

APPLICATION No. __-____

IN THE SUPREME COURT OF THE UNITED STATES

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

Petitioners,

v.

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

Respondents.

ON APPLICATION FOR EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITIONERS' APPLICATION

Respectfully submitted by:

Peter Ticktin
Counsel for Petitioner
270 SW Natura Ave.
Deerfield Beach, FL 33441
(561) 232-2222
Serv512@legalbrains.com

PETITIONER FULTON COUNTY'S APPLICATION FOR AN EXTENSION OF
TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Submitted To: The Honorable Samuel A. Alito, Associate Justice, Circuit Justice for the Third Circuit Court of Appeals and including the State of Pennsylvania.

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5 and 22, the Petitioners, the Board of Elections of Fulton County, Pennsylvania and the Fulton County Board of Commissioners (Fulton County), for good cause, respectfully submit this *Application for an Extension of Time to File a Petition for a Writ of Certiorari* to the United States Court of Appeals for the Third Circuit in the above-captioned case.

The Petitioners are seeking review of the decision by the Third Circuit Court of Appeals concerning Petitioners' breach of contract and constitutional claims against Respondent. (**ATTACHMENT A**, Opinion and Judgment of the Third Circuit Court of Appeals in *Fulton County, et al. v. Dominion Voting Systems, et al.*, Case No. 24-2771, unreported ___F App'x___; 2025 LX 146682 (CA 3, June 23, 2025)). The Third Circuit denied Petitioners' petition for rehearing *en banc* on August 15, 2025.

Petitioners' writ of certiorari from the Third Circuit's opinion and order is due on or before Thursday, November 13, 2025.

Pursuant to the Rules of the Supreme Court, Rules 13.5 and 22, Petitioners are filing this application requesting an extension on or before a date 10 days prior to the date that their petition is due.

JURISDICTION OF THE COURT

This Court has jurisdiction under 28 U.S.C. § 1254(1), which authorizes review of cases in the courts of appeals by writ of certiorari.

SUMMARY OF THE CASE

This case began as a breach of contract case in the United States District Court for the Middle District of Pennsylvania filed by the Petitioners, Fulton County, Fulton County Board of Elections, and then County Commissioners Stuart L. Ulsh and Randy H. Bunch (hereafter “Fulton County”), against Respondents, Dominion Voting Systems, Inc. and U.S. Dominion, Inc. The Petitioners’ basic breach of contract action was lodged by and between the Fulton County Board of Elections, the constitutionally delegated authority to conduct and operate elections in the State of Pennsylvania, and Dominion Voting Systems, Inc. and U.S. Dominion, Inc. (hereafter Dominion), an entity that provides the governmental function of the means for voting in national elections to the citizens of Pennsylvania.

The Petitioners’ lawsuit demonstrated that there was a contract by and between Fulton County and Dominion for provision by the latter of voting machines and voting machine systems required by the State of Pennsylvania to be used in elections. The Petitioners alleged that Dominion breached the contract and also breached warranties for providing voting machine systems that did not perform as required or intended, and which malfunctioned, and/or were otherwise defective during and after the November 2020 General Election.

Dominion filed a motion to dismiss in the District Court and a brief in support. The motion was filed under both Fed. R. Civ. P. 12(b)(1) (lack of subject matter jurisdiction) and 12(b)(6) (failure to state a claim). There, Dominion argued that only Fulton County, and not the Fulton County Board of Elections and the majority members of the Fulton County Board of Commissioners at the time (Stuart L. Ulsh and Randy H. Bunch), were a party to the contract. Dominion further argued that U.S. Dominion was not a party to the contract. Dominion moved for dismissal for lack of subject-matter jurisdiction and for lack of standing with respect to the Board of Elections and Commissioners Ulsh and Bunch.

Petitioners responded to Dominion's motion. First, as to the failure to state a claim argument under Rule 12(b)(6), Fulton County argued that the basis of its breach of contract action was supported by the fact that it claimed the Dominion voting machines had not performed as warranted during the November 2020 election. Petitioners attached a copy of the contract to their complaint and cited those provisions of the contract in which Dominion warranted and contracted to provide the proper and qualitative functioning of its voting machines. Further, Petitioners provided factual allegations, factual support by way of exhibits, and averred that based on these allegations and supporting information, Dominion breached the contract and violated certain warranties.

As to the 12(b)(1) motion, Petitioners explained, as it has done from the original filing of its complaint in this case, that by law, Fulton County, the Fulton County Board of Commissioners, and the Fulton County Board of Elections majority

commissioners, are one and the same for purposes of the delegated authority regarding entering into contracts to provide voting machines and voting machine systems for the constitutionally delegated purpose of running elections.¹ Therefore, as the constitutionally delegated entity, Petitioners not only had standing to sue for breach of contract (they are parties to the contract with Dominion), but it would be incongruous for a court to dismiss one of these “entities,” for lack of subject matter jurisdiction as they are all one and the same.

There is no functional difference between Fulton County and the Fulton County Board of Elections because the Board of Elections has been constitutionally delegated (via the United States Constitution, the Pennsylvania Constitution, and Pennsylvania statutory law), with exclusive authority over all matters concerning voting, voting machines, and electronic voting systems; i.e., the Time, Manner, and Place of conducting elections delegated to the States by Article I, § 4, cl. 1 of the United States Constitution, is further delegated to County Boards of Elections in Pennsylvania by the General Assembly. 25 Pa. Stat. Ann. § 2642(c), (d), and (i). See also *In re: Petition for Agenda Initiative*, 206 A.3d 617, 624 (Pa. Cmwlth. 2019). Thus, Petitioners pointed out that referring to “Fulton County” to identify or indicate Plaintiff Fulton County Board of Elections was simply a convention of the pleadings, even though Dominion somehow insisted that Fulton County was no longer a part of

¹ 25 P.S. § 2641(a) provides that “[i]n each county of the Commonwealth there shall be a county board of elections, which shall have jurisdiction over the conduct of primaries and elections in such county, in accordance with the provisions of this act [the Pennsylvania Election Code].”

the dispute, and that it was the only entity that could pursue a breach of contract action.

Without holding any hearing on Dominion's dispositive motion, the District Court "granted" the motion to dismiss for lack of subject matter jurisdiction and failure to state a claim. The District Court stated: "Defendants' motion correctly argues that all claims on behalf of Plaintiffs Fulton County Board of Elections, Stuart L. Ulsh, and Randy H. Bunch must be dismissed for lack of subject matter jurisdiction because the complaint does not contain any substantive allegations showing they suffered an injury in fact, a predicate to standing. See *Davis v. Wells Fargo*, 824 F.3d 333, 348 (3d Cir. 2016)."

However, the District Court also appeared to have dismissed part of the suit on grounds under 12(b)(6) (failure to state a claim). That was ostensibly a decision on the merits of Fulton County's breach of contract action.

Petitioners further argued that the District Court's decision to dismiss under Rule 12(b) was also erroneous because the District Court reached the merits without having any hearing, even though Petitioners satisfied the pleading requirements for such actions. Petitioners' complaint for breach of contract included a copy of the contract attached to the complaint, a detailed description of the provisions of the contract that were breached, and documentary evidence and factual allegations explaining how and why Petitioners considered the contract to have been breached. Given the documentary evidence provided and the provision of the contract, the District Court erred by not considering the motion to dismiss under Rule 56.

As there was a dual ruling by the District Court, one finding no subject matter jurisdiction and another ruling on the merits regarding the breach of contract claim, Fulton County filed an appeal regarding that decision. *Fulton County, et al. v. Dominion Voting Systems, Inc., et al.*, Case No. 23-2969 (filed October 30, 2023). On April 19, 2024, the Court of Appeals dismissed Fulton County's appeal as premature, reasoning that the appeal was from an interlocutory order of the District Court. *Id.*, Docket No. 19.

Petitioners then filed an amended complaint, and the District Court again dismissed on the same basic grounds. Once again, the District Court did not hold a hearing. In addition to the grounds stated in its earlier opinion, the District Court also found that the portions of the amended complaint were not sufficient to state a claim.

Fulton County appealed the district court's decision. On June 23, 2025, the Third Circuit Court of Appeals affirmed the District Court's decision. (**ATTACHMENT A**, Opinion and Judgment of the Third Circuit Court of Appeals in *Fulton County, et al. v. Dominion Voting Systems, et al.*, Case No. 24-2771, unreported ___F App'x___; 2025 LX 146682 (CA 3, June 23, 2025)). The Court ruled that the Fulton County Board of Elections, and Commissioners Ulsh and Bunch lacked standing to sue Dominion for breach of contract. As Petitioners have pointed out since the beginning of this lawsuit, Commissioner Ulsh *signed* the contract.

Despite this, the Court of Appeals somehow missed this fact and regurgitated the District Court's reasoning. The Third Circuit also *wholly ignored* Petitioners'

argument that as the Fulton County Board of Elections and its Commissioners, as the individuals charged with the Board's functions, are the constitutionally delegated entity with powers over Time, *Manner*, and Place of conducting elections under Article I, § 4, cl. 1 of the United States Constitution, it had authority not only to *sign* the contract with Dominion, but also to sue it for breach of contract and breach of warranty for providing voting machines and voting machine systems that failed to function properly during the November 2020 General Election. To be clear the Pennsylvania General Assembly, via 25 Pa. Stat. Ann. § 2642(c), (d), and (i), delegates the running and conducting of elections to county boards of elections. See also *In re: Petition for Agenda Initiative*, 206 A.3d 617, 624 (Pa. Cmwlth. 2019).

Petitioner is seeking review of the Third Circuit's opinion concerning this critical constitutional question and hereby respectfully requests a 60-day extension of time to file said writ for the following reasons, *inter alia*.

REASONS FOR GRANTING EXTENSION OF TIME

1. Petitioners, Fulton County Board of Elections and its Commissioners, are constitutionally delegated with the powers *and* duties to ensure the proper conducting of national elections. Despite this, Petitioners have been forced to seek outside counsel for the vindication of the rights of Fulton County's voting citizens.

2. No prejudice would arise from the requested extension. If the petition were granted, the Court would likely not hear oral argument until 2026. Therefore, the parties have ample time to prepare their briefs.

3. The issues in this case are of national significance. If the constitution delegates *time*, *manner*, and *place* of conducting national elections to the States, as Article I, § 4, cl. 1 of the United States Constitution indicates, then the entity that is re-delegated that authority by the State must have the power to ensure the constitutionally sound conducting of national elections. If a voting machine company has failed to provide adequate means for this function, then the constitutionally delegated authority must have both *standing* and *power* to sue such company for a breach of its obligation to do so.

More importantly, voting machine companies provide an important governmental function, which is supposed to preserve the fundamental right of all citizens to be able to vote and to be assured that their vote will be properly counted. Moreover, every citizen has a fundamental constitutional right to free and fair elections, which includes the guarantee that their vote will not be manipulated, adulterated, or cancelled out by errant or fraudulent votes. If the entity delegated with the constitutional authority to preserve this guarantee cannot sue a voting machine company to hold it accountable for providing a sub-standard and malfunctioning product, then there is no authority to hold these quasi-governmental actors accountable to the People.

WHEREFORE, for the reasons stated herein, Petitioners apply to Your Honor and respectfully request an extension of 60 days from the Thursday, November 13, 2025 due date to file a Petition for a Writ of Certiorari to the Third Circuit Court of

Appeals, so that this Court may timely docket said petition on or before Monday, January 12, 2026.

Respectfully submitted,

/s/ Peter Ticktin
Peter Ticktin
Counsel for Petitioner
270 SW Natura Ave.
Deerfield Beach, FL 33441
(561) 232-2222
Serv512@legalbrains.com

Dated: November 3, 2025