Twitter Thread by Zoe Tillman



Zoe Tillman
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New: The Trump campaign filed a three-page letter in the 3rd Circuit this morning requesting oral argument in its big case trying to undo Biden's win in PA: https://t.co/oSOEc27he8

There is a lot to unpack here, too much for one tweet, so bear with me

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November 25, 2020

Office of the Clerk
United States Court of Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1790

RE: Donald J. Trump for President, Inc., et al., v. Kathy Boockvar, in her capacity as Secretary of the Commonwealth of Pennsylvania, et al., No 20-3371

Local Rule 34.1 Statement

Dear Chief Clerk:

I write on behalf of Appellants/Plaintiffs Donald J. Trump for President, Inc., *et al.* in the above matter pursuant to Local Rule 34.1 to inform the Court of our availability for oral argument if that would assist the Court. In addition, Plaintiffs request that former Mayor Rudolph W. Giuliani, admitted *pro hac vice* below, be permitted to argue. Unfortunately, Attorney Giuliani, who is admitted to the Second Circuit Court of Appeals, has not been able to obtain the necessary certifications due to Covid-19 complications with government entities in New York.

Over 70 million Americans voted for President Donald J. Trump. The Campaign's claims should be heard on the merits, and not dismissed for perceived procedural irregularities. America's voters need to have confidence in our electoral system, including those who administer it, and the judiciary which reviews that administration.

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The 3rd Circuit doesn't let lawyers who aren't members of the court's bar to appear unless they're pro bono. Trump's legal team still asks to let Rudy Giuliani argue, saying he hasn't been able to get the "necessary certifications due to Covid-19 complications"

oral argument if that would assist the Court. In addition, Plaintiffs request that former Mayor Rudolph W. Giuliani, admitted *pro hac vice* below, be permitted to argue. Unfortunately, Attorney Giuliani, who is admitted to the Second Circuit Court of Appeals, has not been able to obtain the necessary certifications due to Covid-19 complications with government entities in New York.

Trump's lawyers write that given how many people voted for him, the claims "should be heard on the merits" — but recall this case is not up on appeal about the merits. The campaign is asking for emergency review of the judge denying its request to file a 2nd amended complaint

> Over 70 million Americans voted for President Donald J. Trump. The Campaign's claims should be heard on the merits, and not dismissed for perceived procedural irregularities. America's voters need to have confidence in our electoral system, including those who administer it, and the judiciary which reviews that administration.

They contend oral argument would be helpful to address issues raised by PA, the DNC, and other parties in briefs filed yesterday, which they then touch on in a set of footnotes

> If the Court has any questions that the Appeal should be granted, Plaintiffs believe that oral argument would be helpful to address arguments raised by Defendants and Intervenors which were not raised below, including undue delay,[1] the relevant date for relief,[2] prejudice,[3] mootness,[4] and the basis for the Court's decision.[5]

The first footnote argues there was no undue delay in filing the 2nd amended complaint b/c given the shifting makeup of the campaign's legal team, there was "confusion" that led to the filing of the 1st amended complaint, which removed sections and a number of counts

> [1]Plaintiffs believe that the Court will benefit from clarification that Plaintiffs' lead counsel, Porter Wright, withdrew because of threats, including economic retaliation. Further, former opposing counsel verbally harassed Plaintiffs' remaining counsel, Linda Kerns, who then withdrew. As a result of this conduct -- in an already compressed schedule, Plaintiffs can clarify that there was confusion regarding the filing of the Amended Complaint, which incorrectly withdrew certain allegations and claims. One day later, Plaintiffs informed the Court of its intent to correct this by filing a Second Amended Complaint. Plaintiffs then repeated their intent at oral argument the next day, and moved expeditiously to amend the day following, and the District Court never found that they intended to delay or confuse matters.

Recall the 1st amended complaint was filed after the 3rd Circuit ruled in another election-related case, Bognet, and that opinion significantly undercut the campaign's theory of standing, which Giuliani acknowledged during arguments before the district court

Footnote #4 argues the case isn't moot now that PA has certified the election results, even though the relief sought in the 1AC is to stop certification from happening (the 2AC that they want to pursue alternatively asks for the state legislature to choose electors)

> [4] Plaintiffs wish to address an issue never raised below because the matter is not moot. As in *Marks v. Stinson*, 19 F.3d 873 (3d Cir. 1994), federal courts may order the result of the Election decertified, which, as Plaintiffs can explain, would render the Certificate of Ascertainment allegedly issued by Governor Wolf invalid. Moreover, the Pennsylvania General Assembly has the power to appoint the Commonwealth's presidential electors. A decision by the District Court that President Trump won the legal votes may have significant impact on the General Assembly. Further, the District Court can always add parties to this matter, as necessary, to address any attempts by Defendants to moot relief related to the election of the President. In addition, the District Court has broad powers to effect relief through the All Writs Act, 28 U.S.C. §1651.

They write that the certification of election results was "allegedly issued" by PA Gov. Wolf, but the state did, in fact, certify the results. They also contend that results can be "decertified" by the courts, but recall that is not relief that they request in the complaint

Generally speaking, once a case is up on appeal, you cannot start introducing new evidence/claims — the appellate judges are reviewing the record from below. Trump's lawyers note the district court didn't address the question of decertifying election results

So, now we wait to see what the 3rd Circuit does. On Monday when it set the briefing schedule, the court had only said it would "advise if oral argument desired"

ORDER

Appellants' amended motion for emergency expedited review is granted at the direction of the Court. Appellants' brief must be filed on or before 4:00 p.m. today. Appellees' briefs must be filed on or before 4:00 p.m. on November 24, 2020. The Court will advise if oral argument desired.

For the Court,

Patricia A. Dodszuweit

Patricia S. Dodszuweit. Clerk

Dated: November 23, 2020
SLC/cc: Counsel of Record