Twitter Thread by Mike Dunford

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Election Litigation Thread - Georgia:

OK, so since my attempt to sit back while Akiva does all the work of going through the latest proof that not only the pro se have fools for lawyers has backfired, let's take a stroll through the motion for injunctive relief.

> They've also got a brief in support of their injunction motion, but I've got client work that needs doing. Hopefully @questauthority has you covered
>
> — Akiva Cohen (@AkivaMCohen) January 4, 2021

At the start, I'd note that the motion does not appear to be going anywhere fast - despite the request that they made over 80 hours ago to have the motion heard within 48 hours.

The most recent docket entries are all routine start-of-case stuff.

Why isn't it going anywhere quickly? Allow me to direct your attention to something that my learned colleague Mr. Cohen said earlier:
https://t.co/KRAlyjuB5u

> Folks, judges DO NOT read complaints or petitions when they are filed, and they DO NOT just up and act on the "requests for relief". If you want something, you need to actually ask the court for it by a motion, not just put it in your "here's what we want if we win" section
>
> — Akiva Cohen (@AkivaMCohen) January 4, 2021

Now I'm not a litigator, but if I had an emergency thing that absolutely had to be heard over a holiday weekend, I'd start by reading the relevant part of the local rules for the specific court in which I am filing my case.

In this case, this bit, in particular, seems relevant:

My next step, if I had any uncertainty at all, would be to find and use the court's after-hours emergency contact info. I might have to work some to find it, but it'll be there. Emergencies happen; there are procedures for them.

And then I'd do exactly what they tell me to do.

What I would NOT do is label my "emergency motion" as an "expedited motion," file it, and hope for the best. That approach is how you wind up with your case stuck in limbo the way their other Georgia elections case is.

That's what I'd do.

Here's what they did:

Seriously, courts have staff. They are professionals. They are usually very good at what they do. They don't like being inconvenienced by after-hours stuff, but sometimes it's necessary and everyone knows that.

And court staff are there to help. It's what they do.

Make the call, be apologetic about the inconvenience and grateful for their help. It's not rocket surgery.

Anyway, let's dive into the motion and memorandum in support, which are roughly similar in length. (Which is strange.)

Sometimes courts want a combined motion and memorandum as one document. Sometimes courts want a short motion that just says what you want and a separate memorandum in support.

They did, somehow, neither of those things.

We'll start with the motion. Which, as I said, I'd expect to be no more than 2 or 3 pages given the separate memorandum but is somehow 12 pages long.

https://t.co/e2WnrnLiML

I'd also note that the first page of the motion makes reference to the Federal Rule of Civil Procedure governing injunctions but doesn't mention the Local Rule about emergency motions.

And, Judge Cohen's standing order notwithstanding, was submitted in non-OCR form.

Seriously, judges and clerks just love lengthy documents that can't be text-searched. Especially ones that you're being asked (possibly) to read on an emergency basis.

At the start, they're incorporating everything in their complaint. AND they're also incorporating things that were, things that are, and some things...that have not yet come to pass.

Pro-Tip:
If you are going to rely on "the meaning specified in Plaintiff's Complaint" for stuff you randomly capitalize in a different document, MAKE THE BLOODY COMPLAINT TEXT-SEARCHABLE YOU UTTER PILLOCK.

If there's a separate memorandum in support, why is this stuff even here consuming my time?

If you are citing cases at me, you should be doing that in the memorandum in support, which is where the legal arguments go. Not so much here.

Still mostly memorandum in support stuff here, bud. And if it's also there verbatim I'm not gonna be all that thrilled.

Seriously, my feeling on what I've seen so far is that the motion should have an explanation of why you need the emergency schedule, the specific relief you are requesting, and not much legal argument if you're submitting a separate memorandum, which you did.

We're more than halfway through this thing and we're only just getting to that stuff now.

Not ideal.

Also, as far as I can tell this is the only explanation for why they need emergency relief - that there's not a lot of time left before their case becomes moot.

That's --- no.

"There's only a few days left before this case becomes moot" is **YOUR** emergency. You need to ALSO explain why this is THE COURT'S emergency.

"I'm turning in my homework late" does not even BEGIN to cut it for that. You need to explain why.

Wut???

https://t.co/klYrUABBFz

Not a litigator, but here's my understanding:
If you're filing a motion and separate memorandum of law, the MOTION is where you put "the Motion and relief" you are requesting. You don't put that in the memorandum of law.

You put the legal arguments in the memorandum of law.

For those asking about the "your emergency/my emergency" thing:

Your emergency should not involve "I waited to long to go bat'room and now I hazza 'mergency."

If you want it to be the court's problem, it really should be an unavoidable emergency, not just one you didn't avoid.

Moving on, here's the relief they request in the "motion." Only the good lord knows what else we'll find in the "memorandum of law."

But I almost hope that there IS other relief requested in the memorandum of law, because these dingleberry-brained nincompoops FORGOT to put in all the stuff about having the Georgia Legislature appoint new electors.

Somehow, I've got a feeling they're not getting all this stuff in the next 48 hours. Just a hunch.

But apparently we only get the "GOD BLESS AMERICA" signoff on complaints and other things signed with the loopy special signature.

Right.

Let's see how much worse the not-text-searchable memorandum of law is.
https://t.co/DTR1KRR1Tw

And right at the start, I'm seeing a lot of stuff in square brackets, so I'm going to go find the case they cite. This requires, of course, that I look for the full citation because they start with a short cite and there's no table of authorities.

OK, despite the lack of quotation marks and the bizzare and unnecessary substitution of words, it's a reasonable rendering of the original. Aside from omitting the bit where the court said it was acting so that voters could preserve their right to vote, anyway.

This is the entire section on standing. Given that (1) Georgia is not in the 8th Circuit; and (2) at least one other court of appeal has held that candidates don't have standing to bring electors clause claims because they're not the legislature, I feel like this was a bit short.

This is boilerplate, and, honestly, if you've been following me or Akiva since Thanksgiving you probably know the injunction factors better than these yahoos.

Also, this is A LOT of boilerplate given how short this memorandum is.

The status quo is that the people voted, the votes were counted, recounted, and rerecounted, the electors were appointed, the electors voted. Your requested preliminary injunction would undo all that.

That wouldn't exactly be "maintain[ing] the status quo," now would it?

1: I don't think I've ever seen - even in student writing - a section heading like this.
2: Gimmie a break, you've now used more than 1/6th the whole memorandum restating the standard for injunctive relief what the hell?

I'm ---

The voters voted. The counters counted. The electors elected.

What "further violations" are remotely possible at this point? All the stuff these defendants can do has been done.

Also - DO NOT just slap a paragraph like this in there. If you are going to argue likelihood of success on the merits, you need to actually argue it. Not make assertions.

DON'T DO THIS - E V E R.

You have filed a motion that you want RESOLVED in 48 hours. DO NOT tell the judge to refer generally to forty-two bloody paragraphs of your disjointed rambilings. Pinpoint citations are supposed to PINPOINT things, not wave vaguely in their direction.

This comes off as a document written by someone who wants to waste the court's time without wasting any more of their own than necessary.

Probably because it is.

These are critical factors. You are requesting literally the most radical interim relief that would be issued in the history of American elections. And you can't come up with more than one sentence for each? FFS.

The court's initial reaction to something like that is likely to be "fuckoff. Fuck all the way off. Fuck all the way off until you reach the end of the universe. And then keep fucking off for another few miles."

Oh, but we're going back to likelihood of success, what the hell was that I just read then?

SWEET JESUS H TAPDANCING CHRIST ON A CRUTCH YOU WANT TO INCORPORATE AN ENTIRE STATE COURT CASE THAT WAS NEVER HEARD IN THE FIRST INSTANCE BY REFERENCE???????????

They haven't shown that they would win the election but for the other stuff. Also, they haven't shown that decertifying would result in votes that benefit them. Two bites at this apple and they can't do better than this.

This part is still pretty much "if I win you aren't harmed because I should have won" which is not exactly the entirety of how this factor works.

None of this actually addresses either public interest or public policy but what the hell it's only just as critical a factor as all the others.

And, yup. Sure enough.

We've got relief in the memorandum that wasn't in the motion (and which the court almost certainly cannot grant given that the legislature isn't in session and isn't a party).

So a hearing has been set for tomorrow, which is a lot later than 48 hours from filing. I wouldn't be stunned if the judge notes that the hyper-shortening of the schedule is due to the plaintiff's chronic inability to follow rules.

If the plaintiff is extremely lucky, the judge won't make comments regarding the effect that the procedural bumblefuckings here have on the credibility of the claims that it wasn't them who bumblefucked the state case it was the state courts.

Overall, if there's one word that I'd associate with this entire case, it's "half."

As in -hearted, -assed, and -witted.

Defense response is due during my Minecraft stream tonight, doubt that I'm going to delay my stream to read it but we'll see.

If I had to guess, I'd say a bench dismissal (or at least a rejection of injunctive relief from the bench) by 11:00 tomorrow at the latest.