

No. 20-_____

In the
Supreme Court of the United States

Donald J. Trump, et al.,

PETITIONERS,
V.

Joseph R. Biden, et al.,

RESPONDENTS.

on petition for a writ of certiorari to
the supreme court of wisconsin

MOTION FOR EXPEDITED CONSIDERATION

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DECEMBER 29, 2020

**MOTION FOR EXPEDITED CONSIDERATION OF THE
PETITION FOR A WRIT OF CERTIORARI AND
EXPEDITED MERITS BRIEFING AND ORAL ARGUMENT
IN THE EVENT THAT THE COURT GRANTS THE PETITION**

Petitioners Donald J. Trump, Michael R. Pence, and Donald J. Trump for President, Inc., the re-election campaign for President Trump, respectfully request, pursuant to Supreme Court Rule 21, that this Court expedite its consideration of the petition for a writ of certiorari filed today. Petitioners further request, pursuant to Supreme Court Rule 25.4, that if the petition is granted, the Court expedite the schedule for briefing and oral argument. Expedited review would allow an orderly and timely resolution of the important questions presented under the U.S. Constitution and federal law. It is in the interests of the parties, Congress, and the Nation as a whole, that this Court have as much time as possible to consider the relative merits of the parties' positions and to issue its decision sufficiently in advance of fast-approaching deadlines. This Petition seeks to set aside the certification of presidential electors because the November 3, 2020 election in Wisconsin failed within the meaning of 3 U.S.C. §2 and have the Wisconsin Legislature appoint its electors as permitted by Section 2 and Article II of the United States Constitution. This petition and petitions pending from Pennsylvania, as well as election challenge proceedings pending in other states, contest sufficient electoral votes to change the December 8, 2020 electoral college vote such that the President could prevail in this election, further underscoring the critical importance of expediting this case.

The Case Presented

First, Petitioners seek a writ of certiorari to review the constitutionality of the Wisconsin Supreme Court's invocation of the non-statutory, judge-made doctrine of laches as a vehicle to avoid reaching the merits of Petitioners' challenges to 50,125 specific absentee ballots that were cast and counted in violation of specific provisions of election laws adopted by the Wisconsin Legislature pursuant to its plenary power to determine the "Manner" by which Wisconsin appoints its presidential electors. U.S. CONST. art. II, § 1, cl. 2. Further, Petitioners seek review of whether the invocation of laches in a post-election

challenge to specific ballots imposes an unconstitutional burden on the right of a citizen to seek public office by persuading her fellow citizens to cast their votes for her. If the Wisconsin Supreme Court's decision is not reversed it will have a profound chilling effect, nationwide, as all future candidates will feel it necessary to continuously monitor all election officials in all competitive jurisdictions, in an effort to divine whether some or all of them might violate the election laws. Candidates will feel it necessary to launch preemptive litigation against possible abuses, for fear that if they wait to bring suit after an election, when they know whether concrete harm has occurred, courts will invoke the doctrine of laches to tell them they waited too long. And candidates will be forced to proceed in this fashion through guesswork, without any way of knowing whether the possible violations will actually impact the outcome of the election.

Second, Petitioners seek a writ of certiorari to set aside counting 50,125 absentee ballots that were cast in violation of Wisconsin's election code, and the subsequent decisions of the Boards of Canvassers of Milwaukee and Dane Counties to overrule Petitioners' objections to the inclusion of these 50,125 absentee ballots in the post-recount vote totals, and the decision of the Wisconsin Supreme Court approving such.

Third, Petitioners seek a declaration under 3 U.S.C. §2 that the election in Wisconsin "failed" and the Wisconsin Legislature may appoint its electors under Section 2 and Article II of the U.S. Constitution.

Expedited Consideration is Appropriate

This Court should review the Wisconsin Supreme Court's decisions and enter an appropriate remedy on an expedited basis.

First, the ordinary briefing schedules prescribed by Rules 15 and 25 of this Court would not allow the case to be considered and decided before the results of the general election are finalized pursuant to these upcoming deadlines: Congress is scheduled to count

the electoral votes commencing on January 6, 2021 (see 3 U.S.C. § 15) and, practically speaking, that count must be completed by Inauguration Day for the President and Vice President, January 20, 2021 (*see* U.S. Const., amend. XX), to avoid the need for an Acting President to head up the executive branch. These dates would come and go before the completion of briefing, argument, and a decision on the merits under the Court's default rules. See U.S. Sup. Ct. R. 15, 25. 3. That the Wisconsin Supreme Court invoked a judge-made doctrine, in a post-election review, expressly to *avoid* deciding whether specific ballots were cast in violation of the manner for appointing presidential electors directed by the Wisconsin Legislature only underscores the error and the need for quick action by this Court. *See, e.g., Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006).

Second, time is plainly of the essence because once candidates have taken office, it will be impossible to repair election results that were tainted by illegally cast and counted absentee ballots. Thus, without expedited review, Petitioners' appellate rights -- and this Court's power to resolve the important constitutional and legal questions presented in the context of this election -- may be irrevocably lost. *See, e.g., Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S. 1004, 1005 (2000) (granting petitioner's motion to expedite consideration of petition for a writ of certiorari).

Third, this Court's expedited review will in no way prejudice Respondents, the majority of which are governmental agencies or officials who have an interest in the Constitution being followed; indeed, a duty to ensure it is followed. Vice President Biden and Senator Harris also have an interest in having any remaining election challenges resolved, on the merits, prior to Inauguration Day.

Finally, if this matter is not timely resolved, not only Petitioners, but the Nation as a whole, may suffer injury from the resulting confusion. The importance of a prompt

resolution of the federal constitutional questions presented by this case cannot be overstated. Large swaths of the population believe the election was tainted by fraud and irregularities. Those concerns and doubts would only be enhanced if this Court, like the Wisconsin Supreme Court, opted not to reach the merits of Petitioners' challenge to the election result in Wisconsin. Prompt review of the petition is essential to helping restore the public's confidence in our system of free and fair elections.

Accordingly, Petitioners submit that Respondents should be directed to file their response(s) to the petition by 5 p.m. on December 30, 2020. Given the time constraints of the case, Petitioners waive their right to a reply. If certiorari is granted, petitioners submit that the case should be decided based on the petition and response(s). If the Court deems additional briefing to be helpful, Petitioners submit that the Court should order expedited contemporaneous opening merits briefs for Petitioners and Respondents, together with any *amicus curiae* briefs and contemporaneous reply briefs for Petitioners and Respondents within 24 hours thereafter. If oral argument is deemed helpful, Petitioners submit that it should be expedited, as well.

Respectfully submitted this 29th day of December 2020.

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