

## Unsuccessful Suit to Require State Legislatures to Certify Presidential Election Results

*Wisconsin Voters Alliance v. Pence*  
(James E. Boasberg, D.D.C. 1:20-cv-3791)

A district judge denied relief in a federal suit filed in the district court for the District of Columbia seeking an order requiring state legislatures in five states to certify presidential election results. In addition to finding no merit to the complaint, the judge faulted the plaintiffs for naming as defendants officials in the five states over whom the court could not have personal jurisdiction. The judge also scolded the attorney for making no effort to serve the defendants, and the judge referred the plaintiffs' attorney for discipline.

*Subject:* Voting irregularities. *Topics:* Electoral College; enjoining certification; attorney discipline; election errors; laches.

A federal complaint filed in the district court for the District of Columbia on December 22, 2020, sought a judicial order requiring state legislatures to certify the 2020 presidential election results for each state.<sup>1</sup> The plaintiffs were five organizations—one each in Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin—and eighteen individuals, including ten voters in the five states and eight office holders in four of the states.<sup>2</sup> The defendants were the Vice President, the two houses of Congress, the Electoral College, and the governor and presiding officers for the two legislative houses of each of the five states.<sup>3</sup>

The complaint recited previous litigation in the Supreme Court:

**F. In 2020, Texas sued Pennsylvania, Michigan, Wisconsin and Georgia in the U.S. Supreme Court to adjudicate election irregularities and improprieties.**

83. On December 7, 2020, Texas filed an original action in the U.S. Supreme Court, Case No. 20O155, against Pennsylvania, Michigan, Wisconsin and Georgia for election irregularities and improprieties. On December 9, Missouri and 16 other states filed a motion for leave to file an amicus curiae brief in support of Texas. On December 10, U.S. Representative Mike Johnson and 105 other members submitted a motion for leave to file amicus brief in support of Texas. On December 11, the Supreme Court dismissed the original action in a text order:

The State of Texas's motion for leave to file a bill of complaint is denied for lack of standing under Article III of the Constitution. Texas has not demonstrated a judicially cognizable interest in the manner in which another State conducts its elections.<sup>4</sup>

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1. Complaint, *Wis. Voters Alliance v. Pence*, No. 1:20-cv-3791 (D.D.C. Dec. 22, 2020), D.E. 1; *Wis. Voters Alliance v. Harris*, 28 F.4th 1282, 1283 (D.C. Cir. 2022).

2. Complaint, *supra* note 1; *Wis. Voters Alliance v. Pence*, 514 F. Supp. 3d 117, 119 (D.D.C. 2021).

3. Complaint, *supra* note 1; *Wis. Voters Alliance*, 514 F. Supp. 3d at 119.

4. Complaint, *supra* note 1, at 32 (quoting *Texas v. Pennsylvania*, 593 U.S. \_\_\_\_, 141 S. Ct.

The proposed bill of complaint sought an order nullifying Electoral College appointments based on presidential election results in Georgia, Michigan, Pennsylvania, and Wisconsin.<sup>5</sup>

With their district-court complaint, the plaintiffs filed a motion for a preliminary injunction.<sup>6</sup>

On January 4, 2021, Judge James E. Boasberg denied immediate relief: “the suit rests on a fundamental and obvious misreading of the Constitution. It would be risible were its target not so grave: the undermining of a democratic election for President of the United States.”<sup>7</sup> The plaintiffs’ “central contention is flat-out wrong.”<sup>8</sup>

Judge Boasberg scolded the plaintiffs for procedural improprieties:

In order to provide an equitable briefing and hearing schedule on a very tight timetable, this Court immediately instructed Plaintiffs to file proofs of service on Defendants so that they could proceed on their preliminary-injunction Motion. Twelve days later, Plaintiffs have still not provided proof of notice to any Defendant, let alone filed a single proof of service or explained their inability to do so.<sup>9</sup>

And he scolded the plaintiffs for naming as defendants persons over whom the court clearly had no personal jurisdiction: “Plaintiffs cannot simply sue anyone they wish here in the District of Columbia. . . . [T]hey never explain how a court in this city can subject to its jurisdiction, say, the Majority Leader of the Wisconsin State Senate.”<sup>10</sup>

Judge Boasberg found

it difficult to believe that the suit is meant seriously. Courts are not instruments through which parties engage in such gamesmanship or symbolic political gestures. As a result, at the conclusion of this litigation, the Court will determine whether to issue an order to show cause why this matter should not be referred to its Committee on Grievances for potential discipline of Plaintiffs’ counsel.<sup>11</sup>

On January 7, the day that Congress certified Joe Biden the winner of the presidential election, the plaintiffs voluntarily dismissed their case.<sup>12</sup> Somewhat more than one month later, Judge Boasberg concluded that disciplinary

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1230 (2020)).

5. Proposed Bill of Complaint at 39, No. 20O155 (U.S. Dec. 7, 2020), [www.supremecourt.gov/DocketPDF/22/22O155/162953/20201207234611533\\_TX-v-State-Motion-2020-12-07%20FINAL.pdf](http://www.supremecourt.gov/DocketPDF/22/22O155/162953/20201207234611533_TX-v-State-Motion-2020-12-07%20FINAL.pdf).

6. Preliminary-Injunction Motion, *Wis. Voters Alliance*, No. 1:20-cv-3791 (D.D.C. Dec. 22, 2020), D.E. 2; *Wis. Voters Alliance*, 28 F.4th at 1283.

7. *Wis. Voters Alliance*, 514 F. Supp. 3d at 119.

8. *Id.* at 120.

9. *Id.* at 119 (citation omitted); see Docket Sheet, *Wis. Voters Alliance*, No. 1:20-cv-3791 (D.D.C. Dec. 22, 2020) (minute order, Dec. 23, 2020).

10. *Wis. Voters Alliance*, 514 F. Supp. 3d at 120.

11. *Id.* at 121–22.

12. Notice, *Wis. Voters Alliance*, No. 1:20-cv-3791 (D.D.C. Jan. 7, 2021), D.E. 16; *Wis. Voters Alliance v. Harris*, 28 F.4th 1282, 1283 (D.C. Cir. 2022).

referral was appropriate.<sup>13</sup> Because the referral was not a final order, the court of appeals determined that it did not have jurisdiction over counsel's attempted appeal.<sup>14</sup>

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13. Opinion, *Wis. Voters Alliance*, No. 1:20-cv-3791 (D.D.C. Feb. 19, 2021), D.E. 23, 2021 WL 686359; see David Wickert, *Attorney in Ga. Election Suit May Face Discipline*, *Atlanta J.-Const.*, Feb. 24, 2021, at 7A.

14. *Wis. Voters Alliance*, 28 F.4th at 1283.