

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ASA GORDON

Plaintiff,

JOSEPH R. BIDEN, Vice President of
the United States,

Defendant.

Civil Action 08-01294 (HHK)

PLAINTIFF'S MOTION FOR RELIEF OF JUDGMENT OR ORDER

Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, Plaintiff pro se Asa Gordon moves the court for relief from a grievous *mistake* and oversight in the Court's Judgment and Order for dismissal of this civil action filed March 26, 2009, wherein the Court's Memorandum Opinion rules on the Plaintiff's *equal protection* claims but *inadvertently* omits ruling on the plaintiff's prayer for relief pursuant to the the *Mal-Apportionment Penalty*(MAP) clause of **Amend. XIV§2** and **2USC§6**. In regards to the Declaratory Judgment relief portions of Plaintiff's complaint, there remains no genuine issue as to any material fact that is relevant to Plaintiff's argument for Summary Judgment. Thus, Plaintiff is entitled to relief and 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.
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(202) 635-7926

May 11th, 2009

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FOR THE DISTRICT OF COLUMBIA

ASA GORDON

Plaintiff,

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MEMORANDUM OF LAW

I. INTRODUCTION

The Court's ruling of March 26th, 2009 in this Civil Action in favor of the defendant's motion to dismiss, is predicated on the Court's Memorandum Opinion (MO) finding that:

"Gordon's alleged injury is not 'fairly traceable' to the Vice President's actions, which in fact are purely ministerial, but rather is attributable to the actions of third-party states and state officials, he fails to satisfy the causation element of standing. Therefore, he is unable to prosecute this action." See MO at 5.

II. ARGUMENT

The Court's dispositive finding is in regards to the plaintiff's complaint under the *equal protection clause* of the first section of the Fourteenth Amendment. However, the court decision inadvertently omits an assessment of relief from injury arising from the Plaintiff's complaint under the *mal-apportionment penalty clause* of the second section of the Fourteenth Amendment.

A. "Equal Protection" Claim is A *Derivative* of The "Mal-Apportionment Penalty" Claim.

The Plaintiff's "equal protection" claims are made and only arise as a consequence of the violation of the the Fourteenth Amendment's Section 2 *mal-apportionment penalty clause*. The plaintiff's complaint seeks a remedy to prevent a Constitutional *mandate* for a reduction of representatives imposed on *un-bounded* Southern states for the de-facto disfranchisement of minority polled presidential electors by a court order for proportional apportionment of presidential electors. See. Compl. at 8.

The Court's MO finds that Plaintiff's *equal protection* claims of wrongdoing are attributable to third party state officials, not the defendant. However the equal protection claim in this civil action is a *derivative* claim of the plaintiff for a Constitutional injury incurred as a consequence of the actions of the defendant for a Constitutional violation of the *mal-apportionment Penalty clause* under the Fourteenth Amendment's *right to vote* provision.

B. Only the Defendant Can Consummate A Mal-Apportionment of Presidential Electors.

No State official, only the Defendant, in his role as president of the senate, has a constitutional role to preside over the counting and *authentication* of the final count of presidential electors. While the Plaintiff's *equal protection* claims may be "fairly traceable" (See MO at 5) to the actions of state officials, the injury to the Constitution and person arising from a violation of the Plaintiff's *mal-apportionment penalty* claim is *decidedly traceable* to the actions of the Defendant.

Indeed, the fact is, many state officials submit their *Certificates of Vote* for the final count in the electoral college with no specific claim that the listed presidential electors with their vote tallies are the representative presidential electors of their state based upon a federal or state statute, a critical fact that is overlooked by the Court in this Civil Action.

III. Conclusion

This action is hardly moot. Indeed, this Civil Action was filed to render *moot* a Constitutional *mandate* that would be triggered to reduce state representatives from unbounded Southern States for de facto disfranchisement subject to the mal-apportionment penalty clause in the absence of a court order to effect proportional apportionment of presidential electors. The court's ruling as it now stands has mistakenly *un-mooted* that Constitutional injury to now be in effect and ongoing.

As noted in these proceedings this Plaintiff, unlike any other American citizen, has no congressional representative to whom he may appeal, the Plaintiff stands alone to petition the US Court as the only forum of government that can provide this role for the plaintiff.

For the foregoing reasons the court should set aside its order to dismiss this civil action in its totality on the basis of a mistaken and misplaced emphasis on the Fourteenth Amendment's equal protection *derivative* claims raised in this civil action to properly factor into the Court's deliberations and consideration the omitted issues of fact in regards to the civil actions Fourteenth Amendment *mal-apportionment penalty* claim. The undisputed facts in this action and the clear text of the governing United States Code 2USC§6 warrants the Plaintiffs relief from the existing court order and that the court corrects its *oversight* and proceeds with adjudication on pleadings before the court for a court order for proportional apportionment of presidential electors from *Unbounded Southern States* in order to moot the now standing and ongoing injury to the Plaintiff and the Constitution of the United States.

For the foregoing reasons, the Court is respectfully asked to grant Plaintiff's Motion for Relief.

Respectfully submitted,

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

May 11th, 2009

CERTIFICATE OF SERVICE

I hereby certify that on May 11th, 2009, a copy of "PLAINTIFF'S MOTION FOR RELIEF OF JUDGMENT OR ORDER" was filed with the Court and served via first class mail on the following:

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May 11th, 2009

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ORDER

Upon consideration of "PLAINTIFF'S MOTION FOR RELIEF OF JUDGMENT OR ORDER" and the entire record herein, it is this ____ day of _____ 2009 hereby,

ORDERED that "PLAINTIFF'S MOTION FOR RELIEF OF JUDGMENT OR ORDER" is granted.

Hon. Henry H. Kennedy
United States District Judge

May 11th, 2009

cc:
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