

TRUMPING UNMERITORIOUS ELECTION CONTESTS: THE NEED FOR UNIFORM ELECTION CONTEST LAWS IN THE WAKE OF 2020 ELECTION LITIGATION

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INTRODUCTION

Armed with plastic hand ties, a pistol, and full body armor, a defendant charged with seditious conspiracy described his purpose on January 6, 2021 as “taking the Capital before the day is over, ripping them out by their hair. . . . I just want to see Nancy Pelosi’s head hitting every step on the way out.”¹ During one of the first primetime hearings of the January 6 Committee in June 2022, Vice Chair, Liz Cheney, relayed former President Trump’s “sophisticated seven-point plan to overturn the 2020 election and to prevent the transition of presidential power.”² According to this plan, former President Trump took great lengths to proliferate the lie that the 2020 election “was stolen from him;” and he pressured multiple federal and local government officials to spread this lie; to change election results; “to create fake electoral slates;” and, ultimately, to refuse to acknowledge “certified electoral votes.”³

The former president’s efforts culminated in an “unprecedented” violent insurrection on January 6, 2021, wherein his supporters marched on the U.S. Capitol to prevent the counting of Electoral College votes by Congress and by Vice President, Mike Pence.⁴ What makes this event unprecedented, politically, is that—in light of past contentious elections, such as the 2000 election and the 1960 election whereby the losing candidates

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¹ Alan Feuer, *Prosecutors Open Arguments Against Defendant in First Jan. 6 Trial*, N.Y. TIMES (Mar. 2, 2022), <https://www.nytimes.com/2022/03/02/us/politics/jan-6-trial-opening-arguments.html> [https://perma.cc/Z79P-T37Z].

² Dana Bash et al., *January 6 Vice Chair Cheney Said Trump Had a ‘Seven-Part Plan’ To Overturn the Election. Here’s What She Meant*, CNN, <https://edition.cnn.com/2022/06/09/politics/jan-6-hearing-cheney-trump-overturn-election-plan/index.html> [https://perma.cc/8YGE-LQFD] (last visited Oct. 29, 2022).

³ *Id.*

⁴ Samuel Issacharoff, *Weaponizing the Electoral System*, 74 STAN. L. REV. ONLINE 28, 30 (2022), <https://review.law.stanford.edu/wp-content/uploads/sites/3/2022/04/74-Stan.-L.-Rev.-Online-28-Issacharoff.pdf> [https://perma.cc/832F-5ZAW].

were tasked with counting Electoral College votes—the president in power had never before directly attacked the normally ceremonial, “orderly and dignified” Electoral College counting process.⁵

Tragically, on January 6, four supporters of the former president in the crowd died.⁶ Later, five Capital Police officers also died—two of whom committed suicide within the days and weeks following January 6.⁷ The violence and destruction that occurred on January 6 inevitably leads to the question: how did we get here? Undoubtedly, the persons at the Capitol on January 6 were motivated—to the point of violence—to keep the former president in power. As former President Trump’s seven-step plan demonstrates, so too was the former president. While January 6 “was not an attempted coup d’état in the fashion of Latin American dictators of the late twentieth century” due to its lack of overtaking “the nerve centers of power” or “mobiliz[ing] the military,” the American electorate should nevertheless “not discount the seriousness of the breach of democratic norms.”⁸

One method (i.e., step one of seven) that the former president utilized to stay in power involved “engag[ing] in a massive effort to spread false and fraudulent information to the American public claiming the 2020 election was stolen from him.”⁹ The primary avenue the former president chose to amplify his claims of election fraud was the legal process, which he used to “corruptly pressure[] state election officials, and state legislators, to change election results.”¹⁰ Particularly, in the days and months leading to January 6, the Republican Party, led by the former president, “set its sights on voting and election administration as the prime culprit for losing the presidency.”¹¹ Accordingly, by December 2020, the former president had filed over fifty lawsuits, alleging widespread voter fraud, all of which were legally

⁵ *Id.* As of August 2023, there are two indictments (state and federal) against former President Trump concerning his allegedly unlawful behavior during the 2020 election. On August 1, 2023, following special counsel for the Department of Justice Jack Smith’s investigation, a grand jury indicted the former president on four counts of violating federal law. One count included conspiracy to defraud the United States, which includes the former president’s alleged acts in (1) using “knowingly false claims of election fraud . . . to subvert legitimate election results”; (2) “organiz[ing] fraudulent slates of electors in seven targeted states”; and “enlist[ing] the Vice President to . . . fraudulently alter the election results.” Zachary B. Wolf and Curt Merrill, CNN POLITICS (Aug. 1, 2023), <https://www.cnn.com/interactive/2023/08/politics/annotated-text-copy-trump-indictment-dg/> [<https://perma.cc/V2RV-XML7>] (quoting Indictment at 5–6, *United States v. Trump*, 1:23-cr-00257-TSC (D.C.C. Aug. 1, 2023)).

⁶ Chris Cameron, *These Are the People Who Died in Connection with the Capitol Riot*, N.Y. TIMES (Jan. 5, 2022), <https://www.nytimes.com/2022/01/05/us/politics/jan-6-capitol-deaths.html> [<https://perma.cc/S9HD-UFYW>]. Ashli Babbitt, a veteran, was shot by a Capitol Police officer; Kevin Greeson died from a heart attack; Rosanne Boyland, was “crushed in a stampede” and died from an “accidental overdose”; and Benjamin Philips died from a stroke. *Id.*

⁷ *Id.*

⁸ Issacharoff, *supra* note 4.

⁹ Bash, *supra* note 2.

¹⁰ *Id.* Using the legal process was step four of Trump’s seven-step plan. *Id.*

¹¹ Issacharoff, *supra* note 4, at 31.

unsuccessful—resulting in such cases being “denied, dismissed, settled or withdrawn.”¹²

Although former President Trump’s 2020 election litigation was legally unsuccessful, the court of public opinion is decidedly much more divided along party lines regarding the legitimacy of the 2020 presidential election: For example, nearly one year after the 2020 election, approximately 70% of Republicans believed “Joe Biden was not legitimately elected President of the United States,” whereas 96% of Democrats believed Biden was legitimately elected.¹³ Additionally, among eighteen states, there are twenty-one Secretary of State candidates who have “publicly questioned or disputed the results of the 2020 election” just one year following the January 6 insurrection.¹⁴ This development is particularly troubling given the fact that a state’s chief election official, commonly termed the “Secretary of State,” is charged with “safeguard[ing] and administer[ing] the democratic process,” among other functions critical to ensuring the integrity and efficiency of elections; such persons who refuse to acknowledge the legitimacy of the 2020 election could “weaponize” their position to doubt election results that are not favorable to their political party.¹⁵

As such, the former president’s election litigation has created an air of legitimacy regarding the existence of alleged rampant voter fraud. Thus—though this election litigation was unsuccessful in state and federal courts across the country—the mere existence of former President Trump’s lawsuits proved to be harmful to the public’s perception of the integrity of their vote and, broadly, of their faith in the democratic process. Indeed, “[w]hen election litigation arises close to, on, or after election day, the American public’s confidence in the election process weakens.”¹⁶

Accordingly, this Note examines step four of the former president’s seven-part plan to overturn the 2020 election results, focusing on the

¹² Pete Williams and Nicole Via y Rada, *Trump’s Election Fight Includes Over 50*

Lawsuits. It’s Not Going Well., NBC NEWS (Nov. 23, 2020), <https://www.nbcnews.com/politics/2020-election/trump-s-election-fight-includes-over-30-lawsuits-it-s-n1248289> [<https://perma.cc/P6P8-CFB8>]; see also *Current Litigation*, ABA (Apr. 2021), https://www.americanbar.org/groups/public_interest/election_law/litigation/ [<https://perma.cc/W3KW-G5BE>].

¹³ David Paleologos, *Paleologos: Voters Divided by Party in Views on Biden Legitimacy and Our Country’s Biggest Challenges*, USA TODAY (Sept. 2, 2021), <https://www.usatoday.com/story/news/nation/2021/09/02/paleologos-poll-shows-partisan-split-biden-legitimacy-more-issues-suffolk-university/5694049001/> [<https://perma.cc/32DT-7GZQ>].

¹⁴ Rick Hasen, “*Campaigning to Oversee Elections, While Denying the Last One*”, ELECTION LAW BLOG (Jan. 2022), <https://electionlawblog.org/?p=127266>

[<https://perma.cc/68MA-PV2B>] (quoting Jennifer Medina et al., *Campaigning to Oversee Elections, While Denying the Last One*, THE N.Y. TIMES (Jan. 2022), <https://www.nytimes.com/2022/01/30/us/politics/election-deniers-secretary-of-state.html> [<https://perma.cc/SKP7-YYHT>]).

¹⁵ *Id.*

¹⁶ Jessica Becerra, *The Possibility of Using Alternative Dispute Resolution for Election Law Disputes*, 18 PEPP. DISP. RES. L. J. 117, 118 (2018).

voluminous litigation that ensued in the aftermath of the 2020 presidential election—brought by or on behalf of former President Trump—whereby he sought to contest the outcome of the 2020 presidential election. Particularly, the legal basis for former President Trump’s lawsuits arose from battleground states’ election contest laws, the cause of action by which he contested election results through alleging widespread voter fraud and challenging state election procedure.

Moreover, election contest statutes exist within a state’s election code; consequently, Part IA of this Note will provide a broad overview of state election administration. Part IB and Part IC, respectively, include an overview of state election contest laws, focusing on states’ history of enacting these statutes as well as the commonalities and distinctions among states’ election contest statutes—including their grounds, statutes of limitation, proceedings, remedies, and reasons why courts often dismiss such proceedings—in order to understand the state law involved in former President Trump’s election litigation. Next, Part IIA of this Note will provide an overview of the former president’s election litigation, while Part IIB will examine the holdings of a limited number of former president’s state and federal election lawsuits, focusing especially on those cases invoking election contest statutes. Part IIC will discuss common legal reasons why courts dismissed these claims—such as (1) the doctrine of laches; (2) the justiciability doctrines such as mootness and standing; and (3) state and federal rules of civil procedure—and why the former president’s legal strategy was unsuccessful. Additionally, in consideration of the immense variation among states’ election contest statutes and the potentiality for harm to the integrity of elections that accompanies frivolous post-election lawsuits, Part IID will address why a uniform election contest statute is necessary.

Lastly, Part III of this Note will explore the proposed resolutions to election contest statutes existing in the literature and this Note’s proposed solution. Specifically, this Note will advocate for uniformity among state election contest statutes by proposing substantive and procedural provisions to be adopted in a Model Act by the Uniform Law Commission’s Election Law Committee—including built-in sanctions and penalties for both the contestants and their attorneys in consideration of the few instances of attorney discipline resulting from the former president’s unsuccessful election litigation.¹⁷ Overall, this Note’s proposal aims to deter unmeritorious and frivolous election contest lawsuits whose only enduring success is to

¹⁷ Katelyn Polantz, *Judge Orders Pro-Trump Attorneys Who Brought Frivolous Election Fraud Case to Pay More Than \$180,000 to Defendants They Sued*, CNN (Nov. 23, 2021), <https://www.cnn.com/2021/11/22/politics/gary-fielder-ernest-john-walker-fees-election-lawsuits/index.html> [<https://perma.cc/XU2N-VDQ6>].

“erode the public’s confidence in the electoral process.”¹⁸

I. STATE ELECTION ADMINISTRATION AND ELECTION CONTEST STATUTES

To understand more fully the purpose of election contest statutes, it is necessary to discuss how the statutes operate within the broader framework of state election administration, the history of state development of these statutes, how the statutes diverge or share similarities among the states, and common reasons why election contest proceedings have historically been unsuccessful.

Overview of State Election Administration

Broadly, elections are “an expression of choice by the voters and may refer to the combined actions of voters and election officials meant to make a final selection”¹⁹ or a process “to declare elected the candidate who receives the most legal votes.”²⁰ In the United States, every state is charged with administering elections;²¹ and states are limited only by the requirement that their elections may not violate certain provisions of the U.S. constitution.²² Additionally, states administer various kinds of elections: general elections (“an election of officers throughout the state”); special elections (“an election held under special circumstances to fill a vacancy in office or to vote on some question or proposition”); primary elections (“a method of selecting candidates for office by members of a political party”); and regular elections (“an election that recurs at specified times”).²³

Election administration in the U.S. is “highly decentralized,” meaning that elections are largely conducted at the local level with limited control by state and federal legislatures.²⁴ Practically, this translates to over “10,000 election administration jurisdictions in the U.S.”²⁵ as well as variation in election administration between, and even within, states.²⁶ Whether the highly decentralized and varied nature of state election

¹⁸ Brendan Williams, *Did President Trump’s 2020 Election Litigation Kill Rule 11?*, 30 B.U. PUB. INT. L.J. 181, 191 (2021) (quoting *Wood v. Raffensperger*, 501 F. Supp. 3d 1310, 1325 (N.D. Ga. 2020)).

¹⁹ 29 C.J.S. *Elections* § 1 (2022).

²⁰ *Id.* § 379.

²¹ *Id.* § 319.

²² *Id.*

²³ *Id.* §§ 2–5.

²⁴ *Election Administration at State and Local Levels*, NAT’L CONF. OF STATE LEGISLATURES (Feb. 3, 2020), <https://www.ncsl.org/research/elections-and-campaigns/election-administration-at-state-and-local-levels.aspx> [<https://perma.cc/ZT6Y-TS6C>] (adapted from KATHLEEN HALE ET AL., *ADMINISTERING ELECTIONS: HOW AMERICAN ELECTIONS WORK* (2015)).

²⁵ *Id.*

²⁶ *Id.*

administration is a positive or negative development is subject to debate.²⁷ However, this system helps to explain why election contest laws (and, generally, the kinds of pre- and post-election disputes available in each state) lack uniformity throughout the country.

Furthermore, during the late 1800s, state legislatures began enacting statutes to formalize election administration, which also created the need for state election officials to oversee and to direct election administration.²⁸ Likewise, state election officials gained more responsibility in election administration through federal legislation passed in the 1990s and early 2000s—through the National Voter Registration Act and the Help America Vote Act, respectively, that required states to institute voter registration, voter records, and funding for voting equipment.²⁹ Eventually, each state delegated the crucial responsibilities of ensuring compliance with state and federal election law to its “chief election official” or “Secretary of State.”³⁰ Throughout time, election administration has grown more complex and has changed from “clerical positions” to “multifaceted managerial position[s],” complete with advanced technology and statewide training to ensure that county level elections are functional and effective.³¹

State election administration statutes can govern elections processes such as the number, location, opening, and closing of voting sites per county as well as the voting equipment and number of election administrators at each voting location.³² Additionally, at the most basic level, to vote in a general election, an individual must meet certain statutory criteria (e.g., “[b]e a United States citizen,” “18 years old,” and not “be adjudged mentally incompetent,” or have a felony conviction, etc.); must register to vote; must travel to an assigned polling place; and must cast a ballot (which usually involves technology, such as a scanner).³³

Following voting, the local board of elections (or whichever entity is charged with administering elections) must count every ballot in order to certify the election results for the winning candidate in compliance with the relevant statutory and constitutional provisions.³⁴ The board of elections may not count illegal votes—which are votes that “have not been cast in the manner provided by law”—or invalid votes—such as absentee ballots that

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* (explaining a state’s chief election official can be elected or appointed and can be an individual, board of persons, or both).

³¹ *Id.*

³² 26 AM. JUR. 2D *Elections* §§ 303–308 (2022).

³³ *Voting and Election Guide*, ADELPHI UNIV. (Oct. 2022), <https://libguides.adelphi.edu/c.php?g=745658&p=5340357> [<https://perma.cc/Q544-LCGR>] (last updated Oct. 4, 2022, 11:54 AM).

³⁴ 26 AM. JUR. 2D, *supra* note 32 § 358.

did not comply with state law.³⁵ Generally, however, “[i]n the absence of proof of fraud or gross irregularities, the fact that some ballots were cast illegally may be disregarded.”³⁶ In fact, individuals contesting an election “ha[ve] the burden of proving illegal votes were cast and that those votes were sufficient to affect the outcome.”³⁷ Essentially, for an election to be “valid,” the election “must be held substantially as required by statutes providing therefor.”³⁸ However, courts construe election laws “narrow[ly] and technical[ly]” to achieve, rather than destroy, the broad objective of election laws: “to provide qualified voters the opportunity to designate the candidate of their choice.”³⁹

Presidential elections coincide with general elections once every four years.⁴⁰ States have the same broad authority to control presidential elections within their state as they do any other election that occurs within their borders. However, there are specific federal constitutional provisions that govern the process by which the U.S. president is elected, such as those describing the existence and function of the Electoral College.⁴¹ Lastly, candidates for election—including presidential candidates—can, and have,⁴² directly challenged election results through states’ election contest provisions or through “rais[ing] federal constitutional issues to challenge [state] elections.”⁴³

Overview of State Election Contest Statutes

Every state has enacted election contest laws, which are state-created

³⁵ *Id.* § 359.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* § 302.

³⁹ *Id.*

⁴⁰ PA. DEP’T OF STATE VOTING & ELECTION INFO.: TYPES OF ELECTIONS, <https://www.vote.pa.gov/About-Elections/Pages/Types%20of%20Elections.aspx> [https://perma.cc/XA7V-RYZC] (last visited Oct. 9, 2022).

⁴¹ See U.S. Const. art. II § 1, cl. 2, 3. In contrast to every other U.S. election whereby individuals vote for their preferred candidate directly, when individuals cast their vote for the president, they are actually voting for a slate of electors that will, in turn, cast their vote for the president—a process known as the Electoral College. *Presidential Election Process*, USA.GOV (Sept. 13, 2022), <https://www.usa.gov/election> [https://perma.cc/LN48-8JHE].

⁴² See generally Steve Bickerstaff, *The Law of Presidential Elections: Issues in the Wake of Florida 2000: Counts, Recounts, and Election Contests: Lessons from the Florida Presidential Election*, 29 FLA. ST. U. L. REV. 425, 435 (2001).

⁴³ Joshua A. Douglas, *Procedural Fairness in Election Contests*, 88 IND. L.J. 1, 30 (2013). Lawfully, the U.S. president may influence election lawmaking and administration, directly and indirectly, through three primary mechanisms: executive agencies (e.g., inconsistently choosing to prioritize different election laws under the National Voter Registration Act); independent agencies (e.g., relying on or being prohibited from facilitating enforcement on campaign finance statutes under the Federal Election Commission); and narrow grants of direct power (e.g., choosing to sanction or not to sanction foreign countries for interference in domestic elections). Lisa M. Manheim, *Presidential Control of Elections*, 74 VAND. L. REV. 385, 388–89 (2021).

statutory causes of action that permit unsuccessful candidates to “challenge” the certification or the validity of the election.⁴⁴ Generally, the purposes of these statutes include the following: (1) “to challenge the election process itself”; (2) “to ascertain the true will of the electorate”; or (3) “to obtain a new election” when the election failed to “result in a free and fair expression of the voters on the merits.”⁴⁵ Election contests are incredibly important to the election process because the “integrity of the election process requires immediate resolution of disputes that prevent certification”; and these statutes, ideally, “afford a simple and speedy means of contesting elections to stated offices.”⁴⁶

Historically, states enacted election contest laws in response to the Electoral Count Act of 1887.⁴⁷ Specifically, the Act required states to enact legislation “to resolve contests that will ensure the resolution of all disputes at least six days prior to the meeting of electors.”⁴⁸ Interestingly, the U.S. Constitution contains no provision regarding an individual right or cause of action to contest the outcome of an election.⁴⁹ In contrast, constitutions in twenty-five states include a provision which requires states to administer elections that are “‘free, ‘equal,’ and/or ‘open.’”⁵⁰ While only a few states have construed this provision to allow for independent causes of actions “to void elections that were tainted by deceptive practices or voter intimidation,” most states have construed this provision to allow their legislatures to create statutory causes of action to contest elections.⁵¹

Generally, states’ election contest laws contain provisions according

⁴⁴ C.J.S., *supra* note 19 § 426.

⁴⁵ *Id.*

⁴⁶ *Validity, Construction and Application of State Statutory Limitations Periods Governing Election Contests*, 60 A.L.R. 6TH 481 (2021).

⁴⁷ See The Electoral Count Act of 1887, Pub. L. 49–90, 24 Stat. 373 (1887). Congress enacted this statute “to place some parameters around a state’s independent resolution of presidential election controversies” following the Hayes-Tilden controversy of 1886—whereby a congressional “Electoral Commission” comprised of fifteen individuals determined the winner of the 1886 presidential election. Douglas, *supra* note 43, at 30. In response to the 2020 election, Congress amended the Electoral Count Act of 1887 in 2022 to “identif[y] the role of the vice president as ‘solely ministerial’ and [to] clarif[y] that Congress must defer to the [electoral] slates as determined by the states.” Wendy Underhill, *What the Electoral Count Act Means for States*, NAT’L CONF. OF STATE LEGISLATURES (Jan. 16, 2023), <https://www.ncsl.org/state-legislatures-news/details/what-the-electoral-count-reform-act-means-for-states> [https://perma.cc/VH57-7WSG].

⁴⁸ Douglas, *supra* note 43, at 30 (citing 3 U.S.C. § 5 (2006)).

⁴⁹ *Id.* But see Douglas, *supra* note 43, at 26 (“Under the Federal Contested Election Act, one who intends to contest the election of a member of the House of Representatives must file a notice of such intent with the Clerk of the House of Representatives within 30 days after the result of the election has been declared by the officer or the board of canvassers authorized by law to declare such result.”).

⁵⁰ Matthew C. Jones, *Fraud and the Franchise: The Pennsylvania Constitution’s Free and Equal Election Clause as an Independent Basis for State and Local Election Challenges*, 68 TEMP. L. REV. 1473, 1474 (1995). These provisions are typically located in the “‘Declaration of Rights’ or ‘Bill of Rights’ sections” of state constitutions. *Id.*

⁵¹ *Id.*

to the particular candidates for election.⁵² Of particular interest to this Note are election contest laws regarding presidential elections. In twenty states as well as the District of Columbia, election contest laws contain processes for contesting presidential elections; alternatively, thirty states' election contest laws contain no such provision.⁵³ Furthermore, in the thirty states that do not have election contest laws containing provisions governing presidential elections, typically, candidates may invoke the general election contest statute because it applies to all state elections.⁵⁴

Importantly, some courts distinguish election contest proceedings from other, similar proceedings—such as an “election protest,” a “recount,” or a “canvass.”⁵⁵ Most closely related to an election contest proceeding is a recount of an election. Some courts distinguish a recount of an election, which “is a special . . . statutory proceeding . . . authorized by the legislature to test the accuracy of the official canvas”⁵⁶ as being “a part of the election process while a[n] [election] contest is a challenge of the election process itself.”⁵⁷ Generally, a recount of votes “is the appropriate remedy when a plaintiff has alleged a simple counting mistake . . . rather than the far more drastic remedy of a new . . . election.”⁵⁸ Some state statutes allow for recount and election contest actions to be brought together, whereas other state statutes require the two actions to be brought separately,⁵⁹ and still others require a claimant to bring a recount claim as a precondition to bringing an election contest claim.⁶⁰

Commonalities and Differences Among State Election Contest Statutes

Overall, there are *some* commonalities among states' election contest laws, however, “the main trend that emerges is a lack of uniformity in how states decide disputed elections.”⁶¹ Accordingly, this section discusses commonalities and differences among states' election contest laws according to the following common themes of such claims: (1) the grounds for election

⁵² Douglas, *supra* note 43, at 5.

⁵³ *Id.* at 31.

⁵⁴ *Id.* at 33.

⁵⁵ 26 AM. JUR. 2D *Elections* § 385 (2022); *see also* 29 C.J.S. *Elections* § 426 (2022). Election protests “challenge a candidate’s qualifications or eligibility” and, thus, in some jurisdictions, “may apply only . . . before an election is held” 26 AM. JUR. 2D *Elections* § 385 (2022). A canvass can refer to “all the proceedings for determining the result of an election” which can include the following: counting votes, recording counted votes on tally sheets, and the process of “inspecting the returns of the election officers” from various counties. 29 C.J.S. *Elections* § 401 (2022).

⁵⁶ 29 C.J.S. *Elections* § 512 (2022).

⁵⁷ 26 AM. JUR. 2D *Elections* § 385 (2022)

⁵⁸ 29 C.J.S. *Elections* § 512 (2022).

⁵⁹ *Id.*

⁶⁰ *Id.* § 426.

⁶¹ Douglas, *supra* note 43, at 3.

contests, including the parties, the pleading requirements, and the subject matter; (2) the statutes of limitations for bringing election contests; (3) the procedure in election contest proceedings; (4) the remedies available in election contests; and (5) the common reasons why such claims are often unsuccessful.

Grounds for Election Contests

Generally, parties (i.e., the contestants) may bring an election contest claim in two contexts: “(1) where a candidate seeks an order declaring himself or herself the winner; and (2) where a qualified voter seeks to void the election because it was not fair and equal and therefore uncertain in its outcome.”⁶² Overall, because the right to bring an election contest claim arises exclusively from a state statute or a state constitutional provision, election contest claims are limited to the enumerated grounds of the statute; and a contestant may not “travel beyond the statute and contest an election on general principles.”⁶³

While the statutorily-limited grounds for bringing election contest claims vary, generally, the majority of these statutes allow contestants to bring election contests on the following grounds: “(1) an election official has engaged in fraud or other illegal conduct; (2) illegal votes have been counted; (3) legal votes have been rejected or excluded; and (4) an election official has been bribed.”⁶⁴ As an example, Kentucky law provides for “corrupt practices”⁶⁵ and “administrative or clerical errors”⁶⁶ as the sole grounds for bringing an election contest. Generally, one significant limitation concerning the grounds of an election contest is that if a contestant alleges “fraud, mere irregularities or misconduct on the part of the election officers”—and these allegations “*do not tend to affect the [election] result*”—then such allegations “are not a ground for contest.”⁶⁷ Lastly, when deciding election contest claims, courts generally apply “liberal” rather than “technical” rules of pleading to resolve contests quickly. Overall, the language in each state’s election contest statute limits the grounds for bringing such claims, but,

⁶² *Validity, Construction and Application of State Statutory Limitations Periods Governing Election Contests*, *supra* note 46.

⁶³ 29 C.J.S. *Elections* § 435 (2022).

⁶⁴ Bickerstaff, *supra* note 42, at 432; *see also* Douglas, *supra* note 43, at 38–39. Other specific, common reasons for bringing an election contest claim can include the fact that ballots contain deceptive language, omit a candidate’s name, or include an ineligible candidate’s name. Additionally, the board of elections could intentionally or negligently miscalculate votes, or there may be a sufficient number of illegal votes counted or legal votes rejected to “place in doubt the result of the election.” *Validity, Construction and Application of State Statutory Limitations Periods Governing Election Contests*, *supra* note 46.

⁶⁵ KY. REV. STAT. ANN. § 120.015.

⁶⁶ KY. REV. STAT. ANN. § 120.017.

⁶⁷ 29 C.J.S. *Elections* § 436 (2022) (emphasis added).

importantly, the majority of those statutes contain grounds relating to fraud by counting illegal ballots or by rejecting legal ballots.⁶⁸

Statute of Limitations for Bringing Election Contests

Perhaps the most strictly-enforced and “mandatory” component of an election contest is the statute of limitations requirement.⁶⁹ Forty-six of fifty states mandate when contestants must file an election contest claim, and such “deadlines generally range from as few as three days after the election results are certified (primary elections for governor in Maryland) to as long as forty days (all elections in Oregon).”⁷⁰ Typically, the deadline for filing an election contest is between “five and fourteen days” following the certification of election results or a canvass.⁷¹ Lastly, in contrast to when a *contestant* must file an election contest, some states also require deadlines for *courts* to hear or resolve the contest.⁷²

Additionally, some statutes require certain conditions or events to occur prior to bringing an election contest. For example, some statutes require that the election be completed or, in the case of a challenge to particular ballots, the contestant is required to request a recount first.⁷³ Generally, then, in these states, “an election contest is strictly a postelection proceeding and . . . do[es] not extend to acts or omissions antedating the election.”⁷⁴ In contrast, some states allow parties to assert “both preelection and postelection events” as grounds to contest the election.⁷⁵ Regardless of a state’s inclusion of preelection events as grounds for election contests, however, nearly all election contest statutes contain strict deadlines by which candidates must file an election contest—whether that deadline is three days or forty days following the certification of election results.

Election Contest Proceedings

The majority of states utilize their judiciary to resolve election contests, but only some of those states have statutes which enumerate the particular venue for or specify which judges can hear election contests.⁷⁶

⁶⁸ *See id.*

⁶⁹ Douglas, *supra* note 43, at 34.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 35 (emphasis added). When deciding election contest claims, courts generally apply “liberal” rather than “technical” rules of pleading to resolve contests quickly. 29 C.J.S. *Elections* § 476 (2022).

⁷³ 29 C.J.S. *Elections* § 441 (2022).

⁷⁴ *Id.* § 435.

⁷⁵ *Id.* (“[A]n election is seen as a process, not a single event, and the whole process may be subject to contest.”).

⁷⁶ Douglas, *supra* note 43, at 36–38 (demonstrating that states not utilizing the judiciary tend to employ “the

Most states utilizing the judiciary to resolve election contests treat contests similarly to other civil lawsuits, “although some states give judges additional powers,” inserting broad discretion in their decisions.⁷⁷ For example, New Jersey judges are allowed to “compel the production of all ballot boxes” and South Dakota judges are allowed to “shorten[] the time for an answer” and “actively manag[e] discovery.”⁷⁸ Notably, judges—not juries—decide election contests.⁷⁹

Furthermore, there are certain presumptions and evidentiary burdens that accompany election contests, which arise from courts interpreting the specific election contest statute at issue. Generally, courts presume that elections and ballots are valid and that election officials follow the law and do not engage in misconduct.⁸⁰ Additionally, individuals contesting the election have the burden of proof “of establishing the grounds” in their complaint.⁸¹ Specifically, when the contestant is alleging voting irregularities or that illegal votes have been cast, the contestant “has the burden of proving that voting irregularities *materially* affected the outcome of the election or were sufficient to place the entire election in doubt” or “to make a *prima facie* showing that such votes were illegally cast.”⁸²

While important burdens of proof exist in election contest proceedings, many statutes omit any language concerning the evidentiary standard that applies, or they simply stipulate that “ordinary civil rules should apply.”⁸³ As such, many states apply the “‘preponderance of the evidence’ test,” while only some states apply “a ‘beyond a reasonable doubt’ . . . standard to at least some elements of election contests.”⁸⁴ Lastly, most state election contest statutes address whether or not appellate review is permitted.⁸⁵ If appellate review *is* permitted, however, it is restricted because the appellate court will give significant deference to the lower court’s factual findings and may only reverse the lower court on questions of law, thus providing lower courts with significant authority to impact the outcome of the contest.⁸⁶

legislature, the state supreme court, [or] a special nonjudicial tribunal” to resolve election contests).

⁷⁷ *Id.* at 40.

⁷⁸ *Id.* at 40–41.

⁷⁹ *Id.* at 41.

⁸⁰ 29 C.J.S. *Elections* §§ 491–93 (2022).

⁸¹ *Id.* § 494.

⁸² *Id.* § 495–97 (emphasis added).

⁸³ Steven F. Huefner, *Remedying Election Wrongs*, 44 HARV. J. ON LEGIS. 265, 313 (2007).

⁸⁴ *See id.* at 313–14.

⁸⁵ Douglas, *supra* note 43, at 42–43.

⁸⁶ *Id.* at 42–43.

Available Remedies

Similar to the limited grounds available in election contests, candidates' remedies in an election contest are limited by the election contest statute and the pleadings.⁸⁷ Generally, courts may provide candidates who have successfully contested an election with one of two remedies: "to declare a winner of the election or . . . to order a new election" after finding the current election void.⁸⁸ Some courts are solely authorized to order a new election and are unable to declare a new winner of the election.⁸⁹ Furthermore, of those courts able to order a new election, some courts have cautioned that judges should be "very reluctant" to do so because "it is the duty of the court to validate the election if possible."⁹⁰ Lastly, some courts have determined that, unless authorized by the statute or the constitution, "equity cannot be invoked to determine an election's validity."⁹¹

Moreover, legal scholars criticize election contest statutes for focusing primarily on procedure and for "provid[ing] courts with little substantive guidance for determining whether a remediable election failure in fact has occurred, and if so, how to remedy it."⁹² Accordingly, "many courts . . . therefore have had to develop their own standards for deciding if an actionable failure has occurred and how to resolve it," resulting in "a variety of judicially developed tests for when courts will uphold, invalidate, call for a rerunning of, or themselves declare the winners of, a contested election."⁹³

Common Reasons for Dismissal

In light of the limited grounds and available remedies, the strict filing deadlines, the legal presumption that elections are valid, and the evidentiary burden to prove voting irregularities impacted the outcome of the election, election contests are hardly ever successful.⁹⁴ In fact, recounts, rather than election contests, are more likely to change the outcome of an election.⁹⁵ Overall, courts commonly dismiss election contests due to insufficient

⁸⁷ 29 C.J.S. *Elections* § 542 (2022).

⁸⁸ Bickerstaff, *supra* note 42, at 432.

⁸⁹ *Id.* at 432–33.

⁹⁰ 29 C.J.S. *Elections* § 543 (2022).

⁹¹ 26 AM. JUR. 2D *Elections* § 386 (2022).

⁹² Huefner, *supra* note 83, at 270.

⁹³ *Id.* at 270–71; see Bickerstaff, *supra* note 42, at 433 (explaining that a few states "have allowed votes to be added or subtracted from a candidate's total based on an allocation formula.").

⁹⁴ See Joshua A. Douglas, *Allen Chair Issue 2013: Election Law: Beyond the Red, Purple, and Blue: Essay: Discouraging Election Contests*, 47 U. RICH. L. REV. 1015, 1025 (2013).

⁹⁵ *Id.*

grounds for contest, mootness, laches, and waiver and estoppel.⁹⁶

First, courts dismiss election contests due to insufficient grounds for contest when a contestant has alleged “mere irregularities or misconduct on the part of election officers which do not tend to affect the result of the election.”⁹⁷ Second, courts utilize the justiciability doctrine of mootness to bar election contests when a contestant alleges “[f]actual issues regarding the accuracy of the official vote count and the adequacy of the election canvass” and is unable to prove that such errors would have impacted the result of the election.⁹⁸

Third, courts invoke the equitable doctrine of laches to bar election contest claims where the party contesting the election “fails to exercise the requisite diligence” by either filing the contest too late or by failing to raise preelection issues before the certification of the election results, especially in jurisdictions that view election contest claims as solely involving post-election disputes.⁹⁹ Lastly, courts invoke waiver and estoppel to bar election contests and have held that the party contesting an election is “estopped from asserting . . . irregularities as a basis for invalidating the election, absent a showing of fraud” when “there is a full opportunity to correct any irregularities” before the election results have been certified.¹⁰⁰ Particularly, waiver and estoppel are invoked when the party contesting the election “*know[s] of objections to irregularities in the conduct of the election, await[s] the outcome of the election and then, after losing the election, contest[s] or complain[s] of those objections.*”¹⁰¹

Overall, understanding how election contest statutes function within state election administration, how the statutes have developed throughout the states and retain few overarching commonalities, and why election contest proceedings are often dismissed due to the doctrines stated above is critical to understanding the law uniting the former president’s 2020 election litigation. Indeed, the common reasons for dismissal of election contests are particularly salient given that courts invoked all of these doctrines—most notably, laches and mootness—against the former president to bar his lawsuits contesting the outcome of the 2020 election.

⁹⁶ 26 AM. JUR. 2D *Elections* §§ 387–390 (2022); 29 C.J.S. *Elections* § 443–459 (2022).

⁹⁷ See 26 AM. JUR. 2D *Elections* § 390 (2022) (showing other examples where courts have found insufficient grounds for contest—including omitting a candidate’s name on the ballot, producing clerical errors, missing the deadline to run for an election, and unlawfully electioneering at voting locations).

⁹⁸ *Id.* Additionally, courts apply the mootness doctrine when “the relief sought is to have a name or an issue placed on the ballot, but the election was held before the case could be decided.” *Id.* § 387.

⁹⁹ 29 C.J.S. *Elections* § 459 (2022).

¹⁰⁰ *Id.* § 443.

¹⁰¹ *Id.* (emphasis added).

II. ANALYSIS OF FORMER PRESIDENT TRUMP'S 2020 ELECTION LITIGATION

In analyzing the former president's 2020 election litigation, it is first necessary to describe the breadth of this litigation and to address why this Note discusses only a portion of those cases, which are representative of the whole. Following an analysis of particular cases brought by the former president, this Part will address common reasons why courts dismissed these cases as well as the former president's failing legal strategy. Finally, this Part will demonstrate that former President Trump's election litigation highlights the significant role election contest statutes have in post-election disputes and that courts' dismissals of his cases illustrate why a uniform election contest law is needed—so that no politician in any state is incentivized to abuse the legal process for political gain.

Summary of Former President Trump's Election Litigation

Former President Trump initiated sixty-two lawsuits to contest the outcome of the 2020 election in state and federal courts across the country, sixty-one of which failed.¹⁰² In light of the stringent time considerations and the important subject matter associated with these lawsuits, courts consolidated and dismissed these lawsuits very early on in the litigation, making it difficult to quantify the number of lawsuits filed, won, or lost.¹⁰³ Even under a nuanced reading of these lawsuits, however, the former president's election litigation was overwhelmingly unsuccessful from a legal perspective.¹⁰⁴

Within these sixty-two cases, only a portion were actually filed after the election by the former president in his official capacity as a presidential candidate, by his campaign, or by his election litigation counsel.¹⁰⁵ Accordingly, this Note will be limited to discussing only state and federal court cases filed (1) by or on the former president's behalf; (2) on or after

¹⁰² William Cummings et al., *By the Numbers: President Donald Trump's Failed Efforts to Overturn the Election*, USA TODAY (Jan. 6, 2021), <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/> [<https://perma.cc/SK4J-JSC5>].

¹⁰³ See Russell Wheeler, *Trump's Judicial Campaign to Upend the 2020 Election: A Failure but Not A Wipe Out*, BROOKINGS INST. (Nov. 30, 2021), <https://www.brookings.edu/blog/fixgov/2021/11/30/trumps-judicial-campaign-to-upend-the-2020-election-a-failure-but-not-a-wipe-out/> [<https://perma.cc/JQU8-C62B>]. One attorney examined only cases occurring after the election ended that contested the outcome of the 2020 presidential election and did not involve “plaintiffs dropp[ing] before any judicial action.” *Id.* In that examination, the author surmised that there were “42 post-election cases,” resulting in “29 state cases with 150 votes by 75 judges” and “13 federal cases with 44 votes by 41 judges.” *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ See generally Cummings et al., *supra* note 102.

election day; and (3) in the following five battleground states: Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin. Thus, given these limitations, this Note will focus principally on ten out of the sixty-two total lawsuits relating to the 2020 election.

Furthermore, this Note mirrors the former president's apparent legal strategy in all five battleground states, which involved filing at least one state court case and at least one federal court case per state contesting the election.¹⁰⁶ Additionally, in state court, the former president typically sought to contest the election under the state's election contest statute or under the state's constitutional provision requiring free and equal elections.¹⁰⁷ Moreover, in federal court, the former president tended to allege that the state's election laws and/or administration violated the Elections Clause of the Constitution or was otherwise violative of the Constitution's Equal Protection Clause of the Fourteenth Amendment.¹⁰⁸ Importantly, "[a]lthough it is possible that parties may file in federal court and raise federal constitutional issues to challenge an election, election contests are typically the province of state law."¹⁰⁹

Analysis of Former President Trump's Election Litigation

For each of the five battleground states noted above, this Note will discuss major state and federal court cases that contested the outcome of the 2020 election. Additionally, as election contest statutes are within the province of state law, this analysis will address how the claimants invoked (or failed to invoke) election contest statutes as well as why the courts dismissed such claims.

Arizona

In Arizona state court, the former president did not invoke Arizona's election contest statute, and the court did not invoke or mention such statute either.¹¹⁰ Specifically, in the state court case, *Donald J. Trump for President*,

¹⁰⁶ See, e.g., *Trump v. Kemp*, 511 F. Supp. 3d 1325, 1329–30 (N.D. Ga. 2021) (appealing Georgia Supreme Court's denial of election contest petition).

¹⁰⁷ See, e.g., Verified Petition to Contest Georgia's Presidential Election Results for Violations of the Constitution and Laws of the State of Georgia, and Request for Emergency Declaratory and Injunctive Relief at 4, *Trump v. Raffensperger*, No. 2020CV343255 (Fulton Cnty. Superior Ct. Dec. 4, 2020), <https://electioncases.osu.edu/wp-content/uploads/2020/12/Trump-v.-Raffensperger-Petition-to-Contest.pdf> [<https://perma.cc/5LAW-G64B>]; and see Complaint at 10–14, *Donald J. Trump for President, Inc. v. Hobbs*, No. CV2020-014248 (Maricopa Cnty. Superior Ct. Nov. 7, 2020), <https://electioncases.osu.edu/wp-content/uploads/2020/11/Trump-v-Hobbs-complaint.pdf> [<https://perma.cc/FHT2-W825>].

¹⁰⁸ See, e.g., *Trump v. Kemp*, 511 F. Supp. 3d 1325, 1331–32 (N.D. Ga. 2021).

¹⁰⁹ Douglas, *supra* note 43, at 3.

¹¹⁰ Arizona voters filed multiple cases directly invoking the Arizona election contest statute: ARIZ. REV. STAT. ANN. § 16-672. See Verified Complaint at 2, *Ward v. Jackson*, CV2020-015285 (Maricopa Cnty. Superior Ct.

Inc. v. Hobbs, the former president sued Arizona election officials four days after the 2020 U.S. presidential election for: (1) failure to adjudicate and tabulate ballots; (2) deprivation of the franchise without due process; (3) violation of the Privileges and Immunities Clause; and (4) violation of the Free and Equal Elections Clause.¹¹¹ Primarily, the plaintiffs alleged that “potentially thousands of voters . . . have been disenfranchised by systematic improper tabulator overrides.”¹¹² Tabulator overrides refer to what occurs when an electronic tabulation machine detects a “facial irregularity” in a ballot, which then prompts a poll worker to override the machine’s rejection of the ballot.¹¹³ The plaintiffs voluntarily dismissed the action less than a week later, stating that their claims “ha[d] become moot”¹¹⁴ because “the tabulation of votes statewide ha[d] rendered unnecessary a judicial ruling as to the presidential electors.”¹¹⁵

Interestingly, in the companion federal court case, *Bowyer v. Ducey*, the U.S. District Court for the District of Arizona did explicitly discuss the Arizona election contest statute and provided several reasons why bringing this contest in federal court was improper.¹¹⁶ In *Bowyer*, counsel to the former president, Sidney Powell,¹¹⁷ sued Arizona election officials to (1) contest the election, (2) “de-certify” the election results, and (3) impose a permanent injunction against the governor and the secretary of state to prevent their communication of “certified election results to the Electoral College.”¹¹⁸ The

Nov. 24, 2020), <https://electioncases.osu.edu/wp-content/uploads/2020/11/Ward-v-Jackson-complaint.pdf> [<https://perma.cc/T7J3-CP7E>]; Petition for Election Contest at 1, *Stevenson v. Ducey*, CV2020-096490 (Maricopa Cnty. Superior Ct. Dec. 4, 2020), <https://electioncases.osu.edu/wp-content/uploads/2020/12/Stevenson-v-Ducey-Petition-for-Election-Contest.pdf> [<https://perma.cc/J355-APE6>]. See generally *Election Law at Ohio State: Major Pending Election Cases*, THE OHIO STATE UNIV., https://electioncases.osu.edu/case-tracker/?sortBy=filing_date_desc&keywords=&status=all&state=all&topic=25 [<https://perma.cc/YWE5-V3Y9>] (last visited Sept. 17, 2022) (choose “Arizona” from dropdown; then click “search”) [hereinafter *Election Law at Ohio State*].

¹¹¹ Verified Complaint at 10–14, *Donald J. Trump for President, Inc. v. Hobbs*, No. CV2020–014248 (Maricopa Cnty. Superior Ct. Nov. 7, 2020), <https://electioncases.osu.edu/wp-content/uploads/2020/11/Trump-v-Hobbs-complaint.pdf> [<https://perma.cc/FHT2-W825>].

¹¹² *Id.* at 2.

¹¹³ *Id.*

¹¹⁴ Court Order to Dismiss at 2, *Donald J. Trump for President, Inc. v. Hobbs*, No. CV2020-014248 (Maricopa Cnty. Superior Ct. Nov. 13, 2020), https://electioncases.osu.edu/wp-content/uploads/2020/11/Trump-v-Hobbs_order-dismissing-case.pdf [<https://perma.cc/92XR-UTH6>].

¹¹⁵ Plaintiffs’ Notice of Partial Mootness at 1, *Donald J. Trump for President, Inc. v. Hobbs*, No. CV2020-014248 (Maricopa Cnty. Superior Ct. Nov. 13, 2020) <https://electioncases.osu.edu/wp-content/uploads/2020/11/Trump-v-Hobbs-Notice-of-Partial-Mootness.pdf> [<https://perma.cc/4YM2-66PJ>].

¹¹⁶ *Bowyer v. Ducey*, 506 F. Supp. 3d 699 (D. Ariz. 2020); see ARIZ. REV. STAT. ANN. § 16–672.

¹¹⁷ Several attorneys “filed an ethics complaint against 21 attorneys who went to court on behalf of President Donald Trump” (including Sidney Powell) for “knowingly br[ing]ing] 10 ‘utterly meritless cases’ against elections officials.” *Bar Complaint Filed Against Trump Attorneys in Arizona*, 12NEWS <https://www.12news.com/article/news/politics/bar-complaint-filed-against-trump-attorneys-in-arizona/75-857a2dd9-9e96-47b1-83f5-f9782bd875fb> [<https://perma.cc/Y4SC-VSDH>] (last visited Jan. 21, 2023).

¹¹⁸ *Bowyer*, 506 F. Supp. 3d at 707.

court dismissed the plaintiffs' complaint due to lack of jurisdiction, laches, mootness, and failure to plead fraud with particularity in compliance with Fed. R. Civ. P. 9(b).¹¹⁹

Specifically, the court found that the Arizona election contest statute requires claims of "alleged election misconduct, including illegal votes and erroneous counting" to be brought in the superior court in Maricopa County or the county the individual resides, rather than the federal district court in which it was filed.¹²⁰ Next, the court concluded that laches barred the plaintiffs' claims of voting irregularities due to the fact that the plaintiffs waited "until a month after Election Day and two days after certification of the election" before bringing a contest when such irregularities were known to them "prior to Election Day or soon thereafter."¹²¹ Furthermore, the court held the plaintiffs' claims were moot because the court was unable to give them the relief they sought: "Nothing [in 3 U.S.C.S. § 6] authorizes this Court to de-certify the results."¹²² Lastly, the court held that the plaintiffs failed to plead fraud with particularity because, generally, the three-hundred pages of affidavits produced by the plaintiffs were "largely based on anonymous witnesses, hearsay, and irrelevant analysis of unrelated elections" and were "only impressive for their volume."¹²³

*Georgia*¹²⁴

In Georgia state court, the former president and numerous individual voters filed election contest petitions pursuant to GA. CODE ANN. §§ 21-2-

¹¹⁹ *Id.* at 713–20.

¹²⁰ *Id.* at 713–14.

¹²¹ *Id.* at 718–19.

¹²² *Id.* at 720. See 3 U.S.C.S. § 6 (a federal statute which requires states to report the certification of their presidential electors to the U.S. Archivist).

¹²³ *Bowyer*, 506 F. Supp. 3d at 721. The plaintiffs alleged fraud through (1) poll watcher "misconduct;" (2) expert witness testimony regarding "widespread voter fraud in Arizona" based on a tweet which purported to show, via a telephone survey, "troublesome ballots" in Arizona; and (3) "Dominion voting machines" being "hacked or compromised" due to a "spike" in processing votes on Election Day as well as a Venezuelan "voting systems company whose software 'DNA' is now used in voting machines in the United States." *Id.* at 722–23.

¹²⁴ On August 14, 2023, a grand jury in Georgia indicted Former President Trump on thirteen counts—one of which is "a racketeering charge for allegedly attempting to unlawfully change the outcome of the election in Georgia in 2020." Another charge against the former president includes unlawful solicitation of Georgia Secretary of State Brad Raffensperger due to the former president's alleged call to him on January 1, 2021 to request that he "'find' the votes he needed to win the state." Janie Boschma, et al., *Former President Donald Trump's Fourth Indictment*, *Annotated*, CNN POLITICS (Aug. 15, 2023), <https://www.cnn.com/interactive/2023/08/politics/annotated-trump-indictment-georgia-election-dg/> [\[https://perma.cc/2MQ4-DZ2W\]](https://perma.cc/2MQ4-DZ2W); Amy O'Kruk and Curt Merrill, *Donald Trump's Criminal Cases, In One Place*, CNN POLITICS (Aug. 31, 2023), <https://www.cnn.com/interactive/2023/07/politics/trump-indictments-criminal-cases/> [\[https://perma.cc/5752-XUY4\]](https://perma.cc/5752-XUY4).

521–21-2-529.¹²⁵ For example, in *Trump v. Raffensperger*, the former president sued Georgia election officials in a petition to contest Georgia’s presidential election results—alleging systemic irregularities, misconduct, fraud, violations of the Georgia election code through counting illegal votes, and violations of Georgia’s Equal Protection and Due Process Clauses.¹²⁶ The Georgia Supreme Court (following an emergency petition for Writ of Certiorari) dismissed the petition for lack of jurisdiction and denied the plaintiff’s request for injunctive relief, noting that while it “has subject matter jurisdiction over ‘election contest[s],’” it does not have original jurisdiction over such matters and, as such, dismissed the petition.¹²⁷

The former president appealed the Georgia Supreme Court’s decision to deny emergency injunctive relief to the U.S. District Court for the Northern District of Georgia in *Trump v. Kemp*.¹²⁸ In this case, the former president reiterated his state election contest claims—such as counting illegal votes in violation of the Georgia election code—and utilized the grounds for the election contest as the basis for alleged violations of the U.S. Constitution¹²⁹—specifically, the Electors, Elections, and Equal Protection

¹²⁵ See e.g., Verified Petition for Emergency Injunctive and Declaratory Relief at 2, *Still v. Raffensperger*, No. 2020CV343711 (Fulton Cnty. Superior Ct. Dec. 12, 2020) <https://electioncases.osu.edu/wp-content/uploads/2020/12/Still-v-Raffensperger-complaint.pdf> [<https://perma.cc/A773-X73N>]; Verified Complaint at 1, *Boland v. Raffensperger*, No. 2020CV343018 (Fulton Cnty. Superior Ct. Nov. 29, 2020) <https://electioncases.osu.edu/wp-content/uploads/2020/11/Boland-v-Raffensperger-Complaint.pdf> [<https://perma.cc/HHN5-KR7Z>]. See generally *Election Law at Ohio State*, *supra* note 110 (choose “Georgia” from dropdown; then click “search”).

¹²⁶ Petition at 4, *Trump v. Raffensperger*, No. 2020CV343255 (Fulton Cnty. Superior Ct. Dec. 4, 2020), <https://electioncases.osu.edu/wp-content/uploads/2020/12/Trump-v.-Raffensperger-Petition-to-Contest.pdf> [<https://perma.cc/5LAW-G64B>]. Pursuant to Georgia’s election contest statute that enumerates the grounds for election contests, GA. CODE ANN. § 21-2-522, the petition alleges election officials counted thousands of illegal votes (voters who were allegedly underage, had a felony conviction, were unregistered, or dead) and that Raffensperger fraudulently accepted certain absentee ballots in contravention of Georgia’s election code. *Id.* at 17–27.

¹²⁷ Order Dismissing Petition, *Trump v. Raffensperger*, No. S21M0561 (Ga. Dec. 12, 2020), <https://electioncases.osu.edu/wp-content/uploads/2020/12/Trump-v.-Raffensperger-GA-SC-Order-Dismissing-Petition.pdf> [<https://perma.cc/9B2R-CHM9>].

¹²⁸ *Trump v. Kemp*, 511 F. Supp. 3d 1325, 1329–30 (N.D. Ga. 2021). Individual voters and Georgia congressional representatives filed federal lawsuits to contest the 2020 election, alleging fraud and violations of the Elections Clause and the Equal Protection Clause. See, e.g., *Wood v. Raffensperger*, 501 F. Supp. 3d 1310 (N.D. Ga. 2020); *Pearson v. Kemp*, No. 1:20-CV-4809-TCB, 2020 WL 7040582, (N.D. Ga. Nov. 29, 2020); and *Brooks v. Mahoney*, No. 4-20:cv-00281 (S.D. Ga. Nov. 12, 2020), https://electioncases.osu.edu/wp-content/uploads/2020/11/Brooks-v.-Mahoney_Doc9.pdf [<https://perma.cc/GTA3-F7QV>]. See generally Kevin Cramer, *Judicial Rulings in Response to the 2020 Presidential Election*, <https://www.cramer.senate.gov/2020judicialrulings> [<https://perma.cc/T2ZF-GNUN>] (last visited Jan. 21, 2023).

¹²⁹ Plaintiff’s Memorandum of Law in Support of Motion for Expedited Declaratory and Injunctive Relief at 8, *Trump v. Kemp*, 511 F. Supp. 3d 1325 (N.D. Ga. 2021) (No. 1:20-CV-5310-MHC). After describing Trump’s election contest claims, counsel for Trump stated: “Georgia’s failure to afford Plaintiff his right to the election contest, as well as the violation of Georgia election laws by the state’s election officials, means that the ‘manner’ for choosing electors established by the Legislature was not followed under Article II;” and “Georgia ‘failed’ to choose its electors in accord with the manner prescribed by the Legislature violating Due Process.” *Id.*

Clauses.¹³⁰ The plaintiff also requested injunctive relief from the court “to take the unprecedented action of decertifying the results of the presidential election in Georgia and directing the Georgia General Assembly to appoint presidential electors.”¹³¹

Ultimately, the court held the plaintiff did not have standing to bring either of these claims because, respectively, (1) the Electors Clause “grants the right to prescribe the manner in which presidential electors are selected to each state legislature” and the plaintiff is “not the General Assembly;” and (2) the plaintiffs failed to demonstrate they were injured by the defendants because the defendants “did not have any role in the counting of any allegedly illegal votes.”¹³² Lastly, the court dismissed the plaintiff’s request for a preliminary injunction because (1) the court did not have the jurisdiction to grant such relief as the plaintiff was unable to “remove the election contest” pending in state court, and “[t]he sole remedy for objecting to the counting of electoral votes after certification lies with the Congress;” and (2) the plaintiff failed to show that either of his constitution claims had a “substantial likelihood of success.”¹³³ To conclude, the court stated that the public interest “outweigh[s] any burden on Plaintiff” because the plaintiff’s requested injunctive relief “would breed confusion, undermine the public’s trust in the election, and potentially disenfranchise millions of Georgia voters.”¹³⁴

Michigan

In Michigan, neither the state nor federal cases filed by the former president directly invoked the state’s election contest statute, MICH. COMP. LAWS ANN. §§ 168.747–168.749; rather, the former president alleged violations of the state’s election code as well as constitutional violations. For example, in the state court case, *Donald J. Trump for President, Inc. v. Benson*, the former president sued Michigan election officials for violating the state constitution’s “purity of elections” clause and state election law concerning counting of absentee ballots.¹³⁵ However, like cases involving

¹³⁰ *Id.* at 1331–32. It is the Georgia Supreme Court’s denial of Trump’s second motion for emergency injunctive relief—to enjoin certification of election results—that he appealed to the U.S. District Court for the Northern District of Georgia. At the time of this lawsuit, the Georgia Supreme Court reassigned the election contest to another judicial district with jurisdiction over election contests and appointed a judge to try Trump’s election contest claims on January 8. *Id.* at 1329–30.

¹³¹ *Id.* at 1330.

¹³² *Id.* at 1331–34.

¹³³ *Id.* at 1334–38.

¹³⁴ *Id.* at 1339.

¹³⁵ Complaint at 6–7, *Donald J. Trump for President, Inc. v. Benson*, No. 20-000225-MZ (St. of Mi. Ct. of Claims Nov. 4, 2020), <https://electioncases.osu.edu/wp-content/uploads/2020/11/DJT-v-Benson-Complaint.pdf> [<https://perma.cc/F3L5-HTVW>]. Michigan state court cases filed by individual voters alleged the counting illegal votes and unconstitutional election administration procedures and sought to

election contests, the court dismissed the case as moot, reiterating that “the results of the election have been certified” and “[t]he dates for these activities have since come and gone.”¹³⁶

In the federal court case, *Donald J. Trump for President, Inc. v. Benson*, the former president sued Michigan election officials, alleging that the defendants violated various federal and corollary state constitutional provisions (such as the Equal Protection Clause and the Elections and Electors Clauses) as well as Michigan’s election code because, generally, illegal votes were counted—nearly mirroring his claims in his Georgia federal court case.¹³⁷ Ultimately, the plaintiffs voluntarily dismissed the case based on their unfounded claim that “[t]he Wayne County board of county canvassers met and declined to certify the results of the presidential election.”¹³⁸

Pennsylvania

Like the former president’s Michigan cases, neither the state nor federal courts in Pennsylvania directly invoked the state’s election contest statute, 25 PA. STAT. ANN. §§ 3456–3474. Rather, the former president alleged improper election administration and constitutional violations and sought to prevent certification of election results. For example, in Pennsylvania state court case, *Donald J. Trump for President, Inc. v. Boockvar*, the former president sued Pennsylvania election officials alleging

delay or deny election certification—such as *Johnson v. Benson*, No. 1:20-cv-01098 (W.D. Mich. Nov. 15, 2020), <https://electioncases.osu.edu/wp-content/uploads/2020/11/Johnson-v-Benson-Complaint-Doc1.pdf> [<https://perma.cc/DV99-3EVJ>] and *Constantino v. City of Detroit*, 950 N.W.2d 707 (Mich. 2020). See *Election Law at Ohio State*, *supra* note 110 (choose “Michigan” from dropdown; then click “search”).

¹³⁶ *Donald J. Trump for President, Inc. v. Benson*, No. 20-000225-MZ (St. of Mi. Ct. of Claims Jan. 6, 2021) <https://electioncases.osu.edu/wp-content/uploads/2020/11/DJT-v-Benson-Order-Dismissing-Case-as-Moot.pdf> [<https://perma.cc/W74F-ERLD>]. Individual voters also filed lawsuits in Michigan federal court that contested the election. See, e.g., *King v. Whitmer*, 556 F. Supp. 3d 680 (E.D. Mich. 2021); *Verified Complaint for Declaratory and Injunctive Relief, Bally v. Whitmer*, No. 1:2020cv1088 (W.D. Mich. Nov. 11, 2020) <https://electioncases.osu.edu/wp-content/uploads/2020/11/Bally-v-Whitmer-Doc1.pdf> [<https://perma.cc/N2CG-LQM6>]. See generally *Election Law at Ohio State*, *supra* note 110 (choose “Michigan” from dropdown; then click “search”). Judge Linda Parker, author of the over 100-page opinion for *King*, sanctioned several attorneys, including Sidney Powell, for their role in the “historic and profound abuse of the judicial process.” See Alison Durkee, *Here Are All The Places Sidney Powell, Lin Wood and Pro-Trump Attorneys Could Also be Punished for ‘Kraken’ Lawsuits after Michigan Sanctions Ruling*, FORBES (Aug. 26, 2021), <https://www.forbes.com/sites/alisondurkee/2021/08/26/here-are-all-the-places-sidney-powell-lin-wood-and-pro-trump-attorneys-could-also-be-punished-for-kraken-lawsuits-after-michigan-sanctions-ruling/?sh=33b54065e1aa> [<https://perma.cc/SL67-J3EU>].

¹³⁷ Complaint at 26–29, *Donald J. Trump for President, Inc. v. Benson*, No. 1:20-cv-01083-JTN-PJG (W.D. Mich. Nov. 11, 2020) <https://electioncases.osu.edu/wp-content/uploads/2020/11/Donald-J.-Trump-v-Benson-Doc1.pdf> [<https://perma.cc/MJ3E-F8XE>].

¹³⁸ *Donald J. Trump for President, Inc. v. Benson*, No. 1:20-cv-01083-JTN-PJG (W.D. Mich. Nov. 19, 2020), <https://electioncases.osu.edu/wp-content/uploads/2020/11/Donald-Trump-v-Benson-Doc33.pdf> [<https://perma.cc/QK2F-ELJB>].

that the Secretary of State, Kathy Boockvar, gave improper guidance concerning a three-day extension to count absentee and mail-in ballots and sought an injunction to prevent Boockvar from offering further incorrect guidance.¹³⁹ The court granted the injunction, and, as such, this case is viewed as the only “win” the former president encountered during his election litigation.¹⁴⁰

In the federal case, *Donald J. Trump for President, Inc. v. Secretary of Pennsylvania*, the former president sued Pennsylvania election officials for improper election administration—such as “restrict[ing] poll watchers” and “let[ting] voters fix technical defects in their mail-in ballots”—and alleging such actions were violative of the U.S. Constitution.¹⁴¹ The U.S. Court of Appeals for the Third Circuit denied the plaintiffs leave to file their second amended complaint as well as their third request for an injunction “to undo Pennsylvania’s certification of its votes.”¹⁴² The court reasoned that “[t]he Campaign’s delay was undue”—given the five-day window between the plaintiffs’ filing of the second amended complaint motion and the deadline it requested from the court to resolve the case, which was the same day Pennsylvania certified its election results—and that amending the complaint

¹³⁹ Petition for Review in the Nature of a Complaint in Equity at 12–13, *Donald J. Trump for President, Inc. v. Boockvar*, No. 602 M.D. 2020 (Commonwealth Ct. of Pa. Nov. 4, 2020), <https://electioncases.osu.edu/wp-content/uploads/2020/11/DJT-v-Boockvar-Petition-for-Review.pdf> [<https://perma.cc/9DSB-SHPM>]. The former president filed lawsuits in Pennsylvania state courts to challenge specific provisions of the state election law; and individual voters filed state lawsuits that alleged fraud to bar election certification. *See, e.g.*, Notice of Appeal via Petition for Review of Decision by the Bucks County Board of Elections, In re: Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election, No. 2020-05786 (Bucks Cnty. Ct. of Common Pleas Nov. 9, 2020) <https://electioncases.osu.edu/wp-content/uploads/2020/11/Donald-J.-Trump-for-President-v-Bucks-County-BOE-NOP.pdf> [<https://perma.cc/U9DB-243P>]; Complaint, *Metcalf v. Wolf*, No. 636 MD 2020 (Commonwealth Ct. of Pa. Dec. 4, 2020) <https://electioncases.osu.edu/wp-content/uploads/2020/12/Metcalf-v-Wolf-Petition-for-Review.pdf> [<https://perma.cc/LQ77-ZCU3>]. *See generally Election Law at Ohio State, supra* note 110 (choose “Pennsylvania” from dropdown; then click “search”). *See also Judicial Rulings in Response to the 2020 Presidential Election, supra* note 127.

¹⁴⁰ *Donald J. Trump for President, Inc. v. Boockvar*, No. 602 M.D. 2020 (Commonwealth Ct. of Pa. Nov. 12, 2020), <https://electioncases.osu.edu/wp-content/uploads/2020/11/DJT-v-Boockvar-Injunction-Order.pdf> [<https://perma.cc/2T29-8KE8>].

¹⁴¹ *Donald J. Trump for President, Inc. v. Sec’y Pa.*, 830 Fed. Appx. 377, 382 (3d Cir. 2020). The former president also brought the following cases to Pennsylvania federal courts: *Donald J. Trump for President, Inc. v. Boockvar* No. 602 M.D. 2020 (Commonwealth Ct. of Pa. Nov. 4, 2020), which was appealed to Third Circuit and addressed above, and *Donald J. Trump, Inc. v. Philadelphia County Board of Elections* 241 A.3d 120 (Commonwealth Ct. of Pa. Oct. 23, 2020), which sought to enjoin the county board of elections from intentionally violating state law and was dismissed). *See generally Election Law at Ohio State, supra* note 110 (choose “Pennsylvania” from dropdown; then click “search”). Individual voters, including one judge, brought several state court cases to enjoin certification of election results and to allege widespread voter fraud—such as *Kelly v. Commonwealth*, 240 A.3d 1255 (Pa. 2020) and *Pirkle v. Wolf*, No. 4-20-cv-02088 (M.D. Pa. Nov. 10, 2020), <https://electioncases.osu.edu/wp-content/uploads/2020/11/Pirkle-v-Wolf-Doc1.pdf> [<https://perma.cc/8FFA-7ELF>]. *See generally Judicial Rulings in Response to the 2020 Presidential Election, supra*, note 127.

¹⁴² *Sec’y Pa.*, 830 Fed. Appx. at 382. Because the District Court granted the defendants’ motion to dismiss the first amended complaint, the Circuit Court’s affirmation of the District Court’s decision dismissed the case entirely. *Id.*

for a third time would render defendants' claims to dismiss the lawsuit moot.¹⁴³

Additionally, the court held that amending the complaint would be futile because the plaintiffs had already litigated the claims and simply reiterated “conclusory allegations” in their second amended complaint—such as the allegation that Democratic election officials “engaged in a deliberate scheme of intentional and purposeful discrimination . . . by excluding Republican and Trump Campaign observers from the canvassing of the mail ballots . . .” and that “2.5 million absentee and mail votes . . . should not have been counted.”¹⁴⁴ Lastly, the court denied the plaintiffs' injunction—which sought to “throw[] out millions of votes”—because, namely, “[t]he Campaign faces no irreparable harm” as the alleged “defective ballots” do not “move the needle” toward the “certified margin of victory of 80,555 votes,” and “[t]he public interest favors counting all lawful voters' votes.”¹⁴⁵ To conclude, the court emphasized the following point: “Voters, not lawyers, choose the President. Ballots, not briefs, decide elections.”¹⁴⁶

Wisconsin

Analogous to his Michigan and Pennsylvania lawsuits, in Wisconsin, the former president did not directly invoke the state's election contest statute and instead challenged improper state election administration to prevent election certification—specifically invoking Wisconsin's election recount statute.¹⁴⁷ For example, in the state court case, *Trump v. Biden*, the former president and vice president sued President-Elect Joseph R. Biden and Wisconsin election entities to “invalidate a sufficient number of Wisconsin ballots to change Wisconsin's certified election results” by challenging “four different categories of ballots—each applying only to voters in Dane County and Milwaukee County.”¹⁴⁸ The court rejected the plaintiffs' request to issue a “blanket invalidation of indefinitely confined voters” from the date of an

¹⁴³ *Id.* at 385–86.

¹⁴⁴ *Id.* at 386–87. According to lead counsel to the former president, Rudolph Giuliani, this lawsuit was “not a fraud case.” *Id.* In December 2022, the D.C. Bar found that Giuliani violated “at least one rule of attorney practice” for his role in this case and recommended he be disbarred. Aaron Katersky, *DC Bar's Disciplinary Counsel Recommends Rudy Giuliani Be Disbarred*, ABC NEWS (Dec. 15, 2022), <https://abcnews.go.com/US/de-bars-disciplinary-counsel-recommends-giuliani-disbarred/story?id=95370350> [<https://perma.cc/5LGS-7WZU>].

¹⁴⁵ *See* *Sec'y Pa.*, 830 Fed. Appx. at 388–90.

¹⁴⁶ *Id.* at 391.

¹⁴⁷ *See, e.g.*, *Trump v. Biden*, 951 N.W.2d 568 (Wis. 2020); WIS. STAT. § 9.01.

¹⁴⁸ *Id.* at 570. Individual voters also brought lawsuits in Wisconsin state courts to decertify election results and to allege constitutional violations due to improper election administration. *See, e.g.*, *Trump v. Evers*, 985 N.W.2d 450 (Wis. 2020) (consolidated in *Trump v. Biden*); *Wis. Voters Alliance v. Wis. Elections Comm'n*, 985 N.W.2d 449 (Wis. 2020). *See generally Election Law at Ohio State*, *supra* note 110 (choose “Wisconsin” from dropdown; then click “search”).

erroneous Facebook post by two county clerks because the argument had “no basis in reason or law; it is wholly without merit.”¹⁴⁹

Next, the court affirmed the trial court in holding that the remaining challenges to invalidate the three categories of absentee ballots were barred by the doctrine of laches.¹⁵⁰ Principally, the court noted that all three challenges constituted an unreasonable delay because the absentee application practice had been used for approximately a decade throughout the state (including the former president’s election win in 2016) and had not been challenged until *after* the election.¹⁵¹ Lastly, the court issued warning to parties bringing “election-related claims” in the future: they “have a special duty to bring their claims in a timely manner” so as to avoid “needless litigation and undermining confidence in the election results.”¹⁵²

In the federal court case, *Trump v. Wisconsin Elections Commission*, the former president sued Wisconsin election officials for state election administration laws which allegedly violated the Electors Clause of the U.S. Constitution.¹⁵³ Specifically, the plaintiff alleged two of the three election procedures it previously alleged in state court, and the U.S. Court of Appeals for the Seventh Circuit stated that the doctrine of laches effectively barred the plaintiffs’ state-law challenges: “The President had a full opportunity before the election to press the very challenges to Wisconsin law underlying his present claims . . . he cannot now—after the election results have been certified as final—seek to bring those challenges.”¹⁵⁴ Second, the court concluded that “[t]he President would fare no better on the merits of the Electors Clause claim” because the Wisconsin election officials’ actions were “under color of authority expressly granted to it by the Legislature” and such “authority is not diminished by allegations that the Commission erred in its exercise.”¹⁵⁵

¹⁴⁹ *Biden*, 951 N.W.2d at 571–72.

¹⁵⁰ *Id.* at 572.

¹⁵¹ *Id.* at 574–76.

¹⁵² *Id.* at 577.

¹⁵³ *Trump v. Wis. Elections Comm’n*, 983 F.3d 919 (7th Cir. 2020). Individual voters brought lawsuits in federal courts, alleging various constitutional violations and seeking to enjoin the certification of election results. *See, e.g.*, Complaint at 1, In Re: Feehan, No. 2:20-cv-1771 (E.D. Wis. Dec. 1, 2020) <https://electioncases.osu.edu/wp-content/uploads/2020/12/Feehan-v-WEC-Doc1.pdf> [<https://perma.cc/CTA6-MPT5>]; Verified Complaint at 2, Langenhorst v. Pecore, 1:20-cv-01701-WCG (E.D. Wis. Nov. 12, 2020), <https://electioncases.osu.edu/wp-content/uploads/2020/11/Langenhorst-v-Pecore-Doc4.pdf> [<https://perma.cc/U4EY-6GXZ>]. *See generally Election Law at Ohio State*, *supra* note 110 (choose “Wisconsin” from dropdown; then click “search”).

¹⁵⁴ *Wis. Election Comm’n*, 983 F.3d at 925–26.

¹⁵⁵ *Id.* at 926–27.

Discussion of Common Legal Reasons Why Such Cases Were Dismissed

Among the state and federal cases analyzed in this Note that were brought by the former president to contest the outcome of the 2020 election, there were several common reasons courts dismissed these cases: (1) laches; (2) justiciability doctrines such as mootness and standing; and (3) state and federal rules of civil procedure. Additionally, multiple courts also denied the plaintiffs' primary form of relief sought: preliminary injunctions. First, three courts dismissed Trump's lawsuits due to the doctrine of laches.¹⁵⁶ Those courts that dismissed cases due to laches tended to focus on the fact that the plaintiffs were claiming injury due to aspects of election procedure—that in some cases were present for a decade before the case was brought—that they should have challenged before the election occurred; and, thus, they lost the ability to challenge such procedures after the election ended.¹⁵⁷

Equal to the number of cases dismissed due to laches, courts dismissed three cases due to the justiciability doctrines of mootness and standing.¹⁵⁸ Those courts that dismissed the cases for mootness tended to focus on the fact that the cases were brought or were ongoing after the remedy sought by plaintiffs was impossible to grant: preventing certification of the election results. Additionally, several courts dismissed Trump's cases based on state and federal rules of civil procedure—namely, voluntary dismissal by the plaintiffs, failure to plead fraud with particularity, lack of jurisdiction, and denying plaintiffs' leave to amend their complaint.¹⁵⁹ Furthermore, multiple courts also denied the plaintiffs' request for a preliminary injunction to enjoin the certification of election results; and, in those cases, the courts noted that the plaintiffs' claims had no real likelihood of success on the merits

¹⁵⁶ Courts dismissed three cases, in whole or in part, due to the doctrine of laches: *Bowyer v. Ducey*, 506 F. Supp. 3d 699 (D. Ariz. 2020), *Trump v. Biden* 951 N.W.2d 568 (Wis. 2020), and *Trump v. Wis. Election Comm'n*, 983 F.3d 919 (7th Cir. 2020).

¹⁵⁷ See *Biden*, 951 N.W.2d at 575.

¹⁵⁸ Courts dismissed two cases, in whole or in part, on the basis of mootness: *Donald Trump for President, Inc. v. Benson*, No. 20-000225-MZ (St. of Mi. Ct. of Claims Jan. 6, 2021), <https://electioncases.osu.edu/wp-content/uploads/2020/11/DJT-v-Benson-Order-Dismissing-Case-as-Moot.pdf> [<https://perma.cc/W74F-ERLD>] and *Bowyer v. Ducey*, 506 F. Supp. 3d 699 (D. Ariz. 2020). Similarly, Georgia federal court case *Trump v. Kemp*, 511 F. Supp. 3d 1325 (N.D. Ga. 2021) was dismissed due to a lack of constitutional standing given the ongoing election contest claim in the state court and the lack of traceability of the plaintiff's injury to the defendants.

¹⁵⁹ Respectively, the cases are as follows: *Donald J. Trump for President, Inc. v. Hobbs*, No. CV2020-014248 (Maricopa Cnty. Superior Ct. Nov. 13, 2020) <https://electioncases.osu.edu/wp-content/uploads/2020/11/Trump-v-Hobbs-Notice-of-Partial-Mootness.pdf> [<https://perma.cc/4YM2-66PJ>]; *Donald Trump for President, Inc. v. Benson*, No. 20-000225-MZ (St. of Mi. Ct. of Claims Jan. 6, 2021); *Bowyer v. Ducey*, 506 F. Supp. 3d 699 (D. Ariz. 2020); *Trump v. Raffensberger*, No. 2020CV343255 (Fulton Cnty. Superior Ct. Dec. 4, 2020); and *Donald Trump for President, Inc. v. Sec'y Pa.*, 830 Fed. Appx. 377 (3d Cir. 2020).

and that the public interest in upholding the election results outweighed any burden the plaintiffs suffered.¹⁶⁰

Although only a handful of these cases directly invoked a state's election contest statute or involved a formal election contest petition,¹⁶¹ those cases that did not directly invoke an election contest statute still addressed one of the most common grounds for election contests: fraudulent or illegal election administration.¹⁶² Furthermore, the former president tended to couch these claims of fraud as the basis for broader claims like constitutional violations and requests for injunctions; and such actions were summarily dismissed through laches or through justiciability or procedural grounds.¹⁶³ Thus, the former president's legal strategy largely centered on borrowing the grounds from election contest statutes while also avoiding formal election contest proceedings and their associated strict filing deadlines, state court jurisdiction requirements, limited enumerated grounds, and finite remedies. In essence, the former president's lawsuits were functionally election contests—just not so in form or in title.

While the former president's lawsuits would have been more legally and structurally sound if he had utilized election contest causes of action, he still likely would have been legally unsuccessful because the alleged election fraud failed to materialize in any state to impact the outcome of the election. In fact, part of what contributed to the former president's lack of success in these lawsuits—notwithstanding the lack of evidence of fraud—is akin to presidential candidate Gore's failure in contesting the outcome of the presidential election in Florida in 2000:

The fundamental flaw in Gore's legal strategy . . . was [his] *failure to appreciate the difference in law and dynamics between an administrative recount of votes and an election contest*. If the necessary uncounted votes were there, an appropriate recount could find them. If the campaign was left to pursuing an election contest, however, *the chances of*

¹⁶⁰ See *Donald J. Trump for President, Inc. v. Sec'y Pa.*, 830 Fed. Appx. 377, 388–90 (3d Cir. 2020). See also *Trump v. Kemp*, 511 F. Supp. 3d 1325, 1329–30 (N.D. Ga. 2021); *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 707 (D. Ariz. 2020). Importantly, the one “win” attributed to the former president came in the form of the Pennsylvania state court's granting of a preliminary injunction in *Donald J. Trump for President, Inc. v. Boockvar*, No. 602 M.D. 2020 (Commonwealth Ct. of Pa. Nov. 4, 2020).

¹⁶¹ Cases directly invoking election contests include *Bowyer v. Ducey*, 506 F. Supp. 699 (D. Ariz. 2020), *Trump v. Raffensperger*, No. 2020CV343255 (Fulton Cnty. Superior Ct. Dec. 4, 2020), and *Trump v. Kemp*, 511 F. Supp. 3d 1325 (N.D. Ga. 2021).

¹⁶² See, e.g., *Kemp*, 511 F. Supp. 3d at 1331–32.

¹⁶³ See, e.g., *Donald J. Trump for President, Inc. v. Sec'y Pa.*, 830 Fed. Appx. 377, 391 (3d Cir. 2020) (“Seeking to turn those state-law claims into federal ones, the Campaign claims discrimination. But its alchemy cannot transmute lead into gold.”). See also *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 713–14 (D. Ariz. 2020); *Kemp*, 511 F. Supp. 3d 1325, 1331–32 (N.D. Ga. 2021).

success were essentially nonexistent in the time available before the deadlines set by federal law for the selection of presidential electors.¹⁶⁴

Similar to Gore’s legal strategy, former President Trump failed to appreciate the nuances of state election laws—which can be seen, for example, through his many dismissed lawsuits on the basis of laches for failing to bring claims concerning election administration and procedure *prior* to election day and through disregarding basic jurisdictional requirements in election contest statutes. Ultimately, the former president’s legal strategy proved to be *politically* successful by providing him a legitimate forum with which to tout his unfounded claims of election fraud.¹⁶⁵ When appropriately invoked, however, causes of action pertaining to elections, while imperfect and intricate, can help provide order to and disincentivize meritless post-election disputes.

Discussion of Why A Uniform Election Contest Law is Needed

A uniform or model election contest statute is needed so that another candidate in a high public interest election is not able to manipulate the legal process for political gain. Uniformity among the varied state laws can help ensure that such lawsuits are not as easy to bring as other civil claims and contain more severe penalties for those who bring frivolous claims. Currently, in many states, election contest statutes “encourage” post-election litigation—or, at the very least, do not discourage—post-election litigation.¹⁶⁶ Frivolous post-election litigation is harmful to democracy for myriad reasons, especially in a hyper-politized environment, because it casts doubt on the validity of an election and on the infallibility of an individual’s vote.¹⁶⁷

Indeed, there are practical, “normative” concerns associated with unmeritorious election contests, such as the fact that they may “negatively affect the legitimacy of the ultimate winner.”¹⁶⁸ This is especially so given the existence of increased “hyperpolitization and election contests” associated with modern elections following *Bush v. Gore*.¹⁶⁹ Ultimately, uniform election contest statutes that seek to deter unmeritorious post-election challenges would ensure that candidates in a nationwide race will be

¹⁶⁴ Bickerstaff, *supra* note 42, at 463 (emphasis added).

¹⁶⁵ Paleologos, *supra* note 13.

¹⁶⁶ Douglas, *supra* note 94, at 1019.

¹⁶⁷ See generally Becerra, *supra* note 16, at 118–19.

¹⁶⁸ Douglas, *supra* note 94, at 1019.

¹⁶⁹ *Bush v. Gore*, 531 U.S. 98 (2000); Douglas, *supra* note 94, at 1015.

subjected to the same kinds of evidentiary standards and penalties and could deter such lawsuits from occurring. Undeniably, “[p]ublic interest in election contests for higher, nationwide offices such as the presidency is likely to be substantial, making it important to understand the procedures by which tribunals decide these disputes.”¹⁷⁰

Additionally, the common reasons why courts dismissed the former president’s claims illuminate the defects as well as the strengths of election contest statutes regarding their ability to discourage unmeritorious claims. The courts’ dismissals of the former president’s election lawsuits due to laches illuminates the idea that—to prevent, deter or, ultimately, dismiss frivolous lawsuits—the subject matter or grounds for election contests should concern only post-election disputes and not election administration or procedure that existed prior to election day. For example, if all states’ election contest statutes contained a provision that limited election contests to *post*-election disputes, Trump would have been prevented from filing post-election lawsuits challenging election procedures that had existed for decades (like in Wisconsin) or that had been changed specifically to make voting easier during the COVID-19 pandemic (like new laws in Georgia making absentee voting more accessible to the public).¹⁷¹

Likewise, courts’ dismissals of the former president’s election lawsuits due to both state and federal rules of civil procedure illuminate the idea that election contest statutes should retain or adopt strict statutes of limitation as well as stringent and consistent evidentiary burdens. Courts could dismiss frivolous claims alleging systemic irregularities or election officials’ misconduct more easily and quicker with a higher, uniform burden of proof. Additionally, having strict filing deadlines for election contests would allow courts to dispose of frivolous lawsuits early in litigation and would not allow candidates to have a platform to air their grievances on the outcome of the election.

Similarly, courts’ dismissals of the former president’s election lawsuits due to justiciability doctrines, like mootness, illuminates the idea that the remedies available under election contest statutes should be limited, enumerated, and should not allow for preventing certification of electors in

¹⁷⁰ Douglas, *supra* note 43, at 5.

¹⁷¹ See *Trump v. Biden*, 951 N.W.2d 568, 575 (Wis. 2020) (“[WIS. STAT. § 6.87(2), the Wisconsin absentee ballot statute] has been relied on in eleven statewide elections, including in the 2016 presidential election when President Trump was victorious in Wisconsin.”). See also Complaint, at 27, *Trump v. Raffensperger*, No. 2020CV343255 (Fulton Cnty. Superior Ct. Dec. 4, 2020), <https://electioncases.osu.edu/wp-content/uploads/2020/12/Trump-v.-Raffensperger-Petition-to-Contest.pdf> [<https://perma.cc/5LAW-G64B>] (equating systemic irregularities in the Georgia election to rules changed for absentee ballots in light of the COVID-19 pandemic by stating “[r]espondent Raffensperger sent unsolicited absentee ballot applications before the 2020 primary election to all persons on the list of qualified electors, whether or not an application had been requested by the voter.”).

presidential elections. Currently, election contest statutes inevitably involve broad judicial discretion due to the lack of guidance provided in the statutes.¹⁷² This discretion is particularly prone to abuse due to the potentiality for a judge's political views to influence the outcomes of such cases, albeit this was not the case for several Trump-appointed federal judges deciding his election claims.¹⁷³ Judges' discretion regarding the remedies of election contests are especially concerning given that the enumerated remedies (to void the election and declare a new winner or to order a new election) are severe and undemocratic. While several courts rejected former President Trump's requests to enjoin the certification of election results, statutorily prohibiting courts from considering granting this drastic remedy would ensure courts do not abuse this power and would deter losing candidates, like the former president, from requesting this remedy in the first place.¹⁷⁴

Overall, Trump's election litigation and legal strategy foreshadow future circumstances where losing candidates in high public-interest elections may utilize the judiciary to amplify false claims of election fraud and to avoid states' election contest statutes altogether—like former President Trump did in Michigan, Pennsylvania, and Wisconsin. Strengthening and unifying state election contest claims will allow future courts to avoid contemplating unmeritorious election contests by—for example—applying statutes which enumerate and limit the grounds to only post-election events; give state courts exclusive jurisdiction (and, thus, remove federal courts' ability) to resolve these disputes; and remove the possibility for courts to grant the remedy of enjoining the certification of election results. If former President Trump were held to these standards, his lawsuits would have not only been dismissed quicker and closer to election day, but he may not have been able to bring them at all—thus saving the public and the legal system from the harm that stems from courts entertaining dishonest, frivolous election claims that even his own influential political supporters knew were false.¹⁷⁵

¹⁷² Petition at 40–41, *Trump v. Raffensperger*, No. 2020CV343255 (Fulton Cnty. Superior Ct. Dec. 4, 2020), <https://electioncases.osu.edu/wp-content/uploads/2020/12/Trump-v.-Raffensperger-Petition-to-Contest.pdf> [<https://perma.cc/5LAW-G64B>].

¹⁷³ Jan Wolfe, *U.S. Judiciary, Shaped by Trump, Thwarts His Election Challenges*, REUTERS (Dec. 1, 2020), <https://www.reuters.com/article/us-usa-election-trump-judges/u-s-judiciary-shaped-by-trump-thwarts-his-election-challenges-idUSKBN28B600> [<https://perma.cc/X4A6-YPCS>].

¹⁷⁴ See *Donald J. Trump for President, Inc. v. Sec'y Pa.*, 830 Fed. Appx. 377, 388–90 (3d Cir. 2020); see also *Trump v. Kemp*, 511 F. Supp. 3d 1325, 1329–30 (N.D. Ga. 2021); *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 707 (D. Ariz. 2020).

¹⁷⁵ See Herb Scribner and Sara Fischer, *Rupert Murdoch Admits Fox News Hosts Peddled Election Lies*, AXIOS (Feb. 27, 2023), <https://www.axios.com/2023/02/27/rupert-murdoch-admits-fox-news-hosts-peddled-election-lies> [<https://perma.cc/8KPJ-N5LN>].

III. RESOLUTION

Given the shortfalls and discrepancies among state election contest laws in the context of such a high public-interest election, this Note advocates for the adoption of a uniform election contest statute across all fifty states. A summary of proposed remedies from legal scholars in this field precedes this proposal to provide context for the substance and importance of the substantive and procedural provisions of the proposed Model Act.

Summary of Proposed Resolutions

Several legal scholars have proposed solutions for improving election contests in the following areas: (1) uniformity of certain aspects of election contest statutes—including the statutes of limitations, grounds, and remedies; (2) deterring post-election litigation; and (3) removing the resolution of election contests from the judiciary entirely.¹⁷⁶ First, author Joshua Douglas proposes states reform their election contest statutes in three ways (based on the principle of reducing judges' ideological decision-making): timeliness, clearer standards by which the decision-maker decides the case, and fairer decision-makers (including a proposed tribunal model comprised of three “neutrals” and two “partisan” judges).¹⁷⁷

Likewise, Professor Steven F. Huefner suggests various solutions for states to strengthen the available remedies for election litigation, such as through a framework involving “prototypes of election miscues and the range of existing remedial tools available to respond.”¹⁷⁸ Huefner also suggests reforming election contest statutes to contain clear procedural matters, tests to constrain judges according to the particular “election misuse” at issue, and an increased evidentiary burden for allegations of election irregularities.¹⁷⁹

Additionally, in another article, Joshua Douglas proposes several possible solutions for “disincentivizing post-election litigation,” which—ranging from most extreme to least extreme—are as follows: banning election contest claims, imposing monetary hurdles to bringing such a claim, and imposing a range of penalties on candidates who have previously brought an unmeritorious election contest claims.¹⁸⁰ Alternatively, Professor Richard Hasen suggests limiting the grounds for post-election litigation to only those issues that “could reasonably have been foreseen and raised before the

¹⁷⁶ See Douglas, *supra* note 43, at 52–53; see Huefner, *supra* note 83, at 268–69; see Becerra, *supra* note 16, at 130.

¹⁷⁷ Douglas, *supra* note 43, at 52–53.

¹⁷⁸ Huefner, *supra* note 83, at 268–69.

¹⁷⁹ *Id.* at 278–85.

¹⁸⁰ Douglas, *supra* note 94, at 1027–34.

election” so as to not give candidates the “option” of waiting to sue until after the election ends.¹⁸¹

Lastly, author Jessica Becerra suggests that using alternative dispute resolution as an alternative to litigation for election law disputes can “limit[] the judicial influence on election law decisions and the media’s reporting of election law disputes” and thereby “improve the civil discourse of our elections and political culture.”¹⁸² In sum, most solutions offered in the election contest context involve disincentivizing or removing the option of litigation altogether or, otherwise, creating more precise, enumerated terms and remedies in the statutes themselves to provide for a more ordered and impartial process overall.

Proposed Resolution

This Note offers a proposal for a Model Uniform Election Contest Statute to the newly-created Uniform Law Commission’s Election Law Committee. The Uniform Law Commission created an Election Law Committee in 2021 to “study the need for and feasibility of a model act on the subject.”¹⁸³ The Uniform Law Committee proposes new, model legislation for states to adopt in the absence of federal legislation on the subject. Considering the historical development of election contest statutes, the local and decentralized nature of election administration, and the fact that federal legislation on the subject may pose constitutional issues beyond the scope of this Note, a Model Act is the best avenue for states to adopt or amend their existing election contest statutes.

Below, this Note proposes both substantive and procedural provisions for a potential Model Act, in light of the considerations previously discussed as to why existing election contest statutes need modification and uniformity—including the potential for politicians to abuse the legislative process without many obstacles or impediments for their own political gain.

Proposed Substantive Provisions

Proposed substantive provisions for the Model Act include the following: (1) restrictions on the subject-matter or the grounds of election

¹⁸¹ Richard L. Hasen, *Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown*, 62 WASH. & LEE L. REV. 937, 993–94 (2005).

¹⁸² Becerra, *supra* note 16, at 125. Specifically, Becerra advocates for a federal statute that requires “a mandatory mediation process for all pre-election disputes that arise more than one month before a scheduled election” as well as “mandatory arbitration” to be used for disputes occurring “prior to, on, or after election day.” *Id.* at 130.

¹⁸³ *Election Law Committee*, UNIF. L. COMM’N, <https://www.uniformlaws.org/committees/community-home?CommunityKey=98bdd2ac-3433-4010-9345-61ac7863f291> [<https://perma.cc/V8JL-TWDM>] (last visited Nov. 6., 2022).

contests; (2) enumeration of remedies and allowing for non-litigation remedies; and (3) imposing a higher evidentiary burden on the contestants bringing such claims.

Subject Matter Restrictions

Consistent with Richard Hasen's suggestion to limit the grounds for election contest statutes to concern solely post-election matters,¹⁸⁴ the subject-matter of or grounds for election contest statutes should be narrowly-focused on post-election matters and should be enumerated and uniform. For example, election contest actions should be limited to grounds that concern solely post-election matters, such as bribery or unlawful conduct by election officials, including improper vote-counting that would impact the outcome of the election. Further, no election contest statutes should involve grounds for pre-election litigation claims, such as lawsuits invoking election recounts or challenging election administration or procedure. As such, candidates and their attorneys will have a clearer understanding of which claims must be litigated before or after election day.

Available Remedies

Remedies should also be enumerated in the Model Act to limit judicial discretion involved in election contests, especially those that concern high public-interest elections. In addition to enumerating the common existing remedies available in election contest statutes (to declare the election void and issue a new election or to declare a new winner of the election), there should also be more nuanced provisions according to the particular ground alleged for the election contest as suggested by Steven Huefner.¹⁸⁵

For example, in situations where the dispute is centered on "which votes to count," and the contestant is able to prove there are a number of "tainted" or "invalid" votes, the election contest statute should enumerate the available remedies to the judge.¹⁸⁶ Huefner suggests that if the contestant can prove and identify the invalid votes, such votes should be subtracted "from the official tally and declare the winner the candidate who has the most remaining votes."¹⁸⁷ Conversely, if the votes cannot be properly identified and are below the margin of victory, the judge can either choose to let the election stand or to engage in "proportional deduction" in cases without

¹⁸⁴ Hasen, *supra* note 1801.

¹⁸⁵ Huefner, *supra* note 83, at 268–69.

¹⁸⁶ *Id.* at 279.

¹⁸⁷ *Id.* at 280.

voting fraud or irregularity.¹⁸⁸ Additionally, remedies should not be restricted solely to the judiciary as Becerra suggests.¹⁸⁹ Courts should be allowed to refer the parties to mediation or arbitration to allow the parties to have an opportunity to resolve the election dispute and gather evidence among themselves.

Clear and Convincing Evidentiary Burden

Courts should impose upon the losing candidate bringing an election contest claim a clear and convincing burden of proof for all grounds of an election contest but especially for claims alleging fraud and illegal votes. As noted by Steven Huefner, a “clear and convincing test” should be the evidentiary standard for particular grounds of election contests—such as those that allege voting irregularities—to rebut “the strong presumption of correctness” of an election.¹⁹⁰ Additionally, higher evidentiary burdens could certainly disincentivize candidates from producing demonstrably weak or irrelevant evidence of fraud to contest elections, and it could encourage parties to, under the direction of the judge or arbiter, engage in discovery.

Proposed Procedural Provisions

Proposed procedural provisions for the Model Act include the following: (1) enumeration of jurisdiction, venue, and appellate processes; (2) enumeration of a uniform statute of limitations period; and (3) built-in sanctions and penalties for both the contestants and their attorneys.

Jurisdiction and Venue

Election contest statutes should enumerate the jurisdiction and venue for contesting presidential elections—including assigning original jurisdiction to the state trial court or the state supreme court. Limiting the jurisdiction to state courts will limit the number of lawsuits that can be brought statewide and federally and will focus the lawsuits around the resolute and intricate state election law framework. Additionally, if an election contest claim is first brought to a state trial court, the statute should clearly enumerate whether an appellate procedure is allowed and whether that should follow the traditional appellate process in that state. Limiting jurisdiction to state courts to consider election contest claims is consistent

¹⁸⁸ *Id.* at 282.

¹⁸⁹ Becerra, *supra* note 16, at 125.

¹⁹⁰ Huefner, *supra* note 83, at 313.

with the decentralized nature of the U.S. election system and provides a more organized and clearer pathway for election contest proceedings. Lastly, it would deter losing candidates from couching the traditional grounds of an election contest claim within general constitutional violations in federal courts, like the former president did in numerous cases.¹⁹¹

Uniform Statute of Limitations

Consistent with narrowing the grounds for election contests to concern solely post-election disputes, election contest statutes should provide a uniform statute of limitations for bringing an election contest to incentivize candidates to decide quickly and carefully about the claims they bring and to bar claims brought too long after the election has ended. The uniform statute of limitations should be within the range deduced by Joshua Douglas as being the average length of time among all states' election contest statutes with enumerated timeliness provisions: between five and fourteen days after the completion of the canvass or certification of the election result.¹⁹² This timeline would also allow for election contests to occur before the certification of presidential electors by Congress—in line with the original purpose of the Electoral Count Act of 1887.¹⁹³

Sanctions and Penalties

Further, to deter candidates and their attorneys from bringing unmeritorious claims, there should be enumerated sanctions provided in every election contest statute against both the candidates and their attorneys. Attorney sanctions could closely model the language present in the relevant federal rules of civil procedure's pleading requirements (Rule 11)¹⁹⁴ as well as from the relevant Model Rules of Professional Conduct (Rule 3.1¹⁹⁵ and Rule 3.3).¹⁹⁶ Likewise, as noted by Joshua Douglas, statutes should contain provisions for imposing sanctions on the losing candidates (in addition to

¹⁹¹ See, e.g., *Donald J. Trump for President, Inc. v. Sec'y Pa.*, 830 Fed. Appx. 377, 391 (3d Cir. 2020). See also *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 713–14 (D. Ariz. 2020); *Trump v. Kemp*, 511 F. Supp. 3d 1325, 1331–32 (N.D. Ga. 2021).

¹⁹² Douglas, *supra* note 43, at 34.

¹⁹³ *Id.* at 30.

¹⁹⁴ Fed. R. Civ. P. 11. (allowing courts to impose the following sanctions: “nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney’s fees and other expenses directly resulting from the violation”).

¹⁹⁵ MODEL RULES OF PRO. CONDUCT r. 3.1 (AM. BAR ASS’N 2018) (requiring lawyers to “not bring or defend a proceeding . . . unless there is a basis in law and fact for doing so that is not frivolous”).

¹⁹⁶ MODEL RULES OF PRO. CONDUCT r. 3.3 (Am. Bar Ass’n, 2018). (requiring lawyers to “not knowingly make a false statement of fact or law to a tribunal” or “offer evidence the lawyer knows to be false”).

their attorneys) for bringing those claims—such as paying for the prevailing candidate’s attorneys’ fees and being enjoined from filing another election contest claim in the state for the remainder of the elections period.¹⁹⁷ Judges should also be able to consider increasing the sanctions when the election contest involves an election with higher public interest, such as presidential elections.

Overall, these substantive and procedural additions to a proposed Model Act would serve to deter unmeritorious election contests, establish a clearer pathway for candidates to challenge election results, and reduce the ability for candidates and their attorneys to utilize the courtroom to amplify false claims regarding the legitimacy of an election.

CONCLUSION

As it stands, state election contest statutes are ripe for abuse by politicians seeking to sow discord in election results to bolster their political capital. These statutes contain no built-in protections to eliminate unmeritorious election contests nor to punish attorneys bringing such frivolous claims, and they provide judges with extensive discretion to resolve disputes that impact the democratic process. This development is particularly problematic given that, in many states, these statutes are the only way a losing candidate or individual voter may contest the outcome of an election. The former president’s attempt to contest the outcome of the 2020 election through post-election lawsuits—which culminated in violence on January 6, 2021—sheds light on the imperfections of and inconsistencies between election contest statutes.

Accordingly, this Note advocates for both substantive and procedural provisions of a Model Election Contest Act to reduce the possibility of meritless and divisive lawsuits contesting election outcomes—especially for high public interest elections. Had former President Trump been subjected to the proposed provisions of the Model Act, he would have been limited to only post-election events as grounds for his claims, his claims would have been heard solely by state courts, and he would not have been permitted to request an injunction of certification of election results. Further, these legal limits would have potentially deterred him from initiating voluminous, frivolous litigation, or—at the very least—he would have been penalized for doing so. Broadly speaking, both unifying and deterring election contest proceedings serve the broader goal of restoring the public’s faith in the elections process and ensuring, in the words of a Pennsylvania judge, that

¹⁹⁷ Douglas, *supra* note 94, at 1031–34.

“[v]oters, not lawyers, choose the President” and “[b]allots, not briefs, decide elections.”¹⁹⁸

¹⁹⁸ Donald J. Trump for President, Inc. v. Sec’y Pa., 830 Fed. Appx. 377, 391 (3d Cir. 2020).