

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DONALD J. TRUMP FOR	:
PRESIDENT, INC., <i>et al.</i> ,	: No. 4:20-CV-02078
Plaintiffs	:
	: (Judge Brann)
v.	:
KATHY BOOCKVAR, <i>et al.</i> ,	:
Defendants	:

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'
MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

Date: 11/20/20

Respectfully submitted,

/s/ Rudolph William Giuliani
Rudolph William Giuliani
NY Supreme Court ID No. 1080498

/s/Marc A. Scaringi

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**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'
MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

The undersigned counsel hereby submit this Memorandum of Law in Support of Plaintiffs' Motion for Leave to File Second Amended Complaint. (ECF 172) in order to direct the Court's attention to a very important argument which completely ripened only after the Amended Complaint was filed and is best set forth in the Plaintiff's Memorandum of Law in Support of Renewed Motion for a Temporary Restraining Order and Preliminary Injunction (ECF 183, pp. 21-22).

On November 17, 2020, the Pennsylvania Supreme Court ruled that parties and candidates have no right to meaningfully observe the canvassing of mail ballots. *In re Canvassing Observation*, No. 30 EAP 2020 (Pa. Nov. 17, 2020). This decision arrived on the heels of *In re November 3, 2020 Gen. Election*, 2020 Pa. LEXIS 5560 (Pa. Oct. 23, 2020), which *sua sponte* declared that the provision of the Pennsylvania election code providing for challenging mail ballots by observers on Election Day, 25 P.S. 3146.8(f), was invalid. As a result of these last-minute decisions on the eve of the Presidential election, Pennsylvania no longer allows meaningful observation or challenges to mail ballots which do not comply with Pennsylvania law, *see* 25 Pa.Stat. §§ 3146.8; 3150.16, before they are mixed with other ballots and opened. We emphasize -- ballots in secrecy envelopes are separated from the outside envelope, mixed, opened, and counted without any observation or challenge.

In and of itself, Pennsylvania’s system – as dictated by its Supreme Court – is so porous and lacking in checks and balances that it constitutes a *prima facie* case that the “election process itself reaches the point of patent and fundamental unfairness” in violation of the Due Process clause. *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978). See *Reynolds v. Sims*, 377 U.S. 533 (1964); *Marks v. Stinson*, 19 F.3d 873 (3d Cir. 1994). These eve-of-election changes to Pennsylvania law governing a presidential election are also improper under *Bush v. Gore*, 531 U.S. 98, 104 (2000) (*per curiam*). In such case, if such votes are to be counted, at a minimum, the burden of proof shifts to Defendants to prove the mail ballots are valid. See, e.g., *Warf v. Bd. of Elections*, 619 F.3d 553, 561-62 (6th Cir. 2010) (“once the contestant has made a showing of irregularity, ... contestee must then come forward with evidence of substantial compliance with balloting procedures”); *Wilkes-Barre Election Appeals*, 1967 Pa. Dist. & Cnty. Dec. LEXIS 9, *16 (Pa.Com.Pl. Luz. Cnty. Dec. 27, 1967) (where “challenger has presented a *prima facie* case to substantiate his challenge [to absentee ballot,] ... the burden of proof shifted to the voter to establish her position.”)

We respectfully ask the Court to consider this important, potentially dispositive issue when deciding the pending motions.

Respectfully submitted,

/s/ Rudolph William Giuliani

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PRESIDENT, INC., et al,	: CIVIL ACTION
	:
Plaintiffs	: No. 4:20-cv-02078
	:
v.	: Judge Brann
	:
KATHY BOOCKVAR, et al,	:
	:
Defendants	:

CERTIFICATE OF SERVICE

I, Deborah A. Black, Paralegal for Scaringi Law, do hereby certify that I served a true and correct copy of *Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Leave to File Second Amended Complaint*, in the above-captioned action, upon all parties via CM/ECF.

Date: November 20, 2020

/s/ Deborah A. Black
Deborah A. Black, Paralegal
For Marc A. Scaringi, Esquire and
Brian C. Caffrey, Esquire