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17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

19 PAUL RODRIGUEZ; ROCKY  
CHAVEZ; LEAGUE OF UNITED  
20 LATIN AMERICAN CITIZENS; and  
CALIFORNIA LEAGUE OF UNITED  
21 LATIN AMERICAN CITIZENS,

22 Plaintiffs,

23 v.

24 JERRY BROWN, in his official  
capacity as Governor of the State of  
25 California; and ALEX PADILLA, in his  
official capacity as Secretary of State of  
26 the State of California,

27 Defendants.

Case No.

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

1 **I. NATURE OF THE ACTION**

2 1. The predominant method in America for counting votes in presidential  
3 elections violates the United States Constitution; it also distorts presidential  
4 campaigns, facilitates outside interference in our elections, and ensures that a  
5 substantial number of citizen voters are disenfranchised when their votes are tallied  
6 in early November, only to be discarded when it really counts in mid-December.

7 2. The Constitution assigns to presidential “Electors” the vote to choose  
8 the President and Vice President. U.S. Const. art. II, § 1. States determine how  
9 those Electors are selected. California, like 47 other states and the District of  
10 Columbia, has decided to select Electors on a winner-take-all (“WTA”) basis,  
11 whereby the political party of the leading candidate among California’s voters  
12 selects every Elector, with the vote of every other California citizen rendered  
13 meaningless by receiving no Elector directly or through a political party. In 2016,  
14 for example, Secretary Hillary Clinton received 61.73% of the votes in California,  
15 yet she received every single electoral vote from California. Likewise, President  
16 Donald Trump received 31.62% of the votes in California, but received none of the  
17 electoral votes from California.

18 3. This magnification of certain votes and cancellation of all others is  
19 required by California law. Under California’s WTA method of selecting Electors,  
20 the party of the presidential candidate who wins more votes in the state than any  
21 other candidate is awarded all of California’s fifty-five Electors. *See* California  
22 Elections Code §§ 6901, 6902, 6906, 15400, 15452, 15505; *see also* National  
23 Archives and Records Administration, *Frequently Asked Questions*,  
24 <https://www.archives.gov/federal-register/electoral-college/faq.html#wtapv> (last  
25 visited Feb. 15, 2018) (“The District of Columbia and 48 states have a winner-takes-  
26 all rule for the Electoral College. In these States, whichever candidate receives a  
27 majority of the popular vote, or a plurality of the popular vote (less than 50 percent  
28 but more than any other candidate), takes all of the state’s Electoral votes.”).

1           4.       The WTA method gives only one candidate’s party all of the Electors,  
2 regardless of whether the winning candidate has garnered only a few thousand more  
3 votes than the next vote-getter in California, as Woodrow Wilson did in 1916, or as  
4 much as 67% of the vote in California, as Franklin D. Roosevelt did in 1936. Either  
5 way, the vote of each and every citizen voter is cancelled when the final direct  
6 election for President takes place unless it is cast for the winning candidate. This  
7 includes as many as 4,483,810 California citizens who voted for Donald Trump in  
8 2016.

9           5.       In California, it is Republican voters who are effectively  
10 disenfranchised by the WTA system of selecting Electors. In each of the last seven  
11 presidential elections the candidate who won California and received all of  
12 California’s Electors has been a Democrat. In those seven presidential elections,  
13 31,871,758 votes were cast for the Republican candidate in California, but none of  
14 the 382 California Electors were awarded to the Republican candidate.

15           6.       This problem is not unique to California; it is also not unique to  
16 Republicans, as the same phenomenon occurs in reverse in heavily Republican  
17 states where votes for the Democratic candidate for President are systemically  
18 discarded before the final direct election for President.

19           7.       Thus, under the WTA system, many Californians have been and will  
20 continue to be denied their constitutional right to an equal vote in the presidential  
21 election.

22           8.       The WTA system also weakens the influence of California in  
23 presidential campaigns generally. In particular, WTA leads presidential campaigns  
24 to focus on “battleground” states that in 2016 together represented only 35% of  
25 voters and did not include California. George Pilsbury & Julian Johannesen,  
26 Nonprofit VOTE, *America Goes to the Polls 2016: A Report on Voter Turnout in*  
27 *the 2016 Election*, at 12 (Mar. 16, 2017), available at  
28 <http://www.nonprofitvote.org/documents/2017/03/america-goes-to-the-polls->

1 2016.pdf/. Accordingly, presidential campaigns largely do not focus on the citizens  
2 of California, despite the fact that California has the highest number of Electors in  
3 the United States. In fact, just four battleground states—Florida, North Carolina,  
4 Ohio and Pennsylvania—saw 71% of campaign advertising spending and 57% of  
5 candidate appearances; the top fourteen battleground states<sup>1</sup> saw 99% of advertising  
6 spending and 95% of candidate appearances. *Id.* at 7, 12. WTA therefore causes  
7 candidates for President and Vice President to give disproportionate attention to an  
8 unrepresentative subset of the country, ultimately giving that unrepresentative subset  
9 outsized political influence. Under such circumstances, the presidential election  
10 does not reflect or include the voices of the entire nation, including individuals in  
11 California.

12 9. Finally, the WTA system distorts presidential campaigns and facilitates  
13 outside interference in our elections. In close elections, WTA makes it much easier  
14 and much more likely for a very small number of voters in a few predictable  
15 battleground states to determine the final electoral result than would be the case with  
16 a system of proportional selection of Electors. This increased vulnerability gives the  
17 Court added reason to ensure that the current system satisfies the requirements of  
18 the Constitution.

19 10. This lawsuit is a challenge to the WTA method selected by California.  
20 As established by longstanding Supreme Court precedent, that exercise of state  
21 discretion remains subject to Constitutional norms, including the First and  
22 Fourteenth Amendments.

23 11. To be clear, this lawsuit is not a challenge to the Electoral College,  
24 which is mandated by the Constitution. Instead, it is a challenge to the decision of  
25 California to award and select Electors on a WTA basis. The Constitution does not

26 <sup>1</sup> The fourteen battleground states in the 2016 presidential election were assumed to  
27 be Arizona, Colorado, Florida, Georgia, Iowa, Maine, Michigan, Nevada, New  
28 Hampshire, North Carolina, Ohio, Pennsylvania, Virginia, and Wisconsin.

1 address how states should select Electors, and it certainly does not require WTA.  
2 To the contrary, as shown below, WTA is inimical to the long-established principle  
3 of “one person, one vote,” and thereby violates the fundamental constitutional right  
4 to vote, as well as other constitutional rights.

5 12. Plaintiffs seek (1) a declaratory judgment that the WTA provisions of  
6 California’s election code, *see* California Elections Code §§ 6901, 6902, 6906,  
7 15400, 15452, and 15505, violate the First and Fourteenth Amendments to the  
8 United States Constitution; and (2) an order permanently enjoining the use of the  
9 WTA method (or other non-representational methods, such as selection by  
10 Congressional District vote) of selecting Electors in presidential elections.

11 13. WTA violates the Fourteenth Amendment because it counts votes for a  
12 losing presidential candidate in California only to discard them in determining  
13 Electors who cast votes directly for the presidency. Put differently, the WTA  
14 system unconstitutionally magnifies the votes of a bare plurality of voters by  
15 translating those votes into an entire slate of presidential Electors, all of whom  
16 support the nominee of a single political party—while, at the same time, the votes  
17 cast for all other candidates are given no effect. Accordingly, in the last five  
18 presidential elections, at least 30% of California voters cast a vote for the candidate  
19 that did not win the popular vote in California, and those voters thereby effectively  
20 had their votes cancelled. Their votes were completely irrelevant to how the  
21 Electors representing California voted in the Electoral College. WTA thus treats  
22 California citizens who vote for a losing candidate in an arbitrary and disparate  
23 manner in clear violation of the principle of “one person, one vote.”

24 14. In addition, WTA violates the First Amendment because of the burdens  
25 that it places on the right of association and on the right to have a voice in  
26 presidential elections through casting a vote. There is no state interest that remotely  
27 outweighs these burdens. Again, at least 30% of voters in the last five presidential  
28 elections—nationwide and in California—have voted for a losing candidate, and

1 none of their votes have counted in the final direct election. This trend will likely  
2 continue.

3 **II. JURISDICTION AND VENUE**

4 15. Subject matter jurisdiction for Plaintiffs' claims under the First and  
5 Fourteenth Amendments to the United States Constitution exists under 42 U.S.C. §  
6 1983 and 28 U.S.C. § 1331.

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

8 **III. PARTIES**

9 17. Because of California's WTA method of selecting Electors, each of the  
10 individual Plaintiffs listed below ("Individual Plaintiffs") has suffered, and will  
11 again suffer, an injury that comes from lacking any meaningful representation in the  
12 final vote count for the President (and Vice President) of the United States. In  
13 particular, because the Individual Plaintiffs have voted for, and will vote for, the  
14 Republican or third-party candidate for President in California, they have been, and  
15 will be again, deprived of the right to have their votes counted equally and  
16 meaningfully toward the election of the President.

17 18. Plaintiff Paul Rodriguez is a resident of the State of California, where  
18 he is registered to vote as a Republican and has been active within the Republican  
19 Party. Mr. Rodriguez has repeatedly voted in Studio City, California, for a  
20 Republican for President. Mr. Rodriguez plans to remain a permanent resident of  
21 California and will continue to vote in future presidential elections for the  
22 Republican candidate.

23 19. Plaintiff Assemblyman Rocky Chavez is a resident of the State of  
24 California, where he is a registered to vote as a Republican and serves as a  
25 Republican state assemblyman representing the 76th District of California. Mr.  
26 Chavez has consistently voted in California for the Republican candidate for  
27 President. Mr. Chavez plans to remain a permanent resident of California and will  
28 continue to vote in future presidential elections for the Republican candidate.

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1           20. Plaintiff League of United Latin American Citizens (“LULAC”) is the  
2 oldest and largest national Latino civil rights organization. LULAC is a nonprofit  
3 organization, incorporated under the laws of the State of Texas, with presence in  
4 most of the fifty states and Puerto Rico, including California. LULAC has chapters  
5 throughout California and has individual members who reside and vote throughout  
6 California, including members who have voted and will vote for the Republican, or  
7 third party, presidential candidate in California elections for the President. LULAC  
8 has long been active in representing Latinos and other minority interests in all  
9 regions of the State. LULAC conducts voter registration activities throughout  
10 California, and exercises its rights under the Constitution to engage in full and  
11 effective political participation for Latinos and minority voters.

12           21. Plaintiff California League of United Latin American Citizens  
13 (“California LULAC”) is a nonprofit organization with members located in many  
14 cities and towns throughout the State of California. California LULAC has  
15 individual members who reside and vote throughout California, including members  
16 who have voted and will vote for the Republican, or third party, presidential  
17 candidate in California elections for the President. Since its founding, California  
18 LULAC has fought for full access to the political process, increased political power,  
19 and improved political opportunities for Hispanic Americans in California.

20           22. Defendant Jerry Brown is the Governor of California and is sued in his  
21 official capacity for declaratory and prospective injunctive relief to prevent a  
22 violation of federal constitutional rights. Governor Brown is the chief executive  
23 officer of the State of California and has the duty to communicate to the “Archivist  
24 of the United States a certificate of such ascertainment of the electors appointed,  
25 setting forth the names of such electors and the canvass or other ascertainment under  
26 the laws of such State of the number of votes given or cast for each person for  
27 whose appointment any and all votes have been given or cast”. 3 U.S.C. § 6. In  
28 these circumstances, Governor Brown has no immunity from suit.

1           23. Defendant Alex Padilla is the Secretary of State of California and is  
2 sued in his official capacity for declaratory and prospective injunctive relief to  
3 prevent a violation of federal constitutional rights. Mr. Padilla is the chief elections  
4 officer of the state of California and must “analyze the votes given for presidential  
5 electors, and certify to the Governor the names of the proper number of persons  
6 having the highest number of votes.” *See* California Elections Code § 15505. He  
7 must also “issue and transmit to each presidential elector a certificate of election.”  
8 *Id.* In these circumstances, Mr. Padilla has no immunity from suit.

9 **IV. WTA IS NOT MANDATED BY THE CONSTITUTION**

10           24. Under Article II, Section 1 of the U.S. Constitution, states are given  
11 authority to determine the manner of selecting Electors. That provision of the  
12 Constitution states: “Each State shall appoint, in such Manner as the Legislature  
13 thereof may direct, a Number of Electors” to choose a President and Vice President.

14           25. “When the state legislature vests the right to vote for President in its  
15 people, the right to vote as the legislature has prescribed is fundamental; and one  
16 source of its fundamental nature lies in the equal weight accorded to each vote and  
17 the equal dignity owed to each voter.” *Bush v. Gore*, 531 U.S. 98, 104 (2000).

18           26. The Constitution grants “extensive power to the States to pass laws  
19 regulating the selection of electors. But the Constitution is filled with provisions  
20 that grant Congress or the States specific power to legislate in certain areas; these  
21 granted powers are always subject to the limitation that they may not be exercised in  
22 a way that violates other specific provisions of the Constitution.” *Williams v.*  
23 *Rhodes*, 393 U.S. 23, 29 (1968).

24           27. California has chosen the WTA system of selecting Electors for  
25 presidential races. Neither Article II, Section 1 of the U.S. Constitution, nor any  
26 other constitutional provision, compels California to make that choice.

27  
28



1 **V. CALIFORNIA’S METHOD OF SELECTING ELECTORS**  
 2 **IS UNCONSTITUTIONAL**

3 28. California’s WTA method of selecting Electors violates the Fourteenth  
 4 Amendment’s command that no State may “deny to any person within its  
 5 jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. It also  
 6 violates the First Amendment by unduly burdening the rights of the citizens of  
 7 California to associate and to effectively express their political preferences through  
 8 voting. *See* U.S. Const. amend. I, § 1.

9 29. Under Article II, Section 1 of the United States Constitution, each state  
 10 is required to appoint the same number of Electors as it has Senators and  
 11 Representatives. U.S. Const. art. II, § 1. These Electors are tasked with electing the  
 12 President and Vice President of the United States. *Id.*

13 30. While Article II, Section 1 grants the states “extensive power” to “pass  
 14 laws regulating the selection of electors,” it cannot be “thought that the power to  
 15 select electors could be exercised in such a way as to violate express constitutional  
 16 commands that specifically bar States from passing certain kinds of laws.” *Rhodes*,  
 17 393 U.S. at 29. The Supreme Court has made clear “that no State can pass a law  
 18 regulating elections that violates the Fourteenth Amendment’s command that No  
 19 State shall deny to any person the equal protection of the laws.” *Id.* (internal  
 20 quotation marks and ellipses omitted). “No right is more precious in a free country  
 21 than that of having a voice in the election of those who make the laws under which,  
 22 as good citizens, we must live. Other rights, even the most basic, are illusory if the  
 23 right to vote is undermined. Our Constitution leaves no room for classification of  
 24 people in a way that unnecessarily abridges this right.” *Wesberry v. Sanders*, 376  
 25 U.S. 1, 17–18 (1964).

26 31. In California, as in the rest of the country, citizens do not vote directly  
 27 for President. Instead, they vote for Electors, who then cast their votes in a direct  
 28 election for President. California has chosen to adopt a WTA system for

1 determining Electors. Under this system, all of California’s fifty-five Electors are  
 2 members of the political party that nominated the candidate that wins the popular  
 3 vote in the state. The consequence of this system is to give no effect to the votes of  
 4 citizens who voted for a losing candidate in California in the tabulation of the final  
 5 vote for President. California’s WTA system violates the “one person, one vote”  
 6 principle, long enshrined in Fourteenth Amendment Supreme Court jurisprudence,  
 7 because votes for a losing presidential candidate are counted in California only to be  
 8 discarded when another candidate wins more votes in California. In other words, if  
 9 an individual does not vote for the winning candidate in California, that person’s  
 10 vote translates into no representation in the state’s multi-member Electoral College  
 11 delegation.

12 **A. *The WTA Method of Determining Electors Violates the “One Person,***  
 13 ***One Vote” Principle and the Fourteenth Amendment***

14 32. In 2016, 31.6% of voters in California voted for the Republican  
 15 candidate for President. Despite this significant bloc of support, every single  
 16 Republican vote was systemically discarded under the WTA method of selecting  
 17 Electors.

18 33. Such systemic discarding of votes occurs in election after election in  
 19 California. In the last five presidential elections, the Republican candidate for  
 20 President received at least 30% of the vote—31.6% in 2016 (4,483,810 votes),  
 21 37.1% in 2012 (4,839,958 votes), 36.9% in 2008 (5,011,781 votes), 44.3% in 2004  
 22 (5,509,826 votes), and 41.6% in 2000 (4,567,429 votes). In each of these elections,  
 23 the entirety of California’s Electors went to Democratic candidates, cancelling the  
 24 votes of Republican voters. Combined, California has discarded almost 25 million  
 25 presidential votes since the year 2000. During the same period, Democratic  
 26 candidates received over 37 million popular votes, but those votes were unduly  
 27 magnified in each election and translated into the election of 274 total Electors, and  
 28

1 274 total electoral votes cast for Democratic presidential nominees. During the  
2 same period, California selected zero Republican Electors.

3 34. The inequitable nature of the current system of determining Electors  
4 has been recognized by both major parties. As Saul Anuzis, the former Chairman of  
5 the Michigan Republican Party, stated, “This is, to me, a nonpartisan issue. It’s a  
6 question of what is the right way to elect a president. In every other office in the  
7 land, we elect the person who gets the most votes, from dog catcher to governor.”  
8 Eliza Newlin Carney, *GOP Nonprofit Backs Electoral College*, Roll Call (Dec. 7,  
9 2011, 12:57 PM), [http://www.rollcall.com/news/GOP-Nonprofit-Backs-Electoral-](http://www.rollcall.com/news/GOP-Nonprofit-Backs-Electoral-College-210872-1.html)  
10 [College-210872-1.html](http://www.rollcall.com/news/GOP-Nonprofit-Backs-Electoral-College-210872-1.html).

11 35. Democrats also share this view. For example, Representative James  
12 Clyburn, when writing on the WTA system of selecting Electors, stated, “My  
13 position has always been that winner-take-all elections trample on the variety of  
14 voices in our diverse country. Winner-take-all elections by their very nature mean  
15 that the highest vote getter wins, even if the margin of victory is only one vote.”  
16 James Clyburn, *Representative James Clyburn: Mend It*, The American Prospect  
17 (Dec. 19, 2001), <http://prospect.org/article/flunking-electoral-college>. Similarly,  
18 retired Senate Minority Leader Harry Reid called the Electoral College “very  
19 undemocratic.” Chris Sanchez, *‘UNDEMOCRATIC’: Harry Reid goes in on the*  
20 *Electoral College*, Business Insider (Dec. 13, 2016, 10:54 PM),  
21 [http://www.businessinsider.com/electoral-college-undemocratic-harry-reid-trump-](http://www.businessinsider.com/electoral-college-undemocratic-harry-reid-trump-hillary-clinton-2016-12)  
22 [hillary-clinton-2016-12](http://www.businessinsider.com/electoral-college-undemocratic-harry-reid-trump-hillary-clinton-2016-12).

23 36. The “one person, one vote” principle means that California may not  
24 “value one person’s vote over that of another.” *Bush*, 531 U.S. at 104–05. The  
25 Supreme Court laid the groundwork for the “one person, one vote” principle over  
26 fifty years ago in *Baker v. Carr*, 369 U.S. 186 (1962), in which it recognized a right  
27 to vote “free of arbitrary impairment by state action” whether “such impairment  
28 resulted from dilution by a false tally, or by a refusal to count votes from arbitrarily

1 selected precincts, or by a stuffing of the ballot box.” *Id.* at 208 (internal citations  
2 omitted).

3 37. “One person, one vote” was first articulated the following year in *Gray*  
4 *v. Sanders*, 372 U.S. 368 (1963), which involved a challenge to Georgia’s system  
5 for allocating votes in the primary for statewide office. The Court invalidated  
6 Georgia’s system because the candidate winning the popular vote in the county  
7 under that system would receive “the entire unit vote of that county,” with “other  
8 votes for a different candidate being worth nothing and *being counted only for the*  
9 *purpose of being discarded.*” *Gray*, 372 U.S. at 381 n.12 (emphasis added). In so  
10 holding, the Court stressed: “The conception of political equality from the  
11 Declaration of Independence, to Lincoln’s Gettysburg Address, to the Fifteenth,  
12 Seventeenth, and Nineteenth Amendments can mean only one thing—one person,  
13 one vote.” *Id.* at 381.

14 38. “Over the ensuing decades, the Court has several times elaborated on  
15 the scope of the one-person, one-vote rule.” *Evenwel v. Abbott*, 136 S. Ct. 1120,  
16 1124 (2016). The Supreme Court applied “one person, one vote” to invalidate a  
17 scheme for the apportionment of seats in the Alabama legislature, *see Reynolds v.*  
18 *Sims*, 377 U.S. 533, 563 (1964) (applying “one person, one vote” to strike down  
19 method for counting votes and highlighting that weighting “the votes of citizens  
20 differently, by any method or means, merely because of where they happen to  
21 reside, hardly seems justifiable”), and to a system placing Electors for a new party  
22 on the ballot, *see Moore v. Ogilvie*, 394 U.S. 814, 819 (1969) (concluding “The idea  
23 that one group can be granted greater voting strength than another is hostile to the  
24 one man, one vote basis of our representative government”).

25 39. Only one case involving the constitutionality of a WTA system in the  
26 context of presidential elections has reached the Supreme Court and, in that case, the  
27 Court summarily affirmed the lower court’s decision without an opinion. *Williams*  
28 *v. Va. State Bd. of Elections*, 288 F. Supp. 622 (E.D. Va. 1968), *summarily aff’d*

1 *without opinion*, 393 U.S. 320 (1969). In *Williams*, the plaintiffs brought an Equal  
 2 Protection Clause challenge to Virginia’s WTA system for selecting Electors before  
 3 a three-judge panel. The panel acknowledged “discrimination against the minority  
 4 voters” because “once the electoral slate is chosen, it speaks only for the element  
 5 with the largest number of votes.” *Id.* at 627. It nonetheless dismissed the  
 6 complaint, ruling that “in a democratic society the majority must rule, unless the  
 7 discrimination is *invidious*.” *Id.* (emphasis added). The panel found that “No such  
 8 evil has been made manifest” and dismissed the complaint. *Id.*

9 40. To the extent that there was once an invidiousness requirement to a  
 10 Fourteenth Amendment claim involving violation of the “one person, one vote”  
 11 principle, the Court’s decision in *Bush v. Gore*, 531 U.S. 98 (2000) removed it.  
 12 There, the Supreme Court invalidated Florida’s process for recounting votes in the  
 13 2000 presidential election for violating the “one person, one vote” principle.  
 14 Notably, there was no suggestion that any unequal treatment of votes under  
 15 Florida’s process was invidious. *See id.* at 105; *see also id.* at 104 (“When the state  
 16 legislature vests the right to vote for President in its people, the right to vote as the  
 17 legislature has prescribed is fundamental; and one source of its fundamental nature  
 18 lies in the equal weight accorded to each vote and the equal dignity owed to each  
 19 voter.”); *id.* at 107 (holding that “the idea that one group can be granted greater  
 20 voting strength than another is hostile to the one man, one vote basis of our  
 21 representative government”) (quoting *Moore*, 394 U.S. at 819 (alteration omitted)).

22 ***B. The WTA Method of Determining Electors Violates the Right to***  
 23 ***Associate Protected by the First and Fourteenth Amendments to the***  
 24 ***United States Constitution***

25 41. The right to associate is protected under the First and Fourteenth  
 26 Amendments. “It is beyond debate that freedom to engage in association for the  
 27 advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by  
 28

1 the Due Process Clause of the Fourteenth Amendment, which embraces freedom of  
2 speech.” *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958).

3 42. The Supreme Court has long held that “political belief and association  
4 constitute the core of those activities protected by the First Amendment.” *Elrod v.*  
5 *Burns*, 427 U.S. 347, 356 (1976). The “right of individuals to associate for the  
6 advancement of political beliefs” and “the right of qualified voters, regardless of  
7 their political persuasion, to cast their votes effectively” are “overlapping” rights  
8 that “rank among our most precious freedoms.” *Rhodes*, 393 U.S. at 30.

9 43. California’s WTA selection of Electors deprives Plaintiffs of their First  
10 and Fourteenth Amendment associational rights based solely on Plaintiffs’ political  
11 association and expression of political views at the ballot box.

12 44. California’s WTA selection of Electors discards Plaintiffs’ votes for  
13 President, limiting Plaintiffs’ ability to express their political preference. When  
14 Plaintiffs express their political preference through a vote for the Republican or  
15 third-party candidate, California’s WTA selection of Electors ensures that Plaintiffs’  
16 voices are not heard and Plaintiffs’ votes do not count toward the selection of  
17 Electors. Plaintiffs each become an “unequal participant in the decisions of the  
18 body politic.” *Whitford v. Gill*, 218 F. Supp. 3d 837, 883 (W.D. Wis. 2016).

19 45. In 1986, the Supreme Court held that a state law restricting access to  
20 primary voting to those who were registered members of the party was  
21 unconstitutional because it limited “the Party’s associational opportunities at the  
22 crucial juncture at which the appeal to common principles may be translated into  
23 concerted action, and hence to political power in the community.” *Tashjian v.*  
24 *Republican Party of Conn.*, 479 U.S. 208, 216 (1986). The associational rights of  
25 Plaintiffs and other Republicans and third-party voters in California are similarly  
26 restricted due to California’s WTA selection of Electors. Plaintiffs’ votes are  
27 discarded “at the crucial juncture at which the appeal to common principles may be  
28 translated into concerted action, and hence to political power in the community.” *Id.*

1 46. The WTA system also limits Plaintiffs' associational rights because it  
2 dilutes the power of the Republican and third-party voters in California. As a result,  
3 candidates from major political parties rarely hold campaign events in California  
4 once they are selected by their parties in the primary. This results in a reduced  
5 opportunity for all Californians to interface with and petition the candidates for  
6 major political parties in person, and "to express their ideas, hopes, and concerns to  
7 their government and their elected representatives" as is also protected by the  
8 Petition Clause of the First Amendment. *Borough of Duryea, Pa. v. Guarnieri*, 564  
9 U.S. 379, 388 (2011).

10 47. The impact of California's WTA system is felt nationally as well as  
11 locally. Indeed, "in the context of a Presidential election, state-imposed restrictions  
12 implicate a uniquely important national interest." *Anderson v. Celebrezze*, 460 U.S.  
13 780, 794–95 (1983) (footnote call omitted). "Moreover, the impact of the votes cast  
14 in each State is affected by the votes cast for the various candidates in other States"  
15 and burdens on associational rights may place "a significant state-imposed  
16 restriction on a nationwide electoral process." *Id.* at 795.

17 48. California has "a less important interest in regulating Presidential  
18 elections than statewide or local elections, because the outcome of the former will  
19 be largely determined by voters beyond the State's boundaries." *Id.* And any  
20 regulation of such elections may not contravene constitutional rights. *See id.* at 788  
21 (citing *Storer v. Brown*, 415 U.S. 724, 730 (1974)).

22 49. "When deciding whether a state election law violates First and  
23 Fourteenth Amendment associational rights," courts must "weigh the 'character and  
24 magnitude' of the burden the State's rule imposes on those rights against the  
25 interests the State contends justify that burden, and consider the extent to which the  
26 State's concerns make the burden necessary." *Timmons v. Twin Cities Area New*  
27 *Party*, 520 U.S. 351, 358 (1997) (quoting *Burdick v. Takushi*, 504 U.S. 428, 434  
28 (1992)).

1 50. California's WTA selection of Electors poses a severe burden on  
2 Plaintiffs' associational rights that is not outweighed by any legitimate state interest.

3 **C. The WTA System Makes United States Elections More Vulnerable to**  
4 **Outside Influences**

5 51. As government reports have concluded, "Russian intelligence accessed  
6 elements of multiple state or local electoral boards. Since early 2014, Russian  
7 intelligence has researched US electoral processes and related technology and  
8 equipment." U.S. Office of the Dir. of Nat'l Intelligence, Background to "Assessing  
9 Russian Activities and Intentions in Recent US Elections": The Analytic Process  
10 and Cyber Incident Attribution, at 3 (2017),

11 [https://www.dni.gov/files/documents/ICA\\_2017\\_01.pdf](https://www.dni.gov/files/documents/ICA_2017_01.pdf). "Russia's effort to  
12 influence the 2016 US presidential election represented a significant escalation in  
13 directness, level of activity, and scope of effort compared to previous operations  
14 aimed at US elections." *Id.* at 5. Efforts from the outside to influence the outcome  
15 of United States elections strike at the core of our democracy.

16 52. The current WTA system makes our election system more vulnerable  
17 to outside attacks, as prevailing under that system usually depends on gaining a  
18 majority in a handful of battleground states. As one commentator explained: "It is  
19 true that our decentralized, precinct-by-precinct system would make a coordinated  
20 national vote hack a massive undertaking. But given that our elections usually come  
21 down to a few predictable states, swaying even a national election is not as hard a  
22 task as it once seemed. Sowing chaos at the district or precinct level appears to be  
23 within hackers' current capabilities." Suzanne Mello-Stark, *It's now clear US*  
24 *voting is hackable. Here are 6 things we must do to prevent chaos*, Vox (June 16,  
25 2017, 10:50 AM), [https://www.vox.com/the-big-idea/2017/6/16/15816510/voting-](https://www.vox.com/the-big-idea/2017/6/16/15816510/voting-security-hacks-russia-georgia-election)  
26 [security-hacks-russia-georgia-election](https://www.vox.com/the-big-idea/2017/6/16/15816510/voting-security-hacks-russia-georgia-election).

27 53. Under a more equitable and constitutional method of selecting Electors,  
28 the risk of an outside influence changing the outcome of a presidential election is



1 greatly reduced. The votes of citizens in each state become meaningful and the  
2 outcomes of elections do not boil down to the winner of a few easily predictable  
3 states.

4 **CAUSES OF ACTION**

5 **Count I – Fourteenth Amendment to the United States Constitution**

6 54. Plaintiffs reallege and incorporate all prior paragraphs of this  
7 Complaint.

8 55. California’s WTA system for selecting Electors results in the votes of  
9 citizens who voted for a losing candidate in the state not being counted in the final  
10 direct election for President. Accordingly, California’s WTA method of  
11 determining Electors violates the “one person, one vote” principle and the  
12 Fourteenth Amendment to the United States Constitution.

13 56. Unless enjoined by order of this Court, Defendants will continue to  
14 violate the Fourteenth Amendment to the United States Constitution by  
15 implementing the WTA method of selecting Electors.

16 **Count II – First and Fourteenth Amendments to the**  
17 **United States Constitution**

18 57. Plaintiffs reallege and incorporate all prior paragraphs of this  
19 Complaint.

20 58. California’s WTA system poses a severe burden on Plaintiffs’ rights to  
21 associate and to effectively express their political preference through voting that is  
22 not outweighed by any legitimate state interest. Accordingly, California’s WTA  
23 method of determining Electors violates the First and Fourteenth Amendments to  
24 the United States Constitution.

25 59. Unless enjoined by order of this Court, Defendants will continue to  
26 violate the First and Fourteenth Amendments to the United States Constitution by  
27 implementing the WTA method of selecting Electors.

28

**ATTORNEYS' FEES**

60. In accordance with 52 U.S.C. § 20510 and 42 U.S.C. § 1988, Plaintiffs are entitled to recover reasonable attorney's fees, expenses, and costs.

**PRAYER FOR RELIEF**

1. WHEREFORE, Plaintiffs respectfully request that this Court:

- a. declare that California's current method of selecting Electors under California Elections Code Sections 6901, 6902, 6906, 15400, 15452, and 15505, and any other related section, is unlawful because it (1) treats California citizens who vote for a losing candidate in an arbitrary and disparate manner in violation of the Fourteenth Amendment of the United States Constitution; and (2) burdens these citizens' rights to associate and to express their political preference effectively through voting in violation of the First and Fourteenth Amendments to the United States Constitution;
- b. declare that Plaintiffs' rights will be irreparably harmed without injunctive or declaratory relief from this Court;
- c. enjoin Defendants from selecting Electors under the challenged WTA system, or any other system that fails to treat each California citizen's vote for the President in an equal manner, including selection by Congressional District vote;
- d. set reasonable deadlines for state authorities to propose and then implement a method of selecting Electors that treats each California citizen's vote for the President in an equal manner, making clear that such a system *cannot* include selection by Congressional District vote;
- e. if state authorities fail to propose or implement a valid method of selecting Electors by the Court's deadlines, order a proportional



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