

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

LOUIE GOHMERT, *et al.*,

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

**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF
OF THE U.S. HOUSE OF REPRESENTATIVES
AS AMICUS CURIAE IN SUPPORT OF DISMISSAL**

The U.S. House of Representatives respectfully moves for leave to file the accompanying *amicus curiae* brief in support of dismissal.¹ Plaintiffs take no position and Defendant consents to the filing of this brief. No person or entity other than *amicus* and its counsel assisted in or made a monetary contribution to the preparation or submission of this brief.

The decision to allow the filing of an *amicus curiae* brief “lies solely within the court’s discretion.” *U.S. ex rel. Gudur v. Deloitte Consulting LLP*, 512 F. Supp. 2d 920, 927 (S.D. Tex. 2007). Among other factors, a court may consider whether “the proffered information

¹ The Bipartisan Legal Advisory Group (BLAG) of the U.S. House of Representatives, which “speaks for, and articulates the institutional position of, the House in all litigation matters,” has authorized the filing of an *amicus* brief in this matter. Rules of the U.S. House of Representatives (116th Cong.), Rule II.8(b), <https://perma.cc/M25F-496H>. The BLAG comprises the Honorable Nancy Pelosi, Speaker of the House, the Honorable Steny H. Hoyer, Majority Leader, the Honorable James E. Clyburn, Majority Whip, the Honorable Kevin McCarthy, Republican Leader, and the Honorable Steve Scalise, Republican Whip. Representative McCarthy and Representative Scalise dissented.

is ‘timely and useful’ or otherwise necessary to the administration of justice.” *United States v. Ollis*, No. CIV.A. H-07-3295, 2008 WL 620520, at *7 (S.D. Tex. Mar. 3, 2008).

The House’s motion for leave to file an *amicus* brief should be granted. The House has a significant institutional interest in this litigation, which seeks to upend Congress’s longstanding role in counting the votes of the Electoral College in Presidential elections by invalidating the federal statute—the Electoral Count Act—that has governed that process since its 1887 enactment.

Pursuant to the Twelfth Amendment, following each Presidential election, each state’s electors meet in their respective states, certify lists of all electors who voted for President and Vice President, and transmit their list to the President of the Senate. After that process, “[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.” U.S. Const. amend. XII. The House has a compelling interest in how the constitutionally mandated Joint Session of Congress proceeds on January 6, 2021.

As the proposed *amicus* brief explains, the Electoral Count Act codified Congress’s practice, pursuant to the Twelfth Amendment, of counting and resolving disputes over electoral votes. The House has important interests in preserving Congress’s power to adopt procedures governing the counting of electoral votes, and in ensuring that the orderly procedures that have governed the Joint Session since the Presidential election of 1888 continue to do so.

The House also has a compelling interest in ensuring that the public’s confidence in the processes for confirming the results of the 2020 Presidential election is not undermined by this last-minute suit, which would authorize the Vice President to ignore the will of the Nation’s

voters and choose the winner in an election in which he himself is a candidate, as will often be the case.

Finally, the House has expertise in the Twelfth Amendment's procedures for counting electoral votes, which it has implemented for every election since that amendment was ratified in 1804. The House submits that its brief will aid the Court in considering plaintiffs' claims and provides a perspective that otherwise would not be available to the Court. Numerous federal courts throughout the country (including the U.S. Supreme Court) have in recent years granted leave for *amicus* briefs by the House.

Given the unique procedural posture of this filing, the page limits governing this filing are unclear. We therefore respectfully request that the Court accept the brief at its current length of 23 pages.

For the foregoing reasons, the House's motion for leave to file the proposed *amicus* brief should be granted.

Respectfully submitted,

/s/ Douglas N. Letter

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December 31, 2020

Counsel for Amicus U.S. House of Representatives *

* Attorneys for the Office of General Counsel for the U.S. House of Representatives, including any counsel specially retained by the Office of General Counsel, are “entitled, for the purpose of performing the counsel’s functions, to enter an appearance in any proceeding before any court of the United States or of any State or political subdivision thereof without compliance with any requirements for admission to practice before such court.” 2 U.S.C. § 5571(a).

CERTIFICATE OF CONFERENCE

I hereby certify that as counsel for *amicus curiae*, the United States House of Representatives, I have complied with the meet and confer requirement in Local Rule CV-7(h) in the following respects: On December 30 and 31, 2020, I have personally contacted attorneys at the Department of Justice, who have informed me that they are representing Defendant Vice President Michael R. Pence. I spoke by telephone and exchanged several emails regarding the House's Unopposed Motion for Leave to File Brief of the U.S. House of Representatives as *Amicus Curiae* in Support of Dismissal with John Griffiths, the Director of the Department of Justice Civil Division Federal Programs Branch. I have also exchanged emails on the same subject with Jeff Clark, Acting Assistant Attorney General of the Civil Division, copying John Coghlan, Deputy Assistant Attorney General for the Federal Programs Branch, and I spoke by telephone with Mr. Coghlan. Mr. Clark expressly represented that Defendant consents to the House's motion for leave to file a brief in the case as *amicus curiae*.

In addition, on December 31, 2020, I spoke by telephone with William Sessions, counsel for plaintiffs, and we discussed the House's Unopposed Motion for Leave to File Brief of the U.S. House of Representatives as *Amicus Curiae* in Support of Dismissal. I have also exchanged emails with Mr. Sessions and the other attorneys representing plaintiffs. Mr. Sessions represented that Plaintiffs take no position on the House's motion.

December 31, 2020

/s/ Douglas N. Letter

Douglas N. Letter

CERTIFICATE OF SERVICE

I certify that on December 31, 2020, I caused the foregoing document to be filed via the United States District Court for the Eastern District of Texas CM/ECF system, which I understand caused a copy to be served on all registered parties.

/s/ Douglas N. Letter
Douglas N. Letter