

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

ASA GORDON,)	
)	
Plaintiff,)	
)	
v.)	Civil Action 08-1294 (HHK)
)	
RICHARD B. CHENEY, Vice President of the United States)	
)	
)	
Defendant)	

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

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, and Local Rule LCvR 7.1(h) , Plaintiff pro se Asa Gordon 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.

Respectfully submitted,

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

September 19th, 2008

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FOR THE DISTRICT OF COLUMBIA**

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MEMORANDUM OF LAW

I. INTRODUCTION

Defendant's cavalier pleadings are contemptuous of the gravity of this action. The continuous denial of the Mal-apportion Penalty of 2U.S.C.§6 for the mal-apportionment of presidential electors will present a real possibility for public disorder and justifiable loss of confidence in the United States purported democracy in the aftermath of the 2008 Presidential election. The "winner-take-all" award of presidential electors that represent the majority choice of the white population in "unbounded Southern states" (with its historic legacy of de jure black disfranchisement) with the de facto disfranchisement of any apportionment of presidential electors based on the majority choice of its black population not grounded in any federal or state statute present the distinct possibility that Mr. Obama, the nations first viable black candidate for president of the United States, could win the popular vote in 2008 by a larger margin than did Gore in 2000, but will repeat the Democratic loss in the Electoral College. This turn in events will have national and international consequences for the determination that American Democracy is hopelessly grounded in the racial bias of its *constitutional* origins.

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

The specter of the original Constitution's compromise over the issue of slavery established an institutionalized Constitutional franchise by racial quotas that haunts every modern day presidential election. The compromises established an anti-majoritarian Constitutional representational and electoral math that disproportionately favored the minority white population of the South by counting a disfranchised black population.

The compromises put into place institutional safeguards to preserve racial privilege predicated upon *Southern white minority privilege quotas* for congressional representation and electoral politics. How did our nation evolve in just over the decade mark from the divine universal addition in the Declaration of Independence of 1776 - the self evident truth- "That all men are created equal" - to the fractional division of - "3/5ths of all other persons" - in the Constitutional Convention of 1787. It required a cognitive dissonance that could compartmentalize democracy with racial exclusion. This was the Faustian bargain denounced by contemporary abolitionists as the Constitution's "*covenant with death*."

Historically, the "*Southern white minority privilege quotas*" has 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 nations 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.

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.

"Winner take all" , ungrounded in either federal or state statute, which preserves and perpetuates the disproportionate racial electoral bias created in the nation's constitutional origin for the former slave states is anathema to the core of that founding principle.

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 Legal Requirement" that "Electors in these (Southern) States ARKANSAS, GEORGIA, LOUISIANA, TENNESSEE, and TEXAS are not bound by State Law to cast their vote for a specific candidate". { <http://www.archives.gov/federal-register/electoral-college/laws.html> }. See TRO at 3,6,8.

2. The Defendant's exclusive selection of only majority polled presidential electors from the aforementioned *Unbounded Southern States* constitutes an *abridgment* of minority polled presidential electors ungrounded in either state or federal statute. See TRO at 3,6,8.

3. Defendant's certain presumptive action on Jan. 6th, 2009 constitutes *arbitrary treatment* in regards to the counting of *Unbounded Southern States* presidential electors that will mathematically represent the majority choice of the states white voters with *zero* representation based on the majority choice of the states black voters. See TRO at 3,6,8.

4. Defendant's certain presumptive action on Jan. 6th, 2009 constitutes *arbitrary treatment* in regards to the counting of *Unbounded Southern States* presidential electors that 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. See TRO at 3,6,8.

5. The Defendant's presumptive unilateral action on Jan. 6th, 2009 in regards to the *Unbounded Southern States* constitutes an arbitrary discriminatory distinction among presidential electors not grounded in federal or state law. See TRO at 3,6,8.

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 *text* and *intent* of section 2 of the Fourteenth Amendment to the Constitution.

III. Conclusion

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 *Unbounded Southern States*.

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

Respectfully submitted,

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1667 Webster Street, N.E.
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(202) 635-7926

September 19th, 2008

CERTIFICATE OF SERVICE

I hereby certify that on September 19th, 2008, 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:

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September 19h, 2008

