

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Asa Gordon, DC registered voter, Pro Se
Executive Director
Douglass Institute of Government
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Plaintiff,

VS.

National Archives and Records Administration(NARA)

David S. Ferriero
Archivist of the United States

Oliver Potts
Director, Office of the Federal Register (OFR)

U.S. National Archives and Records Administration
700 Pennsylvania Ave., NW
Washington, DC 20408
(202) 741-6030

Defendants.

**AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

I. INTRODUCTION

1. This is a civil action for declaratory and mandatory relief, authorized by the Declaratory Judgement Act, 28 U.S.C. § 1361, Writs, 28 U.S.C. § 1361 and the Administrative Procedure Act,. et seq. Plaintiff sues the defendant, David S. Ferriero, in his official capacity as Archivist of the United States of America and the defendant Oliver Potts, in his official capacity as Director, Office of the Federal Register of the National Archives and Records Administration (NARA).

2. Plaintiff seeks to move this Court to issue declaratory judgments and provide injunctive relief to ensure NARA faithfully discharges its responsibilities in regards to oversight of future presidential elections to certify the integrity of Article II Section 1 presidential electors and inclusive as amended by Section 2 Fourteenth Amendment presidential electors in order to effect an unbiased administration by NARA of all of the constitutional provisions governing presidential elections.
3. At the Jan., 9th TRO hearing Defendants submitted a Motion to Dismiss that confirmed plaintiff's assertion that the Defendants have the authority to provide redress for injury arising from an unconstitutionally constituted Electoral College. Specifically Defendants affirm their role in ensuring the integrity of the Electoral College by declaring at ¶ 1 Pg.3 in their Motion to Dismiss "When the Archivist received the Certificates of Vote from the states, the Office of the Federal Register reviewed them to ensure, for example, that they were signed, that they listed separate vote totals for the president and vice president, and that no members of Congress or the Cabinet served as electors (see U.S. Const. art. II, § 1, cl. 2.)".
4. In light of Defendants' admission of authority and responsibility in their Motion to Dismiss to "ensure" the constitutional integrity of presidential electors in regards to U.S. Const. art. II, § 1, cl. 2. Plaintiff also seeks to add an Article Two malfeasance claim to this AMENDED COMPLAINT.
5. There is facial evidence that Defendants are complicit in the illegitimate seating of at least 50 Trump Electors in the recent Electoral College in violation of U.S. Const. art. II, § 1.
6. There is facial evidence that Defendants are complicit in at least 62 legitimate Clinton Electors not being seated in the recent Electoral College as alleged in the original complaint in violation of U.S. Const. amend. xiv, § 2.
7. Defendants have caused detriment to the plaintiff and at least 62 presidential electors pledged to Hillary Clinton to suffer an abridgment of their votes in violation of the malapportionment

penalty clause of the Second Section of the Fourteenth Amendment to the Constitution pursuant to Title Two Section Six of the United States Code (2 U.S.C§6). The election codes in the states: Alabama , Arizona , Georgia , Indiana , Iowa, Michigan , North Carolina, Pennsylvania , South Carolina , Tennessee, and Wisconsin do not specify a "Winner Take All" statute that explicitly awards the states' presidential electors to the candidate who wins a majority of the votes cast in the state (i.e. unbounded states) . Defendants failed to “ensure” that the Certificates of Votes for the aforementioned states abides by the Amend14§2 Constitutional mandate to allocate the states' electors in proportion to the popular vote cast or suffer a reduction in Congressional representation pursuant to 2U.S.C§6.

8. Furthermore, Defendants have misinformed the unbounded state executives by their exclusion of section 2 of the Fourteenth Amendment to the Constitution and the “Reduction of Representation” federal code 2 U.S.C§6 in the NARA pamphlet entitled, *Provisions of the Constitution and United States Code relating to Presidential Elections*. This pamphlet is provided to the Governor of each state and the Mayor of the District of Columbia by the archivist of the United States prior to presidential elections.

II. JURISDICTION

9. This Court has jurisdiction over the present action pursuant to 28 U.S.C. §1331, Federal Question Jurisdiction (this action being one that arises under the Constitution and the laws of the United States, specifically 3 U.S.C. § 6, 11, 12, 13); Art. II § 1 and the 1st,4th,5th, 9th,14th Amendment to the U.S. Constitution; 28 U.S.C. Section 2201, the Declaratory Judgment Act; 5 U.S.C. § 702 and the Administrative Procedures Act; 28 U.S.C. § 1361, regarding an action to compel an officer of the United States to perform his/her duty, and 28 U.S.C. § 1651 issue all writs necessary or appropriate in the aid of their respective jurisdictions and agreeable to the usages and principles of law, 2 U.S.C§6 Reduction of Representation.

III. VENUE

10. 28 U.S.C. Section 1391(e), as amended, provides that in a civil action in which each defendant is an officer or employee of the United States or any agency thereof acting in his official capacity, or under color of legal authority, or any agency of the United States, the action may be brought in any judicial district in which a defendant in the action resides. Plaintiff is a resident of the District of Columbia and Defendant National Archives and Records Administration (NARA) is an agency which operates within this district with headquarters in Washington, D.C.

IV. PRELIMINARY STATEMENT

11. Plaintiff on Nov. 28, 2016 in a letter to the Archivist delivered by regular mail, email, and personal delivery to the NARA II receiving desk at 8601 Adelphi Road, College Park, MD 20740 served Notice of Potential Complaint for Declaratory Relief in the Nature of Mandamus and other Injunctive Relief, if the OFR failed to inform 11 unbounded state Governors and Electors before the December 19, 2016 meeting of Electors in the state capitals that the resultant Certificates of Votes must conform to the Amend14§2 Constitutional mandate to allocate the states' electors in proportion to the popular vote cast.

12. The Archivist of the United States is required by law to perform certain functions relating to the Electoral College (3 U.S.C. sections 6, 11, 12, 13). The Archivist has delegated to the Director of the Federal Register the authority to carry out the administration of the Electoral College process.

13. The Office of the Federal Register (OFR) and the National Archives and Records Administration (NARA), affirmed through their Counsel at the Jan.9th, TRO hearing Defendants responsibility for oversight of the Presidential Election. NARA declares at their official web site that:

"There is no Constitutional provision or Federal law requiring Electors to vote in accordance with

the popular vote in their States"

For the 11 states identified here, there is even the absence of a state law requiring Electors to vote in accordance with the popular vote in their States.

V. PLAINTIFF

14. Plaintiff, Asa Gordon is a Voter in the 2016 Presidential Election, U.S. citizen and resident of the District of Columbia. Plaintiff serves as Executive Director of the Douglass Institute of Government (DIG), an advocacy think tank. DIG is an unincorporated association composed of veteran Civil Rights activists, social analysts and historical scholars who seek to analyze societal and governmental action based upon the simple premise of determining whether the path of action chosen provides the public service intended. The Douglass Institute of Government provides information to serve the public interest by insuring that Government officials are not negligent in the exercise of functions that are either granted in statute or are assumed by Government agents to fulfill their perceived responsibilities. DIG is committed to fulfill Frederick Douglass' admonition to "agitate, agitate, agitate" to secure our inalienable rights. All DIG associates are pledged to expend as much of their personal resources as possible to advance the collective will of the association.
15. NARA through its agents has already committed and will continue to exact concrete and particularized injury -and, without a remediable order from this Court, will continue to injure— DIG associates in the form of a significant diversion and depletion of DIG associates time, resources, and efforts. Plaintiff has standing under *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982), because there has been a "concrete and demonstrable injury to the organization's activities[,] with the consequent drain on the organization's resources." See also *Ragin v. Harry Macklowe Real Estate Co.*, 6 F.3d 898, 904-05 (2d Cir. 1993). DIG through Plaintiff seeks declaratory relief determining the meaning of Art. II, § 1 and Amend 14§2 electors

as ascertained by the Defendants, stating that Defendants present and future conduct violates the Constitution's definitive and punitive constitutional provisions, as well as injunctive relief ordering Defendant's to refrain from discriminating and violating the Constitution's Presidential Electors Clauses.

VI. DEFENDANTS

16. Defendant David S. Ferriero, Archivist of the United States is required by law to perform certain functions relating to the electoral college (3 U.S.C. sections 6, 11, 12, 13). The Archivist has delegated to the Director of the Federal Register the authority to carry out the administration of the Electoral College process. He is sued in his official capacity only. Defendants have been unresponsive and totally dismissive of plaintiff's request.
17. Defendant Oliver Potts, Office of the Federal Register, coordinates the functions of the Electoral College on behalf of the Archivist of the United States, the States, the Congress, and the American People. He is sued in his official capacity only. Defendants have been unresponsive and totally dismissive of plaintiff's request.
18. In proceedings before the court to date, i.e. the January 9th, 2017 TRO hearing, the Defendant's Counsel have represented NARA officials presiding over the integrity of the Electoral College and the Presidential electoral process as impotent empires that can call constitutional strikes on electors but cannot call electors out, referees who can call constitutional fouls on offending electors but can exact no penalty.

VII. NATURE OF THE ACTION

19. The allocation of Presidential Electors, since the ratification of the 14th Amendment in July 1868, has been un-Constitutional in some states. Pursuant to the malapportionment penalty clause of the second section of the 14th Amendment (<http://constitutionus.com/#>), and pursuant Title Two Section Six of the United States Code (2 U.S.C.§6), electors in at least eleven states must be apportioned to the presidential candidates in those states based on the percentage of the

popular vote they received in those states. Currently at least eleven (11) states allocate all of their electors to the candidate who merely wins a plurality (not even a majority) of the state's popular vote, absent a specific state law stipulating a Winner Take All provision to their allocation.

20. These eleven unbounded states are Alabama (with 3 electors pledged to Ms. Clinton), Arizona (5 for Clinton), Georgia (7 for Clinton, 1 for Mr. Johnson), Indiana (4 for Clinton, 1 for Johnson), Iowa (3 for Clinton), Michigan (8 for Clinton), North Carolina (7 for Clinton), Pennsylvania (10 for Clinton), South Carolina (4 for Clinton), Tennessee (4 for Clinton), and Wisconsin (5 for Clinton). This is the apportionment of electors based on the proportional allocation of electors.

21. "On the first Monday after the second Wednesday in December", as provided by 3 U.S.C. §7, Electors pledged to Ms. Clinton and Mr. Johnson, in at least these eleven states, have Constitutional standing to demand being seated as Electors from these states at the Electoral College and cast their proportional votes on December 19, 2016.

22. The explicit consequence of the Constitutions' malapportionment penalty clause allocation of electors is:

$306 - 62 = 244$ electors allocated to Trump

$232 + 60 = 292$ for Clinton

With 2 electors awarded to Johnson.

(CNN PE Results, Dec. 2, 2016).

Explicitly Clinton with a majority in the popular vote also has a constitutionally mandated majority in the Electoral College.

23. Despite the circumlocution, slavery was sanctioned throughout the Constitution. ... Art. I, sec. 2, par. 3. The three-fifths clause provided for counting three-fifths of all slaves for purposes of representation in Congress. ... The most prominent indirect protections of slavery were: Art. II,

sec. 1, par. 2. This clause provided for the indirect election of the President through an electoral college based on congressional representation. This provision incorporated the three fifths clause into the Electoral College and gave whites in slave states a disproportionate influence in the election of the President. " _Garrison's Constitution, The Covenant with Death and How It Was Made, By Paul Finkelman, Prologue, Quarterly of The U.S. National Archives and Records Administration, winter 2000, Vol. 32, No. 4.

24. The disproportionate Southern white minority privilege quotas established in the 1787 Constitutional Convention worked well. The Southern white minority privilege quotas favored the slave state of Virginia with over a quarter of the electors required to elect a President, resulting in the election of white slaveholding Virginian to the presidency for 32 of the Constitution's first 36 years. A slaveholder served as president for 50 of the nation's first 60 years. From the constitutional convention of 1787 to the election of 1860 at the dawn of the Civil War, only two Presidents were elected who were not favorable to slavery.
25. The constitutional framers of 1787 established a rigged electoral franchise predicated on racial quotas that disproportionately favored a white minority. The original constitution of 1787 racially privileged white minority affirmative action articles is reconstituted in our time by the mechanism of "winner take all" politics that is not grounded in the Constitution or Federal law. Furthermore "winner-take-all" explicitly violates the plain text of the second section of the Fourteenth Amendment mal-apportionment penalty clause.

VIII . STATEMENT OF FACTS

26. Defendants Motion to Dismiss, submitted at the TRO hearing, confirms plaintiff's assertion that the Defendants' have the authority to provide redress for injury arising from an unconstitutionally constituted Electoral College. Specifically Defendants affirm their role in ensuring the integrity of the Electoral College by declaring at ¶ 1 Pg.3 in their Motion to Dismiss "When the Archivist received the Certificates of Vote from the states, the Office of the

Federal Register reviewed them to ensure, for example, that they were signed, that they listed separate vote totals for the president and vice president, and that no members of Congress or the Cabinet served as electors (see U.S. Const. art. II, § 1, cl. 2.)”.

27. Defendants' negligence in regards to their processing of Art. II, § 1 electors is already in public dispute (See Attached Exhibit) and by ignoring the Amend14§2 electors subject to this civil action have allowed for a possible illegitimate Electoral College to be constituted, thereby undermining public faith in the constitutional legitimacy of the present and future presidency.

28. At the January 6th, 2017 counting of the Electoral College before Congress the Senate in totality abdicated their responsibility to ensure the integrity of the Electoral College and thus the legitimacy of the Presidency by refusing to join with any House Representative that presented indisputable evidence of the pending counting of at least 50 illegally seated Trump electors.

IX. INJURIES TO PLAINTIFF

29. Defendants' malfeasance in the performance of their duties by the improper certification of **Art. II, § 1** electors and the non-certification of proper **Amend14§2** electors, commitment with the dissemination of deficient information to the Governors of states regarding the laws governing the presidential elections has caused the Plaintiff to divert and expend valuable resources specifically to counteract those violations.

30. There is a direct conflict between Defendants' malfeasance in the performance of their responsibilities in regards to the electoral process and DIG associate's mission of protecting the rights of citizens to be informed about the activities of government officials, ensuring the integrity of government officials, and the electoral process at least at the federal level. Defendants electoral malfeasance creates questions about the legitimacy of the members that make up the Electoral College and thus the Constitutional legitimacy of the Presidency, leaving the public insufficient information to judge.

31. Plaintiff has expended a significant amount of time and resources since the 2000 presidential

election educating the public about citizens' voting rights pursuant to section two of the fourteenth amendment. Because of disbelief that such rights exist, the public relies on the information posted at the web sites maintained by NARA as the definitive federally designated source for all valid information regarding Presidential elections.

32. The Defendant's failure to communicate the aforementioned Electoral College voting rights in the "unbounded" states pursuant to Amend14§2 as implemented by 2U.S.C§6 to the public, the Governor, and the presidential electors, and take appropriate action by December 19th, Defendants aided and abetted the election of a neo-redeemer Chief Executive and the reemergence of neo-redemption politics in our time injurious to all non-white citizens of our nation. The Redeemers were an eclectic group of individuals dedicated to the reversal of the civil rights gains of the former enslaved blacks during Reconstruction, and the restoration of political dominance by white supremacy.
33. Michael Keegan, president of the progressive pressure group People for the American Way, declares: "By choosing Steve Bannon as chief strategist, Trump has made clear that he intends to carry the racism and antisemitism of his campaign straight into the White House. The website Bannon ran is a home for the white nationalist right that elevates racist, xenophobic, anti-Semitic tirades and conspiracy theories."
34. Adam Jentleson, a spokesman for Senate Democratic leader Harry Reid, has declared: "It is easy to see why the KKK views Trump as their champion when Trump appoints one of the foremost peddlers of White Supremacist themes and rhetoric as his top aide."
35. The Southern Poverty Law Center, an anti-hate speech watchdog, wrote in an open letter:
"Bannon presided over a news empire where he, according to former staffers, 'aggressively pushed stories against immigrants, and supported linking minorities to terrorism and crime' ...
"Under Bannon, Breitbart published a call to 'hoist [the Confederate flag] high and fly it with pride' only two weeks after the Charleston massacre when the country was still reeling from the

horrors of the murders.

36. John Weaver, a party strategist who worked for Ohio Governor John Kasich's presidential campaign, tweeted: "The racist, fascist extreme right is represented footsteps from the Oval Office. Be very vigilant, America."
37. Donald Trump, the affirmative action minority popular vote Presidential candidate, has appointed Sen. Jeff Sessions (R-Ala.) as attorney general. In 1986, a Senate committee denied Sessions, then a 39-year-old U.S. attorney in Alabama, a federal judgeship. His former colleagues testified Sessions used the n-word and joked about the Ku Klux Klan, saying he thought they were "okay, until he learned that they smoked marijuana."
38. The Southern Poverty Law Center's Heidi Beirich, who tracks hate speech, said Sessions is guilty of it, and that his mere presence in Trump's inner circle is "a tragedy for American politics."

X. STANDING

A. Unique Standing as a DC Citizen Voter

39. Plaintiff standing is singularly unique as a citizen voter. No other United States citizen stands in the unique position of the Plaintiff and the citizens of the District of Columbia. The congress in its infinite wisdom abides the disfranchisement of the plaintiff and the citizens of the District of Columbia in a manner unlike any other citizen of the United States of America. The Congress chose to circumscribe the opportunity of this class of citizens of which the Plaintiff is a member in the voting process. The Plaintiff as do all the citizens of the District of Columbia, are precluded the right to vote for representatives in the House or Senate who can vote or protect their interests in the Congress of the United States of America. Congress has uniquely limited the right of this class of citizen to enjoy the franchise to vote with the explicit exception that this class of citizen can participate only in the selection of electors to vote for the President and Vice President of the United States. This injury is real , particularized and unlike any injury that any

other citizen from any other state can assert. The Plaintiff, unlike any other American citizen, has no congressional representative to whom he may appeal or to whom he can raise an objection at the appointed time established for such objections under 3USC§15. The reason being, the plaintiff has no representative who has a right in law to speak on the floor of Congress. Nor can Plaintiff appeal for representative leverage to apply pressure to remedy Plaintiff suffering from the malfeasance of governmental officials. Thus as a pseudo citizen voter, Plaintiff stands alone to petition the only forum of government that can provide a remedy in this instance, the federal court of the United States of America.

B. *Anderson v. Celebrezze*

40. Defendants argue that I lack standing because I do not vote in any of the states subject to this civil action. As a DC voter, Plaintiff asserts the same claim of standing as granted by the Supreme Court to out of state voters in *Anderson v. Celebrezze*. The Supreme Court held in *Anderson v. Celebrezze*, 460 U.S. 780 (1983) that: “A burden that falls unequally on independent candidates or on new or small political parties impinges, by its very nature, on associational choices protected by the First Amendment, and discriminates against those candidates and voters whose political preferences lie outside the existing political parties. And in the context of a Presidential election, state imposed restrictions implicate a uniquely important national interest, because the President and Vice President are the only elected officials who represent all the voters in the Nation, and the impact of the votes cast in each State affects the votes cast in other States.”

C. *Havens Realty Corp. v. Coleman*

41. Plaintiff as Executive Director of DIG associates has standing under *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982), because there has been a “concrete and demonstrable injury to the organization's activities[,] with the consequent drain on the organization's resources.” See also *Ragin v. Harry Macklowe Real Estate Co.*, 6 F.3d 898, 904-05 (2dCir. 1993). DIG seeks

declaratory relief determining the meaning of Art. II§1 and Amend XIV§2 electors as ascertained by the Defendants, stating that Defendant's present and future conduct violates the Constitution's definitive and punitive constitutional provisions, as well as injunctive relief ordering Defendant's to refrain from discriminating and violating the Constitution's Presidential Electors Clauses.

D. Non enumerated and reserved 9th&10th Amend. Rights

42. The Federal citizen's "right to vole" for presidential electors under Section 2 of the 14th Amendment supersedes the appointment of electors "in such manner as the Legislature thereof may direct" under Article II, section 1, clause 2, because where two constitutional amendments apply to the same subject, (election of presidential electors) QUOD LEGES POSTERIORES PRIORES CONTRARIAS ABROGANT. Furthermore, Amendment XIV is clear by its adoption and by the constitutional construction of its framers that the non-enumerated rights of the Ninth Amendment retained by the people takes precedence over the non-delegated powers of the Tenth Amendment reserved to the states, (or to the people). The plain text of the second section of the Fourteenth Amendment sets a clear hierarchy, placing the citizen's right to vote over a state representative's right to hold his seat in Congress for an abridgment of that right.

E. Plaintiff Asserts a Right to Proceed As Private Attorney General.

43. The Attorney General has a public trust to enforce the law. In more than 140 years, the Attorney Generals of the United States have failed to enforce Section 2 of the 14th Amendment even over periods where the violations were blatant and violent. Plaintiff is a person who was to benefit from Section 2 of the 14th Amendment. If the Attorney General has abdicated his duty to enforce the law, then let plaintiff proceed as a private Attorney General. Section 2 of the 14th Amendment has never been litigated as it was intended by the Reconstruction-era Constitutional framers; it has never been enforced. Judicial notice may be taken that for well over a century, Congress, the Judiciary and the Executive Branch of Government have failed to enforce this

provision of the Constitution despite overt denials of the "right to vote" and other civil rights to African-Americans. Since Congress and the White House have not enforced this Constitutional provision for well over a century, then a theory of private attorney general should fill the resulting gap, for there are no surplusages or dead letters in the law. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

F. Universal Mathematical Standing

44. Every voting citizen has mathematical standing. Every citizen voter is included in the formula for calculating congressional and state representation . Congressional representation for each state is calculated by the formula:

$$Rs=Ps/(Pn/436)+2$$

where **Ps** is the population of the state (me) and **Pn** (me again) is the population of the nation.

The number **436** represents the number of seats in the House of Representatives plus one for the District of Columbia. The equation is rounded to the nearest whole number for each state and then adjusted for any statistical anomaly when the resulting sum does not equal **538**.

XI. LEGAL BACKGROUND

45. **Article 1 Section 2 Clause 3:** “Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons”.
46. **Article 2 Section 1 Clause 2 :** “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector”.

47. **"Art. II, sec. 1, cl. 2** _ “This clause provided for the indirect election of the President through an electoral college based on congressional representation. This provision incorporated the three fifths clause into the electoral college and gave whites in slave states a disproportionate influence in the election of the President”. _ *Paul Finkelman, Garrison's Constitution, The Covenant with Death and How It Was Made*, Prologue Quarterly of NARA, Winter 2000, Vol. 32, No. 4 , p233.
48. **Amend. XIV§2** : “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State”.
49. **2 USC §6-Reduction of representation** : “Should any State deny or abridge the right of any of the male inhabitants thereof, being twenty-one years of age, and citizens of the United States, to vote at any election named in the amendment to the Constitution, article 14, section 2, except for participation in the rebellion or other crime, the number of Representatives apportioned to such State shall be reduced in the proportion which the number of such male citizens shall have to the whole number of male citizens twenty-one years of age in such State.
50. On May 8, 1866, during a debate on the Fourteenth Amendment, Thaddeus Stevens, the leader of the Republicans in the House of Representatives, delivered a very important speech on the amendment's intent. He said:

“I can hardly believe that any person can be found who will not admit every one of these provisions (of the 14th Amendment) is just. They are all asserted, in some form or other, on our DECLARATION or organic law. ... The second section I consider the most important in the article. It fixes the basis of representation in Congress. If any State shall exclude any of her adult male citizens from the elective franchise, or abridge that right, she shall forfeit her right to representation in the same proportion. The effect of this provision will be either to compel the States to grant universal suffrage or so shear them of their power as to keep them forever in a hopeless minority in the national Government, both legislative and executive.”

51. At the turn of the last century, Congressman George Henry White, the last former enslaved black to serve in Congress and by 1898 the only African American in the House of Representatives, challenged the House to punish southern states for disfranchising blacks by calling for a reduction in their congressional delegations. Congressman White appealed in 1899 that southern delegations to Congress ought to be limited to:

“the benefit of the votes that are allowed to be cast in their representation ... It is a question that this House must deal with some time, sooner or later.”

XII THIS IS A CASE OF FIRST IMPRESSION

52. Voting rights are inherently *implicit* and *subjective* in the adjudication of an *equal balance test* pursuant to the *equal protection clause* of the *first section* of the 14th amendment. Voting rights are *explicit* and *quantitative* in the adjudication of a *partisan voter abridgment test* pursuant to the *malapportionment penalty clause* of the *second* section of the 14th amendment. Logic dictates that the only way to avoid a proportional penalty is by proportional representation. **Amend. 14§2** as implemented by **2U.S.C.§6** mandates a proportional weighting formula for the allocation of a state's electoral representatives to avoid the Constitution's malapportionment penalty clause “*shall be reduced in the proportion*”.

XIII CLAIM FOR RELIEF

53. Plaintiff realleges paragraphs 1 through 52 herein as fully set forth.
54. There is an actual controversy between Plaintiff and Defendants in regards to their responsibility to properly identify and ensure the integrity of electors certified by Defendants

satisfy the constitutional requirements of Art.II§1. Plaintiff asserts that Defendants have violated and will continue to violate in the future their responsibility to ensure the integrity of Art.II§1 electors.

55. There is an actual controversy between Plaintiff and Defendants in regards to their responsibility to properly identify and ensure the integrity of electors certified by Defendants satisfy the constitutional requirements of Amend. XIV§2. Plaintiff has taken the position that Defendants have violated and will continue in the future to violate the electoral apportionment mandate of Amend. XIV§2.

56. Plaintiff is entitled to declaratory relief under 28 U.S.C. § 2201. A declaration resolving the actual controversy between Plaintiff and Defendants—as to the meaning and proper allocation of Art.II§1 and Amend. XIV§2 presidential electors and whether Defendant’s conduct is violating and will violate the the Constitution's electors Clauses—will serve a useful purpose in settling the legal issues in this action and offering relief from uncertainty. Without this relief, Plaintiff will continue to suffer a significant drain on his personal resources with commitment strain on the DIG organization.

57. There is an actual controversy between Plaintiff and Defendants in regards to Defendants' production of the NARA pamphlet entitled, *Provisions of the Constitution and United States Code relating to Presidential Elections*. This pamphlet is provided to the Governor of each state and the Mayor of the District of Columbia by the archivist of the United States prior to presidential elections. The dissemination of deficient information to the Governors of states regarding the laws governing the presidential elections has caused the Plaintiff to divert and expend valuable DIG resources specifically to counteract those acts of malfeasance.

58. Defendants owe Plaintiff the duty to act upon his request and have unreasonably failed to perform that duty. Plaintiff provided all relevant information and facts needed for them to act.

XIV PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court grant the following relief:

(a) A declaratory judgment, stating that:

- (1) Defendants will examine the Certificates of Votes from unbounded states received by NARA before the statutory deadline for legal sufficiency to ensure that the Certificates of Votes adheres to the eligibility requirements **Art.II§1** electors.
- (2) Defendants will examine the Certificates of Votes from unbounded states received by NARA before the statutory deadline for legal sufficiency to ensure that the Certificates of Votes adheres to the proportional allocation of electors pursuant to Title Two Section Six of the United States Code (**2 U.S.C.§6**).
- (3) Defendants are to reject Certificates of Votes that only record the award of electors by the least fair allocation of presidential electors on a winner-take-all basis ungrounded in State Law, Federal Law or the US Constitution over the obviously more fair proportional allocation of presidential electors based on **Amend14§2**, as enforced by **2U.S.C§6**.
- (4) Defendants will inform unbounded state Governors and Electors that the December meeting of Electors in state capitals must abide by the **Amend14§2** Constitutional mandate to allocate the states' electors in proportion to the popular vote cast.(4) Defendants will include Section 2 of the 14th Amendment (**Amend.14§2**) and its enabling statutory code section 6 of title 2 of the United States Code (**2U.S.C.§6**) in the NARA pamphlet "*Provisions of the Constitution and United States Code relating to Presidential Elections*" as a permanent feature.
- (5) Defendants will contact State Governors to inform them of their exclusion of

Amend.14§2 and **2U.S.C.§6** in the pamphlet mailed to them prior to the November presidential election entitled, *Provisions of the Constitution and United States Code relating to Presidential Elections*.

(6) Defendants' conduct, as described herein, is violating or will violate the Constitutions **Art.II§1 & Amend.14§2** Electors Clauses.

(b) Injunctive relief, enjoining Defendants from violating the **Art.II§1 & Amend.14§2** Electors Clauses, as construed by this Court;

(c) Such other and further relief as this Court may deem just and proper, including that Plaintiff be awarded allowed costs and expenses under the Equal Access to Justice Act or as otherwise appropriate.

Dated: February 10, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2017 a copy of " **AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** " was filed with the Court and served via first class mail on the following:

JOHNNY H. WALKER, D.C. Bar #991325
Assistant United States Attorney
555 4th Street, N.W.
Washington, District of Columbia 20530
Telephone: 202 252 2575
Counsel for Defendants

Furthermore, Courtesy copies (pdf) have been sent by email to johnny.walker@usdoj.gov.

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