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ATTORNEYS FOR PLAINTIFFS

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

**CITIZENS FOR FAIR REPRESENTATION;
CITY OF FORT JONES; THE CALIFORNIA
LIBERTARIAN PARTY; THE CALIFORNIA
AMERICAN INDEPENDENT PARTY; THE
MARIN COUNTY GREEN PARTY; MARK
BAIRD; JOHN D'AGOSTINI ; LARRY
WAHL; SHASTA NATION INDIAN TRIBE;
ROY HALL JR; WIN CARPENTER; KYLE
CARPENTER; PATTY SMITH;
KATHERINE RADINOVICH; DAVID
GARCIA; LESLIE LIM; KEVIN MCGARY;
TERRY RAPOZA; HOWARD THOMAS;
MICHAEL THOMAS; STEVEN BAIRD;
MANUEL MARTIN; OTHERS SIMILARLY
SITUATED; AND DOES 1-30,**

Plaintiffs,

v.

SECRETARY OF STATE ALEX PADILLA,

Defendant,

) **Case No.:**

) **A VERIFIED COMPLAINT FOR
) DECLARATORY AND INJUNCTIVE
) RELIEF FOR MISAPPORTIONMENT
) AND UNCONSTITUTIONAL VOTE
) DILUTION & ABRIDGMENT IN THE
) CALIFORNIA ASSEMBLY & STATE
) SENATE**

) **THREE JUDGE PANEL REQUESTED
) UNDER 28 U.S.C. 2284(a)**

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1 PLAINTIFFS, through attorneys Gary Zerman & Scott Stafne, *pro hac vice*¹, complain:

2 **INTRODUCTION**

3
4 The great experiment and promise of Independence - “We The People” – launched the
5 American Revolution that led to The United States of America, was based on the fundamental
6 founding organic principle of “No taxation, without Representation - Give me Liberty, or give
7 me death.” Sadly, this paramount principle of representation - that the people themselves
8 provide the basis for governmental sovereignty and legitimacy - has been abridged by California.
9

10 This neglect of “We the People” as the organic basis for this Nation’s self-governance
11 stems from the cap the California government placed on the number of Senators (limited to 40)
12 and Assembly Members (limited to 80) in 1862, when the population of the State was less
13 420,000 people. This arbitrary cap has created an oligarchy inconsistent with representative self-
14 governance because the same number of legislators (120 total) now attempts to represent
15 California’s present population of nearly forty MILLION (40,000,000) people. By any metric,
16 this is impossible; 120 legislators cannot possibly represent forty (40) MILLION people in any
17 effective, equitable and meaningful manner as contemplated by the United States Constitution
18 and Amendments thereto.
19
20

21 Since the end of the Civil War the United States has consistently strengthened its
22 commitment to a representative form of self-governance by ratification of Constitutional
23 Amendments and treaties designed to promote the people’s participation in governing at both the
24 National and State levels. California's refusal to increase its levels of legislative representation to
25 reflect its exponential population growth is both arbitrary and unconstitutional.
26
27

28

¹ Stafne is filing a request to appear *pro hac vice* concurrently with the filing of this complaint.

1 As a consequence, the premise of the People’s right to participate in meaningful self-
2 governance has been abandoned. California elections are effectively “purchased” by candidates
3 who are in the service of the two major parties and no longer represent the people.

4 Accordingly, Plaintiffs bring this lawsuit to return their representation to those principles
5 contemplated by the founders for a representative republic, or in the alternative to sanction
6 California for its brazen subjugation of the people’s right to govern themselves.
7

8 **I. JURISDICTION, VENUE & THREE (3) JUDGE PANEL**

9 1.1. This action arises under the U.S. Constitution and statutes enacted consistent therewith.

10 The Constitutional basis for this action includes, but is not limited to United States Const.
11 Article I, Section 2, all sections of the Fourteenth Amendment, the First Amendment and the
12 Ninth Amendment. The statutory bases for this action include, but may not be limited to: 42
13 U.S.C. §§ 1983 and 1988 as well as 2 U.S.C. § 6.
14

15 1.2. Jurisdiction in this Court exists under 28 U.S.C. 1331 and 1343 (§§ 3 and 4).
16

17 1.3. Supplemental jurisdiction over State matters exists pursuant to 28 U.S.C. §1367(a).
18

19 1.4. Venue is proper under 28 U.S.C. §1391(b) because the majority of Plaintiffs exist in the
20 Eastern District of California and the office of Defendant is located in Sacramento.

21 1.5. Plaintiff requests a district court of three-judges as per 28 U.S.C. §2284(a) to be
22 convened in this action because this action challenges the constitutionality of the apportionment
23 of the statewide legislative bodies in California, specifically the California Assembly and Senate.
24

25 **I. CASE SUMMARY**

26 In New Hampshire the average number of people in each of the legislative districts for its lower
27 house is less than 4,000 people. So if you are a United States citizen and qualify to be elected to
28 New Hampshire’s lower legislative body, you know your own vote has meaning.

1 2.2. In California, the opportunity to be elected to the lower legislative house is daunting. In
2 California the number of people in each of its Assembly districts is almost 500,000. If you are a
3 United States citizen and qualify to run for California's lower legislative body you know that
4 your vote is insignificant and unless you are wealthy, or are supported by those who are, you
5 have no reasonable chance of being elected to the California legislature. The evidence will show
6 that running for legislative office in California costs exorbitant amounts of money - the vast
7 majority of the electorate have no meaningful chance to be elected or support someone who can
8 be because they simply do not have the resources to fund a political campaign to reach out to
9 hundreds of thousands of people necessary to win a California legislative campaign.
10

11 2.3. James Madison observed in the convention of 1787 that "[a] Republic may be converted
12 into an aristocracy or oligarchy as well by limiting the number capable of being elected, ..." *U.S.*
13 *Term Limits, Inc. v. Thornton*, 514 U.S. 779, 790–91 (1995). The People in California have had
14 their representation limited and capped and now have an Oligarchy at best and only a mere
15 shadow of connection to the represented.
16

17 2.4. The result of California not increasing the number of legislative districts and legislators
18 as its population grows, arbitrarily and unconstitutionally allows the same number of legislative
19 members (Assembly-80 and Senate-40) as existed in 1862 when the population of California
20 totaled 416,645 - to represent the almost 40,000,000 people that live in the State of California
21 today! This apportionment of California's legislature is arbitrary, baseless and directly violates
22 the plaintiffs rights to "self-governance" as established by the Fourteenth and other Amendments
23 to the United States Constitution, *see infra.*, ¶ 4.8, as well as by statutes of the United States
24 intended to protect the rights of this Nation's people.
25
26
27
28

1 2.5. For purpose of this complaint, plaintiffs allege the right of citizens of the United States to
2 self-governance includes the privilege and/or the right: a.) to take part in the conduct of public
3 affairs in California, directly or through freely chosen representatives in the California
4 legislature; b.) to a meaningful and equal opportunity, without regard to wealth, to be elected or
5 elect others to represent them in the California legislature through genuine periodic elections,
6 which are by universal and equal suffrage that guarantee the free expression of the will of the
7 voters; c.) to reasonably equal voting rights among United States citizens in the various States,
8 which are not arbitrarily determined, diluted or abridged; and d.) to a meaningful opportunity,
9 under general conditions of equality, to access one's actual legislative representatives, rather than
10 just his or her staff members, to engage in such political speech and rights as is contemplated and
11 protected by the First Amendment to the United States Constitution.
12

14 2.6. Statistics and history confirm that where voting districts are small and voters can actually
15 access their representatives there is less unacceptable incumbent durability; that more United
16 States citizens can run for office in these smaller districts and win without having to spend
17 exorbitant amounts of money; that third parties can run successful campaigns; that citizens are
18 able to petition their legislators with grievances and have their petitions meaningfully answered;
19 and that municipalities tasked with the care and oversight of people and other natural resources
20 within their boundaries and administering state programs (as well as collecting taxes to
21 implementing State policies) have meaningful access to the state legislature.
22

24 2.7. The current small number of representatives in the California Senate and Assembly
25 prevents the California legislature from adequately performing those traditional legislative duties
26 necessary for enacting legislation which benefits the people. These duties include without
27 limitation: meeting with citizens, taking petitions, acting as oversight for California's state and
28

1 municipal agencies, 225,000+ employees (including approximately 2,400 judges), the
2 jurisdictional matters of the state, including public works such as the Oroville Dam and the
3 hundreds of other facilities that if not properly kept up, can threaten the livelihood, health and
4 safety of millions of people in municipalities and communities across California.

5 2.8. This case is brought by multiple plaintiffs, including Municipal Government, 3rd Party
6 Political Parties, Government Officials and various United States Citizens through Citizens for
7 Fair Representation (“CFR”), a nonprofit corporation, seeking equitable relief greatly increasing
8 the number of representatives in California or penalizing the State pursuant to U.S.
9 Constitutional Amendment 14 §2 for abridging the rights of plaintiffs to vote in California.

10 2.9. Plaintiffs illustrate their case with the charts attached hereto as Exhibit A and Exhibit B.
11 Exhibit A shows the history of legislative representation of the people from the time of statehood
12 projected in the future until 2050. Exhibit B lends perspective to this history by demonstrating
13 how California state legislative representation stacks up against those other states which have the
14 best and worst levels of representation of their people.
15
16
17

18 **III. PARTIES**

19 3.1. CFR is a nonprofit formed to promote meaningful opportunities for people, who are not
20 wealthy, to participate in their own governing by being elected to the California legislature or
21 helping others with similar beliefs and/or characteristics be elected. CFR seeks to increase
22 representation and decrease the size of the California districts to achieve this purpose.
23

24 3.2. CFR includes as members United States citizens who are duly qualified to vote in
25 California. Additionally, members of the association include a government municipality,
26 government officials, and political parties who have a concrete interest in having a meaningful
27 opportunity to access a legislature composed of a sufficient number of representatives to perform
28

1 traditional legislative functions. They aim to create reasonably sized districts and engender
2 competitive elections to ensure the agency interests of their representatives. Representation in the
3 California legislature currently stands at one Assembly member per district made up of almost
4 500,000 people and one Senator per district of almost one million people. Since the population of
5 the state keeps growing, and the level of representation remains static, the ability of the people to
6 participate in their own self-governance has been diluted and will continue to be until
7 California's arbitrary cap on the number of Senators and members of the Assembly are removed.

9 3.3. Counties in General - are legal subdivisions of California pursuant to Article 11 Section 1
10 of the California Constitution. Throughout history people have created municipalities where
11 neighbors work together to achieve the goals of local people and their communities. Counties
12 like the people who create them, have unique policy interests and political needs. California's
13 current representation ratio and invalid apportionment prevents counties from meaningfully
14 accessing the California legislature for purposes of performing its governmental responsibilities,
15 which include without limitation, protecting its citizens, communities, and properly managing
16 their resources. Many counties have to hire lobbyists to advance their interests in the state
17 legislature because of the inadequate representation ratio.

20 3.4. City of Fort Jones is a municipal subdivision of the County of Siskiyou. It has an interest
21 in protecting the health and safety of its citizens and has an interest in having adequate state
22 representation in Siskiyou County for purposes of protecting the liberty and property interests of
23 its citizens, communities, and their natural resources. Fort Jones has an interest in Siskiyou
24 County having a member of the Senate and Assembly.

26 3.5. Siskiyou County - was formed in 1852 and it had a population of approximately 7,000
27 people when it was formed and about 45,000 people as of July 1, 2015. When it was first formed,
28

1 Siskiyou had its own representative in the state Senate and the Assembly. Now, it shares a
2 Senator with ten (10) other counties and an Assembly member with seven (7) other Counties.
3 Numerous state policies have been enacted that have harmed Siskiyou and its inhabitants
4 economically, including some which prevents its citizens from logging, mining, and raising
5 cattle. The power of the state agencies to shut these activities down has been greater than
6 Siskiyou County's political power to stop or challenge these actions that harm it.
7

8 3.6. The Libertarian Party and the American Independent Parties of California are political
9 parties and as organizations join this case as plaintiffs. The Libertarian Party runs candidates for
10 State, Federal and Local elections. Very few are elected, and usually for local elections. The size
11 of the districts and the cost of running for state offices is deterring.
12

13 3.7. The California American Independent Party has an interest in participating in
14 governmental functions and may choose to run candidates for state legislative office.
15

16 3.8. Each party (or subgroup thereof) has tens of thousands of members and wants to run
17 and/or has run candidates for state legislative office in California. Each plaintiff political party
18 has their own political beliefs and governing philosophies with respect to rights and freedoms.
19 Each has a profound interest in the fair apportionment of California's legislative districts, which
20 they assert requires increasing the total number of legislative representatives in both the
21 Assembly and Senate. These political parties note that when the legislative districts were much
22 smaller there were many third party members elected to the legislature frequently.
23

24 3.9. In General: All individual voter plaintiffs allege they are citizens of the United States
25 who are duly qualified to vote in the State of California. Further their rights to a meaningful
26 opportunity to be elected to the California legislature, or participate in elections has been
27 adversely affected by California's ever increasing dilution of their right to self-governance,
28

1 which in turn means an ever shrinking vote value. Each person as a voter and taxpayer has an
2 interest in accessing the legislature, to petition for redress of grievances, to be able to reasonably
3 meet with their representatives and discuss matters and for their needs to be advanced. Plaintiffs
4 assert that the custom of adding unelected assistants (and other legislative staff) in lieu of adding
5 more representatives as the population grows denies each of them their privileges and rights to
6 self-governance.
7

8 3.10. Mark Baird is a citizen of the United States and California. Baird was born in Santa
9 Monica, in 1952 and now resides in Fort Jones in Siskiyou County. He turned 18 in 1970 and at
10 that time, each California Assembly member had a district with about an average of 249,000
11 people and each Senate district had about 498,000. Today, each Assembly member represents
12 about 500,000 people and each Senator represents about 1,000,000. Baird's vote, like the votes
13 of all other United States citizens voting in California during this time period (unlike the votes of
14 most United States citizens in other States) has been devalued by approximately 100% during the
15 course of his lifetime. Mark Baird alleges that a 100% loss of his vote is invalidating and
16 California's representation ratio and unfair apportionment has adversely affected Baird's ability
17 to meaningful self-governance through access to the California legislature.
18
19

20 3.11. John D'Agostini resides in El Dorado County and is their elected Sheriff. His claim in
21 this case is brought in his individual, not his official capacity. D'Agostini has an interest in El
22 Dorado County (and the local communities within its boundaries) having adequate representation
23 in the State legislature to perform their municipal duties. He has articulated before the El Dorado
24 Board of Supervisors that if ". . . you don't have a seat at the table, you are on the menu!"
25

26 3.12. Larry Wahl is a citizen and elected Supervisor of Butte County. Recently, the spillway of
27 the Oroville Dam eroded and this resulted in over 180,000 people being evacuated in mostly
28

1 Butte and Yuba Counties. On information and belief, officials were warned of this problem in
2 2005. Wahl alleges that one reason this known infrastructure deficiency was likely not timely
3 remedied is because there are not enough members of the legislature to perform adequate
4 oversight. Wahl and many of his fellow citizens were injured by the legislature's failure to timely
5 address the Oroville spillway.

6
7 3.13. Terry Rapoza, Howard Thomas, and Michael Thomas are United States citizens qualified
8 to vote in California. They have an interest in adequate representation.

9 3.14. Patty Smith and Katherine Radinovich are United States citizens who are qualified voters
10 in California and as women they have an interest in women having an opportunity at being
11 elected. Smaller districts and/or an increase in the number of representatives will allow more
12 women to be elected to the legislature.

13
14 3.15. The following plaintiffs are members of ethnic minorities and assert they have a right and
15 interest in fair representation according to their ethnic make-up as a proportion of the population.
16 Further, they assert they have a right to self-governance, including the right to be elected to the
17 legislature, based on fair apportionment. David Garcia is a citizen of Hispanic ancestry and has
18 an interest in having Hispanics being elected to the California legislature. Leslie Lim is an
19 American of Asian heritage. She has a remedial interest in the fact that California's current
20 representation was set at 40 Senators and 80 Assembly members in the 1878-1879 Convention.
21 At that Convention delegates openly noted that the Asians weren't intended to be represented as
22 people, but should be treated as "Cattle or Stock."² It took almost 70 years from that point for
23
24

25
26 ² During the debates on the 1878 -1879 Constitution where representation in the State legislature was set at 40
27 Senators and 80 Assembly members the following dialog took place:

28 Mr. Heiskell: "Do you want the Chinese to be represented—enumerated in the apportionment?"

Mr. O'Donnell: "Well, we do not represent them. . . I want to be represented according to the Census of the
United States. We don't mean the Chinese. We count them as chattel or stock."

1 the first Asian American (March Fong Eu) to get elected to the California legislature. Kevin
2 McGary is an African American voter who has an interest in fair elections and African
3 Americans being elected proportionally to their numbers.

4 3.16. In General - According to the US Census there are almost 650,000 Native Americans in
5 California today. On information and belief, there has never been a Native American elected to
6 the California legislature. Native American plaintiffs have an interest in more representation as
7 that would likely elect at least one to the legislature just as other States have.
8

9 3.17. Roy Hall Jr. is the chief of the Shasta Nation Tribe of Indians. He resides in Fort Jones
10 California. Win Carpenter is a private citizen of Native American ancestry and is a member of
11 the Pit River Indian Tribe. He has similar interests to Roy Hall Jr. above.
12

13 3.18. Shasta Tribe of Indians are Native Americans in an unrecognized Tribe in California who
14 are interested in promoting the self-governance rights of its members to promote their best
15 interests including without limitations the Tribe's recognition by the State of California.
16

17 3.19. Kyle Carpenter recently became 18 years old and his vote is already losing value.

18 3.20. Steve Baird was a recent candidate for the California Senate District 1. Due to the current
19 representation ratio of one senator per million people he was unable to be elected. Had he been
20 allowed to run in a smaller district, such as those which exist in other states, he would more
21 likely than not have mounted an effective campaign and been elected. Baird's district was about
22 27,000 square miles, larger than West Virginia. Baird's district had close to 1 million people
23 located in 11 counties. Parts of his senate district didn't have cell phone access for people who
24 lived there. On information and belief his challenger as an incumbent used his ability to vote for
25 bills in various committees to raise a substantial amount of money for re-election. Challengers
26
27

28 Debates and Proceedings of the California Constitutional Convention of 1878 Pg. 755.

1 cannot use the power of incumbency to gain money to buy votes, but they could meaningfully
2 compete for votes if they could campaign for office in constitutionally appropriate sized districts.

3 3.21. Manuel Martin was a candidate for the 9th Assembly district in the most recent election.
4 Marin's district had close to 500,000 people and spanned two counties. Due to the size of the
5 district, he was not able to run an effective campaign and lost in the primary. The district size
6 mandates large amounts of money be raised or else you simply cannot win.
7

8 3.22. Petitions: Each of the plaintiffs set forth above has petitioned the California legislature
9 and/or the Secretary of State and in some instances more than once publicly demanding an
10 increase the number of Assembly Members and Senators. Not one of the Plaintiffs received a
11 response because, on information and belief, the traditional role of state legislatures has been
12 changed by California's purposeful dilution of its people's right to self-governance.
13

14 3.23. Alex Padilla is the elected Secretary of State of California and in that capacity has duties
15 to oversee the election laws of California. These duties include without limitation, the
16 responsibility to conduct fair elections which ensure plaintiffs' rights under the United States
17 Constitution and the amendments thereto. Plaintiffs allege Defendant Padilla has violated their
18 rights under the United States Constitution as is set forth in this complaint. Plaintiffs bring this
19 action against Secretary of State Padilla in both his individual and official capacities.
20

21 3.24. Petitions: Each of the plaintiffs and many others, including counties, has petitioned the
22 California legislature and/or the Secretary of State and in some instances more than once,
23 publicly demanding an increase the number of Assembly Members and Senators. Copies of
24 many of these petitions are attached hereto as Exhibit C. Not one of the Plaintiffs received a
25 response because, on information and belief, the traditional and constitutional role of state
26
27
28

1 legislatures has been changed by California's purposeful dilution of its people's right to self-
2 governance.

3 **IV. STATEMENT OF FACTS**

4 4.1. Plaintiffs incorporate herein all the facts previously set forth herein.
5

6 **A. FACTS ON REPRESENTATION AND LEGISLATIVE** 7 **PARTICIPATION**

8 4.2. Exhibit A shows the average number of persons per representatives in California from
9 formation in 1850 until 2015. Representation was increased until 1862. It was voted to be fixed
10 in the convention of 1878-9 at 40 Senators and 80 Assembly members. The size of the
11 Assembly districts has ballooned from a maintained average of 2,500 or so people and all
12 Counties being represented in the legislature to almost 500,000 and most counties sharing
13 Assembly members. Each Senate district had about one for 5,000 and now all but two counties
14 having their own Senator to districts of almost 1 million and most counties sharing Senators.
15

16 4.3. California's lower chamber representation is almost three times worse than the second
17 least representative state. California state Senate districts are larger than the U.S. House
18 districts.
19

20 4.4. The representation ratio is far worse than exists in other established democracies in
21 Europe and the Americas.

22 4.5. The founders of the United States who prepared its organic law studied well and
23 carefully the histories of previous republics and democracies. See e.g. Federalist Papers Nos.
24 10, 49, 55, 56 & 57. "... The members of the executive and judiciary departments are few in
25 number, and can be personally known to a small part only of the people. ... The members of
26 the legislative department, on the other hand, are numerous. They are distributed and dwell
27 among the people at large. Their connections of blood, of friendship, and of acquaintance
28

1 embrace a great proportion of the most influential part of the society. The nature of their public
2 trust implies a personal influence among the people, and that they are more immediately the
3 confidential guardians of the rights and liberties of the people. ..." (Fed. No. 49.) Our Founders
4 asked "[w]ho are to be the electors of the Federal Representatives?" They answered: "Not the
5 rich more than the poor; not the learned more than the ignorant; not the haughty heirs of
6 distinguished names, more than the humble sons of obscurity and unpropitious fortune. The
7 electors are to be the great body of the people of the United States." (Fed. No. 57.) "The
8 difference most relied upon, between American and other republics, consists in the principle of
9 representation." (Fed. No. 63.)

11 4.6. The only place where voting is directly recognized in the original Constitution is for
12 choosing members of the House of Representatives³. Article I, Section 2 provides: "The House
13 of Representatives shall be composed of Members chosen every second Year by the People of
14 the several States, and the Electors in each State shall have the Qualifications requisite for
15 Electors of the most numerous Branch of the State Legislature."

17 4.7. Article I, Sec. 2 states that all States ratifying the Constitution allowed voting for at least
18 one branch of the State legislatures at the time the Constitution was ratified; further, that this
19 requirement contemplated that any future States admitted to the Union would require voting to
20 elect the members of at least one house of the legislature.

22 4.8. Since the Civil War fifteen (15) amendments to the U.S. Constitution have been enacted
23 and ratified. Eight of these amendments have been designed to further the rights of United States
24

26 ³ Evidence has emerged this nation's founders, who touted one of the Constitution's greatest achievements as
27 creating a representative republic, ratified as its First Amendment (which was actually Article the First). This
28 provision required the number of house members be increased for every increase of population by 50,000
people. *See* LaVergne, Eugene, *First Amendment Free Press, Inc., How "Less" is "More": the Story of the Real
First Amendment to the United States Constitution* (2016).

1 citizens to participate in their own governing through the expansion of voting rights and
2 prohibiting the abridgment thereof by state governments⁴.

3 4.9. Principles involving people’s rights to participate in their own governance or be
4 adequately represented by representatives elected by them also evolved internationally during
5 this same period of time. While these principles may not necessarily be binding *per se* upon the
6 United States as a matter of international law or as treaty law, plaintiffs do allege these
7 agreements establish international norms and standards relating to persons rights in this
8 hemisphere to participate in their own governance and with regard to those voting rights
9 standards which apply in civilized nations generally.
10

11 **B. HISTORICAL FACTS RELATING TO**
12 **REPRESENTATION IN CALIFORNIA**

13 4.10. On February 2, 1848 the Treaty of Guadalupe Hidalgo was signed and it established the
14 boundaries between the United States and Mexico.
15

16 4.11. On June 3, 1849, General Bennett C. Riley formed 10 electoral districts in California by
17 using the 5 established Mexican districts and then drawing the boundaries for more, as well as
18 California’s boundaries. These County districts were used for the elections of local officials and
19 the members of the California Constitutional Convention held in Monterey, California in 1849.
20

21 ⁴ These amendments include: the **Thirteenth Amendment** (ratified 1865) prohibiting slavery and thereby changing
22 their apportionment value as people; the **Fourteenth Amendment** (ratified 1868) establishing United States
23 citizenship in addition to State citizenship; **Fifteenth Amendment** (ratified 1870) which provides “[t]he right of
24 citizens to the United States shall not be denied or abridged by the United States of by any State on account of
25 race, color, or previous condition of servitude.”; the **Seventeenth Amendment** (ratified 1913) which provides in
26 pertinent part: “[t]he Senate of the United States shall be composed of two Senators elected by the people
27 thereof...; the **Nineteenth Amendment** (ratified in 1920) which provides in pertinent part: “[t]he right of citizens
28 to the United States shall not be denied or abridged by the United States or by any State on account of sex.”; the
Twenty-Third Amendment (ratified in 1961) which treats the District of Columbia as if it were a State for
purposes of appointing electors to the Electoral College for purposes of electing the President; the **Twenty-**
Fourth Amendment (ratified in 1964) provides “[t]he right of citizens of the United States to vote in any primary
or other election [for national office] shall not be denied or abridged by the United States or any State by reason of
failure to pay poll tax or any other tax.”; and the **Twenty-Sixth Amendment** (ratified in 1971) which states in
pertinent part: “[t]he right of citizens of the United States, who are eighteen years of age or older, to vote shall not
be abridged by the United States or by any State on account of age.”

1 4.12. On August 1, 1849, elections for local governing officials and members of the
2 Convention were held in the established counties, which all had varying populations at that time.

3 4.13. On Sept. 1, 1849, California held its first Constitutional Convention. The Convention
4 concluded on October 13, 1849, the proposed Constitution to the citizens for ratification.

5 4.14. On November 13, 1849, the voters passed the Constitution by simple majority.

6 4.15. Four delegates were then sent to Washington D.C. to petition for Statehood for
7 California to be part of the United States. The Petition was granted on September 9, 1850.
8

9 4.16. The Constitution formed a bicameral Legislature, with a Senate and an Assembly. Each
10 County was represented by at least one member of the legislature at this time. Also, the
11 representation in the Assembly was to have 24 to 36 members, and the Assembly was then to
12 increase to 30 to 80 members after the population of the State reached 100,000 (California's
13 population exceeded 100,000 in 1851). As per the Constitution, the Representation in the Senate
14 was to be not more than one half and not less than one third the number of Assembly members.
15

16 4.17. The Assembly initially had 36 members in 1850. In 1852, the Assembly was increased to
17 63 members and finally to 80 members in 1854. The increases maintained an approximate
18 representation ratio of one Assembly representative per 2,500 people until 1854.
19

20 4.18. In 1850, the Senate was initially apportioned with 16 members to the Counties.

21 4.19. In 1850, each Senator represented an average of 5,787 people. In 1858, the Senate was
22 increased to 35 members and at this point represented about 9,215 people. In 1862, the Senate
23 was increased to 40 members and each Senator represented about 10,000 persons.
24

25 4.20. California held its 2nd Constitutional Convention in 1878. Many alternatives to the size of
26 the Assembly were discussed. A proposal was to reduce it to 60 members. Proposals were
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1 considered for the size to be increased from 80 to 100 and even 112 and 120 members. The
2 increase to 120 members failed its vote by a division of 44 to 45 and was not reconsidered.

3 4.21. At the conclusion, the members of the Convention maintained the current size of the
4 Legislature. However numerous members of the Convention voiced their concern that a
5 legislative body limited to 40 senators and 80 Assembly persons could not adequately represent
6 all of California's people and would need to be increased as the population grew.
7

8 4.22. Instead of increasing representation, legislative representatives began hiring staff
9 members (assistants) to help them represent their constituents. On information and belief, the
10 duties of staff members include everything from manning the home office while the
11 representative is in Sacramento to answering phone calls, receiving and replying to letters from
12 constituents, to drafting statutes and in some instances to even raising money from donors and
13 participating in elections such as knocking on doors. On information and belief, many legislative
14 decisions are made by these unelected staff members. The number of assistants apparently
15 started at one for every 5 members (a typist) and has ballooned to about 2,100 today, many of
16 whom actually perform the duties of representatives.
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19 **C. FACTS RELATED TO PLAINTIFFS**

20 4.23. California's static apportionment since 1862 coupled with an exploding population
21 invidiously devalues and abridges the value of each person's vote and interferes with self-
22 governance. Assemblypersons and Senators who more often than not have little in common with
23 their constituents and no reasonable opportunity to meet and confer with them, because of the
24 large numbers of people in their districts, are unable to meaningfully understand their
25 constituents concerns so as to be able to meaningfully address them.
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D. FACTS RELATING TO PLAINTIFF MUNICIPALITIES

4.24. The current legislative arrangement also adversely affects the ability of municipalities to govern their local communities. This includes “on the ground” responsibility for the preservation of natural resources in their communities, which often times are utilized by both the local community and the State. Municipalities must have adequate access to the legislature to achieve these goals. The current arrangement is such that their policy concerns do not matter.

4.25. For example, over 180,000 people evacuated from the City of Oroville in Butte County because a dam's spillway failed. It is now known that this failure was predicted years before, but nothing was done to prevent the threat. One good explanation for this is that the almost 200,000 people of Butte County do not even get their own Assembly person as they represent just under 500,000. If Assembly representation was raised to just the mean national average (40,000), Butte would have 5 Assembly members and they would be more able to oversee this state project that affects the lives of millions.

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**E. FACTS RELATING TO THE FEDERAL
PLAN OF STATE REPRESENTATION**

4.26. In 1850, every County had at least one representative and populations were not always equal. Prior to 1926 Art. IV, § 6 of the California Constitution, provided that both houses of the legislature would be apportioned on the basis of population.

4.27. In 1926 voters passed Proposition 28 which set up a “federal system” of apportionment to better reflect the unique interests of counties and to provide the check and balances for a republican form of government.

1 4.28. Several attempts to rescind the legislation were made, but did not pass. California's
2 federal system was overturned by the U.S. Supreme Court in the case of *Jordan v. Silver*, 381
3 U.S. 415, 415–19, 85 S. Ct. 1572 (1965), which was decided before the Supreme Court
4 reconsidered its previous holdings under the Guarantee Clause.

5 **F. FACTS RELATING TO THIRD PARTIES**

6
7 4.29. Historically, multiple third party candidates were elected to the California Legislature.
8 These parties included: the Union-Labor Party, American Party, Peoples Party, Workingmen
9 Party, Socialist Party, Independence League Party, Progressive Party, Prohibition Party, and the
10 Green Party among others. The size of the electoral districts adversely affects the ability of third
11 party plaintiffs to elect their candidates to the legislature. Research demonstrates that it is
12 virtually impossible for third parties to play a meaningful role in governing when the
13 representative ratio becomes over 30,000 people per district. Data from other states suggests that
14 the opportunities of third party candidates' election increases as district size decreases.

15
16 4.30. Third party registration in California as of October 2016 is as follows: American
17 Independent Party has approximately 507,377 voters; Green Party has approximately 94,647
18 voters; Libertarian Party has approximately 139,805 voters; and, Peace & Freedom Party has
19 approximately 75,640 voters.
20

21
22 4.31. The membership in those parties is not great enough to get elected in any California
23 Assembly or Senate races because the costs of winning elections is no longer consistent with our
24 Nation's principles of self-governance through representation. On information and belief, the
25 lack of third party representation in California is a direct result of the district size and the small
26 number of representatives in California.
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1 4.32. In the lower legislative chamber of Vermont (which has the second best representation in
2 America, almost 10% (12 out of its 150) of these legislators are Green party members. The only
3 member of a third party elected to the California legislature in the last half century was a Green
4 Party member for one term and then lost re-election.

5 4.33. A self-governance model designed so that “We the People” can rule based on the
6 election of representatives who actually represent us was not and is not designed solely to
7 accommodate the 2 party system of governance it has become. The right intended to be created
8 and preserved was for self-governance through meaningful representative; a right and benefit of
9 the people which California continues to reject. California’s static level of representation for
10 growing population has and continues to frustrate the people’s right of self-governance.
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13 **G. FACTS RELATING TO NATIVE AMERICANS**

14 4.34. Native Americans lived and existed in California long before it was settled by Americans
15 of Non-Native American Heritage. In 1845 before California became a State there were
16 approximately 150,000 Native Americans living here. By 1855 that number had been reduced to
17 50,000 as a result of genocide. A History of American Indians in California, pp. 2-9.
18

19 4.35. Native Americans in California were treated as non-persons and slaves, even after the
20 passage of the Thirteenth and Fourteenth Amendments.
21

22 4.36. Native Americans were not granted United States citizenship status by the Fourteenth
23 Amendment. *Elk v. Wilkins*, 112 U.S. 94, 107, 5 S. Ct. 41, 48, 28 L. Ed. 643 (1884).
24

25 4.37. In 1917 the California Supreme Court decided that Native Americans were citizens.

26 4.38. According to the California Department of Commerce, as of 2015, there were
27 approximately 648,000 Native Americans in California. On information and belief, no Native
28 American has ever been elected to the California State legislature. The reason Native Americans

1 have not and are not likely to be elected to the California legislature in the future is because the
2 unfair and arbitrary and unconstitutional size of California's legislative districts.

3 4.39. These plaintiffs and their ancestors have paid taxes in various manners into what is likely
4 to them an alien system designed in a manner in which they paid to support, but have never had a
5 seat at the table and unless this Court acts it appears they should not expect to have one.

6
7 4.40. Many Native Americans live on reservations that have large populations concentrated
8 and would be able to elect members to the legislature if the districts were smaller and consistent
9 with the requirements of self-governance through representation.

10 **H. FACTS RELATED TO "CANDIDATE" PLAINTIFFS**

11
12 4.41. The rights of Steven Baird and Manuel Martin to self-governance were adversely affected
13 by California's arbitrary apportionment system, which required them to run for legislature in
14 vastly inflated districts, unlike those anywhere else in the United States.

15 4.42. California's arbitrary apportionment system adversely impacted their ability to campaign
16 for office by requiring them to compete for votes without the economic resources necessary to do
17 so, because of the large number of citizens included in each district.

18 **V. CAUSES OF ACTION**

19 ***1st CAUSE OF ACTION - 14th AMEND. PRIVILEGES & IMMUNITIES***

20
21 5.1. Plaintiffs incorporate all of their previous allegations herein.

22 5.2 The individual Plaintiffs by virtue of being citizens of the United States are entitled to the
23 privilege of self-governance through their elective franchise, as modified by the Fourteenth and
24 subsequent Amendments. *See supra.*, ¶ 4.8 and note 4.
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1 5.3. Plaintiffs pay taxes to the United States and California and therefore are entitled as part
2 of the social contract upon which the founding of this Country is based to the privilege of
3 representation with regard to their governing.

4 5.4 The privilege of self-governance includes without limitation: a.) the privilege of enjoying
5 a meaningful opportunity to take part in their governance, directly or through freely chosen
6 representatives elected to the California legislature; b.) the privilege of enjoying a meaningful
7 opportunity to be elected and/or vote for others to be elected to the California Assembly or
8 Senate in genuine competitive periodic elections held by the State of California; c.) the privilege
9 of a meaningful opportunity, under equality, to access one's legislative representative, rather
10 than only the member's legislative staff and d.) the privilege of not having the value of their vote
11 abridged to the point where it becomes meaningless and invalidating when measured with the
12 same rights United States citizens enjoy in other States.

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14
15 5.5. California's current representation ratio of approximately one (1) Assembly member for
16 490,000 people and approximately one Senator for 980,000 people is completely arbitrary and
17 violates each of the privileges identified in the preceding paragraph. Plaintiffs assert that
18 Defendant and the government of the State of California has no intention to increase the number
19 of representatives in either the Assembly or the Senate, and has done nothing toward creating a
20 plan or standard to increase representation. Accordingly, the rights of Plaintiffs to enjoy those
21 privileges related to self-governance and their right to a meaningful vote will continue to be
22 abridged and violated. Plaintiffs assert the privileges guaranteed them with regard to self-
23 governance, right to vote, and access to representation have been abridged for California's
24 approximately 40 million people to 80 Assembly members and 40 senators.
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1 **2nd CAUSE OF ACTION - 14th AMENDMENT VIOLATION OF DUE PROCESS**

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3 5.6. Plaintiffs incorporate all of their previous allegations herein.

4 5.7. The Due Process Clause protects rights that are “so rooted in the traditions and
5 conscience of our people as to be ranked as fundamental” They include rights which are “the
6 very essence of a scheme of ordered liberty” as well as “such principles of equity as are
7 recognized by all temperate and civilized governments, from a deep and universal sense of its
8 justice.” *McDonald v City of Chicago, Ill.*, 561 US 742, 760-61 (2010).

9
10 5.8. The privileges identified in the preceding cause of action are also rights which are
11 protected by the substantive due process clause of the Fourteenth Amendment.

12 5.9. These due process rights are violated by California’s arbitrary representative ratio and
13 unfair apportionment as described above. Plaintiffs assert that Defendant and the government of
14 the State of California has no intention to increase the number of representatives in either the
15 Assembly or the Senate, and has done nothing toward creating a plan or standard to increase
16 representation. Accordingly, the rights of Plaintiffs to due process will continue to be ignored
17 and violated. By refusing to increase its number of legislative representatives California has
18 abridged the votes of United States citizens in violation of the Due Process Clause and will likely
19 continue to do so in the future unless ordered by this Court to increase the number of districts or
20 to reduce the representative ratio in the U.S. House delegation to California to spur the change.

21
22 **3rd CAUSE OF ACTION - 14th AMENDMENT EQUAL PROTECTION**

23
24 5.10. Plaintiffs incorporate all of their previous allegations herein.

25 5.11. Fair and effective representation for all citizens is a basic aim of legislative
26 apportionment. Equal Protection Clause guarantees the opportunity for equal participation by all
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28

1 voters in the elections. “Diluting the weight of votes because of place of residence impairs basic
2 constitutional rights under the Fourteenth Amendment just as much as invidious discriminations
3 based upon factors such as race....” *Reynolds v. Sims*, 377 U.S. 533, 565-566 (1964).

4 5.12. The representative ratio between the California people and California Assembly members
5 and Senators is completely arbitrary and denies Plaintiffs Equal Protection under the Fourteenth
6 Amendment. Plaintiffs assert that Defendant and the government of the State of California has
7 no intention to increase the number of representatives in either the Assembly or the Senate, and
8 has done nothing toward creating a plan or standard to increase representation. Accordingly, the
9 rights of Plaintiffs will continue to be abridged in violation of the Equal Protection Clause. The
10 United States citizens in all other States are afforded significantly more opportunity to engage in
11 self-governance than are those in California by a factor of well over 50%, which plaintiffs allege
12 constitutes significant and invalidating population deviations.
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14

15 5.13. The failure of California to increase its number of legislative representatives to
16 accommodate its profound population growth also violates the Equal Protection Clause because
17 it denies the opportunity for self-governance (as defined herein) based on wealth and results in
18 less women, blacks, Hispanics, Native American, and members of political parties being elected
19 to office than would be expected if the number of representatives was not arbitrary and unfair.
20

21 ***4th CAUSE OF ACTION - 2 USC 6 - ABRIDGMENT - 14th AMENDMENT, SEC. 2***

22 5.14. Plaintiffs incorporate by reference the preceding allegations and further allege:
23

24 5.15. If the Court cannot resolve this case based upon the various constitutional causes of
25 action raised herein, then Plaintiffs move for the sanction of decrease the number of
26 representatives for the State of California in the U.S. House of Representatives as a remedy.
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1 5.16. A static level of representation and the growing population abridges the vote of each
2 plaintiff in this action and other citizens similarly situated.

3 5.17. Plaintiffs advance their final and perhaps only means, to confront the Oligarchy now in
4 place in California, which has demonstrated for decades it has no interest in addressing, much
5 less developing a plan or standard to increase representation, as those who hold the power are
6 conflicted and would thereby only diminish their own influence. Plaintiffs assert that Liberty
7 requires that all the People must have adequate representation and direct and meaningful access
8 to their representative. The 14th Amendment, sec. 2, provides for the removal of U.S. House
9 Members as a remedy/sanction for the denial or abridgment of voting rights and that sanction
10 shall be in place until the abridgement is remedied.
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12

13 ***5th CAUSE OF ACTION - 1st AMENDMENT VIOLATIONS***
14

15 5.18. Plaintiffs incorporate all of their previous allegations herein.

16 5.19. Freedom of speech, association, press and the right to petition are fundamental rights
17 which are safeguarded by the Fourteenth Amendment and subsequent amendments of the Federal
18 Constitution establishing the people's rights to self-governance. See ¶ 4.8 and note 4. Individual
19 and organizational plaintiffs have First Amendment political rights which are associated with
20 their privileges and rights to self-governance. Such rights include, among others, the right to
21 promote their political agendas through speech, press, assembly, and petitioning their State
22 legislative representatives for redress of their grievances.
23

24 5.20. The right to petition the legislature for redress of grievances is diminished substantially if
25 representation does not keep pace with population growth. The right to assemble and engage in
26 speech with the representative is similarly diminished if representation in the legislature is set at
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1 a point where the representative is not able to know and react to the will of the people in his/her
2 district, instead of just those lobbyists which contribute money to buy elections.

3 5.21. The only method ordinary citizens have to enforce their rights and to insure the agency
4 relationship between the representative and the represented through the body politic is their vote.
5 As the value of each citizen's vote has been diminished, the rights to assemble with their
6 representatives and Petition for Redress of Grievances is diminished in the same proportion. The
7 failure of California to increase its number of legislative representatives, to accommodate its
8 profound population growth also violates the First Amendment because it frustrates those First
9 Amendment rights of plaintiffs related to self-governance. For example, the small number of
10 representatives in proportion to the population of the California denigrates representatives'
11 incentive to hear and respond to petitions by their constituents.
12
13

14 ***6th CAUSE OF ACTION - 52 USC 10301 VIOLATION***

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16 5.22. Plaintiffs incorporate by reference the preceding allegations and further alleges:

17 5.23. This cause of action is being brought by the Shasta Nation tribe, Roy Hall Jr., Kyle
18 Carpenter, and Win Carpenter, all of whom are Native Americans living in California.

19
20 5.24. Native Americans have lived and existed in California long before settled by Americans
21 of Non-Native American Indian Heritage who set up the Government of California.

22 5.25. Roy Hall Jr. is the recognized Chairman of a Tribe in California. His Tribe, though it has
23 a long heritage, was never recognized by California. Having a representative in the legislature
24 who is an American Indian may well change that. California's unjust and unfair apportionment
25 and representative ratios have created and continue to create a barrier for a Native American
26 getting elected to the California legislature in violation of the 13th, 14th, and 15th Amendments.
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28

1 5.26. There are 648,000 Native American's in California who could populate the majority of an
2 Assembly and Senate District. Many live in concentrated groups on or near reservations.

3 5.27. On information and belief, there has never been an American Indian from California who
4 has been elected to the State legislature; this is unfair and unjust and not consistent with the
5 Constitutional principles of self-governance. One of the reasons Native American cannot and are
6 not elected to the California legislature is unfair, unjust, and unconstitutional apportionment and
7 California's representative ratio.
8

9 5.28. An increase in the number of representatives is required to allow Native American, as
10 well as ethnic minorities and women, to meaningfully participate in self-governance.

11 5.29. Under present "one man-one vote" apportionment principles Native American plaintiffs
12 have a remedial interest in the immediate creation of an Assembly district which allows them an
13 opportunity to enact one of their members to the California legislature.
14

15 ***7th CAUSE OF ACTION - 9th AMENDMENT VIOLATIONS***
16

17 5.30. Plaintiffs incorporate by reference the preceding allegations and further alleges:
18

19 5.31. The Ninth Amendment protects the political rights of people against government.

20 5.32. The Ninth Amendment provides: "The enumeration in the Constitution, of certain rights,
21 shall not be construed to deny or disparage others retained by the people." Prior to the Civil War,
22 the Ninth Amendment protected the people only from the National government.

23 5.33. Since the end of the great Civil War, the Constitution has been amended on numerous
24 occasions to ensure the rights of United States citizens to self-governance in the States through
25 the electoral franchise given United States citizens shall not be abridged.
26

27 5.34. The ratification of these Constitutional Amendments applied the protections afforded the
28 people by the Ninth Amendment against the federal government to the State governments with

1 regard to political rights, including the right to self-governance and not having the value of one's
2 vote arbitrarily abridged.

3 5.35. An inference from the fact that 120 legislators employ over 2,100 assistants is that such
4 assistants are performing legislative functions that should be performed by someone elected.

5 5.36. The addition of assistants who perform those legislative activities necessary for self-
6 governance instead of adding more legislative representatives (which likely would be more
7 economical and less subject to abuse) violates the political rights of the people to elect as
8 representatives those persons who will exercise the people's will and sovereignty.
9

10 5.37 Plaintiffs assert that Defendant and the government of California have no intention to
11 increase the number of representatives in the state legislature, and have done nothing toward
12 increasing representation. Accordingly, the political rights of Plaintiffs to self-governance and a
13 meaningful vote will continue to be abridged in violation of the Ninth Amendment.
14

15 **VI. PRAYER**

16 WHEREFORE, Plaintiffs respectfully pray the Court as follows:
17

- 18 1. The assigned trial Judge as soon as practicably possible alert the Chief Judge of the Ninth
19 Circuit to convene a district court of three judges as required by 28 U.S.C. 2284(1).
- 20 2. Declare the existing apportionment and representative ratio of California's legislative
21 districts impair plaintiff's' right to participate in self-governance and abridge the value of
22 individual plaintiffs' votes as well as impairs their first Amendment rights.
- 23 3. Enter a permanent injunction and, if necessary, a preliminary injunction establishing
24 statewide legislative districts in California in accordance with such plans as plaintiffs will submit
25 to the Court; and enjoin the growth of the Representative Districts. This plan should include the
26 creation of at least one Native American majority district.
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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on this date I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

Dated this 8th Day of May 2017.

By: /s/ Gary L. Zerman
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