

In the
Supreme Court of the United States

DONALD J. TRUMP FOR PRESIDENT, INC.,

Petitioner,

v.

KATHY BOOCKVAR, SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA, *et al.*,

Respondents.

On Writ of Certiorari to the
Pennsylvania Supreme Court

**REPLY TO SECRETARY BOOCKVAR'S RESPONSE IN OPPOSITION
TO THE MOTION FOR EXPEDITED CONSIDERATION
OF THE PETITION FOR A WRIT OF CERTIORARI**

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Of the 70 Respondents served in this case, only Kathy Boockvar, Secretary of the Commonwealth of Pennsylvania – the person most responsible for the events which led up to the egregious violations of Article II of the Constitution detailed in the Petition – filed opposition to the Motion for Expedited Consideration. Tellingly, the Secretary does not dispute the main contentions in the Petition for Writ of Certiorari, namely, that she and other officials in Pennsylvania—both executive and judicial—ignored or altered provisions of Pennsylvania election law, in violation of Article II of the Constitution. And she does not address Petitioner’s contention that 3 U.S.C. § 2 provides a remedy when a state has “failed” to choose electors according to the “manner” set out by the state legislature. Instead, most of the opposition – filed by Democrat Pennsylvania Attorney General Shapiro, a vocal opponent of President Trump – consists of extraneous, political attacks on the President and his legal strategy. The non-political points asserted by the Secretary have no merit. And the Secretary’s remaining contentions simply assume the very thing in dispute, namely, whether the electors that have been certified in Pennsylvania were actually chosen by the voters of the state in accord with the election laws adopted by the Legislature.

The Petition Is Timely

The Petition was timely filed and expedited relief is warranted. As explained in the Motion, the timing of the Petition was affected by cases pending in this Court; ultimately, one was dismissed (*Texas*)¹ and one not acted upon (*Kelly*). In addition,

¹ The Secretary claims that the President’s motion to intervene in the Texas “implicitly recognized that Texas lacked standing.” Not true. As the Third Circuit

until the Petition was filed on December 20, 2020, it was not clear that Pennsylvania's 20 electoral votes could turn the election. Now, with critical additional filings related to Wisconsin and Georgia, it is clear that the presidential election will turn on whether this Court acts, and does so in an expedited basis.

Petitioner has filed petitions for certiorari in this Court challenging 20 electoral votes in Pennsylvania and 10 electoral votes in Wisconsin based on violations of Article II of the U.S. Constitution, and seeks the remedy that the legislatures of those states be allowed to appoint their electors pursuant to 3 U.S.C. § 2.² In addition, Petitioner has filed suit in the Northern District of Georgia, claiming that Georgia's presidential election violated Article II, and seeks the remedy that the Georgia Legislature be allowed to appoint its 16 electors pursuant to 3 U.S.C. § 2. Taken together, the two petitions and the Georgia suit challenge 46 electoral votes, more than enough to change the outcome of this election if those states' legislatures appoint electors in favor of President Trump. It is now a matter of extreme urgency

has recognized, "A motion for intervention ... is not an appropriate device to cure a situation in which plaintiffs may have stated causes of action that they have no standing to litigate." *McClune v. Shamah*, 593 F.2d 482, 486 (3d Cir. 1979); *see also Fuller v. Volk*, 351 F.2d 323, 328 (3d Cir. 1965) ("intervention will not be permitted to breathe life into a 'nonexistent' lawsuit"). The reason Petitioner sought to intervene in the Texas case was because, had this Court accepted Texas's arguments on standing, the case would have provided an opportunity for this Court to consider in a single action the Article II violations that occurred in four states whose electoral votes are outcome determinative.

² Section 2 provides: "Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct." 3 U.S.C. § 2.

that this Court hear this case, as well as the related Wisconsin case and anticipated appeal from the Georgia case, to decide critical issues under Article II and 3 U.S.C. § 2, which will determine who will serve as the President and Vice President for the next four years.

First, on December 20, 2020, the Petitioner filed its petition for certiorari contending that a trio of Pennsylvania Supreme Court decisions — including one decided on November 23, 2020, nearly three weeks after the election — governing the November 3, 2020, presidential election violated Article II of the Constitution, and seeking as a remedy that the Pennsylvania Legislature be allowed to appoint its 20 electors.

Second, on December 29, 2020, President Trump and Vice President Pence, in their capacity as candidates, and their Campaign, filed their petition for certiorari challenging a Wisconsin Supreme Court decision which denied a challenge to the November 3, 2020, presidential election in violation of Article II. *See Donald J. Trump, et al. v. Joseph R. Biden, et al.* (Case No. ___) (cert. petition filed December 29, 2020). That petition seeks a declaration that the Wisconsin election failed within the meaning of 3 U.S.C. § 2 and seeks the remedy that the Wisconsin Legislature be allowed to appoint its 10 electors.

Thereafter, on December 30, 2020, Donald J. Trump, in his capacity as candidate for President, filed a petition for certiorari challenging a Seventh Circuit Court of Appeals decision, which asserted that Wisconsin's November 3, 2020 presidential election failed, and sought a remedy that the Wisconsin Legislature

appoint its 10 electors. *See Donald J. Trump v. Wisconsin Elections Commission, et al.* (Case No. __) (cert. petition filed December 30, 2020).

Third, on December 31, 2020, President Trump, in his capacity as a candidate, filed suit in federal court in Georgia, asserting that its November 3, 2020 presidential election failed because, *inter alia*, Georgia has refused to provide a judge to hear his December 4, 2020 election contest in violation of Article II, 3 U.S.C. § 2, and Due Process. In that case, Plaintiff seeks a preliminary injunction setting aside the certification of Georgia's electors and the remedy that the Georgia Legislature be allowed to appoint its 16 electors. *See Donald J. Trump v. Brian P. Kemp, et al.* (Case No. __) (N.D.Ga. Dec. 31, 2020). It is expected that whichever side loses the preliminary injunction motion will appeal to the Eleventh Circuit Court of Appeals, from which this Court may grant certiorari pursuant to S. Ct. Rules 21, 23, and 17.2 and FED. R. CIV. P. 65.

All told, the two petitions for certiorari and the Georgia suit challenge 46 electoral votes. If the Legislatures are permitted to appoint those electors and do so in favor of Petitioner, President Trump will win this election. It is thus a matter of national importance and urgency that this Court hear this case, as well as the related Wisconsin petitions, and likely appeal from Georgia, before Congress convenes on January 6, 2021 to begin counting electoral votes, pursuant to 3 U.S.C. § 15, in order for the President and Vice President to be determined by Inauguration Day on January 20 (U.S. CONST. amend. XX, § 1), to avoid the disruption that would be caused if the office is left vacant and an Acting President temporarily fills the post,

and to avoid the possibility that a President might actually be inaugurated on the basis of an out-come determinative number of illegally-counted votes.

The Seventh Circuit's Seminal Opinion on Relief

Subsequent to the filing of the Petition and Motion to Expedite, the Seventh Circuit ruled in the case which is now pending before this Court on a petition for writ of certiorari. Critically, while the Circuit ruled against the President on laches and in dicta on other issues, it affirmed his right to meaningful relief under 3 U.S.C. § 2, holding:

... [T]he President's complaint can be read as ... requesting a declaration that the defendants' actions violated the Electors Clause and that those violations tainted enough ballots to "void" the election. Were we to grant the President the relief he requests and declare the election results void, the alleged injury—the unlawful appointment of electors—would be redressed. True, our declaration would not result in a new slate of electors. But the fact that a judicial order cannot provide the full extent or exact type of relief a plaintiff might desire does not render the entire case nonjusticiable. See *Church of Scientology v. United States*, 506 U.S. 9, 12–13 (1992). A favorable ruling would provide the opportunity for the appointment of a new slate of electors. From there, it would be for the Wisconsin Legislature to decide the next steps in advance of Congress's count of the Electoral College's votes on January 6, 2021. See 3 U.S.C. § 15.

Trump v. Wis. Elections Comm'n, No. 20-3414, 2020 U.S. App. LEXIS 40360, at *10-11 (7th Cir. Dec. 24, 2020).

Thus, if this Court follows the Seventh Circuit's holding, the President would have the opportunity to obtain meaningful relief, *i.e.*, to have the elections in Pennsylvania, as well as Wisconsin and Georgia, declared "failed" and allow the legislatures of those states to appoint electors in accord with the number of legal votes

cast at the November 3 election, electors whose votes could then be counted for the President when Congress begins its proceedings on January 6, 2021. Thus, for this additional reason, the Motion to Expedite should be granted.

Respectfully submitted this 31st day of December, 2020.

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