

## No Injunction Against Certification of Pennsylvania's 2020 Presidential Election Results

*Donald J. Trump for President v. Boockvar*  
(4:20-cv-2078) and *Pirkle v. Wolf* (4:20-cv-2088)  
(Matthew W. Brann, M.D. Pa.)

Six days after the 2020 presidential election, the apparently defeated incumbent sought an injunction against certification of Pennsylvania's votes, citing alleged mismanagement of the election. The district judge heard oral arguments eight days later, after substantial changes in the plaintiffs' representation. The judge dismissed the case, and the court of appeals affirmed his denial of permission for another amended complaint.

*Subject:* Voting irregularities. *Topics:* Enjoining certification; election errors; intervention; news media; equal protection; absentee ballots; Covid-19; case assignment; attorney discipline.

On the evening of November 9, 2020, six days after the general election, the apparently unsuccessful reelection campaign for President Trump and two Pennsylvania voters filed a federal complaint in the Middle District of Pennsylvania's Williamsport courthouse against the secretary of the commonwealth and seven county boards of elections alleging mismanagement of the election and seeking an injunction against certification of election results.<sup>1</sup>

Judge Matthew W. Brann set the case for a telephonic status conference on the afternoon of the following day.<sup>2</sup> Following the conference, he set the case for oral argument on November 17 and a possible evidentiary hearing on November 19.<sup>3</sup> He sat in Williamsport, and he denied the secretary's motion to transfer the case to Harrisburg: "Testimony by witnesses, if it becomes necessary, may be provided either in-person or virtually, in order to accommodate those witnesses."<sup>4</sup>

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1. Complaint, *Donald J. Trump for President, Inc. v. Boockvar*, No. 4:20-cv-2078 (M.D. Pa. Nov. 9, 2020), D.E. 1 [hereinafter *Donald J. Trump for President, Inc. Complaint*]; *Donald J. Trump for President, Inc. v. Boockvar*, 502 F. Supp. 3d 899, 905–06, 908 (M.D. Pa. 2020); see Rebecca Davis O'Brien, Corinne Ramey & Deanna Paul, *Trump Camp Sues to Stop States Certifying Results*, Wall St. J., Nov. 10, 2020, at A6; Jeremy Roebuck, *Trump Campaign Files Pa. Suit*, Phila. Inquirer, Nov. 10, 2020, at A8.

2. Order, *Donald J. Trump for President, Inc.*, No. 4:20-cv-2078 (M.D. Pa. Nov. 10, 2020), D.E. 27; *Donald J. Trump for President, Inc.*, 502 F. Supp. 3d at 908.

3. Order, *Donald J. Trump for President, Inc.*, No. 4:20-cv-2078 (M.D. Pa. Nov. 10, 2020), D.E. 35; *Donald J. Trump for President, Inc.*, 502 F. Supp. 3d at 908–09; see Transcript, *Donald J. Trump for President, Inc.*, No. 4:20-cv-2078 (M.D. Pa. Nov. 17, 2020, filed Nov. 21, 2020), D.E. 199; see also Emily Bazelon, *The Trump Campaign Has Filed 16 Lawsuits Contesting the Election*, N.Y. Times, Nov. 16, 2020, at A16.

4. Order, *Donald J. Trump for President, Inc.*, No. 4:20-cv-2078 (M.D. Pa. Nov. 10, 2020), D.E. 36; see Motion, *id.* (Nov. 10, 2020), D.E. 25.

Judge Brann granted intervention on November 12 to organizations and individuals represented by the ACLU and to the Democratic National Committee, but he denied intervention to an individual attorney.<sup>5</sup>

Also on November 12, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction.<sup>6</sup> Three days later, they filed an amended complaint,<sup>7</sup> apparently motivated by a decision on standing in election litigation issued by the court of appeals on November 13.<sup>8</sup>

Four voters filed a federal complaint in the Western District on November 10<sup>9</sup> and moved to consolidate their case with the Trump campaign's case,<sup>10</sup> but they dismissed their case voluntarily on November 16.<sup>11</sup>

Judge Brann expressed concern about frequent and last-minute changes in counsel.<sup>12</sup> The complaint listed a large law firm and a sole practitioner as the plaintiffs' attorneys.<sup>13</sup> On November 13, Judge Brann granted the large law firm's November 12 motion to withdraw.<sup>14</sup> On November 16, the same day that Judge Brann granted special admission to the court's bar to two Texas attorneys,<sup>15</sup> they and the remaining original attorney moved to withdraw.<sup>16</sup> Judge Brann granted withdrawal to the Texas attorneys but not to the remaining original attorney.<sup>17</sup> Judge Brann "believed it best to have some semblance of consistency in counsel ahead of the oral argument [on the following day]."<sup>18</sup>

Two Pennsylvania attorneys entered an appearance on November 16<sup>19</sup> and moved for a continuance to allow them to adequately prepare.<sup>20</sup> Judge Brann denied the request: "given the emergency nature of this proceeding, and the looming deadline for Pennsylvania counties to certify their election

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5. Order, *id.* (Nov. 12, 2020), D.E. 72, 2020 WL 8262029; *see* Motions, *id.* (Nov. 10 and 11, 2020), D.E. 30, 39, 55.

6. Motion, *id.* (Nov. 12, 2020), D.E. 89; *Donald J. Trump for President, Inc.*, 502 F. Supp. 3d at 909.

7. Amended Complaint, *Donald J. Trump for President, Inc.*, No. 4:20-cv-2078 (M.D. Pa. Nov. 15, 2020), D.E. 125.

8. *Boguet v. Sec'y Commonwealth of Pa.*, 980 F.3d 336, 345 (3d Cir. 2020), *vacated as moot*, 593 U.S. \_\_\_, 141 S. Ct. 2508 (2021); *see Donald J. Trump for President, Inc.*, 502 F. Supp. 3d 909.

9. Complaint, *Pirkle v. Wolf*, No. 4:20-cv-2088 (W.D. Pa. Nov. 10, 2020), D.E. 1.

10. Motion, *id.* (Nov. 11, 2020), D.E. 5.

11. Notice, *id.* (Nov. 16, 2020), D.E. 20; *see* Dismissal Order, *id.* (Nov. 16, 2020), D.E. 21.

12. *Donald J. Trump for President, Inc.*, 502 F. Supp. 3d at 909–10.

13. *Donald J. Trump for President, Inc.* Complaint, *supra* note 1, at 84–85.

14. Order, *Donald J. Trump for President, Inc. v. Boockvar*, No. 4:20-cv-2078 (M.D. Pa. Nov. 13, 2020), D.E. 117; Motion, *id.* (Nov. 12, 2020), D.E. 106.

15. Approved Admission Petitions, *id.* (Nov. 16, 2020), D.E. 147, 148.

16. Motion, *id.* (Nov. 16, 2020), D.E. 151.

17. Order, *id.* (Nov. 16, 2020), D.E. 154.

18. *Donald J. Trump for President, Inc. v. Boockvar*, 502 F. Supp. 3d 899, 909–10 (M.D. Pa. 2020).

19. Appearance, *Donald J. Trump for President, Inc.*, No. 4:20-cv-2078 (M.D. Pa. Nov. 16, 2020), D.E. 149.

20. Motion, *id.* (Nov. 16, 2020), D.E. 152.

results, postponing those proceedings seemed imprudent.”<sup>21</sup> Rudy Giuliani joined the case on behalf of the plaintiffs on the morning of oral argument.<sup>22</sup>

Judge Brann denied a motion by the Associated Press to attend the oral argument in person as an exception to the court’s providing to the public on-ly remote audio access because of the Covid-19 infectious pandemic.<sup>23</sup>

After oral argument, Judge Brann determined that an evidentiary hearing would not be necessary.<sup>24</sup> He dismissed the action on Saturday evening, November 21.<sup>25</sup> “[T]his Court has been presented with strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence. In the United States of America, this cannot justify the disenfranchisement of a single voter, let alone all the voters of the sixth most populated state.”<sup>26</sup>

On November 27, the court of appeals rejected an appeal from Judge Brann’s denial of permission for a second amended complaint.<sup>27</sup> “Free, fair

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21. *Donald J. Trump for President, Inc.*, 502 F. Supp. 3d at 910; Order, *Donald J. Trump for President, Inc.*, No. 4:20-cv-2078 (M.D. Pa. Nov. 16, 2020), D.E. 153.

22. Petition, *Donald J. Trump for President, Inc.*, No. 4:20-cv-2078 (M.D. Pa. Nov. 17, 2020), D.E. 158; *Donald J. Trump for President, Inc.*, 502 F. Supp. 3d at 910; see Jon Swaine & Aaron Schaffer, *Trump Attorney Giuliani Fumbles in Federal Court*, Wash. Post, Nov. 19, 2020, at A9; see also Jeremy Roebuck, *Giuliani Law License Suspended Over Pa. Lies*, Phila. Inquirer, June 25, 2021, at A1 (“Of all the lies Rudy Giuliani told in his effort to overturn the 2020 presidential election results, it was the whoppers he spread seeking to undermine confidence in Pennsylvania’s vote that a New York court highlighted first in suspending his law license Thursday.”); Jeremy Roebuck, *Giuliani’s Disbarment Is Urged for Push to Overturn Pa. Vote*, Phila. Inquirer, Dec. 16, 2022, at A1 (“Rudy Giuliani violated rules governing attorney conduct through his efforts to overturn Pennsylvania’s 2020 election while representing former President Donald Trump, a disciplinary panel of the Washington, D.C. bar found Thursday.”). See generally Keith L. Alexander, *Appeals Court Panel Recommends That Giuliani Be Disbarred*, Wash. Post, July 8, 2023, at B4; Alan Feuer, *Ethics Panel Says Giuliani Should Lose Law License*, N.Y. Times, July 8, 2023, at A14; Isaac Yu, *Giuliani Should Be Disbarred for Election Effort, Panel Says*, Wall St. J., July 8, 2023, at A2.

Giuliani, Trump, and seventeen others were indicted in Georgia on August 14, 2023, for attempts to alter Georgia’s presidential election results. Indictment, *State v. Trump*, No. 23SC188947 (Ga. Sup. Ct. Fulton Cty. Aug. 14, 2023); see Dan Barry, *The Allegiance That Hastened Giuliani’s Slide*, N.Y. Times, Aug. 17, 2023, at A1; Aruna Viswanatha & Gimmy Vielkind, *Giuliani Is Caught Up in a Law He Wielded*, Wall St. J., Aug. 16, 2023, at A1.

23. Opinion, *Donald J. Trump for President, Inc.*, No. 4:20-cv-2078 (M.D. Pa. Nov. 17, 2020), D.E. 157, 2020 WL 6747472; see Motion, *id.* (Nov. 16, 2020), D.E. 150.

24. Order, *id.* (Nov. 18, 2020), D.E. 162; *Donald J. Trump for President, Inc.*, 502 F. Supp. 3d at 910.

25. *Donald J. Trump for President, Inc.*, 502 F. Supp. 3d 899; see Alan Feuer, *In Defeat for Trump, Judge Dismisses Suit Seeking to Nullify Pennsylvania Results*, N.Y. Times, Nov. 22, 2020, at 29; Jeremy Roebuck, *Judge Tosses Trump Suit Seeking to Void Pa. Vote*, Phila. Inquirer, Nov. 22, 2020, at A1; Jon Swaine, *In Scathing Opinion, Federal Judge Dismisses Trump Campaign Lawsuit in Pa.*, Wash. Post, Nov. 22, 2020, at A12.

26. *Donald J. Trump for President, Inc.*, 502 F. Supp. 3d at 906.

27. *Donald J. Trump for President, Inc. v. Sec’y Commonwealth of Pa.*, 830 F. App’x 377 (3d Cir. 2020); see *Donald J. Trump for President, Inc.*, 502 F. Supp. 3d at 923; Order, *Donald J. Trump for President, Inc.*, No. 4:20-cv-2078 (M.D. Pa. Nov. 21, 2020), D.E. 203; see also Alan Feuer, *Scathing Ruling Sinks President in Pennsylvania*, N.Y. Times, Nov. 28, 2020, at

elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here.”<sup>28</sup>

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A1; Corinne Ramey, *Court Denies Trump's Pennsylvania Appeal*, Wall St. J., Nov. 28, 2020, at A4; Jeremy Roebuck & Jonathan Lai, *A Two-Month Failed Effort to Overturn Pa.'s Election Results*, Phila. Inquirer, Jan. 10, 2021, at A12; Jon Swaine, Michelle Ye Hee Le & Robert Barnes, *Trump Looks to Supreme Court After Rebuff in Pa.*, Wash. Post, Nov. 28, 2020, at A1.  
28. *Donald J. Trump for President, Inc.*, 830 F. App'x at 381.