

ASA GORDON,

Plaintiff

v.

NATIONAL ARCHIVES AND
RECORDS ADMINISTRATION, *et al.*

Defendants

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, and Local Rule LcvR 7.1(i) Plaintiff hereby respectfully submits this Memorandum in support of Motion for Leave to File Amended Complaint.

Plaintiff respectfully moves the Court, pursuant to Rule 15 of the Federal Rules of Civil Procedure and Local Rule LcvR 7.1(i), for leave to file an AMENDED COMPLAINT, a copy of which is attached hereto. The AMENDED COMPLAINT maintains the counts and allegations against the same defendants from the original complaint, but accounts for the significant factual and procedural developments that have occurred since the original complaint was filed. Plaintiff seeks to amend claims to more thoroughly frame the relevant constitutional issues before this Court. Plaintiff's amended claims are supported by defendants' behavior as alleged in the original complaint. Plaintiff seeks the Court's leave to amend, which should be granted for the reasons set forth below.

STATEMENT OF FACT

On Tuesday, Jan. 3, 2017, Plaintiff filed a temporary restraining order and preliminary injunction to constrain the The Archivist and/or representatives from the Office of the Federal Register from recognizing “Certificates of Votes” that they had certified for presentation when Congress meets in joint session on January 6, 2017 to count electoral votes. Plaintiff asserted that Defendants had certified “Certificates of Votes” that were in violation of the mandate of the Second Section of the Fourteenth Amendment to the Constitution. Defendants had certified as constitutionally sufficient “Certificates of Votes” predicated on a "Winner Take All" electoral allocation of electors ungrounded in either state or federal law and therein provided a constitutional mandate for 60 voter abridged Democratic presidential electors standing in future civil actions to seek a reduction in congressional representation exacted on the party favored by a partisan allocation of electors in 11 unbounded states.

At the Jan., 9th TRO hearing Plaintiff conceded that the TRO was now moot, but not the substance of the outstanding claims made in the Complaint. The hearing then proceeded on the merits of a PI wherein the court would make a Declaratory Judgment consistent with the outstanding arguments advanced in the original Complaint.

The development of the status presented in regards to the Civil Action at the TRO hearing and the revelations presented to the Plaintiff in the Defendants' Motion to Dismiss, as submitted at the TRO hearing, presents cause for this Motion for Leave to File an Amended Complaint.

Furthermore, Plaintiff's AMENDED COMPLAINT is supported by Defendants' unwitting affirmation of Plaintiff's principle claim in their Motion to Dismiss. Defendants' Motion to Dismiss, submitted at the TRO hearing, confirms plaintiff's assertion that the Defendants have the authority to provide redress for injury arising from an unconstitutionally constituted Electoral College. Specifically 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.)”.

Thus Defendants affirm their authority and responsibility to ensure the constitutional integrity of presidential electors submitted by the states. This singular unwitting admission by Defendants constitutes a nugatory refutation of the entire set of arguments Defendants posit in their now fatally flawed Motion to Dismiss.

ARGUMENT

I. The Efficient Administration of Justice Requires That Plaintiffs be Given Leave to File an Amended Complaint

Federal Rule of Civil Procedure 15(a) requires that leave to file an amended complaint be “freely given when justice so requires.” This standard is readily met here, in light of Defendants’ admission of authority and responsibility in their Motion to Dismiss to “ensure” the constitutional integrity of presidential electors in regards to U.S. Const. art. II, § 1, cl. 2. Plaintiff also seeks to add an Article Two malfeasance claim to the AMENDED COMPLAINT. (See. Attached affidavit of DIG associate Jabari Zakiya).

“Leave to amend a complaint should be freely given in the absence of undue delay, bad faith, undue prejudice to the opposing party, repeated failure to cure deficiencies, or futility.” *Richardson v. United States*, 193 F.3d 545, 548-49 (D.C. Cir. 1999). The United States Supreme Court has declared that “this mandate is to be heeded.” *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Davis v. Liberty Mut. Ins. Co.*, 871 F.2d 1134, 1136 (D.C. Cir. 1989). Thus, the burden is on the opposing party to show that there is reason to deny leave. *In re Vitamins Antitrust Litigation*, 217 F.R.D. 30, 32 (D.D.C. 2003). The Supreme Court explained that “if the underlying facts or circumstances relied upon by a plaintiff may

be a proper source of relief, he ought to be afforded an opportunity to test his claim on the merits.”
Foman, 371 U.S. at 182.

The interests of justice and judicial economy will undoubtedly be served by having all allegations properly before the Court as set forth in Plaintiff’s proposed amended complaint. The amendments are narrowly tailored to reflect the present circumstances and Plaintiff’s present understanding of the case. In so doing, the action can more effectively proceed on the merits.

II. Plaintiff is entitled to amend complaint because amendments would not be futile

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 at personal cost, time and energy to act as Plaintiff’s surrogate representative for redress.

The Amended Complaint will not prejudice Defendants, in fact the action will remove the taint of prejudice that presently stains NARA by assuming a posture that demonstrates a predilection to favor the racially biased intent of the constitutional framers of article 2 electors while ignoring and disregarding the racially neutral DECLARATION intent of the constitutional framers of section two Fourteenth Amendment electors.

CONCLUSION

For the foregoing reasons, Plaintiff requests that the Court grant it leave to file the attached Amended Complaint.

Respectfully submitted this 10th day of February, 2017.

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Plaintiff