

## Winner Take All in the Electoral College

*Gordon v. Cheney*

*(Henry H. Kennedy, Jr., D.D.C. 1:05-cv-6)*

On January 4, 2005, two days before the Vice President, as president of the Senate, was to count the electoral votes for his and President Bush's reelection, a pro se plaintiff affiliated with the Green Party filed a federal complaint in the district court for the District of Columbia seeking to enjoin the count on the ground that electoral votes in several states were improperly allocated according to a winner-take-all rule.<sup>1</sup> With his complaint, the plaintiff filed a motion for a temporary restraining order and a preliminary injunction.<sup>2</sup> Judge Henry H. Kennedy, Jr., denied the plaintiff immediate relief on January 6: "it is apparent from [the motion's] face that plaintiff has not, and cannot, meet the rigorous requirements for obtaining such an extraordinary remedy."<sup>3</sup> On March 22, the plaintiff dismissed the action voluntarily.<sup>4</sup>

The plaintiff filed a similar pro se action on July 28, 2008.<sup>5</sup> On March 26, 2009, Judge Kennedy granted to Vice President Biden Vice President Cheney's motion to dismiss the action.<sup>6</sup> "The problem for [the plaintiff], among others, is that his claims are predicated on allegations of wrongdoing by third parties."<sup>7</sup>

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1. [Complaint](#), *Gordon v. Cheney*, No. 1:05-cv-6 (D.D.C. Jan. 4, 2005), D.E. 1.

2. [Motion](#), *id.* (Jan. 4, 2005), D.E. 3.

On November 2, 2004, the plaintiff filed a federal pro se challenge to the District of Columbia's allocation of electoral votes, [Complaint](#), *Gordon v. Williams*, No. 1:04-cv-1904 (D.D.C. Nov. 2, 2004), D.E. 1, which the court dismissed on May 11, 2005, for failure to prosecute, [Order](#), *id.* (May 11, 2005), D.E. 5. See [Notice of Related Case](#), *Gordon*, No. 1:05-cv-6 (D.D.C. Jan. 4, 2005), D.E. 2.

3. [Order](#), *Gordon*, No. 1:05-cv-6 (D.D.C. Jan. 6, 2005), D.E. 4.

4. [Stipulation](#), *id.* (Mar. 22, 2005), D.E. 9.

5. [Complaint](#), *Gordon v. Cheney*, No. 1:08-cv-1294 (D.D.C. July 28, 2008), D.E. 1; [Gordon v. Biden](#), 606 F. Supp. 2d 11, 12 & n.1 (D.D.C. 2009); see [Motion for Temporary Restraining Order and Preliminary Injunction](#), *Gordon*, No. 1:08-cv-1294 (D.D.C. July 30, 2008), D.E. 3; [Notice of Related Case](#), *id.* (July 28, 2008), D.E. 2.

6. [Gordon](#), 606 F. Supp. 2d at 12, *aff'd*, 364 F. App'x 651 (D.C. Cir. 2010).

7. *Id.* at 14.