

August 24, 2011

Hon. Henry H. Kennedy, Jr.  
United States District Judge  
United States District Court  
For the District of Columbia  
333 Constitution Avenue, N.W.  
Washington, DC 20001

Re:

Amicus letter dated August 11, 2011 in the matter of *Gordon et. al. vs Clerk of the U.S. House of Representatives*, United States District Court for the District of Columbia, Case 1:11-cv-00003-HHK.

Dear Hon. Henry H. Kennedy, Jr.:

This letter is in response to the letter brief of Gary Michael Coutin, esquire, submitted as an amicus curiae brief in the above referenced case pending with this honorable court.

The amicus letter brief represents to the court that Mr. Coutin is "the only attorney in the United States actually challenging the constitutionality of the Electoral College in court" and tries to draw the court's attention to "appeals against the constitutionality of the Electoral College beginning with *Henderson v. Electoral College* in November 2000 ... *Phillips v. Electoral College* ."

The present Cause of Controversy *is not* directed at the constitutionality of the Electoral College. The Court is advised that the plaintiffs' and co-plaintiffs' pleadings before the court in this matter are for redress for injuries arising from an unconstitutional mal-apportionment in their "right to vote" *for presidential electors*. This injury to the value of their vote derives from a "winner-take-all" state practice ungrounded in state law. This civil action, in fact, pleads for a remedy grounded in the Constitution that in effect Democratizes the Electoral College for plaintiffs casting a vote as *racial* and/or *political* minorities.

This court expressed precisely the plaintiffs' (co-plaintiffs') issues of concern in this matter at the TRO hearing of Jan. 4. On this occasion the Court stated that "**Mr. Gordon raises some weighty issues having to do with the consequences or results of an electoral system where a minority, a minority number of votes are not recognized, that is when there is a winner-take-all system.**"

The constitutional remedy the co-plaintiffs plead in this cause of controversy is a matter of law. Section 2 of the 14th Amendment presents a *de jure mandate* that unbounded southern states must allocate their presidential electors in proportion to the popular vote split or suffer a proportional "reduction of representation" in the state's number of electors and representatives to Congress pursuant to Title Two Section six of the United States Code for a *de facto abridgment* of the franchise for citizens internal and external to a state who *vote for presidential electors* that are negated by a state's at large "winner take all" system.

It was the application of a "reduction of representation" remedy by the Clerk of the House of Representatives and the framers of the Fourteenth Amendment in 1865, applied to the former Confederate States that denied the franchise to its former enslaved citizens that proved necessary to secure passage of the Fourteenth Amendment. In this cause of action the plaintiffs move the court to apply that remedy to assure that their votes are given the proportional weight they are entitled to under the mal-apportionment mandate of the Fourteenth Amendment to the Constitution. *The specific text of Amend. XIV§2 as implemented by 2 U.S.C.§6 governs the appropriate remedy in this matter* and supersedes 3 U.S.C.§5, wherein a state allocates presidential electors on a winner take all system not specified in the state's election code. The Fourteenth Amendment provided that if the freemen should be excluded from suffrage, the representation of the Southern States in Congress would be greatly reduced. Indeed, when Congress learned that the Southern States, which had been compelled to accept the Fourteenth Amendment, were willing to accept these terms rather than give the "Negro" his civil rights, the Reconstruction Congress decided that another Amendment was necessary to augment the right to the franchise and immediately agreed upon the Fifteenth Amendment.

The co-plaintiffs in this matter concur with and welcome the "amicus letter for Plaintiff" representation to the court that "**the silence of the books is an authority against the defendant, and the plaintiff must have judgment.**"

If a state's election code fails to specify how the state's Presidential electors are to be allocated, the electors must be apportioned in such a manner as to conform with the principle of Amend. 14§2 mandate for an equality in the weight of votes cast by the citizens of the state. There is no constitutional default to a "Winner Take All" system for presidential electors.

Mathematical logic dictates that the only way Article Two electors can be reconciled with Amend. 14§2 electors is by a proportional allocation of a state's Presidential electors.

The Federal citizen's "*right to vote*" for presidential electors under Section 2 of the 14th Amendment supersedes the appointment of electors "*in such manner as the Legislature thereof may direct*" under Article II, section 1, clause 2, because where two constitutional amendments apply to the same subject, the last will of the sovereign prevails. Furthermore, Amendment XIV is clear by its adoption and by the constitutional construction of its framers that the *non enumerated rights* of the Ninth Amendment *retained by the people* takes precedence over the *non-delegated powers* of the Tenth Amendment *reserved to the states, ( or to the people)*.

Therefore, the remedy pleaded by the Plaintiffs and co-plaintiffs in their two-part summary judgment pending before the court is warranted as a matter of law.

With Much Regards,

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**CERTIFICATE OF SERVICE**

We hereby certify that a copy of the foregoing **Co-Plaintiffs' response to "amicus letter for Plaintiff"** dated August 11, 2011 was served on counsel for defendant and in the manner set forth below:

By first class mail, postage prepaid.

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