

Liberty Nation

Well, That Was Fast — Supremes Reject Texas

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The U.S. Supreme Court has denied the Texas complaint against Pennsylvania, Wisconsin, Michigan, and Georgia. A brief statement was put out by the court last evening, December 11. *Liberty Nation's* Legal Affairs Editor Scott Cosenza, Esq. joins Editor-in-Chief Leesa K. Donner to unpack this decision.

Leesa K. Donner – What was the reason the court gave for rejecting the complaint, Scott?

Scott Cosenza – The order states that Texas lacked Article III standing to sue. That means they didn't present the minimum showing a plaintiff must make to invoke the federal courts' authority. The Supreme Court said Texas "has not demonstrated a judicially cognizable interest in the manner in which another State conducts its elections." A cognizable claim or controversy is one that meets the basic criteria of viability for being tried or adjudicated before a particular tribunal.

LKD: However, Justices Samuel Alito and Clarence Thomas don't appear to agree from what I see in the court document. Is that right, and if so, what is their point?

SC: They both would have granted Texas motion – to hear the case. They did not comment about any of the claims or legal issues, beyond the fact that they would give Texas a hearing. Alito and Thomas believe that the Constitution requires the Supreme Court to accept cases when one state sues another. Enough other justices disagree – they think the Court has discretionary authority, and thus, may deny a hearing if they choose.

LKD: Does this mean it was 7 – 2 against granting Texas a hearing? Also, could you explain to our readers why Alito and Thomas have a different take on Article III – it is that ambiguous?

SDC: We know that Justices Alito and Thomas dissented because they stated so. No other Justices revealed their vote so, all we can say for sure is that there were 2 votes against granting Texas a hearing.

The relevant part of Article III says, "In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction." Thomas and Alito see no room in that directive for the Court to pass over one state's attempt to sue another.

LKD: Cato Institute's Walter Olson and many other legal experts, yourself included, maintain this claim by Texas was fatally flawed from the get-go. How so?

SC: For me, any time a party asks for a remedy or solution that is both novel and likely to provide for massive disruption to society or the economy, the odds are the court will avoid issuing such a ruling, regardless of the politics involved.

LKD: While this decision to let things stand as they are is a blow to those who believe election fraud took place in those four states, it does not foreclose any other future or pending election cases. Is there anything else you see on the legal horizon right now that might stave off the electoral college exercise slated for Monday, December 14?

SDC: In terms of what's possible, any pending case could stave it off, provided it made it to the Supreme Court and found a different ending than Texas' petition. Practically speaking, the answer is no.