

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOHN S. TRINSEY, JR.,	:	
aka JACK TRINSEY,	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	
UNITED STATES OF AMERICA,	:	No. 00-5700
ET AL.,	:	
Defendants	:	

MEMORANDUM

Schiller, J.

December 21, 2000

Presently before the Court are the motions of Defendants Florida Elections Commission and the United States of America to dismiss this action. Upon consideration of Defendants' motions, Plaintiff's response thereto, and oral argument, Defendants' motions are granted.

I. PROCEDURAL BACKGROUND

Plaintiff John S. Trinsey, also known as Jack Trinsey, proceeding pro se, filed a complaint against the United States of America on November 9, 2000, alleging that the Twelfth Amendment¹ to the United States Constitution unconstitutionally denied the majority of the voters in the November 7, 2000 presidential election their right to "one person - one vote."²

¹Plaintiff's complaint and amended complaint state challenges to the Twelfth Amendment of the United States Constitution. In his response to Defendant Florida Elections Commission's motion to dismiss, however, Mr. Trinsey attacks Article II as well.

²Although Plaintiff makes no mention of 42 U.S.C. § 1983 in his complaint or amended complaint, he does complain of a due process violation and his response to Defendant Florida Elections Commission's motion to dismiss suggests that he intended to bring the present action

(Compl. at ¶¶ 3, 5). Mr. Trinsey fashioned his complaint as a class action.³

Along with his complaint, Mr. Trinsey filed a motion for an expedited hearing and for injunctive relief. (Document No. 2). Also on November 9, the Honorable John R. Padova, United States District Judge for the Eastern District of Pennsylvania, sitting as the emergency judge, deferred Plaintiff's application for a temporary restraining order pending service on the United States of America in accordance with the Federal Rules of Civil Procedure and scheduled a hearing on Plaintiff's motion for expedited hearing before me for November 16, 2000. (Document No. 3). At the hearing, I set forth a briefing schedule for the parties and scheduled oral argument. (Document No. 3).

On November 17, 2000, Mr. Trinsey filed an amended complaint, adding as defendants presidential candidates George W. Bush and Al Gore, vice presidential candidates Dick Cheney and Joe Lieberman, Florida Secretary of State Catherine Harris,⁴ the Florida Elections Commission ("FEC"), and the Electoral College. (Document No. 6)

On November 28, 2000, Defendant FEC moved to dismiss this action. (Document No. 7). On December 11, 2000, Defendant United States of America filed a motion to dismiss. (Document No. 11).

under that statute.

³It is unclear from his pleadings whether the class Mr. Trinsey asks this Court to certify consists of all "of the People of the United States of America who voted November 7th, 2000 to elect the President of the United States of America," (Compl. at p. 3), or only those voters who, in voting for Al Gore and Joe Lieberman, comprised "the majority of voters[.]" (Compl. at ¶6). At oral argument, Mr. Trinsey said he filed this "class action for people who voted -- 100,000,000 people."

⁴The Court notes that Ms. Harris' first name is correctly spelled "Katherine."

II. LEGAL STANDARD

Defendants FEC and the United States each filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) asserting that Plaintiff's complaint fails to state a claim upon which relief can be granted.⁵

In considering a motion to dismiss under Rule 12(b)(6), all well-pleaded facts in the complaint must be taken as true and all facts and inferences reasonably drawn therefrom must be viewed in the light most favorable to the plaintiff. See Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990) (citation omitted); White v. City of Philadelphia, 118 F. Supp.2d 564, 567 (E.D. Pa. 2000) (citing Jenkins v. McKeithen, 395 U.S. 411, 421 (1969)). A motion to dismiss is properly granted only if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hison v. King & Spalding, 467 U.S. 69, 73 (1984).

In this case, the operative facts are not only uncontested, but are facts in which the nation's populace is now well versed. In the November 7, 2000 presidential election, more Americans cast their votes for Al Gore and Joe Lieberman than for George W. Bush and Dick Cheney.⁶ Due to the constitutionally prescribed electoral college process, this country's next president and vice president are candidates who did not win the popular vote. The Plaintiff seeks

⁵The FEC and the United States each raise several grounds for their respective motions to dismiss, including issues relating to justiciability, standing, sovereign immunity and jurisdiction over the subject matter. I decline to address these issues because I find that Plaintiff's complaint fails to state a claim upon which relief can be granted, a challenge advanced by both defendants.

⁶Al Gore and Joe Lieberman received 50,158,094 votes, while 49,820,518 votes were cast in favor of George W. Bush and Dick Cheney. See <http://www.cnn.com/ELECTION/2000/results/> (Dec. 13, 2000).

a declaratory judgment from this Court, deeming the Twelfth Amendment to the Constitution violative of the Constitution, and a stay of the electoral college process. Thus, the question before me is whether, under these facts, the law allows Mr. Trinsey to recover.

III. DISCUSSION

The gravamen of Mr. Trinsey's complaint is that the electoral college, established by Article II, Section 1, Clause 2 and the Twelfth Amendment to the United States Constitution runs contrary to the principle of "one person, one vote" long-recognized by the courts. (Amend. Compl. at ¶5). Plaintiff misunderstands this doctrine.

The "one person, one vote" principle is rooted in the Fourteenth Amendment's Equal Protection Clause. See Rice v. Cayetano, 120 S.Ct. 1044, 1059, ___ U.S. ___ (2000). This notion, as the Supreme Court reminded us in Chisom v. Roemer, 501 U.S. 380, 403 n.31 (1991), was first set forth in Gray v. Sanders, 372 U.S. 368, 379, 381 (1963), a case addressing the use of a county unit system as the basis for counting votes in a primary election for statewide offices. In Gray the Court concluded that "[o]nce the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote -- whatever, their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment." Gray, 372 U.S. at 379. The right upon which Mr. Trinsey relies is founded upon equal protection principles; it is "the right of each voter to 'have his vote weighed equally with those of all other citizens.'" Davis v. Bandemer, 478 U.S. 109, 150 (1986) (quoting Mobile v. Bolden, 446 U.S. 55, 78 (1980) (plurality opinion)).

Neither the Constitution nor the "one person, one vote" doctrine vests a right in the

citizens of this country to vote for Presidential electors, see Bush v. Gore, 2000 WL 1811418, *3 (Dec. 12, 2000), or empowers the courts to overrule constitutionally mandated procedure in the event that the vote of the electors is contrary to the popular vote. Once the State has granted its citizens the right to vote for Presidential electors, however, as each of the states have done, “the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” Bush v. Gore, 2000 WL 1811418, *3 (Dec. 12, 2000). Mr. Trinsey does not contend that his vote was accorded less weight than votes cast by other citizens. Instead, Mr. Trinsey protests the fact that individuals citizens vote for Presidential electors, rather than casting their votes directly for president.

As the Supreme Court has instructed, “the only weighting of votes sanctioned by the Constitution concerns matters of representation, such as the allocation of Senators irrespective of population and the use of the electoral college in the choice of a President.” Gray v. Sanders, 372 U.S. 368, 380 (1963) (emphasis added); see Penton v. Humphrey, 264 F. Supp. 250, 251 (S.D. Miss. 1967) (acknowledging that under Gray, “the alleged inequities of the electoral college are an exception of the application of [the one person, one vote] doctrine).

It is axiomatic that the Court, as interpreter and enforcer of the words of the Constitution, is not empowered to strike the document’s text on the basis that it is offensive to itself or is in some way internally inconsistent. In other words, the electoral college cannot be questioned constitutionally because it is established by the Constitution. See Irish v. Democratic-Farmer-Labor Party of Minnesota, 287 F. Supp. 794, 803 (D. Minn. 1968).

Plaintiff, however, is not alone in his disdain for the electoral college process. One legal scholar lamented:

In the category, Most Mistaken Part of the Current Constitution, I nominate the electoral college. The ingenious scheme of presidential selection set up by Article II and refined by the Twelfth Amendment was a brilliant eighteenth century invention that makes no sense today. Our system of selecting Presidents is a constitutional accident waiting happen.

Akhil Reed Amar, Constitutional Accident Waiting to Happen, 12 CONST. COMMENT. 143, 143 (1995). Thus, this Court acknowledges that this action represents the frustration that many Americans have felt in the wake of the presidential election that took place on November 7, 2000. While the post-election day period of uncertainty as to the identity of our next president and vice president was distasteful to some,⁷ we have all learned more about the process by which we elect a president in this country in the past six weeks than is likely part of most school curricula.

Our Founding Fathers adopted and the states ratified a Constitution that has endured for more than two centuries. The genius of it is that though not immutable, our Constitution is not subject to change by judicial fiat or presidential decree. “Amendment of the Constitution . . . [is a] legislative function[.]” Wilson v. Guggenheim, 70 F. Supp. 417, 419 (E.D.S.C. 1947). Any successful effort to alter the Constitution requires strict adherence to systematic procedures. See U.S. CONST. art. V.⁸ It is not the province of this Court to engage in constitutional amendment

⁷This Court recognizes, as Mr. Trinsey pointed out in his oral argument, that there are many America citizens that may feel aggrieved by the result of this election, including our service men and women, individual voters, and some of the candidates.

⁸Article V of the United States Constitution states:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall

where it is asserted that part of the document is unconstitutional. Although the aberration we experienced in the 2000 election occurs with about the same frequency as the appearance of Halley's comet, the problem, Mr. Trinsey, is not in the stars, but in ourselves.⁹

IV. CONCLUSION

For the above-stated reasons, I find that there exists no legal theory upon which this Court can enter judgment for the Plaintiff as to any of the Defendants. Therefore, I must dismiss this action.

An Order follows.

be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

⁹My apologies to William Shakespeare, who wrote the following words of Cassius to Brutus:

Men at some times are masters of their fates;
The fault, dear Brutus is not in our stars;
But in ourselves, that we are underlings.

WILLIAM SHAKESPEARE, JULIUS CAESAR act 1, sc. 2.

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UNITED STATES OF AMERICA,	:	No. 00-5700
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ORDER

AND NOW, this 21st day of December 2000, it is hereby ORDERED that Defendants' motion to dismiss (Document Nos. 7 and 11) are GRANTED.

IT IS FURTHER ORDERED that the above-captioned matter is DISMISSED as to all defendants.

BY THE COURT:

Berle M. Schiller, J.

