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TIMOTHY A. DeWITT (CA 150631)
Attorney at Law
2729 Dwight Way, No. 402
Berkeley, CA 94704
Tel. 310-382-0536

Attorney/ Plaintiff, *Pro Se*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(Oakland/SF Division)

MAR 17 2016
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FILED

MAR 17 2016
SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 3:15-cv-05261 WHA

TIMOTHY A. DeWITT, on behalf
of himself and others similarly situated,

Plaintiff,

THREE-JUDGE CASE (28 U.S.C. §2284)

~~PROPOSED~~ SECOND AMENDED
COMPLAINT AMENDING ALLEGATIONS OF
ORIGINAL SIXTH CLAIM FOR RELIEF

vs.

(1) Voter Qualifications Clause, First and
Fourteenth Amendments (One Person, One Vote,
and Viewpoint Discrimination Against Minority
Political Party Generally, and in Specified
Districts);

CALIFORNIA CITIZENS REDISTRICTING
COMMISSION, a California agency;
SECRETARY OF STATE OF THE STATE
OF CALIFORNIA, Alex Padilla;

And DOES 1 through 100, Defendants.

//

1 Plaintiff Timothy A. DeWitt ("Plaintiff" or "DeWitt"), by and through undersigned
2 counsel, files this Second Amended Complaint against the defendants (and against the California
3 defendants, additionally under 42 U.S.C. §1983): California Citizens Redistricting Commission
4 ("Commission"); Secretary of State of the State of California, Alex Padilla ("Secretary")
5 (collectively "Defendant(s)"). In support thereof, Plaintiff alleges as follows:

6 **REQUEST/DEMAND FOR THREE-JUDGE COURT**

7 1. This action involves Plaintiff's challenge to the constitutionality of both
8 Congressional and statewide legislative redistricting plans. Plaintiff therefore requests a three-
9 judge court pursuant to 28 U.S.C. §2284. The request is made with respect to each claim for relief
10 presented herein, with the sole exception of the claim against Defendant Clerk, unless it is
11 determined that the request must be made with respect to the "action" as a whole, in which case,
12 and in the alternative, Plaintiff requests a three-judge court with respect to each and every claim
13 presented in this entire "action."

14 2. Notice to the Chief Judge of the Ninth Circuit Court of Appeals should take
15 place as early as is practicable (or, in the express language of §2284, "immediately") -- and in any
16 case before the Court (acting as a single judge) makes any substantive review or ruling on the
17 merits of the case not expressly authorized by Congress in §2284 itself. With the possible
18 exception of the claim against Defendant Clerk (as discussed above), Plaintiff expressly demands
19 that the entire "action" (i.e., not individual "claims for relief") be noticed for hearing and
20 determination by a three-judge court. This notice must be given pursuant to the express terms of
21 §2284, the United States Congress' clearly primary control and authority over the appellate
22 jurisdiction of the United States Supreme Court (Art. III, sec. 2, cl. 2) (see 28 U.S.C. §§1253 &
23 2284), the Due Process Clause of the Fifth Amendment, and the Separation of Powers embedded
24 in the structure of the United States Constitution.

25 3. Plaintiff's individual "claims for relief" herein are inextricably interlinked,
26 or otherwise intimately related, each to the other, by reason of the relatedness or commonality of

1 issues, and parties in the action, and may not be forcibly pulled or stripped apart by a United States
2 District Court. To do so would impermissibly subvert Congress' exclusive authority and control
3 over the appellate jurisdiction of the United States Supreme Court (see 28 U.S.C. §§1253 & 2284),
4 the Supreme Court's own appellate jurisdiction in fact over this entire "action" (seeking injunctive
5 relief pursuant to a constitutional challenge to congressional and statewide districting plans), the
6 parties' fundamental right to at least one real and genuine appeal in this action under the Due
7 Process Clause, and the Separation of Powers doctrine embedded in the organizational structure
8 the United States Constitution. (See also *Page v. Bartels*, 248 F.3d 175 (3rd Cir.2001) (§2284
9 requirements expressly apply to entire "action", not individual claims for relief.)

10 **PARTIES, JURISDICTION AND VENUE/ COMMON FACTS**

11 4. Plaintiff Timothy A. DeWitt is an individual, a resident of the State of
12 California (and the Northern District of California), a California-licensed attorney and member of
13 the United States Supreme Court Bar, over 35 years of age, a qualified candidate for each and
14 every seat in California's 53-member delegation to the United States House of Representatives
15 (under the Candidate Qualifications Clause, U.S. Const., art. I, sec. 2, cl. 2), a qualified voter in
16 and for each and every election contest (without additional restriction or limitation of any kind) for
17 membership in California's 53-member congressional delegation (under the Voter Qualifications
18 Clause, U.S. Const., art. I, sec. 2, cl. 1), and a qualified candidate for the office of President of the
19 United States, specifically a "natural born Citizen" of the United States by virtue of actual birth, to
20 U.S. citizen parents, geographically within a state of the United States at a time it was admitted as
21 a state (the State of California, 1964) (under the Presidential Qualifications Clause, U.S. Const.,
22 art. II, sec. 1, cl. 5).

23 5. Plaintiff DeWitt desires to become an actual candidate for membership in
24 California's Congressional Delegation by running for multiple (i.e., more than one, and up to all,
25 of California's 53) seats, simultaneously at the same election (the upcoming 2016 election), and to
26 be subject to no more burdensome or onerous procedural requirements, such as filing fees and

1 other ballot access requirements, than those candidates who voluntarily choose or elect to run for
2 just one of those seats in the same election.

3 6. California statutes specifically prohibit otherwise qualified candidates from
4 running for more than one office in the same election. (Calif. Elections Code §8003(b).)
5 California's ballot access and candidacy requirements (e.g., filing fees, nominating papers) are also
6 all reckoned on a strict district-by-district basis. This means that if DeWitt wanted to run for all 53
7 seats for which he is fully constitutionally qualified directly under the U.S. Constitution, he would
8 have to make payments and satisfy other candidacy and ballot-access requirements that are at least
9 **53 times (or, 5,300%)** more burdensome and onerous than the requirements that apply to
10 candidates who voluntarily choose or elect to run for just one seat for which they are qualified in
11 the State's overall delegation.

12 7. Such requirements, both financial and procedural, are also objectively
13 simply prohibitively onerous and burdensome, tantamount to a complete bar on any such
14 candidacies.

15 8. In addition to running for up to ALL of the state's congressional seats he is
16 constitutionally qualified to occupy or hold (on no more onerous or burdensome a basis than
17 competing candidates who voluntarily elect to run for just one of those seats), DeWitt is also
18 considering becoming a candidate for the U.S. Senate simultaneously in the same election, and a
19 candidate for Congress in the 1st Congressional District of Wisconsin (currently occupied by
20 Defendant SPEAKER) (see *Schaefer v. Townsend*, 215 F.3d 1031 (9th Cir. 2000)). He needs and
21 is entitled to know whether he will actually be permitted to do so at all, and on the most
22 advantageous basis required and available under law (see, e.g., continued dual office-holding by
23 Defendant Speaker as "incumbent" of individual congressional seat in Wisconsin), in order
24 adequately to prepare for those potential candidacies.

25 9. Plaintiff DeWitt, in his capacity as a qualified and actual voter, has in the
26 past, and desires again in the future, to vote in Congressional election contests being conducted in

1 California other than the one artificial sub-state election “district” where he happens to reside.
2 DeWitt’s practice is to “write in” by hand, in the area designated on the ballot for the local
3 Congressional election contest, both the specific Congressional district number and the official
4 ballot candidate’s name for whom he desires to vote (whose name actually appears on the ballot
5 for that district contest) on the ballot actually presented to him by his own local election officials.
6 DeWitt is informed and believes that votes cast in this manner have not been, and will not be,
7 actually “counted” by California election officials, and actually applied to the contest in which he
8 is attempting to cast his votes. This practice clearly violates both the Voter Qualifications Clause
9 and, through an indirect, or two-step, process, also the Candidate Qualifications Clauses of the
10 U.S. Constitution.

11 10. DeWitt also satisfies the qualifications set forth directly in and by the
12 Constitution itself for the Office of President of the United States, including specifically (by virtue
13 of live birth geographically within the State of California in 1964) that he is a “natural born
14 Citizen” of the United States. (U.S. Const., art. II, sec.1, cl. 5.)

15 11. Plaintiff is informed and believes, and based thereon alleges, that Defendant
16 California Citizens Redistricting Commission (“Commission”), is a California agency established
17 by direct initiative vote of the people of California (i.e., not the Legislature thereof), whose
18 members are appointed, not popularly elected, and are not members of the Legislature. Simply
19 put, this appointed Commission is not the popularly-elected, deliberative “Legislature” of
20 California under either the California State Constitution, or identified and contemplated by the
21 Elections Clause of the U.S. Constitution as having exclusive initial authority over the
22 establishment of content-neutral “times, places, and manner” of holding congressional elections in
23 California. Defendant COMMISSION fundamentally lacks authority to, and/or otherwise failed
24 and fails to, apply, the continuous, real-time, active, deliberative, popularly-elected, genuine,
25 plenary, sovereign “Legislative” policy discretion contemplated and required by the U.S.
26 Constitution over such fundamental questions, among others, as whether (1) to acquiesce and

1 comply with the false federal districting mandate at 2 U.S.C. §2c, and draw or create such districts,
2 in the first place (or alternatively, for example, challenge defendant SPEAKER and Congress to
3 draw and establish such districts directly themselves under the express supervisory “make or alter”
4 provisions of the Elections Clause, or, in the absence of such supervisory action by Congress itself,
5 provide for and establish at-large or statewide elections to Congress which would not require the
6 drawing of new districts at all); (2) to consider factors such as the partisan political make-up of
7 different areas, or the residency of current incumbents, within or across the state in drawing new
8 districts; (3) to consider and minimize dramatic variances and deviations in actual voting strength,
9 voter registration, and/or actual votes cast (as separate and distinct from gross “total population”
10 statistics) in establishing new congressional districts; (4) to consider and minimize correlations or
11 relationships between the political or partisan characteristics of various election districts, and the
12 relative actual voting strength (again, as separate and distinct from the gross “total population”) of
13 those districts; (5) whether to redistrict within or between the national decennial censuses as
14 required to address and minimize dramatic variances or deviations that, it turns out, exist in actual
15 voting strength across different districts, and the equally dramatic correlation or relationship
16 between the political or partisan make-up of the districts, and the actual voting strength of various
17 districts across the state; or (6) whether to establish new non-geographic voting districts that would
18 safeguard or protect the opportunity to obtain representation proportionate to actual voting strength
19 in the electorate, for example, along (historically disadvantaged, and expressly constitutionally
20 protected) sex or gender lines (see U.S. Const., amend. XIX.)

21 12. In addition, categorically failing or refusing even to consider the partisan
22 political make-up of various areas or regions across the state (a policy mandated by the state’s
23 political *majority* via direct *majority* vote in a statewide initiative election -- not by a popularly-
24 elected, representative, deliberative Legislature), strips Defendant COMMISSION of any ability to
25 protect political minorities (e.g., members of the minority Republican political party in the state)
26 against the inherently majoritarian character or bias of all artificial “winner-take-all”, single-

1 member election contests, and itself creates a super-sophisticated, or *meta*-, partisan gerrymander
2 (carried out, ironically or in classic Orwellian fashion, precisely in the name of political
3 “neutrality”). Defendant Commission is also (impermissibly and unconstitutionally) required, by
4 initiative vote of a simple-*majority* of California voters statewide, literally to turn a formal “blind-
5 eye” to the partisan or political characteristics of their districts.

6 13. This formally legally imposed and required, willful know-nothingness,
7 includes the fact that some districts composed predominantly of members of the current minority
8 political party in the state (Republican), are now over-filled or packed with as much as roughly
9 FOUR AND ONE HALF TIMES as many registered and actual voters as some other districts
10 composed predominantly of members of (surprise, wait for it) the *majority* political party in the
11 state. This artificial and systematic majoritarian viewpoint bias, tilt, or discrimination -- built in to
12 both the very creation of the Commission, and its mandatory, artificially limited, formally “know-
13 nothing” marching orders, or rules of engagement -- toward majority partisan or political factions
14 in the State, and against minority political groups or parties, has also been borne out in fact, in
15 both the 2012 and 2014 election cycles in California, in the congressional elections actually
16 conducted on the basis of Defendant COMMISSION’S supposedly politically “neutral” districts.

17 14. Plaintiff is informed and believes, and based thereon alleges, that Defendant
18 Secretary of State of the State of California, Alex Padilla, is the chief elections officer of the State
19 of California, and is sued in that capacity.

20 15. Plaintiff is ignorant of the true names and capacities of Defendants sued
21 herein as DOES 1 through 100, inclusive, and therefore sues these Defendants by such fictitious
22 names. Plaintiff reserves the right to move the Court to amend this Complaint to allege their true
23 names and capacities when ascertained. Plaintiff is informed and believes, and thereon alleges,
24 that each of the fictitiously named Defendants is responsible in some manner for the occurrences
25 herein alleged.

SIXTH CLAIM FOR RELIEF

(Commission’s districts violate constitutional requirement of One Person, One Vote and constitute viewpoint discrimination against the minority political party in California both generally, and in specified districts.)

56. Plaintiff incorporates herein by reference the allegations presented in Paragraphs 1 through 15 of this Complaint.

57. Defendant Commission’s districting plans fall wildly short of the mark of actual voting equality required by the fundamental constitutional principle of “one person, one vote.” Some districts in the northern part of the state, for example, are now over-filled, stuffed, or packed with as many as roughly four-and-one-half times (or 450%) as many registered *and actual voters* as other districts in the southern part of the state. What’s worse, this facially or outrageously anomalous result in fact, is accomplished through the formal legal trick, artifice, theory, or pre-supposition, that merely making a maximum effort to achieve formal equality in raw “total population” figures between various districts somehow operates as a bright-line, categorical, *a priori*, “safe harbor”, or contrived constitutional “house of repose” for district line-drawers. The assumption, however, is as facially erroneous as a matter of proper constitutional law, as the dramatic numerical (450%) variances in actual voting strength across the districts are outrageous as a matter of fact.

58. To make matters even worse, some of the districts with the very highest numbers of actual voters, whose actual votes are most diluted in strength compared to other voters across the state, are comprised predominantly of members of the MINORITY Republican political party in the state. Conversely, the districts with the very lowest numbers of actual voters, whose votes are the most artificially and heavily over-weighted in the state, come from districts comprised predominantly, if not overwhelmingly, with members of the MAJORITY political party in the State. Commission’s grotesquely numerically distorted districting plans thus also constitute impermissible viewpoint discrimination in violation of the First Amendment of the U.S.

1 Constitution. (U.S. Const, amend. I.)

2 58a. Specifically, Plaintiff resides, is registered to vote, and actually votes in the
3 13th Congressional District, the 15th Assembly District, and 9th Senate District of California.
4 Although it has been his general practice to write-in on his ballot votes for candidates running in
5 other Congressional district contests in California, it was not a uniform practice that occurred at
6 each and every election (in fact, Plaintiff cannot recall an occasion where it ever occurred at a
7 primary election), it was not his practice in state legislative elections (for the State Assembly and
8 Senate), and (in view of this Court's Jan. 12, 2016, ruling in this action) he intends and will
9 actually vote in the upcoming 2016 primary and general elections for ballot-qualified candidates in
10 each of the 13th Congressional, 15th Assembly, and 9th Senate District contests. Upon information
11 and belief, his votes will be counted as cast by California election officials in all three sets of
12 district elections.

13 58b. In the November 2014 elections, the number of actual votes cast in the 15th
14 Assembly and 13th Congressional Districts where Plaintiff resides (122,732 and 190,431 total
15 votes cast, respectively) were roughly 431% and 309% greater, respectively, than the total votes
16 cast in the low-turnout 59th Assembly (28,493 actual votes) and 34th Congressional (61,621 votes)
17 Districts located in the southern part of the state. And the vote totals in the 10th Assembly
18 (141,635 votes) and 1st Congressional (216,372 votes) Districts, both located in the northern part
19 of the state, were approximately 490% and 350% of those cast in the 59th Assembly and 34th
20 Congressional districts, respectively, located in the southern part of the state. Similarly, in the
21 November 2012 election, the total votes cast in the 9th Senate District where Plaintiff resides was
22 350,981, approximately 78% greater than the 197,378 votes cast in the 33rd Senate District in the
23 southern part of the state. Further, the high voting strength 1st Congressional District is
24 represented by a member of Plaintiff's minority Republican political party, and the comparatively
25 low voting strength 34th Congressional, 59th Assembly, and 33rd Senate Districts, by contrast, are
26 all comprised predominantly of, and represented by, members of the majority political party in

1 California. Plaintiff is also a Constitution-qualified and potential candidate in each of the higher
2 voting strength Congressional districts in the state, on an individual or single-district basis,
3 including specifically the high voting strength 1st Congressional District.

4 59. The U.S. Supreme Court famously declared, as part of its initial set of
5 decisions requiring numerical voting equality in districted elections: "Cows and trees don't vote,
6 people do." Nearly 60 years later, in the modern era of districting, this constitutional aphorism
7 must now be updated to read: "Total populations don't vote [either], actual voters do."

8 60. It should also be noted that, in the absence of the artificial district-residency,
9 and numerical single-district restrictions currently being imposed on otherwise fully qualified
10 voters and candidates across the state (which restrictions are separately challenged in this action),
11 each actual vote cast in the election would automatically carry *exactly equal numerical* weight in
12 fact as all other votes cast in the election, the same as already occurs in all other state-wide
13 elections, for example, for the offices of Governor, U.S. Senator, or President (or, perhaps
14 ironically, even Defendant SECRETARY's statewide office), across the state of California. So
15 these kinds of numerical deviations in actual voting strength are in fact easily remediable in fact by
16 doing what the Constitution already independently and directly requires under the Qualifications
17 Clauses (for Congressional elections), and simply ceasing to apply impermissible artificial district-
18 residency and single-district restrictions on all voters and candidates across the state.

19 61. In addition, upon information and belief, Defendant Secretary fails to make
20 any effort to determine whether persons who claim the right to vote in California elections as
21 citizens by virtue of physical birth geographically in the United States -- beyond the bare fact of
22 the issuance or possession of a birth certificate -- are in fact lawful/constitutional citizens of the
23 United States. Secretary makes no additional inquiry or investigation whatsoever (perhaps
24 because he simply and erroneously pre-supposes that all such persons are citizens) whether such
25 persons are actually citizens of the United States as a matter of law by virtue of being born
26 "subject to the jurisdiction" of the United States within the meaning of that phrase as provided in

1 the Fourteenth Amendment of the United States Constitution (e.g., persons born to foreign
2 diplomat parents geographically within the United States, or so-called “super-citizens”.)

3 62. Defendant Secretary’s active failure in this way to enforce the requirement
4 that registered and actual voters actually be lawful “citizens” of the United States, and Defendant
5 Commission’s drawing of district lines based in part on the assumption that all such (birth
6 certificate-holding) persons are in fact voting-eligible citizens, only further impermissibly dilutes
7 the votes or influence of validly Constitutionally-qualified and actual voters (and their candidates
8 of choice) across California.

9 THEREFOR, Plaintiff demands judgment against Defendants COMMISSION and
10 SECRETARY as set forth below.

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PRAYER FOR RELIEF

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WHEREFOR, Plaintiff prays for judgment against Defendants, and the DOE defendants, as follows:

A. Against the California Defendants, Commission and Secretary, for monetary damages, for violation of constitutional rights under color of law, under 42 U.S.C. §1983.

B. For equitable and injunctive relief that:


(1) Defendants’ districting and electoral practices described above violate the Voter Qualifications Clause (for Congressional elections), the Due Process and Equal Protection Clauses of the Fourteenth Amendment, the First Amendment (viewpoint discrimination), and the Constitutional principle of “One Person, One Vote”; and for all related temporary, preliminary, and permanent injunctive relief.

C. For costs, including attorneys’ fees, and such other relief as is just and appropriate.

Dated: March 16, 2016.

Respectfully submitted,

TIMOTHY A. DeWITT (CA 150631)

By: 
Timothy A. DeWitt
Attorney/Plaintiff, *Pro Se*