

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ARNOLD DAVIS, on behalf of himself
and all others similarly situated,
Plaintiff-Appellant,

No. 13-15199

D.C. No.
1:11-cv-00035

v.

GUAM; GUAM ELECTION
COMMISSION; ALICE M. TAIJERON;
MARTHA C. RUTH; JOSEPH F. MESA;
JOHNNY P. TAITANO; JOSHUA F.
RENORIO; DONALD I. WEAKLEY;
LEONARDO M. RAPADAS,
Defendants-Appellees.

OPINION

Appeal from the United States District Court
for the District of Guam
Frances Tydingco-Gatewood, Chief District Judge,
Presiding

Argued and Submitted
August 27, 2014—Hagatna, Guam

Filed May 8, 2015

Before: Mary M. Schroeder, Alex Kozinski, and
N. Randy Smith, Circuit Judges.

Opinion by Judge Kozinski;
Dissent by Judge N.R. Smith

SUMMARY*

Civil Rights

The panel affirmed in part and reversed in part the district court's dismissal, on standing and ripeness grounds, of an action brought by a resident of Guam who is not eligible to vote in a plebiscite concerning Guam's future political relationship with the United States because he is not a Native Inhabitant.

Plaintiff alleged that Guam's Native Inhabitant classification is an unlawful proxy for race. Plaintiff sought a declaration that limiting registration to Native Inhabitants is unlawful, and an injunction against using any registry other than Guam's general voter registry in determining who is eligible to register for, and vote in, the plebiscite.

The panel held that plaintiff's challenge to Guam's registration restriction asserted a judicially cognizable injury that would be prevented or redressed if the district court were to grant his requested relief. Plaintiff therefore had Article III standing to pursue his challenge to Guam's alleged race-based registration classification. The panel further held that the claim was ripe because plaintiff alleged he was currently subjected to unlawful unequal treatment in the ongoing registration process.

The panel held that because plaintiff did not argue on appeal that the district court erred by dismissing his claim

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

against Leonardo Rapadas, the Attorney General of Guam, any claim of error was waived.

Dissenting, Judge N.R. Smith stated that given the speculative and remote course of events that stood between plaintiff and his contemplated injury, the matter was not ripe for adjudication, and the district court correctly dismissed plaintiff's complaint.

COUNSEL

Douglas R. Cox, Scott P. Martin (argued) and Marisa C. Maleck, Gibson, Dunn & Crutcher LLP, Washington, D.C., Michael E. Rosman, Center for Individual Rights, Washington, D.C., Mun Su Park, Law Offices of Park and Associates, Tamuning, Guam and J. Christian Adams, Election Law Center, PLLC, Alexandria, Virginia for Plaintiff-Appellant.

Leonardo M. Rapadas, Attorney General, and Robert M. Weinberg, Assistant Attorney General (argued), Office of the Attorney General of Guam, Tamuning, Guam for Defendants-Appellees.

Meriem L. Hubbard, Joshua P. Thompson and Jonathan Wood, Pacific Legal Foundation, Sacramento, California for Amicus Curiae Pacific Legal Foundation.

Julian Aguon, Law Office of Julian Aguon, Hagatna, Guam for Amicus Curiae Anne Perez Hattori.

OPINION

KOZINSKI, Circuit Judge:

Pursuant to a law passed by the Guam legislature, eligible “Native Inhabitants of Guam” may register to vote in a plebiscite concerning Guam’s future political relationship with the United States. Guam will conduct the plebiscite if and when 70 percent of eligible Native Inhabitants register. Plaintiff Arnold Davis is a Guam resident who isn’t eligible to register because he is not a Native Inhabitant. He alleges that Guam’s Native Inhabitant classification is an unlawful proxy for race. At this stage, we must determine only whether Davis has standing to challenge the classification and whether his claims are ripe.

I. BACKGROUND

Guam law directs the territory’s Commission on Decolonization to “ascertain the intent of the Native Inhabitants of Guam as to their future political relationship with the United States of America.” 1 Guam Code Ann. § 2105. The same law also provides for a “Political Status Plebiscite.” *Id.* § 2110. The plebiscite would ask eligible Native Inhabitants to choose among three options: (1) “Independence,” (2) “Free Association with the United States of America” or (3) “Statehood.” *Id.* It would be conducted by Guam’s Election Commission on the same day as a general election. *Id.* The Commission on Decolonization would then be required to transmit the plebiscite’s results to the President, Congress and the United Nations as reflecting “the intent of the Native Inhabitants of Guam as to their future political relationship with the United States.” *Id.* § 2105.

Guam will hold the plebiscite if and when 70 percent of all eligible Native Inhabitants¹ register with the Guam Decolonization Registry. 1 Guam Code Ann. § 2110; 3 Guam Code Ann. §§ 21000, 21003. Native Inhabitants aren't required to register, although some will be registered automatically unless they submit a written request not to be registered. 3 Guam Code Ann. § 21002.1. Guam reports that the 70 percent threshold isn't close to being met. Thus, Guam hasn't set a date for the plebiscite and perhaps never will.

Davis tried to register with the Decolonization Registry, but the application was rejected because Davis isn't a Native Inhabitant. Davis agrees he's not a Native Inhabitant but claims that the Native Inhabitant classification violates the Fifth, Fourteenth and Fifteenth Amendments, as well as the Voting Rights Act and the Guam Organic Act² because it is

¹ Guam law defines "Native Inhabitants" as persons who became U.S. citizens by virtue of the Guam Organic Act of 1950 and their descendants. 1 Guam Code Ann. § 2102. The Organic Act granted citizenship to three classes of persons: (1) Spanish subjects who inhabited Guam on April 11, 1899, when Spain ceded Guam to the United States in the Treaty of Paris (and their children); (2) persons who were born on Guam and resided there on April 11, 1899 (and their children); and (3) persons born on Guam on or after April 11, 1899, when Guam was subject to U.S. jurisdiction. *See* Organic Act of Guam, Pub. L. No. 630, 64 Stat. 384, 384 (Aug. 1, 1950).

² The Organic Act extends the rights afforded by several constitutional provisions to Guam, including the Fifth Amendment, the Equal Protection Clause of the Fourteenth Amendment and the Fifteenth Amendment. 48 U.S.C. § 1421b(u); *Guam v. Guerrero*, 290 F.3d 1210, 1214–15 (9th Cir. 2002). The Organic Act also contains its own anti-discrimination provisions. *See, e.g.*, 48 U.S.C. § 1421b(n). The Voting Rights Act applies to Guam, a U.S. territory. 52 U.S.C. § 10101(a)(1) (formerly 42 U.S.C. § 1971(a)(1)).

a “proxy for race.” Davis seeks a declaration that limiting registration to Native Inhabitants is unlawful, and an injunction against using any registry other than Guam’s general voter registry in determining who’s eligible to register for, and vote in, the plebiscite.

The district court held that Davis lacks standing and his claims are unripe. According to the district court, Davis hasn’t been injured because “there is no discernible future election in sight.” “To suffer a real discernible injury,” the district court held, Guam’s restriction on voter registration to Native Inhabitants “would have to be, by necessity, related to an election that is actually scheduled.” We have jurisdiction pursuant to 28 U.S.C. § 1291 and review de novo. *Bova v. City of Medford*, 564 F.3d 1093, 1095 (9th Cir. 2009).

II. STANDING AND RIPENESS

To “satisfy the standing requirements imposed by the ‘case’ or ‘controversy’ provision of Article III,” Davis must show that he has suffered, or will imminently suffer, a “concrete and particularized” injury to a “judicially cognizable interest.” *Bennett v. Spear*, 520 U.S. 154, 167 (1997); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). That injury must be “fairly traceable to the challenged action of the defendant[s],” and it must appear likely that the injury would be prevented or redressed by a favorable decision. *Bennett*, 520 U.S. at 167; *see also Allen v. Wright*, 468 U.S. 737, 751 (1984). When determining Article III standing we “accept as true all material allegations of the complaint” and “construe the complaint in favor of the complaining party.” *Maya v. Centex Corp.*, 658 F.3d 1060, 1068 (9th Cir. 2011) (quoting *Warth v. Seldin*, 422 U.S. 490, 501 (1975)).

Guam law gives some of its voters the right to participate in a registration process that will determine whether a plebiscite will be held. Davis alleges that the law forbids him from participating on the basis of his race. Davis's allegation—that Guam law provides a benefit to a class of persons that it denies him—is “a type of personal injury [the Supreme Court has] long recognized as judicially cognizable.” *Heckler v. Mathews*, 465 U.S. 728, 738 (1984). The plaintiff in *Mathews* challenged a provision of the Social Security Act that required certain male workers (but not female workers) to make a showing of dependency as a condition for receiving full spousal benefits. *Id.* at 731–35. The statute, however, “prevent[ed] a court from redressing this inequality by increasing the benefits payable to” the male workers. *Id.* at 739. Thus, the lawsuit couldn't have resulted in any tangible benefit to Mathews. The Supreme Court nevertheless held that Mathews had standing to challenge the provision because he sought to vindicate the “right to equal treatment,” which isn't necessarily “coextensive with any substantive rights to the benefits denied the party discriminated against.” *Id.*; see also *Allen*, 468 U.S. at 762; 13A Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure* §§ 3531.4 at 215–16, 3531.6 at 454–56 (3d ed. 2008). We read *Mathews* as holding that equal treatment under law is a judicially cognizable interest that satisfies the case or controversy requirement of Article III, even if it brings no tangible benefit to the party asserting it. Guam's alleged denial of equal treatment to Davis is thus a judicially cognizable injury.

Guam concedes that its law excludes Davis from the registration process because he's not a Native Inhabitant. It argues, however, that the Native Inhabitant classification can't injure Davis because the plebiscite is “not self executing

and effects no change in political status, right, benefit or privilege for any individual.” But this contradicts *Mathews*, which held that unequal treatment is an injury even if curing the inequality has no tangible consequences. 465 U.S. at 739. Moreover, Guam understates the effect of any plebiscite that would be held if the registration threshold were triggered. After the plebiscite, the Commission on Decolonization would be required to transmit the results to the President, Congress and the United Nations, 1 Guam Code Ann. § 2105, thereby taking a public stance in favor of whatever outcome is favored by those voting in the plebiscite.³ If the plebiscite is held, this would make it more likely that Guam’s relationship to the United States would be altered to conform to that preferred outcome, rather than one of the other options presented in the plebiscite, or remaining a territory. This change will affect Davis, who doubtless has views as to whether a change is appropriate and, if so, what that change should be. Guam law thus does provide a tangible benefit to Native Inhabitants that Davis alleges he is unlawfully denied: the right to help determine whether a plebiscite is held. This is not unlike the right to participate in jury service, which may not be denied on a constitutionally unequal basis. See *Batson v. Kentucky*, 476 U.S. 79, 87 (1986) (citing *Carter v.*

³ The U.S. House of Representatives, for one, has indicated that it has open ears. In a 1998 resolution, it acknowledged the Commission on Decolonization and “reaffirm[ed] its commitment to the United States citizens of Guam for increased self-government, consistent with self-determination for the people of Guam.” H.R. Res. 494, 105th Cong., 144 Cong. Rec. 25922, 25922–23 (1998).

Jury Comm'n of Greene Cnty., 396 U.S. 320, 329–30 (1970)).⁴

Davis's challenge to the Native Inhabitant classification is also ripe because he alleges he's currently being denied equal treatment under Guam law. The registration process is ongoing and Guam must hold the plebiscite if 70 percent of eligible Native Inhabitants register. By being excluded from the registration process, Davis claims he is unlawfully denied a right currently enjoyed by others: to help determine whether a plebiscite will be held. The ripeness question thus "coincides squarely with standing's injury in fact prong." *Bova*, 564 F.3d at 1096 (quoting *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000) (en banc)); see also 13B *Federal Practice & Procedure* § 3531.12 at 163.

Guam maintains that its plebiscite law does not, in fact, violate Equal Protection, the Fifteenth Amendment or the Voting Rights Act. But we need not resolve these issues to determine whether Davis's claims satisfy the case or controversy requirement of Article III. These are merits questions, and standing doesn't "depend[] on the merits of the

⁴ Although *Batson* involved a criminal defendant's challenge to his conviction, the Court reiterated its holding in *Carter* that when a state "den[ies] a person participation in jury service on account of his race, the [s]tate unconstitutionally discriminate[s] against the excluded juror." *Batson*, 476 U.S. at 87; see also *Carter*, 396 U.S. at 329 ("People excluded from juries because of their race are as much aggrieved as those indicted and tried by juries chosen under a system of racial exclusion."). Whether participation in Guam's registration process is "deemed a right, a privilege, or a duty," Guam must "hew to federal constitutional criteria" when determining who is eligible to register. *Id.* at 330.

plaintiff's contention that particular conduct is illegal." *Warth*, 422 U.S. at 500.

CONCLUSION

Davis's challenge to Guam's registration restriction asserts a judicially cognizable injury that would be prevented or redressed if the district court were to grant his requested relief. Davis therefore has Article III standing to pursue his challenge to Guam's alleged race-based registration classification. The claim is ripe because Davis alleges he is currently subject to unlawful unequal treatment in the ongoing registration process. Therefore, we need not decide whether any of the other injuries Davis alleges follow from Guam's Native Inhabitant restriction would be sufficient to confer standing independently. In particular, we express no view as to whether the challenged law resulted in the type of "stigmatizing" harm that we've held may be a judicially cognizable injury in the Establishment Clause context. *See Catholic League v. City & Cnty. of S.F.*, 624 F.3d 1043, 1052–53 (9th Cir. 2010) (en banc). Nor do we decide whether an alleged violation of the Voting Rights Act is itself a judicially cognizable injury.

In the district court, Davis also sought to enjoin Leonardo Rapadas, the Attorney General of Guam, from enforcing a provision of Guam's criminal law that makes it a crime for a person who knows he's not a Native Inhabitant to register for the plebiscite. *See* 3 Guam Code Ann. § 21009. The district court held that Davis lacked standing to seek this injunction because he had not "shown that he is subject to a genuine threat of imminent prosecution." While Rapadas is still listed as a nominal defendant on appeal, Davis doesn't argue that the district court erred in dismissing this claim. Therefore,

any claim of error is waived. *See Wagner v. Cnty. of Maricopa*, 747 F.3d 1048, 1059 (9th Cir. 2013).

We decline Davis’s suggestion that we reach the merits of his claims in the event we find his claims to be justiciable. Instead we leave it to the district court to consider the merits of Davis’s non-waived claims in the first instance.

AFFIRMED in part, REVERSED in part, and REMANDED.

Appellees other than Rapadas shall pay costs on appeal. Rapadas shall recover his costs, if any, from Davis.

N.R. SMITH, Circuit Judge, dissenting:

The majority holds that federal courts have jurisdiction in this case based on precedent not applicable to its decision. For that reason, I must dissent.

Currently Guam is an unincorporated, organized territory of the United States.¹ Guam’s legislature found that the native inhabitants of Guam “have been subjected to incessant

¹ Guam became an “organized” territory after Congress enacted the Guam Organic Act in 1950, which granted the people of Guam United States citizenship and established institutions of local government. Guam is “unincorporated,” because not all provisions of the U.S. Constitution apply to the territory. DOI Dep’t of Insular Aff., Report on the State of the Islands (1997), <http://www.doi.gov/oia/reports/Chapter-4-Guam.cfm> (last visited Apr. 15, 2015).

control by external colonial powers” and have never been afforded the right to self-determination as to their political relationship with the United States. 1 Guam Code. Ann. § 2101. Therefore, in 2004, Guam’s legislature enacted 1 Guam Code. Ann. § 2110. It provides:

(a) The Guam Election Commission shall conduct a “Political Status Plebiscite”, at which the following question, which shall be printed in both English and Chamorro, shall be asked of the eligible voters:

In recognition of your right to self-determination, which of the following political status options do you favor? (Mark ONLY ONE):

1. Independence ()
2. Free Association with the United States of America ()
3. Statehood ().

Person eligible to vote shall include those persons designated as Native Inhabitants of Guam, as defined within this Chapter of the Guam Code Annotated, who are eighteen (18) years of age or older on the date of the “Political Status Plebiscite” and are registered voters on Guam.

The “Political Status Plebiscite” mandated in Subsection (a) of this Section shall be held on

a date of the General Election at which seventy percent (70%) of the eligible voters, pursuant to this Chapter, have been registered as determined by the Guam Election Commission.

From the plain language of the statute, it is apparent that (1) the Guam legislature wants to gather the opinion of the Native Inhabitants of Guam regarding political status options; (2) to gather that opinion, the legislature scheduled a future plebiscite (poll) asking for an indication of what political status option is favored by such Native Inhabitants; and (3) the poll will not occur unless seventy percent of the Native Inhabitants of Guam register to be polled.

It is a fundamental principle that federal courts are courts of limited jurisdiction, limited to deciding “cases” and “controversies.” U.S. Const. art. III, § 2. The Supreme Court has repeatedly insisted that a case or controversy does not exist, unless the plaintiff shows that “he has *sustained or is immediately in danger of sustaining* some direct injury as the result of the challenged official conduct.” *City of L.A. v. Lyons*, 461 U.S. 95, 102 (1983) (internal quotation marks omitted) (emphasis added). The Court admonished that the “injury or threat of injury must be *both real and immediate, not conjectural or hypothetical.*” *Id.* (internal quotation marks omitted) (emphasis added). “[R]ipeness is peculiarly a question of timing,” and ripeness is particularly at issue when a party seeks pre-enforcement review of a statute or regulation. *Thomas v. Anchorage Equal Rights Com’n*, 220 F.3d 1134, 1138 (9th Cir. 2000). A “claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Bova v. City of Medford*, 564 F.3d 1093, 1096 (9th Cir. 2009)

(quoting *Texas v. United States*, 523 U.S. 296, 300 (1998)). The Supreme Court has consistently held that the ripeness doctrine aims “to prevent the courts, through premature adjudication, from entangling themselves in abstract disagreements.” *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580 (1985) (internal quotation marks omitted). “Where a dispute hangs on future contingencies that may or may not occur, it may be too impermissibly speculative to present a justiciable controversy.” *In re Coleman*, 560 F.3d 1000, 1005 (9th Cir. 2009) (internal quotation marks and citations omitted).

The district court found Davis’s alleged injury was not ripe. “Although a district court’s determination of federal subject matter jurisdiction is reviewed de novo, the district court’s factual findings on jurisdictional issues must be accepted unless clearly erroneous.” *Stock W., Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989) (internal citations omitted). The district court conducted a hearing and then made certain factual findings as to the ripeness of Davis’s claim. The district court found that: (1) there is no date currently set for the plebiscite; (2) “there is no discernible future election in sight”; (3) there is no “real threat of the election occurring any time soon”; (4) there is “little likelihood that the plebiscite will be scheduled any time in the near future”; (5) Davis’s own statements actually support the conclusion that the “plebiscite is not likely to occur any time soon, or if at all”; (6) Davis had not “successfully argued [or] shown that he is presently threatened with or has already suffered any irreparable damage or injury because he cannot register for a plebiscite that is *more than likely not to occur*.” The district court concluded that “until the plebiscite [Davis] seeks to register for is “certainly impending,” that Davis had no claim.

The district court's factual findings are supported by the record. Davis does not challenge the findings as clearly erroneous. The majority does not hold the findings to be clearly erroneous. Applying the ripeness precedent to these findings, this controversy fails for ripeness. The inability to register for an opinion poll, that is not currently scheduled and unlikely to ever occur, is not a matter of "sufficient ripeness to establish a concrete case or controversy." *Thomas*, 473 U.S. at 579. Whether the plebiscite occurs is contingent on a series of events that have not yet occurred and may never occur. Thus, at this point, there is not a "realistic danger" that the plebiscite will occur. *Babbitt v. United Farm Workers Nat'l. Union*, 442 U.S. 289, 298 (1979). Our court's role is "neither to issue advisory opinions nor to declare rights in hypothetical cases, but to adjudicate live cases or controversies." *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000). Davis's allegations of future injury are too speculative to be "of sufficient immediacy and reality" to satisfy the constitutional requirement of ripeness. *See In re Coleman*, 560 F.3d at 1005.² Thus, the matter is not ripe and our court has no jurisdiction.

² The Sixth Circuit appears to be the only Circuit that has directly addressed the question of when an alleged deprivation of voting rights is ripe. The court found the Constitution protects an individual's "fundamental right to vote *not the right to register to vote.*" *Lawson v. Shelby Cnty.*, 211 F.3d 331, 336 (6th Cir. 2000) (emphasis added). Accordingly, the court found that the cause of action accrued on election day, "when [the plaintiffs] presented themselves at their polling station and were refused the right to vote," not when they were "notified that their registrations had been rejected" for refusing to provide social security numbers. *Id.* Unlike this case, the "vote" at issue in *Lawson* involved an actual election.

In its decision, the majority instead concludes that Davis has standing to challenge the plebiscite, not based on voting rights cases, but based on one's ability to seek Social Security benefits.³ In fact, the majority cites no precedent suggesting that forbidding Davis from registering for this plebiscite implicates the voting rights protected under the Constitution. The Fifteenth Amendment only applies to an "*election* in which public issues are *decided* or public officials *selected*." *Terry v. Adams*, 345 U.S. 461, 468 (1953) (emphasis added). Davis does not allege that he is being denied the right to register for an *election*. Davis does not allege the plebiscite will select "candidates for public or party office." See 52 U.S.C. § 10310(c). Davis does not allege the plebiscite will change Guam's Constitution. Davis does not allege the plebiscite will enact, amend, or repeal any statute. Despite the language in the majority's opinion to the contrary, Davis does not allege the plebiscite will change the rights of Guam's citizens or that the plebiscite itself will *change* or *decide* Guam's political status in relationship with the United States. Rather, the injury alleged by Davis is merely being denied the right to register to participate in an opinion poll that will likely never occur. Clearly, the inability to register

³ I note the majority also cites *Batson v. Kentucky*, 476 U.S. 79, 85–86 (1986) to support its position. Op. 8. However, in *Batson*, the United States Supreme Court held that a prosecutor's use of peremptory challenges based on race violates the Equal Protection Clause of the Fourteenth Amendment. *Batson*, 476 U.S. at 85–86. The Court's focus was protecting the defendant's *constitutional right to a trial by jury*. *Id.* The Court found that the jury must be "indifferently chosen to secure the *defendant's right* under the Fourteenth Amendment." *Id.* at 87 (internal quotation marks omitted) (emphasis added). It is difficult to understand how the majority extrapolated the holding in this case to its conclusion that Davis's right to register for the plebiscite "is not unlike the right to participate in jury service, which may not be denied on a constitutionally unequal basis." Op. 8.

for this opinion poll is not equivalent to being denied the right to register to vote in the type of vote contemplated and protected by the Constitution.

Even if prohibiting Davis from registering for the plebiscite were a violation of his voting rights, this case “involves too remote and abstract an inquiry for the proper exercise of the judicial function.” *Texas v. United States*, 523 U.S. 296, 300 (1998). The plebiscite is not currently scheduled and as the district court found, it is not likely to *ever occur!* The condition precedent to even scheduling the opinion poll is obtaining the registration of seventy percent of the eligible voters. Failing to satisfy this requirement (an event that even Davis describes as a “mirage”), the poll will not take place. Yet, amazingly, the majority finds these circumstances present a case ripe for resolution.

The majority mistakenly suggests that *Heckler v. Mathews*, 465 U.S. 728 (1984) would apply.⁴ However, in *Mathews*, there was no question that Social Security pension benefits *would be paid*. There was no uncertainty as to

⁴ The plaintiff in *Mathews* claimed that he was subjected to unequal treatment as to Social Security benefits “solely because of his gender.” *Mathews*, 465 U.S. at 738. Specifically, the plaintiff alleged that “as a nondependent man, he receiv[ed] fewer benefits than he would if he were a similarly situated woman.” *Id.* The Court focused on two factors when determining the plaintiff had standing (1) his injury was concrete as “there was no doubt about the direct causal relationship between the government’s alleged deprivation of appellee’s right to equal protection and the personal injury appellee has suffered—denial of Social Security benefits solely on the basis of his gender”; (2) that he was denied equal treatment solely because of gender (a protected class). *Id.* at 739–40 & n.9. The court concluded that the plaintiff’s standing did not depend on his ability to obtain increased Social Security benefits if he prevailed. *Id.* at 737.

application of the allegedly unconstitutional pension offset provision. Thus, there was no question the issue was ripe. Indeed, the Court was not asked to determine ripeness and the Court did not address ripeness. Rather, the issue before the Court was determining the plaintiff's standing. The Court was asked to answer the question of whether the plaintiff's standing was dependant on his ability to receive additional benefits if he prevailed. *See Mathews*, 465 U.S. at 735–38.

Thus, the majority's conclusion that this case is ripe is without precedent and ignores the district court's extensive factual findings as to ripeness. Can you imagine the hours the district court will now have to spend resolving Davis's many alleged claims, including claims of alleged unequal treatment under the Fourteenth Amendment, alleged stigmatizing harm under the Establishment Clause, alleged violations of the Voting Rights Act, even though this plebiscite will never occur?

Given the speculative and remote course of events that stands between Davis and his contemplated injury, this matter is not ripe for adjudication, and the district court correctly dismissed Davis's complaint.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; St. Paul, MN 55164-0526 (Attn: Jean Green, Senior Publications Coordinator);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

United States Court of Appeals for the Ninth Circuit

BILL OF COSTS

This form is available as a fillable version at:

<http://cdn.ca9.uscourts.gov/datastore/uploads/forms/Form%2010%20-%20Bill%20of%20Costs.pdf>.

Note: If you wish to file a bill of costs, it MUST be submitted on this form and filed, with the clerk, with proof of service, within 14 days of the date of entry of judgment, and in accordance with 9th Circuit Rule 39-1. A late bill of costs must be accompanied by a motion showing good cause. Please refer to FRAP 39, 28 U.S.C. § 1920, and 9th Circuit Rule 39-1 when preparing your bill of costs.

v. 9th Cir. No.

The Clerk is requested to tax the following costs against:

Cost Taxable under FRAP 39, 28 U.S.C. § 1920, 9th Cir. R. 39-1	REQUESTED <i>(Each Column Must Be Completed)</i>				ALLOWED <i>(To Be Completed by the Clerk)</i>				
	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	
Excerpt of Record	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	
Opening Brief	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	
Answering Brief	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	
Reply Brief	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	
Other**	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	
TOTAL:				\$ <input type="text"/>	TOTAL:				\$ <input type="text"/>

* *Costs per page:* May not exceed .10 or actual cost, whichever is less. 9th Circuit Rule 39-1.

** *Other:* Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to 9th Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

Attorneys' fees **cannot** be requested on this form.

Continue to next page

Form 10. Bill of Costs - Continued

I, , swear under penalty of perjury that the services for which costs are taxed were actually and necessarily performed, and that the requested costs were actually expended as listed.

Signature

("s/" plus attorney's name if submitted electronically)

Date

Name of Counsel:

Attorney for:

(To Be Completed by the Clerk)

Date

Costs are taxed in the amount of \$

Clerk of Court

By: , Deputy Clerk