Case No.

IN THE
Supreme Court of the United States

CITIZENS FOR FAIR REPRESENTATION; et al.,

Petitioners,

v.

SECRETARY OF STATE ALEX PADILLA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PETITION FOR WRIT OF CERTIORARI

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October 13, 2020

Church of the Gardens Press
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QUESTIONS PRESENTED

1. Did any Petitioner/Plaintiffs named in the three complaints filed with the District Court allege sufficient personal concrete and particularized harm therein to assert Article III standing for violations of each Plaintiff's individual right to self governance, if any such right exists?
2. Did the Single Judge District Court below and the Ninth Circuit Court of Appeals in appellate review act without or in excess of Article III jurisdiction over the subject-matter as conferred by Congress in 28 U.S.C. §2284(a) and (b)(3) as explained by the United States Supreme Court in *Shapiro v. McManus*, 136 S. Ct. 450 (2015) when each refused to convene a three-court judge district court?
3. Did the judges below (a single District Court judge and the presiding judge of the Ninth Circuit Court of Appeals) violate Article III § 1 and the principle of "party presentation" when they engaged in conduct so as to deny Plaintiffs ability to access a three-judge District Court pursuant to 28 U.S.C. 2284(a) to present their claims?

PARTIES TO THE PROCEEDINGS

An original Complaint (ECF 1), First Amended Complaint (FAC) (ECF 11, Exhibit 1), and Second Amended Complaint (SAC) (ECF 39) were filed with the District Court.

The Plaintiffs named in the original Complaint included:

> Citizens for Fair Representation; City of Fort Jones; the California Libertarian Party; the 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 Bird; Manuel Martin; Others Similarly Situated; and Does 1-30.

ECF 1.

The Plaintiff's named in the FAC are identified below. Those Plaintiffs named in the proposed FAC that were not identified in the original Complaint are bolded and italicized.

> Citizens for Fair Representation; City of Fort Jones; ***City of Colusa***; ***City of Williams***; The California Libertarian Party; The California American Independent Party; Mark Baird; Steven Baird; ***Cindy Brown***; Win Carpenter; Kyle Carpenter; ***David Curtis***; ***Mary Cordray***; ***Brittney Kristine Cournyer***; John D'Agostini; David Garcia; Roy Hall Jr.; ***Sara Hemphill***; Leslie Lim; Manuel Martin; ***Kevin McGary***; ***Tanya Nemcik***; ***Charles Nott; Mike Poindexter***; ***Clayton Terry Rapoza***; Terry Rapoza; Howard Thomas; Michael Thomas; ***Andy Vasquez***; Larry Wahl; ***Raymond Wong***; Others Similarly Situated; and Does 1–30.

The Plaintiff's named in the SAC are identified below. Those Plaintiffs named in the proposed SAC that were not identified in the original Complaint are bolded and italicized.

> Citizens for Fair Representation; ***Shasta Nation Tribe***; City of Colusa; City of Williams; the California American Independent Party; The California Libertarian Party; Mark Baird; Cindy Brown; Win Carpenter; Kyle Carpenter; John D'Agostini; David Garcia; Roy Hall Jr.; Leslie Lim; Mike Poindexter; Michael Thomas; Larry Wahl; and Raymond Wong.

The Defendant named in the original Complaint was California Secretary of Secretary of State Alex Padilla. Secretary Padilla was also named as the Defendant in the FAC. Alex Padilla was also named as a Defendant in the SAC. The Citizens Redistricting Commission (Commission) and the State

of California were also added as Defendants in the SAC. However, the Commission and the State never appeared as Defendants.

CORPORATE DISCLOSURE STATEMENT

Petitioner Citizens for Fair Representation is a nongovernmental corporation. Citizens for Fair Representation has no parent corporation, and no publicly held company owns 10% or more of its stock.

Petitioner California American Independent Party is a nongovernmental corporation. The California American Independent Party has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

Petitioner California Libertarian Party is a nongovernmental corporation. The California Libertarian Party has no parent corporation, and no publicly held company owns 10% or more of its stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

State Cases

Federal Statutes

Constitutional Provisions

State Constitutional Provisions

Federal Rules

Other

OPINIONS BELOW

The opinions below include:

The May 15, 2020, decision of the United States Court of Appeals for the Ninth Circuit affirming the November 28, 2018, and August 1, 2018, decisions of the United States District Court for the Eastern District of California (District Court). That opinion is not published. But the Court of Appeals decision is reported at *Citizens for Fair Representation v. Padilla*, 815 F. App'x 120 (9th Cir. 2020). It is attached at Petition ***Appendix 1a***.

The decision of the District Court dated November 28, 2018, dismissing Plaintiff's (SAC). That decision is not published. But this District Court decision is reported at *Citizens for Fair Representation v. Padilla*, No. 2: 17-cv-00973-KJM-DMC, 2018 U.S. Dist. LEXIS 202623 (E.D. Cal. Nov. 28, 2018). This decision is attached as ***Appendix 2a***.

The decision of the District Court dated August 1, 2018, denying Plaintiffs' motion for the appointment of a three-judge district court pursuant to 28 U.S.C. § 2284. This order is not published. However, this District Court's order is reported at *Citizens for Fair Representation v. Padilla*, No. 2: 17-cv-00973-KJM-CMK, 2018 U.S. Dist. LEXIS 129242 (E.D. Cal. Aug. 1, 2018). This decision is attached as ***Appendix 3a.***

The decision of the District Court dated January 31, 2018, dismissing Plaintiffs' original Complaint is not published. But this District Court's decision is partially reported at *Citizens for Fair Representation v. Padilla*, No. 2: 17-cv-00973-KJM-CMK, 2018 U.S. Dist. LEXIS 129242 (E.D. Cal. Aug. 1, 2018). This decision is attached as ***Appendix 4a***.

The District Court also issued an Order reflected as a Docket Entry dated February 1, 2018, that states:

> ORDER signed by District Judge Kimberly J. Mueller on 1/31/2018 ORDERING the Plaintiffs' complaint, as currently articulated, asserts a generalized grievance that does not establish standing to sue in federal court. The complaint is also fraught with non-justiciable political questions. Accordingly, the court DISMISSES the complaint under Rule 12(b)(1) based on lack of subject-matter jurisdiction, but GRANTS plaintiffs leave to amend the complaint subject to the limitations discussed above. The amended complaint, limited to twenty-five pages, shall be filed within twenty-one days. Because a single-judge court lacks the authority to dismiss this case on the merits under Rule 12(b)(6), *Shapiro*, 136 S. Ct. at 455-56, the court DENIES without prejudice defendant's motion to dismiss under Rule 12(b)(6), subject to renewal should this case proceed before a three judge court at some point in the future. The court DENIES as MOOT plaintiffs' motion for sanctions. This resolves ECF Nos. 9, 11, 23. (Becknal, R)

This Order is not published or reported. That decision is attached hereto as ***Appendix 5a***.

The minute order of the District Court dated August 2, 2017, stating:

> In light of plaintiffs complaint and notice of requirement of three judge court, (ECF Nos. 1, 12), the court has determined this case implicates 28 U.S.C. 2284(a), providing for the convening of a three judge court. The court thereby DIRECTS the Clerk of Court to formally notify the Chief Judge of the Ninth Circuit of the pendency of this action, as 20 U.S.C § 2284(b)(1) [sic] requires, so that he may appoint a three judge court. SO ORDERED. (Text Only Entry)

This order is not published or reported. This order is attached as ***Appendix 6a.***

JURISDICTION

The United States Court of Appeals for the Ninth Circuit entered judgment on May 15, 2020. No motion for rehearing was filed. On March 19, 2020, this Court by Order granted a 60-day extension of time in which to file petitions for certiorari because of the COVID-19 Pandemic. This Petition for Certiorari is being filed within this emergency time frame.

Accordingly, the jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

PETITION FOR WRIT OF CERTIORARI

Petitioners, plaintiffs below on one or more of the three complaints filed by them pertaining to this case or controversy and who are parties to this Petition include:

> Citizens for Fair Representation, The California American Independent Party, The California Libertarian Party, The Marin County Green Party, Andy Vasquez, Charles Nott, Cindy Brown, Clayton Terry Rapoza, David Curtis, David Garcia, Howard Thomas, John D'Agostini, Kathy Radinovich, Kevin McGary, Kyle Carpenter, Larry Wahl, Leslie Lim, Manual Martin, Mark Baird, Mary Cordray, Michael Thomas, Mike Poindexter, Patty Smith, Roy Hall Jr., Sara Hemphill, Shasta Nation Tribe, Stephen Baird, Tanya Nemcik, Terry Rapoza, and Win Carpenter.

These Petitioners respectfully submit this Petition for a Writ of Certiorari to review the final judgment of the Ninth Circuit Court of Appeals dismissing Petitioner's appeal for lack of standing and additionally the District Court's conclusion that Plaintiffs various complaints stated impermissible political questions.

These Petitioners also respectfully ask this Court to consider whether the Ninth Circuit Court of Appeals and the District Court below had subject-matter jurisdiction over Petitioners' claims pursuant Article III §1 to make the jurisdictional rulings those courts rendered with regard to Petitioners' self governance claims.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves structural aspects of the United States' Constitution, including its Separation of Powers and Federalism aspects, which relate to and are intended to protect the liberty interests of individuals.

ARTICLE I

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives

ARTICLE II

Section 1. The executive Power shall be vested in a President of the United States of America

ARTICLE III

SECTION ONE. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION TWO. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

ARTICLE IV

SECTION FOUR: The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE VI

Clauses 2 and 3. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

THIRTEENTH AMENDMENT

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

FOURTEENTH AMENDMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being *twenty-*

one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

* * *

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.
(Emphasis Supplied)

FIFTEENTH AMENDMENT

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

NINETEENTH AMENDMENT

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. Congress shall have power to enforce this article by appropriate legislation.

TWENTY-FOURTH AMENDMENT

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

TWENTY-SIXTH AMENDMENT

Section 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.
Section 2. The Congress shall have power to enforce this article by appropriate legislation.

CALIFORNIA CONSTITUTIONAL PROVISIONS

Article 4 Section 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.

FEDERAL STATUTORY PROVISIONS

2 U.S.C. § 6

Should any State deny or abridge the right of any of the male inhabitants thereof, being twenty-one years of age, and citizens of the United States, to vote at any election named in the amendment to the Constitution, article 14, section 2, except for participation in the rebellion or other crime, the number of Representatives apportioned to such State shall be reduced in the proportion which the number of such male citizens shall have to the whole number of male citizens twenty-one years of age in such State.

28 U.S.C. § 2284

(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.

STATEMENT OF THE CASE

On Sept. 1, 1849, California held its first Constitutional Convention, which resulted in ratification of the state's first Constitution on November 13, 1849. At this convention, the overwhelmingly white male delegates ratified a Constitution eliminating the existing political ***and*** suffrage rights of all Native Americans, blacks, and non-white because they feared non-whites participation in control of California's government to non-whites. Art. II, § 1 of the 1849 Constitution expressly limited suffrage to only white males, including only white male Mexicans who declared U.S. Citizenship.

California became a state of the U.S. under its 1849 Constitution on September 9, 1850. The Assembly was apportioned 36 members at that time; the Senate was apportioned with 16 members. In 1854, the Assembly was increased through statute to 80 members; in 1862, the Senate was expanded by statute to 40 members. These

caps were memorialized in California's 1879 constitutions for the purpose of continuing white dominance of California's government.

These legislative caps remain in effect today as a vestige of past invidious, intentional, systematic racial discrimination by California's government against non-whites. Plaintiffs claim these caps continue to injure people of all races today—Native American, Hispanic, Asian, and White—and that these legislative caps harm each of them individually, concretely and specifically.

Whites make up only 38% of California's population, but the cap on the number of legislators gives them greatly disproportionate representation in the legislature. In 2017–19 for example, the Senate had 31 whites (77.5%), 2 Asian/Pacific Islanders (5%), 2 blacks (5%), and 5 Hispanics (12.5%). In the Assembly, 37 members are white (46%), 22 are Hispanic (27.5%), 8 are black (10%), and 2 are multiracial (5 %). Because the Assembly is apportioned to provide twice as many representatives , so non-whites have a significantly greater chance of being elected, but not of participating in their own self governance as that term was defined in their complaints.

Twenty-two Plaintiffs[1] filed the original Complaint in this case on May 8, 2017, complaining about the disparate impact California's invidiously racist apportionment of its legislative houses was having on the people of California generally and on each of the Plaintiff's personally. That Complaint was 28 pages long, not including exhibits, and contained a "Request for three judge court under 28 U.S.C. 2284(a) in its caption. (ECF 1). The Complaint was broken down into various sections. One section of the Complaint alleged the general nature of the Plaintiffs' grievance and documented how this adversely impacted individual liberties to the point of tyranny ECF

[1] The twenty-two Plaintiffs included one association, one city, three political parties, one Native American tribe, and 18 individuals.

1, ¶¶ 2.1–2.8. Another section alleged how each Plaintiff had been "concretely" and "particularly" injured by violations of their personal right to self-representation.

ECF 1, ¶¶ 3.1–3.25

> The allegations of general injury in the original Complaint stated:
>
> legislative office in California costs exorbitant amounts of money - the vast majority of the electorate have no meaningful chance to be elected or support someone who can be because they simply do not have the
>
> 2.4. The result of California not increasing the number of legislative districts and legislators as its population grows, arbitrarily and unconstitutionally allows the same number of legislative members (Assembly-80 and Senate-40) as existed in 1862 when the population of California totaled 416,645 - to represent the almost 40,000,000 people that live in the State of California today! This apportionment of California's legislature is arbitrary, baseless and directly violates the plaintiffs rights to "self governance" as established by the Fourteenth and other Amendments to the United States Constitution, *see* infra, ¶ 4.8, as well as by statutes of the United States intended to protect the rights of this Nation's people.
>
> 2.5. For purpose of this complaint, plaintiffs allege the right of citizens of the United States to self-governance includes the privilege and/or the right: a.) to take part in the conduct of public affairs in California, directly or through freely chosen representatives in the California legislature; b.) to a meaningful and equal opportunity, without regard to wealth, to be elected or elect others to represent them in the California legislature through genuine periodic elections, which are by universal and equal suffrage that guarantee the free expression of the will of the voters; c.) to reasonably equal voting rights among United States citizens in the various States, which are not arbitrarily determined, diluted or abridged; and d.) to a meaningful opportunity, under general conditions of equality, to access one's actual legislative representatives, rather than just his or her staff members, to engage in such political speech and rights as is contemplated and protected by the First Amendment to the United States Constitution.

Original Complaint, ¶ 2.4–2.5

On May 30, 2017, Secretary Padilla filed a motion to dismiss the Complaint claiming all the Plaintiffs lacked Article III standing because they had alleged only a

generalized grievance. Padilla also urged Plaintiff's Complaint should be barred by the political question doctrine. (ECF 9).

The Plaintiffs responded to the Secretary's motion to dismiss by filing their First Amended Complaint (FAC) (ECF 11), on July 28, 2017. The FAC was sixty-two pages long, not including the exhibits. The FAC named several new Plaintiffs, including two local municipalities, and several individuals. (ECF 11, exhibit 1 - Caption) The caption of the FAC stated: "*THREE-JUDGE COURT REQUESTED [28 U.S.C. 2248]*"

The FAC was accompanied by a separate "Notice of the Requirement of a Three-Judge District Court." (ECF 12).

In their FAC, Plaintiffs devoted twenty-two pages to establishing historical legal and basis for "self governance" being a liberty interest right and/or privilege, *i.e.* to which each Plaintiff was entitled. *See* ECF 11, exhibit 1, pp. 14–36, ¶¶ 10.1–10.86. Plaintiffs alleged their individual right to self governance was established by a myriad of historical events, laws, constitutional provisions and amendments, statutes, treaties, judicial precedent, and international norms. These included the Declaration of Independence, the Revolutionary War, the text of the United States Constitution and numerous Amendments thereto occurring throughout the centuries, the Civil War, United States judicial precedent, and international agreements that were ratified by this Nation and others through the course of this history. *See* ECF 11, exhibit 1, ¶ 10.3)

With regard to their direct Constitutional claims for their right to self-representation the Plaintiffs relied on the second paragraph[2] of the Declaration of

[2] This paragraph states in pertinent part:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That

Independence, the ratification of Article 1, Section 2, Cl. 2 of the United States Constitution, and the Thirteenth[3], Fourteenth[4], Fifteenth[5], Seventeenth[6], Nineteenth[7], Twenty-Third[8], Twenty-Fourth[9], and Twenty-Sixth[10] Amendments to that Constitution as demonstrating the Peoples' exercise of their sovereignty to assure themselves of citizens' rights to self governance and suffrage.

Further, Plaintiffs alleged that Supreme Court precedent observes that "unconstitutional discriminations . . . occur when the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voter's influence on the political process as a whole" citing *Davis v. Bandemer*, 478 U.S. 109, 111 (1986), *Reynold v. Sims*, 377 U.S. 533 (1964) and *Wesberry v. Sanders*, 376 U.S. 1, 7 (1964). *See* FAC, ¶ 10.63 (ECF 11, exhibit 1, p. 29).

Plaintiffs also alleged that numerous statutes confirmed their right to self governance, including the Voting Rights Act enacted into law 1965[11]; the Voting Accessibility for the Elderly and Handicapped Act enacted into law in 1990[12]; the Americans with Disabilities Act enacted into law in 1990[13]; the National Voter Registration Act of 1993[14], and the Help the America Vote Act of 2002[15].

> whenever any form of government becomes destructive to these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness . . .

[3] *See* FAC, ¶ 10.38 (ECF 11, exhibit 1, p. 24)
[4] *See* FAC, ¶ 10.39–10.40 (ECF 11, exhibit 1, pp. 24–24)
[5] *See* FAC, ¶ 10.41 (ECF 11, exhibit 1, p. 25)
[6] *See* FAC, ¶ 10.46–10.47 (ECF 11, exhibit 1, p. 26)
[7] *See* FAC, ¶ 10.48 (ECF 11, exhibit 1, p. 26)
[8] *See* FAC, ¶ 10.61 (ECF 11, exhibit 1, p. 28–29)
[9] *See* FAC, ¶ 10.62 (ECF 11, exhibit 1, p. 29)
[10] *See* FAC, ¶ 10.66 (ECF 11, exhibit 1, p. 30–31)
[11] *See* FAC, ¶ 10.64 (ECF 11, exhibit 1, p. 29–30)(VRA is intended to prevent access to political processes)
[12] *See* FAC, ¶ 10.67 (ECF 11, exhibit 1, p. 31)
[13] *See* FAC, ¶ 10.68-10.69 (ECF 11, exhibit 1, p. 31)
[14] *See* FAC, ¶ 10.72 (ECF 11, exhibit 1, p. 32)
[15] *See* FAC, ¶ 10.75 (ECF 11, exhibit 1, p. 33)

Plaintiffs also alleged numerous international agreements to which the United States was a party demonstrated the United States was a principal proponent (or at least acquiesced) in an international norm embracing the People's right to self governance in the United States. See e.g. The United Nations Charter ratified in 1945[16], the Universal Declaration of Human Rights ("UDHR") G.A. Res. 217 A (III), U.N. Doc A/80 passed in 1948[17], the Basic Law (Grundgesetz) for the Federal Republic of Germany promulgated by the Parliamentary Council (including the United States and its allies) for the Federal Republic of Germany in 1949[18], The American Declaration of the Rights and Duties of Man ("American Declaration"), passed by the Organization of American States in 1948[19], The International Covenant on Civil and Political Rights (ICCPR) which has been in force since March 23, 1976[20], the Inter-American

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[16] *See* FAC, ¶ 10.54 (ECF 11, exhibit 1, p. 27)

[17] *See* FAC, ¶ 10.58 (ECF 11, exhibit 1, p. 27) (Article 21 of that declaration, which the United States ratified and remains committed to, states:

> Article 21. (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

[18] *See* FAC, ¶ 10.59 (ECF 11, exhibit 1, p. 27) (Article 21 of that law states:

> (1) The Federal Republic of Germany is a democratic and social federal state.
> (2) All state authority is derived from the people. It shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies.
> (3) The legislature shall be bound by the constitutional order, the executive and the judiciary by law and justice.
> (4) All Germans shall have the right to resist any person seeking to abolish this constitutional order, if no other remedy is available.

[19] *See* FAC, ¶ 10.60 (ECF 11, exhibit 1, p. 28-29) (Section XX of this declaration states:

> Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

[20] *See* FAC, ¶ 10.65 (ECF 11, exhibit 1, p. 30) (Article 1, section 1 to that Covenant states in pertinent part: " All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

Democratic Charter (IADC) adopted by the Organization of American States in 2001[21], and the Convention on the Rights of People with Disabilities, adopted in 2006[22].

Plaintiffs also alleged that the nature of the United States government with regards to that self governance as was contemplated by the Declaration of Independence as it was interpreted by this Court in *Dred Scott v Sanford*, 60 US 393 (1856) was fundamentally changed by the Civil War to embrace liberty for all races, "except Indians not taxed." *See* FAC, ¶¶ 10.31-10.41 (ECF 11, exhibit 1, pp. 21-25.)

The next section of the FAC described injuries from the invidious cap that generally affects most Californians, just as the state imposed generalized mandate for each person to wear masks does. See e.g. FAC, ¶¶ 12.1-3, ECF 11, exhibit 1, pp. 37-38. But the FAC then went on to allege the various concrete and particularized injuries each Plaintiff had incurred. For example, the FAC alleged "Baird has been subject to retaliation for exercising political and civil rights related to free speech because he has been a proponent of the Jefferson movement and decreasing the population of legislative district in order to promote self governance throughout California." ECF 11, Exhibit 1, ¶¶ 12.4.A, pp. 37-38.

On August 1, 2017 Secretary Padilla filed an opposition to Plaintiffs' motion for leave to amend the FAC. (ECF 13)

On the next day, August 2, 2017 the district court filed a minute order that stated:

> In light of plaintiffs complaint and notice of requirement of three judge court, (ECF Nos. 1, 12), the court has determined this case implicates 28 U.S.C. § 2284(a), providing for the convening of a three judge court. The

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[21] *See* FAC, ¶ 10.74 (ECF 11, exhibit 1, p. 32)

[22] *See* FAC, ¶ 10.76 (ECF 11, exhibit 1, p. 33) (Article 29 commits nations "shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, . . .) These rights include those related to self governance as alleged to have been violated in the FAC.

> court thereby DIRECTS the Clerk of Court to formally notify the Chief Judge of the Ninth Circuit of the pendency of this action, as 20 U.S.C. § 2284(b)(1) requires, so that he may appoint a three judge court. SO ORDERED.

(ECF 14).

On August 3, 2017, the Secretary filed an ex parte application for an Order Reconsidering Minute Order ECF 14. On August 10, 2017, the district court issued a minute order (ECF 17) that set a briefing schedule with regard to the Secretary's reconsideration application.

On September 8, 2017, after the completion of briefing, the district court heard oral argument relating to the Plaintiffs' request for a three-judge district court, the Secretary's motion to dismiss, and the Plaintiffs' motion for to leave to file their FAC.

On February 1, 2018, the district court issued a ruling:

> "ORDERING the Plaintiff's complaint, as currently articulated, asserts a generalized grievance that does not establish standing to sue in federal court. The complaint is also fraught with non-justiciable political questions. Accordingly, the court DISMISSES the complaint under Rule 12(b)(1) based on lack of subject-matter jurisdiction, ***but GRANTS plaintiffs leave to amend the complaint subject to the limitations discussed above. The amended complaint, limited to twenty-five pages***, ***shall be filed*** within twenty-one days. Because a single-judge court lacks the authority to dismiss this case on the merits under Rule 12(b)(6), Shapiro, 136 S. Ct. at 455-56, the court DENIES without prejudice defendant's motion to dismiss under Rule 12(b)(6), subject to renewal should this case proceed before a three judge court at some point in the future.

ECF 32. (Emphasis supplied)

The District Court's Order did not rule on the Plaintiffs' motion for leave to file the FAC directly, but indirectly denied it by ordering that any amended or supplemental complaint must be no longer than 25 pages, which was less pages than either the original Complaint (27 pages long) or the proposed FAC (62 pages long). Obviously, these page limitations were intended to substantially limit the space Plaintiffs

had to assert their self governance causes of action and restrict their ability to allege standing.

If the District Count was not imposing such restrictions so as to cause dismissal of Plaintiffs' claims, then what was the District Court's purpose in doing so? And where did its authority to so severely handicap these Plaintiffs' presentation of their case come from?

In their Second Amended Complaint (SAC)(ECF 39) the Plaintiffs once again noted the problems related to the invidious racially discriminatory caps on the apportionment of California's Senate and Assembly were causing the People generally in California.

> For more than 150 years, California has capped the size of the state legislature. Despite the enormous population increase of over 39,000,000 (Thirty-Nine Million) people the legislature is limited to only 40 members of the senate and 80 for the Assembly. Constitutionally capping the number of members of California's legislature, in 1879, was intended to and did reduce the representation of non-whites. California's legislature is now dominated by a static number of powerful elite politicians in districts which are constantly expanding, effectively leaving plaintiffs unrepresented because their interests can and have been systematically ignored.
>
> By maintaining these arbitrary caps, California has perpetuated a system of oligarchic governance at odds with the norm of self-representation at the heart of the U.S. Constitution. As a result, California violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment, as well as the First Amendment, and denies to plaintiffs a republican form of government as guaranteed by Article IV and the federal structure of the U.S. Constitution.
>
> California could easily remedy these constitutional violations simply by significantly apportioning a larger number of members to the assembly and senate. Many other states have significantly larger legislatures. If California determines that expanding the legislature to remedy past invidious racial discrimination is unworkable, the state has the option of initiating the process prescribed in the U.S. Constitution to break the state into two or more new states. *See* U.S. Const., Art. IV, § 3, cl. 1.
>
> The issue here is that California is "locked in" to this unconstitutional system by its own history. However, because members of the Assembly and Senate would lose their political power if they

> solved this dire problem, instead they will continue to do nothing to redress plaintiffs' grievances and injuries, and only judicial intervention by this Court can remedy the constitutional violations set forth herein.

ECF 39, INTRODUCTION, pp.2-3

After alleging California's invidious race discrimination was causing everyone harm, but those close its oligarchical government, the plaintiffs also identified their own individual personal grievances which brought them to the judicial department to litigate against the tyranny they claimed was injuring them. Such standing allegations included, among others:

" . . . CFR's members have effectively been disenfranchised from California's political legislative process and voting because they reside in such populous legislative districts that CFR's member's interests, needs, and concerns are routinely ignored by California's bicameral legislature. . . ." ECF 39, ¶1.1, p. 3;

"Plaintiffs Win Carpenter, Kyle Carpenter, and Roy Hall Jr. . . . are part of a racial class of approximately 650,000 Native Americans in California whose members have been intentionally, systematically, and invidiously discriminated against by California since statehood, . . . The decimation of the Native American population coupled with the unconstitutional cap on the size of the legislature which results in the population of the Assembly and Senate districts growing larger and larger over time have denied Native Americans any opportunity to elect a member of their race to a statewide legislative body." ECF 39, ¶1.2, p. 3–4;

"David Garcia is a Latino/Hispanic1 (Mexican) U.S. citizen . . . Hispanics have been intentionally, systematically, and invidiously discriminated against by California in numerous ways, including intentional extermination and forced expulsion of Hispanic U.S. citizens and voters from California, beginning at statehood and continuing at least through the 1930s. The cap on the size of the legislature is an integral part of a constitutional and legislative framework dating to the Nineteenth Century

to dilute the political power and abridge the votes of Hispanics, causing Plaintiff Garcia and others similarly situated Hispanics grave economic, social, and stigmatic injuries as members of a racial and ethnic minority. Further, their ability to elect candidates of their choice to the legislature has long been seriously impacted." ECF 39, ¶1.3, p. 4.

"Raymond Wong and Leslie Lim are U.S. citizens of Asian descent . . . Asians, especially persons of Chinese, Mongolian, Japanese descent as well as those who provided 'Coolie' labor before 1879, have been intentionally, systematically, and invidiously discriminated against by California in ways that the state has formally admitted, through their intentional killing, forced expulsion, internment, and other intentional discrimination based on their race from the 1850s through at least the 1950s. The cap on the size of the legislature is an integral part of a constitutional and legislative framework dating to the nineteenth century to dilute the political power and abridge the votes of Wong and Lim and other similarly situated Asians, resulting in grave economic, social, and stigmatic injuries to them as members of a racial minority. Further, their ability to elect candidates of their choice to the legislature has long been seriously impaired." ECF 39, ¶1.4, p. 4–5.

"Cindy Brown is a black U.S. citizen . . . Brown and other blacks have been intentionally, systematically, and invidiously discriminated against by California in numerous ways that have been formally admitted by the state, including being denied the right to vote by the 1849 Constitution, subjected to "Jim Crow" race laws following the 1879 Constitution, and subjected to voter disenfranchisement for felony convictions based on race by California courts, which have a long history of intentionally discriminating against blacks. Brown alleges the 1849 and 1879 constitutions, including the 1879 constitutional cap on the size of California's statewide legislative bodies —has in the past and continues now— to dilute black political power by abridging the

value of their votes based on race. As an example, Brown alleges the capped legislature refuses to oversee the corruption of California's judges and courts that incarcerate and impose felony sentences (which impacts the right to vote) of non-whites." ECF 39, ¶1.5, p. 5.

"This dilution of political power has resulted in grave economic, social, and stigmatic injury to Plaintiffs Mark Baird, [Winn and Kyle] Carpenters, John D'Agostini, Mike Poindexter, Michael Thomas, and Larry Wahl, —U.S. citizens who live and vote in California senate districts composed of eight or more counties.— . . . Colusa and Williams are rural municipalities within Senate District 4 (which is composed of eight counties.) These Plaintiffs allege that California's constitutional cap of 40 senators and 80 assembly persons, which was born out of the invidious discrimination against non-whites described herein, now causes them injury." ECF 39, ¶1.6, p. 5.

"Plaintiffs the California American Independent Party and The California Libertarian Party are minority political parties that have substantial numbers of registered members in California, but their ability to elect candidates of their choice is seriously undermined by the constitutional framework . . . . [designed] to dilute the value of non-white people's votes by capping the number of senators and representatives." ECF 39, ¶1.7, p. 6.

Other allegations going to the concreteness and the particularization of several plaintiffs injuries are set forth in the "Factual Allegations" section of Plaintiffs' SAC. For example, ¶ 3.32-3.33 allege:

> 3.32 Plaintiffs identified in ¶ 1.6 reside and vote in geographically large senate districts composed of eight or more counties[23]. People living in

[23] This footnote appears as note 2 in Plaintiffs' SAC:

> California Senate District 1 encompasses eleven counties and is larger geographically than the State of West Virginia; it is comprised of people and industries so diverse they are impossible to be represented as a single constituency. By contrast, there are 11 senators who exclusively represent Los Angeles County, and 4 others with parts of that county in their districts.

> such large legislative districts, are prejudiced from running for statewide legislative offices or accessing representatives having similar governmental concerns because candidates from such districts have to pay increased fees and costs to access voters in large geographical areas. For example, the difference in fees and costs to run for offices in large geographic districts as opposed to urban legislative districts can be substantial (i.e. thousands of dollars). This impacts those candidates in such districts ability to run for office and, if elected, serve their constituents.
>
> 3.33 Plaintiffs Baird, Carpenters, Hall, D'Agostini, Poindexter, Thomas, Wahl and other similarly situated persons living in geographically large legislative districts are also injured by the vanishing value of their vote because the representatives who represent numerous counties can choose to represent the interests of only those constituents (or non-constituents) who contribute to their campaigns. Despite constituents' petitions and protests, the legislature often refuses to provide for their safety. ***For example, the Oroville Dam was known for years to have infrastructure problems that could result in spillway failure at any time. Plaintiff Wahl and other Butte County residents could not obtain representation from, nor engage the legislature concerning this wellknown problem until after the spillway broke, which then caused the evacuation of almost 200,000 people. This tragedy, caused economic, social, and stigmatic injuries to many people, including plaintiffs***. . . .
>
> 3.34 Because of Baird's participation in this lawsuit and other lawful political activities, he has been retaliated against by the state and local agencies in ways that have harmed his economic and political interests. For example, ***because of his political views and participation in this case Baird was placed on an indefinite, unpaid leave of absence from his deputy sheriff job in Siskiyou County.***

ECF 39, ¶¶33.2-33.4, pp. 16–17.(Emphasis supplied)

Consistent with the allegations of Plaintiffs' previous complaints the Factual Allegations section of Plaintiffs' SAC concludes: "California's cap on the number of its legislators, and the laws enacted by this legislative oligarchy, have created a situation which today is no longer consistent with the federal structure of government mandated by numerous U.S. constitutional provisions and amendments." ECF 39, ¶3.35, p. 17.

On April 16, 2018, Secretary Padilla filed a motion to dismiss Plaintiffs' SAC based on Fed. R. Civ. Pro. 12(b)(1). (ECF 42, p.10) The motion argued once again that the Plaintiffs alleged a "general grievance," (*Id.* pp. 11–13) but the Secretary misstated the nature of the claims Plaintiffs had actually brought. "Plaintiffs do not meet the first prong of standing analysis because the injury they allege — diluted representation in the Legislature—is a general grievance shared by the public at large." (ECF 42, p. 11) Plaintiffs' Complaint was—and had always been—about each plaintiffs specific liberty interest with regard to self governance as established by the People and the various branches of their government over time.

On May 24, 2018, Plaintiffs responded to the Secretary's motion to dismiss by arguing: "In moving to dismiss the Second Amendment Complaint [SAC] for lack of standing and justiciability, Defendant's arguments essentially are the same made by the dissents in *Baker v. Carr*, 369 U.S. 186 (1962)" ECF 46, p. 1. Plaintiffs claimed, "A. Article III does not preclude standing for all claims involving injuries shared widely by the public," ECF 46, pp. 2–8, and "B. Plaintiffs have standing." ECF 46, pp. 9–15.

On November 29, 2018, the district court issued an order dismissing Plaintiffs' SAC for lack of subject-matter jurisdiction (ECF 67), including for all Plaintiffs "lack of standing," *Id.*, at 6–9, and under the Political Question Doctrine". *Id.* at 9–11.

Plaintiffs fault the district court for not referring this case to a three-judge district court and only considering those aspects of the invidious racially discriminatory legislative ban that affects everyone in California generally and ignoring those concrete and particularized claims of injury each Plaintiff alleged on her, his, or its own behalf. Plaintiffs also take issue with the single judge's decision that the reasoning of *Baker v. Carr*[24] and *Shaw v. Reno*, *see infra.*, do not apply to this case alleging

[24] All the justices in *Baker* (both those in the majority and the dissenters) acknowledged that allegations of racial discrimination presented a clash of private rights that was justiciable. *See* Majority

invidious racial discrimination. Plaintiffs also fault the single judge for not ruling on their motion for leave to file their FAC and limiting any complaint they could file to not more than 25 pages.

Various Plaintiffs in the three versions of the Complaint, *i.e.* the original Complaint, the FAC, and SAC filed a notice of appeal on December 27, 2018. *See* App. 38–42. That appeal was decided on May 15, 2020. The Ninth Circuit Panel that was assigned the appeal did not allow oral argument. In its short nine paragraph Opinion the Panel does not indicate that it understood Plaintiffs' claims were related to "self governance" rights –which people all over the world enjoy.

There is also nothing in the Ninth Circuit Memorandum that suggests its authors considered the actual language of the Complaint regarding each plaintiff's standing before for concluding that each had not alleged a concrete and particularized injury. Indeed, there is nothing stated in the Memorandum by which any reader, let alone Plaintiffs, can deduce those facts of this case by which the Panel concluded it was not *plausible* that California's Constitutions were intended to achieve white supremacy when California has conceded as much and apologized for its conduct.

While the district court was deciding this case and after its Orders were released this Court decided several significant political, partisan gerrymandering cases, the reasoning of which may, or may not apply to this apportionment case. Such cases include: *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019); *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945 (2019); *North Carolina v. Covington*, 138 S. Ct. 2548 (2018); *Abbott v. Perez*, 138 S. Ct. 2305 (2018); and *Gill v. Whitford*, 138 S. Ct. 1916 (2018).

SUMMARY OF ARGUMENT

The structural aspects of the Constitution, such as Separation of Powers and

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Opinion, 396 U.S. 186, 210, 229-31; Justice Marshall's concurrence, 396 U.S. at 244-250; Justice Frankfurter's dissent, 396 U.S. at 285-286; Justice Harlan's dissent, 396 U.S. at 334-335.

Federalism, inform this Court's Article III standing analysis. These same structural aspects also are intended to protect the People's liberty interests.

The District Court and the Ninth Circuit Court of Appeals failed to address Petitioners claims that the liberty interests of each Petitioner in self governance was injured by California's apportionment of its state legislative bodies to achieve and maintain white dominance in California's government. The right to "self governance" as defined by Plaintiff/Petitioners in their Complaint was not based on any specific judicial decision but on the evolution of such right over time and as revealed by the Declaration of Independence, the Revolutionary War, the text of the United States Constitution and numerous Amendments thereto occurring, the Civil War, United States judicial precedent, and international agreements that were ratified by this Nation establishing "self governance" as a liberty interest in free societies. Neither lower court considered Petitioners' claims that each individual plaintiff was entitled under the Constitution to participate in a system of self governance not based on a premise of white supremacy.

To be sure, Petitioners identified in their original Complaint, FAC and SAC the general tyranny that California's racially discriminatory apportionment system has visited upon the people of California as a whole, but each also pled in these complaints how this apportionment system injured them personally in a concrete and particularized manner for the purposes of going forward with their complaints. The lower courts failed to adequately consider the allegations of each Petitioner with regard to their individual injuries stemming from California's denying them a race neutral system of self governance.

Petitioners assert the District Court and Court of Appeals decisions dismissing their apportionment claims prior to referring them to a three-judge district court pursuant to 28 U.S.C. 2284(a) violated Article III, § 1, and the principles of party

presentation applicable to our adversary system of justice. This resulted in a situation where neither of the courts below had subject-matter jurisdiction of this case. Further, Petitioners assert that the courts below impermissibly attempted to manipulate their subject-matter jurisdiction so as to prevent Petitioners claims regarding self governance from being adjudicated before a three-judge district court as the political branches have mandated must occur in apportionment cases.

REASONS TO GRANT PETITION

A. Review should be granted because tyranny restricting individual liberties is not a type of "generalized grievance" for which there is no Article III standing.

The Merriam-Webster Dictionary defines "tyranny" to mean: "oppressive power, . . . especially: oppressive power exerted by government." By definition tyranny is a general grievance experienced by those oppressed by government notwithstanding each individual may be injured by the government's tyranny in a different way.

Does that fact that tyranny is a general grievance mean that Article III prevents a judicial remedy? Consideration of the structural aspects of our Constitution suggests not.

This Court's evolution of its Article III standing doctrine has not been without criticism.[25] But it is difficult to argue with this Court's separation of powers concerns with regard to Article III courts exercising judicial power to "adjudicate" all matters

[25] Not all commentators agree that standing is required by Article III. Many have argued that standing cannot be historically justified. Louis L. JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 462-67 (1965) (arguing that injury is not a prerequisite to judicial standing); Raoul Berger, *Standing to Sue in Public Actions: Is it a Constitutional Right?*, 78 YALE L.J. 816 passim (1969) (exploring the Framers perceptions of Article III and the Court's power); Cass Sunstein, *What's Standing After Lujan? Of Citizen Suits, "Injuries" and Article 111*, 91 Mich. L. Rev. 163, 168–79 (1992) (same); Steven L. Winter, *The Metaphor of Standing and the Problem of Self-Governance*, 40 STAN. L. REV. 1371 (1988) (same); see also Gene R. Nichol, Justice Scalia, *Standing and Public Law Litigation,* 42 DUKE L.J. 1141, 1150 (1993) (noting the Framers' lack of substantive discussion regarding the requirement of case or controversy).

of government. This is because the structural limitations placed on the judiciary, *i.e.* the necessity for a case or controversy in which to exercise traditional *judicial* power, is designed to prevent the courts from purposely or otherwise usurping the policy-making and executive roles of the other branches of the federal government and the states with regard to local policy-making and executive matters.

The problem with the decisions of the courts below appears to be they saw only what they wanted to see —Plaintiffs' allegations that the California's invidious racially motivated apportionment caps cause pretty much everyone injury –without reading the rest of Complaint so as to determine how each Plaintiff claimed to be individually injured by the invidious legislative apportionment imposed on them by California's Constitution, art. IV, § 2. By not performing this necessary judicial function in order to determine their subject-matter jurisdiction, the courts below totally failed to perform the most basic aspects of their judicial function.

> There is, I think, a functional relationship, which can best be described by saying that the law of standing roughly restricts courts to their traditional undemocratic role of protecting individuals and minorities against impositions of the majority, and excludes them from the even more undemocratic role of prescribing how the other two branches should function in order to serve the interest of the majority itself. ***Thus, when an individual who is the very object of a law's requirement or prohibition seeks to challenge it, he always has standing. That is the classic case of the law bearing down upon the individual himself, and the court will not pause to inquire whether the grievance is a "generalized "one."***

Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 882 (1983). (Emphasis Supplied)

The purpose behind the core, structural provisions of the Constitution (including the Separation of Powers, Federalism, and most of its checks and balances provisions) is the promotion of individual liberty; not the government's authority to

cancel individuals' personal liberties and rights so that they can be taken away without judicial redress. *See e.g. Bond v. United States*, 564 U. S. 211, 222, 131 S. Ct. 2355 (2011).

This is why the claims of individuals, not government entities, are the primary means by which the judicial department resolves structural claims. *Id. See e.g. Free Enterprise Fund v. Public Company Accounting Oversight Bd.*, 561 U. S. 477, 130 S. Ct. 3138, 177 L. Ed. 2d 706 (2010); *Clinton v. City of N.Y.*, 524 U.S. 417, 118 S. Ct. 2091 (1998); *Plaut v. Spendthrift Farm, Inc.*, 514 U. S. 211, 115 S. Ct. 1447, 131 L. Ed. 2d 328 (1995); *Bowsher v. Synar*, 478 U.S. 714, 106 S. Ct. 3181 (1986); *INS v. Chadha*, 462 U. S. 919, 103 S. Ct. 2764, 77 L. Ed. 2d 317 (1983); *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U. S. 50, 102 S. Ct. 2858, 73 L. Ed. 2d 598 (1982). *But see DOC v. New York,* 139 S. Ct. 2551, 2565-66 (2019)(holding that states too may have standing where they can establish the prerequisites thereto.)

Those "generalized grievance" cases associated with constitutional governance like *Fairchild v. Hughes*, 258 U.S. 126 (1922), *Ex Parte Levitt*, 302 U.S. 633 (1937) (per curiam), *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208 (1974), *United States v. Richardson*, 418 U.S. 166 (1974), and *Lance v. Coffman*, 549 U.S. 437, 441–42, 127 S. Ct. 1194 (2007) did not involve cases or controversies where plaintiffs were complaining their individual liberties were being violated. They were simply asking courts to determine that laws which applied to everyone in the same abstract way be followed. Because the plaintiffs in those cases did not, and presumably could not allege a private injury that had damaged the. This Court found they had not alleged claims of a type courts generally hear. This is not what has happened here.

Plaintiffs asked the judicial department to exercise its judicial power in equity to remedy California's racially discriminatory apportionment caps so as to enable

Plaintiffs to enjoy their liberty interest in self governance based on their own individual standing.

For example, Brown and Nemchik, who are Petitioners, claim that California's malapportionment affects the quality of justice available in the state's courts where they are involved because there are not enough representatives in the legislature to provide the judicial oversight of the courts and judges. Other Plaintiffs claim the malapportioned number of assembly persons and senators is so small they have no agency with their representatives and that this caused them injury when the legislature failed to attend to the known danger created by the Oroville Dam and those Plaintiffs had to be evacuated and their homes were damaged.

"Generalized grievances are quite different" from these sorts of concrete, personalized injuries, *see Lance v. Coffman*, 549 U.S. at 441–42 citing *Baker v. Carr*, 369 U.S. 186, 207-208, 82 S. Ct. 691 (1962), a political one-person-one-vote political gerrymander case, which appears not to have been overruled by *Rucho*.

If citizens of the United States have a right to self-representation in this country, and it is included within the definition of liberty embraced by the structural provisions of our Constitution, then the courts below needed to consider whether the injuries alleged by each Plaintiff were concrete and particular enough to invoke Article III standing. But the single district court judge and the three-judge appellate review panel refused to perform this simple task.

This is not something the lower courts adjudicating apportionment cases should have done. *See e.g. Gill v. Whitford*, 138 S. Ct. 1916, 1933 (2018)(The fundamental problem with the plaintiffs' case . . . is [that it is] a case about group political interests, not individual legal rights.) Plaintiffs alleged not only how the California's invidious discrimination affected most people to the point where it constituted tyranny, but also showed how this tyranny affected them personally. Because

Plaintiffs have done everything that this Court has said people who have had their liberties negatively should do to establish standing . This Court should grant review, so courts do not become instruments of tyranny. *See e.g.* A. Hamilton, Federalist 78, Madison, 51

B. Review should be granted because liberty in the United States includes the right not to be subjected to invidious discrimination based on race.

Under our history and Constitution, it is up to People, *i.e.* the sovereign, and the political branches of their government to enact policy into law. It is then up to the undemocratic judicial branch to interpret and apply the laws consistent with the intention of the democratically elected policy makers to the extent policy is consistent with the contra-majoritarian restrictions of our Constitution. With regard to race the People amended their Constitution to prevent their government from continuing discrimination based on race.

Unfortunately, this Nation's federal courts have had considerable difficulty performing their limited role in government when it comes to matters of race. *See e.g. Dred Scott v. Sandford*, 60 U.S. 393 (1856), Lincoln, Abraham, "House Divided Speech" Springfield, June 16, 1858; Lincoln, Abraham, First Inaugural Address, March 4, 1861; Thirteenth Amendment; Fourteenth Amendment; Fifteenth Amendment. And unfortunately, courts' desire to shape racial policy continues to be harming our country today as people take to the streets to protest the racial inequality that most people understand as tyranny today. "Get your knee off my neck!!!"

After this Court's infamous *Dred Scott* ruling many Northern newspapers recognized that the decision was not just about blacks, but about us as a people, because slavery is inimical to those liberties which many believed this nation had stood for since announcing its Declaration of Independence.

> Our readers will bear with us if we frequently bring this matter to their notice. Since the organization of the government, no event has occurred that will entail upon the country the consequences, which are involved

> in this partisan movement of the slavery propagandists. It is the first step in a revolution which, if not arrested, nullifies the Revolution of '76 ***and makes us all slaves again***.

Oswald, Alix (2018) "The Reaction to the Dred Scott Decision," Voces Novae: Vol. 4 , Article 9, p. 172. (Emphasis Supplied)

This logic in vogue after this Court handed down its *Dred Scott* decision before the Civil War began — that racism harms each of us concretely and particularly if we are forced to endure it by a government that is illegally practicing it—was embraced by a majority of this Court in *Shaw v. Reno*, 509 U.S. 630, 113 S. Ct. 2816, 2828 (1993).

> We have made clear, however, that equal protection analysis "is not dependent on the race of those burdened or benefited by a particular classification." *Croson*, 488 U.S. at 494 (plurality opinion); see also *id.*, at 520 (SCALIA, J., concurring in judgment). Accord, *Wygant*, 476 U.S. at 273 (plurality opinion). ***Indeed, racial classifications receive close scrutiny even when they may be said to burden or benefit the races equally.*** See *Powers* v. *Ohio*, 499 U.S. 400, 410, 113 L. Ed. 2d 411, 111 S. Ct. 1364 (1991) (***"It is axiomatic that racial classifications do not become legitimate on the assumption that all persons suffer them in equal degree"***).

Shaw v. Reno, 509 U.S. at 650-51. (Emphasis Supplied)

This same logic was reaffirmed in *Shaw v. Hunt*, 517 U.S. 899 (1996) where this Court held that plaintiffs of all races who lived in a district affected by invidious racial discrimination had standing to obtain a remedy for the concrete and specific harms caused each of them. *Id.* 517 at 904.

Here, Plaintiffs include not only members of those races intended to be denied self governance by California's constitutional Framers, but also white persons who claim the oligarchy which was seeded by this invidious discrimination has injured them in concrete and particularized ways affecting each of them personally. For example, Mark Baird (a White plaintiff) alleges he was fired from his job as a deputy sheriff for objecting to California's racially discriminatory apportionment system.

Now it is important that we distinguish at the outset between Plaintiffs' apportionment challenges in this case from political and racial gerrymandering cases generally. This distinction is important as a result of this Court's decision in *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), a case that was decided after the District Court issued the ruling being challenged here. In *Rucho* the question this Court faced was "whether there is an appropriate role for the Federal Judiciary in remedying the problem of partisan gerrymandering—whether such claims are claims of *legal* right, resolvable according to *legal* principles, or political questions that must find their resolution elsewhere." *Id.* 139 S. Ct at 2494. This Court held this was not an appropriate role for courts to play because partisan or political gerrymandering was a practice the Constitution has always contemplated. The Court held that deciding when such practices go too far involved political questions not amenable to resolution by the exercise of judicial power.

Gerrymandering involves the drawing of legislative districts. Apportionment involves deciding how many representatives there shall be in our national and state legislatures. Under the holding of *Shaw v. Hunt*, *supra*, because all the Plaintiffs except CFR are residents of California, so all have standing to challenge the invidious apportionment of California because they reside in the State when they can prove the elements of standing to bring their legal claims against Secretary of State Padilla. This is because policing the "enduring structure" of constitutional government when the political branches fail to do so is "one of the most vital functions of this Court." *Public Citizen v. Department of Justice*, 491 U. S. 440, 468, 109 S. Ct. 2558, 105 L. Ed. 2d 377 (1989) (KENNEDY, J., concurring in judgment).

C. Review should be granted because the single judge district court and the Ninth Circuit Court of Appeals in review had no subject-matter jurisdiction to adjudicate any aspect of this case because Petitioners' apportionment challenge was not frivolous.

Article III, § 1 of the Constitution states in pertinent part: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. …" Congress has established three-judge district courts to adjudicate federal and state apportionment claims. In this regard 28 U.S.C. § 2284(1) and (b)(3) provide:

> **(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)(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.

Each of the complaints in which Petitioners are identified as parties clearly challenges "constitutionality of the apportionment …" of California's statewide legislative bodies, *i.e.* California's Senate and Assembly. Thus, the plain language of this subsection **a** requires their claims must be adjudicated by a three-judge court, not a single judge court.

The single judge district court first agreed, but then its single judge changed her mind. *See* Appendix 6a and 3(a). That single judge determined that she must first resolve the issue of whether the single judge court had subject-matter jurisdiction to adjudicate the Petitioners' apportionment challenges at all. This decision was not

constitutionally appropriate because 28 U.S.C. 2284 required this decision to be made by a three-judge district court.

Writing for a unanimous Court in *Shapiro v. McManus*, Justice Scalia made short work of the argument that a single judge district court may dismiss a case brought under 28 U.S.C. § 2284 without convening a three-judge court. According to Shapiro, "all the district judge must 'determin[e]' is whether the 'request for three judges' is made in a case covered by §2284(a)—no more, no less." 136 S. Ct. at 455. "That conclusion is bolstered," the Court noted, "by 2284(b) (3)'s explicit command that '[a] single judge shall not . . . enter judgment on the merits." *Id.* Under 2284(b) (3) a single judge can make many decisions on behalf of the three-judge court, but those decisions are to be made under the authority of a three-judge court not under the authority of a single judge court.

Shapiro recognized a single circumstance where a district court judge in a single judge court may avoid convening a three-judge court: where the judge "determines that three judges are not required." *Id.* at 454 (quoting § 2284(b)(1)). Shapiro downplayed this language as "not even framed as a proviso, or an exception from that provision, but rather as an administrative detail that is entirely compatible with § 2284(a)." "Section 2284(b)(1) merely clarifies that a district judge need not unthinkingly initiate the procedures to convene a three-judge court without first examining the allegations in the complaint." *Id.* at 455.

In this case, as in *Shapiro*, even such a cursory examination is unwarranted because "[n]obody disputes that the present suit is 'an action...challenging the constitutionality of the apportionment of congressional districts .' It follows that the district judge [i]s required to refer the case to a three-judge court, for § 2284(a) admits of no exception, and 'the mandatory 'shall'. . . normally creates an obligation impervious to judicial discretion." *Id.* at 454.

Shapiro only addressed the argument that the district judge of a single judge court was not required to convene a three-judge court when the constitutional claim was "insubstantial." *Id.* at 455. "'[C]onstitutional claims will not lightly be found insubstantial for purposes of the three-judge-court statute,' the Court said, 'quoting *Washington v. Confederated Tribes of Colville Reservation*, 447 U.S. 134, 147-48 (1980). Relying on a series of earlier cases, including *Goosby v. Osser*, 409 US 512 (1973) the court explained, "'[c]onstitutional insubstantiality' for this purpose has been equated with such concepts as 'essentially fictitious,' 'wholly insubstantial,' 'obviously frivolous,' and 'obviously without merit.' And the adverbs were no mere throwaways; '[t]he limiting words "wholly" and "obviously" have cogent legal significance.'" *Shapiro*, 136 S. Ct. at 455 (quoting Goosby, 409 U.S. at 518). *Goosby* explains that a claim is "constitutionally insubstantial only if the prior decisions inescapably render the claims frivolous; previous decisions that merely render claims of doubtful or questionable merit do not render them insubstantial for the purposes of 28 U. S. C. § 2281." 409 U.S. at 518.

Petitioners raise novel claims in their complaints, *i.e.* their original Complaint, proposed FAC, and SAC, that are in no way controlled by precedent. While these claims may not ultimately succeed, they "easily clear[] *Goosby's* low bar." *Shapiro*, 136 S. Ct. at 456. Indeed, Defendant Padilla has conceded that he did not raise frivolousness in his Motion to Dismiss. ECF 44) at 2 n.2. The district judge of the single judge court also made it clear that she did not consider plaintiffs' claims frivolous: "And there's no question of frivolity here." Transcript. of 6/14/2108 hearing at 29.

When questioned by counsel, the judge of the single judge district court confirmed that, in ruling on Defendant's motion to dismiss, it was not reviewing the Complaint to determine whether it is "essentially fictitious," wholly insubstantial," "obviously frivolous," or "obviously without merit," as Shapiro commands, but rather

"I'm treating this as any other case procedurally." *Id*. at 30. It is thus abundantly clear that the single judge court's failure to grant plaintiffs' request for a notice pursuant to 28 U.S.C. §2284(b)(1) was not an exercise of the narrow residual authority recognized by this Court in *Shapiro*.

Given the District Court's violation of the clear letter of the law, and this Court's recent interpretation thereof in *Shapiro* -- and the Court of Appeals failure to even consider whether it had subject-matter jurisdiction under the language of the 28 U.S.C. 2284 and *Shapiro* -- this Court should grant certiorari in order to remind the district court judge, single district courts generally, and the Ninth Circuit Court of Appeals that courts and judges must follow the laws that constitutionally obligate the judicial branch of government to perform its judicial functions pursuant to the structural provisions of the Constitution.

D. Review should be granted because there is a split among single judge district courts in different circuits following Shapiro as to the jurisdictional obligations of judges of single judge courts and Courts of Appeal.

Because decisions made by three-judge district courts must be appealed directly to this Court, there are not likely to be many, if any, circuit splits regarding appeals of those decisions because they do not occur. Thus, in order to determine the uniformity of judicial making regarding this aspect of single judge district courts subject-matter jurisdiction following *Shapiro* this Court must consider how single judge courts are resolving such questions.

In *Eugene Martin LaVergne et al. v. United States House of Representatives*, United States District Court for the District of Columbia District, Civil Action No. 17-cv-793, "… an action … challenging the constitutionality of the apportionment of congressional districts …" the judge of that single judge district court issued the following order requesting the Chief Judge of the DC Court of Appeals to convene a three-judge district court:

> REQUEST FOR DESIGNATION OF A THREE-JUDGE COURT (May 15, 2017)
> To the Honorable Merrick Garland, Chief Judge of the United States Court of Appeals for the District of Columbia Circuit:
> ….*** …
> [having concluded that on its face that] the complaint does purport to "challeng[e] the validity and Constitutionality of the 2010 Apportionment of the United States House of Representatives." First Am. Compl., ECF No. 4, ¶ 3. As such, it appears to fall squarely within section 2284, which states that "[a] district court of three judges shall be convened when . . . an action is filed challenging the constitutionality of the apportionment of congressional districts . . ." and requires the Court, upon the filing of a request for three judges in such an action, to "immediately notify the chief judge of the circuit." 28 U.S.C. § 2284; *see* also Shapiro v. McManus, 136 S. Ct. 450, 456 (2015)
> ("Perhaps petitioners will ultimately fail on the merits of their suit, but § 2284 entitles them to make their case before a three-judge district court.").

See ECF Document No. 6 in Civil Action No. 17-cv-793.

The Chief Judge of the DC Circuit then issued the following Order:

> DESIGNATION OF JUDGES TO SERVE ON THREE-JUDGES TO SERVE ON THREE-JUDGE DISTRICT COURT
>
> The Honorable Colleen Kollar-Kotelly, Judge, United States District Court for the District of Columbia, having notified me of her conclusion that the above-captioned case is an appropriate one for the convocation of a three-judge District Court, and having requested that such a three-judge court be appointed to hear and decide this case, it is ORDERED, pursuant to 28 U.S.C. §2284, that the Honorable Cornelia T.L. Pillard, Circuit Judge, United States Court of Appeals for the District of Columbia Circuit, and the Honorable Randolph D. Moss, Judge, United States District Court for the District of Columbia, are hereby designate to serve with the Honorable Colleen Kollar-Kotelly as members of the court to hear and determine this case. Judge Pillard
> will preside.
>
> /s/ Merrick B. Garland,
>
> Chief Judge

Given the interpretation of 28 U.S.C. 2284 by the single judge District Court for the District of Columbia and the Chief Judge of the DC Circuit following *Shapiro*

is directly contrary to the interpretation of the single judge federal court in California and the Ninth Circuit in this case this Court should grant review so that the law relating to subject-matter jurisdiction in apportionment cases is the same across the country. Issues regarding federal courts jurisdiction should be decided promptly.

E. Review should be granted because the facts suggest the judge of the single judge district court, the Chief Judge of the Ninth Circuit Court of Appeals, and the Ninth Circuit Court of Appeals panel reviewing the single judge's opinion intentionally attempted to manipulate their subject-matter jurisdiction so as to prevent adjudication of Petitioners' case asserting their individual rights to self-representation.

The record below suggests the error of the single court judge in withdrawing her referral of this case to the Chief Judge of the Ninth Circuit was precipitated by instructions from the Chief Circuit Judge himself and by the judge of the single judge court's subsequent discussion with Ninth Circuit Court of Appeal staff attorneys. Indeed, according to the judge of the single judge court the decision was foisted upon her because she would have preferred to have a three-judge court decide the issues raised by Petitioners in this case:

> "I would love to have other judges to share the responsibility of resolving this motion, but I think, as I've made clear previously, and actually has been clarified in a response I received from the chief judge of the Ninth Circuit, I have an independent obligation initially to determine whether or not there's any case that is going to proceed."

Tr. of 6/14/2108 hearing at 6[26].

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[26] When questioned by counsel, the district judge claimed the Chief Judge really did not instruct her as a judge of the single judge court to withdraw her referral of the case to him. MR. STAFNE: Okay. And my understanding is you are doing that upon the instruction of the chief judge of the Ninth Circuit.
THE COURT: Well, it's not the instruction. It's having been pointed to the proper procedure and the law that's applicable. I made my own decision in terms of reversing myself on the three-judge court. I think it was in error procedurally. It was at least premature. And it is my duty, I became persuaded by checking the authorities that were brought to my attention that it's my job to first decide the motion to dismiss. As I told you, I would love to have two other judges to help decide this, but I don't think that's what the law provides.
Whether the communication from the Court of Appeals is termed as an instruction or merely guidance to the judge of the single-judge court, the point remains that it came from a higher judicial authority

The judge of the single-judge district court also failed to follow normal parties presentation principles by refusing to directly rule Petitioners' motion for leave to file their First Amended Complaint. That amended Complaint, which was 62 pages long, more fully identified Petitioners' causes of action related to self governance and the facts related to each Petitioners' individual standing to bring such a claim. The single judge court indirectly denied plaintiffs' leave to file their FAC by ruling in her first motion to dismiss that Petitioners could file an amended complaint, but that it had to be limited to no more than 25 pages.

Secretary Padilla did not argue for such relief. Nor does there appear to be any basis under the facts or at law for the judge in the single judge district court to have limited any future complaint to 25 pages given the number of plaintiffs.

Indeed, it appears to many that the purpose of this limitation was to prevent Petitioners from properly pleading their case, including the elements of standing.

This is constitutionally problematic because the political branches have instructed the federal courts that the exercise of judicial power in non-frivolous cases challenging the apportionment of state legislative bodies is the responsibility of three-judge courts. All courts and judges in the judicial department must respect this determination of their subject-matter jurisdiction. *Sheldon v. Sill*, 49 U.S. 441, 8 How. 441, 12 L. Ed. 1147 (1850) ("Courts created by statute can have no jurisdiction but such as the statute confers." Id. at 448-9) Accordingly, it was not appropriate for the single judge district court to attempt to manipulate Petitioners access to a three-judge

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responsible for reviewing her decisions in this regard and therefore carried sufficient force to overcome the district judge's preference for having "two other judges to help decide this." Moreover, the Chief Circuit Judge and clerks, who apparently gave this "guidance," did so without the benefit of briefing or argument from the Petitioners on this point. This was clearly inappropriate under this Court's recent ruling in *United States v. Sineneng-Smith*, 140 S. Ct. 1575 (2020). ("[I]n both civil and criminal cases, in the first instance and on appeal . . ., we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *Id.* at 579)

court by limiting any complaint they could file to less than 25 pages so they did not have sufficient space to articulate the facts related to each plaintiff's individual standing related to each specific cause of action Petitioner sought to assert.

In addition to violating Article III, § 1 this manipulation also violated the principle that it is the parties, not judges, who must establish the framework of litigation in our adversarial system of justice. *See United States v. Sineneng-Smith*, 140 S. Ct. 1575 (2020)("In short: "[C]ourts are essentially passive instruments of government." . . . They "do not, or should not, sally forth each day looking for wrongs to right. [They] wait for cases to come to [them], and when [cases arise, courts] normally decide only questions presented by the parties." *Id.* at 1579)

Here, the judge of the single-judge court attempted to manipulate its jurisdiction by limiting what Petitioners could allege in a case she admitted was not frivolous and which was required to be adjudicated by a three-judge district court.

In addition to the judge of the single judge court, the Chief Judge of the Ninth Circuit, and Circuit staff attorneys, and judges of Ninth Circuit panel that decided this appeal without oral argument were also part of that Circuit's concerted effort to deny Petitioners access to the three-judge federal district court.

In addition to blatantly not considering the application of 28 U.S.C. §2284 to its own subject-matter jurisdiction over this apportionment appeal, the Ninth Circuit Court of Appeal's Panel outrageously concluded that:

> —Plaintiffs cannot plausibly allege that California's large electoral districts interfere with any legally-conferred voting rights. Thus, unlike *Akins*, Plaintiffs are unable to allege a concrete and specific injury that would allow them to challenge the size of California's electoral districts on the grounds alleged.

Petitioners claimed their rights to self governance had been violated. The right to self governance includes more than the voting rights the Ninth Circuit mentioned, and the Ninth Circuit should have informed itself of this, so that it could address the

parties claims, not its own red herrings. *See* Appendix 2a. ("Even if the alleged interference with the right to self governance affects each Californian differently, nothing in the Complaint makes out a claim that the plaintiffs' individualized experiences transform the underlying grievance from the general to the particular." *Id*. at 10–11. The Panel also concluded,

> —Even if they have pled facts tending to show that some provisions of the California Constitution were enacted with racially discriminatory purpose, they have not plausibly alleged that Article IV, Section 2 was drafted with this intent.

With all due respect to the Court of Appeals the conclusion by its panel of judges that it is not plausible that Article IV, § 2 of California's Constitution had a racially discriminatory purpose flies in the face of historical fact that acknowledges the driving force of 1879 Constitution was to promote and maintain white supremacy in California's government and laws. *See e.g.* History of Political Conventions in California 1849–1892 (1893) by Winfield J. Davis, Chapter XXVII, 1877—Workingmen's Party and the Kearney Excitement, pgs. 368-369 cited in ¶ 3.11 of SAC; 2 DEBATES AND PROCEEDINGS OF THE CALIFORNIA CONST. CONVENTION OF 1878, at 755 (E.B. Willis & P.K. Stockton, eds. 1880) cited in ¶ 3.11 of SAC; California Assembly's apology to Chinese attached as Exhibit 2 to SAC; California Supreme Court's apology for wrongs perpetrated against Chinese people based on race for the benefit of whites. *In re Hong Yen Chang*, 344 P. 3d 288 (Cal. 2015) (posthumously admitting a Chinese lawyer who in 1890 was denied admission to practice law as a result of discriminatory legislation passed pursuant to the 1879 Constitution); Apology of California legislature to U.S. Citizens of Mexican origin (attached as Exhibit 3 to the SAC) who "were deprived of the right to participate in the political process guaranteed to all citizens, thereby resulting in the tragic denial of due process and equal protection of the laws." *See also Lin Sing v. Washburn*, 20 Cal. 534, 538-9 (1862); Greg

Seto, "'The Chinese Must Go': The Workingmen's Party and the California Constitution of 1879", pp. 9-10 (2013). The Panel also found;

> —Plaintiffs have failed to "plausibly plead facts" to establish a "causal connection" between the size of California's electoral districts and the undue influence of a small political elite. ... As the SAC suggests, a political elite was firmly entrenched in power in 1879 when Article IV, Section 2 was first adopted—and electoral districts had far fewer people then.

This assertion by the Ninth Circuit panel is outright false. Petitioners may have been better able to set forth their claims had not the judge of the single district court interfered with their opportunity to do so by restricting any complaint they may file to 25 pages, but the facts they alleged were sufficient to pass a reasonable plausibility standard.

> 3.29 Approximately 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. However, as noted, the California legislature has artificially manipulated these population levels over time through intentional invidious discrimination, including extermination and forced removals, which continues to skew the racial demographics of the state and thus its legislature.
>
> 3.30 Whites make up only 38% of California's population, but the cap on the number of legislators gives them greatly disproportionate representation in the legislature. In 2017-19, the Senate had 31 whites (77.5%), 2 Asian/Pacific Islanders (5%), 2 blacks (5%), and 5 Hispanics (12.5%). In the Assembly, 37 members are white (46%), 22 are Hispanic (27.5%), 8 are black (10%), and 2 are multiracial (5 %).
>
> 3.31 The fact that racial minorities in California have more favorable representation in the Assembly than in the Senate demonstrates that, as the population of legislative districts decreases, non-whites have a significantly greater chance of electing candidates of their choice.
>
> 3.32 Plaintiffs identified in ¶ 1.6 reside and vote in geographically large senate districts composed of eight or more counties2 . People living in such large legislative districts, are prejudiced from running for statewide legislative offices or accessing representatives having similar governmental concerns because candidates from such districts have to pay increased fees and costs to access voters in large geographical areas. For example, the difference in fees and costs to run for offices in large

> geographic districts as opposed to urban legislative districts can be substantial (i.e. thousands of dollars). This impacts those candidates in such districts ability to run for office and, if elected, serve their constituents.
>
> 3.33 Plaintiffs Baird, Carpenters, Hall, D'Agostini, Poindexter, Thomas, Wahl and other similarly situated persons living in geographically large legislative districts are also injured by the vanishing value of their vote because the representatives who represent numerous counties can choose to represent the interests of only those constituents (or non-constituents) who contribute to their campaigns. Despite constituents' petitions and protests, the legislature often refuses to provide for their safety. For example, the Oroville Dam was known for years to have infrastructure problems that could result in spillway failure at any time. Plaintiff Wahl and other Butte County residents could not obtain representation from, nor engage the legislature concerning this well known problem until after the spillway broke, which then caused the evacuation of almost 200,000 people. This tragedy, caused economic, social, and stigmatic injuries to many people, including plaintiffs (and others similarly situated).

Just as many believed that the Supreme Court was attempting to control, *i.e.,* legislate the status of the African American to being slaves forever in the *Dred Scott* decision many believe the judge in the single district court, the Chief Judge of the Ninth Circuit, the Circuit's staff attorneys, and the Panel that decided this case without oral argument are trying to make policy decisions from the bench that are inimical with the judicial department's role under the Separation of Powers to protect individual liberties from that governmental tyranny Petitioners claim has resulted from California's refusal to recognize that liberty in the 21st century includes self governance.

CONCLUSION

This court should grant Petitioners' petition for writ of certiorari for the reasons stated.

Dated this 13th day of October 2020.

Respectfully submitted,

By:_____

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TABLE OF APPENDICES