MEMORANDUM* OPINION
OF THE NINTH CIRCUIT
(OCTOBER 26, 2018)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FREDERIC C. SCHULTZ,

Plaintiff-Appellant,

v.

JOHN G. ROBERTS, Jr., Chief Justice of the United States; DONALD J. TRUMP,

Defendants-Appellees.

No. 17-56852

D.C. No. 3:17-cv-00097-WQHKSC

Appeal from the United States District Court
for the Southern District of California
William Q Hayes, District Judge, Presiding

Submitted October 22, 2018**

Before: SILVERMAN, GRABER, and GOULD, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Frederic C. Schultz appeals pro se from the district court's judgment dismissing his action alleging that the 2016 presidential election violated his constitutional rights. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Thompson v. Paul*, 547 F.3d 1055, 1058 (9th Cir. 2008). We affirm.

The district court properly dismissed Schultz's action because Schultz failed to allege facts sufficient to state a plausible constitutional claim arising from the election of President Trump by the Electoral College. *See* U.S. Const. amend. XII (providing for election of the president by Electoral College); *Gray v. Sanders*, 372 U.S. 368, 380 (1963) ("The only weighing of votes sanctioned by the Constitution concerns matters of representation, such as . . . the use of the electoral college in the choice of a President.").

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

MANDATE OF THE NINTH CIRCUIT (APRIL 1, 2019)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FREDERIC C. SCHULTZ,

Plaintiff-Appellant,

v.

JOHN G. ROBERTS, Jr., Chief Justice of the United States; DONALD J. TRUMP,

Defendants-Appellees.

No. 17-56852

D.C. No. 3:17-cv-00097-WQH-KSC

U.S District Court for the Southern California, San Diego

The judgment of this Court, entered October 26, 2018, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

Molly C. Dwyer
Clerk of Court

By: Craig Westbrooke
Deputy Clerk
Ninth Circuit Rule 27-7

JUDGMENT OF THE DISTRICT COURT OF CALIFORNIA (OCTOBER 11, 2017)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FREDERIC C. SCHULTZ, an Individual,

Plaintiff,

v.

Chief Justice of the United States JOHN G. ROBERTS, JR.; DONALD J. TRUMP, "President-Elect" of the United States of America

Defendants.

Civil Action No. 17-cv-97-WQH-KSC

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED: Defendants' Motion to Dismiss is granted. The Complaint is dismissed with prejudice.

CLERK OF COURT:

John Morrill
Clerk of Court

By: /s/ M. Cruz
Deputy Clerk

Date: 10/11/2017

ORDER OF THE DISTRICT COURT OF CALIFORNIA (OCTOBER 10, 2017)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FREDERIC C. SCHULTZ,

Plaintiff,

v.

CHIEF JUSTICE OF THE UNITED STATES JOHN G. ROBERTS, JR. and DONALD J. TRUMP, "President" of the United States of America

Defendants.

Case No.: 17-CV-0097 WQH (KSC)

HAYES, Judge:

The matter before the Court is the Motion to Dismiss filed by John G. Roberts, Jr. and Donald J. Trump (collectively, "Defendants"). (ECF No. 9).

I. Background

On January 19, 2017, Frederic C. Schultz initiated this action by filing a Complaint against Defendants. (ECF No. 1). On June 13, 2017, Defendants filed a Motion to Dismiss the Complaint. (ECF No. 9). On July 7, 2017, Schultz filed a Response in Opposition to Defendants' Motion to Dismiss. (ECF No. 11).

II. Allegations of the Complaint

"Schultz is a resident of the State of California, and a[s] such, cast a vote in the November 8 2016 Presidential election for Democratic candidate Hillary Clinton." (ECF No. 1 at ¶ 1.)

> The final vote tally . . . in the general election held on Nov. 8 is Hillary Clinton with 65,844,954 (48.2%) compared to Donald Trump receiving 62,979,879 (46.1%) votes . . . Despite this [vote tally], the Electors awarded the presidential election to Donald Trump . . . Therefore, compared to the actual number of votes cast, people who voted for Hillary Clinton had [thei]r votes diluted . . . "

Id. at ¶¶ 7-8. As a result, Donald Trump's assumption of the office of the President of the United States pursuant to the 2016 presidential election, and his continued occupation of that office, "violate[ ] Schultz's right[s] and the rights of all other citizens who voted for [Hillary] Clinton, under the Fifth Amendment's and Fourteenth Amendment's guarantees of equal protection of the laws . . . ." *Id.* at ¶ 10.

III. Applicable Standard

Federal Rule of Civil Procedure 12(b)(6) permits dismissal for "failure to state a claim upon which relief can be granted." "A pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Dismissal under Rule 12(b)(6) is appropriate where the complaint lacks a cognizable legal theory or sufficient facts to support a

cognizable legal theory. *See Balistreri v. Pac. Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

"[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. P. 8(a)(2)). When considering a motion to dismiss, a court must accept as true all "well-pleaded factual allegations." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). "In sum, for a complaint to survive a motion to dismiss, the non-conclusory factual content, and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quotations omitted).

A district court may dismiss a claim without leave to amend if "any proposed amendment would be futile." *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990) (citing *Klamath-Lake Pharmaceutical Ass'n v. Klamath Medical Serv. Bureau*, 701 F.2d 1276, 1292-93 (9th Cir.)).

IV. Analysis

Schwartz claims that Donald Trump's assumption of the presidency pursuant to the 2016 election and his continued occupation of that office violate his constitutional right to equal protection of the law. (ECF No. 1 at ¶ 10.) Specifically, Schwartz contends that the Electoral College system under which President Trump was elected violates the "one person, one vote" principle. *Id.* at ¶ 11 (citing *Baker v. Carr*, 369 U.S. 186 (1962)). Defendants contend that the

Constitution, particularly the Twelfth Amendment,[1] "sanctions the Electoral College system." (ECF No. 9-1 at 6).

The Electoral College system is specifically provided for by the Twelfth Amendment. *Gray v. Sanders*, 372 U.S. 368, 380 (1963) ("The only weighting of votes sanctioned by the Constitution concerns matters of representation, such as . . . the use of the electoral college in the choice of a President."). Schwartz does not allege any facts to support his claim that the Electoral College system violates his constitutional right to equal protection.[2] Any proposed amendment to Schwartz's claim would be futile, as his complaint is based solely on the unconstitutionality of the Electoral College system.

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[1] The Twelfth Amendment states, "The electors shall meet in their respective states and vote by ballot for President . . . and the votes shall then be counted;—the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then . . . the House of Representatives shall choose immediately, by ballot, the President. . . ."

[2] Because the Court finds that Schwartz has failed to state a claim upon which relief can be granted, it declines to address Defendants' contention that the Court does not have subject matter jurisdiction over Schwartz's claim. *See* ECF No. 9-1 at 3-5.

V. Conclusion

IT IS HEREBY ORDERED that the Defendants' Motion to Dismiss (ECF No. 9) is GRANTED. The Complaint (ECF No. 1) is DISMISSED with prejudice.
DATED: October 10, 2017

/s/ William Q. Hayes
United States District Judge

NOTICE OF DOCKET ACTIVITY (MARCH 22, 2019)

The following transaction was entered on 03/22/2019 at 3:28: 15 PM PDT and filed on 03/22/2019
Case Name: Frederic Schultz v. John Roberts, Jr., et al
Case Number: 17-56852
Document(s): https://ecf.ca9.uscourts.gov/docs1/00903 0812211?uid=28f4e8d807f9332c

Docket Text:

Filed order (BARRY G. SILVERMAN, SUSAN P. GRABER and RONALD M. GOULD) Schultz's motion for permission to file an untimely petition for rehearing *en banc* (Docket Entry No. [37]) is granted.

The full court has been advised of the petition for rehearing *en banc* and no judge has requested a vote on whether to rehear the matter *en banc*. *See* Fed. R. App. P. 35.

Schultz's petition for rehearing *en banc* (Docket Entry No. [36]) is denied. No further filings will be entertained in this closed case. [11239679] (WL)

Notice will be electronically mailed to:

Mr. Daniel Everett Butcher, Assistant U.S. Attorney
Honorable William Q. Hayes, District Judge
Mr. Frederic C. Schultz
USDC, San Diego

NOTICE OF APPEAL OF THE ORDER OF DISMISSAL GRANTED ON 10/10/17 (DECEMBER 8, 2017)

Plaintiff: Frederic C. Schultz
Case Name: Schultz v. Chief Justice of the United States John G. Roberts Jr. and "President" Donald Trump.
Case Number: 3:17-cv-0097-WQH-KSC
Court: U.S. District Court, Southern District of California, USA
Judge: William Q. Hayes
Notice of Appeal to Judge Hayes granting of Defendants' Motion to Dismiss, 10/11/17

Plaintiff Frederic C. Schultz, appearing pro se, hereby declares his NOTICE OF APPEAL to Judge William Q. Hayes Order of dismissal granted 10/10/17 and filed 11/22/17, Case Number 3:17-cv-0097-WQH-KSC, notice of which plaintiff received of by mail on 11/29/2017.

Order received 11/29/17, not before. By Mail.

Signed,

/s/ Frederic C. Schultz
Plaintiff
PO Box 634
San Diego, CA 92038

OPPOSITION TO MOTION TO DISMISS (JULY 3, 2017)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FREDERIC C. SCHULTZ, an Individual

Plaintiff,

v.

CHIEF JUSTICE OF THE UNITED STATES JOHN G. ROBERTS, JR. and DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES OF AMERICA,

Defendants.

Case No.: 17-CV-0097 WQH (KSC)

Date: July 2

1. Introduction

The Court must not dismiss Plaintiff Frederic C. Schultz's, Esq. (hereinafter "SCHULTZ") complaint and motion to immediately name Hillary Clinton President of the United States, because Defendants Chief Justice of the U.S. Supreme Court John Roberts (hereinafter "ROBERTS") and wrongfully designated President Donald Trump (hereinafter "TRUMP") are wrong that SCHULTZ lacks subject matter jurisdiction for 1) lacking standing 2) mootness and 3) the electoral

system, despite being written into the Constitution in Article 2 in 1787, was part of a compromise, along with allowing slavery and counting slaves heads without allowing them to vote; to get the slaveowners then representing the Southern states to join the United States, and is OVERRULED and SUPERSEDED by the later and more important, because it is protective of our human rights, 14th Amendment, passed in 1868 after the Union (Northern) states with help of escaped slaves from the South, approximately 620,000 of whom lost their lives (https://www.civilwar.org/learn/articles/civil-war-facts) fighting for freedom and equal rights for all citizens, no matter what state they live in or their skin color ("race"), won the Civil War, which grants all people "born or naturalized in the United States" citizenship and all the "privileges and immunities" of citizenship and "equal protection of the laws." As the Preamble to the Declaration of Independence states, all women/men are created equal, and women/men wrote the Constitution to protect our God-given human rights, and if the government does not do so then it is the peoples' right and duty to throw off that government and create another that does protect our equal human rights. As our nation's founders clearly state and warn in the Preamble to the Declaration of Independence:

> "We hold these truths to be self-evident, that all men are created equal, that they are endowed, by their Creator, with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.
>
> That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,

> That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.
>
> Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object, evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security."

As all people are created equal, all citizens of our nation must be granted an equal vote in our presidential election.

Our nation's founders, despite stealing freedom from and enslaving those it deemed of the "Negro" "race" and stealing the vote from non-landowners, women, slaves, and Native Americans, still emphasized that they were writing the Constitution to protect, not steal, our human rights, and that the people must revolt against any Government that steals our God-given human rights including. It is absurd to propose, as Defendants ROBERTS and TRUMP, through

counsel, do, that all women/men are created equal, yet some are entitled to a far greater vote than others, not only weakening but by doing so stealing our vote, and subverting the will of the people. Those who voted for Hillary Clinton, including Plaintiff SCHULTZ, received just 71% of the vote of those who voted for Defendant TRUMP. Put alternatively, the only reason TRUMP was declared president by the electors was that people who voted for him received Residents of the state of California, including Plaintiff SCHULTZ, received just 29% of the vote of the residents of Wyoming, as calculated by elector/population. Furthermore, due to equally egregious "winner take all" rules passed by 48 of the 50 states, even though plaintiff SCHULTZ voted for the candidate who won CA, those who voted for TRUMP in CA, just like those who voted for Clinton in states that Trump won, did not have their votes counted at all. As our

Five times since the founding of our nation (1824, 1876, 1888, 2000, and 2016), the electoral system detailed in the Constitution has stolen enough votes to overturn the will of the people. Furthermore, if she/he wins the right states, a candidate could win the presidential election with just 23% of the votes cast (the "popular vote"). ("How to Win the Presidency With 23 Percent of the Popular Vote", by Danielle Kurtzleben, NPR, November 2, 2016http://www.npr.org/2016/11/02/500112248/how-to-win-the-presidency-with-27-percent-of-the-popular-vote.) Given these facts, and that SCHULTZ and the 65,844,610 people who voted for Hillary Clinton in the presidential election of 2016 had our votes weakened by 29%, thus stolen, and that SCHULTZ and the other residents of California only received less than 29% of the vote/

elector as residents of Wyoming, and really, everyone but the 583,626 residents of Wyoming (only 243,679 of whom voted, and only 174,419 of whom voted for TRUMP (https://en.wikipedia.org/wiki/United_States_presidential_election_in_Wyoming,_2016), our least populous state with only .2% of the population of our nation of almost 309,000,000, and only approximately 126,000,000 of whom voted (http://www.cnn.com/2016/11/11/politics/popular-vote-turnout-2016/index.html), has had our votes weakened, thus stolen, by the electoral system detailed in the Constitution, the only way this court can uphold our human rights that our nation's founders formed our nation to protect, and passed the 14th Amendment to protect, and created courts to protect those rights from citizens or a government which wants to steal those rights, is for this Court to do its job and protect our human and constitutional rights, as elucidated and required through subsequent case law, (*See: Baker v. Carr*, 369. U.S. 186 (1962) saying that the Constitution requires "One Person, One Vote", etc.), and uphold the 14th Amendment's promise of "Equal Protection of the Laws" and immediately declare Hillary Clinton President. Just as a Federal Court in a case of ballot stuffing is required to hold a new election (see Donohue v. Board of Elections of State of NY, 435 F. Supp. 957 (1976)), by analogy, in this 2016 presidential election, where the vote count is accurate but the votes were stolen by enforcing an immoral, unconstitutional electoral system enacted to convince slaveholders to get their states to join the nation, enforcement of which steals our constitutional and human rights to equal suffrage, the only remedy for SCHULTZ, the citizen-residents of CA who received less than 1/3 the vote of the citizens of WY, the

almost 66,000,000 people who voted for Hillary Clinton, and every voter in our nation except for the 174,419 residents of Wyoming who voted for TRUMP, is for this Court to name Hillary Clinton President of the United States, immediately. If TRUMP appeals, then the Supreme Court will have to decide the matter to protect our human and constitutional rights to democracy, by definition an equal vote per voter.

1) Plaintiff Schultz Has Standing

TO HAVE STANDING, a Plaintiff must have sufficient connection to and potential harm from enforcement of a law to allow the court to address his case.

Plaintiff SCHULTZ, as a USA citizen and CA resident who voted for Hillary Clinton in the 2016 general election, as well as all other citizens who voted for Clinton, who on average had our votes counted at 71% of the votes of those who voted for Defendant TRUMP, citizens of CA who had our votes counted as 29% on average, on a population per elector basis, and all other citizens of the United States who voted for president in this last election, totaling 136,700,729, (http://www.electproject.org/2016g) except for the 174, 419 WY voters who voted for TRUMP, had their votes diluted by the electoral system giving WY voters more say, by a wide margin, than voters in every other state in our nation. As a USA citizen and CA resident who voted for Clinton, but had his vote stolen by those who are upholding the unconstitutional electoral system, plaintiff SCHULTZ is directly impacted, and extremely harmed, by having our nation run by a person that he and a plurality of the voters did not elect.

Defendant ROBERTS's and TRUMP's attorney states that, according to *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-561, Plaintiff SCHULTZ must show a "concrete and particularized injury in fact; 2) an injury fairly traceable to the defendant's alleged unlawful conduct and 3) the injury is likely to be redressed by a favorable decision.

a) Plaintiff Has Suffered a Concrete and Particularized Injury Plaintiff,

Along with all who voted for Clinton, suffers every second that TRUMP is running our nation's executive branch. In numerous ways, from destroying weakening environmental controls, to fighting to steal our human rights to freedom through misuse of our criminal laws, to not investigating Russian hacking which used illegal and treasonous means to subvert the election to help get Trump elected, and which threatens to allow the Russians to help him again as the Russians are currently still hacking USA's ballot servers, candidate and party emails, etc., TRUMP is destroying our nation, our environment, and our electoral process. ("Officials struggle to convince Trump that Russia remains a threat" By Sara Murray and Dana Bash, CNN, Updated 5:56 PM ET, Wed June 28, 2017. http://www.cnn.com/2017/06/28/politics/officials-struggle-convince-trump-russia-threat/index.html)

"Trump White House Has Taken Little Action to Stop Next Election Hack" by KEN DILANIAN, HALLIE JACKSON, LIKHITHA BUTCHIREDDYGARI and GABRIELA MARTINEZ, NBC News, Politics, JUN 24 2017. http://www.nbenews.com/politics/elections/trump-white-house-has-taken-little-action-stop-next-election-776116) TRUMP has already directed the head of the

Environmental Protection Agency (EPA) to rescind any environmental regulations he can ("Counseled by Industry, Not Staff, E.P.A. Chief Is Off to a Blazing Start," By CORAL DAVENPORT, NY Times, JULY 1, 2017. https://www.nytime.com/2017/07/01/us/politics/trump-epa-chief-pruitt-requlations-climate-change.html? r=0) stating "In the four months since he took office as the Environment Protection Agency's administrator, Scott Pruitt has moved to undo, delay or otherwise block more than 30 environmental rules, a regulatory rollback larger in scope than any other over so short a time in the agency's 47-year history, according to experts in environmental law."

Furthermore, due to his current economic situation, after paying taxes to help others receive free health care, Plaintiff SCHULTZ receives free healthcare insurance from the state of CA, which he will lose if TRUMP gets his way and signs his healthcare bill, which would steal health insurance from SCHULTZ if TRUMP gets his way, potentially causing grave injury or even death to SCHULTZ if he becomes ill. ("Senate Health Care Bill Includes Deep Cuts to Medicaid", By ROBERT PEAR and THOMAS KAPLAN, NY TIMES, JUNE 22, 2017 https://www.nytimes.com/2017/06/22/us/poolitics/senate-health-care-bill.html). The "healthcare" bill Trump has proposed to both houses of Congress would cut at least 22,000,000 from receiving free healthcare insurance, including' SCHULTZ, if it passes. While not definite PLAINTIFF SCHULTZ will ever need healthcare, one never knows in life, and there is certainly a strong possibility, as millions of healthy people get ill every year in our nation, due to infection, accident, aging, etc. All people

eventually die, almost always requiring healthcare first.

According to ROBERTS'S AND TRUMP'S attorney, "The plaintiff must generally aver an injury peculiar to himself, as distinguished from the great body of his fellow citizens." *Lance v. Coffman*, 549 U.S. 437, 441 (2007). Lance does not apply because it referred to a general redistricting plan, and Lance and other plaintiffs were suing not as people who had voted for a candidate who were being discriminated against. In the case of SCHULTZ, only he and those who voted for Clinton are harmed, not all voters, which includes those who voted for TRUMP. Similarly, *Collins v. Merrill*, No. 16-cv-9375 (RJS) 2016 WL7176651, at)2 (S.D.N.Y. Dec. 7, 2016) was not decided in respect to a plaintiff who claimed to have voted for Clinton or had her vote weakened by TRUMP illegally accepting the oath of office from ROBERTS who administered it, weakening and thus stealing her vote for Clinton. Even though she received almost 3 million more votes than TRUMP, only 65,844,610 voted for CLINTON of a total of approximately 325,000,000 who lived in our nation on election day 2016, or just over 20% of the population, hardly the "great body of his fellow citizens" *Lance v. Coffman*, 549 U.S. 437, 441 (2007), which encompasses almost 80% of the population who did not vote for Clinton. ("Demography of the U.S.", wikipedia.org, http://en.wikipedia.org/wiki/Demography_of_the_United_States) Those voters in California who voted for Clinton, who like PLAINTIFF SCHULTZ had our votes weakened and thus stolen, constitute a far smaller percentage of the USA population.

b) Plaintiff Schultz's Injury in Fact Was Caused Directly by Defendant Roberts Administering the Oath of Office to Trump, Despite the Fact He Lost the Election, and Trump Taking the Oath of Office Despite the Fact He Lost.

1) ROBERTS: Defendant ROBERTS, as Chief Justice of the Supreme Court of the United States, has taken an oath both as an attorney and as a judge to uphold the Constitution. Swearing in TRUMP, despite the fact that TRUMP lost the election by almost 3,000,000 votes, was a clear violation of his oath to uphold the constitution of the United States. He should have refused to take direction from the Electors as they were attempting to subvert the democracy of the United States and the will of the people as expressed by the 65,844,610 who voted for Clinton, and specifically, they were attempting to weaken, and thus steal, SCHULTZ'S vote. If DEFENDANT TRUMP had then sued him to administer the oath of office of President of the United States, then the case would have been heard by the Supreme Court, which would have decided it on our nation's principle of democracy, equal rights for all citizens, "one person, one vote", and supporting our human and constitutional rights to equal protection of the laws of the United States. They would have deemed the electoral process naming electors, which dilutes the votes of SCHULTZ, all CA residents, all CA residents who voted for Clinton, all 65,844,610 USA citizens who voted for CLINTON, and the constitutional rights of all USA citizens who don't reside in the WY, approximately 99.8% of the population.

2) **Trump: Defendant Trump, Knowing He Had Lost the Election to Hillary Clinton by Almost 3,000,000 Votes, and That Accepting the Oath of Office of President of the United States Would Steal the Constitutional Right of Schultz to Equal Protection of the Laws of the USA, and His Right to an Equal Vote of Every Voter in the 2016 Election, No Matter Where He Lived and No Matter for Whom He Voted.**

TRUMP did not HAVE to accept the decision of the Electors who were unelected, or of the Congress who certified the election. He CHOSE to violate my human and others' rights who live in all states but Wyoming, and who voted for Hillary Clinton's, right to have her as our president because we elected her, by almost 3,000,000 votes. Republican Senators and House members, who won both houses in this last election, also benefitted from unconstitutional elections, given that more people voted for Democrats in not only the Presidential race, but also in races for the Senate, which received almost 6,000,000 more votes for Democrats, yet went to the Republicans due to Democrat vote dilution by the nature of the Senate (similar unconstitutional vote dilution of those who live in less populous states.). ("Democrats won the most votes in the election. They should act like it. Democrats need to be an opposition party, not a minority party." Updated by Ezra Klein@ezraklein, Vox, Nov 22, 2016, 9:50am EST. http://www.vox.com/polics/2016/11/22/13708648/democrats-won-popuiar-vote.) To preserve the constitutional rights to equal protection of the laws, and right to an equal vote for president of PLAINTIFF SCHULTZ and the majority of voters who voted for Clinton, TRUMP should have refused to

take the oath, despite the fact that the unelected undemocratic electors voted for him as president and the vote-stealing Senate and gerrymandered House approved this stealing of the rights of the almost 66,000,000 who voted for Hillary Clinton, not DEFENDANT TRUMP.

MOOTNESS

DESPITE THE FACT THAT ROBERTS SWORE TRUMP IN AS PRESIDENT IN VIOLATION OF PLAINTIFF SCHULTZ'S CONSTITUTIONAL RIGHTS, SCHULTZ'S SUIT IS NOT MOOT BECAUSE

A) This Court Has the Power to Name Hillary Clinton President Because the Electoral System Is Just Glorified Ballot Stuffing/Vote Stealing.

As the Court states in *Donohue v. Board of Elections of State of NY*, 435 F. Supp. 957 (E.D.N.Y., 1976), in a case alleging ballot stuffing, "The fact of that a national election might require judicial intervention, concomitantly implicating the interests of the entire nation, if anything, militates in favor of interpreting the equity jurisdiction of the federal courts to include challenges to Presidential elections." Thus, just because this Court did not decide in PLAINTIFF SCHULTZ'S favor the day he filed the case, the day before ROBERTS swore TRUMP in as "president", this Court can still fix its mistake now and name Hillary Clinton President of the USA, as SCHULTZ here moves the court to do.

B) It Is Established Law That Even If the Court Does Not Fix It's Continuing Wrong, Despite Fact That Every Day Trump Is in Power Steals Schultz's and All Who Voted for Clinton's Rights to Have Who They Elected as President Serve as President and Run the Executive Branch of Our Government, This Case Is Not Moot Because There Exists the Clear and Present Danger That Without This Court Declaring the Electoral System Unconstitutional for Vote Weakening and Often Vote Stealing.

Van Wie v. Pataki, F. Supp. 2d 148 (N.D.N.Y. 2000) is part of a long line of cases that holds that an election case is not moot after the election, if the issue is bound to come up again in a future case. AS the court states in that case: "A moot case may still be justiciable, however, if the underlying dispute is "capable of repetition, yet evading review."" A subsequent case states: "Holding that in the election context, in the absence of a class action, there must be a reasonable expectation that the same complaining party would encounter the challenged action in the future." *Fetto v. Sergi*, 181 F. Supp. 2d 53 (D. Conn. 2001) The underlying case is still capable of repetition, evading review, and SCHULTZ and millions of Americans are subject to the same plight our nation currently suffers, and has suffered tour times in the past, having a president lose the election yet wrongfully gain the office of "president", unless this court names the Electoral system unconstitutional, and Hillary Clinton president because she won the election.

C) Plaintiff Schultz States a Plausible Claim For Relief (Fed. R. Civ. P. 12 (b) (6))

JUST BECAUSE SOMETHING IS WRITTEN IN THE CONSTITUTION DOES NOT MAKE IT CONSTITUTIONAL.

In the early history of our nation, most states only allowed landowners to vote. Only four states allowed freed slaves to vote. No states allowed Native Americans or women to vote. While some of these provisions have been changed by Constitutional amendment (I.E. honoring women's and "Negros"' God-given human right to vote) others like honoring Native Americans and non-landowners rights to vote have been established through case law. It is well established case law that Americans have the right to "One Person, One Vote." *Baker v. Carr*, 369 U.S. 186 (1962). Furthermore, there is a well established principle that the Fourteenth Amendment's guarantee of "equal protection of the laws" requires not only states but the federal govt to respect our equal rights. *Bolling v. Sharpe*, 347 U.S. 497 (1954).

Finally, the Fourteenth Amendment was approved in 1868, almost 100 years after the adoption by our nation's founders. The Fourteenth Amendment promises to protect our rights to "equal protection of the laws", and weakening my and millions of Americans votes who voted for Clinton and who live in states besides Wyoming is an unconstitutional stealing of our Human Right, protected by the constitution and the preamble to the Declaration of Independence, to equal suffrage, to "One Person, One Vote". Further proof of our nation's intent, and yes, requirement to honor are right to "One Person, One Vote" is the fact that the USA on Dec. 10, 1948, in order to join the

United Nations (UN), signed the Universal Declaration of Human Rights (UDHR), promising to uphold our citizens' rights to "UNIVERSAL AND EQUAL SUFFRAGE", obviously meaning honoring our right to equal vote in the presidential election. The US is not only stealing my and the approximately 66,000,000 Americans who voted for Hillary's right to equal suffrage, and the rights of all citizens of states besides Wyoming citizens right to equal suffrage, it is breaking the founding rules that the USA signed to enter the UN, thus making the USA the only nation that professes to have a democracy that allows anything other than equal suffrage, "one person, one vote" in presidential/parliamentary elections, but also making our continued participation at the UN illegal. Certainly, the USA signing the UDHR in 1948 was strong evidence that the USA believes that EQUAL SUFFRAGE, an EQUAL VOTE FOR ALL, is important to our human rights, is the true definition of democracy.

And make no mistake about it, SCHULTZ's vote as a CA voter and as a citizen who voted for Clinton was stolen. There is no difference between stealing votes through drawing of districts and ballot stuffing. As the Court states in *Donohue v. Board of Elections of NY*, 435 F. Supp. 957 (E.D.N.Y. 1976): "The Supreme Court has unequivocally stated that the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections. A consistent line of decisions by this Court in cases involving attempts to deny or restrict the right of suffrage has made this indelibly clear. It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote. *Reynolds v. Simms*, 377 U.S. 533, 554, 84 S. Ct. 1362, 1377-78.

The right to vote may not be denied by alteration of ballots, *see United States v. Classic*, 313 U.S. 299, 315 (1941) nor "diluted" by ballot-box stuffing, *Ex parte Siebold*, 100 U.S. 371. As the Supreme Court said in *Reynolds v. Sims*, supra, [377 U.S. 533, 554.], where political districting in Alabama was challenged under the fourteenth amendment: [T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise. 377 U.S. at. 555, 84 S. Ct. at 1378 (footnote omitted). *See Hadley v. Junior College District of Metropolitan Kansas City*, 397 US. 50, 52, 90 S. Ct. 641, 643, 94 L.Ed.2d 45 (1970); *South v. Peters*, 339 U.S. 276, 279, 70 S. Ct. 641, 643, 94 L.Ed. 834 (1950) (Douglas, J., dissenting); *Hennings v. Grafton*, 523 F.2d 861, 863-64 (7th Cir. 1975). Thus, while *Reynolds v. Sims* was a case involving reapportionment, there appears to be little distinction, insofar as the fourteenth amendment is concerned, between dilution of a citizen's vote through malapportioned political districts and dilution of valid ballots through votes cast by ineligible voters." The electoral system, relying on state boundaries, is simply a system of "malapportioned political districts" banned by the Supreme Court, and is tantamount to ballot stuffing, granting PLAINTIFF SCHULTZ only 29% of the vote of USA citizens who live in WY, just because he lives in CA.

Furthermore, as the Court states in *Donohue v. Board of Elections of State of NY*, 455 F. Supp. 957 (E.D.N.Y. 1976), the Court, if credible allegations of ballot stuffing were presented, would have the right and responsibility to call for a new election. As the Court states, "The point, however, is not that ordering

a new Presidential election in New York State is beyond the equity jurisdiction of the federal courts. Protecting the integrity of elections particularly Presidential contests is essential to a free and democratic society. *See United States v. Classic supra.* [313 U.S. 299 (1941)]. It is difficult to imagine a more damaging blow to public confidence in the electoral process than the election of a President whose margin of victory was provided by fraudulent registration or voting, ballot-stuffing or other illegal means. [Emphasis added by Plaintiff.] Indeed, entirely foreclosing injunctive relief in the federal courts would invite attempts to influence national elections by illegal means, particularly in those states where no statutory procedures are available for contesting general elections. [18] Finally, federal courts *968 in the past have not hesitated to take jurisdiction over constitutional challenges to the validity of local election. [19] The fact that a national election might require judicial intervention, concomitantly implicating the interests of the entire nation, if anything, militates in favor of interpreting the equity jurisdiction of the federal courts to include challenges to Presidential elections."

In the case of *Schultz v. Roberts and Trump*, there was no (as far as we now know) ballot stuffing or other ballot tampering, (although revelations of Russian attempts have emerged, which TRUMP has done nothing to try to stop), but rather, the votes were counted properly, but were weakened or strengthened according to what state one lived in, with all citizens receiving less of a say that USA citizens residing in WY, because that is the least populous state. USA citizens in Wyoming received more vote by multiples of most of the USA population, up to 3.48 the vote of

voters in California, based on population per elector. 48 states' winner take all' rules even skewed the election in. the contest more, causing votes for TRUMP to count at 1.4x those of us who voted for Hillary, and voters in all states to receive more say in the presidential election that PLAINTIFF SCHULTZ and all other voters in California, and closely followed by voters in NY (WY voters got 3.44x NY voters), MI (3.18), etc. Though done under the color of law, this process weakened, and thus stole our votes the same as if Trump stuffed ballots with 6,000,000 fake ballots. They stole our votes. This Court can, and should, still reverse the election and name Hillary Clinton president, as she won by almost 3 million votes, and only is not serving as president now because of vote stealing under color of law.

DEFENDANT ROBERTS' AND TRUMP'S ARGUMENT THAT THE CONSTITUTION ITSELF "SANCTIONS" "WEIGHTED VOTING" IS NOT IN DISPUTE. However, such "weighing" or vote stealing is overruled by the 14th Amendment, which according to *Bolling v. Sharpe*, 347 U.S. 497 (1954) holds the federal govt to the same equal protection requirements as state governments. This court must protect our rights, by keeping my claim for equal protection alive, not dismissing Plaintiff's complaint, and not restricting my right to amend. The Court can, and should also, name Hillary Clinton president immediately, as she won the election by almost 3 million votes, including that of PLAINTIFF SCHULTZ, subverting the will of the people, and forcing someone on us as "president", TRUMP, who we did not elect and who endangers our lives every second.

Respectfully submitted,

/s/ Frederic C. Schultz

Dated: 7/3/17

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS (JUNE 13, 2017)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FREDERIC C. SCHULTZ,

Plaintiff,

v.

CHIEF JUSTICE OF THE UNITED STATES JOHN G. ROBERTS, JR. and DONALD J. TRUMP, President of the United States of America,

Defendants.

Case No.: 17-CV-0097 WQH (KSC)

Date: July 17, 2017
[No Oral Argument Unless Requested by the Court]

Before: Hon. William Q. HAYES,
United States District Judge.

I. Introduction

Plaintiff's complaint seeks to enjoin Chief Justice John Roberts from administering the oath of office to president-elect Donald Trump. Plaintiff's premise is that the Electoral College (which is provided for by Article II, section 1 and the Twelfth Amendment to the

United States Constitution) is an unconstitutional violation of the "one person, one vote" principle contained in the Fifth and Fourteenth Amendments. Plaintiff's complaint also seeks a declaration to this same effect.

The Court should dismiss this case for lack of subject matter jurisdiction. First, Plaintiff lacks standing to challenge the Electoral College because he has not suffered a concrete and particularized injury at the hands of the Electoral College in general, or Chief Justice Roberts and President Trump in particular. Second, Plaintiff's request for an injunction prohibiting the inauguration from proceeding is moot because President Trump took the oath of office on January 20, 2017. (Plaintiff did not file his complaint until January 19, 2017, and did not serve it until April 17, 2017.)

The Court should also dismiss Plaintiff's complaint for failure to state a claim because the Electoral College itself is part of the Constitution and, therefore, cannot be unconstitutional.

In sum, the Court lacks subject matter jurisdiction over Plaintiff's complaint, which fails to state a claim on the merits in any event. The Court should therefore dismiss Plaintiff's complaint without leave to amend.

II. Argument

Plaintiff filed his complaint on January 19, 2017. Dkt. No. 1. His complaint alleges that the Electoral College results in a dilution of votes that violates the "one person, one vote" principle embodied in the Fifth and Fourteenth Amendments. *Id.*, ¶¶ 3, 7-11. As a remedy, Plaintiff seeks (1) "an order permanently

enjoining CHIEF JUSTICE ROBERTS from swearing in Donald TRUMP as President," *id.* at 8 (Prayer for Relief ¶ 4), and (2) "a judicial declaration that the Electoral system and process laid out in the TWELFTH AMENDMENT" violates "the FIFTH and FOURTEENTH AMENDMENTS protections of equal protection under the laws." *Id.* (Prayer for Relief, ¶ 2). The Court should grant neither.

A. The Court Lacks Subject Matter Jurisdiction Over Plaintiff's Complaint (Fed. R. Civ. P. 12(b)(1))

1. Plaintiff Lacks Standing

The existence of Article III standing is a threshold determination concerning "whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). "In this way, the law of Article III standing . . . serves to prevent the judicial process from being used to usurp the powers of the political branches." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).

The plaintiff bears "the burden of establishing [the] existence" of standing because federal courts should presume they lack jurisdiction "unless the contrary appears affirmatively from the record." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 104 (1998). The "irreducible constitutional minimum" of standing consists of three elements: (1) a concrete and particularized injury in fact; (2) an injury fairly traceable to the defendant's alleged unlawful conduct; and (3) the injury is likely to be redressed by a favorable decision. *Lujan v. Def's. of Wildlife*, 504

U.S. 555, 560-61 (1992). If any of these elements is not satisfied, then a federal court cannot invoke its jurisdiction and must dismiss the case. *See Warth*, 422 U.S. at 499.

a. Plaintiff Has Not Suffered a Concrete and Particularized Injury

An injury in fact must be (1) concrete and particularized, and (2) actual or imminent, not conjectural or hypothetical. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000). To allege a "concrete and particularized" injury, a plaintiff must show that he "personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant." *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 472 (1982). An injury that a plaintiff "suffers in some indefinite way in common with people generally" does not suffice. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 344 (2006). "The plaintiff must generally aver an injury peculiar to himself, as distinguished from the great body of his fellow citizens." *Lance v. Coffman*, 549 U.S. 437, 441 (2007).

Plaintiff here alleges that he is one of almost 66,000,000 voters who had their votes in the 2016 presidential election diluted by the Electoral College. *See* Complaint, ¶¶ 7-8. This allegation falls far short of what is necessary to establish the constitutionally required "concrete and particularized" injury—any and all of the approximately 66,000,000 other voters can allege the same injury. Confirming this point, Plaintiff's complaint alleges a common injury on behalf of each of the approximately 66,000,000 voters, thereby

admitting that his injury is not concrete and particularized. *Id.*, ¶¶ 8-14. The Court therefore should dismiss Plaintiff's complaint for lack of standing. *See Collins v. Merrill*, No. 16-cv-9375 (RJS), 2016 WL 7176651, at *2 (S.D.N.Y Dec. 7, 2016) (holding that plaintiff lacked standing to seek injunctive relief barring defendants from certifying the results of the 2016 Electoral College; "the complaint is premised entirely on alleged injuries that Plaintiff shares with the general voting population. . . . ").

b. Even If the Plaintiff Suffered an Injury in Fact, President Trump and Chief Justice Roberts Did Not Cause the Injury

To establish causation, a plaintiff must show that the alleged injury is fairly traceable to the challenged action of the defendant, and not the result of the action of a third party not before the court. *Pritikin v. Dep't of Energy*, 254 F.3d 791, 797 (9th Cir. 2001). Plaintiff's challenge to the Electoral College names Chief Justice Roberts and President Trump as defendants. But neither Chief Justice Roberts nor President Trump caused Plaintiff's alleged injury—they do not have any authority over the Electoral College or the ability to control its electors. Instead, and as alleged in Plaintiff's complaint, their only role in the process was to perform the purely ministerial functions of administering and receiving the oath of office. Complaint, ¶¶ 2, 10-12, 16-18. Plaintiff therefore lacks standing. *See Gordon v. Biden*, 606 F. Supp. 2d 11, 14 (D.D.C. 2009) (dismissing electoral college suit against the Vice President for lack of standing; "Because Gordon's alleged injury is not 'fairly traceable' to the Vice President's actions, which in fact are purely

ministerial, but rather is attributable to the actions of third-party states and state officials, he fails to satisfy the causation element of standing."), aff'd, 364 F. App'x 651 (D.C. Cir. 2010); *Perkel v. United States*, No. C00-4288 SI, 2001 WL 58964, at *2 (N.D. Cal. Jan. 9, 2001) (dismissing "one man one vote" challenge to the Electoral College brought against the United States for lack of standing; "[The] injury is the alleged nullification of [the plaintiff's] vote, cast in Missouri, by the operation of the electoral college in Missouri.").

2. Plaintiff's Request for Injunctive Relief Is Moot

"Article III requires that a live controversy persist throughout all stages of the litigation" and not "simply at the date the action is initiated." *McCullough v. Graber*, 726 F.3d 1057, 1059 (9th Cir. 2013). "[I]f an event occurs during the pendency of the [case] that renders the case moot," the Court lacks jurisdiction and must dismiss the case. *See Ctr. for Biological Diversity v. Lohn*, 511 F.3d 960, 963 (9th Cir. 2007).

Plaintiff filed his complaint on January 19, 2017, the day before the January 20, 2017 inauguration of President Trump. *See* Complaint, ¶ 12 (referring to "the Presidential Inauguration scheduled for 12:00 P.M. tomorrow in Washington, D.C."). Plaintiff did not serve his complaint on anyone until April 17, 2017, almost four months after the inauguration took place. *See* Docket Nos. 4-8. Plaintiff's request for an injunction against the January 20, 2017 inauguration is therefore moot. *See Center for Biological Diversity*, 511 F.3d at 964 (holding that request for declaration that agency policy was unlawful was moot because the

challenged activity, *i.e.*, use of the policy to determine whether to list the Southern Resident killer whale as an endangered species, had "evaporated or disappeared" once agency issued a final rule listing the whale as an endangered species).

B. Plaintiff's Complaint Does Not State a Plausible Claim for Relief (Fed. R. Civ. P. 12(b)(6))

Plaintiff's request for declaratory relief makes the facially implausible argument that the Twelfth Amendment of the Constitution violates the Fifth and Fourteenth Amendments of this same Constitution. *See* Complaint at 8 (Prayer for Relief, ¶ 4) (requesting that the Court rule that the "TWELFTH AMENDMENT [is] a violation of our rights to equal votes, part of the FIFTH and FOURTEENTH AMENDMENT'S protections of equal protection under the laws. . . . "). As the Supreme Court has recognized, however, the Constitution itself sanctions the Electoral College system and any "weighing of votes" that results from it. *See Gray v. Sanders*, 372 U.S. 368, 380 ("The only weighing of votes sanctioned by the Constitution concerns matters of representation, such as allocation of Senators irrespective of population and the use of the electoral college in the choice of a President."); *see also New v. Pelosi*, Case no. 08 Civ. 9055 (AKH), 2008 WL 4755414 (S.D.N.Y., Oct. 29, 2008) ("The Supreme Court has consistently declined to extend the principle of 'one person, one vote' to the electoral college.") (citing *Gray*), aff'd, 374 F. App'x 158 (2d Cir. 2010).

The court in *New* cogently and succinctly explained the illogic in Plaintiff's allegation that part of the Constitution is unconstitutional:

> Ultimately, this Court lacks the power to grant the relief sought because the Court, as interpreter and enforcer of the words of the Constitution, is not empowered to strike the document's text on the basis that it is offensive to itself or is in some way internally inconsistent. In other words, the electoral college cannot be questioned constitutionally because it is established by the Constitution.

New, 2008 WL 4755414, at *2 (internal quotation omitted) (citing *Porter v. Bowen*, 518 F.3d 1181, 1183-84 (9th Cir. 2008) (Kleinfeld, J., dissenting from denial of reh'g en banc) ("Whether the electoral college and winner-take-all casting of electoral votes is a good idea or not has no bearing on the law. Article II, section 1 and the Twelfth Amendment are the Constitution we have.").

In sum, the Electoral College is part of the Constitution. The only remedy for the injury alleged in Plaintiff's complaint is a constitutional amendment. The Court therefore should dismiss Plaintiff's complaint for failure to state a claim.

III. Conclusion

For the foregoing reasons, Defendants respectfully request that the Court dismiss Plaintiff's complaint without leave to amend.

Respectfully submitted,

Alana W. Robinson
Acting United States Attorney

/s/ Daniel E. Butcher
Assistant United States Attorney
Attorneys for Defendants

Dated: June 13, 2017

NOTICE OF MOTION AND MOTION TO DISMISS (JUNE 13, 2017)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FREDERIC C. SCHULTZ,

Plaintiff,

v.

CHIEF JUSTICE OF THE UNITED STATES JOHN G. ROBERTS, JR. and DONALD J. TRUMP, President of the United States of America,

Defendants.

Case No.: 17-CV-0097 WQH (KSC)

Date: July 17, 2017
[No Oral Argument Unless Requested by the Court]

Before: Hon. William Q. HAYES,
United States District Judge.

TO FREDERICK C. SCHULTZ:

PLEASE TAKE NOTICE that on July 17, 2017, or as soon thereafter as counsel may be heard, in the Courtroom of the Honorable William Q. Hayes, Defendant, through their attorneys of record, Alana W. Robinson, Acting United States Attorney, and Daniel E. Butcher, Assistant U.S. Attorney, will and hereby does move this Court to dismiss Plaintiff's complaint

pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). A memorandum in support of this motion is attached.

Respectfully submitted,

Alana W. Robinson
Acting United States Attorney

/s/ Daniel E. Butcher
Assistant United States Attorney
Attorneys for Defendants

Dated: June 13, 2017

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF TO PREVENT IRREPARABLE VIOLATION OF THE GUARANTY OF EQUAL PROTECTION OF THE LAWS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS, AND OF THE PRINCIPLE OF "ONE PERSON, ONE VOTE" (JANUARY 19, 2017)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FREDERIC C. SCHULTZ, an Individual,

Plaintiff,

v.

CHIEF JUSTICE OF THE UNITED STATES JOHN G. ROBERTS, JR. and DONALD J. TRUMP, President of the United States of America,

Defendants.

Case No.: 17-CV-0097 WQH KSC

Plaintiff FREDERIC C. SCHULTZ ("SCHULTZ") alleges as follows:

Related Cases:

1. SCHULTZ has no other Civil Cases in this or any other federal court.

The Parties

1. SCHULTZ is a resident of the State of California, and as such, cast a vote in. the November 8 2016 Presidential election for Democratic candidate Hillary Clinton.

2. Defendants, Chief Justice of the United States John G. ROBERTS, Jr. and Donald J. TRUMP, "President-Elect" of the United states, are scheduled on Friday Jan. 20th at 12:00 P.M. E.S.T. to respectively administer and take the presidential oath of office for Mr. TRUMP to become president of the United States of America, AS opposed to Sec. Hillary Clinton, who the people elected.

3. Unless this Court issues the relief sought herein, Mr. TRUMP will become president in violation of the guaranty of SCHULTZ's rights to equal protection of the laws under the Fifth Amendment of the United States Constitution, *see, Bolling v. Sharpe*, 347 U.S. 497 (1954), and the fundamental principle of "one [person], one vote", enunciated by the United States Supreme Court in *Baker v. Carr*, 369 U.S. 186 (1962). Bolling held that the federal government is subject to the same equal protection requirements as the state governments, even though the equal protection clause of the Fourteenth Amendment does not mention the federal government. As the Court said in *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975), "This Court's approach to Fifth Amendment equal protection claims [covering the federal government] has been precisely the same as to equal protection claims under the Fourteenth Amendment." Therefore, our right to vote in federal elections is protected by the same "One Person, One Vote" rule established in state elections.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction over this matter under Title 28 U.S.C. § 1331 (federal question jurisdiction), § 2201 (authorizing declaratory relief), and § 2202 (authorizing injunctive relief).

5. Venue is proper in this Court under Title 28 U.S.C. § 1391(b).

Injunctive Relief Allegations

6. SCHULTZ hereby incorporates each of the allegations contained in Paragraphs 1 through 5 above, and incorporates them as though fully set forth here.

7. The final vote tally, according to CNN, in the general election held on Nov. 8 is Hillary Clinton with 65,844,954 (48.2%) compared to Donald TRUMP receiving 62,979,879 (46.1%) votes, a difference of 2,865,075 votes, or 2.1% of total votes cast.

8. Despite this historic margin of votes in favor of the projected loser of the Presidential election, the Electors awarded the presidential election to Donald Trump by a margin of 306 to 232 pledged Electors, and 304 to 227 actual Elector votes. Therefore, compared to the actual number of votes cast, people who voted for Hillary Clinton had our votes diluted by over 2.1% to award Donald TRUMP the election. In other words, Clinton voters' votes were counted at under 98% the weight of those who voted for Trump. Compared to the actual Electoral votes cast, I and all other people who voted for Clinton had our votes diluted by approximately 29%. Put another way, SCHULTZ's vote and everyone else who voted for Clinton had our votes counted 71% as much as those who voted for TRUMP. This result was caused by a combination of

vote dilution by state compared to voters in WY who get the lowest number of voters per elector in the nation, and by state "Winner take All" (WTA) rules which further skew the results from reality. Because the number of voters per Elector varies so much state to state, voters in CA including SCHULTZ only get 29% of the vote of voters in WY according to the 2010 Census, which applies in this and the next presidential election. Alternatively put, WY voters get their votes per Elector counted almost 3.5x CA voters. (Population has changed since to even further dilute votes from the time of the 2010 census.) Voters in all other states get varying degrees less people per elector than WY, with most people in the nation getting between 30% and 40% of the vote of WY voters, ranging up to voters in Washington, D.C. who get 97% of the vote of a WY voter. WY has only 583,626 residents in a nation of 308,745,538, or below .2% of the nation's population, with 194,542 people voting per elector. Therefore, over 99.8% of the voters in the U.S.A. have our votes diluted compared to, and by, WY voters, Voters per elector by state range from 194,542 in WY to 677,344 voters per elector in CA; 668,211 voters per elector in NY; 661,728 per elector in TX, etc. Furthermore, every state but ME and NB, which combined have under 1% of the nation's population, have "WTA" rules which completely wipe out the votes of anyone who votes in a state for the candidate who doesn't win a plurality of the votes in that state, stealing their right to vote completely

9. The amount of dilution per Clinton voter compared to Trump voter depends on how one calculates. As 85,844,954 of USA voters including SCHULTZ voted for Clinton, but Clinton only received pledged

232 Electors, and 227 actual Elector votes, the actual number of Clinton votes per Elector was almost 290,066. As 62,979,879 people voted for TRUMP, but he received 306 pledged Elector and 304 actual Elector votes, the number of Trump votes per Elector was almost 207,171 per elector. Therefore, in the Elector vote, the vote which counts, people who voted for Clinton as SCHULTZ did had our votes counted at the rate of just over 71% the value of the votes of citizens who voted for TRUMP.

10. The Fifth Amendment guarantees to all citizens the equal protection of federal laws, and is more explicitly protective against unfairness than the Due Process Clause of the Fifth and Fourteenth Amendments. *Bolling v. Sharpe*, 347 U.S. 497, 499. Thus, the Fifth Amendment creates a fundamental right in each citizen and a corresponding obligation on the part of all government entities to treat federal election voters fairly. Counting each Clinton vote, including SCHULTZ's Clinton vote, as only equal to approximately 71% the value of the vote of a citizen who voted for TRUMP is fundamentally unjust and immoral, effectively stealing our vote and denying the majority of American voters our choice for president. Such vote dilution and denying of our choice for our leader serves no legitimate, or certainly compelling, government interest. Therefore, the action that Chief Justice ROBERTS and "President Elect" TRUMP are certain to take on Jan. 20, *i.e.* JUSTICE ROBERTS swearing in TRUMP to be President of the United States, violates SCHULTZ's right and the rights of all other citizens who voted for Clinton, under the Fifth Amendment's and Fourteenth Amendment's

guarantees of equal protection of the laws pertaining to his vote for President.

11. In addition, ROBERTS' and TRUMP's anticipated action violates the fundamental, inviolate principle set forth by the United States Supreme Court in *Baker v. Carr*, 369 U.S. 186, of "one person, one vote." There is no precedent supporting an election process that for all intents and purposes rests on a principle of "one person, .71 vote." Actually, SCHULTZ and the 65,844,954 who voted for Clinton had our votes counted at 71% that of those citizens who voted for TRUMP, and alternatively, the 62,979,879 TRUMP voters had their votes counted at a rate over 1.4x that of those who voted for Clinton. These numbers are far from the "one person, one vote" standard promised in Baker, and by our Constitution's guarantee of equal protection under the laws, including the voting laws.

12. This Federal Court has the power to intervene to Enjoin and Prevent Chief Justice of the USA John ROBERTS from swearing in "President Elect" Trump at the Presidential Inauguration scheduled for 12:00 P.M. tomorrow in Washington, D.C. and to require that the ballots cast by the people of the USA be counted equally per voter, and to declare Sec. Hillary Clinton the winner based on the fact she received almost 3 million more votes than TRUMP. *Donohue v. Board of Elections of State of NY*, 435 F. Supp. 957 (E.D.N.Y. 1976) RULED that courts have the right to call for new presidential elections in cases of vote dilution by fraud. Plaintiff SCHULTZ and all Clinton voters had their votes diluted compared to those of TRUMP voters, and Plaintiff SCHULTZ and ALL CITIZENS of all states other than WY have had their votes diluted by

the voters of WY due to a provision of the Constitution that was only adopted to encourage the Slave States from staying in the newly formed USA. Furthermore, Plaintiff SCHULTZ is not calling for a new election, but rather just that his and all citizens of the United States' votes be counted equally, and that his and all citizens who voted for Clinton have their votes counted equally to those who voted for Trump, which they were not by over 40% vote dilution caused by the Electoral system and vote proscribed in the TWELFTH AMENDMENT of the Constitution.

13. Furthermore, though not literally binding on this Court, the United States, along with all the United Nations of the world, is a signatory to the Universal Declaration of Human Rights (UDHR), proclaimed by the United Nations General Assembly (General Assembly resolution 217A) in Paris, France, on Dec. 10, 1948, as a common "standard of achievement" for all people and nations of the world, famously advocated for by Eleanor Roosevelt and the newly free people of the world, after the horrors of Nazi dictatorship caused mass slavery; torture, murder and world war, to prevent anyone from committing such evil ever again, pushing the earth and humanity to the edge of destruction and extinction forever.

Article 21 plainly, powerfully states:

"(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall

> be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures." (Emphasis added.)

This Court is the only body which can uphold these basic guaranteed human rights of the citizens who voted for Clinton, and really of all the people of the United States of America, no matter in which state we live or for which candidate we voted. SCHULTZ and the people of our nation have a right to equal suffrage, meaning, obviously, "One Person, One Vote" and we expect this court to uphold our human rights to an equal vote for president, as a right in and of itself and also as a means to effect all the other human rights with which we are born and which the UDHR, and our great nation's Constitution, were written to protect, today and for all posterity.

13. Injunctive relief is necessary because the process by which the Electors elected TRUMP as the President is irreconcilable with SCHULTZ's rights—and those of approximately 66 million other citizens who voted for Clinton—under the Equal Protection Clause and *Baker v. Carr*. The Court must uphold SCHULTZ's and the majority of voters' fundamental rights to "One Person, One Vote," count our votes equally, and determine Hillary Clinton to be the winner over Donald TRUMP by a margin of 2,865,075 votes, and the next president of the United States.

14. SCHULTZ's and the other approximately 66 million voters who voted for Clinton's fundamental right to have his vote counted equally with a Trump voter's supersedes TRUMP's interest in being sworn in, or the government's interest in having CHIEF

JUSTICE ROBERTS swear him in, for the reasons set forth above in Paragraphs 9-12. The harm CHIEF JUSTICE ROBERTS' and TRUMP's actions on January 20 would cause SCHULTZ and those similarly situated, is substantial and irreparable, and SCHULTZ lacks any adequate remedy in law. Accordingly, an injunction prohibiting JUSTICE ROBERTS from swearing in TRUMP on January 20 at 9:00 A.M. Pacific Time, 12:00 P.M. Eastern Time, is necessary and appropriate.
DECLARATORY RELIEF ALLEGATIONS

15. SCHULTZ hereby incorporates each of the allegations contained in Paragraphs 1 through 14 above, and incorporates them as though fully set forth here.

16. An actual and substantial controversy now exists between SCHULTZ and "PRESIDENT ELECT" TRUMP and CHIEF JUSTICE ROBERTS as to their respective rights and duties. SCHULTZ contends the SWEARING IN PROCESS that TRUMP and CHIEF JUSTICE ROBERTS will engage in on January 20, 2017 will irreparably injure SCHULTZ by counting his vote as 71% of that of the vote of someone who voted for TRUMP, and by making TRUMP President when he lost the election when all the votes are added up, and counted equally, without any watering down based on location or his choice of candidate.

17. This dispute is presently justiciable because CHIEF JUSTICE John ROBERTS is scheduled to swear in Donald TRUMP as the 45th President despite the fact that he lost the election to Hillary Clinton by 2,865,075 votes, or 2.1% of total votes cast by United States citizens on Nov. 8, 2016, thereby causing substantial and cognizable injury to SCHULTZ.

18. CHIEF JUSTICE ROBERTS' and TRUMP's anticipated action of swearing in TRUMP despite his losing the election has substantially affected and will directly, substantially and adversely affect SCHULTZ. Therefore, a judicial determination of the parties' respective rights and obligations as to this controversy is necessary and appropriate at this time.

Prayer for Relief

Wherefore, SCHULTZ prays for judgment as follows:

1. For a judicial declaration that CHIEF JUSTICE ROBERTS' and Donald TRUMP's anticipated action on January 20, 2017 will substantially, adversely, and irreparably injure SCHULTZ and all other Clinton voters, in violation of SCHULTZ's rights under the FIFTH and FOURTEENTH AMENDMENTS of the U.S.A. CONSTITUTION, and will derogate the fundamental principle of "One Person, One Vote."

2. For a judicial declaration that the Electoral system and process laid out in the TWELFTH AMENDMENT, part of a compromise with the slave-holding states, weakened and stole the right to vote of a majority of Americans, in this election, in 4 prior elections since the founding of our nation, and is bound to do so many times in the future unless this Court rules this TWELFTH AMENDMENT a violation of our rights to equal votes, part of the FIFTH and FOURTEENTH AMENDMENT'S protections of equal protection under the laws, and that the only way to satisfy our rights to "One Person, One Vote" is for the Court to order that our votes be counted equally, and to name Hillary Clinton the next President of the United States of America, and to then instruct CHIEF

JUSTICE ROBERTS to swear in Hillary Clinton as president as she won the election by almost 3 million votes, and not Donald TRUMP.

3. For a judicial declaration that under long-standing principles of statutory and Constitutional construction, SCHULTZ's rights supersede the interests of TRUMP's or CHIEF JUSTICE ROBERT's or the Electors in following the procedure for electing our 45th President.

4. For an order permanently enjoining CHIEF JUSTICE ROBERTS from swearing in Donald TRUMP as President, as doing so would weaken SCHULTZ's vote, and those of the 66 million. Americans who voted for Hillary Clinton, to less than One, to 71% of a citizen's who voted for TRUMP, based solely on his geographical location in our nation and for whom he voted, giving citizens who voted for TRUMP over 1.4x the vote of citizens who voted for Sec. Hillary Clinton.

5. For a Judicial Declaration that as Hillary Clinton beat Donald TRUMP by almost 3 million votes in the final tally, she won the Presidential Election of 2016, and Chief Justice of the US ROBERTS shall, as soon as practicable but within one month of today, swear in Hillary Rodham Clinton as the 45th President of the USA, and not Donald TRUMP as he lost the election to her on Nov. 8, 2016, and that current President Barack Obama shall stay president until such date.

6. For all such other relief as this Court deems just and proper.

Respectfully submitted,

/s/ Frederic C. Schultz
Plaintiff, Pro Se
P.O. Box 634
San Diego, CA 92038
(620) 288-6769

Dated: January 19, 2017

CIVIL COVER SHEET
(JANUARY 19, 2017)

Case No.: 17 CV 0097 WQH KSC

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I.

(a) PLAINTIFFS: Frederic C. Schultz

DEFENDANTS: Chief justice of the United States John G. Roberts, Jr. and Donald J. Trump, President Elect

(b) County of Residence of First Listed Plaintiff

San Diego, CA

County of Residence of First Listed Defendant

Washington, DC

II. **Basic of Jurisdiction**

- Federal Question

IV. **Nature of the Suit**

- Civil Rights—441 Voting

V. Origin

- Original Proceeding

VI. Cause of Action

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)

- Equal Protection guaranty of 5th and 14th Amendments

Brief Description of Cause: Defendants will Dilute and Deny my Right to an Equal Vote Unless This Court Declares Hillary Clinton President of USA.

VII. Requested In Complaint:

CHECK YES if you demand in complaint

- Jury Demand: No

/s/ Frederic C. Schultz
Signature of Attorney of Record

Date: 01/19/2017

APPELLANT PETITION FOR REHEARING (JANUARY 11, 2019)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FREDERIC C. SCHULTZ, ESQ., an Individual,

Plaintiff-Appellant,

v.

CHIEF JUSTICE OF THE UNITED STATES JOHN G. ROBERTS, JR., ESQ and DONALD J. TRUMP, "PRESIDENT" OF THE UNITED STATES OF AMERICA,

Defendant-Appellees.

Case No.:17-56852

D.C. Case No: 17-CV-0097-WQH-KSC

Summary of Argument

Pro Se Appellant Frederic C. Schultz, Esq. (hereinafter "Schultz"), on behalf of all California voters who on average had. our votes counted at the rate of 29% of those of citizens of Wyoming, and at a far lower rate than those of citizens in less populous states overall, and on behalf of all CA and USA voters who voted for Hillary Clinton, who had our votes counted on average only 71% of those of citizens who voted for Donald Trump, HEREBY REQUESTS that

the 9th Circuit Court of Appeals rehear my request not to have my case dismissed for failure to state a claim simply because the US Constitution in Article 12 provides for an electoral "college" system.

As SCHULTZ stated in his briefs submitted to this court in May and August (attached), he and all citizens of the United States, including residents of the state of California and of every other state, have the Constitutional and Human Rights to have our votes counted equally as every other citizen of the United States. The 14th and 5th Amendments of the Constitution, as well as the 13th and 15th Amendments, as explained in the previous briefs, both appeals briefs and those going back to Jan. 19, 2017, when Schultz initially filed his appeal, as well as, namely, Amendment 9, which states: "Rights Retained by the People" "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." These and other provisions are meant to protect our rights as citizens.

Most importantly, the Constitution provides for 3 branches of government, Judiciary, Legislative, and Executive Branch. Our nation founders provided a Bill of Rights in the Constitution to protect our God-given rights, so that they never be up for a vote. Central to those rights is the right to an equal vote for government. And central to those rights is Courts and Judges being willing to stand up and protect those rights when called to. Chief Justice John Roberts, and every judge, has a responsibility to not just be a "rubber stamp", but to stand up for our rights as citizens whenever given the opportunity. He took an oath to do so. By swearing in Defendant TRUMP as president, despite the fact he lost the election by

almost 3 million votes, by a vote of 66 to 63 million votes, ROBERTS violated his oath of office to protect and defend our human rights with the Constitution of the United States. Instead, DEFENDANT JUDGE ROBERTS violated his oath to protect us, and DEFENDANT "PRESIDENT" TRUMP violated our rights by accepting such oath wrongfully, when he had lost the election by almost 3 million votes.

Our nation's founders, despite depriving the vote to non-landowners, non-"white" people who were slaves, and women still deeply believed in the concept of representative democracy. That is why they founded our nation, to protect us from a tyrannous king who only had the support of a small percentage of the population. They would have been horrified by the concept that a person would be deemed "president" by an electoral system which they established in order to enforce, not steal, the will of the people, would be used to put in power a person who had lost the election by almost 3 million votes. They provided for the electoral system, as Hamilton said in the Federalist Papers, only in an emergency to save us for a tyrant, which they obviously failed to do in this last election. They never intended for the electoral system to be used to steal our votes.

As the 14th Amendment eloquently states in Section 2: "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". This passage clearly shows they believed that votes for the president must be counted equally." The founders obviously from this, and the whole meaning of the Constitution, the Declaration of Independence, and

the very reason they founded the nation was to grant us our human rights to a democracy. They created a representative democracy as an attempt to represent the will of the people, however narrowly they defined it at the time, not to subvert it. As SCHULTZ pointed out in his previous briefs, a person can now be "elected" president by the electoral "college" who only wins 23% of the "popular" vote, or what every nation that considers itself a democracy would call it, the vote. ("How to win the presidency with 23% of the Popular Vote"—NPR 11/2/16. https://www.npr.org/2016/11/02/500112248/how-to-win-the-presidency-with-27-percent-of-the-popular-vote) Furthermore, although not alleged in the facts of this case, even those citizens of the United States who are not allowed to vote for president, namely citizens of Puerto Rico, Guam, and the US Virgin Islands, have the right to have their votes counted, almost 3 million votes. Puerto Rico has about 2,700,000 citizens who could not vote for president, just over only 5,000 voted for DEFENDANT TRUMP in the March 2016 Primary. Undoubtedly, they would have voted for Clinton too.

Furthermore, as a majority of women and "black" voters voted for Hillary Clinton, and had their votes counted at 71% of those of Trump voters, and 29% on average if CA citizens, they are being discriminated against by having their votes diluted, thus stolen.

Finally, Trump in an interview about a year ago acknowledged that he fully intended not to win the "popular" vote, but to eke out a victory by trying to game the electoral process. He had full intention of subverting our votes, and admitted it. "Excerpts From Trump's Interview With The Times" 12/28/2017, NY Times. https://www.nytimes.com/2017/12/28/us/politics/

trump-interview-excerpts.html Here he clearly states that he intended to use the electoral "college" system to intentionally try to subvert the will of the people to choose our president by gaming the system to force his rule upon us against our will, or votes, or human and constitutional rights, as protected by our constitution, and by the treaty the USA enacted in 1992, the ICCPR, the International Covenant on Civil and Political Rights, which the USA enacted (Senate vote and signed by elected president G.H.W. Bush to enforce our civil and political rights, which it enumerates completely rests on our rights to "equal and universal suffrage".

DEFENDANT TRUMP in the following interview conducted in Dec. 2017 by NY Times reporter Michael Schmidt clearly expresses that he fully intended to try to subvert the will of the people by getting "elected" by the electors, not by the majority of the Americans, as Sec. Hillary Clinton attempted, and accomplished. Here he clearly states such intention to steal our votes:

> "'TRUMP: . . . So, I think it's been proven that there is no collusion. And by the way. I didn't deal with Russia. I won because I was a better candidate by a lot. I won because I campaigned properly and she didn't. She campaigned for the popular vote. I campaigned for the Electoral College. And you know, it is a totally different thing, Mike. You know the Electoral College, it's like a track star. If you're going to run the 100-yard dash, you work out differently than if you're going to run the 1,000 meters or the mile.

> And it's different. It's in golf. If you have a tournament and you have match play or stroke play, you prepare differently, believe it or not. It's different. Match play is very different than stroke play. And you prepare. So I went to Maine five times, I went to [inaudible]. the genius of the Electoral College is that you go to places you might not go to.
>
> And that's exactly what [inaudible]. Otherwise, I would have gone to New York, California, Texas and Florida.
>
> SCHMIDT: You would have run completely differently.
>
> TRUMP: It would have been a whole different thing. The genius is that the popular vote is a much different form of campaigning. Hillary never understood that." NY Times, 12/28/2017

Schultz hereby requests that this Court protect SCHULTZ's and the Citizens of CA's human and constitutional rights to be governed by who he and the citizens of CA and the USA elected and ENFORCE THE RESULTS of the 2016 election, count his vote and all California voters and all those in nation's votes and who voted for Clinton's votes equally as those who voted in other states or voted for Trump, and name Hillary Clinton president, as she won by 66 to 63 million votes. DEFENDANT JUDGE ROBERTS broke his oaths to protect our constitutional and human rights when he swore him in, and TRUMP broke our rights when he accepted the oath, and continues to violate our rights to be represented by whom we elected, every second he in in power against the will of the majority of the people of the USA. SUCH is

your responsibility as representatives of the Judicial branch, and our only protector against, tyranny by the minority of people in our nation, forever. Our rights to democracy, and our lives, are at stake now, until you enforce our rights to be governed by whom we elected, Hillary Clinton. Thank you.

Sincerely,

/s/ Frederic C. Schultz, Esq.
Pro Se Appellant

APPELLANT'S INFORMAL BRIEF
(MAY 16, 2018)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FREDERIC C. SCHULTZ, ESQ., an Individual,

Plaintiff-Appellant,

v.

CHIEF JUSTICE OF THE UNITED STATES JOHN G. ROBERTS, JR., ESQ. and DONALD J. TRUMP, "PRESIDENT" OF THE UNITED STATES OF AMERICA,

Defendant-Appellees.

Case No.:17-56852

D.C. Case No: 17-CV-0097-WQH-KSC

1. Jurisdiction

a. Timeliness of Appeal:

i) Date of entry of Judgment or order of Originating Court: 10/10/17

iv) Date notice of appeal filed: 12/8/17

9th Cir. Case No: 17-56852

2. What are the facts of your case?

Plaintiff FREDERIC C. SCHULTZ, ESQ. (hereinafter "SCHULTZ") is a resident of the State of California who in the 2016 Presidential Election voted for Sec. Hillary Clinton on Nov. 8, 2016. Despite being among the majority of voters in the USA, 65,844,954 citizens, who voted for Clinton, by a margin of 2,865,075 over Defendant Donald TRUMP (hereinafter "TRUMP"), pursuant to the 12th Amendment of the Constitution of the USA, the electors met and voted for Defendant TRUMP by a margin of 304 to 227 for Defendant TRUMP, not Clinton, who won the election, thus weakening SCHULTZ's vote, those who voted for Clinton in CA, and all those who voted for her in the nation's vote, enough to name TRUMP the winner, despite his monumental loss of the election. Congress proceeded to illegally ratify the elector's stealing of SCHULTZ's and the majority of American voters votes. On 1/19/2017, SCHULTZ sued in the Federal Southern District of CA to get the court to block Defendant ROBERTS from swearing in TRUMP. The Court refused to block the illegal ceremony, thus Defendant ROBERTS violated his oath to uphold the Constitution of the USA and swore in TRUMP, who violated the oath he took by taking it, thus illegally becoming the President despite having lost the election by almost 3 million votes to Sec. Hillary Clinton. As a CA voter, SCHULTZ had his vote diluted to that of 29% of a WY voter, on average, when the vote tally is compared to the electoral vote. Furthermore, as a citizen who voted for Clinton, SCHULTZ and the majority millions who voted for Clinton had our vote diluted to 71% of those of citizens who voted for Defendant TRUMP. Calculated another way, on aver-

age, those who voted for Trump's votes were counted at 1.4x those of SCHULTZ and others who voted for Clinton. After considering subsequent briefs submitted by Defendants ROBERTS + TRUMP, and SCHULTZ's reply, the lower court dismissed SCHULTZ's and the majority's claim of a violation of his 5th and 14th Amendment Rights to "no deprivation of liberty without due process" and to violation of his and others' rights to "equal protection" of the laws.

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

Appellant/Plaintiff SCHULTZ in his first brief requested that the lower Court block Appellee/Defendant Chief Justice ROBERTS from violating his oath to uphold the Constitution and swearing in TRUMP despite ROBERTS knowing that doing so would steal the vote from SCHULTZ and the 65,844,954 others who voted for Clinton. Appellant/Plaintiff SCHULTZ also sought to get the lower Court to block TRUMP from accepting the oath, despite knowing that he had lost the election by almost 3 million votes, and thus was violating SCHULTZ's and the citizens' of the USA's Human and Constitutional rights to "universal and equal suffrage", "due process", and "equal protection of the laws". In SCHULTZ's reply brief, after Defendant/Appellee ROBERTS had sworn in Defendant/Appellee TRUMP, Plaintiff/Appellant SCHULTZ requested that the lower Federal Court reverse the swearing in by ROBERTS of TRUMP, uphold the results of the election by counting his and all who voted in the election's votes equally, as democracy and fairness and our rights demand, and name Sec. Hillary Clinton president. The court refused to do so, and at a later date dismissed SCHULTZ's lawsuit.

Plaintiff/Appellee here in this appeal requests that the 9TH CIRCUIT COURT OF APPEALS count SCHULTZ's, all who voted for Sec. Clinton's, and all who voted for TRUMP's votes equally, uphold the results of the popular vote, throw out the immoral and illegal electoral "college" vote, and name Sec. Hillary Clinton president. Furthermore, SCHULTZ hereby requests that the 9TH CIRCUIT attempt to put the state of the nation back to where it was when he first filed his suit, and, according to the principle of "AB INITIO", declare all actions taken by TRUMP illegal, and reverse them all, including the appointment of all Federal judges, including "Justice" Neil Gorsuch, as he was appointed by a "president" who was riot elected by the populace of our great nation.

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

Plaintiff/Appellant SCHULTZ claimed that his right, and the majority millions who voted for Clinton's Human and Constitutional Rights, to equal suffrage, due process, and equal protection of the laws would be, and then was, violated when Defendant/Appellee ROBERTS swore in Defendant/Appellee TRUMP, despite having lost the election by almost 3 million votes.

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

Is the 12th Amendment (which establishes the electoral "college" system) Unconstitutional as it was overruled by the 14th Amendment, the 5th Amendment as interpreted by courts in light of the 14th Amendment, and by the 1948 Universal Declaration of Human Rights' interpretation of those Amendments'

guarantee to our citizens of "universal and equal suffrage", as codified and enacted by President George H. W. Bush and Congress in 1992 in The International Covenant on Civil and Political Rights (ICCPR) United Nations Human Rights treaty, which is now supposed to be the "law of the land"?

The lower court wrongly decided that the electoral "college" system explicated in the 12th Amendment of the Constitution is Constitutional even though it steals our Human and Constitutional Rights to "due process" and "equal protection of the laws" by not counting SCHULTZ's, California citizens, and citizens who voted for Clinton's votes equally to those of people who live in more rural states or who voted for Trump. The lower court violated SCHULTZ's and all citizens' rights to "One Person, One Vote" by not blocking Defendant/Appellee Chief Justice ROBERTS from swearing in Defendant/Appellee TRUMP, despite the fact that he lost the election by almost 3 million votes cast by citizens on Nov. 8, 2016, and by not reversing the results of the stolen election after all briefs were filed, but instead dismissed SCHULTZ's lawsuit, thus stealing SCHULTZ's and all citizens of our state and nation's rights to equal suffrage, as guaranteed by the 5th and 14th Amendments of the Constitution.

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

No.

If not, why not?

Plaintiff/Appellant SCHULTZ in his initial complaint/injunction and responsive brief did cite the fact that the USA signed the Universal Declaration

of Human Rights (UDHR) in 1948, in which our nation promised to uphold our citizens' Human and Constitutional Rights to "universal and equal suffrage". However, SCHULTZ did not mention that the UDHR had been codified into "the law of the land" (which all treaties are) by elected President George H. W. Bush and the Senate in 1992 by the International Covenant on Civil and Political Rights (ICCPR) treaty, because Plaintiff/Appellant SCHULTZ only discovered two days ago that our nation had signed the treaty into law, thus codifying the UDHR and our right to "One Person, One Vote".

7. What law supports these issues on appeal?

The 12th Amendment of the Constitution, establishing the Electoral "College" system of electing our president after the people vote in the general election, is unconstitutional because it steals our Human and Constitutional rights to "universal and equal suffrage" which are supposed to be protected by the 5th and 14th Amendments, which overturned the 12th Amendment. Not only in the last election, but four previous times, the will of the people was subverted by the 12th Amendment's system of electing the president. Every second he is in the office of "president", despite losing the election, Defendant/Appellee TRUMP endangers the lives of millions of Americans, millions of refugees who we have an obligation to protect, our soldiers and the untold thousands of civilians he is ordering them to kill around the world, the millions of Americans who he is attempting to kill by stealing our rights to food, shelter, and universal healthcare, and truly likely will kill all life on earth by starting a nuclear war, including over 326 million Americans and over 7.6 billion people worldwide, due to the fact

that he was not elected by our nation's population because of his extreme stupidity, anger, insanity, corruption, ignorance, treason, and extreme hatred of all other people besides himself, which endangers us all, every second. Unless this court names Sec. Hillary Clinton because she won the election, and orders all actions he took under color of being an unelected "president" null and void, Defendant/Appellee TRUMP has threatened to, and surely will, fire those who are investigating him and his corrupt lackeys for treason, collusion with Russia to subvert the will of the American people, and corruption, and to attempt to pardon himself and those who have aided him in his crimes. Furthermore, even if he is thrown out of office, the even more unelected "Vice President" Mike Pence will attempt to pardon him, and if Pence is in jail for corruption and collusion with Russia to steal our votes, then those lower down the line will attempt to pardon them for their crimes against the American people and humanity. The only way this court can save all life on earth is by immediately making America a Democracy by counting our votes equally, as most nations in the world do, and naming Sec. Hillary Clinton president, as she won the election by almost 3 million votes.

IS IT POSSIBLE FOR A PART OF THE CONSTITUTION, AN AMENDMENT, TO BE UNCONSTITUTIONAL? YES, IF IT IS DEEMED OVERRULED BY A SUBSEQUENT AMENDMENT, OR THE CURRENT INTERPRETATION OF A PRIOR AMENDMENT.

For instance, the 11th Amendment's prohibition of allowing a state to be sued in federal court was overturned by the 14th Amendment's promise that no

State "shall deny to any person . . . the equal protection of the laws." Section 5 of the 14th Amendment allowed Congress to pass such laws necessary to enforce it, and Congress did so by passing Title VII of the Civil Rights Act of 1964, which banned employment discrimination for "race or gender" even by States. The Supreme Court, in "*Fitzpatrick v. Bitzer*" 427 U.S. 445 (1976) upheld the provision of the Civil Rights Act, stating "the Eleventh Amendment, and the principle of state sovereignty which it embodies, are necessarily limited by the enforcement provisions of Section 5 of the Fourteenth Amendment."

Just as the Supreme Court ruled in 1976 that the 14th Amendment, and it's enacting legislation the Civil Rights Act of 1964 overruled provisions of the 11th Amendment, this court must here rule that the 14th Amendment, and it's enacting legislation International Covenant on Civil and Political Rights (ICCPR) treaty which guarantees our nation will protect our citizens' rights to "universal and equal suffrage" (Section 25 (b)) The full text of section 25 of the ICCPR treaty, as enacted by Congress and the President, is:

> "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:
>
> (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
>
> (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret

ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country."

President George H. W. Bush, before signing the ICCPR treaty, objected to a few provisions of the treaty, including a provision that banned states from executing minors, which the Supreme Court of the USA banned several years later. (Not of real importance here is whether those objections were legally binding.) Despite making a few objections before signing it, neither he nor the Senate objected to the provision calling for "universal and equal suffrage" for all citizens of voting age. Treaties are considered the "law of the land." Yes, there has been some dispute as to whether treaties have equal weight to the Constitution, or just have the weight of legislation (which must of course adhere to the constitution), but either way, Congress enacted the treaty, and this Court must uphold its provision that we are all, including Plaintiff/Appellant SCHULTZ, the people of the great state of CA whose vote was counted less than anyone's vote in our nation and at 29% of the weight of voters living in Wyoming, and citizens who voted for Clinton, whose votes were counted at 71% (on average, given also unconstitutional state "Winner Take All" (PTA) rules, not to mention the unconstitutional rules which ban millions of USA citizens living in territories from voting for president at all) of people who voted for Defendant/Appellee TRUMP, entitled to have our votes counted equally now, by this court naming Hillary Clinton President, and letting the Supreme Court ratify our votes and make America a Democracy already.

Yes, it is true that the Equal Protection Clause of the 14th Amendment in its text applies to the states, but the 5th Amendment's Due Process Clause applies to the Federal Government, as many Supreme Court cases have held. The Supreme Court held in "*Bolling v. Sharpe*", 347 U.S. 497 (1954), that the 14th Amendment holds the Fed govt to the same equal protection requirements as the states. As the Court stated in *Bolling*: "Though the Fifth Amendment does not contain an equal protection clause, as does the Fourteenth Amendment, which applies only to the States, the concepts of equal protection and due process are not mutually exclusive." 347 U.S. 497, 499. Similarly, the Court held in "*Weinberger v. Weisenfeld*", 420 U.S. 636 (1975), that "This Court's approach to 5th Amendment equal protection claims [covering the federal government] has . . . been precisely the same as to equal protection claims under the 14th Amendment."

The Supreme Court has held in many cases that all citizens are entitled to "One Person, One Vote". For instance, the Court in *Baker v. Carr*, 369 U.S. 186 (1962) ruled that the Constitution requires "One Person, One Vote".

Similarly, the Supreme Court in "*Reynolds v. Simms*" 377 U.S. 533 (1964) stated that we are all entitled to an equal vote no matter where we live, saying "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests."

The lower court, in a ruling by US District Judge William Q. Hayes, agreed with the Defendants ROBERTS and TRUMP that *Gray v. Sanders*, 372 U.S. 368, 380 (1963) stands for the proposition that "The only weighting of votes sanctioned by the Constitu-

tion concerns matters of representation, such as . . . the use of the electoral college in the choice of a President". However, that case was a decision AGAINST allowing any weighting of votes, and only mentioned the Electoral "college" of the 12th Amendment to explain that that was a compromise to get the southern states, then ruled by slave owners, to join the nation, but it did not say that such weighting of votes was ever constitutional, just that it was inapplicable to the case at hand, which ruled that people in local elections were certainly allowed equal votes.

The 2016 election is comparable to the ballot stuffing case "*Donohue v. Board of Elections of NY*," 435 F. Supp 957 (E.D.N.Y. 1976) which stated that the Court has a right to call for a new election. Just as a Federal Court in a case of ballot stuffing is required to hold a new election (*see Donohue v. Board of Elections of State of NY*, 435 F. Supp. 957 (1976)), by analogy, in this 2016 presidential election, where the vote count is accurate but the votes were stolen by enforcing an immoral, unconstitutional electoral system enacted to convince slaveholders to get their states to join the nation, enforcement of which steals our constitutional and human rights to equal suffrage, the only remedy for SCHULTZ, the citizen-residents of CA who received less than 1/3 the vote of the citizens of WY, the almost 66,000,000 people who voted for Hillary Clinton, and every voter in our nation except for the 174,419 residents of Wyoming who voted for TRUMP, is for this Court to name Hillary Clinton President of the United States, immediately. If TRUMP appeals, then the Supreme Court will have to decide the matter to protect our human and constitutional

rights to democracy, by definition an equal vote per voter.

Plaintiff/Appellant SCHULTZ hereby calls on this court, therefore, to uphold his Human and Constitutional rights to a say in his government by an equal say as all other citizens, and to uphold the vote of the majority and overturn the vote of the electors who diluted and thus stole our right to vote, and to name Sec. Hillary Clinton president, as she won the election by 3 million votes, and to not only strip Defendant TRUMP of the Title of "President", but to rule that any decision he made in office is null and void under the ancient legal principle of "AB INITIO", attempting to make things right by putting them back to how they were before he stole the most powerful office in the world, putting all our lives in danger every second.

Respectfully Submitted,

/s/ Frederic C. Schultz, Esq.

5/16/2017

APPELLEES' ANSWERING BRIEF
(JULY 13, 2018)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FREDERIC C. SCHULTZ,

Plaintiff-Appellant,

v.

JOHN G. ROBERTS, JR., ESQ. Chief Justice of the United States and DONALD J. TRUMP, President of the United States of America,

Defendant-Appellees.

Case No.:17-56852

On Appeal from the United States District Court
for the Southern District of California
17CV0097-WQH-KSC

Adam L. Braverman
United States Attorney
Katherine L. Parker
Assistant U.S. Attorney Chief, Civil Division
Daniel E. Butcher
Assistant U.S. Attorney
880 Front St., Rm. 6293
San Diego, CA 92101
(619) 546-7696

JURISDICTION

The district court entered final judgment on October 11, 2017. *See* Appellee's Supplemental Excerpts of Record (SER) at 4.[1] Plaintiff timely filed his Notice of Appeal on December 8, 2017. SER 1; Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction over Plaintiffs appeal under 28 U.S.C. § 1291.

QUESTIONS PRESENTED

1. Whether the Twelfth Amendment to the United States Constitution is constitutional.

2. Whether the Court lacks subject matter jurisdiction over Plaintiff's complaint because: (1) Plaintiff lacks standing to challenge the Electoral College; and (2) Plaintiff's challenge to the inauguration of President Trump is moot.

STATEMENT

A. Facts

Frederic C. Schultz ("Plaintiff") alleges that he voted for Hillary Clinton in the November 8, 2016 presidential election. SER 38, ¶ 1. Although Hillary Clinton won the popular vote, President Trump prevailed in the Electoral College. SER 39, ¶¶ 7-8.

On January 20, 2017, Chief Justice John Roberts administered the oath of office to then-president-elect Donald Trump, who accepted the oath and assumed

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[1] Plaintiff did not file Excerpts of Record with his Opening Brief (and, as a pro se appellant, was not required to do so under Ninth Circuit Rule 30-1.2). Defendants therefore have filed Supplemental Excerpts of Record with this brief.

the presidency. SER 41 (referring to "the Presidential Inauguration scheduled for 12:00 P.M. tomorrow in Washington, D.C.").

B. Procedural History

1. Plaintiff's Complaint

On January 19, 2017, Plaintiff filed a complaint in the United States District Court for the Southern District of California. SER 37. Plaintiff's complaint named Chief Justice John G. Roberts and then-president-elect Donald J. Trump as defendants, SER 37, and sought to overturn the 2016 presidential election on the ground that the Electoral College violates the "one person, one vote" principle embodied in the Fifth and Fourteenth Amendments. SER 38-41, ¶¶ 3, 7-11.

Although Plaintiff did not file his complaint until the day before the January 20, 2017 inauguration, ER 37, and did not serve his complaint until nearly four months after the inauguration, Clerk's Record Nos. 5-8, Plaintiff sought (1) "an order permanently enjoining CHIEF JUSTICE ROBERTS from swearing in Donald TRUMP as President," SER ¶ 4 (Prayer for Relief, ¶ 4), and (2) "a judicial declaration that the Electoral system and process laid out in the TWELFTH AMENDMENT" violates "the FIFTH and FOURTEENTH AMENDMENTS protections of equal protection under the laws," SER 44 (Prayer for Relief, ¶ 2), and (3) "a judicial declaration that as Hillary Clinton beat Donald TRUMP by almost 3 million votes in the final tally, she won the Presidential Election of 2016, and Chief Justice of the US ROBERTS shall, as soon as practicable but within one month of today, swear in

Hillary Rodham Clinton as the 45th President of the USA, and not Donald TRUMP as he lost the election to her on Nov. 8, 2016, and that current President Barack Obama shall stay president until such date." SER 44-45 (Prayer for Relief, ¶ 5).

2. Defendants' Motion to Dismiss

Chief Justice Roberts and President Trump filed a Motion to Dismiss asserting that: (1) Plaintiff lacked standing (because he did not suffer a concrete and particularized injury caused by either Chief Justice Roberts or President Trump); (2) Plaintiff's request for an injunction prohibiting the inauguration from proceeding was moot (because it had already taken place); and (3) Plaintiff failed to state a plausible claim for relief (because the Electoral College is part of the Constitution and, therefore, cannot be unconstitutional). SER 26-36.

Plaintiff opposed the Motion to Dismiss, contending that he had standing because the injury suffered was particular to him and all who voted for Clinton in California. SER 15-16. Plaintiff further claimed that his injury was directly caused by Chief Justice Roberts administering the oath of office to President Trump and by President Trump accepting the oath. SER 16-17.

Regarding mootness, Plaintiff responded that his case is not moot "because the electoral system is just glorified ballot stuffing/vote stealing" and that "there exists [a] clear and present danger" in the Electoral College today. SER 18.

On the merits, Plaintiff's Opposition argued that "[j]ust because something is written in the Constitution does not make it constitutional." SER 19. Plaintiff

further argued that the Twelfth Amendment is inconsistent with the Fourteenth Amendment, the Declaration of Independence, and the Universal Declaration of Human Rights. SER 20.

3. The District Court's Order Granting Defendants' Motion to Dismiss

The district court granted Defendants' Motion to Dismiss in a three-page order. SER 5-7. The district court ruled that Plaintiff's claim that the Electoral College violated the Fifth and Fourteenth Amendments failed to state a plausible claim for relief because "[t]he Electoral College system is specifically provided for by the Twelfth Amendment." SER 7. The district court further ruled that any proposed amended complaint would be futile because the sole basis for Plaintiff's complaint was the unconstitutionality of the Electoral College. *Id.*

The district court found it unnecessary to address Plaintiff's standing and mootness arguments in light of its ruling that Plaintiff's complaint failed to state a plausible claim for relief. SER 7, n.2.

SUMMARY OF ARGUMENT

The district court properly granted Defendants' Motion to Dismiss. Plaintiff's allegation that the Electoral College is unconstitutional fails because the Electoral College is part of the Constitution.

The Court also lacks subject matter jurisdiction over Plaintiff's complaint. Plaintiff lacks standing because he did not suffer a particularized injury. Further, any hypothetical injury that Plaintiff suffered was not attributable to either Chief Justice Roberts

or President Trump, the only Defendants whom Plaintiff named in this lawsuit. Finally, Plaintiff's complaint is moot because President Trump's inauguration has already taken place.

ARGUMENT

A. Standard of Review

"This Court reviews *de novo* the district court's dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6)." *O'Brien v. Welty*, 818 F.3d 920, 929 (9th Cir. 2016).

This Court may affirm on any ground that is "supported by the record, whether or not relied upon by the district court." *Li v. Kerry*, 710 F.3d 995, 999 (9th Cir. 2013) (quoting *Hall v. N. Am. Van Lines, Inc.*, 476 F.3d 683, 686 (9th Cir. 2007)).

B. The District Court Correctly Ruled that Plaintiff's Complaint Failed to State a Plausible Claim for Relief (Fed. R. Civ. Pro. 12(b)(6))

A court must dismiss a complaint if a plaintiff fails "to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). Plaintiff's complaint here failed to state a plausible claim for relief.

Plaintiff's complaint alleges that the Twelfth Amendment, which provides for Electoral College, is unconstitutional. ER 38-41. The district court correctly rejected this claim and dismissed Plaintiff's complaint without leave to amend.

The Twelfth Amendment states:

> The Electors shall meet in their respective states and vote by ballot for President . . . and

> the votes shall then be counted; The person having the greatest Number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed. . . .

U.S. Const. amend. XII; *see also* U.S. Const. art. II, § 1 ("Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress. . . . ").

Thus, as the Supreme Court has recognized, the Constitution itself sanctions the Electoral College and any "weighing of votes" resulting from it. *Gray v. Sanders*, 372 U.S. 368, 378 (1963) ("The inclusion of the electoral college in the Constitution, as a result of specific historical concerns, validated the collegiate principle despite its inherent numerical inequality. . . . "); *see also* at 380 ("[T]he only weighing of votes sanctioned by the Constitution concerns . . . the use of the electoral college in the choice of a President."); *Bush v. Gore*, 531 U.S. 98, 104 (2000) ("The individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the Electoral College.").

Although Plaintiff argues that the Twelfth Amendment was "overruled" by the Fifth and Fourteenth Amendments, Appellant's Opening Brief (AOB) at 6,

the district court in *New v. Pelosi*[2] explained the fundamental flaw in this argument:

> Ultimately, this Court lacks the power to grant the relief sought because the Court, as interpreter and enforcer of the words of the Constitution, is not empowered to strike the document's text on the basis that it is offensive to itself or is in some way internally inconsistent. In other words, the electoral college cannot be questioned constitutionally because it is established by the Constitution.

2008 WL 4755414, at *2 (internal quotation omitted). Other courts are in agreement. *See, e.g., New v. Ashcroft*, 293 F. Supp. 2d 256, 259 (E.D.N.Y. 2003) (ruling that a complaint seeking to invalidate the Electoral College failed to state a viable claim for relief); *Trinsey v. United States*, No. 00-5700, 2000 WL 1871697, at *7 (E.D. Pa. Dec. 21, 2000) (unpublished) ("neither the Constitution nor the 'one person, one vote' doctrine . . . empowers the courts to overrule constitutionally mandated procedure in the event that the vote of the electors is contrary to the popular vote"); *Penton v. Humphrey*, 264 F. Supp. 250, 251 (S.D. Miss. 1967) (ruling that "the alleged inequities of the electoral college are an exception of the application of [the one person, one vote] doctrine"); *see generally Williams v. North Carolina*, No. 3:17-CV-265-MOC-DCK, 2017 WL 4936429, at *4-5 (W.D.N.C. Oct. 2, 2017) (collecting cases), *report and recommendation adopted*, 2017 WL 4935858 (W.D.N.C.

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[2] No. 08 Civ. 9055 (AKH), 2008 WL 4755414 (S.D.N.Y. Oct. 29, 2008), *aff'd*, 374 F. App'x 158 (2d Cir. 2010) (unpublished).

Oct. 31, 2017), *aff'd sub nom. Williams v. NC State Bd. of Elections*, 719 F. App'x 256 (4th Cir. 2018) (unpublished).[3]

In sum, the Electoral College is part of the Constitution and, therefore, is constitutional. The district court properly dismissed Plaintiffs complaint.

C. The Court Lacks Subject Matter Jurisdiction Over Plaintiff's Complaint (Fed. R. Civ. Pro. 12(b)(1))

Defendants raised lack of subject matter jurisdiction as a basis for dismissal in the district court. ER 29-32. The district court did not reach the issue because it dismissed the case on other grounds. SER 7, n.2. But this Court may affirm the dismissal of Plaintiffs complaint on this alternative ground. *See Li*, 710 F.3d at 999.[4]

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[3] Plaintiff also argues that the Twelfth Amendment violates the 1948 Universal Declaration of Human Rights, ratified in 1992 by the International Covenant on Civil and Political Rights treaty. AOB 6. This argument does not advance Plaintiff's case. Like statutes, treaties must comply with the Constitution. *See Reid v. Coventry*, 354 U.S. 1, 18 (1957) ("It would be completely anomalous to say that a treaty need not comply with the Constitution when such an agreement can be overridden by a statute that must conform to that instrument.").

[4] Subject matter jurisdiction may be raised by any party at any stage of the proceedings. *Intercontinental Travel Marketing, Inc. v. FDIC*, 45 F.3d 1278, 1286 (9th Cir. 1994) ("an objection to subject matter jurisdiction may be raised at any time, by any party or the court.").

1. Plaintiff Lacks Standing

The existence of Article III standing is a threshold determination concerning "whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). To seek relief in federal court, a plaintiff "must first demonstrate that he has standing to do so." *Gill v. Whitford*, 138 S. Ct. 1916, 1923 (2018). *See also Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 104 (1998) ("[T]he party invoking federal jurisdiction bears the burden of establishing its existence."); *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342, n.3 (2006) ("[W]e presume that federal courts lack jurisdiction unless the contrary appears affirmatively from the record.") (quoting *Renne v. Geary*, 501 U.S. 312, 316 (1991)).

Standing requires an "irreducible constitutional minimum" of three elements: (1) a concrete and particularized injury in fact; (2) an injury fairly traceable to the defendant's alleged unlawful conduct; and (3) the injury is likely to be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). If any one of these elements is not satisfied, then a federal court cannot invoke its jurisdiction and must dismiss the case. *Id.*

Here, Plaintiff cannot establish either the first or second element of standing.

a. Plaintiff Did Not Suffer a Concrete and Particularized Injury

To satisfy the "concrete and particularized injury" requirement, a plaintiff must establish "a personal stake' in the outcome, . . . distinct from a generally

available grievance about the government." *Gill v. Whitford*, 138 S.Ct. at 1923 (internal citation and quotation omitted). *See also id.* at 1929 ("[A] plaintiff may not invoke federal-court jurisdiction unless he can show 'a personal stake in the outcome of the controversy. . . . A federal court is not 'a forum for generalized grievances'. . . . "); *DaimlerChrysler Corp*, 547 U.S. at 344 (a grievance that a "taxpayer suffers in some indefinite way in common with people generally" is not "concrete and particularized").

Plaintiff's complaint fails to establish his personal stake in the Electoral College. Plaintiff is neither an elector in the Electoral College nor a candidate subject to its vote. Instead, Plaintiff asserts only a generalized grievance applicable to all voters: the candidate for whom one votes may win the popular vote, but lose in the Electoral College. *See, e.g.*, ER 39-40, ¶ 8 (alleging dilution of the votes of all Clinton voters generally and, further, that "over 99.8% of the voters in the U.S.A. have our votes diluted compared to, and by, [Wyoming] voters"); *see also* AOB 2 (explaining that Plaintiff's vote was weakened along with the votes of all of "those who voted for Clinton in CA, and all those who voted for her in the nation's vote."); AOB 4 (alleging a violation of "the citizens' of the USA's Human and Constitutional rights to 'universal and equal suffrage'"); AOB 13-14 ("[T]he only remedy for . . . every voter in our nation except for the 174,419 residents of Wyoming who voted for TRUMP, is for this Court to name Hillary Clinton President of the United States, immediately."). Plaintiff's generalized grievance is insufficient to satisfy the "concrete and particularized injury" element of standing. *See Drake v. Obama*, 664 F.3d 774, 782

(9th Cir. 2011) (a voter who "has no greater stake in [the] lawsuit than any other United States citizen" lacks standing to challenge constitutional legitimacy of presidency); *see also Collins v. Merrill*, No. 16-cv-9375 (RJS), 2016 WL 7176651, at *2 (S.D.N.Y Dec. 7, 2016) (unpublished) (ruling that plaintiff lacked standing to seek injunctive relief barring defendants from certifying the results of the 2016 Electoral College; "the complaint is premised entirely on alleged injuries that Plaintiff shares with the general voting population. . . . ").

b. Any Injury is Not Fairly Traceable to Either Chief Justice Roberts or President Trump

To satisfy the second element of standing, a plaintiff must show that the alleged injury is "fairly traceable to the challenged action of the defendant, and not . . . the result of the independent action of some third party not before the court." *Pritikin v. Dep't of Energy*, 254 F.3d 791, 797 (9th Cir. 2001) (citing *Defenders of Wildlife*, 504 U.S. at 560-61. Further, a plaintiff must suffer a personal injury "as a result of the putatively illegal conduct of the defendant." *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 472 (1982) (quoting *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 99 (1979)).

Purely ministerial actions do not give rise to an injury that is "fairly traceable" to the individual performing the ministerial act. *See, e.g., Gordon v. Biden*, 606 F. Supp. 2d 11, 14 (D.D.C. 2009) (dismissing an Electoral College suit against the Vice President

for lack of standing; "[b]ecause Gordon's alleged injury is not 'fairly traceable' to the Vice President's actions, which in fact are purely ministerial, but rather is attributable to the actions of third-party states and state officials, he fails to satisfy the causation element of standing."), aff'd, 364 F. App'x 651 (D.C. Cir. 2010) (unpublished).

Plaintiff's complaint here named Chief Justice Roberts and President Trump as defendants. ER 37. But neither Chief Justice Roberts nor President Trump caused Plaintiff's alleged injury-they did not create the Electoral College, they are not members of it, they neither preside nor have any authority over it, and they have no power to change it. Instead, and as alleged in Plaintiff's complaint, their only role in the process was to perform the ministerial actions of administering (Chief Justice Roberts) and receiving (President Trump) the oath of office. ER 38, 40-41, 43 (¶¶ 2, 10-12, 16-18). Because Chief Justice Roberts' and President Trump's actions were purely ministerial, Plaintiff's complaint does not satisfy the "fairly traceable" requirement. Plaintiff therefore cannot establish the causation element of standing. *See, e.g., Perkel v. United States*, No. C00-4288 SI, 2001 WL 58964, at *2 (N.D. Cal. Jan. 9, 2001) (dismissing a challenge to the Electoral College for lack of standing because the alleged harm did not flow from the actions of the United States, the only defendant named in the complaint).

2. Plaintiffs Case is Moot

Article III requires that a live controversy "must exist at all stages of the litigation, including appellate review, and not simply at the date the

action is initiated." *McCullough v. Graber*, 726 F.3d 1057, 1059 (9th Cir. 2013) (internal quotations omitted). If at any point some event renders the controversy moot, the Court lacks jurisdiction and must dismiss the case. *See Center for Biological Diversity v. Lohn*, 511 F.3d 960, 963 (9th Cir. 2007).

Plaintiff's complaint seeks (1) to enjoin the inauguration of President Trump, and (2) a declaration that the Electoral College is unconstitutional. ER 44. Both prayers for relief are moot.

a. Plaintiffs Request for Injunctive Relief is Moot

Plaintiff did not file his complaint until January 19, 2017, the day before the January 20, 2017 inauguration, ER 37, and did not serve his complaint until April 12, 2017, almost four months later. Clerk's Record Nos. 5-8. Because the inauguration has already taken place, Plaintiff's request to enjoin it is moot. *Protectmarriage.com-Yes on 8 v. Bowen*, 752 F.3d 827, 834 (9th Cir. 2014) ("We are unable to effectively remedy a present controversy between the parties where a plaintiff seeks to enjoin an activity that has already occurred, and we cannot 'undo' that action's allegedly harmful effects.").

b. Plaintiffs Request for Declaratory Relief Is Moot

Plaintiff's request for declaratory relief is also moot. As this Court has held, the mootness doctrine applies equally to requests for declaratory relief: "A case or controversy exists justifying declaratory relief only when the challenged government activity is not contingent, has not evaporated or disappeared, and

by its continuing and brooding presence, casts what may well be a substantial adverse effect on the interests of the petitioning parties." *Pinnacle Armor, Inc. v. United States*, 648 F.3d 708, 715 (9th Cir. 2011) (quoting *Headwaters, Inc. v. Bureau of Land Management*, 893 F.2d 1012, 1015 (9th Cir. 1989)).

Here, President Trump prevailed in the Electoral College and assumed the presidency on January 20, 2018. At this point, there is no sufficiently immediate dispute involving Chief Justice Roberts and President Trump that warrants requiring them to answer to the continuing vitality of the Twelfth Amendment in future elections. Plaintiff's request for declaratory relief therefore is moot. *See Gator.com Corp. v. L.L. Bean, Inc.*, 398 F.3d 1125, 1129 (9th Cir. 2005) ("The limitations that Article III imposes upon federal court jurisdiction are not relaxed in the declaratory judgment context . . . . The test for mootness in the context of a case . . . in which a plaintiff seeks declaratory relief . . . is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.") (internal citations and quotations omitted); *Alvarez v. Smith*, 558 U.S. 87, 93 (2009) ("[A] dispute solely about the meaning of a law, abstracted from any concrete actual or threatened harm, falls outside the scope of the constitutional words 'Cases' and 'Controversies.'").

CONCLUSION

For the foregoing reasons, Defendants Chief Justice Roberts and President Trump respectfully

request that the Court affirm the district court's dismissal of Plaintiff's complaint.

Respectfully submitted,

Adam L. Braverman
United States Attorney

Katherine L. Parker
Assistant U.S. Attorney
Chief, Civil Division

/s/ Daniel E. Butcher
Assistant U.S. Attorney

July 13, 2018

REPLY TO DEFENDANT-APPELLEES' ANSWERING BRIEF (AUGUST 6, 2018)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FREDERIC C. SCHULTZ, ESQ., AN INDIVIDUAL,

Plaintiff-Appellant,

v.

JOHN G. ROBERTS, JR., ESQ.
CHIEF JUSTICE OF THE UNITED STATES and
DONALD J. TRUMP, "PRESIDENT" OF THE
UNITED STATES OF AMERICA,

Defendant-Appellees.

Case No.:17-56852

D.C. Case No: 17-CV-0097-WQH-KSC

SUMMARY OF ARGUMENT

PLAINTIFF FREDERIC CHARLES SCHULTZ'S, ESQ. (HEREINAFTER "SCHULTZ") CONSTITUTIONAL AND HUMAN RIGHTS, AS A CITIZEN OF THE UNITED STATES OF AMERICA, WERE VIOLATED WHEN HE VOTED IN THE 2016 ELECTION FOR HILLARY CLINTON IN THE STATE OF CALIFORNIA, SOLELY BECAUSE HE LIVES IN THE STATE OF CALIFORNIA. WHEN ALLO-

CATED ON A BASIS OF CITIZENS PER ELECTOR, SCHULTZ, AS A CITIZEN OF CALIFORNIA, ONLY RECEIVED 29% OF THE VOTE OF A US CITIZEN LIVING IN THE STATE OF WYOMING.

THE SUPREME COURT HAS REPEATEDLY HELD THAT THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT APPLIES TO ALL CITIZENS OF THE USA, PROTECTING US NOT JUST FROM HARM BY THE STATES BUT HARM BY THE FEDERAL GOVERNMENT, AS APPLIED THROUGH THE "DUE PROCESS" CLAUSE OF THE 5TH AMENDMENT. DEFENDANT'S ARGUMENT THAT JUST BECAUSE SOMETHING IS IN THE CONSTITUTION MAKES IT CONSTITUTIONAL IS ABSURD. THE 14TH AMENDMENT, PASSED IN 1868 (AFTER THE CIVIL WAR) OVERTURNED THE 12TH AMENDMENT'S ELECTORAL "COLLEGE" SYSTEM (1804) BECAUSE IT DENIED SCHULTZ THE EQUAL PROTECTION OF THE LAW, SPECIFICALLY HIS RIGHT TO VOTE, AND TO BE GOVERNED BY WHO HE HELPED ELECT, ON WHICH ALL OUR OTHER RIGHTS RELY. FURTHERMORE, THE SENATE AND THE PRESIDENT IN 1992 CODIFIED THE UNIVERSAL DECLARATION OF HUMAN RIGHTS BY PASSING THE INTL. COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) TREATY, GUARANTEEING OUR NATION WILL PROTECT OUR CITIZENS' RIGHTS TO "UNIVERSAL AND EQUAL SUFFRAGE". SCHULTZ NOW REQUESTS THAT THIS COURT REVERSE THE TRAVESTY OF THE 2016 ELECTION, WHICH LIKE 4 OTHER PREVIOUS ELECTIONS, STOLE OUR RIGHT TO VOTE BY DILUTING OUR CA CITIZENS' VOTE

TO 29% OF THOSE OF THE PEOPLE OF WYOMING, AND ENFORCE THE RESULTS OF THE 2016 ELECTION, WEIGHING HIS VOTE AND ALL AMERICAN'S VOTES EQUALLY, AND DIRECT CHIEF JUSTICE ROBERTS TO RETRACT HIS SWEARING IN OF DONALD TRUMP ("TRUMP") AS PRESIDENT, AND DIRECT HIM TO SWEAR IN HILLARY CLINTON INSTEAD AS SHE WON, AND FURTHERMORE DIRECT "PRESIDENT" DONALD TRUMP TO RESIGN SO SCHULTZ AND ALL USA CITIZENS CAN BE GOVERNED BY WHO WE ELECTED, HILLARY CLINTON, WHEN SCHULTZ'S AND ALL CITIZENS VOTES ARE WEIGHTED EQUALLY, AS REQUIRED BY THE 14TH AMENDMENT AND THE ICCPR TREATY (1992).

1) **Defendants Argue "If Something Is in the Constitution, It Is Constitutional"**

This argument is specious, and absurd. Courts have ruled parts of our Constitution Unconstitutional for hundreds of years due to current interpretation of the Constitution, statutes, treaties and case law, or subsequent Constitutional Amendments. When America's founders wrote the Constitution, many of them owned slaves, who certainly couldn't vote. Only landowners could vote at first. Women and former slaves only gained the right to vote through subsequent Constitutional Amendments, because although the courts could have granted them their rights to citizenship and to vote without passing specific Constitutional Amendments, the courts did not. However, for example, the Courts did grant non-landowning men and then Native Americans the right to vote through case law, not constitutional amendment. As SCHULTZ explained in his opening appellate brief

(pp. 9-10), the 14th Amendment itself has already been used by the Supreme Court to overturn the 11th Amendment, to enforce the Civil Rights Act of 1964's ban on discrimination by states based on "gender or race", and SCHULTZ here requests this Court similarly use the 14th Amendment to overturn the 12th Amendment as being violative of our Equal Protection rights to an equal vote.

In response to SCHULTZ'S argument that the 14th Amendment is part of the Constitution, and overrules the earlier-passed 12th Amendment in its dilution, thus theft, of SCHULTZ's AND 66 million Americans, and almost 9 million USA citizens living in CA's, votes who voted for Clinton in the last election, Defendants argue that because the 12th Amendment is in the Constitution, it can't be overruled by other parts of the Constitution, like the 14th Amendment. Defendants quote *New v. Pelosi*, Case No. 1:08-cv-09055, SDNY 2008, to argue "Ultimately, this Court lacks the power to grant the relief sought because the Court, as interpreter and enforcer of the words of the Constitution, is not empowered to strike the document's text on the basis that it is offensive to itself or is in some way internally inconsistent. In other words, the electoral college cannot be questioned constitutionally because it is established by the Constitution." (p. 9, Defendants' Appellate Reply) and other similar cases to argue "the Electoral College is part of the Constitution and, therefore, is constitutional." (p. 10, Defendants' Appellate Reply).

If Defendants' argument held any credence, slavery and prohibition of alcohol would still be legal, as both were fixed by later Constitutional Amendments. Later Constitutional Amendments overrule

earlier ones, and the 14th Amendment, as confirmed in case law declaring our rights to an equal vote (*Baker v. Carr*, *Reynolds v. Sims*, etc.) and in the ICCPR treaty, overrules the 12th Amendment which steals that human right to democracy.

Defendants argue that this issue is settled, that citizens who live in more populous states like SCHULTZ are not due an equal vote for president to those in less populous states.

As the great hero Abolitionist Frederick Douglass stated after the infamous Dred Scott Decision (1857) to the contention that it was settled law that former slaves could not be citizens, "The fact is, the more the question has been settled, the more it has needed settling." The citizens of our more populous states have suffered long enough having our votes diluted, thus stolen (*Reynolds v. Sims*), and it is time for this Court to stand up for SCHULTZ's and all of our constitutionally protected human rights, as citizens of the USA, to an equal vote and democracy, and enforce the 14th Amendment and stop diluting our votes and overturn the false results of the 2016 election and declare Hillary Clinton President.

2) The International Covenant on Civil and Political Rights (ICCPR) Treaty (1992, USA), Codifying the United Nations' Universal Declaration of Human Rights (UN UDHR, 1948), Guaranteeing Schultz and All Americans an Equal Vote, and Thus the Right to Be Governed by Who We Elected for President in 2016, Hillary Clinton, Is the Law of the Land

Treaties hold equal weight to legislation, at least, and as the esteemed Justice Oliver Wendell

Holmes held, equal weight to the Constitution. As Defendants concede, US treaties must conform to the US Constitution. This one does, that's why the Congress enacted it, and President George H. W. Bush signed it, in 1992. SCHULTZ now requests that the Court finally enforce it, and stop the USA's status as the only nation in the world professing to be a democracy that dilutes its citizens' votes who live in more populous states by up to over 3x those who live in rural or less populous states, creating a tyranny and dictatorship of the minority, not a democracy run by majority rule that respects and defends all our citizens' and everyone in the worlds' human rights, including first and foremost the right to an equal vote, and to be governed and judged by who we elected, upon which all our other rights, including our very right to life, freedom, due process, and certainly equal protection, rely.

President Jimmy Carter, when he originally sent the Treaty to the USA Senate for ratification in 1978, explained its importance to protecting our human rights, including our right to participate in our government, stating, "While the [U.S.] is a leader in the realization and protection of human rights, it is one of the few large nations that has [sic] not become a party to . . . [this Covenant and the other two U.N. treaties he transmitted]. Our failure to become a party increasingly reflects upon our attainments, and prejudices [U.S.] participation in the development of the international law of human rights. [This Covenant is] . . . based upon the Universal Declaration of Human Rights, in whose conception, formulation and adoption the [U.S.] played a central role. . . . [This Covenant] treats in detail a wide range of civil and politi-

cal rights. Freedom of speech and thought, participation in government, and others are included which Americans have always considered vital to a free, open and humane society." (Emphasis added.) https://dwkcommentaries.com/2013/02/05/u-s-ratification-of-the-international-covenant-on-civil-and-political-rights/

President Carter then went on to confirm that the UDHR (famously championed by First Lady Eleanor Roosevelt in 1948 to prevent another World War) and ICCPR Treaty, including the provisions protecting our rights to "universal and equal suffrage", were in full compliance with the US Constitution, according to the Department of Justice, stating: "The great majority of the substantive provisions of [this Covenant] are entirely consistent with the letter and spirit of the [U.S.] Constitution and laws. Wherever a provision is in conflict with [U.S.] law, a reservation, understanding or declaration has been recommended. The Department of Justice concurs in the judgment of the Department of State that, with the inclusion of these reservations, understandings and declarations, there are no constitutional or other legal obstacles to [U.S.] ratification." (Emphasis added). https://dwkcommentaries.com/2013/02/05/u-s-ratification-of-the-international-covenant-on-civil-and-political-rights/ President George H.W. Bush, when he sent the treaty to the Senate for ratification and when he signed it, similarly did not object to the provision guaranteeing us an equal vote, nor did the Senate. They promised to uphold our rights, and here SCHULTZ only requests that this court finally do so and enforce our human rights to an equal vote, and to be governed by who we elected in the 2016 election by over 3 million votes, Hillary Rodham Clinton.

3) Subject Matter Jurisdiction (Standing and Mootness):

The Lower Court declined to address these arguments in prior litigation. If this court wishes to decide on this basis, it should remand for further consideration by the District Court.

Prayer for Relief:

The Supreme Court so eloquently stated in the Civil Rights landmark case *Reynolds v Sims* (1964), written by the esteemed Chief Justice Earl Warren, "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. . . . A citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm. This is the clear and strong command of our Constitution's Equal Protection Clause. This is an essential part of the concept of a government of laws and not men. This is at the heart of Lincoln's vision of "government of the people, by the people, [and] for the people." The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races. . . .

We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State."

Just as we have equal rights to an equal vote in state elections, we have them in presidential elections, where our right to choose, and be governed by who we elected, is so much more important than state elections that our democracy, freedom, and very lives are now in great jeopardy.

SCHULTZ respectfully requests that the Court declare Hillary Clinton president because she won the 2016 election by almost 3 million USA citizen's votes, and therefore direct Chief Justice of the USA Supreme Court JOHN ROBERTS to uphold his oath to "support and defend the Constitution of the United States against all enemies, foreign and domestic" by rescinding his oath of office of president to Donald Trump, as his issuance of such an oath in January 2017 violated his oath and Schultz's and all our citizens', including those living in CA + similarly populous states, rights to an equal vote by swearing him in in 2017, and our right to be governed and judged by who we elected, as Defendant TRUMP lost the election by almost 3 million votes, and thus is not legally or morally president of the United States. Plaintiff SCHULTZ thus further requests that the Court also direct Defendant Donald Trump to revoke Defendant TRUMP'S oath of office because he was not elected, and finally requests that the Court direct USA Chief Justice Roberts to immediately swear in Hillary Rodham Clinton, as she won the 2016 election by almost three million votes. Doing so is the only way to right the wrong of the diluted, thus stolen, votes. (*Reynolds v. Sims*, "[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." 377

U.S. at 555, 84 S. Ct. at 1378, (footnote omitted)). Votes of SCHULTZ and the 66 million others, including almost 9 million Californians, who voted for Clinton in the last presidential election were weakened, thus stolen, and our human rights to an equal vote to citizens living in less populous states crushed by the illegal vote of the Electors to award the presidency to Defendant TRUMP even though he lost the election by almost 3 million votes. SCHULTZ requests that this Court treat the electoral "college's" vote-diluting and thus vote-stealing election as detailed in the 12th Amendment to be the same as ballot stuffing and, as *Donohue v. Board of Elections of NY*, 435 F. Supp 957 (E.D.N.Y. 1976) confirms it has the power and responsibility to do, install the winner in power. As the Court in *Donohue* states,: "Thus, while *Reynolds v. Sims* was a case involving reapportionment, there appears to be little distinction, insofar as the fourteenth amendment is concerned, between dilution of a citizen's vote through malapportioned political districts and dilution of valid ballots through votes cast by ineligible voters. . . . The point, however, is not that ordering a new Presidential election in New York State is beyond the equity jurisdiction of the federal courts. Protecting the integrity of elections particularly Presidential contests is essential to a free and democratic society. *See US. v. Classic supra.* [313 U.S. 299 (1941)]. It is difficult to imagine a more damaging blow to public confidence in the electoral process than the election of a President whose margin of victory was provided by fraudulent registration or voting, ballot-stuffing or other illegal means. (Emphasis added) . . . The fact that a national election might require judicial intervention, concomitantly implicating the interests of the entire nation, if anything,

militates in favor of interpreting the equity jurisdiction of the federal courts to include challenges to Presidential elections." The remedy in *DONOHUE* would have been to call for a new election only if it was impossible to distinguish between real and false ballots. In this case, the correct count is known: 66m for Clinton, 63 million for Defendant TRUMP, who illegally accepted the oath of office of President despite the fact he lost the election by almost 3 million votes. The correct relief would be simply to declare Hillary Clinton the real president, because she won the election.

Plaintiff SCHULTZ simply requests that this court entertain this challenge and implement the will of the people and thus overturn the Electoral "college" vote that diluted and thus stole Plaintiff SCHULTZ's and 66 million other American's votes and thus does not express the true will of the American people, and instead to uphold and finally enforce, immediately, before it is too late, our human and constitutional rights to live in a democracy, which means to have our votes counted equally, and to be governed by who we elected in 2016, Hillary Rodham Clinton, and also to protect our right to live in a constitutional democracy in the future and not have our votes ever diluted, thus stolen, ever again.

Finally, Plaintiff SCHULTZ requests that this court treat the 2016 election as any other that was illegally stolen, and enforce our right to be governed by whom and how we choose, while protecting our human and constitutional rights, and, under the ancient legal theory of "AB INITIO", to hereby revoke and declare null and void any and all policies implemented and people appointed to government positions

by Defendant TRUMP, as they were not appointed by Hillary Clinton, who is the real president because she won the election. Furthermore, under the principle of "AB INITIO", SCHULTZ requests that this court put things back how they were before this illegal unjust seizure of power without election by our citizens, and declare all judicial appointments and confirmations null and void, and direct that any cases heard by such illegally appointed "judges" appointed by the unelected Defendant TRUMP to be reheard and newly decided. Please.

The US Constitution, in Amendment 9, "RIGHTS RETAINED BY THE PEOPLE", states, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." We have the right to an equal vote, and to be governed by who we elected. Please listen to the Founders' admonition and don't try to use the 12th Amendment to steal our human, civil, and constitutional rights to have an equal vote and to live in a democracy. Please finally enforce the will of the people in the 2016 Presidential election and appoint Hillary Clinton President, immediately, as our all our freedoms, rights, democracy, and very lives are at stake.

Thank you.

Respectfully Submitted,

/s/ Frederic C. Schultz, Esq.
Pro Se Plaintiff-Appellee

8/6/2017

VOTER DILUTION RECORD

Vote Dilution, per state, based on 2010 Census, which applies to 2012, 2016, 2020

elections:
"*"=Proportional voting

State: voter	Elec-tors	Popula-tion	Popula-tion/Elector=WY	voter	% of WY
AL	9	4,779,736	531,082	2.73x	37%
AK	3	710,231	236,744	1.22x	82%
AZ	11	6,392,017	581,093	2.99x	33%
AR	6	2,915,918	485,987	2.5x	40%
CA	55	37,253,956	677,344	3.48x	29%
CO	9	5,029,196	558,800	2.87x	35%
CT	7	3,574,097	510,586	2.62x	38%
DE	3	897,934	299,312	1.54x	65%
DC	3	601,723	200,575	1.03x	97%
FLA	29	18,801,310	648,322	3.33x	30%
GA	16	9,687,653	605,479	3.11x	32%
HI	4	1,360,301	340,076	1.75	57%
ID	4	1,567,582	391,896	2.01x	50%
IL	20	12,830,632	641,532	3.30x	30%
IN	11	6,483,802	589,437	3.03x	33%
IA	6	3,046,355	507,726	2.61x	38%
KS	6	2,853,118	475,520	2.44x	41%

KY	8	4,339,367	542,421	2.79x	36%
LA	8	4,533,372	566,672	2.91X	34%
*ME	4	1,328,361	332,091	1.71x	59%
MD	10	5,773,552	577,356	2.97x	34%
MA	11	6,547,629	595,239	3.06x	33%
MI	16	9,883,640	617,728	3.18x	31%
MN	10	5,303,925	530,393	2.73x	37%
MS	6	2.967,297	494,550	2.54x	39%
MO	10	5,988,927	598,893	3.08x	32%
MT	3	989,415	329,805	1.70x	59%
*NB	5	1,826,341	365,269	1.88x	53%
NV	6	2,700,551	450,092	2.31x	43%
NH	4	1,316,470	329,118	3.23x	59%
NJ	14	8,791,894	627,993	3.23x	31%
NM	5	2,059,179	411,836	2.12x	47%
NY	29	19,378,102	668,211	3.44x	29%
NC	15	9,535,483	635,699	3.27x	31%
ND	3	672,591	224,197	1.15x	87%
OH	18	11,536,504	640,917	3.29x	30%
OK	7	3,751,351	535,908	2.75x	36%
OR	7	3,831,074	547,297	2.81x	36%
PA	20	12,702,379	635,119	3.26x	31%
RI	4	1,052,567	263,142	1.35x	74%
SC	9	4,625,364	513,930	2.64x	38%

SD	3	814,180	271,394	1.40x	72%
TN	11	6,346,105	576,919	2.97x	34%
TX	38	25,145,561	661,726	3.4x	29%
UT	6	2,763,885	460,648	2.37x	42%
VM	3	625,741	208,581	1.07x	93%
VA	13	8,001,024	615,464	3.16x	32%
WA	12	6,724,540	560,379	2.88x	35%
WV	5	1.852,994	370,599	1.90x	52%
WI	10	5,686,986	568,699	2.92x	34%
WY	3	583,626	194,542	1.00x	100%

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August 27, 2019

Clerk of the Court
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

Re: *Frederic C. Schultz v. John G. Roberts and Donald J. Trump*, Dkt. TBD

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