

FILED

MAY 19 2016

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

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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9 **(Oakland/SF Division)**

10 **Case No. 3:15-cv-5261 WHA**

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

13 **Plaintiff,**

14 **THREE-JUDGE CASE (28 U.S.C. §2284)**

15 **PLAINTIFF'S OBJECTION AND STATEMENT**
16 **RE CASE MANAGEMENT IN ABSENCE OF**
17 **THREE-JUDGE COURT**

18 **vs.**

19 **Date: May 26, 2016**
20 **Time: 2:00 p.m.**
21 **Place: Courtroom 8**

22 **CALIFORNIA CITIZENS REDISTRICTING**
23 **COMMISSION, a California agency;**
24 **SECRETARY OF STATE OF THE STATE**
25 **OF CALIFORNIA, Alex Padilla;**

26 **And DOES 1 through 100, Defendants.**

27 **//**

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD,

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2 please take notice that Plaintiff will and hereby does object to the Court, still sitting as a single
3 judge, exercising jurisdiction over case management issues in this action in the absence of the
4 Three-Judge Court which has been duly requested by Plaintiff (but which has yet to be convened
5 in this action), and has plenary jurisdiction over all aspects of this action, including all case
6 management issues. (See 28 U.S.C. §2284; Appellate Jurisdiction Clause (Art. III, § 2); Separation
7 of Powers Doctrine (Art. III vs. Art. I), Due Process Clause (e.g., three-judge avoidance one-way
8 ratchet against plaintiffs' claims, express unavailability of any preliminary injunctive relief from
9 single-judge under section 2284(b)(3), & steering of interlocutory or final appeals to court of
10 single judge's choosing (but see 28 U.S.C. §1253)).)

11 The single-judge Court's continuing exercise of jurisdiction over this action, now
12 more than six months (180 days) after the initial filing date November 17, 2015, works as a
13 continuing impermissible ouster, among other things (including the incumbent, at the time of the
14 initial filing of the action, Chief Judge's power of appointment of the other two judges for the
15 case, and Plaintiff's ability to bring motions/requests before the three-judge court), of the Three-
16 Judge Court's plenary jurisdiction over the entire action.


17 As the U.S. Supreme Court made clear in its recent unanimous decision in the case
18 of *Shapiro v. McManus*, 577 U.S. ____ (Dec. 8, 2015) (per Scalia, J.), either *no* court (whether
19 single-judge or three-judge) has jurisdiction over the action at all (and any bona fide case
20 management issues are moot), or the Three-Judge Court has plenary jurisdiction over all aspects of
21 the action. Under no procedural scenario contemplated or permitted under Section 2284 or Justice
22 Scalia's opinion for the unanimous court in *Shapiro* may the single-judge court exercise any
23 jurisdiction over the action, including over any case management issues, separate and apart from,
24 or in the absence of, the actual Three-Judge Court required to be convened (if at all, expressly
25 "immediately") in this action, by and under 28 U.S.C. §2284.

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Dated: May 19, 2016.

Respectfully submitted,

TIMOTHY A. DeWITT (CA 150631)

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

CERTIFICATE OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the State of California. I am over the age of 18 and the attorney/plaintiff in the within action. My address is 2729 Dwight Way, No. 402, Berkeley, CA 94704-3100.

I am familiar with the business practices of this office for collection and processing of mail with the United States Postal Service, whereby official mail is attached with the appropriate postage and placed in a designated area. Mail so collected and processed is deposited with the United States Postal Service that same day and in the ordinary course of business. On the below date, I served a true and correct copy of the accompanying

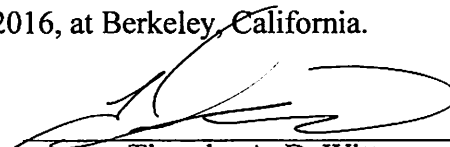
PLAINTIFF'S OBJECTION AND STATEMENT RE CASE MANAGEMENT IN ABSENCE OF THREE-JUDGE COURT

by placing a true copy thereof in a sealed envelope in the designated area for outgoing mail addressed as follows:

**George Waters
Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 19th day of May, 2016, at Berkeley, California.


Timothy A. DeWitt