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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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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 Intervenor 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

Further, as set forth in our opening Brief, oral argument would be helpful to explain why this Court should not hear issues of alleged futility, which were not raised or decided

¹Plaintiffs 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.

²Plaintiffs believe the Court will benefit from hearing how the significant deadline is December 8, the safe-harbor provided by 3 U.S.C. §5, not November 23. Plaintiffs can also explain that this date is not dispositive as Justice Ginsburg wrote in *Bush v. Gore*: "the December 12 'deadline' for bringing Florida's electoral votes into 3 U.S.C. § 5's safe harbor lacks the significance the Court assigns it. ... in light of Congress' detailed provisions for determining, on 'the sixth day of January,' the validity of electoral votes." 531 U.S. 98, 143-44 (2000).

³Plaintiffs can assist the Court in understanding that the District Court made no finding of prejudice to Defendants and Intervenor, and none exists. Plaintiffs informed the District Court of their intent to amend one day after the FAC was filed, moving to amend two days later.

⁴Plaintiffs 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.

⁵Plaintiffs can assist the Court in understanding that the District did not rely on any other grounds besides undue delay. After stating that permissible "grounds that could justify a denial of leave to amend are undue delay, bad faith, dilatory motive, prejudice, and futility," the Court identified undue delay as the sole basis for denying leave to amend—"given" the three factors it mentioned (ECF 202 at 36). Its discussion of the procedural history, such as Plaintiffs previously amending, were not grounds for denial, but merely background for its decision.



below when the Motion to Amend was denied. Rather, this Court should grant the appeal and remand the matter to the District Court to decide alleged futility, while retaining jurisdiction over any emergency issues which may arise. Plaintiffs request twenty minutes to present their oral argument.

Plaintiffs thank the Court for consideration of this letter.

Very truly yours,

A handwritten signature in blue ink that reads "Marc A. Scaringi". The signature is written in a cursive, flowing style.

Marc A. Scaringi

Cc/Counsel for the Appellees-Defendants and Intervenors