



## Missouri, 5 more states ask to join Texas Supreme Court election case against Georgia, others

**Legal experts say Texas case fatally flawed, merely 'political posturing' nearly certain to fail**

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December 10, 2020

Missouri and five other states on Thursday threw their support even further behind the Texas lawsuit aiming to prevent Georgia, Pennsylvania, Michigan and Wisconsin's electors from casting their electoral votes by asking the Supreme Court to let them join the Texas suit.

Missouri on Wednesday led a group of 17 states in filing a brief that supported the Texas lawsuit, which alleges that the four key swing states that voted for President-elect Joe Biden violated the Constitution by having their judicial and executive branches make changes to their presidential elections rather than their legislatures.

But the Thursday filing led by Missouri Attorney General Eric Schmitt, which also includes Arkansas, Utah, Louisiana, Mississippi and South Carolina, would make those states parties before the court in the case rather than just outside voices weighing in. President Trump's campaign did the same on Wednesday.

"The intervening states do not doubt that plaintiff state of Texas will vigorously and effectively litigate this case, but the attorney general of each individual state is best situated to represent the interests of that state and its people," the six states said in their request.

The states led by Missouri on Thursday also said they back the arguments so far made to the court by Texas and the president's campaign, which have argued that not only are the actions taken by Georgia, Pennsylvania, Wisconsin and Michigan unconstitutional, but they also open up the potential for widespread voter fraud.

"All the unconstitutional changes to election procedures identified in the Bill of Complaint have two common features: (1) They abrogated statutory safeguards against fraud that responsible observers have long recommended for voting by mail, and (2) they did so in a way that predictably conferred partisan advantage on one candidate in the presidential election," the Missouri brief from Wednesday, which was joined by 16 other states, said.

It continued: "When non-legislative actors in other states encroach on the authority of the 'Legislature thereof' in that state to administer a presidential election, they threaten the liberty, not just of their own citizens, but of every citizen of the United States who casts a lawful ballot in that election – including the citizens of amici states."

The Texas suit is unique in that it seeks to take advantage of the Supreme Court's rarely used original jurisdiction for cases in which states sue other states.

Despite the backing of so many state attorneys general, most legal experts say the Texas suit is fatally flawed in several ways and nearly certain to fail.

"This is political posturing through litigation. Not one of those attorneys general believes they are entitled to win," Harvard Law professor Lawrence Lessig told Fox News. Lessig is a former clerk for the late Justice Antonin Scalia and currently works with Equal Votes, a nonprofit that seeks to end winner-take-all allocation of electoral votes in states.

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Lessig continued: "As lawyers, that should stop them from signing onto such an action. But they are acting as politicians, not lawyers here – to the detriment of the rule of law."

Walter Olson, a senior fellow at the libertarian Cato Institute, said the only question at this point is the manner in which the Supreme Court will hand Texas a loss in the case.

"This set of lawsuits has met with rejection, so far as I know, from every single federal judge to have ruled on them," Olson said. "The Supreme Court will reject this one too, and the only real question is whether it will do so through orders declining even to hear the case (which is what I predict) or by taking up the case and promptly dismissing on the merits."

Ilya Shapiro, the director of the Robert A. Levy Center for Constitutional Studies at the Cato Institute, pointed out that Texas Solicitor General Kyle Hawkins, the person who would normally be leading his state's litigation, has not worked on the suit.

"[It is] basically a political maneuver more than a real legal lawsuit," Shapiro said. "There's a reason why the Texas solicitor general's name isn't on the case."

Among the several reasons why the Texas lawsuit is all but certain to fall flat is its timing after the election. A principle called "laches," Olson said, "doomed the suit that tried to throw out Pennsylvania's mail-in votes, so it dooms this claim."

He said a party cannot bring a case that could have been addressed in an orderly fashion before "at exactly the time most disruptive and prejudicial to the rights of third parties (such as, in this case, innocent voters who relied on their states' approved methods)."

There is also the fact the "safe-harbor" day for elector selection has already passed, which Olson says harms Texas' case too.

"Standing," or whether a party is permitted to bring a suit in a certain case, also goes against Texas, according to Lessig.

"Not without a radical (and hence, certain to be perceived a politically motivated) change in standing doctrine," will the Supreme Court say that Texas and the other states may sue.

And on the merits of the case specifically, Olson says, Texas would also lose because "the imagined 'rule' is universally ignored since states have in fact allowed their governors,

judiciaries or both to make rulings and determinations affecting the manner in which presidential elections are held and electors thus chosen."

"Texas has done this too," Olson added.

Also of note Thursday is that Ohio, a state with a Republican attorney general in David Yost, filed a brief in support of neither Texas nor the defendant states Georgia, Pennsylvania, Michigan and Wisconsin.

"Although Ohio does not endorse Texas's proposed relief, it does endorse its call for a ruling on the meaning of the electors clause," its brief says, mentioning that such a ruling would clear up controversies for future elections. "Ohio urges the court to decide, at the earliest available opportunity, whether state courts and state executive actors violate the electors clause when they change the rules by which presidential elections are run."

Shapiro also said he believes it could be positive if the Supreme Court weighs in on the Texas case to quash doubts about this election.

"It might even be good for the country if the Supreme Court took this case and unanimously ruled against the claim because that might provide some closure for the supporters of the president," Shapiro said.

He added, however, that the c