No. 20-3414

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DONALD J. TRUMP,

Plaintiff-Appellant,

v.

The WISCONSIN ELECTIONS COMMISSION, *et al.*,

Defendants-Appellees,

and

DEMOCRATIC NATIONAL COMMITTEE, *et al.*,

Intervening Defendants-Appellees.

On Appeal from the United States District Court for the
Eastern District of Wisconsin, Case No. 20-cv-1785-BHL
The Honorable Brett H. Ludwig, United States District Judge, Presiding

BRIEF OF INTERVENING DEFENDANT-APPELLEE DEMOCRATIC NATIONAL COMMITTEE

[Counsel for Intervenor Defendant-Appellee Democratic National Committee listed on following page]

Seth P. Waxman
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Ave., NW
Washington, DC 20006
(202) 663-6000
seth.waxman@wilmerhale.com

David S. Lesser
Jamie Dycus
Christopher Bouchoux
Joseph J. Yu
Charles Bridge
Swapna Maruri
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 230-8800
david.lesser@wilmerhale.com
jamie.dycus@wilmerhale.com
christopher.bouchoux@wilmerhale.com
joseph.yu@wilmerhale.com
charles.bridge@wilmerhale.com
swapna.maruri@wilmerhale.com

Matthew W. O'Neill
FOX, O'NEILL &
SHANNON, S.C.
622 North Water Street,
Suite 500
Milwaukee, WI 53202
(414) 273-3939
mwoneill@foslaw.com

Charles G. Curtis, Jr.
Michelle M. Umberger
Sopen B. Shah
Will M. Conley
PERKINS COIE LLP
33 East Main St., Suite 201
Madison, WI 53703
(608) 663-7460
ccurtis@perkinscoie.com
mumberger@perkinscoie.com
sshah@perkinscoie.com
wconley@perkinscoie.com

Marc E. Elias
John Devaney
Zachary J. Newkirk
PERKINS COIE LLP
700 Thirteenth St., N.W.,
Suite 800
Washington, D.C. 20005
(202) 654-6200
melias@perkinscoie.com
jdevaney@perkinscoie.com
znewkirk@perkinscoie.com

Attorneys for Intervenor Defendant-Appellee Democratic National Committee

Save As Clear Form

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 20-3414

Short Caption: Donald J. Trump v. Wisconsin Elections Commission, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☑ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Democratic National Committee

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Perkins Coie LLP; Wilmer Cutler Pickering Hale and Dorr LLP; and Fox O'Neill & Shannon SC. [revised].

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Charles G. Curtis, Jr. Date: December 14, 2020

Attorney's Printed Name: Charles G. Curtis, Jr.

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

Address: 33 East Main Street, Suite 201

Madison, WI 53703-3095

Phone Number: (608) 663-7460 Fax Number: (608) 663-7499

E-Mail Address: ccurtis@perkinscoie.com

Save As Clear Form

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 20-3414

Short Caption: Donald J. Trump v. Wisconsin Elections Commission, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Democratic National Committee

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Perkins Coie LLP; Wilmer Cutler Pickering Hale and Dorr LLP; and Fox O'Neill & Shannon SC

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Marc E. Elias Date: December 15, 2020

Attorney's Printed Name: Marc E. Elias

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: 700 Thirteenth St., N.W., Suite 800

Washington, D.C. 20005

Phone Number: (202) 654-6200 Fax Number: (202) 654-6211

E-Mail Address: MElias@perkinscoie.com

Save As Clear Form

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 20-3414

Short Caption: Donald J. Trump v. Wisconsin Elections Commission, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Democratic National Committee

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Perkins Coie LLP; Wilmer Cutler Pickering Hale and Dorr LLP; and Fox O'Neill & Shannon SC

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Michelle M. Umberger Date: December 14, 2020

Attorney's Printed Name: Michelle M. Umberger

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: 33 East Main Street, Suite 201

Madison, WI 53703-3095

Phone Number: (608) 663-7460 Fax Number: (608) 663-7499

E-Mail Address: mumberger@perkinscoie.com

Save As Clear Form

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 20-3414

Short Caption: Donald J. Trump v. Wisconsin Elections Commission, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Democratic National Committee

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Perkins Coie LLP; Wilmer Cutler Pickering Hale and Dorr LLP; and Fox O'Neill & Shannon SC

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Sopen B. Shah Date: December 15, 2020

Attorney's Printed Name: Sopen B. Shah

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: 33 East Main Street, Suite 201

Madison, WI 53703-3095

Phone Number: (608) 663-7460 Fax Number: (608) 663-7499

E-Mail Address: SShah@perkinscoie.com

Save As Clear Form

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 20-3414

Short Caption: Donald J. Trump v. Wisconsin Elections Commission, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Democratic National Committee

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Perkins Coie LLP; Wilmer Cutler Pickering Hale and Dorr LLP; and Fox O'Neill & Shannon SC

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Will M. Conley Date: December 14, 2020

Attorney's Printed Name: Will M. Conley

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: 33 East Main Street, Suite 201

Madison, WI 53703-3095

Phone Number: (608) 663-7460 Fax Number: (608) 663-7499

E-Mail Address: WConley@perkinscoie.com

Save As Clear Form

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 20-3414

Short Caption: Donald J. Trump v. Wisconsin Elections Commission, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Democratic National Committee

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Perkins Coie LLP; Wilmer Cutler Pickering Hale and Dorr LLP; and Fox O'Neill & Shannon SC

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ John M. Devaney Date: December 15, 2020

Attorney's Printed Name: John M. Devaney

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: 700 Thirteenth St., N.W., Suite 800

Washington, D.C. 20005

Phone Number: (202) 654-6200 Fax Number: (202) 654-6211

E-Mail Address: JDevaney@perkinscoie.com

Save As Clear Form

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 20-3414

Short Caption: Donald J. Trump v. Wisconsin Elections Commission, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Democratic National Committee

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Perkins Coie LLP; Wilmer Cutler Pickering Hale and Dorr LLP; and Fox O'Neill & Shannon SC

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Zachary J. Newkirk Date: December 15, 2020

Attorney's Printed Name: Zachary J. Newkirk

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: 700 Thirteenth St., N.W., Suite 800

Washington, D.C. 20005

Phone Number: (202) 654-6200 Fax Number: (202) 654-6211

E-Mail Address: ZNewkirk@perkinscoie.com

Save As Clear Form

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 20-3414

Short Caption: Donald J. Trump v. Wisconsin Elections Commission, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Democratic National Committee

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Perkins Coie LLP; and Wilmer Cutler Pickering Hale and Dorr LLP; and Fox, O'Neill & Shannon, S.C.

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: s/ Matthew W. O'Neill Date: December 15, 2020

Attorney's Printed Name: Matthew W. O'Neill

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: 622 North Water Street, Suite 500

Milwaukee, WI 53202

Phone Number: (414) 273-3939 Fax Number: (414) 273-3947

E-Mail Address: mwoneill@foslaw.com

Save As Clear Form

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 20-3414

Short Caption: Donald J. Trump v. Wisconsin Elections Commission, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Intervening Defendant-Appellee Democratic National Committee

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Perkins Coie LLP; Wilmer Cutler Pickering Hale and Dorr LLP; Fox O'Neill & Shannon, S.C.

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s Seth Waxman Date: 12/18/2020

Attorney's Printed Name: Seth Waxman

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: 1875 Pennsylvania Avenue NW

Washington, DC 20006

Phone Number: 202 663 6800 Fax Number: 202 663 6363

E-Mail Address: seth.waxman@wilmerhale.com

Save As Clear Form

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 20-3414

Short Caption: Donald J. Trump v. Wisconsin Elections Commission, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Intervening Defendant-Appellee Democratic National Committee

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Perkins Coie LLP; Wilmer Cutler Pickering Hale and Dorr LLP; Fox O'Neill & Shannon, S.C.

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s Jamie Dycus Date: 12/18/2020

Attorney's Printed Name: Jamie Dycus

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: 7 World Trade Center, Office 42040

New York, NY 10007

Phone Number: 212-937-7236 Fax Number: 212-230-8888

E-Mail Address: jamie.dycus@wilmerhale.com

Save As Clear Form

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 20-3414

Short Caption: Donald J. Trump v. Wisconsin Elections Commission, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Intervening Defendant-Appellee Democratic National Committee

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Perkins Coie LLP; Wilmer Cutler Pickering Hale and Dorr LLP; Fox O'Neill & Shannon, S.C.

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s Christopher Bouchoux Date: 12/18/2020

Attorney's Printed Name: Christopher Bouchoux

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: 7 World Trade Center, Office 42026

New York, NY 10007

Phone Number: 212 230 8823 Fax Number: 212 230 8888

E-Mail Address: christopher.bouchoux@wilmerhale.com

Save As Clear Form

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 20-3414

Short Caption: Donald J. Trump v. Wisconsin Elections Commission, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Intervening Defendant-Appellee Democratic National Committee

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Perkins Coie LLP; Wilmer Cutler Pickering Hale and Dorr LLP; Fox O'Neill & Shannon, S.C.

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s David Lesser Date: 12/18/2020

Attorney's Printed Name: David Lesser

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: 7 World Trade Center, Office 42102

New York, NY 10007

Phone Number: 212-230-8851 Fax Number: 212-230-8888

E-Mail Address: david.lesser@wilmerhale.com

Save As Clear Form

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 20-3414

Short Caption: Donald J. Trump v. Wisconsin Elections Commission, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Intervening Defendant-Appellee Democratic National Committee

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Perkins Coie LLP; Wilmer Cutler Pickering Hale and Dorr LLP; Fox O'Neill & Shannon, S.C.

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s Joseph Yu Date: 12/18/2020

Attorney's Printed Name: Joseph Yu

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: 7 World Trade Center, Office 42110

New York, NY 10007

Phone Number: 212-295-6551 Fax Number: 212-230-8888

E-Mail Address: joseph.yu@wilmerhale.com

Save As Clear Form

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 20-3414

Short Caption: Donald J. Trump v. Wisconsin Elections Commission, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Intervening Defendant-Appellee Democratic National Committee

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Perkins Coie LLP; Wilmer Cutler Pickering Hale and Dorr LLP; Fox O'Neill & Shannon, S.C.

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s Charles Bridge Date: 12/18/2020

Attorney's Printed Name: Charles Bridge

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: 7 World Trade Center, Office 42066

New York, NY 10007

Phone Number: 212-295-6418 Fax Number: 212-230-8888

E-Mail Address: charles.bridge@wilmerhale.com

Save As Clear Form

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 20-3414

Short Caption: Donald J. Trump v. Wisconsin Elections Commission, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Intervening Defendant-Appellee Democratic National Committee

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Perkins Coie LLP; Wilmer Cutler Pickering Hale and Dorr LLP; Fox O'Neill & Shannon, S.C.

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s Swapna Maruri Date: 12/18/2020

Attorney's Printed Name: Swapna Maruri

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: 7 World Trade Center, Office 42044

New York, NY 10007

Phone Number: 212-295-6843 Fax Number: 212-230-8888

E-Mail Address: swapna.maruri@wilmerhale.com

Table of Contents

Table of Authorities

Page(s)

Cases

Table of Authorities

Page(s)

Table of Authorities

Page(s)

STATUTES

Table of Authorities

Page(s)

OTHER AUTHORITIES

Jurisdictional Statement

The Jurisdictional Statement in the brief submitted on behalf of President Trump is incomplete and inaccurate. In addition, and for the reasons discussed in detail in this brief, this Court lacks jurisdiction over the appeal.

A. District Court jurisdiction

President Trump brought this action on December 2, 2020, over four weeks after the November 3 Presidential election. The President asked the U.S. District Court for the Eastern District of Wisconsin to exercise federal jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 with respect to his claims under 28 U.S.C. §§ 2201-02 and 42 U.S.C. § 1983 for alleged federal constitutional violations in connection with the Presidential election. President Trump alleges that the state and municipal defendants engaged in "*ultra vires* modifications to the [Wisconsin] Legislature's explicit directions for the manner of conducting absentee voting in Wisconsin for the presidential election," which the President claims were 'significant departure[s] from the legislative scheme for appointing Presidential electors.'" Trump Br. at 1 (quoting *Bush v. Gore,* 531 U.S. 98, 113 (2000) (Rehnquist, C.J., concurring)).

The District Court lacked jurisdiction over these claims because of the standing and mootness issues discussed in Parts I and II of this brief. The claims also are barred under the Eleventh Amendment, as discussed in Part III. President Trump's supposedly "federal" claims are merely disguised state law claims—they seek relief against state and local officials who supposedly violated state statutory law, even though these allegations have been rejected by the Wisconsin Supreme Court. All of the President's claims of errors by state and municipal officials in carrying out their

state law duties are flat wrong, and in any event *none* would constitute a "*significant* departure from the legislative scheme for appointing Presidential electors" necessary to invite federal judicial intervention. These points are developed in full in the governmental defendants' brief, which the DNC adopts by reference.

B. Appellate jurisdiction

The President has invoked this Court's jurisdiction pursuant to 28 U.S.C. § 1291 over his appeal from the District Court's final Decision and Order (A001) and Judgment (A024), which were entered on December 12, 2020.[1] A notice of appeal was filed on behalf of the President that same day, so the appeal was timely filed pursuant to Fed. R. App. P. 4(a)(1)(A).

Issues Presented

President Trump's Statement of the Issues is argumentative and rests on inaccurate factual and legal premises. The Democratic National Committee ("DNC") agrees with the framing of the substantive issues set forth in the governmental defendants' brief. This brief will address the following additional issues:

1. Whether President Trump has Article III standing to pursue his claims.
2. Whether President Trump's claims are moot.
3. Whether the Eleventh Amendment bars President Trump's claims.

---

[1] Consistent with President Trump's usage, citations to A____ are to the appendix materials attached to the President's brief (ECF No. 41). Citations to B____ are to the President's separately bound appendix (ECF No. 42). Citations to JD___ are to the Joint Defense Appendix being filed on behalf of all defendants and intervening defendants.

Statement of the Case

In response to this Court's December 14 order instructing defendants "to avoid unnecessary duplication," ECF No. 9, all defendants and intervening defendants are submitting a single Joint Appendix. In addition, defense counsel have divided the issues addressed in their respective briefs. This brief of the DNC will address the standing, mootness, and Eleventh Amendment issues. The DNC adopts in full the brief of the state and municipal defendants (which focuses on the state and federal law merits of President Trump's claims, as well as the preclusion issues) and the brief of the Wisconsin State Conference NAACP and the Lawyers' Committee for Civil Rights Under Law (which focuses on the racially discriminatory character of the President's recount strategy).

The District Court granted the DNC's motion for permissive intervention under Fed. R. Civ. P. 24(b) on December 8, *see* ECF No. 61, and the DNC participated fully as a party in the proceedings below, including in briefing and oral argument. The DNC has a substantial stake in the outcome of this litigation. Its nominees for President and Vice-President, President-elect Joseph R. Biden, Jr. and Vice President-elect Kamala D. Harris, won the 2020 national popular vote 45 days ago by over seven million votes. Biden and Harris secured an Electoral College victory of 306-232, which was formalized when the College met and voted on Monday, December 14, 2020. In Wisconsin, the Biden-Harris ticket initially won by a margin of 20,585 votes. The partial recount demanded by President Trump and Vice President Pence, which at their behest was targeted at only two of Wisconsin's 72 counties, increased the Biden-Harris winning margin in Wisconsin to 20,682 votes.

Biden and Harris are therefore entitled, as a matter of state and federal law, to Wisconsin's ten electoral votes. *See* WIS. STAT. §§ 5.10, 5.64(1)(em), 7.70(5)(b), 8.18, 8.25(1); 3 U.S.C. §§ 5-11; U.S. Const. art. II, § 1, cl. 2. The results of the Wisconsin Presidential election have been certified by the Chairperson of the Wisconsin Elections Commission ("WEC"), and Governor Evers in turn has signed the Certificate of Ascertainment and transmitted it to the Archivist of the United States. *See* 3 U.S.C. § 6; *see also* Wis. Stat. §§ 7.70(3)(a), 7.70(5)(b). Wisconsin's ten duly chosen Electors have cast their ballots, and their certified results have been "transmit[ted] sealed to the seat of government of the United States, directed to the President of the Senate." U.S. Const. art. II, § 1, cl. 3; *see* 3 U.S.C. § 11. Wisconsin's Presidential election is over.

Except, apparently, in the courts. This is the *seventh* lawsuit President Trump and his allies have brought in Wisconsin federal and state courts since November 12 challenging the results of the election. In addition to this case, these include three petitions for original actions filed in the Wisconsin Supreme Court;[2] two other federal lawsuits in the Eastern District of Wisconsin (one that is also on appeal to this Court);[3] and the state-court judicial appeals from the Dane and Milwaukee County

[2] *See Trump v. Evers,* No. 2020AP1971-OA (petition denied Dec. 3, 2020) (JD 251-60); *Mueller v. Jacobs,* No. 2020AP1958-OA (petition denied Dec. 3, 2020) (JD 261-62); *Wisconsin Voters All. v. Wisconsin Elections Comm'n*, No. 2020AP1930-OA, at 2 (petition denied Dec. 4, 2020) (JD 263-68).

[3] *See Langenhorst v. Pecore,* No. 1:20-cv-1701-WCG (E.D. Wis.), filed on November 12 but voluntarily dismissed on November 16; and Chief Judge Pepper's

recount proceedings, which came to an end on Monday, December 14, when the Wisconsin Supreme Court upheld the outcome of the recount shortly before Wisconsin's ten chosen Electors cast their votes.[4]

Not one of those seven Wisconsin lawsuits has succeeded. Nor have any of the over *sixty* post-election lawsuits in state and federal courts throughout the Nation seeking to unravel various States' election results.[5]

Some of the lawsuits targeted at the Wisconsin returns have, in the words of Wisconsin Supreme Court Justice Brian Hagedorn, sought to "invalidate the entire Presidential election in Wisconsin by declaring it 'null'—yes, the whole thing," a result that "would appear to be ***unprecedented in American history***." *Wisconsin Voters All. v. Wisconsin Elections Comm'n,* No. 2020AP1930-OA, at 2 (Wis. Dec. 4, 2020) (Hagedorn, J., concurring) (emphasis added) (JD264). The President's unsuccessful state recount effort pursued a different tack. It did not seek to invalidate the entire Wisconsin vote, but rather to weaponize the recount process by targeting large numbers of ballots in only Dane and Milwaukee Counties—the two most urban, nonwhite, and Democratic counties in the State. Voters in both targeted

---

decision in *Feehan v. Wisconsin Elections Commission,* No. 2:20-cv-1771, 2020 WL 7250219 (Dec. 9, 2020), which is on appeal to this Court in No. 20-3448.

[4] *Trump v. Biden,* Milwaukee Cnty. Case No. 2020-CV-7092 and Dane Cnty. Case No. 2020-CV-2514, *aff'd,* 2020 WI 91, 2020 WL 7331907 (Dec. 14, 2020).

[5] Alanna Durkin Richer, *Trump loves to win but keeps losing election lawsuits*, AP NEWS (Dec. 4, 2020), https://apnews.com/article/donald-trump-losing-election-lawsuits-36d113484ac0946fa5f0614deb7de15e; Zoe Tillman, *Trump And His Allies Have Lost Nearly 60 Election Fights In Court (And Counting)*, BuzzFeed News (Dec. 14, 2020), https://www.buzzfeednews.com/article/zoetillman/trump-election-court-losses-electoral-college.

counties, like those statewide, cast ballots in reliance on certain WEC guidance, practices, and forms dating back as long as a decade that were followed throughout the State. Nevertheless, President Trump sought in the recount to invalidate only the ballots of Dane and Milwaukee County voters who relied on WEC's guidance, practices, and forms. This sort of targeted disenfranchisement of those who relied in perfectly good faith on state election authorities would blatantly violate equal protection guarantees. *See, e.g., Trump v. Biden*, 2020 WI 91 ¶ 31 n.12 (citing *Bush v. Gore,* 531 U.S. at 104-05 (per curiam)).

This lawsuit, though resting on many of the same generalized post-hoc grievances about the WEC's interpretations of various Wisconsin election statutes, seeks a different, equally unprecedented remedy. The President's complaint asks the federal courts to declare that various WEC interpretations of Wisconsin election statutes are wrong as a matter of state statutory law, and that these state agency interpretations of state law "infringed and invaded upon the Wisconsin Legislature's prerogative and directions under Article II of the U.S. Constitution regarding the conduct of the 2020 Presidential election." Compl. ¶ 31 (JD019). Not only would the President have the federal courts adjudicate state election-law claims against state officials that already have been rejected by the State's highest court, he asks the federal courts to "remand" or "revert" this dispute *to the Wisconsin Legislature* for the *Legislature* "to review the nature and scope of the infringement declared and determine the appropriate remedy for the constitutional violation(s) established,

including any impact upon the allocation of Presidential electors for the State of Wisconsin." *Id.* (emphasis added).

The President, in other words, wants the *federal courts* to opine on *state law issues* so that the *Wisconsin Legislature* can decide whether to attempt to dispute the validity of the ten Wisconsin electoral votes won by the Biden-Harris ticket and *already cast* and sent to the President of the U.S. Senate. Never mind that the Wisconsin Legislature has shown no interest in upsetting the voters' decision. Never mind that the Wisconsin Supreme Court has rejected the President's state-law arguments (supposedly federalized under Article II of the federal Constitution) based on a combination of the merits and the equitable doctrine of laches. And never mind that those votes already have been cast.

State and federal judges from throughout the country and across the ideological spectrum have united in repeatedly rejecting these sorts of audacious attacks on the Presidential election results. Many have not simply dismissed, but have strongly condemned, such claims seeking the "drastic," "breathtaking," "unprecedented," and "disenfranchising" relief of nullifying the voters' decision and awarding the election to President Trump. *Donald J. Trump for President, Inc. v. Pennsylvania,* No. 20-3371, 2020 WL 7012522, at *1-7 (3d Cir. Nov. 27, 2020) (rejecting requested order "declaring the election results defective and ordering the Pennsylvania General Assembly, not the voters, to choose Pennsylvania's presidential electors"). Judge Ludwig in his decision on review could not help but refer to the President's claims three times in italics as "*extraordinary*." A001 (twice),

A022.[6] Justice Hagedorn of the Wisconsin Supreme Court described President Trump's requested relief as "dangerous." JD265.

Lawsuits like these not only are an abuse of process; they continue to, and perhaps are intended to, erode public confidence in our electoral system. The ongoing corrosive effects are like battery acid on the body politic. There must be an end to spurious serial litigation, and courts must communicate that to current and would-be litigants and their lawyers. As Justice Hagedorn emphasized over two weeks ago in his *Wisconsin Voters Alliance* concurrence:

> Something far more fundamental than the winner of Wisconsin's electoral votes is implicated in this case. At stake, in some measure, is faith in our system of free and fair elections, a feature central to the enduring strength of our constitutional republic. It can be easy to blithely move on to the next case with a petition so obviously lacking, but this is sobering. The relief being sought by the petitioners is ***the most dramatic invocation of judicial power I have ever seen.*** Judicial acquiescence to such entreaties built on so flimsy a foundation would do indelible damage to every future election. Once the door is opened to judicial invalidation of presidential election results, it will be awfully hard to close that door again. This is a dangerous path we are being asked to tread. The loss of public trust in our constitutional order resulting from the exercise of this kind of judicial power would be incalculable.

JD265 (emphasis added).

---

[6] *See also, e.g., Wood v. Raffensperger,* No. 20-14418, 2020 WL 7094866, at *1 (11th Cir. Dec. 5, 2020) (federal courts "may not entertain post-election contests about garden-variety issues of vote counting and misconduct that may properly be filed in state court"); *King v. Whitmer*, No. 2:20-cv-13134, 2020 WL 7134198 at *13 (E.D. Mich. Dec. 7, 2020) ("Plaintiffs ask this Court to ignore the orderly statutory scheme established to challenge elections and to ignore the will of millions of voters. This, the Court cannot, and will not, do."); *Bowyer v. Ducey,* No. CV-20-2321, 2020 WL 7238261, at *1 (D. Ariz. Dec. 9, 2020) ("By any measure, the relief Plaintiffs seek is extraordinary" and would "utterly disenfranchise[] millions of voters.").

Contrary to what President Trump has alleged, Wisconsin state and local elections officials did *not* "r[u]n an unconstitutional and unlawful Presidential election in Wisconsin." Compl. p.71 (Conclusion) (JD083). In fact, the WEC and the 1,850 local election jurisdictions did heroic work throughout one of the most challenging election years in American history, in the midst of the worst global pandemic since the end of World War I. This was an honest, open, and fairly conducted election and recount, made all the more remarkable because the pandemic was raging throughout the State in the weeks leading up to the November 3rd election and during the canvass and recount thereafter. The Wisconsin Supreme Court has rejected President Trump's identical state law claims on a combination of the merits and the equitable doctrine of laches. *See Trump v. Biden,* 2020 WI 91, ¶¶ 3, 6-32. And as Judge Ludwig has demonstrated, President Trump's claims fail both as a matter of fact and as a matter of law. A017-A022.

Summary of the Argument

1. Subject matter jurisdiction is absent because President Trump lacks standing to prosecute his claims based on practices that allegedly "infringed and invaded upon the Wisconsin Legislature's prerogative and directions," Compl. ¶ 31 (JD019), rather than inflicting any cognizable injury on *him*. Nor is any such injury redressable by granting President Trump's request for a "remand" to the Legislature, or President Trump's later request (not set forth in his Complaint) to simply discard the results of the 2020 general election. *Id.* at 72 (JD084).

2. Even if this Court were to conclude, as the District Court did, that subject matter jurisdiction existed at one time, it no longer exists now, because recent

events, in particular the December 14, 2020 meeting and vote of Wisconsin's Presidential electors, have mooted President Trump's claims for relief.

3. The Eleventh Amendment further bars President Trump's claims in this case because granting the relief the President seeks would constitute a gross violation of state sovereignty.

Argument

I. President Trump lacks standing.

Subject matter jurisdiction is absent, requiring dismissal of the appeal. That is because President Trump has failed to show, as Article III requires, that he suffered an "injury in fact" that is "likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). Four distinct considerations support that result.

First, President Trump has not demonstrated an injury to any legally protected interest of his own. Instead, he contends that Defendants "infringed and invaded upon the *Wisconsin Legislature's* prerogative and directions." Compl. ¶ 31 (emphasis added) (JD019). But President Trump cannot sue to vindicate such alleged "infringement" of the Wisconsin Legislature's rights. The Third Circuit, presented with similar claims by voters and a candidate for federal office, explained why: "Because Plaintiffs are not the [state legislature], nor do they bear any conceivable relationship to state lawmaking processes, they lack standing to sue over the alleged usurpation of the [state legislature's] rights under the Elections and Electors Clauses." *Bognet v. Sec'y Commw. of Pa.*, 980 F.3d 336, 350 (3d Cir. 2020); *see also Donald J. Trump for President, Inc. v. Sec'y of Pa.*, No. 20-3371, 2020 WL 7012522,

at *6 (3d Cir. Nov. 27, 2020) (Trump Campaign lacked standing to pursue Electors Clause claims). The Third Circuit's holding in *Bognet* stands in sharp and instructive contrast to, *e.g.*, the decision of the Supreme Court in *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787 (2015), which held that a state legislature, unlike private plaintiffs (such as President Trump), *did* have standing to pursue an Electors Clause claim.[7]

Second, even if President Trump could show that he has a legally protected interest at stake in this litigation, which he cannot, he has failed to demonstrate any injury to that interest. Neither the Complaint nor any of the evidence presented by President Trump to the District Court provides any basis to determine that he was deprived of even a single vote by the election practices challenged in this litigation. Thus President Trump has not shown that the challenged practices afforded any other party an "unfair advantage" in the election. *Donald J. Trump for President v. Cegavske*, No. 2:20-CV-1445, 2020 WL 5626974, at *6 (D. Nev. Sep. 18, 2020) (quoting *Drake v. Obama*, 664 F.3d 774, 783 (9th Cir. 2011). Instead, President Trump has asserted an "undifferentiated, generalized grievance about the conduct of government," which is insufficient as a matter of law to support Article III standing. *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (per curiam); *see also Wood v.*

[7] *Carson v. Simon*, 978 F.3d 1051 (8th Cir. 2020), relied upon by the District Court, is an outlier decision and does not take account of the distinction between private plaintiffs, like President Trump, who have been held to lack standing under the Electors Clause, and state legislatures, which may possess standing where their institutional interests are implicated. *See Bognet*, 980 F.3d at 348-51 & n.6 (declining to follow *Carson* and dismissing Electors Clause claim for lack of standing); *King v. Whitmer*, No. 20-cv-13134, 2020 WL 7134198, at *11 (E.D. Mich. Dec. 7, 2020) (same).

Raffensperger, No. 1:20-cv-04561, 2020 WL 6817513, at *5 (N.D. Ga. Nov. 20, 2020), *aff'd*, No. 20-14418, 2020 WL 7094866 (11th Cir. Dec. 5, 2020), *petition for cert. filed*, No. 20-799 (U.S. Dec. 8, 2020). A federal district court, considering a similar claim in *Hotze v. Hollins*, No. 4:20-CV-03079, 2020 WL 6437668 (S.D. Tex. Nov. 2, 2020), explained that "[e]very citizen, including the Plaintiff who is a candidate for federal office, has an interest in proper execution of voting procedure." *Id.* at *2. There, as here, the plaintiffs lacked standing because they did not show "any specialized grievance beyond an interest in the integrity of the election process, which is common to all members of the public." *Id.* (internal quotation marks omitted).

Third, even if President Trump could show a cognizable injury, which he cannot, he has utterly failed to show that any such injury is redressable. President Trump's Complaint asked the District Court to ignore the voters' will and "remand" this case to the Wisconsin Legislature "to consider the Defendants' violations … and determine what remedy, if any, the Wisconsin Legislature should impose." Compl. at 72 (JD084). Of course, there is no mechanism in federal civil procedure or in the Constitution that empowers a federal court to "remand" a civil action to a state legislature. Later, after the District Court accurately described that request as "bizarre," President Trump attempted to adjust his request for relief, ultimately settling on a request to the District Court to "declare the election a failure, with the results discarded, and the door thus opened for the Wisconsin Legislature to appoint Presidential Electors in some fashion other than by following the certified voting results." A002. But that, too, is an impossibility. By the time the District Court

conducted its hearing on President Trump's claims, Wisconsin's Certificate of Ascertainment had already been transmitted to the National Archives. And (as discussed further below), two days after the hearing, in accordance with federal and state law, Wisconsin's duly appointed Presidential electors cast their votes, finally closing the door on appointment of new electors "in some fashion other than by following the certified voting results." *Id.*; *see Wood v. Raffensperger*, No. 20-14418, 2020 WL 7094866, at *6 (11th Cir. Dec. 5, 2020) ("Because Georgia has already certified its results, Wood's requests to delay certification and commence a new recount are moot. 'We cannot turn back the clock and create a world in which' the 2020 election results are not certified.") (citation omitted). Thus there is no redress that this or any federal court could provide for President Trump's alleged injuries.

The Complaint's requests for declaratory relief do not solve this fundamental redressability problem. *See Golden v. Zwickler*, 394 U.S. 103, 108 (1969) (Article III limitations are "as true of declaratory judgments as any other field" (internal quotation marks omitted)); *Milwaukee Police Ass'n v. Bd. of Fire & Police Comm'rs*, 708 F.3d 921, 926 (7th Cir. 2013) (federal courts "are prohibited from rendering advisory opinions" and "cannot divine on 'abstract disputes about the law.'" (alteration omitted) (quoting *Alvarez v. Smith*, 558 U.S. 87, 93 (2009))); *Flast v. Cohen*, 392 U.S. 83, 96 (1968) ("[I]t is quite clear that 'the oldest and most consistent thread in the federal law of justiciability is that the federal courts will not give advisory opinions.'" (quoting C. Wright, *Federal Courts* 34 (1963))). In particular, President Trump asks this Court for a declaration that he acknowledges the

Wisconsin Legislature would be free to adopt or disregard. *See, e.g.*, Compl. ¶ 67 ("Plaintiff recognizes that in relation to the Electors Clause … it is ultimately the exclusive province of the Wisconsin Legislature to determine the remedy for violation of Article II of the U.S. Constitution in Wisconsin.") (JD); *id.* ¶ 70 ("[I]n the unique context of the Electors Clause it is the State Legislature alone that has the *final* say … on the appointment of that State's electors.") (JD027). Thus, to grant the requested declaratory relief would be "to render an advisory opinion in its most obnoxious form—advice that the [Wisconsin Legislature] has not asked, tendered at the demand of a private litigant, on a subject concededly within the [Wisconsin Legislature's] exclusive, ultimate control." *Chicago & Southern Air Lines, Inc. v. Waterman S. S. Corp.*, 333 U.S. 103, 113 (1948).

Fourth, and finally, granting any of the "remedies" President Trump has requested is impermissible because doing so would itself result in multiple constitutional and statutory violations. As authorized under Article II of the U.S. Constitution, the State of Wisconsin has determined that Presidential electors should be selected by popular vote, not by the Legislature. *See* WIS. STAT. § 8.25(1); *Bush v. Gore*, 531 U.S. 98, 104 (2000) (per curiam). The Legislature's decision cannot be reversed as it relates to an election that has already occurred, and even a prospective change would require lawmaking, not a court order. *See Smiley v. Holm*, 285 U.S. 355, 373 (1932). Separately, only Congress has the power to determine the time of choosing electors, *see* U.S. CONST. art. II, § 1, cl. 4, and Congress has directed states to make that choice "on" Election Day—that is, on November 3, 2020—with narrow

exceptions not applicable here. 3 U.S.C. § 1. Thus, a "remand" for the Wisconsin Legislature to make a new choice would violate federal law. *See id.* More fundamentally, setting aside the election would unlawfully disenfranchise more than 3.2 million Wisconsin voters who cast ballots last month in the Presidential election. *See Shipley v. Chicago Bd. of Election Comm'rs*, 947 F.3d 1056, 1061 (7th Cir. 2020). Even if President Trump could have identified any genuine flaws in the procedures used to conduct the election (he did not), changing the rules after the fact would be quintessentially unfair to voters, violating substantive and procedural due process, *see Briscoe v. Kusper*, 435 F.2d 1046, 1055 (7th Cir. 1970), the First Amendment, *see Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983), and the equal protection rights of every voter who chose the winning Biden-Harris slate of electors, *see Bush*, 531 U.S. at 104-05.

II. The case is moot.

The appeal also should be dismissed as moot. Under Article III, "'an actual controversy must exist not only at the time the complaint is filed, but through *all stages of the litigation*.'" *Ozinga v. Price*, 855 F.3d 730, 734 (7th Cir. 2017) (emphasis added) (quoting *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1975 (2016)). "A case becomes moot—and therefore no longer a Case or Controversy for purposes of Article III—when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (internal quotation marks omitted). "When a case is moot, it must

be dismissed as non-justiciable." *Stotts v. Cmty. Unit Sch. Dist. No. 1*, 230 F.3d 989, 991 (7th Cir. 2000).[8]

Here, President Trump's claims, arguably moot before this lawsuit was filed on December 2, 2020, are certainly moot now. The Presidential election took place on November 3, 2020, as required by federal law. *See* 3 U.S.C. § 1. On November 30, the Wisconsin Elections Commission certified the result, *see* WIS. STAT. § 7.70(3)(a), and Governor Evers signed a Certificate of Ascertainment recognizing the Biden-Harris slate of electors as the winners, *see id.* § 7.70(5)(b). On December 14, the Wisconsin Supreme Court affirmed the decision of a Wisconsin circuit court dismissing President Trump's post-recount appeal. *See Trump v. Biden*, 2020 WI 91. Later that same day, as required by federal and state law, Wisconsin's duly appointed Presidential electors met at the State Capitol and cast their votes for the winners of the 2020 election, President-elect Biden and Vice President-elect Harris. *See* WIS. STAT. § 7.75. As a result, "there is no longer an injury that can be redressed by a favorable decision," and no basis for this Court to exercise subject matter jurisdiction. *Ostby v. Manhattan Sch. Dist. No. 114*, 851 F.3d 677, 682 (7th Cir. 2017); *see also, e.g.*, *McDonald v. Cook Cty. Officers Electoral Bd.*, 758 F. App'x 527, 529 (7th Cir.

[8] As this Court has explained, the standing and mootness inquiries are closely related. "When a party with standing at the inception of the litigation loses it due to intervening events, the inquiry is really one of mootness. Mootness is 'the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).'" *Parvati Corp. v. City of Oak Forest, Ill.*, 630 F.3d 512, 516 (7th Cir. 2010) (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000)).

2019) (dismissing post-election appeal as moot because "decision on the merits would not change the status quo"); *Eichwedel v. Curry*, 700 F.3d 275, 278 (7th Cir. 2012) (dismissing appeal as moot because, even if appellant could establish cognizable and non-speculative injury, "he could not show that the injury would be redressable by a decision in his favor").

The District Court, in its decision on December 12, found a redressable injury based on its conclusion that, if it had issued "a declaration that the Wisconsin general election was a failed election," that would establish a "predicate to allowing the Wisconsin Legislature to take action to determine the manner in which the state should appoint its Presidential Electors now that the originally chosen method has 'failed.'" A013 at n.8. That theory of redress, already "tenuous," *id.*, is now thoroughly defunct as a result of the Electoral College vote on December 14. Even if this Court were to grant President Trump a "favorable judicial decision," *Spokeo*, 136 S. Ct. at 1547, no legal mechanism exists under state or federal law to invalidate the votes cast by Wisconsin's Presidential electors or direct them to change their votes. Indeed, any such votes cast now would violate the requirement of federal law that Wisconsin's electors "meet and give their votes on the first Monday after the second Wednesday in December next following their appointment," *i.e.*, December 14. *See* 3 U.S.C. § 7; *see also* U.S. CONST. art. II, § 1, cl. 4 ("The Congress may determine … the Day on which [the electors] shall give their Votes; which Day shall be the same throughout the United States."). Even if the Court granted the relief sought, in other words, such

relief could not "affect the results of an election that has already happened." *McDonald*, 758 F. App'x at 530. The appeal should be dismissed as moot.

III. The Eleventh Amendment bars President Trump's claims.

The Eleventh Amendment also separately and independently bars the President's claims. It prohibits federal courts from granting "relief against state officials on the basis of state law, whether prospective or retroactive." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984); *see also Dean Foods Co. v. Brancel*, 187 F.3d 609, 613 (7th Cir. 1999) ("[F]ederal courts cannot enjoin a state officer from violating state law."). As the Supreme Court has emphasized, "it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts directly with the principles of federalism that underlie the Eleventh Amendment." *Pennhurst,* 465 U.S. at 106; *see also Rose v. Bd. of Election Comm'rs for City of Chi.*, 815 F.3d 372, 375 n.2 (7th Cir. 2016) ("[A]ny argument to the effect that the state did not follow its own laws is barred by the Eleventh Amendment.").

This is true even when state law claims are styled as federal causes of action. *See Colon v. Schneider*, 899 F.2d 660, 672 (7th Cir. 1990) (rejecting plaintiff's attempt to "transmute a violation of state law into a constitutional violation" and noting that such state law claims would be barred by the Eleventh Amendment); *see also, e.g.*, *Massey v. Coon*, No. 87-3768, 1989 WL 884, at *2 (9th Cir. Jan. 3, 1989) (affirming dismissal where "on its face the complaint states a claim under the due process and equal protection clauses of the Constitution, [but] these constitutional claims are entirely based on the failure of defendants to conform to state law"); *Balsam v. Sec'y*

of State, 607 F. App'x 177, 183–84 (3d Cir. 2015) (Eleventh Amendment bars state law claims even when "premised on violations of the federal Constitution").

None of the President's claims escapes this bar. In substance, he asks the Court to determine that state officials violated state law and compel state officials to do what he believes Wisconsin law requires. He defines the central issue as "Whether Election Administrators Adhered to the Direction of the Wisconsin Legislature in the Conduct of the Presidential Election." Compl. p. 14 (JD026). He wants the federal courts "to declare that these failures by Wisconsin's election officials, which conflicted with their duties under the [Wisconsin] Election Code, abridged the Legislature's authority under the Electors Clause." *Id.* ¶ 162 (JD048); *see also id.* ¶ 26 (claiming the "Wisconsin public officials" engaged in "*ultra vires* acts" that were "inconsistent with state law and the directions of the Wisconsin Legislature as set forth in the Wisconsin Election Code") (JD016); *id.* ¶ 280 ("the Wisconsin Elections Commission usurped the authority of the Wisconsin Legislature") (JD077).

The President's "Motion for Expedited Declaratory and Injunctive Relief" in the District Court only serves to underscore that his issues are truly state law claims masquerading as the basis for a federal action. Once again, it asserts purported violations of Wisconsin law. The President claims that, "[b]y ignoring the Wisconsin Legislature's express directions … Defendants have violated the Wisconsin Election Code." JD278 at ¶ 2. He seeks an order "[e]njoin[ing] the Defendants from any further actual or threatened actions that would infringe on the authority of the Wisconsin Legislature." *Id.* ¶ 12(c) (JD280); *see id.* ¶ 14 (requesting that Defendants

be "enjoined from further violating the Wisconsin Election Code") (JD280).

"[T]o treat a violation of state law as a violation of the Constitution is to make the federal government the enforcer of state law. State rather than federal courts are the appropriate institutions to enforce state rules." *Archie v. City of Racine*, 847 F.2d 1211, 1217 (7th Cir. 1988); *see also, e.g.*, *Ohio Republican Party v. Brunner*, 543 F.3d 357, 360-61 (6th Cir. 2008) (holding *Pennhurst* bars claim that Secretary of State violated state election law). The District Court opined that, in the "unique context" of the Electors Clause, "alleged violations of state laws implicate and may violate federal law." A15. Respectfully, however, such a relaxed standard would open the doors of the federal courts to every garden-variety state election controversy and dispute over the interpretation and enforcement of state election laws in the context of a Presidential election. This would simply invite more of the same kind of serial litigation challenges we have seen over the past 45 days. Even under the expansive view of the Electors Clause advocated by Chief Justice Rehnquist, only a "*significant* departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question." *Bush v. Gore,* 531 U.S. at 113 (Rehnquist, C.J., concurring) (emphasis added). As the District Court correctly concluded below, even under that test "the record does not show any *significant* departure from the legislative scheme during Wisconsin's 2020 Presidential election." A21 (emphasis added).

The Eleventh Amendment bars the requested relief here, especially since the election results already have been certified and the Electors already have cast their

votes. The President is not simply seeking prospective relief; he is attempting to undo actions that already have occurred. We call the Court's attention to other district court decisions—including one by E.D. Wis. Chief Judge Pepper, pending on appeal before this Court—that have correctly held that the Eleventh Amendment bars President Trump's Electors Clause claims. *See, e.g., Feehan v. Wisconsin Elections Comm'n,* No. 20-cv-1771-pp, 2020 WL 7250219, at **14-16 (E.D. Wis. Dec. 9, 2020) (appeal pending in Nos. 20-3396, 20-3448); *Bower v. Ducey,* No. CV-20-02321-PHX-DJH, 2020 WL 7238261, at **8-9 (D. Ariz. Dec. 9, 2020). A similar result is warranted here.

Conclusion

For the reasons set forth above and in the other defense briefs, this Court should affirm the District Court's dismissal of President Trump's complaint with prejudice and its denial of the President's motion as moot.

DATED: December 18, 2020

Respectfully Submitted,

s/ *Charles G. Curtis, Jr.*

Charles G. Curtis, Jr.
Michelle M. Umberger
Sopen B. Shah
Will M. Conley
PERKINS COIE LLP
One East Main St., Suite 201
Madison, WI 53703
(608) 663-7460
ccurtis@perkinscoie.com
mumberger@perkinscoie.com
sshah@perkinscoie.com
wconley@perkinscoie.com

Marc E. Elias
John Devaney
Zachary J. Newkirk
PERKINS COIE LLP
700 Thirteenth St., N.W.,
Suite 800
Washington, D.C. 20005
(202) 654-6200
melias@perkinscoie.com
jdevaney@perkinscoie.com
znewkirk@perkinscoie.com

Attorneys for Intervening Defendants-Appellees Democratic National Committee

Seth P. Waxman
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Ave., NW
Washington, DC 20006
(202) 663-6000
seth.waxman@wilmerhale.com

David S. Lesser
Jamie Dycus
Christopher Bouchoux
Joseph J. Yu
Charles Bridge
Swapna Maruri
WILMER CUTLER PICKERING HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 230-8800
david.lesser@wilmerhale.com
jamie.dycus@wilmerhale.com
christopher.bouchoux@wilmerhale.com
joseph.yu@wilmerhale.com
charles.bridge@wilmerhale.com
swapna.maruri@wilmerhale.com

Matthew W. O'Neill
FOX, O'NEILL & SHANNON, S.C.
622 North Water Street,
Suite 500
Milwaukee, WI 53202
(414) 273-3939
mwoneill@foslaw.com

CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2020, I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ *Charles G. Curtis, Jr.*
Charles G. Curtis, Jr.
PERKINS COIE LLP
33 East Main St., Suite 201
Madison, WI 53703
(608) 663-7460
ccurtis@perkinscoie.com

Attorneys for Intervenor Defendant-Appellant Democratic National Committee

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify the following:

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2) because it contains 6,320 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with all typeface requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) and 32(a)(5)-(6), because it has been prepared in a proportionally spaced typeface using the 2016 version of Microsoft Word in 12-point Century Schoolbook.

Dated: December 18, 2020.

s/ Charles G. Curtis, Jr.

Charles G. Curtis, Jr.
PERKINS COIE LLP
33 East Main St., Suite 201
Madison, WI 53703
(608) 663-7460
ccurtis@perkinscoie.com

Attorneys for Intervenor Defendant-Appellant Democratic National Committee