IN THE
SUPREME COURT OF THE UNITED STATES

October Term 2018

No. _____

EUGENE MARTIN LaVERGNE, *et al,*
Plaintiff-Appellant,
and

CITIZEN'S FOR FAIR REPRESENTATION, *et al,*
Intervenors Plaintiffs-Appellants,

v.

U.S. HOUSE OF REPRESENTATIVES, *et al.*

ON DIRECT APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
(THREE JUDGE DISTRICT COURT)

JOINT JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED:

1. Whether *Article the First*, an amendment to the United States Constitution proposed to the State Legislatures in 1789 by Congress in accordance with the Constitution's Article V, has in fact been fully ratified and automatically consummated into positive Constitutional Law mandating, based upon the population numbers counted at the 2010 Decennial Census, that the 115th Congress and each successive Congress, must have a U.S. House of Representatives of at least 6,230 Representatives apportioned among the now 50 States in the Union?

2. Whether on March 28, 2017 there was an insufficient number of Representatives present in the U.S. House of Representatives to constitute a *quorum* to conduct legislative business, rendering the affirmative vote on *S.J.Res.* 34 invalid and thereby rendering 131 *Stat.* 88 (*Public Law* 115-22 - April 3, 2017, 115th Congress) unconstitutional, invalid and a nullity?

CORPORATE DISCLOSURES

Plaintiff Appellant Eugene Martin LaVergne, *Pro Se* is an individual. The other Co-Plaintiffs below, Frederick John LaVergne, *Pro Se*, Leopard P. Marshall, *Pro Se*, Scott Neuman, *Pro Se*, and Allen J. Cannon, *Pro Se*, are all individuals and will be seeking to appear and be heard on Appeal pursuant to *Supreme Court Rule* 18.

Intervenor Plaintiffs-Appellants below Mark Baird, Cindy Brown, Win Carpenter, Tanya Nemcik and Terry Rapoza are all individuals. Intervenor Plaintiff-Appellant Citizens for Fair Representation is a "d/b/a" entity of Jefferson Formation, Inc., a non-profit corporation (*I.R.C.* 501(c)(4)) of the State of Nevada.

The named Defendants are all Federal or State elected or appointed Officials sued in their official capacity only.

As such, there are no for profit corporations involved in this case in any way.

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JOINT JURISDICTIONAL STATEMENT

PARTIES TO THE PROCEEDINGS BELOW

Plaintiff Appellant Eugene Martin LaVergne, *Pro Se* is the Appellant. The other Co-Plaintiffs below, Frederick John LaVergne, *Pro Se,* Leopard P. Marshall, *Pro Se,* Scott Neuman, *Pro Se,* and Allen J. Cannon, *Pro Se,* will all be seeking to join in the Appeal and appear and be heard pursuant to *Supreme Court Rule* 18. .

Invervenors Plaintiffs-Appellants below Citizens for Fair Representation, Mark Baird, Cindy Brown, Win Carpenter, Tanya Nemcik and Terry Rapoza are all Appellants.

The named Defendants are all Federal or State elected or appointed Officials sued in their official capacity only. Because of the large number of named defendants the names of the Defendants, and the case caption, is printed in full in the APPENDIX.

OPINIONS AND ORDERS BELOW

The Order below is not reported. This is an appeal from a June 6, 2018 Order of a Three Judge District Court convened pursuant to 28 *U.S.C.* §2284(a) in an apportionment case DENYING Appellant's Motion for Summary Judgment and thereby DENYING Appellant's requests for Permanent Injunctive Relief made therein.

JURISDICTION

The June 6, 2018 Court Order of the Three Judge District Court below DENYING Appellant's

Summary Judgment Motion and associated request for Permanent Injunctive Relief was both a direct "*Denial*" of a Motion for Permanent Injunctive Relief and is equally a Court Order that has "*the same practical effect as one granting or denying an injunction*" within the meaning *Abbot v. Perez,* 538 *U.S.* ___ (2018) (slip op. at 12-13 and 16) thereby clearly vesting the Supreme Court with jurisdiction on this direct appeal pursuant to 28 *U.S.C.* §1253.[1]

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

- ***United States Constitution, Article the First***

NOTE: Article the First of the United States Constitution properly reads[2] as follows:

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[1] The Intervenors Plaintiffs Appellants all formally moved to Intervene on December 7, 2017, nine months ago. To date the Three Judge Court has inexplicably failed to actually sign the Order granting formal intervention thereby effectively delaying and preventing such parties from joining in the ongoing and persistent efforts of Eugene Martin LaVergne in seeking Permanent Injunctive relief. It is submitted that nevertheless such parties have a right to proceed on Direct Appeal here and now as the inaction of the Three Judge Court has "*the same practical effect as one granting or denying an injunction*" within the meaning of the Supreme Court's recent opinion in *Abbot v. Perez,* 538 *U.S.* ___ (2018).

[2] This is the correct literal text of the Amendment. *Rule* 34(5) of the Supreme Court indicates that when a federal law is at issue and is not classified in the United States Code, the citation should *ordinarily* be to the *Unites States Statutes at Large.* However, the *Rule* continues stating that "... additional or alternative citation should be provided *only if there is a particular reason why* the citations are relevant to the argument." (emphasis added) *Id.* In this case there is just such a "particular reason", as the text of *Article the First* as found in the *United States Statutes at Large* (specifically at 1 *Stat.* 97 (1789)), first printed and published in 1845 (56 years after the actual events in issue) is in

Article the First

> After the first enumeration, required by the first Article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, 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 shall amount to two hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than two hundred representatives, nor ***less*** than one Representative for every fifty-thousand persons. (Emphasis added).

In addition to *Article the First*, the following Constitutional, Statutory and Regulatory provisions involved in this case are listed below, with the full text of each re-printed at length in the *Appendix*:

- *United States Constitution,* Article I, Section 1 (commonly known as the "Vesting Clause")
- *United States Constitution,* Article I, Section 2
- *United States Constitution,* Article I, Section 5 (commonly known as the "Quorums Clause")
- *United States Constitution,* Article II, Section 7, Clause 2 (commonly known as the "Bicamerality Clause")

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error as it perpetuates a scrivener's error and printing error in the text where the word "more" was inserted in the incorrect location in place of the word "less". *See* detailed explanation of the scrivener's error and printing error in the text of *Article the First* 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) at pages 179 -220..

- *United States Constitution,* Article V
- 1 *U.S.C.* §106b
- 2 *U.S.C.* §2a
- 5 *U.S.C.*§702
- 5 *U.S.C.* §801 (a)(1)(A) & (a)(1)(C)(3)
- 5 *U.S.C.* §802
- 28 *U.S.C.* §2284
- 28 *U.S.C.* §1253
- 28 *U.S.C.* §1657(a)
- 131 *Stat.* 88(*Public Law* 115-22 - April 3, 2017, 115th Congress)

STATEMENT OF THE CASE

On Friday December 2, 2016, in last weeks of the 114th Congress and the administration of President Barak Obama, the United States Federal Communications Commission ("FCC") published in the *Federal Register* a series of related proposed new Agency Rules collectively entitled "Protecting the Privacy of Customers of Broadband and Other Telecommunications Services". *See Federal Register* Volume 81, No. 232 (Friday December 2, 2016) at pages 87274 through 87346. The FCC had been working on the proposed Rules for several years, and

these new proposed Agency Rules were the culmination of the FCC's work. Specifically, these new proposed Agency Rules operated to protect the privacy rights of individuals such as Plaintiffs who use the internet by strictly barring all Internet Service Providers ("ISPs") from tracking and collecting and selling or otherwise disclosing to any third parties any individual's personal, business and health information as learned and accumulated by the ISP by virtue of an individual's use of that ISP's services in accessing, searching and "browsing" the internet.

Under procedures established in the *Congressional Review Act,* the proposed new FCC Rules would automatically become positive and binding Federal Administrative Law unless the *Article* I U.S. Senate and U.S. House of Representatives passed, and the *Article* II President signed, a "Disapproval Resolution" within 60 "legislative days" of the December 2, 2016 date of publication in the *Federal Register. See* 5 *U.S.C.* §802(b)(2).

On January 3, 2017 in the morning hours prior to noon the 114th Congress adjourned and at noon the newly elected 115th Congress convened. There were 435 voting Members elected to the new 115th Congress who appeared and presented credentials from their home states. Using the 435 number as the full number of Representatives apportioned among the 50 States in the Union, and operating with the understanding that the *quorum* necessary to conduct business as mandated by the Constitution's *Article* I, Section 5's "*Quorums Clause*" was 50% of the 435 number, those U.S.

Representatives present erroneously believed that they had satisfied the Constitution's *Article* I, Section 5's mandatory *Quorums Clause* and declared the presence of a *quorum* to conduct legislative business. *See Resolution* 2 (U.S. House, 115th Congress). Thereafter, by a majority vote of the U.S. Representatives then present Defendant U.S. Representative Paul Ryan of Wisconsin was elected to serve as the Speaker of the United States House of Representatives.

On January 20, 2018 at noon Defendant Donald J. Trump was sworn in as the 45th *Article II* President of the United States.

On March 7, 2017, within the timeframe of the *Congressional Review Act,* United States Senator Jeff Flake of Arizona sponsored and introduced a formal "Disapproval Resolution" in the U.S. Senate regarding the recently proposed FCC Privacy Regulations. If passed into law, the "Disapproval Resolution" would operate to effectively and legally reject and effectively block the new proposed FCC Privacy Regulations from becoming permanent Federal Administrative Law. The "Disapproval Resolution" was thereafter identified as *Senate Joint Resolution Number 34 of the 115th Congress* ("*S.J.Res.* 34") and read in relevant part as follows:

> "... 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 Congressional Record – Senate,* March 23, 2017 at pages S1954 – 1955].

On March 28, 2017 the full Membership of U.S. House present took up consideration of *S.J.Res.* 34. There were three readings as required by the *Rules of the House,* and after the third and final reading "*... the Speaker pro tempore announced that the ayes appeared to have it ...*" and *S.J.Res.* 34 was announced and published as having passed and having been affirmatively approved by the U.S. House of Representatives as well. *See Congressional Record – House,* March 28, 2017 at page 2501.

On April 3, 2017, *S.J.Res.* 34 in the exact form as approved by the U.S. Senate and the U.S. House was presented to the *Article* II President Donald J. Trump who promptly signed the legislation into law, which law was thereafter and is now identified as 131 *Stat.* 88 (*Public Law No.* 115-22 - April 3, 2017, 115th Congress).

Less than a month later, on April 28, 2017 Eugene Martin LaVergne (Appellant) and three other Plaintiffs filed a Complaint in the United States District Court for the District of Columbia District challenging the validity and Constitutionality of 131 *Stat.* 88 (*Public Law No.* 115-22 - April 3, 2017, 115th Congress), and also seeking various forms of Permanent Final Declaratory and Permanent Final Injunctive Relief related directly to, and that Plaintiffs' contend

logically flow from, the unusual nature of the Constitutional claims asserted.

The collective Plaintiffs specifically contend that the challenged "Disapproval Resolution" operates to violate their privacy rights because the law effectively operates to permit ISPs to collect and sell and otherwise disclose to third parties Plaintiffs' personal, business and health information as learned and accumulated by the ISPs by virtue of Plaintiffs' use of that ISP's services in accessing, searching and "browsing" the internet. But for the challenged "Disapproval Resolution", the FCC's proposed Agency Rules would operate to bar the ISPs from collecting and selling and otherwise disclosing to third parties Plaintiffs' personal, business and health information. Plaintiffs' the claimed injuries that they articulate constitute sufficient "injury in fact" so as to confer Article III Standing to challenge the constitutionality of "Disapproval Resolution".

The specific basis of the Constitutional challenge in this case is unusual, in that Appellants claim that the U.S. House of Representatives is not Constitutionally apportioned because *Article the First,* the first ever proposed amendment to the United States Constitution, was actually ratified by the Constitution's Article V's standards and is therefore positive Federal Constitutional Law. Moreover, Plaintiffs contend that when the mandatory non-discretionary standards of *Article the First* are applied to the 2010 Decennial census Population in each of the 50 States that the result is a U.S. House size of a minimum of 6,200 Representatives. That being the case, the collective Plaintiffs contend that on March 28, 2017 when the

U.S. House voted to approve what was then *S.J.Res.* 34, that a *Quorum* of the membership of the body mandated by the Constitution's Article I, Section 5 - that being at least 3,116 Representatives - was not then and there present, and that as such, the vote taken on the "Disapproval Resolution" is therefore invalid as having been taken and credited in violation of the Constitution's *"Quorum's Clause"*. As the vote was taken in violation of the "Quorum's Clause", the legislation was not validly passed by the U.S. House of Representatives, and as such the "Disapproval Resolution" has not legally and constitutionally become Federal Law. So the challenge is really twofold: First a challenge to the Constitutionality and validity of the present Apportionment of the U.S. House of Representatives, and second a challenge to the validity and Constitutionality of the "Disapproval Resolution" as having been passed in the absence of the Constitutionally required *quorum*.

The factual and legal challenge in the original Complaint and in the First Amended Complaint[3] are

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[3] The First Amended Complaint, filed May 9, 2017 added an additional Plaintiff (Allen J. Cannon) and a new FIFTH COUNT challenging on *Quorums* Clause grounds the May 4, 2017 vote in the U.S. House of Representatives ostensibly approving House Resolution 1628, named "The American Health Care Act of 2017", which passed the House with a vote of 217 "Ayes" to 213 "Noes" with one "No Vote". This legislation, despite the name, if passed into law, really would have operated to repeal the "Patient Protection and Affordable care Act of 2010 (commonly referred to as "OBAMA Care"), 124 *Stat.* 119 through 1025 (Public Law 111-148, March 23, 2010). The First Amended Complaint was filed peremptorily as it was expected that the Senate would approve and the President

based upon the historical contention of LaVergne and the other Plaintiffs that *Article the First,* the first of a package of twelve amendments each singularly proposed to the then eleven State Legislatures in the Union on September 25, 1789 by the First Session of the First Congress then meeting in New York City, was actually fully ratified and automatically consummated into permanent Constitutional Law in accordance with the Constitution's *Article* V's hybrid Federal Constitutional Law making process and somehow thereafter was "forgotten" lost or hidden in our history. Moreover, LaVergne and the other Plaintiffs contend that during the initial post proposal distribution process of the proposed amendments to the State Legislatures there was an inadvertent "less" to "more" scrivener's and printer's error made in the last (or third and final) line of *Article the First.* LaVergne and the other Plaintiffs specifically contend that correctly applied today, that *Article the First* Constitutionally mandates that Congress, when conducting the required Twenty Third Decennial Census and Apportionment of the U.S. House of Representatives in 2010 as otherwise mandated by Article I, Section 2 (as amended), was Constitutionally required by the clear terms of the proper text of *Article the First* to apply a mandatory non-discretionary ratio of "... *that there shall be not less than two hundred representatives, nor less than one Representative for every fifty thousand persons* ..." to the census Population of each State. As such, in light of the Census Population of each State after

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would then sign. However, as circumstances developed, the bill failed in the Senate. As such, COUNT FIVE is moot. .

the 2010 Decennial Census, *Article the First* mandates that 2010 Decennial Apportionment of the United States House of Representatives must apportion a minimum of 6,230 Representatives among the 50 States in the Union.

THE THREE JUDGE DISTRICT COURT

On May 9, 2017 the Plaintiffs moved seeking an Order under 28 *U.S.C.* §2284 convening and appointing a Three Judge District Court to hear the case as this case included a constitutional challenge to the 2010 Decennial Apportionment of the U.S. House of Representatives. On May 15, the Court Granted the motion and referred the matter to the Honorable Merrick Garland, Chief judge of the District of Columbia Court of Appeals, who in turn on May 18, 2017 issued an Order appointing the members of the Three Judge District Court.

APPELLANT FILES A MOTION SEEKING PERMANENT INJUNCTIVE RELIEF

Because the facts that supported the claims that Appellant and the other Plaintiffs were asserting were largely proven by existing Official State Government Documents that the Court could take Judicial Notice of, rather than move for Preliminary Injunctive Relief, Appellant instead chose to moved directly for Permanent Injunctive Relief. More specifically, first thing on the morning of October 20, 2017 - and several hours before the telephonic Case Management and Status Conference held by the full Three Judge District Court - Appellant filed a formal detailed and comprehensive

Motion for Summary Judgment seeking Final Declaratory and Final Injunctive Relief. Essentially in so moving Appellant was seeking the equivalent of proceeding in a summary manner to Final Judgment by way of Summary Judgment as the facts were not in dispute and the record was clear and undisputable. For this reason, it was by plan and design that Appellant filed a detailed and comprehensive Motion with the Clerk of the Court on this day, doing so specifically so that the Motion and the associated requests for Permanent Declaratory and Permanent Injunctive Relief would already be formally pending before the Court when the Three Judge Court held their initial telephonic Case Management and Status Conference with all parties later that day.

THE INITIAL TELEPHONE CONFERENCE WITH THE FULL THREE-JUDGE COURT

Later that day on October 20, 2017 - now almost 6 months after the case was first filed - finally the full Three Judge Court held the scheduled telephonic conference. During the conference not a single "State Defendant" nor any of the "Federal Defendants" disputed that what Appellant and Plaintiffs were factually and legally alleging was not in fact true and correct as facts are facts. Rather, as expected the collective defendants, unable to defend the truth and substance, wanted to argue procedural bars. Appellant and Plaintiffs expected this and were ready to brief and defend any motion within 30 days. However, there was one procedural issue that the collective Defendants raised that applied only to

Appellant, that being whether a prior case he had brought that was never substantively decided, *LaVergne v. Bryson,* had any preclusive effect now in this case. Appellant was of course aware of the fact that this issue would be raised and had already well researched and confirmed that the law is when a case is Dismissed for a litigant's claimed lack of Article III Standing, that such Dismissal is not a substantive dismissal and had no preclusive effect in any subsequent litigation. That is the law.

In any event, ultimately the Three Judge Court decided to permit the Federal and State Defendants to first in time file their contemplated "Collateral Estoppel Motions" against Appellant only but on a tight schedule, decided to temporarily stay consideration of Appellant's now pending Summary Judgment Motion and request of Permanent Injunctive Relief, with a specifically stated expectation that this motion would be decided in January 2018 and that thereafter the Summary Judgment Motion any other motions the Defendants would want to file would be addressed, most probably around February 2018 at the latest. The Court thereafter entered an Order later in the day on October 20, 2018 memorializing the decisions ("e-signed" by only one of the three Judges) which Order inadvertently omitted language staying consideration of the Summary Judgment Motion and Request for Permanent Injunctive Relief and also staying the obligation of the Defendants to file their opposition.

THE EARLIER *LaVERGNE v. BRYSON* CASE AND THE DEFENDANT'S FRIVOLOUS "COLALTERAL ESTOPPEL MOTIONS"

In December 2011 Appellant brought an earlier case involving *Article the First* and the 2010 Decennial Apportionment of the U.S. House of Representatives which claims were very different than those asserted herein. *See LaVergne v. Bryson, et als,* United States District Court for the District of New Jersey, Trenton Vicinage, Civil Action No. 11-7117(PGS) (*sua sponte* single District Court Judge Order of Dismissal entered December 16, 2011), affirmed *LaVergne v. Bryson,* 497 *F.App'x* 219 (3d Cir. 2012) (*per curium*), *certiorari* denied *sub nom LaVergne v. Blank,* 568 *U.S.* 1161 (2013).

In this case below, in accordance with the Three Judge Court's October 20, 2018 Order, both the Federal and State Defendants assert by motion the *F.R.Civ.P.* 8 affirmative Defense of "Collateral Estoppel" seeking to rely upon action taken in the earlier *LaVergne v. Bryson* case.

Appellant responded by filing opposition to both motions, filing an affirmative Cross-Motion in this case under *F.R.Civ.P.* 60 seeking a collateral declaration that the earlier dismissal in the *LaVergne v. Bryson* case was for claimed lack of Article III Standing only which, as a jurisdictional dismissal, as a matter of has no preclusive effect, filed a Post Judgment Motion under *F.R.Civ.P.* 60 seeking clarification from the Court there that in fact the dismissal was for claimed lack of Article III Standing only, and served the both the Federal and State Defendants with a *F.R.Civ.P.* "RULE 11"

"warning letter" demanding that they withdraw their frivolous motions.

And we now know without question exactly what the District Court did on December 16, 2011, as it was clarified and explained recently on March 6, 2018 on the return date of that Post Judgment Motion:

***

> THE COURT: I know you were saying my decision was unclear, but it was affirmed if I remember it right. *And, you know, I dismissed it based on your lack of standing.* (Emphasis added).
>
> MR. LaVERGNE: That's okay, you can clarify that now because you didn't say that then that's my whole point.
>
> THE COURT: Oh.
>
> MR. LaVERGNE: Because the point is if you dismissed it for lack of standing I'm okay with that, I disagree that was a correct decision but I'm not challenging that. Because the point is a dismissal for lack of jurisdiction based upon lack of standing has no preclusive effect in the case in Washington. So if that's why you dismissed it then just clarify that and say so and we're done.
>
> THE COURT: Al right. ***

***

> THE COURT: Al right. Thank you for coming in, but actually I didn't

> think my judgment last time was so ambiguous that no one understood it. *And I do believe I was entering a judgment because I thought you lacked standing to present a case on reapportionment* ...[.] (Emphasis added).

So in context, it is now clear beyond dispute that the prior *LaVergne v. Bryson* case has no "Collateral Estoppel" or other preclusive effect in this case.

THE "TEMPORARY STAY" OF THE SUMMARY JUDGMENT MOTION

During the October 20, 2017 telephone conference before the Three Judge Court the issue of scheduling the Summary Judgment Motion and request for Permanent Injunctive relief was specifically discussed, and the Three Judge Court agreed to simply temporarily stay consideration. However, when the October 20, 2017 Order memorializing the scheduling issues as discussed and was issued, the Order was inadvertently silent as to staying consideration of the Summary Judgment Motion.

To address the omission, on October 31, 2017 State Federal and State Defendant filed "Consent Motions" to temporarily stay consideration as agreed (which motions were consented to by Appellant) to remedy the omission.

THE INTERVENORS

On December 12, 2017 proposed Intervener Plaintiffs Citizens for Fair Representation, Mark Baird, Cindy Brown, Win Carpenter, Tanya Nemcik and Terry Rapoza filed a collective formal Motion through counsel seeking to intervene as party Plaintiffs in the case. Plaintiffs consented to this.

DENIAL OF THE SUMMARY JUDGMENT MOTION AND REQUEST FOR PERMANENT INJUNCTIVE RELIEF

Despite the clear fact that the full three Judge District Court had already orally agreed to Order a "Stay" of consideration of the Summary Judgment Motion and request for Permanent Injunctive relief pending further Order on the record on October 20, 2017, inexplicably on December 21, 2017, Judge Kollar-Kotelly, instead of merely granting the "consent motions" before her to confirm the stay, instead denied those motions and acting *sua sponte,* and acting alone as a single Judge District Court, signed an Order that read as follows:

> ***
>
> - Plaintiffs' [54] Motion for Summary Judgment is DENIED WITHOUT PREJUDICE to it being refilled at a later date if and when this case proceeds to a point where the Court considers the merits of Plaintiffs" claims. State and Federal Defendants'

> respective [60] and [61] motions to either stay the duty to respond to Plaintiffs' motion, or to hold that motion in abeyance, are accordingly DENIED AS MOOT.

Moreover, worse, for reasons that have never been made clear, this Order was then mailed to Appellant at the wrong address, so Appellant did not even know that the Summary Judgment Motion and request for Permanent Injunctive relief had been DENIED.

Appellant found out about this December 21, 2017 single Judge Dismissal Order at substantially the same time that the Court in *LaVergne v. Bryson* clarified Post Judgment on the record that the December 16, 2011 Order of Dismissal was for lack of standing. As such, Appellant first informally requested, and then formally requested by Motion, a second telephone conference before the full Three Judge District Court to get the case moving forward. The case had literally been filed a year earlier, and other than convening a Three Judge Court and holding one telephone conference, not much else had been done. Moreover, Appellant had been demanding his right to be heard on the Summary Judgment Motion which (Appellant contends) there is no substantive defense to. Inexplicably, on May 1, 2018, the Court denied the request for a telephone conference. As such, Appellant immediately moved by formal motion for Summary Judgment and Permanent Injunctive Relief again, arguing firstly that the December 21, 2017 Single District Judge Order was beyond the Court's power as a singled

Judge District Court may not take such action as the clear and unambiguous terms of 28 *U.S.C.* §2284(b)(3) admonish that: "***A single judge shall not ...hear and determine any application for a ... permanent injunction ...***"[.] (Emphasis added). So the December 21, 2017 Single District Judge Order was improvidently entered in clear violation of law. The last sentence of 28 *U.S.C.* §2284(b)(3) provides that "... *Any action of a single judge may be reviewed by the full court at any time before final judgment*". As such, in so moving, technically Appellant was seeking an Order from the full Three Judge Court vacating and declaring void the portions of the December 21, 2017 single District Judge Order of Judge Kollar-Kotelly that purported to summarily and *sua sponte* "DISMISS WITHOUT PREJUDICE" the pending Summary Judgment Motion, and to compel the Court to proceed and hear the motion now on an expedited basis, Appellant also cited to *F.R.Civ.P.* 60(b)(4) seeking the same requested relief.

On June 6, 2018 the full Three Judge District Court, without argument, and without even waiting for any opposition from Defendants, Denied Appellant's Motion seeking Expedited Review of his Summary Judgment Motion seeking Permanent Injunctive Relief. Believing that refusal to hear and decide a request for Permanent Injunctive relief in a case filed 14 months earlier on a motion filed 8 months earlier was the equivalent of a "denial" for purposes of filing a Direct Appeal under 28 *U.S.C.* §1253, so on June 11, 2018 Appellant and Intervener-Plaintiff Appellants each filed a timely Notice of Appeal.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

Appellant has already best and cogently framed in context the Constitutional substantiality of what is at issue in this case in the Preface to his scholarly book *How "Less" is "More", the Story of the Real First Amendment to the United States Constitution,* which will therefore now be quoted from directly:

> ... [I]t is stunning that so little is known by the People and the elected officials themselves about something so basic and important as the Constitutional composition and constitutionally required and permitted size of the United States House of Representatives. The above considered today in year 2015 greatly supports the somewhat contemporary view of a well known Constitutional Scholar made more than 30 years ago in 1983, who in turn when making his statement was quoting in part the similar observations of another earlier Constitutional Scholar that had been made 22 years earlier in 1961, regarding the fact that Americans have stopped questioning or even thinking about such things as the constitutional legitimacy of their government and such associated issues

as the proper composition and size of the House of Representatives:

> Americans tend to take the legitimacy of their government for granted. There is a "sweet air of legitimacy" ... in a country whose citizens do not pause to question whether "***this*** government is ***the*** government" or whether its actions, right or wrong, are the actions of legitimately constituted authority. * * * ... "[A] government can not attain and hold a satisfactorily definitive attribution of legitimacy if its actions as a government are not, by and large, received as authorized."
>
> That the American system of government traces its authority to a Constitution originally consent to by conventions elected by (a proportion of) the people is one significant figure of the regime. In determining whether those purporting to exercise power are in fact "the government" and whether their actions are authorized, we look to the Constitution as it has been interpreted and amended.

The phenomenon of political complacency and acceptance, first discussed 55 years ago, then discussed again more than 30 years ago, and highlighted yet again today, is as true

> and accurate an observation of the People of the United States today as when it was first observed 55 years ago. The People no longer look to the Constitution and amendments for understanding of the Federal Government. The People rather have become impotent and accept whatever government those in temporary power give them as "***the***" government without challenge or question. Americans have indeed come to blindly and without question accept that the composition and size of the House of Representatives, fixed at 435 now for more than 100 years, is in fact Constitutional and lawful, and is "***the***" government to which they are constitutionally entitled. It is not. The People are being deprived every day of the Republican form of government that the Constitution guarantees to them simply because the People are not adequately and accurately informed. The People simply do not know.

[*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) at Preface, pages II & III].

Appellant submits that objectively viewed, there can be no question or questions that could

possibly qualify as more substantial to the People of the United States as a body politic than those that are directly at issue in this case. More specifically at issue is the proper interpretation and application of the "the *Quorums* Clause" (Article I,. Section 2, Clause 5) of the United States Constitution as applied to legislative action taken in the U.S. House of Representatives, as it operates in consort with the proper interpretation and proper application of the decennial "Apportionment" of the U.S. House of Representatives (Article I, Section 2, as amended by the Fourteenth Amendment, the Sixteenth Amendment, and now also by *Article the First*).

DIRECT REPRESENTATION FOR THE PEOPLE: A REVOLUTIONARY IDEA

To the eye properly informed in actual historical events, it is evident and easily seen that the idea of America was at its inception and during its time in context, the most Revolutionary political concept in the recorded history of humans. And it must be remembered that it was the American Colonists' dispute in 1774 over the *denial of any Representation* in the English Parliament that was imposing taxes upon the Colonies that was the catalyst of a dispute that over time escalated into a full out actual bloody Revolution and the ultimate separation of the thirteen Colonies from England. All too often over time history evolves into a populist and romanticized version of what occurred in the past in replacement of a simple accurate recitation of

factual events. So to remind the reader, while personal rights such as freedom of religion, freedom of speech, and protection from the government quartering soldiers in one's home are indeed very important rights and personal freedoms to be guarded and protected, the fact of reality and history is that when the Constitution was drafted the then recent Revolution had not been fought over these issues. The true fact of history is that the Revolution had been fought because the People had been denied Representation and denied a voice in the political body that was imposing taxes upon them and taking money out of their pockets. This simple fact of history was well understood as Deputies convened in Philadelphia in the late spring and summer of 1787 to revise the *Articles of Confederation for Perpetual Union,* the then existing social compact between the thirteen Colonies. Over the hot summer as the Convention progressed, and after it became clear that most Deputies endorsed suggesting to Congress and the States that the existing social compact be replaced and supplanted with a completely new Constitution, that the focus shifted to whether and to what extent the People would be allowed to play a direct role in the new general Federal Government. Once it was decided that the proposed Legislative Branch would consist of a Senate (2 for each State) whose membership was to be elected by the State Legislatures and a second "branch", a House of Representatives (at least 1 per State, to be apportioned among the States based upon population) whose members were directly elected by the People, the most heated debates and arguments among the Deputies during the summer

of 1787 were on the unresolved issue as to how best apportion the House of Representatives and how best to guarantee and ensure adequate representation of the People for all time.

It was generally understood that the U.S. House of Representatives, as the only organ of the proposed new Federal Government to be directly elected by the People, standing alone would always be the largest and most powerful single organ of the Federal Government. It was specifically contemplated that the total size of the House of Representatives should always be substantially equal to the number of all of the Members of the State Legislatures added together. And it was equally understood that the Article III Judicial Branch would certainly be the smallest of the three (somewhat) co-equal "branches". In the end the First Congress was apportioned 65 Representatives among the contemplated 13 States to remain at that size until after the first census was completed after which Congress would conduct the first decennial apportionment. As originally proposed and enacted, together the Census Clause and the apportionment process ...

> ... reflects several important constitutional determinations: That comparative state political power in the House would reflect comparative population, not comparative wealth; that comparative political power would shift every 10 years to reflect population changes; that federal tax authority would rest upon the same

> base; and Congress, not the States, would determine the manner of conducting the census.

[*Utah v. Evans,* 536 *U.S.* 457, 477 (2002)].

However, while the manner of who and how to count as the People for the Decennial Census was quite specific, great concern was expressed that as, originally written, the actual process of Article I apportionment was to be left to the total discretion of Congress and future Congresses constrained by only three Constitutional limitations: First, each state, irrespective of population, was required to be apportioned at least one Representative; Second, Representatives could not be apportioned across State lines; and Third "... *The number of Representatives shall not exceed one for every thirty-thousand ...*".

The most serious objection to the plan was that it was unwise to leave the process of apportionment to the virtually unchecked discretion of Congress itself, as Congress might in the future arbitrarily refuse to increase the number of Representatives as population increased so as to prevent their own power from being diluted, with a nefarious by-product being inadequate representation of the People in the United States House of Representatives.

STATE RATIFYING CONVENTIONS DEMAND AN APPORTIONMENT AMENDMENT

Over the next year a majority of the State Conventions that ratified the proposed new Constitution did so with the caveat expectation that the First Congress would propose an "apportionment amendment" pursuant to the Constitution's Article V hybrid Constitutional law making process to alter the manner of apportionment in the U.S. House of Representatives to better protect the rights of the People to adequate representation in the future by taking discretion away from Congress over and in the decennial process. Indeed, the North Carolina State Convention, first meeting in August of 1788, felt the issue so important that a majority of the Convention flatly refused to ratify the Constitution on faith that such a change to the existing Article I apportionment scheme would be made, with North Carolina only capitulating and ratifying the Constitution and joining the Union in November 1789, after *Article the First,* the demanded apportionment amendment, had been proposed by the First Session of the First Congress to the State Legislatures.

THE FIRST SESSION OF THE FIRST CONGRESS RESPONDS WITH *ARTICLE THE FIRST*

When the First Session of the First Congress met in New York City on March 3, 1789 the members of Congress from the Eleven States in the Union then appearing had before them a call from

the People to alter the manner of apportioning the U.S. House of Representatives and an expectation from the People that that Congress would respond by proposing an "apportionment amendment" of some form or another. It is significant to note as a matter of history that the U.S. House of Representatives did not actually achieve a quorum to conduct legislative business until almost a month later, on April 1, 1789, when 30 of the then 59 Member U.S. House of Representatives[4] were then present. And in fact Congress ultimately did so respond, as noted, when on September 24, 1789 Congress formally proposed *Article the First* (along with Eleven other proposed amendments) to the State Legislatures pursuant to the Constitution's Article V. And it was no mere coincidence that the "apportionment amendment" was the literal first ever amendment proposed to the Constitution. Moreover, the actual approved text of *Article the First* more clearly defined the apportionment process and removed most discretion from Congress, so that over time (and once at "Line 3" of *Article the First* with a "Census Population" of more than 10 Million) the process would be essentially governed by numbers and math and not by political whim and discretion. And also in keeping with expectations of the People, the First Session of the First Congress organized the Article III Judicial Branch when

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[4] Although the Constitution's Article I initially apportioned 65 Representatives among the contemplated 13 States to be immediately joining the Union, North Carolina (apportioned 5 Representatives) and Rhode Island (apportioned 1 Representative) had not yet ratified the new Constitution at Convention, so the First Session of the First Congress only had 11 States with 59 Representatives.

Congress passed, and President George Washington signed, *An ACT to establish the JUCICIAL COURTS of the United States,* 1 *Stat.* 73 (September 24, 1789). In so doing, as first constituted the entire Article III Federal Judiciary consisted of thirteen Judicial Districts among the then eleven States in the Union with each State consisting of one single Judicial District, and with the "District of Maine", then part of Massachusetts and the "District of Kentucky", then part of Virginia, each assigned their own District, with a total of one Judge per district, or 13 District Judges, and a Supreme Court of 6 Justices (a Chief Justice and five Associate Justices. When North Carolina and Rhode Island formally joined the Union during the First Congress, Second Session, each was designated as a single Judicial District and assigned one District Judge. So the total Article III Judiciary for the original 13 States consisted of a total of 21 Article III Judges: 1 Chief Justice, 5 Associate Justices, and 15 District Court Judges. This, while the size of the House of Representatives was 65, soon to be increased to 105 Representatives in 1792 after the first Decennial Census and first Decennial Apportionment was completed. And then, bizarrely, and during this time period, this fully ratified amendment to the United States Constitution was somehow all but lost or hidden and forgotten in history.

RATIFICATION OF *ARTICLE THE FIRST* BY THE STATE LEGISLATURES

An accurate review of history reveals that *Article the First* was ratified by the following State Legislatures at the following times:

1. The Connecticut State Legislature ratified *Article the First* by the Constitution's Article V's standards at the October 1789 Legislative Session (*or alternatively at the May 1790 Legislative Session if the "Upper House Council" is to be considered part of the "Legislature" for the Constitution's Article V purposes).

2. The New Jersey State Legislature ratified *Article the First* by the Constitution's Article V's standards on November 19, 1789 (*or November 20, 1789).

3. The Virginia State Legislature first ratified *Article the First* by the Constitution's Article V's standards on December 15, 1789 and ratified *Article the First* by the Constitution's Article V's standards a second time on November 3, 1791.

4. The Maryland State Legislature ratified *Article the First* by the Constitution's Article V's standards on December 19, 1789.

5. The North Carolina State Legislature ratified *Article the First* by the Constitution's Article V's standards on December 22, 1789.

6. The South Carolina State Legislature ratified *Article the First* by the Constitution's Article V's standards on January 19, 1790.

7. The New Hampshire State Legislature ratified *Article the First* by the Constitution's Article V's standards on January 25, 1790.

8. The New York State Legislature ratified *Article the First* by the Constitution's Article V's standards on February 24, 1790.

9. The Rhode Island State Legislatures ratified *Article the First* by the Constitution's Article V's standards on June 7, 1790.

10. The Pennsylvania State Legislature ratified *Article the First* by the Constitution's Article V's standards on September 24, 1791.

11. The Vermont State Legislature ratified *Article the First* by the Constitution's Article V's standards on November 3, 1791.

12. The Kentucky State Legislature ratified *Article the First* by the Constitution's Article V's standards on June 21, 1792.

[*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].

Therefore, *Article the First* was fully ratified and automatically consummated into permanent Federal Constitutional Law as early as June 7, 1790 (when there were 13 States in the Union and 9 State Legislatures had ratified), or alternatively on November 3, 1791 (when there were 14 states in the Union and 11 State Legislatures had ratified) or alternatively again, as late as June 21, 1792 (when there were 15 States in the Union and 12 State Legislatures had affirmatively ratified).

PROMULGATION OF CONSTITUTIONAL AMENDMENTS

In what was both a dually genius decision and what history has shown in this case to equally be a flaw, the founding fathers did not Constitutionally vest the duty of keeping track and counting the votes of the various State Legislatures (or State Conventions) with any person or organ of Federal or State government. Instead, the Constitution's Article V merely required the State Legislatures (or State Conventions) to "ratify", not to "ratify ***and notify***". No further action was required of a State Legislature (or State Convention) in this hybrid Federal Constitutional law making process other than merely casting an affirmative vote of assent. And once three-fourths of the Legislatures had cast their affirmative vote of assent, an Amendment was automatically consummated into permanent Federal

Constitutional Law. Or as the literal text of the Constitution's Article V states in relevant part, 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* ...". But what if State Legislatures failed to notify the Federal Government and the other States of their Legislature's ratification vote, how would anyone know for sure exactly when a proposed amendment had been ratified "... *by the Legislatures of three fourths of the several States* ..."?

It is today known that the actual ratification votes in the 7 State Legislatures of New Jersey, Maryland, North Carolina, South Carolina, New Hampshire, New York, and Rhode Island that occurred on or during June 1790 when there were 13 States in the Union were officially reported by such States to the Federal government and known. It is equally known that the State Legislatures of Connecticut and Virginia ratified *Article the First* by the Constitution's Article V's standards prior to June 1790, but that such ratification votes were never reported by those 2 States to the Federal Government. It is known that the 1791 Ratification votes of *Article the First* by the Pennsylvania State Legislature and the Vermont State Legislature were reported by such States to the Federal government and known. It is also known that the 1791 ratification vote of *Article the First* by the Virginia State Legislature - the second time the Virginia State Legislature had done so - was thereafter reported to the Federal Government not once but twice, while the 1789 ratification vote of the Virginia State Legislature was never reported. It is also

known that the 1792 ratification vote of *Article the First* by the Kentucky State Legislature was never reported. And it is known that between 1819 and 1992 - for more than 173 years - that the Pennsylvania State Legislature's 1791 ratification of *Article the First* was lost or hidden and edited out of history as if it never occurred.

As circumstances developed, it would not be until 1818, 30 years in the future, and at a time when there was confusion as to whether or not the "first" Thirteenth Amendment (ultimately there were to be three), commonly known as the "Titles of Nobility Amendment", had yet become part of the Constitution, that Congress first by statute placed the obligation of receiving and counting the information on ratification votes in the State Legislatures with the Secretary of State. *See* CHAP. 362, *An ACT to provide for the Publication of the laws of the United States, and for other purposes* (April 20, 1818). Today that obligation is vested with Defendant Archivist of the United States pursuant to 1 *U.S.C.* §106b.

APPORTIONMENT WITHOUT *ARTICLE THE FIRST*

For the next 100 years, every ten years after each Decennial Census the size of the U.S. House of Representatives was increased every time except once (1840). After 1910 Decennial Census and Apportionment, the size of the U.S. House was fixed by Congress at 433 Representatives, with statutory provision to increase that number by 1 Representative if New Mexico was admitted to the

Union and 1 Representative if Arizona was admitted to the Union. A year or so later, on February 3, 1913, the Sixteenth Amendment was declared ratified, permitting direct taxes to be imposed by Congress without relation to Apportionment. Since that time, and despite dramatic increases in population, the size of the House of Representatives has not been increased from that 435 number.

Today we know that at the end of the Third Session of the First Congress, once the new general government was organized there were a total of 13 States in the Union, a total of 26 Article I Senators, a total of 21 Article III Judges, and a total of 105 Article I Representatives. We also know that *Article the First* was lost or hidden in history and was and today still is being ignored, we know the size of the U.S. House of Representatives has remained effectively "statutorily capped" at 435 Representatives for now well more than 100 years, and today in year 2018, there are now 50 States in the Union, 100 Article I Senators, and a total of *at least*[5] 1,060 active Article III Judges and Justices (872 District Judges and Bankruptcy Judges, *see* 28 *U.S.C.* §133, 179 Circuit Court of Appeals Judges, *see* 28 *U.S.C.* §44, and 9 Supreme Court Justices, *see* 28 *U.S.C.* §1. We also know that today there are still only a total of 435 Members of the Federal House of Representatives, we also know that there are a total

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[5] This 1,060 number does not include the countless and undeterminable number of retired and "Senior Status" Judges and Justices, does not include statutory Federal Magistrate Judges, Court of Claims Judges, International Court of Trade Judges, or any of the literally thousands of Article I Administrative Judges that are in many respects in operation are *de facto* part of both the Article II and Article III branches.

of 7,605 directly elected Members of in the State Legislatures from among the 50 States in the Union, which on balance and in context indicates an *Article the First* apportionment of the United States House of Representatives producing 6,230 Representatives from among the 50 States in the Union as manifestly reasonable, and in context, a U.S. House of Representatives fixed at 435 since 1919 being manifestly absurd in addition to being unconstitutional as violating *Article the First.*

MEETING THE PROMISE TO THE PEOPLE OF FAIR REPRESENTATION IN THE U.S. HOUSE OF REPRESENTATIVES

Through the past 220 years there have been efforts, or the appearance at effort, to honour the Revolutionary concept of a fair and adequate representation in the U.S. House of Representatives as time has progressed and the nation has evolved. But nothing could supplant *Article the First* as the only real and meaningful and sustaining remedy and guarantee to the dilemma of how to provide a fair and adequate - and Constitutional - representation of the People in the U.S. House of Representatives. The Thirteenth Amendment (Abolishing slavery), Fourteenth Amendment (guaranteeing Equal Protection of the Laws and mandating that all persons be counted as "1" for census and apportionment purposes), Fifteenth Amendment (Guaranteeing Citizens of the United States their right to vote), Seventeenth Amendment (Direct election of United States Senators), Nineteenth Amendment (Women voting), Twenty- Third

Amendment (Allocating Presidential Electors for the District of Columbia), Twenty-Fourth Amendment (Abolishing all "Poll Taxes") and the Twenty-Sixth Amendment (Fixing voting age of 18) all individually and collectively are continuing evidence of and all highlight what is ongoing evidence of the ostensible perpetual commitment of Congress and the State Legislature to, when deemed necessary, use the hybrid Federal Constitutional Law making process in the Constitution's Article V to further protect and advance and refine the uniquely American principle of direct elections and direct representation of the People in the U.S. House of Representatives. Congress has also done so on their own legislatively through enactment of such legislation the "Voting Rights Act of 1965", as amended. *See* 79 *Stat.* 437 (Public Law 89-110, Eighty-ninth Congress, January 4, 1965), now codified at 52 *U.S.C.* §10101, *et seq.*, and when called upon in appropriate circumstances the Article III Supreme Court has also acted to reaffirmed and further explain and clarify these uniquely American principles and guaranteed rights. In *Baker v. Carr,* 369 *U.S.* 186 (1962) the United States Supreme Court overruled their earlier decision in *Colgrove v. Green,* 328 *U.S.* 556 (1946) and held that legal challenges to legislative redistricting decisions are justiciable in Article III Courts and are not "political questions" insulated from Judicial Review. Having established the principle of reviewability in Article III Courts, the Supreme Court then continued by extending *Baker* to judicially recognize what has now become the well known "one person, one vote" standard regarding representation. Two years later in *Wesburry v.*

Sanders, 376 *U.S.* 1 (1964), the United States Supreme Court required that to satisfy *Baler's* "one person, one vote" standard each State was required to draw Congressional Districts so that all districts were all approximately equal in population. The Court simultaneously ruled in *Reynolds v. Simms,* 377 *U.S.* 1 (1964) that the "one person, one vote" standard established in *Baker* applied to state legislative bodies also, holding that each legislator in the body of a bi-cameral State Legislature must represent a district substantially equal in population size to each other legislator.

Then there is this. Prior to 1976 there were many cases which required the convening of a Three Judge District Court to hear certain claims. However, after years of "soft lobbying" from the Courts, on April 12, 1976 Congress and the President repealed the entirety of 28 *U.S.C.* §2281 & 28 *U.S.C.* §2282 and vastly revised 28 *U.S.C.* §2284. *See* 90 *Stat.* 119 (Public Law 94-381, August 12, 1976). In the revisions to §2284 Congress added a new subsection (a) which then and still today now reads:

> (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).

The newly enacted §2284, ...

> ... [b]y referring without qualification to actions "challenging the constitutionality" of apportionment, §2284(a) does not limit the use of three-judge courts to injunction actions; suits for declaratory judgments would seem to be covered. But the only basis for directly appealing a reapportionment case to the Supreme Court is §1253, which authorizes direct appeals only from those three-judge orders that grant or deny interlocutory or permanent injunctions.

[*Supreme Court Practice (Seventh Edition),* by Robert L. Stern, Eugene Gressman, Stephen M. Shapiro and Kenneth S. Geller, published by The Bureau of National Affairs, Washington D.C. (1993) at page 59].

So in 1976, Congress by design and with intent specifically enacted amendments to 28 *U.S.C.* §2284 that specifically stated that henceforth any and all legal challenges to the apportionment of the U.S. House of Representatives were so singularly uniquely important to the nation that any and all such legal challenges were henceforth required to be heard and decided firstly by a Three Judge District Court rather than a single District Court Judge, with any later appeal on issues regarding the granting or denial of injunctive relief being heard immediately and directly to the United States Supreme Court, bypassing the Circuit Court of

Appeals. *See* 28 *U.S.C.* §1253 *im pari material* with 28 *U.S.C.* §2284. To be sure, this could not have been a clearer and more unequivocal statement from Congress during the Bicentennial of the birth of the United States that the problematic issue of ensuring a fair and adequate representation of the People in the U.S. House of Representatives and the apportionment process is among the most important, if not actually the most important, issue that could ever be raised and adjudicated in the Article III Courts. Most certainly what is at issue in this case meets any possible definition of "Substantiality".

CORRECTING HISTORY AND IMPLEMENTING AN *ARTICLE THE FIRST* APPORTIONMENT BY SUPREME COURT ORDER

The Supreme Court has all of the authority and right to entertain, consider and rule on all issues before them in this case on direct Appeal. And Appellant has the right to request this Honorable Court to do so. The Supreme Court's decision more than 200 years ago in *Hollingsworth v. Virginia,* 3 *U.S.* (3 *Dall.*) 368 (1798) established the still governing precedent that questions regarding proposal and passage of Constitutional Amendments and the Article V process are indeed justiciable and subject to judicial review in Article III Courts, which remains the binding and governing precedent of the Supreme Court today notwithstanding a plurality of 4 Justices ambiguously questioning this point of law

in *Coleman v. Miller,* 307 *U.S.* 474 (1939) and the companion case of *Chandler v. Wise*, 307 *U.S.* 474 (1939). The Supreme Court's decision in *Dillon v. Gloss,* 256 *U.S.* 368 (1921) holding that Article III Courts may take Judicial Notice of certain State Legislative Records to determine whether, if and when a duly proposed Constitutional amendment was fully consummated and automatically became binding positive Constitutional Law in accordance with the Constitution's Article V is directly applicable in this case to the evidence and information provided by Appellant in support of his motion for Summary Judgment seeking Permanent Injunctive Relief below, so there can be no question but that now the Supreme Court can directly decide the issues here on direct appeal on the existing comprehensive record below. And the Supreme Court can use its injunctive powers to remedy the unconstitutional apportionment of the U.S. House of Representatives consistent with the 2010 Decennial Census, and to in turn declare that that 131 *Stat.* 88 (*Public Law No.* 115-22 - April 3, 2017, 115th Congress) is unconstitutional as not yet having been passed in the U.S. House of Representatives with a valid *quorum* present.

CONCLUSION

For the foregoing reasons it is respectfully requested that the Supreme Court forthwith enter an Order noting probable jurisdiction and enter an expedited briefing schedule and oral argument schedule so as to decide these very important issues.

Respectfully submitted,

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