

IN THE SUPREME COURT OF PENNSYLVANIA

No. 30 EAP 2020

IN RE: CANVASSING OPERATION

APPEAL OF: CITY OF PHILADELPHIA BOARD OF ELECTIONS

On Allowance of Appeal from the November 5, 2020, Single-Judge Order of the Honorable Christine Fizzano Cannon of the Commonwealth Court, No. 1094 CD 2020, Reversing the November 3, 2020, Order of the Honorable Stella Tsai of the Court of Common Pleas of Philadelphia County, November Term 2020, No. 07003

**INITIAL BRIEF OF APPELLANT
THE PHILADELPHIA COUNTY BOARD OF ELECTIONS**

CITY OF PHILADELPHIA LAW DEPT.
Marcel S. Pratt, City Solicitor
Sean J. McGrath, Assistant City Solicitor
Craig Gottlieb, Senior Attorney
Zach Strassburger, Assistant City Solicitor
1515 Arch Street, 17th Floor
Philadelphia, PA 19102-1595
(215) 683-5444

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER
Mark A. Aronchick (I.D. No. 20261)
Robert A. Wiygul (I.D. No. 310760)
One Logan Square, 27th Floor
Philadelphia, PA 19103
Telephone: (215) 496-7050
Email: maronchick@hangley.com

*Counsel for Appellant the Philadelphia
County Board of Elections*

November 11, 2020

TABLE OF CONTENTS

| | | |
|------|--|----|
| I. | STATEMENT OF JURISDICTION | 1 |
| II. | ORDERS IN QUESTION..... | 1 |
| III. | STATEMENT OF SCOPE AND STANDARD OF REVIEW | 3 |
| IV. | STATEMENT OF THE QUESTIONS INVOLVED | 4 |
| V. | STATEMENT OF THE CASE | 5 |
| A. | Procedural History | 7 |
| 1. | Proceedings Before the Court of Common Pleas..... | 7 |
| 2. | Proceedings Before the Commonwealth Court..... | 11 |
| 3. | Events Following the Commonwealth Court’s Order..... | 14 |
| B. | Factual History | 18 |
| VI. | SUMMARY OF ARGUMENT | 22 |
| VII. | ARGUMENT..... | 27 |
| A. | The Case Adjudicated by the Courts Below Remains a Live Controversy Because the Board Is Still Counting Ballots | 27 |
| B. | Even if the Issue Were Moot, This Court Should Still Review It Because It Is Capable Of Repetition Yet Will Evade Review | 29 |
| C. | The Commonwealth Court Erred In Reversing The Trial Court | 32 |
| 1. | The Election Code Vested the Board With Authority to Issue the Challenged Access Regulations..... | 32 |
| 2. | As the Court of Common Pleas Correctly Held, the Board’s Access Regulations Comply With the Applicable Statutory Requirement | 35 |
| 3. | The Election Code Does Not Allow Candidates, Parties, or Their Representative to Make <i>Any</i> Time-of-Canvassing Challenges | 44 |
| 4. | The Campaign Has No Access Rights Beyond What the Express Terms of the Election Code Provide | 47 |

| | |
|--|----|
| 5. The Court of Common Pleas’ Decision Is Consistent With Decisions Interpreting Analogous Statutes in Other Jurisdictions | 50 |
| VIII. CONCLUSION | 54 |

Appendices to Brief

| | |
|--|------------|
| Memorandum Opinion of the Commonwealth Court of Pennsylvania, dated November 5, 2020 | Appendix A |
| Opinion of the Court of Common Pleas of Philadelphia County, dated November 4, 2020 | Appendix B |

Exhibits to Brief

| | |
|---|-----------|
| Verified Complaint for Declaratory and Injunctive Relief, <i>Donald J. Trump for President, Inc. v. Boockvar</i> , No. 20-2078 (M.D. Pa.) (Judge Brann) | Exhibit 1 |
| Complaint and Motion for Emergency Injunction, <i>Donald J. Trump for President, Inc. v. Philadelphia County Board of Elections</i> , No. 20-5533 (E.D. Pa.) (Judge Diamond) | Exhibit 2 |
| Transcript of Hearing: Motion for Emergency Injunction, <i>Donald J. Trump for President v. Philadelphia County Board of Elections</i> , No. 20-5533 (E.D. Pa.) (Judge Diamond), dated November 5, 2020 | Exhibit 3 |
| Order dated November 10, 2020, <i>Donald J. Trump for President, Inc. v. Boockvar</i> , No. 20-2078 (M.D. Pa.) (Judge Brann) | Exhibit 4 |
| Order Den[y]ing Emergency Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition, <i>Kraus v. Cegavske</i> , No. 20 OC 00142 1B (Nev. Dist. Ct. Oct. 29, 2020) | Exhibit 5 |
| Minute Order, <i>Election Integrity Project California Inc v. Lunn</i> , No. 56-2020-00540781 (Cal. Super. Ct. Sept. 15, 2020) | Exhibit 6 |

TABLE OF CITATIONS

| | Page(s) |
|--|----------------|
| CASES | |
| <i>Baer v. Meyer</i> , 728 F.2d 471 (10th Cir. 1984)..... | 49 |
| <i>In re Cain</i> , 590 A.2d 291 (Pa. 1991) | 27 |
| <i>In re: Canvassing Operation</i> , No. 425 EAL 2020 (Pa. filed Nov. 5, 2020) | 47 |
| <i>Commonwealth v. \$23,320.00 U.S. Currency</i> , 733 A.2d 693 (Pa. Commw. Ct. 1999) | 35 |
| <i>Commonwealth v. Dixon</i> , 907 A.2d 468 (Pa. 2006) | 29 |
| <i>Cotz v. Mastroeni</i> , 476 F. Supp. 2d 332 (S.D.N.Y. 2007) | 49 |
| <i>In re Doe</i> , 33 A.3d 615 (Pa. 2011) | 29 |
| <i>Donald J. Trump for President, Inc. v. Boockvar</i> , No. 20-2078 (M.D. Pa.) | 14, 28 |
| <i>Donald J. Trump for President, Inc. v. Boockvar</i> , No. 20-966, --- F. Supp. 3d ----, 2020 WL 5997680 (W.D. Pa. Oct. 10, 2020)..... | 38, 49 |
| <i>Donald J. Trump for President, Inc. v. Boockvar</i> , No. 20-966 (W.D. Pa.) | 37 |
| <i>Donald J. Trump for President v. Philadelphia County Board of Elections</i> , No. 20-5533 (E.D. Pa.) | 15, 16, 28 |
| <i>Election Integrity Project Cal. Inc. v. Lunn</i> , No. 56-2020-00540781 (Cal. Super. Ct. Sept. 15, 2020)..... | 52, 53 |

| | |
|--|----------------|
| <i>Elizabeth Forward Sch. Dist. v. Pa. Labor Relations Bd.</i> , 613 A.2d 68 (Pa. Commw. 1992)..... | 14, 28 |
| <i>Federal Election Comm’n v. Wisconsin Right to Life, Inc.</i> , 551 U.S. 449 (2007)..... | 30 |
| <i>Gentex Corp. v. W.C.A.B. (Morack)</i> , 23 A.3d 528 (Pa. 2011) | 3, 35 |
| <i>Gwynedd Dev. Grp., Inc. v. Dept. of Labor & Indus.</i> , 666 A.2d 365 (Pa. Commw. Ct. 1995) | 33 |
| <i>Harris v. Conradi</i> , 675 F.2d 1212 (11th Cir. 1982)..... | 49 |
| <i>Keese v. Dougherty</i> , 230 A.3d 1128 (Pa. Super. Ct. 2020)..... | 14 |
| <i>Kraus v. Cegavske</i> , No. 20 OC 00142 1B (Nev. Dist. Ct. Oct. 29, 2020) | 50, 51, 52 |
| <i>Kraus v. Cegavske</i> , No. 82018, 2020 WL 6483971 (Nev. Nov. 3, 2020)..... | 52 |
| <i>Messina v. East Penn Twp.</i> , 62 A.3d 363 (Pa. 2012) | 3 |
| <i>Miller v. Lorain Cnty. Bd. of Elections</i> , 141 F.3d 252 (6th Cir. 1998)..... | 48 |
| <i>Mullaney v. Wilbur</i> , 421 U.S. 684 (1975)..... | 29 |
| <i>In re Nov. 3, 2020 Gen. Election</i> , No. 149 MM 2020, --- A.3d ---, 2020 WL 6252803 (Pa. Oct. 23, 2020) | 39, 43, 45, 46 |
| <i>Office of Venango Cnty. v. Venango Cnty. Court of Common Pleas</i> , 893 A.2d 1275 (Pa. 2006) | 29 |
| <i>Pa. Democratic Party v. Boockvar</i> , No. 133 MM 2020, --- A.3d ---, 2020 WL 5554644 (Pa. Sept. 17, 2020)..... | 49 |

| | |
|---|--------|
| <i>Perano v. Twp. of Tilden</i> , No. 09-754, 2010 WL 1462367 (E.D. Pa. Apr. 12, 2010), <i>aff'd</i> , 423 F. App'x 234 (3d Cir. 2011)..... | 48 |
| <i>Republican Party of Pa. v. Cortés</i> , 218 F. Supp. 3d 396 (E.D. Pa. 2016)..... | 48, 49 |
| <i>Reuther v. Delaware Cty. Bureau of Elections</i> , 205 A.3d 302 (Pa. 2019) | 30 |
| <i>Rogele, Inc. v. Workers' Comp. Appeal Bd.</i> , 969 A.2d 634 (Pa. Commw. Ct. 2009) | 43 |
| <i>Roubideaux v. N. Dakota Dept. of Corrections & Rehab.</i> , 570 F.3d 966 (8th Cir. 2009)..... | 48 |
| <i>SEPTA v. City of Phila.</i> , 159 A.3d 443 (Pa. 2017) | 43 |
| <i>Spence v. ESAB Grp., Inc.</i> , 623 F.3d 212 (3d Cir. 2010)..... | 29 |
| <i>Turchi v. Phila. Bd. of License & Inspection Review</i> , 20 A.3d 586 (Pa. Commw. Ct. 2011) | 44 |
| <i>Urevich v. Woodard</i> , 667 P.2d 760 (Colo. 1983) | 30 |
| <i>Vacco v. Quill</i> , 521 U.S. 793 (1997)..... | 48 |

STATUTES

| | |
|---------------------------|-----------|
| 25 P.S. § 2602(q.1) | 36 |
| 25 P.S. § 2641 | 32 |
| 25 P.S. § 2642(k) | 31 |
| 25 P.S. § 2650..... | 1, 12, 37 |
| 25 P.S. § 2687 | 37 |
| 25 P.S. § 3046..... | 1 |

| | |
|---|--------|
| 25 P.S. § 3050..... | 37 |
| 25 P.S. § 3146.8..... | passim |
| 42 Pa. C.S. § 724 | 1 |
| 42 Pa. C.S. § 762(a)(4)..... | 1 |
| Act of December 11, 1968, No. 375, § 8, § 1308(e), 1968 Pa. Laws. 1183, 1200 | 45 |
| Act of May 11, 2006, No. 2006-45, § 12, § 1308(g)(2), 2006 Pa. Laws 178, 187 | 39 |
| Act of October 31, 2019, No. 77, § 7, § 1308(a), (g), 2019 Pa. Legis. Serv. Act 2019-77 | 39 |
| RULES | |
| Pa. R.A.P. 341 | 1 |
| Pa.R.E. 201(d) | 14 |
| OTHER AUTHORITIES | |
| 13C Fed. Prac. & Proc. Juris. § 3533.9 (3d ed. Oct. 2020 update)..... | 30 |
| Pa. Dept. of State, Supplemental Results Dashboard, available at https://www.votespa.com/About-Elections/Pages/Counting-Dashboard.aspx/ | 22, 48 |

I. STATEMENT OF JURISDICTION

This appeal was taken from a single-judge Order entered against Appellant Philadelphia County Board of Elections (“the Board”) on November 5, 2020, in the Commonwealth Court, reversing a November 3, 2020, final order in favor of the Board by the Court of Common Pleas, Philadelphia County, sitting as an election court under 25 P.S. § 3046. Pursuant to 42 Pa. C.S. § 724, this Court has jurisdiction to review the Commonwealth Court’s Order below following the grant of allowance of appeal entered November 9, 2020. The Commonwealth Court had jurisdiction to review the Order of the Court of Common Pleas pursuant to 42 Pa. C.S. § 762(a)(4) (appeals from courts of common pleas regarding statutes relating to election procedures) and Pa. R.A.P. 341 (appeals of final orders).

II. ORDERS IN QUESTION

The text of the Commonwealth Court Order in question is as follows:

AND NOW, November 5, 2020, upon review of arguments contained in briefs submitted by Donald J. Trump for President, Inc. (Appellant), the Philadelphia County Board of Elections, and the Pennsylvania Democratic Party, it is hereby ORDERED that the November 4 [sic], 2020 order of the Court of Common Pleas of Philadelphia County (trial court) denying Appellant’s oral motion to allow closer observation of the canvassing of ballots is REVERSED. The matter is REMANDED to the trial court to enter an ORDER no later than 10:30 a.m. today, November 5, 2020, effective immediately, requiring that all candidates, watchers, or candidate representatives be permitted to be present for the canvassing process pursuant to 25 P.S. § 2650 and/or 25 P.S. § 3146.8 and be permitted to observe all aspects of the canvassing process within 6 feet, while adhering to

all COVID-19 protocols, including, wearing masks and maintaining social distancing. Opinion to follow.

/s/ Christine Fizzano Cannon
Christine Fizzano Cannon, Judge

* * *

The text of the Court of Common Pleas Order in question is as follows:

AND NOW, this 3rd day of November, 2020, in connection with the matter of: petition by Donald J. Trump for President Inc. to allow closer observation of canvassing of ballots, upon consideration of the:

X—oral Petition and Argument and any responses thereto

X—testimony and evidence presented by the witnesses and Argument;

IT IS HEREBY ORDERED AND DECREED that:

The oral motion to allow closer observation of the canvassing of ballots is DENIED for the following reasons:

The Petitioner's witness provided copious testimony as to his ability to observe the opening and sorting of ballots. His concerns pertained to his inability to observe the writing on the outside of the ballots. Given that observers are directed only to observe and not to audit ballots, we conclude, based on the witness's testimony, that the Board of Election has complied with the observation requirements under 25 P.S. 3146.8. We, however, would not discourage the Board from considering the implementation of arrangements to allow for an additional corridor for observation along the side of the canvassing tables if feasible – subject to spatial distancing under COVID-19 and voting privacy requirements.

BY THE COURT

/s/ Stella Tsai
J.
Presiding Election Day Judge

III. STATEMENT OF SCOPE AND STANDARD OF REVIEW

The matter under review is an Order of the Commonwealth Court reversing a decision of the Court of Common Pleas. Based on an evidentiary hearing and findings of fact, the Court of Common Pleas denied the oral petition of Appellee Donald J. Trump for President, Inc. (the “Campaign”), which contended that the Board was providing the Campaign’s representatives insufficient access to the Board’s pre-canvassing of absentee and mail-in ballots, in purported violation of the Election Code.

Where, as here, the underlying Court of Common Pleas decision turns on a mixed question of fact and law, to the extent that factual findings and credibility determinations are at issue, an appellate court will accept the trial court’s conclusions insofar as they are supported by the record. *Messina v. East Penn Twp.*, 62 A.3d 363, 366 (Pa. 2012). To the extent that a legal question is at issue, a determination by the trial court will be reviewed pursuant to a de novo standard and plenary scope of review. *Id.* The more fact-intensive a determination is, the more deference a reviewing court should give to the conclusion below when ruling on mixed question of law and fact. *Gentex Corp. v. W.C.A.B. (Morack)*, 23 A.3d 528, 534 (Pa. 2011).

IV. STATEMENT OF THE QUESTIONS INVOLVED

The questions involved, as stated in this Court's November 9, 2020 Order granting allowance of appeal, are¹:

(1) Whether the issue raised in Appellant's petition for allowance of appeal is moot.

Answered Below: Not addressed below.

Suggested answer: No.

(2) If the issue raised in Appellant's petition for allowance of appeal is moot, does there remain a substantial question that is capable of repetition yet likely to evade review.

Answered Below: Not addressed below.

Suggested answer: Yes.

(3) Whether, as a matter of statutory construction pursuant to Pennsylvania law, the Commonwealth Court erred in reversing the trial court, which concluded that Appellant City of Philadelphia Board of Elections' regulations regarding observer and representative access complied with applicable Election Code requirements.

¹ The Board has re-ordered the questions to reflect the sequence in which they are analyzed in this Brief.

Answered Below: No.

Suggested answer: Yes.

V. STATEMENT OF THE CASE

Appellant-Defendant – the Philadelphia County Board of Elections (the Board or the City) – asks this Court to reverse the Commonwealth Court’s decision.

The statutory-construction question before this Court is straightforward. The Election Code requires that party and candidate representatives “be permitted to remain in the room” where mail-in and absentee ballots are processed. 25 P.S. § 3146.8(g)(1.1), (2). By the Campaign’s own admission, its representative was “in the room” the entire time. Nor was that presence in the room illusory. The Campaign admitted—and the Court of Common Pleas found as a fact—that the Campaign’s representative had an unobstructed view, was “free to walk around the premises,” “can see the [canvassing] workers prepare the [declaration] forms for evaluation, examine them, and sort the [ballots] into separate bins,” and can observe every stage of the canvassing process. (App. B at 2.)² As the Court of Common Pleas explained, the Campaign’s representative “provided copious

² As discussed below, the observation area in the canvassing room was expanded even further—allowing candidate and party representatives to come within six feet of the canvassing and processing operations—contemporaneous with the filing of this appeal.

testimony as to his ability to observe the opening and sorting of ballots.” (*Id.* at 4.)

The Campaign asserts that this extensive access was not good enough because its representative could not approach close enough to Board employees to read signatures and markings on each individual and ballot. According to the Campaign, this limitation deprived the Campaign of the ability to raise objections regarding the sufficiency of ballot-envelope declarations and other ballot- and envelope-specific issues. But the Election Code provides for no such thing. Indeed, this Court recently confirmed that the Legislature had amended the Election Code to eliminate *any* time-of-canvassing challenges. The Campaign’s argument would require the courts to rewrite the Election Code, which they cannot do.

In reaching the opposite conclusion, the Commonwealth Court contradicted the factual findings of the Court of Common Pleas—and the testimony of record—regarding what the Campaign’s representative could actually observe. Further, the Commonwealth Court *did* rewrite the statute: it transformed the Election Code’s requirement that candidate and party representatives “be permitted to remain in the room,” 25 P.S. § 3146.8(g)(1.1), (2), into a requirement that they “be permitted to *observe all aspects* of the canvassing process *within 6 feet*.” (R.69a (emphasis added).) The Commonwealth Court’s decision is supported by neither law nor fact and should therefore be reversed.

A. Procedural History

1. Proceedings Before the Court of Common Pleas

At approximately 7:45 a.m. on Election Day, November 3, 2020, the Campaign first brought this action in the Election Court of the Court of Common Pleas of Philadelphia County, seeking an order allowing the Campaign’s representatives, who were in the room where the canvassing process was taking place, to approach closer to the individual Board employees conducting the canvassing. (R.12a:21-14a:6.) After all parties presented their respective positions to the Election Court (R.12a:21-21a:22)—and after the Campaign’s counsel had “object[ed] to any adjournment” on the purported grounds that “every minute that we wait” was prejudicial to the Campaign’s interests (R.23a:15-24a:6)—the Campaign made an abrupt about-face and voluntarily withdrew the action without prejudice (R.25a:14-16; *see also* R.25a:19-26a:12 (requesting a written order memorializing the withdrawal without prejudice but emphasizing that “[t]hat is not a huge rush”)). The Campaign then waited until 9:51 p.m. before raising the issue again. (R.52a[4:2].) The Campaign did not allege that anything about the Board’s procedures or observers’ location had changed in the intervening 13 hours. (R.52a-54a[4:22-9:13].)

The Campaign presented one witness in the renewed proceeding, a lawyer for the Campaign who was observing the ballot-counting process at the

Pennsylvania Convention Center. (R.56a-57a, 61a[20:19-21:6, 39:10-16].) The witness acknowledged that he had been present in the room where canvassing activities were taking place since before the Board’s pre-canvassing began at 7:00 a.m.³ (R.56a[20:21-21:6].) A “waist high” barrier separated the area of the room where the candidate and party representatives were allowed to be present from the area of the room where Board employees were conducting the various canvassing activities; the barrier was about 15 feet from where those activities began. (R.57a-58a[23:20-25:18].) The witness further explained that he was able to “walk[] back and forth the width of the hall” (R.57a[21:8-9]), and that he was able to observe all of the functions and processes of the canvassing operation; he could “look[] at the various stations and watch[] the ballot envelopes going from the beginning of [the canvassing] process all the way through the scanning of the ballots that are in the envelopes” (R.57a[21:9-12]). He further confirmed that, given his lateral mobility, nothing obstructed his line of sight.⁴ (R.60a[34:2-11].)

Along with the witness’s testimony, Election Court Judge Stella Tsai heard argument from the Board and the Pennsylvania Democratic Party. (R.64a[49:13-

³ See 25 P.S. § 3146.8(g)(1.1) (noting that pre-canvassing shall begin “no earlier than seven o’clock A.M. on election day”).

⁴ The witness testified that there was an area in the back of the room, to which the outer declaration envelopes were taken after they were opened, and that he was not able to see into this area. (R.60a,[34:12-23].) But the Campaign has not alleged that any canvassing or pre-canvassing activities have occurred in that area.

52:24].) After taking a recess to consider this evidence and argument, as well as Code provisions and decisional authority presented by the parties, Judge Tsai denied the Campaign's Petition, holding that the Board had complied with the applicable requirements under 25 P.S. § 3146.8. The Court noted that the Campaign's witness had "provided exacting and copious testimony as to his ability to observe the opening and sorting of ballots." (App. B at 8.) The Court found that candidate representatives were "free to walk around the premises as [they] wished except beyond the metal safety or 'crowd control' barrier." (*Id.* at 2.) It also found that representatives were able to observe every stage of the canvassing process and see what Board employees were doing, even if they could not always "see individual markings on the ballots or whether the signature [on an individual ballot envelope] was completed properly." (*Id.*) Reaching the same conclusion as a recent decision by a Nevada court, the Court of Common Pleas explained that the Election Code did not provide representatives with a right to read the writing on particular envelopes. "[T]he watchers' purpose is not to audit the individual ballots" (*Id.* at 7.) Indeed, the legislature has eliminated time-of-canvassing challenges entirely from the Election Code; "[w]atchers are not directed [by the Code] to audit ballots or to verify signatures, to verify voter address, or to do anything else that would require a watcher to see the writing or markings on the outside of either envelope, including challenging the ballots or ballot signatures."

(*Id.* at 4 & n.3.) As the Court explained, “if watchers like the witness were permitted to observe the canvassing of ballots closely enough to view the names and addresses on single ballots, they would be going beyond the purpose of the statute, which is only to provide for [observing] the canvassing of the ballots **writ large.**” (*Id.* at 6 (emphasis in original).) “The watchers would also threaten the secrecy and anonymity of the voter in direct frustration of the statute’s purpose.” (*Id.*)

As the record makes clear, the Board’s procedures plainly allowed representatives to observe all stages of the canvassing process, while also serving the crucial interests of safety, security, efficiency, and voter privacy: “The Board designed the layout of the Philadelphia Convention Center for the canvassing process in keeping with CDC guidelines on social distancing between individuals and safety protocols. In creating this physical layout, the Board struck the proper balance between the observer’s ability to observe the canvassing process and the paramount interest of voter privacy, as there are declaration envelopes that are being opened, secrecy envelopes that are being opened, and ballots that are being extracted.” (*Id.* at 3.)

Because the Court “found,” based on the record, “that the accommodations afforded to campaign representatives to observe the Election Board employees complied with the relevant provisions of the Election Code” and were an

appropriate exercise of the Board’s discretion, the Court “denied the [Campaign’s] Petition.” (*Id.* at 1.)

2. Proceedings Before the Commonwealth Court

In the afternoon of November 4, 2020, the Campaign filed an appeal to the Commonwealth Court. In accordance with the extremely expedited briefing schedule imposed by the Commonwealth Court, the Board filed its brief⁵ just before 8:00 a.m. the next morning, November 5, 2020.⁶

At 9:32 a.m. on November 5, 2020, the Commonwealth Court issued a single-judge Order by Judge Fizzano Cannon, reversing the Court of Common Pleas. (R.69a) The Order directed the “the trial court to enter an ORDER no later than 10:30 a.m. today, November 5, 2020, effective immediately, requiring that all candidates, watchers, or candidate representatives ... be permitted *to observe all*

⁵ The night before the parties’ briefs were filed in the Commonwealth Court, the Board contacted the Campaign and proposed a compromise along the lines of what the Court of Common Pleas had suggested in its Order denying the Campaign’s Petition. *See supra* Section II. The Campaign rejected the Board’s proposal.

⁶ The Commonwealth Court scheduled a telephonic status conference that began at 7:00 p.m. on November 4, 2020. During the conference, the Board asked the Court to issue an order setting a deadline of 9:00 a.m., November 5, 2020, for the filing of the Campaign’s brief. Because the Campaign did not file papers below, and because the appeal raised important legal issues that require extensive briefing, the Board requested a short amount of time to review the Campaign’s brief before filing a responsive brief. At approximately 9:12 p.m. on November 4, 2020, the Commonwealth Court issued an Order requiring the Campaign and the Board to file simultaneous briefs by no later than 8:00 a.m. the following morning.

aspects of the canvassing process within 6 feet, while adhering to all COVID-19 protocols, including, wearing masks and maintaining social distancing.” (*Id.* (emphasis added).)

Later that day, after the Board had petitioned this Court for allowance of appeal, the Commonwealth Court issued an Opinion in support of its Order. The Court’s analysis addressed three statutory provisions. Two state that candidate representatives are permitted “to be present” during the canvassing process, *i.e.*, when ballot envelopes are opened and ballots are counted. (App. A at 4 (citing 25 P.S. §§ 2650(b), 3146.8(b).) The third provision states that “[o]ne authorized representative of each candidate in an election and one representative from each political party shall be permitted *to remain in the room* in which the absentee ballots and mail-in ballots are pre-canvassed.” (*Id.* (citing § 25 P.S. § 3146.8(g)(1.1) (emphasis in Commonwealth Court opinion.)) The Court opined that the key issue was “the interpretation of the phrase ‘to remain in the room’ where ballots are canvassing ... and the language allowing ... candidates’ representatives to be ‘present’ during the canvassing process.” (App. A at 5.) The Commonwealth Court did not dispute that—as the Campaign itself conceded—the Campaign’s representatives have been “present,” and have “remain[ed] in the room,” whenever canvassing processes have occurred. But without any further textual analysis or justification, the Court concluded that the parties’ “competing

interpretations” of these statutory phrases “are each reasonable” and that “the Election Code is [thus] ambiguous.” (*Id.* (emphasis added).)

The Court stated that the statutory language “imports upon candidates, watchers, or candidates’ representatives at least a modicum of observational leeway to ascertain sufficient details of the canvassing process for the purpose of intelligently assessing and/or reporting to the candidate represented the details of the canvassing process.” (App. A at 5.) Having articulated this standard, the Court then concluded, as a factual matter, that the Board’s procedures had not satisfied the standard because the Campaign’s representative was purportedly “[unable] to actually observe the canvassing processes in any meaningful way.” (*Id.* at 8.) This factual conclusion contradicts the Court of Common Pleas’ factual finding—consistent with the testimony of the Campaign’s own witness—that the Campaign’s representatives “can see the [canvassing] workers prepare the [declaration] forms for evaluation, examine them, and sort the [ballots] into separate bins,” and can also observe “the various stages of the [canvassing] process” (App. B at 2), “watching the ballot envelopes going from [the] beginning of the process all the way through the scanning of the ballots that are in the envelopes” (R.57a[21:8-14]).

Strikingly, the Opinion contains no explanation whatsoever of the basis for the specific injunctive relief ordered by the Commonwealth Court; it provides no

reasoning to support the Court’s conclusion that the Election Code requires the Board to allow candidate and party representatives “to observe all aspects of the canvassing process *within 6 feet*.” (R.69a (emphasis added).) Indeed, the Opinion does not address the terms of the injunction in any way.

3. Events Following the Commonwealth Court’s Order

As the Campaign has acknowledged, when the Court of Common Pleas entered the injunctive order pursuant to the Commonwealth Court’s mandate, the Board temporarily suspended the canvassing process so that it could determine how to proceed. *See* Verified Complaint for Declaratory and Injunctive Relief ¶ 146, *Donald J. Trump for President, Inc. v. Boockvar*, No. 20-2078 (M.D. Pa.) (Judge Brann) (attached as Exhibit 1 hereto).⁷ The Board then promptly filed a petition for allowance of appeal with this Court, which operated as an automatic supersedeas staying the Commonwealth Court’s Order. *See Elizabeth Forward Sch. Dist. v. Pa. Labor Relations Bd.*, 613 A.2d 68, 70 (Pa. Commw. 1992) (“[T]he

⁷ The Board has attached as exhibits to this Brief several public court filings in other cases in which the Campaign is a party (as well as two unpublished decisions offered as persuasive authority), which bear on the issues in this appeal. As discussed later in this Brief, these filings relate specifically to the question of whether this appeal is currently moot, which turns on the circumstances prevailing at present. Although these documents were not in the record below, this Court may take judicial notice of these public filings. *See* Pa.R.E. 201(d) (courts “may take judicial notice at any stage of the proceeding”); *Keese v. Dougherty*, 230 A.3d 1128, 1131 n.3 (Pa. Super. Ct. 2020) (courts may take judicial notice of court filings to the extent that a party has taken advantage of the judicial process).

filing of a petition for allowance of appeal with our Supreme Court operates as an automatic supersedeas.”). Nonetheless, despite the stay, the Board endeavored to comply with the Order, reconfiguring the canvassing room by moving the barrier at the front of the observer area up to within six feet of the first row of canvassing activities. (See Transcript of Hearing on November 5, 2020, *Donald J. Trump for President v. Philadelphia County Board of Elections*, No. 20-5533 (E.D. Pa.) (Judge Diamond) (attached as Exhibit 3 hereto).⁸

Later the same day, November 5, 2020, the Campaign filed a one-page “Complaint and Motion for Emergency Injunction” in the United States District Court for the Eastern District of Pennsylvania. Complaint and Motion for Emergency Injunction, *Donald J. Trump for President, Inc. v. Philadelphia Cnty. Bd. of Elections*, No. 20-5533 (E.D. Pa. filed Nov. 5, 2020) (attached as Exhibit 2 hereto). Notwithstanding the pendency of the Board’s Petition before this Court—not to mention the undisputed fact that the Campaign’s representatives have had access to the canvassing room at all times canvassing has taken place—the Campaign argued that the Board was “intentionally violating state law” by

⁸ The Campaign contends that this modification does not comply with the Commonwealth Court Order (which, again, is currently stayed pursuant to the automatic supersedeas) because the Campaign interprets the Order as requiring the Board to allow representatives to come within six feet of each of the Board’s (approximately 150) canvassers, at least during any time they are engaged in canvassing processes.

“refusing to allow any representatives and poll watchers for President Trump and the Republican Party” “to be present and observe the canvassing of all mail-in and absentee ballots.” (Exhibit 2 ¶¶ 3-5; *see also id.* ¶ 5 (alleging, falsely, that “counting continues with no Republicans present”).) According to the Campaign, this alleged conduct violated its federal constitutional rights. (*Id.* ¶ 6.) The Campaign sought an “Emergency Injunction barring the [Board] from continuing to count any ballots so long as Republican observers are not present as required by state law.” (*Id.* at p. 1.)

District Judge Paul S. Diamond held a hearing on the Campaign’s Motion at 5:30 p.m. During the hearing, the Campaign’s counsel admitted that, contrary to the allegations in its pleading, the Campaign had indeed had representatives in the canvassing room at all times when canvassing had been conducted—and that following the Commonwealth Court ruling, the representatives were permitted to observe from within six feet of the first row of canvassing tables. (Exhibit 3 at 10:8-11 (admitting, in response to questioning from the court, that the Campaign had “a nonzero number of people in the [canvassing] room”)⁹; *id.* at 28:15-29:16.).

⁹ Perplexed by the Campaign’s use of terms such as “nonzero number of people,” the federal court put the question to the Campaign’s attorney directly:

THE COURT: I’m asking you as a member of the bar of this Court, are people representing the Donald J. Trump from President, representing the Plaintiff, in that room?

MR. MARCUS [COUNSEL FOR THE CAMPAIGN]: Yes.

(footnote continued on next page)

In addition, the Board again explained to the Campaign’s counsel—this time, on the record in open court—that the Commonwealth Court’s Order had been stayed as a result of an automatic supersedeas effected by the petition for allowance of appeal. (Exhibit 3 at 6:2-13.) The Campaign’s federal-court motion was resolved by an agreement of the parties, set forth on the record. The agreement provided in pertinent part that the barrier would remain in its closer, reconfigured position of six feet from the first row of canvassing tables pending a further order from this Court or other court of competent jurisdiction. (Exhibit 3 at 30:20-32:23, 41:8-21.) The Campaign’s case remains pending.

Then, on November 9, 2020, the Campaign filed another federal case—this time seeking *to enjoin the Commonwealth from certifying the results of the November 2020 general election* or, alternatively, requiring that the Commonwealth certify results that *exclude hundreds of thousands of votes* cast on mail-in or absentee ballots, disenfranchising those voters. (See Exhibit 1.) The basis for that extraordinary requested relief is, in part, the Campaign’s allegation that “the Board would not permit the Trump Campaign’s watchers to be within 6 feet of ‘all aspects’ of the pre-canvassing process in direct contravention of Commonwealth Court Judge Christine Fizzano Cannon’s November 5, 2020

THE COURT: I’m sorry, then what’s your problem?
(Exhibit 3 at 11:1-7.)

Order.” (*Id.* ¶ 145.) The Campaign neglected to inform the federal court of the supersedeas or of the pendency of these directly related proceedings before the Supreme Court of Pennsylvania. (*See id.*)

On November 10, 2020, the court held a telephonic status conference, following which it issued a scheduling Order attached as Exhibit 4 hereto. Among other things, the Order provides that motions to dismiss shall be filed by November 12, 2020, oral argument on the motions shall be held on November 17, 2020, and an evidentiary hearing on the Campaign’s request for injunctive relief shall be held on November 19, 2020. (*Id.*) During the status conference, counsel informed the court about the status of this appeal and its bearing on the federal action. The court directed counsel to provide a copy of this Court’s decision the moment it issues.

B. Factual History

Philadelphia County’s pre-canvass and canvassing operation is being conducted in Hall F at the Philadelphia convention center. (R.56a[20:22-21:2].) This is a massive operation; since 7:00 a.m. on Election Day, the Board of Elections has been reviewing, opening and counting more than 350,000 mail-in and absentee ballots, as well as processing election returns from in-person polling sites. This endeavor requires a great deal of space, not only to accommodate the physical volume of the ballots and processing machinery, but also to allow a safe process in light of the COVID-19 pandemic, with social distancing protocols in

place among the facility's hundreds of workers and observers. Because of the need for staff to circulate unimpeded and the security and privacy concerns involved with handling ballots, the Board cannot permit outsiders to wander freely through this workspace. Accordingly, the Board has set up a location from which candidates and party representatives, potentially in large numbers, can view the room without impeding the operation.

Jeremy Mercer is an attorney for the Trump Campaign who has been designated as a representative of the campaign at the Board's pre-canvass. (R.56a-57a[20:24-21:2].) Mr. Mercer testified that he had been observing the pre-canvass all day on November 3, 2020, from approximately 7:00 a.m. until his testimony, which occurred at approximately 10:00 p.m. the same day. (R.57a[21:3-6].)

Mr. Mercer admitted that, from his vantage point in the room where pre-canvassing and canvassing occurs, he was able to perceive the full sweep of the Board's operation at the Convention Center. This operation is taking place in a "very, very large hall" that is "divided width wise into four discrete sections for the four discrete processes." (R.57a[21:25-22:5].) Each process is conducted in a section, some of which contain roughly 35 tables. (R.57a[22:14, 24:1-25:1].) Behind those sections are areas for the storage and sorting of ballots as well as processing and receiving stations for the ballots. (R.57a[22:3-5].) A waist-high crowd-control fence, with metal vertical pickets with spaces between each,

separates the observers from the workers. (R.58a[25:5-10].) Despite the scale of this operation, Mr. Mercer testified that he was able to walk back and forth across the width of the hall and watch the ballot envelopes going from beginning of the process all the way through the scanning of the ballots that are in the envelopes. (R.57a[21:7-12].)

Mr. Mercer said the first section had three rows about fifteen tables deep. (R.57a[21:20-25].) His vantage point, which he estimated to be between fifteen and eighteen feet from the first table, allowed him to observe the envelope review process. (R.58a[27:9-19].) He could see these workers take ballot envelopes out of one tray, look at the back of the envelope where the declaration is located, and then either place them in a different tray or back in the initial tray. (R.58a[27:9-19].) He stated that the workers were looking at the back of the ballot envelopes, but that he was not able to see what was written on the envelopes. (R.58a[27:9-19].) Each subsequent table was approximately five to six feet behind the previous one, depth-wise. (R.57a[24:1-5].) Each worker sat approximately six feet from any other worker, but could occasionally be shoulder to shoulder with a supervisor. (R.58a-59a[25:23-26:11].)

In the next section, Mr. Mercer was able to observe what he labeled as the “extraction stage.” (R.58a[28:12-21].) He described watching a very quick process in which ballot envelopes go through a machine that slices them open;

pulls another envelope out of the outer envelope; and then a set of similar machines removes the ballot from the inner secrecy envelope in the same manner. (R.58a[28:12-21].)

Mr. Mercer claimed that he was between eighteen and twenty-two feet from the nearest envelope machine, with seven rows of three desks each. (R.59a[29:1-6].) Mr. Mercer was able to see the first full rows of machines clearly, such that he could determine if the worker had discovered a naked ballot (one in a larger envelope but without a secrecy envelope). (R.59a[30:2-5].) He was also able to see different trays for naked ballots versus the opened or unopened secrecy envelopes and also the process for workers to move each tray to its designated area. (R.59a[30:16-24].) Mr. Mercer claimed binoculars would not be useful to help him better determine whether all requirements were being followed. (R.59a[32:6-10].) Despite observing the pre-canvassing process for approximately twelve hours, Mr. Mercer did not testify that he had observed any problems or issues with the pre-canvass.

Mr. Mercer also could not identify any obstructions to his view other than the distance between himself and the workers. (R.60a[34:6-11].) He also admitted that workers used the space between the first row of desks and the crowd control fence as a walk-through space whenever they needed to leave their area, such as the beginning and end of their shifts and for any breaks. (R.60a[35:11-36:3].)

Mr. Mercer then testified that he wanted to see more of the declaration reviewing process so that he could determine if the date or name on the ballot was incorrect. (R.61a[37:19-38:11].) He claimed that this would allow him to file objections to specific ballots. (R.61[38:5-11].) Mr. Mercer also testified he wanted to be able to determine whether any ballot has any markings on it because the Election Code would require those ballots to be set aside. (R.61a[38:12-22].) When asked what he would need to change to better observe these processes, Mr. Mercer stated that he wanted to be closer to the desks in the first row and also to be permitted to have an observation area either next to the left-most row or right-most row of desks. (R.59a-60a[32:19-33:10].) Mr. Mercer testified prior to the Board's reconfiguring and moving the observation area even closer, to be within six feet of the canvassing operations.

It is important to note that the Campaign's complaints about distance come during a pandemic, during which hundreds of workers are operating in shifts, 24 hours a day, to complete the processing of over 350,000 ballots as efficiently and safely as possible. *See* Pa. Dept. of State, Supplemental Results Dashboard, available at <https://www.votespa.com/About-Elections/Pages/Counting-Dashboard.aspx/>.

VI. SUMMARY OF ARGUMENT

As the Philadelphia County Board of Elections files this brief, it is carrying

out a complex and massive responsibility: to accurately, safely, and securely count hundreds of thousands of mail-in and absentee ballots, under intense time pressure and pandemic conditions, all while complying with the provisions of the Pennsylvania Election Code. The Board designed a facility and a system under which hundreds of employees carry out this task. Now, however, a political campaign has brought a challenge to the processes the Board has put in place, asking a court at the end of the first day of the canvass to somehow redesign the Board's entire facility, with the purpose of calling into question the ballots the Board has counted. And the political campaign does this based on a plainly erroneous reading of the Election Code.

The Court of Common Pleas rejected the Campaign's request based on an evidentiary hearing and factual findings. The Commonwealth Court then reversed, imposing a requirement—unsupported by any statutory language—that the Board allow candidate representatives to approach “within six feet” of “all aspects” of the canvassing process.

At the outset, this appeal remains justiciable. It presents a live controversy, both because the Board continues to count certain ballots, *e.g.*, provisional ballots (so the issue of observer placement remains intact), and because the correctness (or not) of the Commonwealth Court's Order is a central issue in pending federal court cases, where the Campaign seeks to use the Order to invalidate hundreds of

thousands of Pennsylvanians' votes. Therefore, a definitive ruling from this Court on this crucial issue of state law would resolve the critical issue in these federal cases as to whether the Board was required, on purported penalty of voter disenfranchisement, to give the Campaign even closer access.

Moreover, even if this case were moot (as it is not), this case falls under the exception of capable of repetition yet evading review. This Court has held that election issues – which repeat but which follow an abbreviated schedule – are particularly likely to fall under that exception, and this case falls squarely within that category. If not corrected now, the Commonwealth Court's Order will pose profound difficulties for the Board's canvassing of ballots in future elections.

Regarding the merits, the Commonwealth Court erred because the Election Code simply does not say what the Campaign say it does. There is no reasonable dispute about this. The Code provisions relied on by the Campaign and the Commonwealth Court provide merely that candidate and party representatives be allowed to be "present" and "remain in the room" where the canvassing of ballots is occurring. That is exactly what happened here. As noted above, the Campaign has now admitted to a federal court (however begrudgingly) what its own witness admitted in an evidentiary hearing before the Court of Commons Pleas: the Campaign has had representatives "present" "in the room" the entire time.

And the Campaign's access went well beyond that. As the uncontroverted

record makes clear—and as the Court of Common Pleas found as a matter of fact—the Campaign’s representatives have been able to observe every function, stage, and process of the canvassing operation. The Campaign conjures strawmen arguments about hypothetical scenarios in which representatives might be “in the room” and yet effectively unable to view the canvass—because of, for example, a curtain obstructing the representatives’ view, or the fact that representatives were confined to one corner of a huge warehouse while the canvass took place in the opposite corner. But as the record and Court of Common Pleas’s finding make clear, none of those scenarios are this case.

The Campaign’s witness testified, and the Campaign and Commonwealth Court now suggest, that their access to the canvass was not good enough because the Campaign’s representatives could not stand within six feet of *each canvasser in an operation canvassing 350,000 ballots*—and thus could not discern the signatures and other markings on each of the envelopes being canvassed. Indeed, the Campaign’s witness conceded he was able to see that the canvassing staff was examining individual envelopes; he simply could not perceive the particular writing or markings on those individual envelopes. (R.61a[37:13-18].) But the statute does not provide any such right to read over each canvasser’s shoulder; the Campaign’s complaint is with the General Assembly, not the Board. And there is a good reason why that right does not exist: As the Election Code makes clear,

canvass observers cannot object to purported deficiencies relating to signatures or markings on ballots. Put simply, the Campaign's complaint is that it is not in a physical position to do something Pennsylvania law does not allow it to do; the Campaign's desired level of access is found nowhere in the Code and makes no sense given the Code's delineation of the role representatives play. Further, not only would the Campaign's argument require the courts to rewrite the statute, it would also endanger voter privacy (chilling the exercise of the franchise); the security of the ballots; the efficiency of the Board's massive, complex canvassing operation; and the health and safety of everyone in the room.

What is more, the Commonwealth Court's decision flatly contradicts the factual findings of the Court of Common Pleas. The Commonwealth Court wrote that the Board's procedures did not satisfy the Election Code because the Campaign's representative was purportedly "[unable] to actually observe the canvassing processes in any meaningful way." (App. A at 8.) But the Court of Common Pleas had found the exact opposite: Consistent with the testimony of the Campaign's own witness, the court found as a fact that the Campaign's representatives "can see the [canvassing] workers prepare the [declaration] forms for evaluation, examine them, and sort the [ballots] into separate bins," and can also observe "the various stages of the [canvassing] process," (App. B at 2), "watching the ballot envelopes going from [the] beginning of the process all the

way through the scanning of the ballots that are in the envelopes” (R.57a[21:8-14]). The Commonwealth Court’s rewriting of the trial court’s factual findings – without demonstrating that any of those specific findings were clearly erroneous – underpins its entire opinion and constitutes reversible error.

VII. ARGUMENT

A. The Case Adjudicated by the Courts Below Remains a Live Controversy Because the Board Is Still Counting Ballots

The mootness doctrine requires that “an actual controversy must be extant at all stages of review.” *In re Cain*, 590 A.2d 291, 292 (Pa. 1991). The Board acknowledges that Election Day is over, that the Board has counted most of the ballots, and that the election results appear resolved. Nonetheless, the case before this Court is not moot, for two reasons.

First, even though *most* of the ballots have been counted, and even though the remaining ballots cannot change the election results, the Board still must count *some* ballots, whether those ballots be mail-in ballots, a final compilation of machine ballots from polling places, military and overseas ballots (which could be received as late as November 10, 2020, 25 P.S. § 3146.8(g)(2)), or provisional ballots. And the Campaign presumably wants to continue watching the counting of such ballots. Accordingly, because the Board still must count ballots, the representative-access issue is still a live controversy.

Second, the Campaign has kept this issue alive in multiple actions in federal

court. Indeed, the Campaign is currently relying upon the Commonwealth Court's ruling in two different pending federal court cases.

As noted, in *Trump v. Philadelphia*, E.D. Pa. 20-5533 (Judge Diamond), the Campaign has alleged that the Board violated the Campaign's rights because "the Commonwealth's highest available court [*i.e.*, the Commonwealth Court's ruling] requires that representatives ... observe the canvassing of all mail-in and absentee ballots." (Exhibit 2 ¶ 3.) Contrary to the Campaign's assertion that the Board violated its rights by failing to comply with Judge Fizzano Cannon's Order, the Board properly obtained an automatic supersedeas of the Order by petitioning this Court for allowance of appeal. *Elizabeth Forward Sch. Dist. v. Pennsylvania Labor Relations Bd.*, 613 A.2d 68, 70 (Pa. Commw. 1992). Further, that Eastern District case is still pending, so the viability of Judge Fizzano Cannon's ruling remains a live controversy in that matter, and therefore it remains a live controversy here.

Additionally, just two days ago, on November 9, 2020, the Campaign filed its Complaint in *Donald J. Trump for President, Inc. v. Boockvar*, No. 20-2078 (M.D. Pa.), alleging that "the Board would not permit the Trump Campaign's watchers to be within 6 feet of 'all aspects' of the pre-canvassing process in direct contravention of Commonwealth Court Judge Christine Fizzano Cannon's November 5, 2020 Order." (Exhibit 1 ¶ 145.) The Middle District case is also still

pending, so, again, the correctness of the Commonwealth Court’s ruling is clearly a live controversy. This Court is the only tribunal that can definitively settle that question, and it should do so. *See Spence v. ESAB Grp., Inc.*, 623 F.3d 212, 216 (3d Cir. 2010) (“When ascertaining Pennsylvania law, the decisions of the Pennsylvania Supreme Court are the authoritative source.”); *see also Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975) (“[S]tate courts are the ultimate expositors of state law”).

B. Even if the Issue Were Moot, This Court Should Still Review It Because It Is Capable Of Repetition Yet Will Evade Review

Even if this Court concludes that the observer placement issue is moot (as it is not), the Court should still decide the question because “[v]arious well recognized exceptions to the mootness doctrine permit a court’s review of issues that are, in fact, moot. One such exception is the doctrine of ‘capable of repetition yet evading review.’” *Public Def.’s Office of Venango Cnty. v. Venango Cnty. Court of Common Pleas*, 893 A.2d 1275, 1279–80 (Pa. 2006).

Pursuant to this principle, “an appellate court may decide a case where issues important to the public interest are involved, the nature of the question under consideration is such that it will arise again, and review will be repeatedly thwarted if strict rules of mootness are applied.” *Commonwealth v. Dixon*, 907 A.2d 468, 472–73 (Pa. 2006); *accord In re Doe*, 33 A.3d 615, 622 (Pa. 2011).

At the outset, the Board notes that this Court has recently held that election issues are “capable of repetition and likely to evade review in future cases.” *Reuther v. Delaware Cty. Bureau of Elections*, 205 A.3d 302, 306 n.6 (Pa. 2019). Indeed, “[g]iven the abbreviated time frame applicable to elections and the amount of time that it takes for litigation to reach this Court, this [capable of repetition yet evading review] exception is particularly applicable when the question presented relates to an election dispute.” *Id.*

Moreover, both federal and state courts frequently apply the exception to election cases. 13C Fed. Prac. & Proc. Juris. § 3533.9 (3d ed. Oct. 2020 update) (citing *Federal Election Comm'n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 462 (2007) (“[I]t would be entirely unreasonable to expect that [the plaintiff] could have obtained complete judicial review of its claims [before the election ended].” (internal citations omitted))); *Urevich v. Woodard*, 667 P.2d 760, 762 (Colo. 1983) (“This case falls, as do so many elections cases, within the exception to the mootness doctrine that allows review of matters ‘capable of repetition, yet evading review.’”). Therefore, the Court should hear this matter.

Further, this case satisfies all three prongs of the test. First, this case certainly involves important public issues. If the Court were to uphold the Commonwealth Court’s ruling, the result would compromise voter privacy, jeopardize Board of Elections vote counters, and undermine the Board’s ability to

properly and efficiently run its elections. In addition, the Campaign is asserting in federal court that because the Board's decision was incorrect under the Election Code, the ballots of hundreds of thousands of citizens should be thrown out. (*See* Exhibit 1.) It makes this claim without any credible allegation that hundreds of thousands of votes were fraudulently cast. As this Court has always recognized in construing the Election Code broadly when the franchise is at issue, few things in our democratic society are more important than the right to vote and to have that vote counted.

Second, the issues are also capable of repetition. In fact, the precise question at issue – whether the Board's regulations regarding observer access complied with applicable Election Code requirements – will arise at least twice each year, on Election Day.

Finally, the question will evade review. Because the Board cannot start counting ballots until Election Day, 25 P.S. § 3146.8(g)(1.1), the issue of placement of observers of ballot-counting does not ripen until that time. Moreover, because the entire ballot-counting process cannot take longer than twenty days, 25 P.S. § 2642(k) (boards must certify the final results to Commonwealth no later than twenty days after Election Day), and will usually be much faster, the issue threatens to become moot before this Court can hear an appeal.

Accordingly, the Court should evaluate the merits.

C. The Commonwealth Court Erred In Reversing The Trial Court

1. The Election Code Vested the Board With Authority to Issue the Challenged Access Regulations

As set forth in the Pennsylvania Election Code, the General Assembly has granted boards of elections “jurisdiction over the conduct of primaries and elections in [their respective counties].” 25 P.S. § 2641. In connection with this grant of jurisdiction, the Philadelphia County Board of Election is charged with exercising “all powers granted to [it]” and “perform[ing] all duties imposed upon [it]” by the Election Code. *Id.* § 2642. Those duties include the crucial, overarching responsibility to ensure that elections are “honestly, efficiently, and uniformly conducted.” *Id.* § 2642(g). To fulfill these critical duties, the Code authorizes the Board “[t]o make and issue such rules, regulations and instructions, not inconsistent with law, as they may deem necessary for the guidance of ... elections officers and electors.” *Id.* § 2642(f).

Accordingly, to prevail, the Campaign has to show that the access procedures at issue are “inconsistent with law.” But the Campaign did not—and cannot—identify any statutory requirement that the access regulations violate.¹⁰

¹⁰ Here, as set forth in this Court’s Order granting appeal, the statutory-interpretation question is the only merits issue presented. It is also the only basis (footnote continued on next page)

As the Court of Common Pleas recognized, the access regulations “struck the proper balance”—one clearly permitted by the Election Code—“between the observer’s ability to observe the canvassing process” and other important priorities. (App. B at 3.) Canvassing ballots—particularly, as in the case of the Philadelphia County Board of Elections, 350,000 mail-in and absentee ballots—is an enormously complex operation. The Board must secure a space large enough to accommodate all of the staff and machinery necessary to such an undertaking (including envelope sorters, envelope extractors, and ballot scanners), and it must ensure that that space is configured and laid out in a way to allow the ballots and

for the Commonwealth Court’s ruling. Accordingly, this Court’s analysis need go no further than determining—as the undisputed evidence shows and the Court of Common Pleas’ found—that the Board’s canvassing procedures do not violate the Election Code. The Board notes, however, that if the Campaign had challenged the Board’s procedures on grounds other than inconsistency with the Election Code (as it did not), it would have had the burden of showing that Board abused the discretion granted to it by the Election Code. *See Gwynedd Dev. Grp., Inc. v. Dept. of Labor & Indus.*, 666 A.2d 365, 369 (Pa. Commw. Ct. 1995) (“It is well settled that in reviewing discretionary acts of an agency, this court is limited to determining whether there has been a manifest and flagrant abuse of discretion or purely arbitrary execution of the agency’s function or duties.”); *see also id.* at 371 (“[I]t is well settled that an administrative agency has wide discretion when establishing rules, regulations and standards and also in the performance of its administrative duties and functions.... This court cannot overturn an agency’s exercise of its discretion absent proof of fraud, bad faith, or blatant abuse of discretion.”). “The fact that the reviewing court may have a different opinion is not sufficient to interfere with the agency’s action and judicial discretion may not be substituted for administrative discretion.” *Id.* at 370. Here, there is no basis in the record for concluding that the Board abused its discretion in promulgating the canvassing procedures at issue.

personnel to move safely, efficiently, and securely from one stage of the process to another. In broad terms, the Board’s procedures must accommodate the following imperatives:

1. *Ballot security.* The Board must ensure that all ballots are tracked and accounted for, that no one can remove ballots from the Board’s custody, and that no one is in a position improperly to introduce additional ballots into the canvassing process to distort the count. For this reason, among others, it is simply not feasible to allow observers to walk freely through the canvassing area.
2. *Voter privacy.* The declaration envelopes in which the ballots are enclosed contain the personal information of voters. Voter confidentiality is a paramount concern.
3. *Efficiency.* The Board must canvass hundreds of thousands of ballots accurately within a matter of several days, which includes scanning incoming ballot envelopes, determining the sufficiency of ballot declarations, extracting secrecy envelopes (and determining whether there are “naked ballots” that must be set aside), extracting the ballots from secrecy envelopes, and scanning the ballots and tabulating votes. The extensive machinery must be protected from interference or damage (whether intentional or accidental). The delays that would potentially result if, for example, a machine lost power or otherwise failed in the middle of scanning a batch of ballots, could be severe.
4. *Safety.* This includes not only protecting Board employees from the verbal or physical assaults of overzealous representatives—a threat that, sadly, looms large in the current political environment—but also protecting everyone in the canvassing room (employees and representatives alike) from COVID-19.

Of course, this Court is not, and the Commonwealth Court was not, reviewing the access regulations directly. Instead, the appellate courts are reviewing the Court of Common Pleas’ decision, based on live witness testimony

and fact finding, to uphold the Board's procedures. Because of the fact-intensive nature of that mixed question of fact and law, the Court of Common Pleas' answer to the question at issue is entitled to substantial deference. *Gentex Corp. v. W.C.A.B. (Morack)*, 23 A.3d 528, 534 (Pa. 2011). And the Court's underlying factual findings must of course be upheld so long as they are "supported by competent evidence." *Commonwealth v. \$23,320.00 U.S. Currency*, 733 A.2d 693, 696 n.1 (Pa. Commw. Ct. 1999); *see also id.* ("The trial court's findings of fact are entitled to the same deference as those of a jury, and it is axiomatic that as factfinder the trial court is empowered to decide what evidence is credible and to draw and reasonable inferences from all of the evidence.").

As shown below, there is no basis for disturbing the Court of Common Pleas' determination that the Board's access regulations complied with the Election Code. The regulations (a) respect candidates' and political parties' statutory right to be in the room where canvassing occurs while (b) taking account of the imperatives of ballot security, operational efficiency, voter confidentiality, and safety.

2. As the Court of Common Pleas Correctly Held, the Board's Access Regulations Comply With the Applicable Statutory Requirement

As shown by the plain language of the Election Code, the Board's access regulations comply with the Code's requirements. The Court need only focus on

one key provision, 25 P.S. § 3146.8(g)(1.1), (2). But even if the Court considers the additional statutory language cited by the Campaign and Commonwealth Court, the answer is the same: the Board’s regulations are fully consistent with law.

In arguing that the Board’s access restrictions are “inconsistent with law,” the Campaign has relied on two different statutory provisions, only one of which is actually applicable to this case. One provision states that “[o]ne authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the absentee ballots and mail-in ballots are pre-canvassed” and “canvassed.” 25 P.S. § 3146.8(g)(1.1), (2).¹¹ The other provision states that “[w]atchers shall be permitted to be present when the envelopes containing official absentee ballots and mail-in ballots are opened and when such ballots are counted and recorded.” 25

¹¹ “Pre-canvassing” is defined in the Election Code as “the inspection and opening of all envelopes containing official absentee ballots or mail-in ballots, the removal of such ballots from the envelopes and the counting, computing and tallying of the votes reflected on the ballots.” 25 P.S. § 2602(q.1). “Canvassing” is defined as “the gathering of ballots after the final pre-canvass meeting and the counting, computing and tallying of the votes reflected on the ballots.” *Id.* § 2602(a.1). The primary if not exclusive distinction between the two is that pre-canvassing, because it takes place before the polls are closed, includes the counting but not “the recording or publishing of the votes reflected on the ballots.” *Id.* § 2602(q.1); *see also id.* § 3146.8(g)(1.1) (“No person observing, attending or participating in a pre-canvass meeting may disclose the results of any portion of any pre-canvass meeting prior to the close of the polls.”).

P.S. § 3146.8(b). The term “watchers” refers to people whom, under the Election Code, candidates and political parties can appoint to, among other things, observe certain activities at polling places on election day. *See* 25 P.S. §§ 2650, 2687, 3050. The Code allows each candidate to appoint two watchers, and each political party to appoint three watchers, for each polling place. 25 P.S. § 2687.

Only the “authorized representative” provision is applicable to this case—as the Campaign itself admitted in a recent federal case, *Donald J. Trump for President, Inc. v. Boockvar*, No. 20-966 (W.D. Pa.). As the Campaign candidly acknowledged, “[a]lthough Election Code Section 3146.8(b), 25 P.S. § 3146.8(b), provides that ‘[w]atchers shall be permitted to be present when the envelopes containing official absentee and mail in ballots are opened and when such ballots are counted and recorded,’ *poll watchers are not identified as being authorized to attend th[e] pre-canvass meeting*” or “*the post-election canvass meeting. Rather, only one ‘representative’ for each candidate and political party can be present*” Second Amended Complaint ¶¶ 98-99, *Donald J. Trump for President, Inc. v. Boockvar*, No. 20-966 (W.D. Pa. filed Sept. 23, 2020) (citing 25 P.S. § 3146.8(g)(1.1), (2)) (emphasis added).

Indeed, in his recent decision dismissing all of the Campaign’s claims in that case, United States District Judge J. Nicholas Ranjan agreed that “[t]he Election Code provisions pertaining to the ‘pre-canvass’ and ‘canvass’ do not make any

separate reference to poll watchers, instead referring only to the ‘authorized representatives’ of parties and candidates.” *Donald J. Trump for President, Inc. v. Boockvar*, No. 20-966, --- F. Supp. 3d ----, 2020 WL 5997680, at *25 (W.D. Pa. Oct. 10, 2020). As Judge Ranjan explained, that wording of the pre-canvassing and canvassing provisions—and, in particular, the exclusion of watchers from the pre-canvassing and canvassing meetings—reflected the legislature’s concern to protect the pre-canvassing and canvassing process from the risk of interference and encroachment (even if unintentional) by proxies of the candidates and parties:

Plaintiffs complain that poll watchers may not be present during the pre-canvass and canvass meetings for absentee and mail-in ballots. But the Election Code provides that authorized representatives of each party *and* each candidate can attend such canvassing. That means if, for example, 15 Republican candidates appear on ballots within a particular county (between both the state and federal elections), there could be up to 16 “authorized representatives” related to the Republican Party (one for each candidate and one for the party as a whole) present during canvassing. Adding poll watchers to that mix would just be forcing unnecessary cooks into an already crowded kitchen.

Id. at 73 (citation omitted). Put simply, to the extent the Campaign now seeks to argue that the “watcher” provision in 25 P.S. § 3146.8(b) applies to the Board’s access regulations governing pre-canvass and canvass meetings, those arguments are (a) contrary to its earlier admissions and (b) simply wrong—as Judge Ranjan

explained.¹²

In any event, the Board’s regulations plainly do not violate § 3146.8(g)(1.1), (2) *or* § 3146.8(b). As noted, the former requires only that “authorized representative[s]” of the candidates and parties “be permitted to remain in the room in which” the pre-canvassing and canvassing of absentee and mail-in ballots takes place. It is undisputed that the Board’s access regulation

¹² The “watcher” provision in § 3146.8(b) pre-dates the “authorized representative” provision in § 3146.8(g)(2), the latter of which was added to the Code in 2006. *See* Act of May 11, 2006, No. 2006-45, sec. 12, § 1308(g)(2), 2006 Pa. Laws 178, 187. At that time, most absentee ballots were canvassed by local election district officials at polling places rather than by the Board at a central location. *See* Act of May 11, 2006, No. 2006-45, sec. 12, § 1308(a), 2006 Pa. Laws 178, 187. In that context, it makes sense that the watchers—who were already present at polling places while the polls were open—would play the “canvassing observer” role that is now played by the “authorized representatives” identified in § 3146.8(g)(1.1), (2). Pursuant to the 2006 Code amendments, it was only certain types of absentee ballots that were canvassed by the county boards at central locations, and this centralized canvassing process could be observed by “[o]ne authorized representative of each candidate in an election and one representative from each political party,” who were “permitted to remain in the room in which the absentee ballots are canvassed.” *See* Act of May 11, 2006, No. 2006-45, sec. 12, § 1308(g)(2), 2006 Pa. Laws 178, 187. In Act 77 of 2019, which introduced no-excuse mail-in voting, the Legislature amended the Code so that all absentee and mail-in ballots would be canvassed in a central location—under the observation of the candidate and party “representatives”—rather than at local election districts. Act of October 31, 2019, No. 77, sec. 7, § 1308(a), (g), 2019 Pa. Legis. Serv. Act 2019-77. Section 3146.8(b) was nonetheless left in the Code. *Cf. In re Nov. 3, 2020 Gen. Election*, No. 149 MM 2020, --- A.3d ----, 2020 WL 6252803, at *14 n.24 (Pa. Oct. 23, 2020) (“[T]here are some vestiges remaining in the Election Code of the prior, now eliminated, system for time-of-canvassing ballot challenges.... [H]owever, we view the references to ballots in these provisions to be the overlooked remnants of a prior, now eliminated, process.”).

permits exactly that. Moreover, this is not a case in which—to use the hypothetical example the Campaign invoked below—the access to the room is illusory because there is a blanket or other barrier obstructing the representatives’ lines of sight. In relying on those sorts of examples, the Campaign advances a strawman argument. As set forth in the Court of Common Pleas’ well-supported factual findings, representatives can see the entire set-up of the canvassing room, and can perceive “in detail the various stages of the process,” from the sorting and examination of the ballot envelopes, to the extraction of the inner secrecy envelope from the outer envelope, to the extraction of the ballot from the inner secrecy envelope, to the scanning of the ballots themselves. (App. B at 2-4.)

In short, the evidence makes clear that candidate and party representatives can observe every portion of the pre-canvassing and canvassing process. They can vouchsafe that this process ensures that the ballots being scanned and tabulated have been removed from security envelopes that in turn have been removed from outside envelopes that in turn have been sorted and inspected for sufficiency. The representatives can determine when various stages of that process are proceeding or paused, as well as the relative rate of speed at which they are proceeding. They can perceive how many Board staff are present at any time to carry out the canvassing process. In sum, the Commonwealth Court’s finding that the Campaign’s representative was “[unable] to actually observe the canvassing

processes in any meaningful way” (App. A at 8) is flatly at odds with the record, which amply supports the Court of Common Pleas’ contrary factual finding.

Assuming *arguendo* that the Board’s access regulations are subject to § 3146.8(b) (as they are not), they satisfy the requirements of that provision as well, as the Court of Common Pleas found. That provision “explicitly allows only for the watchers to ‘be present’ for three activities: (1) the opening of the envelopes containing the ballots, (2) the counting of the ballots, and (3) the recording of the ballots.” (App. B at 4.) *See* 25 P.S. § 3146.8(b). As the Court found—as the record clearly shows—the Board’s access regulations indisputably allow the representatives of the candidates and parties to “‘be present’ to watch the **opening** of the ballots or to watch the **counting and recording** of the ballots.” (App. B at 4.)

The only record evidence of anything specific a candidate representative cannot do—but would like to do—under the current access regulations is to (1) read the declarations on individual envelopes so that the representative can make his own determination of whether the individual declaration is “sufficient” and (2) determine whether individual secrecy envelopes bear markings that identify the voter, the voter’s political affiliation, of for whom the voter voted.¹³

¹³ *See* 25 P.S. § 3146.8(g)(4)(ii) (“If any of the [secrecy] envelopes ... contain any text, mark or symbol which reveals the identity of the elector, the elector’s political (footnote continued on next page)

(R.61a[37:19-38:11].) Even there, the representative witness conceded he was able to see that the canvassing staff was examining individual declaration envelopes; he simply could not perceive what was written on those individual envelopes.

(R.61a[37:13-18].)

The witness testified that he wanted access to individual-ballot-envelope detail so that he could make his own assessment of whether each declaration was “sufficient” and, if he deemed it insufficient, make “an objection to th[e] processing of that ballot.” (R.61a[37:22-38:4].) In fact, as explained below, the Code does not permit *any* time-of-canvassing challenges or objections from candidates, parties, or their representatives. Independently, however, it is dispositive that nothing in §§ 3146.8(b) or 3146.8(g)(1.1), (2) requires that representatives or watchers be given sufficient access to allow them to read the text printed on individual ballots. The General Assembly could, of course, easily have codified such a right. But it did not. It required only that candidate and party representatives “be permitted to remain in the room in which the ... ballots are” pre-canvassed and canvassed, § 3146.8(1.1), (2), or, assuming *arguendo* that § 3146.8(b) applies, to “be present when the envelopes containing official absentee ballots and mail-in ballots are opened and when such ballots are counted and

affiliation or the elector’s candidate preference, the envelopes and the ballots contained therein shall be set aside and declared void.”).

recorded.” Endorsing the Campaign’s argument would require the courts to interpolate additional language into the statute that the Legislature did not see fit to add—and would severely impair the Board’s ability to protect voter privacy and ensure ballot security, operational efficiency, and safety. And based on Mr. Mercer’s testimony that he seeks to challenge sufficiency determinations, the Campaign’s argument would also significantly alter the Legislature’s determination about how ballots can be challenged, as well as its judgment about how to balance various concerns regarding the expanded mail-in voting process. *See In re Nov. 3, 2020 Gen. Election*, No. 149 MM 2020, --- A.3d ----, 2020 WL 6252803, at *14 (Pa. Oct. 23, 2020).

It is well settled that the “judicial legislation” sought by the Campaign is improper. *Id.* (“It is not our role under our tripartite system of governance to engage in judicial legislation and to rewrite a statute in order to supply terms which are not present therein”); *Rogele, Inc. v. Workers’ Comp. Appeal Bd.*, 969 A.2d 634, 638 (Pa. Commw. Ct. 2009) (“First and foremost, this Court is not authorized to engraft language onto a statute.”); *accord SEPTA v. City of Phila.*, 159 A.3d 443, 461 (Pa. 2017) (Wecht, J., concurring) (“Should the General Assembly wish

to enact such language, it may do so. We may not engraft such language onto a statute that lacks it through an act of judicial fiat.”).¹⁴

3. The Election Code Does Not Allow Candidates, Parties, or Their Representative to Make *Any* Time-of-Canvassing Challenges

As discussed, the deficiency the Campaign purports to identify in the Board’s access regulations is that they do not allow representatives to get close enough to read the declarations or markings on individual envelopes, and thus deprives representatives of the ability to raise “objections ... to ballots.” (R.61a[38:5-11]. (“We’d like to be able to see whether there are objections that could or should be made to ballots; that perhaps the name is not on there, the date is missing or wrong.”).) But the history of the Election Code, as well as a very recent decision from the Pennsylvania Supreme Court, makes clear that the current Code does not allow such objections/challenges to the sufficiency of a declaration. Indeed, it does not allow *any* challenges at the time of canvassing.

¹⁴ The Board respectfully submits that its challenged regulations clearly and unambiguously comply with the plain language of 25 P.S. §§ 3146.8(b), (g)(1.1), (2). But even if there were some ambiguity about the requirements of those provisions (which there is not), the Board’s interpretation would be entitled to deference. *See Turchi v. Phila. Bd. of License & Inspection Review*, 20 A.3d 586, 592-93 (Pa. Commw. Ct. 2011) (The “administrative actor should possess authoritative interpretive powers” because it “has the greater number of encounters with the issues and is, therefore, more likely to develop the expertise relevant to assessing the effect of a particular regulatory interpretation” and because of the “administrative actor’s authority over the legislation or regulations it is charged to administer.” (internal citations omitted)).

The relevant history begins with the 1968 amendments to the Code. Those amendments added language making clear that the *only* permissible grounds for challenging an absentee ballot during the canvassing process were those expressly identified in the canvassing provision itself. *See* Act of December 11, 1968, No. 375, sec. 8, § 1308(e), 1968 Pa. Laws. 1183, 1200 (“All absentee ballots not challenged for any of the reasons provided herein shall be counted and included with the general return of paper ballots or voting machines, as the case may be as follows.”). At that time, the identified grounds for challenge were “(1) that the absentee elector is not a qualified elector; or (2) that the absentee elector was within the county of his residence on the day of the primary or election during the period the polls were open, except where he was in military service or except in the case where his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability; or (3) that the absentee elector was able to appear personally at the polling place on the day of the primary or election during the period the polls were open in the case his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability.” *Id.*; *see In re Nov. 3, 2020 Gen. Election*, No. 149 MM 2020, --- A.3d ----, 2020 WL 6252803, at *13 (Pa. Oct. 23, 2020) (“Prior to the recent Code amendments,” “[t]here were three permissible

grounds for challenge[.]”). Notably, insufficiency of the ballot-envelope declaration was not an identified basis for challenging an absentee ballot.

As this Court recently explained, “when the legislature first allowed for no-excuse mail-in voting in 2019, the legislature simultaneously reduced the bases on which canvassing challenges could be made by eliminating the present-in-his-municipality objection Then, in 2020, the legislature eliminated time-of-canvassing challenges *entirely* from Section 3146.8(g)(3).... Accordingly, the Election Code presently provides no mechanism for time-of-canvassing challenges by candidate or party representatives.” *In re November 3, 2020 General Election*, 2020 WL 6252803, at *14 (second emphasis added). The Court further noted that the purpose for eliminating challenges was likely tied directly to the anticipated effect of no-excuse mail-in voting on the size and scope of the canvassing process: “Presumably, in expanding voting by mail, the legislature sought to streamline the process for canvassing such ballots, perhaps to avoid undermining the expansion effort by eliminating the prospect that voters—including a potentially large number of new mail-in voters—would be brought before the board or the courts to answer third-party challenges.” *Id.*

In sum, the Election Code does not allow party or candidate representatives to raise objections to the sufficiency of particular ballot envelopes or to make *any* other time-of-canvassing challenges. Accordingly, the Campaign cannot avoid the

plain text of § 3146.8(g)(1.1), (2) and § 3146.8(b)—which requires only that representatives “be permitted to remain in the room” or “be present” during canvassing—by arguing that representatives need to be within six feet of every canvasser to avail themselves of a statutory right to raise objections to the processing of particular ballots; no such right exists.

4. The Campaign Has No Access Rights Beyond What the Express Terms of the Election Code Provide

The Board keeps returning to the language of § 3146.8 of the Election Code because it alone is sufficient to require affirmance. Notably, the Campaign does not dispute that any right of access it has to the canvassing room is solely a creation of statutory law—and its scope and limits are therefore defined by the Election Code.¹⁵ Nor could the Campaign reasonably dispute this. It is well

¹⁵ The Campaign made reference to only one potential constitutional argument in the proceedings in the Court of Common Pleas, stating that because “Pennsylvania is a commonwealth with 67 counties,” differences among counties regarding the specific type of access afforded to candidate representatives could violate the Equal Protection Clause. (R.63a[45:10-15].) But the Campaign completely failed to develop any such argument and has therefore waived it. (*See id.*; *see also* Answer to Emergency Petition for Allowance of Appeal at 5-6, *In re: Canvassing Operation*, No. 425 EAL 2020 (Pa. filed Nov. 5, 2020) (suggesting that the Campaign might be able to develop an Equal Protection claim but implicitly conceding that it had not done so in this case). In any event, this Court’s order granting the Board’s petition for allowance of appeal makes clear that the only merits question concerns “statutory construction,” not constitutional law. (R.71a.)

Any equal protection argument premised on differences in the ways counties configure their respective canvassing spaces and operations, even if it had been preserved (as it was not), would fail for a number of reasons. As a threshold

(footnote continued on next page)

matter, such an argument does not make out an equal protection claim. The Equal Protection Clause “embodies a general rule that States must treat like cases alike but may treat unlike cases accordingly.” *Vacco v. Quill*, 521 U.S. 793, 799 (1997). Put differently, to state an Equal Protection claim, “[a]pples must be compared to apples.” *Perano v. Twp. of Tilden*, No. 09-754, 2010 WL 1462367, at *10 (E.D. Pa. Apr. 12, 2010) (rejecting claim that township’s grant of approvals, licenses and permits violated equal protection based on comparison of mobile home park to high-end real estate and commercial business development), *aff’d*, 423 F. App’x 234 (3d Cir. 2011). To juxtapose the canvassing operations of different counties is to compare apples to oranges. For example, although Philadelphia is tasked with canvassing over 350,000 absentee and mail-in ballots, other Pennsylvania counties received fewer than 10,000 such ballots. *See* Pa. Dept. of State, Supplemental Results Dashboard, available at <https://www.votespa.com/About-Elections/Pages/Counting-Dashboard.aspx/>. There is simply no comparison—in size of facility, scope and complexity of operations, number of personnel, or amount of machinery—between the different canvassing needs and procedures attendant to these different circumstances. And, of course, these differences in canvassing operations will necessarily result in differences in the specific type of access provided to candidate and party representatives—all may “remain in the room,” but the size, layout, and contents of the “room” itself will necessarily vary depending on a county’s circumstances. Put simply, differences among counties’ respective canvassing operations are not a cognizable predicate for an equal protection claim. *See, e.g., Roubideaux v. N. Dakota Dept. of Corrections & Rehab.*, 570 F.3d 966, 976 (8th Cir. 2009) (rejecting equal protection challenge because “[a]ny attempt to compare programs between and among different prisons where all of these varying factors are present ‘is like the proverbial comparison of apples to oranges’”); *Miller v. Lorain Cnty. Bd. of Elections*, 141 F.3d 252, 258 (6th Cir. 1998) (a “type of comparison” that amounts to “comparing apples to oranges” is a “comparison [that] does not fit into an equal protection analysis”).

Further, even if the Campaign *could* state a cognizable Equal Protection claim (as it cannot), the claim would necessarily fail on the merits. As discussed herein, there is no constitutional right to observe canvassing operations. And classifications by geographic subdivisions (such as counties) are not suspect. Accordingly, any equal protection claim would receive only rational-basis scrutiny. *See Republican Party of Pa. v. Cortés*, 218 F. Supp. 3d 396, 408-09 (E.D. Pa. 2016). It is well settled that states have a legitimate interest in allowing counties to develop their own procedures—as the Pennsylvania Election Code expressly allows—and that differences resulting from that delegation of authority do not

(footnote continued on next page)

established that there is no constitutional right to “poll watch.” Indeed, both the this Court and Judge Ranjan have so held in rejecting arguments advanced by the Campaign. *Pa. Democratic Party v. Boockvar*, No. 133 MM 2020, --- A.3d ----, 2020 WL 5554644, at *30 (Pa. Sept. 17, 2020) (citing approvingly *Republican Party of Pa. v. Cortés*, 218 F. Supp. 3d 396, 408, 415 (E.D. Pa. 2016)) (“there is no individual constitutional right to serve as a poll watcher; rather, the right to do so is conferred by statute”; nor does poll watching implicate anyone’s First Amendment rights); *Trump*, 2020 WL 5997680, at *72 (same); *accord Harris v. Conradi*, 675 F.2d 1212, 1216 n.10 (11th Cir. 1982); *Baer v. Meyer*, 728 F.2d 471, 476 (10th Cir. 1984); *Cotz v. Mastroeni*, 476 F. Supp. 2d 332, 364 (S.D.N.Y. 2007); *Republican Party*, 218 F. Supp. 3d at 414 (“Because the Pennsylvania Election Code, not the United States Constitution, grants parts the ability to appoint poll watchers, the state is free to regulate their use”). This case law is equally applicable to this case.

violate the Equal Protection Clause. *See id.* at 409 (“the legislature chose to ‘draw the lines’ at the county level, something entirely rational in fashioning a scheme for a state as large as Pennsylvania”); *see also Donald J. Trump for President, Inc. v. Boockvar*, No. 20-966, --- F. Supp. 3d ----, 2020 WL 5997680, at *49 (W.D. Pa. Oct. 10, 2020) (“[T]he legislature’s decision to leave the counties with ultimate discretion when it comes to how, and to what extent, to use drop boxes ... is also reasonable, and justified by sufficiently weighty governmental interests, given the many variations in population, geography, local political culture, crime rates, and resources.”)

Once again, the statutory provisions at issue give the Campaign only the right “to remain in the room” and to “be present” where and when the canvassing occurs. The Board has indisputably honored that right, and, as confirmed by the record, has done so in a manner that affords the Campaign’s representatives the ability to observe every stage of the canvassing process, such that they can describe it with “exacting and copious” detail. (App. B at 8.) The Election Code does *not* say that representatives have the right to be able to read the language written on each ballot declaration or otherwise to make their own determinations of declaration sufficiency with respect to individual ballots. No such right exists.

5. The Court of Common Pleas’ Decision Is Consistent With Decisions Interpreting Analogous Statutes in Other Jurisdictions

Finally, recent cases involving canvassing during the COVID-19 pandemic directly support the Court of Common Pleas’ decision below. Within the last week, a Nevada state court rejected the petition for mandamus filed by the plaintiffs—including the Campaign—who similarly complained about the amount of access they were given to the canvassing process. *See* Order Den[y]ing Emergency Petition for Writ of Mandamus, or, in the Alternative, Writ of Prohibition, *Kraus v. Cegavske*, No. 20 OC 00142 1B (Nev. Dist. Ct. filed Oct. 29, 2020) (attached as Exhibit 5 hereto). The Campaign contended that it had “a right to observers having meaningful observation under [certain Nevada statutes

regarding the canvassing process].” *Id.* at 10. Notably, those statutes provided rights analogous to those the Pennsylvania Election Code provide the Campaign here. One of the Nevada statutes required the county to “allow members of the general public to observe the counting of the ballots.” *Id.* at 8. Another provided that “the counting procedure must be public.” *Id.* at 9. As the court pointed out—and as is also true of the Pennsylvania Election Code—the Nevada statutes “do not use the modifier ‘meaningful.’” *Id.* at 10.

The court rejected the Campaign’s argument for reasons equally applicable here. The Nevada statutory requirements regarding access to the canvassing process, like the Pennsylvania Election Code provisions, “are very general. The legislature left to the election professionals, the Secretary of State and the county election officials, wide discretion in establishing the specifics of the [procedures].” *Id.* The Nevada court held that “Petitioners failed to prove either [the Secretary of State] or [the relevant county election official] exercised their discretionary authority arbitrarily or through mere caprice.” *Id.*

The Nevada court’s reasons for rejecting the Campaign’s arguments in that case apply with equal force to the Campaign’s arguments here:

Petitioners seem to request unlimited access to all areas of the ballot counting area and observation of all information involved in the ballot counting process so they can verify the validity of the ballot, creating in effect a second tier of ballot counters and/or concurrent auditors of the ballot counting election workers. Petitioners failed to cite any constitutional provision, statu[t]e, rule, or case that supports such a

request. *The above-cited statutes created observers not counters, validators, or auditors. Allowing such access creates a host of problems. Ballots and verification tools contain confidential voter information that observers have no[] right to know. Creating a second tier of counters, validators, or auditors would slow a process the Petitioners failed to prove is flawed. The request if granted would result in an increase in the number of persons in the ballot processing areas at a time when social distancing is so important because of the COVID-19 pandemic.*

Petitioners have failed to prove [the respondent county official] has interfered with any right they or anyone else has as an observer.

Id. at 10-11.¹⁶

The same analysis applies here. The Pennsylvania Election Code does not even refer to “observers.” And it certainly does not vest representatives with the right effectively to be “auditors.” Just as the respondent count official in the Nevada acted well within the proper scope of her discretion in issuing and enforcing the challenged access regulations in that case, so too did the Board here.

To the same effect is the decision of a California court in September 2020.

Minute Order, *Election Integrity Project Cal. Inc. v. Lunn*, No. 56-2020-00540781

¹⁶ The Campaign here appealed the Nevada state court decision to the Nevada Supreme Court and also sought a stay of the decision pending appeal. Order Granting in Part and Denying in Part Motion for Stay and to Expedite Appeal, *Kraus v. Cegavske*, No. 82018, 2020 WL 6483971 (Nev. Nov. 3, 2020). On November 3, the court denied the stay request, on the grounds that, among other things, “appellants have not demonstrated a sufficient likelihood of success” on the merits. *Id.* at 2. The court set a briefing schedule such that Respondents/Appellees’ brief was due on November 9, 2020. *Id.*

(Cal. Super. Ct. filed Sept. 15, 2020) (attached as Exhibit 6 hereto). There, the California Election Code “authorize[d] the presence of observers for the ballot counting process.” *Id.* at 1. The defendant official “established certain protocols which include having observers stay in certain designated areas in the ballot counting area, prohibiting observers from communicating with election workers, and requiring that observers request permission to move from one designated area to another.” *Id.* Like the Campaign here, the plaintiff “concede[d] that these protocols allow[ed] them to observe, but not sufficiently so that they can lodge a challenge if they believe that an election workers has made an error in accepting a mail ballot.” *Id.* The court rejected plaintiff’s position because the statute did not require what plaintiffs demanded: “The court finds that the defendant’s procedures in place are reasonable considering the need to effectively conduct the business of counting ballots and the restrictions imposed by the distancing requirements of the Covid pandemic.... [T]he court finds that the role of the observer is observation of the process, and does not extend to challenging the decisions of the election workers.” *Id.* at 2. Here, as in that case, the court’s conclusion rested on factual findings made after a hearing with live witnesses. (*See* App. B at 8 (“[W]e conclude, based on the witness’s testimony, that the Board of Elections has complied with the observations requirements under 25 P.S. § 3146.8 and that Plaintiff is not entitled to the relief he seeks.”)). There is no basis to disturb that

conclusion on appeal.

VIII. CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the Commonwealth Court below and enter judgment for the Board.

Date: November 11, 2020

Respectfully submitted,

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

By: /s/ Mark A. Aronchick
Mark A. Aronchick (I.D. No. 20261)
Robert A. Wiygul (I.D. No. 310760)
One Logan Square, 27th Floor
Philadelphia, PA 19103
Telephone: (215) 496-7050
Email: maronchick@hangleys.com

CITY OF PHILADELPHIA
LAW DEPARTMENT
Marcel S. Pratt, City Solicitor
Sean J. McGrath, Assistant City Solicitor
Craig Gottlieb, Senior Attorney
Zach Strassburger, Assistant City Solicitor
1515 Arch Street, 17th Floor
Philadelphia, PA 19102-1595
(215) 683-5444

*Counsel for Appellant The City of Philadelphia
Board of Elections*

APPENDIX A

Commonwealth Court Opinion

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

| | | |
|-------------------------------|---|-----------------------------|
| In Re: Canvassing Observation | : | |
| | : | |
| Appeal of: Donald J. Trump | : | No. 1094 C.D. 2020 |
| for President, Inc. | : | Submitted: November 5, 2020 |

BEFORE: HONORABLE CHRISTINE FIZZANO CANNON, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE FIZZANO CANNON

FILED: November 5, 2020

Donald J. Trump for President, Inc. (Petitioner) appeals the November 3, 2020 order of the Court of Common Pleas of Philadelphia County Election Court (trial court) that denied Petitioner's oral motion to allow closer observation of the canvassing of ballots (Motion). Upon review, we reverse.

On the evening of November 3, 2020, Petitioner, as a representative of presidential candidate Donald J. Trump (Candidate), sent a representative to the Philadelphia Convention Center to observe the canvassing process of absentee and mail-in ballots submitted in Philadelphia County. When its representative proved unable to observe the process to its satisfaction, Petitioner made its Motion in the trial court requesting that the trial court require the Philadelphia County Board of Elections (Board) to allow Petitioner closer access to better observe the canvassing process. The trial court conducted a hearing on the Motion on the night of November 3, 2020,¹ and issued the order denying the Motion on the morning of November 4,

¹ The hearing commenced at 9:51 p.m. and ended at 11:43 p.m. See Notes of Testimony, November 3, 2020 (N.T.) at 4 & 58.

2020. Petitioner appealed to this Court on November 4, 2020, shortly after the trial court issued its order.²

On appeal,³ Petitioner claims the trial court erred in denying its Motion because the Board configured the tables used for ballot canvassing in such a way so as to preclude observation of the canvassing process by candidates, watchers, and candidates' representatives. *See Appellant's Brief* at 16-25.⁴ Specifically, Petitioner argues that the goals of transparency and accountability require that candidates' representatives be allowed an opportunity to observe the canvassing process beyond mere physical presence in the room where the canvassing process is taking place. *See id.* at 16-21. Petitioner argues that the Board's arrangement of and placement of barriers within the canvassing area prevent any meaningful observation by watchers, candidates, or candidates' representatives. *See id.* We note that Petitioner expressly states that its appeal is not based on any alleged ability of observers to challenge individual ballots, but instead on the distinct right provided by the Election Code to observe the proceedings. *See id.* at 22-25.

The Board counters that it has complied with the requirements of the Election Code by allowing Petitioner's representative into the room where the canvassing is occurring. *See Board's Brief* at 12-15. The Board argues that the

² The trial court issued its order at 10:03 a.m. on the morning of November 4, 2020. *See Philadelphia County Court of Common Pleas Docket No. 201107003* at 1. Petitioner filed its appeal of the trial court's order at 12:36 p.m. *See id.*

³ Matters requiring this Court to engage in statutory interpretation of the Election Code implicate questions of law, which are subject to a *de novo* standard of review and a plenary scope of review. *See Banfield v. Cortes*, 110 A.3d 155, 166 (Pa. 2015).

⁴ Due to the time constraints involved in this matter, on the evening of November 3, 2020, this Court ordered both parties to submit briefs by 8 a.m. on the morning of November 5, 2020, and notified the parties the matter would be decided thereon without argument. *See Commonwealth Court Order* dated November 4, 2020.

evidence illustrated that Petitioner's representative was able to see every portion of the canvassing process. *See id.* at 15.

This matter requires the Court to interpret the meaning of certain provisions of the Pennsylvania Election Code⁵ (Election Code). Initially, we note that

[i]n matters of statutory interpretation, [appellate courts'] objective is to ascertain and effectuate the intent of the General Assembly. . . . [T]he best indication of legislative intent is the plain language of the statute. In ascertaining the plain meaning of statutory language, [appellate courts] consider it in context and give words and phrases their common and approved usage. When the words of a statute are free and clear of all ambiguity, they are the best indicator of legislative intent; hence, in such circumstances, [appellate courts] cannot disregard the letter of the statute under the pretext of pursuing its spirit.

In re Nov. 3, 2020 Gen. Election, ___ A.3d ___ (Pa., No. 149 MM 2020, filed Oct. 23, 2020), 2020 WL 6252803, at *9 (internal citations and quotation marks omitted). Additionally, our Supreme Court has further explained the following regarding the interpretive principles that govern ambiguous statutes generally and election matters specifically:

[W]e are mindful of the longstanding and overriding policy in this Commonwealth to protect the elective franchise. Moreover, it is well-settled that, although election laws must be strictly construed to prevent fraud, they ordinarily will be construed liberally in favor of the right to vote. Indeed, our goal must be to enfranchise and not to disenfranchise the electorate. Lastly, in resolving statutory ambiguity, we may consider, *inter alia*, the

⁵ Act of June 3, 1937, P.L. 1333, *as amended*, §§ 2600-3591.

occasion and necessity for, the mischief to be remedied by,
and the object to be obtained by the statute.

Pa. Democratic Party v. Boockvar, ___ A.3d ___ (Pa., No. 133 MM 2020, filed Sept. 17, 2020) (internal citations, quotation marks, and brackets omitted).

This matter concerns the following Election Code provisions. First, Section 310(b) provides, in pertinent part, that

[e]very candidate shall be entitled *to be present* in person or by attorney in fact duly authorized, and to participate in any proceeding before any county board whenever any matters which may affect his candidacy are being heard, including any computation and canvassing of returns of any primary or election or recount of ballots or recanvass of voting machines affecting his candidacy.

25 P.S. § 2650(b) (emphasis provided). Next, Section 1308(b) provides that

[w]atchers shall be permitted *to be present* when the envelopes containing official absentee ballots and mail-in ballots are opened and when such ballots are counted and recorded.

25 P.S. § 3146.8(b)⁶ (emphasis provided). Lastly, Section 1308(g)(1.1) provides, in pertinent part, that

[o]ne authorized representative of each candidate in an election and one representative from each political party shall be permitted *to remain in the room* in which the absentee ballots and mail-in ballots are pre-canvassed.

25 P.S. § 3146.8(g)(1.1) (emphasis provided).

⁶ Section 1308 was recently amended by Section 7 of the Act of October 31, 2019, P.L. 552, No. 77, and Section 11 of the Act of March 27, 2020, P.L. 41, No. 12.

At issue here is the interpretation of the phrase “to remain in the room” where ballots are canvassed from 25 P.S. § 3146.8(g)(1.1) and the language allowing candidates, watchers, and candidates’ representatives to be “present” during the canvassing process. The Board argues that by using the terms “presence” and “to remain in the room,” the Election Code requires simple physical presence of an observer in the room where ballot canvassing occurs, and nothing more. Petitioner, on the other hand, argues that “presence” and “remaining in the room” implies an ability to observe in addition to physical presence. Because these competing interpretations are each reasonable, the Election Code is ambiguous. *See A.S. v. Pa. State Police*, 143 A.3d 896, 905-06 (Pa. 2016) (explaining that a “statute is ambiguous when there are at least two reasonable interpretations of the text”).

Viewing the language of the Election Code sections in question with an eye toward maintaining the integrity of the elective process in the Commonwealth, as we must, we find the language of these sections imports upon candidates, watchers, or candidates’ representatives at least a modicum of observational leeway to ascertain sufficient details of the canvassing process for the purpose of intelligently assessing and/or reporting to the candidate represented the details of the canvassing process. To find otherwise would completely undercut the intent of the Election Code by reducing candidates’ representatives to tourists incapable of carrying out the observations allowed by the Election Code for the purposes of reporting to the candidate they represent. Obviously, a critical prerequisite to being able to accurately report anything to the represented candidate is that the representatives have the opportunity to observe the processes upon which they are to report. Simply put, allowing candidates, watchers, or candidates’ representatives to be physically “present” or “in the room” during the canvassing process but also

allowing the relegation of those representatives to a position where meaningful observation of the processes they are present to observe is a practical impossibility would be an absurd interpretation of the Election Code that we cannot countenance.⁷ *See Gavin v. Loeffelbein*, 205 A.3d 1209, 1221 (Pa. 2019) (noting that appellate statutory interpretation must not produce absurd results).

Turning to the facts of the instant matter, Jeremy Mercer testified before the trial court on behalf of Petitioner.⁸ *See* Notes of Testimony, November 3, 2020 (N.T.) at 20-41. Mercer explained he was one of the representatives designated on behalf of Candidate to observe the canvassing process of absentee and mail-in ballots in Philadelphia County on November 3, 2020. *See id.* at 20-21. Despite his status as Candidate's designated representative,⁹ Mercer explained that he was not able to get within 15 feet of the tables where the ballots were being processed.¹⁰ *See id.* at 24. Mercer explained the very large hall where the ballots were being processed had four areas with dozens of tables that spread out away from him at roughly 6-foot intervals behind the closest table, with the farthest one being located over 100 feet from Mercer. *See* N.T. at 23-24. Mercer also testified that a waist-high metal fence

⁷ We note that under the trial court's interpretation of the applicable provisions of the Code, a candidate's representative being relegated to one corner of a convention center hall while ballot canvassing occurs in the opposite corner of the hall would comply with the Code because the representative is present in the room.

⁸ Mercer did not testify in person before the trial court, but instead testified via Zoom videoconferencing from the Philadelphia Convention Center, where the canvassing activities were occurring. *See* N.T. at 17. The trial court, however, did not permit Mercer to use his phone to show the trial court the canvassing setup during the Zoom call. *See id.* at 21-23.

⁹ Mercer testified that, in addition to Candidate, he was also serving as the designated representative for other candidates on the ballot. *See* N.T. at 20-21.

¹⁰ Mercer explained the very large hall where the ballots were being processed had four areas with dozens of tables that spread out away from him at roughly 6-foot intervals behind the closest table, with the farthest one being located over 100 feet from Mercer. *See* N.T. at 23-24.

prevented him from getting any closer to the tables where the ballots were being processed. *See id.* at 25. As a result of these distances and barriers, Mercer explained that he was unable to observe the ballots being processed, the envelopes that contained them, whether the secrecy envelopes were present, or any markings on those envelopes. *See id.* at 27-30. Mercer explained that he even used binoculars to attempt to get a better view of the proceedings and ballots, but to no avail. *See id.* at 32.

The Board presented no evidence during the hearing.

In its Pennsylvania Rules of Appellate Procedure 1925(a) opinion filed November 4, 2020 (Trial Court Opinion), the trial court concluded:

The Board designed the layout of the Philadelphia Convention Center for the canvassing process in keeping with CDC guidelines on social distancing between individuals and safety protocols.¹ In creating this physical layout, the Board struck the proper balance between the observer's ability to observe the canvassing process and the paramount interest of voter privacy as there are declaration envelopes that are being opened, secrecy envelopes that are being opened, and ballots that are being extracted.

¹ The Election Board allows the public to observe the canvassing process on You Tube on their website at <https://youtu.be/-Zzb-7EH-MQ>.

Trial Court Opinion at 3 (some footnotes omitted). These conclusions were unsupported by the record and contrary to the uncontradicted testimony of Mercer, the only witness to present testimony in this matter and who the trial court did not find lacked credibility. Nor does the record contain any evidence regarding the

Board's thought process, justification for, or strategy in designing its chosen canvassing setup layout.

Based on this testimony, we conclude that, while he was technically in the room where the canvassing was occurring in strict compliance with the text of the Election Code, Mercer's inability to actually observe the canvassing processes in any meaningful way completely frustrates the intent of the Election Code in allowing a representative in his position to be in the room for observation purposes in the first place. Accordingly, the trial court erred as a matter of law in determining that the Board had sufficiently complied with the requirements of the Election Code and denying Petitioner's Motion.

Further, we acknowledge the Board's argument that closer observation by Petitioner is pointless because Petitioner may not challenge individual ballots in any event. *See* Board's Brief at 18-21. We appreciate that "the Election Code presently provides no mechanism for time-of-canvassing challenges by candidate or party representatives[.]" *In re Nov. 3, 2020 Gen. Election*, at *14. We agree with Petitioner, however, that this matter involves the issue of the right of observation, not the right to challenge. *See* Petitioner's Brief at 22-25. As discussed *supra*, the Election Code provides candidates, watchers, and candidates' representatives this right to observe the canvassing process. *See* 25 P.S. §§ 3146.8(b) & 3146.8(g)(1.1).

For these reasons, we reverse the trial court order denying Petitioner's Motion.

s/Christine Fizzano Cannon

CHRISTINE FIZZANO CANNON, Judge

Certified from the Record

NOV 05 2020

And Order Exit

APPENDIX B

Court of Common Pleas Opinion

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT
TRIAL DIVISION – CIVIL SECTION

Filed and Attested by the
Office of Judicial Records
11/04/2020 06:49 pm
S. WULKO

IN RE: : Election Matter
CANVASSING OBSERVATION :
: NOVEMBER TERM 2020
: No. 07003
: (201107003)
APPEAL OF DONALD J. TRUMP for :
PRESIDENT, INC. : 1094 CD 2020

OPINION

Tsai, J.

I. Introduction

Donald J. Trump for President, Inc. (“Appellant”) has taken an appeal from our November 3, 2020 Order denying his oral petition to conduct closer inspection of the ballot canvassing process at the Philadelphia Convention Center. In his oral petition, Appellant argued that the Commissioners did not provide his designated observers meaningful access to observe the Election Board employees who are canvassing the absentee and mail-in ballots under 25 P.S. § 3146.8(b) so they could report back to the Candidate as to the integrity of the canvassing process. Appellant had filed two similar motions earlier in the day, but withdrew them both without prejudice and presented the instant petition to the Election Court about 15 minutes before Election Court was scheduled to close at 10 p.m. EST. Based on the testimony of the witness presented by Appellant in support of the Petition, we found that the accommodations afforded to campaign representatives to observe the Election Board employees complied with the relevant provisions of the Election Code and denied the Petition.

For the reasons that follow, we respectfully ask this Court to affirm our decision.

II. Factual Findings

Appellant's representative, Jeremy Mercer, is a volunteer for Appellant's campaign. He served as an observer of the canvassing process on November 3, 2020 starting at 7 a.m. throughout the entire day. Mr. Mercer testified via Zoom technology.

The observer described how the canvassing room is set up. There are 3 rows of 15 tables spaced apart and observers are asked to stand behind a metal barrier facing the first table, which is about 15-18 feet away. Nov. 3, 2020 Tr. at 21:20-24:23. From that vantage point, Mr. Mercer can see the workers prepare the forms for evaluation, examine them, and sort the ballot into separate bins. He also described in detail the various stages of the process that he could observe, including "extraction" from about 20 feet away, "where the ballot envelopes are being fed through machines to slice them open so that what's inside the outer envelope can be removed, and then another set of what appear to be the same or very similar machines so that the inner secrecy envelopes then can be sliced open so that what's inside those can be removed." Nov. 3, 2020 Tr. At 28:14-30.

When asked about impediments to his line of sight, he identified the easels that identify each section of the canvassing process around which he can move. Nov. 3, 2020 Tr. 23:2-11. The observer was free to walk around the premises as he wished except beyond the metal safety or "crowd control" barrier. He recounted the specific steps followed by the staff to canvass a ballot. He cited concerns about the long distance between him and the employees, not because he could not see what they were doing, but because he could not see individual markings on the ballot or whether the signature page was completed properly and assess whether the Election Board employee was

handling the ballot properly under the Election Code. He was able to use binoculars, but he did not find them to be useful because the process is fast. Nov. 3, 2020 Tr. 36:2-14.

The Board designed the layout of the Philadelphia Convention Center for the canvassing process in keeping with CDC guidelines on social distancing between individuals and safety protocols.¹ In creating this physical layout, the Board struck the proper balance between the observer's ability to observe the canvassing process and the paramount interest of voter privacy, as there are declaration envelopes that are being opened, secrecy envelopes that are being opened, and ballots that are being extracted.²

III. Discussion

This Court ordered as it did based on our analysis of the statutory provision invoked by the Appellant, 25 P.S. § 3146.8(b), which states: "Watchers [also referred to herein as "observers"] shall be permitted to be present when the envelopes containing official absentee ballots and mail-in ballots are opened and when such ballots are counted and recorded." Despite Appellant's argument that the Board of Elections was not providing observers the opportunity to "meaningfully observe" the canvassing of ballots, Appellant was unable to point to any statutory language or case law using the word "meaningful" or elaborating on what constitutes "meaningful observation."

¹ The Election Board allows the public to observe the canvassing process on You Tube on their website at [**https://youtu.be/-Zzb-7EH-MQ**](https://youtu.be/-Zzb-7EH-MQ)

² The observer, who has worn a mask while observing the canvassing, testified that he saw Election Board workers who occasionally stood shoulder to shoulder, contrary to the CDC social distancing guidelines. The Appellant appears to contend that these incidents undercut the legitimacy of the social distancing guidelines which have influenced the design of the layout for observers. We do not believe these occasional, likely necessary, instances of shoulder-to-shoulder interactions between fellow workers to carry out their canvassing duties, is a legitimate reason to direct the Board to relax its current distancing requirements on observers.

Furthermore, § 3146.8(b), explicitly allows only for the watchers to “be present” for three activities: (1) the opening of the envelopes containing the ballots, (2) the counting of the ballots, and (3) the recording of the ballots.

The Appellant presented a witness, Jeremy Mercer, who provided copious testimony as to his ability to observe the opening and sorting of ballots. He testified as to his ability to observe the ballots being opened, placed in trays, and sorted – including the separation of so-called “naked ballots,” which do not have inner secrecy envelopes. This satisfies the three explicit objects of the statute. The witness’s concerns, however, pertained to his inability to observe the writing on the outside of the ballots. But observing the writing on the outside of the ballots is not necessary in order to simply be able to “be present” to watch the **opening** of the ballots or to watch the **counting and recording** of the ballots. The statute provides no further specific activities for the watchers to observe, and no activities for the watchers to do other than simply “be present.” Watchers are not directed to audit ballots or to verify signatures, to verify voter address, or to do anything else that would require a watcher to see the writing or markings on the outside of either envelope, including challenging the ballots or ballot signatures.³

³ “[I]n 2020, the legislature eliminated time-of-canvassing challenges *entirely* from Section 3146.8(g)(3). ... Accordingly, the Election Code presently provides no mechanism for time-of-canvassing challenges by candidate or party representatives. ... Moreover, as is plain from the above account, at no time did the Code provide for challenges to ballot *signatures*.”

Presumably, in expanding voting by mail, the legislature sought to streamline the process for canvassing such ballots, perhaps to avoid undermining the expansion effort by eliminating the prospect that voters – including a potentially large number of new mail-in voters – would be brought before the board or the courts to answer third-party challenges. Regardless, Intervenor would have us interpret the Election Code, which

Moreover, the Pennsylvania courts have clearly delineated the purpose of having watchers observe canvassing by making “a distinction between votes which are improperly cast and the subsequent mismanagement of votes by the election board, when those votes were completed correctly by the absentee voter.” *In re Canvass of Absentee Ballots of Gen. Election*, 39 Pa. D. & C.2d 429, 433 (Pa. Com. Pl. 1965).

The court further elaborated that:

In the first situation, the strict requirements must be followed to protect the individual's vote; in the latter case, although strict compliance is desired, it is not mandatory, because slight irregularities can be anticipated in the overall handling of absentee ballots. In the latter case, the principles of liberal interpretation should apply, consistent with the above-quoted approach of the Perles case, *supra*, viz.: “Every rationalization within the realm of common sense should aim at saving the ballot rather than voiding it ...”D’

Id. at 433-34.

That line of reasoning ultimately led the court to hold that even when it does not condone a short-cutting of canvassing procedures under the act, such short-cutting does not by itself seriously breach the legislative intent. *See id.* at 434.⁴ The court thus

now does not provide for time-of-canvassing ballot challenges, and which never allowed for signature challenges, as both requiring signature comparisons at canvassing, and allowing for challenges on that basis. We reject this invitation.” *In re November 3, 2020 Gen. Election*, 149 MM 2020, 2020 WL 6252803, at *14 (Pa. Oct. 23, 2020) (footnotes, citations and quotations omitted).

⁴ “The Montgomery County Board of Elections, prior to the general election of November 2, 1965, met with representatives of both the Democratic and Republican Committees of this county for the purposes of setting up a facile procedure to expedite the handling of absentee ballots within the county. At that meeting, on September 7, 1965, it was agreed that certain procedures required for technical compliance with the dictates of the Absentee Voting Act would be eliminated or modified, so that, at time of canvass, there would be less confusion and involvement. This proposal was approved by Horace A. Davenport, Esq., the solicitor for the county board of elections, Peter P. Stevens, chief clerk for the election board, Sheldon W. Farber, Esq., attorney for the County Democratic Committee, and John G. Kauffman, Esq., attorney for the

denied a “general ‘blanket’ challenge presented by petitioner to all the absentee ballots on the basis of the election board’s departure from the statutory directions.” *Id.*

Likewise, we also recognized that canvassing arrangements may arguably be less than what the observer may deem as optimal without rising to the level of violating the statute, especially when the procedures need to be modified to promote safety during the COVID-19 pandemic. We therefore noted in our order that we “would not discourage the Board from considering the implementation of arrangements to allow for an additional corridor for observation along the side of the canvassing tables if feasible – subject to spatial distancing under COVID-19 and voting privacy requirements.” *In re: Canvassing Observation*, Order of November 3, 2020.

Additionally, in *In re Recanvassing of the First Election Dist. of Jefferson Twp.*, 12 Pa. D. & C.4th 536 (Pa. Com. Pl. 1991), the court reasoned that “the Election Code speaks only of canvassing absentee ballots, not single ones,” and that the “intent of the statute [is] to preserve and insure the secrecy and anonymity of the voter.” *Id.* at 538. Indeed, if watchers like the witness were permitted to observe the canvassing of ballots closely enough to view the names and addresses on single ballots, they would be going beyond the purpose of the statute, which is only to provide for the canvassing of the ballots **writ large**. The watchers would also threaten the secrecy and anonymity of the voter in direct frustration of the statute’s purpose. If the watcher intends to observe the canvassing with the intent of voiding ballots, we must emphasize that we “will not disenfranchise a voter for an act that may be contrary to procedure for

Republican Committee of the county.” *In re Canvass of Absentee Ballots of Gen. Election*, 39 Pa. D. & C.2d 429, 433 (Pa. Com. Pl. 1965)


canvassing the vote,” as ballots are not to be voided “because of some minor irregularities or inconsistencies in the canvassing of the ballots.” *Id.* at 538, 539.

Overall, the watchers’ purpose is not to audit the individual ballots, and “meaningful observation” or “meaningful access” is not a legally recognized reason for a watcher getting close enough to do so. Indeed, the term “meaningful” is not even used in the statute. We note that a similar conclusion has been reached in a similar case in Nevada. In that case, the court explained that the statute provides that “[t]he county...shall allow members of the general public to observe the counting of the ballots...,” but does not “use the modifier ‘meaningful.’” *Kraus v. Cegavske*, First Judicial Dist. Of Nevada, Case No. 20 OC 00142 1B, Dept. 2, October 29, 2020, at p. 10. That court also specifically noted that “Petitioners seem to request ... observation of all information involved in the ballot counting process so they can verify the validity of the ballot, creating in effect a second tier of ballot counters and/or concurrent auditors of the ballot counting election workers,” adding that the “statutes created observers not counters, validators, or auditors.” *Id.* at 10-11.

IV. Conclusion

Appellant's witness, Jerry Mercer, provided exacting and copious testimony as to his ability to observe the opening and sorting of ballots. Given that observers are directed only to observe and not to audit ballots, we conclude, based on the witness's testimony, that the Board of Elections has complied with the observation requirements under 25 P.S. § 3146.8 and that Appellant is not entitled to the relief that he seeks.

BY THE COURT:



J.
Presiding Election Day Judge

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DONALD J. TRUMP FOR
PRESIDENT, INC.; LAWRENCE
ROBERTS; and
DAVID JOHN HENRY;

Plaintiffs,

v.

KATHY BOOCKVAR, in her capacity
as Secretary of the Commonwealth of
Pennsylvania; ALLEGHENY
COUNTY BOARD OF ELECTIONS;
CENTRE COUNTY BOARD OF
ELECTIONS; CHESTER COUNTY
BOARD OF ELECTIONS;
DELAWARE COUNTY BOARD OF
ELECTIONS; MONTGOMERY
COUNTY BOARD OF ELECTIONS;
NORTHAMPTON COUNTY BOARD
OF ELECTIONS; and
PHILADELPHIA COUNTY BOARD
OF ELECTIONS;

Defendants.

CIVIL ACTION

No. 20-CV- _____

**VERIFIED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs, by their undersigned counsel, hereby complain of Defendants as follows:

INTRODUCTION

1. American citizens deserve fair elections. Every legal – not illegal – vote should be counted. And no government power, be it state or federal, may deny American citizens the right to observe the process by which votes are cast, processed, and tabulated. We must protect our democracy with complete transparency.

2. Nothing less than the integrity of the 2020 Presidential election is at stake in this action. Defendants, the very officials charged with ensuring the integrity of the election in Pennsylvania, have so mismanaged the election process that no one – not the voters and not President Trump’s campaign – can have any faith that their most sacred and basic rights under the United States Constitution are being protected. The evidence is plain that Defendants have been and are blatantly violating the protections and procedures, including those enacted by the Pennsylvania General Assembly, vitally necessary to ensure that the votes of the citizens of Pennsylvania are not illegally diluted by invalid ballots and that the election is free and fair.

3. While the bedrock of American elections has been transparency, almost every critical aspect of Pennsylvania’s November 3, 2020 General Election was effectively shrouded in secrecy. Democrat-majority counties provided political parties and candidates, including the Trump Campaign, no meaningful access or

actual opportunity to review and assess mail-in ballots during the pre-canvassing meetings.

4. Allegheny and Philadelphia Counties alone received and processed 682,479 mail-in and absentee ballots without review by the political parties and candidates. These are unprecedented numbers in Pennsylvania's elections history. Rather than engaging in an open and transparent process to give credibility to Pennsylvania's brand-new voting system, the processes were hidden during the receipt, review, opening, and tabulation of those 682,479 votes in direct contravention of the Election Code.

5. Allegheny and Pennsylvania counties conducted the canvassing and tabulation in convention center rooms and placed observers far away from the action. In the case of Philadelphia County, when an emergency order was issued requiring them to provide meaningful access to representatives, Philadelphia failed to comply.

6. Worse, Democratic-heavy counties violated the mandates of the Election Code and the determinations of the Pennsylvania Supreme Court, advantaging voters in Democratic-heavy counties as compared to those in Republican-heavy counties. Democratic-heavy counties engaged in pre-canvass activities prior to November 3, 2020, by reviewing received mail-in ballots for deficiencies, such as lacking the inner secrecy envelope or lacking a signature of the elector on the outer declaration envelope. Those offending Counties then would

notify those voters in order to allow them to cure their ballot deficiencies by voting provisionally on Election Day or cancelling their previously mailed ballot and issuing a replacement. In other words, those counties provided their mail-in voters with the opportunity to cure mail-in and absentee ballot deficiencies, while Republican-heavy counties followed the law and did not provide a notice and cure process, disenfranchising those that themselves complied with the Election Code to cast legal votes.

7. The commonality and statewide nature of these irregularities impacts the elections.

8. “The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” [*Bush v. Gore*, 531 U.S. 98, 104-05 \(2000\)](#). All citizens, including Pennsylvanians, have rights under the United States Constitution to the full, free, and accurate elections built upon transparency and verifiability. Citizens are entitled – and deserve – to vote in a transparent system that is designed to protect against vote dilution.

9. As evidenced by numerous sworn statements, Defendants egregious misconduct has included ignoring legislative mandates concerning mail-in ballots – which amounted to over 2.6 million of the approximately 6.75 million votes in

Pennsylvania – including the mandate that mail-in ballots be post-marked on or before Election Day, and critically, preventing Plaintiff’s poll watchers from observing the receipt, review, opening, and tabulation of mail-in ballots. Those mail-in ballots are evaluated on an entirely parallel track to those ballots cast in person.

10. On Election Day, when the Trump Campaign’s poll watchers were present and allowed to observe in various polling locations throughout the Commonwealth, they observed and reported numerous instances of election workers failing to follow the statutory mandates relating to two critical requirements, among other issues: (1) a voter’s right to spoil their mail-in ballot at their polling place on election day and to then vote in-person, and (2) the ability for voters to vote provisionally on election day when a mail-in ballot has already been received for them, but when they did not cast those mail-in ballots.

11. Additionally, Plaintiffs have learned that certain County Election Boards were mailing unsolicited mail-in ballots to voters despite the fact that they had not applied for a mail-in ballot for the General Election, thus resulting in voters who received two ballots. The offending counties also failed to undertake any effort to ensure destruction of the duplicate ballots.

12. The right to vote includes not just the right to cast a ballot, but also the right to have it fairly counted if it is legally cast. The right to vote is infringed if a

vote is cancelled or diluted by a fraudulent or illegal vote, including without limitation when a single person votes multiple times. The Supreme Court of the United States has made this clear in case after case. *See, e.g., Gray v. Sanders*, 372 U.S. 368, 380 (1963) (every vote must be “protected from the diluting effect of illegal ballots.”); *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196 (2008) (plurality op. of Stevens, J.) (“There is no question about the legitimacy or importance of the State’s interest in counting only the votes of eligible voters.”); accord *Reynolds v. Sims*, 377 U.S. 533, 554-55 & n.29 (1964). The disparate treatment of Pennsylvania voters, in subjecting one class of voters to greater burdens or scrutiny than another, violates Equal Protection guarantees because “the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Reynolds*, 377 U.S. at 555.

13. In a rush to count mail ballots and ensure Democrat Joe Biden is elected, Pennsylvania has created an illegal two-tiered voting system for the 2020 General Election, devaluing in-person votes. For voters that appeared at the polls, those citizens were required to sign voter registrations, have those signatures checked against voter rolls, vote in a polling place monitored by statutorily-authorized poll observers, and have their votes counted in a transparent and verifiable open and observed manner. By contrast, due to the arbitrary,

unauthorized, and standardless actions of the Secretary of the Commonwealth of Pennsylvania, Kathy Boockvar, nearly 2.65 million votes were cast through a “mail-in” process that lacked all of the hallmarks of transparency and verifiability that were present for in-person voters. In fact, Secretary Boockvar affirmatively excised nearly every element of transparency and verifiability. Among other things, the Secretary refused to require adequate verification of the voter’s identity. Rather than require votes to be received on the day of election, the Secretary permitted ballots received up to three days after the election to be counted without any evidence of timely mailing, such as a postmark. Finally, contrary to the in-person voting that is open and transparent to the parties and the candidates, Defendants permitted the review and counting of mail-in ballots largely in secret with no monitoring.

14. Through the arbitrary and illegal actions of the Secretary, Pennsylvania created a two-track system of voting resulting in voters being treated differently depending on how they chose to exercise their franchise. The first, marked by voters appearing personally at the polls complied with transparency and verifiability requirements of Pennsylvania Election Code. The second, marked by a mass of paper ballots received through the mail, was cloaked in darkness and complied with none of those transparency and verifiability requirements. This two-track election system not only violates Plaintiffs’ rights guaranteed by the United States Constitution, but

also violates the structure of the Constitution that elections in the States must be carried out as directed by their respective legislatures.

15. Accordingly, Plaintiffs seek an emergency order prohibiting Defendants from certifying the results of the General Election. In the alternative, Plaintiffs seek an emergency order prohibiting Defendants from certifying any results from the General Election that included the tabulation of absentee and mail-in ballots which do not comply with the Election Code, including, without limitation, the tabulation of absentee and mail-in ballots Trump Campaign's watchers were prevented from observing or based on the tabulation of invalidly cast absentee and mail-in ballots which (i) lack a secrecy envelope, or contain on that envelope any text, mark, or symbol which reveals the elector's identity, political affiliation, or candidate preference, (ii) do not include on the outside envelope a completed declaration that is dated and signed by the elector, or (iii) are delivered in-person by third parties for non-disabled voters. Lastly and in addition to the alternative requests for relief, Plaintiffs seek a permanent injunction requiring the County Election Boards to invalidate ballots cast by voters who were notified and given an opportunity to cure their invalidly cast mail-in ballot.

JURISDICTION AND VENUE

16. Under [28 U.S.C. §§ 1331](#) & [1343](#), this Court has subject matter jurisdiction because this action arises under the Constitution and laws of the United

States and involves a federal election for President of the United States. “A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question.” [*Bush*, 531 U.S. at 113](#) (Rehnquist, C.J., concurring); [*Smiley v. Holm*, 285 U.S. 355, 365 \(1932\)](#). Also, this Court has supplemental jurisdiction over any state law claims under [28 U.S.C. § 1367](#).

17. Venue is proper because a substantial part of the events giving rise to the claims occurred in this District, and certain of the Defendants reside in this District and all of the Defendants are residents of the Commonwealth of Pennsylvania in which this District is located. [28 U.S.C. § 1391\(b\) & \(c\)](#).

PARTIES

18. Plaintiff Donald J. Trump for President, Inc. (hereinafter, the “Trump Campaign”), is the principal committee for the reelection campaign of Donald J. Trump, the 45th President of the United States of America (hereinafter, “President Trump”). President Trump is the Republican nominee for the office of the President of the United States of America in the November 3, 2020 General Election. The Trump Campaign brings this action for itself and on behalf of its candidate, President Trump. As a political committee for a federal candidate, the Trump Campaign has Article III standing to bring this action. *See, e.g.*, [*Orloski v. Davis*, 564 F. Supp. 526, 530-31 \(M.D. Pa. 1983\)](#). *See also* [*Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 587-588 \(5th Cir. 2006\)](#) (“[A]fter the primary election, a candidate steps into

the shoes of his party, and their interests are identical.”); [*In re General Election-1985*, 531 A.2d 836, 838 \(Pa. Commw. Ct. 1987\)](#) (A candidate for office in the election at issue suffers a direct and substantial harm sufficient for standing to contest the manner in which an election will be conducted).

19. Plaintiff David John Henry (hereinafter, “Mr. Henry”) is an adult individual who is a qualified registered elector residing in West Hempfield Township, Lancaster County, Pennsylvania. Mr. Henry constitutes a “qualified elector” as that term is defined in Election Code Section 102(t), [25 P.S. § 2602\(t\)](#). Mr. Henry brings this suit in his capacity as a private citizen. As a qualified elector and registered voter, Mr. Henry has Article III standing to bring this action. *See Orloski*, 564 F. Supp. at 530; *Pierce*, 324 F. Supp. 2d at 692-93.

20. Plaintiff Lawrence Roberts (hereinafter, “Mr. Roberts”) is an adult individual who is a qualified registered elector residing in Uniontown, Fayette County, Pennsylvania. Mr. Roberts constitutes a “qualified elector” as that term is defined in Election Code Section 102(t), [25 P.S. § 2602\(t\)](#). Mr. Roberts brings this suit in his capacity as a private citizen. As a qualified elector and registered voter, Mr. Roberts has Article III standing to bring this action. *See Orloski*, 564 F. Supp. at 530; *Pierce*, 324 F. Supp. 2d at 692-93.

21. Defendant Secretary Boockvar is the Secretary of the Commonwealth. In this role, Secretary Boockvar leads the Pennsylvania Department of State. As

Secretary, she is Pennsylvania's Chief Elections Officer and a member of the Governor's Executive Board. The Pennsylvania Constitution vests no powers or duties in Secretary Boockvar. [*Perzel v. Cortes*, 870 A.2d 759, 764 \(Pa. 2005\)](#). Instead, her general powers and duties concerning elections are set forth in Election Code Section 201, [25 P.S. § 2621](#). Under the Election Code, Secretary Boockvar acts primarily in a ministerial capacity and has no power or authority to intrude upon the province of the Pennsylvania General Assembly. [*Perzel*, 870 A.2d at 764](#); [*Hamilton v. Johnson*, 141 A. 846, 847 \(Pa. 1928\)](#). Secretary Boockvar is sued in her official capacity.

22. Defendants Allegheny, Centre, Chester, Delaware, Philadelphia, Montgomery, and Northampton County Board of Elections (collectively hereinafter, the "County Election Boards") are the county boards of elections in and for the aforementioned counties of the Commonwealth of Pennsylvania as provided by Election Code Section 301, [25 P.S. § 2641](#). The County Election Boards "have jurisdiction over the conduct of primaries and elections in such count[ies], in accordance with the provision of [the Election Code.]" [Id. at § 2641\(a\)](#). The County Election Boards' general powers and duties are set forth in Election Code Section 302, [25 P.S. § 2642](#). The County Election Boards are executive agencies that carry out legislative mandates, and their duties concerning the conduct of elections are purely ministerial with no exercise of discretion. [*Shroyer v. Thomas*, 81 A.2d 435,](#)

437 (Pa. 1951); *Perles v. Hoffman*, 213 A.2d 781, 786 (Pa. 1965) (Cohen, J., concurring). *See also* *Deer Creek Drainage Basin Authority v. County Bd. of Elections*, 381 A.2d 103, 109 (Pa. 1977) (Pomeroy, J., dissenting) (“A board of elections, it has been well said, “does not sit as a quasi-judicial body adjudicating contending forces as it wishes, but rather as an executive agency to carry out legislative mandates. Its duties are ministerial only.”); *In re Municipal Reapportionment of Township of Haverford*, 873 A.2d 821, 833, n.18 (Pa. Commw. Ct. 2005) (“The duties of a board of elections under the Election Code are ministerial and allow for no exercise of discretion.”), *appeal denied* 897 A.2d 462 (Pa. 2006).

FACTUAL ALLEGATIONS

I. Federal Constitutional Protections for Free and Fair Public Elections.

23. Free, fair, and transparent public elections are crucial to democracy – a government of the people, by the people, and for the people.

24. In statewide elections involving federal candidates, “a State’s regulatory authority springs directly from the United States Constitution.” *Project Vote v. Kelly*, 805 F. Supp. 2d 152, 174 (W.D. Pa. 2011) (citing *Cook v. Gralike*, 531 U.S. 510, 522-23 (2001); *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 805 (1995)).

25. The Elections Clause of the United States Constitution states that “[t]he Times, Places, and Manner of holding Elections for Senators and Representatives,

shall be prescribed in each State by *the Legislature* thereof.” [U.S. Const. Art. I, § 4, cl. 1](#) (emphasis added). Likewise, the Electors Clause of the United States Constitution states that “[e]ach State shall appoint, in such Manner as *the Legislature* thereof may direct, a Number of Electors” for President. [U.S. Const. Art. II, § 1, cl. 2](#) (emphasis added).

26. The Legislature is ““the representative body which ma[kes] the laws of the people.”” [Smiley 285 U.S. 365](#). Regulations of congressional and presidential elections, thus, “must be in accordance with the method which the state has prescribed for legislative enactments.” [Id. at 367](#); *see also* [Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n, 576 U.S. 787, 135 S. Ct. 2652, 2668 \(U.S. 2015\)](#).

27. In Pennsylvania, the “legislature” is the General Assembly. [Pa. Const. Art. II, § 1](#). *See also* [Winston v. Moore, 91 A. 520, 522 \(Pa. 1914\)](#) (“The power to regulate elections is legislative, and has always been exercised by the lawmaking branch of the government.”); [Patterson v. Barlow, 60 Pa. 54, 75 \(1869\)](#) (“It is admitted that the Constitution cannot execute itself, and that the power to regulate elections is a legislative one, which has always been exercised by the General Assembly since the foundation of the government.”).

28. Because the United States Constitution reserves for state legislatures the power to set the time, place, and manner of holding elections for Congress and the President, state executive officers, including but not limited to Secretary

Boockvar, have no authority to unilaterally exercise that power, much less flout existing legislation.

29. Nor can the authority to ignore existing legislation be delegated to an executive officer. While the Elections Clause “was not adopted to diminish a State’s authority to determine its own lawmaking processes,” [*Ariz. State Legislature*, 135 S. Ct. at 2677](#), it does hold states accountable to their chosen processes when it comes to regulating federal elections. [*Id.* at 2668](#). A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question.” [*Bush*, 531 U.S. at 113](#) (Rehnquist, J., concurring); [*Smiley*, 285 U.S. at 365](#).

II. Actual Observation by Watchers and Representatives Ensures Free and Fair Public Elections.

30. Elections in Pennsylvania are governed and regulated by the Pennsylvania Election Code. “Although the [Commonwealth] is ultimately responsible for the conduct and organization of elections, the statutory scheme [promulgated by the Election Code] delegates aspects of that responsibility to the political parties. This delegation is a legislative recognition of ‘the critical role played by political parties in the process of selecting and electing candidates for state and national office.’” [*Tiryak v. Jordan*, 472 F. Supp. 822, 823-24 \(E.D. Pa. 1979\)](#) (quoting [*Marchioro v. Chaney*, 442 U.S. 191, 195 \(1979\)](#)). “Pennsylvania’s election laws apply equally to federal and state elections.” [*Project Vote*, 805 F. Supp. 2d at](#)

174 (citing *Kuznik v. Westmoreland County Board of Elections*, 902 A.2d 476, 490-93 (Pa. 2006)).

31. The United States Supreme Court has noted: “[S]unlight,” as has so often been observed, “is the most powerful of all disinfectants.” *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 305 (1964).

32. The Pennsylvania General Assembly understood that sentiment long ago and intertwined the concept of watching with the act of voting, enshrining transparency and accountability into the process in which Pennsylvanians choose elected officials. After all, reasonable people cannot dispute that “openness of the voting process helps prevent election fraud, voter intimidation, and various other kinds of electoral evils.” *PG Publishing Co. v. Aichele*, 705 F.3d 91, 111 (3d Cir. 2013).

33. As long as Pennsylvania has had an Election Code, it has had watchers. In 1937, the Pennsylvania General Assembly included the concept of “watchers” in the then-newly enacted Pennsylvania Election Code, a statutory scheme addressing the administration of elections in the Commonwealth. See 25 P.S. §§ 2600, et. seq.

34. As it exists today, Election Code Section 417, codified at 25 P.S. § 2687, creates the position of watcher and entrusts to each candidate for nomination or election at any election, and each political party and each political body which

has nominated candidates for such elections, the power to appoint watchers to serve in each election district in the Commonwealth. *See* [25 P.S. § 2687\(a\)](#).

35. Under the Election Code, “poll watcher[s] perform[] a dual function on Election Day. On the one hand, because [watchers] are designated and paid by [candidates, political parties, and/or political bodies], [their] job is to guard the interests of [their] candidates [or political parties or bodies]. On the other hand, because the exercise of [their] authority promotes a free and fair election, poll watcher[s] serve to guard the integrity of the vote. Protecting the purity of the electoral process is a state responsibility and [watchers’] statutory role in providing that protection involves [them] in a public activity, regardless of [their] private political motives.” [Tiryak, 472 F. Supp. at 824](#).

36. Under Election Code Section 417(b), watchers may observe the election process from the time the first polling place official appears in the morning to open the polling place until the time the polls are closed and the election returns are counted and posted at the polling place entrance. [25 P.S. § 2687\(b\)](#). However, until the polls close, only one watcher representing each political party and its candidates at a general, municipal, or special election can be present in the polling place outside the enclosed space from the time that the election officers meet to open the polls and until the counting of the votes is complete. *Id.* *See also* Election Code Section 1220, [25 P.S. § 3060\(a\) & \(d\)](#). Once the polls close and while the ballots

are being counted, then all the watchers for candidates and political parties or bodies are permitted to be in the polling place outside the enclosed space. [25 P.S. § 2687\(b\)](#).

37. In addition to the activities authorized by Election Code Section 417(b), watchers are among those who are authorized under Election Code Section 1210(d), [25 P.S. § 3050\(d\)](#), to challenge any person who presents himself or herself to vote at a polling place on Election Day concerning the voter's identity, continued residence in the election district, or registration status. See [25 P.S. § 3050\(d\)](#) (“any person, although personally registered as an elector, may be challenged by any qualified elector, election officer, overseer, or *watcher* at any primary or election as to his identity, as to his continued residence in the election district or as to any alleged violation of the provisions of section 1210 of this act, ...”) (emphasis added).

38. Also, watchers are authorized under Election Code Section 1308(b), 25 P.S. § 3146.8(b), to be present when the envelopes containing absentee and mail-in ballots are opened, counted, and recorded. [25 P.S. § 3146.8\(b\)](#).

39. Moreover, watchers' functions go beyond the activities authorized under Election Code Sections 417(b) and 1210(d) on Election Day.

40. For example, under Election Code Section 310, [25 P.S. § 2650](#), watchers appointed by parties, political bodies, or bodies of citizens may appear “at any public session or sessions of the county board of elections,” and “at any computation and canvassing of returns of any primary or election and recount of

ballots or recanvass of voting machines,” in which case such poll watchers may exercise the same rights as watchers at polling places and may raise objections to any ballots or machines for subsequent resolution by the county board of elections and appeal to the courts. [25 P.S. § 2650\(a\) & \(c\)](#).

41. In addition to watchers, the Election Code permits “representatives” of candidates and political parties to be involved in the pre-canvassing and canvassing of absentee and mail-in ballots. *See* [25 P.S. § 3146.8\(g\)\(1.1\) & \(2\)](#).

42. The Election Code also authorizes “representatives” of candidates and political parties to be present when provisional ballots are examined to determine if the individuals voting such ballots are entitled to vote at the election districts in the election. *See* [25 P.S. § 3050\(a.4\)\(4\)](#).

43. Election Code Section 417(b) provides that to be a watcher, a person must be “a qualified registered elector of the county in which the election district for which the watcher [is] appointed is located.” [25 P.S. § 2687\(b\)](#).

44. Without watchers and representatives, the integrity of the vote in elections is threatened and the constitutional right to free and fair public elections under the United States Constitution is denied.

45. Watchers and representatives serve as an important check to ensure transparency and guard against inconsistencies and other wrongdoing by election officials. The need for watchers and representatives is demonstrated by the case of

United States v. DeMuro, Criminal No. 20-112 (E.D. Pa. unsealed May 21, 2020).

In that case, a former Judge of Elections in South Philadelphia pled guilty to adding fraudulent votes to the voting machines during Election Day – also known as “ringing up” votes – and then falsely certifying that the voting machine results were accurate for specific federal, state, and local Democratic candidates in the 2014, 2015, and 2016 primary elections. The scheme involved a political consultant who purportedly solicited monetary payments from the candidates as “consulting fees,” and then used portions of those funds to pay election board officials, including DeMuro, in return for ringing up votes. DeMuro was able to commit the fraud because there were no poll watchers at his precinct. *See United States v. DeMuro*, Criminal No. 20-112, Information ([Doc. #1](#)) (E.D. Pa Mar. 03, 2020); M. Cavacini, “U.S. Attorney William M. McSwain Announces Charges and Guilty Plea of Former Philadelphia Judge of Elections Who Committed Election Fraud,” U.S. Attys. Office – Pa., Eastern (May 21, 2020) (available at <https://www.justice.gov/usao-edpa/pr/us-attorney-william-m-mcswain-announces-charges-and-guilty-plea-former-philadelphia>).

46. The importance of watchers and representatives serving as an important check in elections is recognized internationally. The International Institute for Democracy and Electoral Assistance issued a publication in 2002 called the *International Electoral Standards: Guidelines for Review the Legal Framework of*

Elections. The purpose of the International IDEA standards is to be “used as benchmarks to assess whether or not an election is free and fair.” [*International Electoral Standards* at v; see also id. at 6](#) (“These international standards are relevant to each component, and necessary for the legal framework to be able to ensure democratic elections. This publication is intended to identify electoral standards which contribute to uniformity, reliability, consistency, accuracy and overall professionalism in elections.”). The sources for the *Standards* include numerous international Declarations, Charters, and Conventions, including many to which the U.S. is a signatory. See [*id. at 7*](#).

47. As it relates to ballot counting and tabulation, the *Standards* set out as a general principle the following:

A fair, honest and transparent vote count is a cornerstone of democratic elections. This requires that votes be counted, tabulated and consolidated in the presence of the representatives of parties and candidates and election observers, and that the entire process by which a winner is determined is fully and completely open to public scrutiny.

[*Standards, at 77*](#).

48. “Regardless of whether ballots are counted at the polling station or at a central counting location or at both places, the representatives of parties and candidates and election observers should be permitted to remain present on this occasion.” [*Id. at 78*](#).

49. “The legal framework for elections should clearly specify that the representatives of parties and candidates and election observers be given, as far as practicable, certified copies of tabulation and tally sheets.” [*Id.* at 78](#). “As a necessary safeguard of the integrity and transparency of the election, the legal framework must contain a provision for representatives nominated by parties and candidates contesting the election to observe all voting processes.” [*Id.* at 83](#).

50. “[T]he representatives of parties and candidates should have the right to immediately query decisions made by polling officials or the implementation of voting procedures” [*Id.* at 84](#). Per the *Standards*, representatives of parties and candidates should be permitted “[t]o observe all activity – with the exception of the marking of ballots by voters – within the polling station, from the check counting of ballots and sealing of ballot boxes prior to the commencement of voting to the final packaging of material after close of voting; [t]o challenge the right of any person to vote; [and t]o query any decisions made by polling officials with the polling station[,] committee president and election management officials.” [*Id.* at 85](#). “The legal framework must also be clear and precise concerning what a domestic observer may not do, for instance, interfere with voting, take a direct part in the voting or counting processes, or attempt to determine how a voter will vote or has voted. It should strike a balance between the rights of observers and the orderly administration of the election processes. But in no case should it hinder legitimate

observation, ‘muzzle’ observers, or prevent them from reporting or releasing information that has been obtained through their observations.” [*Id.* at 90](#).

III. The Perils of an Unmonitored Mail-In Voting System.

51. Failing to uphold and ensure the adherence to even basic transparency measures or safeguards against the casting of illegal or unreliable ballots creates an obvious opportunity for ineligible voters to cast ballots, results in fraud, and undermines the public’s confidence in the integrity of elections — all of which violate the fundamental right to vote, the guarantee of equal protection, and the right to participate in free, fair, and transparent elections as guaranteed by the United States Constitution.

52. If a state fails to follow even basic integrity and transparency measures — especially its own — it violates the right to free, fair, and transparent public elections because its elections are no longer meaningfully public and the State has functionally denied its voters a fair election.

53. “[P]ublic confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process.” [*Crawford, 553 U.S. at 195-96*](#) (plurality op. of Stevens, J.). As the Commission on Federal Election Reform – a bipartisan commission chaired by former President Jimmy Carter and former Secretary of State James A. Baker III, and cited extensively by the United States Supreme Court – observed, “the ‘electoral

system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters.”” *Building Confidence in U.S. Election*, Report of the Commission on Federal Election Reform, p. 46 (Sept. 2005) (available at <https://bit.ly/3dXH7rU>, and referred to and incorporated herein by reference) (hereinafter, the “Carter-Baker Report”).

54. According to the Carter-Baker Report, mail-in voting is “the largest source of potential voter fraud.” Carter-Baker Report, p. 46. Many well-regarded commissions and groups of diverse political affiliation agree that “when election fraud occurs, it usually arises from absentee ballots.” Michael T. Morley, *Election Emergency Redlines*, p. 2 (Mar. 31, 2020) (available at <https://ssrn.com/abstract=3564829> or <http://dx.doi.org/10.2139/ssrn.3564829>, and referred to and incorporated herein by reference) (hereinafter, “Morley, Redlines”). Such fraud is easier to commit and harder to detect. As one federal court put it, “absentee voting is to voting in person as a take-home exam is to a proctored one.” *Griffin v. Roupas*, 385 F.3d 1128, 1131 (7th Cir. 2004). See also *id.* at 1130-31 (voting fraud is a “serious problem” and is “facilitated by absentee voting.”).

55. Courts have repeatedly found that mail-in ballots are particularly susceptible to fraud. As Justice Stevens has noted, “flagrant examples of [voter] fraud ... have been documented throughout this Nation’s history by respected historians and journalists,” and “the risk of voter fraud” is “real” and “could affect

the outcome of a close election.” [Crawford, 553 U.S. at 195-96](#) (plurality op. of Stevens, J.) (collecting examples). Similarly, Justice Souter observed that mail-in voting is “less reliable” than in-person voting. [Crawford, 553 U.S. at 212, n.4](#) (Souter, J., dissenting) (“[E]lection officials routinely reject absentee ballots on suspicion of forgery.”); [id. at 225](#) (“[A]bsentee-ballot fraud . . . is a documented problem in Indiana.”). *See also* [Veasey v. Abbott, 830 F.3d 216, 239, 256 \(5th Cir. 2016\)](#) (en banc) (“[M]ail-in ballot fraud is a significant threat” — so much so that “the potential and reality of fraud is much greater in the mail-in ballot context than with in-person voting.”). *See also* [id. at 263](#) (“[M]ail-in voting . . . is far more vulnerable to fraud.”); *id.* (recognizing “the far more prevalent issue of fraudulent absentee ballots”).

56. Pennsylvania is not immune to mail-in ballot fraud. For example, in 1999, former Representative Austin J. Murphy was indicted by a Fayette County grand jury and then convicted of absentee ballot fraud for forging absentee ballots for residents of a nursing home and adding his wife as a write-in candidate for township election judge. *See* B. Heltzel, “Six of seven charges against Austin Murphy dismissed,” *Pittsburgh Post-Gazette* (June 22, 1999) (available at <http://old.post-gazette.com/regionstate/19990622murphy6.asp>, and referred to and incorporated herein by reference). Similarly, in 2014, Richard Allen Toney, the former police chief of Harmar Township in Allegheny County pleaded guilty to

illegally soliciting absentee ballots to benefit his wife and her running mate in the 2009 Democratic primary for town council. *See* T. Ove, “Ex-Harmar police chief pleads guilty to ballot tampering,” Pittsburgh Post-Gazette (Sept. 26, 2014) (available at <https://www.post-gazette.com/local/north/2014/09/26/Ex-Harmar-police-chief-pleads-guilty-to-ballot-tampering-Toney/stories/201409260172>, and referred to and incorporated herein by reference). Further, in 2015, Eugene Gallagher pled guilty to unlawfully persuading residents and non-residents of Taylor in Lackawanna County to register for absentee ballots and cast them for him during his councilman candidacy in the November 2013 election. *See* J. Kohut, “Gallagher resigns from Taylor council, pleads guilty to three charges,” The Times-Tribune (Apr. 3, 2015) (available at https://www.thetimes-tribune.com/news/gallagher-resigns-from-taylor-council-pleads-guilty-to-three-charges/article_e3d45edb-fe99-525c-b3f9-a0fc2d86c92f.html, and referred to and incorporated herein by reference). *See also* [*Commonwealth v. Bailey*, 775 A.2d 881, 886 \(Pa. Commw. Ct. 2001\)](#) (upholding defendant’s conviction for absentee ballot violations, holding that a county district attorney has jurisdiction to prosecute such claims even in the absence of an investigation and referral by the Bucks County elections board); [*In re Center Township Democratic Party Supervisor Primary Election*, 4 Pa . D. & C.4th 555, 557-563 \(Pa. Ct. Com. Pl. Beaver 1989\)](#) (court ordered a run-off election after evidence proved that fifteen absentee ballots were applied for and cast by non-

existent individuals whose applications and ballots were handled by a political ally of the purported winner).

57. As part of the November 3, 2020 General Election, there are at least two Counties that had suspected instances of mail-in ballot fraud. Fayette County experienced two different issues with their mail-in ballots leading up to Election Day. First, an issue caused by Pennsylvania's SURE software system as to the marking of online applications submitted prior to the June primary election with the "permanent mail-in" status caused some voters to receive duplicate ballots for the general election. See <https://www.wpxi.com/news/top-stories/election-officials-working-correct-mail-in-ballot-problems-fayette-county/NH5DSEM7EVE7LGZLMAN4CS52YE/>. Prior to November 3, 2020, Fayette County uncovered an incident involving two voters who received mail-in ballots that were already filled out and two ballots that were found at the election bureau already opened with the secrecy envelope and the ballot missing out of those envelopes. Ballots that were already filled out arrived at homes 40 miles apart. See <https://www.wtae.com/article/fayette-co-prosecutors-investigating-reports-of-voters-receiving-mail-in-ballots-already-filled-out/34527256>. In late September 2020, officials in Luzerne County discovered that a temporary seasonal elections worker had discarded into a trash bin nine (9) military ballots received in unmarked envelopes, 7 of which were all cast for President Trump. See

<https://www.wgal.com/article/federal-authorities-investigate-discarded-ballots-in-luzerne-county-pennsylvania/34162209#>.

58. This risk of abuse by absentee or mail-in voting is magnified by the fact that “many states’ voter registration databases are outdated or inaccurate.” Morley, Redlines, p. 2. A 2012 study from the Pew Center on the States – which the U.S. Supreme Court cited in a recent case - found that “[a]pproximately 24 million – one of every eight – voter registrations in the United States are no longer valid or are significantly inaccurate”; “[m]ore than 1.8 million deceased individuals are listed as voters”; and “[a]pproximately 2.75 million people have registrations in more than one state.” See Pew Center on the States, *Election Initiatives Issue Brief*, “Inaccurate, Costly, and Inefficient: Evidence That America’s Voter Registration System Needs an Upgrade,” (Feb. 2012) (available at <https://www.issuelab.org/resources/13005/13005.pdf>, and referred to and incorporated herein by reference) (cited in [Husted v. A. Philip Randolph Inst.](#), 138 S. Ct. 1833, 1838 (U.S. 2018)).

59. Crucially as it pertains to Pennsylvania’s registered voters, as recently as December 2019, the Auditor General of Pennsylvania, Eugene DePasquale, determined through an audit of Pennsylvania’s Statewide Uniform Registry of Electors (“SURE”), administered by the Department of State, that there are more than 50,000 cases of potentially inaccurate voter records. The Performance Audit

Report noted that the audit “found too many instances of potentially bad data and sloppy recordkeeping.” *See* <https://www.paauditor.gov/press-releases/auditor-general-depasquale-issues-audit-of-voter-registration-system-calls-for-changes-at-pennsylvania-department-of-state>; https://www.paauditor.gov/Media/Default/Reports/Department%20of%20State_SURE%20Audit%20Report%2012-19-19.pdf. The Department of State was provided 50 recommendations to strengthen their policies and management controls, one of which was to work with counties to resolve records management issues such a duplicative voter records. *See id.* Mr. DePasquale criticized the Pennsylvania Department of State for its “lack of cooperation and a failure to provide the necessary information” during the audit, including the “denial of access to critical documents and excessive redaction of documentation.” *Id.* As a result, the Auditor General was “unable to establish with any degrees of reasonable assurance that the SURE system is secure and that Pennsylvania voter registration records are complete, accurate and in compliance with applicable laws, regulations, and related guidelines.” *Id.*

60. Because of its inherent risk, absentee and mail-in voting is an election process that requires adequate procedural safeguards to deter fraud and ensure transparency.

61. One procedural safeguard that any absentee or mail-in ballot voting system must have is the ability of candidates, political parties, and the public at large

to engage in meaningful, effective, and actual observation of the inspection, opening, counting, and recording of absentee and mail-in ballots in order to ensure that the election officers are uniformly applying the same rules and procedures to all absentee and mail-in voters and that only legitimately cast votes are counted and recorded.

IV. Pennsylvania Enacts All-Voter Mail-in Voting.

62. The Pennsylvania General Assembly may enact laws governing the conduct of elections. [Winston, 91 A. at 522](#). However, no legislative enactment may contravene the United States Constitution. U.S. CONST. art. VI; [Shankey v. Staisey, 257 A. 2d 897, 898 \(Pa.\), cert. denied 396 U.S. 1038 \(1970\)](#).

63. “Prior to the year 1957, the Pennsylvania Constitution permitted absentee voting only by individuals engaged in actual military service (Art. 8, § 6 of the Pennsylvania Constitution (1874)), and by bedridden or hospitalized veterans (Art. 8, § 18 added to the Pennsylvania Constitution (1949)).” [Absentee Ballots Case, 224 A.2d 197, 199 \(Pa. 1966\)](#).

64. In 1957, the Pennsylvania Constitution was further amended to permit absentee voting for those “qualified electors who may, on the occurrence of any election, be absent from the municipality of their residence, because their duties, occupation or business require them to be elsewhere or who, on the occurrence of any election, are unable to attend at their proper polling places because of illness or

physical disability or who will not attend a polling place because of the observance of a religious holiday or who cannot vote because of election day duties, in the case of a county employee[.]” [Pa. Const. art. VII, § 14](#).

65. In 1960, the Election Code was amended to implement the 1957 amendment to the Pennsylvania Constitution. [Absentee Ballots Case, 224 A.2d at 200](#). See also The Act of January 8, 1960, entitled “An Act amending the Act of June 3, 1937,” P.L. 2135, [25 P.S. §§ 3149.1-3149.9](#) (Supp. 1960).

66. “Absentee voting has consistently been regarded by the Pennsylvania courts as an extraordinary procedure in which the safeguards of the ordinary election process are absent.” [Canvass of Absentee Ballots of April 28, 1964, Primary Election, 34 Pa. D. & C.2d 419, 420 \(Pa. Ct. Com. Pl. Phila. 1964\)](#).

67. Specifically, “in the casting of an absentee ballot, the ordinary safeguards of a confrontation of the voter by the election officials and watchers for the respective parties and candidates at the polling place are absent.” [Canvass of Absentee Ballots of April 28, 1964, Primary Election, 34 Pa. D. & C.2d at 420](#).

68. Because “it is fraught with evils and frequently results in void votes,” Pennsylvania’s laws regarding absentee voting are “strictly construed and the rights created thereunder not extended beyond the plain and obvious intention of the act.” [Canvass of Absentee Ballots of April 28, 1964, Primary Election, 34 Pa. D. & C.2d at 420-21](#) (citing [Decision of County Board of Elections, 29 D.&C.2d 499, 506-7](#)

(Pa. Ct. Com. Pl. 1962)). *See also* [Marks v. Stinson](#), Civ. A. No. 93-6157, 1994 U.S. Dist. LEXIS 5273, at *78 (E.D. Pa. Apr. 26, 1994).

69. Moreover, consistent with Pennsylvania’s Statutory Construction Act, the Election Code’s use of the word “shall” to identify the manner and other “technicalities” that an elector must follow to cast an absentee ballot are “substantive provisions” that are necessary to “safeguard against fraud” and preserve the “secrecy and the sanctity of the ballot and must therefore be observed,” and ballots cast “in contravention of [such] mandatory provision[s] are void.” [In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election](#), 843 A.2d 1223, 1231-34 (Pa. 2004).

70. On October 31, 2019, the Pennsylvania General Assembly enacted Act 77. *See* [Act 2019-77 \(S.B. 421\)](#), § 8, approved October 31, 2019, eff. October 31, 2019.

71. Act 77 fundamentally changed the administration of elections in the Commonwealth of Pennsylvania in that, for the first time in its history, qualified Pennsylvania electors now have the choice to vote by mail, rather than in person on Election Day, without providing a reason or excuse. *See, e.g.*, [25 P.S. §§ 3150.11-3150.17](#); *see also* [Pa. Dem. Party v. Boockvar](#), Case No. 133 MM 2020, 2020 Pa. LEXIS 4872, at * 1 (Pa. Sept. 27, 2020). Previously, the law offered electors who could not vote in person on the designated Election Day the ability to apply for and receive an absentee ballot, verifying they qualified based on a limited number of

excuses outlined in the statute. Pennsylvania held its first election under Act 77's no excuse mail-in ballot scheme during the Primary Election held on June 2, 2020. The November 3, 2020 election was the first General Election in Pennsylvania under the state's new mail-in voting scheme.

72. Mail-in ballots are not automatically sent to electors in Pennsylvania. The Election Code requires that a person applying for both an absentee and a mail-in ballot complete a form with various information and sign the application. *See* [25 P.S. § 3146.2\(a\)–\(e\)](#); (the absentee ballot application “shall be signed by the applicant”); [25 P.S. § 3150.12\(a\)–\(d\)](#); [25 P.S. § 3146.2\(d\)](#) (except has not relevant here, “the application [for a mail-in ballot] shall be signed by the applicant.”). The only exception to the signature requirement is for military, overseas and disabled voters. *Id.*

73. Other than the signature requirement, there is no other proof of identification required to be submitted with the ballot applications. *See generally* [25 P.S. § 3146.2](#); [25 P.S. § 3150.12](#). When those ballots are being reviewed for approval, the board of elections is required to both (i) compare the information provided on the application with the information contained on the voter's permanent card and (ii) verify the proof of identification. *See* [25 P.S. § 3146.2b\(c\)](#); [25 P.S. § 3150.12b\(a\)](#). The board of elections' signature verification on the application is the only means available to it to verify the identity of the voter.

74. For both absentee and mail-in voting, Act 77 retains the requirement that “the [non-disabled] elector shall send [his or her absentee or mail-in ballot] by mail, postage, except where franked, or deliver it in person to [the] county board of elections,” in order for the ballot to be properly cast under Act 77. [25 P.S. §§ 3146.6\(a\) & 3150.16\(a\)](#). Accordingly, as it did prior to the enactment of Act 77, the Election Code bars ballot harvesting of absentee and mail-in ballots cast by non-disabled voters. See [Crossey v. Boockvar, Case No. 108 MM 2020, 2020 Pa. LEXIS 4868, at *4 \(Pa., Sept. 17, 2020\)](#) (“It has long been the law of this Commonwealth, per 25 P.S. § 3146.6(a), that third-person delivery of absentee ballots is not permitted. Act 77 adds a substantially identical provision for mail-in ballots, which we likewise conclude forbids third-party delivery of mail-in votes.”) (citations omitted); [Absentee Ballots of Nov. 4, 2003 Gen. Election, 843 A.2d at 1234](#) (“[W]e hold that Section 3146.6(a)’s ‘in person’ delivery requirement is mandatory, and that the absentee ballots of non-disabled persons who had their ballots delivered in contravention of this mandatory provision are void.”); [Marks, 1994 U.S. Dist. LEXIS 5273 at *83](#).

75. Also, for both absentee and mail-in voting, Act 77 retains the requirement that an elector must comply with the following additional mandatory requirements for such ballot to be properly cast:

[T]he [non-disabled] elector shall, 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 then 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 of election and the local election district of the elector. The elector shall then fill out, date and sign the declaration printed on such envelope

[25 P.S. §§ 3146.6\(a\) & 3150.16\(a\)](#).

76. Moreover, as it did prior to the enactment of Act 77, the Election Code bars the counting of an absentee or mail-in ballot that either lacks an “Official Election Ballot,” or contains on that envelope “any text, mark or symbol which reveals the identity of the elector, the elector’s political affiliation or the elector’s candidate preference,” or fails to contain a completed declaration that is signed and dated by the elector. Election Code Sections 1306.6(a) and 1308(g)(i)-(iv), [25 P.S. §§ 3146.6\(a\) & 3146.8\(g\)\(4\)\(i\)-\(iv\)](#).

77. These provisions in the Election Code, as amended by Act 77, that identify exactly what an elector “shall” do to properly cast and vote an absentee or mail-in ballot serve to ensure the secrecy of such ballots and to prevent fraud. *See [Absentee Ballots of Nov. 4, 2003 Gen. Election, 843 A.2d at 1232](#). See also [id. at 1234](#)* (the Election Code’s provisions of how to cast an absentee ballot are “substantive matters—how to cast a reliable vote—and not [] a mere procedural

matter” that can be disregarded by a county board of elections); [*Appeal of Yerger*, 333 A.2d 902, 907 \(Pa. 1975\)](#) (the validity of a ballot must first be ascertained before any factual inquiry into the intention of the voter); [*Appeal of James*, 105 A.2d 64, 66 \(Pa. 1954\)](#) (“[V]iolations of substantive provisions of the [Election] Code cannot be overlooked on the pretext of pursuing a liberal construction.”).

78. Importantly, the Pennsylvania Supreme Court recently reaffirmed that “ballots that voters have filled out incompletely or incorrectly” shall be set aside and declared void, and election boards are not permitted to afford these voters a “notice and opportunity to cure” procedure to remedy such defects. [*Boockvar*, 2020 Pa. LEXIS 4872 at *55](#). The *Boockvar* Court further concluded “that a mail-in ballot that is not enclosed in the statutorily-mandated secrecy envelope *must be disqualified*.” [*Id.* at *73](#) (emphasis added).

79. However, in contrast to prior provisions of the Election Code, all absentee and mail-in ballots are no longer sent to polling places on Election Day and are no longer inspected by the local election boards or subject to challenge by watchers at the polling places. Instead, Act 77 mandates that all properly cast absentee and mail-in ballots are to be “safely ke[pt] . . . in sealed or locked containers” at the county boards of elections until they are canvassed by the county elections boards. Election Code Section 1308(a), [25 P.S. § 3146.8\(a\)](#).

80. Additionally, Act 77 requires that “no earlier than seven o’clock A.M. on election day,” the county boards of elections shall meet to conduct a pre-canvass of all absentee and mail-in ballots received to that meeting. Election Code Section 1308(g)(1.1), [25 P.S. § 3146.8\(g\)\(1.1\)](#). During the pre-canvass, the election officials shall inspect and open the envelopes of all absentee and mail-in ballots, remove such ballots from such envelopes, and count, compute and tally the votes reflected on such ballots. However, as part of the pre-canvass, the county election boards are prohibited from recording or publishing the votes reflected on the ballots that are pre-canvassed. Election Code 102(q.1), [25 P.S. § 2602\(q.1\)](#).

81. Further, contrary to prior provisions of the Election Code, Act 77 mandates that the county boards of elections are to meet no earlier than the close of polls on Election Day and no later than the third day following the election to begin canvassing absentee and mail-in ballots. *See* Election Code Section 1308(g)(2), [25 P.S. § 3146.8\(g\)\(2\)](#). However, unlike a pre-canvass, the election officials during a canvass are permitted to record and publish the votes reflected on the ballots. *See* Election Code 102(a.1), [25 P.S. § 2602\(a.1\)](#).

82. Act 77 prohibits an elector from casting both an absentee or mail-in ballot and in-person ballot, whether as a regular or provisional ballot. Specifically, Act 77 provides:

Any elector who receives and votes a mail-in ballot under section 1301-D shall not be eligible to vote at a polling place on election day. The district register at each polling place shall clearly identify electors who have received and voted mail-in ballots as ineligible to vote at the polling place, and district election officers shall not permit electors who voted a mail-in ballot to vote at the polling place.

[25 P.S. § 3150.16\(b\)\(1\)](#). *See also* Election Code 1306(b)(1), [25 P.S. § 3146.6\(b\)\(1\)](#).

83. Further, Act 77 provides that an elector who requests a mail-in or absentee ballot and who is not shown on the district register as having voted may vote only by provisional ballot at the polling place on Election Day, unless the elector remits the unvoted mail-in or absentee ballot and the envelope containing the declaration of the elector to the judge of elections to be spoiled and the elector signs a statement under penalties of perjury that he or she has not voted the absentee or mail-in ballot. [25 P.S. §§ 3150.16\(b\)\(2\) & \(3\)](#); [3146.6\(b\)\(2\) & \(3\)](#).

84. These restrictions and requirements under Act 77 were put in place to reduce the possibility that illegally cast and/or fraudulent ballots would be counted.

85. On November 3, 2020, Pennsylvania conducted the General Election for national and statewide candidates; this was the first general election that followed the enactment of Act 77 and its no-excuse, mail-in voting alternative.

86. However, Philadelphians “began in-person mail-in voting at the [S]atellite [O]ffices on September 29, 2020, sometime between 11:30 a.m. and 12:45

p.m.”” *Donald. J. Trump for President, Inc. v. Phila. Cnty. Bd. of Elections*, 983 CD 2020, at 7 n. 3 (Pa. Commw. Ct. Oct. 23, 2020) (McCullough, J.) (dissenting).

87. In fact, “the presidential election is and has been happening since September 29, 2020. And all across America, news reports in Philadelphia and elsewhere have clearly conveyed that multi-millions of electors have already voted.” *Id.* at p. 14-15.

88. Out of the over 6.70 million votes cast for the Presidential election on November 3, 2020 in Pennsylvania, over 2.5 million of those votes were cast by mail-in or absentee ballot.

89. Despite the unprecedented number of votes cast by absentee and mail-in ballots, Defendants failed to take adequate measures to ensure that the provisions of the Election Code enacted to protect the validity of absentee or mail-in ballots, including without limitation Act 77, were followed. This is crucial because the casting of votes in violation of the Election Code’s mandatory provisions renders them void. [*Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d at 1234](#).

V. The Department of State’s “Guidance” Memos Published Ahead of the General Election.

A. August 19, 2020 Guidance On Inner Secrecy Envelopes.

90. On the same day its guidance on the use of unmanned drop boxes and other ballot-collection sites was disseminated, the Pennsylvania Department of State, with the knowledge, approval, and/or consent of Secretary Boockvar,

published and disseminated to all the County Election Boards another guidance titled “Pennsylvania Guidance for Missing Official Ballot Envelopes (‘Naked Ballots’).” A true and correct copy of the August 19, 2020 Naked Ballots guidance was available at the Pennsylvania Department of State’s web site at https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/PADOS_NakedBallot_Guidance_1.0.pdf.

91. In her Naked Ballot Guidance, Secretary Boockvar espoused “the ... 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[,]” that “[t]he failure to include the inner envelope (‘Secrecy Envelope’) does not undermine the integrity of the voting process[,]” and that “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 election.” *Id.*

92. On September 17, 2020, the Pennsylvania Supreme Court rejected the Secretary’s position and ruled that “the secrecy provision language in Election Code Section 3150.16(a) is mandatory and the mail-in elector’s failure to comply with such requisite by enclosing the ballot in the secrecy envelope renders the ballot invalid.” [Pennsylvania Democratic Party, 2020 Pa. LEXIS 4872 at *72.](#)

93. Following the Pennsylvania Supreme Court’s September 17, 2020 decision, Secretary Boockvar has removed the August 19, 2020 Naked Ballot

guidance from the Pennsylvania Department of State's website. However, she has not issued any guidance advising all 67 County Election Boards that they must *not* count non-compliant absentee or mail-in ballots, including, without limitation, those that lack an inner secrecy envelope, contain on that envelope any text, mark, or symbol which reveals the elector's identity, political affiliation, or candidate preference, do not include on the outside envelope a completed declaration that is dated and signed by the elector, and/or are delivered in-person by third-parties for non-disabled voters.

B. *Guidance On Approving Absentee and Mail-In Ballot Applications and Canvassing Absentee and Mail-In Ballots.*

94. On September 11, 2020, the Pennsylvania Department of State, with the knowledge, approval, and/or consent of Secretary Boockvar, published and disseminated to all the County Election Boards a guidance titled "GUIDANCE CONCERNING EXAMINATION OF ABSENTEE AND MAIL-IN BALLOT RETURN ENVELOPES." A true and correct copy of the September 11, 2020 Guidance is available at the Pennsylvania Department of State's web site at <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Examination%20of%20Absentee%20and%20Mail-In%20Ballot%20Return%20Envelopes.pdf>.

95. Under the "Background" section of the September 11, 2020 Guidance, Secretary Boockvar states that "[b]efore sending [an absentee or mail-in] ballot to

the applicant, the county board of elections confirms the qualifications of the applicant by verifying the proof of identification and comparing the information provided on the application with the information contained in the voter record[,]" that "[i]f the county is satisfied that the applicant is qualified, the application must be approved[,]" and that "[t]his approval shall be final and binding, except that challenges may be made only on the grounds that the applicant was not a qualified voter"

96. Yet, the Election Code mandates that for non-disabled and non-military voters, all applications for an absentee or mail-in ballot "shall be signed by the applicant." 25 P.S. §§ [3146.2\(d\)](#) & [3150.12\(c\)](#).

97. Moreover, because of the importance of the applicant's signature and the use of the word "shall," Pennsylvania courts have consistently upheld challenges to absentee ballots that have been cast by voters who did not sign their absentee ballot applications. See, e.g., [*Opening of Ballot Box of the First Precinct of Bentleyville*, 598 A.2d 1341, 1343 \(Pa. Commw. Ct. 1991\)](#).

98. Except for first-time voters, the only basis under the Election Code for the identification of any voter, whether voting in-person or by absentee or mail-ballot, is by confirmation of the presence of the voter's signature.

99. Before one can cast a regular ballot at a polling place on Election Day, that voter is subject to the following signature comparison and challenge process:

(1) All electors, including any elector that shows proof of identification pursuant to subsection (a), shall subsequently sign a voter's certificate in blue, black or blue-black ink with a fountain pen or ball point pen, and, unless he is a State or Federal employee [sic] who has registered under any registration act without declaring his residence by street and number, he shall insert his address therein, and hand the same to the election officer in charge of the district register.

(2) Such election officer shall thereupon announce the elector's name so that it may be heard by all members of the election board and by all watchers present in the polling place and ***shall compare the elector's signature on his voter's certificate with his signature in the district register. If, upon such comparison, the signature upon the voter's certificate appears to be genuine, the elector who has signed the certificate shall, if otherwise qualified, be permitted to vote:*** Provided, That if the signature on the voter's certificate, as compared with the signature as recorded in the district register, shall not be deemed authentic by any of the election officers, such elector shall not be denied the right to vote for that reason, but shall be considered challenged as to identity and required to make the affidavit and produce the evidence as provided in subsection (d) of this section.

25 P.S. § 3050(a.3)(1) – (2)(2020) (emphasis added).

100. Similarly, under Election Code Section 1308(g)(3)-(7), “[w]hen the county board meets to pre-canvass or canvass absentee ballots and mail-in ballots . . . , the board shall examine the declaration on the envelope of each ballot not set aside under subsection (d) and shall compare the information thereon with that contained in the ‘Registered Absentee and Mail-in Voters File,’ the absentee voters’ list and/or the ‘Military Veterans and Emergency Civilians Absentee Voters File,’

whichever is applicable. If the county board has verified the proof of identification as required under this act and is satisfied that the declaration is sufficient and the information contained in the ‘Registered Absentee and Mail-in Voters File,’ the absentee voters’ list and/or the ‘Military Veterans and Emergency Civilians Absentee Voters File’ verifies his right to vote, the county board shall provide a list of the names of electors whose absentee ballots or mail-in ballots are to be pre-canvassed or canvassed.” [25 P.S. § 3146.8\(g\)\(3\)](#). Further, only those ballots “that have been verified under paragraph (3) shall be counted” [25 P.S. § 3146.8\(g\)\(4\)](#). If a ballot is not counted because of a lack of a signature, it is considered “challenged” and subject to the notice and hearing provisions under Section 1308(g)(5)-(7). [25 P.S. § 3146.8\(g\)\(5\)-\(7\)](#).

101. The Pennsylvania Election Code authorizes the County Election Boards to set aside and challenge returned absentee or mail-in ballots that do not contain the signatures of voters and for which the County Election Boards did not verify the signature of the electors before the mail-in ballot was separated from the outer envelope.

102. County Elections Boards failure and refusal to set aside and challenge returned absentee or mail-in ballots that do not contain the signatures of voters in the November 3, 2020 General Election has resulted in the arbitrary, disparate, and

unequal treatment between those who vote in-person at the polling place versus those who vote by absentee or mail-in ballot.

103. In addition, the disparate treatment between mail-in and in person voters as to the verification of the voter's identity through signature verification has created an environment in Pennsylvania that encourages ballot fraud or tampering and prevents the Commonwealth and the County Election Boards from ensuring that the results of the November 3, 2020 General Election are free, fair, and transparent.

104. As a result of the manner in which the County Election Boards were directed to conduct the election including the canvassing of mail-in ballots, the validity of Pennsylvanians' votes have been unconstitutionally diluted through Defendants' arbitrary, disparate, and/or uneven approval of all absentee and mail-in ballots without performing the requisite verification of the voter's signature, resulting in the treatment of by-mail and in-person voters across the state in an unequal fashion in violation of state and federal constitutional standards.

105. The Department of State issued an additional deficient guidance related to the issue of signature verification on September 28, 2020 related to the issue of signature verification titled "GUIDANCE CONCERNING CIVILIAN ABSENTEE AND MAIL-IN BALLOT PROCEDURES." (App. Ex. 25.)¹ This most recent

¹ Judicial notice of the Secretary's September 28, 2020 guidance memo is appropriate. See [Miller v. City of Bradford, No. 17-268 Erie, 2019 U.S. Dist. LEXIS](#)

guidance provides additional information about the acceptance and scrutiny of mail-in and absentee ballots for the General Election and not only fails to remedy but doubles down on the illegal September 11 guidance forbidding signature verification as a reason to set aside both mail-in ballots and ballot applications as well. In this September 28 guidance memo, the Secretary proclaims that “[t]he Election Code does not permit county election officials to reject applications or voted ballots based solely on signature analysis.” (*Id.*, at p. 9.) She then goes even further and pronounces that “[n]o challenges may be made to mail-in and absentee ballots at any time based on signature analysis.” (*Id.*)

106. Secretary Boockvar continued to issue guidance to the counties in direct contradiction of the Election Code up until the eve of the election. On November 1, 2020, Secretary Boockvar, with no authority to do so, extended the Election Code’s mandatory deadline for voters to resolve proof of identification issues with their mail-in and absentee ballots.²

[134248, at *7 n.4 \(W.D. Pa. Aug. 9, 2019\)](#) (“The Court takes judicial notice of these provisions, as they constitute matters of public record.”).

² The Trump Campaign filed a Petition for Review challenging the validity of the November 1, 2020 guidance which is currently pending before the Commonwealth Court of Pennsylvania in *Donald J. Trump for President, Inc., et al. v. Boockvar*, Case No. 602 M.D. 2020 (Pa. Commw. Ct. 2020).

VI. Defendants' Inconsistent and Uneven Administration of the 2020 General Election Violated the Election Code and Infringed Plaintiffs' Constitutional Rights to Free, Fair and Transparent Public Elections.

107. As of the filing of this complaint, 6,743,874 million votes were cast for President in Pennsylvania, with approximately 2,635,090 ballots returned and cast by absentee or mail-in ballots (approximately 3.1 million absentee and mail-in ballots were approved and sent to electors for the General Election).³

108. In the named County Elections Boards, the following are the number of canvassed and tabulated absentee and mail-in ballots:

- a. Allegheny: 335,573
- b. Centre: 32,514
- c. Chester: 148,465
- d. Delaware: 127,751
- e. Montgomery: 238,122
- f. Northampton: 71,893
- g. Philadelphia: 345,197

109. Despite the fact that well over a third of the votes were cast by mail, Secretary Boockvar and the Pennsylvania Department of State did not undertake any meaningful effort to prevent the casting of illegal or unreliable absentee or mail-in

³ References contained herein to the November 3, 2020 election results in Pennsylvania are derived from <https://www.electionreturns.pa.gov/>.

ballots and/or to ensure the application of uniform standards across the County Election Boards to prevent the casting of such illegal or unreliable ballots. Rather, Secretary Boockvar has exercised every opportunity to do quite the opposite, thereby sacrificing the right to vote by those who legally cast their ballots (whether in-person or through properly cast absentee or mail-ballots) through the unlawful dilution or debasement of the weight of their vote.

A. *The Prevalence of Unsolicited Mail-In Votes*

110. Throughout the Commonwealth, including in the named County Election Boards, numerous voters reported receiving mail-in ballots, even though they did not apply for them.

111. Worse, numerous voters reported have received multiple mail-in ballots, in some documented cases as many as four or five ballots, again, even though they had not themselves submitted applications for mail-in ballots.

112. Moreover, at the polling locations on Election Day, voters were informed that they must vote provisionally because they had applied for mail-in votes, even though those voters report that they neither applied for nor received mail-in ballots. Poll watchers throughout the state observed similar incidents.

113. Voters reported being denied the right to vote in person because they had been told that they had already voted by mail-in or absentee ballots, even though they appeared at their polling place with their un-voted mail-in or absentee ballots

in hand. In many cases, those voters were required to vote provisionally in-person at the polls.

114. Plaintiffs also have reports of voters who were visited at home in the weeks before the election by individuals soliciting their participation in mail-in voting. Those voters report that even though they never applied for mail-in ballots, they did receive mail in ballots, and when they attempted to vote in person were told that they had voted by mail. In at least two documented cases, even though poll workers told the voters that they were recorded as having already voted by mail, they were allowed to vote in person by live ballot on the voting machines.

115. Other voters reported having received unsolicited and un-applied for mail-in ballots, but when they went to their in-person polling place, the poll books reflected that no mail-in ballot had been sent.

116. A witness, who was required to vote provisionally because the voter was identified as having requested a mail-in ballot even though the voter had not done so, contacted the Allegheny County elections office to complain about having to submit a provisional ballot and was advised that a larger number of Republican voters experienced the same issue.

B. *The Misadministration of the Election by the County Election Boards and Poll Workers.*

117. In Montgomery County, a poll watcher observed a Judge of Elections pull aside voters who were not listed in the poll books as registered to vote. The poll

watcher reports hearing the Judge of Elections tell those voters that they needed to return later and report their name as another name that was in the poll book.

118. Across numerous counties, poll watchers observed poll workers mishandling spoiled mail-in or absentee ballots brought to the polling place by voters who intended to vote in-person. Rather than disposing of the spoiled ballots securely, the spoiled ballots were instead placed in unsecured boxes or in stacks of paper despite the protests of voters or poll watchers. For instance in Centre County, a poll worker observed mail-in ballots being improperly spoiled. The workers placed the mail-in ballots returned to the polling place by in-person voters in a bag without writing “void” on them or otherwise destroying them.

119. In at least one case, a voter brought the voter’s own secrecy envelope to the polling place after realizing that the voter had failed to include it when returning the mail-in ballot. The voter was not permitted to submit a provisional ballot in accordance with the statute.

120. In Allegheny County, Plaintiffs have received reports that poll workers were observing voters vote provisionally in such a way that the poll worker could determine which candidates the elector voted on their provisional ballot.

121. In Centre County, a poll worker reported that persons appearing at the polls and admitting that they were New Jersey voters, rather than Pennsylvania voters, were nonetheless provided provisional ballots on which to vote.

122. In Chester County, a representative watcher present during the pre-canvass observed the elections workers counting a reported 15% of mail-in ballots that were sliced or otherwise damaged during the mechanized ballot opening process. Some of those ballots were cut in half and workers had a hard time identifying how to address and/or to rectify the issue.

123. In Chester County, an observer witnessed a flawed resolution process for over-voted and under-voted ballots. The observer witnessed one election worker responsible for resolving over-voted and under-voted ballots by subjectively determining who the elector intended to choose on the empty votes. The observer reports that in numerous instances the election worker altered the over-voted ballot by changing votes that had been marked for Donald J. Trump to another candidate.

124. In Delaware County, an observer at the county office observed issues related to mail-in voted ballots being scanned through machines four or five times before finally being counted. When a voting machine warehouse supervisor arrived to address whether the machine was malfunctioning, the supervisor instead reported that the bar codes on the ballots must be “defective.”

125. In Delaware County, poll watchers observed in at least seven (7) different polling locations numerous instances of voters who were told they had registered to vote by mail, but were given regular ballots, rather than provisional ballots, *and were not made to sign in the registration book.*

126. Mail carriers have noted significant anomalies related to the delivery of mail-in ballots. A mail carrier for the USPS in Erie County has noted that during the course of the General Election mail-in ballot delivery period there were multiple instances in which dozens of mail-in ballots were addressed to single addresses, each ballot being in a different name. Based on the carrier's experience delivering mail to those addresses, the carrier is aware that the people whose names were on the ballots are not names of people who live at those addresses. In addition, ballots were mailed to vacant homes, vacation homes, empty lots, and to addresses that do not exist.

127. It has been reported by Project Veritas, in a release on November 5, 2020, that carriers were told to collect, separate and deliver all mail-in ballots directly to the supervisor. In addition, Plaintiffs have information that the purpose of that process was for the supervisor to hand stamp the mail-in ballots.

C. Uneven Treatment of Absentee and Mail-Ballots That Fail to Include a Secrecy Envelope or Otherwise Comply with the Mandates of the Election Code.

128. The statutory provisions in the Election Code and Act 77 involving absentee and mail-in ballots do not repose in either Secretary Boockvar or the County Election Boards the free-ranging power to attempt to ascertain voter intent or rule out fraud when a vote has been cast in violation of its explicit mandates. While voter intention may be paramount in the realm of the fundamental right to

vote, ascertaining that intent necessarily assumes a properly cast ballot. Otherwise, a properly cast ballot will be diluted by one which has been improperly cast.

129. By enacting the inner secrecy envelope proscription and the other mandates for the casting of a “reliable vote” via an absentee or mail-in ballot, the General Assembly weighed the factors bearing on that question, and it did not vest, and has not vested, any discretion or rule-making authority in Secretary Boockvar and/or the County Election Boards to reweigh those factors in determining whether or not to count a particular absentee or mail-in ballot should be counted. [Pennsylvania Democratic Party, 2020 Pa. LEXIS 4872 at *73.](#)

130. Pennsylvania prominently included secrecy envelope instructions in its mail-in ballot and absentee ballot mailings, and in the months and weeks leading up to the election, repeated those instructions on its website and on its social media postings. *See, e.g.,* <https://www.votespa.com/Voting-in-PA/Pages/Mail-and-Absentee-Ballot.aspx>

131. Local officials also engaged in media campaigns to encourage voters to remember not to send their ballots in “naked,” *i.e.* without the secrecy envelope. The “naked ballot” ad campaign even included several local celebrities and election officials appearing on social media topless to remind the public about the inner envelope.

132. Certain of the County Election Boards proceeded to pre-canvass mail-in ballot envelopes prior to Election Day on November 3, 2020, and for those ballots that lacked an inner secrecy envelope, the voters were notified prior to Election Day in order to cure the invalidity by voting provisionally on Election Day at their polling location.

133. Philadelphia County, however, had other plans. As reflected in a document titled “Cancelled Ballot Notification Information,” Philadelphia County sent a “notification” to voters whose “ballot was cancelled” because, among other reasons, the ballot “was returned without a signature on the declaration envelope” or “was determined to lack a secrecy envelope.” Philadelphia County allowed those voters to cure this defect by casting a “provisional ballot on Election Day” or requesting “a replacement ballot at a satellite election office.” Philadelphia City Comm’rs, *Cancelled Ballot Notification Information*, bit.ly/3la08LR (last visited Nov. 7, 2020).

134. To figure out which voters should be notified, Philadelphia County had to inspect the mail-in ballots before election day—in plain violation of state law. *See* 25 P.S. §3146.8. This required substantial manipulation: Officials in Philadelphia County were determining whether ballots were missing an inner secrecy envelope, for example, which cannot be determined without manipulating the outer envelope—feeling the envelope, holding the envelope up to the light, weighing the

envelope, by evaluating the weight of the envelope through the sorting and/or scanning equipment, etc. This kind of tampering squarely undermines the legislature's "mandate" that mail-in voting cannot compromise "fraud prevention" or "ballot secrecy." [*Pa. Democratic Party, 2020 Pa. LEXIS 4872, at *26.*](#)

135. Secretary Boockvar encouraged this unlawful behavior. In an November 2, 2020 email sent at approximately 8:30 p.m. on the eve of the November 3, 2020 General Election, her office suggested that counties "should provide information to party and candidate representatives during the pre-canvass that identifies the voters whose ballots have been rejected" so that those voters "may be issued a provisional ballot."

136. While counties like the Defendant County Boards of Elections permitted voters to cast either replacement absentee and mail-in ballots before Election Day or provisional ballots on Election Day in order to cure their defective mail-in ballots, many more counties are not. Lancaster, York, Westmoreland and Berks Counties, for example, did not contact voters who submitted defective ballots or give them an opportunity to cure. They simply followed the law and treated these ballots as invalid and refused to count them.

137. Because the counties that followed state law and did not provide a cure process are heavily Republican (and counties that violated state law and did provide a cure process are heavily Democratic), Defendants' conduct harmed the Trump

Campaign. It deprived the President of lawful votes and awarded his opponent with unlawful votes.

D. *Uneven Treatment of Watchers and Representatives at the County Election Boards' Canvassing of Ballots.*

138. In every instance where an absentee or mail-in ballot is opened and canvassed by a county election board, poll watchers and canvass representatives are legally permitted to be present. *See* Election Code Section 1308(b), [25 P.S. § 3146.8\(b\)](#) (“Watchers shall be permitted to be present when the envelopes containing official absentee ballots and mail-in ballots are opened and when such ballots are counted and recorded.”); *see also* [25 P.S. § 3146.8\(g\)\(1.1\) and \(g\)\(2\)](#).

139. Poll watchers and canvass representatives serve the important purpose of assuring voters, candidates, political parties, and political bodies, who may question the fairness of the election process, that the same is conducted in compliance with the law, and is done in a correct manner which protects the integrity and validity of the vote and ensures that all elections are free, open, fair, and honest.

140. Defendants have not allowed watchers and representatives to be present when the required declarations on envelopes containing official absentee and mail-in ballots are reviewed for sufficiency, when the ballot envelopes are opened, and when such ballots are counted and recorded. Instead, watchers were kept by security personnel and a metal barricade from the area where the review, opening, and

counting were taking place. Consequently, it was physically impossible to view the envelopes or ballots.

141. In Centre County, the central pre-canvassing location was a large ballroom. The set-up was such that the poll watchers did not have meaningful access to observe the canvassing and tabulation process of mail-in and absentee ballots, and in fact, the poll watchers and observers who were present could not actually observe the ballots such that they could confirm or object to the validity of the ballots.

142. In Philadelphia County, poll watchers and canvass representatives were denied access altogether in some instances.

143. In Delaware County, observers were denied access to a back room counting area. After a court-ordered injunction, the poll watchers and canvass representatives were finally allowed in the back room counting area on November 5, 2020, to observe, but for only five minutes every two hours. During the allowed observation time in the back room counting area, the observers witnessed tens of thousands of paper ballots.

144. Other Pennsylvania Counties provided watchers with appropriate access to view the ballots as required by Commonwealth law. However, Defendants intentionally denied the Trump Campaign access to unobstructed observation and ensure opacity, denying Plaintiffs and the residents of Pennsylvania the equal protection of the law.

145. With particular regard to the Philadelphia County Board of Elections, the Board would not permit the Trump Campaign's watchers to be within 6 feet of "all aspects" of the pre-canvassing process in direct contravention of Commonwealth Court Judge Christine Fizzano Cannon's November 5, 2020 Order "requiring that all candidates, watchers, or candidate representatives be permitted to be present for the canvassing process pursuant to 25 P.S. § 2650 and/or 25 P.S. § 3146.8 and be permitted to observe all aspects of the canvassing process within 6 feet." *See In Re: Canvassing Observation*, 11/05/2020 Order, 1094 C.D. 2020 (Pa. Commw. Ct. 2020).

146. The Order required the Philadelphia Board of Elections to comply and allow watcher to be within 6 feet by 10:30 a.m., but at 10:35 a.m. the workers were denied entry. Instead, the Board sent all of the workers on a break (previously workers received breaks on a rolling basis), and the Commissioners met offsite. Two hours later the workers returned, and the watchers were allowed to be within 6 feet, but within 6 feet of the first row of counters only. Within a short period of time, the workers began working at other rows that were well-beyond 6-feet, rendering it impossible for watchers to observe the rows that were more than 25-feet beyond the area where watchers were allowed. Moreover, during the course of the entire period, the workers repeatedly removed ballots, sometimes over 100 feet away, to do

something with them, which the Trump Campaign's watchers were unable to observe.

147. Other Counties in the Commonwealth afford watchers the right to be present – that is, to be able to meaningfully view and even read – when official absentee and mail-in ballots are reviewed, being opened, counted, or recorded as required by [25 P.S. § 3146.8\(b\)](#).

148. It is estimated that 680,770 ballots were processed by the Allegheny and Philadelphia County Boards of Elections when no observation was allowed.

149. A shocking number of mail-in ballots have inexplicably appeared in counties since the November 4 ballot reports. For instance, in Delaware County, the county's Wednesday, November 4 report indicated that Delaware County reported it has received about 113,000 mail-in ballots and counted approximately 93,000 voted ballots. On the next day, November 5, the Secretary of the Commonwealth's 4:30 report reflected that Delaware County had received about 114,000 ballots. Several hours later, the Delaware County solicitor reported to an observer that the County had received about 126,000 mail-in ballots and counted about 122,000. As of Sunday, November 8, 2020, the Department of State's website reflects that the County has counted about 127,000 mail-in ballots. Plaintiffs have received no explanation for where the additional 14,000 voted ballots came from, when they arrived, or why they are included in the current count.

150. Defendants have also violated the Equal Protection Clause because as a result of their desire to ensure opacity, watchers in Allegheny and Philadelphia County do not have the same right as watchers in other Pennsylvania Counties to be present as a matter of law when envelopes containing official absentee and mail-in ballots are reviewed and opened and when such ballots are counted and recorded. Also, this means voters are at an unequal risk of having their legal votes diluted by ballots that otherwise should be disqualified. There is no legitimate state interest justifying this disparity.

E. *Mail-in Ballots Received After 8 p.m. On Election Day*

151. In Delaware County, an observer in the county office where mail-in ballots were counted was told by the Delaware County Solicitor that ballots received on November 4, 2020, were not separated from ballots received on Election Day, and the County refused to answer any additional questions.

152. Also in Delaware County, an observer in the county office where mail-in ballots were counted witnessed a delivery on November 5, 2020, of v-cards or USB drives in a plastic bag with no seal and no accompanying paper ballots. The v-cards or USB drives were taken to the back counting room, where observer access was limited. There was no opportunity to observe what happened to the v-cards or USB drives in the back counting room.

VII. Need for Emergency Judicial Intervention.

153. The Equal Protection Clause mandates that the Commonwealth provide and use in every County the same statewide uniform standards and regulations when conducting statewide or multi-county elections involving federal candidates, including without limitation the standards and regulations providing for the casting and counting of votes. [*Pierce*, 324 F. Supp. 2d at 698-99](#). In other words, the Equal Protection Clause requires every county in the Commonwealth to enforce and apply the same standards and procedures for an election, and it does not allow a select few counties to either decline to enforce or employ those standards or develop their own contradicting standards that benefit their voters to the detriment of voters outside their counties. [*Id.*](#)

154. For statewide elections involving federal candidates, Defendants' allowance, by act or omission, of the collection and counting of in-person, provisional, and absentee and mail-in ballots in a manner and at locations that are contrary to the Election Code's mandatory provisions (as set forth above) constitutes legislative action by the Executive Branch in violation of the Elections and Electors Clauses of the United States Constitution.

155. Finally, the Defendants' lack of statewide standards and use of a patchwork of ad-hoc rules that vary from county to county in a statewide election

involving federal and state-wide candidates violates the Equal Protection clause of the Fourteenth Amendment. [Pierce, 324 F. Supp. 2d at 698-99.](#)

156. Because the standards in the conduct of statewide elections involving federal and state candidates, including without limitation the casting and counting of votes, are to be uniform, Plaintiffs have a vested interest in ensuring that the electoral process is properly administered in every election district. However, the administration of the November 3, 2020 General Election across the counties of the Commonwealth, in particular in the named County Election Boards, was far from uniform and did not follow the strictures of the Election Code and the United States Constitution.

157. In light of the Defendants' clear violations of United States Constitution through their illegal implementation of Pennsylvania's Election Code, as set forth above, Plaintiffs seek an order, declaration and/or injunction directing the Defendants to verify and confirm that all mail-in ballots tabulated in the 2020 election results in Commonwealth of Pennsylvania were validly cast in compliance with state law.

158. The current voting regime as employed by Defendants has resulted in the denial of free and fair elections and other fundamental rights during the 2020 Pennsylvania General Election.

COUNT I

Fourteenth Amendments

U.S. Const. Art. I § 4, cl. 1; Art. II, § 1, cl. 2; Amend. XIV, 42 U.S.C. § 1983

Denial of Due Process On The Right to Vote

Invalid Enactment of Regulations Affecting Observation and Monitoring of the Election

159. Plaintiffs refer to and incorporate by reference each of the prior paragraphs of this Complaint as though the same were repeated at length herein.

160. The right of qualified citizens to vote in a state election involving federal candidates is recognized as a fundamental right under the Fourteenth Amendment of the United States Constitution. [*Harper v. Virginia State Board of Elections*, 383 U.S. 663, 665 \(1966\)](#). See also [*Reynolds*, 377 U.S. at 554](#) (The Fourteenth Amendment protects the “the right of all qualified citizens to vote, in state as well as in federal elections.”). Indeed, ever since [*Slaughter-House Cases*, 83 U.S. 36 \(1873\)](#), the United States Supreme Court has held that the Privileges or Immunities Clause of the Fourteenth Amendment protects certain rights of federal citizenship from state interference, including the right of citizens to directly elect members of Congress. See [*Twining v. New Jersey*, 211 U.S. 78, 97 \(1908\)](#) (citing [*Ex parte Yarbrough*, 110 U.S. 651, 663-64 \(1884\)](#)). See also [*Oregon v. Mitchell*, 400 U.S. 112, 148-49 \(1970\)](#) (Douglas, J., concurring) (collecting cases).

161. The fundamental right to vote protected by the Fourteenth Amendment is cherished in our nation because it “is preservative of other basic civil and political rights.” [*Reynolds*, 377 U.S. at 562](#).

162. Voters have a “right to cast a ballot in an election free from the taint of intimidation and fraud,” [*Burson v. Freeman*, 504 U.S. 191, 211 \(1992\)](#), and “[c]onfidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.” [*Purcell v. Gonzalez*, 549 U.S. 1, 4 \(2006\) \(*per curiam*\)](#).

163. “Obviously included within the right to [vote], secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted” if they are validly cast. [*United States v. Classic*, 313 U.S. 299, 315 \(1941\)](#). “[T]he right to have the vote counted” means counted “at full value without dilution or discount.” [*Reynolds*, 377 U.S. at 555, n.29](#) (quoting [*South v. Peters*, 339 U.S. 276, 279 \(1950\)](#) (Douglas, J., dissenting)).

164. “Every voter in a federal . . . election, whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his vote fairly counted, without its being distorted by fraudulently cast votes.” [*Anderson v. United States*, 417 U.S. 211, 227 \(1974\)](#); *see also* [*Baker v. Carr*, 369 U.S. 186, 208 \(1962\)](#).

165. Invalid or fraudulent votes “debase[]” and “dilute” the weight of each validly cast vote. *See* [Anderson, 417 U.S. at 227](#).

166. The right to an honest [count] is a right possessed by each voting elector, and to the extent that the importance of his vote is nullified, wholly or in part, he has been injured in the free exercise of a right or privilege secured to him by the laws and Constitution of the United States.” [Anderson, 417 U.S. at 226](#) (quoting [Prichard v. United States, 181 F.2d 326, 331 \(6th Cir.\)](#), *aff’d due to absence of quorum*, [339 U.S. 974 \(1950\)](#)).

167. Practices that promote the casting of illegal or unreliable ballots, or fail to contain basic minimum guarantees against such conduct, can violate the Fourteenth Amendment by leading to the dilution of validly cast ballots. *See* [Reynolds, 377 U.S. at 555](#) (“[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.”).

168. The Fourteenth Amendment Due Process Clause protects the right to vote from conduct by state officials which seriously undermines the fundamental fairness of the electoral process. [Marks v. Stinson, 19 F.3d 873, 889 \(3d Cir. 1994\)](#); [Griffin v. Burns, 570 F.2d 1065, 1077-78 \(1st Cir. 1978\)](#).

169. Separate from the Equal Protection Clause, the Fourteenth Amendment’s due process clause protects the fundamental right to vote against “the

disenfranchisement of a state electorate.” [*Duncan v. Poythress*, 657 F.2d 691, 702 \(5th Cir. 1981\)](#).

170. “When an election process ‘reaches the point of patent and fundamental unfairness,’ there is a due process violation.” [*Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1183-84 \(11th Cir. 2008\)](#) (quoting [*Roe v. Alabama*, 43 F.3d 574, 580 \(11th Cir.1995\)](#) (citing [*Curry v. Baker*, 802 F.2d 1302, 1315 \(11th Cir.1986\)\)](#)). See also [*Griffin*, 570 F.2d at 1077](#) (“If the election process itself reaches the point of patent and fundamental unfairness, a violation of the due process clause may be indicated and relief under § 1983 therefore in order.”); [*Marks v. Stinson*, 19 F.3d 873, 889 \(3d Cir. 1994\)](#) (enjoining winning state senate candidate from exercising official authority where absentee ballots were obtained and cast illegally).

171. Part of courts’ justification for such a ruling is the Supreme Court’s recognition that the right to vote and to free and fair elections is one that is preservative of other basic civil and political rights. See [*Black*, 209 F.Supp.2d at 900](#) (quoting [*Reynolds*, 377 U.S. at 561-62](#) (“since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.”)); see also [*Yick Wo v. Hopkins*, 118 U.S. 356, 370](#)

[\(1886\)](#) (“the political franchise of voting ... is regarded as a fundamental political right, because [*sic*] preservative of all rights.”).

172. “[T]he right to vote, the right to have one’s vote counted, and the right to have ones vote given equal weight are basic and fundamental constitutional rights incorporated in the due process clause of the Fourteenth Amendment to the Constitution of the United States.” [Black, 209 F. Supp. 2d at 900](#) (a state law that allows local election officials to impose different voting schemes upon some portions of the electorate and not others violates due process).

173. “Just as the equal protection clause of the Fourteenth Amendment prohibits state officials from improperly diluting the right to vote, the due process clause of the Fourteenth amendment forbids state officials from unlawfully eliminating that fundamental right.” [Duncan, 657 F.2d at 704](#).

174. “Having once granted the right to vote on equal terms, [Defendants] may not, by later arbitrary and disparate treatment, value one person's vote over that of another.” [Bush, 531 U.S. at 104-05](#).

175. In statewide and federal elections conducted in the Commonwealth of Pennsylvania, including without limitation the November 3, 2020 General Election, all candidates, political parties, and voters, including without limitation Plaintiffs, have a vested interest in being present and having meaningful access to observe and monitor

the electoral process to ensure that it is properly administered in every election district and otherwise free, fair, and transparent.

176. Moreover, through its provisions involving watchers and representatives, the Pennsylvania Election Code ensures that all candidates and political parties, including without limitation Plaintiff, the Trump Campaign, shall be “present” and have meaningful access to observe and monitor the electoral process to ensure that it is properly administered in every election district and otherwise free, fair, and transparent.

177. Defendants have a duty to guard against deprivation of the right to vote through the dilution of validly cast ballots by ballot fraud or election tampering.

178. Rather than heeding these mandates and duties, Defendants arbitrarily and capriciously denied the Trump Campaign meaningful access to observe and monitor the electoral process by: (a) mandating that representatives at the pre-canvass and canvass of all absentee and mail-ballots be either Pennsylvania barred attorneys or qualified registered electors of the county in which they sought to observe and monitor; and (b) not allowing watchers and representatives to visibly see and review all envelopes containing official absentee and mail-in ballots either at the time or before they were opened and/or when such ballots were counted and recorded. Instead, Defendants refused to credential all of the Trump Campaign’s submitted watchers and representatives and/or kept Trump Campaign’s watchers

and representatives by security and metal barricades from the areas where the inspection, opening, and counting of absentee and mail-in ballots were taking place. Consequently, Defendants created a system whereby it was physically impossible for the candidates and political parties to view the ballots and verify that illegally cast ballots were not opened and counted.

179. Defendants intentionally and/or arbitrarily and capriciously denied Plaintiffs access to and/or obstructed actual observation and monitoring of the absentee and mail-in ballots being pre-canvassed and canvassed by Defendants.

180. Defendants have acted and will continue to act under color of state law to violate the right to vote and due process as secured by the Fourteenth Amendment to the United States Constitution.

181. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm unless the injunctive relief requested herein is granted.

COUNT II

Fourteenth Amendment

U.S. Const. Amend. XIV, 42 U.S.C. § 1983

Denial of Equal Protection

Invalid Enactment of Regulations Affecting Observation and Monitoring of the Election

182. Plaintiffs refer to and incorporate by reference each of the prior paragraphs of this Complaint as though the same were repeated at length herein.

183. The equal enforcement of election laws is necessary to preserve our most basic and fundamental rights.

184. The requirement of equal protection is particularly stringently enforced as to laws that affect the exercise of fundamental rights, including the right to vote.

185. In statewide and federal elections conducted in the Commonwealth of Pennsylvania, including without limitation the November 3, 2020 General Election, all candidates, political parties, and voters, including without limitation Plaintiffs, have a vested interest in being present and having meaningful access to observe and monitor the electoral process in each County to ensure that it is properly administered in every election district and otherwise free, fair, and transparent.

186. Moreover, through its provisions involving watchers and representatives, the Pennsylvania Election Code ensures that all candidates and political parties in each County, including the Trump Campaign, have meaningful access to observe and monitor the electoral process to ensure that it is properly administered in every election district and otherwise free, fair, and transparent. *See, e.g.*, 25 P.S. §§ 3146.8(b) & (g)(1.1)-(2).

187. Defendants have a duty to treat the voting citizens in each County in the same manner as the citizens in other Counties in Pennsylvania.

188. Rather than heeding these mandates and duties, Defendants denied the Trump Campaign equal rights to meaningful access to observe and monitor the

electoral process enjoyed by citizens in other Pennsylvania Counties by: (a) mandating that representatives at the pre-canvass and canvass of all absentee and mail-ballots be either Pennsylvania barred attorneys or qualified registered electors of the county in which they sought to observe and monitor; and (b) not allowing watchers and representatives to visibly see and review all envelopes containing official absentee and mail-in ballots either at or before they were opened and/or when such ballots were counted and recorded. Instead, Defendants refused to credential all of the Trump Campaign's submitted watchers and representatives and/or kept Trump Campaign's watchers and representatives by security and metal barricades from the areas where the inspection, opening, and counting of absentee and mail-in ballots were taking place. Consequently, Defendants created a system whereby it was physically impossible for the candidates and political parties to view the ballots and verify that illegally cast ballots were not opened and counted.

189. Other Pennsylvania county boards of elections provided watchers and representatives of candidates and political parties, including without limitation watchers and representatives of the Trump Campaign, with appropriate access to view the absentee and mail-in ballots being pre-canvassed and canvassed by those county election boards and without restricting representatives by any county residency or Pennsylvania bar licensure requirements.

190. Defendants intentionally and/or arbitrarily and capriciously denied Plaintiffs access to and/or obstructed actual observation and monitoring of the absentee and mail-in ballots being pre-canvassed and canvassed by Defendants, depriving them of the equal protection of those state laws enjoyed by citizens in other Counties.

191. Defendants have acted and will continue to act under color of state law to violate Plaintiffs' right to be present and have actual observation and access to the electoral process as secured by the Equal Protection Clause of the United States Constitution.

192. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm unless the injunctive relief requested herein is granted.

COUNT III

U.S. Const. Art. I, §4, cl. 1 & Art. II, § 1, cl. 2
Violation of the Electors & Elections Clauses

193. Plaintiffs incorporate each of the prior allegations in this complaint.

194. The Electors Clause states that “[e]ach State shall appoint, in such Manner as *the Legislature* thereof may direct, a Number of Electors” for President. U.S. Const. art. II, § 1, cl. 2 (emphasis added). Likewise, the Elections Clause of the U.S. Constitution states that “[t]he Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by *the Legislature* thereof.” U.S. Const. art. I, § 4, cl. 1 (emphasis added).

195. The Legislature is ““the representative body which ma[kes] the laws of the people.”” [*Smiley*, 285 U.S. at 365.](#)

196. Regulations of congressional and presidential elections, thus, “must be in accordance with the method which the state has prescribed for legislative enactments.” [*Id.* at 367](#); *see also* [*Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 135 S. Ct. 2652, 2668 \(2015\).](#)

197. In Pennsylvania, “[t]he legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representative.” [*Pa. Const. Art. II, § 1*](#). *See also* [*Winston*, 91 A. at 522](#); [*Patterson*, 60 Pa. at 75.](#)

198. Defendants, as a member of the Governor’s Executive Board and county boards of elections, are not part of the General Assembly and cannot exercise legislative power. Rather, Defendants’ power is limited to “tak[ing] care that the laws be faithfully executed.” [*Pa. Const. Art. IV, § 2*](#).

199. Because the United States Constitution reserves for the General Assembly the power to set the time, place, and manner of holding elections for the President and Congress, county boards of elections and state executive officers have no authority to unilaterally exercise that power, much less to hold them in ways that conflict with existing legislation.

200. Through its provisions involving watchers and representatives, the Pennsylvania Election Code ensures that all candidates and political parties, including without limitation Plaintiff, the Trump Campaign, shall be “present” and have meaningful access to observe and monitor the electoral process to ensure that it is properly administered in every election district and otherwise free, fair, and transparent. *See, e.g.,* [25 P.S. §§ 3146.8\(b\) & \(g\)\(1.1\)-\(2\)](#).

201. Defendants are not the legislature, and their unilateral decision to implement rules and procedures that deny Plaintiffs the ability to be “present” and have meaningful access to observe and monitor the electoral process violates the Electors and Elections Clauses of the United States Constitution.

202. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm unless the injunctive relief requested herein is granted.

COUNT IV

Fourteenth Amendment

U.S. Const. Amend. XIV, 42 U.S.C. § 1983

Denial of Equal Protection

Disparate Treatment of Absentee/Mail-In Voters Among Different Counties

203. Plaintiffs incorporate each of the prior allegations in this Complaint.

204. According to the Supreme Court, the Fourteenth Amendment of the United States Constitution protects the “the right of all qualified citizens to vote ... in federal elections.” [Reynolds, 77 U.S. at 554](#). Consequently, state election laws

may not “deny to any person within” the state’s “jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, §1, cl. 4.

205. The Equal Protection Clause requires States to “‘avoid arbitrary and disparate treatment of the members of its electorate.’” [*Charfauros v. Bd. of Elections*, 249 F.3d 941, 951 \(9th Cir. 2001\)](#) (quoting [*Bush*, 531 U.S. at 105](#)). That is, each citizen “has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.” [*Dunn v. Bloomstein*, 405 U.S. 330, 336 \(1972\)](#). A qualified voter “is no more nor no less so because he lives in the city or on the farm. This is the clear and strong command of our Constitution’s Equal Protection Clause.” [*Reynolds*, 377 U.S. at 568](#); see also [*Gray v. Sanders*, 372 U.S. 368, 380 \(1963\)](#) (“The idea that every voter is equal to every other voter in his State, when he casts his ballot in favor of one of several competing candidates, underlies many of [the Supreme Court’s] decisions.”). “[H]aving once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” [*Bush*, 531 U.S. at 104-05](#).

206. “The right to vote extends to all phases of the voting process, from being permitted to place one’s vote in the ballot box to having that vote actually counted. Thus, the right to vote applies equally to the ‘initial allocation of the franchise’ as well as ‘the manner of its exercise.’ Once the right to vote is granted, a state may not draw distinctions between voters that are inconsistent with the

guarantees of the Fourteenth Amendment’s equal protection clause.” [*Pierce*, 324 F. Supp. 2d at 695.](#)

207. “[T]reating voters differently” thus “violate[s] the Equal Protection Clause” when the disparate treatment is the result of arbitrary, ad hoc processes. [*Charfauros*, 249 F.3d at 954.](#) Indeed, a “minimum requirement for non-arbitrary treatment of voters [is] necessary to secure the fundamental right [to vote].” [*Bush*, 531 U.S. at 105.](#)

208. The use of “standardless” procedures can violate the Equal Protection Clause. [*Bush*, 531 U.S. at 103.](#) “The problem inheres in the absence of specific standards to ensure ... equal application” of even otherwise unobjectionable principles. [*Id.* at 106.](#) Any voting system that involves discretion by decision makers about how or where voters will vote must be “confined by specific rules designed to ensure uniform treatment.” [*Id.* See also *Thomas v. Independence Twp.*, 463 F.3d 285, 297 \(3d Cir. 2006\)](#) (Equal Protection Clause prohibits the “selective enforcement” of a law based on an unjustifiable standard); [*United States v. Batchelder*, 442 U.S. 114, 125 n.9, 99 S. Ct. 2198, 60 L. Ed. 2d 755 \(1979\).](#)

209. Allowing a patchwork of different rules from county to county, and as between similarly situated absentee and mail-in voters, in a statewide election involving federal and state candidates implicates equal protection concerns. [*Pierce*, 324 F. Supp. 2d at 698-99.](#) See also [*Gray*, 372 U.S. at 379-81](#) (a county unit system

which weights the rural vote more heavily than the urban vote and weights some small rural counties heavier than other larger rural counties violates the Equal Protection Clause and its one-person, one-vote jurisprudence).

210. The equal enforcement of election laws is necessary to preserve our most basic and fundamental rights. Moreover, the requirement of equal treatment is particularly stringently enforced as to laws that affect the exercise of fundamental rights, *see* [Reed v. Town of Gilbert, 135 S. Ct. 2218, 2226 \(2015\)](#), including the right to vote.

211. Because of Defendants’ conduct, voters in some counties have been and being treated differently than voters in other counties—and for no good reason. A voter in any of the counties covered by the Defendant County Elections Boards, who received notice of a defective mail-in ballot and an opportunity to cure it by correcting the ballot or casting a new one before Election Day or by casting a provisional ballot at the polling place on Election Day, has had or may have his vote counted. But voters like Mr. Henry, who received no such opportunity, will not, as their votes were rejected as having been improperly cast and thus void.

212. That “different standards have been employed in different counties across the Commonwealth of Pennsylvania to determine whether an absentee ballot should be counted” is the “kind of disparate treatment” that violates “the equal

protection clause because uniform standards will not be used statewide to discern the legality of a vote in a statewide election.” [Pierce, 324 F. Supp. 2d at 699](#).

213. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm unless the injunctive relief requested herein is granted.

COUNT V

U.S. Const. Art. I, §4, & Art. II, § 1 **Violation of the Electors & Elections Clauses**

214. Plaintiffs incorporate each of the prior allegations in this complaint.

215. The Electors Clause states that “[e]ach State shall appoint, in such Manner as *the Legislature* thereof may direct, a Number of Electors” for President. Art. II, § 1, cl. 2 (emphasis added). Likewise, the Elections Clause of the U.S. Constitution states that “[t]he Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by *the Legislature* thereof.” Art. I, § 4, cl. 1 (emphasis added).

216. The Legislature is ““the representative body which ma[kes] the laws of the people.”” [Smiley, 285 U.S. at 1932](#).

217. Regulations of congressional and presidential elections, thus, “must be in accordance with the method which the state has prescribed for legislative enactments.” [Id. at 367](#); see also [Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n, 135 S. Ct. 2652, 2668 \(2015\)](#).

218. In Pennsylvania, “[t]he legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representative.” [Pa. Const. Art. II, § 1](#). See also [Winston, 91 A. at 522](#); [Patterson, 60 Pa. at 75](#).

219. Defendants, as a member of the Governor’s Executive Board and county boards of elections, are not part of the General Assembly and cannot exercise legislative power. Rather, Defendants’ power is limited to “tak[ing] care that the laws be faithfully executed.” [Pa. Const. Art. IV, § 2](#).

220. Because the United States Constitution reserves for the General Assembly the power to set the time, place, and manner of holding elections for the President and Congress, county boards of elections and state executive officers have no authority to unilaterally exercise that power, much less to hold them in ways that conflict with existing legislation.

221. According to the Pennsylvania Supreme Court, “although the Election Code provides the procedures for casting and counting a vote by mail, it does not provide for the ‘notice and opportunity to cure’ procedure[.]” [Pa. Democratic Party, 2020 Pa. LEXIS 4872, at *56](#). Moreover, “[t]o the extent that a voter is at risk for having his or her ballot rejected due to minor errors made in contravention of those requirements, . . . the decision to provide a ‘notice and opportunity to cure’ procedure to alleviate that risk is one best suited for the Legislature[,] . . . particularly in light

of the open policy questions attendant to that decision, including what the precise contours of the procedure would be, how the concomitant burdens would be addressed, and how the procedure would impact the confidentiality and counting of ballots, all of which are best left to the legislative branch of Pennsylvania's government.” *Id.*

222. Defendants are not the legislature, and their unilateral decision to create a cure procedure violates the Electors and Elections Clauses of the United States Constitution.

223. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm unless the injunctive relief requested herein is granted.

COUNT VI

Fourteenth Amendment Equal Protection Clause

U.S. Const. Amend. XIV, 42 U.S.C. § 1983

Denial of Due Process

Disparate Treatment of Absentee/Mail-In Voters Among Different Counties

224. Plaintiffs incorporate each of the prior allegations in this Complaint.

225. Voting is a fundamental right protected by the Fourteenth Amendment to the United States Constitution.

226. The Fourteenth Amendment protects the right to vote from conduct by state officials which seriously undermines the fundamental fairness of the electoral process. [*Marks v. Stinson*, 19 F.3d 873, 889 \(3d Cir. 1994\)](#); [*Griffin*, 570 F.2d at 1077-78](#). “[H]aving once granted the right to vote on equal terms, the State may not,

by later arbitrary and disparate treatment, value one person's vote over that of another.” [Bush, 531 U.S. at 104-05.](#)

227. The United States Constitution entrusts state legislatures to set the time, place, and manner of congressional elections and to determine how the state chooses electors for the presidency. See [U.S. Const. Art. I, § 4, cl. 1](#) & [Art. II, § 1, cl. 2](#).

228. In Pennsylvania, “[t]he legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representative.” [Pa. Const. Art. II, § 1](#). See also [Winston, 91 A. at 522](#); [Patterson, 60 Pa. at 75](#).

229. Defendants, as a member of the Governor's Executive Board and county executive agencies, are not part of the General Assembly and cannot exercise legislative power. Rather, Defendants' power is limited to “tak[ing] care that the laws be faithfully executed.” [Pa. Const. Art. IV, § 2](#).

230. Although the Pennsylvania General Assembly may enact laws governing the conduct of elections, “no legislative enactment may contravene the requirements of the Pennsylvania or United States Constitutions.” [Shankey, 257 A. 2d at 898](#).

231. According to the Pennsylvania Supreme Court, “although the Election Code provides the procedures for casting and counting a vote by mail, it does not provide for the ‘notice and opportunity to cure’ procedure[.]” [Pa. Democratic Party,](#)

[2020 Pa. LEXIS 4872, at *56](#). Moreover, “[t]o the extent that a voter is at risk for having his or her ballot rejected due to minor errors made in contravention of those requirements, ... the decision to provide a ‘notice and opportunity to cure’ procedure to alleviate that risk is one best suited for the Legislature[,] . . . particularly in light of the open policy questions attendant to that decision, including what the precise contours of the procedure would be, how the concomitant burdens would be addressed, and how the procedure would impact the confidentiality and counting of ballots, all of which are best left to the legislative branch of Pennsylvania’s government.” *Id.*

232. Defendants are not the legislature, and their unilateral decision to create and implement a cure procedure for some but not all absentee and mail-in voters in this Commonwealth violates the Due Process Clause of the United States Constitution.

233. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm unless the injunctive relief requested herein is granted.

COUNT VII

U.S. Const. Art. I, §4, & Art. II, § 1

Violation of the Electors & Elections Clauses

234. Plaintiffs incorporate each of the prior allegations in this complaint.

235. The Electors Clause states that “[e]ach State shall appoint, in such Manner as *the Legislature* thereof may direct, a Number of Electors” for President.

Art. II, § 1, cl. 2 (emphasis added). Likewise, the Elections Clause of the U.S. Constitution states that “[t]he Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by *the Legislature* thereof.” Art. I, § 4, cl. 1 (emphasis added).

236. The Legislature is ““the representative body which ma[kes] the laws of the people.”” [Smiley, 285 U.S. at 193](#).

237. Regulations of congressional and presidential elections, thus, “must be in accordance with the method which the state has prescribed for legislative enactments.” [Id. at 367](#); *see also* [Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n, 135 S. Ct. 2652, 2668 \(2015\)](#).

238. In Pennsylvania, “[t]he legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representative.” [Pa. Const. Art. II, § 1](#). *See also* [Winston, 91 A. at 522](#); [Patterson, 60 Pa. at 75](#).

239. Defendants, as a member of the Governor’s Executive Board and county boards of elections, are not part of the General Assembly and cannot exercise legislative power. Rather, Defendants’ power is limited to “tak[ing] care that the laws be faithfully executed.” [Pa. Const. Art. IV, § 2](#).

240. Because the United States Constitution reserves for the General Assembly the power to set the time, place, and manner of holding elections for the

President and Congress, county boards of elections and state executive officers have no authority to unilaterally exercise that power, much less to hold them in ways that conflict with existing legislation.

241. According to the Pennsylvania Supreme Court, “although the Election Code provides the procedures for casting and counting a vote by mail, it does not provide for the ‘notice and opportunity to cure’ procedure[.]” [*Pa. Democratic Party, 2020 Pa. LEXIS 4872, at *56*](#). Moreover, “[t]o the extent that a voter is at risk for having his or her ballot rejected due to minor errors made in contravention of those requirements, ... the decision to provide a ‘notice and opportunity to cure’ procedure to alleviate that risk is one best suited for the Legislature[,] . . . particularly in light of the open policy questions attendant to that decision, including what the precise contours of the procedure would be, how the concomitant burdens would be addressed, and how the procedure would impact the confidentiality and counting of ballots, all of which are best left to the legislative branch of Pennsylvania’s government.” *Id.*

242. Defendants are not the legislature, and their unilateral decision to create a cure procedure violates the Electors and Elections Clauses of the United States Constitution.

243. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm unless the injunctive relief requested herein is granted.

WHEREFORE, in addition to any other affirmative relief that the Court may deem necessary and proper, Plaintiffs ask this Court to enter judgment in their favor and provide the following alternative relief:

- i. An order, declaration, and/or injunction that prohibits the Defendant County Boards of Elections and Defendant Secretary Boockvar from certifying the results of the 2020 General Election in Pennsylvania on a Commonwealth-wide basis;
- ii. As an alternative to the first request for relief, an order, declaration, and/or injunction that prohibits Defendants from certifying the results of the General Elections which include the tabulation of absentee and mail-in ballots for which Plaintiffs' watchers were prevented from observing during the pre-canvass and canvass in the County Election Boards;
- iii. In addition to the alternative requests for relief, an order, declaration, and/or injunction that prohibits Defendants from certifying the results of the General Elections which include the tabulation of absentee and mail-in ballots which Defendants improperly permitted to be cured;
- iv. A temporary restraining order and preliminary injunction granting the above relief during the pendency of this action;
- v. Plaintiffs' reasonable costs and expenses of this action, including attorneys' fees; and cost; and
- vi. All other further relief to which Plaintiffs might be entitled.

Date: November 9, 2020

Respectfully submitted,

PORTER WRIGHT MORRIS &
ARTHUR, LLP

By: /s/ Ronald L. Hicks, Jr.
Ronald L. Hicks, Jr. (PA #49520)
Carolyn B. McGee (PA #208815)

Six PPG Place, Third Floor
Pittsburgh, PA 15222
(412) 235-4500 (Telephone)
(412) 235-4510 (Fax)
rhicks@porterwright.com
cmcgee@porterwright.com

and

/s/ Linda A. Kerns

Linda A. Kerns (PA #84495)
Law Offices of Linda A. Kerns, LLC
1420 Locust Street, Suite 200
Philadelphia, PA 19102
linda@lindakernslaw.com

Counsel for Plaintiffs

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that I have reviewed the foregoing Complaint and that the factual allegations are true and correct.

Date: November 9, 2020

/s/ James Fitzpatrick
James Fitzpatrick, PA EDO Director
Donald J. Trump for President, Inc.

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DONALD J. TRUMP FOR PRESIDENT, INC.

v.

Case No.: 20-5533

PHILADELPHIA COUNTY BOARD OF ELECTIONS

COMPLAINT AND MOTION FOR EMERGENCY INJUNCTION

1. This action is brought by Donald J. Trump for President, Inc. against the Philadelphia County Board of Elections to seek an emergency injunction to prevent an ongoing violation of Plaintiff's Constitutional rights, including at least the right to Due Process.

2. This action is brought pursuant to 42 U.S.C. Section 1983, for violation by the Defendant of Plaintiff's Constitutional rights under color of state law.

3. Pennsylvania law as determined by the Commonwealth's highest available court requires that representatives and poll watchers to be present and observe the canvassing of all mail-in and absentee ballots.

4. The County Board of Elections is aware of this Order but is intentionally refusing to allow any representatives and poll watchers for President Trump and the Republican Party. The County Board of Elections is nonetheless continuing to count ballots, without any observation by any representatives or poll watchers of President Trump and the Republican Party.

5. The County Board of Elections is intentionally violating state law. The County Board of Elections claims it is "studying" the Order. It has been studying the Order for over an hour and a half, while counting continues with no Republicans present.

6. This conduct constitutes an intentional violation of the Plaintiff's Constitutional rights, including at least the right to Due Process as guaranteed by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiff seeks an Emergency Injunction barring the Defendant County Board of Elections from continuing to count any ballots so long as Republican observers are not present as required by state law.

An injunction is necessary because the harm from Defendant's continuing conduct is irreparable.

Respectfully submitted

/s/ Ronald L. Hicks, Jr.

Ronald L. Hicks, Jr. (PA #49520)

Carolyn B. McGee (PA #208815)

Six PPG Place, Third Floor

Pittsburgh, PA 15222

(412) 235-4500 (Telephone)

(412) 235-4510 (Fax)

rhicks@porterwright.com

cmcgee@porterwright.com

and

Jerome M. Marcus

P.A. Bar No. 50708

P.O. Box 212

Merion Station, PA 19066

(610) 246 6584

jmarcus@marcuslaw.us

JS 44 (Rev. 10/20)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Donald J. Trump for President, Inc.

(b) County of Residence of First Listed Plaintiff Washington, DC
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Ronald L. Hicks, Jr., Porter Wright, 6 PPG Place
3rd Floor, Pittsburgh, PA 15222 - 412-235-4500

DEFENDANTS

Philadelphia County Board of Elections

County of Residence of First Listed Defendant Philadelphia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|---|--|--|---|--|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | | |

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
43 USC 1983

Brief description of cause:
Emergency Federal Election Matter

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

November 5, 2020

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: Washington, DC

Address of Defendant: Philadelphia, PA

Place of Accident, Incident or Transaction: Philadelphia, PA

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.DATE: 11/05/2020

Must sign here

49520

Attorney-at-Law / Pro Se Plaintiff

Attorney I.D. # (if applicable)

CIVIL: (Place a ☒ in one category only)

A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☒ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☐ 11. All other Federal Question Cases
- (Please specify): _____

B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (Please specify): _____
- ☐ 7. Products Liability
- ☐ 8. Products Liability - Asbestos
- ☐ 9. All other Diversity Cases
- (Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Ronald L. Hicks, Jr., counsel of record or pro se plaintiff, do hereby certify:☐ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:☒ Relief other than monetary damages is sought.DATE: 11/05/2020

Sign here if applicable

49520

Attorney-at-Law / Pro Se Plaintiff

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DONALD J. TRUMP FOR : CIVIL ACTION NUMBER
PRESIDENT, INC. :
:
:
VERSUS :
:
PHILADELPHIA COUNTY BOARD :
OF ELECTIONS : 20-5533

JAMES A. BYRNE U.S. COURTHOUSE
THURSDAY, NOVEMBER 5, 2020
COMMENCING AT 5:30 P.M.
PHILADELPHIA, PA 19106

BEFORE THE HONORABLE PAUL S. DIAMOND, J.

HEARING: MOTION FOR EMERGENCY INJUNCTION

APPEARANCES:

JEROME MARCUS, ESQUIRE
P.O.BOX 212
MERION STATION, PA 19066
JMARCUS@MARCUSLAW.US

COUNSEL FOR PLAINTIFF

SUZANNE R. WHITE, RPR, FCRR, CM
OFFICIAL COURT REPORTER
2609 U. S. COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106
(215) 299-7252

PROCEEDINGS RECORDED BY STENOGRAPHY-COMPUTER,
TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

1 CONTINUED APPEARANCES:

2 ROBERT A. WIYGUL, ESQUIRE
3 HANGLEY ARONCHICK SEGAL
4 PUDLIN AND SCHILLER ESQUIRE
ONE LOGAN SQUARE 27TH FLOOR
PHILADELPHIA, PA 19103

5 COUNSEL FOR DEFENDANT

6
7 MEGHAN CLAIBORNE, ESQUIRE
8 BENJAMIN FIELD, ESQUIRE
ONE PARKWAY BUILDING
1515 ARCH STREET
PHILADELPHIA PA 19102

9 COUNSEL FOR DEFENDANT

10
11 ADAM BONIN, ESQUIRE
121 S. BROAD STREET
SUITE 400
12 PHILADELPHIA, PA 19107

13 COUNSEL FOR DEFENDANT

14

15

16

17

18

19

20

21

22

23

24

25

1 (CLERK OPENS COURT.)

2 THE COURT: GOOD EVENING, EVERYBODY.

3 PLEASE BE SEATED.

4 WHAT I WOULD REQUEST IS THAT IF YOU FEEL
5 COMFORTABLE DOING IT, WHEN YOU SPEAK, YOU DON'T NEED TO
6 STAND UP. BUT IF YOU SPEAK INTO THE MICROPHONE, AND IF
7 YOU COULD, IF YOU FEEL COMFORTABLE DOING IT, PULL YOUR
8 MASK DOWN AS I'M DOING NOW, BECAUSE IT'S VERY HARD TO
9 UNDERSTAND SOMEBODY WHEN HE OR SHE IS SPEAKING THROUGH A
10 MASK.

11 I GATHER THERE IS A VIDEO HOOKUP TO 15B
12 FOR THE MEDIA AND THAT THERE IS ALSO A CALL-IN NUMBER.

13 MR. MARCUS IS HERE ON BEHALF OF THE
14 PLAINTIFF. IS THAT RIGHT?

15 MR. MARCUS: YES, SIR.

16 THE COURT: YOU DON'T NEED TO STAND UP,
17 AGAIN, IF YOU CAN SPEAK INTO THE MICROPHONE. IF YOU'RE
18 COMFORTABLE WITHOUT YOUR MASK ON.

19 AND MR. WIYGUL, MS. CLAIBORNE AND
20 MR. FIELD ARE HERE FOR THE BOARD OF ELECTIONS.

21 IS THAT RIGHT?

22 MR. WIYGUL: YES, YOUR HONOR.

23 THE COURT: NICE TO SEE YOU AGAIN,
24 MR. WIYGUL.

25 MR. MARCUS. WELL, YOU HAVE YOUR

1 EMERGENCY HEARING.

2 WHAT DO YOU HAVE TO SAY ABOUT IT?

3 MR. MARCUS: FIRST OF ALL, THANK YOU VERY
4 MUCH, YOUR HONOR, FOR HEARING US ON SUCH SHORT NOTICE.

5 YOUR HONOR, THERE WAS AN ORDER ENTERED BY
6 THE COMMONWEALTH COURT IN PENNSYLVANIA THIS MORNING AT
7 AROUND 9:30 THAT MANDATED THAT MY CLIENT AND VOLUNTEERS
8 WORKING FOR MY CLIENT BE GIVEN ACCESS TO THE COUNTING
9 ROOM WHERE ABSENTEE AND MAIL-IN BALLOTS WERE BEING --

10 THE COURT: A LITTLE LOUDER AND INTO THE
11 MICROPHONE, PLEASE.

12 MR. MARCUS: AN ORDER ENTERED BY THE
13 COMMONWEALTH COURT THIS MORNING, YOUR HONOR, MANDATING
14 THAT VOLUNTEERS WORKING AND PAPERS NOW WORKING WITH AND
15 FOR MY CLIENT, THE TRUMP CAMPAIGN, BE GIVEN ACCESS TO
16 THE ROOM AT THE CONVENTION CENTER IN WHICH ABSENTEE AND
17 MAIL-IN BALLOTS WERE BEING COUNTED. THAT ORDER HAS BEEN
18 STUDIOUSLY DISOBEYED ALL DAY LONG. I WILL PUT ON
19 TESTIMONY FROM THE GENTLEMAN WHO IS SITTING HERE, JEREMY
20 MERCER, WHO IS AN OFFICIAL WITH THE CAMPAIGN. AND I CAN
21 PRODUCE AS LONG A PARADE AS THE COURT WOULD LIKE OF
22 VOLUNTEERS WHO WILL TESTIFY THAT THEY SHOWED UP AND
23 WANTED TO VOLUNTEER, THEIR NAMES WERE ON THE APPROPRIATE
24 LISTS, THEY HAD BEEN TOLD THAT THEIR NAMES HAD BEEN SENT
25 IN THE APPROPRIATE WAY, AND THEY WERE SIMPLY LEFT

1 TWIDDLING THEIR THUMBS FOR HOURS UNTIL IT BECAME CLEAR
2 THAT THEY WERE NOT GOING TO BE ADMITTED TO THE ROOM.
3 AND THEREFORE, THERE WAS NOT ADEQUATE ACCESS TO THE ROOM
4 WHERE THIS COUNTING WAS GOING ON.

5 SO THAT IS THE PROBLEM THAT WE HAVE
6 BROUGHT TO YOUR HONOR THIS EVENING.

7 THE COURT: MR. WIYGUL.

8 MR. WIYGUL: THANK YOU, YOUR HONOR. WE
9 BELIEVE THE MOTION, WHICH AS WE UNDERSTAND IT IS -- I
10 THINK IT'S A ONE-PAGE DOCUMENT STYLED AS A COMPLAINT.

11 THE COURT: LET'S BE FAIR, IT'S A PAGE
12 AND A QUARTER.

13 MR. WIYGUL: IT'S A PAGE AND A QUARTER,
14 YOUR HONOR. I BELIEVE IT'S STYLES BOTH A COMPLAINT AND
15 A MOTION FOR A TEMPORARY RESTRAINING ORDER. WE BELIEVE
16 THAT IT IS FATALLY FLAWED FOR BOTH LEGAL AND FACTUAL
17 REASONS. WE DON'T THINK YOUR HONOR ACTUALLY NEEDS TO
18 REACH THE FACTUAL QUESTIONS.

19 I'M HAPPY TO START BY GIVING JUST AN
20 OVERVIEW OF THE LEGAL FLAWS. AS I HEARD MR. MARCUS
21 EXPLAIN THEIR CONTENTION, THEY ARE SEEKING AN ORDER, I
22 PRESUME AN INJUNCTIVE ORDER OF SOME SORT, FROM THE
23 FEDERAL DISTRICT COURT TO ENFORCE A STATE COURT ORDER.

24 AND THAT IS NOT APPROPRIATE PROCEDURALLY.
25 THEY HAVE REMEDIES IN STATE COURT. I WOULD ALSO ADD, WE

1 BELIEVE THAT MR. MARCUS'S CHARACTERIZATION OF THE STATE
2 COURT PROCEEDINGS IS INCORRECT. THERE WAS AN ORDER
3 ISSUED BY THE COMMONWEALTH COURT THIS MORNING AS HE
4 NOTED. THE PHILADELPHIA BOARD OF ELECTIONS THEN
5 PROMPTLY FILED A PETITION FOR ALLOWANCE OF APPEAL TO THE
6 PENNSYLVANIA SUPREME COURT FROM THAT ORDER.

7 AND UNDER PENNSYLVANIA PROCEDURAL RULES,
8 THE FILING OF THAT PETITION OPERATES AS AN AUTOMATIC
9 SUPERSEDEAS OF THE COMMONWEALTH COURT ORDER DURING THE
10 PENDENCY OF THE PETITION, WHICH, AS FAR AS I KNOW, IS
11 STILL PENDING BEFORE THE PENNSYLVANIA SUPREME COURT.
12 THEY ORDERED BRIEFING ON THAT, AND I BELIEVE BRIEFING
13 WAS COMPLETED AROUND THE MIDDLE OF THE AFTERNOON.

14 THE COURT: WELL, LET ME BACK UP FOR JUST
15 A MINUTE.

16 ARE PEOPLE BEING KEPT OUT OF THE ROOM?

17 MR. WIYGUL: THANK YOU, YOUR HONOR, NO.

18 AND MY COLLEAGUE CAN ADDRESS MORE OF THE DETAILS OF THE
19 FACTS, BUT IT IS MY UNDERSTANDING THAT PEOPLE HAVE NEVER
20 BEEN KEPT OUT OF THE ROOM. AND, IN FACT, NOT
21 WITHSTANDING THE EFFECTIVE STAY OF THE COMMONWEALTH
22 COURT ORDER, WE BELIEVE WE HAVE BEEN COMPLYING WITH ITS
23 TERMS SINCE IT WAS ENTERED.

24 THE COURT: IF WE CAN BE A LITTLE LESS
25 ABSTRACT. HOW BIG IS THE ROOM?

1 MS. CLAIBORNE: MEGHAN CLAIBORNE FOR THE
2 CITY OF PHILADELPHIA.

3 THE COURT: NICE TO SEE YOU.

4 MS. CLAIBORNE: NICE TO SEE YOU TOO, YOUR
5 HONOR.

6 THE ACTUAL DIMENSIONS OF THE ROOM?

7 THE COURT: IS IT AS BIG AS THIS
8 COURTROOM?

9 MS. CLAIBORNE: I WOULD SAY IT'S TEN
10 TIMES LARGER THAN THE COURTROOM AT A MINIMUM.

11 THE COURT: TEN TIMES BIGGER. HOW MANY
12 PEOPLE ARE DOING THE COUNTING?

13 MS. CLAIBORNE: 150.

14 THE COURT: AND ARE OBSERVERS BEING
15 ALLOWED IN TO WATCH THE COUNTING?

16 MS. CLAIBORNE: ABSOLUTELY, YOUR HONOR.
17 AND WE DO HAVE ONE OF THE STAFF WHO WAS PRESENT ALL DAY
18 HERE TO CONFIRM THAT.

19 THE COURT: LET ME BACK UP A LITTLE MORE,
20 MR. MARCUS. I CAN'T REVIEW A STATE COURT ORDER.

21 MR. MARCUS: WE ARE NOT ASKING THE COURT
22 TO ORDER A STATE COURT ORDER, YOUR HONOR.

23 THE COURT: IT KIND OF SOUNDS LIKE YOU
24 ARE. I KNOW YOU INVOKED 1983 AND DUE PROCESS THE 14TH
25 AMENDMENT. WHAT CONSTITUTIONAL RIGHT OF WHOM IS BEING

1 INFRINGED?

2 MR. MARCUS: BOTH THE -- WELL, TO START
3 WITH, THE CAMPAIGN IS RIPE TO BE PRESENT. CAMPAIGN --

4 THE COURT: UNDER WHAT PROVISION OF
5 FEDERAL LAW OR THE CONSTITUTION?

6 MR. MARCUS: THE DUE PROCESS CLAUSE AND
7 THE EQUAL PROTECTION CLAUSE, BOTH OF WHICH WERE AT ISSUE
8 IN BUSH V. GORE. THE --

9 THE COURT: BOTH OF WHICH --

10 MR. MARCUS: -- WERE AT ISSUE IN BUSH V.
11 GORE.

12 THE PLAINTIFF WAS THE CAMPAIGN IN THAT
13 CASE.

14 THE ISSUE WAS THE FAIRNESS --

15 THE COURT: I REMEMBER. I'M OLD ENOUGH.
16 YOU'RE SPEAKING IN GREAT GENERALITIES. EQUAL
17 PROTECTION, DUE PROCESS, AND I ASK YOU WHAT -- HOW IS
18 THE CAMPAIGN BEING DENIED EQUAL PROTECTION? WHAT --

19 MR. MARCUS: IT'S NOT.

20 THE COURT: IT'S NOT?

21 MR. MARCUS: EXCUSE ME, I WAS GOING TO
22 SAY, IT IS NOT BEING GIVEN EQUAL ACCESS TO THE COUNTING.
23 AND I THINK --

24 THE COURT: WHO IS GETTING BETTER ACCESS
25 OTHER THAN THE EMPLOYEES THEMSELVES?

1 MR. MARCUS: REPRESENTATIVES OF THE
2 DEMOCRATIC PARTY.

3 THE COURT: IS THAT TRUE, MS. CLAIBORNE?

4 MS. CLAIBORNE: NO, YOUR HONOR. AGAIN,
5 TO THE BEST OF OUR KNOWLEDGE, UNLESS THERE WERE --

6 THE COURT: "TO THE BEST OF MY KNOWLEDGE"
7 AND "AS FAR AS I KNOW" REALLY WON'T WORK TONIGHT.

8 MS. CLAIBORNE: NO, YOUR HONOR. NOT A
9 SINGLE OBSERVER. TO THE EXTENT THAT AN OBSERVER WAS NOT
10 COMPORTING WITH THE RULES, I BELIEVE THAT AT LEAST ONE
11 INDIVIDUAL WAS REMOVED BECAUSE THEY WERE BEHAVING
12 INAPPROPRIATELY, TO THE EXTENT THAT THEY WEREN'T
13 SOCIALLY DISTANCING OR ANY OTHER ISSUE --

14 THE COURT: HOW CLOSE ARE THE OBSERVERS
15 GENERALLY ALLOWED TO GET TO THE COUNTERS?

16 MS. CLAIBORNE: THAT WAS AT ISSUE TODAY.
17 THERE WAS AN ORDER TOO THIS MORNING THAT THEY BE WITHIN
18 SIX FEET. WE SHUT DOWN ALL OF OUR CANVASSING ACTIVITIES
19 EXCEPT FOR THE FIRST ROW CLOSEST TO THE BARRICADE. WE
20 MOVED THE BARRICADE UP. MS. STEPHANIE REID IS HERE TO
21 TESTIFY WE GOT A TAPE MEASURE, WE MEASURED OUT SIX FEET
22 AND THEY WERE ALLOWED TO STAND AT THE BARRICADE.

23 THE COURT: IT'S OKAY. I'M NOT A LAND
24 SURVEYOR. I JUST WANTED TO KNOW.

25 MR. MARCUS, I'LL GRANT YOU, IF THERE WERE

1 A COMPLETELY IRRATIONAL DECISION THAT PEOPLE WHO WERE, I
2 DON'T KNOW, UNDER FIVE FEET OR OVER FIVE FEET AREN'T
3 ALLOWED TO OBSERVE OR PEOPLE OF A CERTAIN RACE OR
4 RELIGION ARE NOT ALLOWED TO OBSERVE, I'D STILL HAVE
5 TROUBLE FIGURING OUT WHAT THE CONSTITUTIONAL INJURY IS,
6 BUT AT LEAST THERE WOULD BE SOME SORT OF A
7 DISCRIMINATION.

8 THEY'RE SAYING THAT YOUR PEOPLE ARE IN
9 THAT ROOM. ARE THEY IN THAT ROOM OR NOT? DOWN.

10 MR. MARCUS: DOWN. THEY ARE NOT BEING
11 GIVEN EQUAL ACCESS TO THE ROOM.

12 YOUR HONOR, I THINK --

13 THE COURT: EQUAL ACCESS IS REALLY -- ARE
14 THEY IN THE ROOM?

15 MR. MARCUS: THERE ARE NON -- THERE IS A
16 NONZERO NUMBER OF PEOPLE IN THE ROOM. THEY ARE NOT
17 BEING GIVEN --

18 THE COURT: NONZERO NUMBER OF PEOPLE.
19 DON'T KNOW WHAT THAT IS EITHER.

20 MR. MARCUS: MAY I RESPECTFULLY MAKE A
21 SUGGESTION, YOUR HONOR?

22 THE COURT: SURE.

23 MR. MARCUS: THE OTHER SIDE AND WE HAVE
24 WHAT I THINK IS A FACTUAL DISAGREEMENT ABOUT WHAT'S
25 ACTUALLY GOING ON.

1 THE COURT: I'M ASKING YOU AS A MEMBER OF
2 THE BAR OF THIS COURT, ARE PEOPLE REPRESENTING THE
3 DONALD J. TRUMP FOR PRESIDENT, REPRESENTING THE
4 PLAINTIFF, IN THAT ROOM?

5 MR. MARCUS: YES.

6 THE COURT: I'M SORRY, THEN WHAT'S YOUR
7 PROBLEM?

8 MR. MARCUS: THEY'RE NOT BEING GIVEN
9 EQUAL ACCESS TO THE ROOM. THEY'RE NOT BEING GIVEN
10 ACCESS TO -- THE FACTUAL REPRESENTATION THAT THEY WERE
11 WITHIN SIX FEET IS NOT ACCURATE, AS MY CLIENT WILL
12 TESTIFY. THEY CAN'T SEE --

13 THE COURT: HOW MANY FEET ARE THEY AWAY?

14 MR. MARCUS: AT ALL TIMES, YOUR HONOR, A
15 DISTANCE GREATER THAN ONE COULD ACTUALLY SEE. THE
16 DISTANCE VARIED BETWEEN 100 FEET AND 30 FEET.

17 THE COURT: ONE COULD ACTUALLY SEE WHAT?

18 MR. MARCUS: WHAT WAS ACTUALLY GOING ON.
19 THE PURPOSE OF HAVING THE OBSERVERS THERE IS SO THAT
20 THEY CAN OBSERVE THE OPENING OF INDIVIDUAL BALLOTS, THE
21 CHECKING OF SIGNATURES, THE SECURITY --

22 THE COURT: YOU CAN'T SEE FROM 30 FEET IF
23 AN ENVELOPE IS BEING OPENED? YOU'RE 30 FEET FROM ME
24 RIGHT NOW.

25 MR. MARCUS: CORRECT.

1 THE COURT: YOU DON'T THINK I CAN -- AND
2 BELIEVE ME, YOU WOULDN'T WANT ME PILOTING YOUR AIRCRAFT
3 WITH THESE 67-YEAR OLD EYES, BUT I COULD SEE IF YOU WERE
4 OPENING AN ENVELOPE AND LOOKING AT IT?

5 MR. MARCUS: YOU COULD SEE IF I WAS
6 OPENING AN ENVELOPE.

7 THE COURT: WHAT MORE DO THEY HAVE TO DO?
8 THEY'RE NOT GOING TO BE ALLOWED TO STAND OVER THEIR
9 SHOULDERS.

10 MR. MARCUS: NO. BUT THEY HAVE TO BE
11 GIVEN THE RIGHT TO SEE THE SIGNATURE, TO SEE WHETHER THE
12 SIGNATURE MATCHES THE SIGNATURE IN THE BOOK, TO SEE --

13 THE COURT: THEY WOULD HAVE TO BE CLOSER
14 THAN SIX FEET TO DO THAT.

15 MR. MARCUS: THE RULE WAS SIX FEET. SIX
16 FEET --

17 THE COURT: I UNDERSTAND. BUT WE HAVE A
18 VIRUS OUT THERE THAT THERE HAVE TO BE MORE ROOM -- I'M
19 SORRY, THERE WOULD BE LESS ROOM THAN SIX FEET. I DON'T
20 KNOW IF IT'S SAFE.

21 MS. CLAIBORNE, MR. WIYGUL, AGAIN, I'M NOT
22 A LAND SURVEYOR, I DON'T KNOW THAT I HAVE JURISDICTION
23 TO HEAR THIS. I JUST DECIDED WE SHOULD HAVE A HEARING
24 BECAUSE IT DOES SEEM TO ME THAT THE WHOLE THING IS GOING
25 TO BE MOOT IF WHAT I READ ON THE INTERNET IS CORRECT,

1 WHICH IS THAT THE COUNT IS GOING TO BE COMPLETED
2 SOMETIME SOON, WHATEVER THAT IS.

3 DOES THAT SOUND RIGHT, MS. CLAIBORNE?

4 MS. CLAIBORNE: IT IS, YOUR HONOR. BUT,
5 I MEAN, I DO THINK IT IS IMPORTANT TO CORRECT THE
6 FACTUAL RECORD THAT --

7 THE COURT: I COULDN'T AGREE WITH YOU
8 MORE. AND I CAN HEAR TESTIMONY FROM SOMEONE WHO SAYS
9 THEY ARE THIS MANY FEET AND THEN I'LL HEAR TESTIMONY
10 FROM SOMEONE ELSE THAT SAYS THEY'RE THIS MANY FEET.
11 REALLY, CAN WE BE RESPONSIBLE ADULTS HERE AND REACH AN
12 AGREEMENT AS TO HOW FAR ALL OBSERVERS, NOT JUST -- NOT
13 JUST MR. MARCUS'S CLIENTS, ALL OBSERVERS ARE ALLOWED TO
14 STAND?

15 MR. CLAIBORNE: WE ARE HAPPY TO DO THAT,
16 YOUR HONOR, BUT THAT HAS ALREADY BEEN ADDRESSED, AND WE
17 ARE IN COMPLIANCE.

18 THE COURT: THAT'S -- THAT'S --

19 MR. CLAIBORNE: WE ARE CERTAINLY HAPPY --
20 IF HE WANTS SIX FEET, WE'RE AGREEING TO SIX FEET, THAT'S
21 WHAT IT IS, WE WOULD ALLOW THAT TO CONTINUE GOING AND WE
22 WOULD REALLY HOPE THAT THE RECORD WOULD REFLECT THAT SO
23 THAT IS NO MISINTERPRETATION OF WHAT'S GOING ON, AND HE
24 DOESN'T WALK OUT OF HERE AND SAY THAT WE'RE KEEPING THEM
25 30 TO 100 FEET AWAY. THEY ARE ALLOWED UP TO SIX FEET

1 AWAY AT THE BARRICADE, AND THAT'S HOW IT HAS BEEN ALL
2 DAY.

3 THE COURT: I REALLY WOULD LIKE -- YOU'RE
4 A LAWYER, AND YOU DON'T HAVE THE AUTHORITY -- LOOK, YOU
5 MAY BE RUNNING THE CITY SOLICITOR'S OFFICE, I DON'T
6 KNOW, BUT YOU DON'T HAVE THE AUTHORITY TO TELL THE
7 PEOPLE WHERE TO STAND. WHO DOES? I WOULD LIKE A NAME.

8 MR. CLAIBORNE: AT THIS POINT I WOULD SAY
9 THE COMMONWEALTH COURT WHICH HAS ALREADY ISSUED AN ORDER
10 TO THAT EFFECT TODAY, BUT WE CERTAINLY HAVE --

11 THE COURT: I'M TRYING TO AVOID THE NEED
12 TO DO ANYTHING SIMPLY BY HAVING THE PARTIES REACH AN
13 AGREEMENT ON THE RECORD.

14 IF I WERE BROKERING A SETTLEMENT, WHICH
15 I'M NOT, WE WOULD HAVE SOMEBODY, SOME CLIENT
16 REPRESENTATIVE OTHER THAN A LAWYER. WHO WOULD THAT BE?
17 THE HEAD OF THE BOARD OF ELECTIONS?

18 YES, MR. FIELD, NICE TO SEE YOU TOO.

19 MR. FIELD: NICE TO SEE YOU TOO. I DO
20 THAT ALL THE TIME. IT'S AWKWARD IN THESE TIMES, YOUR
21 HONOR. NICE TO SEE YOU.

22 SO I DO REPRESENT THE BOARD OF ELECTIONS.
23 AND THE BOARD IS A THREE MEMBER BOARD. TO THE EXTENT
24 YOUR HONOR IS ASKING THE QUESTION IN TERMS OF THEIR
25 REGULATIONS --

1 THE COURT: NO. I'M ASKING SOMEBODY WITH
2 DECISION-MAKING AUTHORITY TO SAY TO ME, THEY WILL -- TO
3 ME, MR. FEDERAL JUDGE, WE ARE GOING TO LET PEOPLE STAND
4 WITHIN X FEET. SIX FEET HAPPENS TO BE THE NUMBER THAT
5 HAS BEEN PICKED I ASSUME BECAUSE THAT IS GENERALLY WHAT
6 YOU SEE IN EVERY SUPERMARKET AND EVERYWHERE YOU GO, THAT
7 IS CONSIDERED A SAFE DISTANCE MOSTLY. IF IT'S TEN FEET,
8 IT'S TEN FEET. WHATEVER IT IS, I WOULD LIKE SOMEONE TO
9 SAY TO ME, JUDGE, ANYONE WHO WANTS TO WATCH, PROVIDING
10 THEY STAY DISTANT FROM EACH OTHER, BECAUSE THEY HAVE TO
11 STAND AT LEAST SIX FEET APART FROM EACH OTHER, CAN GET
12 AS CLOSE AS X FEET AND SAY THAT TO ME ON THE RECORD
13 HERE. CAN WE DO THAT?

14 YOU'RE SHAKING YOUR HEAD, MS. CLAIBORNE.
15 CAN WE DO THAT?

16 MR. FIELD: SO I CAN EXPLAIN A LITTLE
17 BIT --

18 THE COURT: IF IT'S ALREADY BEING DONE, I
19 DON'T KNOW WHY WE CAN'T DO THAT.

20 MR. FIELD: WE CAN TRY AND ARRANGE FOR A
21 WITNESS, ONE OF THE DEPUTIES OF THE COMMISSIONERS
22 RESPONSIBLE FOR OVERSEEING THE AREA TO COME IN, BUT JUST
23 TO EXPLAIN, AT THE BEGINNING OF THE PRE-CANVASS, THE
24 BARRICADE THAT HAS BEEN DISCUSSED, WHICH CORDONS OFF THE
25 AREA OF THE OBSERVERS ARE IN TO MAKE SURE THAT THE AREA

1 THAT THE BALLOTS ARE BEING WORKED ON IS SAFE, SECURE,
2 BALLOTS ARE NOT, YOU KNOW, IN A POSITION WITH THE PUBLIC
3 AROUND THEM, VOTER SECRECY AND ALL THOSE THINGS --

4 THE COURT: TRULY, MR. FIELD, I'M NOT
5 TELLING YOU HOW TO DO THIS, I'M NOT TELLING YOUR CLIENT
6 HOW TO DO THIS. SIX FEET HAPPENS TO BE THE NUMBER OF
7 FEET THAT HAS BEEN MENTIONED. YOU WANT TO DO TEN FEET,
8 YOU WANT TO DO 20 FEET, AS LONG AS EVERYONE IS HELD TO
9 THE SAME STANDARD, AND THAT IS WHAT I'M TOLD, I DON'T
10 HAVE TO GET INTO A QUESTION OF WHETHER I HAVE TO ABSTAIN
11 BECAUSE THIS APPEARS TO BE AN APPEAL FROM A STATE COURT
12 ORDER. I DON'T HAVE TO ADDRESS WHETHER OR NOT THERE IS
13 A FEDERAL RIGHT AT ISSUE HERE OR WHETHER THERE IS A
14 FEDERAL INJURY, BECAUSE THIS IS WHAT YOU'VE REPRESENTED.
15 THIS IS WHAT EVERYONE IS GOING TO BE HELD TO. AND SO
16 THAT MR. MARCUS HAS NO COMPLAINT AT THAT POINT TO MAKE
17 ABOUT IT -- WELL, HE MAY WANT TO STAND CLOSER, WHICH IS
18 NOT A CONSTITUTIONAL RIGHT AS FAR AS I CAN TELL.

19 MR. FIELD: SO I WILL -- IF I MIGHT, YOUR
20 HONOR, PUT IT ON THE RECORD.

21 I CAN BRING A WITNESS TO THIS, BUT I
22 WANT --

23 THE COURT: WHAT I WOULD LIKE YOU TO DO,
24 I WOULD LIKE TO TAKE A BRIEF RECESS AND I WOULD LIKE YOU
25 TO SPEAK WITH MR. MARCUS FROM A SAFE DISTANCE AND DECIDE

1 WHAT THE AMOUNT OF SPACE IS AND WHAT EVERYONE IS GOING
2 TO BE HELD TO. THEN I'M GOING TO WANT YOU TO GET
3 SOMEONE ON THE PHONE WHO CAN MAKE THE DECISION WHO WILL
4 STATE HERE ON THE RECORD THAT THAT -- THIS IS -- WE ARE
5 GOING TO HONOR THAT. AND THAT IS WHAT WE ARE GOING TO
6 DO WITH RESPECT TO EVERYBODY.

7 LOOK, I DON'T KNOW THAT ANYBODY HAS A
8 RIGHT TO STAND WITHIN A PARTICULAR DISTANCE, ALTHOUGH IT
9 DOES SEEM TO ME THAT IF THE CITY WERE TO SAY PEOPLE OF
10 ONE RACE STAND THIS DISTANCE, PEOPLE WITH ANOTHER RACE
11 STAND ANOTHER DISTANCE, I'M NOT SAYING THAT'S WHAT'S
12 GOING ON. I'M SAYING THAT IF I WERE A LAW PROFESSOR, I
13 COULD PROBABLY THEORETICALLY THINK OF SOMETHING THAT
14 WOULD GET MR. MARCUS INTO COURT HERE, ALTHOUGH THAT DOES
15 SEEM SORT OF TENUOUS TO ME.

16 BUT IF, IN FACT, THE CITY IS PREPARED --
17 A DECISION-MAKER WITH A NAME IS PREPARED TO SAY, WE WILL
18 ALLOW EVERYBODY TO STAND NO CLOSER THAN X FEET, THEN I
19 WILL ASK MR. MARCUS, WHERE IS THE QUIBBLE? WHY ISN'T
20 THAT ENOUGH?

21 MR. FIELD: VERY WELL.

22 THE COURT: CAN WE DO THAT?

23 MR. FIELD: WE CAN DO THAT.

24 MR. MARCUS: YOUR HONOR, MAY I ASK,
25 THERE'S ONE OTHER DIMENSION TO THIS PROBLEM.

1 THE COURT: LENGTH AND WIDTH AND DEPTH?
2 NO, A DIFFERENT DIMENSION. TIME AND SPACE, NO.

3 MR. MARCUS: NUMBER OF HUMAN BEINGS,
4 BECAUSE ONE OF THE SIGNIFICANT ISSUES IS THAT A GREAT
5 NUMBER OF PEOPLE -- AND I OBSERVED THIS MYSELF
6 PERSONALLY AND I HAVE WITNESSES WHO WILL TESTIFY, WHO
7 HAVE THE LEGAL RIGHT TO BE THERE, WERE SIMPLY BEING
8 TOLD, I'M SORRY, WE CAN'T FIND YOUR NAME. THE E-MAIL
9 DIDN'T ARRIVE WHEN WE KNOW THE E-MAIL WAS SENT. SO
10 THERE WERE DOZENS OF PEOPLE WHO WERE SUPPOSED TO BE
11 OBSERVERS WHO WERE SIMPLY NOT IN THE ROOM.

12 THE COURT: I DON'T KNOW HOW MANY PEOPLE
13 CAN FIT. HOW MANY -- SINCE YOU REPRESENT YOUR CLIENTS
14 AND NO ONE ELSE, HOW MANY OF YOUR CLIENT REPRESENTATIVES
15 WISH TO BE IN THAT ROOM?

16 MR. MARCUS: WE WANT THE SAME NUMBER AS
17 THE OTHER SIDE HAS, YOUR HONOR.

18 THE COURT: COME ON, COME ON, COME ON,
19 HONESTLY, HONESTLY, YOU GOT TO DO BETTER THAN THAT.

20 PLEASE. PLEASE, SIR. I DON'T KNOW WHO
21 YOU ARE, BUT DON'T LAUGH.

22 HOW MANY?

23 MR. MARCUS: 25 PEOPLE.

24 THE COURT: CAN YOU ACCOMMODATE THEM,
25 MR. FIELD?

1 MR. FIELD: YOUR HONOR, THERE ARE
2 STATUTORY REQUIREMENTS REGARDING HOW MANY PEOPLE CAN BE
3 IN THE ROOM AT A TIME. THEY CAN APPOINT MORE, SO --

4 THE COURT: ARE THERE PARTICULAR GROUPS
5 THAT ARE ALLOWED IN THE ROOM, OR CAN I -- ANYBODY JUST
6 WALK IN AND SAY I WANT --

7 MR. FIELD: NO. TWO POINTS ON THAT, YOUR
8 HONOR. ONE IS THE ELECTION CODE, THE PENNSYLVANIA
9 ELECTION CODE SAYS THAT THEY CAN APPOINT OBSERVERS.

10 THE COURT: YOU MEAN THE POLITICAL
11 PARTIES CAN APPOINT OBSERVERS?

12 MR. FIELD: SO THE MAJOR POLITICAL
13 PARTIES AND EACH CANDIDATE IN THE ROOM AT ANY TIME IS
14 ONE UP TO ONE PER CANDIDATE PLUS THREE FOR THE PARTY.

15 THE COURT: SO THESE ARE OBVIOUSLY
16 CANDIDATES, ALTHOUGH YOU ALMOST WOULDN'T KNOW IT TO LOOK
17 AT THE INTERNET, OTHER THAN PRESIDENTIAL CANDIDATES.
18 THERE ARE REPRESENTATIVES OF -- HOW MANY CANDIDATES ARE
19 IN THAT ROOM AS FAR AS YOU CAN TELL?

20 MR. FIELD: THERE ARE FEWER
21 REPRESENTATIVES THAN TOTAL CANDIDATES. I THINK THERE
22 WERE 57 CONTESTS ON THE BALLOT IN THE CITY OF
23 PHILADELPHIA IN THIS ELECTION. 59, EXCUSE ME.

24 THE COURT: HOW MANY REPRESENTATIVES OF
25 THE DEMOCRATIC PARTY.

1 MR. FIELD: COUNSEL FOR THE DEMOCRATIC
2 PARTY IS OVER HERE. I WOULD TURN TO HIM ON THAT.

3 THE COURT: COULD YOU IDENTIFY YOURSELF.

4 MR. BONIN: GOOD EVENING, YOUR HONOR.
5 ADAM BONIN.

6 THE COURT: I'VE NEVER MET HIM, BUT I
7 THINK MR. BONIN USED TO LIVE ON MY BLOCK. YES.

8 MR. BONIN: IT'S ENTIRELY POSSIBLE,
9 JUDGE. AND WE CAN SPEAK ABOUT THAT OFF THE RECORD AT A
10 LATER POINT.

11 I'M HERE ON BEHALF OF THE DEMOCRATIC
12 PARTY. WE PARTICIPATED IN THE PROCEEDINGS. WE ARE
13 PARTICIPATING IN THE PROCEEDINGS ON THE STATE COURT
14 LEVEL. WE -- YOU KNOW, WE HAVE -- YOU KNOW, WE HAVE
15 JUST AS MANY -- YOU KNOW, WE HAVE THE RIGHT TO HAVE
16 ONE --

17 THE COURT: PLEASE. I DON'T WANT TO HEAR
18 ABOUT --

19 MR. BONIN: HOW MANY PEOPLE DO WE HAVE?
20 WE HAVE HAD.

21 THE COURT: SIR, SIR, PLEASE. I REALLY
22 DON'T -- I REALLY WOULD TRY TO -- LIKE TO MAKE THIS AS
23 SIMPLE AS POSSIBLE.

24 IS THERE A TOTAL NUMBER -- MS. CLAIBORNE,
25 IS THERE A TOTAL NUMBER ABOVE WHICH IT WOULDN'T BE SAFE?

1 MS. CLAIBORNE: I DO NOT --

2 THE COURT: MR. FIELD, IS THERE A TOTAL
3 NUMBER ABOVE WHICH IT WOULDN'T BE SAFE? YOU DON'T KNOW.

4 MR. FIELD: I DON'T KNOW HOW MANY --

5 THE COURT: HOW MANY PEOPLE -- CAN YOU
6 ESTIMATE HOW MANY PEOPLE ARE OBSERVING RIGHT NOW AS YOU
7 SIT HERE LAST TIME YOU LOOKED?

8 MR. FIELD: I THINK THERE'S PROBABLY BEEN
9 ABOUT 30 TO 40 OBSERVERS IN THE OBSERVER AREA DURING THE
10 DAY AND THAT IS FINE.

11 THE COURT: HOW MANY OF THOSE DO YOU
12 IDENTIFY AS BEING REPRESENTED BY MR. MARCUS?

13 MR. FIELD: I WOULD NOT KNOW THE ANSWER
14 TO THAT.

15 THE COURT: SOME?

16 MR. FIELD: CERTAINLY -- HIS TESTIMONY
17 SOME.

18 THE COURT: IS THERE ROOM FOR MORE THAN
19 30 AS FAR AS YOU CAN TELL?

20 MR. FIELD: SO I BELIEVE THERE IS ROOM
21 FOR MORE THAN 30.

22 THE COURT: 40?

23 MR. FIELD: PROBABLY MORE THAN 40, YOUR
24 HONOR, BUT CAN --

25 THE COURT: 50?

1 MR. FIELD: CAN I MAKE ONE POINT HERE,
2 YOUR HONOR?

3 THE COURT: 50? DO I HEAR 50?

4 MR. FIELD: YOU CAN HAVE 52.

5 THE COURT: OKAY. GOOD AHEAD.

6 MR. FIELD: 52, MAYBE 53. I DON'T KNOW
7 AT WHAT POINT SOCIAL DISTANCING WOULD BECOME AN ISSUE.

8 THE COURT: THAT'S WHAT I'M ASKING.
9 THAT'S WHAT I'M ASKING.

10 MR. FIELD: I DON'T THINK WE ARE NEAR
11 THAT NUMBER. WHAT I WOULD LIKE TO SAY IS THE BOARD LAST
12 WEDNESDAY, SO ON THE 28TH OF OCTOBER, PROMULGATED
13 PROCEDURES. AND THOSE PROCEDURES REQUIRED PEOPLE TO
14 SEND IN NAMES AND ADDRESSES TO CREDENTIALLED OBSERVERS,
15 BECAUSE THERE ARE SECURITY PROTOCOLS.

16 THE COURT: I UNDERSTAND THAT. AND ALL
17 OF THE SECURITY IS GOING TO GO THROUGH MR. MARCUS. AND
18 THAT IS TO SAY, HE IS GOING TO IDENTIFY THE PEOPLE HE
19 WANTS IN THERE. HE IS GOING TO TELL YOU. AND YOU'RE
20 GOING TO TELL YOUR CLIENT. AND THAT IS HOW IT'S GOING
21 TO WORK. IF YOUR CLIENT HAS A PROBLEM WITH A PARTICULAR
22 OBSERVER BECAUSE HE OR SHE HAS A CRIMINAL RECORD;
23 BECAUSE, I DON'T KNOW WHAT IS CONSIDERED INAPPROPRIATE
24 BEHAVIOR, MS. CLAIBORNE REFERRED TO SOMEBODY ACTING
25 INAPPROPRIATELY. IF SOMEONE IS ACTING OUT, IS ACTING

1 NUTS, SOMEONE NUTS, THAT MIGHT BE -- THESE DAYS IT MIGHT
2 BE APPROPRIATE BEHAVIOR, BUT OTHERWISE, HE'S GOING TO
3 TELL YOU -- I'M GOING TO SAY THAT EACH SIDE CAN HAVE 30
4 PEOPLE. HE CAN HAVE 30 PEOPLE PRESENT AND THERE CAN BE
5 30 ADDITIONAL PEOPLE PRESENT. AND HOWEVER MANY THAT IT
6 IS SAFE TO STAND WITHIN WHATEVER DISTANCE YOUR CLIENT
7 HAS DECIDED IS A SAFE DISTANCE. IF IT'S SIX FEET, IT'S
8 SIX FEET. IF IT'S TEN FEET, IT'S WHATEVER YOU DECIDE,
9 AS LONG AS EVERYONE IS BEING TREATED THE SAME. HOWEVER
10 MANY PEOPLE CAN STAND IN THAT FRONT BARRIER HAVE TO BE
11 AN EQUAL NUMBER FROM EACH SIDE. OTHERWISE, THEY CAN
12 JUST KIND OF MILL AROUND AND HAVE COFFEE.

13 DOES THAT WORK?

14 MR. FIELD: SO IN PRACTICE I THINK THAT
15 WORKS. I DO WANT TO POINT OUT, YOUR HONOR, THAT THERE
16 ARE QUESTIONS ABOUT JURISDICTION. AND IT'S HARD FOR ME
17 TO BIND MY CLIENT TO THINGS THAT THE ELECTION CODE
18 DOESN'T REQUIRE.

19 NOW, I THINK THERE'S AN EASY ANSWER TO
20 THAT, BECAUSE CERTAINLY THEY CAN DESIGNATE --

21 THE COURT: MY GUESS IS THAT BY TOMORROW
22 AT THIS TIME, ALL OF THIS IS GOING TO BE MOOT.

23 MR. FIELD: I KNOW, BUT I HAVE TO
24 PROPERLY REPRESENT MY CLIENT.

25 THE COURT: YOU'RE BEING A LAWYER. I

1 UNDERSTAND. IT'S AN OCCUPATIONAL HAZARD. I JUST -- IF
2 YOUR CLIENT, BY NAME, CAN AGREE TO THIS. THIS IS JUST
3 SOMETHING I PULLED OUT OF MY EAR WHILE I'M SITTING HERE,
4 30 AND 30. IF ONLY 10 AND 10 CAN STAND AT THE FRONT
5 RAILING TO WATCH FROM A DISTANCE OF HOWEVER LONG,
6 HOWEVER FAR YOUR CLIENT THINKS IS SAFE, THEN THAT IS
7 WHAT WE'LL DO IF YOU AGREE TO IT AND WE CAN OBVIATE THE
8 NEED FOR ANYTHING MORE.

9 YES, MS. CLAIBORNE?

10 MS. CLAIBORNE: YOUR HONOR, I THINK THAT
11 THE ONLY REMAINING ISSUE -- ONE OF THE REMAINING ISSUES
12 WITH THAT WOULD BE THAT -- UNFORTUNATELY MY CO-COUNSEL
13 HERE WAS PREPARED TO ELOQUENTLY ARGUE THIS AND IT DOES
14 NOT SEEM THAT HE WILL NEED TO. BUT THIS ISSUE IS STILL
15 AT LEAST PARTIALLY PENDING BEFORE THE SUPREME COURT OF
16 PENNSYLVANIA RIGHT NOW. AND AS PART OF THE ISSUE IS
17 THAT THEY HAVE NOW SOUGHT --

18 THE COURT: YOU'RE NOT -- LOOK, I'M NOT
19 GETTING INTO THEIR HAIR.

20 MS. CLAIBORNE: WELL, THE ISSUE IS THAT
21 WE MIGHT COME TO AN AGREEMENT BEFORE YOUR HONOR AND THEN
22 HAVE INCONSISTENT RULING TODAY.

23 THE COURT: IF IT IN FACT MOOTS THE
24 DISPUTE BEFORE THE STATE SUPREME COURT, THEN AND --
25 MR. FIELD IS SHAKING HIS HEAD. BUT IF IT MOOTS THE

1 DISPUTE BEFORE THE STATE SUPREME COURT, YOU'RE FREE TO
2 TELL THE STATE SUPREME COURT ORDER, IF IT ALTERS THE
3 POSTURE BEFORE THE STATE SUPREME COURT, YOU'RE FREE TO
4 TELL THAT. JUST SAY THAT IN AN EFFORT TO RESOLVE THE
5 DISPUTE IN FEDERAL COURT, HERE IS WHAT WE HAVE AGREED
6 TO, AND JUST LEAVE IT AT THAT. IS THERE -- I MEAN,
7 LOOK, I DON'T KNOW WHEN THE STATE SUPREME COURT IS GOING
8 TO ACT. I CLERKED FOR IT 40 YEARS AGO. I DON'T
9 REMEMBER THEM AT LEAST IN THOSE DAYS ACTING WITH
10 PARTICULAR ALACRITY, BUT IT'S 40 YEARS, THINGS MIGHT
11 CHANGE. THEY MAY ACT ON IT LATER TODAY. THEY MAY ACT
12 ON IT TOMORROW MORNING. YOUR AGREEING TO THIS AT THE
13 REQUEST OF THE FEDERAL COURT TO OBVIATE THE NEED TO FILE
14 BRIEFS AND CALL WITNESSES IN THIS MATTER.

15 IF THAT IS TRUE, FINE. AND IF IT'S NOT,
16 THEN I WILL DEAL WITH THAT TOO. YOU'RE NOT WAIVING
17 ANYTHING. I WANT TO BE AWFULLY CLEAR ABOUT THIS.
18 YOU'RE NOT WAIVING ANYTHING BY AGREEING TO A TEMPORARY
19 RESOLUTION OF THIS TO OBVIATE THE NEED FOR LITIGATION
20 AND TAKING PEOPLE AWAY FROM -- AS I UNDERSTAND IT, THERE
21 ARE PEOPLE WHO HAVE TO TESTIFY HERE WHO SHOULD BE
22 COUNTING BALLOTS. I MUCH RATHER THEY WERE COUNTING
23 BALLOTS -- NOT THAT I DON'T ENJOY THE COMPANY OF
24 STRANGERS, BUT I WOULD MUCH RATHER THEY BE COUNTING
25 BALLOTS THAN COMING HERE TO TESTIFY IF THAT WERE

1 POSSIBLE.

2 IT SEEMS TO ME THAT IF WE COULD AVOID
3 LITIGATION HERE AND JUST AGREE TO A PROCESS, THAT WOULD
4 BE A GOOD THING.

5 YES, MR. FIELD?

6 MR. FIELD: I WAS GOING TO SUGGEST, YOUR
7 HONOR, THAT IF WE HAVE A MINUTE TO TALK TO MY CO-COUNSEL
8 AND THEN MR. MARCUS.

9 THE COURT: AND I WOULD REALLY URGE YOU
10 ALL TO TRY TO BE REASONABLE AND TO BEAR IN MIND THAT THE
11 BATTLE OF THE BULGE, AT LEAST THIS PART OF IT, IS GOING
12 TO END UNDOUBTEDLY WITHIN A DAY OR SO. AND IF THERE IS
13 A WAY TO AVOID A LOT OF WHEEL SPINNING BETWEEN NOW AND
14 THEN, I WOULD THINK -- WHERE NO ONE IS PREJUDICED, I
15 WOULD THINK THAT WOULD BE -- AND BY THE WAY, MR. MARCUS,
16 IF THERE ARE REPUBLICAN CANDIDATES WHO WANT TO HAVE
17 THEIR REPRESENTATIVES PRESENT TO WATCH, THAT COMES OUT
18 OF YOUR 30.

19 MR. MARCUS: YES, SIR.

20 THE COURT: AND IF THERE ARE DEMOCRATIC
21 CANDIDATES WHO WANT TO HAVE THEIR REPRESENTATIVES WATCH,
22 THAT COMES OUT OF YOUR 30.

23 MR. BONIN: OF COURSE, YOUR HONOR.

24 THE COURT: SORRY MR. BONIN.

25 MR. BONIN: JUST TO BE CLEAR, I MEAN,

1 THAT IS HOW WE'VE BEEN DOING -- WE HAVE AUTHORIZATIONS
2 FROM THE VARIOUS DEMOCRATIC CANDIDATES WHO ARE ON THE
3 BALLOT HERE. THAT'S HOW WE KEEP TO IT THE ONE PER
4 CANDIDATE.

5 THE COURT: I REALLY DON'T WANT TO BE ON
6 A FOOL'S ERRAND HERE, BUT IT DOES SEEM TO ME THIS IS --
7 THE NEXT FEW DAYS, IF NOT WEEKS, THERE IS GOING TO BE A
8 LOT MORE HEAT THAN LIGHT GENERATED. AND I WOULD SIMPLY
9 LIKE TO AVOID A DISPUTE IF IN FACT THERE REALLY IS NO
10 DISPUTE. IF THE PRESIDENTIAL CAMPAIGN, REELECTION
11 CAMPAIGN, CAN BE PRESENT AND THE BOARD OF ELECTIONS, THE
12 CITY -- THE DEMOCRATIC PARTY DOESN'T FEEL IT IS BEING
13 PREJUDICED BY THEIR PRESENCE, AND THAT THE LAW IS BEING
14 COMPLIED WITH, I DON'T KNOW WHY WE CAN'T JUST AGREE TO
15 THAT.

16 MR. BONIN: ALL WE WANT IS, YOU KNOW, TO
17 BE IN THE ROOM FOR THESE DISCUSSIONS, MAKE SURE WE
18 CONTINUE TO HAVE EQUAL ACCESS.

19 AND I DO HAVE TO SAY THAT I WAS BOTHERED
20 BY MR. MARCUS'S REPRESENTATION THAT SOMEHOW DEMOCRATIC
21 REPRESENTATIVES HAD ANY KIND OF SUPERIOR ACCESS TO
22 ANYONE ELSE.

23 THE COURT: LISTEN, LISTEN. I CAN GET
24 INTO -- THIS IS WHAT I WANT TO AVOID. AS WE USED TO
25 SAY, WHO STRUCK WHOM AND ALL OF THAT KIND OF STUFF. I

1 DON'T WANT TO CHALLENGE ANYONE'S GOOD FAITH. YOU'RE ALL
2 OFFICERS OF THE COURT. AND YOU'RE ALL WELL-KNOWN
3 LAWYERS AND WELL-RESPECTED LAWYERS. I WOULD SIMPLY ASK
4 YOU TO SEE IF YOU CAN WORK THIS OUT REASONABLY.

5 I WILL BE ON THE OTHER SIDE OF THAT DOOR
6 WAITING FOR YOU TO TELL ME WHAT YOU WANT TO DO. OKAY?

7 MR. MARCUS: THANK YOU, YOUR HONOR.

8 THE CLERK: ALL RISE.

9 (COURT IS NOW IN SESSION.)

10 THE COURT: PLEASE BE SEATED, EVERYBODY.
11 WHO WOULD LIKE TO SPEAK?

12 MR. MARCUS: I WOULD LIKE TO SPEAK, YOUR
13 HONOR.

14 THE COURT: ALL RIGHT, MR. MARCUS.

15 MR. MARCUS: I HAVE A VERY ROUGH SKETCH
16 OF THE ROOM. AND I WANT TO EXPLAIN TO THE COURT WHAT IT
17 IS THAT THE DEFENDANTS HAVE OFFERED AND WHY IT IS NOT
18 ACCEPTABLE TO THE PLAINTIFF.

19 THE COURT: YES. WHAT IS THE DEFENDANT
20 OFFERING?

21 MR. MARCUS: SO MAY I HAND THIS UP?

22 THE COURT: OKAY.

23 MR. MARCUS: AS YOUR HONOR WILL SEE --

24 THE COURT: THIS IS YOUR ARTWORK?

25 MR. MARCUS: THAT IS MY CLIENT'S ARTWORK.

1 THAT IS WHY MY CLIENT DOESN'T MAKE A LIVING AS A LAWYER.

2 THE COURT: WHOEVER WROTE THIS, DON'T
3 QUIT YOUR DAY JOB.

4 MR. MARCUS: SO THE LONG RED LINE THAT
5 GOES ALL OF THE WAY DOWN THE SIDE IS THE BARRICADE.

6 THE COURT: THAT'S THE BARRICADE HERE
7 (INDICATING)?

8 MR. MARCUS: CORRECT.

9 THE COURT: THE LITTLE LINES BELOW THAT,
10 IF YOU'RE HOLDING THE PAPER THE RIGHT WAY, ARE TABLES.

11 MR. MARCUS: AS YOUR HONOR WILL SEE,
12 THERE ARE TABLES IN ROWS.

13 THE COURT: YES.

14 MR. MARCUS: THE FIRST TABLE IS SIX FEET
15 FROM THE BARRICADE.

16 THE COURT: YES.

17 MR. MARCUS: INITIALLY THOSE WERE THE
18 ONLY TABLES THAT WERE PRESENT.

19 THE COURT: YES.

20 MR. MARCUS: EVERYBODY WAS HAPPY.

21 THE COURT: YES.

22 MR. MARCUS: THEN THE DEFENDANT SET UP
23 OTHER TABLES BEHIND THOSE TABLES.

24 THE COURT: PRESUMABLY BECAUSE THERE ARE
25 A LOT OF VOTES TO COUNT AND THEY NEEDED TO HAVE MORE

1 TABLES?

2 MR. MARCUS: CORRECT.

3 THE COURT: AND YOU WANT TO HAVE PEOPLE
4 WITHIN SIX FEET OF EACH SET OF TABLES?

5 MR. MARCUS: CORRECT. AND --

6 THE COURT: NO. I'M SORRY. I'M A
7 FEDERAL COURT -- YOU'RE PREPARED, MR. FIELD --

8 MR. MARCUS: CAN I BE HEARD ONE MOMENT ON
9 WHY THAT IS APPROPRIATE?

10 THE COURT: I THINK I'VE BEEN AWFULLY
11 GENEROUS TO YOU, BUT GO AHEAD.

12 MR. MARCUS: THANK YOU, SIR.

13 THE ACTIVITY THAT WE HAVE THE RIGHT TO BE
14 WITHIN SIX FEET OF GOES ON -- IN EACH OF THOSE TABLES.
15 IT'S A VERY BIG ROOM.

16 THE COURT: YOU DON'T HAVE THE RIGHT TO
17 BE WITHIN A HUNDRED FEET.

18 MR. MARCUS: WE HAVE THE RIGHT TO BE
19 WITHIN THE SAME --

20 THE COURT: YOU HAVE A RIGHT MAYBE TO BE
21 TREATED EQUALLY AS RECOGNIZED BY A STATE COURT. I'M NOT
22 YET CONVINCED I HAVE JURISDICTION HERE.

23 IF EVERYONE IS BEING TREATED THE SAME AND
24 EVERYONE IS WITHIN SIX FEET OF THE FIRST SET OF TABLES,
25 PROBABLY MORE LIKE WHAT, 20 FEET FROM THE SECOND SET OF

1 TABLES AND 30 FEET FROM THE THIRD SET OF TABLES, DOES
2 THAT SOUND ABOUT RIGHT?

3 MR. MARCUS: YES, SIR.

4 THE COURT: IS THAT WHAT THE CITY IS
5 PREPARED TO AGREE TO? CAN SOMEBODY PLEASE --

6 MR. FIELD: I'M SORRY, YOUR HONOR. I
7 MISSED THE QUESTION.

8 THE COURT: THAT IS QUITE ALL RIGHT.

9 AS I UNDERSTAND IT, THE CITY IS PREPARED
10 TO AGREE THAT THIS -- YOU DON'T WANT TO MISS THIS BIT OF
11 ARTWORK. THAT THIS IS THE BARRICADE. THE FIRST SET OF
12 TABLES ARE SIX FEET FROM THE BARRICADE, AND THE NEXT SET
13 OF TABLES ARE MAYBE TEN FEET FROM THOSE AND THE NEXT SET
14 OF TABLES ARE MAYBE 10 OR 20 FEET FROM THOSE. AND
15 EVERYONE GETS TREATED THE SAME. NO ONE -- NONE OF THE
16 OBSERVERS CAN BE ANY CLOSER THAN THAT BARRICADE. AND IF
17 THEY'RE 20 OR 30 OR 50 FEET FROM THE NEXT SET OF TABLES
18 OR THE NEXT SET OF TABLES, THAT'S THE WAY IT IS.

19 MR. FIELD: YOUR HONOR, TO BE CLEAR ON
20 THE RECORD, I UNDERSTAND THAT THERE HAVE BEEN AT LEAST
21 15 REPUBLICAN OBSERVERS THERE TODAY. WE TREAT ALL OF
22 THE OBSERVERS THE SAME WAY. THEY ARE FREE TO GO UP TO
23 THE BARRICADE. THERE ARE A SET OF BEHAVIORAL
24 GUIDELINES, SUCH AS NO PHOTOGRAPHY EXCEPT FOR IN A
25 CERTAIN AREA THAT COULD CAUSE SOMEBODY TO BE REMOVED.

1 BUT WE TREAT EVERYBODY THE SAME WAY. THE
2 BARRICADE IS CURRENTLY SIX FEET FROM THE FIRST TABLES
3 WHERE THE ACTIVITIES ARE GOING ON, AND WE ARE PREPARED
4 TO KEEP IT THERE, PENDING RESOLUTION OF THE STATE COURT
5 MATTER.

6 THE COURT: DO YOU HAVE A NAME OF SOMEONE
7 WHO IS COMMITTING TO THIS?

8 MR. FIELD: I CAN ARRANGE FOR SETH
9 BLUESTEIN, WHO IS THE DEPUTY CITY COMMISSIONER.
10 COMMISSIONER AL SCHMIDT IS ONE OF THE PEOPLE IN CHARGE
11 OF MOST OF THE ACTIVITIES THERE.

12 THE COURT: YOU'RE REPRESENTING AS AN
13 OFFICER OF THE COURT THAT MR. BLUESTEIN IS GOING TO
14 ENSURE THAT THIS AGREEMENT IS HONORED?

15 MR. FIELD: PENDING RESOLUTION OF THE
16 PENNSYLVANIA --

17 THE COURT: UNTIL THE SUPREME COURT OR
18 SOME OTHER COURT MAKES A RULING. I'M NOT -- NOTHING YOU
19 ARE AGREEING TO HERE BINDS YOUR HANDS SO THAT YOU CAN'T
20 OBEY THE ORDERS OF A STATE COURT.

21 MR. FIELD: YES, YOUR HONOR. WE WILL
22 KEEP THE FENCE EXACTLY WHERE IT IS, WHICH IS SIX FEET
23 FROM THE FIRST SET OF TABLES.

24 THE COURT: AND THE PEOPLE WHO ARE GOING
25 TO BE ALLOWED IN ARE GOING TO BE PROVIDED TO YOU BY

1 MR. BONIN AND -- THE NAMES -- AND BY MR. MARCUS.

2 MR. FIELD: SO, YOUR HONOR, MR. MARCUS,
3 WE DISCUSSED THE DISTANCE, AND HE INDICATED THAT WAS NOT
4 ACCEPTABLE.

5 WE RETURNED TO THE COURTROOM SO WE --

6 THE COURT: I UNDERSTAND THAT.

7 MR. MARCUS IS NOT GOING TO GET EVERYTHING HE WANTS. I'M
8 GOING TO TELL MR. MARCUS, HE'S THE PLAINTIFF, HE HAS
9 BROUGHT EVERYONE HERE TO THIS DANCE. AND IF HE WANTS
10 HIS PEOPLE TO BE ALLOWED INTO THE ROOM, THEY HAVE TO
11 GIVE HIM THEIR NAMES AND HE HAS TO GIVE THEM TO
12 MS. CLAIBORNE? NO.

13 WHO? WHO DOES HE HAVE TO PROVIDE THEM
14 TO?

15 MR FIELD: TO MR. BLUESTEIN WITH NAMES
16 AND ADDRESSES, YOUR HONOR. BUT THERE IS -- WHAT I DON'T
17 KNOW IF MR. MARCUS HAS THE ABILITY TO IDENTIFY THOSE
18 NAMES AS TO CANDIDATES BECAUSE THE STATUTE IN THE
19 BOARD'S PROCEDURES WHICH REQUIRE BOARD MEETING --

20 THE COURT: YOU CAN'T IDENTIFY THEM AS
21 THE CANDIDATE, THEY WON'T BE ALLOWED IN.

22 MR. FIELD: VERY WELL, YOUR HONOR.

23 THE COURT: SAME WITH MR. BONIN. THAT'S
24 THE AGREEMENT.

25 MR. MARCUS: I HEAR THAT, YOUR HONOR.

1 WHAT ABOUT THE NUMBER OF OBSERVERS?

2 THE COURT: IT WAS 30 AND 30, I BELIEVE.

3 IS THAT --

4 MR. FIELD: SO, YOUR HONOR, IT COULD
5 EXCEED 30. IT'S ONE PER CANDIDATE PLUS THREE PER PARTY.
6 SO IF YOU CAN IDENTIFY OBSERVERS FOR DIFFERENT
7 CANDIDATES, THEN THAT'S FINE.

8 THE COURT: I JUST WANT TO HAVE HARD
9 NUMBERS.

10 YOU'VE APPEARED BEFORE ME. I NEVER SAY
11 THERE'S A TEN-DAY CONTINUANCE. I'LL SAY IT'S DUE ON A
12 PARTICULAR DATE, BECAUSE EVERYBODY COUNTS DIFFERENTLY.
13 40 PER SIDE?

14 MR. FIELD: IF THEY ARE PROPERLY
15 DESIGNATED, YOUR HONOR.

16 THE COURT: 50 PER SIDE? JUST WHAT IS
17 THE AGREEMENT?

18 MR. FIELD: YOUR HONOR, IF THEY ARE
19 PROPERLY DESIGNATED UP TO THE MAXIMUM AMOUNT THE
20 ELECTION CODE IS ALLOWED IS WHAT I CAN COMMIT TO. I
21 DON'T KNOW --

22 THE COURT: WHAT IS THAT?

23 MR. FIELD: HOW MANY -- DO YOU KNOW HOW
24 MANY REPUBLICAN CANDIDATES WERE ON THE BALLOT, MR.
25 BONIN?

1 MR. BONIN: I DO NOT KNOW, BECAUSE I KNOW
2 THAT THERE WERE MANY --

3 THE COURT: JUST PICK A NUMBER. WE'RE
4 TALKING ABOUT A DAY OR TWO. JUST PICK A NUMBER. I
5 PROPOSED 30 PER SIDE. THEN I PROPOSED 40 PER SIDE.
6 WHAT WOULD THE PARTIES LIKE? I JUST --

7 MR. BONIN: WE GENERALLY KEPT THINGS
8 BETWEEN 10 TO 15 AT ALL TIMES. AND THAT HAS BEEN
9 SUFFICIENT FOR US. WE JUST WANT WHAT -- EQUAL TO
10 WHATEVER THE REPUBLICANS WOULD LIKE TO HAVE, AS
11 MR. FIELD SAID, CONSISTENT WITH THE STATUTE.

12 THE COURT: THE WORLD HAS ITS EYES ON
13 PHILADELPHIA RIGHT NOW, AND IT WILL TAKE ITS EYES OFF
14 SOON ENOUGH. I SIMPLY WOULD LIKE THE PARTIES TO AGREE
15 THAT BOTH SIDES WILL BE SUBJECT BY THEIR OWN AGREEMENT
16 TO THE SAME LIMITATIONS. I DON'T CARE IF IT'S ONE
17 OBSERVER PER SIDE.

18 NO MORE THAN HOW MANY MR. BONIN? NO MORE
19 THAN?

20 MR. BONIN: THE PROBLEM WITH MY
21 COMMITTING TO THAT, YOUR HONOR, IS THAT EACH OF THE
22 CANDIDATES WHO IS ON THE BALLOT HAS THE RIGHT TO HAVE AN
23 OBSERVER IN THE ROOM. I CAN'T BIND ALL OF THEM MYSELF.
24 I CAN ONLY SPEAK ON BEHALF OF THE DEMOCRATIC PARTY WHICH
25 I'M REPRESENTING HERE.

1 MR. MARCUS: SAY A BIG NUMBER.

2 THE COURT: THAT WOULD SOLVE IT. 60 PER
3 SIDE? THAT CERTAINLY -- HOW MANY.

4 MR. BONIN: THAT'S --

5 THE COURT: WAIT. MR. WIYGUL, DID YOU
6 TELL ME HOW MANY CANDIDATES WERE ON THE BALLOT?
7 SOMEBODY TOLD ME.

8 MR. FIELD: I BELIEVE THERE
9 WERE 59 RACES ACROSS THE ENTIRE CITY.

10 THE COURT: 59 RACES.

11 MR. FIELD BUT THEY ARE NOT NECESSARILY
12 CANDIDATES ON ALL SIDES IN EACH RACE.

13 THE COURT: FINE. AND AS FAR AS YOU
14 KNOW, MR. BONIN, AS FAR AS YOU KNOW, DOES EVERY
15 CANDIDATE HAVE A REPRESENTATIVE UP TILL NOW? I WOULD BE
16 VERY SURPRISED IF EVERY CANDIDATE DID.

17 MR. BONIN: NO, NOT EVERY CANDIDATE
18 HAS --

19 THE COURT: HOW MANY, BALLPARK?

20 MR. BONIN: I WOULD SAY 20-SOME HAVE
21 AUTHORIZED REPRESENTATIVES, BUT WE HAVEN'T HAD MORE
22 THAN -- THERE HAVEN'T BEEN MORE THAN 10 TO 15
23 DEMOCRATIC --

24 THE COURT: FINE, FINE. THEN WE'LL DO 60
25 A SIDE. AND IF THAT IS AN INADEQUATE NUMBER, IF THAT IS

1 AN INADEQUATE NUMBER, THE PARTIES ARE FREE TO AGREE TO A
2 LARGER NUMBER WITHOUT OTHERWISE VIOLATING THE AGREEMENT
3 OR THE PARTIES MIGHT -- MY LAW CLERK IS GOING TO GIVE
4 YOU HIS CELL PHONE NUMBER. WE ARE ALWAYS OPEN. YOU CAN
5 CALL -- THE PARTIES CAN JOINTLY CALL ME, CONTACT ME
6 THROUGH MY LAW CLERK AT ANY TIME IF THIS NEEDS TO BE
7 REVISED TONIGHT, TOMORROW MORNING, I'LL BE HERE TOMORROW
8 MORNING, BUT IF THIS NEEDS TO BE REVISED, SO WE HAVE --
9 WHAT DID I SAY, 60?

10 MR. BONIN: YOU SAID 60, JUDGE.

11 THE COURT: 60, MR. MARCUS.

12 MR. MARCUS: YES, YOUR HONOR.

13 THE COURT: MR. WIYGUL?

14 MR. FIELD: SO YOUR HONOR --

15 THE COURT: MR. FIELD.

16 MR. FIELD: I CAN'T COMMIT MY CLIENT TO
17 SOMETHING OUTSIDE OF THE ELECTION CODE AND THE
18 REGULATIONS THEY HAVE PASSED, BUT I BELIEVE THAT THIS IS
19 A MATTER THAT WILL NOT -- I'M HOPEFUL WILL NOT COME BACK
20 TO THE COURT, BECAUSE WE CERTAINLY WORK WITH THE PARTIES
21 TO CREDENTIAL OBSERVERS. AND I WILL SAY --

22 THE COURT: I WOULD BE SURPRISED IF THERE
23 ARE 60 PEOPLE FOR EACH SIDE.

24 MR. FIELD: I AGREE, YOUR HONOR. AND
25 THAT'S WHY I'M SAYING THAT. AND I WOULD NOTE THAT IN

1 THIS ELECTION CYCLE, ALL OF THE OBSERVER REQUESTS THAT
2 I'M AWARE OF CAME IN FROM ONE PARTY ATTORNEY AND HAD ALL
3 OF THE CANDIDATES UNDERNEATH IT. SO I THINK IT'S THE
4 CASE THAT WE CAN REQUEST THAT THE CANDIDATES -- AND
5 THERE IS NO DISCUSSION.

6 THE COURT: IF THERE IS A PROBLEM BECAUSE
7 YOU HAVE TO HAVE FEWER PEOPLE OR YOU HAVE TO HAVE MORE
8 PEOPLE, I REALLY WISH YOU WOULD SPEAK TO EACH OTHER AND
9 AGREE TO IT AND JUST INFORM ME OF IT. IF THERE IS A
10 PROBLEM WITH THE CODE AND YOU HAVE TO HAVE FEWER PEOPLE,
11 JUST AS LONG AS IT APPLIES TO BOTH SIDES THE SAME WAY.

12 MR. FIELD: I'M WILLING TO DO THAT, YOUR
13 HONOR, AND I CAN WORK WITH MY CLIENTS.

14 THE COURT: THE PEOPLE ON THIS FIRST --
15 THIS IS GREAT DRAWING. I WOULD LIKE YOU TO HAND THIS
16 OUT TO THE MEDIA. IT SHOULD BE PRINTED.

17 EQUAL NUMBERS OF PEOPLE CAN BE ALLOWED TO
18 STAND -- FOR EACH SIDE CAN BE ALLOWED TO STAND.
19 IMAGINE -- LIKE IN CECIL B. DEMILLE'S TEN COMMANDMENTS,
20 THERE'S A -- THE SEA IS -- THE RED SEA IS PARTED.
21 HOWEVER MANY ON ONE SIDE, HOWEVER MANY ON THE OTHER.

22 DOES THAT SOUND DOABLE, MR. BONIN?

23 MR. BONIN: I THINK THAT THAT
24 MISCONCEIVES OF WHAT THE ROOM LOOKS LIKE, JUDGE. WHAT
25 YOU HAVE IS --

1 THE COURT: I THOUGHT YOU WERE GOING TO
2 TELL ME I MISREMEMBERED THE MOVIE.

3 MR. BONIN: NO, JUDGE. WE ALL -- IT'S ON
4 EASTER EVERY YEAR.

5 BASICALLY WHAT IT LOOKS LIKE IS --

6 MR. CLAIBORNE: I HAVE A PHOTO.

7 MR. BONIN: IF YOU HAVE A PHOTO, YEAH,
8 WHY DON'T YOU SHOW THE JUDGE?

9 THE COURT: THAT WOULD BE GREAT. I DON'T
10 WANT TO PART WITH THIS DRAWING, BUT --

11 MR. CLAIBORNE: (INDICATING).

12 THE COURT: WHAT AM I MISSING, MR. BONIN?
13 HERE'S THE --

14 MR. BONIN: THERE IS A CROWD CONTROL
15 BARRIER ACROSS THE FRONT AS THERE IS ON BROAD STREET FOR
16 THE MUMMERS PARADE. ALL OF THE OBSERVERS FOR ALL
17 PARTIES ARE ON THE ONE SIDE OF THE BARRICADE.

18 THE COURT: CORRECT.

19 MR. BONIN: AND ALL OF THE WORK IS DONE
20 ON THE OTHER SIDE OF THE BARRICADE.

21 THE COURT: CORRECT. I THINK YOU
22 MISUNDERSTOOD. I'M JUST SAYING THAT YOU CAN'T SAY THAT
23 IF THERE ARE 120 OBSERVERS ALLOWED AND EVERYBODY AGREES
24 THAT IS WHAT IT'S GOING TO BE, 119 OF THEM CAN'T BE ON
25 ONE SIDE STANDING AT THE FRONT THERE AND ONE ON THE

1 OTHER. WHATEVER FITS -- WHATEVER FITS SAFELY, IF IT'S
2 10 AND 10, 20 AND 20, WHATEVER IT IS, IT'S --

3 LOOK, THERE MAY NOT BE A NEED FOR THIS.
4 IT MAY BE THAT ONE SIDE HAS ONLY THREE OR FOUR PEOPLE
5 AND THE OTHER SIDE HAS TEN, I DON'T KNOW. BUT THEY ALL
6 HAVE TO -- OBVIOUSLY THEY HAVE TO STAY ON THE ONE SIDE
7 OF THE BARRIER, BUT YOU CAN'T -- EQUAL ACCESS TO BOTH
8 SIDES TO THAT FRONT BARRIER, AS LONG AS THE SOCIAL
9 DISTANCING GUIDELINES AND THE ELECTION CODE AND ALL OF
10 THAT ARE BEING COMPLIED WITH.

11 MR. BONIN: ABSOLUTELY, JUDGE.

12 THE COURT: WOULD YOU LIKE YOUR COMPUTER
13 BACK?

14 MR. CLAIBORNE: YES, SIR.

15 THE COURT: OKAY. IF I DETERMINE THAT IN
16 CARRYING THIS OUT ONE SIDE OR ANOTHER HAS NOT ACTED IN
17 GOOD FAITH, I MAY OR MAY NOT HAVE JURISDICTION TO HEAR
18 THIS DISPUTE, BUT I CERTAINLY HAVE JURISDICTION TO
19 POLICE THE CONDUCT OF COUNSEL AND PARTIES BEFORE ME IF
20 THEY HAVE MISREPRESENTED TO ME. AM I BEING CLEAR? I
21 EXPECT EVERYBODY TO ACT IN GOOD FAITH. ERR ON THE SIDE
22 OF CAUTION. DON'T HESITATE TO CONTACT MY LAW CLERK.
23 AND IF WE CAN SHOW THE WORLD THAT BOTH SIDES CAN ACT
24 REASONABLY TO RESOLVE THIS, THAT WOULD BE WONDERFUL.

25 MR. KIM IS HERE, HE IS IN CHARGE OF

1 SECURITY. I HAVE ASKED HIM, AND HE HAS GRACIOUSLY
2 AGREED, IF ANY OF COUNSEL ARE CONCERNED ABOUT THEIR
3 PHYSICAL SAFETY LEAVING THE BUILDING, BECAUSE I
4 UNDERSTAND, AS I SAID, MORE HEAT THAN LIGHT HAS BEEN
5 GENERATED, HE WILL HAVE MARSHALS ESCORT YOU.

6 IS THERE ANYTHING MORE WE NEED TO DEAL
7 WITH?

8 MR. MARCUS: ONE BRIEF THING, YOUR HONOR.

9 THE COURT: YES.

10 MR. MARCUS: WHICH I DON'T THINK WILL BE
11 CONTROVERSIAL. BUT WE JUST WANT TO MAKE CLEAR THAT JUST
12 AS THE DEFENDANT INTEND TO CONTINUE LITIGATING IN THE
13 STATE SUPREME COURT, SO DO WE, AND THAT OUR AGREEMENT
14 HERE IS NOT --

15 THE COURT: ABSOLUTELY NOT.

16 MR. MARCUS: -- NOT PREJUDICED --

17 THE COURT: YOU CAN LITIGATE.

18 THIS -- I'M GOING TO DENY YOUR MOTION
19 WITHOUT PREJUDICE AS MOOT IN LIGHT OF THE AGREEMENT THAT
20 HAS BEEN REACHED BETWEEN THE PARTIES. IT'S WITHOUT
21 PREJUDICE.

22 MR. MARCUS: THANK YOU, YOUR HONOR.

23 THE COURT: MY GUESS IS LONG BEFORE THE
24 CITY HAS TO ANSWER WHAT IS NOT A TERRIBLY LONG
25 COMPLAINT, AS WE'VE INDICATED, THE LAWSUIT WILL LIKELY

1 IF NOT BE WITHDRAWN, THE COMPLAINT WILL BE REPLACED WITH
2 AN AMENDED COMPLAINT. SO I'M NOT GOING TO ISSUE A CASE
3 MANAGEMENT ORDER, WHICH AS YOU KNOW I'M FOND OF DOING,
4 AND WITH VERY, VERY FAST DATES. I DON'T THINK THAT IS
5 GOING TO BE NECESSARY HERE.

6 IS THERE IS ANYTHING MORE WE NEED TO
7 DISCUSS?

8 MR. MARCUS: NOTHING FROM THE PLAINTIFF.

9 THE COURT: I URGE YOU, IF THERE IS A
10 PROBLEM, DON'T BE SHY, CONTACT MY LAW CLERK AND HE WILL
11 CONTACT ME. I DON'T UNDERSTAND ENTIRELY WHY THIS
12 COULDN'T HAVE BEEN AGREED TO ABSENT JUDICIAL
13 INTERVENTION, EXCEPT FOR THE FACT THAT IT'S A VERY
14 HEAVILY CONTESTED MATTER.

15 AND THE THREE LAWYERS FOR THE DEFENDANTS
16 ARE WHISPERING TO EACH OTHER. YES, IS THERE ANYTHING
17 YOU WISH TO TELL ME?

18 MR. FIELD: YOUR HONOR, I SHUDDER TO
19 BRING THIS UP, TO BE HONEST, BUT I WANT TO MAKE SURE
20 BECAUSE WE ARE GOING TO DO EVERYTHING WE CAN TO
21 NEGOTIATE IN GOOD FAITH --

22 THE COURT: NO, NO. YOU'VE ALREADY
23 NEGOTIATED IN GOOD FAITH. YOU'RE GOING TO TRY TO ACT IN
24 GOOD FAITH TO IMPLEMENT WHAT IT IS THAT YOU AGREED TO.
25 AND I HAVE NO DOUBT THAT YOU WILL, MR. FIELD. I DIDN'T

1 MEAN TO IMPLY THAT YOU WEREN'T.

2 MR. FIELD: UNDERSTOOD. BUT I HAVE BEEN
3 TRANSPARENT WITH THE COURT THAT THERE ARE SOME
4 REQUIREMENTS IN THE ELECTION CODES --

5 THE COURT: IF THERE IS A PROBLEM WITH
6 THE ELECTION CODE AND YOU CAN'T DO SOMETHING, YOU TELL
7 THAT TO MR. MARCUS. AND IF HE CAN'T -- IF HE DISAGREES
8 WITH THAT, CALL MY CLERK. THAT IS NOT BAD FAITH.
9 COMPLYING WITH THE LAW IS NOT BAD FAITH.

10 MR. FIELD: VERY WELL, YOUR HONOR.

11 THE COURT: OKAY? ANYTHING ELSE?

12 MR. MARCUS: THANK YOU, YOUR HONOR.

13 THE COURT: ALL RIGHT. MY THANKS TO ALL
14 OF YOU. PLEASE STAY HEALTHY. AND, OF COURSE, MY THANKS
15 TO OUR MARSHALS.

16 ALL COUNSEL: THANK YOU, JUDGE.

17 (PROCEEDINGS ADJOURNED.)

18 I CERTIFY THAT THE FOREGOING IS A CORRECT
19 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
20 ABOVE-ENTITLED MATTER.

21

22 11-5-20

Suzanne White

23 DATE

SUZANNE R. WHITE

24

OFFICIAL COURT REPORTER

25

| | | | | |
|---|--|---|--|---|
| <p>1</p> <p>10 [7] - 24:4, 31:14, 35:8, 36:22, 40:2 100 [2] - 11:16, 13:25 11-5-20 [1] - 43:22 119 [1] - 39:24 120 [1] - 39:23 121 [1] - 2:11 14TH [1] - 7:24 15 [3] - 31:21, 35:8, 36:22 150 [1] - 7:13 1515 [1] - 2:8 15B [1] - 3:11 19066 [1] - 1:16 19102 [1] - 2:8 19103 [1] - 2:4 19106 [2] - 1:10, 1:22 19107 [1] - 2:12 1983 [1] - 7:24</p> | <p>53 [1] - 22:6 57 [1] - 19:22 59 [3] - 19:23, 36:9, 36:10 5:30 [1] - 1:9</p> <p>6</p> <p>60 [6] - 36:2, 36:24, 37:9, 37:10, 37:11, 37:23 601 [1] - 1:21 67-YEAR [1] - 12:3</p> <p>9</p> <p>9:30 [1] - 4:7</p> <p>A</p> <p>ABILITY [1] - 33:17 ABOUT [12] - 4:2, 10:24, 16:17, 20:9, 20:18, 21:9, 23:16, 25:17, 31:2, 34:1, 35:4, 41:2 ABOVE [3] - 20:25, 21:3, 43:20 ABOVE-ENTITLED [1] - 43:20 ABSENT [1] - 42:12 ABSENTEE [2] - 4:9, 4:16 ABSOLUTELY [3] - 7:16, 40:11, 41:15 ABSTAIN [1] - 16:10 ABSTRACT [1] - 6:25 ACCEPTABLE [2] - 28:18, 33:4 ACCESS [12] - 4:8, 4:15, 5:3, 8:22, 8:24, 10:11, 10:13, 11:9, 11:10, 27:18, 27:21, 40:7 ACCOMMODATE [1] - 18:24 ACCURATE [1] - 11:11 ACROSS [2] - 36:9, 39:15 ACT [6] - 25:8, 25:11, 40:21, 40:23, 42:23 ACTED [1] - 40:16 ACTING [4] - 22:24, 22:25, 25:9 ACTION [1] - 1:3 ACTIVITIES [3] - 9:18, 32:3, 32:11 ACTIVITY [1] - 30:13 ACTUAL [1] - 7:6</p> | <p>ACTUALLY [5] - 5:17, 10:25, 11:15, 11:17, 11:18 ADAM [2] - 2:10, 20:5 ADD [1] - 5:25 ADDITIONAL [1] - 23:5 ADDRESS [2] - 6:18, 16:12 ADDRESSED [1] - 13:16 ADDRESSES [2] - 22:14, 33:16 ADEQUATE [1] - 5:3 ADJOURNED [1] - 43:17 ADMITTED [1] - 5:2 ADULTS [1] - 13:11 AFTERNOON [1] - 6:13 AGAIN [4] - 3:17, 3:23, 9:4, 12:21 AGO [1] - 25:8 AGREE [11] - 13:7, 24:2, 24:7, 26:3, 27:14, 31:5, 31:10, 35:14, 37:1, 37:24, 38:9 AGREED [4] - 25:5, 41:2, 42:12, 42:24 AGREEING [4] - 13:20, 25:12, 25:18, 32:19 AGREEMENT [10] - 13:12, 14:13, 24:21, 32:14, 33:24, 34:17, 35:15, 37:2, 41:13, 41:19 AGREES [1] - 39:23 AHEAD [2] - 22:5, 30:11 AIDED [1] - 1:25 AIRCRAFT [1] - 12:2 AL [1] - 32:10 ALACRITY [1] - 25:10 ALL [36] - 4:3, 4:18, 7:17, 9:18, 11:14, 13:12, 13:13, 14:1, 14:20, 16:3, 22:16, 23:22, 26:10, 27:16, 27:25, 28:1, 28:2, 28:8, 28:14, 29:5, 31:8, 31:21, 35:8, 35:23, 36:12, 38:1, 38:2, 39:3, 39:16, 39:19, 40:5, 40:9, 43:13, 43:16 ALLOW [2] - 13:21, 17:18 ALLOWANCE [1] - 6:5</p> | <p>ALLOWED [16] - 7:15, 9:15, 9:22, 10:3, 10:4, 12:8, 13:13, 13:25, 19:5, 32:25, 33:10, 33:21, 34:20, 38:17, 38:18, 39:23 ALMOST [1] - 19:16 ALREADY [4] - 13:16, 14:9, 15:18, 42:22 ALSO [2] - 3:12, 5:25 ALTERS [1] - 25:2 ALTHOUGH [3] - 17:8, 17:14, 19:16 ALWAYS [1] - 37:4 AM [2] - 39:12, 40:20 AMENDED [1] - 42:2 AMENDMENT [1] - 7:25 AMOUNT [2] - 17:1, 34:19 AN [28] - 4:5, 4:12, 4:20, 5:19, 5:21, 5:22, 6:2, 6:8, 9:9, 9:17, 11:23, 12:4, 12:6, 13:11, 14:9, 14:12, 16:11, 22:7, 23:11, 23:19, 24:1, 24:21, 25:4, 32:12, 35:22, 36:25, 37:1, 42:2 AND [155] - 2:3, 3:6, 3:12, 3:19, 4:7, 4:9, 4:10, 4:14, 4:16, 4:20, 4:22, 4:25, 5:3, 5:12, 5:13, 5:14, 5:16, 5:24, 6:7, 6:12, 6:18, 6:20, 7:14, 7:17, 7:24, 8:6, 8:17, 8:23, 9:7, 9:22, 10:23, 11:16, 12:1, 12:4, 13:8, 13:9, 13:11, 13:16, 13:21, 13:23, 13:24, 14:1, 14:4, 14:23, 15:6, 15:12, 15:20, 16:3, 16:9, 16:15, 16:24, 16:25, 17:1, 17:5, 18:1, 18:2, 18:5, 18:6, 18:14, 19:6, 19:13, 20:9, 21:10, 22:13, 22:14, 22:16, 22:17, 22:19, 22:20, 23:4, 23:5, 23:12, 23:16, 24:4, 24:7, 24:13, 24:16, 24:21, 24:24, 25:6, 25:14, 25:15, 25:20, 26:3, 26:8, 26:9, 26:10, 26:12, 26:13, 26:15, 26:20, 27:8, 27:11,</p> | <p>27:13, 27:19, 27:25, 28:2, 28:3, 28:16, 28:17, 29:25, 30:3, 30:5, 30:23, 31:1, 31:12, 31:13, 31:14, 31:16, 32:3, 32:24, 33:1, 33:3, 33:9, 33:11, 33:16, 34:2, 35:8, 35:13, 36:13, 36:25, 37:17, 37:21, 37:24, 37:25, 38:2, 38:4, 38:8, 38:9, 38:10, 38:13, 39:19, 39:23, 39:25, 40:2, 40:5, 40:9, 40:19, 40:23, 41:1, 41:13, 42:4, 42:10, 42:15, 42:25, 43:6, 43:7, 43:14 ANOTHER [3] - 17:10, 17:11, 40:16 ANSWER [3] - 21:13, 23:19, 41:24 ANY [6] - 9:13, 19:13, 27:21, 31:16, 37:6, 41:2 ANYBODY [2] - 17:7, 19:5 ANYONE [2] - 15:9, 27:22 ANYONE'S [1] - 28:1 ANYTHING [8] - 14:12, 24:8, 25:17, 25:18, 41:6, 42:6, 42:16, 43:11 APART [1] - 15:11 APPEAL [2] - 6:5, 16:11 APPEARANCES [2] - 1:14, 2:1 APPEARED [1] - 34:10 APPEARS [1] - 16:11 APPLIES [1] - 38:11 APPOINT [3] - 19:3, 19:9, 19:11 APPROPRIATE [5] - 4:23, 4:25, 5:24, 23:2, 30:9 ARCH [1] - 2:8 ARE [72] - 3:20, 5:21, 6:16, 7:12, 7:14, 7:21, 7:24, 9:14, 10:4, 10:8, 10:9, 10:10, 10:13, 10:15, 10:16, 11:2, 11:13, 13:9, 13:13, 13:15, 13:17, 13:19, 13:25, 15:3, 15:25, 16:1, 16:2, 17:4, 17:5,</p> |
| <p>2</p> <p>20 [6] - 16:8, 30:25, 31:14, 31:17, 40:2 20-5533 [1] - 1:7 20-SOME [1] - 36:20 2020 [1] - 1:9 212 [1] - 1:16 215)299-7252 [1] - 1:22 25 [1] - 18:23 2609 [1] - 1:21 27TH [1] - 2:3 28TH [1] - 22:12</p> | | | | |
| <p>3</p> <p>30 [20] - 11:16, 11:22, 11:23, 13:25, 21:9, 21:19, 21:21, 23:3, 23:4, 23:5, 24:4, 26:18, 26:22, 31:1, 31:17, 34:2, 34:5, 35:5</p> | | | | |
| <p>4</p> <p>40 [7] - 21:9, 21:22, 21:23, 25:8, 25:10, 34:13, 35:5 400 [1] - 2:11</p> | | | | |
| <p>5</p> <p>5 [1] - 1:9 50 [5] - 21:25, 22:3, 31:17, 34:16 52 [2] - 22:4, 22:6</p> | | | | |

18:21, 19:1, 19:4,
19:5, 19:15, 19:18,
19:20, 20:12, 21:6,
22:10, 22:15, 23:16,
25:21, 26:16, 26:20,
27:2, 29:10, 29:12,
29:24, 31:12, 31:13,
31:14, 31:22, 31:23,
32:3, 32:19, 32:24,
32:25, 34:14, 34:18,
36:11, 37:1, 37:4,
37:23, 39:17, 39:23,
40:10, 41:2, 42:16,
42:20, 43:3
AREA^[5] - 15:22,
15:25, 21:9, 31:25
AREN'T^[1] - 10:2
ARGUE^[1] - 24:13
ARONCHICK^[1] - 2:2
AROUND^[4] - 4:7,
6:13, 16:3, 23:12
ARRANGE^[2] - 15:20,
32:8
ARRIVE^[1] - 18:9
ARTWORK^[3] -
28:24, 28:25, 31:11
AS^[62] - 3:8, 4:21, 5:9,
5:10, 5:20, 6:3, 6:8,
6:10, 7:7, 9:7, 11:1,
11:11, 13:12, 15:12,
16:8, 16:18, 18:16,
19:19, 20:15, 20:22,
20:23, 21:6, 21:12,
21:19, 23:9, 24:16,
25:20, 27:24, 28:23,
29:1, 29:11, 30:21,
31:9, 31:24, 32:12,
33:18, 33:20, 35:10,
36:13, 36:14, 38:11,
39:15, 40:8, 41:4,
41:12, 41:19, 41:25,
42:3
ASK^[4] - 8:17, 17:19,
17:24, 28:3
ASKED^[1] - 41:1
ASKING^[6] - 7:21,
11:1, 14:24, 15:1,
22:8, 22:9
ASSUME^[1] - 15:5
AT^[34] - 1:9, 4:6, 4:16,
7:10, 8:7, 8:10, 9:10,
9:16, 9:22, 10:6,
11:14, 12:4, 14:1,
14:8, 15:11, 15:23,
16:13, 16:16, 19:3,
19:13, 19:17, 20:9,
22:7, 23:22, 24:4,
24:15, 25:6, 25:9,
25:12, 26:11, 31:20,
35:8, 37:6, 39:25

ATTORNEY^[1] - 38:2
AUTHORITY^[3] -
14:4, 14:6, 15:2
AUTHORIZATIONS
^[1] - 27:1
AUTHORIZED^[1] -
36:21
AUTOMATIC^[1] - 6:8
AVOID^[5] - 14:11,
26:2, 26:13, 27:9,
27:24
AWARE^[1] - 38:2
AWAY^[4] - 11:13,
13:25, 14:1, 25:20
AWFULLY^[2] - 25:17,
30:10
AWKWARD^[1] -
14:20

B

BACK^[4] - 6:14, 7:19,
37:19, 40:13
BAD^[2] - 43:8, 43:9
BALLOT^[5] - 19:22,
27:3, 34:24, 35:22,
36:6
BALLOTS^[8] - 4:9,
4:17, 11:20, 16:1,
16:2, 25:22, 25:23,
25:25
BALLPARK^[1] -
36:19
BAR^[1] - 11:2
BARRICADE^[15] -
9:19, 9:20, 9:22,
14:1, 15:24, 29:5,
29:6, 29:15, 31:11,
31:12, 31:16, 31:23,
32:2, 39:17, 39:20
BARRIER^[4] - 23:10,
39:15, 40:7, 40:8
BASICALLY^[1] - 39:5
BATTLE^[1] - 26:11
BE^[82] - 3:3, 4:8, 4:15,
5:2, 5:11, 6:24, 8:3,
9:17, 10:6, 12:8,
12:10, 12:13, 12:18,
12:19, 12:25, 13:1,
13:11, 14:5, 14:16,
15:4, 16:6, 16:11,
16:15, 17:2, 18:7,
18:10, 18:15, 19:2,
20:25, 21:3, 23:1,
23:2, 23:4, 23:10,
23:22, 24:12, 25:17,
25:21, 25:24, 26:4,
26:10, 26:15, 26:25,
27:5, 27:7, 27:11,
27:17, 28:5, 28:10,

30:8, 30:13, 30:17,
30:18, 30:20, 31:16,
31:19, 31:25, 32:25,
33:10, 33:21, 35:15,
36:15, 37:6, 37:7,
37:8, 37:22, 38:16,
38:17, 38:18, 39:9,
39:24, 40:3, 40:4,
40:24, 41:10, 42:1,
42:5, 42:10, 42:19
BEAR^[1] - 26:10
BECAME^[1] - 5:1
BECAUSE^[20] - 3:8,
9:11, 12:24, 15:5,
15:10, 16:11, 16:14,
18:4, 22:15, 22:22,
22:23, 23:20, 29:24,
33:18, 34:12, 35:1,
37:20, 38:6, 41:3,
42:20
BECOME^[1] - 22:7
BEEN^[20] - 4:17, 4:24,
6:20, 6:22, 13:16,
14:1, 15:5, 15:24,
16:7, 21:8, 27:1,
30:10, 31:20, 35:8,
36:22, 41:4, 41:20,
42:12, 43:2
BEFORE^[10] - 1:11,
6:11, 24:15, 24:21,
24:24, 25:1, 25:3,
34:10, 40:19, 41:23
BEGINNING^[1] -
15:23
BEHALF^[3] - 3:13,
20:11, 35:24
BEHAVING^[1] - 9:11
BEHAVIOR^[2] -
22:24, 23:2
BEHAVIORAL^[1] -
31:23
BEHIND^[1] - 29:23
BEING^[23] - 4:9, 4:17,
6:16, 7:14, 7:25,
8:18, 8:22, 10:10,
10:17, 11:8, 11:9,
11:23, 15:18, 16:1,
18:7, 21:12, 23:9,
23:25, 27:12, 27:13,
30:23, 40:10, 40:20
BEINGS^[1] - 18:3
BELIEVE^[12] - 5:9,
5:14, 5:15, 6:1, 6:12,
6:22, 9:10, 12:2,
21:20, 34:2, 36:8,
37:18
BELOW^[1] - 29:9
BENJAMIN^[1] - 2:7
BEST^[2] - 9:5, 9:6
BETTER^[2] - 8:24,

18:19
BETWEEN^[4] - 11:16,
26:13, 35:8, 41:20
BIG^[4] - 6:25, 7:7,
30:15, 36:1
BIGGER^[1] - 7:11
BIND^[2] - 23:17,
35:23
BINDS^[1] - 32:19
BIT^[2] - 15:17, 31:10
BLOCK^[1] - 20:7
BLUESTEIN^[3] - 32:9,
32:13, 33:15
BOARD^[10] - 1:6,
3:20, 6:4, 14:17,
14:22, 14:23, 22:11,
27:11, 33:19
BOARD'S^[1] - 33:19
BONIN^[30] - 2:10,
20:4, 20:5, 20:7,
20:8, 20:19, 26:23,
26:24, 26:25, 27:16,
33:1, 33:23, 34:25,
35:1, 35:7, 35:18,
35:20, 36:4, 36:14,
36:17, 36:20, 37:10,
38:22, 38:23, 39:3,
39:7, 39:12, 39:14,
39:19, 40:11
BOOK^[1] - 12:12
BOTH^[9] - 5:14, 5:16,
8:2, 8:7, 8:9, 35:15,
38:11, 40:7, 40:23
BOTHERED^[1] -
27:19
BRIEF^[2] - 16:24,
41:8
BRIEFING^[2] - 6:12
BRIEFS^[1] - 25:14
BRING^[2] - 16:21,
42:19
BROAD^[2] - 2:11,
39:15
BROKERING^[1] -
14:14
BROUGHT^[2] - 5:6,
33:9
BUILDING^[2] - 2:7,
41:3
BULGE^[1] - 26:11
BUSH^[2] - 8:8, 8:10
BUT^[37] - 3:6, 6:19,
10:6, 12:3, 12:10,
12:17, 13:4, 13:16,
14:6, 14:10, 15:22,
16:21, 17:16, 18:21,
20:6, 21:24, 23:2,
23:23, 24:14, 24:25,
25:10, 25:24, 27:6,
30:11, 32:1, 33:16,

36:11, 36:21, 37:8,
37:18, 39:10, 40:5,
40:7, 40:18, 41:11,
42:19, 43:2
BY^[18] - 1:24, 1:25,
4:5, 4:12, 5:19, 6:3,
14:12, 21:12, 23:21,
24:2, 25:18, 26:15,
27:13, 27:20, 30:21,
32:25, 33:1, 35:15
BYRNE^[1] - 1:8

C

CALL^[5] - 3:12, 25:14,
37:5, 43:8
CALL-IN^[1] - 3:12
CAME^[1] - 38:2
CAMPAIGN^[8] - 4:15,
4:20, 8:3, 8:12, 8:18,
27:10, 27:11
CAN^[61] - 3:17, 4:20,
6:18, 6:24, 11:20,
12:1, 13:8, 13:11,
15:11, 15:13, 15:15,
15:16, 15:20, 16:18,
16:21, 17:3, 17:22,
17:23, 18:13, 18:24,
19:2, 19:3, 19:5,
19:9, 19:11, 19:19,
20:9, 21:5, 21:19,
21:24, 22:1, 22:4,
23:3, 23:4, 23:10,
23:11, 23:20, 24:2,
24:4, 24:7, 27:11,
27:23, 28:4, 30:8,
31:5, 31:16, 32:8,
34:6, 34:20, 35:24,
37:4, 37:5, 38:4,
38:13, 38:17, 38:18,
40:23, 41:17, 42:20
CAN'T^[15] - 7:20,
11:12, 11:22, 15:19,
18:8, 27:14, 32:19,
33:20, 35:23, 37:16,
39:22, 39:24, 40:7,
43:6, 43:7
CANDIDATE^[8] -
19:13, 19:14, 27:4,
33:21, 34:5, 36:15,
36:16, 36:17
CANDIDATES^[15] -
19:16, 19:17, 19:18,
19:21, 26:16, 26:21,
27:2, 33:18, 34:7,
34:24, 35:22, 36:6,
36:12, 38:3, 38:4
CANVASS^[1] - 15:23
CANVASSING^[1] -
9:18

| | | | | |
|---|---|--|--|---|
| CARE ^[1] - 35:16 CARRYING ^[1] - 40:16 CASE ^[3] - 8:13, 38:4, 42:2 CAUSE ^[1] - 31:25 CAUTION ^[1] - 40:22 CECIL ^[1] - 38:19 CELL ^[1] - 37:4 CENTER ^[1] - 4:16 CERTAIN ^[2] - 10:3, 31:25 CERTAINLY ^[7] - 13:19, 14:10, 21:16, 23:20, 36:3, 37:20, 40:18 CERTIFY ^[1] - 43:18 CHALLENGE ^[1] - 28:1 CHANGE ^[1] - 25:11 CHARACTERIZATION ^[1] - 6:1 CHARGE ^[2] - 32:10, 40:25 CHECKING ^[1] - 11:21 CITY ^[11] - 7:2, 14:5, 17:9, 17:16, 19:22, 27:12, 31:4, 31:9, 32:9, 36:9, 41:24 CIVIL ^[1] - 1:3 CLAIBORNE ^[29] - 2:6, 3:19, 7:1, 7:4, 7:9, 7:13, 7:16, 9:3, 9:4, 9:8, 9:16, 12:21, 13:3, 13:4, 13:15, 13:19, 14:8, 15:14, 20:24, 21:1, 22:24, 24:9, 24:10, 24:20, 33:12, 39:6, 39:11, 40:14 CLAUSE ^[2] - 8:6, 8:7 CLEAR ^[6] - 5:1, 25:17, 26:25, 31:19, 40:20, 41:11 CLERK ^[7] - 3:1, 28:8, 37:3, 37:6, 40:22, 42:10, 43:8 CLERKED ^[1] - 25:8 CLIENT ^[16] - 4:7, 4:8, 4:15, 11:11, 14:15, 16:5, 18:14, 22:20, 22:21, 23:6, 23:17, 23:24, 24:2, 24:6, 29:1, 37:16 CLIENT'S ^[1] - 28:25 CLIENTS ^[3] - 13:13, 18:13, 38:13 CLOSE ^[2] - 9:14, 15:12 CLOSER ^[4] - 12:13, 16:17, 17:18, 31:16 | CLOSEST ^[1] - 9:19 CM ^[1] - 1:20 CO ^[2] - 24:12, 26:7 CO-COUNSEL ^[2] - 24:12, 26:7 CODE ^[8] - 19:8, 19:9, 23:17, 34:20, 37:17, 38:10, 40:9, 43:6 CODES ^[1] - 43:4 COFFEE ^[1] - 23:12 COLLEAGUE ^[1] - 6:18 COME ^[6] - 15:22, 18:18, 24:21, 37:19 COMES ^[2] - 26:17, 26:22 COMFORTABLE ^[3] - 3:5, 3:7, 3:18 COMING ^[1] - 25:25 COMMANDMENTS ^[1] - 38:19 COMMENCING ^[1] - 1:9 COMMISSIONER ^[2] - 32:9, 32:10 COMMISSIONERS ^[1] - 15:21 COMMIT ^[2] - 34:20, 37:16 COMMITTING ^[2] - 32:7, 35:21 COMMONWEALTH ^[6] - 4:6, 4:13, 6:3, 6:9, 6:21, 14:9 COMPANY ^[1] - 25:23 COMPLAINT ^[6] - 5:10, 5:14, 16:16, 41:25, 42:1, 42:2 COMPLETED ^[2] - 6:13, 13:1 COMPLETELY ^[1] - 10:1 COMPLIANCE ^[1] - 13:17 COMPLIED ^[2] - 27:14, 40:10 COMPLYING ^[2] - 6:22, 43:9 COMPORTING ^[1] - 9:10 COMPUTER ^[3] - 1:24, 1:25, 40:12 COMPUTER-AIDED ^[1] - 1:25 CONCERNED ^[1] - 41:2 CONDUCT ^[1] - 40:19 CONFIRM ^[1] - 7:18 CONSIDERED ^[2] - 15:7, 22:23 | CONSISTENT ^[1] - 35:11 CONSTITUTION ^[1] - 8:5 CONSTITUTIONAL ^[3] - 7:25, 10:5, 16:18 CONTACT ^[4] - 37:5, 40:22, 42:10, 42:11 CONTENTION ^[1] - 5:21 CONTESTED ^[1] - 42:14 CONTESTS ^[1] - 19:22 CONTINUANCE ^[1] - 34:11 CONTINUE ^[3] - 13:21, 27:18, 41:12 CONTINUED ^[1] - 2:1 CONTROL ^[1] - 39:14 CONTROVERSIAL ^[1] - 41:11 CONVENTION ^[1] - 4:16 CONVINCED ^[1] - 30:22 CORDONS ^[1] - 15:24 CORRECT ^[9] - 11:25, 12:25, 13:5, 29:8, 30:2, 30:5, 39:18, 39:21, 43:18 COULD ^[10] - 3:7, 11:15, 11:17, 12:3, 12:5, 17:13, 20:3, 26:2, 31:25, 34:4 COULDN'T ^[2] - 13:7, 42:12 COUNSEL ^[10] - 1:18, 2:5, 2:9, 2:13, 20:1, 24:12, 26:7, 40:19, 41:2, 43:16 COUNT ^[2] - 13:1, 29:25 COUNTED ^[1] - 4:17 COUNTERS ^[1] - 9:15 COUNTING ^[8] - 4:8, 5:4, 7:12, 7:15, 8:22, 25:22, 25:24 COUNTS ^[1] - 34:12 COUNTY ^[1] - 1:6 COURSE ^[2] - 26:23, 43:14 COURT ^[182] - 1:1, 1:20, 3:1, 3:2, 3:16, 3:23, 4:6, 4:10, 4:13, 4:21, 5:7, 5:11, 5:23, 5:25, 6:2, 6:3, 6:6, 6:9, 6:11, 6:14, 6:22, 6:24, 7:3, 7:7, 7:11, 7:14, 7:19, 7:20, 7:21, 7:22, 7:23, 8:4, | 8:9, 8:15, 8:20, 8:24, 9:3, 9:6, 9:14, 9:23, 10:13, 10:18, 10:22, 11:1, 11:2, 11:6, 11:13, 11:17, 11:22, 12:1, 12:7, 12:13, 12:17, 13:7, 13:18, 14:3, 14:9, 14:11, 15:1, 15:18, 16:4, 16:11, 16:23, 17:14, 17:22, 18:1, 18:12, 18:18, 18:24, 19:4, 19:10, 19:15, 19:24, 20:3, 20:6, 20:13, 20:17, 20:21, 21:2, 21:5, 21:11, 21:15, 21:18, 21:22, 21:25, 22:3, 22:5, 22:8, 22:16, 23:21, 23:25, 24:15, 24:18, 24:23, 24:24, 25:1, 25:2, 25:3, 25:5, 25:7, 25:13, 26:9, 26:20, 26:24, 27:5, 27:23, 28:2, 28:9, 28:10, 28:14, 28:16, 28:19, 28:22, 28:24, 29:2, 29:6, 29:9, 29:13, 29:16, 29:19, 29:21, 29:24, 30:3, 30:6, 30:7, 30:10, 30:16, 30:20, 30:21, 31:4, 31:8, 32:4, 32:6, 32:12, 32:13, 32:17, 32:18, 32:20, 32:24, 33:6, 33:20, 33:23, 34:2, 34:8, 34:16, 34:22, 35:3, 35:12, 36:2, 36:5, 36:10, 36:13, 36:19, 36:24, 37:11, 37:13, 37:15, 37:20, 37:22, 38:6, 38:14, 39:1, 39:9, 39:12, 39:18, 39:21, 40:12, 40:15, 41:9, 41:13, 41:15, 41:17, 41:23, 42:9, 42:22, 43:3, 43:5, 43:11, 43:13, 43:24 COURTHOUSE ^[2] - 1:8, 1:21 COURTROOM ^[3] - 7:8, 7:10, 33:5 CREDENTIAL ^[1] - 37:21 CREDENTIALLED ^[1] - 22:14 CRIMINAL ^[1] - 22:22 CROWD ^[1] - 39:14 CURRENTLY ^[1] - | 32:2 CYCLE ^[1] - 38:1 D DANCE ^[1] - 33:9 DATE ^[2] - 34:12, 43:23 DATES ^[1] - 42:4 DAY ^[8] - 4:18, 7:17, 14:2, 21:10, 26:12, 29:3, 34:11, 35:4 DAYS ^[3] - 23:1, 25:9, 27:7 DEAL ^[2] - 25:16, 41:6 DECIDE ^[2] - 16:25, 23:8 DECIDED ^[2] - 12:23, 23:7 DECISION ^[4] - 10:1, 15:2, 17:3, 17:17 DECISION-MAKER ^[1] - 17:17 DECISION-MAKING ^[1] - 15:2 DEFENDANT ^[6] - 2:5, 2:9, 2:13, 28:19, 29:22, 41:12 DEFENDANTS ^[2] - 28:17, 42:15 DEMILLE'S ^[1] - 38:19 DEMOCRATIC ^[10] - 9:2, 19:25, 20:1, 20:11, 26:20, 27:2, 27:12, 27:20, 35:24, 36:23 DENIED ^[1] - 8:18 DENY ^[1] - 41:18 DEPTH ^[1] - 18:1 DEPUTIES ^[1] - 15:21 DEPUTY ^[1] - 32:9 DESIGNATE ^[1] - 23:20 DESIGNATED ^[2] - 34:15, 34:19 DETAILS ^[1] - 6:18 DETERMINE ^[1] - 40:15 DIAMOND ^[1] - 1:11 DID ^[3] - 36:5, 36:16, 37:9 DIDN'T ^[2] - 18:9, 42:25 DIFFERENT ^[2] - 18:2, 34:6 DIFFERENTLY ^[1] - 34:12 DIMENSION ^[2] - 17:25, 18:2 DIMENSIONS ^[1] - 7:6 |
|---|---|--|--|---|

| | | | | |
|--|--|---|---|---|
| <p>DISAGREEMENT [1] - 10:24</p> <p>DISAGREES [1] - 43:7</p> <p>DISCRIMINATION [1] - 10:7</p> <p>DISCUSS [1] - 42:7</p> <p>DISCUSSED [2] - 15:24, 33:3</p> <p>DISCUSSION [1] - 38:5</p> <p>DISCUSSIONS [1] - 27:17</p> <p>DISOBEYED [1] - 4:18</p> <p>DISPUTE [6] - 24:24, 25:1, 25:5, 27:9, 27:10, 40:18</p> <p>DISTANCE [11] - 11:15, 11:16, 15:7, 16:25, 17:8, 17:10, 17:11, 23:6, 23:7, 24:5, 33:3</p> <p>DISTANCING [3] - 9:13, 22:7, 40:9</p> <p>DISTANT [1] - 15:10</p> <p>DISTRICT [3] - 1:1, 1:2, 5:23</p> <p>DO [38] - 4:2, 7:17, 12:7, 12:14, 13:5, 13:15, 14:12, 14:19, 14:22, 15:13, 15:15, 15:19, 16:5, 16:6, 16:7, 16:8, 16:23, 17:6, 17:22, 17:23, 18:19, 20:19, 21:1, 21:11, 22:3, 23:15, 24:7, 27:19, 28:6, 32:6, 34:23, 35:1, 36:24, 38:12, 41:13, 42:20, 43:6</p> <p>DOABLE [1] - 38:22</p> <p>DOCUMENT [1] - 5:10</p> <p>DOES [12] - 12:24, 13:3, 14:7, 17:9, 17:14, 23:13, 24:13, 27:6, 31:1, 33:13, 36:14, 38:22</p> <p>DOESN'T [4] - 13:24, 23:18, 27:12, 29:1</p> <p>DOING [6] - 3:5, 3:7, 3:8, 7:12, 27:1, 42:3</p> <p>DON'T [45] - 3:5, 3:16, 5:17, 10:2, 10:19, 12:1, 12:19, 12:22, 14:4, 14:5, 14:6, 15:19, 16:9, 16:12, 17:7, 18:12, 18:20, 18:21, 20:17, 20:22, 21:3, 21:4, 22:6, 22:10, 22:23, 25:7, 25:8, 25:23, 27:5,</p> | <p>27:14, 28:1, 29:2, 30:16, 31:10, 33:16, 34:21, 35:16, 39:8, 39:9, 40:5, 40:22, 41:10, 42:4, 42:10, 42:11</p> <p>DONALD [2] - 1:3, 11:3</p> <p>DONE [2] - 15:18, 39:19</p> <p>DOOR [1] - 28:5</p> <p>DOUBT [1] - 42:25</p> <p>DOWN [5] - 3:8, 9:18, 10:9, 10:10, 29:5</p> <p>DOZENS [1] - 18:10</p> <p>DRAWING [2] - 38:15, 39:10</p> <p>DUE [4] - 7:24, 8:6, 8:17, 34:11</p> <p>DURING [2] - 6:9, 21:9</p> | <p>ENTIRE [1] - 36:9</p> <p>ENTIRELY [2] - 20:8, 42:11</p> <p>ENTITLED [1] - 43:20</p> <p>ENVELOPE [3] - 11:23, 12:4, 12:6</p> <p>EQUAL [12] - 8:7, 8:16, 8:18, 8:22, 10:11, 10:13, 11:9, 23:11, 27:18, 35:9, 38:17, 40:7</p> <p>EQUALLY [1] - 30:21</p> <p>ERR [1] - 40:21</p> <p>ERRAND [1] - 27:6</p> <p>ESCORT [1] - 41:5</p> <p>ESQUIRE [6] - 1:15, 2:2, 2:3, 2:6, 2:7, 2:10</p> <p>ESTIMATE [1] - 21:6</p> <p>EVENING [3] - 3:2, 5:6, 20:4</p> <p>EVERY [5] - 15:6, 36:14, 36:16, 36:17, 39:4</p> <p>EVERYBODY [9] - 3:2, 17:6, 17:18, 28:10, 29:20, 32:1, 34:12, 39:23, 40:21</p> <p>EVERYONE [8] - 16:8, 16:15, 17:1, 23:9, 30:23, 30:24, 31:15, 33:9</p> <p>EVERYTHING [2] - 33:7, 42:20</p> <p>EVERYWHERE [1] - 15:6</p> <p>EXACTLY [1] - 32:22</p> <p>EXCEED [1] - 34:5</p> <p>EXCEPT [3] - 9:19, 31:24, 42:13</p> <p>EXCUSE [2] - 8:21, 19:23</p> <p>EXPECT [1] - 40:21</p> <p>EXPLAIN [4] - 5:21, 15:16, 15:23, 28:16</p> <p>EXTENT [3] - 9:9, 9:12, 14:23</p> <p>EYES [3] - 12:3, 35:12, 35:13</p> | <p>FAITH [8] - 28:1, 40:17, 40:21, 42:21, 42:23, 42:24, 43:8, 43:9</p> <p>FAR [9] - 6:10, 9:7, 13:12, 16:18, 19:19, 21:19, 24:6, 36:13, 36:14</p> <p>FAST [1] - 42:4</p> <p>FATALLY [1] - 5:16</p> <p>FCRR [1] - 1:20</p> <p>FEDERAL [8] - 5:23, 8:5, 15:3, 16:13, 16:14, 25:5, 25:13, 30:7</p> <p>FEEL [3] - 3:4, 3:7, 27:12</p> <p>FEET [47] - 9:18, 9:21, 10:2, 11:11, 11:13, 11:16, 11:22, 11:23, 12:14, 12:15, 12:16, 12:19, 13:9, 13:10, 13:20, 13:25, 15:4, 15:7, 15:8, 15:11, 15:12, 16:6, 16:7, 16:8, 17:18, 23:7, 23:8, 29:14, 30:4, 30:14, 30:17, 30:24, 30:25, 31:1, 31:12, 31:13, 31:14, 31:17, 32:2, 32:22</p> <p>FENCE [1] - 32:22</p> <p>FEW [1] - 27:7</p> <p>FEWER [3] - 19:20, 38:7, 38:10</p> <p>FIELD [57] - 2:7, 3:20, 14:18, 14:19, 15:16, 15:20, 16:4, 16:19, 17:21, 17:23, 18:25, 19:1, 19:7, 19:12, 19:20, 20:1, 21:2, 21:4, 21:8, 21:13, 21:16, 21:20, 21:23, 22:1, 22:4, 22:6, 22:10, 23:14, 23:23, 24:25, 26:5, 26:6, 30:7, 31:6, 31:19, 32:8, 32:15, 32:21, 33:2, 33:15, 33:22, 34:4, 34:14, 34:18, 34:23, 35:11, 36:8, 36:11, 37:14, 37:15, 37:16, 37:24, 38:12, 42:18, 42:25, 43:2, 43:10</p> <p>FIGURING [1] - 10:5</p> <p>FILE [1] - 25:13</p> <p>FILED [1] - 6:5</p> <p>FILING [1] - 6:8</p> <p>FIND [1] - 18:8</p> | <p>FINE [6] - 21:10, 25:15, 34:7, 36:13, 36:24</p> <p>FIRST [8] - 4:3, 9:19, 29:14, 30:24, 31:11, 32:2, 32:23, 38:14</p> <p>FIT [1] - 18:13</p> <p>FITS [2] - 40:1</p> <p>FIVE [2] - 10:2</p> <p>FLAWED [1] - 5:16</p> <p>FLAWS [1] - 5:20</p> <p>FLOOR [1] - 2:3</p> <p>FOND [1] - 42:3</p> <p>FOOL'S [1] - 27:6</p> <p>FOR [43] - 1:2, 1:3, 1:13, 1:18, 2:5, 2:9, 2:13, 3:12, 3:20, 4:4, 4:8, 4:15, 5:1, 5:15, 5:16, 6:5, 6:14, 7:1, 9:19, 11:3, 15:20, 15:22, 19:14, 20:1, 21:18, 21:21, 23:16, 24:8, 25:8, 25:19, 27:17, 28:6, 31:24, 32:8, 34:6, 35:9, 37:23, 38:18, 39:15, 39:16, 40:3, 42:13, 42:15</p> <p>FOREGOING [1] - 43:18</p> <p>FOUR [1] - 40:4</p> <p>FREE [4] - 25:1, 25:3, 31:22, 37:1</p> <p>FROM [27] - 4:19, 5:22, 6:6, 11:22, 11:23, 13:8, 13:10, 15:10, 15:11, 16:11, 16:25, 23:11, 24:5, 25:20, 27:2, 29:15, 30:25, 31:1, 31:12, 31:13, 31:14, 31:17, 32:2, 32:23, 38:2, 42:8, 43:19</p> <p>FRONT [5] - 23:10, 24:4, 39:15, 39:25, 40:8</p> |
| E | | | | |
| <p>E-MAIL [2] - 18:8, 18:9</p> <p>EACH [13] - 15:10, 15:11, 19:13, 23:3, 23:11, 30:4, 30:14, 35:21, 36:12, 37:23, 38:8, 38:18, 42:16</p> <p>EAR [1] - 24:3</p> <p>EASTER [1] - 39:4</p> <p>EASTERN [1] - 1:2</p> <p>EASY [1] - 23:19</p> <p>EFFECT [1] - 14:10</p> <p>EFFECTIVE [1] - 6:21</p> <p>EFFORT [1] - 25:4</p> <p>EITHER [1] - 10:19</p> <p>ELECTION [10] - 19:8, 19:9, 19:23, 23:17, 34:20, 37:17, 38:1, 40:9, 43:4, 43:6</p> <p>ELECTIONS [6] - 1:7, 3:20, 6:4, 14:17, 14:22, 27:11</p> <p>ELOQUENTLY [1] - 24:13</p> <p>ELSE [4] - 13:10, 18:14, 27:22, 43:11</p> <p>EMERGENCY [2] - 1:13, 4:1</p> <p>EMPLOYEES [1] - 8:25</p> <p>END [1] - 26:12</p> <p>ENFORCE [1] - 5:23</p> <p>ENJOY [1] - 25:23</p> <p>ENOUGH [3] - 8:15, 17:20, 35:14</p> <p>ENSURE [1] - 32:14</p> <p>ENTERED [3] - 4:5, 4:12, 6:23</p> | | | | |
| F | | | | |
| <p>FACT [5] - 6:20, 17:16, 24:23, 27:9, 42:13</p> <p>FACTS [1] - 6:19</p> <p>FACTUAL [5] - 5:16, 5:18, 10:24, 11:10, 13:6</p> <p>FAIR [1] - 5:11</p> <p>FAIRNESS [1] - 8:14</p> | | | | |
| G | | | | |
| <p>GATHER [1] - 3:11</p> <p>GENERALITIES [1] - 8:16</p> <p>GENERALLY [3] - 9:15, 15:5, 35:7</p> <p>GENERATED [2] - 27:8, 41:5</p> <p>GENEROUS [1] - 30:11</p> <p>GENTLEMAN [1] - 4:19</p> | | | | |

GET [7] - 9:15, 15:11, 16:10, 17:2, 17:14, 27:23, 33:7
GETS [1] - 31:15
GETTING [2] - 8:24, 24:19
GIVE [3] - 33:11, 37:3
GIVEN [8] - 4:8, 4:15, 8:22, 10:11, 10:17, 11:8, 11:9, 12:11
GIVING [1] - 5:19
GO [4] - 15:6, 22:17, 30:11, 31:22
GOES [2] - 29:5, 30:14
GOING [43] - 5:2, 5:4, 8:21, 10:25, 11:18, 12:8, 12:24, 13:1, 13:21, 13:23, 15:3, 16:15, 17:1, 17:2, 17:5, 17:12, 22:17, 22:18, 22:19, 22:20, 23:2, 23:3, 23:22, 25:7, 26:6, 26:11, 27:7, 32:3, 32:13, 32:24, 32:25, 33:7, 33:8, 37:3, 39:1, 39:24, 41:18, 42:2, 42:5, 42:20, 42:23
GOOD [10] - 3:2, 20:4, 22:5, 26:4, 28:1, 40:17, 40:21, 42:21, 42:23, 42:24
GORE [2] - 8:8, 8:11
GOT [2] - 9:21, 18:19
GRACIOUSLY [1] - 41:1
GRANT [1] - 9:25
GREAT [4] - 8:16, 18:4, 38:15, 39:9
GREATER [1] - 11:15
GROUPS [1] - 19:4
GUESS [2] - 23:21, 41:23
GUIDELINES [2] - 31:24, 40:9

H

HAD [6] - 4:24, 20:20, 27:21, 36:21, 38:2
HAIR [1] - 24:19
HAND [2] - 28:21, 38:15
HANDS [1] - 32:19
HANGLEY [1] - 2:2
HAPPENS [2] - 15:4, 16:6
HAPPY [4] - 5:19, 13:15, 13:19, 29:20
HARD [3] - 3:8, 23:16,

34:8
HAS [27] - 4:17, 13:16, 14:1, 14:9, 15:5, 15:24, 16:7, 16:16, 17:7, 18:17, 22:21, 22:22, 23:7, 33:8, 33:11, 33:17, 35:8, 35:12, 35:22, 36:18, 40:4, 40:5, 40:16, 41:1, 41:4, 41:20, 41:24
HAVE [87] - 3:25, 4:2, 5:5, 5:25, 6:19, 6:22, 7:17, 10:4, 10:23, 12:7, 12:10, 12:13, 12:17, 12:18, 12:22, 12:23, 14:4, 14:6, 14:10, 14:15, 15:10, 16:10, 16:12, 18:6, 18:7, 20:14, 20:15, 20:19, 20:20, 22:4, 23:3, 23:4, 23:10, 23:12, 23:23, 24:17, 24:22, 25:5, 25:21, 26:7, 26:16, 26:21, 27:1, 27:18, 27:19, 28:15, 28:17, 29:25, 30:3, 30:13, 30:16, 30:18, 30:20, 30:22, 31:20, 32:6, 33:10, 33:13, 34:8, 35:10, 35:22, 36:15, 36:20, 37:8, 37:18, 38:7, 38:10, 38:25, 39:6, 39:7, 40:6, 40:17, 40:18, 40:20, 41:1, 41:5, 42:12, 42:25, 43:2
HAVEN'T [2] - 36:21, 36:22
HAVING [2] - 11:19, 14:12
HAZARD [1] - 24:1
HE [23] - 3:9, 6:3, 13:20, 13:23, 16:17, 22:18, 22:19, 22:22, 23:4, 24:14, 33:3, 33:7, 33:8, 33:9, 33:11, 33:13, 40:25, 41:1, 41:5, 42:10, 43:7
HE'S [2] - 23:2, 33:8
HEAD [3] - 14:17, 15:14, 24:25
HEALTHY [1] - 43:14
HEAR [7] - 12:23, 13:8, 13:9, 20:17, 22:3, 33:25, 40:17
HEARD [2] - 5:20, 30:8

HEARING [4] - 1:13, 4:1, 4:4, 12:23
HEAT [2] - 27:8, 41:4
HEAVILY [1] - 42:14
HELD [3] - 16:8, 16:15, 17:2
HERE [32] - 3:13, 3:20, 4:19, 7:18, 9:20, 13:11, 13:24, 15:13, 16:13, 17:4, 17:14, 20:2, 20:11, 21:7, 22:1, 24:3, 24:13, 25:5, 25:21, 25:25, 26:3, 27:3, 27:6, 29:6, 30:22, 32:19, 33:9, 35:25, 37:7, 40:25, 41:14, 42:5
HERE'S [1] - 39:13
HESITATE [1] - 40:22
HIM [4] - 20:2, 20:6, 33:11, 41:1
HIS [4] - 21:16, 24:25, 33:10, 37:4
HOLDING [1] - 29:10
HONEST [1] - 42:19
HONESTLY [2] - 18:19
HONOR [59] - 3:22, 4:4, 4:5, 4:13, 5:6, 5:8, 5:14, 5:17, 6:17, 7:5, 7:16, 7:22, 9:4, 9:8, 10:12, 10:21, 11:14, 13:4, 13:16, 14:21, 14:24, 16:20, 17:5, 17:24, 18:17, 19:1, 19:8, 20:4, 21:24, 22:2, 23:15, 24:10, 24:21, 26:7, 26:23, 28:7, 28:13, 28:23, 29:11, 31:6, 31:19, 32:21, 33:2, 33:16, 33:22, 33:25, 34:4, 34:15, 34:18, 35:21, 37:12, 37:14, 37:24, 38:13, 41:8, 41:22, 42:18, 43:10, 43:12
HONORABLE [1] - 1:11
HONORED [1] - 32:14
HOOKUP [1] - 3:11
HOPE [1] - 13:22
HOPEFUL [1] - 37:19
HOURS [1] - 5:1
HOW [30] - 6:25, 7:11, 8:17, 9:14, 11:13, 13:12, 14:1, 16:5, 16:6, 18:12, 18:13, 18:14, 18:22, 19:2, 19:18, 19:24, 20:19, 21:4, 21:5, 21:6,

21:11, 22:20, 27:1, 27:3, 34:23, 35:18, 36:3, 36:6, 36:19
HOWEVER [6] - 23:5, 23:9, 24:5, 24:6, 38:21
HUMAN [1] - 18:3
HUNDRED [1] - 30:17

I

I'D [1] - 10:4
I'LL [4] - 9:25, 13:9, 34:11, 37:7
I'M [39] - 3:8, 5:19, 8:15, 9:23, 11:1, 11:6, 12:18, 12:21, 14:11, 14:15, 15:1, 16:4, 16:5, 16:9, 17:2, 17:11, 17:12, 18:8, 20:11, 22:8, 22:9, 23:3, 24:3, 24:18, 30:6, 30:21, 31:6, 32:18, 33:7, 35:25, 37:19, 37:25, 38:2, 38:12, 39:22, 41:18, 42:2, 42:3
I'VE [2] - 20:6, 30:10
IDENTIFY [6] - 20:3, 21:12, 22:18, 33:17, 33:20, 34:6
IF [72] - 3:4, 3:6, 3:7, 3:17, 6:24, 9:25, 11:22, 12:3, 12:5, 12:20, 12:25, 13:20, 14:14, 15:7, 15:18, 16:19, 17:9, 17:12, 17:16, 22:21, 22:25, 23:7, 23:8, 24:1, 24:4, 24:7, 24:23, 24:25, 25:2, 25:15, 25:25, 26:2, 26:7, 26:12, 26:16, 26:20, 27:7, 27:9, 27:10, 28:4, 29:10, 30:23, 31:16, 33:9, 33:17, 34:6, 34:14, 34:18, 35:16, 36:16, 36:25, 37:6, 37:8, 37:22, 38:6, 38:9, 39:7, 39:23, 40:1, 40:15, 40:19, 40:23, 41:2, 42:1, 42:9, 43:5, 43:7
IMAGINE [1] - 38:19
IMPLEMENT [1] - 42:24
IMPLY [1] - 43:1
IMPORTANT [1] - 13:5
IN [76] - 1:1, 3:12, 4:6, 4:9, 4:16, 4:17, 4:25, 5:25, 6:20, 7:15, 8:8, 8:10, 8:12, 8:16, 10:8, 10:9, 10:14, 10:16, 11:4, 12:12, 13:17, 14:20, 14:24, 15:6, 15:22, 15:25, 16:2, 17:16, 18:11, 18:15, 19:3, 19:5, 19:6, 19:13, 19:19, 19:22, 19:23, 20:12, 20:13, 21:9, 22:14, 22:19, 23:10, 23:14, 24:23, 25:4, 25:5, 25:9, 25:14, 26:10, 27:9, 27:17, 28:9, 29:12, 30:14, 31:24, 32:10, 32:25, 33:18, 33:21, 35:23, 36:12, 37:25, 38:2, 38:19, 40:15, 40:16, 40:21, 40:25, 41:12, 41:19, 42:21, 42:23, 43:4, 43:19
INADEQUATE [2] - 36:25, 37:1
INAPPROPRIATE [1] - 22:23
INAPPROPRIATELY [2] - 9:12, 22:25
INC [1] - 1:4
INCONSISTENT [1] - 24:22
INCORRECT [1] - 6:2
INDICATED [2] - 33:3, 41:25
INDICATING [1] - 29:7
INDICATING [1] - 39:11
INDIVIDUAL [2] - 9:11, 11:20
INFORM [1] - 38:9
INFRINGED [1] - 8:1
INITIALLY [1] - 29:17
INJUNCTION [1] - 1:13
INJUNCTIVE [1] - 5:22
INJURY [2] - 10:5, 16:14
INTEND [1] - 41:12
INTERNET [1] - 12:25
INTERNETO [1] - 19:17
INTERVENTION [1] - 42:13
INTO [8] - 3:6, 3:17, 4:10, 16:10, 17:14, 24:19, 27:24, 33:10
INVOKED [1] - 7:24
IRRATIONAL [1] -

| | | | | | | | |
|---|--|--|---|---|--|--|---|
| <p>10:1</p> <p>IS ^[177] - 3:4, 3:9, 3:11, 3:12, 3:13, 3:14, 3:21, 4:19, 4:20, 5:5, 5:9, 5:16, 5:24, 6:2, 6:10, 6:19, 6:25, 7:7, 7:25, 8:3, 8:17, 8:22, 8:24, 9:3, 9:20, 10:5, 10:13, 10:15, 10:19, 10:24, 11:11, 11:19, 11:23, 12:24, 12:25, 13:1, 13:2, 13:4, 13:5, 13:21, 13:23, 14:23, 14:24, 15:5, 15:7, 15:8, 16:1, 16:8, 16:9, 16:12, 16:13, 16:14, 16:15, 16:17, 17:1, 17:4, 17:5, 17:16, 17:17, 17:19, 18:4, 19:8, 19:13, 20:2, 20:24, 20:25, 21:2, 21:10, 21:18, 21:20, 22:11, 22:17, 22:18, 22:19, 22:20, 22:23, 22:25, 23:6, 23:7, 23:9, 23:21, 23:22, 24:2, 24:6, 24:14, 24:16, 24:20, 24:25, 25:5, 25:6, 25:7, 25:15, 26:11, 26:12, 26:14, 27:1, 27:6, 27:7, 27:9, 27:12, 27:13, 27:16, 27:24, 28:9, 28:17, 28:19, 28:24, 28:25, 29:1, 29:5, 29:14, 30:9, 30:23, 30:24, 31:4, 31:8, 31:9, 31:11, 31:18, 32:2, 32:7, 32:9, 32:10, 32:13, 32:14, 32:22, 33:7, 33:16, 34:3, 34:16, 34:20, 34:22, 35:21, 35:22, 36:25, 37:3, 37:18, 38:5, 38:6, 38:9, 38:15, 38:20, 38:25, 39:5, 39:14, 39:15, 39:19, 39:24, 40:2, 40:25, 41:6, 41:14, 41:23, 41:24, 42:4, 42:6, 42:9, 42:16, 42:24, 43:5, 43:8, 43:9, 43:18</p> <p>ISN'T ^[1] - 17:19</p> <p>ISSUE ^[12] - 8:7, 8:10, 8:14, 9:13, 9:16, 16:13, 22:7, 24:11, 24:14, 24:16, 24:20, 42:2</p> <p>ISSUED ^[2] - 6:3, 14:9</p> | <p>ISSUES ^[2] - 18:4, 24:11</p> <p>IT ^[60] - 3:5, 3:7, 4:2, 5:1, 5:9, 5:16, 6:19, 6:23, 7:7, 7:23, 8:22, 12:4, 12:24, 13:4, 13:5, 13:21, 14:1, 15:8, 16:17, 16:20, 17:8, 19:16, 20:25, 21:3, 23:1, 23:5, 24:7, 24:13, 24:23, 24:25, 25:2, 25:6, 25:8, 25:11, 25:12, 25:20, 26:2, 26:11, 27:3, 27:6, 27:12, 28:16, 28:17, 31:9, 31:18, 32:4, 32:22, 34:2, 34:4, 35:13, 36:2, 38:3, 38:9, 38:11, 38:16, 39:5, 40:2, 40:4, 42:24</p> <p>IT'S ^[35] - 3:8, 5:10, 5:11, 5:13, 5:14, 7:9, 8:19, 8:20, 9:23, 12:20, 14:20, 15:7, 15:8, 15:18, 20:8, 22:20, 23:7, 23:8, 23:16, 24:1, 25:10, 25:15, 30:15, 34:5, 34:11, 35:16, 38:3, 39:3, 39:24, 40:1, 40:2, 41:20, 42:13</p> <p>ITS ^[3] - 6:22, 35:12, 35:13</p> | <p>35:4, 35:6, 35:9, 38:9, 38:11, 39:22, 41:11</p> | <p>K</p> <p>KEEP ^[3] - 27:3, 32:4, 32:22</p> <p>KEEPING ^[1] - 13:24</p> <p>KEPT ^[3] - 6:16, 6:20, 35:7</p> <p>KIM ^[1] - 40:25</p> <p>KIND ^[4] - 7:23, 23:12, 27:21, 27:25</p> <p>KNOW ^[37] - 6:10, 7:24, 9:7, 9:24, 10:2, 10:19, 12:20, 12:22, 14:6, 15:19, 16:2, 17:7, 18:9, 18:12, 18:20, 19:16, 20:14, 20:15, 21:3, 21:4, 21:13, 22:6, 22:23, 23:23, 25:7, 27:14, 27:16, 33:17, 34:21, 34:23, 35:1, 36:14, 40:5, 42:3</p> <p>KNOWLEDGE ^[2] - 9:5, 9:6</p> <p>KNOWN ^[1] - 28:2</p> | <p>L</p> <p>LAND ^[2] - 9:23, 12:22</p> <p>LARGER ^[2] - 7:10, 37:2</p> <p>LAST ^[2] - 21:7, 22:11</p> <p>LATER ^[2] - 20:10, 25:11</p> <p>LAUGH ^[1] - 18:21</p> <p>LAW ^[8] - 8:5, 17:12, 27:13, 37:3, 37:6, 40:22, 42:10, 43:9</p> <p>LAWSUIT ^[1] - 41:25</p> <p>LAWYER ^[4] - 14:4, 14:16, 23:25, 29:1</p> <p>LAWYERS ^[3] - 28:3, 42:15</p> <p>LEAST ^[7] - 9:10, 10:6, 15:11, 24:15, 25:9, 26:11, 31:20</p> <p>LEAVE ^[1] - 25:6</p> <p>LEAVING ^[1] - 41:3</p> <p>LEFT ^[1] - 4:25</p> <p>LEGAL ^[3] - 5:16, 5:20, 18:7</p> <p>LENGTH ^[1] - 18:1</p> <p>LESS ^[2] - 6:24, 12:19</p> <p>LET ^[3] - 6:14, 7:19, 15:3</p> <p>LET'S ^[1] - 5:11</p> | <p>LEVEL ^[1] - 20:14</p> <p>LIGHT ^[3] - 27:8, 41:4, 41:19</p> <p>LIKE ^[22] - 4:21, 7:23, 14:3, 14:7, 15:8, 16:23, 16:24, 20:22, 22:11, 27:9, 28:11, 28:12, 30:25, 35:6, 35:10, 35:14, 38:15, 38:19, 38:24, 39:5, 40:12</p> <p>LIKELY ^[1] - 41:25</p> <p>LIMITATIONS ^[1] - 35:16</p> <p>LINE ^[1] - 29:4</p> <p>LINES ^[1] - 29:9</p> <p>LISTEN ^[2] - 27:23</p> <p>LISTS ^[1] - 4:24</p> <p>LITIGATE ^[1] - 41:17</p> <p>LITIGATING ^[1] - 41:12</p> <p>LITIGATION ^[2] - 25:19, 26:3</p> <p>LITTLE ^[5] - 4:10, 6:24, 7:19, 15:16, 29:9</p> <p>LIVE ^[1] - 20:7</p> <p>LIVING ^[1] - 29:1</p> <p>LOGAN ^[1] - 2:3</p> <p>LONG ^[10] - 4:18, 4:21, 16:8, 23:9, 24:5, 29:4, 38:11, 40:8, 41:23, 41:24</p> <p>LOOK ^[6] - 14:4, 17:7, 19:16, 24:18, 25:7, 40:3</p> <p>LOOKED ^[1] - 21:7</p> <p>LOOKING ^[1] - 12:4</p> <p>LOOKS ^[2] - 38:24, 39:5</p> <p>LOT ^[3] - 26:13, 27:8, 29:25</p> <p>LOUDER ^[1] - 4:10</p> | <p>M</p> <p>MAIL ^[4] - 4:9, 4:17, 18:8, 18:9</p> <p>MAIL-IN ^[2] - 4:9, 4:17</p> <p>MAJOR ^[1] - 19:12</p> <p>MAKE ^[10] - 10:20, 15:25, 16:16, 17:3, 20:22, 22:1, 27:17, 29:1, 41:11, 42:19</p> <p>MAKER ^[1] - 17:17</p> <p>MAKES ^[1] - 32:18</p> <p>MAKING ^[1] - 15:2</p> <p>MANAGEMENT ^[1] - 42:3</p> <p>MANDATED ^[1] - 4:7</p> | <p>MANDATING ^[1] - 4:13</p> <p>MANY ^[28] - 7:11, 11:13, 13:9, 13:10, 18:12, 18:13, 18:14, 18:22, 19:2, 19:18, 19:24, 20:15, 20:19, 21:4, 21:5, 21:6, 21:11, 23:5, 23:10, 34:23, 34:24, 35:2, 35:18, 36:3, 36:6, 36:19, 38:21</p> <p>MARCUS ^[77] - 1:15, 3:13, 3:15, 3:25, 4:3, 4:12, 5:20, 7:20, 7:21, 8:2, 8:6, 8:10, 8:19, 8:21, 9:1, 9:25, 10:10, 10:15, 10:20, 10:23, 11:5, 11:8, 11:14, 11:18, 11:25, 12:5, 12:10, 12:15, 16:16, 16:25, 17:14, 17:19, 17:24, 18:3, 18:16, 18:23, 21:12, 22:17, 26:8, 26:15, 26:19, 28:7, 28:12, 28:14, 28:15, 28:21, 28:23, 28:25, 29:4, 29:8, 29:11, 29:14, 29:17, 29:20, 29:22, 30:2, 30:5, 30:8, 30:12, 30:18, 31:3, 33:1, 33:2, 33:7, 33:8, 33:17, 33:25, 36:1, 37:11, 37:12, 41:8, 41:10, 41:16, 41:22, 42:8, 43:7, 43:12</p> <p>MARCUS'S ^[3] - 6:1, 13:13, 27:20</p> <p>MARKET ^[1] - 1:21</p> <p>MARSHALS ^[2] - 41:5, 43:15</p> <p>MASK ^[3] - 3:8, 3:10, 3:18</p> <p>MATCHES ^[1] - 12:12</p> <p>MATTER ^[5] - 25:14, 32:5, 37:19, 42:14, 43:20</p> <p>MAXIMUM ^[1] - 34:19</p> <p>MAY ^[11] - 10:20, 14:5, 16:17, 17:24, 25:11, 28:21, 40:3, 40:4, 40:17</p> <p>MAYBE ^[4] - 22:6, 30:20, 31:13, 31:14</p> <p>ME ^[29] - 6:14, 7:19, 8:21, 11:23, 12:2, 12:24, 15:2, 15:3, 15:9, 15:12, 17:9,</p> |
|---|--|--|---|---|--|--|---|

17:15, 19:23, 23:16,
26:2, 27:6, 28:6,
34:10, 36:6, 36:7,
37:5, 38:9, 39:2,
40:19, 40:20, 42:11,
42:17
MEAN [5] - 13:5,
19:10, 25:6, 26:25,
43:1
MEASURE [1] - 9:21
MEASURED [1] - 9:21
MEDIA [2] - 3:12,
38:16
MEETING [1] - 33:19
MEGHAN [2] - 2:6, 7:1
MEMBER [2] - 11:1,
14:23
MENTIONED [1] - 16:7
MERCER [1] - 4:20
MERION [1] - 1:16
MET [1] - 20:6
MICROPHONE [3] -
3:6, 3:17, 4:11
MIDDLE [1] - 6:13
MIGHT [6] - 16:19,
23:1, 24:21, 25:10,
37:3
MILL [1] - 23:12
MIND [1] - 26:10
MINIMUM [1] - 7:10
MINUTE [2] - 6:15,
26:7
MISCONCEIVES [1] -
38:24
MISINTERPRETATIO
N [1] - 13:23
MISREMEMBERED
[1] - 39:2
MISREPRESENTED
[1] - 40:20
MISS [1] - 31:10
MISSED [1] - 31:7
MISSING [1] - 39:12
MISUNDERSTOOD
[1] - 39:22
MOMENT [1] - 30:8
MOOT [3] - 12:25,
23:22, 41:19
MOOTS [2] - 24:23,
24:25
MORE [21] - 6:18,
7:19, 12:7, 12:18,
13:8, 19:3, 21:18,
21:21, 21:23, 24:8,
27:8, 29:25, 30:25,
35:18, 36:21, 36:22,
38:7, 41:4, 41:6,
42:6
MORNING [7] - 4:6,
4:13, 6:3, 9:17,

25:12, 37:7, 37:8
MOST [1] - 32:11
MOSTLY [1] - 15:7
MOTION [4] - 1:13,
5:9, 5:15, 41:18
MOVED [1] - 9:20
MOVIE [1] - 39:2
MR [183] - 3:13, 3:15,
3:19, 3:20, 3:22,
3:24, 3:25, 4:3, 4:12,
5:7, 5:8, 5:13, 5:20,
6:1, 6:17, 7:20, 7:21,
8:2, 8:6, 8:10, 8:19,
8:21, 9:1, 9:25,
10:10, 10:15, 10:20,
10:23, 11:5, 11:8,
11:14, 11:18, 11:25,
12:5, 12:10, 12:15,
12:21, 13:13, 13:15,
13:19, 14:8, 14:18,
14:19, 15:3, 15:16,
15:20, 16:4, 16:16,
16:19, 16:25, 17:14,
17:19, 17:21, 17:23,
17:24, 18:3, 18:16,
18:23, 18:25, 19:1,
19:7, 19:12, 19:20,
20:1, 20:4, 20:7,
20:8, 20:19, 21:2,
21:4, 21:8, 21:12,
21:13, 21:16, 21:20,
21:23, 22:1, 22:4,
22:6, 22:10, 22:17,
23:14, 23:23, 24:25,
26:5, 26:6, 26:8,
26:15, 26:19, 26:23,
26:24, 26:25, 27:16,
27:20, 28:7, 28:12,
28:14, 28:15, 28:21,
28:23, 28:25, 29:4,
29:8, 29:11, 29:14,
29:17, 29:20, 29:22,
30:2, 30:5, 30:7,
30:8, 30:12, 30:18,
31:3, 31:6, 31:19,
32:8, 32:13, 32:15,
32:21, 33:1, 33:2,
33:7, 33:8, 33:15,
33:17, 33:22, 33:23,
33:25, 34:4, 34:14,
34:18, 34:23, 34:24,
35:1, 35:7, 35:11,
35:18, 35:20, 36:1,
36:4, 36:5, 36:8,
36:11, 36:14, 36:17,
36:20, 37:10, 37:11,
37:12, 37:13, 37:14,
37:15, 37:16, 37:24,
38:12, 38:22, 38:23,
39:3, 39:6, 39:7,

39:11, 39:12, 39:14,
39:19, 40:11, 40:14,
40:25, 41:8, 41:10,
41:16, 41:22, 42:8,
42:18, 42:25, 43:2,
43:7, 43:10, 43:12
MS [22] - 3:19, 7:1,
7:4, 7:9, 7:13, 7:16,
9:3, 9:4, 9:8, 9:16,
9:20, 12:21, 13:3,
13:4, 15:14, 20:24,
21:1, 22:24, 24:9,
24:10, 24:20, 33:12
MUCH [3] - 4:4, 25:22,
25:24
MUMMERS [1] - 39:16
MY [27] - 4:7, 4:8,
4:15, 6:18, 6:19, 9:6,
11:11, 20:7, 23:17,
23:21, 23:24, 24:3,
24:12, 26:7, 28:25,
29:1, 35:20, 37:3,
37:6, 37:16, 38:13,
40:22, 41:23, 42:10,
43:8, 43:13, 43:14
MYSELF [2] - 18:5,
35:23

N

NAME [5] - 14:7,
17:17, 18:8, 24:2,
32:6
NAMES [7] - 4:23,
4:24, 22:14, 33:1,
33:11, 33:15, 33:18
NEAR [1] - 22:10
NECESSARILY [1] -
36:11
NECESSARY [1] -
42:5
NEED [10] - 3:5, 3:16,
14:11, 24:8, 24:14,
25:13, 25:19, 40:3,
41:6, 42:6
NEEDED [1] - 29:25
NEEDS [3] - 5:17,
37:6, 37:8
NEGOTIATE [1] -
42:21
NEGOTIATED [1] -
42:23
NEVER [3] - 6:19,
20:6, 34:10
NEXT [5] - 27:7, 31:12,
31:13, 31:17, 31:18
NICE [6] - 3:23, 7:3,
7:4, 14:18, 14:19,
14:21
NO [26] - 6:17, 9:4,

9:8, 12:10, 13:23,
15:1, 16:16, 17:18,
18:2, 18:14, 19:7,
26:14, 27:9, 30:6,
31:15, 31:24, 33:12,
35:18, 36:17, 38:5,
39:3, 42:22, 42:25
NON [1] - 10:15
NONE [1] - 31:15
NONZERO [2] - 10:16,
10:18
NOT [61] - 5:2, 5:3,
5:24, 6:20, 7:21,
8:19, 8:20, 8:22, 9:8,
9:9, 9:23, 10:4, 10:9,
10:10, 10:16, 11:8,
11:9, 11:11, 12:8,
12:21, 13:12, 14:15,
16:2, 16:4, 16:5,
16:12, 16:18, 17:11,
18:11, 21:1, 21:13,
24:14, 24:18, 25:15,
25:16, 25:18, 25:23,
27:7, 28:17, 30:21,
32:18, 33:3, 33:7,
35:1, 36:11, 36:17,
37:19, 40:3, 40:16,
40:17, 41:14, 41:15,
41:16, 41:24, 42:1,
42:2, 43:8, 43:9
NOTE [1] - 37:25
NOTED [1] - 6:4
NOTHING [2] - 32:18,
42:8
NOTICE [1] - 4:4
NOVEMBER [1] - 1:9
NOW [11] - 3:8, 4:14,
11:24, 21:6, 23:19,
24:16, 24:17, 26:13,
28:9, 35:13, 36:15
NUMBER [22] - 1:3,
3:12, 10:16, 10:18,
15:4, 16:6, 18:3,
18:5, 18:16, 20:24,
20:25, 21:3, 22:11,
23:11, 34:1, 35:3,
35:4, 36:1, 36:25,
37:1, 37:2, 37:4
NUMBERS [2] - 34:9,
38:17
NUTS [2] - 23:1

O

OBEY [1] - 32:20
OBSERVE [3] - 10:3,
10:4, 11:20
OBSERVED [1] - 18:5
OBSERVER [7] - 9:9,
21:9, 22:22, 35:17,

35:23, 38:1
OBSERVERS [19] -
7:14, 9:14, 11:19,
13:12, 13:13, 15:25,
18:11, 19:9, 19:11,
21:9, 22:14, 31:16,
31:21, 31:22, 34:1,
34:6, 37:21, 39:16,
39:23
OBSERVING [1] -
21:6
OBVIATE [3] - 24:7,
25:13, 25:19
OBVIOUSLY [2] -
19:15, 40:6
OCCUPATIONAL [1] -
24:1
OCTOBER [1] - 22:12
OF [147] - 1:2, 1:7,
3:13, 3:20, 4:3, 4:21,
5:20, 5:22, 6:1, 6:4,
6:5, 6:8, 6:9, 6:10,
6:13, 6:16, 6:18,
6:20, 6:21, 7:2, 7:6,
7:17, 7:23, 7:25, 8:4,
8:7, 8:9, 9:1, 9:5,
9:6, 9:18, 10:3, 10:6,
10:16, 10:18, 11:1,
11:2, 11:19, 11:20,
11:21, 13:23, 13:24,
14:17, 14:22, 14:24,
15:21, 15:23, 15:25,
16:6, 16:10, 17:1,
17:9, 17:13, 17:15,
18:3, 18:4, 18:5,
18:10, 18:14, 19:18,
19:22, 19:24, 20:11,
21:11, 22:12, 22:17,
23:12, 23:22, 24:3,
24:5, 24:11, 24:15,
24:16, 25:13, 25:19,
25:23, 26:11, 26:13,
26:18, 26:22, 26:23,
27:11, 27:21, 27:25,
28:2, 28:5, 28:16,
29:5, 29:25, 30:4,
30:14, 30:24, 30:25,
31:1, 31:10, 31:11,
31:13, 31:14, 31:15,
31:17, 31:18, 31:21,
31:23, 32:4, 32:6,
32:10, 32:11, 32:13,
32:15, 32:20, 32:23,
34:1, 35:21, 35:23,
35:24, 37:17, 38:1,
38:2, 38:3, 38:9,
38:17, 38:24, 39:16,
39:17, 39:19, 39:20,
39:24, 40:7, 40:9,
40:19, 40:22, 40:25,

| | | | | |
|---|---|--|--|--|
| <p>41:2, 41:19, 42:3, 43:14, 43:19</p> <p>OFF [3] - 15:24, 20:9, 35:13</p> <p>OFFERED [1] - 28:17</p> <p>OFFERING [1] - 28:20</p> <p>OFFICE [1] - 14:5</p> <p>OFFICER [1] - 32:13</p> <p>OFFICERS [1] - 28:2</p> <p>OFFICIAL [3] - 1:20, 4:20, 43:24</p> <p>OKAY [6] - 9:23, 22:5, 28:6, 28:22, 40:15, 43:11</p> <p>OLD [2] - 8:15, 12:3</p> <p>ON [55] - 3:13, 3:18, 4:4, 4:18, 4:23, 5:4, 6:12, 10:25, 11:18, 12:25, 13:23, 14:13, 15:12, 16:1, 16:20, 17:3, 17:4, 17:12, 18:18, 19:7, 19:22, 20:2, 20:7, 20:11, 20:13, 22:12, 25:11, 25:12, 27:2, 27:5, 28:5, 30:8, 30:14, 31:19, 32:3, 34:11, 34:24, 35:12, 35:22, 35:24, 36:6, 36:12, 38:14, 38:21, 39:3, 39:15, 39:17, 39:20, 39:24, 39:25, 40:6, 40:21</p> <p>ONE [34] - 2:3, 2:7, 5:10, 7:17, 9:10, 11:15, 11:17, 15:21, 17:10, 17:25, 18:4, 18:14, 19:8, 19:14, 20:16, 22:1, 24:11, 26:14, 27:3, 30:8, 31:15, 32:10, 34:5, 35:16, 38:2, 38:21, 39:17, 39:25, 40:4, 40:6, 40:16, 41:8</p> <p>ONE-PAGE [1] - 5:10</p> <p>ONLY [5] - 24:4, 24:11, 29:18, 35:24, 40:4</p> <p>OPEN [1] - 37:4</p> <p>OPENED [1] - 11:23</p> <p>OPENING [3] - 11:20, 12:4, 12:6</p> <p>OPENS [1] - 3:1</p> <p>OPERATES [1] - 6:8</p> <p>OR [23] - 3:9, 8:5, 9:13, 10:2, 10:3, 10:9, 16:12, 16:13, 19:5, 22:22, 26:12, 31:14, 31:17, 31:18, 32:17, 35:4, 37:3,</p> | <p>38:7, 40:4, 40:16, 40:17</p> <p>ORDER [19] - 4:5, 4:12, 4:17, 5:15, 5:21, 5:22, 5:23, 6:2, 6:6, 6:9, 6:22, 7:20, 7:22, 9:17, 14:9, 16:12, 25:2, 42:3</p> <p>ORDERED [1] - 6:12</p> <p>ORDERS [1] - 32:20</p> <p>OTHER [18] - 8:25, 9:13, 10:23, 14:16, 15:10, 15:11, 17:25, 18:17, 19:17, 28:5, 29:23, 32:18, 38:8, 38:21, 39:20, 40:1, 40:5, 42:16</p> <p>OTHERWISE [3] - 23:2, 23:11, 37:2</p> <p>OUR [4] - 9:5, 9:18, 41:13, 43:15</p> <p>OUT [14] - 6:16, 6:20, 9:21, 10:5, 12:18, 13:24, 22:25, 23:15, 24:3, 26:17, 26:22, 28:4, 38:16, 40:16</p> <p>OUTSIDE [1] - 37:17</p> <p>OVER [3] - 10:2, 12:8, 20:2</p> <p>OVERSEEING [1] - 15:22</p> <p>OVERVIEW [1] - 5:20</p> <p>OWN [1] - 35:15</p> | <p>19:11, 19:13, 35:6, 35:14, 37:1, 37:3, 37:5, 37:20, 39:17, 40:19, 41:20</p> <p>PARTY [9] - 9:2, 19:14, 19:25, 20:2, 20:12, 27:12, 34:5, 35:24, 38:2</p> <p>PASSED [1] - 37:18</p> <p>PAUL [1] - 1:11</p> <p>PENDENCY [1] - 6:10</p> <p>PENDING [4] - 6:11, 24:15, 32:4, 32:15</p> <p>PENNSYLVANIA [8] - 1:2, 4:6, 6:6, 6:7, 6:11, 19:8, 24:16, 32:16</p> <p>PEOPLE [40] - 6:16, 6:19, 7:12, 10:1, 10:3, 10:8, 10:16, 10:18, 11:2, 14:7, 15:3, 17:9, 17:10, 18:5, 18:10, 18:12, 18:23, 19:2, 20:19, 21:5, 21:6, 22:13, 22:18, 23:4, 23:5, 23:10, 25:20, 25:21, 30:3, 32:10, 32:24, 33:10, 37:23, 38:7, 38:8, 38:10, 38:14, 38:17, 40:4</p> <p>PER [10] - 19:14, 27:3, 34:5, 34:13, 34:16, 35:5, 35:17, 36:2</p> <p>PERSONALLY [1] - 18:6</p> <p>PETITION [3] - 6:5, 6:8, 6:10</p> <p>PHILADELPHIA [10] - 1:6, 1:10, 1:22, 2:4, 2:8, 2:12, 6:4, 7:2, 19:23, 35:13</p> <p>PHONE [2] - 17:3, 37:4</p> <p>PHOTO [2] - 39:6, 39:7</p> <p>PHOTOGRAPHY [1] - 31:24</p> <p>PHYSICAL [1] - 41:3</p> <p>PICK [2] - 35:3, 35:4</p> <p>PICKED [1] - 15:5</p> <p>PILOTING [1] - 12:2</p> <p>PLAINTIFF [7] - 1:18, 3:14, 8:12, 11:4, 28:18, 33:8, 42:8</p> <p>PLEASE [9] - 3:3, 4:11, 18:20, 20:17, 20:21, 28:10, 31:5, 43:14</p> <p>PLUS [2] - 19:14, 34:5</p> | <p>POINT [6] - 14:8, 16:16, 20:10, 22:1, 22:7, 23:15</p> <p>POINTS [1] - 19:7</p> <p>POLICE [1] - 40:19</p> <p>POLITICAL [2] - 19:10, 19:12</p> <p>POSITION [1] - 16:2</p> <p>POSSIBLE [3] - 20:8, 20:23, 26:1</p> <p>POSTURE [1] - 25:3</p> <p>PRACTICE [1] - 23:14</p> <p>PRE [1] - 15:23</p> <p>PRE-CANVASS [1] - 15:23</p> <p>PREJUDICE [2] - 41:19, 41:21</p> <p>PREJUDICED [3] - 26:14, 27:13, 41:16</p> <p>PREPARED [7] - 17:16, 17:17, 24:13, 30:7, 31:5, 31:9, 32:3</p> <p>PRESENCE [1] - 27:13</p> <p>PRESENT [7] - 7:17, 8:3, 23:4, 23:5, 26:17, 27:11, 29:18</p> <p>PRESIDENT [2] - 1:4, 11:3</p> <p>PRESIDENTIAL [2] - 19:17, 27:10</p> <p>PRESUMABLY [1] - 29:24</p> <p>PRESUME [1] - 5:22</p> <p>PRINTED [1] - 38:16</p> <p>PROBABLY [4] - 17:13, 21:8, 21:23, 30:25</p> <p>PROBLEM [9] - 5:5, 11:7, 17:25, 22:21, 35:20, 38:6, 38:10, 42:10, 43:5</p> <p>PROCEDURAL [1] - 6:7</p> <p>PROCEDURALLY [1] - 5:24</p> <p>PROCEDURES [3] - 22:13, 33:19</p> <p>PROCEEDINGS [6] - 1:24, 6:2, 20:12, 20:13, 43:17, 43:19</p> <p>PROCESS [4] - 7:24, 8:6, 8:17, 26:3</p> <p>PRODUCE [1] - 4:21</p> <p>PRODUCED [1] - 1:25</p> <p>PROFESSOR [1] - 17:12</p> <p>PROMPTLY [1] - 6:5</p> <p>PROMULGATED [1] -</p> | <p>22:12</p> <p>PROPERLY [3] - 23:24, 34:14, 34:19</p> <p>PROPOSED [2] - 35:5</p> <p>PROTECTION [3] - 8:7, 8:17, 8:18</p> <p>PROTOCOLS [1] - 22:15</p> <p>PROVIDE [1] - 33:13</p> <p>PROVIDED [1] - 32:25</p> <p>PROVIDING [1] - 15:9</p> <p>PROVISION [1] - 8:4</p> <p>PUBLIC [1] - 16:2</p> <p>PUDLIN [1] - 2:3</p> <p>PULL [1] - 3:7</p> <p>PULLED [1] - 24:3</p> <p>PURPOSE [1] - 11:19</p> <p>PUT [2] - 4:18, 16:20</p> |
| Q | | | | |
| <p>QUARTER [2] - 5:12, 5:13</p> <p>QUESTION [3] - 14:24, 16:10, 31:7</p> <p>QUESTIONS [2] - 5:18, 23:16</p> <p>QUIBBLE [1] - 17:19</p> <p>QUIT [1] - 29:3</p> <p>QUITE [1] - 31:8</p> | | | | |
| R | | | | |
| <p>RACE [4] - 10:3, 17:10, 36:12</p> <p>RACES [2] - 36:9, 36:10</p> <p>RAILING [1] - 24:5</p> <p>RATHER [2] - 25:22, 25:24</p> <p>REACH [3] - 5:18, 13:11, 14:12</p> <p>REACHED [1] - 41:20</p> <p>READ [1] - 12:25</p> <p>REALLY [11] - 9:7, 10:13, 13:11, 13:22, 14:3, 20:21, 20:22, 26:9, 27:5, 27:9, 38:8</p> <p>REASONABLE [1] - 26:10</p> <p>REASONABLY [2] - 28:4, 40:24</p> <p>REASONS [1] - 5:17</p> <p>RECESS [1] - 16:24</p> <p>RECOGNIZED [1] - 30:21</p> <p>RECORD [10] - 13:6, 13:22, 14:13, 15:12, 16:20, 17:4, 20:9,</p> | | | | |

22:22, 31:20, 43:19
RECORDED ^[1] - 1:24
RED ^[2] - 29:4, 38:20
REELECTION ^[1] - 27:10
REFERRED ^[1] - 22:24
REFLECT ^[1] - 13:22
REGARDING ^[1] - 19:2
REGULATIONS ^[2] - 14:25, 37:18
REID ^[1] - 9:20
RELIGION ^[1] - 10:4
REMAINING ^[2] - 24:11
REMEDIES ^[1] - 5:25
REMEMBER ^[2] - 8:15, 25:9
REMOVED ^[1] - 31:25
REMOVES ^[1] - 9:11
REPLACED ^[1] - 42:1
REPORTER ^[2] - 1:20, 43:24
REPRESENT ^[3] - 14:22, 18:13, 23:24
REPRESENTATION ^[2] - 11:10, 27:20
REPRESENTATIVE ^[2] - 14:16, 36:15
REPRESENTATIVES ^[9] - 9:1, 18:14, 19:18, 19:21, 19:24, 26:17, 26:21, 27:21, 36:21
REPRESENTED ^[2] - 16:14, 21:12
REPRESENTING ^[4] - 11:2, 11:3, 32:12, 35:25
REPUBLICAN ^[3] - 26:16, 31:21, 34:24
REPUBLICANS ^[1] - 35:10
REQUEST ^[3] - 3:4, 25:13, 38:4
REQUESTS ^[1] - 38:1
REQUIRE ^[2] - 23:18, 33:19
REQUIRED ^[1] - 22:13
REQUIREMENTS ^[2] - 19:2, 43:4
RESOLUTION ^[3] - 25:19, 32:4, 32:15
RESOLVE ^[2] - 25:4, 40:24
RESPECT ^[1] - 17:6
RESPECTED ^[1] - 28:3
RESPECTFULLY ^[1] -

10:20
RESPONSIBLE ^[2] - 13:11, 15:22
RESTRAINING ^[1] - 5:15
RETURNED ^[1] - 33:5
REVIEW ^[1] - 7:20
REVISED ^[2] - 37:7, 37:8
RIGHT ^[24] - 3:14, 3:21, 7:25, 11:24, 12:11, 13:3, 16:13, 16:18, 17:8, 18:7, 20:15, 21:6, 24:16, 28:14, 29:10, 30:13, 30:16, 30:18, 30:20, 31:2, 31:8, 35:13, 35:22, 43:13
RIPE ^[1] - 8:3
RISE ^[1] - 28:8
ROBERT ^[1] - 2:2
ROOM ^[31] - 4:9, 4:16, 5:2, 5:3, 6:16, 6:20, 6:25, 7:6, 10:9, 10:11, 10:14, 10:16, 11:4, 11:9, 12:18, 12:19, 18:11, 18:15, 19:3, 19:5, 19:13, 19:19, 21:18, 21:20, 27:17, 28:16, 30:15, 33:10, 35:23, 38:24
ROUGH ^[1] - 28:15
ROW ^[1] - 9:19
ROWS ^[1] - 29:12
RPR ^[1] - 1:20
RULE ^[1] - 12:15
RULES ^[2] - 6:7, 9:10
RULING ^[2] - 24:22, 32:18
RUNNING ^[1] - 14:5

S

SAFE ^[9] - 12:20, 15:7, 16:1, 16:25, 20:25, 21:3, 23:6, 23:7, 24:6
SAFELY ^[1] - 40:1
SAFETY ^[1] - 41:3
SAID ^[3] - 35:11, 37:10, 41:4
SAME ^[11] - 16:9, 18:16, 23:9, 30:19, 30:23, 31:15, 31:22, 32:1, 33:23, 35:16, 38:11
SAY ^[24] - 4:2, 7:9, 8:22, 13:24, 14:8, 15:2, 15:9, 15:12, 17:9, 17:17, 19:6,

22:11, 22:18, 23:3, 25:4, 27:19, 27:25, 34:10, 34:11, 36:1, 36:20, 37:9, 37:21, 39:22
SAYING ^[5] - 10:8, 17:11, 17:12, 37:25, 39:22
SAYS ^[3] - 13:8, 13:10, 19:9
SCHILLER ^[1] - 2:3
SCHMIDT ^[1] - 32:10
SEA ^[2] - 38:20
SEATED ^[2] - 3:3, 28:10
SECOND ^[1] - 30:25
SECREC Y ^[1] - 16:3
SECURE ^[1] - 16:1
SECURITY ^[4] - 11:21, 22:15, 22:17, 41:1
SEE ^[19] - 3:23, 7:3, 7:4, 11:12, 11:15, 11:17, 11:22, 12:3, 12:5, 12:11, 12:12, 14:18, 14:19, 14:21, 15:6, 28:4, 28:23, 29:11
SEEKING ^[1] - 5:21
SEEM ^[5] - 12:24, 17:9, 17:15, 24:14, 27:6
SEEMS ^[1] - 26:2
SEGAL ^[1] - 2:2
SEND ^[1] - 22:14
SENT ^[2] - 4:24, 18:9
SESSION ^[1] - 28:9
SET ^[12] - 29:22, 30:4, 30:24, 30:25, 31:1, 31:11, 31:12, 31:13, 31:17, 31:18, 31:23, 32:23
SETH ^[1] - 32:8
SETTLEMENT ^[1] - 14:14
SHAKING ^[2] - 15:14, 24:25
SHE ^[2] - 3:9, 22:22
SHORT ^[1] - 4:4
SHOULD ^[3] - 12:23, 25:21, 38:16
SHOULDERS ^[1] - 12:9
SHOW ^[2] - 39:8, 40:23
SHOWED ^[1] - 4:22
SHUDDER ^[1] - 42:18
SHUT ^[1] - 9:18
SHY ^[1] - 42:10
SIDE ^[24] - 10:23, 18:17, 23:3, 23:11,

28:5, 29:5, 34:13, 34:16, 35:5, 35:17, 36:3, 36:25, 37:23, 38:18, 38:21, 39:17, 39:20, 39:25, 40:4, 40:5, 40:6, 40:16, 40:21
SIDES ^[5] - 35:15, 36:12, 38:11, 40:8, 40:23
SIGNATURE ^[3] - 12:11, 12:12
SIGNATURES ^[1] - 11:21
SIGNIFICANT ^[1] - 18:4
SIMPLE ^[1] - 20:23
SIMPLY ^[7] - 4:25, 14:12, 18:7, 18:11, 27:8, 28:3, 35:14
SINCE ^[2] - 6:23, 18:13
SINGLE ^[1] - 9:9
SIR ^[8] - 3:15, 18:20, 20:21, 26:19, 30:12, 31:3, 40:14
SIT ^[1] - 21:7
SITTING ^[2] - 4:19, 24:3
SIX ^[22] - 9:18, 9:21, 11:11, 12:14, 12:15, 12:19, 13:20, 13:25, 15:4, 15:11, 16:6, 23:7, 23:8, 29:14, 30:4, 30:14, 30:24, 31:12, 32:2, 32:22
SKETCH ^[1] - 28:15
SO ^[27] - 5:5, 11:19, 13:22, 14:22, 15:16, 16:15, 16:19, 18:9, 19:3, 19:12, 19:15, 21:20, 22:12, 23:14, 26:12, 28:21, 29:4, 32:19, 33:2, 33:5, 34:4, 34:6, 37:8, 37:14, 38:3, 41:13, 42:2
SOCIAL ^[2] - 22:7, 40:8
SOCIALLY ^[1] - 9:13
SOLICITOR'S ^[1] - 14:5
SOLVE ^[1] - 36:2
SOME ^[7] - 5:22, 10:6, 14:15, 21:15, 21:17, 32:18, 43:3
SOMEBODY ^[7] - 3:9, 14:15, 15:1, 22:24, 31:5, 31:25, 36:7
SOMEHOW ^[1] - 27:20

SOMEONE ^[7] - 13:8, 13:10, 15:8, 17:3, 22:25, 23:1, 32:6
SOMETHING ^[4] - 17:13, 24:3, 37:17, 43:6
SOMETIME ^[1] - 13:2
SOON ^[2] - 13:2, 35:14
SORRY ^[6] - 11:6, 12:19, 18:8, 26:24, 30:6, 31:6
SORT ^[3] - 5:22, 10:6, 17:15
SOUGHT ^[1] - 24:17
SOUND ^[3] - 13:3, 31:2, 38:22
SOUNDS ^[1] - 7:23
SPACE ^[2] - 17:1, 18:2
SPEAK ^[9] - 3:5, 3:6, 3:17, 16:25, 20:9, 28:11, 28:12, 35:24, 38:8
SPEAKING ^[2] - 3:9, 8:16
SPINNING ^[1] - 26:13
SQUARE ^[1] - 2:3
STAFF ^[1] - 7:17
STAND ^[18] - 3:6, 3:16, 9:22, 12:8, 13:14, 14:7, 15:3, 15:11, 16:17, 17:8, 17:10, 17:11, 17:18, 23:6, 23:10, 24:4, 38:18
STANDARD ^[1] - 16:9
STANDING ^[1] - 39:25
START ^[2] - 5:19, 8:2
STATE ^[17] - 5:23, 5:25, 6:1, 7:20, 7:22, 16:11, 17:4, 20:13, 24:24, 25:1, 25:2, 25:3, 25:7, 30:21, 32:4, 32:20, 41:13
STATES ^[1] - 1:1
STATION ^[1] - 1:16
STATUTE ^[2] - 33:18, 35:11
STATUTORY ^[1] - 19:2
STAY ^[4] - 6:21, 15:10, 40:6, 43:14
STENOTYPE ^[1] - 1:24
STENOTYPE-COMPUTER ^[1] - 1:24
STEPHANIE ^[1] - 9:20
STILL ^[3] - 6:11, 10:4, 24:14

STRANGERS ^[1] - 25:24
STREET ^[4] - 1:21, 2:8, 2:11, 39:15
STRUCK ^[1] - 27:25
STUDIOUSLY ^[1] - 4:18
STUFF ^[1] - 27:25
STYLED ^[1] - 5:10
STYLES ^[1] - 5:14
SUBJECT ^[1] - 35:15
SUCH ^[2] - 4:4, 31:24
SUFFICIENT ^[1] - 35:9
SUGGEST ^[1] - 26:6
SUGGESTION ^[1] - 10:21
SUITE ^[1] - 2:11
SUPERIOR ^[1] - 27:21
SUPERMARKET ^[1] - 15:6
SUPERSEDEAS ^[1] - 6:9
SUPPOSED ^[1] - 18:10
SUPREME ^[10] - 6:6, 6:11, 24:15, 24:24, 25:1, 25:2, 25:3, 25:7, 32:17, 41:13
SURE ^[4] - 10:22, 15:25, 27:17, 42:19
SURPRISED ^[2] - 36:16, 37:22
SURVEYOR ^[2] - 9:24, 12:22
SUZANNE ^[2] - 1:20, 43:23

T

TABLE ^[1] - 29:14
TABLES ^[18] - 29:10, 29:12, 29:18, 29:23, 30:1, 30:4, 30:14, 30:24, 31:1, 31:12, 31:13, 31:14, 31:17, 31:18, 32:2, 32:23
TAKE ^[2] - 16:24, 35:13
TAKING ^[1] - 25:20
TALK ^[1] - 26:7
TALKING ^[1] - 35:4
TAPE ^[1] - 9:21
TELL ^[15] - 14:6, 16:18, 19:19, 21:19, 22:19, 22:20, 23:3, 25:2, 25:4, 28:6, 33:8, 36:6, 39:2, 42:17, 43:6
TELLING ^[2] - 16:5
TEMPORARY ^[2] -

5:15, 25:18
TEN ^[10] - 7:9, 7:11, 15:7, 15:8, 16:7, 23:8, 31:13, 34:11, 38:19, 40:5
TEN-DAY ^[1] - 34:11
TENUOUS ^[1] - 17:15
TERMS ^[2] - 6:23, 14:24
TERRIBLY ^[1] - 41:24
TESTIFY ^[6] - 4:22, 9:21, 11:12, 18:6, 25:21, 25:25
TESTIMONY ^[4] - 4:19, 13:8, 13:9, 21:16
THAN ^[21] - 7:10, 8:25, 11:15, 12:14, 12:19, 14:16, 17:18, 18:19, 19:17, 19:21, 21:18, 21:21, 21:23, 25:25, 27:8, 31:16, 35:18, 35:19, 36:22, 41:4
THANK ^[8] - 4:3, 5:8, 6:17, 28:7, 30:12, 41:22, 43:12, 43:16
THANKS ^[2] - 43:13, 43:14
THAT ^[201] - 3:4, 3:12, 3:14, 3:21, 4:7, 4:14, 4:17, 4:22, 4:24, 5:2, 5:5, 5:16, 5:24, 6:1, 6:6, 6:8, 6:12, 6:19, 7:18, 8:12, 9:3, 9:9, 9:10, 9:12, 9:16, 9:17, 10:1, 10:8, 10:9, 10:19, 11:4, 11:10, 11:19, 12:14, 12:18, 12:22, 12:24, 13:1, 13:2, 13:3, 13:6, 13:10, 13:15, 13:16, 13:21, 13:22, 13:23, 13:24, 14:10, 14:16, 14:20, 15:4, 15:5, 15:6, 15:12, 15:13, 15:15, 15:19, 15:24, 15:25, 16:1, 16:7, 16:9, 16:16, 17:4, 17:5, 17:7, 17:9, 17:12, 17:13, 17:14, 17:20, 17:22, 17:23, 18:4, 18:15, 18:19, 19:5, 19:7, 19:9, 19:19, 20:2, 20:9, 21:10, 21:14, 22:11, 22:16, 22:18, 22:20, 23:1, 23:3, 23:5, 23:10, 23:13, 23:14, 23:15, 23:17, 23:20, 23:21, 24:6,

24:10, 24:12, 24:14, 24:17, 24:20, 25:4, 25:6, 25:15, 25:16, 25:23, 25:25, 26:2, 26:3, 26:7, 26:10, 26:15, 26:17, 26:22, 27:1, 27:13, 27:15, 27:19, 27:20, 27:25, 28:5, 28:17, 28:25, 29:1, 29:4, 29:9, 29:18, 30:9, 30:13, 31:2, 31:4, 31:8, 31:10, 31:11, 31:16, 31:20, 31:25, 32:13, 32:14, 32:19, 33:3, 33:6, 33:25, 34:3, 34:22, 35:2, 35:8, 35:15, 35:21, 36:2, 36:3, 36:25, 37:18, 37:19, 37:25, 38:1, 38:4, 38:12, 38:22, 38:23, 39:9, 39:22, 39:24, 40:4, 40:8, 40:10, 40:15, 40:23, 40:24, 41:11, 41:13, 41:19, 42:4, 42:13, 42:24, 42:25, 43:1, 43:3, 43:7, 43:8, 43:18
THAT'S ^[14] - 13:18, 13:20, 14:1, 17:11, 22:8, 22:9, 27:3, 29:6, 31:18, 33:23, 34:7, 36:4, 37:25
THE ^[501] - 1:1, 1:2, 1:11, 3:2, 3:6, 3:12, 3:13, 3:16, 3:17, 3:20, 3:23, 4:6, 4:8, 4:10, 4:12, 4:15, 4:16, 4:19, 4:20, 4:21, 4:23, 4:25, 5:2, 5:3, 5:5, 5:7, 5:9, 5:11, 5:18, 5:20, 5:22, 6:1, 6:3, 6:4, 6:5, 6:8, 6:9, 6:10, 6:11, 6:13, 6:14, 6:16, 6:18, 6:20, 6:21, 6:24, 6:25, 7:1, 7:3, 7:6, 7:7, 7:10, 7:11, 7:12, 7:14, 7:15, 7:17, 7:19, 7:21, 7:23, 7:24, 8:2, 8:3, 8:4, 8:5, 8:6, 8:7, 8:8, 8:9, 8:12, 8:14, 8:15, 8:18, 8:20, 8:22, 8:24, 8:25, 9:1, 9:3, 9:5, 9:6, 9:9, 9:10, 9:12, 9:14, 9:15, 9:19, 9:20, 9:22, 9:23, 10:5, 10:11, 10:13,

10:14, 10:16, 10:18, 10:22, 10:23, 11:1, 11:2, 11:3, 11:6, 11:9, 11:10, 11:13, 11:15, 11:17, 11:19, 11:20, 11:21, 11:22, 12:1, 12:7, 12:11, 12:12, 12:13, 12:15, 12:17, 12:24, 12:25, 13:1, 13:5, 13:7, 13:18, 13:22, 14:1, 14:3, 14:4, 14:5, 14:6, 14:9, 14:11, 14:12, 14:13, 14:17, 14:20, 14:22, 14:23, 14:24, 15:1, 15:4, 15:12, 15:18, 15:21, 15:22, 15:23, 15:24, 15:25, 16:1, 16:2, 16:4, 16:6, 16:9, 16:20, 16:23, 17:1, 17:3, 17:4, 17:9, 17:16, 17:19, 17:22, 18:1, 18:4, 18:7, 18:8, 18:9, 18:11, 18:12, 18:16, 18:17, 18:18, 18:24, 19:3, 19:4, 19:5, 19:8, 19:10, 19:12, 19:13, 19:14, 19:15, 19:17, 19:22, 19:24, 19:25, 20:1, 20:3, 20:6, 20:9, 20:11, 20:12, 20:13, 20:15, 20:17, 20:21, 21:2, 21:5, 21:9, 21:11, 21:13, 21:15, 21:18, 21:22, 21:25, 22:3, 22:5, 22:8, 22:11, 22:12, 22:16, 22:17, 22:18, 23:9, 23:17, 23:21, 23:25, 24:4, 24:7, 24:11, 24:15, 24:16, 24:18, 24:20, 24:23, 24:24, 24:25, 25:1, 25:2, 25:3, 25:4, 25:7, 25:12, 25:13, 25:19, 25:23, 26:9, 26:10, 26:11, 26:15, 26:20, 26:24, 27:2, 27:3, 27:5, 27:7, 27:10, 27:11, 27:12, 27:13, 27:17, 27:23, 28:2, 28:5, 28:8, 28:10, 28:14, 28:16, 28:17, 28:18, 28:19, 28:22, 28:24, 29:2, 29:4, 29:5, 29:6, 29:9, 29:10, 29:13, 29:14, 29:15, 29:16, 29:17, 29:19, 29:21,

29:22, 29:24, 30:3, 30:6, 30:10, 30:13, 30:16, 30:18, 30:19, 30:20, 30:23, 30:24, 30:25, 31:1, 31:4, 31:7, 31:8, 31:9, 31:11, 31:12, 31:13, 31:15, 31:17, 31:18, 31:20, 31:22, 31:23, 32:1, 32:2, 32:3, 32:4, 32:6, 32:9, 32:10, 32:11, 32:12, 32:13, 32:15, 32:17, 32:20, 32:22, 32:23, 32:24, 33:1, 33:3, 33:5, 33:6, 33:8, 33:10, 33:17, 33:18, 33:20, 33:21, 33:23, 33:24, 34:1, 34:2, 34:8, 34:16, 34:17, 34:19, 34:22, 34:24, 35:3, 35:6, 35:10, 35:11, 35:12, 35:14, 35:16, 35:20, 35:21, 35:22, 35:23, 35:24, 36:2, 36:5, 36:6, 36:9, 36:10, 36:13, 36:19, 36:24, 37:1, 37:2, 37:3, 37:5, 37:11, 37:13, 37:15, 37:17, 37:20, 37:22, 38:1, 38:3, 38:4, 38:6, 38:10, 38:11, 38:14, 38:16, 38:20, 38:21, 38:24, 39:1, 39:2, 39:8, 39:9, 39:12, 39:13, 39:15, 39:16, 39:17, 39:18, 39:19, 39:20, 39:21, 39:25, 40:5, 40:6, 40:7, 40:8, 40:9, 40:12, 40:15, 40:19, 40:21, 40:23, 41:3, 41:9, 41:12, 41:15, 41:17, 41:19, 41:20, 41:23, 41:25, 42:1, 42:8, 42:9, 42:13, 42:15, 42:22, 43:3, 43:4, 43:5, 43:6, 43:9, 43:11, 43:13, 43:18, 43:19
THEIR ^[13] - 4:23, 4:24, 5:1, 5:21, 12:8, 14:24, 24:19, 26:17, 26:21, 27:13, 33:11, 35:15, 41:2
THEM ^[9] - 13:24, 16:3, 18:24, 25:9, 33:11, 33:13, 33:20, 35:23, 39:24
THEMSELVES ^[1] -

8:25
THEN ^[15] - 6:4, 11:6, 13:9, 17:2, 17:18, 24:6, 24:21, 24:24, 25:16, 26:8, 26:14, 29:22, 34:7, 35:5, 36:24
THEORETICALLY ^[1] - 17:13
THERE ^[66] - 3:11, 3:12, 4:5, 5:3, 6:2, 9:5, 9:17, 9:25, 10:6, 10:15, 11:19, 12:18, 12:19, 16:12, 16:13, 18:7, 18:10, 19:1, 19:4, 19:18, 19:20, 19:21, 20:24, 20:25, 21:2, 21:18, 21:20, 22:15, 22:19, 23:4, 23:15, 25:6, 25:20, 26:12, 26:16, 26:20, 27:7, 27:9, 29:12, 29:24, 31:20, 31:21, 31:23, 32:4, 32:11, 33:16, 35:2, 36:8, 36:22, 37:22, 38:5, 38:6, 38:9, 39:14, 39:15, 39:23, 39:25, 40:3, 41:6, 42:6, 42:9, 42:16, 43:3, 43:5
THERE'S ^[5] - 17:25, 21:8, 23:19, 34:11, 38:20
THEREFORE ^[1] - 5:3
THESE ^[5] - 12:3, 14:20, 19:15, 23:1, 27:17
THEY ^[47] - 4:22, 4:24, 4:25, 5:2, 5:21, 5:25, 6:12, 9:11, 9:12, 9:17, 9:22, 10:9, 10:10, 10:14, 10:16, 11:10, 11:12, 11:13, 11:20, 12:7, 12:10, 12:13, 13:9, 13:25, 15:2, 15:10, 19:3, 19:9, 23:11, 23:20, 24:17, 25:11, 25:22, 25:24, 29:25, 31:22, 33:10, 33:21, 34:14, 34:18, 36:11, 37:18, 40:5, 40:6, 40:20
THEY'RE ^[6] - 10:8, 11:8, 11:9, 12:8, 13:10, 31:17
THING ^[3] - 12:24, 26:4, 41:8
THINGS ^[4] - 16:3, 23:17, 25:10, 35:7

THINK ^[23] - 5:10, 5:17, 8:23, 10:12, 10:24, 12:1, 13:5, 17:13, 19:21, 20:7, 21:8, 22:10, 23:14, 23:19, 24:10, 26:14, 26:15, 30:10, 38:3, 38:23, 39:21, 41:10, 42:4
THINKS ^[1] - 24:6
THIRD ^[1] - 31:1
THIS ^[62] - 4:6, 4:13, 5:4, 5:6, 6:3, 7:7, 9:17, 11:2, 12:23, 13:9, 13:10, 14:8, 16:5, 16:6, 16:11, 16:14, 16:15, 16:21, 17:4, 17:10, 17:25, 18:5, 19:23, 20:22, 23:22, 24:2, 24:13, 24:14, 25:12, 25:14, 25:17, 25:19, 26:11, 27:6, 27:24, 28:4, 28:21, 28:24, 29:2, 31:10, 31:11, 32:7, 32:14, 33:9, 37:6, 37:8, 37:18, 38:1, 38:14, 38:15, 39:10, 40:3, 40:16, 40:18, 40:24, 41:18, 42:11, 42:19
THOSE ^[10] - 16:3, 21:11, 22:13, 25:9, 29:17, 29:23, 30:14, 31:13, 31:14, 33:17
THOUGHT ^[1] - 39:1
THREE ^[5] - 14:23, 19:14, 34:5, 40:4, 42:15
THROUGH ^[3] - 3:9, 22:17, 37:6
THUMBS ^[1] - 5:1
THURSDAY ^[1] - 1:9
TILL ^[1] - 36:15
TIME ^[7] - 14:20, 18:2, 19:3, 19:13, 21:7, 23:22, 37:6
TIMES ^[5] - 7:10, 7:11, 11:14, 14:20, 35:8
TO ^[308] - 3:5, 3:8, 3:11, 3:16, 3:23, 4:2, 4:8, 4:15, 4:23, 5:2, 5:3, 5:6, 5:17, 5:19, 5:23, 6:5, 7:3, 7:4, 7:15, 7:18, 7:22, 8:2, 8:3, 8:21, 8:22, 9:5, 9:6, 9:9, 9:12, 9:15, 9:19, 9:20, 9:22, 9:24, 10:3, 10:4, 10:11, 11:9, 11:10,

12:7, 12:8, 12:10, 12:11, 12:12, 12:13, 12:14, 12:18, 12:23, 12:24, 12:25, 13:1, 13:5, 13:12, 13:13, 13:15, 13:20, 13:21, 13:25, 14:6, 14:7, 14:10, 14:11, 14:12, 14:18, 14:19, 14:21, 14:23, 15:2, 15:3, 15:4, 15:8, 15:9, 15:10, 15:12, 15:22, 15:23, 15:25, 16:5, 16:6, 16:7, 16:8, 16:10, 16:11, 16:12, 16:15, 16:16, 16:17, 16:21, 16:23, 16:24, 16:25, 17:2, 17:5, 17:6, 17:8, 17:9, 17:15, 17:17, 17:18, 17:25, 18:7, 18:10, 18:15, 18:19, 19:14, 19:16, 20:2, 20:7, 20:15, 20:17, 20:22, 21:9, 21:14, 22:11, 22:13, 22:14, 22:17, 22:18, 22:19, 22:20, 22:21, 22:24, 23:2, 23:3, 23:6, 23:10, 23:15, 23:17, 23:19, 23:22, 23:23, 24:2, 24:5, 24:7, 24:13, 24:14, 24:21, 25:1, 25:3, 25:4, 25:6, 25:8, 25:12, 25:13, 25:17, 25:18, 25:19, 25:21, 25:25, 26:2, 26:3, 26:6, 26:7, 26:10, 26:12, 26:13, 26:16, 26:17, 26:21, 26:25, 27:3, 27:5, 27:6, 27:7, 27:9, 27:14, 27:16, 27:18, 27:19, 27:21, 27:24, 28:1, 28:4, 28:6, 28:11, 28:12, 28:16, 28:18, 29:25, 30:3, 30:11, 30:13, 30:16, 30:18, 30:20, 31:5, 31:10, 31:19, 31:22, 31:25, 32:4, 32:7, 32:13, 32:19, 32:25, 33:5, 33:7, 33:8, 33:9, 33:10, 33:11, 33:13, 33:14, 33:15, 33:17, 33:18, 34:8, 34:19, 34:20, 35:8, 35:9, 35:10, 35:14, 35:16, 35:21, 35:22, 36:22, 37:1, 37:3, 37:6, 37:8, 37:16,

37:20, 37:21, 38:7, 38:8, 38:9, 38:10, 38:11, 38:12, 38:15, 38:16, 38:17, 38:18, 39:1, 39:10, 39:24, 40:6, 40:7, 40:8, 40:17, 40:18, 40:20, 40:21, 40:22, 40:24, 41:6, 41:11, 41:12, 41:18, 41:24, 42:2, 42:5, 42:6, 42:12, 42:16, 42:17, 42:18, 42:19, 42:20, 42:23, 42:24, 43:1, 43:7, 43:13, 43:15
TODAY ^[5] - 9:16, 14:10, 24:22, 25:11, 31:21
TOLD ^[4] - 4:24, 16:9, 18:8, 36:7
TOMORROW ^[4] - 23:21, 25:12, 37:7
TONIGHT ^[2] - 9:7, 37:7
TOO ^[5] - 7:4, 9:17, 14:18, 14:19, 25:16
TOTAL ^[4] - 19:21, 20:24, 20:25, 21:2
TRANSCRIPT ^[2] - 1:25, 43:19
TRANSCRIPTION ^[1] - 1:25
TRANSPARENT ^[1] - 43:3
TREAT ^[2] - 31:21, 32:1
TREATED ^[4] - 23:9, 30:21, 30:23, 31:15
TROUBLE ^[1] - 10:5
TRUE ^[2] - 9:3, 25:15
TRULY ^[1] - 16:4
TRUMP ^[3] - 1:3, 4:15, 11:3
TRY ^[4] - 15:20, 20:22, 26:10, 42:23
TRYING ^[1] - 14:11
TURN ^[1] - 20:2
TWIDDLING ^[1] - 5:1
TWO ^[2] - 19:7, 35:4

U

U.S ^[1] - 1:8
UNDER ^[3] - 6:7, 8:4, 10:2
UNDERNEATH ^[1] - 38:3
UNDERSTAND ^[11] - 3:9, 5:9, 12:17, 22:16, 24:1, 25:20,

31:9, 31:20, 33:6, 41:4, 42:11
UNDERSTANDING ^[1] - 6:19
UNDERSTOOD ^[1] - 43:2
UNDOUBTEDLY ^[1] - 26:12
UNFORTUNATELY ^[1] - 24:12
UNITED ^[1] - 1:1
UNLESS ^[1] - 9:5
UNTIL ^[2] - 5:1, 32:17
UP ^[14] - 3:6, 3:16, 4:22, 6:14, 7:19, 9:20, 13:25, 19:14, 28:21, 29:22, 31:22, 34:19, 36:15, 42:19
URGE ^[2] - 26:9, 42:9
US ^[2] - 4:4, 35:9
USED ^[2] - 20:7, 27:24

V

VARIED ^[1] - 11:16
VARIOUS ^[1] - 27:2
VERSUS ^[1] - 1:5
VERY ^[11] - 3:8, 4:3, 17:21, 28:15, 30:15, 33:22, 36:16, 42:4, 42:13, 43:10
VIDEO ^[1] - 3:11
VIOLATING ^[1] - 37:2
VIRUS ^[1] - 12:18
VOLUNTEER ^[1] - 4:23
VOLUNTEERS ^[3] - 4:7, 4:14, 4:22
VOTER ^[1] - 16:3
VOTES ^[1] - 29:25

W

WAIT ^[1] - 36:5
WAITING ^[1] - 28:6
WAIVING ^[2] - 25:16, 25:18
WALK ^[2] - 13:24, 19:6
WANT ^[26] - 12:2, 16:7, 16:8, 16:17, 16:22, 17:2, 18:16, 19:6, 20:17, 23:15, 25:17, 26:16, 26:21, 27:5, 27:16, 27:24, 28:1, 28:6, 28:16, 30:3, 31:10, 34:8, 35:9, 39:10, 41:11, 42:19
WANTED ^[2] - 4:23,

9:24
WANTS [5] - 13:20, 15:9, 22:19, 33:7, 33:9
WAS [24] - 4:5, 5:3, 5:4, 6:2, 6:13, 6:23, 7:17, 8:12, 8:14, 8:21, 9:9, 9:11, 9:16, 9:17, 11:18, 12:5, 12:15, 18:9, 24:13, 26:6, 27:19, 29:20, 33:3, 34:2
WATCH [5] - 7:15, 15:9, 24:5, 26:17, 26:21
WAY [9] - 4:25, 26:13, 26:15, 29:5, 29:10, 31:18, 31:22, 32:1, 38:11
WE [84] - 5:5, 5:8, 5:9, 5:15, 5:17, 5:25, 6:22, 6:24, 7:17, 7:21, 9:18, 9:19, 9:21, 10:23, 12:17, 12:23, 13:11, 13:15, 13:16, 13:19, 13:21, 14:10, 14:15, 15:3, 15:13, 15:15, 15:19, 15:20, 17:4, 17:5, 17:17, 17:22, 17:23, 18:8, 18:9, 18:16, 20:9, 20:12, 20:14, 20:15, 20:19, 20:20, 22:10, 24:7, 24:21, 25:5, 26:2, 26:7, 27:1, 27:3, 27:14, 27:16, 27:17, 27:24, 30:13, 30:18, 31:21, 32:1, 32:3, 32:21, 33:3, 33:5, 35:7, 35:9, 36:21, 37:4, 37:8, 37:20, 38:4, 39:3, 40:23, 41:6, 41:11, 41:13, 42:6, 42:20
WE'LL [2] - 24:7, 36:24
WE'RE [3] - 13:20, 13:24, 35:3
WE'VE [2] - 27:1, 41:25
WEDNESDAY [1] - 22:12
WEEKS [1] - 27:7
WELL [10] - 3:25, 6:14, 8:2, 16:17, 17:21, 24:20, 28:2, 28:3, 33:22, 43:10
WELL-KNOWN [1] - 28:2

WELL-RESPECTED [1] - 28:3
WERE [31] - 4:9, 4:17, 4:23, 4:25, 5:2, 8:7, 8:10, 9:5, 9:11, 9:22, 9:25, 10:1, 11:10, 12:3, 14:14, 17:9, 17:12, 18:7, 18:10, 18:11, 19:22, 25:22, 25:25, 29:17, 29:18, 34:24, 35:2, 36:6, 36:9, 39:1
WEREN'T [2] - 9:12, 43:1
WHAT [50] - 3:4, 4:2, 7:25, 8:4, 8:17, 8:18, 10:5, 10:19, 10:24, 11:17, 11:18, 12:7, 12:25, 13:21, 15:5, 16:9, 16:14, 16:15, 16:23, 17:1, 17:5, 22:7, 22:8, 22:9, 22:11, 22:23, 24:7, 25:5, 27:24, 28:6, 28:16, 28:19, 30:25, 31:4, 33:16, 34:1, 34:16, 34:20, 34:22, 35:6, 35:9, 37:9, 38:24, 39:5, 39:12, 39:24, 41:24, 42:24
WHAT'S [4] - 10:24, 11:6, 13:23, 17:11
WHATEVER [8] - 13:2, 15:8, 23:6, 23:8, 35:10, 40:1, 40:2
WHEEL [1] - 26:13
WHEN [4] - 3:5, 3:9, 18:9, 25:7
WHERE [7] - 4:9, 5:4, 14:7, 17:19, 26:14, 32:3, 32:22
WHETHER [4] - 12:11, 16:10, 16:12, 16:13
WHICH [17] - 4:16, 5:9, 6:10, 8:7, 8:9, 13:1, 14:9, 14:14, 15:24, 16:17, 20:25, 21:3, 32:22, 33:19, 35:24, 41:10, 42:3
WHILE [1] - 24:3
WHISPERING [1] - 42:16
WHITE [2] - 1:20, 43:23
WHO [30] - 4:19, 4:20, 4:22, 7:17, 8:24, 10:1, 13:8, 14:7, 14:16, 15:9, 17:3, 18:6, 18:10, 18:11, 18:20, 25:21, 26:16,

26:21, 27:2, 27:25, 28:11, 32:7, 32:9, 32:24, 33:13, 35:22
WHOEVER [1] - 29:2
WHOLE [1] - 12:24
WHOM [2] - 7:25, 27:25
WHY [9] - 15:19, 17:19, 27:14, 28:17, 29:1, 30:9, 37:25, 39:8, 42:11
WIDTH [1] - 18:1
WILL [26] - 4:18, 4:22, 11:11, 15:2, 16:19, 17:3, 17:17, 17:19, 18:6, 24:14, 25:16, 28:5, 28:23, 29:11, 32:21, 35:13, 35:15, 37:19, 37:21, 41:5, 41:10, 41:25, 42:1, 42:10, 42:25
WILLING [1] - 38:12
WISH [3] - 18:15, 38:8, 42:17
WITH [34] - 4:14, 4:20, 6:22, 8:3, 9:10, 12:3, 13:7, 15:1, 16:2, 16:25, 17:6, 17:10, 17:17, 22:21, 24:12, 25:9, 25:16, 27:14, 33:15, 33:23, 35:11, 35:20, 37:20, 38:10, 38:13, 39:10, 40:10, 41:7, 42:1, 42:4, 43:3, 43:5, 43:8, 43:9
WITHDRAWN [1] - 42:1
WITHIN [11] - 9:17, 11:11, 15:4, 17:8, 23:6, 26:12, 30:4, 30:14, 30:17, 30:19, 30:24
WITHOUT [4] - 3:18, 37:2, 41:19, 41:20
WITHSTANDING [1] - 6:21
WITNESS [2] - 15:21, 16:21
WITNESSES [2] - 18:6, 25:14
WIYGUL [11] - 2:2, 3:19, 3:22, 3:24, 5:7, 5:8, 5:13, 6:17, 12:21, 36:5, 37:13
WON'T [2] - 9:7, 33:21
WONDERFUL [1] - 40:24
WORK [7] - 9:7, 22:21, 23:13, 28:4, 37:20,

38:13, 39:19
WORKED [1] - 16:1
WORKING [3] - 4:8, 4:14
WORKS [1] - 23:15
WORLD [2] - 35:12, 40:23
WOULD [49] - 3:4, 4:21, 5:25, 7:9, 10:6, 12:13, 12:19, 13:21, 13:22, 14:3, 14:7, 14:8, 14:15, 14:16, 15:8, 16:23, 16:24, 17:14, 20:2, 20:22, 21:13, 22:7, 22:11, 24:12, 25:24, 26:3, 26:9, 26:14, 26:15, 27:8, 28:3, 28:11, 28:12, 35:6, 35:10, 35:14, 36:2, 36:15, 36:20, 37:22, 37:25, 38:8, 38:15, 39:9, 40:12, 40:24
WOULDN'T [4] - 12:2, 19:16, 20:25, 21:3
WROTE [1] - 29:2

Y

YEAH [1] - 39:7
YEAR [1] - 39:4
YEARS [2] - 25:8, 25:10
YES [19] - 3:15, 3:22, 11:5, 14:18, 20:7, 24:9, 26:5, 26:19, 28:19, 29:13, 29:16, 29:19, 29:21, 31:3, 32:21, 37:12, 40:14, 41:9, 42:16
YET [1] - 30:22
YOU [117] - 3:4, 3:5, 3:6, 3:7, 3:16, 3:17, 3:23, 3:25, 4:2, 4:3, 5:8, 6:17, 7:3, 7:4, 7:23, 7:24, 8:17, 9:25, 11:1, 11:22, 12:1, 12:2, 12:3, 12:5, 13:7, 14:4, 14:6, 14:18, 14:19, 14:21, 15:6, 16:2, 16:5, 16:7, 16:8, 16:23, 16:24, 17:2, 18:13, 18:19, 18:21, 18:24, 19:10, 19:16, 19:19, 20:3, 20:14, 20:15, 21:3, 21:5, 21:6, 21:7, 21:11, 21:19, 22:4, 22:19, 23:3, 23:8, 24:7,

26:9, 27:16, 28:4, 28:6, 28:7, 30:3, 30:11, 30:12, 30:16, 30:20, 31:10, 32:6, 32:18, 32:19, 32:25, 33:20, 34:6, 34:23, 36:5, 36:13, 36:14, 37:4, 37:10, 38:7, 38:8, 38:10, 38:15, 38:25, 39:1, 39:7, 39:8, 39:21, 39:22, 40:7, 40:12, 41:5, 41:17, 41:22, 42:3, 42:9, 42:17, 42:24, 42:25, 43:1, 43:6, 43:12, 43:14, 43:16
YOU'RE [18] - 3:17, 8:16, 11:23, 14:3, 15:14, 22:19, 23:25, 24:18, 25:1, 25:3, 25:16, 25:18, 28:1, 28:2, 29:10, 30:7, 32:12, 42:23
YOU'VE [3] - 16:14, 34:10, 42:22
YOUR [82] - 3:7, 3:18, 3:22, 3:25, 4:4, 4:5, 4:13, 5:6, 5:8, 5:14, 5:17, 6:17, 7:4, 7:16, 7:22, 9:4, 9:8, 10:8, 10:12, 10:21, 11:6, 11:14, 12:2, 13:4, 13:16, 14:20, 14:24, 15:14, 16:5, 16:19, 17:24, 18:8, 18:13, 18:14, 18:17, 19:1, 19:7, 20:4, 21:23, 22:2, 22:20, 22:21, 23:6, 23:15, 24:2, 24:6, 24:10, 24:21, 25:12, 26:6, 26:18, 26:22, 26:23, 28:7, 28:12, 28:23, 28:24, 29:3, 29:11, 31:6, 31:19, 32:19, 32:21, 33:2, 33:16, 33:22, 33:25, 34:4, 34:15, 34:18, 35:21, 37:12, 37:14, 37:24, 38:12, 40:12, 41:8, 41:18, 41:22, 42:18, 43:10, 43:12
YOURSELF [1] - 20:3

EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DONALD J. TRUMP FOR
PRESIDENT, INC., *et al.*,

Plaintiffs,

v.

KATHY BOOCKVAR, *et al.*,

Defendants.

No. 4:20-CV-02078

(Judge Brann)

ORDER

AND NOW, this 10th day of November 2020, **IT IS HEREBY ORDERED** that, following a telephonic status conference call with counsel of record, the schedule for briefing, argument, and hearing in this matter is set forth as follows:

1. Plaintiffs shall file their motion seeking injunctive relief by **5:00 p.m. Thursday, November 12, 2020.**
2. Defendants shall file their motion(s) to dismiss by **5:00 p.m. Thursday, November 12, 2020.**
3. Plaintiffs shall file their response to any motions to dismiss by **12:00 p.m. Sunday, November 15, 2020.**
4. Defendants shall file their reply to Plaintiffs' response by **12:00 p.m. Monday, November 16, 2020.**

5. The Court will hold oral argument on **Tuesday, November 17, 2020 at 1:30 p.m** in Courtroom No. 1, Fourth Floor, United States Courthouse and Federal Building, Williamsport, PA 17701.
6. This Court will hold an evidentiary hearing on **Thursday, November 19, 2020 at 10:00 a.m** in Courtroom No. 1, Fourth Floor, United States Courthouse and Federal Building, Williamsport, PA 17701.
7. All parties shall inform my Courtroom Deputy, Janel Rhinehart, of their intent to be present or absent from any hearings. She can be reached at 570-323-9772.

BY THE COURT:

s/ Matthew W. Brann

Matthew W. Brann
United States District Judge

EXHIBIT 5

REC'D & FILED

2020 OCT 29 PH 5:44

AUDREY HOWLANDT

BY

DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

-oOo-

FRED KRAUS, an individual registered
to vote in Clark County, Nevada,
DONALD J. TRUMP FOR PRESIDENT,
INC., and the NEVADA REPUBLICAN
PARTY,

Petitioners,

vs.

BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State,
JOSEPH P. GLORIA, in his official
capacity as Registrar of Voters for Clark
County, Nevada,

Respondents.

CASE NO. 20 OC 00004 1B

DEPT. 2

ORDER DENING EMERGENCY PETITION FOR WRIT OF MANDAMUS, OR
IN THE ALTERNATIVE, WRIT OF PROHIBITION

PROCEDURAL BACKGROUND

Before the Court is the Emergency Petition for Writ of Mandamus, or in the
Alternative, Writ of Prohibition. The Court held an evidentiary hearing on October 28,
2020.

1 **ISSUES**

2 Do Petitioners have standing to bring these claims?

3 Has Registrar Joseph P. Gloria failed to meet his statutory duty under NRS
4 293B.353(1) to allow members of the general public to observe the counting of ballots?

5 Has Registrar Gloria unlawfully precluded Petitioners from the use and
6 enjoyment of a right to which Petitioners are entitled?

7 Has Registrar Gloria exercised discretion arbitrarily or through mere caprice?

8 Has Registrar Gloria acted without or in excess of authorized powers?

9 Has Secretary of State Barbara Cegavske failed to meet any statutory duty under
10 NRS 293B.353(1) to allow members of the general public to observe the counting of
11 ballots?

12 Has Secretary of State Barbara Cegavske unlawfully precluded Petitioners from
13 the use and enjoyment of a right to which Petitioners are entitled?

14 Has Secretary Cegavske exercised discretion arbitrarily or through mere caprice?

15 Has Secretary Cegavske acted without or in excess of authorized powers?

16 Has Secretary of State Cegavske unlawfully precluded Petitioners the use and/or
17 enjoyment of a right to which Petitioners are entitled?

18 Have Petitioners proved they are entitled to a writ of mandamus on their equal
19 protection claims?

20
21 **FACTS**

22 It is important to note the factual context in which this case arose. All of the
23 states in the United States are attempting to hold elections under the health, political,
24 social, and economic consequences of the COVID-19 pandemic. Nevada's state and
25 county election officials had relatively little time to assess, plan, modify, and implement
26 procedures that are quite different from the established election procedures in an effort

1 to provide safe, open elections that would not result in long waiting lines. The
2 modification of procedures includes fewer polling places, a very large increase in mail-in
3 voting, and long lines as a result of social distancing.

4 A second important context is that this lawsuit was filed October 23, 2020—11
5 days before the general election.

6 Every Nevada county is required to submit to the Secretary of State, by April 15,
7 2020, the county's plan for accommodation of members of the general public who
8 observe the processing of ballots. NRS 293B.354(1). Registrar Gloria did not submit a
9 plan by April 15, 2020.

10 Registrar Gloria submitted a plan to the Secretary of State on October 20, 2020.
11 A copy of the plan is attached as Exhibit 1.

12 Historically, the Secretary of State has not sent letters or other notification to the
13 counties approving the counties' plans.

14 The Secretary of State's office reviewed Registrar Gloria's plan, concluded it
15 complied with the law, and Secretary Cegavske issued a letter to Registrar Gloria on
16 October 22, 2020. The letter is attached as Exhibit 2. The Secretary did not write that
17 Registrar Gloria's plan was "approved," but it is clear from the letter that the plan was
18 approved with a suggestion to that the Registrar consider providing additional seating in
19 public viewing areas for observers to view the signature verification process to the extent
20 feasible while ensuring that no personally identifiable information is observable by the
21 public.

22 A copy of all 17 county plans were admitted as exhibits. Clark County's plan is not
23 substantially different from the plan of any of the other 16 counties, and none of the
24 plans is substantially different from the plans of previous years.

25 Clark County uses an electronic ballot sorting system, Agilis. No other Nevada
26 county uses Agilis. Some major metropolitan areas including Cook County, Illinois, Salt
27

1 Lake City, Utah, and Houston, Texas use Agilis. Some Nevada counties use other brands
2 of ballot sorting systems.

3 Registrar Gloria decided to purchase Agilis because of the pandemic and the need
4 to more efficiently process ballot signatures.

5 One of Petitioners' attorneys questioned Registrar Gloria about Agilis in earlier
6 case, Corona v. Cegavske, but never asked Registrar Gloria to stop using Agilis.

7 Clark County election staff tested Agilis by manually matching signatures. Clark
8 County election staff receives yearly training on signature matching from the Federal
9 Bureau of Investigation. The last training was in August of this year.

10 For this general election Clark County is using the same they used for the June
11 primary election. No evidence was presented that the setting used by Clark County
12 causes or has resulted in any fraudulent ballot being validated or any valid ballot
13 invalidated.

14 No evidence was presented of any Agilis errors or inaccuracies. No evidence was
15 presented that there is any indication of any error in Clark County's Agilis signature
16 match rate.

17 Registrar Gloria opined that if Clark County could not continue using Agilis the
18 county could not meet the canvass deadline which is November 15, 2020. The Court
19 finds that if Clark County is not allowed to continue using Agilis the county will not meet
20 the canvass deadline.

21 When the envelope containing mail-in ballots are opened the ballot and envelope
22 are separated and not kept in sequential order. Because they are not kept in sequential
23 order it would be difficult to identify a voter by matching a ballot with its envelope.

24 This is the first election in Registrar Gloria's 28 years of election experience in
25 Clark County that there are large numbers of persons wanting to observe the ballot
26 process.

1 Persons that observe the ballot process sign an acknowledgment and a memo
2 containing instructions to the observer. A copy of an acknowledgment and memo are
3 attached as Exhibit 3.

4 People hired by the Registrar to manage the people wanting to observe the ballot
5 process are called ambassadors. The observer acknowledgment states observers are
6 prohibited from talking to staff. The memo explains the role of ambassadors and invites
7 observers to inform their ambassador they have a question for election officials or the
8 observer may pose a question directly to an election official.

9 Registrar Gloria is not aware of any observer complaints.

10 Several witnesses supporting Petitioners and called by Petitioners testified: they
11 saw ballots that had been removed from the envelope left alone; runners handle ballots
12 in different ways, including taking the ballots into an office, taking ballots into "the
13 vault" and/or otherwise failing to follow procedure, but no procedure was identified;
14 inability to see some tables from the observation area; inability to see into some rooms;
15 inability to see all election staff monitors; inability to see names on monitors; saw a
16 signatures she thought did not match but admitted she had no signature comparison
17 training; and/or trouble getting to where they were supposed to go to observe and
18 trouble being admitted to act as observer at the scheduled time.

19 No evidence was presented that any party or witness wanted to challenge a vote
20 or voter, or had his or her vote challenged.

21 No evidence was presented that there was an error in matching a ballot signature,
22 that any election staff did anything that adversely affected a valid ballot or failed to take
23 appropriate action on an invalid ballot.

24 No evidence was presented that any election staff were biased or prejudiced for or
25 against any party or candidate.

1 One Petitioner witness did not raise issues regarding things she observed with an
2 ambassador but instead went to the Trump Campaign. No issue was ever raised as a
3 result of her observations or report to the Trump Campaign.

4 Washoe County is using cameras to photograph or videotape the ballot process.

5 No Nevada county hand-counts ballots.
6

7 **LEGAL PRINCIPLES**

8 **Standing**

9 Nevada law requires an actual justiciable controversy as a predicate to judicial
10 relief. *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986). For a controversy to
11 exist the petitioner must have suffered a personal injury and not merely a general
12 interest that is common to all members of the public. *Schwarz v. Lopez*, 132 Nev. 732,
13 743, 382 P.3d 886, 894 (2016).
14
15

16 **Mandamus and Prohibition**

17 A court may issue a writ of mandamus “to compel the performance of an act
18 which the law especially enjoins as a duty resulting from an office . . . ; or to compel the
19 admission of a party to the use and enjoyment of a right or office to which the party is
20 entitled and from which the party is unlawfully precluded by such . . . person.” NRS
21 34.160. A court may issue a writ of mandamus “when the respondent has a clear,
22 present legal duty to act.” *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603, 637
23 P.2d 534 (1981). The flip side of that proposition is that a court cannot mandate a
24 person take action if the person has no clear, present legal duty to act. Generally,
25 mandamus will lie to enforce ministerial acts or duties and to require the exercise of
26 discretion, but it will not serve to control the discretion.” *Gragson v. Toco*, 90 Nev. 131,
27

1 133 (1974). There is an exception to the general rule: when discretion “is exercised
2 arbitrarily or through mere caprice.” *Id.*

3 “Petitioners carry the burden of demonstrating that extraordinary relief is
4 warranted.” *Pan v. Dist. Ct.*, 120 Nev. 222, 228 (2004).

5 The writ of prohibition is the counterpart of the writ of mandate. It arrests the
6 proceedings of any tribunal . . . or person exercising judicial functions, when such
7 proceedings are without or in excess of the jurisdiction of such tribunal . . . or person.
8 NRS 34.320.

9 A writ of prohibition “may be issued . . . to a person, in all cases where there is
10 not a plain, speedy and adequate remedy in the ordinary course of law.” NRS 34.330.

11 **Voting Statutes**

12 NRS 293B.353 provides in relevant part:

13 1. The county . . . shall allow members of the general public to observe the
14 counting of the ballots at the central counting place if those members do not
15 interfere with the counting of the ballots.

16 2. The county . . . may photograph or record or cause to be photographed
17 or recorded on audiotape or any other means of sound or video reproduction the
18 counting of the ballots at the central counting place.

19 3. A registered voter may submit a written request to the county . . . clerk
20 for any photograph or recording of the counting of the ballots prepared pursuant
21 to subsection 2. The county . . . clerk shall, upon receipt of the request, provide
22 the photograph or recording to the registered voter at no charge.

23 NRS 293B.354 provides in relevant part:

24 1. The county clerk shall, not later than April 15 of each year in which a
25 general election is held, submit to the Secretary of State for approval a written
26 plan for the accommodation of members of the general public who observe the
27 delivery, counting, handling and processing of ballots at a polling place, receiving
center or central counting place.

...

3. Each plan must include:

- (a) The location of the central counting place and of each polling place and receiving center;
- (b) A procedure for the establishment of areas within each polling place and receiving center and the central counting place from which members of the general public may observe the activities set forth in subsections 1 and 2;
- (c) The requirements concerning the conduct of the members of the general public who observe the activities set forth in subsections 1 and 2; and
- (d) Any other provisions relating to the accommodation of members of the general public who observe the activities set forth in subsections 1 and 2 which the county . . . considers appropriate.

AB 4 section 22 provides in relevant part:

1. For any affected election, the county . . . clerk, shall establish procedures for the processing and counting of mail ballots.

2. The procedures established pursuant to subsection 1:

- (a) May authorize mail ballots to be processed and counted by electronic means; and
- (b) Must not conflict with the provisions of sections 2 to 27, inclusive, of this act.

AB 4 section 23 provides in relevant part:

1. . . . for any affected election, when a mail ballot is returned by or on behalf of a voter to the county . . . clerk . . . and a record of its return is made in the mail ballot record for the election, the clerk or an employee in the office of the clerk shall check the signature used for the mail ballot in accordance with the following procedure:

- a. The clerk or employee shall check the signature used for the mail ballot against all signatures of the voter available in the records of the clerk.

AB 4 section 25 provides in relevant part:

1. The counting procedures must be public.

ANALYSIS

Petitioners failed to prove they have standing to bring their Agilis, observation, ballot handling or secrecy claims.

As set forth above for a justiciable controversy to exist the petitioner must have suffered a personal injury and not merely a general interest that is common to all members of the public. Petitioners provided no evidence of any injury, direct or indirect, to themselves or any other person or organization. The evidence produced by Petitioners shows concern over certain things these observers observed. There is no evidence that any vote that should lawfully be counted has or will not be counted. There is no evidence that any vote that should lawfully not be counted has been or will be counted. There is no evidence that any election worker did anything outside of the law, policy, or procedures. Petitioners do not have standing to maintain their mandamus claims.

Likewise, Petitioners provided no evidence of a personal injury and not merely a general interest that is common to all members of the public regarding the differences between the in-person and mail-in procedures. Petitioners provided no evidence of any injury, direct or indirect, to themselves or any other person or organization as a result of the different procedures. All Nevada voters have the right to choose to vote in-person or by mail-in. Voting in person and voting by mailing in the ballot are different and so the procedures differ. There is no evidence that anything the State or Clark County have done or not done creates two different classes of voters. There is no evidence that anything the State or Clark County has done values one voter's vote over another's.

1 There is no evidence of any debasement or dilution of any citizen's vote. Petitioners do
2 not have standing to bring their equal protection claims.

3
4 **Petitioners failed to prove Registrar Gloria failed to meet his**
5 **statutory duty under NRS 293B.353(1) to allow members of the general**
6 **public to observe the counting of ballots?**

7
8 Petitioners argued they have a right to observers having meaningful observation
9 under NRS 293B.353(1) and AB 4 sec. 25. NRS 293B.353(1) provides in relevant part,
10 "[t]he county . . . shall allow members of the general public to observe the counting of
11 the ballots" AB 4 sec. 25 provides in relevant part "[t]he counting procedure must
12 be public." The statutes do not use the modifier "meaningful."

13 The Nevada Legislature codified the right of the public to observe the ballot
14 counting procedure in NRS 293B.353 and 293B.354, and AB 4 section 25(1). NRS
15 293B.354(1) requires each county to annually submit a plan to the Secretary of State.
16 NRS 293B. 354(3) states the requirements of the plan. The statutory requirements of
17 the plan are very general. The legislature left to the election professionals, the Secretary
18 of State and the county elections officials, wide discretion in establishing the specifics of
19 the plan. Petitioners failed to prove either Secretary Cegavske or Registrar Gloria
20 exercised their discretion arbitrarily or through mere caprice.

21
22 The fact that Registrar failed to timely submit a plan was remedied by submitting
23 the plan late and the Secretary of State approving the plan.

24 Petitioners seem to request unlimited access to all areas of the ballot counting
25 area and observation of all information involved in the ballot counting process so they
26

1 can verify the validity of the ballot, creating in effect a second tier of ballot counters
2 and/or concurrent auditors of the ballot counting election workers. Petitioners failed to
3 cite any constitutional provision, statute, rule, or case that supports such a request. The
4 above-cited statutes created observers not counters, validators, or auditors. Allowing
5 such access creates a host of problems. Ballots and verification tools contain confidential
6 voter information that observers have not right to know. Creating a second tier of
7 counters, validators, or auditors would slow a process the Petitioners failed to prove is
8 flawed. The request if granted would result in an increase in the number of persons in
9 the ballot processing areas at a time when social distancing is so important because of
10 the COVID-19 pandemic.

11
12 Petitioners have failed to prove Registrar Gloria has interfered with any right they
13 or anyone else has as an observer.

14 Petitioners claim a right to have mail-in ballots and the envelopes the ballots are
15 mailed in to be kept in sequential order. Petitioners failed to cite Constitutional
16 provision, statute, rule, or case that creates a duty for Nevada registrars to keep ballots
17 and envelopes in sequential order. Because they failed to show a duty they cannot
18 prevail on a mandamus claim that requires proof a duty resulting from office. Because
19 there is no duty or right to sequential stacking the Court cannot mandate Registrar
20 Gloria to stack ballots and envelopes sequentially.

21
22 Because there is not right to sequential stacking the Court cannot mandate the use and
23 enjoyment of that "right."

24 Plaintiffs want the Court to mandate Registrar Gloria allow Petitioners to
25 photograph of videotape the ballot counting process. The legislature provided in NRS
26

1 293B.353(2) the procedure for photographing or videotaping the counting of ballots.

2 The county may photograph or videotape the counting and upon request provide a copy
3 of the photographs or videotapes.

4 Petitioners failed to cite any constitutional provision, statute, rule, or case that
5 gives the public the right to photograph or videotape ballot counting.

6 Petitioners failed to prove Secretary Cegavske or Registrar Gloria exercised her or
7 his discretion arbitrarily or through mere caprice in any manner. Therefore, the Court
8 cannot mandate Registrar Gloria to require sequential stacking of ballots and envelopes.
9

10 Petitioners requested the Court mandate Registrar Gloria provide additional
11 precautions to ensure the secrecy of ballots. Petitioners failed to prove that the secrecy
12 of any ballot was violated by anyone at any time. Petitioners failed to prove that the
13 procedures in place are inadequate to protect the secrecy of every ballot.

14 Petitioners also request the Court mandate Registrar Gloria stop using the Agilis
15 system. Petitioners failed to show any error or flaw in the Agilis results or any other
16 reason for such a mandate. Petitioners failed to show the use of Agilis caused or resulted
17 in any harm to any party, any voter, or any other person or organization. Petitioners
18 failed Registrar Gloria has a duty to stop using Agilis.
19

20 AB 4 passed by the legislature in August 2020 specifically authorized county
21 officials to process and count ballots by electronic means. AB 4, Sec. 22(2)(a).

22 Petitioners' argument that AB 4, Sec. 23(a) requires a clerk or employee check the
23 signature on a returned ballot means the check can only be done manually is meritless.
24 The ballot must certainly be checked but the statute does not prohibit the use of
25 electronic means to check the signature.
26

1
2 **Equal Protection**

3 There is no evidence that in-person voters are treated differently than mail-in
4 voters. All Nevada voters have the right to choose to vote in-person or by mail-in. Voting
5 in person and voting by mailing in the ballot are different and so the procedures differ.
6 Nothing the State or Clark County have done creates two different classes of voters.
7 Nothing the State or Clark County has done values one voter's vote over another's. There
8 is no evidence of debasement or dilution of a citizen's vote.
9
10

11
12 **CONCLUSIONS OF LAW**

13 Petitioners do not have standing to bring these claims.

14 Registrar Joseph P. Gloria has not failed to meet his statutory duty under NRS
15 293B.353(1) to allow members of the general public to observe the counting of ballots.

16 Registrar Gloria has not precluded Petitioners from the use and enjoyment of a
17 right to which Petitioners are entitled.

18 Registrar Gloria has not exercised discretion arbitrarily or through mere caprice.

19 Registrar Gloria has not acted without or in excess of authorized powers.

20 Secretary of State Barbara Cegavske has not failed to meet any statutory duty
21 under NRS 293B.353(1) to allow members of the general public to observe the counting
22 of ballots.

23 Secretary of State Barbara Cegavske has not unlawfully precluded Petitioners
24 from the use and enjoyment of a right to which Petitioners are entitled.

25 Secretary Cegavske has not exercised discretion arbitrarily or through mere
26 caprice.
27

1 Secretary Cegavske has not acted without or in excess of authorized powers.

2 Secretary of State Cegavske has not precluded Petitioners the use and/or
3 enjoyment of a right to which Petitioners are entitled.

4 Petitioners failed to prove they are entitled to a writ of mandamus on any of their
5 claims.

6
7 **ORDER**

8 The Petition for Writ of Mandamus or in the Alternative for Writ of Prohibition is
9 denied.
10

11 October 29, 2020.

12
13 
14 James E. Wilson, Jr.
District Judge

CERTIFICATE OF SERVICE

I certify that I am an employee of the First Judicial District Court of Nevada; that on the 2 day of November 2020, I served a copy of this document by placing a true copy in an envelope addressed to:

Brian R. Hardy, Esq.
10001 Park Run Drive
Las Vegas, NV 89145
bhardy@maclaw.com

MaryAnn Miller
Office of the District Attorney
Civil Division
500 S. Grand Central Parkway
Las Vegas, NV 89106
Mary-Anne.Miller@clarkcountyda.com

Daniel Bravo, Esq.
3556 E. Russell Road
Second Floor
Las Vegas, NV 89120
dbravo@wrslawyers.com

David O'Mara, Esq.
311 E. Liberty Street
Reno, NV 89501
david@omaralaw.net

Bradley Schrager, Esq.
3556 E. Russell Road
Second Floor
Las Vegas, NV 89120
Bschrager@wrs.awyers.com

Gregory L. Zunino, Esq.
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701
Gzunino@ag.nv.gov

the envelope sealed and then deposited in the Court's central mailing basket in the court clerk's office for delivery to the USPS at 1111 South Roop Street, Carson City, Nevada, for mailing.


Billie Shadron
Judicial Assistant



Election Department

965 Trade Dr • Ste A • North Las Vegas NV 89030
Voter Registration (702) 455-8683 • Fax (702) 455-2793

Joseph Paul Gloria, Registrar of Voters
Lorena Portillo, Assistant Registrar of Voters

October 20, 2020

The Honorable Barbara K. Cegavske
Secretary of State
State of Nevada
101 N. Carson St., Suite 3
Carson City, Nevada 89701-4786

Attention: Wayne Thorley
Deputy Secretary of State for Elections

RE: Accommodation of Members of the General Public at Polling Places, Mail Ballot Processing, and at the Central Counting Place

Dear Secretary Cegavske:

In accordance with NRS 293B.354, I am forwarding to you the following guidelines which are provided to our polling place team leaders and our election staff to ensure we accommodate members of the general public who wish to observe activities within a polling place and/or at the central counting facilities.

Polling Places (Early Voting and Election Day)

Designated public viewing areas are established in each polling place, both early voting and Election Day vote centers, where individuals may quietly sit or stand and observe the activities within the polling place.

Observation guidelines:

- Observers may not wear or display political campaign items
- Observers may not photograph, or record by any other means, any activity at any early voting or Election Day polling place
- Use of cell phones is prohibited in the polling place
- Observers may not disrupt the voting process
- If observers have questions, they must direct them to the polling place team leader

Mail Ballot Processing (Warehouse & Flamingo-Greystone Facility)

The general public is allowed, according to the NRS, to observe the counting of mail ballots. In addition, as a courtesy, members of the general public are also being allowed to observe our mail ballot processing procedures, which occur prior to tabulation.

Due to space limitations we are processing our mail ballots in two different facilities:

- 965 Trade Dr., North Las Vegas, NV 89030
 - AGILIS mail ballot processing
 - Signature audit team
 - Tabulation
 - Ballot duplication
- 2030 E. Flamingo Road, Las Vegas, NV 89119
 - Counting Board
 - Ballot duplication

Observation guidelines:

- Observers may not wear or display political campaign items
- Observers may not photograph, or record by any other means, any activity at any early voting or Election Day polling place
- Use of cell phones is prohibited in the polling place
- Observers may not disrupt the voting process
- If observers have questions, they must direct them to the polling place team leader

Election Night (Warehouse Tabulating)

In front of our tabulation area an area is provided for any observer who wishes to observe our counting activity. Reports are provided after each update to the general public and are also available on our website for review. The general public may access the website through our free county wi-fi access on their personal devices should they choose to do so.

The public viewing area allows the general public to view the tabulation room, where the processing of election night results may be observed through windows that provide full view of all counting activity. Observers are not allowed inside the room because of congestion and COVID restrictions.

The Registrar is available to answer questions, although it should be noted that very few

Page 3

Secretary of State Barbara K. Cegavske

March 14, 2018

individuals from the public have been at the Election Center Warehouse on election night since 2000. This will probably be different this year due to increased interest in observing our activities.

In accordance with NRS 293B.354, at link provided here is a link to the vote center polling places that will be used in the General Election on November 3, 2020 in Clark County. <https://cms8.revize.com/revize/clarknv/Election%20Department/VC-Web-20G.pdf?t=1602940110601&t=1602940110601>. An electronic copy is also attached to the e-mail.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph P. Gloria". The signature is fluid and cursive, with a large initial "J" and a distinct "G" at the end.

Joseph P. Gloria
Registrar of Voters

Enclosures



OBSERVATION OF POLLING PLACE OR CLARK COUNTY ELECTION DEPARTMENT LOCATIONS ACKNOWLEDGEMENT

In accordance with NAC 293.245 (full text included in page 2):

I, VIRGINIA STEWART, by signing this form, hereby acknowledge that during the time I observe the conduct of voting or of any election related process, I am prohibited from the following activities:

1. Talking to voters or staff within the polling place or Election Department location;
2. Using any technical devices within the polling place or Election Department location;
3. Advocating for or against a candidate, political party or ballot question;
4. Arguing for or against or challenging any decisions of the county or city election personnel and;
5. Interfering with the conduct of voting or any election related process.

I further acknowledge that I may be removed from the polling place by the county or city clerk for violating any provisions of Title 24 of the Nevada Revised Statutes or any of the restrictions described herein.

Representing Group/Organization:

Republican Party

Contact Information:

619 656 8405

Signature:

[Signature]

Print Name:

VIRGINIA STEWART

Date:

10/27/20

Polling Place or Election Department Location:

TRAO

October 21, 2020

Memo to Election Observers in the Greystone or County Election Department buildings:

Thank you for choosing to observe our voting process.

The department brought in additional staff to provide adequate supervision and security for observation areas. These staff, whom we call ambassadors, will accompany you while you are in our facilities.

Our ambassadors are not permanent Election Department employees and receive no training in our election processes, and so they are not able to accurately answer your questions about elections.

If you have any questions about the processes you are observing or other election-related questions, please inform the ambassador that you have a question for County Election Department officials. (The ambassador will create a list of questions from observers to relay to Election officials.) Or, you may choose to wait and pose their question to the Election official directly.

At this time, we plan to make Election Department officials available to observers around 9 a.m. and 3 p.m. daily to respond to any questions or concerns. These meetings will occur at both the Greystone and Election Department buildings

Thank you for our understanding.

Sincerely,

Joe Gloria

Clark County Registrar of Voters

BARBARA K. CEGAVSKE
Secretary of State

STATE OF NEVADA

SCOTT W. ANDERSON
Chief Deputy Secretary of State

MARK A. WLASCHIN
Deputy Secretary for Elections



**OFFICE OF THE
SECRETARY OF STATE**

October 22, 2020

Mr. Joe Gloria, Registrar of Voters
965 Trade Drive, Suite A
North Las Vegas, NV 89030-7802
jpg@ClarkCountyNV.gov
via Email

Re: Revision of Observation Plan

Mr. Gloria,

Over the last few days, a potential opportunity for improvement to your elections process observation plan have come to light that the Secretary of State believes to be worth considering. We have received Clark County's plan for accommodating election observers. In addition to the items detailed in your plan, we would request that you consider implementing the following:

Provide additional seating in the public viewing area for observing the signature verification process to the extent feasible while ensuring that no Personally Identifiable Information (PII) is observable to the public. This increase in seating should ensure meaningful observation.

If you have any questions regarding this letter and my determination in this matter, please contact me at (775) 684-5709.

Respectfully,

A handwritten signature in black ink that reads "Barbara K. Cegavske".

Barbara K. Cegavske
Secretary of State

EXHIBIT 6

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA**

MINUTE ORDER

DATE: 09/15/2020

TIME: 01:59:00 PM

DEPT: 42

JUDICIAL OFFICER PRESIDING: Henry Walsh

CLERK: H McIntyre

REPORTER/ERM:

CASE NO: **56-2020-00540781-CU-MC-VTA**

CASE TITLE: **Election Integrity Project California Inc vs. Lunn**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Ruling on Submitted Matter

APPEARANCES

The Court, having previously taken the September 14, 2020 petition for preliminary injunction under submission, now rules as follows:

This matter came before the court on plaintiffs' petition for a preliminary injunction to require defendants to implement certain procedures to augment their existing procedures allowing observers access to the counting of mail election ballots. Testimony was taken, exhibits received and the matter was argued by counsel. The court thereupon took the matter under submission and now rules on the issues presented to it.

Plaintiffs are a public interest group whose purpose is to insure the integrity of the process by which mailed election ballots are counted. They are afforded certain access to the counting process by the authority of the Elections Code, and contend in this litigation that Mark Lunn, the Ventura County Clerk and Registrar of Voters is not providing the statutorily required access. Defendant Lunn contends that he is providing sufficient access, and that plaintiffs are asking for concessions that plaintiffs, as observers, are not entitled to claim.

The Elections Code at section 15104 authorizes the presence of observers for the ballot counting process. The language of the statute states that the purpose of election observers is to watch over the process of vote counting, and challenge whether the election workers handling the vote by mail ballots are "...following established procedures..." To comply with this, Lunn has established certain protocols which include having observers stay in certain designated areas in the ballot counting area, prohibiting observers from communicating with election workers, and requiring that observers request permission to move from one designated area to another. Plaintiffs concede that these protocols allow them to observe, but not sufficiently so that they can lodge a challenge if they believe that an election worker has made an error in accepting a mail ballot.

The vote counting process begins with an election worker validating a ballot by comparing the voter signature on the envelope of the mailed in ballot with the signature of the voter on file with his her affidavit to register as a voter (which may have been on file for decades). If the signatures match, the envelope is opened, and the ballot is further processed for counting. If the election worker concludes that the signatures do not match, the envelope is put aside for further examination. Plaintiffs' witnesses,

who were acting as observers, have testified that the computer screens on which the signatures appear to the election worker (and which they were monitoring) were visible and the signatures recognizable, but were not sufficiently clear because of glare and/or the angle of viewing such that the observer could him/herself determine if there was a match. The observers further contend that their inability to move about more freely in the ballot counting area further restricted their ability to effectively compare signatures for purpose of lodging a challenge to the decision by the election worker.

This is perhaps the real issue of the case. That is, is the function of the observer limited to verifying that appropriate procedures for counting ballots are being observed, or does the observer function extend to one where they have standing to contest decisions by the election workers regarding the validity of individual ballots. Plaintiffs argue the latter, defendant contends the former.

A preliminary injunction shall issue when the party requesting it is likely to prevail on the merits, and that irreparable harm will result if the injunction is not granted (Code of Civil Procedure section 526).

Here the court concludes that the plaintiffs are not likely to prevail on the present state of the evidence. The court finds that the defendant's procedures in place are reasonable considering the need to effectively conduct the business of counting ballots and the restrictions imposed by the distancing requirements of the Covid pandemic. Mr. Lunn has installed Zoom technology to allow for off site monitoring, and is expanding that for the November election. More to the point, however, the court finds that the role of the observer is observation of the process, and does not extend to challenging the decisions of the election workers. Plaintiffs make no contention that the process they have observed is faulty. The court finds additionally that plaintiffs are not at risk for suffering irreparable harm. The existing procedures provide them with reasonable access to be able to accomplish their function. The additions to those procedures which will be in place by Election Day will add to their ability to access and observe the process.

The request for a Preliminary Injunction is denied

Dated: September 15, 2020

Henry J. Walsh
Judge of the Superior Court

CERTIFICATE OF COMPLIANCE

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.

Date: November 11, 2020

/s/ Mark A. Aronchick

Mark A. Aronchick

CERTIFICATE OF COMPLIANCE WITH RULE 2135

Pursuant to Pa. R. A. P. 2135, the text of this brief consists of 13,461 words as counted by the Microsoft Word word-processing program used to generate this brief.

Date: November 11, 2020

/s/ Mark A. Aronchick

Mark A. Aronchick

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Brief for Appellant upon counsel of record by electronic filing and by first class mail, postage prepaid.

/s/ Mark A. Aronchick
Mark A. Aronchick

November 11, 2020