

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|----------------------------------|---|--------------------------|
| DONALD J. TRUMP FOR |) | |
| PRESIDENT, INC.; <i>et al.</i> , |) | |
| |) | Civil Action |
| Plaintiffs, |) | |
| |) | No.: 2-20-CV-966 |
| v. |) | |
| |) | |
| KATHY BOOCKVAR; <i>et al.</i> , |) | |
| |) | Judge J. Nicholas Ranjan |
| Defendants. |) | |

**PLAINTIFFS’ MOTION FOR LEAVE TO FILE
OMNIBUS BRIEF IN OPPOSITION TO PENDING MOTIONS TO DISMISS**

Plaintiffs ask this Court for permission to file one omnibus brief in opposition to the pending motions to dismiss and, in support of same, state the following:

1. This Court has set this case for expedited consideration. *See, e.g.*, [ECF#124](#).
2. As part of that schedule, the Court encouraged defendants who were considering filing a motion to dismiss to do so by July 24, 2020. [ECF#124](#), ¶3.
3. Myriad defendants did so file motions and Plaintiffs filed an Amended Complaint on August 27, 2020. *See* [ECF#234](#); [ECF#240](#) (text only entry).
4. In light of the Amended Complaint, this Court deemed all prior motions to dismiss as moot and set a new date for filing same as July 29, 2020, with response by August 4, 2020. *See* [ECF#241](#) (text only entry).
5. At least 14 defendants/defendant groups filed motions to dismiss all or portions of the Amended Complaint. *See* [ECF#246](#); [ECF#261](#); [ECF#263](#); [ECF#272](#); [ECF#274](#); [ECF#278](#); [ECF#280](#); [ECF#283](#); [ECF#287](#); [ECF#288](#); [ECF#289](#); [ECF#293](#); [ECF#294](#); and [ECF#296](#).
6. Between them, the pending motions raise at least 14 issue, ranging from standing (both Article III and prudential), to abstention (at least four different versions, each of which has multiple parts), to ripeness, to mootness, to the 11th Amendment immunity, to sovereign immunity,

to improper venue, to lack of allegations against specific named counties, and failure to state a claim for one of several reasons.

7. Under this Court's Scheduling Order, Plaintiffs are permitted to file a response to each motion, with a page limit of 20 pages each. *See* [ECF#124](#), ¶4.

8. Instead of filing 14 different responses, many of which would contain the same or very similar arguments, Plaintiffs are proposing to file one omnibus Brief in Opposition to all motions to dismiss, with the brief limited to no more than 70 pages (or 210 pages fewer than the 280 pages allowed if they were to respond to each motion individually).

9. Filing one omnibus brief will allow Plaintiffs to address all arguments advanced by moving defendants in one brief and avoid the duplication that would be necessary in filing a response brief to each motion, which would help streamline this matter and reduce the burden on the Court in reviewing the opposition papers. *Cf.* [ECF#124](#), ¶7 (regarding ability of defendants to file joinders instead of filing their own motions/briefs).

10. Per this Court's procedures, Plaintiffs' counsel sent an email to counsel for all defendants who filed the motions to dismiss, seeking their consent to file one omnibus brief limited to 70 pages. *See* Exhibit A.¹

11. As of the filing of this Motion, the responses received from counsel follow:
- a. proposed intervenors NAACP Pennsylvania State Conference, Common Cause Pennsylvania, League of Women Voters of Pennsylvania, Patricia M. DeMarco, Danielle Graham Robinson, and Kathleen Wise do not oppose the relief requested;

¹ In preparing this motion, Plaintiffs' counsel realized that counsel for Washington County was omitted accidentally from the email on Sunday seeking consent in this motion.

- b. proposed intervenors Michael Crossey, Dwayne Thomas, Irvin Weinreich, Brenda Weinrcieh, and the Pennsylvania Alliance for Retired Americans do not oppose the relief requested;
- c. Bucks, Chester, Montgomery, and Philadelphia Counties do not oppose permitting an omnibus brief but believe the page limit should be 40 pages;
- d. proposed Democratic intervenors join the position of Bucks, Chester, Montgomery, and Philadelphia Counties;
- e. proposed intervenors PennFuture and Sierra Club take no position on the motion;
- f. Secretary Boockvar concurs in the position of Bucks, Chester, Montgomery, and Philadelphia Counties;
- g. Armstrong, Bedford, Blair, Centre, Columbia, Dauphin, Fayette, Huntingdon, Indiana, Lackawanna, Lawrence, Lebanon, Mercer, Montour, Northumberland, Venango, and York Counties concur in the position of Bucks, Chester, Montgomery, and Philadelphia Counties;
- h. Washington County joins in the position of Bucks, Chester, Montgomery, and Philadelphia Counties; and
- i. Luzerne County concurs in the position of Bucks, Chester, Montgomery, and Philadelphia Counties.

12. Plaintiffs believe the 40 page limit is woefully inadequate as it would allow Plaintiffs to devote fewer than 3 pages to each of the 14 arguments raised in the pending motions to dismiss (leaving no room for an introduction or factual background section).

13. A proposed Order granting the requested relief is attached.

Respectfully submitted,

PORTER WRIGHT MORRIS & ARTHUR LLP

Date: August 3, 2020

By: /s/ Ronald L. Hicks, Jr.

Ronald L. Hicks, Jr. (PA #49520)
Jeremy A. Mercer (PA #86480)
Russell D. Giancola (PA #200058)
Six PPG Place, Third Floor
Pittsburgh, PA 15222
(412) 235-4500 (Telephone)
(412) 235-4510 (Fax)
rhicks@porterwright.com
jmercer@porterwright.com
rgiancola@porterwright.com

and

Matthew E. Morgan (DC #989591)
(admitted pro hac vice)
Justin Clark (DC #499621)
(admitted pro hac vice)
Elections, LLC
1000 Maine Ave., SW, 4th Floor
Washington, DC 20224
(202) 844-3812 (Telephone)
matthew.morgan@electionlawllc.com
justin.clark@electionlawllc.com

Counsel for Plaintiffs

CERTIFICATION OF COUNSEL

As counsel for Plaintiffs, we hereby certify, under penalty of perjury and [28 U.S.C. §1746](#), that the emails at Exhibit A were sent to counsel for all moving defendants and that as of the filing of this Motion, the only responses are those set out in Paragraph 11 of the Motion.

Respectfully submitted,

PORTER WRIGHT MORRIS & ARTHUR LLP

Date: August 3, 2020

By: /s/ Ronald L. Hicks, Jr.

Ronald L. Hicks, Jr. (PA #49520)
Jeremy A. Mercer (PA #86480)
Russell D. Giancola (PA #200058)
Six PPG Place, Third Floor
Pittsburgh, PA 15222
(412) 235-4500 (Telephone)
(412) 235-4510 (Fax)
rhicks@porterwright.com
jmercer@porterwright.com
rgiancola@porterwright.com

and

Matthew E. Morgan (DC #989591)
(admitted pro hac vice)
Justin Clark (DC #499621)
(admitted pro hac vice)
Elections, LLC
1000 Maine Ave., SW, 4th Floor
Washington, DC 20224
(202) 844-3812 (Telephone)
matthew.morgan@electionlawllc.com
justin.clark@electionlawllc.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Motion to be filed this 3rd day of August, 2020, via ECF, which system will serve notice of same on all parties registered to receive same via the ECF system. For any party who has yet to enter an appearance, the undersigned certifies that a copy of the foregoing filing will be served on that party via First Class Mail and a copy sent to the County Solicitor, if known, via email or fax.

Respectfully submitted,

PORTER WRIGHT MORRIS & ARTHUR LLP

By: /s/ Ronald L. Hicks, Jr.

Ronald L. Hicks, Jr. (PA #49520)
Jeremy A. Mercer (PA #86480)
Russell D. Giancola (PA #200058)
Six PPG Place, Third Floor
Pittsburgh, PA 15222
(412) 235-4500 (Telephone)
(412) 235-4510 (Fax)
rhicks@porterwright.com
jmercer@porterwright.com
rgiancola@porterwright.com

and

Matthew E. Morgan (DC #989591)
(admitted pro hac vice)
Justin Clark (DC #499621)
(admitted pro hac vice)
Elections, LLC
1000 Maine Ave., SW, 4th Floor
Washington, DC 20224
(202) 844-3812 (Telephone)
matthew.morgan@electionlawllc.com
justin.clark@electionlawllc.com

Counsel for Plaintiffs