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5 Plaintiff, JOHN BIRKE, *pro se*

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7  
8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION  
10

11 JOHN BIRKE, an individual;

12  
13 Plaintiff,

14 vs.

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16 THE 538 INDIVIDUAL MEMBERS OF THE  
ELECTORAL COLLEGE,

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18 Defendants.  
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) Case No.:

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) COMPLAINT FOR DECLARATORY AND  
) INJUNCTIVE RELIEF TO PREVENT  
) IRREPARABLE VIOLATION OF THE  
) GUARANTY OF EQUAL PROTECTION  
) OF THE LAWS UNDER THE FIFTH  
) AMENDMENT, AND OF THE PRINCIPLE  
) OF "ONE PERSON, ONE VOTE"

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1 Plaintiff JOHN BIRKE (“BIRKE”) alleges as follows:

2 **THE PARTIES**

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

6 2. Defendants, the 538 Individual Members of the Electoral College (the  
7 “E.C. Members”) are the electors chosen by the political parties of the popular vote  
8 winner of each state of the United States and the District of Columbia. The E.C.  
9 MEMBERS gather in their respective states on the first Monday following the second  
10 Wednesday of December after the Presidential election (December 19, 2016), in  
11 order to submit to the President of the Senate, Vice President Joseph Biden, their  
12 votes for the President and Vice-President of the United States.

13 3. Unless this Court issues the relief sought herein, the E.C. Members are  
14 overwhelmingly likely to cast their votes in such a manner as to violate the guaranty  
15 of BIRKE’s rights to equal protection of the laws under the Fifth Amendment of the  
16 United States Constitution, *see, Bolling v. Sharpe*, 347 U.S. 497 (1954), and the  
17 fundamental principle of “one [person], one vote, enunciated by the United States  
18 Supreme Court in *Baker v. Carr*, 369 U.S. 186 (1962).

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20 **JURISDICTION AND VENUE**

21 4. This Court has subject matter jurisdiction over this matter under Title  
22 28 U.S.C. § 1331 (federal question jurisdiction), § 2201 (authorizing declaratory  
23 relief), and § 2202 (authorizing injunctive relief).

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

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26 **INJUNCTIVE RELIEF ALLEGATIONS**

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

1           7.     As of 7:00 a.m. P.S.T. November 13, 2016, according to the Associated  
2 Press (AP), Hillary Clinton received about 630,000 more votes in the Presidential  
3 election than President-Elect Donald Trump, out of approximately 121.2 million  
4 votes cast. There is no reasonable chance that Trump will surpass Clinton in the  
5 popular vote, or even narrow the present margin; according to election analysts, it  
6 is likely the margin for Clinton will grow as California and Washington complete  
7 their vote tabulations, and provisional ballots are tabulated. In fact, Clinton's  
8 ultimate margin is widely expected to approach 2 million votes.

9           8.     Notwithstanding this historic margin of votes in favor of the projected  
10 loser of the Presidential election, the E.C. MEMBERS are poised to award the  
11 Presidency to Trump on December 19<sup>th</sup>, because they will cast their votes according  
12 to the vote winner of each state and the District of Columbia.

13           9.     Even taking Clinton's vote margin over Trump according to AP, unless  
14 this Court issues the injunctive relief sought herein, the E.C. MEMBERS will  
15 effectively cause a single vote for Clinton to be valued less than a single vote for  
16 Trump. Calculating roughly based on the vote totals available to BIRKE at the time  
17 of this complaint, the value of each Clinton vote will count for only about .99 of  
18 each Trump vote. If Clinton's margin expands as projected, that value will decrease  
19 to about .97.

20           10.    The Fifth Amendment guarantees to all citizens the equal protection  
21 of federal laws, and is more explicitly protective against unfairness than the Due  
22 Process Clause of the Fifth and Fourteenth Amendments. *Bolling v. Sharpe*, 347  
23 U.S. 497, 499. Thus, the Fifth Amendment creates a fundamental right in each  
24 citizen and a corresponding obligation on the part of all government entities to  
25 treat federal election voters fairly. Counting each Clinton vote, including BIRKE's  
26 Clinton vote, as only equal to approximately .99, that is, quantifiably less than each  
27 Trump vote, is fundamentally unfair, and serves no legitimate, let alone compelling  
28 government interest. Therefore, the action that the E.C. MEMBERS are all but

1 certain to take on December 19, *i.e.*, casting their votes only in accordance with  
2 the declared winner of the states each of the E.C. MEMBERS represents, violates  
3 BIRKE's right under the Fifth Amendment to equal protection of the laws pertaining  
4 to his vote for President.

5 11. In addition, the E.C. MEMBERS' anticipated action violates the  
6 fundamental, inviolate principle set forth by the United States Supreme Court in  
7 *Baker v. Carr* 369 U.S. 186, of "one person, one [whole] vote." There is no  
8 precedent supporting an election process that for all intents and purposes rests on  
9 a principle of "one person, .97-.99 vote."

10 12. Injunctive relief is necessary because the process by which the E.C.  
11 MEMBERS will elect the President on December 19<sup>th</sup> is irreconcilable with BIRKE's  
12 rights --- and those of approximately 63 million other Clinton voters -- under the  
13 Equal Protection Clause and *Baker v. Carr*. Either the procedural process set forth  
14 in the United States Constitution which the E.C. MEMBERS will follow, or BIRKE's  
15 and millions of others' fundamental rights can be vindicated by this Court under  
16 the United States Constitution, but both cannot be.

17 13. BIRKE's fundamental right to have his vote counted equally with a  
18 Trump voter's supersedes the E.C. MEMBERS' interests in following the Electoral  
19 College process, for the reasons set forth above in Paragraphs 9-12. The harm the  
20 E.C. MEMBERS' action on December 19<sup>th</sup> will cause BIRKE is substantial and  
21 irreparable, and BIRKE lacks any adequate remedy in law. Accordingly, an  
22 injunction prohibiting the E.C. MEMBERS from casting votes on December 19, 2016  
23 is necessary and appropriate.

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25 **DECLARATORY RELIEF ALLEGATIONS**

26 14. BIRKE hereby incorporates each of the allegations contained in  
27 Paragraphs 1 through 13 above, and incorporates them as though fully set forth  
28 here.

1 15. An actual and substantial controversy now exists between BIRKE and  
2 the E.C. MEMBERS as to their respective rights and duties. BIRKE contends the  
3 process the E.C. MEMBERS will engage in on December 19, 2016 will irreparably  
4 injure BIRKE by infringing his right to equal protection of the laws under the Fifth  
5 Amendment by devaluing to less than one his vote for Clinton, while the E.C.  
6 MEMBERS are presently believed to contend they should cast their votes on  
7 December 19<sup>th</sup> according to the popular vote winner of each of the states and the  
8 District of Columbia -- which will result in Trump's being elected President.

9 16. This dispute is presently justiciable because by all indications, the E.C.  
10 MEMBERS will vote on December 19<sup>th</sup> to make Donald Trump the 45<sup>th</sup> President  
11 despite his receiving about **1.8 million fewer votes** than Hillary Clinton, thereby  
12 causing substantial and cognizable injury to BIRKE.

13 17. The E.C. MEMBERS' anticipated action, based on their presumed  
14 contention in this matter, has substantially affected and will directly, substantially  
15 and adversely affect BIRKE. Therefore, a judicial determination of the parties'  
16 respective rights and obligations as to this controversy is necessary and appropriate  
17 at this time.

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19 **PRAYER FOR RELIEF**

20 Wherefore, BIRKE prays for judgment as follows:

21 1. For a judicial declaration that the E.C. MEMBERS' anticipated action  
22 on December 19, 2016 will substantially, adversely, and irreparably injure BIRKE  
23 and all other Clinton voters, in violation of BIRKE's rights under the Fifth  
24 Amendment, and will derogate the fundamental principle of one person, one  
25 vote.

26 2. For a judicial declaration that the process to be followed by the E.C.  
27 MEMBERS in electing the 45<sup>th</sup> President is irreconcilable with BIRKE's rights to  
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1 equal protection of the laws under the Fifth Amendment, and will derogate the  
2 fundamental principle of one person, one vote.

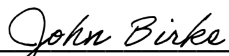
3 3. For a judicial declaration that under longstanding principles of  
4 statutory and Constitutional construction, BIRKE's rights supersede the interests  
5 of the E.C. MEMBERS in following the procedure for electing the 45<sup>th</sup> President.

6 4. For an order permanently enjoining the E.C. MEMBERS from casting  
7 votes for President on December 19<sup>th</sup> in a manner not consistent with Hillary  
8 Clinton's receiving many, many more votes than Donald Trump, or otherwise  
9 performing their duties in such manner as effectively to diminish to less than one  
10 the value of BIRKE'S vote for Hillary Clinton.

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

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13 Dated: November 14, 2016

Respectfully submitted,

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