

No. 20-_____

In the
Supreme Court of the United States

Donald J. Trump, *PETITIONER*,

v.

Wisconsin Election Commission, et al.,
RESPONDENTS.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

MOTION FOR EXPEDITED CONSIDERATION

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**MOTION FOR EXPEDITED CONSIDERATION OF THE
PETITION FOR A WRIT OF CERTIORARI AND
EXPEDITED MERITS BRIEFING AND ORAL ARGUMENT
IN THE EVENT THAT THE COURT GRANTS THE PETITION**

Petitioner Donald J. Trump respectfully requests, pursuant to Supreme Court Rule 21, that this Court expedite its consideration of his petition for a writ of certiorari (the “Petition”) filed today. Petitioner further requests, pursuant to Supreme Court Rule 25.5, that if the Petition is granted, the Court expedite the schedule for briefing and oral argument. Expedited review would allow an orderly and timely resolution of the important questions presented under the U.S. Constitution and federal law. It is in the interests of the parties, Congress, and the Nation as a whole, that this Court have as much time as possible to consider the relative merits of the parties’ positions and to issue its decision sufficiently in advance of fast-approaching deadlines. The Petition seeks to declare Wisconsin’s November 3, 2020 election of presidential electors unconstitutional and void, and thus “failed” within the meaning of 3 U.S.C. § 2, and consequently to have the Wisconsin Legislature appoint its electors as permitted by Section 2 and Article II of the United States Constitution. Similar petitions from Wisconsin and Pennsylvania are pending before this Court, and litigation will be filed shortly in Georgia seeking the same result. Taken together, these four cases challenge 46 elector votes—more than enough to change the result of the vote of electors which took place on December 14.

The Case Presented

First, Petitioner seeks a writ of certiorari to review unauthorized absentee voting practices that state and local election administrators implemented in late stages of the 2020 Presidential election, contrary to the Wisconsin Legislature's statutory warning that absentee voting must be "carefully regulated" to guard against fraud and that absentee voting procedures must be strictly followed or else those ballots cannot be counted. The challenged practices violate specific provisions of election laws adopted by the Wisconsin Legislature pursuant to its plenary power to determine the "Manner" by which Wisconsin appoints its presidential electors, U.S. CONST. art. II, § 1, cl. 2 (the "Electors Clause"), and in violation of the Equal Protection Clause of U.S. CONST. Amend. 14.

Second, the Petition seeks review of the Seventh Circuit's application of laches to bar the Petitioner's post-election challenges to these unauthorized election practices that Respondents implemented in the late stages of this primarily absentee ballot election. The Seventh Circuit's decision will have a profound nationwide chilling effect, as all future candidates will feel it necessary to continuously monitor all election officials in all competitive jurisdictions, in an effort to divine whether some or all of them might violate the election laws. Candidates will feel it necessary to launch preemptive litigation against possible abuses, for fear that if they wait to bring suit after an election, when they know whether concrete harm has occurred, courts will invoke the doctrine of laches to tell them they waited too long. And candidates will be forced to proceed in this fashion

through guesswork, without any way of knowing whether the possible violations will actually impact the outcome of the election.

Third, Petitioner seeks a declaration that Wisconsin's November 3rd presidential election was void and thus "failed," allowing Wisconsin's Legislature to appoint electors under the savings clause of 3 U.S.C. § 2 and Article II of the U.S. Constitution.

Expedited Consideration is Appropriate

This Court should review the Seventh Circuit's decision and enter an appropriate remedy on an expedited basis.

First, the ordinary briefing schedules prescribed by Rules 15 and 25 of this Court would not allow the case to be considered and decided before the results of the general election are finalized pursuant to these upcoming deadlines: Congress is scheduled to count the electoral votes commencing on January 6, 2021 (see 3 U.S.C. § 15) and, practically speaking, that count must be completed by Inauguration Day for the President and Vice President, January 20, 2021 (see U.S. Const., amend. XX), to avoid the need for an Acting President to head up the executive branch. These dates would come and go before the completion of briefing, argument, and a decision on the merits under the Court's default rules. See U.S. Sup. Ct. R. 15, 25. 3.

Second, time is plainly of the essence because once candidates have taken office, it will be impossible to repair election results that were tainted by illegally cast and counted absentee ballots. Thus, without expedited review, Petitioners' appellate rights—and this Court's power to resolve the important constitutional and

legal questions presented in the context of this election—may be irrevocably lost. *See, e.g., Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S. 1004, 1005 (2000) (granting petitioner’s motion to expedite consideration of petition for a writ of certiorari).

Third, this Court’s expedited review will in no way prejudice Respondents, the majority of which are governmental agencies or officials who have an interest in the Constitution being followed; indeed, a duty to ensure it is followed. Vice President Biden and Senator Harris are not parties in the proceedings below but their interests were represented by the Democratic National Committee (DNC) which intervened and was added as a party by the district court. Vice President Biden, Senator Harris, and the DNC also have an interest in having any remaining election challenges resolved, on the merits, prior to Inauguration Day.

Finally, if this matter is not timely resolved, not only Petitioners, but the Nation as a whole, may suffer injury from the resulting confusion. The importance of a prompt resolution of the federal constitutional questions presented by this case cannot be overstated. Large swaths of the population believe the election was tainted by fraud and irregularities. Those concerns and doubts would only be enhanced if this Court, like the Seventh Circuit, were to opt not to reach the merits of Petitioner’s challenge to the conduct of the election in Wisconsin. Prompt review of the petition is essential to helping restore the public’s confidence in our system of free and fair elections.

Accordingly, Petitioner submits that Respondents should be directed to file their response(s) to the petition by 5 p.m. on January 1, 2020; and Petitioners should be directed to submit their reply brief in support of certiorari by 5:00 p.m. on January 2, 2021. If certiorari is granted, petitioners submit that the case should be decided based on the petition, response(s) and reply, which may then also be deemed the parties' briefs on the merits. Petitioner requests he be granted, without need for further request, a word limit for his reply of 3,000 words for each brief in opposition to which he must respond and of an additional 2,000 words for each amicus filed. If the Court deems additional briefing to be helpful, Petitioners submit that the Court should order expedited contemporaneous opening merits briefs for Petitioners and Respondents, together with any *amicus curiae* briefs and contemporaneous reply briefs for Petitioners and Respondents within 24 hours thereafter. If oral argument is deemed helpful, Petitioners submit that it should be expedited, as well.

Respectfully submitted this 30th day of December 2020.

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