DEVVY KIDD, Plaintiff,	)	IN THE DISTRICT COURT
v.	)	OF TRAVIS COUNTY, TEXAS
NANDITA BERRY, Texas Secretary of State,	)	53 JUDICIAL DISTRICT
Defendant.	)	Case No. D-1-GN-14003900

REQUEST FOR WRIT OF PROHIBITION AND INJUNCTION

I. PARTIES.

1. The Plaintiff, Devvy Kidd, is a citizen and resident of Howard County in the State of Texas and seeks a Writ of Prohibition and Injunction against the Defendant in her capacity as Secretary of State. Plaintiff has "taxpayer standing". See *Andrade v. Venable*, 372 S.W.3d 134, 137 (Tex. 2012).

2. Plaintiff has a constitutional right to petition the government for redress of grievances, such constitutional right being predicated on the First Amendment of the United States Constitution, as well as Art. 1, Section 27, of the Texas Constitution. See *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972)("Certainly the right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right of petition."); *Bill Johnson's Restaurants, Inc. v. N.L.R.B.*, 461 U.S. 731, 741 (1983); *McDonald v. Smith*, 472 U.S. 479, 484 (1985)("filing a complaint in court is a form of petitioning activity"); *United States v. Hylton*, 710 F2d 1106, 1111 (5th Cir. 1983)(filing a lawsuit is a petition for redress of grievances); and *White v. Lee*, 227 F.3d 1214, 1227 (9th Cir. 2000).

3. The Defendant, Nandita Berry, is the Texas Secretary of State and is responsible for providing all 254 election administrators in the State of Texas with a list of candidates for U.S. Senate to be placed on the ballot in each county. To place any candidate names on the ballot for United States Senate would constitute an illegal activity because such activity would be done under a law that does not exist. The Seventeenth Amendment to the U.S. Constitution was not ratified by the required number of states.

4. In reference to Howard County, Texas, where Plaintiff resides, according to the Elections Division, the county prints and distributes prior to either a primary or general election certain materials for voters. Part of the costs are paid for by political parties with candidates on the ballot, but the remaining costs are paid by taxpayers. The rough estimate of cost for Howard County, Texas is $2,000 to the taxpayers for software programs.

The cost to the taxpayers to eliminate the office of U.S. Senator within the software required for a new general election in 254 counties would be substantial.

Defendant would be performing an unlawful act by authorizing inclusion of any individual on the ballot statewide as a candidate for the U.S. Senate under a law that does not exist, wasting a considerable amount of tax revenues.

II. RELEVANT FACTS.

5. On April 5, 1911, H.J. Res. 39 was introduced in the U.S. House of Representatives. That bill was to take away the rights of the sovereign states by allowing U.S. Senators to be elected by citizens of these united States of America.

6. H.J. Res. 39 was passed by the House on April 13, 1911. It was subsequently passed

by the U.S. Senate on June 12, 1911. As amended by the House, a second vote was taken May 12, 1912.

7. On May 17, 1912, Philander Chase Knox, then Secretary of the Department Of State, Washington, D.C., sent to the Governor of all 48 states a Resolution of Congress entitled "Joint Resolution Proposing an amendment to the Constitution providing that Senators shall be elected by the people of the several States." See Exhibit 1.

8. On May 10, 1913, a Memorandum from the Office of the Solicitor, Department of State, issued notice of the alleged ratification of the Seventeenth Amendment to the U.S. Constitution. See Exhibit 2. On page 2 of said document, it reads in part:

> "The Department has received information that thirty-six States have taken action purporting to ratify the amendment by Congress and no official information has been received from any State to the effect that the Legislature of that State has rejected the said Amendment."

9. One has to wonder why the Solicitor used the word "purporting" when describing the actions taken by the several States since the definition of "purporting" means "to present, especially deliberately, the *appearance* of being; profess or claim, *often falsely*: a document purporting to be official."

10. The answer to that question lies further into the documents in Exhibit 2, page 5:

> Errors in Resolutions of State Legislatures
>
> "The certified copies of all Resolutions passed by the Legislatures of the States ratifying the proposed amendment contain errors in quoting the Resolution passed by

Congress proposing the amendment as will be observed from the following list:"

11. The list of states making errors according to the Solicitor General is 36, the exact number of states required for ratification of a constitutional amendment in 1913.

12. Exhibit 3, dated May 31, 1913, is titled "Proclamation of the Secretary of State" who at the time was William Jennings Bryan, Secretary of State from March 5, 1913, until June 9, 1915). In Bryan's proclamation, he claimed that three-fourths of the whole number of states in these united States of America ratified the Seventeenth Amendment and thus it became a part of the U.S. Constitution.

13. Additionally, on page 2 of the aforementioned document dated May 10, 1913, authored by the Office of The Solicitor, Department of State, the following statement was made:

> "The Department has received information that thirty-six States have taken action purporting to ratify the amendment proposed by Congress and no official information has been received from any State to the effect that the Legislature of that State has rejected the said amendment."

14. The falsity of this claim is obvious. See Exhibit 2A, which is a letter from the Governor of Georgia, John M. Slaton, to William Jennings Bryan, Secretary of State at that time, dated May 7, 1914.

15. In this letter, Governor Slaton informed Secretary Bryan that the State of Georgia was taking no action on the proposed amendment. Back then, many state legislatures were out of session for up to four years at a time, so they were unable to take any action on the

proposed amendment.

16. However, that was not the case with Georgia. In this letter to Secretary Bryan, Governor Slaton informed him that Georgia had commissioned an investigation into the proper adoption of the proposed Seventeenth Amendment by Congress before it was sent to the states. That report concluded that Congress had not properly proposed the amendment and therefore Georgia would not vote on the amendment.

17. The parties involved, specifically William Jennings Bryan, simply decided to over look how our laws are made – especially those pertaining to a constitutional amendment. Bryan chose to ignore the necessity for concurrence in legislative acts.

18. Philander Knox was Secretary of State in 1913 prior to William Jennings Bryan, his term of service being from March 6, 1909 until March 5, 1913. At that time, Knox commenced a review of the documents he received regarding ratification of the Sixteenth Amendment and drafted a report dated February 15, 1913.

19. Therein, Knox noted that "under the provisions of the Constitution a legislature is not authorized *to alter in any way* the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment."

20. But having said this, Knox went on in the same report and noted all the various changes that the states had made to the amendment.

21. This is exactly the same thing that William Jennings Bryan did for the Seventeenth Amendment. This proposition that state legislatures cannot alter or change a proposed

constitutional amendment is derived from an establish legal principle which requires that legislative bodies, when considering any given legislative act, must agree to the exact same wording and punctuation of that proposed law. See *Ashcroft v. Blunt*, 696 S.W.2d 329 (Mo. Banc 1985). This legislative principle was discussed in a booklet titled *How Our Laws Are Made*, Document Number 97-120, 97th Congress, First Session, written by Edward F. Willett, Jr., Law Revision Counsel for the U.S. House of Representatives:[1]

> "Each amendment must be inserted in precisely the proper place in the bill, with the spelling and punctuation exactly the same as it was adopted by the House. Obviously, it is extremely important that the Senate receive a copy of the bill in the precise form in which it passed the House. The preparation of such a copy is the function of the enrolling clerk.
>
> "When the bill has been agreed to in identical form by both bodies– either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both houses to the conference report– a copy of the bill is enrolled for presentation to the President.
>
> "The preparation of the enrolled bill is a painstaking and important task since it must reflect precisely the effect of all amendments, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk.... must prepare meticulously the final form of the bill, as it was agreed to by both Houses, for

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[1] This publication is available on the Internet at: http://thomas.loc.gov/home/lawsmade.toc.html (accessed Sept. 2, 2014)

presentation to the President.... each (amendment) must be set out in the enrollment exactly as agreed to, and all punctuation must be in accord with the action taken."

As the court can see in Exhibit 2, William Jennings Bryan carefully listed state by state the incredible mess the states had made during the ratification process. Of the 36 states who allegedly ratified, 35 contained errors. Secretary Bryan blew them off and ignored those "mistakes".

22. What cannot be disputed and that which is shown by the historical records are serious and gross errors.

23. For example, Exhibit 4 plainly shows that the legislature of Wisconsin amended the proposed amendment, a power which it lacked.

24. In a letter dated May 20, 1912, the Executive Chamber of the Governor advised the Secretary of State about the receipt of the Seventeenth Amendment Resolution from Congress. However, in a second letter dated a full year later from the Acting U.S. Secretary of State to the Governor of Wisconsin, it was noted that:

"In paragraph 4 of the Joint Resolution passed by the Wisconsin Legislature, the following clause, which does not appear in the Joint Resolution passed by Congress, is inserted after the word 'vacancies' and before the words 'the following'".

25. However, the problem was far worse. Documents from the National Archives show that the Wisconsin State Assembly and Senate adopted the following text for the amendment, along with incorrect punctuation:

"The senate of the United States shall be composed of two senators from each state,

elected by the people thereof, for six years; and each senator shall make temporary appointments until the people fill the vacancies by election as the legislature may direct.

"This amendment shall not be so construed as to affect the election or term of any senator chosen before it becomes valid as part of the constitution."

26. The actual text of the questionably "adopted" Seventeenth Amendment by the U.S. Congress reads:

"The Senate of the United States shall be composed of two Senators from each state elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

"When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

"This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution."

27. Not only did Wisconsin change the first paragraph, its legislature decided to completely eliminate the second one. A state cannot add text to a constitutional amendment nor can it simply decide to take out words, sentences or complete paragraphs in a proposed

constitutional amendment. Absolute conformity must be adhered to or else possibly dozens of variations of an amendment to the U.S. Constitution would result, causing endless legal problems.

28. The letter mentioned above closed with a request by the Acting U.S. Secretary of State that the governor notify him as to the intention of the legislature regarding ratification of the proposed amendment. After due diligence and research, no documents can be found where Wisconsin ever corrected its invalid ratification.

29. While William Jennings Bryan listed California as one of the states which ratified that amendment, in fact, it did not. The California State Legislature never voted on it, either the Assembly or Senate.

30. Exhibit 5 contains a number of certified documents from the State of California, Secretary of State, which prove no vote was ever taken for that constitutional amendment.

31. Exhibit 6 is a CD of the entire California State Assembly and Journal for the year 1913. California has put their Assembly and Senate history dating back to the 1800s on line. The journal pages on Exhibit 5 exactly conform to the certified documents in Exhibit 6.

32. No vote was ever taken on that amendment, either on January 28, 1913, or any other day of that entire year.

33. As seen by going through the journal records on Exhibit 5, the Assembly voted on many bills, and each and every vote was recorded by the name of the elected Assemblyman, with "yeas" and "nays". Had a vote on the proposed constitutional amendment really taken place, that vote would be recorded. It was not because no vote was

taken by that legislature.

34. Additionally, newspapers of that era failed to memorialize any vote in favor of this amendment. In 1913, there were two prominent newspapers publishing in the state of California. *The San Francisco Call* is on line through the Library of Congress, and every issue it published until shuttered on December 8, 1913 is available.

35. The date that California's legislature is claimed to have ratified the Seventeenth Amendment is January 28, 1913. In the *San Francisco Call*'s archives for January 1913 through February 1913, there is no mention the California State Legislature voting on any constitutional amendment. On January 30, 1913, the *Call* published a litany of legislative actions taken through that date, but, there is not a single line about something as important as a constitutional amendment.

36. The *NY Times* began publishing in 1851, and all of its issues are available on microfilm. Searching from January 29, 1913 through February 1913, there isn't any coverage of the California State Legislature ratifying the Seventeenth Amendment. On January 30, 1913, the NY Times printed three separate items dealing with state legislatures:

(1) Delaware Chooses Saulsbury, dealing with two Democratic members of the General Assembly and a vote dead lock;

(2) For Income Tax Amendment out of Charleston, W.VA; that legislature ratified the so called income tax amendment known as the Sixteenth Amendment;

(3) Denver, CO, January 29: The Colorado House of Representatives adopted the Seventeenth Amendment allowing for direct election of U.S. Senators.

Since the *Times* was covering legislative issues in the state capitols, why would it not publish a vote by California's State Legislature to amend the U.S. Constitution?

37. Exhibit 7 is a CD of every single document from the States of the Union in 1913 regarding the ratification of the Seventeenth Amendment. Those documents were obtained by Plaintiff in person at the National Archives in Washington, D.C. and have been certified. However, no documents were found for Rhode Island, South Carolina, Vermont and Washington State.

In order to scan them, Plaintiff had to remove the seal, but Exhibit 8 are the seals.

38. Ratification of a constitutional amendment in 1913 required that 36 states pass a resolution quoting the *exact* language of the proposed constitutional amendment being ratified. However, the State of Wisconsin altered the text by deleting sentences and one complete paragraph, making it invalid. The State of California did *not* vote to ratify the Seventeenth Amendment to the United States Constitution.

39. Plaintiff has proven that the alleged Seventeenth Amendment was two states short of ratification: California and Wisconsin. Therefore, this amendment was not ratified by the required number of states.

40. President Woodrow Wilson signed it into "law" on May 31, 1913. Legal ratification was two states short when Wilson signed off on it.

41. The following year, Louisiana adopted the amendment on June 11, 1914, *after* it had (according to the U.S. Supreme Court in *Dillon v Gloss*) been consummated.

42. Fast forward to April 11, 2002. The State of Alabama suddenly decided 89 years

after the alleged ratification of the Seventeenth Amendment to ratify it.

43. On July 1, 2010, 97 years after the alleged ratification of the Seventeenth Amendment, the Delaware State Legislature suddenly decided to ratify that amendment.

44. Exhibit 9 contains three letters:

(1) A May 27, 1912 letter from the Governor of the State of Delaware to the U.S. Secretary of State at that time, Philander Knox, acknowledging receipt of a copy of the resolution from Congress regarding that amendment.

(2) A letter dated January 29, 1913, from Delaware's Secretary of State sent to the U.S. Secretary of State informing him that the Delaware legislature was in session and the matter would be placed before it.

(3) A letter dated May 7, 1914, from Delaware's Secretary of State to the U.S Secretary of State informing him that because it had been unofficially reported that the amendment had been ratified, Delaware would take no further action.

Yet, some 97 years later, it suddenly became important to ratify it?

45. On April 1, 2012, the Maryland State Legislature decided after 99 years it was suddenly important to ratify that amendment. One news account proclaimed the reason for such a late vote was because their legislature was in session in 1912 and 1914 and not 1913.

In fact, a copy of the proposed amendment was sent to all 48 states by U.S. Secretary of State Philander Knox on May 17, 1912, while Maryland was in session. How long can the ratification process last?

46. When President Wilson signed the Seventeenth Amendment into "law", it was

clearly two states short of ratification. Of the 36 states that allegedly ratified it, 35 had all sorts of errors acknowledged but brushed aside.

However, there can be no dispute Wisconsin clearly did not ratify the proposed amendment and California never voted for it.

47. The following year, Louisiana votes for it, and 89, 98 and 99 years later, three more states allegedly ratified the amendment. Should any of those four states be counted?

48. "The provisions of the act which the petitioner was charged with violating and under which he was arrested (title 2, 3, 26) were by the terms of the act (title 3, 21) to be in force from and after the date when the Eighteenth Amendment should go into effect, and the latter by its own terms was to go into effect one year after being ratified. Its ratification, of which we take judicial notice, was consummated January 16, 1919. *That the Secretary of State did not proclaim its ratification until January 29, 1919, is not material, for the date of its consummation, and not that on which it is proclaimed, controls*. It follows that the provisions of the act with which the petitioner is concerned went into effect January 16, 1920. His alleged offense and his arrest were on the following day; so his claim that those provisions had not gone into effect at the time is not well grounded." *Dillon v. Gloss*, 256 U.S. 368, 376-377 (1921).

49. On the date of the alleged ratification – not the date of proclamation by U.S. Secretary of State, William Jennings Bryan – only 34 states with all the mistakes "ratified" that amendment.

50. Since 36 states were needed at the time, the Seventeenth Amendment was not

ratified and later votes by other states "is not material, for the date of its consummation" controls. The Seventeenth Amendment is a law that doesn't exist.

51. Plaintiff is aware that Governor Rick Perry signed legislation into law in 2011 that would cut down on frivolous lawsuits. HB 274 was primarily designed to stop what would be deemed unnecessary lawsuits against employers. This is not a frivolous lawsuit.

52. Plaintiff is exercising her First Amendment right to petition government for redress of grievance, and what could be more egregious than the Defendant acting upon a law that does not exist?

53. This lawsuit is a "first impression" action that deals with fraud and the furtherance of specific fraud by allowing any candidate to appear on the ballot in the State of Texas to run for U.S. Senator. What could be more important than exposing the non-ratification of a constitutional amendment to the U.S. Constitution? Does the truth not trump frivolous? This court cannot consider any political ramifications of this action, but rather must allow this lawsuit to move forward.

COUNT 1: DECLARATORY JUDGMENT

The allegations contained in paragraphs 1 through 53 set forth above are incorporated herein by reference.

54. The alleged Seventeenth Amendment was not ratified by either the legislature of California or the legislature of Wisconsin, and thus the proclamation of ratification of the Seventeenth Amendment by William Jennings Bryan in May, 1913, was false, fraudulent and constitutionally inadequate and invalid, and insufficient to make the Seventeenth Amendment

a part of the United States Constitution. Even the purported ratification of this amendment by the legislature of Louisiana on June 11, 1914, did not bring the total number of ratifying States to the constitutional threshold of three-quarters of the States.

55. The alleged later ratifications of this purported amendment by the legislature of Alabama on April 11, 2002, by the legislature of Delaware on July 1, 2010, and by the legislature of Maryland on April 1, 2012, being separated by at least 89 years and more did not result in ratification of this amendment. See *Dillon v. Gloss*, 256 U.S. 368, 374-375 (1921)("We do not find anything in the article which suggests that an amendment, once proposed, is to be open to ratification for all time, or that ratification in some of the states may be separated from that in others by many years and yet be effective. We do find that which strongly suggests the contrary. * * * We conclude that the fair inference or implication from Article V is that the ratification must be within some reasonable time after the proposal.").

Wherefore, the premises considered, the Plaintiff prays for a declaratory judgment from this Honorable Court declaring that the alleged Seventeenth Amendment to the United States Constitution has not been constitutionally ratified and made a part of it, and that all of the acts of the Defendant Berry in reference to conducting elections in this State for United States Senator pursuant to the terms of this amendment are null, void, and illegal.

The Plaintiff also prays that this Court enter an injunction prohibiting Defendant Berry from performing any act related to elections of any Senator pursuant to the terms of this "non-amendment."

Respectfully submitted this the __ day of September, 2014.

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