Twitter Thread by Mike Dunford

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Election Litigation Update: DC - the "let's sue the Electoral College" case.

This is a bit surprising, given that as of last time I checked nobody had been served and no appearance had been entered. I suspect it's an effort to make sure the case isn't "pending" on the 6th.

> Link: https://t.co/oOJZD1F4x2
>
> — Brad Heath (@bradheath) January 4, 2021

And, sure enough, still no proof of service on ANY defendant, still no appearance from defense counsel. And this is denying the motion for preliminary injunction but does NOT dismiss the case - which is potentially ominous for plaintiff's counsel.

This isn't a "happy judge" kind of first paragraph. Not even a little bit. Nope.

Y'all, this isn't even directed within a few hundred miles of my direction and I sill just instinctively checked to make sure that there's room for me to hide under my desk if I have to - this is a very not happy, very federal, very judge tone.

Also - the judge just outright said there's a bunch of reasons for dismissal. And not in "might be" terms. In definite fact ones. But the case isn't dismissed yet.

If I was plaintiffs counsel, I'd definitely be clearing under my desk right now, and possibly also my underwear.

Yikes. Ouch.

Judge calling out the length of your filing by both page count and number of footnotes is very much the same energy as your mother using your full name, middle name included, at you. At volume.

Oh dear. This is very unhappy judge energy.

Did they think the judge would not notice that they hadn't filed anything?

This is pure boilerplate. I'm a little - but only a little - surprised that there's nothing added to cover the judge's right to deny without the other parties being served or appearing.

I literally just swore out loud when I read this. Brutal.

Right - very much no standing.

I think I mentioned when I took my initial look at this stupidity that I thought there were some personal jurisdiction issued. Looks like I'm not the only one who noticed that.

I will admit that I didn't refer to the whole "post-election certification" thing as "flat-out wrong." I mostly went with "made-up" or various expletives. But flat-out wrong definitely works.

It's a seriously dumb lawsuit with a weapons-grade dumb legal theory, and the judge most definitely noticed.

"Somewhere between a willful misreading of the Constitution and fantasy." True. Harsh, but true.

Ooh. No, nope, no. Not what you want judge to say about you nope.

Yup. Mention of sanctions - and a "I'll decide when this wraps up what to do with you."

So, what are plaintiffs' options?

Honestly, I don't know. They can, of course, run to the DC Circuit right now if they want - denial of injunctive relief is immediately appealable.

But that would be EXCEPTIONALLY stupid.

With nobody served, no injunctive relief can be granted under the federal rules, so it's not like an appeal can accomplish anything. Best they get is an order telling a now-more-pissed off judge to let them serve and try again.

Next option is to voluntarily dismiss. That might be the right option and what the judge wants to happen. Or it might give the judge reason to say "yup, bad faith" and slam the hammer down. Or both. Or neither.

Or they can plow ahead and attempt service.

Those are the things they can do.

What they probably will do is something so dumb I didn't even think of it.