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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA (SOUTHERN DIVISION)

STEVE HILTON,

Plaintiff,

v.

SHIRLEY WEBER, in her official capacity as California Secretary of State, GOV. GAVIN NEWSOM in his official capacity,

Defendants

And the LEGISLATURE OF CALIFORNIA,

Real Parties in Interest

Case No.: 8:25-cv-01988-KK-E

PLAINTIFF'S REPLY TO OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

Date: November 6, 2025
Time: 9:30 a.m.
Dept.: Courtroom 3, 3rd Floor

To avoid unnecessary repetition, Plaintiff incorporates by reference the arguments set forth in its Complaint and Motion for Injunctive Relief, to the extent applicable. This reply addresses only those additional points raised in Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction related to standing.

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INTRODUCTION

To begin with, this case requires a three-judge panel. This Court should not rule by itself on jurisdiction or standing because Plaintiff's claims invoke the Fourteenth Amendment's equal protection clause. He has explicitly pleaded claims based on vote dilution, on racial gerrymandering, on partisan gerrymandering, and (implicitly) on viewpoint discrimination. They all involve challenges to the legitimacy of the new Proposition 50 map for Plaintiff's new Congressional District (CD)15 home. They are all "substantial" constitutional rights that raise federal questions that are justiciable in federal court and meet the standard for a three-judge panel. *See Shapiro v. McManus*, 577 U.S. 39, 45-46 (2015) (holding that Section 2284(a) required district court judge to refer case to a three-judge panel where the suit is "indisputably an action challenging the constitutionality of the apportionment of congressional districts.")

Secondly, the State has filed its opposition on specific grounds, mostly having to do with standing and ripeness, so, this Reply will not further argue the merits, fully briefed in Plaintiff's opening brief. This Reply will respond to the salient arguments set forth in the State's Brief in Opposition.

This Court has set a hearing date for November 6, 2025, two days after the statewide Special Election on November 4, 2025, and has denied Plaintiff's application for an order advancing the hearing date. By the time the motion can be heard, then, California voters will have voted on Proposition 50, and the outcome will be known. If Proposition 50 passes and the new congressional districts take effect, Plaintiff's application for an injunction will be moot. This Court could have addressed the matter prior to Election Day, but, as observed, chose not to grant Plaintiff's application to do so. The Plaintiff's request to enjoin the Special Election will, then, be moot.

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Nevertheless, Plaintiff remains steadfast that he has standing to challenge the State's use of the new congressional map and to seek resolution through the judicial process. Stated simply, there is a live controversy and cognizable claim.

PLAINTIFF HAS STANDING TO CHALLENGE CALIFORNIA'S CONGRESSIONAL REDISTRICTING PLAN

Defendants contend that Plaintiff does not have standing to advance his equal protection challenge because he failed to establish an injury in fact. However, Plaintiff currently resides in Congressional District (CD)16 and will likely be moved into the newly created CD 15 when and if voters approve Proposition 50. The consequence is he will individually suffer from the effects of residing in a politically gerrymander district, especially when viewed with similarly situated congressional districts that are impacted by the State's redistricting plan. His vote will be severely diluted because the State's partisan gerrymandering places voters of one party in "legislative districts deliberately designed to cast their votes in elections where their chosen candidates will win in landslides (packing) or are destined to lose by closer margins (cracking)." *Gill v. Whitford*, 585 U.S. 48, 66 (2018) (internal quotation marks omitted).

The dilution will occur because the gerrymandered proposed map is based on the 2020 Census, and entire communities in California have been wiped out by devastating wildfires that decimated those communities and where people no longer live, but are presumed to do so, under the 2020 Census.

Despite Defendants' assertion, Plaintiff's injury is imminent. His congressional district will change when and if voters approve Proposition 50 just eight days from now. The composition of his district, along with multiple others across California, will soon be altered if or when the Secretary of State certifies the election results, and in turn, operationalizes the redistricting map. And the current hyper-partisan gerrymandering plan then becomes a reality.

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Remedying Plaintiff's harm "does not necessarily require restricting all of the State's congressional districts." *Gill*, 585 U.S. at 67. The *Gill* decision dictates that the remedy "[requires revising only such districts as are necessary to reshape the [individual] voter's district – so that the voter may be unpacked or uncracked, as the case may be." *Id.* This remedy focuses the State's efforts to take prompt corrective action and mitigate the harm concerns raised by Defendants.

With a personal stake in this litigation, Plaintiff has made out a case or controversy to which the federal judicial power may extend under Article III of the U.S. Constitution. *Murthy v. Missouri*, 603 U.S. 43, 56 (2024). In cases that challenge congressional redistricting plans, as Plaintiff does, the Supreme Court has made clear that "a person's right to vote is individual and personal in nature," so "voters who allege facts showing disadvantage to themselves as individuals have standing to sue." *Gill*, 585 U.S. at 50 (internal quotation marks omitted.) The *Gill* court held that residents of a partisan gerrymandered district, like Plaintiff, have standing to challenge the constitutionality of that district. *Id.* at 51. Similarly, residents of a racially gerrymandered district have standing to challenge the constitutionality of that district. *United States v. Hays*, 515 U.S. 737, 744-745 (1995).

In this case, Plaintiff has demonstrated that he will imminently suffer an injury in fact caused by Defendants and redressable by judicial action. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-561 (1992); *Dutta v. State Farm Mut. Auto. Ins. Co.*, 895 F.3d 1116, 1173 (9th Cir. 2018). Notably, he has an interest in his vote being given the same weight as any other. Clearly, the Defendants set in motion the chain of events that will soon cause his injury. His alleged injury is "legally and judicially cognizable" under *Gill*.

Along with his vote dilution claim, Plaintiff's displacement from CD 16 into the new CD 15 threatens him with other personal injuries. He is forced to move from a

known member to an unknown member of Congress. It limits his opportunities to run for office in his familiar neighborhoods. As a taxpayer, he is harmed by the State expending public funds on improper districts. For these reasons, Plaintiff has met his burden to pursue his constitutional claims because the Complaint (read together with the Motion for Injunctive Relief) goes beyond "raising only a generally available grievance" as the Defendants suggest. *See Lance v. Coffman*, 549 U.S. 437, 439 (refusing to serve "as a forum for generalized grievances.")

Of course, these are all fact-specific matters. And "proof required to establish standing increases as the suit proceeds." *Davis*, 554 U.S. at 734 (citing *Lujan*, 504 U.S. at 561). For now, at this early stage, Plaintiff has met his burden by pleading sufficient facts that demonstrate why and how the State's redistricting plan threatens to dilute his vote. He has also submitted sufficient evidence from which the Court can conclude that it would be proper to preliminarily enjoin Defendants from implementing maps that plainly implicate – and violate – fundamental constitutional rights.

Plaintiff has standing because his "prospective injury [is] real, immediate, and direct." *Davis*, 554 U.S. at 734 (citing *Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983). The Court need not wait until Plaintiff's injury is actualized if or when California voters have approved Proposition 50. *Davis*, 554 U.S. at 734. Either way, the Court can and should exercise jurisdiction to resolve this constitutional case, and preliminarily enjoin the implementation of the gerrymandered maps.

In the end, Plaintiff satisfies the Article III case-or-controversy requirement by alleging an injury that is "personal, particularized, concrete, and otherwise judicially cognizable." *Raines v. Byrd*, 521 U.S. 811, 820 (1997). Plaintiff does not lose standing because he challenged the "prospective operation" of Proposition 50. *See Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979) (A plaintiff may challenge the

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prospective operation of a statute that presents realistic and impending threat of direct injury). Nor does he lose standing because he alleged prospective injury without knowing the outcome of the Special Election. *See Davis v. Federal Election Commission*, 554 U.S. 724, 734 (2008) (A plaintiff facing "prospective injury has standing to sue where the threatened injury is real, immediate, and direct.") Clearly, Plaintiff has an interest in the outcome of the Special Election, particularly when the new redistricting map impacts his congressional district. That interest is not dispositive. His standing rests on the fact that he has maintained a "requisite stake in the outcome" of this litigation from the day he filed suit in federal court. *Id.*

SINGLE-JUDGE DISMISSAL IS INAPPROPRIATE

Because the present suit is a constitutional challenge to the State's congressional redistricting map, it is inappropriate for "a single judge [to] enter judgment on the merits." *Shapiro*, 577 U.S. at 45-46. Nor should a single judge substitute her judgment for that of the ultimate trier of fact. *See Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988 (9th Cir. 2018) (holding that federal courts do not resolve factual disputes at the pleading stage.) Under Ninth Circuit precedent, when a defendant brings a factual challenge to Article III standing (and therefore jurisdiction), as Defendants have done here, the jurisdictional and merits questions become "intertwined". *Beth Bowen v. Energizer Holdings*, 118 F.4th 1134, 1143-44 (9th Cir. 2024) And the court must treat the motion like a motion for summary judgment, "leav[ing] the resolution of material factual disputes to the trier of fact." *Id.* at 1144.

GRANTING LEAVE TO AMEND IS MORE PRUDENT THAN DISMISSAL

The Court should retain jurisdiction to resolve the matter. While he has raised concerns about the statewide effect of the redistricting plan, Plaintiff has also produced plausible evidence that shows he will be particularly disadvantaged when he moves into a partisan gerrymandered congressional district. However, if the Court

believes he has not fully communicated his basis for standing, Plaintiff requests leave to amend his Complaint to fix those issues. *See Morongo Band of Mission Indians v. Cal. State. Bd. of Equalization*, 858 F.2d 1376, 1380, n. 3 (9th Cir. 1988). Clearly, with Election Day looming eight days away, it is imprudent for the Court to dismiss this case and require Plaintiff to re-file and re-serve the complaint within the next few weeks. This will be costly (in money and time) for both parties and the Court.

CONCLUSION

The prudent step in this case is either: (1) the Court retains jurisdiction of this case; or (2) if the Court determines that Plaintiff's Complaint (when read with his Motion for Preliminary Injunction) is defective, then Plaintiff asks for 15 days leave to amend the Complaint. Pursuant to Federal Rules of Civil Procedure 15(a), leave to amend "shall be freely given when justice so requires." *Caravalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 892 (9th Cir. 2010). District courts must give a plaintiff at least one chance to amend a deficient complaint. *Barke v. Banks*, 25 F.4th 714, 721 (9th Cir. 2022)

DATED: October 17, 2025

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By: */s/ John W. Howard*
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CERTIFICATE OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed by JW Howard/Attorneys, LTD. in the County of San Diego, State of California. My business address is 600 West Broadway, Suite 1400, San Diego, California 92101.

On October 27, 2025, I electronically filed the **PLAINTIFF'S REPLY TO OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION** and served the documents using the Court's Electronic CM/ECF Service which will send electronic notification of such filing to all registered counsel.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 27, 2025 at San Diego, California.

/s/ Dayna Dang
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