



PRESIDENT TRUMP’S ATTACKS ON PENNSYLVANIA’S FREE AND FAIR ELECTION AND THE EVENTS OF JANUARY 6

Pennsylvania bore the brunt of President Trump’s crusade to overturn the legitimate results of the 2020 election. For months, President Trump attacked the integrity of the Commonwealth’s election, repeating lie after lie at every opportunity. In state and federal court, his attorneys laundered his lies as legal claims brought in increasingly frivolous lawsuits. One after another, they failed. The courts resoundingly confirmed what Pennsylvania already knew: The 2020 election in Pennsylvania was free and fair; it was conducted in accordance with the laws of the Commonwealth and the United States; and the results of that election were accurate.

Yet despite rejection by the courts, President Trump persisted in his lies. Instead of acknowledging the truth, President Trump inflamed his supporters and insisted on his baseless claims of a rigged election. And what the President and his lawyers failed to accomplish through deceit, the mob he incited on January 6, 2021, tried to accomplish by force. His litigation strategy in shambles, President Trump fixated on disrupting Congress’s counting of Electoral College votes, and his supporters violently attempted to carry out his wishes.

President Trump’s lies led directly to the events of January 6. At the rally he had promoted and in front of supporters he had mobilized, President Trump inflamed the crowd by repeating the same debunked allegations about voter fraud in Pennsylvania and elsewhere. In his remarks, he repeated no fewer than eight false statements about Pennsylvania’s elections alone. In addition, he falsely claimed that the election results would be changed if Vice President Pence would simply reject the electors from Pennsylvania and elsewhere, and then he ended by urging his enraged supporters to march down Pennsylvania Avenue to where the Vice President was overseeing the counting of electoral votes at that very moment.

For this abuse of power and betrayal of his oath of office, the U.S. House of Representatives rightly approved an article of impeachment for incitement of insurrection. Yet the President continues to insist on his lies. In his answer to the article of impeachment, President Trump denied that the statements he made about the election on January 6 and beforehand were false, because “[i]nsufficient evidence exists upon which a reasonable jurist could conclude that [these statements] were accurate or not.”¹ In his most recent pleading, he dismisses his

¹ Trump Answer at 4 (Feb. 2, 2021).

statements as observations about “election security generally” or “election integrity issues,” and claims that he was simply engaging in an “abstract discussion.”²

Let there be no mistake: the statements President Trump made on January 6 were lies. Many “reasonable jurist[s]”—including some appointed by President Trump—evaluated President Trump’s evidence of election improprieties and rejected his claims. Yet he continued to repeat the same lies, despite overwhelming evidence and multiple legal opinions demonstrating that his claims were all false. Between November 3 and January 6, he tweeted about supposed fraud in Pennsylvania nearly once every day.³ Many of those tweets were euphemistically labeled by Twitter as “disputed”; in reality, they were lies.

Even now, President Trump persists in his refusal to acknowledge that the 2020 election was free and fair and that his claims that day were false. Yet he is contradicted by the facts and even by his own lead counsel, who acknowledged yesterday in the well of the Senate that President Biden had lawfully won the 2020 election. President Trump is, of course, free to continue to argue the truth of his statements. But the facts make clear that his statements were lies; they were part and parcel of his months-long campaign to discredit the election results; and the events of January 6 were the tragic yet predictable outcome of his campaign of lies.

For these actions, he should be convicted and barred from holding future federal office.

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The 2020 election in Pennsylvania was free, fair, and conducted in accordance with the Commonwealth’s laws. Under remarkably difficult circumstances, bipartisan election officials in Pennsylvania held the Commonwealth’s first-ever general election in which voters were given the option of no-excuse mail-in voting. As a result, more than 2.5 million Pennsylvanians voted by mail, while more than four million voted in person on November 3.⁴ In total, nearly seven million Pennsylvanians voted in 2020, exceeding 2016 turnout by nearly one million voters. When all the ballots were counted, President Biden won Pennsylvania by approximately 80,000 votes, and Pennsylvania’s 20 electors duly cast their votes for President Biden and Vice President Harris on December 14, 2020.⁵

Despite these facts, President Trump waged a two-month campaign of attacks on Pennsylvania’s election, all part of his effort to overturn the legitimate results of the 2020 presidential race. His lawyers filed multiple cases in Pennsylvania and made numerous unfounded allegations. Those efforts escalated in the days following November 3, as it became apparent that he was likely going to lose Pennsylvania.

In court, President Trump’s false claims were resoundingly rejected. President Trump and his allies lost every case they filed in Pennsylvania, with the exception of a minor lawsuit dealing with a handful of votes that were never counted. And it is false, as some have claimed, that these cases were all rejected on the basis of standing or similar grounds. Some cases were

² Trump Brief at 45, 52 & 61 (Feb. 8, 2021).

³ See <https://www.thetrumparchive.com/>.

⁴ See <https://www.dos.pa.gov/VotingElections/BEST/Pages/BEST-Election-Stats.aspx>.

⁵ See <https://www.electionreturns.pa.gov/#>.

easily disposed of on procedural grounds, but in others, the Trump Campaign was given the opportunity to prove its case. At every opportunity, it utterly failed to do so.

Most notably, the Trump Campaign filed a lawsuit in federal court alleging a broad-ranging conspiracy among state and local officials across Pennsylvania to steal the election for President Biden. After conducting a hearing at which Rudy Giuliani personally argued for the Trump Campaign, district judge Matthew Brann—previously a Republican party official—resoundingly rejected the claims. He described the lawsuit as “strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence.”⁶ His decision was unanimously affirmed by the Court of Appeals for the Third Circuit, in a decision written by Trump appointee Stephanos Bibas. Judge Bibas wrote, “Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here.”⁷

Having failed to bring a plausible claim of fraud in the federal courts of Pennsylvania, President Trump latched on to an even more frivolous lawsuit, filed by Texas in the U.S. Supreme Court against Pennsylvania, Georgia, Wisconsin, and Michigan. That suit repeated many of the false claims that had already been rejected by courts in Pennsylvania and elsewhere, while adding a laughable statistical analysis purporting to show that President Biden could not have plausibly won Pennsylvania. The Supreme Court denied Texas’s request to file the complaint, based on the conclusion that Texas lacked standing to challenge another state’s election procedures. Perhaps more notably, the two Justices who would have allowed Texas to file the complaint—because they believe that the Court lacks the discretion to deny such requests—specifically noted that they would not have granted any other relief.⁸

Despite these failures, President Trump persisted in lying about the election. He continued to tell his supporters that the election had been stolen from him, that the results were fraudulent, and that Pennsylvania and other states had broken their own laws. His ongoing campaign of lies culminated in his speech at the “Save America” rally on January 6. In that speech, he repeated the same lies he had been making since November 3, which were resoundingly rejected by state and federal judges across Pennsylvania—or that were so patently false his lawyers were not even willing to allege them in court. For instance:

- President Trump falsely claimed that “the Democrat Secretary of State and the Democrat State Supreme Court justices illegally abolished the signature verification requirements just 11 days prior to the election.”⁹

⁶ *Donald J. Trump for President, Inc. v. Boockvar*, No. 4:20-CV-02078, 2020 WL 6821992, at *1 (M.D. Pa. Nov. 21, 2020), *aff’d sub nom. Donald J. Trump for President, Inc. v. Sec’y of Pennsylvania*, 830 F. App’x 377 (3d Cir. 2020).

⁷ *Donald J. Trump for President, Inc. v. Secretary of the Commonwealth of Pennsylvania*, 830 Fed. App’x 377, 381 (3d Cir. 2020).

⁸ *Texas v. Pennsylvania*, 2020 WL 7296814, at *1 (U.S. Dec. 11, 2020).

⁹ January 6, 2021, Tr. at 35:13, <https://www.rev.com/blog/transcripts/donald-trump-speech-save-america-rally-transcript-january-6>.

- He falsely claimed that there were “205,000 more ballots than you had voters” in Pennsylvania.¹⁰
- He falsely claimed that “thousands” of dead people voted in Pennsylvania.¹¹
- He falsely claimed that “[o]ver 14,000 ballots were cast by out-of-state voters.”¹²
- He falsely claimed that “[m]ore than 10,000 votes in Pennsylvania were illegally counted, even though they were received after Election Day.”¹³
- He falsely claimed that “more than 60,000 ballots in Pennsylvania were reported received back ... before they were ever supposedly mailed out.”¹⁴
- He falsely claimed that “[t]wenty-five thousand ballots in Pennsylvania were requested by nursing home residents, all in a single giant batch, not legal.”¹⁵
- He falsely claimed that “the number of absentee ballots that had been sent out ... was suddenly and drastically increased by 400,000 people.”¹⁶
- President Trump falsely claimed that Pennsylvania “want[s] to re-certify [its] vote,” and that Pennsylvania would be permitted to “re-certify”—and presumably award its electoral votes to him—but only “if Mike Pence agrees to send it back.”¹⁷

This final lie set the stage for the events that followed. President Trump falsely told his supporters that the election was fraudulent, and that the results could be overturned if Vice President Pence would simply “do the right thing” and refuse to count the electoral votes from Pennsylvania and other challenged states.¹⁸ He concluded, as has been well documented elsewhere, by saying, “[w]e fight like Hell and if you don’t fight like Hell, you’re not going to have a country anymore” before urging his supporters to set off toward the Capitol, where the House and Senate had jointly assembled and where Vice President Pence was beginning the process of counting the nation’s electoral votes.¹⁹

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The events of January 6 were shocking and unprecedented. But they were not wholly unexpected—at least not to election officials in Pennsylvania and elsewhere who had lived with

¹⁰ *Id.*

¹¹ *Id.* at 36:35.

¹² *Id.* at 37:05.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 38:23.

¹⁶ *Id.*

¹⁷ *Id.* at 39:16.

¹⁸ *Id.* at 7:11.

¹⁹ *Id.* at 1:11:44–1:13:19.

President Trump's lies on a nonstop basis for the previous two months. The remainder of this memo explains why President Trump's statements on January 6 were false, and how they were rejected by courts in Pennsylvania and elsewhere or were so frivolous that President Trump's attorneys were unwilling to make them in court. It is hoped that this information will set the record straight about the integrity of Pennsylvania's 2020 elections and help the Senate better understand the facts surrounding President Trump's campaign of lies and why he must be held accountable for the tragic events of January 6.

PRESIDENT TRUMP'S LIES ON JANUARY 6, 2021

During his speech on January 6, President Trump repeated multiple lies about the 2020 election in Pennsylvania. The truth is that that election was free and fair and conducted in accordance with the laws of the Commonwealth and the United States. The results were accurate, and showed that President Biden and Vice President Harris had won Pennsylvania by approximately 80,000 votes. Yet the President continued to lie—despite the fact that his lies had been rejected in court and repeatedly proven to be false:

President Trump falsely claimed that “the Democrat Secretary of State and the Democrat State Supreme Court justices illegally abolished the signature verification requirements just 11 days prior to the election.”

Pennsylvania law has never required signature verification for mail-in and absentee voting. When the Republican legislature authorized no-excuse mail-in voting in 2019, it did not impose a signature verification requirement. Consistent with the requirements of the law, on September 11, 2020—nearly two months before the election—the Secretary of State issued guidance to counties stating, “The Pennsylvania Election Code does not authorize the county board of elections to set aside returned absentee or mail-in ballots based solely on signature analysis by the county board of elections.”²⁰ The Trump Campaign challenged this guidance in federal court, and lost.²¹ In that case, Judge Nicholas Ranjan, who had been appointed by President Trump, held, “A plain reading of the Election Code demonstrates that it does not impose a signature-comparison requirement for mail-in ballots and applications.”²² The Pennsylvania Supreme Court also addressed the issue and unanimously agreed with Judge Ranjan’s conclusion, rejecting the arguments of the Trump Campaign.²³

President Trump falsely claimed that there were “205,000 more ballots than you had voters” in Pennsylvania.

This allegation is completely baseless and has been repeatedly debunked.²⁴ It originated in a claim made by Pennsylvania State Representative Frank Ryan, who apparently relied on incomplete data from Pennsylvania’s voter registration database. That database is updated by each county individually, and this updating process can take several weeks following an election. It appears Rep. Ryan compared the official returns with incomplete data from the registration

²⁰ <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Examination%20of%20Absentee%20and%20Mail-In%20Ballot%20Return%20Envelopes.pdf> at 3.

²¹ *Donald Trump for President, Inc. v. Boockvar*, 2020 WL 5997680 (W.D. Pa. Oct. 10, 2020).

²² *Id.* at *58.

²³ *In re Nov. 3, 2020 Gen. Election*, 240 A.3d 591, 595 (Pa. 2020).

²⁴ *E.g.*, <https://www.ydr.com/story/news/2021/01/01/fact-check-there-were-not-more-votes-than-voters-pennsylvania/4107576001/>; <https://apnews.com/article/fact-checking-afs:Content:9887147615>.

database to justify his baseless claim that there were more votes than voters. The reality is that total turnout in Pennsylvania was 6.96 million voters, 76.5% of the Commonwealth’s registered voters.²⁵

President Trump falsely claimed that “thousands” of dead people voted in Pennsylvania and that “[o]ver 14,000 ballots were cast by out-of-state voters.”

There is no evidence to support these claims, which were never alleged in any of the lawsuits filed by the Trump campaign. In fact, only one person has been charged with casting a ballot on behalf of a voter who had died, and that person stated that he voted for Trump.²⁶

President Trump falsely claimed that “[m]ore than 10,000 votes in Pennsylvania were illegally counted, even though they were received after Election Day.”

Ahead of the 2020 election, the U.S. Postal Service experienced serious delays in mail delivery. To avoid a violation of the Pennsylvania Constitution, which guarantees that all “[e]lections shall be free and equal,”²⁷ the Pennsylvania Supreme Court ruled that mail-in ballots filled out and mailed on or before Election Day could be counted if received up to three days later.²⁸ Many other states likewise allow officials to count ballots received after Election Day if the ballot was filled out on or before Election Day. Ultimately, approximately 10,000 ballots were received during this three-day period. But these votes *were not* counted in the certified results in the presidential race. President Biden won Pennsylvania by more than 80,000 votes without counting any of the ballots that President Trump claimed were “illegally counted.”

President Trump falsely claimed that “more than 60,000 ballots in Pennsylvania were reported received back ... before they were ever supposedly mailed out.”

This false statement also appears to arise from a claim from Rep. Ryan, and it has been similarly debunked.²⁹ Rep. Ryan claimed that 58,221 ballots were returned “on or BEFORE the Mailed Date.”³⁰ But Act 77, which authorized no excuse mail-in voting in Pennsylvania, also required counties to allow any registered voter to request a mail-in ballot in person at the county board of elections and cast it the same day.³¹ In such cases, the “Mailed Date”—here, the date

²⁵ <https://www.dos.pa.gov/VotingElections/BEST/Pages/BEST-Election-Stats.aspx>.

²⁶ <https://fusion.inquirer.com/politics/election/trump-washington-rally-pennsylvania-fact-check-20210106.html>.

²⁷ Pa. Const. art. I § 5.

²⁸ *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 386 (Pa. 2020).

²⁹ <https://www.reuters.com/article/uk-factcheck-pa-data-ballots-same-day-fr/fact-check-data-showing-ballots-mailed-to-voters-and-received-by-the-state-the-same-day-is-not-proof-of-voter-fraud-idUSKBN284314>.

³⁰ <http://www.repfrankryan.com/Display/SiteFiles/390/OtherDocuments/2020/Scott%20Perry%20Election%20Irregularities%20Letter%2012.15.2020.pdf>, at 4 (emphasis original).

³¹ Act 77, § 1305(b)(2).

the ballot was provided to the voter in person—would be the same as the date the ballot was returned. Many voters in Pennsylvania took advantage of this provision, requesting and casting their mail-in ballot on the same day. Since Rep. Ryan provided no numbers or additional detail about the ballots he claims were returned before their mailed dates (as opposed to those that were returned on the mail date, consistent with Act 77), there is no reason to conclude that any ballots marked as returned before the mail date were the result of anything more than routine data entry errors.

President Trump falsely claimed that “[t]wenty-five thousand ballots in Pennsylvania were requested by nursing home residents, all in a single giant batch, not legal.”

There is no evidence at all to support this claim, which appears to be wholly made up.

President Trump falsely claimed that “the number of absentee ballots that had been sent out ... was suddenly and drastically increased by 400,000 people.”

This allegation is based on confusion about the different types of mail-in voting allowed in Pennsylvania. While Pennsylvania now permits no-excuse mail-in voting, it has also long-allowed absentee voting by voters who will be unable to vote in person on Election Day for four specific reasons.³² When it adopted no-excuse mail-in voting in 2019, the legislature maintained absentee voting as a separate option. In 2020, approximately 2.7 million voters requested no-excuse mail-in ballots, while approximately 400,000 requested absentee ballots. The assertion that there was a sudden increase of 400,000 ballots is based on a comparison of the number of no-excuse mail-in ballots requested and the total number of mail ballots sent out, and the supposed discrepancy is explained entirely by the number of absentee ballots issued.

³² Pa. Const. art. VII § 14.