IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID C. RODEARMEL,	)	
	)	
Plaintiff,	)	No. 1:09-cv-00171-RBW-JR
	)	
v.	)	Honorable Karen LeCraft Henderson
	)	Honorable James Robertson
HILLARY RODHAM CLINTON, et al.	)	Honorable Reggie B. Walton
	)	
Defendants.	)	
	)	

REPLY IN SUPPORT OF PLAINTIFF'S
CROSS-MOTION FOR SUMMARY JUDGMENT

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Plaintiff David C. Rodearmel, by counsel, respectfully submits this reply in support of his cross-motion for summary judgment. For the reasons set forth in Plaintiff's "Opposition to Defendants' Motion to Dismiss and Plaintiff's Memorandum in Support of His Cross-Motion for Summary Judgment" ("Plaintiff's Opening Brief") and herein, Plaintiff has demonstrated fully his standing to bring this case. Furthermore, Mrs. Clinton's appointment is contrary to the plain language of Article I, section 6, clause 2 of the U.S. Constitution ("Ineligibility Clause") and cannot be "fixed" by Congress. Because no issues of material fact are in dispute, Plaintiff's cross-motion for summary judgment should be granted.

MEMORANDUM OF LAW

I. Plaintiff Has Demonstrated Standing to Bring this Action.

A. Plaintiff Has Shown a Concrete, Particularized Injury Caused By Defendants' Conduct.

Plaintiff has demonstrated that he is being injured in his employment by being required to serve under, take direction from, and report to a constitutionally ineligible superior, Mrs. Clinton. This is because Plaintiff has been placed in a position where he either must violate his oath of office or risk substantial, adverse consequences to his employment. This constitutes a direct, personal, and concrete injury for purposes of establishing standing to bring this action. Plaintiff also enjoys a property right in his continued employment as a U.S. Foreign Service Officer, and being required to serve under, take direction from, and report to a constitutionally ineligible superior, in violation of Plaintiff's oath of office, also constitutes a material, adverse change in the terms and conditions of Plaintiff's employment and injures Plaintiff's property right in that continuing employment.

Significantly, Defendants do not contest that "oath of office" standing continues to be a viable and entirely valid basis for establishing standing, as demonstrated by *Board of Education v. Allen*, 392 U.S. 236 (1968) and *Clarke v. United States*, 705 F. Supp. 605 (D.D.C. 1988). Instead, Defendants repeat their dismissive description of Plaintiff's injury as mere "abstract outrage" and reiterate their ineffectual attempt to distinguish *Allen*. Defs. Reply at 3. As previously demonstrated, Plaintiff's injury is even more concrete and compelling than the injuries suffered by the board members in *Allen* and the city council members in *Clarke*. The officials in *Allen* and *Clarke* had no property right to their elected, public office. *Taylor v. Beckham*, 178 U.S. 548 (1900). By contrast, foreign service officers such as Plaintiff clearly enjoy a property right in their continued federal employment. *Colm v. Vance*, 567 F.2d 1125, 1129, n.3 (D.C. Cir. 1977). Mrs. Clinton's appointment and continuance, which places Plaintiff in the untenable position of violating his oath of office or facing possible disciplinary action, including removal, for insubordination or other, related grounds, constitutes a material, adverse change in Plaintiff's continuing federal employment and causes injury to his property interest in that employment.

Defendants' contention that no "unconstitutional action" has been required of Plaintiff simply belies the reality of the conflict raised by Mrs. Clinton's appointment. It is undisputed that Plaintiff is required to serve under, take direction from, and ultimately report to Mrs. Clinton. Like the plaintiffs in *Allen* and *Clarke*, Plaintiff is being required to engage in conduct -

- in this instance, to serve under, take direction from, and ultimately report to a constitutionally ineligible superior -- that clearly is contrary to his oath.[1]

Although Defendants trivialize, if not denigrate, Plaintiff's oath as a mere "general pledge to behave lawfully,"[2] the oath of office means much more than that, as the Supreme Court and the Court of Appeals recognized in *Allen* and *Clarke*. Indeed, oaths have long played an important role in affirming the authority of the federal government and the supremacy of federal law, if not fidelity to the rule of law. The oath taken by Plaintiff, a retired U.S. Army Judge Advocate General Reserve Officer with the rank of Lieutenant Colonel, a Foreign Service Officer, and an "Officer of the United States," dates from the Civil War. *See* 37 Cong. Ch. 128; 12 Stat. 502 (1962); *see also* U.S. Office of Personnel Management Website, www.opm.gov/constitution_initiative/oath.asp. It was revised by Congress in 1884 to reflect its present form. *See* 48 Cong. 46; 23 Stat. 22 (1884). In 1966, it was recodified at Title 5, Section 3331. The Constitution in fact requires that Officers of the United States "shall be bound by Oath or Affirmation[] to support this Constitution." U.S. Const., art. VI, cl. 3. Nearly two centuries ago, Joseph Story wrote:

> That all those, who are entrusted with the execution of the powers of the national government, should be bound by some solemn obligation to the due execution of

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[1] Certainly, the law does not require Plaintiff to resign his employment in order to have suffered a sufficiently concrete and personal harm to establish standing. Defendants do not assert that it does. This property interest also differentiates this case from cases such as *City of South Lake Tahoe v. California Tahoe Regional Planning Agency*, 625 F. 2d 231 (9th Cir. 1980), and *Town of Charlestown v. United States*, 696 F. Supp. 800 (D.R.I. 1988) brought by elected public officials who enjoyed no property right in their public offices.

[2] The authorities on which Defendants rely concern *challenges* to state loyalty oaths by persons who objected to taking the oaths. *See Cole v. Richardson*, 405 U.S. 676 (1972); *Dalack v. Village of Tequesta, Fla.*, 434 F. Supp. 2d 1336 (S.D. Fla. 2006).

> the trusts reposed in them, and to support the constitution, would seem to be a proposition too clear to render any reasoning necessary in support of it. It results from the plain right of civil society to require some guaranty from every officer, that he will be conscientious in the discharge of his duty. Oaths have a solemn obligation upon the minds of all reflecting men, and especially upon those, who feel a deep sense of accountability to a Supreme being.

3 Joseph Story, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1838 (1833). The injury Plaintiff is suffering to his oath and to his property interest in his employment is a very real, concrete, and personal harm.

In addition to being concrete and personal, Plaintiff's injury also is particularized in a narrow and discrete way. Contrary to Defendants' assertion, Plaintiff *does* dispute that his "'injury is shared by 'hundreds of thousand . . . or even millions' of others 'who also swore an oath to the Constitution.'" Defs. Reply at 5. This is a misrepresentation of Plaintiff's argument. Plaintiff's injury is unique to Plaintiff. It is irrelevant to any standing analysis that other persons, even many other persons, may have taken the same oath Plaintiff has taken.

Defendants assert that a "narrow" view of "oath of office" standing is necessary to prevent every oath-taking federal employee from becoming potential litigants. Defs. Reply at 3 n.2. Defendants' argument fails to recognize well-established precedent holding that an injury can be suffered by a number of people, even a great number of people, and still be suffered by an individual plaintiff in a particular and personal way. *See Michael v. Anderson*, 14 F.3d 623, 626 (D.C. Cir. 1994) ("That an injury is widespread, however, does not mean that it cannot form the basis for a case in federal court as long as each person can be said to have suffered a distinct and concrete harm.").

Defendants' "floodgates" argument (Defs. Reply at 5-6) also disregards the fact that Plaintiff is part of far classification of federal employees, as he is a U.S. Foreign Service Officer, appointed by the President with the advice and consent of the Senate, and thus an "Officer of the United States," a position to which is delegated a portion, albeit small, of the sovereign powers of the United States. 31 Op. O.L.C. ___ (2007); 2007 OLC LEXIS 3, **12-74 (April 16, 2007). Having to serve under, take direction from, and report to a constitutionally ineligible superior a constitutionally ineligible superior certain diminishes the office to which an "Officer of the United States" has been appointed, if not the sovereign power of the United States that has been delegated to that officer. Under Defendants' cribbed theory of standing, however, not even an "Officer of the United States" can maintain a challenge to violation of the Constitution that affects his or her own office, which is the injury Plaintiff seeks to remedy here.

Furthermore, Defendants' ignore that Plaintiff is proceeding under a statute expressly enacted to permit judicial review of the issue presented in this case. *See* Pub. L. 110-455, 122 Stat. 5036 (codified at 5 U.S.C. § 5312, note). That provision states, in pertinent part:

> Any person aggrieved by an action of the Secretary of State may bring a civil action . . . to contest the constitutionality of the appointment and continuance in office of the Secretary of State on the ground that such appointment and continuance in office is in violation of article I, section 6, clause 2 of the Constitution.

Id. at § 1(b)(1). The fact that Plaintiff is proceeding under this statute, which obviously relates to the unique situation of Mrs. Clinton insofar as it restores the compensation paid to Secretary of State to its pre-2007 level for precisely the same period of time as Mrs Clinton's second U.S. Senate term, defeats Defendants' purported concern that, if this Court were to reaffirm the "oath

standing" of *Allen* and *Clarke*, anyone who has taken an oath to uphold the U.S. Constitution would have standing to challenge any executive branch action they believe to be unconstitutional.

Finally, Defendants' argument that Plaintiff's injury is attributable more to the President who appointed her, rather than the Department of State or Mrs. Clinton, while incorrect, is of no consequence. Defs. Reply at 6. Plaintiff's injury results from being required to serve under, take direction from, and report to a constitutionally ineligible officer. That officer, plainly, is Mrs. Clinton. In any event, to the extent that the President is deemed in any way a necessary party to this litigation, Plaintiff's Complaint can be amended quickly to include him in this action.

B. Plaintiff's Injuries Are Judicially Redressable.

Defendants do not attempt to dispute the fundamental doctrine that it is within the Court's power to "say what the law is" with respect to the constitutionality of Mrs. Clinton's appointment and to give effect to its ruling. *Marbury v. Madison*, 5 U.S. 137 (1803). It is also undisputed that the U.S. Congress specifically enacted legislation providing for this Court to hear and rule upon a challenge to the precise constitutional issue raised in this case. *See* Pub. L. 110-455, 122 Stat. 5036 .

Instead, Defendants desperately try to miscast this case as implicating the President's removal power. Defs. Reply at 7-10. To the contrary, as demonstrated previously (Pltfs. Br. at 15-19), Plaintiff is seeking declaratory and/or injunctive relief under this Court's inherent power to "say what the law is." Defendants' repeated invocation of the President's removal power and impeachment are red herrings, as not only did Congress create a mechanism to consider contests to "the constitutionality of the appointment and continuance in office of the Secretary of State on the ground that such appointment and continuance in office is in violation of article I, section 6,

clause 2 of the Constitution" (*see* Pub. L. 110-455, 122 Stat. 5036), but this Court clearly has the power to redress Plaintiff's injuries, through either declaratory relief or a narrowly tailored injunction. In fact, the logical conclusion of Defendants' argument is that the constitutionality of any appointment is unreviewable by the courts. Not only is that not the case, but it is directly contrary to the very same statute by which Mrs. Clinton claims to be eligible to serve as Secretary of State.

Defendants also suggest that Mrs. Clinton's appointment is unreviewable for the same reasons that the actions of constitutionally defective appointees are not subject to review. *See* Defs. Reply at 8 (*citing, e.g.*, *Buckley v. Valeo*, 424 U.S. 1, 142 (1976)). Defendants appear to invoke the "de facto officer" doctrine, which provides that a governmental action will be upheld even if the official that took the action was not properly in that office in the interest of orderly government. *See*, *e.g.*, *Franklin Savings Ass'n v. Director of the Office of Thrift Supervision*, 740 F. Supp. 1535, 1541 (D. Kan. 1990) (citations omitted). Again, Congress expressly created a remedy, which is the very same remedy Plaintiff has invoked in this lawsuit, to allow for judicial review of Mrs. Clinton's appointment. The "de facto officer" doctrine therefore is plainly inapplicable. Moreover, the D.C. Circuit has recognized an exception to the "de facto officer" doctrine in situations when the plaintiff brings an action at or around the time of challenged governmental action and the agency has notice of the defect in the officer's authority to act. *Andrade v. Lauer*, 729 F.2d 1475, 1499 (D.C. Cir. 1984). This lawsuit was filed only nine (9) days after Mrs. Clinton took office, and Defendants obviously had notice as to the constitutional issue presented by the appointment, as the issue was presented squarely in the very same statute that Defendants claim "restored" Mrs. Clinton's eligibility to serve as Secretary of State. Hence,

even if the "de facto officer" doctrine was somehow relevant to this case, which it is not, it would support the Court's power to review the constitutionality of Mrs. Clinton's appointment.

II. Summary Judgment Should Be Granted In Favor of Plaintiff As Mrs. Clinton's Appointment Is Contrary to the Plain Language of the Ineligibility Clause.

It is undisputed that the emoluments of the office of the Secretary of State increased during the Senate term to which Mrs. Clinton was elected (January 2007 through January 2013). This increase rendered Mrs. Clinton ineligible for appointment to any "civil office under the Authority of the United States" under Art. I, sec. 6, cl. 2.

Defendants contend that a subsequent legislative "fix" by Congress restored Mrs. Clinton's constitutional eligibility for office. Defendants, however, have no explanation as to why, if Framers had intended to allow for such a legislative remedy, no such provision exists. As Plaintiff set forth in his Opening Brief, the Framers clearly knew how to provide for Congress to make "exceptions" and allow Congress to remove otherwise strict Constitutional prohibitions. *See* Pltfs. Br. at 22-24. The Ineligibility Clause plainly does not provide for any such legislative "end runs" to try to cure a Member's ineligibility.

As demonstrated in Plaintiff's Opening Brief, a plain language application of the Ineligibility Clause is entirely proper and also consistent with the purposes underlying the Clause. In response, Defendants only offer an extra-textual interpretation of the Ineligibility Clause, proposing to insert the words "on net" into the otherwise unambiguous language of the provision. Neither the plain language nor the history of the Ineligibility Clause support such a modification. Because Mrs. Clinton's appointment is contrary to the unambiguous language of

the Ineligibility Clause, and no material facts are in dispute, Plaintiff is entitled to summary judgment.

A. The Text of the Ineligibility Clause Is Unambiguous and Precise.

As demonstrated in Plaintiff's Opening Brief, the Ineligibility Clause contains no ambiguity to justify looking beyond the plain language of the provision. *Lake County v. Rollins*, 130 U.S. 662 (1889) (stating that the purpose behind a provision "is to be found in the instrument itself; and when the text of a constitutional provision is not ambiguous, the courts, in giving construction thereto, are not at liberty to search for its meaning beyond the instrument."). The language of the Ineligibility Clause is readily understood, as demonstrated, in particular, by the significant efforts by the political branches to avoid its plain stricture. *District of Columbia v. Heller*, 128 S. Ct. 2783, 2788 (2008) (quoting *United States v. Sprague*, 282 U.S. 716, 731 (1931) (explaining that courts are "guided by the principle that '[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.'"). The only ambiguity relating to the Ineligibility Clause arises from Defendants' extra-textual interpretation of the Clause, specifically the attempted insertion of the words "on net" into the otherwise clear language of the provision.

Curiously, Defendants suggest that Plaintiff did not offer "analysis of the text or grammar of the Clause." Defs. Reply at 12.[3] Plaintiff did, in fact, set forth a detailed analysis of the text of the provision, by, for example, contrasting it with other provisions of the Constitution less capable of precise definition, such as the Due Process Clause. Pltfs. Br. at 22. Plaintiff

[3] In contrast, Defendants' "analysis" of the text consists of citations to unrelated works of 18th century literature and strained grammatical interpretations manufactured for the purpose of avoiding the plain language interpretation of the Clause.

discussed how the Ineligibility Clause, like other bright-line restrictions in the Constitution, is properly applied according to its literal interpretation. *Id.* Plaintiff further demonstrated how the Ineligibility Clause, in striking contrast with other nearby provisions of the Constitution, does not include an "exception" for a legislative enactment to the prohibition. *Id.* at 23-24. This analysis, casually dismissed by Defendant, confirms that a plain language interpretation and application of the Ineligibility Clause is entirely proper as the provision is precise and clear.

Instead, Defendants continue to argue that two additional words – "on net" – should be read into the Ineligibility Clause in order to restore Mrs. Clinton's eligibility. Defendants' "on net" theory of constitutional interpretation, however, is not a proper approach toward assessing Constitutional violations. The Court should reject Defendants' suggestion to modify the provision.

B. A Plain Language Interpretation of the Ineligibility Clause Is Reinforced by the Purposes Underlying the Ineligibility Clause.

As discussed in Plaintiff's Opening Brief, a review of the history and purposes of the Ineligibility Clause, while not necessary to resolve this case, provides compelling support for a plain language interpretation of the provision. Significantly, absent from the historical record of the Constitution, and also Defendants' brief, is any support for an "on net" theory of constitutional interpretation. Also missing is any historical evidence in support of the proposition that Framers contemplated that a legislator's eligibility could be restored via legislative "fix."

It is not in dispute that the Ineligibility Clause is the product of a carefully balanced compromise between advocates of no restriction on legislators holding office and those who

favored a total prohibition. As set forth in Plaintiff's Opening Brief, and acknowledged by Defendants, Federalists, such as Alexander Hamilton, generally opposed any limitation on holding office. Pltfs. Br. at 24. On the other side, advocates of ineligibility for office, including numerous prominent Anti-Federalists, believed that a prohibition was essential to maintain separation between the branches (Pltfs. Br. at 25) and to limit the growth of the national government (*Id*. at 25-27).

Defendants argue that, because a compromise limited the scope of the prohibition, the purposes of those who fought for the Ineligibility Clause deserve lesser (or no) consideration. Defs. Reply at 16.[4] On the contrary, it essential to account for the concerns on both sides to understand the compromise reached by the Framers. As Plaintiff previously discussed, the primary concerns of proponents of ineligibility were broad and intended to affect the behavior of the legislature as a whole. As the Department of Justice's Office of Legal Counsel has explained:

> [The Framers] sought to avoid the spectacle of legislators seeking an office throughout their term at the expense of their constituents. They therefore tried to limit the instances in which the executive could offer such enticements to legislators. Thus, to the extent that lowering salaries of vacant offices increases

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[4] Defendants also suggest that reliance on the views of the Anti-Federalists is disfavored. Defs. Reply at 16. The U.S. Supreme Court and other courts, however, regularly reference the writings of the Anti-Federalists to aid in understanding the intentions of the Framers. *See, e.g., District of Columbia v. Heller*, 128 S. Ct. 2783, 2801 (2008); *Camps Newfound/Owatnonna, Inc. v. Town of Harrison*, 520 U.S. 564, 631-32 (1997) (Thomas, J., dissenting); *U.S. v. Lopez*, 514 U.S. 549, 586-88 (1995) (Thomas, J., concurring); *U.S. Term Limits v. Thornton*, 514 U.S. 779, 906-07 (1995) (Thomas, J., dissenting); *McIntyre v Ohio Elections Comm'n*, 514 U.S. 334, 373 (1995) (Scalia, J., dissenting); *Welch v. Texas Dep't of Highways & Pub. Transp*., 483 U.S. 468, 482 (1987) (Powell, J., concurring); *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575, 584-85 (1983) (O'Connor, J., writing for the majority).

> the frequency of such appointments, it serves to frustrate the intentions of the Framers.

See Defs.' Exh. 2 at 6 (Mem. for the Counselor to the Atty. General, from Charles J. Cooper Re: Ineligibility to Assume a Vacancy on the Supreme Court (Aug. 24, 1987) (hereafter "1987 OLC Opinion").[5]

Most importantly, by understanding the broad concerns of advocates of the Ineligibility Clause, it becomes clear that temporarily decreasing the salary of an office actually undermines the purpose behind the Clause. As Plaintiff previously demonstrated, and unresponded to by Defendants, a legislative "fix" by which eligibility can be restored at any point for any office effectively removes any incentive for legislators not to pursue such offices at the "expense of their constituents" or increase the size of government. The Anti-Federalists particularly feared the emergence of a "permanent political class" which would want to increase the power and size of the central government by taxing the nation. *See* John F. O'Connor, *The Emoluments Clause: An Anti-Federalist Intruder in a Federalist Constitution*, 24 HOFSTRA L. REV. 89, 158-61 (1995). If federal offices are available without any limitation, this promotes legislators becoming part of a permanent political class and detached from their local communities. *Id.* Only if the Ineligibility Clause is interpreted consistent with its plain language, by disqualifying Members

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[5] As Plaintiff previously noted, a legislative "fix" also is ineffectual, and plainly contrary to the letter and spirit of the Ineligibility Clause, because nothing prevents Congress from reducing the salary of the office the day before the Member is nominated, and then restoring the full salary the day after the Member assumes the office. *See* 1987 O.L.C. Op. at 6-7. This further demonstrates how a legislative "fix" effectively removes any incentive for Congress to restrain the salaries of these offices, given that a "fix" is available to remove their ineligibility for any particular office.

from holding these offices, are the broad purposes behind the Ineligibility Clause given full effect.

In summary, the Ineligibility Clause represents a careful compromise by the Framers, with a limited period of ineligibility and with no exceptions. Any legislative "fix" is nothing more than an evasion of this carefully considered compromise. However inconvenient it may be to legislators seeking office, the plain language and purpose behind the Ineligibility Clause cannot be ignored.

C. Recent Disregard of the Ineligibility Clause Does Not Justify Further Violations.

In his Opening Memorandum, Plaintiff demonstrated that, until relatively recently, the Ineligibility Clause was readily understood and applied consistent with its plain language. In fact, the earliest application of the Ineligibility Clause – and most contemporaneous with the framing of the Constitution – involved a nomination by President Washington that clearly demonstrated an adherence to a plain language interpretation of the Clause. Pltfs. Br. at 28-29.

The historical examples cited by Plaintiff, and that Defendant tries to distinguish, demonstrate that until relatively recently the Ineligibility Clause was readily understood and applied consistent with its plain language. *See* Pltfs. Br. at 28-32. For example, the opinion of U.S. Attorney General Benjamin Harris Brewster in 1882 (relied on by the 1987 OLC Opinion) found nothing ambiguous about the Ineligibility Clause and no need to review its purposes. 17 Op. Att'y Gen. 365 (1882).

Defendants are correct that deviation from the plain language of the Ineligibility Clause began with the nomination of Senator Philander Knox in 1909, continued with the nomination of

William Saxbe as Attorney General in 1973, and now the appointment at issue here. The key point, however, is that no number of violations of the Ineligibility Clause by the political branches can excuse further violations.

Defendants' objection to Plaintiff's description of the issue as still "controversial" strains credulity. Defs. Reply at 18. Even if Senator Byrd has abandoned his long-held view as to the validity of a legislative "fix," this hardly demonstrates that the political branches have reached a consensus as to the issue. Of course, until this case, it was the considered opinion of the Office of Legal Counsel, since at least 1987, that a plain language interpretation is appropriate and that a legislative "fix" is ineffectual.[6]

Hence, the history shows that, contrary to Defendants' representation, no "consistent constitutional practice" justifies Defendants' "on net" interpretation of the Ineligibility Clause or any legislative "fix" to restore a legislator's eligibility. On the contrary, the historical practice indicates that the plain language of the Ineligibility Clause has been readily understood, but at times circumvented for personal expediency by the political branches. Prior violations of the Ineligibility Clause, however, provide no principled justification for further disregard.

Finally, Plaintiff notes Defendants' retreat from the May 20, 2009 OLC Opinion, issued apparently to try to buttress Defendants' arguments in this case. Defendants, in particular, object to Plaintiff's description of OLC's "consistent legal advice" being altered for use in this litigation. Defs. Reply at 22-23; Pltfs. Br. at 31. As an initial matter, a position held for at least 22 years, until it was cast aside for this litigation, would seem to constitute "consistent legal

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[6] As Plaintiff previously pointed out, and Defendants do not contest, the May 20, 2009 OLC Opinion was issued contrary to OLC's practice to avoid involvement in pending litigation.

advice." In any event, this characterization of the consistent position of OLC (or at least the Department of Justice) originated, not with Plaintiff, but was stated in the 1987 OLC Opinion. *See* p. 3 ("Opinions of the Attorney General going back over one hundred years further demonstrate the force of the Ineligibility Clause.").

CONCLUSION

For the reasons set forth above and in Plaintiff's Opening Brief, Plaintiff has standing to challenge Mrs. Clinton's appointment. Plaintiff also has demonstrated that Mrs. Clinton's appointment is contrary to the plain language of the Ineligibility Clause and cannot be "fixed" by Congress. Plaintiff respectfully requests that summary judgment in his favor be entered now.

Respectfully submitted,

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