

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

Asa Gordon, DC registered voter, Pro Se
Douglass Institute of Government
1667 Webster St. NE
Washington, DC 20017
(202) 635-7926
dignews@aol.com

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**

**PLAINTIFFS' MOTION TO PRESENT
ORAL ARGUMENT FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, and Local Rule LCvR7.1(h), Plaintiff Asa Gordon pro se moves the court for summary judgment with regards to the Declaratory Judgment Relief portions of Plaintiff's complaint. No genuine issue as to any material fact that is relevant to Plaintiff's motion exists. Thus, Plaintiff is entitled to judgment as a matter of law. Pursuant to the Court's Local Rule LCvR 7.1(c), a proposed order consistent with this motion is attached hereto.

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MEMORANDUM OF LAW

I. INTRODUCTION

The allocation of Presidential Electors, since the ratification of the 14th Amendment in July 1868, has been un-Constitutional in some states. Pursuant to the Malapportionment Penalty Clause of the second section of the 14th Amendment as enforced by Title Two Section Six of the United States Code (2 U.S.C.§6), electors in at least eleven states must be apportioned to the presidential

candidates in those states based on the percentage of the popular vote. Currently at least eleven (11) states allocate all of their electors to the candidate who merely wins a plurality of the state's popular vote, absent an explicit winner-take-all election code. These are unbounded elector states . These eleven states are 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 (8 for Clinton), 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 a proportional allocation of electors.

The 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 vote split or be subject to the Amendment's malapportionment penalty reducing the states Congressional representatives.

There is no winner-take-all default in law. 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. In these states "Winner-take-all" defines the statistical number of votes that have been debased and diluted, i.e. all votes that have not been cast for the majority polled candidate.

Defendants are non-reponsive and contemptuous of the gravity of this action. Plaintiff sues the defendant, David S. Ferriero, in his official capacity as Archivist of the United States of America and the defendant Oliver Potts, in his official capacity as Director, Office of the Federal Register of the National Archives and Records Administration , and moves the Court to issue a Writ of Mandamus ordering the defendants to examine the Certificates of Votes from the unbounded states received by NARA by the statutory deadline of Dec. 28th, 2016 for legal sufficiency to ensure that the Certificates of Votes adheres to a proportional allocation of electors and 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 over the obviously more fair proportional allocation of presidential electors based on Amend14§2, as enforced by 2U.S.C§6.

The National Archives and Records Administration (NARA), Office of the Federal Register (OFR) 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"

For the 11 states identified here, there is even the absence of state law requiring electors to vote in accordance with the popular vote in their States.

The United States Constitution requires that States allocate their presidential electors in proportion to the popular vote split or suffer the federal statutory mandate to reduce the states' representatives in Congress. Allocation of electors on a 'winner take all' basis without an explicit state election code triggers the malapportionment penalty of Section 2 of the 14th Amendment (**Amend.14§2**) as implemented by the "Reduction of representation" federal statute Section 6 of title 2 of the United States Code (**2USC§6**). The "reduction of representation" statute creates a remedy for the abridgment in the right "to vote at any election for the choice of electors for President and Vice-President of the United States."

A brief reflection on our past, in order to illuminate our present, so as to gain informed insight into our future.

What was the original intent of the Electoral College?

"Resolved, that the compact which exists between the North and the South is a covenant with death and an agreement with hell - involving both parties in atrocious criminality - and should be immediately annulled."

This resolution was drafted by the abolitionist William Lloyd Garrison and passed by the Massachusetts Anti-Slavery Society. The compact to which it referred was the 1787 Constitution of the United States of America. The compact was declared an agreement with hell because in its original form it sanctioned slavery.

"[T]he states were divided into different interests not by their difference of size, by other circumstances; the most material of which resulted partly from climate, but principally from the effects of their having or not having slaves. These two causes concurred in forming the great division of interests in the United States. It did not lie between the large and small states: it lay between the Northern and Southern."- May 30, 1787. _ James Madison.

The constitutional framers of 1787 established a rigged electoral franchise predicated on racial quotas that disproportionately favored a southern white minority. Compromises made at the 1787 Constitutional convention put into place institutional safeguards to preserve racial privilege predicated upon southern white minority privilege quotas for congressional representation. At the very outset the compromised constitutional racial quotas came whole, in fractions, and as a null set: whole if you were white, partial if you were black, zero if you were a Native American.

Article 1 Section 2 Clause 3. "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, (i.e. those of European descent) including those bound to Service for a Term of Years, (i.e. indentured servants of European descent) and excluding Indians not taxed, (i.e. the indigenous natives) three fifths of all other Persons, (i.e. those of African descent). "

This Article established an anti-majoritarian calculus for congressional representation that favored the minority white slave holding population of the South by counting its disfranchised enslaved population. This disproportionate racial quota was entrenched into the fabric of the "original" Constitution of 1787.

"It seemed now to be pretty well understood that the real difference of interests lay, not between the large and small but between Northern and Southern states. The institution of slavery and its consequences formed the line of discrimination. " - July 14, 1787_ James Madison.

"Despite the circumlocution, slavery was sanctioned throughout the Constitution. ... Art. I, sec. 2, par. 3. The three-fifths clause provided for counting three-fifths of all slaves for purposes of representation in Congress. ...The most prominent indirect protections of slavery were: Art. II, sec. 1, par. 2. This clause provided for the indirect election of the President through an electoral college based on congressional representation. This provision incorporated the threefifths clause into the electoral college and gave whites in slave states a disproportionate influence in the election of the President. " _Garrison's Constitution, The Covenant with Death and How It Was Made, By Paul Finkelman, Prologue, Quarterly of The U.S. National Archives and Records Administration, Winter 2000, Vol. 32, No. 4.

This Article established an anti-majoritarian electoral college math that disproportionately favored a minority white population.

The Constitution of the United States established racial quotas to institutionalize disproportionate affirmative action articles for white minority representational privilege in the legislative and executive branch of government, as explicitly expressed in the constitution's plain text by the founding delegates to the constitutional convention of 1787 as recorded in "*Notes of Debates in the Federal Convention of 1787*" by the "Father of the Constitution" James Madison.

The early "Republicans" were fully aware of how the Electoral College system altered the weight of votes depending upon where they were cast. Abraham Lincoln followed John Locke in arguing that Social Contract and Consent of the Governed means that each person has an equal right to form the government:

The most eminent statesmen of the republic plainly noted the discriminatory effect of the political calculus of Article I which is carried over into Article II by the Electoral College from the beginning:

"They neither vote themselves nor increase the votes of their masters. Upon what principle, then, ought they to be taken into the federal estimate of representation?"
_The Federalist Papers, No. 54, by James Madison, "The Apportionment of Members Among the States," from the New York Packet, (Tuesday, February 12, 1788).

"Every planter South of the Potomac has three votes in effect for every five slaves he keeps in bondage; while a New England farmer who contributes ten-fold as much to the support of the Government has only a single vote."

_John Quincy Adams and the Foundation of American Foreign Policy, by Samuel F. Bemis, (Nov. 8, 1804), quoted at p. 123, note 37 (1949).

"The slaves do not vote; they are only counted and so used, as to swell the influence of the white people's votes."

_Speech on the Kansas-Nebraska Act, by Abraham Lincoln (October 16, 1854).

The disproportionate Southern white minority privilege quotas established in the 1787 Constitutional Convention worked well. The Southern white minority privilege quotas favored the slave state of Virginia with over a quarter of the electors required to elect a President, resulting in the election of a white slaveholding Virginian to the presidency for 32 of the Constitution's first 36 years. A slaveholder served as president for 50 of the nation's first 60 years. From the constitutional convention of 1787 to the election of 1860 at the dawn of the Civil War, only two Presidents were elected who were not favorable to slavery.

The constitutional framers of 1787 established a rigged electoral franchise predicated on racial quotas that disproportionately favored a white minority. The original constitution of 1787 racially privileged white minority affirmative action articles is reconstituted in our time by the mechanism of "winner take all" politics that is not grounded in the Constitution or Federal law. Furthermore "winner-take-all" explicitly violates the plain text of the second section of the Fourteenth Amendment malapportionment penalty clause.

How did America redeem itself from our nation's original sin in the garden of democracy. By a cataclysmic fratricidal baptism in blood unparalleled in the history of Civil War.

Immediately after the Union victory in America's Civil War that ended slavery, the United States of America began the arduous process of granting and guaranteeing full civil rights for the freed slaves and African Americans generally. That remarkably progressive period was called Reconstruction. We should honor the abolitionist and democratic spirit embodied in the

Reconstruction amendments. We should honor those amendments to the Constitution that represent the crowning achievement of the ultimate sacrifice made in the Civil War by that "*band of brothers*" of Americans of European and African descent to effect "*a new birth of freedom*" and forge "*a more perfect union*".

The Reconstruction amendments restored our most enduring founding principle, the forgotten and maligned "self evident truth", the divine universal addition in the Declaration of Independence of 1776 - - "*That all men are created equal*" was redeemed in the second section of the fourteen amendment to the Constitution.

At the turn of the last century, Congressman George Henry White, the last former enslaved black to serve in Congress and by 1898 the only African American in the House of Representatives, challenged the House to punish southern states for disfranchising blacks by calling for a reduction in their congressional delegations. Congressman White appealed in 1899 that southern delegations to Congress ought to be limited to "the benefit of the votes that are allowed to be cast in their representation ... It is a question that this House must deal with some time, sooner or later."

When Congressman White made his plea, he knew he was destined to be the last black politician in Congress to fall victim to the Redeemers, an eclectic group of individuals dedicated to the reversal of the civil rights gains of the former enslaved blacks during Reconstruction, and the restoration of political dominance by white supremacy. To stop the rising political tide of Redemption politics, White called for the enforcement of the Constitution's malapportionment penalty clause.

The original constitution of 1787 racially privileged white minority affirmative action articles is reconstituted in our time by the mechanism of a "winner take all" Neo-Redeemer Electoral College that is not grounded in the Constitution, Federal law or State law. Why do we acquiescence to the racially biased intent of the 1787 Constitutional framers over the democratizing DECLARATION intent of the reconstruction Constitutional framers? Why do we as a nation, choose to accept the least fair allocation of presidential electors on a winner-take-all basis ungrounded in State Law, Federal Law or the US Constitution over the obviously more fair proportional allocation of presidential electors based on Amend 14§2, as enforced by 2U.S.C§? Why do we acquiescence in the inauguration of neo-redeemer politics by the election an affirmative action minority polled President that sustains the original intent of the Electoral College origins to preserve white supremacy over Democracy.

II. ARGUMENT

PLAINTIFF'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE DISPUTE

A. There are no genuine issues of material fact.

1. The Office of the Federal Register of the National Archives and Records Administration explicitly declares that "There is no Constitutional provision or Federal law requiring Electors to vote in accordance with the popular vote in their States"

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

2. State officials from the aforementioned unbounded States exclusive selection of only majority polled presidential electors for the states *Certificates of Votes* is ungrounded in either state or federal law.

3. Defendants are required to examine the unbounded states *Certificates of Votes* for legal sufficiency.

4. Defendants' presumptive acceptance of winner-take-all *Certificates of Votes* from unbounded states constitutes *arbitrary treatment* in regards to the counting of unbounded states' presidential electors who will represent the exclusive selection of votes cast for the states Republican presidential electors to the exclusion of all votes cast for the states' Democratic presidential electors.

5. Defendants' presumptive acceptance of winner-take-all *Certificates of Votes* from unbounded States constitutes an arbitrary discriminatory distinction among presidential electors not grounded in federal or state law.

B. Plaintiff is entitled to judgment as a matter of law.

"No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right."

- US Supreme Court Justice Black - Wesberry v. Sanders, 376 U.S. 1, 17-18 (1964)

The Mal-apportionment Penalty de jure *mandate* in the second section of the fourteenth amendment, the amendment's *plain text* within the context of the history of its adoption and the *intent* of its framers, clearly *subordinates* the prerogative of *elected* state legislatures for an abridgment of "citizens of the United States, to vote at any election named in the amendment to the Constitution, article 14, section 2". See 2USC§6. This article of the Constitution clearly places the burden for the protection of a Constitutional right on the responsible action of the Government, not the citizen!.

Finally, logic dictates that the only way to comply with a proportional penalty, is to effect proportional representation. This action fulfills the plain *text* and *intent* of section 2 of the Fourteenth Amendment to the Constitution.

III. Conclusion

The foregoing undisputed facts in this action and the clear text of the governing United States Code 2USC§6 warrants summary judgment for a court order to issue a Writ of Mandamus ordering the defendants to examine the Certificates of Votes from the unbounded states received by NARA by the statutory deadline of Dec. 28th, 2016 for legal sufficiency to ensure that the *Certificates of Votes* adhere to a proportional allocation of electors and to reject Certificates of Votes that only record the awarding of electors on a winner-take-all basis ungrounded in State Law, Federal Law or the US Constitution for unbounded States.

For the foregoing reasons, the Court is respectfully asked to enter summary judgment for the plaintiff.

Respectfully submitted,

Asa Gordon, PRO SE
1667 Webster Street, N.E.
Washington, D.C. 20017
(202) 635-7926

December 23, 2016

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2016, a copy of "PLAINTIFFS' MOTION TO PRESENT ORAL ARGUMENT FOR SUMMARY JUDGMENT" was filed with the Court and served via first class mail on the following:

Assistant United States Attorney
555 Fourth Street. N.W., 10th Fl.
Washington, D.C. 20530

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

Asa Gordon
Exe.Dir. Douglass Institute of Government
1667 Webster St. NE
Washington, DC 20017

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ORDER

Upon consideration of "PLAINTIFFS' MOTION TO PRESENT ORAL ARGUMENT FOR SUMMARY JUDGMENT" and the entire record herein, it is this ____ day of _____ 2016, hereby

ORDERED that "PLAINTIFFS' MOTION TO PRESENT ORAL ARGUMENT FOR SUMMARY JUDGMENT" is granted.

Hon. **Richard J. Leon**
United States District Judge

December 23, 2016

Special Assistant U.S. Attorney
United States Attorney's Office
Civil Division
555 4th Street, NW
Washington, D.C. 20530