



Written by [Bob Adelman](#) on December 30, 2020

Liberal Law Professors Call Gohmert's Lawsuit "Stupid," "Inconsistent With the Constitution"

After reviewing Representative Louie Gohmert's lawsuit to give Vice President Pence power to throw out Electoral College votes, Harvard Law School Professor Laurence Tribe [wrote it off](#), calling it "jaw-droppingly stupid" and "the dumbest lawsuit of all." Ohio State University law professor Edward Foley was slightly less histrionic: "The idea that the Vice President has sole authority to determine whether or not to count electoral votes ... is inconsistent with a proper understanding of the Constitution."

Ironically, back in 2010, Professor Foley called the Electoral Count Act of 1887, which Gohmert is challenging, "inadequate, unwieldy, and arguably unconstitutional."

In a [statement](#) issued at the time of the filing of the lawsuit, Gohmert said:

It is for this reason that I and other plaintiffs have filed a complaint for expedited declaratory and emergency injunctive relief to seek judgment from the court on the Vice President's authority when presiding over the Senate during the Joint Session of Congress [on January 6].

We are asking the court to uphold the powers laid out in the United States Constitution which grant the Vice President the exclusive authority and sole discretion in determining which electoral votes to count.

As outlined in the filing, the Electoral Count Act is unconstitutional because it directs Vice President Pence to legitimize electoral votes in violation of the Electors Clause and limits or eliminates his Twelfth Amendment authority to determine which slates of electors should be counted and which, if any, may not be counted.

This is fundamental because no statute can constitutionally supply rules to the extent that such statute violates the U.S. Constitution.

Among those joining Gohmert as plaintiffs are all 11 of Arizona's Republican electors, along with Kelli Ward, the state's GOP chair. Ward described the lawsuit as a "friendly" one, adding, "What we all want here is election integrity.... The Constitution takes precedence over statute."

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Petr Svab, writing for *The Epoch Times*, declared that there is a strong argument against the 1887 statute:



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There's a voluminous body of legal analysis arguing that the Electoral Count Act is unconstitutional.

Congress has no business granting itself the authority to decide which slate of electors is the correct one and which votes should be rejected. Nor does Congress have the power to designate state governors as the final arbiters.

So far the vice president has been silent on how he will handle the issue come January 6. He could simply roll over and allow the illegal votes for Biden to be counted. Or he could rely on a favorable ruling if one is granted from the Trump-appointed district judge who is no doubt at this writing considering just how he will rule.

If no ruling is forthcoming, will Pence simply declare that he is following the letter of the Constitution, including the Election Clause and the 12th Amendment, and discard both slates of electors from states where the legitimacy of the presidential election has been called into question? If he does that, then Biden fails to meet the minimum 270 electoral votes he needs to win the presidency, and the issue then moves to the House for final resolution.

If the latter, then Pence, as Andy Schlafly suggested at WND, will be acting "in accordance with the 12th Amendment by declining to accept tainted certificates and [will] then enjoy watching Democrats scamper to the Supreme Court to seek intervention."

But would they have standing?

All eyes will be focused on the vice president on Wednesday, January 6, 2021, as he gavel to order the joint session of Congress at 1:00 p.m. Washington time to resolve the matter.

Related article:

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