

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

v.

TIMOTHY HALE-CUSANELLI,

Defendant.

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Case No. 1:21-cr-37-TNM

DEFENDANT HALE-CUSANELLI'S NOTICE OF SUPPLEMENTAL AUTHORITY

Defendant Hale-Cusanelli, through his counsel, files this notice to apprise the Court of recent supplemental authority that bears on his Motion for Judgment of Acquittal on Count One of the Superseding Indictment (ECF No. 103). *E.g., Sanders v. District of Columbia*, 2014 U.S. Dist. LEXIS 156954, at *2 (D.D.C. Nov. 6, 2014) (“In practice . . . this Court has allowed notices of supplemental authority to be filed without leave of court, provided that such notices are limited.”).

In moving for a judgment of acquittal on the § 1512(c)(2) charge, Hale-Cusanelli argued that it was not just the absence of investigations and evidence from Congress’s electoral-vote-counting joint sessions that placed them outside the statute’s definition of “official proceeding”; it was also the absence of an adjudicative component to those sessions. The government countered that such joint sessions were adjudicative, as “parties may lodge objections to the certification [of electoral votes]” under the Electoral Count Act. Gov’t Opp. to Mot. for J. of Acquittal, ECF No. 104, p. 18. Just as in a “tribunal,” added the government, “each House must consider the objection and make a ‘decision’ whether to overrule or sustain it.” *Id.* Thus, “even under the defendant’s theory, Congress’s certification of the Electoral College vote possesses

sufficient ‘tribunal-like’ characteristics” to state a § 1512(c)(2) offense. *Id.*

Yesterday, the vice chair of The Select Committee to Investigate the January 6th Attack and another member of the committee published an opinion on the interplay between the events of January 6 and the Electoral Count Act and Twelfth Amendment. Liz Cheney and Zoe Lofgren, *We Have a Bill to Help Prevent Another Jan. 6. Attack*, Wall Street Journal, Sept. 18, 2022, available at: https://www.wsj.com/articles/we-have-a-bill-to-prevent-another-jan-6-attack-cheney-committee-electoral-count-president-11663535092?mod=opinion_lead_pos6. The committee has investigated the events of January 6 very closely. Thus, the vice chair’s opinion is worthy of serious consideration.

The vice chair announced the committee’s intention to “reaffirm what the Constitution and existing law already make plain.” *Id.* “The 12th Amendment is straightforward; it simply requires counting” electoral votes. *Id.* For that reason, “Congress doesn’t sit as a court of last resort, capable of overruling state and federal judges to alter the electoral outcome.” Added the vice chair, “[I]n all cases where one candidate has the majority of electoral votes, [] Congress’s proceeding on Jan. 6. is purely ministerial.”

Vice Chair Cheney is correct: the government has failed to state a § 1512(c)(2) offense here.

Dated: Sept. 19, 2022

Respectfully submitted,

/s/ Nicholas D. Smith
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Certificate of Service

I hereby certify that on the 19th day of September, 2022, I filed the foregoing filing with the Clerk of Court using the CM/ECF system, and counsel of record were served by electronic means.

/s/ Nicholas D. Smith

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