18-17458

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CITIZENS FOR FAIR REPRESENTATION, et al.,

Plaintiffs-Appellants,

v.

SECRETARY OF STATE ALEX PADILLA,

Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of California

No. 2:17-cv-00973-KJM-CMK
The Honorable Kimberly J. Mueller, Judge

ANSWERING BRIEF OF DEFENDANT-APPELLEE

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INTRODUCTION

Plaintiffs challenge a 140-year old provision of the California Constitution prescribing that the state Senate shall have 40 members and the state Assembly shall have 80 members. The district court properly held that established Supreme Court precedent limiting the jurisdiction of federal courts forecloses this challenge, and dismissed the case.

On appeal, Plaintiffs ask this Court to allow it to pursue an order requiring California to adopt more numerous, less populous legislative districts. Plaintiffs assert that the existing number of districts does not afford certain Californians, including those who are persons of color, reside in rural areas of the state, are "not wealthy," or lack "political connections," the same voting and political power as white Californians (but presumably excluding those whose interests Plaintiffs, some of whom are white, purport to represent). According to Plaintiffs, this results in a hegemonic system of political participation that violates federal guarantees of equal protection, due process, and free speech, to an extent that will increase perpetually as the state's population grows.

Federal courts lack jurisdiction to resolve these questions on their merits, even if there were compelling policy arguments favoring such a change. First, Plaintiffs cannot cross the threshold of standing. The district

court correctly held that the injury Plaintiffs assert is a generalized grievance, rather than the concrete and particularized harm required to demonstrate an injury-in-fact. California affords the same level of political representation to every Californian by ensuring that its legislative districts are equal in population. And any challenges in advancing candidates of choice in elections and obtaining meaningful access to one's elected representative in a district shared by over 460,000 people are necessarily common to all Californians—a point well made in Plaintiffs' complaint. *See* Appellants' Excerpts of Record (ER) 41 ("The colossal size of California's legislative districts ensures that the great majority of residents have no effective influence on either the election of or actions of their legislators.")

Second, Plaintiffs advance non-justiciable political questions. The political question doctrine recognizes that federal courts lack the authority to intrude upon policy choices and value judgments committed by the Constitution to the legislative or executive branches. Here, the California Constitution determines the size and structure of the state's legislative districts, and the Legislature is the only branch of government with the authority to amend these constitutional requirements. Even if a federal court possessed the authority to increase the number of state legislative districts in California, there are no judicially discernible and manageable standards by

which to determine what new number of districts would increase the political power of the diverse communities of interest that Plaintiffs purport to represent. Any attempt to propose one would require the reviewing court to weigh conflicting policy concerns and engage in the type of political analysis that federal courts are not equipped to perform. The district court correctly recognized that Plaintiffs' claims and the remedies they seek are political questions "beyond judicial competence, no matter who raises it, how immediate the interests affected, or how burning the controversy." Wright & Miller, 13C Fed. Prac. & Proc. Juris. § 3534 (3d ed.).

Secretary Padilla requests that this Court affirm the judgment of the district court on either or both of these grounds.

JURISDICTIONAL STATEMENT

Secretary Padilla agrees with the jurisdictional statement on page one of Appellants' Opening Brief.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Plaintiffs allege that the ability of Californians who are persons of color, reside in a rural areas of the state, are "not wealthy," or lack "political connections," to elect a preferred candidate to the state legislature or engage with their elected representative is diminished due to the populous nature of California's Senate and Assembly districts. Is any harm that potentially

arises in result a generalized grievance shared by a large number of citizens in substantially equal measure?

To remedy the alleged harm described above, Plaintiffs seek a court order increasing the number of state Senate and Assembly districts to the point at which any "constitutional violations have been cured." Do Plaintiffs' constitutional claims, the remedy they seek, or both, present a non-justiciable political question?

STATEMENT REGARDING ADDENDUM

All pertinent California constitutional provisions and statutes are set forth verbatim and with appropriate citation in the addendum to this brief. Ninth Circuit Rule 28-2.7.

STATEMENT OF THE CASE

I. CALIFORNIA'S APPORTIONMENT SYSTEM

Since at least 1879, the California Constitution has provided that the California Legislature consists of 40 senators and 80 assemblymembers, with a single legislator representing each of 40 senatorial and 80 assembly districts. Cal. Const. art. IV, §§ 2(a), 6; *People ex rel. Snowball v. Pendegast*, 96 Cal. 289, 291 (1892) (describing the membership size of the Senate and Assembly as "general, important, and permanent features of the scheme of legislative organization embodied in the constitution"); ER 28.

To change the membership of either house, or the number of districts, would require a constitutional amendment.[1]

The Citizens Redistricting Commission draws the boundaries of California's state Senate, Assembly, and Board of Equalization districts, as well as all federal congressional districts within California. Cal. Const. art. XXI, § 1. The criteria for drawing districts includes, among other requirements, that "Senatorial, Assembly, and State Board of Equalization districts shall have reasonably equal population with other districts for the same office, except where deviation is required to comply with the federal Voting Rights Act or allowable by law." *Id.*, § 2(d)(1). Redistricting occurs every ten years, closely following each decennial census. *Id.*, § 1. The Commission adopted the statewide maps currently in use in 2011. *Vandermost v. Bowen*, 53 Cal. 4th 421, 438 (2012). In drawing those maps, the Commission adopted an "ideal standard" population of 702,905 for

[1] The California Constitution can be amended by legislative proposal, constitutional convention, or initiative. Cal. Const. art. XVIII, §§ 1–3, *see also id.*, art. II, § 8(a) ("The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them."). A legislative proposal requires a two-thirds majority concurrence of both the Senate and the Assembly. *Id.*, art. XVIII, § 3.

congressional districts, 465,674 for Assembly districts, 931,349 for Senate districts, and 9,313,489 for Board of Equalization districts.[2,3]

II. THE PLAINTIFFS AND THEIR CLAIMS

Plaintiffs are a voting rights organization, two municipalities, two independent political parties, and a dozen individual California voters who assert an interest in expanding their access to and representation within state government.

- Citizens for Fair Representation (CFR) is a not-for-profit organization that educates Californians regarding their right to participate in government, whose members allege to have been "disenfranchised from

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[2] California Citizens Redistricting Commission, Final Report on 2011 Redistricting 9, 11 (Aug. 15, 2011), https://wedrawthelines.ca.gov/wp-content/uploads/sites/64/2011/08/crc_20110815_2final_report.pdf.

[3] Under California's apportionment system, the races and ethnicities of the 80 currently-serving assemblymembers approximate the demographic makeup of the state as a whole. As of June 2019, the racial and ethnic composition of California's lower house is 46 percent white, 25 percent Latino/a, 15 percent Asian Pacific Islander, 10 percent African American, and one percent Native American. California Research Bureau, Demographics in the California Legislature: 2019–2020 Session, Jun. 2019, https://www.library.ca.gov/crb/reports/. *Compare with* ER 33 (alleging "[a]pproximately 38% of California's population is white, 37% is Hispanic, 13% is Asian, and, 6% is black. Less than 2% of California's population is Native American."). The current membership of the Senate, a smaller body, is somewhat less representative: 73 percent white, 18 percent Latino/a, five percent Asian Pacific Islander, and five percent African American. California Research Bureau, Demographics in the California Legislature: 2019-2020 Session, Jun. 2019.

California's political legislative process and voting because they reside in such populous legislative districts that CFR's member's [sic] interests, needs, and concerns are routinely ignored by California's bicameral legislature." ER 21.

- The California Libertarian Party and California American Independent Party are minor political parties that claim their ability to elect candidates of choice is "seriously undermined" by the size of state legislative districts. ER 24.

- The California cities of Colusa and Williams are two rural municipalities that allege to have been injured by the "invidious discrimination" they attribute to the size of the state legislature. ER 23.

- Win Carpenter, Kyle Carpenter, and Chief Roy Hall, Jr. are Native Americans residing in California's Senate District 1 who allege the size of state legislative districts has impaired "any opportunity to elect a member of their race to a statewide legislative body." ER 22.

- David Garcia is a self-described Hispanic resident of California's Senate District 8, who alleges his ability to elect candidates of choice has been "seriously impaired" by the size of state legislative districts. ER 22.

- Raymond Wong and Leslie Lim, residents of California's Senate Districts 32 and 21, respectively, of Asian descent, allege the size of their legislative districts has impaired "any opportunity to elect a member of their race to a statewide legislative body." ER 22.

- Cindy Brown is a self-described black resident of California's Senate District 37 in central Orange County. She alleges the size of state legislative districts dilutes the political power of black Californians. ER 23.

- Mark Baird, John D'Agostini, Mike Poindexter, Michael Thomas, and Larry Wahl are California residents of Senate districts composed of eight or more counties. They allege to have been injured by California's legislative apportionment system. ER 23. The complaint does not disclose their races and ethnicities, but it can be inferred from Plaintiffs' second cause of action, brought only "by non-white plaintiffs," that at least some of this group of plaintiffs identify as white. ER 37.

All of the individual plaintiffs allege to be U.S. citizens and voters, and all purport to represent the interests of others similarly situated to them. ER 21–23.

Plaintiffs sue California Secretary of State Alex Padilla in his official capacity,[4] alleging that the allocation of 40 Senate and 80 Assembly districts in California Constitution article IV, sections 2(a) and 6 (collectively, section 2(a)) violates several federal constitutional guarantees.

Plaintiffs' six claimed constitutional violations overlap considerably. They contend that section 2(a) violates equal protection (Claim 1), especially but not exclusively for non-white plaintiffs (Claim 2), because it was designed to ensure white males remain in control of the state legislature. ER 35–37. They assert that section 2(a) impedes Plaintiffs' ability to protect their interest through direct access to their representatives, in violation of equal protection (Claim 3), as well as their access to government benefits and services, in violation of due process (Claim 4). ER 38–40. They further allege that section 2(a) "was enacted and is maintained to suppress and retaliate against residents who advocate viewpoints contrary to the political elites," in violation of First Amendment free speech guarantees (Claim 5); and that it "assure[s] that the great majority of residents have no effective

[4] Although the complaint names the California Redistricting Commission as a defendant, during the hearing on the motion to dismiss the Second Amended Complaint, Plaintiffs' counsel indicated that Plaintiffs intended to proceed only against Secretary Padilla. ER 10.

influence on their legislators" in violation of the guarantee to a republican form of government (Claim 6).[5] ER 40–41. With the exception of Claim 2, brought only by "non-white plaintiffs," all claims are alleged by all plaintiffs. ER 35, 37–40.

By way of relief, Plaintiffs seek a declaration that the number of districts is unconstitutionally low. ER 42. Plaintiffs also request an injunction requiring that the number of state legislators "be increased to a number, as determined at trial, which will assure . . . voters who have been discriminated against" and "voters in sparsely populated rural areas . . . have a meaningful opportunity to elect their preferred candidates." ER 43. Plaintiffs also ask that the district court "grant the defendants a reasonable period of time, not to exceed two years, to cure these constitutional violations" while "retain[ing] jurisdiction over this case until the constitutional violations have been cured." ER 42.

[5] Plaintiffs concede that the Guarantee Clause claim (Claim 6) is non-justiciable. AOB 23 n. 7.

III. PROCEDURAL HISTORY

Plaintiffs filed a complaint on May 8, 2017, alleging seven different constitutional theories.[6] ER 89, 106, 110–117. They also sought adjudication by a three-judge court pursuant to 28 U.S.C. § 2284(a), which provides for such a panel "when an action is filed challenging the constitutionality of the apportionment . . . of any statewide legislative body." ER 117. The district court declined to convene a three-judge court while matters of subject matter jurisdiction and justiciability were still in question. ER 86. Plaintiffs challenged this decision by petition for writ of mandamus to the Supreme Court, which denied it on October 1, 2018. Pet. Writ Mandamus.

On Secretary Padilla's motion, the district court dismissed the complaint with leave to amend on February 1, 2018, for lack of standing and because it posed a non-justiciable political question. ER 77–83. In particular, the district court found with respect to standing that "[t]he

[6] The original complaint was filed by named plaintiffs CFR, the California Libertarian Party, the California American Independent Party, Mark Baird, John D'Agostini, Larry Wahl, Roy Hall Jr., Win Carpenter, Kyle Carpenter, David Garcia, Leslie Lim, and Michael Thomas, as well as former plaintiffs City of Fort Jones, the Marin County Green Party, the Shasta Nation Indian Tribe, Patty Smith, Katherine Radinovich, Kevin McGary, Howard Thomas, Terry Rapoza, Steven Baird, and Manuel Martin. ER 89.

grievance plaintiffs cite is common to all Californians," because, "plaintiffs here do not contend that voting strength is arbitrarily diluted in some districts vis-a-vis others; plaintiffs argue instead that each district is too large and therefore every Californian's vote and access to government is diluted." ER 80.

On March 19, 2018, Plaintiffs filed the Second Amended Complaint.[7] ER 39. The Second Amended Complaint concedes (as it must) that the size of California's legislative districts is an issue that affects all California voters. *See, e.g.*, ER 33 ("the adverse effects of representative government by enormous legislative districts are felt by all California voters"). Still, it also maintains that certain communities, including those who are people of color, live in rural areas, hold minority political views, are "not wealthy," and do not have "political connections," are harmed disproportionately by large district populations, as compared with other Californians. ER 33.

The district court dismissed the Second Amended Complaint on Secretary Padilla's motion, this time with prejudice, on November 28, 2018. ER 8, 18. Although the Second Amended Complaint alleges more specifically that the constitutional harms were borne disproportionately by

[7] Plaintiffs never filed a first amended complaint.

persons of color and other communities of interest, the district court found this harm still amounts to a widely-shared generalized grievance. ER 13–14. The district court also found that the complaint continues to plead a non-justiciable political question because there are "no judicially discernible and manageable standards" for determining the appropriate size of legislative districts. ER 17. Further, resolving Plaintiffs' claims would require the court to perform "a task committed to the legislative branch" and engage in policy analysis "outside the bounds of this court's powers," ER 17–18 (internal quotation marks and citations omitted). The district court's dismissal order is the subject of this appeal.

SUMMARY OF ARGUMENT

The district court correctly determined that the Second Amended Complaint suffers from two jurisdictional defects, each warranting dismissal. *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 215 (1974).

First, Plaintiffs lack standing to raise the claims they allege. On behalf of the many communities whose interests they represent, including persons of color, residents of rural areas, members of "minority political parties," persons who are "not wealthy," and "ordinary citizens without political power," ER 33, 39, Plaintiffs assert that the number of state legislators and

districts impairs their voting power and their ability to influence their elected representatives, relative to that of white residents, in violation of the Equal Protection Clause, the Due Process Clause, and the First Amendment. In fact, the alleged injury caused by populous districts is manifestly suffered by all Californians and "amounts only to a generalized grievance shared by a large number of citizens in a substantially equal measure." *Duke Power Co. v. Carolina Envtl. Study Grp., Inc.*, 438 U.S. 59, 80 (1978). Because such harm is neither concrete nor particularized, it cannot confer standing. Accordingly, the district court correctly determined that it lacked jurisdiction.

Second, Plaintiffs' claims are non-justiciable political questions that "lie outside of the Article III jurisdiction of federal courts." *Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 980 (9th Cir. 2007) (citations omitted). The district court correctly noted multiple indicia of a political question under *Baker v. Carr*, 369 U.S. 186 (1961), any one of which could warrant dismissal. First, the court lacks "judicially discoverable and manageable standards" for determining whether and to what extent California's legislative districts impair Plaintiffs' constitutional rights. *Id.* at 217. Second, judicial resolution would require the court to engage in "policy determination[s] of a kind clearly for nonjudicial discretion." *Id.* Third,

judicial resolution of this issue would invade the province of the legislative branch. *Id.*

STANDARD OF REVIEW

As Plaintiffs correctly note, this Court reviews de novo a district court's dismissal for lack of subject matter jurisdiction. Appellants' Opening Brief (AOB) 5. All well-pleaded allegations of material fact are accepted as true and construed in the light most favorable to Plaintiffs. *Friedman v. AARP, Inc.*, 855 F.3d 1047, 1051 (9th Cir. 2017).

Dismissal without leave to amend is appropriate when the court "determines that the pleading could not possibly be cured by the allegation of other facts." *Watison v. Carter*, 668 F.3d 1108, 1117 (9th Cir. 2012) (internal quotation marks and citation omitted).

"[E]ither the absence of standing or the presence of a political question suffices to prevent the power of the federal judiciary from being invoked by the complaining party." *Schlesinger*, 418 U.S. at 215. Thus, affirming the district court's dismissal on either ground—lack of standing or the political question doctrine—would suffice to resolve this appeal. "When both standing and political question issues are before the court, the court should determine the question of standing first." *No GWEN All. of Lane Cty., Inc. v. Aldridge*, 855 F.2d 1380, 1382 (9th Cir. 1988) (citations omitted).

ARGUMENT

I. PLAINTIFFS LACK STANDING BECAUSE THEY ALLEGE COMMON AND GENERALIZED GRIEVANCES RATHER THAN CONCRETE AND PARTICULARIZED HARM

A. Plaintiffs' Alleged Harm Is Not Particularized Because It Is Widely Shared by California Residents

Under familiar Supreme Court precedent, a plaintiff invoking federal court jurisdiction must demonstrate three elements, said to constitute the "irreducible constitutional minimum" of Article III standing: "First, the plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of . . . . Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992) (footnote, citations, and internal quotation marks omitted).

Plaintiffs lack the first element of this constitutional minimum, concrete and particularized injury, because they allege an injury suffered by all California voters. The required "injury in fact" must be one affecting a litigant in a "personal and individual way," *id.* at 560 n.1, that creates a

"direct stake in the outcome" of the case. *Sierra Club v. Morton*, 405 U.S. 727, 740 (1972). By contrast, "a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large"—lacks such injury in fact. *Lujan*, 504 U.S. at 573–74. *See also Lance v. Coffman*, 549 U.S. 437, 439 (2007) (per curiam) ("Our refusal to serve as a forum for generalized grievances has a lengthy pedigree."); *Massachusetts v. Mellon*, 262 U.S. 447, 488 (1923) ("The party who invokes the [judicial] power must be able to show . . . that he has sustained or is immediately in danger of sustaining some direct injury . . . and not merely that he suffers in some indefinite way in common with people generally.").

The district court correctly determined that Plaintiffs' injury is shared by all or nearly all Californians in substantially equal measure. ER 13–16. Plaintiffs do not dispute that California's legislative districts are required by law to be and are in fact equally populous. ER 33; *see also* Cal. Const. art. XXI, §2(d) ("[state legislative] districts shall have reasonably equal population with other districts for the same office, except where deviation is required to comply with the federal Voting Rights Act or allowable by law."). This system, by design, equalizes voting power and access to one's

elected representative across California. *Reynolds v. Sims*, 377 U.S. 533, 579 (1964) ("[T]he overriding objective [in districting] must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State."). Accordingly, any injury to the strength of an individual's voting or political power caused by section 2(a) would necessarily be common to all Californians. For example, if, as Plaintiffs allege, California's growing population enlarges districts, weakening the relative power of each voter, that injury would be felt equally by all voters in all districts and cannot be particular to Plaintiffs.

Plaintiffs claim to satisfy the particularized injury requirement of standing by arguing that section 2(a) affects certain communities of interest represented by Plaintiffs more "specifically and concretely" than the general population, ER 33, but offer no logical explanation of how the size of districts, standing alone, could affect these communities differently than anyone else. According to Plaintiffs, section 2(a) affords less voting and political power to persons of color, residents of rural areas, members of "minority political parties," persons who are "not wealthy," and "ordinary citizens without political power," ER 33, 39, than "white, well-heeled Californians." AOB 21. But alleging this conclusion does not make it

plausible or transform what is plainly a generalized grievance into one that is concrete and particularized. Plaintiffs' demographic characteristics do not serve to particularize their injuries where, as here, all votes are of equal power.

Plaintiffs' argument that equally but too populous districts cause them individualized injury fails for other reasons as well. The diverse communities of interest represented by Plaintiffs cut so broadly as to encompass virtually all California residents. The individual named plaintiffs identify as white, black, Native American, Asian, and Hispanic. ER 21–22. They live in densely populated coastal counties as well as rural inland counties. ER 21–22. No facts are alleged regarding who, if any, among them is "not wealthy," but presumably all are "ordinary citizens without political power." The plaintiff municipalities and political parties, for their part, represent the interests of thousands of individuals.[8] CFR broadly

[8] In 2017, the population of plaintiff cities Colusa and Williams was 5,963, and 5,349, respectively. United States Census Bureau, American Fact Finder, https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml (as of Jul. 22, 2019). As of February 10, 2019, there were over 517,872 and 153,348 individuals registered to vote as members of the California American Independent Party and the California Libertarian Party, respectively. California Secretary of State, Report of Registration by County, Feb.10, 2019, https://www.sos.ca.gov/elections/report-registration/ror-odd-year-2019/.

describes its members as "U.S. citizens and residents in California comprised of different races, ethnicities, religions, and political beliefs located in various legislative districts throughout the state." ER 21. And the California Libertarian Party surely counts among its more than 150,000 registered members voters of all economic strata from both urban and rural parts of the state. Thus, although Plaintiffs claim that only some Californians are disproportionately impacted by section 2(a), from a representational standpoint, they have scarcely narrowed the field.[9]

Moreover, the complaint concedes that Plaintiffs' injuries are common to all California voters and residents, as the following examples illustrate:

- "As the state's population grows inexorably, the political influence of each voter will be increasingly diluted." ER 33.

- "The colossal size of California's legislative districts ensures that the great majority of residents have no effective influence on either the election of or actions of their legislators." ER 41

[9] In opposing Secretary Padilla's motion to dismiss the Second Amended Complaint, Plaintiffs identified only Mark Zuckerberg and Nancy Pelosi as persons whose political power remains strong under California's apportionment system. ER 13 (quoting Pls.' Rep. Def.'s Mot. Dismiss 13, ECF No. 48).

- "[M]illions of state residents have no meaningful access to their representatives to express political interests and obtain appropriate redress. California makes the casting of ballots meaningless . . . ." ER 39.

- "Ordinary citizens without political power in huge legislative districts have far greater difficulty obtaining the assistance and attention from their legislators than those with wealth and political connections." ER 39–40.

- "[A] Californian has far less political power than is the norm for the rest of the United States. A person who moves from another state to California suffers an immediate and continuing loss of political influence over the making of state laws." ER 38.

Even the most personalized allegations of harm speak to the common nature of Plaintiffs' injury—the challenge, as one of hundreds of thousands of residents in their respective district (or as the municipality or institution representing that person's interest), of influencing elections and engaging representatives on preferred causes. For example, each of the dozen individual plaintiffs alleges that it is difficult to elect candidates of their choosing due to either or both of two common theories—entrenched racism, and the influence of campaign donors on election results. ER 21–23, 35.

Similarly, "[m]ost plaintiffs" tried and failed to obtain legislative support to reform California's apportionment system before filing this lawsuit. ER 24. Because these challenges are common to the "great majority of [California] residents," ER 41, Plaintiffs cannot establish standing.

B. The Alleged "Dilution" of Plaintiffs' Voting and Political Power Is Not a Concrete Injury

Plaintiffs lack injury in fact because the harm alleged—the degradation of voting and political power held by Plaintiffs and the interests they represent—is not a concrete injury. Plaintiffs mis-describe this injury as "dilution," e.g., ER 22–24. Vote dilution, a term of art in districting cases, refers specifically "to the idea that each vote must carry equal weight. In other words, each representative must be accountable to (approximately) the same number of constituents." *Rucho v. Common Cause*, 139 S. Ct. 2484, 2501 (2019); *Thornburg v. Gingles*, 478 U.S. 30, 31 (1986) ("[L]oss of political power through vote dilution is distinct from the mere inability to win a particular election."). Inherent in the concept of vote dilution is the idea that the value of a vote can be defined only in relation to other votes, whether within the same district, or between districts. *Gill v. Whitford*, 138 S. Ct. 1916, 1930 (2018) (finding "[t]he boundaries of the district, and the composition of its voters, determine" the extent of any vote dilution).

Thus, a case in which district population size varies substantially from district to district, diluting the votes within a more populous district relative to a less populous district, would satisfy the injury-in-fact requirement. *E.g.*, *Gray v. Sanders*, 372 U.S. 368, 375 (1963) (finding plaintiffs had standing to challenge apportionment scheme which allocated representatives according to population "brackets," not actual population, because the bracketing system gave urban votes less weight). The *Gray* plaintiffs' harm is concrete because their loss of voting power enriches the voting power of an identifiable class of voters outside of the plaintiffs' district.

In comparison, the dilution claimed by Plaintiffs is entirely speculative. They surmise that the value of everyone's vote in a less populous district of indeterminate size will be greater that the value of everyone's vote in today's more populous districts. ER 33. Vote dilution, however, is a concrete and particularized harm only where the relation between the votes enhanced and the votes diluted is concrete and measurable. *E.g.*, *Baker*, 369 U.S. at 206–07. Thus, the district court correctly looked beyond the terminology used to describe Plaintiffs' injury to conclude that it was too abstract to confer standing. ER 13. Because their harm is not concrete, Plaintiffs cannot establish standing.

C. Neither *Baker* Nor Other Examples of "Widely Shared Injuries" Inform the Standing Analysis Because They Present Particularized Harms Suffered by a Discernible Group of People

Plaintiffs misplace reliance upon *Baker*, 369 U.S. 186, for the incorrect proposition that "a law of general applicability written in neutral terms that, with the passage of time, had disparate effects on different groups of voters" gives rise to a concrete and particularized injury. AOB 22. *Baker* addressed an equal protection challenge to a statewide districting plan, but the similarities end there. Unlike California's apportionment system, consisting of equipopulous districts redrawn each decade to ensure they remain that way, the Tennessee Legislature devised an apportionment plan that assigned a specific number of legislators to each county or groups of counties. 369 U.S. at 187–88, 237–41. Over the next sixty years, Tennessee's population expanded, and relocated, and in the process grew lopsided: a single vote in one district became equivalent to 19 votes in a different district. *Id.* at 245 (Douglas, J., concurring). On these facts, the *Baker* plaintiffs—as part of an identifiable and clearly defined subgroup of state voters from heavily populated districts who demonstrably lost voting power in relation to an identifiable and clearly defined subgroup of voters in less populated districts—had standing to pursue their equal protection claims. *Id.* at 207–

08 (finding the 1901 statute "disfavors the voters in the counties in which they reside, placing them in a position of constitutionally unjustifiable inequality vis-a-vis voters in irrationally favored counties"). Here, unlike *Baker*, no discernible subgroup of persons has a more particularized stake in this case. And here, unlike *Baker*, no plaintiff can allege the concrete harm of having lost calculable voting share to a plaintiff in another district. Thus, *Baker* embraces the district court's reasons for in dismissing the complaint for lack of standing.

The Opening Brief also draws inapt analogies to a series of unrelated cases Plaintiffs gather under the loose rubric of precedents in which "[t]he Supreme Court has reached the merits" and "where plaintiffs' injuries were shared by the public at large." AOB 14. In four of five examples offered, as explained in more detail below, the harm in question extended only to a specific, discernible class of persons whose injury set them apart from the general population. The fifth example, a First Amendment overbreadth case, arises in a unique doctrinal context that has no application here.

A poll tax injured only those it prevented from voting. In *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966) (per curiam), every registered voter in Virginia was subject to a poll tax, which could effectively disenfranchise voters without financial means. 383 U.S. at 668 ("The

principle that denies the State the right to dilute a citizen's vote on account of his economic status or other such factors by analogy bars a system which excludes those unable to pay a fee to vote or who fail to pay."). This injury to voting rights is a concrete harm, unlike the notion that a system designed to afford equal voting powers nevertheless subverts the rights of "ordinary citizens." The loss of the vote is also an individualized harm, suffered only by those voters unable to pay the tax, as opposed to all voters.[10]

Census data injured only citizens of states undercounted by the census. In *Dep't of Commerce v. House of Representatives*, 525 U.S. 316 (1999), which challenged a sampling methodology that would be used to apportion congressional representatives using census data, a federal statute afforded a private right of action. *Id.* at 328–29. Further, the plaintiffs' asserted injury was more concrete and individualized than that alleged here because the challenged population data sampling technique would have caused Indiana to lose to another state at least one seat in the House of Representatives. *Id.* at 330. As in *Baker*, and unlike here, residents of one

[10] These arguments apply equally to *Hunter v. Underwood*, 471 U.S. 222 (1985), concerning a constitutional provision disenfranchising those convicted of crimes of moral turpitude, and on which Plaintiffs rely for the mistaken proposition that "standing is not an impediment to challenging a law of general applicability that is facially neutral but in practice disadvantages certain groups of voters. AOB 22; *and see supra* p. 24.

jurisdiction stood to gain political power at the clear and demonstrable expense of others. *Id.* at 332.

Racial gerrymandering injured only those who both lived in a gerrymandered district and demonstrably lost voting power to racial majority voters. Contrary to Plaintiffs' assertions, standing in racial gerrymander cases never attaches to "all eligible voters," AOB 14, but only to those in racially gerrymandered districts who can assert an individualized injury based on the loss of voting power to the racial majority created by the gerrymander. *Miller v. Johnson*, 515 U.S. 900, 909 (1995) (noting in dicta that all appellees had standing as residents of the challenged district) (citing *United States v. Hays*, 515 U.S. 737, 744–45 (1995)); *Gill*, 138 S. Ct. at 1930 (holding racial gerrymander claims "must proceed district-by-district") (internal quotation marks and citations omitted). Plaintiffs may assert that all 120 legislative districts in the state are subject to challenge because residents have been injured in all of them, but that would not alter the standing analysis. Rather, it is the definition of a generalized grievance.

A failure to comply with public disclosure laws injured only those who requested disclosure. In *Federal Election Comm'n v. Akins*, 524 U.S. 11 (1998), the plaintiffs challenged the government's failure to respond to a request for information pursuant to a federal public disclosure statute that

expressly recognized a private right of action. *Id.* at 19. The asserted injury—the government's denial of the requested information regarding donors to and expenditures by political organizations and campaigns—was concrete. *Id.* at 21. It was also particularized: Although the requested information stood to benefit the entire nation, only those persons who actually requested its disclosure had a grievance, distinguishing them from the population at large. *Id.* ("a plaintiff suffers an 'injury in fact' when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute) (citing *Public Citizen v. Department of Justice*, 491 U.S. 440, 449 (1989)).

In finding standing, *Akins* notes that the informational injury was "directly related to voting, the most basic of political rights." *Id.* at 25. Using this dictum as a springboard, Plaintiffs argue that any injury by which "'large numbers of voters suffer interference with voting rights conferred by law'" must also be concrete and particularized. AOB 21 (quoting *Akins*, 524 U.S. at 35.) As later cases have clarified, however, "*Akins* does not open the door so wide." *Becker v. Fed. Election Comm'n*, 230 F.3d 381, 389 (1st Cir. 2000). Even though the asserted injury in *Akins* broadly related to voting, the Court's holding did not rest on that fact. "Rather, what was important was that the voters had been denied access to information that would have

helped them evaluate candidates for office, when such information was specifically required by statute to be disclosed to the public." *Id.*

The First Amendment overbreadth doctrine uniquely departs from the general rules of standing in a way not applicable here. The overbreadth doctrine is a "limited exception[]" to the principle that "constitutional rights are personal and may not be asserted vicariously." *Broadrick v. Oklahoma*, 413 U.S. 601, 610–11 (1973). Under the doctrine, a reviewing court "alter[s] its traditional rules of standing" so that plaintiffs "are permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression." *Id.* at 612. The unique nature of the doctrine makes it a poor analogy for this case—even to Plaintiffs' own First Amendment claim. California's apportionment system prevents no one from speaking, or for that matter, from voting, having that vote counted, or having that vote weighed equally with every other vote cast in California.

For each of these reasons, none of Plaintiffs' examples of widely-shared injuries persuades that they have standing here.

D. The Principle That a Generalized Grievance Does Not Confer Standing Applies Equally Here as in Taxpayer Cases

Although often raised when taxpayer status is invoked as a basis for standing, the principle that a generalized grievance does not confer standing is by no means limited to that context. Accordingly, it was correct for the district court to rely on taxpayer standing cases for the black-letter principle that standing is lacking where the alleged "injury is not distinct from that suffered in general by other taxpayers or citizens." ER 13 (quoting *Hein v. Freedom From Religion Found., Inc.*, 551 U.S. 587, 598 (2007); *ASARCO Inc. v. Kadish*, 490 U.S. 605, 613 (1989); *see also* ER 14 (citing *Schlesinger*, 418 U.S. at 220–21). That the underlying claims in *Hein* and *ASARCO* involve misuse of government resources, AOB 12–13, does not serve to distinguish them here, as the Supreme Court has found generalized grievances in non-taxpayer standing cases. *See, e.g.*, *Lujan*, 504 U.S. at 573–74; *Hollingsworth v. Perry*, 570 U.S. 693, 706 (2013) (holding plaintiffs' role as proponents of enacted ballot initiative did not confer a personal stake in its enforcement "that is distinguishable from the general interest of every citizen of California"). Further, and contrary to Plaintiffs' assertion, AOB 13, the generalized grievance in *Lance*, 549 U.S. at 442, involved injuries beyond those attributable to the plaintiffs' taxpayer status.

See Am. Compl., *Lance v. Davidson*, No. 03-Z-2453 (CBS) (D. Colo. Jun. 14, 2004), ¶ 42. The district court properly relied on these cases.

II. PLAINTIFFS' CLAIMS AND REQUESTED REMEDY RAISE NON-JUSTICIABLE POLITICAL QUESTIONS NOT SUITABLE FOR RESOLUTION BY COURTS

A. Plaintiffs' Claims Satisfy Three of the *Baker* Standards for Identifying a Non-Justiciable Political Question, Any One of Which Would be Grounds for Dismissal

The political question doctrine prevents federal courts from intruding upon policy choices and value judgments committed by the Constitution to the legislative or executive branches. *Summers v. Earth Island Inst.*, 555 U.S. 488, 492 (2009) ("[C]ourts have no charter to review and revise legislative and executive action."). Such "disputes involving political questions lie outside of the Article III jurisdiction of federal courts." *Corrie*, 503 F.3d at 980.

In *Baker v. Carr*, 369 U.S. 186 (1962), the Supreme Court identified a non-exhaustive list of six relevant factors, any one or more of which may flag a non-justiciable political question:

> It is apparent that several formulations which vary slightly according to the settings in which the questions arise may describe a political question, although each has one or more elements which identify it as essentially a function of the separation of powers. Prominent on the surface of any case held to involve a political question is found [1] a textually demonstrable constitutional commitment of the issue to a

> coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6)] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

369 U.S. at 217. *See also Coleman v. Miller*, 307 U.S. 433, 454–55 (1939) (affirming denial of writ of mandate seeking to reverse a legislative enactment on justiciability grounds) ("In determining whether a question falls within [the political question] category, the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination are dominant considerations."). The first three *Baker* factors are constitutional limitations; the latter three are prudential considerations counseling against judicial intervention, meaning it would be impractical, unfeasible or unwise to resolve the dispute, but not unconstitutional. *Corrie*, 503 F.3d at 981 (citing *Wang v. Masaitis*, 416 F.3d 992, 996 (9th Cir. 2005).

Here, the second, third, and fourth *Baker* factors each signal a lack of jurisdiction under the political question doctrine warranting dismissal.

The second *Baker* factor squarely applies to the questions Plaintiffs place before this Court. No "judicially discoverable and manageable standards," *Baker*, 369 U.S. at 217, allow the Court to determine the size of legislative districts that would afford California's "ordinary citizens" the same voting power and access to legislative representatives enjoyed by wealthy and politically powerful white voters. *Cf. Holder v. Hall*, 512 U.S. 874, 881, 885, 891 (1994) (Kennedy, J. and Rehnquist J. (opinion); O'Connor, J. (partial concurrence); Thomas, J. and Scalia, J. (separate concurrence)) (a majority agreeing that there is no discoverable benchmark for determining the appropriate size of legislative districts because the spectrum of possibilities renders the choice "inherently standardless").

Most, if not all, of Plaintiffs claim violations on behalf of those who hold "minority" political views, are "not wealthy," or lack "political connections." A reviewing court could scarcely identify these populations, let alone determine the extent of any equal protection violation facing them. *See, e.g., Vieth v. Jubelirer*, 541 U.S. 267, 287 (2004) (plurality opinion) ("Political affiliation is not an immutable characteristic, but may shift from one election to the next; and even within a given election, not all voters follow the party line.") *See also Cousins v. City Council of City of Chicago*, 466 F.2d 830, 844 (7th Cir. 1972) (finding challenge to redistricting

ordinance as discriminating against an "amorphous" group of voters who favor non-incumbent and non-endorsed candidates to be a non-justiciable political question), *cert. den.*, 409 U.S. 893 (Oct. 10, 1972). It is also well-established that the federal Constitution provides no guarantee that such groups (including, specifically, political party members and "urban dwellers") "be accorded political strength proportionate to their numbers." *Vieth*, 541 U.S. at 288. But by no other metric could any right to increased voting power be ascertained. There is no discernible standard addressing this.

The third *Baker* factor—"the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion," 369 U.S. at 217—also justifies dismissal. The statewide nature of the relief Plaintiffs seek illustrates why. The number of Californians encompassed in each community of interest Plaintiffs purport to represent varies significantly. So too does the distribution of the membership of each community of interest vary across districts. Plaintiffs presume smaller districts would only bring increased political influence to persons of color in one corner of the state. ER 34. But this ignores the likelihood that smaller districts would divide and weaken existing strongholds of majority-minority support. Indeed, both could happen simultaneously pursuant to the relief

Plaintiffs seek. An order declaring the existing number of legislative districts unconstitutionally low would invariably implicate policy decisions such as this, which no court is equipped to make. ER 17. Further, the distinct possibility that the resulting court order could operate to limit the voting power of the communities of interest represented by Plaintiffs, instead of strengthening it, speaks to the absence of discernible standards for resolving Plaintiffs' claims.

As for the fourth *Baker* factor, Plaintiffs' claims cannot be remedied by a court without expressing a lack of the respect due to the legislative branch. *See Gaffney v. Cummings*, 412 U.S. 735, 749 (1973) ("From the very outset, we recognized that the apportionment task, dealing as it must with fundamental 'choices about the nature of representation,' is primarily a political and legislative process.") (quoting *Burns v. Richardson*, 384 U.S. 73, 92 (1966)).

In our republic, states retain the power to apportion districts. *Chapman v. Meier*, 420 U.S. 1, 27 (1975) ("[R]eapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court."). California's "number and arrangement of assembly and senatorial districts" are "regulated with minute particularity by the constitution." *Pendegast*, 96 Cal. at 290–91. As Plaintiffs allege, the

existing limits on the number of state legislative representatives have been in place since 1879. ER 28. This legislative determination is entitled to deference. Further, it cannot be changed without a constitutional amendment, which would necessarily involve legislative action (or, alternatively, an initiative by the electorate). Cal. Const., art. XVIII, §§ 1–3. Accordingly, the district court correctly determined that to adjudicate Plaintiffs' claim, which "effectively ask[s] the court to usurp the electorate and unilaterally alter the state constitution," would encroach upon "a task committed to the legislative branch." ER 82.

Plaintiffs' proposed work-around—in which the district court declares the cap unconstitutionally low but leaves to the Legislature the work of devising a solution, ER 42—does not obviate separation of powers concerns. Plaintiffs characterize this proposal as "an easy remedy" that would not require the court to "exercise political (or any) judgment, rely on the advice of experts, or weigh the equities." AOB 28. This contradicts Plaintiffs' position in the district court proceedings that it would be necessary for the district court to consider "'opinions from political scientists'" in order to rule on Plaintiffs' claims. ER 17 (quoting Pls.' Rep. Def.'s Mot. Dismiss 18, ECF No. 48). In any event, as the district court correctly observed, a ruling addressing only the merits of the constitutional claim with no equitable

component would nevertheless require the court to engage in "political evaluation" not subject to "'judicially manageable standards.'"[11] ER 17. For example, the reviewing court must at least consider, if not expressly find, at which size of legislative body (or sizes, if one reasonably assumes that this number would differs for each of the many communities of interest represented by Plaintiffs) the claimed constitutional violations would abate. In other words, Plaintiffs' proposed remedy does not circumvent the political question issue by merely asking the reviewing court "to say what the law is," *Marbury v. Madison*, 5 U.S. 137, 177 (1803). As the Supreme Court recently clarified in *Vieth*, "[s]ometimes . . . the law is that the judicial department has no business entertaining the claim of unlawfulness—because the question is entrusted to one of the political branches or involves no judicially enforceable rights." 541 U.S. at 277.

[11] In so holding, the district court described the difference between the judicial standards for evaluating equal protection claims, on the one hand, and legislative standards for making districting decisions. ER 17. This discussion refers to dicta in *Johnson*, 515 U.S. at 914, to support the unmistakable proposition that political concerns are inherent to districting decisions made by the legislature. Plaintiffs' attempt to distinguish *Johnson* because it ultimately reached the merits of a racial gerrymandering claim is unavailing. AOB 25.

B. *Baker* Was Not Dismissed Because, Unlike Here, There Were Judicially Manageable Standards for Resolution

Even though *Baker* ultimately found the plaintiffs' equal protection challenge did not raise a political question, contrary to Plaintiffs' assertions, AOB 23–24, that aspect of its holding does not control here. In *Baker*, simple arithmetic could rectify the vote dilution caused by the wildly uneven distribution of Tennessee's population across districts (the result of which being, of course, a statewide system of equipopulous districts like the one Plaintiffs challenge here). *Gomillion v. Lightfoot*, 364 U.S. 339 (1960), also relied on by Plaintiffs, involves a similarly discernible standard—how to redraw a formerly square-shaped municipality that had been gerrymandered into a 28-sided one so as not to exclude virtually all African-American residents.

The alleged equal protection violation in *Levy v. Miami-Dade County*, 358 F.3d 1303 (11th Cir. 2004) (per curiam), dismissed for presenting a political question, more closely resembles Plaintiffs' claims. *Levy* challenged the two-tiered governmental structure of Miami-Dade County, under which the same county commission served as the municipal government for both the county and an unincorporated service area within the county in which more than half of all county residents lived. *Id.* at 1304.

Most commissioners represented districts containing both incorporated and unincorporated residents, with the former outnumbering the latter. The *Levy* plaintiffs alleged that this apportionment scheme allowed incorporated residents to influence the governance of the unincorporated area and diluted the votes of unincorporated residents, just as Plaintiffs contend that wealthy and politically-connected Californians enjoy outsized voting power and influence. The Eleventh Circuit affirmed these claims were not justiciable grounds because no "judicially moldable remedy exist[s]" to address the asserted injury. *Id.* at 1305. This principle applies with equal force to Plaintiffs' claims.

C. Plaintiffs' Argument That the Political Question Analysis Depends Only on the Rights Asserted, Not the Remedy Sought, Is Contrary to Law

In arguing that the political question doctrine does not bar their claims, Plaintiffs fault the district court for analyzing "the remedy plaintiffs propose" instead of "the rights [plaintiffs] seek to vindicate." AOB 27. Instead, Plaintiffs assert without authority,[12] "in order to survive a

[12] By way of support, Plaintiffs refer to *Baker*'s observation that, in light of the Supreme Court's determination that the appellants' claim is justiciable, "[b]eyond noting that we have no cause at this stage to doubt the District Court will be able to fashion relief if violations of constitutional rights are found, it is improper now to consider what remedy would be most

justiciability challenge, plaintiffs need to show only that they are asserting *rights* that are judicially cognizable." *Id.* But *Baker* and its progeny have consistently and correctly placed the remedy at the heart of the political question analysis. *Baker*, 369 U.S. at 198; *see also Nixon v. United States*, 506 U.S. 225, 226 (1993) (justiciability asks whether "a claim . . . may be resolved by the courts"). In *Levy*, the presence of a political question turned exclusively on the remedy:

> Before adjudicating a matter before it, a federal court must decide "whether the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded." In this case, the only aspect of justiciability at issue is the concern that a judicially moldable remedy exist to protect the Appellants' right to vote that has allegedly been infringed upon by the current County electoral scheme.

358 F.3d at 1305 (quoting *Baker*, 369 U.S. at 198 (citation omitted)).

Contrary to Plaintiffs' suggestion, there is no basis to excise the remedy from the political question analysis. *Levy* suggests the converse is true: To the extent that an equal protection challenge to a districting plan as

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appropriate if appellants prevail at the trial.'" *Baker*, 369 U.S. at 198. This dictum is unmistakably premised upon the Court's finding that the claims did not present a political question. It provides no authority for the separate, incorrect point of law for which it appears to be offered—that it is improper to determine the presence of a political question based on the remedy requested as a general matter.

benefitting certain residents at the expense of others is a "judicially identifi[able]" claim, the breach of which can be "judicially determined," the political question doctrine nevertheless bars its resolution. 358 F.3d at 1305.

III. WHETHER A THREE-JUDGE COURT SHOULD BE CONVENED IS BEYOND THE SCOPE OF THIS APPEAL

In the Opening Brief's conclusion, Plaintiffs ask the Court to issue an order calling for the convocation of a three-judge court on remand. AOB 34. Although Plaintiffs provided notice of their intent to appeal the district court's orders declining to convene a three-judge court, ER 3, Plaintiffs ultimately did not brief the question of whether a three-judge court should have been empaneled. Accordingly, this question is beyond the scope of this appeal. *Classic Concepts, Inc. v. Linen Source, Inc.*, 716 F.3d 1282, 1285 (9th Cir. 2013) (finding waiver of issue not presented in briefing on appeal).

CONCLUSION

For the foregoing reason, Secretary Padilla requests that this Court affirm the judgment of the district court.

Dated: August 7, 2019

Respectfully submitted,

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18-17458

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CITIZENS FOR FAIR REPRESENTATION; et al.,

Plaintiffs-Appellants,

v.

SECRETARY OF STATE ALEX PADILLA,

Defendant-Appellee.

STATEMENT OF RELATED CASES

To the best of our knowledge, there are no related cases.

Dated: August 7, 2019

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

9th Cir. Case Number(s): 18-17458

I am the attorney or self-represented party.

This brief contains 7,946 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

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18-17458

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ADDENDUM TO ANSWERING BRIEF OF DEFENDANT-APPELLEE

Dated: August 7, 2019

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United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part VI. Particular Proceedings
Chapter 155. Injunctions; Three-Judge Courts

28 U.S.C.A. § 2284

§ 2284. Three-judge court; when required; composition; procedure

Currentness

(a) A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.

(b) In any action required to be heard and determined by a district court of three judges under subsection (a) of this section, the composition and procedure of the court shall be as follows:

(1) Upon the filing of a request for three judges, the judge to whom the request is presented shall, unless he determines that three judges are not required, immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. The judges so designated, and the judge to whom the request was presented, shall serve as members of the court to hear and determine the action or proceeding.

(2) If the action is against a State, or officer or agency thereof, at least five days' notice of hearing of the action shall be given by registered or certified mail to the Governor and attorney general of the State.

(3) A single judge may conduct all proceedings except the trial, and enter all orders permitted by the rules of civil procedure except as provided in this subsection. He may grant a temporary restraining order on a specific finding, based on evidence submitted, that specified irreparable damage will result if the order is not granted, which order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the district court of three judges of an application for a preliminary injunction. A single judge shall not appoint a master, or order a reference, or hear and determine any application for a preliminary or permanent injunction or motion to vacate such an injunction, or enter judgment on the merits. Any action of a single judge may be reviewed by the full court at any time before final judgment.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 968; Pub.L. 86-507, § 1(19), June 11, 1960, 74 Stat. 201; Pub.L. 94-381, § 3, Aug. 12, 1976, 90 Stat. 1119; Pub.L. 98-620, Title IV, § 402(29)(E), Nov. 8, 1984, 98 Stat. 3359.)

28 U.S.C.A. § 2284, 28 USCA § 2284
Current through P.L. 116-34. Some statute sections may be more current, see credits for details.

End of Document

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article II. Voting, Initiative and Referendum, and Recall (Refs & Annos)

West's Ann.Cal.Const. Art. 2, § 8

§ 8. Initiative

Currentness

Sec. 8. (a) The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them.

(b) An initiative measure may be proposed by presenting to the Secretary of State a petition that sets forth the text of the proposed statute or amendment to the Constitution and is certified to have been signed by electors equal in number to 5 percent in the case of a statute, and 8 percent in the case of an amendment to the Constitution, of the votes for all candidates for Governor at the last gubernatorial election.

(c) The Secretary of State shall then submit the measure at the next general election held at least 131 days after it qualifies or at any special statewide election held prior to that general election. The Governor may call a special statewide election for the measure.

(d) An initiative measure embracing more than one subject may not be submitted to the electors or have any effect.

(e) An initiative measure may not include or exclude any political subdivision of the State from the application or effect of its provisions based upon approval or disapproval of the initiative measure, or based upon the casting of a specified percentage of votes in favor of the measure, by the electors of that political subdivision.

(f) An initiative measure may not contain alternative or cumulative provisions wherein one or more of those provisions would become law depending upon the casting of a specified percentage of votes for or against the measure.

Credits
(Formerly Art. 4, § 22, added Nov. 8, 1966. Renumbered Art. 2, § 8, June 8, 1976. Amended by Stats.1996, Res. c. 34 (S.C.A.18) (Prop. 219, approved June 2, 1998, eff. June 3, 1998).)

West's Ann. Cal. Const. Art. 2, § 8, CA CONST Art. 2, § 8
Current with urgency legislation through Ch. 161 of the 2019 Reg.Sess. Some statute sections may be more current, see credits for details.

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West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article IV. Legislative (Refs & Annos)

West's Ann.Cal.Const. Art. 4, § 2

§ 2. Senate and Assembly; membership; terms

Effective: June 6, 2012
Currentness

SEC. 2. (a)(1) The Senate has a membership of 40 Senators elected for 4-year terms, 20 to begin every 2 years. * * *

(2) The Assembly has a membership of 80 members elected for 2-year terms. * * *

* * * (3) The terms of a Senator or a Member of the Assembly shall commence on the first Monday in December next following * * * her or his election.

(4) During her or his lifetime a person may serve no more than 12 years in the Senate, the Assembly, or both, in any combination of terms. This subdivision shall apply only to those Members of the Senate or the Assembly who are first elected to the Legislature after the effective date of this subdivision and who have not previously served in the Senate or Assembly. Members of the Senate or Assembly who were elected before the effective date of this subdivision may serve only the number of terms allowed at the time of the last election before the effective date of this subdivision.

(b) Election of members of the Assembly shall be on the first Tuesday after the first Monday in November of even-numbered years unless otherwise prescribed by the Legislature. Senators shall be elected at the same time and places as members of the Assembly.

(c) A person is ineligible to be a member of the Legislature unless the person is an elector and has been a resident of the legislative district for one year, and a citizen of the United States and a resident of California for 3 years, immediately preceding the election, and service of the full term of office to which the person is seeking to be elected would not exceed the maximum years of service permitted by subdivision (a) of this section.

(d) When a vacancy occurs in the Legislature the Governor immediately shall call an election to fill the vacancy.

Credits
(Added Nov. 8, 1966. Amended Nov. 7, 1972; Nov. 5, 1974. Amended by Initiative Measure (Prop. 140), approved Nov. 6, 1990, eff. Nov. 7, 1990; Initiative Measure (Prop. 28, § 3, approved June 5, 2012, eff. June 6, 2012).)

West's Ann. Cal. Const. Art. 4, § 2, CA CONST Art. 4, § 2

Current with urgency legislation through Ch. 161 of the 2019 Reg.Sess. Some statute sections may be more current, see credits for details.

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West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article IV. Legislative (Refs & Annos)

West's Ann.Cal.Const. Art. 4, § 6

§ 6. Senatorial and Assembly districts

Currentness

Sec. 6. For the purpose of choosing members of the Legislature, the State shall be divided into 40 Senatorial and 80 Assembly districts to be called Senatorial and Assembly Districts. Each Senatorial district shall choose one Senator and each Assembly district shall choose one member of the Assembly.

Credits
(Added June 3, 1980.)

West's Ann. Cal. Const. Art. 4, § 6, CA CONST Art. 4, § 6
Current with urgency legislation through Ch. 161 of the 2019 Reg.Sess. Some statute sections may be more current, see credits for details.

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West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article XVIII. Amending and Revising the Constitution (Refs & Annos)

West's Ann.Cal.Const. Art. 18, § 1

§ 1. Amendments or revisions; legislative proposals

Currentness

Sec. 1. The Legislature by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, may propose an amendment or revision of the Constitution and in the same manner may amend or withdraw its proposal. Each amendment shall be so prepared and submitted that it can be voted on separately.

Credits
(Adopted Nov. 3, 1970.)

West's Ann. Cal. Const. Art. 18, § 1, CA CONST Art. 18, § 1
Current with urgency legislation through Ch. 161 of the 2019 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article XVIII. Amending and Revising the Constitution (Refs & Annos)

West's Ann.Cal.Const. Art. 18, § 2

§ 2. Convention to revise Constitution

Currentness

Sec. 2. The Legislature by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, may submit at a general election the question whether to call a convention to revise the Constitution. If the majority vote yes on that question, within 6 months the Legislature shall provide for the convention. Delegates to a constitutional convention shall be voters elected from districts as nearly equal in population as may be practicable.

Credits
(Adopted Nov. 3, 1970.)

West's Ann. Cal. Const. Art. 18, § 2, CA CONST Art. 18, § 2
Current with urgency legislation through Ch. 161 of the 2019 Reg.Sess. Some statute sections may be more current, see credits for details.

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West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article XVIII. Amending and Revising the Constitution (Refs & Annos)

West's Ann.Cal.Const. Art. 18, § 3

§ 3. Initiative

Currentness

Sec. 3. The electors may amend the Constitution by initiative.

Credits
(Adopted Nov. 3, 1970.)

West's Ann. Cal. Const. Art. 18, § 3, CA CONST Art. 18, § 3
Current with urgency legislation through Ch. 161 of the 2019 Reg.Sess. Some statute sections may be more current, see credits for details.

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West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article XXI. Redistricting of Senate, Assembly, Congressional and Board of Equalization Districts (Refs & Annos)

West's Ann.Cal.Const. Art. 21, § 1

§ 1. Decennial adjustment of boundary lines; standards and process

Effective: November 3, 2010
Currentness

Sec. 1. In the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, the * * * Citizens Redistricting Commission described in Section 2 shall adjust the boundary lines of * * * the congressional, State Senatorial, Assembly, and Board of Equalization districts (also known as "redistricting") in conformance with the * * * standards and process set forth in Section 2. * * *

Credits
(Adopted June 3, 1980. Amended by Initiative Measure (Prop. 11, § 3.2, approved Nov. 4, 2008, eff. Nov. 5, 2008); Initiative Measure (Prop. 20, § 3.1, approved Nov. 2, 2010, eff. Nov. 3, 2010).)

West's Ann. Cal. Const. Art. 21, § 1, CA CONST Art. 21, § 1
Current with urgency legislation through Ch. 161 of the 2019 Reg.Sess. Some statute sections may be more current, see credits for details.

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West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article XXI. Redistricting of Senate, Assembly, Congressional and Board of Equalization Districts (Refs & Annos)

West's Ann.Cal.Const. Art. 21, § 2

§ 2. Citizens Redistricting Commission; duties; membership

Effective: November 3, 2010
Currentness

Sec. 2. (a) The Citizens Redistricting Commission * * * shall be created no later than December 31 in 2010, and in each year ending in the number zero thereafter.

(b) The * * * commission shall: (1) conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines; (2) draw district lines according to the redistricting criteria specified in this article; and (3) conduct themselves with integrity and fairness.

(c)(1) The selection process is designed to produce a * * * commission that is independent from legislative influence and reasonably representative of this State's diversity.

(2) The * * * commission shall consist of 14 members, as follows: five who are registered with the largest political party in California based on registration, five who are registered with the second largest political party in California based on registration, and four who are not registered with either of the two largest political parties in California based on registration.

(3) Each commission member shall be a voter who has been continuously registered in California with the same political party or unaffiliated with a political party and who has not changed political party affiliation for five or more years immediately preceding the date of his or her appointment. Each commission member shall have voted in two of the last three statewide general elections immediately preceding his or her application.

(4) The term of office of each member of the commission expires upon the appointment of the first member of the succeeding commission.

(5) Nine members of the commission shall constitute a quorum. Nine or more affirmative votes shall be required for any official action. The * * * four final redistricting maps must be approved by at least nine affirmative votes which must include at least three votes of members registered from each of the two largest political parties in California based on registration and three votes from members who are not registered with either of these two political parties.

(6) Each commission member shall apply this article in a manner that is impartial and that reinforces public confidence in the integrity of the redistricting process. A commission member shall be ineligible for a period of 10 years beginning from the date of appointment to hold elective public office at the federal, state, county or city level in this State. A member of the commission

shall be ineligible for a period of five years beginning from the date of appointment to hold appointive federal, state, or local public office, to serve as paid staff for, or as a paid consultant to, the Board of Equalization, the Congress, the Legislature, or any individual legislator, or to register as a federal, state or local lobbyist in this State.

(d) The commission shall establish single-member districts for the Senate, Assembly, Congress, and State Board of Equalization pursuant to a mapping process using the following criteria as set forth in the following order of priority:

(1) Districts shall comply with the United States Constitution. * * * Congressional districts shall achieve population equality as nearly as is practicable, and Senatorial, Assembly, and State Board of Equalization districts shall have reasonably equal population with other districts for the same office, except where deviation is required to comply with the federal Voting Rights Act or allowable by law.

(2) Districts shall comply with the federal Voting Rights Act (42 U.S.C. Sec. 1971 and following).

(3) Districts shall be geographically contiguous.

(4) The geographic integrity of any city, county, city and county, local neighborhood, or local community of interest shall be respected in a manner that minimizes their division to the extent possible without violating the requirements of any of the preceding subdivisions. A community of interest is a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Examples of such shared interests are those common to an urban area, a rural area, an industrial area, or an agricultural area, and those common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.

(5) To the extent practicable, and where this does not conflict with the criteria above, districts shall be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant population.

(6) To the extent practicable, and where this does not conflict with the criteria above, each Senate district shall be comprised of two whole, complete, and adjacent Assembly districts, and each Board of Equalization district shall be comprised of 10 whole, complete, and adjacent Senate districts.

(e) The place of residence of any incumbent or political candidate shall not be considered in the creation of a map. Districts shall not be drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or political party.

(f) Districts for the Congress, Senate, Assembly, and State Board of Equalization shall be numbered consecutively commencing at the northern boundary of the State and ending at the southern boundary.

(g) By * * * August 15 in 2011, and in each year ending in the number one thereafter, the commission shall approve four * * * final maps that separately set forth the district boundary lines for the * * * congressional, Senatorial, Assembly, and State Board of Equalization districts. Upon approval, the commission shall certify the four * * * final maps to the Secretary of State.

(h) The commission shall issue, with each of the four * * * final maps, a report that explains the basis on which the commission made its decisions in achieving compliance with the criteria listed in subdivision (d) and shall include definitions of the terms and standards used in drawing each final map.

(i) Each certified final map shall be subject to referendum in the same manner that a statute is subject to referendum pursuant to Section 9 of Article II. The date of certification of a final map to the Secretary of State shall be deemed the enactment date for purposes of Section 9 of Article II.

(j) If the commission does not approve a final map by at least the requisite votes or if voters disapprove a certified final map in a referendum, the Secretary of State shall immediately petition the California Supreme Court for an order directing the appointment of special masters to adjust the boundary lines of that map in accordance with the redistricting criteria and requirements set forth in subdivisions (d), (e), and (f). Upon its approval of the masters' map, the court shall certify the resulting map to the Secretary of State, which map shall constitute the certified final map for the subject type of district.

Credits

(Added by Initiative Measure (Prop. 11, § 3.3, approved Nov. 4, 2008, eff. Nov. 5, 2008). Amended by Initiative Measure (Prop. 20, § 3.2, approved Nov. 2, 2010, eff. Nov. 3, 2010).)

West's Ann. Cal. Const. Art. 21, § 2, CA CONST Art. 21, § 2
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