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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS COLT,

Petitioner,

No. CIV S-11-1742 EFB P

vs.

GARY SWARTHOUT,

Respondent.

ORDER

_____/

Petitioner is a state prisoner proceeding without counsel seeking a writ of habeas corpus. See 28 U.S.C. § 2254. Petitioner challenges the decision of the California Board of Parole Hearings to deny him parole at a 2009 parole consideration hearing. Pet. at 6.¹ He claims that the Board’s decision was unconstitutional because it denied parole for seven years pursuant to Marsy’s Law, in violation of the Ex Post Facto Clause. *Id.* at 11. On October 3, 2011, the court recommended petitioner’s writ of habeas corpus be dismissed because petitioner is already a member of a class action – *Gilman v. Fisher*, No. Civ. S-05-0830 LKK GGH – which addresses the same issues. Dckt. No. 7 at 2, 5. Currently before the court is petitioner’s motion to stay. Dckt. No. 10. For the reasons explained below, petitioner’s request is denied.

¹ For ease of reference, all references to page numbers in the petition are to those assigned via the court’s electronic filing system.

1 Petitioner requests to stay the proceedings pending the outcome of two cases before the
2 California Supreme Court: *In re Vicks*, 195 Cal.App.4th 475, 125 Cal.Rptr. 3d 627 (2011), *reh'g*
3 *denied* (June 3, 2011), *review granted and opinion superseded*, 255 P.3d 952 (Cal. 2011), and *In*
4 *re Reed*, D058592, 2011 WL 3035393 (Cal.Ct.App. July 25, 2011), *review granted* (Oct. 12,
5 2011). *Id.* at 1. Petitioner contends the California Court of Appeal found in both cases that
6 Marsy's law violated the Ex Post Facto Clause. *Id.* But this court has already held that
7 petitioner's rights will be "fully protected by his participation as a class member" in *Gilman*.
8 Dckt. No. 7 at 4. Thus, any influence that these two California Supreme Court cases may have
9 on petitioner's claim is properly addressed in the *Gilman* action.

10 In the alternative, petitioner requests an extension of time to file objections to this court's
11 October 4 findings and recommendations.

12 Accordingly, IT IS HEREBY ORDERED:

13 1. Petitioner's motion to stay is denied; and

14 2. Petitioner's motion for extension of time to file objections is granted. Petitioner may
15 file his objections within 30 days of the date of this order.

16 Dated: November 30, 2011.

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18 EDMUND F. BRENNAN
19 UNITED STATES MAGISTRATE JUDGE
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