[Texas v. Pennsylvania et al. (Dec. 08, 2020). Motion to Intervene of Donald J. Trump, President of the United States, Case No. 22O155 (U.S. 2020).]

NO. 22O155, ORIGINAL

In the Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA, STATE OF GEORGIA, STATE OF MICHIGAN, AND STATE OF WISCONSIN,

Defendants.

MOTION OF DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, TO INTERVENE IN HIS PERSONAL CAPACITY AS CANDIDATE FOR RE-ELECTION, PROPOSED BILL OF COMPLAINT IN INTERVENTION, AND BRIEF IN SUPPORT OF MOTION TO INTERVENE

John C. Eastman
Counsel of Record
One University Dr.
Orange, CA 92866
(714) 628-2587
jeastman@chapman.edu

Counsel for Plaintiff in Intervention

TABLE OF CONTENTS

Page

NO. 22O155, ORIGINAL

In the Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

**COMMONWEALTH OF PENNSYLVANIA
STATE OF GEORGIA, STATE OF MICHIGAN,
STATE OF WISCONSIN,**

Defendants,

**DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES,
IN HIS PERSONAL CAPACITY AS CANDIDATE FOR
RE-ELECTION TO THE OFFICE OF PRESIDENT,**

Plaintiff in Intervention.

MOTION TO INTERVENE

John C. Eastman
Counsel of Record
One University Dr.
Orange, CA 92866
(714) 628-2587
jeastman@chapman.edu

Donald J. Trump, President of the United States, respectfully seeks leave to intervene in the pending original jurisdiction matter of *State of Texas v. Commonwealth of Pennsylvania, et al.*, No. 22O155 (filed Dec. 7, 2020).

Plaintiff in Intervention seeks leave to file the accompanying Bill of Complaint in Intervention against the Commonwealth of Pennsylvania and the States of Georgia, Michigan, and Wisconsin ("Defendant States"), challenging their administration of the 2020 presidential election.

There is no Eleventh Amendment bar to the intervention by a private party whose rights are affected by an original action between States. See, *Maryland v. Louisiana,* 451 U.S. 725, 745, fn. 21 (1981) ("[I]t is not unusual to permit intervention of private parties in original actions"); *Arizona v. California,* 460 U.S. 605, 614 ([O]ur judicial power over the controversy is not enlarged by granting leave to intervene, and the States' sovereign immunity, protected by the Eleventh Amendment, is not compromised"). *See also*, *Texas v. Louisiana*, 416 U.S. 965 (1974) (city in Texas permitted to intervene); *Arizona v. California*, 373 U.S. 546 (1963) (state agencies); *Oklahoma v. Texas*, 258 U.S. 574, 581 (1922) (noting that numerous parties intervened to make claims to the property over which the Court had taken control and that "ancillary" jurisdiction over such claims was proper "although independent suits to enforce the claims could not be entertained in that court").

As set forth in the accompanying brief and Complaint in Intervention, election officials in each of the Defendant States altered or otherwise failed to enforce state election laws in the conduct of the 2020

election. The violations of *state* election law, which is the "manner" the Legislatures of the States have established for choosing presidential electors, violates the Electors Clause of the U.S. Constitution and thus this matter arises under federal law. *See Bush v Gore*, 531 U.S. 98, 113 (2000) ("significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question") (Rehnquist, C.J., concurring). Moreover, as explained more fully in the complaint filed by Texas, the number of ballots affected by illegal conduct of state elections officials greatly exceeds the current margin between Plaintiff in Intervention and his opponent in the election for the Office of President in each of the respective Defendant States, and the four Defendant States collectively have a sufficient number of electoral votes to affect the result of the vote in the Electoral College for the Office of President. Proposed Plaintiff in Intervention therefore clearly has a stake in the outcome of this litigation.

This Court should grant leave to file the Complaint in Intervention.

December 9, 2020

Respectfully submitted,

John C. Eastman
Counsel of Record
One University Dr.
Orange, CA 92866
(714) 628-2587
jeastman@chapman.edu

NO. 22O155, ORIGINAL

In the Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA
STATE OF GEORGIA, STATE OF MICHIGAN,
STATE OF WISCONSIN,

Defendants,

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES,
IN HIS PERSONAL CAPACITY AS CANDIDATE FOR
RE-ELECTION TO THE OFFICE OF PRESIDENT,

Plaintiff in Intervention.

BILL OF COMPLAINT IN INTERVENTION

John C. Eastman
Counsel of Record
One University Dr.
Orange, CA 92866
(714) 628-2587
jeastman@chapman.edu

TABLE OF CONTENTS

BILL OF COMPLAINT IN INTERVENTION

Our Country is deeply divided in ways that it arguably has not been seen since the election of 1860. There is a high level of distrust between the opposing sides, compounded by the fact that, in the election just held, election officials in key swing states, for apparently partisan advantage, failed to conduct their state elections in compliance with state election law, in direct violation of the plenary power that Article II of the U.S. Constitution confers on the *Legislatures* of the States. Indeed, a recent poll by the reputable Rasmussen polling firm indicates that 47% of all Americans (including 75% of Republicans and 30% of Democrats), believe that it is "likely" or "very likely" the election was stolen from the current incumbent President.[1]

The fact that nearly half of the country believes the election was stolen should come as no surprise. President Trump prevailed on nearly every historical indicia of success in presidential elections. For example, he won both Florida and Ohio; no candidate in history—Republican or Democrat—has ever lost the election after winning both States. And he won these traditional swing states by large margins—Ohio by 8 percentage points and 475,660 votes; Florida by 3.4 percentage points and 371,686 votes. He won 18 of the country's 19 so-called "bellwether" counties—counties

---

[1] *See* Leah Barkoukis, "What Do Democrats Think About the Integrity of the Election? One Poll Shows Surprising Findings," Townhall.com (Dec. 1, 2020), available at https://townhall.com/tipsheet/leahbar koukis/2020/12/01/30-percent-of-dems-think-their-party-cheated-n2580862.

whose vote, historically, almost always goes for the candidate who wins the election.[2] Initial analysis indicates that he won 26 percent of non-white voters, the highest percentage for any Republican candidate since 1960,[3] a fairly uniform national trend that was inexplicably not followed in key cities and counties in the Defendant States. And he had coattails but, as some commentators have cleverly noted, apparently no coat. That is, Republican candidates for the U.S. Senate and U.S. House, down to Republican candidates and the state and local level, all out-performed expectations and won in much larger numbers than predicted, yet the candidate for President at the top of the ticket who provided those coattails did not himself get over his finish line in first place. This, despite the fact that the nearly 75 million votes he received—a record for any incumbent President—was nearly 12 million more than he received in the 2016 election, also a record (in contrast to the 2012 election, in which the incumbent received 3 million *fewer* votes than he had four years earlier but nevertheless prevailed). These things just don't normally happen, and a large percentage of the American people know that something is deeply amiss.

---

[2] *See* John McCormick, "Bellwether Counties Nearly Wiped Out by 2020 Election," Wall Street Journal Online (Nov. 13, 2020); "Bellwether Counties Dry Up," Wall Street Journal, print edition (Nov. 14, 2020).

[3] *See* Matthew Impelli, "Trump Wins Highest Percent of Nonwhite Voters of Any Republican in 60 Years," Newsweek (Nov. 5, 2020), available at https://www.newsweek.com/trump-wins-highest-percent-nonwhite-voters-any-republican-60-years-doubles-lgbtq-support-2016-1545294

This Court adjudicates cases arising under the Constitution and laws of the United States, of course. It does not decide elections. That is the role of voters who cast lawful ballots. But the Constitution does contain rules that are obligatory on all agents of government—including those who conduct elections.

When election officials conduct elections in a manner that contravenes of the Constitution of the United States, grave harm is done not just to the candidates on the ballot but to the citizenry's faith in the election process itself.

In the 2020 election, under the guise of responding to the COVID-19 pandemic, election officials in several key states, sometimes on their own and sometimes in connection with court actions brought by partisan advocates, made a systematic effort to weaken measures to ensure fair and impartial elections by creating new rules for the conduct of the elections—rules that were never approved by the legislatures of the defendant states as required by Article II of the United States Constitution. These new rules were aimed at weakening, ignoring, or overriding provisions of state law that are aimed at ensuring the integrity of the voting process.

As more particularly alleged in the Bill of Complaint filed by the State of Texas, for the first time in history, these officials flooded their States with millions of ballots sent through the mail, or placed in drop boxes, with little or no chain of custody and, at the same time, intentionally weakened or eliminated the few existing security measures protecting the integrity of the vote—signature verification and witness requirements.

For example, Pennsylvania's Secretary of State issued guidance purporting to suspend the signature verification requirements, in direct violation of state law. In Michigan, the Secretary of State illegally flooded the state with absentee ballot applications mailed to every registered voter despite the fact that state law strictly limits the ballot application process. In Wisconsin, the largest cities all deployed hundreds of unmanned, unsecured absentee ballot drop boxes that were all invalid means of returning absentee votes under state law. In Georgia, the Secretary of State instituted a series of unlawful policies, including processing ballots weeks before election day and destructively revising signature and identity verification procedures.

In all cases, absentee ballots were mailed to people without even a perfunctory attempt to verify the recipient's identity or eligibility to vote, including residency, citizenship, and criminal records. When returned and counted, the ballots were typically separated from their security envelopes, divorcing them from any information that could have helped determine whether the votes were legally cast.

The effort to weaken ballot security measures did not merely arise in an atmosphere of chaos of an election arising in a global pandemic. There was a nationwide campaign to weaken ballot security and integrity through over three hundred lawsuits filed by partisan

operatives in the months and weeks prior to the 2020 election.[4]

To the extent these drastic and fraud-inducing changes in state election law were done without the consent of the state legislature, the *federal* constitution was violated. Article II provides that only state legislatures can make rules for presidential elections. Election officials—either on their own or in cooperation with courts—cannot change the rules either weeks in advance or in the midst of the election process.

This is no mere procedural requirement. For without compliance with the rule of law, elections are subject to the very real prospect that fraud could occur in the election.

Leaving ballot boxes in public parking lots invites fraud. And when the traditional rules for validating voter signatures and identity are waived, overruled, or ignored, the opportunity for fraud is greatly increased.

And when the most common method of detecting fraud—comparing signatures of voters with their registration documents—is ignored, or envelopes are destroyed, proof of the fraud becomes extremely difficult. The unlawful actions of election officials effectively destroy the evidence by which the fraud may be detected.

---

[4] *See* Amy Sherman, "2020 election lawsuits and ballot access: what you need to know," Politifact (Nov. 2, 2020, available at https://www.politifact.com/article/2020/nov/02/2020-election-lawsuits-and-ballot-access-what-you-/ (referring to Stanford-MIT Healthy Elections Project litigation tracker https://healthyelections-case-tracker.stanford.edu/cases).

It is not necessary for the Plaintiff in Intervention to prove that fraud occurred, however; it is only necessary to demonstrate that the elections in the defendant States materially deviated from the "manner" of choosing electors established by their respective state Legislatures.

By failing to follow the rule of law, these officials put our nation's belief in elected self-government at risk.

This Court should issue a declaratory judgment that the defendant States have violated the Constitution and the rights of the Plaintiff in Intervention by conducting the elections according to unauthorized rules created by officials and courts rather than by the pre-existing requirements of state law. And it should further direct the defendant States to review their election results in compliance with pre-existing state law and count only lawfully cast ballots and thereby determine who truly won the contest for President of the United States. Only then will the public's faith in the election process be restored, and only then will voters on either side of the intensely partisan divide be able to find solace in a result that was obtained after a fair electoral fight, where every *legal* vote was counted but where those votes were not diluted or negated by the casting and counting of *illegal* votes.

Against that background, Donald J. Trump, President of the United States, adopts by reference and joins in the Bill of Complaint submitted by Plaintiff State of Texas, with the following modifications:

JURISDICTION

1. Because this is a Complaint in Intervention to a matter already pending pursuant to this Court's original jurisdiction over "controversies between two or more States," U.S. Const. art. III, § 2, cl. 2; 28 U.S.C. § 1251(a), intervention is permissible even absent independent grounds for the exercise of this Court's original jurisdiction. *See, e.g., Maryland v. Louisiana*, 451 U.S. 725, 745 n.21 (1981) (permitting intervention of private parties as plaintiffs); *Texas v. Louisiana*, 416 U.S. 965 (1974) (city in Texas permitted to intervene); *Arizona v. California*, 373 U.S. 546 (1963) (state agencies); *Oklahoma v. Texas*, 258 U.S. 574, 581 (1922) (noting that numerous parties intervened to make claims to the property over which the Court had taken control and that "ancillary" jurisdiction over such claims was proper "although independent suits to enforce the claims could not be entertained in that court").

2. In matters invoking this Court's original jurisdiction, this Court looks to the Federal Rules of Civil Procedure as a guide. Rule 17.2

PARTIES

3. Plaintiff in Intervention, Donald J. Trump, the current President of the United States and a candidate for re-election as President at the general election that was held on November 3, 2020, is domiciled in the State of Florida. He seeks to intervene in this matter in his personal capacity as a candidate for re-election to the office of President of the United States. Defendants are the Commonwealth of Pennsylvania and the States of Georgia, Michigan, and Wisconsin, which are sovereign states of the United States.

ADDITIONAL FACTS

4. On March 6, 2020, in *Democratic Party of Georgia v. Raffensperger*, No. 1:19-cv-5028-WMR (N.D. Ga.), Georgia's Secretary of State entered a Compromise Settlement Agreement and Release with the Democratic Party of Georgia (the "Settlement") to materially alter the statutory requirements for signature verification. O.C.G.A. §21-2-381(b) requires that election officials match the signature and other information on an application for absentee ballot with the voter registration information on file, and § 21-2-386(a) likewise requires that the signature on any returned absentee ballot be compared with *both* the registration signature and the application signature, before that ballot can be counted. Yet pursuant to the Settlement, those standards were changed to allow absentee ballots to be counted if the signature matched *only* the signature on the absentee ballot application without the necessity of also matching the signature on the voter registration card. Such statutory requirements are designed to minimize the risk of fraud in the absentee ballot process, yet likely as a result of the Settlement requiring that these statutory requirements be ignored, the invalidity rate of absentee ballots dropped from the historic average of about three percent to a miniscule rejection rate of .37%, with the result that approximately 40,000 ballots were counted that, based on historical rejection rates, should not have been counted.

5. Georgia's legislature has not ratified these material changes to statutory law mandated by the Settlement, including altered signature verification requirements and early opening of ballots. The relevant

legislation that was violated by the Settlement did not include a severability clause.

6. This unconstitutional change in Georgia law appeared to materially benefit former Vice President Biden. According to the Secretary of State's office, former Vice President Biden had almost double the number of absentee votes (849,729) as President Trump (451,157).

7. The effect of this unconstitutional change in Georgia election law, which made it more likely that ballots without matching signatures would be counted, had a material impact on the outcome of the election.

COUNT I: ELECTORS CLAUSE

8. Plaintiff in Intervention repeats and re-alleges the allegations of paragraphs 1-7, above, as if fully set forth herein, and also incorporates by references the allegations of paragraphs 1-134 set out in the Bill of Complaint filed by the State of Texas.

9. The Electors Clause of Article II, Section 1, Clause 2, of the Constitution makes clear that only the legislatures of the States are permitted to determine the rules for appointing presidential electors. The pertinent rules here are the state election statutes, specifically those relevant to the presidential election.

10. Non-legislative actors lack authority to amend or nullify election statutes. *Bush v. Gore*, 531 U.S. 98, 104 (2000).

11. The actions set out in paragraphs 29-134 of the Texas Bill of Complaint, as well as those set out in in paragraphs 4-7 above, constitute non-legislative changes to State election law by executive-branch

election officials of the State, or by judicial officials, in Defendant States of Pennsylvania, Georgia, Michigan, and Wisconsin, in violation of the Electors Clause.

12. Electors appointed to Electoral College in violation of the Electors Clause cannot cast constitutionally-valid votes for the office of President.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff in Intervention respectfully request that this Court issue the following relief:

A. Declare that Defendant States Pennsylvania, Georgia, Michigan, and Wisconsin administered the 2020 presidential election in violation of the Electors Clause.

B. Declare that any Electoral College votes cast by such Electors appointed in the Defendant States Pennsylvania, Georgia, Michigan, and Wisconsin are in violation of the Electors Clause and cannot be counted.

C. Enjoin Defendant States and their respective officials from using the constitutionally-infirm 2020 election results for the office of President to appoint Electors to the Electoral College, unless the legislatures of Defendant States review the 2020 election results and decide by legislative resolution to use those results in a manner to be determined by the legislatures that is consistent with the Constitution.

D. If any of the Defendant States have already appointed Electors to the Electoral College using the 2020 election results, direct that such States'

legislatures, pursuant to 3 U.S.C. § 2 and U.S. CONST. art. II, §1, cl. 2, have the authority to appoint a new set of Electors in a manner that does not violate the Electors Clause, or to appoint no Electors at all.

E. Award costs to Plaintiff in Intervention.

F. Grant such other relief as the Court deems just and proper.

December 9, 2020

Respectfully submitted,

John C. Eastman
Counsel of Record
One University Dr.
Orange, CA 92866
(714) 628-2587
jeastman@chapman.edu

NO. 22O155, ORIGINAL

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, IN HIS CAPACITY AS CANDIDATE FOR RE-ELECTION,

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA; TOM WOLF, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF PENNSYLVANIA; *ET AL*.

Defendants,

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, IN HIS PERSONAL CAPACITY AS CANDIDATE FOR RE-ELECTION TO THE OFFICE OF PRESIDENT,

Plaintiff in Intervention.

BRIEF IN SUPPORT OF MOTION TO INTERVENE

John C. Eastman
Counsel of Record
One University Dr.
Orange, CA 92866
(714) 628-2587
jeastman@chapman.edu

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Constitutional Provisions

On December 7, 2020, the State of Texas moved for leave to file a Bill of Complaint against the Commonwealth of Pennsylvania and the States of Georgia, Michigan, and Wisconsin ("Defendant States"), challenging the Defendant States' conduct of the November 3, 2020 election for President. *Texas v. Pennsylvania et al.,* No. 22O155 (S. Ct., filed Dec. 7, 2020). It also filed a motion to expedite and a motion for preliminary injunction and temporary restraining order or, alternatively, for stay and administrative stay. *Id.* On December 8, 2020, this Court ordered the Defendant States to provide a response to the motion and to the accompanying motion for a preliminary injunction and temporary restraining order by 3:00 p.m. on Thursday, December 10. *Id.* Donald J. Trump, President of the United States, seeks leave to intervene to protect his unique and substantial personal interests as a candidate for re-election to the Office of President in the November 3, 2020 election.

ARGUMENT

I. Intervention Is Warranted Because Donald Trump's Unique Interest in the Outcome of the 2020 Election In Which He Was a Candidate Will Be Directly Affected By Any Equitable Relief Afforded or Denied By This Court.

This Court has recognized that in specified circumstances, parties other than states have a "compelling interest" that is not represented by a party state, and thus should be permitted to intervene in original cases that will directly affect that interest. *New Jersey v. New York,* 345 U.S. 369, 373 (1953) (per curiam).

While Plaintiff State of Texas has asserted its important right not to have its electoral votes *diluted* by the illegal and unconstitutional conduct of the Defendant States, Compl. at 4, the candidate whose pledged electors were not elected has an even more direct injury caused by that illegal conduct, namely, his own re-election to the Office of President. This interest would be directly affected by any equitable relief granted or denied by this Court in the pending matter.

As noted extensively in the Bill of Complaint and accompanying brief filed by Texas, certain officials in the Defendant States, using the Covid-19 pandemic as an excuse, ignored or suspended the operation of numerous state laws designed to protect the integrity of the ballot. They gutted the safeguards for absentee ballots through non-legislative actions, despite knowledge that absentee ballots are "the largest source of potential voter fraud," BUILDING CONFIDENCE IN U.S. ELECTIONS: REPORT OF THE COMMISSION ON FEDERAL ELECTION REFORM, at 46 (Sept. 2005) (hereinafter, "CARTER-BAKER"). Eligibility for absentee ballots was expanded without statutory authorization, signature verification and other voter identification requirements were altered or ignored, and access by observers to the processing and counting of absentee ballots was blocked or constrained, all in violation of existing laws in the Defendant States. *See* Compl. at ¶¶ 29-134. The United Nations Declaration of Principles for International Election Observation (endorsed by, among others, the Organization of American States, of which the United States is a member) acknowledges the importance of "political contestants" being "allowed to monitor all processes related to elections and observe procedures, including among other things the functioning of electronic and other

electoral technologies inside polling stations, counting centers and other electoral facilities, as well as the transport of ballots and other sensitive materials." DECLARATION OF PRINCIPLES FOR INTERNATIONAL ELECTION OBSERVATION, Principal 14, p. 5 (Oct. 27, 2005).[5] The United States State Department has also found that "prohibition of local independent observers at polling stations" is one of the factors demonstrating that elections are "not free and fair." Michael Pompeo, "Press Statement: Presidential Elections in Belarus" (Aug. 10, 2020).[6]

Because the U.S. Constitution assigns plenary power for determining the "manner" of choosing presidential electors to the *Legislature* of the State, U.S. Const. art. II, § 1, cl. 2; *Bush v. Gore*, 531 U.S. 98, 104 (2000) those actions by non-legislative election officials in the state, which were not authorized or ratified by the state Legislature, were unconstitutional. *See, e.g., Bush II*, 531 U.S. at 103-105; *McPherson v. Blacker,* 146 U.S. 1, 35 (1892).

As Texas noted in its brief, the Article II assignment to state legislatures of the power to decide the manner of choosing electors was adopted to ensure the integrity of the presidential selection process: "Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption." FEDERALIST NO. 68 (Alexander Hamilton). When a State fails to conduct a valid election—for any reason—"the electors may be appointed on a

---

[5] Available at https://www.cartercenter.org/resources/pdfs/peace/democracy/des/declaration_code_english_revised.pdf.

[6] At https://www.state.gov/presidential-elections-in-belarus/.

subsequent day in such a manner *as the legislature of such State may direct*." 3 U.S.C. § 2 (emphasis added).

The illegal suspension or violation of state law thus calls directly into question the certification of the results of the elections in Defendant States for Vice President Joe Biden, Proposed Plaintiff in Intervention's opponent in the election. President Trump's interest in the outcome of this litigation could therefore not be more acute.

Moreover, Defendant States have a combined total 62 electoral votes. Absent those votes, President Trump appears to have 232 electoral votes and former Vice President Biden appears to have 244, both well short of the 270 electoral votes necessary to constitute a majority of the total number of electoral votes and prevail in the election pursuant to the terms of the Twelfth Amendment. Thus, Defendant States' electors will determine the outcome of the election. Alternatively, if Defendant States are unable to certify 38 or more electors, neither candidate will have a majority of the total number of electors in the Electoral College, in which case the election would devolve to the House of Representatives under the Twelfth Amendment.

This Court looks to the Federal Rules of Civil Procedure in matters arising under its original jurisdiction, but does so only as a "guide." S. Ct. Rule 17.2; *Arizona v. California*, 460 U.S. 605, 614 (1983); *Utah v. United States*, 394 U.S. 89, 95 (1969). This Court's own jurisprudence on intervention in original actions, rather than the jurisprudence in the district courts on the application of Rule 24 of the Rules of Civil Procedure, is controlling. Proposed Plaintiff in Intervention meets the requirements for intervention of right or, at

the very least, permissive intervention, as those requirements have been applied by this Court.

A. Donald Trump meets the Rule 24(a) requirements for intervention as of right.

The requirements for a motion to intervene as of right are: (1) timely application, (2) an interest relating to the subject matter of the action, (3) potential impairment, as a practical matter, of that interest by the disposition of the action, and (4) lack of adequate representation of the interest by the existing parties to the action. *State v. City of Chicago*, 912 F.3d 979 (7th Cir. 2019). Each of these requirements must be evaluated liberally in favor of intervention:

> A liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts. By allowing parties with a practical interest in the outcome of a particular case to intervene, [the court] often prevent[s] or simplifies] future litigation involving related interests; at the same time, [the court] allow[s] an additional interested party to express its views ....

United States v. City of Los Angeles, 288 F.3d 391, 398 (9th Cir. 2002).

The motion to intervene, filed within days of the filing of the original motion for leave to file a Bill of Complaint and before the expedited date set by the Court for response by the Defendant States, is clearly timely.

As a candidate for office at the election at issue, President Trump just as clearly has an interest related to the subject matter of the litigation, which interest will be affected whether this Court decides to

grant or to deny the equitable relief sought by Texas. He has "a personal interest in winning and holding office," *Hoblock v. Albany Cty. Bd. of Elections*, 233 F.R.D. 95, 99 (N.D.N.Y. 2005), as well as in ensuring that the election was conducted legally and constitutionally, *see generally Bush v. Gore*, 531 U.S. 98 (2000).

Finally, Plaintiff in Intervention arguably meets the "adequacy of representation" prerequisite of Rule 24(a) because his interests as a candidate are sufficiently distinct from those pressed by Texas. The burden of showing inadequacy of representation by existing parties is "minimal." *Trbovich v. United Mine Workers*, 404 U.S.528, 538 n.10 (1972).

Texas has expressly noted that its primary interest is in who is elected as *Vice President*, because the Vice President serves as the President of the Senate, in which Texas's own sovereign interests are represented. Brief at 13. President Trump's primary interest is in whether he is re-elected as *President.* Texas also seeks to ensure that the votes cast by its citizens are not unlawfully *diluted* by illegal votes case in the Defendant States; President Trump seeks to have the votes cast in the Defendant States unlawfully for his opponent to be deemed invalid. Although the interests of voters and candidates overlap and "do not lend themselves to neat separation," *Anderson v. Celebrezze*, 460 U.S. 780, 786 (1983) (quoting *Bullock v. Carter*, 405 U.S. 134, 143 (1972)), they are distinct interests. *See, e.g.*, *Bullock*, 405 U.S. at 143 (assessing a candidate's challenge to a filing fee under a different standard than it had previously applied to poll taxes on voters). The interests of candidates and voters "are not aligned, since Candidates have a personal interest

in winning and holding office, while the voters simply in having their votes counted and protected, regardless of who they actually voted for." *Hoblock*, 233 F.R.D. at 99. President Trump's interests here are distinct enough to warrant intervention as of right even under Rule 24(a) itself.

Moreover, although the relief that Texas is seeking is the same that President Trump will be seeking in intervention, this Court has not applied the "adequacy of representation" requirement of Rule 24 as strictly when considering requests to intervene in matters arising under its original jurisdiction. It has, for example, allowed for "*at a minimum*" "permissive intervention" by Indian Tribes where the United States' action on their behalf "would bind the Tribes to any judgment," rejecting the States' argument in the case that the presence of the United States already insured adequacy of representation. *Arizona v. California*, 460 U.S. at 615 (emphasis added). "The Indians' participation in litigation critical to their welfare should not be discouraged," the Court held. *Id.* So, too, in this case. The President's participation in litigation critical to his election should be welcomed.

B. Alternatively, Donald Trump meets the Rule 24(b) requirements for permissive intervention, as applied in original jurisdiction matters.

Rule 24(b) provides the grounds for permissive intervention. "On timely motion, the court may permit anyone to intervene who … (B) has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. Proc. 24(b)(1). In addition, "In exercising its discretion, the court must consider whether the intervention will unduly or prejudice the

adjudication of the original parties' rights." *Id.* at 24(b)(3). Although the requirements merely serve as a "guide" in this Court on original jurisdiction matters, President Trump easily meets them.

First, President Trump's claims about the illegal violations of state law that occurred in the Defendant States, in contravention of the authority provided to the Legislatures of those States by Article II of the U.S. Constitution, is identical to the principal legal claim made by Texas, and it is based on the same set of facts asserted by Texas.

Second, President Trump's motion to intervene is filed only days after the original action was filed. It is therefore clearly "timely," and because it does not raise additional issues for adjudication, it will not "prejudice the adjudication of the original parties' rights," unduly or otherwise.

The lower courts have also considered several other factors in deciding whether to grant permissive intervention, including: whether there is an independent ground for jurisdiction, *Beckman Industries, Inc. v. International Ins. Co.*, 966 F.2d 470 (9th Cir. 1992); the nature and extent of the proposed intervenor's interests and whether the intervenor's participation will contribute to the full development of underlying factual issues and to the just and equitable resolution of the legal questions presented, *U.S. Postal Service v. Brennan*, 579 F.2d 188 (2nd Cir. 1978); and even whether the interests of proposed intervenors are adequately represented by existing parties, *Venegas v. Skaggs,* 867 F.2d 527 (9th Cir. 1989), though some courts treat adequacy of representation as a point of distinction between permissive intervention and intervention as of right.

But for the Eleventh Amendment, there would be no doubt that President Trump could invoke the original jurisdiction of this Court by his own initiative. There is original jurisdiction under Article III, § 2, cl. 2, because this is a case "in which a State [is] a party." No additional statutory grant of jurisdiction is required. "The original jurisdiction of the Supreme Court is conferred not by the Congress but by the Constitution itself. This jurisdiction is self-executing, and needs no legislative implementation." *California v. Arizona*, 440 U.S. 59, 65 (1979) (citing *Kentucky v. Dennison*, 65 U.S. (24 How.) 66, 96 (1860); *Florida v. Georgia*, 58 U.S. (17 How.) 478, 492 (1854); *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 332 (1816)).

There is also jurisdiction under Article III, § 2, cl. 1 because this case "arises under [the] Constitution." The Electors Clause of Article II, § 1 assigns plenary power to the State Legislatures to determine the manner of choosing electors. Violations by non-legislative officials of the statutory scheme established in pursuance of that power therefor violates the Electors Clause. *See Bush v. Gore*, 531 U.S. at 105; *see also id.* at 113 (Rehnquist, C.J., concurring) (any "significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question").

There is also diversity jurisdiction under Article III, § 2, cl. 1, because the complaint in intervention is a suit between a State and a citizen of another State. President Trump, a citizen of the state of Florida, is diverse from each of the Defendant States.

There is no Eleventh Amendment bar to this action because it is an intervention in a suit between two or more States. *See, e.g., Maryland v. Louisiana*, 451

U.S. 725, 745 n.21 (1981) (("[I]t is not unusual to permit intervention of private parties in original actions"); *Texas v. Louisiana*, 416 U.S. 965 (1974) (city in Texas permitted to intervene); *Arizona v. California*, 373 U.S. 546 (1963) (state agencies); *Oklahoma v. Texas*, 258 U.S. 574, 581 (1922) (noting that numerous parties intervened to make claims to the property over which the Court had taken control and that "ancillary" jurisdiction over such claims was proper "although independent suits to enforce the claims could not be entertained in that court").

Second, because proposed Plaintiff in Intervention does not seek to bring new claims against the States, and only asks to participate in an adjudication of his vital rights as a candidate that will be addressed in this cases for which there already is jurisdiction, "the States' sovereign immunity protected by the Eleventh Amendment is not compromised." *Arizona v. California*, 460 U.S. at 614 (citing *Maryland v. Louisiana,* 451 U.S. 725, 745, n. 21 (1981)).

As for the nature and extent of the proposed intervenor's interests and whether the intervenor's participation will contribute to the full development of underlying factual issues and to the just and equitable resolution of the legal questions presented, President Trump's interest in his *own* election is sufficiently distinct from the interests asserted by Texas to warrant at least permissive intervention.

Finally, to the extent it should be considered at all under the permissive intervention head, this Court's holding in *Arizona v. California* that Indian Tribes with claims to water rights that were already being advanced by the United States "on their behalf" nevertheless qualified "at a minimum" for permissive

intervention against an adequacy of representation challenge, 460 U.S. at 615, is sufficient to warrant at least permissive intervention here as well.

II. President Trump's Proposed Complaint in Intervention Meets the Standards Set By This Court.

Original proceedings in this Court follow the Federal Rules of Civil Procedure. "The form of pleadings and motions prescribed by the Federal Rules of Civil Procedure are followed." S. Ct. Rule 17.2. This would include motions for leave to intervene, and therefore such a motion "must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought." Fed. R. Civ. Proc. Rule 24(c). The complaint must set out "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. Proc. Rule 8(a)(2). President Trump's proposed Bill of Complaint in Intervention, which is attached hereto, meets those requirements.

A. The claims raise a "case or controversy."

Like any other action, an original action must meet the Article III criteria for a case or controversy: cognizable injury to the plaintiffs, causation by the challenged conduct, and redressable by a court. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992). Plaintiff in Intervention has standing under those rules.

As a candidate, President Trump clearly has a cognizable, particularized injury to challenge an election that was conducted contrary to state law, and therefore contrary to the "manner" set out by state legislatures in exercising their plenary power under Article

II of the federal constitution. The violations of state law were caused by the Defendant States and the election officials of the States. And a declaration by this Court that, as a result of those violations, electors cannot be legally certified or cast votes in the electoral college (at least until separately ratified by the state Legislature) would provide redress for the Plaintiff in Intervention's injury.

1. Plaintiff in Intervention suffered an injury in fact.

Candidates for the office of President clearly have standing to challenge a state's compliance with the election laws pursuant to which the election for presidential electors is conducted, even though, technically, the election chooses the electors who are pledged to that candidate, not the candidate himself. *See, e.g., Storer v. Brown*, 415 U.S. 724, 738 n.9 (1974).

2. The Defendant States caused the injuries.

Non-legislative officials, in the Defendant States, either on their own initiative or in conjunction with lawsuits designed to change state law, directly caused the challenged violations of the Electors Clause. In the case of Georgia, acquiesced to such changes by settling a federal lawsuit. The Defendants thus caused Plaintiff in Intervention's injuries.

3. The requested relief would redress the injuries.

Plaintiff in Intervention adopts the arguments of the State of Texas relative to redressability. Brief 15-17.

B. Plaintiff in Intervention also has prudential standing.

Beyond the constitutional baseline, standing doctrine also poses prudential limits like the zone-of-interests test. *Ass'n of Data Processing Serv. Org., Inc. v. Camp*, 397 U.S. 150, 153 (1970). Prudential doctrines pose no barrier here.

First, the injuries asserted here are "arguably within the zone of interests to be protected or regulated by the … constitutional guarantee in question." *Camp*, 397 U.S. at 153. The Court has relied on the structure of the Constitution to provide the one-person, one-vote standard, *Wesberry v. Sanders*, 376 U.S. 1, 7-8 & n.10 (1964), and this case is similar. The structure of the Electoral College provides that each State is allocated a certain number of Electors depending upon that State's representation in Congress and that each State must abide by constitutional requirements in the appointment of its Electors. When the election in a State violates those requirements in a presidential election, the interests of the candidates in that election are harmed.

C. Balance of Equities

As this Court recognized in *McPherson v. Blacker*, the authority to choose presidential electors:

> is conferred upon the legislatures of the states by the Constitution of the United States, and cannot be taken from them or modified by their state constitutions. ... *Whatever provisions may be made by statute, or by the state constitution, to choose electors by the people, there is no doubt of the right of the legislature to resume*

> *the power at any time, for it can neither be taken away or abdicated.*

146 U.S. at 35 (emphasis added) (internal quotations omitted). The Defendant States would suffer no cognizable injury from this Court's enjoining their reliance on an unconstitutional vote.

Plaintiff in Intervention adopts the arguments of Texas relative to mootness, ripeness, political question, adequacy of an alternate remedy or forum, Brief 17-22.

III. The Preservation of the Rule of Law Is Essential for the Preservation of Our Nation's Belief In the Legitimacy of Self-Government

Despite the chaos of election night and the days which followed, the media has consistently proclaimed that no widespread voter fraud has been proven. But this observation misses the point. The constitutional issue is not whether voters committed fraud but whether state officials violated the law by systematically loosening the measures for ballot integrity so that fraud becomes undetectable.

Over three hundred cases were brought to undermine existing state law relative to ballot security and integrity.[7] These cases had a design and a purpose. But this Court has made it clear that courts do not have the authority to erect their own standards for

---

[7] *See* Amy Sherman, "2020 election lawsuits and ballot access: what you need to know," Politifact (Nov. 2, 2020), available at https://www.politifact.com/article/2020/nov/02/2020-election-lawsuits-and-ballot-access-what-you-/ (referring to Stanford-MIT Healthy Elections Project litigation tracker https://healthyelections-case-tracker.stanford.edu/cases).

presidential elections. *Bush v. Gore,* 531 U.S. 98 (2000).

Creating rules by litigation and by executive officials can be done in certain contexts, but a presidential election is not one of them. Only state legislatures can make such rules.

The public record demonstrates a ballot-counting process replete with chaos, confusion, and partisan bias. These things on their own do not create a constitutional crisis. A true constitutional crisis arises when non-legislative officials seek to change the rules of the game in a manner that is contrary to the dictates of the Constitution.

A pronouncement "we played by the rules" rings hollow when the persons making such claims changed the rules in an unauthorized manner.

Whatever doubt there is about fraud by voters or political operatives, there is no doubt that the officials of the Defendant States changed the rules of the contest in an unauthorized manner.

A candidate for President of the United States and every citizen of this country are entitled by the Constitution to something far better. They are entitled to an election where every *lawful* vote counts and that every effort to change the law in an unauthorized manner is met with a clear answer. Such actions are unconstitutional.

CONCLUSION

Plaintiff in Intervention's Motion to Intervene should be granted.

December 9, 2020

Respectfully submitted,

John C. Eastman
Counsel of Record
One University Dr.
Orange, CA 92866
(714) 628-2587
jeastman@chapman.edu

CERTIFICATE OF COMPLIANCE

No. 22O155 ORIGINAL

STATE OF TEXAS,

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA AND STATES OF GEORGIA, MICHIGAN, AND WISCONSIN,

Defendants,

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, IN HIS PERSONAL CAPACITY AS CANDIDATE FOR RE-ELECTION TO THE OFFICE OF PRESIDENT,

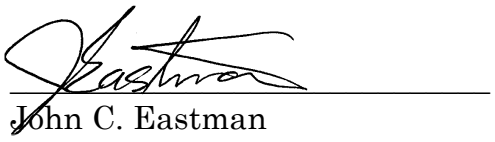
Plaintiff in Intervention

.

As required by Supreme Court Rule 33.1(h), I certify that the Motion to Intervene and Brief in Support by Donald J. Trump, Plaintiff in Intervention, in the above-referenced cases contains 4,221 words, excluding the parts of the brief that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 9, 2020



John C. Eastman
Counsel for Plaintiff in Intervention

No. 22O155 Original

IN THE

Supreme Court of the United States

STATE OF TEXAS,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA AND
STATES OF GEORGIA, MICHIGAN AND WISCONSIN,

Respondent.

AFFIDAVIT OF SERVICE

I HEREBY CERTIFY that all parties required to be served, have been served, on this 9th day of December, 2020, in accordance with U.S. Supreme Court Rule 29.3, three (3) copies of the foregoing **MOTION OF DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, TO INTERVENE IN HIS PERSONAL CAPACITY AS CANDIDATE FOR RE-ELECTION, PROPOSED BILL OF COMPLAIN IN INTERVENTION, AND BRIEF IN SUPPORT OF MOTION TO INTERVENE** by placing said copies in in the U.S. mail, first class postage prepaid, addressed as listed below.

RAYMOND CHARLES CLARK
BYRON S. ADAMS, LEGAL & COMMERCIAL PRINTERS
1615 L Street, NW, Suite 100
Washington, DC 20036
(202) 347-8203

District of Columbia

Signed and sworn to (or affirmed) before me on 9th day of December, 2020.

KAREN PIERANGELI NOTARY PUBLIC DISTRICT OF COLUMBIA

KAREN PIERANGELI
NOTARY PUBLIC, DISTRICT OF COLUMBIA
My Commission Expires June 14, 2025.

Georgia Governor:
Brian Kemp
Office of the Governor
206 Washington Street
Suite 203, State Capitol
Atlanta, GA 30334
Tel: (404) 656-1776
Email: governorsoffice@michigan.gov

Georgia Attorney General:
Christopher M. Carr
Office of the Attorney General
40 Capitol Square, SW
Atlanta, GA 30334
Tel: (404) 458-3600
Email: ccarr@law.ga.gov

Michigan Governor:
Gretchen Whitmer
Office of the Governor
P.O. Box 30013
Lansing, MI 48909
Tel: 517-373-3400
Email: governorsoffice@michigan.gov

Michigan Attorney General:
Dana Nessel
G. Mennen Williams Building
525 W. Ottawa Street
P.O. Box 30212
Lansing, MI 48909
Tel: 517-373-1110
Email: dnessel@michigan.gov

Wisconsin Governor:
Anthony S. Evers
Office of the Governor
115 East, State Capitol
Madison WI 53702
Tel: (414) 227-4344
Email: EversInfo@wisconsin.gov

Wisconsin Attorney General:
Joshua L. Kaul
Wisconsin Department of Justice
17 West Main Street, P.O. Box 7857
Madison, WI 53707-7857
Tel: (608) 287-4202
Email: kauljl@doj.state.wi.us

Pennsylvania Governor
Tom Wolf
Office of the Governor
508 Main Capitol Building
Harrisburg, PA 17120
Tel: 717-787-2500
Email: govcorrespcrm@pa.gov

Pennsylvania Attorney General
Josh Shapiro
Office of Attorney General
Strawberry Square
Harrisburg, PA 17120
Tel.: 717.787.3391
Email: jshapiro@attorneygeneral.gov

Texas Governor
Greg Abbott
Office of the Governor
P.O. Box 12428
Austin, Texas 78711-2428
txgov@public.govdelivery.com

Texas Attorney General
Ken Paxton
Attorney General of Texas
Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, TX 78711-2548
Tel: (512) 936-1414
Email: kenneth.paxton@oag.Texas.gov