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8 FOR THE PLAINTIFF

9 **UNITED STATES DISTRICT COURT**  
10 **EASTERN DISTRICT OF CALIFORNIA**  
11 **SACRAMENTO DIVISION**

12 **MICHAEL C. WARNKEN,**

13 **PLAINTIFF,**

14 **vs.**

15 **ARNOLD SCHWARZENEGGER,**  
16 **GOVERNOR OF CALIFORNIA;**  
17 **DEBRA BOWEN, SECRETARY OF**  
18 **STATE; JERRY BROWN,**  
19 **ATTORNEY GENERAL; THE**  
20 **CALIFORNIA ASSEMBLY AND**  
21 **ONE TO UNKNOWN DOE**  
22 **ASSISTANTS.**

23 **DEFENDANTS.**

A CIVIL ACTION No.:

A COMPLAINT UNDER 42 USC §1983 FOR  
A MAL-APPORTIONED CA ASSEMBLY IN  
VIOLATION OF THE U.S. CONSTITUTION:

1. ART VI §2 SUPREMACY CLAUSE
2. ART I §2 TAXES/REPRESENTATION
3. AMEND I; SPEECH, ASSEMBLY & PETIT
4. AMENDMENT IV FAIR COUNSEL
5. AMENDMENT V; UNLAWFUL TAKING
6. AMENDMENT IX; POLITICAL RIGHTS
7. AMENDMENT X & XI ABRIDGEMENTS
8. AMENDMENT XIII §1; SLAVERY
9. AMENDMENT XIV §1 EQUAL PROTECT
10. AMENDMENTS XV, XIX & XXVI
11. COMMERCE CLAUSE CLAIMS
12. VOTING RIGHTS ACT; 42 USC §1973
13. AND VARIOUS STATE CLAIMS

REQUEST FOR DECLARATORY RELIEF  
UNDER 28 USC §2201, §2202 & CCP §1060  
ATTORNEYS FEES UNDER 42 USC §1988  
AND A JURY AS PER AMENDMENT VII

24  
25 *"THE remaining charge against the House of Representatives, which I am to examine, is*  
26 *grounded on a supposition that the number of members will not be augmented from time*  
27 *to time, as the progress of population may demand. It has been admitted, that this*  
28 *objection, if well supported, would have great weight."* James Madison, Federalist 58

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## **I. INTRODUCTION**

1  
2 1. This suit in law and equity is divided into seven (7) main parts and ancillary matters.

3 2. The first part challenges the current districts of the California Assembly as they were drawn  
4 after the Census of 2000 for the 2002 election, since the district were drawn largely by the Assembly  
5 itself. There was likely an intent to form uncompetitive districts leaving legislators who were not facing  
6 term limits to be completely safe from electoral defeat. The effect has been the establishment of a non-  
7 competitive seats in the Assembly with term limits as the only barrier to autocratic representation.

8 3. In the second part, Plaintiff directly asserts that it is not lawful for the Legislature or any  
9 member thereof to substantially control the drawing its own districts as doing so unlawfully allows them  
10 to be a Judge of its own property and qualifications. They may only defend their rights in this process,  
11 but not control it as they do. Districts drawn by the representatives are always questionable.

12 4. The third and main part of this suit challenges the size of the Assembly's districts as they have  
13 become far too large to meet numerous Constitutional requirements. The size of these districts cause  
14 numerous problems which include further enhancing the autocratic Government we now have by  
15 making it more costly to run for office. The fact that the Assembly in large part has drawn its own  
16 districts has contributed to them not increasing the representation.

17 5. By not regularly increasing the number of Representatives/districts with the population (or  
18 possibly splitting the State) during the Census or at another time, the Assembly districts have become  
19 too large and unlawful since it is inaccessible to the common citizen. This has caused other problems:

20 (a) Large tax paying districts do not have their own Representative; this includes most counties  
21 (only 16 of 58 counties have their own Assembly member) though State taxes are collected at the  
22 county level. Most large cities and substantive political parties have no Assembly Representatives  
23 either. This unnecessary diminution in representation freezes out numerous minorities from a  
24 reasonable opportunity to be elected to office or choose from their peers for office or even have  
25 their needs, ideas or grievances advanced in a political forum. This includes people of a variety of  
26 ethnic backgrounds such as American Indians; numerous substantive political partisans such as  
27 Libertarians and Greens, etc. and the individual, the greatest minority of all.

28 (b) This has diminished many citizens direct access to their Representative in numerous ways. The

1 physical size of some Assembly districts is astounding. The average district size of the Assembly  
2 is over 2,000 square miles and many districts are much larger. The population of the districts are  
3 on average 475,000 persons or more which in itself is immense and overwhelming.

4 (c) Large districts inhibit competitive elections which diminishes citizens' ability to get information  
5 from the electoral contestants or participate reasonably with their legislative council after such  
6 elections as their vote does not compel such an interest from those elected in general.

7 (d) This dilutes the common person's ability to petition the Legislature for redress of grievances.

8 (e) The small number of Representatives in the Assembly are unable to fulfill their general duties  
9 which include overseeing the matters of the State and subject matters within jurisdiction of their  
10 committees for which such oversight is established. Eighty (80) people cannot do this job!

11 (f) Massive districts cripple the effective value of each citizen's vote and amounts to vote dilution.

12 (g) This in turn depletes the accountability of each Representative to the voters that elect them.

13 (h) Large districts substantially diminish candidate challengers from waging an effective campaign  
14 where the candidates cannot meet with the voters and the only way to run is by costly mass media.

15 (i) This in turn discourages potential candidates from running if they do not have the money and  
16 it allows the incumbents and only certain interests to amass huge war which guarantees election.  
17 Voters often choose candidates by party since they can't meet the Candidates.

18 (j) This has taken away the competitiveness of our elections and disables the voters from having  
19 an effective choice in representation. In each district, generally only one Party is able to be  
20 electorally effective. Even other members of the same party cannot and may not compete.

21 (k) The lack of competition for office and the lack of choice for office holders by the voters in turn  
22 weakens all our civil liberties as the other parts of Government become unaccountable and leaves  
23 Plaintiff as a citizen merely to pay taxes for our autocratic Government.

24 (l) The lack of increase in representation and the growth of the population and the increase in size  
25 of the other branches of Government has increased the duties of the Representatives. This has led  
26 to a custom of taking on non-elected staff members in lieu of adding more Representatives when  
27 needed as placebos to fulfill their duties. However these persons are not electorally accountable  
28 to the citizens, they are being delegated duties the Representative is expected to perform and are

1 often paid quite a lot. This is outrageous as it also invidiously encroaches on the rights and  
2 freedoms listed above and devalues our vote and again allows the districts to grow even more.

3 (m) This leaves only the monied persons and those who join large groups able to participate.

4 6. The fourth part of this action challenges the use of assistants and staff and the extent to which  
5 they may be used before doing so becomes invidious to the voter and his/her vote.

6 7. The fifth part of the action directly asserts the Assembly has no ability to perform its duties  
7 which includes properly overseeing the matters of the State.

8 8. The sixth part of this action challenges the Legislature as a whole and several individual  
9 Legislators' willful ignorance of Plaintiff's attempt to be part of the legislative process or redress his  
10 grievances as he has petitioned numerous times for such.

11 9. The seventh part of this action moves for the California Compensation Committee to reset the  
12 salaries of the Assembly with any increase in representation.

13 10. Plaintiff finally moves to enjoin the use of the Robotic Pen.

## 14 15 **II. JURISDICTION**

### 16 **A. JURISDICTION FOUNDED ON A FEDERAL QUESTION**

17 11. This action arises under the United States Constitution via Article I §2 and Amendments I,  
18 IV, V, VI, IX, XIII, XIV, XIV, XIX and XXVI.<sup>1</sup>

### 19 **B. JURISDICTION ALSO FOUNDED ON FEDERAL STATUTES**

20 12. This action arises in part under the United States Code., Title 28 USC 1331, 1343(a)(1-4)  
21 and 28 USC 2201 and 2202.<sup>2</sup>

### 22 **C. SUPPLEMENTAL JURISDICTION EXISTS OVER STATE MATTERS**

23 13. This Court has supplemental jurisdiction over State matters pursuant to 28 U.S.C. 1367(a).<sup>3</sup>

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25 <sup>1</sup>*Mine Workers v. Gibbs* 383 US 715 (1966) [Jurisdiction is to be liberally construed].

26 <sup>2</sup> "The district courts are given a broad grant of jurisdiction by 28 U.S.C. 1331," *Powell v.*  
27 *McCormack*, 395 U.S. 486 (1969).

28 <sup>3</sup>*Harrell v. 20th Century Ins.Co.*, 934 F.2d 203 (1991) [Liberal supplemental jurisdiction].

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**III. VENUE**

14. Venue is founded under 28 USC 1391(b) and is proper as the trial Court for the Eastern District of California is located in Sacramento and the Defendants generally operate in their official capacity and do their main business in the State’s seat of Government which is also in Sacramento and most proximate to this specific Court. Plaintiff served various petitions and other documents to State actors at the seat of Government which is also properly covered by this Court. Further, the Founders acknowledged the need for the Judiciary to arbitrate in such matters.<sup>4</sup>

**IV. NOTICE OF ASSOCIATED CASES**

15. Plaintiff is unaware of any such cases at this time.

**V. PARTIES**

**A. PLAINTIFF**

**1. MICHAEL C. WARNKEN,**

16. A natural person and a native citizen voter and tax payer of California residing in the county of Santa Barbara. Plaintiff is a registered and qualified voter and elector in all State and Federal elections. Plaintiff brings this action on his behalf and on behalf of all persons similarly situated as he and they have a reasonable expectation for fair, lawful and Constitutional representation in the California Assembly. Plaintiff and other persons similarly situated also have a right to fair and equal access to their Representatives regardless of money or community stature of all citizens and that their vote may have equal importance. They also have a reasonable expectation that there will be an adequate number of Representatives to properly fulfill the duties as the Representatives for the citizens they represent as part of their Federal statutory and Constitutional obligations for considerations in redistricting. He and they have a reasonable expectation that their vote will have value, that they will

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<sup>4</sup> *“It is . . . rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority.” Federalist 78*

1 be able to choose their Representative and not have their votes diluted as the population grows, but  
2 representation does not This has had the effect of diminishing the value of their votes.

3  
4 **B. DEFENDANTS**

5 **1. ARNOLD SCHWARZENEGGER, GOVERNOR OF CALIFORNIA;**

6 17. Defendant Governor is a natural person, occupying the elected Executive Office of Governor  
7 of the State of California. In this capacity, Defendant has the essential duty as mandated by the U.S.  
8 Constitution and Statutes of the State of California, to make sure that all legislative bodies of the State  
9 are lawfully composed including but not limited to those duties to make sure that governing districts  
10 are reasonably equal in size, but also, each legislative member has the capacity to do their duties in  
11 representation for the citizens. This includes making sure there are enough Representatives to meet the  
12 needs of the number of citizens. As an elected Representative of the State, the Governor also has the  
13 duty to receive and answer petitions. The Governor also has the authority to convene special sessions  
14 of the Legislature and this assumes the ability to issue writs of election and the number of writs as well.  
15 This action is brought against the Governor, in his official capacity only.

16  
17 **2. DEBRA BOWEN, SECRETARY OF STATE;**

18 18. Defendant Bowen is a natural person, occupying the elected Executive Office of Secretary  
19 of the State of California. In this capacity, Defendant has the essential duty as mandated by the U.S.  
20 Constitution and Statutes of the State of California, to make sure that all legislative bodies of the State  
21 are lawfully composed including but not limited to those duties to make sure that governing districts  
22 are reasonably equal in size, but also, that each legislative member has the capacity to do their duties  
23 in representation for the citizens. This includes making sure there are enough Representatives to meet  
24 the needs of the number of citizens. As an elected Representative of the State, the Secretary of State  
25 also has the duty to receive and answer petitions. Part of the specific duties of the Secretary of State  
26 is authority to oversee State elections and making sure that they are conducted in a fair and open  
27 manner. This action is brought against the Secretary of State, in her official capacity only.

1 **3. JERRY BROWN, ATTORNEY GENERAL;**

2 19. Defendant Brown is a natural person, occupying the elected Executive Office of Attorney  
3 General of the State of California. In this capacity, Defendant has the essential duty as mandated by the  
4 U.S. Constitution and Statutes of the State of California, to make sure that all legislative bodies of the  
5 State are lawfully composed including but not limited to those duties to make sure that governing  
6 districts are reasonably equal in size, but also, each legislative member has the capacity to do their  
7 duties in representation for the citizens. This includes making sure there are enough Representatives  
8 to meet the needs of the number of citizens. As an elected Representative of the State, the Attorney  
9 General also has the duty to receive and answer petitions. He has the duty to enforce all laws of the  
10 State as well as the special power to bring actions against corporations under Quo Warranto and reform  
11 corporations when they are beyond their power as well as bring actions under both State and Federal  
12 Voting Rights Acts. This action is brought against the Attorney General, in his official capacity only.

13  
14 **4. THE CALIFORNIA ASSEMBLY;**

15 20. Eighty (80) natural persons, occupying the eighty (80) offices of the California Assembly  
16 which is, *“the most numerous Branch of the State Legislature”*(Article I, Section 2 U.S. Constitution)  
17 and the body of governance to the People of the State of California for which individual natural persons  
18 of the State, particularly individual tax payers may directly seek redress for their grievances. The  
19 Assembly and its members have duties mandated by the Constitutions of California and the U.S. which  
20 include the duty of overseeing the State including the other branches of State Government, watching  
21 over the Federal Government, meeting with and conferring with their constituents, gathering petitions  
22 for redress and answering them as well as numerous other duties.

23  
24 **5. INDIVIDUAL MEMBERS OF THE ASSEMBLY;**

25 21. Members Pedro Nava, Nell Soto, Leno, Jones, Solorio, Portatino, Dymally for not answering  
26 Plaintiff’s petitions and thereby violating Article I Section 2 of the U.S. Constitution, Amendment I and  
27 Article 1 Section 3 of the California Constitution.

1 **6. CHIEF CLERK AND UNKNOWN DOE STAFF AND ASSISTANTS OF THE ASSEMBLY;**

2 22. Defendant staff members and assistants who are hired to perform and complete many of the  
3 duties that the members of the California Assembly are not able to perform as eighty (80) members is  
4 insufficient.. This shall include Mr. E. Dotson Wilson, the Clerk of the Assembly of California and other  
5 unknown staff members who jointly and severally are jointly and or severally responsible for completing  
6 the job of the Assembly members. These Defendants are joined in this action as necessary parties.

7  
8 **7. ROBOTIC SIGNATURE PEN;**

9 23. Unknown Doe Robotic Pen(s) used to sign most, if not all, pieces of paper submitted to the  
10 citizens and myself from their Representative. Plaintiff is uncertain as to when this evil piece of  
11 hardware came into use, but its use cannot be seen as much more than an intent to deceive the public.  
12 The very existence of this device proves that there are not enough Assembly members!

13  
14 **VI. HISTORY RELATIVE TO COMPLAINT**

15 24. On February 2, 1848 the Treaty of Guadeloupe Hidalgo was signed ending the War between  
16 the United States and Mexico. The Treaty established boundaries between the United States of America  
17 and the United Mexican States.

18 25. On June 3, 1849, General Bennet Riley took the five (5) established Mexican districts and  
19 formed ten (10) (*See Motion to enjoin self apportionment Exhibit B-1*).

20 26. On August 1, 1849 elections for local governing officials and members of the Constitutional  
21 Convention were held in each of these districts.

22 27. On September 1, 1849, California held its Convention. At its conclusion on October 13, 1849,  
23 the delegates voted to submit the proposed Constitution to the citizens for ratification.

24 28. On November 13, 1849, the voters of the State voted upon and passed the Constitution by  
25 simple majority.

26 29. The Constitution established a bi-cameral Legislature with two co-equal legislative bodies,  
27 a Senate and an Assembly. The initial language for the number of members in the California Assembly  
28 was that it would have no fewer than thirty (30) and no more than eighty (80) members.

1 30. In 1850, the Assembly initially had thirty-six (36) members and each held office for one year.

2 31. Four (4) delegates were then sent to Washington D.C. to petition for Statehood for California  
3 and to be part of the United States. Such was granted on September 9, 1850.

4 32. Upon the granting of Statehood, California was allotted two (2) U.S. Senators and two (2)  
5 U.S. House members to represent California in Congress.

6 33. In 1850, the National Census was taken and it was determined that there were 92,597 people  
7 in California. With thirty-six (36) Assembly members, each one represented an average of 2,572.  
8 However representation was by the districts that Governor Riley had drawn not by population.

9 34. In 1850 each U.S. House member in California represented an average of 46,299 persons.

10 35. In 1850, the Assembly, by and through one of its members, a General Vallejo, redrew the  
11 State districts and established the original twenty-seven (27) counties of the State. The legislative  
12 districts ran with the counties but in devising this scheme of representation, it did not mandate that each  
13 county have one (1) Representative by either chamber of the Legislature.

14 36. In 1851, the Legislature voted to increase the number of Assembly members to sixty-three  
15 (63) starting in 1852 since the population had grown to 121,337. (*See Exhibit A*). The new offices  
16 went into effect for the following year. The dilution in 1851 was 3,370 persons per Assembly member.

17 37. In 1853, the California Legislature again voted to increase the number of Assembly members  
18 to eighty (80) since the population had grown to about 178,816 people with an average dilution of  
19 2,838 per Assembly member for the sixty-three (63) Assembly members (*See Exhibit A*).

20 38. In 1954, the final legislative increase in the Assembly from sixty-three (63) members to eighty  
21 (80) went into effect for the election of 1854. The population was 207,556 persons and the average  
22 dilution was 2,594 persons per Assembly member. The Assembly never increased in size ever again.

23 39. In 1860, the National Census was taken and there were approximately 379,994 persons in  
24 California. Each Assembly member represented an average of 4,750 persons. Neither the Executive  
25 Branch nor the Legislature took action to increase the number of members in the Assembly.

26 40. After the 1860 Census, California was given one (1) more U.S. House member so it had three  
27 (3) for the 1862 election. The U.S. House as a whole was also increased, so California's apportionment  
28 and gain of another member was not taken from any other State.

1 41. In 1862, California had three (3) members of the U.S. House and each one represented an  
2 average of 138,682 persons based on the 1862 population of 416,045.

3 42. In 1863, the Assembly began holding office for two (2) year sessions.

4 43. In 1865, the Thirteenth Amendment was ratified December 6 and certified on December 18.

5 44. In 1868, the Fourteenth Amendment was ratified July 20 and certified on July 28.

6 45. In 1870, the Fifteenth Amendment was ratified February 3 and certified on March 30.

7 46. In 1870, the National Census was taken and there were approximately 560,247 persons in  
8 California. Each Assembly member represented an average of 7,003 persons, however, the Legislature  
9 did not vote to increase the number of members in the Assembly.

10 47. After the 1870 Census, California was given one (1) more member in the U.S. House, so it  
11 had four (4) for the 1872 election. The U.S. House as a whole was also increased, so California's  
12 apportionment and gain of another member was not taken from any other State.

13 48. In 1872, California was granted one (1) more U.S. House member, each represented an  
14 average of 155,284 persons based on the 1872 population of 621,136.

15 49. In 1878 to 1879, California held its second Convention. The legislature did not meet then.  
16 Many propositions with regard to the proper size of the Assembly were discussed. One proposal was  
17 for it to be depleted in size to sixty (60) members. Several proposals were considered for the size to  
18 be increased from eighty (80) to one hundred (100), one proposal was for one hundred twelve (112)  
19 members and another motion was for one hundred-twenty (120) members. The increase to one hundred  
20 twenty 120 members failed its vote by a division of 44 to 45 and was not reconsidered (See Debates  
21 and Proceedings of the California Constitutional Convention of 1878 Pg. 754 for vote result).

22 50. There were numerous calls for each county to have a Representative.

23 Mr. Larkin: *"I am in favor of this State being divided into Senate districts according*  
24 *to population, but every county of this State should have a representation in the*  
25 *Assembly. . . My friend Dunlap suggests that one hundred and twelve will give one to*  
26 *each county, and sixty to be divided by the populous counties . . . The only idea of*  
27 *selecting men to represent them should be to select such men as those that belong to*  
28 *the community; that know their wishes; that will come here representing the great*  
*interests of those who send them, and to do so that they should be known in the*  
*community; and no man should be allowed to vote for more than one representative.*  
*That representative should have a constituency who could approach him."* (See Debates  
and Proceedings of the California Constitutional Convention of 1878 Pg. 747).

1 51. Some at the Convention worried that increased representation would lead to “Jobism” (giving  
2 of offices unnecessarily). This was refuted: Mr. Barry: *“It is not that more men shall have opportunities  
3 of filling legislative positions, but that we shall be represented and we desire to be represented.”*(See  
4 *Debates and Proceedings of the California Constitutional Convention of 1878 Pg. 747*).

5 52. Some persons at the Convention stated a concern that the Chinese might be represented.

6 Mr. Heiskell: *“Do you want the Chinese to be represented—enumerated in the  
7 apportionment?”* Mr. O’Donnell: *“Well, we do not represent them. We have got only  
8 twenty (20) representatives and have three hundred thousand (300,000) inhabitants.  
9 Here are some of your counties with only a thousand (1,000) or fifteen hundred  
10 (1,500). I want to be represented according to the Census of the United States. We  
11 don’t mean the Chinese. We count them as chattel or stock.”*(See *Debates and  
12 Proceedings of the California Constitutional Convention of 1878 Pg. 755*).

13 53. This first person of Chinese decent to hold office in the Assembly was March Fong Eu and  
14 she was elected to the Assembly in 1966, almost ninety (90) years after that Convention.

15 54. At the conclusion, the members of the Convention maintained the current size of the  
16 Legislature. However numerous members voiced their concern that the legislative body that intended  
17 to be accessible by the common citizen needed to be increased at some time. This never occurred.

18 55. In 1880, the National Census was taken and there were approximately 864,694 persons in  
19 California. Each Assembly member represented an average of 10,809 persons, however, the Legislature  
20 did not vote to increase the number of members in the Assembly.

21 56. After the 1880 Census, California was given two (2) more members in the U.S. House so it  
22 had six (6) in total for the 1882 election. The U.S. House as a whole was also increased, so California’s  
23 apportionment and gain of another member was not taken from any other State.

24 57. In 1882, California was granted two (2) more U.S. House members, each House Member of  
25 California represented an average of 155,739 persons based on the 1882 population of 934,435.

26 58. In 1890, the National Census was taken and there were approximately 1,213,398 persons in  
27 California. Each Assembly member represented an average of 15,859 persons, however, the Legislature  
28 did not vote to increase the number of members in the Assembly.

59. After the 1890 Census, California was given one (1) more member in the U.S. House of so  
it had seven (7) in total for the 1892 election. The U.S. House as a whole was also increased, so  
California’s apportionment and gain of another member was not taken from any other State.

1 60. In 1892, California was granted one (1) more U.S. House members, each House member of  
2 California represented an average of 181,245 persons based on the 1892 population of 1,268,718.

3 61. In 1900, the National Census was taken and there were approximately 1,490,000 persons in  
4 California. Each Assembly member represented an average of 18,625 persons, however, the Legislature  
5 did not vote to increase the number of members in the Assembly.

6 62. After the 1900 Census, California was given one (1) more member in the U.S. House of so  
7 it had eight (8) in total for the 1902 election. The U.S. House as a whole was also increased, so  
8 California's apportionment and gain of another member was not taken from any other State.

9 63. In 1902, when California was granted one (1) more U.S. House member, each House member  
10 of California represented an average of 202,875 persons based on the 1902 population of 1,623,000.

11 64. Some time after 1900, the Legislature was apparently unable to do its job and started taking  
12 on staff members (assistants). This number began to creep up over the years and today this is quite  
13 numerous, however, Plaintiff does not know how many there are.

14 *"It's a modern and dangerous trend. It wasn't until 1890 that the Congress*  
15 *agreed that each representative should have a staff –of one. Even as late as 1953,*  
16 *congressional staffs averaged at two-and-a-half persons, including those who worked*  
17 *in the home district. I happened to be a member of such a staff at the time.*

18 *When I took office in the California legislature in 1961, each of us was assigned*  
19 *one secretary in Sacramento, who was available only when the legislature was in*  
20 *session. In addition, I was entitled to a full-time secretary in my district office. In those*  
21 *days they expected us to spend more time in the district than Sacramento." Robert T.*  
22 *Monagan, The Disappearance of Representative Government, Pg. 86*

23 65. In 1910, the National Census was taken and there were approximately 2,406,000 persons in  
24 California. Each Assembly member represented an average of 30,075 persons, however, the Legislature  
25 did not vote to increase the number of members in the Assembly.

26 66. After the 1910 Census (13<sup>th</sup> Census), California was apportioned three (3) more members in  
27 the U.S. House, so it had a total of eleven (11) for the 1912 election. The U.S. House as a whole was  
28 also increased, so California's gain of another member was not taken from any other state. However,  
the total number of U.S. House members was increased to 435, but never increased after this.

67. In 1912, when California was granted one (1) more U.S. House member, each House member  
of California represented an average of 242,545 persons based on the 1912 population of 2,668,000.

68. In 1920, the Nineteenth Amendment was ratified August 18 and certified on August 26.

1 69. In 1920, the National Census was taken and there were approximately 3,554,000 persons in  
2 California. Each Assembly member represented an average of 44,425 persons, however, the Legislature  
3 did not vote to increase the number of members in the Assembly.

4 70. After the 1920 Census, California was not given any more members in the U.S. House of so  
5 it had a total of eleven (11) for the 1922 election. The U.S. House stayed at 435 members.

6 71. In 1920, California was not granted anymore U.S. House members. Therefore, in 1922, when  
7 the usual increase would have been made, each of the eleven (11) House members of California  
8 represented an average of 362,818 persons based on a 1922 population of 3,991,000.

9 72. In 1930, the National Census was taken and there were approximately 5,711,000 persons in  
10 California. Each Assembly member represented an average of 71,388 persons, however, the Legislature  
11 did not vote to increase the number of members in the Assembly.

12 73. After the 1930 Census, California was given nine(9) more members in the U.S. House so it  
13 had a total of twenty (20) for the 1932 election. The U.S. House as a whole was not increased, so  
14 California's apportionment and gain of these members was not taken from other States in the Union.

15 74. In 1932, California was apportioned nine (9) more U.S. House members for a total of twenty  
16 (20). Each represented an average of 294,700 persons based on the 1932 population of 5,894,000.

17 75. In 1934, the citizens of California voted by simple majority for a Constitutional Convention:  
18 Yes: 705,915 (51.4%), No: 668,080 (48.6%). The Legislature did not provide for the Convention and  
19 the citizens will was directly subverted.

20 76. In 1940, the National Census was taken and there were approximately 6,950,000 persons in  
21 California. Each Assembly member represented an average of 86,875 persons, however, the Legislature  
22 did not vote to increase the number of members in the Assembly.

23 77. After the 1940 Census, California was given three (3) more members in the U.S. House for  
24 a total of twenty-three (23) for the 1942 election. The U.S. House as a whole was not increased, so  
25 California's apportionment and gain of these members was taken from other States in the Union.

26 78. In 1942, California was apportioned three (3) more U.S. House members for a total of  
27 twenty-three<sup>23</sup>. Each represented an average of 336,304 persons based on the population of 7,735,000.

28 79. In 1950, the National Census was taken and there were approximately 10,677,000 persons

1 in California. Each Assembly member represented an average of 133,463 persons, however, the  
2 Legislature did not vote to increase the number of members in the Assembly.

3 80. After the 1950 Census, California was given seven (7) more members in the U.S. House so  
4 it had a total of thirty (30) for the 1952 election. The U.S. House as a whole was not increased, so  
5 California's apportionment and gain of these members was taken from other States in the Union.

6 81. In 1952, California had thirty (30) U.S. House members, each member represented an average  
7 of 387,833 persons based on the 1952 population of 11,635,000.

8 82. In 1960, the National Census was taken and there were approximately 15,870,000 persons  
9 in California. Each Assembly member represented an average of 198,375 persons, however, the  
10 Legislature did not vote to increase the number of members in the Assembly.

11 83. After the 1960 Census, California was given eight (8) more members in the U.S. House so  
12 it had a total of thirty-eight (38) for the 1962 election. The U.S. House as a whole was not increased,  
13 so California's apportionment and gain of these members was taken from other States in the Union.

14 84. In 1962, when California had thirty-eight (38) U.S. House members, each member represented  
15 an average of 449,263 persons based on the 1962 population of 17,072,000.

16 85. In 1962, the U.S. Supreme Court decided the matter of *Baker v. Carr*, 369 U.S. 186 (1962)  
17 and held that Federal District Courts could take cognizance of reapportionment matters. It sidestepped  
18 the claim of dilution by the Plaintiff and instead opted for the remedy of granting equally sized districts.

19 86. In 1964, the U.S. Supreme Court decided the case of *Reynolds v. Sims*, 377 U.S. 533 and  
20 noted that a person has the right to full and effective participation in the electoral process.<sup>5</sup>

21 87. After *Reynolds* and *Baker*, the Assembly and Senate began to apportion their districts by  
22 population and as before, never made any increases above eighty (80) for advancements in population.  
23 California's State Senate did not maintain one Senator for each county, thus it had to run by population.

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24  
25 <sup>5</sup> “*representative government is in essence self-government through the medium of elected*  
26 *representatives of the people, and each and every citizen has an inalienable right to full and*  
27 *effective participation in the political processes of his State's legislative bodies. Most citizens can*  
28 *achieve this participation only as qualified voters through the election of legislators to represent*  
*them. Full and effective participation by all citizens in State government requires, therefore, that*  
*each citizen have an equally effective voice in the election of members of his State Legislature.*  
*Modern and viable State government needs, and the Constitution demands, no less.” (Ibid at 565).*

1 88. In 1970, the National Census was taken and there were approximately 19,971,069 persons  
2 in California. Each Assembly member represented an average of 249,638 persons. Special Masters  
3 apportioned the Legislature, but it did not vote to increase the number of members in the Assembly.

4 89. After the 1970 Census, California was given five (5) more members in the U.S. House so it  
5 had a total of forty-three (43) for the 1972 election. The U.S. House as a whole was not increased, so  
6 California's apportionment and gain of these members was taken from other States in the Union

7 90. In 1972, California had forty-three (43) U.S. House members, each member represented an  
8 average of 478,732 persons based on the 1972 population of 20,585,469.

9 91. In 1980, the National Census was taken and there were approximately 23,667,902 persons  
10 in California. Each Assembly member represented an average of 295,849 persons. The Legislature  
11 apportioned its own districts, but it did not vote to increase the number of members in the Assembly.

12 92. After the 1980 Census, California was given two (2) more members in the U.S. House so it  
13 had a total of forty-five (45) for the 1982 election. The U.S. House as a whole was not increased, so  
14 California's apportionment and gain of these members was taken from other States in the Union.

15 93. In 1982, when California had forty-five (45) U.S. House members, each member represented  
16 an average of 551,556 persons based on the 1982 population of 24,5820,009.

17 94. In 1990, the National Census was taken and there were approximately 29,950,111 persons  
18 in California. Each Assembly member represented an average of 374,376 persons. Special Masters  
19 apportioned the Legislature, but it did not vote to increase the number of members in the Assembly.

20 95. After the 1990 Census, California was given seven (7) more members in the U.S. House so  
21 it had a total of fifty-two (52) for the 1992 election. The U.S. House as a whole was not increased, so  
22 California's apportionment and gain of these members was taken from other States in the Union.

23 96. In 1992, when California had fifty-two (52) U.S. House members, each member represented  
24 an average of 593,768 persons based on the 1992 population of 30,875,920.

25 97. In 2000, the National Census was taken and there were approximately 33,920,000 persons  
26 in California. Each Assembly member represented an average of 424,000 persons. The Legislature  
27 apportioned its own districts, but it did not vote to increase the number of members in the Assembly.

28

1 98. After the 2000 Census, California was given one (1) more member in the U.S. House so it had  
2 a total of fifty-three (53) for the 2002 election. The U.S. House as a whole was not increased, so  
3 California's apportionment and gain of these members was taken from other States in the Union.

4 99. In 2002, California had fifty-three (53) U.S. House members, each member represented an  
5 average of 642,329 persons based on the 2002 population of 34,043,462. Today, with about 39 million  
6 people in California, each U.S. House districts has about 737,642 persons each!

7 100. At the beginning of 2008, California's population was approximately 38 million and is  
8 growing at about 3,000 new persons per day. The dilution of the Assembly districts with the size of  
9 eighty (80) members leaves each district at about 475,000 persons apiece.

10 101. Today, California's population is about 39 million and each district is about 490,000. The  
11 districts are rapidly growing towards half a million persons when the population reaches 40 million.

## 12 13 **VII. PETITIONING FOR REPRESENTATION**

14 102. On or about May 24, 2007, Plaintiff served the Assembly and the Governor with a petition  
15 to increase the size of the California Assembly (*See Exhibit A-1 and A-2*). The Assembly after some  
16 time gave me a stamped acknowledgment of receipt. The Governor gave me no proof of service. No  
17 answer was given to the Plaintiff. (A copy of the petition is located in *Addendum I, Exhibit A-1*)

18 103. On or about May 25, 2008, Petitioner served the Secretary of State and the Attorney  
19 General with the same petition for the California Assembly (*See Exhibit A-3 and A-4*). No answer was  
20 given to the Petitioner.

21 104. Follow up petitions were sent to each of the above (*See Addendum I, Exhibits B-1 to B-4*)  
22 and again, no answer was given to the Petitioner.

23 105. Two petitions were sent to the Senate through the Secretary of the Senate and Plaintiff's  
24 State Senate Representative, Tom McClintock.

25 106. One petition was answered by the Secretary of the Senate (*See Exhibit A-5*) and it was  
26 indicated that the matter was going to be addressed by the Senate. It never was.

27 107. Petitioner made all reasonable attempts to garner redress through the State legislature and  
28 the State Executives and no answer was given. Therefore Plaintiff brings this suit forth.

1  
2 **IX. CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 **NONCOMPETITIVE ENTRENCHMENT**

5 108. Plaintiff hereby incorporates paragraphs 1-107 and further alleges:

6 109. That the Assembly districts as drawn in large part by the Assembly and are anti-competitive:

7 110. In 1996, of the eighty (80) districts up for election, only two (2) members of the California  
8 Assembly lost their elections to challengers [*See verification in Addendum II, Exhibit C-1*].

9 111. In 1998, another two (2) members of the California Assembly of the eighty (80) legislators  
10 up for election lost their elections to challengers.

11 112. In 2000, only one (1) incumbent lost their seat to a challenger.

12 113. Also in 2000, the U.S. Census was taken by the Federal Government.

13 114. After the 2000 Census, the California Legislature used the new figures for the apportionment  
14 of the Assembly and its districts. The new districts were set into effect for the 2002 elections.

15 115. The Assembly districts for the 2002 election were drawn, largely in part by the incumbent  
16 members of the California Assembly and were directly designed in such a manner that would be most  
17 advantageous to the incumbents of both parties leaving challengers at a huge competitive disadvantage  
18 electorally. Since that time, not a single member of the California who was not term-limited out of the  
19 California Assembly lost a seat during the last three (3) election cycles since the reapportionment of the  
20 legislative seats in 2002 [Again see verification in *Addendum II, Exhibit C-1*].

21 116. In June, the primary elections for the California Assembly were held and not a single member  
22 who was again not term-limited out lost in their primary and when the November 2008 election was  
23 held recently, not a single incumbent lost. That makes four (4) election cycles with no defeat.

24 117. California's Assembly is Autocratic and not consistent with the intent of our Founders

25 118. Since the current Assembly districts were drawn in part by the Assembly and they are non-  
26 competitive, either with passive or active intent, they are unlawful as this amounts to anti-competitive  
27 self-entrenchment and thus an unlawful apportionment.

28 **VIOLATIONS**

1 118. This entrenchment violates Article I, Section 2 of the U.S. Constitution since as a Tax payer,  
2 Plaintiff and all persons similarly situated have a reasonable expectation for fair and equitable  
3 representation which is defeated by allowing Representatives to in effect draw their own districts and  
4 skew the fairness of the outcome of elections and in turn equal access to the Representatives.<sup>6</sup>

5 119. This is also a violation of Amendment I as tainted elections defeat the incentive<sup>7</sup> of my  
6 Representatives to assemble with me or receive, read and answer petitions for redress of grievances.  
7 To show this, there are numerous petitions that I sent to the Assembly that went unanswered!<sup>8</sup>

8 120. Allowing our Representatives to subvert the proper outcome of free elections of tax-paying  
9 citizens amounts to a taking. This is not a specific sense of taking, but a broad and general sense.  
10 Subverting elections not only subverts the rights to petition, but the right of taxation through our  
11 elected Representatives as they were tampered.

12 121. This is also a violation of the **Political Rights** of the Citizens directly via Amendment IX.<sup>9</sup>  
13 Plaintiff asserts that he and others similarly situated have the political right to fair elections. Allowing  
14 the Representatives to draw their own districts subverts this right.

15 122. This also collectively denigrates Amendment X. Those who may be elected to our public  
16 counsels through unlawful means are not as interested in protecting the Sovereign rights of the State.  
17 Stated another way, the agency interests of those who hold office unlawfully may be reasonably  
18 questioned with regard to their interests to protect State interests against Federal encroachments.<sup>10</sup>

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19  
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21 <sup>6</sup> “Art. I, 2, *requires that States create . . . districts which provide equal representation*  
22 *for equal numbers of people with ‘a good-faith effort to achieve absolute equality,’” Kirkpatrick v.*  
*Preisler, 394 U.S. 526 (1969)*

23 <sup>7</sup> “*This policy of supplying, by opposite and rival interests, the defect of better motives,*  
24 *might be traced through the whole system of human affairs, private as well as public.”Federalist 51*

25 <sup>8</sup> See Addendum I. The fact that I had no response from petitions sent to my elected reps.

26 <sup>9</sup> “. . . *the nature of political rights reserved to the people by the Ninth . . . Amendment [is]*  
27 *involved. The right claimed as inviolate may be stated as the right of a citizen to act as a party . . .*  
28 *to further his own political views.”United Public Workers v. Mitchell, 330 U.S. 75, 95 (1947)*

<sup>10</sup> “*The grant of authority over a purely federal matter was not intended to destroy the*  
*local power always existing and carefully reserved to the states in the Tenth Amendment . . .”*  
*Hammer v. Dagenhart, 247 U.S. 251, 275*

1 123. Unlawful elections of State Legislative officials, especially in the main legislative body of the  
2 State denigrates Amendment XI as noted above, the agency of the Representatives and their interest  
3 in protecting the interests of the State may be reasonably questioned.

4 124. This circumstance also amounts to a violation of Amendment XIII §1. Plaintiff is a citizen  
5 of California and those who are elected to represent the citizens have the power of taxation. The  
6 capacity to unlawfully subvert elections in an manner as described positions me so that I end up paying  
7 taxes that Plaintiff and others similarly situated may not otherwise need to pay. It also again subverts  
8 the right to petition for redress grievances which may also be paying the burden of un-necessary taxes.

9 125. This matter is also a violation of Amendment XIV §1 of the U.S. and California Constitution  
10 Due Process and Equal protection clauses as it distorts access to the Representatives. If an election can  
11 be subverted, then access is not free, fair and full. Those who un-rightfully elected may limit access to  
12 themselves. Again, this is a violation of Amendment XIV.

13 126. This practice is also a violation of the Voting Rights Act 42 USC 1973et seq. as it devalues  
14 my vote and those votes of persons similarly situated. This entrenchment violates Amendments XV,  
15 XIX, XXVI as the votes of persons of all ethnicities, women and those of age 18 to 21 are harmed.<sup>11</sup>

16 127. This system also violates California State Constitution Amendment Article I, Section 3 which  
17 states, *“The people have the right to instruct their representatives, petition government for redress of*  
18 *grievances, and assemble freely to consult for the common good.”*Article I, Section 3. If votes are  
19 subverted through malformed districts, then the State right to instruct the Representatives is subverted.

20  
21 **PRAYER**

22 128. Plaintiff hereby prays that the Court enjoin the use of these districts as they are tainted.

23 129. Plaintiff asks that new districts be formed in a lawful manner as the court finds proper or as  
24 by Plaintiff’s Opening Brief and a Motion to Enjoin the Assembly in Self-Appportioning its districts.

25  
26  
27 <sup>11</sup> *“Section 2(a) of the amended Act prohibits any ‘standard, practice, or procedure . . .*  
28 *which results in a denial or abridgement of the right of any citizen of the United States to vote on*  
*account of race or color. . .”* Johnson v. DeGrandy, \_\_\_ U.S. \_\_\_ (1994) , 12

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**SECOND CAUSE OF ACTION**

**UNLAWFUL SELF-APPORTIONMENT**

130. Plaintiff repeats, re-alleges and incorporates by reference the allegations in paragraphs 1-107 along with the First Count and further alleges:

131. That the practice in which the Assembly apportions its own districts is unlawful as it amounts to the Assembly members acting as a Judge to their own properties, powers and qualifications. Doing so in the last apportionment was the key factor which allowed it create the uncompetitive districts, choose their districts or who or what groups are to be in them.<sup>12</sup>

132. The ongoing practice of doing so directly damages Plaintiff as an individual voter and other persons similarly situated as the practice serves to invidiously devalue my vote and subvert my right and ability to choose my elected Representative.

**VIOLATIONS**

133. Plaintiff asserts that all violations asserted for First Count in paragraphs 118 to 127 apply here as well. This custom or practice of the Assembly drawing its own districts is a direct violation of Due Process and Equal Protection as per Amendment XIV of the U.S. Constitution as well as Article I §2, Amendment I, IV, V, IX, X, XI, XIII§1, XIV§1, XV, XIX, XXVI and 42 USC 1973.

134. The California Assembly directly drawing its own districts amounts to setting its own qualifications. If Congress and each of its Houses are not able to judge their own qualifications,<sup>13</sup> neither should the California Assembly be able to do so. There fore, any such lines drawn under such a system should be held repugnant to the U.S. Constitution and thereby void.

**PRAYER**

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<sup>12</sup> *“It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their WILL to that of their constituents.” Federalist 78*

<sup>13</sup> *“The power granted to each House of Congress to judge the ‘Qualifications of its own Members,’ Art. I, 5, cl. 1, does not include the power to alter or add to the qualifications set forth in the Constitution’s text.” Powell v. McCormack, 395 U.S. 486, 540*

1 135. Plaintiff prays that the lines be redrawn and not by the Legislature as such amounts to them  
2 being a Judge of their own properties and doing such amounts to an unlawful Gerrymander.

3 136. Plaintiff further prays that the Court permanently enjoin the practice of the California  
4 Assembly having a hand in drawing its own districts as any method of apportionment where a governing  
5 body has a direct hand in apportioning itself shall always be suspect.

6 137. Plaintiff again asks that the districts be redrawn and that the Court do so in a lawful manner  
7 either upon its own discretion as it sees necessary and proper, by the articulations of the appropriate  
8 Executive officers of the State (Governor, Secretary of State of the Attorney General) or by Plaintiff's  
9 articulations in his Opening Brief to permanently enjoin the Assembly from Self-Appportioning.

10  
11 **THIRD CAUSE OF ACTION**

12 **UNLAWFUL REPRESENTATIVE DILUTION ASSEMBLY**

13 **(DISTRICT SIZE)**

14 138. Plaintiff repeats, re-alleges and incorporates by reference the allegations in paragraphs 1-107  
15 along with the First Count and Second Count and further alleges:

16 139. Representation in the California Assembly has not increased in over 150 years. The last was  
17 in 1854, when it was increased from 63 to 80. The population in 1854 was 207,556 persons the  
18 representational dilution would be approximately 2,500 persons. Since membership in the California  
19 Assembly has not grown, the districts almost have 500,000 people each.

20 140. The Founders of the United States never intended for districts to get this big.<sup>14</sup> In fact,  
21 according to the Declaration of Independence, poor representation and the lack of access to it that  
22 began the Revolutionary War.<sup>15</sup> We did not toss off the bonds from the English to rebind ourselves.

23 141. California chose a bicameral Legislature with an Assembly and the Senate.

24  
25 <sup>14</sup> *"The number of which this branch of the legislature is to consist, at the outset of the*  
26 *government, will be sixtyfive. Within three years a census is to be taken, when the number may be*  
*augmented to one for every thirty thousand inhabitants."* Federalist 55

27 <sup>15</sup> *"He has refused to pass other Laws for the accommodation of large districts of people,*  
28 *unless those people would relinquish the right of Representation in the Legislature, a right*  
*inestimable to them and formidable to tyrants only."* Declaration of Independence

1 142. The Senate was supposed to have large districts and be free from the citizens and their direct  
2 influence<sup>16</sup> as well as have longer terms of office. The Assembly as the lower chamber, was supposed  
3 to be close to the common citizens.<sup>17</sup>

4 143. Citizens of California in effect have two Senates at best since neither has a common interest  
5 with the citizens of California are too far divorced from them in circumstances as they have become an  
6 Aristocracy, (Nay, an Oligarchy or a Despot) which they were never intended to be!

7 144. There is no possible way Representatives in the California Assembly have the ability to meet  
8 with even a small portion of those within their districts nor have an idea of their wants and needs (*See*  
9 *Exhibit D-1*). This prohibits the common citizen from being able to meet with their representatives. The  
10 Assembly was intended to be the chamber to which the common citizen had access.

## 11 VIOLATIONS

12 145. Assembly districts the size of California's of nearly 500,000 persons is baseless and in truth  
13 is basically no representation at all. The Assembly is supposed to be the legislative body intended for  
14 the common citizen to have a common interest with the citizens themselves. I assert this as a combined  
15 violation of Article I, §2 (Qualifications of Electors);<sup>18</sup> Article I, §2 (Representation and Taxes);  
16 Amendment I (Speech, Assembly and Petition with those electors); Amendment IV (as Counsel is  
17 assumed outside of legislative sessions); Amendment IX (Political Rights, see footnote 9 supra);  
18 Amendment XIV §1 (Equal Protection); and Amendments XV, XIX & XXVI (Age, race and gender).<sup>19</sup>

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21 <sup>16</sup> “Another defect to be supplied by a senate lies in a want of due acquaintance with the  
22 objects and principles of legislation.” *Federalist 62*

23 <sup>17</sup> “it is essential to liberty that the government in general should have a common interest  
24 with the people, so it is particularly essential that the branch of it under consideration should  
25 have an immediate dependence on, and an intimate sympathy with, the people.” *Federalist 52*

26 <sup>18</sup> “. . . the Electors in each State shall have the Qualifications requisite for Electors of the  
27 most numerous Branch of the State Legislature.” *Article I, Section 2*

28 <sup>19</sup> “The difference between requiring a continent, with an immense population, to submit to  
be taxed by a government having no common interest with it, separated from it by a vast ocean,  
restrained by no principle of apportionment, and associated with it by no common feelings; and  
permitting the representatives of the American people, under the restrictions of our constitution,  
to tax a part of the society, which is either in a state of infancy advancing to manhood, looking

1 146. It may be argued that the apportionment of eighty (80) members of the California Assembly  
2 was adequate for 1854 when the population was a mere 207,556.<sup>20</sup> However, it is not adequate for the  
3 current population of between 38 and 39 million persons is simply irrational and cannot be justified.<sup>21</sup>

4 147. Government by the Consent of the governed requires that taxation come through persons  
5 that are elected to the Legislature by citizens that (as noted above) have a similar interest with those  
6 they represent (which is not what we have now) the size of the districts heavily influence.

7 148. Representative district size may be reasonably challenged as the purpose of the Census is to  
8 apportion taxes and therefore allocate Representatives to populations of tax payers.<sup>22</sup> Therefore, a  
9 Constitutional apportionment of representation, especially in the chamber that was intended to represent  
10 the common citizens. Each person should at least be able to meet with their Representative and let them  
11 know their wants and needs relevant to their interests.<sup>23</sup>

12  
13 **PRAYER**

14 149. Plaintiff prays that Article 4 Section 2 of the California Constitution which states, "*The*  
15 *Assembly has a membership of 80 members . . .*" be enjoined and declared unconstitutional.

16 150. Plaintiff prays that the number of Assembly Representatives be lawfully formed as per  
17 Plaintiff's benchmarks or as the members of the Governor or the Court deems necessary and proper.

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*forward to complete equality so soon as that state of manhood shall be attained as is the case with*  
22 *the territories; or which has voluntarily relinquished the right of representation . . . is too obvious*  
23 *not to present itself to the minds of all."* *Loughborough v. Blake, 18 U.S. 317, 324*

24 <sup>20</sup> "*Representation schemes once fair and equitable become archaic and outdated.*"  
25 *Reynolds v. Sims, 377 U.S. 533, 567*

26 <sup>21</sup> ". . . irrational on its face [&] lacks sufficient justification." *Shaw v. Reno, 509 U.S. 630*

27 <sup>22</sup> "*As the direct and declared object of this census is, to furnish a standard by which*  
28 *'representatives, and direct taxes, may be apportioned among the several States which may be*  
*included within this Union,'"* *Justice Marshall, Loughborough v. Blake, 18 U.S. 317, 321*

<sup>23</sup> "*In a representative democracy such as this . . . the whole concept of representation*  
*depends upon the ability of the people to make their wishes known to their representatives."*  
*Eastern Railroad Conference v. Noerr Motor Freight, 365 U.S. 127,137*

1 **FOURTH CAUSE OF ACTION**

2 UNLAWFUL REPRESENTATIVE DILUTION ASSEMBLY

3 (VOTE DILUTION)

4 151. Plaintiff repeats, re-alleges and incorporates by reference the allegations in paragraphs 1-107  
5 along with the First through Third Counts and further alleges:

6 152 As the population of the State increases and representation of the legislative bodies in turn  
7 does not increase, Plaintiff and each person similarly situated has their vote diminished.

8 153. As the value of our vote is diminished, so are our rights and privileges, our civil liberties.

9  
10 **VIOLATIONS**

11 154. Article I §2, as Plaintiff's vote has been invidiously devalued due to the size of the district.<sup>24</sup>

12 155. The devaluation of each of our votes in turn affects our access to our Representatives and  
13 therefore in turn, our civil liberties.<sup>25</sup> I assert a debasement of all enumerated civil liberties and  
14 unenumerated ones as per Amendments IX & X. Therefore at this time, Plaintiff and all persons  
15 similarly situated have had the value of his and their votes for members of the California Assembly  
16 invidiously diminished so as to leave it with questionable worth to those elected.<sup>26</sup>

17 156. As this claim is that of an abridgement to the value of all persons votes, Plaintiff asserts that  
18 he and all persons similarly situated have an interest in maintaining the effectiveness of their vote and  
19 not increasing the number of Representatives with the advancement of population has diminished the  
20

21 \_\_\_\_\_  
22 <sup>24</sup> *“Population variances do invidiously devalue the individual’s vote at some point or level  
in size . . .” White v. Weiser, (412 U.S. 783,784).*

23 <sup>25</sup> *“ . . . the political franchise of voting’ is ‘a fundamental political right, because’ it is the  
24 preservative of all rights.’ 118 U.S., at 370.” cited by Reynolds v. Sims, 377 U.S. 533, 561-562*

25 <sup>26</sup> *“ . . . that in all cases where the constitution has conferred a political right or privilege,  
26 and where the constitution has not particularly designated the manner in which that right is to be  
exercised, it is clearly within the just and constitutional limits of the legislative power to adopt  
27 any reasonable and uniform regulations, in regard to the time and mode of exercising that right,  
which are designed to secure and facilitate the exercise of such right in a prompt, orderly, and  
28 convenient manner; nevertheless, ‘such a construction would afford no warrant for such an  
exercise of legislative power as, under the pretense and color of regulating, should subvert or  
injuriously restrain, the right itself.’” Yick Wo v. Hopkins, 118 U.S. 356, 371 (1886)*

1 value of those votes.

2 157. Plaintiff assert this as a stand alone claim and as a violation of all Constitutional Clauses with  
3 regard to our civil liberties, both enumerated and unenumerated.<sup>27</sup>

4 158. Plaintiff also asserts the claim that the size of the district is so large that those persons with  
5 votes have no means of protecting their vote. We are not able to judge the elections to be fair due to  
6 the size of the district. I assert this as a State claim per California Civil Code §22.2<sup>28</sup> and cite the  
7 English custom from Blackstone’s Commentaries.<sup>29</sup>

8 159. As many news articles have shown, it is reasonable to question the validity of our elections.  
9 If elections can be tampered with, then that in turn destroys our vote and whatever value it has. In  
10 essence, it debases our entire system (**See Exhibits B-1,2,3**). I have no faith in our electoral system.

11 160. Plaintiff also asserts Art. 1, §3 California Constitution<sup>30</sup> as the value of the vote diminishes,  
12 the ability to “*instruct . . . representatives’ and ‘petition . . . for redress of grievances.’*” is diminished.

13  
14 **PRAYER**

15 161. Plaintiff prays that Article 4 Section 2 of the California Constitution which states, “*The*  
16 *Assembly has a membership of 80 members . . .*” be enjoined and declared unconstitutional.

17 162. Plaintiff prays that the number of Assembly Representatives be lawfully formed as per  
18 Plaintiff’s benchmarks or as the Governor or the Court deems necessary and proper.

19  
20 **FIFTH CAUSE OF ACTION**

21 \_\_\_\_\_  
22 <sup>27</sup> “. . . a plain, direct and adequate interest in maintaining the effectiveness of their votes,”  
23 *Coleman v. Miller, 307 U.S. 433, 438.*

24 <sup>28</sup> “*The common law of England, so far as it is not repugnant to or inconsistent with the*  
25 *Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in*  
26 *all the courts of this State.” Ca Civ. Code §22.2.*

27 <sup>29</sup> “*In so large a state as ours it is therefore every wisely contrived, that . . . representatives,*  
28 *[are] chosen by a number of minute and separate districts, wherein all the voters are, or easily*  
*may be, distinguished.” Blackstone’s Commentaries, Book I, Chapter 2, Part II*

<sup>30</sup> “*The people have the right to instruct their representatives, petition government for*  
*redress of grievances, and assemble freely to consult for the common good.” Art. 1, §3 Cal. Con*

1 UNLAWFUL REPRESENTATIVE DILUTION ASSEMBLY

2 (DISTRICT SIZE AND COMPETITION)

3 163. Plaintiff repeats, re-alleges and incorporates by reference the allegations in paragraphs 1-107  
4 along with the First through Fourth Counts and further alleges:

5 164. The districts of the California Assembly have gotten so large that the sheer size of the district  
6 affects the competition for these elected seats.

7 165. In general, the more people that a person has to see in a certain time period, the less able  
8 they are to do so. Stated another way, when a representative district has more persons in it, the less able  
9 the Representative is able to meet those persons.

10 166. Plaintiff compiled data on elections from 2002 to 2006 in the lower chamber of 12 different  
11 states in the United States<sup>31</sup> (**See, Addendum II, A-2**) shows that the larger the district gets, the more  
12 money gets spent by the winners (on average) in their election & re-election. The losers of the elections  
13 on the other hand spend less money and are less able to keep up with the spending of the winners.

14 167. The data further shows the larger the district, the more the disparity in money between the  
15 winners and losers becomes. We can see when comparing the winners and losers for the State of New  
16 Hampshire and Vermont, the district sizes are 3,000 to 4,000 persons. In these elections, the winners  
17 and the losers spend about the same amount of money on average each year. It is possible in districts  
18 this size for a person to be able to meet with their Representative and challengers as well.

19 168. When we get to districts the size of Rhode Island (just over 14,000 between 2002 and 2006),  
20 the winners begin spending between 2 and 4 times what the losers of the elections spend. In South  
21 Carolina, over that same time frame, the districts are just above 18,000 persons, the winners spend  
22 between an average of \$18,000 to \$27,000 whereas the losers spend between \$5,000 and \$17,000.

23 169. In Indiana over the same time period, where the average district size is just over 60,000  
24 persons, the winners spent and average between \$49,000 and \$65,000 whereas the losers spent between  
25 \$5,500 and \$12,000.

26 \_\_\_\_\_  
27 <sup>31</sup> I chose these States since they have similar elections cycles, they do not have term-limits  
28 and they are fairly uniform in most other matters. The data shows, the larger the district, the greater  
the proclivity of the winner to have more money as the district grows. The losers cannot keep up.

1 170. In Illinois over that same period where the district size sits at over 105,000 persons, the  
2 winners spend an average of \$150,000 to \$160,000 while losers spent between \$19,000 and \$39,000.

3 171. This disparity is particularly pronounced in California (**See, Addendum II, A-1**). Between  
4 1998 and 2006, the average district size for a California Assembly seat was 409,000 persons and  
5 460,000 persons respectively. The winners of these elections spent on average between \$440,000 and  
6 \$640,000 whereas the losers spent an average of \$23,000 and \$64,000. A factor of 10 to 1 easily.

7 172. When all the States I have gathered the data together are compared (*see Addendum II, A-3,*  
8 ***Ia***), we can see that the larger the electoral district gets, the more money the winners have and the less  
9 money their competitors have. The correlation of the winners data between district size and the money  
10 they have for such elections is quite powerful. The correlation between the size of the district and the  
11 money that is collected by the winners sits at 97% (*see Addendum II, A-3, Ib*). The correlation  
12 between district size and the amount of money for the loser is still powerful at greater than 70% (*see*  
13 ***Addendum II, A-3, Ic***). This can be explained merely that either the opponent(s) have the money or  
14 the capacity to raise more money themselves through themselves or through other places or they don't!

15 173. Not only does the size of the district affect the money disparity, but the money sources as  
16 well. One study published in 2006 showed that an average of 78% of the money the incumbents garner  
17 is from outside of their district and some garnered as much as 20% their money from out of State.<sup>32</sup>

18 174. A 2006 study published by the Institute on Money and State Politics stated that between  
19 2001 and 2004, “*Less than 7 percent of state-level candidates are able to win a state legislative seat*  
20 *without having either a fund raising advantage or already holding office.*” *Money and Incumbency,*  
21 *Advantages in State Legislative Races, Pg.2, by Mark Dixon, July, 20, 2006; published by The Institute*  
22 *on Money in State Politics. (See followthemoney.org for this study).*

23 175. As the size of an electoral district gets larger, money becomes more important. In very large  
24 districts, it is essential since in no way can the candidates meet with all the persons in a district (**See**  
25 **Exhibit D-1** affidavit by Robert Bakhaus). Further, if a Representative cannot meet with all of his  
26 constituents, the constituents cannot begin to substantively expect the other rights of having

27 \_\_\_\_\_  
28 <sup>32</sup> *Local Politics, Remote Money, November 1, 2006, Maplight.org, by Dan Newman*

1 representative such as the ability to petition for redress of grievances. In large districts, money is needed  
2 to buy mass media to sell the candidate to the electorate for vote since they cannot meet with them.

3 176. It is simply not enough for any candidate to have a little hustle, thick soled shoes, an  
4 attentive ear and a few good ideas, you must have financial backing. The larger the district, the more  
5 financial backing becomes important. This is particularly true in California where the incumbents  
6 between 1998 and 2006 raised between \$1.07 and a \$1.39 per person in their district where there  
7 opponent raised between \$0.06 and \$0.14 per person in the district and the districts were well over  
8 400,000 persons (**See, Addendum II, A-1**). This is graphed on (*see Addendum II, A-3, 1b*).

9 177. The effects of money and district size directly correlate to electoral turn over as well. In the  
10 small State of New Hampshire (**See, Addendum II, A-2**), where the districts have an average of about  
11 3,100 to 3,300 citizens apiece between 2002 and 2006, show the highest turn-over rates.

12 178. Both the winners and losers of the elections spend approximately the same amount with the  
13 winners and the losers spending between about \$1,000 to \$1,300 (*see Addendum II, A-2*).<sup>33</sup>

14 179. Not only do their elections have similar spending patterns by the winners and losers, but the  
15 turn-over in that State sit at about 33% to 36%. So 1/3rd of all persons holding office are ousted.

16 180. The effects on the 4,100 person districts in the State of Vermont also show this same high  
17 turn-over trend with between 21% and 25%. Vermont has higher salaries than New Hampshire.<sup>34</sup>

18 181. Indiana had districts that averaged between 61,000 and 63,000 persons from 2002 and 2006  
19 and its turn-over rate has been between 9% and 15% (*see Addendum II, A-2*).

20 182. California with its districts of over 400,000 persons between 1996 and 2006 had an  
21 extremely low turn-over rate in the Assembly. It looks healthy since we have term limits and the effect  
22 of term limits sets the turn-over rate at about 34% or so. However when the effects of term limits are  
23 adjusted out, the real outcome is very troublesome (*see Addendum II, C-1*). In 1996, only two (2)

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24 <sup>33</sup> It needs to be noted that New Hampshire has a 'Flortilla' system where some districts  
25 have multiples of 3,000 persons. An assistant in the New Hampshire Secretary of State's office  
26 directly noted to me that candidates in the single member districts spend less than the campaigns  
for multi-member districts in that state (**See Exhibit C-1**).

27 <sup>34</sup> Legislative salary has an effect on re-election rates. Perville Squire noted: ". . . *the strong*  
28 *negative relationship between legislative compensation and membership turnover in American*  
*Legislatures is well established.*" *The State Wealth Legislative Compensation Effect*.

1 incumbents were defeated. In 1998 again, only two (2) persons beat incumbents. In 2000, only one (1)  
2 incumbent lost. After 2000, not a single incumbent has lost. The one key constant outside of the fact  
3 that the Legislature draws its own districts is the fact that the districts keep growing.

4 183. The size of the districts themselves serve to defeat the necessary competitive diversity that  
5 a representative Government requires of its legislative power. Competition is what gives life and vigor  
6 to a Government, especially when diffused and the opposite of this creates stagnant oppression, which  
7 is what we have today.

8 184. The districts are so large that even members of the primary political Parties are generally  
9 unable to mount an effective campaign against any incumbent. In 1996, there were five (5) incumbents  
10 that had no challenger from the primary political Parties. This number went as high as seven (7). Most  
11 races were complete blowouts as well (*see Addendum II, C-1*). District size is a major factor.

### 12 13 VIOLATIONS

14 185. Districts that get too large become a violation of Article I, Section 2 (Qualifications).<sup>35</sup>

15 186. As the districts get larger, common persons are not being elected to office, especially the  
16 chamber that was intended for the common person.<sup>36</sup>

17 187. This is also a violation of Article I, §2 (Representation and Taxes) as taxes are not decided  
18 by persons of their own election or that are persons of similar concern to the common person.

19 188. This is a violation of Amendment V as paragraph 174 indicates. This amounts to a taking.

20 189. This is an abridgement of Amendment IX as one of the Political Rights of the citizen, as we  
21 have a reasonable expectation for a Constitutional level of representation.

22 190. This becomes a violation (denigration) of Amendment X and XI as that when districts are  
23 too large, they make it so that those in office are unable to do their duties and therefore resist the

24 \_\_\_\_\_  
25 <sup>35</sup> “. . . the Electors in each State shall have the Qualifications requisite for Electors of the  
26 most numerous Branch of the State Legislature.”

27 <sup>36</sup> “. . . requiring a continent, with an immense population, to submit to be taxed by a  
28 government having no common interest with it, restrained by no principle of apportionment, and  
associated with it by no common feelings; . . . is too obvious not to present itself to the minds of  
all.” *Loughborough v. Blake*, 18 U.S. 317, 324

1 encroachments of the Federal Government and retain the rights of the State in a lawful manner.

2 191. This is a violation of Amendment XIII §1; of the U.S. Constitution (Slavery) as such massive  
3 districts cut off constituents from Representatives.

4 192. The district size is also a violation of Amendment I and Amendment XIV§1 as it creates a  
5 much too high of an onus on anyone running for office. If those who hold office can raise such high  
6 amounts of money to run and the districts are too large for any candidate to be able to be reasonably  
7 expected to meet everyone in the district, then money is an absolute necessity. This means that any  
8 challenger to have a reasonable chance to win such an election must be able to raise (it would seem in  
9 this case) \$500,000 just to be competitive. That is too high an onus to place on any candidate and  
10 simply unfair to any district, especially since the incumbents had an opportunity to draw their districts.<sup>37</sup>

11 193. This is also a violation of the Voting Rights Act 42 USC §1973 and Amendments XIV§1,  
12 XV, XIX and XXVI. These large districts devalue all of our votes as citizens. It places the franchise  
13 in moneyed interests and is unduly invidious to Plaintiff's vote and all persons similarly situated. Large  
14 districts leave the incumbent office holders entrenched so that they do not need to compete for their  
15 seats as readily and therefore become indifferent to the electorate and unable to (and in some instances  
16 disinterested) in protecting their rights.

17 194. Therefore, Plaintiff, as a voter (pre-election) and as a person represented (post-election) is  
18 damaged by the size of the electoral districts.

19 **PRAYER**

20 195. Plaintiff prays that Article 4 Section 2 of the California Constitution which states, "*The*  
21 *Assembly has a membership of 80 members . . .*" be enjoined and declared unconstitutional.

22 196. Plaintiff prays that the number of Assembly Representatives be lawfully formed as per  
23 Plaintiff's benchmarks or as the Governor or the Court deems necessary and proper.

24 **SIXTH CAUSE OF ACTION**

25 UNLAWFUL REPRESENTATIVE DILUTION ASSEMBLY

26 (PARTISAN MINORITY ACCESS)

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27 <sup>37</sup> A voting practice, custom or procedure is unconstitutional if it can be shown to be too  
28 "unduly onerous" *Storer v. Brown, 415 U.S. 724, 725 (1974)* to candidates or constituents.

1 197. Plaintiff repeats, re-alleges and incorporates by reference the allegations in paragraphs 1-107  
2 along with the First through Fifth Counts and further alleges:

3 198. Large districts inhibit the ability of third Parties to be part of the electoral process.

4 199. As has been documented, the greater the size of the districts, the fewer Representatives from  
5 third Parties are elected. (*see Addendum II, B-1*).

6 200. As the districts grow in size, the number of members of the third Parties challenging seats  
7 or merely placing themselves on the ballot has diminished substantially (*See Exhibit D-2*).

8 201. As we see in the California Assembly races between 1996 and 2006, electoral participation  
9 in races by members of third Parties has diminished substantially (*See Addendum II, Exhibit C-1*).

10 202. In 1996, there were six (6) third Parties involved in the Assembly races with fifty-four (54)  
11 candidates across the State. In 1998, there were again six (6) third Parties involved in the Assembly  
12 races with sixty-two (62) candidates across the State for the California Assembly. Finally in the year  
13 2000, there were five (5) third Parties involved in the Assembly races with seventy-eight (78)  
14 candidates across the State (*See Addendum II, Exhibit C-1*).

15 203. However, after the Census and redrawing of the districts by the Legislature (largely in part  
16 by the Assembly itself), the number of candidates from third Parties dropped to four (4) and then three  
17 (3) third parties with candidates. Further, the number of third Party candidates running for the Assembly  
18 in 2002 dropped to forty (40) and in 2006, there were only eight (8) members of third Parties running  
19 for the Assembly (*See Addendum II, Exhibit C-1*).

20 204. This circumstance inhibits Plaintiff's and other citizens similarly situated the ability to have  
21 a greater choice and by which be given more competition for such seats which includes the right and  
22 ability to be given more diverse views on problems and a greater array of solutions for problems.

23 205. As the districts have been self-apportioned and enlarged due to population progression third  
24 Parties have been harmed as their ability to effectively compete for offices or have their candidates  
25 compete for these offices has been denigrated.

1 206. The effect of limiting the number of Representatives also limits the market of ideas to which  
2 a healthy Government can collect and sort ideas from all areas that it and then root through such ideas  
3 to garner the best method to treat a matter.<sup>38</sup>

4 207. Only two political parties have seats in the Legislature, the other Parties are not able to  
5 effectively compete for such seats. In the first 65 years of existence, the State had far smaller seats and  
6 vigorous electoral competitiveness by third Parties. In fact, it is hard to argue that the Democrat and  
7 Republican were majority Parties. There were entire electoral sessions where no members of either  
8 modern dominant Party even had a seat.

9 208. Since 1918, only five (5) members of third Parties have been elected to the Assembly. The  
10 last was in 1998 for a single term and she lost her seat (*See Addendum II, Exhibit B-1*).

11 209. Prior to this, the last time a third Party member was elected to the Assembly was 1944 and  
12 before that, two were elected in 1934.

### 13 14 VIOLATIONS

15 210. Districts that get too large become a violation of Article I, Section 2 (Qualifications)(Supra).

16 211. This again is a violation of Art I §2 (Taxes and Representation) which is also a violation of  
17 Amendment V as a taking since we cannot choose those by which are taxed.

18 212. As a citizen and voter, the size of the districts have invidiously taken Plaintiff's ability to  
19 choose his Representative, assemble with them and invidiously burden his right and the right of others  
20 similarly situated of relevant political persuasion from assembling with their Representative. This is a  
21 violation of Amendment I of the U.S. Constitution which includes the right to Speak with, Assemble  
22 and Petition our Representatives.<sup>39</sup>

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23  
24 <sup>38</sup> *"The chief enemies of republican freedom are mental sloth, conformity, bigotry, superstition, credulity, monopoly in the market of ideas, and utter, benighted ignorance. Relying as it does on the consent of the governed, **representative government cannot succeed unless the community receives enough information to grasp public issues and make sensible decisions.**"*  
25 *Adderley v. Florida, 385 U.S. 39, 49 (1966)*  
26

27 <sup>39</sup> *"The state laws here involved heavily burden the right of individuals to associate for the advancement of political beliefs and the right of qualified voters to cast their votes effectively."*  
28 *This is "no 'compelling interest' justifying those burdens."* *Williams v. Rhodes, 393 U.S. 23 (1968)*

1 213. Again, this amounts to a violation of Amendment IV (Fair Counsel) as a Political Right as  
2 per Amendment IX (as the Political Rights denoted above).

3 214. This circumstance also amounts to a violation of Amendment XIII §1; as it is a form of  
4 slavery not to have the ability to elect from persons who are your effective choice as a Representative.

5 215. This amounts in its totality amounts to a violation of Amendment XIV §1 or a violation  
6 Equal Protection as the maintaining the immense size of our current Assembly districts grants an  
7 overwhelming advantage to the existing third Parties.<sup>40</sup>

8 216. Once again, this amounts to a violation of Amendment XV, XIX and XXVI and the Voting  
9 Rights Act( 42 USC §1973) as the size of the districts invidiously affects the ability of political partisans  
10 to effectively choose their Representatives.

11  
12 **PRAYER**

13 217. Plaintiff prays that Article 4 Section 2 of the California Constitution which states, “*The*  
14 *Assembly has a membership of 80 members . . .*” be enjoined and declared unconstitutional.

15 218. Plaintiff prays that the number of Assembly Representatives be lawfully formed as per  
16 Plaintiff’s benchmarks or as the Governor or the Court deems necessary and proper.

17  
18 **SEVENTH CAUSE OF ACTION**

19 **UNLAWFUL REPRESENTATIVE DILUTION ASSEMBLY**

20 **(POLITICAL MINORITY ACCESS)**

21 219. Plaintiff repeats, re-alleges and incorporates by reference the allegations in paragraphs 1-107  
22 along with the First through Sixth Counts and further alleges:

23 220. Initially, the apportionment of both the Assembly and Senate legislative districts was by  
24 county. That was not always consistent and changed numerous times since 1850.

25  
26 \_\_\_\_\_  
27 <sup>40</sup> “. . . election laws taken as a whole . . . [that are] invidiously discriminatory . . . violate  
28 the Equal Protection Clause [if] they give the two old, established parties a decided advantage  
over new [or other] parties.” There is “no ‘compelling interest’ justifying those burdens.” *Williams*  
*v. Rhodes*, 393 U.S. 23, 30-34 (1968)

1 221. Several times this system became perverted where a couple counties were “bundles in the  
2 same district so that one Senator would represent as many as three (3) counties.

3 222. However, after decisions in *Reynolds v. Sims* and *Baker v. Carr (Supra)*, the apportionment  
4 went by population solely. This took representation away from a number of counties. As population  
5 has increased, especially in Los Angeles County and other highly populated areas, several sparsely  
6 populated counties have lost State representation in both chambers which is simply unlawful. It seems  
7 that only sixteen (16) of the fifty-eight (58) counties of the State have their own Representative.

8 223. In the halls of the California State Legislature are murals showing each county of the State  
9 by name and what that county is known for such as its chief industries and other similar aspects. It is  
10 reasonable that each Representative be acquainted with the local interests of the counties.

11 224. As a citizen of Santa Barbara County, Plaintiff does not have an Assembly Representative  
12 for this county. We should have one and I have an interest in this county and every other county having  
13 a Representative to be inclusive and in effect represent the cross-section of the State.

14 225. Since each county is also the initial point to which all real property transaction are recorded,  
15 there is a compelling interest for each person who owns property to have a Representative in the  
16 Assembly as a means to protect property rights.

17 226. Each county has members of the Judiciary and members of the Executive Branch of the State  
18 working in it. Each bounty needs to have a member of the lower chamber as well under a proper system  
19 of checks and balances.

## 20 21 VIOLATIONS

22 227. Plaintiff asserts this as a violation of Article I, §2 (Qualifications of Electors). The citizens  
23 of the fifty-eight (58) Counties of this State are the citizens for which representation is intended. Each  
24 county has its own citizenry and individual customs and interests. Each has an interest to having the  
25 problems and solutions that they have advanced in the State Legislature.<sup>41</sup>

26  
27  
28 <sup>41</sup> *“By enlarging too much the number of electors, you render the representatives too little acquainted with all their local circumstances and lesser interests . . .” Federalist 10*

1 228. This is also a violation Article I, §2 (Representation and Taxes); State taxes are drawn by  
2 each county and each county has a tax assessor to maintain property values so that State bond issues  
3 may be apportioned against property values.

4 229. Therefore as per Article I, §2 of the U.S. Constitution as it is applied to the States, since  
5 taxes are drawn from each county, it is minimally reasonable that each county have a Representative.<sup>42</sup>

6 230. This is a violation of Amendment I; Speech, Assembly and Petition.

7 231. As has been noted above, each county, the members of each county's citizens and governing  
8 institutions should have access to the Assembly with regard to meeting with them, petitioning for  
9 redress of grievances.

10 232. This is also a violation of the implied right of fair Counsel as per Amendment IV (via the  
11 Political Rights under Amendment IX).

12 233. This is also a taking as taxes are laid upon a county without representation.

13 234. This is also a violation of Amendment IX as one of our Political Rights. That right is a  
14 reasonable expectation for proper and lawful representation.

15 235. This is a violation of Amendment XIII as it grants the power of taxation to large districts  
16 of people without access to representation is paramount to slavery

17 236. This is a violation of Amendment XIV and the Equal Protection clause, however, each  
18 county needs to have a Representative in the Legislature.<sup>43</sup>

19 237. The Supreme Court has even made exceptions to population equity requirements to allow  
20 some States to apportion so that each county has a State Representative.<sup>44</sup> However, in this instance,  
21 growth of the entire chamber is necessary to achieve both interests.

---

22  
23 <sup>42</sup> “. . . the ‘power to lay and collect taxes, duties, imposts and excises,’ for the purposes  
24 thereafter mentioned. This grant is general, without limitation as to place. It . . . extends to all  
places over which the government extends.” *Loughborough v. Blake*, 18 U.S. 317, 318-319

25 <sup>43</sup> “. . . the state legislature may itself be properly apportioned the Fourteenth Amendment  
26 requires that citizens not be denied equal representation in political subdivisions which also have  
broad policy-making functions.” *Avery v. Midland County*, 390 U.S. 474, 481(1968)

27 <sup>44</sup> “. . . deviations from population equality may be necessary to permit the States to pursue  
28 other legitimate objectives such as ‘maintain[ing] the integrity of various political subdivisions.’”  
*Brown v. Thompson*, 462 U.S. 835 (1983)

1 238. This has lead to an abridgement of Amendments X & XI. If there are not enough persons  
2 elected to be Representatives for the various counties so that their issues may be dealt with, how can  
3 they possibly maintain the State Sovereignty against National encroachment.

4  
5 **PRAYER**

6 239. Plaintiff prays that Article 4 Section 2 of the California Constitution which states, “*The*  
7 *Assembly has a membership of 80 members . . .*” be enjoined and declared unconstitutional.

8 240. Plaintiff prays that the number of Assembly Representatives be lawfully formed as per  
9 Plaintiff’s benchmarks or as the members of the Governor or the Court deems necessary and proper  
10 and makes sure that in the end apportionment that each county has a Representative in the Assembly.

11  
12 **EIGHTH CAUSE OF ACTION**

13 **UNLAWFUL REPRESENTATIVE DILUTION ASSEMBLY**

14 **(PERSONAL ACCESS INEQUITABLE)**

15 241. Plaintiff repeats, re-alleges and incorporates by reference the allegations in paragraphs 1-107  
16 along with the first through seventh Counts and further alleges:

17 242. Individuals are the final group that is damaged by these excessively large districts. The  
18 individual is the greatest minority of all. When it comes to representation in the California Assembly,  
19 some individuals have greater legislative access than others do.

20 243. It is notable that large groups of individuals and those who are able to contribute financially  
21 with large sums of money have greater access to Representatives than individuals and less wealthy has  
22 than the Plaintiff as a voter and are thus given more rights than he and all other persons similarly  
23 situated have. According to the Founders those persons were intended to have access to the Senate.<sup>45</sup>

24 244. Plaintiff has sent two petitions to his Representative Pedro Nava and has not heard back  
25 from either of them (*See Addendum I, Exhibit F-1 and F-2*).

26  
27 <sup>45</sup> “. . . *the democratical portion of society we will understand the common people, as before*  
28 *explained; by the aristocratical part of the community we will understand the gentlemen.” The*  
*Founders’ Constitution, Volume I, Chapter 11, Document 10*

1 245. Pedro Nava has massive contributions from numerous huge companies and large PACs (*See*  
2 *Attachment B-4*) He needs that money to run for election in districts that are too large to meet the  
3 individual votes. This money comes at a price and I am sure they get access whereas Plaintiff has not  
4 given Mr. Nava anything, plus is a member of another Political Party, gets no response at all.

5 246. Plaintiff believes that Union Pacific Railroad, which has given Mr. Nava thousands of dollars  
6 and is headquartered in Nebraska (*See Attachment B-4*, first page), likely because Mr. Nava sits on  
7 the Transportation Committee does need and likely has access to him!

8 247. Further, the list of groups who have given money to Mr. Nava represent persons that should  
9 have greater and more direct access to a Senate than a lower chamber.

### 11 VIOLATIONS

12 248. Plaintiff asserts this as a violation of Article I, §2 (Qualifications of Electors). The citizens  
13 of this State were intended to have access to this chamber of the Legislature. which representation is  
14 intended. Each county has its own citizenry and individual customs and interests. Each individual has  
15 an interest in having their problems dealt with in the State Legislature if they choose.<sup>46</sup>

16 249. This is also a violation Article I, §2 (Representation and Taxes); State taxes are drawn by  
17 citizens and they have a reasonable expectation to choose persons to represent them in the Assembly.

18 250. Therefore as per Article I, §2 of the U.S. Constitution as it is applied to the States, since  
19 taxes are drawn from each county, it is minimally reasonable that each county have a Representative.

20 251. This is a violation of Amendment I; Speech, Assembly and Petition. The citizens have an  
21 interest in being able to meet with their Assembly Representative to petition for redress of grievances  
22 and otherwise give and receive information.

23 252. This is also a violation of the implied right of fair counsel as per Amendment IV (as per  
24 the Political Rights under Amendment IX). The presumed right of each citizen to have counsel. Though  
25 the Amendment suggests the this right to counsel is assumed in criminal circumstances, I assert that

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26  
27 <sup>46</sup> “. . . [a] *distinct house of representatives, to be the guardians of the public purse, and to*  
28 *protect the people, in their turn, against both kings and nobles.” The Founders’ Constitution, Vol.*  
*1, Chapter 11, Document 10, (Statement of John Adams)*

1 Amendment IV was placed as an affirmative right for the most dire of circumstances a person can be  
2 in. The right to counsel also exists outside of criminal circumstances.

3 253. Anciently, England's Parliament was known as the Council of the Realm.<sup>47</sup>

4 254. This is also a taking as taxes are laid upon citizens without substantive representation.

5 255. This is also a violation of Amendment IX as one of our Political Rights.<sup>48</sup> That right is a  
6 reasonable expectation for proper and lawful representation which means reasonable access to the  
7 Representatives themselves and in persons, particularly in the lower chamber.

8 256. This again amounts to a denigration of Amendments X & XI. If our Representatives in the  
9 Assembly cannot answer petitions from the common citizen, how can they possibly defend California's  
10 rights against Federal encroachment if they cannot deal with the problems of the citizens of the State.

11 257. This is a violation of Amendment XIII as it grants the power of taxation to large districts  
12 of people without access to representation is paramount to slavery.

13 258. This is a violation of Amendment XIV as some people have access, particularly the wealthy  
14 and most do not.<sup>49</sup>

15 259. This amounts to a violation of the Voting Rights Act; 42 USC §1973 and Amendments XV,  
16 XIX, XXVI as numerous people of Color do not have access to the Legislature as well. I can assert  
17 a claim in this regard as Plaintiff has an interest in the integrity of the process of representation and the  
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19 <sup>47</sup>*“And first of the High Court of Parliament, which Court is mentioned before by the name*  
20 *of Council general, or Parliament, and cap. 1. § 3. King Alfred ordaineth for a Usage perpetual,*  
21 *that twice in the year, or oftner if need be, they shall assemble themselves at London to treat in*  
22 *Parliament of the Government of the People of God, how they should keep themselves from sin,*  
*should live in quiet, and should receive right by certain Laws and holy judgments, &c.” Pg. 288,*  
*The Selected Writings and Speeches of Sir Edward Coke, edited by Steve Sheppard, Liberty Fund,*  
*Indianapolis, Indiana*

23 <sup>48</sup> *“ . . . a most formal conspiracy against the rights of mankind, and against that equality*  
24 *between the gentlemen and the common people which nature has established as a moral right, and*  
25 *law should ordain as a political right, for the preservation of liberty.”The Founders’ Constitution,*  
*Volume 1, Chapter 11, Document 10 (Statement of John Adams)*

26 <sup>49</sup> *“ . . . the gentlemen are more intelligent and skilful, as well as generally richer and better*  
27 *connected, and therefore have more influence and power than an equal number of the common*  
28 *people. There is a constant energy and effort in the minds of the former to increase. . . advantages*  
*they possess over the latter, and to augment their wealth and influence at their expense.” The*  
*Founders’ Constitution, Volume 1, Chapter 11, Document 10 (John Adams)*

1 fairness of the representational scheme for himself and other persons similarly situated regardless of  
2 their ethnicity as each has an interest in the others civil liberties.<sup>50</sup>

3 **PRAYER**

4 260. Plaintiff prays that Article 4 Section 2 of the California Constitution which states, “*The*  
5 *Assembly has a membership of 80 members . . .*” be enjoined and declared unconstitutional.

6 261. Plaintiff prays that the number of Assembly Representatives be lawfully formed as per  
7 Plaintiff’s benchmarks or as the members of the Governor or the Court deems necessary and proper  
8 which should include enough persons so the common citizen has access.

9  
10 **NINTH CAUSE OF ACTION**

11 **UNLAWFUL REPRESENTATIVE DILUTION ASSEMBLY**

12 **(ABSENT REPRESENTATIONAL CHARACTER)**

13 262. Plaintiff repeats, re-alleges and incorporates by reference the allegations in paragraphs 1-107  
14 along with the first through eighth Counts and further alleges:

15 263. The Founders wanted and intended for the Legislature to be reflection of the body of people  
16 itself. John Adams noted it “*should be in miniature an exact portrait of the people at large.*” (*Infra*)

17 264. The Founders also wanted there to be mutual sympathies between the Representatives and  
18 those represented.<sup>51</sup> Such sympathy exists when there is much similarity between the Representatives  
19 and those represented, which is left wanting at the moment.

20 265. The Assembly has lost its representative character with regard to individuals.  
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23 <sup>50</sup> “A criminal defendant has standing to raise the third-party equal protection claims of  
24 *jurors excluded by the prosecution because of their race.*’ because ‘. . . the discriminatory use of  
25 *peremptory challenges causes the defendant cognizable injury*’ and ‘. . . he or she has a concrete  
26 *interest in challenging the practice, because racial discrimination in jury selection casts doubt on*  
*the integrity of the judicial process and places the fairness of the criminal proceeding in doubt.*’  
and ‘. . . the relationship between the defendant and the excluded jurors is such that he or she is  
*fully as effective a proponent of their rights as they themselves would be, since both have a*  
*common interest in eliminating racial discrimination,*” *Powers v. Ohio, 499 U.S. 400 (1991)*

27 <sup>51</sup> “. . . it is essential to liberty that the government in general should have a common interest  
28 *with the people. . . it is particularly essential that the branch of it under consideration should have*  
*an immediate dependence on, and an intimate sympathy with, the people.*” *Federalist 52*

1 266. It is not a reflection of the greater State. The Assembly is mostly made up of wealthy persons  
2 and lawyers. Ethnically, it represents some of the greater ethnic components of the populace, but  
3 numerous ethnicities are not and have never been represented. One of the largest and most notable  
4 segment easily includes American Indians who contribute sizeable portions of the State's revenue  
5 through taxes on Indian gaming.

6 267. So, the California Assembly cannot be seen as a cross-section of the State. Numerous  
7 ethnicities are not represented and decreasing the size of the districts, thereby increasing the number  
8 of Representatives, will have the effect of allowing a greater diversity to be represented. More persons  
9 of different trades, statues and ethnic diversity will be included. It is simply impossible for eighty (80)  
10 such persons to represent a cross-section of a State as large and as populous as is California. Liberty  
11 was to exist due to the division of factions. Today, these factions unite all too easily.<sup>52</sup>

12 268. Plaintiff asserts this as a violation of Article I, §2 (Qualifications of Electors). The citizens  
13 of this State were intended to have access to this chamber of the Legislature. Each group has its own  
14 interest as part of the citizenry and the individual interests.

15 269. Robert Monagan, the former Speaker of the California Assembly noted that increasing the  
16 number of Representatives in the Assembly would:

17 *“ . . . decrease the number of Constituents per district. It will ease the pain of dealing*  
18 *with incumbents. It will offer better opportunities for Hispanics and Asians to be*  
19 *represented. It will make it possible to draw lines that will encompass fast growing*  
*areas of the state, without harshly impacting other areas that might lose*  
*representation.*

20 *It will make more districts, and all districts more competitive. It will encourage*  
21 *better candidates, some of whom will resemble the citizen representatives we used to*  
*have. That is what it's all about.” The Disappearance of Representative Government,*  
*Robert P. Monagan. Pg. 131.*

## 22 23 VIOLATIONS

24  
25  
26 <sup>52</sup> *“It must, therefore, divide, if it is not restrained by another faction; when that is the case,*  
27 *as soon as the other faction prevails, they divide, and so on; but when the three natural orders in*  
*society, the high, the middle, and the low, are all represented in the government, and . . . placed to*  
28 *watch each other, and restrain each other mutually by the laws, it is then only, that an emulation*  
*takes place for the public good, and divisions turn to the advantage of the nation.” The Founders’*  
*Constitution, Volume 1, Chapter 11, Document 10 (Statement of John Adams)*

1 270. Plaintiff asserts this as a violation of Article I, §2 (Qualifications of Electors). The citizens  
2 of this State were intended to have this branch of Government for their access. It is reasonable for this  
3 chamber to reasonably represent the diversity of the citizens of the State in its relative diversity.

4 271. This again is a violation of Article I, §2 (Representation and Taxes) and thereby Amendment  
5 V (a taking) and thus XIII, Amendment I, Amendment IV as it implies access to counsel through  
6 Amendment IX, Amendment XIV as a violation of Equal Protection and the basic unenumerated  
7 Political Rights as per Amendment IX which is that of a reasonable expectation that the body of  
8 Government directly representing the citizen reflect the diversity of the citizens.

9 272. This is a particular violation of the Voting Rights Act and 42 USC §1973 and Amendments  
10 XV, XIX and XXVI.<sup>53</sup>

11 273. The California Constitutional Convention of 1879 determined the Assembly's current size  
12 of eighty (80). It is reasonable to consider the non-augmentation may have taken the potential of giving  
13 Chinese citizens the right of representation. Thereby causing at least some of those who were deciding  
14 what the proper level of representation should be pause for increasing it. It is important to note that this  
15 convention bore large hatred of the Chinese laborers (*See Exhibit E-1*).

16 274. American Indians that live on reservations are sufficiently compact enough to have their own  
17 Representative if the representative districts were brought down to certain sizes with a corresponding  
18 increase of Representatives. They have a particular interest in this matter as they pay large sums in taxes  
19 through recent negotiations with the Governor, however, they have no Representative of their own.

20  
21 **PRAYER**

22 275. Plaintiff prays that Article 4 Section 2 of the California Constitution which states, "*The*  
23 *Assembly has a membership of 80 members . . .*" be enjoined and declared unconstitutional.

24  
25 <sup>53</sup> "*The principal difficulty lies, and the greatest care should be employed, in constituting*  
26 *this representative assembly. It should be in miniature an exact portrait of the people at large. It*  
27 *should think, feel, reason, and act like them. That it may be the interest of this assembly to do*  
28 *strict justice at all times, it should be an equal representation, or, in other words, equal interests*  
*among the people should have equal interests in it. Great care should be taken to effect this, and*  
*to prevent unfair, partial, and corrupt elections.*" John Adams, *Thoughts on Government*, April  
1776, *Papers* 4:86-93

1 276. Plaintiff prays that the number of Assembly Representatives be lawfully formed as per  
2 Plaintiff's benchmarks or as the members of the Governor or the Court deems necessary and proper  
3 which should include enough persons so the that the diversity of the State is properly reflected..  
4

5 **TENTH CAUSE OF ACTION**

6 **UNLAWFUL REPRESENTATIVE DILUTION ASSEMBLY**

7 **(USE OF ASSISTANTS)**

8 277. Plaintiff repeats, re-alleges and incorporates by reference the allegations in paragraphs 1-107  
9 along with the first through nine Counts and further alleges:

10 278. Plaintiff argues that not only is this unlawful merely on the face of it, but representation at  
11 this level, even with assistants acting as a form of "filler" can be termed loosely as a "farce and a sham"  
12 at best. Plaintiff believes that such levels of representation discourage voters from participating in the  
13 electoral process, leaves those elected unaccountable to the voter and those elected have no idea what  
14 the wants, needs or concerns of those they represent since they effectively cannot meet with them.

15 279. Plaintiff also argues that the addition and use of assistants in lieu of adding more members  
16 to the Assembly is invidious to the value his vote and the votes of others similarly situated. He argues  
17 that the citizen voter has a right to meet directly with their Representative, especially in the chamber  
18 that was intended for the common citizen, that is the Assembly.

19 280. Plaintiff asserts that assistants and deputies are proper, but only in limited manners of other  
20 legislative bodies such as the U.S. House, the U.S. Senate and the State Senate, in the Executive  
21 Branch at many levels and the Judiciary (Including State and Federal Judges, but not Justices of the  
22 Peace) for ancillary duties such as filing and clerking and so forth.

23 281. Plaintiff concedes that it is plausible that a limited number of staff members may be used for  
24 Committee assignments only, but not acting on the behalf of the Representative meeting the citizens.  
25 The voters were intended to be able to meet with those they represent and the voters were intended to  
26 be able to meet with their Representatives.

27 282. Plaintiff notes that with regard to his study on the various representative chambers, many  
28 of the duties granted to hired staff are often done by elected Representatives. The position of Sergeant

1 of Arms, was often an appointed position amongst the membership. In New Hampshire, the  
2 Representatives themselves often take notes for the Committees.

3 283. According to Robert Monagan, there were at least 3,000 assistants in the Assembly in 1990  
4 when he wrote his book, "The Disappearance of Representative Government" Pg. 90. It's likely more.

5 284. Monagan further went on to note that, "*Government has become so complex and the top*  
6 *leaders so daunted by its complexity that they have granted enormous powers to aids who labor in the*  
7 *shadows.*" (Ibid at page 91). This simply cannot continue.

### 8 9 VIOLATIONS

10 285. Plaintiff asserts this as a violation of Article I, §2 (Qualifications of Electors). The citizens  
11 of this State were intended to have access to "*the most numerous Branch of the State Legislature*"  
12 (Article I, §2 U.S. Constitution). The use of assistants by the Assembly to do many acts and duties  
13 which are expected to be done by the elected members is invidious to the electoral process. Such duties  
14 that may be completed by hired staff should be limited to some secretarial matters and research. They  
15 should not be in a position to be delegated tasks such as meeting with citizens or doing other duties of  
16 the Representative such as sitting on Committees or meeting with or dealing with problems of the  
17 constituents. That is what the citizens vote is for.

18 286. This again is a violation of Article I, §2 (Representation and Taxes) and thereby Amendment  
19 V (a taking) and thus XIII. Forcing citizens to meet with the assistants of the Representatives in lieu  
20 of the Representatives in the lower chamber is invidious to the right of representation and represents  
21 and unlawful delegation of the taxing authority under Article I, §2 as it is the duty of Representatives  
22 to grant taxes and not their assistants.<sup>54</sup>

23  
24 <sup>54</sup> "*Unless we are prepared to hold, that every subject of legislation can be transferred to a*  
25 *'State Board,' we cannot say, this matter of taxation can be thus delegated. If there is any right of*  
26 *the deprivation of which the people of this country have ever been jealous, it is the right to have*  
27 *the burden of taxation imposed by their own representatives. 'Taxation without representation'*  
28 *was the cause of complaint which, perhaps, more than any other evil, led to the separation of the*  
*American colonies from the mother country. It is no more objectionable to refuse to the people a*  
*representation in the body which fixes the amount of this burden than for their representatives to*  
*abandon their duty . . . [since the Legislature is] *immediately responsible to the people.*" Houghton*  
*v. Austin, 47 Cal. 646, 658*

1 287. It is further invidious to Amendment I, as the intended right is for the citizens to be able to  
2 meet with their Representatives, petition for redress of grievances if they needed. This did not mean  
3 the issue could be delegated to assistants.

4 288. This is also a violation of Amendment IV as it implies access to Counsel through  
5 Amendment IX, Amendment XIV as a violation of Equal Protection and the basic unenumerated  
6 Political Rights as per Amendment IX which is that of a reasonable expectation that the body of  
7 Government directly representing the citizen reflect the diversity of the citizens.

8 289. This is a particular violation of the Voting Rights Act and 42 USC §1973 and Amendments  
9 XV, XIX and XXVI.<sup>55</sup>

10 290. This is also a violation of Article I, §3 as it disallows the citizens to petition and direct our  
11 Representatives.

12 291. It is also a direct violation of Article 3, §3 and Amendment IX of the U.S. Constitution as  
13 effectively a violation of the Separation of Powers. Adding paid staff in lieu of more Representatives  
14 places the Legislature power in the hands of the Executive and invidiously diminishes the Legislature.

15  
16 **PRAYER**

17 292. Whereby the Plaintiff moves this court to permanently enjoin the Assembly from adding  
18 more assistants and shall determine what the proper number should be if any at all. This should be  
19 balanced with and against a proper augmentation of the Assembly as the complaint asserts.

20 293. Plaintiff prays that Article 4 Section 2 of the California Constitution which states, “*The*  
21 *Assembly has a membership of 80 members . . .*” be enjoined and declared unconstitutional.

22 294. Plaintiff prays that the number of Assembly Representatives be lawfully formed as per  
23 Plaintiff’s benchmarks or as the members of the Governor or the Court deems necessary and proper.

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25 \_\_\_\_\_  
26 <sup>55</sup> *“The principal difficulty lies, and the greatest care should be employed, in constituting*  
27 *this representative assembly. It should be in miniature an exact portrait of the people at large. It*  
28 *should think, feel, reason, and act like them. That it may be the interest of this assembly to do*  
*strict justice at all times, it should be an equal representation, or, **in other words, equal interests***  
***among the people should have equal interests in it.** Great care should be taken to effect this, and*  
*to prevent unfair, partial, and corrupt elections.” John Adams, Thoughts on Government, April*  
*1776, Papers 4:86-93*

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**ELEVENTH CAUSE OF ACTION**

**UNLAWFUL REPRESENTATIVE DILUTION ASSEMBLY**

**INEFFECTIVE PARTICIPATION IN THE LEGISLATIVE PROCESS**

295. Plaintiff repeats, re-alleges and incorporates by reference the allegations in paragraphs 1-107 along with the first through tenth Counts and further alleges:

296. The size of the districts and the fact that most legislative business is conducted by staff also invidiously devalues each citizen’s ability to participate reasonably in the legislative process.

297. Further, Plaintiff attempted to participate in the legislative process numerous times through petitioning the Legislature directly (*See Addendum I and all the petitions sent to the Assembly*). Of the greatest note was the suggestion to add Justices of the Peace to our State Judiciary. The Chief Justice of California’s Supreme Court noted that we needed more Judges. It seemed that the State is broke and has no capacity to hire more Judges. Justice George notes that the California Judiciary has one of the lowest number of Judges in proportion to the population. Justices of the Peace could deal with smaller cases and relieve those burdens on the State Judges. Justice of the Peace salaries are not \$180,000 a year. There was no answer to either petition (*See Addendum I, E-5 and E-6*).

**VIOLATIONS**

298. Plaintiff asserts this as a violation of Article I, §2 (Qualifications of Electors) and Amendment XIV as all citizens of this State were intended to have access to this branch of Government. This includes all aspects of the legislative process.<sup>56</sup>

299. This again is a violation of Article I, §2 (Representation and Taxes) and thereby Amendment V (a taking) and thus XIII, Amendment I, Amendment IV as it implies access to counsel through Amendment IX, Amendment XIV as a violation of Equal Protection and the basic unenumerated

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<sup>56</sup> “ . . . representative government is in essence self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes of his State's legislative bodies . . . Full and effective participation by all citizens in State government . . . the Constitution demands, no less.” *Reynolds v. Sims*, 377 U.S. 533, 565

1 Political Rights as per Amendment IX which is that of a reasonable expectation that the body of  
2 Government directly representing the citizen to be able to advance his or her interests.

3  
4 **PRAYER**

5 300. Plaintiff prays that Article 4 Section 2 of the California Constitution which states, “*The*  
6 *Assembly has a membership of 80 members . . .*” be enjoined and declared unconstitutional.

7 301. Plaintiff prays that the number of Assembly Representatives be lawfully formed as per  
8 Plaintiff’s benchmarks or as the members of the Governor or the Court deems necessary and proper.

9  
10 **TWELFTH CAUSE OF ACTION**

11 **UNLAWFUL REPRESENTATIVE DILUTION ASSEMBLY**

12 **(INCAPACITY TO PERFORM DUTIES)**

13 302. Plaintiff repeats, re-alleges and incorporates by reference the allegations in paragraphs 1-107  
14 along with the first through eleventh Counts and further alleges:

15 303. The duties of the members of the Assembly are so great they simply cannot be performed.

16 304. The duties of the Representatives in the California Assembly are as follows. Each item is  
17 hereby delineated without extensively going into each matter too in depth, but shall list them and fortify  
18 each as necessary. There may be no single matter of greater contention in this whole complaint than  
19 the Assembly’s inability to perform its duties with the mere eighty (80) members it has.

20 1. Meet with and discuss State matters with those represented which directly includes:

21 a. Directly giving information to and receiving it from all persons represented, b.  
22 Receiving petitions or hearing of matters of redress of grievances from constituents, c.  
23 Petitioning and Assembly with districts that have almost 500,000 persons.

24 2. Taxation; a. Taxation and Representation, b. Grievances and Taxation, c. Representation  
25 and Spending.

26 3. Participating in legislative sessions; a. Participating in general meetings of the Legislature,

27 b. Competently participating in the Subcommittees and overseeing such subject matters as the  
28 Representative is so assigned, c. working on legislation as is necessary for the State and

1 constituents, d. Research, e. Meet with Representatives  
2 4. Judging the actions of their Peers; a. Judging the elections thereof, b. Holding members of  
3 the Assembly accountable for ethical violations, c. Watching the State Senators.  
4 5. To act as a check upon other parts of the State Government; a. Check upon the Executive,  
5 b. Check upon the Judiciary, c. Watching over other State Officials and State Agencies  
6 6. Supervision of the State; a. Provide for common defense, b. Provide necessary infrastructure,  
7 c. Land Use and Zoning, d. Health and Safety, e. Monitoring of Elections, f. Policing Society  
8 7. Watching the Federal Government; a. Watching over the US House of Representatives, b.  
9 Taking information from the U.S. Senate

10 Sitting on their Committee subject matters. Apparently, there are sixty-five (65) standing  
11 Committees to which the eighty (80) members sit over. When the subject matters are broken  
12 out from the Committees and this in turn is added to the list of select Committees, we thus have  
13 a list of approximately two hundred fifty (250) Committee matters in total. Each of these issues  
14 is when taken into full context are simply enormous. Consider the matter of agriculture alone.

15 305. When taken into full view, we need see the duties of actual members we can see there is  
16 absolutely no way they can do their job.

17 306. Karen Bass, the Current Assembly Speaker prior to becoming the Assembly Speaker sat on  
18 twelve (12) Committees (*See Attachment G-1*). Under each of these boards are dozens of jurisdictional  
19 matters. Just the Business and Professions Committee alone has almost twenty (20) matters at hand.

20 307 When you look at the Committee for Business and Professions itself (*Addendum III, Exhibit*  
21 *C-2, Committee 7*), there are only nine (9) people and yet the matters it hears are so vast no nine (9)  
22 people, especially when they are on an average of five (5) or six (6) other Committees similar to this.

23 308. The Business and Professions jurisdictional oversight is impossible to oversee for such a  
24 small group of people. A sample of the vast array of matters this Committees oversee (*See Exhibit G-*  
25 *2*). Matters of oversight include Privacy Rights (for everyone) to overseeing Medical Fraud to  
26 regulating Oral Surgeons to Reforming Boards and Bureaus to overseeing Infectious Diseases to  
27 regulating the naturopathic doctors & podiatrists, licensing fiduciaries, reforming vocational education,  
28 regulating Construction and Funeral homes. They also oversee the regulation of Private Security

1 Guards, Notaries, Junk Faxes, Time Shares, Consumer Rebates and Debt Collectors. This is simply  
2 impossible!

3 309. They also supposedly mediate disputes between local Governments and their contractors  
4 which see impossible since as a researcher at Berkeley noted to me that there are 1081 city/town places  
5 in the State (*See Exhibit G-7*). So some will be tiny and others the size of San Diego or larger and thus  
6 have thousands of contractors if not more! Even if these matters are delegated to some Board or  
7 Commission of the State, who's watching them that is accountable to the voters? No one!

8 310. This Business and Professions also oversees (*See Exhibit G-2*) the sale of "Surplus property  
9 worth hundreds of millions of Dollars." retrofitting public buildings and private residences (how many  
10 buildings are in this State?) And creating penalties for public contractors who violate the law. Yet there  
11 are only nine (9) Representatives and what is worse, these Representatives are on several other  
12 Committees with numerous matters bundled into them as well.

13 311. Curren Price who sits on the Business and Professions Committee also sits on the Elections  
14 and Redistricting Committee, the Governmental Organization, Jobs and Economic Development,  
15 Utilities, Legislative Ethics, Select Committee of Procurement and the Census.

16 312. He is charged with overseeing (*See Addendum III, B-2, District 51 Committees*) Consumer  
17 Protection, Department of Consumer Affairs, Occupational Licensing Medical and Non-Medical as well  
18 as Private Post-Secondary and Vocational Education, Elimination and Creation of Regulatory Agencies,  
19 Administrative Procurement, Office of Administrative Law, State Procurement, State and Local  
20 Property Procurement, Efficiency Cost Control, Charitable Solicitations, Product Labeling, Weights  
21 and Measures, Accuracy in Product Pricing, Elections, Redistricting, Public Records (for all 1081  
22 places in this State), Natural Disasters, Tobacco Products, Procurement, Census, Business Advocacy  
23 in California and the US, California-Mexico Relations, California Oversees Trade, Expansion of New  
24 Technologies, Economic Disaster Relief, Economic Impact Reports, Balance of Trade issues,  
25 Enterprise Zones, Expansion of Oversees Markets, Foreign Investment in California as well as by  
26 Californians, Information Technology, Industrial Innovation & Research, International Trade, Interstate  
27 Commerce, and I shall shorten this as there are so many more including notably all the Utilities and  
28 Commerce matters, Cable, Tourism and he's Co-Chair of the Ethics Committee (*See Exhibit H-1*).

1 313. This is simply impossible for this person to sit on Committees that explore all of these  
2 matters. This is an absolute farce and a sham, especially when so many of these duties should have  
3 multiple persons who are accountable to our vote overseeing them. These matters cannot possibly be  
4 looked into. Our Assembly Representatives simply could not hold hearings to get an accurate sense of  
5 what the customs, trends or otherwise are in any of these matters. These issues should not be delegated  
6 to legislative assistants, although they would have to be since the members can't do these duties.

7 314. At this time, almost all of these matters get delegated to persons who are not accountable  
8 to the voters on the various unaccountable Boards and Commissions. Lois Wolk, who represents a  
9 district just outside of Sacramento was advocating about a year ago to add members to a board to  
10 oversee Assisted Living Facilities (*See Exhibit G-3*). Plaintiff is not sure if this measure passed, but  
11 it shows that in lieu of adding more Representatives, the members themselves seem incredibly prone  
12 to appointing more persons to oversee these matters for them and raising our taxes fund this oversight.

13 315. Plaintiff is disturbed by this as he has petitioned members of the Assembly about some of  
14 these delegations and does not hear back from them. So, since the members of the Assembly are not  
15 accountable at the ballot box (as noted above) and the persons they delegate are not answerable, this  
16 effectively makes the whole aspect of Government autocratic and unanswerable. In essence, arbitrary.<sup>57</sup>

17 316. If we add to this the fact that with larger districts, the members have greater rates of  
18 automatic re-election, then they are less likely to have the incentive to help any individual person who  
19 may have a grievance, particularly if it is substantive. The value of each persons vote is simply not  
20 substantive enough. It is only through gathering a large group or the involvement of the media that  
21 redress can get some achievement and not many people have access to this.

22 317. Another matter of concern is water as we are in a drought (*See Exhibit G-5*). Yet, when we  
23 look to the Assembly, we see that there are only three (3) persons on the Water, Parks and Wildlife  
24 Committee (*See Addendum II, C-1, Committee 29.*) And when we look at the oversight matters of  
25 the Committee itself (*See Exhibit G-4*) which shows the numerous Water Boards, we can reasonably

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27 <sup>57</sup>“Arbitrary Government is where a people have men set over them, without their choice or  
28 allowance; who have power to govern them, and judge their causes without a rule.” *John Winthrop,*  
*Governor of Massachusetts, Arbitrary government described 1644 American historical documents,*  
*1000-1904 [New York : P.F. Collier, c1910]. Harvard classics v. 43.*

1 conclude that three (3) persons cannot oversee all of these matters. Especially with all the other matters  
2 they are assigned to oversee. Just the fact that this Committee in question also oversees as well as  
3 “Parks” and “Wildlife” is of some concern. On top of this however is the fact that Lois Wolk also sits  
4 on numerous other Committees that have sizeable oversight (*See Addendum III, B-2, District 8*  
5 *Committees*) which include the Banking Committee (*See Addendum III, C-1, Committee 5*) which  
6 oversees all the banks that do business in California and only has eleven (11) other Assembly members  
7 on it. She is also on the Budget Committee (*See Addendum III, C-1, Committee 6*), which has a  
8 healthy membership of twenty-six (26), but from what the paper reports, the State is currently \$15  
9 billion in debt (*See Exhibits F-1, 2,4 &5*), so the size of this Committee has not seemed to help its  
10 performance. She also has a position on the Natural Resources Committee (*See Addendum III, C-1,*  
11 *Committee 21*) which has nine (9) members, which is above average. It oversees Air Quality, Energy  
12 research, Recycling, Oil Spills, all State Rivers, Forestry, Ag lands and open space conservation.

13 318. It is reasonable to suggest that she simply cannot effectively oversee these matters at all. Its  
14 not just her, its all persons in the Assembly who are overloaded with Committee work. This cannot  
15 allow them to do these duties as well as meet with their constituents and run for office.

16 319. Other matters of concern is Solid Waste (*See Exhibit G-6*) as this grows by the ton each  
17 year and numerous facilities have leakage. How much of this ends up in our Water? How much of it  
18 are we drinking? What are the other effects of this?

19 320. Another Committee that is of some concern is the Perchlorate Sub-Committee. It only has  
20 one (1) person on it (*See Exhibit G-8*). This is in our water and our vote only buys us one person to  
21 oversee this matter which seems to effect half of the people in the State.

22 321. In this paperwork is information on this topic, it shows that there was dumping in the  
23 proximity of this courthouse within five (5) years, so I am not sure if I wish to drink from the water  
24 fountains in the Court lobby. It shows that with even the best filters, its hard to get out. It shows that  
25 there is now a Government agency to clean up the water. Who is overseeing them?

26 322. Plaintiff has included the current New Hampshire Committee System for 2007-2008 (*See*  
27 *Addendum III, Exhibit D*) as it shows that the four hundred (400) members are well distributed among  
28 numerous Committees that have in many cases fifteen (15) members or more and most of the members

1 of the New Hampshire House only sit on one (1) or two (2) Committees. They have capacity to oversee  
2 their matters they are charged to oversee and they have the ability to meet with those they represent.  
3 They even have the ability to meet with people they do not represent (such as me!)

4 323. As one (1) member noted to me in an email (*See Exhibit C-1*) that their budget is positive,  
5 especially when most States are well in debt.

## 6 7 VIOLATIONS

8 This entire circumstance amounts to a violation of Article I, §2 (as noted many times above),  
9 Amendment I which includes Speech, Assembly and Petition, Amendment IV through the IXth (as  
10 noted many times above). This amounts to a taking (Amendment V) as our taxes end up being gobbled  
11 up to pay for the bottomless pit and the leviathan swallows it whole only to demand more. It violates  
12 numerous unenumerated political rights as per Amendment IX. It amounts to an abridgement of  
13 Amendments X & XI as the members are so few, the Federal Government has to encroach on State  
14 matters to support the U.S. Constitution. This is slavery in a pure form as per Amendment XIII §1.  
15 Since some people benefit from this system and have access to our Representative, this violates  
16 Amendment XIV §1.<sup>58</sup>

17 324. This also amounts to a violation of the Commerce Clause and Dormant Commerce claims  
18 as these matters relate to commerce and there is clearly no ability by the Legislature to regulate these  
19 matters. Further, it can be reasonably questioned as to whether some of the actions if not many of the  
20 actions taken by the State are harmful to the citizens of this State and perhaps others.

21 325. This is a form of a failure to train<sup>59</sup> and properly supervise<sup>60</sup> the State and the institutions that  
22 are in it and operate by the financing of the tax-payers. And further asserts that this may be due to an

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24 <sup>58</sup> “Where would we really find the principal danger to civil liberty in a republic? Not in  
25 the governors as governors, not in the governed as governed, but in the governed unequipped to  
function as governors.” *Adderley v. Florida*, 385 U.S. 39, 49 (1966)

26 <sup>59</sup> “[A] failure to supervise gives rise to 1983 liability, however, only in those situations  
27 where there is a history of widespread abuse [As here]. Only then may knowledge be imputed to  
the supervisory personnel.” *Wellington v. Daniels*, 717 F.2d 932, 936 (CA4 1983)

28 <sup>60</sup> “. . . inadequate training is actionable,” *Oklahoma City v. Tuttle*, 471 U.S. 808, 816

1 incapacity to train and oversee or fundamentally, the action may sit solely with oversight.

2 326. Citizens have a right to have effective representation as per Amendment IX.

3  
4 **PRAYER**

5 327. Plaintiff prays that Article 4 Section 2 of the California Constitution which states, “*The*  
6 *Assembly has a membership of 80 members . . .*” be enjoined and declared unconstitutional.

7 328. Plaintiff prays that the number of Assembly Representatives be lawfully formed as per  
8 Plaintiff’s benchmarks or as the members of the Governor or the Court deems necessary and proper.

9 329. Plaintiff further prays that the increase in the number of assistants be enjoined as well.

10  
11 **THIRTEENTH CAUSE OF ACTION**

12 (VIOLATIONS OF PETITION CLAUSE)

13 330. Plaintiff repeats, re-alleges and incorporates by reference the allegations in paragraphs 1-107  
14 along with the first through twelfth (12) Counts and further alleges:

15 331. Between the dates of May 24, 2007 and September 1, 2008, Plaintiff sent about twenty-three  
16 (23) petitions to the California Assembly, staff members thereof, the State Senate, the Governor, the  
17 Attorney General and the Secretary of State. Only one (1) was answered and oddly enough, by an  
18 unelected Representative in the State Senate (*See Exhibit A-6*). However, even that was dropped.

19 332. The power to petition one’s Government for redress of grievances, is one of the oldest and  
20 most important rights in America.<sup>61</sup>

21 333. The inability to Petition the King and Parliament was one of the grievances most noted in  
22 the Stamp Act and then the Declaration of Independence. The citizens in America who considered  
23 themselves British subjects and as such felt they had the same rights of British Subjects, were upset with  
24 the harsh taxes that were imposed on them and they had no access to Parliament which imposed them.

25  
26 <sup>61</sup> “*The right of the people peaceably to assemble for the purpose of petitioning Congress*  
27 *for a redress of grievances, or for any thing else connected with the powers or the duties of the*  
28 *national government, is an attribute of national citizenship, and, as such, under the protection of,*  
*and guaranteed by, the United States. The very idea of a government, republican in form, implies*  
*a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and*  
*to petition for a redress of grievances.”* *US v. Cruikshank*, 92 U.S. 542, 552 (1875)

1 334. This right of petitioning one's Legislature was known well by the Founders of this country  
2 in their State Legislatures as citizens and non-citizens alike had a definitive and affirmative right to  
3 petition and each person who petitioned had a right to a response.

4 *"In Colonial America, the right of citizens to petition their assemblies was an*  
5 *affirmative, remedial right which required governmental hearing and response.*  
6 *Because each petition commanded legislative consideration, citizens, in large part*  
7 *controlled legislative agendas."* A Short History of the Right to Petition Government  
8 for Redress of Grievances, Yale Law Journal, Vol. 96, No. 1 (Nov.1986) Pg 142 to 166

9 335. This article notes that this practice ended with the Civil War and the numerous persons  
10 petitioning to end Slavery flooded Congress, which soon determined it did not need to answer them.

11 *"This Original theory and practice of petitioning foundered when abolitionists flooded*  
12 *Congress with petitions during the debates over slavery. As a result, the right of*  
13 *petition was collapsed into the right of Free Speech and expression—a definitional*  
14 *narrowing which persists to this day."* A Short History of the Right to Petition  
15 Government for Redress of Grievances, Yale Law Journal, Vol. 96, No. 1 (Nov.1986)  
16 Pg 142 to 166

17 336. This powerful article went on to demonstrate how colonial Assemblies encouraged petitions  
18 as this is what enhanced their powers. The lower chambers were the chambers of the citizens of the  
19 state, the upper chambers were positions that were granted by the Crown. This is the origin of bi  
20 Cameralism in America which is decidedly different than its origin in England. Simon de Monfordt  
21 called Parliament and invited the commoners so that he could stop the wars of the English King.

22 337. The American colonial Legislatures encouraged petitions and they in turn would use these  
23 petitions to establish laws for the Common good.

24 *"The Young assemblies struggling for domestic authority, were especially attentive to*  
25 *citizens grievances and recognized that responsiveness to petitions was a way of*  
26 *extending their jurisdiction."* (Ibid at page 145).

27 338. The power of these chambers depended on the fairness of their proceedings. If one of the  
28 parties who petitioned the Legislature felt slighted, they did have the odious option to petition the King  
or Parliament, which the Legislatures worked hard to keep from happening.

*"The jurisdictional growth of assemblies through the receipt and disposition of*  
*petitions was a complex process, forcing the legislatures to be sensitive to competing*  
*interests. Petitions for privileges and dispensations, such as fishery rights, land grants*  
*or town boundaries, indeed petitions on most controversial issues involved a series of*  
*communications. (Ibid at 151)*

339. During the Colonial period and even after the Revolutionary War, the Legislatures were fluid

1 as members were elected and ousted and a high turn-over rate of seats and offices was common (*See*  
2 *Addendum II, B-5*). Few parties were able to dominate the electoral process or the entire chamber as  
3 they do today. Consequently, the elections of their members were decided by the legislatures  
4 themselves, whereas these days the Courts tend to make all decisions when it comes to elections and  
5 there seems to be more and more elections challenged and the fairness is always being harped on.

6 340. It is also important to note that the size of the legislative districts had a lot to do with this.  
7 Though Higginson noted that it was the issue of Slavery and the Civil War and all the petitions that the  
8 Legislatures received that ended this practice. The greater fault may easily be laid with the fact that the  
9 number of representatives had never really ever increased.

10 *“Fundamentally, the right of petition lacked a secure foundation in the national*  
11 *legislature. Its roots in local assemblies vested with investigatory duties disappeared.*  
12 *The close geographical association between petitioners and colonial legislatures was*  
13 *lost.”(Ibid at 157)*

14 341. In fact, for the most part, Legislatures of all States have remained very stagnant in size (*See*  
15 *Addendum II, B-3*). There are exceptions such as New Hampshire which has 400 lower chamber reps  
16 today (though it is not growing) and Massachusetts which had a Representative chamber that had 749  
17 Members in 1812 (*See Addendum II, B-3*). Representation in Legislative bodies just does not increase.

18 342. The Legislative chambers of the Colonies and the Original States after the revolutionary War  
19 had close representation (*See Addendum II, B-4*). There is little doubt that the close circumstances that  
20 the representatives in those lower chambers and the common citizen had were why. It’s also why  
21 Plaintiff can send a petition to New Hampshire and its small districted representatives and get answers  
22 from them and not his own legislature. (*See Exhibits C-1 to C-6*).<sup>62</sup>

23 343. The Colonial chambers and their small districts could redress abridged liberties.

24 *“Aggrieved persons could reformulate causes of action for judicial redress into*  
25 *grievances of abridged liberties in order to secure legislative relief.”(Ibid at 145)*

26 344. It is important to note that, in the colonial days, the unrepresented had Legislative access.

27 *“Not only the enfranchised population, but also unrepresented groups—notably women,*

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28 <sup>62</sup> *“A representative assembly, elected by [the citizens], is the only way in which they can*  
*act in concert; but they have always allowed themselves to be cheated by false, imperfect, partial,*  
*and inadequate representations of themselves, and have never had their full and proper share of*  
*power in a state.”The Founders’ Constitution, Volume 1, Chapter 4, Document 10 (John Adams)*

1 *felons, Indians, and in some cases, slaves – represented themselves and voiced*  
2 *grievances through petitions.”(Id at 153)*

3 345. The members of the colonies were jealous of their right to petition and to have their petitions  
4 heard for if they were not, such amounted to arbitrary and capricious action.

5 *“If communication to ones representative could be arbitrarily ignored, refused or*  
6 *punished as intrusions on legislative freedom, popular sovereignty was threatened . .*  
7 *. Undue assertion of Parliamentary Privilege–punishing petitioners who were said to*  
8 *menace the dignity of the assembly – jeopardized the entire institution of*  
9 *petitioning.”(Ibid at 149)*

10 346. The person responsible for ending petitioning, or rather, the right to petition and have the  
11 petition heard was John Calhoun and again this was over the issue of Slavery. He asserted the right of  
12 the legislature to determine its own rules for proceeding as a trump over the right to have a petition  
13 heard. However, this smacks of Slavery and this is what Calhoun was fighting for!

14 *“Championing the slave-holding states in the Senate, John Calhoun viewed the*  
15 *requirement of consideration as a grave menace and a fundamental violation of each*  
16 *houses constitutional right to determine the rules of its proceedings.” (Ibid at 159)*

17 347. John Quincy Adams felt that petition was a matter of fundamental importance. He believed:

18 *“Congress had to protect the citizenry’s two constitutional means of approaching the*  
19 *government: periodic election and continual instruction through petitioning.*  
20 *Defending the right of every person to petition Congress, whatever the motive, Adams*  
21 *declared that each petition was entitled to a hearing on its merits.”(Ibid. At 162).*

22 348. Even representatives these days cannot advance their own views or the views of their  
23 Constituents in some instances. This is truly a warped system. (*See Exhibit H-2*)

24 349. Blackstone notes in his Commentaries Bk 1 Ch 1, The Absolute Rights of Individuals, in  
25 which he notes that people have the right to the common Courts of Justice, “. . . *but that the same*  
26 *ought to be tried and determined in the ordinary courts of justice, and by course of law.”*

27 350. He further notes that if he couldn’t get redress here, the next course was to petition  
28 Parliament or the King: *“If there should happen any uncommon injury, or infringement of the rights,*  
*which the ordinary course of law is too defective to reach, there still remains a fourth subordinate*  
*right appertaining to every individual, namely, the right of petitioning the king, or either house of*  
*parliament, for the redress of grievances.”*

351. If he was unable to garner redress in these forums, then last resort is to protect one’s self.

1 “The fifth and last auxiliary right of the subject, that I shall at present mention, is that of having arms  
2 for their defense, suitable to their condition and degree, and such as are allowed by law. Which is also  
3 declared by the same statute I W. & M. st.2. c. 2. and is indeed a public allowance, under due  
4 restrictions, of the natural right of resistance and self-preservation, when the sanctions of society and  
5 laws are found insufficient to restrain the violence of oppression.”

6 352. I have petitioned the Assembly, the Senate and Executive. I have not even begun to petition  
7 for the things I am most damaged by and I have no ability to hear back. So, I bring this to the attention  
8 of this Court as I have diligently worked at this. I ask openly, do I have to protect myself now?<sup>63</sup>

### 10 VIOLATIONS

11 353. Plaintiff asserts this as a violation of Article I, §2 (Qualifications of Electors) and  
12 Amendment XIV as all citizens of this State were intended to have access to this branch of  
13 Government. This includes all aspects of the Legislative process.<sup>64</sup>

14 354. This again is a violation of Article I, §2 (Representation and Taxes) and thereby Amendment  
15 V (a taking) and thus XIII, Amendment IV as it implies access to counsel through Amendment IX,  
16 Amendment XIV as a violation of Equal Protection and the basic unenumerated political rights as per  
17 Amendment IX which is that of a reasonable expectation that the body of Government directly  
18 representing the citizen to be able to advance his or her interests.

19 355. This is a clear violation of Amendment I, the original intent of the petition clause was clearly  
20 to be that there was a right for each citizen to have such petitions be heard. Today, we seem to only  
21 be able to recognize the right to vote. Voting is a pre-election right, petitioning is post election. In

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22 <sup>63</sup> “Conventional methods of petitioning may be, and often have been, shut off to large  
23 groups of our citizens. Legislators may turn deaf ears; formal complaints may be routed endlessly  
24 through a bureaucratic maze; courts may let the wheels of justice grind very slowly. Those who do  
25 not control television and radio, those who cannot afford to advertise in newspapers or circulate  
elaborate pamphlets may have only a more limited type of access to public officials.” *Adderley v.*  
*Florida*, 385 U.S. 39, 50-51 (1966)

26 <sup>64</sup> “. . . representative government is in essence self-government through the medium of  
27 elected representatives of the people, and each and every citizen has an inalienable right to full  
and effective participation in the political processes of his State's legislative bodies . . . Full and  
28 effective participation by all citizens in State government . . . the Constitution demands, no less.”  
*Reynolds v. Sims*, 377 U.S. 533, 565

1 essence, the value of both are gone today. We have no material part in the machinery of Government.  
2 And perhaps this is why the Country is in such shambles.

3 356. Everyone should have as fundamental a right to the petitioning process as they have a right  
4 to vote. District size and capacity is clearly the determining factor on access to the Representative  
5 chamber and the wealthy traditionally and almost always have access in one form or another. Although  
6 these days, it is truly questionable as to who if anyone has access.<sup>65</sup>

7 357. Perhaps a violation of 16.1 LMRA § 301—Duty of Fair Representation—Hybrid Claim.

8 358. This also seems to be a breach of corporate fiduciary duties as well as due care, negligence  
9 and bad faith and agency.

### 10 PRAYER

11 359. Plaintiff prays the Court to remand this action and all petitions to the Assembly and Joint  
12 Ethics Committees as well as the Doe Assistants, EJ and the Chief Clerk for them to make a  
13 determination as to what should happen.

14 360. If no action or substantive actions are taken by this committee with regards to each matter,  
15 Plaintiff moves that this Court remove such persons from office under the terms of forfeiture. I assert  
16 the English Common Law action of forfeiture and use California Civil Code §22.2 and Amendment IX  
17 (as a political right) to fortify such a claim.<sup>66</sup>

18 361. Plaintiff would also move a jury to determine proper damages as well since he has had to  
19 endure this ongoing deprivation of representation.

20  
21 \* \* \* \* \*

### 22 **IX. PRAYER**

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23  
24 <sup>65</sup> “A representative assembly, fairly constituted, and made an integral part of the sover-  
25 eignty, has power forever to control the rich and illustrious in another assembly,” *The Founders’*  
*Constitution, Volume 1, Chapter 4, Document 10 (John Adams)*

26 <sup>66</sup> Sir Edward Coke listed three grounds for forfeiture: 1. Abuse of Office, 2. Non-use of  
27 Office, and 3. Refusal to exercise an Office. *See Henry v. Barkley, (1596) 79 Eng. Rep. 1223, 1224*  
28 *(K.B.); see also R v. Bailiffs of Ipswich, (1706) 91 Eng. Rep. 378 (K.B.) (holding that the recorder*  
*of a corporation forfeits his office if he fails to attend corporate meetings); see 16 Charles Viner, a*  
*General Abridgement of Law and Equity 121 (London, 1793) (“If he does contrary to the duty of*  
*his office, as if he doth not do right to the parties, this misfeasance is forfeiture.”).*

1 Wherefore the plaintiff prays as follows:

2 **A. In General:**

3 1. As soon as practicably possible convene a three judges panel as required by 28 USC 2284(1) and  
4 set a hearing so that an order establishing California Assembly Legislative

5  
6 **B. Upon Formation of the Panel Render the Following Judgments:**

7 2. Grant Declarative Relief:

8 a. Permanently enjoining the use of the current districts were drawn to be intentionally non-  
9 competitive and that they must therefore be redrawn.

10 b. Permanently enjoining the Legislature's practice of drawing its own districts amounts to  
11 unlawful self-apportionment for '*quia aliquis non debet esse Judex in propria causa, imo iniquum est*  
12 *aliquem sui rei esse judicem*' as they may not judge their own properties. From this point forward such  
13 practice should be permanently enjoined and a new lawful practice should be used.

14 c. Permanently enjoining the custom of Adding staff members in lieu of more members with the  
15 advancement of the populace is invidious to the value of the citizens vote and shall therefore be  
16 enjoined for examination of propriety for it amounts to the violation '*delegata potestas non potest*  
17 *delegari,*' of the separation of powers and other civil rights of the Plaintiff and other persons similarly  
18 situated. Therefore enjoining this practice.

19 d. Permanently enjoining Article 4 Section 4a which states "the Assembly shall consist of 80  
20 members" is an outdated method of apportionment for there is no way to which they may do their  
21 expected duties, so it void '*ab impossibili*' and a method of devising the proper size must be determined  
22

23 3. Declare that a new basis for the formulation of the number of Assembly representatives must be  
24 established by either as outlined by the Plaintiff in his benchmarks or as the Court may deem as  
25 necessary and proper. I believe defendants Executive officers should have an opportunity to establish  
26 a remedy themselves if it is proper and found in reason. and/or

27 As the standards have been articulated by the plaintiff with regards to Benchmarks as presented to the  
28 court and potentially concurred to by the court with a Jury.

1 4. Grant Declarative Judgment that as appropriate there shall be times to which augmentations in the  
2 number of members of the California Assembly shall take place as the population does and has been  
3 increasing. This shall include an increase in the number of members as well as the number of districts.  
4 The plaintiffs assert that the consideration of augmentation be done at least once per decade during the  
5 census which is one very appropriate time, such an issue should and needs to be addressed.

6  
7 5. Appoint a Special Master or group of Special Masters to investigate the issues surrounding this case  
8 which shall include:

9 a. An analysis of the Constitutional duties of the members of Assembly and the number of  
10 members needed to fulfil those duties.

11 b. The committees that the members of the Assembly sit upon and determine what the demands  
12 are for each committee, which committees are perhaps un-necessary and the determine the total number  
13 of members needed to reasonably act as proper and able oversight on each of them. Also, an analysis  
14 into the matter of the number of Assistants which is appropriate to allow for the members of the  
15 Assembly. c. The delegation of legislative powers to the Executive branch including the various  
16 commissions that exist in state government.

17 d. The use of Staff members  
18

19 6. Staff Members

20 a. Temporarily (or Permanently) enjoin the hiring of new staff members for the Assembly until  
21 such time that a determination can be made (by this court either on its own or with a special masters  
22 advice) with regards to how many assistants the Assembly members should have and the duties such  
23 assistants may perform with regards to their position.

24 b. Further declare that there are too many assistants and staff members for our Assembly  
25 Representatives and the addition of such has invidiously affected my access and those persons similarly  
26 situated to the representatives we vote for as adding assistants in lieu of more members of the Assembly  
27 has begun to wear at proper and lawful representation and is therefore is Unconstitutional.

1 7. Other issues

2 a. Award Plaintiff his costs and reasonable fees and if possible attorney fees incurred in this action  
3 pursuant to 42 USC 1973(e) and 1988; and

4 b. Remand complaint against Assembly members to the Assembly/Joint Ethics Committee.

5 c. Remand Complaint against the Staffers to the Assembly/Joint Ethics Committee.

6 d. Permanently enjoin the use of Robo-pen.

7 e. Upon enhancement of the Assembly order the California Compensation Commission to meet  
8 and consider the salaries of the Assembly. Part of this consideration is their duties. More members  
9 means less duties.

10 f. Order that the Petitions Plaintiff sent be entered into the Assembly's Journal and that the  
11 Assembly form a Standing Petition Committee.

12 g. Order such other and further relief as the Court may deem just and proper.

13  
14 RESPECTFULLY SUBMITTED,

15  
16  
17 \_\_\_\_\_  
18 Michael C. Warnken

\_\_\_\_\_ Date

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28 **TABLE OF EXHIBITS AND ATTACHMENTS**

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**EXHIBIT**

**ATTACHMENT**

- A-1 PETITION SERVED ON THE ASSEMBLY MARCH 24<sup>th</sup> 2007
- A-2 ARTICLE SHOWING SERVICE ON THE GOVERNOR
- A-3 RECEIPT BY SECRETARY OF STATE
- A-4 FORM GIVEN BY ATTORNEY GENERAL UPON SERVICE
- A-5 SERVICE ON THE SENATE
- A-6 THE SOLE ANSWER FROM THE SECRETARY OF THE SENATE
  
- B-1 DOG REGISTERED TO VOTE
- B-2 MIX UP IN VOTER REGISTRATIONS
- B-3 LA TIMES ARTICLE ON ABUSE OF ABSENTEE VOTING
- B-4 PEDRO NAVAS WAR CHEST FOR REELECTION
  
- C-1 CAMPAIGN COSTS FOR NEW HAMPSHIRE HOUSE MEMBERS
- C-2 CORRESPONDENCE FROM NH HOUSE REP FOOSE
- C-3 CORRESPONDENCE FROM NH HOUSE REP SMITH
- C-4 CORRESPONDENCE FROM NH HOUSE REP WEYLER
- C-5 CORRESPONDENCE FROM NH HOUSE REP WEYLER
- C-6 CORRESPONDENCE FROM NH HOUSE REP MARPLE
  
- D-1 AFFIDAVIT FROM ROBERT BAKHAUS
- D-2 AFFIDAVIT OF SANTA BARBARA LIBERTARIAN PARTY
- D-3 FIRST ELECTORAL COLLEGE VOTE FOR PRESIDENT
- D-4 ELECTED THIRD PARTY MEMBERS FROM NCLS
  
- E-1 CONSTITUTIONAL CONVENTION 1878 (CHINESE REPRESENTATION)

1	E-2	CHRISTIAN ACCESS IN IRAQ LEGISLATURE
2	E-3	
3		
4	F-1	CALIFORNIA'S CASH CRISIS
5	F-2	CALIFORNIA LOAN
6	F-3	CALIFORNIA'S TAX CODE
7	F-4	RED INK STATES
8	F-5	BUDGET DELAYS
9		
10	G-1	KAREN BASS' COMMITTEES
11	G-2	BUSINESS AND PROFESSIONS JURISDICTION
12	G-3	ASSEMBLY DELEGATION OF POWER
13	G-4	WATER BOARDS IN CALIFORNIA
14	G-5	DROUGHT IN CALIFORNIA
15	G-6	SOLID WASTE IN CALIFORNIA 1990 to 2003
16	G-7	LOCAL GOVERNMENTS
17	G-8	PERCHLORATE ISSUES
18		
19	H-1	ETHICS COMMITTEE
20	H-2	DEMOCRAT TOSSED ON BUDGET VOTE
21	H-3	NUNEZ QUESTIONABLE CONDUCT
22	H-4	ASSEMBLY DO NOT CONTACT US LIST
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