

Mediated Agreement on Ballot-Counting Observers

*Donald J. Trump for President v. Philadelphia County
Board of Elections (Paul S. Diamond, E.D. Pa. 2:20-cv-5533)*

Two days after a general election, a district judge mediated resolution to a dispute over ballot-counting observers.

Subject: Voting irregularities. *Topics:* Matters for state courts; equal protection; Covid-19; 42 U.S.C. § 1983.

Two days after the 2020 general election, the campaign for President Trump filed in the Eastern District of Pennsylvania a two-page federal complaint and motion for an emergency injunction against Philadelphia County’s board of elections to bar the board “from continuing to count any ballots so long as Republican observers are not present as required by law.”¹

Judge Paul S. Diamond set the case for hearing that afternoon.² At the hearing, held during the first year of the global infectious Covid-19 pandemic, Judge Diamond advised counsel regarding speaking, “if you could, if you feel comfortable doing it, pull your mask down as I’m doing now, because it’s very hard to understand somebody when he or she is speaking through a mask.”³

At the hearing, Judge Diamond mediated a resolution to the motion regarding number of observers and social distance.⁴ He issued an order: “As stated during today’s Emergency Injunction Hearing, in light of the Parties’ agreement, Plaintiff’s Motion is DENIED without prejudice.”⁵ As stated in the campaign’s January 8, 2021, notice of dismissal, “Following [the November 5, 2020,] agreement, the issues in this case were litigated by the parties in the Pennsylvania state courts.”⁶

1. Complaint at 1, *Donald J. Trump for President, Inc. v. Phila. Cty. Bd. of Elections*, No. 2:20-cv-5533 (E.D. Pa. Nov. 5, 2020), D.E. 1; see Corinne Ramey, Deanna Paul & Brent Kendall, *Election 2020: Trump Campaign Steps Up Legal Challenges*, Wall St. J., Nov. 6, 2020, at A5 (“Thursday afternoon, the Trump campaign filed a federal lawsuit accusing Philadelphia officials of blocking its poll watchers and violating [a state] judge’s order”).

2. Order, *Donald J. Trump for President, Inc.*, No. 2:20-cv-5533 (E.D. Pa. Nov. 5, 2020), D.E. 2.

3. Transcript at 3, *id.* (Nov. 5, 2020, filed Nov. 18, 2020), D.E. 7.

4. *Id.* at 13–43; see Ramey et al., *supra* note 1 (“After a hearing Thursday evening, the parties came to an agreement to allow equal access to the counting area, which had barricades to enforce social distancing.”).

5. Order, *Donald J. Trump for President, Inc.*, No. 2:20-cv-5533 (E.D. Pa. Nov. 5, 2020), D.E. 5 (citation and emphasis omitted).

6. Notice, *id.* (Jan. 8, 2021), D.E. 12.