

August 11, 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:

Asa Gordon and Thelma Tharpe, Plaintiffs, v. Lorraine C, Miller.,  
in her official capacity as Clerk of the U.S. House of Representatives,  
Defendant, United States District Court for the District of Columbia  
Case 1:11-cv-00003-HHK

Dear Sir:

I am an attorney licensed to practice law in the Northern District of California and the Ninth Circuit Court of Appeal. To my knowledge, I am the only attorney in the United States actually challenging the constitutionality of the Electoral College in court. I have participated in over a dozen different lawsuits and appeals against the constitutionality of the Electoral College beginning with *Henderson v. Electoral College* in November 2000. In fact, George Bush, Junior, made an appearance to oppose me in *Phillips v. Electoral College* through an attorney named Robert Mueller, III, now the head of the Federal Bureau of Investigation. Mueller claimed to represent both Bush and Gore in that case.

I have written half a dozen books and many articles on the subject. I have been interviewed on several radio talk shows. A film on his litigation has been posted on youtube.

<http://www.youtube.com/watch?v=gpRLQAYIjEQ>  
<http://www.youtube.com/watch?v=ToROPN6jXwk>  
<http://www.youtube.com/watch?v=5dI2HWEi8N0>

I have been assisting Mr. Gordon in the presentation of his case for the past two years. I am the person who coined the term "Negro Slush Fund" to describe the mode of electing the President (and Vice-President) of the United States otherwise known as the "Electoral College," a term that appears nowhere in the Constitution of the United States.

Mr. Gordon claims that the Secretary of States in five states of the former Confederacy award Presidential elector on a "winner-take-all" basis without a state statute authorizing them to do so. Either he is right or he is wrong.

This presents not a question of fact, but a question of pure law because the court can take judicial notice of the statutes of the state and make a determination of the question for itself: Is the "winner-take-all system" in these states grounded "in state law" or is it not.<sup>1</sup> No testimony need be taken.

The Secretaries of State of the five states have a duty to follow the law. But if there is no law, they have no right to act. This was the common law of England before the separation from the Mother Country:

The justification is submitted to the judges, who are to look into the books; and if such a justification can be maintained by the text of the statute law, or by the principles of common law. If no excuse can be found or produced, ***the silence of the books is an authority against the defendant, and the plaintiff must have judgment.***<sup>2</sup>

The question then becomes a matter of remedy. Specific language in two cases of the Supreme Court of the United States govern remedy.

According to footnote 8, of *Gray v. Sanders*, 372 U.S. 368, 377 (1963), New York could not award any electoral votes in the very first election in 1788 because it had not yet passed an enabling ordinance:

George Washington was elected to the office of Chief Magistrate of the Nation, by 69 votes - the total number cast by the electors. At that time, three States did not vote. New York had not yet passed an electoral law, and North Carolina and Rhode Island had not yet ratified the Constitution. Therefore, of an estimated population of 4,000,000 people, a President was chosen by 69 voters, who had not been selected by the people, but appointed by State legislatures, save in the instances of Maryland and Virginia.<sup>3</sup>

Chief Justice Rhenquist confirmed this prohibition on the awarding of electoral votes without a statutory foundation concurring in *Bush v. Gore*, 531 U.S. 98 (2000).

3 U.S.C. § 5 informs our application of Art. II, §1, cl. 2, to the Florida statutory scheme, which, as the Florida Supreme Court acknowledged, took that statute into account. Section 5 provides that the State's selection of electors "shall be conclusive, and shall govern in the counting of the electoral votes" if the electors are chosen under laws enacted prior to election day, and if the selection process is completed six days prior to the meeting of the electoral college.

This point by the Supreme Court in that case was not incidental determination, but rather the pivotal determination. The Supreme Court of the United States nullified the ruling by the

Supreme Court of the State of Florida on the grounds that the Supreme Court of the State of Florida was altering the rules after the election had been conducted.

Since five states have no “laws enacted prior to election day,” the secretary of states of those five states has no power to make a “selection of electors.” The ruling case law in the United States provides that the no one can count the electoral votes of those five states. No person is above the law.<sup>4</sup>

Yours truly,

Gary Michael Coutin, esquire  
600 W. 19<sup>th</sup> Street  
Costa Mesa, CA 92627  
gmcoutin2000@yahoo.com

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<sup>1</sup> *Somerset v Stewart*, Lofft 1-18; 11 Harg. State Trials 339; 20 Howell's State Trials 1, 79-82; 98 Eng Rep 499-510 (King's Bench, 22 June 1772)(Lord Mansfield for the court took judicial notice of the statutes of England and found that none of them authorized the existence of slavery and therefore ordered all slaves in England set free on habeas corpus under the Magna Carta).

<sup>2</sup> *Entick v. Carrington*". 19 Howell's State Trials 1029 (1765). USA: Constitution Society. [http://www.constitution.org/trials/entick/entick\\_v\\_carrington.htm](http://www.constitution.org/trials/entick/entick_v_carrington.htm). Retrieved 2008-11-13.v; see also *Somerset v Stewart*, Lofft 1-18; 11 Harg. State Trials 339; 20 Howell's State Trials 1, 79-82; 98 Eng Rep 499-510 (King's Bench, 22 June 1772)

<sup>3</sup> *Gray v. Sanders*, 372 U.S. 368, 377 (1963); footnote 8, citing Senate Doc. No. 97, Survey of the Electoral College in the Political System of the United States, 79th Cong., 1<sup>st</sup> Sess., p. 4.

<sup>4</sup> *Marbury v. Madison*, 4 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1803).