

Trump's Frivolous Lawsuits Are the Tip of the Iceberg in His Refusal to Concede

By [Prof. Marjorie Cohn](#)

Global Research, November 12, 2020
[Truthout](#) 11 November 2020

Region: [USA](#)

Theme: [Law and Justice](#)

In-depth Report: [U.S. Elections](#)

*As masses of people poured into the streets to celebrate the end of **Donald Trump's** fascist rule, the lame duck president's lawyers were filing frivolous lawsuits in an attempt to nullify Joe Biden's victory. But none of these suits, even if successful, would change the results of the election.*

Shortly after *CNN* called the election for Biden, Trump [said in a statement](#), "Beginning Monday, our campaign will start prosecuting our case in court to ensure election laws are fully upheld and the rightful winner is seated."

First of all, only prosecutors prosecute cases — in criminal court. Private litigants in civil cases are called plaintiffs. And second, anyone who has the money to hire a lawyer can bring a lawsuit about *anything*. Thousands of legal actions are filed every day, but very few are taken seriously by judges. It's unclear whether Trump is even paying his hired guns; Rudy Giuliani once said he works for Trump without pay.

For months, Trump has mounted a [concerted strategy](#) to preemptively discredit the election results, spewing unsupported allegations of voter fraud with mail-in ballots. Republicans and the Trump campaign have filed myriad lawsuits, even before the election, all seeking to erect obstacles to voting.

Mindful that many more people than usual would vote by mail to protect themselves from the coronavirus, Trump sowed the seeds of doubt about the validity of mail-in ballots. With no evidence whatsoever, he fabricated claims of massive voter fraud. With no regard for the health risks, Trump encouraged his minions to vote in person, insisting the election results must be known on Election Day. Trump's supporters obliged and most voted at the polls. It was therefore no surprise that the overwhelming number of mail-in ballots were cast by Democrats.

Early Wednesday morning, as his putative lead began to evaporate, Trump [tweeted](#), "We'll be going to the U.S. Supreme Court. We want all voting to stop." Trump had said in no uncertain terms that he wanted Amy Coney Barrett installed on the Supreme Court to decide the election in his favor. But although counting of mail-in ballots continued, no votes were cast after Tuesday.

"If you count the legal votes, I easily win. if you count the illegal votes, they can try to steal the election from us," Trump falsely [claimed](#) Thursday night. But as retiring **Rep. Paul Mitchell** (R-Michigan) [tweeted](#), "a legally cast vote does not become 'illegal' simply because a candidate does not like the vote."

The same night, in a [White House briefing](#), Trump said, again falsely, “We were winning in all the key locations by a lot, actually. And then our number started miraculously getting whittled away in secret.” The tabulations were not conducted in secret; they were witnessed by both Republican and Democratic poll watchers.

Moreover, on election night, the count appeared to favor Trump since most Democrats cast mail ballots, which take longer to count. Some states, including Pennsylvania, forbid the counting of any ballots until Election Day. A Democratic-sponsored bill in Pennsylvania would have allowed mail-in ballots to be opened and counted before Election Day in light of the anticipated surge due to the pandemic. But Republicans in the Pennsylvania legislature defeated the bill. Since Trump’s strategy was to declare victory on election night, the GOP forces likely sought to prevent mail-in ballots from diluting Trump’s apparent early lead. Furthermore, election workers didn’t even open mail ballots until November 4, since several counties required all workers to conduct the election on November 3. This explains why it took longer to report the vote counts in Pennsylvania.

On Saturday morning, Trump erroneously [asserted](#), “I won this election, by a lot.” [At the time](#), Biden was leading in the electoral vote — 253 to 214 — and he had received 4,250,184 more popular votes than Trump.

The Pennsylvania Case

It was Pennsylvania that put Biden over the top in electoral votes. *CNN* and other news outlets called Biden the winner on Saturday morning. Trump falsely [tweeted](#) about

“...Pennsylvania, which everyone thought was easily won on Election Night, only to see a massive lead disappear, without anyone being allowed to OBSERVE, for long intervals of time.”

Again falsely, Trump also tweeted,

“Tens of thousands of votes were illegally received after 8 P.M. on Tuesday, Election Day, totally and easily changing the results in Pennsylvania and certain other razor thin states.”

There was nothing illegal about counting ballots that were postmarked by, but received after, Election Day. The Pennsylvania Supreme Court had ruled that ballots could be counted if received by Friday, November 6.

Trump’s challenge to mail-in ballots received in Pennsylvania between November 3 and 6 is the only case that the U.S. Supreme Court might review, and even that is unlikely, since those ballots would not alter the election results.

Twice before the election, Republican state legislators and the Republican Party of Philadelphia asked the high court to halt Pennsylvania’s three-day extension for receipt of mail-in ballots. Twice they were rebuffed. The first time, the Court deadlocked 4-to-4, leaving the Pennsylvania Supreme Court decision in place. Chief Justice John Roberts joined the three remaining liberals — Stephen Breyer, Sonia Sotomayor and Elena Kagan — to uphold the state court’s decision. Right-wingers Clarence Thomas, Samuel Alito, Neil

Gorsuch and Brett Kavanaugh voted to block the ballots.

Although the Supreme Court refused to review the case for lack of time, Alito, Gorsuch and Thomas wrote a statement on October 28, suggesting the Court could still hear the case after the election. They described the plaintiffs' request as a "last ditch attempt to prevent the election in Pennsylvania from being conducted under a cloud." Barrett has not yet participated in this case.

On Saturday, Alito ordered Pennsylvania's secretary of state to segregate, and separately count, mail-in ballots that arrived after Election Day. The Pennsylvania attorney general [affirmed](#) that the state had already segregated them. But the number of ballots in contention is so small it would not affect the outcome of the election. The Court is thus not likely to review this case.

Trump's spate of frivolous lawsuits will not reverse the results of the election. In spite of Trump's pattern of lies about massive fraud from mail-in ballots, his [cases](#) don't allege widespread fraud. Judges have dismissed Trump's lawsuits in Georgia and Michigan for lack of any evidence to support fraud allegations. The cases Trump has won involve primarily technicalities involving small numbers of ballots. Trump's cases include closer access of election observers, signature verification on mail ballots, nonresident voting and the mixing of a small number of ballots. Trump's forces are seeking a recount in Wisconsin, which is unlikely to change the results in that state.

Trump probably thinks the Supreme Court, with his three appointees, will respond to his court challenges by handing him the presidency. That won't happen. But his flurry of lawsuits is also designed to cast doubt on the integrity of the election. As [Robert Reich noted](#), "Trump backers are trying to push Republican-controlled state legislatures to appoint their own slates of Trump electors. That's why the campaign has launched empty legal challenges to perfectly normal vote counts – trying to sow enough doubt to give the state legislatures political cover to appoint their own electors."

In his desperation to maintain power, we can expect Trump to pull out all the stops in the next two-and-a-half months before Inauguration Day.

He plans large rallies to rile his gun-toting base. He has enlisted most Republican leaders, including Mitch McConnell and Lindsey Graham, to collaborate with his attempted theft of the election.

Since the election, Attorney General William Barr told department officials that he [didn't see massive voter fraud](#) or a systemic problem. But on Monday, under pressure from Trump, Barr [authorized federal prosecutors](#) to investigate "substantial allegations of voting and vote tabulation irregularities." He limited the investigations to what he described as "clear and apparently-credible allegations of irregularities that, if true, could potentially impact the outcome of a federal election in an individual State." Weeks before the election, the department had removed its prohibition on voter fraud investigations prior to an election.

In response to Barr's directive, Richard Pilger, the Justice Department official directing voter fraud investigations, immediately stepped down from his job in protest.

Barr's authorization will give McConnell and other GOP leaders ammunition to oppose Biden's victory.

Trump is mounting a full-court press to steal the election from Joe Biden. The refusal to accept the election results by Trump and his congressional and Justice Department accomplices, coupled with his obstruction of the transition process, do not bode well for a peaceful transfer of power.

*

Note to readers: please click the share buttons above or below. Forward this article to your email lists. Crosspost on your blog site, internet forums. etc.

Marjorie Cohn is professor emerita at Thomas Jefferson School of Law, former president of the National Lawyers Guild, deputy secretary general of the International Association of Democratic Lawyers and a member of the advisory board of Veterans for Peace. Her most recent book is [Drones and Targeted Killing: Legal, Moral, and Geopolitical Issues](#). She is a frequent contributor to Global Research.

The original source of this article is [Truthout](#)
Copyright © [Prof. Marjorie Cohn](#), [Truthout](#), 2020

[Comment on Global Research Articles on our Facebook page](#)

[Become a Member of Global Research](#)

Articles by: **[Prof. Marjorie Cohn](#)**

Disclaimer: The contents of this article are of sole responsibility of the author(s). The Centre for Research on Globalization will not be responsible for any inaccurate or incorrect statement in this article. The Centre of Research on Globalization grants permission to cross-post Global Research articles on community internet sites as long the source and copyright are acknowledged together with a hyperlink to the original Global Research article. For publication of Global Research articles in print or other forms including commercial internet sites, contact: publications@globalresearch.ca
www.globalresearch.ca contains copyrighted material the use of which has not always been specifically authorized by the copyright owner. We are making such material available to our readers under the provisions of "fair use" in an effort to advance a better understanding of political, economic and social issues. The material on this site is distributed without profit to those who have expressed a prior interest in receiving it for research and educational purposes. If you wish to use copyrighted material for purposes other than "fair use" you must request permission from the copyright owner.

For media inquiries: publications@globalresearch.ca