

No. \_\_A\_\_\_\_\_

## ***In the Supreme Court of the United States***

LOUIE GOHMERT, TYLER BOWYER, NANCY COTTLE, JAKE HOFFMAN,  
ANTHONY KERN, JAMES R. LAMON, SAM MOORHEAD, ROBERT  
MONTGOMERY, LORAIN PELLEGRINO, GREG SAFSTEN, KELLI WARD  
AND MICHAEL WARD,

*Applicants,*

v.

THE HONORABLE MICHAEL R. PENCE, VICE PRESIDENT OF THE UNITED  
STATES, IN HIS OFFICIAL CAPACITY.

*Respondent.*

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### **APPENDIX TO EMERGENCY APPLICATION TO THE HONORABLE SAMUEL A. ALITO AS CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT FOR ADMINISTRATIVE STAY AND INTERIM RELIEF PENDING RESOLUTION OF A TIMELY FILED PETITION FOR A WRIT OF *CERTIORARI***

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Sidney Powell  
Texas Bar No. 16209700  
SIDNEY POWELL, P.C.  
2911 Turtle Creek Blvd., Suite 1100  
Dallas, TX 72519  
Tel: (214) 628-9514  
Fax: (214) 628-9505  
Email: [sidney@federalappeals.com](mailto:sidney@federalappeals.com)

Lawrence J. Joseph  
DC Bar #464777  
LAW OFFICE OF LAWRENCE J. JOSEPH  
1250 Connecticut Av NW, Ste 700  
Washington, DC 20036  
Tel: (202) 355-9452  
Fax: (202) 318-2254  
Email: [ljoseph@larryjoseph.com](mailto:ljoseph@larryjoseph.com)

*Counsel for Applicants*

William Lewis Sessions\*  
Texas Bar No. 18041500  
SESSIONS & ASSOCIATES, PLLC  
14591 North Dallas Parkway, Suite 400  
Dallas, TX 75254  
Tel: (214) 217-8855  
Fax: (214) 723-5346  
Email: [lsessions@sessionslaw.net](mailto:lsessions@sessionslaw.net)

Howard Kleinhendler  
NY Bar No. 2657120  
HOWARD KLEINHENDLER ESQUIRE  
369 Lexington Ave., 12th Floor  
New York, New York 10017  
Tel: (917) 793-1188  
Fax: (732) 901-0832  
Email: [howard@kleinhendler.com](mailto:howard@kleinhendler.com)

*\* Counsel of Record*

## APPENDIX

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

THE HONORABLE LOUIE  
GOHMERT, et al.,

Plaintiffs,

V.

THE HONORABLE MICHAEL R.  
PENCE, in his official capacity as Vice  
President of the United States,

Defendant.

Case No. 6:20-cv-660-JDK

## ORDER OF DISMISSAL

This case challenges the constitutionality of the Electoral Count Act of 1887, as codified at 3 U.S.C. §§ 5, 15. The Court cannot address that question, however, without ensuring that it has jurisdiction. *See, e.g.*, U.S. CONST. art. III, § 2; *Cary v. Curtis*, 44 U.S. 236, 245 (1845). One crucial component of jurisdiction is that the plaintiffs have standing. This 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. *See, e.g.*, U.S. CONST. art. III, § 2; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). Requiring plaintiffs to make this showing helps enforce the limited role of federal courts in our constitutional system.

The problem for Plaintiffs here is that they lack standing. 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. *Raines v.*

*Byrd*, 521 U.S. 811, 829 (1997).

The other Plaintiffs, the slate of Republican Presidential Electors for the State of Arizona (the “Nominee-Electors”), allege an injury that is not fairly traceable to the Defendant, the Vice President of the United States, and is unlikely to be redressed by the requested relief.

Accordingly, as explained below, the Court lacks subject matter jurisdiction over this case and must dismiss the action.

## I.

### A.

The Electors Clause of the U.S. Constitution requires that each state appoint, in the manner directed by the state’s legislature, the number of presidential electors to which it is constitutionally entitled. U.S. CONST. art. II, § 1, cl. 2. Under the Twelfth Amendment, each state’s electors meet in their respective states and vote for the President and Vice President. U.S. CONST. amend XII. The electors then certify the list of their votes and transmit the sealed lists to the President of the United States Senate—that is, the Vice President of the United States. The Twelfth Amendment then provides that, “[t]he President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted.” *Id.* A candidate winning a majority of the electoral votes wins the Presidency. However, if no candidate obtains a majority of the electoral votes, the House of Representatives is to choose the President—with each state delegation having one vote. *Id.*

The Electoral Count Act, informed by the Hayes-Tilden dispute of 1876, sought to standardize the counting of electoral votes in Congress. Stephen A. Siegel, *The Conscientious Congressman's Guide to the Electoral Count Act of 1887*, 56 FLA. L. REV. 541, 547–50 (2004). Section 5 makes states' determinations as to their electors, under certain circumstances, “conclusive” and provides that these determinations govern the counting of electoral votes. 3 U.S.C. § 5. Section 15 requires a joint session of Congress to count the electoral votes on January 6, with the President of the Senate presiding. *Id.* § 15.

During that session, the President of the Senate calls for objections on the electoral votes. Written objections submitted by at least one Senator and at least one Member of the House of Representatives trigger a detailed dispute-resolution procedure. *Id.* Most relevant here, Section 15 requires both the House of Representatives and the Senate—by votes of their full membership rather than by state delegations—to decide any objection. The Electoral Count Act also gives the state governor a role in certifying the state's electors, which Section 15 considers in resolving objections. *Id.* § 6.

It is these dispute-resolution procedures that Plaintiffs challenge in this case.

## B.

On December 14, 2020, electors convened in each state to cast their electoral votes. *Id.* § 7; Docket No. 1 ¶ 5. In Arizona, the Democratic Party's slate of eleven electors voted for Joseph R. Biden and Kamala D. Harris. These votes were certified by Arizona Governor Doug Ducey and Arizona Secretary of State Katie Hobbs and submitted as required under the Electoral Count Act. Docket No. 1 ¶ 22. That same

day, the Nominee-Electors state that they also convened in Arizona and voted for Donald J. Trump and Michael R. Pence. *Id.* ¶ 20. Similar actions took place in Georgia, Pennsylvania, Wisconsin, and Michigan (with Arizona, the “Contested States”). *Id.* ¶ 20–21. Combined, the Contested States represent seventy-three electoral votes. *See id.* ¶ 23.

On December 27, Plaintiffs filed this lawsuit, alleging that there are now “competing slates” of electors from the Contested States and asking the Court to declare that the Electoral Count Act is unconstitutional and that the Vice President has the “exclusive authority and sole discretion” to determine which electoral votes should count. *Id.* ¶ 73. They also ask for a declaration that “the Twelfth Amendment contains the exclusive dispute resolution mechanisms” for determining an objection raised by a Member of Congress to any slate of electors and an injunction barring the Vice President from following the Electoral Count Act. *Id.* On December 28, Plaintiffs filed an Emergency Motion for Expedited Declaratory Judgment and Emergency Injunctive Relief (“Emergency Motion”). Docket No. 2. Plaintiffs request “an expedited summary proceeding” under Federal Rule of Civil Procedure 57. *Id.*

On December 31, the Vice President opposed Plaintiffs’ motion. Docket No. 18.

## II.

As mentioned above, before the Court can address the merits of Plaintiff’s Emergency Motion, it must ensure that it has subject matter jurisdiction. *See, e.g., Cary*, 44 U.S. at 245 (“The courts of the United States are all limited in their nature and constitution, and have not the powers inherent in courts existing by prescription or by the common law.”); *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 340–41 (2006)

(“If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so.”). Article III of the U.S. Constitution limits federal courts to deciding only “cases” or “controversies,” which ensures that the judiciary “respects ‘the proper—and properly limited—role of the courts in a democratic society.’” *DaimlerChrysler*, 547 U.S. at 341 (quoting *Allen v. Wright*, 468 U.S. 737, 750 (1984)); *see also Raines*, 521 U.S. at 828 (quoting *United States v. Richardson*, 418 U.S. 166, 192 (1974)) (“Our regime contemplates a more restricted role for Article III courts . . . ‘not some amorphous general supervision of the operations of government.’”).

“[A]n essential and unchanging part of the case-or-controversy requirement of Article III” is that the plaintiff has standing. *Lujan*, 504 U.S. at 560. The standing requirement is not subject to waiver and requires strict compliance. *E.g.*, *Lewis v. Casey*, 518 U.S. 343, 349 n.1 (1996); *Raines*, 521 U.S. at 819. A standing inquiry is “especially rigorous” where the merits of the dispute would require the Court to determine whether an action taken by one of the other two branches of the Federal Government is unconstitutional. *Raines*, 521 U.S. at 819–20 (citing *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 542 (1986), and *Valley Forge Christian Coll. v. Ams. United for Separation of Church & St., Inc.*, 454 U.S. 464, 473–74 (1982)). This is because “the law of Art. III standing is built on a single basic idea—the idea of separation of powers.” *Allen*, 468 U.S. at 752, *abrogated on other grounds by Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 (2014). Article III standing “enforces the Constitution’s case-or-controversy requirement.”

*DaimlerChrysler Corp.*, 547 U.S. at 342 (quoting *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11 (2004)). And “[n]o principle is more fundamental to the judiciary’s proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.” *Raines*, 521 U.S. at 818.

Article III standing requires a plaintiff to show: (1) that he “has suffered an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical”; (2) that “the injury is fairly traceable to the challenged action of the defendant”; and (3) that “it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *El Paso Cnty. v. Trump*, 982 F.3d 332, 336 (5th Cir. 2020) (quoting *Friends of the Earth, Inc. v. Laidlaw Env’t. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000)). “The party invoking federal jurisdiction bears the burden of establishing these elements,” and “each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.” *Lujan*, 504 U.S. at 561. “At the pleading stage, general factual allegations of injury resulting from the defendant’s conduct may suffice.” *Id.*

### III.

Here, Plaintiffs have failed to demonstrate that they have standing to bring the claim alleged in Count I of their complaint.

#### A.

The first Plaintiff is the Representative for Texas’s First Congressional District, the Honorable Louie Gohmert. Congressman Gohmert argues that he will



be injured because “he will not be able to vote as a Congressional Representative in accordance with the Twelfth Amendment.” Docket No. 2 at 4. Specifically, Congressman Gohmert argues that on January 6, 2021, when Congress convenes to count the electoral votes for President and Vice President, he “will object to the counting of the Arizona slate of electors voting for Biden and to the Biden slates from the remaining Contested States.” Docket No. 1 ¶ 6. If a member of the Senate likewise objects, then under Section 15 of the Electoral Count Act, each member of the House and Senate is entitled to vote to resolve the objections, which Congressman Gohmert argues is inconsistent with the state-by-state voting required under the Twelfth Amendment. Docket No. 2 at 5. Congressman Gohmert argues that the Vice President’s compliance with the procedures of the Electoral Count Act will directly cause his alleged injury. *Id.* at 7. And he argues that a declaration that Sections 5 and 15 of the Electoral Count Act are unconstitutional would redress his alleged injury. *Id.* at 9–10.

Congressman Gohmert’s argument is foreclosed by *Raines v. Byrd*, which squarely held that Members of Congress lack standing to bring a claim for an injury suffered “solely because they are Members of Congress.” 521 U.S. at 821. And that is all Congressman Gohmert is alleging here. He does not identify any injury to himself as an individual, but rather a “wholly abstract and widely dispersed” institutional injury to the House of Representatives. *Id.* at 829. Congressman Gohmert does not allege that he was “singled out for specially unfavorable treatment as opposed to other Members of their respective bodies,” does not claim that he has

“been deprived of something to which [he] *personally* [is] entitled,” and does not allege a “loss of any private right, which would make the injury more concrete.” *Id.* at 821 (emphasis in original). Congressman Gohmert’s alleged injury is “a type of institutional injury (the diminution of legislative power), which necessarily damages all Members of Congress.” *Id.* Under these circumstances, the Supreme Court held in *Raines*, a Member of Congress does not have “a sufficient ‘personal stake’” in the dispute and lacks “a sufficiently concrete injury to have established Article III standing.” *Id.* at 830.

For the first time in their reply brief, Plaintiffs assert that Congressman Gohmert has standing as a Texas voter, relying on *League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 659 F.3d 421, 430 (5th Cir. 2011). Docket No. 30 at 30, 33–34. The Court disagrees. In *LULAC*, the Fifth Circuit held that an individual voter had standing to challenge amendments to the City of Boerne’s city council election scheme that would allegedly deprive him of a “pre-existing right to vote for certain offices.” 659 F.3d at 430. That is not the case here. Congressman Gohmert does not allege that he was denied the right to vote in the 2020 presidential election. Rather, he asserts that under the Electoral Count Act, “he will not be able to vote *as a Congressional Representative* in accordance with the Twelfth Amendment.” Docket No. 2 at 4 (emphasis added). Because Congressman Gohmert is asserting an injury in his role as a Member of Congress rather than as an individual voter, *Raines* controls.

Further weighing against Congressman Gohmert’s standing here is the speculative nature of the alleged injury. “To establish Article III standing, an injury must be ‘concrete, particularized, and actual or imminent.’” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013) (quoting *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149 (2010)); *see also Lujan*, 504 U.S. at 560 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)) (alleged injury cannot be “conjectural” or “hypothetical”). “Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly* impending.” *Clapper*, 568 U.S. at 409 (quoting *Lujan*, 504 U.S. at 565 n.2).

Here, Congressman Gohmert’s alleged injury requires a series of hypothetical—but by no means certain—events. Plaintiffs presuppose what the Vice President will do on January 6, which electoral votes the Vice President will count or reject from contested states, whether a Representative and a Senator will object under Section 15 of the Electoral Count Act, how each member of the House and Senate will vote on any such objections, and how each state delegation in the House would potentially vote under the Twelfth Amendment absent a majority electoral vote. All that makes Congressman Gohmert’s alleged injury far too uncertain to support standing under Article III. *Id.* at 414 (“We decline to abandon our usual reluctance to endorse standing theories that rest on speculation about the decisions of independent actors.”).

Accordingly, the Court finds that Congressman Gohmert lacks standing to bring the claim alleged here.

## B.

The Nominee-Electors argue that they have standing under the Electors Clause “as candidates for the office of Presidential Elector because, under Arizona law, a vote cast for the Republican Party’s President and Vice President is cast for the Republican Presidential Electors.” Docket No. 2 at 6 (citing ARIZ. REV. STAT. § 16-212). The Nominee-Electors were injured, Plaintiffs contend, when Governor Ducey unlawfully certified and transmitted the “competing slate of Biden electors” to be counted in the Electoral College. *Id.* at 7.

This alleged injury, however, is not fairly traceable to any act of the Vice President. Nor is it an injury likely to be redressed by a favorable decision here. *See Friends of the Earth*, 528 U.S. at 180–81.<sup>1</sup> Plaintiffs do not allege that the Vice President had any involvement in the “certification and transmission of a competing

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<sup>1</sup> The Court need not decide whether the Nominee-Electors were “candidates” under Arizona law. Plaintiffs cite *Carson v. Simon*, in which the Eighth Circuit held that prospective presidential electors are “candidates” under Minnesota law and have standing to challenge how votes are tallied in Minnesota. 978 F.3d 1051, 1057 (8th Cir. 2020). But the U.S. District Court for the District of Arizona has distinguished *Carson*, holding that presidential electors in Arizona are ministerial and are “not candidates for office as the term is generally understood” under Arizona law. *Bowyer v. Ducey*, — F. Supp. 3d —, 2020 WL 7238261, at \*4 (D. Ariz. Dec. 9, 2020); *see also Feehan v. Wis. Elections Comm’n*, No. 20-CV-1771-PP, 2020 WL 7250219, at \*12 (E.D. Wis. Dec. 9, 2020) (nominee-elect is not a candidate under Wisconsin law). “Arizona law makes clear that the duty of an Elector is to fulfill a ministerial function, which is extremely limited in scope and duration, and that they have no discretion to deviate at all from the duties imposed by the statute.” *Bowyer*, 2020 WL 7238261, at \*4 (citing ARIZ. REV. STAT. § 16-212(c)). Arizona voters, moreover, vote “for their preferred presidential candidate,” not any single elector listed next to the presidential candidates’ names. *Id.* (citing ARIZ. REV. STAT. § 16-507(b)). The court in *Bowyer* therefore held that nominee-electors in Arizona lacked standing to sue state officials for alleged voting irregularities. *See id.* In any event, even if the Nominee-Electors had standing to sue state officials to redress the injury alleged here, they have not done so. Plaintiffs have named only the Vice President, and they have not shown “a fairly traceable connection between [their] injury and the complained-of conduct of defendant.” *E.g., Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 103 (1998).

slate of Biden electors.” Docket No. 2 at 7. Nor could they. *See* 3 U.S.C. § 6. That act is performed solely by the Arizona Governor, who is a “third party not before the court.” *Lujan*, 504 U.S. at 560–61 (quoting *Simon v. Eastern Ky. Welfare Rts. Org.*, 426 U.S. 26, 41–42 (1976)). Indeed, Plaintiffs acknowledge that their injury was caused by Arizona officials in Arizona, the “Vice President did not cause [their] injury,” and their “unlawful injuries [were] suffered in Arizona.” Docket No. 2 at 7.

The Nominee-Electors argue that their injury is nevertheless fairly traceable to the Vice President because he will “ratify and purport to make lawful the unlawful injuries that Plaintiffs suffered in Arizona.” *Id.* For support, Plaintiffs cite *Sierra Club v. Glickman*, in which the Fifth Circuit held that an environmental injury was fairly traceable to the Department of Agriculture, even though the injury was directly caused by third-party farmers, because the Department had “the ability through various programs to affect the pumping decisions of those third party farmers to such an extent that the plaintiff’s injury could be relieved.” 156 F.3d 606, 614 (5th Cir. 1998). Nothing like that is alleged here. The Vice President’s anticipated actions on January 6 will not affect the decision of Governor Ducey regarding the certification of presidential electors—which occurred more than two weeks ago on December 14. Even “ratifying” or “making lawful” the Governor’s decision, as Plaintiffs argue will occur here, will not have any “coercive effect” on Arizona’s certification of electoral votes. *See Bennett v. Spear*, 520 U.S. 154, 168–69 (1997).

For similar reasons, the Nominee-Electors’ claimed injury is not likely to be redressed here. To satisfy redressability, Plaintiffs must show that it is “likely” their

alleged injury will be “redressed by a favorable decision.” *Lujan*, 504 U.S. at 561. But here, Plaintiffs seek declaratory and injunctive relief as to the manner of the Vice President’s electoral vote *count*. See Docket No. 1 ¶ 73. Such relief will not resolve their alleged harm with respect to Governor Ducey’s electoral vote *certification*. See Docket No. 2 at 7. As the Supreme Court has long held, “a federal court can act only to redress injury that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court.” *Simon*, 426 U.S. at 41–42; see also *El Paso Cnty.*, 982 F.3d at 343 (plaintiff lacks standing where an order granting the requested relief “would not rescind,” and “accordingly would not redress,” the allegedly harmful act).

Even if their injury were the loss of the right to vote in the Electoral College, see Docket No. 2 at 6, Plaintiffs’ requested relief would not redress that injury. Plaintiffs are not asking the Court to order the Vice President to count the Nominee-Electors’ votes, but rather that the Vice President “exercise the exclusive authority and sole discretion in determining which electoral votes to count for a given State,” or alternatively, to decide that no Arizona electoral votes should count. See Docket No. 1 ¶ 73. It is well established that a plaintiff lacks standing where it is “uncertain that granting [the plaintiff] the relief it wants would remedy its injuries.” *Inclusive Comtys. Project, Inc. v. Dep’t of Treasury*, 946 F.3d 649, 657–58 (5th Cir. 2019).

Accordingly, the Court finds that the Nominee-Electors lack standing.<sup>2</sup>


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<sup>2</sup> Plaintiffs Hoffman and Kern claim without supporting argument that they have standing as members of the Arizona legislature. Docket No. 2 at 4. This claim fails for the reasons Congressman Gohmert’s standing argument fails. See *supra* Part III.A.

**IV.**

Because neither Congressman Gohmert nor the Nominee-Electors have standing here, the Court is without subject matter jurisdiction to address Plaintiffs' Emergency Motion or the merits of their claim. *HSBC Bank USA, N.A. as Tr. for Merrill Lynch Mortg. Loan v. Crum*, 907 F.3d 199, 202 (5th Cir. 2018). The Court therefore **DISMISSES** the case without prejudice.

So **ORDERED** and **SIGNED** this 1st day of **January, 2021**.

  
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JEREMY D. KERNODLE  
UNITED STATES DISTRICT JUDGE





United States Court of Appeals  
for the Fifth Circuit



Certified as a true copy and issued  
as the mandate on Jan 02, 2021

Attest: *July W. Cayce*  
Clerk, U.S. Court of Appeals, Fifth Circuit

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No. 21-40001

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LOUIE GOHMERT; TYLER BOWYER; NANCY COTTLE; JAKE  
HOFFMAN; ANTHONY KERN; JAMES R. LAMON; SAM  
MOORHEAD; ROBERT MONTGOMERY; LORAIN PELLEGRINO;  
GREG SAFSTEN; KELLI WARD; MICHAEL WARD,

*Plaintiffs—Appellants,*

MARIAN SHERIDAN; MESHAWN MADDOCK; MARI-ANN HENRY;  
AMY FACCHINELLO; MICHELE LUNDGREN,

*Movants—Appellants,*

*versus*

MICHAEL R. PENCE,

*Defendant—Appellee.*

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:20-CV-660

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No. 21-40001

Before HIGGINBOTHAM, SMITH, and OLDHAM, *Circuit Judges*.

PER CURIAM:\*

This administrative panel is presented with an emergency motion for expedited appeal. We have appellate jurisdiction under 28 U.S.C. § 1291. That includes jurisdiction to determine both our and the district court's jurisdiction. We have the benefit of the briefing before the district court and its 13-page opinion styled Order of Dismissal, issued January 1, 2021. That order adopts the position of the Department of Justice, finding that the district court lacks jurisdiction because no plaintiff has the standing demanded by Article III. We need say no more, and we affirm the judgment essentially for the reasons stated by the district court. We express no view on the underlying merits or on what putative party, if any, might have standing. The motion to expedite is dismissed as moot. The mandate shall issue forthwith.

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

### **Determination of controversy as to appointment of electors**

If any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned.

3 U.S.C. § 5.

### **Credentials of electors; transmission to Archivist of the United States and to Congress; public inspection**

If any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned.

3 U.S.C. § 6.

## **Counting electoral votes in Congress**

Congress shall be in session on the sixth day of January succeeding every meeting of the electors. The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of 1 o'clock in the afternoon on that day, and the President of the Senate shall be their presiding officer. Two tellers shall be previously appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates and papers purporting to be certificates of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter A; and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted according to the rules in this subchapter provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses. Upon such reading of any such certificate or paper, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State which shall have been regularly given by electors whose

appointment has been lawfully certified to according to section 6 of this title from which but one return has been received shall be rejected, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified. If more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, those votes, and those only, shall be counted which shall have been regularly given by the electors who are shown by the determination mentioned in section 5 of this title to have been appointed, if the determination in said section provided for shall have been made, or by such successors or substitutes, in case of a vacancy in the board of electors so ascertained, as have been appointed to fill such vacancy in the mode provided by the laws of the State; but in case there shall arise the question which of two or more of such State authorities determining what electors have been appointed, as mentioned in section 5 of this title, is the lawful tribunal of such State, the votes regularly given of those electors, and those only, of such State shall be counted whose title as electors the two Houses, acting separately, shall concurrently decide is supported by the decision of such State so authorized by its law; and in such case of more than one return or paper purporting to be a return from a State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted which the two Houses shall concurrently decide were cast by lawful electors appointed in accordance with the laws of the State, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State. But if the two Houses shall disagree in respect of the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted. When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the questions submitted. No

votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of.

3 U.S.C. § 15.

### **Presentment Clause**

Every Order, Resolution, or Vote, to Which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

U.S. CONST. art. I, § 7, cl. 3.

### **Electors Clause**

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, § 1, cl. 2.

### **Twelfth Amendment**

The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons

voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;--The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;--the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

U.S. CONST. amend. XII.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

LOUIE GOHMERT, TYLER BOWYER, NANCY  
COTTLE, JAKE HOFFMAN, ANTHONY KERN,  
JAMES R. LAMON, SAM MOORHEAD,  
ROBERT MONTGOMERY, LORAINÉ  
PELLEGRINO, GREG SAFSTEN, KELLI WARD  
and MICHAEL WARD,

Plaintiffs,

v.

THE HONORABLE MICHAEL R. PENCE, VICE  
PRESIDENT OF THE UNITED STATES, in his  
official capacity.

Defendant.

Case No.

COMPLAINT FOR EXPEDITED  
DECLARATORY AND  
EMERGENCY INJUNCTIVE RELIEF

(Election Matter)

**NATURE OF THE ACTION**

1. This civil action seeks an expedited declaratory judgment finding that the elector dispute resolution provisions in Section 15 of the Electoral Count Act, 3 U.S.C. §§ 5 and 15, are unconstitutional because these provisions violate the Electors Clause and the Twelfth Amendment of the U.S. Constitution. U.S. CONST. art. II, § 1, cl. 1 & Amend. XII. Plaintiffs also request emergency injunctive relief required to effectuate the requested declaratory judgment.

2. These provisions of Section 15 of the Electoral Count Act are unconstitutional insofar as they establish procedures for determining which of two or more competing slates of Presidential Electors for a given State are to be counted in the Electoral College, or how objections to a proffered slate are adjudicated, that violate the Twelfth Amendment. This violation occurs because the Electoral Count Act directs the Defendant, Vice President Michael R. Pence, in his capacity as President of the Senate and Presiding Officer over the January 6, 2021 Joint Session



of Congress: (1) to count the electoral votes for a State that have been appointed in violation of the Electors Clause; (2) 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; and (3) replaces the Twelfth Amendment's dispute resolution procedure – under which the House of Representatives has sole authority to choose the President.

3. Section 15 of the Electoral Count Act unconstitutionally violates the Electors Clause by usurping the exclusive and plenary authority of State Legislatures to determine the manner of appointing Presidential Electors, and instead gives that authority to the State's Executive. Similarly, 3 USC § 5 makes clear that the Presidential electors of a state and their appointment by the State Executive shall be conclusive.

4. This is not an abstract or hypothetical question, but a live “case or controversy” under Article III that is ripe for a declaratory judgment arising from the events of December 14, 2020, where the State of Arizona (and several others) have appointed two competing slates of electors.

5. Plaintiffs include the United States Representative for Texas' First Congressional District and the entire slate of Republican Presidential Electors for the State of Arizona. The Arizona Electors have cast Arizona's electoral votes for President Donald J. Trump on December 14, 2020, at the Arizona State Capitol with the permission and endorsement of the Arizona Legislature, *i.e.*, at the time, place, and manner required under Arizona state law and the Electoral Count Act. At the same time, Arizona's Governor and Secretary of State appointed a separate and competing slate of electors who cast Arizona's electoral votes for former Vice-President Joseph R. Biden, despite the evidence of massive multi-state electoral fraud committed on Biden's behalf that changed electoral results in Arizona and in other states such as Georgia, Michigan,

Pennsylvania and Wisconsin that have also put forward competing slates of electors (collectively, the “Contested States”). Collectively, these Contested States have enough electoral votes in controversy to determine the outcome of the 2020 General Election.

6. On January 6, 2021, when Congress convenes to count the electoral votes for President and Vice-President, Plaintiff Representative Gohmert will object to the counting of the Arizona slate of electors voting for Biden and to the Biden slates from the remaining Contested States. Rep. Gohmert is entitled to have his objection determined under the Twelve Amendment, and not through the unconstitutional impositions of a prior Congress by 3 U.S.C. §§ 5 and 15.

7. Senators have also stated that they may object to the Biden slate of electors from the Contested States.<sup>1</sup>

8. This Complaint addresses a matter of urgent national concern that involves only issues of law – namely, a determination that Sections 5 and 15 of the Electoral Count Act violate the Electors Clause and/or the Twelfth Amendment of the U.S. Constitution. The relevant facts are not in dispute concerning the existence of a live case or controversy between Plaintiffs and Defendant, ripeness, standing, and other matters related to the justiciability of Plaintiffs’ claims.<sup>2</sup>

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<sup>1</sup> See <https://www.forbes.com/sites/jackbrewster/2020/12/17/here-are-the-gop-senators-who-have-hinted-at-defying-mcconnell-by-challenging-election/?sh=506395c34ce3>.

<sup>2</sup> The facts relevant to the justiciability of Plaintiffs’ claims are laid out below and demonstrate the certainty or near certainty that the unconstitutional provisions in Section 15 of the Electoral Count Act will be invoked at the January 6, 2021 Joint Session of Congress to choose the next President, namely: (1) there are competing slates of electors for Arizona and the other Contested States that have been or will be submitted to the Electoral College; (2) the Contested States collectively have sufficient (contested) electoral votes to determine the winner of the 2020 General Election – President Trump or former Vice President Biden; (3) legislators in Arizona and other Contested States have contested the certification of their State’s electoral votes by State executives, due to substantial evidence of election fraud that is the subject of ongoing litigation and investigations; and (4) Senators and Members of the House of Representatives have expressed their intent to challenge the electors and electoral votes certified by State executives in the Contested States.

9. Because the requested declaratory judgment will terminate the controversy arising from the conflict between the Twelfth Amendment and the Electoral Count Act, and the facts are not in dispute, it is appropriate for this Court to grant this relief in a summary proceeding without an evidentiary hearing or discovery. *See* Notes of Advisory Committee on Federal Rules of Civil Procedure, Fed. R. Civ. P. 57.

10. Accordingly, Plaintiffs have concurrently submitted a motion for a speedy summary proceeding under Rule 57 of the Federal Rules of Civil Procedure (“FRCP”) to grant the relief requested herein as soon as possible, and for emergency injunctive relief under Rule 65 thereof consistent with the declaratory judgment requested herein on that same date.

11. Accordingly, Plaintiffs respectfully request this Court to issue a declaratory judgment finding that:

- A. Sections 5 and 15 of the Electoral Count Act, 3 U.S.C. §§ 5 and 15, are unconstitutional because they violate the Twelfth Amendment, U.S. CONST. art. II, § 1, cl. 1 & amend. XII on the face of it; and further violate the Electors Clause;
- B. That Vice-President Pence, in his capacity as President of Senate and Presiding Officer of the January 6, 2021 Joint Session of Congress under the Twelfth Amendment, 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, and must ignore and may not rely on any provisions of the Electoral Count Act that would limit his exclusive authority and his sole discretion to determine the count, which could include votes from the slates of Republican electors from the Contested States;

- C. That, with respect to competing slates of electors from the State of Arizona or other Contested States, the Twelfth Amendment contains the exclusive dispute resolution mechanisms, namely, that (i) Vice-President Pence determines which slate of electors' votes count, or neither, for that State; (ii) how objections from members of Congress to any proffered slate of electors is adjudicated; and (iii) if no candidate has a majority of 270 elector votes, then the House of Representatives (and only the House of Representatives) shall choose the President where "the votes [in the House of Representatives] shall be taken by states, the representation from each state having one vote," U.S. CONST. amend. XII;
- D. That with respect to the counting of competing slates of electors, the alternative dispute resolution procedure or priority rule in 3 U.S.C. § 15, together with its incorporation of 3 U.S.C. § 5, shall have no force or effect because it nullifies and replaces the Twelfth Amendment rules above with an entirely different procedure; and
- E. Issue any other declaratory judgments or findings or injunctive relief necessary to support or effectuate the foregoing declaratory judgments.

### **JURISDICTION AND VENUE**

12. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 which provides, "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

13. This Court also has subject matter jurisdiction under 28 U.S.C. § 1343 because this action involves a federal election for President of the United States. "A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional

question.” *Bush v. Gore*, 531 U.S. 98, 113 (2000) (Rehnquist, C.J., concurring); *Smiley v. Holm*, 285 U.S. 355, 365 (1932).

14. The jurisdiction of the Court to grant declaratory relief is conferred by 28 U.S.C. §§ 2201 and 2202 and by Rule 57, Fed. R. Civ. P., and emergency injunctive relief by Rule 65, Fed. R. Civ. P.

15. Venue is proper because Plaintiff Gohmert resides in Tyler, Texas, he maintains his primary congressional office in Tyler, and no real property is involved in the action. 28 U.S.C. § 1391(e)(1).

### **THE PARTIES**

16. Plaintiff Louie Gohmert is a duly elected member of the United States House of Representatives for the First Congressional District of Texas. On November 3, 2020 he won re-election of this Congressional seat and plans to attend the January 6, 2021 session of Congress. He resides in the city of Tyler, in Smith County, Texas.

17. Each of the following Plaintiffs is a resident of Arizona, a registered Arizona voter and a Republican Party Presidential Elector on behalf of the State of Arizona, who voted their competing slate for President and Vice President on December 14, 2020: a) Tyler Bowyer, a resident of Maricopa County and a Republican National Committeeman; b) Nancy Cottle, a resident of Maricopa County and Second Vice-Chairman of the Maricopa County Republican Committee; c) Jake Hoffman, a resident of Maricopa County and member-elect of the Arizona House of Representatives; d) Anthony Kern, a resident of Maricopa County and an outgoing member of the Arizona House of Representatives; e) James R. Lamon, a resident of Maricopa County; f) Samuel Moorhead, a resident of Gila County; g) Robert Montgomery, a resident of Cochise County and Republican Party Chairman for Cochise County; h) Loraine Pellegrino, a

resident of Maricopa County; i) Greg Safsten, a resident of Maricopa County and Executive Director of the Republican Party of Arizona; j) Kelli Ward, a resident of Mohave County and Chair of the Arizona Republican Party; and k) Michael Ward, a resident of Mohave County.

18. The above eleven plaintiffs constitute the full slate of the Arizona Republican party's nominees for presidential electors (the "Arizona Electors").

19. The Defendant is Vice President Michael R. Pence named in his official capacity as the Vice President of the United States. The declaratory and injunctive relief requested herein applies to his duties as President of the Senate and Presiding Officer at the January 6, 2021 Joint Session of Congress carried out pursuant to the Electoral Count Act and the Twelfth Amendment.

#### STATEMENT OF FACTS

20. The Plaintiffs include a United States Representative from Texas, the entire slate of Republican Presidential Electors for the State of Arizona as well as an outgoing and incoming member of the Arizona Legislature. On December 14, 2020, pursuant to the requirements of applicable state laws and the Electoral Count Act, the Arizona Electors, with the knowledge and permission of the Republican-majority Arizona Legislature, convened at the Arizona State Capitol, and cast Arizona's electoral votes for President Donald J. Trump and Vice President Michael R. Pence.<sup>3</sup> On the same date, the Republican Presidential Electors for the States of Georgia,<sup>4</sup>

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<sup>3</sup> See *GOP Elector Nominees cast votes for Trump in Arizona, Georgia, Pennsylvania*, by Dave Boyer, The Washington Times, December 14, 2020, <https://www.washingtontimes.com/news/2020/dec/14/gop-electors-cast-votes-trump-georgia-pennsylvania/>.

<sup>4</sup> See *id.*

Pennsylvania<sup>5</sup> and Wisconsin<sup>6</sup> met at their respective State Capitols to cast their States' electoral votes for President Trump and Vice President Pence.

21. Michigan's Republican electors attempted to vote at their State Capitol on December 14th but were denied entrance by the Michigan State Police. Instead, they met on the grounds of the State Capitol and cast their votes for President Trump and Vice President Pence vote.<sup>7</sup>

22. On December 14, 2020, in Arizona and the other States listed above, the Democratic Party's slate of electors convened in their respective State Capitols to cast their electoral votes for former Vice President Joseph R. Biden and Senator Kamala Harris. On the same day, Arizona Governor Doug Ducey and Arizona Secretary of State Katie Hobbs submitted the Certificate of Ascertainment with the Biden electoral votes pursuant to the National Archivist pursuant to the Electoral Count Act.<sup>8</sup>

23. Accordingly, there are now competing slates of Republican and Democratic electors in five States with Republican majorities in both houses of their State Legislatures – Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin (*i.e.*, the Contested States) – that

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<sup>5</sup> *See id.*

<sup>6</sup> *See Wisconsin GOP Electors Meet to Cast their own Votes Too Just in Case*, by Nick Viviani, WMTV, NBC15.com, December 14, 2020, <https://www.nbc15.com/2020/12/14/wisconsin-gop-electors-meet-to-cast-their-own-votes-too-just-in-case/> last visited December 14, 2020.

<sup>7</sup> *See Michigan Police Block GOP Electors from Entering Capitol*, by Jacob Palmieri, the Palmieri Report, December 14, 2020, <https://thepalmierireport.com/michigan-state-police-block-gop-electors-from-entering-capitol/>.

<sup>8</sup> *See Democratic Electors Cast Ballots in Arizona for First Time Since 1996*, by Nicole Valdes, ABC15.com, December 14, 2020, *available at*: <https://www.abc15.com/news/election-2020/democratic-electors-cast-ballots-in-arizona-for-first-time-since-1996>.

collectively have 73 electoral votes, which are more than sufficient to determine the winner of the 2020 General Election.<sup>9</sup>

24. The Arizona Electors, along with Republican Presidential Electors in Georgia, Michigan, Pennsylvania, and Wisconsin, took this step as a result of the extraordinary events and substantial evidence of election fraud and other illegal conduct before, during and after the 2020 General Election in these States. The Arizona Legislature has conducted legislative hearings into these voting fraud allegations, and is actively investigating these matters, including issuing subpoenas of Maricopa County, Arizona (which accounts for over 60% of Arizona's population and voters) voting machines for forensic audits.<sup>10</sup>

25. On December 14, 2020, members of the Arizona Legislature passed a Joint Resolution in which they: (1) found that the 2020 General Election “was marred by irregularities so significant as to render it highly doubtful whether the certified result accurately represents the will of the voters;” (2) invoked the Arizona Legislature's authority under the Electors Clause and 5 U.S.C. § 2 to declare the 2020 General Election a failed election and to directly appoint Arizona's electors; (3) resolved that the Plaintiff Arizona Electors' “11 electoral votes be accepted for ... Donald J. Trump or to have all electoral votes nullified completely until a full forensic audit can be conducted;” and (4) further resolved “that the United States Congress is not to consider a slate

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<sup>9</sup> Republican Presidential Electors in the States of Nevada and New Mexico, which have Democrat majority state legislature, also met on December 14, 2020, at their State Capitols to cast their votes for President Trump and Vice President Pence.

<sup>10</sup> Maricopa County election officials have refused to comply with these subpoenas or to turn over voting machines or voting records and have sued to quash the subpoena. Plaintiff Arizona Electors have moved to intervene in this Arizona state proceeding. *See generally Maricopa Cty. v. Fann*, Case No. CV2020-016840 (Az. Sup. Ct. Dec. 18, 2020).



of electors from the State of Arizona until the Legislature deems the election to be final and all irregularities resolved.”<sup>11</sup>

26. Public reports have also highlighted wide-spread election fraud in the other Contested States that prompted competing Electors’ slates.<sup>12</sup>

27. Republican Senators and Republican Members of the House of Representatives have also expressed their intent to oppose the certified slates of electors from the Contested States due to the substantial evidence of election fraud in the 2020 General Election. Multiple Senators and House Members have stated that they will object to the Biden electors at the January 6, 2021 Joint Session of Congress.<sup>13</sup> Plaintiff Gohmert will object to the counting of the Arizona electors voting for Biden, as well as to the Biden electors from the remaining Contested States.

28. Based on the foregoing facts, Defendant Vice President Pence, in his capacity as President of the Senate and Presiding Officer at the January 6, 2021 Joint Session of Congress to select the next President, will be presented with the following circumstances: (1) competing slates of electors from the State of Arizona and the other Contested States (namely, Georgia, Michigan, Pennsylvania, and Wisconsin) (2) that represent sufficient electoral votes (a) if counted, to determine the winner of the 2020 General Election, or (b) if not counted, to deny either President Trump or former Vice President Biden sufficient votes to win outright; and (3) objections from at

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<sup>11</sup> See **Ex. A**, “A Joint Resolution of the 54th Legislature, State of Arizona, To The 116th Congress, Office of the President of the Senate Presiding,” December 14, 2020 (“December 14, 2020 Joint Resolution”).

<sup>12</sup> See *The Immaculate Deception, Six Key Dimensions of Election Irregularities, The Navarro Report*. <https://bannonswarroom.com/wp-content/uploads/2020/12/The-Immaculate-Deception-12.15.20-1.pdf>

<sup>13</sup> See, e.g., *Dueling Electors and the Upcoming Joint Session of Congress*, by Zachary Steiber, Epoch Times, Dec. 17, 2020, available at: [https://www.theepochtimes.com/explainer-dueling-electors-and-the-upcoming-joint-session-of-congress\\_3622992.html](https://www.theepochtimes.com/explainer-dueling-electors-and-the-upcoming-joint-session-of-congress_3622992.html).

least one Senator and at least one Member of the House of Representatives to the counting of electoral votes from one or more of the Contested States.

29. The choice between the Twelfth Amendment and 3 U.S.C. § 15 raises important procedural differences. In the incoming 117th Congress, the Republican Party has a majority in 27 of the House delegations that would vote under the Twelfth Amendment. The Democrat Party has a majority in 20 of those House delegations, and the two parties are evenly divided in three of those delegations. By contrast, under 3 U.S.C. § 15, Democrats have a ten- or eleven-seat majority in the House, depending on the final outcome of the election in New York's 22nd District.

30. Accordingly, it is the foregoing conflict between the Twelfth Amendment of the U.S. Constitution and Section 15 of the Electoral Count Act that establish the urgency for this Court to issue a declaratory judgment that Section 15 of the Electoral Count Act is unconstitutional.

#### **RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS**

31. **Presidential Electors Clause.** The U.S. Constitution grants State Legislatures the exclusive authority to appoint Presidential Electors:

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, § 1 ("Electors Clause").

32. The Supreme Court has affirmed that the “power and jurisdiction of the state [legislature]” to select electors “is exclusive,” *McPherson v. Blacker*, 146 U.S. 1, 11 (1892); this power “cannot be taken from them or modified” by statute or even the state constitution,” and “there is no doubt of the right of the legislature to resume the power at any time.” *Id.* at 10 (citations omitted). In *Bush v. Gore*, 531 U.S. 98 (2000), the Supreme Court reaffirmed *McPherson's* holding that “the state legislature’s power to select the manner for appointing

electors is plenary,” *Bush*, 531 U.S. at 104 (*citing McPherson*, 146 U.S. at 35), noting that the state legislature “may, if it so chooses, select the electors itself,” and that even after deciding to select electors through a statewide election, “can take back the power to appoint electors.” *Id.* (citation omitted).

33. **The Twelfth Amendment.** The Twelfth Amendment sets forth the procedures for counting electoral votes and for resolving disputes over whether and which electoral votes may be counted for a State. The first section describes the meeting of the Electoral College and the procedures up to the casting of the electoral votes by the Presidential Electors in their respective states, which occurred on December 14, 2020, with respect to the 2020 General Election:

The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate.

U.S. CONST. amend. XII.

34. The second section describes how Defendant Vice President Pence, in his role as President of the Senate and Presiding Officer for the January 6, 2021 Joint Session of Congress, shall “count” the electoral votes.

The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted[.]

U.S. CONST. amend. XII.

35. Under the Twelfth Amendment, Defendant Pence alone has the exclusive authority and sole discretion to open and permit the counting of the electoral votes for a given state, and where there are competing slates of electors, or where there is objection to any single slate of electors, to determine which electors’ votes, or whether none, shall be counted. Notably, neither

the Twelfth Amendment nor the Electoral Count Act, provides any mechanism for judicial review of the Presiding Officer's determinations.<sup>14</sup> Instead, the Twelfth Amendment and the Electoral Count Act adopt different procedures for the President of the Senate (Twelfth Amendment) or both Houses of Congress (Electoral Count Act) to resolve any such disputes and the authority for the final determinations, in the event of disagreement, to different parties; namely, the Electoral Count Act gives it to the Executive of the State; while the Twelfth Amendment vests sole authority with the Vice President.

36. The third section of the Twelfth Amendment sets forth the procedures for selecting the President (solely) by the House of Representatives, in the event that no candidate has received a majority of electoral votes counted by the President of the Senate.

*The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.*

U.S. CONST. amend. XII (emphasis added).

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<sup>14</sup> See, e.g., Nathan L. Colvin & Edward B. Foley, *The Twelfth Amendment: A Constitutional Ticking Time Bomb*, U. of Miami L. Rev. 64:475, 526 (2010) (discussing reviews of the Electoral Count Act's ("ECA") legislative history and concluding that, "[o]ne of the more thorough reviews of the legislative history of the ECA reveals that Congress considered giving the Court some role in the process but rejected the idea every time, and it was clear that Congress did not think the Court had a constitutional role nor did it believe that the Court should have any jurisdiction at all." Plaintiffs agree that resolution of disputes before Congress, arising on January 6, 2021, over competing slates of electors, or objections to any slate of electors, are matters outside the purview of federal courts; but the federal courts must determine whether the ECA is unconstitutional. This position is fully consistent with the declaratory judgment requested herein.

37. There are four key features of this Twelfth Amendment procedure that should be noted when comparing it with the Electoral Count Act's procedures: (1) the President is to be chosen solely by the House of Representatives, with no role for the Senate; (2) votes are taken by State (with one vote per State), rather than by individual House members; (3) the President is deemed the candidate that receives the majority of States' votes, rather than a majority of individual House members' votes; and (4) there are no other restrictions on this majority rule provision; in particular, no "tie breaker" or priority rules based on the manner or State authority that originally appointed the electors on December 14, 2020 as is the case under the Electoral Count Act (which gives priority to electors' certified by the State's executive).

38. **The Electoral Count Act.** The Electoral Count Act of 1887, as subsequently amended, includes a number of provisions that are in direct conflict with the text of the Electors Clause and the Twelfth Amendment.

39. Sections 5 and 15 of the Electoral Count Act adopt an entirely different set of procedures for the counting of electoral votes, for addressing situations where one candidate does not receive a majority, and for resolving disputes. Sections 16 to 18 of the Electoral Count Act provide additional procedural rules governing the Joint Session of Congress (to be held January 6, 2021 for the 2020 General Election).

40. The first part of Section 15 is consistent with the Twelfth Amendment insofar as it provides that "the President of the Senate shall be their presiding officer" and that "all the certificates and papers purporting to be certificates of the electoral votes" are to be "opened by the President of the Senate." 3 U.S.C. § 15. However, Section 15 diverges from the Twelfth Amendment by adopting procedures for the President of the Senate to "call for objections," and if there are objections made in writing by one Senator and one Member of the House of

Representatives, then this shall trigger a dispute-resolution procedure found nowhere in the Twelfth Amendment.

41. The Section 15’s dispute resolution procedures are lengthy and reproduced in their entirety below:

When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section 6 of this title [3 USCS § 6]<sup>15</sup> from which but one return has been received shall be rejected, *but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified.* If more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, those votes, and those only, shall be counted which shall have been regularly given by the electors who are shown by the determination mentioned in section 5 [3 USCS § 5] of this title to have been appointed, if the determination in said section provided for shall have been made, or by such successors or substitutes, in case of a vacancy in the board of electors so ascertained, as have been appointed to fill such vacancy in the mode provided by the laws of the State; but in case there shall arise the question which of two or more of such State authorities determining what electors have been appointed, as mentioned in section 5 of this title [3 USCS § 5], *is the lawful tribunal of such State, the votes regularly given of those electors, and those only*, of such State shall be counted whose title as electors the two Houses, acting separately, shall concurrently decide is supported by the decision of such State so authorized by its law; and in such case of more than one return or paper purporting to be a return from a State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted which the two Houses shall concurrently decide were cast by lawful electors appointed in accordance with the laws of the State, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such

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<sup>15</sup> 3 U.S.C. § 6 is inconsistent with the Electors Clause—which provides that electors “shall sign and certify, and transmit sealed to the seat of the government of the United States” the results of their vote, U.S. Const. art. II, § 1, cl. 2-3—because § 6 relies on state executives to forward the results of the electors’ vote to the Archivist for delivery to Congress. 3 U.S.C. § 6. Although the means of delivery are arguably inconsequential, the Constitution vests state executives with no role whatsoever in the process of electing a President. A state executive lends no official imprimatur to a given slate of electors under the Constitution.

*State. But if the two Houses shall disagree in respect of the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted.* When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the questions submitted. No votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of.

3 U.S.C. § 15 (emphasis added).

42. First, the Electoral Count Act submits disputes over the “count” of electoral votes to both the House of Representatives and to the Senate. The Twelfth Amendment envisages no such role for both Houses of Congress. The President of the Senate, and the President of the Senate alone, shall “count” the electoral votes. This intent is borne out by a unanimous resolution attached to the final Constitution that described the procedures for electing the first President (*i.e.*, for a time when there would not already be a Vice President), stating in relevant part “that the Senators should appoint a President of the Senate, for the sole Purpose of receiving, opening and counting the Votes for President.” 2 M. Farrand, RECORDS OF THE FEDERAL CONVENTION OF 1787, at 666 (1911). For all subsequent elections, when there would be a Vice President to act as President of the Senate, the Constitution vests the opening and counting in the Vice President.

43. Second, the Electoral Count Act gives both the House of Representatives and the Senate the power to vote, or “decide,” which of two or more competing slates of electors shall be counted, and it requires the concurrence of both to “count” the electoral votes for one of the competing slates of electors.

44. Under the Twelfth Amendment, the President of the Senate has the sole authority to count votes in the first instance, and then the House may do so *only* in the event that no candidate receives a majority counted by the President of the Senate. There is no role for the Senate to participate in choosing the President.

45. Third, the Electoral Count Act eliminates entirely the unique mechanism by which the House of Representatives under the Twelve Amendment is to choose the President, namely, where “the votes shall be taken by states, the representation for each state having one vote.” U.S. CONST. amend. XII. The Electoral Count Act is silent on how the House of Representatives is to “decide” which electoral votes were cast by lawful electors.

46. Fourth, the Electoral Count Act adopts a priority rule, or “tie breaker,” “if the two Houses shall disagree in respect of counting of such votes,” in which case “the votes of the electors whose appointment shall have been certified by the executive of the State ... shall be counted.” This provision not only conflicts with the President of the Senate’s exclusive authority and sole discretion under the Twelfth Amendment to decide which electoral votes to count, but also with the State Legislature’s exclusive and plenary authority under the Electors Clause to appoint the Presidential Electors for their State.

47. The Electoral Count Act is unconstitutional because it exceeds the power of Congress to enact. It is well settled that “one legislature may not bind the legislative authority of its successors,” *United States v. Winstar Corp.*, 518 U.S. 839, 872 (1996), which is a foundational and “centuries-old concept,” *id.*, that traces to Blackstone’s maxim that “Acts of parliament derogatory from the power of subsequent parliaments bind not.” *Id.* (quoting 1 WILLIAM BLACKSTONE, COMMENTARIES \*90). “There is no constitutionally prescribed method by which one Congress may require a future Congress to interpret or discharge a constitutional responsibility in any particular way.” Laurence H. Tribe, *Erog v. Hsub and Its Disguises: Freeing Bush v. Gore from Its Hall of Mirrors*, 115 HARV. L. REV. 170, 267 n.388 (2001).

48. The Electoral Count Act also violates the Presentment Clause by purporting to create a type of bicameral order, resolution, or vote that is not presented to the President. *See* U.S.



CONST. art. I, § 7, cl. 3 (“Every Order, Resolution, or Vote, to Which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.”)

49. The House and Senate cannot resolve the issues that the Electoral Count Act asks them to resolve without either a supermajority in both houses or presentment. The Electoral Count Act similarly restricts the authority of the House of Representatives and the Senate to control their internal discretion and procedures pursuant to Article I, Section 5 which provides that “[e]ach House may determine the Rules of its Proceedings ...” U.S. CONST. art. I, § 5, cl. 2.

50. Further, the Electoral Count Act improperly delegates tie-breaking authority to State executives (who have no agency under the Electors Clause or election amendments) when a State presents competing slates that Congress cannot resolve, or when an objection is presented to a particular slate of electors.

51. The Electoral Count Act also violates the non-delegation doctrine, the separation-of-powers and anti-entrenchment doctrines. *See generally* Chris Land & David Schultz, *On the Unenforceability of the Electoral Count Act*, 13 Rutgers J.L. & Pub. Policy 340, 364-377 (2016).

### JUSTICIABILITY AND JURISDICTION

52. **This Court Can Grant Declaratory Judgment in a Summary Proceeding.** This Court has the authority to enter a declaratory judgment and to provide injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202. The court may order a speedy hearing of a declaratory judgment action. Fed. Rules Civ. Proc. R. 57,

Advisory Committee Notes. A declaratory judgment is appropriate when it will “terminate the controversy” giving rise to the proceeding. *Id.* Inasmuch as it often involves only an issue of law on undisputed or relatively undisputed facts, it operates frequently as a summary proceeding, justifying docketing the case for early hearing as on a motion. *Id.*

53. As described above, Plaintiffs’ claims involve legal issues only – specifically, whether the Electoral Count Act violates the Twelfth Amendment of the U.S. Constitution – that do not require this court to resolve any disputed factual issues.

54. Moreover, the factual issues related to the justiciability of Plaintiffs’ claims are not in dispute. To assist this Court to grant the relief on the expedited basis requested herein, Plaintiffs address a number of likely objections to this Court’s jurisdiction and the justiciability of Plaintiffs’ claims that may be raised by Defendant.

55. **Plaintiffs Have Standing.** Plaintiffs have standing as including a Member of the House of Representatives, Members of the Arizona Legislature, and as Presidential Electors for the State of Arizona.

56. Prior to December 14, 2020, Plaintiff Arizona Electors had standing under the Electors Clause as candidates for the office of Presidential Elector because, under Arizona law, a vote cast for the Republican Party’s President and Vice President is cast for the Republican Presidential Electors. *See* ARS § 16-212. Accordingly, Plaintiff Arizona Electors, like other candidates for office, “have a cognizable interest in ensuring that the final vote tally reflects the legally valid votes cast,” as “[a]n inaccurate vote tally is a concrete and particularized injury to candidates such as the Electors.” *Carson v. Simon*, 978 F.3d 1051, 1057 (8th Cir. 2020) (affirming that Presidential Electors have Article III and prudential standing under Electors Clause). *See also* *Wood v. Raffensperger*, No. 20-14418, 2020 WL 7094866, \*10 (11th Cir. Dec. 5, 2020) (affirming

that if Plaintiff voter had been a candidate for office “he could assert a personal, distinct injury” required for standing); *Trump v. Wis. Elections Comm’n*, No. 20-cv-1785, 2020 U.S. Dist. LEXIS 233765 at \*26 (E.D. Wis. Dec. 12, 2020) (President Trump, “as candidate for election, has a concrete particularized interest in the actual results of the election.”).

57. But for the alleged wrongful conduct of Arizona executive branch and Maricopa County officials under color of law, by certifying a fraudulently produced election result in Mr. Biden’s favor, the Plaintiff Arizona Electors would have been certified as the presidential electors for Arizona, and Arizona’s Governor and Secretary of State would have transmitted uncontested votes for Donald J. Trump and Michael R. Pence to the Electoral College. The certification and transmission of a competing slate of Biden electors has resulted in a unique injury that only Plaintiff Arizona Electors could suffer, namely, having a competing slate of electors take their place and their votes in the Electoral College.

58. The upcoming January 6, 2021 Joint Session of Congress provides further grounds of standing for the requested declaratory judgment that the Electoral Count Act is unconstitutional. Then, Plaintiffs are certain or nearly certain to suffer an injury-in-fact caused by Defendant Vice President Pence, acting as Presiding Officer, if Defendant ignores the Twelfth Amendment and instead follows the procedures in Section 15 of the Electoral Count Act to resolve the dispute over which slate of Arizona electors is to be counted.

59. The Twelfth Amendment gives Defendant exclusive authority and sole discretion as to which set of electors to count, or not to count any set of electors; if no candidate receives a majority of electoral votes, then the President is to be chosen by the House, where “the votes shall be taken by States, the representation from each state having one vote.” U.S. CONST. amend. XII. If Defendant Pence instead follows the procedures in Section 15 of the Electoral Count Act,

Plaintiffs' electoral votes will not be counted because (a) the Democratic majority House of Representatives will not "decide" to count the electoral votes of Plaintiff Republican electors; and (b) either the Senate will concur with the House not to count their votes, or the Senate will not concur, in which case, the electoral votes cast by Biden's electors will be counted because the Biden slate of electors was certified by Arizona's executive.

60. It is sufficient for the purposes of declaratory judgment that the injury is threatened. The declaratory and injunctive relief requested by Plaintiffs "may be made before actual completion of the injury-in-fact required for Article III standing," namely, the application of Section 15 of the Electoral Count Act, rather than the Twelfth Amendment to resolve disputes over which of two competing slates of electors to count "if the plaintiff can show an actual present harm or significant possibility of future harm to demonstrate the need for pre-enforcement review." 10 FED. PROC. L. ED. § 23.26 ("Standing to Seek Declaratory Judgment") (citations omitted).

61. Plaintiffs have demonstrated above that this injury-in-fact is to occur at the January 6, 2021 Joint Session of Congress, and they seek the requested declaratory and injunctive relief "only in the last resort, and as a necessity in the determination of a vital controversy." *Id.*

62. **Plaintiffs Present a Live "Case or Controversy."** Plaintiffs' claims present a live "case or controversy" with the Defendant, rather than hypothetical or abstract dispute, that can be litigated and decided by this Court through the requested declaratory and injunctive relief. Here there is a clear threat of the application of an unconstitutional statute, Section 15 of the Electoral Count Act, which is sufficient to establish the requisite case or controversy. *See, e.g., Navegar, Inc. v. U.S.*, 103 F.3d 994, 998 (D.C. Cir. 1997) ("the threat of prosecution provides the foundation of justiciability as a constitutional and prudential matter, and the Declaratory Judgments Act provides the mechanism for seeking pre-enforcement review in federal court.").

63. First, the events of December 14, 2020, gave rise to two competing slates of electors for the State of Arizona: the Plaintiff Arizona Electors, supported by Arizona State legislators (as evidenced by the December 14, 2020 Joint Resolution and the participation of Arizona legislator Plaintiffs), who cast their electoral votes for President Trump and Vice President Pence, and one certified by the Arizona state executives who cast their votes for former Vice President Biden and Senator Harris. Second, the text of the Twelfth Amendment of the Constitution expressly commits to the Defendant Vice President Pence, acting as the President of the Senate and Presiding Officer for the January 6, 2021 Joint Session of Congress, the authority and discretion to “count” electoral votes, *i.e.*, deciding in his sole discretion as to which one of the two, or neither, set of electoral votes shall be counted. The Electoral Count Act similarly designates Defendant as the Presiding Officer responsible for opening and counting electoral votes, but sets forth a different set of procedures, inconsistent with the Twelfth Amendment, for deciding which of two or more competing slates of electors and electoral votes, or neither, shall be counted.

64. Accordingly, a controversy presently exists due to: (1) the existence of competing slates of electors for Arizona and the other Contested States, and (2) distinct and inconsistent procedures under the Twelfth Amendment and the Electoral Count Act to determine which slate of electors and their electoral votes, or neither, shall be counted in choosing the next President. Further, this controversy must be resolved at the January 6, 2021 Joint Session of Congress. Finally, the Constitution expressly designates Defendant Pence as the individual who decides which set of electoral votes, or neither, to count, and the requested declaratory judgment that the procedures under Electoral Count Act are unconstitutional is necessary to ensure that Defendant Pence counts electoral votes in a manner consistent with the Twelfth Amendment of the U.S. Constitution.

65. The injuries that Plaintiffs assert affect the procedure by which the status of their votes will be considered, which lowers the thresholds for immediacy and redressability under this Circuit's and the Supreme Court's precedents. *Nat'l Treasury Employees Union v. U.S.*, 101 F.3d 1423, 1428-29 (D.C. Cir. 1996); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 571-72 & n.7 (1992). Similarly, a plaintiff with concrete injury can invoke Constitution's structural protections of liberty. *Bond v. United States*, 564 U.S. 211, 222-23 (2011).

66. **Plaintiffs' Claims Are Ripe for Adjudication.** Plaintiffs' claims are ripe for the same reasons that they present a live "case or controversy" within the meaning of Article III. "[T]he ripeness doctrine seeks to separate matters that are premature for review because the injury is speculative and may never occur from those cases that are appropriate for federal court action." *Roark v. Hardee LP v. City of Austin*, 522 F.3d 533, 544 n.12 (5th Cir. 2008) (quoting ERWIN CHEMERINSEY, FEDERAL JURISDICTION § 2.4.18 (5th Ed. 2007)). As explained above, the facts underlying the justiciability of Plaintiffs' claims are not in dispute. Further, it is certain or nearly certain that Plaintiffs will suffer an injury-in-fact at the January 6, 2021 Joint Session of Congress, if Defendant Pence disregards the exclusive authority and sole discretion granted to him under the Twelfth Amendment to "count" electoral votes, and instead follows the conflicting and unconstitutional procedures in Section 15 of the Electoral Count Act, pursuant to which Plaintiffs' electoral votes will be disregarded in favor of the competing electors for the State of Arizona.

67. **Plaintiffs' Claims Are Not Moot.** Plaintiffs seek prospective declaratory judgment that portions of the Electoral Count Act are unconstitutional and injunctive relief prohibiting Defendant from following the procedures in Section 15 thereof that authorize the House and Senate jointly to resolve disputes regarding competing slates of electors. This prospective relief would apply to Defendants' future actions at the January 6, 2021 Joint Session

of Congress. The requested relief thus is not moot because it is prospective and because it addresses an unconstitutional “ongoing policy” embodied in the Electoral Count Act that is likely to be repeated and will evade review if the requested relief is not granted. *Del Monte Fresh Produce v. U.S.*, 570 F.3d 316, 321-22 (D.C. Cir. 2009).

## COUNT I

### **DEFENDANT WILL NECESSARILY VIOLATE THE TWELFTH AMENDMENT AND THE ELECTORS CLAUSE OF THE UNITED STATES CONSTITUTION IF HE FOLLOWS THE ELECTORAL COUNT ACT.**

68. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

69. The Electors Clause states that “[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors” for President and Vice President. U.S. Const. art. II, §1, cl. 2 (emphasis added).

70. The Twelfth Amendment of the U.S. Constitution gives Defendant Vice President, as President of the Senate and the Presiding Officer of January 6, 2021 Joint Session of Congress, the exclusive authority and sole discretion to “count” the electoral votes for President, as well as the authority to determine which of two or more competing slates of electors for a State, or neither, may be counted, or how objections to any single slate of electors is resolved. In the event no candidate receives a majority of the electoral votes, then the House of Representatives shall have sole authority to choose the President where “the votes shall be taken by states, the representation from each state having one vote.” U.S. CONST. amend. XII.

71. Section 15 of the Electoral Count Act replaces the procedures set forth in the Twelfth Amendment with a different and inconsistent set of decision making and dispute resolution procedures. As detailed above, these provisions of Section 15 of the Electoral Count Act are unconstitutional insofar as they require Defendant: (1) to count the electoral votes for a

State that have been appointed in violation of the Electors Clause; (2) 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; and (3) replaces the Twelfth Amendment’s dispute resolution procedure which provides for the House of Representatives to choose the President under a procedure where “the votes shall be taken by states, the representation from each state having one vote” – with an entirely different procedure in which the House and Senate each separately “decide” which slate is to be counted, and in the event of a disagreement, then only “the votes of the electors whose appointment shall have been certified by the executive of the State ... shall be counted.” 3 U.S.C. § 15.

72. Section 15 of the Electoral Count Act also violates the Electors Clause by usurping the exclusive and plenary authority of State Legislatures to determine the manner of appointing Presidential Electors and gives that authority instead to the State’s Executive.

### **PRAYER FOR RELIEF**

73. Accordingly, Plaintiffs respectfully request that this Court issue a judgment that:

- A. Declares that Section 15 of the Electoral Count Act, 3 U.S.C. §§5 and 15, is unconstitutional because it violates the Twelfth Amendment on its face, Amend. XII, Constitution;
- B. Declares that Section 15 of the Electoral Count Act, 3 U.S.C. §§5 and 15, is unconstitutional because it violates the Electors Clause. U.S. CONST. art. II, § 1, cl. 1;
- C. Declares that 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;

- D. Enjoins reliance on any provisions of the Electoral Count Act that would limit Defendant's exclusive authority and his sole discretion to determine which of two or more competing slates of electors' votes are to be counted for President;
- E. Declares that, with respect to competing slates of electors from the State of Arizona or other Contested States, or with respect to objection to any single slate of electors, the Twelfth Amendment contains the exclusive dispute resolution mechanisms, namely, that (i) Vice-President Pence determines which slate of electors' votes shall be counted, or if none be counted, for that State and (ii) if no person has a majority, then the House of Representatives (and only the House of Representatives) shall choose the President where "the votes [in the House of Representatives] shall be taken by states, the representation from each state having one vote," U.S. CONST. amend. XII;
- F. Declares that, also with respect to competing slates of electors, the alternative dispute resolution procedure or priority rule in 3 U.S.C. § 15, is null and void insofar as it contradicts and replaces the Twelfth Amendment rules above by with an entirely different procedure in which the House and Senate each separately "decide" which slate is to be counted, and in the event of a disagreement, then only "the votes of the electors whose appointment shall have been certified by the executive of the State ... shall be counted," 3 U.S.C. § 15;

G. Enjoins the Defendant from executing his duties on January 6<sup>th</sup> during the Joint Session of Congress in any manner that is insistent with the declaratory relief set forth herein, and

H. Issue any other declaratory judgments or findings or injunctions necessary to support or effectuate the foregoing declaratory judgment.

74. Plaintiffs have concurrently submitted a motion for a speedy summary proceeding under FRCP Rule 57 to grant the relief requested herein *as soon as practicable*, and for emergency injunctive relief under FRCP Rule 65 thereof consistent with the declaratory judgment requested herein on that same date.

Dated: December 27, 2020

Respectfully submitted,

Howard Kleinhendler  
Howard Kleinhendler Esquire  
NY Bar No. 2657120  
369 Lexington Ave., 12th Floor  
New York, New York 10017  
Tel: (917) 793-1188  
Fax: (732) 901-0832  
Email: howard@kleinhendler.com

/s/ William Lewis Sessions  
William Lewis Sessions  
Texas Bar No. 18041500  
Sessions & Associates, PLLC  
14591 North Dallas Parkway, Suite 400  
Dallas, TX 75254  
Tel: (214) 217-8855  
Fax: (214) 723-5346 (fax)  
Email: lsessions@sessionslaw.net

Lawrence J. Joseph  
DC Bar No. 464777  
Law Office of Lawrence J. Joseph  
1250 Connecticut Ave, NW, Suite 700-1A  
Washington, DC 20036  
Tel: (202) 355-9452  
Fax: 202) 318-2254  
Email: ljoseph@larryjoseph.com

Julia Z. Haller  
DC Bar No. 466921  
Brandon Johnson  
DC Bar No. 491370  
Defending the Republic  
601 Pennsylvania Ave., NW  
Suite 900  
South Building  
Washington, DC 20004  
Tel: (561) 888-3166  
Fax: 202-888-2162  
Email: hallerjulia@outlook.com  
Email: brandoncjohnson6@aol.com

**COUNSEL FOR PLAINTIFFS  
LOUIE GOHMERT, TYLER BOWYER,  
NANCY COTTLE, JAKE HOFFMAN,  
ANTHONY KERN, JAMES R. LAMON,  
SAM MOORHEAD, ROBERT  
MONTGOMERY, LORAINÉ  
PELLEGRINO, GREG SAFSTEN, KELLI  
WARD and MICHAEL WARD**



*A JOINT RESOLUTION OF THE 54<sup>TH</sup> LEGISLATURE,*

***STATE OF ARIZONA***

***TO***

***THE 116<sup>TH</sup> CONGRESS, OFFICE OF THE PRESIDENT OF THE SENATE, PRESIDING.***

WHEREAS, it is the constitutional and legal obligation of the Legislature of the State of Arizona to ensure that the state's presidential electors truly represent the will of the voters of Arizona; and

WHEREAS, pursuant to the direction of Congress as set forth in United States Code, title 3, section 1 as authorized by Article II, section 1, clause 4 of the Constitution of the United States, and state law adopted pursuant thereto, Arizona conducted an election for presidential electors on the Tuesday next after the first Monday in November of 2020—that is, on November 3, 2020; and

WHEREAS, that election was marred by irregularities so significant as to render it highly doubtful whether the certified results accurately represent the will of the voters; and

WHEREAS, Congress has further directed in U.S. Code, title 3, section 2 that when a state "has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such manner as the legislature of such State may direct"; and

**EXHIBIT A**

WHEREAS, that provision implicitly recognizes that Article II, Section 1, Clause 2 of the U.S. Constitution grants to each state legislature, with stated limitations, the sole authority to prescribe the manner of appointing electors for that state; and

WHEREAS, the United States Supreme Court and other courts have explained that when a state legislature directs the manner of appointing electors, it does so pursuant to a grant of authority from the U.S. Constitution rather than by reason of any state constitutional or other legal provision; that this authority may be exercised by the legislature alone without other aspects of the normal lawmaking process; and that the state legislature's authority over the appointment of presidential electors is plenary and may be resumed at any time; and

WHEREAS, because U.S. Code, title 3, section 7 mandates that all presidential electors vote for President and Vice President of the United States on December 14, 2020, it is impossible to pursue the Legislature's preferred course of action, which would be for Arizona's voters to participate in a new and fair and free presidential election before that date; and

WHEREAS, in view of the facts heretofore recited, the Legislature is required to exercise its best judgment as to which slate of electors the voters prefer; and

WHEREAS, legal precedent exists where in 1960 the State of Hawaii sent an alternate slate of electors while the Presidential election was still in question in order to meet the deadline of selecting electors, and upon recount the alternate slate of electors' ballots were ultimately counted; and

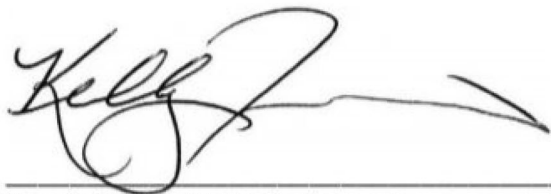
WHEREAS, the undersigned have an obligation to find the truth. For this reason, on several occasions since November 3, we state lawmakers have requested fact-finding hearings to include a comprehensive and independent forensic audit. At this time, no such audit has been authorized. This leaves the uncertainty of the election results in a state that requires further investigation and resolution; and

WHEREAS, the Senate Judiciary standing committee today called for a forensic audit of various election irregularities, ongoing litigation is currently active, and there are unresolved disputes by both the Legislature and at least one Presidential campaign, rendering the election inconclusive as of date of signing of this letter,

THEREFORE,

Be it resolved by the undersigned Legislators, members of the Arizona House and Senate, request that the alternate 11 electoral votes be accepted for to Donald J. Trump or to have all electoral votes nullified completely until a full forensic audit can be conducted. Be it further resolved that the United States Congress is not to consider a slate of electors from the State of Arizona until the Legislature deems the election to be final and all irregularities resolved

Signed this day, 14 December, 2020.



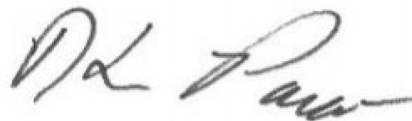
Senator Elect Kelly Townsend  
Legislative District 16



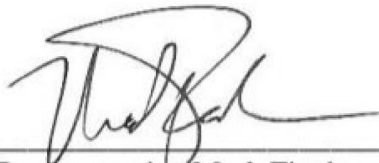
Representative Bret Roberts  
Legislative District 11



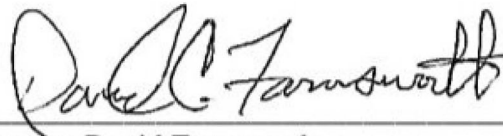
Senator Paul Boyer  
Legislative District 20



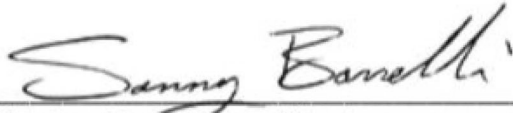
Representative Kevin Payne  
Legislative District 21



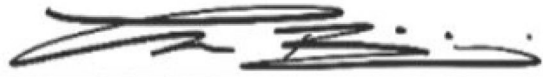
Representative Mark Finchem  
Legislative District 11



Senator David Farnsworth  
Legislative District 16



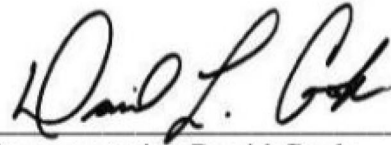
Senator Sonny Borrelli  
Legislative District 5



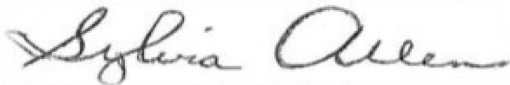
Representative Leo Biasiucci  
Legislative District 5



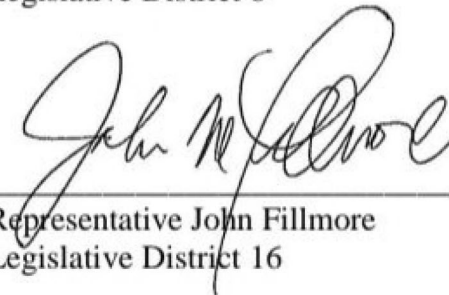
Representative Anthony Kern  
Legislative District 20



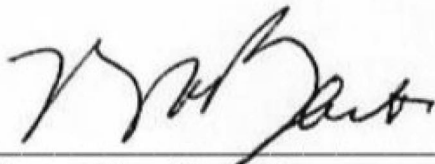
Representative David Cook  
Legislative District 8



Senator Sylvia Allen  
Legislative District 15



Representative John Fillmore  
Legislative District 16



Senator Elect Nancy Barto  
Legislative District 15



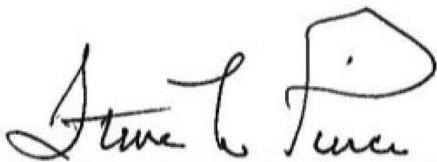
Representative Travis Grantham  
Legislative District 12



Majority Leader Warren Petersen  
Legislative District 12



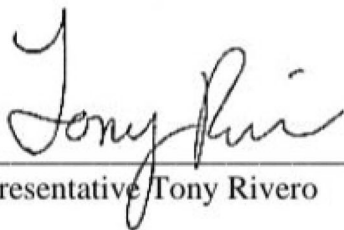
Representative Walter Blackman  
Legislative District 6



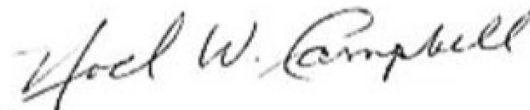
Representative Steve Pierce  
Legislative District 1



Representative Shawna Bolick  
Legislative District 20



Representative Tony Rivero



Representative Noel Campbell

# Sen. Hawley Will Object During Electoral College Certification Process On Jan 6

Wednesday, December 30, 2020

Today U.S. Senator Josh Hawley (R-Mo.) announced he will object during the Electoral College certification process on January 6, 2021. Senator Hawley will object to highlight the failure of some states, including notably Pennsylvania, to follow their own election laws as well as the unprecedented interference of Big Tech monopolies in the election. He will call for Congress to launch a full investigation of potential fraud and election irregularities and enact election integrity measures.

Democrats have previously objected during the certification process for the 2004 and 2016 Presidential elections.

Senator Hawley said, "Following both the 2004 and 2016 elections, Democrats in Congress objected during the certification of electoral votes in order to raise concerns about election integrity. They were praised by Democratic leadership and the media when they did. And they were entitled to do so. But now those of us concerned about the integrity of this election are entitled to do the same.

"I cannot vote to certify the electoral college results on January 6 without raising the fact that some states, particularly Pennsylvania, failed to follow their own state election laws. And I cannot vote to certify without pointing out the unprecedented effort of mega corporations, including Facebook and Twitter, to interfere in this election, in support of Joe Biden. At the very least, Congress should investigate allegations of voter fraud and adopt measures to secure the integrity of our elections. But Congress has so far failed to act.

"For these reasons, I will follow the same practice Democrat members of Congress have in years past and object during the certification process on January 6 to raise these critical issues."

## Background On Previous Objections to Electoral College Vote Certification

*In 2005, Senator Barbara Boxer and Representative Stephanie Tubbs Jones Objected to the Electoral College Votes from Ohio.*

Stephanie Tubs-Jones Said, "I Raise This Objection Because I Am Convinced That We As A Body Must Conduct A Formal And Legitimate Debate About Election Irregularities." (C-SPAN

(<https://outreach.senate.gov/ixextranet/ixClickTrk.aspx?>

&cid=SenHawley&crop=14310.6298941.5866468.7119050&report\_id=&redirect=https%3a%2f%2fwww.c-span.org%2fvideo%2f%3f185005-2%2fdebate-ohio-electoral-vote-objection&redir\_log=266954022449514), 1/6/05, 3:10-3:20)

## EXHIBIT A



12/30/2020

Sen. Hawley Will Object During Electoral College Certification Process On Jan 6 | Senator Josh Hawley

**Boxer views her 2005 objection as "her proudest moment on the Senate floor," according to CNN.** (CNN

([https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?](https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report_id=&redirect=https%3a%2f%2fwww.cnn.com%2f2010/01/06/politics/boxer-objection-bush-boxer%2findex.html&redir_log=628933907465617)

[&cid=SenHawley&crop=14310.6298941.5866468.7119050&report\\_id=&redirect=https%3a%2f%2fwww.cnn.com%2f2010/01/06/politics/boxer-objection-bush-boxer%2findex.html&redir\\_log=628933907465617](https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report_id=&redirect=https%3a%2f%2fwww.cnn.com%2f2010/01/06/politics/boxer-objection-bush-boxer%2findex.html&redir_log=628933907465617)), 12/27/2020)

**In January 2005, 31 Congressional Democrats Voted To Reject Ohio's Electoral Votes.** (CNN

(applewebdata://849C88A2-A8F5-4FBA-9175-

C87F69402B4D/Bush%20carries%20Electoral%20College%20after%20delay), 1/6/05)

**Nancy Pelosi Praised The 2005 Objections, Saying Democrats Were "Speaking Up For Their Aggrieved Constituents" During "Their Only Opportunity To Have This Debate While The Country Is Listening"**

**Nancy Pelosi Said "We Are Witnessing Democracy At Work" And "This Debate Is Fundamental To Our Democracy." "**

[T]oday we are witnessing democracy at work. This is not, as some of our Republican colleagues have referred to it, sadly, frivolous. This debate is fundamental to our democracy." (C-SPAN ([https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report\\_id=&redirect=https%3a%2f%2fwww.c-span.org%2fvideo%2f%3f185005-2%2fdebate-ohio-electoral-vote-objection&redir\\_log=266954022449514](https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report_id=&redirect=https%3a%2f%2fwww.c-span.org%2fvideo%2f%3f185005-2%2fdebate-ohio-electoral-vote-objection&redir_log=266954022449514)), 1/6/05, 32:49-33:08)

**Pelosi Said Democrats Were "Speaking Up For Their Aggrieved Constituents, Many Of Whom May Have Been**

**Disenfranchised In This Process."** "The Members of Congress who have brought this challenge are speaking up for their aggrieved constituents, many of whom may have been disenfranchised in this process. This is their only opportunity to have this debate while the country is listening, and it is appropriate to do so. If there were other venues of this caliber, we would have taken that opportunity. But this is the opportunity. We have a responsibility to take advantage of it." (C-SPAN ([https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report\\_id=&redirect=https%3a%2f%2fwww.c-span.org%2fvideo%2f%3f185005-2%2fdebate-ohio-electoral-vote-objection&redir\\_log=266954022449514](https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report_id=&redirect=https%3a%2f%2fwww.c-span.org%2fvideo%2f%3f185005-2%2fdebate-ohio-electoral-vote-objection&redir_log=266954022449514)), 1/6/05, 34:14-34:45)

**Pelosi Said "This Is Their Only Opportunity To Have This Debate While The Country Is Listening" And "We Have A Responsibility To Take Advantage Of It."** (C-SPAN ([https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report\\_id=&redirect=https%3a%2f%2fwww.c-span.org%2fvideo%2f%3f185005-2%2fdebate-ohio-electoral-vote-objection&redir\\_log=266954022449514](https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report_id=&redirect=https%3a%2f%2fwww.c-span.org%2fvideo%2f%3f185005-2%2fdebate-ohio-electoral-vote-objection&redir_log=266954022449514)), 1/6/05, 34:14-34:45)

- **Pelosi Said "This Is Their Only Opportunity To Have This Debate While The Country Is Listening" And "We Have A Responsibility To Take Advantage Of It."** (C-SPAN ([https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report\\_id=&redirect=https%3a%2f%2fwww.c-span.org%2fvideo%2f%3f185005-2%2fdebate-ohio-electoral-vote-objection&redir\\_log=266954022449514](https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report_id=&redirect=https%3a%2f%2fwww.c-span.org%2fvideo%2f%3f185005-2%2fdebate-ohio-electoral-vote-objection&redir_log=266954022449514)), 1/6/05, 34:14-34:45)

**Pelosi Said "Do Not Talk About This As A 'Conspiracy Theory.'" "[P]lease do not talk about this as a 'conspiracy theory.' It is not about that. It is not about conspiracy; it is about the Constitution of the United States."** (C-SPAN ([https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report\\_id=&redirect=https%3a%2f%2fwww.c-span.org%2fvideo%2f%3f185005-2%2fdebate-ohio-electoral-vote-objection&redir\\_log=266954022449514](https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report_id=&redirect=https%3a%2f%2fwww.c-span.org%2fvideo%2f%3f185005-2%2fdebate-ohio-electoral-vote-objection&redir_log=266954022449514)), 1/6/05, 39:50-40:03)

**Pelosi Said "Do Not Talk About This As A 'Conspiracy Theory.'" "[P]lease do not talk about this as a 'conspiracy theory.' It is not about that. It is not about conspiracy; it is about the Constitution of the United States."** (C-SPAN

([https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report\\_id=&redirect=https%3a%2f%2fwww.c-span.org%2fvideo%2f%3f185005-2%2fdebate-ohio-electoral-vote-objection&redir\\_log=266954022449514](https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report_id=&redirect=https%3a%2f%2fwww.c-span.org%2fvideo%2f%3f185005-2%2fdebate-ohio-electoral-vote-objection&redir_log=266954022449514)), 1/6/05, 39:50-40:03)

12/30/2020

Sen. Hawley Will Object During Electoral College Certification Process On Jan 6 | Senator Josh Hawley

## In 2017, At Least Seven House Democrats Sought To Object To Electoral Votes In Favor Of President Trump:

- **Jim McGovern Said "The Electors Were Not Lawfully Certified, Especially Given The Confirmed And Illegal Activities Engaged By The Government Of Russia."** (CNN ([https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report\\_id=&redirect=https%3a%2f%2fwww.cnn.com%3a%2f%2fcollege-vote-count-objections%2findex.html&redir\\_log=106450293475627](https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report_id=&redirect=https%3a%2f%2fwww.cnn.com%3a%2f%2fcollege-vote-count-objections%2findex.html&redir_log=106450293475627)), 1/6/17)
- **Raul Grijalva Objected After North Carolina's Tally.** (CNN ([https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report\\_id=&redirect=https%3a%2f%2fwww.cnn.com%3a%2f%2fcollege-vote-count-objections%2findex.html&redir\\_log=106450293475627](https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report_id=&redirect=https%3a%2f%2fwww.cnn.com%3a%2f%2fcollege-vote-count-objections%2findex.html&redir_log=106450293475627)), 1/6/17)
- **Pramila Jayapal Objected To Georgia's Vote Certificate.** (CNN ([https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report\\_id=&redirect=https%3a%2f%2fwww.cnn.com%3a%2f%2fcollege-vote-count-objections%2findex.html&redir\\_log=106450293475627](https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report_id=&redirect=https%3a%2f%2fwww.cnn.com%3a%2f%2fcollege-vote-count-objections%2findex.html&redir_log=106450293475627)), 1/6/17)
- **Jamie Raskin Objected To 10 Of Florida's 29 Electoral Votes, Saying "They Violated Florida's Prohibition Against Dual Office Holders."** (CNN ([https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report\\_id=&redirect=https%3a%2f%2fwww.cnn.com%3a%2f%2fcollege-vote-count-objections%2findex.html&redir\\_log=106450293475627](https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report_id=&redirect=https%3a%2f%2fwww.cnn.com%3a%2f%2fcollege-vote-count-objections%2findex.html&redir_log=106450293475627)), 1/6/17)
- **Maxine Waters Objected.** (CNN ([https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report\\_id=&redirect=https%3a%2f%2fwww.cnn.com%3a%2f%2fcollege-vote-count-objections%2findex.html&redir\\_log=106450293475627](https://outreach.senate.gov/iqextranet/iqClickTrk.aspx?&cid=SenHawley&crop=14310.6298941.5866468.7119050&report_id=&redirect=https%3a%2f%2fwww.cnn.com%3a%2f%2fcollege-vote-count-objections%2findex.html&redir_log=106450293475627)), 1/6/17)

### Issues

General (/issues/general)

(/HAWLEY-WONT-CONSENT-NDAA-

< PREVIOUSVOTE-WITHOUT-VOTE-2000-DIRECT-ASSISTANCE)



(<https://www.facebook.com/SenatorHawley/>)



(<https://twitter.com/SenHawleyPress>)



([https://www.youtube.com/channel/UCMzt8xq6qQ3XQ\\_DINfjx0-w](https://www.youtube.com/channel/UCMzt8xq6qQ3XQ_DINfjx0-w))



(<https://www.instagram.com/senatorhawley/>)

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**EXHIBIT B**



# Sen. Hawley announces he will contest certification of electoral college vote

By John Wagner

Dec. 30, 2020 at 11:24 a.m. EST

Sen. Josh Hawley (R-Mo.) announced Wednesday that he would object next week when Congress convenes to certify the electoral college vote, a move that all but ensures at least a short delay in cementing President-elect Joe Biden's victory.

President Trump has repeatedly suggested congressional intervention as a last-ditch way to reverse the election results, despite opposition from Senate Majority Leader Mitch McConnell (R-Ky.) and other leading Republicans, who have conceded it is bound to fail and will put their members in an awkward position.

In a statement, Hawley said he feels compelled to put a spotlight on purported election irregularities.

"At the very least, Congress should investigate allegations of voter fraud and adopt measures to secure the integrity of our elections. But Congress has so far failed to act," Hawley said.

Any member of the House, joined by a member of the Senate, can contest the electoral votes on Jan. 6. The challenge prompts a floor debate followed by a vote in each chamber.

Trump will inevitably lose that vote, given that Democrats control the House and a number of Senate Republicans have publicly recognized Biden's victory, including Sen. Mitt Romney (Utah), who has called Trump's refusal to accept the election dangerous.

Even in the unlikely event that Trump were to prevail in the Senate, where Vice President Pence would be in position to cast a tie-breaking vote if needed, the challenge still would fail given the House vote.

Still, a number of Republican members of the House, led by Rep. Mo Brooks (R-Ala.) and encouraged by the president, have said they plan to challenge votes in swing states where they have made unfounded allegations that the vote was marred by fraud.

Prior to Hawley's announcement, one incoming Republican senator, newly elected Tommy Tuberville of Alabama, has said he is considering signing on, as well.

Hawley has been mentioned as a potential 2024 presidential candidate, and his move is certain to appeal to Trump supporters and parts of the Republican base.

## EXHIBIT C

WP NEWSLETTER WEEKDAYS

A 5-minute breakdown to track the presidential transition [Sign Up](#) →

Trump, nevertheless, has played up what is usually a ceremonial milestone as a potential turning point in his quest to reverse the election results.

“See you in Washington, DC, on January 6th. Don’t miss it,” Trump tweeted Sunday.

Meanwhile, a lawsuit filed Sunday by U.S. Rep. Louie Gohmert (R-Tex.) and several Arizona Republicans against Pence attempts to get a federal judge to expand Pence’s power to affect the outcome.

*Rosalind S. Helderman and Tom Hamburger contributed to this report.*

1/1/2021

Sen.-elect Tuberville suggests he'll back effort on challenge Electoral College vote | TheHill



# Sen.-elect Tuberville suggests back effort on challenge Electoral College vote

BY TAL AXELROD - 12/17/20 01:41 PM EST

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START

**Bidens honor frontline workers in NYE address: 'We owe them, we owe them, we owe them'**

ADMINISTRATION — 10:47 PM AGO

**Florida reports first case of new, contagious coronavirus strain**

STATE WATCH — 10:10 PM AGO

**NY restaurant that hosted Republican club's holiday party gets liquor license revoked**

STATE WATCH — 10:15 PM AGO

**Roberts commends courthouses for their ability to adapt amid the pandemic**

LEGAL — 10:37 PM AGO

**Photos show Wuhan, once epicenter of pandemic, crowded for New Year's celebrations**

NEWS — 10:15 PM AGO

**Trump hotel in DC raises room rates for Biden inauguration**

NEWS — 10:10 PM AGO

**Indiana law going into effect Jan. 1 will require women to have ultrasound before abortion**

HEALTHCARE — 10:10 PM AGO

**GOP lawmaker criticizes Trump,**

Sen.-elect Tommy Tuberville (R-Ala.) indicated in a video that surfaced Thursday that he thinks the Senate should support a challenge to the results of the Electoral College, which certified President-elect Joe Biden's victory this week.

Tuberville suggested he would back a challenge Rep. Mo Brooks (R-Ala.) has vowed to bring against the vote. If a senator joins Brooks, it would require the House and Senate to debate and then vote on the issue.

"You see what's coming. You've been reading about it in the House. We're going to have to do it in the Senate," Tuberville said in the video taken by liberal activist Lauren Windsor at a rally for Sens. Kelly Loeffler (R-Ga.) and David Perdue (R-Ga.) in Georgia.

It appeared that Tuberville believed he was speaking with another rallygoer rather than a liberal activist, and Windsor asked the senator-elect what he could do to "fight to make this election right." The video was taken Wednesday night.

Lauren Windsor  
@lawindsor



BREAKING: Defying McConnell, Sen-elect Tuberville suggests he will challenge Electoral College, while stumping in Georgia

EXHIBIT D

1/1/2021

Sen.-elect Tuberville suggests he'll back effort on challenge Electoral College vote | TheHill

**colleagues for 'trying to discredit' the election**

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Senate has votes to...

Tuberville's campaign did not immediately respond to a request from comment from The Hill, but earlier this week Tuberville's campaign chairman had said that the senator-elect might back the Brooks effort.

"I think that he [Tuberville] and Ted Cruz are the two best candidates to do this," said Stan McDonald, Tuberville's campaign chairman, during an interview on WVNN-radio in Huntsville on Tuesday. "I don't know yet if or when he will do this. He's very seriously considering it."

Senate Majority Leader Mitch McConnell (R-Ky.) pleaded with Republican senators this week to dismiss the drive to challenge the results, which has been spearheaded by Brooks. McConnell indicated that forcing a debate would ultimately lead to a contentious vote to swat away the challenge, which would divide Republicans from President Trump, who remains wildly popular with the GOP base despite his loss.

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GOP Georgia senators  
throw support behind...

"I think that there was encouragement on the phone for us to accept the result, as much as it's not what we, you know, would have envisioned for the next four years, and to try to do what's best for American people, which is to look forward," Sen. Shelley Moore Capito (R-W.Va.) said after a conference call with McConnell.

If the vote took place, it would not change the outcome of the election as there is not enough support in the House or Senate for it to be successful.



Noem rules out Thune  
challenge after Trump...

Trump and his allies have launched a sprawling legal campaign to overturn the election results on claims that widespread voter fraud cost him reelection. But virtually all of the lawsuits have been thrown out, at times by Trump-appointed judges, for lack of evidence or standing.

"We got to grab a hold and hold on. We have no choice. Listen to me now, we have no choice but to win this election. They're going to try to steal it, they're going to try to buy it, they're going to do everything they can, lie, cheat, steal to win this election, like they did in the presidential election," Tuberville told the rally crowd in Georgia.

**GOP senator criticizes 'ambitious politicians' for 'dangerous'...**

**Hawley jams GOP with Electoral College fight**

Sen. John Thune (S.D.), the No. 2 Senate Republican, told reporters Thursday he hopes Tuberville does not vote to have a debate on the Electoral College, saying, "it's time ... to move on."

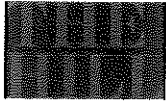
1/1/2021

Sen.-elect Tuberville suggests he'll back effort on challenge Electoral College vote | TheHill

"The fact of the matter is that's been litigated over and over... it's time to be done with this," Thune said. "I would hope that we wouldn't have members of the Senate who would decide that that makes sense. I don't think it's a good decision right now and I don't think it's good for the country."

*Jordain Carney contributed to this report.*

**TAGS** SHELLEY MOORE CAPITO MITCH MCCONNELL KELLY LOEFFLER DAVID PERDUE  
DONALD TRUMP JOHN THUNE JOE BIDEN MO BROOKS TED CRUZ TOMMY TUBERVILLE



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1/1/2021

At Least 140 House Republicans Expected To Challenge Electoral College Result

ELECTION 2020 | Dec 31, 2020, 05:31pm EST | 32,917 views

# At Least 140 House Republicans Expected To Challenge Electoral College Result



**Andrew Solender** Forbes Staff

Business

*I write about politics and the Biden transition.*

**TOPLINE** As many as 140 Republican House members are expected to object to certification of President-elect Joe Biden's Electoral College victory as part of President Donald Trump's continued efforts to overturn his reelection loss.



WASHINGTON, DC - DECEMBER 10: House Minority Leader Kevin McCarthy (R-CA), surrounded fellow

**EXHIBIT E**

For a limited time



1/1/2021

At Least 140 House Republicans Expected To Challenge Electoral College Result

- “2 House Republicans tell me they expect as of now that at least 140 Republican Members of the House will on Jan. 6 object to and vote against the Electoral College results,” tweeted CNN host Jake Tapper on Thursday.
  - Rep. Denver Riggleman (R-Va.) told *Forbes* a “staggering number” of his Republican House colleagues will likely object, adding, “140 certainly seems possible... I wouldn't be surprised if it were a little higher.”
  - Riggleman said he initially expected around a hundred objections but that “pressure [is] being exerted” on House Republicans – as evidenced by state delegations putting out joint statements vowing to object to the vote.
  - “I would be getting pressure right now,” said Riggleman – who lost renomination to a right-wing challenger in June – adding that the vote to object “keeps their base happy, they know it'll keep the conference happy and they know it's not gonna win anyway.”
  - Riggleman said there is “not a whole lot of excitement for that vote” because most of his colleagues don't believe in the systemic fraud Trump has alleged, echoing Sen. Ben Sasse, who said, “When we talk in private, I haven't heard a single Congressional Republican allege that the election results were fraudulent – not one.”
  - Just one senator has confirmed they will join the effort: Sen. Josh Hawley (R-Mo.) said Wednesday he plans to object because “some states, particularly Pennsylvania, failed to follow their own state election laws” –
- 

For a limited time

Hawley's plan to object is in defiance of Senate Majority Leader Mitch McConnell, who has instructed members of his caucus not to object to the electoral college because the eventual vote on whether to sustain objections would put Republican senators in a difficult position. Hawley was absent from a call with Republican senators Thursday morning in which McConnell hoped to challenge him on his position, according to *Politico* and *Axios*. Sen. Pat Toomey (R-Pa.) also opposes Hawley's move.

#### TANGENT

Just 49 Republican members of Congress have publicly acknowledged Biden as president-elect – 25 House members and 24 senators, including McConnell and Toomey. Biden said during an interview with Stephen Colbert earlier this month that several Republicans called him to ask for time to recognize his victory because they are in a “tough spot” politically.

#### BIG NUMBER

9. That's how many objections Biden himself – as President of the Senate – shut down during certification of Trump's victory at a joint session of Congress in 2017. All the objections came from House Democrats alleging Russian meddling, voter suppression and civil rights violations, but because none had a senator backing them, Biden repeatedly said the objections “cannot be entertained” and that there was “no debate.”

#### KEY BACKGROUND

The last time a senator and a House member teamed up to challenge an electoral college vote was 2005, when Sen. Barbara Boxer and Rep. Stephanie Tubbs Jones challenged President George W. Bush's 2004 victory in Ohio on the basis of civil rights violations. The objections precipitated two hours of debate in the House and one hour in the Senate before being rejected by wide margins in both chambers.

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At Least 140 House Republicans Expected To Challenge Electoral College Result

in debate but will undoubtedly be rejected by the Democrat-controlled House – and, likely, the Republican-controlled Senate. Thus, certification of the result will be delayed but not thwarted.

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