

## **No Standing to Compel the Vice President to Exercise Discretion in Confirming Electoral College Results**

*Gohmert v. Pence*

*(Jeremy D. Kernodle, E.D. Tex. 6:20-cv-660)*

A district judge and the court of appeals determined that plaintiffs did not have standing to seek a court order that the Vice President exercise discretion in presiding over the confirmation of Electoral College votes.

*Subject:* Voting irregularities. *Topics:* Electoral College; intervention; attorney discipline.

In a federal action filed in the Eastern District of Texas on December 27, 2020, “Plaintiffs include the United States Representative for Texas’ First Congressional District and the entire slate of Republican Presidential Electors for the State of Arizona.”<sup>1</sup> The plaintiffs asked the court to declare that the defendant Vice President Pence “in his capacity as President of Senate and Presiding Officer of the January 6, 2021 Joint Session of Congress, is subject solely to the requirements of the Twelfth Amendment and may exercise the exclusive authority and sole discretion in determining which electoral votes to count for a given State.”<sup>2</sup> On the following day, the plaintiffs filed an emergency motion for an expedited declaratory judgment and emergency injunctive relief.<sup>3</sup> On the case’s third day, the plaintiffs filed a motion to shorten time for response to their earlier motion.<sup>4</sup>

Judge Jeremy D. Kernodle ordered briefing on the injunction motion completed by January 1, 2021,<sup>5</sup> on which day he dismissed the case for lack of standing.<sup>6</sup> The Vice President’s exercise of discretion would not necessarily

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1. Complaint at 2, *Gohmert v. Pence*, No. 6:20-cv-660 (E.D. Tex. Dec. 27, 2020), D.E. 1; *Gohmert v. Pence*, 510 F. Supp. 3d 435, 438–39 (E.D. Tex. 2021); see Erik Larson, *Gohmert Sues Pence Over Electors*, Houston Chron., Dec. 29, 2020, at A9; Elizabeth Thompson, *Gohmert Targets Electors*, Dallas Morning News, Dec. 29, 2020, at B1. See generally Rosalind S. Helderman & John Wagner, *Pence Snubs GOP Effort to Let Him Alter Results*, Wash. Post, Jan. 1, 2021, at A1.

2. Complaint, *supra* note 1, at 25–26.

3. Motion, *Gohmert*, No. 6:20-cv-660 (E.D. Tex. Dec. 28, 2020), D.E. 2; *Gohmert*, 510 F. Supp. 3d at 439.

4. Motion, *Gohmert*, No. 6:20-cv-660 (E.D. Tex. Dec. 29, 2020), D.E. 7.

5. Order, *id.* (Dec. 29, 2020), D.E. 12.

6. *Gohmert*, 510 F. Supp. 3d 435; see Devlin Barrett, *Judge Rejects Gohmert’s Election Suit Against Pence*, Wash. Post, Jan. 2, 2021, at A1; Catie Edmondson & Maggie Haberman, *Suit That Aimed to Reject Biden Electoral Votes Is Dismissed*, N.Y. Times, Jan. 2, 2021, at A20.

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provide the plaintiffs with relief from their alleged harms.<sup>7</sup> The court of appeals affirmed Judge Kernodle’s dismissal on the following day.<sup>8</sup>

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7. *Gohmert*, 510 F. Supp. 3d at 443.

8. *Gohmert v. Pence*, 832 F. App’x 349 (5th Cir. 2021).

A national lawyers group on Monday called for professional licensing bodies to investigate East Texas congressman Louie Gohmert and his attorneys for what it called a “self-evident breach” of ethics rules for lawyers when they sued unsuccessfully last week to try to force Vice President Mike Pence to overturn the results of the Nov. 3 presidential election.

Robert T. Garrett, *Gohmert Faces Suit Over Ethics*, Dallas Morning News, Jan. 5, 2021, at A6.