

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
TRENTON VICINAGE

EUGENE MARTIN LaVERGNE,

Plaintiff,

vs.

JOHN BRYSON in his official capacity
as the Secretary of the United States
Department of Commerce;

JOHN GROVER in his official capacity
as the Director of the United States
Census Bureau;

KAREN L. HAAS in her official
capacity as the Clerk of the United States
House of Representatives;

JOHN BOEHNER in his official
capacity as the Speaker of the United
States House of Representatives;

DANIEL INOUE in his official as the
President *Pro Tempore* of the United
States Senate,

JOSEPH BIDEN in his official capacity
as the President of the Senate, and

DAVID FERRIERO in his official
capacity as the Archivist of the United
States of America,

Defendants.

Civil Action No. _____

RECEIVED

DEC 06 2011

AT 8:30 _____ M
WILLIAM T. WALSH, CLERK

Civil Action:

VERIFIED COMPLAINT

I. JURISDICTION:

1. Jurisdiction to entertain plaintiff's Federal Constitutional claims is vested in the United States District Court pursuant to 28 U.S.C. 1391 and 28 U.S.C. 2284(a). Plaintiff's claims for

declaratory and injunctive relief are authorized by 28 *U.S.C.* 2201 and 28 *U.S.C.* 2202 (the Federal “Declaratory Judgment Act”), by 28 *U.S.C.* 1361 (the Federal “Mandamus Act”), by *Rule 57* and *Rule 65* of the Federal Rules of Civil Procedure, and by general legal and equitable powers of this Court. Plaintiff additionally has a non-statutory right to bring this action to challenge the lawfulness of what is Article II Executive Branch Action and to seek to enjoin its implementation by federal officials. *See Chamber of Commerce of the United States v. Reich*, 74 *F.3d* 1322 (D.C. Cir. 1996).

II. VENUE:

2. Venue is proper in the District of New Jersey and the Trenton Vicinage pursuant to the requirements of 28 *U.S.C.* 1391.

III. THE PARTIES:

3. *Pro Se* Plaintiff Eugene Martin LaVergne (hereinafter “plaintiff”) is a citizen and resident of the United States of America, a citizen and resident of the State of New Jersey, and a citizen and resident of the Borough of West Long Branch in the County of Monmouth. Plaintiff is an adult male and a lawfully registered voter and is a “person” within the meaning of the United States Constitution, Article I, Section 2 (1788), as amended by the 14th Amendment, Section 2

(1868), as modified by Formal United States Attorney General Opinion (1940) (*See 39 Op. Att'y General* 518 (1940) on the issue of "Indians not taxed" ...).

4. Defendant Secretary John Bryson (hereinafter "Secretary Bryson"), a resident of the State of New York, is at present the Secretary the United States Department of Commerce, and is named as a party to this lawsuit only in his official capacity as the presently serving Secretary of Commerce. Defendant Secretary Bryson's place of business is 1401 Constitution Avenue, N.W., Washington D.C 20230.

5. Defendant Director John Grover (hereinafter "Director Grover"), is the Director of the United States Census Bureau and is named as a party to this lawsuit only in his official capacity as the presently serving Director of the Census Bureau. The United States Census Bureau is a Bureau within and under the jurisdiction of the United States Department of Commerce. Director Grover's principle place of business is located at United States Census Building, in the County of Prince George's , Town of Suitland-Silver Hill, in the State of Maryland.

6. Defendant the Honorable Karen L. Haas (hereinafter "House of Representatives Clerk Haas") is the Official Clerk of the United States House of Representatives. House of Representatives Clerk Haas is named as a party to this lawsuit only in her official capacity as the presently serving Clerk of the United States House of Representatives. The principle place of business of House of Representatives Clerk Hass is United States House of Representatives, United States Capitol, Room H154, Washington, D.C.

7. Defendant the Honorable John Boehner (hereinafter “Speaker Boehner”), a resident of the State of Ohio, is an Elected Representative from the State of Ohio and is also at present serving in the United States Representatives in the capacity of Speaker of the United States House of Representatives, a Constitutional Office created by Article I, Section 2 of the United States Constitution. Speaker Boehner is named as a party to this lawsuit only in his official capacity as the presently serving Speaker of the United States House of Representatives and as the highest ranking member of that Legislative body Constitutionally entitled to introduce Legislation. The principle place of business of Speaker Boehner is United States House of Representatives, Office of the Speaker of the House, United States Capitol, Room H232, Washington, D.C.

8. Defendant the Honorable Daniel Inouye (hereinafter “President *Pro Tempore* Inouye”), a resident of the State of Hawaii, is an Elected United States Senator from the State of Hawaii and is also at present serving in the United States Senate in the capacity of President *Pro Tempore* of the United States Senate, a Constitutional Office created by Article I, Section 3 of the United States Constitution. President Inouye is named as a party to this lawsuit only in his official capacity as the presently serving President *Pro Tempore* of the United States Senate and as the highest ranking member of that Legislative body Constitutionally entitled to introduce Legislation. The principle place of business of President *Pro Tempore* Inouye is United States Senate, Office of the President *Pro Tempore*, United States Capitol, Washington, D.C.

9. Defendant the Honorable Joseph Biden (hereinafter Vice President Biden), a resident of the State of Delaware, is presently the elected Vice President of the United States. Vice President Biden is named as a party to this lawsuit only in his official capacity as the Vice President of the United States who also serves as the President of the Senate. In his capacity as the President of the Senate, Vice President Biden is charged with counting the Electoral Votes for President from the November 2012 General Election pursuant to Article II, Section 1 of the United States Constitution, as amended by the 12th and 23rd Amendments, in accordance with 3 *U.S.C. sec. 15*, on January 6, 2013 at 1 o'clock in the afternoon. The principle place of business of Vice President Biden is located at Office of the Vice President of the United States, White House, 1600 Pennsylvania Avenue, Washington, D.C.

10. Defendant David Ferriero (hereinafter "Archivist Ferriero") is presently serving as the Archivist of the United States of America, the Chief Administrator of the National Archives and Records Administration. The address of Archivist Ferriero is National Archives Building, 700 Pennsylvania Avenue, NW, Washington, D.C. The National Archives Administration is an independent agency of the United States Government charged with preserving and documenting government and historical records and with increasing public access to those documents which comprise the National Archives. The National Archives Records Administration is officially responsible for maintaining and publishing the legally authentic and authoritative copies of acts of Congress, Presidential Proclamations and Executive Orders, and Federal Regulations. In addition to such duties, the Archivist of the United States of America, in this case Archivist Ferriero, not only maintains all official documentation regarding the ratification actions of the various State Legislatures regarding proposed of amendments to the United States Constitution,

but also has the authority to declare when the constitutional threshold for passage of a proposed amendment has been reached, and the additional specific statutory power to declare when a proposed amendment has become ratified and enacted as an actual amendment to the United States Constitution, and to thereafter number and publish the now ratified Amendment as a codicil amendment and a part of the United States Constitution. *See "National Archives and Records Administration Act of 1984", Pub. Law 98-497, now codified at 1 U.S.C. 106b.*

IV. SPECIFIC CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE IN THIS CASE:

A. CONSTITUTIONAL PROVISIONS SPECIFICALLY REGARDING APPORTIONMENT DIRECTLY AT ISSUE IN THIS CASE:

11. Article I, Section 2 of the United States Constitution in its original form provides in relevant part as follows:

* * * Representatives and direct taxes¹ shall be apportioned among the several States which may be included within this Union, according to their respective numbers which shall be determined by adding to the whole Number of free Persons, including those bound to Serve for a Term of Years, and excluding Indians not taxed,² three fifths of all other Persons.³ The actual Enumeration shall be made within three Years after the first Meeting of

¹ It should be noted that the Constitutional requirement in Article I, Section 2 that "Taxes" be apportioned among the States according to their respective numbers was made inoperative by the ratification of the 16th Amendment on February 25, 1913.

² It should also be noted that the Constitutional requirement in Article I, Section 2 and the Fourteenth Amendment, Section 2 that "...Indians not taxed ..." were not to be counted in the Census was rendered moot in 1940 when the United States Attorney General issued a Formal Opinion that there were no longer any Indians that met that definition. *See 39 Op. Att'y General 518 (1940) (On the issue of "Indians not taxed" ...).*

³ It should further be noted that the Fourteenth Amendment, Section 2, ratified on July 28, 1868, required that each former slave now to be counted as 1 "whole person" (as opposed to "3/5 of a person") for Article I, Section 2 Census purposes.

Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law Direct. The number of Representatives shall not exceed one for every thirty Thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three. * * *

[United States Constitution, Article I, Section 2]

12. On July 28, 1868, the Fourteenth Amendment was ratified and was added as a codicil Amendment to the United States Constitution. Section 2 of the 14th Amendment vides in relevant part as follows:

* * *

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. *
* *

[United States Constitution, 14th Amendment, Section 2].

13. Article II, Section I of the United States Constitution provides as follows:

Section 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same term, be elected as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, **a Number of Electors, equal to the whole number of Senators**

and Representatives to which the State may be entitled in the Congress: But no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector. * * * (Emphasis added)

[United States Constitution, *Article II, Section 1*].

The Article II, Section 1 “Electoral College” process was modified extensively to its present form with the ratification of the 12th Amendment on September 25, 1804 and the 23rd Amendment on March 29, 1961. However, the 12th and 23rd Amendments did nothing to change the calculation and allocation of the number of Electors apportioned to each State in the Electoral College, that being a number equal to the “whole number” of Senators (ie. 2) and Representatives (ie. at least 1). This formula guarantees each State a minimum of 3 electors to participate in the election of the President and Vice-President through the Electoral College Process as defined in Article II, Section 1 and as amended by the 12th and 23rd Amendments. New Jersey was apportioned 13 Representatives after the 2000 Census, which with the 2 Senators gave New Jersey, and thereby plaintiff, 15 Electors Votes toward the election of the President and Vice President. Now, under an unconstitutional process, New Jersey, and thereby plaintiff, is set to only be apportioned 12 Representatives, meaning that if the 2010 Census Apportionment is allowed to stand, New Jersey will lose 1 Representative and also thereby 1 Electoral Vote to a now reduced level of 12 Representatives and a total of 14 Electoral Votes.

B. FEDERAL STATUTORY PROVISIONS REGARDING APPORTIONMENT DIRECTLY AT ISSUE IN THIS CASE:

14. The operative Federal Statute that plaintiff challenges herein as unconstitutional is Act of June 18, 1929. Chapter 28, Section 22 (46 *Stat.* 26), as amended by Act of April 25, 1940, Chapter 152 (54 *Stat.* 162), as amended by Act of November 15, 1941, Chapter 470, Section 1

(55 Stat. 761), as amended by Public Law 104-186, title II, Section 201, August 20, 1996 (110 Stat. 1724), now codified at 2 U.S.C. 2a, and reads in its present form as follows:

* * *

Sec. 2a. Reapportionment of Representatives; time and manner; existing decennial census figures as basis; statement by President; duties of clerk.

- (a) On the first day, or within one week thereafter, of the first regular session of the Eighty-second Congress and on each fifth Congress thereafter, the President shall transmit to the Congress a Statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the seventeenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no State to receive less than one Member.
- (b) Each State shall be entitled in the Eighty –Third Congress and in each Congress thereafter until the taking effect of a reapportionment under this section or subsequent statute, to the number of Representatives shown in the statement required by subsection (a) of this section, no State to receive less than one Member. It shall be the duty of the Clerk of the House of Representatives, within fifteen calendar days after the receipt of such statement, to send to the executive of each State a certificate of the number of Representatives to which such State is entitled under this section. In case of a vacancy in the office of the Clerk, such duty shall devolve upon the Sergeant at Arms of the House of Representatives.
- (c) Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: (1) If there is no change in the number of Representatives, they shall be elected

from the districts provided by the law of such State, and if any of them are elected from the State at large they Shall continue to be so elected; (2) if there is an increase in the number of Representatives, such additional Representative or Representatives from the districts then provided by the law of such State; (3) if there is a decrease in the number of representatives but the number of districts in each State is equal to such decreased number of Representatives, they shall be elected from the districts then provided by the law of such State; (4) if there is a decrease in the number of Representatives but the number of districts in such State is less than such number of Representatives, the number of Representatives by which such number of districts is exceeded shall be elected from the State at large and the other Representatives from the districts then prescribed by law of such state; (5) if there is a decrease in the number of Representatives and number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large.

[2 U.S.C. 2a(a), (b) and (c)].

C. CONSTITUTIONAL PROVISIONS REGARDING THE FEDERAL LAW MAKING PROCESS AND THE “SEPARATION OF POWERS DOCTRINE” DIRECTLY AT ISSUE IN THIS CASE:

15. Article I, Section 1 of the United States Constitution (commonly known as the “Vesting Clause”) provides in relevant part as follows: “All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. (Emphasis added).

16. Article II, Section 7, Clause 2 of the United States Constitution (commonly known as the “Bicamerality Clause”) provides in relevant part as follows: “Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States. ...” (Emphasis added).

17. Article II, Section 7, Clause 3 of the United States Constitution (commonly known as the “Presentment Clause”) provides in relevant part as follows:

Every Order, Resolution, or vote to which the concurrence of the Senate and the House of representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the case of a Bill.

[United States Constitution, *Article II, Section 7, cl. 3.*]

D. CONSTITUTIONAL PROVISIONS REGARDING THE RATIFICATION OF AMENDMENTS DIRECTLY AT ISSUE IN THIS CASE:

18. Article V of the United States Constitution provides as follows:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the

Several States, or by Conventions in three fourths thereof, as the one or the other Mode of ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate. (Emphasis added).

[United States Constitution, *Article V*].

V. THE FACTS:

A. THE 2010 DECENNIAL CENSUS AND THE CONSTITUTIONAL APPORTIONMENT OF REPRESENTATIVES AMONG THE STATES UNDER THE PRESENT “PROCESS” OUTLINED IN THE PRESENT VERSION OF FEDERAL LAW WHICH IS CODIFIED AT 2 U.S.C. 2a:

19. After the 2000 Census, New Jersey was Apportioned 13 Representatives in the United States House of Representatives. By operation of Article II, Section 1 and the Twelfth and Twenty Third Amendments, New Jersey was therefore allocated 15 votes in the “Electoral College”.

20. Pursuant to Article I, Section 2 of the United States Constitution, the 2010 Decennial Census took place during 2010 and the population of the Nation as a whole including all territories, as well as the populations of each of the now 50 States, was counted as of April 1, 2010. The Census was conducted under the supervision of Secretary Bryson and the Department of Commerce, and was actually conducted by Director Glover of the United States Census Bureau which is a Bureau within the Department of Commerce. Both the United States

Commerce Department and the United States Census Bureau are part of the Article II Executive Branch of Constitutional Government.

21. The Official United States Census Population Counts, as of April 1, 2010, were found to be as follows as per the Census Department Web Site (but see ****, *infra*):

- The Total 2010 National Census Population including all 50 States and United States Territories: **308,745,535 (308.7 Million)**
- The Total 2010 Census Population and Percentage of Increase in Population since 2000 Census for Each State (Listed in Sequence of Admission to the Union):

1. Delaware:	897,934 (+14.6%)	26. Michigan	9,883,640 *(-0.6%)
2. Pennsylvania	12,702,379 (+3.4%)	27. Florida	18,801,310 (+17.6%)
3. New Jersey	8,791,894 (+4.5%)	28. Texas	25,145,561 (+20.6%)
4. Georgia	9,678,653 (+18.3%)	29. Iowa	3,046,355 (+4.1%)
5. Connecticut	3,574,097 (+4.9%)	30. Wisconsin	5,686,986 (+6%)
6. Massachusetts	6,547,629 (+3.1%)	31. California	37,253,956 (+10%)
7. Maryland	5,773,552 (+9%)	32. Minnesota	5,303,925 (+7.8%)
8. South Carolina	4,625,364 (+15.3%)	33. Oregon	3,831,074 (+12%)
9. New Hampshire	1,316,470 (+6.6%)	34. Kansas	2,853,118 (+6.1%)
10. Virginia	8,001,024 (+13%)	35. West Virginia	1,852,994 (+2.5%)
11. New York	19,378,102 (+2.1%)	36. Nevada	2,700,551 (+35.1%)
12. North Carolina	9,535,488 (+18.5%)	37. Nebraska	1,826,341 (+6.7%)
13. Rhode Island	1,052,567 (+0.4%)	38. Colorado	5,029,196 (+16.9%)
14. Vermont	625,741 (+2.8%)	39. North Dakota	675,591 (+4.7%)
15. Kentucky	4,339,367 (+7.4%)	40. South Dakota	814,180 (+7.9%)
16. Tennessee	6,346,105 (+11.5%)	41. Montana	989,415 (+9.7%)
17. Ohio	11,536,504 (+1.6%)	42. Washington	6,724,540 (+14.1%)
18. Louisiana	4,533,372 (+1.4%)	43. Idaho	1,567,582 (+21.1%)
19. Indiana	6,483,802 (+6.6%)	44. Wyoming	563,626 (+14.1%)
20. Mississippi	2,967,297 (+4.3%)	45. Utah	2,763,885 (+23.8)
21. Illinois	12,830,632 (+3.3%)	46. Oklahoma	3,751,351 (+8.7%)
22. Alabama	4,779,736 (+7.5%)	47. New Mexico	2,059,179 (+24.6%)
23. Maine	1,328,361 (+4.2%)	48. Arizona	8,412,700 (+24.6%)

24. Missouri	5,988,929 (+7.0%)	49. Alaska	710,231 (+13.3%)
25. Arkansas	2,926,229 (+13.3%)	50. Hawaii	1,360,301 (+12.3%)

22. Once the Official Census Figures were calculated, apportionment was automatically - and without any debate, discussion, participation, or oversight by Congress or the President – determined pursuant to 2 *U.S.C.* 2a, which Law now operates such that a mathematical formula known as the “Method of Equal Proportions” is used automatically by unelected career Federal Civil Service Employees at the Bureau of Census in the Article II Branch of Government to determine how many Representatives are to be Apportioned to each State for the next 10 years.

23. The Statutory Federal Law Making Process in 2 *U.S.C.* 2a, simply described, and as took place in 2011 regarding the 2010 Decennial Census, works as follows:

- A.) Defendant Director Grover (or his predecessor) and the United States Bureau of Census in the Article II Branch of Government conducts the 2010 Census and reports the Census Populations of the Nation as a whole and of each individual State as of April 1, 2010.
- B.) Thereafter, United States Civil Servant Employees at the Bureau of Census in the Article II Branch of Government then take the number of 435 Representatives that Congress capped their size at in 1911 and, using the State Census Populations of the 50 States, apply the mathematical formula known as the “Method of Equal Proportions” to determine how many Representatives out of the 435 each State is entitled to, with each State entitled to at least 1 Representative no matter what the State’s population.
- C.) United States Civil Servant Employees at the Bureau of Census in the Article II Branch of Government then prepare a “Chart” (usually 1 page), commonly known as a “Decennial Census Apportionment Statement”, which reflects each State and the number of Representatives each State is entitled to out of the 435

Representatives according to the statutorily chosen mathematical formula.

- D.) That “Chart” (“Decennial Census Apportionment Statement”) is then given by the United States Civil Servant Employees to the Director of the Census Bureau, in this case, defendant Director Grover (or his predecessor). Director Grover (or his predecessor) does nothing more than the ministerial task of preparing a “Census Director’s cover letter” (usually 1 page also) addressed to the Secretary of Commerce which is then literally stapled over the “2010 Decennial Census Apportionment Statement”, and the “Census Director’s cover letter” and the “Census Apportionment Statement” are then sent to the Secretary of Commerce, in this case defendant Secretary Bryson (or his predecessor, former Commerce Secretary Gary Locke). **See “Exhibit A” attached hereto.***
- * (“Exhibit A” includes the December 5, 2011 cover letter formal response that plaintiff received from Dana Cope, Chief, Freedom of Information Act and Information Branch, United States Department of Commerce, Economics and Statistics Administration (1 page), which FOIA response included the December 21, 2010 Memorandum (1 page) from and signed by defendant Grover, with three pages of single page charts referenced as “Tables” 1, 2 & 3, with Table 1 being the single page 2010 Decennial Census Apportionment Statement, all sent to non-party Rebecca M. Blank, Undersecretary for Economic Affairs in the United States Department of Commerce, who then gave the “2010 Decennial census Apportionment Chart” to the then Secretary of Commerce, Gary Locke, predecessor to defendant Bryson. Also part of the same FOIA response to plaintiff’s request are the documents included in this Verified Complaint at “Exhibit B”, which is the 1 page December 21, 2010 Cover letter from then Commerce Secretary Gary Locke (predecessor to defendant Bryson) which was sent to President Obama with the 2010 Decennial Apportionment Statement (1 page) enclosed.)*

- E.) Once defendant Secretary Bryson (or his predecessor, former Commerce Secretary Gary Locke) receives the “Census Director’s cover letter” and the “Decennial Census Apportionment Statement” at the United States Commerce Department at what is now the Presidential Cabinet level of Article II Government, Secretary Bryson is statutorily charged with the ministerial task of then drafting *his own* 1 page “Commerce Secretary’s cover letter” addressed to the President, which encloses the “Decennial Census Apportionment Statement”. The cumulating document at this point consists entirely of 1 chart prepared by United States Civil Servant Employees at the Bureau of Census and 1 cover letter from an Article II Cabinet Official, with this 2 page packet then being sent to the President of the United States, and at this point any prior charts or cover letters being discarded. **See “Exhibit B”.**

- F.) Once the President of the United States receives the package with 1 Chart (prepared by United States Civil Servant Employees at the Bureau of Census) and 1 cover letter from the Secretary of Commerce, an Article II Cabinet Official, the President by statute is required to perform the additional ministerial task of sending the information on to Congress. This process requires Presidential staff to discard the cover letter from the Secretary of Commerce, to make a photocopy (so that there are 2 copies of what the President has received) and for the President to also *prepare his OWN cover*

letters (usually 1 page, 1 sentence), one addressed to the each of the Presiding Legislative Officers in Congress, in this case defendant Speaker Boehner at the House of Representatives and defendant President *Pro Tempore* Inouye in the Senate. The President may opt to simply send the same one identical cover letter to each legislative leader addressed simply to "Congress". At this point, the 2 packages contains 1 Chart prepared by United States Civil Servant Employees at the Bureau of Census (the "Decennial Census Apportionment Statement"), and the President's cover letter. That is it. That is the entirety of the Decennial Apportionment of Representatives required by Article I, Section 2 of the United States Constitution.

G.) A true copy of the President's 2010 Census 2 U.S.C. 2a Cover Letter and the "2010 Decennial Census Apportionment Statement" is attached hereto. **See "Exhibit C".** ** (The President's Cover letter and the actual "2010 Decennial Apportionment Statement" sent to Congress were found by plaintiff with great difficulty, but with the assistance of the defendant Haas' Office, ultimately plaintiff was directed to the Government Printing Office where the letter and chart are printed as House Document 112-5).

H.) "Exhibit C" was sent by the President to the Speaker of the United States House of Representatives and was received by defendant Boehner on January 5, 2011 as reflected in the Congressional Record as follows:

THE APPORTIONMENT POPULATION AND NUMBER OF REPRESENTATIVES,
BY STATE: 2010 CENSUS - MESSAGE FROM THE PRESIDENT OF THE UNITED
STATES (H.DOC.NO.112-5) - - (House of Representatives - January 5, 2011)

[Page: H31]

The SPEAKER pre tempore laid before the House the following message from the President of the United States; which was read and referred to the Committees on the Judiciary and Oversight and Government Reform and ordered to be printed:

To the Congress of the United States:

Pursuant to title 2, United States Code, section 2a(a), I transmit herewith the statement showing the apportionment population for each State as of April 1, 2010, and the number of Representatives to which each State would be entitled.

Barack Obama.

The White House, January 5, 2011

[See House Doc. No. 112-5]

I.) "Exhibit A" was sent by the President to the President Pro Tempore of the Senate and was received by defendant Inouye on January 5, 2011 as reflected in Journal of the Senate:

REPORT OF THE APPORTIONMENT POPULATION FOR EACH STATE AS OF
APRIL 2010, AND THE NUMBER OF REPRESENTATIVES TO WHICH EACH
STATE WOULD BE ENTITLED - - PM1 - - (Senate - January 5, 2011)

[Page: S61]

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Homeland Security and Government Affairs:

To the Congress of the United States:

Pursuant to title 2, United States Code, section 2a(a), I transmit herewith the statement showing the apportionment population for each State as of April 1, 2010, and the number of Representatives to which each State would be entitled.

Barack Obama.

The White House, January 5, 2011

[See Page S61, 2011 Congressional Record.]

- J.) Once received in the House of Representatives, defendant House of Representatives Clerk Haas is charged by law with the ministerial task of looking at the "2010 Census Apportionment Statement" as to each State and the number of Representatives apportioned out of the 435 by pursuant to the mathematical formula conducted by United States Civil Servant Employees at the Bureau of Census, and to then prepare "Certificates of Entitlement" (ie "New Jersey – 13 representatives") for all 50 States, and to then send each of the 50 Governors a "Certificate of Entitlement" - with yet another 1 page 1 sentence cover letter. Attached hereto is a true copy of the "Certificate of Entitlement" as to New Jersey and a true copy of the House Clerk's cover letter to New Jersey Governor Chris Christie dated January 12, 2011. *See* **"Exhibit D". ***** ***("Exhibit D" includes the November 28, 2011 response to plaintiff's New Jersey State Law "Open Public Records Act Request" (1 page), which provided plaintiff with a copy of the January 12, 2011 cover letter from defendant Haas to New Jersey Governor Christie (1 page) and the January 11, 2011 "Certificate of Entitlement" granting New Jersey 12 Representatives in the United States House of Representatives (a loss of 1 Representative) as of January 3, 2011 (1 page), both filed with the New Jersey Secretary of State Kim Guadagno on September 19, 2011).
- K.) Once each Governor receives the cover letter and "Certificate", each Governor (here Governor Christopher Christie) follows State Law to commence the politically complicated intrastate "Redistricting" Law Making Process.

24. As a result of this "process", New Jersey, with a Statewide Census Population as of April 1, 2010, of 8,791,894, has been Apportioned now a reduced number of 12 Representatives in the House of Representatives as of January 3, 2013. With a Statewide Population of 8,791,894, this means that each citizen in New Jersey, including plaintiff, can expect New Jersey to have 12
November 28, 2011 **APPEARING IN A PRO SE CAPACITY**

Intrastate Congressional Districts of approximately 733,958, or a ratio of 1 Representative for every 733,958 people.

25. As per the present Decennial Apportionment “process” in effect, as of January 3, 2013 each State will be entitled to a differently “apportioned” number of Representatives in the United States House of Representatives at an average ratio of “Representatives” to “people” of 1 Representative for every 710,767 people (National Apportionment Ratio Average of 1 / 710,767), though there are vast deviations among the States. The following chart lists the actual number of Representatives to which each State is entitled as a result of the 2010 Census Reapportionment “process”, referencing when that number has changed since the 2000 Census Reapportionment, and the *actual* size of the *actual* ratio of “Representatives” to “people” within each State as per the 2010 Census Reapportionment “process”.**** *****(Please note that the actual statistics used in the charts below in this Verified Complaint were taken directly from the United States Census Bureau Website. However, Plaintiff notes that there are differences – unexplained anywhere – between the population statistics as listed by the Census Bureau on their Web Site, and area where the public can readily access this data as public information, and the population statistics as contained in the Charts found at “Exhibit A”, Table 1, “Exhibit B”, and Chart at “Exhibit C”, two of which required a FOIA request to obtain and one of which is almost impossible to find, but the Charts that the Actual 2010 “statutory automatic” Apportionment of Representatives was based upon.)*

1. Delaware 1 Representative
 Actual Census Ratio: 1 / 900,877

 2010 Census Population and % of change
 since the 2000 Census: 897,934 (+14.6%)

 Population divided by 710,767 = 1.2674

 2010 Census Population and change
 since the 2000 Census: 897,934 (+14.6%)

26. Michigan 14 Representatives (-1)
 Actual Census Ratio: 1 / 707,973

 2010 Census Population and % of change
 since the 2000 Census: 9,883,640 *(-0.6%)

 Population divided by 710,767 = 13.90

 2010 Census Population and change
 since the 2000 Census: 9,883,640 *(-0.6%)

 * Ratio with 13 Representatives = 760,280

 * Ratio with 15 Representatives = 658,909

2. Pennsylvania 18 Representatives (-1)

Actual Census Ratio: 1 / 707,495

2010 Census Population and % of change
since the 2000 Census: 12,702,379 (+3.4%)

Population divided by 710,767 = 17.87

* Ratio with 17 Representatives = 1 / 747,198

* Ratio with 19 Representatives = 1 / 668,546

27. Florida 27 Representatives (+2)

Actual Census Ratio: 1 / 700,029

2010 Census Population and % of change
since the 2000 Census: 18,801,310 (+17.6%)

Population divided by 710,767 = 26.4521

* Ratio with 26 Representatives = 1 / 723,127

* Ratio with 25 Representatives = 1 / 752,052

* Ratio with 24 Representatives = 1 / 783,387

* Ratio with 23 Representatives = 1 / 817,448

3. New Jersey 12 Representatives (-1)

Actual Census Ratio: 1 / 733,958

2010 Census Population and change
since the 2000 Census: 8,791,894 (+4.5%)

Population divided by 710,767 = 12.36598

* Ratio with 13 Representatives 1 / 676,299

28. Texas 36 Representatives (+4)

Actual Census Ratio: 1 / 701,901

2010 Census Population and change
since the 2000 Census: 25,145,561 (+20.6%)

Population divided by 710,767 = 35.3780

* Ratio with 35 Representatives = 1 / 718,444

* Ratio with 34 Representatives = 1 / 739,575

* Ratio with 33 Representatives = 1 / 761,986

* Ratio with 32 Representatives = 1 / 785,798

* Ratio with 37 Representatives = 1 / 679,609

4. Georgia 14 Representatives (+1)

Actual Census Ratio: 1 / 694,826

2010 Census Population and change
since the 2000 Census: 9,678,653 (+18.3%)

Population divided by 710,767 = 13.617

29. Iowa 4 Representatives (-1)

Actual Census Ratio: 1 / 763,447

2010 Census Population and change
since the 2000 Census: 3,046,355 (+4.1%)

Population divided by 710,767 = 4.286

5. Connecticut 5 Representatives

Actual Census Ratio: 1 / 716,326

2010 Census Population and change
since the 2000 Census: 3,574,097 (+4.9%)

Population divided by 710,767 = 5.02

30. Wisconsin 8 Representatives

Actual Census Ratio: 1 / 712,279

2010 Census Population and change
since the 2000 Census: 5,686,986 (+6%)

Population divided by 710,767 = 8.0

6. Massachusetts 9 Representatives (-1)

Actual Census Ratio: 1 / 728,849

2010 Census Population and change
since the 2000 Census: 6,547,629 (+3.1%)

Population divided by 710,767 = 9.21

* Ratio with 10 Representatives = 1 / 654,763

31. California 53 Representatives

Actual Census Ratio: 1 / 704,566

2010 Census Population and change
since the 2000 Census: 37,253,956 (+10%)

Population divided by 710,767 = 52.4137

* Ratio with 52 Representatives = 1 / 716,422

* Ratio with 51 Representatives = 1 / 730,456

* Ratio with 50 Representatives = 1 / 745,079

* Ratio with 49 Representatives = 1 / 760,284

* Ratio with 48 Representatives = 1 / 776,124

* Ratio with 47 Representatives = 1 / 792,637

* Ratio with 46 Representatives = 1 / 809,868

7. Maryland 8 Representatives

Actual Census Ratio 1 / 723,741

2010 Census Population and change
since the 2000 Census: 5,773,552 (+9%)

Population divided by 710,767 = 8.12

32. Minnesota 8 Representatives

Actual Census Ratio: 1 / 664,360

2010 Census Population and change
since the 2000 Census: 5,303,925 (+7.8%)

Population divided by 710,767 = 7.462

8. South Carolina 7 Representatives (+1)

Actual Census Ratio: 1 / 663,711

2010 Census Population and change
since the 2000 Census: 4,625,364 (+15.3%)

Population divided by 710,767 = 6.50

* Ratio with 6 Representatives = 1 / 770,894

33. Oregon 5 Representatives

Actual Census 1 / 769,721

2010 Census Population and change
since the 2000 Census: 3,831,074 (+12%)

Population divided by 710,767 = 5.390

* Ratio with 6 Representatives = 1 / 638,512

9. New Hampshire 2 Representatives

Actual Census Ratio: 1 / 660,723

2010 Census Population and change
since the 2000 Census: 1,316,470 (+6.6%)

Population divided by 710,767 = 1.852

34. Kansas 4 Representatives

Actual Census Ratio: 1 / 715,953

2010 Census Population and change
since the 2000 Census: 2,853,118 (+6.1%)

Population divided by 710,767 = 4.01

10. Virginia 11 Representatives

Actual Census Ratio: 1 / 730,703

2010 Census Population and change
since the 2000 Census: 8,001,024 (+13%)

Population divided by 710,767 = 11.256

* Ratio with 10 Representatives = 1 / 800,102

* Ratio with 12 Representatives = 1 / 666,752

35. West Virginia 3 representatives

Actual Census Ratio: 1 / 619,938

2010 Census Population and change
since the 2000 Census: 1,852,994 (+2.5%)

Population divided by 710,767 = 2.60

11. New York 27 Representatives (-2)

Actual Census Ratio: 1 / 719,298

2010 Census Population and change
since the 2000 Census: 19,378,102 (+2.1%)

Population divided by 710,767 = 27.26

* Ratio with 28 Representatives = 692,075

* Ratio with 29 Representatives = 668,210

* Ratio with 26 Representatives = 745,311

36. Nevada 4 Representatives (+1)

Actual Census Ratio: 1 / 677,358

2010 Census Population and change
since the 2000 Census: 2,700,551 (+35.1%)

Population divided by 710,767 = 3.799

* Ratio with 3 Representatives = 1 / 900,183

12. North Carolina 13 Representatives

Actual Census Ratio: 1 / 735,829

2010 Census Population and change
since the 2000 Census: 9,535,488 (+18.5%)

Population divided by 710,767 = 13.4157

* Ratio with 12 Representatives = 794,624

* Ratio with 14 Representatives = 681,106

37. Nebraska 3 Representatives

Actual Census Ratio: 1 / 610,608

2010 Census Population and change
since the 2000 Census: 1,826,341 (+6.7%)

Population divided by 710,767 = 2.5695

13. Rhode Island 2 Representatives

Actual Census Ratio: 1 / 527,624

2010 Census Population and change
since the 2000 Census: 1,052,567 (+0.4%)

Population divided by 710,767 = 1.48

14. Vermont 1 Representative

Actual Census Ratio: 1 / 630,337

2010 Census Population and change
since the 2000 Census: 625,741 (+2.8%)

Population divided by 710,767 = .880

38. Colorado 7 Representatives

Actual Census Ratio: 1 / 720,704

2010 Census Population and change
since the 2000 Census: 5,029,196 (+16.9%)

Population divided by 710,767 = 7.075

39. North Dakota 1 Representative

Actual Census Ratio: 1 / 675,905

2010 Census Population and change
since the 2000 Census: 675,591 (+4.7%)

Population divided by 710,767 = .95

15. Kentucky 6 Representatives

Actual Census Ratio: 1 / 725,101

2010 Census Population and change
since the 2000 Census: 4,339,367 (+7.4%)

Population divided by 710,767 = 6.105

40. South Dakota 1 Representative

Actual Census Ratio: 1 / 819,761

2010 Census Population and change
since the 2000 Census: 814,180 (+7.9%)

Population divided by 710,767 = 1.145

16. Tennessee 9 Representatives

Actual Census Ratio: 1 / 708,381

2010 Census Population and change
since the 2000 Census: 6,346,105 (+11.5%)

Population divided by 710,767 = 8.928

41. Montana 1 Representative

Actual Census Ratio: 1 / 994,416

2010 Census Population and change
since the 2000 Census: 989,415 (+9.7%)

Population divided by 710,767 = 1.392

17. Ohio 16 Representatives (-2)

Actual Census Ratio: 1 / 723,031

2010 Census Population and change
since the 2000 Census: 11,536,504 (+1.6%)

Population divided by 710,767 = 16.23

* Ratio with 17 Representatives = 678,617

* Ratio with 18 Representatives = 640,916

* Ratio with 15 Representatives = 769,100

42. Washington 10 Representatives (+1)

Actual Census Ratio: 1 / 675,337

2010 Census Population and change
since the 2000 Census: 6,724,540 (+14.1%)

Population divided by 710,767 = 9.46

* Ratio with 9 Representatives = 1 / 747,171

* Ratio with 8 Representatives = 1 / 840,567

18. Louisiana 6 Representatives (-1)
 Actual Census Ratio: 1 / 758,994
 2010 Census Population and change
 since the 2000 Census: 4,533,372 (+1.4%)
 Population divided by 710,767 = 6.378140
 * Ratio with 7 Representatives = 1 / 647,624

43. Idaho 2 Representatives
 Actual Census Ratio: 1 / 786,750
 2010 Census Population and change
 since the 2000 Census: 1,567,582 (+21.1%)
 Population divided by 710,767 = 2.20

19. Indiana 9 Representatives
 Actual Census Ratio: 1 / 722,398
 2010 Census Population and change
 since the 2000 Census: 6,483,802 (+6.6%)
 Population divided by 710,767 = 9.122

44. Wyoming 1 Representative
 Actual Census Ratio: 1 / 568,300
 2010 Census Population and change
 since the 2000 Census: 563,626 (+14.1%)
 Population divided by 710,767 = .7929

20. Mississippi 4 Representatives
 Actual Census Ratio: 1 / 744,560
 2010 Census Population and change
 since the 2000 Census: 2,967,297 (+4.3%)
 Population divided by 710,767 = 4.174

45. Utah 4 Representatives (+1)
 Actual Census Ratio: 1 / 692,691
 2010 Census Population and change
 since the 2000 Census: 2,763,885 (+23.8)
 Population divided by 710,767 = 3.888
 * Ratio with 3 Representatives = 1 / 921,295

21. Illinois 18 Representatives (-1)
 Actual Census Ratio: 1 / 714,688
 2010 Census Population and change
 since the 2000 Census: 12,830,632 (+3.3%)
 Population divided by 710,767 = 18.05
 *Ratio with 19 Representatives = 1 / 675,296

46. Oklahoma 5 Representatives
 Actual Census Ratio: 1 / 752,976
 2010 Census Population and change
 since the 2000 Census: 3,751,351 (+8.7%)
 Population divided by 710,767 =

22. Alabama 7 Representatives

Actual Census Ratio: 1 / 686,140

2010 Census Population and change
since the 2000 Census: 4,779,736 (+7.5%)

Population divided by 710,767 = 6.724

47. New Mexico 9 Representatives (+1)

Actual Census Ratio: 1 / 712,522

2010 Census Population and change
since the 2000 Census: 2,059,179 (+24.6%)

Population divided by 710,767 =

23. Maine 2 Representatives

Actual Census Ratio: 1 / 666,537

2010 Census Population and change
since the 2000 Census:

Population divided by 710,767 =

48. Arizona 3 Representatives (+1)

Actual Census Ratio: 1 / 712,522

2010 Census Population and change
since the 2000 Census:

Population divided by 710,767 = 2.897

24. Missouri 8 Representatives (-1)

Actual Census Ratio: 1 / 751,435

2010 Census Population and change
since the 2000 Census: 5,988,929 (+7.0%)

Population divided by 710,767 = 8.426

* Ratio with 9 Representatives = 665,436

49. Alaska 1 Representative

Actual Census Ratio: 1 / 721,523

2010 Census Population and change
since the 2000 Census: 710,231 (+13.3%)

Population divided by 710,767 = .999

25. Arkansas 4 Representatives

Actual Census Ratio: 1 / 731,557

2010 Census Population and change
since the 2000 Census: 2,926,229 (+13.3%)

Population divided by 710,767 = 4.11

50. Hawaii 2 Representatives

Actual Census Ratio: 1 / 683,431

2010 Census Population and change
since the 2000 Census: 1,360,301 (+12.3%)

Population divided by 710,767 = 1.913

B. RATIFICATION HISTORY OF “ARTICLE THE FIRST”:

26. Originally there were 13 States as listed in Article I of the Constitution. Under Article V, any proposed Constitutional amendment must receive the ratification by $\frac{3}{4}$ of the States. With 13 States, for ratification and passage of any proposed amendment, $\frac{3}{4}$ of the number of 13 is 9.75 States ($13 \times .75 = 9.75$). The Constitution was and is silent on the issue of how to address “fractional numbers” if at all, in the context of the $\frac{3}{4}$ ratification language in Article V. The language of Article V does not speak in terms of “whole states”, just “three-fourths”. Based upon research it appears plainly that no Article III Court has ever addressed this issue.

27. The 12 Bill of Rights, proposed to the States as proposed amendments to the Constitution in September 1789 by Joint Resolution of Congress, were taken up by the States for consideration for ratification, which also took place simultaneous to additional States being admitted to the Union. **See “Exhibit E”****** ****(*“Exhibit E” is a copy of a photograph of the actual Original Bill of Rights on display in the United States Archives.*) The Constitution is also silent on the issue of whether Article V fixes the $\frac{3}{4}$ number at the time of the Joint Resolution proposing amendment is submitted to the States for ratification, or whether the $\frac{3}{4}$ number changes as new States are admitted. Based upon research no Article III Court has ever addressed this issue.

28. Ultimately, “Article the Third” through “Article the Twelfth” were ratified and became what we today know as the First 10 Amendments to the Constitution, commonly and collectively referred to as “The Bill of Rights”. “Article the Second” was approved 203 years after first proposed, finally being ratified in 1992 as the 27th Amendment. There is no question that

Congress has, without ever expressly stating so, taken the position that “Article the First” was not ratified. At least as yet.

29. Article the First, as proposed, reads verbatim as follows:

ARTICLE THE FIRST. “After the first enumeration required by the first Article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress, that there shall be no less than two hundred Representatives, nor more than one Representative for every fifth thousand persons.”

[See “Exhibit E” attached hereto].

30. By its own terms, if ratified, “Article the First” would somewhat modify or clarify the 30,000 language regarding the ratio of Representatives to a given State’s population as stated in Article I, Section 2 of the Constitution.

31. In short, “Article the First” clearly stated how in the future Congress would be required after every 10 year Census cycle, to augment the number of seats in the House, then and reapportion the total number of seats in the House among the several States. “Article the First” required with no ambiguity that “...there shall be one Representative for every thirty thousand ...”, and over time once 200 seats were reached with this formula as population grew, that “ ... that there shall be no less than two hundred Representatives, *nor more than one Representative*

for every fifth thousand persons.” With no ambiguity, “Article the First”, if ratified, ensured and defined the future method of calculating the total number of Representatives to be apportioned among the States ensuring that there would never be a House of Representatives where any one Representative represented more than 50,000 people. First, the Constitutional ration would have been 1 Representative for every 30,000 people. After population growth and passage of time and use of the 1 for 30,000 people ratio resulted in an increase to 200 Representatives, thereafter the ratio was increased to 1 for every 50,000 people.

32. As noted, on September 28, 1789, Congress proposes 12 individual Amendments to the States for consideration for ratification: “Article the First”, “Article the Second”, “Article the Third”, “Article the Fourth”, “Article the Fifth”, “Article the Sixth”, “Article the Seventh”, “Article the Eighth”, “Article the Ninth”, “Article the Tenth”, “Article the Eleventh”, and “Article the Twelfth”, collectively referred to as “The 12 Bill of Rights”.

33. Article V of the Constitution requires $\frac{3}{4}$ of the States to approve and ratify each proposed amendment to become law and an Amendment to the Constitution. With 13 original States and the Article V requirements, $13 \text{ States} \times (.75) = 9.75 \text{ States}$ required for ratification. If the standard was a “whole” State, this meant that 10 States of the 13 States need to ratify each proposal before the proposal became an Amendment to the Constitution and law.

34. On November 20, 1787, New Jersey became the first State to address the issue of ratification of the “Bill of Rights” and ratified and approved 11 of the 12 proposed amendments, rejecting only “Article the Second”.

35. On December 19, 1789, Maryland ratified and approved all 12 of the proposed “Bill of Rights” as submitted.
36. On December 22, 1789, North Carolina ratified and approved all 12 of the proposed “Bill of Rights” as submitted.
37. On January 19, 1790, South Carolina ratified and approved all 12 of the proposed “Bill of Rights” as submitted.
38. On January 25, 1790, New Hampshire ratified and approved 11 of the 12 proposed amendments, rejecting only “Article the Second”.
39. On January 28, 1790, Delaware ratified and approved 11 of the 12 proposed amendments, *rejecting only “Article the First”*.
40. On February 24, 1790, New York ratified and approved 11 of the 12 proposed amendments, rejecting only “Article the Second”.
41. On March 10, 1790, Pennsylvania ratified and approved 10 of the 12 proposed amendments, rejecting only “Article the First” and “Article the Second”. However, on September 21, 1791, Pennsylvania reconsiders “Article the First” and approves and ratified “Article the First”.

42. On March 4, 1791, Vermont is admitted as the 14th State. Now presumably – though not definitely - the ratification requirements changed. $14 \text{ States} \times .75 = 10.5 \text{ States}$, or presumably – though not definitely - 11 whole States approval now required for ratification.

43. On June 7, 1790, Rhode Island ratified and approved 11 of the 12 proposed amendments, rejecting only “Article the Second”.

44. On November 3, 1791, Vermont ratified and approved all 12 of the proposed “Bill of Rights” as submitted.

45. On December 15, 1791, Virginia ratified and approved all 12 of the proposed “12 Bill of Rights” as submitted. Virginia was the 11th of the now 14 States to take action on the issue of whether to approve the “12 Bill of Rights”. The States of Massachusetts, Georgia and Connecticut had yet to take any action one way or another on the issue of whether to approve the “12 Bill of Rights.” Since all 11 of the 14 States that had voted so far had unanimously approved and ratified proposed “Article the Third”, “Article the Fourth”, “Article the Fifth”, “Article the Sixth”, “Article the Seventh”, “Article the Eighth”, “Article the Ninth”, “Article the Tenth”, “Article the Eleventh”, and “Article the Twelfth”, each of these proposed amendments were by operation of law now without any question ratified as Constitutional Amendments, and were re-numbered and re-named “Amendments 1 through 10”. “Article the First”, because of Delaware, at this point had 10 States approval and ratification, and was therefore still one whole State short

of the 11 States required for ratification, with Massachusetts, Georgia and Connecticut yet to take action.

46. On June 1, 1792, Kentucky was admitted as the 15th State. Now, again, it was presumed that the ratification requirements changed again – though not definitely. $15 \text{ States} \times .75 = 11.25$ States, or presumably 12 whole States approval now required for ratification.

47. On June 24, 1792, Kentucky ratified and approved all 12 of the proposed “Bill of Rights” as submitted. Approval of “Article the Third” through “Article the Twelfth” by Kentucky was by law only ceremonial as such proposals were already ratified on December 15, 1791 with Virginia taking action, and were already the Amendments 1 through 10. By approving “Article the First”, Kentucky became the 11th State to do so. However, when joining the Union, Kentucky changed the numerical requirements of the Article V $\frac{3}{4}$ States ratification requirement from 11 to now 11.25. It was assumed that Article V then Constitutionally required an increased to the next whole number of 12, otherwise “Article the First” achieved ratification. .

48. With 13 states and theoretically 9.75 states required for ratification, .75, being more than a 50% fraction of a whole number, basic principles of math required rounding up to now 10 States being required for ratification. With 14 States and theoretically 10.5 States required for ratification, and .5 being 50% of a fractional whole number, basic math principles required rounding up to the next whole number of 11. But with Kentucky’s approval and ratification bringing mathematical ratification to theoretically *11.25, less than 50% of a whole number*, basic principles of math would have required ***rounding down*** to the closest whole number of 11.

Stated somewhat more simply, did “Article the First” actually become ratified on June 24, 1792?

49. The Constitution is silent on fractional numbers and how to deal with them, save where in the original version of Article I slaves were only counted as 3/5 of a whole person for Census purposes. And Article VII by its own terms required 9 of the 13 States to ratify the Constitution for it to become binding upon the States that had ratified, not “9.75” States to ratify.

VI. LEGAL CLAIMS:

FIRST COUNT:

“SEPARATION OF POWERS DOCTRINE” CLAIM

50. Article I, Section 2 of the United States Constitution requires Congress to conduct a census every 10 years, and upon completion of the Census, to thereafter engage in a political process of “apportioning” the number of Representatives in the House of Representatives fairly and equitably among the States in accordance with the articulated Constitutional Standards, and then for Congress to pass a specific law which will then supplant the prior Reapportionment Law to remain in effect for the next 10 years.

51. The Federal Law making process as outlined in the Constitution is clear in that to make Federal Law in accordance with the Constitution, both the Article I Senate and House of Representatives must both pass on a Bill in identical form (Article I, Section 1 and Article I,

Section 7, Clause 2) and then present the Bill to the President who must sign and approve, or “veto” and disapprove, the Bill exactly in the form submitted, and if disapproved with a “veto”, the Bill must be returned to Congress where $\frac{3}{4}$ approval will still “override” the president’s “veto” and the Bill will become Federal Law. (Article 2, Section 7, Clause 3).

52. The present statutory scheme for creating the “Federal Law” which apportions the Representatives in Congress, specifically 2 U.S.C. 2a, delegates the Constitutional Law making responsibility of Decennial Apportionment of Representatives in the House of Representatives required by Article I, Section 2, exclusively to the Article II Executive Branch of Government to the exclusion of the Article I Legislative Branches of Government, and operates such that the what is actually occurring is that Career Federal Civil Servant Employees in a Bureau within a Cabinet Department under the Article II President, are literally making a chart based upon a specified math formula which is treated as Federal Law. This process which results in a product from a “law to create law” is nonetheless still in the end creating Federal Law as otherwise and specifically mandated by Article I, Section 2, and is done in such a way as to clearly violate the “Separation of Powers Doctrine” generally, and Article I Section 2, the Fourteenth Amendment, Section 2, Article I, Section 1 (“Vesting Clause”); Article I, Section 7, Clause 2 (“Bicamerality Clause”); Article I, Section 7, Clause 3 (“Presentment Clause”), and Article II, Section I and 12th and 23rd Amendments (Fair representation in “Electoral College”) of the United States Constitution (1787) specifically. See *Clinton v. City of New York*, 524 U.S. 417 (1998); *Bowsher v. Synar*, 478 U.S. 714 (1986); *I.N.S. v. Chada*, 462 U.S. 919 (1983); *United States Senate v. Federal Trade Commission*, 463 U.S. 1216 (1983); *City of New Haven, Conn. v. United States*, 809 F.2d 900 (D.C. Cir. 1987); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952);

Panama Refining Co. v. Ryan, 293 U.S. 388 (1935); and *Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935).

SECOND COUNT:

“NON-DELEGATION DOCTRINE” CLAIM

53. The 2010 Decennial Apportionment conducted by the Article II Executive Branch pursuant to 2 U.S.C. 2a, is unconstitutional as a clear violation of Article I, Section I (“Vesting Clause”) specifically, and as a clear violation of the so called “Non-Delegation Doctrine” generally. See *Field v. Clark*, 143 U.S. 649 (1892); *J. W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394 (1928); *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935); *Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935); *Whitman v. American Trucking Association*, 531 U.S. 457 (2001) (Thomas, J., concurring); *Union Department v. American Petroleum Institute*, 448 U.S. 607 (1980) (Rhenquist, J., concurring); *American Textiles Manufacturers Institute v. Donovan*, 542 U.S. 490 (1981) (Rhenquist, J., dissenting); *Clinton v. City of New York*, 524 U.S. 417 (1998) (Kennedy, J., concurring); *Mistretta v. United States*, 448 U.S. 361 (1989); *Fryetags v. Commissioners*, 501 U.S. 868 (1991).

THIRD COUNT:

“1 MAN – 1 VOTE” AND “EQUITABLE RATIO” CLAIM

54. Article I, Section 2, provided in relevant part as follows:

* * * Representatives ... shall be apportioned among the several States which may be included within this Union, according to their respective numbers which shall be determined by adding to the whole Number of free Persons, including those bound to Serve for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made with in three Years after the first Meeting of Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law Direct. The number of Representatives shall not exceed one for every thirty Thousand, but each state shall have at least one Representative ...[.] * * * (Emphasis added).

[United States Constitution, Article I, Section 2.]

55. A plain reading of the text of Article I, Section 2 requires the following of Congress:

(1) Within 3 years conduct a Census to determine the population of each State in accordance with the then existing definition of “person” for census purposes;

(2) “apportion” (not *divide*, apportion) the Representatives “among the several States within this Union, according to their respective numbers”;

(3) that “[t]he number of Representatives *shall not exceed* one for every thirty Thousand, but each state shall have at least one Representative[.]”;

(4) repeat this process over every 10 years.

56. Separate from the actual literal text is the fact that inherent in the text of Article I, Section 2 is a “1 man – 1 vote” standard, just as the Supreme Court has found such an additional requirement in *Westbury v. Sanders*, 367 U.S. 1 (1964). Historical precedent supports this position. The “2010 Census Apportionment Statement” violates the “1 man – 1 vote” standard inherent in Article I, Section 2 and as stated in *Westbury v. Sanders*, 367 U.S. 1 (1964).

57. Additionally, while much debate had been made on the issue of exactly what the language in Article I, Section 2 that “[t]he number of Representatives *shall not exceed* one for every thirty Thousand ...” actually means, it is clear from both the Philadelphia Convention, the *Federalist Papers* (specifically Nos. 55, 56, 57 & 58), Congress’ proposal of “Article the First” as a proposed amendment to the Constitution, and the actual understanding of George Washington and his Attorney General, the First Attorney General Edmund Randolph, and of James Madison, Thomas Jefferson, James Madison, and Alexander Hamilton, and others, that this 30,000 number was neither really an absolute numerical ceiling nor an absolute numerical floor, but rather was some form of an “equitable ratio” of fairness and reasonable proportion of representation in the ratio of number of Representatives to the number of people each Representative would represent in Congress.

58. Plaintiff does not hazard to claim to know at exactly what point population disparity in proportion to Representatives and the 30,000 equitable goal rises to a level that goes past the wide latitude and discretion that Congress must be afforded in making Decennial Apportionment decisions, and travels into a what is now ratio of Representative to population that is so far away from the 1 / 30,000 contemplated ratio that *Article I, Section 2* of the Constitution has been violated. Plaintiff sees no practical and numerically exact “bright line” that once passed, Article I, Section 2 has been violated as this is not a numerical or mathematical process *per se* but rather a legal and political process governed by fairness and equity. However, we know that the original ratio in 1792 was 1 / 33,000. We know that after the 2010 Census that the ratio now will be 1 / 710,000 +. In this factual context, plaintiff does not hesitate to state his position that without need for further inquiry that a ratio disparity that is 21.5 times past the contemplated equitable ratio of 1 / 30,000 is so dramatic and extreme as to be *per se* a violation of Article I, Section 2, and there is no reason for this Court not to state so, leaving Congress to then try to first define and refine the Decennial Apportionment process into what is and was Constitutionally contemplated, and to do so in an actual Constitutional Law making process. .

THIRD COUNT:

RATIFICATION OF “ARTICLE THE FIRST” CLAIM:

59. *Article V* of the United States Constitution is silent on the issue of fractional numbers and how they affect – or do not affect – the “three-fourths” language regarding ratification of proposed amendments by the States. *Article V* of the United States Constitution is also silent on the issue of whether the “three-fourths” of the States referred to in *Article V* refers to the $\frac{3}{4}$ of the States admitted at the time that the amendment was originally proposed, or whether that number changes as additional States are admitted to the Union before a given ratification process is concluded. Even if the Law is that the $\frac{3}{4}$ requirement changes and increases whenever a State joins the Union, when Kentucky became the 15th State and ratified “Article the First”, the “pure numerical ratio” of “three-fourths” was 11.25 States, and Kentucky was the 11th State to ratify. If fractional numbers are disregarded, or fractional numbers less than .49 are “rounded down” to the last whole number, then “Article the First” actually was ratified in 1792. If any fractional number requires advancing to the next whole number, then “Article the First” was not ratified. Only the Article III Federal Courts can answer these yet unanswered questions regarding interpreting *Article V*. *Marbury v. Madison*, 5 U.S. 137, 177 (1803). This Court is now being asked to answer these questions.

VII. RELIEF REQUESTED:

(A) A declaration from this Article III Court that the actions of defendants as described herein have operated to violate plaintiff's Constitutional Rights;

(B) A preliminary, and then permanent injunction prohibiting the collective defendants from treating the 2 *U.S.C.* 2a(a) "2010 Decennial Census Apportionment Statement" prepared by career Federal Civil Service Employees as federal law and as an otherwise valid Decennial Apportionment of the House of Representatives as mandated by Article I, Section 2 of the United States Constitution;

(C) A preliminary, and then permanent injunction prohibiting the collective defendants from treating the fifty separate 2 *U.S.C.* 2a(b) "Certificates of Entitlement" prepared by defendant Hass and sent to the Governors of the 50 States as federal law and as an otherwise valid Decennial Apportionment of the House of Representatives as mandated by Article I, Section 2 of the United States Constitution;

(D) A declaration that 2 *U.S.C.* 2a is unconstitutional on its face and / or as applied to plaintiff as violating Article I, Section 2 ("Apportionment Clause"); the Fourteenth Amendment, Section 2 ("Apportioning of Whole Persons"); Article I, Section 1 ("Vesting Clause"); Article I, Section 7, Clause 2 ("Bicamerality Clause"); Article I, Section 7, Clause 3 ("Presentment Clause"), Article II, Section I, and Twelfth and Twenty Third Amendments (Fair representation in "Electoral College") specifically, the so called "Separation of Powers Doctrine" generally;

(E) A declaration that 2 U.S.C. 2a is unconstitutional on its face and / or as applied to plaintiff as violating Article I, Section 2 (“Apportionment Clause”); the Fourteenth Amendment, Section 2 (“Apportioning of Whole Persons”); Article I, Section 1 (“Vesting Clause”); Article II, Section I, and Twelfth and Twenty Third Amendments (Fair representation in “Electoral College”) specifically, and the “Non Delegation Doctrine” generally;

(F) A declaration that 2 U.S.C. 2a is unconstitutional on its face and / or as applied to plaintiff as violating the “1 man – 1 vote” standard of *Westbury v. Sanders*, 367 U.S. 1 (1964) specifically and the “1 man – 1 vote” standard of Article I, Section 2 of the United States Constitution;

(G) A declaration that the “1 man – 1 vote” standard of *Westbury v. Sanders*, 367 U.S. 1 (1964) applies to the Article I, Section 2 Decennial interstate Apportionment of Representatives and clarifying that Congress and the President must meet this standard as far as is practicable when enacting the Constitutionally mandated 2010 Decennial Census Apportionment Law;

(H) A declaration that the Decennial Apportionment of Representatives in the United States House of Representatives mandated by Article I, Section 2 of the United States Constitution to follow each Decennial Census, has not yet occurred as to the 2010 Decennial Census;

(I) An Order pursuant to 28 *U.S.C. 1361* directing by *mandamus* that defendants Boehner and Inouye forthwith immediately take measures to create and enact an Apportionment Law relative to the 2010 Decennial Census and in accordance with Congress' Constitutional obligation and in accordance with the requirements of the textual provisions of Article I, Section 2 of the United States Constitution, in accordance with the United States Supreme Court's "1 man – 1 vote" standard, and in accordance with original historical practice;

(J) An Order pursuant to 28 *U.S.C. 1361* directing by *mandamus* that defendant Boehner continue to seat 13 Representatives from the State of New Jersey with full voting rights and other full and unrestricted rights of participation in the business of the United States House of Representatives as of January 13, 2013 and thereafter continuously until such time a Constitutionally valid Apportionment of Representatives under the 2010 Census has occurred and been approved by this Court as having met Constitutional standards;

(K) An Order pursuant to 28 *U.S.C. 1361* directing by *mandamus* that the State of New Jersey shall continue to have 15 votes in the Electoral College until further Order of the Court or until a valid Apportionment of Representatives under the 2010 Census has occurred and been approved by this Court as having met Constitutional standards, and directing Vice President Biden, in his capacity as the President of the Senate, in discharging his duties under 3 *U.S.C. sec. 15*, to count 15 Electoral Votes from the State of New Jersey on January 6, 2013;

(L) An Order declaring that “Article the First” has been ratified as a codicil amendment to the United States Constitution as having met the requirements of Article V of the United States Constitution’s ratification process; and

(M) An Order pursuant to 28 *U.S.C. 1361* directing by *mandamus* that defendant Archivist Ferriero declare, pursuant to the powers conferred to him by 1 *U.S.C. 106b*, that “Article the First” has been ratified and enacted as an actual amendment to the United States Constitution, directing by *mandamus* that defendant Archivist Ferriero number proposed amendment “Article the First” as the now ratified and effective Twenty Eighth Amendment to the United States Constitution, and directing by *mandamus* that defendant Archivist Ferriero publish same in accordance with Federal Law; and

(N) An Order granting such further relief as the Court deems fair, just and equitable.

Respectfully submitted,

DATED: November 28, 2011



©EUGENE MARTIN LaVERGNE
APPEARING IN A *PRO SE* CAPACITY
543 CEDAR AVENUE
WEST LONG BRANCH, NEW JERSEY 07764
TELEPHONE: (732) 272-1776
EMAIL: EMLESQNJ@HOTMAIL.COM

VERIFICATION:

EUGENE MARTIN LaVERGNE hereby certifies as follows:

1. I am the plaintiff in the above matter and as such I am familiar with all facts regarding this case and the claims made herein.
2. All facts contained herein are true and all exhibits attached hereto are true and accurate copies of the original documents.

CERTIFICATION UNDER NEW JERSEY STATE LAW:

I HEREBY CERTIFY THAT THE FOREGOING STATEMENTS MADE BY ME ARE TRUE. I AM AWARE THAT IF ANY OF THE FOREGOING STATEMENTS MADE BY ME ARE WILFULLY FALSE I AM SUBJECT TO PUNISHMENT.

DATED: November 28, 2011



EUGENE MARTIN LaVERGNE
APPEARING IN A PRO SE CAPACITY

DECLARATION UNDER 28 U.S.C. 1746:

I DECLARE AND CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON NOVEMBER 28, 2011.

DATED: November 28, 2011



EUGENE MARTIN LaVERGNE
APPEARING IN A PRO SE CAPACITY