

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

ASA GORDON,

and

THELMA THARPE,

Plaintiffs,

v.

**LORRAINE C, MILLER., Clerk of the
U.S. House of Representatives,**

Defendant.

Civil Action 11-00003 (HHK)

**PLAINTIFFS' TWO PART MOTIONS FOR SUMMARY JUDGMENTS
FOR INJUNCTIVE RELIEF AND DECLARATORY RELIEF**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, and Local Rule LCvR 7.1(h) , Plaintiffs move the court for Injunctive relief by summary judgment and separately move the court to grant the Plaintiffs' Declaratory Relief by summary judgment. No genuine issues as to any material facts that are relevant to Plaintiff's two part separate motions for summary judgment exist. Thus, Plaintiffs are entitled to the summary judgments herein as a matter of law. Pursuant to the Court's Local Rule LCvR 7.1(c), proposed orders consistent with the two part separate motions are attached hereto. Plaintiff would be happy to appear should the Court conclude that oral argument would be helpful.

Respectfully submitted,

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

May 20th, 2011

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROBERT ASA GORDON,

and

THELMA THARPE,

Plaintiffs,

v.

LORRAINE C, MILLER., Clerk of the
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Defendant.

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MEMORANDUM OF LAW

I. INTRODUCTION

(1) Plaintiffs move the Court for **injunction relief**, to enjoin the Defendant pursuant to action taken under Rule II of the U.S. House of Representatives from recognizing the full slate of *unbounded electoral states'* Congressional representatives in the next session of Congress who are subject to the *malapportionment penalty clause* for minority vote dilution by Race and/or Party Affiliation in the allocation of presidential electors by a general ticket (winner-take-all) rule ungrounded in a State's election code. Plaintiffs move the court to apply the sanction in section two of the Fourteenth Amendment as implemented by 2USC§6 which calls for the reduction of the number of the offending State's representatives in congress in proportion to the disenfranchised class of U.S. Citizens whose voting rights were denied *and/or abridged* .

(2) Plaintiffs move the Court to enter a **declaratory judgment** that **Amend. XIV§2** as implemented by **2USC§6** mandates *proportional apportionment of presidential electors* based on the popular vote split for the subject states of this civil action that award their Presidential Electors by a Winner-Take-All rule that is not specified in the State's election statutes.

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

The "Negro" Electoral Slush Fund.

Let us be honest, the purpose of the Electoral College was to create a *Negro Electoral Slush Fund* to establish and sustain white supremacy, and a great deal of our jurisprudence in this matter is in denial of this historical truth. That is one other reason why this is a case of first impression, it does not shy away from this historical legacy of infamy.

The existence of the Electoral College's *Negro Electoral Slush Fund* (unwarranted political power) is a documented historical fact.¹ The *Negro Electoral Slush Fund* was eight electoral votes in 1800 when Jefferson won the Presidential Election over John Adams by eight electoral votes. It grew to 12 electoral votes under the first census. It grew to 25 by the time John Quincy Adams tried to abolish slavery in the District of Columbia as a member of the House of Representatives. The abolition of slavery by the 13th Amendment actually aggravated the problem by increasing the size of the *Negro Electoral Slush Fund* by converting the 3/5 clause into a 5/5 clause.

¹ *The Negro President*, by Garry Wills, Volume 50, Number 17 (November 6, 2003).

The *Negro Electoral Slush Fund* cemented the Virginia Dynasty. The *Negro Electoral Slush Fund* caused Southern states on the average to be twice the territorial size of their Northern counterparts. The *Negro Electoral Slush Fund* led to the War with Mexico to increase the territory subject to the Slave Power. *The Negro Electoral Slush Fund* did not end with the demise of slavery.

After the Civil War, Republican Senator James G. Blaine when running for the Presidency saw how the subsidy of slavery hidden in the Electoral College continued even after the formal abolition of slavery. His speech sounded amazingly similar to that of Lincoln's before the Civil War. Blaine pointed out that Union soldiers in Iowa and Wisconsin combined for seventeen Congressmen as did Confederate disunionists in South Carolina, Mississippi, and Louisiana. White voters in those southern states had twice the power of their North counterparts because the 17 congressmen from the North represented all voters (e.g., 2,247,000 voters virtually all of whom were white) while the seventeen Congressmen from those Southern states represented only 1,035,000 whites while 1,224,000 Africans whose very being created half of the 17 seats in Congress were being prevented from voting. Blaine argued that the inequality of treatment of the former slaves led to the inequality of white people in the North as compared to white people in the South.

Blaine attacked the South....The Senator depicted the canvass in South Carolina as "a series of skirmishes ...in which the polling-places were regarded as forts to be captured by one party and held against the other...." Stressing that the South was allotted thirty-five electoral votes because of its colored population, Blaine argued that the key issue was "whether the white voter of the North shall be equal to the white voter of the South in shaping the policy and fixing the destiny of the country; whether to put it still more baldly, the white man who fought in the ranks of the Union Army shall have as weight and influential a vote in the Government of the Republic as the white man who fought in the ranks of the rebel army."²

². *Farewell to the Bloody Shirt: Northern Republicans and the Southern Negro, 1877-1893*, by Stanley P. Hirshson, Quadrangle Books, Chicago, (1962); citing the Congressional Record, 45 Cong., 3 Sess. (December 11, 1878), pp. 84-86.

The function of the Electoral College as a political subsidy to slavery was to add to the white vote 60% of the black vote. It serves that function today. 100% percent of the black vote in the unbounded Southern States that are the subject to this civil action are “captive” through the virtual representation system of the Electoral College "winner-take-all" rule which turns black votes for the Democrats or for Third Parties into electoral votes for the Republicans against whom those blacks and the Plaintiffs of this cause of action voted .

The function of a "Winner-take-all" Electoral college was, is now, and will forever be a racial quota to augment votes for white supremacy. As the history of the origins of the electoral college attest, the electoral college was designed to inculcate a permanent bias to disproportionately represent the majority choice of a minority white nationalist population over the majority choice of the black population and even a *national majority based on the black vote*. Without the black vote there would exist no Fourteenth Amendment or Fifteenth Amendment to the Constitution of the United States America. The Black vote was critical in the election of President Lincoln³, The Black vote was necessary to the post Civil War election of Ulysses S. Grant, that secured executive support for the Reconstruction Amendments. The Black vote provided the winning margin in the election to the Presidency of the United States, the first American of African descent.

³ **OHIO CARRIED BY BLACK VOTES**, *Richmond Enquirer*, Nov. 2, 1860; **WHAT PARTY IS BATTLING AGAINST BLACK REPUBLICANISM - AROUND THAT PARTY SOUTHERN MEN SHOULD RALLY**, *Richmond Enquirer*, Nov. 6, 1860 (pp. 158, 160, African American History in the Black Press, 1851-1899, *From the Coming of the Civil War to the Rise of Jim Crow as Reported and Illustrated in Selected Newspapers of the Time*, Vol.1:1851-1869, The Schneider Collection, 1996.)

One shudders at what this country would look like today without the black vote. Given the proven historical importance of the black vote, its diminution on any scale in our national politics should not be discounted in our courts of law. It's the black vote that has given this nation *standing as a Democracy* before the world, this cause of action does not only involve the *standing of the Plaintiffs* but the *standing of the black vote* to continue to save us as a nation from ourselves.

II. ARGUMENT

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

A. There are no genuine issues of material fact.

1. ARKANSAS, GEORGIA, LOUISIANA, TENNESSEE, TEXAS, are unbound electoral states that allocate their presidential electors on a "winner take all" basis wherein there exists no "winner take all" state election statute.
2. The allocation of presidential electors in these states does not represent the proportion of the black votes in these states for minority polled candidates of a political party.
3. These states *de-facto* disenfranchised the citizens of their respective states who voted for presidential electors pledged to the candidate with less than a plurality of the popular vote.
4. Enshrined in the Constitution of the United States of America (**Amend. XIV§2**) as implemented by the "Reduction of representation" U.S. Code (**2USC §6**) is a *de jure* mandate for the reduction of a State's representatives to Congress "when the right to vote at any election for the choice of electors for President and Vice-President of the United States... is denied to any ... citizens of the United States, or in any way abridged".

5. The Clerk of the U.S. House of Representatives, under House Rules acting ex-officio in a ministerial capacity has recognized in this section of Congress and will in *following sessions of each Congress* members to the U.S. House of Representatives from the states cited in this action that are in explicit violation of **Amend. XIV§2** as implemented by the "Reduction of representation" U.S. Code **2USC§6** .

B. Plaintiffs are 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", 2USC §6. Section two of the Fourteenth Amendment is clear by its adoption and the constitutional construction by its framers that the *non enumerated rights* of the Ninth Amendment *retained by the people* takes president over the *non delegated powers* of the tenth Amendment *reserved to the states, (or to the people)*.

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

III. Conclusion

The foregoing statement of material facts (1-5) as to which there is no genuine dispute is sufficient to warrant summary judgment for **injunction relief**, to enjoin the Defendant from recognizing, under rule 2, members to Congress that are subject to title **2USC §6**.

The foregoing statement of material facts (1-4) as to which there is no genuine dispute is sufficient to warrant a separate summary judgment for a **declaratory judgment** that **Amend. XIV§2** as implemented by **2USC§6** mandates *proportional apportionment of presidential electors*.

The Defendant in its MTD presented no evidence that it can dispute any of these material issues of fact, or that any such evidence can be produced in a sufficient manner to meet its burden at trial.

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 for proportional apportionment of presidential electors from the Unbounded Southern States.

For the foregoing reasons, the Court is respectfully asked to enter summary judgments for the plaintiffs.

Respectfully submitted,

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

May 20th, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing **PLAINTIFFS' TWO PART MOTIONS FOR SUMMARY JUDGMENTS FOR INJUNCTIVE RELIEF AND DECLARATORY RELIEF & PROPOSED ORDERS** to be served on counsel for defendant by e-mail attached pdf file of this motion in this matter, and in the manner set forth below:

By first class mail, postage prepaid.

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Respectfully submitted,

_____/s/_____
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ORDER

Upon consideration of "**PLAINTIFFS' TWO PART MOTIONS FOR SUMMARY JUDGMENTS FOR INJUNCTIVE RELIEF AND DECLARATORY RELIEF**" and the entire record herein, it is this _____ day of _____ 2011, hereby

ORDERED that "**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT FOR INJUNCTIVE RELIEF**" is granted. Defendant is enjoined from recognizing in the next session of Congress the full slate of Congressional representatives from States (cited in this action), that award their presidential electors by a general ticket (winner-take-all) rule, that is not specified in the State's election code.

Hon. Henry H. Kennedy
United States District Judge

May 20th, 2011

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ORDER

Upon consideration of "**PLAINTIFFS' TWO PART MOTIONS FOR SUMMARY JUDGMENTS FOR INJUNCTIVE RELIEF AND DECLARATORY RELIEF**" and the entire record herein, it is this _____ day of _____ 2011, hereby

ORDERED that "**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT FOR DECLARATORY RELIEF**" is granted. The court declares that Section two of the Fourteenth Amendment of the United States of America's Constitution as implemented by 2USC§6 mandates *proportional apportionment of presidential electors* based on the popular vote split for the subject states of this civil action that award their Presidential Electors by a Winner-Take-All rule that is not specified in the State's election statutes.

Hon. Henry H. Kennedy
United States District Judge

May 20th, 2011