

# **Exhibit H**

Declaration of Professor Kenneth R. Bowling,  
Ph.D.

**Declaration of Professor Kenneth R. Bowling, Ph.D.**

1. I am a citizen of the United States, and a resident of Washington, D.C.
2. In 1962, I was awarded a B.A. from Dickinson College. In 1964, I was awarded an M.A. from the University of Wisconsin, Madison. Finally, in 1968, I was awarded a Ph.D. in history from the University of Wisconsin, Madison.
3. I have earned the following grants, fellowships, and honors: Thomas Jefferson Prize from the Society for History in the Federal Government (1989, 2005, and 2013); Lyman C. Butterfield Award from the Association for Documentary Editing (2005); and the Charles Thomson Prize from the National Archives (1976).
4. My employment history includes: Editor, First Federal Congress Project ("FFC"), The George Washington University, Washington, D.C. from 1974-2016, and FFC Project Co-Editor since 1989; Adjunct Professor, History Department, The George Washington University (2000-2016); History Department, George Mason University, teaching graduate seminar in Historical Documentary Editing (1989-1999); Assistant Professor, Institute for Environmental Studies, University of Wisconsin, Madison (1971-1974); and Associate Editor, First Federal Elections Project, University of Wisconsin, Madison (1968-1970).
5. I have published many full length books and articles, many of which discuss Alexander Hamilton and/or Hamilton related documents. I edited (or co-edited) documentary editions, including: *Documentary History of the First Federal Congress, 1789–1791* (22 vols., Johns Hopkins University Press, Baltimore and London, 1972-2017); and *Creating the Bill of Right: The Documentary Record from the First Federal Congress* (Johns Hopkins University Press, Baltimore and London, 1991). My scholarly books include: *Peter Charles L'Enfant: Vision, Honor, and Male Friendship in the Early American Republic* (George Washington University, 2002); *The Creation of Washington, D.C., The Idea and Location of the American Capital* (George Mason University Press, Fairfax, Va., 1991); *The Politics of the First Congress, 1789–1791* (Garland Publishing Co., New York, 1990); *Birth of the Nation: The First Federal Congress, 1789–1791* (Madison House, Madison, Wisconsin, 1989) (with Charlene B. Bickford);
6. I have published over ten book chapters and journal articles, including articles in *Journal of the Early Republic* and *Journal of the National Archives*. I delivered six conference lectures at

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the White House Historical Association Conference, U.S. Capitol Historical Society Annual Conference and elsewhere.

7. I authenticated one of the original thirteen original copies of the federal Bill of Rights, leading to its recovery by the State of North Carolina.

8. My publications are widely cited in legal materials. For example, my publications are cited by the Supreme Court of the United States,<sup>1</sup> by United States Courts of Appeals for the District of Columbia Circuit<sup>2</sup> and Second Circuit,<sup>3</sup> by other courts of record,<sup>4</sup> in an Office of Legal Counsel memorandum,<sup>5</sup> in a dozen briefs and trial court filings,<sup>6</sup> and in over one hundred secondary sources.<sup>7</sup>

9. I have reviewed photoduplicates of the February 26, 1793 roll of officers. There are two such documents. The longer of the two documents was reproduced (in part) in *The Papers of Alexander Hamilton* (“PAH”). For convenience, I call the original document, which was reproduced (in part) in PAH, the *Complete Report*. The shorter of the two documents was reproduced in *American State Papers* (“ASP”). For convenience, I call the original document, which was reproduced in ASP, the *Condensed Report*. The two originals are in longhand, and the PAH and ASP reproductions are typeset. I have also examined the typeset reproductions. The photoduplicates were supplied to me by Seth Barrett Tillman. I am satisfied that those photoduplicates are complete or substantially complete.

10. For the reasons I explain below, I conclude that the signature in the *Complete Report* is Alexander Hamilton’s signature. (This includes the signatures in the cover letter and in Annexes X, XI, XII, and XIII.) This document is what it purports to be: a communication from the Treasury to the Senate, responding to a prior Senate order, and signed by the Secretary of the

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<sup>1</sup> See, e.g., *Clinton v. Jones*, 520 U.S. 681, 695 n.21 (1997); *id.* at 716 (Breyer, J., concurring).

<sup>2</sup> See, e.g., *Parker v. District of Columbia*, 478 F.3d 370, 405 n.10 (D.C. Cir. 2007) (Karen LeCraft Henderson, J., dissenting).

<sup>3</sup> See, e.g., *Anderson v. Miller*, 346 F.3d 315, 325 (2d Cir. 2003).

<sup>4</sup> See, e.g., *Fletcher v. Haas*, 851 F. Supp. 2d 287, 293–94 (D. Mass. 2012).

<sup>5</sup> See, e.g., *Whether a Former President may be Indicted and Tried for the same Offenses for which he was Impeached by the House and Acquitted by the Senate*, O.L.C., 2000 WL 33711290, at \*10 n.46 (2000).

<sup>6</sup> See, e.g., Brief for Respondent, *Borough of Duryea, Penn. v. Guarnieri*, No. 09-1476 (U.S. Jan. 18, 2011), 2011 WL 175871, at \*26–27 & n.18.

<sup>7</sup> See, e.g., Wesley J. Campbell, *Commandeering and Constitutional Change*, 122 YALE L.J. 1104 *passim* (2013).

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Treasury, Alexander Hamilton. It was dated February 26, 1793 and transmitted to the Senate the next day.

11. For the reasons I explain below, I conclude that the signature in the *Condensed Report* is not Alexander Hamilton's signature. This document is a scrivener's copy. In my professional judgment, *The Condensed Report* was drafted after 1830.

12. In a footnote to an amicus brief submitted to this Court (Southern District of New York), Seth Barrett Tillman asserted:

*See Report on the Salaries, Fees, and Emoluments of Persons Holding Civil Office Under the United States* (Feb. 26, 1793), in 14 *The Papers of Alexander Hamilton* ("PAH"), 157, 157–59 (1969), [perma.cc/49RT-TTGF](https://perma.cc/49RT-TTGF). The editors of PAH marked this document "DS," meaning "document signed," which indicates that this document was the original signed by Hamilton. The original Hamilton-signed document, on which the PAH reproduction is based, remains in the vaults of the National Archives & Records Administration (Record Group #46). An excerpt of the original Hamilton signed document is available at [bit.ly/2rQCDxX](https://bit.ly/2rQCDxX). Amicus notes that an entirely different document (but bearing a similar name) can be found in *American State Papers* ("ASP"). *See List Of Civil Officers Of The United States, Except Judges, With Their Emoluments, For The Year Ending October 1, 1792*, in 1 *American State Papers/Miscellaneous* 57 (1834). The document in ASP was not signed by Hamilton. The undated ASP document was drafted by an unknown Senate functionary. Unlike Hamilton's manuscript, the record in ASP includes the President and Vice President. Both documents are probative of the legal meaning of *Office . . . under the United States* as used in the Senate order. But the two documents are not equally probative. There is no reason to favor a document of unknown provenance over the Hamilton-signed original which was, in fact, an official communication from the Executive Branch responding to a Senate order.<sup>8</sup>

The historical record is not entirely clear, but for the reasons I explain below, my best professional view is that Tillman's assessment of the signatures of the two documents is correct.

13. I have seen Alexander Hamilton's signature thousands of times over the course of fifty years of editing original manuscripts and other documents. I recognize Hamilton's signature well. The signature on *The Condensed Report*, which was subsequently reported and reproduced in *American State Papers*, is not in Hamilton's hand. It is not his signature.

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<sup>8</sup> Brief for Scholar Seth Barrett Tillman as *Amicus Curiae* in Support of the Defendant at 19 n.76, *Citizens for Responsibility and Ethics in Washington v. Donald J. Trump, President of the United States of America*, Civ. A. No. 1:17-cv-00458 (S.D.N.Y. June 16, 2017) (filed by Professor Josh Blackman & Robert W. Ray, Esq.), Doc. No. 37, 2017 WL 2692500, <https://ssrn.com/abstract=2985843>.

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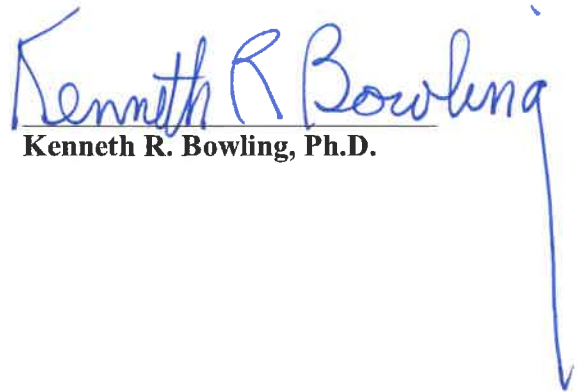
14. By contrast, the signatures in the *Complete Report* (including the transmittal letter, cover letter, and in Annexes 10, 11, 12, and 13) are Alexander Hamilton's signature.

15. A "mass" destruction took place while congressional documents were prepared for inclusion in *American State Papers, Documents, Legislative and Executive, of the Congress of the United States* (Washington: Gales and Seaton, 1832–61). I assume this because the *Documentary History of the First Federal Congress, 1789–1791* had to rely on the ASP copy for several documents because the original copies no longer exist.

16. In Hamilton's day, some, perhaps many (but certainly not all) understood and used the phrase *office under the United States* (and its close textual variants) to include those officers who went through the Appointments Clause process of presidential nomination, Senate advice and consent, and presidential appointment, or to other lesser officers, such as those who only received presidential commissions (e.g., inferior officers). *Office under the United States* did not extend to elected officials. In my professional judgment, Hamilton's roll of officers, *The Complete Report*, is consistent with what was one strand (perhaps the prevailing strand) of the contemporaneous (that is, circa 1793) public understanding of *office under the United States*.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 8 th day of September, 2017.

  
Kenneth R. Bowling, Ph.D.