

## Unsuccessful Effort to Decertify Georgia’s 2020 Presidential Election Results a Few Days Before Congressional Certification

*Trump v. Kemp (Mark H. Cohen, N.D. Ga. 1:20-cv-5310)*

About an hour before New Year’s Day, six days before Congress was to certify President Biden’s Electoral College victory in the 2020 presidential election, the defeated incumbent filed a federal complaint in the Northern District of Georgia seeking to have Georgia’s presidential election results decertified. The district judge denied the plaintiff immediate relief at a January 5, 2021, videoconference hearing.

*Subject:* Voting irregularities. *Topics:* Enjoining certification; laches; matters for state courts; Electoral College.

At 11:03 p.m. on Thursday, December 31, 2020, President Trump filed a federal complaint in the Northern District of Georgia against Georgia’s governor and its secretary of state seeking a court order decertifying the President’s reelection defeat in Georgia.<sup>1</sup> The secretary of state had certified the results of the presidential election in Georgia on November 20, and the governor had certified Georgia’s slate of presidential electors on November 21.<sup>2</sup>

With his complaint, the President filed a motion for expedited relief.<sup>3</sup> On Monday, the court assigned the case to Judge Mark H. Cohen,<sup>4</sup> who ordered a response to the motion filed that evening.<sup>5</sup> He set the case for a videoconference hearing on Tuesday morning.<sup>6</sup>

Judge Cohen began the hearing with an announcement that public audio streaming of the proceeding had not been consented to by the plaintiff’s attorney.<sup>7</sup> Judge Cohen ended the hearing by denying the President immediate relief.<sup>8</sup> Judge Cohen issued a published opinion that day.<sup>9</sup>

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1. Complaint, *Trump v. Kemp*, No. 1:20-cv-5310 (N.D. Ga. Dec. 31, 2020), D.E. 1; Scheduling Order at 1, *id.* (Jan. 4, 2021), D.E. 8.

2. *Trump v. Kemp*, 511 F. Supp. 3d 1325, 1329 (N.D. Ga. 2021).

3. Motion, *Trump*, No. 1:20-cv-5310 (N.D. Ga. Dec. 31, 2020), D.E. 2.

4. Docket Sheet, *id.* (Dec. 31, 2020).

5. Scheduling Order, *supra* note 1.

Although Plaintiff’s counsel could have requested through this Court’s ECF filing system an immediate hearing over this past holiday weekend, and obtained a hearing before the duty district judge, counsel did not do so. Consequently, this Court was not informed of these filings until this morning at 9:38 a.m. when the case was assigned to the undersigned.

*Id.* at 2.

6. *Id.* at 3.

7. Transcript at 4, *Trump*, No. 1:20-cv-5310 (N.D. Ga. Jan. 5, 2021, filed Jan. 5, 2021), D.E. 19.

8. *Id.* at 55–56; Minutes, *id.* (Jan. 5, 2021), D.E. 16; see Mark Niese, *Judge Denies Trump’s Effort to Decertify Georgia Results*, Atlanta J.-Const., Jan. 6, 2021, at 12A.

9. *Trump v. Kemp*, 511 F. Supp. 3d 1325 (N.D. Ga. 2021).

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Judge Cohen declined to permit the President’s “hijacking a pending state election contest case under any circumstances, and certainly not when [the plaintiff was not pursuing it diligently].”<sup>10</sup> Nor had the plaintiff’s claims probable merit.<sup>11</sup>

Two days later, a day after congressional certification of President Biden’s victory,<sup>12</sup> the plaintiff filed a notice of voluntary dismissal “due to an out of court settlement agreement.”<sup>13</sup> The defendants acceded to dismissal, but characterized the reference to a settlement as “demonstrably false.”<sup>14</sup> The court terminated the case on the following day.<sup>15</sup>

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10. *Id.* at 1335.

11. *Id.* at 1336–38.

12. See Kristina Peterson & Natalie Andrews, *Mob Storms Capitol—Biden Certification Delayed*, Wall St. J., Jan. 7, 2021, at A1.

13. Notice, *Trump*, No. 1:20-cv-5310 (N.D. Ga. Jan. 7, 2021), D.E. 22.

14. Notice Response, *id.* (Jan. 7, 2021), D.E. 23.

15. Docket Sheet, *supra* note 4.