



Written by [Bob Adelman](#) on January 2, 2021

Judge Tosses Rep. Louie Gohmert's Lawsuit, Claiming He Doesn't Have "Standing"

When Texas Republican Representative Louie Gohmert [filed a lawsuit](#) against Vice President Mike Pence on Monday, it was a "friendly" lawsuit seeking to grant him all the powers provided by the Constitution. Pence is to preside on Wednesday, January 6, over the joint session of congress to count the Electoral College votes for the presidency.

Lawyers from both the House of Representatives (controlled by the Democrats) and the Justice Department (controlled by the Deep State), filed dismissals of Gohmert's lawsuit. On Friday a federal judge [tossed Gohmert's lawsuit](#), claiming that he didn't have standing to bring it.



Rep. Louie Gohmert (AP Images)

Pence joined with the Justice Department in its request to have the judge dismiss the lawsuit.

The New American has closely followed the story from the beginning. Gohmert argues that a statute enacted in 1887, the Electoral Count Act, is unconstitutional because, as he claimed in his suit, its provisions "violate the Electors Clause and the Twelfth Amendment to the U.S. Constitution." His suit added:

[They] violate the Twelfth Amendment because the Electoral Count Act directs the Defendant [Pence] ... to count the electoral votes for a State that have been appointed in violation of the Electors Clause [and] limits or eliminates his exclusive authority and sole discretion under the Twelfth Amendment to determine which slates of electors for a State, or neither, may be counted.

This position is supported by constitutional scholars John Yoo and Edward Foley, an associate law professor at Ohio State University, among others. Said Foley: "The President of the Senate [Pence] has the exclusive constitutional authority to determine which 'certificates' to 'open' and thus which electoral votes 'to be counted.'"

Foley added that the Senate and the House "have an observational role only.... They don't actually take any actions of their own in this opening and counting process."

Predictably the Democrat-controlled House of Representatives moved to have the judge dismiss Gohmert's lawsuit. More tellingly, however, was the fact that the Vice President joined with the Justice Department's move to have the judge dismiss the case as well. Said Pence's lawyers [in their filing](#):



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Plaintiffs [Gohmert and other parties bringing the suit] have presented this Court with an emergency motion raising a host of weighty legal issues about the manner in which the electoral votes for President are to be counted. But these plaintiffs' suit is not a proper vehicle for addressing those issues, because plaintiffs have sued the wrong defendant.

Pence's lawyers, in conjunction with lawyers from the Justice Department, instead argued that Gohmert should sue the House of Representatives as it was party to the creation of the Election Count Act back in 1887!

As Leon Wolf, writing for *The Blaze*, pointed out:

Although Pence's filing opposes the suit on technical legal grounds — to wit, that he is not a properly-named defendant in the suit since it seeks to give him more power — the fact that he filed the brief at all seems to indicate that Pence has no interest in participating in a Vice Presidential nullification of any electoral college votes.

In his effort to avoid considering the merits of Gohmert's case, the judge, U.S. District Judge Jeremy Kernodle (appointed by President Trump to that position in 2018) conjured that he didn't need to, since, he claimed, Gohmert has no legal standing to bring the lawsuit. And whatever standing he might have as a member of the House who would be damaged by a fraudulent president election was supposedly weak and insubstantial.

Standing, wrote Kernodle, "requires the plaintiffs to show a personal injury that is fairly traceable to the defendant's allegedly unlawful conduct and is likely to be redressed by the requested relief." However, according to Kernodle,

Plaintiff Louie Gohmert, the United States Representative for Texas's First Congressional District, alleges at most an institutional injury to the House of Representatives. Under well-settled Supreme Court authority, that is insufficient to support standing.

The U.S. Supreme Court, it will be remembered, tossed a Texas lawsuit because the state, claimed the court, didn't have standing to bring it.

So the game of hide and seek — "hot potato" if you will — continues. Gohmert's lawyers said he will appeal the judge's decision to dismiss.

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