

Winner Take All in the Electoral College

Gordon v. Cheney (Henry H. Kennedy, Jr., D.D.C. 1:05-cv-6)

Two days before the U.S. Senate was to count presidential electoral votes, a pro se plaintiff filed a federal complaint seeking to enjoin the count on the ground that electoral votes in several states were improperly allocated according to a winner-take-all rule. Two days later, the court denied immediate relief.

Subject: Voting irregularities. *Topics:* Electoral College; enjoining certification; pro se party.

On January 4, 2005, two days before the Vice President, as president of the Senate, was to count the electoral votes for his and President Bush's reelection, a pro se plaintiff affiliated with the Green Party filed a federal complaint in the district court for the District of Columbia seeking to enjoin the count on the ground that electoral votes in several states were improperly allocated according to a winner-take-all rule.¹ With his complaint, the plaintiff filed a motion for a temporary restraining order and a preliminary injunction.² Judge Henry H. Kennedy, Jr., denied the plaintiff immediate relief on January 6: "it is apparent from [the motion's] face that plaintiff has not, and cannot, meet the rigorous requirements for obtaining such an extraordinary remedy."³ On March 22, the plaintiff dismissed the action voluntarily.⁴

The plaintiff filed a similar pro se action on July 28, 2008.⁵ On March 26, 2009, Judge Kennedy granted to Vice President Biden Vice President Cheney's motion to dismiss the action.⁶ "The problem for [the plaintiff], among others, is that his claims are predicated on allegations of wrongdoing by third parties."⁷

1. Complaint, *Gordon v. Cheney*, No. 1:05-cv-6 (D.D.C. Jan. 4, 2005), D.E. 1.

2. Motion, *id.* (Jan. 4, 2005), D.E. 3.

On November 2, 2004, the plaintiff filed a federal pro se challenge to the District of Columbia's allocation of electoral votes, Complaint, *Gordon v. Williams*, No. 1:04-cv-1904 (D.D.C. Nov. 2, 2004), D.E. 1, which the court dismissed on May 11, 2005, for failure to prosecute it, Order, *id.* (May 11, 2005), D.E. 5. See Notice of Related Case, *Gordon*, No. 1:05-cv-6 (D.D.C. Jan. 4, 2005), D.E. 2.

3. Order, *Gordon*, No. 1:05-cv-6 (D.D.C. Jan. 6, 2005), D.E. 4.

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4. Stipulation, *Gordon*, No. 1:05-cv-6 (D.D.C. Mar. 22, 2005), D.E. 9.

5. Complaint, *Gordon v. Cheney*, No. 1:08-cv-1294 (D.D.C. July 28, 2008), D.E. 1; *Gordon v. Biden*, 606 F. Supp. 2d 11, 12 & n.1 (D.D.C. 2009); see Motion for Temporary Restraining Order and Preliminary Injunction, *Gordon*, No. 1:08-cv-1294 (D.D.C. July 30, 2008), D.E. 3; Notice of Related Case, *id.* (July 28, 2008), D.E. 2.

6. *Gordon*, 606 F. Supp. 2d at 12, *aff'd*, 364 F. App'x 651 (D.C. Cir. 2010).

7. *Id.* at 14.