UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TIMOTHY A. DeWITT,
Appellant,

vs.

PAUL RYAN, C.C.R.C., et al.,
Appellee(s).

9th Circuit Case No. 16-16162
Originating Court Case No. 15-cv-5261 WHA

APPELLANT'S INFORMAL BRIEF

(attach additional sheets as necessary)

1. Jurisdiction

a. Timeliness of Appeal:

(i) Date of entry of judgment or order of originating court: ____Jan 12, 2016 & May 31, 2016___

(ii) Date of service of any motion made after judgment (other than for fees and costs): _____N/A_____

(iii) Date of entry of order deciding motion: ____N/A_____

(iv) Date notice of appeal filed: _____June 29, 2016_____

(v) For prisoners, date you gave notice of appeal to prison authorities: _____N/A_____

2. What are the facts of your case?

Plaintiff filed action in originating court challenging the constitutionality, *inter alia*, of both the state legislative and Congressional districting plans developed by defendant Commission (Calif. Citizens Redistricting Commission), and implemented and enforced by defendant Secretary (as chief elections officer of California) (CA Secretary of State, Alex Padilla) for California's elections. Plaintiff promptly filed a Request with the originating court (both as part of the original Complaint, and a couple of days later, in a separate Request) (Dkt. ##1 & 5), sitting as a single-judge, to give notice to the Chief Judge of the Circuit Court of necessity to convene three-judge court to hear and determine action, as expressly provided by the Three-Judge Act, 28 U.S.C. §2284.

The underlying factual allegations supporting the action, with respect both to Plaintiff and each of the respective Defendants, are set forth in the Complaint (Dkt. #1) and Second Amended Complaint (Dkt. #24) in the originating court. In brief, Plaintiff is a constitution-qualified and actual voter in California's state legislative, congressional, and Presidential elections, a constitution-qualified and potential candidate for Congress, and also satisfies all of the qualifications for President of the United States, including specifically the "natural born Citizen" qualification, by virtue of having been born in a Constitutionally admitted state of the United States at a time when it was admitted as a state, California. Defendant Paul Ryan is Speaker of the U.S. House of Representatives, co-chair of the presidential Electoral College, and simultaneously occupies an individual seat in the House of Representatives (M.C., Wisc.) (although, public record, and notably, he does not attempt to draw the salaries from both offices simultaneously). Defendant Arnold Schwarzenegger is, among other things, the immediate past Governor of the State of California, who was the sitting Governor (the chief executive officer of the state) when major-party presidential candidate John McCain (who was actually born in the Panama Canal Zone) was presented on California's presidential election ballots in the 2008 elections. (See also, other examples, Presidential candidates George Romney, born in Mexico, and Ted Cruz, born in Canada.) Defendant Scott Harris, is the Clerk of Court for the U.S. Supreme Court with responsibility for administering Supreme Court Rules ("SCR") Rule 18, the procedures by which the Court handles as alleged, and for lack of a better term, illusory "appeal in name only" appeals pursuant to Congress' own basic jurisdictional statute (28 U.S.C. §1253) governing the matter under express authority of the Appellate Jurisdiction Clause of the U.S. Constitution (Art. III, sec. 2, cl. 2) (also, Separation of Powers Doctrine (Art. III vs. Art. I)).

It should also be noted, in connection with his "one person, one vote", vote dilution, and/or "partisan gerrymandering" claim (the Sixth Claim for Relief below), Plaintiff in fact did allege facts sufficient to establish that both the California majority that established the defendant Redistricting Commission and its artificial "partisan political blindness" mandate, and the Commission itself, had the requisite discriminatory "intent" to establish a partisan gerrymandering claim under *Davis v. Bandemer*, 478 U.S. 109, 129 & fn. 11 (1986) and *Vieth v. Jubilirer*, 541 U.S. 267, 315 (2004). An artificial partisan blindness requirement or mandate, by itself, further suppresses a minority political party's (In CA today, the Republican party's) representation in majoritarian winner-take-all election contests, and doing nothing to correct dramatic discriminatory effects or results (because you are also prohibited from taking such corrective action by the same blindness mandate), together with massive

presumptively invalid numerical deviations in actual voting strength across different districts with different partisan make-ups, while also erroneously treating total population equality as a constitutional "safe harbor" against vote dilution challenges, and actively turning a blind eye to any even dramatic deviations in actual voting strength beyond that, among other things, indeed are sufficient to allege the requisite "intent" to establish a cognizable partisan gerrymandering claim under the applicable precedents. (But see CA Defs' raw, conclusory assertion to the contrary in their Motion to Dismiss below (Dkt. ##33 & 40).)

Although Plaintiff duly presented his Three-Judge request under 28 U.S.C. §2284(b)(1), the originating court nonetheless failed "immediately" to give the required notice to the Chief Judge of the Ninth Circuit as requested by Plaintiff, and instead proceeded itself to enter judgment adverse to the requesting Plaintiff, first (by Order date January 12, 2016) (Dkt. #16) dismissing Plaintiff's various claims for relief, *sua sponte*, and without any prior notice to Plaintiff whatsoever, with respect to the FIRST thru FIFTH, and SEVENTH thru TENTH claims for relief, without any leave to move to amend the Complaint, and with respect to the SIXTH claim, with leave to move to amend, and finally (by Order dated May 30, 2016) (Dkt. #45), after the Court approved the filing of the amended SIXTH Claim, dismissing Plaintiff's SIXTH claim for relief upon the filing and hearing of Defendants Commission and Secretary's Motion to Dismiss.

Plaintiff's various claims were/are actually meritorious, and therefore not all so "constitutionally insubstantial" or "frivolous" (but see Dkt. ##16 & 45) that they could be dismissed by the originating court, sitting as a single judge (esp. acting *sua sponte* under a completely different and more expansive or discretionary legal standard for the originating court), even under existing Supreme Court precedents -- in which it should be noted the Court had no occasion, and did not, consider or determine the permissibility of its rulings under the Separation of Powers doctrine, and Appellate Jurisdiction and Due Process Clauses of the U.S. Constitution (see, e.g., *Shapiro v. McManus* (2015) citing *Goosby v. Osser* (1973)). In any case, Article III courts fundamentally lack authority in effect to re-write Congress' own statute (Three-Judge Act, §2284) precisely governing, or in the language of the Constitution, actively "regulating" (AJC, Art. III, sec. 2, cl. 2) the jurisdiction of the courts, including the direct appellate jurisdiction of the Supreme Court (28 U.S.C. §1253) under the Separation of Powers doctrine, without first determining that those Congressional statutes affirmatively violate Article III courts' own constitutional role or powers under the Separation of Powers doctrine.

Nonetheless, and in the absence of any determination that the Three-Judge Act (as written by Congress) affirmatively violates the Separation of Powers doctrine (Art. I vs. Art. III), and thru the process ostensibly of ordinary judicial review or statutory construction, the Supreme Court (and the originating court acting under purported authority of existing Supreme Court precedent) (see *Shapiro* & *Goosby*, supra) has substantially re-written the Three-Judge Act, a basic jurisdictional statute, by, among other things,

(1) interposing or inserting a substantive "non-frivolity" or "constitutional substantiality" filter or requirement into the text of Section 2284(a) of the Three-Judge Act, a requirement appearing nowhere in Congress' own plain statement controlling the subject (esp. where, as here, it is well known that Art. III courts independently possess ample judicial weaponry to safeguard against the filing of genuinely frivolous or insubstantial claims (see, e.g., FRCP Rule 11)); and thereby

(2) artificially transferring "jurisdiction over jurisdiction", and "jurisdiction over justiciability", from the three-judge court itself (actually specified and required by the Congress which, it should be remembered, created all the lower courts in the first place), to the district court sitting as a single judge (usually requiring a time-consuming substantive review

and inquiry into the merits of challenging plaintiffs' constitutional claims, typically by motion of the party-defendants (who will not even have been served or appear in the action "immediately")); and thereby also

(3) effectively vitiating both Congress' express (and eminently sensible) negative check-off "immediacy" requirement in §2284(b)(1), and Congress' direct grant of plenary jurisdiction (see also §2284(b)(3)) over actions directly identified by Congress itself (§2284(a)), to a district court of three judges.

3. What did you ask the originating court to do (for example, award damages, give injunctive relief, etc.)?

Give notice to Chief Judge of U.S. Court of Appeals for the Ninth Circuit of necessity to convene three-judge court to hear and determine action as required under 28 U.S.C. §2284 (Three-Judge Act); enjoin defendants' conduct violating plaintiff's constitutional rights; award monetary damages to plaintiff for violation of rights under color of law.

4. State the claim or claims you raised at the originating court.

Plaintiff requested (both in original Complaint, and by separate Request) that the originating court, sitting as a single judge, give notice to the Chief Judge of the Circuit Court (here, the Ninth Circuit), of the necessity to convene a three judge court to hear and determine this action, as contemplated and required in the Three-Judge Act, 28 U.S.C. §2284(a) & (b)(1).

Plaintiff presented his claims that the CA defendants' redistricting plans for CA's congressional and state legislative seats following the 2010 decennial census violated the Voter Qualifications, Candidate Qualifications, and Elections Clauses, the constitutional principle of "one person, one vote", and each of the First, Tenth, Fourteenth, and Nineteenth Amendments, of the United States Constitution.

In particular, (1) defendants impermissibly restrict otherwise fully constitutionally qualified voters and candidates in the State, either directly or indirectly, to the *one* (see CA Elec. Code §8003(b) ("No person may file nomination papers … for more than one office at the same election.")) federal Congressional district (out of a total of 53) where they *reside* (but see *U.S. Term Limits v. Thornton* (1995), citing with approval the Contested Election Case of William McCreery of Maryland, from the year 1807 (17 Annals of Cong. 871)(states fundamentally lack power to impose any additional or supplementary sub-state geographical residency qualifications on candidates for Congress));

(2) CA's districting plans were drawn on the erroneous legal theory that mere population equality alone works as a categorical "safe harbor" against "one person, one vote" challenges, and as result, and also, produce massive, systematic, irrationally (and, yes, "intentionally" [see *Davis v. Bandemer* (1986) (formal blindness does not shield plans from finding of discriminatory intent) and *Vieth v. Jubilirer* (2004)], both at level of majority of CA electorate mandating via statewide initiative process, partisan political *blindness* across known majoritarian, winner-take-all districting schemes, and within redistricting Commission itself) [note, and in the alternative, originating court also plainly erred in dismissing Plaintiff's claims with respect to the "intentionality" issue, *without leave to amend*, on the putative grounds of "futility"] *discriminatory* (cf. *Evenwel v. Abbott* (2016)) numerical deviations in actual voting strength of as much as 490% (Four Hundred and Ninety Percent) from district to district, impermissibly disadvantaging (especially taken together with the inherently majoritarian character of single-member, winner-take-all contests) voters and candidates associated with the minority Republican political party in the state, and voters in minority geographical areas in the state which happen to have relatively high actual voter turnout or voting strength compared to other areas in the State;

(3) Defendant CA Commission failed and fails to exercise the plenary, sovereign, continuous, real-time, popularly-elected, representative, and deliberative, decision-making and discretion contemplated and required by the term "Legislature" in the Elections Clause of the U.S. Constitution (Art. 1, sec. 4) (the States' only analog or counterweight to the actual United States

Congress within the federal government as contemplated in the Elections Clause), and the express guarantee of an indirect, representative "Republican form of government" in the Guaranty Clause, and contrary to the single judge's ruling below dismissing Plaintiff's claim, the raw identity challenge (i.e., the term "Legislature" in the Elections Clause means the State Legislature *eo nomine*) presented in the *Arizona Legislature v. Arizona Commission* (2015) case (itself decided, perhaps ironically, on direct appeal to the Supreme Court from the decision of three-judge district court), did not present or resolve Plaintiff's broader and deeper claims here, and even if it did, Plaintiff would nonetheless be entitled to urge that the Supreme Court review and overrule its very recent, contentious, and splintered decision in that action on that issue (without having his claims gratuitously branded as somehow being "frivolous" by a single judge district court desirous of avoiding a three-judge court expressly for its own reasons (e.g., "judicial economy"));

(4) 2 U.S.C. §2c (with its wholly unexecuted lesser-included mandate that candidates for Congress must be elected by single-member district) in effect impermissibly instructs or orders the (separately sovereign) Legislatures of the States to enact specific legislation drawing up those otherwise non-existent districting plans (see Hinds' Predecents of the House of Representatives, Vol. 1, §310 (1844) (House itself acknowledges that four at-large Congressional delegations must be recognized and seated as Members of Congress despite existence of federal single-member districting mandate (5 Stat. 491 (1842))) (see also *New York v. United States*, 505 U.S. 144 (*June* 1992) (Tenth Amendment prohibits, federal government from affirmatively commandeering separately sovereign political processes of the States); *Printz v. United States*, 521 U.S. 98 (1997) (similar)); and

(5) CA's majoritarian winner-take-all districting plans also impermissibly discriminate against historically disadvantaged female voters and candidates under the First, Fourteenth, and Nineteenth Amendments of the U.S. Constitution (esp. considering public record fact that female members of the actual ruling or majority party in the U.S. House of Representatives, in the Year 2016, are still approximately 900% underrepresented (by a factor of 9 to 1) (and 400%, or 4 to 1 generally) compared to their male counterparts in same, and in view of the actual voting strength of female voters generally in the various State electorates at-large. (Note: originating court, sitting as a single judge, at a time when a request for the immediate convening of a three-judge court had already been pending for at least seven weeks (Dkt. #5), dismissed Plaintiff's entire Seventh Claim for Relief (based on the First, Fourteenth, and *Nineteenth* Amendments) presented in his original Complaint (Dkt. #1), without any prior notice to plaintiff whatsoever, before any defendants had even appeared in the action, *sua sponte*, without leave to amend, under the wrong legal standard, all without offering a single sentence of substantive analysis on the subject. (See Dkt. #16.) (See also *Powers v. Ohio*, 499 U.S. 400 (1991) (standing).)

In addition, Plaintiff claimed that defendants (including defendants Paul Ryan, in his capacity as co-chair of the Electoral College, and Arnold Schwarzenegger in his capacity as Governor (chief executive officer) of California when candidate John McCain was permitted on California's presidential ballot in the 2008 elections) have and do violate the Presidential Qualifications Clause (specifically, the "natural born citizen" clause) because they recognize as "eligible to the Office of President" persons/candidates who are not born in a constitutionally admitted state of the United States at a time when it was admitted as a state (as Plaintiff was, California 1964), and citing as specific examples, major-party candidates John McCain, born in the "unorganized territory" of the Panama Canal Zone, and Barry Goldwater, born in a similar unadmitted U.S. territory (both of which were unilaterally acquired by the political branches of the federal government alone, without constitutional participation of the States qua States) (and cf. all persons born in The Philippines from the end of the Spanish-American War to end of WWII, who were never (and, notably, still are not) even considered statutory or Congressionally natural-*ized* "citizens" of the United States, much less constitutional "natural born citizens" eligible to the U.S.

Presidency) which subsequently, after his (Goldwater's) birth, became the constitutionally-admitted state of Arizona,

AND ALSO that defendant Paul Ryan (Speaker of the U.S. House of Representatives) separately violates the Anti-Simultaneous or Dual Office-Holding Clause of the U.S. Constitution (Art. I, sec. 6, cl. 2), by simultaneously holding or occupying the offices of both Speaker of the United States House of Representatives, and a separate seat as a Member of Congress.

Finally, Plaintiff asserted a claim against the Clerk of the Supreme Court, Scott Harris, challenging the constitutionality of Supreme Court Rules ("SCR") Rule 18 (as establishing, in essence, an illusory "appeal in name only" appeal) (and imposing a hidden or undisclosed "Rule of Four" rule or filter effectively, and impermissibly, converting all such appeals into wholly discretionary Petitions for Certiorari for the Court), as independently violative of the Appellate Jurisdiction Clause (Art. III, sec. 2, cl. 2), the Separation of Powers doctrine (Art. III v. Art. I), and the Due Process Clause, of the U.S. Constitution (affecting redistricting appellants' fundamental right of access to the courts).

5. What issues are you raising on appeal? What do you think the originating court did wrong?

Originating Court, sitting as a single judge, fundamentally lacked jurisdiction, and erred under the Three-Judge Act (28 U.S.C. §2284) – and the Appellate Jurisdiction Clause of the U.S. Constitution (Art. III, sec. 2, cl. 2) (see 28 U.S.C. §1253), the Separation of Powers Doctrine (Art. III v. Art. I), and the Due Process Clause of the U.S. Constitution) -- by first failing to give notice to the Senior Judge of the Circuit Court (Ninth Circuit) upon request duly made by Plaintiff below, of necessity of convening three judges to hear and determine action, and then entering a final judgment of dismissal of all Plaintiff's claims in this action in the absence of such notice and the required Three-Judge Court. (28 U.S.C. §2284(a), (b)(1), and (b)(2).) (See Dkt. ##16, 46 & 47.)

Plaintiff's claims in this action are (actually meritorious, and therefore otherwise) not so "frivolous" or "constitutionally insubstantial" under existing Supreme Court precedents (see *Shapiro v. McManus* (2015) & *Goosby* (cited therein)), so that the originating court, sitting as a single judge, was authorized to exercise "jurisdiction over jurisdiction" or "jurisdiction over justiciability" in the case and refuse to give the requested notice to the Chief Judge of the Circuit Court under the Three Judge Act (§2284(a) & (b)(1)), and enter judgment of dismissals in the action itself, even under *Shapiro v. McManus* (2015) (which had no occasion to, and did not, consider or resolve Plaintiff's constitutional arguments here based on the AJC (see also §1253), Separation of Powers doctrine (Art. III v. Art. I), and the Due Process Clause.

And, alternatively, in any case, the Article III courts may not in effect substantially re-write Congress' Three Judge Act (a fundamental jurisdictional statute for all Art. III courts) (1) by inserting an artificial substantive "non-frivolity" or "constitutional substantiality" requirement into §2284(a), which appears nowhere in Congress' own clear language in that section, and thereby also (2) vitiate Congress' "immediacy" plan or requirement for the required notice (upon request) in §2284(b)(1), and also (3) Congress' clear plan and intention to grant plenary jurisdiction over the action (which necessarily includes both "jurisdiction over jurisdiction", and "jurisdiction over justiciability") to an actual Three-Judge Court (see §2284(b)(3)) (in also cases satisfying the requirements of §2284(a) as written by Congress itself), under the Separation of Powers doctrine (Art. III v. Art. I), without first determining that the Three-Judge Act as actually written by Congress somehow affirmatively violates the Separation of Powers doctrine going back

the other way (Art. I vs. Art. III) – which review and determination has never occurred in any case to date by any Article III court, including the originating court below (sitting as a single judge), and would be plainly constitutionally erroneous if it ever did. The Art. III courts' re-writing of Congress' Three-Judge Act (ostensibly in furtherance of their own sub-constitutional institutional interests of "judicial economy", administrative convenience, or even the subjectively desired but essentially speculative temporal "percolation" of perceived "politically-sensitive" constitutional issues before they are presented to the Supreme Court for ruling on the merits by direct appeal (ref. Roberts, C.J., Oral Arg., *Shapiro v. McManus* (2015)), also creates an impermissible "one-way ratchet" that always works against a challenging Plaintiff's substantive claims, recklessly dangles a powerful institutional incentive for single-judge district courts to stamp a challenging plaintiff's claims with the derogatory and personally disparaging judicial "scarlet letter" of "frivolousness" or "insubstantiality", and deprives challenging plaintiffs of a meaningful appeal on the merits of their claims (in the court specified by Congress, the Supreme Court), all in plain violation of the Due Process Clause of the U.S. Constitution.

6. Did you present all issues listed in #5 to the originating court? _____

If not, why not? Yes/No Yes, except as to issues arising out of FIRST thru FIFTH and SEVENTH thru TENTH, original CLAIMS FOR RELIEF resolved by District Court *sua sponte* in its January 12, 2016 Order, and with respect to those issues, issues presented in the original Complaint itself.

7. What law supports these issues on appeal? (You may, but need not, refer to cases and statutes.)

***Statutes*:**

28 U.S.C. §2284(a) ("A district court of three judges *shall be convened … when an action is filed* challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body." (Emp. supp.));

28 U.S.C. §2284(b)(1) ("Upon the filing of a request for three judges, the judge to whom the request is presented shall, unless he determines that three judges are not required, *immediately notify* the chief judge of the circuit…." (Emp. supp.));

28 U.S.C. §2284(b)(3) ("A single judge shall not … enter judgment on the merits."; "*Any action* of a single judge may be reviewed by the full [three-judge] court *at any time* before final judgment." (Emp. supp.)**)**;

28 U.S.C. §1253 (legally "*required* by… *Act of Congress* to be heard and determined by a district court of three judges" (emp. supp.));

2 U.S.C. §2c; 5 Stat. 491 (1842); 42 U.S.C. §1983

Calif. Elec. Code, §8003(b) ("No person may file nomination papers … for more than one office at the same election.")

***Cases*:**

Page v. Bartels, 248 F.3d 175 (3rd Cir.2001) (§2284 requirements expressly apply to entire "action", not individual claims for relief.);

Boumediene v. Bush, 553 U.S. 723 (2008) (separation of powers doctrine applies to expand right of access to the courts, even where Due Process formally inapplicable);

Shapiro v. McManus, 577 U.S. __ (2015) (unanimous, per Scalia J) (partisan gerrymander claim easily clears "low bar" established in *Goosby*);

Goosby v. Osser, 409 U.S. 512 (1973);

Schaefer v. Townsend, 215 F.3d 1031 (9th Cir. 2000) (CA election officials may not bar current resident of Nevada from ballot access for Congressional office from CA);

U.S. Term Limits, Inc. v Thornton, 514 U.S. 779 (1995) (qualifications of candidates defined and fixed directly in and by Constitution itself, neither States nor Congress may add to, reduce, or alter);

Powell v. McCormack (Speaker of the U.S. House of Representatives), 395 U.S. 486 (1969) (qualifications clause actions against sitting Speakers of the House fully justiciable in Art. III courts);

United States v. Wong Kim Ark, 169 U.S. 649 (1898) (principle of *jus soli*, rather than *jus sanguinis*, applies to persons born in constitutionally-admitted state of the United States (Calif.) to foreign national parents lawfully present in the United States);

Slaughter-House Cases, 83 U.S. 36 (1873);

New York v. United States, 505 U.S. 144 (*June* 1992) (Tenth Amendment prohibits federal government from affirmatively *commandeering* separately sovereign political processes of the States); *Printz v. United States*, 521 U.S. 98 (1997) (similar);

Arizona Legislature v. Arizona Comm'n, 576 U.S. __ (2015) (raw identity challenge to Redistricting Commission as not State Legislature *eo nomine* under Elections Clause);

Powers v. Ohio, 499 U.S. 400 (1991)(standing crosses identity lines);

Evenwel v. Abbott, 578 U.S. __ (2016);

Vieth v. Jubilirer, 541 U.S. 267, 315 (2004);

Davis v. Bandemer, 478 U.S. 109, 129 & fn. 11 (1986) (due to inherently political nature of redistricting process, not difficult to infer intent from probable result of legislature's actions);

Kirkpatrick v. Preisler, 394 U.S. 526, 530-31 (1969) (no even *de minimus* deviations permitted for Congressional districting plans because one person, one vote principle grounded in voting rights for those plans – Voter Qualifications Clause);

Brown v. Thomson, 462 U.S. 835, 842-43 (1983) ("[m]aximum deviations *above 10%* [for state legislative districts] are *presumptively* impermissible." (cited in *Evenwel*, slip. opin., at 3-4 (emp. added).)

***Constitutional Provisions*:**

Voter Qualifications Clause, U.S. Const., art. I, sec. 2, cl. 1;

Candidate Qualifications Clause, U.S. Const., art. I, sec. 2, cl. 2;

Elections Clause, U.S. Const., art. I, sec. 4 ("Times, Places and Manner of holding elections for Senators and Representatives…");

Guaranty Clause, art. IV, sec. 4, cl. 1 (indirect, representative, republican form of government, reflecting fundamental value and requirement of actual deliberation among popularly elected

representatives exercising plenary, sovereign legislative powers of the states within the federal system of government);

Presidential Qualifications Clause, U.S. Const., art. II, sec. 1, cl. 5 ("No Person except a natural born Citizen… shall be eligible to the Office of President.");

No Dual or Simultaneous Office-Holding Clause, U.S. Const., art. I, sec. 6, cl. 2 ("[N]o Person holding any Office under the United States [e.g., Speaker of the United States House of Representatives], shall [simultaneously] be a Member of either House [e.g., M.C., Wisc.] during his Continuance in Office.");

U.S. Const., amend. I; U.S. Const., amend. X; U.S. Const., amend. XIV;

Appellate Jurisdiction Clause, U.S. Const., art. III, sec. 2, cl. 2 ("[S]upreme Court shall have appellate Jurisdiction, both as to Law and to Fact, with such Exceptions, and under such Regulations as the Congress shall make.");

Separation of Powers Doctrine, U.S. Const.; Division of Powers Doctrine, U.S. Const.

***Court Rules*:**

Supreme Court Rules ("SCR"), Rule 18;

Fed. R. Civ. Proc. ("FRCP"), Rule 11.

Miscellaneous:

Federalist Papers, No. 52 & 60 (qualifications of those who may choose [voters] or be chosen [candidates] are defined and fixed directly in and by the Constitution itself, and are unalterable by political branches);

Contested Election Case of William McCreery of Md., 17 Annals of Cong. 871 (1807) (cited approvingly in both *U.S. Term Limits v. Thornton,* 514 U.S. 779 (1995) and *Powell v. McCormack*, 395 U.S. 486, 542-43 (1969));

Hinds' Precedents of the House of Representatives, Vol. 1, §310, Report of the Committee on Elections, March 15, 1844 (fully conceding Congress has no constitutional authority to direct or instruct state legislatures to draw single-member districting plans under Elections Clause of U.S. Constitution; report in fact followed by full House of Representatives; members of four separate state congressional delegations elected at-large in violation of first federal "single-member districts" statute in fact recognized and seated as full members of Congress as required by U.S. Constitution; no involvement by any Art. III court requested or required).

8. Do you have any other cases pending in this court? If so, give the name and docket number of each case. NO.

9. Have you filed any previous cases which have been decided by this court? If so, give the name and docket number of each case.

YES. *DeWitt v. Wilson*, et al., No. 95-16627 (1997).

10. For prisoners, did you exhaust all administrative remedies for each claim prior to filing your complaint in the district court? _____N/A_____

Note: Excerpts of Record not submitted. (Circuit Rule 30-1.2)

Name __Timothy A. DeWitt_____ Signature ___s/*Timothy A. DeWitt*_____

2729 Dwight Way, No. 402_____
Berkeley, CA 94704_____ Address

October 31, 2016__ Date

CERTIFICATE OF SERVICE

Case Name: _____DeWitt_____ v. _____Ryan, et al._____ 9th Cir. Case No.: __16-16162_____

IMPORTANT: You must send a copy of ALL documents filed with the Court and any attachments to counsel for ALL parties in this case. You must attach a copy of the certificate of service to each of the copies and the original you file with the Court. Please fill in the title of the document you are filing. Please list the names and addresses of the parties who were sent a copy of your document and the dates on which they were served. Be sure to sign the statement below.

I certify that a copy of the _____Appellant's Informal Brief_____ (title of document you are filing) and any attachments was served, either in person or by mail (or ECF), on the persons listed below.

Date: October 31, 2016

____s/*Timothy A. DeWitt*__ Signature

Name Address Date Served (October 31, 2016)

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