

1 purposes. Id. at 3-4. Defendants oppose the motion on both the
2 merits and standing grounds, noting their commitment to not
3 enforce the statute against Plaintiff in this action or any
4 related cases. See Opp'n, ECF No. 22, at 1. Plaintiff replied.
5 See Reply, ECF No. 24.

6 For the reasons set forth below, this Court DENIES
7 Plaintiff's motion for preliminary injunction.¹

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9 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

10 Plaintiff's firearms, two handguns and two semi-automatic
11 rifles, were seized from his home after officers responded to a
12 suicide threat from Plaintiff's wife; the seizure occurred
13 pursuant to California Welfare and Institutions Code §§ 5150,
14 8102, and 8103. Mot. at 2. Shortly thereafter, Plaintiff filed
15 a complaint against Defendants and other state parties, alleging
16 that the seizure violated his Second Amendment rights. See
17 Compl., ECF No. 1. Several months later, Plaintiff filed the
18 operative first amended complaint ("FAC"), adding causes of
19 action challenging § 1021.11, which covers the fee-shifting
20 provisions in Senate Bill No. 1327. See FAC, ECF No. 16.
21 § 1021.11 permits state entities and officials charged with
22 enforcing laws that regulate or restrict firearms to collect
23 attorney's fees and costs from any person or entity who pursues
24 declaratory or injunctive relief against the enforcement of those
25 laws if the state is the prevailing party; the state may seek

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27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled
for November 15, 2022.

1 these costs and fees within three years of the date when the
2 dismissal or denial of relief became final on appellate review or
3 when the time for seeking appellate review expires. Cal. Civ.
4 Pro. Code § 1021.11.

5 A couple of weeks after filing the FAC, Plaintiff requested
6 by e-mail that Defendants waive enforcement of § 1021.11 against
7 Plaintiff and his counsel for all of Plaintiff's past, current,
8 and future litigation related to this case. Opp'n at 3.

9 Defendants replied that they would waive enforcement if Plaintiff
10 agreed to withdraw his claims for relief related to § 1021.11,
11 which Plaintiff rejected. Id. at 3-4. A couple of weeks later,
12 Plaintiff filed this motion for preliminary injunction seeking to
13 enjoin Defendants' enforcement of § 1021.11. Id. at 4. Shortly
14 thereafter, Defendants claim that they notified Plaintiff's
15 counsel that they would not enforce the statute against Plaintiff
16 in any litigation related to this action, regardless of whether
17 or not Plaintiff amended the FAC; Defendants reiterated this
18 commitment several days later in response to Plaintiff's
19 statement that he planned to continue with this motion for
20 preliminary injunction. Id. at 4-5. Plaintiff contends that
21 Defendants have stated that they do intend to proceed with
22 enforcement of § 1021.11 against Plaintiff unless Plaintiff
23 withdraws this motion. Mot. at 6. On October 20, 2022,
24 Defendants filed their opposition brief, arguing that
25 (1) Plaintiff lacks standing and (2) Plaintiff has alleged
26 insufficient facts to establish the requisite elements for a
27 preliminary injunction. See Opp'n. Plaintiff replied. See
28 Reply.

1 II. OPINION

2 A. Legal Standard

3 A defendant may move to dismiss for lack of subject matter
4 jurisdiction pursuant to Federal Rule of Civil Procedure
5 12(b)(1). Fed. R. Civ. P. 12(b)(1).

6 If a plaintiff lacks standing, then the Court lacks subject-
7 matter jurisdiction, and the case must be dismissed. See Maya v.
8 Centex Corp., 658 F.3d 1060, 1067 (9th Cir. 2011). Once a party
9 has moved to dismiss for lack of subject-matter jurisdiction
10 under Rule 12(b)(1), the opposing party bears the burden of
11 establishing the court's jurisdiction. See Kokkonen v. Guardian
12 Life Ins. Co. of Am., 511 U.S. 375, 377 (1994).

13 B. Analysis

14 1. Standing

15 Defendants claim that Plaintiff lacks standing because
16 Plaintiff faces no threat that Defendants will enforce § 1021.11
17 against him. Opp'n at 5. Defendants have committed to not seek
18 fees against Plaintiff in this case or any related matters, which
19 is what Plaintiff is seeking in the FAC. Id. Defendants claim
20 that their commitment to not enforcing the statute against
21 Plaintiff is unconditional and subject to judicial estoppel,
22 which eliminates the need for Plaintiff's injunction. Id. at 6.

23 Plaintiff responds that Defendants' stated commitment not to
24 enforce § 1012.11 against him is insufficient to negate standing.
25 Reply at 2. Plaintiff argues that Defendants' commitment is
26 illusory and does not bind the other defendants named in the FAC
27 nor does it protect other prospective challengers to SB No. 1327
28 and § 1012.11. Id. at 2-3, 10-11. Plaintiff then refers to the

1 Supreme Court's holding in New York State Rifle & Pistol Ass'n,
2 Inc. v. City of New York, New York, 206 L. Ed. 2d 798, 140 S. Ct.
3 1525, 1526 (2020) to support his contention that Defendants are
4 abusing their positions as state officials for political ends.
5 Id. at 3-4. Plaintiff claims that, regardless of Defendants'
6 stated commitment, he and other potential litigants have suffered
7 an injury-in-fact due to the chilling effect of the statute,
8 which deters legal challenges. Id. at 7-9. Plaintiff further
9 contends that an injury-in-fact has been established because the
10 statute nullifies 42 U.S.C. § 1988, a federal statutory right.
11 Id. at 10.

12 The Court finds that Plaintiff has failed to establish
13 standing. To have standing, a plaintiff must show that (1) the
14 plaintiff suffered an injury in fact, i.e., one that is
15 sufficiently "concrete and particularized" and "actual or
16 imminent, not conjectural or hypothetical," (2) the injury is
17 "fairly traceable" to the challenged conduct, and (3) the injury
18 is likely to be "redressed by a favorable decision. Lujan v.
19 Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). For the
20 second factor, a plaintiff must allege "a causal connection
21 between the injury and the conduct" at issue; it is insufficient
22 to connect the injury to the independent actions of a third
23 party. Id. at 560. When a plaintiff alleges a chilling of their
24 First Amendment rights as an injury in fact, the alleged chilling
25 cannot be based solely on a fear of future injury that is too
26 speculative to confer standing. Wright v. Serv. Emps. Int'l
27 Union Loc. 503, No. 20-35878, 2022 WL 4295626, at *5 (9th Cir.
28 Sept. 19, 2022). Further, a plaintiff cannot establish standing

1 through the "mere existence of a proscriptive statute nor a
2 generalized threat of prosecution." Thomas v. Anchorage Equal
3 Rts. Comm'n, 220 F.3d 1134, 1139 (9th Cir. 2000). To establish
4 third-party standing, a plaintiff must show that (1) the third-
5 party suffered an injury in fact, (2) the plaintiff and third
6 party have a close relationship, and (3) the third party faces an
7 obstacle that prevents them from pursuing their own claim.
8 Campbell v. Louisiana, 523 U.S. 392, 397 (1998).

9 In this case, Plaintiff has failed to establish that he
10 faces a concrete and particularized injury from the enforcement
11 of § 1012.11 against him. Defendants have stated in their
12 opposition brief that they do not intend to enforce the statute
13 against Plaintiff in the current action or any related action.
14 By assuming this position in a legal proceeding and maintaining
15 that position, Defendants will be subject to judicial estoppel,
16 absent a showing that: (1) Defendants' stated position is clearly
17 inconsistent with an earlier position; (2) Defendants have
18 succeeded in persuading a court to accept an earlier inconsistent
19 position; or (3) Defendants' inconsistent position will "derive
20 an unfair advantage or impose an unfair detriment on the opposing
21 party if not estopped." Bock v. Washington, 33 F.4th 1139, 1145
22 (9th Cir. 2022). Plaintiff has failed to make a showing of any
23 of these factors. In light of this failure, the Court finds that
24 Defendants are estopped from enforcing § 1021.11 against
25 Plaintiff in this action and related actions, and that Plaintiff
26 has failed to demonstrate an injury-in-fact on this ground.
27 Plaintiff's claim of a chilling effect must also fail because the
28 threat of future injury from the enforcement of the statute

1 against him is non-existent. Plaintiff's contention that
2 Defendants' commitment does not bind the other parties in the FAC
3 is immaterial because Plaintiff narrowed the scope of his
4 injunction to address only Defendants Newsom and Bonta; the
5 speculative, independent actions of third parties not named as
6 parties in this action are insufficient to establish the
7 requisite "causal connection between the injury and the conduct"
8 at issue. Lujan, 504 U.S. at 560. Plaintiff further fails to
9 establish any of the requisite elements for third-party standing
10 on behalf of other potential litigants. As for Plaintiff's
11 argument concerning the abrogation of 42 U.S.C. 1988, the Court
12 declines to consider it pursuant to Ninth Circuit precedent
13 against the consideration of new arguments or issues raised for
14 the first time in a reply brief. Brown v. Takeuchi Mfg. Co.
15 (U.S.), No. 221CV00392JAMDMC, 2022 WL 1204713, at *4 (E.D. Cal.
16 Apr. 22, 2022) (citing Cedano-Viera v. Ashcroft, 324 F.3d 1062,
17 1066 n.5 (9th Cir.2003)); see also State of Nev. v. Watkins, 914
18 F.2d 1545, 1560 (9th Cir.1990).

19 2. Remaining Issues

20 The Court does not reach the parties' remaining issues,
21 because the first issue of standing is dispositive.

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23 III. SANCTIONS

24 This Court issued its Order re Filing Requirements ("Filing
25 Order") on August 4, 2022. ECF No. 11-2. The Filing Order
26 limits reply memoranda to ten pages. Filing Order at 1. The
27 Filing Order also states that an attorney who exceeds the page
28 limit must pay monetary sanctions of \$50 per page. Id.

1 Plaintiff exceeded the Court's 10-page limit on reply memoranda
2 by four pages. See Reply. The Court therefore ORDERS
3 Plaintiff's counsel to pay \$200.00 to the Clerk for the Eastern
4 District of California no later than seven days from the date of
5 this Order.

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7 IV. ORDER

8 For the reasons set forth above, the Court DENIES
9 Plaintiff's motion for preliminary injunction.

10 IT IS SO ORDERED.

11 Dated: December 8, 2022

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14 JOHN A. MENDEZ
15 SENIOR UNITED STATES DISTRICT JUDGE
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