

FILED

JUN 14 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DON HIGGINSON,

Plaintiff-Appellant,

v.

XAVIER BECERRA, in his official
capacity as Attorney General of California;
CITY OF POWAY,

Defendants-Appellees.

No. 18-55455

D.C. No.

3:17-cv-02032-WQH-JLB

MEMORANDUM*

DON HIGGINSON,

Plaintiff-Appellee,

v.

XAVIER BECERRA, in his official
capacity as Attorney General of California;
CITY OF POWAY,

Defendants,

v.

CALIFORNIA LEAGUE OF UNITED
LATIN AMERICAN CITIZENS;

No. 18-55506

D.C. No.

3:17-cv-02032-WQH-JLB

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

JACQUELINE CONTRERAS; XAVIER
FLORES; JUDY KI; HIRAM SOTO,
Proposed Defendant-Intervenors,

Movants-Appellants.

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Argued and Submitted June 7, 2018
Portland, Oregon

Before: GRABER and M. SMITH, Circuit Judges, and HELLERSTEIN,** District
Judge.

Plaintiff Don Higginson timely appeals the district court's dismissal of this action for lack of subject matter jurisdiction. The district court ruled that Plaintiff does not have standing to sue either the Attorney General of California, Xavier Becerra, or the City of Poway ("the City") for allegedly violating his rights under the Equal Protection Clause when the City adopted the by-district election scheme of Map 133 to avoid litigation under the California Voting Rights Act ("CVRA"). Reviewing de novo, Arakaki v. Lingle, 477 F.3d 1048, 1056 (9th Cir. 2007), we reverse and remand.

** The Honorable Alvin K. Hellerstein, United States District Judge for the Southern District of New York, sitting by designation.

1. We reverse the dismissal of the City. Plaintiff has standing to sue the City to challenge its adoption of Map 133. See Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc., 528 U.S. 167, 180–81 (2000) (laying out the requirements of Article III standing). Plaintiff has adequately alleged that he resides in a racially gerrymandered district and that the City's adoption of Map 133 reduced the number of candidates for whom he can vote. This alleged injury is concrete and particularized, directly traceable to the City's adoption of Map 133, and potentially redressable by an injunction requiring the City to return to its former system of at-large elections. Accordingly, Plaintiff can bring this as-applied challenge to the City's actions, including his argument that the City violated his rights because the CVRA, with which the City sought to comply, is unconstitutional under the Equal Protection Clause.

2. We also reverse the dismissal of the Attorney General. On remand, the Attorney General will remain a defendant unless, at his request, the district court redesignates him as an intervenor.

3. Our holdings above render Proposed Intervenors' motion to participate in the litigation not moot. We now grant that motion on the merits. See United States v. Sprint Commc'ns, Inc., 855 F.3d 985, 995 (9th Cir. 2017) (concluding, first, that the motion to intervene was not moot and then deciding the motion on the merits).

We review de novo the district court's decision regarding intervention as a matter of right under Federal Rule of Civil Procedure 24(a)(2), and we construe that rule liberally. Arakaki v. Cayetano, 324 F.3d 1078, 1082–83 (9th Cir. 2003). We conclude that Proposed Intervenors meet all four requirements for intervention as of right.

REVERSED and REMANDED for further proceedings consistent with this disposition.