

No. 22O155

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In the **Supreme Court of the United States**

STATE OF TEXAS,  
*Plaintiff,*

v.

COMMONWEALTH OF PENNSYLVANIA,  
STATE OF GEORGIA, STATE OF MICHIGAN,  
AND STATE OF WISCONSIN,  
*Defendants.*

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**On Motion for Leave to File a Bill of Complaint and  
Motion for Expedited Consideration and for  
Emergency Injunctive Relief or Stay**

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**MOTION FOR LEAVE TO FILE AND AMICUS  
BRIEF OF CHRISTIAN FAMILY COALITION (CFC)  
FLORIDA, INC. IN SUPPORT OF PLAINTIFF**

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December 10, 2020

Amicus Christian Family Coalition (CFC) Florida, Inc., hereby moves on an emergency basis for leave to file its attached Amicus Brief in support of Plaintiff Texas' emergency motion and request for judgment.

**THE AMICUS BRIEF SHOWS THE NEED TO PRESERVE THE INTEGRITY AND FAIRNESS OF THE PRESIDENTIAL ELECTION PROCESS BY ENFORCING 3 U.S.C. § 2 AGAINST THE POST-ELECTION-DAY TRANSGRESSIONS OF THE FOUR DEFENDANT STATES**

Plaintiff Texas correctly argues that various constitutional provisions and Title 3 section 2 of the United States Code (3 U.S.C. § 2) warrant relief against the four defendant States. Texas correctly argues that 3 U.S.C. § 2 authorizes State legislatures to step in and directly select Presidential electors in cases of failed Presidential elections.

But 3 U.S.C. § 2 also has another purpose. It requires State legislatures to tightly regulate the process of counting ballots for President whenever States run beyond election day in the counting process. Section 2 provides that States may finish the counting on “a subsequent day [only] in such a manner as the legislature of such State shall direct.” Each of the four States violated 3 U.S.C. § 2 by prolonging their processes of counting Presidential ballots long after election day without its legislature’s expressly prescribing the “manner” of the post-election-day counting of ballots, as required by 3 U.S.C. § 2. It was during this unregulated post-election-day ballot counting – in violation of 3 U.S.C. § 2 – that the serious electoral transgressions occurred in the four defendant

States. Their selection and certification of Presidential electors is void, for violating 3 U.S.C. § 2.

The attached Amicus Brief will assist this Court by addressing this additional purpose of 3 U.S.C. § 2 and the serious and prolonged violations of this section by the defendant States.

Because of the urgent nature of plaintiff's pending motion, filed only two days ago, as well as defendants' lack of appearance in this Court as of the present time, Amicus has not had an opportunity to seek the parties' consent to the filing of the attached Amicus Brief. Nor was it practical to do so. Numerous additional States are joining this case, and the time is short.

The Amicus Brief is short, focuses on a single statutory section, 3 U.S.C. § 2, will not prejudice any party, will assist this Court, and is being filed as soon as possible following plaintiff's emergency motion.

This Court should grant this motion and permit the filing of the attached Amicus Brief.

Respectfully submitted,

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**AMICUS BRIEF OF CHRISTIAN FAMILY  
COALITION (CFC) FLORIDA, INC., A FLORIDA  
NOT-FOR-PROFIT CORPORATION**

The Christian Family Coalition (CFC) Florida, Inc. (“Amicus”), hereby submits its Amicus Brief in support of Plaintiff’s emergency motion for a TRO, preliminary injunction, etc., to enforce the requirements of 3 U.S.C. § 2 to remedy the prolonged and delayed post-election-day counting of ballots by the four defendant States.

**INTEREST OF AMICUS<sup>1</sup>**

Amicus, a non-profit corporation, is a human rights and social justice advocacy organization representing over 500,000 fair-minded voters. Amicus actively seeks to protect human rights and social justice in litigation and political forums. The performance of Amicus’s function in legislative and executive forums depends upon the responsiveness of the political process and, in turn, upon the fairness of public elections. The fair and responsive election of the President, secured by 3 U.S.C. § 2 is indispensable to the integrity of Presidential elections and thus to the responsiveness of the political processes upon which Amicus depends to protect human rights and social justice.

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<sup>1</sup> No counsel or other representative or agent of any party in these cases authored any part of this Amicus Brief or exercised any form of control or approval over this Amicus Brief or any portion of it. No person or entity, aside from Amicus or its counsel, made a monetary contribution to the preparation or submission of this Amicus Brief.

## SUMMARY OF ARGUMENT

Texas correctly argues that 3 U.S.C. § 2 authorizes State legislatures to directly select Presidential electors where their selection by popular ballot has failed or been corrupted. But 3 U.S.C. § 2 also has another effect. It provides that if States prolong the process of selecting Presidential electors beyond election day, States may finish the counting on “a subsequent day [only] in such a manner as the legislature of such State shall direct.” Each of the four States violated 3 U.S.C. § 2 by prolonging their processes of counting Presidential ballots long after election day without its legislature’s expressly prescribing the “manner” of the post-election-day counting of ballots, as required by 3 U.S.C. § 2. It was during this unregulated post-election-day ballot counting – in violation of 3 U.S.C. § 2 – that the serious electoral transgressions occurred in the four defendant States. Their selection and certification of Presidential electors is void, for want of compliance with 3 U.S.C. § 2.

## ARGUMENT

The relief Texas seeks is essential. If this Court fails to remedy the serious transgressions by the four defendant States, the same problems will arise again in future elections, undermining the electoral system and public confidence in it. Kicking the can down the road – to the next election – will only exacerbate the problem. Nothing less than the nation’s democratic form of government is at stake.

Amicus fully supports Texas’ claim, but there is an additional ground for the relief Texas seeks. Each

defendant State has violated 3 U.S.C. § 2, thereby voiding its selection and certification of Presidential electors.

Section 2 provides that if a State cannot complete the counting of ballots for Presidential electors on the designated election day – as required in 3 U.S.C. § 1 – the State may thereafter finish the counting on “a subsequent day [only] in such a manner as the legislature of such State shall direct.” Each defendant State delayed its counting of ballots for Presidential electors well beyond election day without any specification by its Legislature as to the “manner” of post-election-day counting. This clear violation of 3 U.S.C. § 2 voids the selection and certification of Presidential electors in each defendant State.

Title 3 U.S. Code § 2 provides:

“Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day *in such a manner as the legislature of such State may direct.*”

(emp. added).

It is undisputed that each defendant State failed “to make a choice” of Presidential electors on the election day “prescribed by law,” the first Tuesday after the first Monday in November, the uniform national day for selecting electors under 3 U.S.C. § 1. Indeed, the counting of ballots in each defendant State continued several days, if not weeks, after election day, often after unexplained – and suspicious – hiatuses in ballot

counting. However, federal law permitted this post-election-day counting to continue into “a subsequent day [only] in such a manner as the legislature of such State may direct.” 3 U.S.C. § 2. Yet it appears that none of the legislatures in the defendant States provided for the “manner” of post-election-day counting of ballots for Presidential electors. Thus the selection processes in the defendant States violated 3 U.S.C. § 2, voiding their selection and certification of Presidential electors.

An examination of each defendant State’s election laws confirms this. Pennsylvania law provides for the popular election of Presidential electors but makes no provision for the “manner” of post-election-day ballot-counting. *See* 25 Pa.Stat. §§ 3191-3194.

Likewise, Georgia’s election law provides for the popular election of Presidential electors but fails to specify the “manner” of post-election-day counting of ballots. *See* 21 Ga.Code §§ 21-2-132 - 21-2-529. Nor does Michigan election law address the latter subject (Mich.Stat. §§ 168.41 - 168.47); nor does Wisconsin election law (Wisc.Stat. §§ 7.75(1), 8.18 – 8.185).

Some or all defendant States have legislative provisions for other post-election day matters, such as recounts, challenges, and filling vacancies. *See, e.g.*, Wisc.Stat. § 9.01 (recounts); *id.*, at § 7.75(1) (vacancies); Mich.Stat. § 168.47 (vacancies); 25 Pa.Stat. § 3193 (vacancies). Wisconsin law further provides for gubernatorial certification of the election “as soon as possible” after certification by the State Board of Canvassers (Wisc.Stat. § 168.46).

But none of these State statutes provides for the “manner” of post-election-day counting of ballots for Presidential electors – in violation of the express requirement of 3 U.S.C. § 2.

It was precisely during the post-election-day “counting” of ballots in each defendant State that the entire process went off track. The post-election-day transgressions were serious and included: statistically implausible voting spikes of hundreds-of-thousands of votes with 99%-vs-1% margins, another voting spike of more than 100,000 votes with an absurd 100%-vs-0% margin, ballot double-counting, poll-watcher exclusion, miraculous “catch-ups” after suspicious halts in ballot-counting, late-delivered ballots brought by out-of-State trucks, and more.

Congress wisely sought to prevent exactly this type of post-election-day mischief by requiring the tight regulation of post-election-day counting “in such a manner as the legislature of such State may direct.” 3 U.S.C. § 2. The defendant States defaulted in their obligation to enact this post-election-day regulation. Their selection and certification of Presidential electors is void.

These are federal issues, not only because of the controlling effect of the federal statute, 3 U.S.C. § 2, but also because State authority to regulate the selection of Presidential electors derives expressly from Article II of the Constitution. *Bush v. Palm Beach County Canvassing Board*, 531 U.S. 70, 76 (2000) (In “the selection of Presidential electors, the [State] legislature is not acting solely under the authority given it by the people of the State, but by virtue of a

direct grant of authority made under Art. II, § 1, cl.2, of the United States Constitution.”); *Bush v. Gore*, 531 U.S. 98, 113 (2000) (“A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question.”) (Rehnquist, C.J., Scalia, J., Thomas, J., concurring).

### CONCLUSION

There is no more important issue and case now before this Court. The integrity and reliability of the nation’s electoral process rest in this Court’s hands. Unless resolved now, the issues before this Court will fester, worsen and explode later, in the next election cycle, or sooner. For the sake of the nation and its democratic principles, it is an existential imperative that this Court grant the TRO, preliminary injunction, and other relief which Texas seeks, and ultimately enter judgment in Texas’ favor.

Respectfully submitted,

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