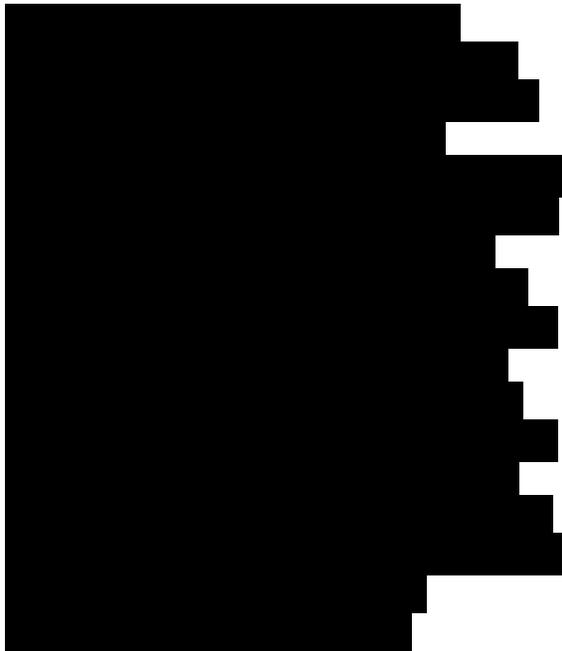


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7 ATTORNEYS FOR PLAINTIFFS

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10 SACRAMENTO DIVISION

11 CITIZENS FOR FAIR REPRESENTATION;  
12 

Case No.: 2:17-cv-00973-KJM-CMK

**FIRST AMENDED COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE  
RELIEF FOR MISAPPORTIONMENT  
AND UNCONSTITUTIONAL VOTE  
DILUTION & ABRIDGMENT  
IN THE CALIFORNIA  
ASSEMBLY & STATE SENATE**

**REQUEST FOR A THREE JUDGE PANEL  
UNDER 28 U.S.C. 2284(a)**

**DEMAND FOR A JURY TRIAL ON ALL  
FACTUAL MATTERS**

13 Plaintiff,  
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23 vs.

24 SECRETARY OF STATE ALEX PADILLA,  
25

26 Defendant.  
27

**INTRODUCTION**

1  
2 The great experiment and promise of Independence - “We The People” – launched the  
3 American Revolution that led to The United States of America, which was based on the  
4 fundamental founding principles of “No taxation, without Representation” and “Give me  
5 Liberty, or give me death.” Sadly, the paramount principle of representative government - that  
6 the people themselves provide the basis for governmental sovereignty and legitimacy - has been  
7 abridged by California.  
8

9 This neglect of “We the People” as the organic basis for this nation’s self-governance  
10 stems from the cap California placed on the number of Senators (at 40 in 1862) and Assembly  
11 Members (at 80 in 1854) - when the population of the State was less than 420,000 people. This  
12 arbitrary cap has created an oligarchy contrary to representative self-governance because the  
13 same number of legislators (120 total) now purports to represent California’s present population  
14 of almost 40,000,000 people. By any metric - this is impossible; 120 legislators cannot possibly  
15 represent forty million people in any effective or meaningful way.<sup>1</sup>  
16

17 Since the end of the Civil War, the United States has consistently strengthened its  
18 commitment to a representative form of self-governance at both the Federal and State levels.  
19 California's refusal to increase its levels of legislative representation to reflect its exponential  
20 population growth is both arbitrary and unconstitutional.  
21

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22  
23 <sup>1</sup> 155 years and over 35,500,000 residents added to California’s population - yet the California  
24 government did not see fit to add - a single representative. Almost 30 years ago former Speaker  
25 of the Assembly (1969-71) Robert T. Monagan warned and put on notice his colleagues of this  
26 grave problem with his book *The Disappearance of Representative Government: A California  
27 Solution* (1990) - <https://www.amazon.com/Robert-T.-Monagan/e/B001KCGFY2>. See also  
28 Proposition 140 (1990), California Constitution , Article IV, Section 1.5 - Limits on Terms of  
Office - ¶ 1070 - *infra*.

1 As a consequence, the premise of the People’s right to participate in meaningful  
2 self-governance under the federal structure of the compound republic known as the United States  
3 has been abandoned. California elections are effectively “purchased” by candidates who are in  
4 the service of the two major parties and no longer represent the people.

5  
6 For the purpose of this complaint “self-governance” is defined to mean the privilege  
7 and/or the right: a) to take part in the conduct of public affairs in California, directly or through  
8 freely chosen representatives in the California legislature; b) to a meaningful and equal  
9 opportunity, without regard to wealth, to be elected or to elect others to represent them in the  
10 California legislature through genuine periodic elections, which are by universal and equal  
11 suffrage that guarantee the free expression of the will of the voters; c) to reasonably equal voting  
12 rights among United States citizens in the various States, which are not arbitrarily determined,  
13 diluted or abridged; and d) to a meaningful opportunity, under general conditions of equality, to  
14 access one’s actual legislative representatives, rather than just his or her staff members, to  
15 engage in such political speech and the right to Petition for redress of grievances (without  
16 retaliation) as was/is contemplated and protected by the First Amendment to the United States  
17 Constitution.  
18

19  
20 **I. PARTIES**

21 1.1. This case is brought by multiple California plaintiffs all of whom are members of  
22 Citizens for Fair Representation (“CFR”), a nonprofit corporation. CFR provides education and  
23 help to those seeking to understand, obtain, and restore the value of each citizen’s vote and the  
24 right of the people to meaningful self governance. Each of the plaintiffs of CFR will be more  
25 fully described in the last part of the Fact section of this First Amended Complaint (herein after  
26

1 referred to as FAC). Plaintiffs are not as they have been portrayed in the national media as  
2 simply Northern California rural farmers and ranchers who have an axe to grind against LA<sup>2</sup>.  
3 Plaintiffs are a diverse group of people, municipalities, political parties, and organizations, which  
4 exist throughout all areas of the State, who understand that California has intentionally abridged  
5 the voting rights of all citizens of the United States, and the rights of all people of California, to  
6 self governance so that an oligarchy can control California.  
7

8 1.2. Alex Padilla, the defendant, is the elected Secretary of the State of California and in that  
9 capacity has duties to oversee the election laws of California. These duties include without  
10 limitation, the responsibility to conduct fair elections which ensure compliance with plaintiffs'  
11 rights under the United States Constitution (including amendments thereto), applicable statutes  
12 and treaties, and those norms of international law to which civilized nations in 2017 subscribe.  
13

14 1.3. Plaintiffs allege Defendant Padilla has violated the duties of his office as set forth in the  
15 preceding paragraph and accordingly bring this action against Secretary of State Padilla in both  
16 his individual and official capacities pursuant to 42 U.S.C. 1983 and other applicable law.  
17

## 18 **II. JURISDICTION, VENUE, & THREE (3) JUDGE PANEL**

19 2.1. This action arises under the U.S. Constitution, statutes enacted thereto, treaties enacted  
20

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21 <sup>2</sup> See e.g. Fuller, Thomas, New York Times, "[California's Far North Deplores 'Tyranny' of the](#)  
22 [Urban Majority](#)", (July 2, 2017); Pollak, Joel B., Breitbart, "[NYT: 'State of Jefferson' Still Mulls](#)  
23 [Independence from California](#)" (July 4, 2017); Greenhut, Steven, The American Spectator,  
24 "[California Watch: Hard-Pressed Rural Californians Try Civil Rights Approach](#)" (July 6, 2017).  
25 This case is not as the NYT and Breitbart suggest brought by a group of white North California  
26 secessionists to achieve their own selfish interests. Indeed in this regard, it is being amended add  
27 more plaintiffs to make clear Greenhut's point that this is a "civil rights case" which affects all  
28 California and citizens of the United States generally. It is about all people being able to  
participate in their own self governance in a constitutionally and legally adequate manner. See  
infra.

1 thereto, and customary international law.

2 2.2. Jurisdiction in this Court exists under 28 U.S.C. 1331 and 1343 (§§ 3 and 4).

3 2.3. Supplemental jurisdiction over State matters exists pursuant to 28 U.S.C. §1367(a).

4 2.4. Venue is proper under 28 U.S.C. §1391(b) because the majority of Plaintiffs exist in the  
5 Eastern District of California and the office of Defendant is located in Sacramento.

6 2.5. Plaintiffs request a district court of three-judges be convened because this action  
7 challenges the constitutionality of the apportionment of the statewide legislative bodies in  
8 California, specifically the California Assembly and Senate. *See* 28 U.S.C. §2284(a) *See also*  
9 [\*Shapiro v. McManus\*](#), 136 S. Ct. 450, 454-455, 193 L. Ed. 2d 279, 284-285 (2015) ([The  
10 requirement of a three judge panel is bolstered by 28 U.S.C.] §2284(b)(3)’s explicit command  
11 that [a] single judge shall not . . . enter judgment on the merits.” *Id.*

12 2.6. As the Court knows, defendant Padilla has filed a motion to dismiss plaintiff’s original  
13 complaint pursuant to Fed. R. Civ. Pro. 12(b)(6). Pursuant to this Court’s order, Dkt. 3, ¶ 5(d)  
14 and Dkt 3-1 ¶ 4(A), plaintiffs are amending their complaint to better clarify the legal issues  
15 raised by defendant’s motion, to add additional causes of action, and to add additional plaintiffs.

16 2.7. Defendants motion to dismiss pursuant to Fed. R. Civ. Pro. 12(b)(6) is ill advised. The  
17 Supreme Court has expressly rejected the notion that, "where the pleadings do not state a claim,  
18 then by definition they are insubstantial and so properly are subject to dismissal by the district  
19 court without convening a three-judge court." *Shapiro v. McManus*, 136 S. Ct. 450, 455 (2015).  
20 Indeed, the Court described the failure-to-state-a-claim standard as "both too demanding and  
21 inconsistent with our precedents," and it reiterated that "constitutional claims will not lightly be  
22 found insubstantial for purposes of the three-judge-court statute." *Id.* Accordingly, so much of  
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27

1 defendant Padilla’s motion to dismiss as is premised on the 12(b)(6) legal standard, as opposed  
2 to a lack of subject matter jurisdiction, should be promptly withdrawn so plaintiffs do not have to  
3 respond to it.

4 2.8. Plaintiffs first amended complaint demonstrates this Court must convene a 3-judge panel  
5 unless plaintiffs claims are legally speaking “non-existent” or “essentially fictitious.” When  
6 deciding whether a three-judge court must be convened, “all the district court must ‘determin[e]’  
7 is whether the ‘request for three judges’ is made in a case covered by § [2284\(a\)](#) -- no more, no  
8 less.” *Id.*, at 455 (quoting 28 U.S.C. § [2284\(b\)\(1\)](#). (alteration in original)

9 2.9. Once convened plaintiffs request the Court, via a three judge panel, grant plaintiffs  
10 equitable and/or declaratory apportionment relief decreasing the size of California’s Assembly  
11 districts to a point where each Assembly member in the California legislature will represent the  
12 same number of people within a range of 5,000 to 50,000.

13 2.10. Further plaintiffs request the Court, via a three judge panel, grant plaintiffs equitable  
14 and/or declaratory apportionment relief decreasing the size of California’s Senate districts to a  
15 point where each Senator in the California legislature will represent the same number of people  
16 within a range of 10,000 to 100,000.

17 2.11. Alternatively, if the Court, via a three judge panel, finds the relief requested in ¶¶ 2.9 &  
18 2.10 is not available, the plaintiffs request this Court penalize the State of California pursuant to  
19 Section 2 of the Fourteenth Amendment by requiring the number of California’s U.S. House  
20 members be reduced in proportion to the State’s abridgement of the people’s right to vote and  
21 participate in self governance in the California State legislature (*See* [2 U.S.C. § 6](#) a statutory  
22 provision legislatively enacted to enforce this remedy).

**III. JURY REQUEST**

3.1. Plaintiffs request a jury decide all issues of material fact and/or which they are entitled to have resolved by a jury pursuant to law.

**IV. FACTUAL ALLEGATIONS**

**A. FACTS REGARDING THE PEOPLE WHO RESIDE IN CALIFORNIA**

4.1. The California Department of Finance reports California’s population for January 1, 2017 is approximately 39,455,000.

4.2. The U.S. Census Bureau reports that as of 2010 the total number of people residing in California was a little over 37,000,000 people. According to the Census Bureau data 50% (18,517,830) of the people were males and 50% (18,736,126) were females.

4.3. Approximately 38% of California’s population are Caucasian.

4.4. Approximately 37% of California’s population is Hispanic.

4.5. Approximately 13% of California’s population is of Asian descent.

4.6. Approximately 10.6% of California’s population is over 65 years of age.

4.7. Approximately 12.6 % of California’s population is disabled.

4.8. Approximately 6% of California’s population is African-American.

4.9. Less than 2% of California’s population is indigenous and includes Native American Indians.

**B. FACTS REGARDING CALIFORNIA’S CURRENT STATE LEGISLATORS**

5.1. Since 1862 the people of California have been represented by 40 Senators.

5.2. As of today 78% (31) of the Senators are men, and 22% (9) are women. 78% (31) of the

1 Senators are Caucasian, 12.5% (5) are Hispanic; 5% (2) are Asian/Pacific Islander, and 5% (2)  
2 are African American. On information and belief no Senators are disabled. On information and  
3 belief no Native American Indians have ever been elected to the California Senate  
4 notwithstanding they once comprised the largest group of people living in California.

5  
6 5.3. Since 1854 the people of California have been represented by 80 Assembly members. As  
7 of today 79% (63) of the Assembly members are men and 21% (17) are women. 46% (37) of the  
8 Assembly members are Caucasian, 28% (22) are Hispanic; 14% (11) are Asian/Pacific Islander,  
9 and 10% (8) are African American. On information and belief no Senators are disabled and none  
10 are identified as Native American Indians. On information and belief no Native American  
11 Indians have ever been elected to the California Assembly notwithstanding they once comprised  
12 the largest group of people living in California.

13  
14 **C. FACTS RELATED TO CALIFORNIA’S APPORTIONMENT**

15 6.1. Since 1854 and 1862, California’s practice has been to not increase the number of  
16 legislators, to facilitate population growth *i.e.* it capped the Assembly at 80 and Senate at 40.  
17 This practice was incorporated as part of California’s 1878 Constitution. *See* Historical Facts,  
18 *infra*.

19  
20 6.2. Exhibit A illustrates the impact this practice has had over time with regard to the number  
21 of constituents each legislator represents. Each Assembly member now represents approximately  
22 500,000 constituents. Each Senator is currently tasked with representing almost 1,000,000  
23 people.

24  
25 6.3. Exhibit B illustrates the population of each of the fifty States; the number of elected  
26 representatives in each State’s lower house, and the number of constituents each elected house

1 member was tasked with representing in 2015.

2 6.4. Exhibit B shows that New Hampshire has 400 representatives, each represents about  
3 3,327 people. California has 80 Assembly members, each represents almost 500,000 people.

4 6.5. Exhibit B shows California’s lower chamber representation is almost three times worse  
5 than the second least representative state, *i.e.* Texas (Each Texas House member is tasked with  
6 representing approximately 183,310 people).

8 6.6. California state Senate districts are more populous than U.S. House districts.

9 6.7. California has worse representation of its people than do most nations. *See* Exhibit C.

10 **D. FACTS RELATED TO VOTER TURNOUT BY DISTRICT POPULATION**

11 7.1. The smaller the State legislative district population, the higher the voter turnout for both  
12 State and Federal elections.

14 7.2. For example, in New Hampshire where the average district population is less than 4,000  
15 the turnout of Voting Age Population (VAP) was:

<b>Year</b>	<b>Percentage of VAP Turnout</b>
2016	72.5% *
2014	48.8%
2012	68.6% *
2010	44.2%
2008	69.9% *
2006	39.9%
2004	68.4% *
2002	46%

16 \* Presidential Year

1 Thus, the average VAP turnout has been 57.25% every election since 2002.

2 7.3. Vermont with an average district population of approximately 4,163 in 2016 and 150

3 House members saw a VAP turnout of :

4

5 <b>Year</b>	6 <b>Percentage of VAP Turnout</b>
7 2016	8 64.8%
9 2014	10 43.7%
11 2012	12 57.2%
13 2010	14 48.5%
15 2008	16 66%
17 2006	18 53.8%
19 2004	20 65%
21 2002	22 48.1%

23 An average VAP turnout of 56%

24 7.4. Maine with an average district population of approximately 8,791 in 2016 and 151 House

25 members saw a VAP turnout of:

26

27 <b>Year</b>	28 <b>Percentage of VAP Turnout</b>
29 2016	30 72.8%
31 2014	32 58.5%
33 2012	34 70.8%
35 2010	36 54.3%
37 2008	38 69.6%
39 2006	40 53.3%
41 2004	42 72.6%
43 2002	44 46%

1  
2 An average VAP turnout of 62.2%.

3 7.5. Meanwhile California, with an average House district population of approximately  
4 498,123 people and only 80 House members, the Voting Age Population turnout percentage was:  
5

6

Year	Percentage of VAP Turnout
2016	58%
2014	42%
2012	55%
2010	35.8%
2008	49.5%
2006	32.2%
2004	47.1%
2002	29%

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16 An average VAP turnout of only 43%.

17 7.6. An average VAP turnout of less than 50% in the most populous State in the nation affects  
18 self governance in both Federal and State elections.  
19

20 7.7. The cost to win an election in a house district with a bloated population is much greater  
21 than the cost to win a house seat in a district where the actual representation of the people by the  
22 legislator is more reasonable and proportionate.

23 7.8. For example, the average cost to win one of the 400 lower house representative positions  
24 in New Hampshire during the 2016 election cycle was \$406. Conversely, in California the  
25 average cost to win one of it's 80 Assembly seats was \$762,774.00.  
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**E. CALIFORNIA’S 120 ELECTED LEGISLATORS HAVE DELEGATED LEGISLATIVE RESPONSIBILITIES TO NON ELECTED ASSISTANTS**

8.1. Traditionally the duties of the elected members of State legislative bodies include without limitation: consideration, preparation, and voting with regard to legislation, meeting with and responding to constituents needs and petitions, committee assignments to perform legislative oversight of State agencies, employees, other branches of government, municipal governments, including public works such as the Oroville Dam and the hundreds of other facilities that if not properly kept up can threaten the livelihood, health and safety of thousands, perhaps millions of people in municipalities and communities around the State.

8.2. The current (and long standing) small number of representatives in the California Senate (40) and Assembly (80) prevents each elected officials, and the legislature as a whole, from fulfilling their responsibilities to the people.

8.3. The practice of not increasing the number of legislative representatives beyond 120 elected members no matter how large the population of California grows has been accompanied by the practice of hiring non elected assistants - who do not answer to the people.

8.4. On information and belief, there are presently over 2,100 such staff and assistants who perform legislative duties, but who do not answer to nor can be held accountable by the people. Plaintiffs’ rights to self governance in a representative republic mandate when legislators cannot adequately perform their essential duties, including their ability to engage with those who have elected them, then the population size of the districts should be reduced.

8.5. The long standing practice of hiring assistants to perform legislative activities instead of adding more elected representatives violates the civil rights of the people to self governance

1 under the federal structure established by the United States Constitution, and should not be  
2 permitted. That which can be done directly should be done directly.

3 **F. OPPORTUNITY OF THIRD PARTIES TO COMPETE IN CALIFORNIA’S**  
4 **OLIGARCHY**

5 9.1. Before California’s population ballooned to the point where each of the Senators and  
6 Assembly members had to compete in districts comprised hundreds of thousands of people to be  
7 elected, multiple third party candidates had been elected to the California Legislature. Parties  
8 from which third party candidates were elected included: the American Party, People’s Party,  
9 Workingmen Party, Socialist Party, Independence League Party, Progressive Party, Prohibition  
10 Party, and the Green Party.

11 9.2. Third party registration in California as of October 2016 is:

Party Name	Number of Members
American Independent Party	507,733
Libertarian Party	139,805
Green Party	94,647
Peace & Freedom Party	75,640

12 9.3. The primary factor preventing these political parties participation in self governance is  
13 the cost of winning office in California’s high population districts.

14 **G. HISTORICAL FACTS RELATED TO “SELF GOVERNANCE”**

15 10.1. On July 4, 1776 the Continental Congress adopted the Declaration of Independence. The  
16 second paragraph of the Declaration of Independence states:

17 We hold these truths to be self-evident, that all men are created equal, that  
18 they are endowed by their Creator with certain unalienable rights, that  
19 among these are life, liberty and the pursuit of happiness. That to secure

1 these rights, governments are instituted among men, deriving their just  
2 powers from the consent of the governed. That whenever any form of  
3 government becomes destructive to these ends, it is the right of the people to  
4 alter or to 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<sup>3</sup>.

5 10.2. Following the adoption of the Declaration of Independence in July 1776 the Second  
6 Constitutional Convention of the colonies (which became the United States) adopted the Articles  
7 of Confederation in August 1776. These Articles of Confederation were replaced by the United  
8 States Constitution which was ratified in 1789.

9 10.3. Our founders intended to create a democratic republic. Our founders did not intend to  
10 create an oligarchy form of government. James Madison observed that “[a] Republic may be  
11 converted into an aristocracy or oligarchy as well by limiting the number capable of being  
12 elected, ...” *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 790–91 (1995). Alexander  
13 Hamilton wrote: “If the legislature can disfranchise any number of citizens at pleasure by general  
14 descriptions, it may soon confine all the votes to a small number of partisans, and establish an  
15 aristocracy or an oligarchy; ...” *United States v. Brown*, 381 U.S. 437, 444 (1965)

16 10.4. A “republic<sup>4</sup>” is defined as:

17 1 a (1) : a government having a chief of state who is not a monarch and who in  
18 modern times is usually a president (2) : a political unit (such as a nation) having  
19 such a form of government

20 b (1) : a government in which supreme power resides in a body of citizens  
21 entitled to vote and is exercised by elected officers and representatives

22  
23 <sup>3</sup> While several changes were made to the draft of the Declaration of Independence, one of the  
24 most significant was Congress’ deletion of language proposed by Thomas Jefferson condemning  
25 slavery. See BlackPast.org, “The Deleted Passage of the Declaration of Independence (1776):  
[THE DECLARATION OF INDEPENDENCE AND THE DEBATE OVER SLAVERY](#)”

26 <sup>4</sup> See [Merriam-Webster dictionary](#) last accessed on July 13, 2017 at  
27 <https://www.merriam-webster.com/dictionary/republic>

1 responsible to them and governing according to law (2) : a political unit (such as  
2 a nation) having such a form of government

3 10.5. An “aristocracy<sup>5</sup>” is defined as:

- 4 1: government by the best individuals or by a small privileged class  
5 2a : a government in which power is vested 1a) in a minority consisting of those  
6 believed to be best qualified b : a state with such a government  
7 3: a governing body or upper class usually made up of a hereditary nobility a  
8 member of the British *aristocracy*  
9 4: a class or group of people believed to be superior (as in rank, wealth, or  
10 intellect) an intellectual *aristocracy*

11 10.6. An “oligarchy<sup>6</sup>” is defined as:

- 12 1: government by the few \* The corporation is ruled by *oligarchy*.  
13 2: a government in which a small group exercises control especially for corrupt  
14 and selfish purposes \* a military *oligarchy* was established in the county; *also* a  
15 group exercising such control \* an *oligarchy*<sup>7</sup>.

16 10.7. As is demonstrated *infra.*, the Constitution has been amended on numerous occasions  
17 throughout our history to preserve and greatly expand the representative nature of the United  
18 State’s republican form of government.

19 10.8. As originally ratified the United States Constitution was not particularly egalitarian

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20 <sup>5</sup> See [Merriam Webster Dictionary](https://www.merriam-webster.com/dictionary/aristocracy) last accessed on July 13, 2017 at  
21 <https://www.merriam-webster.com/dictionary/aristocracy>

22 <sup>6</sup> See [Merriam Webster Dictionary](https://www.merriam-webster.com/dictionary/oligarchy) last accessed on July 13, 2017 at  
23 <https://www.merriam-webster.com/dictionary/oligarchy>

24 <sup>7</sup> Among others, this case poses the question as to whether an oligarchy, as opposed to a  
25 representative body, can exercise the people’s sovereignty pursuant to the United States  
26 Constitution, its statutes, its treaties, and international customary law as it has developed into the  
27 21st Century. For a good discussion of this issue from a practical perspective, *see* Jeffrey  
28 Winters, “[Oligarchy and Democracy](#)” *The American Interest*, Vol. 7, Number 2 (September 28,  
2011); Martin Gilens and Benjamin I. Page, *Perspectives on Politics*, [Testing Theories of  
American Politics: Elites, Interests Groups, and Average Citizens](#), Vol. 12, Issue 3 (September 8,  
2014); *The Washington Post*, Martin Gilens and Benjamin I. Page, [Critics argued with our  
analysis of U.S. political inequality. Here are 5 ways they’re wrong.](#)” (May 23, 2016).

1 because our founders feared tyranny whether visited upon them by a King or a “democratic”  
2 mob. Accordingly, for the most part only white men who owned property were allowed to vote  
3 in most states at the time the Constitution was written.

4  
5 10.9. Although an elector’s ability to vote for persons to represent the people in the United  
6 States House of Representatives was much debated, *see e.g.* Federalist Papers Nos. [10](#), [49](#), [55](#), [56](#)  
7 & [57](#), most of the governmental institutions created by the original text of the Constitution were  
8 not democratic. For example, the President, Senators, and Judges were not elected directly by the  
9 people, but were representative of the people only in the sense that their selection was through  
10 the people indirectly and not a king, as sovereign. Nonetheless, “[t]he difference most relied  
11 upon, between American and other republics, consists in the principle of representation.”  
12 ([Federalist Paper No. 63](#))

13  
14 10.10. The only place where voting by electors is discussed directly in the original Constitution  
15 is for choosing members of the House of Representatives<sup>8</sup>. [Article I](#), Section 2, Cl. 1 provides:  
16 “The House of Representatives shall be composed of Members chosen every second Year by the  
17 People of the several States, and the Electors in each State shall have the *qualifications requisite*  
18 *for Electors of the most numerous Branch of the State Legislature.*” Two Senators from each  
19 State were originally chosen by each State’s legislature, Art. I, Sec. 3, Cl. 1, until the  
20 Seventeenth Amendment was ratified providing that Senators be elected by the people.  
21

22 10.11. Article I, Sec. 2 demonstrates that all States ratifying the Constitution allowed voting for  
23

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24 <sup>8</sup> Evidence has emerged that this nation’s founders, who touted one of the Constitution’s greatest  
25 achievements as creating a representative republic, ratified as its First Amendment (which was  
26 actually Article the First) in 1792. This provision required the number of house members be  
27 increased for every increase of population by 50,000 people. *See* LaVergne, Eugene, First  
28 Amendment Free Press, Inc., [How “Less” is “More”: the Story of the Real First Amendment to  
the United States Constitution](#) (2016).

1 at least one branch of the State legislatures at the time the Constitution was ratified; further, this  
2 requirement contemplated that any future States admitted to the Union would require voting to  
3 elect the members of at least one branch of each State legislature.

4 10.12. Our initial founders (as opposed to those who rewrote much of the Constitution following  
5 the Civil War) contemplated: "... The members of the executive and judiciary departments are  
6 few in number, and can be personally known to a small part only of the people. ... *The members*  
7 *of the legislative department, on the other hand, are numerous. They are distributed and dwell*  
8 *among the people at large.*" (Federalist No. 49.) (Emphasis added)

9  
10 10.13. The Constitution was written to accommodate the interests of slave-owners with regard to  
11 many concerns including, among other things, apportionment of representatives in the United  
12 States House of Representatives. Five slaves were counted as three persons for apportionment of  
13 the each State's representatives in the United States House of Representatives.

14  
15 10.14. Proof of the pro-slavery nature of the United States Constitution, Bill of Rights, and  
16 specific constitutional provisions, is demonstrated by Finkelman, Paul (1999) "[\*Affirmative\*](#)  
17 [\*Action for the Master Class: The Creation of the Proslavery Constitution\*](#)," Akron Law Review:  
18 Vol. 32 : Iss. 3 , Article 1<sup>9</sup>. The particular provisions of the United States Constitution and facts  
19 substantiating them as favoring slavery are hereby incorporated by reference to and incorporation  
20 of Finkelman's article. The founders acceptance of slavery as reflected in the United States  
21 Constitution demonstrates how much this nation has grown over time in its commitment to  
22 principles of self government from the Declaration of Independence.  
23

24  
25  
26 <sup>9</sup> This law review article reprinted in 2015 is available here:  
27 <http://ideaexchange.uakron.edu/cgi/viewcontent.cgi?article=1420&context=akronlawreview>

1 10.15. The language of the text of the original Constitution referred to “citizens of States”.  
2 These references were in [Article III, § 2](#) (referring to the authority of Article III courts to hear  
3 disputes between “citizens of different states” and “foreign citizens”) and [Article IV](#) (dealing  
4 with “States Relations”), §2, which states: “1: The Citizens of each State shall be entitled to all  
5 Privileges and Immunities of Citizens in the several States.” The Constitution required members  
6 of the House of Representatives, Senators, the Vice President and President be citizens of the  
7 United States for a number of years before assuming office. Article 1, § 1 and [Article II](#), § 1.

9 10.16. On February 2, 1848 while the national debate over slavery was continuing the Treaty  
10 of Guadalupe Hidalgo was signed. This treaty established the boundaries between the United  
11 States and Mexico. At the time the treaty was signed a significant number of the people living in  
12 California were Native Americans. Native Americans, along with people of African American  
13 descent, were treated as property, and slaves.

15 10.17. On June 3, 1849, General Bennett C. Riley formed 10 California electoral districts by  
16 using the 5 established Mexican districts and then drawing the boundaries for 5 more, as well as  
17 California’s state boundaries. These County districts were used for the elections of local officials  
18 and the members of the California Constitutional Convention held in Monterey, in 1849.

20 10.18. On August 1, 1849, Counties (referenced above) with varying populations held elections  
21 for local governing officials and members of the Convention.

22 10.19. On Sept. 1, 1849, California held its first Constitutional Convention. During that  
23 Convention those assembled voted to eliminate the Indians' right to vote because they feared the  
24 control Indians might exercise. [\*A History of American Indians in California\*](#), pp. 7. The  
25 Convention concluded on Oct. 13, 1849. The proposed Constitution was presented to the people  
26

1 for ratification on Nov. 13, 1849. The Constitution was passed by a simple majority.

2 10.20. Four delegates were then sent to Washington D.C. to petition for Statehood and the  
3 petition was granted. California became a State of the United States on September 9, 1850.

4 10.21. The first Constitution formed a bicameral Legislature, with a Senate and Assembly.

5 10.22. Each County was represented at that time by at least one member of the legislature.

6 10.23. The Assembly was required to have between 24 and 36 members, and the California  
7 Constitution anticipated the members of the Assembly include 80 members after the population  
8 of the State reached or exceeded 100,000 people.

9 10.24. California's population exceeded 100,000 in 1851.

10 10.25. California's 1849 Constitution provided the number of Senators was to be not more than  
11 one half and not less than one third the number of Assembly members.

12 10.26. The Assembly initially had 36 members in 1850. In 1852, the Assembly was increased to  
13 63 members and finally to 80 members in 1854. These increases maintained an approximate  
14 representation ratio of one Assembly representative per 2,500 people until 1854.

15 10.27. In 1850, the Senate was initially apportioned with 16 members to the Counties.

16 10.28. In 1850, each Senator represented an average of 5,787 people. In 1858, the Senate was  
17 increased to 35 members and then each Senator represented about 9,215 people. In 1862, the  
18 Senate was increased to 40 members and each Senator represented about 10,000 persons.

19 10.29. By 1855 the number of Native American Indians living in California (estimated to be  
20 more than than 300,000 before 1769) had been greatly reduced as a result of various reasons,  
21 including repeated genocide. *History of American Indians in California*, pp. 2-9. ("The savages  
22 were in the way; the miners and settlers were arrogant and impatient; there were no missionaries  
23  
24  
25  
26  
27  
28

1 or others present with even the poor pretense of soul saying or civilizing. *It was one of the last*  
2 *human hunts of civilization, and the basest and most brutal of them all.*” citing Bancroft,  
3 1963a:474 (Emphasis Supplied))

4 10.30. Indians were authorized to be treated as slaves and non-persons by California statutes,  
5 starting with it’s statehood in 1850. *Id.*, pp. 6-8.

6 10.31. About a month before California ratified its second constitution the U.S. Supreme Court  
7 decided [\*Dred Scott v Sanford\*](#), 60 US 393 (1857) which held that human beings of African  
8 American ancestry - slaves, *as well as those African Americans who were free* - were not persons  
9 or citizens under the Constitution and therefore could not access federal courts.

10 10.32. The Supreme Court’s rationale for holding that all persons of African American descent  
11 were property and nothing more in the United States of America is illuminated by that Court’s  
12 discussion of the Declaration of Independence, which opines in pertinent part:  
13

14  
15 In the opinion of the court, the legislation and histories of the times, and the  
16 language used in the Declaration of Independence, show, that neither the class of  
17 persons who had been imported as slaves, nor their descendants, whether they had  
18 become free or not, were then acknowledged as a part of the people, nor intended  
19 to be included in the general words used in that memorable instrument.

20 It is difficult at this day to realize the state of public opinion in relation to that  
21 unfortunate race, which prevailed in the civilized and enlightened portions of the  
22 world at the time of the Declaration of Independence, and when the Constitution  
23 of the United States was framed and adopted. But the public history of every  
24 European nation displays it in a manner too plain to be mistaken.

25 They had for more than a century before been regarded as beings of an inferior  
26 order, and altogether unfit to associate with the white race, either in social or  
27 political relations; and so far inferior, that they had no rights which the white man  
28 was bound to respect; and that the negro might justly and lawfully be reduced to  
slavery for his benefit. He was bought and sold, and treated as an ordinary article  
of merchandise and traffic, whenever a profit could be made by it. This opinion  
was at that time fixed and universal in the civilized portion of the white race. It  
was regarded as an axiom in morals as well as in politics, which no one thought of  
disputing, or supposed to be open to dispute; and men in every grade and position

1 in society daily and habitually acted upon it in their private pursuits, as well as in  
2 matters of public concern, without doubting for a moment the correctness of this  
3 opinion.

4 And in no nation was this opinion more firmly fixed or more uniformly acted  
5 upon than by the English Government and English people. They not only seized  
6 them on the coast of Africa, and sold them or held them in slavery for their own  
7 use; but they took them as ordinary articles of merchandise to every country  
8 where they could make a profit on them, and were far more extensively engaged  
9 in this commerce than any other nation in the world.

10 The opinion thus entertained and acted upon in England was naturally impressed  
11 upon the colonies they founded on this side of the Atlantic. And, accordingly, a  
12 negro of the African race was regarded by them as an article of property, and  
13 held, and bought and sold as such, in every one of the thirteen colonies which  
14 united in the Declaration of Independence, and afterwards formed the  
15 Constitution of the United States. The slaves were more or less numerous in the  
16 different colonies, as slave labor was found more or less profitable. But no one  
17 seems to have doubted the correctness of the prevailing opinion of the time.

18 The legislation of the different colonies furnishes positive and indisputable proof  
19 of this fact.

20 *Scott v. Sandford*, 60 U.S. at 407-408.

21 10.33. This view of the Declaration of Independence was confronted and overturned by the Civil  
22 War and the ratification of several amendments to the United States Constitution over the next  
23 century. These amendments and statutes enacted pursuant to them and other enumerated powers  
24 greatly expanded the rights of self governance established by the Declaration of Independence to  
25 virtually all citizens of the United States over 18 years of age.

26 10.34. On March 4, 1861, President Lincoln's first inaugural address sought to avert a civil war  
27 between the States. In that address Lincoln observed the problematic nature of the Supreme  
28 Court's assertion of authority, vis a vis, the other federal departments of government (*i.e.* the  
legislative and executive branches) to declare what the law is for the sovereign authority which is  
possessed by the people, not their government or any branch thereof. See [\*Lincoln's First\*](#)

1 [Inaugural Address](#)<sup>10</sup>.

2 10.35. In that same Inaugural Address President Lincoln also observed:

3       This country, with its institutions, belongs to the people who inhabit it.  
4       *Whenever they shall grow weary of the existing government, they can exercise*  
5       *their constitutional right of amending it, or their revolutionary right to*  
6       *dismember, or overthrow it. I can not be ignorant of the fact that many worthy,*  
7       *and patriotic citizens are desirous of having the national constitution amended.*  
8       *While I make no recommendation of amendments, I fully recognize the rightful*  
9       *authority of the people over the whole subject, to be exercised in either of the*  
10       *modes prescribed in the instrument itself; and I should, under existing*  
11       *circumstances, favor, rather than oppose, a fair opportunity being afforded the*  
12       *people to act upon it. Id. (emphasis supplied)*

13 10.36. Most historians agree the Supreme Court’s decision in *Dred Scott v Sanford* was a  
14 primary cause of the Civil War, which the [New York Times](#) has estimated caused the deaths of  
15 over 750,000 Americans. This is far more than the number of Americans killed in any other war  
16 and estimated by some to be more than the number of Americans killed in all other wars.

17 10.37. Following the Civil War, the Constitution was amended to repudiate the Dred Scott  
18 decision, including its interpretation of the meaning of the Declaration of Independence  
19 following the Civil War. *See e.g.* Tsesis, Alexander, [Self-Government and the Declaration of](#)  
20 [Independence](#), 97 Cornell L. Rev. 693 (2011-2012)<sup>11</sup>

21 10.38. The [Thirteenth Amendment of the Constitution](#) was ratified in 1865. “Neither slavery nor  
22 involuntary servitude, except as a punishment for crime whereof the party shall have been duly  
23 convicted, shall exist within the United States, or any place subject to their jurisdiction.”

24 10.39. The [Fourteenth Amendment of the Constitution](#) was ratified in 1868. It states in part:

25       1: *All persons born or naturalized in the United States, and subject to the*

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26 <sup>10</sup> A copy of Lincoln’s First Inaugural Address can be accessed at this link:

27 <http://www.ushistory.org/documents/lincoln1.htm>

28 <sup>11</sup> A copy of article can be accessed at this link:

<https://pdfs.semanticscholar.org/bdc9/705605e0072f388a18244491c0a3ad611634.pdf>

1       *jurisdiction thereof, are citizens of the United States and of the State wherein they*  
2       *reside.* No State shall make or enforce any law which shall abridge the privileges  
3       or immunities of *citizens of the United States*; nor shall any State deprive *any*  
4       *person* of life, liberty, or property, without due process of law; nor deny to *any*  
5       *person* within its jurisdiction the equal protection of the laws. (Emphasis  
6       Supplied)

7       10.40. The Fourteenth Amendment memorialized two classes of citizenship: *citizens of the*  
8       *United States* and citizens of the State where each person resided. The Fourteenth Amendment  
9       mandated that no State “shall make or enforce any law which shall abridge the privileges or  
10       immunities of *citizens of the United States*” or “deprive *any person* of life, liberty or property,  
11       without due process of law.” (Emphasis Provided) This amendment also provided no State shall  
12       “deny to *any person* within its jurisdiction the equal protection of the laws.” (Emphasis  
13       provided)

14       10.41. The [Fifteenth Amendment](#) of the U.S. Constitution was ratified in 1870. It states in part:  
15       “The right of citizens of the United States to vote shall not be denied or abridged by the United  
16       States or by any State on account of race, color, or previous condition of servitude.”

17       10.42. California held a second Constitutional Convention in 1878, almost a decade after the  
18       passage of the Thirteenth, Fourteenth, and Fifteenth amendments to the U.S. Constitution.  
19       During that convention the delegates opined that humans of Chinese descent were not people  
20       who would be represented in the California legislature because they were more akin to “chattel  
21       or stock.”<sup>12</sup>

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22  
23  
24  
25       <sup>12</sup> During the debates on the 1878 -1879 Constitution where representation in the State legislature  
26       was set at 40 Senators and 80 Assembly members the following dialog took place:

27               MR. HEISKELL: “Do you want the Chinese to be represented—enumerated in the  
28               apportionment?”

1 10.43. Several proposals were made to change the size of the Senate and Assembly during the  
2 1878 California Constitutional convention, which was ratified in May 1878. However, the  
3 members of the Convention maintained the current size of the Legislature at 40 Senators and 80  
4 Assemblymen.

5 10.44. Native Americans Indians were not granted United States citizenship status by the  
6 Fourteenth Amendment. [Elk v. Wilkins](#), 112 U.S. 94, 107 (1884).

7 10.45. In October 1889 through April 1890 a conference of American States was held in  
8 Washington D.C. The attendees approved the establishment of the International Union of  
9 American Republics which later became known as the Inter-American System, the oldest  
10 international institutional system in the world. This system ultimately became the basis for the  
11 Organization of American States following the end of World War II.

12 10.46. The [Seventeenth Amendment to the U.S. Constitution](#) was ratified 1913. It provided in  
13 part: “[t]he Senate of the United States shall be composed of two Senators elected by the people  
14 thereof...” This Amendment transferred the entire electoral franchise for Senators from the state  
15 legislature’s to the people of the State.

16 10.47 The Seventeenth Amendment states: “The electors in each state shall have the  
17 qualifications requisite for electors of the most numerous branch of the state legislatures.”  
18  
19  
20  
21

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22 MR. O’DONNELL: “Well, we do not represent them. . . I want to be represented  
23 according to the Census of the United States. We don’t mean the Chinese. We count them  
24 as chattel or stock.”

25 Debates and Proceedings of the California Constitutional Convention of 1878, Pg. 755.

26 Notwithstanding the language of the Thirteenth, Fourteenth, and Fifteenth Amendments  
27 [Article XIX](#) to second California Constitution triggered the all-out ethnic cleansing of Chinese  
28 communities.

1 10.48. The [Nineteenth Amendment of the United States Constitution](#) was ratified in 1920. It  
2 provides in pertinent part: “[t]he right of citizens of the United States to vote shall not be denied  
3 or abridged by the United States or by any State on account of sex.”<sup>13</sup>

4 10.49 By 1940 California’s 80 Assembly members each represented approximately 86,875  
5 people. California’s 40 state senators each represented approximately 173,750 people.

6  
7 10.50 In October 1941, the mayor of Port Orford, Oregon Gilbert Gable proposed that the  
8 southern Oregon counties of Curry, Josephine, Jackson, and Klamath should join with the  
9 northern California counties of Del Norte, Siskiyou, and Modoc to form the new state of  
10 Jefferson because these rural areas were underrepresented by their respective State governments.

11 10.51 The movement to split California and Oregon into three States in order to achieve self  
12 governance for the the people of the California’s northern counties lost momentum following  
13 Japan’s December 7, 1941 attack on Pearl Harbor.

14 10.52. World War II lasted from 1939 to 1945.

15 10.53. The war in Europe concluded with the unconditional surrender of Germany on May 8,  
16 1945. The United States and its allies issued the Potsdam Declaration July 26, 1945 setting forth  
17 the terms of surrender for Japan.  
18

19 10.54. In April and June 1945 representatives of 50 nations met in San Francisco to complete  
20 the Charter of the United Nations. The U.S. Senate approved the [UN Charter](#) on July 28, 1945,  
21 by a vote of 89 to 2.  
22

23 10.55. Japan refused to surrender under the terms of the Potsdam Declaration. The United States  
24

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25 <sup>13</sup> There is little case law discussing the history of the Nineteenth Amendment. One commentator  
26 has suggested this is unfortunate because the failure to understand the roots of the amendment,  
27 detracts from its significance. Siegel, Reva B., "[She the People: The Nineteenth Amendment,  
28 Sex Equality, Federalism, and the Family](#)" (2002). Faculty Scholarship Series. Paper 1106.

1 dropped atomic bombs on the Japanese cities of Hiroshima and Nagasaki. Japan surrendered  
2 thereafter on August 15, 1945.

3 10.56. The United Nations came into existence on October 24, 1945 after 29 nations ratified its  
4 its Charter.

5  
6 10.57. Following Japan's surrender, the United States and its allies appointed United States  
7 General Douglas MacArthur as the Supreme Commander for the Allied Powers to oversee the  
8 occupation of Japan. MacArthur suspended Japanese laws restricting political, civil and religious  
9 liberties. MacArthur announced a general election to be held in April 1946 and also required the  
10 Japanese Diet (legislature) to pass a new election law to provide for free democratic elections  
11 including for the first time in the history of Japan the right of women to vote.

12  
13 10.58. On December 10, 1948, the General Assembly of the United Nations adopted and  
14 proclaimed the [Universal Declaration of Human Rights](#) ("UDHR") G.A. Res. 217 A (III), U.N.  
15 Doc. A/810 was passed in (1948). Section 21 of this Declaration provides:

16 Article 21. (1) Everyone has the right to take part in the government of his  
17 country, directly or through freely chosen representatives. (2) Everyone has the  
18 right of equal access to public service in his country. (3) The will of the people  
19 shall be the basis of the authority of government; this will shall be expressed in  
20 periodic and genuine elections which shall be by universal and equal suffrage and  
21 shall be held by secret vote or by equivalent free voting procedures.

22 10.59. The [Basic Law \(Grundgesetz\) for the Federal Republic of Germany](#) was promulgated by  
23 the Parliamentary Council (including the United States and its allies) for the Federal Republic of  
24 Germany on May 23, 1949. Article 21 of The Basic Law states in part:

25 (1) The Federal Republic of Germany is a democratic and social federal state.  
26 (2) All state authority is derived from the people. It shall be exercised by the people  
27 through elections and other votes and through specific legislative, executive and judicial  
28 bodies.

1 (3) The legislature shall be bound by the constitutional order, the executive and the  
2 judiciary by law and justice.

3 (4) All Germans shall have the right to resist any person seeking to abolish this  
4 constitutional order, if no other remedy is available.

5 10.60. [The American Declaration of the Rights and Duties of Man](#) ("American Declaration"),  
6 was passed by the OAS during this same period of time following World War II. Section XX of  
7 this Declaration provides:

8 Every person having legal capacity is entitled to participate in the government of  
9 his country, directly or through his representatives, and to take part in popular  
10 elections, which shall be by secret ballot, and shall be honest, periodic and free.

11 10.61. The [Twenty-Third Amendment to the United States Constitution](#) was ratified in 1961.  
12 This amendment treats the District of Columbia as if it were a State for purposes of appointing  
13 electors to the Electoral College for electing the President. The Twenty-Third Amendment is  
14 consistent with the republican form of government our original founders contemplated and not  
15 inconsistent with America’s renewed commitment to self governance following the Civil War  
16 and World War II<sup>14</sup>.

17 10.62. The [Twenty-Fourth Amendment to the United States Constitution](#) was ratified on January  
18 24, 1964. This amendment provides in pertinent part: “[t]he right of citizens of the United States  
19 to vote in any primary or other election [for national office] shall not be denied or abridged by  
20 the United States or any State by reason of failure to pay poll tax or any other tax.”

21 10.63. On June 15, 1964 the United States Supreme Court decided [Reynold v Sims](#), 377 U.S. 533  
22 (1964). The Supreme Court ruled that the voting districts of state legislatures must have roughly  
23

24  
25  
26 <sup>14</sup> The [Twelfth Amendment to the United States Constitution](#) was ratified in 1804. It clarifies the  
27 republican, as opposed to democratic, nature of our government because the President is not  
28 directly elected by the people.

1 equal populations. *Reynolds* was based on the Equal Protection Clause of the U.S. Constitution  
 2 and it together with [Wesberry v. Sanders](#), 376 U.S. 1, 7 (1964) established the "one person, one  
 3 vote" rule, which remains the law today. Consistent with this legal theory the Supreme Court has  
 4 observed: “unconstitutional discriminations occur only when the electoral system is arranged in a  
 5 manner that will consistently degrade a voter’s or a group of voter’ influence on the political  
 6 process as a whole.” [Davis v. Bandemer](#), 478 U.S. 109, 111(1986).

8 10.64. The [Voting Rights Act](#) was enacted into law on August 1965. This statute outlawed  
 9 discriminatory voting practices adopted by States to prevent citizens of the United States from  
 10 exercising their rights to vote. The statute makes clear that it applies to the rights of self  
 11 governance, not just voting. In this regard the law states:

A violation of subsection (a) is established if, based on the totality of  
 13 circumstances, it is shown that *the political processes leading to nomination or  
 14 election in the State or political subdivision are not equally open to participation  
 15 by members of a class of citizens protected by subsection (a) in that its members  
 16 have less opportunity than other members of the electorate to participate in the  
 political process and to elect representatives of their choice.* (Emphasis Supplied)

17 10.65. [The International Covenant on Civil and Political Rights](#) (ICCPR) is a multilateral treaty  
 18 adopted by the United Nations General Assembly with resolution 2200A (XXI) on December  
 19 16, 1966, which has been in force from March 23, 1976 in accordance with Article 49 of the  
 20 covenant. The United States is a signatory to this treaty, which provides in part:

**Article 1**

22 1. All peoples have the right of self-determination. By virtue of that right they  
 23 freely determine their political status and freely pursue their economic, social and  
 24 cultural development.

\* \* \*

25 3. The States Parties to the present Covenant, including those having  
 26 responsibility for the administration of Non-Self-Governing and Trust Territories,  
 27 shall promote the realization of the right of self-determination, and shall respect  
 that right, in conformity with the provisions of the Charter of the United Nations.

\* \* \*

**Article 25**

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.

10.66. The [Twenty-Sixth Amendment to the United States Constitution](#) was ratified in 1971.

This amendment states in part: “[t]he right of citizens of the United States, who are eighteen years of age or older, to vote shall not be abridged by the United States or by any State on account of age.

10.67. In 1984 Congress passed the [Voting Accessibility for the Elderly and Handicapped Act](#) to promote the fundamental right for handicapped and elderly (over 65 years of age) people to have accessible registration and polling places to vote in Federal elections.

10.68. The [Americans with Disabilities Act](#) (ADA) was signed into law on July 26, 1990 by President George H.W. Bush. The ADA is one of America's most comprehensive pieces of civil rights legislation. The ADA prohibits discrimination and guarantees people with disabilities have the same opportunities as everyone else to participate in the mainstream activities of American life, which include the right to participate in self governance.

10.69. People with disabilities include disproportionate amounts of disempowered communities including the elderly, the poor, people of color, women, and veterans. Congress enacted the ADA to insure disabled rights of self governance. [ARTICLE: Contemporary Voting Rights Controversies Through the Lens of Disability, 68 Stan. L. Rev. 1491 \(2016\)](#)

1 10.70. In 1990 the people of California passed an initiative (Prop 140) imposing term limits on  
2 their legislature. The findings of the people supporting this amendment state:

3 The people find and declare that the Founding Fathers established a system of  
4 representative government based upon free, fair, and competitive elections. The  
5 increased concentration of political power in the hands of incumbent  
6 representatives has made our electoral system less free, less competitive, and less  
7 representative.

8 The ability of legislators to serve unlimited number of terms, to establish their  
9 own retirement system, and to pay for staff and support services at state expense  
10 contribute heavily to the extremely high number of incumbents who are  
11 re-elected. These unfair incumbent advantages discourage qualified candidates  
12 from seeking public office and create a class of career politicians, instead of the  
13 citizen representatives envisioned by the Founding Fathers. These career  
14 politicians become representatives of the bureaucracy, rather than of the people  
15 whom they are elected to represent.

16 To restore a free and democratic system of fair elections, and to encourage  
17 qualified candidates to seek public office, the people find and declare that the  
18 powers of incumbency must be limited. Retirement benefits must be restricted,  
19 state-financed incumbent staff and support services limited, and limitations placed  
20 upon the number of terms which may be served.

21 [California Constitution , Article IV, Section 1.5](#)

22 10.71. In 1992 the Jefferson movement to achieve meaningful representation in California  
23 resurfaced. State Assemblyman Stan Statham proposed advisory votes in 31 counties asking if  
24 California should be split into two. Of the 31 counties which voted on the measure 27 approved  
25 it. Based on these results, Statham introduced legislation in California Assembly to consider the  
26 self governance of Northern California, *but the bill died in committee.*

27 10.72. The [National Voter Registration Act of 1993](#) was enacted to enhance voting opportunities  
28 for every citizen of the United States by making it easier for all Americans to register to vote and  
maintain their registration. This statute also requires certain accommodations for persons with  
disabilities with regard to their participation in self governance.

1 10.73. On July 26, 1996 the United Nations Human Rights Committee issued an interpretative  
2 comment on Article 25: "[The Right to Participate in Public Affairs, Voting Rights and the Right](#)  
3 [to Equal Access to Public Service.](#)"

4 10.74 In 2001 OAS adopted the [Inter-American Democratic Charter](#) (IADC). The IADC was a  
5 binding resolution of the General Assembly of the OAS and was based on the principles put forth  
6 in the American Declaration for the Rights and Duties of Man, *see supra.*, a precursor to the UN  
7 Universal Declaration of Human Rights, which was among those measures passed following  
8 World War II.

9 10.75. On October 29, 2002 President Bush signed the "[Help America Vote Act of 2002](#)," into  
10 law. HAVA created a new federal agency to, among other things, provide funds to states to  
11 improve election administration, replace outdated voting systems, and create minimum standards  
12 for states to follow in several key areas of election administration.

13 10.76. The [Convention on the Rights of People with Disabilities](#) was adopted in 2006 and  
14 entered into force in 2008. Article 29 of that Convention states in pertinent part:

15 Article 29: Participation in political and public life States Parties shall  
16 guarantee to persons with disabilities political rights and the opportunity to  
17 enjoy them on an equal basis with others, ...

18 These rights include and incorporate those related to self governance.

19 20.77. The Jefferson movement continued to express their concern about lack of representation  
20 in the California legislature. This concern caused several northern counties to petition to separate  
21 from the State in 2013 and 2014.

22 10.78. Notwithstanding broad popular support in Northern California to split the State in order  
23 to afford its citizens meaningful representation, not one of California's 120 legislators even  
24

1 proposed a bill to have that issue (or any other related to self governance) considered. Instead  
2 they took steps to retaliate against the Jefferson movement, signalling to all people in California  
3 that the 120 member legislative oligarchy would not tolerate any challenges to its power.

4 10.79. Because of their support of measures to promote self governance members of the  
5 Jefferson movement for fair representation were threatened with retaliation and were retaliated  
6 against. For example, their own Assembly Member told supporters of the Jefferson movement in  
7 Siskiyou County that because of that County’s support for better representation he was not going  
8 to support their interests in the California legislature. That legislator kept his promise.

9 10.80 California has also retaliated against the Jefferson movement’s exercise of political free  
10 speech. Such retaliation has come through the implementation of special regulations on people  
11 and property owners in those Counties. Further the legislature and government of California has  
12 retaliated against those persons by allocating less resources and oversight to the Counties’  
13 infrastructure and resources.

14 10.81. U.S. Const. Art. IV, § 3, cl. 1 provides in pertinent part: “[N]o new State shall be formed  
15 or erected within the Jurisdiction of any other State ... without the consent of the Legislatures of  
16 the States concerned as well as of the Congress.”

17 10.82. The entire Jefferson movement could not persuade a single legislator (even those who  
18 represented them as constituents) to introduce a bill providing for consideration of a State split.  
19 Once again the oligarchy is ignoring the will of the people.

20 10.83. Accordingly, the Committee for Fair Representation was formed to, among other things,  
21 educate all Californians about their rights to self governance.

22 10.84. Plaintiffs complaint is being amended to show 1 Senator/1,000,000 people and 1  
23  
24  
25  
26  
27

1 Assembly member/500,000 people is woefully inadequate to represent 40,000,000 Californians  
2 regardless of their demographics; north or south, urban or rural, rich or poor. The problem of  
3 oligarchy permeates throughout the entire state.

4 10.85. [Chief Justice Roberts May Day proclamation](#) encourages federal judges to carefully  
5 analyze cases arising under the Fourteenth Amendment (and presumably its progeny) in 2017.  
6

7 “In celebration of Law Day, May 1, 2017, I encourage federal judges throughout  
8 the country to recognize the day and this year’s theme, “The Fourteenth  
9 Amendment: Transforming American Democracy,” as we work together to  
advance public education about the constitutional values that define and shape our  
great nation.”

10 **H. HARMS CAUSED BY CALIFORNIA’S LEGISLATIVE OLIGARCHY**

11 11.1. California’s intentional failure to increase the number of State legislators from 120 since  
12 1862 constitutes an invidious abridgment and dilution of the voting rights of citizens of the  
13 United States. This interferes with the people’s rights to self governance. It promotes the  
14 interests of the wealthy and elite above those of the people. This interference adversely impacts  
15 voter turnout in Federal and State elections. These practices harm each plaintiff’s liberty and  
16 property interests secured by the Federalism structure of our government.  
17

18 11.2. California, through agents and representatives, has threatened to and retaliated against  
19 several Plaintiffs and/or their municipalities for expressing their First Amendment rights about  
20 the need for better representation through a State split. Such threats are designed to chill all  
21 Plaintiffs’ First Amendment rights to participate in self governance.  
22

23 11.3. California’s arbitrary practices create a legislature where Assembly members and  
24 Senators have little in common with the constituents they represent. These legislators are  
25 incentivized by this oligarchy to meet, confer, and represent the interests of those persons and  
26

1 entities who are wealthy enough to finance legislative campaigns. These contributors often have  
2 self serving and differing interests than the majority of the legislator's constituents. This system  
3 interferes with the people's right to self governance in California and the United States.

4 11.4. California's arbitrary practices create legislative districts so large that the representative  
5 relationship between constituent and representative has broken down. Votes have become so  
6 diluted as to be meaningless. This discourages voter turnout in California. California has  
7 between 10-20% less voter turnout than States where district sizes are smaller.

8 11.5. Where voting districts are reasonably sized, elections remain competitive and thus  
9 representatives have incentives to actually meet with and keep their constituents informed; voters  
10 thus can meaningfully access their representatives; more United States citizens can run for office  
11 in these smaller districts and be elected without having to spend exorbitant amounts of money;  
12 third parties can run successful campaigns; there is likely to be more diversity with elected  
13 representatives to better reflect the communities they represent; citizens are able to petition their  
14 legislators with grievances and have their petitions meaningfully responded to; and  
15 municipalities tasked with the care and oversight of people and other natural resources within  
16 their boundaries can have meaningful access to the state legislature to promote and support  
17 municipal responsibilities.

18 11.6. The 40 members of the California Senate and and 80 members of the California  
19 Assembly cannot possibly perform the traditional legislative duties and provide the necessary  
20 oversight for state government (including that necessary for overseeing the other two branches of  
21 California's government) in addition to attending committee meetings, hearings and enacting  
22 legislation. *See* Exhibit D, which is indicative of the magnitude of the legislature's oversight  
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1 responsibilities, but does not reflect its Constitutional duties to oversee the state judicial  
2 department when necessary.

### 3 **I. FURTHER IDENTIFICATION OF PLAINTIFFS**

4 12.1. As previously noted this case is brought on behalf of plaintiffs by CFR, a nonprofit  
5 corporation. *See supra*, ¶ 1.1. This section of Plaintiffs' FAC is intended to identify those CFR  
6 members who are bringing this lawsuit. This section adds some plaintiffs who were not  
7 identified in the original complaint. This section also drops persons, municipalities, government  
8 officials, and organizations which were identified in the original complaint because either such  
9 plaintiffs have made clear they do not want to participate in this lawsuit or they have not filed  
10 evidence of intention to do so that CFR feels comfortable with. CFR reserves the right to name  
11 these persons and entities, including classes of plaintiffs pursuant to Fed. R. Civ. Pro. 23, if later  
12 circumstances warrant such joinder.

15 12.2. Most of the plaintiffs identified in this FAC petitioned California to stop the dilution of  
16 their votes and/or their rights to self governance. Copies of several of these petitions are attached  
17 hereto as Exhibit E. Not a single plaintiff has received a response to their petitions or requests  
18 for more representative government, indicating that California is unwilling to consider repealing  
19 its practice of intentional dilution of plaintiffs' votes and self governance rights. California's  
20 failure to respond to plaintiffs' and others' requests for meaningful representation creates an  
21 inference California's commitment to continue to dilute plaintiffs' rights represents an  
22 intentional discrimination.

24 12.3. The individual plaintiffs named in the FAC constitute a diverse group, each of whom has  
25 been harmed by one or more of those California practices identified herein. These practices  
26

1 include: abridgement of voting privileges guaranteed to citizens of the United States by the  
2 Constitution; violation to those self governance rights based on substantive due process;  
3 violation of those self governance rights based on suspect class in violation of Equal Protection  
4 and the Voting Rights Act; violations of liberty interests protected by the federal structure of the  
5 United States Constitution; violations of treaties and customary laws establishing the rights to  
6 self governance; violations of rights enumerated and unenumerated guaranteed by the Ninth  
7 Amendment; and retaliation against certain plaintiffs for their exercise of political rights because  
8 such retaliation and/or attempted retaliation chill the First Amendment rights of all plaintiffs.  
9

10 12.4. In alphabetical order, the plaintiffs include:

11 A. [REDACTED] is a resident of Fort James, California. [REDACTED] is aggrieved by all the  
12 unconstitutional practices set forth above, except for those based on violations of the Voting  
13 Rights Act because he is a Caucasian. He has been subject to retaliation for exercising political  
14 speech because he has been a proponent of the Jefferson movement.  
15

16 B. [REDACTED] is a resident of Colfax, California. [REDACTED] ran for California's  
17 state senate in 2016. [REDACTED] is aggrieved by all the unconstitutional practices related to self  
18 governance set forth above, except for those based on violations of the Voting Rights Act  
19 because he is a Caucasian.  
20

21 C. [REDACTED] is a resident of Orange County, California. [REDACTED] is a disabled  
22 African American woman, who also brings this action on behalf of herself and other disabled  
23 persons. [REDACTED] educates the public about disabilities and advocates for the disabled in California  
24 courts. [REDACTED] is aggrieved by all the unconstitutional practices related to self governance set  
25 forth above, including those set forth in the Voting Rights Act because she is an African  
26  
27  
28

1 American. [REDACTED] further claims her rights and those on behalf of who she advocates are being  
2 violated by the legislature's failure to provide oversight of California's Court system in violation  
3 of her ADA rights and her rights of self governance.

4 D. [REDACTED] are residents of Redding, California. Both are  
5 Native American Indians. [REDACTED] are aggrieved by all the unconstitutional practices  
6 related to self governance set forth above, including those set forth in the Voting Rights Act  
7 because both are Native American Indians.

8 E. [REDACTED] is a resident of Marin County, California. [REDACTED] ran for  
9 Secretary of State (a non legislative seat) as a member of the [REDACTED] is aggrieved by  
10 all the unconstitutional practices related to self governance set forth above, including his inability  
11 to mount an effective campaign to run for California's legislative oligarchy. If elected as  
12 Secretary of State he would likely have sought an opinion from the attorney-general as to  
13 whether California's restriction of legislative representation to only 120 representatives for  
14 40,000,000 people was lawful under the United States Constitution.

15 F. [REDACTED] is a resident El Dorado, California. [REDACTED] and/or others in El  
16 Dorado County have been aggrieved by all the unconstitutional practices set forth above, and  
17 further by retaliation against the County and its people for the assertion of political speech.

18 G. [REDACTED] is a Hispanic man who resides in Valley Springs, California. [REDACTED]  
19 asserts he is aggrieved by all the unconstitutional practices set forth above, including those set  
20 forth in the Voting Rights Act because he is Hispanic.

21 H. [REDACTED] is a Native American [REDACTED] unrecognized Shasta Nation Tribe  
22 of American Indians (Shasta Tribe) and brings this action on his own behalf and on behalf of the  
23

1 Shasta Tribe. [REDACTED] and the Shasta Nation Tribe are aggrieved by all the unconstitutional  
2 practices related to self governance set forth above, including those set forth in the Voting Rights  
3 Act because both/all are Native American Indians.

4 I. [REDACTED] is a 73 year old Caucasian woman and a lobbyist who is a citizen of the  
5 United States who is moving to San Francisco, California on August 1, 2017. [REDACTED] alleges  
6 she is aggrieved by all the unconstitutional practices set forth above.  
7

8 J. [REDACTED] is a 42 year old Asian Woman who lives in Valencia, California. [REDACTED] is  
9 aggrieved by all the unconstitutional practices set forth above, including those set forth in the  
10 Voting Rights Act because she is Asian.

11 K. [REDACTED] is a Caucasian man living in Stockton, California. [REDACTED] is  
12 aggrieved by all the unconstitutional practices set forth above, and further he ran for [REDACTED]  
13 and was prevented from running a competitive campaign because of California's legislative  
14 oligarchy system of government, and he was retaliated against for running for [REDACTED]  
15

16 L. [REDACTED] is a 55 year old African American man living in Alameda,  
17 California. [REDACTED] is aggrieved by all the unconstitutional practices related to self governance  
18 set forth above, including those set forth in the Voting Rights Act because he is an African  
19 American.  
20

21 M. [REDACTED] is a 42 year old Caucasian woman, who resides in Contra Costa  
22 County. [REDACTED] is aggrieved by all the unconstitutional practices set forth above, and further  
23 because she is a disabled woman who has repeatedly petitioned her representatives for redress  
24 without response and has let them know she has the disabilities of dyslexia and PTSD, which are  
25 covered by the ADA, but has been ignored. Additionally, [REDACTED] who has been involved in a  
26  
27  
28

1 lawsuit filed in the Family Law Courts alleges that she is aggrieved because the California  
2 legislature has not conducted any meaningful oversight of those courts and this has caused her  
3 and thousands of others harm.

4 N. [REDACTED] is is a resident of Modoc County. [REDACTED] and the people of  
5 Modoc County have been aggrieved by all the unconstitutional practices set forth above, and  
6 Modoc County has been retaliated against by California for exercise of their political speech.  
7

8 O. [REDACTED] is Caucasian man who is a resident of Shasta County. [REDACTED] is  
9 aggrieved by all the unconstitutional practices related to self governance set forth above,  
10 including those based on retaliation by California for the exercise of political speech.  
11

12 P. [REDACTED] is a Caucasian woman living in Shasta, California. [REDACTED] is aggrieved by  
13 all the unconstitutional practices related to self governance set forth above.  
14

15 Q. [REDACTED] is a 73 year old Caucasian man who resides in Portola, California.  
16 [REDACTED] is aggrieved by all the unconstitutional practices related to self governance set forth  
17 above, including those which are age related.

18 R. [REDACTED] is a Caucasian man who resides in Placerville, California. [REDACTED] is  
19 aggrieved by all the unconstitutional practices related to self governance set forth above.  
20

21 S. [REDACTED] is a resident of Yuba County. [REDACTED] and the people of Yuba County  
22 are aggrieved by all the unconstitutional practices set forth above, and further have been  
23 subjected to retaliation based upon their exercise of political speech related to self governance.

24 T. [REDACTED] is a resident of Butte County. [REDACTED] and the people of Butte County are  
25 aggrieved by all the unconstitutional practices set forth above, and further have been subjected to  
26 retaliation based upon their exercise of political speech related to self governance.  
27

1 U. [REDACTED] is a Chinese American and resident of Los Angeles County. [REDACTED]  
2 is aggrieved by all the unconstitutional practices set forth above, including those set forth in the  
3 Voting Rights Act because he is Chinese.

4 *CANDIDATES*

5  
6 12.5. In addition to having the value of their votes abridged, the following plaintiffs have also  
7 been injured by being unable to meaningfully campaign as candidates for the California  
8 legislature due to the extraordinary amount of money it takes to win a legislative election in  
9 California, as opposed to other States.

10 12.6. [REDACTED] ran for the California Senate first district, which is larger than the State of  
11 West Virginia and had 11 Counties in it. [REDACTED] ran for Assembly.

12  
13 12.7. [REDACTED] ran for Secretary of State (a non legislative seat) as a member of  
14 the [REDACTED] If elected as Secretary of State he would likely have sought an opinion from the  
15 attorney-general as to whether California's restriction of legislative representation to only 120  
16 representatives for 40,000,000 people was lawful under the United States Constitution.

17 *CITIES*

18  
19 12.8. Plaintiffs include the California cities of [REDACTED] Their city  
20 councils have voted and approved joining this lawsuit.

21 12.9. Plaintiff cities on behalf of the people who reside within them bring this action alleging  
22 that they are being harmed by the massive and arbitrary population size of California's  
23 legislative districts because California's practice of not increasing the number of districts to  
24 accommodate a growing populations has created an oligarchy that violates the people's right to  
25 self governance in a federal system. On information and belief California's oligarchy system of  
26

1 legislation promotes retaliation against those small municipalities and communities which  
2 challenge it. Plaintiff cities are aggrieved by all the unconstitutional practices related to self  
3 governance set forth above.

4 *COUNTIES*

5  
6 12.10. Plaintiffs want to clarify that no counties are plaintiffs to this action. Originally several  
7 counties, including Siskiyou County, indicated an intention to join in this lawsuit challenging the  
8 size of districts and the representation ratio between legislators and the people. Ultimately, these  
9 counties chose to not participate in this lawsuit, although two (2) county supervisors and two (2)  
10 county sheriffs decided to be plaintiffs - in their individual capacities.

11 12.11. On information and belief several of the counties decided not to participate in this lawsuit  
12 and/or otherwise challenge California's system of legislative oligarchy because they feared  
13 retaliation by California against the counties, their officials, and constituents. Plaintiff counties  
14 are aggrieved by all the unconstitutional practices related to self governance set forth above.

15 *POLITICAL PARTIES*

16  
17 12.12. The [REDACTED] and [REDACTED] of California are political parties  
18 and join this case as plaintiffs. The [REDACTED] runs candidates for State, Federal and Local  
19 elections. The California [REDACTED] has an interest in participating in  
20 governmental functions and may choose to run candidates for state legislative office. All political  
21 parties have an interest in citizens of the United States being afforded the right to self governance  
22 in a federal system where neither the State nor Federal government constitute an oligarchy or  
23 aristocracy. Further, the political parties have an interest in insuring that no persons, including its  
24 members are not retaliated against for exercising First Amendment rights relating to political  
25  
26  
27

1 speech. Plaintiff political parties are aggrieved by all the unconstitutional practices related to  
2 self governance set forth above.

3 **V. CAUSES OF ACTION**

4 ***1st CAUSES OF ACTION - 14th AMEND. PRIVILEGES & IMMUNITIES***

5 13.1. Plaintiffs incorporate all of their previous allegations herein.

6 13.2. The first section of the Fourteenth Amendment states in pertinent part: “No State shall  
7 make or enforce any law which shall abridge the privileges or immunities *of citizens of the*  
8 *United States*” (Emphasis Supplied)

9 13.3. In [Yick Wo v. Hopkins](#) the Court referred to “the political franchise of voting” as a  
10 “privilege merely conceded by society according to its will” which was a “fundamental political  
11 right, because [“it is the”] preservative of all rights.” *Id.*, 118 U.S. 356, 370, (1886).

12 13.4. The individual Plaintiffs by virtue of being citizens of the United States are entitled to the  
13 privilege of self-governance through their elective franchise, as modified by the Thirteenth,  
14 Fourteenth, Fifteenth, Seventeenth, Nineteenth, and Twenty-Sixth Amendments guaranteeing all  
15 citizens of the United States the right to vote (and that their votes not be abridged by any State  
16 government). The purpose of this privilege is so that all citizens of the United States can  
17 meaningfully participate in self governance.

18 13.5. By refusing to increase representation when the population dramatically increases, the  
19 value of each constituent’s vote is abridged, diminished, and diluted. In a democratic republic  
20 votes are intended to be, and in fact are, the only currency by which elections can and should  
21 be won. When money trumps votes, a democratic republic ceases to exist because the  
22 representative relationship, between representative and constituents has broken down.

1 13.6. California has violated the “privileges and immunities” of plaintiffs by creating an  
2 oligarchy/aristocracy, which is contrary to the voting rights and rights to self governance  
3 guaranteed citizens of the United States by Constitution, as amended.

4 13.7. The privilege of voting and self governance has evolved over time to the point where  
5 California's creation of an oligarchy/aristocracy, where elections are won based solely on wealth,  
6 and thereby violates the privileges and immunities clause of the Fourteenth Amendment.  
7

8 ***2nd CAUSE OF ACTION - 14th AMENDMENT VIOLATION OF DUE PROCESS***

9 13.8. Plaintiffs incorporate all of their previous allegations herein.

10 13.9. The Fourteenth Amendment Sec. 1 states in pertinent part: “No State ... shall deprive *any*  
11 *person* of life, liberty, or property, without due process of law;” (emphasis supplied)

12 13.10. The Due Process Clause protects rights that are “so rooted in the traditions and  
13 conscience of our people as to be ranked as fundamental.” They include rights which are “the  
14 very essence of a scheme of ordered liberty” as well as “such principles of equity as are  
15 recognized by all temperate and civilized governments, from a deep and universal sense of its  
16 justice.” [McDonald v City of Chicago, Ill.](#), 561 US 742, 760-61 (2010).  
17

18 13.11. The privileges identified in the preceding cause of action, the electoral franchise and right  
19 to self governance, are also rights which are protected substantive due process.  
20

21 13.12. The right to vote is a fundamental right, which our Constitution guarantees to all citizens.  
22 *See, e.g.,* [Bush v. Gore](#), 531 U.S. 98, 104 (2000); [Burson v. Freeman](#), 504 U.S. 191, 198,  
23 (1992); [Tashjian v. Republican Party](#), 479 U.S. 208 (1986); [Buckley v. Valeo](#), 424 U.S. 1, 49  
24 n.55, 46 L. Ed. 2d 659, 96 S. Ct. 612 (1976); [Lubin v. Panish](#), 415 U.S. 709, 721 (1974); [Bullock](#)  
25 [v. Carter](#), 405 U.S. 134 (1972); [Phoenix v. Kolodziejski](#), 399 U.S. 204 (1970); [Harper v.](#)  
26

1 Virginia State Bd. of Elections, 383 U.S. 663, 667 (1966); Reynolds v. Sims, 377 U.S. 533,  
2 561-562 (1964); Wesberry v. Sanders, 376 U.S. 1, 7 (1964).

3  
4 No right is more precious in a free country than that of having a voice in the election  
5 of those who make the laws under which, as good citizens, we must live. Other  
6 rights, even the most basic, are illusory if the right to vote is undermined. Our  
7 Constitution leaves no room for classification of people in a way that unnecessarily  
8 abridges this right.

9 Wesberry, 376 U.S. at 17-18. "History has seen a continuing expansion of the scope of the  
10 right of suffrage in this country. The right to vote freely for the candidate of one's choice is of the  
11 essence of a democratic society, and any restrictions on that right strike at the heart of  
12 representative government." Reynolds v. Sims, 377 U.S. at 555.

13 13.13. Plaintiffs' substantive due process rights to participate in self governance in California  
14 pursuant to the provisions of the U.S. Constitution, U.S. statutes, U.S. treaties, and such  
15 principles of equity as are recognised by all temperate and civilized governments have been  
16 violated by California's practice of not increasing the number of elected representatives to  
17 accommodate a dramatically growing population.

18 13.14. Plaintiffs assert that California's intentional cap on the number of representatives at 120  
19 legislators in 1862, when its population was just above 400,000 people, which has exploded to  
20 almost 40,000,000 people today, has deprived plaintiffs' rights to due process and will continue  
21 to do so into the future.

22 ***3rd CAUSE OF ACTION - 14th AMENDMENT EQUAL PROTECTION***  
23 ***and VOTING RIGHTS ACT, 52 U.S.C. Ch. 103***

24 ***A. CONSTITUTIONAL ALLEGATIONS***

25 13.15. Plaintiffs incorporate all of their previous allegations herein.

26 13.16. The first section of the Fourteenth Amendment states in pertinent part: "No State shall ...  
27

1 deny to **any person** within its jurisdiction the equal protection of the laws.”

2 13.17. Plaintiffs allege California’s intentional and invidious practice of refusing to increase  
3 legislative representatives to accommodate population growth has created an  
4 oligarchy/aristocracy of legislative power, which favors the wealthy connected and elite and  
5 thereby violates the equal protection clause of the Fourteenth Amendment.  
6

7 13.18. Fair and effective representation is the basic goal of legislative apportionment. The Equal  
8 Protection Clause guarantees the opportunity for equal participation by all voters in the elections.  
9 “Diluting the weight of votes because of place of residence impairs basic constitutional rights  
10 under the Fourteenth Amendment just as much as invidious discriminations based upon factors  
11 such as race....” *Reynolds v. Sims*, 377 U.S. 533, 565-566 (1964).  
12

13 13.19. California’s practice of not increasing its number of legislative representatives to  
14 accommodate its expansive population growth also violates the Equal Protection Clause because  
15 it intentionally and invidiously discriminates against persons based upon suspect classification.  
16

17 13.20. *Discrimination On Rights To Self Government Based On Wealth*: California’s invidious  
18 and intentional practice of limiting legislators to 120 elected members creates an oligarchy which  
19 unconstitutionally intentionally discriminates against people’s right to participate in self  
20 governance based on wealth. See e.g. [Lubin v. Panish](#), 415 US 709 (1974); [Phoenix v.](#)  
21 [Kolodziejki](#), 399 US 204 (1970); [Harper v. Virginia State Bd. of Elections](#), 383 U.S. 663,  
22 666-668 (1966)  
23

24 13.21. *Discrimination On Rights To Self Government Based On Rance And Ethnicity*:  
25 California’s invidious and intentional practice of limiting legislators to 120 elected members  
26 creates an oligarchy which unconstitutionally and intentionally discriminates against people’s  
27

1 right to participate in self governance based on race and national origin.

2 13.22. *Discrimination On Rights To self Government Based On Sex:* California’s invidious and  
3 intentional practice of limiting legislators to 120 elected members creates an oligarchy which  
4 unconstitutionally and intentionally discriminates against people’s right to participate in self  
5 governance based on sex.

6  
7 13.23. *Discrimination On Rights To Self Governance Based On Disability:* California’s  
8 invidious and intentional practice of limiting legislators to 120 elected members creates an  
9 oligarchy which unconstitutionally and intentionally discriminates against people who are  
10 disabled. A higher percentage of Women, Blacks, Hispanics, Native Americans, and poor are  
11 disabled. than are whites and those who possess significant wealth.

12  
13 13.24 *Discrimination Based On Political Speech:* California’s invidious and intentional  
14 practice of DISCRIMINATING AGAINST plaintiffs based on the exercise of political speech  
15 seeking fair representation.

16 *B. VOTING RIGHTS ACT - 52 USC 10301*

17 13.25. Subsection 2(a) of the Voting Rights Act prohibits all States and political subdivisions  
18 from imposing practices or procedures which result in the denial or abridgement of self  
19 governance to racial and language minorities.

20  
21 13.26. Subsection 2(b) establishes that § 2 has been violated where the "totality of  
22 circumstances" reveal that "the political processes leading to nomination or election . . . are not  
23 equally open to participation by members of a [protected class] . . . in that its members have less  
24 opportunity than other members of the electorate to participate in the political process and to  
25 elect representatives of their choice."  
26

1 13.27. The extent to which members of a protected class have been elected to office in the State  
2 or political subdivision in the past is one circumstance which may be considered.

3 13.28. On information and belief no native American Indian has ever been elected to the  
4 California Assembly or Senate. African American and Hispanic citizens of the United States are  
5 not elected to the legislature in any percentage that approximates their proportion of the  
6 population.  
7

8 13.29. California has used the practice of intentionally and invidiously promoting large  
9 population districts to discriminate against plaintiffs based on race and national origin with  
10 regard to voting and self governance.

11 13.30. The totality of the circumstances establish "the political processes leading to nomination  
12 or election . . . are not equally open to participation based on race and national origin.  
13

14 ***4th CAUSE OF ACTION - 2 USC 6 - ABRIDGMENT - 14th AMENDMENT, SEC. 2***

15 13.31. Plaintiffs incorporate by reference the preceding allegations.

16 13.32. A static level of representation and the growing population invidiously and intentionally  
17 abridges each plaintiffs' vote and their right of self governance of each individual plaintiff in this  
18 action. If the Court and the Judicial Department of the United States do not have Article III  
19 judicial power to enjoin and/or declare that the number of districts be increased to accommodate  
20 the representation ratios sought by the Plaintiffs, then Plaintiffs request this Court decrease the  
21 number of representatives for the State of California in the U.S. House of Representatives as a  
22 penalty, pursuant to the Fourteenth Amendment, § 2 and pursuant to [2 U.S.C. 6](#).  
23

24 ***5th CAUSE OF ACTION - FEDERALISM VIOLATION***

25 13.33. Plaintiffs incorporate all of their previous allegations herein.  
26  
27

1 13.34. Federalism, central to this nation’s constitutional design, adopts the principle that both  
2 the Federal government and each State government has elements of sovereignty the other is  
3 bound to respect.

4 13.35. A central purpose for the federal structure of the United States is to protect the liberty  
5 interests of the people. [Bond v. United States](#), 564 U.S. 211, 222-224 (2011).

6 13.36. James Madison contended “[i]n the compound republic of America a double security  
7 arises to the rights of the people. ... The different governments will controul each other, at the  
8 same time that each will be controuled by itself.” [The Federalist No. 51](#). Alexander Hamilton in  
9 [The Federalist No. 28](#) observed: “Power being almost always the rival of power, the general  
10 government will at all times stand ready to check the usurpations of the state governments, and  
11 these ... will have the same disposition towards the general government.”

12 13.37. Thomas Jefferson agreed the way “to have a good government is not to trust it all to one,  
13 but to divide it among the many...” According to Jefferson “[t]he elementary republics of the  
14 wards, the county republics, the State republics, and the Republic of the Union, would form a  
15 gradation of authorities ... holding every one its delegated share of powers...” [Letter from](#)  
16 [Thomas Jefferson to Joseph C. Cabell \(Feb. 2, 1816\)](#).

17 13.38. California’s substitution of an oligarchy/aristocracy, which fails to represent all the  
18 people as sovereign violates plaintiffs federalism rights as they exist in the 21st century.

19 13.39. California’s oligarchy intentionally discourages millions of eligible voters from voting  
20 and violates the people’s right to self governance at both the State and Federal levels.

21 13.40. In order to preserve their power, the Oligarchs violate Plaintiffs’ rights to participate in  
22 the operation of a compound republic, which is supposed to safeguard self governance.

**6th CAUSE OF ACTION - Treaties and Customary International Law.**

13.41. Plaintiffs incorporate by reference the preceding allegations.

13.42. Treaties have a force equal to that of Congressional statute under [Article 6](#), section 2 (the Supremacy Clause of the United States Constitution), which states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

13.43. A ratified treaty creates obligations for both Federal and State authorities.

13.44. As is established in the “Historical Facts” section of this FAC in the years following World War II, the global community came together to recognize that all people everywhere are entitled to the rights associated with self governance.

13.45. The United States is a party to a number of treaties and other agreements that clearly and definitively establish an international obligation on the part of their signatories to uphold the principles of self-governance and full representation. Those documents include, but are not limited to: the UN Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the Inter-American Democratic Charter and the American Declaration of the Rights and Duties of Man.

13.46. The Declaration and the ICCPR both rely upon the principle, enunciated in the U.S. Declaration of Independence, that the will of the people shall be the basis of the authority of government; *i.e.* that “[governments derive] their just powers from the consent of the governed” and that people are endowed by reason of birth with certain unalienable rights, among those the right to participate in self governance.

1 13.47. The UN Universal Declaration of Human Rights is not a legally binding treaty—it was  
2 seen as merely the first step in the process of creating the International Bill of Human Rights.  
3 However, the ICCPR, which was created in 1966 to give juridical force to the political  
4 aspirations of the Declaration, is a binding treaty to which the United States is a signatory.

5  
6 13.48. Article 1 and Article 25 of the ICCPR both further affirm the political rights laid out in  
7 the Declaration. Art. 1 unequivocally states: “All peoples have the right to self determination. By  
8 virtue of that right they freely determine their political status and freely pursue their economic,  
9 social, and cultural development.” Article 1 emphasizes the responsibility of individual national  
10 governments in enforcing the treaty provisions towards their citizens.

11  
12 13.49. The Senate declared the ICCPR to be a non-self-executing treaty, but the question of  
13 whether it had the unicameral authority to do so is an unresolved question of law. *See Igartúa v.*  
14 *Obama*, 842 F.3d 149, 158-9 (1st Cir. 2016); *Igartúa v. United States*, 626 F.3d 592, 621-8,  
15 638-639 (1st Cir. 2010)(Torruella dissenting); *Igartua-de la Rosa v. United States*, 417 F.3d 145,  
16 169-192 (1st Cir. 2005)(Torruella Dissenting); 185-192 (Howard dissenting).

17  
18 13.50. The United States is also a party to several regional instruments imposing upon it an  
19 obligation to to comply with the norms of self governance for all its people. The Inter American  
20 Democratic Charter (IADC), adopted in 2001, contains language on political rights similar to  
21 that of the Declaration and the ICCPR. The IADC was a binding resolution of the General  
22 Assembly of the Organization of American States (OAS), and was based on the principles in the  
23 American Declaration for the Rights and Duties of Man, a precursor to the UN Universal  
24 Declaration of Human Rights. *See Historical Facts.*

1 13.51. California’s current arbitrary apportionment of only 80 Assembly district and 40 Senate  
2 Districts for almost 40,000,000 violates both the United States Constitution and customary  
3 international law, which recognizes the same rights of self governance.

4 13.52. Customary international law has legal force equal to that of treaties or Congressional  
5 statutes on California.

6 13.53. Restatement of the Law, Foreign Relations Law 3rd, §102 provides in part:

7 \* \* \*

8 (2) Customary international law results from a general and consistent practice of  
9 states followed by them from a sense of legal obligation.

10 (3) International agreements create law for the states parties thereto and may lead to the  
11 creation of customary international law when such agreements are intended for adherence  
12 by states generally and are in fact widely accepted.

13 (4) General principles common to the major legal systems, even if not incorporated or  
14 reflected in customary law or international agreement, may be invoked as supplementary  
15 rules of international law where appropriate.

16 13.54. The United States has consistently since July 4, 1776 emphasized that this nation was  
17 founded on the notion of “We the People” and self governance. Although the Constitution  
18 originally limited electors for members of the House of Representatives to those established by  
19 the States, after the Civil War and World War II the Constitution was amended on numerous  
20 occasions to broaden voting rights to enfranchise more and more citizens of the United States  
21 both with regard to State and Federal elections. *See Historical Facts, supra.*

22 13.55. Following World War II the United States imposed systems of self governance on its  
23 former enemies, *i.e.* Germany and Japan. Further, the United States entered into international  
24 organizations in order to promote those same self governance principles by other nation-states as  
25 are reflected in the United States Declaration of Independence and Constitution (including those  
26 amendments passed after the Civil War. *See Historical Facts, supra.*)

1 13.56. International Agreements reflect that the principles of self governance, including the  
2 principle of “one person/one vote” are now widely accepted and practiced.

3 13.57. Although California is only one State of 50 States which make up the United States, its  
4 representation ratio is worse than exists in most countries and violates the rights of citizen’s of  
5 the United States to self governance under customary International Law, the United States  
6 Constitution, federal statutes, and treaties, which Plaintiffs contend are binding on California.  
7

8 ***7th CAUSE OF ACTION - 9th AMENDMENT VIOLATIONS***

9 13.58. Plaintiffs incorporate by reference the preceding allegations.

10 13.59. The [Ninth Amendment](#) protects some rights of people against State governmental action.  
11 The Ninth Amendment provides: “The enumeration in the Constitution, of certain rights, shall  
12 not be construed to deny or disparage others retained by the people.” Prior to the Civil War, the  
13 Ninth Amendment protected the people only from the Federal government.  
14

15 13.60. Since the end of the Civil War, the Constitution has been amended on numerous  
16 occasions to provide voting and self governance rights to citizens of the United States in the  
17 States. Also numerous statutes and treaties have been enacted since the Civil War and World  
18 War II which are designed to expand plaintiffs self governance rights. These are enumerated and  
19 unenumerated privileges and/or rights which the Constitution specifically bestows with regard to  
20 self governance in favor of the citizens of the United States against the States and the Federal  
21 government.  
22

23 13.61. Plaintiffs can enforce their rights to self governance against California directly through  
24 the Ninth Amendment.

25 13.62. Plaintiffs allege their Ninth Amendment rights to self governance have been intentionally  
26

1 violated by California refusing to increase members of the legislature.

2 **8th CAUSES OF ACTION - 1ST & 14TH AMENDMENT VIOLATIONS**

3 13.63. Plaintiffs incorporate all of their previous allegations herein.

4 13.64. The [First Amendment](#) operates to limit the conduct of state actors. See [Murdock v.](#)  
5 [Pennsylvania](#), 319 U.S. 105, 108, (1943) (recognizing that the Fourteenth Amendment makes the  
6 First Amendment "applicable to the states").

7  
8 13.65. Political belief and association constitute the core of those activities protected by the First  
9 Amendment. The First Amendment works in tandem with other constitutional guarantees to  
10 protect representational rights. Indeed, "[t]he right of qualified voters, regardless of their political  
11 persuasion, to cast their votes effectively . . . rank[s] among our most precious freedoms."  
12 [Anderson v. Celebrezze](#), 460 U.S. 780, 787 (1983) (quoting [Williams v. Rhodes](#), 393 U.S. 23,  
13 30-31 (1968)).

14  
15 13.66. “[R]epresentative government is in essence self-government through the medium of  
16 elected representatives of the people, and each and every citizen has an inalienable right to full  
17 and effective participation in th[is] political process[] . . . . Most citizens can achieve this  
18 participation only as qualified voters through the election of legislators to represent them. Full  
19 and effective participation by all citizens . . . requires, therefore, that each citizen have an equally  
20 effective voice in the election of [a representative]. *Reynolds*, 377 U.S. at 565

21  
22 13.67. Thus, at the most basic level, when a State engages in practices which dilute the votes of  
23 certain citizens, the practice imposes a burden on those citizens' right to "have an equally  
24 effective voice in the election" of a legislator to represent them.

25  
26 13.68. In this case it is undisputed that California’s practice of repeatedly refusing to increase

1 the number of its elected legislators from its cap of 40 Senators and 80 Assembly members  
2 regardless of the growth of its population dilutes the value of a U.S. citizen's vote by placing  
3 them in an overpopulated district.

4 13.69. For years plaintiffs and others have been engaged in political speech to further their  
5 interests in representative self governance. California has retaliated against some plaintiffs  
6 expression of political speech by purposely subjecting them to discriminatory regulations and  
7 performing less legislative oversight and overlooking problems with regard to state infrastructure  
8 located in their municipalities. State officials have also threatened plaintiffs and others that if  
9 they support increasing the current number of 120 legislators the State may take retaliatory  
10 actions against them.  
11

12 13.70. Plaintiffs allege that California has in fact retaliated against plaintiffs and others who  
13 have through political speech demanded that California practices be changed and that State  
14 actors have caused them harm.  
15

## 16 **VI. PRAYER**

17 WHEREFORE, Plaintiffs respectfully pray the Court as follows:

- 18 1. The assigned trial Judge as soon as practicably possible alert the Chief Judge of the Ninth  
19 Circuit to convene a district court of three judges as required by 28 U.S.C. 2284(1).
- 20 2. Declare the existing apportionment and representative ratio of California's legislative  
21 districts impair plaintiff's' right to participate in self-governance and abridge the value of  
22 individual plaintiffs' votes as well as impairs their first Amendment rights.
- 23 3. Enter a permanent injunction and, if necessary, a preliminary injunction establishing  
24 statewide legislative districts in California as follows:  
25  
26  
27

1 A. California’s Assembly districts be reduced to a point where each Assembly  
2 member in the California legislature will represent the same number of people  
3 within a range of 5,000 to 50,000 people; and  
4

5 B. California’s Senate districts be reduced to a point where each Senator in the  
6 California legislature will represent the same number of people within a range of  
7 10,000 to 100,000 people; and  
8

9 C. Enjoin any further growth of the population size of either Assembly or Senate  
10 Districts.

11 4. Alternatively, to penalize California pursuant to 2 U.S.C. § 6 by reducing its number of  
12 U.S. House of Representative members by an amount the fact finder determines is appropriate.

13 5. Appoint a Special Master for determinations of population data for the court to use.

14 6. Enter a permanent injunction and, if necessary, a preliminary injunction establishing a  
15 moratorium on the hiring of legislative assistants, who perform legislative functions.

16 7. Award plaintiffs’ attorney fees and reasonable costs incurred in this action pursuant to 42  
17 U.S.C. § 1988; and other similar purposed statutes relevant to this action.

18 8. Order such other and further relief as the Court may deem just and proper.  
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21 Dated this \_\_\_\_th day of July, 2017

22 Respectfully Submitted,  
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**DRAFT**

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BY:           /s/ Scott E. Stafne            
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**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that on this date I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this \_\_\_\_\_ day of July, 2017 at Arlington, Washington.

BY: /s/ Pam Miller