

No. 25-704

IN THE SUPREME COURT OF THE UNITED STATES

COUNTY OF FULTON, PENNSYLVANIA, FULTON COUNTY
BOARD OF ELECTIONS, AND FULTON COUNTY
COMMISSIONERS, STUART L. ULSH AND RANDY H. BUNCH,

Petitioners,

v.

DOMINION VOTING SYSTEMS, INC.
AND U.S. DOMINION, INC.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

(1) Did the District Court err in determining that Petitioners Fulton County Board of Elections, Stuart L. Ulsh and Randy H. Bunch, none of whom were named parties in a contract for the lease and license of a voting system executed between Petitioner Fulton County and Respondent Dominion Voting Systems, Inc., lacked standing to assert a breach of contract and breach of warranty action?

(2) Did the District Court err in considering Petitioners' conduct that resulted in the decertification of the voting system by the Pennsylvania Department of State in determining that Petitioners Fulton County Board of Elections, Stuart L. Ulsh and Randy H. Bunch lacked standing to pursue a breach of contract and breach of warranty action against Respondents?

(3) Are the Elections Clauses of the U.S. and Pennsylvania Constitutions implicated by the District Court's and Third Circuit's decisions below?

CORPORATE DISCLOSURE STATEMENT

As of the commencement of this action, Respondent Dominion Voting Systems, Inc. was a wholly owned subsidiary of Respondent US Dominion, Inc., and Respondent U.S. Dominion, Inc. was a wholly owned subsidiary of Dominion Intermediate Holdings, Inc. On October 17, 2025, Respondent Dominion Voting Systems, Inc. changed its name to Liberty Vote USA Inc.; Respondent U.S. Dominion, Inc. changed its name to Liberty Vote Holdings Inc.; and Dominion Intermediate Holdings, Inc. changed its name to Liberty Vote Intermediate Inc. As a result, Liberty Vote USA Inc. is a wholly owned subsidiary of Liberty Vote Holdings Inc., and Liberty Vote Holdings Inc. is a wholly owned subsidiary of Liberty Vote Intermediate Inc. No publicly-held corporation owns ten percent or more of the stock of any of the above entities.

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INTRODUCTION

Petitioners seek review of “a garden variety contract dispute over the meaning of contract terms as applied to events that took place and actions and conduct on the part of the parties to the contract, before, during and after its performance.” Pet. 37. Asserting only state law contract claims, Petitioner’s complaint was filed in the Pennsylvania Court of Common Pleas for Fulton County and removed under diversity jurisdiction to the United States District Court for the Middle District of Pennsylvania. The District Court dismissed the complaint, and a subsequently filed amended complaint, pursuant to a Rule 12(b) motion, the latter of which was by way of an unreported memorandum opinion. The Third Circuit affirmed in an unreported decision.

This matter does not involve a federal question, or a constitutional issue. It does not present a conflict over the law as interpreted by different United States courts of appeals. It does not present an issue of national importance. Rather, as described by Petitioners, “[t]his is a classic case of breach of contract by and between two contracting parties that have a dispute about the legal obligations of each party to the agreement and the consequences of a breach of its terms.” Pet. 43. In short, it presents no compelling reason for this Court to exercise its supervisory power. Accordingly, the petition for writ of certiorari should be denied.

STATEMENT OF THE CASE

In August 2019, the County of Fulton, Pennsylvania (“Fulton County”) entered into a written contract with Dominion Voting Systems, Inc. (“Dominion”) to lease and license voting system equipment and software for conducting elections (“Agreement”). The Agreement expressly identified the parties as Fulton County and Dominion, and disclaimed any third-party beneficiaries by providing that “no obligation of [Dominion] or [Fulton County] may be enforced against [Dominion] or [Fulton County], as applicable, by any person not a party to this Agreement.” There were no other named parties in the Agreement. R. App. Vol. II 339-349.

The Agreement placed certain restrictions on Fulton County’s use of the leased hardware and licensed software provided by Dominion. It specifically prohibited Fulton County from (i) transferring or copying onto any other storage device or hardware, or other copying of the software, except for the purpose of system backup; (ii) reverse engineering, disassembling, decompiling, deciphering, or analyzing the software; and/or (iii) altering or modifying the software in any way. R. App. Vol. II 356.

In January of 2019, Dominion provided Fulton County with the hardware and software set forth in the Agreement (the “Voting System”), which was subsequently certified by the Commonwealth of Pennsylvania as complying with its election code, and by the United States Election Assistance Commission as meeting federal voting system requirements.

Fulton County began using the Voting System in April of 2019, and continued use of it through the November 2, 2020 general election. R. App. Vol. II 374-75, 425, 427; Supp. App. SA 19.

In December 2020 and February 2021, Fulton County permitted Wake TSI, a third party-consultant, to access and inspect the Voting System, and to make copies of its directories, log files and other information. In July of 2021, the Pennsylvania Department of State (the “Department”) decertified Fulton County’s future use of the Voting System, finding that by allowing a third party to access and image portions of the Voting System after it had been certified, Fulton County violated provisions of the Pennsylvania Election Code and compromised the security integrity of the Voting System for future elections. R. Supp. App. SA 41. The Department’s decision was based solely upon the actions of Fulton County in allowing a third-party inspection, and not due to any issues with the Voting System as supplied by Dominion.

In August 2021, Fulton County filed an action against the Secretary of the Commonwealth in the Pennsylvania Commonwealth Court seeking reversal of the decertification decision. R. App. Vol. II 311, ¶83. Fulton County maintained that the Department’s decertification decision was without justification, and that if the Department had inspected the Voting System after the Wake TSI inspection, the Department would have found it continued to meet the security and other requirements of the Pennsylvania Election Code and could readily be used by Fulton County going forward. *See County of Fulton*

v. Sec’y of Commonwealth, 330 A.3d 481, 486-487 (Pa. Cmwlth. 2024). On January 1, 2022, while the Commonwealth Court litigation was pending, and the Voting System remained subject to the decertification determination by the Department, Fulton County contracted with another provider to procure an alternative voting system. R. App. Vol. II 312, ¶86.

In January 2022, the Pennsylvania Supreme Court issued a stay order enjoining Fulton County from allowing any further inspections of the Voting System during the pendency of the Commonwealth Court litigation. In July 2022, Fulton County directly disregarded the Pennsylvania Supreme Court’s stay order and permitted yet another third-party consultant, Speckin Forensics, to inspect the Voting System.¹

On September 21, 2022, while the Commonwealth Court litigation was still pending, and while the County continued to maintain that there was no basis for the Department of State to

¹ In a lengthy, reported opinion issued on April 19, 2023, the Pennsylvania Supreme Court imposed sanctions on Fulton County for willfully violating its order. *See County of Fulton v. Sec’y of Commonwealth*, 292 A.3d 974, 979 (Pa. 2023). The Pennsylvania Supreme Court also imposed sanctions on the County’s attorney after concluding that he “in tandem with and also independently of his clients” was “guilty of relentless, dilatory, obdurate, vexatious and bad-faith conduct” during proceedings related to Fulton County’s efforts to inspect the Voting System. *Id.* at 1018. On July 27, 2023, Petitioners filed a petition for writ of certiorari in this Court seeking review of the Pennsylvania Supreme Court’s sanction order. This Court denied that petition on October 10, 2023. *See Fulton County v. Sec’y of Pa.*, 144 S. Ct. 283 (2023).

decertify the Voting System or prevent Fulton County from using it in future elections, Fulton County, along with Petitioners Fulton County Board of Elections (“Board of Elections”), Stuart L. Ulsh (“Ulsh”) and Randy H. Bunch (“Bunch”), filed this matter as a state court breach of contract and breach of warranty action in the Pennsylvania Court of Common Pleas for Fulton County.² R. App. Vol. II 1-292. The complaint alleged that Dominion breached the Agreement by failing to provide a voting system that met the conditions of certification and that was free from defect which prevented the system from operating in conformity with the Agreement’s specifications. The complaint further averred that Fulton County suffered the following damages: (i) the inability to ensure compliance with the requirements of state and federal law; (ii) violations of the constitutional rights of Fulton County voters; and (iii) capital outlay and expenditures in connection with the Agreement. R. App. Vol. II 25, ¶95-96. Petitioners specially referenced and relied upon their pleadings filed in the Commonwealth Court litigation as part of the factual predicates for their claims in the complaint. R. App. Vol. II 16-17, ¶60-62.

Dominion timely removed the case based on diversity jurisdiction to the United States District Court for the Middle District of Pennsylvania, and filed a motion to dismiss on the grounds that (i) the complaint failed to state a claim for breach of contract or breach of warranty on the facts as pled; and (ii) the District Court lacked subject matter jurisdiction due

² Messrs. Ulsh and Bunch were both at the time of filing Fulton County Commissioners and members of the Board of Elections.

to a lack of standing as to all parties other than Fulton County and Dominion. On September 28, 2023, the District Court granted Dominion's motion on both grounds.

The District Court first determined that it lacked subject matter jurisdiction over the claims asserted by Petitioners Board of Elections, Ulsh and Bunch because the complaint contained no substantive allegations showing they suffered an injury in fact, which is a predicate to standing. The District Court noted that those parties were not parties to the Agreement, and other than including their names in the caption, the complaint contained neither averments regarding their involvement in the matter nor sought damages on their behalf. The District Court dismissed the claims asserted by the Board of Elections, Ulsh and Bunch without prejudice, and granted those parties leave to file an amended complaint. *County of Fulton v. Dominion Voting Sys., Inc.*, 695 F. Supp. 3d 612, 616-618 (M.D. Pa. 2023).

Turning to the claims asserted by Fulton County, the District Court applied the well-established standard articulated in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and held that the complaint failed to allege factual content that allowed the court to draw the reasonable inference that Dominion was liable to Fulton County under a breach of contract or breach of warranty theory. As stated by the District Court in its memorandum opinion:

The complaint and documents attached to and referenced in the complaint make clear that Fulton County's voting system passed certification under federal and state law, and that the system was only decertified by the Pennsylvania Department of State because of Fulton County's own conduct in permitting a third-party to access and inspect the system. Fulton County cannot thus make out a breach of contract on the basis that Dominion violated the agreement by failing to provide a system that allowed it to comply with federal and state election requirements. Nor can it do so on the basis that any such failure caused it to suffer damages.

County of Fulton, 695 F. Supp. 3d at 617. The District Court further concluded that the complaint failed to allege any particular defect with the Voting System that prevented it from operating in accordance with the Agreement, and no such defect could be inferred from the facts as pled. *Id.* at 618. The District Court dismissed the claims asserted by Fulton County with prejudice with one caveat – Fulton County was granted leave to file an amended complaint “[t]o the extent Fulton County alleges that Defendant provided it with a defective voting system that did not operate in conformity in all material respects with the specifications included and referenced in the agreement”. *Id.*

On October 19, 2023, all Petitioners *except Fulton County* filed an amended complaint.³ The averments in the amended complaint were substantively indistinguishable from those set forth in the original complaint. The most notable difference was the substitution of Petitioner Board of Elections for each averment previously attributed to Fulton County. Otherwise, the amended complaint relied on the same facts, attached the same exhibits, asserted the same two causes of action, and sought the same damages as the original. R. App. Vol. II, 293-608. Consequently, Dominion filed a Rule 12(b) motion to dismiss the amended complaint.

On August 22, 2024, the District Court issued an unreported memorandum opinion granting Dominion's motion and dismissing the amended complaint, but this time with prejudice. Relying on principles espoused by this Court in *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016) and *Flast v. Cohen*, 392 U.S. 83 (1968), and elaborated by the Third Circuit in *Adam v. Barone*, 41 F.4th 230 (3d Cir. 2022), *Mielo v. Steak 'n Shake Ops., Inc.*, 897 F.3d 467 (3d Cir. 2018), and *Davis v. Wells Fargo*, 824 F.3d 333 (3d Cir. 2016), the District Court once again determined that the Petitioners (made up now of only the Board of

³ Petitioners, *including Fulton County*, concurrently filed a Notice of Appeal to the Third Circuit. Dominion moved to quash the appeal on the grounds that the filing of the amended complaint precluded the finality of the District Court's decision. The Third Circuit granted Dominion's motion and dismissed the appeal for lack of appellate jurisdiction on April 19, 2024. *Fulton County v. Dominion Voting Sys.*, 2024 U.S. App. LEXIS 10548 (3d Cir. 2024). Petitioner Fulton County ceased to be a party participant in the case moving forward.

Elections, Ulsh and Bunch) lacked standing to pursue the action against Dominion.

The District Court noted that none of the named plaintiffs in the amended complaint were parties to the Agreement at issue. Pet. App. 18a. However, even if they had been, the District Court determined that they would still lack standing. The District Court opined that standing requires that the alleged injury must be fairly traceable to the defendant's conduct, citing *Adam*, 41 F.4th at 235; *Mielo*, 897 F.3d at 480-81, and *Davis*, 824 F.3d at 346-47, and that the amended complaint was devoid of nonconclusory allegations that it was Dominion who caused them harm. Rather, “the amended complaint evinces that it was the conduct of Fulton County and its agents that caused the Voting System to be decertified by the Pennsylvania Department of State by breaching its contract with [Dominion].” Pet. App. 19a.

On September 23, 2024, Petitioners filed their notice of appeal to the Third Circuit, appealing only the District Court's order dismissing the amended complaint. On June 23, 2025, the Third Circuit, in an unreported decision, affirmed the District's Court's order dismissing the amended complaint. Pet. App. 7a. The Third Circuit determined that the only legally protected interest asserted by the Board of Elections, Ulsh and Bunch was created by the Agreement that none of them were a party to. Pet. App. 6a. The Third Circuit further concluded that as non-parties to the Agreement, Petitioners Board of Elections, Ulsh and Bunch did not suffer any invasion of a legally protected interest that would otherwise

give them standing to pursue a claim against Respondents under the Agreement. Pet. App. 7a. Accordingly, the Third Circuit held that the District Court lacked jurisdiction over the lawsuit. Pet. App. 7a.

Petitioners filed a petition for rehearing en banc, which the Third Circuit subsequently denied on August 15, 2025.

While Petitioners' appeal was pending before the Third Circuit, the Pennsylvania Commonwealth Court granted summary relief to the Secretary of the Commonwealth in the Commonwealth Court litigation. *See County of Fulton v. Sec'y of the Commonwealth*, 330 A.3d 481 (Pa. Cmwlth. 2024), *aff'd*, 2025 Pa. LEXIS 1965 (Dec. 9, 2025).

REASONS FOR DENYING THE PETITION

The petition for writ of certiorari should be denied because the lower courts' decisions do not involve the creation of any new or novel proposition of law, implicate a federal question or raise a constitutional issue. They do not conflict with any decision of another circuit. They do not address an issue of national importance. Rather, the lower courts correctly applied well established legal standards for addressing Article III standing and for reviewing the veracity of pleadings under *Iqbal* and *Twombly* to a garden variety breach of contract action. There is simply no consideration that would warrant the exercise of the extraordinary jurisdiction of this Court.

Petitioners attempt to overcome this shortcoming by arguing that the lower courts' decisions implicate the Elections Clauses of the United States and Pennsylvania Constitutions. They do not. This case does not involve the manner, method or uniformity of elections, or even a particular election process. To quote Petitioner, "[t]his is a classic case of breach of contract by and between two contracting parties that have a dispute about the legal obligations of each party to the agreement and the consequences of a breach of its terms." See Petition, p. 43. That the dispute involves a contract for the lease and license of a voting system does not by implication invoke the Elections Clause, or render this case suitable for this Court's review.

I. The District Court correctly determined that Petitioners Fulton County Board of Elections, Stuart L. Ulsh and Randy H. Bunch lacked standing to pursue a breach of contract or breach of warranty action against Dominion.

The District Court correctly concluded that Petitioners Board of Elections, Ulsh and Bunch lacked standing to pursue a breach of the Agreement. None of them were actual parties to the Agreement, and the Agreement expressly disclaimed third-party beneficiaries.⁴ As a result, the District Court

⁴ Petitioners state in their Petition that "the Dominion contract was between Dominion and the County Board of Elections". Pet. 19. This is patently false based upon the language set forth in the Agreement, which identified the parties as Fulton County and Dominion. R. App. Vol. II 31. Additionally, in the original

considered the test set forth by this Court in *Spokeo v. Robins*, that requires a litigant to (1) plausibly allege an injury in fact (2) that is fairly traceable to the party sued and (3) is judicially redressable in a favorable decision. 578 U.S. at 338. Based upon the allegations contained in the amended complaint, and in the documents and pleadings referenced therein, the District Court correctly determined that none of these Petitioners suffered any injury in fact, and even if they had, there were no nonconclusory allegations in the amended complaint that fairly traced the harm to Dominion.⁵ Rather, Petitioners' own averments evinced that it was Petitioners' own conduct in allowing a third-party inspection of the Voting System that resulted in its decertification and Petitioners' inability to use the system moving forward. The District Court was within its discretion to make that determination. The Third Circuit, in conducting a de novo review, reached the same conclusion.

Petitioners' contention that the Board of Elections and Fulton County are or otherwise should be treated as one and the same for purposes of

complaint, Petitioners alleged that it was Fulton County that entered into the Agreement with Dominion, not the Board of Elections. R. App. Vol. II 6. Only after the original complaint was dismissed and the Petitioners filed an amended complaint without Fulton County's participation did the Petitioners then claim that the Board of Elections was a party to the Agreement.

⁵ Those allegations in a complaint that are no more than conclusions are not entitled to the assumption of truth under established Third Circuit precedent. See *Bistrain v. Levi*, 696 F.3d 352 (3d Cir. 2012).

assessing standing is not supported by law. The Pennsylvania General Assembly created county boards of elections as separate entities pursuant to 25 Pa. Stat. Ann. § 2641, and vested them with jurisdiction over the conduct of primaries and elections. The General Assembly did not convey statutory standing to boards of elections for commercial transactions involving voting systems, or indicate that they were to be treated as the functional equivalent of the counties for which they served. And although the statute provided Petitioner Board of Elections with the authority to purchase election equipment, the Board of Election's unexercised authority to enter into the contract here cannot change the nature of the Agreement itself, as the Third Circuit held. Pet. App. 6a.

II. The District Court appropriately considered Petitioners' conduct that resulted in the decertification of the voting system by the Pennsylvania Department of State in determining that Petitioners Fulton County Board of Elections, Stuart L. Ulsh and Randy H. Bunch lacked standing.

The District Court appropriately considered Petitioners' conduct that resulted in the decertification of the voting system in determining that the Board of Elections, Ulsh and Bunch lacked standing. The factual circumstances for the decertification were all specifically pled by Petitioners in the amended complaint, or otherwise set forth in the pleadings in the Commonwealth Court litigation

that were specifically referenced and relied upon in the amended complaint. The District Court did not look outside of the pleadings as Petitioners contend.

Petitioners' position that the scope of the District Court's review should have resulted in the motion being treated as one for summary judgment is not supported by existing caselaw. It is well established among the circuit courts that in considering a motion to dismiss, the court may consider documents whose contents are alleged in the complaint, and whose authenticity no party questions, but which are not physically attached to the pleading, without converting the motion to one for summary judgment. *See Pryor v. Nat'l Collegiate Athletic Ass'n*, 288 F.3d 548, 560 (3d Cir. 2002); *Irizarry v. Bisignano*, 158 F.4th 43, 49 (1st Cir. 2025); *Davis v. HSBC Bank*, 691 F.3d 1152, 1160 (9th Cir. 2012). The District Court was well within its province to consider the documents attached to and referenced in the amended complaint. There was no error in the District Court's review.

III. The Elections Clauses of the U.S. and Pennsylvania Constitutions are not implicated by the District Court's and Third Circuit's decisions below.

Petitioners' contention that the District Court's dismissal of the amended complaint implicates the Elections Clauses of the U.S. and Pennsylvania Constitutions is unfounded. This case does not involve the manner, method or uniformity of elections. It does not involve a specific election

process. It does not involve contested election results. Rather, it involves a commercial transaction entered into between two parties for the lease and license of a voting system.

The Election Clauses of the U.S. and Pennsylvania Constitutions do not regulate or govern such contracts, nor are they implicated by an alleged breach of such a contract. The ability of Fulton County and its Board of Elections to maintain jurisdiction over the conduct of elections within its borders is unimpacted by the lower courts' decisions. There is no constitutional question present in this case.

IV. This case is not suitable for this Court's review.

Petitioners' challenges to the below decisions are based on allegations of typical, run-of-the-mill errors in a court's review of Rule 12(b) motions. There is no compelling issue that would warrant invoking the discretionary jurisdiction of this Court. It is not this Court's function to serve as a court of error correction. Yet, that is what the Petitioners seek here.

Additionally, the issues presented result from the particular factual circumstances of this case. Fulton County procured a voting system and then engaged in conduct that caused the voting system to be decertified by the Department thereby causing it to procure an alternative system. Fulton County, as the only party that had standing under the Agreement, removed itself as a party after the

original complaint was dismissed, leaving as parties individuals and entities that had no legally protected interest in the Agreement and suffered no injury that was fairly traceable to the conduct of Dominion. There is no legal issue of significance that is independent of these factual circumstances to consider, rendering this case unsuitable for this Court's review.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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