
STATE OF INDIANA)	IN THE MARION CIRCUIT COURT
)SS:	
COUNTY OF MARION)	CAUSE NO. 49C01-18 -PL-
)	
)	
Plaintiffs,)	
)	
v.)	
)	
ERIC HOLCOMB, in his official capacity as)		
Governor of the State of Indiana; and)		
CONNIE LAWSON, in her official capacity)		
as Secretary of State of the State of Indiana,)		
Defendants. .)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Nature of the Action

Come now the Plaintiffs, by counsel, and for their cause of action state and depose as follows, that:

1. Indiana Constitution, Article 1, §23, also known as the Equal Privileges and Immunities Clause, provides: “General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens.”

2. Electors vote to choose the President and Vice President of the United States. U.S. Const. Art. II, sec. 1; Amend. XII.

3. Each State determines the way in which its Electors are selected: “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.” U.S. Const., Art. II, sec. 1

4. The existence of Electors is a vestige of the “Great Compromise” of the 1787 Constitutional Convention: “Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons...” U.S. Const., Art I, sec. 2.

5. Indiana statute provides the means by which our Electors Ind. Const., Art. 1, § 23. Indiana

6. The method by which the State of Indiana determines and apportions its Electors in general elections for President and Vice President (“elections” or “election”) violates Article 1, §23 of the Indiana Constitution, in that in any given election, nearly one-half of voters who cast a vote in such elections are effectively disenfranchised.

7. In Indiana, the political party of the candidates for President and Vice President who have gained the plurality of the popular votes cast in the election for those offices selects every Elector.

8. 5. I.C. § Provides:

9. In 2008 [final #s], 2012 [final #s], and in 2016 [final numbers], a total of [total of all votes for the non-winner] Hoosier voters saw her or his vote rendered meaningless by having her or his vote count nothing toward selection of an Elector.

10. . The right to cast a vote and the right to have one’s vote counted are both constitutionally protected. U.S. v. Classic, 313 U.S. 299, 315 (1941).

11. A person’s interest in participating in the political process through voting

and having her or his vote counted is a right both ‘individual and personal in nature. Reynolds v Sims, 377 U.S. 533, 561 (1963).

12. The right of suffrage can be denied by a debasement or dilution of the right to vote just as effectively as by wholly prohibiting the free exercise of the franchise. Reynolds, 377 U.S. at 554.

13. The matter is not that the votes for one ticket are nullified, but that none of the eleven (11) Electors is allowed to vote for anyone but the Statewide winner of a plurality of the popular vote.

14. This means of apportionment of the Electors unconstitutionally magnifies the votes of a bare plurality of voters into a group that chooses all eleven Electors from Indiana is the same as if a general vote for Indiana’s delegation to the United States House of Representatives and Indiana’s two (2) United States Senators resulted in Indiana’s entire Congressional delegation being selected by one (1) political party.

15. For the same reason, a bare plurality of one (1) vote should not render the votes of nearly one-half ($\frac{1}{2}$) of Hoosier voters a nullity.

16. Application and construction of a State’s constitution are matters left to that State, so long as they are not repugnant to the United States Constitution. [CITE].

17. Far from being repugnant to the United States Constitution, application of Indiana’s Equal Privileges and Immunities Clause to eliminate the current method of apportionment of Electors would more greatly extend equal protection of the law to all Indiana citizens.

18. This lawsuit does not challenge the existence of Electors (the phrase “Electoral College” does not appear in the Constitution), but challenges the decision of the State of Indiana to award and select Electors on a winner take all basis.

19. The United States Constitution does not (a) prescribe how a State should choose its electors or (b) mention a winner take all scheme.

20. After John Quincy Adams was elected President in 1824, States rushed to enhance their individual standing in elections and adopted a winner take all scheme to select Electors.

21. Since 1824, our Nation has progress from slavery, to universal suffrage, through segregation, and to a recognition of One Person//One Vote.

22. Plaintiffs seek (1) a declaratory judgment that the current formula under I.C. § , et seq., violates Indiana Const. Art. 1, §23; and (2) an order that permanently enjoins use of the winner take all method, or other methods that would violate our Equal Privileges and Immunities Clause.

23. No State interest justifies this disparate treatment of Indiana’s citizens.

Jurisdiction and Venue

24. This Court has jurisdiction over this cause pursuant to I.C. § 34-36-1-3.

25. Venue is proper in this judicial district pursuant to Indiana Trial Rule 75(A)(5) and (7).

26. Declaratory relief is authorized pursuant to Indiana Trial 57.

27. Injunctive relief is authorized pursuant to Indiana Trial Rule 65 and I.C. § 34-26-1-1.

Parties

28. Each of the Plaintiffs has suffered, and will again suffer, an injury that comes from lack of any meaningful vote toward the election of the President and Vice President.

29. Plaintiffs have voted in past elections for President and Vice President and will

continue to vote in those elections.

WHEREFORE, Plaintiffs respectfully , and for all other proper relief.

Respectfully submitted,

/s Mark Small.

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