

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

ASA GORDON,

Plaintiff,

v.

RICHARD B. CHENEY,  
President of the Senate of the United States

Defendant.

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) Civil Action No. 08-1294 (HHK)  
) ECF  
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**DEFENDANT'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS AND  
OPPOSITION TO PLAINTIFF'S MOTION TO PRESENT ORAL ARGUMENTS FOR  
SUMMARY JUDGMENT**

Defendant, Richard B. Cheney, in his official capacity as President of the Senate of the United States, by and through undersigned counsel, hereby submits Defendant's Reply in Support of its Motion to Dismiss ("Motion to Dismiss") and Defendant's Opposition to Plaintiffs Motion to Present Oral Arguments for Summary Judgment ("Motion for Summary Judgment"). For the reasons set forth in Defendant's Motion to Dismiss and below, this case should be dismissed with prejudice and the Court should deny Plaintiffs Motion for Summary Judgment.

**I. Plaintiff Lacks Standing**

Plaintiffs alleged injury fails to constitute an injury in fact. Plaintiffs allegations are not concrete, actual or imminent as required under law. See *Luian v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Plaintiff describes the injury as "a real possibility for public disorder and justifiable loss of confidence in the United States purported democracy." See Plaintiff s Motion for Summary Judgment at 2. Further, the alleged harm is not certain or even imminent. By his

own admission, the injury he is complaining of is "presumptive" and will not take place until "Jan. 6'h 2009." See Plaintiffs Opposition at 6; Motion for Summary Judgment at 5.

Further, were this Court to give credence to Plaintiffs claim, resulting in a judicially cognizable injury, that claim of injury would be shared by all citizens. See Motion for Temporary Restraining Order at 3; Motion for Summary Judgment at 2. Plaintiff states that this is a "civil action to protect the voting rights of presidential electors and the voters they represent." See Plaintiffs Opposition at 3. Plaintiff does not assert that he is a "presidential elector." Moreover, Plaintiff is a citizen of the District of Columbia, not a voter in Arkansas, Georgia, Louisiana, Tennessee, and Texas, the rights of whom his action sets out to protect, d. at 8.

## II. Plaintiff Fails to Meet the Legal Standard for Summary Judgment

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary judgment is proper where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). Summary judgment is only appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed, R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Diamond v Atwood 43 F. 3d 1538, 1540 (D.C. Cir. 1995). A genuine issue of fact is one which would change the outcome of the litigation. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986). The party moving for summary judgment bears the initial responsibility of informing the trial court of the basis for its motion and identifying those portions of the record which it believes demonstrate the absence of a genuine issue of

material fact. Alexis v. District of Columbia, 44 F. Supp. 331, 337 (D.D.C. 1999); Celotex, 477 U.S. at 323.

Nowhere, in any of his filings, does Plaintiff allege that Defendant is (or will be) violating any constitutional provision, statute, regulation, or case law. See generally Plaintiffs Motion for Temporary Restraining Order, Plaintiffs Opposition to Defendant's Motion to Dismiss ("Plaintiff's Opposition"), and Motion for Summary Judgment. While Plaintiff cites to cases that hold that voting is a "fundamental political right," he does not specifically assert that Defendant is violating this right. See Plaintiffs Opposition at 5. Plaintiff cites to Reynolds v. Sims, 377 U.S. 533 (1964), as apparent authority for his allegation that only selecting the "majority polled presidential electors" of Arkansas, Georgia, Louisiana, Tennessee, and Texas violates "political equality." Id. However, in Reynolds, the Court invalidated existing and proposed plans for the apportionment of Alabama's bicameral legislature because the Court held that plans violated the Equal Protection Clause. Reynolds, 377 U.S. at 568. Plaintiff is not alleging in the instant case that Defendant has violated the Equal Protection Clause.

### III. Conclusion

For the reasons set forth above, and in Defendant's Motion to Dismiss, the Court should grant Defendant's Motion to Dismiss and dismiss Plaintiffs Complaint.

Dated: October 6, 2008

Respectfully submitted,

\_\_\_\_\_/S/\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 6th day of October 2008 a true and correct copy of the above Defendant's Reply in Support of Its Motion to Dismiss and Opposition to Plaintiffs Motion to Present Oral Argument for Summary Judgment was sent via first class U.S. Mail, postage pre-paid to:

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