



Post-Election Day Litigation Tracker: 11/5/20

CASE	ISSUE	Developments (include last updated timestamp)	Filings?
PENNSYLVANIA			
<p><i>Republican Party of Pennsylvania v. Boockvar, No. 20-542 (U.S.)</i></p>	<p>The Trump campaign claims that a state supreme court ruling that extended the mail-in ballot receipt deadline to November 6 violates the Elections/Electors Clause of the U.S. Constitution.</p> <p>The Court previously declined to issue a stay and refused to expedite briefing in the case.</p>	<p>6:00pm 11/5</p> <p>Trump filed a motion to intervene before the Supreme Court.</p> <p>The Supreme Court has ordered a response to be filed by 5pm today (11/5)</p> <p>The Republican party has consented to the Trump campaign's intervention as of 11/5.</p> <p>The state filed a response opposition the Trump campaign's motion on 11/5.</p> <p>The PA Democratic Party filed a brief that does not oppose intervention but simply argues</p>	<p><a href="#">Here.</a></p>

*The Voter Protection Program (VPP) is a national nonpartisan initiative promoting election integrity and ensuring safe, fair, and secure elections. Learn more at [voterprotectionprogram.org](https://voterprotectionprogram.org)*

		<p>that the court need not decide the motion until it rules on the cert petition.</p> <p>The Luzerne County Board filed a brief that takes no position on intervention.</p>	
<p><b><i>In re Canvassing Observation, No. 425 EAL 2020 (Pa. Supreme Court)</i></b></p>	<p>Trump campaign argues that counting should temporarily stop until observers are given greater access to watch the ballot count.</p> <p>The Trump campaign claims to want “meaningful” access to observe the ballot count.</p> <p>Contemporaneous coverage of lower court proceedings here: <a href="https://twitter.com/broadandmarket/status/1323794598951587841?s=21">https://twitter.com/broadandmarket/status/1323794598951587841?s=21</a></p>	<p>6:00pm 11/5</p> <p>Trump campaign appealed a ruling by Election Day judge that denied greater access.</p> <p>A status conference was held last night (11/4)</p> <p>The parties filed briefs at 8am this morning (11/5)</p> <p>The Commonwealth Court reversed the trial court, ordering that observers be allowed to stand as close as 6 feet away from canvassers. The Commonwealth Court found that the representative was deprived of the ability to observe “in any meaningful way.” The court did <u>not</u> order the count to stop.</p> <p>The city petitioned the Pennsylvania Supreme Court to</p>	<p><a href="#">Here.</a></p>

		<p>allow an appeal. Counting temporarily stopped and has restarted while officials make plans to accommodate the Commonwealth Court's order. There were reports that the Pennsylvania Supreme Court had reversed, but the Court's spokesperson has denied.</p> <p>The Pennsylvania Democratic Party filed a letter supporting the Board's appeal.</p> <p>The Trump campaign has filed an answer.</p>	
<p><b><i>Donald J. Trump for President Inc. v. Boockvar, No. 602 MD 2020 (Commonwealth Court of Pennsylvania)</i></b></p>	<p>The Trump campaign claims that Secretary Boockvar issued guidance that impermissibly extends the statutory period for absentee and mail-in voters to provide proof of identification.</p> <p>In their complaint, the Trump campaign explicitly accepts that ballots can continue to be counted after Election Day.</p>	<p>6:00pm 11/5</p> <p>Petition for review filed.</p> <p>A status conference will be held today at 10:00am (11/5)</p> <p>A status conference will be held today at 12:00pm (11/5)</p> <p>The Commonwealth Court has entered an interim order that county boards of elections segregate ballots for which ID is received and verified on November 10, 11, and 12 and not count those ballots until</p>	<p><a href="#">Here.</a></p>

		further order of the court.	
<b>Hamm v. Boockvar, No. 600 MD 2020 (Commonwealth Ct. of Pa.)</b>	<p>Plaintiffs (including a member of the PA House) challenge guidance recently issued by Secretary Boockvar, arguing that her instruction that county boards of election communicate with voters whose ballots are found to be deficient during the pre-canvass process violates state law.</p> <p>In the plaintiffs' view, this process, as well as any process allowing voters to "cure" their vote through casting a provisional ballot, violates Pennsylvania law. They ask the court to enjoin the Secretary from allowing invalidly "cured" ballots to be counted in the vote totals.</p>	<p>6:00pm 11/5</p> <p>Filed late 11/3.</p> <p>Status conference was scheduled for 1:30 Wed 11/4</p> <p>Another status conference was scheduled for 10am Thurs 11/5</p> <p>Petitioners filed amended petition and the DNC moved to intervene.</p> <p>A hearing on the plaintiffs' preliminary injunction motion is scheduled for Fri 11/6 at 9:30am.</p> <p>Petitioners' brief has been filed; response from state due 8am 11/6</p>	<a href="#">Here.</a>
<b>Miller v. Delaware County Board of Elections, No. CV-2020-007458 (Ct. Common Pleas, Del. Cty.)</b>	<p>Two voters challenged Delaware County's use of drop boxes, arguing that the county had not instituted procedures to ensure that ballots will not be deposited after polls close at 8pm. They based this allegation "upon information and belief." The plaintiffs argue that</p>	<p>6:00pm 11/5</p> <p>11/3 - The case was dismissed without prejudice and does not appear to have been renewed.</p>	

	Delaware County's "comingling" of late ballots with validly cast ballots violates Pennsylvania statutory law.		
<b><i>In re: Motion for Injunctive Relief of the Northampton County Republican Committee, No. C-48-CV-2020-6915 (Northampton County Court of Common Pleas)</i></b>	<p>The Northampton County Republican Committee made an oral motion to stop the county board of elections from disclosing the identity of cancelled ballots during the pre-canvass process. The court denied that motion.</p> <p>Reported: The Northampton County Republican Committee will ask an appeals court to block the local elections board from disclosing the identity of cancelled ballots (presumably so the errors can be fixed).</p>	<p>6:00pm 11/5</p> <p>An appeal was filed to the Commonwealth Court on 11/5.</p>	
<b><i>Donald J. Trump for President, Inc. v. Philadelphia County Board of Elections, No. 20-cv-5533 (E.D. Pa.)</i></b>	The Trump campaign has sued to force the Philadelphia County Board of Elections to comply with the Commonwealth Court's order allowing greater access for poll watchers. The campaign asserts that the county board's violation of that order contravenes the Fourteenth Amendment's Due Process Clause. The entire complaint is	<p>6:00pm 11/5</p> <p>Complaint was filed late afternoon on 11/5.</p> <p>A hearing will be held before Judge Diamond at 5:30pm.</p>	<a href="#">Here.</a>

	just over one page in length.		
<b><i>Barnette v. Lawrence, No. 20-cv-5477 (E.D. Pa.)</i></b>	<p>A Pennsylvania voter and a Fourth Congressional District candidate have sued in federal court, seeking to stop Montgomery County officials from contacting voters with deficient ballots and permitting them to cure deficiencies. They also ask the court to spoil any ballots that have been cured.</p> <p>The plaintiffs argue that Montgomery County officials are violating the Equal Protection Clause by arbitrarily allowing some voters a cure opportunity while denying that same opportunity to other voters. At a hearing, the judge appeared disinclined to endorse the plaintiffs' view of the law.</p>	<p>6:00pm 11/5</p> <p>The complaint was filed early 11/3.</p> <p>TRO motion was filed at 4pm 11/3 afternoon, with plaintiffs requesting a hearing at 9am on 11/4</p> <p>A hearing was held 11/4, but no decision is expected until Friday at the earliest.</p> <p>Plaintiffs filed a supplemental motion in support of their TRO on 11/5.</p> <p>On 11/5, the plaintiffs filed a motion to withdraw their TRO motion, noting that the schedule set by the court would not allow relief to be granted in a timely manner.</p>	<a href="#">Here.</a>
<b><i>Donald J. Trump for President, Inc. v. Montgomery County Board of Elections, No. 2020-18680 (Montgomery County Court of Common Pleas)</i></b>	The Trump campaign is challenging the validity of around 600 ballots that it alleges have been counted despite having certain deficiencies on the outer envelope that is verified during	<p>6:00pm 11/5</p> <p>Case was filed on the afternoon of 11/5.</p>	

	the pre-canvassing process (the voter's signature, address, and/or date of execution)		
<b><i>In re Pre-Canvass of Absentee and Mail-in Ballot of November 3, 2020 General Election, (Bucks County Case)</i></b>	Plaintiffs argued that the Bucks County Board of Elections permitted the disclosure of pre-canvass results by sharing certain information about deficient ballots. They claimed that the Bucks County Board's actions violate Pennsylvania law.	6:00pm 11/5  The case was dismissed Tuesday night (11/3).	<a href="#">Here.</a>
<b>ARIZONA</b>			
<b><i>Aguilera v. Fontes, No. ?? (Maricopa County Superior Court)</i></b>	The plaintiff claims that her vote was cancelled because she filled out her ballot using a sharpie, and she seeks an opportunity to cure her ballot.  This complaint is part of the larger narrative of "#sharpiegate," a conspiracy that Republican voters were given sharpies to use while voting.	6:00pm 11/5  Lawsuit filed. The Arizona Democratic Party has moved to intervene.	<a href="#">Here.</a>
<b>GEORGIA</b>			
<b><i>In re: Enforcement of Election Laws and Securing Ballots Cast or Received After 7:00PM on November 3, 2020, No. SPCV</i></b>	Georgia Republican Party and Trump campaign argue that some elections officials may be confused about whether	6:00pm 11/5  Lawsuit filed	<a href="#">Here.</a>

<p><b>20-00982 (Chatham County Superior Court)</b></p>	<p>ballots that arrive after 7:00pm on Election Day can be counted, and to avoid any counting of late ballots they ask the court to order the Chatham County Board of Elections to collect, secure, and safely store all absentee ballots received after 7:00pm on Election Day and provide a list of the names of the voters and the time the ballot was received to the plaintiffs.</p> <p>Per an affidavit in support of the complaint, the plaintiffs are only concerned about 53 potential inter-mixed ballots.</p>	<p>Petition dismissed following hearing on 11/5. Undisputed evidence was that no late-arriving ballots had been counted and that all late-arriving ballots are being segregated according to Georgia law.</p>	
<p><b>MINNESOTA</b></p>			
<p><b><i>Carson v. Simon</i>, No. 20-cv-2030 (D. Minn.)</b></p>	<p>Two Republican electors argue that the Secretary of State violated federal law and the Electors Clause by entering into a state-court consent decree in which he agreed not to enforce Minnesota’s Election Day deadline to receive absentee ballots. On 10/11, the district court denied a preliminary injunction on standing grounds, and on 10/19, it denied a stay pending</p>	<p>6:00pm 11/5</p> <p>Intervenors have moved to stay further proceedings and to certify a question to the Minnesota Supreme Court. The certified question would clarify whether the plaintiffs in this case are bound by the Trump campaign and Republican Party’s agreement not to challenge the state-court consent decree in any forum.</p>	<p><a href="#">Here.</a></p>



	<p>appeal. On 10/29, the 8th Circuit reversed and remanded, ordering ballots to be segregated.</p>	<p>A response was filed by Republican electors, and a decision could come at any time.</p> <p>On 11/5, the court denied the motion to certify without prejudice. The court reasoned that there was no request for relief pending before it from any party (ballots have been segregated by order of the 8th Circuit).</p>	
<b>MICHIGAN</b>			
<b><i>Donald J. Trump for President, Inc. v. Benson, No. 20-225-MZ (Mich. Ct. Cls.)</i></b>	<p>Trump campaign has filed a lawsuit in the Michigan Court of Claims to halt the counting of mail-in ballots until they are granted “meaningful access” to observe the opening and counting process.</p> <p>This case resembles one brought in Pennsylvania and appears to be part of a larger effort to stop the count in states where mail-in ballots were cast heavily in favor of Trump.</p>	<p>6:00pm 11/5</p> <p>Complaint filed along with motion for emergency declaratory judgment.</p> <p>Case was assigned to Judge Cynthia Dane Stephens.</p> <p>The DNC has moved to intervene.</p> <p>The court denied relief following a hearing. A written order will likely issue by tomorrow afternoon (11/6)</p>	<a href="#">Here.</a>
<b><i>Stoddard v. City Election</i></b>	Plaintiffs claim that in Detroit,	6:00pm 11/5	<a href="#">Here</a>

<p><b>Commission, No. ??? (Third Judicial Circuit Court, Wayne Count)</b></p>	<p>Democratic inspectors are improperly curing deficient ballots without the participation of a Republican inspector. They ask the Court to halt the improper cure process, order the cured ballots to be segregated, and postpone certification until Republican inspectors can be located to participate in the process. They also seek to segregate any cured previously ballots.</p>	<p>Case was filed late Wednesday evening (11/4). An amended complaint and TRO were filed today (11/5).</p>	
<p><b>NEVADA</b></p>			
<p><b>Kraus v. Cegavske, No. 82018 (Nev.)</b></p>	<p>On 10/23, the Trump campaign and Nevada Republican Party filed a lawsuit seeking to halt mail-in ballot counting in Clark County, Nevada. The plaintiffs argued that Nevada law and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution required Clark County to permit poll watchers to observe and assert challenges to the counting of mail-in ballots. The day that the lawsuit was filed, the state-court judge denied the plaintiffs' motion for a temporary restraining order.</p>	<p>6:00pm 11/5</p> <p>Nevada has won this case twice: original TRO and then on the merits. Nevada Republicans have filed an emergency appeal with the Nevada Supreme Court. They ask that the court halt the count of mail-in ballots until proper observation procedures can be instituted.</p> <p>On 11/3, the Nevada Supreme Court denied an injunction pending appeal while also expediting the appeal, ordering briefing that will conclude by November 9. The court's order</p>	<p><a href="#">Here.</a></p>

	<p>On 11/2, the same judge denied the plaintiffs' petition for a writ of mandamus. In the judge's view, the plaintiffs' lacked standing to raise their claims and, in any event, their allegations did not establish a violation of state law or the Equal Protection Clause.</p>	<p>recognizes that much of the plaintiffs' appeal may be moot by the time the appeal is fully briefed.</p> <p>On 11/5, the parties filed a motion to extend the briefing schedule, to allow time to finalize a settlement agreement.</p>	
<b>District of Columbia</b>			
<b>NAACP v. USPS, No. 1:20-cv-02295 (D.D.C.) (Judge Emmet Sullivan)</b>	<p>Plaintiffs sued in late August seeking injunctive relief ordering USPS to take various extraordinary measures to deliver mail-in ballots in light of the pandemic.</p>	<p>6:00pm 11/5</p> <p>A small number of ballots in PA and NC were postmarked by Election Day, but for which the USPS needs to do further investigation to determine whether they were delivered:</p> <p><u>Pennsylvania</u> (1,359 MAX -- this is probably too high)</p> <ul style="list-style-type: none"> <li>● Central PA: 545</li> <li>● Philadelphia: 814</li> </ul> <p><u>North Carolina</u> (2,535 MAX -- this is probably too high)</p> <ul style="list-style-type: none"> <li>● Greensboro: 1,335</li> <li>● Mid-Carolinas: 1,200 (but this facility ALSO</li> </ul>	<p><a href="#">Here.</a></p>

		<p>handles mail for SC, so even this number is likely too high).</p> <p>There's another telephone hearing on Friday, 11/6 at 11 AM: 1-888-363-4734 with passcode 6114909</p>	
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