

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, LORAIN 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.

Civil Action No. 6:20-cv-00660-JDK

**PLAINTIFFS' MOTION TO SHORTEN TIME FOR RESPONSE TO
PLAINTIFF'S EMERGENCY MOTION FOR EXPEDITED
DECLARATORY JUDGMENT AND EMERGENCY INJUNCTIVE RELIEF
AND REQUEST FOR EXPEDITED SCHEDULING ORDER**

Plaintiffs U.S. Representative Louie Gohmert Jr. (TX-1), Tyler Bowyer, Nancy Cottle, Jake Hoffman, Anthony Kern, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Kelli Ward, and Michael Ward, by and through their undersigned counsel, file this Motion to Shorten Time for Response to Plaintiff's Emergency Motion for Expedited Declaratory Judgment and Emergency Injunctive Relief and Request for Expedited Scheduling Order, pursuant to Local Rule CV-7(e). In support of this Motion, Plaintiffs would show the following:

Reasons For Requesting Expedited Briefing

As set forth in in the Complaint and Plaintiff's Emergency Motion for Expedited Declaratory Judgment and Emergency Injunctive ("Plaintiff's Motion"), Plaintiffs seek an expedited declaratory judgment declaring that Sections 5 and 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. The Complaint and this Motion address a matter of urgent national concern, that involves only issues of law—namely, a determination that Section 5 and 15 of the Electoral Count Act violate the Electors Clause and the Twelfth Amendment of the U.S. Constitution—where the relevant facts concerning the Plaintiffs’ standing, the justiciability of Plaintiffs’ claims by this Court, and this Court’s ability to grant the relief requested are not in dispute

The requested declaratory judgment will terminate the controversy arising from the conflict between the Twelfth Amendment and the Electoral Count Act. It is appropriate for this Court to grant this relief in a summary proceeding without an evidentiary hearing or discovery. See FED. R. CIV. P. 57, Advisory Committee Notes. For this reason, Plaintiffs have requested an expedited summary proceeding under Rule 57 of the Federal Rules of Civil Procedure to grant the relief requested herein no later than *Thursday, December 31, 2020*, and for emergency injunctive relief under FED. R. CIV. P. 65 consistent with the declaratory judgment requested herein on that same date.

Plaintiffs have requested an opportunity for timely oral argument on Plaintiff’s Motion. A joint session of Congress will convene on Wednesday, January 6, 2021 at 1:00 p.m. Eastern Time for purposes of voting on selection of the President of the United States. As Vice President of the United States and President of the Senate, Defendant Michael R. Pence will preside over the proceedings. Accordingly, a ruling of this Court is required by Monday, January 4, 2021 in order for Plaintiffs to obtain a timely ruling on the relief they have sought, and for any party challenging the Court’s ruling to have a meaningful opportunity for appellate review of the Court’s decision.

Efforts to Resolve Issues Without Litigation

Prior to filing of this lawsuit, Plaintiffs' counsel presented a written statement of the specific relief requested and summary of Plaintiff's legal arguments by e-mail to the Office of the Counsel for the Vice President. Prior to moving for emergency relief, Plaintiffs' counsel conferred via telephone with the Counsel to the Vice President and provided an as-filed copy of the Complaint and an unsigned final copy of Plaintiff's Motion via email. In the teleconference, Plaintiffs' counsel made a meaningful attempt to resolve the underlying legal issues by agreement, including advising the Vice President's counsel that Plaintiffs intended to seek immediate injunctive relief in the event the parties did not agree. Those discussions were not successful in reaching an agreement and this lawsuit was filed. Counsel for the Vice President was promptly furnished a copy of the Complaint and Plaintiff's Motion.

In an effort to expedite matters, Plaintiffs' counsel sought an agreement with Defendant's counsel to effect service by agreement upon electronic transmission means (e-mail) or a waiver. This effort was unsuccessful and Plaintiffs' counsel promptly sought issuance of a Summons and initiated efforts to have formal service effected promptly. In the meantime, Plaintiffs' counsel delivered copies of the Complaint and Plaintiff's Motion to Counsel for the Vice President and the United States District Attorney for the Eastern District of Texas by email.

On the morning of Tuesday, December 29, 2020, the United States District Attorney for the Eastern District of Texas was formally served with a Summons and copy of Plaintiff's Motion. *See* ECF #5. Contemporaneously, Plaintiff's counsel were contacted by Mr. Christopher Healy from the Civil Division of the United States Department of Justice in Washington, D.C. and a conference call of the parties' counsel was scheduled for late morning of Tuesday, December 29, 2020. Undersigned counsel was informed that Mr. Healy and other representatives of the

Government who may represent Defendant have received copies of the Complaint and Plaintiff's Motion.

Attempts to Reach Agreement on Scheduling of Briefing and Hearing

A conference of counsel for the parties was attended by three of Plaintiffs' counsel and five attorneys from governmental departments representing Defendant Pence. In that conference, the parties' counsel discussed scheduling of Defendants' response to Plaintiff's Motion, Plaintiff's Reply, and hearing on the merits of the motion before the Court. Defendants' counsel requested additional time to confer with their client and agreed upon reconvening at 1:30 p.m. of the same day to have further discussion.

A second conference of the parties' counsel did not take place. Instead, Plaintiff's counsel received an e-mail from Mr. Healy seeking a delay. A true copy of the email exchange between counsel, labeled as "Exhibit 1", is attached.

Requested Relief

Plaintiffs request that the Court enter an order requiring that Defendant file any response to Plaintiffs' Motion by the Court's close of business hours (5:00 p.m. Central) on Wednesday, December 30, 2020, and that Plaintiffs file their reply by 9:00 a.m. the following morning. Plaintiffs further request an in-person hearing before the Court on the afternoon of Thursday, December 31, 2020.

Conclusion

Therefore, Plaintiffs respectfully request that the Court grant the relief sought in this motion and set a scheduling of briefing and argument of Plaintiff's Motion as requested.

Dated: December 29, 2020

Respectfully submitted,

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COUNSEL FOR PLAINTIFFS

CERTIFICATE OF CONFERENCE

I hereby certify that as counsel for Plaintiffs, I have complied with the meet and confer requirement in Local Rule CV-7(h) in the following respects: I have personally contacted and spoken with Mr. Christopher Healy from the Civil Division of the United States Department of Justice in Washington, D.C. and other Government counsel whom I understand will be representing the Defendant. The contents of the foregoing Motion and the Defendant's position on same were discussed in a meaningful manner. Defendant's counsel have indicated they could not make any commitments to scheduling of briefing and a hearing on Plaintiff's Motion. Defendant's counsel insisted upon formal service of the Vice President and Attorney General of the United States. The parties' counsel could not agree on the merits of the motion or upon times for scheduling of a response from Defendant, or hearing on the merits, of Plaintiff's Motion. Undersigned counsel has concluded that the parties are presently at an impasse, leaving an open issue for the Court to resolve. Undersigned counsel will immediately advise the Court of any change in the parties' positions.

Dated: December 29, 2020


William Lewis Sessions
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the date specified below, I electronically filed the foregoing motion (together with its accompanying proposed order) with the Clerk of the Court using the CM/ECF system. In addition, because counsel for the defendant has not yet filed an appearance, I served on the following person at the indicated addresses, with a courtesy copy via facsimile and/or email to the addresses specified:

Gregory F. Jacob
Counsel to the Vice President
Office of the Vice President
Eisenhower Executive Office Building
Washington, DC 20501
E-mail: gregory.f.jacob@ovp.eop.gov

Stephen J. Cox
United States Attorney
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Beaumont, Texas 77701
Fax: (409) 839-2550
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Christopher Healy
U.S. Department of Justice, Civil Division,
Federal Programs Branch
1100 L St. NW | Washington, DC 20005
Tel (202) 514-8095 | fax (202) 616-8470
E-mail: Christopher.Healy@usdoj.gov

Dated: December 29, 2020



William Lewis Sessions
Counsel for Plaintiffs

From: [Healy, Christopher \(CIV\)](#)
To: [Lewis Sessions; Senanayake, Tanya \(CIV\)](#)
Cc: [Howard Kleinhendler; Larry Joseph](#)
Subject: RE: Activity in Case 6:20-cv-00660-JDK Gohmert et al v. Pence Notice of Attorney Appearance - Pro Hac Vice
Date: Tuesday, December 29, 2020 1:38:40 PM

Lewis, we are still conferring with our client, and at this point have nothing to report. We hope to have an update for you today, and we're happy to set another call (say 5:00 eastern time) and will try to have a confirmed position for you by then.

--Christopher

From: Lewis Sessions <lsessions@sessionslaw.net>
Sent: Tuesday, December 29, 2020 2:36 PM
To: Healy, Christopher (CIV) <Christopher.Healy@usdoj.gov>; Senanayake, Tanya (CIV) <Tanya.Senanayake@usdoj.gov>
Cc: Howard Kleinhendler <howard@kleinhendler.com>; Larry Joseph <ljoseph@larryjoseph.com>
Subject: RE: Activity in Case 6:20-cv-00660-JDK Gohmert et al v. Pence Notice of Attorney Appearance - Pro Hac Vice

Christopher and Tanya,

We are on the conference call waiting for you. Call in: (888) 808-6929, Access Code 9728812#. I sent an Outlook calendar entry to you earlier.

Lewis Sessions
Attorney at Law
Board Certified - Civil Trial Law
Texas Board of Legal Specialization

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From: Lewis Sessions
Sent: Tuesday, December 29, 2020 1:04 PM
To: Christopher.Healy@usdoj.gov; Senanayake, Tanya (CIV) <Tanya.Senanayake@usdoj.gov>
Cc: Howard Kleinhendler <howard@kleinhendler.com>; Larry Joseph <ljoseph@larryjoseph.com>
Subject: FW: Activity in Case 6:20-cv-00660-JDK Gohmert et al v. Pence Notice of Attorney Appearance - Pro Hac Vice

Counsel,

Per our agreement, I am forwarding notice received from the Clerk of the Court.

EXHIBIT 1

Lewis Sessions

Attorney at Law
Board Certified - Civil Trial Law
Texas Board of Legal Specialization

SESSIONS & ASSOCIATES, PLLC

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From: txedCM@txed.uscourts.gov <txedCM@txed.uscourts.gov>

Sent: Tuesday, December 29, 2020 1:00 PM

To: txedcmcc@txed.uscourts.gov

Subject: Activity in Case 6:20-cv-00660-JDK Gohmert et al v. Pence Notice of Attorney Appearance - Pro Hac Vice

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U.S. District Court

Eastern District of TEXAS [LIVE]

Notice of Electronic Filing

The following transaction was entered by Joseph, Lawrence on 12/29/2020 at 12:59 PM CST and filed on 12/29/2020

Case Name: Gohmert et al v. Pence
Case Number: [6:20-cv-00660-JDK](https://ecf.txed.uscourts.gov/cases/6:20-cv-00660-JDK)
Filer: Tyler Bowyer
Nancy Cottle
Louie Gohmert
Jake Hoffman
Anthony Kern
James R. Lamon
Robert Montgomery