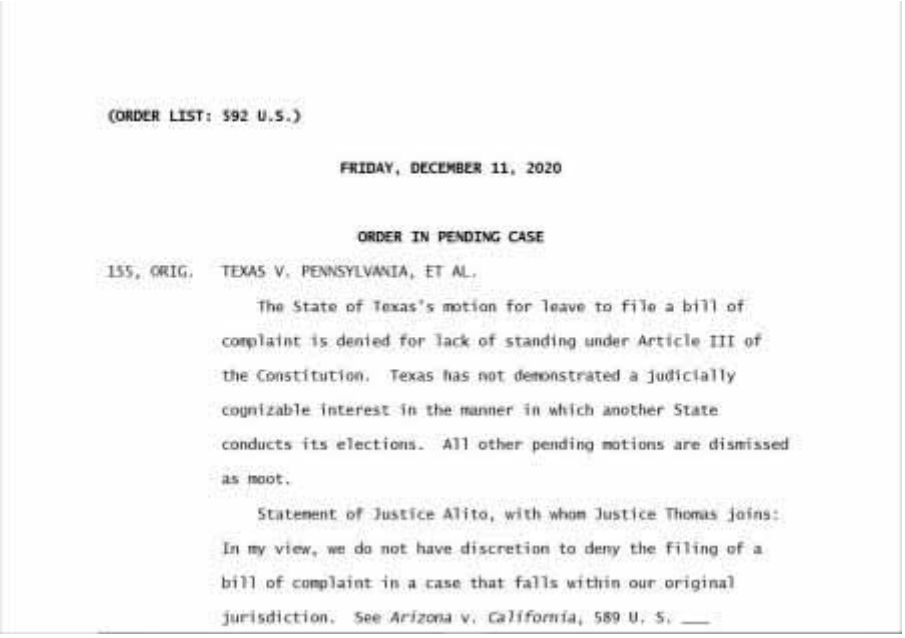
The Texas v. Pennsylvania Denial of Jurisdiction

WHO WILL EXERCISE "DISCERNMENT?"

by Joseph DeMaio, ©2020



(ORDER LIST: 592 U.S.)

FRIDAY, DECEMBER 11, 2020

ORDER IN PENDING CASE

155, ORIG. TEXAS V. PENNSYLVANIA, ET AL.

The State of Texas's motion for leave to file a bill of complaint is denied for lack of standing under Article III of the Constitution. Texas has not demonstrated a judicially cognizable interest in the manner in which another State conducts its elections. All other pending motions are dismissed as moot.

Statement of Justice Alito, with whom Justice Thomas joins:

In my view, we do not have discretion to deny the filing of a bill of complaint in a case that falls within our original jurisdiction. See *Arizona* v. *California*, 589 U. S. ___

(Dec. 13, 2020) — OK, faithful P&E readers, you and a slew of other Americans may be asking themselves: what is going on in the wake of the Supreme Court's declination to accept jurisdiction over the *Texas v. Pennsylvania* original action seeking leave to file a "Bill of Complaint" in the Court?

Unless you have been living in a cave for the last ten days, you know that Texas submitted to the Court a motion for leave to file, under the Court's original jurisdiction under the Constitution, a "Bill of Complaint" against Pennsylvania, Georgia, Michigan and Wisconsin. The docketed documents can be found here.

The long and short of the proposed bill of complaint was that, because the named state defendants had altered through non-legislative acts – *i.e.*, through the actions of executive branch and judicial branch, but not legislative branch personnel – their state statutory laws and/or procedures governing how presidential elections were to be held, those actions altered how presidential electors under the federal Constitution were to be selected and thus infringed on the rights of other states and their citizen voters to have such elections conducted in a lawful and constitutional manner. The argument was that the rogue states' actions diluted and/or disenfranchised voters of other states where their election laws were observed. A majority of the Court determined to reject assumption of

jurisdiction over the case because Texas purportedly lacked "standing" to bring the action.

The curious aspect of the Supreme Court's refusal to accept jurisdiction lies in the fact that only Justices Alito and Thomas – two of the Court's staunchest conservatives – disagreed with the other members of the Court. They argued that Texas did, in fact, possess "standing" before the Court because, in their view, the Court lacked "discretion" to refuse to accept jurisdiction under Art. 3, § 2 of the Constitution. Stated otherwise, they believed that, because federal law and the Constitution vests *exclusive* jurisdiction in the Court over "controversies between two or more states," that investiture alone bestowed "standing" in Texas to maintain the action.

So why, one might one ask, did the three other "conservative" members of the Court – Justices Gorsuch, Kavanaugh and Barrett – disagree and not join Justices Alito and Thomas? Clearly, had they been of the same mind as Justices Alito and Thomas, instead of declining jurisdiction, the Court would have accepted jurisdiction. Note that just because jurisdiction may be accepted in an original "bill of complaint" arising between two states does not equate to a decision ultimately favoring the state bringing the action, here, Texas. Jurisdiction could have been accepted, additional briefing and oral argument ordered, and still, Texas could have ultimately lost on the merits.

However, by barring Texas from even "getting in the front door" to have its arguments considered, Justices Gorsuch, Kavanaugh and Barrett seem to be telegraphing a mixed message. Either they are philosophically aligned on the "standing" issue with the liberal wing of the Court, including Chief Justice Roberts and Justices Sotomayor, Kagan and Breyer, or something else could be going on.

For example, there are additional "2020 election anomaly" cases still pending in the Court on petitions for certiorari which, for whatever reason, Justices Gorsuch, Kavanaugh and Barrett may have believed presented better facts for adjudicating the core issues of whether the 2020 election was, in fact, illegally rigged in favor of Slow Joe and Ineligible Kamala. Or perhaps they felt that the issue was so radioactive that even the mere act of accepting jurisdiction over the Texas bill – let alone ruling on its merits – was a "bridge too far" for them. One other potential could be that they hoped that, come Dec. 14, 2020, when the various state electors are scheduled to meet and announce their votes, all of the issues would be mooted and the pending cases could be dismissed.

While plausible, each of these potentials still fails to adequately answer the question of why three conservative Justices split from two other conservative Justices on the question, particularly given the fact that a decision on the merits could still deny the relief sought by Texas while answering the not-insubstantial question: can states engage in non-legislative acts directly impacting and cannibalizing presidential elections without violating the Constitution?

As it now stands, that is exactly what the declination of jurisdiction over the Texas case would lead one to believe. The petulant responses of the rogue states – Pennsylvania,

Georgia, Michigan and Wisconsin – that it is "none of Texas's business" how they conduct their presidential elections, even when it results in a fraudulent popular vote count directly affecting the state's Electoral College vote, is, to state the matter politely, %##@*^&!.

Accordingly, circling back to why Justices Gorsuch, Kavanaugh and Barrett may have sided with the liberal wing of the Court, one can only hope that prior to Jan. 6, 2021, some other decision of the Court in a pending case will upend the process. Or perhaps the option discussed here may end up mooting the problem. Recall that neither Pennsylvania nor Georgia sanction "faithless electors" with removal from their positions and voiding of their votes, once cast. If on Dec. 14, all Pennsylvania and Georgia electors, or enough "blue state" Democrat electors, determine to place the future of the Republic ahead of partisan and cannibalistic Democrat chicanery and politics, perhaps the right result will emerge.

Wait…, sorry…, my bad…. That "vote your conscience/Federalist 68" option and result would depend on rabid Democrat electors falling back on patriotic principles and casting their votes in a state that does not remove them and void their vote for doing so. They will comply and do as they are told…, or else. Stated otherwise, it is now apparently OK to void votes for President Trump by overwhelming them with fraudulent votes, but it is forbidden to permit presidential electors to exercise "discernment" or to "deliberate" – as noted in Federalist 68 – over their Electoral College votes against those circumstances. Faithful P&E readers, please accept humble apologies for lapsing into rational thought.

Your servant used to end some of these posts with the rhetorical question: "Is this a great country, or what?" If the Biden-Harris cabal takes over – especially if the Senate falls under the control of Chuck Schumer – that phrase will be changed to: "***Was*** this a great country, or what?"

Recall what Schumer said in the lead-up to the Senate runoff elections in Georgia: "Now we take Georgia, then we change the world." That statement sounds disturbingly like the one rumored, but not proven, to have been uttered by another "leader" in pre-WWII Germany: "Today we take Germany, tomorrow, the world." The rumored speaker: Adolph Hitler.

Yikes.