

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

<p>ASA GORDON,</p> <p>and</p> <p>THELMA THARPE,</p> <p>Plaintiffs,</p> <p>v.</p> <p>LORRAINE C, MILLER., Clerk of the U.S. House of Representatives,</p> <p>Defendant.</p>

Civil Action 11-00003 (HHK)

PLAINTIFFS' MOTION IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Pursuant to the Court's Local Rule LCvR 7.1(b), Plaintiffs respectfully submit this Opposition Motion to the Defendant's Motion to Dismiss (MTD) this action. The grounds for this motion are set forth in the attached memorandum of points and authorities in support hereof. Pursuant to the Court's Local Rule LCvR 7.1(c), a proposed order consistent with this motion is attached hereto. Plaintiff is prepared to present oral argument if the Court concludes it would be helpful.

Respectfully submitted,

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April 29th, 2011

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and

THELMA THARPE,

Plaintiffs,

v.

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"Mr. Gordon raises some weighty issues having to do with the consequences or results of an electoral system where a minority, a minority number of votes are not recognized, that is when there is a winner-take-all system."_ District Judge Henry H Kennedy Jr., TRO hearing *Gordon et. al. v Clerk HOR*, Jan. 4th, 2011.

INTRODUCTION

The Court is correct in its initial expression at the TRO hearing that this is *a case of first impression*. Heretofore *minority vote dilution* case law precedents have all been argued within the confines of the *equal protection clause* of the first section of the Fourteenth Amendment wherein the right to vote is *implicit*. The Court should bear in mind that *minority vote dilution* claims are particularly forceful in the present case before the bar, where these arguments are for the first time presented in the context of the *malapportionment penalty clause* of the second section of the Fourteenth Amendment wherein the penalty for an abridgment of the citizen's right to vote is *explicit*.

The Defendant's ad hominem¹ attacks on the plaintiff Gordon and its attempts to demean the motives of the co-plaintiffs joined in this action seem to be a cover for a failure of the Defendant to address the merits of the case head on. As stated above, plaintiffs have raised a legal and constitutional question that no court has ever addressed. Casting aspersions upon the plaintiffs is not equivalent to addressing the merits of the case that plaintiffs have filed.

Afterall, it took over a century to properly enforce Section 1 of the 14th Amendment. Plaintiff's plea asks that we not allow another century to pass before properly enforcing Section 2.

All Plaintiffs in this action have alleged a meritorious federal cause of action in this complaint, with concrete facts supporting their particular and individual standing to bring this action.

Plaintiffs 1) assert a fundamental right essential to the preservation of all other rights; 2) assert rights arising under not one but several amendments to the Constitution of the United States; 3) assert a claim that is neither abstract or remote, but one that is concrete and particular; 4) are impaired and injured in fact by the denial, debasing and diluting of their vote; 5) assert a particular and concrete remedy under Section Two of the 14th Amendment and other provisions of the Constitution intended to benefit a class of persons of which they are members; 6)assert a right which the Attorney General has never protected despite more than a century of its violation.

¹ "This case arises out of plaintiffs' dissatisfaction with the system by which we elect a president every four years ... Mr. Gordon previously has sought to involve the federal judiciary in reshaping the nation's Electoral College system in a manner that is more to his liking ... Our research indicates that Mr. Gordon's quixotic tilt at the Electoral College dates back more than a decade". MTD_ p.p. 1,3.

This suit concerns the process by which the various states allocated electors to the political parties on a "winner-take-all" basis following the November elections. In a nutshell, plaintiffs assert that:

- 1) Five states (Arkansas, Georgia, Louisiana, Tennessee and Texas) do not have state laws authorizing the Secretaries of State to make any allocation at all.
- 2) The Secretaries of State of the five states historically have allocated the electoral votes of the state on a winner-take-all basis.
- 3) This practice violates the 2nd section of the 14th Amendment and 2 U.S.C. § 6.

Plaintiffs maintain that the challenged conduct is not only unlawful on its face but is unconstitutional in that its effect is to dilute and debase votes by race and or party affiliation (and of those similarly situated) in the process of electing the Executive Branch, contrary to the 14th Amendment and especially §2 of the 14th Amendment as implemented by §6 of Title 2 of the United States Code.

Under a federal statute enacted after the “stolen election” of 1876, a state is required to select its electors “... by laws enacted prior to the day fixed for the appointment of the electors.” (3 U.S.C. §5)

Since these five unbounded Southern states with a historical legacy of racial disenfranchisement awarded their presidential electors without a state statute authorizing such an award, the electoral votes of those states must be allocated on a proportional basis by anyone for any purpose, since those votes violated the Constitution and laws of the United States. The absence of a state statute leaves the choice by the Secretary of State without a statutory basis and therefore without legitimacy to discriminate in the allocation of the state's presidential electors.

The 'winner-take-all' apportionment of electors in these states effectively disenfranchised their citizens who voted for the presidential electors pledged to any candidate with less than the popular majority vote. These southern states, in the 2008 presidential election in particular, awarded all of their unbounded presidential electors on a 'winner take all' basis that isn't grounded in any state or federal law. These states have in effect disenfranchised the citizens of the state, and diluted the vote of citizens *external* to the state, who voted for the presidential electors pledged to the candidate with less than the popular majority vote.

This civil action avers that the court take judicial notice that Section 2 of the 14th Amendment requires that unbounded southern states allocate their presidential electors in proportion to the popular vote split or suffer the federal statutory *mandate* to reduce the states' representatives in Congress. The 'winner take all' allocation of electors triggers the malapportionment penalty in Section 2, as implemented by the "Reduction of Representation" federal statute Section 6 of Title 2 of the US Code. This statute creates a remedy for the abridgment in the right "to vote at any election for the choice of electors for President and Vice-President of the United States."

The original intent of Section 2 of the 14th Amendment -- sometimes called the Reconstruction Amendment -- as implemented by the federal statute was to place a ruinous penalty on those former confederate states that would effect *minority vote dilution*.

The Plaintiffs in this civil action move this District Court to enforce the Constitution's malapportionment penalty clause (14th Amendment, Section 2) mandate for a "Reduction of representation" of the offending states now in *standing* violation pursuant to 2USC§6 by an injunction of the clerk of the House, or that, in the alternative, the court issue a *declaratory judgment* that the award of presidential electors on a winner-take-all basis in

these states violates Section 2 of the 14th Amendment and must henceforth effect
proportional apportionment of the states' presidential electors in future elections.

Plaintiffs aver and request that this court take judicial notice of the following: The Honorable Lorraine C. Miller, acting ex officio as the Clerk of the U.S. House of Representatives, under House Rules will in the absence of a court injunction recognize elected members to the U.S. House of Representatives, on January 5th, 2011, and following sessions of each Congress in explicit violation of **Amend. XIV§2** as implemented by the "Reduction of representation" U.S. Code **2USC§6** , depriving citizens' constitutionally protected rights under the First , Ninth, Tenth and Fourteenth Amendment to the United States Constitution from minority vote dilution based on race and/or party affiliation and certain **Amend. IX** rights retained by the people or **Amend. X** powers reserved to the people. Compl. 6, ¶ 2.

Here the Clerk is acting in a ministerial capacity. That capacity is not discretionary, therefore it must conform to the Constitution and laws of the United States. Thus the plaintiffs are acting within their constitutional rights to petition a federal court for a temporary restraining order or, in the alternative, a preliminary injunction prohibiting the Clerk from including the full slate of unbounded electoral states' Congressional representatives, which are subject to the malapportionment penalty in the Fourteenth Amendment to the United States Constitution.

The original intent of Section 2 of the 14th Amendment -- sometimes called the Reconstruction Amendment -- as implemented by the federal statute was to place a ruinous penalty on those former confederate states that would effect '*minority vote dilution*'. The plaintiffs have a right to petition the federal courts to ensure that states may not, in the absence of state law, assume the winner-take-all process as a permanent "states right" by default, relying on the acquiescence of the federal courts, a compliant Congress, and a disinterested Executive to disenfranchise voters.

More specifically, as we now show, the Defendant's MTD should be denied because (1) plaintiffs' standing in this action meets, indeed exceeds, the standards for standing established in the classic "minority vote dilution" precedents², (2) The Speech or Debate Clause, U.S. Const. art. I, § 6, cl. 1 does not apply to the *ministerial* nature of the act of the Clerk in this matter and therefore does not abolish standing; rather it guarantees it.³ (3) This is not a "moot" case. This case falls within the classic exception to the "mootness" doctrine, a case that is constantly recurring and yet escaping judicial review. (4) the Complaint states a claim for relief as a matter of law pursuant to the "Reduction of representation" U.S. Code **2USC§6** for an abridgment of plaintiffs' votes in the 2008 presidential election in explicit violation of **Amend. XIV§2**.

The defendant claims that

"(4) the Complaint fails to state a claim upon which relief may be granted because the winner-take-all Electoral College system does not violate the Fourteenth Amendment. See *Williams v. Va. State Bd. of Elections*, 288 F. Supp. 622, 626-27 (E.D. Va. 1968), *aff'd per curiam*, 393 U.S. 320 (1969)". MTD_P4.

The issue raised by this complaint is not the issue in *Williams*. The issue here is that the winner-take-all allocation did not conform to state law because the five states here have no state law. The Supreme Court of the United States in *Bush v. Gore* said that the state must act according to the state law in place at the time of the election. But here there is no state law governing the allocation. And has not been for many election cycles.

². *Anderson v. Celebrezze*, 460 U.S. 780(1983); *Rogers v. Lodge*, 458 U.S. 613 (1982); *Connor v. Finch*, 431 U.S. 407 (1977) ; *Williams v. Rhodes*, 393 U.S. 23 (1968); *Fortson v. Dorsey*, 379 U.S. 433 (1965); *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Gray v. Sanders*, 372 U.S. 368 (1963); *Baker v. Carr*, 369 U.S. 186 (1962)

³. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

ARGUMENT

I. PLAINTIFFS HAVE STATED A CONTROVERSY UNDER THE FEDERAL CONSTITUTION THAT IS RIPE AND NOT MOOT.

The admission in the Defendant's MTD_P.2 that five states lack statutes authorizing awarding electoral votes yet award their electoral votes on a winner-take-all basis guarantees an actual controversy in this case that cannot be moot.

The law recognizes an exception to the mootness doctrine for issues that are "capable of repetition yet evading review."⁴ Election cases are consistently recognized as coming within this exception. The Supreme Court has declared that if it were to hold an election issue to be moot, "...[t]here would be every reason to expect the same parties to generate a similar, future controversy subject to identical time restraints."⁵ Moreover, the courts allow an exception to the mootness doctrine "as applied" to constitutional challenges because adjudication of the issue "...will have the effect of simplifying future challenges, thus increasing the likelihood that timely filed cases can be adjudicated before an election is held."⁶

Indeed the courts have the authority to hear cases which are otherwise moot so long as they present: 1) unsettled legal issues of public interest and importance and 2) an issue of a recurring nature that will escape review unless the Court exercises its discretionary jurisdiction.⁷ Therefore good cause exists to hold a hearing now rather than in the teeth of a close election . This case concerns the most important election in the entire country.

⁴ *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 127 S.Ct. 2652, 2662 (2007).

⁵ *Norman v. Reed*, 502 U.S. 279, 288 (1992).

⁶ *Storer v. Brown*, 415 U.S. 724, 737 n.8 (1974)

⁷ *Citizens for Safe Waste Management v. St. Louis County Air Pollution Control Appeal Board*, 896 S.W.2d 643, 645 (Mo. App. W.D. 1995).

Absent an appropriate declaratory judgment by the court, we may expect a repeat in the next Presidential Election the constitutional injury to Section 2 of the Fourteenth Amendment by continuing to adhere to the "winner take all" rule for unbounded electoral states. Such action will de facto:

1) violate the 1st Amendment rights of the citizens internal and external to the unbounded states by misrepresenting their disproportionate political expression.

2) disenfranchise those electors of the states based only upon the majority choice of its white citizens and thus transfer the weight of the votes of the black citizens of the states to augment the white citizens' vote and transfer the weight of the votes of minority-polled parties to augment the disproportionate representation of the party that opposes their political expression.

Thus the spirit of the infamous 1787 constitutional compromise known as the "3/5ths clause" survives in our time. From the year 1876, the dawn of the era of White "Redemption," for over a century, and still counting, the Electoral College as effected by the mechanism of "winner take all" has rendered the descendants of enslaved blacks as inert bodies that serve as little more than political ballast in contemporary presidential elections to inflate *exclusive white majority* Southern political power.

The states in question have been violating the Constitution for many Presidential elections; the issue is ripe now; there is no reason to dismiss this complaint; there is good reason to hear the controversy now and not in the teeth of a contested election with the fate of the nation in the balance.

II. THIS CASE IS NOT ABOUT THE DISCRETIONARY FUNCTIONS OF THE CLERK. THE *SPEECH OR DEBATE CLAUSE* DOES NOT APPLY TO THIS ACTION.

The Clerk performs several discretionary functions which the court cannot review for many reasons including the Separation of Powers. But the act to be reviewed here is not discretionary. If the Secretaries of State are acting in excess of jurisdiction in making the allocation of presidential electors without authority in the form of state law, then the electoral votes cannot be legally cast regardless of who those votes are cast for. *Ex parte Young*, 209 U.S. 123 (1908).

This lawsuit does not involve discretionary duties of the clerk. This lawsuit involves “ministerial duties” only. The Defendant's MTD under the heading FACTUAL AND PROCEDURAL BACKGROUND, specifies the *ministerial* duties of the Clerk of the House of Representatives the plaintiffs sought to enjoin.

Pursuant to 2 U.S.C. § 26, the Honorable Lorraine C. Miller , as Clerk of the 111th Congress, prepared a roll of the Representatives-elect to the 112th Congress and, pursuant to House tradition and precedent, presided over the opening of the 112th Congress for the purpose of calling the session to order, recording the presence of the Representatives-elect, and presiding over the election of the Honorable John A. Boehner as Speaker of the House for the 112th Congress. MTD_p.4

The Supreme Court of the United States issued an opinion on the power of the courts to order compliance to the Constitution in ministerial duties. *Marbury v. Madison* bears on the Electoral College issue in several ways. 1) In a monarchy, the word of the king is law; but in a republic no man is above the law (or, to put it another way, the "law is king" and all people are subject to the law. 2) Since the function of the courts in a republic is to subject all to the law, a court must hold that even the Clerk of the U.S. House of Representatives must obey the law when the duty is "ministerial" (e.g., when the performance of the duty is fixed and certain, not

subject to his judgment or discretion). 3) The function of the courts is "*juris dictio*," to say what the law is (e.g., to rule whether the 14th Amendment supersedes the provisions of the U.S. Const. art. I § 6, cl.1 to the contrary). We know for certain that the original racial quotas of U.S. Const. art. I § 2, cl.3 were changed by section 2 of the Fourteenth Amendment.

The aforementioned "ministerial" duties of the clerk have absolutely nothing to do with the "Speech or Debate" clause. This whole argument by the Defendant is specious, divergent, and is irrelevant to the issue before the court. Furthermore, *illegitimate* Congressional members of the House of Representatives who are subject to 2 U.S.C. § 6 by definition cannot be engaged in activities "within the 'sphere of legitimate legislative activity,'" *McMillan*, 412 U.S. at 312 . If the constitutional legitimacy of legislation passed by members of Congress *is not* immune to judicial review by the "Speech or Debate" clause, it is a perversion of logic to argue that under the "Speech or Debate" clause the constitutional legitimacy of the members themselves is immune from judicial review.

The Defendant's MTD fails to present a single argument as to how the representatives of the unbound Southern electoral states of this action are immune to the "Reduction of representation" *mandate* of U.S. Code 2USC§6. Furthermore, no coherent explanation is made to the court as to how the "Speech or Debate" clause anoints absolute immunity on illegitimate members of Congress from the constitutional penalty of a superseding provision of the Constitution, a Reconstruction Amendment that profoundly altered the original racial bias of the article invoked by the Defendant. Explicitly, absolutely none of the judicial precedents cited in the Defendant's MTD address the U.S. Const. art. I § 6 *speech or debate clause* within the context of members of Congress from states subject to the *malapportionment penalty clause* of U.S. Const. Amend. XIV §2.

Despite the circumlocution, slavery was sanctioned throughout the Constitution. ...

Art. I, sec. 2, par. 3. The three-fifths clause provided for counting three-fifths of all slaves for purposes of representation in Congress. This clause also provided that any "direct tax" levied on the states could be imposed only proportionately, according to population, and that only three-fifths of all slaves would be counted in assessing each state's contribution.

The most prominent indirect protections of slavery were:

Art. II, sec. 1, par. 2. This clause provided for the indirect election of the President through an electoral college based on congressional representation. This provision incorporated the three-fifths clause into the electoral college and gave whites in slave states a disproportionate influence in the election of the President.⁸

QUOD LEGES POSTERIORES PRIORES CONTRARIAS ABROGANT
THE FOURTEENTH AMENDMENT'S *MALAPPORTIONMENT* CLAUSE
SUPERSEDES THE *SPEECH OR DEBATE CLAUSE* OF ARTICLE I OF THE U.S.
CONSTITUTION.

The **Reduction of representation clause** (Amend. XIV§2) of members to Congress for an abridgment of citizens' "right to vote" *supersedes*: the *The three-fifths clause* (U.S. Const. art. I, § 2, cl. 3 & U.S. Const. art. II, § 1, cl. 2); the *Qualifications of members cause* (U.S. Const. art. I, § 5, cl. 1; the *Members punishment clause* (U.S. Const. art. I, § 5, cl. 2), and the *Speech or Debate Clause* (U.S. Const. art. I, § 6, cl. 1) because where two constitutional amendments apply to the same subject (*representatives to Congress*) the last will of the sovereign prevails.

8. Garrison's Constitution, The Covenant with Death and How It Was Made, By Paul Finkelman, *Prologue*, Quarterly of The U.S. National Archives and Records Administration, Winter 2000, Vol. 32, No. 4.

III. THE PLAINTIFFS' INJURY AND STANDING IS ESTABLISHED BY "MINORITY VOTE DILUTION" SUPREME COURT PRECEDENTS

The federal courts have held that citizens in plaintiffs' position have standing:

The plaintiffs' standing does not depend on any injury suffered in the previous election, but rather on the probability that their votes will be miscounted in upcoming elections.

The claims of the plaintiffs here are not speculative or remote, but real and imminent. The plaintiffs here have alleged an injury in fact sufficient to confer Article III standing. The increased probability that their votes will be improperly counted based on punch-card and central count optical scan technology is neither speculative nor remote.⁹

A cause of action for interference with the right to vote requires only a denial or dilution of the vote. The "Winner take All" rule denies and dilutes the votes of citizens such as the plaintiffs internal and external to the state that adopts this practice in every Presidential Election in the Unbounded Southern States that are the subject of this action. A citizen need not wait for a dilution in his vote to be sufficient to alter the outcome of an election to challenge it.

In a case where no voter can know that it is he or she who will be injured, such a specific showing is not necessary for standing.¹⁰ All that is needed is a showing that an injury is likely to occur to some group of voters.¹¹

⁹. *Stewart v. Blackwell*, 444 F.3d 843 (2006); citing *Bryant v. Yellen*, 447 U.S. 352 (1980).

¹⁰ *Sandusky County Democratic Party v. Blackwell*, Nos. 04-4265, 04-4266, 2004 WL 2384445, at *6 (6th Cir. Oct. 26, 2004) (plaintiffs had standing to bring a claim on behalf of voters alleging that the Secretary of State's issuance of provisional ballots in Ohio elections violated the Help America Vote Act).

¹¹ *Stewart v. Blackwell*, 444 F.3d 843, 847 n.1 (2006), R. Guy Cole, Jr., Circuit Judge, dissent

The plain text of Amend. XIV§2 endows the citizen with a constitutional standing to retain the right to vote for the choice of presidential electors that cannot be denied or abridged.

There is a presumption of irreparable injury when a constitutional right is at risk.¹²

There is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth. The right to vote includes the right to have the ballot counted. It also includes the right to have the vote counted at full value without dilution or discount.
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[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise. ¹⁴

And, if a State should provide that the votes of citizens in one part of the State should be given two times, or five times, or 10 times the weight of votes of citizens in another part of the State, it could hardly be contended that the right to vote of those residing in the disfavored areas had not been effectively diluted. ¹⁵

In decision after decision, this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction. ¹⁶

The plaintiff's specific showing of injury by tables (See TRO_p.4&5) and the mathematical certainty of the abridgment of a citizens "right to vote" by the winner-take-all *practice* of the unbounded Southern states , clearly positions the plaintiffs in this civil action to meet standards to establish injury and standing that exceeds the threshold set in the case law precedents cited here.

¹² *Elrod v. Burns*, 427, U.S. 347, 373-74, 96 S. Ct. 2673, 2690 (1976); see generally 11A Charles Allen Wright, Arthur A. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2948.1, at n.21 (2nd ed. 1995).

¹³ Justice Douglas, dissenting in *South v. Peters*, 339 U.S. 276, 279 (1950).

¹⁴ *Terry v. Adams*, 345 U.S. 461, 469 (1953).

¹⁵ *Reynolds v. Sims*, supra., 377 U.S. 533, 562 (1964).

¹⁶ *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972).

The foundation of the electoral college is congressional representation. If you move the foundation, you move the house.

The integrity of the vote counting process does not end when the state has determined the set of ballots to be counted; the ballots themselves must also count. For a vote to count, all voters must cast an equally effective vote. The Supreme Court has stated that the Constitution requires “complete equality for each voter”¹⁷ and that “each citizen have an equally effective voice.”¹⁸ The Court has applied this principle to require equal apportionment of state and congressional districts.¹⁹

At-large voting denies voters an equally effective vote. At-large voting always operates to “minimize or cancel out the voting strength of racial or political elements of the voting population”.²⁰ At-large voting clearly operates to suppress the representation of minority groups, whether racial, economic, political, or otherwise. This is precisely the circumstances of the Plaintiffs in this cause of action.

The standards for standing and injury established in the aforementioned precedents for petitioners of the court for redress for *minority vote dilution* pursuant to the *equal protection clause* of the **Amend. XIV§1** are augmented for plaintiffs in this action who petition this court for redress pursuant to the *malapportionment penalty clause* of **Amend. XIV§2**.

¹⁷ *Wesberry v. Sanders*, 376 U.S. 1, 14 (1964)

¹⁸ *Reynolds v. Sims*, 377 U.S. 533, 565 (1964)

¹⁹ *Reynolds v. Sims*, 377 U.S. 533, 559, 568 (1964)

²⁰ *Fortson v. Dorsey*, 379 U.S. 433, 439 (1965)

The Court has set strict standards for protecting the principle of **one person, one vote**.

By holding that, as a federal constitutional requisite, both houses of a state legislature must be apportioned on a population basis, we mean that the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable. ²¹

Extending this strict standard to the case of at-large voting requires the complete abolition of at-large voting. History shows that some governments adopted at-large voting to prevent the election of black candidates at the time of the adoption of the Fifteenth Amendment in 1870. ²²

Courts have also recognized the discrimination inherent in at-large voting, noting that at-large voting will “tend to submerge electoral minorities and over represent electoral majorities.” For this reason, the Supreme Court “has concluded that single-member districts are to be preferred in court-ordered legislative reapportionment plans unless the court can 'articulate a singular combination of unique factors' that justifies a different result.” ²³

{ Winner-Take-All is At-Large Voting on Steroids. }

The principles articulated in these cases apply with even more force for the plaintiffs in the present cause of action before the court, wherein the plaintiffs constitute electoral minorities that under winner-take-all exaggerates electoral majorities.

²¹ *Reynolds v. Sims*, 377 U.S. 577 (1964)

²² J. Morgan Kousser, "The Undermining of the First Reconstruction", in *Minority Vote Dilution*, 27, 32–33 (Chandler Davidson, ed., 1984)]

²³ *Connor v. Finch*, 431 U. S. 415 (1977); *Mahan v. Howell*, 410 U. S. 315, 410 U. S. 333; *Chapman v. Meier*, supra at 420 U. S. 21; *East Carroll Parish School Board v. Marshall*, 424 U. S. 636, 424 U. S. 639.

In considering political gerrymandering claims, the Court further elaborated the right to an equally effective vote. The Court in *Davis v. Bandemer*, 478 U.S. 127-143 (1986) stated that “unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter’s ... influence on the political process” and that voters must be able to “effectively influence the political process” and that “the question is whether a particular group has been unconstitutionally denied its chance to effectively influence the political process. *Davis v. Bandemer*, 478 U. S. 132-133

{ Winner-take-all is arranged in this unconstitutional manner. }

The reasoning in *Davis v. Bandemer* directly applies to to plaintiff's Gordon of D.C. and Moss of Louisiana who voted for a third party presidential candidate.

In *Anderson v. Celebrezze*, 460 U.S. 780 (1983) The Supreme Court held that:

A burden that falls unequally on independent candidates or on new or small political parties impinges, by its very nature, on associational choices protected by the First Amendment, and discriminates against those candidates and voters whose political preferences lie outside the existing political parties. And in the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest, because the President and Vice President are the only elected officials who represent all the voters in the Nation, and the impact of the votes cast in each State affects the votes cast in other States.²⁴

²⁴ Pp. 460 U. S. 790-795.

In *Williams v. Rhodes*, we squarely held that protecting the Republican and Democratic Parties from external competition cannot justify the virtual exclusion of other political aspirants from the political arena. Addressing Ohio's claim that it "may validly promote a two-party system in order to encourage compromise and political stability," we wrote:

"The fact is, however, that the Ohio system does not merely favor a 'two-party system;' it favors two particular parties -- the Republicans and the Democrats -- and in effect tends to give them a complete monopoly. There is, of course, no reason why two parties should retain a permanent monopoly on the right to have people vote for or against them. Competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms. "

Williams v. Rhodes, 393 U.S. at 393 U. S. 31-32. Thus, in *Williams v. Rhodes*, we concluded that First Amendment values outweighed the State's interest in protecting the two major political parties.²⁵

The aforementioned findings of the Supreme Court in *Anderson v. Celebrezze* and *Williams v. Rhodes* sustains the standing of minority third party plaintiffs who challenge a state's electoral procedure that unduly favors a duopoly, and **who do not vote in the offending states**. This is precisely the position of the Green Party Plaintiff Gordon of DC and external to the state of Louisiana Green Party petitioner plaintiff Moss of Louisiana. The legal literature that addresses "Minority Vote Dilution" by "winner-take-all", "majority-group bloc voting" or any at-large system of voting that dilutes, debases, and abridges the voting weight of racial minorities and third parties is well-established.

The "winner-take-all" system imposed on states during national voting for President and Vice President ensures that only the votes cast for one of the two major parties will be counted. All other votes will be thrown out. Hence, the popular warning to anyone bold enough to vote for a third party: "Don't throw your vote away."

²⁵. Page 460 U. S. 802

In *Williams v. Rhodes*, 393 U.S. 23 (1968) The Supreme Court held that:

[R]estrictive election laws, taken as a whole, are invidiously discriminatory and violate the Equal Protection Clause because they give the two old, established parties a decided advantage over new parties.²⁶ ... The state laws here involved heavily burden the right of individuals to associate for the advancement of political beliefs and the right of qualified voters to cast their votes effectively²⁷ ... Obviously we must reject the notion that Art. II, § 1, gives the States power to impose burdens on the right to vote where such burdens are expressly prohibited in other constitutional provisions. We therefore hold that no State can pass a law regulating elections that violates the Fourteenth Amendment's command that "No State shall . . . deny to any person . . . the equal protection of the laws."²⁸

It logically follows that this burden is considerably higher for a "Winner Take All" rule predicated on a *state practice* ungrounded in state law and fails to meet the requirements of the Malapportionment Penalty Clause of the Fourteenth Amendment. This court should therefore hold in this case (consistent with the reasoning of the Supreme Court in *Williams v. Rhodes*) that no state can engage in a *mere practice* (absent even the color of law) regulating elections that fails to comport with the Fourteenth Amendment's Second Section command that "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, . . . the basis of representation therein shall be reduced in the proportion which the number of such . . . citizens shall bear to the whole number of . . . citizens . . . in such State."

Because the "Winner-Take-All" process, adopted without Constitutional or statutory authority, arbitrarily denies the counting of votes for any candidate other than the one receiving the majority of votes, all competing parties, including one of the two "major" parties, have all votes for their candidates discarded. This is a clear denial/abridgment of the right to vote, triggering the Second Section of the Fourteenth Amendment to the Constitution.

²⁶ Pp. 393 U. S. 30-34.

²⁷ Pp. 393 U. S. 30-31.

²⁸ Page 393 U. S. 29

IV. THE ORIGINAL INTENT OF THE RECONSTRUCTION AMENDMENTS' FRAMERS CONFIRMS PLAINTIFFS' STANDING AND CAUSE FOR REDRESS BY THE CLERK.

Our sworn duty to construe the Constitution requires, however, that we read it to effectuate the intent and purposes of the Framers. We must, therefore, consider the history and circumstances indicating what the Civil War Amendments were in fact designed to achieve.
BELL v. MARYLAND, 378 U.S. 226,289 (1964)

By this standard of construction by the court, the plaintiffs' standing in this matter should be assured.

The Civil War Amendments were intended to alter all the branches of government to the principle of equality and not just the legislative branch. Conforming the Constitution to the Declaration was the "original intent" of those conducting the Civil War as the Union Party (composed of Republicans, Democrats, and Others). On May 8th, 1866 during the debate on the 14th Amendment, the leader of the House of Representatives, Thaddeus Stevens, delivered a very important speech on the Amendment's intent:

I can hardly believe that any person can be found who will not admit that every one of these provisions (of the 14th Amendment) is just. They are all asserted, in some form or other, in our DECLARATION or organic law. ... *The second section I consider the most important in the article* (my emphasis). It fixes the basis of representation in Congress. If any State shall exclude any of her adult male citizens from the elective franchise, or abridge that right, she shall forfeit her right to representation in the same proportion. The effect of this provision will be either to compel the States to grant universal suffrage or so shear them of their power as to keep them forever in a hopeless minority in the national Government, both legislative and executive.²⁹

²⁹ Hon. Thaddeus Stevens, (R-Penn.), in the Congressional Globe, at p. 536.

When Lincoln issued the Emancipation Proclamation it included a provision that called upon the slaves to put the emancipation in effect by service in the Union Armies to free themselves. Now the Reconstruction amendment would have to call upon the freemen to effect the franchise by an irony wherein the ex-slaves had to be *allowed to vote for the right to vote*.

In order to reconstruct the South and reconstitute the Constitution, the South's freedmen were enfranchised thanks to the first Reconstruction Act of March 2, 1867. Agents of the Freedmen's Bureau registered freemen throughout the South to vote for the first time. Whereas under the Reconstruction Act some white southerners were disenfranchised for disloyalty, black southerners were permitted to vote in elections for the various state constitutional conventions. Before the 14th and 15th Reconstruction Amendments could be realized, the vote of exslaves was necessary to restore the union and perfect the constitution to the founding principle of the DECLARATION.

By the end of 1867, 735,000 blacks, in contrast to 660,000 whites, were registered to vote in the former Confederate states.³⁰ Ulysses S. Grant , the General who saved the Union, could not win a majority of the white vote. Black voters provided the winning margin of victory in electing Ulysses S. Grant president in the election of 1868 that would secure executive support of the Reconstruction Amendments.

One century and two score years later, their descendants' votes would provide the winning margin in the election to the Presidency of the United States, the first American of African descent.

³⁰ Harper's Weekly, September 28, 1867 reported that black voters constituted a majority in the states of Alabama, Georgia, Louisiana, and Texas.
(Note: These are the same states that are the subject of this civil action)

Reacting to the retreat of white America from Reconstruction to "Redemption," in September of 1883 Frederick Douglass played off the Gettysburg Address, which itself played off the Declaration of Independence. "We hold it to be self-evident that no class or color should be the exclusive rulers of this country; If there is such a ruling class, there must of course be a subject class, and when this condition is once established this Government of the people, by the people and for the people, will have perished from the earth." So is the lineage: from Thomas Jefferson to Abraham Lincoln to Frederick Douglass.

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 fourteenth amendment to the Constitution.

In argument before open court on the TRO, Gordon presented an historical context for this civil action to address the *existing* malapportionment in the seating of the 112th Congress. In contradiction to the assertion by the Deputy General Counsel of the U.S. House of Representatives that the Clerk possesses no authority to deny recognition of Congressional members³¹, it was brought to the court's attention that in fact there existed an historical precedent.

³¹ See MTD_ p.7 ("C. The Clerk Cannot Redress Plaintiffs' Claims")

Plaintiff Gordon pointed out that: "As Congress prepared to convene on December 4, 1865, the clerk of the House, Edward McPherson, announced that he would not recognize representatives elected from the former Confederate states." In December 1865, the Republican Congress refused to recognize elected members to Congress under President Johnson's lenient plan for the reconstruction of the former Confederate states within the Union. A cartoon in the December 9th, 1865 issue of *Harpers Weekly* depicted House Clerk McPherson denying a seat to a Southern Congressman-elect.

NO ACCOMMODATIONS!

Southern Congressman Elect to Clerk of the House. "I should like very much to secure my Old Seat. Governor Perry says I'm entitled to it."

Clerk of the House. "I am very sorry, Sir. but we can not accommodate you. All the Old Seats were broken up, and are now being thoroughly Reconstructed." _ [*Harpers Weekly* - December 9, 1865, page 781.]

Moderate Republicans were disturbed by the reluctance of white Southerners to ratify the 13th Amendment, their refusal to grant voting rights to black men, their enactment of black codes which limited the rights and liberties of blacks, and their election of former Confederates, such as Confederate Vice President Alexander Stephens, to state and national offices.

Over the next several months, Johnson vetoed Congressional legislation which sought to ensure the basic civil rights of black Americans. In the Congressional elections of November 1866, Republicans won a majority large enough to override any presidential vetoes, and in 1867 began enacting their own Reconstruction program, which relied on enforcement by the federal army and federal courts.

Gordon then pointed out that if the clerk had not acted to refuse to recognize the elected Southern representatives from the former Confederate states in that session of Congress, we would not have the Fourteenth Amendment to the Constitution that gives cause to this civil action.

Gordon represented to the court that the compromises over the issue of African slavery made by delegates to the Philadelphia Constitutional Convention in 1787 created the flawed

electoral foundation that continues to undermine the political impact of African-American voters on contemporary presidential elections. Gordon noted that the spirit of the infamous 1787 constitutional compromise known as the "3/5ths clause" survives in our time, that the Electoral College, as effected by the mechanism of "winner take all," has rendered the descendants of enslaved blacks as inert bodies who serve as little more than political ballast to inflate Southern political power today.



The specter of the 3/5ths compromise that established an institutionalized Constitutional franchise by racial quotas haunts every modern day presidential election. The original Constitution's "covenant with death" that established an augmented white elective prerogative is now preserved by "Winner take All" in the unbounded former Confederate states.

U.S. Const. art. I, § 2, cl.3 and **U.S. Const. art. II, § 2, cl.1** established an anti-majoritarian electoral math that disproportionately favored the minority white population of the South by counting a disfranchised black population, was entrenched into the fabric of America's Constitution, and that legacy is maintained in the South to this day by the rule of "Winner take all".

Under the rule of "winner take all" the historic and present disproportionate representation provided by yesterday's slave population and today's disenfranchised black population has served and continues to serve as the enduring bulwark of disparate political power for Southern whites.

The original intent of the Reconstruction Amendment (**Amend.14§2**), as implemented by **2USC§6**, was to place a ruinous penalty on those former confederate states that would effect *minority vote dilution*. It took over a century to properly enforce section 1 of the 14th Amendment. Let us not allow another century to pass before *enforcing* Section 2.

Conforming the Constitution to the Declaration was the *original intent* of the Republican Party from its inception. Their party platforms of 1856 and in 1860 identified the Declaration of Independence as the "true constitution" of the United States.

This court should read the three Civil War Amendments as a whole. In *The Slaughterhouse Cases* (1872), dissenting Supreme Court Justice Swayne wrote, "Fairly construed, these amendments may be said to rise to the dignity of a new Magna Carta." But historians and the legal establishment have generally failed to acknowledge that the purpose of the Civil War Amendments was collectively to conform the Constitution to the Declaration.

V. THE REFERENCE TO PRIOR CASES IS INTENDED TO PREJUDICE THE COURT WHEN IN FACT PLAINTIFF IS ALTERING THE ALLEGATIONS TO MEET SPECIFIC OBJECTIONS OF PRIOR COURTS.

Defendant argues that:

Our research indicates that Mr. Gordon's quixotic tilt at the Electoral College dates back more than a decade. In addition to the Clerk of the House and the Vice President, he also sued the same Vice President previously, *Gordon v. Cheney*, No. 1:05-cv-00006 (HHK) (D.D.C. 2005) (voluntarily dismissed on grounds of mootness); the mayor of the District of Columbia, *Gordon v. Williams*, No. 1:04-cv-01904 (HHK) (D.D.C. 2005) (dismissed for plaintiff's failure to respond to show cause order); NARA, *Gordon v. Nat'l Archives and Records Administration*, No. 1:02-cv-01551 (TPJ) (D.D.C. 2003) (dismissed with prejudice for lack of standing); an earlier Vice President, *Gordon v. Gore*, No. 1:00-cv-03112 (RCL) (D.D.C. 2001) (voluntarily dismissed); and the President of the Senate, *Gordon v. Lott*, 1:00-cv-03087 (RCL) (D.D.C. 2000) (voluntarily dismissed). MTD_p.3 fn4.

Note that defendant does not claim that any of the prior cases decided the issue set forth in the allegations herein on the merits. The argument by the defendants is that "This Court dismissed that case for lack of jurisdiction...." The prior dismissals resulted from legal technicalities. For example, the Circuit Court in a prior case ruled:

The Plaintiff is not injured by the operation of the five states' winner-take-all systems because he does not vote in those states.³²

The fact of the matter is , plaintiff Gordon does not vote in any state of the Union whatsoever. But this statement by the Court of Appeal could not possibly be more wrong.

32 *Gordon v. Biden*, The United States District Court for the District of Columbia Case No. 09-5142; United States Court of Appeals for the District of Columbia Circuit, C.A. No. 08-1294 (HHK).

The *Celebrezze* case specifically held that the 14th Amendment applied to the mode of electing the President of the United States. The Supreme Court of the United States in that case clearly noted the “interstate” impact of votes for the President in that “...

"[T]he impact of the votes cast in each State is affected by the votes cast for the various candidates in other States....

Furthermore, in the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation. Moreover, the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States."³³

The President of the United States plays a critical role in the amount of taxes and the manner they are laid upon the various portions of the American population. Those powers should be equitably exercised so that the burden of taxes is equal throughout the nation:

The standard, then, by which direct taxes must be laid, is applicable to this district, and will enable Congress to apportion on it, its just and equal share of the burden, with the same accuracy as on the respective States.³⁴

The ruling by the Court of Appeal in the prior case subjects plaintiff to taxation without representation by its ruling that he lacks standing to contest the process of electing the President unless he lives in the “states.”³⁵ This holding deprives plaintiff of citizenship created by the Civil War Amendments and the 23rd Amendment derived from them.³⁶

³³ *Anderson v. Celebrezze*, 460 U.S. 780 (1983).

³⁴ *Loughborough v. Blake*, 18 U.S. 317, 322 (1820).

³⁵ *Loughborough v. Blake*, 18 U.S. 317 (1820)(Congress possesses, under the constitution, the power to lay and collect direct taxes within the District of Columbia, in proportion to the census directed to be taken by the constitution).

³⁶ United States Constitution, Amendments 13, 14, and 15. See also United States Constitution, Amendment 23.

The right of the plaintiff to choose the President of the United States who imposes these taxes must be equal in weight to that of any other citizen of the United States who live in States organized in the United States. The inequality of the weight of the vote of citizen of the District of Columbia compared to that of a citizen of the United States who live in States is tantamount to "...taxation without representation."

The court should note that the District of Columbia has adopted as its motto the words "No Taxation Without Representation!"³⁷ The court should note that the Plaintiff stood for election as a Presidential elector of the District of Columbia from the Green Party. Plaintiff votes for the President of the United States as a resident of the capital of the nation. In the context of the complaint at bar, these facts constitute "particularized injury" more than sufficient to establish standing to bring this action.

The opinion ignores the "particularized injury" that arises from being a citizen of the District of Columbia. Plaintiff has a special right to protection of the national government through votes for the President (and Vice-President) because he (and all other members of the District of Columbia have no "right" or power to chose any other member of the government of the nation as set forth in plaintiff's argument to the court:

³⁷ In the United States, the phrase is used in Washington, D.C. as part of the campaign for a vote in Congress. In November 2000, the D.C. Department of Motor Vehicles began issuing license plates bearing the slogan "Taxation without representation".[13] In a show of support for the city, President Bill Clinton used the "Taxation Without Representation" plates on the presidential limousine; however, President George W. Bush had the tags replaced to those without the motto shortly upon taking office.[14] In 2002, the city council authorized adding the slogan to the D.C. flag, but no new flag design has been approved.[15] [16] In 2007, the District of Columbia and United States Territories Quarters program was created based on the successful 50 State Quarters program. [17] DC submitted designs containing the slogan, but they were rejected by the U.S. Mint.[18] On February 27, 2009, the phrase, "No taxation without representation" was also used in the Tea Party protests, where protesters were upset over increased government spending and taxes.[19] *Wikipedia*.

No other United States citizen stands in the unique position of the Plaintiff and the citizens of the District of Columbia. ... The Plaintiff as do all the citizens of the District of Columbia are precluded the right to vote for representatives in the House or Senate who can vote or protect their interests in the Congress of the United States of America. Congress has uniquely limited the right of this class of citizen to enjoy the franchise to vote with the explicit exception that this class of citizen can participate only in the selection of electors to vote for the President and Vice President of the United States. This limited franchise is diminished and diluted, indeed negated, if those duly selected electors which includes the [Appellant] from the District of Columbia are held to compete with a class of unbounded electoral states presidential electors who have not met constitutional muster. This injury is real, particularized and unlike any injury that any other citizen from any other state can assert. The Plaintiff, unlike any other American citizen, has no congressional representative to whom he may appeal or who can raise an objection at the appointed time established for such objections under 3 USC § 15. The reason being, the Plaintiff has no representative who has a right in law to speak on the floor of Congress. Thus the Plaintiff stands alone to petition the only forum of government that can provide a remedy in this instance, the federal court of the United States of America.³⁸

To say that only a citizen of the state can complain misses the way that the Electoral College creates inequality of votes on an interstate basis.³⁹ Racism was the basis of the Electoral College because 600,000 people in the south (being slaves) were not permitted to vote by the law and the political theory (being mere property). Madison said so.

There was one difficulty, however, of a serious nature attending an immediate choice by the people. The right of suffrage was much more diffusive in the northern than the southern states; and the latter could have no influence in the election on the score of the Negroes. The substitution of electors obviated this difficulty....⁴⁰

³⁸ *Gordon v. Cheney*, No. 1:05-cv-00006 (HHK) (D.D.C. 2005), See DC12_7-8.

³⁹ *Wickard v. Filburn*, 317 U.S. 111 (1942)(Congress had wide powers under interstate commerce clause treating the nation as a unity).

⁴⁰ James Madison quoted in an article called "Two Chief Proposals Compared," from a study by Lucius Wilmerding, Jr., (author of the doctrine "one voter--one vote"), *Advances Studies Princeton, N.J.* Included in *Amend Constitution to Abolish Elector College System*; hearings April 18 and 2, 1951, before Subcommittee no. 1 of the House Judiciary Committee on House Joint Resolutions 11, 14, 19, 89, 90, 109 and 205, 82nd Congress, 125 Session, Superintendent of Documents, Washington, D.C. 195); found in *Presidential Election Reforms*, by Walter M Daniels, H. Wilson Company: New York (1953).

Slavery reduced the African to a non-person who could not vote. The Electoral College (and the 3/5 clause) used this status to create a political subsidy (a departure from the principle of equality) to slavery. Madison himself favored the direct election of the President of the United States by the people of the United States which treated the United States as a Unity: "One nation, under God, indivisible." James Madison criticized delegate Patterson at the Convention

...that his doctrine of Representation which was in its principle the genuine one, must for ever silence the pretensions of the small States to an equality of votes with the large ones. *They ought to vote in the same proportion which their citizens would do, if the people of all the States were collectively met.*⁴¹

Moreover, the 23rd Amendment speaks of voting for the President as not merely a privilege but as a "right."⁴² The conduct complained of violates "civil rights" of the Plaintiff.⁴³ So this court cannot claim that plaintiff has no standing because he is not a citizen of a state. This is to deny his rights under the Constitution of the United States (as amended).

In any event, plaintiff in this case has corrected that legal technicality that he is not a citizen of the five states in question. The case immediately prior was dismissed, not on the merits, but for standing. Plaintiff was not a resident of any of the five states. That argument from the prior case does not apply to the case at bar because residents of two of the five states have joined the legal battle over the merits of the case. So dismissal is not in order for that reason as well.

⁴¹ James Madison quoted in Records of the Federal Convention of 1787, by Max Farrand, Vol. I. p. 562.

⁴² The 23rd Amendment itself, under which Appellant cast a vote for the President violates the 14th Amendment. When the 23rd Amendment was enacted, the District of Columbia was entitled to 4 electoral votes though the amendment allowed it only three. In other words, the 23rd Amendment afforded a $\frac{3}{4}$ vote for the African Americans in the District of Columbia which was better than the 3/5 clause while still falling short of the formula of the Declaration of Independence that says that "...all men are created equal."

⁴³ 28 U.S.C. § 1983.

I have a dream that one day this nation will rise up and live out the true meaning of its creed: "We hold these truths to be self-evident, that all men are created equal."⁴⁴

Plaintiffs ask this court to end the hypocrisy, to do justice and to live out its national creed. There is nothing *quixotic* about this request at all. People have fought and died for this cause. People today are fighting and dying for this cause.

Plaintiffs ask this court to recognize the link between slavery and the *original* electoral college. Plaintiffs ask this court to recognize that the electoral college was a system of virtual representation in a country that had just rejected virtual representation as unrepresentative and unconstitutional. Plaintiffs ask this court to recognize that the electoral college operated as a subsidy to slavery as it created votes allegedly on behalf of some to be cast by others. Specifically, the system allowed the existence of five black persons to be the equivalent of three white persons in computing the number of members in the House of Representatives allocated to a state⁴⁵ which in turn became the basis of allocating the number of electors possessed by each of the states in presidential elections.⁴⁶

The specter of the 3/5ths compromise that established an institutionalized Constitutional franchise by racial quotas haunts every modern day presidential election. The original Constitution's "covenant with death" that established an augmented white elective prerogative is now preserved by "Winner take All" in the unbounded former Confederate states.

⁴⁴ Martin Luther King, Abraham Lincoln Memorial (August 28, 1963).

⁴⁵ Under Article I of the Constitution of the United States.

⁴⁶ Under Article II of the Constitution of the United States, as amended.

Benjamin Franklin summarized the American Revolution to the World as “Liberty, Equality, and Fraternity.” But the Electoral College was based upon the inversion “Slavery, Inequality, and Racism.” The Civil War inverted the inversion and returned America to its original principles:

Liberty (13th Amendment)

Equality (14th Amendment)

Fraternity (15th Amendment).

Where the words of the Declaration of Independence are the supreme, slavery is a legal impossibility.⁴⁷ Where the words of the Declaration of Independence are the supreme, A "Winner-Take-all" Electoral College is a legal impossibility.⁴⁸ This coincidence results from the fact that the Electoral College was devised to protect slavery. In other words, *the original intent* of the Electoral College is unconstitutional today. In fact, the *original intent of the Electoral College* was never constitutional.

"Winner-Take-All" is structurally anti-majoritarian, institutionally racially biased, and constitutionally deficient. "Winner-Take-All" is constitutionally deficient and should expose the unbounded states to a reduction in state representatives pursuant to the malapportionment penalty of the Second section of the Fourteenth Amendment to the Constitution for an abridgment of the plaintiffs "right to vote" without minority vote dilution by race and/or party affiliation.

⁴⁷ *Quok Walker v. Jennings*, (Mass. Sup. Court, 1783).

⁴⁸ *Quok Walker v. Jennings*, (Mass. Sup. Court, 1783).

CONCLUSION

In the forgoing arguments the Plaintiffs have established injury and standing by the jurisprudence of *textualism*, *stare decisis* and *original intent* that exceeds the standing granted by Federal Courts to plaintiffs who plea for redress of *minority vote dilution* under the *equal protection clause* of **U.S. Const. Amend. 14§1**, wherein the right to vote is *implicit*. The plaintiffs in the present case at bar make their claims under the *malappotionment penalty clause* of **U.S. Const. Amend. 14§2** with an *explicit* declaration to protect the citizens' "right to vote".

The judicial branch has jurisdiction in the constitutional controversy because the very word "jurisdiction" is to say "what the law is."⁴⁹ Courts of justice have the power to "declare all acts contrary to the manifest tenor of the Constitution void."⁵⁰ The court must rule summarily for plaintiffs because where two constitutional amendments apply to the same subject the last will of the sovereign prevails.

For the foregoing reasons the **PLAINTIFFS' MOTION IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS** should be GRANTED with the court proceeding on a hearing of the issues raised in the plaintiffs' complaint.

Respectfully submitted,

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

April 29th, 2011

⁴⁹ Federalist Papers, Alexander Hamilton; Marbury v. Madison.

⁵⁰ Alexander Hamilton argued in The Federalist No. 78 (1788).

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing **PLAINTIFFS' MOTION IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS** and **PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS** 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.

KATHERINE E. McCARRON, D.C. Bar # 486335
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Respectfully submitted,

_____/s/_____
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April 29th, 2011

**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)

UPON CONSIDERATION OF Plaintiffs' Motion in Opposition to Defendant's Motion to Dismiss, and the entire record herein, it is by the Court this ____ day of _____, 2011

ORDERED

That the Plaintiffs' Opposition Motion is GRANTED for all the reasons set forth in the Plaintiffs' Memorandum of Points and Authorities filed in support of the Motion.

UNITED STATES DISTRICT JUDGE

Copies to:

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