

ASA GORDON,

Plaintiff

v.

NATIONAL ARCHIVES AND
RECORDS ADMINISTRATION, *et al.*

Defendants

This *Case or Controversies* arises out of the *ministerial legal duties* of the defendant National Archives and Records Administration's (NARA) Office of the Federal Register (OFR) required by law to perform certain functions relating to the Electoral College. NARA acting pursuant to 3 U.S.C. 6, 11, 12, and 13, **creates legal rights** to "ensure" the constitutional integrity of "Certificates of Votes", including by its publication of "*Provisions of the Constitution and United States Code relating to Presidential Elections*" an **enforceable right to receive truthful information** concerning the electoral process that **automatically creates standing** if these rights are violated.

“[t]he actual or threatened injury required by Art. III may exist solely by virtue of ‘statutes creating legal rights, the invasion of which creates standing....’” *Warth v. Seldin*, supra, at 500, 95 S.Ct., at 2205, quoting *Linda R.S. v. Richard D.*, 410 U.S. 614, 617, n. 3, 93 S.Ct. 1146, 1148, n. 3, 35 L.Ed.2d 536 (1973).

Furthermore, Defendants' have not contested arguments raised in Plaintiff's *Memorandum in*

Support of Plaintiff's Motion for leave to File Amended Complaint.

* Case 1:16-cv-02458-RJL Document 17

FACTUAL BACKGROUND

(1) A *Case or Controversy* arises out of the activities of the Defendant NARA through the OFR acting under the authority of (3 U.S.C. Sections [6,11,12,13](#)) to carry out the administration of the electoral college process by selectively choosing to examine Certificates of Votes for legal sufficiency to comport with the *Office of Trust* clause of Art.II¹ to the exclusion of ensuring the same in regards to the reduction of representation *malapportionment penalty clause* of Amend. XIV§2.

(2) A *Case or Controversy* arises out of the activities of the Defendant NARA through the Office of the Federal Register (OFR) pursuant to the Federal Registration Act 44U.S.C.15, 1CFR2 to inform

" citizens of their rights and obligations by providing ready access to the official text of Federal laws, Presidential documents, administrative regulations and notices, and descriptions of Federal organizations, programs and activities."

The OFR has produced and posted on the Internet "*Provisions of the Constitution and United States Code relating to Presidential Elections*"² as general information within the *zone of interest* of all citizens. This document is also produced in pamphlet form for State Governors and the Mayor of the District of Columbia.

Defendants' actions in performing these ministerial legal duties create legal rights that automatically create standing for the plaintiff.

(See. Attached affidavit.)

¹ Defendants affirm their role in insuring the integrity of the Electoral College by declaring at ¶ 1 Pg.3 in their Motion to Dismiss "When the Archivist received the Certificates of Vote from the states, the Office of the Federal Register reviewed them to ensure, for example, that they were signed, that they listed separate vote totals for the president and vice president, and that no members of Congress or the Cabinet served as electors (see U.S. Const. art. II, § 1, cl. 2.)".

² <https://www.archives.gov/federal-register/electoral-college/resources/state-officials-instructions.pdf>

ARGUMENT

The fundamental core of a democratic society is that the citizenry be informed. NARA is an agency charged with the responsibility to inform the citizenry. The choice to withhold pertinent information to a class of citizens who are misinformed of their rights is tantamount to malfeasance. The plaintiff strongly asserts that the defendant as a governmental entity has a responsibility when it undertakes to discharge a duty to the general public, to discharge that responsibility with accuracy and completeness.

I. Plaintiff meets the irreducible constitutional minimum for standing.

The "irreducible constitutional minimum of standing" requires that plaintiffs demonstrate:

- (a) an "injury in fact" is "concrete and particularized."
- (b) that the injury is "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court," and
- (c) that it is "'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992), quoting in part *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 38, 41-42, 43 (1976).

"This triad . . . constitutes the core of Article III's case-or-controversy requirement." *Steel*

Company v. Citizens for a Better Environment, 523 U.S. 83, 103-104 (1998).

- (A) Defendants have disregarded and refuse to acknowledge Plaintiff's personal **interest** in their malfeasance by misinforming Plaintiff and Plaintiff's Mayor, while acting under the authority of 3 U.S.C. 6, 11, 12, and 13 to prepare a package that purports to convey to the states the full scope of the Constitution and Federal statutes that govern the Electoral College. Defendants, with foreknowledge provided by the plaintiff, deliberately chose to exclude in their prepared instructions to the states, Section 2 of the Fourteenth Amendment as implemented by Title Two Section 6 of the United States Code, provisions of the Constitution and Federal statute that explicitly applies to presidential electors. Plaintiff has suffered **injury in fact** by Defendants' willful disregard of the electoral college reconstruction amendments in their electoral package. Defendants' deleterious actions have frustrated Plaintiff's efforts to educate

his Mayor, District of Columbia election officials and the public, of electoral college rights arising from Amend.14§2 as implemented by 2U.S.C.§6 with a consequent extraordinary drain on Plaintiff's personal time in research, development of public informational resources, personal advocacy and financial cost because the Defendant NARA is held by Government officials and the public at large as the definitive arbiter of information regarding the electoral college. The court's authority may be invoked when the party "has suffered some actual or threatened injury". Gladstone, Realtors v. Village of Bellwood, 441U.S. 91,99(1979).

- (B) The OFR is the author and has the sole editorial responsibility to amend or augment "*Provisions of the Constitution and United States Code relating to Presidential Elections*". The District of Columbia and the Plaintiff's state officials who are the recipients of this pamphlet have no autonomy or statutory responsibility to amend or augment the pamphlet. Thus the remedy sought by plaintiffs is *traceable* only to the conduct of NARA.
- (C) It is obvious that in this *Case-or-Controversy*, injunctive relief and declaratory judgments are warranted to redress the *wrongful judgment* of OFR to misinform the Plaintiff, the citizenry and their public officials by the OFR's willful omission of an indisputable provision pertaining to suffrage rights, is far from *speculative*, and will be definitively redressed by a favorable court decision. *Richardson v. Ramirez*, 418 U.S. 24, 61 (1974).

II. Defendants' Third Parties Precedents are misplaced.

Defendants' principle reliance on Supreme Court precedent: *Warth v. Seldin*, 422 U.S. 490, 499(1975), *Id.* at pg3., wherein the Plaintiff's lack of standing is predicated upon the thesis that *Plaintiff's alleged injuries are not redressable by the Defendants but are subject to other third parties* is totally misplaced for in this case of controversy the Defendants represent the only party that has assumed the responsibility for the action in question, and possess the authority in statute to redress the relief sought by the Plaintiff.

Defendants' principle reliance on Supreme Court precedents: *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 ,(1992), *Id.* at pg.5, wherein the Plaintiff's lack of standing is predicated upon the thesis that *Defendants' responsibility for the action or non-action taken is not to the Plaintiff but to third parties* is totally misplaced for the OFR, in the fulfillment of their declared mission has produced "*Provisions of the Constitution and United States Code relating to Presidential Elections*" as General Information within the clear *zone of interest* of the plaintiff.

III. This case or controversy is raised by the Defendants' Judgment.

The power of the federal courts is "to correct wrong judgments, not to revise opinions." *Richardson v. Ramirez*, 418 U.S. 24, 61 (1974)".

This is not a *case or controversy* over a difference of opinion between the Plaintiff and Defendants. This issue is over a serious fault in their *editorial judgment* to exclude a section of the Constitution that *pertains more directly to voting rights of individuals and the penalty for disregarding those rights as not within the scope* of a pamphlet entitled *Provisions of the Constitution and United States Code relating to Presidential Elections*.

This *editorial judgment* is taken within the context of the Defendants' stated mission to inform "citizens of their rights and obligations by providing ready access to the official text of Federal laws". This *editorial judgment* constitutes "willful misfeasance" of NARA's stated responsibility in its mission to inform all citizens of their rights.

The document is provided to Governors and the Mayor of the District of Columbia in Pamphlet form. However under the provisions of the *Federal Registration Act* 44U.S.C.15 the *subject matter* of the pamphlet is provided to the general public and to public and academic libraries.

NARA through the OFR has the sole authority to amend or edit the document "*Provisions of the Constitution and United States Code relating to Presidential Elections*".

XIV Uncontested Argument in Support of Amended Complaint.

Defendants' have not contested arguments raised at pg.4 in Plaintiff's *Memorandum in Support of Plaintiff's Motion for leave to File Amended Complaint*:

Plaintiff's proposed amendments are not futile. In order to survive a motion to dismiss, a complaint must have facial plausibility allowing the court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). The court must construe the complaint in favor of the plaintiff and grant plaintiff the benefit of all inferences derived from the facts. *Schuler v. United States*, 617 F.2d 605, 608 (D.C. Cir. 1979).

The Fifth Amendment's Equal Protection Clause directs that all persons similarly situated should be treated alike. *United States Dep't of Agriculture v. Murry*, 413 U.S. 508, 517 (1973) (Marshall, J., concurring). The D.C. Circuit has stated that "[a] central purpose of the equal protection guarantee is to shield the politically impotent from capricious action by the majority." *Cnty-Serv. Broad. of Mid-America, Inc. v. FCC*, 593 F.2d 1102, 1125 n.4 (D.C. Cir. 1978).

It should go without saying that no similarly situated voter in this nation is more politically impotent and subject to the capricious action of the government or its agents than is represented by the neutered franchise of a DC voter. Lacking any congressional representative to whom Plaintiff can appeal, to exact leverage on non-responsive agents of the Government, Plaintiff is compelled to suffer a particularized injury as a DC voter, by having to petition the judiciary.

CONCLUSION

Plaintiff brings this action as a Citizen of the United States lacking any congressional representative to whom Plaintiff can appeal to seek relief from non-responsive agents of the Government. Plaintiff is compelled to suffer a particularized injury as a District of Columbia voter arising from NASA's statutorily created right to truthful electoral college information, by having to go to extraordinary measures at personal cost, time and energy to counteract Defendant's knowing and willful misinformation to Plaintiff, the Mayor of the District of Columbia and Governors of unbounded states by Defendants' judgment to exclude a clear and unambiguous provision of the United States Constitution relating to Presidential Elections, i.e. Amend.14§2. This Reconstruction amendment was

intended for the benefit of the plaintiff and other US citizens to protect the fundamental right of suffrage and be informed of the penalty for disregarding those rights. The particular impact of this misfeasance by NARA on the Plaintiff, Plaintiff's Mayor and Governors of unbounded states are that they are not made cognizant of avenues of redress for the *denial* or *abridgment* of suffrage rights under Section 2 of the Fourteenth Amendment of the United States Constitution.

Defendants' production of "*Provisions of the Constitution and United States Code relating to Presidential Elections*" pursuant to the Federal Registration Act 44U.S.C.15, 1CFR2 as general information within the *zone of interest* of all citizens creates legal rights, an enforceable right to receive unbiased and truthful information regarding presidential elections that automatically creates standing for plaintiff to vindicate his right to prevent Defendants' dissemination of inaccurate information.

For the foregoing reasons, Plaintiff respectfully requests that Plaintiff's motion for leave to file amended complaint, dated Feb. 10th, 2017 is granted.

Dated: April 21, 2017

Respectfully submitted,

Asa Gordon, *Pro Se*
Executive Director and Founder
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CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2017, I caused to be served, by United States mail postage prepaid, a copy of **PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT AND OPPOSITION TO DEFENDANTS' COMBINED OPPOSITION** as follows:

JOHNNY H. WALKER, D.C. Bar #991325
Assistant United States Attorney
555 4th Street, N.W.
Washington, District of Columbia 20530
Telephone: 202 252 2575
Counsel for Defendants

A courtesy copy has been sent by email to johnny.walker@usdoj.gov.

Asa Gordon, *Pro Se*
Executive Director and Founder
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Affidavit of Asa Gordon, Exe. Dir. DIG

Duly sworn, under oath, I Asa Gordon make the following statement:

I am a co-founder and Executive Director of the Douglass Institute of Government(DIG). I am a resident of the District of Columbia and a registered voter of this jurisdiction.



In mid November of 2000, associates of co-founder of DIG Lawrence Douglass Jamison,esq (dec.) from across the country, and in particular from the States of Georgia and Florida, made inquiries of DIG as to what redress or penalties were available to citizens with respect to disenfranchisement in Florida's 2000 Presidential elections under the Constitution of the United States. Particular inquiries were made of DIG when it was reported in the media that the Florida legislature had threatened to select the Florida presidential electors without regard for state or federal court guidelines. In consultation with Jamison we made several inquiries of local officials, professors of law, civil rights organizations and attorneys as to what course may be undertaken to lodge a grievance for infringement on the constitutional right of suffrage and what related information may be readily available to the public. From these inquiries we were led to reference Government web pages on the Presidential election process maintained by the National Archives and Records Administrations' (NARA) Office of the Federal Register (OFR). We passed this information on to those who had made inquiries of DIG without review at that time.

By late December of 2000, after a later review, I became aware that the OFR had posted at their web site on the electoral college an Internet reference link to a particular document, [Relevant Provisions of the U.S. Constitution and Federal Law](#): under the heading General Information. This Internet reference seriously misinforms the general public of their electoral rights. At this same web site, under the heading State Resources, the OFR provided a link to [Letter from the Archivist to Governors](#). I became aware that the flawed document at the agency web site is published in pamphlet form "for use by the Executives and Electors of the several States in the performance of their duties in connection with Presidential Electors." **See Amended Complaint at ¶8.** *Before I had made these discoveries I mistakenly used the OFR internet links to pass their flawed document on to my associates in November of 2000.*

As a consequence of my lectures over the last decade and a half on behalf of DIG and as Secretary General of the United States Colored Troops chartered by the African American Civil War Museum Freedom foundation on the post Civil War Reconstruction Era in U.S. history, I became cognizant of the fact that the OFR had committed a serious error in judgment in the publication of their pamphlet entitled "*Provisions of the Constitution and United States Code relating to Presidential Elections*" by their exclusion of the second section of the fourteenth amendment. To my dismay, I later learned that local officials, professors of law, civil rights organizations, Internet web sites on electoral rights, law libraries, Government documents libraries, and attorneys practicing Civil Rights law are profoundly influenced by this inaccurate OFR source. This misinformation was, in fact, a major cause for the ignorance and disbelief that many local officials, professors of law, civil rights organizations and attorneys displayed in response to my personal herculean efforts to bring general public and professional awareness to this missing provision of the Fourteenth Amendment to the U.S. Constitution.

At the [Federal Register Main Page](http://www.archives.gov/federal_register/) (http://www.archives.gov/federal_register/) the OFR proclaimed "OFR plays an important role in: [The Electoral College](#)", (http://www.archives.gov/federal_register/electoral_college/electoral_college.html). The OFR also declared:

"Our Mission

The Office of the Federal Register (OFR) informs citizens of their rights and obligations by providing ready access to the official text of Federal laws, Presidential documents, administrative regulations and notices, and descriptions of Federal organizations, programs and activities."

At the [Electoral College Link](#), the OFR declared:

"U. S. Electoral College

The Office of the Federal Register coordinates the functions of the Electoral College on behalf of the Archivist of the United States, the States, the Congress, and the American People. ..."

In fulfillment of their declared mission, the OFR has produced "*Provisions of the Constitution and United States Code relating to Presidential Elections*" as General Information within the zone of interest of all citizens. This document is posted on the Internet by the OFR and is broadly linked to and reproduced at numerous public Internet sites. This document has also been reproduced in pamphlet form for public dissemination by the Superintendent of Documents as Gov. Doc. No. AE 2.102:P 92/2000 for acquisition by public and academic libraries pursuant to the Federal Register Act 44U.S.C.15. & 1CFR2. Thus *actual* injury to a broadly misinformed citizenry has been realized and threatens to be perpetuated unabated.

I have informed NARA and the DC Secretary of State of the error in OFRs' judgment to exclude from the pamphlet "*Provisions of the Constitution and United States Code relating to Presidential Elections*" that portion of the Constitution that pertains more directly to voting rights of individuals and the penalty for disregarding those rights".

NARA belittles my effort as a member of that class of misinformed and targeted citizens who has chosen to exercise his obligation to safeguard his rights once realized. Acting under the purview of the Federal Register Act 44U.S.C.15;1CFR2, NARA has exacted *actual injury* upon me *directly* by asserting they have no obligation to correct any wrongful *editorial judgment* identified by me in fulfillment of their stated mission to inform me of my electoral rights, nor or they obligated to correct any *wrongful editorial judgment* that *threatens* injury to my electoral rights by misinformed officials who rely on NARA for guidance in protecting my electoral rights. Thus the *injury* I have suffered is both *actual* and *threatened* by the only agency that has the statutory authority and responsibility to correct this *case or controversy*.

I affix my signature hereto.

Asa Gordon, *PRO SE*
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