IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

REPRESENTATIVE RONNY JACKSON,

Plaintiff,

v.

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

Defendants.

Case 2:25-cv-00197-Z

Hon. Matthew J. Kacsmaryk

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFF'S COMPLAINT

INTRODUCTION

California voters have the power to amend the California Constitution by approving legislatively referred constitutional amendments. Cal. Const. art. XVIII, §§ 1 & 4. Plaintiff, wholly ignoring California and federal law, seeks to block California voters from exercising this power and considering Proposition 50 (Prop 50). But this Court lacks jurisdiction over Defendants. And apart from lacking merit, Plaintiff's causes of action are nonviable as a matter of law because he fails to identify a justiciable claim directly under the Elections Clause, has conceded the nonjusticiability of his Guarantee Clause claim, cannot establish standing to bring either claim, and fails to surmount other threshold obstacles to this lawsuit. Accordingly, the Court must dismiss this case with prejudice.

ARGUMENT

I. THE COURT MUST DISMISS THE COMPLAINT FOR LACK OF PERSONAL JURISDICTION

Secretary Weber. California's Secretary of State is a separately elected constitutional officer; the Governor does not "direct" the Secretary. Cal Const. art. V, § 11. Plaintiff's fundamental misunderstanding of the Governor's relationship with the Secretary of State does not excuse him from the well-settled requirement that "[e]ach defendant's contacts with the forum State must be assessed individually" to establish personal jurisdiction. *Calder v. Jones*, 465 U.S. 783, 790 (1984). Nor does it support specific jurisdiction over parties "that would not otherwise be subject to personal jurisdiction in [this] court[.]" *Patin v. Thoroughbred Power Boats Inc.*, 294 F.3d 640, 653 (5th Cir. 2002).

Setting aside that Plaintiff raises his alter ego theory for the first time in his opposition, that concept usually applies in the context of corporations when, for example, the successor of a corporation is "the *same entity*" and, consequently, "the jurisdictional contacts of one *are* the jurisdictional contacts of the other for the purposes of the *International Shoe* due process analysis."

Id. (emphasis in original); Opp. at 3. Plaintiff cites no authority applying this theory to government officials, nor any evidence that the Secretary is the "same entity" as the Governor in the context of ACA 8. *Id.* Nor could he—the Secretary has defined responsibilities under state law that are distinct from the Governor's, and does not report to the Governor. Opp. at 3; Cal Const. art. II, §§ 5, 8-10, 14; Cal. Gov. Code §§ 12159, 12172.5; Cal. Elec. Code § 10; Lean Decl. ¶¶ 3-5.

As it stands, Plaintiff makes no plausible argument satisfying any due process requirement as to Secretary Weber. *See Bulkley & Assocs., LLC v. Dep't of Indus. Rels., Div. of Occupational Safety & Health of the State of Cal*., 1 F.4th 346, 351 (5th Cir. 2021) (outlining a three-part test to evaluate due process requirements for specific jurisdiction); ECF No. 33 at 9. He also fails to explain how his baseless assertion that the Secretary acts "under the direction of Governor Newsom" establishes the requisite connection between the Secretary and Texas. *See Walden v. Fiore*, 571 U.S. 277, 286 (2014) ("Due process requires that a defendant be haled into court in a forum State based on his *own* affiliation with the State. . . .") (citation and quotation marks omitted) (emphasis added); Opp. at 2.

Governor Newsom. As to Governor Newsom, Plaintiff's opposition foregoes citing any legal authority in favor of providing nearly four pages' worth of quotes from a press release, news articles, social media posts, ACA 8, and AB 604, characterizing them as "admissions" that "are fatal to the Secretary and Governor's jurisdictional defense." Opp. at 3-6. In his view, because Texas acted first in redistricting, any State that follows its lead and openly acknowledges doing so is subject to suit in Texas. But a state official's mere act of acknowledging that the State has redistricted in response to Texas does not establish any of the prerequisites for personal jurisdiction. *See Bulkley & Assocs.*, 1 F.4th at 351 (describing requirements for jurisdiction over nonresident defendants). And tellingly, Plaintiff does not seek any remedy based on Governor

Newsom's mentioning of Texas when discussing California's proposed redistricting; he seeks only a remedy for the proposed redistricting itself. As a further hurdle to personal jurisdiction, although California legislation is the basis of Plaintiff's lawsuit and request for relief, Plaintiff admits that "State executive officials obviously are not responsible for [drafting] legislation." Opp. at 2; ECF No. 1. The opposition is otherwise unresponsive to Defendants' arguments.

***Effects Jurisdiction*.** Plaintiff's inability to establish minimum contacts for either defendant belies his reliance on *Calder's* effects test, because the test "is not a substitute for a nonresident's minimum contacts that demonstrate purposeful availment of the benefits of the forum state." *Panda Brandywine Corp. v. Potoman Elec. Power Co.*, 253 F.3d 865, 869 (5th Cir. 2001) (citation and quotation marks omitted). At best, Plaintiff's claims "only relate to the foreseeability of causing injury in Texas, which is not a 'sufficient benchmark' for specific jurisdiction." *Id.* at 869. If this Court accepts Plaintiff's arguments, out-of-state defendants would be subject to jurisdiction in Texas "simply because plaintiff's complaint alleged injury in Texas to Texas residents regardless of the defendant's contacts, and would have to appear in Texas to defend the suit 'no matter how frivolous the suit may be.'" *Id.* at 870. "Such result would completely vitiate the constitutional requirement of minimum contacts and purposeful availment." *Id.*

II. THE COURT MUST DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

A. Plaintiff Lacks Standing

Plaintiff's theory of standing is untethered from basic standing principles and directly relevant precedent rejecting attempts by individuals to bring claims directly under the Elections Clause without asserting any other constitutional violation—such as a violation of equal protection guarantees—resulting from the purported Elections Clause violation. As to injury-in-fact, Plaintiff claims that because the Texas Legislature's redistricting was among the factors motivating the California Legislature to propose redistricting, each Congressmember in Texas—and perhaps

everyone in Texas—has a right to haul California state officials into court in Texas to answer whether California followed its own laws. Opp. at 15. He also argues, without factual support, that the California Legislature targeted him specifically and that every ballot cast in California inflicts an injury-in-fact. *Id.* at 16.

Plaintiff's arguments are not grounded in law or fact. His claim that he is injured whenever Californians cast votes in the Special Election, regardless of its eventual outcome, confirms that he lacks any cognizable injury and only seeks to have California officials follow his plainly incorrect interpretation of California law. Plaintiff's claim that the California Legislature has abdicated its responsibility to draw congressional districts "is precisely the kind of undifferentiated, generalized grievance about the conduct of government" the Supreme Court has found insufficient to confer standing. *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (distinguishing such injury from cases involving alleged equal protection violations).

Plaintiff appears to believe that this principle does not apply to him because he is a congressman and "not an everyday citizen." Opp. at 13, 15-16. But because "[t]he Elections Clause vests authority to prescribe '[t]he Times, Places and Manner of holding Elections for Senators and Representatives . . . in each State by the Legislature thereof[,]'" claims premised on unlawful usurpation of the state legislature's power under the Elections Clause "belong, if they belong to anyone, only to the [State's legislature]." *Corman v. Torres*, 287 F. Supp. 3d 558, 573 (M.D. Pa. 2018) (citation omitted); *see also Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, 576 U.S. 787, 824 (2015) (AIRC) ("the Clause surely was not adopted to diminish a State's authority to determine its own lawmaking processes"); *see* ECF No. 33 at 21. Such allegations of usurpation of power under the Elections Clause may be asserted by "an institutional plaintiff asserting an institutional injury," but not by individual legislators with no

authorization to represent the state legislature's interests. *AIRC*, 576 U.S. at 802.[1] Plaintiff certainly has no authorization to assert the institutional interests of California's Legislature. And although *Texas v. Pennsylvania* was a case in which the Supreme Court declined to exercise original jurisdiction over a dispute brought by Texas against other States, Opp. at 16 & n.6, its conclusion applies with equal force here, where Plaintiff bases his claim on what he asserts was conduct "aimed at Texas," *id.* at 3-4. 7-8, 13: Plaintiff, like Texas, has no "judicially cognizable interest in the manner in which another State conducts its elections." *Texas v. Pennsylvania*, 141 S. Ct. 1230 (2020).

Plaintiff's attempt to establish causation and redressability is equally flawed. He argues that even before the California electorate has determined whether to pass Prop 50, the California Legislature's actions have affected "[e]very Republican member in Texas." Opp. at 16-17. He then equates the Legislature's actions with threats of retaliation made in the employment context, arguing that "the violation of the [State's] law itself causes injury regardless of the outcome." *Id.* at 16. But that is an insufficient "undifferentiated, generalized grievance about the conduct of government[.]" *Lance*, 549 U.S. at 442. In any case, the Legislature has not threatened anyone, let alone Plaintiff. Plaintiff's analogy to employment law, citing a case having nothing to do with standing, does not resolve the speculative nature of Plaintiff's alleged harm. Opp. at 16.[2]

Finally, Plaintiff argues that "enjoining the submission of Prop 50 ballots to California voters" would "remedy ongoing legal violations." *Id.* at 17. But Plaintiff does not have standing

[1] *See also King v. Whitmer*, 505 F. Supp. 3d 720, 736 (E.D. Mich. 2020) (rejecting plaintiffs' assertion of standing where they were not members of state legislature); *Corman*, 287 F. Supp. 3d at 568-69, 573 ("two of 253 members of the Pennsylvania General Assembly" lacked standing to sue under Elections Clause for "deprivation of 'their legislative authority to apportion congressional districts'").

[2] For similar reasons, the speculative nature of Plaintiff's claims—based on contingent events that may never occur—renders this case unripe for review. *See* ECF No. 33 at 25-26.

simply because he believes violations of state law are occurring. And preventing voters from *receiving* ballots—a remedy he seeks for the first time in his Opposition—raises an additional constitutional infirmity: mootness. Voters began receiving ballots, and elections officials began receiving cast ballots, in September. ECF No. 33 at 5. The Special Election is well underway.

B. Plaintiff Cannot Assert a Claim Directly Under the Elections Clause and Cannot Assert Any Claim Under the Guarantee Clause

Plaintiff "cannot derive a cause of action directly from the constitutional text of the Elections Clause" for the same structural reasons *Corman* and other cases conclude that individual plaintiffs (including candidates) do not have standing to bring claims directly under the Elections Clause. *Texas Voters Alliance v. Dallas Cnty.*, 495 F. Supp. 3d 441, 461-62 (E.D. Tex. 2020) (citing *Lance*, 549 U.S. at 442). As explained, it is Plaintiff's status as an individual asserting only a bare failure to comply with the law, rather than an institutional plaintiff asserting the usurpation of its own institutional power, that renders him unable to raise a "cause of action based solely on the text of the Elections Clause[.]" *Id.* at 462. "'The [Elections] Clause is a default provision; it invests the States with responsibility for the mechanics of congressional elections' insofar as 'Congress declines to preempt state legislative choices.'" *Sharma v. Hirsch*, 121 F.4th 1033, 1038 (4th Cir. 2024) (quoting *Foster v. Love*, 522 U.S. 67, 69 (1997)), *cert. denied*, 145 S. Ct. 1966 (2025). As such, "[w]hen states do not otherwise violate constitutional rights and requirements"—such as the First, Fourteenth, or Fifteenth Amendments—"only Congress may supersede their discretionary authority" to enact or adopt election rules and redistricting plans. *Id.* And in rejecting the Elections Clause as a vehicle to plead claims that redistricting was conducted with improper partisan considerations—in contrast to claims alleging one-person, one vote or racial gerrymandering equal protection violations—the Supreme Court explained that the Framers at no point "suggest[ed] that the federal courts had a role to play." *Rucho*, 588 U.S. at 699. Plaintiff

pleads no such independent equal protection or other constitutional violation. He also fails to identify even a single case in which an individual plaintiff—legislator or otherwise—was permitted to assert an Elections Clause claim premised solely on alleged violations of state law.

Attempting to distinguish *Rucho*, Plaintiff claims that his Elections Clause claim "is not a question of partisan gerrymandering." Opp. at 11. But he argues that "[t]he Elections Clause Prohibits Procedural Manipulation to Achieve Partisan Ends Against a Sister State," *id.* at 20, and repeatedly references partisan considerations underlying the Legislature's referral of Prop 50 to the voters as the basis for his theory of harm. Plaintiff seeks to do what *Rucho* explicitly rejected as nonjusticiable: shoehorn a partisan gerrymandering theory into an Elections Clause claim to establish a "'judicially enforceable limit on the political considerations that the States and Congress may take into account when redistricting.'" 588 U.S. at 717 (citation omitted).

Contrary to Plaintiff's contention, Opp. at 14, *Moore v. Harper*, 600 U.S. 1 (2023) did not create an avenue for federal district courts to be the primary referees over state legislatures' compliance with state laws. Opp. at 14, 17. Rather, *Moore* held that "[s]tate courts retain the authority to apply state constitutional restraints when legislatures act under the power conferred upon them by the Elections Clause," and the role of the United States Supreme Court is to exercise judicial review of state court decisions to ensure those decisions do "not so exceed the bounds of ordinary judicial review as to unconstitutionally intrude upon the role specifically reserved to state legislatures by Article I, Section 4, of the Federal Constitution." *Id.* at 37; *id.* at 34 ("[s]tate courts are the appropriate tribunals . . . [to decide] questions arising under their local law, whether statutory or otherwise."). Plaintiff gets it backward in trying to bypass California courts, pursue his action in federal court in Texas in the first instance, and deprive California courts of the deference they are due in interpreting California election law.

Finally, Plaintiff concedes that his Guarantee Clause claim is nonjusticiable, but still argues that the clause provides a "backdrop" allowing courts to consider whether a State has abandoned "republican principles" when evaluating Elections Clause claims. Opp. at 12. The Supreme Court has explicitly rejected the notion that a plaintiff could mount a justiciable challenge to a State's partisan redistricting based on an alleged "violat[ion of] 'the core principle of [our] republican government'" set forth in the Guarantee Clause. *Rucho*, 588 U.S. at 717. This appears to be just another attempt by Plaintiff to plead a nonjusticiable dispute about partisan motives.

Plaintiff cannot invoke either the Elections or Guarantee Clause to state a claim premised on his dissatisfaction with California's policy choices about how to draw its congressional districts—even if those policy choices involve some consideration of partisan concerns. As "the Framers gave Congress power to do something about" redistricting conducted with partisan motivations, *Rucho*, 588 U.S. at 720, Plaintiff holds the power to remedy his concerns about federalism and States' motivations in redistricting by lobbying his colleagues to adopt a nationwide policy of nonpartisan redistricting or to "make or alter" other redistricting rules as permitted by the Elections Clause. U.S. Const. art. I, § 4, cl. 1

C. Plaintiff Fails to Overcome Defendants' Claim of Sovereign Immunity

Plaintiff effectively concedes that his only claim is one rooted in California state law. *See* Opp. at 12 ("Plaintiff acknowledges the tradition of nonjusticiability of Guarantee Clause claims"); *see also id*. at 17 ("Plaintiff challenges ongoing violations of federal law—specifically, the Elections Clause requirement that state legislatures act within their constitutional authority."). And while it is true that "State laws can violate the Constitution in some circumstances," Opp. at 18, alleged violations of the Elections Clause premised *solely* on a State's failure to follow its own laws have been squarely rejected as nonactionable injuries. *See, e.g., Coffman*, 549 U.S. at 441; *see supra* § II.A.; *see also* ECF No. 5 at 1-5, 13-18, 20-21. The contours of the *Ex parte Young*

doctrine are well established—"a claim that state officials violated *state law* in carrying out their official responsibilities is a claim against the State that is protected by the Eleventh Amendment[.]" *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 121 (1984) (emphasis added). Plaintiff's discussion of *Ex parte Young* and *Moore v. Harper* offers no reason to deviate from precedent. Opp. at 17-18.

Moreover, Plaintiff contravenes Fifth Circuit and Supreme Court precedent with his bare assertion that "Governor Newsom's enforcement authority is demonstrated by his active promotion and championing of ERRA[,]" because a governor's "general duty" to enforce laws does not trigger the *Ex parte Young* exception. *Morris v. Livingston*, 739 F.3d 740, 746 (5th Cir. 2014); *see Okpalobi v. Foster*, 244 F.3d 405, 416-17 (5th Cir. 2001); *see also Whole Woman's Health v. Jackson*, 595 U.S. 30 (2021); Opp. at 18.

Lastly, Plaintiff misses the mark by introducing yet another alter-ego theory. *See* Opp. at 18. The concept of alter egos in the context of sovereign immunity applies when an "entity deemed an 'alter ego' or 'arm' of the state" is sued—a scenario inapposite to this case, which involves no entity defendants. *Perez v. Region 20 Educ. Serv. Ctr.*, 307 F.3d 318, 326 (5th Cir. 2002).

III. THE COURT MUST DISMISS BECAUSE PLAINTIFF FAILS TO STATE A CLAIM

Plaintiff's single page devoted to addressing the merits of his claim consists entirely of his failure to acknowledge what California and federal law actually say about Californians' power to change the time, place, and manner in which California conducts redistricting. Opp. at 19. As explained in Defendants' combined brief, the Elections Clause "leaves with the States primary responsibility for apportionment of their federal congressional and state legislative districts." *Growe v. Emison*, 507 U.S. 25, 34 (1993). Article XXI of the California Constitution sets forth the manner and time in which California conducts redistricting, and as currently written, it prescribes decennial, nonpartisan redistricting by the independent Citizens Redistricting

Commission. Cal. Const. art. XXI, §§ 1, 2(e); *see* ECF No. 33 at 2. And California voters, "as the ultimate source of legitimate political power, are of course free through *constitutional amendment* to adopt whatever changes in the existing [redistricting] system they consider appropriate, subject only to limitations contained in the Constitution of the United States." *Legislature v. Deukmejian*, 34 Cal. 3d 658, 680 (1983) (emphasis added); Cal. Const. art. XVIII, §§ 1 & 4. That is what Prop 50 proposes here. If adopted by voters, ACA 8 would expressly amend Article XXI to use ACA 8's temporary alternative redistricting procedure "notwithstanding any other provision of this Constitution or existing law." ACA 8 § 4(b). Nothing in federal constitutional law or legislation prohibits California from "tak[ing] partisan interests into account" in future redistricting, if the voters choose to amend the state constitution to permit it. *Rucho*, 588 U.S. at 701; *see also* ECF No. 33 at 29, 32 & n.22.

In attempting to cast the Legislature's referral of the redistricting question to the voters as an *ultra vires* action, Plaintiff claims that the Legislature improperly "reclaim[ed redistricting] authority through a simple majority vote" and that Prop 50 "merely asks voters to ratify a completed redistricting[.]" Opp. at 19. But because a legislatively referred constitutional amendment has no effect unless a majority of California voters approve it, no redistricting will or even *can* occur if the voters do not approve Prop 50. Providing for a statewide election on whether to amend the California Constitution and officially adopt the map proposed in AB 604 is precisely the path to amendment that the California Constitution prescribes. Cal. Const. art. XVIII, § 1.

CONCLUSION

Plaintiff's claims fail as a matter of law and cannot be brought in this Court, and he identifies no basis to believe his complaint can be saved by amendment. Defendants respectfully request that it be dismissed with prejudice.

Dated: October 20, 2025

Respectfully submitted,

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