

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

PENNSYLVANIA DEMOCRATIC)	
PARTY; <i>et al.</i> ,)	
)	
Petitioners,)	
)	
v.)	133 MM 2020
)	
KATHY BOOCKVAR; et al.,)	
)	
Respondents.)	

APPENDIX TO PETITIONERS’ BRIEF

Exhibit	Description of Document
A	Petitioners Omnibus Memorandum of Law in Opposition to Preliminary Objections of Various County Boards of Elections
B	Petitioners’ Answers to Various Boards of Elections and Secretary of the Commonwealth’s New Matters
C	Application for Mail-In Ballot
D	Declaration of Adam R. Roseman, Esq.
E	August 31, 2020 transcript of the evidentiary hearing in <i>Crossey</i> (“ <i>Crossey</i> Transcript”).
F	August 1, 2020 Pennsylvania 2020 Primary Election Act 35 of 2020 Report
G	January 10, 2020 Department of State Mail-in and Absentee Ballots and Voter Registration Changes Guidance

H	August 19, 2020 Department of State Absentee and Mail-in Ballot Return Guidance
I	May 28, 2020 email from the Deputy Secretary of State Jonathan Marks to county Boards of Election
J	August 19, 2020 Department of State Guidance for Missing Official Election Ballot Envelopes
K	Petitioners' Exhibit 32 admitted into evidence during the <i>Crossey</i> hearing ("Stroman Report").
L	Relevant portions of Philadelphia County Board of Elections' Objections and Responses to Plaintiffs' First Set of Interrogatories and Requests for Production in the case captioned <i>Donald J. Trump for President, Inc., et al v. Boockvar, et al</i> , No. 20-966 (W.D. Pa.) ("Federal Court Act").
M	Relevant portions of Bucks, Chester, and Montgomery County Boards of Elections' Objections and Responses to Plaintiffs' First Set of Interrogatories and Request for Production in the Federal Court Action.
N	July 15, 2020 email string Bates labeled LAW-013648-51 produced by Lawrence County Board of Elections in the Federal Court Action.
O	Petition for Declaratory and Injunctive Relief
P	Bucks, Chester, Montgomery, and Philadelphia Response to Petition.
Q	Update on June the 2 Primary Election in Delaware County, Press Release, Delaware County Pennsylvania, www.delcopa.gov/publicrelations/releases/2020/june2primaryupdate.html
R	June 2, 2020 Order from Court of Common Pleas of Delaware County, Pennsylvania in <i>In re Extension of Time for Absentee</i>

	<i>and Mail-In Ballots to be Received by Mail and Counted in the 2020 Primary Election</i> , No. 2020-003416
S	June 2, 2020 Order from Court of Common Pleas of Bucks County, Pennsylvania in <i>In re: Extension of Time for Absentee and Mail-In Ballots to be Received by Mail and Counted in the 2020 Primary Election</i> , No. 2020-02322-37.
T	Executive Order, Extension of Deadline for Receipt of Absentee and Mail-In Ballots in Certain Counties, 2020-02 (June 1, 2020).
U	Marc Levy, <i>Grey Area of Mail-in Voting Law Up to Pennsylvania Court</i> , TIMES LEADER (Aug. 25, 2020), https://www.timesleader.com/news/798226/gray-area-of-mail-in-voting-law-up-to-pennsylvania-court-3 .
V	Respondents' Ex. 2 admitted into evidence during the <i>Crossey</i> Hearing ("Chart of County Absentee or Mail-In Ballots")
W	Joel Achenbach and Rachel Weiner titled Experts project autumn surge in coronavirus cases, with a peak after Election Day and published in the WASHINGTON POST, available at https://www.washingtonpost.com/health/coronavirus-fall-projections-second-wave/2020/09/04/6edb3392-ed61-11ea-99a1-71343d03bc29_story.html .
X	Secretary of the Commonwealth's Aug. 13, 2020 Praeceptum to Withdraw Certain Respondents' Preliminary Objections Based on United States Postal Service's Announcement of Statewide Mail Delays Affecting General Election in <i>Crossey</i> .
Y	Petitioners' Exhibit 28 admitted into evidence during the <i>Crossey</i> hearing ("Eastern AIM Service Update")
Z	July 29, 2020 letter from USPS to Secretary Boockvar.
AA	July 30, 2020 letter from USPS to North Carolina Secretary of State Elaine Marshall.

BB	Answer and New Matter of Secretary Boockvar in Response to Petition
CC	H.B. 2626, P.N. 4335, 219th Leg. Reg. Sess. (Pa. 2020)
DD	Emily Previti, <i>Gov. Wolf plans to veto election code bill in its current form</i> , available at www.witf.org/2020/09/02/gov-wolf-plans-to-veto-election-code-bill-in-its-current-form/ (last visited Sept. 7, 2020).
EE	Special Master Mary Hanna Leavitt's September 4, 2020 Recommended Findings of Fact and Conclusions of Law in <i>Crossey, et al v. Boockvar, et al</i> , 266 M.D. 2020
FF	S.B. 10, P.N. 1898, 219th Leg. Reg. Sess. (Pa. 2020)
GG	Union County Board of Elections' Supplemental Responses to Plaintiffs' Set of Written Interrogatories and Requests for Production of Documents to all Defendant County Boards of Elections in the Federal Court Action.
HH	September 8, 2020 Declaration of Gerald Lawrence
Addendum	Factual Summary

EXHIBIT “A”

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA DEMOCRATIC)	
PARTY; <i>et al.</i> ,)	
)	
Petitioners,)	
)	
v.)	407 MD 2020
)	
)	
KATHY BOOCKVAR; et al.,)	
)	
Respondents.)	
)	

**OMNIBUS MEMORANDUM OF LAW IN OPPOSITION TO
PRELIMINARY OBJECTIONS OF VARIOUS
COUNTY BOARDS OF ELECTIONS**

This Petition raises issues that go to the very heart of the most fundamental principles underlying the “Free and Equal Protections Clause” in the state Constitution, and was filed to prevent the certain disenfranchisement of scores of Pennsylvania voters at a time of unprecedented and unanticipated national crisis. Petitioners here present specific, narrow questions arising from the interpretation of Act 77 of 2019 and its application during the upcoming General Election on November 3, when serious voter health concerns and safety restrictions caused by the novel coronavirus (“COVID-19”) will assuredly lead to an avalanche of mail-in and absentee ballot applications. This Court has the power and authority to resolve these issues in an expeditious manner to allow for an efficient and just administration of the General Election.

Specifically, Petitioners have asked this Court to: (1) resolve pure questions of law related to the proper interpretation of the mail-in and absentee ballot provisions of Act 77 of 2019 (“Act 77”); (2) confirm the constitutionality of the Election Code’s poll watcher residency requirement; and (3) review and assess the 67 county Boards of Elections’ (“Boards” or “the Boards”) application of various provisions in the new Act 77 in this unique time precipitated by COVID-19 where millions of mail-in and absentee ballots have been and will be requested by Pennsylvania voters.

On July 10, 2020, the Pennsylvania Democratic Party and several Democratic candidates (“Petitioners”) filed a Petition for Declaratory and Injunctive Relief (“Petition”) against the Secretary of the Commonwealth (“Secretary”) and all 67 county boards. Of the 68 respondents, just nine filed preliminary objections, asserting substantially similar issues in generally consistent language. Petitioners file this omnibus memorandum of law to address all parties’ preliminary objections.

Collectively, the preliminary objections generally raise five issues: (1) allegations that the Petition violates the separation of powers doctrine and thus is non-justiciable; (2) allegations that the relief requested in the Petition is unripe or moot; (3) allegations—solely as to the injunctive relief requested—that it fails to state a claim for relief; (4) the Petition fails to state any specific claim of illegal conduct against certain Boards or, even if it does, the illegal conduct is alleged with

insufficient specificity; and (5) the Petition includes impertinent and scandalous allegations.

For the reasons explained below, this Court must deny all preliminary objections swiftly and move to the most efficient procedural mechanism for resolution.¹

I. STATEMENT OF FACTS

A. The General Assembly Passes Act 77.

On October 31, 2019, Governor Wolf signed Act 77 into law, which was a bipartisan effort and made major changes to the Pennsylvania Election Code. Petition, ¶ 35.

Significantly, Act 77 permits no excuse mail-in voting for all qualified electors. *See* 25 Pa. C.S. §§ 3150.11-3150.17. To vote by mail or absentee ballot, the process begins by applying for such a ballot. *See* 25 Pa. C.S. § 3150.12a(a). Applications for mail-in ballots must be received by county Boards not later than

¹ Simultaneously, the Secretary has sought an exercise of extraordinary jurisdiction from the Pennsylvania Supreme Court arguing that a prompt resolution is required to ease the administration of the upcoming election. *See* **Ex. 5**. That application is pending and is, with a single exception, not opposed—and the one exception was an amicus filing which urged state courts to defer on these issues of state law to the United States District Court for the Western District of Pennsylvania, who, on Sunday, August 23, 2020, entered an order abstaining from handling this matter until it is resolved by Pennsylvania’s state courts. *See Donald J. Trump Campaign for President, Inc., et al v. Boockvar, et al*, No. 20-00966 (W.D. Pa. Aug. 23, 2020) (Dkt. 409-410). The General Election is now just 10 weeks away. Petitioners concur that a rapid resolution is appropriate and, if the Supreme Court does not exercise its King’s Bench power, urge an accelerated disposition of these preliminary objections and a rapid hearing on the merits.

seven days before an election. *Id.* If a voter submits an application and the county board of elections determines that the voter meets the statutory requirements for an absentee ballot or a mail-in ballot, the board sends the absentee or mail-in ballot to the voter via the United States Postal Services (“USPS”) mail. *See* 25 Pa. C.S. §§ 3146.2a(a.3)(3), 3150.12b(a)(1), 3150.15.

Under Act 77, the general mail-in process for a voter is as follows:

In secret, proceed to mark the ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed ‘Official Election Ballot.’ This envelop shall be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector’s county board and the local election of the elector. The elector shall then fill out, date and sign the declaration printed on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

Id. at § 3150.16(a); Act 77 § 1306-D(a) (there are special provisions for those in need of assistance); *see also* 25 Pa. C.S. § 3146.6(a).

Act 77 bars counting an absentee or mail-in ballot that has “any text, mark or symbol which reveals the identity of the elector, the elector’s political affiliation or the elector’s candidate preference” on the **privacy envelope**. *See* 25 Pa. C.S. § 3146.8(g)(4)(i)-(iv) (emphasis added). But, Act 77 does not empower Boards to

exclude ballots solely because the voter forgot to utilize the inner secrecy envelope (“Privacy Envelope”). *See* Petition, ¶ 133.

The Election Code treats provisional ballots—ballots cast in-person when there are questions or concerns regarding a voter’s eligibility—differently than mail-in or absentee ballots. *See e.g.*, 25 Pa. C.S. § 3050(a.2), (a.4). Unlike the Election Code’s provisions related to mail-in and absentee ballots, the provisional ballot section of the Election Code expressly provides that “a provisional ballot shall not be counted if a provisional ballot envelope does not contain a secrecy envelope.” 25 Pa. C.S. § 3050(a.4)(5)(ii)(C); Petition, ¶ 133.

Act 77 requires voters to return their ballots to their “county board of election” by 8:00 pm on election day. Act 77 § 1306-D(a); 25 Pa. C.S. § 3146.6(a), 3146.8(g)(1)(ii), 3150.16(a), (c). The language adopted by the General Assembly in Section 1306-D allows Boards to collect Ballots at any location controlled by the Board and did not specify the use of the Board’s central office. *Id.* at § 3150.16(a).

In the process of implementing Act 77, on January 10, 2020, the Department of State issued Applications and Balloting Guidance: Mail-in and Absentee Ballots and Voter Registration Changes (“January Guidance”) which provides that “[i]n addition to [county election offices], counties may provide for other secure ballot

collection locations that the county deems appropriate to accommodate in-person return of voted mail-in and absentee ballots.” **Ex. 1**, January Guidance at pg. 5.²

The January Guidance provides that if Boards decide to provide “ballot collection locations,” Boards should consider, among other things, (1) “[e]nsure and document to the Department the security and chain of custody of mail-in and absentee ballots received from ballot collection locations”; (2) “[u]tilize a secure ballot collection receptacle that is designed for this specific purpose”; (3) “[o]fficially designate county election personnel who are sworn and authorized to remove mail-in and absentee ballots from ballot collection receptacles.” *Id.* The guidance was updated by a revised guidance issued on August 19, 2020. **Ex. 2**, Absentee and Mail-In Ballot Return Guidance.

²A court may take judicial notice of official court records and public documents at the preliminary objection stage. *See* Pa. R.E. 201(b)(2); *See Doxsey v. Commonwealth*, 674 A.2d 1173, 1174 (Pa. Cmmw. Ct. 1996) (taking judicial notice of copies of official criminal court records, which respondent had attached to its preliminary objections). Here, Petitioners respectfully request that this Court take judicial notice of the **Exhibit 1**, the January Guidance; **Exhibit 2**, August 19, 2020 Absentee and Mail-In Ballot Return Guidance; **Exhibit 3**, the July 29, 2020 letter from Thomas J. Marshall, General Counsel for the United States Postal Service to Secretary of the Commonwealth Kathy Boockvar; **Exhibit 4**, August 19, 2020 Guidance for Missing Official Election Ballot Envelopes (“Naked Ballot Guidance”); **Exhibit 5**, Secretary Boockvar’s Application for the Court to Exercise Extraordinary Jurisdiction Over The Commonwealth Court Case Docketed at 407 MD 2020 (“Kings Bench Petition”); **Exhibit 6**, Secretary’s Praecepto to Withdraw Certain of Respondent’s Preliminary Objections, *Crossey, et al v. Boockvar, et al*, No. 108 MM 2020 (Pa. Aug. 13, 2020) (“Praecepto to Withdraw”). These documents are publicly available documents and/or official court records.

B. The Pandemic Leads To A Surge In Mail-In And Absentee Ballots During The Primary Election.

COVID-19 impacted the 2020 Primary Election and how citizens cast their ballots. Petition, ¶ 53. In reaction to the pandemic, on March 25, 2020, the General Assembly passed Act 12, which delayed the date of the Primary Election from April 28 to June 2, permitted counties to temporarily consolidate polling places without court approval and eased other rules related to location and staffing of polling places, which resulted in dramatic consolidation of polling places. *Id.* at ¶ 54-56.

Approximately 1.8 million electors voted by mail in the Primary Election. *Id.* at ¶ 73. The crush of absentee and mail-in ballots due to the pandemic created massive disparities in the distribution and return of mail-in and absentee ballots in the Primary Election. *Id.* at ¶ 70. Some county Boards needed more than 20 days to distribute mail-in and absentee ballots while other Boards were able to provide same-day processing of voters' ballot applications and distribution of ballots. *Id.* at ¶ 76.

Significant delays in the processing and distribution of mail-in and absentee ballots were not the only election administration problems resulting from the pandemic during the rollout of Act 77 during the Primary Election. Because most voters were new to voting by mail, some voters forgot to place their ballot in the inner envelope (*i.e.*, the Privacy Envelope), so-called Naked Ballots. *Id.* at ¶ 124. After Boards received the Naked Ballots, several Boards asked the Department of State for guidance regarding whether they must count them. *Id.* at ¶¶ 125-128. Most

of the 67 Boards counted Naked Ballots but a handful chose not to follow the Secretary's guidance and did not, thereby spoiling otherwise valid ballots and overriding voters' intent to cast a ballot for their preferred candidates. *See Id.* at ¶ 129-130.

The delays in voters receiving their mail-in and absentee ballots from some Boards lead to a delay in voters delivering them to their Boards by 8:00 p.m. on the night of the Primary Election, the deadline in the Election Code. 25 P.S. § 3146.6(a), 3146.8(g)(1)(ii), 3150.16(c); Act 77 § 1306-D(a), (c). As a result, Boards had to—and did—take steps to address this issue. Petition, ¶¶ 84-86. Boards of more populous counties established ballot drop-boxes controlled by Boards so voters could personally deliver their mail-in and absentee ballots by the 8:00 p.m. deadline. *Id.* Other Boards chose not to do this. *Id.* What is more, given the delays in sending voters mail-in ballots, some Boards themselves sought, and received authorization to accept ballots for up to 7 days post-election so long as the ballots were mailed by the Primary Election. *Id.* at ¶ 103.

In addition, on June 1, 2020, one day before the Primary Election, Governor Wolf issued an executive order extending the deadline for county election offices in Allegheny, Dauphin, Delaware, Erie, Montgomery, and Philadelphia counties to receive absentee or mail-in ballots by 5:00 p.m. on June 9, 2020 so long as they were postmarked no later than June 2, 2020. Executive Order, Extension of Deadline for

Receipt of Absentee and Mail-In Ballots in Certain Counties, 2020-02 (June 1, 2020). Governor Wolf exercised his executive authority to do so because of the unprecedented and unanticipated surge in mail-in ballot applications, the COVID-19 pandemic, and civil unrest in those counties related to the death of George Floyd. *Id.*

In short, the processing times for mail-in and absentee ballot applications and the distribution/receipt of ballots varied throughout the Commonwealth during the Primary Election. *See Id.* at ¶¶ 82-86; 103, 105.

C. The Same Issues That Existed In The Primary Election Will Occur During The General Election If This Court Does Not Resolve The Petition.

While the overall impact of the pandemic on the administration of the 2020 General Election is difficult to predict with absolute certainty, two facts are or should be undisputed: the pandemic will persist and voter turnout will be substantially greater in the upcoming general election than in the primary. Those two facts will result in a wave of even more mail-in and absentee ballots cast in the Commonwealth during the General Election. *Id.* at ¶¶ 169-170.

To make matters worse, on July 29, 2020, the USPS warned the Secretary that there is a “significant risk” that certain voters who timely request an absentee or mail-in ballot “will not have sufficient time to complete and mail the completed ballot[s] back to election officials in time for it to arrive by [Pennsylvania’s] return

deadline.” **Ex. 3**, USPS Letter. The USPS Letter further explained that there was a risk that “ballots requested in a manner consistent with [Pennsylvania’s] election rules and returned promptly . . . [may] not be returned in time to be counted.” *Id.* Accordingly, although the Election Codes expressly permits voters to *request* a mail-in or absentee ballot as late as 7 days before the General Election, the USPS recommends that voters who choose to vote by mail should mail their *ballots* to their county boards no later than October 27, 2020, 7 days before the General Election. *Id.*

In advance of the General Election, on August 19, 2020, the Pennsylvania Department of State issued Guidance for Missing Official Election Ballot Envelopes (“Naked Ballots”). **Ex. 4**, Naked Ballot Guidance. The Department’s position is that “naked ballots should be counted pursuant to the Pennsylvania Election Code . . . and the failure to include the [Privacy Envelope] does not undermine the integrity of the voting process.” *Id.* Accordingly, the Department of State has instructed the Boards to “develop a process for counting naked ballots that are discovered during the pre-canvass or canvass.” *Id.*

II. ARGUMENT

A. The Petition is Justiciable – It Seeks Interpretations of the Election Code and this Court is the Proper Forum to Resolve the Dispute.

The Lehigh County Board of Elections (“Lehigh BoE”)³ seeks to dismiss the Petition because it violates the separation of powers doctrine. According to Lehigh BoE, the relief Petitioners seek is not justiciable because only the General Assembly can make changes to the mail-in and absentee ballot provisions in Act 77. On this issue, Lehigh BoE is fundamentally wrong.

This case is a dispute regarding, among other things, the interpretation of Section 1306-D of Act 77 (25 Pa. C.S. § 3150.16(a)), the validity and constitutionality of the Election Code’s poll watcher residency requirement provision, and whether the deadline for voters to return mail-in and absentee ballots⁴ disenfranchises voters when there is a wave of mail-in and absentee ballot applications before the General Election because of a pandemic that renders in-person voting unsafe.

Lehigh BoE’s argues essentially, that anyone who disagrees with Lehigh BoE’s interpretation of the language of the Election Code is wrong and is seeking changes to the Election Code via judicial intervention rather than through the legislature. Lehigh BoE’s position is a decidedly minority one, claiming that its

³ Perry and Franklin Boards of Elections joined Lehigh Board of Elections’ preliminary objections.

⁴ 25 Pa. C.S. §§ 3146.6(a), 3146.8(g)(1)(ii), 3150.16(a), (c).

interpretations are correct and the interpretations of Petitioners, the Secretary, and dozens of other counties are fundamentally flawed, and that issue should never be resolved by a Pennsylvania Court.

This Court can and should resolve this dispute. Indeed, the General Assembly endowed the Commonwealth Court with statutory jurisdiction to resolve election related disputes. *See* 42 Pa. C.S. § 764(2) (explaining Commonwealth Court has jurisdiction over election matters relating to “Statewide” office); *Mohn v. Bucks County Republican Committee*, 218 A.3d 927 (Pa. Super. Ct. 2019).

Perhaps ironically, *Costa v. Cortes*, 143 A.3d 430 (Pa. Commw. Ct. 2016), a case Lehigh BoE cites in support of its preliminary objection, proves this very point. Petitioners in *Costa* sought to enjoin the Secretary of the Commonwealth from implementing House Resolution 783 which purported to remove a proposed constitutional amendment from the April 2016 Primary ballot. *Id.* at 433. The Commonwealth Court had jurisdiction because the dispute involved, in part, whether the H.R. 783 prohibited the Secretary from complying with his duties under the Election Code. *Id.* at 435-36. Because the dispute involved the Election Code in a statewide election, the Court had little trouble exercising its jurisdiction.

Every election cycle the Commonwealth Court handles an array of cases on an expedited basis measured by the election calendar. This dispute is no different. Thus, contrary to Lehigh BoE’s position that Petitioners seek to use this Court to

“implement desired policy changes,” Petitioners ask this Court merely to do something that it routinely does: interpret the Election Code to inform the parties *what the law is*, and assess whether the Election Code as applied to specific circumstances (in this case a wave of mail-in and absentee ballots because of a pandemic) disenfranchises voters and thus fails to provide voters the right to participate in a free and fair election. Pa. Const. art. I, § 5.

Accordingly, this Court should deny Lehigh BoE’s preliminary objection that the Petition is nonjusticiable pursuant to the separation of powers doctrine.

B. The Petition Is Ripe For Judicial Review.

Next, the Lehigh BoE argues the relief Petitioners seek is not ripe for review. This argument also fails. The ripeness doctrine does not prohibit this Court from resolving Petitioners’ request for declaratory relief because the issues are ready for judicial review and Petitioners, as well as voters, will suffer hardships if review of the declaratory relief requested is delayed. Alternatively, even if the Lehigh BoE believes it can credibly argue that all 67 Boards will meet the mail-in and absentee ballot related timelines that they were simply unable to meet during the Primary Election, the Court should nevertheless address this issue because it is substantially similar to issues that meet the exception to the mootness doctrine for matters that would avoid meaningful review. Thus, the Court should review Petitioners’ requests for injunctive relief.

1. Petitioners’ Requests For Declaratory Relief Can And Should Be Decided Now.

As an initial matter, Petitioners seek declaratory relief in Counts I, IV, and V. There can be no good faith argument that the interpretation of disputed provisions of the Election Code that will unquestionably be at play in the upcoming election are ripe for declaratory judgment.

The justiciability doctrine of ripeness addresses whether judicial intervention occurs at the appropriate time. *Town of McCandless v. McCandless Police Officers Association*, 901 A.2d 991, 1002 (Pa. 2006). Whether the ripeness doctrine bars a declaratory judgment action depends on “(1) whether the issues are adequately developed for judicial review; including whether the claim involves uncertain and contingent events that may not occur as anticipated or at all; and (2) what hardships the parties will suffer if review is delayed.” *Alaica v. Ridge*, 784 A.2d 837, 842 (Pa. Commw. Ct. 2001). “An actual controversy exists when litigation is both imminent and inevitable and a declaration sought will practically help to end the controversy between the parties.” *Chester Community Charter School v. Dep’t of Ed.*, 996 A.2d 68, 80 (Pa. Commw. Ct. 2010). Importantly, a conflict does not need to have reached a “full-fledged battle” for a matter to be ripe for declaratory judgment. *Ronald H. Clark, Inc. v. Township of Hamilton*, 562 A.2d 965, 968 (Pa. Commw. Ct. 1989).

Here, the ripeness doctrine does not bar the declaratory relief Petitioners seek. Petitioners seek a declaratory judgment on issues that are adequately developed for

judicial review because each issue is purely a question of law and statutory interpretation. These claims are also not based on uncertain or contingent events that may not occur as anticipated at all. The events of the Primary Election serve as a prologue to what will likely occur—absent judicial intervention—during the General Election. For example, the prospect of Boards not counting Naked Ballots during the General Election is real. Indeed, some Boards, like Lawrence County Board of Elections, did not count Naked Ballots during the Primary Election despite guidance from the Department of State instructing Boards to do so. *See* Ex. B to Petition. Absent a declaration from this Court, some Boards will follow the Secretary’s guidance and count Naked Ballots while others undoubtedly will not. Accordingly, declaratory relief from this Court regarding whether Act 77 requires Boards to count Naked Ballots is ripe as the parties and voters need clear guidance on this issue.

Additionally, during the Primary Election some Boards established ballot drop-boxes to facilitate the delivery of the unexpected surge of mail-in and absentee ballots because of the pandemic. Faced with likely an even larger number of mail-in and absentee ballots during the General Elections, Boards once again will need to evaluate whether to establish ballot drop-boxes in their county to ensure voters can timely deliver their ballots to their county board. The Department of State has issued guidance permitting the Boards to do this. *See* **Ex. 1-2**. Although the Secretary has provided Board’s with authorized guidance and directives to ensure uniformity, this

Court's confirmation of the Secretary's interpretation of the Election Code regarding Naked Ballots and the use of drop-boxes to collect ballots will allow the Commonwealth and all Boards to proceed in a consistent and lawful manner.

Next, it is self-evident that the parties will suffer hardships if review of these issues is delayed. Failing to resolve disputes regarding the proper interpretation of the mail-in and absentee ballot sections of the Election Code will lead to voter disenfranchisement (*e.g.*, some Boards refusing to count Naked Ballots) and create unnecessary obstacles for voters to timely cast their ballots (*e.g.*, if Boards decline to establish ballot drop-boxes). This is especially true in the Commonwealth's most populous and dense counties where the spread of COVID-19 is highest and most dangerous for in-person voting. By contrast, resolving these issues *now* provides clarity to Boards, candidates, campaigns, and voters in advance of the General Election. Thus, the ripeness doctrine does not bar adjudication of Petitioners' requests for declaratory relief.

2. The Exception To The Mootness Doctrine Renders Petitioners' Request For Injunctive Relief Ripe.

"Cases in which apparently moot claims are likely to arise again have long been gathered under the 'capable of repetition yet evading review' exception to the mootness doctrine." *De La Fuente v. Cortés*, 261 F. Supp. 3d 543, 549 (M.D. Pa. 2017) (citing *Merle v. United States*, 351 F.3d 92, 94 (3d Cir. 2003)). Under this exception, "a court may exercise its jurisdiction and consider the merits of a case

that would otherwise be deemed moot when (1) the challenged action is, in its duration, too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.” *Merle*, 351 F.3d at 95. This exception, “in the context of election cases, is appropriate when there are ‘as applied’ challenges as well as in the more typical case involving only facial attacks.” *Storer v. Brown*, 415 U.S. 724, 737 n. 8 (1974). “The construction of the [Election Code], an understanding of its operation, and possible constitutional limits on its application, will have the effect of simplifying future challenges, thus increasing the likelihood that timely filed cases can be adjudicated before an election is held.” *Id.*

De La Fuentes is particularly instructive. In that case, a presidential candidate who unsuccessfully sought the Democratic nomination and was then blocked from running as an independent candidate in the 2016 presidential election sued to challenge the Pennsylvania statute that blocked his bid to run as an independent. *De La Fuentes*, 261 F. Supp. 3d at 547. He claimed that the law threatened his plans to run in the 2020 presidential election. *Id.* Defendants in that case argued—like Lehigh BoE does here—that any claims arising out of the 2016 election were moot because the election was over and any claims related to the 2020 election were at best hypothetical and thus not ripe. *Id.* at 549.

The court rejected defendants’ argument and found that plaintiff’s claims were “not purely hypothetical but are grounded in factual occurrences that are susceptible to repetition.” *Id.* Further, the court found plaintiff’s claims fell within the “capable of repetition yet evading review” exception to the mootness doctrine because he likely faced the “same obstacles and raise the same claims again.” *Id.* The court identified a Catch-22 that the plaintiff faced if defendants’ arguments were accepted. *Id.* “Plaintiff’s grievances arise when Pennsylvania’s election laws impede his campaign efforts, which is most likely to occur mere months before the election cycle ends.” *Id.* In turn, “[p]laintiff could not fully litigate his claim in a matter of months and, therefore, will always bump against a jurisdictional bar.” *Id.*

This Court must reject Lehigh BoE’s arguments for the same reasons as those explained in *De La Fuentes*. Petitioners seek injunctive relief to address issues that occurred during the Primary Election, and are certain to occur again in the General Election if not addressed by this Court. Without a timely resolution, Petitioners will be unable to fully litigate their claims on the eve of the General Election. This will also likely lead to scores of election-related lawsuits against a wide range of county boards. Petitioners request an efficient and statewide resolution of their claims.

a. There Is A Reasonable Expectation That Petitioners Will Be Subject To The Same Action Again If This Court Does Not Resolve The Petition.

As is now well-documented, the pandemic significantly impacted how voters cast ballots during the Primary Election. Instead of voting in-person, voters requested, received, and delivered mail-in and absentee ballots in unprecedented numbers. Petition, ¶¶ 71-73. All told, by the mail-in ballot application deadline, nearly 1.8 million voters requested to vote by mail. *Id.* at ¶ 73. Despite Boards' best efforts, significant problems ensued. *Id.* at ¶¶ 74-76. There were delays in some Boards processing mail-in and absentee ballot applications and mailing ballots to voters who applied for them. *Id.* at ¶¶ 71, 76. Other Boards had little trouble processing applications and sending voters mail-in and absentee ballots. *Id.* at ¶ 76. The Secretary has admitted that Boards for the most populous counties in the Commonwealth—which also have the highest prevalence of COVID-19—experienced problems addressing the surge of mail-in ballot applications because of staffing shortages and social distancing rules. *Id.* at ¶ 74.

Problems continued after voters received their ballots from Boards. Because most voters do not typically vote by mail, some voters forgot to place their ballot in the inner envelope (*i.e.*, the Privacy Envelope), so-called Naked Ballots. *Id.* at ¶ 124. After Boards received the Naked Ballots, several Boards asked the Department of State for guidance regarding whether they must count them. *Id.* at ¶ 125.

Notwithstanding the Department's guidance, some Boards counted Naked Ballots and some did not. *See id.* at ¶¶ 128-130.

The delays in voters receiving their mail-in ballots led to a delay in voters delivering them to their Boards by 8:00 pm on the night of the Primary Election, the deadline in the Election Code. *See* 25 P.S. §§ 3146.6(a), 3146.8(g)(1)(ii), 3150.16(a), (c). Accordingly, Boards had to—and did—take steps to address this issue. Petition, ¶¶ 84-86. Indeed, some Boards established ballot drop-boxes controlled by Boards so voters could deliver their mail-in and absentee ballots by the 8:00 pm deadline. *Id.* Other Boards did not do this. Given the delays in sending voters mail-in ballots, some Boards themselves sought, and received authorization to accept ballots for up to 7 days post-election so long as the ballots were mailed by the Primary Election. *Id.* at ¶ 103. Also, Governor Wolf issued an executive order extending the deadline for boards in six counties to receive absentee or mail-in ballots 7 days after the election due to the surge in mail-in ballot applications, the pandemic, and civil unrest. Executive Order, Extension of Deadline for Receipt of Absentee and Mail-In Ballots in Certain Counties, 2020-02 (June 1, 2020).

All told, the time it took for voters who applied for a mail-in or absentee ballot to receive their request ballots, and the method and time for voters to deliver mail-in or absentee ballots varied significantly throughout the Commonwealth during the Primary Election.

Against the backdrop of the Primary Election, Petitioners seek an injunction requiring Boards to (1) use all reasonable measures to encourage and facilitate the return of mail-in ballots; (2) count mail-in and absentee ballots postmarked by 8:00 p.m. on Election Day and received by Boards by the Uniform and Overseas Citizens Absentee Voting Act (“UOCAVA”), 52 U.S.C. § 20301, *et seq.*, that is, one week after Election Day or November 10, 2020; (3) contact voters whose mail-in and absentee ballots contain facial defects to let them cure their ballot; and (4) clothe and count Naked Ballots.

Tellingly, no party seriously disputes that the delays and issues extant in the Primary Election will not repeat themselves during the General Election, when Boards are likely to receive even more mail-in and absentee ballot applications. In fact, the problems will be *worse*. The deadlines to apply for a mail-in or absentee ballot, for Boards to send ballots to voters, and for voters to mail ballots back to Boards in Act 77 is consistent with the presumptions embedded in law that a recipient will receive a letter three-days after mailing it. *See Meierdierck v. Miller*, 147 A.2d 406, 408 (Pa. 1959); *see also* Pa. R. A. P. 121(e); Fed. R. Civ. P. 6(d). If voters receive their mail-in or absentee ballots from Boards more than three days before the election, there should be little issue in the USPS timely returning their ballots to Boards as recipients of mail typically receive it three days after it is sent.

However, the problem for the General Election is that the Secretary has admitted in court filings that mail delivery delays will necessary lead to validly cast ballots not being received by Boards by the Election Code’s deadline of 8:00 pm on election day. *See* **Ex. 5**, Secretary’s King’s Bench Petition; **Ex. 6**, Secretary’s Praecipe to Withdraw. In the King’s Bench Petition, the Secretary conceded that given the mail delivery delays expected by the USPS the Court should order the counting of all ballots postmarked by the General Election and received by November 6, 2020, three days after the General Election. *See* **Ex. 5**.

The Secretary’s position was based on a July 29, 2020 letter she received from Thomas J. Marshall, General Counsel for the USPS stating that there was a “significant risk” that certain voters who timely request an absentee or mail-in ballot “will not have sufficient time to complete and mail the completed ballot[s] back to election officials in time for it to arrive by [Pennsylvania’s] return deadline.” **Ex. 3**, USPS Letter. The USPS Letter also recommends that voters who wish to vote by mail, send their ballots 7 days before the General Election (October 27, 2020), to ensure they are timely received by Boards and are counted. *Id.* Thus, the USPS Letter concedes that even if Boards and voters comply with the deadlines in the Election Code, mail delivery delays—which are not the fault of voters or Boards—could disenfranchise thousands, if not hundreds of thousands, of voters who cast their ballot by mail. Stated differently, the admissions of both the Secretary and the USPS

show that the threat of disenfranchising voters during the General Election is both real and likely.

The mail delays will require some Boards, especially those in populous counties, to again create a work around, establish temporary offices and ballot drop-boxes controlled by agents of the Boards to collect voters' mail-in and absentee ballots. Petitioners dispute that the November 6 date is appropriate (suggesting, instead, the November 10 deadline for overseas and military ballots), but agree that there will be a failure, and the only dispute is as to the necessary remedy.

Accordingly, as in *De La Fuente*, Petitioners' claims credibly allege that past is indeed prologue. The issues during the Primary Election are likely to repeat themselves if the Court does not intervene now.

b. If This Court Does Not Resolve The Petition, Petitioners Will Not Be Able To Fully Litigate Their Claims Before The General Election.

Second, if Petitioners' claims are deemed moot or unripe, Petitioners will find themselves in a Catch-22, being forced to wait until the eve of the election to sue various county boards, when, at that time, it will simply be too late to fully litigate Petitioners' claims and requests for relief. Worse yet, waiting until just right before the election will lead to piecemeal litigation, which could lead to different results in similarly situated counties and evade a uniform standard, thus inviting the type of spurious claim made in *Bush v. Gore* which have already been raised in the

temporarily-stayed federal litigation. *Donald J. Trump for President, Inc., et al v. Boockvar, et al*, No. 2:20-966 (W.D. Pa. July 29, 2020). Petitioners will have to identify issues on a county-by-county basis and bring separate lawsuits to address a myriad of claims. There is no time for that and such an approach is not efficient, practical, and will lead to disparate treatment of voters depending on the county in which they reside. At bottom, if Petitioners are forced to wait to bring their claims until the eve of the election, there will be no way to put the toothpaste back in the bottle: thousands, if not hundreds of thousands, of voters will be disenfranchised and there will exist no remedy to correct it.

3. Public Policy Mandates This Court Resolve Petitioners' Requests for Relief Before The General Election.

The Pennsylvania Constitution expressly guarantees to voters the right to participate in a free and fair election. Pa. Const. art. I § 5. Consistent with this constitutional mandate, it is in Petitioners and Respondents' interests (including Lehigh BoE) for this Court to resolve the Petition and interpret the Election Code now, *before* the General Election. This will allow Petitioners, Respondents, and voters to plan accordingly. Plainly, the Petitioners and Respondents should endeavor to ensure Pennsylvania does not become the 2020 version of Florida during the 2000 General Election. Neither individual Pennsylvania voters nor the parties' interests will be served if election disputes are being litigated well after the General Election. Such a result will only fuel doubt and reduce voter confidence in the results of the

General Election. Resolving the Petition expeditiously is a universal benefit as it will instill the utmost confidence in Pennsylvania's electorate that the Commonwealth, through the Secretary and Boards, will conduct a fair and transparent election during unprecedented times.

In sum, Lehigh BoE's preliminary objection that Petitioners' requests for relief are not ripe and/or moot must be denied.

C. The Allegations In The Petition Establish A Right To Injunctive Relief.

Clarion and Tioga County Boards of Election ("Clarion and Tioga BoEs")⁵ filed a demurrer arguing that Counts I-IV do not establish a right to injunctive relief. The demurrers fail because Petitioners possess a clear right to the injunctive relief they seek. The Court's resolution of a question involving voter disenfranchisement clearly cannot be compensated by damages, and great injury looms to the voting rights of thousands. Thus, the request for an injunction is appropriate.

A party seeking a permanent injunction must establish three elements: (1) a clear right to relief; (2) that an injunction is necessary to avoid an injury that cannot be compensated by damages; (3) that a greater injury will result from refusing the

⁵ Perry and Franklin County Boards of Elections joined the preliminary objections filed by Clarion and Tioga BoEs and Green County Board of Elections' preliminary objections are virtually identical to those filed by Clarion and Tioga BoEs.

injunction.” *Mazin v. Bureau of Prof’s Occupational Affairs*, 950 A.2d 382, 389 (Pa. Commw. Ct. 2008).

1. Counts I and IV Present a Claim for Injunctive Relief.

Petitioners⁶ primarily request declaratory relief in Counts I and IV, both causes of action clearly establish a claim for injunctive relief. First, a reasonable interpretation of Section 1306-D (25 Pa. C.S. § 3150.16(a)) requires Boards to count Naked Ballots and affirms each Board’s discretionary authority to utilize ballot drop boxes as necessary and as determined by the specific demographic and geographical needs of the respective counties. *See e.g.*, 25 Pa. C.S. § 2641(a); 2726; 2726; *see also Republican Party of Pa. v. Cortés*, 218 F. Supp. 3d 396, 402 (E.D. Pa. 2016) (explaining Election Code creates a “county-based scheme to manage elections within the state”). The Secretary agrees and has issued guidance consistent with Petitioners’ position. **Exs. 1-2, 4.**

Second, the claims relate to potential disenfranchisement, which cannot be adequately compensated by monetary damages. *See Bergdoll v. Kane*, 731 A.2d 1261, 1268-69 (Pa. 1999) (the right to vote “is pervasive of other basic civil and

⁶ As an initial matter, Counts I and IV seek a declaratory judgment and affirmative injunctive relief. If this Court provides Petitioners with the declaratory relief sought in Count I and Count IV, it may moot Petitioners’ request for affirmative injunctive relief. For example, if this Court issues a declaratory judgment requiring that, under Section 1306-D of Act 77, Boards must clothe and count Naked Ballots, the request for affirmative injunctive relief against Boards from excluding Naked Ballots from canvass would be moot. To Petitioners’ knowledge, no county board has expressed an intention to defy a court order regarding an interpretation of the Election Code or, specifically, Act 77.

political rights, and is the bedrock [sic] of our free political system”); *see also Perles v. Cty. Return Bd. Of Northumberland Cty.*, 202 A.2d 538, 540 (Pa. 1964) (“The disenfranchisement of even one person validly exercising his right to vote is an extremely serious matter.”); *In re Canvass of Absentee Ballots of 1967 General Election*, 245 A.2d 258, 262 (Pa. 1968) (holding that the disenfranchisement of 5,506 citizens would be “unconscionable”). It is well-established that threats to a fundamental constitutional right like voting are immediate and cannot be compensated by damages. *See PA State Education Association v. Comm’n*, 981 A.2d 383 (Pa. Cmmw. Ct. 2009). Here, Petitioners seek the protection of a Constitutional right—the most fundamental “right to vote”. Clarity on the procedures employed by Boards related to Naked Ballots and utilization of drop boxes, especially during this time of crises, is necessary to a fair and open administration of the 2020 General Election and future elections.

Third, without an injunction and accompanying declaratory guidance, severe injury could occur by way of disenfranchisement, decreased legitimacy of our elections, and future legal challenges to the outcome of the General Election. Specifically, if Boards do not count Naked Ballots, tens of thousands, if not hundreds of thousands, voters could be disenfranchised. Also, the General Assembly surely could not have intended to prohibit Boards from establishing ballot drop boxes, making it substantially more difficult, if not virtually impossible, for millions of

Commonwealth voters to exercise their right to vote. This is especially true given the USPS's admission that they are ill-equipped to handle the surge in mail-in ballots before the election under the timeframes of the Pennsylvania Election Code—the very reason why Petitioners seek injunctive relief requiring Boards to develop an alternative implementation plan in other counts of the Petition.

2. Counts II and III Present Claims for Injunctive Relief.

Clarion and Tioga BoE's effort to dismiss Counts II and III fare no better. These counts are as-applied challenges to the Election Code's deadline by which voters must delivery their mail-in and absentee ballots to Boards. 25 P.S. §§ 3146.6(c), 3146.8(g)(1)(ii), 3150.16(a), (c).

When considering an “as applied constitutional challenge, which is still at the preliminary objection stage, [the court] must accept well-pleaded facts as true.” *Ladd v. Real Estate Comm'n*, 2020 WL 2532285, at *13 n. 18 (Pa. May 19, 2020). The facts plead in Counts II and III of the Petition plead a claim for injunctive relief because they detail the very challenges that accompany the implementation of Act 77's changes to the Election Code during a global pandemic.

The Pennsylvania Constitution provides that “all elections conducted in this Commonwealth must be ‘free and equal.’” *League of Women Voters v. Commonwealth*, 178 A.3d 737, 804 (Pa. 2018) (quoting Pa. Const. art. I, § 5). This clause requires that elections be “conducted in a manner which guarantees, to the

greatest degree possible, a voter's right to equal participation in the electoral process for the selection of his or her representatives in government.” *Id.* at 804.

Accordingly, in times of crisis, such as COVID-19, this Court has the authority to provide the injunctive relief requested in Counts II and III to protect voters' guaranteed constitutional rights. *See, e.g., In re General Election-1985*, 531 A.2d 836, 838-39 (Pa. Commw. Ct. 1987) (affirming two-week suspension of election in precinct affected by severe flooding and reasoning that adhering to the prescribed schedule under the prevailing circumstances, “where members of the electorate could be deprived of their opportunity to participate because of circumstances beyond their control, such as a natural disaster, would be inconsistent with the purpose of the election laws”); *accord Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1259 (N.D. Fla. 2016) (issuing injunction extending voter registration deadline due to effect of a hurricane); *Georgia Coalition for the Peoples' Agenda, Inc. v. Deal*, 214 F. Supp. 3d 1344, 1345 (S.D. Ga. 2016) (same).

To vote by mail or absentee ballot, the process begins by applying for such a ballot. 25 Pa. C.S. § 3150.12(a). Applications for mail-in (and absentee ballots) must be received by county Boards not later than seven days before an election. *See id.* at § 3150.12a(a). When mail-in ballot applications are received, the Board must verify the information submitted in the application against the voter's record in the SURE system. *See Act 77 § 1302.2-D(a); 25 P.S. § 3150.12b(a)*. The Board then “shall

commence to deliver or mail official mail-in ballots as soon as a ballot is certified and the ballots are available.” *Id.* at § 1305-D; 25 P.S. § 3150.15. At which point, the voter has until 8:00 p.m. on Election Day to return the ballot to the Board. *See* Act 77 § 1306-D(a); 25 P.S. §§ 3146.6(a), 3146.8(g)(1)(ii) and 3150.16(a), (c).

When the General Assembly drafted Act 77 in the fall of 2019, neither the existence or impact of COVID-19 was known, and accordingly was not considered by the General Assembly. *See* Petition, ¶¶ 42-43. Thus, the law was considered and passed based on the assumption that Boards would receive between 80,000 to 100,000 mail-in and absentee ballots. *See e.g., id.* at ¶ 72. Based on this assumption and normal and historically established mail standards, the General Assembly set the deadlines for the application receipt, and return of mail-in and absentee ballots to Boards. In the Primary Election, due to COVID-19, those assumptions and timelines proved to be impracticable.

Instead of 80,000 to 100,000 voters, nearly 2,000,000 voters chose to vote by mail as the pandemic rendered voting in-person unsafe. *Id.* at ¶ 73. The timelines set forth for voting by mail in the Election Code simply did not account for the wave of mail-in and absentee ballot applications and ballots. *Id.* at ¶¶ 74-77. The Commonwealth’s most populous counties simply could not meet the deadlines in the Election Code because of the surge in mail-in ballot applications during the Primary Election. *See id.* at ¶¶ 66-79.

The pandemic persists and even more Pennsylvania citizens will vote during General Election. As such, the issues extant during the Primary Election will persist in the General Election. In fact, they will more than likely be worse due to the increase in turnout. The USPS has informed the Secretary that based on the Postal Services' expected delivery times for mail service at the time of the General Election, "there is significant risk" that certain voters who timely request an absentee or mail-in ballot "will not have sufficient time to complete and mail the completed ballot[s] back to election officials in time for it to arrive by [Pennsylvania's] return deadline." **Ex. 3.** Given the above, the Secretary has conceded that ballots mailed by voters by 8:00 p.m. on Election Day and received the third day following the election should be counted. *See Ex. 5, King's Bench Petition, at 27-29.*

Accordingly, the allegations in the Petition sufficiently allege the need for injunctive relief to extend the deadline for Boards to receive mail-in and absentee ballots given the circumstances under which the General Election will occur.

Similarly, Count III requests injunctive relief to afford voters the right to cure their facially defective ballots. The changes of Act 77 present voters with new requirements and responsibilities. Indeed, voters who typically vote in-person will now vote by mail and, as explained above, voting by mail is no easy task. Given that the number of voters expected to utilize the new framework in the General Election

is exponentially larger than anticipated by the General Assembly, the Court should grant the requested relief to guarantee the right to vote.

Therefore, the factual allegations in the Petition allege a clear right to injunctive relief with respect to their as-applied challenges to the mail-in and absentee ballot provisions in the Election Code.

D. Petitioners Named All Boards In The Petition Because They Are Indispensable Parties.

The Washington County Board of Elections (“Washington BoE”)⁷ seeks dismissal because the Petition fails to allege any specific misconduct by Washington BoE and that even if the Petition did allege misconduct it is not specific. These arguments fail because all county Boards are indispensable parties and the Petition plainly raises specific statutory matters upon which the Court’s rulings will directly affect the conduct of the Boards.

An action must be dismissed “[w]hensoever it appears by suggestion of the parties or otherwise . . . that there has been a failure to join an indispensable party.” Pa. R. Civ. P. 1032(b). “In Pennsylvania, an indispensable party is one whose rights are so directly connected with and affected by litigation that he must be a party of record to protect such rights, and his absence renders any order or decree of court null and void for want of jurisdiction.” *Columbia Gas, Transmission Corp. v.*

⁷ Westmoreland and Berks County Boards of Elections raised the same or substantially preliminary objections as Washington BoE.

Diamond Fuel Co., 346 A.2d 788, 789 (Pa. 1975). “The absence of indispensable parties goes absolutely to the jurisdiction, and without their presence the court can grant no relief.” *Powell v. Shepard*, 113 A.2d 261, 264–65 (Pa. 1955) (quotations and citations omitted). The failure to join an indispensable party is a non-waivable issue. *See id.*; *see also Fiore v. Oakwood Plaza Shopping Center, Inc.*, 585 A.2d 1012, 1020 (Pa. Super. Ct. 1991) (stating issue of failure to join indispensable party cannot be waived).

Courts consider four factors when determining whether a party is indispensable: “1. Do absent parties have a right or interest related to the claim? 2. If so, what is the nature of that right or interest? 3. Is that right or interest essential to the merits of the issue? 4. Can justice be afforded without violating the due process rights of absent parties?” *DeCoatsworth v. Jones*, 639 A.2d 792, 797 (Pa. 1994) (citation omitted).

Here, the fact that the Petition makes no allegations about misconduct or violations of law by Washington BoE during the Primary Election is immaterial. The Washington BoE, and the other 66 county boards in Pennsylvania, were named in the Petition because they are indispensable parties. Employing the factors from *DeCoatsworth* makes this clear: (1) Washington BoE’s interest relates to the counting and collecting of absentee and mail-in ballots; (2) Washington BoE is required to follow the mandates of the General Assembly and Secretary as

interpreted by the courts (*e.g.*, this Court will declare whether Washington BoE and other counties are required to count Naked Ballots; (3) questions of election administration are central to this lawsuit; and (4) justice cannot be afforded without the inclusion of Washington BoE because the Court’s determination will prescribe mandatory election practices upon all Boards.

In sum, Washington BoE has an interest in and a right to have its say, or not, on the issues raised and remedies sought by Petitioners, and therefore are indispensable parties in this action.

E. The Petition Does Not Include Scandalous And Impertinent Matter.

Finally, Washington BoE⁸ asks this Court to strike whatever allegations it deems superfluous and tangential to allow them and other Boards to craft a better response to the Petition. Specifically, Washington BoE contends that the Petition includes unsubstantiated anecdotes, Tweets, too many news article links, and a “meandering detour” regarding the pandemic, and that it has difficulty responding with specificity to certain allegations in the Petition. *See* Washington BoE’s Preliminary Objections, Section II.C. Putting aside the complete lack of substantive or procedural merit, Washington BoE’s arguments are belied by the 24 Answers to the Petition filed by other Boards and one by the Secretary.

⁸ The Westmoreland Board of Elections joined in Washington BoE’s preliminary objection under Pa. R. Civ. P. 1028(a)(2).

More to the point, the allegations in the Petition are necessary and neither Washington BoE (or any other defendant) will suffer any prejudice from the allegations. “The right to strike an impertinent matter . . . ‘should be sparingly exercised and only when a party can affirmatively show prejudice.’” *Breslin v. Mountain View Nursing Home, Inc.*, 171 A.3d 818, 829 (Pa. Super. Ct. 2017) (quoting *Commonwealth Dep’t of Env’tl. Res. v. Hartford Accident and Indem. Co.*, 396 A.2d 885, 888 (Pa. 1979)). In this case, Washington BoE does not allege—nor could it—that any of the allegations in the Petition prejudices it in any way. It cannot both claim that the Petition fails to allege it did anything wrong on the one hand, but then claim the allegations in the Petition are prejudicial to it on the other.

The reality is, the allegations in the Petition are appropriate and necessary to provide context and establish the relief requested. Act 77’s mail-in and absentee voting system do not exist in a vacuum. The Court needs to understand the interplay between Act 77 and Act 12 and the current political and epidemiological climate. One candidate’s routine and baseless allegations that voting by mail (particularly in so-called swing states like Pennsylvania) is somehow rife with voter fraud shows this Court the urgent need to provide clarity on critical election issues related to mail-in and absentee voting before the General Election. Likewise, allegations regarding how the pandemic impacted the Primary Election and led to a surge of mail-in and absentee ballots is important to establish the need for a judicial remedy because Act

77's mail-in voting scheme is ill-equipped to handle the likely even greater surge of mail-in and absentee ballots in the General Election. That is, these allegations support Petitioners' as-applied challenges to the Election Code. Thus, this Court must deny Washington BoE's preliminary objection and decline to strike any allegations in the Petition.

III. CONCLUSION

For the reasons stated herein, the preliminary objections filed by Leigh, Perry, Franklin, Greene, Berks, Clarion, Tioga, Washington, and Westmoreland County Boards of Election should be denied.

Respectfully submitted,

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*/s/ Kevin Greenberg*_____

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August 27, 2020

EXHIBIT “B”

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA DEMOCRATIC)	
PARTY, <i>et al.</i>)	
)	
v.)	No. 407 MD 2020
)	
KATHY BOOCKVAR, <i>et al.</i>)	

PETITIONERS’ ANSWER TO NEW MATTER

By and through undersigned counsel, Petitioners submit their Answer to the New Matter of Defendants, Bucks, Chester, Montgomery and Philadelphia Counties.

208. Petitioners refer to and incorporate the preceding paragraphs of the Petition as if set forth herein.

209. Admitted.

210. Admitted.

211. Admitted.

212. Admitted.

213. Admitted in part and denied in part. The first sentence of the paragraph is admitted. As to the second sentence, Petitioners admit only that the risks identified by the Secretary exist if a poll watcher is acting to delay or interfere in the operation of an election, and thus appropriately regulating the conduct of poll watchers fulfill an important public and governmental function. Petitioners

believe that poll watchers, behaving appropriately within the polling place, fulfill important public service roles.

214. Admitted.

215. Denied.

216. Admitted.

Respectfully submitted,

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/s/ Kevin Greenberg_____

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August 27, 2020

PUBLIC ACCESS POLICY CERTIFICATE OF COMPLIANCE

It is hereby certified by the undersigned that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,
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Dated: August 27, 2020

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA DEMOCRATIC)	
PARTY, <i>et al.</i>)	
)	
v.)	No. 407 MD 2020
)	
KATHY BOOCKVAR, <i>et al.</i>)	

PETITIONERS’ ANSWER TO NEW MATTER

By and through undersigned counsel, Petitioners submit their Answer to the New Matter of Defendants, Armstrong, Bedford, Blair, Centre, Columbia, Dauphin, Fayette, Huntingdon, Indiana, Lackawanna, Lawrence, Lebanon, Montour, Northumberland, Venango, and York Counties Boards of Elections.

208. Petitioners refer to and incorporate the preceding paragraphs of the Petition as if set forth fully herein.

209. Denied as stated. The allegations in Paragraph 209 are conclusions of law to which no response is required, and are therefore denied. By way of further answer, Petitioners disagree with Responding Counties’ interpretation of state law when Lawrence County (and potentially other counties) did not count naked ballots per the instructions of the Secretary, as described in the petition. Per the instructions of the Election Board on these varying issues, Petitioners, the Pennsylvania Democratic Party appealed this matter to the Lawrence County Common Pleas Court

sitting as an Election Court. By way of a further reply, Petitioners admit, on information and belief, that all counties are not alleged to have likewise misinterpreted any laws, but, instead, are indispensable parties for which complete relief cannot be granted without their inclusion as parties.

210. Admitted.

211. Denied as stated. A county has no statutory authority to disenfranchise voters by discarding Naked Ballots, and therefore all counties are required to count Naked Ballots under the laws of the Commonwealth of Pennsylvania.

212. Admitted.

213. Admitted in part, denied in part. Petitioners admit only that a prompt resolution of this case is needed. Petitioners lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 213 as to the belief of the Counties.

214. Denied. The e allegations in Paragraph 214 are conclusions of law to which no further response is required.

215. Denied. The allegation in Paragraph 215 is a conclusion of law to which no response is required.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA DEMOCRATIC)	
PARTY, <i>et al.</i>)	
)	
v.)	No. 407 MD 2020
)	
KATHY BOOCKVAR, <i>et al.</i>)	

PETITIONERS’ ANSWER TO NEW MATTER

By and through undersigned counsel, Petitioners submit their Answer to the New Matter of Defendant, Kathy Boockvar.

208. Denied. With their Petition for Declaratory and Injunctive Relief, Petitioners filed an executed verification of named party, Congressman Dwight Evans, which conforms with the Pennsylvania Rules of Civil Procedure.

209. Admitted.

210. Admitted.

211. Admitted.

212. Admitted.

213. The allegations in Paragraph 213 are conclusions of law to which no response is required, and are therefore denied. By way of further answer, the Election Code does not permit county boards to employ practices which disenfranchise voters, such as discarding valid absentee and mail-in ballots solely because a voter did not utilize a secrecy envelope.

214. Denied. By way of further answer, the allegation in Paragraph 214 is simply a form, conclusory statement, without any basis in law and fact, Petitioners are entitled to relief on both injunctive and declaratory claims.

Respectfully submitted,

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Lazar M. Palnick, Esq.

1216 Heberton Street

Pittsburgh, Pennsylvania 15206

(412) 661-3633

lazarpalnick@gmail.com

Attorneys for Petitioners

August 27, 2020

PUBLIC ACCESS POLICY CERTIFICATE OF COMPLIANCE

It is hereby certified by the undersigned that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,
GREENBERG TRAUIG, LLP

/s/ Kevin Greenberg

Kevin Greenberg (No. 82311)
1717 Arch Street, Suite 400
Philadelphia, PA 19103
(t) 215.988.7818
(f) 215.988.7801
greenbergk@gtlaw.com

Dated: August 27, 2020

EXHIBIT “C”

M Pennsylvania Application for Mail-In Ballot

Print your name

Please print your name exactly as you registered to vote.

1

Last name _____ Jr Sr II III IV
 First name _____ Middle name or initial _____

About you

Phone and email are optional and used if information is missing on this form.

2

Birth date _____
 Phone _____ Email _____

Your address

Please print your address exactly as you registered to vote.

3

Address (not P.O. Box) _____ Apt. number _____
 City/Town _____ State PA Zip code _____
 Municipality _____ County _____
 Ward (if known) _____ Voting district (if known) _____
 I have lived at this address since: _____

Where to mail ballot?

4

Same as above Address or P.O. Box _____
 City/Town _____ State _____ Zip code _____

Identification

If you have a PennDOT number, you must use it. If not, please provide the last four digits of your Social Security number. See "Necessary Identification" on Page 2.

5

PA driver's license or PennDOT ID card number _____
 Last four digits of your Social Security number X X X - X X -
 I do not have a PA driver's license or a PennDOT ID card or a Social Security number.

Declaration

6

I declare that I am eligible to vote by mail-in ballot at the forthcoming primary or election; that I am requesting the ballot of the party with which I am enrolled according to my voter registration record; and that all of the information which I have listed on this mail-in ballot application is true and correct.

Voter signature here X _____ Date _____

Annual mail-in request

See "What is an annual mail-in ballot request?" for more information.

7

If you would like to apply to receive mail-in ballots for the remainder of this year and if you would like to automatically receive an annual application for mail-in ballots each year, please indicate below.

I would like to receive mail-in ballots this year and receive annual applications for mail-in ballots each year.

Help with this form

Complete this section if you are unable to sign the declaration in Section 6.

8

I hereby state that I am unable to sign my application for a mail-in ballot without assistance because I am unable to write by reason of my illness or physical disability. I have made or have received assistance in making my mark in lieu of my signature.

Mark of voter X _____ Date _____

Address of witness _____

Signature of witness X _____

Pennsylvania Application for Mail-In Ballot

How to submit your application:

Once your application is completed, you may **return it to your local county board of elections**. If you're unsure of where to mail your application, please visit www.VotesPA.com/county for more information.

Deadline alert:

The **deadline to apply** for a mail-in ballot is 5:00PM on the Tuesday before the election. Please note your application must be **received** in the county board of election's office by that time. **Postmarks do not count.**

The **deadline to return your completed ballot** is 8:00PM on election day. Please note your completed ballot must be **received** in the county board of election's office by that time. **Postmarks do not count.**

Necessary identification:

In order to apply for a mail-in ballot, you must supply your PA Driver's License or PennDOT issued photo ID card number in the Identification section. If you do not have a PA Driver's License or PennDOT issued photo ID card, you must supply the last four (4) digits of your Social Security number.

If you do not have a valid form of either of these types of identification, please check the box titled "I do not have a PA driver's license or a PennDOT ID card or a Social Security number" in the Identification section. If you choose this option, you must enclose a photocopy of an acceptable ID.

Please visit www.VotesPA.com/MailBallot for more information, call **1-877-VotesPA** (1-877-868-3772), or contact your county board of elections.

What is an annual mail-in ballot request?

If you indicate you would like to be added to the annual mail-in ballot request list, you will receive an application to renew your request for mail-in ballot each year. Once your application is approved, you will automatically receive ballots for the remainder of the year and you do not need to submit an application for each election.

If you update your voter registration due to relocation out of county after you submit an annual mail-in request, please ensure your annual status is transferred when updating your address.

WARNING: If you receive a mail-in ballot and return your voted ballot by the deadline, you may not vote at your polling place on election day. If you are unable to return your voted mail-in ballot by the deadline, you may only vote a provisional ballot at your polling place on election day, unless you surrender your mail-in ballot and envelope to the judge of elections to be voided to vote by regular ballot.

Questions?

Call your County Election Office or call 1-877-VOTESPA (1-877-868-3772).

For more information about voting, visit our website: www.VotesPA.com.

Información en español:

Si le interesa obtener este formulario en español, llame al **1-877-868-3772**.

County Election Office addresses

Adams

117 Baltimore St
Rm 106
Gettysburg PA 17325
(717) 337-9832

Allegheny

542 Forbes Ave
Ste 609
Pittsburgh PA 15219-2913
(412) 350-4500

Armstrong

Administration Bldg
450 E Market St
Ste 207
Kittanning PA 16201
(724) 548-3222

Beaver

810 Third St
Beaver PA 15009
(724) 770-4440

Bedford

200 S Juliana St
3rd Fl
Ste 301
Bedford PA 15522
(814) 623-4807

Berks

633 Court St
1st Fl
Reading PA 19601
(610) 478-6490

Blair

423 Allegheny St
Ste 043
Hollidaysburg PA 16648-2022
(814) 693-3150

Bradford

6 Court St
Ste 2
Towanda PA 18848
(570) 265-1717

Bucks

55 E Court St
Doylestown PA 18901-4318
(215) 348-6163

Butler

PO Box 1208
Butler PA 16003
(724) 284-5308

Cambria

200 S Center St
Ebensburg PA 15931
(814) 472-1464

Cameron

20 E Fifth St
Emporium PA 15834-1469
(814) 486-9321

Carbon

76 Susquehanna St
PO Box 170
Jim Thorpe PA 18229-0170
(570) 325-4801

Centre

420 Holmes St
Willowbank Office Bldg
Bellefonte PA 16823-1486
(814) 355-6703

Chester

601 Westtown Rd
Ste 150
PO Box 2747
West Chester PA 19380-0990
(610) 344-6410

Clarion

Administrative Building
330 Main St
Rm 104
Clarion PA 16214
(814) 226-4000 Ext 2006

Clearfield

212 E Locust St
Ste 106
Clearfield PA 16830
(814) 765-2642 ext 5053

Clinton

2 Piper Way
Ste 309
Lock Haven PA 17745
(570) 893-4019

Columbia

PO Box 380
Bloomsburg PA 17815-0380
(570) 389-5640

Crawford

903 Diamond Park
Meadville PA 16335
(814) 333-7307

Cumberland

1601 Ritner Highway
Ste 201
Carlisle PA 17013
(717) 240-6385

Dauphin

PO Box 1295
Harrisburg PA 17108-1295
(717) 780-6360

Delaware

Govt Center Bldg
201 W Front St
Media PA 19063-2728
(610) 891-4659

Elk

300 Center St
PO Box 448
Ridgway PA 15853-0448
(814) 776-5337

Erie

140 W 6th St
Rm 112
Erie PA 16501
(814) 451-6017

Fayette

22 E Main St
Public Service Bldg
Uniontown PA 15401
(724) 430-1289

Forest

526 Elm St
Box 3
Tionesta PA 16353
(814) 755-3537

Franklin

157 Lincoln Way East
Chambersburg PA 17201-2211
(717) 261-3886

Fulton

116 W Market St
Ste 205
McConnellsburg PA 17233
(717) 485-6872

Greene

93 E High St
Rm 102
Waynesburg PA 15370
(724) 852-5230

Huntingdon

Bailey Building
233 Penn St
Huntingdon PA 16652-1486
(814) 643-3091 Ext 205

Indiana

825 Philadelphia St
Indiana PA 15701-3934
(724) 465-3852

Jefferson

155 Main St
Jefferson Place
Brookville PA 15825-1269
(814) 849-1693

Juniata

1 N Main St
PO Box 68
Mifflintown PA 17059
(717) 436-7706

Lackawanna

123 Wyoming Ave
2nd Floor
Scranton PA 18503
(570) 963-6737

Lancaster

PO Box 2139
Lancaster PA 17608
(717) 299-8293

Lawrence

430 Court St
New Castle PA 16101
(724) 656-2161

Lebanon

400 S 8th St
Municipal Bldg
Rm 209
Lebanon PA 17042
(717) 228-4428

Lehigh

17 S 7th St
Allentown PA 18101-2401
(610) 782-3194

Luzerne

20 N Pennsylvania Ave
Ste 207
Wilkes-Barre PA 18701
(570) 825-1715

Lycoming

48 W Third St
Williamsport PA 17701-9536
(570) 327-2267

McKean

500 W Main St
Smethport PA 16749
(814) 887-3203

Mercer

5 Courthouse
Mercer PA 16137-1227
(724) 662-7542

Mifflin

20 N Wayne St
Lewistown PA 17044
(717) 248-6571

Monroe

One Quaker Plaza
Rm 105
Stroudsburg PA 18360
(570) 517-3165

Montgomery

Voter Services
PO Box 311
Norristown PA 19404-0311
(610) 278-3280

Montour

253 Mill St
Danville PA 17821
(570) 271-3002

Northampton

Elections Division
669 Washington St
Easton PA 18042
(610) 829-6260

Northumberland

320 N 2nd St
Ste 1
Sunbury PA 17801
(570) 988-4208

Perry

PO Box 37
New Bloomfield PA 17068
(717) 582-2131 ext 4110

Philadelphia

City Hall, Room 142
1400 John F Kennedy Blvd
Philadelphia, PA 19107
(215) 686-3469

Pike

506 Broad St
Milford PA 18337
(570) 296-3427

Potter

1 N Main St
Ste 204
Coudersport PA 16915
(814) 274-8467

Schuylkill

420 N Centre St
Pottsville PA 17901
(570) 628-1467

Snyder

PO Box 217
Middleburg PA 17842-0217
(570) 837-4207

Somerset

300 N Center Ave
Ste 340
Somerset PA 15501
(814) 445-1549

Sullivan

245 Muncy St
PO Box 157
Laporte PA 18626
(570) 946-5201 ext 7

Susquehanna

PO Box 218
31 Lake Ave
Montrose PA 18801
(570) 278-6697

Tioga

118 Main St
Wellsboro PA 16901
(570) 723-8230

Union

155 N 15th St
Lewisburg PA 17837-8822
(570) 524-8681

Venango

1174 Elk St
PO Box 831
Franklin PA 16323-0831
(814) 432-9514

Warren

204 4th Ave
Warren PA 16365
(814) 728-3406

Washington

100 W Beau St
Rm 206
Washington PA 15301
(724) 228-6750

Wayne

925 Court St
Honesdale PA 18431
(570) 253-5978

Westmoreland

2 N Main St
Ste 109
Greensburg PA 15601
(724) 830-3150

Wyoming

1 Courthouse Sq
Tunkhannock PA 18657
(570) 996-2226

York

28 E Market St
York PA 17401-1579
(717) 771-9604

For a listing of available email addresses, go to www.votesPA.com/county.

EXHIBIT “D”

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

PENNSYLVANIA DEMOCRATIC)
PARTY; *et al.*,)
)
 Petitioners,)
)
)
 v.)
)
)
 KATHY BOOCKVAR; *et al.*,)
)
 Respondents.)
)

133 MM 2020

DECLARATION OF ADAM R. ROSEMAN, ESQ.

Pursuant to 18 Pa. C.S. § 4904, I hereby declare as follows:

1. My name is Adam R. Roseman. I am over eighteen years of age and competent to testify to the matters contained herein.

2. I am an associate at law firm Greenberg Traurig, LLP and work in the Philadelphia, Pennsylvania office located at 1717 Arch Street, Philadelphia, Pennsylvania 19093.

3. I am counsel for Petitioners in the above-referenced matter.

4. Likewise, I am counsel for Petitioners in the case captioned *Donald J. Trump for President, Inc., et al v. Boockvar, et al*, No. 20-966 (W.D. Pa.) (“Federal Court Action”). Petitioners successfully intervened in the Federal Court Action.

5. I am familiar with the discovery in the Federal Court Action and I have reviewed the relevant discovery before drafting this Declaration.

6. Separately, I have reviewed the August 31, 2020 transcript, September 4, 2020 Recommended Findings of Fact and Conclusions of Law, and exhibits introduced and admitted during the August 31, 2020 evidentiary hearing in *Crossey, et al v. Boockvar, et al*, 266 MD 2020 (“*Crossey*”).

7. Attached as **Ex. E** to Petitioners’ brief is a true and correct copy of the transcript of the August 31, 2020 evidentiary hearing in *Crossey*.

8. Attached as **Ex. K** to Petitioners’ brief is a true and correct copy of the *Crossey* Petitioners’ Exhibit 32 that was admitted into evidence during the

evidentiary hearing in *Crossey*. Exhibit 32 is a Preliminary Report of Ronald Stroman.

9. Attached as **Ex. L** to Petitioners' brief is a true and correct copy of relevant portions of the Philadelphia County Board of Elections' Objections and Responses to Plaintiffs' First Set of Interrogatories and Requests for Production in the Federal Court Action.

10. Attached as **Ex. M** to Petitioners' brief is a true and correct copy of relevant portions of the Bucks, Chester, and Montgomery County Boards of Elections' Objections and Responses to Plaintiffs' First Set of Interrogatories and Request for Production in the Federal Court Action.

11. Attached as **Ex. N** to Petitioners' brief is a true and correct copy of a July 15, 2020 email string Bates labeled LAW-013648-51 produced by Lawrence County Board of Elections in the Federal Court Action.

12. Attached as **Ex. U** to Petitioners' brief is a true and correct copy of an article written by Marc Levy and published in the TIMES LEADER on August 25, 2020 titled *Grey Area of Mail-in Voting Law Up to Pennsylvania Court*, available at <https://www.timesleader.com/news/798226/gray-area-of-mail-in-voting-law-up-to-pennsylvania-court-3>.

13. Attached as **Ex. V** to Petitioners' brief is a true and correct copy of the *Crossey* Respondent's Exhibit 2 that was admitted into evidence during the

evidentiary hearing in *Crossey*. Exhibit 2 is a chart of County Absentee or Mail-In Ballots.

14. Attached as **Ex. W** to Petitioners' brief is a true and correct copy of a September 5, 2020 article written by Joel Achenbach and Rachel Weiner titled *Experts project autumn surge in coronavirus cases, with a peak after Election Day* and published in the WASHINGTON POST, available at at https://www.washingtonpost.com/health/coronavirus-fall-projections-second-wave/2020/09/04/6edb3392-ed61-11ea-99a1-71343d03bc29_story.html.

15. Attached as **Ex. X** to Petitioners' brief is a true and correct copy of *Crossey* Respondents' Praecipe to Withdraw Certain Respondents' Preliminary Objections Based on United States Postal Service's Announcement of Statewide Mail Delays Affecting General Election in *Crossey*.

16. Attached as **Ex. Y** to Petitioners' brief is a true and correct copy of the *Crossey* Petitioners' Exhibit 28 that was admitted into evidence during the evidentiary hearing in *Crossey*. Petitioners' Exhibit 28 is an August 4, 2020 presentation regarding the Eastern Areas Inspiring Mail Service Update ("Eastern AIM Service Update").

17. Attached as **Ex. DD** to Petitioners' brief is a true and correct copy of a September 2, 2020 article written by Emily Previti titled *Gov. Wolf plans to veto election code bill in its current form*, available at

<https://www.witf.org/2020/09/02/gov-wolf-plans-to-veto-election-code-bill-in-its-current-form/>

18. Attached as **Ex. EE** to Petitioners' brief is a true and correct copy of Special Master Mary Hanna Leavitt's September 4, 2020 Recommended Findings of Fact and Conclusions of law in *Crossey*.

19. Attached as **Ex. GG** to Petitioners' brief is a true and correct copy of the Union County Board of Elections' Supplemental Responses to Plaintiffs' Set of Written Interrogatories and Requests for Production of Documents Directed To All Defendant County Boards.

20. Attached as **Ex. HH** to Petitioners' brief is a true and correct copy of a September 8, 2020 Declaration of Gerald Lawrence.

I declare, subject to penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities, that the foregoing is true and correct.

Executed on the 8th day of September 2020

A handwritten signature in black ink, appearing to read 'Adam R. Roseman', written over a horizontal line.

Adam R. Roseman

EXHIBIT “E”

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

* * * * *

MICHAEL CROSSEY, DWAYNE THOMAS, *
IRVIN WEINREICH, BRENDA WEINREICH,*
AND THE PENNSYLVANIA ALLIANCE FOR *
RETIRED AMERICANS, * Case No.
Petitioners * 266 M.D. 2020
vs. *
KATHY BOOCKVAR, SECRETARY OF THE *
COMMONWEALTH, AND JESSICA MATHIS, *
DIRECTOR OF THE BUREAU OF ELECTION*
SERVICES AND NOTARIES, *
Respondent *

* * * * *

BEFORE: MARY HANNAH LEAVITT, Presiding Judge
HEARING: August 31, 2020
9:39 a.m.
LOCATION: Pennsylvania Judicial Center
601 Commonwealth Avenue
Harrisburg, PA 17120

Reporter: Kelly Gallick
Any reproduction of this transcript
is prohibited without authorization
by the certifying agency

1 WITNESSES: Ronald Stroman, Michael Herron, Devon
2 Laudenslager, Joe Eisenberg, Michael Plunkett,
3 Torren Ecker

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A P P E A R A N C E S

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EMILY R. BRAILEY, ESQUIRE

STEPHANIE I. COMMAND, ESQUIRE

Perkins Coie, LLP

700 13th Street Northwest

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Washington, D.C. 20005-3960

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Philadelphia, PA 19103-6995

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TIMOTHY E. GATES, ESQUIRE

Pennsylvania Department of State

Bureau of Commissions, Elections and Legislation

306 North Office Building

Harrisburg, PA 17120

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A P P E A R A N C E S (cont'd)

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Holland & Knight, LLP

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301 South Hills Village Drive

Suite LL200-420

Pittsburgh, PA 15241

COUNSEL FOR HOUSE INTERVENORS

SHAWN SHEEHY, ESQUIRE

Holtzman, Vogel, Josefiak, Torchinsky, PLLC

45 North Hill Drive

Suite 100

Warrenton, WV 20186

COUNSEL FOR SENATE INTERVENORS

A P P E A R A N C E S (cont'd)

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RICHARD P. LIMBURG, ESQUIRE
Obermayer, Rebmann, Maxwell & Hippel, LLP
1500 Market Street
Suite 3400, Center Square West
Philadelphia, PA 19102

COUNSEL FOR SENATE INTERVENORS

I N D E X

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2		
3	DISCUSSION AMONG PARTIES	12 - 13
4	WITNESS: RONALD STROMAN	
5	EXAMINATION ON QUALIFICATIONS	
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23	DIRECT EXAMINATION	
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20	CROSS EXAMINATION	
21	by Attorney Nkwonta	277 - 292
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25	by Attorney Evans	307 - 310

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3	REDIRECT EXAMINATION	
4	by Attorney Sheehy	311 - 312
5	DISCUSSION AMONG PARTIES	312 - 319
6	WITNESS: DEVON LAUDENSLAGER	
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8	by Attorney Brailey	319 - 328
9	WITNESS: DR. JOSEPH EILENBERG	
10	EXAMINATION ON QUALIFICATIONS	
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15	by Attorney Sheehy	341 - 349
16	REDIRECT EXAMINATION	
17	by Attorney Brailey	350 - 351
18	DISCUSSION AMONG PARTIES	351 - 369
19	WITNESS: TORREN ECKERT	
20	DIRECT EXAMINATION	
21	by Attorney Wallen	369 - 375
22	CROSS EXAMINATION	
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EXHIBIT PAGE

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4	USPS Office of Inspector General Management Alert	391
6	USPS General Counsel Thomas Marshall Letter to Judge Boockvar	391
7	USPS General Counsel Thomas Marshall Letter to Judge Marshall	391
9	USPS PMG Briefing, Service Performance Measurement	392
28	Eastern Areas Inspiring Mail Service Update	392
30	Preliminary Report of Joseph Eisenberg	392
32	Preliminary Report of Ronald Stroman	392
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1	Letter dated 7/29/20 from Thomas Marshall to Kathy Boockvar	393

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<u>SENATE INTERVENORS' EXHIBITS:</u>		
1	Mr. Plunkett's Declaration	396
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		PAGE
<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>ADMITTED</u>

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17	Report from US Department of Health and Human Services	397

HOUSE INTERVENORS' EXHIBITS:

1	Statement of Postmaster General	398
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P R O C E E D I N G S

CRIER: Ladies and gentlemen,
Commonwealth Court is now in session. The Honorable
President Judge Mary Hannah Leavitt presiding.

JUDGE MARY HANNAH LEAVITT: You may be
seated. Good morning and welcome to the
Commonwealth Court. We've got a busy day ahead of
us. We are here on the Petition of Michael Crossey,
Dwayne Thomas, and the Pennsylvania Alliance for
Retired Americans against Kathy Boockvar, the
Secretary of the Commonwealth, and Jessica Mathis,
the Director of the Bureau of Election Services.

The Court is acting as special master
to the Pennsylvania Supreme Court, which has an - an
amended Petition for Review pending with it, as well
as preliminary objections that were filed by the
Respondent, as well as the Intervenor on behalf of
Senator Joe Scarnati and Jake Corman and
intervention petitions of the House Speaker Cutler.

We're going to proceed as specified at
the pre-hearing conference on Saturday. The
Petitioner will present its witnesses. There will
be no opening statement. It's expected that we will
have closing arguments at the appropriate time. And

1 with that, we will begin with Petitioners' first
2 witness.

3 ATTORNEY NKWONTA: Thank you, Your
4 Honor. Petitioners call Mr. Ronald Stroman.

5 ---

6 RONALD STROMAN,
7 CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
8 HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS
9 FOLLOWS:

10 ---

11 EXAMINATION ON QUALIFICATIONS

12 ---

13 BY ATTORNEY NKWONTA:

14 Q. Good morning, Mr. Stroman.

15 A. Good morning.

16 Q. Could you please state your name for the
17 record?

18 A. Ronald Stroman.

19 JUDGE LEAVITT: Before you proceed
20 further - thank you. All right. Thank you. Sorry.
21 You may continue.

22 BY ATTORNEY NKWONTA:

23 Q. Mr. Stroman, would you please state your
24 full name for the record?

25 A. Ronald Stroman.

1 Q. Mr. Stroman, do you understand that
2 you've been retained as an expert for the
3 Petitioners in this case?

4 A. I do.

5 Q. And you have prepared an expert report?

6 A. I have.

7 Q. Or a preliminary expert report I should
8 say?

9 A. Yes.

10 ATTORNEY NKWONTA: I'd like to put up
11 Exhibit 32 at this time.

12 ---

13 (Whereupon, Petitioners' Exhibit 32, Preliminary
14 Report of Ronald Stroman, was marked for
15 identification.)

16 ---

17 BY ATTORNEY NKWONTA:

18 Q. Could you scroll down just a little bit
19 to verify that it's Mr. Stroman's preliminary
20 report? Mr. Stroman, do you recognize Exhibit 32?

21 A. I do.

22 Q. Is that the preliminary report you
23 prepared for this case?

24 A. Yes.

25 ATTORNEY NKWONTA: Petitioners move to

1 admit Exhibit 32 into evidence.

2 BY ATTORNEY NKWONTA:

3 Q. Before we get into your report, Mr.
4 Stroman, I'd like to ask you to tell us a little bit
5 about your educational background. Can you tell us
6 a little bit about your background?

7 A. Yes. I have a Bachelor's degree in
8 government from Manhattan College in New York and a
9 juris doctorate degree from Rutgers University Law
10 Center in New Jersey.

11 Q. Could you give us a brief summary of your
12 employment history?

13 A. I began in the Office of General Counsel
14 at the U.S. Department of Housing and Urban
15 Development for a number of years before moving to -
16 I was then employed at the - by the House Judiciary
17 Committee, the subcommittee on criminal justice.
18 And I was assistant counsel on the subcommittee on
19 criminal justice.

20 From there, I became deputy general
21 counsel for the House Government Reform Oversight
22 Committee. I was in the Government Operations
23 Committee. I held a number of positions on that
24 committee. I then took a position as Director at
25 the U.S. Department of Transportation where I

1 reported directly to the Secretary of
2 Transportation. From there, I was a managing
3 director at the Government Accountability Office.
4 From there, I went back to the Congress. I was
5 staff director for the House Committee on - on
6 Government Oversight and Reform. In that capacity,
7 I had oversight over the Postal Service as part of
8 my responsibilities. Then from there, I was
9 selected as deputy postmaster general in 2011 and
10 remained there until I left in June of this year.

11 Q. How many years of public service does
12 that amount to in total?

13 A. Forty-two (42).

14 Q. You mentioned that you became deputy
15 postmaster general in 2011 and remained in that
16 position until June 2020. What is the highest
17 ranking position in the United States Postal
18 Service?

19 A. Postmaster general would be the highest
20 ranking position in the Postal Service.

21 Q. And where did your position rank in
22 comparison to that?

23 A. I was the second highest ranking position
24 in the United States Postal Service.

25 Q. I want to talk a little bit about your

1 responsibilities at the USPS as deputy postmaster
2 general. Can you tell us what your general
3 responsibilities were in that role?

4 A. Yes. I was a member of the Board of
5 Governors. The Board of Governors is a body which
6 directs the strategic direction of the Postal
7 Service. It's made up of presidentially appointed
8 governors and the postmaster general and the deputy
9 postmaster general. So we set the direction for the
10 Postal Service.

11 So for the nine years I was at the Postal
12 Service, I was on the Board and working to set that
13 strategic direction. I was part of the postmaster
14 general's executive leadership team and we met every
15 week to discuss implementation of the direction that
16 had been laid out - laid out by the Board of
17 Governors. I met virtually daily and sometimes many
18 times with the postmaster general during the course
19 of the day to work on a variety of issues.

20 I had direct responsibility to represent
21 the Postal Service at the Universal Postal Union in
22 Switzerland. The Universal Postal Union is the
23 second oldest United Nations organization who is
24 responsible for setting rates for all folks
25 throughout the world, as well as establishing

1 commerce rules and regulations.

2 One of the - one of our responsibilities
3 in that role was to ensure the ability to overseas
4 voters and military voters to cast their ballots. I
5 had also responsibility for all federal, state, and
6 local interaction with the Postal Service. So that
7 included all federal agencies, Congress, state and
8 local governments. And it is in that state and
9 local government capacity that I worked extensively
10 with the election community surrounding the country.

11 Q. Thank you. And following up on that, can
12 you tell us a little bit more about your
13 responsibilities with respect to voting by mail and
14 election issues when you were communicating with
15 state and local officials?

16 A. Yes. There were three primary areas we
17 were provided the responsibility of. One area was
18 resolution of concerns or complaints. So I had set
19 forth a task force within the Postal Service. And
20 reporting up to that task force were - are election
21 mailing coordinators who are in every state in the
22 country. They reach out to state and local
23 government.

24 In that capacity, what we did was set up
25 a process where if state and local governments or

1 mailing community, or local board of election had
2 any concern, we could rapidly respond to those
3 concerns. They would start at the local level and
4 work their way up to Washington and headquarters and
5 those of us at the task force to ensure that they
6 were responded to. Before I left, I established a
7 website where anyone who had specific concerns could
8 put in their zip code, file their concern, and then
9 we would respond to those. So that was one area.

10 Outreach was another. So as I mentioned,
11 we had extensive outreach to states around the
12 country. I would have discussion with secretaries
13 of state, local boards of election, National
14 Association of Secretaries of State. For example, I
15 would go and I would brief them at consultations,
16 election directors. I would do regular briefings
17 and have conversations with that organization. I
18 would ensure that during the course of the outreach,
19 we had exactly the right person out who were
20 reaching out to every state. So we had things -
21 bodies like election, our election mail
22 coordinators. Our mail piece design analysts would
23 help board of elections design their envelopes so
24 that they were compatible with our automated
25 equipment.

1 And then finally, in a general way,
2 training. So training was a key component of what
3 we did. We made sure that our employees were
4 trained, because they don't deal with election mail.
5 They didn't deal with election mail every single
6 day with every side. So training was absolutely
7 key.

8 So - and then lastly is working with the
9 election mail community. So we worked with the
10 election mail community, state and local government
11 to develop best practices. We developed kits that
12 we would then send out to every board of election
13 with the best practices stated therein with -.

14 Q. And you were the deputy postmaster -?

15 JUDGE LEAVITT: Hold on. We have a
16 lot of heavy lifting to do today and I think your
17 witness has testified sufficiently about his
18 ability, and background, experience, and
19 qualifications to testify. So I would suggest that
20 we end this part of the examination. Unless there's
21 something directly pertinent to his substantive
22 testimony, I think we should bring this to a close.

23 ATTORNEY NKWONTA: Okay.

24 At this time, Your Honor, Petitioners
25 would like to move the witness, Mr. Stroman, as an

1 expert in the operations of the U.S. Postal Service,
2 its delivery standards, and the application of those
3 delivery standards to voting by mail.

4 JUDGE LEAVITT: Ms. Hangle, do you
5 have any questions?

6 ATTORNEY HANGLEY: I do not, Your
7 Honor. No objection.

8 JUDGE LEAVITT: Mr. Torchinsky?

9 ATTORNEY SHEEHY: Shawn Sheehy, Your
10 Honor.

11 JUDGE LEAVITT: Oh, I'm sorry.

12 ATTORNEY SHEEHY: No, no problem.

13 JUDGE LEAVITT: You may remove your
14 mask during questioning.

15 ATTORNEY SHEEHY: Thank you, Your
16 Honor. And I'll reserve for Cross Examination.

17 JUDGE LEAVITT: Okay.

18 ATTORNEY SHEEHY: Thank you.

19 JUDGE LEAVITT: Mr. Torchinsky?

20 ATTORNEY EVANS: Mr. Evans, Your
21 Honor.

22 JUDGE LEAVITT: Oh, I'm sorry.

23 ATTORNEY EVANS: And yes, I'll have a
24 couple of questions your Mr. Stroman.

25

EXAMINATION ON QUALIFICATIONS

1
2
3 BY ATTORNEY EVANS:

4 Q. Mr. Stroman, have you ever been qualified
5 as an expert?

6 JUDGE LEAVITT: I think it would be
7 helpful if you removed your mask while you're
8 speaking.

9 ATTORNEY EVANS: Sure, Your Honor.
10 Sorry.

11 JUDGE LEAVITT: Make it intelligible.
12 All right.

13 BY ATTORNEY EVANS:

14 Q. Mr. Stroman, have you ever been qualified
15 as an expert in another case?

16 A. Yes.

17 Q. And what cases were those?

18 A. There was a case last week filed in
19 Oklahoma regarding similar issues that we're
20 discussing today.

21 Q. And who was your client in that case?

22 A. The client was the - in Oklahoma, the
23 client was the DNC.

24 Q. And who is the DNC?

25 A. Democratic National Committee, I believe,

1 yes.

2 Q. And do you serve as an expert in any
3 other matters currently?

4 A. I have been retained as an expert in
5 other matters, yes.

6 Q. And what other matters are those?

7 ATTORNEY NKWONTA: Objection, Your
8 Honor. I would object to this question to the
9 extent that it seeks to ask Mr. Stroman to disclose
10 matters in which he's been retained and not
11 disclosed publicly or that have not been presented
12 to the Court.

13 JUDGE LEAVITT: Could you limit your
14 answer to the public proceeding or matters that have
15 moved to the public forum?

16 THE WITNESS: Yes.

17 JUDGE LEAVITT: You understand the
18 distinction?

19 THE WITNESS: Yes, ma'am.

20 JUDGE LEAVITT: Okay.

21 THE WITNESS: Yes. So I have been
22 retained in - publicly in the case that I mentioned
23 in Oklahoma is the only case that I was publicly
24 retained.

25 JUDGE LEAVITT: Well, you're - to put

1 it in a better way, your retention was a matter of
2 public record only in the Oklahoma case?

3 THE WITNESS: Yes.

4 JUDGE LEAVITT: All right.

5 BY ATTORNEY EVANS:

6 Q. Have you submitted an expert report in
7 any other case that's pending?

8 A. Yes. There was a case, a similar case in
9 Wisconsin.

10 Q. Okay.

11 And who was your client in that case?

12 A. I would have to go back and check.

13 Q. Do you not recall who your client is and
14 who -?

15 A. I believe it was the DNC as well. There
16 were a number of clients.

17 Q. And who is the DNC?

18 A. The Democratic National Committee.

19 Q. Have you reviewed any data that's
20 specific to Pennsylvania in arriving at your
21 conclusions today?

22 A. Yes.

23 Q. And what data is that?

24 A. Data on service performance in
25 Pennsylvania that was available on the Postal

1 Service's website.

2 Q. Okay.

3 Other than that data, have you reviewed
4 anything else specific to Pennsylvania?

5 A. Anything else? What do you mean
6 anything?

7 Q. Any other data specific to Pennsylvania
8 related to -.

9 A. Regarding service performance?

10 Q. That's correct.

11 A. No, I do not believe so.

12 Q. Were the parties in this case produced in
13 the data that you reviewed, do you know?

14 A. I'm sorry. What was the question?

15 Q. Were the parties in this case produced in
16 the specific Pennsylvania data that you reviewed?

17 A. Were the parties - I still do not
18 understand your question. The data that I reviewed
19 was all posted on the United States Postal Service
20 website and prepared by the Postal Service.

21 Q. Sure.

22 ATTORNEY EVANS: And to the extent, we
23 would just request from the Petitioners that we be
24 presented that data at some point. I think we
25 probably should have already been presented that

1 data, but we would just make that request, Your
2 Honor.

3 ATTORNEY NKWONTA: Counsel, you
4 already have that data. It was presented with Mr.
5 Stroman's disclosures yesterday and it's also one of
6 the exhibits that have been designated.

7 BY ATTORNEY EVANS:

8 Q. Have you spoken with any persons that
9 work for the U.S. Postal Service in Pennsylvania in
10 preparing for your testimony?

11 A. No. No.

12 Q. Are you familiar with the structure of
13 how Pennsylvania administers elections?

14 A. Generally.

15 Q. But you would agree with me that you're
16 not testifying today about how Pennsylvania
17 administers elections.

18 Is that right?

19 A. Well, that's kind of a broad question.
20 I'm not sure I understand what you're asking.

21 Q. Would you regard yourself as an expert in
22 administration of elections in Pennsylvania?

23 A. No.

24 ATTORNEY EVANS: Your Honor, I will
25 not object to Mr. Stroman's qualifications generally

1 about testifying about how the USPS functions. But
2 I will note for the court - for the court's
3 discretion about his limited knowledge about the
4 U.S. Postal Service in Pennsylvania and the way
5 elections are administered in Pennsylvania.

6 THE WITNESS: Can I respond?

7 JUDGE LEAVITT: No. No you may not.
8 That's what your lawyer is for. The witness will be
9 admitted as proposed as a qualified expert. I think
10 the point you make - you're Mr. Evans?

11 ATTORNEY EVANS: I'm Mr. Evans.
12 Sorry, Your Honor.

13 JUDGE LEAVITT: Oh, you're Mr. Evans.
14 And you're -?

15 ATTORNEY SHEEHY: Mr. Sheehy.

16 JUDGE LEAVITT: All right. I think it
17 goes to the weight of the testimony.

18 ATTORNEY EVANS: That's correct, Your
19 Honor.

20 JUDGE LEAVITT: You may proceed.

21 ATTORNEY NKWONTA: Thank you, Your
22 Honor.

23 ---

24 DIRECT EXAMINATION

25 ---

1 BY ATTORNEY NKWONTA:

2 Q. To begin, Mr. Stroman, can you give us a
3 brief overview of how ballots and other pieces of
4 election mail go through the mail system?

5 A. Yes. They are essentially the network
6 the Postal Service has essentially divided retail
7 processing and delivery. So the retail end is what
8 many people would think of as the post office. It's
9 more than that, but in a general way, the post
10 office. So a piece of mail or a ballot would be
11 collected from a carrier or an individual could vote
12 in the post office and submit that ballot.

13 That ballot would then compiled with
14 other types of mail. And in this instance, if it
15 was first class mail, it would be combined with First
16 Class Mail. That mail would then be put on a - and
17 the transportation would move from retail to a
18 processing center.

19 At the processing center, the mail would
20 be saved with other like mail. So First Class Mail
21 would be saved in the same area. Marketing mail is
22 another class of it. Others would be staged in
23 another area. That mail is then put on sorting
24 machines. The sorting machines then sorts that mail
25 to find appropriate zip code.

1 Once that mail gets sorted appropriately,
2 that mail is then taken to a dock. It is then put
3 on trucks. That truck would either send that mail
4 or it would take that mail to what we call a
5 delivery unit. And the delivery unit would then
6 sort the mail. The carriers would sort the mail
7 with the clerks to specific routes.

8 That route would then - the carriers
9 would put that mail on a truck and that truck, they
10 would drive and then they would deliver the mail.
11 The only - the additional steps - it's a little more
12 complicated than I'm making it, but the additional
13 step would be if you needed to send the mail to an
14 area which was outside of the boundaries of that
15 processing center. So that might go to another
16 processing center, but the same steps would be
17 repeated at that processing center.

18 Q. Understood. You were deputy postmaster
19 general during some of the primary elections that
20 occurred while the coronavirus pandemic was raised
21 throughout the country.

22 Correct?

23 A. Correct.

24 Q. And you were also the postmaster general
25 when the Wisconsin April primary occurred.

1 Is that correct?

2 A. That's correct.

3 Q. And there's an investigation initiated or
4 conducted by the Office of Inspector General with
5 respect to USPS's performance during that.

6 Is that correct?

7 A. That's correct.

8 Q. Were you familiar with that
9 investigation?

10 A. Very much so.

11 Q. And could you tell us what steps USPS
12 took in response to that investigation?

13 A. In response to the investigation, you
14 know, I had prepared a briefing - was preparing a
15 briefing for the operations committee of the Board
16 of Governors talking about our efforts, our
17 preparation effort for the general election. And in
18 the course of that briefing, I had mentioned that
19 there were some significant problems, perhaps even
20 more problems that we had anticipated that came out
21 of the primary in Wisconsin.

22 Wisconsin was overwhelmed by the number
23 of ballots that came to them at the last -
24 relatively at the last minute. They then gave those
25 ballots to the Postal Service at the last minute.

1 And it caused a great deal of confusion about who
2 was responsible for those ballots not getting to the
3 Board in time.

4 So in response to that briefing, during
5 the course of the briefing I noted that one of the
6 causes of the delay was incompatibility of our
7 service standards for different types of mail that
8 would be used to mail a ballot. In the last days
9 that a voter could request a ballot, it was constant
10 in need in other states around the country. And
11 that we needed to message that is pretty
12 substantially that, you know, this is going to be a
13 problem. This is one of the main problems that we
14 saw coming out of the primaries.

15 The Board, at least the committee of the
16 Board of Governors at that point decided that they
17 wanted to send out letters to states identifying
18 those that - whose statutory dates by which voters
19 could request a ballot was incompatible with our
20 service standards. And that then was the genesis of
21 letters that were sent out around the country.

22 Q. Thank you for that. And we'll get into
23 those letters shortly.

24 ATTORNEY NKWONTA: In the meantime,
25 I'd like to pull up Plaintiff's (sic) Exhibit 4,

1 Petitioners' Exhibit 4.

2 ---

3 (Whereupon, Petitioners' Exhibit 4, USPS Office
4 of Inspector General Management Alert, was marked
5 for identification.)

6 ---

7 BY ATTORNEY NKWONTA:

8 Q. Do you recognize Exhibit 4, Mr. Stroman?

9 A. Yes. Yes.

10 Q. And is that the report that came out of
11 the OIG investigation into the Wisconsin April
12 primary?

13 ATTORNEY EVANS: Your Honor, I'll just
14 object. Leading.

15 ATTORNEY NKWONTA: Your Honor, I
16 understand. I'm trying to get through testimony as
17 quickly as we can.

18 JUDGE LEAVITT: I'm sorry. Could you
19 speak up?

20 ATTORNEY NKWONTA: Sure. I understand
21 the objection. I'm just trying to get through the
22 testimony as quickly as I can.

23 BY ATTORNEY NKWONTA:

24 Q. Mr. Stroman, can you tell us what Exhibit
25 4 is?

1 A. Exhibit 4 is the audit that was done by
2 the Office of Inspector General. The Office of
3 Inspector General initiated the audit by the cause
4 of request from Senators Johnson and Baldwin, who
5 were concerned about the untimely delivery of
6 ballots in Wisconsin. So they requested the OIG to
7 do this audit or this investigation of this untimely
8 delivery of ballots in Milwaukee. And this is the
9 audit report.

10 Q. And was this the investigation that you
11 discussed in the Board of Governors meeting that you
12 just mentioned?

13 A. Yes. This was - yes. This is what -
14 this issue was what we discussed.

15 ATTORNEY NKWONTA: Petitioners move to
16 admit Exhibit 4 into evidence.

17 JUDGE LEAVITT: Does Mr. Stroman have
18 a copy of all the exhibits that have been marked for
19 the court? Your witness has a copy of all of
20 Petitioners' Exhibits?

21 ATTORNEY NKWONTA: Yes, Judge.

22 JUDGE LEAVITT: Okay.

23 So I don't think it's necessary that
24 we put the exhibit up on the screen.

25 ATTORNEY NKWONTA: Well, I'm not sure

1 if he has a copy right in front of him.

2 JUDGE LEAVITT: Got you.

3 ATTORNEY NKWONTA: But he -.

4 JUDGE LEAVITT: Okay.

5 So he does not have a hard copy?

6 ATTORNEY NKWONTA: No. I don't think
7 he has a hard copy.

8 JUDGE LEAVITT: Okay.

9 ATTORNEY EVANS: And Your Honor, it
10 would be helpful as well for, I think, the Counsel
11 if it was put on the screen, just so we're seeing
12 the document because my internet unfortunately is
13 not working. So I don't have the ability to pull
14 that up. I can't access my exhibits right now.

15 ATTORNEY NKWONTA: We do have a hard
16 copy as well, but I think the screen would be
17 preferable. And I would like to put up Exhibit or
18 Petitioners' Exhibit 6, please.

19 ---

20 (Whereupon, Petitioners' Exhibit 6, General
21 Counsel Thomas Marshall Letter to Judge
22 Boockvar, was marked for identification.)

23 ---

24 BY ATTORNEY NKWONTA:

25 Q. While we wait for Exhibit 6 to be loaded,

1 Mr. Stroman, you mentioned that in that Board of
2 Governors meeting, you discussed potentially sending
3 letters to different states or secretaries of states
4 and election officials when, where you determined
5 that the election laws or the deadlines for request
6 and submitting ballots were incongruence or
7 incompatible with USPS delivery standards.

8 Is that correct?

9 A. Correct.

10 ATTORNEY EVANS: I'm going to object,
11 Your Honor. I mean, I understand we're trying to
12 move it along, but these are just very leading
13 questions.

14 JUDGE LEAVITT: I'm sorry. I didn't.

15 ATTORNEY EVANS: I'm objecting on the
16 basis of it being leading. I understand we have to
17 move it along, but we can't have Counsel testifying
18 for the expert. And so I would just request that
19 the questions not be in leading nature and that
20 Counsel recharacterize the question.

21 JUDGE LEAVITT: I'll sustain the
22 objection.

23 BY ATTORNEY NKWONTA:

24 Q. Mr. Stroman, can you describe what came
25 out of that meeting with the Board of Governors with

1 respect to any potential outreach to election
2 officials?

3 A. Yes. What came out of that meeting was a
4 decision to send letters to some core elections
5 around the country to inform them that the date by
6 which a voter could request a ballot was
7 inconsistent or incongruous with postal services
8 service standards for mail that would be used to
9 send and receive ballots.

10 Q. Can you take a look at Petitioners'
11 Exhibit 6 and can you tell us whether Exhibit 6 is
12 consistent with what you had discussed during that
13 meeting and the outcome of the Wisconsin
14 investigation?

15 A. Yes. Exhibit 6 is consistent with what
16 we discussed in that meeting. And essentially, as I
17 said earlier, the incongruence of our service
18 standards with our standards with the last day from
19 which a voter could request an election, and a
20 caution that that could delay ballots would prevent
21 that getting to the boards of election on time, thus
22 disenfranchising voters in different states.

23 Q. And this letter was issued by General
24 Counsel Marshall. Do you know General Counsel
25 Marshall?

1 A. Yes. Tom Marshall is general counsel for
2 the Postal Service. He's also served on the
3 executive leadership team with me and I interacted
4 with Mr. Marshall virtually every day.

5 ATTORNEY NKWONTA: Petitioners move to
6 admit Exhibit 6 into evidence.

7 ATTORNEY EVANS: I'd have to object.
8 I don't think that he's laid a foundation or
9 authenticated the document.

10 ATTORNEY NKWONTA: Your Honor, this is
11 a public document and this is the document that has
12 been filed by the Secretary of State, the recipient
13 of the document. I don't think there are any
14 questions as to authenticity. I think the
15 foundation has been established.

16 ATTORNEY EVANS: I believe in
17 Pennsylvania for a document to be self-
18 authenticated, it's going to have to be certified.
19 Although this is a letter - if Mr. Stroman has
20 personal knowledge and he can verify that this is
21 true and authentic document, I'll have no objection.
22 I just didn't hear that foundation or the
23 authentication question asked.

24 JUDGE LEAVITT: I'll sustain the
25 objection.

1 BY ATTORNEY NKWONTA:

2 Q. Mr. Stroman, have you seen this document
3 before, Petitioners' Exhibit 6?

4 A. Yes.

5 Q. And is Exhibit - where did you see
6 Petitioners' Exhibit 6?

7 A. I have seen the Petitioners' Exhibit 6 in
8 - online. I have seen Petitioners' Exhibit 6 in
9 preparation for this hearing. And those are the two
10 places that I've seen.

11 Q. Is Petitioners' Exhibit 6 an accurate
12 copy of the letter from the United States Postal
13 Service that you saw online?

14 A. Yes.

15 ATTORNEY NKWONTA: Your Honor, at this
16 time, Petitioners move to admit Exhibit 6 into
17 evidence. And Petitioners alternatively request
18 that the Board take Exhibit 6 -.

19 JUDGE LEAVITT: I'm sorry. You're
20 alternative what?

21 ATTORNEY NKWONTA: Alternatively,
22 Petitioners' request that the Board take judicial
23 notice of the authenticity of Exhibit 6, which is
24 really beyond dispute at this point.

25 JUDGE LEAVITT: They'll be admitted.

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(Whereupon, Petitioners' Exhibit 6, USPS General Counsel Thomas Marshall Letter to Judge Boockvar, was admitted.)

ATTORNEY NKWONTA: Thank you, Your Honor.

BY ATTORNEY NKWONTA:

Q. Mr. Stroman, is Exhibit 6 consistent with what you discussed - the content of Exhibit 6 consistent with what you discussed in that board meeting?

A. At the Board of Governors meeting, yes.

Q. Do you agree with the statements in Exhibit 6, specifically the statements asserted in page two, second and third paragraphs?

A. Could you put up page two second and third paragraphs, please?

Q. And the statement I'm specifically referring to is the statement starting - beginning in the second paragraph that the state law deadlines and requirements for requesting absentee ballots and submitting absentee ballots are incompatible with the Postal Service's delivery standards.

A. Yes, I agree with that.

1 Q. Do you also agree with the statement that
2 ballots may be requested in a manner consistent with
3 Pennsylvania rules and returned promptly yet not
4 counted under current Postal Service delivery
5 standards?

6 A. I do, yes.

7 Q. Could you walk us through why that is the
8 case, why ballots promptly requested or ballots
9 requested and promptly submitted may not be
10 delivered on-time in accordance with U.S. Postal
11 Service delivery standards?

12 A. Sure. At a high level, the reason is
13 that there are two types of mail that are used for
14 ballots, First Class Mail and what we call marketing
15 mail. And First Class Mail has a service standard
16 of two to five days. Marketing mail has a service
17 standard of three to ten days.

18 So what that means is it would - if you
19 mailed a mail piece, the Postal Service would
20 consider it on First Class Mail on-time if it
21 arrived anywhere from two days to five days. If you
22 mailed it marketing mail, it would be considered on-
23 time if you delivered it anywhere between three days
24 to ten days.

25 So if you look at the outer region of

1 those service standards and you compare those to
2 seven days before an election a voter can request a
3 ballot, and you do the math, there is, you know,
4 there are certainly a chance that ballot will not
5 get to a voter in - will not be returned to the
6 Board of Election in time. And that is really the
7 reason that - when I was there at the Postal
8 Service, we urged - you know, we discussed with
9 states the compatibility of service standards to the
10 date of which you requested a ballot. At a high
11 level, that is the reason it will not get there.

12 Q. Thank you, Mr. Stroman. We can pull down
13 Petitioners' Exhibit 6 at this point. You mentioned
14 delivery standards and you mentioned two to five day
15 standards for First Class Mail and you mentioned a
16 three to ten day standard for business mail. Those
17 are the delivery standards under normal
18 circumstances under best case scenarios.

19 Is that correct?

20 A. That's correct.

21 Q. In your report, do you conclude that
22 these are not normal circumstances, meaning that
23 there are other factors in place that affect the
24 USPS's ability to meet its delivery standards? Can
25 you explain to the court what those factors are?

1 A. Sure. The fact is there's really two,
2 two basic factors and maybe one, you know, sub
3 factor. One is the pandemic. The pandemic has
4 unfortunately created areas in the country where the
5 Postal Services employee availability has dropped
6 significantly. And in those areas, you have limited
7 ability to process and deliver the mail because the
8 employees are not available to deliver or process
9 the mail or sort the mail because the employees are
10 not available.

11 And these - you know, these spots occur
12 in different places around the country. We have an
13 integrated network and I talked about
14 transportation, for example. So, you know, you can
15 have an employee availability issue in one area.
16 Then that could affect the delivery of mail in a
17 completely different area because of the integrated
18 nature of the network.

19 So the pandemic has really exacerbated
20 this issue of employee availability around the
21 country. So that is one reason. The second reason
22 is -.

23 ATTORNEY EVANS: Your Honor, I just
24 want to note and reiterate that the witnesses aren't
25 to review any documents. I'm not suggesting Mr.

1 Stroman is reviewing any documents. To the extent
2 that he is, I hope that we've been provided those
3 documents. But I just want to reiterate that to the
4 court and the witnesses.

5 ATTORNEY NKWONTA: I don't understand
6 the objection, Your Honor. What is the objection?

7 ATTORNEY EVANS: It appears Mr.
8 Stroman may be looking at something. He may not be
9 looking at something. I'm just reiterating the
10 understanding from the status conference yesterday.
11 I just want to point that out.

12 JUDGE LEAVITT: Mr. Stroman was not at
13 the pre-hearing conference, but that was the
14 direction of the court, that the witness not testify
15 from any notes or electronic devices and not use any
16 documents that have not been shared with all counsel
17 that are here in the courtroom today.

18 So I believe Mr. Evans is just simply
19 asking for assurance that Mr. Stroman is not
20 testifying from handwritten notes, or an electronic
21 device, or something of that nature.

22 ATTORNEY EVANS: That's correct, Your
23 Honor. Thank you.

24 JUDGE LEAVITT: All right.

25 ATTORNEY NKWONTA: And I'll represent

1 to the court that we have shared with Mr. Stroman
2 the only materials he can have are his report. None
3 of the materials -.

4 JUDGE LEAVITT: I'm old and hard of
5 hearing. You've got to talk louder and into the
6 microphone. Thank you.

7 ATTORNEY NKWONTA: Sorry.

8 JUDGE LEAVITT: I'm talking about the
9 lawyers.

10 ATTORNEY NKWONTA: We have assured him
11 and we would ask the court to take Mr. Stroman's
12 word that he is complying with the orders.

13 JUDGE LEAVITT: All right. Thank you.

14 BY ATTORNEY NKWONTA:

15 Q. Mr. Stroman, if I'd ask you to pick up
16 where you left off. I believe you were discussing
17 the factors that may affect USPS's ability to meet
18 its delivery standards.

19 A. Yes. So employee availability saying
20 that the interrelationship of the network, you know,
21 compounds the issue of employee availability,
22 particularly in a pandemic because the network is
23 integrated.

24 So if you have problems in one area,
25 those problems can affect other areas even if it's

1 not in that specific - even if the employee
2 availability issue is not in that specific area. So
3 this is a significant problem for the Postal
4 Service. The other issue -.

5 Q. Sorry. Before you get off on employee
6 availability, I want to ask did you experience any
7 of these employee availability issues up until you
8 left the USPS in June of 2020?

9 A. Yes. We experienced significant employee
10 availability issues in different parts of the
11 country from about mid-March until the time that I
12 left.

13 Q. And did you experience any employee
14 availability issues within Pennsylvania
15 specifically?

16 A. There were employee availabilities,
17 particularly in the Philadelphia and the Greater
18 Philadelphia area.

19 Q. And how did the employee availability
20 issues affect USPS's ability to meet its delivery
21 standards?

22 A. It delayed our ability to meet our
23 service standards. So, you know, it made it - we
24 certainly did not meet our standards in certain
25 areas and it certainly delayed the mail. So, you

1 know, it required in some instances that we had to
2 actually prioritize packages over letters because we
3 were concerned that we needed to get out
4 pharmaceuticals and employee protective devices to
5 frontline workers. And so we said look, you know,
6 given the lack of availability, we're going to
7 prioritize certain things over other things.
8 Packages were prioritized over letters. So we had
9 to make those kinds of difficult choices at
10 different parts around the country.

11 Q. You mentioned specifically that you
12 experienced employee availability issues in the
13 Philadelphia region. Are the effects of those
14 employee availability issues limited to the
15 Philadelphia region?

16 A. No. As I indicated, I think - you know,
17 it's not any less - as indicated a minute ago,
18 because the network is integrated, one place can
19 affect another. An example would be let's just say,
20 you know, you had employees who are out in a
21 specific post office. That would delay and the
22 other carriers have to take up that route. That's
23 going to delay how quickly you can even just pick up
24 the mail. That's going to delay how quickly a truck
25 could leave if it wanted to leave with all the mail

1 going to the processing plant.

2 So that processing plant would be
3 potentially delayed in starting its runtime on the
4 machine waiting for, you know, delayed mail to come
5 in. That means that they can't go out to any number
6 of delivery units because all the first-class mail
7 is processed together. So it is just - it'll just
8 have this impact on different parts of the -.

9 Q. It will also have an impact on different
10 parts of the Commonwealth?

11 A. It could, yes.

12 Q. In addition to the employee availability
13 issues, were there any other factors that affect
14 USPS as well as - well, before I get onto that, I
15 want to ask you one other question.

16 You mentioned you experienced the
17 employee availability issue while you were still
18 deputy postmaster general until June. Do you know
19 if those employee availability issues are still
20 ongoing?

21 A. Based on testimony that I have heard from
22 the new postmaster general during his testimony
23 before the House and the Senate, he's testified to
24 the fact that those employee availability issues
25 continue.

1 Q. In addition to the employee availability
2 issues, what other factors have you observed that
3 affect USPS's ability to maintain its delivery
4 standards currently?

5 A. Some - it certainly - you know, certainly
6 the new - at least a new initiative by the new
7 postmaster general has delayed the mail
8 significantly. And so the service performance of
9 First Class Mail around the country has taken a
10 pretty significant hit as a result of one of the
11 initiatives of the new postmaster general with
12 regard to transportation.

13 Q. And can you tell us a little bit about
14 how that transportation initiative effects USPS's
15 ability to meet its delivery standards?

16 A. Sure. So as I talked earlier about the
17 integrated nature of the network, what the new
18 postmaster general did was he came in, he read a -
19 he instituted based on an OIG report a decision to
20 require all the transportation to run on time, to
21 leave the processing plants on time, to leave post
22 offices on time, for the carriers going out on the
23 street to go out on time.

24 And what that has caused is delays
25 because if the transportation is leaving say a

1 processing plan on time. If the processing plant
2 has not finished or even begun to run a First Class
3 Mail on sorting machines, you essentially leave with
4 the truck not being filled and you're leaving mail
5 behind. And if you do that day after day after day,
6 the mail just piles up. So the fact that the
7 schedule in your processing plant does not sync up -
8 it has to sync up with their schedule of the
9 transportation plant. So if you just have the
10 trucks leave on time without fixing the issue on the
11 processing and delivery side, you're going to have
12 delays. And that has backed up and delayed the
13 process.

14 Q. Are there any other factors that you've
15 observed that affect delivery standards?

16 A. I would just say, you know, the - because
17 of the volume of absentee balloting, what is
18 happening around the country is that states are now
19 changing the way that they do, that they get ballots
20 out and back in to voters. So some now are moved
21 from in-house to out-house to having ballot houses
22 do this. And they're using different standards that
23 they have done in past elections.

24 So this - because they're doing things
25 differently in different states, training is a huge

1 problem because, you know, if you're relying on what
2 you did say for the last couple of elections, this
3 election could be significantly different in your
4 state because the state could be doing significantly
5 different things.

6 So the training has got to catch up with
7 the changes that are being made in the states to try
8 to make sure that the employees understand exactly
9 what's going on because of the relationship between
10 the work of the Postal Service and boards of
11 election.

12 So that is causing this need for enhanced
13 training. It needs to - it certainly needs to be
14 accelerated. So we're seeing that as a problem as
15 well. So those are the major problems.

16 Q. And is it your opinion that those factors
17 have resulted in at least a decreased ability to
18 meet delivery service standards and delays?

19 ATTORNEY EVANS: Objection. Leading.

20 THE WITNESS: Yes.

21 ATTORNEY EVANS: Objection. Leading.

22 Your Honor, I mean, I think he effectively stated
23 what Mr. Stroman's opinion was and I would request
24 that he restate the question in a way for Mr.
25 Stroman to state his opinion and not the

1 Petitioners' Counsel.

2 JUDGE LEAVITT: I'm not sure I follow
3 your objection.

4 ATTORNEY EVANS: I'm just requesting
5 that he restate the question because Petitioners'
6 Counsel effectively said is it your opinion that and
7 he stated the opinion.

8 JUDGE LEAVITT: Can you restate the
9 question?

10 ATTORNEY NKWONTA: Sure. I can do
11 that.

12 BY ATTORNEY NKWONTA:

13 Q. Mr. Stroman, in your opinion, what has
14 been the effect of these factors on the timeliness
15 of mail delivery?

16 A. All of these factors have delayed the
17 timeliness of mail delivery.

18 Q. And are these factors that are currently
19 ongoing?

20 A. Yes.

21 ATTORNEY NKWONTA: I'd like to put up
22 Petitioners' Exhibit 9, please.

23 ---

24 (Whereupon, Petitioners' Exhibit 9, USPS PMG
25 Briefing, Service Performance Measurement, was

1 marked for identification.)

2 ---

3 BY ATTORNEY NKWONTA:

4 Q. Mr. Stroman, do you recognize Exhibit 9?

5 A. I do.

6 Q. Can you explain to the court what Exhibit
7 9 is?

8 A. This is a measure of service performance
9 for processing mail that was presented to the
10 postmaster general in August.

11 Q. Let's move to the second page of Exhibit
12 9. Mr. Stroman, where have you seen Exhibit 9
13 before?

14 A. I've seen it - this was - I watched the
15 House hearing, the House Committee on Oversight
16 Reforms hearing in which postmaster general
17 testified. This chart was presented to the
18 postmaster general at that time. It was put up on
19 the screen. I saw it then. The committee
20 subsequently put the presentation online. I saw it
21 there. And then in preparation for the hearing.

22 Q. Is Exhibit 9 an accurate copy of the
23 chart and presentation that you saw in the House
24 Oversight Committee hearing and published by the
25 Oversight Committee?

1 A. Yes. It's the same - this is the same
2 slide, the same presentation.

3 ATTORNEY NKWONTA: Petitioners move to
4 admit Exhibit 9 into evidence.

5 JUDGE LEAVITT: I will allow the
6 witness to testify about this exhibit. I think it's
7 going to go faster if all the motions for admission
8 are done at the conclusion of your case. So just
9 keep the record - somewhat on your time, keep a
10 record of future exhibits that you want to move into
11 evidence. We can do them all at once.

12 ATTORNEY NKWONTA: Certainly. Thank
13 you, Your Honor.

14 JUDGE LEAVITT: And the Intervenors
15 and the Respondents, you can state your objection at
16 the time that the exhibits are proffered. Go ahead.

17 BY ATTORNEY NKWONTA:

18 Q. Mr. Stroman, can you walk us through what
19 the first line on the second page of Exhibit 9
20 shows?

21 A. Yes. The key slide here is the orange -
22 particularly the orangey line. And so this is - the
23 Postal Service has a goal. It's kind of an internal
24 goal of processing all of its First Class Mail on time
25 95 percent of the time. That's the target. And this

1 line will show how it looks to that 95 percent or
2 better than 95 percent performance was at the Postal
3 Service from March 14, 2020 until August 1st of 2020.

4 And what you see is that the performance
5 is up and down, left and slightly below on average.
6 It's slightly the 95 percent target most of the time
7 between March and - and July. A little bit below,
8 goes up and down depending on weeks, but, you know,
9 generally speaking below target. Then you get to
10 middle part - you know, early to middle part of July
11 where the service performance just drops pretty
12 dramatically with regards to processing and stays -
13 and stayed - stayed low and - you know through August
14 1st. So it's a precipitous drop around the middle of
15 - the middle of July.

16 Q. And just to clarify Mr. Stroman, when you
17 said that the pertinent line we're looking at is the
18 orange, you're referring to is middle solid orange
19 line that represents -

20 A. Correct.

21 Q. - processing scores.

22 Is that correct?

23 A. Yes. Yes. Exactly.

24 I can go over the lines, but that's
25 essentially the key, the processing line.

1 Q. And why is that the key metric here?

2 A. Well, because if your processing scores
3 have dropped dramatically it is going to delay the
4 mail. And if you can't get the mail processed
5 consistent with your target of say 95 percent - and
6 remember 95 percent means that five percent of the
7 mail is not meeting those service standards, your -
8 your - your mail is going to be delayed. There's no
9 question about it. You can make up a little bit of
10 time, but if your processing is delayed - is dropping
11 by this much or, you know, even half of that you're
12 going to have significant delays.

13 Q. So if the processing score drops to 85
14 percent, which it appears to do around the August 1st
15 mark, what does that tell you about the ability to
16 meet delivery service standards?

17 A. It - it tells me that you're not going to
18 meet your service performance targets. You're going
19 to be delayed significantly in your service
20 performance at that number.

21 Q. Is it accurate to say about 15 percent of
22 - of mail would not meet delivery service standards or
23 is there a different measurement that you could
24 explain?

25 ATTORNEY EVANS: Objection. Compound

1 and leading, Your Honor. I would request that counsel
2 restate the question.

3 JUDGE LEAVITT: Could you restate the
4 question?

5 BY ATTORNEY NKWONTA:

6 Q. Can you tell from looking at this graph
7 have percentage of the mail is not meeting delivery
8 service standard either at - in July or - or as of
9 August 1st, which is the - the last date on this
10 chart?

11 A. Yeah. You can't tell with - with
12 precision because there are other - if - if you - if
13 it was just this, if this was all you had, then
14 potentially you could, you know, make up some of this
15 by, you know, overtime or running extra trucks to try
16 to catch up here. But I would say that again you're
17 going to have a - a significant delay, whether it's
18 two days, three days. You know, I think we could
19 argue about - but it's a - it's a significant delay.

20 And - and I would - the other point I
21 guess I would make is that this service performance
22 you're not getting this week after week after week.
23 So this has a compounding effect. So it's - it's like
24 you're not meeting this day into the next day, into
25 the next week, into next week and the next week. So

1 you keep backing up and you have these delays stacking
2 up on each other. So it gets worse. The delays get
3 worse as the timeframe runs because you simply are
4 having this compounding effect day after day and week
5 after week.

6 Q. You mentioned, Mr. Stroman, two different
7 ways to eventually make up the difference. You
8 mentioned overtime and running extra trucks.

9 Are there any current policies in place
10 that you think would affect the ability to make up
11 this precipitous processing measure?

12 A. Well, I mean - yes. I mean, the problem
13 that you have now is that the postmaster general had
14 said all of the trucks have to run on time and have to
15 leave on time. And is - because you're not running
16 extra you're not waiting anymore, you're leaving,
17 digging out of the hole becomes a challenge. You
18 could potentially dig out if you just - you kept
19 running extra trucks or you kept overtime and you just
20 kept trying to dig out.

21 Because you got to dig out on what you
22 already have. But here I think because you're -
23 you're just are running the trucks according to your
24 schedule it'll take a longer time to dig out of the -
25 it's going to take a longer time to dig out of the

1 hole.

2 Q. Now, at the top of the chart the title
3 says Presort First-Class Mail.

4 A. Uh-huh (yes).

5 Q. And what does that mean?

6 A. So presort it - this - this is a
7 combination chart. So you have first-class mail, it
8 could be what they call presort, and then you can
9 single piece. So the presorts means that if you have
10 a certain volume of mail you can, if you have the
11 capability, sort the mail yourself. So some mailing -
12 mailing houses can sort the mail and skip one of the
13 processing steps and take the mail to what we call a
14 delivery unit where the delivery unit then just tries
15 - has to sort it to the particular route. And so it
16 is a faster type of mail.

17 The other type of mail that's - that's in
18 here is what we call single piece. So those are
19 single pieces of mail. And - and those generally -
20 and those have to go through the processing step. So
21 this combines both the presort, which is faster, with
22 the single piece, which is a - which is going to be
23 slower, and so it's a combination of the two.

24 Q. And what type of mail typically goes out
25 from voters to election officials?

1 A. All mail going from voters to election
2 officials will be single piece, that individual
3 ballot. It will not be presort.

4 Q. And is single piece faster or slower than
5 presort?

6 A. Single piece is slower than presort
7 because it has to go through that processing step.
8 It's not presorted so you have to have it sorted, and
9 that takes - that sorting takes an - an additional
10 time depending upon the volume of mail. So it's a
11 slower type of mail.

12 Q. So is it - whatever processing speed you
13 would see for presort and first-class mail combined
14 together would you expect the processing speed for
15 single piece mail to be higher, equal as or slower
16 than - than this combined metric here?

17 A. It would be slower.

18 Q. In other words, the - the mail going out
19 from voters to election officials would be even
20 slower.

21 Is that what you're saying?

22 A. Yes.

23 Q. And is this decrease in USPS deliveries
24 also occurring in Pennsylvania?

25 A. Yes.

1 ATTORNEY NKWONTA: I'd like to put up
2 Petitioners' Exhibit 28 at this time.

3 JUDGE LEAVITT: I'm sorry?

4 ATTORNEY NKWONTA: Petitioner - I'd
5 like to put up Petitioners' Exhibit 28.

6 JUDGE LEAVITT: Absolutely.

7 ---

8 (Whereupon, Petitioners' Exhibit 28, Eastern
9 Areas Inspiring Mail Service Update, was marked
10 for identification.)

11 ---

12 BY ATTORNEY NKWONTA:

13 Q. Mr. Stroman, do you recognize Exhibit 28?

14 A. Yes.

15 Q. Can you explain to the Court - well,
16 before you do that.

17 Where have you seen Exhibit 28 before?

18 A. So I - Exhibit 28 was on the Postal
19 Service's website in the eastern - then the eastern
20 region of the Postal Service. So the Postal Service
21 was divided into seven regions. The eastern region,
22 which covers Pennsylvania, has their own - each of the
23 regions has their own website. And this is - this was
24 on the website of the eastern region.

25 Q. And what is Exhibit 28 exactly?

1 A. So what this is, this shows you the
2 service performance for a combination of first-class
3 letters and - and flats. So first-class letters is a
4 combination of the, you know, presort and single
5 piece. And then flats are kind of flat envelopes that
6 are processed on a different machine. And this is a
7 chart showing your service performance from a baseline
8 of 96 percent.

9 So the green line would - would be that
10 baseline of what your targets are. So you set these
11 targets first-class and flat mail being delivered 96
12 percent of the time. The gray line here would be what
13 your performance to that baseline in 20 - in - in
14 2019. And then the red line would be - is your
15 service performance in Pennsylvania for first-class
16 letters - a combination of first-class letters and
17 flats for 2020 from - from March until - until August.

18 Q. And can you explain what the graph shows
19 in terms of a performance or USPS' ability to meets it
20 delivery standards?

21 A. Yeah. It - it shows in Pennsylvania that
22 at the composite - this is composite meaning you're
23 throwing everything together. Your performance in
24 2020 slipped from your performance in 2019. So we try
25 to do better. I mean, our goal is to do better than

1 we did the year before. So the performance in 2020
2 slipped. But then when - got to the middle of July,
3 you know, it just - it - it - it just fell off the
4 table. It's the only way I can say it. I mean, the
5 performance, you know, is - is just - is - is very bad
6 here in the state.

7 Q. And which entity publishes the statistics?

8 A. This is published - put together by the
9 eastern region - then the eastern region of the Postal
10 Service. So you - you - what happens is you have
11 general service performance down. That's compiled at
12 - generally at headquarters. They will then -
13 headquarters will then desegregate that by state and
14 by district and then that information will be given to
15 or shared with the eastern region. And the eastern
16 region tracks its own data, so you know, through the -
17 you know, get together and make sure that it matches
18 up. So it's a combination of the eastern region with
19 headquarters.

20 Q. And you mentioned that there is a point in
21 which delivery standards fell off the table.

22 Can you tell us around - when in the
23 calendar that occurred?

24 A. July, about the middle part of July. You
25 can see it starts to just plummet.

1 Q. And is that consistent with the time
2 period in which some of the policy changes we
3 discussed earlier were implemented?

4 A. It - it is exactly that time.

5 Q. Is that also consistent with the time
6 period in which the letters to secretary of states
7 were issued?

8 A. It is.

9 Q. In the chart below, there are specific
10 metrics for different states or different portions of
11 the eastern region.

12 A. Yeah.

13 Q. I'd like to go through and identify - or
14 I'd like to go through and identify which entries
15 pertain to Pennsylvania.

16 A. Yeah. So you - you start with central
17 Pennsylvania for, you know, week 43. So this is, you
18 know, the ending - end - end part of July. You see
19 the service performance in central Pennsylvania is
20 72.86 percent. You - then if you look at the
21 Philadelphia metro area, Philadelphia metro is 85.68
22 percent. And then you go over to western Pennsylvania
23 and that same period your - you're at, you know, 90.01
24 percent. So you have for that week or week - for that
25 week 43 you've got Eastern - you got the Eastern

1 District with - with a combined service performance
2 for 79.07 percent.

3 Q. And can you tell the Court or describe
4 what these numbers mean precisely?

5 A. Well, what they mean is that you are - if
6 - you're - you're not - you are - you are not - you're
7 - you're not hitting your service performance target
8 by a wide margin. And that means in essence that the
9 - as you discussed in the last slide, that your mail
10 is going to be - is - is delayed. Here because the
11 service is - is pretty - has just fallen off the
12 table, it's a - a really, really significant problem
13 in - in service performance.

14 Q. And Mr. Stroman, given the time between
15 now and - and November are - are these significant
16 drops in performance something that - that can be
17 turned around relatively quickly?

18 A. Not in my experience. In my experience
19 when you - you know, the Postal Service is a huge
20 organization. It goes to, you know, every household
21 six days a - a week. That's 31,000, you know, post
22 offices, 265 processing machines. We've got hundreds
23 of - of trucks running on the - running on the
24 highways and the streets in - in every community in
25 the country.

1 service standards in normal circumstances or was that
2 letter capturing the circumstances we see here on
3 Exhibit 28?

4 A. The - the letter was talking about the
5 incongruity of the - it was only talking about the
6 incongruity of your - the Postal Service's service
7 standards with the last days that it only could
8 request the ballot. They weren't commenting on the
9 service performance of the Postal Service in it. It
10 was just those two factors. And when you put those
11 two factors - simply put those two factors together
12 you may reach the conclusion, and I agree with, that
13 you're - you know, you're risking voters not having
14 their ballots get to Boards of Election in time to -
15 yeah.

16 Q. And that's under the best case scenario
17 where the USPS is actually meeting its delivery
18 standards.

19 Right?

20 A. Yeah.

21 ATTORNEY EVANS: Objection. Leading,
22 Your Honor.

23 I - I request that he restate the -
24 the - the question.

25 JUDGE LEAVITT: I'm sorry?

1 ATTORNEY EVANS: Well, I have my
2 objection. I think it would be best if he restated
3 the question and I'll - I'll rest on my objection.

4 JUDGE LEAVITT: Can you restate the
5 question?

6 BY ATTORNEY NKWONTA:

7 Q. The delivery standards that are referenced
8 in the letter, is that - is the letter referring to
9 delivery standards under the best case scenario where
10 USPS would be meeting its delivery guidelines and
11 metrics?

12 A. It is based on what I would say is - it is
13 based on a goal recognizing that the Postal Service is
14 - would be hitting its service standards 95 - or 96
15 percent of the time with regard to the service
16 standard. So that's what the assumption is in - in
17 the letter, that we would hit those service standards
18 96 percent of the time. And you would look at the
19 last date that a voter could request a ballot and then
20 the conclusion is that you're going to - that is going
21 to result in the voters not having their ballots in
22 the count.

23 Q. So just to clarify to make sure I
24 understand.

25 Even assuming USPS had met or was meeting

1 its service standards 96 percent of the time, wouldn't
2 there still be an issue with respect to the delivery -
3 the timely delivery of mail going out to the voters?

4 A. There - there would be - there's an issue
5 if they were meeting that, but in this case as we see
6 in Pennsylvania, at least as of, you know, week 44,
7 they were far away from it.

8 Q. When you combine the incongruence of the
9 USPS delivery standards with Pennsylvania laws for
10 requesting and submitting ballots as you mentioned
11 with this precipitous drop in the performance
12 standards and metrics that - that you describe in
13 Exhibit 28, how do you think that affects the Postal
14 Service's ability to - to meet its service standards
15 currently and deliver mail on time?

16 A. I - I - I think it - it is - brings a
17 significant risk that the Postal Service will not be
18 able to meet its existing service standards and mail
19 will be delayed beyond, you know, I think what even
20 they are in - you know, had anticipated with a 96
21 percent service standard. So when we look at the
22 issues that you mention I think there is a - a - a
23 very, very high risk that mail is going to be delayed
24 and, you know, ballots will be affected.

25 Q. Thank you, Mr. Stroman.

1 ATTORNEY NKWONTA: That's all the
2 questions I have for now.

3 ATTORNEY EVANS: And Your Honor, I
4 just put one - one thing on the - the record about
5 Petitioners' Exhibit 28. I know that you're going to
6 consider these to be offered and admitted at the end,
7 but I just want to put this on the record. To the
8 extent Petitioners admit - seek to admit Petitioners'
9 Exhibit 28 for the truth of the matter asserted
10 therein, we - we would object. It is hearsay. Mr.
11 Stroman has no personal knowledge about the research
12 that was done and he didn't personally evaluate the
13 data. He didn't testify to that effect. So we would
14 want to preserve that objection. We can take that up
15 if and when it's offered for admission. Thank you.

16 JUDGE LEAVITT: Okay. All right.
17 Would counsel like a short break
18 before - before you begin Cross Examination?

19 ATTORNEY NKWONTA: Yes, Your Honor,
20 for Petitioner.

21 JUDGE LEAVITT: We will take a five
22 minute break.

23 ATTORNEY EVANS: Thank you, Your
24 Honor.

25 CRIER: The Court is now in recess.

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(WHEREUPON, A PAUSE IN THE RECORD WAS HELD.)

CRIER: Commonwealth Court is now in session.

JUDGE LEAVITT: All right. Thank you. Ms. Hangley?

ATTORNEY EVANS: Ms. Hangley -.

JUDGE LEAVITT: Oh. Well, right. Ms. Hangley replaced by someone else.

ATTORNEY EVANS: She's been replaced by Mr. Wiygul, Your Honor.

JUDGE LEAVITT: All right.

ATTORNEY WIYGUL: Good morning, Mr. Stroman.

JUDGE LEAVITT: You may proceed.

ATTORNEY WIYGUL: Thank you, Your Honor.

CROSS EXAMINATION

BY ATTORNEY WIYGUL:

Q. Mr. Stroman, the - the letter you testified about earlier I believe had been marked as Petitioners' Exhibit 6, that's the July 29th of 2020

1 letter from general counsel of the Postal Service to
2 Secretary Boockvar.

3 Do you - you remember that letter?

4 A. I do.

5 Q. Were you personally involved in drafting
6 that letter?

7 A. The general counsel drafted the letter.

8 Q. Okay.

9 Not yourself, sir.

10 Is that correct?

11 A. That's correct.

12 Q. Sir, in your experience at the Postal
13 Service are you aware of whether or not the Postal
14 Service has ever represented to first-class customers
15 that they can typically expect their mail to be
16 delivered within one to three business days?

17 A. I'm sorry. Would you repeat your
18 question?

19 Q. Certainly.

20 In your experience at the Postal Service,
21 are you aware of whether or not the Postal Service has
22 ever represented to first-class mail customers that
23 they can typically expect their mail to be delivered
24 within one to three business days?

25 A. Ever? My - again, it's - it's probably

1 before we changed the service standard that you could
2 get your mail in one to three days, but not since we
3 changed service standards.

4 Q. If I were to represent to you that the
5 current USPS website makes that representation, would
6 you have a basis to dispute that?

7 A. Yeah. It's probably an old - probably
8 leftover from the time that you could get first-class
9 in mail one to three days. I mean, I - I don't go on
10 the website, but my guess is it's just in there and
11 hasn't been pulled out.

12 Q. And the - the two to five day standard
13 that you spoke about earlier, is that a standard for
14 nationwide first-class mail delivery?

15 A. Standard - yes. It's - when you say
16 nationwide - I'm sorry. What do you mean?

17 Q. In other words, if you were to send a
18 letter, for example, from the east coast to the west
19 coast by first-class mail that two to five day
20 delivery standard would apply to that cross country
21 delivery.

22 Correct?

23 A. Right. Correct.

24 Q. And sir, do you have an opinion as to
25 whether in the November 2020 general election - based

1 on all of the information that you reviewed and
2 discussed in your direct testimony, do you have an
3 opinion as to whether there's a significant risk that
4 ballots returned via first-class mail may not arrive
5 within one to three days of when they're sent?

6 A. Yes.

7 Q. What is that opinion?

8 A. My opinion is that there's a significant
9 risk that they won't - they won't arrive back at a
10 Board of Election within two to five days. I think
11 there's a significant risk.

12 Q. And - and just - just to be clear, sir,
13 the distance between voters and their Board of
14 Elections is significantly shorter than the distance
15 between the east coast and west coast of the United
16 States.

17 Correct?

18 A. Well, again - I mean, the voter, you're
19 voting absentee. You can be anywhere in the country.
20 So you could be in California, you could be in Puerto
21 Rico, you could be anywhere. That's one of the
22 beauties of an absentee ballot.

23 Q. That's - that's a fair point.

24 You understand that in Pennsylvania under
25 current law anyone can request to return their ballot

1 in mail - by mail without excuse.

2 Correct?

3 A. Yes. Yes.

4 Q. Thank you. No further questions.

5 JUDGE LEAVITT: Mr. Torchinsky?

6 ATTORNEY SHEEHY: Thank you, Your
7 Honor.

8 ---

9 CROSS EXAMINATION

10 ---

11 BY ATTORNEY SHEEHY:

12 Q. Mr. Stroman, my name is Shawn Sheehy.
13 Can you hear me well?

14 A. Yes, I can.

15 Q. Good morning and thank you for your
16 service.

17 A. Thank you.

18 Q. You gave an interview with the Guardian
19 newspaper in August of 2020.

20 Is that correct?

21 A. I did.

22 Q. And in that interview you agreed that the
23 Postal Service had the capacity to handle the volume
24 of mail-in ballots.

25 Correct?

1 A. Yes.

2 Q. As a matter fact, I believe the Guardian
3 newspaper quoted you as saying, quote, I would like
4 him, referring to Louie DeJoy, to say to the employees
5 this is a priority to me and I expect 100 percent of
6 the ballots that we have - that have - that we have be
7 processed and delivered consistent with our service
8 standards. Continuing, just making that statement
9 would be important to send a signal to the workforce
10 that this is your expectation and that you're going to
11 put the resources in to make sure that happens.

12 Is that an accurate -

13 A. Correct.

14 Q. - quote?

15 A. Yes, it is.

16 Q. Thank you.

17 ATTORNEY SHEEHY: Can we pull up
18 Petitioners' Exhibit 4, please? This would be the OIG
19 report. Thank you. Thank you very much.

20 BY ATTORNEY SHEEHY:

21 Q. Now, sir, this report discusses the
22 Wisconsin election, the Wisconsin primary election
23 held on April 7th.

24 Right?

25 A. Generally speaking, but it - it's focused

1 on Milwaukee.

2 Q. So the primary election in Wisconsin
3 generally for April 7th focusing on the primary
4 election in Milwaukee held on April 7th.

5 Correct?

6 A. Correct.

7 Q. And during that time in Wisconsin, there
8 was a statewide shutdown.

9 Correct?

10 A. I'm sorry. I didn't hear your question.
11 A statewide shutdown of -?

12 Q. Yes.

13 The governor of Wisconsin had ordered a -
14 people to remain in their homes due to the
15 coronavirus.

16 Correct?

17 A. I do not know that.

18 Q. Are you aware that the order came out from
19 the governor on the March 23rd? Does that - refresh
20 your recollection?

21 A. Generally, yeah. I'd - I'd have to go
22 back and - and look at it. It's been awhile, but that
23 sounds right.

24 Q. So the governor issued the order on the
25 March 23rd. Governor of Wisconsin issued the order on

1 March 23rd and the election was approximately 15 days
2 later.

3 Correct?

4 A. I'll take your word for it. Again, I just
5 can't say. I haven't looked at the order so I'm not
6 sure.

7 ATTORNEY SHEEHY: Can we pull up
8 please Petitioners' Exhibit 8, please - I'm sorry,
9 Petitioners' Exhibit 6, please?

10 BY ATTORNEY SHEEHY:

11 Q. This is Mr. Marshall's letter. And you
12 just testified that the two to five days' time period
13 is a nationwide performance standard for the US Postal
14 Service.

15 Correct?

16 A. Correct.

17 Q. Meaning that if a letter was mailed from
18 Alaska - Anchorage, Alaska to Miami, Florida the
19 performance standard would be two to five days.

20 Correct?

21 A. It should be two to five days. Yes.

22 Q. And in response to the Secretary's
23 question, you stated that in some cases there are
24 absentee ballots cast from outside the Commonwealth of
25 Pennsylvania.

1 Correct?

2 A. Correct.

3 Q. Do you know how many absentee ballots are
4 cast from outside the Commonwealth of Pennsylvania?

5 A. I do not.

6 Q. And do you know what the performance
7 standard is within the Commonwealth of Pennsylvania?

8 A. Well, the performance - I'm - I'm a little
9 confused by your question. If you - you could just -.

10 Q. I can rephrase it for you, Mr. Stroman.
11 That's fine.

12 A. Well, let's me just say this. We just
13 went over performance standards in Pennsylvania on
14 Direct Examination. And so I testified to what those
15 are between March and August. So you mean something
16 other than that?

17 Q. So Mr. Marshall's letter is a nationwide
18 performance standard of two to five days.

19 What is the -

20 A. Can you hear me? It's a standard -.

21 Q. - performance standard -?

22 What is the performance standard for the
23 Commonwealth of Pennsylvania.

24 A. Two to five days.

25 Q. And that standard would include mail that

1 was coming outside the Commonwealth of Pennsylvania
2 into Pennsylvania.

3 Correct?

4 A. Yes.

5 Q. What is the performance standard for mail
6 that is mailed within the Commonwealth of
7 Pennsylvania?

8 A. Two to five days.

9 Q. And where can we find that performance
10 standard, Mr. Stroman?

11 A. You can go on the USPS website and the -
12 it's there. And certainly it is in materials that the
13 Postal Service provides to every Board of Election and
14 every Secretary of State's office. It's in kits that
15 they provide, so it's there. It's in, you know, the
16 performance manual. You can pull up the performance
17 manual to look at it there.

18 Q. So the expectation for mail that is mailed
19 within a county in - within Pennsylvania, Allegheny
20 County -

21 A. Yes.

22 Q. - the performance standard for mail within
23 Allegheny County is the exact same for the performance
24 standard from Anchorage, Alaska to Miami, Florida?

25 A. It is, two to five days. So - I mean, you

1 know, just so you understand, if you're - if you're
2 going from one part of the country to - to another
3 there probably is - it's probably on air, so you're
4 probably flying it from point A to point B. You're
5 not - it's not the same mode of transportation.
6 You're flying. So the closer you get you probably are
7 running trucks and you're not flying. So it's a
8 different mode of transportation to account for the
9 distinction, the difference. In some instances you're
10 running highway - long highway trips, it just ends.
11 But you know, it's not like you're running a truck
12 from Alaska to Pennsylvania. You're putting it on an
13 air.

14 Q. Mr. Stroman, do you know how Pennsylvania
15 will be mailing their absentee and mail-in ballots
16 voters? Will it be first-class presort, first-class
17 letter class? Do you know?

18 A. I - I don't know, but I - I don't believe
19 that there is a uniform approach. Most - as far as I
20 know there is a - local Board of Elections to make
21 that determination on their own.

22 ATTORNEY SHEEHY: Can we pull up
23 Petitioners' Exhibit 32, please? And if we could
24 scroll down. I'm sorry. I don't have the precise
25 paragraph number, but if we could scroll down. I

1 think the paragraph begins with second. Can we
2 continue scrolling down, please? Can you continue
3 scrolling down?

4 THE WITNESS: What is the exact word
5 you're looking for?

6 ATTORNEY SHEEHY: I'm looking for the
7 statistics that you sited -

8 THE WITNESS: Uh-huh (yes).

9 ATTORNEY SHEEHY: - for the
10 performance reports. And we only received this
11 yesterday so forgive me for not writing it down. I'm
12 almost there.

13 If we could keep going down. I'm
14 sorry.

15 BY ATTORNEY SHEEHY:

16 Q. Do you know what I'm referring to, Mr.
17 Stroman? You cited several statistics on Pennsylvania
18 mail. Here it is, paragraph 21. Thank you.

19 Do you see that in paragraph 21? The USPS
20 has a 96.5 percent target for on time delivery for
21 first-class mail?

22 A. Yes.

23 Q. And the Central District achieved a 94.1
24 percent score, Philadelphia -?

25 A. Yes.

1 Q. Philadelphia achieved -

2 A. Yes. Yes.

3 Q. - a 92.7 percent and western Pennsylvania
4 achieved a 96 percent score?

5 A. Yes. I see that.

6 Q. Okay.

7 Where did you get those numbers, sir?

8 A. These came from - these came from the
9 website in the Eastern District.

10 Q. From the Eastern District website.

11 Can you be more specific, please?

12 A. Well, what - what do you want me to -?

13 Q. I'm not - I'm not familiar with the
14 Eastern District.

15 A. So - so the Eastern District of the - of
16 the Postal Service had divided the country into seven
17 districts. And so -.

18 Q. And so this is a US Postal Service Eastern
19 District website?

20 A. No. I'm sorry. Let me - let me - that
21 was the other - This I believe came off of - I'm going
22 to have to double-check. I believe these came off of
23 the PRCs website, the Postal Regulatory Commission.

24 Q. Okay.

25 And these statistics include mail that is

1 coming from outside Pennsylvania into Pennsylvania.

2 Correct?

3 A. I am sorry. What was the question? It
4 come - mail -?

5 Q. These statistics on - in paragraph 21
6 specific to Pennsylvania's numbers, those statistics
7 include mail that's coming from outside of
8 Pennsylvania into Pennsylvania.

9 Correct?

10 A. Well, this is that you have to meet your
11 service standard for first-class mail 96 percent of
12 the time. That means you - you - before you get them
13 origin to destination in 96 percent of the time.
14 That's the - that is the target.

15 Q. So - and I understand that.

16 Does west - does the Central Pennsylvania
17 District, achieving 94.1 percent score, does that
18 include with that 94.1 percent mail that is coming
19 from outside Pennsylvania and into Pennsylvania?

20 A. It includes all the mail.

21 Q. Okay.

22 Does it - does it include first-class flat
23 mail?

24 A. It includes all mail.

25 Q. So it includes first-class flats then.

1 Yes?

2 A. Yes.

3 Q. And it includes -

4 A. First-class flats -.

5 Q. - first-class letters.

6 Yes?

7 A. Yes.

8 Q. And it includes first-class presort.

9 Correct?

10 A. Yes.

11 Q. And first-class flats are the slowest form
12 of mail.

13 Correct?

14 A. Generally.

15 Q. And election mail is not separately broken
16 down in these statistics.

17 Correct?

18 A. Correct.

19 Q. And election mail is prioritized.

20 Correct?

21 A. Election mail - in the plants, we attempt
22 to prioritize them.

23 Q. So election mail is like PPP - election
24 mail is PPE. You testified earlier you can prioritize
25 election mail.

1 Correct?

2 A. No. It's not like that at all. I mean,
3 when we talked about prioritizing PPE we were moving
4 PPE and we were holding the mail. We were moving
5 packages first. We were just holding the mail.

6 This is that if you looking at marketing
7 mail, which is a slower type of mail, and you look at
8 first-class mail, you try to move both of those mails
9 consistent with how you're going to run first-class
10 mail. So you can't - as you indicated, you cannot
11 separate election mail from other types of first-class
12 mail. It's all running on the same sorting equipment.
13 So we try to the extent that we can, although, you
14 know, it's a risk. You try to move marketing mail and
15 run that at roughly the same rate that you would run
16 first-class mail.

17 Q. So if - so election mail, however, can be
18 isolated.

19 Correct?

20 A. No, it's actually - election mail is
21 running on its - your - your processing on the same
22 sorting equipment that you're running all First Class
23 Mail.

24 You can identify it if the Board of
25 Elections has - we have we call a 191 Tab. If they

1 tab it, you will - you can then see it as, quote,
2 election.

3 So you can -.

4 Q. And do you know if Pennsylvania's absentee
5 ballots are going to tag the absentee -

6 A. I can -.

7 Q. - ballots so that you can isolate it?

8 ATTORNEY EVANS: Objection, relevance.

9 THE WITNESS: Yeah.

10 ATTORNEY EVANS: You should - also
11 should let the - the - the witness finish his answer.

12 THE WITNESS: And I - I just want to
13 be clear.

14 Because when I say isolating, you're
15 not isolating. You are identifying. You are running
16 First Class Mail on exactly the same processing
17 equipment. You're not running it separately.

18 So it's all focused together. It's
19 all running together. So if you are - you are
20 identifying this now - so it's - so you're not going
21 to put them at the - at the back, or hold them, you
22 shouldn't hold them for a day.

23 That was our effort, don't hold these,
24 you should move them. But you're moving them like
25 you're moving them in First Class Mail.

1 BY ATTORNEY EVANS:

2 Q. And so if Pennsylvania identifies its
3 mail-in ballots, you could move them faster or
4 prioritize them.

5 Correct?

6 A. Not faster than First Class Mail.

7 Q. Okay.

8 A. That's what I'm saying.

9 Q. So all -?

10 A. That's why I'm saying processing
11 equipment. So processing is done. First Class is
12 processed together. Marketing mail is processed
13 together. Flats are processed together. They are
14 processed - depending upon the type of mail, that mail
15 gets processed together.

16 So you're not processing election mail
17 differently than you're processing other First Class
18 Mail.

19 Q. So if election mail is tagged, so that it
20 can be identified -

21 A. Correct.

22 Q. - it will be processed First Class
23 Presort.

24 Correct? They're processed First Class
25 job?

1 A. No. Again, it depends. I mean, it -
2 first it - first of all, I mean, it depends on if it's
3 - if it's outgoing or incoming.

4 So all ballots coming back to the voters,
5 no - no ballot coming back to the voters is presorted.
6 That's all single - single piece.

7 It's possible, that depending upon what a
8 particular Board of Election does, if they have enough
9 - if they have enough ballots, you could presort them.
10 That the mailing house could take those ballots,
11 presort them and then take them to the delivery room.

12 So that's possible. But you have to meet
13 the presort standards. And those standards, you know,
14 are - are specific standards. And the problem with
15 presort is that the election moves closer and closer
16 to the end, say you have, you know, a particular
17 elections that 150 ballots on a given day. You can't
18 presort.

19 So even - you got to reach a threshold.

20 So even if - as you get closer, that
21 number in certain areas could drop below the presort -
22 presort threshold.

23 So even if you were - wanted to presort,
24 and you had the capability to presort, you might not
25 be able to presort on the - on the ballots going to

1 the voter. But you certainly can presort the ballots
2 coming back.

3 Q. And if - going back to the statistics in
4 paragraph 21, if mail was sent First Class Presort,
5 and that has a higher on time delivery, those
6 numbers -

7 A. Uh-huh (yes).

8 Q. - are even closer to the target rate,
9 correct, if not surpassing it?

10 A. I - I - I - look at the - show me the -
11 the - that again, please.

12 ATTORNEY NKWONTA: If we can pull up
13 Petitioners' 32, please. I believe it was in
14 paragraph 21.

15 BY ATTORNEY NKWONTA:

16 Q. So we see there, the Central District of
17 Pennsylvania achieved a 94 -.

18 A. I - if you go up to - go up the other way,
19 up to 80.

20 Okay.

21 Hold it right there.

22 Q. Are you ready for me to -?

23 A. Okay. Okay.

24 Don't - don't - just let me read.

25 Q. That's fine. Thank you.

1 A. Okay.

2 I - I got it.

3 Q. Now, the Central District, if we can
4 scroll down a little bit, please, achieved a 94.1
5 percent score, and -

6 A. Yes.

7 Q. - included within all that mail, you
8 testified earlier, is all First Class? So presort,
9 letter and flats.

10 Correct?

11 A. Correct.

12 Q. So if presort is the fastest mail and
13 flats is the lowest, the flats is lowering the First
14 Class Presort delivery time.

15 Correct?

16 A. The flat as a single piece is lowering the
17 score.

18 Q. And -?

19 A. So we've got single piece First Class, you
20 have flats. Those are lowering that score.

21 And as I testified, those single piece are
22 the ballots coming back from the voter to the Board of
23 - to the Board of Election.

24 Q. So for First Class Presort, it could be
25 that the Postal Service and the Central Pennsylvania

1 District is meeting the target threshold.

2 Correct?

3 A. At - it could be at the time of the - this
4 data - this data -

5 Q. Correct.

6 A. - ran up into June. And that was before
7 the initiative that we discussed earlier.

8 So it's certainly possible -

9 Q. Okay.

10 And that was to encourage -?

11 A. - that - that there are -.

12 That's right. And that was before the
13 Postmaster General's initiative in July.

14 So to answer the question, it is likely
15 that it is below that target.

16 Q. Now - but not with the statistics -

17 A. That - that's now.

18 Q. - the statistics that we have through the
19 third quarter, which is June 30th, -

20 A. Uh-huh (yes).

21 Q. - it could be that the Central
22 Pennsylvania District is meeting its target for First
23 Class -?

24 A. You keep - you - you keep using the
25 present is. It was.

1 So that's - that's my confusion. Meaning,
2 that I - I just said it's likely that they're not now,
3 that they were.

4 Q. But you don't know?

5 A. No, I - I said it's likely. You asked me
6 whether it was likely, not possible. That's - that
7 was the question. I'm saying it's likely that they're
8 not.

9 And I would say, it's - it's certainly
10 possible that they were. And that's back in - back in
11 early June.

12 Q. Now, speaking of possibilities, you
13 discussed in your testimony employee availability
14 issues.

15 Do you recall that -

16 A. Yes.

17 Q. - testimony?

18 And you said -

19 A. Yes.

20 Q. - that it could have an impact in
21 Pennsylvania.

22 Did I characterize your testimony
23 correctly?

24 A. Well, if you have employee availability
25 issues, and the employee availability issues, even as

1 testified by the current Postmaster General, are
2 having an impact of major - of all the areas around
3 the country.

4 I would say it's likely that you're having
5 - going to have an impact in Philadelphia.

6 Q. But you don't know if it will have an
7 impact in Philadelphia?

8 A. Correct.

9 Q. If you can put up Exhibit 9 - Petitioners'
10 Exhibit 9, please.

11 You - do you recall on Direct testifying
12 about this exhibit, Mr. Stroman?

13 A. Yes, yes, yes.

14 Q. Now, this sort of breakdown processing
15 versus last mile, this is talking about nationwide
16 processing.

17 Correct?

18 A. Correct.

19 Q. There's nothing in this slide that
20 discusses Pennsylvania specifically.

21 Correct?

22 A. That's correct.

23 Q. And similar to the other slide, we just
24 have Presort First Class Mail.

25 Correct?

1 So that's not talking about flats.

2 Correct?

3 A. It says presort First Class.

4 I don't know if this means I have to - I
5 don't know if this means First Class Flat. I just
6 don't know.

7 Q. And do you know if it includes
8 international mail?

9 A. No, this would include - it includes -
10 well, hold on. Let me think - let me think about the
11 question.

12 It could. I mean, it - it - the service
13 standards, though, for international mail, I'm just
14 thinking it through, certainly wouldn't be two to five
15 days.

16 So I don't believe this would include
17 international.

18 Q. Okay.

19 Are you aware of the Postal Service
20 issuing service updates on a weekly basis?

21 A. I'm sorry, what's the question again, my -
22 what's the question?

23 Q. Are you aware that the U.S. Postal Service
24 issues weekly service updates?

25 A. To who?

1 Q. Just to the public. They posted it
2 online?

3 A. Yes, they - there are weekly service
4 updates.

5 You - you know, sometimes they're not
6 current, but -.

7 Q. And would you agree with the service
8 update that described COVID-19's impact on the Postal
9 Service as minor, in August of this - this month?

10 A. I think it depends on where you're talking
11 about.

12 If you're talking about nationally, that
13 is possible. If you're talking about any specific
14 area, that is not - you know, I - I think that would
15 be an inaccurate description.

16 Q. It - it was nationwide.

17 A. Between - no, no, sorry.

18 Q. It was a nationwide service alert.

19 A. I don't know what they means by minor,
20 so are we talking about - do they - do they mean -
21 minor, do they mean, okay, it has all two percentage
22 points, three percentages points, four percentage
23 points? I'm just not sure how they're classifying
24 minor. So I - I can't really answer that question.

25 ATTORNEY SHEEHY: If I could have one

1 moment, Your Honor?

2

3 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

4

5 ATTORNEY SHEEHY: Mr. Stroman.

6 Thank you, Your Honor, I don't have
7 any further questions.

8

JUDGE LEAVITT: Mr. Evans?

9

10 ATTORNEY EVANS: Thank you, Your
Honor.

11

12

CROSS EXAMINATION

13

14 BY ATTORNEY EVANS:

15 Q. And - and Mr. Stroman, my name is Jake
16 Evans. I represent both the Speaker Bryan Cutler and
17 Majority Leader Kerry Benninghoff in this case.

18 My first question for you is, did the
19 General Counsel of the U.S. Postal Service approve you
20 to testify in this case?

21

A. No.

22

Q. The - the General Counsel -?

23

A. Yeah, what I heard is standards.

24

25 Can you - what do you mean, did he approve
it? While at the General Counsel -?

1 They - they -.

2 Q. I'm asking -.

3 A. I'm not employed - I'm not employed at the
4 Postal Service.

5 Q. Now, you -

6 A. I'm not employed by the Postal Service.

7 Q. - now, you - you answered my question, Mr.
8 Stroman.

9 Did the General Counsel or - or any
10 representative at the U.S. Postal Service approve you
11 to divulge any confidential information or other
12 information about discussions during the Board of
13 Governor's meetings at the U.S. Postal Office?

14 A. I'm sorry, I don't understand your
15 question.

16 Would you repeat it, please?

17 Q. Sure.

18 ATTORNEY EVANS: I - I would ask, Your
19 Honor, the court reporter to repeat it. But if it's
20 easier for me to just restate it, I can do that.

21 JUDGE LEAVITT: Can you read back the
22 question?

23 COURT REPORTER: I don't have the
24 exact -.

25 BY ATTORNEY EVANS:

1 Q. Okay.

2 Mr. Stroman, did the General Counsel of
3 the U.S. Postal Office or any representative from the
4 U.S. Postal Office approve you to discuss any
5 confidential information or other information about
6 Board of Governor's meetings and the discussions that
7 took place therein while you were employed by the U.S.
8 Postal Service?

9 ATTORNEY NKWONTA: I object to the
10 relevance of this line of questioning.

11 ATTORNEY EVANS: Your Honor, this -
12 this - this goes directly to admissibility.

13 There are statutes that preclude these
14 type of discussions for going forward, and to the
15 extent they're not allowed we would move to strike it.

16 JUDGE LEAVITT: Well, is there a
17 foundation for your question, which is did you give
18 permission to discuss confidential information?

19 I'm not sure if the - any of the
20 information was -

21 ATTORNEY EVANS: So - so earlier we -.

22 JUDGE LEAVITT: - we just have focused
23 on acquired in confidence.

24 Maybe that's the first question you
25 need -

1 ATTORNEY EVANS: Yeah.

2 JUDGE LEAVITT: - him to answer.

3 ATTORNEY EVANS: Well - well, earlier
4 in this - or Judge Leavitt, Mr. Stroman testified
5 about discussions that took place in Board of
6 Governor's meetings.

7 And I am asking if he got permission
8 to divulge those discussions?

9 ATTORNEY NKWONTA: Objection to the
10 relevance of that question.

11 ATTORNEY EVANS: It goes directly to
12 admissibility - admissibility. And that's to the -
13 and as far as whether he obtained permission, that is
14 directly relevant to that.

15 If he did not, we fully have the
16 opportunity to file a motion to strike that specific
17 testimony. And if and when we do that, the Court
18 would take up that issue.

19 But as far as him answering this
20 direct question is directly relevant to that motion
21 and admissibility question.

22 So it is relevant.

23 JUDGE LEAVITT: I'll allow the witness
24 to answer the question.

25 BY ATTORNEY EVANS:

1 Q. Thank you, Mr. Stroman.

2 Yes - yes or no answer is fine.

3 JUDGE LEAVITT: And he can explain his
4 answer.

5 THE WITNESS: I am not employed by the
6 Postal Service. Therefore, I would not get permission
7 from anyone in the Postal Service to - to describe the
8 contents of my testimony.

9 BY ATTORNEY EVANS:

10 Q. So - so the answer is no.

11 Is that right?

12 A. And - and I don't - sorry?

13 Q. Is the answer no, that you did not get
14 permission?

15 That's the only question I need. And then
16 the - the Judge can take up the question on whether a
17 motion to strike is warranted, proper or should be
18 granted.

19 But we just need to know whether or not
20 you got permission, Mr. Stroman.

21 Is that a no?

22 ATTORNEY NKWONTA: Object to
23 foundation.

24 I don't think Counsel has laid a
25 foundation for what he thinks is confidential.

1 ATTORNEY EVANS: And Your Honor, my -

2 JUDGE LEAVITT: Okay.

3 ATTORNEY EVANS: - response is -.

4 JUDGE LEAVITT: I - I - I've allowed
5 the - the answer.

6 And I believe the answer to the
7 question is no, that he does not believe that he needs
8 permission.

9 ATTORNEY EVANS: Well - well, if I can
10 get a clear record on that, Your Honor, -

11 JUDGE LEAVITT: Go ahead.

12 ATTORNEY EVANS: - Mr. Stroman would
13 just answer - his answer, no, he did not obtain
14 permission from the U.S. Postal Service.

15 THE WITNESS: I did not.

16 BY ATTORNEY EVANS:

17 Q. Okay. Thank you.

18 I will now - if we can pull up
19 Petitioners' Exhibit 4.

20 And Mr. Stroman, you would agree with me,
21 that Petitioners' Exhibit 4 relates to Wisconsin only.

22 Doesn't it?

23 A. No.

24 Q. What other states does it relate to?

25 A. If you - if you look at the report, it

1 talks about impacts nationwide, the Postal Service.

2 So it is specific with regards to
3 Milwaukee.

4 But there are recommendations that come
5 out of this, which are the Inspector General referred
6 to as nationwide impacts.

7 Q. You would agree with me, that - that it
8 did not analyze any data for Pennsylvania for the
9 November 3rd election.

10 Did it?

11 A. I have no idea.

12 Q. Would you agree with me, that the
13 circumstances in Wisconsin in April of this year are
14 very different than the circumstances that currently
15 exist as regards to COVID?

16 Doesn't it?

17 A. I - I don't understand your question.

18 Q. Would you agree with me, that the
19 circumstances regarding COVID-19 were very different
20 in April of 2020 than they are now?

21 Aren't they?

22 A. I do not know.

23 Q. So you can't offer any testimony that
24 they're similar in April of 2020, as to COVID as they
25 currently are?

1 Can you?

2 A. No, I do not know.

3 Q. Okay. That -

4 A. I cannot -.

5 Q. - that's fine. That's fine.

6 A. I can't answer that.

7 Q. All right.

8 We will next go to - if I could pull
9 Petitioners' Exhibit 6.

10 Actually, we'll - we'll go to Petitioners'
11 Exhibit 28. And just for the record, Mr. Stroman,
12 what is Petitioners' Exhibit 28?

13 A. Exhibit 28 is the service performance. It
14 is a chart showing the service performance in the
15 eastern area of the Postal Service for First Class
16 letters, and a composite of First Class letters and
17 flats.

18 Q. And where did you locate this document?

19 A. The website of - of the Eastern Region.

20 Q. So you didn't analyze any of the data that
21 made any of these conclusions in Petitioners' Exhibit
22 28.

23 Did you?

24 A. No.

25 Q. You don't know if any of the data is right

1 or wrong that's in Petitioners' Exhibit 28.

2 Do you?

3 A. I have a high degree of confidence that
4 it's correct. Very high degree of confidence.

5 Q. Well, I'll object on nonresponsive.

6 If you could just answer yes or no, you
7 don't personally -?

8 A. Well, I don't have to answer yes or no.
9 I'm not telling you it has a high degree of
10 confidence.

11 Q. I - I understand that, Mr. Stroman. But
12 I'm asking yes or no.

13 When - do you have -?

14 A. I'm not saying - do you want the whole -
15 I'm saying that I have a high degree of confidence,
16 based on my knowledge of how data is put together in
17 the Postal Service, disseminated to the Eastern Region
18 that this information is absolutely accurate.

19 Q. Okay.

20 And I would respectfully request, Mr.
21 Stroman, that you allow me to ask my question. And
22 then I will allow you to answer. And that will make
23 this the most fluid way.

24 A. Well, I - I respectfully ask you - you to
25 allow me to fully answer my - the question.

1 Q. That's fair.

2 So Petitioners' Exhibit 28.

3 Do you have any personal knowledge that
4 data backs up the findings in Petitioners' Exhibit 28?

5 A. I have personal knowledge the way data is
6 assembled and disseminating within the Postal Service.
7 And based on that knowledge, I have a high degree of
8 confidence that this information is correct.

9 Q. So you have personal knowledge that the
10 way that it's analyzed, but you do not -

11 A. Yes.

12 Q. - have personal knowledge of the data that
13 was analyzed for this study, Petitioners' Exhibit 28.
14 Do you?

15 A. I have no - I'm sorry, repeat the
16 question.

17 Q. You have personal knowledge of the way the
18 data is analyzed, but you do not have personal
19 knowledge of the data that was analyzed for the
20 findings in Petitioners' Exhibit 28.

21 Do you?

22 A. I can't - I did not analyze the data on
23 this sheet, yes, sir.

24 Q. Okay.

25 Earlier, Mr. Stroman, you - you testified

1 about Postmaster DeJoy's testimony before the Senate
2 Committee on Homeland's Security and Government
3 Affairs here.

4 Do you recall that?

5 A. The House and the Senate?

6 Q. That's correct?

7 A. Yes, that's correct.

8 Q. And at this hearing, do you recall Mr.
9 DeJoy testifying as follows, the ballots are usually
10 identified with special markings, and every employee
11 manager is very much focused on making sure that
12 ballots move quickly through the process, sometimes in
13 advance of First Class Mail. So these particular
14 processes are deployed and will be deployed as we come
15 into the 2020 election.

16 Do you recall that testimony from
17 Postmaster DeJoy?

18 A. I do.

19 Q. And would you agree with Postmaster DeJoy,
20 that ballots typically have special markings?

21 A. And I would not necessarily - I would not
22 necessarily - I would disagree with some of the
23 Postmaster DeJoy's statement.

24 First of all, the mail - the ballots will
25 move consistent with First Class Mail. Secondly,

1 employees have to be trained as to what those tags
2 mean. They don't handle election mail every day.

3 So this is - happens maybe once a year,
4 once every two years. So that training becomes very
5 important and - to do. And that's what I testified
6 earlier.

7 So I don't - I think you have to train the
8 employees. You got new employees coming in to the
9 Postal Service every single day.

10 And they have not had an opportunity to
11 understand what the 191 tag actual means. There's a
12 lot of tags in flight. There's a red tag. There are
13 green tags. It could be blue tags.

14 So you have to do the training to ensure
15 that people do understand that - I understand - I
16 agree with the sentiment, that in the plans,
17 historically we try to move all classes of mail from
18 the First Class to market as promptly as possible. So
19 that would be my understanding.

20 Q. Okay. Thank you.

21 And so you would agree, that ballots have
22 special markings.

23 Right?

24 A. Not all - it's not that - the ballots
25 don't have special markings, you have a set. And if a

1 Board of Elections attaches what we call a Green 191
2 Tag to that - say, that stack of mail, that won't
3 identify it as ballots in this stack.

4 Q. And is it your understanding as well, that
5 the U.S. Postal Service prioritizes election-related
6 mail?

7 A. The U.S. Postal Service moves their mail
8 consistent with their service mail.

9 What they do is to try to prioritize all
10 to - to give all classes of the mail, marketing mail,
11 as well as First Class Mail the same treatment. So
12 you try to - to make sure that your marketing mail is
13 moved at the same pace as your First Class Mail.

14 Q. So you would then agree with Postmaster
15 DeJoy's testimony that election made -
16 election-related mail has special tags, and it's going
17 to be prioritized, often sent as First Class Mail.

18 Is that right?

19 A. He can't - I'd say - you said it is. And
20 that's the difference. If you attach a 191 Tag - and
21 oftentimes in my experience, they are no attached.

22 But if a Board of Election attaches that
23 191 Tag, that written tag, that will identify that
24 stack of mail as being ballots.

25 And if they are, then the Board - then our

1 effort is to move all classes, all types of mail,
2 First Class and marketing to move them - to move the
3 marketing mail as you would First Class.

4 Q. And then Postmaster DeJoy also testified
5 that when he was speaking of the letter, which is
6 Petitioners' Exhibit 6 earlier, -

7 A. Yes.

8 Q. - that the purpose of sending out the
9 letters to all states, with regard to what - we just
10 want to make everyone aware of, is what - is that it
11 will really work. We can put all these additional
12 processes on. But it would be more helpful if we had
13 reasonable standards from the Election Boards that
14 comply with our processes to enable us to do it more
15 efficiently and effectively.

16 Would you agree with Postmaster DeJoy,
17 that Election Boards play a very important role in
18 ensuring that mail-in and absentee ballots are sent
19 out on time?

20 A. Yes.

21 Q. And what role do they play?

22 A. Well, the thing - I mean, that could take
23 a while - is they need to - Election Boards and the
24 mailers that represent them, they need to ensure that
25 they're - the envelopes that they are sending their

1 election mail out are automation compatible.

2 So a lot of times what happens is, that
3 you - that a Board doesn't use an envelope which is
4 automation compatible or they use a mailing house that
5 doesn't have an envelope that is what we call
6 automation compatible.

7 What that means is that it doesn't run
8 smoothly, efficiently on our machines that therefore,
9 that will slow the mail.

10 So the - unless you work with the - what
11 we call Mailpiece Design Analyst to ensure that you
12 have, A, the size of the envelope, right, and then
13 secondly, the contents of the envelope.

14 So when it runs on our machines, the
15 scanning machines have an optical reader. And the
16 optical reader has to read the ZIP Code, and the
17 address and the return address on an envelope.

18 And if you don't put those in exactly the
19 right place, that's going to delay the mail because it
20 sends it back potentially to the origin.

21 And so a lot of times, Boards of Election
22 don't have the - those elements precisely as they need
23 to, because they have to comport with the Postal
24 Service to design and test the envelope, that the
25 materials are going to be there.

1 They also can't put too many things in the
2 envelope. So what happens with some Boards of
3 Election is, they try to save money and they stuff all
4 this stuff into the envelope. And that slows it down
5 as well.

6 So if - the machines can break or spit -
7 and spit it out. And if it breaks the machine or jams
8 the machine, that's going to slow the process. So
9 you've got to get a technician to come and fix the
10 machine. And that affects all the First Class Mail.

11 So you've got to make sure that you don't
12 stuff too much in. You've got to make sure that you
13 design it well. You have to make sure that you get -
14 you don't hesitate, but you move promptly to get these
15 ballots to the Postal Service.

16 Those are some of the things that are
17 important, I think for the - for the boards of
18 election to do.

19 There are other things. I would say, for
20 example, Intelligent Mail barcodes. One of the things
21 that the IG report recommended on a national basis is
22 to use Intelligent Mail barcode. If you don't use
23 Intelligent Mail barcodes then you can't track ballots
24 through our network. So the ballot gets lost
25 somewhere in the process, which happens.

1 You've got these big plans. You don't
2 know where it is unless you're using an Intelligent
3 Mail barcode, where we can effectively track every
4 single ballot and the voter can track the ballot.

5 All of that is a summary to say those are
6 some of the ways that Boards of Election are key -

7 Q. Sure.

8 A. - to ensuring that ballots aren't delayed.

9 Q. And - and so just to - to summarize that,
10 their county election workers are the people who
11 actually mail out the Absentee Ballot or Mail-In
12 Ballet applications.

13 Aren't they?

14 A. Not necessarily.

15 So sometimes what happens is they - in
16 fact, you use a Mail-In Ballot to mail those out.

17 And in fact - and I would say given the
18 volume of Absentee Ballots we're talking about, I
19 would certainly encourage most Boards of Elections to
20 use the Mail-In Ballots, because we don't - we're -
21 and just the - the number of Absentee Ballots is going
22 to be overwhelming. It's going to overwhelm these
23 Boards, it actually - as it has in the primaries.

24 So if you got Boards of Election who are
25 trying to do this on their own, that's when you have

1 these - that's when you have some of the problems if
2 they don't have the technical capacity to process this
3 many Absentee Ballots.

4 So I would say, no, I mean, it's certainly
5 not just, you know, local boards. And I would
6 discourage them from doing that. I think they ought
7 to hire people who know they're - what they're doing,
8 know how to do this. And if they don't, I think it's
9 a - it's a huge mistake.

10 Q. And - and so they - the County Election
11 Boards may outsource it, but at the end of the day, it
12 is the County Election Boards that approve - approve
13 and coordinate for the selling out of Mail-In, and
14 Absentee Ballots and the Absentee Mail-In Ballot
15 applications.

16 Isn't that right?

17 A. No, they - they - they could contract in
18 the mailing house. But the coordination doesn't
19 happen between - it happens with that mailing app.

20 And so some of the delays, for example,
21 that we've seen is that the mailing house is not
22 coordinated with the Board of Elections. So the Board
23 of Elections has to coordinate with the mailing house.

24 Q. No, I understand that - and I don't want
25 to interrupt.

1 A. You've been interrupting. Let me finish
2 my answer.

3 Q. Well, I'm trying to keep us focused.
4 Because we only have so much time, Mr. Stroman.

5 JUDGE LEAVITT: I think he's -.

6 BY ATTORNEY EVANS:

7 Q. And I think it's - we're just talking -.

8 JUDGE LEAVITT: Mr. Stroman, your -
9 your - your knowledge of this area is extraordinary.
10 But I believe the only question that you're being
11 asked is, who is legally responsible to send out those
12 ballots?

13 ATTORNEY EVANS: That's - that's
14 correct.

15 JUDGE LEAVITT: It's not the - not the
16 third-party outsource company, it's the Board of
17 Elections?

18 That's the only question you're being
19 asked.

20 ATTORNEY EVANS: That's correct.

21 THE WITNESS: Judge, I would answer
22 that, yes, that's correct. That is not what he asked
23 me.

24 BY ATTORNEY EVANS:

25 Q. Okay.

1 So given that it is legally the obligation
2 of county election workers to send out or coordinate
3 for the selling out - the sending out of the Absentee
4 and Mail-In Ballots and/or application, if they failed
5 to do this timely, that would be a very important
6 reason for Absentee Ballots, Mail-In Ballots or Mail-
7 In and Absentee Ballots not arriving on time.

8 Wouldn't it?

9 A. If they fail to do what timely, I'm sorry?

10 Q. If - if the - if County Election Boards
11 failed to -

12 A. Uh-huh (yes).

13 Q. - send - send out Mail-In or Absentee
14 Ballots or applications for Mail-In and Absentee
15 Ballots, that would be the reason for them not
16 arriving on time.

17 Wouldn't it?

18 A. If - if - if a board of election or a
19 mailing house delayed sending ballots to the Postal
20 Service, that would delay the arrival of the ballot.

21 Q. And that wouldn't have anything to do with
22 the U.S. Postal Service.

23 Would it?

24 A. No, absolutely not. I - no.

25 Q. So merely the fact that, in your opinion,

1 the U.S. Postal Service is not operating as
2 efficiently as it should is not going to solve this
3 problem.

4 Will it?

5 A. If - if - which I'm not - not going to
6 solve what problem?

7 In other words, there are multiple reasons
8 for ballots being delayed. Some of those will be
9 because of the Postal Service, and its - particularly,
10 its incongruity with the statute. But some of the
11 delays, to your point, are as a result of the states
12 or delays by local boards of election.

13 Q. And that's correct.

14 And - and my question is, given that,
15 nothing the U.S. Postal Service can do can change that
16 fact.

17 Can it?

18 A. Nothing the Postal Service can do can
19 change the operation of a board of election.

20 That is correct.

21 Q. Would you agree with me that county
22 election boards are responsible for coordinating for
23 or sending out Absentee, or Mail-In Ballots or their
24 accompanying applications to people that live in that
25 respective county?

1 ATTORNEY NKWONTA: Objection, Your
2 Honor.

3 This is now going beyond the scope of
4 the Direct. And it lacks foundation.

5 ATTORNEY EVANS: And my response is,
6 earlier in my voir dire of Mr. Stroman, I specifically
7 asked about his knowledge of county election
8 boards. And I also asked whether he had knowledge
9 about it. And he answered yes. There was also
10 testimony to this effect. And I'm responding to that
11 testimony, Your Honor.

12 And this is directly relevant to his
13 opinion that because the U.S. Postal Service can't
14 meet the one to five-day deadline, the solution is
15 extending the received-by deadline.

16 This undercuts that opinion. Because
17 it proves that irrespective of any of the results
18 about the U.S. Postal Service, the county election
19 boards are failing to meet their obligations. The
20 result is going to be the same.

21 And in addition to that, the point
22 that I'm about to make, Your Honor, is that county
23 election boards send out Mail-In Ballots and Absentee
24 Ballots to people that live in the county, not people
25 that live in Alaska, not people that live in Hawaii.

1 And if you live in the same county,
2 which is a very short distance, there's a much higher
3 likelihood it's going to be received not by the top in
4 date - top-end date of five days, but more likely on a
5 one or two-day.

6 JUDGE LEAVITT: Mr. Evans, I think the
7 question is certainly, is it not true that county
8 boards of election send ballots to people that live in
9 the county, for the most part? Not - Absentee Ballots
10 could be kids off at college in New England, but for
11 the most part?

12 THE WITNESS: I - Judge, I'm assuming
13 that is the case. But I don't know -

14 JUDGE LEAVITT: Okay.

15 THE WITNESS: - if the board of
16 elections -.

17 JUDGE LEAVITT: But you don't have any
18 personal knowledge?

19 THE WITNESS: I do not, Judge.

20 JUDGE LEAVITT: You don't know what
21 they're going to have the ballot sent out by the
22 county go within the county, or go out -

23 THE WITNESS: Correct.

24 JUDGE LEAVITT: - of the county or of
25 the state?

1 THE WITNESS: I do not know.

2 JUDGE LEAVITT: Okay.

3 ATTORNEY EVANS: Okay.

4 Your Honor, I'm going to - or sorry,
5 Your Honor.

6 BY ATTORNEY EVANS:

7 Q. Mr. Stroman, I would refer you to
8 Plaintiffs' Exhibit 6.

9 And this is the June 29th letter.

10 A. Okay.

11 Q. And earlier, you spoke about this letter.

12 Would you agree with me - and I believe
13 you testified earlier to this, that these type of
14 letters are sent out pretty commonly around election
15 time.

16 Aren't they?

17 A. No, I wouldn't say they are commonly.
18 This one in particular, I think, came out of the
19 concern from - that I talked about earlier, out of
20 Wisconsin, where it certainly appears - it appeared
21 that boards of election were going to be overwhelmed
22 by the volume of Absentee Ballots.

23 So they're not routine. They don't
24 routinely go out. We have sent out at least one
25 letter, that I know of, or statements to this effect

1 before. But most of our communications with the
2 states are the presentations and discussions with the
3 states about the need to - problems of
4 incompatibility. So it's not routine.

5 Q. Would you agree with me that a similar
6 letter like this was sent out in 2016?

7 A. Yes, I think that is - that is correct.
8 When - when I say it's not routine, a simple letter
9 was sent out in 2016. But that - you know, that's
10 four years ago. It doesn't routinely go out.

11 The one in 2016 went out. I sent that
12 because I started to see this incongruity. And I
13 wanted to have some record of that.

14 I - I didn't send out a - another one in
15 2017, 2018 or 2019. And I don't know that there had
16 been a letter before that ever sent out on this issue.
17 There's not one that I'm aware of.

18 So that - that is my point. These are not
19 normal things. And I think this one was generated by
20 the volume of Absentee Ballots expected in the - in
21 the primaries and the general election.

22 Q. Okay.

23 And you would agree with me, in 2016, that
24 deadlines for Absentee and Mail-In Ballots was not
25 extended.

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BY ATTORNEY EVANS:

Q. And if we could go to page 15 to this exhibit, House Exhibit Number 1.

A. PDF page 15 or the document page 15?

Q. The - it should be the page of the report, page 15 of the report. And if you could scroll on to the second paragraph.

And Mr. Stroman, I have handed you - I have personally handed you House Intervenors' Exhibit 1, which I would represent to you is the - the statement of Postmaster General and Chief Executive Officer Louis DeJoy before his Senate hearing.

And it - it would be helpful if you could read for the Court, the sentence that the - starting with despite and then the following sentence to be clear, if you could read that for the Court.

A. Despite some assertions to the contrary, this is the same message that we had made in previous years and have been reiterating all year, and has nothing to do with recent operational initiatives of concerns about delayed mail.

To be clear, these recommendations are designed to ensure that ballots will be received and counted, and should in no way be misconstrued to imply

1 that we lack confidence in our ability to deliver
2 those ballots. We can and will handle the volume of
3 election mail we receive.

4 Q. And Mr. Stroman, what is the highest
5 position at the U.S. Postal Service?

6 A. Postmaster General of the United States.

7 Q. And would you agree with me that Louis
8 DeJoy is the current Postmaster General of the United
9 States?

10 A. I would.

11 Q. And would you agree with me that he has
12 made very clear in this statement that his letters to
13 Secretaries of State, including Petitioners' Exhibit
14 29 should not be construed to imply lack of confidence
15 in our ability to deliver ballots?

16 A. Yes, I - I think that is true.

17 Q. And would you -?

18 A. That's - the ability of the Postal Service
19 to deliver ballots, I have confidence.

20 Q. And would you agree with me, that the
21 letter that he sent out to Secretaries of State,
22 including the one in this case, which is Petitioners'
23 Exhibit 6, is the same message that he has made in
24 previous years and he's been reiterating all this
25 year, including when you were there?

1 A. The same message that he has made?
2 He just got there.

3 So it's not the same message that he
4 has - I - I have, and the Postal Service has,
5 previously said that the service standards of the
6 Postal Service are incompatible with state statutes
7 that allow voters to request ballots, and that that
8 incongruity will result in ballots being not counted
9 by boards of election.

10 Q. So it's the same - and just to be clear,
11 Mr. Stroman. Sorry, this has just been the lawyer in
12 me.

13 For the record, this is -

14 A. Yes.

15 Q. - the same message that the U.S. Postal
16 Service has made in previous years and has been
17 reiterating all year.

18 Is that right?

19 A. It's - it's similar. It's not the same.

20 Q. So I'll - I'll refer you to - if we can
21 scroll down to the last paragraph on page 15.

22 A. Uh-huh (yes). Yes.

23 Q. And if you could read for the Court that
24 first sentence, In sum -.

25 A. In sum, the bulk - go ahead.

1 Q. No, I was just going to say in sum, just
2 in - in case - go ahead.

3 A. In sum, the bulk of our education efforts
4 is simply to ensure that voters who choose to use the
5 mail will have their ballots counted.

6 Q. And then if you could read where it says
7 while. So I think it's a couple of sentences down,
8 maybe three or four.

9 A. While we will do whatever we can deliver
10 ballots, even when they are mailed at the last second,
11 it should also be obvious to fair-minded election
12 officials that urging voters to mail back their
13 ballots at least a week before the deadline is a
14 simple and straightforward step to ensure that ballots
15 are delivered on time, and most importantly, counted
16 under state law.

17 Q. Would you agree with me that it's
18 ultimately the voter's personal responsibility to
19 ensure that their vote is counted.

20 Isn't that right?

21 A. I can't - I'm not - I can't - I'm in no
22 position to answer that.

23 Q. When would you recommend that people
24 request an Absentee or Mail-In Ballot?

25 A. I would recommend it consistent with what

1 this letter says.

2 Q. Can you say that again, you would
3 recommend it consistent with what, what the letter
4 says?

5 A. Yes. In other words, I would recommend -
6 actually, I would recommend - this says seven days in
7 advance.

8 Did you want my recommendation? I would
9 say - probably say at least ten days you should mail
10 your - your ballot, but at least, you know, this
11 amount.

12 And 14 days, 15 days to request a ballot,
13 you know, I - I would push it back to three weeks.
14 You know, if I was urging voters, I would extend the
15 time frames. Because I think that the delays are
16 likely and I would push it back a little bit.

17 Q. Do you know how many days currently we are
18 from Election Day?

19 A. I - if I had to calculate, I don't know.

20 Q. If I told you it was 66 days, would you
21 have any reason to disagree with that?

22 A. No, I think that sounds right.

23 Q. Did you know that voters in Pennsylvania
24 can send in a Mail-In or Absentee Ballot application
25 now?

1 A. Yes. And in most - most of the country.

2 Q. Did you know that at a minimum, an
3 Absentee or Mail-In Ballot application will be sent
4 out for a ballot application 45 days before the
5 November 3rd election?

6 A. Yeah, I think that's -.

7 Q. Would you agree with me that there is a
8 higher likelihood that your vote is counted the sooner
9 you mail in your Mail-In or Absentee Ballot?

10 A. It is - the sooner you mail it in, the
11 more likely it is that the ballot will get to a board
12 of election in time for it to be counted.

13 Q. Did you know that Pennsylvania's Governor
14 Wolf said that all prepaid postage would be provided
15 for election-related mail?

16 A. Yes, I read that.

17 Q. And it's prepaid postage and -?

18 A. That's right, yes.

19 Q. Is it postmarked?

20 A. Yes.

21 Q. And how is it postmarked?

22 A. How is it postmarked? If it's a letter,
23 it will be run on our automated processing equipment
24 and it will receive a postmark.

25 Q. Well, is that a physical postmark?

1 A. It - I'm - I'm not sure what you mean by
2 educational. It is meant to inform, and in this
3 instance, the Secretary of Pennsylvania - Secretary of
4 the State of Pennsylvania that, in the opinion of the
5 Postal Service, there is a likelihood that voters who
6 mail ballots consistent with Pennsylvania election law
7 will not have their ballots counted.

8 Q. Would you agree with me that letters like
9 this one are not a recommendation to change existing
10 state law?

11 A. I - well, there is no recommendation in
12 the letter, if that's what you're asking.

13 Q. If we could scroll down to the second
14 page.

15 A. Yeah.

16 Q. And if you could read for the Court the
17 last paragraph, the to be clear sentence.

18 A. You want me to read the whole paragraph?

19 Q. No, just the to be clear sentence.

20 A. The first sentence?

21 Q. That's correct. It starts with to be
22 clear, yeah. Sorry about that.

23 A. Yeah.

24 Q. I was looking at the first three words.

25 A. Okay.

1 To be clear, the Postal Service is not
2 going to definitively interpret the requirements of
3 your state law - laws and it's also not recommended
4 that such laws be changed to accommodate the Postal
5 Service's delivery standards.

6 Q. And would you agree with that statement?

7 A. Would I agree with the statement that the
8 letter - that the letter is not recommending that such
9 laws be changed to accommodate the Postal Service
10 delivery standards?

11 Q. Would you - would you personally -?

12 A. Yes, that -.

13 Q. Would you - I'm not asking what the letter
14 says. I'm asking - and I think, when was this - this
15 letter was sent out in July and I think you left the
16 Postal Service in May.

17 Isn't that right?

18 A. No, I left in June.

19 Q. June? Okay.

20 So you left a month before this letter was
21 sent out.

22 Is that right?

23 A. That is correct, yes.

24 Q. And you testified earlier that you had
25 facilitated at least some of these letters that were

1 sent out in the past.

2 Is that right?

3 A. In 2016 we sent out a letter.

4 Q. And so my - my question is, in your
5 capacity that you're testifying today, -

6 A. Uh-huh (yes).

7 Q. - would you agree with the to be clear
8 sentence that you just read into the record?

9 A. It - it - I'm just confused about the
10 question.

11 Are you saying would I recommend
12 personally that states change their laws to
13 accommodate Postal Service delivery standards? Is
14 that the question?

15 Q. I'm asking, in the expert capacity that
16 you're testifying today and based upon your prior
17 experience as a Deputy Postmaster General, -

18 A. Uh-huh (yes).

19 Q. - do these letters not purport to
20 definitively interpret the recommendation of the
21 state's election law and also not recommend that such
22 laws be changed to accommodate the Post Service - the
23 Postal Service's delivery standard?

24 A. I'd have to look at the 2016 letter.

25 As I said, this letter says it's not

1 recommending election laws be changed. I think it's
2 basically saying here, it's up to you, you have to
3 figure out what you want to do.

4 And I'd have to look at the 2016 letter to
5 know what that letter said. So I can't speak to that
6 one. I was speaking to this one. And that's why I
7 said do you want me to speak to what this letter has
8 said?

9 If you're asking me for my - my opinion, I
10 mean, I'll give you that, but -.

11 Q. That's what I'm asking. I'm asking, in
12 your opinion, is that statement consistent with your
13 opinion?

14 A. No. I think changing the law where
15 change is an option, I think it is an option to be
16 considered, because they're inconsistent with the
17 postal service's delivery standards. I'm not saying
18 it's the only option, but it is an option, and I
19 have one occasion, recommended changes to the law
20 that states consider changing their law because it's
21 just too tight, the timeframes.

22 Q. Sure. But this letter didn't make that
23 recommendation; did it?

24 A. I think I've already -.

25 JUDGE LEAVITT: I think you've

1 answered the question.

2 Mr. Evans, are you almost done with
3 your Cross Examination?

4 ATTORNEY EVANS: I am, Your Honor. If
5 I can just get one more minute and take a quick look
6 over my notes, and that will conclude -.

7 Okay.

8 Mr. Stroman, I'm finished. I
9 appreciate your time today.

10 THE WITNESS: Thank you.

11 JUDGE LEAVITT: Hold on. Do you have
12 any Redirect?

13 ATTORNEY NKWONTA: Yes, I have some
14 Redirect questions. Do you want to do that now or
15 after lunch?

16 JUDGE LEAVITT: Let's - we have a lot
17 to do. We need to finish this witness, because in
18 the future, Cross Examination, that's not going to
19 be permitted for any party. It's not going to be
20 permitted to go on this long again. Please proceed,
21 and try to limit the number of the questions.

22 ATTORNEY NKWONTA: Certainly.

23 ---

24 REDIRECT EXAMINATION

25 ---

1 BY ATTORNEY NKWONTA:

2 Q. Mr. Stroman, I'll try to make this quick.
3 So we'll just pull up Plaintiff's - or Petitioners'
4 Exhibit 32. And if we can go back to paragraph 21?
5 I believe, during Cross Examination you were asked
6 whether the delivery standards for pre-sort mail may
7 - may reach the target or even exceed the target,
8 given it - given that the - the central district
9 achieved a score of 94.1 percent.

10 Is that correct?

11 A. That's correct.

12 Q. And what was that time period in which
13 the central district achieved a score of 94.1
14 percent?

15 A. I can't remember the beginning of it - it
16 ended in June, and I have to look at when - the
17 beginning end of that. I want to say -. I'd have
18 to go back and take a look at it. I think it was
19 January to June, but I'd have to look at it.

20 Q. But the period ended in June.

21 Right?

22 A. The period ended in June.

23 Q. And you also reported the scores - you
24 reported more recent scores for the central
25 district.

1 Pennsylvania, the report was a 72.1 percent.

2 Q. And that is a more recent score that -
3 well, is that - isn't that a decrease from the score
4 that you reported -

5 A. Yes.

6 Q. - earlier on?

7 A. Yes, that is. That's - that is a very
8 big decrease. A dramatic decrease.

9 Q. Next, I want to talk to you about the
10 employability issue that came up during Cross
11 Examination. And I believe you were asked about
12 employability issues in Pennsylvania.

13 When you worked as the postmaster general
14 up until June, did you have personal experience or
15 personal knowledge of employee availability issues
16 in Pennsylvania?

17 A. Yes.

18 Q. Do you mind describing, very briefly,
19 what those issues were specific to Pennsylvania,
20 those employee availability issues?

21 A. So you have - during the time after
22 mid-March, in several major metropolitan areas,
23 including the - including the Philadelphia area, we
24 experienced a significant employee availability
25 issues where employees were either - or at that

1 time, they were. Either they had COVID, had been
2 exposed to COVID, had to take care of children or
3 they were just frightened to come to work. So the
4 Philadelphia area was one of those areas.

5 Q. And what was the effect on timeliness of
6 availability because of those employee availability
7 issues that you had personal knowledge of in
8 Pennsylvania?

9 A. It's - it's slow delivering the mail.

10 ATTORNEY NKWONTA: I'd like you - I'd
11 like to pull up Exhibit 28, Petitioners' Exhibit 28.
12 BY ATTORNEY NKWONTA:

13 Q. Mr. Stroman, you were asked about the -
14 the data analysis that went into publishing these
15 figures and this chart.

16 Are these figures and is this chart
17 published by the United States Postal Service?

18 A. Yes.

19 Q. In your experience as deputy postmaster
20 general, were these figures and this chart typically
21 published by the United States Postal Service?

22 A. Yes.

23 Q. Is that why you have a high degree of
24 confidence in its accuracy?

25 A. Yes. That and the fact that we discussed

1 data - service performance data every week at the
2 United States Postal Service. And I know that they
3 discussed, and followed and tracked this data in
4 various areas every single day. It is used to
5 determine performance on a daily basis. We would
6 discuss it weekly, and so I have familiarity with
7 the way in which this data is put together. Its
8 products used both in headquarters and the field.

9 Q. Thank you, Mr. Stroman.

10 ATTORNEY NKWONTA: Can you pull up
11 Petitioners' Exhibit 6, please?

12 BY ATTORNEY NKWONTA:

13 Q. There was some questioning during your
14 Cross Examination about the 2016 letter, and how
15 this compares to the 2016 letter.

16 Do you believe that the message in this
17 letter, specifically - and I'm reading from the
18 first full paragraph on page two, which states there
19 is a significant risk that, at least in certain
20 circumstances, ballots may be requested in a manner
21 that was consistent with your election rules and
22 returned promptly, and yet, not returned in a time
23 to be counted.

24 Was that message reflected in prior
25 letters, Mr. Stroman?

1 A. Again, I'd have to go back and look, but
2 that certainly - it was said that the incongruity
3 between the two would - could determine results in
4 ballot timing.

5 ATTORNEY EVANS: And I'd object, Your
6 Honor, on the basis of the best evidence rule, that
7 the 2016 letters would be the one to speak to their
8 content.

9 JUDGE LEAVITT: I'm going to sustain
10 the objection.

11 BY ATTORNEY NKWONTA:

12 Q. Mr. Stroman, the 2016 letter that was
13 discussed during Cross Examination occurred at a
14 time very different from this one, do you agree?

15 A. Yes. It was very much different from the
16 time that we are in now. And the chances of this
17 letter, as I previously testified, was the concern
18 that you were going to get overwhelming - it was an
19 overwhelming number of absentee ballots that - that
20 come in, and that states were not prepared for that
21 overwhelming number of ballots.

22 So the chances of it in - and to some
23 extent, the point of the language in it - you know,
24 it was trying to reflect the different set of
25 circumstances of ending -.

1 Q. And Mr. Stroman, your concern about the
2 ballots not arriving on time, and your concern about
3 delays are not just - are they just limited to - to
4 the delivery of ballots based on the service
5 standards, or are there other factors that led into
6 your concern or your opinion about the timeliness of
7 ballot delivery?

8 A. As I previously testified, the employee
9 availability is a significant issue, the new
10 postmaster district transportation initiative is an
11 issue, as well as just the overwhelming number of
12 absentee ballots that are going to - we're going to
13 have - and we expect to have in the general
14 election. All of those are factors that play into
15 my conclusion about delayed mail.

16 Q. You recommended that during Cross
17 Examination, particularly that request, or at least
18 voters requesting an absentee ballots three weeks
19 earlier and not just 14 days, why would you
20 recommend that - or voter absentee ballots three
21 weeks earlier under current procedures indefinitely?

22 A. I guess for a number of - a number of
23 reasons. One has to do with just as I've indicated,
24 I believe that there will be delays in their mail.
25 And I think if you look at the - as I've looked at

1 the primaries, the mistakes that I saw were going to
2 delay the mail. And so I - I reached the conclusion
3 that - the reasons I talked about, you know, I think
4 that that is one, that you're going to see delays.
5 And I think that the letter, this letter was
6 written, it's not necessarily a factor in the end.
7 It's the kind of delays that I've testified to here
8 today.

9 And the other reason is that, you know,
10 my experience is that, you know, you can - you
11 really got the message early, because voters - I've
12 seen some, you know, early, you know, messaging
13 about seven days, we tried to do that. But
14 overtime, invariably, the voter is just - you know,
15 too many voters, they just come in at the last
16 minute, and you just - you have this overwhelming
17 number of voters who have these ballots coming in
18 toward the end. And I've seen it in election, after
19 election, after election and I've seen it here in
20 the primaries. So part of it is to message earlier.

21 Look, we - you really need to message
22 that, you know, you need different - voters are
23 willing to come in late, and they're going to come
24 in late, despite their best effort. So as early as
25 you can start that messaging, you can - you'll have

1 plenty of overhead, push the timeframe back.
2 Something's got to give here because I am really
3 concerned about ballots not being done.

4 Q. You were also asked, Mr. Stroman, about
5 ballots having special tags and whether that would
6 somehow expedite the ballots through the mailing
7 process.

8 Do ballots coming from voters have
9 special tags?

10 A. No.

11 Q. The last thing, Mr. Stroman, I believe
12 you were asked - or at least it was suggested during
13 your Cross Examination, that prepaid postage on
14 ballots would prevent - would somehow prevent those
15 ballots from having postmarks.

16 Do you recall when you were asked that
17 question?

18 A. Yes.

19 Q. And I believe it was specifically related
20 to the Governor's recent Executive Order providing
21 prepaid postage for mail-in absentee ballots.

22 Is that correct?

23 A. Correct.

24 ATTORNEY NKWONTA: I'd like to pull up
25 Petitioners' Exhibit 4, please. Can we scroll to

1 page nine of the pdf, page seven of the report?

2 BY ATTORNEY NKWONTA:

3 Q. So the bottom left corner section of that
4 page there's a heading that states requirements for
5 postmarks on ballots. Is that - can you see there,
6 Mr. Stroman?

7 A. Yes.

8 Q. Can you describe for the Court what that
9 section is discussing and what policy is being
10 advanced in that section there?

11 A. So the requirement here is that you have
12 to have postmarks on all ballots. And the inspector
13 general is saying that this is important, and you
14 have to do everything to ensure that every ballot
15 consistent with the requirements of the postal
16 service has a postmark on it. That becomes
17 absolutely prevalent.

18 Q. And this policy applies - does this
19 policy apply that the ballot has prepaid postage or
20 is sent prepaid postage?

21 A. Yes, it applies to all ballots.

22 Q. Is this a new policy?

23 A. No.

24 Q. How long has this policy been in place?

25 A. I can't give you an exact date, but it's

1 a couple brief questions.

2 So you've testified extensively on
3 delaying, or you know, what the standard - two to
4 five-day standard is, and how the goal is to achieve
5 that for 98 percent of the mail, whether it's been
6 following, at least according to your understanding,
7 of the data collected by the postal service as a
8 result of changes, operational changes.

9 Here is my question. It's a very
10 small one. Is it possible that a voter in
11 Pennsylvania, in any county, but let's - for sake of
12 this hypothetical and make it a rural county, can
13 collect - can request a county to send a ballot on
14 Friday, October 27th, receive the ballot and mail
15 the ballot so that it is actually received by eight
16 o'clock by Tuesday evening, Election Day. In other
17 words, a five-day turnaround.

18 Is that possible? Not likely,
19 possible?

20 THE WITNESS: It's highly, highly
21 unlikely that it could happen. And I can walk you
22 through that, Judge, if you'd like.

23 JUDGE LEAVITT: No, I just wanted to
24 know if it was possible, because after all, the
25 legislatures are making the policy and they want the

1 most number of voters to request a ballot and most
2 number of voters be able to return them. So all I'm
3 asking is, is it possible that a voter who waits
4 until Friday before Election Day to request a ballot
5 to have that ballot actually counted on Election
6 Day?

7 THE WITNESS: On the Friday before
8 Election Day?

9 JUDGE LEAVITT: Yes.

10 THE WITNESS: Oh, I'm sorry. The
11 Friday meaning the 30th?

12 JUDGE LEAVITT: Friday would be, I
13 believe, the 27th of this year. I could be wrong.
14 I don't have a calendar -.

15 THE WITNESS: I think Friday - I
16 think, Judge, Friday is the 30th, but -.

17 JUDGE LEAVITT: Okay.

18 All right.

19 Then it's the last day - the 27th,
20 that would be Wednesday.

21 THE WITNESS: So again, it's a bit
22 different. So if the voter requested it on Friday,
23 and there is a delay, that is totally beyond the
24 service standards -.

25 JUDGE LEAVITT: Okay.

1 I understand that. I'm just asking -
2 these are - these are standards, they deal with
3 millions of dockets. But is it possible that there
4 is a single case where a person could request a
5 ballot on Wednesday the 27th and actually have the
6 ballot received by the Board of Elections the
7 following Tuesday?

8 THE WITNESS: It - it's possible, but
9 it's highly unlikely.

10 JUDGE LEAVITT: Okay.

11 That's all. Thank you very much for
12 your time this morning. You are excused.

13 MR. STROMAN: Thank you.

14 JUDGE LEAVITT: I don't know if you're
15 planning to recall him on a rebuttal case, or -?

16 ATTORNEY NKWONTA: No. We have no
17 need, Your Honor.

18 JUDGE LEAVITT: Okay.

19 Thank you. At this point, we're going
20 to go off the record. I think it's time for a short
21 lunch break.

22 CRIER: Court is now in recess.

23 ---

24 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

25 ---

1 CRIER: Ladies and gentlemen, Court is
2 now in session.

3 JUDGE LEAVITT: Be seated. Thank you.

4 In the interest of completing the hearing today,
5 we're going to take steps to expedite the proceeding.

6 I'm going to ask the Counsel to limit their witness
7 testimony to 30 minutes, 40 minutes tops. And Cross
8 Examination is going to be limited to ten minutes per
9 person. Also to expedite this, instead of showing the
10 exhibits on screen for the remote witness, I'm
11 assuming all of the remote witnesses have hard copies
12 of the exhibits.

13 Is that true for the most of the -?

14 ATTORNEY NKWONTA: No, I'm not sure if
15 Mr. Stroman -

16 JUDGE LEAVITT: You're not sure?

17 ATTORNEY NKWONTA: - had hard copies.
18 I know we have electronic copies, but I'm -.

19 JUDGE LEAVITT: But - but we all have
20 hard copies that we can pull out. So it's unnecessary
21 for us to have the exhibits shown on the screen as
22 that slows things down, to put the exhibit up on the
23 screen for the benefit of the remote witness.

24 So I'm going to try to dispense with
25 that to the extent that we can, but I understand. If

1 he didn't have it, he didn't have it. So -.

2 ATTORNEY SHEEHY: Your Honor - Your
3 Honor, Shawn Sheehy with the Senate Intervenors. I
4 don't believe our witness, Mr. Michael Plunkett will
5 have an electronic copy of all of the exhibits in the
6 case. With the Court's indulgence, we would like to
7 continue with the practice of -

8 JUDGE LEAVITT: All right.

9 Okay.

10 ATTORNEY SHEEHY: - putting them up on
11 the -. Thank you.

12 JUDGE LEAVITT: Now, one thing that
13 might expedite is, if you want to - instead of going
14 back and forth through the same exhibit, do all of
15 your questioning about that exhibit once. And I
16 understand that there's redirect and that it may
17 require that it go back up, so -.

18 ATTORNEY SHEEHY: Thank you, Your
19 Honor. And if I may, one other request, Your Honor.
20 Since Mr. Plunkett is largely going to be testifying
21 about the same issues that Mr. Stroman was testifying
22 to, is it possible that Mr. Plunkett could have one
23 hour of testimony?

24 JUDGE LEAVITT: How long will the -?
25 Are you saying, like, how long will the Secretary's

1 testimony take? I think I said 30 minutes arbitrarily
2 because I was assuming I would get a Requestor
3 objection.

4 Is that going to do it for you or not?

5 ATTORNEY HANGLEY: I will try to keep
6 it to 30 minutes, but it may stretch to 45.

7 JUDGE LEAVITT: All right.

8 All right.

9 And I think because we're really now
10 focusing on the mail, Mr. Plunkett will follow the
11 Secretary's testimony.

12 ATTORNEY NKWONTA: Your Honor, we
13 still have a witness on the mail issue here. We have
14 an individual voter on the mail issue.

15 JUDGE LEAVITT: Well, so - is that
16 Doctor -?

17 ATTORNEY NKWONTA: So we're going -.

18 JUDGE LEAVITT: It will be a little
19 bit more than just, what are the mail problems?

20 ATTORNEY NKWONTA: Sorry, I -.

21 JUDGE LEAVITT: Is this Doctor - is
22 this Dr. Eisenberg?

23 ATTORNEY NKWONTA: No. I'm talking
24 about Devon Laudenslager. She's an individual voter
25 who is going to testify to mail delay issues. Her

1 testimony won't be long, but it - it was meant to
2 follow - if we're going to be focusing on mail
3 delivery, it was meant to follow Mr. Stroman.

4 JUDGE LEAVITT: Follow Mr. Plunkett?
5 All right.

6 ATTORNEY NKWONTA: It would follow -
7 follow Mr. Stroman. So we request that she testify
8 after the secretary.

9 JUDGE LEAVITT: Okay.

10 ATTORNEY SHEEHY: And we don't have
11 any objection to that, Your Honor.

12 JUDGE LEAVITT: Pardon me?

13 ATTORNEY SHEEHY: On behalf of the
14 Senate Intervenors, we're calling Mr. Plunkett. We
15 don't have any objection to the voter witness going
16 after the Secretary.

17 JUDGE LEAVITT: Okay.

18 All right.

19 Great. Thank you.

20 ATTORNEY HANGLEY: Your Honor, may I
21 ask a question? For - for Secretary Boockvar's
22 testimony, will it still be possible to put documents
23 on the screen?

24 JUDGE LEAVITT: I'm sorry, I didn't
25 hear you. You're going to have to speak up.

1 ATTORNEY HANGLEY: For Secretary
2 Boockvar's testimony, will it still be possible to put
3 documents on the screen for her to refer to or should
4 I hand her hard copies?

5 JUDGE LEAVITT: Does she have hard
6 copies? I mean, she's here in the Courtroom. It
7 would really speed things up, I think, if she could
8 just refer to the exhibits - I mean, do you - exhibits
9 other than the one letter?

10 ATTORNEY HANGLEY: I do. One of them
11 is such a small type, that I think it would be easier
12 for her to review - see them on screen than -.

13 JUDGE LEAVITT: Okay.

14 Okay.

15 The best laid plans of mice and men.

16 All right.

17 You may call Secretary Boockvar.

18 ATTORNEY HANGLEY: Respondents call
19 Secretary of the Commonwealth, Kathy Boockvar.

20 ---

21 KATHY BOOCKVAR,

22 CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
23 HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS
24 FOLLOWS:

25 ---

1 DIRECT EXAMINATION

2 ---

3 BY ATTORNEY HANGLEY:

4 Q. Good afternoon, Secretary Boockvar.

5 A. Good afternoon, Your Honor (sic).

6 Q. How long have you served -? Oh, this
7 is -.8 A. I'm sorry, I thought - I said good
9 afternoon, Your Honor, but now I'm saying good
10 afternoon, Counsel.

11 Q. Hello, Secretary.

12 JUDGE LEAVITT: Could you move toward
13 the clerk?14 THE WITNESS: Yes.15 JUDGE LEAVITT: Thank you.

16 Much better.

17 JUDGE LEAVITT: Okay.18 BY ATTORNEY HANGLEY:19 Q. Through our several layers of Plexiglas,
20 can you tell the Court how long you served as
21 Secretary of the Commonwealth?22 A. Absolutely. I was Sworn in on January 5th
23 of 2019, and Confirmed by the Senate in November,
24 later that year.

25 Q. And what - what is the Department of

1 State's responsibilities in handling elections?

2 A. So the Secretary of State is the chief
3 election official for the Commonwealth of
4 Pennsylvania. So the Department of State receives
5 elections in conjunction with each of the 67 counties
6 across the Commonwealth. And that is everything from
7 voter registration, to voting systems, to election
8 security and really everything in between. I'm happy
9 to get into further detail.

10 Q. I'll ask you for further details as we go
11 along. But can you tell the Court, do these
12 responsibilities of the Secretary change from election
13 to election?

14 A. They do. And you get a sense of - you
15 know, honestly, the laws might change. For example,
16 Act 77 was just passed into law, made more changes to
17 law, you know, that we've seen in each decade there's
18 that kind of change. And then of course, there's
19 changes that happen circumstantially.

20 So for example, in the Primary of 2020, we
21 saw more changes to how Pennsylvanians vote and how
22 elections are run than we've seen, you know, in any
23 election, that I think any of us can recall in our
24 lifetime, starting with -.

25 I'm sorry, do you want me to continue?

1 Q. Can you tell the Court what those things
2 are?

3 A. Sure. So about two years ago, we started
4 the initiative to require each of the 67 counties to
5 upgrade their voting systems to new - new systems that
6 meet time, security and accessibility standards,
7 including voter verifiable paper ballot. So each of
8 the counties upgraded in the last 18 months or so,
9 with the final 22 counties upgrading this year.

10 In addition to that, on October 31st of
11 2019, the Governor signed into law, Act 77, his star
12 bipartisan legislation passed by the Pennsylvania
13 legislature, which made, again, more changes to
14 elections - how elections are run in Pennsylvania,
15 than in the last eight decades, including, thank
16 goodness, allowing every Pennsylvanian to vote by mail
17 without needing an excuse.

18 And of course, that leads me to change
19 three, which was COVID-19. So being faced with a
20 global pandemic, thank goodness that all
21 Pennsylvanians already had been established and we all
22 had the right to vote by mail. But the primary of
23 this year was the first time that that was occurring.
24 So that was a huge change in Pennsylvania.

25 And then of course the fourth change

1 happened right before primary day, which was the civil
2 unrest that hit across the nation and across
3 communities in Pennsylvania, arising out of the tragic
4 death of George Floyd and others.

5 So all of those circumstances converging
6 into one election on June 2nd, those are four very
7 different examples of how elections are influenced by
8 lots of different factors.

9 Q. Now, I'd like to ask you about your
10 position in this case. This case was brought in the
11 spring of 2020. At that time, what was the
12 Department's position as to when the courts should
13 extend the deadline for the return of absentee mail-in
14 ballots?

15 A. No extension.

16 Q. And what was the reason for posting it?

17 A. We did not see information at that time
18 that made us feel that there was a statewide,
19 consistent, uniform problem that impacted -. The -
20 the relief that was being sought in the primary was a
21 67-county solution. And at the time, we did not have
22 information that led us to believe it was a 67-county
23 problem. So where possible, we worked to design
24 solutions that are narrow and tailored to fit the
25 problem.

1 Q. At the time, as the primary drew closer,
2 did you see evidence of individual problems with
3 individual counties?

4 A. In the primary?

5 Q. In the primary, yes.

6 A. Yes. There were individual problems in
7 individual counties.

8 Q. And in your mind, what was the proper
9 solution to the individual problems in the individual
10 counties?

11 A. They wanted to encourage them to go into
12 their county courts, Court of Common Pleas, and seek
13 individualized relief.

14 Q. And did any counties do that?

15 A. Yes. Several did.

16 Q. And do you know what they sought?

17 A. They sought to have that that's - similar
18 to what's being asked here. They sought to have the
19 deadline - the receipt deadline of the absentee
20 mail-in ballots be extended. So not changing the date
21 by which the vote needs to be cast, just the date for
22 the mail to be delivered.

23 Q. And to your knowledge, did the courts
24 grant the requests?

25 A. So - so - there were - there was one

1 county was granted -. There were two counties that
2 were granted outright and one had to go back a second
3 time because the evidence against that developed more
4 as the time went on, but yes. I'm not aware of in the
5 long run, with all of the counties that went into
6 court got the relief that they sought.

7 Q. In the case that was originally filed, did
8 you understand the Petitioners were arguing that there
9 some voters under those deadlines who would mail their
10 ballots and miss the deadlines? That ballots would
11 not arrive?

12 A. I'm sorry, could you repeat the question?

13 Q. I'm sorry. What was the Department's
14 response to the argument that some voters were going
15 to miss the deadline for the receipt of the mail-in
16 absentee ballots?

17 A. They were always some - some voters and -.
18 And just in elections, but in the world. Any time you
19 set a deadline, there are bodies of variation,
20 presumably going to be people that miss that deadline.
21 It's - it's a set time in place that, you know, it -
22 it -. There's almost always going to be people that
23 miss it. The same goes for voters. So you look back
24 at the start numbers, in every election, there are
25 voters who unfortunately miss the deadline.

1 Q. Over the past month, has your position
2 changed on whether a statewide change is appropriate?

3 A. It has.

4 Q. And what caused that change?

5 A. Primarily, the letter that's not on
6 screen, but I'll point to it anyway, that was up on
7 screen earlier from the United States Postal Service.

8 Q. Okay.

9 And that letter has been marked as PX-6.
10 And this is the July 29, 2020 letter?

11 A. Yes.

12 Q. Can you take a look at that letter before
13 you?

14 A. Is it going to be on the screen? I don't
15 actually have a binder.

16 Q. Oh. I'm sorry.

17 JUDGE LEAVITT: We're going to bring
18 the exhibits up to you. I think we can get it up on
19 the screen.

20 There - can you - can you read that?

21 THE WITNESS: I can read it.

22 BY ATTORNEY HANGLEY:

23 Q. What about this letter led you to change
24 your mind?

25 A. So this letter was - a couple of things.

1 And the - well, the subject matter, obviously, but the
2 tone and tenure of the letter, and the seriousness of
3 the words that they used in describing the problem,
4 made it clear that this varied in circumstances than
5 what we were dealing with before the primary. And
6 then, you know, thinking that we were going to be
7 dealing with it right after the primary.

8 And - and I should say, so there was this
9 letter and then, you know, various - this letter
10 which, you know, ended up going to, I think, to
11 something like 46 different states, and you know - and
12 all around that same time, conversations about we're a
13 member of the National Association of Secretaries of
14 State; at the time, I was also co-chair of the
15 Elections Committee of - the Elections Committee. And
16 this may be more than what you're looking for in this
17 particular questions, but there were a lot of
18 conversations happening about these initiatives at
19 that moment.

20 Q. Let's just talk about the letter itself
21 first.

22 So - have you received a letter like this
23 before from the post office?

24 A. No. We get other letters from the postal
25 service about voting, but nothing like this before.

1 Q. Let's look through the letter. In the
2 first paragraph, what about this letter jumped out to
3 you when you received it?

4 A. So first of all, as far as that, even in
5 the blue line, it's about deadlines. It's about
6 deadlines for me on the ballots. So really from the
7 get-go, I was - and it - it's directed to
8 Pennsylvania. So it's specific to Pennsylvania's
9 election laws. And then he went on to use very strong
10 language about, you know, the incompatibility of
11 Pennsylvania law to current delivery timelines. And
12 you know, using the word like incompatibility, in -
13 you know, in congress, and the talk of a significant
14 risk of voters being unable to vote according to the
15 legal standards as they exist in Pennsylvania due to
16 the current delivery timeframes of the postal service.

17 Q. Let's scroll down through the letter. I'd
18 like to point you to the paragraph at the top of page
19 two.

20 JUDGE LEAVITT: How - so the bullet
21 point at the top of page two?

22 ATTORNEY HANGLEY: I just need to go
23 down a little bit. Thank you.

24 BY ATTORNEY HANGLEY:

25 Q. What was the message at the bullet point

1 at the top of page two?

2 A. So it states that - that a domestic voter
3 needs to - should expect to mail their completed
4 ballot at least one week before the due date.

5 Q. And in the next paragraph, does the letter
6 identify the risk to voters?

7 A. Yes. It even says that our state law
8 requirements and deadlines appear to be incompatible
9 with the postal services delivery standards and
10 recommended timeframe noted above. And it says
11 specifically, it uses the expression, there is a
12 significant risk that at least in certain
13 circumstances, ballots may be requested in a manner
14 that is consistent with your election rules and
15 returned promptly, and yet not be returned in time to
16 be counted.

17 Q. To your understanding, how is this message
18 different from the message that voters should mail
19 their ballots in time?

20 A. I'm sorry?

21 Q. To your - to your understanding, how is
22 the risk identified in your letter different from what
23 faced voters in previous elections?

24 A. Well, in previous elections, in previous
25 years, there was a very common understanding that

1 generally, when you mail a letter, whether it was
2 ballot or a birthday card to your mother, there's a
3 one to three day - business-day turnaround time. And
4 for, you know, anybody that's old enough to remember
5 when we used to do a lot of mailing, that's something
6 that has been consistent from year to year for, you
7 know, my whole life. And you know I think - so I
8 think, you know, why this letter jumped out, first of
9 all, it's now saying it's going to take at least a
10 week. And two, that this is across your state. This
11 is not just Montgomery County, or just Dauphin County,
12 or just any individual county.

13 This is whether it's a 60-year old voter
14 with a disability from Tioga who may, for the last 30
15 years, have been putting her absentee ballot in the
16 mail five or six days before Election Day; now through
17 no fault of her own, this letter said you should
18 expect that she's likely to be disenfranchised. And
19 that's whether she's from Westmoreland County, or
20 Lancaster or Tioga.

21 This - this was a very, very different
22 message than anything I had ever heard before.

23 Q. Now, at around the time that you received
24 this letter, were you having conversations with the
25 national groups about election law in general and

1 postal service specifically?

2 A. Yes. So as we mentioned, at the time I
3 was co-chair of the Elections Committee and the
4 National Association of Secretaries of State. And
5 usually, the NASS as it's referred to, has two
6 national conferences a year. And then, you know, the
7 committee, like the elections committee, which is the
8 busiest of the committees, you know, might have some
9 calls or meetings periodically throughout the year.

10 Everything changed with COVID-19. So as
11 of mid-March, we actually started having weekly
12 meetings, weekly calls with secretaries of state
13 around the country, because there are 40 of us who are
14 chief election officials in our state. And we were
15 all dealing with the same issues in different ways
16 across the country.

17 So there was a lot of conversation in
18 that, the elections committee throughout, you know,
19 then to the current time.

20 Q. And then these conversations, did you hear
21 anything that made you feel more comfortable with the
22 risks identified in this letter?

23 A. So you're talking about after - so
24 starting from late-July to the present?

25 Q. Correct.

1 A. Okay.

2 So no. In fact, you know, it's made it -
3 it's - it's reinforced the seriousness of this
4 problem. So - and some states have actually held
5 primaries since that time. So for example, a couple
6 of weeks ago on one of the NASS election committee
7 calls, Washington State -. So Washington State is
8 very different than Pennsylvania in the sense that
9 they've been voting by mail for years and years. So
10 they actually had a lot of experience and data,
11 historical data about when they can expect to receive
12 what, because their entire state was voting by mail.

13 So Washington State had a primary in the
14 first week of August. And the Washington Secretary of
15 State reported just in the last - you know, within a
16 week or so after that, then they saw significant mail
17 delays and a huge increase in the number of ballots
18 received after Election Day that they had not seen
19 before. And again, they've been voting by mail. They
20 have a lot of - as far as knowledge goes, you know,
21 ebbs and flows of what they usually expect.

22 So that confirmed this. That things are
23 different now than they've been in any time in
24 certainly, recent or maybe longer history.

25 Q. Okay.

1 Let me quickly ask you about a couple of
2 other organizations. Have you often had regular calls
3 from the CISA?

4 A. Yes. So CISA is -. So the Department of
5 Homeland - the United States Department of Homeland
6 Security is a, you know, very strong partner with
7 Secretaries of State and election officials across the
8 country, to make sure our election security and
9 integrity are very strong.

10 So the Department of Homeland Security has
11 a subtext called CISA, it's the Cyber Security and
12 Infrastructure Security Agency. They are kind of our
13 main hub with the federal government. And they hold
14 periodic informational stakeholder calls for
15 Secretaries of State and election officials.

16 So for example, they held the call within
17 the last three - maybe even two weeks. Also putting
18 on, you know - bringing on the United States Postal
19 Service individuals as well. So that's like another
20 source for that information. And we've also - I'm
21 sorry, we've also had the postal service people
22 present to that, to the national election committees
23 as well.

24 Q. And did anything about those calls or
25 those presentations cause you to lower the level of

1 risk that you see that voters will be disenfranchised?

2 A. No.

3 Q. How about - I want to ask about the
4 Department of State communications with the post
5 office itself, without giving the content of the
6 communications, do members of your staff regularly
7 communicate with the post office?

8 A. Yes.

9 Q. And do they report those communications to
10 you?

11 A. Yes.

12 Q. Does anything about those communications
13 cause you to rethink your - your view that there's a
14 significant risk that voters who mail their ballots
15 prior to and not received them?

16 A. No.

17 Q. How about the post office itself, has
18 anything that the post office has communicated either
19 to you or the Governor caused you to change that view?

20 A. No. You know, I've looked at some of the
21 testimony, you've reviewed some of the materials
22 that's been out there. And primarily it is - it just
23 seemed like they understand that they had to do some
24 damage control. And they - you know, put a crisis
25 communications plan into place. And I think a lot of

1 their messaging is consistent with ours, which is, you
2 know, encourage voters to submit ballots as soon as
3 possible. And that won't change regardless.

4 But unfortunately, nothing they said has
5 retracted what they said in this letter. Nobody has
6 said we need to do that or face that change since we
7 wrote the letter. It has been consistently continued
8 to be - we can't get - what we used to be able to rely
9 on, we can no longer rely on. Circumstances have
10 changed.

11 Q. Madam Secretary, were you here this
12 morning for Mr. Stroman's testimony?

13 A. Yes.

14 Q. Did anything in that testimony cause you
15 to change your view that there's a significant risk
16 that ballots will not be delivered?

17 A. No. I think if anything, it made me more
18 concerned.

19 Q. Now, as Secretary of State, when you're
20 told that there's a significant risk that voters will
21 be disenfranchised, what do you see as your
22 responsibility?

23 A. To do everything I can to prevent that. I
24 mean, as the chief election official, we have an
25 obligation. I have an obligation to potentially work

1 to assess risks and accessibility to the vote. And
2 you know, hurdles and obstacles and - you know,
3 security and integrity of the vote. And all of those
4 things. And then, you know, there were very few black
5 and whites, you know, a lot of this, just like the
6 rest of the world in every field.

7 And - but it's - but it's my obligation to
8 always make sure -. We've got 8.5 million registered
9 voters in the state, millions more eligible voters who
10 aren't registered. We, you know - it - it is a
11 constant assessment and evaluation to make sure that
12 we are providing the highest level of accessibility,
13 security and safety to the voters of Pennsylvania to
14 make sure that they can exercise their right to vote.

15 Q. So in furtherance of that, that
16 responsibility that you described, have you - have you
17 explored other ways to help voters - help fix the
18 consequences of these post office delays?

19 A. Absolutely. And you know, I should say
20 it's not just with the post office. It's the volume
21 itself. So Act 77 was a phenomenal law that, you
22 know, you probably would have never had seen if -.
23 It's the combination, right, of COVID-19 and the fact
24 that this law provided a new option and postal service
25 delays that make - that what we're dealing with today,

1 so significant.

2 So yes, from day one, like, we learned so
3 much from the primary that we - I mean, the 67
4 counties in the Department of State. So we
5 immediately started working with the counties to
6 figure it out. It's remarkable that nearly 1.5
7 million Pennsylvanians who are able to successfully
8 cast their vote by mail, which is like 17 times more
9 than any prior primary. So it was remarkably well
10 done, but there's far more that we need to do, knowing
11 the - it's going to be even greater for November.

12 So it falls to the person to mail - and
13 all the other reasons to do it. So I work with the
14 counties to make sure they mail out their ballots as
15 early as possible. So they're planning to mail the
16 ballots in September, you know, most of them,
17 hopefully the challenges to that will be worked out.
18 And those - the ballots will be mailed in September,
19 they are staffing up, they are - we provided federal
20 funds to the counties to make sure they can buy
21 additional equipment so they can process all of these
22 ballots, or have -. There's some evidence, as the
23 gentleman testified this morning, some of them are
24 hiring mail houses, learning from each other who had
25 good experiences, who had bad experiences.

1 And then of course, we're ultimately doing
2 the - I don't know if it's a part of it, but we're
3 doing a major bilingual voter education campaign to
4 make sure that the public knows to get their ballot
5 request in as soon as possible and so forth.

6 Q. Okay.

7 That was going to be my next question.

8 A. Okay.

9 Q. Is why can't - there are questions about
10 personal responsibility and education. Why can't we
11 just fix this by doing more public education?

12 A. I wish I could snap my fingers and reach
13 every voter in the Commonwealth, 8.5 million is a lot
14 of people. And there's - as we all know, people have
15 different connectivity, they're rural. You know, some
16 of people live in the rural mountains of, you know,
17 Tioga County. It's - it's - may have challenges to
18 Internet, broadband. Somebody else maybe in a
19 low-income community doesn't have a computer.

20 So we're trying to really try to do
21 everything we possibly can to reach as many voters, to
22 even just let them know, because again, this is brand
23 new that we can even all vote by mail, let them know
24 what their options are. But unfortunately, it's hard
25 to reach 8.5 million people and particularly, as a

1 diverse and big state as we are.

2 Q. And we also heard some testimony about how
3 the county board of elections should be working with
4 the post office on things like envelopes and how heavy
5 the envelopes are.

6 Is that happening?

7 A. Yes.

8 All of the - all the counties work with
9 the postal service. And you know, we - we are sort of
10 the hub, meaning, Department of State, help to figure
11 out the sign and the markings. And you know, others
12 besides me, know those details better than I do, but
13 yes, the counties are regularly in touch with the
14 postal service as well. They have to be.

15 Q. I want to switch tones to explore, when we
16 talk about risk, the possibility of ballots not
17 arriving - the extent of that risk.

18 So I'd like you to look at Exhibit R-2,
19 which we'd like to put on the screen if we can because
20 the print is so small. I also have a hard copy if you
21 want it.

22 A. My eyes are not what they used to be.

23 Q. I'd like to get new glasses.

24 All right.

25 Before I ask you about specific numbers,

1 can you - can you tell the Court what this document
2 is?

3 A. So this, I believe, is the data I asked to
4 be run, which shows the date and numbers broken down
5 by county, broken down in some cases by week and in
6 some cases by day or maybe it's even a two-week
7 period.

8 So you can see at the top are the
9 timeframes. On the left column, all the way on the
10 left is - are the counties. And then the numbers
11 indicate the balance received by the counties back,
12 the completed ballots cast by voters, both absentee
13 and mail-in ballots, that lead up to and immediately
14 following the primary.

15 Q. And are the totals for all counties down
16 at the bottom?

17 A. Correct.

18 Q. All right.

19 So out of all of the ballots -. I see
20 we're going to have trouble keeping track of this.

21 But of all of the ballots that were
22 received by all of the counties, how many have arrived
23 in the last week?

24 A. Nearly half arrived in the last week.
25 Nearly 700,000 ballots arrived in the last week, up to

1 June 20 - the June 2nd.

2 Q. And how many arrived on the day before the
3 election?

4 A. Can you zoom in a little bit for me,
5 please?

6 That 173 number. The day before the
7 election? Is that what you said?

8 Q. Yes.

9 A. Is that number -?

10 Q. The 173.

11 A. Okay.

12 So 173,869, all on June 1st, the day
13 before the primary.

14 Q. And the date of the primary, the number
15 just to the right of that?

16 A. 89,018.

17 Q. So out of the total, approximately 1.5
18 ballots, mail-in ballots that were received, how many
19 in that window were leading up to the election?

20 A. I'm sorry, say the question again.

21 Q. How many ballots were mailed in, in the
22 primary?

23 A. Total ballots cast by mail in the primary
24 was just under 1.5 million, 1.45 or something like
25 that, 1.6 million.

1 necessary to extend the deadline by ten days?

2 A. Again, if you - I think I ought to be
3 clear, if you look at the numbers, this is not six
4 counties where those are really high numbers in this
5 time period and the rest of the state. But if this
6 - there's an even distribution with the fact that -
7 that people's ballots, they tend to be delivered at
8 the end of the period. And you can see that even
9 before that last week, 320,000 were the prior week.
10 So the one was, you know, what is it, two-thirds of
11 the ballots came in in that last two weeks, if my math
12 is right. Right? Right? So about - about a million
13 give or take, just under a million?

14 So it just shows like the -. So having a
15 situation, where - where we have reasonable timeframes
16 for delivery acceptance with individualized
17 circumstances, and there were counties where they had
18 bigger problems than other counties in the primary,
19 but where it works generally well, you can see that
20 still the patterns are fairly consistent.

21 So it wouldn't just be a Montgomery County
22 voter who would be likely be disenfranchised. And
23 again, that really is why - why I'm here today with a
24 different opinion than I was - than I would have been
25 if this hearing were held six weeks ago, is that I

1 keep thinking about that voter in Sullivan County
2 having the same challenges that the voter in Beaver
3 County and a voter in Lebanon County has.

4 This is - we've been explicitly told, and
5 based on hearing from other states' experiences, and
6 hearing from folks at the national level, we've been
7 warned, your state's laws are incompatible with our
8 currently delivery timeframes. And I have an
9 obligation to do more than that.

10 Q. So Secretary, why - you understand the
11 Petitioners in this case have asked for a seven-day
12 deadline. And you're asking the Court for three days?

13 A. Correct.

14 Q. Why the difference? Why are you taking a
15 position of three days?

16 A. So pretty much - much of what we do at the
17 Department of State is really a balance of effective
18 and efficient election administration, a balance with
19 accessibility of voters to the exercise of their vote
20 to the franchise.

21 And sometimes some things get tilted in
22 one direction and tilts away in the other direction,
23 and you constantly have to take both into account.
24 And we work very closely with the 67 counties. So why
25 - yeah, you could say two weeks, you know, beyond the

1 deadline. And some of you would say that would catch
2 most voters. Yes. But on the other hand, the
3 difference between a week and three days is there are
4 - every deadline that you move, you pass other
5 deadlines.

6 So for example, one of the next deadlines
7 is after Election Day, it's six days after Election
8 Day. By the sixth day after Election Day, voters, who
9 for example are voting for the first time in their
10 precinct or ever, need to present - provide ID in
11 order for the ballot to be counted. So that's - that
12 deadline is six days after Election Day. So you're
13 moving the deadline for receipt of ballots - a seven-
14 day deadline, you're going to go past that deadline.
15 So you've got to move that forward. And at seven days
16 after Election Day there's the - is the timeframe for
17 the - a person to - say if a person is - is going to
18 give up the right to have a recount; that's seven days
19 after.

20 Q. Okay.

21 And did that -?

22 A. Ten days. Sorry. Yes.

23 For my job, to declare a recount, is eight
24 days after Election Day. So there's - again, each
25 deadline, if you move forward seven days, a

1 significant number of ballots to be counted, you're
2 really pressing up against -. How do you know whether
3 a recount is needed? So then you're going to move
4 forward that deadline and that impacts another
5 deadline.

6 So to me, you know, we really - we really
7 - we thought - we looked at the numbers, and you know,
8 we can talk about numbers going forward here, we
9 thought three days would capture the greatest majority
10 - we're finding a balance. So we'd capture the
11 majority of voters who voted in a prompt manner, but
12 it just wasn't received by that Tuesday due to the
13 delays as described by the gentleman this morning, and
14 the letter and what I'm hearing at a national level.
15 But it wouldn't be problematic for those - those
16 deadlines.

17 Q. Okay.

18 You mentioned that when ballots are
19 received that they match the deadline, we are to -
20 looking at the dates, June 3rd, June 4th and
21 June 5th, and this grading you're looking at, that
22 starts with a 31183, that's June 3rd.

23 What do these totals tell you about when
24 the ballot - when the ballots are coming in after
25 the election?

1 A. The majority of them come in within those
2 first three days. So you can see - if you look -
3 continue to scroll over, so that comes to about
4 61,000 or something ballots received at the primary
5 in those first three days. And then in the next
6 four days after that, which some of these may -
7 don't think each of these are days, right, because I
8 think that 10,000 number is actually a longer period
9 of time.

10 But I can tell you I looked at this on my
11 screen, the first 90 days are about 60 or 61,000,
12 and then the next four days are about 18,000. And
13 that 18,000 is primarily from two counties who have
14 late delivery problems that were specific to their
15 counties, Montgomery County, Delaware County.

16 So 11,500 of that 18,000 in the second -
17 four days of that seven-day period following
18 Election Day were from two counties. So you know,
19 the 60,000 really captured a much greater percentage
20 of the late-received balance.

21 Q. So that 60,000, those were three days
22 after the election?

23 A. Correct.

24 Which is what we're asking for, is
25 postmarked by Tuesday, Election Day, but received by

1 Friday, three days later.

2 Q. Now, are you taking the position -?

3 Sorry.

4 Are you taking the position that if a
5 county or region are having specific problems, let's
6 say a hurricane or some problems with delivering
7 ballots, are you ruling out the possibility that
8 those counties could take a longer extension?

9 A. No, I would not rule it out. We can't
10 predict whether a Hurricane Sandy is going to come
11 and hit two counties and change the circumstances
12 there. There are circumstances, and that's why we
13 have - that's why we have the courts.

14 All right.

15 And sometimes there's - there's relief
16 that's needed across the state. And sometimes
17 there's different relief that's needed based on
18 individual circumstances of the counties. And the
19 counties should absolutely be able to continue to go
20 to their court and seek equitable relief as needed.

21 Q. But in this situation that are described
22 as Post Office delays, what would count as
23 appropriate for that?

24 A. The count, based on the information that
25 I have at this time is based on the information that

1 I have today, the circumstances -. And you can see
2 - you know, I mean, I was interested to see -. I
3 have not seen the charts that were shown, you know,
4 in the Central Pennsylvania region, which I - you
5 know, I'm not actually sure what the full scope of
6 it is.

7 But you know, I think - that's not a
8 region that I would have thought of as being
9 particularly hard hit, you know, differently for
10 COVID or -. It showed - it showed that the current
11 delivery delays are happening everywhere. They're
12 happening everywhere.

13 Each region, at least that we've seen -
14 and again, it's consistent with that letter, that
15 voter in - you know, I can change the county, but
16 Wyoming County where I lived for a year and a half,
17 or, you know, a year for Philadelphia, like it's the
18 same. We are all impacted by it.

19 The current delivery delays are
20 incompatible with Pennsylvania deadlines. And we
21 need - we need to make sure that tens or hundreds of
22 thousands of voters are not disenfranchised through
23 no fault of their own.

24 Q. One more question about the relief that
25 you're asking for - we are asking for to grant. We

1 are asking the Court to rule that documents without
2 postmarks or with illegible postmarks are treated as
3 mailed - that there's an assumption they were mailed
4 on Election Day.

5 What's the reason for that?

6 A. So that is really - I mean, we want to
7 make sure to - as much as possible, that there's
8 uniformity in how this is administered, so that a
9 voter in one county doesn't have their vote counted
10 when there's an illegible postmark or a missing
11 postmark in another county, they don't count that
12 ballot.

13 So - and, you know, based on the fact
14 that that's information, as we understand it, the
15 easiest way to do that -. The best way to do it is
16 to have a presumption that as long as it's received
17 by that - you know -. If there's evidence that it's
18 postmarked after November 3rd, it should absolutely
19 not be counted, but if there's an illegible postmark
20 or missing postmark, which should be in the very,
21 very small minority of cases, it should be counted
22 as long as it's received by that Friday.

23 And you know, based on delivery - you
24 know, based on all the different factors, I think,
25 you know, that again, that - that can be a very

1 small percentage. You - you heard the gentleman
2 from the Postal Service talk about - I understand it
3 being called cancellation marks or postmarks that
4 are used on things like this, return mail and other
5 forms.

6 This has been consistent with what we've
7 been told. Those marks are put on, whether it's
8 business return mail or whether it's stamps or
9 meters. And of course we are going to get postage -
10 we're covering - counties are doing it different
11 ways. We're reimbursing them no matter how they do
12 it, but in any event, an overwhelming majority of
13 times there's going to be a postmark, but if it's
14 illegible and missing it should be counted, so long
15 as it's received. There's uniformity across the
16 board.

17 Q. Now, in the Cross Examination this
18 morning, you heard some questions about how can we
19 be sure that those delays will last until November.
20 To the extent that there's any doubt about what's
21 going to happen in the next two months, where do you
22 need to come down from that?

23 A. You know, the Postal Service didn't wait
24 until October to send me this letter. They sent it
25 on July 29th. And I don't think that's an accident.

1 I think that they intended to send it in July so
2 that we're not waiting until October, two weeks
3 before Election Day or two days before Election Day
4 to make these judgment calls.

5 We are being told the problem starts now,
6 and the counties need to - the counties and the
7 State need to be preparing for it now. And you
8 know, just knowing how much the counties need to be
9 doing now - between now and Election Day and
10 following Election Day, you know, with planning and
11 staffing, and planning equipment, time and space,
12 making sure that they have every piece of the
13 election administration process planned for, staffed
14 and ready to go, it - it starts now - it actually
15 started long before this.

16 So I - you know, I appreciate the fact
17 that the Postal Service decided to contact us in
18 July, and so I have to take it seriously starting
19 today. I don't think we can wait.

20 ATTORNEY HANGLEY: I have nothing
21 further.

22 JUDGE LEAVITT: Attorney Nkwonta?

23 ---

24 CROSS EXAMINATION

25 ---

1 BY ATTORNEY NKWONTA:

2 Q. Good afternoon, Secretary Boockvar.

3 A. Good afternoon.

4 Q. I want to ask you a couple questions
5 about the July 29 letter that you received from
6 USPS.

7 Was it your understanding that USPS's
8 observations were based on the interplay between
9 Pennsylvania's deadlines for requesting an absentee
10 ballot or mail-in ballots and submitting ballots be
11 counted and USPS's deadlines?

12 Let me rephrase. When I say USPS's
13 deadline, I mean USPS's regular delivery standards.

14 A. Can you break down the question a little
15 more, because it seems like maybe it was three
16 questions in one.

17 Q. Sure.

18 So the - the July 29th letter, is it your
19 understanding that it discussed the interplay
20 between Pennsylvania's deadlines for submitting the
21 absentee ballots and USPS's regular delivery
22 standards?

23 A. It addressed the interplay between Postal
24 Service delivery standards and the Pennsylvania's
25 specific deadline.

1 Is that your question?

2 Q. Yes.

3 A. Yes.

4 Q. And that letter did not say anything
5 about delivery delays.

6 Correct?

7 A. I - I don't recall if there were delays
8 in there, but I think they tend to talk about it as
9 delivery standards.

10 Q. So the letter is really based on USPS's
11 two to five-day current delivery standards, but
12 didn't even factor in the delays that may have been
13 occurring at the time or that it would be stopped
14 from occurring then.

15 Is that correct?

16 A. I can't speak for them, for the Postal
17 Service's intent.

18 Q. Do you recall seeing any reference of
19 delays in that letter?

20 A. I don't - I don't recall. I do not
21 recall. Maybe that word was not in there.

22 Q. So if there were delays that further
23 added the time required to deliver ballots in
24 addition to what USPS is already indicating, that
25 July 29th letter, that would indicate - would that

1 indicate to you that more time is required to make
2 sure that was given?

3 A. No. My recommendations here today are
4 based on an understanding of the delays. To me, I
5 read the letter as the circumstances as they exist
6 today, and based on my understanding of them on a
7 national level. And that letter and everything else
8 I've read, they may not use the word delays, but it
9 means delays.

10 And that is the reality we're dealing
11 with today and the recommendations that I make here
12 and I'm asking the Court to uphold are based on my
13 sense of the delays.

14 Q. As you sit here, do you have a sense of
15 the total number of ballots that were delivered
16 after Election Day?

17 A. In Pennsylvania?

18 Q. Yes.

19 A. In the primary?

20 Q. Yes.

21 A. I mean, we can pull up the chart again.
22 I mean, I know - I don't know offhand the number
23 past that seven days out. But the - I think I said
24 this, about 60,000, 61,000 the first three days
25 after Election Day, and then about 18,000 the

1 following four days after that.

2 Q. So over 80,000 were delivered after the
3 deadline for receipt of the election date of the
4 June 7 primary?

5 A. I believe that's correct, based on the -
6 my 60 and 18, don't entertain me - but they - they
7 will if there's a couple more, so I'm assuming that
8 there are.

9 Q. You also mentioned that you are - have
10 taken part or are involved in the National
11 Association of Secretaries of State.

12 Is that correct?

13 A. Correct.

14 Q. And there is an election committee.

15 Is that correct?

16 A. Correct.

17 Q. And that involves the chief election
18 officials from different states. Sometimes there
19 are Secretaries of States and some other official.

20 Is that correct?

21 A. Correct.

22 Q. And North Carolina is one of those
23 states?

24 A. It is. But I - well, I'll let you ask
25 your question.

1 Q. I'd like to put up Plaintiff's Exhibit 7,
2 please.

3 Plaintiff's Exhibit 7, I'll represent to
4 you, is the letter that the U.S. Postal Service and
5 General Counsel issued to the North Carolina
6 Secretary of State, and this has been published
7 annually.

8 I'd like to have you take a look at a
9 couple paragraphs from the letter.

10 Can you scroll to the second page of this
11 letter?

12 And if we look at the first - sort of the
13 second full paragraph of this letter, starting
14 specifically, can you read for the Court that first
15 sentence, starting specifically?

16 A. Specifically, it appears that a voter may
17 generally request a ballot as late as seven days
18 before the November general election, and that a
19 completed ballot must be postmarked by Election Day
20 to the election officials no later than three days
21 after the election.

22 Q. And am I correct that this letter - the
23 portion of this letter indicates that this law and
24 these deadlines are incompatible with the USPS's
25 delivery standards?

1 A. I mean, I'd have to go on to read it,
2 because that sentence should not say that.

3 Q. You can scroll up just a little bit, I
4 think it's in the first paragraph.

5 So in that first full paragraph, can you
6 read that first sentence starting with under our
7 reading?

8 A. Under our reading of your state's
9 election laws, as in effect on July 27, 2020,
10 certain state law requirements and deadlines appear
11 to be incompatible with the Postal Service's
12 delivery standards and the recommended time frame
13 noted above.

14 Q. So would you agree that the USPS is
15 instructing in this letter that the deadline of
16 three days after Election Day for the receipt of
17 ballots postmarked by Election Day, when voters can
18 request the ballots seven days before Election Day,
19 is incompatible with the USPS's delivery standards?

20 ATTORNEY EVANS: Your Honor, I'd like
21 to object that the Best Evidence Rule applies here.
22 We'll let the contents of the letter speak to - for
23 themselves.

24 Secretary Boockvar can't testify as to
25 the intent of the letter.

1 ATTORNEY NKWONTA: Your Honor, if
2 Counsel's going to -.

3 JUDGE LEAVITT: I'm going to overrule
4 the objection. I think he's trying to get the
5 witness to agree that her proposed deadline was too
6 short, based on this letter.

7 ATTORNEY NKWONTA: Well, I'll phrase
8 it this way.

9 BY ATTORNEY NKWONTA:

10 Q. Would you agree that the USPS, at least
11 in another state, has indicated similar deadlines,
12 and the one you proposed was incompatible with the
13 Postal Service's delivery standards?

14 A. So I guess what I would say is this.
15 First of all, I'm just going to point out that in
16 North Carolina the Secretary of State is not a chief
17 election official. So Elaine Marshall does a lot of
18 great things, but elections are not something she
19 oversees. So that's interesting.

20 But regardless of the Postal Service's
21 error in that regard, they don't specify -. They
22 say certain state law requirements and deadlines
23 appear to be incompatible. I'm not sure, since I'm
24 not with the Postal Service, which one that they're
25 referring to. But it certainly has similar language

1 than as ours do. That's -.

2 Q. I also wanted to ask you a couple of
3 quick questions about the primaries. As you
4 mentioned during your testimony, a number of
5 different counties, several counties, requested
6 relief during the primary election, specifically the
7 extension of the deadline for the receipt of mail-in
8 ballots.

9 Is that right?

10 A. I'm sorry, can you repeat the question?

11 Q. Sure.

12 Is it correct that several counties
13 requested extension of the deadline for the receipt
14 of mail-in ballots during the primary?

15 A. Yes.

16 Q. And is it correct that each of those
17 counties requested a seven-day extension?

18 A. No.

19 Q. Which counties, to your knowledge, did
20 not request a seven-day extension, requested an
21 extension less than seven days?

22 A. So Bucks County, I believe, requested a
23 deadline the following Monday rather than the
24 following Tuesday, as I recall.

25 Q. So Bucks County requested a six-day

1 extension?

2 A. I believe so.

3 Q. Are you aware of the extension the Court
4 granted in Bucks County?

5 A. I think the Court in the Bucks County
6 case - this is a better question for the paper, but
7 I believe that it was only for the following Monday.
8 I could be wrong, but that's my belief.

9 Q. Fair enough.

10 And in Delaware County, were you aware or
11 did you have personal knowledge of the extent of the
12 deadline than was requested in Delaware County?

13 A. I seem to recall it was longer in
14 Delaware County.

15 Q. And in Montgomery County, do you have
16 personal knowledge of the extent of the deadline
17 that the Montgomery County Board requested?

18 A. I believe Montgomery County was seven
19 days. Although Montgomery County was - and Delaware
20 County were also part of the Executive Order being
21 issued, so there was that, which we didn't even talk
22 about.

23 Q. How long was that Executive Order
24 extension?

25 A. Seven days.

1 Q. Overseas and military voters also
2 received an extension or a cushion after Election
3 Day to submit their ballots.

4 How long is that extension?

5 A. It's not an extension. Their deadline is
6 a week after Election Day.

7 Q. And what kind of happens when oversees or
8 military voters submit ballots without a postmark,
9 but it arrives before their seven-day deadline?

10 A. I think it's still counted. But I think
11 that there's a lot more flexibility to make it
12 easier for military and overseas voters to make sure
13 that their ballots are counted.

14 Q. I think you're right.

15 And lastly, the date that you discussed
16 during your testimony refer to the number of ballots
17 - you were referring to the number of ballots
18 received the last week before the primary, the last
19 day before the primary and on the day of the
20 primary.

21 Correct?

22 A. Correct.

23 Q. And is it your understanding that there
24 have been mail delays that have actually led you
25 change your position on some of the requested relief

1 in this case?

2 A. Are you asking me if mail delays are what
3 led me to change my opinion in this case?

4 Q. Yes.

5 A. Yes.

6 Q. And are those mail delays things that
7 occurred after the primary, in your view?

8 A. Yes.

9 Q. So is it your position or would you agree
10 that the number of ballots that we saw arriving the
11 last day, on Election Day, and the day before
12 Election Day, given the current mail delays, is it
13 your view that those ballots may not arrive in time
14 for the next election?

15 A. Yes, that is my concern.

16 ATTORNEY NKWONTA: Thank you.

17 Nothing further, Your Honor.

18 ATTORNEY LIMBURG: Your Honor, Richard
19 Limburg for the Senate Intervenors.

20 JUDGE LEAVITT: I'm sorry, I can't
21 hear you.

22 ATTORNEY LIMBURG: Yes, Your Honor,
23 Richard Limburg for the Senate Intervenors.

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25 CROSS EXAMINATION

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BY ATTORNEY LIMBURG:

Q. Good afternoon, Secretary Boockvar.

A. Good afternoon.

Q. And looking at your -.

JUDGE LEAVITT: Could you - right into the microphone.

BY ATTORNEY LIMBURG:

Q. In looking at the Exhibit R-02, which is the analysis, I guess, of mail received before and after the June 2nd primary. And I wanted to ask about the mail received after June 2nd.

Are all the pieces of mail counted after June 2nd postmarked?

Do we know that they all were postmarked before - on or before June 2nd?

A. So I want to make sure I understand your question.

So are you asking me - the numbers that you indicate the ballots were received after June 2nd, -

Q. Yes.

A. - you're asking whether they were postmarked?

Q. Yes.

1 A. So the - for the primary, the law that's
2 in place is - it didn't relate to postmarks at all,
3 it related to receipt.

4 All right?

5 So the ballots have to be received by
6 June 2nd, except in the seven counties where there
7 was either an Executive Order or a Court of Commons
8 Pleas' Order based on the situations in those seven
9 counties that require - that allowed for a
10 postmarked date to be counted as long as it was
11 received by some later date, depending on which
12 county it was.

13 So - so it's not relevant for the
14 overwhelming majority for the 61 counties or 60
15 counties that it didn't apply in. But the counties
16 for which the Executive Order or the Court of Common
17 Pleas' Order was in place, that was based on
18 postmarks. So the - my understanding is that the
19 county - the Executive Order itself -.

20 And maybe I should just stop because I
21 think - I'm not even sure what exactly your question
22 is.

23 Q. You answered the question.

24 According to this chart, if there had
25 been a three-day extension for the primary election,

1 another 60,000 or so ballots would have been counted
2 as that.

3 Is that correct?

4 A. If there had been a three-day extension
5 for the entire state, then yes.

6 Q. For the entire state.

7 After June 5th, an additional it looks
8 likes about 35,000 ballots were received between
9 June 6th and June 24th. Those going to the - why
10 were those - if these were all mailed on time, why
11 should they -?

12 I guess this has to do with my postmark
13 question. If they were all mailed in on time, that
14 is postmarked or dropped in the mail before
15 June 2nd, why were they not all - why should they
16 not all be counted - the first 60,000 differently
17 from the 35,000 that came in late?

18 A. Well, this goes back to the ballots that
19 I was talking about earlier. So if the election -
20 if we pull data, if we had data going back - and our
21 data has become more and more advanced over time, if
22 we had data it would show you that there were always
23 ballots received after Election Day.

24 Just by the nature of a - setting a
25 deadline, there's always going to be people that

1 be disenfranchised, there's a significant risk to be
2 disenfranchised for reasons outside of their
3 control. But it is possible to apply early and mail
4 your ballot back early, as of today.

5 Is that right?

6 A. Yes.

7 And we're encouraging everybody to do so.
8 And that wouldn't change.

9 Q. That is in the voter's control; isn't it?

10 A. Sorry?

11 Q. That is in the voter's control; isn't it?

12 A. Much of the time it is. But portions of
13 this are in the voter's control. Portions of this
14 are in the county control. And portions of this are
15 in the Postal Service control or lack of control,
16 depending on how you look at it.

17 Q. Isn't it the legislature that is supposed
18 to balance the efficiency and the accessibility
19 aspects of the election?

20 A. We have three branches of the government
21 and all of them play a role in elections. Just like
22 we have elections that are run in this country based
23 upon the federal law, state laws and local
24 authority.

25 So I don't think that it's any one

1 branch's job to do this. I think this is something
2 that the judiciary has a role. We just heard about
3 the primary counties having individualized relief,
4 that they got through their county Courts of Common
5 Pleas.

6 The Commonwealth Court plays a
7 significant role in elections. The legislature
8 plays an important role. The Department of State
9 plays an important role. The federal government
10 plays an important role.

11 Q. But do those other branches play a role
12 in - in resolving disputes that arose in the course
13 of the election while enforcing the Election Code?

14 A. I'm sorry, I don't understand your
15 question.

16 Q. Those - those other branches of
17 government are not typically involved in resolving
18 issues of the efficiency versus accessibility of
19 voting; are they?

20 A. I still don't think I understand your
21 question.

22 Q. Let me move on then.

23 If someone who votes in person arrives
24 late at the polls and it is after eight o'clock,
25 should there not be an extension for them, if there

1 is an extension for the voters who vote by mail at
2 the last minute?

3 A. I'm going to answer the first part of
4 your question, because I'm not sure I understand
5 part of your question.

6 But in a normal day, in a normal Election
7 Day under normal circumstances, should a random
8 voter be allowed to vote if they arrive after 8:00
9 p.m.?

10 Q. Yes.

11 A. No.

12 But are there circumstances -? If there
13 is a tornado that passes through the county or, for
14 example, there was a county, during the primary,
15 where, due to COVID, there was a line into the
16 parking lot or there was something to that regard,
17 and the Court of Common Pleas granted an hour
18 extension, that's perfect for the judiciary to play
19 that role.

20 Q. You said that the Post Office has not
21 retracted the July 29th letter that you received.

22 Didn't Postmaster General DeJoy say that
23 they will be able to handle the volume of the mail
24 that is expected for the general election?

25 A. Do you want to show me a place where he

1 said that -?

2 Q. I'm referring to his testimony before the
3 Joint Committee of the House and Senate, that you
4 heard his testimony, I believe, last week.

5 A. I have a general understanding that
6 that's what he said. And frankly, I think for, you
7 know, September and half of October I think that's
8 probably right.

9 I'm mostly worried about that last week
10 and a half before the election.

11 Q. Have you looked into the question how
12 much mail is still delivered in one to three days in
13 Pennsylvania?

14 A. I'm sorry, can you repeat the question?

15 Q. The Post Office service standards are two
16 to five days for first class mail. And you said
17 that it was always the case before this letter that
18 first class mail was delivered in one to three days.

19 How do you know that is true?

20 And let me just ask that.

21 A. So first of all, I think that
22 mischaracterizes my testimony. I don't think that's
23 always the case.

24 I said it has generally been understood.
25 You know, I'm 51. I haven't been around forever,

1 but long enough that that's been the general
2 understanding.

3 And I think as of yesterday we actually
4 looked on the website and it talks about one to
5 three business days expected delivery for first
6 class mail. So two to five days seems to already be
7 a delayed standard that is taken into account for
8 current delays, as far as I can tell.

9 But regardless, I'm basing most of why
10 I'm here today on being explicitly told even in five
11 days, we can't rely on that voters need to mail in
12 their ballots and still be ahead of their deadline.

13 ATTORNEY LIMBURG: Your Honor, I
14 haven't kept track of my time.

15 JUDGE LEAVITT: You may ask one or two
16 more questions.

17 BY ATTORNEY LIMBURG:

18 Q. Does prec canvassing speed up the ability
19 to count the ballots and certify the results in
20 accordance with the statutory deadlines?

21 A. So yes, depending on how much
22 prec canvassing you're talking about. So if you're
23 talking about the amount of prec canvassing that we
24 have currently based on Act 12, 2020, that's not
25 enough. And we've seen that from the primary.

1 So starting at 7:00 a.m., precanvassing
2 at 7:00 a.m., on Election Day doesn't help. But if
3 you gave another three weeks to the counties to
4 precanvass, yes, I think it would help speed things
5 up.

6 Q. Do you know how many counties have chosen
7 not to precanvass during the primary?

8 ATTORNEY HANGLEY: I'm going to
9 object. It's beyond the scope. I did not ask
10 questions about precanvassing.

11 JUDGE LEAVITT: I did not hear your
12 objection.

13 ATTORNEY HANGLEY: I'm sorry. I
14 objected that it was beyond the scope of Direct.

15 JUDGE LEAVITT: Could you restate your
16 question?

17 BY ATTORNEY LIMBURG:

18 Q. You testified then that you don't believe
19 the three-day extension would adversely impact the
20 ability to meet the statutory deadline. That's the
21 implication, when you testified about balancing the
22 three day versus the seven-day extension.

23 Is that correct?

24 A. I think what I testified is that what I
25 believe is that best finds balance. Again, any time

1 you move anything, it impacts other things, but I
2 think that amount of extension is an important step
3 based on the circumstances that face us today.

4 Q. And do you expect - how much more - how
5 many more mail-in ballots do you expect to be cast
6 in the general that would be passed in the primary
7 election?

8 A. So of course I don't have a magic eight
9 ball. And you know, for those of you who are not
10 younger than me don't know what that is. But you
11 know, based on the numbers in the primary, there
12 were 1.5 million in the primary, you know, I would
13 expect that we would probably see close to double
14 that.

15 JUDGE LEAVITT: You would say what?

16 THE WITNESS: Probably double that.

17 JUDGE LEAVITT: Double? So you're at
18 three million.

19 THE WITNESS: Correct.

20 The question was about the number of
21 mail-in absentee ballots.

22 Correct?

23 ATTORNEY LIMBURG: Yes, correct.

24 BY ATTORNEY LIMBURG:

25 Q. And you don't think that the three-day

1 extension will - you still don't think that with the
2 volume of mail that the three-day extension will not
3 impact the ability to - for the counties to certify
4 the results 20 days after the election?

5 A. So I'm going to take this opportunity to
6 answer your question by urging your clients to
7 please pass a law allowing the counties to start
8 prec canvassing those ballots earlier, because if you
9 do, that will help tremendously.

10 And then I would be able to answer the
11 question, you know, really very strongly.

12 So again, as I said earlier everything is
13 a balance. I'd rather not lose three days of the
14 counting time period, but I think that the risk to
15 the voters, and - that that's the best way to find
16 that balance. It will be enough time to catch most
17 of the voters who have cast their ballots. It will
18 not be too much time to bump too close up against
19 those other deadlines.

20 Q. And last question.

21 Why should not each - if each county
22 Board of Elections is responsible for administering
23 the mail-in ballots in that county, why should it
24 not be up to each county to apply for special
25 judicial relief if they need it?

1 A. No, that was done in partnership with the
2 branches of government that change laws.

3 Q. Which is who?

4 A. The legislature and the Governor.

5 Q. So did the Pennsylvania General Assembly,
6 including my client, change the existing received-by
7 deadline?

8 A. I'm sorry, maybe I misunderstood your
9 first question.

10 Are you asking me if we changed laws as
11 something relating to this letter?

12 Q. That's correct.

13 A. Okay.

14 I think I need you to rephrase the
15 original question, because I don't think I was
16 actually answering the question that maybe you were
17 asking.

18 Q. So the original question was, have you
19 changed any laws?

20 A. Unrelated to that letter.

21 Q. Related to the letter.

22 A. Can you be a little bit more specific?

23 Q. So what is your recommendation about the
24 current deadlines for absentee and mail-in ballots
25 to be accepted and counted?

1 A. I'm just going to repeat that. I think
2 your question is, what is my recommendation for what
3 the change should be to make sure that the absentees
4 and mail-ins are counted?

5 Q. That's correct.

6 A. Based on the current circumstances and
7 delays today, we believe that they should be
8 postmarked - that all ballots should be postmarked
9 no later than November 3rd and received by Friday,
10 November 6.

11 Q. And how long - is that different than the
12 existing received-by deadline?

13 A. What I recommended, is that different
14 than the current received-by deadline? Yes.
15 Otherwise, I wouldn't need to be here today.

16 Q. So my question is, given that 25
17 Pennsylvania statute 314 - 46.6 establishes that all
18 absentee or mail-in ballots must be received on or
19 before 8:00 p.m. the day of the primary election,
20 you must have changed an existing law to make that
21 appropriate.

22 Is that right?

23 A. I have no idea what that question was.

24 Q. So currently Pennsylvania's law says that
25 - I think we could be potentially talking past each

1 other, but right now what is the deadline for
2 absentee mail-in ballots to be received?

3 A. I think we already established that it's
4 on Election - 8:00 p.m. on Election Day.

5 Q. Is that established by Pennsylvania law?

6 A. It is.

7 Q. And is your recommendation inconsistent
8 with that?

9 A. My recommendation is that it be
10 postmarked - based on the current circumstances,
11 that either by judicial - by judicial Order, based
12 on those circumstances here before us today or by
13 legislative change, we would be advocating, as a
14 matter of policy, prior to this for a long time.
15 But the circumstances before us today have gone
16 beyond the matter of policy. They have transitioned
17 to a matter -.

18 Q. But I only -?

19 A. And I'm going to answer the question.

20 Q. But I only have ten minutes.

21 It's yes or no.

22 This is inconsistent.

23 Right?

24 JUDGE LEAVITT: I'd like the witness
25 to be able to answer the question, please.

1 You may finish your question (sic).

2 THE WITNESS: All right.

3 As I explained -.

4 JUDGE LEAVITT: At the end of this,
5 you can ask her if it's a yes or a no. She's
6 allowed to explain her - her yes or no. And if you
7 could make it speedy, that would help.

8 THE WITNESS: Sure. Thank you, Your
9 Honor.

10 The questions have been about - the
11 question was about as convoluted -. I mean, are you
12 trying to ask me whether I'm asking for relief
13 that's different than current law?

14 Yes, obviously I wouldn't need to be
15 here if I was asking for what already existed under
16 current law.

17 BY ATTORNEY EVANS:

18 Q. That's fair. But you haven't changed any
19 law.

20 Right?

21 A. Of course I haven't changed them. Me
22 personally, I have not changed any law.

23 Q. So when - when would you recommend that
24 voters vote to make sure their ballot is counted in
25 the November 3rd election?

1 A. I'm sorry. Can you repeat the question?

2 Q. When would you encourage voters to vote
3 to ensure that their ballot is counted in the
4 November 3rd election?

5 A. I recommend that they apply today or
6 yesterday or a month ago. We recommend that they
7 apply as early as humanly possible if they're voting
8 by mail. They can now, based on Act 77, go in
9 person. Once the ballots are finalized, we're
10 recommending that - the counties are opening
11 satellite election offices. And now, as authorized
12 under Act 77, any voter can go in person and request
13 a mail-in ballot while they are in the office and
14 fill it out and cast that ballot all in one day,
15 weeks before Election Day. We're recommending that.

16 Or we're recommending that if you prefer
17 to go in person on Election Day, that you vote on
18 November 3rd. And we're going to make sure that
19 every polling place has - is a safe place to vote.
20 However, you vote, do it as soon as you possibly
21 can.

22 Q. Now, did you consider moving the deadline
23 for absentee ballot applications to be received in
24 three days as your recommendation?

25 A. I'm sorry, can you repeat the question?

1 JUDGE LEAVITT: Would you consider
2 different approach, namely advancing the date from
3 the 27th to the 22nd of October?

4 THE WITNESS: The application -?

5 JUDGE LEAVITT: Advancing the deadline
6 for the application.

7 THE WITNESS: Okay.

8 So that's not a claim before us in
9 this litigation. So we - we were just - we were
10 working with the existing claims. This wasn't
11 obviously a lawsuit that we brought, so it wasn't -
12 it wasn't an issue.

13 But as a matter - we've been in - in
14 discussions with the legislature and the counties
15 about different aspects of the process. And so the
16 problem with - but the application, you know, as we
17 were talking earlier -. And I think the Postal
18 Service - the gentleman from the Postal Service
19 talked about this, too. There are multiple stages
20 in the process. Right?

21 The application needs to filed by the
22 voter by a week before Election Day. And so like
23 just for context in -. So for example, the
24 legislature just introduced a law that moves that
25 back. In the primary, 400,000 Pennsylvanians

1 applied for their ballot in that week difference.

2 So when we go back to the balance that
3 we're trying - that we always were trying to find at
4 the Department of State -. When there is a problem,
5 we are always trying to design a solution or propose
6 a solution that doesn't end up with greater
7 disenfranchisement as a result of it, that
8 counteracts, or you know, worse - makes worse the
9 disenfranchisement they may be trying to solve.

10 So for example moving back the
11 application deadline may help - allow people to, you
12 know, send in their applications sooner, but it also
13 prevents people during that period from applying.
14 So for example, that in-person absentee that we
15 talked about, which we now have in Pennsylvania,
16 which is great tool for people and it takes the
17 pressure off the mail, and it takes the pressure off
18 Election Day -. If you cut off a week of that,
19 that's a lot of people who are losing that option,
20 which is a great option for Pennsylvanians.

21 And most importantly, it doesn't help
22 that 60-year-old voter with a disability from Tioga
23 County, who for 30 years had been mailing her ballot
24 six days before Election Day, five days, seven days
25 before Election Day. No matter when the application

1 deadline is, it will not help her when her ballot
2 isn't received on time due to current delivery
3 delays at the Postal Service.

4 And so it might help some people. It
5 might prevent voting right now for a lot of people.
6 And it doesn't help ultimately that voter who has
7 done what she's done for 30 years and can no longer
8 rely on that.

9 BY ATTORNEY EVANS:

10 Q. So moving back - moving back the
11 received-by deadline for absentee mail-in ballots,
12 does that risk treat - treating voters unequally?

13 A. I'm sorry, I don't understand.

14 Q. Would you agree with me that moving back
15 the received-by deadline for absentee and mail-in
16 ballots could allow one voter to have a longer
17 deadline for a vote to be received than another
18 voter? Would you agree with that?

19 A. Are you talking about the application
20 deadline? You're saying move back or move forward.
21 I'm not sure which direction you're talking about.
22 Are you talking about the application deadline or the
23 mail-in ballot deadline, and which direction are you
24 going?

25 Q. So when I refer to received-by deadline, I

1 was - I'm referring to the deadline which is at issue
2 in this case for absentee and mail-in ballots to be
3 received in order to be accepted and counted.

4 A. So what's current on Election Day?

5 Q. So currently, a proposition, your
6 recommendation has been to move back the deadline for
7 absentee and mail-in ballots to be accepted three
8 days. My question is, does allowing that three-day
9 deadline to be extended allow for the unequal
10 treatment of voters?

11 A. Not any more than anything else. I mean,
12 the mail is the mail. So if you have a circumstance
13 where for one voter it takes four days and another
14 voter it takes five days, that's going to be the
15 situation regardless of when you make the deadline.

16 Q. So would you agree with me that if I send
17 my ballot in on November 3rd, and it was counted, and
18 someone else sent their ballot in and it was received
19 on November 6th and it was counted, the person that
20 sent their ballot in on November 6th got three more
21 days than I did for their ballot to be counted.

22 Is that right?

23 A. You - you can't send your ballot on
24 November 6th. It has to be postmarked by the same day
25 as everybody else.

1 Q. But what if there's no postmark?

2 A. Again, you heard the Postal Service - in
3 every postal communications that I've received is the
4 Postal Service puts either postmarks or cancellation
5 marks on the mail. So are there going to be a very
6 small minority of cases where an error's made and it's
7 missing? Sure, but why should that voter be penalized
8 for that?

9 Q. Well, my question is whether some voters
10 would get unequal treatment. And it was one of your
11 recommendations that if there was no postmark, you
12 presume that they'd be postmarked by Election Day?

13 A. As long as it's received by the Friday,
14 and that's across the board for every voter. That
15 doesn't discriminate against voters. It's whether
16 they live in - whatever county they live in anywhere
17 in the country. It's the same rules.

18 Q. And so it's your testimony today that that
19 would not allow one voter to get three more days than
20 another voter for their vote to be counted?

21 A. No. It's no different than it is today.
22 If you put your ballot in the mail, and it's there by
23 November 3rd, and I put my ballot in the mail the same
24 day and it doesn't get there by November 3rd, that's a
25 matter of the mail. And whether you make it November

1 3rd or you make it November 6th, that doesn't change
2 the equation in anyway.

3 Q. If someone dropped their piece of mail in
4 the mail on November 3rd, is there any possibility
5 that it would be received on November 3rd?

6 A. I - it's hard for me to imagine how that's
7 possible.

8 Q. So you would agree with me that if it was
9 sent on November 3rd and received on November 6th that
10 you got three more days than the person who sent it on
11 November 1st and it was received on November 3rd.

12 Right?

13 A. Everybody has the same deadline. I don't
14 apply - no, I'm answering your question. I might
15 apply four months before you do. That's - you know,
16 and we might get our ballots on the same day. We
17 might return our ballots on different - you might
18 return your ballot earlier than me, but have it
19 received later. That's - what we're trying to do is
20 make sure that the Postal Service delays that didn't
21 exist before don't disenfranchise tens or hundreds of
22 thousands more people than it ever did before.

23 JUDGE LEAVITT: Mr. Evans, I'll allow
24 one more question.

25 ATTORNEY EVANS: Sure.

1 BY ATTORNEY EVANS:

2 Q. And my last question, Secretary Boockvar,
3 is, in your experience, do most people cast ballots in
4 the last two weeks of the election?

5 A. Yes. It appears that way based on the
6 numbers and listing them.

7 Q. And that's not unique to this election, is
8 it?

9 A. I haven't reviewed data recently to our
10 prior elections, but I think as a general rule,
11 absentee ballots tend to come in towards the end of
12 the process.

13 Q. And could there be a possibility, given
14 how hard you and the Postmaster General and other
15 people who are pushing people to vote early, that
16 possibly ballots are casted earlier in this election
17 than - than they are in most other elections?

18 A. I hope so.

19 Q. All right.

20 ATTORNEY EVANS: No further questions,
21 Your Honor.

22 JUDGE LEAVITT: Do you have any
23 Redirect?

24 ATTORNEY HANGLEY: Your Honor, can I
25 have one moment just to consult with my -?

1 JUDGE LEAVITT: Yes.

2 ATTORNEY HANGLEY: Thank you. No
3 further questions, Your Honor.

4 JUDGE LEAVITT: All right.

5 The Court has a couple questions. How
6 many ballots were cast in the primary this year?

7 THE WITNESS: Total including in
8 person votes, or just mail-in?

9 JUDGE LEAVITT: All - the mail-in was
10 1.4 million, or close to 1.5 million. How many total
11 ballots were cast?

12 THE WITNESS: So close to 2.9 million.
13 It was near record turnout for a presidential primary,
14 for uncontested in particular.

15 JUDGE LEAVITT: I'm not sure I
16 understand the basis for the one to three-day. Is
17 this something more than an urban legend?

18 THE WITNESS: I didn't - you know, I -
19 I said earlier, I send a letter every year. And like,
20 it's more than that. Bills due, and - and again, it's
21 on - literally right now as we speak. It's on the
22 Postal Service's website. Not on an old page, on a
23 page that if you Google, you will find one -.

24 JUDGE LEAVITT: It'll say one to three
25 days?

1 THE WITNESS: Yeah. And - and
2 generally, that has been the case. I mean, honestly,
3 up until this year, the Postal Service in this country
4 has been faster than the majority of the countries
5 around the world. It's really been remarkable, but
6 things are different this year.

7 JUDGE LEAVITT: What - what have you
8 done to educate the voters or help the county boards
9 of election educate the voters that wait, they'll
10 procrastinate their deadlines and you may get caught,
11 you know? If you show up at the polling at like 8:05,
12 you're going to be sent home. So what have you been
13 doing?

14 THE WITNESS: So we started really -
15 so there was a pre-primary period, and now - now we're
16 in the pre-general period. So we - thank goodness we
17 got some federal appropriations which gave us some
18 funding that we could use for this purpose. So before
19 the primary and in the next couple weeks we'll be
20 doing it again, we send a postcard to every household.

21 So the primaries are just primary
22 voters. For the general, it's all registered voter
23 households are going to get a postcard telling them
24 that they all have the ability to vote by mail, how to
25 do it, votespa.com, they can call an 877 number to get

1 a line in Spanish to make sure that people who don't
2 speak English -.

3 JUDGE LEAVITT: So - so the postcard
4 says if you want to vote by mail, request your ballot
5 -

6 THE WITNESS: Today.

7 JUDGE LEAVITT: - by this date, but we
8 recommend an even earlier date? Is that what you -
9 what the mailing will say?

10 THE WITNESS: Everything we send says
11 that, and so we've - we're doing postcards. We're
12 doing radio ads bilingual. We're doing TV ads
13 bilingual, we're doing digital platforms, everything
14 that -.

15 JUDGE LEAVITT: If there's a - because
16 you have a diverse populace in Pennsylvania, you don't
17 reach them all the same way. But all right. What
18 you're - there's typically targeting the mail in
19 absentee voting option, and the need to act promptly?

20 THE WITNESS: Exactly. And - and we
21 did in the primary too. In fact - so we're also
22 ending emails to voters for which we have contact
23 information. And so that allowed us - for the people
24 that we had records for, it allowed us to target. So
25 at some point, we literally stopped telling people to

1 mail it. And we stopped telling people to apply. We
2 started pushing them into the get your ballot in today
3 mode, and we're going to do all that again. Even with
4 all that, more communication than we've had, you know,
5 in a long time, still almost half the ballots came in
6 that last week.

7 JUDGE LEAVITT: What kind of
8 information campaign did the Department of State run,
9 say a year ago, before we had Act 77?

10 THE WITNESS: Very little. We don't
11 get - we don't generally get funding for that kind of
12 thing, and there are appropriations. So we had
13 created - really beginning from when we were upgrading
14 the voting systems in all the counties, we created
15 what we call Ready to Vote 2020, an initiative with
16 the - you know, for us to support the counties in
17 helping to educate the voters.

18 So we created 67 individualized
19 webpages added onto the Department of State's website,
20 telling all the voters everything they need to know.
21 That there's a new voting system, how to use it, what
22 accessibility features they had. And then, when Act
23 77 passed, we expanded it to include information about
24 vote by mail, how to complete an online application to
25 vote by mail. I mean, we've really done tremendous

1 amounts that have never been done before in
2 Pennsylvania and are continuing that.

3 JUDGE LEAVITT: Previously, we'd
4 remind voters to find out from the counties or on
5 their own initiative how do I get an absentee ballot,
6 I'm going to be out of town on Election Day, or even
7 how to register. I mean, it - does - does your public
8 relations campaign explain that you have to register
9 in order to vote?

10 THE WITNESS: So it goes through all
11 of the - all the different pieces. And this again,
12 this started before the primary. So before the
13 primary, it - it tells registration deadlines and
14 again, it says don't wait, because the registration
15 deadlines also changed under Act 77. It talks about
16 vote by mail, but it also talks about in-person
17 options, you know, and making sure that everybody knew
18 that no matter what choice you made, that it's going
19 to be a safe, secure choice. But even with really
20 blasting it out in a way that's never been done
21 before, still, half the voters were - votes were cast
22 that week.

23 JUDGE LEAVITT: Okay, thank you.

24 THE WITNESS: Thank you.

25 JUDGE LEAVITT: You may now step down.

1 CRIER: Yes.

2 JUDGE LEAVITT: All right.

3 Mr. Torchinsky -.

4 ATTORNEY NKWONTA: Your Honor, I'm
5 sorry. I mean reporting again. May Secretary
6 Boockvar be excused? I just want to confirm that with
7 the court.

8 JUDGE LEAVITT: I'm sorry?

9 ATTORNEY NKWONTA: I'm sorry. I just
10 wanted to confirm with the court. May Secretary
11 Boockvar be excused at this point?

12 JUDGE LEAVITT: Yes, I'm sorry. I
13 thought that was -.

14 ATTORNEY NKWONTA: Okay.

15 I just wanted to be sure, thank you.

16 JUDGE LEAVITT: All right.

17 When I said step down, I meant really
18 step down.

19 ATTORNEY NKWONTA: Thank you, Your
20 Honor.

21 JUDGE LEAVITT: Yes, you're welcome.

22 ATTORNEY SHEEHY: May I proceed, Your
23 Honor? Thank you, Your Honor. The Senate Intervenors
24 call Mr. Michael Plunkett.

25 CRIER: Sir, if I could just ask you

1 to please raise your right hand?

2

3

MICHAEL PLUNKETT,

4

CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND

5

HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS

6

FOLLOWS:

7

--

8

CRIER: Thank you.

9

10

EXAMINATION ON QUALIFICATIONS

11

12

BY ATTORNEY SHEEHY:

13

Q. Good afternoon, sir. Could you please

14

state your name for the record?

15

A. Michael Plunkett.

16

Q. And where are you currently employed?

17

A. I'm employed by the Association for Postal

18

Commerce, better known as PostCom.

19

Q. Let's take - take a step back. We can go

20

through your educational history, briefly. Where did

21

you go to undergraduate?

22

A. Pennsylvania University, University Park,

23

1980 to 1984.

24

Q. And what degrees did you render?

25

A. I have a BS in finance, and a BA in

1 economics.

2 Q. And do you have any upper Master's degree
3 educational?

4 A. I have an MBA from the Wharton School with
5 the University of Pennsylvania, and I also have an MBA
6 from the Massachusetts Institute of Technology in
7 Cambridge, Massachusetts.

8 Q. And what year were those degrees from?

9 A. Wharton would be 1993 to, MIT 2009.

10 Q. And have you been employed at the U.S.
11 Postal Service?

12 A. Yes, for more than 25 years.

13 Q. And when did you start at the Postal
14 Service?

15 A. 1984.

16 Q. And what were your duties at the Postal
17 Service in 1984?

18 A. In 1984 I worked in operations as a letter
19 carrier.

20 Q. And -?

21 JUDGE LEAVITT: Is there - is it
22 possible for you to turn up the volume? Or - or maybe
23 that's where IT - can you hear him, Mr. Nkwonta?

24 COURT REPORTER: Yeah, could be
25 louder.

1 THE WITNESS: Yes, I can. Can you
2 hear me?

3 ATTORNEY NKWONTA: If he could be
4 louder, I agree with you, Your Honor. If he could be
5 louder, that would be helpful, please.

6 THE WITNESS: Is that better?

7 JUDGE LEAVITT: I think. I was just
8 wondering, if there's something you can do, Mr.
9 Bolton?

10 MR. BOLTON: The - there should be a
11 receive volume on the screen. You know, you just turn
12 it up and make it - for hearing.

13 JUDGE LEAVITT: All right, that's
14 better. All right.

15 Can you hear, Attorney Torchinsky?

16 ATTORNEY SHEEHY: Yes, Your Honor.
17 I -.

18 JUDGE LEAVITT: Okay, all right.

19 I'm sorry for the interruption.

20 ATTORNEY SHEEHY: No, I appreciate it
21 Your Honor, thank you.

22 BY ATTORNEY SHEEHY:

23 Q. Mr. Plunkett, what were your job duties at
24 the Postal Service from 1995 to 1999?

25 A. In 1995, I was hired as an economist in

1 the Postal Service's Budget Office. I worked as an
2 economist in the Budget Department, and leader in
3 pricing for about four years after which I was
4 promoted to managerial and executive positions which I
5 held in product development, pricing, business
6 development, and retail management.

7 Q. And Mr. Plunkett, if we could break that
8 down. As an economist from 1995 to 1999, did your
9 duties include work load forecasting and productivity
10 measurement?

11 A. Yes, they did.

12 Q. And did that, did those duties include
13 analyzing postal delivery times?

14 A. Occasionally, yes.

15 Q. And did that include analyzing how the
16 postmarks were applied?

17 A. Not in that particular position, no.

18 Q. In 1999, were you promoted at the Postal
19 Service?

20 A. Yes, I believe it was 1999.

21 Q. And what was your position that you were
22 promoted to?

23 A. I became the manager of internet messaging
24 services.

25 Q. And what - what were your duties as the

1 manager of internet messaging services?

2 A. At the time, the Postal Service was
3 working to develop a concept called hybrid mail
4 whereby consumers of small businesses could convert
5 electronic documents into hardcopy, mail pieces. And
6 for about a year and a half, I was the program manager
7 of that activity.

8 Q. And what did your duties include in
9 developing the hybrid mail system?

10 A. Managing the team specialists, to roll out
11 the technology, also to acquire and develop
12 intellectual properties to support the program. It
13 also included developed marketing and promotional
14 materials for the program. It also included gaining
15 regulatory approval so that the Postal Service could
16 offer our program because, you know, the Postal
17 Service was and is still a highly regulated entity.
18 And any time it develops a new product or service,
19 there is a regulatory process that must be followed.
20 So as the program manager I was responsible for all of
21 those things.

22 Q. And in 2000, you became the Vice
23 President?

24 A. Yes, I became the Associate Vice President
25 of the business development.

1 Q. Okay.

2 And what did your job duties include as a
3 vice president for business development?

4 A. I was specifically tasked with helping to
5 develop an internal process for vetting and approving
6 new business concepts and ideas so that they could
7 gain internal approval and funding to development -
8 develop and to review and improve exit services.

9 Q. And as part of your duties, did it require
10 any kind of understanding of postal delivery times?

11 A. In some cases, yes.

12 Q. And were you promoted after you received
13 associate vice president for business development?

14 A. In other words, a reorganization in my
15 department was eliminated.

16 Q. And so, what was your job title in 2002?

17 A. I became the manager of pricing
18 innovation.

19 Q. Okay.

20 And what were your duties as the manager
21 of pricing strategies and innovation?

22 A. At the time, the Postal Service was
23 interested in identifying the boundaries of pricing
24 regulations by exploring untapped opportunities in
25 postal ratemaking, including contract pricing and

1 pricing of new innovative products and services.

2 Q. And as part of your duties as a manager,
3 did you analyze service performance and delivery
4 times?

5 A. Yes.

6 Q. Are you familiar with the forever stamp?

7 A. Yes, of course.

8 Q. And how are you familiar with it?

9 A. I was part of a team that put together a
10 pool of pricing ideas that we presented to senior
11 postal leadership as offering the best opportunities
12 for development, and the forever stamp was one of
13 those ideas.

14 Q. And as part of those duties - you're
15 familiar with the postmarks?

16 A. Yes.

17 Q. And did you have to analyze how the Postal
18 Service supplied postmarks?

19 A. Not for that particular project, no. I
20 mean, they did - it's a different kind of stamp, but
21 it would've been processed and cancelled in the exact
22 same way as any other stamp that you use.

23 Q. In your 25 years at the Postal Service,
24 you have had occasion to study how the Postal Service
25 applies postmarks?

1 A. Yes, of course.

2 Q. How many times have you testified as an
3 expert witness on behalf of the Postal Service?

4 A. It's about 15 to 20.

5 Q. And were - those times that you testified
6 as an expert witness, was that before the Postal Rate
7 Commission?

8 A. Yes, that's correct.

9 Q. And did the subject matter of that
10 testimony include your knowledge of postal delivery
11 times?

12 A. Sometimes, yes, it did.

13 Q. And did that subject matter of your
14 testimony include your knowledge of postmarks?

15 A. I don't recall if it specifically touched
16 on postmarking or cancellation operations.

17 Q. Now, what is your current position?

18 A. I'm the President and Chief Executive
19 Officer of the Association for Postal Commerce, better
20 known as PostCom.

21 Q. And what are your duties at PostCom?

22 A. Well, we're a trained association and we
23 represent companies in the mailing industry. That
24 would include commercial mailers like banks and
25 insurance companies, and also we supply the printers,

1 the logistics and transportation companies, technology
2 firms, and others to support mailers. We also
3 represent the largest shipping companies like DHL,
4 UPS, and FedEx, but we also represent other trade
5 associations. We're active in the mailing industry.

6 We're a small, two person association, and
7 our - our services primarily revolve around advocacy
8 and education. So on behalf of our member companies
9 and their representatives, we track activities and
10 developments in the postal industry and postal
11 operations. And we're needed as activists, advocates
12 on behalf of our members in regulatory proceedings or
13 improvement oversight bodies, like the Government
14 Accountability Office, the Office of the Inspector
15 General, and - and so forth.

16 Q. And are part of your duties as the
17 President of PostCom to review Postal Regulatory
18 Commission reports concerning delivery times?

19 A. Yes, absolutely.

20 Q. And how often do you review those reports?

21 A. Well, reports are issued quarterly. And
22 so, at a minimum we review them quarterly. The postal
23 does also, on an annual basis, files a document called
24 annual compliance report with the Postal Regulatory
25 Commission which - which contains extensive

1 operational and service data on a wide range of postal
2 products. And every year, we are active participants
3 in the proceeding that the Regulatory Commission
4 undertakes to assess the annual compliance reports,
5 it's called the annual compliance determination.

6 So as part of my activities with my
7 association, we are active litigants in that
8 proceeding, and it's my job to prepare and analyze
9 anything we file relating to that report.

10 Q. And how long have you served as the
11 President for PostCom?

12 A. This is my fifth year.

13 Q. So as part of your duties as the President
14 of PostCom, how many times have you reviewed Postal
15 Regulatory Commission quarterly reports?

16 A. Well, at - at least 17, but it's much,
17 much more than that. We review them when they come
18 out, but depending on issues that may be raised by
19 members, we have occasion to go back and revisit
20 things on an annual basis. So that's easily 25 to 30.

21 Q. And what is the purpose of reviewing the
22 reports?

23 A. Well, we - we consider ourselves to be the
24 stewards of the mailing industry and always examine
25 the Postal Service's performance to see if they are

1 performing in accordance with service standards. And
2 if they're not, to help to identify shortcomings or
3 recommend ways in which postal reporting service could
4 be improved with an eye towards improving the
5 underlying service performance.

6 Q. And as part of your duties, do you stay
7 informed of post office policies concerning postmarks?

8 A. Yes. Although, the postmarking is, that's
9 not something that changes with great frequency, but
10 yes.

11 ATTORNEY SHEEHY: Your Honor, at this
12 time I'd like to have the court recognize Mr. Plunkett
13 as an expert witness in postal delivery performance
14 standards and practices regarding postmarks.

15 JUDGE LEAVITT: Okay.

16 Do you have any voir dire?

17 ATTORNEY NKWONTA: Yes, Your Honor,
18 Petitioners object. I have a few questions for Mr.
19 Plunkett.

20 ---

21 EXAMINATION ON QUALIFICATIONS

22 ---

23 BY ATTORNEY NKWONTA:

24 Q. Good afternoon, Mr. Plunkett.

25 A. Good afternoon.

1 Q. Mr. Plunkett, when was the last time you
2 worked at the U.S. Postal Service?

3 A. 2012.

4 Q. So you have not worked with the U.S.
5 Postal Service within the last eight years.

6 Is that correct?

7 A. That's correct.

8 Q. And when you did work at the U.S. Postal
9 Service, were any of your positions related to or
10 required you to participate in development policies
11 for Postal Service operations?

12 A. Yes.

13 Q. But - with which operations?

14 A. Well, I'm not sure I can recall all of
15 them.

16 Q. Maybe I can - maybe I can narrow this down
17 a little bit. Which of your prior experiences
18 required you to assess the USPS's ability to meet its
19 delivery standards?

20 A. Well, again that's encompassed in the
21 pricing function. That would've been part of my
22 duties and responsibilities as an expert witness on
23 any kind of rate development for postal products.
24 Part of that is knowing the service performance and
25 understanding the service commitments that are made

1 for those products. As an executive in other
2 functions, I was part of a number of, as you might
3 imagine, cross functional activities wherefrom postal
4 policies are developed. Postal policies and postal
5 pricing are intertwined inextricably, and have been
6 for decades.

7 Q. In your work at the USPS, did you ever
8 communicate with any election officials regarding
9 election mail?

10 A. No.

11 Q. Did you communicate with anyone in your
12 work at USPS regarding election mail?

13 A. Well, I - I want to point something out.
14 Election mail is not a distinct product in postal
15 departments. Election mail is a specific use of other
16 postal products, including first class mail, marketing
17 mail, and business reply mail. I have strictly
18 communicated with officials on those products, but
19 again, in postal terms, election mail is not a
20 specific self-contained product.

21 Q. Fair enough. But in your role at USPS,
22 you have never been required to conduct any activity
23 with respect to delivery on mail that was, or delivery
24 of other types of election mail specifically?

25 A. That's correct.

1 Q. The USPS's current delivery standards and
2 policies and procedures, were you employed at the USPS
3 when they were developed?

4 A. To some extent, yes.

5 Q. To what extent would you say yes?

6 A. Well, the Postal Service delivery
7 standards are largely unchanged, but some years ago,
8 the Postal Service underwent some network realignment
9 which eliminated overnight delivery for much of First
10 Class Mail. I was not at the Postal Service at that
11 time, but that did not change the underlying service
12 standards for other postal products and services as a
13 whole.

14 Q. Have you ever assessed the Postal
15 Service's ability to meet its delivery standards?

16 A. Yes, all the time.

17 Q. And what do you do to assess that? What
18 do you do review to assess that?

19 A. We review any operational changes that the
20 Postal Service makes. We review current announcements
21 and messages from the Postal Service that relates to
22 operational or other changes. We also review
23 materials prepared by Postal Service's regulator,
24 including filings that the Postal Service files with
25 its regulator. We also review reports by the

1 Government Accountability Office and the Postal
2 Service's Office of the Inspector General, which
3 occasionally or frequently impact fair amount of
4 Postal Service's ability to perform to its mission.

5 Q. So you review materials published by the
6 Postal Service, and you come to your own conclusions
7 about what they mean.

8 Is that fair?

9 A. Well, I - generally, before reaching our
10 own conclusions, I seek the opinions of other people
11 with expertise in that area, including any of our
12 members.

13 Q. As you sit here and offer opinions in this
14 case, is it fair to say that your opinions are based
15 on your review of materials published by the Postal
16 Service and you reaching your conclusions as to what
17 those materials mean?

18 A. Those were factors, of course. I've
19 spoken with other people in our industry about
20 developments over the last several years. So my
21 opinions and judgements are informed by other sources
22 as well.

23 Q. So your opinions and judgments are formed
24 by reviewing materials posted by USPS, speaking with
25 other people who are connected with the USPS you

1 mentioned, and then reaching your conclusion based on
2 those sources.

3 Is that fair?

4 ---

5 (WHEREUPON, THERE WAS A BRIEF INTERRUPTION IN THE
6 PROCEEDINGS.)

7 ---

8 BY ATTORNEY NKWONTA:

9 Q. Hello, Mr. Plunkett. Before we got cut
10 off, I was asking about your methodology of how you
11 arrive at your opinions. And you stated that you
12 review materials published by the Postal Service and
13 spoke to people.

14 Is that fair?

15 A. Yes.

16 Q. The people who you spoke to, who are they?

17 A. Well, in my routine dealings I speak with
18 postal officials, with postal customers, with the
19 suppliers to the postal customers, with experts from
20 the postal regulator, from other oversight bodies, and
21 with postal contractors. A wide spectrum of people in
22 our industry.

23 Q. And in reviewing those materials and
24 speaking with these individuals, and providing your
25 conclusions, what else forms your opinion aside from

1 meeting with others at USPS and speaking with these
2 individuals?

3 A. Well my personal experience is my
4 technical and other education and, you know, as a
5 lifelong practitioner in the postal system, so on and
6 so forth. A range of actors I would say.

7 Q. I'm talking specifically about your
8 opinions relating to the USPS's ability to meet
9 delivery standards and its ability to deliver mail on
10 time.

11 A. Yes.

12 Q. So other than reviewing materials from the
13 USPS's website and talking to people, what experience
14 or expertise do you bring here to reach that - those
15 conclusions that you reached?

16 A. Well again, and I - in conducting a review
17 of any materials published by the Postal Service or
18 anyone else, I have backgrounds in financial and
19 statistical analysis. And again, decades of
20 experience in the Postal Service where service bears
21 on every function and position in the Postal Service.
22 So I would say those are relevant to my ability to
23 interpret and understand information that is provided
24 by the Postal Service on how well it's performing
25 according to its own standards.

1 Q. Do you know how that information is put
2 together, constructed?

3 A. To some extent, yes.

4 Q. When you say to some extent, what is it -
5 what is the source of your knowledge as to how the -
6 the information that you review is constructed?

7 A. Well, I understand the process by which
8 the Postal Service acquires information about how mail
9 loops through its network because the underpinnings of
10 the Postal Service's service measuring system is the
11 intelligent mail barcode which is applied by mailers
12 and used by the Postal Service to track pieces through
13 its network and to determine to what extent those
14 pieces are being delivered in accordance with service
15 standards.

16 The companies I represent are active
17 participants in development and technology standards
18 that support the intelligent mail barcode. We
19 represent printers who produce intelligent mail
20 barcodes, and we represent companies that - whose
21 business is actively tracking and reporting internally
22 on the Postal Service's performance, independent of
23 what the Postal Service produces itself. So I have
24 substantial familiarity with the way information is
25 provided to the Postal Service and how the Postal

1 Service uses it and interprets it before reporting on
2 their own services.

3 Q. Now your opinions about the Postal
4 Service's ability to meet its service standards
5 however, not - not just the actual reporting of its
6 service standards, but its ability to meet its service
7 standards and its ability to deliver mail on time.
8 That opinion is based on what you've read on public
9 facing websites and from individual conversations.

10 Correct?

11 A. Well - well certainly, any judgments about
12 the Postal Service's current or future abilities to
13 perform according to its service standards must be
14 informed by how the Postal Service has done so in the
15 past, and so naturally I would rely on publically
16 available information they release to how well the
17 Postal Service has been able to do that historically.

18 ATTORNEY NKWONTA: Your Honor, at this
19 time the Defendant would move to strike Mr. Plunkett
20 as an expert witness on the specific issues in this
21 case, which are the ability of the Postal Service to
22 deliver mail that was on time as reflected in the
23 Supreme Court's Order, and the Postal Service's
24 ability to comply with its delivery standards.

25 ATTORNEY WIYGUL: And Respondent is

1 joining that motion, Your Honor.

2 JUDGE LEAVITT: I'm sorry?

3 ATTORNEY WIYGUL: I'm sorry, I said
4 Respondents join the motion, Your Honor.

5 JUDGE LEAVITT: All right.

6 ATTORNEY SHEEHY: Your Honor, on
7 behalf of the Senate Intervenors, we have to disagree.
8 Mr. Plunkett is bringing 25 years of Postal Service
9 experience to this court, and in his 25 years he has
10 worked in areas involved with the postal delivery
11 service standards, and he continues to work in that
12 space. And he understands how those statistics are
13 developed. So I believe that he is qualified as an
14 expert, and they're certainly welcome to cross examine
15 him on the issue, but I do believe he's qualified as
16 an expert.

17 JUDGE LEAVITT: I'm going to overrule
18 the objection, and I'm going to qualify him as an
19 expert. I think that the question is the ability of
20 Postal Service to apply the deadline for the November
21 3rd, 2020 deadline. There's no expert that's actually
22 in the proposed office counting mail. They rely on
23 information that's collected and processed by the
24 Postal Service. So please proceed.

25 ATTORNEY SHEEHY: Thank you, Your

1 Honor.

2

3

DIRECT EXAMINATION

4

5

BY ATTORNEY SHEEHY:

6

Q. Mr. Plunkett, have you submitted a
7 declaration in this case?

8

A. Yes, I have.

9

ATTORNEY SHEEHY: At this time, I'd
10 like to have the court pull up Senate Intervenors'
11 Exhibit 1, if that's possible. Thank you.

12

13

(Whereupon, Senate Intervenors' Exhibit 1,
14 Mr. Plunkett's Declaration, was marked for
15 identification.)

16

17

BY ATTORNEY SHEEHY:

18

Q. And on page seven of this document, Mr.
19 Plunkett, I'd like to ask you if you could confirm
20 that is your signature?

21

A. It's not visible on my screen yet.

22

Q. That's fine. It's not visible on mine
23 either. There you go.

24

A. Yes, sir, that is my signature, yes.

25

Q. Is this a true and accurate copy of the

1 report you submitted in this case?

2 A. I believe so, yes. It appears to be.

3 Q. Now, we've already discussed your
4 knowledge of performance - delivery performance for
5 the Postal Service. I'd like to ask you a couple
6 general questions.

7 Does the U.S. Postal Service have a
8 national service performance standard for First Class
9 Mail delivery?

10 A. Well, they have - every three digit ZIP
11 Code area in the United States has its own, individual
12 service standards based on where they are in the
13 Postal Service's network and how what is required to
14 get that from that point of origin to other three
15 digit destinations around the United States.

16 Q. And what is the national performance
17 standard for First Class Mail?

18 A. Well, for the continuous 48 states, it's
19 two to three days. For Alaska and Hawaii and Puerto
20 Rico, it's up to five days. And for outlying
21 territories as such as Guam, it could be as long as
22 six days for First Class Mail.

23 Q. And Mr. Plunkett, does the U.S. Postal
24 Service have a service performance standard for First
25 Class Mail delivery in Pennsylvania?

1 A. Yes, they do.

2 Q. And what is that standard?

3 A. Well, for most of Pennsylvania it's -
4 would be covered by a two day service standard for
5 mail within the State of Pennsylvania. Pieces moving
6 from one end of the state to the other end of the
7 state would generally fall into the three day service
8 standard.

9 Q. And what about mail that's sent in a
10 county? So intra-county mail?

11 A. Generally, it would be two days within
12 county, but there's going to be exceptions where it's
13 up to three days.

14 Q. Mr. Plunkett, is there a separate service
15 performance standard for election mail?

16 A. No, there's not.

17 Q. Now, does election mail receive different
18 treatment from other First Class Mail?

19 A. Yes. The Postal Service has put in place
20 a number of special internal processes to isolate,
21 identify, and track election or ballot mail within its
22 network, whether those ballots travel as First Class
23 Mail or as marketing mail.

24 Q. And what and how does the Postal Service -
25 what are the policies in place that the Postal Service

1 has to isolate and identify election mail?

2 A. Well for instance, they prescribe markings
3 for the face of election envelopes to identify
4 individual envelopes as election mail. They also make
5 available placards and tags to identify containers
6 that contain election mail so that when those
7 containers are entered into the postal network, they
8 can keep track of it and isolate it from other types
9 of mail. Electronically, the Postal Service also asks
10 mailers to identify, on mailing statements, if they're
11 submitting election mail.

12 And earlier, I was speaking about the
13 intelligent mail barcode. The Postal Service also
14 imposes three characters on intelligent mail barcodes
15 to what are called service type indicators so the
16 mailers can identify that specific pieces of mail are
17 carrying election materials. So there's a number of
18 different steps that the Postal Service takes to flag
19 this mail as it enters and moves through its network.

20 Q. Now, does that expedite the process and
21 delivery of election mail?

22 A. Yes. It actually makes sure that it
23 doesn't somehow get delayed or somehow mis-sent to a
24 wrong point in the network.

25 Q. So just so that I understand it. If First

1 Class Mail is sent within Pennsylvania based upon the
2 performance standard discussed, and it's delivered
3 within two to three days 98 percent of the time. What
4 would you expect the percentage to look like for
5 election mail?

6 A. Slightly better, given that the Postal
7 Service does take extra precautions to identify this
8 mail and to make sure that it's cleared at facilities
9 on a daily basis. So I'd expect it to be slightly
10 better than First Class Mail on average.

11 Q. Now, Mr. Stroman in his - in his report
12 that he submitted - or Petitioner submitted that
13 there's a postal target for on time delivery at 96
14 percent.

15 Does that sound accurate to you?

16 A. Yes. I would just point out that the
17 internal Postal Service target is inherently different
18 from official service standards, but that seems
19 possible.

20 Q. And what are the differences between
21 performance targets and performance standards?

22 A. Technically, service standards are subject
23 to regulation. It - so, for instance, if the Postal
24 Service wanted to elect service standards, it would
25 seek an advisory opinion from the Postal Regulatory

1 Commission to do so. If the Postal Service decides to
2 offer an internal target for achievement for any
3 product, it can do so any time it chooses, and some
4 enforcement at will.

5 Q. So if you could go to paragraph nine in
6 Senate Intervenors' Exhibit 1, and stop right there,
7 correct.

8 Do you see the table, Mr. Plunkett, that's
9 between paragraphs nine and ten?

10 A. Yes, I do.

11 Q. Could you please explain this table in
12 general terms?

13 A. Sure. And this table depicts how well the
14 service performed in meeting its service standards for
15 delivering First Class pre-sorted letters and
16 postcards during the second fiscal quarter of postal
17 year 2020 which covers the period of time between
18 January 1st and March 31st. And isolated in this
19 table are four of the districts in the Postal
20 Service's network which cover the State of
21 Pennsylvania.

22 Q. Now, which one of these columns is most
23 relevant for the delivery of election mail?

24 A. I would argue that it would be the central
25 column. It's the two day percent within one day, so

1 that would be the fourth numerical column from the
2 left. I would argue it's the most relevant. Maybe
3 the fifth column from the left, but I would say the
4 fourth.

5 Q. So the percentage within plus or minus one
6 day under the two day column?

7 A. That's correct.

8 Q. Now could you explain percent within plus
9 or minus one day?

10 A. Sure. So if I want to isolate a specific
11 column, if you look at the fourth column from the left
12 on any particular line in that table. What that shows
13 is what percentage of - of the First Class Mail in
14 that postal district was delivered within three days.

15 Q. Now -.

16 A. Which is two days, plus one of course.

17 Q. Okay.

18 But it also included mail that was
19 delivered in one day? Am I right about that?

20 A. Yeah - yes, but then it - if there is any,
21 it would be a very small quantity. Well, a smaller
22 quantity for sure.

23 Q. So for the eastern area between January
24 1st and March 31st, 2020 would - the average that
25 percent delivered within one to three days is 98.3

1 percent?

2 A. Yes, that's - that's a reasonable
3 interpretation, yes.

4 Q. Now, does this chart include mail that is
5 mailed from outside of Pennsylvania and into
6 Pennsylvania?

7 A. I believe it does, yes.

8 Q. Now what is the number of plus or minus
9 one day percentage delivered within plus or minus one
10 day and sent to Pennsylvania at the beginning - at the
11 beginning here in the second quarter?

12 A. Could you repeat that, please?

13 Q. Yes. For Central Pennsylvania, percent
14 within plus or minus one day for the two day column,
15 what is that -?

16 A. Ninety-eight (98) - 98.4 percent.

17 Q. And what does - what does that mean?

18 A. That means for mail going to Central
19 Pennsylvania that was - that fell within the two day
20 service standard, and that would generally be mail
21 originating for - in the State of Pennsylvania, that
22 98.4 percent of it was delivered either within one
23 day, two days, or three days.

24 Q. And what does that mean for, or what is
25 the percentage delivered between one and three days

1 for the Philadelphia Metro area from January 1st to
2 March 31st?

3 A. 98.2 percent.

4 Q. And how about for Western Pennsylvania?
5 What is the percentage delivered between one and three
6 days in Western Pennsylvania?

7 A. 98.8 percent.

8 Q. Now are those numbers higher than 96
9 percent?

10 A. Yes, certainly.

11 Q. So if we could go to the next table that's
12 above paragraph 12, please. And can you explain in
13 general terms what this chart says?

14 A. Yes. That's the service variance report
15 for pre-sorted First Class letters and postcards for
16 the first order - first calendar quarter of 2020,
17 which is the second postal quarter of fiscal year
18 2020. And as with the previous table, it shows the
19 percentage of mail delivered within one, two, or three
20 days of the service standards. But in this case, it
21 shows the way the volume is weighted by the quantity
22 of pieces that fall within each category for each
23 specific district covering parts of Pennsylvania.

24 Q. Now, down in the column where it says
25 weight, is that in pounds or is that the number of

1 pieces of mail sent between March 1st - I'm sorry,
2 January 1st, 2020 and March 31st, 2020?

3 A. Those would be pieces within the
4 measurement of the Postal Service.

5 Q. So for the eastern area two day, we're
6 looking at 163,818,279 pieces of mail.

7 Am I reading that correctly?

8 A. Yes, that's correct.

9 Q. And for that quarter in the eastern area,
10 would you agree with me that it's approximately 700
11 million pieces in the eastern area from January 1st,
12 2020 through March 31st, 2020?

13 A. Yes. If you could go across all three
14 service categories, it's approximately 700 million
15 pieces. That's right.

16 Q. And that was just as the Coronavirus
17 pandemic was impacting the United States?

18 A. Yes. There may be a very slight COVID
19 impact in these volumes, but post of the COVID impacts
20 on the postal volumes took place after March 31st.

21 Q. Now, in your 25 years of experience within
22 the postal - post office, Postal Service, sorry, as
23 well as your time at PostCom, are these numbers
24 roughly average? Are they above average or are they
25 below average?

1 A. Well, it depends on how you calculate the
2 average. These would be low because First Class Mail
3 volumes have been steadily declining for the last 13
4 years. Now, in the first quarter of this year there's
5 one unusual circumstance which is that the department
6 census dropped the single largest First Class mailing
7 in history. And some of that hit the postal - hit the
8 postal network in the quarter we're discussing, but by
9 any standard, these are below historical averages.

10 Q. Now, as the post - has the postal number
11 of pieces going through the Postal Service continued
12 to decline between April 1st, 2020 and June 30th,
13 2020?

14 A. Yes. So Postal Service's mail volumes are
15 down between 15 and 20 percent since the advent of the
16 COVID pandemic.

17 Q. Now, based on the 700 million pieces that
18 went through January 1st, 2020 to March 31st, 2020
19 would an addition of an 8,500,000 pieces of mail cause
20 this to overwhelm the system?

21 A. No, absolutely not.

22 Q. If you could go to the table that's
23 between paragraphs 14 and 15, please. And can you
24 describe what this table is?

25 A. That is a service variance report, but it

1 relates to flat shaped mail, not letters and
2 postcards. Again, for the same districts for the same
3 period of time as the previous tables. And again,
4 flat shaped mail rather than letter shaped mail.

5 Q. Now, are - those numbers on the table
6 between 14 and 15, are those numbers generally lower
7 than the numbers in the table between paragraphs nine
8 and ten?

9 A. Generally, yes. Flat shape - service
10 performance on flat shaped mail in all postal
11 categories generally laps the service performance for
12 letters and postcards.

13 Q. So in composites statistics that the
14 Postal Service has that talks about First Class Mail
15 generally which laps the lower, the performance
16 delivery statistics for First Class pre-sorted mail?

17 A. Slightly, but flat shape makes up a
18 relatively small proportion of total mail volume. So
19 composites is much more heavily weighted toward letter
20 service performance than flat.

21 Q. Now, since the post office flags and
22 isolates and identifies election ballots, are ballots
23 more likely treated as First Class flat or First Class
24 letters?

25 A. Ballots would be flagged irrespective of

1 shape, but my understanding is the overwhelming
2 majority of ballot mail travels as letters, not as
3 flats.

4 Q. If we can pull Senate Intervenors' Exhibit
5 4, please.

6

7 (Whereupon, Senate Intervenors' Exhibit 4,
8 Quarterly Performance for Presort First Class
9 Mail, was marked for identification.)

10

11 BY ATTORNEY SHEEHY:

12 Q. Do you recognize this document, Mr.
13 Plunkett?

14 A. Yes. That's the quarterly performance
15 report for First Class pre-sorted for the third
16 quarter for fiscal year 2020 which ended on June 30th
17 of this year.

18 Q. And have you reviewed this document
19 before?

20 A. Yes, I have.

21 Q. And is this a true and accurate copy of
22 the quarterly performance report by the U.S. Postal
23 Service for pre-sorted, First Class Mail?

24 A. It appears to be, yes.

25 Q. So what is the coverage date for this

1 document?

2 A. This would've been from April 1st, 2020 to
3 June 20th, 2020.

4 Q. Do you see under the performance
5 highlights, a little bit lower on this page?

6 A. Yes.

7 Q. If you could scroll up just a little bit.
8 My - my apologies, if you want to scroll down a bit.
9 My apologies. Thank you. Do you see where it says
10 the national two day performance was 93.2 percent on
11 time, which is 2.1 points lower than the same period
12 last year?

13 A. Yes.

14 Q. Do you know why there was a decrease of
15 2.1 points?

16 A. Well, the presumption and the explanation
17 that's been given is that because during this period
18 of time, there were localized instances of lack of
19 employee availability in postal facilities because of
20 the pandemic where a number of employees were either
21 ill or quarantined, and therefore unavailable to work,
22 which resulted in, in some cases, some significant
23 delays locally that would pull down the national
24 averages.

25 Q. You can go to the next page. Scroll down

1 a little bit further please. Thank you very much.

2 Now, we just went through the first quarter
3 statistics where for central Pennsylvania for two-day
4 mail, it was 98.4 percent of mail delivered between
5 one and three days.

6 Correct?

7 A. That's correct. That's subject to check,
8 but I believe that's correct.

9 Q. Now, for central Pennsylvania from April
10 1st through June 30 of 2020, what is the percent of
11 mail delivered between one and three days?

12 A. Well, are numbers invisible on my screen,
13 but I believe it's 97.9 percent.

14 Q. I'm sorry. I didn't hear what you said.
15 97.9?

16 A. 97.9, I believe, yes.

17 Q. Okay.

18 Is that within the margin of error of 98.4
19 percent?

20 A. Most certainly, yes.

21 Q. And is that within the margin of error for
22 the national average for the third quarter of last
23 year?

24 A. Subject to check, yes, I believe so.

25 Q. If you can scroll down to the top of the

1 next page? My apologies. Thank you.

2 A. And you said the national average for the
3 quarter?

4 Q. Yes. For fiscal year, third quarter?

5 A. Yes, slightly better but probably within
6 the margin of error, yes.

7 Q. And is that the same as the national
8 average overall last year, 97.9?

9 A. Yes, I would say so. Yes.

10 Q. So we can scroll back to page two, please.

11 Now, you testified in the Philadelphia
12 metro area from January 1st, 2020, to March 31st,
13 2020, the percentage of mail in Philadelphia metro
14 area, first class mail, was delivered one to three
15 days was 98.2 percent.

16 Correct?

17 A. Subject to check, yes.

18 Q. And what is that percentage of mail
19 delivered between one to three days between April 1st,
20 2020, and June 30 of 2020?

21 A. 97.4 percent.

22 Q. And is that within the margin of error for
23 the national average last year?

24 A. It would certainly - no, it's really
25 close. Yes.

1 Q. Now, if you were still in your managerial
2 position at the Postal Service, would 97.4 percent of
3 mail delivered between one to three days cause you
4 alarm?

5 A. Due to the circumstances, and I have no
6 personal insight into employee availability in the
7 facilities in Pennsylvania, certainly not.

8 Q. And what about the western Pennsylvania
9 region? You testified that from January 1st, 2020 to
10 March 31st, 2020, that mail was being delivered
11 between one to three days in the western region at
12 98.8 percent.

13 Correct?

14 A. Correct.

15 Q. And what is the percentage of first class
16 mail being delivered between one to three days in the
17 western region between April 1st, 2020, and June 30 of
18 2020?

19 A. 98.5 percent.

20 Q. And is that within the margin of error?

21 A. Yes.

22 Q. Is that better than the national average
23 last year?

24 A. Yes.

25 Q. Is that better than the national average

1 from last year in this quarter?

2 A. I believe so, yes.

3 Q. And are all of these numbers either from
4 the second fiscal quarter or from the third fiscal
5 quarter? Are they all higher than 96 percent?

6 A. Subject to check, yes.

7 Q. What do you conclude from these
8 statistics?

9 A. That whatever effects the postal network
10 might have had as a result of the Coronavirus during
11 the third fiscal quarter of 2020, does not appear to
12 have had any measurable or meaningful impacts on
13 service performance in the eastern area, the eastern
14 administrative area of the postal network.

15 Q. Now, based upon the statistics that we
16 just discussed, if a voter requested a ballot on
17 October 27th, is it possible that the ballot will be
18 received by the voter and returned to the County Board
19 of Election by November 3rd, Election Day?

20 A. What day of the week is October 27?

21 Q. Yeah.

22 A. I'm sorry. What day of the week is that?

23 Q. Oh, I'm sorry. October 27th is a
24 Wednesday.

25 A. A Wednesday?

1 Q. Yes.

2 A. Okay.

3 So if - I'm going to presume that the
4 election official who receives their request has
5 ballots available to send out when they get the
6 request. So if that ballot was sent out that day and
7 was received by the Postal Service before cutoff time,
8 then most likely the situation is that the voter would
9 get it on Friday. In some isolated instances, maybe
10 Saturday.

11 If the voter returns around immediately,
12 meaning voter receives it on Friday and deposits it in
13 the mail the same day, under most circumstances, the
14 election officials should get that ballot back by
15 Monday.

16 Q. So there would be a one-day turnaround for
17 that ballot to be received by Election Day?

18 A. Barring some unexpected or unforeseen
19 circumstances.

20 Q. Now, if October 27th is, in fact, a
21 Tuesday, so there's actually one week between the
22 county office receiving a request perhaps and mailing
23 the ballot and Election Day, is it possible that the
24 ballot will be returned to the county election office
25 by November 3rd on Election Day?

1 A. Well, if the request is received on that
2 Tuesday, then, again, it would be most likely the
3 outcome is if the voter would receive their requested
4 ballot the subsequent Thursday. And if the voter
5 deposited that ballot with the Postal Service on
6 Thursday, then under those circumstances, you would
7 expect the county to receive the ballot back by
8 Saturday. The Postal Service has shortened hours on
9 Saturdays, although in the case of election mail, it
10 will almost certainly be making some exceptional
11 cutoff times. But even if the mail were not received
12 by the Postal Service early enough to return to the
13 clerk on Saturday, we're expected to deliver it
14 subsequently in one day.

15 ATTORNEY SHEEHY: If you could Senate
16 Intervenors' Exhibit 10, please?

17 ---

18 (Whereupon, Senate Intervenors' Exhibit 10,
19 USPS Service Alert, was marked for
20 identification.)

21 ---

22 BY ATTORNEY SHEEHY:

23 Q. Mr. Plunkett, do you recognize this
24 document?

25 A. Yes. That's a Postal Service - that's

1 from the Postal Service's webpage where they post the
2 service orders which could relate to any number of
3 unforeseen circumstances that impact the Postal
4 Service's processing the delivery network.

5 Q. If we could scroll down? Thank you very
6 much.

7 Do you see, Mr. Plunkett, where it says the
8 United States Postal Service is closely monitoring the
9 Coronavirus disease, 2019, COVID-19 situation?

10 Do you see that?

11 A. Yes. Yes, I do.

12 Q. Okay.

13 If you go two paragraphs down where it
14 says the Postal Service has so far - can you just read
15 that sentence please?

16 A. The Postal Service has so far experienced
17 only minor operational impacts in the United States as
18 a result of the COVID-19 pandemic.

19 Q. In your studies of postal delivery times,
20 postal delivery standards, and in your 25 years'
21 experience in the Postal Service, do you agree with
22 that sentence?

23 A. Yes, that's consistent with what I've been
24 told by my members and what I've observed in public
25 reporting as well.

1 Q. And based on statistics on review in the
2 first - I'm sorry. In the second and third fiscal
3 quarters in Pennsylvania, would you say that the
4 Postal Service in Pennsylvania has experienced minor
5 operational impacts?

6 A. Yes.

7 ATTORNEY SHEEHY: I'd like to go to
8 Senate Intervenors' Exhibit 11, please.

9 ---

10 (Whereupon, Senate Intervenors' Exhibit 11,
11 Postmaster General Statement, was marked for
12 identification.)

13 ---

14 BY ATTORNEY SHEEHY:

15 Q. And do you recognize this document?

16 A. Yes, I do.

17 Q. And what is this document?

18 A. It's an official statement issued by
19 Postmaster General DeJoy reaffirming the Postal
20 Service's commitment to ensuring that election mail
21 will be delivered and handled in a timely fashion
22 during the 2020 election season.

23 Q. And can we scroll down, please? Now, do
24 you see the paragraph that says I am announcing today?

25 A. Yes.

1 Q. Can you read that paragraph please?

2 A. I am announcing today the expansion of our
3 current leadership taskforce on election mail to
4 enhance our ongoing work and partnership with state
5 and local election officials in jurisdictions
6 throughout the country.

7 Do you want me to continue?

8 Q. Yeah, if you could just finish the
9 paragraph?

10 A. Sure.

11 Leaders of our postal unions and
12 management associations have committed to joining this
13 taskforce to ensure strong coordination throughout our
14 organization. Because of the unprecedented demands of
15 the 2020 election, this taskforce will help ensure
16 that election officials and voters are well informed
17 and fully supported by the Postal Service.

18 Q. That's what the Postmaster General is
19 promising, is that in addition to the Postal Service's
20 efforts prioritizing election ballots?

21 A. Seems to be, yes.

22 ATTORNEY SHEEHY: Now, if we can
23 scroll down a little bit further, David?

24 BY ATTORNEY SHEEHY:

25 Q. Do you see the last bullet point where it

1 says and we reassert that overtime has and will
2 continue to be approved as needed? In addition -

3 A. Yes.

4 Q. - effective October 1st, we will engage
5 standby resources in all areas of our operations,
6 including transportation, to satisfy any unforeseen
7 demand?

8 A. Yes.

9 Q. Now, what impact does having overtime
10 continue to be approved have on the post office's
11 delivery service centers?

12 A. Well, again, it depends. And as this
13 seems to indicate, this is to allow for unforeseen
14 circumstances. So I almost have to hypothesize.

15 Consider, for example, a Postal Service
16 heading for Election Day has a truck departing a
17 processing and delivery - I'm sorry. Processing and
18 distribution plants heading to a local election office
19 carrying ballots. And let's suppose that for some
20 reason, that truck breaks down after it leaves the
21 postal facility.

22 If the postal deliveries were absolutely
23 prohibiting overtime or had no standby transportation
24 available, then arguably those ballots would not get
25 to their destination.

1 But having the ability to call out an
2 extra truck or to enable the employee to continue and
3 resume delivery after the truck is repaired means that
4 if something unforeseen happens, its impacts on the
5 Postal Service's ability to meet its service
6 commitments is taken care of.

7 Q. And are you familiar with the phrase
8 engage standby resources?

9 A. Yes. Essentially, having employees on
10 call or having supplemental transportation units in
11 place so that certain things can be made.

12 Q. So I'd like to transition to discussing
13 closing postmarks with you.

14 ATTORNEY SHEEHY: If we could pull up
15 Senate Intervenors' Exhibit 1, please? If you can
16 scroll down to paragraph 30.

17 BY ATTORNEY SHEEHY:

18 Q. Mr. Plunkett, does the United States
19 Postal Service always use human readable postmarks?

20 A. Not always. So unreadable postmarks are
21 generally used for mail that has a stamp as a means of
22 payment of postage. And the purpose of the postmark
23 is to cancel the stamps so that it can be - cannot be
24 reused, thereby minimizing postage fraud.

25 Q. Now, what about postage prepaid mail? Is

1 there a human readable postmark on postage prepaid
2 mail?

3 A. Sometimes. Postal facilities automation
4 equipment often, as indicated in paragraph 30,
5 imprints a mark on that kind of mail that does
6 identify the facility in which the mail was processed
7 and the date on which it was processed. We started
8 doing that back in about 2014. It doesn't happen in
9 every case.

10 Sometimes mail, for certain reasons, is
11 not sent into a processing facility. It's turned
12 around locally and might not bear such an imprint.
13 But some of it does, but in some cases, it doesn't.

14 Q. And how is it determined that postage
15 prepaid will have a human readable postmark on it?

16 A. Generally, if it goes through a piece of
17 automated sortation or cancellation equipment, it
18 should bear a mark unless there is a malfunction,
19 meaning if the printer heads on that particular piece
20 of equipment are not working properly or any kind of
21 high-speed equipment, sometimes you'll get instances
22 where two pieces drop together so that the piece
23 behind wouldn't receive an imprint.

24 But if it goes across the piece of
25 automated sortation or cancellation equipment, it

1 will, in most cases, bear a mark.

2 Q. And, Mr. Plunkett, I'm going to transition
3 now to a few more questions on Pennsylvania. Are you
4 familiar with Pennsylvania's absentee ballot request
5 deadlines?

6 A. I believe voters can request a ballot up
7 to seven days before the date of election.

8 Q. And do you know when Pennsylvania counties
9 can begin mailing those ballots out to voters?

10 A. I believe, if I'm not mistaken, 40 days in
11 advance of the election.

12 Q. Now, is 40 days sufficient time prior to
13 November 3rd for the post office to deliver those
14 ballots and for the voters to complete and mail it
15 back?

16 A. Barring some extraordinary circumstance,
17 yes.

18 Q. And what is the latest date that a voter
19 can safely mail their ballot to ensure that it is
20 received by the county election office by 8:00 p.m. on
21 November 3rd?

22 A. Well, under most circumstances, if it's
23 sent on Saturday before postal cutoff time, it should
24 get there. But I would recommend Friday, the Friday
25 preceding the date of election.

1 Q. I'm sorry. Could you state that again? I
2 had trouble hearing the answer.

3 A. I said in most circumstances, assuming a
4 piece was mailed on Saturday prior to the Election Day
5 and it was received by the Postal Service before the
6 local cutoff time for that day, it should arrive by
7 that Tuesday.

8 But to be on the safe side, I would
9 recommend depositing mail on Friday because the Postal
10 Service has different hours of operation on Saturdays.

11 ATTORNEY SHEEHY: Just one moment,
12 Your Honor.

13 JUDGE LEAVITT: Uh-huh (yes.)

14 ATTORNEY SHEEHY: I have no further
15 questions, Your Honor. Thank you.

16 JUDGE LEAVITT: Mr. Nkwonta?

17 ---

18 CROSS EXAMINATION

19 ---

20 BY ATTORNEY NKWONTA:

21 Q. Mr. Plunkett, before we get into your
22 report and your opinions, I just want to go over and
23 make sure that we understand your background. So from
24 1995 to 1999, you were an economist in the Budget
25 Office.

1 Is that correct?

2 A. Not exactly. I started in the Budget
3 Office in 1995 and moved over into pricing, still as
4 an economist in, I believe, 1997.

5 Q. And then in 1999, you became manager of
6 internet and messaging.

7 Is that right?

8 A. Yes.

9 Q. And in 2000, you became vice-president for
10 business development.

11 Is that right?

12 A. I was associate vice-president. But yes.

13 Q. After you left the USPS in 2012, where did
14 you work?

15 A. Well, I retired. And so for several
16 years, I volunteered with a local organization called
17 Compass that does consulting projects for D.C. area
18 nonprofits, that essentially pull together teams of
19 graduates from the top business schools to do strategy
20 and business developing consulting for nonprofit
21 organizations.

22 Q. And that work was not related to any USPS
23 work, was it?

24 A. No, it was not.

25 Q. It was not until 2016, that you started

1 working in your current position at -?

2 A. That's right. That's right.

3 Q. Now, you were asked about service delivery
4 standards. And you gave a delivery standard that
5 seems to be different than what the USPS has
6 published. Can you explain again how you determine
7 service delivery standard?

8 A. Well, what I said, I believe, is that the
9 actual delivery standards are ZIP Code specific,
10 meaning that for any three-digit ZIP Code area in the
11 United States, there is a unique set of service
12 standards that determines when mail, either
13 originating from that ZIP Code area or designated to
14 that ZIP Code area must be delivered by the Postal
15 Service to be in compliance with their service
16 standards because there's a wide range of geography
17 and population density across the United States. So
18 service standards do vary geographically.

19 ATTORNEY NKWONTA: I'd like to pull up
20 the next Exhibit 4, please. Please scroll over
21 please.

22 BY ATTORNEY NKWONTA:

23 Q. Are you familiar with Exhibit 4, Mr.
24 Plunkett?

25 A. I've seen it, yes.

1 Q. And you're familiar that this is the
2 report initiated by USPS through the Office of
3 Inspector General.

4 Is that correct?

5 A. That's my understanding, yes.

6 ATTORNEY NKWONTA: Can we go to page
7 seven of the PDF, page four of the report?

8 BY ATTORNEY NKWONTA:

9 Q. At the very top, you can see that the
10 title of that section says ballots found in Milwaukee
11 and D.C. after election. And -?

12 A. Yes.

13 Q. And if you look at the end, footnote
14 three, do you mind reading footnote three of that
15 discussion at the bottom?

16 A. Yes. The Postal Service's first class
17 mail delivery standard is two to five days.

18 ---

19 (WHEREUPON, THERE WAS A BRIEF INTERRUPTION IN THE
20 PROCEEDINGS.)

21 ---

22 ATTORNEY NKWONTA: Sorry about that,
23 Your Honor.

24 BY ATTORNEY NKWONTA:

25 Q. Do you disagree with that statement, Mr.

1 Plunkett?

2 A. No, I do not. Well, I would say it's a
3 little bit imprecise. Two to five days covers the 50
4 U.S. States and Puerto Rico. I think I even mentioned
5 in passing in my Direct Examination that, for example,
6 the service center to Guam, a U.S. territory, is six
7 days.

8 But two to five days covers the vast
9 majority, the overwhelming majority of mail that
10 travels within the 50 U.S. States and the Commonwealth
11 of Puerto Rico.

12 Q. And what publication, if any, have you
13 pointed to or identified in support of your revised
14 service standard?

15 ATTORNEY SHEEHY: Objection. What did
16 you call it?

17 ATTORNEY NKWONTA: Revised service
18 standard.

19 BY ATTORNEY NKWONTA:

20 Q. Mr. Plunkett, what publication have you
21 pointed to or identified to support your business
22 standard or your delivery standard, the one that you
23 have asserted here on Direct testimony?

24 A. Well, I don't think I pointed to a
25 specific document. I'll give you an example. If you

1 go to the Postal Service's website, there's a little
2 simulator in there that allows you to identify a
3 three-digit area and the specific product you're
4 interested in. And it will give you a
5 representational map of the service standards from
6 that three-digit area to the entire United States.

7 And so when we're thinking about two to
8 five days. So, for example, if a piece of mail
9 originates in Harrisburg, Pennsylvania, and it's going
10 to Fairbanks, Alaska, that's a five-day service
11 standard. But if a piece originates within
12 Harrisburg, Pennsylvania, and it's going anywhere
13 within the State of Pennsylvania, the service standard
14 for that piece of first class mail will be two days.

15 Q. So is it fair to say that you are relying
16 on that search function on the USPS website in
17 determining the service standard for specific ZIP
18 Codes?

19 A. Well, also just general knowledge that
20 within the contiguous 48 states, first class mail has
21 a two to three day service standard.

22 Q. Right.

23 But in determining that two to three day
24 service standard, that specific information you
25 obtained from a search function on the USPS's website.

1 Is that correct?

2 A. Yes.

3 ATTORNEY NKWONTA: Staying on the same
4 document, Petitioners' Exhibit 4, can we turn to page
5 seven of the report, page ten of the PDF?

6 BY ATTORNEY NKWONTA:

7 Q. Mr. Plunkett, in your report, you made
8 reference to postmarks. And you discussed the
9 connection between postmarks and business reply mail.

10 Is that correct?

11 A. Yes.

12 Q. And can reiterate the connection between
13 postmarks and business reply mail? What is the fact
14 and the purpose of a piece of mail as a business reply
15 mail? What does that have to do with postmarks?

16 A. Well, business reply mail doesn't require
17 a postmark because the postage is paid - well, postage
18 is prepaid by the recipient. And when the Postal
19 Service processes a piece of business reply mail, they
20 debit the account of the reply mail permit holder.

21 I believe the Postal Service has
22 instituted an informal policy by which they plan to
23 postmark business reply mail if it contains ballots
24 and if it's identified as containing ballots.

25 Q. You say that it's a policy that they plan

1 to implement. Are you aware that this policy has
2 already been implemented?

3 A. I believe it has.

4 Q. And how long has this policy been in
5 place?

6 A. I'm not certain exactly when it
7 originated. I believe recently the Postmaster General
8 reaffirmed that the Postal Service plans to isolate
9 election mail and to postmark even where postmarks are
10 not necessary.

11 Q. On the page we're looking at, Petitioners'
12 Exhibit 4, under requirements for postmarks on
13 ballots, can you read the second sentence starting
14 with Postal Service guidance?

15 A. As a result, the return processing
16 postmarking ballots is considered critical to election
17 results.

18 Q. And the following sentence?

19 A. Postal Service guidance issued on April
20 23rd, 2018, states that all ballots mailed back from
21 votes must have a cancellation postmark, including
22 absentee ballots, vote by mail ballots, and business
23 reply ballots.

24 Q. Do you disagree with that?

25 A. I do not.

1 ATTORNEY NKWONTA: Can we turn to
2 House Intervenors' Exhibit 1? The document I'm
3 looking for is Mr. Plunkett's report.

4 ATTORNEY SHEEHY: Senate Intervenors'
5 Exhibit 1.

6 ATTORNEY NKWONTA: Senate Intervenors'
7 Exhibit 1. And can we go to the table between
8 paragraphs nine and ten?

9 BY ATTORNEY NKWONTA:

10 Q. Mr. Plunkett, are you aware of any data
11 showing USPS's service performance for July and
12 August?

13 A. No official reporting. I have seen leaked
14 internal postal documents that have shown snapshots of
15 service performance. But the Postal Service reports
16 its official results quarterly. And the current
17 quarter, which includes that period of time, does not
18 end until September 30th.

19 Q. So you're not aware of any publicly
20 available reports say for the USPS's performance
21 standards in July and August?

22 A. Performance standards or performance
23 results?

24 Q. Performance results.

25 A. I have not seen any official reporting on

1 Postal Service results.

2 Q. So as you sit here today, you're not able
3 to tell the Court what the USPS's current performance
4 is with respect to its ability to meet service
5 standards?

6 A. Not systematically because there's no exit
7 data that I'm aware of that documents that.

8 Q. And that is why the data that you have
9 presented stops in June.

10 Is that right?

11 A. Well, at the time of the affidavit, that
12 was the most recent quarterly report that had been
13 released by the Postal Service.

14 Q. And other than the quarterly reports, are
15 you aware of any other reports from the U.S. Postal
16 Service that indicate the U.S. Postal Service's
17 performance with respect to its delivery standards?

18 A. Well, I've seen some leaked documents
19 that, for example, were on the House Oversight
20 Committee website briefly, but I think they were
21 pulled down. I have seen reporting on those
22 documents, but that's all.

23 Q. I'll stay with this exhibit before we move
24 on. And I want to ask you a question about, first,
25 the time period within this table. This table, as you

1 were discussing during Direct, refers to mail pieces
2 delivered between January and March 31st.

3 Is that correct?

4 A. Yes, that's correct.

5 Q. And we're almost in September.

6 Is that correct?

7 A. Yes, that's correct.

8 Q. So if one wanted to determine what the
9 performance of the USPS was this month or currently
10 with respect to its ability to meet the service
11 standards, this table, or the data in this table,
12 would not provide that information.

13 Right?

14 A. No, it would not.

15 Q. And then looking at the top of the table,
16 which is titled quality performance for presorted
17 first class letters and postcards, you understand the
18 distinction between presort mail and first class
19 single piece of mail.

20 Correct?

21 A. Yes.

22 Q. And presort mail can be sent to voters
23 from election officials in some instances.

24 Is that correct?

25 A. Yes, that's right.

1 Q. And presort mail tends to be faster than
2 single piece mail.

3 Is that correct?

4 A. Not universally. Not necessarily.

5 Q. Would you say in some cases or most cases
6 or never?

7 A. I would say it's hard to determine that
8 because there's much more variation in single piece
9 first class mail. And while the Postal Service
10 doesn't routinely break out single pieces into
11 different categories, I'll give you a couple of
12 hypothetical examples.

13 A courtesy reply mail piece that is me
14 returning a payment to my bank that has been prepaid,
15 preprinted, and pre-barcoded by my bank so that it
16 travels through the Postal Service's network will
17 likely have a very different service experience than a
18 handwritten greeting card that I send on the same day
19 because it may not be legible, it is a different size,
20 it may not work as well within the Postal Service's
21 equipment.

22 So I am hesitant to make blanket
23 statements comparing single piece as a category with
24 presort because there's much more variation in single
25 piece than there is in presort because of the types of

1 uses that people make of it.

2 Q. Fair enough.

3 Is it true that the mail going from voters
4 back to election officials is universally single piece
5 mail?

6 A. Yes.

7 Q. You mentioned earlier that you have no
8 personal insight into employee availability issues in
9 Pennsylvania.

10 Is that correct?

11 A. That's correct.

12 Q. So you would have no personal insight as
13 to whether employee availability issues have resulted
14 in impacts in USPS's ability to meet its service
15 standards.

16 Correct?

17 A. I do not because I believe the Postal
18 Service has been reluctant to share information,
19 specific information, about full availability in its
20 facilities due to privacy and other concerns.

21 ATTORNEY NKWONTA: I'd like to pull
22 Petitioners' Exhibit 28, please.

23 BY ATTORNEY NKWONTA:

24 Q. Have you seen Exhibit 28 before, Mr.
25 Plunkett?

1 A. I have not seen that specific slide, but
2 I've seen things like it.

3 Q. Do you know where this document reflected
4 in Exhibit 28 is located or where it can be accessed?

5 A. I don't. It looks like it's from an
6 area's inspiring mail presentation presented in the
7 eastern area. That's something that I would not have
8 attended. It may be available on the Postal Service's
9 post it pro website, but I'm not sure.

10 Q. So you would not be able to make any
11 representations or offer any opinion as to the
12 accuracy of the data reflected in Exhibit 28?

13 A. It looks plausible, but I have no
14 knowledge of its creation or its origins. I can't
15 swear to anything but it's - who developed it or under
16 what circumstances.

17 Q. So you do not dispute its accuracy.
18 Correct?

19 A. I do not dispute or affirm it, no.

20 Q. Do you have any personal insight into the
21 effects of recent policy changes in July and recent
22 operational changes in July within the USPS?

23 A. I have heard and seen anecdotally
24 information about service delays. I, of course,
25 watched the hearings in both the House and the Senate

1 where the Postmaster General testified about recent
2 changes and the effect it was having. I believe he
3 acknowledged that some of the changes in policy had
4 produced declines, temporary declines, in service, but
5 I don't think he committed to any specifics about the
6 degree of decline that they observed and experienced.

7 Q. So when you say the Postmaster General
8 acknowledged that some of the policy changes and the
9 operational changes had impacts on the service
10 delivery standards, is it fair to say that he
11 acknowledged that they resulted in delays?

12 A. Yes, but he also said that they were
13 stopping those practices and expected service to
14 return to pre-decision levels.

15 Q. When you say stopping those practices, do
16 you know which, if any, practices have been reversed?

17 A. Well, my understanding is that the primary
18 source of these disruptions was a decision by the
19 Postal Service to forego the practice of scheduling
20 extra transportation trips from the plants to delivery
21 units and/or to not hold the last dispatch from
22 processing centers to delivery networks, which had led
23 to unexpected instances of mail not getting to the
24 carriers on its intended delivery date.

25 That, I believe, is the specific policy

1 that the PMG acknowledged and said that the Postal
2 Services was ceasing.

3 Q. Are you aware that the Postmaster General
4 also pointed to staff and the availability issues as a
5 reason for the impacts on service delivery standards?

6 A. I'm aware that he said that, but I thought
7 that was in relation to performance during the COVID
8 pandemic in general and not since the implementation
9 of the change in transportation schedule. That's my
10 recollection.

11 ATTORNEY NKWONTA: Thank you.

12 Nothing further.

13 ATTORNEY WIYGUL: May I proceed, Your
14 Honor?

15 JUDGE LEAVITT: You may.

16 ATTORNEY WIYGUL: It's Mr. Wiygul,
17 Your Honor.

18 JUDGE LEAVITT: Right. Yes. Your
19 turn.

20 ATTORNEY WIYGUL: Thank you.

21 JUDGE LEAVITT: Ten minutes.

22 ATTORNEY WIYGUL: Thank you.

23 ---

24 CROSS EXAMINATION

25 ---

1 BY ATTORNEY WIYGUL:

2 Q. Good afternoon, Mr. Plunkett.

3 On Direct Examination, Counsel for Senate
4 Intervenors asked you a hypothetical question or I
5 believe made a series of hypothetical questions asking
6 you how quickly a ballot could be completed and
7 returned to the voter as measured from the time the
8 voter applied for the mail-in ballot.

9 Do you remember those questions?

10 A. Yes.

11 Q. And you answered at least one of those
12 questions to be on the express assumption that the
13 ballot was sent out by the county board of elections
14 on the same day the application was made.

15 Do you remember making that assumption?

16 A. Yes.

17 Q. Are you aware, sir, of how much time
18 Pennsylvania law allows counties to process
19 applications for mail-in ballots and send out those
20 ballots?

21 A. I am not.

22 Q. So if I were to tell you that Pennsylvania
23 law allows counties 48 hours from the time the ballot
24 application is approved by the county, you have no
25 basis to dispute that.

1 Is that correct?

2 A. That's correct.

3 Q. Counsel for Petitioners asked you some
4 questions about the time period of the data that you
5 relied on in your expert report. I want to pick up on
6 that and just ask a few more questions.

7 And just to be clear, as I understand the
8 disclosure that Counsel for Senate Intervenors
9 provided, your testimony today is set forth in an
10 affidavit, or at least the substance of it, is set
11 forth in an affidavit that was filed in May of this
12 year.

13 Is that right?

14 A. I believe that's correct.

15 Q. And then my understanding is you gave a
16 deposition in a Florida federal case that covered,
17 I'll say, some topics that are similar to the topics
18 we're covering in this case. You gave that deposition
19 in late June of this year.

20 Is that right?

21 A. Yeah, that's correct.

22 Q. And, again, just to be clear, all the data
23 that you relied on for your opinions today in terms of
24 Postal Service performance is from the first and
25 second calendar quarters of 2020.

1 Is that right?

2 A. Yes.

3 ATTORNEY WIYGUL: And can we pull up
4 Petitioners' Exhibit 9, please? Thank you.

5 BY ATTORNEY WIYGUL:

6 Q. You testified as to whether you were able
7 to hear Mr. Stroman's testimony this morning?

8 A. I did not listen to Mr. Stroman's
9 testimony, no.

10 Q. Okay.

11 Well, I'll represent to you that this
12 chart was shown. And one of the things that was
13 pointed out by Mr. Stroman was there was a
14 precipitous, I believe that was his word, a
15 precipitous drop in the performance score that began
16 just about the beginning of July of this year.

17 And do you agree that that's what this
18 chart appeared to show?

19 A. Well, I mean, precipitous, of course, is
20 an imprecise term. I would also point out this is for
21 market mail. It is first class. But certainly,
22 there's a noticeable decline on or about the first
23 week of July.

24 Q. And that decline began just after the data
25 that you relied on in your report ended temporally.

1 Correct?

2 A. Yes.

3 Q. Okay.

4 I want to ask you a few questions about
5 postmarks if I can. You testified about postmarks in
6 the Florida federal court case as well.

7 Correct?

8 A. I believe so, yeah.

9 Q. Okay.

10 And as I recall your deposition testimony,
11 you testified that the basis for your opinions
12 regarding the likelihood or the chance that election
13 mail may not bear a date stamp was based on your own
14 experience and conversations that you had with Postal
15 Service employees.

16 Is that correct?

17 A. Subject to check, I have no reason to say
18 it isn't.

19 Q. And you testified in particular that you
20 had not consulted any Postal Service publications in
21 reaching those opinions about postmarks.

22 Do you remember that testimony?

23 A. I don't recall saying that, but, again,
24 subject to check, it's possible. I don't know.

25 Q. Okay.

1 And Counsel for Petitioner showed you a
2 publication that stated that the Postal Service's
3 policy, I'm paraphrasing, but the Postal Service's
4 policy was to provide a date stamp on election mail.

5 Do you remember that?

6 A. Yes.

7 ATTORNEY WIYGUL: Could we show the
8 witness Respondents' Exhibit 4, please?

9 ---

10 (Respondents' Exhibit 4, Postal Bulletin, was
11 marked for identification.)

12 ---

13 BY ATTORNEY WIYGUL:

14 Q. And, sir, I represent to you this is a
15 postal bulletin with a number of 22539 dated February
16 13th, 2020. And you've seen this before.

17 Correct?

18 A. Yes.

19 Q. And this is - in fact, this was shown to
20 you in your late June deposition in the Florida case.

21 Correct?

22 A. That's correct.

23 Q. Is that the first time you had seen this
24 publication?

25 A. Yes.

1 Q. And you don't mention this publication,
2 understandably enough based on what you told us. You
3 don't mention this publication or any other
4 publication in the opinions you offer about postmarks
5 in your May affidavit.

6 Correct?

7 A. Correct.

8 ATTORNEY WIYGUL: And could we go to
9 page 12 of this document, please? It should be PDF
10 page 12.

11 Well, actually, just go back one page
12 previous please, to page 11. Can we go to the top,
13 please?

14 Thank you.

15 BY ATTORNEY WIYGUL:

16 Q. Mr. Plunkett, this is a series of
17 frequently asked questions and answers in this postal
18 bulletin.

19 Correct?

20 A. Correct.

21 Q. And just to be clear, postal bulletin is
22 an official publication of the Postal Service.

23 Is that right?

24 A. I believe so, yes.

25 Q. And now -.

1 ATTORNEY WIYGUL: I'm sorry. Can you
2 go to the bottom of the next page, page 12?

3 BY ATTORNEY WIYGUL:

4 Q. And do you see there's a question 13, the
5 return ballots need to be postmarked even if there is
6 a meter?

7 A. Yes.

8 Q. And the answer by the Postal Service in
9 this official publication in February of this year is
10 yes, return ballots are postmarked in every state to
11 ensure that marked ballots are postmarked for states
12 that require it.

13 Do you see that?

14 A. Yes.

15 Q. Do you have any reason to doubt the truth
16 of that assertion?

17 A. No.

18 Q. There were some questions from Counsel for
19 Petitioner about the testimony by Postmaster General
20 recently before both houses of Congress. And I
21 believe your testimony was that you had watched that
22 testimony.

23 Is that correct? The Postmaster General's
24 testimony?

25 A. I did. I did, yes.

1 Q. And isn't it true, sir, that in the
2 Postmaster General's Senate testimony, he testified
3 and answered the questions posed by Senator Romney
4 that the delays that he acknowledged - as you
5 mentioned earlier, that the delay that he acknowledged
6 were in certain urban areas particularly hard.

7 Do you remember that testimony?

8 A. That sounds accurate, yes.

9 Q. And that one of the urban areas that was
10 specifically cited was Philadelphia.

11 Do you remember that?

12 A. Yes, that's correct.

13 Q. And he said we have a significant issue in
14 employee availability in many, many parts of the
15 country that are also leading to delays in delivery of
16 mail.

17 Do you recall the testimony of the
18 substance of which I just related?

19 A. Yes.

20 Q. And he gave actually some statistics or
21 estimates about statistics in Philadelphia. He said
22 there are 750 routes in Philadelphia. And as a result
23 of the COVID epidemic, there have been days when the
24 Postal Service was short 200 carriers in that area.

25 Do you recall testimony like that by

1 Postmaster General?

2 A. Yes. Yes, I do.

3 Q. And would you expect that sort of
4 diminution in employee availability would have an
5 effect on the timely delivery of mail in Philadelphia?

6 A. For the duration of that lack of
7 availability, yes.

8 Q. And, sir, it's fair to say that you're not
9 a medical doctor or an epidemiologist.

10 Is that right?

11 A. Certainly not.

12 Q. And you're not offering any testimony for
13 the Court today about what the state of the COVID
14 pandemic will be in October or early November.

15 Is that right?

16 A. No.

17 Q. Were you able to listen to any of the
18 testimony that was given by Secretary Boockvar today,
19 sir?

20 A. I was not, no.

21 Q. Okay.

22 Well, I'll represent to you that Secretary
23 Boockvar showed an exhibit that gave the number of
24 ballots that were sent out for the primary election in
25 Pennsylvania and were received at different points in

1 time. And I'll represent to you that on Election Day,
2 there were 80,000 or 90,000 ballots that were received
3 on election day in the Pennsylvania primary.

4 Do you have any basis to doubt that?

5 A. No.

6 Q. And Secretary Boockvar, I'll represent to
7 you, also testified that she expected, in her capacity
8 as Secretary of the Commonwealth, that there would be
9 approximately twice as many people who are likely to
10 vote by mail in the general election as voted in the
11 primary.

12 Do you have any basis to dispute that?

13 A. No, I don't.

14 Q. And do you have any basis to dispute that
15 given what I've just related to you, that if the mail
16 in the general election, the mailed return ballots, is
17 delayed by even one day, that that will mean that tens
18 of thousands, if not more than 100,000 voters, who
19 would otherwise have had their ballots counted, will
20 not have those ballots counted.

21 Do you have any basis to dispute that?

22 ATTORNEY EVANS: Objection. Assumes
23 facts that are not in evidence.

24 ATTORNEY WIYGUL: I think they are in
25 evidence, Your Honor.

1 ATTORNEY EVANS: Well, then let them
2 speak for themselves.

3 ATTORNEY WIYGUL: I think it's fair in
4 Cross Examination to question the witness who's
5 testifying on this issue.

6 JUDGE LEAVITT: Well, you're somewhat
7 outside the scope of Direct, but I'm not sure I
8 understand your question. You're giving him a
9 hypothetical?

10 ATTORNEY WIYGUL: Yeah. Let me -.

11 JUDGE LEAVITT: And you're giving him
12 a math question, which is not -.

13 ATTORNEY WIYGUL: I can try to
14 simplify, Your Honor.

15 JUDGE LEAVITT: All right.

16 BY ATTORNEY WIYGUL:

17 Q. My question, if I can try again, sir, is
18 do you have any basis to dispute that if mail delivery
19 of first class mail, including ballots, in
20 Pennsylvania is delayed by even a day relative to what
21 the standard time would be, that that will mean tens
22 of thousands of voters, whose vote would otherwise
23 have counted, will not have that vote counted?

24 JUDGE LEAVITT: Do you mean a delay of
25 two to five days?

1 ATTORNEY WIYGUL: Your Honor, I
2 mean -.

3 JUDGE LEAVITT: Or the delay -?

4 ATTORNEY WIYGUL: Delay relative to -.

5 JUDGE LEAVITT: Oh, one to three days?

6 ATTORNEY WIYGUL: Delay relative to
7 what the standard was in the primary election
8 statewide.

9 JUDGE LEAVITT: What was that?

10 ATTORNEY WIYGUL: Well, what
11 actually -?

12 JUDGE LEAVITT: The problem with the
13 terms here is the Postal Service has a standard.
14 Whether or not the standard is satisfied in an
15 individual case or a countywide case, that's not
16 determined.

17 ATTORNEY WIYGUL: I thought you
18 meant -.

19 JUDGE LEAVITT: I want to know how a
20 particular piece of mail, what time table will govern
21 gets delivery. So I guess what troubles me about your
22 question is that you're assuming that the standard is
23 inviolate.

24 ATTORNEY WIYGUL: I think my question,
25 Your Honor, is does the witness have any basis to

1 dispute at a one-day variation in mail service for
2 ballots could mean the difference between whether tens
3 of thousands of ballots are counted or whether they're
4 not counted.

5 THE WITNESS: Are you talking about
6 ballots that are being returned by voters to election
7 officials?

8 BY ATTORNEY WIYGUL:

9 Q. Yes. Correct.

10 A. Under any circumstances I can think of, I
11 don't think a one-day delay that affected the Postal
12 Service in general would necessarily result in any
13 ballots not being received by election officials on
14 time.

15 Keep in mind, election officials are, I
16 believe, offices within county buildings.

17 Correct?

18 Q. Are they in county buildings? Yes, that's
19 my understanding, sir.

20 A. So, you know, going back to your earlier
21 question about Philadelphia, even in a circumstance
22 where in a specific locale, the Postal Service had a
23 sufficient lack of availability of carriers on a
24 specific day, the Postal Service has the ability to
25 prioritize which deliveries go first.

1 And the Postal Service has stated publicly
2 and has published clear indication that it prioritizes
3 and gives preference to the handling of ballots
4 relative to all other mail.

5 And so unless you're talking about
6 circumstances where the Postal Service is being shut
7 down, I don't see that as a significant risk.

8 Q. So, just to be clear, it's your testimony
9 that it's not the case that some people mail their
10 ballots prior to Election Day, and nonetheless,
11 they're not received until after Election Day?

12 A. Oh, that will happen almost certainly.
13 Sure.

14 ATTORNEY WIYGUL: Okay.

15 If I can have just one moment, Your
16 Honor, to consult with co-counsel.

17 JUDGE LEAVITT: All right.

18 Again, I think you're just giving him
19 a simple math question, and I don't know that you need
20 this witness.

21 ATTORNEY WIYGUL: Thank you, Your
22 Honor. I have no further questions.

23 JUDGE LEAVITT: All right.

24 Mr. Evans, do you have any questions?

25 ATTORNEY EVANS: Sure, Your Honor.

1 Just a couple. I may be quick.

2 If we could go to, I think it's
3 Petitioners' Exhibit 9.

4 ---

5 CROSS EXAMINATION

6 ---

7 BY ATTORNEY EVANS:

8 Q. And, Mr. Plunkett, my name is Jake Evans
9 and I represent the House Intervenors in this case.

10 A. All right.

11 Q. And if we could go - Respondents' Counsel
12 was just referring to a chart, if we could go to it.
13 Mr. Plunkett, both Petitioners' and Respondents'
14 Counsel and Mr. Stroman kind of focused on this
15 downturn here. How many weeks does that downturn take
16 place?

17 A. Three, it appears.

18 Q. In your opinion, does - focusing on a
19 three-week period, is that sufficient to extrapolate
20 over - strike that.

21 Focusing on a three-week period, is that
22 sufficient to extrapolate long-term over any
23 indication of whether the USPS will be able to meet
24 service standards?

25 A. Not without other information that would

1 support such an extrapolation.

2 Q. And to properly evaluate service standards
3 in Pennsylvania, should a person look at Pennsylvania
4 data on USPS delivery of whether it's meeting those
5 service standards?

6 A. I think that's preferable if that data is
7 available.

8 Q. Would only looking at national data call
9 into doubt whether service standards are being met in
10 Pennsylvania?

11 A. It's certainly less insightful and less
12 valuable information than having Pennsylvania specific
13 data.

14 Q. And I will now refer you to the House's
15 Exhibit 1, if we could go to that? And have you seen
16 this document before, Mr. Plunkett?

17 A. Yes, I have.

18 Q. And what is this document?

19 A. This is the testimony filed by the
20 Postmaster General, coincident with his appearance
21 before the Senate Committee on Homeland Security and
22 Government Affairs.

23 Q. Okay.

24 And is this a true and accurate depiction
25 of that document?

1 A. It appears to be, yes.

2 Q. And if I can refer you to page 15?

3 A. Of the document or the -?

4 Q. Of the document. I think it'll say page
5 15 at the bottom. There we go. And Mr. Plunkett,
6 here it says and I'll just read it for simplicity's
7 sake, and I'm referring to the paragraph in that
8 regard. In that regard we have not changed our
9 delivery standards, our processing, our rules or our
10 prices for election mail.

11 To the contrary, we have intensified our
12 efforts to fulfill our role in the electoral process.
13 We will do everything we can to handle and deliver
14 election mail in a manner consistent with the proven
15 processes and procedures that we have relied on for
16 years. Mr. Plunkett, in your expert opinion and based
17 upon the data that you have seen, is the U.S. Postal
18 Service fulfilling their role in the process of
19 election related mail?

20 A. To the best of my knowledge, yes.

21 Q. And based upon your evaluation of the data
22 in Pennsylvania, if a piece of election related mail
23 is sent in a county to someone else in that county,
24 how long would it take to be received by the
25 recipient?

1 very brief recess, if we can do that. But it's up to
2 the Court's discretion.

3 JUDGE LEAVITT: How long do you think
4 your Redirect will take?

5 ATTORNEY SHEEHY: Five minutes, Your
6 Honor.

7 JUDGE LEAVITT: All right.
8 Why don't we do the Redirect and then
9 we will recess?

10 ATTORNEY SHEEHY: Okay.

11 ---

12 REDIRECT EXAMINATION

13 ---

14 BY ATTORNEY SHEEHY:

15 Q. If we could put up Petitioners' Exhibit 9,
16 please? Now, Mr. Plunkett, you testified relying on
17 statistics from quarterly reports from the second
18 fiscal quarter and the third fiscal quarter.

19 Correct?

20 A. Yes, that's correct.

21 Q. And I believe on Cross you testified that
22 the third fiscal quarter reports ending in June 30th,
23 2020, are the latest official data from the Postal
24 Service.

25 Do I understand that correctly?

1 A. Yes.

2 Q. So looking at the Petitioners' Exhibit 9,
3 would you consider this reliable data to advise people
4 on mail delivery times in Pennsylvania?

5 A. Well it has a couple of weaknesses. And
6 just as an example, when you're talking about any
7 relatively short period of time, three weeks in this
8 case, the results can be skewed by anomalous events
9 that may indicate a permanence change or maybe
10 indicate a transitory change. But with the limited
11 information it's hard to reach a definitive conclusion
12 one way or the other.

13 Q. And is that why we rely on quarterly data
14 as a more accurate snapshot of the time period?

15 A. Well that's a historical artifact. The
16 Postal Service is required to report quarterly by the
17 Postal Regulatory Commission. So they comply with
18 those regulations and that's the basis for relying on
19 quarterly data.

20 ATTORNEY SHEEHY: I have nothing
21 further, Your Honor.

22 JUDGE LEAVITT: All right. Thank you.
23 While we have that, could you put that exhibit back
24 on the screen? This was created by the U.S. Postal
25 Service.

1 Is that not correct? I realize this
2 is a Petitioner Exhibit.

3 THE WITNESS: I believe that - I
4 believe that is an internal report generated by the
5 Postal Service Management.

6 JUDGE LEAVITT: So this is something
7 that you referred to as a leak document?

8 THE WITNESS: Yeah.

9 This appears to be something for
10 internal Postal Service consumption that a postal
11 official would send outside of the organization.
12 That's what it appears to be.

13 JUDGE LEAVITT: Okay. All right.

14 And could we put up Petitioners'
15 Exhibit 28? Could - could you explain to me what
16 Areas Inspiring Mail is? Is that a prior
17 organization?

18 THE WITNESS: No.

19 So the Postal Service engages in
20 multiple outreach efforts to communicate with
21 companies in the mailing industry, like those that I
22 represent. One of those forms is called Areas
23 Inspiring Mail. And each of the Postal Service's
24 administrative areas, in this case the eastern area,
25 conducts periodic, often - basically only online

1 meetings with their customers, for example.

2 This looks like something that would
3 have been shared online during a recent eastern area
4 meeting, that somebody took a screen capture of. Or a
5 postal official had prepared it, sent it out and it
6 was distributed that way. I did not attend this
7 briefing. My office, for what it's worth, is not part
8 of the eastern area. So I generally attend the
9 northeast area - area of Areas Inspiring Mail
10 meetings.

11 JUDGE LEAVITT: Okay. Thank you.

12 You may step down, Mr. Plunkett, or
13 sign off.

14 THE WITNESS: All right. Thank you.

15 JUDGE LEAVITT: We'll take a five
16 minute break and then we'll regather there to figure
17 out what we're doing to wrap up this hearing. All
18 right?

19 CRIER: The court is now in recess.

20 ---

21 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

22 ---

23 CRIER: The Commonwealth Court is now
24 in session.

25 JUDGE LEAVITT: All right. You may be

1 seated.

2 Mr. Nkwonta, who is the witness that
3 you want to put on next? Is it Mr. -?

4 ATTORNEY NKWONTA: The witness Ms.
5 Devon Laudenslager. She will testify to mailing
6 delays.

7 JUDGE LEAVITT: Okay.

8 And how long do you expect the
9 testimony to be?

10 ATTORNEY NKWONTA: Twenty (20)
11 minutes.

12 JUDGE LEAVITT: Okay.

13 And is that your final witness?

14 ATTORNEY NKWONTA: No, Your Honor.

15 JUDGE LEAVITT: Okay.

16 ATTORNEY NKWONTA: We also have Mr.
17 Joseph Eisenberg, Dr. Joseph Eisenberg.

18 JUDGE LEAVITT: Is his testimony going
19 to be about the Postal Service operations or is it
20 going to be that we can expect that there will be a
21 pandemic in November?

22 ATTORNEY NKWONTA: I think Dr.
23 Eisenberg's testimony is sort of a bridge. So it's
24 not squarely Postal Service operations, but it is
25 about the impacts of the Coronavirus and we plan to

1 tie that in as to the effects on Postal Service
2 staffing. So it is not reputable to Postal Service,
3 but it is sort of a bridge between Postal Service and
4 the Coronavirus.

5 JUDGE LEAVITT: How long will his
6 testimony be? It seems to me that we're under a very,
7 very tight schedule. And in this court's design - it
8 seems to me that there are some facts that we ought to
9 be stipulating to that will, I think, expedite this
10 whole process. Is there any part of his testimony
11 that you think you could request the other parties
12 stipulate to?

13 ATTORNEY NKWONTA: Well I think we
14 would have to confer on the - the impact of COVID-19
15 both currently and in November. And we can agree to
16 stipulate or reach some stipulation to that. I'm not
17 sure whether that's the type of fact that leads itself
18 to quick stipulation. But I am willing to hear what
19 the Intervenors and Respondents has to say about it.

20 JUDGE LEAVITT: Does anybody doubt
21 that the pandemic will still be affecting behavior on
22 Election Day?

23 ATTORNEY EVANS: This is Jake Evans,
24 Your Honor. We can't stipulate to that. It's going
25 to be our strong position COVID is a non-commodity at

1 this point. And in March and April it was a new
2 issue, which created systematic stay at home orders
3 and allowed for a short period of time for mail in
4 absentee ballots to go out. And that's not the case
5 now. And we're planning accordingly to mitigate the
6 impact of COVID. And we have to have had an
7 opportunity to show that's the case by confronting
8 evidence presented against us.

9 JUDGE LEAVITT: All right. Mr.
10 Torchinsky?

11 ATTORNEY SHEEHY: We - we second the
12 House Intervenor on that.

13 JUDGE LEAVITT: All right.

14 How long will his testimony take? Can
15 we cut it down to 15 minutes?

16 ATTORNEY NKWONTA: I - I think that
17 would be difficult, Your Honor. I hesitate to give a
18 time, because we never plan for 15 minutes when we
19 work with them. So we're going to have to be doing it
20 on the fly. But I will renew my proposal from
21 Saturday, that we have a number of claims that don't
22 seem like they're going to be heard today. And the
23 Supreme Court's order is not entirely, you know, it's
24 not - it's not entirely explicit.

25 While it refers to claims, it also

1 refers to the Postal Service issues. And I think that
2 it prejudices - it prejudices Petitioners to just
3 assume the Supreme Court meant one thing and not the
4 other. And as a compromise I would propose that you
5 allow the Petitioners to submit evidence on the papers
6 once we finish with the Postal Service testimony.

7 ATTORNEY HANGLEY: We have no
8 objection to that, Your Honor.

9 JUDGE LEAVITT: I'm sorry?

10 ATTORNEY HANGLEY: We have no
11 objection to that proposal, Your Honor.

12 JUDGE LEAVITT: Mr. Evans?

13 ATTORNEY EVANS: Your Honor, we just
14 can't agree to that. Under Pennsylvania law we are
15 fully entitled to an opportunity to confront evidence
16 presented against us. And impeach the credibility of
17 that evidence. And an affidavit on a sheet of paper
18 is not going to give us that opportunity. And we -
19 the House hasn't called a witness today.

20 So I don't know if there's a way that
21 - and both of our witnesses, one of which is going to
22 testify primarily on the importance of finality in
23 delaying election results well after the deadline is
24 not going to help things. And the other is going to
25 testify about real world election fraud. I think the

1 Court has done a good job of kind of bifurcating the
2 issue today. We focused on the U.S. Postal Service
3 issue. But that whole separate issue is going to be
4 the election fraud issue. And once that door is open
5 we are going to present an opportunity to present the
6 witness and present our evidence on it.

7 JUDGE LEAVITT: All right.

8 Well, why don't you call your next
9 witness? And I'll reserve judgment on the issue of
10 third party assistance.

11 ATTORNEY BRAILEY: Petitioners call
12 Ms. Devon Laudenslager.

13 ---

14 DEVON LAUDENSLAGER,
15 CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
16 HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS
17 FOLLOWS:

18 ---

19 DIRECT EXAMINATION

20 ---

21 BY ATTORNEY BRAILEY:

22 Q. Ms. Laudenslager, please state and spell
23 your name for the record.

24 A. Devon Laudenslager.

25 Q. And do you understand that you're here

1 today to testify regarding your personal experience
2 with voting in the primary in Pennsylvania this year
3 and with mail delays in Pennsylvania?

4 A. Yes, I do.

5 Q. Ms. Laudenslager, where - and where in
6 Pennsylvania do you live?

7 A. In Philadelphia.

8 Q. And are you registered to vote in
9 Philadelphia?

10 A. Yes, I am.

11 Q. And how long have you voted there?

12 A. Four years.

13 Q. And did you apply to vote by mail this
14 year?

15 A. I did.

16 Q. And why did you do that?

17 A. It was right sort of the beginning of
18 COVID-19 and I wasn't really going anywhere in person
19 at that point in time. I didn't want to go in person
20 to vote out of safety concerns. So I applied for a
21 mail in ballot.

22 Q. And when did you apply?

23 A. May 6th.

24 Q. And did you get confirmation that your
25 application was received?

1 A. I did. I received an email on May 6th,
2 confirming.

3 Q. And when did you receive that ballot?

4 A. I never received that ballot.

5 Q. And so what happened during that time?

6 A. And so I received a confirmation on May
7 6th that I had applied for a ballot on May 5th. And
8 it said if you have any questions, call the
9 Philadelphia County school number and they will apply
10 you for the mail in ballot process. So I received
11 another email that my ballot had been given to me on
12 May 15th. And a week later it hadn't come on May
13 22nd.

14 And I was getting a little nervous,
15 because the deadline to apply for the mail in ballot
16 was May 26th. And I didn't know what to do if it
17 didn't come in terms of getting a replacement. And so
18 then I started trying to track down information to see
19 was it possible to track my ballot to see, you know,
20 where it was in the mail, if it was on its way or if I
21 should apply for replacement, if that was even an
22 option to apply for replacement, what do I do if it
23 doesn't arrive in time.

24 Q. And so how did you find the information?
25 What resources did you use to try to find

1 informational about your ballot?

2 A. I called the phone number in the
3 confirmation email I received from Philadelphia
4 County. And unfortunately that phone number when I
5 called was just a busy signal, like the line was off
6 the hook or disconnected. I called several times,
7 over and over again. I got through once, but I let it
8 ring for about two minutes. And there was no
9 voicemail.

10 There was - you know, nobody answered, no
11 message to redirect me anywhere else. I did just an
12 online search for Philadelphia County elections to see
13 if there was either an email or anyone else I could
14 call. And I found two different phone numbers for
15 Philadelphia County elections, I guess. And I tried
16 both of those numbers and one of them just rang and
17 gave me a voicemail.

18 And the other one took me to a voicemail
19 that said our offices are closed due to COVID-19, and
20 for any questions please refer to our website. And
21 the information on the website was just a phone number
22 - directing me back to phone numbers. It was just
23 kind of a loop.

24 Q. All right.

25 A. From a phone number to a website, which

1 led you to a phone number where you can't get a person
2 and then it leads you somewhere else.

3 Q. Right.

4 So you stated that this was on May 22nd.
5 So what did you do next?

6 A. Then I called my state rep's office. So I
7 left a voicemail with my representative, Brian Sims.
8 And I left a voicemail with Rep. Sim's office on the
9 22nd. They had a voicemail stating that the offices
10 were closed due to COVID-19. But that they were
11 regularly calling into the voicemail and returning
12 calls. And to leave your information and expect a
13 call back. So I left a voicemail sort of explaining
14 what I was going through trying to track my ballot and
15 asking for a call back.

16 Q. Right.

17 And did anybody call you back?

18 A. They did, yes. That office called me back
19 on the 26th, which was the deadline to apply for the
20 mail in. I still hadn't received it as of that day.
21 And I told them what I - you know, when I had applied
22 and when it had been sent and that it hadn't come yet.
23 And now it's the deadline and I really wanted to go by
24 mail in. And what do I do if it doesn't come.

25 Q. And did they send you a new ballot?

1 A. So what they did was they told me they
2 were in touch with the Philadelphia City
3 Commissioner's Office and that it was sort of a
4 running problem. And that the City Commissioner's
5 Office was keeping a list of folks who needed a
6 replacement ballot because theirs hadn't arrived yet.
7 So they were going to add me to that list. So they
8 took my name and my address and they made that call to
9 add me to that list so I could get a replacement sent.

10 Q. All right. Okay.

11 So this is May 26th. So what happens over
12 the course of the next few days?

13 A. I - so the election was June 2nd. I
14 waited for my mail to arrive that day. And that
15 comes between noon and 2:00 at my apartment. And my
16 ballot still did not arrive and it was Election Day.
17 And I really wanted to vote. So I went in person to
18 my poll location and I filled out a ballot.

19 Q. All right.

20 And were you able to track whether your
21 vote was counted?

22 A. I was, yes. It was counted.

23 Q. And did you ever receive your mail ballot?

24 A. I did. I received it on June 4th. So
25 unfortunately two days after Election Day.

1 Q. Right.

2 And since the primary have you had other
3 instances of either delayed mail or lost mail? And
4 can you give an example?

5 A. Sure.

6 And I don't know at this point whether the
7 mail was delayed or if it was lost. I'm just not
8 sure. On August 10th I received an online notice from
9 Franklin University, notifying me that I'd be admitted
10 to graduate schooling. And it gave me online
11 correspondence. It said within the next few days you
12 should receive in the mail your information.

13 And I have not received a single piece of
14 mail from them yet, unfortunately. So it's been 21
15 days. And I've also applied to renew my driver's
16 license in Pennsylvania in August. And I received a
17 letter back from the Pennsylvania Department of
18 Transportation that was dated August 19th. And the
19 letter said we received your renewal and we will be
20 mailing your license with the same old photo, because
21 you're not coming in with COVID to take your picture.
22 And that license will be arriving within a few days of
23 this letter in separate correspondence. And if you
24 don't receive it within the next seven days, then -
25 then follow-up. So that was 12 days ago. I haven't

1 received it yet and -.

2 Q. Right.

3 Do you plan to vote in the election in
4 November?

5 A. I do.

6 Q. And do you think you're going to vote by
7 mail?

8 A. I doubt it. I don't think that I will
9 honestly, because there's too many hurdles that seemed
10 really unnecessary and I don't want to run into a
11 situation like that again. It was complicated.

12 Q. Is your decision based upon - is your
13 decision whether to vote by mail based on your
14 confidence in the USPS getting in your ballot on time
15 or for you to get your ballot?

16 ATTORNEY WALLEN: Objection, leading.

17 ATTORNEY BRAILEY: Okay. I can
18 rephrase.

19 BY ATTORNEY BRAILEY:

20 Q. Are you making your decision based on your
21 confidence in the mail system and your mail service?

22 ATTORNEY WALLEN: Objection, again.

23 She's just leading her to the answer.

24 JUDGE LEAVITT: Okay.

25 Attorney -.

1 BY ATTORNEY BRAILEY:

2 Q. What is going into your decision about
3 whether to vote by mail?

4 A. Sure. When I tried to vote by mail in the
5 primary that was the first time that I ever tried to
6 vote by mail. And I applied almost a full month - it
7 was May 5th. The primary was June 2nd. Almost a full
8 month in advance, which seemed like plenty of time to,
9 you know, receive my ballot, return it in the mail and
10 have it postmarked in time and have it dropped off.
11 And when it just didn't transpire that way, there were
12 so many obstacles.

13 And you know, with that I don't know the
14 cost. I kind of just don't want to take the chance.
15 Will it happen again? If it does I'll just have to go
16 through it again and just have to go in person anyway.
17 Or even if I get it in plenty of time and I mail it
18 back, even early before the deadline, I just don't
19 know how long it will actually take to get delivered.
20 I just don't have enough time for that.

21 Q. And why is voting by mail important to you
22 this year?

23 A. Oh, well, because of COVID-19. I didn't
24 want the in person exposure.

25 Q. Uh-huh (yes).

1 CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
2 HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS
3 FOLLOWS:

4

5

EXAMINATION ON QUALIFICATIONS

6

7

BY ATTORNEY BRAILEY:

8

Q. Dr. Eisenberg, please state your full name
9 for the record.

10

A. Joseph Neil Eisenberg.

11

12

Q. Do you understand that you have been
retained by Petitioners to opine on COVID-19 and the
13 implications on the election this year?

14

A. Yes.

15

Q. And did you draft a preliminary report for
16 this case?

17

A. I did.

18

Q. Okay.

19

Let's discuss a little bit of why you're
20 qualified to speak with us today. What is your
21 educational background?

22

A. I have a PH.D. in - a Bachelor's in
23 engineering from the University of California,
24 Berkeley. And I have a Master's in Public Health, and
25 that's also with the University of California at

1 Berkeley.

2 CRIER: Sir, I would ask that you
3 please repeat your answer. You cut out there.

4 THE WITNESS: All right.

5 I have a Bachelor's in engineering
6 from the University of California, Berkeley. And a
7 Master's in Public Health, also from the University of
8 California at Berkeley. And a PH.D. from the joint
9 program University of California San Francisco and
10 Berkeley.

11 BY ATTORNEY BRAILEY:

12 Q. And what is your professional background?

13 A. Yeah.

14 After I got my PH.D. I moved into the area
15 of public health. First as a faculty at the
16 University of Berkeley. And now currently I am a
17 professor and chair of the Department of Epidemiology
18 at the University of Michigan in the scope of health.

19 Q. And what are your qualifications to offer
20 opinions on infectious diseases?

21 A. My expertise in epidemiology is an
22 infectious disease epidemiology. I specialize in how
23 pathogens are transmitted from one person to another.
24 Specifically with the focus on environmental mediation
25 of those factors and both locally and domestically

1 throughout the country on various avenues in various
2 epidemiology of those types of diseases.

3 Q. And what work have you done with regarding
4 COVID-19?

5 A. I have since March a number of different
6 activities, including being on different committees at
7 the University of Michigan, advising different actions
8 with respect to the University. I have been
9 collaborating with commissioners' services in a
10 variety of different studies and actions. I have been
11 a consultant for various companies, Ford Motors. On
12 opening up the economy and also I have been on various
13 regional and national committees.

14 Q. All right.

15 And can you pull up Petitioners' Exhibit
16 30?

17 ---

18 (Whereupon, Petitioners' Exhibit 30, Preliminary
19 Report of Joseph Eisenberg, was marked for
20 identification.)

21 ---

22 BY ATTORNEY BRAILEY:

23 Q. Can you scroll down a little bit? Okay.
24 Dr. Eisenberg, you can just skip the title. Dr.
25 Eisenberg, is this the preliminary report that you

1 drafted for this case?

2 A. It is.

3 Q. Okay.

4 And what did you rely on to draft this
5 report?

6 A. I relied on data coming from various
7 sources. I relied on my understanding of how
8 respiratory pathogens are transmitted both from the
9 perspective of the epidemiology of these pathogens and
10 ways the population trends of disease at various times
11 and places. As well as the property of the virus, the
12 type of biology of the virus, abilities to survive
13 outside of the environment and the ability to act.

14 Q. Okay.

15 ATTORNEY BRAILEY: At this time I
16 would like to move to admit Dr. Eisenberg as an expert
17 in infectious diseases and epidemiology.

18 JUDGE LEAVITT: Ms. Hangle?y?

19 ATTORNEY HANGLEY: No questions, Your
20 Honor. No objection.

21 JUDGE LEAVITT: Mr. Torchinsky?

22 ATTORNEY SHEEHY: I'll save it for
23 Cross Examination, Your Honor.

24 JUDGE LEAVITT: Okay.

25 ATTORNEY WALLEN: My only objection is

1 the broad objection to the court's earlier question
2 about the scope of this testimony. I think this is
3 going to lead us down, you know, several hours of
4 infectious disease testimony. And I would at least
5 request if we're going to go down this road that the
6 witness's expertise be limited to COVID-19 and its
7 impact on vote by mail.

8 JUDGE LEAVITT: Is that an acceptable
9 limitation?

10 ATTORNEY BRAILEY: Yes.

11 JUDGE LEAVITT: Okay.

12 ATTORNEY BRAILEY: Okay.

13 ---

14 DIRECT EXAMINATION

15 ---

16 BY ATTORNEY BRAILEY:

17 Q. Dr. Eisenberg, can you tell us about the
18 state of COVID-19? Let's just keep it narrow. And
19 tell us what's happening in Pennsylvania.

20 A. Yes. Pennsylvania had an original peak in
21 March and April, much like in many other states in the
22 country. And it subsided in early June and we saw a
23 subsequent second increase and peak that has largely
24 been due to the opening of the economy. But it has
25 now leveled off.

1 Q. So you mentioned the re-opening. And so
2 are you aware that Pennsylvania has had a phased
3 reopening?

4 A. Yes.

5 Q. Uh-huh (yes).

6 And what phase are the counties in, in the
7 reopening of Pennsylvania?

8 A. They're in green.

9 Q. And did Pennsylvania's phased reopening
10 have any impact on the amount of cases of COVID-19 in
11 Pennsylvania?

12 A. Yeah. I think the way in which
13 Pennsylvania shifted from yellow to green, coincides
14 with the increases that we saw in Pennsylvania.

15 Q. And was it immediate or what did the curve
16 look like as Pennsylvania - as Pennsylvania went
17 through its phases what did - how did it curve, the
18 COVID cases respond?

19 Q. It curved and responded as what we
20 expected, with a two plus delay. So that is going to
21 be any type of activity that may increase the risk of
22 transmission won't be seen in the case reports for at
23 least two weeks.

24 A. And so as you watched the counties go from
25 yellow - from red to yellow and from yellow to green,

1 it's my understanding that you saw two weeks after -
2 after these transitions you saw spikes.

3 Is that correct?

4 Q. An increase in cases.

5 Q. Okay.

6 A. And it was a steady increase in cases.

7 Q. And so right now as you told us,
8 Pennsylvania, all counties are in green phase. What
9 does that mean for the trajectory of COVID cases right
10 now in Pennsylvania?

11 A. It means right now that we're seeing the
12 fact that the cases have plateaued it means that we're
13 still seeing significant transmission of COVID on the
14 order of, at least as the data suggests, six or seven
15 cases per day. So likely that is due to the reopening
16 that occurred.

17 Q. And so even though Pennsylvania I guess we
18 can refer to it as flattened the curve to seven cases
19 a day. Is - is that still - do we still consider that
20 a public health crisis?

21 A. I would consider that still is concerning.
22 You know, that we still have a significant
23 transmission that's occurring in the state. And it's
24 still reflective of the evidence of abstinence is
25 occurring.

1 Q. So with that kind of transmission rate, if
2 there are events, such as cases people voting or
3 people together, what will that mean for Pennsylvania?

4 A. Any kind of increased contact, especially
5 of that scale, has the risk of increasing that
6 transmission more. So you know, the risk of any type
7 of increased contact is twofold. One will increase
8 transmission and it will also increase the number of
9 cases that are occurring. It will also increase the
10 risk of those that are elderly, those that are high
11 risk of severe disease, will be in contact with it.

12 Q. What is the trajectory of COVID-19 for the
13 fall and especially for November?

14 A. The trajectory for the fall depends on
15 what happens. And so our concern in the fall are a
16 few. One is that as kids go back to school, as an
17 example right now, of increased transmission, as well
18 as universities. And again, we won't see that
19 implication of that increase of contact for two or so
20 weeks. So we've got that, which is a risk of actually
21 increasing the cases.

22 And the other risk in the fall is that
23 influenza season comes into play in October, November.
24 And that is a concern right now because that basically
25 compounds the resource and the strain that hospitals

1 have. Hospitals are generally at working capacity and
2 they - the fact that they may even be doubling or
3 tripling patients, the ones that have major patients.

4 Q. Doctor, how - how is COVID-19 transferred?
5 Or rather I guess transferred - what are the most
6 likely ways that COVID-19 is transferred between
7 people?

8 A. Three ways. One is through, and this is
9 probably not a surprise, through breathing, talking,
10 say any kind of activity that there will be particles
11 that you come in contact with. The other is air
12 stabilization, that viruses that adhere to smaller
13 particles and they stay in the air for hours. And
14 therefore the more infected people that are in an
15 enclosed space, there is risk for somebody to inhale
16 infected wind. Or through just contamination of
17 surfaces, contamination of hands, you know, the
18 surface of your hands.

19 Q. Uh-huh (yes).

20 And I understand that there are various
21 protections that people can take to avoid or to lower
22 their risk of - of getting COVID. What - what are the
23 best ways to prevent transmission of COVID?

24 A. So in public health we talk about
25 hierarchy of control. And the ultimate way to control

1 the pathogen is to eliminate the pathogen, which would
2 be - in this case, that's kind of in the future.
3 We're not there right now.

4 Q. I'm sorry. You cut out. Can you repeat
5 that? I didn't hear.

6 A. Sorry.

7 Q. You said the best way is what?

8 A. The best way is elimination of the virus.
9 And that through in this case would be through a
10 vaccine, which we haven't developed yet. That is
11 still yet to be cured. And the second best way to
12 control this virus is through some kind of
13 infrastructural changes that would be improving
14 ventilation in an indoor space, first of all. We
15 could also use these for the viruses.

16 With the ventilation systems. The other
17 way would be to have Plexiglas and barriers between
18 people. So these are more functional roles. And then
19 the weakest kind of control would be personal
20 protective equipment, such as masks and asking people
21 to social distance. Both of them are behavioral kind
22 of activities, which adherence is depending on the
23 people that you're interacting with.

24 Q. Based on your experience and studies
25 you've done, is it ever possible to have 100 percent

1 participation or even a really high amount of
2 participation for people complying?

3 ATTORNEY WALLEN: I am going - I am
4 going to object. We let this go for a little while.
5 But this is straying so far from anything else we've
6 talked about all day. That this is the full on COVID-
7 19 epidemiology dissertation that I don't think really
8 serves the Court.

9 JUDGE LEAVITT: Could you try to get a
10 little more surgical? I think this is very
11 interesting, but this isn't NPR. This is the Court of
12 Law. We are trying to make a very specific record.
13 So if you could get back to the issue at hand?

14 ATTORNEY BRAILEY: I understand.

15 BY ATTORNEY BRAILEY:

16 Q. Okay.

17 So the issue at hand, Dr. Eisenberg, the
18 election that's coming up in November. What is the
19 safest way for people to vote given the factors you've
20 told us about transmission of COVID-19? And you
21 listed indoor places and all the kinds of protections
22 we would have to take. What is the - what is the
23 safest way for people to vote this year?

24 A. The safest way would be absentee voting,
25 voting by mail.

1 Q. One moment. And so because, you know,
2 it's not likely we will have the whole country voting
3 by mail. You know, we'll have in person voting. How
4 does COVID-19 affect poll workers? And specifically
5 we're talking about poll workers in Pennsylvania.

6 A. Right. So poll workers are going to be
7 exposed to indoor settings for a full day, exposed to
8 lots of different people throughout that day. So they
9 would bear the largest risk of COVID. And that risk
10 would increase for a number of people that have high
11 intensity, people at any time inside the polling
12 station.

13 Q. Uh-huh (yes).

14 And is there anything to fully protect
15 poll workers who will have to work four shifts
16 indoors? You've talked about PPEs, so what about for
17 poll workers?

18 A. Yes.

19 Q. I'm sorry. Can you just repeat the first
20 three words for me?

21 A. There is no way to fully protect somebody
22 in an indoor environment like that. But you can
23 mitigate the risk by wearing protective equipment or
24 by having barriers, much like we're doing here.

25 Q. Uh-huh (yes).

1 And then like in June, the polling
2 locations were consolidated in Pennsylvania for
3 various reasons. If not enough poll workers can work
4 at the - it might be less polling locations, what will
5 that mean for election day in terms of transmission of
6 COVID?

7 A. Well presuming there is going to be a
8 higher density of people in higher numbers that are
9 voting that day, there would be an increase of
10 transmission.

11 Q. Uh-huh (yes). Okay.

12 One moment.

13 ATTORNEY BRAILEY: No further
14 questions.

15 JUDGE LEAVITT: Ms. Hangley?

16 ATTORNEY HANGLEY: No questions, Your
17 Honor.

18 JUDGE LEAVITT: Thank you.

19 Mr. Torchinsky?

20 ATTORNEY SHEEHY: Thank you, Your
21 Honor. Yes.

22 ---

23 CROSS EXAMINATION

24 ---

25 BY ATTORNEY SHEEHY:

1 Q. Good evening, Doctor. My name is Shawn
2 Sheehy and I represent the Senate Intervenors.

3 Are you aware that Dr. Fauci of the NIH
4 said that voting in person could be done safely?

5 ATTORNEY BRAILEY: I'm going to object
6 that would be hearsay to the extent that we're
7 talking about COVID.

8 ATTORNEY SHEEHY: I'm just asking if
9 the doctor was aware of Dr. Fauci's statement.

10 JUDGE LEAVITT: I'll - I'll allow the
11 question.

12 BY ATTORNEY SHEEHY:

13 Q. Doctor, are you aware?

14 A. Yes, I am. Yes.

15 Q. You are aware?

16 A. Yes, I am aware.

17 ATTORNEY SHEEHY: Could we put up
18 Senate Intervenors' Exhibit 16, please?

19 ---

20 (Whereupon, Senate Intervenors' Exhibit 16, 16
21 Dhaval Dave Article, was marked for
22 identification.)

23 ---

24 BY ATTORNEY SHEEHY:

25 Q. And Doctor, are you familiar with the

1 protests around the country referred to as being
2 Black Lives Matter protests?

3 A. I am.

4 Q. And have you - in your professional work,
5 have you seen this paper?

6 A. I have glanced at this, yes.

7 Q. Forgive me. I didn't hear your answer.

8 A. Yes, I have read - I have read through
9 this paper.

10 Q. And so you're family that the conclusion
11 in this paper is that the protests had little effect
12 on the spread of COVID-19 for the entire population
13 of the counties with protests during more than three
14 weeks?

15 ATTORNEY BRAILEY: I'm going to object
16 about incidents not in this matter.

17 ATTORNEY SHEEHY: I - there's been
18 testimony about how COVID-19 has spread and the
19 dangers of COVID-19.

20 JUDGE LEAVITT: I'll allow the
21 question.

22 ATTORNEY SHEEHY: Thank you.

23 BY ATTORNEY SHEEHY:

24 Q. Doctor -?

25 A. Yes. So without looking at the - the

1 details, you know, this is a fairly complicated
2 analysis, but - and I hadn't looked at it in that
3 much detail, I would say that they are significant
4 issues with respect to the - they - they didn't like
5 having to make a statement like that because of the
6 economy and these protests happened in a similar
7 timeframe and for analysis doesn't - needs that
8 these somehow angle back to those events, which is
9 difficult to do with respect to that act. And so it
10 is challenging to make a statement about that
11 because of the fact so much is going on at the same
12 time.

13 Q. So do you - do you dispute the conclusion
14 in this paper that the spread of COVID-19 for
15 counties with protests that there was - there was
16 little effect on the spread of COVID-19?

17 A. I don't dispute it. I have no data to
18 suggest that - making that statement is difficult in
19 these times. So it's hard to imagine that this
20 could be a definitive statement.

21 Q. Okay.

22 ATTORNEY SHEEHY: Put up Senate
23 Intervenors' as Exhibit 17, please.

24 ---

25 (Whereupon, Senate Intervenors' Exhibit 17,

1 Report from US Department of Health and Human
2 Services, was marked for identification.)

3 ---

4 BY ATTORNEY SHEEHY:

5 Q. Doctor, have you seen this document
6 before?

7 A. I have not.

8 Q. You - you have not seen this document
9 before?

10 A. No.

11 Q. This is the Morbidity and Mortality
12 Report, Notes from the Field, from the Department of
13 Human - Health and Human Services and the CDC.

14 Are you familiar with these reports
15 generally?

16 A. Yes, yes.

17 Q. You can go to page three, please.

18 A. All right.

19 Q. All right.

20 ATTORNEY SHEEHY: If you can scroll
21 further down please? Thank you.

22 BY ATTORNEY SHEEHY:

23 Q. Now, do you see this last paragraph here,
24 the data provided preliminary evidence that the
25 CDC's interim guidance for ensuring various voting

1 options and encouraging physical distancing? You
2 did see that paragraph?

3 A. Okay.

4 Q. And do you have reason to dispute that
5 paragraph?

6 A. That risk reduction can be achieved by
7 implementing these guidances of voting periods.
8 Okay.

9 ATTORNEY SHEEHY: If we can scroll up,
10 please? A little further up, please? Thank you.

11 BY ATTORNEY SHEEHY:

12 Q. And do you see the last paragraph on page
13 two that begins, these data provide an initial
14 assessment?

15 A. Yes.

16 Q. Do you see the sentence, no clear
17 increase in cases, hospitalizations or deaths was
18 observed after the election, suggesting a possible
19 benefit of the mitigation strategies, which limited
20 in-person voting and aimed to ensure the safety of
21 the polling sites open on Election Day? Do you see
22 that?

23 A. I do, yes.

24 Q. And do have any reason to doubt the
25 conclusions in that paragraph?

1 A. In general, by looking at that data, if
2 there was one report of a - of cases associated with
3 voting and was constant.

4 But there - but is the paragraph is
5 directly talking about the general surveillance data
6 with will - like it doesn't have on it everything.
7 But they do have -.

8 ATTORNEY SHEEHY: If we could scroll
9 up, just a little bit, please?

10 BY ATTORNEY SHEEHY:

11 Q. Now to - I want to discuss the ways
12 COVID-19 is spread.

13 Isn't it true that the - the typical way
14 COVID-19 is spread is through person-to-person
15 contact, in, you know, within 15 -?

16 Let me rephrase the question.

17 Is it true that the typical way COVID-19
18 is spread is when an infected person is in close
19 contact with another person for 15 minutes or more?

20 A. There is increased evidence in reported
21 literature that that aerosolization is also a
22 significant mode of transmission and that is
23 aerosolized in the air for hours. So being that
24 person that releases it, so that there's - so that's
25 the same mode of transmission that -.

1 Q. But aren't the studies around aerosols -
2 aren't those just experimental studies?

3 A. Yes, as are experiments about distance.
4 You know, the six feet rule is based on these same
5 factors and studies.

6 Q. But didn't the WHO, the World Health
7 Organization, in the summary of the aerosol study
8 say that no studies had found viable air samples?

9 A. Yeah, I think that they're saying that
10 it's considered more controversial without whether
11 or not - how important aerosolization is.

12 Q. But there's no - there's no consensus in
13 the medical community about aerosolization of COVID-
14 19.

15 Correct?

16 A. There is - there seemed to be a coalition
17 of opinion that moving forward, aerosolization can
18 be more specifically to explain a lot of outbreaks
19 that occurred, where it was awful for there to be
20 all that contact, that the media is conversing and
21 approximate person to person contact.

22 So I understand that there's still a
23 consensus about transmission in general, but there
24 is increasing evidence and opinion on aerosolization
25 in addition to the remedy is significant.

1 Q. There's a consensus in the medical
2 community that wearing masks and social distance
3 prevent the spread of - or mitigate the spread of
4 COVID-19.

5 Correct?

6 A. Correct.

7 Q. Does that same consensus exist with
8 aerosolization of COVID-19?

9 A. There is, I would say, that that - there
10 is a similar - I would say that they are a similar
11 consensus, except that there's not - that masks can
12 also protect to some extent against aerosolization.
13 So that a lot of the consensus about wearing masks
14 is to really ensure that it is adhering to - that in
15 a short period of time that is the person connected
16 with it can't - that infrastructural changes that's
17 being developed in the future, that to reason that
18 call against masks and social distancing and that be
19 done immediately. It doesn't time to -.

20 Q. I have no further questions. Thank you.

21 JUDGE LEAVITT: Mr. Wallen?

22 ATTORNEY WALLEN: No questions, Your
23 Honor.

24 JUDGE LEAVITT: Thank you.

25 Do you have any Redirect?

1 ATTORNEY BRAILEY: I just a couple
2 questions.

3 JUDGE LEAVITT: Okay.

4 ---

5 REDIRECT EXAMINATION

6 ---

7 BY ATTORNEY BRAILEY:

8 Q. Doctor Eisenberg, I want to talk about -
9 actually can we pull up, I think it was Senate
10 Exhibit 16.

11 Dr. Eisenberg, Counsel raised the issue
12 of the protests that were generally across the
13 country.

14 And are there some differences between
15 these protests and - and voting on Election Day that
16 are important to take into consideration, when you
17 think about the transmission of COVID at events like
18 this?

19 A. Yes, large events there's a big
20 difference that these protests that are outside,
21 there is ventilation. So the - all known risks are
22 lower outside than inside. Polling stations occur
23 indoors, that the biggest change that made a
24 difference and then obviously the amount of time
25 that you are indoors you have evidence it made a

1 difference. Protestors were generally people that
2 are outside.

3 Q. Is there something to be said about the
4 percent of the population that might be together on
5 one day, like Election Day, versus the percent of
6 population that were protesting?

7 A. Yes, so a very small percentage of the
8 population in any state where are actually
9 protesting whereas in election, I imagine 60 percent
10 of the population will be voting. So that's a huge
11 population in one day that's going to an indoor
12 setting.

13 Q. Uh-huh (yes). One moment.

14 Thanks. No more questions.

15 JUDGE LEAVITT: Thank you.

16 Dr. Eisenberg, you are excused. Thank
17 you for your testimony.

18 THE WITNESS: Thank you.

19 JUDGE LEAVITT: Your next witness, Dr.
20 Herron?

21 ATTORNEY NKWONTA: Your Honor, our -
22 our next witness is not - we'll not address the
23 postal delay or postal services.

24 JUDGE LEAVITT: Right. I understand.

25 ATTORNEY NKWONTA: So we're not going

1 to -.

2 JUDGE LEAVITT: You're going to do the
3 other issue, which is third-party assistance?

4 ATTORNEY NKWONTA: Right.

5 So the - the question that I have is
6 whether we are moving into that issue or -. I know
7 that other parties have designated witnesses on the
8 Postal Service. So I wanted to clarify what - where
9 we stand.

10 JUDGE LEAVITT: I can call a -
11 evidence directly related to the Postal Service - or
12 maybe I'm wrong.

13 But do you have something Mr. -?

14 ATTORNEY NKWONTA: No, the - the
15 Senate Intervenors can call their one witness.

16 JUDGE LEAVITT: Okay.

17 What about Mr. Evans?

18 ATTORNEY EVANS: Both of our witnesses
19 will testify as to the U.S. Postal Service issue.

20 One of them more primarily, Mr.
21 Eckhart, than the other one. One's focus will
22 primarily be on election fraud.

23 JUDGE LEAVITT: Well, do you want to -
24 ?

25 Why - why don't we go to third party

1 assistance?

2 ATTORNEY HANGLEY: Your Honor, may I
3 make a request?

4 JUDGE LEAVITT: Pardon me.

5 ATTORNEY HANGLEY: May I make a
6 request?

7 JUDGE LEAVITT: Sure.

8 ATTORNEY HANGLEY: Since we - since
9 the other two parties don't seem to be able to agree
10 on the third party assistance question. If, in a -
11 I'd like to ask the Petitioners if we have a
12 problem, as to what their evidence is on this.
13 Because it doesn't appear to me to be anything to
14 survive summary judgement or even a motion on
15 relief. So Your Honor may decide it is just not
16 necessary to hear evidence on the issue and you can
17 make your conclusions of law based on -

18 JUDGE LEAVITT: Okay.

19 ATTORNEY HANGLEY: - based on proffer.

20 JUDGE LEAVITT: Do you want me -? I -
21 I think we have a proffer. Do you want to stand on
22 what's in your - you want to be aware of the - the
23 Pennsylvania Supreme Court rendered in a ruling
24 prior to Act 77 rules that third party assistance is
25 not permitted.

1 ATTORNEY NKWONTA: My understanding of
2 that ruling, Your Honor, is the Pennsylvania Supreme
3 Court interpreted the statute, a specific statute to
4 prohibit a third-party voter assistance without
5 delivery.

6 Now, our lawsuit does not seek the
7 permanent invalidation of that statute. Our - we
8 recognize that statute exists but what our lawsuit
9 seeks are - are temporary safeguards to protect the
10 rights to vote during the COVID pandemic and
11 specifically for the November election.

12 So just as we recognize that current
13 law imposes the Election Day deadline, we also
14 recognize that current law prohibits third-party
15 voter assistance.

16 What we're asking for are safeguards
17 to allow to give us an opportunity to overcome some
18 of these hurdles that have been placed in their way.
19 And in doing that, that - that is the nature of the
20 evidence that we present today.

21 And I'd also like to point out that
22 Pennsylvania actually does permit third-party voter
23 assistance.

24 JUDGE LEAVITT: In certain specified
25 circumstances.

1 ATTORNEY NKWONTA: Precisely.

2 JUDGE LEAVITT: If - if you're not
3 asking for relief - you're asking for more -?

4 ATTORNEY NKWONTA: Understand.

5 And I - I - I think it's important to
6 identify the circumstances under which Pennsylvania
7 already allows this form of relief. It is permitted
8 for disabled voters and it's permitted for disabled
9 voters because the Court found that the burden -?

10 JUDGE LEAVITT: Well, you're not
11 challenging the fact that it is unconstitutional.
12 Your position is that people who are at risk of
13 getting COVID-19 are disabled for -

14 ATTORNEY NKWONTA: No -.

15 JUDGE LEAVITT: - purposes of the
16 Election Code?

17 ATTORNEY NKWONTA: Not necessarily.

18 We're - we're not - we're not trying
19 to create a new interpretation of the Election Code.

20 What we are - what we are arguing is
21 that, as applied to this upcoming November 3rd
22 election in light of COVID, that the additional
23 safeguard of allowing these voters to designate
24 someone else to drop off their ballot, it is
25 necessary to protect the rights of vote. Just as we

1 are arguing, -

2 JUDGE LEAVITT: So you are -

3 ATTORNEY NKWONTA: - that -.

4 JUDGE LEAVITT: - your position is
5 that the statute as currently written, it is
6 constitutional, because it does not permit third-
7 party assistance to a person at risk of COVID-19.

8 That's - that's your legal position?

9 ATTORNEY NKWONTA: Yes, it is.

10 And I'll clarify, as applied.

11 JUDGE LEAVITT: Okay.

12 Well, how long will the doctor take?

13 ATTORNEY NKWONTA: Well -.

14 JUDGE LEAVITT: What is he going to
15 testify to?

16 ATTORNEY NKWONTA: He's going to
17 testify to the - and - and that's a good question,
18 Your Honor, because his testimony is actually in
19 response to one of the - the - to - to either the
20 Respondents or the Intervenors' arguments against
21 extending this relief, which is the risk of voter
22 fraud. So he's going to testify to the incidence of
23 voter fraud in - in American elections and
24 Pennsylvania.

25 ATTORNEY EVANS: And - and Your Honor,

1 to the extent the Court, it is our position this is
2 an open and shut issue. It was addressed by the
3 Pennsylvania Supreme Court Opinion 2014. And to the
4 extent that Court is inclined to dismiss this count,
5 we would withdraw our proffer of Mr. Marx, because
6 it - it would not be necessary. And we don't think
7 this is frankly a proper use of the Court's time,
8 given it's such a clear issue. I think that is one
9 of the reasons why the Pennsylvania Supreme Court
10 expressly referenced the U.S. Postal Service issue,
11 and just said they were making other claims. If
12 this Board doesn't find that this qualifies as a
13 remaining other claim, given that it completely
14 lacks merit and it has already been decided, I think
15 that we could just call Mr. Ecker, and the Court can
16 just find this claim has no merit. And therefore,
17 it wasn't a claim that evidence needed to be
18 presented on.

19 ATTORNEY NKWONTA: Your Honor, with
20 all due respect, I - I think Mr. Evans has missed
21 the point of both our claim and the Supreme Court
22 decisions.

23 The Supreme Court decision that he's
24 referring to was a statutory interpretation
25 decision. In other words, the Court was asking what

1 does the statute permit? That's not what we're
2 asking here. We know what the statute permits and
3 what it doesn't permit. Just like we know for - for
4 the receipt deadline.

5 What we're asking is whether the
6 circumstances before us require certain
7 accommodations in order to protect the
8 constitutional rights above to a free and equal
9 election.

10 ATTORNEY HANGLEY: And Your Honor,
11 there is - from Petitioners' proffer it appears that
12 Petitioners are forgetting who has the burden here
13 to show that this was even necessary.

14 We don't need to get to fraud.
15 Neither Respondent nor Intervenors need to respond
16 and argue that fraud is a reason for the statute.
17 Petitioners don't show that there is a
18 constitutional burden imposed by the statute. And
19 what I'm hearing is the Petitioners don't have
20 evidence for that.

21 So I don't - I don't believe that it's
22 necessary to hear this protest or to get into the
23 fraud issues, which are really a - very far afield
24 from what the Supreme Court ordered this court to
25 hear evidence on.

1 JUDGE LEAVITT: Well, the Court - the
2 Supreme Court directed the Commonwealth Court to
3 conduct all necessary proceedings to create a - an
4 evidentiary record on claims raised in this case.
5 That is my dilemma. If you're going to claim what
6 all necessary proceedings means.

7 ATTORNEY HANGLEY: Your Honor, I think
8 that all necessary proceedings, with respect to
9 third-party about delivery is hearing what we've
10 just heard, in concluding that there is no evidence
11 for that claim and that's not necessary for the
12 court to spend time on Intervenor's might, you know,
13 respond to the claim. Petitioners can't make it in
14 the first instance. And we're not hearing from
15 election experts on why is it even necessary. We're
16 not hearing - there doesn't appear to be any
17 evidence. So this really is necessary. It's just
18 something that someone thinks might be a good idea
19 and that's not a basis to take up this Court's time.

20 ATTORNEY NKWONTA: Your Honor, the
21 Court just heard evidence from Ms. Laudenslager, who
22 explained that, in spite of her fears of COVID-19,
23 she would be forced to vote in person in November.
24 And the reason she's going to be forced to vote in
25 person in November, is because she no longer trusts

1 the mail based on a specific incident that occurred
2 with respect to her primary ballot and with respect
3 to other instances of mail, her DMV application, her
4 grad school applications, et cetera.

5 That's concrete evidence in
6 individuals who are affected, because they were
7 placed in the untenable position of choosing the
8 between your right to vote, which can - which can be
9 at risk under the current deadlines in the USPS, and
10 her health. But she can be placed at risk by voting
11 in person. Just like Dr. Eisenberg just mentioned.

12 So I think that - I - I think that the
13 motion that we have and presented evidence is not
14 entirely accurate, because - because I think that
15 the - opposing Counsel's view on our evidence and
16 the framework of the Postal Service is alone but
17 it's not entirely - there is evidence that people
18 need this relief. But I will say, though, that
19 Intervenors and opposing Counsel have not presented
20 any evidence of - of - any evidence that would
21 warrant or that - that supports a stated interest in
22 - in preventing this accommodation.

23 So what - so our evidence -.

24 JUDGE LEAVITT: I want -.

25 ATTORNEY NKWONTA: Go - go ahead.

1 JUDGE LEAVITT: The statute is clear.
2 And you have a constitutional challenge. And
3 you're saying, as applied for this election cycle,
4 the statute as written is unconstitutional, because
5 it omits third-party assistance.

6 ATTORNEY NKWONTA: Yes. And we
7 presented evidence as to why that -.

8 JUDGE LEAVITT: Why do you need
9 evidence? That's a legal argument; is it not?

10 ATTORNEY NKWONTA: It's a legal
11 argument to the extent that -.

12 JUDGE LEAVITT: And you have your
13 witness who testified about the - the law, and you
14 had an epidemiologist?

15 ATTORNEY NKWONTA: Yes, that - that is
16 correct.

17 JUDGE LEAVITT: And you have - but if
18 Dr. Herron is going to say how third-party
19 assistance eliminates that -.

20 ATTORNEY NKWONTA: No, Dr. Herron said
21 - Dr. Herron is more to rebut the State - the
22 State's reported interests or with the State's
23 asserted interest in preventing voter fraud.

24 So in other words, Dr. Herron's
25 evidence is not necessarily to say this is the

1 burden among individual voters. We feel like we
2 have presented that evidence with our witnesses.

3 Dr. Herron's evidence - or Dr.
4 Herron's testimony is more so to rebut the State's
5 response that - or the Intervenors' response that
6 voter fraud necessitates this form of relief.

7 ATTORNEY HANGLEY: Your Honor, there's
8 no evidence for anyone to respond to -.

9 JUDGE LEAVITT: I - I - I agree. I
10 think - well, you're not presenting evidence, except
11 in - in anticipation of - of a voter fraud argument
12 against third-party assistance. If - if your
13 witness, Mr. Marx, is - is going to testify about
14 something that occurred a long time ago, and anyway,
15 and everything that happened in that case is
16 recited, is it not in the federal litigation?

17 ATTORNEY NKWONTA: To my - to my
18 knowledge, yes, Your Honor. I mean, when -.

19 JUDGE LEAVITT: Oh, so you can - you
20 could use that record in a - a District Court
21 opinion to rebut what I think is really nothing but
22 argument, that we need third-party assistance, based
23 on your - Ms. Laudenslager testimony. It's not like
24 that's your evidence in support of third-party
25 assistance.

1 ATTORNEY NKWONTA: But I would add
2 that it's not the only - that's one piece of
3 evidence. But I would also point to the Court to
4 the fact that the mail delay that we pointed to,
5 that is also evidence of the need for third-party
6 assistance.

7 But what - .

8 JUDGE LEAVITT: I got that down in the
9 record. You can make your argument.

10 ATTORNEY EVANS: Well, our - our
11 response to that, Your Honor, is if he's got his
12 evidence that he's alleging, we definitely should
13 have a right to present the justification for
14 presenting election fraud - .

15 JUDGE LEAVITT: Well you can make that
16 with the case law and Marx, isn't that enough?

17 ATTORNEY EVANS: Oh, Mr. Marx is here
18 to testify today. I mean, we - we - we're the only
19 Intervenor or party in the case that hasn't
20 presented one witness or one piece of evidence.

21 ATTORNEY NKWONTA: What they're
22 saying, Your Honor, is even if Dr. Herron doesn't
23 testify and - Mr. Marx should testify, nonetheless,
24 about events that transpired when - 1993, I believe.

25 ATTORNEY EVANS: Well, it doesn't -

1 it's not just the - it's not just that, Your Honor.
2 It shows that there is justification. Election
3 fraud is real.

4 Again, to the - to the extent the -
5 the Court is willing to make a finding that
6 Petitioner hasn't established evidence which even
7 shifts the burden to us and therefore this isn't a
8 final claim before the Court, we'd be willing to
9 withdraw Mr. Marx. If the Court is not willing to
10 make that finding, the Court's ability to make the
11 finding then, it hasn't shifted and therefore we
12 need to provide justification, we need to be
13 provided an opportunity to do that.

14 JUDGE LEAVITT: I - I think the - the
15 only evidence is the testimony of Ms. Laudenslager.
16 And to some extent, Dr. Eisenberg. And I think you
17 had a chance to cross examine them. I don't think
18 there's anything that they've said that would
19 require a rebuttal witness. So I think - I think
20 the issue of third-party assistance isn't fully
21 developed as desired by Petitioner.

22 ATTORNEY EVANS: Yes, has it been
23 fully developed as desired by the Intervenor of the
24 House? I mean, we have had an opportunity to
25 respond. I mean to allow everyone else to present

1 live testimony and to inhibit us from only having to
2 rely on papers, I think is unfair, Your Honor.

3 Like I said, if the Court is willing
4 to say then what was presented and make a finding is
5 insufficient to even establish a claim and we'd
6 willing to make that withdrawal. If not, we just
7 can't.

8 ATTORNEY NKWONTA: Your - Your Honor,
9 I would add one - one more thing to that.

10 I think that one thing I want to
11 clarify for this hearing is that this Court, as I'm
12 sure you know, had full discretion in how and under
13 what circumstances it accepts evidence. There is no
14 rule that stipulates that the Court only accepts
15 evidence orally or in Court. The Court can hold
16 hearings, the Court can also hold written arguments
17 open. And that is contemplated by the Pennsylvania
18 Rules. So it is entirely this Court's discretion
19 whether it hears evidence orally, through written
20 papers or through other forms, in order to reach its
21 Findings of Fact and Conclusions of Law.

22 ATTORNEY HANGLEY: And Your Honor, I
23 don't have to be - the Petitioners, they presented -
24 they presented evidence that some people have some
25 trouble with voting, but there's no link from that

1 to third party mail assistance.

2 And as Your Honor knows, disabled
3 people can have third-party use over their ballot.
4 And other people have options, such as bringing
5 themselves to the County Board of Elections.

6 So - so we are not - we believe we
7 have not heard enough evidence that Petitioners'
8 arguing anything other than their argument on the
9 papers, a legal argument. And the response that is
10 also a legal argument that incites the Marx case.
11 There is no need for Mr. Marx's testimony here.

12 ATTORNEY EVANS: But Your Honor, Ms.
13 Laudenslager didn't testify that she needed third-
14 party assistance, that she requested it. There's
15 nothing in the record that states -?

16 JUDGE LEAVITT: I agree.

17 ATTORNEY EVANS: I mean, there - there
18 is -.

19 JUDGE LEAVITT: But - but her - her
20 testimony speaks for itself. And that's your
21 argument. It doesn't support a factual finding that
22 third-party assistance is needed.

23 What we have in the Election Code are
24 two options - three. Absentee ballot, absentee
25 voting, which you can apply for on the day of the

1 election if you wake up with COVID-19. You can vote
2 by mail or you can vote in person.

3 I think - I think please make your
4 legal argument, but I - I - I don't think you've
5 presented - I don't think the issue - I don't think
6 there are any facts defined on third-party
7 assistance, one way or the other.

8 And with that, I'm going to suggest
9 that we take a break. And then, do you want to have
10 Mr. Ecker testify?

11 ATTORNEY EVANS: Yes, Your Honor.

12 JUDGE LEAVITT: All right.

13 We'll take a ten-minute break -

14 ATTORNEY EVANS: Okay.

15 JUDGE LEAVITT: - and then resume.

16 ATTORNEY EVANS: Thank you.

17 CRIER: The Board is now recessed.

18 ---

19 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

20 ---

21 ATTORNEY NKWONTA: Before we get to
22 the House Intervenors' testimony, I would request that
23 they make a proffer as to the relevance and to the
24 personal knowledge of their witness's testimony
25 because their witness was originally designated to

1 testify. And they have since changed this topic to
2 somehow fit within the Postal Service delays and I
3 don't see the connection. And I would ask that they
4 make a proffer as to the relevance of this testimony.

5 ATTORNEY WALLEN: My inclination - I
6 thought based on the prior discussion that you - that
7 the Court indicated that you didn't see the value of
8 the hearing from Mr. Marx. And we were prepared to
9 present Mr. Eckert.

10 JUDGE LEAVITT: I thought Mr. Eckert
11 was related to the Postal Service?

12 ATTORNEY WALLEN: No. Mr. Eckert is -
13 slightly. Mr. Eckert is going to testify about the
14 finality of elections and issues relating to absentee
15 ballots and the same.

16 ATTORNEY NKWONTA: And the question,
17 Your Honor, is to - what gives Mr. Eckert personal
18 knowledge about the issues he is about to testify to
19 that would be relevant to this case? I mean, what
20 we're talking about here, Postal Service delivery
21 delays, and he's testifying about the finality of
22 elections. I'm not even sure what he's going to
23 contribute within his personal knowledge to this
24 discussion.

25 ATTORNEY WALLEN: I would say the

1 Petitioners' proposed relief is an extension and be
2 received by deadline. Mr. Eckert can testify, having
3 won a primary election last cycle by one vote where
4 the result changed repeatedly from when absentee
5 ballots were counted to when provisional ballots were
6 counted.

7 JUDGE LEAVITT: I think I understand
8 Mr. Eckert is being offered as evidence on why the
9 deadline should not be extended three days as proposed
10 by the Secretary, or seven days as proposed by the
11 Petitioner?

12 ATTORNEY WALLEN: Correct, Your Honor.

13 JUDGE LEAVITT: So I will allow his
14 testimony.

15 ATTORNEY WALLEN: Then the House
16 Intervenors call Mr. Eckert.

17 ---

18 TORREN ECKERT,
19 CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
20 HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS
21 FOLLOWS:

22 ---

23 DIRECT EXAMINATION

24 ---

25 BY ATTORNEY WALLEN:

1 Q. Good evening. Please state your name for
2 the record.

3 A. Torren Eckert.

4 Q. And what is your current occupation?

5 A. I'm currently elected to the State House
6 of Representatives for the 193rd District, which is
7 representing parts of Adams and Cumberland County. I
8 am also a licensed attorney and still maintain a
9 general practice and have done so for roughly
10 approximately eight years.

11 Q. When did you first run for public office?

12 A. I started my campaign running in the 2018
13 election, roughly in the January timeframe.

14 Q. For the same office you hold now?

15 A. That's correct.

16 Q. And where is that district located?

17 A. The district makes up parts of northern
18 Adams County and southern and western Cumberland
19 County.

20 Q. Drawing your attention to the 2018 primary
21 election, were there other candidates in the race?

22 A. Yes.

23 So for the Republican primary, there were
24 four other candidates that were on the ballot and
25 there was one Democratic candidate.

1 Q. And on what date was the 2018 primary
2 election?

3 A. May 15th of 2018.

4 Q. So drawing your attention to primary
5 Election Day, were the results known on Election Day?

6 A. So on Election Day as ballots started
7 coming in, or as the votes were tabulated, numbers
8 came in, roughly. I would say, at nine o'clock at
9 night, maybe 9:30, the results were posted. And I had
10 won - or I had lost the election by one vote as
11 opposed to the candidate who had ultimately lost. He
12 had a single vote ahead of me. The other two
13 candidates had much less to not make it contested. So
14 really it came down to really two candidates after the
15 night of the election.

16 Q. One vote and how many ballots cast?

17 A. It was approximately 8,000 Republican
18 ballots cast for that primary election.

19 Q. Were there any issues with the absentee
20 ballots?

21 A. No.

22 In fact, at that time, absentee ballots
23 were tabulated at the precinct and we'd come to find
24 out, for whatever reason, one of the precincts did not
25 re-tabulate or did not count the ballots at the

1 precinct in Adams County. We had a lot of scan
2 machines, which allows you to basically - what I call
3 Scantron machines, where you run a paper ballot
4 through a machine, which most folks have nowadays.

5 The county did not - or the precinct did
6 not run that ballot through the machine. So they did
7 so - or they opened those ballots the next day at the
8 county election office in which one of those absentee
9 ballots was for another candidate that was not the
10 lead vote getter. And then one of the other - the
11 other absentee ballot was, in fact, for myself.

12 Q. What was the margin then?

13 A. It was tied at that point. And again,
14 just to clarify, these absentee ballots were received
15 - these absentee ballots were received prior to
16 Election Day, following the natural proceedings. They
17 weren't - you know, they weren't delivered the next
18 day. These absentee ballots, in fact, the poll
19 workers just did not run them through the machine.

20 Q. So did anyone contest the result?

21 A. There was no formal election contest.
22 However, taking a step back, moving up to - so to
23 answer your question, no one contested the absentees
24 or their authenticity.

25 Q. So I'm sorry. We'll take a step back.

1 Were there any provisional ballots that were
2 outstanding?

3 ATTORNEY NKWONTA: This literally has
4 nothing to do with the ballot receipt deadline.

5 ATTORNEY WALLEN: We're talking about
6 the extent - about what happens when an election
7 extends indefinitely.

8 JUDGE LEAVITT: I am going to allow
9 the question. I'll note your continuing objection.

10 BY ATTORNEY WALLEN:

11 Q. Were there any provisional ballots?

12 A. So the Friday preceding - the Friday
13 following the election, Adams County election office
14 does their re-canvassing, and at that point is when
15 the county - the county office goes through the
16 provisional ballots. At that time, the county
17 election board determined that there were two
18 provisional ballots that were cast. One was
19 determined not to be a valid Adams County voter. The
20 other was to be considered as a ballot of an Adams
21 County voter. And that provisional ballot was for
22 myself, thereby putting me ahead by the one vote.

23 Q. Did anyone contest the result at that
24 point?

25 A. No official election contest was filed.

1 However, because it wasn't a statewide race, the - any
2 party can petition a precinct to be recounted by
3 finding three voters from any precinct that you want
4 to challenge or recount, I should say. So the
5 gentleman who had lost by one vote elected to file a
6 petition with the court to recount the Adams County
7 ballots, because that makes up the majority of his
8 district. And he elected to recount those ballots.

9 Q. What was the result of the recount?

10 A. After weeks of petitions and going through
11 the process of, you know, being able to set dates and
12 times, that ultimately the numbers held. They
13 literally counted one ballot one by one, looking at -
14 you know, it was a hand count numerous times. And
15 through that process every vote came in the same as it
16 had - had since the re-canvassing was conducted
17 following the election.

18 Q. When were the election results finally
19 certified?

20 A. Approximately June 12th was when the
21 County completed the recount. I am not exactly sure
22 when the state certified the results.

23 Q. Approximately how long did the whole
24 process take?

25 A. Roughly a month. I mean from election

1 night, being May 15th, to the end of the recount was a
2 long 30 days.

3 Q. How did it feel to go through this
4 experience?

5 A. From a candidate perspective and not
6 knowing the outcome of the election, really, it's an
7 up and down ride. I mean, we went from having lost an
8 election to being tied to then winning an election and
9 then going through a recount process. And this was in
10 circumstances when all of the ballots were received
11 Election Day.

12 And I think to myself that it had - you
13 know, and this was challenging for not just me, but
14 for our families and really both me and my opponent
15 who had lost by one vote, you know, the lack of
16 finality, the lack of closure knowing what the results
17 were. And this was an election where there was only
18 8,000 votes cast. You know, frankly it was a long,
19 arduous process to get to the point of knowing when
20 those results were going to come in. And any kind of
21 delay, any further delay, would have made that longer
22 as well.

23 Q. Thank you, Mr. Eckert, no further
24 questions.

25

CROSS EXAMINATION

1
2
3 BY ATTORNEY NKWONTA:

4 Q. Good evening, Mr. Eckert.

5 A. Hi.

6 Q. Mr. Eckert, you supported Act 77.

7 Correct?

8 ATTORNEY WALLEN: Object, Your Honor.

9 I object to this line of questioning. Legislative
10 immunity under the speech debate clause prevents this
11 inquiry.

12 JUDGE LEAVITT: Sustained.

13 BY ATTORNEY NKWONTA:

14 Q. As a representative for the 193rd
15 District, you agree that it's important for your
16 constituents to exercise the right to vote.

17 Correct?

18 ATTORNEY WALLEN: Objection. Mr.
19 Eckert is not in his official capacity. He is here -
20 and it's well outside the scope of Direct.

21 ATTORNEY NKWONTA: That's an
22 interesting objection because all he talked was his
23 campaign and the recount of which he was involved in
24 and the race in which he attained -.

25 JUDGE LEAVITT: You're asking

1 questions about his role as a representative. If you
2 could rephrase your question to relate to his
3 experience as a candidate?

4 ATTORNEY NKWONTA: Sure.

5 BY ATTORNEY NKWONTA:

6 Q. As a candidate, did you personally want
7 the constituents under the 193rd District to have and
8 exercise the right to vote?

9 A. I did.

10 Q. Are you aware that over 8,000 mail in and
11 absentee ballots were returned to election officials
12 after Election Day of the June 2nd primary?

13 ATTORNEY WALLEN: Objection. Your
14 Honor, this is well outside the scope. We didn't even
15 talk about the June primary.

16 ATTORNEY NKWONTA: We're talking about
17 the deadline.

18 Right?

19 JUDGE LEAVITT: You're referring to
20 testimony that he may or may not have heard from
21 Secretary Boockvar.

22 ATTORNEY NKWONTA: But I am aware - I
23 am allowed to ask him if he's aware of that fact and
24 go right to the deadline.

25 JUDGE LEAVITT: I'll allow the

1 question. Are you aware of that fact?

2 THE WITNESS: Could you repeat the
3 question, please?

4 BY ATTORNEY NKWONTA:

5 Q. Are you aware that over 8,000 absentee or
6 mail in ballots were delivered to election officials
7 after the election date deadline in the June 2nd
8 primary?

9 A. I don't have knowledge of the exact
10 number. I do not.

11 Q. Do you have any reason to dispute that?

12 A. I don't have any knowledge to dispute it
13 as well.

14 Q. Is it your position that all of those
15 ballots and all of those voters whose ballots that
16 were delivered after Election Day should be denied the
17 ability to vote?

18 ATTORNEY WALLEN: Objection. He's not
19 being called in as an expert witness.

20 JUDGE LEAVITT: Please, it was a very
21 simple directive. If you could limit your Cross to
22 the Direct or something that goes to his credibility.

23 BY ATTORNEY NKWONTA:

24 Q. You mentioned that there were no absentee
25 ballot issues in your election or in the recount.

1 Is that correct?

2 A. That's correct.

3 Q. And you mentioned that the recount process
4 took about a month.

5 Right?

6 A. That's correct.

7 Q. And you don't have any sense as to how
8 long it would have taken had the deadline for absentee
9 ballots been seven days after Election Day, do you?

10 A. I can't speak to the exact timeline, but I
11 do know that had absentees been allowed post eight
12 o'clock on election night, that certainly winning by
13 one vote could have - potentially be me in that
14 position, having lost by one vote, would have given me
15 the opportunity to really find friends and family who
16 maybe hadn't mailed in their ballot yet to give them
17 an extra four hours to do so.

18 So that certainly would have given them
19 that opportunity. So arguably I didn't have that
20 opportunity. But certainly as a candidate I would -
21 if that were the rule, it certainly would give me an
22 opportunity to influence the election after the close
23 of the polls.

24 Q. Well, not if there is a postmarked
25 requirement.

1 Right? You're aware of what it means for
2 a ballot to have to be postmarked before Election Day?

3 A. I am not an expert in mail. Just - no.
4 I'm not an expert in mail.

5 Q. If ballots are required to be postmarked
6 before Election Day, extending the deadline wouldn't
7 allow anybody to vote after Election Day, would it?

8 A. I guess arguably - I can't speak as to
9 what happens when you put a piece of envelope in the
10 mail and drop it off at the post office. Presumably
11 the election results came in about 9:30 presumably.
12 Folks could have dropped off a piece of mail at the
13 post office that night. Whether or not that gets
14 processed that night, I am not an expert in that. We
15 had testimony today on that. But to me that seems
16 like exactly what I should do after the polls close.

17 Q. What time do the polls close in
18 Pennsylvania?

19 A. Eight o'clock.

20 Q. What time does the post office close?

21 A. I think that varies from location to
22 location, but that being said, I think that post
23 offices have the ability to drop off mail slots and
24 things like that. I don't really know when they're
25 collected. I am not an expert in that.

1 Q. So you can't say one way or another
2 whether a ballot or a piece of mail submitted after
3 8:00 p.m. on Election Day would be postmarked before
4 or after Election Day?

5 A. I can't make that assertion.

6 Q. And you mentioned the effect of absentee
7 ballots coming in after Election Day, the effect that
8 would have on the recount and why you would not want
9 that. Are you aware that military and overseas
10 ballots arrive up to seven days after Election Day?

11 A. I am aware of that fact. They were not in
12 this 2018 election, but I am aware of that fact, yes.

13 Q. And that doesn't pose a problem to you?

14 A. It did not in the 2018 election.

15 Q. In general does it pose a problem to you?

16 ATTORNEY WALLEN: Objection. This is
17 so far outside the scope.

18 ATTORNEY NKWONTA: We're still talking
19 about the deadline.

20 ATTORNEY WALLEN: You're now asking
21 him his opinion on - you're asking him his opinions on
22 the recount.

23 ATTORNEY NKWONTA: I did not.

24 JUDGE LEAVITT: He did not testify to
25 that in his Direct testimony, about how the different

1 deadlines proposed by the Secretary and proposed by
2 the petitioner, how they would have affected him four
3 years ago or two years ago or even what he thinks
4 about them.

5 ATTORNEY NKWONTA: I respect that.
6 But that goes to my point that if he is testifying
7 about that, then why is his testimony even relevant?

8 JUDGE LEAVITT: He's testifying about
9 why he likes the eight o'clock deadline.

10 ATTORNEY NKWONTA: Exactly. Thank
11 you, Your Honor. No further questions.

12 ATTORNEY HANGLEY: No questions, Your
13 Honor.

14 ATTORNEY SHEEHY: No questions, Your
15 Honor.

16 JUDGE LEAVITT: Any Redirect?

17 ATTORNEY WALLEN: No further
18 questions, Your Honor.

19 JUDGE LEAVITT: Thank you very much.

20 The Court had proposed that the
21 parties give a brief oral argument. I am thinking
22 that it might be better that the argument be made in
23 your memorandum of law, which has to be filed in just
24 a little over 24 hours. I would like the parties to
25 address the Petitioner and Secretary Boockvar. I

1 would like you to address the question of how the
2 Court can declare part of the Act 77 unconstitutional
3 and not have that result in triggering the non-
4 separability clause, which would render all of Act 77
5 unconstitutional and therefore would eliminate mail-in
6 voting.

7 I think what I'm going to do - so
8 that's one issue. The next thing that I would like
9 each Counsel to claim to the Court is what you want
10 the Court's Order to look like from if you submit a
11 proposed Order to others that have submitted nothing.
12 So we'll start with the Petitioner. What do you want
13 the Court Order to look like?

14 ATTORNEY NKWONTA: Your Honor, the
15 Petitioners would like the Court to temporarily enjoin
16 - and I don't have the statute memorized by heart.
17 But to temporarily enjoin the ballot receipt deadline
18 and to issue an injunction that would require
19 Pennsylvania collection officials to count ballots
20 received up to seven days after Election Day, as long
21 as they're postmarked by Election Day.

22 And additionally, the Petitioners
23 would request that the Court enjoin Pennsylvania Law
24 to the extent that it prohibits individuals from
25 seeking assistance from designated assisters in the

1 November 3rd election from delivering - assisters
2 delivering their ballots in light of the COVID-19
3 pandemic. And both forms of relief that are requested
4 by Petitioners are limited to the COVID-19 pandemic
5 and the November election. So these are temporary
6 injunctions, not - we are not taking permanent
7 invalidation of those laws.

8 JUDGE LEAVITT: You want the Court to
9 declare the statute unconstitutional as to those two
10 points, the receipt by eight o'clock on Election Day,
11 and the prohibition against the third party
12 assistance, and you want election officials, the
13 Secretary and all the county boards of election
14 enjoined from counting - from carrying out the terms
15 of the statute that you want declared
16 unconstitutional?

17 ATTORNEY NKWONTA: Yes. We would ask
18 to enjoin the Secretary and all acting in concert with
19 the Secretary from failing to count or refusing to
20 count ballots delivered up to seven days after
21 Election Day if they are postmarked by Election Day.

22 JUDGE LEAVITT: Who are those persons?

23 ATTORNEY NKWONTA: Those persons could
24 be both county election officials or it could be the
25 Department of State as well.

1 ATTORNEY HANGLEY: Your Honor, we are
2 not asking the court to find that Act 77 is
3 unconstitutional, either - or as applied. We're
4 asking the court to enter relief similar to what the
5 County Courts of Appeals and the County Courts of
6 Common Pleas enter in all the cases where polling
7 place hours need to be extended, in the three cases in
8 the primary where the receipt by deadline is extended.

9 We're asking the court to order that
10 the Secretary and the county courts will accept
11 ballots that are postmarked by Election Day, received
12 by Friday after Election Day, and if there's an
13 illegible or missing postmark, that they presume that
14 those ballots were mailed right after Election Day.

15 JUDGE LEAVITT: So you're asking the
16 court to enter an order under Section 1206 of the
17 Election Code which is the provision that allows the
18 Courts of Common Pleas to enter emergency type
19 elections?

20 ATTORNEY HANGLEY: I'm asking you to
21 put - enter something under a variety of that
22 jurisdiction. I'm asking the court to order equitable
23 relief to react to an emergency situation.

24 JUDGE LEAVITT: Can the Court order
25 equitable relief contrary to the statute?

1 ATTORNEY HANGLEY: I think that this Court
2 can, just the same as Courts of Common Pleas can and
3 do.

4 JUDGE LEAVITT: Well, they have an
5 express statutory obligation to order relief on the
6 Election Day in discrete circumstances. I mean,
7 you're asking two different - I think you're asking
8 for equitable relief, and the problem that I would
9 like you to address is how the Court can order
10 equitable relief because that authority follows the
11 law. The statute we're dealing with doesn't
12 contemplate such relief, certainly not on a statewide
13 basis.

14 ATTORNEY HANGLEY: Correct, Your
15 Honor. But this court has jurisdiction in general in
16 election matters, and has a right to protect the
17 voters from a situation where they are being
18 disenfranchised. It's not the statute that is the
19 problem. The problem is the post office, and this
20 court has the authority to order relief temporarily,
21 for one election only.

22 JUDGE LEAVITT: I understand the scope
23 of the relief. I'm not sure about the authority, but
24 I will look forward to reading your memorandum of law.
25 All right, Mr. Torchinsky, what would you like the

1 Board to enter?

2 ATTORNEY SHEEHY: A denial of
3 Petitioners' petition for relief in the nature of a
4 preliminary injunction, and we would ask that the
5 court grant our preliminary objections and to make
6 sure that they're -.

7 JUDGE LEAVITT: Mr. Evans?

8 ATTORNEY EVANS: We would as well to
9 the extent - it's my understanding that this court is
10 making primarily an evidentiary finding, but we also
11 would request the denial of the PI application on the
12 basis that it lacks jurisdiction. They're trying to
13 require the County Election Boards to take certain
14 actions, yet the County Election Boards are not
15 parties or Respondents in the lawsuit. They've
16 established no injury.

17 We are 64 days out of the election.
18 All voters could request absentee or mail-in ballots
19 now. All voters can go into vote. It is highly
20 speculative based upon a significant -.

21 JUDGE LEAVITT: You are making
22 argument. You should save that for your memorandum of
23 law. I want to know what - you're absolutely right.
24 This Court ultimately will not issue the order. The
25 Special Master will make a recommendation, which is

1 why the court is asking what order would you like this
2 court to recommend to the Supreme Court?

3 ATTORNEY EVANS: Sure Recommendation
4 would be the denial of the preliminary injunction
5 application, and also granting our preliminary
6 objections on the bases that I just mentioned.

7 JUDGE LEAVITT: Are you taking a
8 preliminary injunction or a permanent injunction which
9 has limited duration?

10 ATTORNEY NKWONTA: Your Honor, we're
11 seeking a permanent injunction with a limited
12 duration. And one other thing I would like to flag
13 about our request for relief is Your Honor's aware
14 when we - our claims and our lawsuit is framed as a
15 constitutional challenge for the failure to adopt
16 commutative measures in order to protect voters during
17 the COVID-19 pandemic.

18 JUDGE LEAVITT: And the absence of
19 language in the statute that you're claiming is
20 unconstitutional?

21 ATTORNEY NKWONTA: Right. So when we
22 asserted that - when we were initially before Your
23 Honor, we asserted that we were not challenged. We
24 were challenging in the failure to adopt those
25 commutative measures. The court protected that

1 interpretation, and interpreted our challenge as a
2 constitutional challenge to those statutes, which is
3 why the relief we seek takes the form it does now.

4 JUDGE LEAVITT: Right, but you're
5 challenging the constitutionality of the statute for
6 an omission. You're not challenging - except for the
7 third party assistance, you're challenging that
8 language.

9 ATTORNEY NKWONTA: I understand your
10 point, Your Honor. Just this explains why our relief
11 takes the form it does now.

12 JUDGE LEAVITT: Okay.

13 Is there anything anyone else would
14 like to bring up at this time?

15 ATTORNEY HANGLEY: Yes, two things
16 Your Honor. One is that we haven't moved our exhibits
17 in, and I was wondering if we could do that now or -?

18 JUDGE LEAVITT: Yes.

19 ATTORNEY HANGLEY: And the other is
20 about the format of the filing in 24 hours, if that's
21 paragraphs or a brief?

22 JUDGE LEAVITT: All right. We have
23 Petitioners' Exhibit 1, which is the Curriculum Vitae
24 of Mr. Stroman. Would you like that admitted?
25 Actually, do you want to go through the list?

1 ATTORNEY NKWONTA: Yes.

2 JUDGE LEAVITT: And just tell the
3 court what you want admitted?

4 ATTORNEY NKWONTA: Yes, Your Honor.

5 JUDGE LEAVITT: All right.

6 ATTORNEY NKWONTA: Your Honor, the
7 Petitioners seek to admit Petitioners' Exhibit 9. Do
8 you want me to describe what each exhibit is?

9 JUDGE LEAVITT: No, go ahead.

10 ATTORNEY NKWONTA: Petitioners'
11 Exhibit 28, Petitioners' Exhibit 30 and Petitioners'
12 Exhibit 7. And then, I would also add that before the
13 Court's instruction, the Court admitted Petitioners'
14 Exhibit 32, 4 and 6.

15 JUDGE LEAVITT: Thirty-two (32), 4 and
16 6. Any objection?

17 ATTORNEY EVANS: I would have an
18 objection to Petitioners' Exhibit 28. I have no
19 objection to the extent that it is admitted not for
20 the truth of the matter asserted therein. To the
21 extent that it is admitted for the truth of the matter
22 asserted therein, I have to object because Mr. Stroman
23 has no personal knowledge. He can't testify that he
24 evaluated the data to generate that report, and
25 therefore, there's nothing in the record to establish

1 that what that document represents is true. And so I
2 would propose that it be admitted with limiting
3 instructions that it is not being admitted for the
4 truth of the matter asserted therein.

5 JUDGE LEAVITT: Mr. Torchinsky, do you
6 have an objection to any of these exhibits?

7 ATTORNEY SHEEHY: Nothing additional,
8 Your Honor. I join in the House Intervenors.

9 ATTORNEY HANGLEY: I object to the
10 admission of Petitioners' Exhibit 7. It's the letter
11 from the post office to the North Carolina Secretary
12 of State on the basis of foundation.

13 JUDGE LEAVITT: Pardon me?

14 ATTORNEY HANGLEY: On lack of
15 foundation and authenticity.

16 JUDGE LEAVITT: I'm going to admit all
17 of the exhibits, I think. Basically, everyone is
18 producing - well, we don't have the underlying data
19 for any of the parties' exhibits. However, I'm going
20 to admit those exhibits, which are 4, 6, 7, 9, 28, 30,
21 and 32.

22 ---

23 (Whereupon, Petitioners' Exhibit 4, USPS Office
24 of Inspector General Management Alert, was
25 admitted.)

1 (Whereupon, Petitioners' Exhibit 6, USPS General
2 Counsel Thomas Marshall Letter to Judge
3 Boockvar, was admitted.)

4 (Whereupon, Petitioners' Exhibit 7, USPS General
5 Counsel Thomas Marshall Letter to Judge Marshall
6 was admitted.)

7 (Whereupon, Petitioners' Exhibit 9, USPS PMG
8 Briefing, Service Performance Measurement,
9 was admitted.)

10 (Whereupon, Petitioners' Exhibit 28, Eastern
11 Areas Inspiring Mail Service Update, was
12 admitted.)

13 (Whereupon, Petitioners' Exhibit 30, Preliminary
14 Report of Joseph Eisenberg, was admitted.)

15 (Whereupon, Petitioners' Exhibit 32, Preliminary
16 Report of Ronald Stroman, was admitted.)

17 ---

18 JUDGE LEAVITT: And you can, in your
19 memorandum of law, argue the weight of the document to
20 which you object.

21 All right, Respondents?

22 ATTORNEY HANGLEY: I believe that
23 Respondents' Exhibit 1 has already been marked as a
24 Petitioners' exhibit. That's the July 29th letter.
25 So I would not move for that one. Exhibit 2, which is

1 the spreadsheet from the Secretary - testified, and
2 Exhibit 4, which is a post office document.

3 JUDGE LEAVITT: Any objection?

4 ATTORNEY NKWONTA: No objection, Your
5 Honor.

6 ATTORNEY SHEEHY: No objections.

7 ATTORNEY EVANS: No objections.

8 JUDGE LEAVITT: They are admitted.

9

10 (Whereupon, Respondents' Exhibit 1, Letter
11 dated 7/29/20 from Thomas Marshall to Kathy
12 Boockvar, was admitted.)

13 (Whereupon, Respondents' Exhibit 2, Chart of
14 County Absentee or Mail-in Ballots, was
15 marked for identification and admitted.)

16 (Whereupon, Respondents' Exhibit 4, Postal
17 Bulletin: Your 2020 Election and Political Mail
18 Guide, was marked for identification and
19 admitted.)

20

21 JUDGE LEAVITT: Mr. Torchinsky, you're
22 up.

23 ATTORNEY SHEEHY: Thank you, Your
24 Honor. I'd like to move into evidence Exhibits 1
25 through 4. Those were exhibits, a part of Mr.

1 Plunkett's declaration and what Mr. Plunkett testified
2 to, as well as Exhibits 10 and 11 that Mr. Plunkett
3 testified to as well. And documents - Exhibits 16 and
4 17. Sixteen (16) was one document that Dr. Eisenberg
5 recognized, and Exhibit 17 is a government document
6 from the Center for Disease Control.

7 JUDGE LEAVITT: Any objections?

8 ATTORNEY NKWONTA: I need a minute,
9 Your Honor, to look at all these exhibits.

10 Your Honor, apologies, but I would ask
11 if the Senate Intervenors could read off their list?

12 JUDGE LEAVITT: I'm sorry?

13 ATTORNEY NKWONTA: I wanted to ask if
14 the Senate Intervenors could read off their list
15 again?

16 JUDGE LEAVITT: I'll read it. It's
17 the Exhibits 1, 2, 3, 4, 10, 11, 16 and 17. Did I get
18 that right?

19 ATTORNEY SHEEHY: Yes, Your Honor.
20 Your Honor, if I could add an additional, two
21 additional exhibits, to our list? And that would be
22 Exhibits 6 and 7. Those are both also government
23 documents.

24 ATTORNEY NKWONTA: Your Honor,
25 Petitioners object to Exhibit 7 on relevance grounds,

1 and we object to Exhibit 16 and 17 on hearsay grounds.

2 ATTORNEY HANGLEY: Your Honor, would
3 you like to hear my objections also? Should I state
4 our objections?

5 JUDGE LEAVITT: Go ahead.

6 ATTORNEY HANGLEY: So we object to 6
7 and 7 on hearsay grounds and relevance, 11 on hearsay
8 grounds, and 16 and 17 on the same basis. Sixteen
9 (16) and 17 are medical treatises that are not
10 authenticated.

11 ATTORNEY NKWONTA: Petitioners object
12 to Exhibit 6 as well on hearsay grounds and on
13 relevance.

14 JUDGE LEAVITT: The Court will order
15 all the exhibits admitted proffered by the Senate, 1,
16 2, 3, 4, 6, 7, 10, 11, 16 and 17. I think that's all
17 of them. The hearsay objection - unfortunately, every
18 exhibit has some degree of hearsay. What's the
19 relevancy objection to the Postmaster's statement? I
20 forget, did you make a relevancy objection? Your
21 witness, Mr. Stroman, testified at length about the
22 testimony as well as -.

23 ATTORNEY NKWONTA: Which exhibit are
24 you referring to?

25 JUDGE LEAVITT: Exhibit 11.

1 ATTORNEY NKWONTA: I'm not objecting -
2 I don't recall objecting to 11, but - I don't recall
3 objecting to 11.

4 ATTORNEY HANGLEY: I objected to 11 as
5 hearsay, to the extent that it's admitted for the
6 truth.

7 JUDGE LEAVITT: In that case, they're
8 all admitted.

9 ---

10 (Whereupon, Senate Intervenors' Exhibit 1, 1
11 Mr. Plunkett's Declaration, was admitted.)

12 (Whereupon, Senate Intervenors' Exhibit 2,
13 Attachment A from Plunkett's Report, was
14 admitted.)

15 (Whereupon, Senate Intervenors' Exhibit 3,
16 Attachment B from Plunkett's Report, was
17 admitted.)

18 (Whereupon, Senate Intervenors' Exhibit 4,
19 Quarterly Performance for Presort First Class
20 Mail, was admitted.)

21 (Whereupon, Senate Intervenors' Exhibit 6,
22 Investigation of Election Irregularities was
23 admitted.)

24 (Whereupon, Senate Intervenors' Exhibit 7,
25 Final Report from Miami-Dade County Grand Jury,

1 was admitted.)

2 (Whereupon, Senate Intervenors' Exhibit 10,
3 USPS Service Alert, was admitted.)

4 (Whereupon, Senate Intervenors' Exhibit 11,
5 Postmaster General Statement, was admitted.)

6 (Whereupon, Senate Intervenors' Exhibit 16,
7 Dhaval Dave Articles, was admitted.)

8 (Whereupon, Senate Intervenors' Exhibit 17,
9 Report from US Department of Health and Human
10 Services, was admitted.)

11 ---

12 JUDGE LEAVITT: The House did not have
13 any exhibits?

14 ATTORNEY EVANS: We have one, Your
15 Honor, which was - Exhibit 1 was the statement of the
16 Postmaster General, Louis DeJoy, on August 21st, 2020.
17 We'll move to admit that one, and that's the only
18 exhibit we would seek to admit.

19 ATTORNEY HANGLEY: Same objection,
20 hearsay.

21 ATTORNEY NKWONTA: We don't have a
22 physical copy of the exhibits.

23 ATTORNEY EVANS: Those were produced
24 yesterday.

25 ATTORNEY NKWONTA: No objection, Your

1 Honor.

2 JUDGE LEAVITT: House Speaker Number 1
3 is admitted.

4 ---

5 (Whereupon, House's Exhibit 1, Statement of
6 Postmaster General, was admitted.)

7 ---

8 ATTORNEY SHEEHY: No objection.

9 JUDGE LEAVITT: That concludes the
10 hearing - one last thing I will request counsel to do.

11 When you submit your Proposed Findings of Fact and
12 Conclusions of Law, and requested relief is that - you
13 don't have much time, and what we don't need in the
14 Proposed Findings of Fact are lengthy descriptions or
15 summaries of the evidence. I really want you to give
16 forth the factual findings that you want the Court to
17 make, not summaries of the evidence.

18 So after the Court receives the
19 Memoranda of Law, it may have questions. If that
20 transpires, the Court will schedule an argument and it
21 will be done by WebEx, probably with audio - I mean,
22 with video and audio.

23 Okay?

24 Anything else? Great, thank you all.

25 CRIER: The Commonwealth Court is now

1 adjourned.

2

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HEARING CONCLUDED AT 8:12 P.M.

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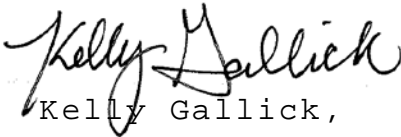
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CERTIFICATE

I hereby certify that the foregoing proceedings,
was reported by me on 8/31/2020 and that I, Kelly
Gallick, read this transcript, and that I attest that
this transcript is a true and accurate record of the
proceeding.

Date the 1st day of September, 2020.



Kelly Gallick,

Court Reporter

EXHIBIT “F”



Pennsylvania 2020 Primary Election Act 35 of 2020 Report

Date: August 1, 2020

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Introduction

On June 2, 2020, Pennsylvania held a primary election under unprecedented conditions. Prior to the primary, significant changes were implemented to the voting processes in Pennsylvania.

First, all Pennsylvanians voted on new, more accessible, auditable, and secure voting systems providing a voter-verifiable paper ballot. All 67 counties debuted their new voting systems in 2019 or the 2020 primary, completing a two-year initiative to bring these new systems with augmented election security and integrity to all Pennsylvanians.

Second, the Commonwealth for the first time in over 80 years significantly increased voting options, thanks to bipartisan support of Act 77 of 2019, which granted Pennsylvania voters enhanced options to participate in our democracy. One of those options provided that all eligible voters could now choose to vote by mail-in ballot.

Though unknown at the time, the timing of passage of Act 77 and mail-in voting was essential due to a third change: the spread of COVID-19. Due to the pandemic and stay-at-home orders implemented to stop the spread of the virus, Pennsylvanians embraced mail-in voting in impressive numbers. Nearly 1.5 million voters cast their vote by mail-in or absentee ballot, 17 times the number that voted absentee in the 2016 primary, when approximately 84,000 absentee ballots were cast.

And fourth, circumstances changed even further just days before our primary election, when we experienced civil unrest nationally and in regions throughout the Commonwealth in response to the tragic death of George Floyd, leading to curfews, travel restrictions, and office closures.

Yet, despite the changes and challenges, Pennsylvanians voted safely and peacefully in the primary, embracing the new mail-in voting option, and the new voting systems performed well. Reports of significant incidents were fewer than reported in many comparable prior elections, and our overall turnout was far higher than in 2012, the last time a presidential primary was not contested on both sides of the aisle. In addition to the nearly 1.5 million people who voted by mail, over 1.3 million Pennsylvanians voted in person on June 2.

We also learned some valuable lessons from the primary that we can use to ensure an even smoother voting experience in the general election in November.

In March 2020, Act 12 of 2020 was enacted, changing the date of the Primary from April 28 to June 2. Temporary changes, including allowing counties the ability to more quickly and easily appoint and staff polling places, were part of what allowed the 2020 Primary to be conducted safely and efficiently in the middle of a pandemic. While some of these Act 12 changes were temporary and expired after the primary, the Department of State and the county election offices agree that several of these temporary provisions relating to poll workers would be valuable and should be made permanent.

Other principal goals are to make it easier for counties to distribute and count mail-in ballots. The sheer volume of these ballots delayed some primary results in several counties. Our top priority is and has always been the accurate count of the ballots, and we know every voter shares this commitment. In addition, we also want to help the counties canvass these ballots as quickly and efficiently as possible.

The single most important change to accomplish this is a legislative change: We hope to work with the General Assembly to allow counties to begin pre-canvassing ballots in the weeks before Election Day. The counties overwhelmingly support this reform, and we hope the legislature shares this priority and will pass this amendment before counties finalize and begin sending ballots in early September.

Additionally, the Department is working with the counties to develop timelines and best practices, to map out the most effective processes before November, including recommendations on additional equipment, staffing, and schedules necessary to effectively process the high volume of mail-in ballots expected in November.

This report represents the fullest collection of data relating to the 2020 Primary Election, which may be helpful in mapping additional changes to Pennsylvania's Election Code that would be useful prior to the November Election. It includes some data not requested pursuant to Act 35, in order to provide more context for and a more complete presentation of the data.

The data referenced and presented in this report was obtained from two sources: The Statewide Uniform Registry of Electors (SURE), which is the statewide database used by county election officials to maintain elections and voter data, and the responses to uniform surveys that the Department sent to each county election director. Each county board of elections is responsible for ensuring the accuracy of the data that it enters into SURE and for its own responses to the Department's surveys. The Department has no ability to independently verify or guarantee the accuracy of the data received solely from the county boards of elections.

Voter Registration Statistics

Registered Voters as of June 2, 2020¹

County	Registered Voters
ADAMS	67,695
ALLEGHENY	898,944
ARMSTRONG	42,128
BEAVER	110,663
BEDFORD	32,237
BERKS	256,863
BLAIR	75,535
BRADFORD	36,324
BUCKS	461,310
BUTLER	129,783
CAMBRIA	83,182
CAMERON	2,987
CARBON	44,339
CENTRE	109,015
CHESTER	359,265
CLARION	23,239
CLEARFIELD	46,523
CLINTON	20,811
COLUMBIA	38,035
CRAWFORD	53,613
CUMBERLAND	178,406
DAUPHIN	187,621
DELAWARE	404,732
ELK	19,223
ERIE	195,467
FAYETTE	77,316
FOREST	3,385
FRANKLIN	94,623
FULTON	9,124
GREENE	21,704
HUNTINGDON	26,687
INDIANA	49,874
JEFFERSON	30,256
JUNIATA	13,633
LACKAWANNA	142,575

County	Registered Voters
LANCASTER	331,820
LAWRENCE	54,204
LEBANON	86,963
LEHIGH	234,842
LUZERNE	211,276
LYCOMING	69,008
McKEAN	24,098
MERCER	70,706
MIFFLIN	25,283
MONROE	109,981
MONTGOMERY	574,403
MONTOUR	13,299
NORTHAMPTON	212,972
NORTHUMBERLAND	53,985
PERRY	28,054
PHILADELPHIA	1,076,764
PIKE	40,955
POTTER	10,687
SCHUYLKILL	85,526
SNYDER	22,180
SOMERSET	46,659
SULLIVAN	4,416
SUSQUEHANNA	25,516
TIOGA	25,221
UNION	24,050
VENANGO	31,048
WARREN	30,486
WASHINGTON	145,882
WAYNE	33,353
WESTMORELAND	239,997
WYOMING	17,209
YORK	291,334
Total	8,599,294

Table 1: Data obtained from the SURE system.

¹ Data not requested by Act 35 but included for informational purposes.

Voter Registration Statistics

Voter Registration Applications Received by County Election Offices Fewer than 30 Days Before the 2020 Primary Election.

In other words, this represents voter registration applications received between May 4, 2020 and June 2, 2020.

County	Applications Received 5/4/20 – 6/2/20
ADAMS	1,522
ALLEGHENY	23,248
ARMSTRONG	951
BEAVER	2,676
BEDFORD	655
BERKS	6,589
BLAIR	1,998
BRADFORD	768
BUCKS	10,976
BUTLER	3,254
CAMBRIA	1,891
CAMERON	62
CARBON	1,061
CENTRE	2,882
CHESTER	9,515
CLARION	568
CLEARFIELD	1,430
CLINTON	614
COLUMBIA	1,057
CRAWFORD	1,259
CUMBERLAND	4,383
DAUPHIN	4,892
DELAWARE	10,611
ELK	444
ERIE	4,454
FAYETTE	1,891
FOREST	65
FRANKLIN	2,310
FULTON	205
GREENE	434
HUNTINGDON	615

County	Applications Received 5/4/20 – 6/2/20
INDIANA	1,042
JEFFERSON	779
JUNIATA	294
LACKAWANNA	3,561
LANCASTER	8,666
LAWRENCE	1,226
LEBANON	2,185
LEHIGH	6,780
LUZERNE	4,945
LYCOMING	1,698
McKEAN	636
MERCER	1,665
MIFFLIN	692
MONROE	2,629
MONTGOMERY	16,778
MONTOUR	348
NORTHAMPTON	5,222
NORTHUMBERLAND	1,362
PERRY	696
PHILADELPHIA	31,678
PIKE	941
POTTER	225
SCHUYLKILL	2,036
SNYDER	538
SOMERSET	1,067
SULLIVAN	83
SUSQUEHANNA	474
TIOGA	513
UNION	596
VENANGO	788
WARREN	417
WASHINGTON	3,463
WAYNE	659
WESTMORELAND	5,514
WYOMING	382
YORK	7,131
Total	220,989

Table 2: Data obtained from the SURE system.

Voter Registration Statistics

Voter Registration Applications Fewer than 15 Days before Primary Election

Voter Registration Applications Received by County Election Offices Fewer than 15 Days Before the 2020 Primary Election. In other words, this represents voter registration applications received between May 19, 2020 and June 2, 2020.

County	Applications Received 5/19/20 – 6/2/20
ADAMS	553
ALLEGHENY	9,063
ARMSTRONG	355
BEAVER	961
BEDFORD	222
BERKS	2,339
BLAIR	773
BRADFORD	269
BUCKS	4,257
BUTLER	1,213
CAMBRIA	725
CAMERON	18
CARBON	368
CENTRE	1,058
CHESTER	3,330
CLARION	169
CLEARFIELD	513
CLINTON	225
COLUMBIA	382
CRAWFORD	423
CUMBERLAND	1,613
DAUPHIN	1,775
DELAWARE	4,316
ELK	161
ERIE	1,535
FAYETTE	659
FOREST	23
FRANKLIN	917
FULTON	64
GREENE	173
HUNTINGDON	213

County	Applications Received 5/19/20 – 6/2/20
INDIANA	361
JEFFERSON	278
JUNIATA	102
LACKAWANNA	1,077
LANCASTER	3,023
LAWRENCE	487
LEBANON	735
LEHIGH	2,451
LUZERNE	1,753
LYCOMING	616
McKEAN	247
MERCER	611
MIFFLIN	248
MONROE	1,072
MONTGOMERY	6,570
MONTOUR	109
NORTHAMPTON	2,054
NORTHUMBERLAND	455
PERRY	228
PHILADELPHIA	12,892
PIKE	346
POTTER	77
SCHUYLKILL	704
SNYDER	177
SOMERSET	396
SULLIVAN	30
SUSQUEHANNA	122
TIOGA	177
UNION	195
VENANGO	241
WARREN	137
WASHINGTON	1,303
WAYNE	214
WESTMORELAND	2,037
WYOMING	123
YORK	2,611
Total	82,924

Table 3: Data obtained from the SURE system.

Total Number of Voters in 2020 Primary Election²

County	Votes
ADAMS	21,656
ALLEGHENY	316,376
ARMSTRONG	15,513
BEAVER	38,330
BEDFORD	11,342
BERKS	78,851
BLAIR	25,741
BRADFORD	11,827
BUCKS	157,090
BUTLER	47,129
CAMBRIA	30,151
CAMERON	1,114
CARBON	12,835
CENTRE	32,986
CHESTER	121,902
CLARION	9,351
CLEARFIELD	17,811
CLINTON	7,781
COLUMBIA	12,028
CRAWFORD	15,602
CUMBERLAND	60,260
DAUPHIN	67,118
DELAWARE	138,838
ELK	7,932
ERIE	59,698
FAYETTE	23,093
FOREST	1,274
FRANKLIN	33,806
FULTON	3,060
GREENE	7,878
HUNTINGDON	9,551
INDIANA	17,355
JEFFERSON	11,912
JUNIATA	5,256
LACKAWANNA	53,141
LANCASTER	104,382

County	Votes
LAWRENCE	17,862
LEBANON	28,292
LEHIGH	70,409
LUZERNE	65,634
LYCOMING	24,709
McKEAN	8,101
MERCER	21,564
MIFFLIN	8,320
MONROE	28,454
MONTGOMERY	218,034
MONTOUR	3,517
NORTHAMPTON	63,310
NORTHUMBERLAND	15,871
PERRY	11,277
PHILADELPHIA	345,591
PIKE	10,331
POTTER	4,384
SCHUYLKILL	31,118
SNYDER	8,108
SOMERSET	17,877
SULLIVAN	1,724
SUSQUEHANNA	9,131
TIOGA	9,835
UNION	8,577
VENANGO	11,061
WARREN	7,934
WASHINGTON	48,440
WAYNE	12,025
WESTMORELAND	85,164
WYOMING	6,598
YORK	87,277
Total	2,880,499

Table 4: Data obtained from the SURE system.

² Data not requested by Act 35 but included for informational purposes.

Total Mail-in and Absentee Ballots Cast in 2020 Primary Election³

County	Votes
ADAMS	10,492
ALLEGHENY	213,873
ARMSTRONG	4,985
BEAVER	18,603
BEDFORD	3,840
BERKS	39,339
BLAIR	10,241
BRADFORD	3,443
BUCKS	78,798
BUTLER	19,779
CAMBRIA	11,873
CAMERON	538
CARBON	5,603
CENTRE	19,112
CHESTER	74,469
CLARION	2,987
CLEARFIELD	5,401
CLINTON	2,898
COLUMBIA	4,964
CRAWFORD	5,653
CUMBERLAND	31,745
DAUPHIN	34,109
DELAWARE	59,405
ELK	2,778
ERIE	29,651
FAYETTE	9,952
FOREST	604
FRANKLIN	12,505
FULTON	740
GREENE	3,241
HUNTINGDON	3,143
INDIANA	7,301
JEFFERSON	3,584
JUNIATA	1,639
LACKAWANNA	29,453

County	Votes
LANCASTER	52,273
LAWRENCE	8,003
LEBANON	13,031
LEHIGH	39,769
LUZERNE	40,038
LYCOMING	7,543
McKEAN	2,575
MERCER	8,312
MIFFLIN	3,012
MONROE	14,813
MONTGOMERY	126,843
MONTOUR	1,710
NORTHAMPTON	36,867
NORTHUMBERLAND	4,708
PERRY	3,792
PHILADELPHIA	174,472
PIKE	5,572
POTTER	1,108
SCHUYLKILL	11,044
SNYDER	2,695
SOMERSET	5,818
SULLIVAN	625
SUSQUEHANNA	3,605
TIOGA	3,271
UNION	3,687
VENANGO	3,963
WARREN	3,094
WASHINGTON	22,220
WAYNE	5,050
WESTMORELAND	40,437
WYOMING	2,824
YORK	40,040
Total	1,459,555

Table 5: Data obtained from the SURE system.

³ Data not requested by Act 35 but included for informational purposes.

Absentee Ballot Statistics

Absentee Ballot Applications Received for the 2020 Primary Election regardless of how the application was processed.

County	Applications Received
ADAMS	2,071
ALLEGHENY	46,229
ARMSTRONG	989
BEAVER	4,166
BEDFORD	695
BERKS	7,138
BLAIR	2,000
BRADFORD	767
BUCKS	21,979
BUTLER	4,740
CAMBRIA	2,255
CAMERON	82
CARBON	1,306
CENTRE	4,386
CHESTER	19,163
CLARION	689
CLEARFIELD	1,252
CLINTON	468
COLUMBIA	1,169
CRAWFORD	1,429
CUMBERLAND	6,746
DAUPHIN	7,362
DELAWARE	18,691
ELK	494
ERIE	5,895
FAYETTE	2,536
FOREST	102
FRANKLIN	2,440
FULTON	161
GREENE	874
HUNTINGDON	633
INDIANA	1,238
JEFFERSON	558
JUNIATA	319
LACKAWANNA	6,072
LANCASTER	10,915

County	Applications Received
LAWRENCE	1,961
LEBANON	2,620
LEHIGH	8,944
LUZERNE	5,513
LYCOMING	1,667
McKEAN	459
MERCER	2,170
MIFFLIN	549
MONROE	4,709
MONTGOMERY	34,317
MONTOUR	402
NORTHAMPTON	8,227
NORTHUMBERLAND	1,411
PERRY	685
PHILADELPHIA	52,258
PIKE	1,788
POTTER	226
SCHUYLKILL	2,626
SNYDER	505
SOMERSET	1,258
SULLIVAN	134
SUSQUEHANNA	829
TIOGA	529
UNION	563
VENANGO	878
WARREN	780
WASHINGTON	5,386
WAYNE	1,238
WESTMORELAND	8,600
WYOMING	562
YORK	9,906
Total	349,709

Table 6: Data obtained from the SURE system.

Absentee Ballot Statistics

Absentee Ballot Applications Approved for the 2020 Primary Election.

County	Applications Approved
ADAMS	1,837
ALLEGHENY	41,269
ARMSTRONG	945
BEAVER	3,862
BEDFORD	661
BERKS	6,182
BLAIR	1,790
BRADFORD	704
BUCKS	19,396
BUTLER	4,273
CAMBRIA	2,108
CAMERON	53
CARBON	1,175
CENTRE	4,019
CHESTER	17,251
CLARION	640
CLEARFIELD	1,181
CLINTON	420
COLUMBIA	1,049
CRAWFORD	1,339
CUMBERLAND	6,094
DAUPHIN	6,745
DELAWARE	16,197
ELK	454
ERIE	5,512
FAYETTE	2,385
FOREST	92
FRANKLIN	2,259
FULTON	146
GREENE	839
HUNTINGDON	565
INDIANA	1,228
JEFFERSON	499
JUNIATA	273
LACKAWANNA	5,695
LANCASTER	9,809

County	Applications Approved
LAWRENCE	1,790
LEBANON	2,388
LEHIGH	7,972
LUZERNE	4,886
LYCOMING	1,476
McKEAN	427
MERCER	1,908
MIFFLIN	487
MONROE	4,067
MONTGOMERY	29,704
MONTOUR	364
NORTHAMPTON	7,418
NORTHUMBERLAND	1,298
PERRY	634
PHILADELPHIA	48,938
PIKE	1,556
POTTER	210
SCHUYLKILL	2,427
SNYDER	471
SOMERSET	1,172
SULLIVAN	123
SUSQUEHANNA	749
TIOGA	464
UNION	515
VENANGO	815
WARREN	734
WASHINGTON	5,034
WAYNE	1,121
WESTMORELAND	7,940
WYOMING	525
YORK	8,629
Total	315,188

Table 7: Data obtained from the SURE system.

Absentee Ballot Statistics

Absentee Ballots Voted in the 2020 Primary Election.

County	Ballots Voted
ADAMS	1,338
ALLEGHENY	28,494
ARMSTRONG	781
BEAVER	3,197
BEDFORD	540
BERKS	4,841
BLAIR	1,451
BRADFORD	535
BUCKS	13,642
BUTLER	3,310
CAMBRIA	1,732
CAMERON	43
CARBON	965
CENTRE	3,366
CHESTER	13,400
CLARION	525
CLEARFIELD	956
CLINTON	323
COLUMBIA	807
CRAWFORD	965
CUMBERLAND	4,878
DAUPHIN	5,546
DELAWARE	11,215
ELK	380
ERIE	4,579
FAYETTE	1,936
FOREST	80
FRANKLIN	1,706
FULTON	112
GREENE	712
HUNTINGDON	449
INDIANA	1,060
JEFFERSON	329
JUNIATA	230
LACKAWANNA	4,776
LANCASTER	7,631
LAWRENCE	1,470

County	Ballots Voted
LEBANON	1,935
LEHIGH	6,162
LUZERNE	3,630
LYCOMING	1,071
McKEAN	328
MERCER	1,323
MIFFLIN	401
MONROE	3,109
MONTGOMERY	22,027
MONTOUR	306
NORTHAMPTON	5,813
NORTHUMBERLAND	898
PERRY	516
PHILADELPHIA	35,009
PIKE	1,262
POTTER	173
SCHUYLKILL	1,885
SNYDER	383
SOMERSET	872
SULLIVAN	108
SUSQUEHANNA	595
TIOGA	370
UNION	440
VENANGO	643
WARREN	555
WASHINGTON	3,935
WAYNE	959
WESTMORELAND	6,632
WYOMING	423
YORK	5,977
Total	236,040

Table 8: Data obtained from the SURE system.

Absentee Ballot Statistics

Absentee Ballot Applicants Who Voted a Provisional Ballot in the 2020 Primary Election.

County	Provisional Ballots Voted
ADAMS	40
ALLEGHENY	1,079
ARMSTRONG	25
BEAVER	74
BEDFORD	10
BERKS	176
BLAIR	47
BRADFORD	33
BUCKS	938
BUTLER	219
CAMBRIA	37
CAMERON	0
CARBON	22
CENTRE	62
CHESTER	448
CLARION	12
CLEARFIELD	36
CLINTON	11
COLUMBIA	16
CRAWFORD	28
CUMBERLAND	159
DAUPHIN	221
DELAWARE	966
ELK	5
ERIE	125
FAYETTE	49
FOREST	1
FRANKLIN	61
FULTON	9
GREENE	16
HUNTINGDON	17
INDIANA	11
JEFFERSON	35
JUNIATA	3
LACKAWANNA	138

County	Provisional Ballots Voted
LANCASTER	301
LAWRENCE	21
LEBANON	42
LEHIGH	243
LUZERNE	155
LYCOMING	82
McKEAN	12
MERCER	107
MIFFLIN	11
MONROE	142
MONTGOMERY	1,092
MONTOUR	1
NORTHAMPTON	152
NORTHUMBERLAND	38
PERRY	1
PHILADELPHIA	657
PIKE	37
POTTER	10
SCHUYLKILL	42
SNYDER	9
SOMERSET	56
SULLIVAN	2
SUSQUEHANNA	17
TIOGA	21
UNION	11
VENANGO	23
WARREN	19
WASHINGTON	88
WAYNE	16
WESTMORELAND	161
WYOMING	14
YORK	435
Total	9,147

Table 9: Data obtained from the SURE system.

Absentee Ballot Statistics

Absentee Ballot Applications Filed Prior to Receipt of Voter Registration in the 2020 Primary Election.

County	Applications Filed
ADAMS	0
ALLEGHENY	4
ARMSTRONG	0
BEAVER	0
BEDFORD	0
BERKS	1
BLAIR	0
BRADFORD	0
BUCKS	0
BUTLER	0
CAMBRIA	0
CAMERON	0
CARBON	0
CENTRE	0
CHESTER	3
CLARION	0
CLEARFIELD	0
CLINTON	0
COLUMBIA	0
CRAWFORD	0
CUMBERLAND	1
DAUPHIN	1
DELAWARE	0
ELK	0
ERIE	0
FAYETTE	0
FOREST	0
FRANKLIN	0
FULTON	0
GREENE	0
HUNTINGDON	0
INDIANA	1
JEFFERSON	0
JUNIATA	0
LACKAWANNA	0
LANCASTER	0

County	Applications Filed
LAWRENCE	0
LEBANON	0
LEHIGH	0
LUZERNE	2
LYCOMING	0
McKEAN	0
MERCER	0
MIFFLIN	0
MONROE	0
MONTGOMERY	2
MONTOUR	0
NORTHAMPTON	1
NORTHUMBERLAND	0
PERRY	0
PHILADELPHIA	3
PIKE	0
POTTER	0
SCHUYLKILL	0
SNYDER	0
SOMERSET	0
SULLIVAN	0
SUSQUEHANNA	0
TIOGA	0
UNION	0
VENANGO	0
WARREN	0
WASHINGTON	0
WAYNE	0
WESTMORELAND	0
WYOMING	0
YORK	0
Total	19

Table 10: Data obtained from the SURE system.

Absentee Ballot Statistics

Total Absentee Ballots Reported by Counties as Challenged in the 2020 Primary Election.

County	Ballots Challenged
ADAMS	0
ALLEGHENY	0
ARMSTRONG	0
BEAVER	0
BEDFORD	0
BERKS	0
BLAIR	0
BRADFORD	0
BUCKS	0
BUTLER	0
CAMBRIA	0
CAMERON	0
CARBON	0
CENTRE	0
CHESTER	0
CLARION	0
CLEARFIELD	0
CLINTON	0
COLUMBIA	0
CRAWFORD	0
CUMBERLAND	0
DAUPHIN	0
DELAWARE	0
ELK	0
ERIE	0
FAYETTE	0
FOREST	0
FRANKLIN	0
FULTON	0
GREENE	0
HUNTINGDON	0
INDIANA	0
JEFFERSON	0
JUNIATA	0
LACKAWANNA	0
LANCASTER	0
LAWRENCE	0

County	Ballots Challenged
LEBANON	0
LEHIGH	0
LUZERNE	0
LYCOMING	0
McKEAN	0
MERCER	0
MIFFLIN	0
MONROE	0
MONTGOMERY	0
MONTOUR	0
NORTHAMPTON	0
NORTHUMBERLAND	0
PERRY	0
PHILADELPHIA	0
PIKE	0
POTTER	0
SCHUYLKILL	0
SNYDER	0
SOMERSET	0
SULLIVAN	0
SUSQUEHANNA	0
TIOGA	0
UNION	0
VENANGO	0
WARREN	0
WASHINGTON	0
WAYNE	0
WESTMORELAND	0
WYOMING	0
YORK	0
Total	0

Table 11: Data obtained from each county via a uniform survey requesting the data required pursuant to Act 35.

Absentee Ballot Statistics

Absentee Ballots Successfully Challenged in the 2020 Primary Election.

County	Ballots Challenged
ADAMS	0
ALLEGHENY	0
ARMSTRONG	0
BEAVER	0
BEDFORD	0
BERKS	0
BLAIR	0
BRADFORD	0
BUCKS	0
BUTLER	0
CAMBRIA	0
CAMERON	0
CARBON	0
CENTRE	0
CHESTER	0
CLARION	0
CLEARFIELD	0
CLINTON	0
COLUMBIA	0
CRAWFORD	0
CUMBERLAND	0
DAUPHIN	0
DELAWARE	0
ELK	0
ERIE	0
FAYETTE	0
FOREST	0
FRANKLIN	0
FULTON	0
GREENE	0
HUNTINGDON	0
INDIANA	0
JEFFERSON	0
JUNIATA	0
LACKAWANNA	0
LANCASTER	0
LAWRENCE	0

County	Ballots Challenged
LEBANON	0
LEHIGH	0
LUZERNE	0
LYCOMING	0
McKEAN	0
MERCER	0
MIFFLIN	0
MONROE	0
MONTGOMERY	0
MONTOUR	0
NORTHAMPTON	0
NORTHUMBERLAND	0
PERRY	0
PHILADELPHIA	0
PIKE	0
POTTER	0
SCHUYLKILL	0
SNYDER	0
SOMERSET	0
SULLIVAN	0
SUSQUEHANNA	0
TIOGA	0
UNION	0
VENANGO	0
WARREN	0
WASHINGTON	0
WAYNE	0
WESTMORELAND	0
WYOMING	0
YORK	0
Total	0

Table 12: Data obtained from each county via a uniform survey requesting the data required pursuant to Act 35.

Absentee Ballot Statistics

Challenged Absentee Ballots Not Canvassed in the 2020 Primary Election.

County	Ballots Not Canvassed
ADAMS	0
ALLEGHENY	0
ARMSTRONG	0
BEAVER	0
BEDFORD	0
BERKS	0
BLAIR	0
BRADFORD	0
BUCKS	0
BUTLER	0
CAMBRIA	0
CAMERON	0
CARBON	0
CENTRE	0
CHESTER	0
CLARION	0
CLEARFIELD	0
CLINTON	0
COLUMBIA	0
CRAWFORD	0
CUMBERLAND	0
DAUPHIN	0
DELAWARE	0
ELK	0
ERIE	0
FAYETTE	0
FOREST	0
FRANKLIN	0
FULTON	0
GREENE	0
HUNTINGDON	0
INDIANA	0
JEFFERSON	0
JUNIATA	0
LACKAWANNA	0
LANCASTER	0

County	Ballots Not Canvassed
LAWRENCE	0
LEBANON	0
LEHIGH	0
LUZERNE	0
LYCOMING	0
McKEAN	0
MERCER	0
MIFFLIN	0
MONROE	0
MONTGOMERY	0
MONTOUR	0
NORTHAMPTON	0
NORTHUMBERLAND	0
PERRY	0
PHILADELPHIA	0
PIKE	0
POTTER	0
SCHUYLKILL	0
SNYDER	0
SOMERSET	0
SULLIVAN	0
SUSQUEHANNA	0
TIOGA	0
UNION	0
VENANGO	0
WARREN	0
WASHINGTON	0
WAYNE	0
WESTMORELAND	0
WYOMING	0
YORK	0
Total	0

Table 13: Data obtained from each county via a uniform survey requesting the data required pursuant to Act 35.

Mail-in Ballot Statistics

Mail-in Ballot Applications Received for the 2020 Primary Election regardless of how the application was processed.

County	Applications Received
ADAMS	11,846
ALLEGHENY	255,281
ARMSTRONG	5,077
BEAVER	18,817
BEDFORD	4,079
BERKS	43,844
BLAIR	11,293
BRADFORD	4,094
BUCKS	88,393
BUTLER	21,946
CAMBRIA	12,265
CAMERON	586
CARBON	5,906
CENTRE	19,097
CHESTER	79,624
CLARION	2,943
CLEARFIELD	5,564
CLINTON	3,335
COLUMBIA	5,318
CRAWFORD	6,768
CUMBERLAND	32,854
DAUPHIN	34,857
DELAWARE	75,180
ELK	2,945
ERIE	30,414
FAYETTE	10,036
FOREST	602
FRANKLIN	13,364
FULTON	824
GREENE	3,037
HUNTINGDON	3,328
INDIANA	6,984
JEFFERSON	4,431
JUNIATA	1,740
LACKAWANNA	29,414
LANCASTER	57,550

County	Applications Received
LAWRENCE	8,202
LEBANON	13,676
LEHIGH	43,579
LUZERNE	51,135
LYCOMING	9,151
McKEAN	2,974
MERCER	10,140
MIFFLIN	3,235
MONROE	15,143
MONTGOMERY	142,881
MONTOUR	1,780
NORTHAMPTON	39,744
NORTHUMBERLAND	5,794
PERRY	3,957
PHILADELPHIA	182,074
PIKE	5,687
POTTER	1,209
SCHUYLKILL	11,446
SNYDER	2,773
SOMERSET	6,069
SULLIVAN	584
SUSQUEHANNA	3,682
TIOGA	3,653
UNION	3,823
VENANGO	4,231
WARREN	3,208
WASHINGTON	23,532
WAYNE	4,856
WESTMORELAND	41,716
WYOMING	2,914
YORK	49,257
Total	1,615,741

Table 14: Data obtained from the SURE system.

Mail-in Ballot Statistics

Mail-in Ballot Applications Approved for the 2020 Primary Election.

County	Applications Approved
ADAMS	11,142
ALLEGHENY	238,504
ARMSTRONG	4,863
BEAVER	17,835
BEDFORD	3,910
BERKS	41,120
BLAIR	10,488
BRADFORD	3,913
BUCKS	81,907
BUTLER	20,281
CAMBRIA	11,820
CAMERON	562
CARBON	5,475
CENTRE	17,816
CHESTER	72,525
CLARION	2,831
CLEARFIELD	5,277
CLINTON	3,153
COLUMBIA	4,932
CRAWFORD	6,369
CUMBERLAND	30,987
DAUPHIN	33,096
DELAWARE	69,247
ELK	2,781
ERIE	28,984
FAYETTE	9,628
FOREST	583
FRANKLIN	12,780
FULTON	772
GREENE	2,930
HUNTINGDON	3,155
INDIANA	6,964
JEFFERSON	4,226
JUNIATA	1,614
LACKAWANNA	28,087
LANCASTER	53,426

County	Applications Approved
LAWRENCE	7,719
LEBANON	13,031
LEHIGH	39,601
LUZERNE	48,105
LYCOMING	8,632
McKEAN	2,833
MERCER	9,378
MIFFLIN	3,069
MONROE	13,840
MONTGOMERY	129,168
MONTOUR	1,627
NORTHAMPTON	36,497
NORTHUMBERLAND	5,351
PERRY	3,791
PHILADELPHIA	176,003
PIKE	5,155
POTTER	1,174
SCHUYLKILL	11,022
SNYDER	2,632
SOMERSET	5,855
SULLIVAN	561
SUSQUEHANNA	3,466
TIOGA	3,427
UNION	3,639
VENANGO	3,998
WARREN	3,061
WASHINGTON	22,250
WAYNE	4,598
WESTMORELAND	39,290
WYOMING	2,769
YORK	45,426
Total	1,510,951

Table 15: Data obtained from the SURE system.

Mail-in Ballot Statistics

Mail-in Ballots Voted in the 2020 Primary Election.

County	Ballots Voted
ADAMS	9,154
ALLEGHENY	185,379
ARMSTRONG	4,204
BEAVER	15,406
BEDFORD	3,300
BERKS	34,498
BLAIR	8,790
BRADFORD	2,908
BUCKS	65,156
BUTLER	16,469
CAMBRIA	10,141
CAMERON	495
CARBON	4,638
CENTRE	15,746
CHESTER	61,069
CLARION	2,462
CLEARFIELD	4,445
CLINTON	2,575
COLUMBIA	4,157
CRAWFORD	4,688
CUMBERLAND	26,867
DAUPHIN	28,563
DELAWARE	48,190
ELK	2,398
ERIE	25,072
FAYETTE	8,016
FOREST	524
FRANKLIN	10,799
FULTON	628
GREENE	2,529
HUNTINGDON	2,694
INDIANA	6,241
JEFFERSON	3,255
JUNIATA	1,409
LACKAWANNA	24,677
LANCASTER	44,642
LAWRENCE	6,533

County	Ballots Voted
LEBANON	11,096
LEHIGH	33,607
LUZERNE	36,408
LYCOMING	6,472
McKEAN	2,247
MERCER	6,989
MIFFLIN	2,611
MONROE	11,704
MONTGOMERY	104,816
MONTOUR	1,404
NORTHAMPTON	31,054
NORTHUMBERLAND	3,810
PERRY	3,276
PHILADELPHIA	139,463
PIKE	4,310
POTTER	935
SCHUYLKILL	9,159
SNYDER	2,312
SOMERSET	4,946
SULLIVAN	517
SUSQUEHANNA	3,010
TIOGA	2,901
UNION	3,247
VENANGO	3,320
WARREN	2,539
WASHINGTON	18,285
WAYNE	4,091
WESTMORELAND	33,805
WYOMING	2,401
YORK	34,063
Total	1,223,515

Table 16: Data obtained from the SURE system.

Mail-in Ballot Statistics

Mail-in Ballot Applicants Who Voted a Provisional Ballot in the 2020 Primary Election.

County	Provisional Ballots Voted
ADAMS	248
ALLEGHENY	4,337
ARMSTRONG	146
BEAVER	459
BEDFORD	129
BERKS	1,146
BLAIR	316
BRADFORD	263
BUCKS	3,335
BUTLER	1,001
CAMBRIA	298
CAMERON	12
CARBON	131
CENTRE	304
CHESTER	1,468
CLARION	71
CLEARFIELD	195
CLINTON	139
COLUMBIA	90
CRAWFORD	227
CUMBERLAND	676
DAUPHIN	1,058
DELAWARE	5,916
ELK	53
ERIE	710
FAYETTE	289
FOREST	14
FRANKLIN	364
FULTON	34
GREENE	92
HUNTINGDON	92
INDIANA	83
JEFFERSON	355
JUNIATA	41
LACKAWANNA	544

County	Provisional Ballots Voted
LANCASTER	1,689
LAWRENCE	87
LEBANON	233
LEHIGH	1,132
LUZERNE	1,513
LYCOMING	649
McKEAN	163
MERCER	567
MIFFLIN	56
MONROE	397
MONTGOMERY	4,170
MONTOUR	22
NORTHAMPTON	566
NORTHUMBERLAND	165
PERRY	10
PHILADELPHIA	1,874
PIKE	132
POTTER	72
SCHUYLKILL	255
SNYDER	83
SOMERSET	165
SULLIVAN	13
SUSQUEHANNA	88
TIOGA	125
UNION	68
VENANGO	139
WARREN	65
WASHINGTON	254
WAYNE	43
WESTMORELAND	1,029
WYOMING	58
YORK	2,156
Total	42,674

Table 17: Data obtained from the SURE system.

Mail-in Ballot Statistics

Mail-in Ballot Applications Filed Prior to Receipt of Voter Registration in the 2020 Primary Election.

County	Applications Filed
ADAMS	0
ALLEGHENY	16
ARMSTRONG	0
BEAVER	0
BEDFORD	0
BERKS	2
BLAIR	0
BRADFORD	0
BUCKS	2
BUTLER	1
CAMBRIA	0
CAMERON	0
CARBON	1
CENTRE	1
CHESTER	2
CLARION	0
CLEARFIELD	1
CLINTON	1
COLUMBIA	0
CRAWFORD	0
CUMBERLAND	2
DAUPHIN	0
DELAWARE	4
ELK	0
ERIE	3
FAYETTE	0
FOREST	0
FRANKLIN	2
FULTON	1
GREENE	0
HUNTINGDON	2
INDIANA	4
JEFFERSON	2
JUNIATA	0
LACKAWANNA	1
LANCASTER	3

County	Applications Filed
LAWRENCE	0
LEBANON	0
LEHIGH	1
LUZERNE	1
LYCOMING	1
McKEAN	0
MERCER	0
MIFFLIN	0
MONROE	0
MONTGOMERY	2
MONTOUR	0
NORTHAMPTON	0
NORTHUMBERLAND	1
PERRY	0
PHILADELPHIA	21
PIKE	2
POTTER	0
SCHUYLKILL	0
SNYDER	1
SOMERSET	0
SULLIVAN	0
SUSQUEHANNA	0
TIOGA	1
UNION	0
VENANGO	2
WARREN	0
WASHINGTON	0
WAYNE	0
WESTMORELAND	2
WYOMING	0
YORK	5
Total	91

Table 18: Data obtained from the SURE system.

Mail-in Ballot Statistics

Total Mail-in Ballots Reported by Counties as Challenged in the 2020 Primary Election.

County	Ballots Challenged
ADAMS	0
ALLEGHENY	0
ARMSTRONG	0
BEAVER	0
BEDFORD	0
BERKS	0
BLAIR	0
BRADFORD	0
BUCKS	0
BUTLER	0
CAMBRIA	0
CAMERON	0
CARBON	0
CENTRE	0
CHESTER	0
CLARION	0
CLEARFIELD	0
CLINTON	0
COLUMBIA	0
CRAWFORD	0
CUMBERLAND	0
DAUPHIN	0
DELAWARE	0
ELK	0
ERIE	0
FAYETTE	0
FOREST	0
FRANKLIN	0
FULTON	0
GREENE	0
HUNTINGDON	0
INDIANA	0
JEFFERSON	0
JUNIATA	0
LACKAWANNA	0
LANCASTER	0
LAWRENCE	0

County	Ballots Challenged
LEBANON	0
LEHIGH	0
LUZERNE	0
LYCOMING	0
McKEAN	0
MERCER	0
MIFFLIN	0
MONROE	0
MONTGOMERY	0
MONTOUR	0
NORTHAMPTON	0
NORTHUMBERLAND	0
PERRY	0
PHILADELPHIA	0
PIKE	0
POTTER	0
SCHUYLKILL	0
SNYDER	0
SOMERSET	0
SULLIVAN	0
SUSQUEHANNA	0
TIOGA	0
UNION	0
VENANGO	0
WARREN	0
WASHINGTON	0
WAYNE	0
WESTMORELAND	0
WYOMING	0
YORK	0
Total	0

Table 19: Data obtained from each county via a uniform survey requesting the data required pursuant to Act 35.

Mail-in Ballot Statistics

Mail-in Ballots Reported by Counties as Successfully Challenged in the 2020 Primary Election.

County	Ballots Challenged
ADAMS	0
ALLEGHENY	0
ARMSTRONG	0
BEAVER	0
BEDFORD	0
BERKS	0
BLAIR	0
BRADFORD	0
BUCKS	0
BUTLER	0
CAMBRIA	0
CAMERON	0
CARBON	0
CENTRE	0
CHESTER	0
CLARION	0
CLEARFIELD	0
CLINTON	0
COLUMBIA	0
CRAWFORD	0
CUMBERLAND	0
DAUPHIN	0
DELAWARE	0
ELK	0
ERIE	0
FAYETTE	0
FOREST	0
FRANKLIN	0
FULTON	0
GREENE	0
HUNTINGDON	0
INDIANA	0
JEFFERSON	0
JUNIATA	0
LACKAWANNA	0
LANCASTER	0

County	Ballots Challenged
LAWRENCE	0
LEBANON	0
LEHIGH	0
LUZERNE	0
LYCOMING	0
McKEAN	0
MERCER	0
MIFFLIN	0
MONROE	0
MONTGOMERY	0
MONTOUR	0
NORTHAMPTON	0
NORTHUMBERLAND	0
PERRY	0
PHILADELPHIA	0
PIKE	0
POTTER	0
SCHUYLKILL	0
SNYDER	0
SOMERSET	0
SULLIVAN	0
SUSQUEHANNA	0
TIOGA	0
UNION	0
VENANGO	0
WARREN	0
WASHINGTON	0
WAYNE	0
WESTMORELAND	0
WYOMING	0
YORK	0
Total	0

Table 20: Data obtained from the SURE system.

Mail-in Ballot Statistics

Challenged Mail-in Ballots Not Canvassed in the 2020 Primary Election.

County	Ballots Not Canvassed
ADAMS	0
ALLEGHENY	0
ARMSTRONG	0
BEAVER	0
BEDFORD	0
BERKS	0
BLAIR	0
BRADFORD	0
BUCKS	0
BUTLER	0
CAMBRIA	0
CAMERON	0
CARBON	0
CENTRE	0
CHESTER	0
CLARION	0
CLEARFIELD	0
CLINTON	0
COLUMBIA	0
CRAWFORD	0
CUMBERLAND	0
DAUPHIN	0
DELAWARE	0
ELK	0
ERIE	0
FAYETTE	0
FOREST	0
FRANKLIN	0
FULTON	0
GREENE	0
HUNTINGDON	0
INDIANA	0
JEFFERSON	0
JUNIATA	0
LACKAWANNA	0
LANCASTER	0
LAWRENCE	0

County	Ballots Not Canvassed
LEBANON	0
LEHIGH	0
LUZERNE	0
LYCOMING	0
McKEAN	0
MERCER	0
MIFFLIN	0
MONROE	0
MONTGOMERY	0
MONTOUR	0
NORTHAMPTON	0
NORTHUMBERLAND	0
PERRY	0
PHILADELPHIA	0
PIKE	0
POTTER	0
SCHUYLKILL	0
SNYDER	0
SOMERSET	0
SULLIVAN	0
SUSQUEHANNA	0
TIOGA	0
UNION	0
VENANGO	0
WARREN	0
WASHINGTON	0
WAYNE	0
WESTMORELAND	0
WYOMING	0
YORK	0
Total	0

Table 21: Data obtained from each county via a uniform survey requesting the data required pursuant to Act 35.

Absentee Ballot and Mail-in Ballot Statistics

Ballots Sent to Wrong Individual or Wrong Address in the 2020 Primary Election.⁴

County	Ballots Sent
ADAMS	0
ALLEGHENY	3,000
ARMSTRONG	0
BEAVER	0
BEDFORD	2
BERKS	0
BLAIR	0
BRADFORD	0
BUCKS	0
BUTLER	0
CAMBRIA	0
CAMERON	0
CARBON	0
CENTRE	0
CHESTER	0
CLARION	0
CLEARFIELD	0
CLINTON	0
COLUMBIA	19
CRAWFORD	0
CUMBERLAND	0
DAUPHIN	0
DELAWARE	0
ELK	0
ERIE	0
FAYETTE	0
FOREST	0
FRANKLIN	0
FULTON	0
GREENE	0
HUNTINGDON	0
INDIANA	2
JEFFERSON	0
JUNIATA	0

⁴ Counties responding to this question noted that ballots were sent to the wrong address because the

County	Ballots Sent
LACKAWANNA	1
LANCASTER	0
LAWRENCE	0
LEBANON	0
LEHIGH	0
LUZERNE	0
LYCOMING	1
McKEAN	0
MERCER	0
MIFFLIN	0
MONROE	0
MONTGOMERY	0
MONTOUR	0
NORTHAMPTON	0
NORTHUMBERLAND	8
PERRY	11
PHILADELPHIA	0
PIKE	0
POTTER	0
SCHUYLKILL	0
SNYDER	0
SOMERSET	0
SULLIVAN	0
SUSQUEHANNA	0
TIOGA	0
UNION	3
VENANGO	0
WARREN	0
WASHINGTON	0
WAYNE	0
WESTMORELAND	0
WYOMING	0
YORK	235
Total	3,282

Table 22: Data obtained from each county via a uniform survey requesting the data required pursuant to Act 35.

voters' address was incomplete or needed to be updated.

Absentee Ballot and Mail-in Ballot Statistics

Ballots Voted by Individual Other than Voter in the 2020 Primary Election.⁵

County	Ballots Voted
ADAMS	0
ALLEGHENY	0
ARMSTRONG	0
BEAVER	0
BEDFORD	0
BERKS	0
BLAIR	0
BRADFORD	0
BUCKS	0
BUTLER	0
CAMBRIA	0
CAMERON	0
CARBON	0
CENTRE	0
CHESTER	0
CLARION	0
CLEARFIELD	0
CLINTON	0
COLUMBIA	0
CRAWFORD	0
CUMBERLAND	0
DAUPHIN	0
DELAWARE	0
ELK	0
ERIE	1
FAYETTE	0
FOREST	0
FRANKLIN	0
FULTON	0
GREENE	0
HUNTINGDON	0
INDIANA	0

County	Ballots Voted
JEFFERSON	0
JUNIATA	0
LACKAWANNA	1
LANCASTER	0
LAWRENCE	0
LEBANON	0
LEHIGH	0
LUZERNE	0
LYCOMING	0
McKEAN	0
MERCER	0
MIFFLIN	0
MONROE	0
MONTGOMERY	0
MONTOUR	0
NORTHAMPTON	0
NORTHUMBERLAND	0
PERRY	0
PHILADELPHIA	0
PIKE	0
POTTER	0
SCHUYLKILL	1
SNYDER	0
SOMERSET	0
SULLIVAN	0
SUSQUEHANNA	0
TIOGA	0
UNION	0
VENANGO	0
WARREN	0
WASHINGTON	0
WAYNE	0
WESTMORELAND	0
WYOMING	0
YORK	0
Total	3

Table 23: Data obtained from each county via a uniform survey requesting the data required pursuant to Act 35.

⁵ In every instance where a voter received a wrong ballot as indicated above, the county reported they were able to correct the matter and reissue a ballot

to the appropriate voter while ensuring the incorrect ballot was cancelled and not counted.

Absentee Ballot and Mail-in Ballot Statistics

Ballots Returned Not by Mail or In Person in the 2020 Primary Election.⁶

County	Ballots Returned
ADAMS	0
ALLEGHENY	0
ARMSTRONG	0
BEAVER	0
BEDFORD	0
BERKS	0
BLAIR	0
BRADFORD	0
BUCKS	0
BUTLER	0
CAMBRIA	0
CAMERON	0
CARBON	0
CENTRE	0
CHESTER	0
CLARION	0
CLEARFIELD	0
CLINTON	0
COLUMBIA	1
CRAWFORD	0
CUMBERLAND	0
DAUPHIN	0
DELAWARE	0
ELK	0
ERIE	0
FAYETTE	0
FOREST	0
FRANKLIN	4
FULTON	0
GREENE	0
HUNTINGDON	0
INDIANA	0
JEFFERSON	0

⁶ In the above reports, figures include emergency ballots, ballots returned through a voter-designated

County	Ballots Returned
JUNIATA	0
LACKAWANNA	1
LANCASTER	2
LAWRENCE	0
LEBANON	0
LEHIGH	0
LUZERNE	0
LYCOMING	20
McKEAN	0
MERCER	9
MIFFLIN	0
MONROE	0
MONTGOMERY	112
MONTOUR	0
NORTHAMPTON	0
NORTHUMBERLAND	0
PERRY	0
PHILADELPHIA	2
PIKE	0
POTTER	0
SCHUYLKILL	0
SNYDER	0
SOMERSET	0
SULLIVAN	2
SUSQUEHANNA	0
TIOGA	0
UNION	0
VENANGO	0
WARREN	0
WASHINGTON	0
WAYNE	0
WESTMORELAND	0
WYOMING	0
YORK	0
Total	153

Table 24: Data obtained from each county via a uniform survey requesting the data required pursuant to Act 35.

agent, or other persons that were not the voter. For more information, see pp. 38 -39.

Act 12 of 2020 Statistics

Election Officers Appointed in Districts
Outside District of Residence for the 2020
Primary Election.⁷

County	Election Officers Appointed
ADAMS	23
ALLEGHENY	296
ARMSTRONG	58
BEAVER	No data provided
BEDFORD	5
BERKS	413
BLAIR	86
BRADFORD	34
BUCKS	372
BUTLER	52
CAMBRIA	35
CAMERON	8
CARBON	25
CENTRE	203
CHESTER	139
CLARION	0
CLEARFIELD	5
CLINTON	14
COLUMBIA	Data not available at this time
CRAWFORD	15
CUMBERLAND	167
DAUPHIN	0
DELAWARE	Data not available at this time
ELK	0
ERIE	138
FAYETTE	32
FOREST	2
FRANKLIN	40
FULTON	1
GREENE	44
HUNTINGDON	40
INDIANA	18

County	Election Officers Appointed
JEFFERSON	5
JUNIATA	0
LACKAWANNA	186
LANCASTER	341
LAWRENCE	3
LEBANON	No data provided
LEHIGH	0
LUZERNE	168
LYCOMING	0
McKEAN	14
MERCER	56
MIFFLIN	8
MONROE	88
MONTGOMERY	0
MONTOUR	1
NORTHAMPTON	169
NORTHUMBERLAND	11
PERRY	1
PHILADELPHIA	Data not available at this time
PIKE	0
POTTER	2
SCHUYLKILL	36
SNYDER	1
SOMERSET	13
SULLIVAN	0
SUSQUEHANNA	5
TIOGA	0
UNION	10
VENANGO	31
WARREN	25
WASHINGTON	238
WAYNE	25
WESTMORELAND	350
WYOMING	0
YORK	167
Total	4,217

Table 25: Data obtained from each county via a uniform survey requesting the data required pursuant to Act 35.

⁷ Several counties did not have this data readily available at this time.

Act 12 of 2020 Statistics

Number of Polling Places Consolidated that did Not Require DOS Approval for the 2020 Primary Election.

County	Polling Places Consolidated
ADAMS	0
ALLEGHENY	N/A
ARMSTRONG	3
BEAVER	1
BEDFORD	2
BERKS	0
BLAIR	9
BRADFORD	0
BUCKS	9
BUTLER	0
CAMBRIA	6
CAMERON	N/A
CARBON	13
CENTRE	4
CHESTER	73
CLARION	2
CLEARFIELD	0
CLINTON	0
COLUMBIA	0
CRAWFORD	11
CUMBERLAND	8
DAUPHIN	6
DELAWARE	151
ELK	0
ERIE	0
FAYETTE	0
FOREST	N/A
FRANKLIN	0
FULTON	0
GREENE	5
HUNTINGDON	42
INDIANA	2
JEFFERSON	1
JUNIATA	0
LACKAWANNA	14

County	Polling Places Consolidated
LANCASTER	6
LAWRENCE	8
LEBANON	0
LEHIGH	0
LUZERNE	86
LYCOMING	0
McKEAN	0
MERCER	1
MIFFLIN	12
MONROE	0
MONTGOMERY	212
MONTOUR	0
NORTHAMPTON	0
NORTHUMBERLAND	8
PERRY	0
PHILADELPHIA	N/A
PIKE	0
POTTER	0
SCHUYLKILL	9
SNYDER	2
SOMERSET	5
SULLIVAN	0
SUSQUEHANNA	0
TIOGA	0
UNION	0
VENANGO	0
WARREN	0
WASHINGTON	11
WAYNE	2
WESTMORELAND	0
WYOMING	0
YORK	0
Total	724

Table 26: Data obtained from each county via a uniform survey requesting the data required pursuant to Act 35.

Act 12 of 2020 Statistics

Polling Place Consolidation Requiring DOS Approval for the 2020 Primary Election.

County	Polling Places Consolidated
ADAMS	0
ALLEGHENY	830 into 211
ARMSTRONG	0
BEAVER	0
BEDFORD	0
BERKS	0
BLAIR	0
BRADFORD	0
BUCKS	0
BUTLER	0
CAMBRIA	0
CAMERON	10 into 3
CARBON	0
CENTRE	0
CHESTER	0
CLARION	0
CLEARFIELD	0
CLINTON	0
COLUMBIA	0
CRAWFORD	0
CUMBERLAND	0
DAUPHIN	0
DELAWARE	0
ELK	0
ERIE	0
FAYETTE	0
FOREST	9 into 2
FRANKLIN	0
FULTON	0
GREENE	0
HUNTINGDON	0
INDIANA	0
JEFFERSON	0
JUNIATA	0
LACKAWANNA	0
LANCASTER	0

County	Polling Places Consolidated
LAWRENCE	0
LEBANON	0
LEHIGH	0
LUZERNE	0
LYCOMING	0
McKEAN	0
MERCER	0
MIFFLIN	0
MONROE	0
MONTGOMERY	0
MONTOUR	0
NORTHAMPTON	0
NORTHUMBERLAND	0
PERRY	0
PHILADELPHIA	850 into 190
PIKE	0
POTTER	0
SCHUYLKILL	0
SNYDER	0
SOMERSET	0
SULLIVAN	0
SUSQUEHANNA	0
TIOGA	0
UNION	0
VENANGO	0
WARREN	0
WASHINGTON	0
WAYNE	0
WESTMORELAND	0
WYOMING	0
YORK	0

Table 27: Data in this table is based on the request for approval the referenced counties submitted to the Department of State.

Act 12 of 2020 Statistics

Polling Places Located Subject to Section 1803-B during the 2020 Primary Election.

County	Polling Places
ADAMS	0
ALLEGHENY	1
ARMSTRONG	0
BEAVER	0
BEDFORD	2
BERKS	0
BLAIR	0
BRADFORD	0
BUCKS	0
BUTLER	0
CAMBRIA	0
CAMERON	0
CARBON	0
CENTRE	0
CHESTER	0
CLARION	0
CLEARFIELD	0
CLINTON	0
COLUMBIA	0
CRAWFORD	0
CUMBERLAND	0
DAUPHIN	1
DELAWARE	0
ELK	0
ERIE	0
FAYETTE	0
FOREST	0
FRANKLIN	0
FULTON	0
GREENE	0
HUNTINGDON	0
INDIANA	0
JEFFERSON	0
JUNIATA	0
LACKAWANNA	0
LANCASTER	0
LAWRENCE	0

County	Polling Places
LEBANON	0
LEHIGH	5
LUZERNE	0
LYCOMING	0
McKEAN	3
MERCER	0
MIFFLIN	0
MONROE	0
MONTGOMERY	0
MONTOUR	0
NORTHAMPTON	0
NORTHUMBERLAND	10
PERRY	0
PHILADELPHIA	10
PIKE	0
POTTER	0
SCHUYLKILL	0
SNYDER	0
SOMERSET	0
SULLIVAN	0
SUSQUEHANNA	0
TIOGA	0
UNION	0
VENANGO	0
WARREN	0
WASHINGTON	11
WAYNE	0
WESTMORELAND	74
WYOMING	0
YORK	0
Total	117

Table 28: Data obtained from each county via a uniform survey requesting the data required pursuant to Act 35.

Polling Places Located in a School

Polling places located in schools for the 2020 Primary Election.

County	Polling Places
ADAMS	1
ALLEGHENY	30
ARMSTRONG	0
BEAVER	4
BEDFORD	0
BERKS	28
BLAIR	6
BRADFORD	0
BUCKS	65
BUTLER	0
CAMBRIA	5
CAMERON	8
CARBON	0
CENTRE	8
CHESTER	93
CLARION	2
CLEARFIELD	1
CLINTON	0
COLUMBIA	0
CRAWFORD	4
CUMBERLAND	8
DAUPHIN	28
DELAWARE	73
ELK	0
ERIE	15
FAYETTE	12
FOREST	0
FRANKLIN	0
FULTON	0
GREENE	3
HUNTINGDON	19
INDIANA	1
JEFFERSON	0
JUNIATA	0
LACKAWANNA	20
LANCASTER	8
LAWRENCE	3

County	Polling Places
LEBANON	2
LEHIGH	17
LUZERNE	26
LYCOMING	1
McKEAN	1
MERCER	8
MIFFLIN	10
MONROE	2
MONTGOMERY	140
MONTOUR	0
NORTHAMPTON	29
NORTHUMBERLAND	6
PERRY	0
PHILADELPHIA	99
PIKE	0
POTTER	0
SCHUYLKILL	1
SNYDER	0
SOMERSET	3
SULLIVAN	0
SUSQUEHANNA	0
TIOGA	0
UNION	2
VENANGO	0
WARREN	2
WASHINGTON	8
WAYNE	0
WESTMORELAND	29
WYOMING	0
YORK	10
Total	841

Table 29: Data obtained from each county via a uniform survey requesting the data required pursuant to Act 35.

Pre-Canvassing and Canvassing Statistics

Date and Time of Pre-Canvass Meeting⁸

County	Date/Time of Meeting
ADAMS	6/2/2020 9:00am
ALLEGHENY	6/2/2020 7:00am
ARMSTRONG	6/2/2020 9:00am
BEAVER	N/A
BEDFORD	6/2/2020 7:30am
BERKS	N/A
BLAIR	6/2/2020 9:00am
BRADFORD	N/A
BUCKS	6/2/2020 10:00am
BUTLER	6/2/2020 7:00am
CAMBRIA	6/2/2020 8:00am
CAMERON	6/2/2020 10:00am
CARBON	N/A
CENTRE	6/2/2020 9:00am
CHESTER	6/2/2020 7:00am
CLARION	6/2/2020 4:30pm
CLEARFIELD	6/2/2020 10:00am
CLINTON	N/A
COLUMBIA	6/2/2020 7:00am
CRAWFORD	6/2/2020 10:00am
CUMBERLAND	N/A
DAUPHIN	N/A
DELAWARE	6/2/2020 9:00 am
ELK	6/2/2020 1:00pm
ERIE	6/2/2020 10:00 am
FAYETTE	6/2/2020 8:00am
FOREST	6/2/2020 3:00pm
FRANKLIN	6/2/2020 8:30am
FULTON	6/2/2020 1:00pm
GREENE	N/A
HUNTINGDON	6/2/2020 10:00am
INDIANA	6/2/2020 9:00am
JEFFERSON	6/2/2020 7:00am

⁸ If N/A is listed, it means that the county did not participate in pre-canvassing events.

⁹ In the survey responses, Montour County reported they began on 6/1/2020 when they started

County	Date/Time of Meeting
JUNIATA	N/A
LACKAWANNA	6/2/2020 9:00am
LANCASTER	6/2/2020 8:00am
LAWRENCE	6/2/2020 8:10am
LEBANON	N/A
LEHIGH	6/2/2020 7:00am
LUZERNE	6/2/2020 7:00am
LYCOMING	6/2/2020 7:00am
McKEAN	6/2/2020 9:00am
MERCER	N/A
MIFFLIN	6/2/2020 9:30am
MONROE	N/A
MONTGOMERY	6/2/2020 8:00am
MONTOUR ⁹	6/1/2020 9:00am
NORTHAMPTON	6/2/2020 7:00am
NORTHUMBERLAND	6/2/2020 8:00am
PERRY	6/2/2020 9:30am
PHILADELPHIA	N/A
PIKE	N/A
POTTER	6/2/2020 10:00am
SCHUYLKILL	6/2/2020 1:00am
SNYDER	6/2/2020 8:00am
SOMERSET	N/A
SULLIVAN	6/2/2020 11:00am
SUSQUEHANNA	6/2/2020 7:00pm
TIOGA	6/2/2020 1:00pm
UNION	6/2/2020 9:00am
VENANGO	6/2/2020 7:00am
WARREN	6/2/2020 9:00am
WASHINGTON	6/2/2020 7:00am
WAYNE	6/2/2020 8:00am
WESTMORELAND	6/2/2020 9:00am
WYOMING	6/2/2020 7:00am
YORK	6/2/2020 7:00am

Table 30: Data obtained from each county via a uniform survey requesting the data required pursuant to Act 35.

preliminary sorting and slicing envelopes opening without removing ballots nor counting ballots.

Pre-Canvassing and Canvassing Statistics

Date and Time of Canvass Meeting for the 2020 Primary Election.

County	Date and Time of Meeting
ADAMS	6/2/2020 9:00am
ALLEGHENY	6/2/2020 8:00pm
ARMSTRONG	6/5/2020 9:00am
BEAVER	6/3/2020 9:00am
BEDFORD	6/2/2020 7:30am
BERKS	6/2/2020 9:00am
BLAIR	6/3/2020 8:00am
BRADFORD	6/2/2020 1:00pm
BUCKS	6/3/2020 9:00am
BUTLER	6/5/2020 9:00am
CAMBRIA	6/2/2020 8:30am
CAMERON	6/5/2020 9:00am
CARBON	6/3/2020 9:00am
CENTRE	6/2/2020 9:00am
CHESTER	6/3/2020 7:00am
CLARION	6/3/2020 9:00am
CLEARFIELD	6/2/2020 8:00pm
CLINTON	6/5/2020 9:00am
COLUMBIA	6/2/2020 8:00pm
CRAWFORD	6/2/2020 8:30pm
CUMBERLAND	6/3/2020 9:00am
DAUPHIN	6/4/2020 9:00am
DELAWARE	6/2/2020 8:30am
ELK	6/3/2020 9:00am
ERIE	6/5/2020 9:00am
FAYETTE	6/5/2020 9:00am
FOREST	6/2/2020 3:00pm
FRANKLIN	6/3/2020 9:00am
FULTON	6/5/2020 9:00am
GREENE	6/3/2020 9:00am
HUNTINGDON	6/2/2020 8:00pm
INDIANA	6/3/2020 8:30am
JEFFERSON	6/2/2020 9:00am
JUNIATA	6/3/2020 9:00am
LACKAWANNA	6/2/2020 5:30pm

County	Date and Time of Meeting
LANCASTER	6/3/2020 9:00am
LAWRENCE	6/2/2020 8:00pm
LEBANON	6/3/2020 9:00am
LEHIGH	6/3/2020 10:00am
LUZERNE	6/2/2020 8:00pm
LYCOMING	6/2/2020 8:00pm
McKEAN	6/5/2020 9:00am
MERCER	6/3/2020 9:00am
MIFFLIN	6/5/2020 9:00am
MONROE	6/3/2020 at 9:30am
MONTGOMERY	6/2/2020 8:00am
MONTOUR	6/3/2020 9:00am
NORTHAMPTON	6/5/2020 9:00am
NORTHUMBERLAND	6/2/2020 3:45pm
PERRY	6/2/2020 10:00am
PHILADELPHIA	6/5/2020 9:00am
PIKE	6/3/2020 7:00am
POTTER	6/3/2020 9:00am
SCHUYLKILL	6/2/2020 1:00pm
SNYDER	6/2/2020 9:00pm
SOMERSET	6/2/2020 9:00am
SULLIVAN	6/5/2020 9:00am
SUSQUEHANNA	6/2/2020 8:00pm
TIOGA	6/3/2020 8:30am
UNION	6/5/2020 9:00am
VENANGO	6/5/2020 8:00am
WARREN	6/5/2020 9:00am
WASHINGTON	6/3/2020 9:00am
WAYNE	6/2/2020 8:00pm
WESTMORELAND	6/5/2020 5:00pm
WYOMING	6/2/2020
YORK	6/2/2020 8:00pm

Table 31: Data obtained from each county via a uniform survey requesting the data required pursuant to Act 35.

Pre-Canvassing and Canvassing Statistics

Last Date County Reported Counting all Domestic Ballots for the 2020 Primary Election.¹⁰

County	Date and Time of Meeting
ADAMS	6/4/2020
ALLEGHENY	6/17/2020
ARMSTRONG	6/11/2020
BEAVER	6/11/2020
BEDFORD	6/3/2020
BERKS	6/9/2020
BLAIR	6/8/2020
BRADFORD	6/17/2020
BUCKS	6/17/2020
BUTLER	6/8/2020
CAMBRIA	6/5/2020
CAMERON	6/5/2020
CARBON	6/18/2020
CENTRE	6/5/2020
CHESTER	6/15/2020
CLARION	6/17/2020
CLEARFIELD	6/5/2020
CLINTON	6/9/2020
COLUMBIA	6/9/2020
CRAWFORD	6/18/2020
CUMBERLAND	6/16/2020
DAUPHIN	Not provided
DELAWARE	6/18/2020
ELK	6/3/2020
ERIE	6/12/2020
FAYETTE	6/22/2020
FOREST	6/5/2020
FRANKLIN	6/9/2020
FULTON	6/5/2020
GREENE	6/17/2020
HUNTINGDON	6/5/2020

County	Date and Time of Meeting
INDIANA	6/16/2020
JEFFERSON	6/5/2020
JUNIATA	6/5/2020
LACKAWANNA	6/8/2020
LANCASTER	6/16/2020
LAWRENCE	6/9/2020
LEBANON	week of 6/8/20
LEHIGH	6/12/2020
LUZERNE	6/18/2020
LYCOMING	6/15/2020
McKEAN	6/5/2020
MERCER	6/9/2020
MIFFLIN	6/10/2020
MONROE	6/5/2020
MONTGOMERY	6/17/2020
MONTOUR	6/4/2020
NORTHAMPTON	6/5/2020
NORTHUMBERLAND	6/3/2020
PERRY	6/5/2020
PHILADELPHIA	6/17/2020
PIKE	6/5/2020
POTTER	6/4/2020
SCHUYLKILL	6/11/2020
SNYDER	6/4/2020
SOMERSET	6/10/2020
SULLIVAN	6/5/2020
SUSQUEHANNA	6/5/2020
TIOGA	6/5/2020
UNION	6/11/2020
VENANGO	6/5/2020
WARREN	6/5/2020
WASHINGTON	6/12/2020
WAYNE	6/8/2020
WESTMORELAND	6/9/2020
WYOMING	6/5/2020
YORK	6/12/2020

Table 32: Data obtained from each county via a uniform survey as well as other county post-election reporting regarding ballot counting status.

¹⁰ Data not requested by Act 35 but included for informational purposes.

Review of Actions Taken

The General Assembly's enactment of the election reforms contained in Act 2019-77 and Act 2020-12 and election officials' subsequent implementation of those legislative reforms enabled Pennsylvania to respond effectively to the unique challenges posed by the COVID-19 pandemic. The mail-in voting option in Act 77 and the emergency polling place and poll worker provisions in Act 12 gave voters expanded access to voting by mail and helped county election officials protect public health for in-person voting.

As mentioned in the introduction to this report, the confluence of circumstances leading up to the June 2 Primary, including the closures and restrictions caused by COVID-19 and the unprecedented volume of voters voting by mail, resulted in some unavoidable challenges. Delays and errors in fulfilling some ballot requests in several counties required those counties not only to take quick actions to correct errors, but also to provide individualized outreach to correct any confusion among voters experiencing these issues.

Counties collectively reported that 3,288 ballots were sent to the wrong voter or to the wrong address. Of this total, 3,000 were reported by a single county (Allegheny). That county reported that 3,000 ballots were returned as undeliverable because the voters provided an incorrect or no longer valid address. In about half of these cases, the county was able to reissue ballots, but in some cases the undeliverable ballots arrived too late for the county to reissue ballots.

The causes of the remaining errors and irregularities include the following:

- mail house vendor errors;
- mailing addresses on some address labels without an apartment number due to an anomaly in the Online Absentee Ballot application that did not require applicants to enter apartment information in the correct field;
- human error when inserting balloting materials into envelopes;
- mail delivery errors that resulted in individuals receiving another voter's balloting materials; and
- timing issues that resulted in voters receiving ballots at an address after they moved or returned to a previous address.

Counties reported that three (3) ballots (of the nearly 2.9 million ballots voted in the Primary Election) were voted by someone other than the voter. In each of these three cases, the person who voted the ballot received it in error, and in each case county election officials voided the ballots and re-issued them to the appropriate voter. Based on the information reported by the counties, these situations were reviewed by the counties, who reported that the facts did not appear to be willful nor attempted fraud, and thus they were dealt with administratively.

Counties reported that a total of 153 ballots were returned by means other than the voter sending it by mail or delivering it in person to a site designated by the county board of elections. Of those 153 ballots, 117 ballots were delivered on behalf of voters with disabilities by duly

designated agents. The remaining 36 instances appear to be the result of confusion regarding the requirements for delivering balloting materials. For example, Mercer County reported that a care home administrator delivered the ballots of nine (9) residents on Election Day because they had failed to timely mail the ballots. The county reported that it informed the care home administrator that the ballots could not be counted. Lycoming County reported that it allowed approximately 20 ballots to be delivered by the voters' spouses. That county has taken steps to ensure that its staff does not accept this type of delivery in the future.

In addition to the issues reported in response to the Act 35 inquiries, in Montgomery County approximately 1,900 voters were sent ballots for the incorrect political party. The county cancelled the ballots and issued new ballots to each affected voter. Also, in Montgomery County, about 4,000 additional voters received the wrong ballot style. Unfortunately, the county became aware of this issue late in the process, at which point there was no longer time to issue new ballots and send them by mail. The county cancelled all the incorrect ballots and contacted the affected voters to inform them that they could vote provisionally at the polls or come to the county in person to request a replacement ballot. In both these circumstances, the county's mail house vendor did not employ adequate quality control measures to prevent such errors from occurring. The county is no longer using this vendor and will ensure stricter quality control measures going forward.

In the lead up to the June 2, 2020 Primary, the Department worked with the counties that experienced delays and/or errors in the fulfillment of ballot requests to aid them in assessing the causes and identifying appropriate solutions for any problems that occurred. Immediately following the conclusion of the Primary, the Department reached out to the counties to follow up on all issues and begin working with them on ways to prevent future occurrences, and expanded our work with them on process improvement and implementation of best practices. The Department also engaged experts to work directly with counties to break down and evaluate their internal processes and external dependencies to identify specific actions that the counties must take to avoid similar delays and errors for the November general election.

The data provided by the counties reinforces numerous independent studies that conclude that mail ballot fraud is exceedingly rare, and it demonstrates that the errors that occurred accounted for a very small fraction of the nearly 1.5 million absentee and mail-in ballots requested and cast by voters. Nonetheless, it also demonstrates the need for additional education and outreach to ensure that the issues experienced during the primary do not recur.

Issues or Incidents Involving Voting Machines

The counties reported relatively few voting system errors or issues in the 2020 Primary Election. Of the 27 counties that reported experiencing any voting system issue, all but three (3) counties reported only isolated issues with scanners or ballot-marking devices that were quickly resolved through maintenance or replacement. For example, nine (9) counties had to replace or take offline approximately 30 scanners on Election Day and one (1) county had to replace a defective power cord on a scanner. The remaining counties experienced isolated errors related to needing to replace the paper roll or ink cartridge for the printers, cleaning and calibration adjustments, paper jams, battery failures and errors in opening the polls and other minor poll worker errors. In the overwhelming majority of counties these routine issues were reported in fewer numbers in the 2020 primary than voting system issues reported in comparable prior years with older voting systems.

In the three (3) counties that experienced more significant issues, voters were able to continue voting with little to no interruption throughout the day. In each instance, the issues were not actually voting system issues; rather, they concerned printing vendor errors resulting in some ballots that did not fit through the scanners or were too lightly printed to be successfully scanned, or the use of incorrect markers resulting in write-in votes unable to be scanned.

Each of these issues was addressed at the time and additional corrective action is being taken, as described below:

Bucks County, whose printing vendor cut some ballots too large to be scanned by the precinct scanners, addressed the issue immediately by instructing voters to cast their ballots in the emergency ballot box on the scanner so they could be secured and returned to the county to be tabulated centrally. The county is implementing changes to ensure this does not recur in the future, including evaluating a change in print vendor and augmenting quality control and testing measures.

Similarly, in Lancaster County, where some ballots were too lightly printed to be read by the scanner, the county addressed the immediate issue by instructing voters to insert the improperly printed ballots into the emergency ballot box on the scanner so they could be secured and returned to the county to be tabulated centrally. The county has cancelled its contract with the print vendor and is in the process of rebidding the contract and will implement changes to ensure this does not recur.

Clarion County experienced issues with the scanners' reading of write-in votes on election day ballots and determined that the issue was caused by the pens used to mark the ballots, not the voting system itself. Though the issue did not impede voting, it did significantly slow the canvassing of write-in votes after election day. Because they could not be effectively scanned and captured at the precinct on election day, all ballots with write-in votes had to be rescanned at the county and reconciled manually. The county will be implementing improved training to address this prior to the November election.

The Department will continue working with all counties to ensure that their pre-election logic and accuracy testing is completed as broadly and effectively as possible. Additionally, the Department will work with counties to conduct additional education for poll workers and voters alike. COVID-19 significantly affected both poll worker recruitment and training, and also prevented many counties from holding in-person voting system demonstrations to give poll workers, voters, and other stakeholders an opportunity to gain hands-on experience with new voting systems.

The Department's Ready to Vote 2020 campaign will continue to serve as an important resource for information about each county's voting system. This resource includes online step-by-step instructions for each county's voting system, as well as video demonstrations of voting on each voting system. These resources are supplemented by poll worker training resources provided by both the Department and voting system vendors to ensure that poll workers have access to training materials that they can review in their own homes. The Ready to Vote 2020 campaign also includes a toolkit that candidates, legislators, parties, and other stakeholders can use to generate awareness about these resources. It is essential that all stakeholders work to expand knowledge of these resources, to increase voter education, poll worker recruitment, and poll worker training, to ensure the most accessible and secure participation by eligible voters in this November's election.

Conclusions

The 2020 Primary Election provided some clarity on additional changes that the General Assembly should consider regarding the administration of elections.

Delivery of Ballots to Voters

Section 1305 of the Election Code requires a county board of elections to begin delivering or mailing ballots to voters no later than 14 days before a primary or election. Based on the experiences of the primary election, we believe this is not nearly enough.

Therefore, the Department recommends that the deadline for counties to begin delivering or mailing ballots to voters be increased to at least 28 days before the election, and if a third-party vendor is used, counties should be required to submit the initial list of approved applicants to its third-party vendor(s) no fewer than 35 days prior to an election. These changes would help ensure that voters receive their ballot earlier and have an appropriate amount of time to complete and return their ballot.

Return of Ballots to Counties

Requiring ballots to be sent to voters earlier will only solve part of this problem, however. Some voters will not receive their ballots until only a day or two before an election; others will receive their ballot earlier but may not return it until closer to the election. To allow for all of these votes to be counted, the Department recommends that counties be required to count votes that are received by the county board of elections no later than the Friday following an election, provided that the envelopes have been postmarked by Election Day. Allowing ballots to be returned by the Friday after Election Day will allow ample time for all votes to be counted prior to the statutory deadline to order a statewide recount of any race that is decided by less than a 0.5% margin. Coupled with a change of date for counties to begin delivering or mailing ballots to voters, this change would provide eligible voters the greatest ability to cast their vote.

Pre-Canvass Timeline

As mentioned earlier in this report, the Department also supports counties beginning the pre-canvassing process as early as three weeks before Election Day. To illustrate why this is important, we can look to the Democratic Primary on June 2: At midnight on June 3, 2020, the Democratic race for Auditor General was led by one candidate. Due to delays in canvassing of ballots, it was not until days later that a different candidate, Nina Ahmad, took the lead as ballots continued to be counted. This same process occurred in nine (9) House and Senate races. Even with Act 12 of 2020 moving back the pre-canvassing period from 8pm on Election Day to 7am, it was still not enough time, and in approximately half the counties, ballots were still being counted over a week later. Allowing counties to begin taking these steps earlier would allow them to report accurate and nearly complete results in a timely manner.

The Department recommends that this period be extended to three weeks prior to the primary or election. The Department further recommends that counties be required to conduct at least one pre-canvass meeting, and as many meetings as necessary to pre-canvass all ballots received

prior to the Friday before a primary or election. Counties would be required to follow procedures already in place to notify the public, political parties, and campaigns about these pre-canvass meetings. Furthermore, the law already prohibits any person attending or participating in a pre-canvass meeting from disclosing the results of a pre-canvass meeting prior to the close of the polls. The penalty for doing so is enumerated in Section 1853 of the Election Code, which provides for a fine of up to \$2,500 and/or up to two years in jail. Thus, the Department believes that changes can be implemented that would ensure that counties would be able to report accurate and more complete results on election night without risking the release of results beforehand.

Poll Worker Flexibility

Act 12 of 2020 authorized counties to appoint poll workers for the 2020 Primary Election who were not specifically registered electors of the election district they were serving in on the day of the primary. This flexibility allowed for the counties to appoint thousands of poll workers in order to fill vacancies in advance of the primary. The Department believes that making this provision of Act 12 permanent would enhance poll worker recruitment and is of urgent need given the continuance of COVID 19 precautions.

Additionally, the Department would recommend that Section 405 of the Election Code be modified to provide a county Board of Elections with a greater amount of time prior to an election in which they may appoint poll workers to fill vacancies. Currently, a county must wait until five days before an election to appoint poll workers to fill vacancies. Prior to those five days the county must seek Court approval to appoint them. The Department believes that this should be changed to allow counties the authority to fill vacancies beginning at least 60 days before Election Day. Like the other recommendation described above, this would provide counties with greater flexibility in ensuring that all polling places are properly staffed on election day.

The Pennsylvania Department of State and all 67 counties have demonstrated the strength of our election officials' commitment to ensuring the integrity, accessibility, and security of our elections. On June 2, 2020, Pennsylvanians reaffirmed the durability of our democracy when we exercised our right to vote amid a worldwide pandemic and nationwide social unrest, and overwhelmingly embraced new, more secure voting systems and expanded options for voting safely by mail. We have our dedicated county election officials and poll workers, as well as our resilient voters, to thank for the success of the primary election. With their continued commitment and collaboration, we look forward to holding another successful election on November 3rd.

EXHIBIT “G”

TLP: WHITE



Pennsylvania
Applications and Balloting Guidance:
Mail-in and Absentee Ballots
and Voter Registration Changes

Date: January 10, 2020

Version: 1.0

TLP: WHITE

TLP: WHITE

Act 77 of 2019 provides that voters in Pennsylvania can cast their vote early by either mail-in or absentee ballot. The Act also modifies voter registration requirements. The following guidelines define both what is required by Act 77 and what is permissible under Act 77 or some other portion of the Election Code.

Voter Registration

- The voter registration deadline is now fifteen (15) days before the election. Therefore, voter registration applications must now be **received** by the county board of elections no later than fifteen (15) days before the election.
- Applicants may either return their application in person or it must be received by mail by the county board of elections by the deadline. Previously, counties accepted applications postmarked by the deadline, but that is no longer permitted.
 - Voter registration applications submitted online are timely if they are submitted before midnight on the 15th day prior to a primary or election.
- If an applicant's voter registration application is rejected, the applicant may appeal that decision to the county board of elections by the 8th day prior to Election Day.

Mail-in and Absentee Balloting – General Provisions

- Qualified voters may apply at any time before any primary or election for a mail-in or absentee ballot (up to the deadline described below), and county boards of elections **must begin** processing applications at least fifty (50) days before the primary or election. County boards of elections **may process applications earlier** than fifty (50) days before the primary or election, **if the county board of elections determines that it is better for its operational needs to do so.**
- The deadline for applying for absentee ballots has not changed, and the new mail-in ballots follows the same application deadline. Applications must be received by the county board of elections by 5:00 P.M. on the Tuesday prior to the primary or election. **However, the deadline for counties to receive voted mail-in or absentee ballots has been extended to 8:00 P.M. on Election Day.**
- **Permanent voter lists:**
 - **For the permanent absentee ballot list, only voters with a permanent illness or disability are eligible;** this section does not apply to voters expecting to be absent from the municipality.
 - Absentee voters who request to be placed on the permanent absentee list no longer have to renew their physician's certification of continued disability every four (4) years or list it on each application.

TLP: WHITE

TLP: WHITE

- For the permanent mail-in ballot list, any mail-in voter can request to be placed on the permanent mail-in voter list.
 - Each year the county must send an application to any voter on the permanent absentee and mail-in voter lists by the first (1st) Monday in February.
 - The yearly application serves as a standing request for any election that calendar year **and** for any special election until the third (3rd) Monday in February the next year.
- **Important Changes relating to Returning the Ballot:**
 - A voter who has returned a mail-in or absentee ballot may **not** vote at the polling place on Election Day.
 - If a voter requests but does not return their mail-in or absentee ballot, they may still deliver the ballot in person to a county elections office (CEO) until 8:00 P.M. on Election Day.
 - If a voter cannot return the ballot in person, the voter can vote in person at the voter's polling place on Election Day, but they may only do so by provisional ballot.
 - If a voter whose record in the district poll book indicates that the voter is not eligible to cast a ballot in person on Election Day asserts that they did not cast a mail-in or absentee ballot and is eligible to vote, the voter should be provided a provisional ballot.

Mail-in and Absentee Applications

There are three (3) ways by which voters can apply for mail-in or absentee ballots:

1. In Person
2. Online
3. By Mail

Requirements for in-person applications:

- Voters are permitted to apply in person at a CEO for a mail-in or absentee ballot.
- Voters who apply at a CEO during business hours may request to receive a mail-in or absentee ballot in person while the voter is in the office. **Note:** Please see "Optional county services" below for more information.

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- Once the ballot has been finalized and printed, the county board of elections **must promptly present** the voter with the voter's mail-in or absentee ballot.
- A county board of elections **cannot decline** the voter's application for a mail-in or absentee ballot, unless there is a bona fide objection to the mail-in or absentee ballot application.
- Voters who request a mail-in or absentee ballot in person must be provided an opportunity to privately and secretly mark their ballot. **Note:** *The marking of the ballot in secret does not have to take place in the election offices. It can be provided in a nearby location.*
- Voters are permitted to deliver a mail-in or absentee ballot in-person at a CEO up to 8:00 P.M. on Election Day.

Optional County Services:

- As allowed under existing law, county election boards may provide for mail-in and absentee application processing and balloting at more than one CEO located within county borders.
- Additional business hours for CEOs may be established; hours do not have to be limited to weekdays nor to typical business hours. Counties are encouraged to offer business hours outside of these time frames, including weeknights or weekend hours to enable maximum flexibility and convenience to voters.
- If a county decides to provide additional mail-in and absentee balloting by establishing additional CEOs, the county must account for **all** of the following:
 - Each CEO must be staffed by appointed elections personnel in municipal or county-owned or leased properties selected by the county board of elections for processing applications and in-person voting of both mail-in and absentee ballots.
 - Each CEO must have a secure county network connection that is capable of connecting to the Statewide Uniform Registry of Electors (SURE), and staff trained and approved to access SURE. **NOTE:** *The Department will work with counties to establish secure connections; the county network extension must be approved by the Department.*
 - Each CEO must either have copies of all ballot styles available to be voted in the county, or an on-demand ballot printer capable of printing all ballot styles available to be voted in the county.
 - Each CEO must have a secure ballot collection receptacle to store voted mail-in or absentee ballots submitted at the location.
- When choosing a location for the CEO, counties should consider, at a minimum, the following:
 - Choose locations that serve heavily populated urban/suburban areas, as well as rural areas.

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- For example, counties may want to select accessible locations near heavy traffic areas such as commercial corridors, large residential areas, major employers and public transportation routes.
 - In rural areas, locations should be selected that are easily recognizable and accessible within the community.
- Counties may want to select locations in areas in which there have historically been delays at existing polling locations, and areas with historically low turnout.

Requirements for online or mail applications:

- After the ballot has been finalized and printed, the county board of elections **must promptly deliver or mail** the voter's mail-in or absentee ballot, and in any event must deliver ballots by the second (2nd) Tuesday before the election.
- After the county board of elections begins delivering and mailing mail-in and absentee ballots, the county must deliver or mail subsequent ballots requested within forty-eight (48) hours of receipt provided they are approved.
- Whether submitted in person or by mail, all mail-in and absentee ballots must be received by the CEO by 8:00 P.M. on Election Day.

Mail-in and Absentee Ballots

Delivery of Mail-in and Absentee Ballots

- As noted previously, counties **must** begin processing applications for mail-in and absentee ballots at least fifty (50) days before the primary or election or at an earlier time as the county board of elections determines **may** be appropriate.
- Counties **must begin delivering** mail-in or absentee ballots as soon they are certified and available.
- Counties **may** await the outcome of pending litigation that affects the contents of the ballots, but in any event the county **must** begin delivering mail-in or absentee ballots no later than the 2nd Tuesday prior to Election Day.

Collection of Mail-in and Absentee Ballots

- In addition to CEOs, counties may provide for other secure ballot collection locations that the county deems appropriate to accommodate in-person return of voted mail-in and absentee ballots.
- If a county decides to provide for other ballot collection locations, the county should consider the following best practices:

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- The county board of elections should pass a resolution to determine the number and locations of ballot collection locations within the county, and provide public notification of the locations.
- Ensure and document to the Department the security and chain of custody of mail-in and absentee ballots retrieved from ballot collection locations. **NOTE:** *Please contact the Department for guidance on how to document security and chain of custody.*
- Utilize a secure ballot collection receptacle that is designed for this specific purpose. **NOTE:** *Please contact the Department for guidance on factors, best practices, and examples for these receptacles.*
- Officially designate county election personnel who are sworn and authorized to remove mail-in and absentee ballots from ballot collection receptacles.
- Process mail-in and absentee ballots collected from ballot collection locations in the same manner as ballots personally delivered or mailed to the county board of elections.
- Hours of access to and collection from the ballot collection locations do not have to be limited to weekdays nor to typical business hours.
- Public notification should be provided as to the location of collection locations, and clear signage should designate the locations and explain their proper use.

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Version History:

Version	Date	Description	Author
1.0	1.10.2020	Initial document release	Bureau of Election Security and Technology

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EXHIBIT ‘H’

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Pennsylvania

Absentee and Mail-in Ballot Return Guidance

Date: August 19, 2020

Version: 1.0

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BACKGROUND

Under Pennsylvania law, in addition to using the mail, voters may return their own voted absentee or mail-in ballot in-person. The ballot may be returned to each county election board’s primary office as well as to other offices and locations designated by the board to receive ballots (hereinafter referred to as “Ballot Return Sites”), including secure ballot return receptacles (commonly referred to as “drop-boxes”) that are easily identifiable.

This document provides guidance on how each county should establish a ballot return and collection plan for their county prior to each election.

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1 ESTABLISHING A BALLOT RETURN AND COLLECTION PLAN

1.1 BALLOT RETURN SITES

For each election, county boards of elections should establish a plan and adopt procedures for how voters in their county may return their own voted absentee and mail-in ballots to the county board of elections. The initial plan should be submitted to the Department of State on or before 45 days prior to the election.

County boards of elections may establish multiple ballot return locations where voters may return their own voted ballot. At these sites, the county may provide voters with access to a secure ballot return receptacle for this purpose.

1.2 LOCATION OF BALLOT RETURN SITES

1.2.1 Location of Ballot Return Sites

Sites may include, but are not limited to, city and municipal facilities, public libraries, county facilities, or other locations designated by the board to receive ballots. When choosing a location, counties should consider, at a minimum, the following:

- locations that serve heavily populated urban/suburban areas, as well as rural areas.
- locations near heavy traffic areas such as commercial corridors, large residential areas, major employers and public transportation routes.
- locations that are easily recognizable and accessible within the community.
- locations in areas in which there have historically been delays at existing polling locations, and areas with historically low turnout.
- proximity to communities with historically low vote by mail usage.
- proximity to language minority communities.
- proximity to voters with disabilities.
- proximity to communities with low rates of household vehicle ownership.
- proximity to low-income communities.
- access to accessible and free parking.
- the distance and time a voter must travel by car or public transportation.

1.2.2 Hours of Operation

Business hours for sites do not have to be limited to weekdays or normal business hours. Counties are encouraged to offer business hours outside of these time frames, including weeknights or weekend hours to enable maximum flexibility and convenience to voters.

TLP: WHITE**1.3 PROVIDING NOTICE OF LOCATION OF COUNTY ELECTION OFFICES AND BALLOT RETURN SITES**

A list of the ballot return sites and county election offices, including the dates and hours they are open, should be made public as early as possible. At least 7-10 days after submission of the plan to the Department of State, the county board of elections should provide notice of the county's ballot return plan by posting a notice in the county elections office and in a highly visible location on the county's website. The board may also post copies of the notice at such other locations it deems appropriate for the efficient notification of voters. The notification should also be included in absentee and mail-in voting materials sent to voters. At a minimum, the notice should include the following:

- ballot return deadline.
- list of county election offices and ballot return sites, including building names and street address.
- days and hours of operation, including election day hours.
- contact information for the county board of elections.
- accessibility information.

The list posted on the county's website should be in a format that is accessible for people with disabilities. In the event of any changes to site location operations, the county board of elections should post the updated information on the official election website within 24 hours.

1.4 CONFIRMATION OF PLAN READINESS

A county's initial absentee and mail-in ballot return plan should be submitted to the Department of State, Bureau of Election Security and Technology ("BEST") no later than 45 days before an election. If the Bureau of Election Security and Technology requests modifications to a plan, the county election office should submit a modified plan within 7 days of the request. If the county board of elections determines that it is in the best interest of their voters to alter their plan or increase/decrease the number of ballot return sites they may submit a supplemental plan to BEST no later than 25 days before the election with notice to the public within 5 days of submission.

2 BALLOT RETURN SITE DESIGN AND REQUIREMENTS

2.1 TYPES OF BALLOT RETURN SITES

County boards of elections may establish sites where voters may return their own voted ballot. The site should provide voters access to a ballot return receptacle that is secure.

All return sites should be accessible at least during regular business hours beginning not less than 30 days before the day of the election, and on the day of the election. Return sites should have the same features, and be of substantially similar design, color scheme, and signage to facilitate identification by the public.

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2.2 SECURE RECEPTACLES (“DROP-BOXES”)

Each ballot return site should have a secure receptacle that permits voters to return their own voted ballot. A postage stamp is not needed on the return envelope when depositing a ballot at a ballot return site. The receptacle should be designed to function as follows:

- hardware should be operable without any tight grasping, pinching, or twisting of the wrist.
- hardware should require no more than 5 lbs. of pressure for the voter to operate.
- receptacle should be operable within reach-range of 15 to 48 inches from the floor or ground for a person utilizing a wheelchair.

Other design requirements include:

- The drop-box should provide specific points identifying the slot where ballots are inserted. The drop-box may have more than one ballot slot (e.g. one for drive-by ballot return and one for walk-up returns).
- To ensure that only ballot material can be deposited and not be removed by anyone but designated county board of election officials, the opening slot of a drop-box should be too small to allow tampering or removal of ballots.
- The opening slot should also minimize the ability for liquid to be poured into the drop-box or rainwater to seep in.

The county boards of election should determine receptacle size based on the use and needs of the location. The receptacle should be securely fastened to a stationary surface, to an immovable object, or placed behind a counter.

2.3 SIGNAGE

In determining the design and functions of ballot return sites, county boards of elections should design them in such a way that they are official and secure. To this end, the county board of elections must ensure each return site is marked with official signage (“Official Ballot Return Site” or “Official Ballot Return.”) Counties should not display traditional “Vote Here” signs at designated ballot return sites. Signage should adhere to the following:

- Signage should be in all languages required under the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10503).
- Signage should display language stating that counterfeiting, forging, tampering with, or destroying ballots is a second-degree misdemeanor pursuant to sections 1816 and 1817 of the Pennsylvania Election Code (25 P.S. §§ 3516 and 3517).
- Signage should also provide a statement that third-party return of ballots is prohibited unless the person returning the ballot is rendering assistance to a disabled voter or an emergency absentee voter. Such assistance requires a declaration signed by the voter and the person rendering assistance.

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- Signage should provide a statement requesting that the designated county elections official should be notified immediately in the event the receptacle is full, not functioning, or is damaged in any fashion, and should provide a phone number and email address for such purpose.

2.4 ACCESSIBILITY OF BALLOT RETURN SITES

County boards of elections should ensure that ballot return sites are accessible to voters with disabilities, and should also ensure the following:

- If a site has only one ballot return receptacle, the design and placement of that site should meet the accessibility requirements.
- At a site with multiple drop-boxes, if not all drop-boxes meet the accessibility requirements outlined in this subdivision, then each inaccessible return site should have directional signage indicating the location of an accessible drop-box.

2.5 SECURITY

County boards of election must ensure the following when establishing ballot return sites:

- Only personnel authorized by the county board of elections should have access to the ballots inside of a drop-box.
- Drop-boxes should be secured in a manner to prevent their unauthorized removal.
- All drop-boxes should be secured by a lock and sealed with a tamper-evident seal. Only authorized election officials designated by the county board of elections may access the keys and/or combination of the lock.
- Drop-boxes should be securely fastened in a manner as to prevent moving or tampering, such as fastening the drop-box to concrete or an immovable object.
- During the hours when the staffed return site is closed or staff is unavailable, the drop-box should be placed in a secure area that is inaccessible to the public and/or otherwise safeguarded.
- The county boards of election should ensure adequate lighting is provided at all ballot return sites when the site is in use.
- When feasible, ballot return sites should be monitored by a video security surveillance system, or an internal camera that can capture digital images and/or video. A video security surveillance system can include existing systems on county, city, municipal, or private buildings. Video surveillance should be retained by the county election office through 60 days following the deadline to certify the election.
- To prevent physical damage and unauthorized entry, the drop-box at a ballot return site located outdoors should be constructed of durable material able to withstand vandalism, removal, and inclement weather.

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3 BALLOT COLLECTION AND CHAIN OF CUSTODY PROCEDURES

The county board of elections should develop ballot collection and chain of custody procedures for ballots returned to a county election office or a ballot return site. These procedures may not be inconsistent with Pennsylvania law or Department of State directives.

3.1 BALLOT COLLECTION AT BALLOT RETURN SITES

- Ballots should be collected from ballot return sites only by personnel authorized by the county board of elections and at times determined by the board of elections, at least every 24 hours, excluding Saturdays and Sundays.
- The county board of elections should designate at least two election officials to collect voted ballots from a ballot return site. Each designated election official should carry identification or an official designation that identifies them as an election official authorized to collect voted ballots.
- Election officials designated to collect voted ballots by the board of elections should sign a declaration declaring that he or she will timely and securely collect and return voted ballots, will not permit any person to tamper with a ballot return site or its contents, and that he or she will faithfully and securely perform his or her duties.
- The designated election officials should retrieve the voted ballots from the ballot return site and place the voted ballots in a secure ballot transfer container.
- The designated election officials should note on *Ballot Return Site Collection Forms* the site and unique identification number of the ballot return site and the date and time of retrieval.

3.2 TRANSPORT AND RECEIPT OF RETRIEVED BALLOTS TO THE BOARD OF ELECTIONS

- Ballots collected from any ballot return site should be immediately transported to the county board of elections.
- Upon arrival at the office of the county board of elections, the county board of elections, or their designee(s), should note the time of arrival on the same form, as described above.
- The seal number should be verified by a county election official or a designated representative.
- The county board of elections, or their designee(s), should inspect the drop-box or secure ballot transfer container for evidence of tampering and should receive the retrieved ballots by signing the retrieval form and including the date and time of receipt. In the event tampering is evident, that fact must be noted on the retrieval form.
- The completed collection form should be maintained in a manner prescribed by the board of elections to ensure that the form is traceable to its respective secure ballot container.
- The county elections official at the county election office or central count location should note the number of ballots delivered on the retrieval form.

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3.3 ELECTION DAY AND POST-ELECTION PROCEDURES

- The county board of elections should arrange for authorized personnel to retrieve ballots on election night and transport them to the county board of elections for canvassing of the ballots.
- Authorized personnel should be present at ballot return sites immediately prior to 8:00 p.m. or at the time the polls should otherwise be closed.
- At 8:00 p.m. on election night, or later if the polling place hours have been extended, all ballot return sites, and drop-boxes must be closed and locked.
- Staff must ensure that no ballots are returned to ballot return site after the close of polls.
- After the final retrieval after the closing of the polls, the drop-box must be removed or locked and/or covered to prevent any further ballots from being deposited, and a sign shall be posted indicating that polling is closed for the election.

4 PROCESSING OF COLLECTED BALLOTS

Any ballots collected from a return site should be processed in the same manner as mail-in ballots personally delivered to the central office of the county board of elections official by the voter and ballots received via the United States Postal Service or any other delivery service.

###

Version History:

Version	Date	Description	Author
1.0	8.19.2020	Initial document release	Bureau of Election Security and Technology

EXHIBIT ‘I’

From: Marks, Jonathan <jmarks@pa.gov>
Sent: Thursday, May 28, 2020 7:44 PM
To: Marks, Jonathan <jmarks@pa.gov>
Subject: Important DOS Email re: Absentee/Mail-in Ballot Canvass
Importance: High

To all county election officials.

I hope you are all safe and well.

The department has received some questions from county officials in recent days regarding the proper disposition of absentee or mail-in ballots cast by voters who did not enclose their voted ballots in the official election ballot envelope ("secrecy" or "inner" envelope).

Though the Election Code requires county boards of elections to set aside absentee or mail-in ballots enclosed in official election ballot envelopes that contain "any text, mark or symbol which reveals the identity of the elector," there is **no statutory requirement, nor is there any statutory authority**, for setting aside an absentee or mail-in ballot solely because the voter forgot to properly insert it into the official election ballot envelope. See 25 P.S. § 3146.8(g)(4)(ii).

To preserve the secrecy of such ballots, the board of elections in its discretion may develop a process by which the members of the pre-canvass or canvass boards insert these ballots into empty official election ballot envelopes or privacy sleeves until such time as they are ready to be tabulated.

Please consult with your solicitor about your plans to deal with such instances should they occur during the pre-canvass or canvass.

Thank you for everything you are doing to administer the 2020 Primary while coping with the unique challenges presented by COVID-19.

Kind regards,

Jonathan M. Marks
Deputy Secretary for Elections & Commissions
Pennsylvania Department of State
302 North Office Building | Harrisburg, PA 17120
☎ 717.783.2035 📠 717.787.1734
✉ jmarks@pa.gov

EXHIBIT “J”

TLP: WHITE



Pennsylvania
Guidance for Missing Official Election Ballot Envelopes
("Naked Ballots")

Date: August 19, 2020

Version: 1.0

TLP: WHITE

“Naked Ballot” is the term used when a voter fails to insert their ballot in the inner secrecy envelope before casting their mail-in or absentee ballot.

It is the Department’s position that naked ballots should be counted pursuant to the Pennsylvania Election Code, furthering the Right to Vote under the Pennsylvania and United States Constitutions. The failure to include the inner envelope (“Secrecy Envelope”) does not undermine the integrity of the voting process. For these reasons, no voter should be disenfranchised for failing to place their ballot in the official election ballot envelope before returning it to the county board of elections.

In order to promote consistency across the 67 counties, the county board of elections should develop a process for counting naked ballots that are discovered during the pre-canvass or canvass. Such a process should include placing and sealing the naked ballot into an empty official election ballot envelope (“Secrecy Envelope”) and then placing the secured ballot with the other removed official election ballot envelopes so that it may be tabulated.

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Version History:

Version	Date	Description	Author
1.0	8.19.2020	Initial document release	Bureau of Election Security and Technology

EXHIBIT “K”

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael Crossey, Dwayne Thomas,
Irvin Weinreich, Brenda Weinreich, and
the Pennsylvania Alliance for Retired
Americans,

Petitioners,

v.

Kathy Boockvar, Secretary of the
Commonwealth, Jessica Mathis,
Director of the Bureau of Election
Services and Notaries,

Respondents.

No. 108 MM 2020

AND

No. 266 MD 2020

PRELIMINARY REPORT OF RONALD STROMAN

I, Ronald Stroman, having been duly sworn according to law, declare as follows:

1. My name is Ronald Stroman. I am over the age of 18 and I prepared this preliminary report based upon my personal knowledge of the facts below and my experience.

2. I am a resident of Washington, D.C. I served for nine years as the Deputy Postmaster General of the USPS, the second highest-ranking official in USPS, from 2011 until June 1, 2020. The USPS has more than 600,000 employees and approximately \$70 billion in annual operating revenue. Some of my responsibilities and priorities as Deputy Postmaster General related to voting by mail and included: (1) improving the quality of the information that USPS provided to state and local election officials on voting by mail; (2) improving the communications between the USPS, election officials, and the election mail community; (3) improving the internal training for USPS employees on election mail; and (4) developing a system for the rapid resolution of election mail issues. I worked closely with state and local election officials across the country

EXHIBIT
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for approximately five years to implement these improvements in the voting by mail system.

3. With the COVID-19 pandemic and the resulting dramatic shift to voting by mail across most of the country, election officials in most states, including in Pennsylvania, are facing unprecedented challenges in conducting this year's elections. The surge in voting by mail imposes unprecedented strains on state election systems, most of which are not designed for the expected volume of mail ballots, and on the United States Postal Service ("USPS"), which has never before been required to provide mail service to support elections in which large numbers of voters will vote by mail.

I. BACKGROUND

4. As Deputy Postmaster General, my work in coordinating with the election mail community included coordinating with the National Association of State Election Directors ("NASED") and the National Association of Election Officials, also known as The Election Center, to develop best practices for administering vote by mail in federal, state, and local elections. NASED and the Election Center's members are election officials from across the country, many of whom have worked in election administration at the state and local levels for decades. In the process of working with these officials, I became very familiar with state laws governing voting by mail. In addition to having expertise in issues involving mail and the USPS, I am a lawyer, having been admitted to the Bar of Pennsylvania in 1978. My training and experience as a lawyer, including working as Assistant Counsel on the Judiciary Committee of the U.S. House of Representatives, has provided me with unique insights into the relationship between states' voting laws involving voting by mail and the operations and service standards of the USPS.

5. My work on voting by mail as the Deputy Postmaster General has also provided me with a detailed understanding of the resources and procedures that election officials and the

USPS must have to support voting by mail. Specifically, election officials and the USPS must devote the resources and establish the procedures necessary to ensure that: (1) voters receive absentee ballots in a timely manner; (2) voters are able to return their completed ballots in time for them to be counted; (3) ballots are not lost in the mail; and (4) ballots are properly verified by election officials and included in final vote tabulations.

6. A copy of my curriculum vitae is attached as Exhibit 1. I am being compensated at a rate of \$400 per hour. My compensation in this matter is not in any way contingent on the content of my opinion or the outcome of this matter.

7. I have been asked to describe, based on my experience, the impact of the coronavirus pandemic and the resulting surge in voting by mail on USPS's operational capacity, as well as its ability to meet delivery service standards to ensure the timely delivery of mail ballots in Pennsylvania. Based on my observations from elections conducted in Pennsylvania and other states during the coronavirus pandemic, it is highly probable that the shift toward voters casting ballots by mail will be even more pronounced in the November 3rd general election. This surge in vote by mail will continue to impose significant challenges for USPS, which has never before been required to provide mail service to support elections in which the majority of voters will vote by mail.

8. In preparing this preliminary report, I reviewed publicly available materials which I understand have been disclosed to all parties.

II. THE USPS, THE PANDEMIC, AND ELECTION MAIL

9. In my role as Deputy Postmaster General, I also became familiar with the problems the USPS experienced in connection with several elections held during the COVID-19 pandemic. Some of those problems are described in a July 7, 2020 report issued by the USPS' Office of the

Inspector General (“OIG”) in connection with Wisconsin’s Spring Election, held on April 7, 2020. The audit reflected in the OIG Report was conducted between April and July, encompassing a period during which I was still Deputy Postmaster General. It focuses not just on the Wisconsin election, but also on national issues involving the incompatibility of many state election deadlines concerning: (1) when completed ballots must be received to be counted, and (2) the time it takes for the USPS to deliver absentee ballots to voters and then to deliver voters’ completed ballots back to election offices. I was aware of the issues that were being addressed in the audit while I was still with the USPS, including the incompatibility of state election deadlines and USPS delivery time, and I have reviewed the final OIG report and am familiar with its findings.

10. The report documents and summarizes evidence that election officials were overwhelmed by the volume of mailed ballots in the Wisconsin primary. The evidence includes: three tubs of absentee ballots to be mailed to voters that were found in the USPS’s Milwaukee Processing & Distribution Center after the polls had closed on election day because a third-party mailer presented them to USPS around 6:00 p.m. on election day, as well as 2,693 absentee ballots that Milwaukee voters had requested and that, according to election records, had been sent on March 22 and 23, but were not actually sent because of a system failure. In addition, problems occurred when USPS returned absentee ballots to the Fox Point Clerk’s Office three different times, without explanation, instead of delivering them to voters, and hundreds of completed ballots returned by voters were not postmarked by the USPS, leaving election officials uncertain about whether to count them as lawfully cast votes.

11. Pennsylvania’s June 2, 2020 primary was similarly affected by the pandemic. Over 1.8 million voters requested an absentee ballot in the June Primary. Election officials struggled to keep up with the demand and process times lagged. One county mailed 6,000 absentee ballots to

voters the day before the June Primary. Tens of thousands of voters did not receive their absentee ballots until the week after the primary. According to an analysis of election data published by Pennsylvania's Department of State, the average wait time for voters to receive their absentee ballot after requesting it was 7 days, with Blair, Bucks, Centre, Cumberland, Franklin, Fulton, Juniata, Mifflin, Montgomery, Philadelphia, and Somerset counties exceeding 10 days, and Delaware topping the list with an average wait of over 20 days.

12. In the days before the June Primary, some county election officials began encouraging voters not to return their completed ballots by mail, expressing concern that ballots mailed would not be received in time. For this reason, several counties petitioned their Courts of Common Pleas to extend the deadline for the receipt of completed ballots. County officials in Montgomery County, for instance, stated that the USPS was delivering mail at slower rates than it had anticipated, that numerous voters reported not receiving their absentee ballots despite that the ballots had been mailed to them, and that they had received confirmation from USPS that absentee ballots could take up to ten days to be delivered to voters. Based on my experience, the interest in vote by mail, and the corresponding strain on election officials, is only likely to become more acute in the November General Election.

13. These problems reveal a system that was overwhelmed by both the impact of the coronavirus and the volume of absentee ballots requested and returned by mail. The pressing question now for Pennsylvania election officials, Pennsylvania voters, and the nation is whether the problems the State has experienced will resolve themselves before the November election, which is less than 65 days away, or whether the recent elections are a sign of what is to come in November, with an unprecedented volume of absentee ballots and the extraordinary challenge of delivering that mail during a once-in-a-century pandemic. My experience with voting by mail and

my extensive work with election officials leads me to conclude that the recent primaries are a predictor of what may occur in the November general election, absent significant changes.

III. PENNSYLVANIA'S VOTING LAWS MAKE RETURNING A BALLOT BY MAIL A RISKY BET

14. Pennsylvania's voting laws are such that many voters will not receive their absentee ballot in time to return it by mail with confidence that it will be received in time to be counted. The problem lies at the confluence of two deadlines: First, under Pennsylvania law a voter may request a ballot up until 7 days before an election. Second, under Pennsylvania law a ballot is only counted if it is received by election officials on election day. This is the so-called ballot receipt deadline.

15. The USPS recently notified Pennsylvania that its laws left many voters at serious risk of disenfranchisement. The letter laid out the risk: "[I]t appears that a completed ballot must be received by Election Day to be counted. If that understanding is correct, we accordingly recommend, as noted above, that voters who choose to mail their ballots do so no later than Tuesday, October 27. However, it further appears that state law generally permits voters to request a ballot as late as 7 days before the November general election. If a voter submits a request at or near that deadline, and the ballot is transmitted to the voter by mail, there is a significant risk that the voter will not have sufficient time to complete and mail the completed ballot back to election officials in time for it to arrive by the state's return deadline. This risk is exacerbated by the fact that the law does not appear to require election officials to transmit a ballot until 48 hours after receiving a ballot application."

16. Several factors lead me to conclude that the ballot receipt deadline for the November General Election will lead to disenfranchisement.

17. *First*, I understand that mail voting has increased exponentially in Pennsylvania—

with 1.8 million voters requesting an absentee ballot for the June 2 primary compared to 84,000 in the 2016 primary—because of the ongoing COVID-19 pandemic and the State’s recent adoption of no-excuse mail-in voting for all eligible voters, 25 P.S. § 3150.11(a). Pennsylvania officials, including the Governor, have also encouraged vote by mail.

18. *Second*, the USPS has service standards for the two types of mail used for election-related materials: First Class Mail and Marketing Mail. The service standard for First Class Mail is two to five days, while the service standard for Marketing Mail is three to ten days. There is an irreconcilable conflict between these USPS service standards and Pennsylvania’s voting laws that will almost certainly lead to the disenfranchisement of large numbers of Pennsylvanians, an effect that will only be exacerbated if voters are required to rely exclusively on the postal service to return their mail ballots.

19. To illustrate, consider a very optimistic scenario of a voter submitting a request for an absentee ballot on Tuesday, October 27, 2020, which is one week before election day. If an election official responds promptly and mails the ballot within a day, the ballot could be accepted by the USPS as early as Wednesday, October 28. Let’s assume the Board of Elections is using First Class Mail and the ballot is delivered to the voter’s residence on Friday, October 30. The voter promptly reviews the candidates and any ballot initiatives, fills out the ballot and mails it Saturday afternoon, after the Saturday USPS critical entry time. The mail carrier won’t pick up that ballot until Monday, November 2. Even if the voter takes the ballot to a Post Office and has it postmarked on Saturday, the ballot would not be processed until Monday. With the USPS service standard of two to five days, the earliest that ballot would be delivered to the Board of Elections is Wednesday, November 4, the day after election day. This scenario assumes everything goes perfectly, and a voter is within two days reach of USPS. Now, let’s say it takes five days to get a

ballot to a voter, a day for the voter to fill out a ballot, and five days for that ballot to be delivered back to the Board of Elections, all within the USPS service standards. These realistic changes add six more days without even attempting to account for expected delays. In each of these scenarios, mailing ballots back to election officials is a futile, or, at best, risky proposal for a voter.

20. *Third*, the already high risk of late delivery is increased by the significant challenges the USPS is facing. The COVID-19 pandemic has caused mail delays across the state. For example, in various cities, the USPS has had significant challenges with employee availability. Postmaster General DeJoy recently testified before the Senate Homeland Security and Governmental Affairs Committee that COVID-19 has impacted employee availability by at least 20 percent in Philadelphia. This March, in Bethlehem, PA, at least one employee in the mail facility contracted COVID-19. In response, the USPS gave workers the option to go home, with half taking them up on the offer. As more employees have been forced to take leave, either as a precaution after potential exposure to the virus or to care for family members, resulting in limited staffing, the Postal Service has begun prioritizing the delivery of packages to ensure the timely delivery of life-saving pharmaceuticals and personal protective equipment. With health-care experts predicting a second wave of COVID-19 in the fall, along with the seasonal flu, staffing shortages could be a significant issue at a critical time for the acceptance, processing, and delivery of absentee ballots.

21. In response to a decline in mail volume over the last decade and the last year, the USPS cut costs by ending some employee overtime, and requiring all trucks to leave plants on time, regardless of whether all mail is loaded onto the trucks, which delayed delivery of mail left behind at the plant. The USPS has a 96.5 percent target for on-time delivery for First-Class Mail. In quarter three, covering the period of April 1, 2020 through June 30, 2020, the USPS' Central

Pennsylvania District achieved a 94.1 percent score, Philadelphia Metro District achieved 92.7 percent, and Western Pennsylvania District achieved a 96 percent score. After the implementation of these new policies, during the week of July 19, the Central Pennsylvania District reported a 72.1 percent score, Philadelphia Metro District achieved a 85.7 percent score, and Western Pennsylvania District reported a 90 percent score, all significantly below their previous scores and below the target. After significant public and congressional pressure, particularly on the potential impact to timely delivery of mail-in ballots, the Postmaster General announced that he was suspending the operational changes until after the election. However, the Postmaster General has indicated that he will not reverse any of the operational changes already implemented.

22. The factors I describe above give me great concern that a significant number of Pennsylvania voters who submit their ballots by mail in the November election will be disenfranchised because of mail delivery delays. Providing additional leeway for the delivery of ballots postmarked by election day would, in my opinion, significantly reduce the risk that USPS delays could prevent voters from casting a ballot in the November general election.

23. I declare that the foregoing is true and correct to the best of my knowledge.

Executed on August 29, 2020

Respectfully submitted,

DocuSigned by:
Ronald Stroman
EEA300C66EA5493

Ronald Stroman

Exhibit 1

RONALD A STROMAN

Phone: (202) 641-0031 | **Email:** stromanra@gmail.com

Address: 1360 Kalmia Road NW, Washington, DC 20012

EXECUTIVE SUMMARY

Detail-oriented, passionate, and highly motivated Government Affairs Executive with 30+ years of exemplary service in the United States House of Representatives and experience as Deputy Postmaster General for the U.S. Postal Service and Director of the U.S. Department of Transportation. Expertise in overseeing government programs, managing legislative strategies, developing bipartisan legislation, and supervising financial activities. Committed to maintaining a reputation based on exemplary service and uncompromising ethics and recognized for successfully developing and managing public policy advocacy initiatives while overseeing a large number of staff and budgets up to \$6MM. Possesses solid analytical, communication, public speaking, and several other key strengths as follows:

- ◆ Committee Oversight
- ◆ Public Policy Advocacy
- ◆ Equal Opportunity
- ◆ Staff Supervision
- ◆ Diversity Improvement
- ◆ Financial/Budget Analysis
- ◆ Stakeholder Relations
- ◆ Government Procurement
- ◆ Program Management
- ◆ Waste/Fraud Investigation
- ◆ Grassroots Communication
- ◆ Agency Collaboration
- ◆ Contract Administration
- ◆ Strategic Negotiation
- ◆ Multi-Office Management
- ◆ Federal Spending Insight
- ◆ Legislative Analysis
- ◆ Continuous Improvement
- ◆ Government Reform
- ◆ Business Strategy Implementation

CAREER OVERVIEW

United States Postal Service • Washington, D.C.

2011 - June 2020

Deputy Postmaster General

- ◆ Named the 20th Deputy Postmaster General out of 219 years of Postal Service existence, as the 2nd highest ranking postal executive serving on the Postal Service Board of Governors and Postmaster General's Executive Leadership Team.
- ◆ Reports include the functions of Consumer and Industry Affairs, Government Relations and Public Policy, Sustainability, and the Judicial Officer Department.
- ◆ Collaborates with the mailing industry to help improve interactions with postal customers and facilitates relationships with federal, state, and local agencies on core business strategy implementation.
- ◆ Assists in overseeing agency operations with total annual revenues of \$65 billion and a workforce of over 500K employees for a government agency second in size to Wal-Mart if compared as a business.

United States House of Representatives • Washington, D.C.

2009 - 2011

Staff Director, Committee on Oversight & Government Reform

- ◆ Responsible for overseeing a staff of more than 70 attorneys, professionals, and administrative personnel with a \$6MM operating budget.
- ◆ Directed committee investigations in the areas of Financial Crisis, Waste, Fraud, Abuse in Federal Spending, and various other issues.
- ◆ Oversaw drafting and negotiations of laws related to funding for Federal Procurement, United States Postal Services, Federal Workforces, and Limiting Peer-to-Peer Computer Downloading.
- ◆ Supervised 85 professional staff members and played an integral role in 20 bills that were signed into law by President Obama.

United States General Accounting Office • Washington, D.C. 2001 - 2009

Managing Director, Office of Opportunity & Inclusiveness

- ◆ Held accountable for monitoring, analyzing, and recommending changes to the GAO's human capital systems while serving as Principal Advisor to the Comptroller General on diversity matters.
- ◆ Directed interpretive services for the deaf/hard-of-hearing staff, as well as oversaw agency's formal complaint process and reviewed all products responding to Congressional requests which involved civil rights and diversity.

CAREER OVERVIEW (CONTINUED)

United States Department of Transportation • Washington, D.C. 1997 - 2001

Director, Office of Civil Rights

- ◆ Supervised office operations for 6 locations throughout the nation and a staff of 70 employees.
- ◆ Served as Principal Advisor to the Secretary of Transportation on all civil rights and equal opportunity matters while implementing Titles VI and VII of the Civil Rights act of 1964, the Americans with Disabilities Act of 1990, and the Disadvantaged Business Enterprise provisions of the Transportation Equity Act for the 21st Century.
- ◆ Successfully eliminated 400-case backlog of EEO cases during stewardship of the Office of Civil Rights.
- ◆ Implemented efforts to establish Disability Resources Center, which now handles all requests for reasonable accommodation by the Department's employees with disabilities.
- ◆ Established department-wide Alternative Dispute Resolution program and Diversity Task Force.

United States Department of Transportation • Washington, D.C. 2000 - 2001

Acting Director, Office of Small & Disadvantaged Business Utilization

- ◆ Led a staff of 13 in the mission of ensuring that small, minority, and women-owned businesses participated fully in the Department's direct and federally assisted procurement opportunities which incorporated the Disadvantaged Business Enterprise Program.
- ◆ Managed the Bonding Assistance Program in an effort to increase the number of surety bonds written, as well as the Short Term Lending Program to provide capital loans and guarantees for small disadvantaged businesses working on transportation-related contracts.

United States House of Representatives • Washington, D.C. 1984 - 1997

Deputy Minority Staff Director/Procurement Counsel, Committee on Government Reform & Oversight (1995 – 1997)

Staff Director/Chief Counsel, Subcommittee on HR & Intergovernmental Relations/Comm. on Govt. Ops. (1993 – 1994)

General Counsel, Committee on Government Operations (1988 – 1994)

Assistant Counsel, Subcommittee on Criminal Justice/Committee on the Judiciary (1984 – 1988)

United States Department of Housing & Urban Development • Washington, D.C. 1978 - 1984

Attorney Advisor, Office of the General Counsel

EDUCATION, AFFILIATIONS & PUBLICATIONS

Rutgers University Law Center · Newark Campus 1977

Doctor of Jurisprudence

Manhattan College · New York 1974

Bachelor of Arts in Government

Pennsylvania State Bar Association

Member

Publication: *Charles Tiefer & Ronald Stroman – Uncovering Congress’ Intent in the Federal Acquisition Streamlining Act on Commercial Product Acquisition, The Procurement Lawyer (Summer 1997).*

EXHIBIT “L”

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DONALD TRUMP FOR PRESIDENT, INC.;	:	Civil Action
<i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	No.: 2:-20-CV-966
v.	:	
	:	
KATHY BOOCKVAR; <i>et al.</i> ,	:	
	:	Judge J. Nicholas Ranjan
Defendants.	:	

**DEFENDANT PHILADELPHIA COUNTY BOARD OF ELECTIONS’ OBJECTIONS
AND RESPONSES TO PLAINTIFFS’ FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION DIRECTED TO COUNTY BOARDS OF ELECTIONS**

Pursuant to Federal Rules of Civil Procedure 26, 33, and 34 and the Court’s July 17, 2020 Scheduling Order, Defendant the Board of Elections of Philadelphia County (the “Board of Elections”) serves the following Objections and Responses to the First Set of Interrogatories and Requests for Production of Documents (collectively the “Requests”) Directed to County Boards of Elections by Plaintiffs Donald J. Trump for President, Inc., Glenn Thompson, Mike Kelly, John Joyce, Guy Reschenthaler, the Republican National Committee, Melanie Stringhill Patterson, and Clayton David Show (“Plaintiffs”).

OBJECTIONS AND RESPONSES TO INTERROGATORIES

1. Please identify all Procedures, Practices, Rules, Regulations, and/or Instructions You implemented, used, followed, and/or communicated in the June 2, 2020 Primary Election, and all Procedures, Practices, Rules, Regulations, and/or Instructions that You intend to implement, use, follow, and/or communicate in the November 3, 2020 General Election, concerning or relating to the processing, verification, acceptance, and/or rejection of applications for absentee and/or mail-in ballots, including without limitation whether You mail applications to all qualified electors within Your county and/or whether You frank or prepay the postage for any or all completed and returned applications, and if there are any differences, please identify the reasons why You are making a change in such Procedures, Practices, Rules, Regulations, and/or Instructions for the November 3, 2020 General Elections.

disproportional. The burden and expense of discovery concerning Plaintiffs' new allegations, especially on the expedited schedule requested by Plaintiffs, outweighs its likely benefit.

The Board of Elections further objects to this Interrogatory No. 2 to the extent it requests information contained in the Act 35 Report and thus is not required to be produced by the Board of Elections under the Scheduling Order. The Board of Elections further objects to this Interrogatory No. 2 to the extent that the information sought is publicly available from the Counties, the Secretary, the Department, and/or other entities, and thus equally accessible to Plaintiffs. The Board of Elections also objects to this Interrogatory No. 2 because it should more properly be directed to the Secretary to the extent it requests identification of materials related to Procedures, Practices, Rules, Regulations and/or Instructions that have been or will be promulgated or established by the Secretary or the Department.

The Board of Elections further objects to this Interrogatory No. 2 to the extent that it seeks disclosure of any information other than 1) the policies and rules that were in effect for the June 2, 2020 Primary Election and 2) the policies and rules that will be in effect for the November 3, 2020 General Election (to the extent these have been established), and to the extent that it seeks communications beyond official Board of Elections communications to the public, because this information is irrelevant, disproportional to the needs of the case, and not narrowly tailored in accordance with the Scheduling Order. The Board of Elections further objects to this Interrogatory No. 2 to the extent it requests information that is protected by the attorney-client privilege, work product doctrine, deliberative process privilege, and/or other applicable privileges or protections from disclosure.

3. Please identify all Procedures, Practices, Rules, Regulations, and/or Instructions You implemented, used, followed, and/or communicated in the June 2, 2020 Primary Elections, and all Procedures, Practices, Rules, Regulations, and/or Instructions that You intend to implement, use, follow, and /or communicate in the November 3, 2020 General Election,

concerning or relating to the return or delivery by electors of voted absentee and/or mail-in ballots, including without limitation whether You frank or prepay the postage for any or all absentee ballots and/or mail-in ballots and/or whether third parties may deliver in person absentee and/or mail-ballots cast by non-disabled electors, and if there are any differences, please identify the reasons why You are making a change in such Procedures, Practices, Rules, Regulations, and/or Instructions for the November 3, 2020 General Election.

RESPONSE: The Board of Elections objects to this Interrogatory No. 3 as overly broad, not narrowly tailored, and disproportional because it calls for “all Procedures, Practices, Rules, Regulations, and/or Instructions” relating to “the return or delivery by electors of voted absentee and/or mail-in ballots,” without limitation to the specific allegations and relief requested in Plaintiffs’ Complaint. Indeed, this Interrogatory No. 3 specifically seeks information about the prepayment of postage “for any and all absentee and/or mail-in ballots,” but Plaintiffs’ Complaint includes no allegations concerning, and requests no relief regarding, any such prepayment of postage. Thus, the burden and expense of this proposed discovery outweighs its likely benefit.

The Board of Elections further objects to this Interrogatory No. 3 to the extent it requests information contained in the Act 35 Report and thus is not required to be produced by the Board of Elections under the Scheduling Order. The Board of Elections further objects to this Interrogatory No. 3 to the extent that the information sought is publicly available from the Counties, the Secretary, the Department, and/or other entities, and thus equally accessible to Plaintiffs. The Board of Elections also objects to this Interrogatory No. 3 because it should more properly be directed to the Secretary to the extent it requests Procedures, Practices, Rules, Regulations and/or Instructions that have been or will be promulgated or established by the Secretary or the Department. The Board of Elections further objects to this Interrogatory No. 3 to the extent it requests information that is protected by the attorney-client privilege, work product

doctrine, deliberative process privilege, and/or other applicable privileges or protections from disclosure.

Subject to and without waiving these objections, the Board of Elections states that it followed the Pennsylvania Election Code, 25 Pa. Stat. Ann. §§ 2600 *et seq.* (the “Election Code”), and guidance issued by the Secretary and the Department concerning the return or delivery of absentee and mail-in ballots for the June 2, 2020 Primary Election, including the prohibition of third-party delivery of absentee and/or mail ballots cast by non-disabled electors.

The Board of Elections plans to follow the Election Code and such guidance concerning the return or delivery of absentee and mail-in ballots for the November 3, 2020 General Election, including concerning whether third-parties are permitted to deliver absentee and/or mail ballots cast by non-disabled electors. In making determinations about which policies to implement as the General Election approaches, the Board of Elections will consider all developing conditions that might affect Philadelphians’ ability to vote safely and securely. Important considerations may include the spread of the COVID-19 pandemic, public health recommendations, availability of poll workers, transit and transportation issues, and potential security concerns. At all times, the Board of Elections will strive to administer an orderly election while protecting the franchise for all Philadelphians.

In the week before the Primary Election, the Board of Elections established and administered three categories of drop-off locations, at which voters who had received an absentee or mail-in ballot could return their ballots in person: (1) 24/7 Drop-Off Locations at the two County Board of Elections Offices, City Hall and 520 N. Columbus Blvd.; (2) Mobile Drop-Off Locations, open between May 30, 2020 and June 1, 2020; and (3) Election Day Drop-Off Offices, open on June 2, 2020 only.

24/7 Drop-Off Locations

The Board of Elections created two 24/7 Drop-Off Locations for voters to return their absentee and mail-in ballots in person. Each 24/7 Drop-Off Location consisted of a converted mail box, bolted to the ground. The front of each box bore signage stating the following: “NO U.S. MAIL. BALLOT DROP OFF ONLY. VOTERS MUST DROP OFF THEIR OWN BALLOT DROP OFF DEADLINE IS ELECTION DAY JUNE 2ND AT 8PM.” The signage also included the same information in Spanish. Both 24/7 Drop-Off Locations were under 24-hour video surveillance.

At each 24/7 Drop-Off Location, ballots were collected at least daily, with more frequent ballot collections closer to Primary Day. On Primary Day, Board of Elections personnel made the last ballot collection at each location at 8:00 p.m. During ballot collection, Board of Elections personnel maintained custody of returned absentee and mail-in ballots at all times. Immediately after collection, Board of Elections personnel transported returned ballots directly to the Board of Elections for verification and processing. The Board of Elections’ procedures thus ensured the chain of custody of all ballots returned at 24/7 Drop-Off Locations.

The two Drop-Off Locations were:

- City Hall – installed on the south side of City Hall on May 22, 2020 and moved slightly to another location also on the south side of City Hall on May 29, 2020.
- Board of Elections Office at 520 N. Columbus Blvd (Spring Garden entrance) – installed on May 28, 2020

Mobile Drop-Off Locations

The two 24/7 Drop-Off Locations were both located in the central part of Philadelphia. At the best of times, residents of Philadelphia’s far-flung neighborhoods would have a time-consuming journey to reach these locations; because of the pandemic, road closures stemming

from civil unrest, and the inaccessibility of public transportation, cross-city travel during the days before the election was difficult, dangerous, and, at points, impossible. The City Commissioners therefore approved establishing, for ten “zones” of Philadelphia,¹ a two-hour Mobile Drop-Off Location at which voters could return their absentee and mail-in ballots in person before Primary Day.

Mobile Drop-Off Locations were staffed by City Commissioner Al Schmidt and/or three members of his staff: Chief Deputy Commissioner Seth Bluestein, Deputy Commissioner Michelle Montalvo, and Election and Voter Registration Clerk 2 Darrylisha Flippen (collectively the “Mobile Drop-Off Location Personnel”). Commissioner Schmidt and Deputy Commissioner Bluestein each attended part or all of each Mobile Drop-Off Location. Mobile Drop-Off Location Personnel provided for the security of ballots returned at each Mobile Drop-Off Locations by, *inter alia*, using secured ballot bags manufactured by A. Rifkin Co. specifically for ballot collection purposes. The A. Rifkin Co. secured ballot bags were chosen because they could fit the number of ballots that were anticipated and were able to be sealed. There were two types of secured ballots bags: a smaller and larger version. Each secured ballot bag features a double-sealing mechanism which, once employed, prevents the removal of ballots from the secured ballot bag or addition of ballots to the secured ballot bag without breaking the seals.

Mobile Drop-Off Location Personnel used two secured ballot bags at each Mobile Drop-Off Location. When a secured ballot bag was filled, Mobile Drop-Off Location Personnel would

¹ For the June Primary, Philadelphia Polling Places were divided into ten “zones.” Center City, Far Northeast; Lower Northeast; North; Northwest; River; South; Southwest; Upper North; and West. The Board of Elections did not provide a Mobile Drop-Off Location in Center City because Center City already had two 24/7 Drop-Off Locations. The Board of Elections also provided two Mobile Drop-Off Locations in the “North” zone, to ensure access to Spanish speaking residents via Spanish language outreach and instructions.

seal the secured ballot bag, and Commissioner Schmidt or Deputy Commissioner Bluestein would personally bring it to the Board of Elections for verification and processing, and then return to the Mobile Drop-Off Location with the emptied secured ballot bag. At the same time, other Mobile Drop-Off Location Personnel remained at the Mobile Drop-Off Location using the second secured ballot bag. At the end of the day, Commissioner Schmidt or Deputy Commissioner Bluestein would return both secured ballot bags to the Board of Elections for verification and processing of their contents.

Only Mobile Drop-Off Location Personnel handled secured ballot bags at each Mobile Drop-Off Location. Mobile Drop-Off Location Personnel maintained possession of each secured ballot bag up to and including bringing each sealed, secured ballot bag to the Board of Elections for verification and processing. The Board of Elections' procedures thus ensured the chain of custody of all ballots returned at Mobile Drop-Off Locations. The Board of Elections partnered with a nonprofit, nonpartisan group, the Committee of Seventy, in implementing the Mobile Drop-Off Locations. The Committee of Seventy helped advertise the locations and provided a vehicle, the "votesmobile," that carried a table and canopy and served as a prop at the locations. The "votesmobile" was not used to collect or transport ballots, and the Mobile Drop-Off Location Personnel did not ride in it.

Mobile Drop-Off Location Personnel did not authorize third parties to return ballots unless they were in possession of a declaration from a disabled elector. In the event a third-party attempted to return a ballot without the appropriate declaration authorizing the third-party to act as the agent of a disabled elector, Mobile Drop-Off Location Personnel instructed the third party that he or she could not return a ballot on any other voter's behalf, unless the third-party (1) was acting on behalf of a disabled voter, (2) secured a declaration from the disabled voter, and (3)

returned with the executed declaration along with the disabled voter’s ballot. Each Mobile Drop-Off Location had available copies of a form declaration provided by the Department.

The Mobile Drop-Off Locations were:

Region	Location	Address	Date	Time
West	Boys Latin of Philadelphia Charter High School	5501 Cedar Ave Philadelphia, PA 19143	Saturday, May 30, 2020	9:00 AM- 11:00 AM
Southwest	John Bartram High School	2401 S 67th St Philadelphia, PA 19142	Saturday, May 30, 2020	12:00 PM- 2:00 PM
South	South Philadelphia High School	2101 S Broad St Philadelphia, PA 19148	Saturday, May 30, 2020	3:00 PM-5:00 PM
Far Northeast	George Washington High School	10175 Bustleton Ave Philadelphia, PA 19116	Sunday, May 31, 2020	8:00 AM- 10:00 AM
Lower Northeast	Rising Sun Plaza Shopping Center	Rising Sun & Adams Aves Philadelphia, PA 19120	Sunday, May 31, 2020	11:00 AM- 1:00 PM
North (East of Broad)	25th District PAL Center	3199 D Street Philadelphia, PA 19134	Sunday, May 31, 2020	2:00 PM-4:00 PM
River ²	Fishtown Crossing Shopping Center	2401 Aramingo Ave Philadelphia, PA 19125	Sunday, May 31, 2020	5:00 PM-7:00 PM
Northwest	Shawmont Elementary School	535 Shawmont Ave Philadelphia, PA 19128	Monday, June 1, 2020	9:00 AM- 11:00 AM
Upper North	Central High School	1700 W Olney Ave Philadelphia, PA 19141	Monday, June 1, 2020	12:00 PM- 2:00 PM
North (West of Broad)	Tanner Duckrey Public School	1501 W Diamond St Philadelphia, PA 19121	Monday, June 1, 2020	3:00 PM-5:00 PM

² The Board of Elections canceled the Fishtown Mobile Drop-Off Location because of security concerns arising from social unrest in the area.

Election Day Drop-Off Offices

As Election Day approached, the City Commissioners approved establishing, for each council district in Philadelphia, one Election Day Drop-Off Office for voters to return their absentee and mail-in ballots in person on Primary Day.

Each Election Day Drop-Off Office was operated by city employees who, in accordance with the City's usual practice for election day staffing, were temporarily designated as Board of Elections staff for Primary Day only (the "Election Day Drop-Off Office Personnel") Election Day Drop-Off Office Personnel were trained on the proper procedures for the return of absentee and mail-in ballots, including that voters could only return their own ballots unless they possessed completed forms regarding their designation as an agent to deliver the ballot of a disabled voter.

Election Day Drop-Off Office Personnel provided for the security of ballots returned at each Election Day Drop-Off Office by, *inter alia*, using secured ballot bags manufactured by A. Rifkin Co. specifically for ballot collection purposes. Each secured ballot bag features a double-sealing mechanism which, once employed, prevents the removal of ballots from the secured ballot bag or addition of ballots to the secured ballot bag without breaking the seal.

Each Election Day Drop-Off Office received one secured ballot bag to collect ballots. Election Day Drop-Off Office Personnel were instructed to (1) maintain custody of the secured ballot bag at all times, (2) stop accepting ballots and seal the secured ballot bag at 8 p.m. on Primary Day, and (3) return the secured ballot bag to the Board of Elections after 8 p.m. on Primary Day to allow for ballot verification and processing.

Election Day Drop-Off Office Personnel were instructed not to authorize third parties to return ballots unless they were in possession of a declaration from a disabled elector.

The Election Day Drop-Off Offices were:

Council District 1	Philadelphia City Commissioner's Office	520 N. Columbus Boulevard	19123
Council District 2	Tilden Middle School	6601 Elmwood Avenue	19142
Council District 3	Lucien Blackwell Library	52nd and Sansom Streets	19139
Council District 4	Hillside Recreation Center	203 Fountain Street	19128
Council District 5 ³	Council President's District Office	2815 Ridge Ave, Ste B	19121
Council District 6	Councilperson Henon's District Office	6730 Torresdale Avenue	19135
Council District 7	Harrowgate PAL Center	851 E Tioga Street	19134
Council District 8	Councilperson Bass District Office	4439A Germantown Avenue	19144
Council District 9	West Oak Lane Library	2000 Washington Lane	19138
Council District 9	Wadsworth Library	1500 Wadsworth Avenue	19150
Council District 10	Councilperson O'Neill's District Office	Bustleton Ave and Bowler Streets	19115

Investigation remains ongoing, so the Board of Elections reserves the right to supplement this Response.

4. Please identify all correspondence, memoranda, email messages, postings, or other communications, whether in writing or made orally, that (a) were made by, to, and/or between You and any other person, including without limitation: (i) any political party or body, political committee, political action committee, non-profit organization, or other body of citizens; (ii) any voter/elector in the Commonwealth of Pennsylvania; (iii) any other County Election Board; (iv) any District Election Board; (v) any of Your employees, agents, or other representatives acting on Your behalf; and/or (vi) Secretary Boockvar and/or the Elections Department; and (b) concern, relate to, describe, explain, or justify the Procedures, Practices, Rules, Regulations, and/or Instructions identified in Your answer to the preceding Interrogatory, including without limitation any incidents, complaints, concerns, changes, modifications, or supplementation to such Procedures, Practices, Rules, Regulations, and/or Instructions.

RESPONSE: The Board of Elections objects to this Interrogatory No. 4 as overly broad, not narrowly tailored, and disproportional because it calls for “all correspondence, memoranda,

³ Because of damage to the Council President's District Office, the Council District 5 Election Day Drop-Off Office was moved to a location in the parking lot of the Council Office. Election Day Drop-Off Office Personnel operated the secured ballot bags pursuant to the above-listed procedures. The “votesmobile,” was parked in the parking lot to provide additional signage.

VERIFICATION

I, Chief Deputy Commissioner Seth Bluestein, state that I am authorized to make this verification on behalf of Defendant Philadelphia County Board of Elections, that I have read Defendant Philadelphia County Board of Elections' Objections and Responses to Plaintiffs' First Set of Interrogatories and Requests for Production Directed to County Boards of Elections, and that I believe, based on reasonable inquiry, that the facts set forth therein concerning the Philadelphia County Board of Elections are true and correct to the best of my knowledge, information, and belief. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: August 5, 2020



Seth Bluestein
Chief Deputy Commissioner for
Commissioner Al Schmidt

EXHIBIT “M”

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DONALD TRUMP FOR PRESIDENT, INC.;	:	Civil Action
<i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	No.: 2:-20-CV-966
v.	:	
	:	
KATHY BOOCKVAR; <i>et al.</i> ,	:	
	:	Judge J. Nicholas Ranjan
Defendants.	:	

**DEFENDANTS BUCKS, CHESTER, AND MONTGOMERY COUNTY
BOARDS OF ELECTIONS’ OBJECTIONS AND RESPONSES TO
PLAINTIFFS’ FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION DIRECTED TO COUNTY BOARDS OF ELECTIONS**

Pursuant to Federal Rules of Civil Procedure 26, 33, and 34 and the Court’s July 17, 2020 Scheduling Order, Defendants the Boards of Elections of Bucks County, Chester County, and Montgomery County (such Boards of Elections collectively referred to herein as the “Boards of Elections”) serve the following Objections and Responses to the First Set of Interrogatories and Requests for Production of Documents (collectively the “Requests”) Directed to County Boards of Elections by Plaintiffs Donald J. Trump for President, Inc., Glenn Thompson, Mike Kelly, John Joyce, Guy Reschenthaler, the Republican National Committee, Melanie Stringhill Patterson, and Clayton David Show (“Plaintiffs”).

OBJECTIONS AND RESPONSES TO INTERROGATORIES

1. Please identify all Procedures, Practices, Rules, Regulations, and/or Instructions You implemented, used, followed, and/or communicated in the June 2, 2020 Primary Election, and all Procedures, Practices, Rules, Regulations, and/or Instructions that You intend to implement, use, follow, and/or communicate in the November 3, 2020 General Election, concerning or relating to the processing, verification, acceptance, and/or rejection of applications for absentee and/or mail-in ballots, including without limitation whether You mail applications to all qualified electors within Your county and/or whether You frank or prepay the postage for any or all completed and returned applications, and if there are any differences, please identify

3. Please identify all Procedures, Practices, Rules, Regulations, and/or Instructions You implemented, used, followed, and/or communicated in the June 2, 2020 Primary Elections, and all Procedures, Practices, Rules, Regulations, and/or Instructions that You intend to implement, us, follow, and /or communicate in the November 3, 2020 General Election, concerning or relating to the return or delivery by electors of voted absentee and/or mail-in ballots, including without limitation whether You frank or prepay the postage for any or all absentee ballots and/or mail-in ballots and/or whether third parties may deliver in person absentee and/or mail-ballots cast by non-disabled electors, and if there are any differences, please identify the reasons why You are making a change in such Procedures, Practices, Rules, Regulations, and/or Instructions for the November 3, 2020 General Election.

RESPONSE: The Boards of Elections object to this Interrogatory No. 3 as overly broad, not narrowly tailored, and disproportional because it calls for “all Procedures, Practices, Rules, Regulations, and/or Instructions” relating to “the return or delivery by electors of voted absentee and/or mail-in ballots,” without limitation to the specific allegations and relief requested in Plaintiffs’ Complaint. Indeed, this Interrogatory No. 3 specifically seeks information about the prepayment of postage “for any and all absentee and/or mail-in ballots,” but Plaintiffs’ Complaint includes no allegations concerning, and requests no relief regarding, any such prepayment of postage. Thus, the burden and expense of this proposed discovery outweighs its likely benefit.

The Boards of Elections further object to this Interrogatory No. 3 to the extent that it requests information contained in the Act 35 Report and thus is not required to be produced by the Boards of Elections under the Scheduling Order. The Boards of Elections further object to this Interrogatory to the extent that the information sought is publicly available from the Counties, the Secretary, the Department, and/or other entities, and thus equally accessible to Plaintiffs. The Boards of Elections also object to this Interrogatory because it should more properly be directed to the Secretary to the extent it requests Procedures, Practices, Rules, Regulations and/or Instructions that have been or will be promulgated or established by the Secretary or the Department. The Boards of Elections further object to this Interrogatory No. 3

to the extent that it requests information that is protected by the attorney-client privilege, work product privilege, deliberative process privilege, and/or other applicable privileges or protections from disclosure.

Subject to and without waiving these objections, the Boards of Elections state that they followed the Pennsylvania Election Code, 25 Pa. Stat. Ann. §§ 2600 *et seq.* (the “Election Code”), and guidance issued by the Secretary and the Department concerning the return or delivery of absentee and mail-in ballots for the June 2, 2020 Primary Election, including that they did not authorize third-party delivery of absentee and/or mail-in ballots cast by non-disabled electors.

The Boards of Elections plan to follow the Election Code and such guidance concerning the return or delivery of absentee and mail-in ballots for the November 3, 2020 General Election, including concerning whether third-parties are permitted to deliver absentee and/or mail ballots cast by non-disabled electors. Pursuant to the Secretary’s July 31, 2020 announcement concerning the Department’s provision of funding for pre-paid postage the return of mail-in and absentee ballots for the November 3, 2020 General Election, the Boards of Election intend to provide pre-paid postage and/or reimbursement for postage for mail-in and absentee ballots issued to County electors. Furthermore, in making determinations about which policies to implement as the General Election approaches, the Boards of Elections will consider all developing conditions that might affect electors’ ability to vote safely and securely. Important considerations may include the spread of the COVID-19 pandemic, public health recommendations, availability of poll workers, transit and transportation issues, potential security concerns, and any relevant amendments to the Election Code. At all times, the Boards of

Elections will strive to administer an orderly election while protecting the franchise for all electors.

With regard to the June 2, 2020 Primary Election, the Boards of Elections permitted voters who had received an absentee or mail-in ballot to return such ballots by mail or in-person to the respective Board of Elections. Due to the disruptions associated with the COVID-19 pandemic, including delays in mail processing and delivery and closures of physical office spaces, the Boards of Elections established and administered secure, monitored ballot box drop-off locations, where voters who had received an absentee or mail-in ballot were permitted to return such ballots in person. The Boards of Elections, based on their extensive experience running elections in their Counties and in accordance with guidance issued by the Secretary and the Department, believed the provision of such monitored, secure ballot box drop-off locations was necessary in order to ensure that voters who had requested mail-in or absentee ballots were able to cast such ballots safely in the midst of an unprecedented global pandemic.

The Bucks County Board of Elections established and administered three monitored, secure ballot box drop-off locations at different locations in Bucks County, all of which were located on County property:

- Lower Bucks Government Services Center, 7321 New Falls Road, Levittown;
- Bucks County Administration Building, 55 East Court Street, Doylestown; and
- Upper Bucks Government Services Center, 261 California Road Quakertown.

These secure ballot box drop-off locations were available on Saturday, May 30, 2020, Sunday, May 31, 2020, Monday, June 1, 2020, and Primary Election Day, Tuesday, June 2, 2020. These secure ballot box drop-off locations were monitored at all times they were available to voters by Board of Elections personnel and/or their County employee agents, and they were under constant video surveillance. Each night, and for a final time at 8:00 p.m. on Primary Election Day, Board

of Elections personnel and/or their County employee agents emptied the ballot boxes, timestamped the envelopes, and securely transported the ballots to the Board of Elections office where they were securely stored. Each night all of the drop boxes established throughout Bucks County were securely transported to secure locations for overnight storage.

The Chester County Board of Elections established and administered six monitored, secure ballot box drop-off locations at different locations in Chester County:

- Chester County Government Services Center, 601 Westtown Road, West Chester;
- Chester County Public Safety Training Campus, 137 Modena Road, Coatesville;
- Longwood Gardens South Parking Lot, 1010 East Baltimore Pike, Chadds Ford;
- Kimberton Fair Grounds, 762 Pike Springs Road, Phoenixville;
- Warwick County Park, 191 County Park Road, Pottstown; and
- Battle of the Clouds Park, 125 North Phoenixville Pike, Malvern, PA.

Other than the secure ballot box drop-off location at the Chester County Government Services Center, these secure ballot box drop-off locations were only available on Monday, June 1, 2020, and Primary Election Day, Tuesday, June 2, 2020. These secure ballot box drop-off locations were monitored at all times they were available to voters by Board of Elections personnel and/or their County employee agents. Each night the ballot boxes were securely transported to secured and monitored locations for overnight storage. All cast ballots were removed from the ballot boxes and securely stored for processing after the ballot boxes were returned.

The Montgomery County Board of Elections established and administered a total of ten secure, monitored ballot-box drop-off locations at different locations in Montgomery County. Five of these locations were established on County property and were available from Saturday, May 23, 2020 until Primary Election Day, Tuesday, June 2, 2020:

- One Montgomery Plaza, 425 Swede Street, Norristown;

- Green Lane Park, 2144 Snyder Lane, Green Lane;
- Montgomery County Community Connections Office, 421 West Main Street, Lansdale;
- Montgomery County Community College Pottstown Campus, 101 College Drive-South Hall, Pottstown; and
- Eastern Courthouse Annex, 102 North York Road, Willow Grove.

The Montgomery County Board of Elections also established and administered five additional secure, monitored ballot-box drop-off locations that were available only on Primary Election Day, Tuesday, June 2, 2020:

- Lower Merion Township Building, 75 East Lancaster Avenue, Ardmore;
- Lower Providence Township Building, 100 Parklane Drive, Eagleville;
- Spring Mill Fire Company, 1210 East Hector Street, Conshohocken;
- Upper Dublin Township Building, 801 Loch Alsh Avenue, Fort Washington; and
- Wall Park, 600 Church Road, Elkins Park.

All ten of these secure ballot box drop-off locations were monitored at all times they were available to voters by Board of Elections personnel and/or their County employee agents.

The Montgomery County Board of Elections also established and administered monitored, secure temporary ballot box drop-off locations at seven state-licensed long-term care facilities that typically served as polling places but were unable to be used for that purpose because of the COVID-19 pandemic. These monitored, secure temporary ballot box drop-off locations were available on May 30, 2020 at the following long-term care facilities:

- Shannondell at Valley Forge, 1000 Shannondell Drive, Audubon;
- Beaumont Retirement at Bryn Mawr, 610 North Ithan Avenue, Bryn Mawr; and
- Rydal Park, 1515 The Fairway, Jenkintown.

These monitored, secure temporary ballot box drop-off locations were available on May 31, 2020 at the following long-term care facilities:

- Normandy Farms, 9000 Twin Silo Drive, Blue Bell;
- Foulkeways at Gwynedd, 1120 Meetinghouse Road, Gwynedd;
- Elm Terrace Gardens, 660 North Broad Street, Lansdale; and
- Dock Woods Community, 275 Dock Drive, Lansdale.

The monitored, secure temporary ballot box drop-off locations at these long-term care facilities were monitored at all times they were available to voters by Board of Elections personnel and/or their County employee agents.

The respective Boards of Elections provided for the security of all ballots deposited at the ballot box drop-off locations by *inter alia* the use of locks and seals on the ballot boxes themselves, the overnight placement of the ballot boxes in secure, indoor locations, the secured transport of ballots by Board of Elections personnel and/or their County employee agents only, and procedures ensuring that the chain of custody of ballots remained with Board of Elections personnel and/or their County employee agents from the secure, monitored ballot box drop-off locations to secure Board of Elections facilities for verification and processing. For the monitored, secure, temporary ballot box drop-off locations at long-term care facilities, Montgomery County used locked, sealed ballot bags with slots into which a voter could drop his or her ballot.

Consistent with Pennsylvania law, the Boards of Elections did not authorize third parties to return mail-in or absentee ballots cast by non-disabled electors by mail, or to deliver such ballots cast by non-disabled electors in-person to the respective Boards of Elections. Boards of Elections personnel and/or their County employee agents responsible for monitoring the secure ballot box drop-off locations were explicitly instructed not to authorize an individual voter to

deliver a ballot other than their own. Moreover, the Montgomery County secure ballot box drop-off locations had signage providing *inter alia* that “[t]he Pennsylvania Election Code prohibits anyone other than the voter who has filled out the ballot to return it to the Board of Elections.

You may only submit your own voted ballot to this Secure Ballot Drop Box.” Furthermore, the Boards of Election made clear in their public statements that a voter could only return his or her own ballot at a monitored, secure ballot box drop-off location.

The Boards of Elections did not authorize mail-in or absentee ballots to be returned by voters to polling places in the June 2, 2020 Primary Election.

Investigation remains ongoing, so the Boards of Elections reserve the right to supplement this Response.


4. Please identify all correspondence, memoranda, email messages, postings, or other communications, whether in writing or made orally, that (a) were made by, to, and/or between You and any other person, including without limitation: (i) any political party or body, political committee, political action committee, non-profit organization, or other body of citizens; (ii) any voter/elector in the Commonwealth of Pennsylvania; (iii) any other County Election Board; (iv) any District Election Board; (v) any of Your employees, agents, or other representatives acting on Your behalf; and/or (vi) Secretary Boockvar and/or the Elections Department; and (b) concern, relate to, describe, explain, or justify the Procedures, Practices, Rules, Regulations, and/or Instructions identified in Your answer to the preceding Interrogatory, including without limitation any incidents, complaints, concerns, changes, modifications, or supplementation to such Procedures, Practices, Rules, Regulations, and/or Instructions.

RESPONSE: The Boards of Elections object to this Interrogatory No. 4 as overly broad, not narrowly tailored, and disproportional because it calls for “all correspondence, memoranda, email messages, postings, or other communications” that “were made by, to, and/or between You and any other person,” concerning the information requested in Interrogatory No. 3, which was not limited to the specific allegations and relief requested in Plaintiffs’ Complaint. As noted in response to Interrogatory No. 3, Plaintiffs’ Complaint includes no allegations concerning, and requests no relief regarding, prepayment of postage “for any and all absentee and/or mail-in ballots.” Thus, the burden and expense of this proposed discovery outweighs its likely benefit.

VERIFICATION

I, KELLY E. GALE, Assistant Director to the Bucks County Board of Elections, state that I am authorized to make this verification on behalf of Defendant Bucks County Board of Elections, that I have read Defendants Bucks, Chester, and Montgomery County Boards of Elections' Objections and Responses to Plaintiffs' First Set of Interrogatories and Requests for Production Directed to County Boards of Elections, and that I believe, based on reasonable inquiry, that the facts set forth therein concerning the Bucks County Board of Elections are true and correct to the best of my knowledge, information, and belief. I verify under penalty of perjury that the foregoing is true and correct.

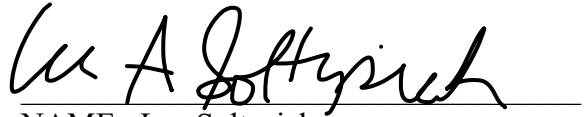
Dated: August 5, 2020


KELLY E. GALE
Assistant Director to the Bucks County
Board of Elections

VERIFICATION

I, Lee Soltysiak, state that I am authorized to make this verification on behalf of Defendant Montgomery County Board of Elections, that I have read Defendants Bucks, Chester, and Montgomery County Boards of Elections' Objections and Responses to Plaintiffs' First Set of Interrogatories and Requests for Production Directed to County Boards of Elections, and that I believe, based on reasonable inquiry, that the facts set forth therein concerning the Montgomery County Board of Elections are true and correct to the best of my knowledge, information, and belief. I verify under penalty of perjury that the foregoing is true and correct.

Dated: August 5, 2020



NAME: Lee Soltysiak
TITLE: Chief Clerk of the Montgomery
County Board of Elections

EXHIBIT “N”

FW: Act 35-Legislative Response Due by 7/15

From: Ed Allison <lcvote@co.lawrence.pa.us>
To: "Swanger, Zane" <zswanger@pa.gov>
Date: Wed, 15 Jul 2020 18:01:17 +0000

Ed Allison
Voter Registration and Elections
Lawrence County Government Center
430 Court Street
New Castle, PA 16101
724.656.2161– office
724.656.1987 - Fax



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From: Ed Allison <lcvote@co.lawrence.pa.us>
Sent: Tuesday, July 14, 2020 11:58 AM
To: 'cflannery@co.lawrence.pa.us' <cflannery@co.lawrence.pa.us>; Tom Leslie <tleslie@co.lawrence.pa.us>
Subject: RE: Act 35-Legislative Response Due by 7/15

Ed Allison
Voter Registration and Elections
Lawrence County Government Center
430 Court Street
New Castle, PA 16101
724.656.2161– office
724.656.1987 - Fax



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then delete and /or destroy all electronic and hard copies of this communication from your electronic mail system, including attachments.

From: Mathis, Jessica <jesmathis@pa.gov>
Sent: Friday, July 10, 2020 11:52 AM
To: Mathis, Jessica <jesmathis@pa.gov>
Subject: Act 35-Legislative Response Due by 7/15
Importance: High

Dear County Election Official,

On June 18, 2020, the Governor signed [Act 35 of 2020](#), House Bill 2502, into law. The Act mandates that the Department of State collect specific information from the counties and publish a report regarding the June 2, 2020 primary election. This report will assist legislators in identifying any necessary changes to the Election Code before the upcoming general election, and further improve election operations.

While the Department can collect some of the data required from the SURE system, we require some elements that aren't contained within SURE from the counties. Therefore, we are required to collect the following from every county, **and we must receive this information from you if at all possible by July 15th, and in all circumstances no later than July 17th**, as required by 71 P.S. § 279.6(c):

1. 1. The number of absentee or mail-in applications received from voters who were not registered at the time they applied for a ballot, but for whom voter registration applications were received after the application for an absentee or mail-in application was received by the county.
 - * Please report to us how many for each application type (i.e. absentee and mail-in) **Information not available.**
2. 2. The number of absentee ballots challenged. **No challenges filed**
3. 3. The number of absentee ballots subject to challenge which were not canvassed.
4. 4. The number of mail-in ballots challenged. **No challenges filed.**
5. 5. The number of mail-in ballots subject to challenge which were not canvassed.
6. 6. The number of election officers (pollworkers) appointed under the relevant emergency provision included in Act 12 of 2020 and codified at Section 1801-B of the Election Code, 25 P.S. § 3581.
 - * As you'll recall, this provision allowed appointed pollworkers to be registered anywhere in the county, thereby relaxing the typical requirement that pollworkers be registered in the election district where they are appointed. **This as a common practice across the Commonwealth. We have sought relief from this requirement for years but no one listens.**
 - * **Please report to us both how many total pollworkers you appointed for the primary election, and specifically how many pollworkers you appointed who served in an election district other than where they were registered. Appointed over 200 with 3 serving outside their jurisdiction.**
7. 7. The number of polling places consolidated under the relevant emergency provision included in Act 12 of 2020 and codified at Section 1802-B of the Election Code, 25 P.S. § 3582. **8**

- * As a reminder, this provision allowed counties to collocate two or more polling places in any location in the county, without leave of court. This provision also required counties to get approval from the Department if consolidation resulted in a more than 60% reduction in polling places.
 - * **Please report to us how many polling places you usually have and how many polling places you had on June 2nd. Normal is 75. We were able to man 67.**
8. 8. If your county required approval from DOS to consolidate polling places, please share that number with the Department. If your county did not consolidate any polling places per Act 12, please share that with us as well.
 9. 9. The number of polling places located in a place where malt or brewed beverages are served, as allowed under the relevant emergency provision included in Act 12 of 2020 and codified at Section 1803-B of the Election Code, 25 P.S. § 3583. **Zero**
 - * This temporary provision allowed polling places to be located in a building where malt or brewed beverages were being served, so long as they were not dispensed in the same room as where the election was held.
 10. 10. The number of polling places located in school buildings on June 2nd, and if available, the number of polling places you usually locate in school buildings. **3 for 3.**
 11. 11. The date and time your county began pre-canvassing absentee and mail-in ballots, and the date and time when your county began canvassing absentee and mail-in ballots. **Pre-canvass – 8:10 AM Canvass – 8:00pm June 2, 2020.**
 - * If your county did not engage in pre-canvassing during the primary election, please share that with us as well.
 12. 12. The number of incidents known to the county board of elections or registration commission relating to each of the following categories:
 - * An absentee ballot or mail-in ballot which was sent to the wrong individual or wrong address. **Zero**
 - * An absentee ballot or mail-in ballot which was voted by an individual other than the individual who applied for the absentee ballot or mail-in ballot. **How the hell would we know that.**
 - * An absentee ballot or mail-in ballot which was returned to the county board of elections by a means other than the elector sending the absentee ballot or mail-in ballot by mail or delivery in person. **Single drop box inside courthouse-approximately 200.**
 13. 13. To the extent consistent with Federal and State law, a review of any action taken by the county board of elections or registration commission in response to the aforementioned incidents, including determinations made on the incident, legal actions filed and referrals to law enforcement. **Objection by the Democratic Party for not canvassing approximately 440 ballots that were not enclosed in secrecy envelopes. Objection withdrawn.**
 14. 14. A review of issues or incidents encountered with an electronic voting system, including any technical issues encountered in polling places. **None**

The Department is requesting this information from each county board of elections by **Wednesday, July 15th** in order to prepare the mandated report to the General Assembly. All counties **must, with no exceptions**, submit this data to the Department by July 17th as mandated by statute.

The Department will soon provide a survey to submit the requested information above in a simple format. We anticipate that survey will be available later today and will send a follow up on how to access and submit the requested information.

The Department must then finalize and produce a public report no later than 60 days after the election. Thank you very much for your cooperation and response to these questions.

Sincerely,

Jessica

Jessica Mathis, Director
Bureau of Elections and Notaries
PA Department of State
210 North Office Building | Harrisburg, PA 17120
Phone: 717. 787.5280 Fax: 717.705.0721
www.dos.pa.gov

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EXHIBIT “O”

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA DEMOCRATIC)
PARTY, NILOFER NINA AHMAD,)
DANILO BURGOS, AUSTIN DAVIS,)
DWIGHT EVANS, ISABELLA)
FITZGERALD, EDWARD GAINEY,)
MANUEL M. GUZMAN, JR.,)
JORDAN A. HARRIS, ARTHUR)
HAYWOOD, MALCOLM)
KENYATTA, PATTY H. KIM,)
STEPHEN KINSEY, PETER)
SCHWEYER, SHARIF STREET, and)
ANTHONY H. WILLIAMS,)

Petitioners,)

v.)

KATHY BOOCKVAR, in her capacity)
as Secretary of the Commonwealth of)
Pennsylvania;)

ADAMS COUNTY BOARD OF)
ELECTIONS; ALLEGHENY)
COUNTY BOARD OF ELECTIONS;)
ARMSTRONG COUNTY BOARD OF)
ELECTIONS; BEAVER COUNTY)
BOARD OF ELECTIONS; BEDFORD)
COUNTY BOARD OF ELECTIONS;)
BERKS COUNTY BOARD OF)
ELECTIONS; BLAIR COUNTY)
BOARD OF ELECTIONS;)
BRADFORD COUNTY BOARD OF)

ELECTION MATTER

No. _____ MD 2020

ELECTIONS; BUCKS COUNTY)
BOARD OF ELECTIONS; BUTLER)
COUNTY BOARD OF ELECTIONS;)
CAMBRIA COUNTY BOARD OF)
ELECTIONS; CAMERON COUNTY)
BOARD OF ELECTIONS; CARBON)
COUNTY BOARD OF ELECTIONS;)
CENTRE COUNTY BOARD OF)
ELECTIONS; CHESTER COUNTY)
BOARD OF ELECTIONS; CLARION)
COUNTY BOARD OF ELECTIONS;)
CLEARFIELD COUNTY BOARD OF)
ELECTIONS; CLINTON COUNTY)
BOARD OF ELECTIONS;)
COLUMBIA COUNTY BOARD OF)
ELECTIONS; CRAWFORD COUNTY)
BOARD OF ELECTIONS;)
CUMBERLAND COUNTY BOARD)
OF ELECTIONS; DAUPHIN)
COUNTY BOARD OF ELECTIONS;)
DELAWARE COUNTY BOARD OF)
ELECTIONS; ELK COUNTY BOARD)
OF ELECTIONS; ERIE COUNTY)
BOARD OF ELECTIONS; FAYETTE)
COUNTY BOARD OF ELECTIONS;)
FOREST COUNTY BOARD OF)
ELECTIONS; FRANKLIN COUNTY)
BOARD OF ELECTIONS; FULTON)
COUNTY BOARD OF ELECTIONS;)
GREENE COUNTY BOARD OF)
ELECTIONS; HUNTINGDON)
COUNTY BOARD OF ELECTIONS;)
INDIANA COUNTY BOARD OF)
ELECTIONS; JEFFERSON COUNTY)
BOARD OF ELECTIONS; JUNIATA)
COUNTY BOARD OF ELECTIONS;)
LACKAWANNA COUNTY BOARD)
OF ELECTIONS; LANCASTER)
COUNTY BOARD OF ELECTIONS;)
LAWRENCE COUNTY BOARD OF)

ELECTIONS; LEBANON COUNTY)
BOARD OF ELECTIONS; LEHIGH)
COUNTY BOARD OF ELECTIONS;)
LUZERNE COUNTY BOARD OF)
ELECTIONS; LYCOMING COUNTY)
BOARD OF ELECTIONS; MCKEAN)
COUNTY BOARD OF ELECTIONS;)
MERCER COUNTY BOARD OF)
ELECTIONS; MIFFLIN COUNTY)
BOARD OF ELECTIONS; MONROE)
COUNTY BOARD OF ELECTIONS;)
MONTGOMERY COUNTY BOARD)
OF ELECTIONS; MONTOUR)
COUNTY BOARD OF ELECTIONS;)
NORTHAMPTON COUNTY BOARD)
OF ELECTIONS;)
NORTHUMBERLAND COUNTY)
BOARD OF ELECTIONS; PERRY)
COUNTY BOARD OF ELECTIONS;)
PHILADELPHIA COUNTY BOARD)
OF ELECTIONS; PIKE COUNTY)
BOARD OF ELECTIONS; POTTER)
COUNTY BOARD OF ELECTIONS;)
SCHUYLKILL COUNTY BOARD OF)
ELECTIONS; SNYDER COUNTY)
BOARD OF ELECTIONS;)
SOMERSET COUNTY BOARD OF)
ELECTIONS; SULLIVAN COUNTY)
BOARD OF ELECTIONS;)
SUSQUEHANNA COUNTY BOARD)
OF ELECTIONS; TIOGA COUNTY)
BOARD OF ELECTIONS; UNION)
COUNTY BOARD OF ELECTIONS;)
VENANGO COUNTY BOARD OF)
ELECTIONS; WARREN COUNTY)
BOARD OF ELECTIONS;)
WASHINGTON COUNTY BOARD)
OF ELECTIONS; WAYNE COUNTY)
BOARD OF ELECTIONS;)
WESTMORELAND COUNTY)

BOARD OF ELECTIONS;)
WYOMING COUNTY BOARD OF)
ELECTIONS; and YORK COUNTY)
BOARD OF ELECTIONS,)
Respondents.)

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

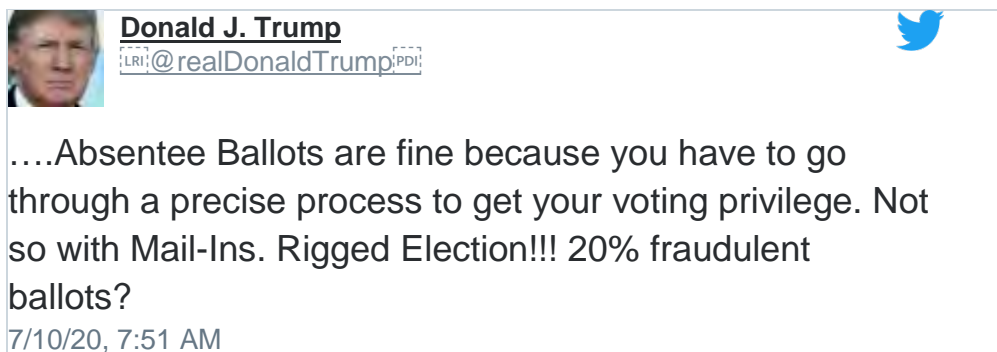
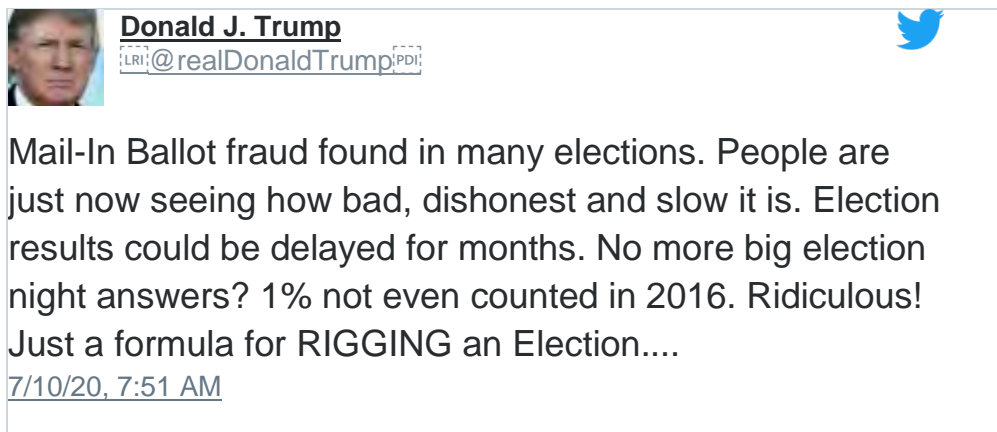
In support of this Petition for Declaratory and Injunctive Relief, Petitioners, the Pennsylvania Democratic Party, Dwight Evans, Nina Ahmad, Anthony H. Williams, Arthur Haywood, Sharif Street, Jordan A. Harris, Stephen Kinsey, Danilo Burgos, Austin Davis, Isabella Fitzgerald, Edward Gainey, Manuel M. Guzman, Jr., Malcolm Kenyatta, Patty H. Kim, and Peter Schweyer, by and through undersigned counsel, respectfully request that the court issue declaratory and injunction relief so as to protect the franchise of absentee and mail-in voters and respectfully aver as follows:

I. Introduction

1. The forthcoming General Election occurs in the midst of uncertainty arising from a recent revamping of the Commonwealth's election laws. In late 2019 and early 2020, pursuant to its Constitutional authority, the General Assembly made significant changes to how Pennsylvania runs its elections. *See* Act 77 of 2019, Act 12 of 2020. Major legislative changes made to a complicated regulatory scheme inadvertently create uncertainty while those changes are implemented. Some snags in implementation may be resolved administratively, while others require Court intervention or corrective action over time. These shake-out issues are "normal."

2. The stakes in this forthcoming election could not be higher. And any uncertainty or other inconsistency, creates heightened space for mischievous havoc and genuine concern. One national candidate, trailing in the polls, has already invoked the specter of *Bush v. Gore* and the 2000 Presidential election in an overly dramatic and transparently irrelevant attempt to create such havoc.

3. Indeed, just this morning, President Trump again spread false information regarding the use of mail-in ballots in the midst of a global pandemic so severe that renders standing in line at a polling place a significant health risk.



4. Even the clear fact that mail-in voting is safe and an important health measure in these times has not stopped litigants in pending federal court litigation from making wild unsupported assertions or challenging even clear provisions of Pennsylvania statutes. (*See Trump v. Boockvar*, No. 20-CV-00966 (W.D. Pa.) (Ranjan, J.) (the “*Trump* Litigation”)).

5. The 2020 Primary was the test run for the implementation of some of the Act 77 changes. Analysis of the Primary identified implementation snags that needed to be smoothed in time for the November General Election.

6. Legislation has been introduced in the Pennsylvania General Assembly to correct some of these issues, but in light of the existing extreme partisanship, may never be adopted. *See, e.g.*, H.B. 2626. Given that reality, the Petitioners here are compelled, to file this petition with this Court, but could not do so until after the results of the primary election were certified on July 7, 2020.

7. Petitioners raise a number of issues: some appropriately require a statewide solution; and others require a statewide objectives or policies, with county-specific implementations. Statewide policies must address the statewide objectives but do so with consideration given to the 67 different county densities, developed environments, transportation networks, and public services infrastructure across Pennsylvania’s counties.

8. While voting by mail has been available for absentee electors in Pennsylvania for decades, in 2019, the General Assembly passed Act 77 to expand mail-in voting to all registered Pennsylvania voters who choose that option to exercise their constitutional franchise to vote.

9. Voting by mail is generally safe and reliable. Some states have conducted all-mail elections for many years. Prior to Act 77, Pennsylvania was one of the states that most significantly restricted the right of citizens to vote from home.

10. By expanding mail-in balloting to all registered voters, the Pennsylvania General Assembly made a series of choices to promote the exercise of the franchise, even before the shelter-in-place and health concerns caused by COVID-19).

11. Expansion of mail-in voting also called for standardized protocols, but flexible enough for each county to adjust to account for the specific geographic and populations of each county.

12. For example, larger populated counties need multiple collection sites in order to accommodate for the increased demand.

II. Jurisdiction

13. This Court has original jurisdiction in cases relating to statewide election matters. *See* 42 Pa. C.S. § 764(2); *see also Mohn v. Bucks County Republican Committee*, 218 A.3d 927 (Pa. Super. 2019).

III. Parties

14. Petitioner, the Pennsylvania Democratic Party (the “Party”), is a major statewide political party pursuant to 25 P.S. § 2831 with offices in Harrisburg, Pennsylvania. The Party brings this action for itself, the Democratic Party, all of its members, all registered Democratic voters, and all nominated Democratic candidates in the November 3, 2020 General Election in the Commonwealth.

15. Petitioner Dwight Evans is a resident of the 10th Ward in Philadelphia, Pennsylvania, and is the Democratic nominee running for reelection as Congressman for the 3rd District in the 2020 General Election. Representative Evans is both a “candidate” and a “qualified elector” as those terms are defined under the Election Code. *See* 25 P.S. §§ 2602(a), (t). Representative Evans brings this suit in his capacity as a candidate for federal office and a private citizen.

16. Petitioner Nilofer Nina Ahmad is a resident of the 9th Ward in Philadelphia, Pennsylvania, and is the Democratic nominee for Auditor General in

the 2020 General Election. Ms. Ahmad brings this suit in her capacity as a candidate for state office and a private citizen.

17. Petitioner Anthony H. Williams is a resident of the 3rd Ward in Philadelphia, Pennsylvania, and serves as the State Senator for 8th District. Senator Williams brings this suit as a private citizen.

18. Petitioner Arthur Haywood is a resident of Wyncote, Pennsylvania, and serves as the State Senator for the 4th District. Senator Haywood brings this suit as a private citizen.

19. Petitioner Sharif Street is a resident of the 32nd Ward in Philadelphia, Pennsylvania, and is the Democratic nominee running for reelection as State Senator for the 3rd District in the 2020 General Election. Senator Street brings this suit in his capacity as a candidate for state office and a private citizen.

20. Petitioner Jordan A. Harris is a resident of the 43rd Ward in Philadelphia, Pennsylvania, and is the Democratic nominee running for reelection as State Representative for the 186th District in the 2020 General Election. Representative Harris brings this suit in his capacity as a candidate for state office and a private citizen.

21. Petitioner Stephen Kinsey is a resident of the 59th Ward in Philadelphia, Pennsylvania, and is the Democratic nominee running for reelection as State Representative for the 201th District in the 2020 General Election.

Representative Kinsey brings this suit in his capacity as a candidate for state office and a private citizen.

22. Petitioner Danilo Burgos is a resident of the 43rd Ward in Philadelphia, Pennsylvania, and is the Democratic nominee running for reelection as State Representative for the 197th District in the 2020 General Election.

Representative Burgos brings this suit in his capacity as a candidate for state office and a private citizen.

23. Petitioner Austin Davis is a resident of McKeesport, Pennsylvania, and is the Democratic nominee running for reelection as State Representative for the 35th District in the 2020 General Election. Representative Davis brings this suit in his capacity as a candidate for state office and a private citizen.

24. Petitioner Isabella Fitzgerald is a resident of the 10th Ward in Philadelphia, Pennsylvania, and is the Democratic nominee running for reelection as State Representative for the 203rd District in the 2020 General Election.

Representative Fitzgerald brings this suit in her capacity as a candidate for state office and a private citizen.

25. Petitioner Edward Gainey is a resident of Pittsburgh, Pennsylvania, and is the Democratic nominee running for reelection as State Representative for the 24th District in the 2020 General Election. Representative Gainey brings this suit in his capacity as a candidate for state office and a private citizen.

26. Petitioner Manuel M. Guzman, Jr. is a resident of Reading, Pennsylvania, and is the Democratic nominee running for election as State Representative for the 127th District in the 2020 General Election. Mr. Guzman brings this suit in his capacity as a candidate for state office and a private citizen.

27. Petitioner Malcolm Kenyatta is a resident of the 47th Ward in Philadelphia, Pennsylvania, and is the Democratic nominee running for reelection as State Representative for the 181st District in the 2020 General Election. Representative Kenyatta brings this suit in his capacity as a candidate for state office and a private citizen.

28. Petitioner Patty H. Kim is a resident of Harrisburg, Pennsylvania, and is the Democratic nominee running for reelection as State Representative for the 103rd District in the 2020 General Election. Representative Kim brings this suit in her capacity as a candidate for state office and a private citizen.

29. Petitioner Peter Schweyer is a resident of the Allentown, Pennsylvania, and is the Democratic nominee running for reelection as State Representative for the 22nd District in the 2020 General Election. Representative Schweyer brings this suit in his capacity as a candidate for state office and a private citizen.

30. Respondent Kathryn Boockvar is Secretary of the Commonwealth. Her office address is 302 North Office Building, 401 North Street, Harrisburg, Pennsylvania. She is a respondent solely in her official capacity.

31. The 67 County Boards of Elections are also named as individual respondents. Boards “have jurisdiction over the conduct of primaries and elections in such count[ies].” *Id.* at § 2641(a). The Boards’ powers are set forth under the Election Code. *See* 25 P.S. § 2642.

IV. Questions of Suffrage Must Be Construed in the Voter’s Favor

32. It has long been the law in the Commonwealth that:

In the sphere of popular elections . . . nothing can be more vital in the accomplishment of an honest and just selection than the ascertainment of the intention of the voter. Election laws will be strictly enforced to prevent fraud, but ordinarily will be construed liberally in favor of the right to vote. All statutes tending to limit the citizen in his exercise of the right of suffrage should be liberally construed in his favor. Where the elective franchise is regulated by statute, the regulation should, when and where possible, be so construed as to insure rather than defeat the exercise of the right of suffrage. Technicalities should not be used to make the right of the voter insecure. No construction of a statute should be indulged that would disfranchise any voter if the law is reasonably susceptible of any other meaning. . . .

The power to throw out a ballot for minor irregularities . . . must be exercised very sparingly and with the idea in mind that either an individual voter or a group of voters are not to be disfranchised at an election except for

compelling reasons. The purpose in holding elections is to register the actual expression of the electorate's will and that computing judges should endeavor to see what was the true result.

In re James Appeal, 105 A.2d 64, 65-66 (Pa. 1954) (citing *Bauman's Election Contest Case*, 41 A.2d 630 (Pa. 1945) (internal quotations omitted).

33. This longstanding policy is inextricably intertwined with the challenges posed by COVID-19.

34. Put simply, it is the desire of the people of the Commonwealth to vote in the upcoming election. Through Act 77, the General Assembly created a universal right to vote by mail in Pennsylvania elections. Unfortunately, COVID-19 presents unpredictable constraints upon in-person voting that, in turn, raises questions about ambiguities in Act 77. Petitioners call upon the Court to make commonsense declarations to ensure that the 2020 General Election registers “the actual expression of the electorate’s will.” *Id.*

V. Act 77

35. On October 31, 2019, Governor Wolf signed Act 77 into law. Act 77 is a sweeping election reform bill aimed to improve Pennsylvania’s elections and make voting easier and more accessible for all Commonwealth citizens.

36. Significantly, Act 77 permits no excuse mail-in voting for all qualified electors. See 25 Pa. C.S. §§ 3150.11-3150.17.

37. Under Act 77, the general mail-in process for a voter is as follows:

In secret, proceed to mark the ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Official Election Ballot." This envelope shall be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board and the local election of the elector. The elector shall then fill out, date and sign the declaration printed on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

Act 77 § 1306-D(a) (there are special provisions for those in need of assistance).

38. Act 77 bars counting an absentee or mail-in ballot that has "any text, mark or symbol which reveals the identity of the elector, the elector's political affiliation or the elector's candidate preference" on the privacy envelope. *See* 25 Pa. C.S. § 3146.8(g)(4)(i)-(iv).

39. As discussed in more detail below, and unlike the express statutory language applicable to provisional ballots, Act 77 contains no requirement or authorization for Boards to exclude ballots solely because the voter forgot to utilize the inner secrecy envelope.

40. Voters who vote by mail-in or absentee ballots must return their ballots to their county Board using the envelope provided by the Commonwealth, or by dropping it off in person to a facility of the county Board of Elections. The

Board of Elections must receive the voted ballot by 8:00 pm on election day. *See* Act 77 § 1306-D.

41. Act 77 also allows Boards to begin conducting a pre-canvass of all absentee and mail-in ballots no earlier than 7:00 am on Election Day. A single canvass observers for each candidate and political party can attend. 25 Pa. C.S. § 3146.8(g)(2).

VI. The Novel Coronavirus

42. The novel coronavirus began infecting humans in China in December 2019 and as of March 11, 2020, the World Health Organization announced that the coronavirus was officially a pandemic. *See Friends of Danny Devito v. Wolf*, No. 68 MM 2020, at *3 (Pa. Apr. 13, 2020).

43. COVID-19 has impacted nearly every facet of people’s lives and the General Assembly and Governor Wolf responded accordingly.

44. Governor Wolf declared a disaster emergency due to the pandemic on March 6. *See* Governor Wolf, “Proclamation of Disaster Emergency,” (Mar. 6, 2020), Commonwealth of Pennsylvania Office of the Governor, https://www.scribd.com/document/450457202/2020-3-6-COVID19-Digital-Proclamation-pdf#from_embed.

45. On March 19, 2020, consistent with his earlier disaster emergency declaration, the Governor issued an order closing businesses that were not considered life-sustaining. *See* Governor Wolf, “Order of the Governor of Pennsylvania Regarding the Closure of All Businesses That Are Not Life Sustaining,” (Mar. 19, 2020), Commonwealth of Pennsylvania Office of the Governor, <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-TWW-COVID-19-business-closure-order.pdf>.

46. On June 3, 2020, the Governor renewed the Disaster Emergency Proclamation for an additional ninety days. *See* Governor Wolf, “Amendment to the Proclamation of Disaster Emergency,” (June 3, 2020), Commonwealth of Pennsylvania Office of the Governor <https://www.pema.pa.gov/Governor-Proclamations/Documents/06.03.2020%20TWW%20amendment%20to%20COVID%20disaster%20emergency%20proclamation.pdf>.

47. Despite the efforts of the Commonwealth’s elected officials and the resolve of its citizens, as of this writing, 90,202 Pennsylvania citizens have been confirmed to have been infected with COVID-19 and 6,848 have died. Department of Health, “COVID-19 Data for Pennsylvania,” <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx> (last accessed July 10, 2020).

48. Unfortunately, there is no evidence to suggest that we will defeat COVID-19 by the November election. Day by day, the United States records record high cases. *See* Derek Hawkins, Marisa Iati and Jacqueline Dupree, *Coronavirus Updates: Seven-Day Average Case Total in the U.S. Sets Record for 27th Straight Day*, Washington Post, July 5, 2020, available at <https://www.washingtonpost.com/nation/2020/07/05/coronavirus-update-us/>.

49. In May, President Trump admitted that a second wave was “a very distinct possibility . . . it’s standard.” Fox News First, *Trump Vows ‘Second Wave’ of Coronavirus Won’t Shut Down US*, May 22, 2020, available at <https://www.foxnews.com/us/trump-vows-second-wave-of-coronavirus-wont-shut-down-us>.

50. The Federal Administration’s top infectious disease expert, Dr. Anthony Fauci, has also made clear that “we will have coronavirus in the fall . . . I am convinced of that.” Berkeley Lovelace Jr., *Dr. Anthony Fauci Says a Second Wave of Coronavirus is ‘Not Inevitable,’* CNBC, May 27, 2020, <https://www.cnbc.com/2020/05/27/dr-anthony-fauci-says-a-second-wave-of-coronavirus-is-not-inevitable.html>.

51. As such, it is highly probable – if not a certainty – that medical risks and government restrictions will remain in place that change Pennsylvanians’ day to day life, including voting procedures.

52. In the words of our Supreme Court, “[t]he enforcement of social distancing to suppress transmission of the disease is currently the only mitigation tool.” *Wolf*, No. 68 MM 2020, at *28.

53. COVID-19 impacted the 2020 Primary Election and how citizens cast their ballots.’

54. On March 25, 2020, the General Assembly passed Act 12, which delayed the date of the primary election from April 28 to June 2.

55. In response to concerns from counties that COVID-19 threatened their ability to staff polling locations, Act 12 also allowed counties to temporarily consolidate polling places without court approval and eased other rules related to location and staffing of polling places. Act 12 of 2020 § 1802-B.

56. As a result of Act 12, the state’s two most populous counties, Philadelphia and Allegheny, shifted from the more than 2,100 polling places they open in a typical election to fewer than 500. *See Allegheny County 2020 Primary Election Polling Places, available at https://www.alleghenycounty.us/uploadedFiles/Allegheny_Home/Dept-Content/Elections/Docs/2020%20Primary%20Election%20Polling%20Places.pdf*; Sarah Reyes, *Election Day Guide: June 2, 2020*, Philadelphia Office of the Mayor, June 1, 2020, *available at <https://www.phila.gov/2020-05-29-election-day-guide-june-2-2020/>*.

57. Similarly, Montgomery County officials reduced the number of polling places by 60% for the Primary Election in response to the COVID-19 outbreak and in Delaware County there were 238 fewer polling places than in a typical election. Carl Hessler, Jr., *Montgomery County Officials Reduce Polling Places Under ‘Pandemic Election Plan,’* Pottstown Mercury, May 12, 2020, available at https://www.pottsmmerc.com/news/montgomery-county-officials-reduce-polling-places-under-pandemic-election-plan/article_925f3e3e-93a8-11ea-8c91-2369be893bb1.html; Kathleen E. Carey, *Pandemic Forces Dramatic Changes in Delco Election Procedures,* Delaware County Times, May 8, 2020, available at https://www.delcotimes.com/news/coronavirus/pandemic-forces-dramatic-changes-in-delco-election-procedures/article_389603b4-90a2-11ea-a4c4-1b7d54d5ea21.html.

58. Act 12 also amended the Election Code to allow a “pre-canvass” which permitted Boards to begin counting mail-in ballots at 7:00 a.m. on Election Day.

59. But the most significant change is the increase to approximately 1.8 million of the number of voters who participated solely by mail, with the concurrent impact on the number of ballots rejected for imperfectly following the complicated procedures.

VII. The Implementation Challenges of Starting Elections by Mail

60. A failure to accurately complete mailed ballots is not new – this has long been an issue with Pennsylvania absentee ballots. In 2018, under a law that had not changed materially in over a decade and without a flood of new mail participants, approximately 3.7 percent of ballots were rejected from voters who had already proven their eligibility and applied to vote, leading to 8,137 voters being disenfranchised.

61. According to nationwide data from the Election Assistance Commission, in the 2018 General Election, 8.2 percent of the total number of returned ballots were not counted or, 2,491,998 votes. *2018 Comprehensive Report: A Report to the 116th Congress*, United States Election Assistance Commission at 14, June 2019, available at https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf.

62. We do not yet know the numbers for the 2020 Primary, but the volume of mailed ballots in the current environment, and the increase of people who are new to the process, the issue of disqualified ballots was exacerbated, with some reports estimating that as many as ten percent of ballots were rejected.

63. A significant percentage of ballots are returned without being completely and properly processed. See Enrijeta Shino, Mara Suttman-Lea, and Daniel A. Smith, *Here's the Problem with Mail-In Ballots, They Might Not be*

Counted, The Washington Post, May 21, 2020, available at

<https://www.washingtonpost.com/politics/2020/05/21/heres-problem-with-mail-in-ballots-they-might-not-be-counted/>; Colleen O’Dea, *One in 10 Ballots Rejected in Last Month’s Vote-By-Mail Elections*, NJ Spotlight, June 10, 2020, available at <https://www.njspotlight.com/2020/06/one-in-10-ballots-rejected-in-last-months-vote-by-mail-elections/>.

64. Completing a mail-in ballot is not a simple task. It starts with obtaining an application (on paper or online). Then the voter must complete the application, including proving their identity. At a later time, sometimes weeks later, the ballot arrives, and the voter must then open the envelope, review the directions, and complete the ballot. After completing the ballot, the voter is instructed to package the ballot into the Privacy Envelope, seal the Privacy Envelope, and then place the sealed privacy envelope inside the outer envelope (the “Mailing Envelope”). After sealing the Mailing Envelope, the voter must then complete some information on the outside of the mailing envelope, including a voter’s declaration. Finally, the voter must return the Mailing Envelope to the Board, either by taking it to a Board’s location (discussed further, *infra*) or by stamping and mailing the mailing envelope through the United States mail.

65. In Pennsylvania, the issues with absentee or mail-in ballots have generally been threefold: first, many ballots are returned without the Privacy

Envelope (a “Naked Ballot”); second, many ballots are returned with an incomplete Mailing Envelope – this could be an envelope not completed at all or could be one where the declaration is missing a date or a signature; and third, many ballots are not timely returned because of delays – some from the Boards, some from the voter, some from the Postal Service, and some due to a combination of factors from all three sources.

VIII. The Need for a Better Ballot Distribution and Collection Process

66. When faced with an unanticipated flood of mail-in ballot applications arising from the global pandemic, most county Boards fell behind in sending ballots to voters; almost all Boards, except in the smallest counties, failed to meet the 48-hour requirement set in Act 77.

67. In the Primary, this issue led to an as-applied infirmity in the statute.

68. Despite the opinion of some, COVID-19 did not magically disappear in warmer months, but, instead, will continue to present an unpredictable challenge to the operation and functioning of the upcoming General Election and thus the as-applied infirmity is certain to reoccur in the Fall.

69. When mail-in ballot applications are received, the Board must verify the information submitted in the application against the voter’s record in the SURE system. *See Act 77 § 1302.2-D(a)*. The Board then “shall commence to deliver or

mail official mail-in ballots as soon as a ballot is certified and the ballots are available.” *Id.* at § 1305-D. At which point, the voter has until 8:00 p.m. on Election Day to return the ballot to the Board. *See* 25 P.S. §§ 3146.6(c), 3146.8 (g)(1(ii) and 3150.16(c).

70. Given the new right to do so, and the COVID-19 necessity to avoid large gatherings at polling places, Pennsylvanians applied in overwhelming numbers to vote by mail in the 2020 Primary Election. This crush of applications created massive disparities in the distribution and return of mail-in ballots in the primary election.

71. By May 4, 2020, nearly one million voters sent applications to vote by mail. Of that number, almost a quarter million voters (241,170) still had not yet been sent a ballot by their Board 17 days later. 5/22 Supplemental Declaration of Jonathan Marks at ¶ 4, *Crossey v. Boockvar*, No. 266 MD 2020 (Pa. Commw. Ct.), attached hereto as Exhibit A.

72. In fact, as of May 20, Philadelphia voters had requested more mail-in ballots than the statewide total from 2016 and *twenty-three* times as many as in Philadelphia County in 2016. *See* Jonathan Lai, *Philly Voters Have Requested More Mail Ballots Than All of Pennsylvania Did in 2016*, Philadelphia Inquirer, May 20, 2020, available at <https://www.inquirer.com/politics/election/coronavirus-philadelphia-mail-ballot-requests-20200520.html>.

73. By the May 26 application deadline, approximately 1.8 million voters had requested to vote by mail.

74. In other litigation, the Department of State has admitted that counties where the prevalence of COVID-19 was highest, like Philadelphia and its collar counties, experienced the compounding problem of a “surge of paper ballot applications” and “COVID-19 related staffing shortages and social distancing rules” which, it worried would cause “difficulties in promptly processing all of the outstanding applications.” *See* Marks 5/22 Decl. ¶¶ 13-15.

75. A study by local media found disparities between counties in the time it took to approve applications and mail ballots to voters. *See* 6abc Action News Analysis, *Action News Data: Huge Disparities Found Among Pa. Voters for Mail-In Ballot Wait Times*, May 27, 2020, available at <https://6abc.com/absentee-ballot-vote-by-mail-in-voting-election/6215538/>.

76. As of May 27, 2020, the statewide average was seven days from the receipt of an application by the Board to when a ballot was mailed to a voter. *See id.* However, that average time varied significantly by county. For instance, in Delaware County where 77,123 applications were requested, the wait time was an average of 20.4 days. *Id.* Contrarily, in neighboring Chester County, where 90,016 applications were requested, the wait time was 6.6 days. *Id.* Some smaller counties were mailing ballots out on the day received. *Id.*

77. In Delaware County the processing was so delayed that thousands were not mailed out until the night of the election, and thousands more were mailed out at great expense as overnight mail in the days leading into the election. *See In re: Extension of Time for Absentee and Mail-In Ballots to Be Received by Mail and Counted in the 2020 Primary*, No. CV-2020-003416 (Del. Co. C. P. June 2, 2020) (permitting an “election to be conducted whereby [qualified electors] could be deprived of their opportunity to participate because of circumstances beyond their control would be inconsistent with the Election Laws of this Commonwealth”).

78. This Petition thus requests that the Court extend the deadline for receipt of mail-in ballots in the certainty that the Boards are once again inundated with an influx of mail-in ballot requests later in the cycle.

79. It is normal in elections with significant public attention for there to be a flood of registrations received right before deadlines. That pattern in the Primary clearly extended to vote-by-mail applications as voters considered the situation and decided not to go to the polls to avoid putting themselves at risk.

VIII. a. The Need for Drop Boxes and Satellite Sites

80. One of the choices made by the General Assembly was to allow Boards to collect ballots at any location controlled by the Board, not limited to a central office. *See Act 77 at § 1306-D.*

81. The General Assembly's decision clearly authorizes this action, but that legislative determination is not being implemented by some counties due to a concern over allegations about authorization and federal litigation that mischaracterizes this issue of Pennsylvania law.

82. The Primary election showed us that counties need to be creative in handling the challenges presented by the massive influx of mail-in ballots, the challenges of COVID-19, and the need to timely collect and canvass the votes of their residents.

83. The actions of certain county Boards provided examples of how, moving forward, counties may craft solutions that make sense for their geography, citizens and realities.

84. In Delaware County, at the last minute, the Board permitted its voters to return their sealed ballots to any polling location throughout the county. *See June 1 Update on the Primary Election in Delaware County, Delaware County Press Release, June 1, 2020, https://www.delcopa.gov/publicrelations/releases/2020/primaryupdate_june1.html.*

The Board noted that the drop boxes inside polling locations were “under observation by the poll workers.” *Id.*

85. Similarly, Montgomery County created ten drop-off locations at various county township buildings, firehouses and parks throughout the county where voters could return mail-in ballots. *See 2020 Primary Election Secure Ballot Box Drop-Off Locations*, Montgomery County Board of Elections, <https://www.montcopa.org/ArchiveCenter/ViewFile/Item/5177>. The Montgomery County Board specifically stated “[y]ou may not return any ballot that does not belong to you. County Security will be on-site at each location and there will be video surveillance. Anyone depositing a ballot that does not belong to them will be referred to the District Attorney’s office.”

86. Philadelphia County partnered with a non-partisan organization, the Committee of Seventy, to execute the County’s mail-in ballot collection initiative. *See Mobile Drop Off Location For Mail-In-Ballot*, Philadelphia Commissioners, https://www.philadelphiavotes.com/en/home/item/1814-mobile_drop_off_location_for_mail_in_ballot. The Philadelphia Board created 24/7 drop off locations at City Hall and the Board of Elections Office and temporary stations throughout the City from Saturday, May 30, to Monday, June 1. *Id.* Personnel from the City Commissioners Office, including Commissioner Al Schmidt (R), personally greeted voters at schools and community centers

throughout the City and Board staff were the only personnel receiving ballots from the voters. As was required by statute, voters were only permitted to drop off their own ballot. *Id.*

87. The foregoing actions are all under attack in the federal court as allegedly violating both federal and state law. *See* Trump Litigation Complaint at Counts I, II, III, VI, VII.

88. If invalidated, the requirement that a single collection site only be used will have a greater and disparate impact on the citizens of larger counties and those who rely on suddenly unsafe public transportation systems.

89. Notably, the United States Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (“CISA”) has issued guidance on election security. CISA’s Elections Infrastructure Government Coordinating Council and Sector Coordinating Council’s Joint COVID Working Group released guidelines on how to administer and secure election infrastructure during the pandemic. *See* CISA Guidance, *Ballot Drop Boxes*, https://www.eac.gov/sites/default/files/electionofficials/vbm/Ballot_Drop_Box.pdf (the “CISA Guidance”).

90. The first sentence of the CISA Guidance states that “[a] ballot drop box provides a secure and convenient means for voters to return their mail ballot.” *Id.*

91. The CISA Guidance provides that “[b]allot drop boxes should be placed in convenient, accessible locations, including places close to public transportation routes, near or on college campuses, and public buildings, such as libraries and community centers familiar to voters and easy to find” and recommends one drop box for “every 15,000-20,000 registered voters.” *Id.* at 2.

92. The Delaware, Montgomery and Philadelphia counties examples above followed the recommended guidance by choosing easily accessible locations.

93. In fact, according to the CISA Guidance, the volume of drop-boxes available in the Primary election were woefully inadequate.

94. Unlike other claims, such as review of ballots submitted, the process cannot be identical from county-to-county as not all counties are identical, or even similar.

95. When it comes to how to best provide services, and for many other issues, classes of counties are classified by their population and history and are treated differently in many ways in applicable law. This makes sense in terms of service delivery because there are different challenges servicing a densely packed metropolis or an openly expansive rural county.

96. Counties separately administer elections in many varying ways, and this county-based structure has been upheld repeatedly by the Pennsylvania courts.

97. Once a voter is properly registered, qualified, and has applied for his or her ballot, and has completed it, each county Board should use all reasonable measures to encourage and facilitate the return of that ballot.

98. This is particularly true in situations where mail delivery would not be an acceptable option, such as returns over the last few days before Election Day, or areas where there is not daily mail collection at each voter's door. In fact, there are no appropriate reasons to attempt to impede the true return of a ballot.

99. This Petition requests a declaratory judgment that the Boards take reasonable and commonsense steps to facilitate the return of mail-in ballots – as some counties did in the primary election by sponsoring secure drop-off locations – and enjoin them from requiring electors to mail or deliver their mail-in ballots to the Boards' central offices.

100. A prompt resolution of this petition is required to allow Boards to buy and install necessary equipment (such as collection mail boxes) and to arrange for site-control for collection locations.

b. The Need to Extend the Mail Receipt Deadline

101. In the Primary, at least tens of thousands of voters ultimately did not receive their ballots with enough time to return them by the close of the polls on Election Day.

102. When this Court addressed this issue in early June, it did so without the full body of evidence now available after the post-mortem on the Primary.

103. In the Primary election, at least two counties (Bucks and Delaware) were so behind in mailing out ballots that the Boards themselves sought, and received, authorization to accept ballots for up to 7 days post-election so long as the ballots were mailed by the day of the Primary. *See In re: Extension of Time for Absentee and Mail-In Ballots to be Received By Mail and Counted in the 2020 Primary Election*, No. 2020-02322-37 (C.P. Bucks) (McMaster, J.); *In re: Extension of Time for Absentee and Mail-In Ballots to be Received By Mail and Counted in the 2020 Primary Election*, No.-CV 2020-003416 (C.P. Delaware).

104. This Court addressed this issue generally in a decision issued on Primary Day, stating in an unpublished memorandum opinion that while the petitioners in that case had not alleged facts to show that enforcement of the received-by deadline will result in an unconstitutional *statewide* deprivation of the right to vote, the Court sided with the petitioners and directed the petitioners to seek relief in Common Pleas court on a county-by-county basis. *See Delisle v. Boockvar*, Dkt. 319 M.D. 2020 (Pa. Commw. Ct., June 2, 2020).

105. While county-by-county litigation may have been necessary based on the evidence before the Court in June, at this time, the Petitioners assert that a broader remedy is appropriate both because of the evidence gathered at the June

primary and because the election will be more efficient, and less subject to challenge on federal Equal Protection grounds, if this issue were to be addressed on a statewide basis.

106. In six counties, there are, or will be, available the number of ballots counted that were received between Election Day and the UOCAVA Deadline, as the postmark rule was ordered by the Governor, due to the State of Emergency resulting from the unrest following the police murder of George Floyd. *See* Executive Order No. 2020-20 at ¶ 1.

107. Petitioners' requested remedy seeks to lift the deadline in the Election Code across the state in a uniform standard to allow any ballot postmarked by 8 pm on Election Night to be counted if it is received by the deadline for ballots to be received under the Uniformed and Overseas Citizens Absentee Voting Act, specifically the end of business on Tuesday, November 10 (the "UOCAVA Deadline").

108. As an alternative remedy, Petitioners propose that the Court tailor the extension of ballot deadlines on a ballot-by-ballot basis to the date that is 21 days after the ballot is mailed by the county, provided that (i) in no extent would the deadline be extended past the UOCAVA Deadline, and (ii) no extension would apply if the ballot was mailed within 24 hours of receipt of a completed application from the qualified elector.

IX. Boards Must Allow Imperfectly Completed Envelopes to be Corrected

109. Voters who did receive their ballots timely but returned their ballot with certain procedural defects were disenfranchised because they were not notified of the defects and given an opportunity to cure them.

110. The Pennsylvania Constitution expressly guarantees to voters the right to participate in a free and fair election. Pa. Const. art. I § 5.

111. And, it is well-settled that the Election Code should be “liberally construed to protect . . . the voters’ right to elect the candidate of their choice.” *In re 2003 General Election for Office of Prothonotary*, 849 A.2d 230, 237 (2004) (citations omitted).

112. Consistent with this principle, the Pennsylvania Constitution and the spirit of the Election Code require Boards to provide qualified electors a grace period to cure minor defects in their ballots.

113. The vote-by-mail ballot packet contains no fewer than five separate items. After reading the directions, voters must (1) complete their ballot in either black lead pencil, indelible pencil or blue, black or blue-black ink, or fountain pen or ball point pen; (2) fold the ballot and place it in the Official Election Ballot envelope or Privacy Envelope; (3) place the Privacy Envelope inside the Mailing

Envelope; and (4) complete the back of the Mailing Envelope, the so-called voter declaration. *See* 25 Pa. C.S. §§ 3146.6(a), 3150.16(a).

114. This process inevitably leads to minor errors like a voter forgetting to complete the voter declaration or completing the ballot in colored ink.

115. Voters, many of whom are new to mail ballots, should not be disenfranchised by technical errors or incomplete ballots.

116. Indeed, “[a]ll statutes tending to limit the citizen in his [or her] exercise of the right of suffrage should be liberally construed in his [or her] favor. Where the elective franchise is regulated by statute, the regulation should, when and where possible, be so construed as to insure rather than defeat the exercise of the right of suffrage. Technicalities should not be used to make the right of the voter insecure. . . .” *James Appeal*, 105 A.2d at 65-66.

117. Courts have cautioned that “[t]he power to throw out a ballot for minor irregularities . . . must be exercised very sparingly and with the idea in mind that either an individual voter or a group of voters are not to be disenfranchised at an election except for compelling reasons. . . . The purpose in holding elections is to register the actual expression of the electorate’s will and that computing judges should endeavor to see what was the true result. *In re Pennsylvania General Election*, 841 A.2d 593, 597 n. 6 (Pa. Cmmw. Ct. 2003) (citations omitted).

118. Accordingly, Petitioners seek a declaratory judgment requiring that when a Board has knowledge of an incomplete ballot and has the elector's contact information, the Board should notify the qualified elector using the most expeditious means feasible and provide the individual a chance to cure the facial defect until the UOCAVA Deadline. Petitioners also request this Court enjoin any Board from not providing a qualified elector until the UOCAVA Deadline to remedy facial defects on their mailing envelope.

119. With these precepts in mind, where Boards have both (a) knowledge of an incomplete or incorrectly filled out ballot and (b) the elector's contact information (i.e., email or telephone number), Boards should be required to contact the electors and provide them the opportunity to cure the facial defect until the UOCAVA Deadline.

120. There is no governmental interest in requiring that the formalities of the outside of the Mailing Envelope be completed prior to mailing rather than prior to counting.

121. Nor is there any timeliness governmental interest in rejecting a ballot count as long as ballots continue to arrive under federal law, which is required until the UOCAVA Deadline.

122. Having Boards contact electors when they have knowledge of an incomplete or incorrectly filled out ballot ensures that all electors, who desire to cast a ballot, have the opportunity to do so and for their ballot to be counted.

123. Balancing the impacts of disenfranchising electors for minor inconsistencies, against the (non-existent) governmental interest the harm to the voter is overwhelming; thus, electors should be allowed to cure a facial defect on their Mailing Envelope.

X. Imperfectly Packaged “Naked Ballots” Must be Clothed and Counted

124. Once ballots were received, some county Boards were unsure of what to do with ballots returned by voters without the secrecy envelope (the “Naked Ballots”) under Act 77.

125. In advance of the Primary, several Boards communicated this confusion to the Department of State.

126. The Department considered their concerns, reviewed the law, and on May 28 issued clear direction from the Secretary of the Commonwealth, which was distributed to the counties on May 28, 2020, after this issue appeared to arise. *See* Directive of the Pennsylvania Department of State sent to the county election directors on May 28, 2020, a copy of this correspondence is attached as Exhibit B (the “Marks Guidance”).

127. The Department of State instructed as follows:

Though the Election Code requires county boards of elections to set aside absentee or mail-in ballots enclosed in official election ballot envelopes that contain “any text, mark or symbol which reveals the identity of the elector,” there is no statutory requirement, nor is there any statutory authority, for setting aside an absentee or mail-in ballot solely because the voter forgot to properly insert it into the official election ballot envelope. See 25 P.S. § 3146.8(g)(4)(ii).

To preserve the secrecy of such ballots, the board of elections in its discretion may develop a process by which the members of the pre-canvass or canvass boards insert these ballots into empty official election ballot envelopes or privacy sleeves until such time as they are ready to be tabulated.

Id. A significant majority of counties followed the Marks Guidance and counted the Naked Ballots, but some did not.

128. During the Primary, several county Boards, including specifically the Lawrence County Board, in the canvass of mail-in and/or absentee ballots which were marked and returned by voters, refused to count ballots that were returned to the Board without a Privacy Envelope, or inner-envelope. That is, voters placed their ballot in the outer envelope, the Mailing Envelope.

129. A challenge to the rejection of the Naked Ballots was filed on Election Day in Lawrence County but was later abandoned as moot as the results of all elections covered by such order would not have been affected. *See In re: Canvass of Mail-In Ballots for the 2020 General Primary*, No. _____

(Lawrence Co. C.P. June 2, 2020).

130. The refusal by certain Boards to canvass and count ballots which lack the Privacy Envelope is in violation of the provisions of the Pennsylvania Election Code and the rights of Electors to vote and have their ballots counted under the Pennsylvania Constitution.

131. While voters are instructed to use a Privacy Envelope in submitting the ballot, there is nothing in the Election Code allowing or authorizing a Board to discard a ballot cast without a Privacy Envelope. *See* 25 P.S. § 3146.8.

132. This Court has addressed the issue of voter intent in a case where a form of ballot was argued to override the will of the voter and stated that the intent of the voter should control in the absence of a clear indication of fraud. *See In re Pennsylvania Gen. Elec. for Snyder County Comm'r*, 841 A.2d 593, 597 (Pa. Commw. 2003).

133. The clear legislative intent to allow these votes to be counted can be seen by comparison to the statute applicable to provisional ballots, which expressly includes language authorizing/requiring the Board to not count *provisional* ballots that are not in a privacy envelope. *See* 25 P.S. § 3050(a.4)(5)(ii)(C).

134. No parallel language is located in the statute applicable to the mail-in or absentee ballots. *See* 25 P.S. § 3146.8.

135. If the General Assembly had wanted to incorporate this language into

the absentee and mail-in ballots when those statutes were being revised in 2019 and 2020, it could have done so; the choice not to include that language evidences the intent to allow valid votes to count and for the Boards to do what is necessary to count the votes while reasonably protecting the privacy of voters.

136. The Legislative decision not only is express, but also logical. Provisional ballots run a much greater theoretical risk from the compromise of privacy as they are voted at polling places, oftentimes in front of local precinct officials who are neighbors and friends.

137. As a result, the General Assembly logically determined that this potentially greater risk of pressure on the voters offsets the risk of disenfranchisement from the failure to use a ballot envelope and chose to mandate rejection of a provisional ballot without a Secrecy Envelope.

138. On the other hand, mail-in and absentee ballots are packaged in the privacy of the voter's home and are only removed from the envelope at all in a central process, en masse with other ballots, by sworn election officials under the scrutiny of authorized representatives and poll watchers. Understanding this difference, and the lack of possible pressure from a negligent failure to use a secrecy envelope, the General Assembly made a conscious choice not to require disenfranchisement in the situation of absentee and mail-in ballots.

139. In this case of Naked Ballots, the choice is thus to either (i)

completely disenfranchise the voter in contravention of the Election Code, or (ii) take corrective measures to protect privacy – such as placing the ballot inside a replacement Privacy Envelope before examination – and not disenfranchise a vote from a valid and qualified elector.

140. While each Board is empowered, and expressly authorized, to review the facts and circumstances where the situation is unclear, both federal and state law require equal treatment of similarly situated voters.

141. Where, as is the case here, there is a clearly right course of action that can be adopted statewide, the Court can and should issue a declaratory judgment and injunctive relief to cause Naked Ballots to be counted, but after the county undertakes reasonable measures to protect the privacy of voter ballots and allow the ballots to be intermingled before review and tabulation.

XI. The Poll Watcher Law Remains Valid

142. Despite raising this issue election after election, the *Trump* litigants are again asserting – in the Western District – the same argument about poll watchers that was rejected in 2016 by the Eastern District, and which they did not raise in any Commonwealth court in the last four years.

143. Poll watchers should be required to be residents of the county, if only to allow local law enforcement access and jurisdiction to enforce after Election

Day penalties for any malicious shenanigans that out-of-county or out-of-state poll watchers may be more willing to undertake.

144. This Petition asks this Court to resolve ambiguities associated with the interpretation and implementation of Act 77 against the backdrop of a global pandemic and the presumptive nominee of one political party routinely spreading misinformation about the legitimacy of mail-in and absentee ballots.

145. There is nothing more sacrosanct in democracy than the right to vote, this Petition seeks only to protect that right uniformly for all qualified electors in the Commonwealth.

146. The Commonwealth simply cannot invite a post-election attack on the fairness of Pennsylvania's elections like was alleged in *Bush v. Gore*.

147. When initially enacted, the poll watcher provisions of the Election Code restricted a poll watcher's geographical territory to the election district in which the elector lived. *See* 25 Pa. C.S. § 2687 (1947).

148. In 2004, the Pennsylvania General Assembly amended the Election Code to allow poll watchers to work anywhere within their county. *See* 25 Pa. C.S. § 2687(b).

149. Four years ago, on the eve of the last Presidential election, the Republican Party of Pennsylvania sued the Secretary of the Commonwealth, Pedro Cortes, seeking to enjoin the enforcement of the geographic restriction and to allow

registered voters to poll watch anywhere in the Commonwealth. *See Republican Party of Pa. v. Cortés*, 218 F. Supp. 3d 396, 402 (E.D. Pa. 2016) (Pappert, J.). The *Cortés* plaintiffs asserted two primary arguments: (1) poll watchers uncover election law violations and that when an unqualified elector votes within a district, the legitimate votes of qualified electors in the district are diluted and their fundamental right to vote is violated; and (2) the poll watcher geographic restriction violated the Equal Protection and Due Process Clause by “arbitrarily and unreasonably distinguish[ing] between voters within the same electoral district by allowing some, but not others, to serve as poll watchers.” *Id.* at 407.

150. The District Court for the Eastern District of Pennsylvania, however, declined to enjoin the enforcement of the geographic restriction. In so doing, the Court found that the poll watcher residency requirement did not dilute the complainants’ votes because the theory was based purely on speculation that fraudulent voters may be “casting ballots elsewhere in the Commonwealth and the unproven assumption that these alleged instances of voter fraud would be prevented by the affected poll watchers were they not precluded from serving at those locations.” *Id.*

151. The *Cortés* Court also found that the poll watcher residency requirement did not burden the plaintiff’s fundamental right to vote and therefore

the state need only provide a rational basis for the poll watcher residency requirement. *Id.*

152. The *Cortés* Court deferred to the General Assembly's decision to limit poll watchers to county residents because the choice was "rationally related to the state's interest in maintaining from their own county is rationally related to the state's interests in maintaining its county-run election system [under which] each county election official is tasked with managing credentials for a discrete part of the state's population." *Id.* at 410.

153. After losing the injunction hearing, the *Cortés* plaintiff abandoned those arguments and did not raise the issue for the next four years in either Pennsylvania state or federal court.

154. Nor did the Republican leadership in the General Assembly offer any changes to the applicable statutes when they drafted the bills that became Acts 77 and 12.

155. Apparently undeterred by continuous clear and unambiguous ruling, the *Trump* plaintiffs again sued the Pennsylvania Secretary of the Commonwealth and the 67 Boards in the Commonwealth seeking, inter alia, an injunction that permits poll watchers regardless of their county of residence, to be present in all locations where votes are cast, including without limitation all locations where absentee or mail-in ballots are being returned. *See Trump Lawsuit, Complaint*, ¶ 5.

The Plaintiffs in the *Trump* Lawsuit make virtually the same arguments made by the *Cortés* plaintiffs and appear doomed to suffer the same fate under both federal and Pennsylvania Law.

156. Neither Act 77 nor Act 12 altered or amended the Election Code requirement that poll watchers may only watch polls at polling locations within the county where the poll watcher is registered to vote.

157. That is not to say that the General Assembly did not consider this provision – Act 77 specifically created the position of Canvass Authorized Representative who do not have to be registered voters in the county or the Commonwealth who can observe canvass activities. *See* Act 12 of 2020 § 1308(g)(1.1).

158. This choice is also consistent and reflects the distinction between an activity in a polling place away from watchful eyes and activity taking place under the watch of sworn election officials.

159. The changes to Pennsylvania election processes and procedures enacted under Acts 77 and 12 in no way makes the Election Code’s poll watcher residency requirement violative of either the United States or Pennsylvania Constitution nor does it alter the outcome in *Cortés*.

160. As explained in *Cortés*, the poll watcher residency requirement does not dilute any voters’ vote and continues to serve the “state’s interests in

maintaining its county-run election system; each county election official is tasked with managing credentials for a discrete part of the state’s population.” *Cortés*, 218 F. Supp. 3d at 410.

161. The fact that counties are using fewer actually polling locations and more drop off of absentee and mail-in ballots locations due to a global pandemic does not change the state’s interests in the poll watcher geographic restriction. The Commonwealth still has an interest in maintaining its county-run election system.

COUNT I

DECLARATORY JUDGMENT THAT COUNTY OFFICES ARE NOT LIMITED SOLELY TO A CENTRAL OFFICE, AND THAT SECURE BALLOT DROP-BOXES ARE PERMITTED UNDER THE ELECTION CODE; AND FOR AFFIRMATIVE INJUNCTION REQUIRING BOARDS TO USE ALL REASONABLE MEASURES TO ENCOURAGE AND FACILITATE THE RETURN OF MAIL-IN BALLOTS

162. Petitioners refer to and incorporate Paragraphs 1 through 161 of this Complaint as though the same were repeated at length herein.

163. Pursuant to the Declaratory Judgment Act, the Court may declare the rights, status, or other legal relations of any interested person under a statute or contract. *See* 42 Pa. C.S. § 7533.

164. Section 1306-D of Act 77 outlines the manner in which mail-in ballots may be returned. An elector shall, after completing the ballot “send same by mail,

postage prepaid, except where franked, or deliver it in person to said county board of election.” *Id.*

165. Petitioners seek a declaration that a reasonable interpretation of Act 77 permits Respondents to provide secure, easily accessible locations as the Board deems appropriate, including, where appropriate, mobile or temporary collection sites, and/or drop-boxes for the collection of mail-in ballots.

166. Additionally, Petitioners seek relief in the form of an affirmative injunction requiring that county Boards are required to evaluate the particular facts and circumstances in their jurisdictions and develop a reasonable plan reflecting the needs of the citizens of the county to ensure the expedient return of mail-in ballots.

167. A party seeking a permanent injunction must establish three elements: (1) a clear right to relief; (2) that an injunction is necessary to avoid an injury that cannot be compensated by damages; (3) that a greater injury will result from refusing the injunction.” *Mazin v. Bureau of Prof’s Occupational Affairs*, 950 A.2d 382, 389 (Pa. Commw. Ct. 2008).

168. So long as ballots are returned by the elector to the Board in a manner that respects the integrity of the election, creative solutions by county Boards to facilitate ballot return are permitted by the Election Code. Thus, there is a clear right to relief.

169. The right to allow an elector to exercise the franchise without fear of death is not a harm even potentially compensable by damages. Until a vaccine is available, which is not anticipated before November, and widespread precautions are taken, which many are actively discouraging, the impact of COVID-19 on the administration of 2020 General Election is unpredictable. As such, procedures from county Boards will prevent disenfranchisement, which cannot be compensated by damages. *See Kuznik v. Westmoreland Cty. Bd. of Com'rs*, 902 A.2d 476 (Pa. 2006).

170. Despite what the President has asserted on Twitter, enhanced collections will not change the likely date of the announcement of election returns – with the volume of mail-in vote it will take days, and potentially weeks, until final numbers are known. In the Primary, it was 35 days before returns were certified earlier this week. The threat of disenfranchising thousands of voters through no fault of their own and a potentially inaccurate election poses a greater threat than depriving candidates of “big election night answers.”

COUNT II

INJUNCTION THAT MAIL-IN AND ABSENTEE BALLOTS POSTMARKED BY 8 P.M. ON ELECTION DAY AND RECEIVED BY THE BOARDS BY THE UOCAVA DEADLINE MUST BE TABULATED

171. Petitioners refer to and incorporate Paragraphs 1 through 170 of this Complaint as though the same were repeated at length herein.

172. Act 77 requires electors who vote via mail-in or absentee ballot must return their ballots to the county Board and the Board must receive the voted ballot by 8:00 pm on Election Day. *See* Act 77 § 1306-D.

173. Due in part to COVID-19, in the 2020 Primary, numerous Boards saw a crushing late cycle influx in requests for mail-in and absentee ballots overwhelming the resources of even the best funded Voter Services Offices.

174. More qualified electors vote in General elections than in primaries.

175. A larger number of voters combined with a potential “second wave” of COVID-19 will likely lead to an even greater demand for mail-in and absentee ballots, causing similar, if not worse delays in getting voters their ballots.

176. The Free and Fair Election Clause requires that all voters have a bona fide and fair right to participate in each election and that the Boards of Elections may not interfere with that right through a failure to timely take required action. *See* Pa. Const. art. I § 5.

177. The Election Code provides Pennsylvania courts with the power to decide matters pertaining to the election as may be necessary to carry out the intent of the Election Code, including ensuring fair elections including an equal opportunity for all eligible electors to participate in the election process. *See* 25 P.S. § 3046.

178. In order to protect the right of voters under the Free and Fair Elections Clause, Petitioners seek an injunction ordering Respondents to lift the deadline in the Election Code across the state to allow any ballot postmarked by 8:00 p.m. on Election night to be counted if it is received by the Boards by the deadline for ballots to be received by the UOCAVA Deadline, at 5 pm on Tuesday, November 10.

179. Alternatively, this Court could enjoin the Counties to extend a more tailored ballot extension deadline to the date that is 21 days after the particular voter's ballot is mailed by the county, provided that (i) in no extent would the deadline be extended past the UOCAVA deadline, and (ii) no extension would apply if the ballot was mailed within 24 hours of receipt by the Board of Election of a completed application from the qualified elector.

180. A party seeking a permanent injunction must establish three elements: (1) a clear right to relief; (2) that an injunction is necessary to avoid an injury that cannot be compensated by damages; (3) that a greater injury will result from refusing the injunction." *See Mazin*, 950 A.2d at 389.

181. As exhibited by the Courts in Bucks and Delaware Counties in the Primary election, where ballots are not able to be timely mailed, there is a significant barrier to the exercise of the franchise, and given the experience in the Primary, the state of the pandemic in the United States, and the known increase in

activity just before deadlines in Presidential elections, similar delays are inevitable. To avoid disenfranchising innocent electors there is a clear need for and right to relief.

182. An injunction will prevent disenfranchisement, which cannot be compensated by damages. *See Kuznik*, 902 A.2d at 476.

183. The balancing of harm falls on the side of granting of relief, as there is no harm on an extension to the UOCAVA Deadline, as federal law already requires that ballots continue to be allowed to be received by such date.

COUNT III

INJUNCTION REQUIRING BOARDS TO CONTACT ELECTORS WHOSE MAIL-IN OR ABSENTEE BALLOTS CONTAIN FACIAL DEFECTS AND PROVIDE THOSE ELECTORS AN OPPORTUNITY TO CURE THE FACIAL DEFECTS BY THE UOCAVA DEADLINE

184. Petitioners refer to and incorporate Paragraphs 1 through 183 of this Complaint as though the same were repeated at length herein.

185. The Pennsylvania Constitution expressly guarantees to voters the right to participate in a free and fair election. Pa. Const. art. I § 5.

186. The procedure for mail-in ballots often leads to minor errors, which result in many ballots being rejected and disenfranchising voters who believe they have exercised their right to vote.

187. Petitioners are not seeking to impose a pre-election review requirement on Respondents, however, where Respondents undertake such a review, whether before, on, or after Election Day, and have knowledge of an incomplete or incorrectly filled out ballot and has the elector's contact information (i.e., email or telephone number), Respondents should contact the potentially disenfranchised electors and provide each of them the opportunity to cure the facial defect until the UOCAVA Deadline.

188. A party seeking a permanent injunction must establish three elements: (1) a clear right to relief; (2) that an injunction is necessary to avoid an injury that cannot be compensated by damages; (3) that a greater injury will result from refusing the injunction.” *Mazin*, 950 A.2d at 389.

189. There is no government interest in requiring that the formalities of the outside of the Mailing Envelope be completed prior to mailing rather than prior to counting, nor is there a governmental interest in denying a ballot on timeliness grounds so long as ballots continue to arrive under federal law, which is required until the UOCAVA Deadline. Thus, a right to relief is clear.

190. An injunction will prevent disenfranchisement, which cannot be compensated by damages. *See Kuznik*, 902 A.2d at 476.

191. There is no governmental interest in disenfranchising the votes of valid, qualified electors, and for the reasons set forth above there is no temporal benefit from any deadline to cure errors prior to the UOCAVA Deadline.

COUNT IV

DECLARATORY JUDGMENT THAT, UNDER ACT 77, BOARDS MUST CLOTHE AND COUNT NAKED BALLOTS AND NOTHING IN THE UNITED STATES CONSTITUTION, THE PENNSYLVANIA CONSTITUTION OR FEDERAL OR STATE LAW MANDATES OTHERWISE; AND INJUNCTION AGAINST BOARDS FROM EXCLUDING SUCH BALLOTS FROM THE CANVASS.

192. Petitioner's refer to and incorporate Paragraphs 1 through 191 of this Complaint as though the same were repeated at length herein.

193. Pursuant to the Declaratory Judgment Act, the Court may declare the rights, status, or other legal relations of any interested person under a statute or contract. *See* 42 Pa. C.S. § 7533.

194. The Pennsylvania Constitution bestows the right to vote upon qualified citizens and to equal protection in the enjoyment of that right. *See* Pa. Const. art. VII, § 1 & art. I, § 28.

195. The Free and Equal Elections Clause of the Pennsylvania Constitution, provides that “[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right to suffrage.” Pa. Const. art. I, § 5.

196. Voting is a fundamental right also protected by the Fourteenth Amendment to the United States Constitution.

197. Act 77 requires Boards to set aside absentee ballots or mail-in ballots enclosed in official election ballot envelopes that contain “any text, mark or symbol which reveals the identity of the elector.” 25 P.S. § 3146.8(g)(4)(ii).

198. Petitioners request a declaration that there is no statutory authority for Respondents to set aside an absentee or mail-in ballot solely because the voter forgot to properly insert it into the official election ballot envelope.

199. Additionally, Petitioners seek an injunction prohibiting Respondents from invalidating Naked Ballots which are otherwise satisfactory.

200. A party seeking a permanent injunction must establish three elements: (1) a clear right to relief; (2) that an injunction is necessary to avoid an injury that cannot be compensated by damages; (3) that a greater injury will result from refusing the injunction.” *Mazin*, 950 A.2d at 389.

201. There is no statutory authority that permits Defendants to refuse to clothe and count Naked Ballots, the right to relief is clear.

202. An injunction will prevent disenfranchisement, which cannot be compensated by damages. *See Kuznik*, 902 A.2d at 476.

203. If the Commonwealth were to determine to count all Naked Ballots on a uniform basis, pursuant to an order of this Court, there would be no potential

Equal Protection claim arising from the fact that such votes were wrongfully disqualified in a few counties.

COUNT V

DECLARATORY JUDGMENT THAT THE POLL WATCHER RESIDENCY REQUIREMENT DOES NOT VIOLATE THE FIRST OR FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION, EQUAL PROTECTION CLAUSE, OR EQUAL PROTECTION AND FREE AND EQUAL ELECTIONS CLAUSES OF THE PENNSYLVANIA CONSTITUTION.

204. Plaintiffs refer to and incorporate Paragraphs 1 through 203 of this Complaint as though the same were repeated at length herein.

205. Pursuant to the Declaratory Judgment Act, the Court may declare the rights, status, or other legal relations of any interested person under a statute or contract. *See* 42 Pa. C.S. § 7533.

206. The Election Code only permits a poll watcher to serve in an election district in a county in which the watcher is not a qualified registered elector. *See* Election Code 417, 25 Pa. C.S. § 2687(b). The state's interest in the poll watcher residency requirement remains the same today as it was in 2016.

207. Petitioners request a declaration that Election Code's poll watcher residency requirement does not violate the United States Constitution's First and Fourteenth Amendments, its Equal Protection Clause, or the Equal Protection and Free and Equal Elections Clauses of the Pennsylvania Constitution.

WHEREFORE, Petitioners pray this Honorable Court to order make the above declarations and issue the requested injunctive relief.

Respectfully submitted,

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July 10, 2020

PUBLIC ACCESS POLICY CERTIFICATE OF COMPLIANCE

It is hereby certified by the undersigned that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,
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Dated: July 10, 2020

EXHIBIT ‘P’

Respondents Bucks County Board of Elections, Chester County Board of Elections, Montgomery County Board of Elections, and Philadelphia County Board of Elections (together, “Respondents”), submit this Response to the Petition for Declaratory and Injunctive Relief.

1. Admitted in part and denied in part. Respondents admit that Act 77 of 2019 and Act 12 of 2020 made significant changes to Pennsylvania election procedures. The allegations regarding the potential consequences of this legislation set forth conclusions of law to which no response is required, and are therefore denied.

2. Admitted in part and denied in part. Respondents admit that the stakes in the 2020 general election are high, and that one presidential candidate has “invoked the specter of Bush v. Gore and the 2020 Presidential election.” The allegations regarding the potential consequences of alleged legal uncertainties set forth conclusions of law to which no response is required, and are therefore denied. Respondents lack sufficient information to admit or deny the averments as to the motivations behind President Trump’s alleged statements, and therefore deny the remaining averments of this paragraph.

3. Admitted upon information and belief.

4. Admitted.

5. Respondents admit only that many of Act 77's provisions were implemented for the first time in the 2020 primary election, and that each Respondent has taken into account its experiences administering the 2020 primary election in planning for the 2020 general election. The remaining allegations of this paragraph are denied as vague.

6. Respondents admit, upon information and belief, that legislation to amend the Election Code, which includes H.B. 2626, has been introduced in the Pennsylvania General Assembly. To the extent this paragraph sets forth conclusions of law, no response is required, and these averments are therefore denied. Respondents lack sufficient information to admit or deny the remaining averments of this paragraph, and therefore deny them.

7. Respondents admit that as a general matter, many aspects of election administration are not one size fits all, and must be adapted to the different needs of different areas. Respondents further admit that the factors Petitioners list, as well as many other factors, may be relevant to election administrators' decisions. The remaining averments of this paragraph set forth conclusions of law to which no response is required, and these averments are therefore denied.

8. Admitted.

9. Admitted.

10. Admitted.

11. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

12. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

13. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

14. Respondents admit the first sentence of this paragraph. The second sentence sets forth conclusions of law to which no response is required, and is therefore denied.

15. Respondents admit the first sentence of this paragraph. The second and third sentences set forth conclusions of law to which no response is required, and are therefore denied.

16. Respondents admit the first sentence of this paragraph. The second sentence sets forth conclusions of law to which no response is required, and is therefore denied.

17. Respondents admit the first sentence of this paragraph. The second sentence sets forth conclusions of law to which no response is required, and is therefore denied.

18. Respondents admit the first sentence of this paragraph. The second sentence sets forth conclusions of law to which no response is required, and is therefore denied.

19. Respondents admit the first sentence of this paragraph. The second sentence sets forth conclusions of law to which no response is required, and is therefore denied.

20. Respondents admit the first sentence of this paragraph. The second sentence sets forth conclusions of law to which no response is required, and is therefore denied.

21. Respondents admit the first sentence of this paragraph. The second sentence sets forth conclusions of law to which no response is required, and is therefore denied.

22. Respondents admit the first sentence of this paragraph. The second sentence sets forth conclusions of law to which no response is required, and is therefore denied.

23. Respondents admit the first sentence of this paragraph. The second sentence sets forth conclusions of law to which no response is required, and is therefore denied.

24. Respondents admit the first sentence of this paragraph. The second sentence sets forth conclusions of law to which no response is required, and is therefore denied.

25. Respondents admit the first sentence of this paragraph. The second sentence sets forth conclusions of law to which no response is required, and is therefore denied.

26. Respondents admit the first sentence of this paragraph. The second sentence sets forth conclusions of law to which no response is required, and is therefore denied.

27. Respondents admit the first sentence of this paragraph. The second sentence sets forth conclusions of law to which no response is required, and is therefore denied.

28. Respondents admit the first sentence of this paragraph. The second sentence sets forth conclusions of law to which no response is required, and is therefore denied.

29. Respondents admit the first sentence of this paragraph. The second sentence sets forth conclusions of law to which no response is required, and is therefore denied.

30. Respondents admit the first sentence of this paragraph. The second sentence sets forth conclusions of law to which no response is required, and is therefore denied.

31. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

32. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

33. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

34. Respondents admit that COVID-19 has caused significant challenges for election administration. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

35. Respondents admit the first sentence of this paragraph. The second sentence sets forth conclusions of law to which no response is required, and is therefore denied.

36. Admitted.

37. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

38. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

39. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

40. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

41. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

42. Admitted upon information and belief.

43. Admitted.

44. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

45. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

46. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

47. Respondents admit that more than 100,000 COVID-19 infections and thousands of COVID-19 deaths have been reported in Pennsylvania. The specific allegations of this paragraph refer to a document that speaks for itself, and any characterization thereof is denied.

48. Respondents admit that it appears unlikely that the COVID-19 pandemic will subside before the general election. The specific allegations of this paragraph refer to a document that speaks for itself, and any characterization thereof is denied.

49. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

50. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

51. Respondents admit that it appears likely that the medical risks posed by COVID-19 will persist for some time, and that these risks will have an effect on Pennsylvanians' day to day life and on voting procedures in the 2020 general election.

52. Respondents admit, upon information and belief, that social distancing is an important tool for mitigation of COVID-19 risk. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

53. Admitted.

54. Admitted.

55. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

56. This paragraph refers to documents that speak for themselves, and any characterization thereof is denied.

57. This paragraph refers to documents that speak for themselves, and any characterization thereof is denied.

58. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

59. Respondents admit, upon information and belief, that approximately 1.8 million Pennsylvania voters requested mail-in or absentee ballots for the 2020 primary election, and that this number was a large increase over prior elections. Respondents lack sufficient information to admit or deny the remaining averments of this paragraph, and therefore deny them.

60. Respondents admit that, both in and before 2020, they were not able to count some returned ballots for various reasons. Petitioners lack sufficient information to admit or deny the remaining averments of this paragraph, and therefore deny them.

61. Respondents lack sufficient information to admit or deny the averments of this paragraph, and therefore deny them.

62. Respondents lack sufficient information to admit or deny the averments of this paragraph, and therefore deny them.

63. This paragraph refers to documents that speak for themselves, and any characterization thereof is denied.

64. Respondents admit that, as a general matter, this paragraph sets forth the steps involved in voting by mail. Respondents deny, however, that voters who return their ballots by U.S. mail are always required to “stamp” the ballots. In the 2020 primary election, Philadelphia and Montgomery Counties provided prepaid postage for return of absentee and mail-in ballots. All Respondents intend to provide prepaid postage in the 2020 general election.

65. Respondents admit that, in the 2020 primary election and previous elections, they have received ballots without privacy envelopes, with incomplete declarations, with missing signatures, and after the deadlines for the receipt of ballots. Respondents lack sufficient information to admit or deny the averments of this paragraph as they relate to Pennsylvania as a whole, and therefore deny them.

66. Respondents admit that they received a large and unprecedented number of applications for mail-in and absentee ballots for the 2020 primary election. They attribute this surge in applications to a number of factors, including the new availability of vote by mail to any voter, the global pandemic, and the efforts of state and local officials and public interest groups to promote vote by mail. The remaining allegations of this paragraph set forth conclusions of law to which no response is required, and are therefore denied.

67. This paragraph sets forth a conclusion of law to which no response is required, and is therefore denied.

68. Respondents admit that COVID-19 has not magically disappeared, and that it is highly likely to present challenges to the administration of the 2020 general election. The remaining averments of this paragraph set forth conclusions of law to which no response is required, and are therefore denied.

69. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

70. Respondents incorporate their response to paragraph 66.

71. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

72. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

73. Admitted on information and belief.

74. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

75. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

76. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

77. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

78. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

79. Respondents believe, upon information and belief, that many voters submitted last minute vote-by-mail applications for the 2020 primary election for a number of reasons, including the progress of the pandemic, emerging plans for polling places, and a push by some public interest groups to encourage vote by mail in the last weeks before the application deadline. With respect to the averments regarding what is “normal” in certain elections and regarding individual voters’ decisions, Respondents lack sufficient information to admit or deny these averments, and therefore deny them.

80. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

81. Respondents state that each of them provided for in person return of ballots to a limited number of locations other than Board of Elections offices. Respondents lack sufficient information to admit or deny the remaining averments of this paragraph, and therefore deny them.

82. Respondents admit only that in light of all the complexities involved in running an election, it is important for local election authorities to have the flexibility to implement appropriate solutions to whatever challenges present themselves. In the 2020 primary election, in Respondents' region of the Commonwealth, these challenges included the large number of mail-in and absentee ballots, COVID-19, civil unrest, transportation issues, and the need to evacuate certain election offices and close others to the public. Respondents further admit that during the run-up to the 2020 primary election, each of them considered their county's specific challenges and took a variety of steps to respond to these challenges.

83. Respondents incorporate their Response to Paragraph 82.

84. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

85. The Montgomery County Board of Elections admits that it established and administered ten ballot drop-off sites at different locations in Montgomery County. It further states that it also established and administered seven additional ballot drop-off locations at seven long-term care facilities that typically served as polling places but could not be used for that purpose because of the pandemic. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

86. Denied as stated. The Philadelphia County Board of Elections implemented three programs to give voters an opportunity to return their ballots in person. The Philadelphia Board “partnered” with the Committee of Seventy on the second program listed below, but not on any other aspect of mail-in or absentee ballot collection. First, the Philadelphia Board installed drop boxes outside the Board of Elections offices at City Hall and 520 North Columbus Boulevard, which were closed to the public because of COVID-19 restrictions. Second, in the days before the primary election, the Philadelphia Board operated two-hour mobile ballot collection points in a number of locations around the County. The Committee of Seventy participated in publicizing these locations and providing props and equipment, but was not involved in collecting or transporting ballots. Commissioner Al Schmidt (R) and members of his staff were the only personnel receiving ballots from voters. Third, on Election Day, certain City employees were designated as temporary Board of Elections staff by the Philadelphia Board to collect ballots at eleven locations across the City. With respect to restrictions on return of ballots by third parties, this paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

87. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

88. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

89. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

90. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

91. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

92. Admitted in part and denied in part. The Montgomery County and Philadelphia County Boards of Elections admit that they chose easily accessible locations for in-person return of ballots. They deny, if alleged, that the CISA Guidance caused them to do so. Respondents state that, as is often the case with general guidelines issued nationwide, some of the recommendations in the CISA Guidance appear to be appropriate for Respondents' particular circumstances, and others do not. For example, in Respondents' opinion, under current circumstances, it would be impractical and unnecessary to implement the Guidance's "best practice" of one drop box for every 15,000-20,000 registered voters in their densely populated counties.

93. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

94. Respondents admit, if alleged, that decisions as to what opportunities to give voters to return mail-in and absentee ballots in person depend heavily on local circumstances, and that election officials must have flexibility to respond to conditions as they occur. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

95. Respondents incorporate their response to paragraph 94.

96. Respondents admit that under Pennsylvania's county-based election administration structure, there is variety in county administration of elections. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

97. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

98. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

99. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

100. Respondents admit that their election preparations are underway and that any uncertainty as to what election procedures are legally permissible will impede those preparations. They, like Petitioners, seek prompt resolution of this Petition. Respondents lack sufficient information to admit or deny the remaining averments of this paragraph as they relate to other counties, and therefore deny them.

101. Respondents admit that certain voters in their counties, who applied at the end of the application period, likely did not receive their ballots until shortly before election day, or on election day itself. Respondents lack sufficient information to admit or deny the averments of this paragraph as they relate to other counties or to the total number of voters involved, and therefore deny them.

102. Respondents lack sufficient information to admit or deny the averments of this paragraph, and therefore deny them.

103. The Bucks County Board of Elections admits that Bucks County solicitors filed the petition referred to in this paragraph. Respondents lack sufficient information to admit or deny the allegations of this paragraph regarding Delaware County. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

104. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

105. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

106. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied. Respondents lack sufficient information to admit or deny the remaining averments of this paragraph, and therefore deny them.

107. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

108. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

109. Respondents admit that in their counties, a number of ballots were rejected in the 2020 primary election because they had procedural defects. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied. Respondents lack sufficient information to admit or deny the averments of this paragraph with respect to other counties, and therefore deny them.

110. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

111. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

112. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

113. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

114. Respondents admit that in their counties, a number of ballots were rejected in the 2020 primary election because they had procedural defects. Respondents lack sufficient information to admit or deny the remaining averments of this paragraph, and therefore deny them.

115. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied. Respondents admit that voters should not be disenfranchised.

116. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

117. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

118. The Petition is a document that speaks for itself, and any characterization thereof is denied.

119. To the extent that this paragraph purports to characterize the Petition, it refers to a document that speaks for itself, and any characterization thereof is denied. Furthermore, this paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

120. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

121. Respondents incorporate their response to paragraph 120. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

122. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

123. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

124. Respondents lack sufficient information to admit or deny the averments of this paragraph, and therefore deny them.

125. Respondents lack sufficient information to admit or deny the averments of this paragraph, and therefore deny them.

126. Respondents lack sufficient information to admit or deny the averments of this paragraph, and therefore deny them. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

127. Respondents admit that each of them followed the Marks Guidance and counted so-called “naked ballots.” Respondents lack sufficient information to admit or deny the averments of this paragraph as they related to other counties, and therefore deny them. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

128. Respondents lack sufficient information to admit or deny the averments of this paragraph, and therefore deny them.

129. Respondents lack sufficient information to admit or deny the averments of this paragraph, and therefore deny them.

130. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

131. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

132. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

133. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

134. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

135. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

136. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

137. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

138. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

139. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

140. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

141. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

142. This paragraph refers to litigation filings that speak for themselves, and any characterization thereof is denied.

143. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

144. The Petition speaks for itself, and any characterization thereof is denied.

145. The Petition speaks for itself, and any characterization thereof is denied. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

146. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

147. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

148. This paragraph sets forth conclusions of law to which no response **is** required, and is therefore denied.

149. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

150. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

151. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

152. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

153. Respondents lack sufficient information to admit or deny the averments of this paragraph, and therefore deny them.

154. Respondents lack sufficient information to admit or deny the averments of this paragraph, and therefore deny them.

155. This paragraph refers to litigation filings that speak for themselves, and any characterization thereof is denied.

156. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

157. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

158. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

159. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

160. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

161. Admitted.

162. Respondents refer to and incorporate their responses to Paragraph 1 through 161 of the Petition.

163. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

164. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

165. This paragraph refers to a document that speaks for itself, and **any** characterization thereof is denied.

166. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied

167. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

168. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

169. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

170. Respondents lack sufficient information to admit or deny the averments of this paragraph, and therefore deny them.

171. Respondents refer to and incorporate their responses to Paragraph 1 through 170 of the Petition.

172. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

173. Respondents admit that the volume of mail-in and absentee ballot applications in the 2020 primary put strains on their operations. Respondents deny that their operations were “overwhelmed.” Respondents lack sufficient information to admit or deny the remaining averments of this paragraph, and therefore deny them. as to other counties.

174. Admitted, as a general proposition, upon information and belief.

175. Respondents anticipate a larger volume of mail-in and absentee ballot applications for the 2020 general election than they received in the 2020 primary election, but also anticipate that a greater percentage of these applications will arrive early in the application process, and that the lessons of the primary election will improve Respondents’ vote by mail operations in the general election. Therefore, Petitioners cannot predict whether delays in sending out ballots will be “similar” or “worse” than in the primary election. Respondents lack sufficient information to admit or deny the averments of this paragraph with respect to COVID-19 progression or other counties

176. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

177. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

178. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

179. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

180. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

181. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

182. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

183. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

184. Respondents refer to and incorporate their responses to Paragraph 1 through 170 of the Petition.

185. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

186. Respondents state that they work to ensure that every vote by a qualified elector counts, but as a general matter, voter error occurs, whether in returning mail-in ballots or in voting at polling places, and must sometimes result in votes not being counted.

187. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

188. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

189. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

190. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

191. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

192. Respondents refer to and incorporate their responses to Paragraph 1 through 191 of the Petition.

193. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

194. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

195. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

196. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

197. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

198. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

199. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

200. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

201. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

202. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

203. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

204. Respondents refer to and incorporate their responses to Paragraphs 1 through 203 of the Petition.

205. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

206. This paragraph sets forth conclusions of law to which no response is required, and is therefore denied.

207. This paragraph refers to a document that speaks for itself, and any characterization thereof is denied.

NEW MATTER

208. Respondents refer to and incorporate their responses to the preceding paragraphs.

209. The Pennsylvania Election Code authorizes Respondents, and other county boards of elections, to make such rules and regulations for the conducts of elections as they deem necessary, as long as those rules and regulations are not inconsistent with the law.

210. Nothing in the Pennsylvania Election Code prohibits Respondents from providing secure and convenient locations, other than board of elections offices, at which voters may return their ballots in person.

211. The provisions of 25 P.S. § 2687 are not unconstitutional on their face or as applied.

212. The poll watcher residency requirements of 25 P.S. § 2687 further important governmental interests, including Respondents' interest in conducting orderly issuance of poll watcher certificates and ensuring that poll watchers comply with applicable regulations.

213. There are important governmental interests in ensuring that poll watchers are only permitted to exercise their official authority within polling places, where election officials are present, and not at public locations where voters deposit sealed mail-in and absentee ballots, such as drop boxes and U.S.P.S. mailboxes. For example, giving party and candidate representatives any official license to “watch” these locations is highly likely to lead to inappropriate interactions with voters, voter intimidation (whether intentional or not), altercations, and congestion.

214. Respondents believe that a reasonable extension of the deadline for receipt of voted ballots, so long as they are mailed before 8:00 p.m. on election day, would result in the counting of many more validly cast ballots.

215. With respect to the proposed remedy set forth in paragraph 108 of the Petition, which would require a separate calculation to determine whether each ballot received after 8:00 p.m. on election night may be counted, Respondents believe that this proposed remedy would be impractical to administer, would burden Respondents’ operations, and could result in a significant delay of election results.

216. Neither the Election Code nor other applicable law requires Respondents to set aside a ballot solely because the voter neglected to place the ballot inside an official secrecy envelope.

WHEREFORE, Respondents respectfully asks this Honorable Court to expedite its consideration of this matter and promptly decide all issues before it, so Respondents can continue their preparations for the 2020 general election.

Respectfully submitted,

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

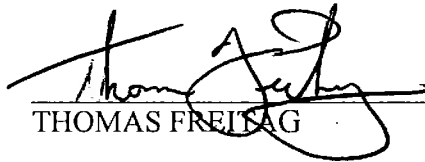
Dated: August 13, 2020

By: /s/ Mark A. Aronchick
Mark A. Aronchick (ID No. 20261)
Michele D. Hangle (ID No. 82779)
Robert A. Wiygul (I.D. No. 310760)
John B. Hill (I.D. No. 328340)
One Logan Square, 27th Floor
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Fax: (215) 568-0300

Counsel for Respondents

VERIFICATION

I, THOMAS FREITAG, state that I am the Director of Elections for Respondent the Bucks Board of Elections and am authorized to make this verification on its behalf. I verify that the averments of fact made in the Response of the Boards of Elections of Bucks County to the Petition for Declaratory and Injunctive Relief are true and correct to the best of my knowledge, information and belief. I understand that the statements are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.


THOMAS FREITAG

Dated: August 13, 2020

EXHIBIT “Q”

Update on the June 2 Primary Election in Delaware County

Home / Departments / Public Relations Releases / Update on the June 2 Primary Election in Delaware County

Delaware County is preparing for the June 2 primary election, including putting safety precautions into place for in-person voting and sending absentee and mail-in ballots to residents.

On March 27, Governor Wolf signed Senate Bill 422, which rescheduled Pennsylvania's primary election from April 28 to June 2 due to the COVID-19 emergency. Voters have the option to vote by absentee or mail-in ballot or to vote in person.

As of May 20, the County has approved approximately 50,000 absentee or mail-in ballots and approximately 30,000 of the approved ballots have been mailed out. There are approximately 25,000 applications pending. Applications approved by May 14 are being mailed out today.

If your application was not processed by May 14, it may still be in the process of being approved. The Election Bureau is continuing to work through the backlog of paper and online applications to be processed. Additional staff has been added to process those applications.

If you receive your ballot too close to the June 2 election to be confident that it can be returned by mail and received by the County by June 2 you will have several options to have your vote counted:

- Return your completed ballot in the sealed return envelope in person to the Delaware County Government Center (201 W. Front St., Media, PA) Monday- Friday from 8:30a.m to 4:30p.m., Saturday from 9:00a.m. to 2:00p.m. and on Election Day from 8:30a.m. to 8:00p.m.
- Return your completed ballot in the sealed return envelope to any polling location on Election Day where there will be drop boxes while the polling locations are open.
- The County is planning to have a mobile dropbox visit retirement communities on Election Day to collect ballots that were received too late to be returned by mail for those residents who cannot leave the facility. Details on that will be provided once they are confirmed.
- Anyone who requested an absentee or mail-in ballot and did not receive it in time or who does not want to return it in one of the ways noted above, can go to their polling location and ask for a provisional ballot. The ballot will be put in an envelope and then counted when the County Election Bureau confirms that the requested mail-in ballot was not returned. Since all ballots are being counted centrally, provisional ballots will likely be included in the initial results.

Information and instructions to request a mail-in or absentee ballot can be found here:

www.delcopa.gov/electionsbureau/absenteevoting.html

In order to request either ballot type, you must be registered to vote. The deadline to register to vote in the primary election was May 18, 2020. Residents can still register to vote in the general election in November.

Mail-in ballot and absentee applications will be accepted through May 26, 2020. If a voter has already applied for an absentee or mail-in ballot, they do not need to reapply. You can check the status of your ballot here: www.votespa.com

Residents are asked to complete and return their ballot as soon as possible.

Residents still have the option to vote in person. Due to the COVID-19 pandemic, polling locations have been consolidated. The list of consolidated polling locations can be found online and registered voters whose polling location has changed are being notified by mail. Information on polling locations can be found here: www.delcopa.gov/departments/votingmachines.html.

If you are not sure of your voting precinct, you can check your new voting location by using your address at:

<https://www.pavoterservices.pa.gov/Pages/PollingPlaceInfo.aspx>

PUBLIC RELATIONS NAVIGATION

- > [Press Releases](#)
- > [Property Tax Reassessment Project](#)
- > [Use of County Facility Form](#)

Adrienne Marofsky, Director

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Media, PA 19063
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delcopr@co.delaware.pa.us

pens, and face shields for poll workers. The local election boards will implement procedures to maintain social distancing while signing-in and while voting. Poll workers will be wearing masks to protect voters and other poll workers. All voters who choose to vote in person are urged to wear face masks inside the polling locations in order to protect the poll workers and fellow voters. This will help reduce anxiety for everyone who is participating in our democratic process.

Poll workers are being contacted this week both by phone and by mail with details on on-line training. People who have volunteered to help fill vacancies will also be contacted.

Delaware County Council and the Delaware County Election Board will provide an online video presentation providing an update on the planning for the primary election in Delaware County that will be held on May 22 at 10:00a.m. The presentation will include an update for the general public and also for poll workers.

The presentation will be streamed online on the County's website here: <https://www.delcopa.gov/electionsbureau/index.html>

The presentation will also be streamed live on Delaware County Council's Facebook page: <https://www.facebook.com/DelawareCountyCouncil/>

Contact Us

📍 201 West Front Street,
Media, PA 19063

☎ 610-891-4000

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EXHIBIT “S”

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IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY,
PENNSYLVANIA
CIVIL DIVISION

IN RE: EXTENSION OF TIME FOR : No. 2020-003416
ABSENTEE AND MAIL-IN BALLOTS :
TO BE RECEIVED BY MAIL AND :
COUNTED IN THE 2020 PRIMARY :
ELECTION :

ORDER

AND NOW, this 2nd day of June,

2020, upon consideration of the Emergency Petition of the Delaware County Board of Elections for an Extension of Time for the Voted Absentee and Mail-in Ballots of the Qualified Registered Electors of Delaware County to be Counted for the 2020 Primary Election, and the response received thereto from the Delaware County Republican Party, this Court finds as follows:

With respect to the Court's power, neither the Pennsylvania Constitution nor the Election Code Act of June 3, 1937, P.L. 1333, as amended, 25 P.S. § 2601, 405,1 expressly provides any procedure to follow when a natural

disaster creates an emergency situation that interferes with an election. However, Section 1206 of the Code, 25 P.S. § 3046 states that the Court of Common Pleas of each County or a Judge thereof, shall on Election Day decide matters pertaining to the election as may be necessary to carry out the intent of this Act. The purpose of the election laws of this Commonwealth is to ensure fair elections, including an equal opportunity for all eligible Electors to participate in the election process.

Thus, the language of 25 P.S. § 3046 implicitly grants this Court authority to provide relief when there is a natural disaster or emergency such as that which presently confronts the Voters of Delaware County. To permit an election to be conducted whereby members of the Electorate could be deprived of their opportunity to participate because of circumstances beyond their control would be inconsistent with the Election Laws of this Commonwealth. Therefore, I am **GRANTING** the Emergency Petition of the Delaware County Board of Elections as follows:

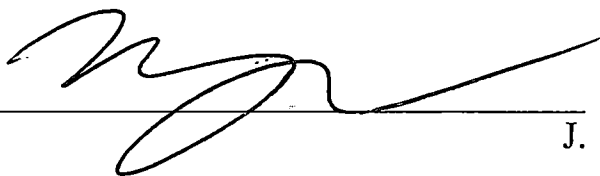
The Delaware County Board of Elections shall accept for tabulation all absentee and mail-in ballots postmarked on or before June 2, 2020 and delivered by the United States Post Office to the Delaware County Board of Elections any time before June 9, 2020, at 5:00 p.m.

It is further **ORDERED** and **DECREED** that for the 400-500 voters who still did not have mail-in or absentee ballots mailed to them as of the morning

of June 2, 2020 (the list of which is incorporated within the Petition), the Delaware County Board of Elections shall accept for tabulation their absentee or mail-in ballots received by June 12, 2020, at 5:00 p.m. In the event that any such voter has voted a provisional ballot, the mail-in ballot shall be disregarded.

Absentee and mail-in ballots that are received by the Board of Elections either by June 9, 2020, or June 12, 2020, shall be segregated from all other absentee and mail-in ballots. The Board of Elections shall clearly indicate and mark on all ballots received subsequent to June 2, 2020, and according to the previously aforementioned deadlines of June 9, 2020 and June 12, 2020, in a manner which clearly represents the receipt date of those ballots and that those ballots are the result of absentee and/or mail-in status.

BY THE COURT:



A handwritten signature in black ink, appearing to be 'M. J.', is written over a horizontal line. The signature is stylized and cursive.

EXHIBIT “R”

**IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA
CIVIL DIVISION**

IN RE: EXTENSION OF TIME FOR : No. 2020-02322-37
ABSENTEE AND MAIL-IN BALLOTS :
TO BE RECEIVED BY MAIL AND :
COUNTED IN THE 2020 PRIMARY :
ELECTION :

ORDER

AND NOW, this 2nd day of JUNE, 2020, upon consideration of the Emergency Petition of the Bucks County Board of Elections for an Extension of Time for the Voted Absentee and Mail-in Ballots of the Qualified Registered Electors of Bucks County to be Counted for the 2020 Primary Election, the positions of those candidates appearing in support and opposition thereto, and the evidence developed at an evidentiary hearing on this matter, this Court finds as follows:

1. Section 1206 of the Election Code Act of June 3, 1937, P.L. 1333, as amended, 25 P.S. § 3046 expressly states that the Court of Common Pleas of each County or Judge thereof, shall on Election Day decide matters pertaining to the election as may be necessary to carry out the intent of this Act. The purpose of the election laws of this Commonwealth is to ensure fair elections including an equal opportunity for all eligible electors to participate in the election process. Thus, the language of 25 P.S. § 3046 implicitly grants this Court authority to provide relief when there is a natural disaster or emergency such as that which presently confronts the voters of Bucks County. To permit an election to be conducted whereby faultless members of the electorate could be deprived of their opportunity to participate because of circumstances beyond their control would be inconsistent with the election laws of this Commonwealth, including those providing such members with the option to cast their votes by mail. Therefore, in order to enforce these laws and protect the rights of Bucks County voters, it is hereby ORDERED and DECREED, that the Emergency Petition of the Bucks County Board of Elections is GRANTED and the Bucks County Board of Elections shall accept all absentee and mail-in ballots

postmarked on or before June 1, 2020 and delivered by the United States Post Office to the Bucks County Board of Elections any time before June 9, 2020, at 5:00 p.m.

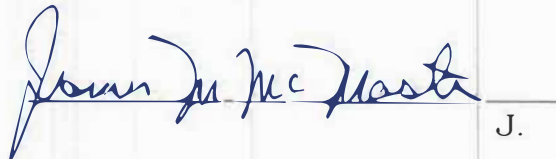
2. It is further ORDERED as follows:

a. Excepting overseas and military ballots which are not impacted by this Order, all civilian absentee and mail-in ballots postmarked on or before June 1, 2020 and delivered by the United States Post Office to the Bucks County Board of Elections between June 2, 2020 at 8:00 p.m. and June 9, 2020 at 5:00 p.m. (the “emergency extension ballots”) shall be segregated from all other absentee and mail-in ballots received on or before 8:00 PM on June 2, 2020.

b. The Bucks County Board of Elections shall create and maintain a record that documents the receipt date of the emergency extension ballots.

c. The Bucks County Board of Elections shall accept the emergency extension ballots for tabulation during the official tabulations, except in instances in which a voter has properly cast a provisional ballot, in which case the emergency extension ballot shall not be tabulated.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "James M. McMaster", is written over a horizontal line.

J.

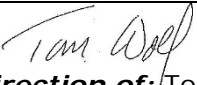
JAMES M. McMASTER, JUDGE

**N.B. It is your responsibility
to notify all interested parties
of the above action.**

EXHIBIT “T”

Executive Order

Commonwealth of Pennsylvania Governor's Office

Subject: Extension of Deadline for Receipt of Absentee and Mail-In Ballots in Certain Counties	Number: 2020-02
 By Direction of: Tom Wolf, Governor	Date: June 1, 2020

WHEREAS, the General Primary Election is scheduled by law to occur throughout the Commonwealth on June 2, 2020;

WHEREAS, to date, due in large part to COVID-19, an unprecedented number of Pennsylvanians have taken advantage of absentee voting and the Commonwealth's newly implemented mail-in balloting procedure;

WHEREAS, civil unrest over the weekend in the counties of Allegheny, Dauphin, Delaware, Erie, Montgomery and Philadelphia led to curfews, travel restrictions, and the evacuation of election offices in at least two counties, which affected the counties' efforts and impeded many voters' attempts to return their ballots;

WHEREAS, these civil disturbances, curfews, and travel restrictions have been continuing and expanding in these counties, thereby impeding county election activities and opportunities for voters to submit their absentee and mail-in ballots, and are expected to continue into tonight and tomorrow;

WHEREAS, on Saturday, May 30, 2020, and as amended on Monday, June 1, 2020, I, Tom Wolf, Governor of the Commonwealth of Pennsylvania, pursuant to the provisions of *Section 7301(c) of the Emergency Management Services Code, (35 Pa. C.S. §§ 7101 et seq., as amended)* proclaimed the existence of a disaster emergency in the counties of Allegheny, Dauphin, Delaware, Erie, Montgomery and Philadelphia due to the civil disturbance affecting these counties;

WHEREAS, the civil disturbances in these affected counties have created one or more barriers to voters returning their ballots, including travel and public transportation disruptions, road closures and blockages, lack of access to ballot drop boxes, alteration of mobile ballot collection schedules, evacuations of buildings, and curfews;

WHEREAS, *Sections 1306(c), 1308(g)(1)(ii) and 1306-D(c) of the Pennsylvania Election Code (25 P.S. §§ 3146.6(c), 3146.8(g)(1)(ii) and 3150.16(c))* provide that no civilian absentee or mail-in ballot shall be counted if it is received by the county board of elections after eight o'clock P.M., prevailing time, on the day of the primary election;

WHEREAS, in these affected counties, it appears very likely that a large number of voters who applied for absentee or mail-in ballots by the May 26 deadline will not be able to return their ballots by the statutory deadline; and

WHEREAS, these recent civil disturbances make it necessary and proper to extend the statutory deadline in those affected counties for receipt of voted civilian absentee and mail-in ballots to ensure that voters in those counties are not disenfranchised through no fault of their own.

NOW, THEREFORE, I, Tom Wolf, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania, the *Emergency Management Services Code*, and other laws of the Commonwealth, do hereby issue this Executive Order as follows:

- 1. Deadline for Receipt of Absentee and Mail-In Ballots.** Notwithstanding the provisions of *Sections 1306(c), 1308(g)(1)(ii), and 1306-D(c) of the Pennsylvania Election Code (25 P.S. §§ 3146.6(c), 3146.8(g)(1)(ii), and 3150.16(c))* or any other provision in the laws of the Commonwealth to the contrary, for the counties of Allegheny, Dauphin, Delaware, Erie, Montgomery and Philadelphia, an otherwise valid civilian absentee or mail-in ballot shall be counted if it bears a postmark, cancellation mark, or other official indicia of the date of mailing ("postmark") of no later than Tuesday, June 2, 2020, and is received by postal mail in the office of the county board of elections no later than five o'clock P.M., prevailing time, on Tuesday, June 9, 2020.

Further provided, however, that no civilian absentee or mail-in ballot shall be counted if it is received by any means other than postal mail after eight o'clock P.M., prevailing time, on Tuesday, June 2, 2020.

- 2. Segregation of Ballots.** Absentee and mail-in ballots that are received by a county board of elections later than eight o'clock P.M., prevailing time, on Tuesday, June 2, 2020, under the authority of Paragraph 1 of this Executive Order shall be segregated from all other absentee and mail-in ballots. The segregated ballots shall be canvassed in accordance with the *Pennsylvania Election Code*.
- 3. Notice.** The Office of the Secretary of the Commonwealth shall post this Executive Order in the Department of State's Bureau of Elections and Notaries, and in all other appropriate places, and shall communicate its contents to the county boards of elections, and shall take all necessary action to provide notice of this Executive Order to the general public.
- 4. Effective Date.** This Executive Order shall take effect immediately and remain in effect only until 5:00 P.M., prevailing time, Thursday, July 2, 2020.

EXHIBIT “U”



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Gray area of mail-in voting law up to Pennsylvania court

August 25, 2020 Times Leader News 11

By Marc Levy Associated Press



In this May 28 file photo, mail-in primary election ballots are processed at the Chester County Voter Services office in West Chester

AP file photo



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HARRISBURG — With a federal lawsuit from President Donald Trump’s campaign on hold until October, it could be up to Pennsylvania’s Supreme Court to settle crucial questions of election law in the presidential battleground, including whether to count mail-in ballots returned without secrecy envelopes.

The state Supreme Court could decide any day now whether to take over and fast-track a state Democratic Party lawsuit on a matter that could affect more than 100,000 ballots in the Nov. 3 presidential election.

The Democratic Party’s lawsuit, among other things, asks the courts to order counties to count mail-in ballots that arrive without secrecy envelopes.

It is a gray area of the law, and Senate Minority Leader Jay Costa, D-Allegheny, estimated the number of votes returned without secrecy envelopes is from 3% to 5% of all mailed-in ballots.

“That’s a significant number, so that issue needs to be resolved,” Costa said.

Trump’s campaign in June sued in federal court to, in part, secure an order preventing those ballots from being counted. But a federal judge on Sunday put that case on hold, saying its claims must wait, at least until Oct. 5, to see if state courts settle them.

Pennsylvania authorized a broad vote-by-mail law last year at a prescient time, just before the pandemic fueled interest in voting by mail in the state’s June 2 primary election.

As a result, more than half of the 2.8 million ballots cast were mail-in or absentee ballots. That record-smashing number of votes-by-mail is expected to grow in the presidential election, when Pennsylvania could help decide the outcome.

Even with Trump baselessly excoriating mail ballots as fraudulent, both the state’s Republican and Democratic parties are encouraging members to vote by mail, and Trump’s campaign is leaving door-hangers encouraging voters to “sign up for your ballot today!”

If at least 3 million people in Pennsylvania vote by mail in

During the coronavirus pandemic, local governments have pivoted to using more digital services in order to manage constituents' needs / community requests, like offering online updates about garbage collection and providing access to virtual council meetings. How would you rate your recent



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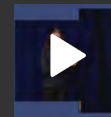
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the Nov. 3 election, as expected, just 1% of that is 30,000 ballots, while 5% is 150,000 ballots. If 4 million people vote by mail, 5% is 200,000 ballots.

That is compared to the approximately 44,000 ballots that Trump won by in Pennsylvania in 2016 when he became the first Republican since 1988 to capture the state's electoral votes.

Tim Benyo, the chief clerk of Lehigh County's board of elections, said he doesn't remember the issue coming up as such a point of contention — until now.

A secrecy envelope is essentially an unmarked envelope that holds the ballot inside the return envelope and theoretically shields election officials and people authorized to watch vote counting from knowing a voter's choices.

Pennsylvania is one of 16 states that require secrecy envelopes be provided to voters, according to the National Conference of State Legislatures. But one of Gov. Tom Wolf's top elections officials messaged counties in May to tell them that there is nothing in the law that requires them or authorizes them to discard a ballot that is returned without a secrecy envelope.

A majority of counties counted them in the June 2 primary, the Democratic Party's lawsuit said.

Mercer County, which did not count them, set aside almost 400 ballots without secrecy envelopes out of about 8,300 cast. Another, Lawrence County, set aside about 430 ballots out of about 8,000 cast. That's about 5% in both counties.

Lawrence County's director of elections, Ed Allison, said he welcomes clarity on it.

"If we get a ruling from the court or legislation telling us what we can and can't do, I'm tickled to death," Allison said. "As an election direction, any ambiguity that can be settled by a court of law or legislation, I'm all for it. I don't necessarily have to agree with it, but it fixes it."

Last week, Wolf's Department of State issued updated guidance to counties that said "naked ballots" should be counted under the law.

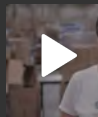
In the meantime, Wolf and state lawmakers are discussing making a range of changes to election law to help fix

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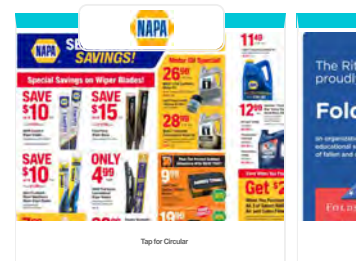
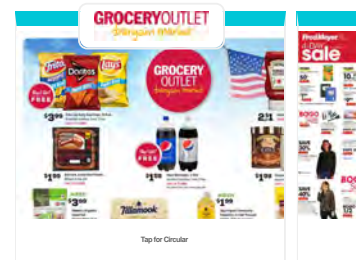
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glitches in the primary election's massive vote by mail before November's election.

Rep. Garth Everett, whose committee handles election issues, said he doesn't have a problem with the state's guidance on handling ballots without secrecy envelopes. While lawmakers could still weigh in, it is not a sticking point, said Everett, R-Lycoming.

"It may be a moot point now," Everett said.



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ADAMS	-	1,161	2,582	2,134	2,800	1,347	466	1	-	-	-	-	1	-	10,492
ALLEGHENY	14	4,257	45,430	37,011	98,080	4,579	17,773	-	251	6,288	-	-	202	123	214,008
ARMSTRONG	2	569	1,800	1,176	648	620	163	-	-	-	-	-	-	8	4,986
BEAVER	4	2,733	5,734	4,163	3,737	1,501	730	-	-	-	-	-	-	-	18,602
BEDFORD	-	-	1,744	870	598	485	145	-	-	-	-	-	-	2	3,844
BERKS	23	4,411	10,670	9,495	9,725	3,457	61	1,197	28	-	-	-	2	283	39,352
BLAIR	11	10	3,113	3,113	3,159	1,899	1,380	682	-	-	-	-	-	4	10,258
BRADFORD	3	5	1,398	652	381	871	135	1	1	-	-	-	-	-	3,447
BUCKS	25	42	272	21,360	40,819	5,420	9,184	1,760	8	1	44	-	-	23	78,958
BUTLER	5	4	2,827	6,140	4,653	4,777	1,353	1	-	-	-	-	2	18	19,780
CAMBRIA	8	2,072	3,291	2,190	1,986	1,829	480	-	20	-	-	-	-	1	11,877
CAMERON	-	-	2	208	213	79	36	-	-	-	-	-	-	-	538
CARBON	-	-	1,962	1,702	961	771	194	5	8	-	-	-	-	-	5,603
CENTRE	-	181	6,036	5,543	3,267	2,914	1,173	12	1	2	-	-	6	-	19,135
CHESTER	30	3,497	21,947	15,318	23,601	4,123	2,837	2,964	9	2	-	-	6	138	74,472
CLARION	-	-	1,163	484	878	333	120	7	-	-	-	-	-	3	2,988
CLEARFIELD	-	104	2,144	1,534	808	649	159	-	-	1	-	-	-	1	5,400
CLINTON	-	35	937	495	920	298	156	6	37	14	-	-	-	-	2,898
COLUMBIA	-	174	1,619	1,250	1,048	733	140	1	-	-	-	-	1	-	4,966
CRAWFORD	-	494	1,333	1,042	1,161	1,262	354	12	-	-	-	-	-	6	5,664
CUMBERLAND	-	41	10,583	7,767	5,699	6,093	1,555	9	22	2	-	-	7	2	31,780
DAUPHIN	15	1,475	11,419	7,494	5,224	6,127	1,272	55	2	4	-	-	1	1,060	34,148
DELAWARE	-	55	1,509	1,660	12,485	19,408	2,523	2,374	128	6,627	3,895	-	3,280	5,479	59,423
ELK	2	502	951	519	341	329	132	-	-	1	-	-	-	-	2,777
ERIE	11	2,351	4,663	5,068	8,542	3,407	154	2,438	2,319	216	-	-	134	337	29,640
FAYETTE	-	-	3,395	2,436	1,733	889	1,079	392	10	2	-	-	-	12	9,948
FOREST	-	-	103	179	207	95	20	-	-	-	-	-	-	-	604
FRANKLIN	10	668	3,263	2,553	3,408	2,058	441	116	-	-	-	-	-	-	12,517
FULTON	-	-	211	221	146	97	65	-	-	-	-	-	-	1	741
GREENE	-	544	1,137	601	562	255	139	2	1	-	-	-	-	-	3,241
HUNTINGDON	-	141	576	458	988	799	180	-	2	-	-	-	-	-	3,144
INDIANA	-	820	2,881	1,560	911	808	324	-	-	-	-	-	-	-	7,304
JEFFERSON	-	-	15	885	1,910	555	185	-	45	-	-	-	-	1	3,596
JUNIATA	1	1	277	567	411	283	98	-	1	-	-	-	-	-	1,639
LACKAWANNA	7	3,360	10,149	7,028	5,908	1,993	1,004	2	-	-	-	-	3	-	29,454
LANCASTER	35	5,934	14,008	11,388	10,853	6,653	3,318	2	11	-	-	-	-	1	52,033
LAWRENCE	4	210	2,717	1,810	2,717	1,984	1,011	282	-	2	-	-	-	1	8,021
LEBANON	-	314	3,942	2,025	2,893	2,779	723	383	-	-	-	-	-	-	13,059
LEHIGH	-	701	9,624	11,809	8,410	7,055	1,004	1,215	34	45	-	-	3	8	39,908
LUZERNE	-	-	6,341	8,457	12,035	8,279	4,534	411	-	-	-	-	18	20	40,095
LYCOMING	4	11	2,664	1,294	1,650	1,396	514	-	-	-	-	-	-	2	7,535
McKEAN	-	272	888	515	486	340	75	-	-	-	-	-	-	-	2,576
MERCER	7	185	2,692	1,768	1,641	1,324	707	-	-	2	-	-	1	4	8,331
MIFFLIN	-	-	1,070	897	507	400	136	-	2	-	-	-	-	-	3,012
MONROE	3	25	5,357	3,610	3,937	865	1,018	-	1	1	-	-	2	-	14,819
MONTGOMERY	-	-	1,582	45,104	30,543	12,824	15,804	9,058	3,544	2,477	-	-	5,805	285	127,026
MONTOUR	-	69	504	505	379	154	96	-	-	-	-	-	2	-	1,709
NORTHAMPTON	6	3,648	8,705	8,139	9,160	5,509	1,623	219	4	5	-	-	1	10	37,029
NORTHUMBERLAND	-	336	310	674	1,370	1,855	161	-	-	-	-	-	-	-	4,706
PERRY	4	16	1,389	891	1,044	331	133	-	-	-	-	-	-	-	3,808
PHILADELPHIA	2	38	20,820	31,031	70,935	18,272	3,150	7,322	7,610	279	27	84	734	14,636	174,940
PIKE	-	704	1,723	1,210	1,198	503	258	2	-	-	-	-	4	-	5,602
POTTER	-	-	415	309	227	95	59	-	-	-	-	-	-	2	1,107
SCHUYLKILL	-	-	2,741	3,569	2,078	2,048	606	1	1	-	-	-	-	-	11,044
SNYDER	-	431	823	593	403	286	158	-	-	-	-	-	-	1	2,695
SOMERSET	-	11	271	1,738	2,477	1,032	270	-	-	-	-	-	2	19	5,820
SULLIVAN	-	47	248	133	111	60	26	-	-	-	-	-	-	-	625
SUSQUEHANNA	-	881	694	903	854	411	282	-	-	2	-	-	-	-	4,027
TIOGA	-	-	1,426	825	566	274	166	-	21	-	-	-	-	2	3,280
UNION	6	517	1,225	790	733	254	160	-	-	1	-	-	-	-	3,686
VENANGO	-	-	93	622	2,990	698	282	2	-	-	-	-	-	-	4,687
WARREN	-	-	1,331	682	432	444	207	-	-	-	-	-	-	-	3,096
WASHINGTON	5	367	7,389	4,034	4,323	4,541	304	1,213	47	1	-	-	2	-	22,226
WAYNE	5	801	1,480	1,194	727	578	270	-	-	1	-	-	-	-	5,056
WESTMORELAND	25	6,093	13,555	9,102	7,412	2,930	1,293	-	3	-	-	-	2	16	40,431
WYOMING	1	421	1,003	513	462	294	121	-	-	-	-	-	-	-	2,815
YORK	-	4	8,246	8,976	7,223	9,750	5,766	-	3	-	-	-	18	70	40,056
Total	278	51,743	292,412	320,032	436,701	173,869	89,018	31,183	14,177	15,973	3,966	84	10,240	22,578	1,462,254

**EXHIBIT
R-02**

EXHIBIT “W”

Experts project autumn surge in coronavirus cases, with a peak after Election Day

By **Joel Achenbach** and **Rachel Weiner**

September 5, 2020 at 9:00 a.m. EDT

PLEASE NOTE

The Washington Post is providing this important information about the coronavirus for free. For more, sign up for our daily [Coronavirus Updates newsletter](#) where all stories are free to read. To support this work, please [subscribe to the Post](#).

Infectious-disease experts are warning of a potential cold-weather surge of [coronavirus cases](#) — a long-feared “second wave” of infections and deaths, possibly at a catastrophic scale. It could begin well before Election Day, Nov. 3, although researchers assume the crest would come weeks later, closer to when fall gives way to winter.

An [autumn surge in covid-19](#), the disease caused by the novel coronavirus, would not be an October surprise: It has been hypothesized since early in the pandemic because of the patterns of other respiratory viruses.

“My feeling is that there is a wave coming, and it’s not so much whether it’s coming but how big is it going to be,” said Eili Klein, an epidemiologist at Johns Hopkins University School of Medicine.

The pandemic is already a [dominant campaign issue](#), and it’s not clear that even a spike in deaths would apply much torque to the presidential race. Outbreaks in some states could also bring pressure further down the ballot and conceivably affect turnout if there is so much community spread that voters who planned to cast ballots in person feel unsafe going to the polls.

The warnings from researchers come at a moment when, despite a rise in cases in the [Upper Midwest](#), national numbers have been [trending downward](#) at a slow pace for several weeks following the [early-summer surges](#) in the Sun Belt.

Respiratory viruses typically begin spreading more easily a couple of weeks after schools resume classes. Although the pandemic has driven many school districts to remote learning, there is a broad push across the country to return to something like normal life.

The Labor Day holiday weekend is a traditional time of travel and group activities, and, like Independence Day and

The coronavirus has a relatively long incubation period, and the disease progression in patients with severe illnesses also tends to be drawn out over several weeks. As a result, any spike in deaths will lag weeks behind a spike in infections. And the infection surges have consistently followed the loosening of shutdown orders and other restrictions.

A model produced by the University of Washington's Institute for Health Metrics and Evaluation and published Friday forecasts a "most likely" daily death toll of 1,907 on Election Day, roughly double the current toll. Under the IHME forecast, the numbers would continue to rise until early December, peaking at more than 2,800 deaths daily.

By year's end, 410,000 people in the United States will have died under the model's most-likely scenario. That's more than double current fatalities. The model also produced best-case and worst-case scenarios — ranging from 288,000 to 620,000 deaths by Jan. 1 — depending on the degree to which people wear masks, adhere to social distancing and take other precautions.

"I firmly believe we will see distinct second waves, including in places that are done with their first waves. New York City, I'm looking at you," said Andrew Noymer, an epidemiologist at the University of California at Irvine who studied the October surge in cases when the mild pandemic influenza virus circulated in 2009.

"I expect fall waves starting in mid-October and getting worse as fall heads into winter, and reaching a crescendo certainly after the election," he said. "Some places will peak around Thanksgiving, some places will peak around Christmas, some places not until January and February."

If that's correct, the worst impacts will occur after the campaigning is over and the ballots have been cast. The exact timing is unlikely to be a political factor, contended David Rubin, the director of PolicyLab at Children's Hospital of Philadelphia, who said that most people have already made judgments about the candidates' handling of the pandemic.

"I wouldn't foresee anything happening between now and the election that would change the dynamics of the election," Rubin said.

President Trump's approval rating has been remarkably consistent through the pandemic, noted Kyle Kondik of the University of Virginia Center for Politics. Though Trump lost some ground in May and June, he is no less popular than he was last fall, when the economy was strong and people could travel freely.

"There has been a little bit of erosion, but not a ton," Kondik said. Of course, in a close election, even a small shift "could be a difference between victory and defeat."

Rubin raised another possible consequence of increased viral transmission in advance of the election: Candidates could become sick.

"The candidates are campaigning. They're mixing with people," Rubin said. "I would not be surprised to see a couple people get sick, and whether that goes all the way to the presidential candidates could be a game changer. This virus has got pretty close to the president a couple of times."

The timing of the pandemic remains unpredictable in part because it is not yet a seasonal virus. Seasonal viruses, such as those that cause influenza, and the coronaviruses that cause common colds, are remarkably faithful to the calendar, with most typically flaring in the fall a couple of weeks after children go back to school and start bringing their newly

with most typically having in the fall a couple of weeks after children go back to school and start bringing their newly acquired infections into their homes, said Ellen Foxman, an immunologist at the Yale School of Medicine and expert on respiratory viruses.

But most people still have no immunity to the novel coronavirus. It spreads opportunistically in all kinds of weather. Despite millions of infections and more than 184,000 deaths, most people in the United States remain susceptible.

“A pandemic virus is different, because most of us do not have prior immunity to this virus,” Foxman said. “That means it’s a lot more contagious than a typical virus that we get every year.”

There is a small body of evidence that a person who gets the virus acquires a limited amount of immunity. And there also are indications that some people can become infected a second time.

It’s possible that some people suffer minimal or no effects from the coronavirus because of exposure to other viruses, which prime the body’s immune system against pathogens generally. This is seen as one plausible explanation for the unusual percentage of people — the Centers for Disease Control and Prevention estimates 40 percent — who become infected with the novel coronavirus but are asymptomatic. But there still is no approved vaccine. Most experts do not expect one to be distributed, at least in any significant numbers, before the end of the year at the earliest, and broad distribution could take many months.

Meanwhile, the country’s health departments are reporting roughly 40,000 positive test results every day — more than double the number in May when many states began reopening after the first wave of infections. Epidemiologist Jeffrey Shaman of Columbia University said a good target for the entire country would be to drive transmission down to 500 infections a day. At that level, contact tracing and testing could keep outbreaks under control.

“The question is, is it going to spread out of control broadly?” Shaman said. “Are we going to get us down to 10,000 cases, then under 1,000, and then to my magical number of 500? The thing about this disease, it really spins out of control.”

Klein, the Hopkins epidemiologist, warns the fall wave is likely to be more intense than the peak in the spring. Maryland had 2,000 covid-19 patients in hospitals at its peak in April, he said, and his midrange scenario envisions twice that many hospitalized patients at the next peak.

At Hopkins, doctors are discussing what they call “Surge 2.0.” They are envisioning outbreaks that could potentially overwhelm hospitals with covid-19 patients. Even less-catastrophic surges could hamper other kinds of non-covid-19 medical care, said Lisa Lockerd Maragakis, an associate professor of medicine and infectious diseases.

“Even though we have had so many cases and we have had so many tragic deaths, we have the vast majority of people who are not immune to this virus,” Maragakis said. “Without a therapeutic or a vaccine, we are still in a position where the transmission of the virus depends heavily on our behaviors every day.”

That is a common refrain among those working around-the-clock to understand this pandemic.

“We are collectively in control of how many cases or deaths there are,” Marc Lipsitch, an epidemiologist at Harvard, said in an email. “Forecasts more than a month from now make sense only if they are conditional on how we behave.”

“People’s behavior is a dramatic determinant here,” said Christopher Murray, the director of IHME. “Look at what happened in Florida [after the spike in cases]. People got scared. They started wearing masks, they stopped going to bars.”

bars.

But the converse is also true: If people stop being vigilant, the virus bounces back.

EXHIBIT “X”

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IN THE SUPREME COURT OF PENNSYLVANIA

MICHAEL CROSSEY, et al.,

Petitioners,

v.

KATHY BOOCKVAR, IN HER CAPACITY AS
SECRETARY OF THE COMMONWEALTH OF
PENNSYLVANIA, et al.,

Respondents.

No. 108 MM 2020

**PRAECIPE TO WITHDRAW CERTAIN OF
RESPONDENTS' PRELIMINARY OBJECTIONS BASED ON
UNITED STATES POSTAL SERVICE'S ANNOUNCEMENT OF
STATEWIDE MAIL DELAYS AFFECTING GENERAL ELECTION**

“The right [to vote] is pervasive of other basic civil and political rights, and is the bed-rock of our free political system.” *Bergdoll v. Kane*, 731 A.2d 1261, 1269 (Pa. 1999) (internal quotation marks omitted). This right is enshrined in the Pennsylvania Constitution, which requires that all “elections conducted in this

Commonwealth must be ‘free and equal.’” *League of Women Voters v. Commonwealth*, 178 A.3d 737, 804 (Pa. 2018) (quoting Pa. Const. art. I, § 5). This clause, which “has no federal counterpart,” mandates that “all aspects of the electoral process, to the greatest degree possible, be kept open and unrestricted to the voters of our Commonwealth, and, also, conducted in a manner which guarantees, to the greatest degree possible, a voter’s right to equal participation in the electoral process for the selection of his or her representatives in government.” *Id.* at 802, 804. Respondents, the Secretary of the Commonwealth and the Director of the Bureau of Election Services and Notaries, are public officials charged with safeguarding Pennsylvanians’ ability to exercise the franchise and ensuring that Pennsylvania’s elections remain free and fair.

Recent developments show that judicial relief is needed to protect Pennsylvanians’ fundamental right to vote. Specifically, the Secretary has received a letter from the United States Postal Service’s General Counsel, Thomas J. Marshall, stating that, based on the Postal Service’s expected delivery times for mail service at the time of the general election, “there is a significant risk” that certain voters who timely request an absentee or mail-in ballot “will not have sufficient time to complete and mail the completed ballot[s] back to election officials in time for it to arrive by [Pennsylvania’s] return deadline.” (Letter from Thomas J. Marshall to Secretary Kathy Boockvar at 2 (July 29, 2020), attached as

Exhibit 1 hereto.) The Postal Service’s announcement represents a significant change to the outlook for voting by mail in the general election. In the lead-up to the primary election, Respondents were aware of isolated issues in certain counties, which raised the prospect of delays in the processing of ballot applications and the delivery of ballots for certain voters (and were addressed by, among other things, county-specific orders issued by certain Courts of Common Pleas¹). But prior to Mr. Marshall’s letter, the Postal Service had not indicated the likelihood of widespread, continuing, multiple-day mail-delivery delays presenting an overwhelming, statewide risk of disenfranchisement for significant numbers of voters utilizing mail-in ballots.² Respondents file this Praecipe to inform the Court of these developments and, based on these new circumstances, to withdraw their

¹ See *In re: Extension of Time for Absentee and Mail-in Ballots to Be Received by Mail and Counted in the 2020 Primary Election*, No. 2020-02322 (C.P. Bucks Cnty.); *In re: Extension of Time for Absentee and Mail-in Ballots to Be Received by Mail and Counted in the 2020 Primary Election*, No. 2020-06565 (C.P. Montgomery Cnty.); *In re: Extension of Time for Absentee and Mail-in Ballots to Be Received by Mail and Counted in the 2020 Primary Election*, No. 2020-003416 (C.P. Del. Cnty.).

² For example, as previously explained to this Court, Department of State officials were in close contact with representatives of the Postal Service in the months leading up to the June 2020 primary election, and were not given any reasons to expect that delivery of first-class mail take longer than the typical one to three business days. Declaration of Jonathan Marks in Support of Respondents’ Response in Opposition to Application for Special Relief in the Nature of a Preliminary Injunction ¶¶ 42-46 (May 11, 2020), *Disability Rights Pennsylvania v. Boockvar*, No. 83 MM 2020 (Pa. Sup. Ct.).

first and second Preliminary Objections to the Amended Petition in this case.³

I. PETITIONERS' CLAIMS AND RESPONDENTS' PRELIMINARY OBJECTIONS

The COVID-19 pandemic has posed significant challenges for the administration of elections. It has also created obstacles for voters, many of whom fear that travelling to polling places on election day will put their health—and, potentially, the health of their loved ones—at risk. Fortunately, in 2019, with broad and bipartisan support, the Pennsylvania legislature enacted Act 77, which, among other important updates to Pennsylvania's Election Code, for the first time offered the option of mail-in voting to Pennsylvania electors who did not qualify for absentee voting. This historic change was a significant development that undeniably makes it easier for all Pennsylvanians to exercise their right to vote. Indeed, Act 77 has been essential to protecting Pennsylvanians' access to the

³ For the avoidance of doubt, Respondents clarify that their third and fourth Preliminary Objections, asserting failure to join necessary parties and sovereign immunity, do not apply to the Amended Petition's request for an extension of the received-by deadline resulting from alleged delays in mail-delivery times. Accordingly, as explained further below, Respondents no longer object to the Court's granting that specific relief. Respondents adhere to their third and fourth Preliminary Objections, however, with respect to the Amended Complaint's request for an order requiring elections officials to permit third-party delivery of absentee and mail-in ballots from non-disabled voters. The remaining item of relief sought in the Amended Complaint—provision of prepaid postage on ballot-return envelopes—is now moot. *See* Pennsylvania Pressroom, *Pennsylvania Will Provide Postage-Paid Return Envelopes with Mail and Absentee Ballots* (July 31, 2020), <https://www.media.pa.gov/Pages/State-Details.aspx?newsid=391>.

franchise during the ongoing public health crisis, mitigating congestion at polling places and providing a crucial alternative to in-person voting.

In their Amended Petition in the present action, Petitioners allege that the expected high volume of mail-in voting in the upcoming general election, combined with delays Petitioners predict in the processing and delivery of applications and ballots, threatens to disenfranchise certain Pennsylvania voters. Specifically, Petitioners warn that, due to these alleged delays, voters who timely request an absentee or mail-in ballot in advance of the application deadline—one week prior to election day, *see* 25 Pa. Stat. §§ 3146.2a(a), 3150.12a(a)—may be unable to complete and mail it back so that it is received by county boards of elections by the current deadline of 8:00 p.m. on election day. (Am. Pet. ¶ 55.) Accordingly, Petitioners request that, among other things, the Court extend the received-by deadline so that ballots mailed by election day will be counted even if it takes a few additional days for them to be received by county boards of elections.

In their Preliminary Objections filed on July 27, 2020, Respondents argued, among other things, that Petitioners' claims of constitutional injury were hypothetical (Objection No. 1) and unripe (Objection No. 2). In particular, Respondents maintained that while future developments could potentially warrant judicial intervention, Petitioners' predictions were "simply too speculative, at th[at] point, to state a claim" for statewide relief. (Preliminary Objections at 6.) For

essentially the same reasons, this Court dismissed a lawsuit seeking similar relief in May 2020. *See Disability Rights Pennsylvania et al. v. Boockvar et al.*, No. 83 MM 2020, Order dated May 15, 2020 (sustaining Respondents’ preliminary objection); *see also id.*, Concurring Statement of Justice Wecht at 1–2 (May 15, 2020) (“While circumstances may change, the possibility that votes may be suppressed due to late ballot delivery, as presently alleged, is too remote at this time to constitute a cognizable injury.”).

II. NEW DEVELOPMENTS ESTABLISH A CONCRETE THREAT OF DISENFRANCHISEMENT WARRANTING JUDICIAL RELIEF

Respondents’ position was correct at the time their Preliminary Objections were filed. But circumstances have changed. Recent reports have revealed that the United States Postal Service, already strained by the COVID-19 pandemic, has implemented certain changes to its internal protocols and procedures that have resulted in widespread, multiple-day delays in mail delivery.⁴ The recent letter by the Postal Service’s General Counsel makes the threat to Pennsylvanians’ right to vote unmistakably clear and concrete. The letter states bluntly that “the Postal Service’s [current] delivery standards” are “incompatible with” Pennsylvania’s “deadlines for requesting and casting mail-in ballots.” (Exhibit 1, at 1, 2.) Given

⁴ *See, e.g.*, Jacob Bogage, *Postal Service overhauls leadership as Democrats press for investigation of mail delays*, Wash. Post, Aug. 7, 2020, <https://www.washingtonpost.com/business/2020/08/07/postal-service-investigation-dejoy/>.

the current mail-delivery times, the Postal Service recommends that, to be received by county boards by the election-day deadline, voters should mail their completed ballots “no later than Tuesday, October 27.” (*Id.* at 2.) As noted above, however, the Election Code permits voters until October 27 to *request* a ballot. *See* 25 Pa. Stat. §§ 3146.2a(a), 3150.12a(a). The result, in the words of the Postal Service’s letter, is that “there is a significant risk that ... ballots may be requested in a manner that is consistent with [Pennsylvania’s] election rules and returned promptly, and yet not be returned in time to be counted.” (Exhibit 1, at 2.) To state it simply: voters who apply for mail-in ballots in the last week of the application period and return their completed ballot by mail will, through no fault of their own, likely be disenfranchised.

Given these developments, it is no longer the case that the injury alleged by Petitioners is speculative or that their claims for relief are unripe. Accordingly, Respondents hereby withdraw the first two of the Preliminary Objections filed on July 27, 2020. Further, Respondents agree that, to remedy the burden on Pennsylvanians’ right to vote, this Court should order that ballots mailed by voters on or before 8:00 p.m. on election day will be counted if they are otherwise valid and received by the county boards of election on or before the third day following the election. Ballots received within this period that lack a postmark or other proof of mailing, or for which the postmark or other proof of mailing is illegible, should

enjoy a presumption that they were mailed by 8:00 p.m. on election day. Ballots bearing postmarks or other proof of mailing dated after election day would not be counted. Such relief would be narrowly tailored to address the injury at issue—namely, the threat that mail-delivery delays during an ongoing pandemic will disenfranchise Pennsylvania voters—and firmly anchored in judicial precedent. *See, e.g., In re General Election-1985*, 531 A.2d 836, 838–39 (Pa. Commw. Ct. 1987) (affirming two-week suspension of election in precinct affected by severe flooding and reasoning that adhering to the prescribed schedule under the prevailing circumstances, “where members of the electorate could be deprived of their opportunity to participate because of circumstances beyond their control, such as a natural disaster, would be inconsistent with the purpose of the election laws”); *supra* note 1 (citing recent decisions by Courts of Common Pleas); *accord Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1259 (N.D. Fla. 2016) (issuing injunction extending voter registration deadline due to effect of a hurricane); *Georgia Coalition for the Peoples’ Agenda, Inc. v. Deal*, 214 F. Supp. 3d 1344, 1345 (S.D. Ga. 2016) (same). Here, unlike the issues that arose in some counties with respect to the June 2020 primary election, the injury arises from statewide delays in mail delivery; accordingly, statewide relief by this Court is appropriate.

In addition, a short extension of the deadline for receipt of completed absentee and mail-in ballots would be feasible to administer and not disrupt other

aspects of election administration. Respondents do not expect that such an extension would create any significant delay in the reporting of Pennsylvania's election results.

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: August 13, 2020

By: /s/ Michele D. Hangle

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EXHIBIT 1



July 29, 2020

Honorable Kathy Boockvar
Secretary of the Commonwealth of Pennsylvania
302 North Capitol Building
Harrisburg, PA 17120-0001

Dear Secretary Boockvar:

Re: Deadlines for Mailing Ballots

With the 2020 General Election rapidly approaching, this letter follows up on my letter dated May 29, 2020, which I sent to election officials throughout the country. That letter highlighted some key aspects of the Postal Service's delivery processes. The purpose of this letter is to focus specifically on the deadlines for requesting and casting ballots by mail. In particular, we wanted to note that, under our reading of Pennsylvania's election laws, certain deadlines for requesting and casting mail-in ballots are incongruous with the Postal Service's delivery standards. This mismatch creates a risk that ballots requested near the deadline under state law will not be returned by mail in time to be counted under your laws as we understand them.

As I stated in my May 29 letter, the two main classes of mail that are used for ballots are First-Class Mail and USPS Marketing Mail, the latter of which includes the Nonprofit postage rate. Voters must use First-Class Mail (or an expedited level of service) to mail their ballots and ballot requests, while state or local election officials may generally use either First-Class Mail or Marketing Mail to mail blank ballots to voters. While the specific transit times for either class of mail cannot be guaranteed, and depend on factors such as a given mailpiece's place of origin and destination, most domestic First-Class Mail is delivered 2-5 days after it is received by the Postal Service, and most domestic Marketing Mail is delivered 3-10 days after it is received.

To account for these delivery standards and to allow for contingencies (e.g., weather issues or unforeseen events), the Postal Service strongly recommends adhering to the following timeframe when using the mail to transmit ballots to domestic voters:

- **Ballot requests:** Where voters will both receive and send a ballot by mail, voters should submit their ballot request early enough so that it is received by their election officials at least 15 days before Election Day at a minimum, and preferably long before that time.
- **Mailing blank ballots to voters:** In responding to a ballot request, election officials should consider that the ballot needs to be in the hands of the voter so that he or she has adequate time to complete it and put it back in the mail stream so that it can be processed and delivered by the applicable deadline. Accordingly, the Postal Service recommends that election officials use First-Class Mail to transmit blank ballots and allow 1 week for delivery to voters. Using Marketing Mail will result in slower delivery times and will increase the risk that voters will not receive their ballots in time to return them by mail.

- **Mailing completed ballots to election officials:** To allow enough time for ballots to be returned to election officials, domestic voters should generally mail their completed ballots at least one week before the state's due date. So, if state law requires ballots to be returned by Election Day, voters should mail their ballots no later than Tuesday, October 27.

Under our reading of your state's election laws, as in effect on July 27, 2020, certain state-law requirements and deadlines appear to be incompatible with the Postal Service's delivery standards and the recommended timeframe noted above. As a result, to the extent that the mail is used to transmit ballots to and from voters, there is a significant risk that, at least in certain circumstances, ballots may be requested in a manner that is consistent with your election rules and returned promptly, and yet not be returned in time to be counted.

Specifically, it appears that a completed ballot must be received by Election Day to be counted. If that understanding is correct, we accordingly recommend, as noted above, that voters who choose to mail their ballots do so no later than Tuesday, October 27. However, it further appears that state law generally permits voters to request a ballot as late as 7 days before the November general election. If a voter submits a request at or near that deadline, and the ballot is transmitted to the voter by mail, there is a significant risk that the voter will not have sufficient time to complete and mail the completed ballot back to election officials in time for it to arrive by the state's return deadline. That risk is exacerbated by the fact that the law does not appear to require election officials to transmit a ballot until 48 hours after receiving a ballot application.

To be clear, the Postal Service is not purporting to definitively interpret the requirements of your state's election laws, and also is not recommending that such laws be changed to accommodate the Postal Service's delivery standards. By the same token, however, the Postal Service cannot adjust its delivery standards to accommodate the requirements of state election law. For this reason, the Postal Service asks that election officials keep the Postal Service's delivery standards and recommendations in mind when making decisions as to the appropriate means used to send a piece of Election Mail to voters, and when informing voters how to successfully participate in an election where they choose to use the mail. It is particularly important that voters be made aware of the transit times for mail (including mail-in ballots) so that they can make informed decisions about whether and when to (1) request a mail-in ballot, and (2) mail a completed ballot back to election officials.

We remain committed to sustaining the mail as a secure, efficient, and effective means to allow citizens to participate in the electoral process when election officials determine to utilize the mail as a part of their election system. Ensuring that you have an understanding of our operational capabilities and recommended timelines, and can educate voters accordingly, is important to achieving a successful election season. Please reach out to your assigned election mail coordinator to discuss the logistics of your mailings and the services that are available as well as any questions you may have. A list of election mail coordinators may be found on our website at: <https://about.usps.com/election-mail/politicalection-mail-coordinators.pdf>.

We hope the information contained in this letter is helpful, and please let me know if you have any questions or concerns.

Sincerely,



Thomas J. Marshall

CERTIFICATION REGARDING PUBLIC ACCESS POLICY

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Dated: August 13, 2020

/s/ Michele D. Hangle
Michele D. Hangle

EXHIBIT “Y”

SERVICE

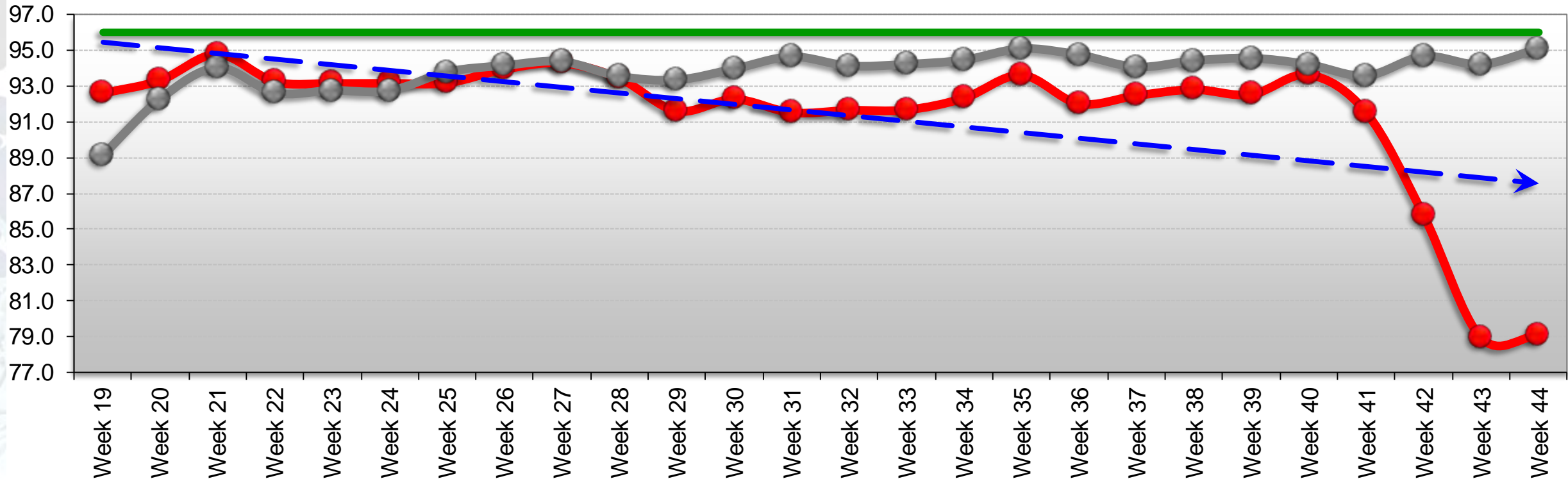
Dave Webster

A/Manager Operations Support - Eastern Area



EASTERN

First-Class Letters / Flats Composite



District	WK 43	RK	QTD	RK	YTD	RK
Appalachian	84.96	41	89.11	15	92.98	5
Central Pennsylvania	72.86	63	79.47	65	90.91	42
Kentuckiana	85.13	38	87.12	32	92.00	17
Northern Ohio	68.31	65	81.17	62	91.25	34
Ohio Valley	71.08	64	80.77	63	90.35	49
Philadelphia Metro	85.68	33	86.68	36	91.23	36

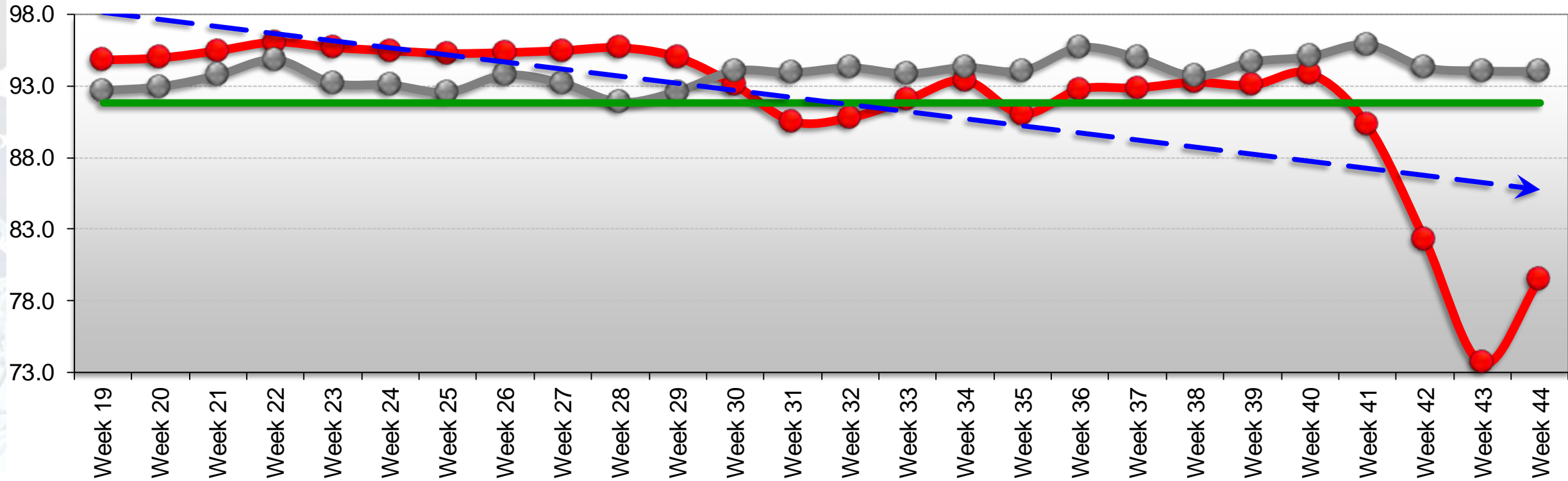
District	WK 43	RK	QTD	RK	YTD	RK
South Jersey	86.99	25	88.01	28	91.82	20
Tennessee	82.48	52	85.83	43	91.47	27
Western New York	86.00	31	88.59	22	93.15	4
Western Pennsylvania	90.01	5	90.50	6	93.60	1
Eastern	79.07	7	84.60	6	91.59	2
National Total	84.23		86.26		90.76	

Eastern Area First Class Composite

● Current ● SPLY — Target

AREAS INSPIRING MAIL





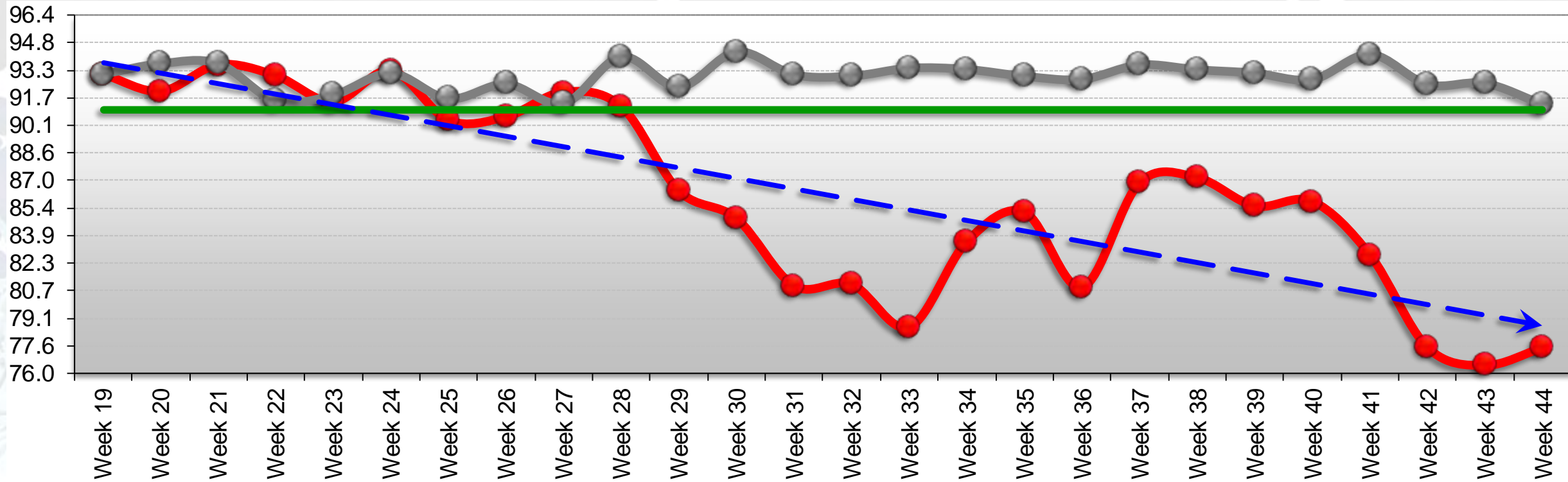
District	WK 43	RK	QTD	RK	YTD	RK
Appalachian	92.62	5	92.34	3	94.79	3
Central Pennsylvania	72.90	60	74.74	63	90.13	41
Kentuckiana	84.66	42	85.26	39	93.62	9
Northern Ohio	63.68	63	69.63	65	92.18	21
Ohio Valley	69.38	62	75.67	61	90.99	36
Philadelphia Metro	84.91	39	82.33	49	90.48	38

District	WK 43	RK	QTD	RK	YTD	RK
South Jersey	88.90	22	91.33	7	93.37	13
Tennessee	82.06	48	82.96	45	92.35	19
Western New York	83.19	46	77.26	58	92.81	16
Western Pennsylvania	94.26	1	94.78	1	96.75	1
Eastern	79.51	6	81.73	6	92.47	2
National Total	83.10		84.30		90.45	

Eastern Area Marketing Mail Composite

● Current ● SPLY — Target





District	WK 43	RK	QTD	RK	YTD	RK
Appalachian	71.94	39	85.19	17	92.28	7
Central Pennsylvania	77.58	29	78.36	37	87.83	31
Kentuckiana	84.65	10	81.64	28	90.37	17
Northern Ohio	70.70	43	77.49	41	89.44	21
Ohio Valley	79.33	23	82.24	26	88.02	30
Philadelphia Metro	73.71	36	69.63	52	84.08	41

District	WK 43	RK	QTD	RK	YTD	RK
South Jersey	79.82	21	79.42	34	89.64	19
Tennessee	83.73	13	76.82	42	84.22	40
Western New York	44.28	65	54.03	66	82.51	43
Western Pennsylvania	88.25	5	91.44	4	94.14	1
Eastern	77.47	2	77.98	3	87.84	2
National Total	72.46		76.91		84.81	

Eastern Area Periodicals (Destination Entry)

● Current ● SPLY — Target



EXHIBIT “Z”



July 29, 2020

Honorable Kathy Boockvar
Secretary of the Commonwealth of Pennsylvania
302 North Capitol Building
Harrisburg, PA 17120-0001

Dear Secretary Boockvar:

Re: Deadlines for Mailing Ballots

With the 2020 General Election rapidly approaching, this letter follows up on my letter dated May 29, 2020, which I sent to election officials throughout the country. That letter highlighted some key aspects of the Postal Service's delivery processes. The purpose of this letter is to focus specifically on the deadlines for requesting and casting ballots by mail. In particular, we wanted to note that, under our reading of Pennsylvania's election laws, certain deadlines for requesting and casting mail-in ballots are incongruous with the Postal Service's delivery standards. This mismatch creates a risk that ballots requested near the deadline under state law will not be returned by mail in time to be counted under your laws as we understand them.

As I stated in my May 29 letter, the two main classes of mail that are used for ballots are First-Class Mail and USPS Marketing Mail, the latter of which includes the Nonprofit postage rate. Voters must use First-Class Mail (or an expedited level of service) to mail their ballots and ballot requests, while state or local election officials may generally use either First-Class Mail or Marketing Mail to mail blank ballots to voters. While the specific transit times for either class of mail cannot be guaranteed, and depend on factors such as a given mailpiece's place of origin and destination, most domestic First-Class Mail is delivered 2-5 days after it is received by the Postal Service, and most domestic Marketing Mail is delivered 3-10 days after it is received.

To account for these delivery standards and to allow for contingencies (e.g., weather issues or unforeseen events), the Postal Service strongly recommends adhering to the following timeframe when using the mail to transmit ballots to domestic voters:

- **Ballot requests:** Where voters will both receive and send a ballot by mail, voters should submit their ballot request early enough so that it is received by their election officials at least 15 days before Election Day at a minimum, and preferably long before that time.
- **Mailing blank ballots to voters:** In responding to a ballot request, election officials should consider that the ballot needs to be in the hands of the voter so that he or she has adequate time to complete it and put it back in the mail stream so that it can be processed and delivered by the applicable deadline. Accordingly, the Postal Service recommends that election officials use First-Class Mail to transmit blank ballots and allow 1 week for delivery to voters. Using Marketing Mail will result in slower delivery times and will increase the risk that voters will not receive their ballots in time to return them by mail.

- **Mailing completed ballots to election officials:** To allow enough time for ballots to be returned to election officials, domestic voters should generally mail their completed ballots at least one week before the state's due date. So, if state law requires ballots to be returned by Election Day, voters should mail their ballots no later than Tuesday, October 27.

Under our reading of your state's election laws, as in effect on July 27, 2020, certain state-law requirements and deadlines appear to be incompatible with the Postal Service's delivery standards and the recommended timeframe noted above. As a result, to the extent that the mail is used to transmit ballots to and from voters, there is a significant risk that, at least in certain circumstances, ballots may be requested in a manner that is consistent with your election rules and returned promptly, and yet not be returned in time to be counted.


Specifically, it appears that a completed ballot must be received by Election Day to be counted. If that understanding is correct, we accordingly recommend, as noted above, that voters who choose to mail their ballots do so no later than Tuesday, October 27. However, it further appears that state law generally permits voters to request a ballot as late as 7 days before the November general election. If a voter submits a request at or near that deadline, and the ballot is transmitted to the voter by mail, there is a significant risk that the voter will not have sufficient time to complete and mail the completed ballot back to election officials in time for it to arrive by the state's return deadline. That risk is exacerbated by the fact that the law does not appear to require election officials to transmit a ballot until 48 hours after receiving a ballot application.

To be clear, the Postal Service is not purporting to definitively interpret the requirements of your state's election laws, and also is not recommending that such laws be changed to accommodate the Postal Service's delivery standards. By the same token, however, the Postal Service cannot adjust its delivery standards to accommodate the requirements of state election law. For this reason, the Postal Service asks that election officials keep the Postal Service's delivery standards and recommendations in mind when making decisions as to the appropriate means used to send a piece of Election Mail to voters, and when informing voters how to successfully participate in an election where they choose to use the mail. It is particularly important that voters be made aware of the transit times for mail (including mail-in ballots) so that they can make informed decisions about whether and when to (1) request a mail-in ballot, and (2) mail a completed ballot back to election officials.

We remain committed to sustaining the mail as a secure, efficient, and effective means to allow citizens to participate in the electoral process when election officials determine to utilize the mail as a part of their election system. Ensuring that you have an understanding of our operational capabilities and recommended timelines, and can educate voters accordingly, is important to achieving a successful election season. Please reach out to your assigned election mail coordinator to discuss the logistics of your mailings and the services that are available as well as any questions you may have. A list of election mail coordinators may be found on our website at: <https://about.usps.com/election-mail/politicalection-mail-coordinators.pdf>.

We hope the information contained in this letter is helpful, and please let me know if you have any questions or concerns.

Sincerely,



Thomas J. Marshall

EXHIBIT “AA”

THOMAS J. MARSHALL
GENERAL COUNSEL
AND EXECUTIVE VICE PRESIDENT



AUG 13 2020

July 30, 2020

Honorable Elaine Marshall
North Carolina Secretary of State
P.O. Box 29622
Raleigh, NC 27626-0622

Dear Secretary Marshall:

Re: Deadlines for Mailing Ballots

With the 2020 General Election rapidly approaching, this letter follows up on my letter dated May 29, 2020, which I sent to election officials throughout the country. That letter highlighted some key aspects of the Postal Service's delivery processes. The purpose of this letter is to focus specifically on the deadlines for requesting and casting ballots by mail. In particular, we wanted to note that, under our reading of North Carolina's election laws, certain deadlines for requesting and casting mail-in ballots are incongruous with the Postal Service's delivery standards. This mismatch creates a risk that ballots requested near the deadline under state law will not be returned by mail in time to be counted under your laws as we understand them.

As I stated in my May 29 letter, the two main classes of mail that are used for ballots are First-Class Mail and USPS Marketing Mail, the latter of which includes the Nonprofit postage rate. Voters must use First-Class Mail (or an expedited level of service) to mail their ballots and ballot requests, while state or local election officials may generally use either First-Class Mail or Marketing Mail to mail blank ballots to voters. While the specific transit times for either class of mail cannot be guaranteed, and depend on factors such as a given mailpiece's place of origin and destination, most domestic First-Class Mail is delivered 2-5 days after it is received by the Postal Service, and most domestic Marketing Mail is delivered 3-10 days after it is received.

To account for these delivery standards and to allow for contingencies (e.g., weather issues or unforeseen events), the Postal Service strongly recommends adhering to the following timeframe when using the mail to transmit ballots to domestic voters:

- **Ballot requests:** Where voters will both receive and send a ballot by mail, voters should submit their ballot request early enough so that it is received by their election officials at least 15 days before Election Day at a minimum, and preferably long before that time.
- **Mailing blank ballots to voters:** In responding to a ballot request, election officials should consider that the ballot needs to be in the hands of the voter so that he or she has adequate time to complete it and put it back in the mail stream so that it can be processed and delivered by the applicable deadline. Accordingly, the Postal Service recommends that election officials use First-Class Mail to transmit blank ballots and allow 1 week for delivery to voters. Using Marketing Mail will result in slower delivery times and will increase the risk that voters will not receive their ballots in time to return them by mail.

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WASHINGTON DC 20260-1100
PHONE: 202-268-5555
FAX: 202-268-6981
THOMAS.J.MARSHALL@USPS.GOV
www.usps.com

- **Mailing completed ballots to election officials:** To allow enough time for ballots to be returned to election officials, domestic voters should generally mail their completed ballots at least one week before the state's due date. In states that allow mail-in ballots to be counted if they are *both* postmarked by Election Day *and* received by election officials by a specific date that is less than a week after Election Day, voters should mail their ballots at least one week before they must be received by election officials. So, for example, if state law requires a mail-in ballot to be postmarked by Tuesday, November 3, and received by Friday, November 6, voters should mail their ballot by Friday, October 30, to allow enough time for the ballots to be delivered by November 6. Voters must also be aware of the posted collection times on collection boxes and at the Postal Service's retail facilities and that ballots entered after the last posted collection time on a given day will not be postmarked until the following business day.

Under our reading of your state's election laws, as in effect on July 27, 2020, certain state-law requirements and deadlines appear to be incompatible with the Postal Service's delivery standards and the recommended timeframe noted above. As a result, to the extent that the mail is used to transmit ballots to and from voters, there is a significant risk that, at least in certain circumstances, ballots may be requested in a manner that is consistent with your election rules and returned promptly, and yet not be returned in time to be counted.

Specifically, it appears that a voter may generally request a ballot as late as 7 days before the November general election, and that a completed ballot must be postmarked by Election Day and received by election officials no later than 3 days after the election. If a voter submits a request at or near the ballot-request deadline, and if the requested ballot is transmitted to the voter by mail, there is a risk that the ballot will not reach the voter before Election Day, and accordingly that the voter will not be able to use the ballot to cast his or her vote. That risk is exacerbated by the fact that the law does not appear to impose a time period by which election officials must transmit a ballot to the voter in response to a request. Even if the requested ballot reaches the voter by Election Day, there is a risk that, given the delivery standards for First-Class Mail, a completed ballot postmarked on or close to Election Day will not be delivered in time to meet the state's receipt deadline of November 6. As noted above, voters who choose to mail their ballots should do so no later than Friday, October 30.

To be clear, the Postal Service is not purporting to definitively interpret the requirements of your state's election laws, and also is not recommending that such laws be changed to accommodate the Postal Service's delivery standards. By the same token, however, the Postal Service cannot adjust its delivery standards to accommodate the requirements of state election law. For this reason, the Postal Service asks that election officials keep the Postal Service's delivery standards and recommendations in mind when making decisions as to the appropriate means used to send a piece of Election Mail to voters, and when informing voters how to successfully participate in an election where they choose to use the mail. It is particularly important that voters be made aware of the transit times for mail (including mail-in ballots) so that they can make informed decisions about whether and when to (1) request a mail-in ballot, and (2) mail a completed ballot back to election officials.

We remain committed to sustaining the mail as a secure, efficient, and effective means to allow citizens to participate in the electoral process when election officials determine to utilize the mail as a part of their election system. Ensuring that you have an understanding of our operational capabilities and recommended timelines, and can educate voters accordingly, is important to achieving a successful election season. Please reach out to your assigned election mail coordinator to discuss the logistics of your mailings and the services that are available as well as any questions you may have. A list of election mail coordinators may be found on our website at: <https://about.usps.com/election-mail/politicaelection-mail-coordinators.pdf>.

We hope the information contained in this letter is helpful, and please let me know if you have any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Thomas J. Marshall". The signature is written in black ink and is positioned above the printed name.

Thomas J. Marshall

EXHIBIT “BB”

You are hereby notified to file a written response to the enclosed New Matter within thirty (30) days from service hereof or a judgment may be entered against you.

/s Timothy E. Gates
Timothy E. Gates, Counsel for Respondent Secretary of the Commonwealth Kathy Boockvar

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

**PENNSYLVANIA DEMOCRATIC :
PARTY, et al., :**

Petitioner, :

v. :

KATHY BOOCKVAR, et al., :

Respondents. :

NO. 407 MD 2020

**ANSWER AND NEW MATTER OF SECRETARY OF THE
COMMONWEALTH KATHY BOOCKVAR IN
RESPONSE TO PETITION FOR REVIEW**

Respondent Secretary of the Commonwealth Kathy Boockvar, by and through her undersigned counsel, states the following as her Answer and New Matter in response to the Petition for Review in the above-captioned matter:

INTRODUCTION

1. Admitted in part and denied in part. It is admitted that the General Assembly made changes to how the Commonwealth of Pennsylvania conducts its elections through Act 77 of 2019 and Act 12 of 2020. That legislation, being in writing, speaks for itself and allegations concerning interpretation of those provisions constitute conclusions of law to which no responsive pleading is required and are denied. It is further admitted that declaratory relief may be appropriate to address certain issues concerning interpretation of those provisions and that certain issues may be addressed and resolved administratively. The remaining allegations in Paragraph 1 are denied.

2. Admitted in part and denied in part. It is admitted only that the Commonwealth has a long and proud history of administering free and fair elections and that it is critically important to ensure that the 2020 General Election meets the same standard. Secretary Boockvar denies the remaining allegations in Paragraph 2. By way of further response, the allegations in Paragraph 2 purport to characterize comments by a national candidate which, being in writing, speak for themselves and, as a result, the allegations are denied.

3. Denied. The allegations in Paragraph 3 purport to characterize writings which speak for themselves and, as a result, the allegations are denied. By

way of further response, any insinuation that mail-in voting leads to fraud is denied.

4. Admitted in part and denied in part. It is admitted that mail-in voting is safe and was embraced by Pennsylvanians in the 2020 Primary Election. The remaining allegations in Paragraph 4 concerning the *Trump v. Boockvar*, No. 20-CV-00966 (W.D. Pa) matter purport to characterize pleadings in that matter which are in writing and speak for themselves and, and as a result, the allegations are denied.

5. Admitted in part and denied in part. It is admitted that the 2020 Primary Election was the first election after passage of Act 77. Secretary Boockvar denies the remaining allegations in Paragraph 5 and further states that the allegations constitute conclusions of law to which no responsive pleading is required.

6. Admitted in part and denied in part. It is admitted that there is proposed legislation relating to election issues, including H.B. 2626. The allegations in Paragraph 6 concerning the meaning and/or effect of the proposed legislation constitute conclusions of law to which no responsive pleading is required and are denied. By way of further response, the proposed legislation, being in writing, speaks for itself. Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning

Petitioners' decisions with respect to the timing of any legal filing and those allegations are denied.

7. Denied. The allegations in Paragraph 7 constitute conclusions of law to which no responsive pleading is required and are denied.

8. Admitted in part and denied in part. It is admitted that voting by absentee ballot was permitted for years and that mail-in voting was first utilized in the 2020 Primary Election. The remaining allegations in Paragraph 8 purport to characterize statutes which are in writing and speak for themselves, and as a result, the allegations are denied.

9. Admitted in part and denied in part. It is admitted that mail-in voting is generally safe and reliable and that other states offer mail-in voting. The remaining allegations in Paragraph 9 constitute conclusions of law to which no responsive pleading is required and are denied. By way of further response, it is not clear which specific states are referred to in Paragraph 9.

10. Admitted. By way of further response, Act 77, being in writing, speaks for itself.

11. Denied. The allegations in Paragraph 11 constitute conclusions of law to which no responsive pleading is required and are denied.

12. Denied. The allegations in Paragraph 12 constitute conclusions of law to which no responsive pleading is required and are denied.

JURISDICTION

13. Denied. The allegations in Paragraph 13 constitute conclusions of law to which no responsive pleading is required and are denied.

PARTIES

14. Admitted in part and denied in part. It is admitted only that one of the named Petitioners is the Pennsylvania Democratic Party which is a political party as defined in the Election Code, 25 P.S. § 2831. The allegations in Paragraph 14 concerning the capacity in which the Pennsylvania Democratic Party purports to bring this action constitute conclusions of law to which no responsive pleading is required and are denied.

15. Denied. After reasonable investigation, Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 and the allegations are denied. By way of further response, the allegations in Paragraph 15 concerning the capacity in which Petitioner Dwight Evans purports to bring this action constitute conclusions of law to which no responsive pleading is required.

16. Denied. After reasonable investigation, Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 and the allegations are denied. By way of further response, the allegations in Paragraph 16 concerning the capacity in which

Petitioner Nilofer Nina Ahmad purports to bring this action constitute conclusions of law to which no responsive pleading is required.

17. Denied. After reasonable investigation, Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 and the allegations are denied. By way of further response, the allegations in Paragraph 17 concerning the capacity in which Petitioner Anthony H. Williams purports to bring this action constitute conclusions of law to which no responsive pleading is required.

18. Denied. After reasonable investigation, Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 and the allegations are denied. By way of further response, the allegations in Paragraph 18 concerning the capacity in which Petitioner Arthur Haywood purports to bring this action constitute conclusions of law to which no responsive pleading is required.

19. Denied. After reasonable investigation, Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 and the allegations are denied. By way of further response, the allegations in Paragraph 19 concerning the capacity in which Petitioner Sharif Street purports to bring this action constitute conclusions of law to which no responsive pleading is required.

20. Denied. After reasonable investigation, Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 and the allegations are denied. By way of further response, the allegations in Paragraph 20 concerning the capacity in which Petitioner Jordan Harris purports to bring this action constitute conclusions of law to which no responsive pleading is required.

21. Denied. After reasonable investigation, Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 and the allegations are denied. By way of further response, the allegations in Paragraph 21 concerning the capacity in which Petitioner Stephen Kinsey purports to bring this action constitute conclusions of law to which no responsive pleading is required.

22. Denied. After reasonable investigation, Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 and the allegations are denied. By way of further response, the allegations in Paragraph 22 concerning the capacity in which Petitioner Danilo Burgos purports to bring this action constitute conclusions of law to which no responsive pleading is required.

23. Denied. After reasonable investigation, Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the

allegations in Paragraph 23 and the allegations are denied. By way of further response, the allegations in Paragraph 23 concerning the capacity in which Petitioner Austin Davis purports to bring this action constitute conclusions of law to which no responsive pleading is required.

24. Denied. After reasonable investigation, Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 and the allegations are denied. By way of further response, the allegations in Paragraph 24 concerning the capacity in which Petitioner Isabella Fitzgerald purports to bring this action constitute conclusions of law to which no responsive pleading is required.

25. Denied. After reasonable investigation, Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 and the allegations are denied. By way of further response, the allegations in Paragraph 25 concerning the capacity in which Petitioner Edward Gainey purports to bring this action constitute conclusions of law to which no responsive pleading is required.

26. Denied. After reasonable investigation, Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 and the allegations are denied. By way of further response, the allegations in Paragraph 26 concerning the capacity in which

Petitioner Manuel M. Guzman purports to bring this action constitute conclusions of law to which no responsive pleading is required.

27. Denied. After reasonable investigation, Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 and the allegations are denied. By way of further response, the allegations in Paragraph 27 concerning the capacity in which Petitioner Malcolm Kenyatta purports to bring this action constitute conclusions of law to which no responsive pleading is required.

28. Denied. After reasonable investigation, Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28 and the allegations are denied. By way of further response, the allegations in Paragraph 28 concerning the capacity in which Petitioner Patty H. Kim purports to bring this action constitute conclusions of law to which no responsive pleading is required.

29. Denied. After reasonable investigation, Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 and the allegations are denied. By way of further response, the allegations in Paragraph 29 concerning the capacity in which Petitioner Peter Schweyer purports to bring this action constitute conclusions of law to which no responsive pleading is required.

30. Admitted. It is admitted that Secretary Boockvar is the Secretary of the Commonwealth, that she maintains an office at the address in Paragraph 30 and that she is named as a Respondent in her official capacity.

31. Admitted in part and denied in part. It is admitted only that the 67 county boards of elections are named as Respondents. The remaining allegations in Paragraph 31 constitute conclusions of law to which no responsive pleading is required and are denied.

PETITIONERS' ALLEGATIONS

32. Denied. The allegations in Paragraph 32 constitute conclusions of law to which no responsive pleading is required and are denied.

33. Admitted in part and denied in part. It is admitted that the COVID-19 pandemic posed and continues to pose challenges in all facets of life. The remaining allegations in Paragraph 33 constitute conclusions of law to which no responsive pleading is required and are denied.

34. Admitted in part and denied in part. It is admitted only that Pennsylvanians are assured the right to vote in free and equal elections and that Act 77 extends the option to vote by mail. Secretary Boockvar denies the remaining allegations in Paragraph 34 and further states that the allegations concerning interpretation of Act 77 constitute conclusions of law to which no responsive pleading is required.

35. Admitted in part and denied in part. It is admitted that Governor Tom Wolf signed Act 77 into law on October 31, 2019 and that Act 77 significantly increased voting options. The remaining allegations in Paragraph 35 constitute conclusions of law to which no responsive pleading is required and are denied. By way of further response, Act 77, being in writing, speaks for itself.

36. Admitted. By way of further response, Act 77, being in writing, speaks for itself.

37. Denied as stated. Act 77, being in writing, speaks for itself and Petitioners' characterization thereof is denied.

38. Denied as stated. Act 77, being in writing, speaks for itself and Petitioners' characterization thereof is denied.

39. Denied as stated. It is admitted only that there is no requirement or authorization in Act 77 to set aside a mail-in ballot because the voter neglected to include an inner envelope. By way of further response, Act 77, being in writing, speaks for itself.

40. Denied. The allegations in Paragraph 40 constitute conclusions of law to which no responsive pleading is required.

41. Denied. The allegations in Paragraph 41 constitute conclusions of law to which no responsive pleading is required.

42. Denied as stated. The allegations in Paragraph 42 purport to characterize the Supreme Court's decision in *Friends of Danny DeVito v. Wolf*, 227 A.3d 782 (Pa. 2020), which is in writing and speaks for itself and, as a result, the allegations are denied.

43. Admitted.

44. Denied as stated. The allegations in Paragraph 44 purport to characterize a proclamation which is in writing and speaks for itself and, as a result, the allegations are denied.

45. Denied as stated. The allegations in Paragraph 45 purport to characterize an order which is in writing and speaks for itself and, as a result, the allegations are denied.

46. Denied as stated. The allegations in Paragraph 46 purport to characterize an order which is in writing and speaks for itself and, as a result, the allegations are denied.

47. Denied as stated. The allegations in Paragraph 47 purport to characterize an order which is in writing and speaks for itself and, as a result, the allegations are denied.

48. Denied. The allegations in Paragraph 48 purport to characterize a news article which is in writing and speaks for itself and, as a result, the allegations are denied.

49. Denied. The allegations in Paragraph 49 purport to characterize a news article which is in writing and speaks for itself and, as a result, the allegations are denied.

50. Denied. The allegations in Paragraph 50 purport to characterize a news article which is in writing and speaks for itself and, as a result, the allegations are denied.

51. Admitted in part and denied in part. It is admitted that the Department of State has been and will continue to monitor relevant developments to ensure a safe voting experience in the 2020 General Election. Secretary Boockvar denies the remaining allegations in Paragraph 51 and further states that the allegations relate to projections of future events that cannot be admitted or denied.

52. Denied as stated. The allegations in Paragraph 52 purport to characterize the Supreme Court's decision in *Friends of Danny DeVito v. Wolf*, 227 A.3d 782 (Pa. 2020), which is in writing and speaks for itself and, as a result, the allegations are denied.

53. Denied as stated. It is admitted only that Pennsylvanians embraced mail-in voting due, at least in part, to the COVID-19 pandemic. The remaining allegations in Paragraph 53 are denied.

54. Admitted in part and denied in part. It is admitted that Governor Wolf signed Act 12 into law on March 27, 2020 and that the new legislation rescheduled

the primary election to June 2, 2020. The remaining allegations in Paragraph 54 constitute conclusions of law to which no responsive pleading is required and are denied. By way of further response, Act 12, being in writing, speaks for itself.

55. Denied. The allegations in Paragraph 55 constitute conclusions of law to which no responsive pleading is required and are denied. By way of further response, Act 12, being in writing, speaks for itself.

56. Denied. The allegations in Paragraph 56 purport to characterize a news article which is in writing and speaks for itself and, as a result, the allegations are denied.

57. Denied. The allegations in Paragraph 57 purport to characterize a news article which is in writing and speaks for itself and, as a result, the allegations are denied.

58. Denied. The allegations in Paragraph 58 constitute conclusions of law to which no responsive pleading is required and are denied.

59. Admitted in part and denied in part. It is admitted that 1,459,555 voters cast mail-in or absentee ballots in the 2020 Primary Election. Secretary Boockvar denies the remaining allegations in Paragraph 59 and further states that the allegations constitute conclusions of law to which no responsive pleading is required.

60. Denied. After reasonable investigation, Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60 concerning what is meant by “failure to accurately complete mailed ballots” or the reasons why certain ballots were not counted and the allegations are denied.

61. Denied. The allegations in Paragraph 61 purport to characterize a written document which speaks for itself and, as a result, the allegations are denied.

62. Denied. Data concerning the number and type of ballots canvassed and not canvassed are included in the Act 35 report published on August 3, 2020. Secretary Boockvar denies the remaining allegations in Paragraph 62 and refers to the Act 35 report.

63. Denied. The allegations in Paragraph 63 reference written documents which speak for themselves and, as a result, the allegations are denied.

64. Admitted in part and denied in part. It is admitted only that application for and completion of a mail-in ballot require substantial compliance with applicable instructions. The remaining allegations in Paragraph 64 are denied.

65. Admitted in part and denied in part. It is admitted only that mail-in ballots may be returned without an inner envelope or with an outside envelope that

is not completed and may be returned beyond the deadline. The remaining allegations in Paragraph 65 are denied.

66. Admitted in part and denied in part. It is admitted that the influx of mail-in ballot applications in some instances led to delay in ballot delivery. The remaining allegations in Paragraph 66 constitute conclusions of law to which no responsive pleading is required and are denied.

67. Denied. The allegations in Paragraph 67 constitute conclusions of law to which no responsive pleading is required and are denied.

68. Admitted in part and denied in part. It is admitted only that the COVID-19 virus continues to present challenges. The remaining allegations in Paragraph 68 are denied. By way of further response, the allegations in Paragraph 68 concerning an alleged “as-applied infirmity” in Act 77 constitute conclusions of law to which no responsive pleading is required.

69. Denied. The allegations in Paragraph 69 constitute conclusions of law to which no responsive pleading is required and are denied. By way of further response, Act 77, being in writing, speaks for itself.

70. Admitted in part and denied in part. It is admitted only that Pennsylvanians have embraced mail-in voting and that nearly 1.5 million voters cast their vote by mail-in or absentee ballot in the 2020 Primary Election. This is 17 times the number that voted absentee in the 2016 Primary Election when

approximately 84,000 absentee ballots were cast. The remaining allegations in Paragraph 70 are denied.

71. Denied. The allegations in Paragraph 71 purport to characterize the Supplemental Declaration of Deputy Secretary Jonathan Marks which is in writing and speaks for itself and, as a result, the allegations are denied.

72. Denied. The allegations in Paragraph 72 purport to characterize a news article which is in writing and speaks for itself and, as a result, the allegations are denied.

73. Denied as stated. It is admitted that 1,615,741 mail-in ballot applications were received and that 349,709 absentee ballot applications were received in relation to the 2020 Primary Election.

74. Denied. The allegations in Paragraph 74 purport to characterize the Supplemental Declaration of Deputy Secretary Marks which is in writing and speaks for itself and, as a result, the allegations are denied.

75. Denied. The allegations in Paragraph 75 purport to characterize a news report which is in writing and speaks for itself and, as a result, the allegations are denied.

76. Denied. The allegations in Paragraph 76 purport to characterize a news report which is in writing and speaks for itself and, as a result, the allegations are denied.

77. Denied. The allegations in Paragraph 77 purport to characterize a document in another judicial proceeding which is in writing and speaks for itself and, as a result, the allegations are denied.

78. Denied. The allegations in Paragraph 78 constitute conclusions of law to which no responsive pleading is required and are denied.

79. Admitted in part and denied in part. It is admitted only that Pennsylvanians have embraced mail-in voting and that nearly 1.5 million voters cast their vote by mail-in or absentee ballot in the 2020 Primary Election. Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 79 concerning what specific voters considered when making requests for mail-in ballots and those allegations are denied.

80. Denied as stated. It is admitted that Act 77 and other provisions in the Election Code allow that counties may provide for secure ballot collection locations in addition to a central office.

81. Denied. The allegations in Paragraph 81 constitute conclusions of law to which no responsive pleading is required and are denied.

82. Denied. The allegations in Paragraph 82 constitute conclusions of law to which no responsive pleading is required and are denied.

83. Denied. The allegations in Paragraph 83 constitute conclusions of law to which no responsive pleading is required and are denied.

84. Denied. The allegations in Paragraph 84 purport to characterize a news report which is in writing and speaks for itself and, as a result, the allegations are denied.

85. Denied. The allegations in Paragraph 85 purport to characterize a news report which is in writing and speaks for itself and, as a result, the allegations are denied.

86. Denied. The allegations in Paragraph 86 purport to characterize a news report which is in writing and speaks for itself and, as a result, the allegations are denied.

87. Denied. The allegations in Paragraph 87 constitute conclusions of law to which no responsive pleading is required and are denied.

88. Denied. The allegations in Paragraph 88 constitute conclusions of law to which no responsive pleading is required and are denied. By way of further response, the allegations relate to potential future events and no response to such allegations is possible.

89. Denied. The allegations in Paragraph 89 purport to characterize a U.S. Department of Homeland Security publication which is in writing and speaks for itself and, as a result, the allegations are denied.

90. Denied. The allegations in Paragraph 90 purport to characterize a U.S. Department of Homeland Security publication which is in writing and speaks for itself and, as a result, the allegations are denied.

91. Denied. The allegations in Paragraph 90 purport to characterize a U.S. Department of Homeland Security publication which is in writing and speaks for itself and, as a result, the allegations are denied.

92. Denied. The allegations in Paragraph 92 constitute conclusions of law to which no responsive pleading is required and are denied. By way of further response, Paragraphs 84-91 of this Answer are incorporated by reference as if set forth fully herein.

93. Denied. The allegations in Paragraph 93 purport to characterize a U.S. Department of Homeland Security publication which is in writing and speaks for itself and, as a result, the allegations are denied.

94. Denied. The allegations in Paragraph 94 constitute conclusions of law to which no responsive pleading is required and are denied.

95. Denied. The allegations in Paragraph 95 constitute conclusions of law to which no responsive pleading is required and are denied.

96. Denied. The allegations in Paragraph 96 constitute conclusions of law to which no responsive pleading is required and are denied.

97. Denied. The allegations in Paragraph 97 constitute conclusions of law to which no responsive pleading is required and are denied.

98. Denied. The allegations in Paragraph 98 constitute conclusions of law to which no responsive pleading is required and are denied.

99. Denied. The allegations in Paragraph 99 describe the relief sought in this action and do not include any factual allegations and therefore no response is required.

100. Admitted in part and denied in part. It is admitted that prompt resolution of this dispute is advisable and desired. The remaining allegations in Paragraph 100 constitute conclusions of law to which no responsive pleading is required and are denied.

101. Denied. Secretary Boockvar denies the allegations in Paragraph 101 and further states that the allegations constitute conclusions of law to which no responsive pleading is required.

102. Denied. The allegations in Paragraph 102 constitute conclusions of law to which no responsive pleading is required and are denied.

103. Denied. The allegations in Paragraph 103 purport to characterize rulings in other judicial proceedings which are in writing and speak for themselves and, as a result, the allegations are denied.

104. Denied stated. The allegations in Paragraph 104 purport to characterize a ruling in another judicial proceeding, *Delisle v. Boockvar*, Case No. 319 M.D. 2020 (Pa. Cmwlth. June 2, 2020), which is in writing and speaks for itself and, as a result, the allegations are denied.

105. Denied. The allegations in Paragraph 105 constitute conclusions of law to which no responsive pleading is required and are denied.

106. Denied as stated. The allegations in Paragraph 106 purport to characterize an Executive Order which is in writing and speaks for itself and, as a result, the allegations are denied.

107. Denied. The allegations in Paragraph 107 describe the relief sought in this action and do not include any factual allegations and therefore no response is required.

108. Denied. The allegations in Paragraph 108 describe the relief sought in this action and do not include any factual allegations and therefore no response is required.

109. Denied. After reasonable investigation, Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 109 concerning alleged disenfranchisement of particular voters and the allegations are denied. By way of further response, data concerning ballots cast and challenged are included in the Act 35 report.

110. Denied as stated. Article 1, Section 5 of the Pennsylvania Constitution states, in pertinent part, that “[e]lections should be free and equal. . . .”

111. Denied. The allegations in Paragraph 111 constitute conclusions of law to which no responsive pleading is required and are denied.

112. Denied. The allegations in Paragraph 112 constitute conclusions of law to which no responsive pleading is required and are denied.

113. Admitted in part and denied in part. It is admitted only that the mail-in ballot package contains the ballot, an inner envelope, the outer return envelope and instructions. The instructions, being in writing, speak for themselves and Petitioners’ characterization thereof is denied. The remaining allegations in Paragraph 113 constitute conclusions of law to which no responsive pleading is required and are denied.

114. Denied as stated. It is admitted only that mail-in ballots may at times contain errors, some of which may be correctible and do not require that the ballot be set aside and not counted.

115. Admitted.

116. Denied. The allegations in Paragraph 116 constitute conclusions of law to which no responsive pleading is required and are denied.

117. Denied. The allegations in Paragraph 117 constitute conclusions of law to which no responsive pleading is required and are denied.

118. Denied. The allegations in Paragraph 118 describe the relief sought in this action and do not include any factual allegations and therefore no response is required.

119. Denied. The allegations in Paragraph 119 describe the relief sought in this action and do not include any factual allegations and therefore no response is required.

120. Denied. The allegations in Paragraph 120 constitute conclusions of law to which no responsive pleading is required and are denied.

121. Denied. The allegations in Paragraph 121 constitute conclusions of law to which no responsive pleading is required and are denied.

122. Admitted.

123. Denied. The allegations in Paragraph 123 constitute conclusions of law to which no responsive pleading is required and are denied.

124. Admitted in part and denied in part. It is admitted only that the Department of State received questions from county officials regarding proper disposition of mail-in ballots cast by voters who did not enclose their voted ballots in the official election ballot envelope (“inner” envelope). The remaining allegations in Paragraph 124 are denied.

125. Admitted. By way of further response, Paragraph 124 of this Answer is incorporated by reference as if set forth fully herein.

126. Denied as stated. It is admitted that Jonathan Marks, Deputy Secretary for Elections & Commissions, sent the email attached to the Petition as Exhibit B. The email is in writing and speaks for itself and, as a result, the allegations are denied.

127. Denied. The allegations in Paragraph 127 purport to characterize Deputy Secretary Marks's email which is in writing and speaks for itself and, as a result, the allegations are denied. Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 127 concerning each county's handling of specific ballots and the allegations are denied. By way of further response, Secretary Boockvar incorporates the Act 35 report issued on August 3, 2020.

128. Admitted in part and denied in part. It is admitted only that certain counties expressed that they were not inclined to count ballots without an inner envelope. After reasonable investigation, Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 128 concerning specific actions by the various counties and the allegations are denied.

129. Admitted in part and denied in part. It is admitted only that the handling of ballots without an inner envelope was the subject of litigation filed in Lawrence County. Documents filed in the matter captioned *In re Canvass of Mail-*

In Ballots for the 2020 General Primary, (Lawrence Cty. C.P. June 2, 2020), are in writing and speak for themselves and, as a result, Petitioners' characterizations thereof are denied. Secretary Boockvar lacks information sufficient to form a belief as to the truth of the allegations in Paragraph 129 concerning the litigants' reasons for discontinuing the litigation and those allegations are denied.

130. Denied. The allegations in Paragraph 130 constitute conclusions of law to which no responsive pleading is required and are denied.

131. Denied. The allegations in Paragraph 131 constitute conclusions of law to which no responsive pleading is required and are denied.

132. Denied. The allegations in Paragraph 132 constitute conclusions of law to which no responsive pleading is required and are denied.

133. Denied. The allegations in Paragraph 133 constitute conclusions of law to which no responsive pleading is required and are denied.

134. Denied. The allegations in Paragraph 134 constitute conclusions of law to which no responsive pleading is required and are denied.

135. Denied. The allegations in Paragraph 135 constitute conclusions of law to which no responsive pleading is required and are denied.

136. Denied. The allegations in Paragraph 136 constitute conclusions of law to which no responsive pleading is required and are denied.

137. Denied. The allegations in Paragraph 137 constitute conclusions of law to which no responsive pleading is required and are denied.

138. Denied. The allegations in Paragraph 138 constitute conclusions of law to which no responsive pleading is required and are denied.

139. Denied. The allegations in Paragraph 139 constitute conclusions of law to which no responsive pleading is required and are denied.

140. Denied. The allegations in Paragraph 140 constitute conclusions of law to which no responsive pleading is required and are denied.

141. Denied. The allegations in Paragraph 141 constitute conclusions of law to which no responsive pleading is required and are denied.

142. Admitted in part and denied in part. It is admitted only that the U.S. District Court for the Eastern District of Pennsylvania rejected constitutional challenges to the poll watcher residency requirement in 25 P.S. § 2687(b). *See Republican Party of Pa. v. Cortes*, 218 F. Supp. 3d 396 (E.D. Pa. 2016). It is further admitted that other litigants purport to assert a challenge to the same provision in the *Trump* litigation pending in the U.S. District Court for the Western District of Pennsylvania. The remaining allegations in Paragraph 142 are denied.

143. Denied. The allegations in Paragraph 143 constitute conclusions of law to which no responsive pleading is required and are denied.

144. Denied. The allegations in Paragraph 144 describe the relief sought in this action do not include any factual allegations and therefore no response is required.

145. Admitted in part and denied in part. It is admitted only that the right to vote is sacrosanct in our democracy. The remaining allegations in Paragraph 145 describe the relief sought in this action and therefore no response to those allegations is required.

146. Denied. The allegations in Paragraph 146 constitute conclusions of law to which no responsive pleading is required and are denied. By way of further answer, Secretary Boockvar denies that the Commonwealth has done or would do anything to invite “a post-election attack on the fairness of Pennsylvania’s elections.”

147. Denied. The allegations in Paragraph 147 constitute conclusions of law to which no responsive pleading is required and are denied.

148. Denied. The allegations in Paragraph 148 constitute conclusions of law to which no responsive pleading is required and are denied.

149. Denied. The allegations in Paragraph 149 purport to characterize documents filed in another case *Republican Party of Pa. v. Cortes*, 218 F. Supp. 3d 396 (E.D. Pa. 2016), which are in writing and speak for themselves and, as a result, the allegations are denied.

150. Admitted in part and denied in part. It is admitted only that constitutional challenges to the statutory poll watcher residency requirement were rejected in *Republican Party of Pa. v. Cortes*. The decision in that case is in writing and speaks for itself and, as a result, the allegations in Paragraph 150 purporting to characterize that decision are denied.

151. Denied. The allegations in Paragraph 151 purport to characterize the decision in *Republican Party of Pa. v. Cortes* which is in writing and speaks for itself and, as a result, the allegations are denied.

152. Denied. The allegations in Paragraph 152 purport to characterize the decision in *Republican Party of Pa. v. Cortes* which is in writing and speaks for itself and, as a result, the allegations are denied.

153. Denied. After reasonable investigation, Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 153 concerning proposed changes to the bills referenced and the allegations are denied.

154. Denied. After reasonable investigation, Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 154 concerning proposals to amend the statutory poll watcher residency requirement and the allegations are denied.

155. Admitted in part and denied in part. It is admitted only that other litigants purport to assert a challenge to the statutory poll watcher residency requirement in the *Trump* litigation which is pending in the U.S. District Court for the Western District of Pennsylvania. The pleadings in that action, being in writing, speak for themselves and Petitioners' characterizations thereof are denied. The remaining allegations in Paragraph 155 constitute conclusions of law to which no responsive pleading is required and are denied.

156. Denied as stated. It is admitted only that there has been no change in the poll watcher residency requirement.

157. Denied. The allegations in Paragraph 157 constitute conclusions of law to which no responsive pleading is required and are denied.

158. Denied. The allegations in Paragraph 158 constitute conclusions of law to which no responsive pleading is required and are denied.

159. Denied. The allegations in Paragraph 159 constitute conclusions of law to which no responsive pleading is required and are denied.

160. Denied. The allegations in Paragraph 160 purport to characterize the decision in *Republican Party of Pa. v. Cortes* which is in writing and speaks for itself and, as a result, the allegations are denied.

161. Admitted in part and denied in part. It is admitted only that the Commonwealth has an interest in administering its county-based election system.

The remaining allegations in Paragraph 161 constitute conclusions of law to which no responsive pleading is required and are denied.

COUNT I

**CLAIM FOR DECLARATORY RELIEF RELATING TO
USE OF SECURE BALLOT DROP-BOXES**

162. Paragraphs 1 through 161 of this Answer are incorporated by reference as if set forth fully herein.

163. Denied. The allegations in Paragraph 163 constitute conclusions of law to which no responsive pleading is required and are denied.

164. Denied. The allegations in Paragraph 164 constitute conclusions of law to which no responsive pleading is required and are denied.

165. Denied. The allegations in Paragraph 165 describe the relief sought in this action and do not include any factual allegations and therefore no response is required.

166. Denied. The allegations in Paragraph 166 describe the relief sought in this action and do not include any factual allegations and therefore no response is required.

167. Denied. The allegations in Paragraph 167 constitute conclusions of law to which no responsive pleading is required and are denied.

168. Denied. The allegations in Paragraph 168 constitute conclusions of law to which no responsive pleading is required and are denied.

169. Denied. The allegations in Paragraph 170 constitute conclusions of law to which no responsive pleading is required and are denied.

170. Admitted in part and denied in part. It is admitted only that returns were certified days after the 2020 Primary Election and that voters should not be disenfranchised through no fault of their own. The remaining allegations in Paragraph 170 constitute conclusions of law to which no responsive pleading is required and are denied.

COUNT II

CLAIM FOR INJUNCTION REGARDING TABULATION OF MAIL-IN AND ABSENTEE BALLOTS

171. Paragraphs 1 through 170 if this Answer are incorporated by reference as if set forth fully herein.

172. Denied. The allegations in Paragraph 172 constitute conclusions of law to which no responsive pleading is required and are denied.

173. Admitted in part and denied in part. It is admitted only that Pennsylvanians embraced mail-in voting in impressive numbers for the 2020 Primary Election and that some counties reported that they experienced delays in fulfilling ballot requests. The remaining allegations in Paragraph 173 are denied.

174. Denied as stated. It is admitted only that it is generally true that more registered electors vote in the general election than in the primary.

175. Denied. After reasonable investigation, Secretary Boockvar lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 175 concerning possible future events and the allegations are denied.

176. Denied. The allegations in Paragraph 176 constitute conclusions of law to which no responsive pleading is required and are denied.

177. Denied. The allegations in Paragraph 177 constitute conclusions of law to which no responsive pleading is required and are denied.

178. Denied. The allegations in Paragraph 178 describe the relief sought in this action and do not include any factual allegations and therefore no response is required.

179. Denied. The allegations in Paragraph 179 describe the relief sought in this action and do not include any factual allegations and therefore no response is required.

180. Denied. The allegations in Paragraph 180 constitute conclusions of law to which no responsive pleading is required and are denied.

181. Denied. The allegations in Paragraph 181 constitute conclusions of law to which no responsive pleading is required and are denied.

182. Denied. The allegations in Paragraph 182 constitute conclusions of law to which no responsive pleading is required and are denied.

183. Denied. The allegations in Paragraph 183 constitute conclusions of law to which no responsive pleading is required and are denied.

COUNT III

CLAIM FOR INJUNCTION REQUIRING BOARDS TO CONTACT ELECTORS WITH DEFECTIVE BALLOTS

184. Paragraphs 1 through 183 of this Answer are incorporated by reference as if set forth fully herein.

185. Denied as stated. Article 1, Section 5 of the Pennsylvania Constitution states, in pertinent part, that “[e]lections should be free and equal. . . .”

186. Admitted in part and denied in part. It is admitted only that mail-in ballots may at times contain errors, some of which may be correctible and do not require that the ballot be set aside and not counted. The remaining allegations in Paragraph 186 constitute conclusions of law to which no responsive pleading is required and are denied.

187. Denied. The allegations in Paragraph 187 describe the relief sought in this action and do not include any factual allegations and therefore no response is required.

188. Denied. The allegations in Paragraph 188 constitute conclusions of law to which no responsive pleading is required and are denied.

189. Denied. The allegations in Paragraph 189 constitute conclusions of law to which no responsive pleading is required and are denied.

190. Denied. The allegations in Paragraph 190 constitute conclusions of law to which no responsive pleading is required and are denied.

191. Admitted in part and denied in part. It is admitted only that there is no governmental interest in not counting valid votes of qualified electors. The remaining allegations in Paragraph 191 constitute conclusions of law to which no responsive pleading is required and are denied.

COUNT IV

CLAIM FOR DECLARATORY JUDGMENT REGARDING NAKED BALLOTS

192. Paragraphs 1 through 191 of this Answer are incorporated by reference as if set forth fully herein.

193. Denied. The allegations in Paragraph 193 constitute conclusions of law to which no responsive pleading is required and are denied.

194. Denied as stated. Qualifications of electors are set forth in Article VII, Section 1 of the Pennsylvania Constitution. The right to equal protection is guaranteed by Article VI, Section 26 of the Pennsylvania Constitution.

195. Admitted.

196. Admitted.

197. Admitted.

198. Denied. The allegations in Paragraph 198 describe the relief sought in this action and do not include any factual allegations and therefore no response is required.

199. Denied. The allegations in Paragraph 199 describe the relief sought in this action and do not include any factual allegations and therefore no response is required.

200. Denied. The allegations in Paragraph 200 constitute conclusions of law to which no responsive pleading is required and are denied.

201. Admitted in part and denied in part. It is admitted only that there is no statutory requirement or statutory authority for setting aside an absentee or mail-in ballot solely because the voter forgot to insert it into the official election ballot envelope. The remaining allegations in Paragraph 201 constitute conclusions of law to which no responsive pleading is required and are denied.

202. Denied. The allegations in Paragraph 202 constitute conclusions of law to which no responsive pleading is required and are denied.

203. Denied. The allegations in Paragraph 203 constitute conclusions of law to which no responsive pleading is required and are denied.

COUNT V

CLAIM FOR DECLARATORY JUDGMENT THAT POLL WATCHER RESIDENCY REQUIREMENT IS CONSTITUTIONAL

204. Paragraphs 1 through 203 of this Answer are incorporated by reference as if set forth fully herein.

205. Denied. The allegations in Paragraph 205 constitute conclusions of law to which no responsive pleading is required and are denied.

206. Admitted in part and denied in part. It is admitted only that the poll watcher residency requirement is the same today as in 2016. The remaining allegations in Paragraph 206 constitute conclusions of law to which no responsive pleading is required and are denied.

207. Denied. The allegations in Paragraph 207 describe the relief sought in this action and do not include any factual allegations and therefore no response is required.

WHEREFORE, Secretary Boockvar seeks judgment in her favor, together with such other and further relief as this Court deems appropriate under the circumstances.

NEW MATTER

In further response to the Petition for Review, Secretary Boockvar asserts the following New Matter:

208. Petitioners failed to properly verify the Petition for Review pursuant to Rule 1517 of the Pennsylvania Rules of Appellate Procedure and Rule 1024 of the Pennsylvania Rules of Civil Procedure.

209. The Election Code does not prohibit counties from providing, in addition to county board of election offices, other secure ballot collection locations that the county deems appropriate to accommodate in-person return of voted mail-in and absentee ballots.

210. Though the Election Code requires county boards of election to set aside absentee or mail-in ballots enclosed in official election ballot envelopes that contain “any text, mark or symbol which reveals the identity of the elector,” 25 P.S. § 3146.8(g)(4)(ii), there is no statutory requirement, nor is there any statutory authority, for setting aside an absentee or mail-in ballot solely because the voter did not insert the ballot into an inner envelope.

211. The poll watcher residency requirement in 25 P.S. § 2687 is not unconstitutional on its face or as applied.

212. As the Chief Elections Officer, the Secretary of the Commonwealth's interpretation and administration of the Election Code are entitled to deference and she is authorized to issue guidance to county election officials concerning election matters.

213. The Election Code authorizes county boards of elections to, *inter alia*, make such rules, regulations and instructions, not inconsistent with law, as they may deem necessary for the guidance of election officers and electors and to instruct election officers in their duties. 25 P.S. § 2642 (f), (g).

214. Petitioners' claims for mandatory injunctive relief are barred and/or limited by sovereign immunity.

WHEREFORE, Secretary Boockvar seeks judgment in her favor, together with such other and further relief as the Court deems appropriate under the circumstances.

Date: August 13, 2020

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VERIFICATION

I, Kathy Boockvar, hereby aver and state that I have read the foregoing Answer and New Matter which was drafted by counsel. The factual statements contained therein are true and correct to the best of my knowledge, information and belief although the language is that of counsel and, to the extent the content of the foregoing document is that of counsel, I have relied upon counsel in making this verification.

This statement is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Kathy Boockvar

Date: August 13, 2020

CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently from non-confidential information and documents.

/s Timothy E. Gates
Timothy E. Gates

Date: August 13, 2020

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA DEMOCRATIC :
PARTY, *et al.*, :
Petitioners :
 :
v. : NO. 407 MD 2020
 :
KATHY BOOCKVAR, in her capacity as :
Secretary of the Commonwealth of :
Pennsylvania, *et al.*, :
Respondents :

CERTIFICATE OF SERVICE

I, Karen M. Romano, Chief Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on August 13, 2020, a copy of the foregoing document titled ANSWER AND NEW MATTER was served on all parties as set forth below. The following parties have been served electronically via PACFile:

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s/ Karen M. Romano

KAREN M. ROMANO
Chief Deputy Attorney General

EXHIBIT “CC”

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2626 Session of 2020

INTRODUCED BY MOUL, RYAN, JAMES, STAATS, MILLARD, PYLE, THOMAS, MENTZER, SCHLEGEL CULVER AND GAYDOS, JUNE 23, 2020

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, SEPTEMBER 1, 2020

AN ACT

1 ~~Amending the act of June 3, 1937 (P.L.1333, No.320), entitled~~ <--
2 ~~"An act concerning elections, including general, municipal,~~
3 ~~special and primary elections, the nomination of candidates,~~
4 ~~primary and election expenses and election contests; creating~~
5 ~~and defining membership of county boards of elections;~~
6 ~~imposing duties upon the Secretary of the Commonwealth,~~
7 ~~courts, county boards of elections, county commissioners;~~
8 ~~imposing penalties for violation of the act, and codifying,~~
9 ~~revising and consolidating the laws relating thereto; and~~
10 ~~repealing certain acts and parts of acts relating to~~
11 ~~elections," in the Secretary of the Commonwealth, further~~
12 ~~providing for powers and duties of the Secretary of the~~
13 ~~Commonwealth; in county boards of elections, further~~
14 ~~providing for powers and duties of county boards; in~~
15 ~~preparation for and conduct of primaries and elections,~~
16 ~~providing for deadline for change of enrollment of political~~
17 ~~party; in voting by qualified absentee electors, further~~
18 ~~providing for applications for official absentee ballots, for~~
19 ~~date of application for absentee ballot, for approval of~~
20 ~~application for absentee ballot, for official absentee voters~~
21 ~~ballots, for voting by absentee electors and for canvassing~~
22 ~~of official absentee ballots and mail in ballots; in voting~~
23 ~~by qualified mail in electors, further providing for~~
24 ~~applications for official mail in ballots, for date of~~
25 ~~application for mail in ballot, for approval of application~~
26 ~~for mail in ballot, for official mail in elector ballots and~~
27 ~~for voting by mail in electors; and making a related repeal.~~
28 AMENDING THE ACT OF JUNE 3, 1937 (P.L.1333, NO.320), ENTITLED <--
29 "AN ACT CONCERNING ELECTIONS, INCLUDING GENERAL, MUNICIPAL,
30 SPECIAL AND PRIMARY ELECTIONS, THE NOMINATION OF CANDIDATES,
31 PRIMARY AND ELECTION EXPENSES AND ELECTION CONTESTS; CREATING
32 AND DEFINING MEMBERSHIP OF COUNTY BOARDS OF ELECTIONS;
33 IMPOSING DUTIES UPON THE SECRETARY OF THE COMMONWEALTH,

1 COURTS, COUNTY BOARDS OF ELECTIONS, COUNTY COMMISSIONERS;
2 IMPOSING PENALTIES FOR VIOLATION OF THE ACT, AND CODIFYING,
3 REVISING AND CONSOLIDATING THE LAWS RELATING THERETO; AND
4 REPEALING CERTAIN ACTS AND PARTS OF ACTS RELATING TO
5 ELECTIONS," IN PRELIMINARY PROVISIONS, FURTHER PROVIDING FOR
6 DEFINITIONS; IN SECRETARY OF THE COMMONWEALTH, PROVIDING FOR
7 REPORTS ON IMPLEMENTATION OF ELECTIONS; IN COUNTY BOARDS OF
8 ELECTIONS, FURTHER PROVIDING FOR POWERS AND DUTIES OF COUNTY
9 BOARDS, FOR RECORDS AND DOCUMENTS TO BE OPEN TO PUBLIC
10 INSPECTION AND PROVISO, FOR PRESERVATION OF RECORDS AND FOR
11 WATCHERS OR ATTORNEYS AT SESSIONS OF COUNTY BOARD AND
12 CANDIDATES MAY BE PRESENT; IN DISTRICT ELECTION OFFICERS,
13 FURTHER PROVIDING FOR QUALIFICATIONS OF ELECTION OFFICERS AND
14 FOR APPOINTMENT OF WATCHERS; IN VOTING BY QUALIFIED ABSENTEE
15 ELECTORS, FURTHER PROVIDING FOR APPLICATIONS FOR OFFICIAL
16 ABSENTEE BALLOTS, FOR DATE OF APPLICATION FOR ABSENTEE
17 BALLOT, FOR OFFICIAL ABSENTEE VOTERS BALLOTS, FOR DELIVERING
18 OR MAILING BALLOTS, FOR VOTING BY ABSENTEE ELECTORS AND FOR
19 CANVASSING OF OFFICIAL ABSENTEE BALLOTS AND MAIL-IN BALLOTS;
20 IN STATEWIDE UNIFORM REGISTRY OF ELECTORS ADVISORY BOARD,
21 PROVIDING FOR SURE REQUIREMENTS; IN VOTING BY QUALIFIED MAIL-
22 IN ELECTORS, FURTHER PROVIDING FOR APPLICATIONS FOR OFFICIAL
23 MAIL-IN BALLOTS, FOR DATE OF APPLICATION FOR MAIL-IN BALLOT,
24 FOR OFFICIAL MAIL-IN ELECTOR BALLOTS, FOR DELIVERING OR
25 MAILING BALLOTS AND FOR VOTING BY MAIL-IN ELECTORS; IN
26 PENALTIES, PROVIDING FOR AN ENHANCEMENT OF PENALTIES FOR
27 CERTAIN VIOLATIONS; AND MAKING AN EDITORIAL CHANGE.

28 The General Assembly of the Commonwealth of Pennsylvania
29 hereby enacts as follows:

30 ~~Section 1. Section 201 of the act of June 3, 1937 (P.L.1333, <--~~
31 ~~No.320), known as the Pennsylvania Election Code, is amended by~~
32 ~~adding a subsection to read:~~

33 ~~Section 201. Powers and Duties of the Secretary of the~~
34 ~~Commonwealth. The Secretary of the Commonwealth shall exercise~~
35 ~~in the manner provided by this act all powers granted to him by~~
36 ~~this act, and shall perform all the duties imposed upon him by~~
37 ~~this act, which shall include the following:~~

38 * * *

39 ~~(i) To develop a tracking system by which each ballot,~~
40 ~~absentee ballot and mail in ballot is assigned a unique~~
41 ~~scannable identification number to ensure that multiple ballots~~
42 ~~are not cast by a qualified elector.~~

43 ~~Section 2. Section 302(p) of the act, amended March 27, 2020~~

1 ~~(P.L.41, No.12), is amended and the section is amended by adding~~
2 ~~a subsection to read:~~

3 ~~Section 302. Powers and Duties of County Boards. The county~~
4 ~~boards of elections, within their respective counties, shall~~
5 ~~exercise, in the manner provided by this act, all powers granted~~
6 ~~to them by this act, and shall perform all the duties imposed~~
7 ~~upon them by this act, which shall include the following:~~

8 * * *

9 ~~(p) A county board of elections shall not pay compensation~~
10 ~~to a judge of elections who wilfully fails to deliver by two~~
11 ~~o'clock A. M. on the day following the election envelopes;~~
12 ~~supplies, including all uncast provisional ballots; and returns,~~
13 ~~including all provisional ballots cast in the election district~~
14 ~~and [statements signed under sections 1306 and 1302 D.]~~
15 ~~completed absentee ballot and envelopes containing the~~
16 ~~declaration of the elector received by the judge of elections~~
17 ~~under sections 1306(b)(3) and 1306 D(b)(3).~~

18 ~~(g) To administer the ballot tracking system developed by~~
19 ~~the Secretary of the Commonwealth under section 201(i) as~~
20 ~~prescribed and directed by the Secretary of the Commonwealth.~~

21 ~~Section 3. The act is amended by adding a section to read:~~

22 ~~Section 1231.1. Deadline for Change of Enrollment of~~
23 ~~Political Party. Not later than thirty days prior to an~~
24 ~~election, a registered elector who desires to change the~~
25 ~~enrollment of political designation or who, although registered,~~
26 ~~has not previously enrolled as a member of a party may appear~~
27 ~~before a commissioner, registrar or clerk or may submit an~~
28 ~~application by mail under 25 Pa.C.S. § 1324 (relating to~~
29 ~~application by mail) and state in a signed writing the political~~
30 ~~party in which the registered elector desires to be enrolled. If~~

1 ~~the signature of the elector is verified by comparison with the~~
2 ~~registered elector's signature as it appears on file with the~~
3 ~~commission, the commissioner, registrar or clerk shall make the~~
4 ~~change in its registration records. If supported by other~~
5 ~~evidence of identity, a mark may be made in lieu of a signature~~
6 ~~by a registered elector who is unable to write. The mark must be~~
7 ~~made in the presence of a witness who must sign the registration~~
8 ~~application.~~

9 Section 4. ~~Section 1302(i) (1) of the act, amended March 27,~~
10 ~~2020 (P.L.41, No.12), is amended to read:~~

11 Section 1302. ~~Applications for Official Absentee Ballots. *~~
12 ~~**~~

13 ~~(i) (1) Application for official absentee ballots shall be~~
14 ~~on physical and electronic forms prescribed by the Secretary of~~
15 ~~the Commonwealth.~~

16 ~~(1.1) The application shall state that an elector who~~
17 ~~applies for an absentee ballot pursuant to section 1301 shall~~
18 ~~not be eligible to vote at a polling place on election day~~
19 ~~unless the elector brings the elector's absentee ballot to the~~
20 ~~elector's polling place, remits the ballot and the envelope~~
21 ~~containing the declaration of the elector to the judge of~~
22 ~~elections to be spoiled and signs a statement subject to the~~
23 ~~penalties of 18 Pa.C.S. § 4904 (relating to unsworn~~
24 ~~falsification to authorities) to the same effect.] except by~~
25 ~~provisional ballot. The application shall also state that an~~
26 ~~elector may deliver an absentee ballot and the envelope~~
27 ~~containing the declaration of the elector to the judge of~~
28 ~~elections of the elector's election district at the elector's~~
29 ~~polling place during the hours that the polling place is open on~~
30 ~~election day.~~

1 ~~(1.2) [Such physical] Physical application forms shall be~~
2 ~~made freely available to the public at county board of~~
3 ~~elections, municipal buildings and at such other locations~~
4 ~~designated by the secretary.~~

5 ~~(1.3) [Such electronic] Electronic application forms shall~~
6 ~~be made freely available to the public through publicly~~
7 ~~accessible means.~~

8 ~~(1.4) No written application or personal request shall be~~
9 ~~necessary to receive or access the application forms.~~

10 ~~(1.5) Copies and records of all completed physical and~~
11 ~~electronic applications for official absentee ballots shall be~~
12 ~~retained by the county board of elections.~~

13 ~~* * *~~

14 ~~Section 5. Section 1302.1(a) and (a.3)(1) and (2) of the~~
15 ~~act, amended October 31, 2019 (P.L.552, No.77), are amended to~~
16 ~~read:~~

17 ~~Section 1302.1. Date of Application for Absentee Ballot.~~

18 ~~(a) Except as provided in subsection (a.3), applications for~~
19 ~~absentee ballots shall be received in the office of the county~~
20 ~~board of elections not earlier than fifty (50) days before the~~
21 ~~primary or election, except that if a county board of elections~~
22 ~~determines that it would be appropriate to its operational~~
23 ~~needs, any applications for absentee ballots received more than~~
24 ~~fifty (50) days before the primary or election may be processed~~
25 ~~before that time. Applications for absentee ballots shall be~~
26 ~~processed if received not later than five o'clock P.M. of the~~
27 ~~[first Tuesday] fifteenth day prior to the day of any primary or~~
28 ~~election.~~

29 ~~(a.3) (1) The following categories of electors may apply~~
30 ~~for an absentee ballot under this subsection, if otherwise~~

1 qualified:

2 ~~(i) An elector whose physical disability or illness~~
3 ~~prevented the elector from applying for an absentee ballot~~
4 ~~before five o'clock P.M. on the [first Tuesday] fifteenth day~~
5 ~~prior to the day of the primary or election.~~

6 ~~(ii) An elector who, because of the elector's business,~~
7 ~~duties or occupation, was unable to apply for an absentee ballot~~
8 ~~before five o'clock P.M. on the [first Tuesday] fifteenth day~~
9 ~~prior to the day of the primary or election.~~

10 ~~(iii) An elector who becomes so physically disabled or ill~~
11 ~~after five o'clock P.M. on the [first Tuesday] fifteenth day~~
12 ~~prior to the day of the primary or election that the elector is~~
13 ~~unable to appear at the polling place on the day of the primary~~
14 ~~or election.~~

15 ~~(iv) An elector who, because of the conduct of the elector's~~
16 ~~business, duties or occupation, will necessarily be absent from~~
17 ~~the elector's municipality of residence on the day of the~~
18 ~~primary or election, which fact was not and could not reasonably~~
19 ~~be known to the elector on or before five o'clock P.M. on the~~
20 ~~[first Tuesday] fifteenth day prior to the day of the primary or~~
21 ~~election.~~

22 ~~(2) An elector described in paragraph (1) may submit an~~
23 ~~application for an absentee ballot at any time up until the time~~
24 ~~of the closing of the polls on the day of the primary or~~
25 ~~election. The application shall include a declaration describing~~
26 ~~the circumstances that prevented the elector from applying for~~
27 ~~an absentee ballot before five o'clock P.M. on the [first~~
28 ~~Tuesday] fifteenth day prior to the day of the primary or~~
29 ~~election or that prevent the elector from appearing at the~~
30 ~~polling place on the day of the primary or election, and the~~

1 ~~elector's qualifications under paragraph (1). The declaration~~
2 ~~shall be made subject to the provisions of 18 Pa.C.S. § 4904~~
3 ~~(relating to unsworn falsification to authorities).~~

4 * * *

5 ~~Section 6. Sections 1302.2(c), 1303(c) and 1306(a)~~
6 ~~introductory paragraph and (b) (3) of the act, amended March 27,~~
7 ~~2020 (P.L.41, No.12), are amended to read:~~

8 ~~Section 1302.2. Approval of Application for Absentee~~
9 ~~Ballot.—~~

10 * * *

11 ~~(c) The county board of elections, upon receipt of any~~
12 ~~application of a qualified elector required to be registered~~
13 ~~under the provisions of preceding section 1301, shall determine~~
14 ~~the qualifications of such applicant by verifying the proof of~~
15 ~~identification and comparing the information set forth on such~~
16 ~~application with the information contained on the applicant's~~
17 ~~permanent registration card. If the board is satisfied that the~~
18 ~~applicant is qualified to receive an official absentee ballot,~~
19 ~~the application shall be marked "approved." Such approval~~
20 ~~decision shall be final and binding, except that challenges may~~
21 ~~be made only on the ground that the applicant was not a~~
22 ~~qualified elector. Such challenges must be made to the county~~
23 ~~board of elections prior to five o'clock p.m. on the Friday~~
24 ~~prior to the election, or during the pre canvassing of an~~
25 ~~elector's absentee ballot, whichever is earlier: Provided,~~
26 ~~however, That a challenge to an application for an absentee~~
27 ~~ballot shall not be permitted on the grounds that the elector~~
28 ~~used an application for an absentee ballot instead of an~~
29 ~~application for a mail in ballot or on the grounds that the~~
30 ~~elector used an application for a mail in ballot instead of an~~

1 ~~application for an absentee ballot.~~

2 ~~* * *~~

3 ~~Section 1303. Official Absentee Voters Ballots. * * *~~

4 ~~(e) The official absentee voter ballot shall state that an~~
5 ~~elector who receives an absentee ballot pursuant to section 1301~~
6 ~~and whose voted ballot is not timely received by the commission~~
7 ~~or voted ballot and the envelope containing the declaration of~~
8 ~~the elector is timely received by the judge of elections of the~~
9 ~~elector's election district at the elector's polling place on~~
10 ~~election day and who, on election day, is capable of voting at~~
11 ~~the appropriate polling place may only vote on election day by~~
12 ~~provisional ballot [unless the elector brings the elector's~~
13 ~~absentee ballot to the elector's polling place, remits the~~
14 ~~ballot and the envelope containing the declaration of the~~
15 ~~elector to the judge of elections to be spoiled and signs a~~
16 ~~statement subject to the penalties under 18 Pa.C.S. § 4904~~
17 ~~(relating to unsworn falsification to authorities) to the same~~
18 ~~effect].~~

19 ~~Section 1306. Voting by Absentee Electors. (a) Except as~~
20 ~~provided in paragraphs (2) and (3), at any time after receiving~~
21 ~~an official absentee ballot, but on or before eight o'clock P.M.~~
22 ~~the day of the primary or election, the elector shall, in~~
23 ~~secret, proceed to mark the ballot only in black lead pencil,~~
24 ~~indelible pencil or blue, black or blue black ink, in fountain~~
25 ~~pen or ball point pen, and then fold the ballot, enclose and~~
26 ~~securely seal the same in the envelope on which is printed,~~
27 ~~stamped or endorsed "Official Election Ballot." This envelope~~
28 ~~shall then be placed in the second one, on which is printed the~~
29 ~~form of declaration of the elector, and the address of the~~
30 ~~elector's county board of election and the local election~~

1 ~~district of the elector. The elector shall then fill out, date~~
2 ~~and sign the declaration printed on such envelope. Such envelope~~
3 ~~shall then be securely sealed and the elector shall send same by~~
4 ~~mail, postage prepaid, except where franked, or deliver it in~~
5 ~~person to said county board of election or to the judge of~~
6 ~~elections of the elector's election district at the elector's~~
7 ~~polling place.~~

8 * * *

9 (b) * * *

10 (3) ~~Notwithstanding paragraph (2), an elector who requests~~
11 ~~an absentee ballot and who is not shown on the district register~~
12 ~~as having voted the ballot may [vote at the polling place if the~~
13 ~~elector remits the ballot and the envelope containing the~~
14 ~~declaration of the elector to the judge of elections to be~~
15 ~~spoiled and the elector signs a statement subject to the~~
16 ~~penalties under 18 Pa.C.S. § 4904 (relating to unsworn~~
17 ~~falsification to authorities) in substantially the following~~
18 ~~form:~~

19 I hereby declare that I am a qualified registered elector who
20 has obtained an absentee ballot or mail in ballot. I further
21 declare that I have not cast my absentee ballot or mail in
22 ballot, and that instead I remitted my absentee ballot or
23 mail in ballot and the envelope containing the declaration of
24 the elector to the judge of elections at my polling place to
25 be spoiled and therefore request that my absentee ballot or
26 mail in ballot be voided.

27 (Date)

28 (Signature of Elector).....(Address of Elector)

29 (Local Judge of Elections)] ~~deliver the completed absentee~~
30 ~~ballot to the judge of elections of the elector's election~~

1 ~~district at the elector's polling place.~~

2 * * *

3 Section 7. ~~Section 1308(g) (1.1) and (2) of the act, amended~~
4 ~~March 27, 2020 (P.L.41, No.12), is amended, subsection (g) is~~
5 ~~amended by adding a paragraph and the section is amended by~~
6 ~~adding a subsection to read:~~

7 Section 1308. ~~Canvassing of Official Absentee Ballots and~~
8 ~~Mail in Ballots. * * *~~

9 ~~(a.1) A judge of elections shall deliver all completed~~
10 ~~absentee ballots, mail in ballots and envelopes containing the~~
11 ~~declaration of the elector received under sections 1306(b) (3)~~
12 ~~and 1306 D(b) (3) to the county board of elections by two o'clock~~
13 ~~A.M. on the day following the election.~~

14 * * *

15 (g) * * *

16 (1.1) ~~The county board of elections shall meet [no earlier~~
17 ~~than seven o'clock A.M. on election day] at least once before~~
18 ~~election day at the county courthouse or the offices of the~~
19 ~~county board of election to pre canvass all ballots received~~
20 ~~prior to the meeting.~~

21 (1.2) ~~A county board of elections that meets to pre canvass~~
22 ~~absentee ballots and mail in ballots may complete the tasks~~
23 ~~described in paragraph (4) (i), (ii) and (iii) at any point~~
24 ~~during the period beginning twenty one days prior to the~~
25 ~~election and up to and including the day before the election,~~
26 ~~provided that the board completes a pre canvass of all absentee~~
27 ~~ballots or mail in ballots received prior to the Friday before~~
28 ~~the election. A county board of elections shall provide at least~~
29 ~~forty eight hours' notice of a pre canvass meeting by publicly~~
30 ~~posting a notice of a pre canvass meeting on its publicly~~

1 accessible Internet website. ~~[One] The authorized representative~~
2 ~~of each candidate in an election, the county chairperson of each~~
3 ~~political party and one representative from each political party~~
4 ~~shall be permitted to remain in the room in which the absentee~~
5 ~~ballots and mail in ballots are pre canvassed. The proceedings~~
6 ~~of the pre canvassing shall be recorded and made available upon~~
7 ~~request. No person observing, attending or participating in a~~
8 ~~pre canvass meeting may disclose the results of any portion of~~
9 ~~any pre canvass meeting prior to the close of the polls.~~

10 ~~(2) The county board of elections shall meet no earlier than~~
11 ~~the close of polls on the day of the election at the county~~
12 ~~courthouse or the offices of the county board of election and no~~
13 ~~later than the third day following the election to begin~~
14 ~~canvassing absentee ballots and mail in ballots not included in~~
15 ~~the pre canvass meeting. The meeting under this paragraph shall~~
16 ~~continue until all absentee ballots and mail in ballots received~~
17 ~~prior to the close of the polls have been canvassed. The county~~
18 ~~board of elections shall not record or publish any votes~~
19 ~~reflected on the ballots prior to the close of the polls. The~~
20 ~~canvass process shall continue through the eighth day following~~
21 ~~the election for valid military overseas ballots timely received~~
22 ~~under 25 Pa.C.S. § 3511 (relating to receipt of voted ballot). A~~
23 ~~county board of elections shall provide at least forty eight~~
24 ~~hours' notice of a canvass meeting by publicly posting a notice~~
25 ~~on its publicly accessible Internet website. One authorized~~
26 ~~representative of each candidate in an election, the county~~
27 ~~chairperson of each political party and one representative from~~
28 ~~each political party shall be permitted to remain in the room in~~
29 ~~which the absentee ballots and mail in ballots are canvassed.~~
30 ~~The proceedings of the canvassing shall be recorded and made~~

1 ~~available upon request.~~

2 * * *

3 ~~Section 8. Section 1302 D(f) of the act, amended March 27,~~
4 ~~2020 (P.L.41, No.12), is amended and subsection (g) is amended~~
5 ~~by adding a paragraph to read:~~

6 ~~Section 1302 D. Applications for official mail in ballots.~~

7 * * *

8 ~~(f) Form. The following shall apply:~~

9 ~~(1) Application for an official mail in ballot shall be~~
10 ~~on physical and electronic forms prescribed by the Secretary~~
11 ~~of the Commonwealth.~~

12 ~~(2) The application shall state that a voter who applies~~
13 ~~for a mail in ballot under section 1301 D shall not be~~
14 ~~eligible to vote at a polling place on election day [unless~~
15 ~~the elector brings the elector's mail in ballot to the~~
16 ~~elector's polling place, remits the ballot and the envelope~~
17 ~~containing the declaration of the elector to the judge of~~
18 ~~elections to be spoiled and signs a statement subject to the~~
19 ~~penalties under 18 Pa.C.S. § 4904 (relating to unsworn~~
20 ~~falsification to authorities) to the same effect.] except by~~
21 ~~provisional ballot. The application shall also state that an~~
22 ~~elector may deliver a mail in ballot and the envelope~~
23 ~~containing the declaration of the elector to the judge of~~
24 ~~elections of the elector's election district at the elector's~~
25 ~~polling place during the hours that the polling place is open~~
26 ~~on election day.~~

27 ~~(3) The physical application forms shall be made freely~~
28 ~~available to the public at county board of elections,~~
29 ~~municipal buildings and at other locations designated by the~~
30 ~~Secretary of the Commonwealth.~~

1 ~~(4) The electronic application forms shall be made~~
2 ~~freely available to the public through publicly accessible~~
3 ~~means.~~

4 ~~(5) No written application or personal request shall be~~
5 ~~necessary to receive or access the application forms.~~

6 ~~(6) Copies and records of all completed physical and~~
7 ~~electronic applications for official mail in ballots shall be~~
8 ~~retained by the county board of elections.~~

9 ~~(g) Permanent mail in voting list.~~

10 ~~* * *~~

11 ~~(1.1) A county board of elections shall remove a person~~
12 ~~from the permanent mail in ballot list if the elector does~~
13 ~~any of the following:~~

14 ~~(i) The person loses eligibility to vote.~~

15 ~~(ii) The elector votes in person at the elector's~~
16 ~~polling place.~~

17 ~~(iii) The elector requests removal from the~~
18 ~~permanent mail in ballot list.~~

19 ~~* * *~~

20 ~~Section 9. Section 1302.1 D(a) of the act, added October 31,~~
21 ~~2019 (P.L.552, No.77), is amended to read:~~

22 ~~Section 1302.1 D. Date of application for mail in ballot.~~

23 ~~(a) General rule. Applications for mail in ballots shall be~~
24 ~~received in the office of the county board of elections not~~
25 ~~earlier than 50 days before the primary or election, except that~~
26 ~~if a county board of elections determines that it would be~~
27 ~~appropriate to the county board of elections' operational needs,~~
28 ~~any applications for mail in ballots received more than 50 days~~
29 ~~before the primary or election may be processed before that~~
30 ~~time. Applications for mail in ballots shall be processed if~~

1 ~~received not later than five o'clock P.M. of the [first Tuesday]~~
2 ~~fifteenth day prior to the day of any primary or election.~~

3 * * *

4 ~~Section 10. Sections 1302.2 D(a) (3), 1303 D(e) and 1306 D(a)~~
5 ~~and (b) (3) of the act, amended March 27, 2020 (P.L.41, No.12),~~
6 ~~are amended to read:~~

7 ~~Section 1302.2 D. Approval of application for mail in ballot.~~

8 ~~(a) Approval process. The county board of elections, upon~~
9 ~~receipt of any application of a qualified elector under section~~
10 ~~1301 D, shall determine the qualifications of the applicant by~~
11 ~~verifying the proof of identification and comparing the~~
12 ~~information provided on the application with the information~~
13 ~~contained on the applicant's permanent registration card. The~~
14 ~~following shall apply:~~

15 * * *

16 ~~(3) Challenges must be made to the county board of~~
17 ~~elections prior to five o'clock p.m. on the Friday prior to~~
18 ~~the election or during the prec canvassing of an elector's~~
19 ~~mail in ballot, whichever is earlier: Provided, however, That~~
20 ~~a challenge to an application for a mail in ballot shall not~~
21 ~~be permitted on the grounds that the elector used an~~
22 ~~application for a mail in ballot instead of an application~~
23 ~~for an absentee ballot or on the grounds that the elector~~
24 ~~used an application for an absentee ballot instead of an~~
25 ~~application for a mail in ballot.~~

26 * * *

27 ~~Section 1303 D. Official mail in elector ballots.~~

28 * * *

29 ~~(e) Notice. The official mail in voter ballot shall state~~
30 ~~that a voter who receives a mail in ballot under section 1301 D~~

1 ~~and whose voted mail in ballot is not timely received by the~~
2 ~~commission or voted ballot and the envelope containing the~~
3 ~~declaration of the elector is timely received by the judge of~~
4 ~~elections of the elector's election district at the elector's~~
5 ~~polling place on election day may only vote on election day by~~
6 ~~provisional ballot [unless the elector brings the elector's~~
7 ~~mail in ballot to the elector's polling place, remits the ballot~~
8 ~~and the envelope containing the declaration of the elector to~~
9 ~~the judge of elections to be spoiled and signs a statement~~
10 ~~subject to the penalties of 18 Pa.C.S. § 4904 (relating to~~
11 ~~unsworn falsification to authorities) to the same effect].~~

12 ~~Section 1306 D. Voting by mail in electors.~~

13 ~~(a) General rule. At any time after receiving an official~~
14 ~~mail in ballot, but on or before eight o'clock P.M. the day of~~
15 ~~the primary or election, the mail in elector shall, in secret,~~
16 ~~proceed to mark the ballot only in black lead pencil, indelible~~
17 ~~pencil or blue, black or blue black ink, in fountain pen or ball~~
18 ~~point pen, and then fold the ballot, enclose and securely seal~~
19 ~~the same in the envelope on which is printed, stamped or~~
20 ~~endorsed "Official Election Ballot." This envelope shall then be~~
21 ~~placed in the second one, on which is printed the form of~~
22 ~~declaration of the elector, and the address of the elector's~~
23 ~~county board of election and the local election district of the~~
24 ~~elector. The elector shall then fill out, date and sign the~~
25 ~~declaration printed on such envelope. Such envelope shall then~~
26 ~~be securely sealed and the elector shall send same by mail,~~
27 ~~postage prepaid, except where franked, or deliver it in person~~
28 ~~to said county board of election or to the judge of elections of~~
29 ~~the elector's election district at the elector's polling place.~~

30 * * *

1 ~~(b) Eligibility.~~

2 * * *

3 ~~(3) Notwithstanding paragraph (2), an elector who~~
4 ~~requests a mail in ballot and who is not shown on the~~
5 ~~district register as having voted the ballot may [vote at the~~
6 ~~polling place if the elector remits the ballot and the~~
7 ~~envelope containing the declaration of the elector to the~~
8 ~~judge of elections to be spoiled and the elector signs a~~
9 ~~statement subject to the penalties of 18 Pa.C.S. § 4904~~
10 ~~(relating to unsworn falsification to authorities) which~~
11 ~~shall be in substantially the following form:~~

12 ~~I hereby declare that I am a qualified registered elector~~
13 ~~who has obtained an absentee ballot or mail in ballot. I~~
14 ~~further declare that I have not cast my absentee ballot or~~
15 ~~mail in ballot, and that instead I remitted my absentee~~
16 ~~ballot or mail in ballot to the judge of elections at my~~
17 ~~polling place to be spoiled and therefore request that my~~
18 ~~absentee ballot or mail in ballot be voided.~~

19 ~~(Date)~~

20 ~~(Signature of Elector).....(Address of Elector)~~

21 ~~(Local Judge of Elections)] deliver the completed mail in~~
22 ~~ballot and the envelope containing the declaration of the~~
23 ~~elector to the judge of elections of the elector's election~~
24 ~~district at the elector's polling place.~~

25 * * *

26 ~~Section 11. Repeals are as follows:~~

27 ~~(1) The General Assembly declares that the repeal under~~
28 ~~paragraph (2) is necessary for the addition of section~~
29 ~~1231.1.~~

30 ~~(2) 25 Pa.C.S § 1503 is repealed.~~

1 ~~Section 12. This act shall take effect in 30 days.~~

2 SECTION 1. SECTION 102 (A.1) AND (Q.1) OF THE ACT OF JUNE 3, <--
3 1937 (P.L.1333, NO.320), KNOWN AS THE PENNSYLVANIA ELECTION
4 CODE, AMENDED OR ADDED MARCH 27, 2020 (P.L.41, NO.12), ARE
5 AMENDED TO READ:

6 SECTION 102. DEFINITIONS.--THE FOLLOWING WORDS, WHEN USED IN
7 THIS ACT, SHALL HAVE THE FOLLOWING MEANINGS, UNLESS OTHERWISE
8 CLEARLY APPARENT FROM THE CONTEXT:

9 * * *

10 (A.1) THE WORD "CANVASS" SHALL MEAN THE [GATHERING OF
11 BALLOTS AFTER THE FINAL PRE-CANVASS MEETING AND THE COUNTING,
12 COMPUTING AND TALLYING OF THE VOTES REFLECTED ON THE BALLOTS.]
13 ACTIVITIES PERMITTED UNDER SECTION 1308(G)(3) AND (4).

14 * * *

15 (Q.1) THE WORD "PRE-CANVASS" SHALL MEAN [THE INSPECTION AND
16 OPENING OF ALL ENVELOPES CONTAINING OFFICIAL ABSENTEE BALLOTS OR
17 MAIL-IN BALLOTS, THE REMOVAL OF SUCH BALLOTS FROM THE ENVELOPES
18 AND THE COUNTING, COMPUTING AND TALLYING OF THE VOTES REFLECTED
19 ON THE BALLOTS. THE TERM DOES NOT INCLUDE THE RECORDING OR
20 PUBLISHING OF THE VOTES REFLECTED ON THE BALLOTS.] THE
21 ACTIVITIES PERMITTED UNDER SECTION 1308(G)(3) AND (4)(I), (II)
22 AND (III).

23 * * *

24 SECTION 2. THE ACT IS AMENDED BY ADDING A SECTION TO READ:

25 SECTION 209. REPORTS ON IMPLEMENTATION OF ELECTIONS.--(A)
26 NO LATER THAN SIXTY DAYS AFTER AN ELECTION, THE BUREAU OF
27 COMMISSIONS, ELECTIONS AND LEGISLATION OF THE DEPARTMENT OF
28 STATE SHALL ISSUE A REPORT TO THE CHAIR AND MINORITY CHAIR OF
29 THE STATE GOVERNMENT COMMITTEE OF THE SENATE AND THE CHAIR AND
30 MINORITY CHAIR OF THE STATE GOVERNMENT COMMITTEE OF THE HOUSE OF

1 REPRESENTATIVES. A COPY OF THE REPORT SHALL ALSO BE MADE
2 AVAILABLE ON THE DEPARTMENT OF STATE'S PUBLICLY ACCESSIBLE
3 INTERNET WEBSITE.

4 (B) THE REPORT UNDER SUBSECTION (A) SHALL INCLUDE ONLY THE
5 FOLLOWING INFORMATION RELATING TO THE ADMINISTRATION OF THE
6 ELECTION BY THE DEPARTMENT OF STATE, A COUNTY BOARD OF ELECTIONS
7 OR A REGISTRATION COMMISSION ESTABLISHED UNDER 25 PA.C.S. § 1203
8 (RELATING TO COMMISSIONS):

9 (1) FOR EACH COUNTY AND THE SUM FOR THIS COMMONWEALTH, THE
10 NUMBER OF APPLICATIONS FOR AN ABSENTEE BALLOT WHICH WERE
11 RECEIVED BY THE COUNTY BOARDS OF ELECTIONS.

12 (2) FOR EACH COUNTY AND THE SUM FOR THIS COMMONWEALTH, THE
13 NUMBER OF APPLICATIONS FOR A MAIL-IN BALLOT WHICH WERE RECEIVED
14 BY THE COUNTY BOARDS OF ELECTIONS.

15 (3) FOR EACH COUNTY AND THE SUM FOR THIS COMMONWEALTH, THE
16 NUMBER OF APPLICATIONS FOR AN ABSENTEE BALLOT WHICH WERE
17 APPROVED BY THE COUNTY BOARDS OF ELECTIONS.

18 (4) FOR EACH COUNTY AND THE SUM FOR THIS COMMONWEALTH, THE
19 NUMBER OF APPLICATIONS FOR A MAIL-IN BALLOT WHICH WERE APPROVED
20 BY THE COUNTY BOARDS OF ELECTIONS.

21 (5) FOR EACH COUNTY AND THE SUM FOR THIS COMMONWEALTH, THE
22 NUMBER OF ABSENTEE BALLOTS WHICH WERE VOTED BY QUALIFIED
23 ELECTORS.

24 (6) FOR EACH COUNTY AND THE SUM FOR THIS COMMONWEALTH, THE
25 NUMBER OF MAIL-IN BALLOTS WHICH WERE VOTED BY QUALIFIED
26 ELECTORS.

27 (7) FOR EACH COUNTY AND THE SUM FOR THIS COMMONWEALTH, THE
28 NUMBER OF PROVISIONAL BALLOTS CAST UNDER SECTION 1210(A.4).

29 (8) FOR EACH COUNTY AND THE SUM FOR THIS COMMONWEALTH, THE
30 NUMBER OF QUALIFIED ELECTORS VOTING BY A PROVISIONAL BALLOT

1 UNDER SECTION 1306(B) (2) .

2 (9) FOR EACH COUNTY AND THE SUM FOR THIS COMMONWEALTH, THE
3 NUMBER OF QUALIFIED ELECTORS VOTING BY PROVISIONAL BALLOT UNDER
4 SECTION 1306-D(B) (2) .

5 (10) FOR EACH COUNTY AND THE SUM FOR THIS COMMONWEALTH, THE
6 NUMBER OF PROVISIONAL BALLOTS UNDER PARAGRAPH (7) WHICH WERE
7 CANVASSED.

8 (11) FOR EACH COUNTY AND THE SUM FOR THIS COMMONWEALTH, THE
9 NUMBER OF PROVISIONAL BALLOTS UNDER PARAGRAPH (8) WHICH WERE
10 CANVASSED.

11 (12) FOR EACH COUNTY AND THE SUM FOR THIS COMMONWEALTH, THE
12 NUMBER OF PROVISIONAL BALLOTS UNDER PARAGRAPH (9) WHICH WERE
13 CANVASSED.

14 (13) FOR EACH COUNTY AND THE SUM FOR THIS COMMONWEALTH, THE
15 NUMBER OF VOTER REGISTRATION APPLICATIONS UNDER SECTION 1231 AND
16 25 PA.C.S. PT. IV (RELATING TO VOTER REGISTRATION) WHICH WERE
17 RECEIVED:

18 (I) FEWER THAN THIRTY DAYS BEFORE THE ELECTION.

19 (II) FEWER THAN FIFTEEN DAYS BEFORE THE ELECTION.

20 (14) FOR EACH COUNTY AND THE SUM FOR THIS COMMONWEALTH, THE
21 NUMBER OF POLLING PLACES IN SCHOOL BUILDINGS.

22 (15) FOR EACH COUNTY, THE DATE, STARTING TIME AND ENDING
23 TIME THAT THE COUNTY BOARD OF ELECTIONS MET TO PRE-CANVASS
24 ABSENTEE BALLOTS AND MAIL-IN BALLOTS UNDER SECTION 1308(G) (1.1) .

25 (16) FOR EACH COUNTY, THE DATE, STARTING TIME AND ENDING
26 TIME THAT THE COUNTY BOARD OF ELECTIONS MET TO CANVASS ABSENTEE
27 BALLOTS AND MAIL-IN BALLOTS UNDER SECTION 1308(G) (2) .

28 (17) FOR EACH COUNTY AND THE SUM FOR THIS COMMONWEALTH, THE
29 NUMBER OF ABSENTEE BALLOTS WHICH WERE CHALLENGED UNDER SECTION
30 1302.2(C) .

1 (18) FOR EACH COUNTY AND THE SUM FOR THIS COMMONWEALTH, THE
2 NUMBER OF MAIL-IN BALLOTS WHICH WERE CHALLENGED UNDER SECTION
3 1302.2-D(A) (2).

4 (19) FOR EACH COUNTY AND THE SUM FOR THIS COMMONWEALTH, THE
5 NUMBER OF ABSENTEE BALLOTS SUBJECT TO CHALLENGES UNDER PARAGRAPH
6 (17) WHICH WERE NOT CANVASSED.

7 (20) FOR EACH COUNTY AND THE SUM FOR THIS COMMONWEALTH, THE
8 NUMBER OF MAIL-IN BALLOTS SUBJECT TO CHALLENGES UNDER PARAGRAPH
9 (18) WHICH WERE NOT CANVASSED.

10 (21) THE NUMBER OF INCIDENTS KNOWN TO THE DEPARTMENT OF
11 STATE, COUNTY BOARDS OF ELECTIONS OR REGISTRATION COMMISSIONS
12 RELATING TO EACH OF THE FOLLOWING CATEGORIES:

13 (I) AN ABSENTEE BALLOT OR MAIL-IN BALLOT WHICH WAS SENT TO
14 THE WRONG INDIVIDUAL OR WRONG ADDRESS.

15 (II) AN ABSENTEE BALLOT OR MAIL-IN BALLOT WHICH WAS VOTED BY
16 AN INDIVIDUAL OTHER THAN THE INDIVIDUAL WHO APPLIED FOR THE
17 ABSENTEE BALLOT OR MAIL-IN BALLOT.

18 (III) AN ABSENTEE BALLOT OR MAIL-IN BALLOT WHICH WAS
19 RETURNED TO THE COUNTY BOARDS OF ELECTIONS BY A MEANS OTHER THAN
20 PERMITTED BY LAW.

21 (22) TO THE EXTENT CONSISTENT WITH FEDERAL AND STATE LAW, A
22 REVIEW OF ANY ACTION TAKEN BY THE DEPARTMENT OF STATE, COUNTY
23 BOARDS OF ELECTIONS OR REGISTRATION COMMISSIONS IN RESPONSE TO
24 AN INCIDENT UNDER PARAGRAPH (21), INCLUDING DETERMINATIONS MADE
25 ON THE INCIDENT, LEGAL ACTIONS FILED AND REFERRALS TO LAW
26 ENFORCEMENT.

27 (23) A REVIEW OF ISSUES OR INCIDENTS ENCOUNTERED WITH AN
28 ELECTRONIC VOTING SYSTEM THAT RECEIVED THE APPROVAL OF THE
29 SECRETARY OF THE COMMONWEALTH UNDER SECTION 1105-A, INCLUDING
30 ANY TECHNICAL ISSUES ENCOUNTERED AT POLLING PLACES.

1 (C) THE DEPARTMENT OF STATE SHALL DEVELOP A PROCESS TO
2 COLLECT DATA REQUIRED TO BE INCLUDED IN THE REPORT UNDER
3 SUBSECTION (B) FROM EACH COUNTY BOARD OF ELECTIONS WHICH
4 CONDUCTS AN ELECTION AND EACH REGISTRATION COMMISSION UNDER 25
5 PA.C.S. PT. IV IN A COUNTY WHICH CONDUCTS AN ELECTION, AS
6 APPLICABLE. A COUNTY BOARD OF ELECTIONS OR REGISTRATION
7 COMMISSION UNDER THIS SUBSECTION SHALL COMPLY WITH THE PROCESS
8 FOR SUBMISSION OF DATA UNDER THIS SUBSECTION NO LATER THAN
9 FORTY-FIVE DAYS AFTER AN ELECTION.

10 SECTION 3. SECTION 302(P) OF THE ACT, AMENDED MARCH 27, 2020
11 (P.L.41, NO.12), IS AMENDED TO READ:

12 SECTION 302. POWERS AND DUTIES OF COUNTY BOARDS.--THE COUNTY
13 BOARDS OF ELECTIONS, WITHIN THEIR RESPECTIVE COUNTIES, SHALL
14 EXERCISE, IN THE MANNER PROVIDED BY THIS ACT, ALL POWERS GRANTED
15 TO THEM BY THIS ACT, AND SHALL PERFORM ALL THE DUTIES IMPOSED
16 UPON THEM BY THIS ACT, WHICH SHALL INCLUDE THE FOLLOWING:

17 * * *

18 (P) A COUNTY BOARD OF ELECTIONS SHALL NOT PAY COMPENSATION
19 TO A JUDGE OF ELECTIONS WHO WILFULLY FAILS TO DELIVER BY TWO
20 O'CLOCK A. M. ON THE DAY FOLLOWING THE ELECTION ENVELOPES;
21 SUPPLIES, INCLUDING ALL UNCAST PROVISIONAL BALLOTS; AND RETURNS,
22 INCLUDING ALL PROVISIONAL BALLOTS CAST IN THE ELECTION DISTRICT
23 AND [STATEMENTS SIGNED UNDER SECTIONS 1306 AND 1302-D.] ALL
24 MATERIAL DELIVERED UNDER SECTIONS 1306(B) (3) (I) AND 1306-D(B) (3)
25 (I).

26 SECTION 4. SECTIONS 308, 309, 310(A), 402(A) AND 417(B) OF
27 THE ACT ARE AMENDED TO READ:

28 SECTION 308. RECORDS AND DOCUMENTS TO BE OPEN TO PUBLIC
29 INSPECTION; PROVISO.--THE RECORDS OF EACH COUNTY BOARD OF
30 ELECTIONS, GENERAL AND DUPLICATE RETURNS, TALLY PAPERS,

1 AFFIDAVITS OF VOTERS AND OTHERS, NOMINATION PETITIONS,
2 RECORDINGS OF PRE-CANVASSING MEETINGS, RECORDINGS OF CANVASSING
3 MEETINGS, CERTIFICATES AND PAPERS, OTHER PETITIONS, APPEALS,
4 WITNESS LISTS, ACCOUNTS, CONTRACTS, REPORTS AND OTHER DOCUMENTS
5 AND RECORDS IN ITS CUSTODY, EXCEPT THE CONTENTS OF BALLOT BOXES
6 AND VOTING MACHINES AND RECORDS OF ASSISTED VOTERS, SHALL BE
7 OPEN TO PUBLIC INSPECTION, EXCEPT AS HEREIN PROVIDED, AND MAY BE
8 INSPECTED AND COPIED BY ANY QUALIFIED ELECTOR OF THE COUNTY
9 DURING ORDINARY BUSINESS HOURS, AT ANY TIME WHEN THEY ARE NOT
10 NECESSARILY BEING USED BY THE BOARD, OR ITS EMPLOYEES HAVING
11 DUTIES TO PERFORM THERETO: PROVIDED, HOWEVER, THAT SUCH PUBLIC
12 INSPECTION THEREOF SHALL ONLY BE IN THE PRESENCE OF A MEMBER OR
13 AUTHORIZED EMPLOYE OF THE COUNTY BOARD, AND SHALL BE SUBJECT TO
14 PROPER REGULATION FOR SAFEKEEPING OF THE RECORDS AND DOCUMENTS,
15 AND SUBJECT TO THE FURTHER PROVISIONS OF THIS ACT: AND PROVIDED
16 FURTHER, THAT GENERAL AND DUPLICATE RETURNS, TALLY PAPERS,
17 AFFIDAVITS OF VOTERS AND OTHERS, AND ALL OTHER PAPERS REQUIRED
18 TO BE RETURNED BY THE ELECTION OFFICERS TO THE COUNTY BOARD
19 SEALED, SHALL BE OPEN TO PUBLIC INSPECTION ONLY AFTER THE COUNTY
20 BOARD SHALL, IN THE COURSE OF THE COMPUTATION AND CANVASSING OF
21 THE RETURNS, HAVE BROKEN SUCH SEALS AND FINISHED, FOR THE TIME,
22 THEIR USE OF SAID PAPERS IN CONNECTION WITH SUCH COMPUTATION AND
23 CANVASSING[.]: AND PROVIDED FURTHER, THAT RECORDINGS OF PRE-
24 CANVASSING MEETINGS SHALL BE OPEN TO PUBLIC INSPECTION UNDER
25 THIS SECTION ONLY AFTER THE CLOSE OF POLLS ON ELECTION DAY; AND
26 PROVIDED FURTHER, THAT RECORDINGS OF PRE-CANVASSING MEETINGS
27 SHALL ALSO BE OPEN TO PUBLIC INSPECTION UNDER THIS SECTION BY AN
28 AUTHORIZED REPRESENTATIVE UNDER SECTION 1308(G)(1.1)(VI): AND
29 PROVIDED FURTHER, THAT RECORDINGS OF CANVASSING MEETINGS SHALL
30 BE OPEN TO PUBLIC INSPECTION UNDER THIS SECTION BY AN AUTHORIZED

1 REPRESENTATIVE UNDER SECTION 1308(G) (2) (VI).

2 SECTION 309. PRESERVATION OF RECORDS.--ALL DOCUMENTS, PAPERS
3 AND RECORDS IN THE OFFICE OF THE COUNTY BOARD OF ELECTIONS OF
4 EACH COUNTY SHALL BE PRESERVED THEREIN FOR A PERIOD OF AT LEAST
5 ELEVEN (11) MONTHS, AND ALL OFFICIAL BALLOTS [AND], THE CONTENTS
6 OF BALLOT BOXES AND RECORDINGS OF PRE-CANVASSING MEETINGS AND
7 CANVASSING MEETINGS SHALL BE PRESERVED THEREIN FOR A PERIOD OF
8 AT LEAST FOUR (4) MONTHS; IN THE EVENT THE COUNTY BOARD HAS BEEN
9 NOTIFIED IN WRITING BY THE DISTRICT ATTORNEY OF THE COUNTY, OR
10 BY A JUDGE OF A COURT OF RECORD, TO PRESERVE SAID [PAPERS OR
11 CONTENTS OF BALLOT BOXES] RECORDS FOR A LONGER PERIOD OF TIME,
12 FOR THE PURPOSES OF PENDING PROSECUTION OR LITIGATION, SAID
13 RECORDS SHALL BE PRESERVED ACCORDINGLY.

14 SECTION 310. WATCHERS OR ATTORNEYS AT SESSIONS OF COUNTY
15 BOARD; CANDIDATES MAY BE PRESENT.--

16 (A) ANY PARTY OR POLITICAL BODY OR BODY OF CITIZENS WHICH
17 NOW IS, OR HEREAFTER MAY BE, ENTITLED TO HAVE WATCHERS AT ANY
18 REGISTRATION, PRIMARY OR ELECTION, SHALL ALSO BE ENTITLED TO
19 APPOINT WATCHERS WHO ARE QUALIFIED ELECTORS [OF THE COUNTY], OR
20 ATTORNEYS, TO REPRESENT SUCH PARTY OR POLITICAL BODY OR BODY OF
21 CITIZENS AT ANY PUBLIC SESSION OR SESSIONS OF THE COUNTY BOARD
22 OF ELECTIONS, AND AT ANY COMPUTATION AND CANVASSING OF RETURNS
23 OF ANY PRIMARY OR ELECTION AND RECOUNT OF BALLOTS OR RECANVASS
24 OF VOTING MACHINES UNDER THE PROVISIONS OF THIS ACT. SUCH
25 WATCHERS OR ATTORNEYS MAY EXERCISE THE SAME RIGHTS AS WATCHERS
26 AT REGISTRATION AND POLLING PLACES, BUT THE NUMBER WHO MAY BE
27 PRESENT AT ANY ONE TIME MAY BE LIMITED BY THE COUNTY BOARD TO
28 NOT MORE THAN THREE FOR EACH PARTY, POLITICAL BODY OR BODY OF
29 CITIZENS.

30 * * *

1 SECTION 402. QUALIFICATIONS OF ELECTION OFFICERS.-- (A)
2 EXCEPT AS PROVIDED IN SUBSECTION (B), ELECTION OFFICERS SHALL BE
3 QUALIFIED REGISTERED ELECTORS OF THE [DISTRICT IN WHICH THEY ARE
4 ELECTED OR APPOINTED.] COUNTY IN WHICH THE POLLING PLACE IS
5 LOCATED. AN ELECTION OFFICER SHALL NOT BE REQUIRED TO BE A
6 QUALIFIED REGISTERED ELECTOR IN THE ELECTION DISTRICT IN WHICH
7 THE ELECTION OFFICER IS APPOINTED. NO PERSON SHALL BE QUALIFIED
8 TO SERVE AS AN ELECTION OFFICER WHO SHALL HOLD, OR SHALL WITHIN
9 TWO MONTHS HAVE HELD, ANY OFFICE, APPOINTMENT OR EMPLOYMENT IN
10 OR UNDER THE GOVERNMENT OF THE UNITED STATES OR OF THIS STATE OR
11 OF ANY CITY OR COUNTY OR POOR DISTRICT, OF ANY MUNICIPAL BOARD,
12 COMMISSION OR TRUST IN ANY CITY, SAVE ONLY DISTRICT JUSTICES,
13 NOTARIES PUBLIC AND PERSONS IN THE MILITIA SERVICE OF THE STATE;
14 NOR SHALL ANY ELECTION OFFICER BE ELIGIBLE TO ANY CIVIL OFFICE
15 TO BE VOTED FOR AT A PRIMARY OR ELECTION AT WHICH HE SHALL
16 SERVE, EXCEPT THAT OF AN ELECTION OFFICER.

17 * * *

18 SECTION 417. APPOINTMENT OF WATCHERS.--

19 * * *

20 (B) EACH WATCHER SO APPOINTED MUST BE A QUALIFIED REGISTERED
21 ELECTOR [OF THE COUNTY IN WHICH THE ELECTION DISTRICT FOR WHICH
22 THE WATCHER WAS APPOINTED IS LOCATED]. EACH WATCHER SO APPOINTED
23 SHALL BE AUTHORIZED TO SERVE IN THE ELECTION DISTRICT FOR WHICH
24 THE WATCHER WAS APPOINTED AND, WHEN THE WATCHER IS NOT SERVING
25 IN THE ELECTION DISTRICT FOR WHICH THE WATCHER WAS APPOINTED, IN
26 ANY OTHER ELECTION DISTRICT [IN THE COUNTY IN WHICH THE WATCHER
27 IS A QUALIFIED REGISTERED ELECTOR]: PROVIDED, THAT ONLY ONE
28 WATCHER FOR EACH CANDIDATE AT PRIMARIES, OR FOR EACH PARTY OR
29 POLITICAL BODY AT GENERAL, MUNICIPAL OR SPECIAL ELECTIONS, SHALL
30 BE PRESENT IN THE POLLING PLACE AT ANY ONE TIME FROM THE TIME

1 THAT THE ELECTION OFFICERS MEET PRIOR TO THE OPENING OF THE
2 POLLS UNDER SECTION 1208 UNTIL THE TIME THAT THE COUNTING OF
3 VOTES IS COMPLETE AND THE DISTRICT REGISTER AND VOTING CHECK
4 LIST IS LOCKED AND SEALED, AND ALL WATCHERS IN THE ROOM SHALL
5 REMAIN OUTSIDE THE ENCLOSED SPACE. IT SHALL NOT BE A REQUIREMENT
6 THAT A WATCHER BE A RESIDENT OF THE ELECTION DISTRICT FOR WHICH
7 THE WATCHER IS APPOINTED. AFTER THE CLOSE OF THE POLLS AND WHILE
8 THE BALLOTS ARE BEING COUNTED OR VOTING MACHINE CANVASSED, ALL
9 THE WATCHERS SHALL BE PERMITTED TO BE IN THE POLLING PLACE
10 OUTSIDE THE ENCLOSED SPACE. EACH WATCHER SHALL BE PROVIDED WITH
11 A CERTIFICATE FROM THE COUNTY BOARD OF ELECTIONS, STATING HIS
12 NAME AND THE NAME OF THE CANDIDATE, PARTY OR POLITICAL BODY HE
13 REPRESENTS. WATCHERS SHALL BE REQUIRED TO SHOW THEIR
14 CERTIFICATES WHEN REQUESTED TO DO SO. WATCHERS ALLOWED IN THE
15 POLLING PLACE UNDER THE PROVISIONS OF THIS ACT, SHALL BE
16 PERMITTED TO KEEP A LIST OF VOTERS AND SHALL BE ENTITLED TO
17 CHALLENGE ANY PERSON MAKING APPLICATION TO VOTE AND TO REQUIRE
18 PROOF OF HIS QUALIFICATIONS, AS PROVIDED BY THIS ACT. DURING
19 THOSE INTERVALS WHEN VOTERS ARE NOT PRESENT IN THE POLLING PLACE
20 EITHER VOTING OR WAITING TO VOTE, THE JUDGE OF ELECTIONS SHALL
21 PERMIT WATCHERS, UPON REQUEST, TO INSPECT THE VOTING CHECK LIST
22 AND EITHER OF THE TWO NUMBERED LISTS OF VOTERS MAINTAINED BY THE
23 COUNTY BOARD: PROVIDED, THAT THE WATCHER SHALL NOT MARK UPON OR
24 ALTER THESE OFFICIAL ELECTION RECORDS. THE JUDGE OF ELECTIONS
25 SHALL SUPERVISE OR DELEGATE THE INSPECTION OF ANY REQUESTED
26 DOCUMENTS.

27 * * *

28 SECTION 5. SECTION 1302(I)(1) OF THE ACT, AMENDED MARCH 27,
29 2020 (P.L.41, NO.12), IS AMENDED AND THE SUBSECTION IS AMENDED
30 BY ADDING PARAGRAPHS TO READ:

1 SECTION 1302. APPLICATIONS FOR OFFICIAL ABSENTEE BALLOTS.--*

2 * *

3 (I) (1) APPLICATION FOR OFFICIAL ABSENTEE BALLOTS SHALL BE
4 ON PHYSICAL AND ELECTRONIC FORMS PRESCRIBED BY THE SECRETARY OF
5 THE COMMONWEALTH.

6 (1.1) THE APPLICATION SHALL STATE [THAT] THE FOLLOWING:

7 (I) THAT AN ELECTOR WHO APPLIES FOR AN ABSENTEE BALLOT
8 PURSUANT TO SECTION 1301 SHALL NOT BE ELIGIBLE TO VOTE AT A
9 POLLING PLACE ON ELECTION DAY [UNLESS THE ELECTOR BRINGS THE
10 ELECTOR'S ABSENTEE BALLOT TO THE ELECTOR'S POLLING PLACE, REMITS
11 THE BALLOT AND THE ENVELOPE CONTAINING THE DECLARATION OF THE
12 ELECTOR TO THE JUDGE OF ELECTIONS TO BE SPOILED AND SIGNS A
13 STATEMENT SUBJECT TO THE PENALTIES OF 18 PA.C.S. § 4904
14 (RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES) TO THE SAME
15 EFFECT. SUCH PHYSICAL] EXCEPT BY PROVISIONAL BALLOT.

16 (II) THAT AN ELECTOR WHO DOES NOT RETURN THE ABSENTEE BALLOT
17 BY MAIL MAY PERSONALLY DELIVER THE ABSENTEE BALLOT TO ONLY THE
18 FOLLOWING:

19 (A) A MEMBER OR EMPLOYE OF THE COUNTY BOARD OF ELECTIONS AT
20 THE PERMANENT OFFICES OF THE COUNTY BOARD OF ELECTIONS.

21 (B) A MEMBER OR EMPLOYE OF THE COUNTY BOARD OF ELECTIONS AT
22 A LOCATION AT THE COUNTY COURTHOUSE DESIGNATED BY THE COUNTY
23 BOARD OF ELECTIONS.

24 (C) A JUDGE OF ELECTIONS AT THE ELECTOR'S POLLING PLACE ON
25 ELECTION DAY.

26 (1.2) PHYSICAL APPLICATION FORMS SHALL BE MADE FREELY
27 AVAILABLE TO THE PUBLIC AT COUNTY BOARD OF ELECTIONS, MUNICIPAL
28 BUILDINGS AND AT SUCH OTHER LOCATIONS DESIGNATED BY THE
29 SECRETARY. [SUCH ELECTRONIC]

30 (1.3) ELECTRONIC APPLICATION FORMS SHALL BE MADE FREELY

1 AVAILABLE TO THE PUBLIC THROUGH PUBLICLY ACCESSIBLE MEANS.

2 (1.4) NO WRITTEN APPLICATION OR PERSONAL REQUEST SHALL BE
3 NECESSARY TO RECEIVE OR ACCESS THE APPLICATION FORMS.

4 (1.5) COPIES AND RECORDS OF ALL COMPLETED PHYSICAL AND
5 ELECTRONIC APPLICATIONS FOR OFFICIAL ABSENTEE BALLOTS SHALL BE
6 RETAINED BY THE COUNTY BOARD OF ELECTIONS.

7 * * *

8 SECTION 6. SECTION 1302.1(A) AND (A.3) (1) AND (2) OF THE
9 ACT, AMENDED OCTOBER 31, 2019 (P.L.552, NO.77), ARE AMENDED TO
10 READ:

11 SECTION 1302.1. DATE OF APPLICATION FOR ABSENTEE BALLOT.--

12 (A) EXCEPT AS PROVIDED IN SUBSECTION (A.3), APPLICATIONS FOR
13 ABSENTEE BALLOTS SHALL BE RECEIVED IN THE OFFICE OF THE COUNTY
14 BOARD OF ELECTIONS NOT EARLIER THAN FIFTY (50) DAYS BEFORE THE
15 PRIMARY OR ELECTION, EXCEPT THAT IF A COUNTY BOARD OF ELECTIONS
16 DETERMINES THAT IT WOULD BE APPROPRIATE TO ITS OPERATIONAL
17 NEEDS, ANY APPLICATIONS FOR ABSENTEE BALLOTS RECEIVED MORE THAN
18 FIFTY (50) DAYS BEFORE THE PRIMARY OR ELECTION MAY BE PROCESSED
19 BEFORE THAT TIME. APPLICATIONS FOR ABSENTEE BALLOTS SHALL BE
20 PROCESSED IF RECEIVED NOT LATER THAN FIVE O'CLOCK P.M. OF THE
21 [FIRST TUESDAY] FIFTEENTH DAY PRIOR TO THE DAY OF ANY PRIMARY OR
22 ELECTION.

23 (A.3) (1) THE FOLLOWING CATEGORIES OF ELECTORS MAY APPLY
24 FOR AN ABSENTEE BALLOT UNDER THIS SUBSECTION, IF OTHERWISE
25 QUALIFIED:

26 (I) AN ELECTOR WHOSE PHYSICAL DISABILITY OR ILLNESS
27 PREVENTED THE ELECTOR FROM APPLYING FOR AN ABSENTEE BALLOT
28 BEFORE FIVE O'CLOCK P.M. ON THE [FIRST TUESDAY] FIFTEENTH DAY
29 PRIOR TO THE DAY OF THE PRIMARY OR ELECTION.

30 (II) AN ELECTOR WHO, BECAUSE OF THE ELECTOR'S BUSINESS,

1 DUTIES OR OCCUPATION, WAS UNABLE TO APPLY FOR AN ABSENTEE BALLOT
2 BEFORE FIVE O'CLOCK P.M. ON THE [FIRST TUESDAY] FIFTEENTH DAY
3 PRIOR TO THE DAY OF THE PRIMARY OR ELECTION.

4 (III) AN ELECTOR WHO BECOMES SO PHYSICALLY DISABLED OR ILL
5 AFTER FIVE O'CLOCK P.M. ON THE [FIRST TUESDAY] FIFTEENTH DAY
6 PRIOR TO THE DAY OF THE PRIMARY OR ELECTION THAT THE ELECTOR IS
7 UNABLE TO APPEAR AT THE POLLING PLACE ON THE DAY OF THE PRIMARY
8 OR ELECTION.

9 (IV) AN ELECTOR WHO, BECAUSE OF THE CONDUCT OF THE ELECTOR'S
10 BUSINESS, DUTIES OR OCCUPATION, WILL NECESSARILY BE ABSENT FROM
11 THE ELECTOR'S MUNICIPALITY OF RESIDENCE ON THE DAY OF THE
12 PRIMARY OR ELECTION, WHICH FACT WAS NOT AND COULD NOT REASONABLY
13 BE KNOWN TO THE ELECTOR ON OR BEFORE FIVE O'CLOCK P.M. ON THE
14 [FIRST TUESDAY] FIFTEENTH DAY PRIOR TO THE DAY OF THE PRIMARY OR
15 ELECTION.

16 (2) AN ELECTOR DESCRIBED IN PARAGRAPH (1) MAY SUBMIT AN
17 APPLICATION FOR AN ABSENTEE BALLOT AT ANY TIME UP UNTIL THE TIME
18 OF THE CLOSING OF THE POLLS ON THE DAY OF THE PRIMARY OR
19 ELECTION. THE APPLICATION SHALL INCLUDE A DECLARATION DESCRIBING
20 THE CIRCUMSTANCES THAT PREVENTED THE ELECTOR FROM APPLYING FOR
21 AN ABSENTEE BALLOT BEFORE FIVE O'CLOCK P.M. ON THE [FIRST
22 TUESDAY] FIFTEENTH DAY PRIOR TO THE DAY OF THE PRIMARY OR
23 ELECTION OR THAT PREVENT THE ELECTOR FROM APPEARING AT THE
24 POLLING PLACE ON THE DAY OF THE PRIMARY OR ELECTION, AND THE
25 ELECTOR'S QUALIFICATIONS UNDER PARAGRAPH (1). THE DECLARATION
26 SHALL BE MADE SUBJECT TO THE PROVISIONS OF 18 PA.C.S. § 4904
27 (RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES).

28 * * *

29 SECTION 7. SECTION 1303(E) OF THE ACT, AMENDED MARCH 27,
30 2020 (P.L.41, NO.12), IS AMENDED TO READ:

1 SECTION 1303. OFFICIAL ABSENTEE VOTERS BALLOTS.--* * *

2 (E) (1) THE OFFICIAL ABSENTEE VOTER BALLOT SHALL STATE
3 [THAT AN ELECTOR WHO RECEIVES AN ABSENTEE BALLOT PURSUANT TO
4 SECTION 1301 AND WHOSE VOTED BALLOT IS NOT TIMELY RECEIVED BY
5 THE COMMISSION AND WHO, ON ELECTION DAY, IS CAPABLE OF VOTING AT
6 THE APPROPRIATE POLLING PLACE MAY ONLY VOTE ON ELECTION DAY BY
7 PROVISIONAL BALLOT UNLESS THE ELECTOR BRINGS THE ELECTOR'S
8 ABSENTEE BALLOT TO THE ELECTOR'S POLLING PLACE, REMITS THE
9 BALLOT AND THE ENVELOPE CONTAINING THE DECLARATION OF THE
10 ELECTOR TO THE JUDGE OF ELECTIONS TO BE SPOILED AND SIGNS A
11 STATEMENT SUBJECT TO THE PENALTIES UNDER 18 PA.C.S. § 4904
12 (RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES) TO THE SAME
13 EFFECT.] THE FOLLOWING:

14 (I) THAT AN ELECTOR WHO DOES NOT RETURN THE ABSENTEE BALLOT
15 BY MAIL MAY PERSONALLY DELIVER THE BALLOT, ENCLOSED WITHIN BOTH
16 THE ENVELOPE MARKED "OFFICIAL ELECTION BALLOT" AND THE ENVELOPE
17 CONTAINING THE DECLARATION OF THE ELECTOR, TO ONLY THE
18 FOLLOWING:

19 (A) A MEMBER OR AN EMPLOYEE OF THE COUNTY BOARD OF ELECTIONS,
20 BEFORE ELECTION DAY OR PRIOR TO EIGHT O'CLOCK P.M. OF ELECTION
21 DAY, AT:

22 (I) THE PERMANENT OFFICES OF THE COUNTY BOARD OF ELECTIONS;
23 OR

24 (II) A LOCATION AT THE COUNTY COURTHOUSE DESIGNATED BY THE
25 COUNTY BOARD OF ELECTIONS.

26 (B) THE JUDGE OF ELECTIONS AT THE ELECTOR'S POLLING PLACE ON
27 ELECTION DAY DURING POLLING HOURS.

28 (II) THAT AN ELECTOR WHO RECEIVES AN ABSENTEE BALLOT
29 PURSUANT TO SECTION 1301 AND WHOSE VOTED BALLOT IS NOT TIMELY
30 RECEIVED AS SET FORTH IN SUBPARAGRAPH (I) AND WHO, ON ELECTION

1 DAY, IS CAPABLE OF VOTING AT THE APPROPRIATE POLLING PLACE MAY
2 ONLY VOTE ON ELECTION DAY BY PROVISIONAL BALLOT.

3 (III) THAT AN ELECTOR MUST PERSONALLY RETURN OR MAIL THE
4 ELECTOR'S BALLOT.

5 (2) THE SECRETARY OF THE COMMONWEALTH SHALL PRESCRIBE THE
6 TEXT AND THE MANNER BY WHICH THE NOTICE UNDER THIS SUBSECTION
7 SHALL BE PRINTED ON A BALLOT AND SHALL INCLUDE THE FOLLOWING
8 STATEMENT:

9 THIS BALLOT MAY BE MAILED BY THE ELECTOR TO THE COUNTY BOARD
10 OF ELECTIONS OR PERSONALLY RETURNED BY THE ELECTOR TO THE
11 JUDGE OF ELECTIONS AT THE ELECTOR'S POLLING PLACE ON ELECTION
12 DAY, OR IN PERSON ON OR BEFORE ELECTION DAY TO A MEMBER OR AN
13 EMPLOYEE OF THE COUNTY BOARD OF ELECTIONS AT A LOCATION AT
14 THE COUNTY COURTHOUSE DESIGNATED BY THE COUNTY BOARD OF
15 ELECTIONS OR IN PERSON ON OR BEFORE ELECTION DAY TO A MEMBER
16 OR AN EMPLOYEE OF THE COUNTY BOARD OF ELECTIONS AT THE
17 PERMANENT OFFICES OF THE COUNTY BOARD OF ELECTIONS AND TO NO
18 OTHER LOCATION.

19 SECTION 8. SECTION 1305(B)(1) OF THE ACT, AMENDED OCTOBER
20 31, 2019 (P.L.552, NO.77), IS AMENDED TO READ:

21 SECTION 1305. DELIVERING OR MAILING BALLOTS.--

22 * * *

23 (B) (1) THE COUNTY BOARD OF ELECTIONS UPON RECEIPT AND
24 APPROVAL OF AN APPLICATION FILED BY ANY ELECTOR QUALIFIED IN
25 ACCORDANCE WITH THE PROVISIONS OF SECTION 1301, SUBSECTIONS (I)
26 TO (L), INCLUSIVE, SHALL COMMENCE TO DELIVER OR MAIL OFFICIAL
27 ABSENTEE BALLOTS AS SOON AS A BALLOT IS CERTIFIED AND THE
28 BALLOTS ARE AVAILABLE. WHILE ANY PROCEEDING IS PENDING IN A
29 FEDERAL OR STATE COURT WHICH WOULD AFFECT THE CONTENTS OF ANY
30 BALLOT, THE COUNTY BOARD OF ELECTIONS MAY AWAIT A RESOLUTION OF

1 THAT PROCEEDING BUT IN ANY EVENT, SHALL COMMENCE TO DELIVER OR
2 MAIL OFFICIAL ABSENTEE BALLOTS NOT LATER THAN THE [SECOND]
3 FOURTH TUESDAY PRIOR TO THE PRIMARY OR ELECTION. FOR THOSE
4 APPLICANTS WHOSE PROOF OF IDENTIFICATION WAS NOT PROVIDED WITH
5 THE APPLICATION OR COULD NOT BE VERIFIED BY THE BOARD, THE BOARD
6 SHALL SEND THE NOTICE REQUIRED UNDER SECTION 1302.2(D) WITH THE
7 ABSENTEE BALLOT. AS ADDITIONAL APPLICATIONS ARE RECEIVED AND
8 APPROVED AFTER THE TIME THAT THE COUNTY BOARD OF ELECTIONS
9 BEGINS DELIVERING OR MAILING OFFICIAL ABSENTEE AND MAIL-IN
10 BALLOTS, THE BOARD SHALL DELIVER OR MAIL OFFICIAL ABSENTEE
11 BALLOTS TO SUCH ADDITIONAL ELECTORS WITHIN FORTY-EIGHT HOURS.

12 * * *

13 SECTION 9. SECTION 1306(A) INTRODUCTORY PARAGRAPH AND (B) (3)
14 OF THE ACT, AMENDED MARCH 27, 2020 (P.L.41, NO.12), ARE AMENDED
15 AND SUBSECTION (B) IS AMENDED BY ADDING A PARAGRAPH TO READ:

16 SECTION 1306. VOTING BY ABSENTEE ELECTORS.--(A) EXCEPT AS
17 PROVIDED IN PARAGRAPHS (2) AND (3), AT ANY TIME AFTER RECEIVING
18 AN OFFICIAL ABSENTEE BALLOT, BUT ON OR BEFORE EIGHT O'CLOCK P.M.
19 THE DAY OF THE PRIMARY OR ELECTION, THE ELECTOR SHALL, IN
20 SECRET, PROCEED TO MARK THE BALLOT ONLY IN BLACK LEAD PENCIL,
21 INDELIBLE PENCIL OR BLUE, BLACK OR BLUE-BLACK INK, IN FOUNTAIN
22 PEN OR BALL POINT PEN, AND THEN FOLD THE BALLOT, ENCLOSE AND
23 SECURELY SEAL THE SAME IN THE ENVELOPE ON WHICH IS PRINTED,
24 STAMPED OR ENDORSED "OFFICIAL ELECTION BALLOT." THIS ENVELOPE
25 SHALL THEN BE PLACED IN THE SECOND ONE, ON WHICH IS PRINTED THE
26 FORM OF DECLARATION OF THE ELECTOR, AND THE ADDRESS OF THE
27 ELECTOR'S COUNTY BOARD OF ELECTION AND THE LOCAL ELECTION
28 DISTRICT OF THE ELECTOR. THE ELECTOR SHALL THEN FILL OUT, DATE
29 AND SIGN THE DECLARATION PRINTED ON SUCH ENVELOPE. SUCH ENVELOPE
30 SHALL THEN BE SECURELY SEALED AND THE ELECTOR SHALL SEND SAME BY

1 MAIL, POSTAGE PREPAID, EXCEPT WHERE FRANKED, OR DELIVER IT IN
2 PERSON TO SAID COUNTY BOARD OF ELECTION[.] TO A MEMBER OR AN
3 EMPLOYE OF THE COUNTY BOARD OF ELECTIONS AT THE PERMANENT
4 OFFICES OF THE COUNTY BOARD OF ELECTIONS, TO A MEMBER OR AN
5 EMPLOYE OF THE COUNTY BOARD OF ELECTIONS AT A LOCATION AT THE
6 COUNTY COURTHOUSE DESIGNATED BY THE COUNTY BOARD OF ELECTIONS OR
7 TO THE JUDGE OF ELECTIONS OF THE ELECTOR'S ELECTION DISTRICT AT
8 THE ELECTOR'S POLLING PLACE DURING POLLING HOURS AND TO NO OTHER
9 LOCATION.

10 * * *

11 (B) * * *

12 (3) NOTWITHSTANDING PARAGRAPH (2), AN ELECTOR WHO REQUESTS
13 AN ABSENTEE BALLOT AND WHO IS NOT SHOWN ON THE DISTRICT REGISTER
14 AS HAVING VOTED THE BALLOT MAY [VOTE AT THE POLLING PLACE IF THE
15 ELECTOR REMITS THE BALLOT AND THE ENVELOPE CONTAINING THE
16 DECLARATION OF THE ELECTOR TO THE JUDGE OF ELECTIONS TO BE
17 SPOILED AND THE ELECTOR SIGNS A STATEMENT SUBJECT TO THE
18 PENALTIES UNDER 18 PA.C.S. § 4904 (RELATING TO UNSWORN
19 FALSIFICATION TO AUTHORITIES) IN SUBSTANTIALLY THE FOLLOWING
20 FORM:

21 I HEREBY DECLARE THAT I AM A QUALIFIED REGISTERED ELECTOR WHO
22 HAS OBTAINED AN ABSENTEE BALLOT OR MAIL-IN BALLOT. I FURTHER
23 DECLARE THAT I HAVE NOT CAST MY ABSENTEE BALLOT OR MAIL-IN
24 BALLOT, AND THAT INSTEAD I REMITTED MY ABSENTEE BALLOT OR
25 MAIL-IN BALLOT AND THE ENVELOPE CONTAINING THE DECLARATION OF
26 THE ELECTOR TO THE JUDGE OF ELECTIONS AT MY POLLING PLACE TO
27 BE SPOILED AND THEREFORE REQUEST THAT MY ABSENTEE BALLOT OR
28 MAIL-IN BALLOT BE VOIDED.

29 (DATE)

30 (SIGNATURE OF ELECTOR) (ADDRESS OF ELECTOR)

1 (LOCAL JUDGE OF ELECTIONS)] PERSONALLY DELIVER THE COMPLETED
2 ABSENTEE BALLOT, ENCLOSED WITHIN BOTH THE ENVELOPE MARKED
3 "OFFICIAL ELECTION BALLOT" AND THE ENVELOPE CONTAINING THE
4 DECLARATION OF THE ELECTOR, TO ONLY THE FOLLOWING:

5 (I) THE JUDGE OF ELECTIONS OF THE ELECTOR'S ELECTION
6 DISTRICT AT THE ELECTOR'S POLLING PLACE DURING POLLING HOURS.

7 (II) A MEMBER OR AN EMPLOYE OF THE COUNTY BOARD OF ELECTIONS
8 AT A LOCATION AT THE COUNTY COURTHOUSE DESIGNATED BY THE COUNTY
9 BOARD OF ELECTIONS.

10 (III) A MEMBER OR AN EMPLOYE OF THE COUNTY BOARD OF
11 ELECTIONS AT THE PERMANENT OFFICES OF THE COUNTY BOARD OF
12 ELECTIONS.

13 (4) A JUDGE OF ELECTIONS SHALL KEEP ALL MATERIAL DELIVERED
14 UNDER PARAGRAPH (3) (I) IN A SECURE, SAFE AND SEALED CONTAINER IN
15 THE CUSTODY OF THE JUDGE OF ELECTIONS UNTIL DELIVERY OF THE
16 MATERIAL TO THE COUNTY BOARD OF ELECTIONS UNDER SECTION
17 1308(A.1).

18 * * *

19 SECTION 10. SECTION 1308(G) (1.1), (2) AND (3) OF THE ACT,
20 AMENDED OCTOBER 31, 2019 (P.L.552, NO.77) AND MARCH 27, 2020
21 (P.L.41, NO.12), ARE AMENDED AND THE SECTION IS AMENDED BY
22 ADDING A SUBSECTION TO READ:

23 SECTION 1308. CANVASSING OF OFFICIAL ABSENTEE BALLOTS AND
24 MAIL-IN BALLOTS.--* * *

25 (A.1) A JUDGE OF ELECTIONS SHALL DELIVER ALL MATERIAL
26 PERSONALLY DELIVERED UNDER SECTIONS 1306(B) (3) (I) AND 1306-D(B)
27 (3) (I) TO THE COUNTY BOARD OF ELECTIONS BY TWO O'CLOCK A.M. ON
28 THE DAY FOLLOWING THE ELECTION.

29 * * *

30 (G) * * *

1 (1.1) THE FOLLOWING APPLY TO PRE-CANVASSING BY A COUNTY
2 BOARD OF ELECTIONS:

3 (I) THE COUNTY BOARD OF ELECTIONS SHALL MEET [NO EARLIER
4 THAN SEVEN O'CLOCK A.M. ON ELECTION DAY] AT LEAST ONCE BEFORE
5 ELECTION DAY TO PRE-CANVASS ALL BALLOTS RECEIVED PRIOR TO THE
6 MEETING.

7 (II) A COUNTY BOARD OF ELECTIONS MAY NOT PRE-CANVASS
8 ABSENTEE BALLOTS AND MAIL-IN BALLOTS BEFORE EIGHT O'CLOCK A.M.
9 ON THE SATURDAY BEFORE THE ELECTION.

10 (III) A COUNTY BOARD OF ELECTIONS MAY NOT PRE-CANVASS
11 ABSENTEE BALLOTS OR MAIL-IN BALLOTS RECEIVED ON OR AFTER THE DAY
12 OF THE ELECTION.

13 (IV) IF A COUNTY BOARD OF ELECTIONS MEETS TO PRE-CANVASS
14 ABSENTEE BALLOTS AND MAIL-IN BALLOTS AT A LOCATION OTHER THAN
15 THE OFFICES OF THE COUNTY BOARD OF ELECTIONS, THE COUNTY BOARD
16 OF ELECTIONS SHALL MAINTAIN SECURITY AND CHAIN OF CUSTODY OF ANY
17 MATERIAL TRANSPORTED TO THE LOCATION FROM THE OFFICES OF THE
18 COUNTY BOARD OF ELECTIONS.

19 (V) A COUNTY BOARD OF ELECTIONS SHALL PROVIDE AT LEAST
20 FORTY-EIGHT HOURS' NOTICE OF A PRE-CANVASS MEETING BY PUBLICLY
21 POSTING A NOTICE OF A PRE-CANVASS MEETING ON ITS PUBLICLY
22 ACCESSIBLE INTERNET WEBSITE.

23 (VI) ONE AUTHORIZED REPRESENTATIVE OF EACH CANDIDATE IN AN
24 ELECTION, ONE AUTHORIZED REPRESENTATIVE OF THE COUNTY
25 CHAIRPERSON OF EACH POLITICAL PARTY AND ONE AUTHORIZED
26 REPRESENTATIVE [FROM] OF EACH POLITICAL PARTY SHALL BE PERMITTED
27 TO REMAIN IN THE ROOM IN WHICH THE ABSENTEE BALLOTS AND MAIL-IN
28 BALLOTS ARE PRE-CANVASSED. AUTHORIZED REPRESENTATIVES SHALL BE
29 PERMITTED TO BE IN AN AREA WHICH IS WITHIN AUDIO RANGE AND HAS A
30 CLEAR LINE OF SIGHT OF THE PRE-CANVASSING ACTIVITIES.

1 (VII) A COUNTY BOARD OF ELECTIONS SHALL RECORD THE PRE-
2 CANVASSING ACTIVITIES WITH AUDIO AND VISUAL RECORDING. A
3 RECORDING UNDER THIS SUBPARAGRAPH SHALL BE MADE AVAILABLE ONLY
4 AFTER THE CLOSE OF THE POLLS UNDER SECTION 308.

5 (VIII) NO PERSON OBSERVING, ATTENDING OR PARTICIPATING IN A
6 PRE-CANVASS MEETING OR WHO VIEWS OR LISTENS TO A RECORDING UNDER
7 SUBPARAGRAPH (VII) MAY DISCLOSE THE RESULTS OF ANY PORTION OF
8 ANY PRE-CANVASS MEETING PRIOR TO THE CLOSE OF THE POLLS.

9 (2) THE FOLLOWING APPLY TO CANVASSING BY A COUNTY BOARD OF
10 ELECTIONS:

11 (I) THE COUNTY BOARD OF ELECTIONS SHALL MEET NO EARLIER THAN
12 THE CLOSE OF POLLS ON THE DAY OF THE ELECTION AND NO LATER THAN
13 [THE THIRD] NINE O'CLOCK A.M. ON THE DAY FOLLOWING THE ELECTION
14 TO BEGIN CANVASSING ABSENTEE BALLOTS AND MAIL-IN BALLOTS [NOT
15 INCLUDED IN THE PRE-CANVASS MEETING].

16 (II) THE MEETING UNDER THIS PARAGRAPH SHALL CONTINUE UNTIL
17 ALL ABSENTEE BALLOTS AND MAIL-IN BALLOTS RECEIVED PRIOR TO THE
18 CLOSE OF THE POLLS HAVE BEEN CANVASSED.

19 (III) THE COUNTY BOARD OF ELECTIONS SHALL NOT RECORD OR
20 PUBLISH ANY VOTES REFLECTED ON THE BALLOTS PRIOR TO THE CLOSE OF
21 THE POLLS.

22 (IV) THE CANVASS PROCESS SHALL CONTINUE THROUGH THE EIGHTH
23 DAY FOLLOWING THE ELECTION FOR VALID MILITARY-OVERSEAS BALLOTS
24 TIMELY RECEIVED UNDER 25 PA.C.S. § 3511 (RELATING TO RECEIPT OF
25 VOTED BALLOT).

26 (V) A COUNTY BOARD OF ELECTIONS SHALL PROVIDE AT LEAST
27 FORTY-EIGHT HOURS' NOTICE OF A CANVASS MEETING BY PUBLICLY
28 POSTING A NOTICE ON ITS PUBLICLY ACCESSIBLE INTERNET WEBSITE.

29 (VI) ONE AUTHORIZED REPRESENTATIVE OF EACH CANDIDATE IN AN
30 ELECTION, ONE AUTHORIZED REPRESENTATIVE OF THE COUNTY

1 CHAIRPERSON OF EACH POLITICAL PARTY AND ONE AUTHORIZED
2 REPRESENTATIVE [FROM] OF EACH POLITICAL PARTY SHALL BE PERMITTED
3 TO REMAIN IN THE ROOM IN WHICH THE ABSENTEE BALLOTS AND MAIL-IN
4 BALLOTS ARE CANVASSED. AUTHORIZED REPRESENTATIVES SHALL BE
5 PERMITTED TO BE IN AN AREA WHICH IS WITHIN AUDIO RANGE AND HAS A
6 CLEAR LINE OF SIGHT OF THE CANVASSING ACTIVITIES.

7 (VII) A COUNTY BOARD OF ELECTIONS SHALL RECORD THE
8 CANVASSING ACTIVITIES WITH AUDIO AND VISUAL RECORDING. A
9 RECORDING UNDER THIS SUBPARAGRAPH SHALL BE MADE AVAILABLE UNDER
10 SECTION 308.

11 (3) WHEN THE COUNTY BOARD MEETS TO PRE-CANVASS OR CANVASS
12 ABSENTEE BALLOTS AND MAIL-IN BALLOTS UNDER PARAGRAPHS (1), (1.1)
13 AND (2), THE BOARD SHALL [EXAMINE] DO ALL OF THE FOLLOWING:

14 (I) EXAMINE THE DECLARATION ON THE ENVELOPE OF EACH BALLOT
15 NOT SET ASIDE UNDER SUBSECTION (D) AND SHALL COMPARE THE
16 INFORMATION THEREON WITH THAT CONTAINED IN THE "REGISTERED
17 ABSENTEE AND MAIL-IN VOTERS FILE," THE ABSENTEE VOTERS' LIST
18 AND/OR THE "MILITARY VETERANS AND EMERGENCY CIVILIANS ABSENTEE
19 VOTERS FILE," WHICHEVER IS APPLICABLE.

20 (II) IF THE COUNTY BOARD HAS VERIFIED THE PROOF OF
21 IDENTIFICATION AS REQUIRED UNDER THIS ACT AND IS SATISFIED THAT
22 THE DECLARATION IS SUFFICIENT AND THE INFORMATION CONTAINED IN
23 THE "REGISTERED ABSENTEE AND MAIL-IN VOTERS FILE," THE ABSENTEE
24 VOTERS' LIST AND/OR THE "MILITARY VETERANS AND EMERGENCY
25 CIVILIANS ABSENTEE VOTERS FILE" VERIFIES HIS RIGHT TO VOTE, [THE
26 COUNTY BOARD SHALL] PROVIDE A LIST OF THE NAMES OF ELECTORS
27 WHOSE ABSENTEE BALLOTS OR MAIL-IN BALLOTS ARE TO BE PRE-
28 CANVASSED OR CANVASSED.

29 (III) FOR ABSENTEE BALLOTS OR MAIL-IN BALLOTS WHICH THE
30 COUNTY BOARD IS NOT SATISFIED THAT PROOF OF IDENTIFICATION HAS

1 BEEN PROVIDED DUE TO ANY INABILITY TO MATCH THE SIGNATURE
2 PRESENT ON THE BALLOT TO THE SIGNATURE ON FILE:

3 (A) NOTIFY THE ELECTOR BY MAIL, E-MAIL, TELEPHONE OR TEXT
4 MESSAGE THAT THE SIGNATURE ON THE ELECTOR'S BALLOT DOES NOT
5 MATCH THE ELECTOR'S SIGNATURE IN THE REGISTRATION BOOKS.

6 (B) DIRECT THE ELECTOR TO APPEAR BEFORE, OR TO PROVIDE AN
7 ELECTRONIC, FACSIMILE OR PAPER COPY TO, THE COUNTY BOARD OF
8 ELECTIONS WITHIN SIX (6) CALENDAR DAYS OF THE NOTICE WITH:

9 (I) PROOF OF IDENTIFICATION AND AN EXECUTED AFFIRMATION
10 ATTESTING, UNDER PENALTY OF PERJURY, THAT THE ELECTOR IS THE
11 SAME INDIVIDUAL WHO PERSONALLY REMITTED THE ABSENTEE BALLOT OR
12 MAIL-IN BALLOT; OR

13 (II) AN EXECUTED AFFIRMATION ATTESTING, UNDER PENALTY OF
14 PERJURY, THAT THE ELECTOR IS THE SAME INDIVIDUAL WHO PERSONALLY
15 REMITTED THE ABSENTEE BALLOT OR MAIL-IN BALLOT AND THAT THE
16 ELECTOR IS INDIGENT AND UNABLE TO OBTAIN PROOF OF IDENTIFICATION
17 WITHOUT THE PAYMENT OF A FEE.

18 (C) NOTIFY THE ELECTOR THAT THE ABSENTEE BALLOT OR MAIL-IN
19 BALLOT MAY NOT BE COUNTED IF THE ELECTOR FAILS TO COMPLY WITH
20 CLAUSE (B).

21 * * *

22 SECTION 11. THE HEADING OF ARTICLE XIII-C OF THE ACT IS
23 AMENDED TO READ:

24 ARTICLE XIII-C
25 STATEWIDE UNIFORM REGISTRY OF ELECTORS [ADVISORY BOARD]

26 SECTION 12. THE ACT IS AMENDED BY ADDING A SECTION TO READ:
27 SECTION 1303-C. SURE REQUIREMENTS.

28 IN ADDITION TO THE REQUIREMENTS UNDER 25 PA.C.S. § 1222(C)
29 (RELATING TO SURE SYSTEM), THE SURE SYSTEM SHALL DO ALL OF THE
30 FOLLOWING:

1 (1) TRACK APPLICATIONS FOR ABSENTEE BALLOTS AND MAIL-IN
2 BALLOTS; AND

3 (2) ASSIGN A UNIQUE SCANNABLE IDENTIFICATION NUMBER TO
4 BE AFFIXED TO THE ENVELOPE CONTAINING THE DECLARATION OF THE
5 ELECTOR WHICH IS RETURNED BY THE ELECTOR WITH EACH ABSENTEE
6 BALLOT AND MAIL-IN BALLOT.

7 SECTION 13. SECTION 1302-D(F) OF THE ACT, AMENDED MARCH 27,
8 2020 (P.L.41, NO.12), IS AMENDED TO READ:

9 SECTION 1302-D. APPLICATIONS FOR OFFICIAL MAIL-IN BALLOTS.

10 * * *

11 (F) FORM.--THE FOLLOWING SHALL APPLY:

12 (1) APPLICATION FOR AN OFFICIAL MAIL-IN BALLOT SHALL BE
13 ON PHYSICAL AND ELECTRONIC FORMS PRESCRIBED BY THE SECRETARY
14 OF THE COMMONWEALTH.

15 (2) THE APPLICATION SHALL STATE [THAT] THE FOLLOWING:

16 (I) THAT A VOTER WHO APPLIES FOR A MAIL-IN BALLOT
17 UNDER SECTION 1301-D SHALL NOT BE ELIGIBLE TO VOTE AT A
18 POLLING PLACE ON ELECTION DAY [UNLESS THE ELECTOR BRINGS
19 THE ELECTOR'S MAIL-IN BALLOT TO THE ELECTOR'S POLLING
20 PLACE, REMITS THE BALLOT AND THE ENVELOPE CONTAINING THE
21 DECLARATION OF THE ELECTOR TO THE JUDGE OF ELECTIONS TO
22 BE SPOILED AND SIGNS A STATEMENT SUBJECT TO THE PENALTIES
23 UNDER 18 PA.C.S. § 4904 (RELATING TO UNSWORN
24 FALSIFICATION TO AUTHORITIES) TO THE SAME EFFECT.] EXCEPT
25 BY PROVISIONAL BALLOT.

26 (II) THAT AN ELECTOR WHO DOES NOT RETURN THE MAIL-IN
27 BALLOT BY MAIL MAY PERSONALLY DELIVER THE MAIL-IN BALLOT
28 TO ONLY THE FOLLOWING:

29 (A) A MEMBER OR EMPLOYEE OF THE COUNTY BOARD OF
30 ELECTIONS AT THE PERMANENT OFFICES OF THE COUNTY

1 BOARD OF ELECTIONS.

2 (B) A MEMBER OR EMPLOYEE OF THE COUNTY BOARD OF
3 ELECTIONS AT A LOCATION AT THE COUNTY COURTHOUSE
4 DESIGNATED BY THE COUNTY BOARD OF ELECTIONS.

5 (C) A JUDGE OF ELECTIONS AT THE ELECTOR'S
6 POLLING PLACE ON ELECTION DAY.

7 (3) THE PHYSICAL APPLICATION FORMS SHALL BE MADE FREELY
8 AVAILABLE TO THE PUBLIC AT COUNTY BOARD OF ELECTIONS,
9 MUNICIPAL BUILDINGS AND AT OTHER LOCATIONS DESIGNATED BY THE
10 SECRETARY OF THE COMMONWEALTH.

11 (4) THE ELECTRONIC APPLICATION FORMS SHALL BE MADE
12 FREELY AVAILABLE TO THE PUBLIC THROUGH PUBLICLY ACCESSIBLE
13 MEANS.

14 (5) NO WRITTEN APPLICATION OR PERSONAL REQUEST SHALL BE
15 NECESSARY TO RECEIVE OR ACCESS THE APPLICATION FORMS.

16 (6) COPIES AND RECORDS OF ALL COMPLETED PHYSICAL AND
17 ELECTRONIC APPLICATIONS FOR OFFICIAL MAIL-IN BALLOTS SHALL BE
18 RETAINED BY THE COUNTY BOARD OF ELECTIONS.

19 * * *

20 SECTION 14. SECTION 1302.1-D(A) OF THE ACT, ADDED OCTOBER
21 31, 2019 (P.L.552, NO.77), IS AMENDED TO READ:

22 SECTION 1302.1-D. DATE OF APPLICATION FOR MAIL-IN BALLOT.

23 (A) GENERAL RULE.--APPLICATIONS FOR MAIL-IN BALLOTS SHALL BE
24 RECEIVED IN THE OFFICE OF THE COUNTY BOARD OF ELECTIONS NOT
25 EARLIER THAN 50 DAYS BEFORE THE PRIMARY OR ELECTION, EXCEPT THAT
26 IF A COUNTY BOARD OF ELECTIONS DETERMINES THAT IT WOULD BE
27 APPROPRIATE TO THE COUNTY BOARD OF ELECTIONS' OPERATIONAL NEEDS,
28 ANY APPLICATIONS FOR MAIL-IN BALLOTS RECEIVED MORE THAN 50 DAYS
29 BEFORE THE PRIMARY OR ELECTION MAY BE PROCESSED BEFORE THAT
30 TIME. APPLICATIONS FOR MAIL-IN BALLOTS SHALL BE PROCESSED IF

1 RECEIVED NOT LATER THAN FIVE O'CLOCK P.M. OF THE [FIRST TUESDAY]
2 FIFTEENTH DAY PRIOR TO THE DAY OF ANY PRIMARY OR ELECTION.

3 * * *

4 SECTION 15. SECTIONS 1303-D(E) AND 1305-D OF THE ACT,
5 AMENDED MARCH 27, 2020 (P.L.41, NO.12), ARE AMENDED TO READ:
6 SECTION 1303-D. OFFICIAL MAIL-IN ELECTOR BALLOTS.

7 * * *

8 (E) NOTICE.--

9 (1) THE OFFICIAL MAIL-IN VOTER BALLOT SHALL STATE [THAT
10 A VOTER WHO RECEIVES A MAIL-IN BALLOT UNDER SECTION 1301-D
11 AND WHOSE VOTED MAIL-IN BALLOT IS NOT TIMELY RECEIVED MAY
12 ONLY VOTE ON ELECTION DAY BY PROVISIONAL BALLOT UNLESS THE
13 ELECTOR BRINGS THE ELECTOR'S MAIL-IN BALLOT TO THE ELECTOR'S
14 POLLING PLACE, REMITS THE BALLOT AND THE ENVELOPE CONTAINING
15 THE DECLARATION OF THE ELECTOR TO THE JUDGE OF ELECTIONS TO
16 BE SPOILED AND SIGNS A STATEMENT SUBJECT TO THE PENALTIES OF
17 18 PA.C.S. § 4904 (RELATING TO UNSWORN FALSIFICATION TO
18 AUTHORITIES) TO THE SAME EFFECT.] THE FOLLOWING:

19 (I) THAT AN ELECTOR WHO DOES NOT RETURN THE MAIL-IN
20 BALLOT BY MAIL MAY PERSONALLY DELIVER THE BALLOT,
21 ENCLOSED WITHIN BOTH THE ENVELOPE MARKED "OFFICIAL
22 ELECTION BALLOT" AND THE ENVELOPE CONTAINING THE
23 DECLARATION OF THE ELECTOR, TO ONLY THE FOLLOWING:

24 (A) A MEMBER OR AN EMPLOYEE OF THE COUNTY BOARD
25 OF ELECTIONS, BEFORE ELECTION DAY OR PRIOR TO 8 P.M.
26 OF ELECTION DAY, AT:

27 (I) THE PERMANENT OFFICES OF THE COUNTY
28 BOARD OF ELECTIONS; OR

29 (II) A LOCATION AT THE COUNTY COURTHOUSE
30 DESIGNATED BY THE COUNTY BOARD OF ELECTIONS.

1 (B) THE JUDGE OF ELECTIONS AT THE ELECTOR'S
2 POLLING PLACE ON ELECTION DAY DURING POLLING HOURS.

3 (II) THAT AN ELECTOR WHO RECEIVES A MAIL-IN BALLOT
4 UNDER SECTION 1301-D AND WHOSE VOTED BALLOT IS NOT TIMELY
5 RECEIVED AS SET FORTH UNDER SUBPARAGRAPH (I) AND WHO, ON
6 ELECTION DAY, IS CAPABLE OF VOTING AT THE APPROPRIATE
7 POLLING PLACE MAY ONLY VOTE ON ELECTION DAY BY
8 PROVISIONAL BALLOT.

9 (III) THAT AN ELECTOR MUST PERSONALLY RETURN OR MAIL
10 THE ELECTOR'S BALLOT.

11 (2) THE SECRETARY OF THE COMMONWEALTH SHALL PRESCRIBE
12 THE TEXT AND THE MANNER BY WHICH THE NOTICE UNDER THIS
13 SUBSECTION SHALL BE PRINTED ON A BALLOT AND SHALL INCLUDE THE
14 FOLLOWING STATEMENT:

15 THIS BALLOT MAY BE MAILED BY THE ELECTOR TO THE
16 COUNTY BOARD OF ELECTIONS OR PERSONALLY RETURNED BY
17 THE ELECTOR TO THE JUDGE OF ELECTIONS AT THE
18 ELECTOR'S POLLING PLACE ON ELECTION DAY, OR IN PERSON
19 ON OR BEFORE ELECTION DAY TO A MEMBER OR AN EMPLOYEE
20 OF THE COUNTY BOARD OF ELECTIONS AT A LOCATION AT THE
21 COUNTY COURTHOUSE DESIGNATED BY THE COUNTY BOARD OF
22 ELECTIONS OR IN PERSON ON OR BEFORE ELECTION DAY TO A
23 MEMBER OR AN EMPLOYEE OF THE COUNTY BOARD OF
24 ELECTIONS AT THE PERMANENT OFFICES OF THE COUNTY
25 BOARD OF ELECTIONS AND TO NO OTHER LOCATION.

26 SECTION 1305-D. DELIVERING OR MAILING BALLOTS.

27 THE COUNTY BOARD OF ELECTIONS, UPON RECEIPT AND APPROVAL OF
28 AN APPLICATION FILED BY A QUALIFIED ELECTOR UNDER SECTION 1301-
29 D, SHALL COMMENCE TO DELIVER OR MAIL OFFICIAL MAIL-IN BALLOTS
30 AS SOON AS A BALLOT IS CERTIFIED AND THE BALLOTS ARE AVAILABLE.

1 WHILE ANY PROCEEDING IS PENDING IN A FEDERAL OR STATE COURT
2 WHICH WOULD AFFECT THE CONTENTS OF ANY BALLOT, THE COUNTY BOARD
3 OF ELECTIONS MAY AWAIT A RESOLUTION OF THAT PROCEEDING BUT IN
4 ANY EVENT, SHALL COMMENCE TO DELIVER OR MAIL OFFICIAL MAIL-IN
5 BALLOTS NOT LATER THAN THE [SECOND] FOURTH TUESDAY PRIOR TO THE
6 PRIMARY OR ELECTION. FOR APPLICANTS WHOSE PROOF OF
7 IDENTIFICATION WAS NOT PROVIDED WITH THE APPLICATION OR COULD
8 NOT BE VERIFIED BY THE BOARD, THE BOARD SHALL SEND THE NOTICE
9 REQUIRED UNDER SECTION 1302.2-D(C) WITH THE MAIL-IN BALLOT. AS
10 ADDITIONAL APPLICATIONS ARE RECEIVED AND APPROVED, THE BOARD
11 SHALL DELIVER OR MAIL OFFICIAL MAIL-IN BALLOTS TO THE ADDITIONAL
12 ELECTORS WITHIN 48 HOURS.

13 SECTION 15.1. SECTION 1306-D(A) AND (B) (3) OF THE ACT,
14 AMENDED MARCH 27, 2020 (P.L.41, NO.12), ARE AMENDED AND
15 SUBSECTION (B) IS AMENDED BY ADDING A PARAGRAPH TO READ:
16 SECTION 1306-D. VOTING BY MAIL-IN ELECTORS.

17 (A) GENERAL RULE.--AT ANY TIME AFTER RECEIVING AN OFFICIAL
18 MAIL-IN BALLOT, BUT ON OR BEFORE EIGHT O'CLOCK P.M. THE DAY OF
19 THE PRIMARY OR ELECTION, THE MAIL-IN ELECTOR SHALL, IN SECRET,
20 PROCEED TO MARK THE BALLOT ONLY IN BLACK LEAD PENCIL, INDELIBLE
21 PENCIL OR BLUE, BLACK OR BLUE-BLACK INK, IN FOUNTAIN PEN OR BALL
22 POINT PEN, AND THEN FOLD THE BALLOT, ENCLOSE AND SECURELY SEAL
23 THE SAME IN THE ENVELOPE ON WHICH IS PRINTED, STAMPED OR
24 ENDORSED "OFFICIAL ELECTION BALLOT." THIS ENVELOPE SHALL THEN BE
25 PLACED IN THE SECOND ONE, ON WHICH IS PRINTED THE FORM OF
26 DECLARATION OF THE ELECTOR, AND THE ADDRESS OF THE ELECTOR'S
27 COUNTY BOARD OF ELECTION AND THE LOCAL ELECTION DISTRICT OF THE
28 ELECTOR. THE ELECTOR SHALL THEN FILL OUT, DATE AND SIGN THE
29 DECLARATION PRINTED ON SUCH ENVELOPE. SUCH ENVELOPE SHALL THEN
30 BE SECURELY SEALED AND THE ELECTOR SHALL SEND SAME BY MAIL,

1 POSTAGE PREPAID, EXCEPT WHERE FRANKED, OR DELIVER IT IN PERSON
2 [TO SAID COUNTY BOARD OF ELECTION.] TO A MEMBER OR AN EMPLOYEE
3 OF THE COUNTY BOARD OF ELECTIONS AT THE PERMANENT OFFICES OF THE
4 COUNTY BOARD OF ELECTIONS, TO A MEMBER OR AN EMPLOYEE OF THE
5 COUNTY BOARD OF ELECTIONS AT A LOCATION AT THE COUNTY COURTHOUSE
6 DESIGNATED BY THE COUNTY BOARD OF ELECTIONS OR TO THE JUDGE OF
7 ELECTIONS OF THE ELECTOR'S ELECTION DISTRICT AT THE ELECTOR'S
8 POLLING PLACE DURING POLLING HOURS AND TO NO OTHER LOCATION.

9 * * *

10 (B) ELIGIBILITY.--

11 * * *

12 (3) NOTWITHSTANDING PARAGRAPH (2), AN ELECTOR WHO
13 REQUESTS A MAIL-IN BALLOT AND WHO IS NOT SHOWN ON THE
14 DISTRICT REGISTER AS HAVING VOTED THE BALLOT [MAY VOTE AT THE
15 POLLING PLACE IF THE ELECTOR REMITS THE BALLOT AND THE
16 ENVELOPE CONTAINING THE DECLARATION OF THE ELECTOR TO THE
17 JUDGE OF ELECTIONS TO BE SPOILED AND THE ELECTOR SIGNS A
18 STATEMENT SUBJECT TO THE PENALTIES OF 18 PA.C.S. § 4904
19 (RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES) WHICH
20 SHALL BE IN SUBSTANTIALLY THE FOLLOWING FORM:

21 I HEREBY DECLARE THAT I AM A QUALIFIED REGISTERED ELECTOR
22 WHO HAS OBTAINED AN ABSENTEE BALLOT OR MAIL-IN BALLOT. I
23 FURTHER DECLARE THAT I HAVE NOT CAST MY ABSENTEE BALLOT OR
24 MAIL-IN BALLOT, AND THAT INSTEAD I REMITTED MY ABSENTEE
25 BALLOT OR MAIL-IN BALLOT TO THE JUDGE OF ELECTIONS AT MY
26 POLLING PLACE TO BE SPOILED AND THEREFORE REQUEST THAT MY
27 ABSENTEE BALLOT OR MAIL-IN BALLOT BE VOIDED.

28 (DATE)

29 (SIGNATURE OF ELECTOR) (ADDRESS OF ELECTOR)

30 (LOCAL JUDGE OF ELECTIONS)] MAY PERSONALLY DELIVER THE

1 COMPLETED MAIL-IN BALLOT, ENCLOSED WITHIN BOTH THE ENVELOPE
2 MARKED "OFFICIAL ELECTION BALLOT" AND THE ENVELOPE CONTAINING
3 THE DECLARATION OF THE ELECTOR, TO ONLY THE FOLLOWING:

4 (I) THE JUDGE OF ELECTIONS OF THE ELECTOR'S ELECTION
5 DISTRICT AT THE ELECTOR'S POLLING PLACE DURING POLLING
6 HOURS.

7 (II) A MEMBER OR AN EMPLOYEE OF THE COUNTY BOARD OF
8 ELECTIONS AT A LOCATION AT THE COUNTY COURTHOUSE
9 DESIGNATED BY THE COUNTY BOARD OF ELECTIONS.

10 (III) A MEMBER OR AN EMPLOYEE OF THE COUNTY BOARD OF
11 ELECTIONS AT THE PERMANENT OFFICES OF THE COUNTY BOARD OF
12 ELECTIONS.

13 (4) A JUDGE OF ELECTIONS SHALL KEEP ALL MATERIAL
14 DELIVERED UNDER PARAGRAPH (3) (I) IN A SECURE, SAFE AND SEALED
15 CONTAINER IN THE CUSTODY OF THE JUDGE OF ELECTIONS UNTIL
16 DELIVERY OF THE MATERIAL TO THE COUNTY BOARD OF ELECTIONS
17 UNDER SECTION 1308(A.1).

18 * * *

19 SECTION 16. SECTIONS 1801, 1802, 1802.1, 1803, 1804, 1805,
20 1806, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814, 1815,
21 1816, 1817, 1818, 1819, 1820, 1821, 1823, 1824, 1825, 1827,
22 1828, 1829, 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1837,
23 1838, 1839, 1840, 1841, 1843, 1845, 1847, 1848, 1849 AND 1850
24 OF THE ACT ARE AMENDED TO READ:

25 SECTION 1801. DISOBEYING LAWFUL INSTRUCTIONS.--ANY PERSON
26 WHO WILFULLY DISOBEYS ANY LAWFUL INSTRUCTION OR ORDER OF ANY
27 COUNTY BOARD OF ELECTIONS, OR WHO REFUSES TO OBEY THEIR SUBPOENA
28 DULY ISSUED AND SERVED UNDER THE PROVISIONS OF THIS ACT, SHALL
29 BE GUILTY OF A MISDEMEANOR, AND, UPON CONVICTION THEREOF, SHALL
30 BE SENTENCED TO PAY A FINE NOT EXCEEDING [FIVE HUNDRED (\$500)]

1 ONE THOUSAND (\$1,000) DOLLARS, OR TO UNDERGO AN IMPRISONMENT NOT
2 EXCEEDING [ONE (1) YEAR] TWO (2) YEARS, OR BOTH, IN THE
3 DISCRETION OF THE COURT.

4 SECTION 1802. PERJURY.--ANY WILFUL FALSE STATEMENT MADE
5 UNDER OATH OR AFFIRMATION OR IN WRITING, STATING THAT IT IS SO
6 MADE, ALTHOUGH SUCH OATH OR AFFIRMATION MAY NOT HAVE ACTUALLY
7 BEEN MADE, BY ANY PERSON REGARDING ANY MATERIAL MATTER OR THING
8 RELATING TO ANY SUBJECT BEING INVESTIGATED, HEARD, DETERMINED OR
9 ACTED UPON BY ANY COUNTY BOARD OF ELECTIONS, OR MEMBER THEREOF,
10 OR BY ANY COURT OR JUDGE THEREOF, JUDGE OF ELECTION, INSPECTOR
11 OF ELECTION, OR OVERSEER, IN ACCORDANCE WITH THE TERMS OF THIS
12 ACT, SHALL BE PERJURY, A MISDEMEANOR OF THE FIRST DEGREE, AND
13 ANY PERSON, UPON CONVICTION THEREOF, SHALL BE SENTENCED TO PAY A
14 FINE NOT EXCEEDING [TEN THOUSAND (\$10,000)] TWENTY THOUSAND
15 (\$20,000) DOLLARS, OR TO UNDERGO AN IMPRISONMENT OF NOT MORE
16 THAN [FIVE (5)] TEN (10) YEARS, OR BOTH, IN THE DISCRETION OF
17 THE COURT.

18 SECTION 1802.1. FALSE AFFIDAVITS OF CANDIDATES.--ANY
19 CANDIDATE FOR STATE, COUNTY, CITY, BOROUGH, INCORPORATED TOWN,
20 TOWNSHIP OR SCHOOL DISTRICT OFFICE OR FOR THE OFFICE OF UNITED
21 STATES SENATOR OR REPRESENTATIVE IN CONGRESS OR ANY OTHER
22 ELECTIVE PUBLIC OFFICE WHO KNOWINGLY MAKES A FALSE STATEMENT
23 REGARDING HIS ELIGIBILITY OR QUALIFICATIONS FOR SUCH OFFICE IN
24 HIS CANDIDATE'S AFFIDAVIT SHALL, IN LITIGATION WHICH RESULTS IN
25 THE REMOVAL OF THE CANDIDATE FROM THE BALLOT, BE LIABLE FOR
26 COURT COSTS, INCLUDING FILING FEES, ATTORNEY FEES, INVESTIGATION
27 FEES AND SIMILAR COSTS, IN AN AMOUNT UP TO [TEN THOUSAND
28 (\$10,000)] TWENTY THOUSAND (\$20,000) DOLLARS.

29 SECTION 1803. REFUSAL TO PERMIT INSPECTION OF PAPERS;
30 DESTRUCTION OR REMOVAL; SECRETARY OF THE COMMONWEALTH.--ANY

1 SECRETARY OF THE COMMONWEALTH, DEPUTY, OR EMPLOYE OF HIS OFFICE,
2 WHO SHALL REFUSE TO PERMIT THE PUBLIC INSPECTION OR COPYING AS
3 AUTHORIZED, EXCEPT WHEN IN USE IN HIS OFFICE, BY THIS ACT, OF
4 ANY RETURN, NOMINATION PETITION, CERTIFICATE OR PAPER, OTHER
5 PETITION, ACCOUNT, CONTRACT, REPORT OR ANY OTHER DOCUMENT OR
6 RECORD IN HIS CUSTODY WHICH, UNDER THE PROVISIONS OF THIS ACT,
7 IS REQUIRED TO BE OPEN TO PUBLIC INSPECTION; OR WHO SHALL
8 DESTROY OR ALTER, OR PERMIT TO BE DESTROYED OR ALTERED, ANY SUCH
9 DOCUMENT OR RECORD DURING THE PERIOD FOR WHICH THE SAME IS
10 REQUIRED TO BE KEPT IN HIS OFFICE; OR WHO SHALL REMOVE ANY SUCH
11 DOCUMENT OR RECORD FROM HIS OFFICE DURING SAID PERIOD, OR PERMIT
12 THE SAME TO BE REMOVED, EXCEPT PURSUANT TO THE DIRECTION OF ANY
13 COMPETENT COURT OR ANY COMMITTEE REQUIRED TO DETERMINE ANY
14 CONTESTED PRIMARY OR ELECTION, SHALL BE GUILTY OF A MISDEMEANOR,
15 AND, UPON CONVICTION THEREOF, SHALL BE SENTENCED TO PAY A FINE
16 NOT EXCEEDING [ONE THOUSAND (\$1,000)] TWO THOUSAND (\$2,000)
17 DOLLARS, OR TO UNDERGO AN IMPRISONMENT OF NOT LESS THAN [ONE (1)
18 MONTH] TWO (2) MONTHS NOR MORE THAN [TWO (2)] FOUR (4) YEARS, OR
19 BOTH, IN THE DISCRETION OF THE COURT.

20 SECTION 1804. REFUSAL TO PERMIT INSPECTION OF PAPERS;
21 DESTRUCTION OR REMOVAL; COUNTY BOARDS OF ELECTIONS.--ANY MEMBER,
22 CHIEF CLERK OR OTHER EMPLOYE OF ANY COUNTY BOARD OF ELECTIONS,
23 WHO SHALL REFUSE TO PERMIT THE PUBLIC INSPECTION OR COPYING, AS
24 AUTHORIZED BY THIS ACT, OF ANY GENERAL OR DUPLICATE RETURN
25 SHEET, TALLY PAPER, AFFIDAVIT, NOMINATION PETITION, CERTIFICATE
26 OR PAPER, OTHER PETITION, WITNESS LIST, ACCOUNT, CONTRACT,
27 REPORT OR ANY OTHER DOCUMENT OR RECORD IN THE CUSTODY OF SUCH
28 COUNTY BOARD WHICH, UNDER THE PROVISIONS OF THIS ACT, IS
29 REQUIRED TO BE OPEN TO PUBLIC INSPECTION; OR WHO SHALL DESTROY
30 OR ALTER, OR PERMIT TO BE DESTROYED OR ALTERED, ANY SUCH

1 DOCUMENT OR RECORD DURING THE PERIOD FOR WHICH THE SAME IS
2 REQUIRED TO BE KEPT IN THE OFFICE OF SUCH COUNTY BOARD; OR WHO
3 SHALL REMOVE ANY SUCH DOCUMENT OR RECORD FROM THE OFFICE OF SUCH
4 COUNTY BOARD DURING SAID PERIOD, OR PERMIT THE SAME TO BE
5 REMOVED, EXCEPT PURSUANT TO THE DIRECTION OF ANY COMPETENT COURT
6 OR ANY COMMITTEE REQUIRED TO DETERMINE ANY CONTESTED PRIMARY OR
7 ELECTION, SHALL BE GUILTY OF A MISDEMEANOR, AND, UPON CONVICTION
8 THEREOF, SHALL BE SENTENCED TO PAY A FINE NOT EXCEEDING [~~ONE~~
9 ~~THOUSAND (\$1,000)~~] TWO THOUSAND (\$2,000) DOLLARS, OR TO UNDERGO
10 AN IMPRISONMENT OF NOT LESS THAN [~~ONE (1) MONTH~~] TWO (2) MONTHS
11 NOR MORE THAN [~~TWO (2)~~] FOUR (4) YEARS, OR BOTH, IN THE
12 DISCRETION OF THE COURT.

13 SECTION 1805. INSERTION AND ALTERATION OF ENTRIES IN
14 DOCUMENTS; REMOVAL; REFUSAL TO DELIVER.--ANY MEMBER, CHIEF CLERK
15 OR EMPLOYE OF ANY COUNTY BOARD OF ELECTIONS OR JUDGE, INSPECTOR
16 OR CLERK OF ELECTION, MACHINE INSPECTOR, OVERSEER, OR OTHER
17 PERSON, WHO KNOWINGLY INSERTS OR KNOWINGLY PERMITS TO BE
18 INSERTED ANY FICTITIOUS NAME, FALSE FIGURE OR OTHER FRAUDULENT
19 ENTRY ON OR IN ANY REGISTRATION CARD, DISTRICT REGISTER, VOTER'S
20 CERTIFICATE, LIST OF VOTERS, AFFIDAVIT, TALLY PAPER, GENERAL OR
21 DUPLICATE RETURN SHEET, STATEMENT, CERTIFICATE, OATH, VOUCHER,
22 ACCOUNT, BALLOT OR OTHER RECORD OR DOCUMENT AUTHORIZED OR
23 REQUIRED TO BE MADE, USED, SIGNED, RETURNED OR PRESERVED FOR ANY
24 PUBLIC PURPOSE IN CONNECTION WITH ANY PRIMARY OR ELECTION; OR
25 WHO MATERIALLY ALTERS OR INTENTIONALLY DESTROYS ANY ENTRY WHICH
26 HAS BEEN LAWFULLY MADE THEREIN, EXCEPT BY ORDER OF THE COUNTY
27 BOARD OF ELECTIONS OR COURT OF COMPETENT JURISDICTION, OR WHO
28 TAKES OR REMOVES ANY SUCH BOOK, AFFIDAVIT, RETURN, ACCOUNT,
29 BALLOT OR OTHER DOCUMENT OR RECORD FROM THE CUSTODY OF ANY
30 PERSON HAVING LAWFUL CHARGE THEREOF, IN ORDER TO PREVENT THE

1 SAME FROM BEING USED OR INSPECTED OR COPIED AS REQUIRED OR
2 PERMITTED BY THIS ACT, OR WHO NEGLECTS OR REFUSES, WITHIN THE
3 TIME AND IN THE MANNER REQUIRED BY THIS ACT, TO DELIVER THE SAME
4 INTO THE CUSTODY OF THE OFFICERS WHO ARE REQUIRED BY THIS ACT TO
5 USE OR KEEP THE SAME, SHALL BE GUILTY OF A MISDEMEANOR, AND,
6 UPON CONVICTION THEREOF, SHALL BE SENTENCED TO PAY A FINE NOT
7 EXCEEDING [ONE THOUSAND (\$1,000)] TWO THOUSAND (\$2,000) DOLLARS,
8 OR TO UNDERGO AN IMPRISONMENT OF NOT LESS THAN [ONE (1) MONTH]
9 TWO (2) MONTHS OR MORE THAN [TWO (2)] FOUR (4) YEARS, OR BOTH,
10 IN THE DISCRETION OF THE COURT.

11 SECTION 1806. REFUSAL TO PERMIT OVERSEERS, WATCHERS,
12 ATTORNEYS OR CANDIDATES TO ACT.--ANY MEMBER OF A COUNTY BOARD OF
13 ELECTIONS, JUDGE OF ELECTION OR INSPECTOR OF ELECTION WHO SHALL
14 REFUSE TO PERMIT ANY OVERSEER OR WATCHER, ATTORNEY OR CANDIDATE
15 TO BE PRESENT, AS AUTHORIZED BY THIS ACT, AT ANY SESSION OF A
16 COUNTY BOARD, COMPUTATION AND CANVASSING OF RETURNS OF ANY
17 PRIMARY OR ELECTION, RECOUNT OF BALLOTS OR RECANVASS OF VOTING
18 MACHINES, AS AUTHORIZED BY THIS ACT, OR AT ANY POLLING PLACE
19 DURING THE TIME THE POLLS ARE OPEN AT ANY PRIMARY OR ELECTION,
20 AND AFTER THE CLOSE OF THE POLLS DURING THE TIME THE BALLOTS ARE
21 COUNTED OR VOTING MACHINE CANVASSED AND UNTIL THE RETURNS OF
22 SUCH PRIMARY OR ELECTION HAVE BEEN MADE UP AND SIGNED, SHALL BE
23 GUILTY OF A MISDEMEANOR, AND, UPON CONVICTION THEREOF, SHALL BE
24 SENTENCED TO PAY A FINE NOT EXCEEDING [ONE THOUSAND (\$1,000)]
25 TWO THOUSAND (\$2,000) DOLLARS, OR TO UNDERGO AN IMPRISONMENT NOT
26 EXCEEDING [ONE (1) YEAR] TWO (2) YEARS, OR BOTH, IN THE
27 DISCRETION OF THE COURT.

28 SECTION 1807. DRIVING AWAY WATCHERS, ATTORNEYS, CANDIDATES
29 OR OVERSEERS.--ANY PERSON WHO BY VIOLENCE OR INTIMIDATION SHALL
30 THREATEN OR DRIVE AWAY ANY WATCHER, ATTORNEY, CANDIDATE OR

1 OVERSEER, OR REPRESENTATIVE OF THE COUNTY BOARD OF ELECTIONS, OR
2 OF THE SECRETARY OF THE COMMONWEALTH, REQUIRED OR PERMITTED TO
3 BE PRESENT AT ANY POLLING PLACE, OR WHO SHALL IN ANY MANNER
4 PREVENT ANY OVERSEER, OR REPRESENTATIVE OF THE COUNTY BOARD OF
5 ELECTIONS OR OF THE SECRETARY OF THE COMMONWEALTH FROM
6 PERFORMING HIS DUTY UNDER THIS ACT, SHALL BE GUILTY OF A
7 MISDEMEANOR, AND, UPON CONVICTION THEREOF, SHALL BE SENTENCED TO
8 PAY A FINE NOT EXCEEDING [ONE THOUSAND (\$1,000)] TWO THOUSAND
9 (\$2,000) DOLLARS, OR TO UNDERGO AN IMPRISONMENT OF NOT LESS THAN
10 [ONE (1) MONTH] TWO (2) MONTHS NOR MORE THAN [TWO (2)] FOUR (4)
11 YEARS, OR BOTH, IN THE DISCRETION OF THE COURT.

12 SECTION 1808. REFUSAL TO PERMIT ELECTION OFFICERS, CLERKS
13 AND MACHINE INSPECTORS TO ACT; DRIVING AWAY SAID PERSONS.--ANY
14 PERSON, INCLUDING ANY ELECTION OFFICER, WHO SHALL REFUSE TO
15 PERMIT ANY ELECTION OFFICER, CLERK OR MACHINE INSPECTOR, DULY
16 ELECTED OR APPOINTED AND AUTHORIZED TO ACT, TO PERFORM THE
17 DUTIES IMPOSED ON HIM OR TO ACT AS PERMITTED BY THIS ACT; OR WHO
18 SHALL BY VIOLENCE OR INTIMIDATION THREATEN OR DRIVE AWAY, ANY
19 SUCH ELECTION OFFICER, CLERK OR MACHINE INSPECTOR OR WHO SHALL,
20 IN ANY MANNER, PREVENT ANY SUCH ELECTION OFFICER, CLERK OR
21 MACHINE INSPECTOR FROM PERFORMING HIS RIGHTS AND DUTIES UNDER
22 THIS ACT, SHALL BE GUILTY OF A MISDEMEANOR, AND, UPON CONVICTION
23 THEREOF, SHALL BE SENTENCED TO PAY A FINE NOT EXCEEDING [ONE
24 THOUSAND (\$1,000)] TWO THOUSAND (\$2,000) DOLLARS, OR TO UNDERGO
25 AN IMPRISONMENT OF NOT LESS THAN [ONE (1) MONTH] TWO (2) MONTHS
26 OR MORE THAN [TWO (2)] FOUR (4) YEARS, OR BOTH, IN THE
27 DISCRETION OF THE COURT.

28 SECTION 1809. REFUSAL TO ADMINISTER OATH; ACTING WITHOUT
29 BEING SWORN.--IF ANY JUDGE OF ELECTION OR MINORITY INSPECTOR OF
30 ELECTION REFUSES OR FAILS TO ADMINISTER THE OATH TO THE OFFICERS

1 OF ELECTION, IN THE MANNER REQUIRED BY THIS ACT, OR IF ANY JUDGE
2 OF ELECTION, INSPECTOR OF ELECTION, CLERK OF ELECTION, OR
3 MACHINE INSPECTOR, SHALL ACT WITHOUT BEING FIRST DULY SWORN, OR
4 IF ANY SUCH PERSON SHALL SIGN THE WRITTEN FORM OF OATH WITHOUT
5 BEING DULY SWORN, OR IF ANY JUDGE OF ELECTION OR MINORITY
6 INSPECTOR OF ELECTION OR ANY OTHER PERSON AUTHORIZED TO
7 ADMINISTER OATHS SHALL CERTIFY THAT ANY SUCH PERSON WAS SWORN
8 WHEN HE WAS NOT, HE SHALL BE GUILTY OF A MISDEMEANOR, AND, UPON
9 CONVICTION THEREOF, SHALL BE SENTENCED TO PAY A FINE NOT
10 EXCEEDING [ONE HUNDRED (\$100)] TWO HUNDRED (\$200) DOLLARS, OR TO
11 UNDERGO AN IMPRISONMENT NOT EXCEEDING [SIX (6) MONTHS] ONE (1)
12 YEAR, OR BOTH, IN THE DISCRETION OF THE COURT.

13 SECTION 1810. VIOLATION OF OATH OF OFFICE BY ELECTION
14 OFFICERS.--ANY JUDGE OF ELECTION, INSPECTOR OF ELECTION, CLERK
15 OF ELECTION, OR MACHINE INSPECTOR WHO SHALL WILFULLY VIOLATE ANY
16 OF THE PROVISIONS OF HIS OATH OF OFFICE, SHALL BE GUILTY OF A
17 MISDEMEANOR, AND, UPON CONVICTION THEREOF, SHALL BE SENTENCED TO
18 PAY A FINE NOT EXCEEDING [ONE THOUSAND (\$1,000)] TWO THOUSAND
19 (\$2,000) DOLLARS, OR TO UNDERGO AN IMPRISONMENT NOT EXCEEDING
20 [ONE (1) YEAR] TWO (2) YEARS, OR BOTH, IN THE DISCRETION OF THE
21 COURT.

22 SECTION 1811. PEACE OFFICERS; FAILURE TO RENDER ASSISTANCE;
23 HINDERING OR DELAYING COUNTY BOARD MEMBERS AND OTHERS.--ANY
24 SHERIFF, DEPUTY SHERIFF, CONSTABLE, DEPUTY CONSTABLE, POLICE OR
25 OTHER PEACE OFFICER, WHO SHALL FAIL UPON DEMAND OF ANY MEMBER OF
26 A COUNTY BOARD OF ELECTIONS, JUDGE OR INSPECTOR OF ELECTION, OR
27 OVERSEER TO RENDER SUCH AID AND ASSISTANCE TO HIM AS HE SHALL
28 REQUEST IN THE MAINTENANCE OF PEACE AND IN THE MAKING OF
29 ARRESTS, AS HEREIN PROVIDED, OR WHO SHALL WILFULLY HINDER OR
30 DELAY OR ATTEMPT TO HINDER OR DELAY ANY MEMBER OF A COUNTY

1 BOARD, JUDGE OR INSPECTOR OF ELECTION, OR OVERSEER IN THE
2 PERFORMANCE OF ANY DUTY UNDER THIS ACT, SHALL BE GUILTY OF A
3 MISDEMEANOR, AND, UPON CONVICTION THEREOF, SHALL BE SENTENCED TO
4 PAY A FINE NOT EXCEEDING [~~FIVE HUNDRED (\$500)~~] ONE THOUSAND
5 (\$1,000) DOLLARS, OR TO UNDERGO AN IMPRISONMENT OF NOT LESS THAN
6 [~~THREE (3)~~] SIX (6) MONTHS NOR MORE THAN [~~TWO (2)~~] FOUR (4)
7 YEARS, OR BOTH, IN THE DISCRETION OF THE COURT.

8 SECTION 1812. NOMINATION PETITIONS AND PAPERS; OFFENSES BY
9 SIGNERS.--IF ANY PERSON SHALL KNOWINGLY AND WILFULLY SIGN ANY
10 NOMINATION PETITION OR NOMINATION PAPER, WITHOUT HAVING THE
11 QUALIFICATIONS PRESCRIBED BY THIS ACT, OR IF ANY PERSON SHALL
12 SET OPPOSITE A SIGNATURE ON A NOMINATION PETITION OR PAPER, A
13 DATE OTHER THAN THE ACTUAL DATE SUCH SIGNATURE WAS AFFIXED
14 THERETO, OR IF ANY PERSON SHALL SET OPPOSITE THE SIGNATURE ON A
15 NOMINATION PETITION OR NOMINATION PAPER, A FALSE STATEMENT OF
16 THE SIGNER'S PLACE OF RESIDENCE OR OCCUPATION, OR IF ANY PERSON
17 SHALL SIGN MORE NOMINATION PETITIONS OR NOMINATION PAPERS THAN
18 PERMITTED BY THE PROVISIONS OF THIS ACT, HE SHALL BE GUILTY OF A
19 MISDEMEANOR, AND, UPON CONVICTION THEREOF, SHALL BE SENTENCED TO
20 PAY A FINE NOT EXCEEDING [~~ONE HUNDRED (\$100)~~] TWO HUNDRED (\$200)
21 DOLLARS, OR TO UNDERGO AN IMPRISONMENT OF NOT LESS THAN [~~THREE~~
22 ~~(3)~~] SIX (6) MONTHS NOR MORE THAN [~~TWO (2)~~] FOUR (4) YEARS, OR
23 BOTH, AT THE DISCRETION OF THE COURT.

24 SECTION 1813. FALSE SIGNATURES AND STATEMENTS IN NOMINATION
25 PETITIONS AND PAPERS.--IF ANY PERSON SHALL KNOWINGLY MAKE A
26 FALSE STATEMENT IN ANY AFFIDAVIT REQUIRED BY THE PROVISIONS OF
27 THIS ACT, TO BE APPENDED TO OR TO ACCOMPANY A NOMINATION
28 PETITION OR A NOMINATION PAPER, OR IF ANY PERSON SHALL
29 FRAUDULENTLY SIGN ANY NAME NOT HIS OWN TO ANY NOMINATION
30 PETITION OR NOMINATION PAPER, OR IF ANY PERSON SHALL

1 FRAUDULENTLY ALTER ANY NOMINATION PETITION OR NOMINATION PAPER
2 WITHOUT THE CONSENT OF THE SIGNERS, HE SHALL BE GUILTY OF A
3 MISDEMEANOR, AND, UPON CONVICTION THEREOF, SHALL BE SENTENCED TO
4 PAY A FINE NOT EXCEEDING [FIVE HUNDRED (\$500)] ONE THOUSAND
5 (\$1,000) DOLLARS, OR TO UNDERGO IMPRISONMENT OF NOT MORE THAN
6 [ONE (1) YEAR] TWO (2) YEARS, OR BOTH, IN THE DISCRETION OF THE
7 COURT.

8 SECTION 1814. NOMINATION PETITIONS; CERTIFICATES AND PAPERS;
9 DESTRUCTION; FRAUDULENT FILING; SUPPRESSION.--ANY PERSON WHO
10 SHALL FALSELY MAKE ANY NOMINATION CERTIFICATE OR WHO SHALL
11 WILFULLY DEFACE OR DESTROY ANY NOMINATION PETITION, NOMINATION
12 CERTIFICATE OR NOMINATION PAPER, OR ANY PART THEREOF, OR ANY
13 LETTER OF WITHDRAWAL, OR WHO SHALL FILE ANY NOMINATION PETITION,
14 NOMINATION CERTIFICATE OR NOMINATION PAPER OR LETTER OF
15 WITHDRAWAL KNOWING THE SAME, OR ANY PART THEREOF, TO BE FALSELY
16 MADE, OR WHO SHALL SUPPRESS ANY NOMINATION PETITION, NOMINATION
17 CERTIFICATE OR NOMINATION PAPER, OR ANY PART THEREOF, WHICH HAS
18 BEEN DULY FILED, SHALL BE GUILTY OF A MISDEMEANOR, AND, UPON
19 CONVICTION THEREOF, SHALL BE SENTENCED TO PAY A FINE NOT
20 EXCEEDING [ONE THOUSAND (\$1,000)] TWO THOUSAND (\$2,000) DOLLARS,
21 OR TO UNDERGO AN IMPRISONMENT OF NOT MORE THAN [ONE (1) YEAR]
22 TWO (2) YEARS, OR BOTH, IN THE DISCRETION OF THE COURT.

23 SECTION 1815. OFFENSES BY PRINTERS OF BALLOTS.--ANY PRINTER
24 EMPLOYED BY ANY COUNTY BOARD OF ELECTIONS TO PRINT ANY OFFICIAL
25 BALLOTS, OR ANY PERSON ENGAGED IN PRINTING THE SAME WHO SHALL
26 APPROPRIATE TO HIMSELF OR GIVE OR DELIVER OR KNOWINGLY PERMIT TO
27 BE TAKEN ANY OF SAID BALLOTS BY ANY OTHER PERSON THAN SUCH
28 COUNTY BOARD OF ELECTION OR THEIR DULY AUTHORIZED AGENT, OR WHO
29 SHALL WILFULLY PRINT OR CAUSE TO BE PRINTED ANY OFFICIAL BALLOT
30 IN ANY FORM OTHER THAN THAT PRESCRIBED BY SUCH COUNTY BOARD OR

1 WITH ANY OTHER NAMES OR PRINTING, OR WITH THE NAMES SPELLED
2 OTHERWISE THAN AS DIRECTED BY THEM OR THE NAMES OR PRINTING
3 THEREON ARRANGED IN ANY OTHER WAY THAN THAT AUTHORIZED AND
4 DIRECTED BY THIS ACT, SHALL BE GUILTY OF A MISDEMEANOR, AND,
5 UPON CONVICTION THEREOF, SHALL BE SENTENCED TO PAY A FINE NOT
6 EXCEEDING [~~ONE THOUSAND (\$1,000)~~] TWO THOUSAND (\$2,000) DOLLARS,
7 OR TO UNDERGO AN IMPRISONMENT OF NOT LESS THAN [~~SIX (6) MONTHS~~]
8 ONE (1) YEAR NOR MORE THAN [~~FIVE (5)~~] TEN (10) YEARS, OR BOTH,
9 IN THE DISCRETION OF THE COURT.

10 SECTION 1816. UNLAWFUL POSSESSION OF BALLOTS; COUNTERFEITING
11 BALLOTS.--ANY PERSON OTHER THAN AN OFFICER CHARGED BY LAW WITH
12 THE CARE OF BALLOTS, OR A PERSON ENTRUSTED BY ANY SUCH OFFICER
13 WITH THE CARE OF THE SAME FOR A PURPOSE REQUIRED BY LAW, WHO
14 SHALL HAVE IN HIS POSSESSION OUTSIDE THE POLLING PLACE ANY
15 OFFICIAL BALLOT, OR ANY PERSON WHO SHALL MAKE OR HAVE IN HIS
16 POSSESSION ANY COUNTERFEIT OF AN OFFICIAL BALLOT, SHALL BE
17 GUILTY OF A MISDEMEANOR OF THE SECOND DEGREE, AND, UPON
18 CONVICTION THEREOF, SHALL BE SENTENCED TO PAY A FINE NOT
19 EXCEEDING [~~FIVE THOUSAND (\$5,000)~~] TEN THOUSAND (\$10,000)
20 DOLLARS, OR TO UNDERGO AN IMPRISONMENT OF NOT MORE THAN [~~TWO~~
21 ~~(2)~~] FOUR (4) YEARS, OR BOTH, IN THE DISCRETION OF THE COURT.

22 SECTION 1817. FORGING AND DESTROYING BALLOTS.--ANY PERSON
23 WHO SHALL FORGE OR FALSELY MAKE THE OFFICIAL ENDORSEMENT ON ANY
24 BALLOT OR WILFULLY DESTROY OR DEFACE ANY BALLOT OR WILFULLY
25 DELAY THE DELIVERY OF ANY BALLOTS SHALL BE GUILTY OF A
26 MISDEMEANOR OF THE SECOND DEGREE, AND, UPON CONVICTION THEREOF,
27 SHALL BE SENTENCED TO PAY A FINE NOT EXCEEDING [~~FIVE THOUSAND~~
28 ~~(\$5,000)~~] TEN THOUSAND (\$10,000) DOLLARS, OR TO UNDERGO AN
29 IMPRISONMENT OF NOT MORE THAN [~~TWO (2)~~] FOUR (4) YEARS, OR BOTH,
30 IN THE DISCRETION OF THE COURT.

1 SECTION 1818. TAMPERING WITH VOTING MACHINES.--ANY ELECTION
2 OFFICER OR OTHER PERSON WHO SHALL UNLAWFULLY OPEN OR WHO SHALL
3 TAMPER WITH OR INJURE OR ATTEMPT TO INJURE ANY VOTING MACHINE TO
4 BE USED OR BEING USED AT ANY PRIMARY OR ELECTION, OR WHO SHALL
5 PREVENT OR ATTEMPT TO PREVENT THE CORRECT OPERATION OF SUCH
6 MACHINE, OR ANY UNAUTHORIZED PERSON WHO SHALL MAKE OR HAVE IN
7 HIS POSSESSION A KEY TO A VOTING MACHINE TO BE USED OR BEING
8 USED IN ANY PRIMARY OR ELECTION, SHALL BE GUILTY OF A
9 MISDEMEANOR OF THE SECOND DEGREE, AND, UPON CONVICTION THEREOF,
10 SHALL BE SENTENCED TO PAY A FINE NOT EXCEEDING [FIVE THOUSAND
11 (\$5,000)] TEN THOUSAND (\$10,000) DOLLARS, OR TO UNDERGO AN
12 IMPRISONMENT OF NOT MORE THAN [TWO (2)] FOUR (4) YEARS, OR BOTH,
13 IN THE DISCRETION OF THE COURT.

14 SECTION 1819. DESTROYING, DEFACING OR REMOVING NOTICES, ET
15 CETERA.--ANY PERSON WHO SHALL, PRIOR TO ANY PRIMARY OR ELECTION,
16 WILFULLY DEFACE, REMOVE OR DESTROY ANY NOTICE OR LIST OF
17 CANDIDATES POSTED IN ACCORDANCE WITH THE PROVISIONS OF THIS ACT,
18 OR WHO, DURING ANY PRIMARY OR ELECTION, SHALL WILFULLY DEFACE,
19 TEAR DOWN, REMOVE OR DESTROY ANY CARD OF INSTRUCTIONS, NOTICE OF
20 PENALTIES, SPECIMEN BALLOT OR DIAGRAM PRINTED OR POSTED FOR THE
21 INSTRUCTION OF ELECTORS, OR WHO SHALL, DURING ANY PRIMARY OR
22 ELECTION, WILFULLY REMOVE OR DESTROY ANY OF THE SUPPLIES OR
23 CONVENIENCES FURNISHED BY THE COUNTY BOARD OF ELECTIONS TO ANY
24 POLLING PLACE IN ORDER TO ENABLE ELECTORS TO VOTE, OR THE
25 ELECTION OFFICERS TO PERFORM THEIR DUTIES, OR WHO SHALL WILFULLY
26 HINDER THE VOTING OF OTHERS, SHALL BE GUILTY OF A MISDEMEANOR,
27 AND, UPON CONVICTION THEREOF, SHALL BE SENTENCED TO PAY A FINE
28 NOT EXCEEDING [ONE HUNDRED (\$100)] TWO HUNDRED (\$200) DOLLARS,
29 OR TO UNDERGO AN IMPRISONMENT OF NOT MORE THAN [THREE (3)] SIX
30 (6) MONTHS, OR BOTH, IN THE DISCRETION OF THE COURT.

1 SECTION 1820. POLICE OFFICERS AT POLLING PLACES.--ANY POLICE
2 OFFICER IN COMMISSION, WHETHER IN UNIFORM OR IN CITIZEN'S
3 CLOTHES, WHO SHALL BE WITHIN ONE HUNDRED (100) FEET OF A POLLING
4 PLACE DURING THE CONDUCT OF ANY PRIMARY OR ELECTION, EXCEPT IN
5 THE EXERCISE OF HIS PRIVILEGE OF VOTING OR FOR THE PURPOSE OF
6 SERVING WARRANTS, OR IN ACCORDANCE WITH THE PROVISIONS OF THE
7 EXCEPTION SET FORTH IN SECTION 1207 OF THIS ACT WHERE THE POLICE
8 STATION OR HEADQUARTERS IS LOCATED IN THE SAME BUILDING OR ON
9 THE PREMISES WHERE THE POLLING PLACE IS LOCATED OR UNLESS CALLED
10 UPON TO PRESERVE THE PEACE, AS PROVIDED BY THIS ACT, SHALL BE
11 GUILTY OF A MISDEMEANOR, AND, UPON CONVICTION THEREOF, SHALL BE
12 SENTENCED TO PAY A FINE NOT EXCEEDING [FIVE HUNDRED (\$500)] ONE
13 THOUSAND (\$1,000) DOLLARS, OR TO UNDERGO AN IMPRISONMENT OF NOT
14 MORE THAN [ONE (1) YEAR] TWO (2) YEARS, OR BOTH, IN THE
15 DISCRETION OF THE COURT.

16 SECTION 1821. PEACE OFFICER; FAILURE TO QUELL DISTURBANCES
17 AT POLLS; HINDERING OR DELAYING ELECTION OFFICERS AND OTHERS.--
18 ANY MAYOR, CHIEF BURGESS, SHERIFF, DEPUTY SHERIFF, CONSTABLE,
19 DEPUTY CONSTABLE, POLICE OFFICER OR OTHER PEACE OFFICER WHO
20 SHALL NEGLECT OR REFUSE TO CLEAR AN AVENUE TO THE DOOR OF ANY
21 POLLING PLACE WHICH IS OBSTRUCTED IN SUCH A WAY AS TO PREVENT
22 ELECTORS FROM APPROACHING, OR WHO SHALL NEGLECT OR REFUSE TO
23 MAINTAIN ORDER AND QUELL ANY DISTURBANCE IF SUCH ARISES AT ANY
24 POLLING PLACE UPON THE DAY OF ANY PRIMARY OR ELECTION, WHEN
25 CALLED UPON SO TO DO BY ANY ELECTION OFFICER OR ANY THREE
26 QUALIFIED ELECTORS OF THE ELECTION DISTRICT, OR WHO SHALL
27 WILFULLY HINDER OR DELAY, OR ATTEMPT TO HINDER OR DELAY, ANY
28 JUDGE, INSPECTOR OR CLERK OF ELECTION, MACHINE INSPECTOR OR
29 OVERSEER IN THE PERFORMANCE OF ANY DUTY UNDER THIS ACT, SHALL BE
30 GUILTY OF A MISDEMEANOR IN OFFICE, AND, UPON CONVICTION THEREOF,

1 SHALL BE SENTENCED TO PAY A FINE NOT EXCEEDING [ONE THOUSAND
2 (\$1,000)] TWO THOUSAND (\$2,000) DOLLARS, OR TO UNDERGO AN
3 IMPRISONMENT OF NOT MORE THAN [ONE (1) YEAR] TWO (2) YEARS, OR
4 BOTH, IN THE DISCRETION OF THE COURT.

5 SECTION 1823. ELECTION OFFICERS PERMITTING UNREGISTERED
6 ELECTORS TO VOTE; CHALLENGES; REFUSING TO PERMIT QUALIFIED
7 ELECTORS TO VOTE.--ANY JUDGE OR INSPECTOR OF ELECTION WHO
8 PERMITS ANY PERSON TO VOTE AT ANY PRIMARY OR ELECTION WHO IS NOT
9 REGISTERED IN ACCORDANCE WITH LAW, EXCEPT A PERSON IN ACTUAL
10 MILITARY SERVICE OR A PERSON AS TO WHOM A COURT OF COMPETENT
11 JURISDICTION HAS ORDERED THAT HE SHALL BE PERMITTED TO VOTE, OR
12 WHO PERMITS ANY REGISTERED ELECTOR TO VOTE KNOWING THAT SUCH
13 REGISTERED ELECTOR IS NOT QUALIFIED TO VOTE, WHETHER OR NOT SUCH
14 PERSON HAS BEEN CHALLENGED, OR WHO PERMITS ANY PERSON WHO HAS
15 BEEN LAWFULLY CHALLENGED TO VOTE AT ANY PRIMARY OR ELECTION
16 WITHOUT REQUIRING THE PROOF OF THE RIGHT OF SUCH PERSON TO VOTE
17 WHICH IS REQUIRED BY LAW, OR WHO REFUSES TO PERMIT ANY DULY
18 REGISTERED AND QUALIFIED ELECTOR TO VOTE AT ANY PRIMARY OR
19 ELECTION, WITH THE KNOWLEDGE THAT SUCH ELECTOR IS ENTITLED TO
20 VOTE, SHALL BE GUILTY OF A FELONY OF THE THIRD DEGREE, AND, UPON
21 CONVICTION THEREOF, SHALL BE SENTENCED TO PAY A FINE NOT
22 EXCEEDING [FIFTEEN THOUSAND (\$15,000)] THIRTY THOUSAND (\$30,000)
23 DOLLARS, AND TO UNDERGO AN IMPRISONMENT OF NOT MORE THAN [SEVEN
24 (7)] FOURTEEN (14) YEARS, OR BOTH.

25 SECTION 1824. ELECTION OFFICERS REFUSING TO PERMIT ELECTOR
26 TO VOTE IN PROPER PARTY AT PRIMARIES.--ANY JUDGE, INSPECTOR OR
27 CLERK OF ELECTION WHO REFUSES TO PERMIT AN ELECTOR AT ANY
28 PRIMARY AT WHICH BALLOTS ARE USED TO RECEIVE THE BALLOT OF THE
29 PARTY WITH WHICH HE IS ENROLLED, OR WHO GIVES TO ANY SUCH
30 ELECTOR THE BALLOT OF ANY PARTY IN WHICH HE IS NOT ENROLLED, OR

1 ANY JUDGE, OR INSPECTOR OF ELECTION, OR MACHINE INSPECTOR WHO,
2 AT ANY PRIMARY AT WHICH VOTING MACHINES ARE USED, ADJUSTS ANY
3 VOTING MACHINE ABOUT TO BE USED BY AN ELECTOR SO AS NOT TO
4 PERMIT HIM TO VOTE FOR THE CANDIDATES OF THE PARTY IN WHICH HE
5 IS ENROLLED, OR SO AS TO PERMIT HIM TO VOTE FOR THE CANDIDATES
6 OF ANY PARTY IN WHICH HE IS NOT ENROLLED, SHALL BE GUILTY OF A
7 MISDEMEANOR OF THE FIRST DEGREE, AND, UPON CONVICTION THEREOF,
8 SHALL BE SENTENCED TO PAY A FINE NOT EXCEEDING [~~TEN THOUSAND~~
9 ~~(\$10,000)~~] TWENTY THOUSAND (\$20,000) DOLLARS, OR TO UNDERGO AN
10 IMPRISONMENT OF NOT MORE THAN [~~FIVE (5)~~] TEN (10) YEARS, OR
11 BOTH, IN THE DISCRETION OF THE COURT.

12 SECTION 1825. FRAUDS BY ELECTION OFFICERS.--ANY JUDGE,
13 INSPECTOR OR CLERK OF ELECTION OR MACHINE INSPECTOR WHO SHALL BE
14 GUILTY OF ANY WILFUL FRAUD IN THE CONDUCT OF HIS DUTIES AT A
15 PRIMARY OR ELECTION, AND ANY PERSON WHO SHALL MAKE A FALSE
16 RETURN OF THE VOTES CAST AT ANY PRIMARY OR ELECTION, OR WHO
17 SHALL DEPOSIT FRAUDULENT BALLOTS IN THE BALLOT BOX OR CERTIFY AS
18 CORRECT A RETURN OF BALLOTS IN THE BALLOT BOX WHICH HE KNOWS TO
19 BE FRAUDULENT, OR WHO SHALL REGISTER FRAUDULENT VOTES UPON ANY
20 VOTING MACHINE OR CERTIFY AS CORRECT A RETURN OF VOTES CAST UPON
21 ANY VOTING MACHINE WHICH HE KNOWS TO BE FRAUDULENTLY REGISTERED
22 THEREON, OR WHO SHALL MAKE ANY FALSE ENTRIES IN THE DISTRICT
23 REGISTER, OR WHO SHALL FAIL TO INSERT IN THE VOTING CHECK LIST
24 THE VOTER'S CERTIFICATE OF ANY ELECTOR ACTUALLY VOTING AT ANY
25 PRIMARY OR ELECTION, OR WHO SHALL FAIL TO RECORD VOTING
26 INFORMATION AS REQUIRED HEREIN, OR WHO SHALL FAIL TO INSERT IN
27 THE NUMBERED LISTS OF VOTERS THE NAME OF ANY PERSON ACTUALLY
28 VOTING, OR WHO SHALL WILFULLY DESTROY OR ALTER ANY BALLOT,
29 VOTER'S CERTIFICATE, OR REGISTRATION CARD CONTAINED IN ANY
30 DISTRICT REGISTER, OR WHO SHALL WILFULLY TAMPER WITH ANY VOTING

1 MACHINE, OR WHO SHALL PREPARE OR INSERT IN THE VOTING CHECK LIST
2 ANY FALSE VOTER'S CERTIFICATES NOT PREPARED BY OR FOR AN ELECTOR
3 ACTUALLY VOTING AT SUCH PRIMARY OR ELECTION, FOR THE PURPOSE OF
4 CONCEALING THE DESTRUCTION OR REMOVAL OF ANY VOTER'S
5 CERTIFICATE, OR FOR THE PURPOSE OF CONCEALING THE DEPOSIT OF
6 FRAUDULENT BALLOTS IN THE BALLOT BOX, OR THE REGISTERING OF
7 FRAUDULENT VOTES UPON ANY VOTING MACHINE OR OF AIDING IN THE
8 PERPETRATION OF ANY SUCH FRAUD, OR WHO SHALL FAIL TO RETURN TO
9 THE COUNTY BOARD OF ELECTION FOLLOWING ANY PRIMARY OR ELECTION
10 ANY KEYS OF A VOTING MACHINE, BALLOT BOX, GENERAL OR DUPLICATE
11 RETURN SHEET, TALLY PAPER, OATHS OF ELECTION OFFICERS,
12 AFFIDAVITS OF ELECTORS AND OTHERS, RECORD OF ASSISTED VOTERS,
13 NUMBERED LIST OF VOTERS, DISTRICT REGISTER, VOTING CHECK LIST,
14 UNUSED, SPOILED AND CANCELLED BALLOTS, BALLOTS DEPOSITED,
15 WRITTEN OR AFFIXED IN OR UPON A VOTING MACHINE, OR ANY
16 CERTIFICATE, OR ANY OTHER PAPER OR RECORD REQUIRED TO BE
17 RETURNED UNDER THE PROVISIONS OF THIS ACT; OR WHO SHALL CONSPIRE
18 WITH OTHERS TO COMMIT ANY OF THE OFFENSES HEREIN MENTIONED, OR
19 IN ANY MANNER TO PREVENT A FREE AND FAIR PRIMARY OR ELECTION,
20 SHALL BE GUILTY OF A FELONY OF THE THIRD DEGREE, AND, UPON
21 CONVICTION THEREOF, SHALL BE SENTENCED TO PAY A FINE NOT
22 EXCEEDING [FIFTEEN THOUSAND (\$15,000)] THIRTY THOUSAND (\$30,000)
23 DOLLARS, OR TO UNDERGO AN IMPRISONMENT OF NOT MORE THAN [SEVEN
24 (7)] FOURTEEN (14) YEARS, OR BOTH, IN THE DISCRETION OF THE
25 COURT.

26 SECTION 1827. INTERFERENCE WITH PRIMARIES AND ELECTIONS;
27 FRAUDS; CONSPIRACY.--IF ANY PERSON SHALL PREVENT OR ATTEMPT TO
28 PREVENT ANY ELECTION OFFICERS FROM HOLDING ANY PRIMARY OR
29 ELECTION, UNDER THE PROVISIONS OF THIS ACT, OR SHALL USE OR
30 THREATEN ANY VIOLENCE TO ANY SUCH OFFICER; OR SHALL INTERRUPT OR

1 IMPROPERLY INTERFERE WITH HIM IN THE EXECUTION OF HIS DUTY; OR
2 SHALL BLOCK UP OR ATTEMPT TO BLOCK UP THE AVENUE TO THE DOOR OF
3 ANY POLLING PLACE; OR SHALL USE OR PRACTICE ANY INTIMIDATION,
4 THREATS, FORCE OR VIOLENCE WITH DESIGN TO INFLUENCE UNDULY OR
5 OVERAWE ANY ELECTOR, OR TO PREVENT HIM FROM VOTING OR RESTRAIN
6 HIS FREEDOM OF CHOICE; OR SHALL PREPARE OR PRESENT TO ANY
7 ELECTION OFFICER A FRAUDULENT VOTER'S CERTIFICATE NOT SIGNED IN
8 THE POLLING PLACE BY THE ELECTOR WHOSE CERTIFICATE IT PURPORTS
9 TO BE; OR SHALL DEPOSIT FRAUDULENT BALLOTS IN THE BALLOT BOX; OR
10 SHALL REGISTER FRAUDULENT VOTES UPON ANY VOTING MACHINE; OR
11 SHALL TAMPER WITH ANY DISTRICT REGISTER, VOTING CHECK LIST,
12 NUMBERED LISTS OF VOTERS, BALLOT BOX OR VOTING MACHINE; OR SHALL
13 CONSPIRE WITH OTHERS TO COMMIT ANY OF THE OFFENSES HEREIN
14 MENTIONED, OR IN ANY MANNER TO PREVENT A FREE AND FAIR PRIMARY
15 OR ELECTION, HE SHALL BE GUILTY OF A FELONY OF THE THIRD DEGREE,
16 AND, UPON CONVICTION THEREOF, SHALL BE SENTENCED TO PAY A FINE
17 NOT EXCEEDING [FIFTEEN THOUSAND (\$15,000)] TWENTY THOUSAND
18 (\$20,000) DOLLARS, OR TO UNDERGO AN IMPRISONMENT OF NOT MORE
19 THAN [SEVEN (7)] FOURTEEN (14) YEARS, OR BOTH, IN THE DISCRETION
20 OF THE COURT.

21 SECTION 1828. PERSONS INTERFERING IN OTHER DISTRICTS.--ANY
22 PERSON WHO SHALL ON THE DAY OF ANY PRIMARY OR ELECTION VISIT ANY
23 POLLING PLACE AT WHICH HE IS NOT ENTITLED TO VOTE AND AT WHICH
24 HE IS NOT ENTITLED TO BE PRESENT UNDER ANY PROVISION OF THIS
25 ACT, AND SHALL USE ANY INTIMIDATION OR VIOLENCE FOR THE PURPOSE
26 OF PREVENTING ANY ELECTION OFFICER FROM PERFORMING THE DUTIES
27 REQUIRED OF HIM BY THIS ACT, OR FOR THE PURPOSE OF PREVENTING
28 ANY QUALIFIED ELECTOR FROM EXERCISING HIS RIGHT TO VOTE OR FROM
29 EXERCISING HIS RIGHT TO CHALLENGE ANY PERSON OFFERING TO VOTE,
30 OR FOR THE PURPOSE OF INFLUENCING THE VOTE OF ANY ELECTOR, HE

1 SHALL BE GUILTY OF A FELONY OF THE THIRD DEGREE, AND, UPON
2 CONVICTION THEREOF, SHALL BE SENTENCED TO PAY A FINE NOT
3 EXCEEDING [FIFTEEN THOUSAND (\$15,000)] THIRTY THOUSAND (\$30,000)
4 DOLLARS, OR TO UNDERGO AN IMPRISONMENT OF NOT MORE THAN [SEVEN
5 (7)] FOURTEEN (14) YEARS, OR BOTH, IN THE DISCRETION OF THE
6 COURT.

7 SECTION 1829. ASSAULT AND BATTERY AT POLLS.--ANY PERSON WHO
8 SHALL UNLAWFULLY STRIKE, WOUND OR COMMIT AN ASSAULT AND BATTERY
9 UPON THE PERSON OF ANY ELECTOR AT OR NEAR THE POLLING PLACE
10 DURING THE TIME OF ANY PRIMARY OR ELECTION SHALL BE GUILTY OF A
11 MISDEMEANOR OF THE FIRST DEGREE, AND, UPON CONVICTION THEREOF,
12 SHALL BE SENTENCED TO PAY A FINE NOT EXCEEDING [TEN THOUSAND
13 (\$10,000)] TWENTY THOUSAND (\$20,000) DOLLARS, OR TO UNDERGO AN
14 IMPRISONMENT OF NOT MORE THAN [FIVE (5)] TEN (10) YEARS, OR
15 BOTH, IN THE DISCRETION OF THE COURT.

16 SECTION 1830. UNLAWFUL ASSISTANCE IN VOTING.--ANY ELECTOR AT
17 ANY PRIMARY OR ELECTION WHO SHALL ALLOW HIS BALLOT OR THE FACE
18 OF THE VOTING MACHINE VOTED BY HIM TO BE SEEN BY ANY PERSON WITH
19 THE APPARENT INTENTION OF LETTING IT BE KNOWN HOW HE IS ABOUT TO
20 VOTE; OR IN DISTRICTS IN WHICH BALLOTS ARE USED, SHALL CAST OR
21 ATTEMPT TO CAST ANY OTHER THAN THE OFFICIAL BALLOT WHICH HAS
22 BEEN GIVEN TO HIM BY THE PROPER ELECTION OFFICER; OR WHO,
23 WITHOUT HAVING MADE THE DECLARATION UNDER OATH OR AFFIRMATION
24 REQUIRED BY SECTION 1218 OF THIS ACT, OR WHEN THE DISABILITY
25 WHICH HE DECLARED BEFORE ANY REGISTRATION COMMISSION NO LONGER
26 EXISTS, SHALL PERMIT ANOTHER TO ACCOMPANY HIM INTO THE VOTING
27 COMPARTMENT OR VOTING MACHINE BOOTH, OR TO MARK HIS BALLOT OR
28 PREPARE THE VOTING MACHINE FOR VOTING BY HIM; OR WHO SHALL MARK
29 HIS BALLOT OR PREPARE THE VOTING MACHINE FOR VOTING WHILE
30 ANOTHER IS UNLAWFULLY PRESENT IN THE VOTING MACHINE COMPARTMENT

1 OR VOTING MACHINE BOOTH WITH HIM; OR WHO SHALL STATE FALSELY TO
2 ANY ELECTION OFFICER THAT BECAUSE OF ILLITERACY HE IS UNABLE TO
3 READ THE NAMES ON THE BALLOT OR BALLOT LABELS OR THAT BY REASON
4 OF PHYSICAL DISABILITY HE CANNOT SEE OR MARK THE BALLOT OR ENTER
5 THE VOTING COMPARTMENT WITHOUT ASSISTANCE OR THAT HE CANNOT SEE
6 OR OPERATE THE VOTING MACHINE OR ENTER THE VOTING MACHINE BOOTH
7 WITHOUT ASSISTANCE; OR WHO SHALL STATE, AS HIS REASON FOR
8 REQUIRING ASSISTANCE, A DISABILITY FROM WHICH HE DOES NOT
9 SUFFER; OR ANY PERSON WHO SHALL GO INTO THE VOTING COMPARTMENT
10 OR VOTING MACHINE BOOTH WITH ANOTHER WHILE VOTING OR BE PRESENT
11 THEREIN WHILE ANOTHER IS VOTING, OR MARK THE BALLOT OF ANOTHER
12 OR PREPARE THE VOTING MACHINE FOR VOTING WITH ANOTHER, EXCEPT IN
13 STRICT ACCORDANCE WITH THE PROVISIONS OF THIS ACT; OR ANY PERSON
14 WHO SHALL INTERFERE WITH ANY ELECTOR WHEN INSIDE THE ENCLOSED
15 SPACE OR WHEN MARKING HIS BALLOT, OR PREPARING THE VOTING
16 MACHINE FOR VOTING, OR WHO SHALL ENDEAVOR TO INDUCE ANY ELECTOR
17 BEFORE DEPOSITING HIS BALLOT TO SHOW HOW HE MARKS OR HAS MARKED
18 HIS BALLOT; OR ANY PERSON GIVING ASSISTANCE WHO SHALL ATTEMPT TO
19 INFLUENCE THE VOTE OF THE ELECTOR WHOM HE IS ASSISTING OR WHO
20 SHALL MARK A BALLOT OR PREPARE A VOTING MACHINE FOR VOTING IN
21 ANY OTHER WAY THAN THAT REQUESTED BY THE VOTER WHOM HE IS
22 ASSISTING, OR WHO SHALL DISCLOSE TO ANYONE THE CONTENTS OF ANY
23 BALLOT WHICH HAS BEEN MARKED OR ANY VOTING MACHINE WHICH HAS
24 BEEN PREPARED FOR VOTING WITH HIS ASSISTANCE, EXCEPT WHEN
25 REQUIRED TO DO SO IN ANY LEGAL PROCEEDING, SHALL BE GUILTY OF A
26 MISDEMEANOR, AND, UPON CONVICTION THEREOF, SHALL BE SENTENCED TO
27 PAY A FINE NOT EXCEEDING [ONE THOUSAND (\$1,000)] TWO THOUSAND
28 (\$2,000) DOLLARS, OR TO UNDERGO AN IMPRISONMENT OF NOT MORE THAN
29 [ONE (1) YEAR] TWO (2) YEARS, OR BOTH, IN THE DISCRETION OF THE
30 COURT.

1 SECTION 1831. ELECTION OFFICERS PERMITTING UNLAWFUL
2 ASSISTANCE.--ANY ELECTION OFFICER WHO SHALL PERMIT A VOTER TO BE
3 ACCOMPANIED BY ANOTHER INTO THE VOTING COMPARTMENT OR VOTING
4 MACHINE BOOTH WHEN THE REGISTRATION CARD OF SUCH PERSON CONTAINS
5 NO DECLARATION THAT SUCH PERSON REQUIRES ASSISTANCE, OR WHEN
6 SUCH PERSON HAS NOT MADE, UNDER OATH OR AFFIRMATION, THE
7 STATEMENT REQUIRED BY SECTION 1218 OF THIS ACT, OR WHEN SUCH
8 ELECTION OFFICER KNOWS THAT THE DISABILITY WHICH THE ELECTOR
9 DECLARED BEFORE ANY REGISTRATION COMMISSION NO LONGER EXISTS, OR
10 WHO SHALL PERMIT ANY PERSON TO ACCOMPANY AN ELECTOR INTO THE
11 VOTING COMPARTMENT OR VOTING MACHINE BOOTH, EXCEPT AS PROVIDED
12 BY THIS ACT, SHALL BE GUILTY OF A MISDEMEANOR, AND, UPON
13 CONVICTION THEREOF, SHALL BE SENTENCED TO PAY A FINE NOT
14 EXCEEDING [ONE THOUSAND (\$1,000)] TWO THOUSAND (\$2,000) DOLLARS,
15 OR TO UNDERGO AN IMPRISONMENT OF NOT MORE THAN [ONE (1) YEAR]
16 TWO (2) YEARS, OR BOTH, IN THE DISCRETION OF THE COURT.

17 SECTION 1832. FAILURE TO KEEP AND RETURN RECORD OF ASSISTED
18 VOTERS.--ANY JUDGE OF ELECTION WHO SHALL FAIL TO RECORD, AS
19 REQUIRED BY SECTION 1218 (C) OF THIS ACT, THE NAME OF EACH
20 ELECTOR WHO RECEIVED ASSISTANCE OR WHO IS ACCOMPANIED BY ANOTHER
21 INTO THE VOTING COMPARTMENT OR VOTING MACHINE BOOTH; OR WHO
22 SHALL INSERT IN THE RECORD OF ASSISTED VOTERS THE NAME OF ANY
23 ELECTOR WHO DOES NOT RECEIVE ASSISTANCE OR IS NOT ACCOMPANIED BY
24 ANOTHER INTO THE VOTING COMPARTMENT OR VOTING MACHINE BOOTH; OR
25 WHO SHALL FAIL TO RECORD THE EXACT DISABILITY OF ANY ASSISTED
26 ELECTOR WHICH MAKES THE ASSISTANCE NECESSARY, OR SHALL RECORD IN
27 RESPECT OF ANY ASSISTED ELECTOR A DISABILITY, OTHER THAN THAT
28 STATED BY THE ELECTOR; OR WHO SHALL FAIL TO RECORD THE NAME OF
29 EACH PERSON RENDERING ASSISTANCE TO AN ELECTOR AS PRESCRIBED BY
30 THIS ACT; OR WHO SHALL KNOWINGLY RECORD AS THE NAME OF SUCH

1 PERSON GIVING ASSISTANCE A NAME WHICH IS NOT THE NAME OF SUCH
2 PERSON; OR WHO SHALL FAIL OR NEGLECT TO RETURN THE RECORD OF
3 ASSISTED VOTERS TO THE COUNTY BOARD OF ELECTIONS AS REQUIRED BY
4 THIS ACT, SHALL BE GUILTY OF A MISDEMEANOR, AND, UPON CONVICTION
5 THEREOF, SHALL BE SENTENCED TO PAY A FINE NOT EXCEEDING [~~ONE~~
6 ~~THOUSAND (\$1,000)~~] TWO THOUSAND (\$2,000) DOLLARS, OR TO UNDERGO
7 AN IMPRISONMENT OF NOT LESS THAN [~~TWO (2)~~] FOUR (4) MONTHS NOR
8 MORE THAN [~~TWO (2)~~] FOUR (4) YEARS, OR BOTH, IN THE DISCRETION
9 OF THE COURT.

10 SECTION 1833. UNLAWFUL VOTING.--ANY PERSON WHO VOTES OR
11 ATTEMPTS TO VOTE AT ANY PRIMARY OR ELECTION, KNOWING THAT HE
12 DOES NOT POSSESS ALL THE QUALIFICATIONS OF AN ELECTOR AT SUCH
13 PRIMARY OR ELECTION, AS SET FORTH IN THIS ACT, SHALL BE GUILTY
14 OF A MISDEMEANOR OF THE FIRST DEGREE, AND, UPON CONVICTION
15 THEREOF, SHALL BE SENTENCED TO PAY A FINE NOT EXCEEDING [~~TEN~~
16 ~~THOUSAND (\$10,000)~~] TWENTY THOUSAND (\$20,000) DOLLARS, OR TO
17 UNDERGO AN IMPRISONMENT OF NOT MORE THAN [~~FIVE (5)~~] TEN (10)
18 YEARS, OR BOTH, IN THE DISCRETION OF THE COURT.

19 SECTION 1834. ELECTOR VOTING BALLOT OF WRONG PARTY AT
20 PRIMARY.--ANY ELECTOR WHO SHALL WILFULLY VOTE AT ANY PRIMARY THE
21 BALLOT OF A PARTY IN WHICH HE IS NOT ENROLLED, IN VIOLATION OF
22 THE PROVISIONS OF THIS ACT, SHALL BE GUILTY OF A MISDEMEANOR OF
23 THE SECOND DEGREE, AND, UPON CONVICTION THEREOF, SHALL BE
24 SENTENCED TO PAY A FINE NOT EXCEEDING [~~FIVE THOUSAND (\$5,000)~~]
25 TEN THOUSAND (\$10,000) DOLLARS, OR TO UNDERGO AN IMPRISONMENT OF
26 NOT MORE THAN [~~TWO (2)~~] FOUR (4) YEARS, OR BOTH, IN THE
27 DISCRETION OF THE COURT.

28 SECTION 1835. REPEAT VOTING AT ELECTIONS.--IF ANY PERSON
29 SHALL VOTE IN MORE THAN ONE ELECTION DISTRICT, OR OTHERWISE
30 FRAUDULENTLY VOTE MORE THAN ONCE AT THE SAME PRIMARY OR

1 ELECTION, OR SHALL VOTE A BALLOT OTHER THAN THE BALLOT ISSUED TO
2 HIM BY THE ELECTION OFFICERS, OR SHALL ADVISE OR PROCURE ANOTHER
3 SO TO DO, HE SHALL BE GUILTY OF A FELONY OF THE THIRD DEGREE,
4 AND, UPON CONVICTION THEREOF, SHALL BE SENTENCED TO PAY A FINE
5 NOT EXCEEDING [FIFTEEN THOUSAND (\$15,000)] THIRTY THOUSAND
6 (\$30,000) DOLLARS, OR TO UNDERGO AN IMPRISONMENT OF NOT MORE
7 THAN [SEVEN (7)] FOURTEEN (14) YEARS, OR BOTH, IN THE DISCRETION
8 OF THE COURT.

9 SECTION 1836. REMOVING BALLOTS.--ANY PERSON REMOVING ANY
10 BALLOT FROM ANY BOOK OF OFFICIAL BALLOTS, EXCEPT IN THE MANNER
11 PROVIDED BY THIS ACT, SHALL BE GUILTY OF A MISDEMEANOR OF THE
12 SECOND DEGREE, AND, UPON CONVICTION THEREOF, SHALL BE SENTENCED
13 TO PAY A FINE NOT EXCEEDING [FIVE THOUSAND (\$5,000)] TEN
14 THOUSAND (\$10,000) DOLLARS, OR TO UNDERGO AN IMPRISONMENT OF NOT
15 MORE THAN [TWO (2)] FOUR (4) YEARS, OR BOTH, IN THE DISCRETION
16 OF THE COURT.

17 SECTION 1837. COMMISSIONERS TO TAKE SOLDIERS' VOTES.--ANY
18 COMMISSIONER APPOINTED BY OR UNDER THE PROVISIONS OF ARTICLE
19 XIII OF THIS ACT WHO SHALL KNOWINGLY VIOLATE HIS DUTY OR
20 KNOWINGLY OMIT OR FAIL TO DO HIS DUTY THEREUNDER OR VIOLATE ANY
21 PART OF HIS OATH, SHALL BE GUILTY OF PERJURY, AND, UPON
22 CONVICTION THEREOF, SHALL BE SENTENCED TO PAY A FINE NOT
23 EXCEEDING [ONE THOUSAND (\$1,000)] TWO THOUSAND (\$2,000) DOLLARS,
24 OR TO UNDERGO AN IMPRISONMENT OF NOT MORE THAN [ONE (1) YEAR]
25 TWO (2) YEARS, OR BOTH, IN THE DISCRETION OF THE COURT.

26 SECTION 1838. FRAUDULENT VOTING BY SOLDIERS.--ANY PERSON WHO
27 SHALL VOTE OR ATTEMPT TO VOTE AT ANY ELECTION BY ELECTORS IN
28 MILITARY SERVICE UNDER THE PROVISIONS OF ARTICLE XIII OF THIS
29 ACT, NOT BEING QUALIFIED TO VOTE AT SUCH ELECTION, SHALL BE
30 GUILTY OF A MISDEMEANOR, AND, UPON CONVICTION THEREOF, SHALL BE

1 SENTENCED TO PAY A FINE NOT EXCEEDING [ONE THOUSAND (\$1,000)]
2 TWO THOUSAND (\$2,000) DOLLARS, OR TO UNDERGO AN IMPRISONMENT OF
3 NOT MORE THAN [ONE (1) YEAR] TWO (2) YEARS, OR BOTH, IN THE
4 DISCRETION OF THE COURT.

5 SECTION 1839. BRIBERY AT ELECTIONS.--ANY PERSON WHO SHALL,
6 DIRECTLY OR INDIRECTLY, GIVE OR PROMISE OR OFFER TO GIVE ANY
7 GIFT OR REWARD IN MONEY, GOODS OR OTHER VALUABLE THING TO ANY
8 PERSON, WITH INTENT TO INDUCE HIM TO VOTE OR REFRAIN FROM VOTING
9 FOR ANY PARTICULAR CANDIDATE OR CANDIDATES OR FOR OR AGAINST ANY
10 CONSTITUTIONAL AMENDMENT OR OTHER QUESTION AT ANY PRIMARY OR
11 ELECTION; OR WHO SHALL, DIRECTLY OR INDIRECTLY, PROCURE FOR OR
12 OFFER OR PROMISE TO PROCURE FOR SUCH PERSON ANY SUCH GIFT OR
13 REWARD WITH THE INTENT AFORESAID; OR, WHO WITH THE INTENT TO
14 INFLUENCE OR INTIMIDATE SUCH PERSON TO GIVE HIS VOTE OR TO
15 REFRAIN FROM GIVING HIS VOTE FOR ANY PARTICULAR CANDIDATE OR
16 CANDIDATES OR FOR OR AGAINST ANY CONSTITUTIONAL AMENDMENT OR
17 OTHER QUESTION AT ANY PRIMARY OR ELECTION, SHALL GIVE TO OR
18 OBTAIN FOR OR ASSIST IN OBTAINING FOR OR OFFER OR PROMISE TO
19 GIVE TO OR OBTAIN FOR OR ASSIST IN OBTAINING FOR SUCH PERSON ANY
20 OFFICE, PLACE, APPOINTMENT OR EMPLOYMENT, PUBLIC OR PRIVATE, OR
21 THREATEN SUCH PERSON WITH DISMISSAL OR DISCHARGE FROM ANY
22 OFFICE, PLACE, APPOINTMENT OR EMPLOYMENT, PUBLIC OR PRIVATE,
23 THEN HELD BY HIM, SHALL BE GUILTY OF A FELONY OF THE THIRD
24 DEGREE, AND, UPON CONVICTION THEREOF, SHALL BE SENTENCED TO PAY
25 A FINE NOT EXCEEDING [FIFTEEN THOUSAND (\$15,000)] THIRTY
26 THOUSAND (\$30,000) DOLLARS, OR TO UNDERGO AN IMPRISONMENT OF NOT
27 MORE THAN [SEVEN (7)] FOURTEEN (14) YEARS, OR BOTH, IN THE
28 DISCRETION OF THE COURT.

29 SECTION 1840. RECEIPTS AND DISBURSEMENTS OF PRIMARY AND
30 ELECTION EXPENSES BY PERSONS OTHER THAN CANDIDATES AND

1 TREASURERS.--ANY MEMBER OF A POLITICAL COMMITTEE WHO SHALL
2 RECEIVE OR DISBURSE ANY MONEY OR INCUR ANY LIABILITY FOR PRIMARY
3 OR ELECTION EXPENSES, EXCEPT THROUGH THE TREASURER OF SUCH
4 POLITICAL COMMITTEE, AND ANY PERSON NOT A CANDIDATE OR MEMBER OF
5 A POLITICAL COMMITTEE WHO SHALL RECEIVE OR DISBURSE ANY MONEY OR
6 INCUR ANY LIABILITY FOR PRIMARY OR ELECTION EXPENSES, SHALL BE
7 GUILTY OF A MISDEMEANOR, AND, UPON CONVICTION THEREOF, SHALL BE
8 SENTENCED TO PAY A FINE NOT EXCEEDING [ONE THOUSAND (\$1,000)]
9 TWO THOUSAND (\$2,000) DOLLARS, OR TO UNDERGO AN IMPRISONMENT OF
10 NOT LESS THAN [ONE (1) MONTH] TWO (2) MONTHS NOR MORE THAN [TWO
11 (2)] FOUR (4) YEARS, OR BOTH, IN THE DISCRETION OF THE COURT.

12 SECTION 1841. RECEIPTS OF PRIMARY AND ELECTION EXPENSES BY
13 UNAUTHORIZED PERSONS.--ANY PERSON OR ANY POLITICAL COMMITTEE WHO
14 RECEIVES MONEY ON BEHALF OF ANY CANDIDATE WITHOUT BEING
15 AUTHORIZED TO DO SO UNDER THE PROVISIONS OF SECTION 1623, SHALL
16 BE GUILTY OF A MISDEMEANOR, AND, UPON CONVICTION THEREOF, SHALL
17 BE SENTENCED TO PAY A FINE NOT EXCEEDING [FIVE THOUSAND DOLLARS
18 (\$5,000)] TEN THOUSAND DOLLARS (\$10,000), OR TO UNDERGO AN
19 IMPRISONMENT OF NOT LESS THAN [ONE (1) MONTH] TWO (2) MONTHS NOR
20 MORE THAN [TWO (2)] FOUR (4) YEARS, OR BOTH, IN THE DISCRETION
21 OF THE COURT.

22 SECTION 1843. CONTRIBUTIONS BY CORPORATIONS OR
23 UNINCORPORATED ASSOCIATIONS.--ANY CORPORATION OR UNINCORPORATED
24 ASSOCIATION, WHICH SHALL PAY, GIVE OR LEND OR AGREE TO PAY, GIVE
25 OR LEND ANY MONEY BELONGING TO SUCH CORPORATION OR
26 UNINCORPORATED ASSOCIATION OR IN ITS CUSTODY OR CONTROL, IN
27 VIOLATION OF THE PROVISIONS OF SECTION 1633, SHALL BE GUILTY OF
28 A MISDEMEANOR, AND, UPON CONVICTION THEREOF, SHALL BE SENTENCED
29 TO PAY A FINE OF NOT LESS THAN [ONE THOUSAND DOLLARS (\$1,000)]
30 TWO THOUSAND DOLLARS (\$2,000) NOR MORE THAN [TEN THOUSAND

1 ~~DOLLARS (\$10,000)]~~ TWENTY THOUSAND DOLLARS (\$20,000). ANY
2 DIRECTOR, OFFICER, AGENT OR EMPLOYEE OF ANY CORPORATION OR
3 UNINCORPORATED ASSOCIATION WHO SHALL ON BEHALF OF SUCH
4 CORPORATION OR UNINCORPORATED ASSOCIATION PAY, GIVE OR LEND OR
5 AUTHORIZE TO BE PAID, GIVEN OR LENT ANY MONEY BELONGING TO SUCH
6 CORPORATION OR UNINCORPORATED ASSOCIATION OR IN ITS CUSTODY OR
7 CONTROL IN VIOLATION OF THE PROVISIONS OF SECTION 1633, SHALL BE
8 GUILTY OF A MISDEMEANOR, AND, UPON CONVICTION THEREOF, SHALL BE
9 SENTENCED TO PAY A FINE NOT EXCEEDING [~~TEN THOUSAND DOLLARS~~
10 ~~(\$10,000)]~~ TWENTY THOUSAND DOLLARS (\$20,000), OR TO UNDERGO AN
11 IMPRISONMENT OF NOT LESS THAN [~~ONE (1) MONTH]~~ TWO (2) MONTHS NOR
12 MORE THAN [~~TWO (2)]~~ FOUR (4) YEARS, OR BOTH, IN THE DISCRETION
13 OF THE COURT.

14 SECTION 1845. FAILURE TO FILE EXPENSE ACCOUNT.--ANY
15 CANDIDATE OR TREASURER OF A POLITICAL COMMITTEE OR PERSON ACTING
16 AS SUCH TREASURER WHO SHALL FAIL TO FILE AN ACCOUNT OF PRIMARY
17 OR ELECTION EXPENSES, AS REQUIRED BY THIS ACT, SHALL BE GUILTY
18 OF A MISDEMEANOR, AND, UPON CONVICTION THEREOF, SHALL BE
19 SENTENCED TO PAY A FINE NOT EXCEEDING [~~FIVE THOUSAND DOLLARS~~
20 ~~(\$5,000)]~~ TEN THOUSAND DOLLARS (\$10,000), OR TO UNDERGO AN
21 IMPRISONMENT OF NOT LESS THAN [~~ONE (1) MONTH]~~ TWO (2) MONTHS NOR
22 MORE THAN [~~TWO (2)]~~ FOUR (4) YEARS, OR BOTH, IN THE DISCRETION
23 OF THE COURT.

24 SECTION 1847. PROHIBITING DURESS AND INTIMIDATION OF VOTERS
25 AND INTERFERENCE WITH THE FREE EXERCISE OF THE ELECTIVE
26 FRANCHISE.--ANY PERSON OR CORPORATION WHO, DIRECTLY OR
27 INDIRECTLY--(A) USES OR THREATENS TO USE ANY FORCE, VIOLENCE OR
28 RESTRAINT, OR INFLECTS OR THREATENS TO INFLECT ANY INJURY,
29 DAMAGE, HARM OR LOSS, OR IN ANY OTHER MANNER PRACTICES
30 INTIMIDATION OR COERCION UPON OR AGAINST ANY PERSON, IN ORDER TO

1 INDUCE OR COMPEL SUCH PERSON TO VOTE OR REFRAIN FROM VOTING AT
2 ANY ELECTION, OR TO VOTE OR REFRAIN FROM VOTING FOR OR AGAINST
3 ANY PARTICULAR PERSON, OR FOR OR AGAINST ANY QUESTION SUBMITTED
4 TO VOTERS AT SUCH ELECTION, OR TO PLACE OR CAUSE TO BE PLACED OR
5 REFRAIN FROM PLACING OR CAUSING TO BE PLACED HIS NAME UPON A
6 REGISTER OF VOTERS, OR ON ACCOUNT OF SUCH PERSON HAVING VOTED OR
7 REFRAINED FROM VOTING AT SUCH ELECTION, OR HAVING VOTED OR
8 REFRAINED FROM VOTING FOR OR AGAINST ANY PARTICULAR PERSON OR
9 PERSONS OR FOR OR AGAINST ANY QUESTION SUBMITTED TO VOTERS AT
10 SUCH ELECTION, OR HAVING REGISTERED OR REFRAINED FROM
11 REGISTERING AS A VOTER; OR (B) BY ABDUCTION, DURESS OR COERCION,
12 OR ANY FORCIBLE OR FRAUDULENT DEVICE OR CONTRIVANCE, WHATEVER,
13 IMPEDES, PREVENTS, OR OTHERWISE INTERFERES WITH THE FREE
14 EXERCISE OF THE ELECTIVE FRANCHISE BY ANY VOTER, OR COMPELS,
15 INDUCES, OR PREVAILS UPON ANY VOTER TO GIVE OR REFRAIN FROM
16 GIVING HIS VOTE FOR OR AGAINST ANY PARTICULAR PERSON AT ANY
17 ELECTION; OR (C) BEING AN EMPLOYER, PAYS HIS EMPLOYEES THE SALARY
18 OR WAGES DUE IN "PAY ENVELOPES" UPON WHICH OR IN WHICH THERE IS
19 WRITTEN OR PRINTED ANY POLITICAL MOTTO, DEVICE, STATEMENT OR
20 ARGUMENT CONTAINING THREATS, EXPRESS OR IMPLIED, INTENDED OR
21 CALCULATED TO INFLUENCE THE POLITICAL OPINIONS OR ACTIONS OF
22 SUCH EMPLOYEES, OR WITHIN NINETY DAYS OF ANY ELECTION OR PRIMARY
23 PUTS OR OTHERWISE EXHIBITS IN THE ESTABLISHMENT OR PLACE WHERE
24 HIS EMPLOYEES ARE ENGAGED IN LABOR, ANY HANDBILL OR PLACARD
25 CONTAINING ANY THREAT, NOTICE, OR INFORMATION THAT IF ANY
26 PARTICULAR TICKET OR CANDIDATE IS ELECTED OR DEFEATED WORK IN
27 HIS PLACE OR ESTABLISHMENT WILL CEASE, IN WHOLE OR IN PART, HIS
28 ESTABLISHMENT BE CLOSED UP, OR THE WAGES OF HIS EMPLOYEES
29 REDUCED, OR OTHER THREATS, EXPRESS OR IMPLIED, INTENDED OR
30 CALCULATED TO INFLUENCE THE POLITICAL OPINIONS OR ACTIONS OF HIS

1 EMPLOYES, SHALL BE GUILTY OF A MISDEMEANOR OF THE SECOND DEGREE.
2 ANY PERSON OR CORPORATION, CONVICTED OF A VIOLATION OF ANY OF
3 THE PROVISIONS OF THIS SECTION, SHALL BE SENTENCED TO PAY A FINE
4 NOT EXCEEDING [FIVE THOUSAND (\$5,000)] TEN THOUSAND (\$10,000)
5 DOLLARS, OR SUCH PERSON OR THE OFFICERS, DIRECTORS OR AGENTS OF
6 SUCH CORPORATION RESPONSIBLE FOR THE VIOLATION OF THIS SECTION,
7 SHALL BE SENTENCED TO UNDERGO AN IMPRISONMENT OF NOT MORE THAN
8 [TWO (2)] FOUR (4) YEARS, OR BOTH, IN THE DISCRETION OF THE
9 COURT.

10 SECTION 1848. FAILURE TO PERFORM DUTY.--ANY SECRETARY OF THE
11 COMMONWEALTH, MEMBER OF A COUNTY BOARD OF ELECTIONS, CHIEF
12 CLERK, EMPLOYE, OVERSEER, JUDGE OF ELECTION, INSPECTOR OF
13 ELECTION, CLERK OF ELECTION, MACHINE INSPECTOR OR CUSTODIAN OR
14 DEPUTY CUSTODIAN OF VOTING MACHINES ON WHOM A DUTY IS LAID BY
15 THIS ACT WHO SHALL WILFULLY NEGLECT OR REFUSE TO PERFORM HIS
16 DUTY, SHALL BE GUILTY OF A MISDEMEANOR, AND, UPON CONVICTION
17 THEREOF, SHALL BE SENTENCED TO PAY A FINE NOT EXCEEDING [ONE
18 THOUSAND (\$1,000)] TWO THOUSAND (\$2,000) DOLLARS, OR TO UNDERGO
19 AN IMPRISONMENT OF NOT MORE THAN [TWO (2)] FOUR (4) YEARS, OR
20 BOTH, IN THE DISCRETION OF THE COURT.

21 SECTION 1849. HINDERING OR DELAYING PERFORMANCE OF DUTY.--
22 ANY PERSON WHO INTENTIONALLY INTERFERES WITH, HINDERS OR DELAYS
23 OR ATTEMPTS TO INTERFERE WITH, HINDER OR DELAY ANY OTHER PERSON
24 IN THE PERFORMANCE OF ANY ACT OR DUTY AUTHORIZED OR IMPOSED BY
25 THIS ACT, SHALL BE GUILTY OF A MISDEMEANOR, AND, UPON CONVICTION
26 THEREOF, SHALL BE SENTENCED TO PAY A FINE NOT EXCEEDING [FIVE
27 HUNDRED (\$500)] ONE THOUSAND (\$1,000) DOLLARS, OR TO UNDERGO AN
28 IMPRISONMENT OF NOT MORE THAN [ONE (1) YEAR] TWO (2) YEARS, OR
29 BOTH, IN THE DISCRETION OF THE COURT.

30 SECTION 1850. VIOLATION OF ANY PROVISION OF ACT.--ANY PERSON

1 WHO SHALL VIOLATE ANY OF THE PROVISIONS OF THIS ACT, FOR WHICH A
2 PENALTY IS NOT HEREIN SPECIFICALLY PROVIDED, SHALL BE GUILTY OF
3 A MISDEMEANOR, AND, UPON CONVICTION THEREOF, SHALL BE SENTENCED
4 TO PAY A FINE NOT EXCEEDING [ONE THOUSAND (\$1,000)] TWO THOUSAND
5 (\$2,000) DOLLARS, OR TO UNDERGO AN IMPRISONMENT OF NOT MORE THAN
6 [ONE (1) YEAR] TWO (2) YEARS, OR BOTH, IN THE DISCRETION OF THE
7 COURT.

8 SECTION 17. SECTION 1853 OF THE ACT, AMENDED MARCH 27, 2020
9 (P.L.41, NO.12), IS AMENDED TO READ:

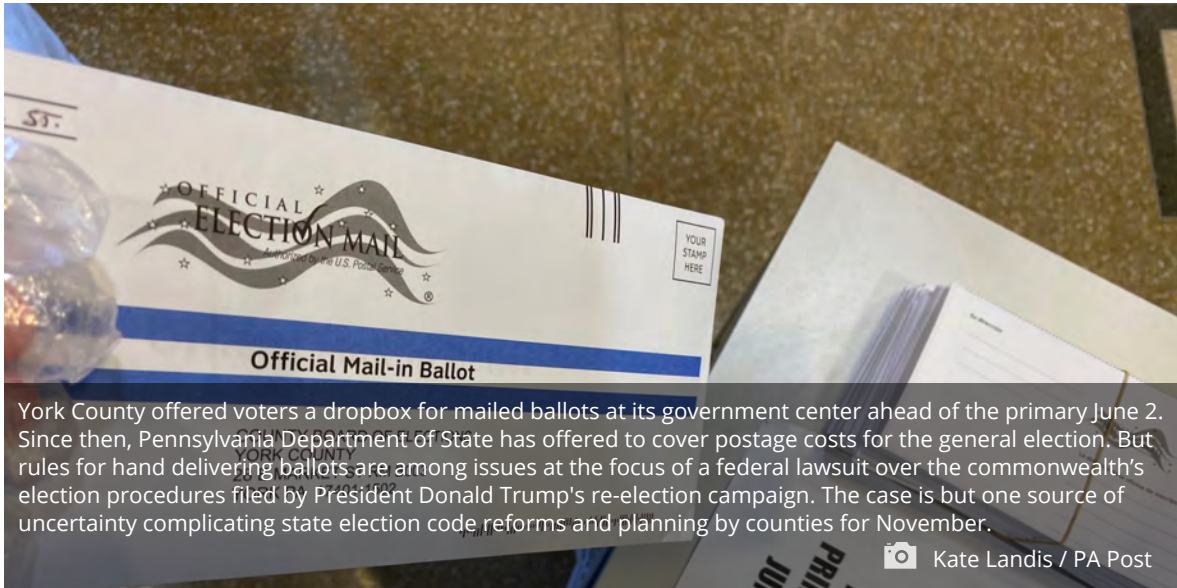
10 SECTION 1853. VIOLATIONS OF PROVISIONS RELATING TO ABSENTEE
11 AND MAIL-IN BALLOTS.--IF ANY PERSON SHALL SIGN AN APPLICATION
12 FOR ABSENTEE BALLOT, MAIL-IN BALLOT OR DECLARATION OF ELECTOR ON
13 THE FORMS PRESCRIBED KNOWING ANY MATTER DECLARED THEREIN TO BE
14 FALSE, OR SHALL VOTE ANY BALLOT OTHER THAN ONE PROPERLY ISSUED
15 TO THE PERSON, OR VOTE OR ATTEMPT TO VOTE MORE THAN ONCE IN ANY
16 ELECTION FOR WHICH AN ABSENTEE BALLOT OR MAIL-IN BALLOT SHALL
17 HAVE BEEN ISSUED TO THE PERSON, OR SHALL DISCLOSE RESULTS OF A
18 PRE-CANVASSING MEETING UNDER SECTION 1308(G)(1.1), OR SHALL
19 VIOLATE ANY OTHER PROVISIONS OF ARTICLE XIII OR ARTICLE XIII-D
20 OF THIS ACT, THE PERSON SHALL BE GUILTY OF A MISDEMEANOR OF THE
21 THIRD DEGREE, AND, UPON CONVICTION, SHALL BE SENTENCED TO PAY A
22 FINE NOT EXCEEDING [TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500)]
23 FIVE THOUSAND DOLLARS (\$5,000), OR BE IMPRISONED FOR A TERM NOT
24 EXCEEDING [TWO (2)] FOUR (4) YEARS, OR BOTH, AT THE DISCRETION
25 OF THE COURT.

26 IF ANY CHIEF CLERK OR MEMBER OF A BOARD OF ELECTIONS, MEMBER
27 OF A RETURN BOARD OR MEMBER OF A BOARD OF REGISTRATION
28 COMMISSIONERS, SHALL NEGLECT OR REFUSE TO PERFORM ANY OF THE
29 DUTIES PRESCRIBED BY ARTICLE XIII OR ARTICLE XIII-D OF THIS ACT,
30 OR SHALL REVEAL OR DIVULGE ANY OF THE DETAILS OF ANY BALLOT CAST

1 IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE XIII OR ARTICLE
2 XIII-D OF THIS ACT, OR SHALL DISCLOSE RESULTS OF A PRE-
3 CANVASSING MEETING UNDER SECTION 1308(G)(1.1), OR SHALL COUNT AN
4 ABSENTEE BALLOT OR MAIL-IN BALLOT KNOWING THE SAME TO BE
5 CONTRARY TO ARTICLE XIII OR ARTICLE XIII-D, OR SHALL REJECT AN
6 ABSENTEE BALLOT OR MAIL-IN BALLOT WITHOUT REASON TO BELIEVE THAT
7 THE SAME IS CONTRARY TO ARTICLE XIII OR ARTICLE XIII-D, OR SHALL
8 PERMIT AN ELECTOR TO CAST THE ELECTOR'S BALLOT OTHER THAN A
9 PROVISIONAL BALLOT AT A POLLING PLACE KNOWING THAT THERE HAS
10 BEEN ISSUED TO THE ELECTOR AN ABSENTEE BALLOT OR MAIL-IN BALLOT,
11 THE [ELECTOR] INDIVIDUAL SHALL BE GUILTY OF A FELONY OF THE
12 THIRD DEGREE, AND, UPON CONVICTION, SHALL BE PUNISHED BY A FINE
13 NOT EXCEEDING [FIFTEEN THOUSAND DOLLARS (\$15,000)] THIRTY
14 THOUSAND DOLLARS (\$30,000), OR BE IMPRISONED FOR A TERM NOT
15 EXCEEDING [SEVEN (7)] FOURTEEN (14) YEARS, OR BOTH, AT THE
16 DISCRETION OF THE COURT.

17 SECTION 18. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.

EXHIBIT “DD”



York County offered voters a dropbox for mailed ballots at its government center ahead of the primary June 2. Since then, Pennsylvania Department of State has offered to cover postage costs for the general election. But rules for hand delivering ballots are among issues at the focus of a federal lawsuit over the commonwealth's election procedures filed by President Donald Trump's re-election campaign. The case is but one source of uncertainty complicating state election code reforms and planning by counties for November.

Kate Landis / PA Post

Gov. Wolf plans to veto election code bill in its current form

It contains a controversial provision allowing campaigns to assign poll watchers anywhere in the state.

Emily Previti

SEPTEMBER 2, 2020 | 6:42 PM

(Harrisburg) — Gov. Tom Wolf will veto an election code bill that passed the Pennsylvania House of Representatives today, if it passes the Senate as well.

His spokeswoman confirmed Wolf's intended veto of House bill 2626 if it stays as is, citing in particular the need for voter access to drop boxes for mail-in ballots and more time for counties to prep mailed ballots received back before Election Day for processing.

After 90 minutes of floor debate, the House voted nearly on party lines Wednesday afternoon to pass [the measure < https://www.witf.org/2020/09/02/democrats-oppose-election-code-bill-on-track-for-party-line-passage-after-late-summer-stalemate/>](https://www.witf.org/2020/09/02/democrats-oppose-election-code-bill-on-track-for-party-line-passage-after-late-summer-stalemate/), with three Democrats from Western Pennsylvania crossing the aisle to support it. Rep. Todd Stephens of Montgomery County is the only House Republican who opposed it.

The bill now goes to the state Senate, due back in session after Labor Day.

House Republicans indicated they expect support of the measure from Senate majority leadership, whose spokeswoman said Tuesday only that they “look forward to receiving the bill.”

RELATED STORIES

- [Democrats oppose election code bill on track for party-line passage after late-summer stalemate < https://www.witf.org/2020/09/02/democrats-oppose-election-code-bill-on-track-for-party-line-passage-after-late-summer-stalemate/>](https://www.witf.org/2020/09/02/democrats-oppose-election-code-bill-on-track-for-party-line-passage-after-late-summer-stalemate/)



Charlie Riedel / AP Photo

FILE PHOTO: In this March 10, 2020, file photo a woman votes in the presidential primary election at the the Summit View Church of the Nazarene in Kansas City, Mo.

As [amended Tuesday, HB2626 <](#)

[https://www.legis.state.pa.us/cfdocs/legis/HA/public/HaCheck.cfm?](https://www.legis.state.pa.us/cfdocs/legis/HA/public/HaCheck.cfm?txtType=HTM&year=2019&sind=0&body=H&type=B&bn=2626&pn=4025&ayear)

[txtType=HTM&year=2019&sind=0&body=H&type=B&bn=2626&pn=4025&ayear](https://www.legis.state.pa.us/cfdocs/legis/HA/public/HaCheck.cfm?txtType=HTM&year=2019&sind=0&body=H&type=B&bn=2626&pn=4025&ayear)

would require counties to start sending out ballots earlier and finalizing counts sooner. But it also would let counties start processing mailed ballots the Saturday ahead of Election Day, much later than the three weeks in the original version of the measure, a timeline [favored by election directors <](#)

[https://www.witf.org/2020/05/01/counties-could-be-](https://www.witf.org/2020/05/01/counties-could-be-overwhelmed-by-mail-in-ballots-election-directors-warn/)

[overwhelmed-by-mail-in-ballots-election-directors-warn/> .](https://www.witf.org/2020/05/01/counties-could-be-overwhelmed-by-mail-in-ballots-election-directors-warn/)

County voting chiefs also want permission to assign poll workers anywhere in their home county – and that’s in the bill. But so is a more controversial provision allowing campaigns to assign poll watchers anywhere in the state, the same relief sought in a [federal lawsuit by President Donald Trump’s re-election campaign <](#)
[https://www.witf.org/2020/08/23/federal-judge-stays-trump-campaign-lawsuit-over-pennsylvania-voting-rules/> .](https://www.witf.org/2020/08/23/federal-judge-stays-trump-campaign-lawsuit-over-pennsylvania-voting-rules/)

HB2626 also calls for a mailed ballot application deadline 15 days before the election versus a week, but doesn’t address the return deadline. Currently, that’s Election Day.

Counties have been asking since 2014 for more time between the mailed ballot application and return deadlines, according to Dauphin’s election chief Jerry Feaser.

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POLITICS & POLICY

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EXHIBIT “EE”

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael Crossey, Dwayne Thomas, :
Irvin Weinreich, Brenda Weinreich, :
and the Pennsylvania Alliance :
for Retired Americans, :
Petitioners :

v. :

266 M.D. 2020

Kathy Boockvar, Secretary of the :
Commonwealth, and Jessica Mathis :
Director of the Bureau of Election :
Services and Notaries, :
Respondents :

**RECOMMENDED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

I. Introduction

On April 22, 2020, the Pennsylvania Alliance for Retired Americans and four individuals, two of whom are members of the Alliance (collectively, Petitioners), filed a Petition for Declaratory and Injunctive Relief (Petition) against the Secretary of the Commonwealth, Kathy Boockvar, and the Director of the Bureau of Election Services and Notaries, Jessica Mathis (collectively, Secretary) in this Court. Anticipating disruptions to the June 2, 2020, primary election from the COVID-19 pandemic, the Petition raised, *inter alia*, constitutional claims about provisions of the Pennsylvania Election Code (Election Code)¹ related to mail-in ballots, which is a method of voting that the General Assembly added to the Election Code by the Act of October 31, 2019, P.L. 552, No. 77 (Act 77). Petitioners filed a May 8, 2020, Emergency Application for Special Relief in the Nature of a

¹ Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§2600-3591.

Preliminary Injunction and for Expedited Review (Preliminary Injunction Application).

This Court held a pre-hearing telephone conference call on the Preliminary Injunction Application, during which the Secretary confirmed her intention to challenge this Court's jurisdiction over the Petition in her preliminary objections. The parties agreed to bifurcate the issue of jurisdiction over the Preliminary Injunction Application from the merits. After briefing by the parties and intervenors,² this Court denied the Preliminary Injunction Application on May 28, 2020, on the basis that Petitioners were not likely to prevail on the issue of this Court's jurisdiction.

On June 17, 2020, this Court issued an opinion and order transferring the matter to the Supreme Court of Pennsylvania. This Court agreed with the Secretary that the Petition's claims fell within the Supreme Court's exclusive jurisdiction over constitutional challenges to Act 77 under Section 13(b) of Act 77.³ *Crossey v. Boockvar* (Pa. Cmwlth., No. 266 M.D. 2020, filed June 17, 2020).

² After this Court transferred the matter to the Supreme Court, the Supreme Court granted the applications for leave to intervene filed on behalf of President Pro Tempore Joseph B. Scarnati, III, and Majority Leader of the Senate Jake Corman (collectively, Senate Intervenors) and on behalf of the Speaker of the House of Representatives Bryan Cutler and House Majority Leader Kerry Benninghoff (House Intervenors). See *Crossey v. Boockvar* (Pa., No. 108 MM 2020, filed August 21, 2020).

The Supreme Court denied the application for leave to intervene filed by the Republican Party of Pennsylvania, the Republican National Committee, and the National Republican Congressional Committee. *Id.*

³ Specifically, this Court concluded that the Petition challenged Sections 1306 and 1306-D of the Election Code. These sections relate to the date, time, and manner by which absentee or mail-in ballots must be returned to the county boards of elections. They are listed in Section 13(b) of Act 77 as sections over which the Supreme Court had exclusive jurisdiction if a challenge was brought within 180 days of Act 77's effective date.

The Supreme Court accepted the transfer at 108 MM 2020 and granted Petitioners' Application for Leave to File an Amended Petition by July 13, 2020. The Amended Petition for Review (Amended Petition) sets forth constitutional claims arising from the Secretary's failure (1) to allow the return of absentee and mail-in ballots after the 8:00 p.m. Election Day deadline, because of alleged backlogs in the application process and delays by the United States Postal Service (USPS) in mail delivery; (2) to provide prepaid postage on mail-in ballots; and (3) to allow voters to obtain third-party assistance in the return of mail-in ballots. The Amended Petition alleges that the Secretary's failure to implement such procedures violates Article I, Sections 1,⁴ 5,⁵ and 26⁶ of the Pennsylvania Constitution. Petitioners request the Supreme Court to declare that the above-listed barriers to voting by mail violate their constitutionally protected right to free access to a free and equal election during the pandemic. Petitioners request the Supreme Court to order the Secretary to implement additional safeguards for the November 3, 2020, general election and any other election held during the pandemic. These proposed safeguards include providing prepaid postage on all absentee and mail-in ballots; counting ballots delivered after the statutory deadline of 8:00 p.m. Election Day; and authorizing third-party assistance in the collection and submission of absentee and

⁴ Article I, Section 5 of the Pennsylvania Constitution provides: "All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness." PA. CONST. art. I, §1.

⁵ Article I, Section 5 of the Pennsylvania Constitution provides: "Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." PA. CONST. art. I, §5.

⁶ Article I, Section 26 of the Pennsylvania Constitution provides: "Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right." PA. CONST. art. I, §26.

mail-in ballots to the extent the latter two measures do not trigger Act 77's non-severability provisions.

The Secretary and Intervenors filed preliminary objections to the Amended Petition.⁷ Prior to disposition thereof, the Supreme Court issued an August 26, 2020, order appointing the undersigned as Special Master and directing the Court “to create an evidentiary record on claims raised in this case including the ability of the United States Postal Service to comply with deadlines for the November 3, 2020 general election.” *Crossey v. Boockvar* (Pa., No. 108 MM 2020, filed August 26, 2020). The Supreme Court directed this Court to file with the Prothonotary of the Supreme Court its proposed findings of fact and conclusions of law and recommended disposition no later than Friday, September 4, 2020. *Id.*

On August 27, 2020, this Court issued a case management order that directed the parties and intervenors to file pre-hearing statements by Friday, August 28, 2020. It scheduled a pre-hearing telephone conference for Saturday, August 29, 2020, and an evidentiary hearing for August 31, 2020. It also ordered that the parties

⁷ The Secretary objected on the basis that the Amended Petition (1) fails to state a constitutional claim because its allegations are hypothetical; (2) the Alliance lacks standing as an organization and asserts claims not ripe for review; and (3) fails to join indispensable parties, *i.e.*, the county boards of elections. The Secretary also objected on the basis that the Commonwealth enjoys sovereign immunity that bars mandatory injunctive relief.

On August 13, 2020, the Secretary withdrew her preliminary objections that the Amended Petition did not state a constitutional violation and was not ripe for review.

Senate Intervenors objected on the basis of (1) lack of jurisdiction and ripeness; (2) failure to join the county boards of elections as indispensable parties; (3) the claims raise non-justiciable political questions; (4) failure to conform to law; (5) insufficient specificity of the pleadings; and (6) lack of capacity to sue.

House Intervenors objected on the basis of (1) lack of standing of the Alliance because it does not vote; (2) failure to state a constitutional violation; (3) failure to present a justiciable claim; and (4) failure to join indispensable parties.

and intervenors file and serve proposed findings of fact and conclusions of law by September 2, 2020, 9:00 a.m.

II. Evidentiary Hearing of August 31, 2020

The Court summarizes the hearing testimony and documentary evidence as follows.

A. Petitioners' Witnesses⁸

1. Ronald Stroman

1. Ronald Stroman served as Deputy Postmaster General from 2011 to June 2020. Notes of Testimony, [Aug. 31, 2020,] 13-15 (N.T. ____).
2. He holds a B.A. in government from Manhattan College and a J.D. from Rutgers University. N.T. 13.
3. Mr. Stroman was a member of the USPS Board of Governors, which oversees the strategic direction of the USPS. He served on the Postmaster General's Executive Leadership Team, which implements the directions of the Board of Governors. N.T. 15.
4. Mr. Stroman had responsibility to improve the communications between the USPS, election officials and the election mail community; to improve the internal training for USPS employees on election mail; and to develop a system for rapid response to election mail issues. N.T. 17; Petitioners' Ex. 32.

⁸ The Court took witnesses out of order so that the testimony relevant to each issue was addressed at the same time. The Court further notes that the transcript of the evidentiary hearing is incomplete. Paragraphs 16, 39, and 40 of the summary of Mr. Stroman's testimony is based upon the notes of the court and staff, not the transcript. On September 4, 2020, a corrected transcript was filed with the Court. The citations herein refer to the transcript filed with the Court on September 1, 2020.

5. The Court accepted Mr. Stroman as an expert in the USPS' operations and delivery standards, and the application of those delivery standards to voting by mail. N.T. 19, 25.
6. Mr. Stroman testified that there are three aspects to the USPS mail process: retail (local post office), processing and delivery. N.T. 26.
7. Mail is collected by carriers or at a local post office. All mail is collected and placed with similar types of mail (*e.g.*, First-Class Mail, Marketing Mail) and transported to the processing center. At the processing center, mail is placed in sorting machines to find the correct zip code. If the mail remains in the same zip code, it is taken to a truck for transportation to a delivery unit. Carriers and clerks sort the mail by routes, and then the mail is placed on trucks for delivery to the addressees. N.T. 26-27.
8. If mail is designated for a location outside the boundaries of the processing center, it is transported to the appropriate processing center. Upon receipt there, the same process is used to deliver the mail. *Id.*
9. Mr. Stroman was Deputy Postmaster General during the April 2020 Wisconsin primary, and he testified about the investigation the USPS conducted into its performance during that primary. N.T. 28; Petitioners' Ex. 4.
10. Mr. Stroman attributed the delay in the receipt of absentee ballots during the Wisconsin primary election to: (1) the different service standards depending on the class of mail; and (2) the date upon which a voter requested a ballot. N.T. 28, 29.
11. Mr. Stroman testified about the July 29, 2020, letter that General Counsel and Executive Vice President of the USPS, Thomas J. Marshall, sent to

- Secretary Boockvar. That letter advised the Secretary that the Commonwealth's election law deadlines for requesting and casting mail-in ballots are incongruous with the USPS' delivery standards, and that this mismatch creates a risk that ballots requested near the deadline would not be returned in time to be counted under the law. N.T. 34; Petitioners' Ex. 6.
12. The July 29, 2020, letter further advised that there are two main classes of mail used for ballots: First-Class Mail and Marketing Mail, the latter of which uses a nonprofit postage rate. Petitioners' Ex. 6.
 13. Mr. Stroman agreed with Mr. Marshall's statement that voters must use First-Class Mail (or an expedited service) to mail their ballots and ballot requests, while election officials may generally use First-Class Mail or Marketing Mail to mail ballots to voters. N.T. 37.
 14. Domestic First-Class Mail has a nationwide delivery standard of 2 to 5 days upon receipt at the post office. N.T. 38, 75; Petitioners' Ex. 6, 32, ¶18.
 15. Marketing Mail has a nationwide delivery standard of 3 to 10 days upon receipt at the post office. N.T. 38, 75; Petitioners' Exs. 6, 32, ¶18.
 16. Mr. Stroman agreed that the July 29, 2020, letter does not advocate for changes in Pennsylvania's election law to accommodate the USPS's delivery standards and was intended to be educational.
 17. According to Mr. Stroman, mail delivered within the above-listed standards is considered timely under normal circumstances. N.T. 38, 39.
 18. Mr. Stroman identified three circumstances that he does not consider normal at this time: the COVID-19 pandemic, new initiatives by the new Postmaster General and the increase in the volume of mail-in ballots. N.T. 39, 45.

19. The pandemic has caused issues with USPS employee availability, which in turn affects the processing and delivery of mail in both the primary location and secondary location to which the mail is directed. N.T. 39, 40.
20. In the Pennsylvania June 2, 2020, primary, the pandemic affected the delivery of mail not only in the Philadelphia region but also in the entire mail-processing network. N.T. 43, 44.
21. Mr. Stroman testified that the new Postmaster General, Louis DeJoy, issued a new directive that mail transportation trucks leave at the designated time. If the mail has not been processed before the scheduled departure, the truck leaves without all the mail. In a cumulative fashion, this causes delays and backups on the delivery side of the process. N.T. 45-47, 55.
22. The third factor affecting the delivery standards is the volume of ballots. States are amending their election laws, which requires the USPS to train its employees to process election mail. N.T. 47.
23. The above factors will delay the USPS' ability to meet its delivery standards, according to Mr. Stroman. N.T. 49.
24. Mr. Stroman testified about Petitioners' Exhibit 9, which is a Score Break-down of Presort First-Class Mail on a nationwide basis and shows a decline in delivery times for three weeks in July 2020. He testified that Petitioners' Exhibit 9 was consistent with his knowledge of the Postmaster General's testimony in recent U.S. House and Senate Hearings. N.T. 49-51; Petitioners' Ex. 9.
25. Exhibit 9 purports to show how close the USPS came to meeting its performance standards. The decline in the score indicates that the USPS did not meet its service performance targets. N.T. 52-54.

26. Mr. Stroman opined that the USPS' failure to hit its performance targets has a compounding effect and that delays in delivery will get worse as time runs. N.T. 54, 55.
27. Mr. Stroman testified that all ballots returned to the county boards of elections will be single-piece mailings, which requires them to go through the sorting process. This may cause delays. N.T. 56, 85, 88.
28. Mr. Stroman testified regarding Petitioners' Exhibit 28, which is an Areas Inspiring Mail Chart. The Chart uses a baseline performance standard of 96%, meaning that percentage of time the USPS meets its delivery standard of 2 to 5 days for First-Class Mail or 3 to 10 days for Mass Marketing Mail. N.T. 58-63; Petitioners' Ex. 28.
29. The Chart provides that in the 43rd week, the USPS' performance rates, when compared to its intended performance standard of 96%, was 72.86% for Central Pennsylvania; 85.68% for the Philadelphia Metropolitan area; and 90.01% for Western Pennsylvania. N.T. 61; Petitioners' Ex. 28.
30. Mr. Stroman attributed the drop in the performance to the Postmaster General's changes in operations. N.T. 60.
31. These numbers mean that the USPS is not meeting its service target rates by a large margin, according to Mr. Stroman. N.T. 61, 62.
32. Mr. Stroman has a high degree of confidence in the data used in Petitioners' Exhibit 28 based on his personal knowledge of how the USPS operates and how such data is retrieved and compiled. N.T. 101-02.
33. Mr. Stroman opined that the USPS cannot improve its performance before the November 2020 general election. It takes time to fix the problems due

to the integrated nature of the USPS' network and to clear backlogs. N.T. 62, 63.

34. Mr. Stroman opined that there is a significant risk that the USPS will not meet its First-Class Mail service delivery standards of 2 to 5 days during the November 2020 election. N.T. 66, 70.
35. Mr. Stroman further observed that not all absentee ballots will be deposited in the mail from within the Commonwealth. N.T. 71.
36. Mr. Stroman testified that the USPS' delivery standard is 2 to 5 days within the Commonwealth, which includes mail deposited in the mail outside of the Commonwealth. N.T. 76, 77.
37. Mr. Stroman did not know which class of mail Pennsylvania election officials will use to mail the ballots to voters or the class by which the ballots will be returned to election officials. He believed that Pennsylvania's boards of elections are not using uniform mailing. N.T. 78.
38. Election mail is not separated from the general mail but the USPS attempts to prioritize it by tagging or coding election mail. N.T. 83, 85.
39. Mr. Stroman agreed that the county boards of elections play a very important role in getting the ballots to voters on time and are ultimately responsible for mailing ballots. N.T. 107. The county boards of elections should ensure that the envelopes used are automation compatible, the proper weight and properly addressed.
40. Mr. Stroman recommended that voters mail their completed ballots to the county election board at least 10 days prior to the election.
41. Mr. Stroman testified that it was possible but highly unlikely that a voter who requested a mail-in ballot the Tuesday before the election could have

that ballot mailed to the voter and then received by the county board of elections before the Election Day 8:00 p.m. deadline. N.T. 120-22; Petitioners' Ex. 32, ¶19.

2. Devon Laudenslager

1. Devon Laudenslager is a resident of the City of Philadelphia and has been registered to vote for four years. N.T. 282.
2. Due to the COVID-19 pandemic, Ms. Laudenslager applied for a mail-in ballot from her county board of elections on May 5, 2020, and received a confirmation email the next day that her application had been received. N.T. 282.
3. On May 15, 2020, Ms. Laudenslager received a second email indicating that her ballot had been mailed on May 15, 2020, and if she did not receive the ballot by May 22, 2020, she should contact her board of elections. N.T. 283.
4. When Ms. Laudenslager did not receive her mail-in ballot by May 22, 2020, she attempted to contact her board of elections. N.T. 283. Initially, she received a busy signal and, when the line was not busy, no one answered the phone and there was no ability to leave a message. N.T. 283-84.
5. She attempted to locate an alternate phone number to contact the board from its website, but her attempts to reach the board through alternate phone numbers were unsuccessful. N.T. 284.
6. As of May 26, 2020, the deadline to apply for a mail-in ballot, Ms. Laudenslager had not received her ballot. N.T. 283.
7. Ms. Laudenslager contacted her state representative's office, which told her that it had been in touch with the City of Philadelphia Commissioners

Office, and had a list of voters that needed replacement ballots. N.T. 285-86.

8. On June 2, 2020, Ms. Laudenslager went to her polling place to vote because she had not received her mail-in ballot. N.T. 286.
9. Her vote was counted. N.T. 286.
10. Ms. Laudenslager received a ballot by mail on June 4, 2020. N.T. 286.
11. Ms. Laudenslager intends to vote in the November 3, 2020, general election but doubts she will attempt to use a mail-in ballot due to her experience in the June 2020 primary and her fears that she cannot be assured that her county board of elections will receive her ballot in time to be counted even if she receives her ballot timely. N.T. 287-89.
12. Ms. Laudenslager gave two other examples of issues she had with her mail. She expected a follow-up letter from a graduate school and she received a letter from the Department of Transportation indicating her license would be renewed but that she should expect a follow-up letter. She never received either follow-up letter. N.T. 287.

3. Dr. Joseph Eisenberg

1. Joseph N.S. Eisenberg, PhD, MPH, is the John G. Searle endowed Chair and Professor of Epidemiology in the School of Public Health at the University of Michigan. He also has an adjunct appointment at the Universidad San Francisco de Quito in Ecuador. He received his PhD in Bioengineering in the joint University of California, Berkeley/University of California, San Francisco program, and an MPH from the School of Public Health at the University of California, Berkeley (focusing on the science of infectious disease transmission). Petitioners' Ex. 30 at ¶2.

2. Dr. Eisenberg is an infectious disease epidemiologist who researches how pathogens move through the environment and society to cause infectious diseases. Petitioners' Ex. 30 at ¶¶3, 5.
3. Since February 2020, Dr. Eisenberg has provided expert advice on COVID-19 by serving on advisory panels (Bipartisan Policy Center, Washington D.C.); presenting Webinars (Alliance for Health Policy, Barsan Research Forum, The University of Michigan Club of Washington, D.C.); and participating in media interviews (Detroit Fox News, MSNBC, WXYX Detroit, New York Times, Washington Post). During the initial phase of the pandemic, Dr. Eisenberg was a member of a subcommittee informing the Governor of Michigan's task force on opening the economy. Dr. Eisenberg has consulted with companies such as Ford Motor Company and Gemline on best practices during the COVID-19 pandemic. Petitioners' Ex. 30 at ¶6.
4. The Court admitted Dr. Eisenberg as an expert in the field of epidemiology. N.T. 295.
5. Dr. Eisenberg observed that COVID-19 cases in Pennsylvania have plateaued, but he expects significant transmission to continue in the fall. N.T. 297.
6. The novel coronavirus that causes COVID-19 is spread from person to person through the air and on environmental surfaces. The higher the concentration of virus to which one is exposed, the greater the chances of being infected. Additionally, being close to people who are coughing, speaking with force, or sneezing is riskier than those who are just speaking normally. Transmissibility increases when people are in enclosed, poorly ventilated spaces, in crowded spaces and in close proximity to other people.

Public gatherings at polling places and ballot return locations in municipal buildings may contribute to the spread of the virus. Petitioners’ Ex. 30 at ¶¶2, 14.

7. Dr. Eisenberg acknowledged the [Centers for Disease Control and Prevention] has adopted “interim guidance for ensuring various voting options, encouraging physical distancing, personal prevention practices, and employing environmental cleaning and disinfection to lower COVID-19 transmission during elections.” N.T. 307 (quoting Senate Intervenors Ex.17 at 2).
8. Allowing voters to vote by mail is consistent with current public health guidelines to minimize the spread of the virus and prevent COVID-19 illness because it (1) decreases the number of people who need to vote in person; (2) allows high-risk individuals to avoid in-person voting; and (3) minimizes the chances that indoor ballot return locations, such as polling stations or county board of elections’ offices, will contribute to the spread of the virus. Petitioners’ Ex. 30 at ¶¶2, 36.

B. Respondents’ Witness

1. Kathy Boockvar, Secretary of the Commonwealth

1. Kathy Boockvar was appointed as Secretary of the Commonwealth in January 2019 and confirmed by the Pennsylvania Senate in November 2019.
2. Secretary Boockvar is the chief elections official for the Commonwealth of Pennsylvania with responsibility for assessing risks to the voting process, including obstacles to the accessibility, security and integrity of elections. She and the Department of State engage in a “constant assessment and evaluation” to ensure “the highest level of accessibility, security, and safety

to the voters of Pennsylvania to make sure that they can exercise their right to vote.” N.T. 144.

3. At the inception of this litigation in April 2020, Secretary Boockvar opposed a statewide extension of the received-by deadline for mail-in ballots, preferring instead to deal with issues that would arise during the 2020 primary election on a county-by-county basis. N.T. 132.
4. The courts of common pleas in three counties extended the received-by deadline in the 2020 primary election. N.T. 133. An executive order by Governor Tom Wolf extended the received-by deadline by seven days in six counties due to civil unrest. *Id.* at 169.
5. On July 29, 2020, Secretary Boockvar received a letter from Thomas J. Marshall, General Counsel and Executive Vice President of the USPS. Respondents’ Ex. 1.
6. In his letter, Mr. Marshall advised Secretary Boockvar that “most domestic First-Class Mail is delivered 2 to 5 days after it is received by the Postal Service, and most domestic Marketing Mail is delivered 3 to 10 days after it is received.” Respondents’ Ex. 1 at 1. Based on these guidelines, Mr. Marshall recommended that (a) where voters will both receive and send a ballot by mail, they should request a ballot from their election officials at least 15 days before Election Day; (b) election officials should use First-Class Mail to transmit blank ballots and allow one week for delivery to voters; and (c) domestic voters should mail their completed ballots at least one week before the state’s due date. *Id.* at 1-2.
7. Observing that Pennsylvania’s election laws require a ballot to be returned by Election Day and that voters may request a mail-in ballot as late as 7 days

before Election Day, Mr. Marshall opined that “to the extent that the mail is used to transmit ballots to and from voters, there is a significant risk that, at least in certain circumstances, ballots may be requested in a manner that is consistent with your election rules and returned promptly, and yet not be returned in time to be counted.” Respondents’ Ex. 1 at 2.

8. Mr. Marshall sent the same letter to the Secretary of State of North Carolina on July 30, 2020, noting that in North Carolina “a voter may generally request a ballot as late as 7 days before the November general election, and that a completed ballot must be postmarked by Election Day and received by election officials no later than 3 days after the election.” Petitioners’ Ex. 7. Mr. Marshall’s letter to North Carolina also described North Carolina’s election law deadline for receipt of absentee and mail-in ballots “incongruous” and “incompatible” with the USPS nationwide delivery standards for First-Class Mail and Marketing Mail. *Id.* The letter went to 46 states. N.T. 135.
9. Secretary Boockvar testified that Mr. Marshall’s estimate that most domestic First-Class Mail is delivered 2 to 5 days after it is received by the USPS differed from her understanding that such mail typically has a 1 to 3 business day turnaround time, which is what voters would have expected in previous elections. N.T. 138.
10. A total of 1,462,254 ballots were cast by mail in the 2020 primary election. Respondents’ Ex. 2. According to the Department of State’s records, the mailed ballots were received by the county boards of elections in the following timeframes:

2/24/2020 – 3/31/2020:	278
4/1/2020 – 4/30/2020:	51,743

5/1/2020 – 5/19/2020:	292,412
5/20/2020 – 5/26/2020:	320,032
5/27/2020 – 5/31/2020:	436,701
6/1/2020:	173,869
6/2/2020 (Election Day):	89,018
6/3/2020:	31,183
6/4/2020:	14,177
6/5/2020:	15,973
6/6/2020:	3,966
6/7/2020:	84
6/8/2020:	10,240
6/9/2020 – 6/24/2020:	22,578

Id.

11. The State of Washington conducts its elections solely by mail and experienced “significant mail delays and a huge increase in the number of ballots received after election day” in the 2020 primary election. N.T. 141.
12. The Pennsylvania Department of State predicts that approximately 3 million voters will cast their votes by mail-in or absentee ballot in the November 2020 general election. N.T. 181. Based on voting patterns in the 2020 primary election, the Department expects that approximately half of the mail-in and absentee ballots will arrive in the last week of voting. *Id.* at 150-51.
13. Based primarily upon Mr. Marshall’s letter, Secretary Boockvar changed her position on a statewide change to the received-by deadline. In addition, she has had discussions with other state election officials. Secretary Boockvar is concerned that Pennsylvania’s deadlines for mail-in ballots are incompatible with the USPS’ current delivery timeframes, which are applicable statewide. She recommends that mail-in ballots should be counted if they are postmarked by Election Day, November 3, 2020, and received by the county

boards of elections no later than 3 days after the election, or by Friday, November 6, 2020. N.T. 134-136.

14. Secretary Boockvar opined that, in weighing the contours of an extension, she considered the balance between ensuring citizens can exercise their right to vote and conducting efficient election administration. Based on voting patterns in the 2020 primary election, the majority of late mail-in ballots arrived within 3 days after the election. N.T. 154; Respondents' Ex. 2.
15. Secretary Boockvar opined that Petitioners' requested 7-day extension of the received-by deadline will adversely impact other deadlines. N.T. 153. These deadlines include the deadline by which certain voters using mail-in or absentee ballots must provide identification, which is on the sixth day after the election;⁹ the deadline for defeated candidates to give up any right to a recount or recanvass, which is on the eighth day after the election;¹⁰ and the deadline for the Secretary to order a recount or recanvass, which is on the ninth day after the election.¹¹
16. County boards of elections are increasing their staffing in advance of the November 3, 2020, election and will mail out ballots beginning in September. Federal funds are available to the boards for purchasing additional processing equipment. N.T. 145.
17. The Department of State will reimburse county boards of elections for the return postage they affix to the mail-in ballot envelopes, which will be done in different ways depending on the county, *i.e.*, business return mail, a stamp

⁹ Section 1308(h) of the Election Code, added by the Act of March 6, 1951, P.L. 3, *as amended*, 25 P.S. §3146.8(h).

¹⁰ Section 1404(h) of the Election Code, 25 P.S. §3154(h).

¹¹ Section 1404(g)(2) of the Election Code, 25 P.S. §3154(g)(2).

or a meter marking. N.T. 158-59. “[A]n overwhelming majority of times there’s going to be a postmark.” *Id.* at 159.

18. The Department of State is conducting major efforts to educate voters about the process of voting by mail and the importance of doing so promptly. N.T. 146-47.
19. When impediments to voting arise in individual counties, such as local emergencies or delays in issuing ballots, a county may seek relief from its own court of common pleas. N.T. 132, 155-56.

C. Senate Intervenors’ Witness

1. Michael Plunkett

1. Michael Plunkett is a retired 25-year employee of the USPS. He holds a B.A. in Economics from the Pennsylvania State University, an M.B.A. from the Wharton School, University of Pennsylvania, and a second M.B.A. from the Massachusetts Institute of Technology. N.T. 205.
2. Mr. Plunkett worked for the USPS in various staff and management positions, including letter carrier and Associate Vice President of Business Development. N.T. 193; Senate Intervenors (SI) Ex. 1, ¶¶1-3. He retired from the USPS in 2011 and since 2016 has served as President and CEO of the Association for Postal Commerce, which is a trade association for companies that use the USPS in their business. SI Ex. 1, ¶3.
3. Mr. Plunkett was admitted as an expert witness in USPS delivery performance standards and practices on postmarks. N.T. 202, 211.
4. Mr. Plunkett used the quarterly reports filed by the USPS with the Postal Regulatory Commission, the regulator for the USPS, as the source of data

for his expert testimony about USPS operational performance in Pennsylvania and in the Eastern Area. SI Ex. 1, ¶7.

5. Pennsylvania has 8.5 million registered voters. For purposes of his opinion, Mr. Plunkett assumed that all voters would vote by absentee or mail-in ballots in the November 2020 general election over the 50-day period permitted under the Election Code. SI Ex. 1, ¶¶13, 15.
6. Most outbound First-Class Mail is sent in batches known as “Presort First-Class Mail,” which will be used to send ballots to voters by county boards of elections. SI Ex.1, ¶¶8, 10.
7. Election mail is treated differently than other First-Class Mail because it is prioritized for faster delivery. N.T. 267-268.
8. Mr. Plunkett testified that USPS delivery standards are zip code specific. The service performance standard for First-Class Mail within the 48 contiguous states is 2 to 3 days, and 2 to 5 days for those states plus Alaska, Hawaii and Puerto Rico. It is 6 days for Guam. For mail within Pennsylvania, the service performance standard is 2 days, although it is 3 days for mail between Erie and Philadelphia. For intra-county mail in Pennsylvania, the service performance standard is 2 days but up to 3 days for some counties. N.T. 213, 244.
9. Mr. Plunkett testified about the USPS report for the first quarter of 2020 covering the Eastern Area, made up of four districts that cover Pennsylvania identified as “Appalachian,” “Central Pennsylvania,” “Philadelphia Metro” and “Western Pennsylvania.” N.T. 217. The report showed that 99.5% of outbound Presort First-Class Mail was delivered within 3 days. This included mail originating within and outside Pennsylvania. Of that total,

98.3% was delivered within 1 day. SI Ex. 1, ¶¶8, 10. The service standard is 2 days for mail originating and ending in Pennsylvania. N.T. 219.

10. The USPS report for the first quarter of 2020 showed that in the Eastern Area, 97.0% of First-Class Mail was delivered within 3 days. Of that number, 92.5% of all First-Class Mail was delivered within 1 day. SI Ex. 1, Attachment A.
11. The USPS report for the second quarter of 2020 in the Eastern Area showed that approximately 99% of Presort First-Class Mail in Pennsylvania was delivered within 3 days, with 97.4% being delivered within 1 day. SI Ex. 4 at 2; N.T. 217.
12. The second quarter of 2020 included the period of time the USPS experienced a reduction in employee availability caused by the COVID-19 pandemic. N.T. 225.
13. The volume of First-Class Mail declined approximately 9% between 2019 and 2020, which suggests that the USPS has capacity to handle an increase in mail volume. SI Ex.1, ¶18.
14. During the first quarter of 2020, the USPS processed approximately 700 million Presort First-Class Mail letters and postcards in the Eastern Area. SI Ex.1 ¶11. If all 8.5 million registered voters in Pennsylvania request an absentee or mail-in ballot for the November 2020 election, that would represent 1.2% of USPS capacity in the Eastern service area. N.T. 144. The Secretary anticipates that 3 million Pennsylvanians will vote by mail in 2020, which represents 0.4% of USPS capacity in the Eastern service area. N.T. 181.

15. Given the volume of First-Class Mail handled by the USPS in the Eastern Area, Mr. Plunkett testified that the addition of 8.5 million ballots would not create an operational issue for the USPS. N.T. 181; SI Ex. 1, ¶15. Mr. Plunkett opined that “adding outbound and inbound election related mail in Pennsylvania would not impact the USPS’ ability to provide reliable and timely mail service.” SI Ex. 1, ¶24.
16. Mr. Plunkett is “unaware of any significant disruptions to First-Class Mail service.” SI Ex. 1, ¶19. Such disruptions would be known to him given his 25-year employment with the USPS and current employment with the Association for Postal Commerce, which continually monitors USPS performance. N.T. 205.
17. Upon being shown Petitioners’ Exhibit 28, Mr. Plunkett testified that the Postmaster General acknowledged that policy changes caused a temporary decline in service. Because the Postmaster General has ended the practice of trucks leaving a processing center before all mail has been sorted, USPS service should return to pre-decision levels. N.T. 252-53.
18. “Postmarks” are applied to stamped mail to prevent reuse of the stamp. N.T. 236; SI Ex. 1. Commercial mail generally bears evidence of payment, such as permit imprints, that are linked numerically to postage accounts. This mail does not bear traditional “postmarks” readable by the human eye. SI Ex. 1, ¶29.
19. The USPS has created specific service type identification (STID) codes, which are encoded in an intelligent mail barcode, for use on election mail that will allow it to identify and track ballots as they move through the USPS network. SI Ex. 1, ¶35.

20. The marks imprinted by the USPS on this type of mail are not readable by the human eye and would require scanners and software to decode. SI Ex. 1, ¶36. Mr. Plunkett testified that the USPS “plans to isolate election mail and to postmark even where postmarks are not necessary.” N.T. 246, 261.
21. Mr. Plunkett testified that a voter who requests a ballot on the last day in the general election cycle, Tuesday, October 27, 2020, would likely receive a ballot on Thursday or Friday. If the voter mails her ballot on Saturday, it would likely be received on Monday or Tuesday, Election Day. N.T. 271, 272.
22. Mr. Plunkett testified that a 1-day delay in service would not mean that ballots would not be received on time. N.T. 267.

D. House Intervenors’ Witness

1. Torren Ecker

1. Mr. Ecker is a member of the House of Representatives and represents the 193rd District. N.T. 331.
2. He ran in the May 15, 2018, primary as one of four candidates for the office. N.T. 331.
3. At 9:30 p.m. that day, the election results were posted and it appeared that Mr. Ecker lost by one vote. N.T. 332.
4. Election officials learned that one precinct had not counted its absentee ballots. When those ballots were counted, Mr. Ecker gained an additional vote. At that point, the election was tied. N.T. 332-33.
5. When the county board of elections recanvassed its ballots, it found two provisional ballots. An unqualified voter submitted one ballot, and the other voter cast a ballot in favor of Mr. Ecker. N.T. 334.

6. The losing candidate petitioned the court of common pleas for a recount, but after the recount Mr. Ecker remained the winner of the primary election. N.T. 335.
7. Starting on May 15, 2018, the entire process took approximately one month. N.T. 335.
8. As a candidate, Mr. Ecker agreed that he wanted constituents of the 193rd District to vote. N.T. 338.

III. Findings of Fact

1. All witnesses testified credibly. To the extent that the opinions of Mr. Stroman and the Secretary differ from the opinions of Mr. Plunkett, the Court finds Mr. Plunkett's opinions more credible and persuasive than those of Mr. Stroman and the Secretary, in light of his experience in statistical and financial analysis of USPS data both as a 25-year employee of the USPS and as current president of the Association for Postal Commerce.
2. The USPS has a standard delivery performance of 2 to 3 days for First-Class Mail in the contiguous United States; 5 days for First-Class Mail sent to Alaska, Hawaii, and Puerto Rico; and 6 days for mail sent to Guam.
3. Marketing mail has a nationwide standard delivery performance of 3 to 10 days.
4. For First-Class Mail within Pennsylvania, the standard delivery performance is 2 to 3 days after collection by the USPS. However, mail may take 3 days to be delivered from one end of the Commonwealth to the other (for example, from Philadelphia to Erie).
5. These above-described standards for delivery performance have been in place for a long time and not been adjusted since the enactment of Act 77.

6. For intra-county mail, the standard delivery performance is 2 days after collection by the USPS and, with limited exceptions, may take 3 days within some counties.
7. Petitioners' Exhibit 9, entitled "USPS Service Performance Measurement, PMG Briefing, August 12, 2020," shows the percentage of time that the USPS met its performance target of 96% nationwide for the period of March 14, 2020, through August 1, 2020, for various classes of mail. Relevantly, the graph shows a downturn in the USPS' performance for the period of July 4, 2020, through July 18, 2020, for Presort First-Class Mail. The Court declines to draw an inference from this exhibit that there is a general decline in standard delivery performance because the graph is based upon a snapshot of three weeks of experience. Mr. Stroman attributed the downturn to the Postmaster General's new policy directive on transportation, and this policy directive has been terminated.
8. Petitioners' Exhibit 28, which is a graph produced by Areas Inspiring Mail, shows that for the 41st through 43rd weeks there was a drop in the USPS's performance against the target of 96%. The graph shows that during those three weeks the USPS met its standard delivery target 72.86% of the time for Central Pennsylvania; 85.68% of the time for the Philadelphia Metro Area; 84.96% of the time for the Appalachian region; and 90.01% of the time for Western Pennsylvania. The Court declines to assign Exhibit 28 any weight. First, the document appears undated or the date is obscured. It does not show the year and month of the activity depicted. Second, Mr. Stroman testified that Exhibit 28 compares the USPS' performance for 2019 to that of 2020 and that the graph shows a sharp decline in the USPS' performance

targets between the 41st and 43rd weeks. N.T. 59. However, it is not clear that the weeks identified in the graph correspond directly to weeks of the calendar year. We have not reached the 41st through 43rd weeks of calendar year 2020. Third, the graph depicts a snapshot of three weeks and does not predict what the data will show for the 12-week period from June 1, 2020, to September 30, 2020.

9. Mail for deposit with the USPS may be handed directly to a postal carrier or collected by a carrier from a voter's residential mail receptacle.
10. There is no separate delivery performance standard for election-related First-Class Mail. The USPS prioritizes First-Class Mail identified as election-related.
11. Although there was testimony and argument regarding USPS "delivery delays," there was no evidence to define a delay. The USPS delivery standards are set in ranges, *i.e.*, 2 to 3 days in Pennsylvania. There is no evidence that USPS performance in Pennsylvania extends beyond that range. To the contrary, the USPS performance in Pennsylvania falls within the range over 98% of the time.
12. Pennsylvania's USPS performance exceeds the national average. In the first quarter of 2020 for Pennsylvania, 99.5% of USPS outbound Presort First-Class Mail was delivered within 3 days. More than 98% was delivered within 1 day. In the second quarter of 2020 for Pennsylvania, 99.4% of USPS outbound Presort First-Class Mail was delivered within 3 days. More than 98% was delivered within 1 day.
13. If all 8.5 million registered voters in Pennsylvania elect to vote by absentee or mail-in ballot, the quantity of mail generated will represent only 1.2% of

USPS' capacity in the Eastern service area and will not overwhelm the system.

14. A voter may cast a ballot in person at a polling location any time between 7:00 a.m. and before 8:00 p.m. on Election Day. If the voter has applied for an absentee or mail-in ballot, she may personally return the ballot to the county board of elections by 8:00 p.m. on Election Day or mail the ballot to the county board in such time that the board receives the ballot no later than 8:00 p.m., Election Day (the "received-by deadline").
15. A voter may elect to return the ballot by using a prepaid postage envelope if one is provided by the county board of elections, by placing a First-Class stamp on the return envelope or by purchasing expedited delivery from the USPS or other private delivery service.
16. If a voter applies for an absentee or mail-in ballot but cannot return it to the county board of elections before the received-by deadline, the voter may cast a provisional ballot in person at her polling place, as Ms. Laudenslager did.
17. There was no evidence that the county boards of elections anticipate consolidating polling places as they did in the primary election, that the county boards anticipate insufficient staffing or that the health and safety procedures used by the county boards during the June 2020 primary were ineffective.
18. Section 1206 of the Election Code, 25 P.S. §3046, provides a remedy for emergencies arising on election day; that is, an individual or county may bring a controversy before the court of common pleas and have the matter decided expeditiously. This was done in three counties during the 2020 primary election. Where an individual is seeking a judicial order to vote,

the court must inform the individual of the provisional ballot process set forth in Section 1206 of the Election Code, 25 P.S. §3046.

19. Secretary's Exhibit 2, a chart identifying the number of mail-in ballots received by each county and the date of receipt, does not support a finding that the received-by deadline should be extended by three days, to Friday, November 6, 2020. The exhibit does not explain when the voters applied for their absentee or mail-in ballots, when the county boards of elections mailed the ballots to the voters or when the voters deposited the ballots in the return mail.

Secretary's Exhibit 2 showed that 61,333 votes were received by county boards of elections during the three days that followed the primary election day. Of that total, 52,761 were received in counties where the Governor had extended the received-by deadline because of civil unrest or where the court of common pleas had extended the received-by deadline for receipt of absentee and mail-in ballots. Accordingly, all 52,761 were counted. Secretary's Exhibit 2 does not predict how many mail-in ballots will be received after 8:00 p.m. on Election Day because it is not known whether the mailing of ballots in the primary election was affected by the announced extension of the received-by deadline.

20. The Secretary is working with the county boards of elections and the USPS to design election-related mail envelopes. The Secretary is undertaking a public education campaign to inform voters of the need to apply for and return all mail ballots as early as possible.
21. Ms. Laudenslager was not disenfranchised because she voted at a polling place and her vote was counted.

22. Petitioners presented no evidence to support their request for third-party assistance in the delivery of ballots to either the USPS or the county boards of election or for their request for prepaid postage on all absentee and mail-in ballots.
23. Petitioners' claim for prepaid postage is moot in light of the Secretary's announcement that the Department of State will provide funding to the county boards of elections for postage.
24. There was no clear evidence presented on whether prepaid postage envelopes, which may be provided by the county boards of elections to voters for mailing their completed ballots, will be postmarked. A postmark would evidence the date the voter placed the ballot in the mail.
25. There was no evidence showing that COVID-19 was transmitted to an individual who appeared at a polling place in Pennsylvania during the primary election on June 2, 2020.
26. There was no evidence presented to address how an extension of the statutory deadline could be implemented without causing confusion among the 67 county boards of elections that are preparing to conduct the general election in accordance with the received-by deadline which has been in effect for all elections in Pennsylvania since 1964, and among the voting public.

IV. Conclusions of Law

1. The deadline for receipt of absentee and mail-in ballots by 8:00 p.m. on Election Day represents a policy choice made by the legislative and executive branches in the enactment of Act 77. This deadline was first adopted for absentee ballots. *See* Section 22 of the Act of August 13, 1963,

P.L. 707 (effective January 1, 1964). The same deadline was adopted in Act 77 for mail-in ballots. *See* Section 1306-D(c) of the Election Code, 25 P.S. §3150.16(c).

2. Petitioners' evidence did not prove that disruptions to USPS operations are likely to occur in November 2020 that will cause timely mailed ballots to go uncounted in the general election. Petitioners offered no evidence that a single mail-in ballot in the primary election was received by a county board of elections after the June 2, 2020, deadline because of a delay in delivery by the USPS. Petitioners offered no evidence upon which the Court can find, as fact, that the USPS will not be able to deliver absentee and mail-in ballots within 2 to 3 days of their being posted. The credible evidence shows just the opposite, *i.e.*, the USPS is unlikely to be overwhelmed in November.
3. If the current deadlines remain in place for the November general election and significant delays develop in certain counties with the processing of ballot applications or in the USPS delivery of mail, the county courts of common pleas are empowered to provide targeted relief. Petitioners have not demonstrated that such county-specific relief will be inadequate and that an immediate statewide remedy is necessary.
4. As Justice Wecht wrote in support of the Pennsylvania Supreme Court's recent decision dismissing a similar COVID-19-related challenge to the Commonwealth's administration of the 2020 primary election, "the instant request ... is predicated upon mere speculation about what may or may not occur with delivery operations within the Commonwealth in several weeks' time. While circumstances may change, the possibility that votes may be suppressed due to late ballot delivery, as presently alleged, is too remote at

this time to constitute a cognizable injury.” *Disability Rights Pennsylvania v. Boockvar*, (Pa., No. 83 MM 2020, filed May 15, 2020) (Wecht, J., Concurring Statement at 1-2).

5. Petitioners’ evidentiary case did not address the alleged injury occasioned by the prohibition against third-party assistance in casting and delivering absentee and mail-in ballots or the need for prepaid postage on all absentee and mail-in ballots.
6. The Court concludes that it is not necessary to address the outstanding legal objections raised by Respondents, by Senate Intervenors or by House Intervenors.
7. Petitioners have not made a “clear, palpable and plain demonstration” that the received-by deadline for absentee and mail-in ballots in Act 77 is unconstitutional for any election during the COVID-19 pandemic. *Yocum v. Commonwealth of Pennsylvania Gaming Control Board*, 161 A.3d 228, 238 (Pa. 2017). The received-by deadline for mail-in ballots is a valid election administration regulation, and the opportunity to vote by mail-in ballot accommodates those voters who do not wish to vote in person during the COVID-19 pandemic.

V. Discussion

Constitutional challenges to any legislation, including election laws, are cognizable only where the injury is concrete. “There is a presumption that lawfully enacted legislation is constitutional. Should the constitutionality of legislation be challenged, the challenger must meet the burden of rebutting the presumption of constitutionality by a *clear, palpable and plain demonstration* that the statute violates a constitutional provision.” *Yocum*, 161 A.3d at 238 (emphasis added).

Where a court determines that a law is unconstitutional, it is not the court's role to design an alternative scheme that passes constitutional muster; rather, the court must grant the legislature sufficient time to consider and enact remedial legislation. *See generally In re Fortieth Statewide Investigation Grand Jury*, 197 A.3d 712, 721 (Pa. 2018) (courts may not usurp the province of the legislature by rewriting legislation and adding hearing and evidentiary requirements that the participants must follow in grand jury proceedings); *League of Women Voters v. Commonwealth*, 178 A.3d 737, 821 (Pa. 2018) (providing timeframe for legislative and executive branches to enact remedial redistricting plan).

Moreover, “[i]t is a mistake to suppose[] that a court of equity is amenable to no law, either common or statute, and assumes the rule of an arbitrary legislator in every particular case.’ When the rights of a party are clearly established by defined principles of law, equity should not change or unsettle those rights. Equity follows the law.” *Piper v. Tax Claim Bureau of Westmoreland County*, 910 A.2d 162, 165 (Pa. Cmwlth. 2006) (quoting *First Federal Savings and Loan Association v. Swift*, 321 A.2d 895, 897 (Pa. 1974)).

The United States Constitution provides that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing [sic] Senators.” U.S. CONST. art. I, §4, cl.1. Article I, Section 5 of the Pennsylvania Constitution further states: “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” PA. CONST. art. I, §5.

Each state’s election code, “whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects -- to least some degree -- the individual’s right to vote” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)). “A court considering a challenge to a state election law must weigh ‘the character and magnitude of the asserted injury to the rights protected by the First and the Fourteenth Amendments that the plaintiff seeks to vindicate’ against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 789).

Although Petitioners seek to add new provisions to the existing Election Code, rather than expressly challenging the validity of a particular provision, the premise of *Yocum* applies with equal force. This Court has explained that “[a] statute is cloaked with a strong presumption of constitutionality and one who attacks it bears the burden of demonstrating that the legislation ‘clearly, palpably and plainly violates the constitution.’” *Ketterer v. Department of Transportation*, 574 A.2d 735, 736 (Pa. Cmwlth. 1990) (quotation omitted).

Petitioners premise their claims on different provisions of the Pennsylvania Constitution, but the alleged injury in each instance is at bottom the same: if the legislative and executive branches do not implement the responsive measures to the ongoing COVID-19 pandemic favored by Petitioners, some voters will be burdened in the exercise of their vote. They believe this warrants declaratory and injunctive relief.

Petitioners allege that counties could (1) face shortages of poll workers and may have to contend with social-distancing guidelines in processing ballots, *see* Amended Petition ¶6; (2) fall behind on processing mail-in and absentee ballots applications, *id.*, *see also* ¶53; and (3) the USPS may not be able to deliver election ballots in a timely manner, *id.* ¶54. Petitioners allege that it is “anyone’s guess whether voters who timely request mail ballots will receive them in time to complete the [ballots] and mail them back to county officials such that they arrive by 8:00 p.m. on Election Day.” *Id.* ¶55.

Petitioners allege that without third-party assistance with delivery of mail-in and absentee ballots, “[v]oters ... who have struggled with delayed mail delivery will be forced to deliver their ballots for the general election in-person this year to ensure their votes are counted[.]” *Id.* ¶63. Similarly, Petitioners assert that without prepaid postage on absentee and mail-in ballots, voters will have to shoulder the “unnecessary expense” of stamps, which “could be cost prohibitive,” and will also risk a “trip to the post office or any other establishment that sells stamps, at a time when individuals have been instructed to maintain social distancing guidelines to stem the spread of COVID-19[.]” *Id.* ¶¶66-67. Some of the reforms for which Petitioners advocate are under consideration by the General Assembly. If they are not enacted, Petitioners believe these reforms must be ordered by the Supreme Court of Pennsylvania.

The Amended Petition states that in the days before the June primary election, some counties took targeted measures to address COVID-19-specific challenges. *See* Amended Petition ¶25 n.4, ¶57 (citing *In re Extension of Time for Absentee and Mail-In Ballots to be Received by Mail and Counted in the 2020 Primary Election*, (C.C.P. Del. Cty. No. 2020-003416)). However, Petitioners

believe these county-specific judicial orders (and executive orders) will not suffice in November 2020.

In her preliminary objections filed with the Supreme Court, the Secretary stated that “nothing in the Amended Petition gives any specifics on what exactly will go wrong, where it will go wrong, or, -- just as importantly -- why the statewide remedy Petitioners seek will be necessary to correct the problem. Nor could the Amended Petition supply these specifics; in a fast-changing situation, and with the November general election months away, such predications are necessarily conjectural at best.” Secretary Preliminary Objections, at 16 ¶21.

Considering the above, Petitioners did not carry their burden of showing that the Election Code’s deadline for returning absentee and mail-in ballots is plainly and palpably unconstitutional. One year ago, the former Election Code required that all mail-in ballots, which were limited to absentee ballots, had to be returned to the county boards of elections by 5:00 p.m. on the Friday *before* Election Day in order to be counted. *Former* Section 1306(a) of the Election Code, 25 P.S. §3146.69(a). The General Assembly, which determines the time, place and manner of Pennsylvania’s elections, extended the former received-by deadline by four days in Act 77. It is for the General Assembly to decide what further changes should be made to all the statutory deadlines, which may include advancing the deadline for requesting an absentee or mail-in ballot.

Presently, voters in Pennsylvania have 50 days to request and cast a mail-in ballot. Section 1302.1 – D of the Election Code, 25 P.S. §3150.12a. Voters have the option to request a ballot early in the process and to return it early in the process. They also have the option to wait until one week before the election to request a ballot from the county board of elections, which has 48 hours to respond.

If the voter receives the ballot one day before Election Day, she can purchase overnight mailing from the USPS to ensure its timely receipt. If the voter receives the ballot on Election Day, she can personally deliver the ballot to the county board of elections. If the requested ballot is not received by Election Day, the voter can vote in person at her designated polling place, as did Ms. Laudenslager. And, of course, voters have the option to appear at their polling place and vote in person before 8:00 p.m. on Election Day.

Section 1206 of the Election Code provides that where significant problems develop in a precinct or county, our courts of court of common pleas can order relief. 25 P.S. §3046. This was done in several counties in the 2020 primary election, which extended the deadline for receipt of absentee and mail-in ballots.

As the Secretary noted, there must be deadlines in order for a free and equal election to take place. And every deadline will mean that some voters will not be able to participate in an election. A voter may arrive at the polling place at 8:05 p.m. on Election Day, or a voter's mail-in ballot may arrive at the county board of elections at 8:05 p.m. on Election Day. Neither vote will be counted.

In her original preliminary objections, the Secretary argued that Petitioners' pleading did not present a controversy ripe for judicial review. Nor did Petitioners' evidence. Whatever delays may be occasioned in the November 2020 general election with respect to the receipt of mail-in ballots by county boards of elections, they are not likely to be caused by the USPS. The evidence demonstrated that USPS performance in Pennsylvania exceeds the national average.

There are an infinite number of considerations that go into setting the rules for a free and equal election. It is the job of the legislature, not the judiciary, to make these policy choices.

The 8:00 p.m. Election Day deadline for returning absentee and mail-in ballots has been in existence since 1964.¹² For a court to order a new statewide deadline may create widespread confusion among voters and the county boards of elections, the parties that actually conduct the election. This militates against intervention by a court sitting in equity, assuming grounds for relief were demonstrated, and here they were not.

Even if that hurdle were crossed, an order enjoining enforcement of the received-by deadline would have to be issued to the county boards of elections. They are the persons that process and qualify ballots. Because they are not parties to this case, they cannot be enjoined from enforcing the received-by deadline in the Election Code.

In sum, the Election Code provides meaningful responses for conducting an election during the COVID-19 pandemic. Voters may cast their vote by mail if they conclude their polling place will not meet their standards of safety. That voters have the responsibility to obtain a ballot and return it by 8:00 p.m. Election Day does not impose an unlawful burden on the free exercise of the right to vote. At the next level, county boards of elections may seek relief from their courts of common pleas should the circumstances require that step appropriate. Finally, the General Assembly can enact appropriate measures should it determine that the COVID-19 pandemic requires a statewide response.

¹² Pennsylvania's received-by deadline is consistent with other state election laws. *See* ARIZ. REV. STAT. ANN. §16-558.01 (West 2015) (requiring the return of a mail-in ballot by 7:00 p.m. on the day of the election); GA. CODE ANN. §21-2-386(a)(1)(f) (West 2019) (requiring the destruction of absentee ballots received after the polls close); ME. REV. STAT. ANN. tit. 21-a, §755 (1991) (requiring the return of an absentee ballot before the close of the polls on election day); MICH. COMP. LAWS ANN. §168.764a (West 2012) (requiring receipt of absentee ballot before the close of polls on election day); WIS. STAT. ANN. §7.52(1)(a) (West 2018) (requiring the canvas of all absentee ballots received by 8:00 p.m. on election day).

VI. Conclusion

For these reasons, the Court recommends that the Supreme Court deny Petitioners' Prayer for Relief.

Respectfully submitted,

s/Mary Hannah Leavitt
MARY HANNAH LEAVITT, President Judge

Filed: September 4, 2020

Exhibits Admitted into Evidence at Evidentiary Hearing

Exhibit No.	Description
Petitioners	
Petitioners' Ex. 4	USPS Office of Inspector General Management Alert (July 7, 2020)
Petitioners' Ex. 6	USPS General Counsel Thomas J. Marshall Letter to the Hon. Kathy Boockvar (July 29, 2020)
Petitioners' Ex. 7	USPS General Counsel Thomas J. Marshall Letter to the Hon. Elaine Marshall (July 30, 2020)
Petitioners' Ex. 9	USPS PMG Briefing, Service Performance Measurement (Aug. 12, 2020)
Petitioners' Ex. 28	Eastern Areas Inspiring Mail Service Update
Petitioners' Ex. 30	Preliminary Report of Joseph Eisenberg
Petitioners' Ex. 32	Preliminary Report of Ronald Strohman
Respondents	
Respondents' Ex. 1	Letter dated July 29, 2020, from Thomas J. Marshall, General Counsel and Executive Vice President of the United States Postal Service, to Kathy Boockvar, Secretary of the Commonwealth of Pennsylvania
Respondents' Ex. 2	Chart of County Absentee or Mail-in Ballots
Respondents' Ex. 4	Postal Bulletin: Your 2020 Election and Political Mail Guide (Feb. 13, 2020)
Senate Intervenor	
Senate Intervenor's Ex. 1	Mr. Plunkett's Declaration that as filed on May 18, 2020 as Ex. A to Legislative Intervenor's Opposition to the Petitioners' Application for Special Relief in the Nature of a Preliminary Injunction
Senate Intervenor's Ex. 2	Attachment A from Plunkett's Report, <i>Quarterly Performance for First-Class Flats: Service Variance</i>
Senate Intervenor's Ex. 3	Attachment B from Plunkett's Report, <i>Quarterly Performance Aggregation for First-Class Flats: Service Variance</i>
Senate Intervenor's Ex. 4	Quarterly Performance for Presort First-Class Mail® Service Variance, USPS, FY 2020 Quarter III
Senate Intervenor's Ex. 6	In the Matter of: Investigation of Election Irregularities Affecting Counties Within the 9 th Congressional District
Senate Intervenor's Ex. 7	Final Report of the Miami-Dade County Grand Jury, Spring Term A.D. 2012, available

Senate Intervenors' Ex. 10	USPS Service Alert, Aug. 28, 2020
Senate Intervenors' Ex. 11	Postmaster General Louis DeJoy Statement, USPS, Aug. 18, 2020
Senate Intervenors' Ex. 16	Dhaval M. Dave, <i>et al. Black Lives Matter Protests, Social Distancing, and COVID-19</i>
Senate Intervenors' Ex. 17	U.S. Department of Health and Human Services and Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report, <i>Notes from the Field</i> , July 31, 2020
House Intervenors	
House Intervenors' Ex. 1	Statement of Postmaster General and Chief Executive Office Louis DeJoy (Aug. 21, 2020)

EXHIBIT “FF”

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 10 Session of
2020

INTRODUCED BY SCARNATI AND CORMAN, AUGUST 24, 2020

REFERRED TO STATE GOVERNMENT, AUGUST 24, 2020

AN ACT

1 Amending the act of June 3, 1937 (P.L.1333, No.320), entitled
2 "An act concerning elections, including general, municipal,
3 special and primary elections, the nomination of candidates,
4 primary and election expenses and election contests; creating
5 and defining membership of county boards of elections;
6 imposing duties upon the Secretary of the Commonwealth,
7 courts, county boards of elections, county commissioners;
8 imposing penalties for violation of the act, and codifying,
9 revising and consolidating the laws relating thereto; and
10 repealing certain acts and parts of acts relating to
11 elections," in county boards of elections, further providing
12 for watchers or attorneys at sessions of county board and
13 candidates may be present; in district election officers,
14 further providing for qualifications of election officers and
15 for appointment of watchers; in voting by qualified absentee
16 electors, further providing for applications for official
17 absentee ballots, for date of application for absentee
18 ballot, for official absentee voters ballots and for voting
19 by absentee electors; and, in voting by qualified mail-in
20 electors, further providing for applications for official
21 mail-in ballots, for date of application for mail-in ballot,
22 for official mail-in elector ballots, for delivering or
23 mailing ballots and for voting by mail-in electors.

24 The General Assembly of the Commonwealth of Pennsylvania
25 hereby enacts as follows:

26 Section 1. Sections 310(a), 402(a) and 417(b) of the act of
27 June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania
28 Election Code, are amended to read:

29 Section 310. Watchers or Attorneys at Sessions of County

1 Board; Candidates May Be Present.--

2 (a) Any party or political body or body of citizens which
3 now is, or hereafter may be, entitled to have watchers at any
4 registration, primary or election, shall also be entitled to
5 appoint watchers who are qualified electors [of the county], or
6 attorneys, to represent such party or political body or body of
7 citizens at any public session or sessions of the county board
8 of elections, and at any computation and canvassing of returns
9 of any primary or election and recount of ballots or recanvass
10 of voting machines under the provisions of this act. Such
11 watchers or attorneys may exercise the same rights as watchers
12 at registration and polling places, but the number who may be
13 present at any one time may be limited by the county board to
14 not more than three for each party, political body or body of
15 citizens.

16 * * *

17 Section 402. Qualifications of Election Officers.--(a)
18 Except as provided in subsection (b), election officers shall be
19 qualified registered electors of the [district in which they are
20 elected or appointed.] county in which the polling place is
21 located. An election officer shall not be required to be a
22 qualified registered elector in the election district in which
23 the election officer is appointed. No person shall be qualified
24 to serve as an election officer who shall hold, or shall within
25 two months have held, any office, appointment or employment in
26 or under the Government of the United States or of this State or
27 of any city or county or poor district, of any municipal board,
28 commission or trust in any city, save only district justices,
29 notaries public and persons in the militia service of the State;
30 nor shall any election officer be eligible to any civil office

1 to be voted for at a primary or election at which he shall
2 serve, except that of an election officer.

3 * * *

4 Section 417. Appointment of Watchers.--

5 * * *

6 (b) Each watcher so appointed must be a qualified registered
7 elector [of the county in which the election district for which
8 the watcher was appointed is located]. Each watcher so appointed
9 shall be authorized to serve in the election district for which
10 the watcher was appointed and, when the watcher is not serving
11 in the election district for which the watcher was appointed, in
12 any other election district [in the county in which the watcher
13 is a qualified registered elector]: Provided, That only one
14 watcher for each candidate at primaries, or for each party or
15 political body at general, municipal or special elections, shall
16 be present in the polling place at any one time from the time
17 that the election officers meet prior to the opening of the
18 polls under section 1208 until the time that the counting of
19 votes is complete and the district register and voting check
20 list is locked and sealed, and all watchers in the room shall
21 remain outside the enclosed space. It shall not be a requirement
22 that a watcher be a resident of the election district for which
23 the watcher is appointed. After the close of the polls and while
24 the ballots are being counted or voting machine canvassed, all
25 the watchers shall be permitted to be in the polling place
26 outside the enclosed space. Each watcher shall be provided with
27 a certificate from the county board of elections, stating his
28 name and the name of the candidate, party or political body he
29 represents. Watchers shall be required to show their
30 certificates when requested to do so. Watchers allowed in the

1 polling place under the provisions of this act, shall be
2 permitted to keep a list of voters and shall be entitled to
3 challenge any person making application to vote and to require
4 proof of his qualifications, as provided by this act. During
5 those intervals when voters are not present in the polling place
6 either voting or waiting to vote, the judge of elections shall
7 permit watchers, upon request, to inspect the voting check list
8 and either of the two numbered lists of voters maintained by the
9 county board: Provided, That the watcher shall not mark upon or
10 alter these official election records. The judge of elections
11 shall supervise or delegate the inspection of any requested
12 documents.

13 * * *

14 Section 2. Section 1302(i)(1) of the act, amended March 27,
15 2020 (P.L.41, No.12), is amended and the subsection is amended
16 by adding paragraphs to read:

17 Section 1302. Applications for Official Absentee Ballots.--*

18 * *

19 (i) (1) Application for official absentee ballots shall be
20 on physical and electronic forms prescribed by the Secretary of
21 the Commonwealth.

22 (1.1) The application shall state that an elector who
23 applies for an absentee ballot pursuant to section 1301 shall
24 not be eligible to vote at a polling place on election day
25 [unless the elector brings the elector's absentee ballot to the
26 elector's polling place, remits the ballot and the envelope
27 containing the declaration of the elector to the judge of
28 elections to be spoiled and signs a statement subject to the
29 penalties of 18 Pa.C.S. § 4904 (relating to unsworn
30 falsification to authorities) to the same effect. Such physical]

1 except by provisional ballot. The application shall also state
2 that an elector may personally deliver an absentee ballot and
3 the envelope containing the declaration of the elector to the
4 judge of elections of the elector's election district at the
5 elector's polling place during the hours that the polling place
6 is open on election day, to a location at the county courthouse
7 designated by the county board of elections or to the permanent
8 offices of the county board of elections and to no other
9 location.

10 (1.2) Physical application forms shall be made freely
11 available to the public at county board of elections, municipal
12 buildings and at such other locations designated by the
13 secretary. [Such electronic]

14 (1.3) Electronic application forms shall be made freely
15 available to the public through publicly accessible means.

16 (1.4) No written application or personal request shall be
17 necessary to receive or access the application forms.

18 (1.5) Copies and records of all completed physical and
19 electronic applications for official absentee ballots shall be
20 retained by the county board of elections.

21 * * *

22 Section 3. Section 1302.1(a) and (a.3)(1) and (2) of the
23 act, amended October 31, 2019 (P.L.552, No.77), are amended to
24 read:

25 Section 1302.1. Date of Application for Absentee Ballot.--

26 (a) Except as provided in subsection (a.3), applications for
27 absentee ballots shall be received in the office of the county
28 board of elections not earlier than fifty (50) days before the
29 primary or election, except that if a county board of elections
30 determines that it would be appropriate to its operational

1 needs, any applications for absentee ballots received more than
2 fifty (50) days before the primary or election may be processed
3 before that time. Applications for absentee ballots shall be
4 processed if received not later than five o'clock P.M. of the
5 [first Tuesday] fifteenth day prior to the day of any primary or
6 election.

7 (a.3) (1) The following categories of electors may apply
8 for an absentee ballot under this subsection, if otherwise
9 qualified:

10 (i) An elector whose physical disability or illness
11 prevented the elector from applying for an absentee ballot
12 before five o'clock P.M. on the [first Tuesday] fifteenth day
13 prior to the day of the primary or election.

14 (ii) An elector who, because of the elector's business,
15 duties or occupation, was unable to apply for an absentee ballot
16 before five o'clock P.M. on the [first Tuesday] fifteenth day
17 prior to the day of the primary or election.

18 (iii) An elector who becomes so physically disabled or ill
19 after five o'clock P.M. on the [first Tuesday] fifteenth day
20 prior to the day of the primary or election that the elector is
21 unable to appear at the polling place on the day of the primary
22 or election.

23 (iv) An elector who, because of the conduct of the elector's
24 business, duties or occupation, will necessarily be absent from
25 the elector's municipality of residence on the day of the
26 primary or election, which fact was not and could not reasonably
27 be known to the elector on or before five o'clock P.M. on the
28 [first Tuesday] fifteenth day prior to the day of the primary or
29 election.

30 (2) An elector described in paragraph (1) may submit an

1 application for an absentee ballot at any time up until the time
2 of the closing of the polls on the day of the primary or
3 election. The application shall include a declaration describing
4 the circumstances that prevented the elector from applying for
5 an absentee ballot before five o'clock P.M. on the [first
6 Tuesday] fifteenth day prior to the day of the primary or
7 election or that prevent the elector from appearing at the
8 polling place on the day of the primary or election, and the
9 elector's qualifications under paragraph (1). The declaration
10 shall be made subject to the provisions of 18 Pa.C.S. § 4904
11 (relating to unsworn falsification to authorities).

12 * * *

13 Section 4. Sections 1303(e) and 1306(a) introductory
14 paragraph and (b) (3) of the act, amended March 27, 2020 (P.L.41,
15 No.12), are amended to read:

16 Section 1303. Official Absentee Voters Ballots.--* * *

17 (e) The official absentee voter ballot shall state [that an
18 elector who receives an absentee ballot pursuant to section 1301
19 and whose voted ballot is not timely received by the commission
20 and who, on election day, is capable of voting at the
21 appropriate polling place may only vote on election day by
22 provisional ballot unless the elector brings the elector's
23 absentee ballot to the elector's polling place, remits the
24 ballot and the envelope containing the declaration of the
25 elector to the judge of elections to be spoiled and signs a
26 statement subject to the penalties under 18 Pa.C.S. § 4904
27 (relating to unsworn falsification to authorities) to the same
28 effect.] as follows:

29 (1) That a voter may return the ballot on or before election
30 day to the permanent offices of the county board of elections by

1 mail or in person, in person to a location at the county
2 courthouse designated by the board of elections or, if not
3 returned prior to election day, in person to the judge of
4 elections at the elector's election district at the elector's
5 polling place on election day during polling hours and to no
6 other location. The Secretary of the Commonwealth shall
7 prescribe the text and the manner by which the notice under this
8 subsection shall be printed on a ballot and shall require the
9 following statement:

10 This ballot may be personally returned by an elector to the
11 elector's polling place on election day, or in person on or
12 before election day to a location at the county courthouse
13 designated by the county board of elections, or by mail or in
14 person to the permanent offices of the county board of
15 elections and to no other location.

16 The notice shall also require electors to personally return
17 ballots.

18 (2) That an elector who receives an absentee ballot pursuant
19 to section 1301 and whose voted ballot is not timely received as
20 set forth in subsection (e)(1) and who, on election day, is
21 capable of voting at the appropriate polling place may only vote
22 on election day by provisional ballot.

23 Section 1306. Voting by Absentee Electors.--(a) Except as
24 provided in paragraphs (2) and (3), at any time after receiving
25 an official absentee ballot, but on or before eight o'clock P.M.
26 the day of the primary or election, the elector shall, in
27 secret, proceed to mark the ballot only in black lead pencil,
28 indelible pencil or blue, black or blue-black ink, in fountain
29 pen or ball point pen, and then fold the ballot, enclose and
30 securely seal the same in the envelope on which is printed,

1 stamped or endorsed "Official Election Ballot." This envelope
2 shall then be placed in the second one, on which is printed the
3 form of declaration of the elector, and the address of the
4 elector's county board of election and the local election
5 district of the elector. The elector shall then fill out, date
6 and sign the declaration printed on such envelope. Such envelope
7 shall then be securely sealed and the elector shall send same by
8 mail, postage prepaid, except where franked, or deliver it in
9 person to said county board of election[.] at the permanent
10 offices of the county board of elections, to a location at the
11 county courthouse designated by the county board of elections or
12 to the judge of elections at the elector's polling place and to
13 no other location.

14 * * *

15 (b) * * *

16 (3) Notwithstanding paragraph (2), an elector who requests
17 an absentee ballot and who is not shown on the district register
18 as having voted the ballot [may vote] on election day may:

19 (i) Vote by provisional ballot at the polling place. [if the
20 elector remits the ballot and the envelope containing the
21 declaration of the elector to the judge of elections to be
22 spoiled and the elector signs a statement subject to the
23 penalties under 18 Pa.C.S. § 4904 (relating to unsworn
24 falsification to authorities) in substantially the following
25 form:

26 I hereby declare that I am a qualified registered elector who
27 has obtained an absentee ballot or mail-in ballot. I further
28 declare that I have not cast my absentee ballot or mail-in
29 ballot, and that instead I remitted my absentee ballot or
30 mail-in ballot and the envelope containing the declaration of

1 the elector to the judge of elections at my polling place to
2 be spoiled and therefore request that my absentee ballot or
3 mail-in ballot be voided.

4 (Date)

5 (Signature of Elector).....(Address of Elector)

6 (Local Judge of Elections)]

7 (ii) Personally deliver the completed absentee ballot and
8 the envelope containing the declaration of the elector to the
9 judge of elections of the elector's election district at the
10 elector's polling place during polling hours, to a location at
11 the county courthouse designated by the county board of
12 elections or to the permanent offices of the county board of
13 elections and to no other location.

14 * * *

15 Section 5. Section 1308(f), (g) (1.1), (2) and (3) of the
16 act, amended October 31, 2019 (P.L.552, No.77) and March 27,
17 2020 (P.L.41, No.12), are amended, subsection (g) is amended by
18 adding a paragraph and the section is amended by adding a
19 subsection to read:

20 Section 1308. Canvassing of Official Absentee Ballots and
21 Mail-in Ballots.--* * *

22 (a.1) A judge of elections shall deliver all completed
23 absentee ballots and mail-in ballots to the county board of
24 elections by two o'clock A.M. on the day following the election.

25 * * *

26 (f) Any person challenging an application for an absentee
27 ballot, an absentee ballot, an application for a mail-in ballot
28 or a mail-in ballot for any of the reasons provided in this act
29 shall deposit the sum of ten dollars (\$10.00) in cash with the
30 county board, which sum shall only be refunded if the challenge

1 is sustained or if the challenge is withdrawn within five (5)
2 days after the primary or election. If the challenge is
3 dismissed by any lawful order then the deposit shall be
4 forfeited. The county board shall deposit all deposit money in
5 the general fund of the county.

6 [Notice of the requirements of subsection (b) of section 1306
7 shall be printed on the envelope for the absentee ballot or
8 mail-in ballot.]

9 (g) * * *

10 (1.1) The county board of elections shall meet [no earlier
11 than seven o'clock A.M. on election day] at least once before
12 election day at the county courthouse or the offices of the
13 county board of elections to pre-canvass all ballots received
14 prior to the meeting.

15 (1.2) A county board of elections that meets to pre-canvass
16 absentee ballots and mail-in ballots may begin the tasks
17 described in paragraph (4) (i), (ii) and (iii) after eight
18 o'clock A.M. the Saturday before the election and continuing
19 through election day for any absentee ballots or mail-in ballots
20 received prior to eleven fifty-nine P.M. on the day prior to
21 election day. A county board of elections shall provide at least
22 forty-eight hours' notice of a pre-canvass meeting by publicly
23 posting a notice of a pre-canvass meeting on its publicly
24 accessible Internet website. [One] The authorized representative
25 of each candidate in an election, the county chairperson of each
26 political party or a designee and one representative from each
27 political party shall be permitted to remain in the room in
28 which the absentee ballots and mail-in ballots are pre-
29 canvassed. The proceedings of the pre-canvassing shall be
30 recorded and made available upon request and the individuals

1 allowed to watch the pre-canvassing shall have a clear line of
2 sight to view the proceedings. No person observing, attending or
3 participating in a pre-canvass meeting may disclose the results
4 of any portion of any pre-canvass meeting prior to the close of
5 the polls.

6 (2) The county board of elections shall meet no earlier than
7 the close of polls on the day of the election at the county
8 courthouse or the offices of the county board of elections and
9 no later than the third day following the election to begin
10 canvassing absentee ballots and mail-in ballots not included in
11 the pre-canvass meeting. The meeting under this paragraph shall
12 continue until all absentee ballots and mail-in ballots received
13 prior to the close of the polls have been canvassed. The county
14 board of elections shall not record or publish any votes
15 reflected on the ballots prior to the close of the polls. The
16 canvass process shall continue through the eighth day following
17 the election for valid military-overseas ballots timely received
18 under 25 Pa.C.S. § 3511 (relating to receipt of voted ballot). A
19 county board of elections shall provide at least forty-eight
20 hours' notice of a canvass meeting by publicly posting a notice
21 on its publicly accessible Internet website. One authorized
22 representative of each candidate in an election, the county
23 chairperson of each political party or a designee and one
24 representative from each political party shall be permitted to
25 remain in the room in which the absentee ballots and mail-in
26 ballots are canvassed. The proceedings of the canvassing shall
27 be recorded and made available upon request and the individuals
28 allowed to watch the canvassing shall have a clear line of sight
29 to view the proceedings.

30 (3) When the county board meets to pre-canvass or canvass

1 absentee ballots and mail-in ballots under paragraphs (1),
2 (1.1), (1.2) and (2), the board shall examine the declaration on
3 the envelope of each ballot not set aside under subsection (d)
4 and shall compare the information thereon with that contained in
5 the "Registered Absentee and Mail-in Voters File," the absentee
6 voters' list and/or the "Military Veterans and Emergency
7 Civilians Absentee Voters File," whichever is applicable. If the
8 county board has verified the proof of identification as
9 required under this act and is satisfied that the declaration is
10 sufficient and the information contained in the "Registered
11 Absentee and Mail-in Voters File," the absentee voters' list
12 and/or the "Military Veterans and Emergency Civilians Absentee
13 Voters File" verifies his right to vote, the county board shall
14 provide a list of the names of electors whose absentee ballots
15 or mail-in ballots are to be pre-canvassed or canvassed. For
16 absentee ballots or mail-in ballots which the county board is
17 not satisfied that proof of identification has been provided due
18 to any inability to match the signature present on the ballot to
19 the signature on file, the county board shall:

20 (i) Notify the elector by mail, e-mail, telephone or text
21 message that the signature on the elector's ballot does not
22 match the elector's signature in the registration books.

23 (ii) Direct the elector to appear before, or to provide an
24 electronic, facsimile or paper copy to, the county board of
25 elections within six (6) calendar days with:

26 (A) proof of identification and an executed affirmation
27 affirming, under penalty of perjury, that the elector is the
28 same individual who personally remitted the absentee ballot or
29 mail-in ballot; or

30 (B) an executed affirmation affirming, under penalty of

1 perjury, that the elector is the same individual who personally
2 remitted the absentee ballot or mail-in ballot and that the
3 elector is indigent and unable to obtain proof of identification
4 without the payment of a fee.

5 (iii) Notify the elector that the absentee ballot or mail-in
6 ballot may not be counted if the elector fails to comply with
7 subparagraph (ii).

8 * * *

9 Section 6. Section 1302-D(f) of the act, amended March 27,
10 2020 (P.L.41, No.12), is amended to read:

11 Section 1302-D. Applications for official mail-in ballots.

12 * * *

13 (f) Form.--The following shall apply:

14 (1) Application for an official mail-in ballot shall be
15 on physical and electronic forms prescribed by the Secretary
16 of the Commonwealth.

17 (2) The application shall state that a voter who applies
18 for a mail-in ballot under section 1301-D shall not be
19 eligible to vote at a polling place on election day [unless
20 the elector brings the elector's mail-in ballot to the
21 elector's polling place, remits the ballot and the envelope
22 containing the declaration of the elector to the judge of
23 elections to be spoiled and signs a statement subject to the
24 penalties under 18 Pa.C.S. § 4904 (relating to unsworn
25 falsification to authorities) to the same effect.] except by
26 provisional ballot. The application shall also state that an
27 elector may personally deliver a mail-in ballot and the
28 envelope containing the declaration of the elector to the
29 judge of elections of the elector's election district at the
30 elector's polling place during the hours that the polling

1 place is open on election day, to a location at the county
2 courthouse designated by the county board of elections or to
3 the permanent offices of the county board of elections and to
4 no other location.

5 (3) The physical application forms shall be made freely
6 available to the public at county board of elections,
7 municipal buildings and at other locations designated by the
8 Secretary of the Commonwealth.

9 (4) The electronic application forms shall be made
10 freely available to the public through publicly accessible
11 means.

12 (5) No written application or personal request shall be
13 necessary to receive or access the application forms.

14 (6) Copies and records of all completed physical and
15 electronic applications for official mail-in ballots shall be
16 retained by the county board of elections.

17 * * *

18 Section 7. Section 1302.1-D(a) of the act, added October 31,
19 2019 (P.L.552, No.77), is amended to read:

20 Section 1302.1-D. Date of application for mail-in ballot.

21 (a) General rule.--Applications for mail-in ballots shall be
22 received in the office of the county board of elections not
23 earlier than 50 days before the primary or election, except that
24 if a county board of elections determines that it would be
25 appropriate to the county board of elections' operational needs,
26 any applications for mail-in ballots received more than 50 days
27 before the primary or election may be processed before that
28 time. Applications for mail-in ballots shall be processed if
29 received not later than five o'clock P.M. of the [first Tuesday]
30 fifteenth day prior to the day of any primary or election.

1 * * *

2 Section 8. Sections 1303-D(e), 1305-D and 1306-D(a) and (b)
3 (3) of the act, amended March 27, 2020 (P.L.41, No.12), are
4 amended to read:

5 Section 1303-D. Official mail-in elector ballots.

6 * * *

7 (e) Notice.--The official mail-in voter ballot shall state
8 [that] as follows:

9 (1) That a voter who receives a mail-in ballot under
10 section 1301-D may return the ballot on or before election
11 day to the permanent offices of the county board of elections
12 by mail or in person, in person to a location at the county
13 courthouse designated by the county board of elections or, if
14 not returned prior to election day, in person to the judge of
15 elections at the elector's polling place on election day
16 during polling hours and to no other location. The Secretary
17 of the Commonwealth shall prescribe the text and the manner
18 by which the notice under this subsection shall be printed on
19 a ballot and shall require the following statement:

20 This ballot may be personally returned by an elector
21 to the elector's polling place on election day, in
22 person on or before election day to a location at the
23 county courthouse designated by the county board of
24 elections, or by mail or in person to the permanent
25 offices of the county board of elections and to no
26 other location.

27 The notice shall also require electors to personally return
28 ballots.

29 (2) That an elector who receives a mail-in ballot under
30 section 1301-D and whose voted mail-in ballot is not timely

1 received as set forth under paragraph (1) and who on election
2 day is capable of voting at the appropriate polling place may
3 only vote on election day by provisional ballot [unless the
4 elector brings the elector's mail-in ballot to the elector's
5 polling place, remits the ballot and the envelope containing
6 the declaration of the elector to the judge of elections to
7 be spoiled and signs a statement subject to the penalties of
8 18 Pa.C.S. § 4904 (relating to unsworn falsification to
9 authorities) to the same effect].

10 Section 1305-D. Delivering or mailing ballots.

11 The county board of elections, upon receipt and approval of
12 an application filed by a qualified elector under section 1301-
13 D, shall commence to deliver or mail official mail-in ballots
14 as soon as a ballot is certified and the ballots are available.
15 While any proceeding is pending in a Federal or State court
16 which would affect the contents of any ballot, the county board
17 of elections may await a resolution of that proceeding but in
18 any event, shall commence to deliver or mail official mail-in
19 ballots not later than the [second] fourth Tuesday prior to the
20 primary or election. For applicants whose proof of
21 identification was not provided with the application or could
22 not be verified by the board, the board shall send the notice
23 required under section 1302.2-D(c) with the mail-in ballot. As
24 additional applications are received and approved, the board
25 shall deliver or mail official mail-in ballots to the additional
26 electors within 48 hours.

27 Section 1306-D. Voting by mail-in electors.

28 (a) General rule.--At any time after receiving an official
29 mail-in ballot, but on or before eight o'clock P.M. the day of
30 the primary or election, the mail-in elector shall, in secret,

1 proceed to mark the ballot only in black lead pencil, indelible
2 pencil or blue, black or blue-black ink, in fountain pen or ball
3 point pen, and then fold the ballot, enclose and securely seal
4 the same in the envelope on which is printed, stamped or
5 endorsed "Official Election Ballot." This envelope shall then be
6 placed in the second one, on which is printed the form of
7 declaration of the elector, and the address of the elector's
8 county board of election and the local election district of the
9 elector. The elector shall then fill out, date and sign the
10 declaration printed on such envelope. Such envelope shall then
11 be securely sealed and the elector shall send same by mail,
12 postage prepaid, except where franked, or deliver it in person
13 to said county board of election at the permanent offices of the
14 county board of elections, to a location at the county
15 courthouse designated by the county board of elections or to the
16 judge of elections at the elector's polling place and to no
17 other location.

18 * * *

19 (b) Eligibility.--

20 * * *

21 (3) Notwithstanding paragraph (2), an elector who
22 requests a mail-in ballot and who is not shown on the
23 district register as having voted the ballot [may vote at the
24 polling place if the elector remits the ballot and the
25 envelope containing the declaration of the elector to the
26 judge of elections to be spoiled and the elector signs a
27 statement subject to the penalties of 18 Pa.C.S. § 4904
28 (relating to unsworn falsification to authorities) which
29 shall be in substantially the following form:

30 I hereby declare that I am a qualified registered elector

1 who has obtained an absentee ballot or mail-in ballot. I
2 further declare that I have not cast my absentee ballot or
3 mail-in ballot, and that instead I remitted my absentee
4 ballot or mail-in ballot to the judge of elections at my
5 polling place to be spoiled and therefore request that my
6 absentee ballot or mail-in ballot be voided.

7 (Date)

8 (Signature of Elector).....(Address of Elector)

9 (Local Judge of Elections)] on election day may:

- 10 (i) Vote by provisional ballot at the polling place.
11 (ii) Personally deliver the completed mail-in ballot
12 and the envelope containing the declaration of the
13 elector to the judge of elections of the elector's
14 election district at the elector's polling place during
15 polling hours, to a location at the county courthouse
16 designated by the county board of elections or to the
17 permanent offices of the county board of elections and to
18 no other location.

19 * * *

20 Section 10. This act shall take effect immediately.

EXHIBIT “GG”

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DONALD J. TRUMP FOR)	Civil Action
PRESIDENT, INC.; <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	No.: 2-20-CV-966
v.)	
)	
KATHY BOOCKVAR; <i>et al.</i> ,)	
)	
Defendants.)	Judge J. Nicholas Ranjan

**SUPPLEMENTAL RESPONSES TO PLAINTIFFS' SET OF WRITTEN
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
DIRECTED TO ALL DEFENDANT COUNTY BOARDS OF ELECTIONS**

Defendant, Union County Board of Elections (“Union County” or “Defendant”), by and through its attorneys, Jonathan L. DeWald, Esquire, Allen P. Page IV, Esquire, and McNerney, Page, Vanderlin & Hall, submits the following Supplemental Responses to Plaintiff’s Set of Written Interrogatories and Requests for Production of Documents Directed to All Defendant County Boards of Election (“Discovery Requests”) as follows:

INTERROGATORIES

1. Please identify all Procedures, Practices, Rules, Regulations, and/or Instructions You implemented, used, followed, and/or communicated in the June 2, 2020 Primary Election, and all Procedures, Practices, Rules, Regulations, and/or Instructions that You intend to implement, use, follow, and/or communicate in the November 3, 2020 General Election, concerning or relating to the processing, verification, acceptance, and/or rejection of applications for absentee and/or mail-in ballots, including without limitation whether You mail applications to all qualified electors within Your county and/or whether You frank or prepay the postage for any or all completed and returned applications, and if there are any differences, please identify the

reasons why You are making a change in such Procedures, Practices, Rules, Regulations, and/or Instructions for the November 3, 2020 General Election.

ANSWER:

Applications are reviewed by election office staff and compared to the information of record contained in the state registration data files and the laws that define who may and may not vote in Pennsylvania. Declined applicants are sent letters indicating that their application has been declined.

7. Please identify all Procedures, Practices, Rules, Regulations, and/or Instructions You implemented, used, followed, and/or communicated in the June 2, 2020 Primary Election, and all Procedures, Practices, Rules, Regulations, and/or Instructions that You intend to implement, use, follow, and/or communicate in the November 3, 2020 General Election, concerning or relating to the pre-canvassing, canvassing, counting, and/or tabulation of voted absentee and/or mail-in ballots, including without limitation (a) the timing of when such pre-canvassing, canvassing, and/or counting shall occur; (b) whether absentee and/or mail-in ballots that have been (i) cast either without inner secrecy envelopes, with inner secrecy envelopes with marks, text, or symbols, or without the outside envelope's declaration being filled out, dated, and signed, and/or (ii) delivered in-person by someone other than the electors who voted the ballots should be processed, handled, counted, or disallowed, and (c) whether poll watchers can be present during any such pre-canvassing, canvassing, and/or counting, and if there are any differences, please identify the reasons why You are making a change in such Procedures, Practices, Rules, Regulations, and/or Instructions for the November 3, 2020 General Election.

ANSWER:


In the 2020 Primary Election in Union County the following occurred: (a) ballots that were received and not inserted into a secrecy envelope were accepted; (b) ballots that were returned in a secrecy envelope that may have been marked were accepted; and (c) ballots returned that did not have all of the information completed on the outside envelope were held aside until the missing information was provided to the elections office (a copy of the outside envelope was sent to the voter to complete the missing information). Unless directed

otherwise by the Court or General Assembly, Union County intends to follow the same procedure in the 2020 General Election.

As provided by law, Union County allowed for nursing home ballots to be collected and delivered by someone other than the actual voter. Ballot harvesting is not allowed.

The canvassing of all types of Union County ballots has always been with representation of the primary Democratic and Republican parties, and this was the practice in place for the 2020 Primary Election. Other parties are welcome to observe if they so desire.

McNERNEY, PAGE, VANDERLIN & HALL

By: 

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ID No. 314791

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Dated: August 18, 2020

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DONALD J. TRUMP FOR
PRESIDENT, INC.; *et al.*,

Plaintiffs,

v.

KATHY BOOCKVAR; *et al.*,

Defendants.

) Civil Action
)
)

) No.: 2-20-CV-966
)
)

) Judge J. Nicholas Ranjan

VERIFICATION

I, Jeff Reber, hereby state that I am the Commissioner of the Union County Board of Elections and aver that I have read the foregoing Supplemental Responses to Plaintiffs' Written Interrogatories and Requests for Production of Documents Directed to All Defendant County Board of Elections which has been drafted by my counsel.

The factual statements contained in the foregoing Responses and Objections to Plaintiffs' Written Interrogatories and Requests for Production of Documents Directed to All Defendant County Board of Elections are true, correct and accurate to the best of my knowledge, information and belief and I am authorized as Commissioner to execute this Verification on behalf of the Union County Board of Elections. I further understand that false statements made herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

By: _____


Date: _____

[Handwritten Signature]
August 18, 2020

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 19, 2020, a true and correct copy of the foregoing **SUPPLEMENTAL RESPONSES TO PLAINTIFFS' SET OF WRITTEN INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS DIRECTED TO ALL DEFENDANT COUNTY BOARDS OF ELECTIONS** was served upon each party who has entered an appearance via electronic transmission to that party's counsel of record.

McNERNEY, PAGE, VANDERLIN & HALL

By: 

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ID No. 314791

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ID No. 325789

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EXHIBIT “HH”

Declaration

I, Gerald Lawrence, swear and affirm:

1. I am and have been the Chairman of the Delaware County Board of Elections since February, 2020, and but for the 2010-12 term, I have served on the Board of Elections since 2004.

2. The Board of Elections has jurisdiction over the conduct of primary and general elections in Delaware County, including receiving, processing and mailing absentee and mail-in ballot requests to qualified voters.

2020 Primary

3. Due to COVID-19, the Delaware County Courthouse was closed to the public beginning in March, 2020. Voters who need assistance generally can only receive it telephonically.

4. Before the application deadline of May 26, 2020, Delaware County received over 85,000 applications for absentee and mail-in ballots for the June 2 Primary Election.

5. Because the number of absentee and mail-in ballot requests was drastically more than ever before received or anticipated, and because of the circumstances surrounding the COVID-19 public health emergency, we could not process all requests and mail ballots by the statutory deadline of Thursday, May 28, 2020.

6. To not disenfranchise voters, we each subsequent day continued to process and mail out ballots:

- a. On Friday, May 29, 2020, we released twenty-eight (28) mail sleeve counts. Each sleeve has an average of 240-250 ballots, so we mailed approximately 6,720-7000 ballots.
- b. On Saturday, May 30, 2020, we released thirty-six (36) sleeves, or approximately 8,640-9000 ballots.
- c. On Sunday, May 31, 2020, we released thirteen (13) sleeves, or approximately 3,120-3250 ballots.
- d. On Monday, June 1, 2020, we released twenty-four (24) sleeves, or approximately 5,760-6000 ballots.
- e. On Tuesday, June 2, 2020 (Primary Election Day), after receiving a court order extending the time for voters to return ballots, the Board released the remaining ballots.

f. In the four days following the statutory deadline to mail ballots to qualified voters, we mailed over 25,000 late absentee and mail-in ballots.

7. We undertook remedial measures for the Primary, including (i) maintaining a drop box for 24/7 drop off of ballots at the County Courthouse, (ii) overnighting ballots to voters, and (iii) allowing ballots to be returned at the Board's offices at polling places on Election Day.

8. Some ballots were also delivered to the Board of Elections by overnight carriers other than the US Postal Service.

9. We also sought and received relief from the Delaware County Court of Common Pleas in the attached Order.

10. Delaware County also had a record number of provisional ballots cast in the June 2 Primary. The number of provisional ballots cast (8,005) is almost 8 times the previous Delaware County record, and over 20 times the historical average. Besides the volume, the pandemic required social distancing and other public health procedures slowed the process.

11. Even using an all hands approach during weekend and evening hours, we only completed the processing and certified the results of the ballots on the last permitted day to certify the election results but the uploading of the results of the provisional ballot review took over four weeks to complete, until after the last scheduled day for certification.

12. We noticed many more than usual errors by voters completing the outer envelopes of ballots in the June 2 Primary Election. While we do not maintain statistics to have an exact count, there was a significant increase in the number of ballots missing information than in past elections.

13. We typically see a wide range of voter errors in completing the outer envelopes, including, but not limited to, voters signing in the wrong place, voters printing their name, voters not signing or printing their name, voters omitting the date or other information, and voters writing the wrong date - often their date of birth.

14. I do not know if the increase in errors was due to new voters, limited availability of assistance, or other factors, but I suspect it is some combination of all those factors.

2020 General

15. We are already at work processing voter registration applications and mail-in and absentee ballot requests for the November General Election, but have a

current backlog in the processing of voter registrations and vote-by-mail applications.

16. To get ahead of the curve, we have bought additional equipment, hired additional staff and added management.

17. Historically, the volume of registration applications dramatically increases before the general election in Presidential years.

18. The volume typically includes many applications from voters already registered. The challenges of registration processing, and now mail-in application processing, are sometimes further complicated by well-intentioned voter registration drives that re-register many of whom are already on the voting rolls.

19. Also, many organized voter registration efforts have historically dropped large volumes of applications immediately before or on the final day of registration causing the voter registration office to fall behind and then catch up after the deadline.

20. Until this year, new or relocated registrations were due 30 days before election day. Now, we have half that time.

21. We have not yet finalized our plans for ballot collection and early voting as we are constrained by the issues with the litigation, but we have approved and announced a satellite voting centers in Upper Darby Township and Chester City.

22. We will not allow third-party delivery of ballots, except for those asserting a disability or otherwise permitted by law, unless the courts or the General Assembly direct otherwise.

23. We do not yet have an approved ballot, even though voting is set to start on Monday, September 14.

I affirm and declare under penalty of perjury that the facts I state in this Declaration are true, correct and complete to the best of my knowledge.

GERALD LAWRENCE

A handwritten signature in blue ink, appearing to read 'G. Lawrence', is written over a horizontal line.

William F. Martin
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Media, PA 19063
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IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY,
PENNSYLVANIA
CIVIL DIVISION

IN RE: EXTENSION OF TIME FOR : No. 2020-003416
ABSENTEE AND MAIL-IN BALLOTS :
TO BE RECEIVED BY MAIL AND :
COUNTED IN THE 2020 PRIMARY :
ELECTION :

ORDER

AND NOW, this 2nd day of June,

2020, upon consideration of the Emergency Petition of the Delaware County Board of Elections for an Extension of Time for the Voted Absentee and Mail-in Ballots of the Qualified Registered Electors of Delaware County to be Counted for the 2020 Primary Election, and the response received thereto from the Delaware County Republican Party, this Court finds as follows:

With respect to the Court's power, neither the Pennsylvania Constitution nor the Election Code Act of June 3, 1937, P.L. 1333, as amended, 25 P.S. § 2601, 405,1 expressly provides any procedure to follow when a natural

disaster creates an emergency situation that interferes with an election. However, Section 1206 of the Code, 25 P.S. § 3046 states that the Court of Common Pleas of each County or a Judge thereof, shall on Election Day decide matters pertaining to the election as may be necessary to carry out the intent of this Act. The purpose of the election laws of this Commonwealth is to ensure fair elections, including an equal opportunity for all eligible Electors to participate in the election process.

Thus, the language of 25 P.S. § 3046 implicitly grants this Court authority to provide relief when there is a natural disaster or emergency such as that which presently confronts the Voters of Delaware County. To permit an election to be conducted whereby members of the Electorate could be deprived of their opportunity to participate because of circumstances beyond their control would be inconsistent with the Election Laws of this Commonwealth. Therefore, I am **GRANTING** the Emergency Petition of the Delaware County Board of Elections as follows:

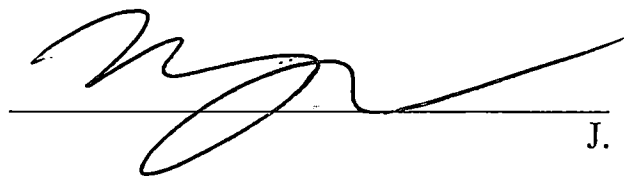
The Delaware County Board of Elections shall accept for tabulation all absentee and mail-in ballots postmarked on or before June 2, 2020 and delivered by the United States Post Office to the Delaware County Board of Elections any time before June 9, 2020, at 5:00 p.m.

It is further **ORDERED** and **DECREEED** that for the 400-500 voters who still did not have mail-in or absentee ballots mailed to them as of the morning

of June 2, 2020 (the list of which is incorporated within the Petition), the Delaware County Board of Elections shall accept for tabulation their absentee or mail-in ballots received by June 12, 2020, at 5:00 p.m. In the event that any such voter has voted a provisional ballot, the mail-in ballot shall be disregarded.

Absentee and mail-in ballots that are received by the Board of Elections either by June 9, 2020, or June 12, 2020, shall be segregated from all other absentee and mail-in ballots. The Board of Elections shall clearly indicate and mark on all ballots received subsequent to June 2, 2020, and according to the previously aforementioned deadlines of June 9, 2020 and June 12, 2020, in a manner which clearly represents the receipt date of those ballots and that those ballots are the result of absentee and/or mail-in status.

BY THE COURT:



J.

ADDENDUM 1

ADDENDUM 1
FACTUAL SUMMARY

I. THE PRIMARY ELECTION

1. Act 77 was passed on October 29, 2019 and signed into law on October 31. Act 77 permits no-excuse mail-in voting for all qualified electors. 25 P.S. §§ 3150.11-3150.17.

2. The General Assembly considered and passed Act 77 based on the assumption that Boards of Elections (“Boards”) would receive slightly more than the historic tens of thousands of mail-in and absentee ballots (approximately 84,000 absentee ballots during the 2016 primary election). **Ex. F**, Act 35 Report at 4.

3. As part of implementing Act 77, on January 10, 2020, the Department of State issued Applications and Balloting Guidance: Mail-in and Absentee Ballots and Voter Registration Changes (“January Guidance”) which provides that “[i]n addition to [county election offices], counties may provide for other secure ballot collection locations that the county deems appropriate to accommodate in-person return of voted mail-in and absentee ballots.” **Ex. G**, January Guidance at 5.

4. The January Guidance also provided instructions to Boards regarding how to safely and securely establish ballot collection locations. *Id.*

5. Due to the novel coronavirus (“COVID-19”), the General Assembly passed Act 12 of 2020, which, among other things, permitted counties to temporarily consolidate polling places without court approval and eased other rules related to

location and staffing of polling places. Act 12 of 2020, §§ 1801-B(a), 1804-B(a); (25 Pa. C.S. § 3582(b); 3584(a)).

6. Before the June 2, 2020 Primary Election, certain county Boards sought guidance from the Department of State as to whether Boards are required to count “Naked Ballots,” absentee and mail-in ballots that lack the inner “Privacy Envelope.” **Ex. I**, May 28, 2020 email from Deputy Secretary of State Jonathan Marks (“Marks Guidance”).

7. The Department of State responded to the Boards through an email from Deputy Secretary Marks that explained that there was no “statutory authority, for setting aside an absentee or mail-in ballot solely because the voter forgot to properly insert it into the official election ballot envelope.” *Id.*

8. The Marks Guidance instructed Boards to “develop a process by which the members of the pre-canvass or canvass boards insert these ballot into empty official election ballot envelopes or privacy sleeves until such time as they are ready to be tabulated.” *Id.*

9. As a result of COVID-19, voters cast nearly 1.5 million ballots cast by mail in the Primary Election. **Ex. F** at 4.

10. Though most county Boards accepted and counted Naked Ballots, consistent with the Marks Guidance, others did not and opted to follow their own

procedures and a patchwork of standards resulted. **Ex. N**, July 15, 2020 email string from Lawrence County Board of Elections.

11. Despite the Marks Guidance, in Lawrence and Mercer Counties, and potentially others, about 5% of mail-in and absentee ballots cast were rejected due to the voter neglecting to clothe their ballot in the inner Official Election Envelope, a so-called “Privacy Envelope.” *See id.*

12. In addition to certain Boards rejecting Naked Ballots, across the Commonwealth some voters cast ballots with incomplete outer envelopes, Mailing Envelopes, lacking all required information or simply the declaration, date, or signature. **Ex. HH**, Declaration of Gerald Lawrence, ¶¶ 12-14.

13. Due to the surge of mail-in ballot requests because of the pandemic, which rendered in-person voting unsafe, there were mass disparities in the distribution and return of mail-in ballots in the Primary Election. **Ex. F** at pg. 38-39 (noting some counties experienced delays in fulfilling mail-in and absentee ballot requests).

14. The average wait time for voters to receive their mail-in or absentee ballot after requesting it was 7 days, with some counties, including Philadelphia, exceeding 10 days. **Ex. K**, Report of Ronald Stroman at ¶ 11.

15. In response to delays in voters receiving mail-in and absentee ballots, some county Boards established secure drop boxes at township buildings and other

public locations that were controlled and monitored by county security and in some cases were under video surveillance. **Ex. L**, Relevant portions of Philadelphia Board of Elections’ Objections and Responses to Plaintiffs’ First Set of Interrogatories and Requests for Production, Answer to Interrogatory No. 3; **Ex. M**, Relevant portions of Bucks, Chester, and Montgomery Boards of Elections’ Objections and Responses to Plaintiffs’ First Set of Interrogatories and Request for Production, Answer to Interrogatory No. 3.

16. Boards established these drop boxes and other ways for voters to timely return their mail-in and absentee ballots consistent with their authority vested in them to provide rules and regulations governing how voters return their ballots. *See Ex. L and M.*

17. In addition, certain county Boards requested extensions of the ballot receipt deadline (“received-by” deadline) because of delays impacting delivery of ballots to voters, and the return of those ballots to county Boards. **Ex. R**, June 2, 2020 Order from Court of Common Pleas of Delaware County, Pennsylvania; **Ex. S**, June 2, 2020 Order from Court of Common Pleas of Bucks County, Pennsylvania;

18. Certain Courts of Common Pleas granted seven-day extensions of the received-by deadline in response to the county Boards’ requests. *Id.*

19. In addition, due to civil unrest following George Floyd's murder, Governor Wolf issued an executive order extending the received-by deadline in six counties by seven days, until June 9, 2020. **Ex. T.**

20. More than 240,000 mail-in ballots and 69,000 absentee ballots, which voters requested and county Boards approved and eventually mailed to voters, were not voted during the Primary Election. **Ex. F** at 12-14, 20-22.

21. Boards received about half of the mail-in and absentee ballots cast the week before the Primary Election. **Ex. E**, *Crossey* Transcript, Secretary Boockvar Testimony at 175:1-14.

22. Boards received more than 98,000 ballots *after* the 8:00 p.m. on the Primary Election, the ballot received deadline. **Ex. V**, Chart of County Absentee and Mail-in Ballots.

II. THE NOVEL CORONAVIRUS

23. The novel coronavirus (“COVID-19”) continues to spread in Pennsylvania and the state, as of August, is still recording high numbers of new cases, 600-700 each day and 20-30 deaths. *COVID-19 Data for Pennsylvania, Pennsylvania Department of Health, <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx>* (last visited Sept. 7, 2020).

24. As of the end of August, there were nearly 138,000 confirmed cases of COVID-19 in the state and nearly 8,000 deaths. *Id.*

25. The Commonwealth still recommends that its citizens social distance, wear masks, and avoid public transportation and large gatherings to prevent a spike in COVID-19. *Help Stop the Spread*, Pa. Dept. of Health, *www.health.pa.gov/topics/disease/coronavirus/Pages/Stop-the-Spread.aspx* (last visited Sept. 7, 2020).

26. Election Day will occur during the continuing pandemic. And, the safest way to vote is by mail. **Ex. E** at 339:17-25.

27. The Pennsylvania Department of State predicts that approximately 3 million voters will cast their votes by mail-in or absentee ballot during the General Election. *Id.* at 207:4-19.

28. Boards will receive half of the mail-in and absentee ballots in the last week of voting. *Id.* at 175:4-23.

III. THE DEPARTMENT OF STATE ISSUES UPDATED GUIDANCE FOR THE GENERAL ELECTION

29. To provide clarity to Boards in advance of the General Election, on August 19, the Department of State issued updated guidance for use in the General Election. The Department of State issued Absentee and Mail-in Ballot Return Guidance (“August 2020 Drop Box Guidance”) which authorizes the use of ballot return locations, known as drop boxes, and reiterates that county Boards are authorized and should “establish and adopt procedures for how voters in their county may return their own voted absentee and mail-in ballots.” **Ex. H** at pg. 3-8.

30. The Department of State also issued Guidance for Missing Official Election Envelopes (“Naked Ballot Guidance”). **Ex. J**. The Naked Ballot Guidance is generally consistent with the Marks Guidance and explains that “naked ballots should be counted pursuant to the Pennsylvania Election Code, furthering the Right to Vote under the Pennsylvania and United States Constitutions. The failure to include the inner envelope (‘Secrecy Envelope’) does not undermine the integrity of the voting process.” *Id.*

IV. THE USPS OPERATIONAL CHANGES INCREASE THE RISK OF VOTER DISENFRANCHISEMENT

31. USPS’s service standard for domestic First-Class mail is 2 to 5 days, and for Marketing Mail it is 3 to 10 days. **Ex. E** at 40:7-24.

32. All mail from voters to Boards are considered single piece First-Class mail. *Id.* at 58:24-59:3. Single piece mail is slower than presort First-Class mail because it has to go through a “processing step.” *Id.* at 59:4-11. That is, single piece mail has not been presorted so the additional step or processing is an additional step which makes delivery slower. *Id.*

33. Recent operational changes risk that timely requests for mail-in and absentee ballots will not be delivered to county Boards in sufficient time to allow Boards to send ballots to voters and for voters to send back to Boards to be counted under the Election Code’s ballot received deadline. **Ex. K** at ¶ 16-21.

34. The USPS’s own data supports this. In the second quarter (April 1 to June 30), USPS reported the Central Pennsylvania District, Philadelphia Metro District, and Western Pennsylvania District achieved on-time delivery performance scores of greater than 92 percent in each region for single-piece First Class mail. *Id.* at ¶ 21 Critically, this is still below USPS’s target of 96.5 percent on-time delivery. *Id.*

35. Starting in mid-July, however, USPS’s delivery performance plummeted. These same regions achieved scores of 90 percent or lower. The Central Pennsylvania District reported a 72.1 percent score (down from 94.1 percent), the Philadelphia Metro District achieved an 85.7 percent score (down from 92.7 percent), and the Western Pennsylvania District reported a 90 percent score (down

from 96 percent). *Id.*; **Ex. E** at 63:16-64:2, 60:18-62-6 (explaining mail delivery performance in Pennsylvania has declined in 2020 as compared to 2019).

36. According to Mr. Stroman, the former Deputy Postmaster General until May 31, 2020, USPS's service performance for the delivery of First-Class letters and Flats, which was already below the 96.5 percent target, has "fallen off the table," starting in mid-July. *Id.* at 64:3-13.

37. A multitude of factors have contributed to the USPS's service performance. **Ex. K** at ¶ 16.

38. First, USPS has encountered significant staffing availability issues due to COVID-19. In fact, the Postmaster General testified before the Senate that employee availability in Philadelphia has dropped "more than 25 percent." Senate Hearing on U.S. Postal Service, C-SPAN (Aug. 21, 2020) (video), www.cspan.org/video/?474940-1/senate-hearing-us-postal-service. When Mr. Stroman served as Deputy Postmaster General, he confirmed that there were staffing availability issues in Philadelphia. **Ex. E** at 45:13-18; 136:18-137:4.

39. Employee staffing availability issues impacts the delivery of mail because Pennsylvania's mail system is a highly integrated network that relies on workers being physically available for the job. *Id.* at 45:19-46:10. When there is an "employee availability issue in one area," the "delivery of mail in a completely

different area” may be impacted “because of the integrated nature of the network.”

Id. at 41:21-42:18.

40. Second, the USPS has altered the way overtime is applied. **Ex. K** at ¶ 21; **Ex. E** at 56:6-19; 57:6-20. Before mid-July, the USPS employees had wider latitude to take overtime as needed and complete necessary tasks to ensure timely deliveries. **Ex. E** at 57:6-20. The Postmaster General stopped that practice. *Id.*

41. Third, the USPS implemented a new transportation policy that required drivers to leave a facility at the time they are scheduled to depart, regardless of whether the processing teams have loaded the truck with all the necessary pieces of mail. **Ex. K** at ¶ 21; **Ex. E** at 48:13-49:13. This has caused delivery delays “because if the transportation is leaving . . . a processing plant on time [and the] plant has not finished or even begun to run [] First-Class mail on sorting machines, you essentially leave the truck not being filled and you’re leaving mail behind. And if you do that day after day after day, the mail just piles up.” **Ex. E** at 48:13-49:13.

42. The confluence of these factors has contributed to the decline in USPS delivery performance and present a significant risk that Pennsylvania voters who submit their ballots by mail during the General Election will be disenfranchised because of the mail delivery delays. **Ex. K** at ¶ 22; **Ex. E** at 68:8-24.

V. THE USPS HAS WARNED THE SECRETARY OF THE SIGNIFICANT RISK OF VOTER DISENFRANCHISEMENT

43. On July 29, 2020, the USPS sent the Secretary of the Commonwealth (“Secretary”) a letter warning the Commonwealth that “state-law requirements and deadlines [for mail ballots] appear to be incompatible with the Postal Service’s delivery standards” and that “there is a significant risk that . . . ballots may be requested in a manner that is consistent with [the Commonwealth’s] election rules and returned promptly, and yet not be returned in time to be counted.” **Ex. Z**, USPS Warning Letter to Pennsylvania.

44. Thus, if a voter submits a mail-in or absentee ballot application close to the October 27, 2020 deadline, and the ballot is sent to the voter by mail, there is a significant risk that the voter will not have enough time to complete it and mail it back to election officials in time to arrive by the ballot receipt deadline based on USPS’s service standards. **Ex. E** at 145:9-22.

45. This is particularly true because Boards have 48 hours to transmit a ballot after receiving a mail-in or absentee ballot application. **Ex. K** at ¶ 15.

46. The USPS’s warning to the Secretary was a very different message than the Secretary had received previously from the USPS. **Ex. E** at 162:21-163:22.

47. As such, the Secretary changed her position regarding extending the ballot received deadline. Initially, she believed no extension was necessary and then

believed the deadline should be extended until November 6, 2020, three days after Election Day. *See id.* at 159:23-160:7; 177:10-20.

48. The Secretary testified that the “current [USPS mail] delivery delays are incompatible with the Pennsylvania [ballot received by] deadline[()]. And we need –we need to make sure that tens or hundreds of thousands of voters are not disenfranchised through no fault of their own.” *Id.* at 182:19-23.

49. Critically, the USPS’s warning to the Secretary of significant risk of voter disenfranchisement due to mail delivery delays outlined in the USPS Warning Letter to Pennsylvania does not take into account the decrease in mail delivery standards starting in July 2020. *Id.* at 67:7-68:7. That is, the USPS believes there is a significant risk of voter disenfranchisement even if the USPS meets its service standards of 96 percent on-time delivery. *Id.* at 65:19-66:20.

50. A 7-day extension to the received-by deadline is consistent with the USPS’s recommendation to the Secretary that voters should mail their ballots to county Boards no later than October 27, 2020, 7 days before the statutory deadline, to ensure county Boards timely receive a voter’s ballot. **Ex. Z**, USPS Warning Letter to Pennsylvania.

51. The USPS warned other states that the ballot receipt deadline of 3 days after Election Day would also risk disenfranchising voters. **Ex. AA**, USPS Warning Letter to North Carolina dated July 30, 2020. The letter explains that “it appears that

a voter may generally request a ballot as late as 7 days before the November general election, and that a requested ballot must be postmarked by Election Day and received by election officials no later than 3 days after the election,” which presents “a risk that the ballot will not reach the voter before Election Day” or that “a completed ballot postmarked on or close to Election Day will not be delivered in time to meet the state’s receipt deadline of November 6. *Id.*

VI. THE USPS MAIL DELIVERY DELAYS WILL NOT CHANGE BEFORE THE GENERAL ELECTION.

52. The factors impacting mail delivery are ongoing. **Ex. E** at 51:13-20.

53. The mail delivery delays are unlikely to change before the General Election. *Id.* at 64:14-25.

54. The mail system is an “integrated network” and changes to not happen rapidly. *Id.* at 65:1-9.

55. Service performance levels have “a compounding effect,” service levels weeks from now are inextricably tied to current performance levels. *Id.* at 56:6-57:5. Backlogs are “building up week after week” and it will take “a longer time to dig out of the hole.” *Id.* at 65:10-18.

56. The Postmaster General has repeatedly confirmed that he is unwilling to reverse the policy decisions that are contributing to the mail delivery delays. **Ex. K** at ¶ 21.