



Written by [Bob Adelman](#) on December 29, 2020

## Rep. Louie Gohmert Sues to Give Pence Authority to Reject Electoral Votes

As *The New American* [reported Monday](#), Vice President Mike Pence, as president of the Senate, has the power under the Constitution's 12th Amendment to "open all the certificates and the votes shall then be counted." Constitutional scholars argue that this power allows Pence to discard electors from states that violated their election laws or otherwise committed election fraud, leaving uncontested states' electors to determine the outcome of November's presidential election. If neither candidate wins 270 Electoral College votes, the matter is resolved in the House of Representatives, with each state getting one vote.



AP Images

The only thing standing in the way of Pence performing his constitutional duties, however, is the 1887 Electoral Count Act. According to Representative Louie Gohmert (R-Texas) and others, that act is unconstitutional. [He filed suit](#) on Monday in the U.S. District Court for the Eastern District of Texas:

This civil action seeks an expedited declaratory judgment finding that the elector dispute resolution provisions in Section 15 of the Electoral Count Act ... are unconstitutional because these provisions violate the Electors Clause and the Twelfth Amendment of the U.S. Constitution.

The Electors (or "Elections") Clause refers to Article 1, Section 4, Clause 1 of the U.S. Constitution:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.

Gohmert's suit claims that the Act's Section 15 provisions "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.... [They] violate the Twelfth Amendment because the Electoral Count Act directs the Defendant, Vice President Michael R. Pence, in his capacity of 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."

Gohmert's lawsuit reiterates the position of constitutional scholars that "Vice President Pence, in his



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capacity as President of the 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.”

In the past, the Electoral Count Act has reduced the authority and responsibility of the president of the Senate to a largely ceremonial capacity — a figurehead and placeholder in the process. Gohmert’s challenge, if successful, would restore the authority that the U.S. Constitution clearly gives to the Vice President as president of the Senate on January 6.

The judge for the District Court for the Eastern District of Texas is Jeremy Kernodle, who was appointed to that position by President Trump in 2018.

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