

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Asa Gordon, DC registered voter, Pro Se
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Plaintiff,

VS.

National Archives and Records Administration(NARA)

David S. Ferriero

Archivist of the United States

Oliver Potts

Director, Office of the Federal Register (OFR)

U.S. National Archives and Records Administration

700 Pennsylvania Ave., NW

Washington, DC 20408

(202) 741-6030

Defendants.

Case: 1:16-cv-02458 (F-Deck) Assigned To: Leon, Richard J. Description: Pro Se Gen. Civil
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**MOTION FOR TEMPORARY RESTRAINING ORDER
PRELIMINARY INJUNCTION AND SUPPORTING MEMORANDUM OF LAW**

JURISDICTION

Jurisdiction of this court is evoked under the 1st, 4th, 9th, 12th and 14th Amendment (Amend. 14 § 2) of the United States Constitution, 42 U.S.C. § 1983, 2 U.S.C. § 6 and pursuant to Rule 65 of the Federal Rules of Civil Procedure.

INTRODUCTION

1. This is a motion for a temporary restraining order and preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure.

2. The Archivist of the United States is required by law to perform certain functions relating to the Electoral College (3 U.S.C. sections 6, 11, 12, 13). The Archivist has delegated to the Director of the Federal Register the authority to carry out the administration of the Electoral College process.

3. The Office of the Federal Register (OFR) and the National Archives and Records Administration (NARA), responsible for the oversight in the Presidential Election, declares that:

"There is no Constitutional provision or Federal law requiring Electors to vote in accordance with the popular vote in their States"

{ <http://www.archives.gov/federal-register/electoral-college/electors.html> }

For the 11 states subject to this civil action, there is even the absence of a state law requiring Electors to vote in accordance with the popular vote in their States.

4. Enshrined in the Constitution of the United States of America (Amend. XIV§2) as implemented by the "Reduction of representation" U.S. Code (2USC §6) is a *de jure* mandate for the reduction of a State's representatives to Congress "when the right to vote at any election for the choice of electors for President and Vice-President of the United States... is denied to any ... citizens of the United States, or in any way abridged"

5. Plaintiff enters this plea for injunctive relief against the Defendants acting ex officio to move the court to compel the Office of the Federal Register of the National Archives and Records Administration to reject Certificates of Votes that only record the award of electors by the least fair allocation of presidential electors on a winner-take-all basis ungrounded in State Law, Federal Law or the US Constitution and effect the allocation of electors by the obviously more fair proportional apportionment of presidential electors based on the popular vote split pursuant to the mandate of Amend14§2, as enforced by 2U.S.C§6.

**FACTUAL BACKGROUND and
MEMORANDUM OF LAW IN SUPPORT OF MOTION**

Plaintiffs aver and request that this court take judicial notice of the following:

**I. "Reduction of representation" (2USC §6) Malapportionment Penalty
Mandate for Violations of the Fourteenth Amendment "right to vote" Clause
based on Party Affiliation.**

6. The 2016 Presidential election winner-take-all Certificates of Votes posted by NARA for the eleven states : Alabama (with 3 electors pledged to Ms. Clinton), Arizona (5 for Clinton), Georgia (7 for Clinton, 1 for Mr. Johnson), Indiana (4 for Clinton, 1 for Johnson), Iowa (3 for Clinton), Michigan (7 for Clinton, , 1 for Johnson), North Carolina (7 for Clinton), Pennsylvania (10 for Clinton), South Carolina (4 for Clinton), Tennessee (4 for Clinton), and Wisconsin (5 for Clinton), based on the proportional allocation of electors, constitutes an abridgement of the vote of citizens of the United States in the exercise of their "right to vote ... for the choice of electors for President and Vice-President of the United States" on the basis of party affiliation in violation of the second section of the Fourteenth Amendment. The plain textual language of the malapportionment penalty of the Second Section of the Fourteenth Amendment as implemented by the "Reduction of representation" U.S. Code (2USC §6) presents a *de jure* mandate for the reduction of a State's representatives to Congress in the proportion that the discriminated class of citizens votes based on party affiliation bears to the whole number of votes cast by the State's citizens.

7. The following table demonstrates how the electoral weight that represents the votes for a minority polled party is transferred to the party that received a majority of votes by the "winner take

all" rule in the unbounded electoral states, without an explicit legal authority in State Law, Federal Law or the US Constitution.

Proportional Allocation of Electors- Nov, 8th, 2016 _ [XX] Election Results Department of States												
Proportional System	Trump v Clinton						Census 2010			Dec.10,2016		
	Reb.		Dem		Liber-tarian		Total Electors	Democratic clinton	Republican trump	Total Votes	Green stein	Libertarian johnson
State												
Alabama	5.60	6	3.09	3	0.19	0	9	725,704	1,314,431	2,113,963	9341	44,211
Arizona	5.39	5	5.00	5	0.46	0	11	1,161,167	1,252,401	2,554,240	34,345	106,327
Georgia	8.17	8	7.34	7	0.49	1	16	1,877,963	2,089,104	4,092,373	0	125,306
Indiana	6.25	6	4.17	4	0.54	1	11	1,039,126	1,557,286	2,740,958	7841	133,993
Iowa	3.07	3	2.50	3	0.23	0	6	653,669	800,983	1,566,031	11,479	59,186
Michigan ...	7.60	8	7.56	7	0.57	1	16	2,268,839	2,279,543	4,799,284	51,463	172,136
North Carolina	7.47	8	6.93	7	0.41	0	15	2,189,350	2,362,697	4,741,665	12093	130,134
Pennsylvania	9.72	10	9.57	10	0.48	0	20	2,926,457	2,970,764	6,115,446	49,947	146,709
South Carolina	4.94	5	3.66	4	0.21	0	9	855,373	1,155,389	2,103,027	13,034	49,204
Tennessee	6.72	7	3.84	4	0.31	0	11	869,189	1,521,162	2,490,799	15954	70286
Wisconsin ..	4.72	5	4.64	5	0.36	0	10	1,381,823	1,404,000	2,975,313	31,006	106,585
	T		C	59	J		134	Democratic	Republican			
Total	69.65	71	58.31	59	4.25	3		15,948,660	18,707,760	36,293,099	227,162	1,144,077
	52%	53%	44%	44%	3%	2%		43.9%	51.5%		0.6%	3.2%
											0.7%	

This table demonstrates that the popular vote for the Presidential candidate in the 2016 Presidential election would translate to 59 Democratic Presidential electors and 3 Libertarian electors with proportional apportionment. Under the "winner take all" rule the 62 electors were transferred to the Republican party candidate. No state election laws in the unbounded states authorize the allocation of the states' presidential electors on a "winner take all" basis. Therefore the exclusive selection of the Republican slate of electors on a "winner take all" basis constituted an *abridgment* of the citizens' "right to vote" and a debasement in the weight of the citizens' vote and plaintiffs' vote in and external to the state in violation of Amend. 14§2. as implemented by 2U.S.C. § 6.

8. The 11 unbounded electoral states without an explicit "winner take all" election statute are constitutionally mandated by the plain text of the second section of the Fourteenth Amendment to allocate their presidential electors predicated upon the popular split in the popular vote or be subject to the Amendment's malapportionment penalty reducing the states' Congressional representatives. There is no federal or state statutory authority in such states for presidential candidates pledged to a minority candidate to be discarded and replaced with presidential electors pledged to the majority vote candidate.

II. Rule 65 of the Federal Rules of Civil Procedure four factors.

A. Plaintiff is Entitled to the Entry of a Temporary Restraining Order.

9. Rule 65 of the Federal Rules of Civil Procedure requires the Court to consider the following four factors: (1) the substantial likelihood that plaintiffs will succeed on the merits; (2) the substantial threat that plaintiff will suffer irreparable injury if the temporary restraining order were not granted; (3) the threatened injury outweighs the harm a temporary restraining order may cause the defendant; and (4) the grant of a temporary restraining order will not be a disservice the public interest. *Levi Strauss & Co. v. Sunrise Int'l Trading, Inc.* 51 F.3d 982, 985 (11th Cir. 1995); *Nnadi v. Richter*, 976 F.2d 682, 690 (11th Cir. 1992); *Future Tech Int'l v. Tae Il Media, Ltd.*, 944 F. Supp. 1538, 1532 (S.D. Fla. 1996). As to the four factors, "no particular quantum of proof is required as to each of the four criteria." *Laboratorios Roldan v. Tex Int'l, Inc.*, 902 F. Supp. 1555, 1565 (S.D. Fla. 1995). The four factors, which also govern the grant of preliminary injunctive relief, favor the issuance of a temporary restraining order in this case.

B. Plaintiff *Should* Succeed On the Merits of The Claims.

10. To issue preliminary injunctive relief, "a district court need not find that the evidence positively guarantees a final verdict" in favor of the movant. *Levi Strauss & Co.*, 51 F.3d at 985. Plaintiff need only demonstrate a likelihood of success on the merits.

11. The right to vote is a "fundamental political right." *Yick Wo v. Hopkins* 118 U.S. 356, 370 (1886). This right is "denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds v. Sims*, 377 U.S. 533, 554 (1964). As the Supreme Court in *Reynolds* noted, "The conception of political equality ...

can mean only one thing - one-person, one-vote. The idea that every voter is equal to every other voter in his State, when he casts his ballot in favor of one of several competing candidates, underlies many of our decisions." *Id.* at 557-58 (internal citations omitted).

12. Voting is a fundamental right that cannot be subject to arbitrary or inconsistent treatment. See, e.g., *Harper v. Virginia*, 383 U.S. 663 (1966); *Reynolds v. Sims*, 379 U.S. 870 (1964).

13. It is well-established that even with respect to matters that do not involve fundamental rights, the government cannot engage in arbitrary distinctions among similarly situated citizens. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985). Moreover, the government cannot deny an individual's liberty or property interests through procedures that operate in a wholly arbitrary fashion. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982). These principles apply a fortiori to the exercise of a fundamental right such as voting.

C. The Public Interest Will Be Served by Granting the Requested Relief

14. Plaintiff seeks a temporary restraining order to compel the Office of the Federal Register of the National Archives and Records Administration to reject Certificates of Votes that only record the awarding of electors by the least fair allocation of presidential electors on a winner-take-all basis ungrounded in State Law, Federal Law or the US Constitution and effect the allocation of electors by the obviously more fair proportional apportionment of presidential electors based on the popular vote split pursuant to Amend. XIV§2 as implemented by the "Reduction of representation" U.S. Code 2USC§6 and Amend. XIV§1 as implemented by 42 U.S.C. § 1983. The fundamental purpose of Section 1983 is to protect the civil rights of the citizens of the United States. *Mitchum v. Foster*, 407 U.S. 225, 243 (1972); *Owen v. City of Independence*, 445 U.S. 622, (1980). Accordingly, the federal courts have been authorized by Congress to effectuate this fundamental purpose by awarding injunctive relief against violations of Section 1983. This Court's grant of a temporary restraining

order against Defendant would thus be consistent with and further the public interest in enforcing the federal civil rights laws.

15. The exclusive selection of Presidential electors pledged to Donald Trump on Dec. 19th, 2016 on a "winner-take-all" basis without any authority in federal or state law, abridged the right of state citizens who voted for presidential electors pledged to Hillary Clinton and Gary Johnson in violation of the malapportionment penalty cause of the second section of the Fourteenth Amendment.

16. The current allocation of 2016 Presidential Electors in at least 11 states is un-Constitutional, owing to the abridgment of electoral votes resulting from the states' allocation of electors on a winner-take-all basis that is not required under the constitution, federal law, or the election laws of the states in question. Therefore, all of the presidential electors of these states have a right to a proportional representation in the Electoral College based on the popular vote split.

17. Uncontested "Winner take all" allocation of electors in the unbounded states, ungrounded in either federal or state statute, preserves and perpetuates the disproportionate electoral racial bias quotas created in the nation's constitutional origin of 1787 on behalf of the former slave states and therein is a particular egregious affront to full participatory democracy by minority voters and presidential electors, and cannot be construed to serve the *national* public interest.

III. CONCLUSION

16. For the foregoing reasons, Plaintiff respectfully moves the Court, pursuant to Rule 65, to issue a temporary restraining order or, in the alternative, a preliminary injunction to compel the Office of the Federal Register of the National Archives and Records Administration to reject Certificates of Votes that only record the awarding of electors by the least fair allocation of presidential electors on a winner-take-all basis ungrounded in State Law, Federal Law or the US Constitution and effect the allocation of electors by the obviously more fair proportional apportionment of presidential electors based on the popular vote split pursuant to the mandate of Amend14§2, as enforced by 2U.S.C§6.

17. For the foregoing reasons the plaintiff seeks this temporary restraining order and preliminary injunction at this time to constrain the The Archivist and/or representatives from the Office of the Federal Register from recognizing Certificates of Votes for presentation when Congress meets in joint session on January 6, 2017 to count electoral votes that are in standing violation of the Constitution and predicated on a "Winner Take All" electoral formula ungrounded in either state or federal law and provides a constitutional mandate for 60 voter abridged presidential electors to envoke in future civil actions a reduction in congressional representation exacted on the party favored by a partisan allocation of electors in 11 unbounded states.

A proposed order is filed herein.

Respectfully submitted,

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Plaintiff

Asa Gordon, Pro Se

VS.

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LOCAL RULE 65.1
CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of January 2017, a copy of " MOTION FOR TEMPORARY RESTRAINING ORDER PRELIMINARY INJUNCTION AND SUPPORTING MEMORANDUM OF LAW " in the above captioned matter was provided to the Defendant, U.S. Attorney, and to the U.S. Attorney General by attached pdf files via e-mail to: david.ferriero@nara.gov, oliver.potts@nara.gov, dc.outreach@usdoj.gov; AskDOJ@usdoj.gov. and filed with the Court and served via first class mail on the following:

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Order for Preliminary Injunction

Upon consideration of plaintiffs' complaint for declaratory and injunctive relief and motion for a temporary restraining order and preliminary injunction to compel Defendants to examine the Certificates of Votes received by NARA from eleven unbounded states without an explicit winner-take-all election code for legal sufficiency, in order to ensure that the Certificates of Votes adheres to the proportional allocation of electors pursuant to Title Two Section Six of the United States Code (2 U.S.C.§6), before presentation for the counting of electoral votes before Congress Jan. 6th, 2016, it is, therefore,

ORDERED that Plaintiffs' application for a temporary restraining order is hereby GRANTED; and it is further

ORDERED that Defendants will reject Certificates of Votes from unbounded states that exclusively record the awarding of electors on a winner-take-all basis ungrounded in State Law, Federal Law or the US Constitution and effect a proportional apportionment of presidential electors for the Certificates of Votes for the states subject to this civil action.

Date: _____

Time: _____

Judge, United States District Court