UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Eugene Martin LaVergne,
543 Cedar Avenue
West Long Branch, New Jersey 07764;
Frederick John LaVergne,
312 Walnut Street
Delanco, New Jersey 08075;
Leonard P. Marshall,
303 Spinnaker Way
Neptune, New Jersey 07753
Scott Neuman,
1325 Englemere Boulevard
Toms River, New Jersey 08757; and
Allen J. Cannon,
7 Brookside Drive
Titusville, New Jersey 08560,

Plaintiffs,

vs.

(1) United States House of Representatives, *a body politic created and constituted by Article I of the United States Constitution, as amended;*
(2) Individual Members of the United States House of Representatives from the 50 States that have been seated so far at the One Hundred Fifteenth Congress *(435 Representatives Apportioned to date out of the minimum of 6,230 Representatives Constitutionally Required to be Apportioned);*
(3) Honorable Paul Ryan, *United States Representative from the State of Wisconsin;*
(4) Honorable David S. Ferriero, *Archivist of the United States;*

Case No. 1:17-cv-00793 (F-Deck)
Hon. Colleen Kollar-Kotelly, U.S.D.J.
Case Filed: April 28, 2017

FIRST AMENDED COMPLAINT

(5) **Honorable Wilbur Ross,** *United States Secretary of Commerce;*
(6) **Honorable Donald J. Trump,** *President of the United States;* and
(7) **Honorable Karen L. Haas,** *Clerk of the United States House of Representatives;*

VIRGINIA STATE OFFICIALS:

(8) **Honorable Terry McAuliffe,** *Governor of Virginia;*
(9) **Honorable Mark Herring,** *Virginia State Attorney General*
(10) **Honorable Kelly Thomasson,** *Secretary of the Commonwealth of Virginia;*
(11) **Virginia State Senate**
(40 State Senators)
(12) **Virginia House of Delegates**
(100 State Delegates)

CONNECTUCUT STATE OFFICIALS:

(13) **Honorable Daniel P. Malloy,** *Governor of Connecticut;*
(14) **Honorable George Jepsen,** *Connecticut State Attorney General;*
(15) **Honorable Denise W. Merrill,** *Connecticut Secretary of State;*
(16) **Connecticut State Senate**
(36 State Senators);
(17) **Connecticut State House of Representatives**
(151 State Representatives);

KENTUCKY STATE OFFICIALS:

(18) **Honorable Matt Bevin,** *Governor of Kentucky;*
(19) **Honorable Andy Beshear,**
Kentucky State Attorney General;
(20) **Honorable Alison Lundergan Grimes,**
Kentucky Secretary of State;
(21) **Kentucky State Senate**
(30 state Senators);
(22) **Kentucky State House of Representatives**
(100 State Representatives)

STATE OFFICIALS FROM THE OTHER 47 STATES:

ALABAMA STATE OFFICIALS:

(23) **Honorable Robert Bentley;** *Governor of Alabama;*

(24) **Honorable Luther Strange,** *Alabama State Attorney General;*

(25) **Honorable John H. Merrill,** *Alabama Secretary of State;*

(26) **Alabama State Senate** (35 State Senators);

(27) **Alabama State House of Representatives** (105 State Representatives);

ALASKA STATE OFFICIALS:

(28) **Honorable Bill Walker,** *Governor of Alaska;*

(29) **Honorable Jahna Lindemuth,** *Alaska State Attorney General;*

(30) **Honorable Josephine Bahnke,** *Director Alaska Division of Elections;*

(31) **Alaska State Senate** (20 State Senators);

(32) **Alaska State House of Representatives** (40 State Representatives);

ARIZONA STATE OFFICIALS:

(33) **Honorable Doug Ducey,** *Governor of Arizona;*

(34) **Honorable Mark Brnovich,** *Arizona State Attorney General;*

(35) **Honorable Michele Reagan,** *Secretary of State of Arizona;*

(36) **Arizona State Senate** (30 State Senators);

(37) **Arizona State House of Representatives** (60 State Representatives);

ARKANSAS STATE OFFICIALS:

(38) **Honorable Asa Hutchinson,** *Governor of Arkansas;*

(39) **Honorable Leslie Rutledge,** *Arkansas State Attorney General;*

(40) **Honorable Mark Martin,** *Arkansas Secretary of State;*

(41) **Arkansas State Senate**
(35 State Senators);
(42) **Arkansas State House of Representatives**
(100 State Representatives);

CALIFORNIA STATE OFFICIALS:

(43) **Honorable Edmund G. Brown, Jr.,** *Governor of California;*
(44) **Honorable Xavier Becerra,** *California State Attorney General;*
(45) **Honorable Alex Padilla,** *California Secretary of State;*
(46) **California State Senate**
(40 State Senators);
(47) **California State Assembly**
(80 State Representatives);

COLORADO STATE OFFICIALS:

(48) **Honorable John Hickenlooper,** *Governor of Colorado;*
(49) **Honorable Cynthia H. Coffman,** *Colorado State Attorney General;*
(50) **Honorable Wayne W. Williams,** *Colorado Secretary of State;*
(51) **Colorado State Senate**
(40 State Senators)
(52) **Colorado State House of Representatives**
(80 State Representatives)

DELAWARE STATE OFFICIALS:

(53) **Honorable John Carney,** *Governor of Delaware;*
(54) **Honorable Matthew Denn,** *Delaware State Attorney General;*
(55) **Honorable Elaine Manlove,** *Department of Elections;*
(56) **Delaware State Senate**
(21 State Senators);
(57) **Delaware State House of Representatives**
(41 State Representatives);

FLORIDA STATE OFFICIALS

(58) **Honorable Rick Scott,** *Governor of Florida;*
(59) **Honorable Pam Bondi,** *Florida State Attorney General;*

(60) **Honorable Ken Detzner,** *Florida Secretary of State;*
(61) **Florida State Senate** (35 State Senators);
(62) **Florida State House of Representatives** (105 State Representatives);

GEORGIA STATE OFFICIALS:

(63) **Honorable Nathan Deal,** *Governor of Georgia;*
(64) **Honorable Christopher M. Carr,** *Georgia State Attorney General;*
(65) **Honorable Brian P. Kemp,** ***Georgia Secretary of State;***
(66) **Georgia State Senate** (56 State Senators);
(67) **Georgia State House of Representatives** (180 State Representatives);

HAWAII STATE OFFICIALS:

(68) **Honorable David Y. Ige,** *Governor of Hawaii;*
(69) **Honorable Doug Chinm,** *Hawaii Attorney General;*
(70) **Honorable Scott T. Nago,** *Chief Election Officer;*
(71) **Hawaii State Senate** (25 State Senators);
(72) **Hawaii State House of Representatives** (51 State Representatives);

IDAHO STATE OFFICIALS:

(73) **Honorable C. L. "Butch" Otter,** *Governor of Idaho;*
(74) **Honorable Lawrence Wasden,** *Idaho Attorney General;*
(75) **Honorable Lawrence Denney,** *Idaho Secretary of State;*
(76) **Idaho State Senate** (35 State Senators);
(77) **Idaho State House of Representatives** (70 State Representatives);

ILLINOIS STATE OFFICIALS:

(78) **Honorable Bruce Rauner,** *Governor of*

Illinois;

(79) **Honorable Lisa Madigan,** *Illinois State Attorney General;*

(80) **Honorable Steve Sandvoss,** *Executive Director, Illinois State Board of Elections;*

(81) **Illinois State Senate**
(59 State Senators);

(82) **Illinois State House of Representatives**
(70 State Representatives);

INDIANA STATE OFFICIALS:

(83) **Honorable Eric J. Holcomb,** *Governor of Indiana;*

(84) **Honorable Curtis Hill,** *Indiana State Attorney General;*

(85) **Honorable Connie Lawson,** *Indiana Secretary of State;*

(86) **Indiana State Senate,**
(50 State Senators);

(87) **Indiana State House of Representatives**
(100 State Representatives);

IOWA STATE OFFICIALS:

(88) **Honorable Terry Branstad,** *Governor of Iowa;*

(89) **Honorable Tom Miller,** *Iowa State Attorney General;*

(90) **Honorable Paul D. Pate,** *Iowa Secretary of State;*

(91) **Iowa State Senate**
(35 State Senators);

(92) **Iowa State House of Representatives**
(105 State Senators);

KANSAS STATE OFFICIALS:

(93) **Honorable Sam Brownback,** *Governor of Kansas;*

(94) **Honorable Derek Schmidt,** *Kansas State Attorney General;*

(95) **Honorable Kris W. Kobach,** *Kansas Secretary of State;*

(96) **Kansas State Senate**
(40 State Senators);

(97) **Kansas State House of Representatives**
(125 State Senators);

LOUISIANA STATE OFFICIALS:

(98) **Honorable John Bel Edwards,** *Governor of Louisiana;*

(99) **Honorable Jeff Landry,** *Louisiana Attorney General;*

(100) **Honorable Tom Schedler,** *Louisiana Secretary of State;*

(101) **Louisiana State Senate** (39 State Senators);

(102) **Louisiana State House of Representatives** (105 State Representatives);

MAINE STATE OFFICIALS:

(103) **Honorable Paul LePage,** *Governor of Maine;*

(104) **Honorable Janet T. Mills,** *Maine State Attorney General;*

(105) **Honorable Matthew Dunlap,** *Maine Secretary of State;*

(106) **Maine State Senate** (35 State Senators);

(107) **Maine State House of Representatives** (151 State Representatives);

MARYLAND STATE OFFICIALS:

(108) **Honorable Larry Hogan,** *Governor of Maryland;*

(109) **Honorable Brian Frosh,** *Maryland State Attorney General;*

(110) **Honorable John C. Wobensmith,** *Maryland Secretary of State;*

(111) **Maryland State Senate** (47 State Senators);

(112) **Maryland State House of Delegates** (141 State Delegates);

MASSACHUSETTS STATE OFFICIALS:

(113) **Charlie Baker,** *Governor of Massachusetts;*

(114) **Honorable Maura Healey,** *Massachusetts State Attorney General;*

(115) **Honorable William Francis Galvin,** *Secretary of the Commonwealth of*

Massachusetts;

(116) Massachusetts State Senate (40 State Senators);

(117) Massachusetts State House of Representatives (160 Representatives);

MICHIGAN STATE OFFICIALS:

(118) Honorable Rick Snyder, *Governor of Michigan;*

(119) Honorable Bill Schultte, *Michigan State Attorney General;*

(120) Honorable Ruth Johnson, *Michigan Secretary of State;*

(121) Michigan State Senate (38 State Senators);

(122) Michigan State House of Representatives (110 State Representatives);

MINNESOTA STATE OFFICIALS:

(123) Honorable Mark Dayton, *Governor of Minnesota;*

(124) Honorable Lori Swanson, *Minnesota State Attorney General;*

(125) Honorable Steve Simon, *Minnesota Secretary of State;*

(126) Minnesota State Senate (67 State Senators);

(127) Minnesota State House of Representatives (134 State Representatives);

MISSISSIPPI STATE OFFICIALS:

(128) Honorable Phil Bryant, *Governor of Mississippi;*

(129) Honorable Jim Hood, *Mississippi State Attorney General;*

(130) Honorable Delbert Hosemann, *Mississippi Secretary of State;*

(131) Mississippi State Senate (52 State Senators);

(132) Mississippi State House of Representatives (122 State Representatives);

MISSOURI STATE OFFICIALS:

(133) Honorable Eric Greitens, *Governor of*

Missouri;

(134) **Honorable Joshua Hawley,** *Missouri Attorney General;*

(135) **Honorable John R. Ashcroft,** *Missouri Secretary of State;*

(136) **Missouri State Senate** (34 State Senators);

(137) **Missouri State House of Representatives** (163 State Representatives);

MONTANA STATE OFFICIALS:

(138) **Honorable Steve Bullock,** *Governor of Montana;*

(139) **Honorable Tim Fox,** *Montana Attorney General;*

(140) **Honorable Corey Stapleton,** *Montana Secretary of State;*

(141) **Montana State Senate** (50 State Senators);

(142) **Montana State House of Representatives** (100 State Representatives);

NEBRASKA STATE OFFICIALS:

(143) **Honorable Pete Ricketts,** *Governor of Nebraska;*

(144) **Honorable Doug Peterson,** *Nebraska Attorney General;*

(145) **Honorable John A. Gale,** *Nebraska Secretary of State;*

(146) **Nebraska Unicameral State Legislature** (49 Members);

NEVADA STATE OFFICIALS:

(147) **Honorable Brian Sandoval,** *Governor of Nevada;*

(148) **Honorable Adam Paul Laxalt,** *Nevada State Attorney General;*

(149) **Honorable Barbara K. Cegavske,** *Nevada Secretary of State;*

(150) **Nevada State Senate** (21 State Senators);

(151) **Nevada State House of Representatives** (42 State Representatives);

NEW HAMPSHIRE STATE OFFICIALS:

(152) **Honorable Chris Sununu,** *Governor of New Hampshire;*

(153) **Honorable Joseph Foster,** *New Hampshire State Attorney General;*

(154) **Honorable William M. Gardner,** *New Hampshire Secretary of State;*

(155) **New Hampshire State Senate** (24 State Senators);

(156) **New Hampshire State House of Representatives** (400 State Representatives);

NEW JERSEY STATE OFFICIALS:

(157) **Honorable Chris Christie,** *Governor of New Jersey;*

(158) **Honorable Kim Guadagno,** *Lt. Governor / Secretary of State;*

(159) **Honorable Christopher S. Porrino,** *Acting New Jersey State Attorney General;*

(160) **New Jersey State Senate** (40 State Senators);

(161) **New Jersey State General Assembly** (80 State Representatives);

NEW MEXICO STATE OFFICIALS:

(162) **Honorable Susana Martinez,** *Governor of New Mexico;*

(163) **Honorable Hector Balderas,** *New Mexico State Attorney General;*

(164) **Honorable Dianna Duran,** *New Mexico Secretary of State;*

(165) **New Mexico State Senate** (24 State Senators);

(166) **New Mexico State House of Representatives** (70 State Representatives);

NEW YORK STATE OFFICIALS:

(167) **Honorable Andrew Cuomo,** *Governor of New York;*

(168) **Honorable Eric Schneiderman,** *New York State Attorney General;*

(169) **Honorable Rossana Rosado,** *New York*

Secretary of State;

(170) New York State Senate
(63 State Senators);

(171) New York State House of Representatives
(150 State Representatives);

NORTH CAROLINA STATE OFFICIALS:

(172) Honorable Ray Cooper, *Governor of North Carolina*;

(173) Honorable Josh Stein, *North Carolina State Attorney General;*

(174) Honorable Elaine F. Marshall, *North Carolina Secretary of State;*

(175) North Carolina State Senate
(50 State Senators);

(176) North Carolina State House of Representatives
(120 State Representatives);

NORTH DAKOTA STATE OFFICIALS:

(177) Honorable Doug Burgum, *Governor of North Dakota;*

(178) Honorable Wayne Stenehjem, *North Dakota Attorney General* ;

(179) Honorable Al Jaeger, *North Dakota Secretary of State;*

(180) North Dakota State Senate
(47 State Senators);

(181) North Dakota State House of Representatives
(94 State Representatives);

OHIO STATE OFFICIALS:

(182) Honorable John Kasich, *Governor of Ohio;*

(183) Honorable Mike DeWine, *Ohio State Attorney General*;

(184) Honorable Jon Husted, *Ohio Secretary of State;*

(185) Ohio State Senate
(33 State Senators);

(186) Ohio State House of Representatives
(99 State Representatives);

OKLAHOMA STATE OFFICIALS:

(187) **Honorable Mary Fallin,** *Governor of Oklahoma;*

(188) **Honorable Mike Hunter,** *Oklahoma State Attorney General;*

(189) **Honorable Hike Hunter,** *Oklahoma Secretary of State;*

(190) **Oklahoma State Senate** (48 State Senators);

(191) **Oklahoma State House of Representatives** (101 State Representatives);

OREGON STATE OFFICIALS:

(192) **Honorable Kate Brown,** *Governor of Oregon;*

(193) **Honorable Ellen F. Rosenblum,** *Oregon State Attorney General;*

(194) **Honorable Dennis Richardson,** *Oregon Secretary of State;*

(195) **Oregon State Senate** (30 State Senators);

(196) **Oregon State House of Representatives** (60 State Representatives);

PENNSYLVANIA STATE OFFICIALS:

(197) **Honorable Tom Wolf,** *Governor of Pennsylvania;*

(198) **Honorable Josh Shapiro,** *Pennsylvania State Attorney General;*

(199) **Honorable Pedro A. Cortes,** *Pennsylvania Secretary of State;*

(200) **Pennsylvania State Senate** (50 State Senators);

(201) **Pennsylvania State House of Representatives** (203 State Representatives);

RHODE ISLAND STATE OFFICIALS:

(202) **Honorable Gina Raimondo,** *Governor of Rhode Island;*

(203) **Honorable Peter F. Kilmartin,** *Rhode Island Attorney General;*

(204) **Honorable Nellie M. Gorbea,** *Rhode Island Secretary of State;*

(205) **Rhode Island State Senate**
(38 State Senators);
(206) **Rhode Island State House of Representatives**
(75 State Representatives);

SOUTH CAROLINA STATE OFFICIALS:

(207) **Honorable Henry McMaster,** *Governor of South Carolina;*
(208) **Honorable Alan Wilson,** *South Carolina Attorney General;*
(209) **Honorable Mark Hammond,** *South Carolina Secretary of State;*
(210) **South Carolina State Senate**
(46 State Senators);
(211) **South Carolina State House of Representatives**
(179 State Representatives);

SOUTH DAKOTA STATE OFFICIALS:

(212) **Honorable Dennis Daugaard,** *Governor of South Dakota;*
(213) **Honorable Marty Jackley,** *South Dakota Attorney General;*
(214) **Honorable Shantel Krebs,** *South Dakota Secretary of State;*
(215) **South Dakota State Senate**
(35 State Senators);
(216) **South Dakota State House of Representatives**
(70 State Representatives);

TENNESSEE STATE OFFICIALS:

(217) **Honorable Bill Haslam,** *Governor of Tennessee;*
(218) **Honorable Herbert R. Slattery, III,** *Tennessee Attorney General;*
(219) **Honorable Tre Hargett,** ***Tennessee*** *Secretary of State;*
(220) **Tennessee State Senate**
(33 State Senators);
(221) **Tennessee State House of Representatives**

(99 State Representatives);

TEXAS STATE OFFICIALS:

(222) **Honorable Greg Abbott,** *Governor of Texas;*

(223) **Honorable Ken Paxton,** *Texas State Attorney General;*

(224) **Honorable Rolando Pablos,** *Texas Secretary of State;*

(225) **Texas State Senate**
(31 State Senators);

(226) **Texas State House of Representatives**
(150 State Representatives);

UTAH STATE OFFICIALS:

(227) **Honorable Gary R. Herbert,** *Governor of Utah;*

(228) **Honorable Sean D. Reyes,** *Utah Attorney General;*

(229) **Honorable Spencer J. Cox,** *Utah Lieutenant Governor;*

(230) **Utah State Senate**
(29 State Senators);

(231) **Utah State House of Representatives**
(75 State Representatives);

VERMONT STATE OFFICIALS:

(232) **Honorable Phil Scott,** *Governor of Vermont;*

(233) **Honorable TJ Donovan,** *Vermont Attorney General;*

(234) **Honorable Jim Condos,** *Vermont Secretary of State;*

(235) **Vermont State Senate**
(30 State Senators);

(236) **Vermont State House of Representatives**
(150 State Representatives);

WASHINGTON STATE OFFICIALS:

(237) **Honorable Jay Inslee,** *Governor of Washington;*

(238) **Honorable Bob Ferguson,** *Washington State Attorney General;*

(239) **Honorable Kim Wyman,** *Washington*

Secretary of State;

(240) Washington State Senate (49 State Senators);

(241) Washington State House of Representatives (98 State Representatives);

WEST VIRGINIA STATE OFFICIALS:

(242) Honorable Jim Justice, *Governor of West Virginia;*

(243) Honorable Patrick Morrisey, *West Virginia State Attorney General;*

(244) Honorable Mac Warner, *West Virginia Secretary of State;*

(245) West Virginia State Senate (34 State Senators);

(246) West Virginia State House of Representatives (100 State Representatives);

WISCONSIN STATE OFFICIALS:

(247) Honorable Scott Walker, *Governor of Wisconsin;*

(248) Honorable Brad Schimel, *Wisconsin State Attorney General;*

(249) Honorable Doug La Follette, *Wisconsin Secretary of State;*

(250) Wisconsin State Senate (33 State Senators);

(251) Wisconsin State House of Representatives (99 State Representatives);

WYOMING STATE OFFICIALS:

(252) Honorable Matthew Mead, *Governor of Wyoming;*

(253) Honorable Peter K. Michael, *Wyoming State Attorney General;*

(254) Honorable Ed Murray, *Wyoming Secretary of State;*

(255) Wyoming State Senate (30 State Senators);

(256) Wyoming State House of Representatives (60 State Representatives);

Defendants;

and

(257) Michael Pence, *Vice President of the United States and President of the United States Senate,*
(258) United States Senate, *a body politic created and constituted by Article I of the United States Constitution, as amended;*
(259) Individual Members of the United States Senate from the 50 States that have been seated at the One Hundred Fifteenth Congress;

Interested Parties.

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Plaintiffs Eugene Martin LaVergne, Frederick John LaVergne, Leonard P. Marshall, Scott Neuman and Allen J. Cannon, by way of First Amended Complaint against the named Defendants, say as follows:

I. JURISDICTION, VENUE, AND CONVENING A THREE JUDGE COURT:

A. Jurisdiction:

1. Jurisdiction to entertain Plaintiffs'' Federal Constitutional legal claims is conferred on the United Sates District Court pursuant to 28 *U.S.C.* §1391 and 28 *U.S.C.* §2284(a). Jurisdiction to entertain Plaintiffs' legal claims challenging Federal Agency action or inaction is conferred on the United States District Court pursuant to 5 *U.S.C.* §702. Additionally, Plaintiffs have a non-statutory right to bring this action to challenge the lawfulness of what is Article II Executive Branch Action and to seek to enjoin its wrongful implementation and / or failure to implement by Federal Officials. *See*

Chamber of Commerce of the United States v. Reich, 74 *F.3d* 1322 (3d Cir. 1996). Plaintiffs' claims for declaratory and injunctive relief is authorized by 28 *U.S.C.* §2201 and 28 *U.S.C.* §2202 ("Federal Declaratory Judgments Act"), by 28 *U.S.C.* §1361 ("Federal Mandamus Act"), by *Rule* 57 and *Rule* 65 of the *Federal Rules of Civil Procedure,* by *L.Cv.R.* 65.1 of the *Rules of the United States District Court for the District of Columbia,* and by general legal and equitable powers of this Court. Cumulatively and / or alternatively, Plaintiffs' claims for declaratory and injunctive relief against the Virginia State Officials, Connecticut State Officials and Kentucky State Officials to compel each State to provide "official notice" to the Archivist of the United States of their respective State Legislature's unreported ratification action on *Article the First* is conferred pursuant to 28 *U.S.C.* §1367 and by the *Code of Virginia* §8.01 – 184, *Connecticut General Statute* 59-29 and *Kentucky Revised Statutes* 418.045, 418.050 and 418.055.

B. Venue:

2. Venue is proper in the District of the District of Columbia pursuant to the requirements of 28 *U.S.C.* §1391.

C. Convening a Three Judge Court:

3. The Plaintiffs herein are challenging the validity and Constitutionality of the 2010 Apportionment of the United States House of Representatives. 28 *U.S.C.* §2284(a) provides as follows:

> **(a)** A district court of three judges ***shall be convened*** when otherwise required by Act of Congress, or ***when an action is filed challenging the constitutionality of the apportionment of congressional districts*** or the

apportionment of any statewide legislative body. (emphasis added).

[28 *U.S.C.* §2284(a)].

4. The cited statute by its express terms clearly requires that "... [a] *district court of three judges* ***shall be convened*** *... when an action is filed challenging the constitutionality of the apportionment of congressional districts ...*" *Id.* As this case is clearly an action "challenging the constitutionality of the apportionment of congressional districts" within the meaning of 28 *U.S.C.* §2284(a), a district court of three judges "... ***shall*** ..." be convened to hear this case. *Id.* The procedures for convening a three judge court when required by 28 *U.S.C.* §2284(a) are outlined in 28 *U.S.C.* §2284(b). As Plaintiffs' First Amended Complaint is clearly, on its face, a challenge to the apportionment of congressional districts, the cited statute mandates the non-discretionary automatic convening of a Three Judge Court to entertain and decide and adjudicate Plaintiffs' claims. *See Shapiro v. McManus,* 577 *U.S.* ___ (2015) (Slip Opinion No. 14-990).

II. THE PARTIES:

1. Plaintiffs Eugene Martin LaVergne, Frederick John LaVergne, Leonard P. Marshall, Scott Neuman and Allen J. Cannon are all citizens of the United States and residents of the State of New Jersey. Plaintiffs each access and use the internet for business, personal and health purposes through various commercial Internet Service Providers ("ISPs") who Plaintiffs pay a fee to for accessing the internet which also allows Plaintiffs to access, use and administer email accounts and web sites. Plaintiffs claim rights to privacy regarding personal, business and health information and object to ISPs

collecting and selling or otherwise disseminating any information whatsoever regarding Plaintiffs personal, business and health information to third parties. ISPs collecting and selling or otherwise disseminating Plaintiffs' personal, business and health information as accumulated by the ISP to third parties proximately causes damage to Plaintiffs. On Friday December 2, 2016 the Federal Communications Commission ("FCC") published a new Agency Rule entitled "Protecting the Privacy of Customers of Broadband and Other Telecommunications Services" in the *Federal Register,* at Volume 81, No. 232 (Friday December 2, 2016) pages 87274 through 87346. The new Agency Rule operates to protect the privacy interests of Plaintiffs and others similarly situated by Federal Law and among other things, bars ISPs from collecting and selling or otherwise disseminating Plaintiffs' personal, business and health information as accumulated by the ISP to third parties for free or for profit. Under the *Congressional Review Act,* the new FCC Rule "Protecting the Privacy of Customers of Broadband and Other Telecommunications Services" would automatically become final binding Federal Law unless the Senate and House of Representatives pass, and the President signs, a "disapproval resolution" in accordance with the procedures outlined therein. *See* 5 *U.S.C. sec.* 802. On March 28, 2017, with the Senate having introduced and approved a "disapproval resolution" known as S.J. Res. 34, the United Sates House of Representatives also then and there voted to approve S.J. Res. 34 rejecting the new FCC Rule "Protecting the Privacy of Customers of Broadband and Other Telecommunications Services". However, on March 28, 2017 the United States House of Representatives of the One Hundred and Fifteenth Congress was not apportioned in accordance with *Article the First* with a minimum of 6,230 Representatives among the 50 States, and with only 435 Representatives, had not yet

achieved the mandatory Article I *Quorum* of 50% +1 of the membership present (or 3,116 Representatives) to conduct business, and as such the March 28, 2017 vote in the House of Representatives approving S.J. Res. 34 was illegal, invalid, a nullity and unconstitutional. Nevertheless, on April 3, 2017 Article II President Donald J. Trump signed S.J. Res. 34 into law, rejecting new FCC Rule "Protecting the Privacy of Customers of Broadband and Other Telecommunications Services", thereby allowing ISPs to now, without violating any Federal Laws, to collect and sell or otherwise disseminating Plaintiffs' personal, business and health information as accumulated by the ISP to third parties. S.J. Res. 34 is now identified as Public Law No: 115-22 (04/03/2017). Plaintiffs have Article III Standing to challenge the legality and constitutional validity of S.J. Res. 34 / Public Law No: 115-22 (04/03/2017) on the basis that the March 28, 2017 vote in the House of Representatives was conducted without the necessary Article I *Quorum* to conduct business rendering the vote invalid, illegal, a nullity and unconstitutional, which in turn means that the "bi-camerality" requirements of the Constitution have not yet been met and that S.J. Res. 34 / Public Law No: 115-22 (04/03/2017) is not valid law. Additionally and cumulatively, Plaintiffs have Article III "Standing" to bring this lawsuit because, as citizens of the United States and residents and voters of New Jersey, Plaintiffs are generally damaged by having a United States House of Representatives not properly apportioned in accordance with the mandatory standards of *Article the First* with a minimum of 6,230 Representatives apportioned among the 50 States, and specifically and directly damages by their home State of New Jersey only having been apportioned 12 Representatives to represent their interests in the United States House of Representatives at the One Hundred and Fifteenth Congress when

in fact the State of New Jersey is Constitutionally required to have been apportioned a total of a minimum of 177 Representatives at the One Hundred and Fifteenth Congress, leaving the State of New Jersey with 165 vacancies for Representatives, thereby unconstitutionally diluting Plaintiffs representation at the One Hundred and Fifteenth Congress.

2. Defendant United States House of Representatives is a national body politic created and constituted by Article I of the *United States Constitution*, as amended, which exercises legislative powers in the United States Government's Constitutional law making process. The *United States Constitution's* Article I requires the presence of a *quorum,* which is 50%+ of the Representatives Constitutionally apportioned among the States in the Union after a given Decennial Apportionment, before any legislative business (including the election of a "Speaker of the House" and the March 28, 2017 third vote on S.J Res. 34) may be conducted. The principal place of business of Defendant United States House of Representatives is located at United States Capitol Building, Room H154, Washington, D.C. 20515.

3. Defendant Individual Members of the United States House of Representatives from the 50 States that have been seated so far at the One Hundred Fifteenth Congress consists of the Members who were elected to serve during the One Hundred and Fifteenth Congress at the November 8, 2016 General Elections held in each of the 50 States. The individual names of each Member, and the State that they represent, is listed in "Official List of Members of the House of Representatives of the United States and Their Places and Residence – One Hundred Fifteenth Congress, March 1, 2017", compiled by Karen L. Haas, clerk of the House of Representatives", a true copy attached hereto at **"Exhibit**

A", the contents of which are hereby adopted and incorporated herein by reference. The general principal place of business of each Representative elected to the One Hundred and Fifteenth Congress is as listed in **"Exhibit B".**

4. Defendant Honorable Paul Ryan is an elected Member of the United States House of Representative from the First Congressional District of the State of Wisconsin. Defendant Honorable Paul Ryan was purportedly elected to the position of "Speaker of the United States House of Representatives" on January 3, 2017 by a majority vote of the Representatives then and there present. However, the number of Representatives then and there present on January 3, 2017 was less than the minimum number of Representatives necessary to constitute a Constitutional *quorum* necessary for conducting business which includes choosing a "Speaker". Due to the absence of a Constitutional *quorum* in the One Hundred Fifteenth Congress, and due to the fact that a Constitutional *quorum* can not be achieved unless and until special elections to fill vacancies are held in accordance with 2 *U.S.C.* §2(c) in the States, until such time as at least 3,116 Representatives of the Constitutionally mandatory minimum number of 6,230 Representatives Apportioned among the 50 States in the Union have been elected, have presented their credentials to Defendant Karen L. Haas and then taken the required oath of office, Defendant Honorable Paul Ryan has not, or has not yet, been validly elected as the Speaker of the United States House of Representatives at the One Hundred and Fifteenth Congress. Defendant Honorable Paul Ryan has a specific principal place of business located at: 1233 Longworth House Office Building, Washington, D.C. 20515.

5. Defendant David S. Ferriero, Archivist of the United States, is presently serving as the Archivist of the United States of America, the Chief Administrator of the National

Archives and Records Administration. The Archivist has the non-discretionary ministerial legal obligation to declare and publish and promulgate a proposed amendment to the United States Constitution when he has received official notification that a sufficient number of State Legislatures ratified a proposed amendment so that the amendment was fully ratified and automatically consummated as law. *See* 1 *U.S.C.* §106(b). The Archivist has a principal place of business located at National Archives and Records Administration, 700 Pennsylvania Avenue NW, Washington, D.C. 20408.

6. Defendant Willbur Ross, a resident of the State of California, is the United States Secretary of Commerce and has a principal place of business located at 1401 Constitution Avenue, NW, Washington, D.C.

7. Donald J. Trump is the duly elected Article II President of the United States and has a principal place of business located at 1600 Pennsylvania Avenue NW, Washibngton, D.C.

8. Defendant Karen L. Haas is the Clerk of the United States House of Representatives at the One Hundred Fifteenth Congress, having previously served as the Clerk in the One Hundred and Fourteenth and earlier Congresses. Defendant Karen L. Haas has a principal place of business located at United States Capitol, Room H154, Washington, D.C.

9. The Virginia, Connecticut and Kentucky State Officials named in the caption of this lawsuit are the State Officials responsible for "officially reporting" their State Legislature's ratification votes on proposed Constitutional amendments to the Archivist of the United States and are the State Officials responsible for issuing writs for special elections to fill vacancies in the United States House of Representatives in their States

and are responsible for administering such special elections. The addresses and principal place of business of such State Officials are as found in **"Exhibit C"** attached hereto which is incorporated herein by reference.

10. Other State Officials are the State Officials responsible for issuing writs for special elections to fill vacancies in the United States House of Representatives in their States and are responsible for administering such special elections. The addresses and principal place of business of such State Officials are as found in **"Exhibit C"** attached hereto which is incorporated herein by reference.

11. Interested Party Michael Pence is the duly elected Vice President of the United States whose principal place of business is located at Office of the Vice President, United States Capitol, Washington, D.C.

12. Interested United States Senate is a body politic created and constituted by Article I of the United States Constitution, as amended. The principal place of business of this Interested Party is Office of the Secretary of the Senate, United States Capitol, Washington, D.C.

13. Interested Parties individual Members of the United States Senate have an address and principal place of business as found in **"Exhibit D"** and **"Exhibit E"** attached hereto which is incorporated herein by reference.

III. LEGAL CLAIMS:

FIRST COUNT:

1. The text of the *United States Constitution's* Article V itself confirms that the ratification vote in a State Legislature is not part of a regular State Law making process requiring the participation or approval of any State's Executive Branch or adherence to any other State Law making process or procedure but rather is a specific and unique grant of legal authority conferred directly by the Federal Constitution itself to the States to participate in the Federal Constitutional Law making process (through the approval and affirmative ratification vote of the State "Legislature" or alternatively by ratification vote at State Convention) with the other States in the Union. As the United States Supreme Court has observed, "... *[t]he function of a state legislature in ratifying a proposed amendment to the Federal Constitution, like the function of Congress in proposing the amendment, is a federal function derived from the Federal Constitution ...*" *Hawke v. Smith (No. 2),* 252 *U.S.* 368, 376 (1921).

2. As the ratification vote of a State Legislature is part of a constitutionally defined Federal process for making Federal Constitutional law, State lawmaking process and procedure as otherwise outlined in a State's own Constitution or other rules of procedure regarding lawmaking do not govern and rather the required actions of the State Legislature for a valid ratification are only as defined in the *United States Constitution's* Article V itself. The *United States Constitution's* Article V requires only that a State Legislature meet and cast an affirmative vote of assent for the Legislature to have taken the requisite Article V positive action and to have affirmatively "ratified" an amendment.

There is no requirement that a bi-cameral state legislature take action at the same session or in the same year for that matter. As the literal text of Article V states, a proposed amendment: "... *shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States* ...". More directly stated, a proposed amendment is validly ratified by a State's Legislature at the moment that an affirmative vote of assent of the entirety of a "State's Legislature" for Article V purposes is cast. Moreover, the fact that the special Federal action taken by a State's Legislature may not be formally memorialized in a Resolution or Legislative Journal until some later date, if even ever, is also of no moment. The text of Article V does not state that an amendment is ratified by a State when their Legislature casts the affirmative vote of assent ... *and then does some further action.* Rather, the Federal Article V action is complete upon the affirmative vote of assent. The *United States Constitution's* Article V is an automatic and self enacting process in that a proposed amendment is automatically consummated as positive Federal Constitutional Law when the threshold "three fourth" State's Legislature has affirmatively voted to adopt and ratify an amendment. No further action is constitutionally required other than the actual affirmative vote or assent of "... *the Legislatures of three fourths of the several States* ...".

3. Whether or not an amendment, positively ratified by the *Constitution's* Article V's standards has been "officially reported" to the other States or to any organ of the Federal Government does not affect the legal sustaining validity of a State Legislature's ratification vote once cast. This merely affects whether or when the People know. Having once been ratified by a State's Legislature in accordance with the standards of Article V, an amendment remains so ratified as of the date of the vote whether or not the

ratification action is published, known, or the record of the State Legislature's ratification is intentionally ignored or temporarily forgotten about and lost in time. This clear and simple interpretation of how the Constitution's Article V works is born out by the literal text of Article V itself, and this interpretation of how Article V works is concurred in by historical precedent and by formal legal opinions of the Article II Executive Branch (*see* "Congressional Pay Amendment", Memorandum Opinion for the Counsel to the President, by Timothy E. Flanigan, Acting Assistant Attorney General, Office of Legal Counsel, reported at 16 *O.L.C.* 85 (May 13, 1992); and Memorandum Opinion for the Counsel to the President, by Timothy E. Flanigan, Acting Assistant Attorney General, Office of Legal Counsel, reported at 16 *O.L.C.* 87 (November 2, 1992)) and formal judicial opinion of the Article III United States Supreme Court (*see Dillon v. Gloss,* 256 *U.S.* 368 (1921)).

4. Additionally, historical precedent and by formal legal opinions of the Article II Executive Branch (*see* MEMORANDUM OPINION FOR THE COUNSEL TO THE PRESIDENT – "Power of a State Legislature to Rescind its Ratification of a Constitutional Amendment", by John M. Harmm, *Acting Attorney General, Office of Legal Counsel,* 77-7 *O.L.C.* (February 15, 1977)), confirm that once an affirmative vote has been cast by a State's Legislature, it may not be rescinded by a later sitting State Legislature. This legal opinion is supported by historical precedent (Fourteenth and Fifteenth Amendments) and, most directly, by the so called "Civil War" which commenced when the State of South Carolina sought to rescind its prior ratification of the United States Constitution to leave the Union. These are very basic and easy to understand concepts.

5. On September 28, 1789, at a time that there were Eleven States in the Union, the First Session of the First Congress meeting in New York City proposed, in accordance with the procedures outlined in the *United States Constitution's* Article V, twelve specific amendments to the then newly enacted *Constitution* denominated at "*Article the First*" through "*Article the Twelfth*".

6. The date of the initial proposal by Congress, and the accurate historical record of the vote of assent of each State Legislatures that affirmatively voted to ratify *Article the First* over time, the number of States in the Union as changed over time at the time of each ratification vote, and whether the ratification vote was reported to any organ of the Federal Government, is as follows:

I. **INITIAL PROPOSAL:** *Article the First* was proposed to the State Legislatures of the then Eleven States in the Union as an amendment to the *United States Constitution* on September 28, 1789 in accordance with the *United States Constitution's* Article V. On October 3, 1789 a copy of the Resolution of Congress proposing *Article the First* (along with another Eleven Proposed Amendments denominated *Article the Third* through *Article the Twelfth*) was then transmitted to the Governor of each of the Eleven States in the Union and to the Governors of North Carolina and Rhode Island under cover letter signed by President George Washington.

II. **RATIFICATION VOTES IN THE STATE LEGISLATURES:**

(*The process starts with Eleven States in the Union: Massachusetts, New Hampshire, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina and Georgia)

(1.) **Connecticut State Legislature:** Ratified *Article the First* by the *United States Constitution's* Article V's standards October 1789 (*or alternatively May 1790 if the "Upper House Council" is part of the "Legislature" for Article V purposes). **(UNREPORTED)**

(2.) **New Jersey State Legislature:** Ratified *Article the First* by the *United States Constitution's* Article V's standards on November 19, 1789 (* or November 20, 1789). **(REPORTED)**

(*November 28, 1789 now Twelve States in the Union: North Carolina ratified the *United States Constitution* at statewide convention of November 28, 1789 and joined the Union of States)

(3.) **Virginia State Legislature:** Ratified *Article the First* by the United States Constitution's Article V's standards on December 8, 1789.
(UNREPORTED)
*After the First Decennial Census results were reported in October 1791, and in anticipation of the first Decennial Apportionment of the United States House of Representatives, the Virginia State Legislature ratified *Article the First* by the United States Constitution's Article V's standards *a second time* on November 3, 1789.
(IMMEDIATELY AND SINGULARLY REPORTED)
*After the Virginia State Legislature later ratified *Article the Third* through *Article the Twelfth* (some for the second time) on December 15, 1789, the November 3, 1791 singular ratification of *Article the First* was reported for a second time, this time in a collective instrument of ratification of all twelve proposed amendments.
(SECOND NOVEMBER 3, 1791 RATIFICATION REPORTED A SECOND TIME WITH OTHER ELEVEN AMENDMENTS)

(4.) **Maryland State Legislature:** Ratified *Article the First* by the United States Constitution's Article V's standards on December 19, 1789.
(REPORTED)

(5.) **North Carolina State Legislature:** Ratified *Article the First* by the United States Constitution's Article V's standards on December 22, 1789.
(REPORTED)

(6.) **South Carolina State Legislature:** Ratified *Article the First* by the United States Constitution's Article V's standards on January 19, 1790.
(REPORTED)

(7.) **New Hampshire State Legislature:** Ratified *Article the First* by the United States Constitution's Article V's standards on January 25, 1790.
(REPORTED)

(8.) **New York State Legislature:** Ratified *Article the First* by the United States Constitution's Article V's standards on February 24, 1790.
(REPORTED)

(*May 29, 1790 now Thirteen States in the Union: Rhode Island ratified the *United States Constitution* at statewide convention of May 29, 1790 and joined the Union of States.)

(9.) **Rhode Island State Legislature:** Ratified *Article the First* by the United States Constitution's Article V's standards on June 7, 1790. **(REPORTED)**

(*March 3, 1791 now Fourteen States in the Union: Vermont was admitted as the Fourteenth State in the Union by Act of Congress taking effect March 4, 1791.)

(10.) **Pennsylvania State Legislature:** Ratified *Article the First* by the United States Constitution's Article V's standards on September 24, 1791. **(REPORTED)**

(11.) **Vermont State Legislature:** Ratified *Article the First* by the United States Constitution's Article V's standards on November 3, 1791. **(REPORTED)**

(*June 1, 1792 now Fifteen States in the Union: Kentucky was admitted as the Fifteenth State in the Union by Act of Congress taking effect June 1, 1792.)

(12.) **Kentucky State Legislature:** Ratified *Article the First* by the United States Constitution's Article V's standards on June 21, 1792. **(UNREPORTED)**

[*See How "Less" is "More": The Story of the Real First Amendment to the United States Constitution,* by Eugene Martin LaVergne, published by First Amendment Free Press, New York, New York (2016) at pages 521-522].

7. *Article the First*, the first ever amendment proposed by Congress to the *United States Constitution* on September 28, 1789, was ratified by the State Legislatures of three fourths of the States at the time of ratification in accordance with the Constitution's Article V's standards and therefore has been fully ratified and fully consummated as a permanent part of the United States Constitution since at least June 21, 1792, if not earlier. The reasons how these facts were lost in history for over 220 years are detained in *How "Less" is "More": The Story of the Real First Amendment to the United States Constitution,* by Eugene Martin LaVergne, published by First Amendment Free Press,

New York, New York (2016) and will be documented and presented in detail at time of trial.

8. The *United States Constitution's* Article V itself does not by its terms expressly vest authority in any organ of State or Federal Government to announce or declare or proclaim when a proposed amendment has met the three fourths consummation threshold in Article V and has therefore been fully ratified and automatically consummated as a permanent part of the United States Constitution.

9. The odd fact of history is that though *Article the Third* through *Article the Twelfth* as proposed by Congress to the State Legislatures on September 28, 1789 are generally acknowledged in history as having been affirmatively ratified by a sufficient number of State Legislatures to met the three fourths full ratification and automatic consummation threshold in Article V, and though *Article the Third* through *Article the Twelfth* as proposed by Congress on September 28, 1789 are today uniformly editorially re-numbered and commonly referred to as the *First Amendment* through the *Tenth Amendment,* and also collectively referred to as the "Bill of Rights", the fact of history is that there never was any specific contemporaneous generally agreed upon formal and official acknowledgement, declaration or proclamation by any organ or State or Federal Government that such proposed amendments were ever fully ratified and automatically consummated as law and were therefore now a permanent part of the *United States Constitution.*

10. It would be twenty nine years in the future before Congress and the President would first address this gap in the law and promulgation process of Constitutional

Amendments. Specifically, by *Act* of April 20, 1818, Congress and the President passed a new Federal statute which provided in part as follows:

> * * *
> Sect. 2. *And be it further enacted,* That whenever official notice shall have been received, at the Department of State, that any amendment which heretofore has been, or may be proposed to the constitution of the United states, has been adopted, according to the provisions of the constitution, it shall be the duty of the said Secretary of State forthwith to cause the said amendment to be published in the said newspapers authorized to promulgate the laws, with his certificate, specifying the states by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the constitution of the United States.

[*See An ACT to provide for the Publication of the Laws of the United States, and for other purposes,* (Approved April 20, 1818), *Laws of the United States of America from the 4th of March, 1815, to the 4th of March 1821* (Volume VI), WASHINGTON CITY: Printed and Published by Davis & Force, Pennsylvania Avenue (1822) at pages 307 – 310, Section 2 at page 308, later republished at 2 *Stat.* 439 (1818)].

11. The 1818 Act originally vested the ministerial counting authority and promulgation authority in the Secretary of State, was later amended to vest such ministerial authority in the General Services Administrator, and today vests the ministerial counting and promulgation authority in the Archivist of the United States. After various amendments over the time, the *Act*, originally passed in 1818, and as amended over time, is now codified at 1 *U.S.C.* §106(b) and today in its present form reads as follows:

> Whenever official notice is received at the National Archives and Records Administration that any amendment proposed to the Constitution of the Untied States has been adopted, according to the provisions of the Constitution, the Archivist of the United States shall forthwith cause the

> amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the Untied States.

[1 *U.S.C.* §106(b)].

12. Under 1 *U.S.C.* §106(b) the Archivist of the United States is required, upon receipt of "... *official notice* ..." of ratification from three fourths of the State Legislatures at the time of ratification that numerically confirm full ratification and automatic consummation, to in turn take ministerial action and publish and promulgate any such amendment to the *United States Constitution* along with his official certificate specifying that the amendment has become valid to all intents and purposes, as a permanent part of the *United States Constitution.*

13. To date the Archivist of the United States has promulgated a constitutional amendment in accordance with 1 *U.S.C.* §106(b) only once. *Article the Second,* initially proposed by Congress on September 28, 1789, was certified and declared and published by former Archivist Don Wilson, Archivist of the United States, to be a valid part of the *United States Constitution* under the authority of 1 *U.S.C.* §106(b) on May 18, 1992. (but omitting the UNREPORTED June 24, 1792 Kentucky State Legislature's ratification of *Article the Second*).

14. Plaintiffs, private citizens, have reviewed the evidence today on official record with the National Archives regarding what "reporting" State Legislature's ratified *Article the First* and when they did so. Plaintiffs, private citizens, have also specifically provided *"actual notice"* of the UNREPORTED ratifications of *Article the First* by the Connecticut State Legislature in October 1789, by the Virginia State Legislature on

December 8, 1789, and by the Kentucky State Legislature on June 24, 1792 to Defendant David Ferriero, Archivist of the United States, along with a demand that he promulgate *Article the First* as a part of the *United States Constitution* as required by 1 *U.S.C.* §106(b). Plaintiffs have further requested that the official May 18, 1992 Archivists Certification regarding *Article the Second* be revised and corrected and republished to include the June 24, 1992 ratification of such amendment by the Kentucky State Legislature. Plaintiffs' demands have been ignored.

15. 28 *U.S.C.* §2201(a) provides in relevant part as follows:

> (a) In a case of actual controversy within its jurisdiction ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought, Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

[28 *U.S.C.* §2201(a)].

16. 28 *U.S.C.* §2202 provides as follows:

> Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

[28 *U.S.C.* §2202].

17. 28 *U.S.C.* §1361 provides as follows:

> The district courts shall have original jurisdiction of any action in the nature of mandamus to compel any officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

[28 *U.S.C.* §1361].

18. For purposes of this Count I the named Virginia State Official Defendants, the named Connecticut State Official Defendants, and the named Kentucky State Official Defendants all qualify as an "... *officer ... of the United States* ..." within the meaning of 28 *U.S.C.* §1361 as they are being called upon to take further action in the special hybrid Article V Federal Constitutional Law making process and under and in furtherance of Federal Constitutional authority and obligation and are not being called upon to take any action under State authority.

19. The factors to be considered and the evaluation process for an Article III Court to use when determining whether to issue a *mandamus* pursuant to 28 *U.S.C.* §1361 are outlined by the United States Supreme Court in *Cheney v. United States District Court,* 542 *U.S.* 367 (2004). For a writ of *mandamus* to issue, the moving party must show (1) that there is no other adequate means to obtain the relief desired, (2) that the right to the issuance of the writ is "clear and undisputable", and (3) the Court must find that the issuance of the writ is appropriate under the circumstances. *Id.* at 380-381.

20. Cumulatively and / or alternatively, Plaintiffs' claims for declaratory and injunctive relief against the Virginia State Officials, Connecticut State Officials and Kentucky State Officials to compel each State to provide "official notice" to the Archivist of the United States of their respective State Legislature's unreported ratification action on *Article the First* is conferred pursuant to 28 *U.S.C.* §1367 and by the *Code of Virginia* §8.01 – 184, *Connecticut General Statute* 59-29 and *Kentucky Revised Statutes* 418.045, 418.050 and 418.055.

20. 5 *U.S.C.* §702 provides in relevant part as follows:

> A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensible party. * * *

[5 *U.S.C.* §702].

WHEREFORE, Plaintiffs demand Judgment on the factual and legal claims in Count I as follows:

A.) Judgment pursuant to 28 *U.S.C.* §2201(a), 28 *U.S.C.* §2202, 28 *U.S.C.* §1361 and *Cheney v. United States District Court,* 542 *U.S.* 367 (2004) and / or 28 *U.S.C.* §1367 and the *Code of Virginia* §8.01 – 184, *Connecticut General Statute* 59-29 and *Kentucky Revised Statutes* 418.045, 418.050 and 418.055 directing by way of *mandamus* and compelling the named Virginia State Officials, Connecticut State Officials and Kentucky State Officials to take measures and to actually provide "official notice" of the unreported ratification actions of their respective State Legislatures as enumerated in Plaintiffs' Complaint to Defendant Archivist of the United States;

B.) Judgment pursuant to 5 *U.S.C.* §702, 28 *U.S.C.* §2201(a), 28 *U.S.C.* §2202, 28 *U.S.C.* §1361 and *Cheney v. United States District Court,* 542 *U.S.* 367 (2004) directing by way of *mandamus* and compelling Defendant David Ferriero, Archivist to the United States, upon receipt of "official notice" from the named Virginia State Officials, Connecticut State Officials and Kentucky State Officials

of the unreported ratification actions of their respective State Legislatures regarding *Article the First* as enumerated in Plaintiffs' Complaint, to then in turn immediately declare, certify and publish that *Article the First* has having become valid, to all intents and purposes, as a part of the Constitution of the Untied States, as he is ministerial required to do by 1 *U.S.C.* §106(b).

C.) Judgment providing such other further relief as the Court deems fair, just and equitable.

SECOND COUNT:

1. Plaintiffs hereby repeat and re-allege each and every prior allegation again as if set forth fully at length herein.

2. There is a problem in that there was a "Scrivener's Error" made in the original fourteen "copies" of the original 14 hand engrossed Resolutions proposing *Article the First* and the other amendments, which "Scrivener's Error" was then unknowingly and unintentionally converted into a "Printing Error" in the literal text of *Article the First.* This is described in detail in Chapter 7 (page 129-178) and Chapter 8 (page 179-220) of the book *How "Less" is "More": The Story of the Real First Amendment to the United States Constitution,* by Eugene Martin LaVergne, published by First Amendment Free Press, New York, New York (2016), which facts are hereby incorporated by reference as if set forth fully at length herein.

3. As to the meaning, Plaintiffs cite to an Archivist's December 7, 2010 Press Release: "The National Archives Presents the ORIGINAL Bill of Rights – with 12 Amendments", where the Archivist notes, regarding *Article the First*, that ...

> " * * * Had this been ratified, there would be far more than 435 Members of Congress – nearly 6,000. Currently, each member represents on average about 650,000 people."

[*See* **"Exhibit F"**].

4. The actual literal text of Article the First as approved by both the House of Representatives and the Senate as of September 15, 1789 was as follows:

> **[Line 1]** After the fist enumeration, required by the first Article of the Constitution, there shall be one Representatives for ever thirty thousand, until the number shall amount to one hundred,
> **[Line 2]** after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred,
> **[Line 3]**after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor less than one Representative for every fifty thousand persons.

[*See* "Exhibit G"].

5. On September 24, 1789, a Committee on Conference while considering other unresolved proposed amendments, made an unsolicited recommendation that there be a last minute "Less" to "More" change in the text of *Article the First*, with the specific recommendation being written out in a single "Report" (never printed) prepared in the hand of Senator Oliver Ellsworth of Connecticut, which read as to Article the First as follows:

> * * *
> The Committee were also of opinion it would be proper for both Houses to agree to amend the first Article, by striking out the word "less" in the last line but one, and inserting in

> its place, the word "more", and accordingly recommend that the said Article be reconsidered for that purpose.

["Exhibit H".]

6. This single September 24, 1789 Committee on Conference hand written Report was locked away for almost 200 years in Senate Records. The Official Journal of the House (printed) thereafter inaccurately paraphrased where the change was directed to have been made (as approved by Congress) *see* **"Exhibit I",** which resulted in the noted "Scrivener's Error" made in the original fourteen "copies" of the original 14 hand engrossed Resolutions proposing *Article the First* and the other amendments, which "Scrivener's Error" was then unknowingly and unintentionally converted into a "Printing Error" in the literal text of *Article the First* in the first official printing of the *Acts Passed at a Congress* ... printed by Francis Childs and John Swaine in New York City in 1789 and all subsequent "corrected" printings thereafter (as checked against the inaccurate *House Journal*). The First Official Printing of the *Acts Passed at a Congress* ... printed by Francis Childs and John Swaine in New York City in 1789 indeed specifically contained the "less" to "more" mistake in Line 3 of *Article the First* and also contained the printing error by printing the word "imprisonments" in place of "punishments" in the text of *Article the Tenth.* **"Exhibit J".**

7. The correct literal text of Article the First, as approved by Congress, and as ratified by the State Legislatures, is as follows:

> **[Line 1]** After the fist enumeration, required by the first Article of the Constitution, there shall be one Representatives for ever thirty thousand, until the number shall amount to one hundred,
> **[Line 2]** after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred

> Representatives, nor ***more*** than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred,
> **[Line 3]**after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor less than one Representative for every fifty thousand persons.

8. The "Scrivener's Error Doctrine" is a common law doctrine that allows Courts encountering text in documents that is in error due to a *vitium scriptoris* – literally "the mistake of a scribe", or any "Clerical error in writing" – to ignore the error and apply instead the actual correct literal text. *See Church of the Holy Trinity v. United States,* 143 *U.S.* 457 (1892).

WHEREFORE, Plaintiffs demand that this Court apply the "Scrivener's Error Doctrine" and declare and confirm that the correct, fully ratified and consummated, literal text of *Article the First* is as follows:

> **[Line 1]** After the fist enumeration, required by the first Article of the Constitution, there shall be one Representatives for ever thirty thousand, until the number shall amount to one hundred,
> **[Line 2]** after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor ***more*** than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred,
> **[Line 3]**after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor less than one Representative for every fifty thousand persons.

THIRD COUNT:

1. Plaintiffs hereby repeat and re-allege each and every prior allegation again as if set forth fully at length herein.

2. Article I, Section 1 of the *United States Constitution* (commonly known as the "Vesting Clause") provides that "... *All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.*"

3. Article I, Section 4 of the *United States Constitution* provides as follows: "*The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.*" This Section has been revised and altered and supplemented over time by several Constitutional Amendments, specifically: Amendment XIV, Section 2 (Stating in part that: "*[W]hen 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 crimes, 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.*"); Amendment XV (Right to vote shall not be denied or abridged "... *on account of race, color, or previous condition of servitude.*"); Amendment [XVII] (Senators to be directly elected by the People); Amendment [XIX] (Guaranteeing all women the right to vote); Amendment [XXIV] (Barring States from

charging a "Poll Tax" to participate in elections); Amendment [XXVI] (Guaranteeing citizens 18 year old and above the right to vote).

4. Under the *United States Constitution's* Article I, Section 3: "*each State, irrespective of population, is apportioned two Senators who serve six year terms.*" Under the *United States Constitution* as originally ratified and enacted, the two Senators apportioned to each State were elected not by the People bur rather were elected by each respective State's Legislature. Each United States Senator serves a 6 year term, with all terms staggered, so that approximately 1/3 of the Senate is up for election every 2 years. Amendment [XVII] to the *United States Constitution*, acknowledged as fully ratified and consummated as law in 1913, altered the election process so that United States Senators would henceforth be directly elected by the People at General Elections rather than by the State Legislatures.

5. The only organ of Federal Government where members were directly elected by the People in the original form of the *United States Constitution* was the United States House of Representatives. The number of Representatives to be apportioned to each State was to be based upon each State's "Apportionment and Direct Federal Tax Population", with each State guaranteed at least one Representative irrespective of that State's "Apportionment and Direct Federal Tax Population". The Article I process of determining the number of Representatives ("Apportioning") each State as originally proposed and as originally ratified and enacted in the *United States Constitution* required a three (today two) step process: **First** a "census" (a literal counting of all persons in the nation) was required to be conducted so that the "Actual Population" figures for each State could be determined. **Second**, the number of slaves in each state were to be

subtracted, then counted as 3/5 of a person, with that 3/5 number then added back to establish each State's "Apportionment and Direct Federal Tax Population". **Third,** each State's "Apportionment and Direct Federal Tax Population" was then relied upon by Congress dually as a basis for assessing any direct Federal Taxes and as a basis for Apportioning Representatives in the United States House of Representatives among the States. The census process and the Apportionment process was (and is) specifically Constitutionally required to be conducted every 10 years.

6. Until the First Decennial Census was to be completed, the text of Article I of the Constitution itself temporarily "Constitutionally Apportioned" 65 Representatives among the contemplated original 13 States – based upon census estimates – to remain in effect until the first Statutory Decennial Census and first Decennial statutory Apportionment of the United States House of Representatives was completed.

7. The "First Decennial Census" was commenced in 1790 and completed and reported in October 1791 (save for the figures from South Carolina which were not reported, with extension, until March 1792) under the supervision of then United States Secretary of State Thomas Jefferson. Every ten years thereafter (Second Decennial Census in 1800, Third Decennial Census in 1810, Fourth Decennial Census in 1820, Fifth Second Decennial Census in 1830, Sixth Decennial Census in 1840, Seventh Decennial Census in 1850, Eighth Decennial Census in 1860, Ninth Decennial Census in 1870, Tenth Decennial Census in 1880, Eleventh Decennial Census in 1890, Twelfth Decennial Census in 1900, Thirteenth Decennial Census in 1910, Fourteenth Decennial Census in 1920, Fifteenth Decennial Census in 1930; Sixteenth Decennial Census in 1940; Seventeenth Decennial Census in 1950; Eighteenth Decennial Census in 1960;

Nineteenth Decennial Census in 1970; Twentieth Decennial Census in 1980; Twenty First Decennial Census in 1990; Twenty Second Decennial Census in 2000; and Twenty Third Decennial Census in 2010) Congress has met the Constitutional mandate in Article I that a "Census" be held. In operation today, and pursuant to the Constitutional mandate, Congress has enacted the "Census Act", now codified at 13 *U.S.C.* §1 *et seq.,* which since 1902 has delegated the authority to conduct the actual Decennial Census to the Defendant United States Secretary of Commerce.

8. The *United States Constitution* as originally ratified and enacted conferred complete discretion in Congress in the future Decennial Apportionment Process of the House of Representatives constrained by only four specific enumerated Constitutional requirements: **First**, that "*Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers* ...", with the "respective numbers" being those as determined in the State's "Apportionment and Direct Federal Tax Population" (as that evolved over time); **Second,** "... *The number of Representatives shall not exceed one for every thirty Thousand* ..."; **Third**, that "... *each State shall have at Lease one Representative* ...", and **Fourth**, that Representative may only be Apportioned to one state and within a given State's political boundaries (*ie.* no crossing State lines).

9. During the ratification debates before, at, and after the various State Conventions, the manner of the future Apportioning of Representatives among the State's was the most hotly debated and volatile topic. The People had just fought a bloody Revolution over taxes and representation. Having now earned their freedom, the only organ of Federal

Government where the People directly elected anyone in the proposed new *Constitutional* Government was in the Article I House of Representatives.

10. The People frankly did not trust future Congresses to protect the interests of the People in a fair and adequate representation in the House of Representatives and did not trust that, left to their own discretion, future Congresses would continually increase the size of the House of Representatives as States were added to the Union and as population inevitably increased over time. The Federal Legislature was not to be, nor was it ever intended to be, an elitist governing body and rather the intent of the framers and those State Conventions that ratified the Constitution was always that over time the size of the United States House of Representatives would be substantially equal in size to the total number of the members of the various State Legislatures combined together. It is noted with irony that concerns came true because today there are **435** voting Representatives in the United States House of Representatives, whereas today the total number of the voting members in the various State Legislatures combined together is **7,605.**

11. To address the objection to leaving discretion in Congress to determine the future size of the House of Representatives, various State Ratifying Conventions demanded an immediate amendment to the Article I process for Apportioning Representatives. Congress honored such demands at the First Session of the First Congress by proposing *Article the First* (along with a package of eleven other proposed amendments) to the State Legislatures for ratification on September 25, 1789. *See* Count I, and Count II, *supra.* However, *Article the First* to the United States Constitution was temporarily forgotten about, intentionally hidden or ignored, or lost in history, but it is law today nonetheless. *See How "Less is More": The Story of the Real First Amendment to the United States*

Constitution, by Eugene Martin LaVergne, Published by First Amendment Free Press, Inc., New York, New York (2016).

12. Unaware, or not yet aware, that *Article the First* had been fully ratified and become law, in an overt politically divisive and partisan legislative process, the First Session of the Second Congress passed their first effort at the Constitutionally mandated fist statutory apportionment of the House of Representatives in March of 1792 which Bill was vetoed by President George Washington. This is the first exercise of the "veto" power by the Article II President in history. After Congress failed to override President Washington's veto, Congress passed, and on April 14, 1792 President Washington signed, *An ACT for apportioning Representatives among the several States, according to the first enumeration. See Acts passed at the Second Congress of the United States of America: Begun and Held at the City of Philadelphia, in the State of Pennsylvania, on Monday, the Twenty-Fourth of October, One Thousand Seven Hundred and Ninety-One; and of the Independence of the United States the Sixteenth*, (PUBLISHED BY AUTHORITY) PHILADELPHIA: Printed by Francis Childs and John Swaine, Printers of the Laws of the United States [1792] at page 89. Thereafter, every ten years Congress conducted a Decennial Census and, as States were added to the Union and as the actual national population increased, Congress by statute also increased the size of the United States House of Representatives, until 1840. After the Sixth Decennial Census in 1840 Congress decreased the size of the House of Representatives for the first and only time. Starting at the Seventh Decennial Census in 1850 Congress resumed and thereafter continued increasing the size of the House of Representatives every ten years by statute. After passage of Amendment XIV to the United States Constitution and starting with the

Ninth Decennial Census in 1870, all persons, including now former slaves, were now counted as "1" when calculating the "Apportionment and Direct Federal Tax Population" (which was now a two step process). Every ten years thereafter going forward each successive Act of Congress Apportioning the House of Representatives resulted in an increase in the number of Representatives as the number of States and the population continued to increase over time.

13. By the time of the Thirteenth Decennial Census in 1910 there were now 48 States in the Union and an actual population (which now, by virtue of the 14th Amendment, had now become the "Apportionment and Direct Federal Tax Population") of 92,228,496 People.

14. In the Spring of 1911 Congress passed, and the President signed, an Act Apportioning the United States House of Representatives relying upon a math theory known as the "Method of Major Fractions". Relying upon the "Method of Major Fractions" Congress Apportioned now 433 Representatives among the 46 States, and made provision for 1 Representative for each of the then Territories of Arizona and New Mexico, both of whom were pending Statehood, if and when each was admitted to the Union, to remain in effect until the next Decennial Apportionment. Unknown at that time is the reality that, notwithstanding the clear Article I Constitutional mandate of perpetual Decennial Apportionment, there would not be another Decennial Apportionment of the United States House of Representatives for another 20 years in the future, until after the Fifteenth Decennial Census in 1930.

15. On February 25, 1913 Amendment XVI to the United States Constitution was acknowledged as fully ratified and automatically consummated as Federal Constitutional

law. This Amendment provided that "*The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration*". As such, the Apportionment of the United States House of Representatives was no longer directly related to any direct taxes that the Federal Government sought to impose, and what had initially been known as the "Apportionment and Direct Federal Tax Population", was now just the "Apportionment Population", or not simply the "Census Population".

16. Several months later, on May 31, 1913, Amendment [XVII] was acknowledged as fully ratified and automatically consummated as Federal Constitutional law. This amendment now provided in relevant that that: "*The Senate of the United states shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. ...*" From then forward, the two United States Senators from each State were to be elected directly by the People and not by the state Legislatures.

17. On August 26, 1920 Amendment [XIX] was acknowledged as fully ratified and automatically consummated as Federal Constitutional law. This amendment provided in relevant part that that: "*The right of citizens to the United States to vote shall not be denied or abridged by the United states or by any State on account of sex.*" As such, now women – any by virtue of Amendment XIII black women too – enjoyed the right to vote in all Elections.

18. In 1920 the Fourteenth Decennial Census reported a national population of 106,021,537. This was the first time that the nation's recorded national population exceeded 100 million People.

19. On November 2, 1920 Republican Party candidate Warren G. Harding, a candidate selected primarily at the Republican Political Party's candidate by wealthy business interests, was elected President of the United States.

20. The Sixty Seventh Congress convened on March 4, 1921 with 435 Representatives in the United States House of Representatives (as Arizona and New Mexico had now become States). There was a Republican Political Party solid majority in the United States Senate and there was a solid Republican Political Party majority in the United States House of Representatives. The President Warren G. Harding was a member of the Republican Political Party.

21. Notwithstanding the Constitution's Article I clear mandate that the House of Representatives be Apportioned among the now 48 States in the Union in accordance with the population figures from the Fourteenth Decennial Census, the Republican Political Party that now controlled both houses of Congress and the Presidency, and the business interests that controlled them, fearful that their future political influence would be severely diminished after an Apportionment of the House of Representatives due to the combination of all of the recent populist changes in the Constitutional and political process that had taken place in the last 10 years, simply refused to follow the Constitutional mandate and Apportion the United States House of Representatives.

22. The unconstitutional refusal by a succession of Republican Political party controlled Congresses and Presidential administrations continued throughout the entire decade of the 1920s, with Democratic Political Party, Socialist Political Party, and Independent members of the House of Representatives objecting and repeatedly demanding that Congress Apportion the House of Representatives in accordance with the

Fourteenth Decennial Census. Each time such calls being voted down by the Republican Party majority.

23. In June 18, 1929, prior to the Fifteenth Decennial Census, and now under immense national public pressure to Apportion the House of Representatives which has not been done since twenty years earlier in 1910, Congress finally passed what is today commonly referred to as "Automatic Apportionment Act of 1929", actually titled as follows: *CHAP. 28. – An Act To provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress. See* Act of June 18, 1929, Ch. 28, 46 Stat. 21 (1929). Section 22 of that Act provided in relevant part as follows:

> * * *
>
> Sec. 22.
>
> (a) On the first day, or within one week thereafter, of the second regular session of the Seventy-first Congress and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the fifteenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives made in each of the following manners:
>
> (1) By apportioning the then existing number of Representatives among the several States according to the respective numbers of the several States as ascertained under such census, by the method used in the last preceding apportionment, no State to receive less than one Member;
>
> (2) By apportioning the then existing number of Representatives among the several States according to the respective numbers of the several States as ascertained under such census, by the method known as the method of major fractions, no State to receive less than one Member; and

> (3) By apportioning the then existing number of Representatives among the several States according to the respective numbers of the several States as ascertained under such census, by the method known as the method of equal proportions, no State to receive less than one Member.
>
> (b) If the Congress to which this statement required by subdivision (a) of this section is transmitted, fails to enact a law apportioning Representatives among the several States, then each State shall be entitled, in the second succeeding Congress and in each Congress thereafter until the taking effect of a reapportionment under this Act or subsequent statute, to the number of Representatives shown in the statement based upon the method used in the last preceding apportionment. It shall be the duty of the Clerk of the last House of Representatives forthwith to send to the executive of each state a certificate of the number of Representatives to which such State is entitled under this section. In case of a vacancy in the office of the Clerk, or of his absence or inability to discharge this duty, then such duty shall devolve upon the officer who, under section 32 or 33 of the Revised Statutes, is charged with preparation of the roll of Representatives-elect.
>
> * * *

24. The "Automatic Apportionment Act of 1929" never anywhere stated the arbitrary number of "435 Representatives", and rather referred to "... *the then existing number of Representatives* ..." – which was 435 – as the number of Representatives to be Apportioned among the 48 States based upon each State's population. The Act, specifically *Sec.* 22(a), required the President to send a "Statement" to Congress to show three different possible calculations for Apportioning the 435 Representatives among the now 48 States. First the Presidents Statement was charged to show the number of Representatives apportioned to each of the 48 States using the *"...the method used in the last preceding apportionment, no State to receive less than one Member...". See Sec.* 22(a)(1). As circumstances were, the "method used in the last preceding apportionment"

was in fact the math method known as "the method of major fractions". Second, the Presidents Statement was to show the number of Representatives apportioned to each State using "... *the method known as the method of major fractions, no State to receive less than one Member* ...". *See Sec.* 22(a)(2). This was literally the same calculations required by *Sec.* 22(a)(1). Thirdly, the President's Statement was to show the number of Representatives apportioned to each State using "...*the method of equal proportions, no State to receive less than one Member* ...". *See Sec.* 22(a)(3). If Congress, after being provided with the President's Statement, failed affirmatively act and pass a separate Apportionment Bill, then the calculations "... *shown in the statement based upon the method used in the last preceding apportionment* ..." (which was an Apportionment of 435 based upon the method of major fractions) would become law. This way, if Congress refused to act and Apportion the House of Representatives after the 1930 Decennial Census as they had refused to do after the 1920 Decennial Census, the Article I Constitutional mandate would "automatically" he complied with.

25. As circumstances developed, the calculations for Apportioning 435 Representatives among the 48 States based upon the "Method of Major Fractions" and the "Method of Equal Proportions" worked out to be literally identical, so Congress took no action. Technically by Congresses inaction the Fifteenth Decennial Apportionment was conducted using the "Method of Major Fractions." *See Sec.* 22(a)(1). The Clerk of the United States House of Representatives, using the calculations provided, sent a "Certificate" to the Governor of each of the 48 States notifying of how many Representatives their State would be entitled to in the next Congress and in succeeding Congresses.

26. After the Sixteenth Decennial Census in 1940 the "Automatic Apportionment Act of 1929" was still in effect. However, this time, there was a difference between an Apportionment conducted using the "Method of Major Fractions" and that using the "Method of Equal Propositions". As such, Congress left intact the "Automatic Apportionment Act of 1929" but then amended it so that henceforth the President's Statement would only and exclusively use and rely upon the "Method of Equal Proportions" when making the calculations. *See Act* of November 15, 1941, Chapter 470, Section 1 (55 *Stat.* 761), as amended by Public Law 104-186, Title II, Section 201.

27. Through inertia more than conscious thought, the size of the United States House of Representatives has remained at the arbitrary number of 435 Representatives except for a brief period at the middle to end of the decade of 1950 when the number was temporarily increased to 437 when 1 Representative was temporarily added for Alaska and 1 Representative was temporarily added for Hawaii to remain in place until after the next Decennial Apportionment unless Congress ordered otherwise. As Congress later took no independent action, after the Eighteenth Decennial Census in 1960, the size of the House of Representatives was reduced back to 435 Representatives Apportioned among the now 50 States at Eighteenth Decennial Apportionment.

28. After further amendment in 1996 (Public Law 104-186, Title II, Section 201, August 20, 1996 (110 *Stat.* 1724)) the "Automatic Apportionment Act of 1929" is still in effect today, still operates automatically, and still relies exclusively upon the "Method of Equal Proportions" against the base number of 435, 50 States, and each State's population.

29. The "Automatic Apportionment Act of 1929" is now codified at 2 *U.S.C.* §2, and reads in its present for as follows:

> (a) On the first day, or within one week thereafter, of the first regular session of the Eighty-second Congress and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the seventeenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled ***under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions***, no State to receive less than one Member.
>
> (b) Each State shall be entitled, in the Eighty-third Congress and in each Congress thereafter until the taking effect of a reapportionment under this section or subsequent statute, to the number of Representatives shown in the statement required by subsection (a) of this section, no State to receive less than one Member. It shall be the duty of the Clerk of the House of Representatives, within fifteen calendar days after the receipt of such statement, to send to the executive of each State a certificate of the number of Representatives to which such State is entitled under this section. In case of a vacancy in the office of the Clerk, or of his absence or inability to discharge this duty, then such duty shall devolve upon the Sergeant at Arms of the House of Representatives.
>
> (c) Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: (1) If there is no change in the number of Representatives, they shall be elected from the districts then prescribed by the law of such State, and in any of them are elected from the State at large they shall continue to be so elected; (2) if there is an increase in the number of Representatives, such additional Representative or Representatives shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; (3) is there is a decrease in the number of Representatives but the number of districts in such State is equal to such decreased number of Representatives, they

> shall be elected from the districts then prescribed by the law of such States; (4) if there is a decrease in the number of Representatives but the number of districts in such State is less than such number of Representatives, the number of Representatives by which such number of districts is exceeded shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such States; or (5) if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large.

[2 *U.S.C.* §2].

30. In *Department of Commerce v. Montana*, 502 *U.S.* 422 (1992), the United States Supreme Court affirmed the Constitutionality of the "Automatic Apportionment Act of 1929", as amended, now codified at 2 *U.S.C.* §2. The Supreme Court noted that despite the earlier historical precedent prior to 1930 of Congress passing a separate Decennial Apportionment Law every 10 years, that the arbitrary number of 435, taken and then Apportioned among the 50 States using the "Method of Equal Proportions" and the automatic process, resulted in complying with the (then) known Constitutional limitations on Congress' discretion: Each State was apportioned at least one Representative, no one Representative represented less than 30,000 people, and no Representative was apportioned to more than one State. The Court recognized that the State of Montana's 1 Apportioned Representative indeed represented hundreds of thousands of more People than other Representatives on average in other States, and noted the "1 man 1 vote" principles applied to intra State Redistricting, but nevertheless found that "...[t]he constitutional guarantee of a minimum of one Representative for each state inexorably compels a significant departure from the ideal". *Id.* at 463. Significantly, the Court

found that the Automatic process – which through the years utilized several different math formulas for Apportioning – was allowed and permissible as a way to meet the Article I Constitutional Mandate. Otherwise stated, since the "automatic process" satisfied the only (known) constitutional limits placed on an Apportionment of the United States House of Representatives, this automatic process was therefore permissible and was not unconstitutional.

The 2010 Twenty Third Decennial Census and Apportionment:

31. In accordance with the Automatic Apportionment Act of 1929 the Secretary of Commerce prepared a "2010 Decennial Apportionment Table" showing the apportionment population of each State, as well as the number of Representatives to which each State is entitled to at and after the One Hundred and Thirteenth Congress, based on the 2010 apportionment population in each State, 435 Representatives, and the "Method of Equal Proportions". This was transmitted to the Article II President. **"Exhibit K".**

32. In accordance with the Automatic Apportionment Act of 1929 the Article II President used this information and prepared a "2010 Decennial Apportionment Table" showing the apportionment population of each State, as well as the number of Representatives to which each State is entitled to at and after the One Hundred and Thirteenth Congress and thereafter, based on the 2010 apportionment population in each State, 435 Representatives, and the "Method of Equal Proportions". This was transmitted to the Article I Congress. **"Exhibit L".**

33. In accordance with the Automatic Apportionment Act of 1929 Karen L. Hass, Clerk of the United States House of Representatives, upon receipt of the "President's

Apportionment Statement", in turn prepared and sent to the executive of each State a "House Clerk's 2 *U.S.C.* §2(b) Certificate" enumerating the number of Representatives to which such State is entitled in the United States House of Representatives at the One Hundred and Thirteenth Congress and thereafter. The Certificate sent to New Jersey where Plaintiffs all live advised that twelve Representatives were apportioned to New Jersey, when in fact the number should have been One Hundred and Seventy Seven. . **"Exhibit L".**

Severability:

34. The language "... ***under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions...*"** in 2 *U.S.C.* §2(a) is unconstitutional and / or is otherwise superseded by the correct text in Line 3 of *Article the First* that reads as follows: " * * * *that there shall not be less than two hundred Representatives, nor less than one Representative for every fifty thousand persons* ...", so that the 2 *U.S.C.* §2(a) would now read as follows:

> (a) On the first day, or within one week thereafter, of the first regular session of the Eighty-second Congress and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the seventeenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled ***that there shall not be less than two hundred Representatives, nor less than one Representative for every fifty thousand persons***, no State to receive less than one Member.

35. The standard for determining whether certain language in a statutory scheme may be judicially severed and removed or replaced with superseding text is well settled:

> The standard for determining the severability of an unconstitutional provision is well established: Unless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as law.

[*Alaska Airlines, Inc. v. Brock,* 480 *U.S.* 678, 684 (1987) (internal quotation marks omitted)].

36. The Automatic Apportionment Act of 1929 itself did not contain a severability clause. "In the absence of a severability clause, ... Congress' silence is just that – silence – and does not raise a presumption against severability." *Alaska Airlines, Inc. v. Brock, supra,* 480 *U.S.* at 686.

37. In light of the cited principles the offending and superseded language (replacing the Method of Equal Proportions with the text of Line 3 of *Article the First*) may be severed and replaced without doing violence to the rest of the Automatic Apportionment Act. Indeed, the Automatic Act as originally enacted used several methods to be implemented automatically based upon each State's Apportionment Population, only settling on the permanent use of the Method of Equal Proportions after the 1940 census. Therefore, use of the Method of Equal Proportions is not an integral part of the legislation, but rather it is the automatic process using some standard. The purpose of the legislation was, to the best extent possible, take politics out of the Apportionment Process. As Line 3 of *Article the First* literally reduces the Decennial Apportionment Process to a simple math process similar to the way that the Method of Equal Proportions does, having those calculations performed by the Executive Branch and reported (just as been done in the past albeit using the Method of Equal Propositions as the formula) does

no violence to the statutory scheme and in fact is directly in keeping with the statutory scheme.

WHEREFORE, Plaintiffs demand Judgment on the factual and legal claims in Count III as follows:

A.) Judgment pursuant to 28 *U.S.C.* §2201(a) and 28 *U.S.C.* §2202 declaring that the specific text in 2 *U.S.C.* §2(a) that reads "*...under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions* ..." is unconstitutional and / or has been superseded with the non-discretionary legal standards for Apportioning the United States House of Representatives as stated in Line 3 of *Article the First,* an amendment to the *United States Constitution;*

B.) Judgment pursuant to 28 *U.S.C.* §2201(a) and 28 *U.S.C.* §2202 judicially severing out of 2 *U.S.C.* §2(a) the specific text that reads "*...under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions* ..." and replacing and supplanting and superseding such text with the mandatory non-discretionary legal standards for Apportioning the United States House of Representatives as stated in Line 3 of *Article the First,* an amendment to the *United States Constitution,* to wit: "*... that there shall be not less than two hundred Representatives, nor more than one Representative for every fifty thousand persons ...*";

C.) Judgment pursuant to 5 *U.S.C.* §702, 28 *U.S.C.* §2201(a), 28 *U.S.C.* §2202, 28 *U.S.C.* §1361 and *Cheney v. United States District Court,* 542 *U.S.* 367 (2004) directing by way of *mandamus* and compelling Defendant the Honorable Wilbur

Ross, United States Secretary of Commerce, to recalculated and transmit to the President of the United States a corrected and revised "Table" showing the apportionment population of each State, as well as the number of Representatives to which each State is entitled to at and after the One Hundred and Fifteenth Congress, based on the 2010 apportionment population in each State and the mandatory non-discretionary constitutional standard in Line 3 of *Article the First* "*... that there shall be not less than two hundred Representatives, nor more than one Representative for every fifty thousand persons ...*", showing in the revised "Table" that the following States are now entitled to the following number of Representatives at the One Hundred Fifteenth Congress, to wit: **ALABAMA** – 96 Representatives; **ALASKA** – 15 Representatives; **ARIZONA** – 129 Representatives; **ARKANSAS** – 59 Representatives; **CALIFORNIA** – 747 Representatives; **COLORADO** – 101 Representatives; **CONNECTICUT** – 72 Representatives; **DELAWARE** – 19 Representatives; **FLORIDA** – 379 Representatives; **GEORGIA** – 195 Representatives; **HAWAII** – 28 Representatives; **IDAHO** – 32 Representatives; **ILLINOIS** – 258 Representatives; **INDIANA** – 131 Representatives; **IOWA** – 62 Representatives; **KANSAS** – 58 Representatives; **KENTUCKY** – 88 Representatives; **LOUISIANA** – 112 Representatives; **MAINE** – 25 Representatives; **MARYLAND** – 116 Representatives; **MASSACHUSETTS** – 132 Representatives; **MICHIGAN** – 199 Representatives; **MINNESOTA** – 107 Representatives; **MISSISSIPPI** – 60 Representatives; **MISSOURI** – 121 Representatives; **MONTANA** – 20 Representatives; **NEBRASKA** – 37

Representatives; **NEVADA** – 55 Representatives; **NEW HAMPSHIRE** – 27 Representatives; **NEW JERSEY** – 177 Representatives; **NEW MEXICO** – 42 Representatives; **NEW YORK** – 389 Representatives; **NORTH CAROLINA** – 192 Representatives; **NORTH DAKOTA** – 14 Representatives; **OHIO** – 232 Representatives; **OKLAHOMA** – 76 Representatives; **OREGON** – 77 Representatives; **PENNSYLVANIA** – 225 Representatives; **RHODE ISLAND** – 22 Representatives; **SOUTH CAROLINA** – 93 Representatives; **SOUTH DAKOTA** – 17 Representatives; **TENNESSEE** – 128 Representatives; **TEXAS** – 506 Representatives; **UTAH** – 56 Representatives; **VERMONT** – 13 Representatives; **VIRGINIA** – 161 Representatives; **WASHINGTON** – 136 Representatives; **WEST VIRGINIA** – 38 Representatives; **WISCONSIN** – 114 Representatives and **WYOMING** – 12 Representatives;

D.) Judgment pursuant to 5 *U.S.C.* §702, 28 *U.S.C.* §2201(a), 28 *U.S.C.* §2202, 28 *U.S.C.* §1361 and *Cheney v. United States District Court,* 542 *U.S.* 367 (2004) directing by way of *mandamus* and compelling Defendant the Honorable Donald J. Trump, President of the United States, to use information in the revised "Table" received from Defendant Secretary of Congress to prepare a revised "President's 2 *U.S.C.* §2(a) Apportionment Statement", and for the President to transmit to Congress this revised "President's Apportionment Statement" "... showing the whole number of person in each State, excluding Indians not taxed, ... and the number of Representatives to which each State would be entitled ...", with the number of Representatives Apportioned to each State in the One Hundred and Fifteenth Congress and thereafter in the revised "President's 2 *U.S.C.* §2(a)

Apportionment Statement" being as follows: **ALABAMA** – 96 Representatives; **ALASKA** – 15 Representatives; **ARIZONA** – 129 Representatives; **ARKANSAS** – 59 Representatives; **CALIFORNIA** – 747 Representatives; **COLORADO** – 101 Representatives; **CONNECTICUT** – 72 Representatives; **DELAWARE** – 19 Representatives; **FLORIDA** – 379 Representatives; **GEORGIA** – 195 Representatives; **HAWAII** – 28 Representatives; **IDAHO** – 32 Representatives; **ILLINOIS** – 258 Representatives; **INDIANA** – 131 Representatives; **IOWA** – 62 Representatives; **KANSAS** – 58 Representatives; **KENTUCKY** – 88 Representatives; **LOUISIANA** – 112 Representatives; **MAINE** – 25 Representatives; **MARYLAND** – 116 Representatives; **MASSACHUSETTS** – 132 Representatives; **MICHIGAN** – 199 Representatives; **MINNESOTA** – 107 Representatives; **MISSISSIPPI** – 60 Representatives; **MISSOURI** – 121 Representatives; **MONTANA** – 20 Representatives; **NEBRASKA** – 37 Representatives; **NEVADA** – 55 Representatives; **NEW HAMPSHIRE** – 27 Representatives; **NEW JERSEY** – 177 Representatives; **NEW MEXICO** – 42 Representatives; **NEW YORK** – 389 Representatives; **NORTH CAROLINA** – 192 Representatives; **NORTH DAKOTA** – 14 Representatives; **OHIO** – 232 Representatives; **OKLAHOMA** – 76 Representatives; **OREGON** – 77 Representatives; **PENNSYLVANIA** – 225 Representatives; **RHODE ISLAND** – 22 Representatives; **SOUTH CAROLINA** – 93 Representatives; **SOUTH DAKOTA** – 17 Representatives; **TENNESSEE** – 128 Representatives; **TEXAS** – 506 Representatives; **UTAH** – 56 Representatives; **VERMONT** – 13 Representatives; **VIRGINIA** – 161

Representatives; **WASHINGTON** – 136 Representatives; **WEST VIRGINIA** – 38 Representatives; **WISCONSIN** – 114 Representatives and **WYOMING** – 12 Representatives;

E.) Judgment pursuant to 5 *U.S.C.* §702, 28 *U.S.C.* §2201(a), 28 *U.S.C.* §2202, 28 *U.S.C.* §1361 and *Cheney v. United States District Court,* 542 *U.S.* 367 (2004) directing by way of *mandamus* that Defendant Karen L. Hass, Clerk of the United States House of Representatives, upon receipt of the revised "President's Apportionment Statement", to send to the executive of each State a revised and corrected "House Clerk's 2 *U.S.C.* §2(b) Certificate" enumerating the number of Representatives to which such State is entitled in the United States House of Representatives at the One Hundred and Fifteenth Congress and thereafter, and the present number of vacancies for Representatives at the One Hundred and Fifteenth Congress and thereafter, for each State under an Apportionment conducted in accordance with the standards of *Article the First,* an amendment to the United States Constitution, to wit: **ALABAMA:** 96 Representatives (89 Vacancies); **ALASKA:** 15 Representatives (14 Vacancies); **ARIZONA:** 129 Representatives (120 Vacancies); **ARKANSAS:** 59 Representatives (55 Vacancies); **CALIFORNIA:** 747 Representatives (694 Vacancies); **COLORADO:** 101 Representatives (94 Vacancies); **CONNECTICUT:** 72 Representatives (67 Vacancies); **DELAWARE:** 19 Representatives (18 Vacancies); **FLORIDA:** 379 Representatives (352 Vacancies); **GEORGIA:** 195 Representatives (181 Vacancies); **HAWAII:** 28 Representatives (26 Vacancies); **IDAHO:** 32 Representatives (30 Vacancies); **ILLINOIS:** 258 Representatives

(240 Vacancies); **INDIANA:** 131 Representatives (122 Vacancies); **IOWA:** 62 Representatives (58 Vacancies); **KANSAS:** 58 Representatives (54 Vacancies); **KENTUCKY:** 88 Representatives (82 Vacancies); **LOUISIANA:** 112 Representatives (106 Vacancies); **MAINE:** 25 Representatives (23 Vacancies); **MARYLAND:** 116 Representatives (108 Vacancies); **MASSACHUSETTS:** 132 Representatives (123 Vacancies); **MICHIGAN:** 119 Representatives (105 Vacancies); **MINNESOTA:** 107 Representatives (99 Vacancies); **MISSISSIPPI:** 60 Representatives (56 Vacancies); **MISSOURI:** 121 Representatives (113 Vacancies); **MONTANA:** 20 Representatives (19 Vacancies); **NEBRASKA:** 37 Representatives (34 Vacancies); **NEVADA:** 55 Representatives (51 Vacancies); **NEW HAMPSHIRE:** 27 Representatives (25 Vacancies); **NEW JERSEY:** 177 Representatives (165 Vacancies); **NEW MEXICO:** 42 Representatives (39 Vacancies); **NEW YORK:** 389 Representatives (362 Vacancies); **NORTH CAROLINA:** 192 Representatives (179 Vacancies); **NORTH DAKOTA:** 14 Representatives (13 Vacancies); **OHIO:** 232 Representatives (216 Vacancies); **OKLAHOMA:** 76 Representatives (71 Vacancies); **OREGON:** 77 Representatives (72 Vacancies); **PENNSYLVANIA:** 225 Representatives (237 Vacancies); **RHODE ISLAND:** 22 Representatives (20 Vacancies); **SOUTH CAROLINA:** 93 Representatives (86 Vacancies); **SOUTH DAKOTA:** 17 Representatives (16 Vacancies); **TENNESSEE:** 128 Representatives (119 Vacancies); **TEXAS:** 506 Representatives (470 Vacancies); **UTAH:** 56 Representatives (52 Vacancies); **VERMONT:** 13 Representatives (12 Vacancies); **VIRGINIA:** 161

Representatives (150 Vacancies); **WASHINGTON:** 136 Representatives (126 Vacancies); **WEST VIRGINIA:** 38 Representatives (35 Vacancies); **WISCONSIN:** 114 Representatives (106 Vacancies) and **WYOMING:** 12 Representatives (11 Vacancies);

F.) Judgment pursuant to 5 *U.S.C.* §702, 28 *U.S.C.* §2201(a), 28 *U.S.C.* §2202, 28 *U.S.C.* §1361 and *Cheney v. United States District Court,* 542 *U.S.* 367 (2004) directing by way of *mandamus* that the Defendant Governors in each of the 50 States to issue, pursuant to the authority of Article I, Section 2 of the *United States Constitution,* Writs of Election to fill the vacancies remaining in each respective State, and the Defendant named State Officials from each of the States to administer, at large special elections in each State as required for vacancies in accordance with 2 *U.S.C.* §2(c), to wit: **ALABAMA:** 89 Vacancies; **ALASKA:** 14 Vacancies; **ARIZONA:** 120 Vacancies; **ARKANSAS:** 55 Vacancies; **CALIFORNIA:** 694 Vacancies; **COLORADO:** 94 Vacancies; **CONNECTICUT:** 67 Vacancies; **DELAWARE:** 18 Vacancies; **FLORIDA:** 352 Vacancies; **GEORGIA:** 181 Vacancies; **HAWAII:** 26 Vacancies; **IDAHO:** 30 Vacancies; **ILLINOIS:** 240 Vacancies; **INDIANA:** 122 Vacancies; **IOWA:** 58 Vacancies; **KANSAS:** 54 Vacancies; **KENTUCKY:** 82 Vacancies; **LOUISIANA:** 106 Vacancies; **MAINE:** 23 Vacancies; **MARYLAND:** 108 Vacancies; **MASSACHUSETTS:** 123 Vacancies; **MICHIGAN:** 105 Vacancies; **MINNESOTA:** 99 Vacancies; **MISSISSIPPI:** 56 Vacancies; **MISSOURI:** 113 Vacancies; **MONTANA:** 19 Vacancies; **NEBRASKA:** 34 Vcancies; **NEVADA:** 51 Vacancies; **NEW HAMPSHIRE:** 25 Vacancies;

NEW JERSEY: 165 Vacancies; **NEW MEXICO:** 39 Vacancies; **NEW YORK:** 362 Vacancies; **NORTH CAROLINA:** 179 Vacancies; **NORTH DAKOTA:** 13 Vacancies; **OHIO:** 216 Vacancies; **OKLAHOMA:** 71 Vacancies; **OREGON:** 72 Vacancies; **PENNSYLVANIA:** 237 Vacancies; **RHODE ISLAND:** 20 Vacancies; **SOUTH CAROLINA:** 86 Vacancies; **SOUTH DAKOTA:** 16 Vacancies; **TENNESSEE:** 119 Vacancies; **TEXAS:** 470 Vacancies; **UTAH:** 52 Vacancies; **VERMONT:** 12 Vacancies; **VIRGINIA:** 150 Vacancies; **WASHINGTON:** 126 Vacancies; **WEST VIRGINIA:** 35 Vacancies; **WISCONSIN:** 106 Vacancies and **WYOMING:** 11 Vacancies;

G.) Judgment pursuant to 28 *U.S.C.* §2201(a) and 28 *U.S.C.* §2202 declaring that with a minimum number of 6,230 Representatives constitutionally required to be Apportioned among the 50 States, that 3,116 Representatives must be appear, present their credentials, and be sworn and take their seats before the United States House of Representatives at the One Hundred and Fifteenth Congress will have achieved the Majority "... *Quorum to do Business ...* " required by Article I, Section 5 of the *United States Constitution;*

H.) Judgment pursuant to 28 *U.S.C.* §2201(a) and 28 *U.S.C.* §2202 specifically declaring "Resolution 2" of January 3, 2017 of Defendant United States House of Representatives finding a *Quorum* present for the One Hundred Fifteenth Congress to conduct business invalid and void as the required 3,116 Majority "... *Quorum to do Business ...* " required by Article I, Section 5 of the *United States Constitution* had not yet appeared, presented their credentials, been sworn and been seated;

I.) Judgment pursuant to 28 *U.S.C.* §2201(a) and 28 *U.S.C.* §2202 specifically declaring the January 3, 2017 vote of Defendant United States House of Representatives for the One Hundred Fifteenth Congress purportedly electing Defendant Honorable Paul Ryan to the constitutional position of "Speaker of the House" for the One Hundred Fifteenth Congress void as the required 3,116 Majority "... *Quorum to do Business ...*" required by Article I, Section 5 of the *United States Constitution* had not yet appeared, presented their credentials, been sworn and taken their seats;

J.) Judgment pursuant to 28 *U.S.C.* §2201(a) and 28 *U.S.C.* §2202 specifically declaring any and all Business and votes taken by Defendant United States House of Representatives for the One Hundred Fifteenth Congress void *ab initio* because the required 3,116 Majority "... *Quorum to do Business ...*" required by Article I, Section 5 of the *United States Constitution* Representatives had not yet appeared, presented their credentials, been sworn and taken their seats;

K.) Judgment pursuant to 28 *U.S.C.* §2201(a) and 28 *U.S.C.* §2202 specifically enjoining and restraining each individually named Representative, whether acting individually or together with other Representatives, who have to date appeared, presented their credentials, been sworn, and taken their seats, from conducting any Article I legislative business unless and until such time as 3,116 Representatives, the Majority "... *Quorum to do Business ...*" required by Article I, Section 5 of the *United States Constitution* Representatives, have appeared, presented their credentials, been sworn and taken their seats;

L.) Judgment providing such other further relief as the Court deems fair, just and equitable.

FOURTH COUNT:

1. Plaintiffs hereby repeat and re-allege each and every prior allegation again as if set forth fully at length herein.

2. On Friday December 2, 2016 the Federal Communications Commission ("FCC") published a new Agency Rule entitled "Protecting the Privacy of Customers of Broadband and Other Telecommunications Services" in the *Federal Register,* at Volume 81, No. 232 (Friday December 2, 2016) pages 87274 through 87346.

3. In the official "Synopsis" published along with the new FCC Rule the FCC made the following relevant findings and declarations:

> * * *
>
> 2. Internet access is a critical tool for consumers – it expands our access to vast amounts of information and countless new services. It allows us to seek jobs and expand our career horizons; find and take advantage of educational opportunities; communicate with our health care providers; engage with our government; create and deepen our ties with family, friends and communities; participate in online commerce; and otherwise receive the benefits of being digital citizens. Broadband providers provide the "on ramp" to the Internet. These providers therefore have access to vase amounts of information about their customers including when we are online, where we are physically located when we are online, how long we stay online, what devices we use to access the Internet, what Web sites we visit, and what applications we use.
>
> 3. Without appropriate privacy protections, use or disclosure of information that our broadband providers collect about us would be at odds with our privacy interests. * * *

[*See Federal Register,* at Volume 81, No. 232 (Friday December 2, 2016) page 87274].

4. In this new FCC Rule the FCC applied the privacy requirements of the *Communications Act of 1934*, as amended, to broadband Internet access service (BIAS) and other telecommunications services, and specifically implemented the statutory requirement that telecommunications carriers and internet service providers (ISPs") protect the confidentiality of customer personal and proprietary information. Among the various requirements and restrictions in the new FCC Rule was a specific provision that protected consumers from having their data sold or otherwise disseminated by internet service providers ("ISPs") to third parties without the consumer's express permission first being given. Without this FCC Rule, ISPs would be permitted to sell customer's personal and proprietary information without limitation or restriction, with much or all of the information permitted to be sold being information that consumers reasonably expect to otherwise remain confidential and private information. Moreover, most egregious, consumers will not even be made aware that this private information is being sold or otherwise made public and there is no mechanism for consumers to stop or block the sale or dissemination.

5. Plaintiffs each use Broadband Internet Access Service ("BIAS") through Internet Service Providers ("ISPs") for business and personal and health care purposes. Plaintiffs each object to and are alarmed at the fact that their private and proprietary business, personal and health care information can be made available for dissemination and / or sale by ISPs without notice to them and without their right or legal to object which actions by ISPs may constitute *per se* violations of the *Health Insurance Portability and*

Accountability Act of 1996 ("HIPPA"). Plaintiffs will suffer damage and irreparable harm if ISPs are allowed to sell and / or otherwise disseminate the business and personal and health care information of Plaintiffs.

6. Under the *Congressional Review Act,* the new FCC Rule "Protecting the Privacy of Customers of Broadband and Other Telecommunications Services" published in the Federal Register on Friday December 2, 2016 becomes final binding Federal Law unless the Senate and House of Representatives pass, and the President approves, a "disapproval resolution" in accordance with the procedures outlined therein. *See* 5 *U.S.C. sec.* 802.

7. On March 7, 2017 in accordance with the terms and conditions and procedures of the *Congressional Review Act,* Senator Jeff Flake of Arizona, sponsored and introduced a formal "disapproval resolution" in the Senate to reject the new FCC Rule "Protecting the Privacy of Customers of Broadband and Other Telecommunications Services". The "disapproval resolution" was thereafter assigned and identified as Senate Joint Resolution Number 34 of the 115th Congress ("S.J. Res. 34").

8. On March 23, 2017 Senate considered S.J. Res. 34. *See Congressional Record – Senate,* March 23, 2017 at pages S1942 - S1943 (Senate debate at pages S1947 through S1955). On recorded Senate Roll Call vote No. 94, S.J. Res. 34 was approved by a close vote of 50 "Yeas" to 48 "Nays", with 2 Senators (Senator Isakson of Georgia and Senator Paul of Kentucky) absent. As approved by the full Senate on March 23, 2017, S.J. Res. 34 read verbatim as follows:

115th CONGRESS **1st SESSION**

S.J. RES. 34

JOINT RESOLUTION

Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by

> the Federal Communications Commission relating to "Protection the Privacy of Customers of Broadband and Other Telecommunications Services".
>
> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That Congress disapproves the rule submitted by the Federal Communications Commission relating to "Protecting the Privacy of Customers of Broadband and Other Telecommunications Services" (81 Fed. Reg. 87274 (December 2, 2016)), and such rule shall have no force or effect.

[*See* True copy at "Exhibit P"; *see also Congressional Record – Senate,* March 23, 2017 at pages S1954 – 1955].

9. On January 3, 2017, the House of Representatives erroneously determined that they had achieved the required Article I *quorum* to conduct business. *See* Res. 2 (House) One Hundred Fifteenth Congress. The House of Representatives calculated the *quorum* based upon 435 voting Representatives apportioned among the 50 States in the Union whereas the Constitution's *Article the First* requires a minimum of 6,230 Representatives apportioned among the 50 States. The minimum number of Representatives to constitute an Article I *quorum* is 3,116 Representatives (50% +1 of the mandatory minimum 6,230 Representatives).

10. Notwithstanding the Constitutional reality that the House of Representatives lacks the required Article I *quorum* to Conduct any business, the House of Representatives nevertheless substantively considered S.J.Res. 34. On March 28, 2017, on second reading and House Roll Call vote No. 200, S.J. Res. 34 was approved by the United States House of Representatives by a comfortable majority of those present – but not with the Constitutionally mandated *quorum* present being present. Specifically by a vote of 231 "Ayes" to 189 "Noes", with 9 Representatives absent, the House purportedly approved S.J. Res. 34 at the second of the required three readings. *See Congressional*

Record – House, March 28, 2017 at pages , H2488 – H2489. Immediately thereafter that same day there was debate in the House meeting in a Committee of the Whole, *see Congressional Record – House,* March 28, 2017 at pages 2489 – 2501, after which S.J. Res. 34 was read the required third and last time, and after which there was a third and final vote where "*... the Speaker pro tempore announced that the ayes appeared to have it.*" *See Congressional Record – House,* March 28, 2017 at page 2501. The March 28, 2017 third vote in the House of Representatives approving S.J. Res. 34 was invalid, ultra vires, and in violation of the Constitution's Article I's "*Quorums* Clause" as there were not at least 3,116 Representatives (50% +1 of the mandatory minimum 6,230 Representatives) that had appeared, presented their credentials, been sworn, and taken their seats.

11. On March 30, 2017 S.J. Res. 34, having been validly passed by the Article I Senate and having been believed to have been validly passed by the Article I House of Representatives, was then presented to the Article II President by the Senate for his approval or disapproval.

12. On April 3, 2017 Article II President Donald J. Trump signed and approved S.J. Res. 34 (now identified as Public Law No: 115-22 (04/03/2017)).

13. As there was not a Constitutionally sufficient and valid Article I *quorum* in the House of Representatives on March 28, 2017 when S.J. Res. 34 was approved in the House of Representatives after the third and last reading, to date S.J. Res. 34 has only been validly approved by the Article I Senate (by majority vote with the mandatory Article I *quorum* present on March 23, 2017) and Article II President (on April 3, 2017), but not by the Article I United States House of Representatives. For these reasons, S.J.

Res. 34 is not valid Federal Law yet as the bi-camerality requirements of the United States Constitution have not been met yet as the House of Representatives does not yet have an Article I *quorum* to conduct business and will not unless and until such time as at least 3,116 Representatives (50% +1 of the mandatory minimum 6,230 Representatives required to be apportioned among the 50 States) have appeared, presented their credentials, been sworn, and formally taken their seats.

WHEREFORE, Plaintiffs demand Judgment on the factual and legal claims in Count IV as follows:

A.) Judgment pursuant to 28 *U.S.C.* §2201(a) and 28 *U.S.C.* §2202 specifically declaring that S.J. Res 34 enacted at the First Session of the One Hundred and Fifteenth Congress is invalid as the House of Representatives has not yet satisfied the *United States Constitution's* Article I, Section 5's "*Quorum's* Clause", that therefore the March 28, 2017 third vote approving S.J. Res 34 was invalid and a nullity, and that therefore S.J. Res. 34 has not yet met the vesting and bi-camerality requirements of the *United States Constitution's* Article I and Article II and is not valid Federal Law (*See I.N.S. v. Chada,* 462 *U.S.* 919 (1983) and *Clinton v. New York,* 524 *U.S.* 417 (1996));

B.) Judgment pursuant to 28 *U.S.C.* §2201(a) and 28 *U.S.C.* §2202 declaring that with a minimum number of 6,230 Representatives constitutionally required to be Apportioned among the 50 States at the One Hundred and Fifteenth Congress, that 3,116 Representatives must be appear, present their credentials, and be sworn and take their seats before the United States House of Representatives at the One

Hundred and Fifteenth Congress will have achieved the Majority "... *Quorum to do Business* ..." required by Article I, Section 5 of the *United States Constitution;*

C.) Judgment pursuant to 28 *U.S.C.* §2201(a) and 28 *U.S.C.* §2202 specifically enjoining and restraining each individually named Representative, whether acting individually or together with other Representatives, who have to date appeared, presented their credentials and been sworn and taken their seats, from conducting any Business unless and until the minimum 3,116 Representatives Majority "... *Quorum to do Business* ..." required by Article I, Section 5 of the *United States Constitution* have appeared, presented their credentials and been sworn and taken their seats; and

D.) Judgment providing such other further relief as the Court deems fair, just and equitable.

FIFTH COUNT:

1. Plaintiffs hereby repeat and re-allege each and every prior allegation again as if set forth fully at length herein.

2. On March 23, 2010 the President Barak Obama signed the "Patient Protection and Affordable Care Act" (also commonly known as "The Affordable care Act of 2010" and / or "Obama-Care") into law. *See* Public Law 111-148, and 124 Stat. 119 through 124 Stat. 1025. The overall constitutionality of the "Patient Protection and Affordable Care Act" was confirmed by the United States Supreme Court in *National Federation of Independent Business v, Sebelius,* 567 *U.S.* ___ (2012).

3. The "Patient Protection and Affordable Care Act" has provided opportunity for Plaintiffs to obtain adequate Health Insurance coverage whereas before Plaintiffs were ineligible for and could not afford adequate Health Insurance coverage.

4. On March 20, 2017 Representative Diane Black of Tennessee introduced proposed House Resolution No. 1628 ("H.R. 1628") at the First Session of the 115th Congress. H.R. 1628 is entitled the "American Health Care Act of 2017".

5. If enacted into law, H.R. 1628, the "American Health Care Act of 2017", will operate to deprive Plaintiffs and others similarly situated to having their Health Insurance coverage cancelled and / or denied and or severally reduced and / or abolished proximately causing serious damage to Plaintiffs. Plaintiffs therefore have Article III standing to challenge the validity of any vote in the House of Representatives on H.R. 1628, the "American Health Care Act of 2017".

6. On May 4, 2017, the United States House of Representatives purportedly affirmatively voted to approve H.R. 1628, the "American Health Care Act of 2017", by a vote of 217 "Ayes" to 213 "Noes", with 1 no vote. H.R. 1628, the "American Health Care Act of 2017", has now been sent to the United States Senate for consideration. *See* **"Exhibit Q".**

7. However, on January 3, 2017, the House of Representatives erroneously determined that they had achieved the required Article I *quorum* to conduct business. *See* Res. 2 (House) One Hundred Fifteenth Congress. The House of Representatives calculated the *quorum* based upon 435 voting Representatives apportioned among the 50 States in the Union whereas the Constitution's *Article the First* requires a minimum of 6,230 Representatives apportioned among the 50 States. The minimum number of

Representatives to constitute an Article I *quorum* is 3,116 Representatives (50% +1 of the mandatory minimum 6,230 Representatives).

8. Notwithstanding the Constitutional reality that the House of Representatives lacks the required Article I *quorum* to Conduct any business, the House of Representatives nevertheless substantively considered and voted on and purportedly approved H.R. 1628, the "American Health Care Act of 2017". The May 4, 2017 vote in the House of Representatives approving H.R. 1628, the "American Health Care Act of 2017", was invalid, ultra vires, and in violation of the Constitution's Article I's "*Quorums* Clause" as there were not at least 3,116 Representatives (50% +1 of the mandatory minimum 6,230 Representatives) that had appeared, presented their credentials, been sworn, and taken their seats.

9. The House of Representatives does not yet and will not have an Article I *quorum* to conduct business unless and until such time as at least 3,116 Representatives (50% +1 of the mandatory minimum 6,230 Representatives required to be apportioned among the 50 States) have appeared, presented their credentials, been sworn, and formally taken their seats.

WHEREFORE, Plaintiffs demand Judgment on the factual and legal claims in Count V as follows:

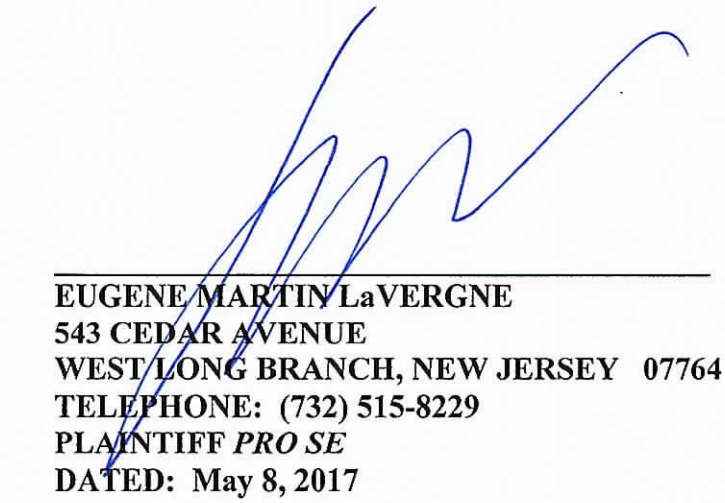
A.) Judgment pursuant to 28 *U.S.C.* §2201(a) and 28 *U.S.C.* §2202 specifically declaring that H.R. 1628 enacted at the First Session of the One Hundred and Fifteenth Congress is invalid as the House of Representatives has not yet satisfied the *United States Constitution's* Article I, Section 5's "*Quorum's* Clause", and therefore the May 4, 2017 vote in the House of Representatives approving H.R.

1628 was invalid and a nullity, and H.R. 1628, as an invalid vote, can and does not be relied upon to met the vesting and bi-camerality requirements of the *United States Constitution's* Article I and Article II to become valid Federal Law (*See I.N.S. v. Chada,* 462 *U.S.* 919 (1983) and *Clinton v. New York,* 524 *U.S.* 417 (1996));

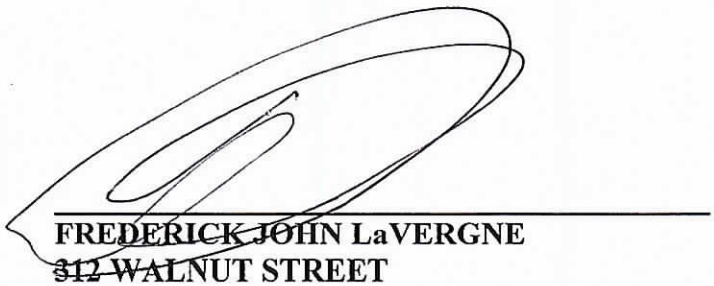
B.) Judgment pursuant to 28 *U.S.C.* §2201(a) and 28 *U.S.C.* §2202 declaring that with a minimum number of 6,230 Representatives constitutionally required to be Apportioned among the 50 States at the One Hundred and Fifteenth Congress, that 3,116 Representatives must be appear, present their credentials, and be sworn and take their seats before the United States House of Representatives at the One Hundred and Fifteenth Congress will have achieved the Majority "... *Quorum to do Business ...* " required by Article I, Section 5 of the *United States Constitution;*

C.) Judgment pursuant to 28 *U.S.C.* §2201(a) and 28 *U.S.C.* §2202 specifically enjoining and restraining each individually named Representative, whether acting individually or together with other Representatives, who have to date appeared, presented their credentials and been sworn and taken their seats, from conducting any Business unless and until the minimum 3,116 Representatives Majority "... *Quorum to do Business ...* " required by Article I, Section 5 of the *United States Constitution* have appeared, presented their credentials and been sworn and taken their seats; and

D.) Judgment providing such other further relief as the Court deems fair, just and equitable.



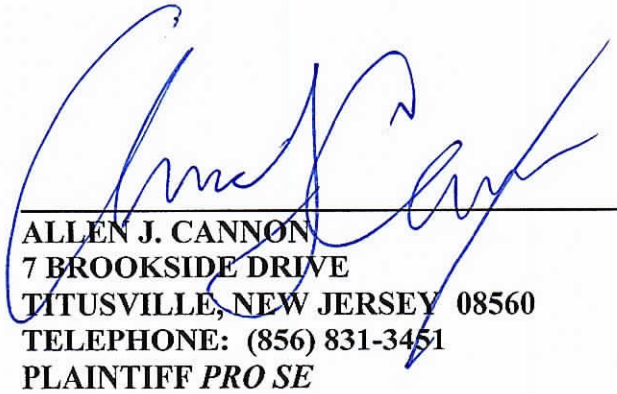
EUGENE MARTIN LaVERGNE
543 CEDAR AVENUE
WEST LONG BRANCH, NEW JERSEY 07764
TELEPHONE: (732) 515-8229
PLAINTIFF *PRO SE*
DATED: May 8, 2017



FREDERICK JOHN LaVERGNE
312 WALNUT STREET
DELANCO, NEW JERSEY 08075
TELEPHONE: (609) 276-1630
PLAINTIFF *PRO SE*
DATED: May 8, 2017

LEONARD P. MARSHALL
303 SPINNAKER WAY
NEPTUNE, NEW JERSEY 07753
TELEPHONE: (732) 233-9613
PLAINTIFF *PRO SE*
DATED: May 8, 2017

SCOTT NEUMAN
1325 ENGLEMERE BOULEVARD
TOMS RIVER, NEW JERSEY 08757
TELEPHONE: (848) 333-8899
PLAINTIFF *PRO SE*
DATED: May 8, 2017



ALLEN J. CANNON
7 BROOKSIDE DRIVE
TITUSVILLE, NEW JERSEY 08560
TELEPHONE: (856) 831-3451
PLAINTIFF *PRO SE*
DATED: May 8, 2017