

**IN THE SUPREME COURT OF PENNSYLVANIA**

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**No. 133 MM 2020**

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PENNSYLVANIA DEMOCRATIC PARTY *et al.*,

Petitioners,

v.

KATHY BOOCKVAR, IN HER OFFICIAL CAPACITY AS ACTING  
SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA *et al.*,

Respondents.

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**REPUBLICAN COMMITTEE RESPONDENTS' ANSWER TO  
SECRETARY BOOCKVAR'S APPLICATION FOR THE COURT TO  
EXERCISE EXTRAORDINARY JURISDICTION**

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Proposed Intervenor-Respondents Donald J. Trump for President, Inc. (“Trump Campaign”), the Republican Party of Pennsylvania, the Republican National Committee (“RNC”), and the National Republican Congressional Committee (collectively, the “Republican Committee Respondents”) support and seek to uphold free and fair elections on behalf of all Pennsylvanians.

For that reason, the Republican Committee Respondents oppose Secretary Boockvar’s Application for the Court to Exercise Extraordinary Jurisdiction (the “Application”). Despite acting primarily in a ministerial capacity, with no authority to intrude on the province of the General Assembly, the Secretary now has sided with the Democratic Party in seeking a judicial rewrite of the Election Code. The Secretary’s Application is nothing less than a transparent attempt to shop for a favorable forum to impose, by judicial fiat, her preferred new and wide-ranging election-administration regime on the Commonwealth, its citizens, and its voters. In the process, the Secretary invites the Court to undo the grand bipartisan compromise to promote free and fair elections that the General Assembly and the Governor crafted in last year’s historic Act 77.

The Secretary’s requested relief thus far exceeds this Court’s authority—and, in fact, would trigger invalidation of Pennsylvania’s *entire no-excuse mail-in voting scheme* under Act 77’s non-severability clause. The Court should deny the Application for that reason alone. Moreover, the Secretary’s request for relief at

odds with the Election Code’s plain language dramatically underscores that the Republican Committee Respondents should be permitted to intervene and to defend the multiple provisions of Act 77 that no party to the case is currently defending. Accordingly, in all events, the Republican Committees’ pending Application for Leave to Intervene should be granted.

## **BACKGROUND**

### **A. Act 77 And The Pennsylvania Election Code**

Act 77 embodied a grand bipartisan compromise to modernize Pennsylvania’s election system and to provide universal no-excuse mail-in voting. The Pennsylvania House of Representatives passed Act 77 on a bipartisan majority vote, 138-61. The Pennsylvania Senate passed Act 77 on a bipartisan majority vote, 35-14. Governor Wolf signed Act 77 into law on October 31, 2019. *See* Pennsylvania General Assembly, Senate Bill 421, Regular Session 2019-2020, [https://www.legis.state.pa.us/cfdocs/billinfo/bill\\_history.cfm?year=2019&sind=0&body=S&type=B&bn=421](https://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2019&sind=0&body=S&type=B&bn=421).

As amended by Act 77, the Election Code permits all Pennsylvania voters to vote absentee as “qualified absentee electors,” 25 P.S. § 3146.1, or by mail as “qualified mail-in electors,” 25 P.S. § 3150.11. Act 77 spells out several rules and requirements to vote by absentee or mail-in ballot. Four are principally relevant here.

*First*, Act 77 requires voters to return their absentee or mail-in ballots to the office of the county board of elections “by mail” or “in person.” Act 77 §§ 1306, 1306-D; 25 P.S. §§ 3146.16, 3150.16. Act 77 thus prohibits returning ballots to any location other than the office of the county board of elections.

*Second*, Act 77 directs that absentee and mail-in ballots “must be received in the office of the county board of elections no later than eight o’clock P.M. on the day of the primary or election,” Act 77 §§ 1306, 1306-D; 25 P.S. §§ 3146.16, 3150.16. This is the Election Day received-by deadline.

*Third*, Act 77 mandates that the “elector shall . . . fold the ballot” and “enclose and securely seal the same in the” secrecy envelope. Act 77 §§ 1306, 1306-D; 25 P.S. §§ 3146.16, 3150.16. The Election Code also directs election officials to “set aside and declare[] void” any ballot whose secrecy envelope contains “any text, mark, or symbol which reveals the identity of the elector, the elector’s political affiliation or the elector’s candidate preference.” 25 P.S. §§ 3146.8(g)(4)(ii). Act 77 and the Election Code therefore invalidate any absentee or mail-in ballot that lacks a secrecy envelope or whose secrecy envelope contains any marking that reveals the identity of the voter.

*Fourth*, Act 77 requires that the voter must “fill out” the declaration on the absentee or mail-in ballot outer envelope and return the ballot so that it is “received in the office of the county board of elections no later than eight o’clock P.M. on the

day of the primary or election.” Act 77 §§ 1306, 1306-D; 25 P.S. §§ 3146.16, 3150.16. Act 77 therefore does not permit voters to cure noncompliant ballots after Election Day.

Act 77 also contains a non-severability clause. In particular, Section 11 provides: “Sections 1, 2, 3, 3.2, 4, 5, 5.1, 6, 7, 8, 9 and 12 of this act are nonseverable. If any provision of this act or its application to any person or circumstances is held invalid, the remaining provisions or applications of this act are void.” Act 77, § 11. The four provisions outlined above are all covered by the non-severability clause: they appear in section 6 of Act 77 for absentee ballots and in section 8 of Act 77 for mail-in ballots. *See* Act 77 §§ 1306, 1306-D; 25 P.S. §§ 3146.16, 3150.16. In fact, Pennsylvania’s new universal mail-in voting scheme is contained in section 8 of Act 77. *See* Act 77 § 8. Accordingly, invalidation of any provision of Act 77 covered by the non-severability clause requires invalidation of the entire universal mail-in voting scheme. *See id.* § 11.

Act 77 directs that this Court has “exclusive jurisdiction to hear a challenge or to render a declaratory judgment concerning the constitutionality of” certain provisions of Act 77—including the provisions at issue in this suit—“within 180 days of the effective date” of the Act. *Id.* § 13. This Court already has held that the exclusive-jurisdiction provision does not apply to actions “filed outside the 180 day

time period from the date of enactment of’ Act 77. *Delisle v. Boockvar*, 95 MM 2020, 2020 WL 3053629, \*1 (Pa. May 29, 2020).

Act 77 did not amend every provision of the Election Code. Among the provisions that Act 77 did not amend is 25 P.S. § 2687(b), which requires that a poll watcher “must be a qualified registered elector of the county in which the election district for which the watcher was appointed is located.” This is the poll watcher residency requirement.

**B. *Trump for President, Inc. v. Boockvar*, No. 2:20-cv-966 (W.D. Pa.)**

On June 29, 2020, the Trump Campaign and the RNC, together with Congressmen Glenn Thompson, Mike Kelly, John Joyce, and Guy Reschenthaler, and registered voters Melanie Stringhill Patterson and Clayton David Show (collectively, the “Republican Plaintiffs”) commenced an action in the United States District Court for the Western District of Pennsylvania, under the caption *Donald J. Trump for President, Inc., et al. v. Kathy Boockvar, et al.*, No. 2:20-cv-966-NR (the “Federal Action”). The Republican Plaintiffs joined the Secretary and all 67 Boards of Elections as defendants.

The Republican Plaintiffs have asked the federal court for a faithful and constitutional construction of the Election Code. The Republican Plaintiffs therefore seek, *inter alia*, declarations that:

- a. the return of absentee and mail-in ballots to locations other than the offices of the county election boards violates Act 77;

- b. the counting of absentee or mail-in ballots that lacked the secrecy envelope or contain any other text, mark, or symbol which reveals the electors' identity violates Act 77; and
- c. the Election Code's residency requirement for poll watchers is unconstitutional.

*See* Federal Action Am. Compl. (Doc. 234) at 70–73 (Ex. A).

In light of the imminent 2020 general election, the Republican Plaintiffs sought expedited consideration of their claims. The Republican Plaintiffs specifically asked the federal court to resolve the Federal Action in time to “provide all parties sufficient time to implement any necessary changes and avoid confusion” ahead of the general election. Federal Action Doc. 6 ¶ 6 (Ex. B). The federal court granted expedited consideration. Fact discovery in the Federal Action will be completed by August 26, and a hearing on the merits is scheduled for September 22 and 23, 2020. *See* Federal Action Docs. 124 (Ex. C), 334 (Ex. D).

Petitioners in this action (collectively, “the Democratic Party”) moved to intervene in the Federal Action. *See* Federal Action Doc. 83 (Ex. E). The federal court granted that motion. *See* Federal Action Doc. 309 (Ex. F).

**C. *Pennsylvania Democratic Party v. Boockvar*, 407 MD 2020 (Pa. Commw. Ct.)**

The Democratic Party filed this suit on July 10, eleven days after the Republican Plaintiffs filed the Federal Action. The Democratic Party named as Respondents all the same sixty-eight parties (the Secretary of State and every Board of Elections) whom the Republican Committees named as defendants in the Federal

Action. *See* Pet. Among other relief, the Democratic Party seeks mirror-image declarations that run directly opposite of the relief that the Republican Plaintiffs seek in the Federal Action. For example, the Democratic Party seeks declarations permitting voters to return ballots to locations other than the offices of county boards of elections; permitting election officials to count ballots that lack a secrecy envelope; and upholding the poll watcher residency requirement. *See id.* The Democratic Party also seeks judicial declarations extending the received-by deadline and requiring Commonwealth election officials to extend certain voters an opportunity to cure noncompliance with absentee and mail-in ballot requirements. *See id.*

Even though the Federal Action is proceeding on an expedited schedule, the Democratic Party sought an expedited schedule in this case. *See* App. For Extraordinary Relief. The Commonwealth Court granted that application in part and denied it in part. *See* Order (July 30, 2020). The Commonwealth Court set an accelerated schedule to brief preliminary objections to the Petition. *See id.*

In her Application, the Secretary now reveals that she agrees with the Democratic Party's position with respect to returning ballots to locations other than the office of county boards of elections, counting ballots without secrecy envelopes, and the poll watcher residency requirement. *See* App. 23–26, 31–39. The Secretary also asks the Court to set aside the Election Day received-by deadline, although she

seeks a shorter extension of that deadline than the Democratic Party. *See id.* at 27–29. To her credit, the Secretary still opposes the Democratic Party’s request to create an extra-statutory notice-and-cure procedure for certain voters. *See id.* at 29–31.

### **STANDARD FOR THE EXERCISE OF JURISDICTION**

This Court may exercise extraordinary jurisdiction over a matter pending before any court in the Commonwealth “involving an issue of immediate public importance.” 42 Pa. C.S. § 726. The exercise of such jurisdiction “should be invoked sparingly.” *Washington Cty. Comm’rs v. Pa. Labor Relations Bd.*, 417 A.2d 164, 167 (1980); *Com. v. Morris*, 771 A.2d 721, 731 (Pa. 2001). Indeed, “the presence of an issue of immediate public importance is not alone sufficient to justify extraordinary relief.” *Washington Cty. Comm’rs*, 417 A.2d at 167; *Morris*, 771 A.2d at 731. The Court “will not invoke extraordinary jurisdiction unless the record clearly demonstrates a petitioner’s rights,” *Washington Cty. Comm’rs*, 417 A.2d at 167; *Morris*, 771 A.2d at 731, and “[e]ven a clear showing that a petitioner is aggrieved does not assure that this Court will exercise its discretion to grant the requested relief,” *Washington Cty. Comm’rs*, 417 A.2d at 167; *Phila. Newspapers, Inc. v. Jerome*, 387 A.2d 721, 731 (Pa. 2001). The Court may weigh “conserv[ing] judicial resources” and whether “a question is likely to recur” in deciding whether to exercise extraordinary jurisdiction. *Morris*, 771 A.2d at 731.

## ARGUMENT

The Secretary's Application is a transparent attempt to engage in forum shopping, to secure a judicial rewrite of the Election Code, and to undo the grand bipartisan compromise that the General Assembly and the Governor struck in Act 77. Indeed, the Secretary's requested relief exceeds the limits of this Court's authority, contravenes Act 77's valid and binding non-severability clause, and runs afoul of the U.S. Constitution. The Court should deny the Application.

### **I. THE COURT SHOULD DECLINE EXTRAORDINARY JURISDICTION**

The Secretary's Application fails at the threshold because the Secretary does not even invoke the proper standard for an exercise of this Court's extraordinary jurisdiction. The only factor that the Secretary points to is the purported "immediacy" of the questions presented, App. 16, but such immediacy "is not alone sufficient to justify extraordinary relief," *Morris*, 771 A.2d at 731. The Secretary advances no argument that "the record clearly demonstrates [her] rights." *Washington Cty. Comm'rs*, 417 A.2d at 167; *Morris*, 771 A.2d at 731. And she does not explain how judicial resources would be "conserve[d]" by an exercise of extraordinary jurisdiction or how the questions presented would be "likely to recur" once they are resolved for the first time. *Morris*, 771 A.2d at 731. The Secretary's failure even to engage, much less satisfy, the governing standard alone warrants

denial of the Application. *See Washington Cty. Comm'rs*, 417 A.2d at 167; *Morris*, 771 A.2d at 731.

Nor could the Secretary have satisfied the governing standard, had she tried. As explained below, the Secretary's construction of Act 77 and the Election Code is incorrect on four of the five provisions she addresses. *See infra* Part II. She therefore has no "clearly demonstrate[d]" right to relief with respect to any of those provisions. *Washington Cty. Comm'rs*, 417 A.2d at 167. And while the Secretary is correct that the Democratic Party has identified "no statutory or constitutional basis for requiring County Boards to contact voters whose ballots contain 'minor errors' and afford them an opportunity to cure," App. 29–31, she does not argue that this question *by itself* presents an issue of immediate public importance. And rightly so: the Democratic Party's position on that question is so far-fetched that it is unlikely to cause confusion. The issue can be addressed through ordinary appellate channels, and the exercise of extraordinary jurisdiction is therefore unwarranted. *See, e.g., In re Dauphin Cty. Fourth Investigating Grand Jury*, 943 A.2d 929, 936 (2007) (explaining that the Court will not "exercise extraordinary jurisdiction to consider ... challenges that are properly reviewable in the ordinary course").

Moreover, the Secretary's own arguments in support of extraordinary jurisdiction actually underscore that the Court should deny the Application. The Secretary's only argument on the lone factor she addresses is that the questions

presented are “immedia[te]” because the “compressed timeline” may not permit completion of full proceedings before the Commonwealth Court and an appeal to this Court by Election Day. App. 16–20. But the Secretary expresses no such timing concern with respect to the Federal Action, and makes no argument that a “final ruling” in that action will be delayed past Election Day. *See id.* Nor could she: the Republican Plaintiffs asked the federal court to resolve the Federal Action in time to “provide all parties sufficient time to implement any necessary changes and avoid confusion” ahead of the imminent 2020 general election. Federal Action Doc. 6 ¶ 6 (Ex. B). The federal court granted expedited consideration, and the Federal Action is well on its way to resolution. Discovery is proceeding; the case already is set for a hearing on the merits on September 22 and 23; and any appellate proceedings can be expedited. Thus, to the extent the common questions presented are “immedia[te],” they already will reach a “final ruling” in the Federal Action in advance of Election Day. App. 16–20.

The Secretary does not ask this Court to resolve the questions presented before the federal court will do so, or even propose a schedule for this Court to oversee any discovery, conduct pre-trial and trial proceedings, receive briefing, convene oral argument, and decide the questions presented. *See* App. 16–20. Rather, the Secretary’s only argument against allowing the federal court to adjudicate the questions presented in the Federal Action is her unsubstantiated assertion that the

federal court might adopt an “erroneous” construction of Act 77 and the Election Code. *Id.* at 17, 19. But the Secretary provides no basis to believe that the able federal court is incapable of faithful and accurate statutory construction. *See id.* The Secretary’s objection to litigating in federal court, therefore, is merely that the federal court might construe Act 77 and the Election Code in a manner that the Secretary disfavors. *See id.*

Thus, the Secretary’s own arguments make clear that the Application is nothing more than an effort to avoid the Federal Action and to secure what she believes to be a more favorable judicial forum to advance her preferred construction of Act 77 and the Election Code. But the Court’s extraordinary jurisdiction exists for the rare case of protecting clearly established rights on issues of immediate public importance, *see Washington Cty. Comm’rs*, 417 A.2d at 167, not to facilitate the Secretary’s forum shopping.

Furthermore, the Secretary advances no argument that an exercise of extraordinary jurisdiction will “conserve judicial resources.” *Morris*, 771 A.2d at 731. Nor would it do so. Even the Secretary acknowledges that this Court might have to “remand this matter to the Commonwealth Court” for discovery, pre-trial, and trial proceedings. App. 16. And while the Secretary has asked the federal court to abstain, *see id.* at 16–19, to date the federal court has declined to do so. The federal-law standard for abstention and the state-law standard for an exercise of

extraordinary jurisdiction are different, *see id.*, and neither this Court nor the Secretary can order the federal court to halt proceedings in the Federal Action. Thus, an exercise of extraordinary jurisdiction may simply result in *two* actions addressing the same questions presented on an expedited timeline. Such an outcome would exacerbate, not alleviate, the very challenges of “[m]ultiple competing lawsuits seeking contrary directives . . . during the last few months before election day” that the Secretary professes to seek to avoid. *Id.* at 16. Especially when the competing litigation was caused by the Democratic Party commencing this mirror-image action to forum shop away from the Federal Action, the Court should deny the Application.

## **II. THE COURT SHOULD DENY DECLARATORY RELIEF**

Even if the Court’s exercise of extraordinary jurisdiction were otherwise proper, it still should deny the Application because the Court may not grant the relief that the Secretary—or the Democratic Party—requests. The requested relief exceeds the Court’s remedial authority, contradicts the plain terms of Act 77 and the Election Code, and contravenes the U.S. Constitution.

### **A. State And Federal Law Prohibit This Court From Departing From Plain Statutory Text And Rewriting The Election Code**

1. This Court’s task in construing statutes is clear: to “ascertain and effectuate the intention of the General Assembly.” 1 Pa. C.S. § 1921(a). “The best indication of legislative intent is the language used in the statute.” *Office of Admin. v. Pa. Labor Relations Bd.*, 916 A.2d 541, 547–48 (Pa. 2007). Accordingly, “[w]hen

the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing the spirit.” 1 Pa. C.S. § 1921(b).

Moreover, this Court lacks the authority to rewrite the General Assembly’s enactments because the General Assembly—not the judiciary—holds the sole power to write the laws for the Commonwealth. As this Court recently reaffirmed, the judiciary “may not usurp the province of the legislature by rewriting [statutes] ... as that is not [the court’s] proper role under our constitutionally established tripartite form of governance.” *See In re: Fortieth Statewide Investigating Grand Jury*, No. 75, 77–82, 84, 86–87, 89 WM 2018, slip. op. at 12–13 (Pa. Dec. 3, 2018); *accord Heller v. Frankston*, 475 A.2d 1291 (Pa. 1984) (“Where a legislative scheme is determined to have run afoul of constitutional mandate, it is not the role of this Court to design an alternative scheme which may pass constitutional muster.”). Thus, the Court cannot take unilateral action to rewrite the law. *Robinson Twp. v. Commonwealth*, 147 A.3d 536, 583 (Pa. 2016); *Cali v. Phila.*, 177 A.2d 824, 835 (Pa. 1962). “[E]diting a statute” by the Court “would amount to judicial legislation.” *State Bd. of Chiropractic Exam’rs v. Life Fellowship of Pa.*, 272 A.2d 478, 482 (Pa. 1971).

The foundational rules of statutory construction and fundamental limitations on the Court’s authority apply with even greater force when the Election Code is at issue. “The power to regulate elections is a legislative one, and has been exercised

by the General Assembly since the foundation of the government.” *Winston v. Moore*, 91 A. 520, 522 (Pa. 1914) (citing *Patterson v. Barlow*, 60 Pa. 54 (1869); see also *Agre v. Wolf*, 284 F. Supp. 3d 591, 620 (E.D. Pa. 2018) (Smith, C.J.) (“The process for crafting procedural regulations is textually committed to state legislatures and to Congress.”).

The Pennsylvania Constitution is even more explicit regarding the separation of powers in the context of absentee voting. It provides:

The ***Legislature*** shall, by general law, provide a manner in which, and the time and place at which, 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, may vote, and for the return and canvass of their votes in the election district in which they respectively reside.

PA. CONST. art. VII, § 14(a) (emphasis added).

2. The requirements of deference to the General Assembly’s enactments—not the Secretary’s purported “interpretations” of them—and faithful adherence to the statutory text take on particular importance under Act 77. Act 77 contains a non-severability clause that covers all of Pennsylvania’s universal mail-

in voting scheme and every statutory provision implicated in this case other than the poll watcher residency requirement. *See* Act 77 § 11.

The Court has “assume[d] that, as a general matter, nonseverability provisions are constitutionally proper.” *Stilp v. Commonwealth*, 905 A.2d 918, 978 (Pa. 2006). And that is particularly true here for two reasons.

*First*, as this Court has recognized, non-severability provisions should be upheld when they legitimately arise from “the concerns and compromises which animate the legislative process.” *Id.* “In an instance involving such compromise, the General Assembly may determine, the court’s application of [ordinary severability principles] might undo the compromise; a nonseverability provision, in such an instance, may be essential to securing the support necessary to enact the legislation in the first place.” *Id.* That is the case here, since the non-severability clause was part and parcel of the grand bipartisan compromise embodied in Act 77.

*Second*, Act 77’s non-severability provision avoids the defect that the Court identified in *Stilp*. The defect in the provision the Court declined to enforce in *Stilp* was that it had been “employed as a sword against the Judiciary” and appeared “to be aimed at securing a coercive effect upon the Judiciary” (by threatening decreased judicial compensation) in violation of the separation of powers. 905 A.2d at 978–80. Such provisions are “ineffective and cannot be permitted to dictate [the Court’s] analysis.” *Id.* at 980.

Act 77’s non-severability provision is nothing of the sort. It was permissibly employed by the Legislature “as a shield to ensure preservation of a legislative scheme or compromise,” *id.* at 978, in an area “regarded as peculiarly within the province of the legislative branch of government,” *Winston*, 91 A. at 522. Not only is there no evidence or basis to believe that the non-severability provision in a law concerning election administration was intended to coerce the courts, but it is also clear that the provision was intended to preserve the compromise struck in Act 77.

Accordingly, Act 77’s non-severability clause is valid, enforceable, and binding on this Court. Accordingly, invalidation of any of the provisions of Act 77 covered by the non-severability clause—including any of the Act 77 provisions implicated in this case—requires invalidation of *all* covered provisions, including the entire universal mail-in voting scheme contained in section 8 of Act 77. *See* Act 77 § 11.

3. Finally, the U.S. Constitution also places crucial and inviolate prohibitions on judicial rewriting of the Election Code. The Elections Clause directs that “[t]he Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed by *the Legislature thereof*,” subject to directives of Congress. U.S. CONST. art. I, § 4, cl. 1 (emphasis added). Likewise, the Electors Clause directs that “[e]ach State shall appoint, in such Manner as *the Legislature*

*thereof* may direct,” electors for President and Vice President. U.S. CONST. art. II, § 1, cl. 2.

The Electors Clause in particular “convey[s] the broadest power of determination” and “leaves it to the legislature exclusively to define the method” of appointment of electors. *McPherson v. Blacker*, 146 U.S. 1, 27 (1892). “Thus, the text of the election law itself, and not just its interpretation by the courts of the States, takes on independent significance.” *Bush v. Gore*, 531 U.S. 98, 112–13 (2000) (Rehnquist, J., concurring). “A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question,” including when such departure is carried out by the state judiciary. *Id.* at 113. “[W]ith respect to a Presidential election,” state courts must be “mindful of the legislature’s role under Article II in choosing the manner of appointing electors.” *Id.* at 114. For this reason as well, the Court may not deviate from Act 77’s plain text or rewrite the Election Code.

**B. The Secretary’s And The Democratic Party’s Requested Relief Exceeds The Court’s Authority**

The Secretary and the Democratic Party ask the Court to rewrite three provisions of Act 77; the Democratic Party asks the Court to rewrite a fourth; and the Secretary and the Democratic Party ask the Court to uphold an unconstitutional provision of the Election Code. All of this requested relief exceeds the Court’s authority under state and federal law—and the requested changes to Act 77 would

trigger invalidation of Pennsylvania’s entire no-excuse mail-in voting regime under Act 77’s non-severability clause.

**1. Act 77 Prohibit County Boards From Designating Locations Other Than Their Offices For Delivery Of Ballots**

Act 77 requires voters to return their absentee or mail-in ballots to the office of the county board of elections “by mail” or “in person.” Act 77 §§ 1306, 1306-D; 25 P.S. §§ 3146.16, 3150.16. The Secretary and the Democratic Party nonetheless ask the Court to authorize voters to return their ballots to other locations, including unmanned drop-boxes. *See* App. 23–26; *see also* Pet. By invalidating a plain requirement of Act 77, however, this relief would trigger Act 77’s non-severability clause and invalidation of Pennsylvania’s entire universal mail-in voting scheme. *See* Act 77 § 11.

Moreover, the Secretary’s and the Democratic Party’s preferred scheme would permit individual counties to implement vastly different ballot-return regimes. *See, e.g.*, App. 23 (discussing ballot-return regimes in Delaware County, Montgomery County, and Philadelphia County). In fact, the Secretary’s and the Democratic Party’s requested remedy would permit *each* of Pennsylvania’s 67 counties to adopt its *own* ballot-return regime. An outcome permitting variation across counties would create disparities and potential confusion for voters and candidates participating in statewide elections or in elections in districts covering more than one county. And it would violate Equal Protection: “[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 (holding that standardless manual recount across counties violated Equal Protection); *see also Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (“[T]he right to 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.”). Accordingly, “[a] state must impose uniform statewide standards in each county in order to protect the legality of a citizen’s vote. Anything less implicates constitutional problems under the equal protection clause of the Fourteenth Amendment.” *Pierce v. Allegheny County Bd. of Elections*, 324 F. Supp. 2d 684, 697 (W.D. Pa. 2003). The Secretary’s and the Democratic Party’s requested relief fails.

## **2. Act 77 Creates The Valid And Binding Election Day Received-By Deadline**

Act 77 expressly requires that absentee and mail-in ballots “must be received in the office of the county board of elections no later than eight o’clock P.M. on the day of the primary or election.” Act 77 §§ 1306, 1306-D; 25 P.S. §§ 3146.16, 3150.16. Even the Secretary acknowledges this express requirement. *See* App. 27. The Secretary and the Democratic Party nonetheless both seek a judicial order that would craft a new Election Day postmark requirement and extend the received-by deadline, although they seek different extensions. *See id.* But neither the Secretary

nor the Democratic Party even mentions Act 77's non-severability clause, let alone explains how the relief they seek would not trigger that clause and invalidation of Pennsylvania's universal mail-in voting scheme. *See id.*; *see also* Pet.

The Secretary now suggests that enforcement of the received-by deadline violates the Free and Equal Elections Clause. *See* App. 27. Of course, the Secretary previously told the Court that the received-by deadline is constitutional under that Clause. *See* Resps.' Opp. To App. For Prelim. Inj. at 34–37, *Disability Rights Pa. v. Boockvar*, No. 83 MM 2020. The Secretary was right the first time, as the Court recognized on two occasions. *See* *Disability Rights Pa. v. Boockvar*, No. 83 MM 2020, 2020 WL 2507661 (Pa. May 15, 2020); *Delisle*, 2020 WL 3053629. After all, the received-by deadline is a neutral, evenhanded rule that applies to all Pennsylvania voters equally. It therefore is constitutional. *See, e.g., League of Women Voters v. Commonwealth*, 178 A.3d 737, 804 (Pa. 2018); *see also* *Rosario v. Rockefeller*, 410 U.S. 752 (1973). Indeed, neither the Secretary nor the Democratic Party has shown—or can show—that the Election Day received-by deadline is a “plain, palpable and clear abuse of the [legislative] power which actually infringes the rights of the electors.” *Patterson v. Barlow*, 60 Pa. 54, 75 (1869).

Moreover, the Secretary's contention that an extension of the received-by deadline is appropriate to address “the threat of mail-delivery delays during an ongoing pandemic,” Add. 28, contravenes not only this Court's decisions in

*Disability Rights* and *Delisle* but also decisions from courts around the country that have upheld Election Day received-by deadlines even during the COVID-19 pandemic. *See, e.g., Stapleton v. Thirteenth Judicial Dist. Ct.*, No. OP 20-0293, Order (Mont. May 27, 2020) (Ex. G); *Nielsen v. DeSantis*, No. 4:20-cv-236 (N.D. Fla. June 24, 2020) (Ex. H); *Thomas v. Andino*, No. 3:20-cv-01552-JMC, 2020 WL 2617329 (D.S.C. 2020). Of course, any “threat of mail-delivery delays during [the] ongoing pandemic,” Add. 28, is not unique to Pennsylvania. Yet the Secretary has not even cited, much less attempted to distinguish, this weight of authority. There is no basis to invalidate the received-by deadline, let alone the entire universal mail-in voting scheme.

### **3. Act 77 And The Election Code Invalidate Absentee And Mail-In Ballots That Lack A Secrecy Envelope**

Act 77 mandates that the “elector shall . . . fold the ballot” and “enclose and securely seal the same in the” secrecy envelope. Act 77 §§ 1306, 1306-D; 25 P.S. §§ 3146.16, 3150.16. The Election Code also directs election officials to “set aside and declare[] void” any ballot whose secrecy envelope contains “any text, mark, or symbol which reveals the identity of the elector, the elector’s political affiliation or the elector’s candidate preference.” 25 P.S. § 3146.8(g)(4)(ii).

The purpose of these provisions is to protect the secret ballot and “to prevent ballots from being identifiable.” *Appeal of Weiskerger*, 290 A.2d 108, 109 (Pa. 1972). Indeed, protecting the sanctity of a secret ballot requires ballots to be

invalidated whenever “the voter purposely marks a mark thereon or commits some other act in connection with his ballot to distinguish and identify it.” *Id.*

These provisions thus contemplate that an absentee or mail-in ballot is “invalid” whenever the envelope that contains it “reveals the identity of the elector.” 25 P.S. § 3146.8(g)(4)(ii). This occurs when a marking on the secrecy envelope reveals the identity of the elector. *Id.* It also occurs when a voter omits the secrecy envelope. In that scenario, the voter places the ballot in an outer envelope that contains identifying information—in particular, the completed declaration by which election officials confirm the voter’s identity and eligibility to vote. *See id.* § 3146.8(g)(3). Accordingly, absentee and mail-in ballots without a secrecy envelope also are “identifiable” and invalid. *Appeal of Weiskerger*, 290 A.2d at 109. Thus, *any* ballot contained in an envelope with markings that reveal the identity of the voter is invalid. *See* 25 P.S. § 3146.8(g); *Appeal of Weiskerger*, 290 A.2d at 109.

The Secretary makes four attempts to parse the statutory language toward a different outcome, all of which fail. *First*, the Secretary suggests that noncompliance with the secrecy envelope requirement does not “permit fraud.” App. 34. But as the Secretary acknowledges, this Court has recognized that the Commonwealth has a strong interest in preventing ballots from “being identifiable” to election officials or anyone else. *Id.* Indeed, advancing that interest promotes the integrity of, and public confidence in, the Commonwealth’s elections. The

Secretary, however, never addresses this interest, much less explains why the Court should undermine it by invalidating the secrecy envelope requirement.

*Second*, the Secretary suggests that the use of the word “shall” in the secrecy envelope provision of Act 77 is “merely directory.” App. 32. But noncompliance with procedures to safeguard the secret ballot is a far cry from “minor irregularities” like using the wrong color of ink or writing in a candidate whose name appears on the ballot. *Appeal of Weiskerger*, 290 A.2d at 109; *Shambach v. Bickhart*, 845 A.3d 793 (Pa. 2004); *see also* App. 31–35. The Secretary recognizes as much because she concedes that ballots in secrecy envelopes with markings that reveal the identity of the voter are invalid. *See id.* at 32–33.

*Third*, the Secretary argues that “[n]owhere does the Election Code provide that naked ballots or mail-in ballots without interior envelopes should not be counted.” App. 33. But the General Assembly’s clarification that absentee or mail-in ballots in *secrecy* envelopes that reveal the voter’s identity are invalid does not imply that absentee or mail-in ballots in *outer* envelopes that reveal the voter’s identity are valid. Rather, the statutory language makes clear that the General Assembly invalidated *any* ballot contained in an envelope that reveals the identity of the voter, regardless of whether that envelope is a secrecy envelope or an outer envelope. Indeed, the Secretary’s cramped reading of the statute would frustrate the

General Assembly's policy to protect the secret ballot. *See, e.g., Appeal of Weiskerger*, 290 A.2d at 109.

*Fourth*, the Secretary suggests that invalidating naked ballots would violate the constitutional guarantee of "free and equal elections." App. 34. The secrecy envelope requirement, however, is a neutral and evenhanded rule that applies to all Pennsylvania voters on equal terms. It therefore does not violate the Free and Equal Elections Clause. *See, e.g., League of Women Voters*, 178 A.3d at 804. And once again, neither the Secretary nor the Democratic Party have shown a "plain, palpable and clear abuse of the [legislative] power which actually infringes the rights of the electors." *Patterson*, 60 Pa. at 75. The Court should reject the Secretary's and the Democratic Party's proposed reading and uphold Act 77 in its entirety.

**4. The Democratic Party Provides No Basis For Requiring The Commonwealth To Provide A Cure Opportunity To Certain Voters**

The Secretary is entirely correct that "[t]he Democratic Party provides no statutory or constitutional basis for requiring County Boards to contact voters whose ballots contain 'minor errors' and afford them an opportunity to cure." App. 29. The only authority the Democratic Party cites for this novel requirement is Pennsylvania's Free and Equal Elections Clause. Pet. ¶ 185. But as this Court has long made clear, that provision does not imbue courts with freestanding authority to rewrite the Election Code to comport with a litigant's notion of good election policy.

Rather, “ballot and election laws have always been regarded as peculiarly within the province of the legislative branch of government.” *Winston*, 91 A. at 522. *Id.* If some restrictions are “onerous or burdensome, the Legislature may be appealed to for such relief, or for such amendments, as the people may think proper to amend.” *Id.*

Here, the legislative nature of the request at issue is readily apparent. Notifying voters of defective ballots and providing them with an opportunity to cure would be a monumental undertaking, particularly on the eve of an election. Outlining and implementing that requested relief statewide would require the expenditure of significant resources. As the Secretary again correctly notes, “[s]uch logistical policy decisions are more properly addressed by the legislature.” App. 30. That body, rather than this court, is the entity best suited to balance the Commonwealth’s interests and the likely fiscal and administrative burdens resulting from a policy such as that proposed by the Democratic Party.

The tardiness of the Democratic Party’s request, made in the “weeks” leading up to the imminent general election, alone is a sufficient basis to deny it. *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). In all events, the Democratic Party cannot show a “plain, palpable and clear abuse of the [legislative] power which actually infringes the rights of the electors.” *Patterson*, 60 Pa. at 75. To the contrary, the requirement that voters follow the appropriate procedures when filling out their ballots easily

passes muster. Those procedures treat all voters alike. *Winston*, 91 A. at 523. They deny no qualified electors the right to vote. *Id.* Each voter “has the right to cast his ballot and have it honestly counted” under the same standard. *Id.* And “the inconveniences if any bear upon all in the same way under similar circumstances.” *Id.*

Finally, once again, the Democratic Party’s requested relief would trigger invalidation of the entire universal mail-in voting scheme under Act 77’s non-severability clause. *See* Act 77 § 11. Requiring county officials to offer voters a chance to “cure,” though the UOCAVA period, defective ballots discovered “on, or after Election Day,” Pet. ¶187, would necessitate invalidation of the requirement in section 8 of Act 77 that the voter “fill out” the declaration on the outer envelope of the ballot in time for it to be “received in the office of the county board of elections no later than eight o’clock P.M. on the day of the primary or election,” Act 77 §§ 1306, 1306-D; 25 P.S. §§ 3146.16, 3150.16 (emphasis added). Any such invalidation, in turn, would trigger Act 77’s non-severability clause. *See* Act 77 § 11. And, in fact, under the Democratic Party’s requested approach, the completed ballot would not even be *cast*, let alone received, by the received-by deadline. The Court should deny this claim.

## 5. The Poll Watcher Residency Requirement Is Unconstitutional

Finally, the Court may not grant the Secretary's and the Democratic Party's request to uphold the poll watcher residency requirement, *see* App. 36, because that requirement is unconstitutional. The Secretary relies primarily on the U.S. District Court for the Eastern District of Pennsylvania's decision in *Republican Party of Pennsylvania v. Cortes*, 218 F. Supp. 3d 396 (E.D. Pa. 2016). *See* App. 38-39. That decision, however, is distinguishable, and the Secretary improperly dismisses the vital role of poll watchers in safeguarding all Pennsylvanians from election fraud or ballot tampering.

As an initial matter, *Cortes* was decided on a very different procedural posture and a limited record. In that case, the plaintiffs sought a preliminary injunction just eighteen days before the general election, and the requested relief, if granted, "would [have] alter[ed] Pennsylvania's laws just five days before the election." *Cortes*, 218 F. Supp. 3d at 405. Accordingly, "avoid[ing] last-minute intervention in a state's election process" served as the primary reason for why the court denied the requested relief, because the court found that "[a]ny intervention ... risks practical concerns including disruption, confusion or other unforeseen deleterious effects." *Id.* Thus, having found that the requested injunctive relief was untimely, any further ruling by the court in that case was dicta. *See, e.g., Kool, Mann, Coffee & Co. v. Coffey*, 300 F.3d 340, 355 (3d Cir. 2002) (having concluded notice was inadequate,

the court’s “comments about the merits of the case [were] simply precatory and [were] not necessary to the actual holding of the case”).

More fundamentally, that decision, like the Secretary here, gives short shrift to the Commonwealth’s obligation to safeguard the electorate from voter fraud. “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). This “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.” *Id.* 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)). Ultimately, “the deposit of forged ballots in the ballot boxes, no matter how small or great their number, dilutes the influence of honest votes in an election, and whether in greater or less degree is immaterial.” *Id.*; *see also Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (“[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.”).

Poll watchers help prevent such injury. Their “statutory role” in “[p]rotecting the purity of the electoral process” “promotes a free and fair election” and “serve[s] to guard the integrity of the vote.” *Tiryak v. Jordan*, 472 F. Supp. 822, 824 (E.D. Pa. 1979). In their absence, fraud can flourish—a fact demonstrated just months ago when a former election judge pled guilty to ringing up fraudulent votes in South Philadelphia. He was able to commit this crime, in part 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). And with Pennsylvania moving to an entirely new election regime under Act 77—with increased opportunities for ballot fraud and tampering—the need for poll watchers has never been more apparent.

Nevertheless, due to the distribution of voters throughout the Commonwealth, the county-residence requirement makes it difficult for both political parties to identify qualified poll watchers in all precincts. For example, in Philadelphia County, there exist 66 voting wards which are divided into 1,686 divisions. *See Political Maps*, Office of the Phila. City Commissioners (2020), <http://www.philadelphiavotes.com/en/resources-a-data/political-maps>. Republicans are not a majority of registered voters in any ward in Philadelphia County. *See Department Reports and Data*, “Historical Citywide Voter Registration Data,” Office of the Phila. City Commissioners (1940-2019),

[https://files7.philadelphiavotes.com/departments-reports/Historical\\_Registration\\_1940-2019G.pdf#\\_ga=2.206750996.604579856.1592778750-](https://files7.philadelphiavotes.com/departments-reports/Historical_Registration_1940-2019G.pdf#_ga=2.206750996.604579856.1592778750-1031414694.1591725640)

1031414694.1591725640. Conversely, in some contiguous geographic areas of the Commonwealth, such as in Fulton, Franklin, Bedford, Huntingdon and Perry counties, Republicans account for almost 70% of the voters. 2019 Voter Registration Statistics – Official, Pa. Dept. of State (Nov. 5, 2019), <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics/Documents/2019%20Election%20VR%20Stats%20%20final.pdf>.

Given these disparities, there is no rational basis for the Commonwealth to adhere to its county-residence rule. While the *Cortes* court claimed that rule was rationally related to Pennsylvania’s “county-by-county system of elections,” *Cortes*, 218 F. Supp. 3d at 409, the fact remains that the Election Code sets forth the uniform standards that *all sixty-seven Pennsylvania counties* must follow in order to conduct any election in this Commonwealth. Indeed, the Equal Protection Clause requires such uniformity. *See, e.g., Pierce*, 324 F. Supp. 2d at 697 (“A state must impose uniform statewide standards in each county to protect the legality of a citizen’s vote.”). Accordingly, the Commonwealth lacks a constitutionally recognized basis for imposing a county-residence restriction that effectively denies political parties, their candidates, and the voters an essential safeguard against voter fraud. The poll watcher residency requirement is unconstitutional.

### III. THE SECRETARY'S APPLICATION CONFIRMS THAT INTERVENTION SHOULD BE GRANTED

Finally, the Secretary's Application dramatically underscores that the Republican Committee Respondents should be granted intervention and party status in this case. At the time the Republican Committee Respondents sought leave to intervene, both they and the Secretary "putatively share[d] some of the same goal[s] in upholding Pennsylvania's election laws." Application For Leave To Intervene ¶ 29. The Secretary's Application has eradicated virtually all of the common ground with the Republican Committee Respondents. Instead, the Secretary has sided with the Democratic Party in seeking invalidation of three provisions of Act 77 and validation of the Election Code's unconstitutional poll watcher residency requirement. Accordingly, no party to this action is defending the three provisions of Act 77 that the Secretary and the Democratic Party now jointly attack or is challenging the unconstitutional poll watcher residency requirement that the Secretary and the Democratic Party now jointly defend. In other words, no party is representing the Republican Committees' interests.

"The right to intervention should be accorded to anyone having an interest of his own to which no other party on the record is interested in protecting." *Keener v. Zoning Hearing Bd.*, 714 A.2d 1120, 1123 (Pa. Commw. 1998) (citing *Bily v. Allegheny County Bd. of Property Assessment, Appeals & Review*, 44 A.2d 250 (1945)); *see also* Pa. R.C.P. No. 2329(2) (providing that if the allegations in the

petition to intervene “have been established and are found to be sufficient,” the court “*shall* enter an order allowing intervention” unless, *inter alia*, “the interest of the petitioner is already adequately represented” (emphasis added)).

Of critical importance—and what was not clear until the Secretary filed the Application—was the Secretary joining in the Democratic Party’s request for relief. This, despite the Secretary acting primarily in a ministerial capacity under the Election Code, with no power or authority to intrude upon the province of the General Assembly. *See* 25 P.S. § 2621; *Perzel v. Cortes*, 870 A.2d 759, 764 (Pa. 2005); *Hamilton v. Johnson*, 141 A. 846, 847 (Pa. 1928). But the Secretary, in her official capacity, has abandoned her duty to follow and uphold the mandatory, non-discretionary language of Act 77 and the Election Code. Insofar as the Secretary has no discretion on this matter—and thus should be afforded no deference in her “interpretation” of the perfectly clear statutory requirements—her abandonment of her duties by joining in the Democratic Party’s requested relief cries out for a court to allow another, interested party to defend the Election Code.<sup>1</sup> The Republican Committee Respondents’ Application for Leave to Intervene should be granted.

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<sup>1</sup> Regrettably, this is not the only instance of the Secretary attempting to invoke discretion she does not have to join in requests for relief not authorized by the Election Code. *See, e.g.*, App. at 10–11 (the Secretary admitting that she originally filed preliminary objections in *Crossey v. Boockvar*, 108 MM 2020, only to abandon two of those objections and join the petitioners’ request to extend the received-by deadline). The Secretary also has produced in discovery in the Federal Action a Pennsylvania Absentee and Mail-in Ballot Return Guidance that purports

## CONCLUSION

The Court should deny the Secretary's Application For The Court To Exercise Extraordinary Jurisdiction.

Dated: August 20, 2020

Respectfully submitted,

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*\*Pro hac vice application forthcoming*

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to authorize use of "Ballot Return Sites" other than the office of the county board of elections. See Ex. I.

**CERTIFICATION OF WORD COUNT**

Pursuant to Rule 2135 of the Pennsylvania Rules of Appellate Procedure, I certify that this Brief contains 7,904 words, exclusive of the supplementary matter as defined by Pa.R.A.P. 2135(b).

*/s/ Kathleen A. Gallagher*  
\_\_\_\_\_  
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Republican Congressional Committee*

## **CERTIFICATE OF COMPLIANCE**

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

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# **EXHIBIT A**

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

DONALD J. TRUMP FOR PRESIDENT, ) CIVIL ACTION  
INC.; GLENN THOMPSON; MIKE KELLY; )  
JOHN JOYCE; GUY RESCHENTHALER; )  
REPUBLICAN NATIONAL COMMITTEE; )  
MELANIE STRINGHILL PATTERSON; and )  
CLAYTON DAVID SHOW, )

Plaintiffs, )

v. ) No. 2:20-CV-966

KATHY BOOCKVAR, in her capacity as )  
Secretary of the Commonwealth of )  
Pennsylvania; ADAMS COUNTY BOARD )  
OF ELECTIONS; ALLEGHENY COUNTY )  
BOARD OF ELECTIONS; ARMSTRONG )  
COUNTY BOARD OF ELECTIONS; )  
BEAVER COUNTY BOARD OF )  
ELECTIONS; BEDFORD COUNTY BOARD )  
OF ELECTIONS; BERKS COUNTY BOARD )  
OF ELECTIONS; BLAIR COUNTY BOARD )  
OF ELECTIONS; BRADFORD COUNTY )  
BOARD OF ELECTIONS; BUCKS COUNTY )  
BOARD OF ELECTIONS; BUTLER )  
COUNTY BOARD OF ELECTIONS; )  
CAMBRIA COUNTY BOARD OF )  
ELECTIONS; CAMERON COUNTY )  
BOARD OF ELECTIONS; CARBON )  
COUNTY BOARD OF ELECTIONS; )  
CENTRE COUNTY BOARD OF )  
ELECTIONS; CHESTER COUNTY BOARD )  
OF ELECTIONS; CLARION COUNTY )  
BOARD OF ELECTIONS; CLEARFIELD )  
COUNTY BOARD OF ELECTIONS; )  
CLINTON COUNTY BOARD OF )  
ELECTIONS; COLUMBIA COUNTY )  
BOARD OF ELECTIONS; CRAWFORD )  
COUNTY BOARD OF ELECTIONS; )  
CUMBERLAND COUNTY BOARD OF )  
ELECTIONS; DAUPHIN COUNTY BOARD )  
OF ELECTIONS; DELAWARE COUNTY )  
BOARD OF ELECTIONS; ELK COUNTY )  
BOARD OF ELECTIONS; ERIE COUNTY )

BOARD OF ELECTIONS; FAYETTE )  
 COUNTY BOARD OF ELECTIONS; )  
 FOREST COUNTY BOARD OF )  
 ELECTIONS; FRANKLIN COUNTY )  
 BOARD OF ELECTIONS; FULTON )  
 COUNTY BOARD OF ELECTIONS; )  
 GREENE COUNTY BOARD OF )  
 ELECTIONS; HUNTINGDON COUNTY )  
 BOARD OF ELECTIONS; INDIANA )  
 COUNTY BOARD OF ELECTIONS; )  
 JEFFERSON COUNTY BOARD OF )  
 ELECTIONS; JUNIATA COUNTY BOARD )  
 OF ELECTIONS; LACKAWANNA )  
 COUNTY BOARD OF ELECTIONS; )  
 LANCASTER COUNTY BOARD OF )  
 ELECTIONS; LAWRENCE COUNTY )  
 BOARD OF ELECTIONS; LEBANON )  
 COUNTY BOARD OF ELECTIONS; )  
 LEHIGH COUNTY BOARD OF )  
 ELECTIONS; LUZERNE COUNTY BOARD )  
 OF ELECTIONS; LYCOMING COUNTY )  
 BOARD OF ELECTIONS; MCKEAN )  
 COUNTY BOARD OF ELECTIONS; )  
 MERCER COUNTY BOARD OF )  
 ELECTIONS; MIFFLIN COUNTY BOARD )  
 OF ELECTIONS; MONROE COUNTY )  
 BOARD OF ELECTIONS; MONTGOMERY )  
 COUNTY BOARD OF ELECTIONS; )  
 MONTOUR COUNTY BOARD OF )  
 ELECTIONS; NORTHAMPTON COUNTY )  
 BOARD OF ELECTIONS; )  
 NORTHUMBERLAND COUNTY BOARD )  
 OF ELECTIONS; PERRY COUNTY BOARD )  
 OF ELECTIONS; PHILADELPHIA )  
 COUNTY BOARD OF ELECTIONS; PIKE )  
 COUNTY BOARD OF ELECTIONS; )  
 POTTER COUNTY BOARD OF )  
 ELECTIONS; SCHUYLKILL COUNTY )  
 BOARD OF ELECTIONS; SNYDER )  
 COUNTY BOARD OF ELECTIONS; )  
 SOMERSET COUNTY BOARD OF )  
 ELECTIONS; SULLIVAN COUNTY )  
 BOARD OF ELECTIONS; SUSQUEHANNA )  
 COUNTY BOARD OF ELECTIONS; TIOGA )  
 COUNTY BOARD OF ELECTIONS; UNION )  
 COUNTY BOARD OF ELECTIONS; )

VENANGO COUNTY BOARD OF )  
 ELECTIONS; WARREN COUNTY BOARD )  
 OF ELECTIONS; WASHINGTON COUNTY )  
 BOARD OF ELECTIONS; WAYNE )  
 COUNTY BOARD OF ELECTIONS; )  
 WESTMORELAND COUNTY BOARD OF )  
 ELECTIONS; WYOMING COUNTY )  
 BOARD OF ELECTIONS; and YORK )  
 COUNTY BOARD OF ELECTIONS, )  
 )  
 Defendants. )

**VERIFIED AMENDED COMPLAINT  
 FOR DECLARATORY AND INJUNCTIVE RELIEF**

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

**INTRODUCTION**

1. Free and fair elections are essential to the right of Americans to choose through their vote whom they elect to represent them. Upending our entire election process and undermining ballot security through inconsistently-enforced regulations of by-mail voting, including through the use of unauthorized, unmonitored, and/or unsecured drop-boxes, is the single greatest threat to free and fair elections. To be free and fair, elections must be transparent, verifiable, and conducted uniformly in compliance with the rules and requirements set out by the legislature. Yet, Defendants have inexplicably chosen a path that jeopardizes election security and will lead - and has already led - to the disenfranchisement of voters, questions about the accuracy of election results, and ultimately chaos heading into the upcoming November 3, 2020 General Election. This is all a direct result of Defendants' hazardous, hurried, and illegal implementation of unmonitored mail-in voting which provides fraudsters an easy opportunity to engage in ballot harvesting, manipulate or destroy ballots, manufacture duplicitous votes, and sow chaos. Contrary to the direction of Pennsylvania's General Assembly which has authorized only monitored and secured mail-in voting, Defendants have sacrificed the sanctity of in-person voting at the altar of

unmonitored and unsecured mail-in voting and have exponentially enhanced the threat that fraudulent or otherwise ineligible ballots will be cast and counted in the upcoming General Election.

2. All of this was on full display in Pennsylvania's June 2, 2020 Primary Election. That election proved that Defendants are unwilling to properly administer the Pennsylvania General Assembly's new mail-in voting law, Act 77, that made significant changes to Pennsylvania's elections, and instead have opted to promote unlimited use of unmonitored mail-in voting. Defendants' failure is the direct result of their election administration decisions, many of which exceed the legal power or authority of the decision makers. For example, despite the Pennsylvania General Assembly's clear and unambiguous mandate that absentee and mail-in<sup>1</sup> ballots by non-disabled electors are to be mailed or personally delivered to the county boards of elections, approximately twenty (20) counties in this Commonwealth, with the knowledge, consent and/or approval of the Secretary of the Commonwealth, allowed absentee and mail-in ballots to be returned to polling places and other locations, such as shopping centers, parking lots, fairgrounds, parks, retirement homes, college campuses, fire halls, municipal government buildings, and elected officials' offices. Also, the Governor of the Commonwealth issued an Executive Order

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<sup>1</sup> Article VII, Section 14 of the Constitution of the Commonwealth of Pennsylvania provides that absentee voting shall be permitted 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](#). Act 77 (as hereinafter defined, and codified, in part, at [25 P.S. § 2602](#)) makes a distinction between a "qualified mail-in elector" and a "qualified absentee elector." See [25 P.S. § 2602\(w\) & \(z.6\)](#). In general use, however, the terms "mail-in" and "absentee" are used interchangeably to discuss the use of the United States Postal Service to deliver ballots to and from electors. For the purposes of this complaint, the terms "mail-in" and "absentee" refer to the general usage unless the specific is indicated.

the *day before* the June 2, 2020 Primary Election changing the rules of mail-in balloting, but only for some counties and not all. Further, Allegheny County not only issued duplicate mail-in and absentee ballots to voters because of a glitch in the state’s Statewide Uniform Registry of Electors (SURE) system, but also instituted severe polling place consolidations that caused long lines and confusion among voters, candidates, and political parties. Moreover, Philadelphia County could not sustain its vote counting process and, without warning, stopped counting ballots on June 4, 2020, and then, without formal notice, started counting again on June 9, 2020.

3. Defendants, through their haphazard administration of Act 77, have burdened voters, candidates, and political committees with the arbitrary and illegal preclusion of poll watchers from being present in all locations where votes are being cast because (a) the locations where mail-in or absentee ballots are being returned do not constitute a “polling place” within the meaning of Sections 102(q) and 417(b) of the Pennsylvania Election Code, Act of June 3, 1937, P.L. 1333, as amended (“Election Code”), [25 P.S. §§ 2602\(q\)](#) and [2687\(b\)](#); and (b) the poll watchers may only serve in the county of their residence under Election Code Section 417(b), [25 P.S. § 2687\(b\)](#). The result is that a significant portion of votes for elections in Pennsylvania are being cast in a fashion that denies any procedural visibility to candidates, political parties, and the public in general, thereby jeopardizing the free and fair public elections guaranteed by the United States and Pennsylvania Constitutions. The most recent election conducted in this Commonwealth and the public reaction to it demonstrate the harm caused by Defendants’ unconstitutional infringements of Plaintiffs’ rights. The continued enforcement of arbitrary and disparate policies and procedures regarding poll watcher access and ballot return and counting poses a severe threat to the credibility and integrity of, and public confidence in, Pennsylvania’s elections.

4. 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. An individual's right to vote is infringed if his or her vote is cancelled or diluted by a fraudulent or illegal vote, including without limitation when a single person votes multiple times. The United States Supreme Court 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)*.

5. Accordingly, along with equitable and other relief, Plaintiffs seek an order, declaration, and/or injunction that prohibits Defendants from permitting the return of absentee and mail-in ballots to locations other than to the respective offices of the county boards of elections as prescribed by the Pennsylvania Election Code, particularly with regard to mobile ballot collection centers and other inadequately noticed and unmonitored ad hoc drop boxes. Further, Plaintiffs seek an order, declaration, and/or injunction that bars county election boards from counting absentee and mail-in ballots that lack a 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. Additionally, Plaintiffs seek an order, declaration, and/or injunction that requires county election boards to verify the identification and qualification for each applicant of an absentee or mail-in ballot, and to properly enforce which voters can and cannot vote on Election Day at the polling place after having applied for and either voted or not voted their absentee or mail-in ballots. Finally, Plaintiffs seek an order,

declaration, and/or injunction that permits poll watchers, regardless of their county of residence, to be present in all locations where votes are cast or counted, including without limitation all locations where absentee or mail-in ballots are being returned.

### **JURISDICTION AND VENUE**

6. 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. Also, this Court has supplemental jurisdiction over any state law claims under [28 U.S.C. § 1367](#).

7. Venue is proper because a substantial part of the events giving rise to the claims occurred in this District, and several 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](#).

### **PARTIES**

8. 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 presumptive Republican nominee for the office of the President of the United States of America in the upcoming November 3, 2020 General Election. The Trump Campaign brings this action for itself and on behalf of its candidate, President Trump. President Trump is a “candidate” as that term is defined in Election Code Section 102(a), [25 P.S. §§ 2602\(a\)](#). See [Rowland v. Smith, 83 Pa. D. & C. 99, 101-2 \(Pa. Ct. Com. Pl. Dauphin 1952\)](#) (“candidate” under the Election Code includes one who is a candidate for nomination for President of the United States). 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 (5<sup>th</sup> Cir. 2006) (“after the primary election, a candidate steps into the shoes of his party, and their interests are identical.”).

9. Plaintiff Glenn Thompson (hereinafter, “Representative Thompson”) is an adult individual who is a qualified registered elector residing in Centre County, a member of the Republican Party, and the United States Representative for the 15th Congressional District of Pennsylvania. Representative Thompson is currently running for reelection in the 15th Congressional District which includes all of Warren, McKean, Forest, Venango, Elk, Cameron, Clarion, Jefferson, Armstrong, Clearfield, and Indiana counties, most of Cambria and Centre counties, and part of Butler County. Representative Thompson constitutes both a “candidate” and a “qualified elector” as those terms are defined in Election Code Section 102(a) and (t), 25 P.S. § 2602(a) & (t). Representative Thompson brings this suit in his capacity as a candidate for federal office and a private citizen. As a candidate and voter, Representative Thompson has Article III standing to bring this action. See Orloski, 564 F. Supp. at 530; Pierce v. Allegheny County Bd. of Elections, 324 F. Supp. 2d 684, 692-93 (W.D. Pa. 2003).

10. Plaintiff Mike Kelly (hereinafter, “Representative Kelly”) is an adult individual who is a qualified registered elector residing in Butler County, a member of the Republican Party, and the United States Representative for the 16th Congressional District of Pennsylvania. Representative Kelly is currently running for reelection in the 16th Congressional District which includes all of Erie, Crawford, Mercer, and Lawrence counties, as well as part of Butler County. Representative Kelly constitutes both a “candidate” and a “qualified elector” as those terms are defined in Election Code Section 102(a) and (t), 25 P.S. § 2602(a) & (t). Representative Kelly brings this suit in his capacity as a candidate for federal office and a private citizen. As a candidate

and voter, Representative Kelly has Article III standing to bring this action. See [Orloski, 564 F. Supp. at 530; Pierce, 324 F. Supp. 2d at 692-93.](#)

11. Plaintiff John Joyce (hereinafter, “Representative Joyce”) is an adult individual who is a qualified registered elector residing in Blair County, a member of the Republican Party, and the United States Representative for the 13th Congressional District of Pennsylvania. Representative Joyce is currently running for reelection in the 13th Congressional District which includes all of Blair, Huntingdon, Bedford, Fulton, Franklin, and Adams counties, most of Somerset County, and parts of Westmoreland, Cambria, and Cumberland counties. Representative Joyce constitutes both a “candidate” and a “qualified elector” as those terms are defined in Election Code Section 102(a) and (t), [25 P.S. § 2602\(a\) & \(t\)](#). Representative Joyce brings this suit in his capacity as a candidate for federal office and a private citizen. As a candidate and voter, Representative Joyce has Article III standing to bring this action. See [Orloski, 564 F. Supp. at 530; Pierce, 324 F. Supp. 2d at 692-93.](#)

12. Plaintiff Guy Reschenthaler (hereinafter, “Representative Reschenthaler”) is an adult individual who is a qualified registered elector residing in Washington County, a member of the Republican Party, and the United States Representative for the 14th Congressional District of Pennsylvania. Representative Reschenthaler is currently running for reelection in the 14th Congressional District which includes all of Fayette, Greene, and Washington counties, as well as the western part of Westmoreland County. Representative Reschenthaler constitutes both a “candidate” and a “qualified elector” as those terms are defined in Election Code Section 102(a) and (t), [25 P.S. § 2602\(a\) & \(t\)](#). Representative Reschenthaler brings this suit in his capacity as a candidate for federal office and a private citizen. As a candidate and voter, Representative

Reschenthaler has Article III standing to bring this action. See [Orloski, 564 F. Supp. at 530; Pierce, 324 F. Supp. 2d at 692-93.](#)

13. Plaintiff Republican National Committee (hereinafter, the “RNC”) is a national political committee that leads the Republican Party of the United States (hereinafter, the “Republican Party”). The RNC works to elect Republican candidates to state and federal offices throughout the United States, including in the Commonwealth of Pennsylvania, and it organizes and operates the Republican National Convention through which its members nominate their candidates for President and Vice President of the United States. The Republican Party includes over thirty million (30,000,000) registered Republicans in all fifty (50) states, the District of Columbia, and the U.S. territories, and constitutes a “political party” as that term is defined in Election Code Section 801, [25 P.S. § 2831](#). The RNC brings this action for itself, the Republican Party, all of its members, all registered Republican voters, and all nominated Republican candidates in the November 3, 2020 General Election in the Commonwealth of Pennsylvania. As a political committee, the RNC has Article III standing to bring this action. See, e.g., [Sandusky County Democratic Party v. Blackwell, 387 F.3d 565, 573-74 \(6<sup>th</sup> Cir. 2004\)](#); [Pa. Democratic Party v. Republican Party of Pa., 2016 U.S. Dist. LEXIS 153944, at \\*8-9 \(E.D. Pa. Nov. 7, 2016\)](#); [Democratic Exec. Comm. v. Detzner, 347 F. Supp. 3d 1017, 1025 \(N.D. Fl. 2018\)](#); [Orloski, 564 F. Supp. at 530-31.](#)

14. Plaintiff Melanie Stringhill Patterson (hereinafter, “Ms. Patterson”) is an adult individual who is a qualified registered elector residing in Belle Vernon, Fayette County, Pennsylvania. Ms. Patterson resides in the 14<sup>th</sup> Congressional District and desires to engage in poll watching for the re-election campaigns of both President Trump and Representative Reschenthaler in counties other than Fayette County. Ms. Patterson constitutes a “qualified

elector” as that term is defined in Election Code Section 102(t), [25 P.S. § 2602\(t\)](#). Ms. Patterson brings this suit in her capacity as a private citizen. As a qualified elector and registered voter, Ms. Patterson has Article III standing to bring this action. See [Orloski, 564 F. Supp. at 530](#); [Pierce, 324 F. Supp. 2d at 692-93](#).

15. Plaintiff Clayton David Show (hereinafter, “Mr. Show”) is an adult individual who is a qualified registered elector residing in Hopwood, Fayette County, Pennsylvania. Mr. Show resides in the 14<sup>th</sup> Congressional District and desires to engage in poll watching for the re-election campaigns of both President Trump and Representative Reschenthaler in counties other than Fayette County. Mr. Show constitutes a “qualified elector” as that term is defined in Election Code Section 102(t), [25 P.S. § 2602\(t\)](#). Mr. Show brings this suit in his capacity as a private citizen. As a qualified elector and registered voter, Mr. Show has Article III standing to bring this action. See [Orloski, 564 F. Supp. at 530](#); [Pierce, 324 F. Supp. 2d at 692-93](#).

16. Defendant Kathy Boockvar (hereinafter, “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.

17. Defendants Adams County Board of Elections, Allegheny County Board of Elections, Armstrong County Board of Elections, Beaver County Board of Elections, Bedford

County Board of Elections, Berks County Board of Elections, Blair County Board of Elections, Bradford County Board of Elections, Bucks County Board of Elections, Butler County Board of Elections, Cambria County Board of Elections, Cameron County Board of Elections, Carbon County Board of Elections, Centre County Board of Elections, Chester County Board of Elections, Clarion County Board of Elections, Clearfield County Board of Elections, Clinton County Board of Elections, Columbia County Board of Elections, Crawford County Board of Elections, Cumberland County Board of Elections, Dauphin County Board of Elections, Delaware County Board of Elections, Elk County Board of Elections, Erie County Board of Elections, Fayette County Board of Elections, Forest County Board of Elections, Franklin County Board of Elections, Fulton County Board of Elections, Greene County Board of Elections, Huntingdon County Board of Elections, Indiana County Board of Elections, Jefferson County Board of Elections, Juniata County Board of Elections, Lackawanna County Board of Elections, Lancaster County Board of Elections, Lawrence County Board of Elections, Lebanon County Board of Elections, Lehigh County Board of Elections, Luzerne County Board of Elections, Lycoming County Board of Elections, McKean County Board of Elections, Mercer County Board of Elections, Mifflin County Board of Elections, Monroe County Board of Elections, Montgomery County Board of Elections, Montour County Board of Elections, Northampton County Board of Elections, Northumberland County Board of Elections, Perry County Board of Elections, Philadelphia County Board of Elections, Pike County Board of Elections, Potter County Board of Elections, Schuylkill County Board of Elections, Snyder County Board of Elections, Somerset County Board of Elections, Sullivan County Board of Elections, Susquehanna County Board of Elections, Tioga County Board of Elections, Union County Board of Elections, Venango County Board of Elections, Warren County Board of Elections, Washington County Board of Elections, Wayne County Board of

Elections, Westmoreland County Board of Elections, Wyoming County Board of Elections, and York County Board of Elections (collectively hereinafter, the “County Election Boards”), are the county boards of elections in and for each county 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.**

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

19. The most fundamental principle defining credible elections in a democracy is that they must reflect the free expression of the will of the people.

**A. *The Right to Vote in Federal Elections.***

20. 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 the [\*Slaughter-House Cases\*, 83 U.S. 36 \(1873\)](#), the United States Supreme Court has held that the Privileges and 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).

21. 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](#).

22. “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)).

23. “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).

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

25. “The deposit of forged ballots in the ballot boxes, no matter how small or great their number, dilutes the influence of honest votes in an election, and whether in greater or less degree is immaterial. 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)).

26. Practices that promote fraud or 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.”).

**B. *The Equal Protection Clause of the Fourteenth Amendment.***

27. “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, 104-5 (2000). *See also* [Harper](#), 383 U.S. at 665 (“Once the franchise is granted, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.”).

28. The Equal Protection Clause of the Fourteenth Amendment proscribes that “one person’s vote must be counted equally with those of all other voters in a State.” [Reynolds, 377 U.S. at 560](#). In other words, “whenever a state or local government decides to select persons by popular election to perform governmental functions, [equal protection] requires that each qualified voter must be given an equal opportunity to participate in that election ... .” [Hadley, v. Junior College District, 397 U.S. 50, 56 \(1968\)](#).

29. Accordingly, 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](#)); *see also* [Dunn v. Blumstein, 405 U.S. 330, 336 \(1972\)](#) (“[A] citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.”); [Gray, 372 U.S. at 380](#) (“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.”).

30. “[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](#).

31. 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.](#)

32. Allowing a patchwork of different rules from county to county in a statewide election involving federal and state candidates implicates equal protection concerns. [Pierce](#), 324 F. Supp. 2d at 698-699. See also [Gray](#), 372 U.S. at 379-381 (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).

**C. Constitutional Commitment of Federal Election Regulation to the State Legislature.**

33. 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, 522-523 (2001); [U.S. Term Limits, Inc. v. Thornton](#), 514 U.S. 779, 805 (1995)).

34. 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).

35. The Legislature is “the representative body which ma[kes] the laws of the people.” [Smiley v. Holm](#), 285 U.S. 355, 365 (1932). 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).

36. 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.”)

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

38. 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](#).

39. “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. Pennsylvania Constitutional Protections for Free and Fair Public Elections.**

40. The Pennsylvania Constitution also bestows the right to vote upon qualified citizens and guarantees them equal protection in the enjoyment of that right. See [Pa. Const. art. VII, § 1§](#) & [art. I, § 28](#).

41. Further, Article I, Section 5 of the Pennsylvania Constitution, entitled “Elections” and commonly referred to as the “Free and Equal Elections Clause,” provides:

Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

[Pa. Const. art. I, § 5.](#)

42. The Free and Equal Elections Clause “is contained within the Pennsylvania Constitution’s ‘Declaration of Rights,’ which ... is an enumeration of the fundamental individual human rights possessed by the people of the Commonwealth that are specifically exempted from the powers of the Commonwealth government to diminish.” [League of Women Voters v. Commonwealth, 178 A.3d 737, 803 \(Pa. 2018\).](#)

43. “[E]lections are free and equal within the meaning of the [Pennsylvania] Constitution when they are public and open to all qualified electors alike; when every voter has the same right as every other voter; **when each voter under the law has the right to cast his ballot and have it honestly counted**; when the regulation of the right to exercise the franchise does not deny the franchise itself, or make it so difficult as to amount to a denial; and when no constitutional right of the qualified elector is subverted or denied him.” [Winston, 91 A. at 523](#) (emphasis added).

44. *Winston*’s mandate set forth in the preceding paragraph represents “the minimum requirements for ‘free and fair’ elections” in this Commonwealth. [League of Women Voters, 178 A.3d at 810.](#)

45. The rights protected by the Free and Equal Elections Clause of the Pennsylvania Constitution, including without limitation the right to free and fair public elections, may not be taken away by an act of the Commonwealth’s legislative or executive branches, and both branches are prohibited by this clause from interfering with the exercise of those rights, even if the interference occurs by inadvertence. [League of Women Voters, 178 A.3d at 810.](#)

46. The rights protected by the Free and Equal Elections Clause of the Pennsylvania Constitution, including without limitation the right to free and fair public elections, apply to the election of both federal and state candidates. [League of Women Voters, 178 A.3d at 811.](#)

**III. Poll Watching Ensures Free and Fair Public Elections.**

47. The Pennsylvania Constitution gives the Commonwealth's General Assembly the authority to enact legislation governing the conduct of elections. See [Pa. Const. art. VII, § 6; Winston, 91 A. at 522.](#)

48. “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, 490-493 \(Pa. 2006\)](#)).

49. Elections in Pennsylvania are governed and regulated by the Election Code.

50. “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 \(1979\)](#)).

51. Election Code Section 417, [25 P.S. § 2687](#), creates the position of poll 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 poll watchers to serve in each election district in the Commonwealth. See [25 P.S. § 2687\(a\)](#).

52. Under the Election Code, “poll watcher[s] perform[] a dual function on Election Day. On the one hand, because [poll 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 [poll 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.](#)

53. Election Code Section 417 dictates the number of poll watchers allowed, the qualifications and manner of their appointment, their provision of watchers’ certificates from the County Election Boards, their location within the polling place<sup>2</sup>, the activities permitted by poll watchers, and the maximum amount of compensation to be paid to poll watchers. [25 P.S. § 2687\(a\)-\(c\).](#)

54. Under Election Code Section 417(b), poll 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 poll 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 poll watchers for candidates and political parties or bodies are permitted to be in the polling place outside the enclosed space. [25 P.S. § 2687\(b\).](#)

55. Under Election Code Section 417(b), poll watchers are permitted to keep a list of voters, and during times when voters are not present or voting, watchers can ask the Judge of Elections to inspect the voting check list and either of the two numbered lists of voters, but cannot mark or alter those lists. [25 P.S. § 2687\(b\).](#)

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<sup>2</sup> “Polling place” is a defined term under the Election Code which means “the room provided in each election district for voting at a primary or election.” Election Code Section 102(q), [25 P.S. § 2602\(q\).](#)

56. In addition to the activities authorized by Election Code Section 417(b), poll 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).

57. Also, prior to October 31, 2019, poll watchers were authorized under Election Code Section 1308(e), 25 P.S. § 3146.8(e) (repealed), to be present at the polling place on Election Day when absentee ballots, which were required to be delivered to the polling places, were examined by local election boards and to assert challenges to the mail-in ballots' validity.

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

59. For example, under Election Code Section 310, [25 P.S. § 2650](#), poll watchers appointed by parties, political bodies, or bodies of citizens may appear at any public session 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\(a\) & \(c\)](#).

60. Without poll watchers, the integrity of the vote in elections is threatened and the constitutional right to free and fair public elections under the United States and Pennsylvania Constitutions is denied.

61. Poll watchers serve as an important check to ensure transparency and guard against inconsistencies and other wrongdoing by election officials. The need for poll watchers was 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>).

62. Poll watchers also serve a “get out the vote” function. Traditionally, poll watchers have a list of all registered voters and keep track of those who voted to aid their respective candidates, campaign committees, and political parties in encouraging reliable supporters to vote on election day. If polling locations fail to open or are relocated and changed, then poll watchers

serve to help redirect voters to proper locations in the absence of state guidance. Poll watchers also aid candidates, parties, and the state by quickly identifying issues with polling locations or rogue election officials, thus facilitating the rapid resolution of those issues before voters are disenfranchised.

**IV. The Perils of Hastily Moving to an Unmonitored Mail-In Voting System.**

63. “States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised.” [\*Lassiter v. Northampton County Board of Elections\*, 360 U.S. 45, 50 \(1959\)](#).

64. However, failing to enact even basic transparency measures or safeguards against the casting of illegal or unreliable ballots creates an obvious opportunity for ineligible voters to cast ballots, invites 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 and Pennsylvania Constitutions.

65. If a state fails to enact even basic integrity and transparency measures 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.

66. “[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”).

67. 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.”).

68. 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 195-196](#) (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) (“election officials routinely reject absentee ballots on suspicion of forgery”); [\*id.\* at 225](#) (“absentee-ballot fraud ... is a documented problem in Indiana”). See also [\*Veasey v. Abbott\*, 830 F.3d 216, 239, 256 \(5th Cir. 2016\)](#) (en banc) (“mail-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”).

69. Pennsylvania is not immune from 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](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).

70. Mail-in voting is vulnerable to abuse in several ways. For one, mail-in ballots are sometimes “mailed to the wrong address or to large residential buildings” and “might get intercepted.” Carter-Baker Report, p. 46. For another, absentee or mail-in voters “who vote at home, at nursing homes, at the workplace, or in church are more susceptible to pressure, overt and subtle, or to intimidation.” *Id.* And “[v]ote buying schemes are far more difficult to detect when citizens vote by mail.” *Id.* For example, “[i]ndividuals can sign and sell their absentee ballot,” or “[o]ne spouse can coerce the other to sign the ballot and hand it over to them to vote fraudulently.” *Id.*

71. 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 \(U.S. 2018\)](#)).

72. Similarly, a 2010 study by the Caltech/MIT Voting Technology Project found that roughly 9% of “listed registration records in the United States ... are estimated to be invalid.” See Ansolabehere, S., Hersh, E., Report, Caltech/MIT Voting Technology Project, *The quality of voter registration records: A state-by-state analysis*, “Summary,” (Jul 14, 2010) (available at [https://elections.wi.gov/sites/default/files/publication/65/the\\_quality\\_of\\_voter\\_registration\\_records\\_harvard\\_10685.pdf](https://elections.wi.gov/sites/default/files/publication/65/the_quality_of_voter_registration_records_harvard_10685.pdf), and referred to and incorporated herein by reference). On top of those invalid records, “in the typical state 1 in 65 records is duplicative, meaning that the same registrant is listed multiple times.” *Id.* The same study found that “[i]n the typical state, 1 in 40 counted votes in the 2008 general election cannot be matched to a registrant listed as having voted” and that “1 in 100 listed registrants is likely to be deceased.” *Id.*

73. The risks of abuse by mail-in voting are compounded by the practice of ballot harvesting: *i.e.*, coordinated efforts to have third parties collect mail-in ballots from voters and drop them off at polling places or elections centers.

74. Ballot harvesters are usually third parties (*i.e.*, campaign workers, union members, political activists, paid personnel, volunteers, or others). They go door-to-door and offer to collect and turn in ballots for voters. “In some documented cases, the workers collecting the ballots have entered into voters’ homes to help them retrieve and fill out their ballots.” S. Crabtree, “Amid Covid Mail-In Push, CA Officials Mum on Ballot Harvesting,” RealClear Politics (Apr. 24, 2020) (available at [https://www.realclearpolitics.com/articles/2020/04/24/amid\\_covid\\_mail-in\\_push\\_ca\\_officials\\_mum\\_on\\_ballot\\_harvesting\\_143036.html](https://www.realclearpolitics.com/articles/2020/04/24/amid_covid_mail-in_push_ca_officials_mum_on_ballot_harvesting_143036.html), and referred to and incorporated herein by reference).

75. “Ballot harvesting gives third parties who may be completely unknown to both the voter and election officials the opportunity to potentially tamper with absentee ballots” in a number of ways. Morley, Redlines, p. 5. For instance, “[h]arvesters may pressure voters into giving them blank ballots or casting their votes a certain way,” or, “[w]hen a voter has voted for the ‘wrong’ candidate, the harvester may surreptitiously change the vote, include additional votes to void the ballot, or simply dispose of the ballot rather than returning it.” *Id.*

76. These forms of misconduct are incredibly difficult to detect. The practice is “especially concerning when third parties who are not related to the voter -- and who may not even be known to the voter -- are permitted to harvest unlimited numbers of ballots, frequently without having to identify themselves to election officials or note their identity on the ballots’ envelopes.” Morley, Redlines, p. 4.

77. Ballot harvesting can have a substantial negative impact on elections. For example, in 1993, the Honorable Clarence C. Newcomer of the United States District Court for the Eastern District of Pennsylvania enjoined the Philadelphia County Board of Elections from counting over a thousand voted absentee ballots that had been delivered by Democratic committee members and several campaign workers of William Stinson who was the Democratic candidate for the 2nd senatorial district for the Pennsylvania Senate. See [Marks v. Stinson, C.A. No. 93-6157, 1994 WL 1461135, 1994 U.S. Dist. LEXIS 5273, at \\*83 & \\*96-99 \(E.D. Pa. April 26, 1994\)](#). Judge Newcomer found that approximately six hundred (600) of the illegally delivered ballots involved unregistered voters who could not have voted in person at the polls. [Id., 1994 U.S. Dist. LEXIS 5273, at \\*44-45](#). Accordingly, because the ballot harvesting violated the Pennsylvania Election Code and the fundamental right to vote protected by the Fourteenth Amendment, Judge Newcomer declared Bruce Marks, the Republican candidate, the winner of that election. [Id. at \\*77-92](#).

78. To be sure, absentee or mail-in voting can be a legitimate feature of a state's election process when coupled with adequate procedural safeguards to deter fraud. But given the many risks discussed above, in most states, it is an *alternative* implemented carefully and slowly and *only with* such safeguards in place.

79. One procedural safeguard is prohibiting a third party's ability to collect and return another person's absentee or mail-in ballot. As the Carter-Baker Report explains: "States therefore should reduce the risks of fraud and abuse in absentee voting by prohibiting 'third-party' organizations, candidates, and political party activists from handling absentee ballots." Carter-Baker Report, p. 46.

80. Another procedural safeguard is specifying the location where absentee or mail-in ballots can be returned and providing for state officials or poll watchers to monitor the return or delivery of ballots to those location.

81. Federal law also recognizes the risks of unmonitored absentee or mail-in voting and thus requires certain first-time voters to present identification. See [52 U.S.C. § 21083\(b\)](#).

## V. **Pennsylvania Enacts All-Voter Mail-in Voting.**

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

83. "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 \(Pa. 1966\)](#).

84. 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](#).

85. 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).

86. “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 \(Pa. Ct. Com. Pl. Phila. 1964\)](#).

87. 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](#).

88. 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

[Board of Elections, 29 D.&C.2d 499, 506-7 \(Pa. Ct. Com. Pl. 1962\)](#)). See also [Marks, 1994 U.S. Dist. LEXIS 5273, at \\*78](#).

89. 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.” See [In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election, 843 A.2d 1223, 1231-34 \(Pa. 2004\)](#).

90. 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.

91. Act 77 made significant changes to Pennsylvania’s elections, including the adoption of no excuse mail-in voting for all qualified electors. See, e.g., [25 P.S. §§ 3150.11-3150.17](#). However, presumably knowing of all the risks associated with mail-in voting, the General Assembly enacted no excuse mail-in voting with certain restrictions designed to ensure the ballot’s secrecy and to prevent fraud.

92. For example, 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. See [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 [Absentee Ballots of Nov. 4, 2003 Gen. Election, 843 A.2d at 1234](#) (“we 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](#).

93. Also, for both absentee and mail-in voting, Act 77 retains the requirement that an elector must comply with the following mandatory requirements in order 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.

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

94. 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.” See Election Code Sections 1306.6(a) and 1308(g)(i)-(iv), [25 P.S. §§ 3146.6\(a\) & 3146.8\(g\)\(4\)\(i\)-\(iv\)](#).

95. 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 \(Pa. 1954\)](#) (“violations of substantive provisions of the [Election] Code cannot be overlooked on the pretext of pursuing a liberal construction.”).

96. 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 poll watchers at the polling places. Instead, Act 77 mandates that all properly cast absentee and mail-in ballots are to remain with the County Election Boards until they are to be canvassed by them. *See* Election Code Section 1308(a), [25 P.S. § 3146.8\(a\)](#).

97. Additionally, contrary to the prior provisions of the Election Code, Act 77 requires the County Election Boards to conduct a pre-canvass of all absentee and mail-in ballots received to that point before 7:00 a.m. on Election Day. Poll watchers are not permitted to attend this pre-canvass meeting; rather, only one “representative” for each candidate and political party can be present. *See* Election Code Section 1308(g)(2), [25 P.S. § 3146.8\(g\)\(2\)](#).

98. Further, contrary to prior provisions of the Election Code, Act 77 mandates that the County Election Boards 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. But, like prior provisions of the Election Code, poll watchers are permitted to be present when the envelopes containing official absentee and mail-in ballots are opened and when such ballots are counted and recorded. *See* Election Code Section 1308(g)(2) & (b), [25 P.S. § 3146.8\(g\)\(2\) & \(b\)](#).

99. Similar to prior provisions of the Election Code, Act 77 specifies the County Election Boards as the location for where voters must mail or personally deliver all cast absentee and mail-in ballots. *See* Election Code Section 1306(a), [25 P.S. §§ 3146.6\(a\) & 3150.16](#)

Accordingly, other locations, including without limitation mobile locations and polling places, are not authorized for the return or delivery of absentee or mail-in ballots under Act 77. *Id.*

100. Act 77 prohibits an elector from casting both a mail-in ballot and in-person 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\(b\)\(1\)](#).

101. 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\(b\)\(2\) & \(3\)](#).

102. 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.

**VI. Defendants' Administration of Pennsylvania's 2020 Primary Election Resulted in Violations of the Election Code and Infringement of Constitutional Rights to Free, Fair and Transparent Public Elections.**

103. Although the Secretary of the Commonwealth is considered the “chief election officer,” the Pennsylvania Constitution vests no powers or duties in Secretary Boockvar. [Perzel, 870 A.2d at 764](#). Instead, her general powers and duties concerning the administration of elections are set forth in Election Code Section 201, [25 P.S. § 2621](#).

104. Under Election Code Section 201, Secretary Boockvar has no ruling-making power or authority. *See* [25 P.S. § 2621\(a\)-\(g\)](#). Instead, 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, 141 A. at 847](#).

105. Under Election Code Section 301, [25 P.S. § 2641](#), the election procedures and processes are managed by each of the Commonwealth's sixty-seven counties. In particular, Election Code Section 301 provides that each county “shall” have “a county board of elections” which “shall have jurisdiction over the conduct of primaries and elections in such county, in accordance with the provisions of [the Election Code].” [25 P.S. § 2641\(a\)](#).

106. The general powers of the County Election Boards are set forth in Election Code Section 302, [25 P.S. § 2642](#). Under that section, the County Election Boards are empowered to “make and issue such rules, regulations and instructions, *not inconsistent with law*, as they may deem necessary *for the guidance of voting machine custodians, election officers and electors.*” [25 P.S. § 2642\(f\)](#) (emphasis added).

107. However, because they are executive agencies that carry out legislative mandates, *see* [Shroyer, 81 A.2d at 437](#); [Perles, 213 A.2d at 786](#)

108. , the County Election Boards have no power to enact or adopt rules, policies, practices, and/or procedures that violate explicit directives of the Election Code, including those involving absentee and mail-in voting, on the pretext of pursuing a liberal construction. *See* [In re Canvass of Absentee Ballots of November 4, 2003, 839 A.2d 451, 461 \(Pa. Commw. Ct. 2003\)](#) (J. Leadbetter, dissenting), *rev'd in part*, [843 A.2d 1223 \(Pa. 2004\)](#). *See also* [In re April 10, 1984 Election of East Whiteland Township, Chester County, 483 A.2d 1033, 1036 \(Pa. Commw. Ct. 1984\)](#) (“While it is true that a defect which is minor or technical in nature will not void an otherwise

valid ballot, violations of substantive provisions of the Code cannot be overlooked on the pretext of pursuing a liberal construction.”).

109. When County Election Boards, individually or collectively, exceed their limited rule-making powers, they “generate a far greater inequity: the uneven treatment of absentee votes throughout the Commonwealth.” [In re Canvass of Absentee Ballots](#), 843 A.2d at 1234. See also [Pierce](#), 324 F. Supp. 2d at 698-699 (allowing a patchwork of different rules from county to county in a statewide election involving federal and state candidates implicates equal protection concerns).

110. Under the Election Code, the Secretary of the Commonwealth has no role that allows her to oversee the County Election Boards’ conduct of primaries and general elections, except the limited authority to order a recount or recanvass under Election Section 1404, [25 P.S. § 3154](#). See [25 P.S. § 2621\(f.2\)](#).

111. Accordingly, under the Election Code Section 302, the County Election Boards, rather than the Secretary of the Commonwealth, are responsible to mail out, receive, count, and verify absentee and mail-in ballots. See, e.g., 25 P.S. §§ [3146.5](#), [3146.6\(a\) & \(c\)](#), [3146.8\(g\)\(3\)](#), [3150.15](#), [3150.16\(a\) & \(c\)](#). Also, the County Election Boards are the entities to issue “certificates of appointment to watchers at primaries and elections.” [25 P.S. § 2642\(e\)](#). Additionally, the County Election Boards are responsible for “instruct[ing] election officers in their duties . . . to the end that primaries and elections may be honestly, efficiently, and *uniformly* conducted.” [25 P.S. § 2642\(g\)](#) (emphasis added).

112. On June 2, 2020, Pennsylvania held its Primary Election which was the first election that followed the enactment of Act 77 and its unmonitored all voter mail-in voting alternative.

113. Prior to the Primary Election, Pennsylvania election officials estimated that as many as two million (2,000,000) voters would apply to vote by mail. *See Crossey v. Boockvar*, No. 266 MD 2020 (Pa. Commw. Ct. May 18, 2020), “Decl. of Jonathan Marks, the Deputy Secretary for Elections and Commissions for Pennsylvania,” ¶ 32 (hereinafter, “Marks Decl.” and referred to and incorporated herein by reference). “Ultimately, more than 1.8 million voters applied for a mail-in or absentee ballot.” *See* “Trump, Biden win Pennsylvania primary contests amid unrest, pandemic,” TRIBLive–Associated Press (June 2, 2020) (available at <https://triblive.com/news/pennsylvania/pennsylvania-primary-begins-amid-unrest-pandemic/>, and referred to and incorporated herein by reference).

114. According to Secretary Boockvar, “nearly 1.5 million voters cast their vote by mail-in or absentee ballot [in the June 2, 2020 Primary Election.]” *See* K. Boockvar, “FixGov: Historic primary paves way for successful general election in Pennsylvania,” The Brookings Institution (June 22, 2020) (available at <https://www.brookings.edu/blog/fixgov/2020/06/22/historic-primary-paves-way-for-successful-general-election-in-pennsylvania/>, and referred to and incorporated herein by reference).

115. Despite the record number of requested and voted absentee or mail-in ballots, Defendants failed to take adequate measures to ensure that the provisions of the Election Code concerning absentee or mail-in ballots, including without limitation the newly enacted Act 77, were followed.

**A. *Failure to Perform Proper Verification of Applicant’s Qualifications and Identity.***

116. On or about January 10, 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 set of “guidelines” titled “Pennsylvania Applications and Balloting

Guidance: Mail-in and Absentee Ballots and Voter Registration Changes.” A true and correct copy of the January 10, 2020 Guidelines are available at the Pennsylvania Department of State’s web site at [https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/PADOS\\_Act%2077\\_Absentee%20and%20Mail-in%20Guidance.pdf](https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/PADOS_Act%2077_Absentee%20and%20Mail-in%20Guidance.pdf).

117. The January 10, 2020 Guidelines purportedly “define both what is required by Act 77 and what is permissible under Act 77 or some other portion of the Election Code.” *See* January 10, 2020 Guidelines, p. 2.

118. According to the January 10, 2020 Guidelines, “[a] county board of elections **cannot decline** the voter’s application for a mail-in or absentee ballot, unless there is a bona fide objection to the mail-in or absentee ballot application.” *See* January 10, 2020 Guidelines, p. 4 (emphasis original).

119. Yet, Act 77 states that a county election board, “upon receipt of any application of a qualified elector under section 1301-D, shall determine the qualifications of the applicant by verifying the proof of identification and comparing the information provided on the application with the information contained on the applicant’s permanent registration card,” and determine for itself whether it is “satisfied that the applicant is qualified to receive an official mail-in ballot,” at which point “the application shall be marked ‘approved,’” which decision “shall be final and binding, except that challenges may be made only on the grounds that the applicant [i]s not a qualified elector.” [25 P.S. § 3150.12b\(a\)\(1\)-\(2\)](#). *See also* [25 P.S. § 3146.2b\(a\) – \(c\)](#).

120. The January 10, 2020 Guidelines make no mention of the County Election Boards’ duty to verify an applicant’s qualifications or identification by comparison to the applicant’s permanent registration card. Instead, the January 10, 2020 Guidelines suggest the County Election Boards should just approve all submitted applications unless someone raises a “bona fide

objection,” without any further explanation as to what constitutes a “bona fide objection.” *See* January 10, 2020 Guidelines, p. 4.

121. Upon information and belief, several counties followed the “guidance” provided in the January 10, 2020 Guidelines and approved all applications for absentee or mail-in ballots without performing the requisite verification of the applicant’s qualifications or identification by comparison to the applicant’s permanent registration card.

**B. *Use of Unmonitored Drop-Boxes and Other Ballot Collection Locations.***

122. Under the headings “Optional County Services” and “Collection of Mail-In and Absentee Ballots,” the January 10, 2020 Guidelines state that “[a]s allowed under existing law, county election boards may provide for mail-in and absentee application processing and balloting at more than one [county elections office (CEO)] located within county borders,” and advises that “[w]hen choosing a location for the CEO, counties should consider, at a minimum, ... choos[ing] locations that serve heavily populated urban/suburban areas, as well as rural areas, [including] near heavy traffic areas such as commercial corridors, large residential areas, major employers and public transportation routes.” *See* January 10, 2020 Guidelines, pp. 4-6.

123. Nowhere in the January 10, 2020 Guidelines does Secretary Boockvar disclose what “existing law” permits the creation of additional county election offices, *id.*, and indeed, no such existing law exists.

124. Moreover, although the January 10, 2020 Guidelines note the importance of the County Election Boards to follow certain “best practices” concerning the use of drop boxes and other “ballot collection locations,” the January 10, 2020 Guidelines themselves instruct the County Election Boards to “contact the Department [of State] for [further] guidance” on these issues. *Id.* at p. 6.

125. Upon information and belief, the Pennsylvania Department of State, with the knowledge, approval and/or consent of Secretary Boockvar, disseminated such further “guidance” to some but not all the County Election Boards.

126. Despite the Election Code’s clear and unambiguous mandate that absentee and mail-in ballots by non-disabled electors were to be mailed or personally delivered to only the county boards of elections, approximately twenty (20) County Election Boards (namely, Allegheny, Bedford, Bucks, Chester, Cameron, Carbon, Centre, Chester, Clinton, Crawford, Dauphin, Delaware, Elk, Erie, Luzerne, Montgomery, Philadelphia, Venango, and York) followed the January 10, 2020 Guidelines and other “guidance” provided by Secretary Boockvar and/or the Pennsylvania Department of State, and allowed absentee and mail-in ballots to be returned to other locations, such as shopping centers, parking lots, fairgrounds, parks, retirement homes, college campuses, fire halls, municipal government buildings, and elected officials’ offices. *See* “Voting by Absentee or Mail-In Ballot: County drop boxes and drop-off locations,” Pa. Dept. of State (2020) (previously available at <https://www.votespa.com/Voting-in-PA/Documents/2020Primary-County-DropLocations.pdf>, and referred to and incorporated herein by reference). *See also* Joe Brandt and Deanna Durante, “Can You Drop Off a Pa. Mail-In Ballot? It Depends Where You Live,” Channel 10 Philadelphia (May 26, 2020) (available at <https://www.nbcphiladelphia.com/news/local/can-you-drop-off-a-pa-mail-in-ballot-it-depends-where-you-live/2408168/>, and referred to and incorporated herein by reference); Shaunice Ajiwe, “Here Are All the Places You Can Drop Off Your Mail-In Ballot,” Philadelphia Magazine (May 29, 2020) (available at <https://www.phillymag.com/news/2020/05/29/drop-off-mail-in-ballot/>, and referred to and incorporated herein by reference).

127. Additionally, the Philadelphia County Board of Elections partnered with the Committee of Seventy, a Philadelphia based, self-proclaimed non-partisan group, to implement a mobile mail-in ballot drop-off initiative to collect voted absentee and mail-in ballots from non-disabled voters. The mobile collection occurred between May 30, 2020 and June 1, 2020 at certain schools and shopping centers within Philadelphia County, and was in addition to the Commissioner's "24/7 mail-in ballot drop-off locations" at "[Philadelphia] City Hall (south portal) and [the Philadelphia County] Board of Elections Office at 520 N. Columbus Blvd (Spring Garden entrance)." *See* Office of the Philadelphia City Commissioners, "Mobile Drop Off Location for Mail-In-Ballot" (available at <https://www.philadelphiavotes.com/en/home/item/1814-mobile-drop-off-location-for-mail-in-ballot>, and referred to and incorporated herein by reference).

128. Moreover, the Delaware County Board of Elections announced the day before the June 2, 2020 Primary Election that it was permitting third-party delivery of absentee and mail-in ballots for non-disabled voters and that absentee and mail-in ballots could be returned to "ANY polling location on Election Day" via unmonitored drop boxes in which voters were "not be required to check in with the [poll] workers." Further, the Delaware County Board of Elections allowed those who received and completed absentee or mail-in ballots but did not want to return them to the election board to appear at their respective polling location on Election Day and cast provisional ballots which will "likely be included in the initial results." *See, e.g.*, Delaware County Press Release, June 1, 2020 (last accessed July 15, 2020) [https://www.delcopa.gov/publicrelations/releases/2020/primaryupdate\\_june1.html](https://www.delcopa.gov/publicrelations/releases/2020/primaryupdate_june1.html). All of these actions were inconsistent and/or contrary to the clear and unambiguous mandates of the Election Code and Act 77. *See* [25 P.S. §§ 3146.6\(a\) & \(b\)\(1\)-\(3\), 3150.16\(a\) & \(b\)\(1\)-\(3\), and 3050\(a.4\)](#).

129. Most of the other locations that were used to collect mail-in or absentee ballots for the Primary Election involved the use of unmonitored and/or unsecured “drop-off boxes” and/or other similar means.

130. Moreover, the amount of notice and the fashion in which notice was given concerning the existence, use, and location of the drop boxes and the mobile voting sites varied among the twenty counties that implemented such measures, and many of the notices failed to comply with the Election Code’s notice publication requirements. *See, e.g.*, Election Code Sections 106 and 526(c), 25 P.S. §§ [2606](#) & [2726\(c\)](#).

131. Under Act 77, the other locations that were used to collect mail-in or absentee ballots for the Primary Election do not constitute a “polling place” as defined in Election Code Section 102(q), [25 P.S. § 2602\(q\)](#).

132. Moreover, Election Code Sections 526 through 530, 25 P.S. §§ [2726-2729.1](#), set forth the requirements that must be met for a location to be selected and used as a “polling place.” Notably, Election Code Section 529.1, [25 P.S. § 2729.1](#), mandates that “[n]o election shall be held in any of the following: ... (5) A vacant lot[; or] ... (7) An office, building or private residence of an elected official. ... .” Accordingly, many of the other locations that were used to collect mail-in or absentee ballots for the Primary Election violated Election Code Section 529.1, [25 P.S. § 2729.1](#).

133. The other locations that were used to collect mail-in or absentee ballots for the Primary Election were used in violation of the Election Code’s mandatory provisions, including without limitation the clear and unambiguous mandate that absentee and mail-in ballots were to be mailed or personally delivered by the electors to only the County Boards of Elections, *see* Election Code Section 1306(a), [25 P.S. §§ 3146.6\(a\)](#) & [3150.16](#), and that no election shall be held

in a vacant lot or an office or building of an elected official, *see* Election Code Section 529.1, [25 P.S. § 2729.1](#).

134. The use of illegal and inadequately noticed drop boxes or mobile drop-off facilities eviscerates the procedural protections that currently accompany Pennsylvania’s mail-in voting procedures by creating a gap in the ability of both the Commonwealth and political parties to observe the delivery process and ensure that Pennsylvania’s election laws are being followed.

**C. *Issues Involving Duplicate or Unmailed Absentee and Mail-In Ballots.***

135. On May 14, 2020, Allegheny County reported that an issue with the State’s SURE system was causing the printing and mailing of duplicate mail-in and absentee ballots to voters within its county. *See* A. Downs, “Elections Division Statement on State SURE System Issue Impacting County,” Allegheny County Dept. of Adm. Servs. – Div. of Elections (May 14, 2020) (available at [file:///H:/Downloads/Elections%20Division%20Statement%20on%20State%20SURE%20System%20Issue%20Impacting%20County%20\(2\).pdf](file:///H:/Downloads/Elections%20Division%20Statement%20on%20State%20SURE%20System%20Issue%20Impacting%20County%20(2).pdf), and referred to and incorporated herein by reference).

136. Further, several Allegheny County residents reported that they never received their mail-in or absentee ballots, and of the more than 280,000 mail-in ballots requested, only 75% of the ballots were received back, as of June 4, 2020. *See* “Allegheny County voters identify 5 issues to address before November presidential election,” PublicSource (Jun. 4, 2020) (available at <https://www.publicsource.org/allegheny-county-voters-identify-5-issues-to-address-before-november-presidential-election/>, and referred to and incorporated herein by reference).

137. The issue of duplicate ballots caused confusion with voters over which ballot to vote and whether their voted ballot was actually received.

**D. *Uneven Treatment of Electors Who Applied for But Did Not Vote an Absentee or Mail-in Ballot and Sought to Vote at their Polling Place on Election Day.***

138. On January 30, 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 set of “guidelines” titled “Pennsylvania Balloting and Envelope Guidance.” A true and correct copy of the January 30, 2020 Guidelines are available at the Pennsylvania Department of State’s web site at [https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/PADOS\\_BallotingandEnvelope\\_CountyGuidance\\_v1.0.pdf](https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/PADOS_BallotingandEnvelope_CountyGuidance_v1.0.pdf).

139. Like the January 10, 2020 Guidelines, the January 30, 2020 Guidelines purportedly “define both what is required by Act 77 and what is permissible under Act 77 or some other portion of the Election Code.” *See* January 30, 2020 Guidelines, p. 2. Further, the January 30, 2020 Guidelines state “[t]he Department of State (DOS) will continue to update this guidance leading up to the 2020 Primary Election.” *Id.*

140. According to the January 30, 2020 Guidelines, “[a]s soon as a voter requests a civilian absentee ballot or mail-in ballot, they are only entitled to vote by provisional ballot if they show up at their polling place, and the voter is not shown on the district register as having voted an absentee or mail-in ballot,” citing Election Code Section 1210, [25 P.S. § 3050\(a.4\)\(1\)](#). Also, the January 30, 2020 Guidelines state: “Act 77 of 2019 establishes provisional balloting as the only option for voters to cast their vote in the event their absentee or mail-in ballot is not returned to the county by 8:00 p.m. on election day.”

141. Yet, under Act 77, an elector who requests an absentee or mail-in ballot and who is not shown on the district register as having voted that ballot may vote a regular ballot in-person at the polling place if the elector remits his or her unvoted absentee or mail-in ballot and the envelope containing the elector’s declaration to the judge of elections to be spoiled and the elector signs the

requisite statement declaring that he or she has not voted the absentee or mail-in ballot and has requested it to be spoiled. *See* [25 P.S. §§ 3146.6\(b\)\(3\) & 3150.16\(b\)\(3\)](#).

142. The “guidance” provided in the January 30, 2020 Guidelines concerning whether an elector who has applied for but not voted an absentee or mail-in ballot is contrary to what Act 77 and the Election Code provides.

143. On March 5, 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 set of “guidelines” titled “Pennsylvania Provisional Voting Guidance.” A true and correct copy of the March 5, 2020 Guidelines are available at the Pennsylvania Department of State’s web site at [https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/PADOS\\_ProvisionalBallots\\_guidance\\_1.0.pdf](https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/PADOS_ProvisionalBallots_guidance_1.0.pdf).

144. Like the January 10, 2020 and January 30, 2020 Guidelines, the March 5, 2020 Guidelines purportedly “define both what is required by Act 77 and what is permissible under Act 77 or some other portion of the Election Code.” *See* March 5, 2020 Guidelines, p. 2. Further, the March 5, 2020 Guidelines state “[t]he Department of State (DOS) will continue to update this guidance leading up to the 2020 Primary Election.” *Id.*

145. According to the March 5, 2020 Guidelines, “[i]f a voter is issued an absentee or mail-in ballot for the upcoming election, they cannot vote a regular ballot.” *See* March 5, 2020 Guidelines, p. 4.

146. Nowhere in the March 5, 2020 Guidelines does Secretary Boockvar identify what provision of Act 77 supports this “guidance.” *Id.*

147. Yet, under Act 77, an elector who requests an absentee or mail-in ballot and who is not shown on the district register as having voted that ballot may vote a regular ballot in-person at

the polling place if the elector remits his or her unvoted absentee or mail-in ballot and the envelope containing the elector's declaration to the judge of elections to be spoiled and the elector signs the requisite statement declaring that he or she has not voted the absentee or mail-in ballot and has requested it to be spoiled. *See* [25 P.S. §§ 3146.6\(b\)\(3\) & 3150.16\(b\)\(3\)](#).

148. Much like the January 30, 2020 Guidelines, the “guidance” provided in the March 5, 2020 Guidelines concerning whether an elector who has applied for but not voted an absentee or mail-in ballot is contrary to what Act 77 and the Election Code provides.

149. Many County Election Boards followed the misinformation provided in the January 30, 2020 and March 5, 2020 Guidelines and denied electors who had applied for but not voted their absentee or mail-in ballots the right to vote a regular ballot in person at the polling locations, whereas other counties followed the dictates of the Election Code and Act 77 and allowed such electors to vote a regular ballot upon the spoliation of their ballots.

150. Equally concerning is that, according to a recent report from the Philadelphia County Board of Elections, double voting (*i.e.*, voting by mail and in-person by the same elector) occurred in the Primary Election. *See* Jonathan Lai, “Philly elections officials caught 40 cases of double voting. It’s not fraud, but it’s still a problem,” *The Philadelphia Inquirer* (June 16, 2020) (available at <https://www.inquirer.com/politics/election/pa-primary-election-mail-ballots-double-voting-20200616.html>, and referred to and incorporated herein by reference).

151. The double-voting occurred in Philadelphia despite Act 77’s clear and unambiguous mandate that an elector cannot vote both a mail-in or absentee ballot and an in-person or machine ballot. [25 P.S. § 3150.16\(b\)\(1\)-\(3\)](#).

152. The January 30, 2020 and March 5, 2020 Guidelines caused an uneven treatment of voters throughout the Commonwealth.

**E. *Uneven Treatment of Absentee and Mail-Ballots That Fail to Include a Secrecy Envelope as Mandated by the Election Code and Act 77.***

153. On pages 10 through 13 of the January 30, 2020 Guidelines, the Pennsylvania Department of State, with the knowledge, approval and/or consent of Secretary Boockvar, provided “guidance” on the envelopes that an elector must use to vote an absentee or mail-in ballot, including without limitation the “secrecy envelope.” *See* January 30, 2020 Guidelines, pp. 10-12. Other than stating that “[t]he secrecy envelope shall contain no other marks other than the envelope title,” the January 30, 2020 Guidelines do not note that the Election Code’s mandatory requirement that the absentee and mail-in ballot be enclosed in a secrecy envelope in order for it to be counted.

154. Attached as Exhibit 1 is a directive issued by the Pennsylvania Department of State, with the knowledge, approval and/or consent of Secretary Boockvar, on May 28, 2020.

155. Titled “Important DOS Email re: Absentee/Mail-in Ballot Canvass,” the May 28, 2020 Directive states:

Thought the Election Code requires county boards of elections to set aside absentee or mail-in ballots enclosed in the official ballot envelopes that contain “any text, mark or symbol which reveals the identity of the elector,” there is **no statutory requirement, nor is there any statutory authority**, for setting aside an absentee or mail-in ballot solely because the voter forgot to properly insert it into the official election ballot envelope. [See 25 P.S. § 3146.8\(g\)\(4\)\(ii\).](#)

To preserve the secrecy of such ballots, the board of elections in its discretion may develop a process by which the members of the pre-canvass or canvass boards insert these ballots into empty official election ballot envelopes or privacy sleeves until such time as they are ready to be tabulated.

*See* May 28, 2020 Directive.

156. The May 28, 2020 Directive is contrary to the clear and unambiguous provisions of the Election Code and Act 77. *See* Election Code Sections 1306.6(a) and 1308(g)(i)-(iv), [25 P.S. §§ 3146.6\(a\) & 3146.8\(g\)\(4\)\(i\)-\(iv\)](#). *See also* [Absentee Ballots of Nov. 4, 2003 Gen. Election, 843](#)

[A.2d 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).

157. Upon information and belief, many of the County Election Boards followed the May 28, 2020 Directive and counted in the 2020 Primary Election absentee and mail-in ballots that failed to comply with the Election Code’s inner secrecy envelope mandate, but some County Election Boards did not.

158. Also, upon information and belief, some but not all County Election Boards followed in the 2020 Primary Election the Election Code’s mandate to not count absentee and mail-in ballots that contain on the inner secrecy 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 fail to include on the outside envelope a completed declaration that is dated and signed by the elector, but some County Election Boards did not. For example, upon information and belief, Philadelphia County Board of Elections’ practice is to count such absentee and mail-in ballots, whereas the practice in other counties is to not count them.

159. 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.

160. 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.

161. The May 28, 2020 Directive caused an uneven treatment of absentee and mail-in voters throughout the Commonwealth.

**F. *Defendants' Inconsistent Administration and Uneven Treatment of Voters Represents an Unconstitutional Infringement of Plaintiffs' Fundamental Rights.***

162. 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.](#)

163. Further, 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 constitutes legislative action by the Executive Branch in violation of the Elections and Electors Clauses of the United States Constitution.

164. Finally, the lack of statewide standards governing the location of drop boxes and the subsequent 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 698-699.](#)

**VII. Pennsylvania's Poll Watching is Unconstitutionally Restrictive.**

165. When initially enacted, Election Code Section 417 restricted a poll watcher's geographical territory to a single appointed election district within the county in which the person was a qualified registered elector. *See* 25 P.S. § 2687 (1947).

166. In 2004, Election Code Section 417 was amended to expand the poll watcher's geographical territory from a single election district to all election districts in the county in which the watcher is a qualified registered elector. [25 P.S. § 2687\(b\) \(2004\)](#).

167. In 2019, when Act 77 was enacted, no changes were made to Election Code Section 417 or the county residency requirement of poll watchers.

168. Consequently, as currently written, Election Code Section 417 does not permit a candidate or political party or any other body to appoint a poll watcher to serve in an election district in a county in which the watcher is not a qualified registered elector. *See* Election Code Section 417, [25 P.S. § 2687\(b\)](#).

169. In this upcoming November 3, 2020 General Election, there are statewide and federal candidates, including President Trump and Representatives Thompson, Kelly, Joyce, and Reschenthaler, whose election will be impacted by the manner in which the voting in all sixty-seven (67) counties of the Commonwealth is conducted.

170. Moreover, the Election Code sets forth the uniform standards that all sixty-seven (67) counties must follow in order to conduct any election in this Commonwealth and to cast and count votes, and the provisions of the Election Code do not create different standards for one or more classes of counties. Rather, the standards apply equally to all 67 counties.

171. The Equal Protection Clause mandates that the Commonwealth provide and use 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 698-699](#). 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.*

172. Accordingly, the manner in which the November 3, 2020 General Election is conducted and in which votes are cast and counted should be uniform across the counties of the Commonwealth.

173. 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.

174. The Commonwealth has not, and cannot, articulate a constitutionally-recognized basis to restrict poll watchers from serving in counties other than their county of residence.

175. The Commonwealth's arbitrary rule against voters serving as poll watchers in counties other than their county of residence has real, demonstrable impacts on all Plaintiffs to this action.

176. In Pennsylvania, all Congressional electoral districts contain portions of multiple counties, and President Trump will appear on every ballot that will be cast in the November 3, 2020 General Election in all 67 counties of the Commonwealth. Consequently, all Plaintiffs have an interest in having their poll watchers monitor the polls in multiple counties to ensure the integrity of the vote on behalf of themselves and the other federal and state electoral candidates and to protect the integrity of the vote on behalf of its registered electors who are voting for federal and statewide Republican candidates.

177. According to statistics collected and disseminated by the Pennsylvania Department of State, there is a significant gap between the number of voters registered as Democrats and the

number of registered Republicans in some Pennsylvania counties. *See* “2019 Voter Registration Statistics – Official,” Pa. Dept. of State (Nov. 5, 2019) (available at <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics/Document/s/2019%20Election%20VR%20Stats%20%20final.pdf>, and referred to and incorporated herein by reference) (hereinafter, the “2019 Voter Registration Statistics”).

178. For example, in Philadelphia County, there exist 66 voting wards which are divided into 1,686 divisions (hereinafter, the “Philadelphia Divisions”). *See* Political Maps, Office of the Phila. City Commissioners (2020) (available at <http://www.philadelphiavotes.com/en/resources-a-data/political-maps>, and referred to and incorporated herein by reference). Republicans are not a majority of registered voters in any ward in Philadelphia County. *See* Department Reports and Data, “Historical Citywide Voter Registration Data,” Office of the Phila. City Commissioners (1940-2019) (available at [https://files7.philadelphiavotes.com/department-reports/Historical\\_Registration\\_1940-2019G.pdf#\\_ga=2.206750996.604579856.1592778750-1031414694.1591725640](https://files7.philadelphiavotes.com/department-reports/Historical_Registration_1940-2019G.pdf#_ga=2.206750996.604579856.1592778750-1031414694.1591725640), and referred to and incorporated herein by reference).

179. In some contiguous geographic areas of the Commonwealth, such as in Fulton, Franklin, Bedford, Huntingdon and Perry counties, Republicans account for almost 70% of the voters, thereby placing Democrats at a disadvantage in staffing polling places with Democratic poll watchers. *See* 2019 Voter Registration Statistics.

180. As a result of the Commonwealth’s arbitrary restriction on poll watchers, candidates, political parties, and political bodies are unjustifiably burdened in their attempts to locate available, qualified registered electors who can serve as poll watchers.

181. Additionally, Pennsylvania law does not speak to the ability of poll watchers to be present at the other locations that were used to collect mail-in and absentee ballots for the Primary

Election to ensure that no third-party delivery or other ballot-harvesting has occurred. *See* Election Code Sections 417 & 102(q), [25 P.S. §§ 2687\(b\)](#) & [2602\(q\)](#).

182. Nor are poll watchers permitted to be present during the pre-canvass meetings held on Election Day by the county boards of elections of the absentee and mail-in ballots. *See* Election Code Section 1308(g)(2), [25 P.S. § 3146.8\(g\)\(2\)](#).

183. In the June 2, 2020 Primary Election, approximately half of the cast votes were by absentee and mail-in ballots.

184. For the upcoming November 3, 2020 General Election, the predictions are that the same or greater percentage of absentee and mail-in ballots will be cast.

185. Plaintiffs have a substantial interest to ensure that the upcoming November 3, 2020 General Election is conducted in a free, open, and honest manner and that the votes cast are legitimate.

186. The Commonwealth has not articulated and cannot articulate a constitutionally-recognized basis to restrict poll watchers from being present at locations that are used to collect mail-in and absentee ballots prior to or on Election Day (to the extent such collections at locations beyond the County Election Boards' offices or through inadequately noticed and unmonitored ad hoc drop boxes are authorized by the Election Code, which Plaintiffs assert they are not), or the pre-canvass meeting of such voted absentee and mail-in ballots.

187. The Commonwealth's arbitrary exclusion of poll watchers from being present at locations that are used to collect mail-in and absentee ballots prior to Election Day (to the extent such collections at locations beyond the County Election Boards' offices or through inadequately noticed and unmonitored ad hoc drop boxes are authorized by the Election Code, which Plaintiffs

assert they are not), or the pre-canvass meeting of such ballots has real, demonstrable impacts on all Plaintiffs to this action.

188. Poll watchers 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.

189. Arbitrarily restricting a registered voter from serving outside of the county of his or her residence and/or limiting his or her activities to only those which occur at a polling place on Election Day results in an unconstitutional infringement on the fundamental right to vote, the guarantee of equal protection, and the right to participate in free and fair public elections as guaranteed by the United States and Pennsylvania Constitutions.

#### **VIII. Need for Judicial Intervention.**

190. The current voting regime as employed by Defendants, including the January 10, 2020, January 30, 2020, and the March 5, 2020 Guidelines, and the May 28, 2020 Directive, remain in place and have needlessly resulted in the denial of free and fair elections and other fundamental rights during the Pennsylvania Primary Election. Absent judicial intervention, there is no reason to believe things will be different during the November 3, 2020 General Election.

191. This Court should act now to prevent a recurrence of the problems that manifested in the Pennsylvania Primary Election. Although the November General Election is still months away, presenting these issues to the Court now allows this Court and the parties sufficient time to develop a record and adequately consider the legal merits of Plaintiffs' claims.

192. Plaintiffs respectfully request that this Court prevent Defendants from making the same mistake twice. In addition to any other affirmative relief that the Court may deem necessary and proper, Plaintiffs seek an order, declaration, and/or injunction that prohibits Defendants from

permitting the return of absentee and mail-in ballots to locations other than the respective office of the county boards of elections as prescribed by the Pennsylvania Election Code. In the alternative, if the challenged conduct is not found to be illegal, Plaintiffs seek an order, declaration, and/or injunction instructing Defendants to publish uniform state-wide guidance on absentee ballot drop boxes explaining that the locations for absentee ballot drop boxes are subject to the same notice and determination requirements that Pennsylvania law currently provides for polling places. Further, Plaintiffs seek an order, declaration, and/or injunction that bars County Election Boards from counting absentee and mail-in ballots that lack an “Official Election Ballot” secrecy envelope, contain a text, mark, or symbol thereon, 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. Additionally, Plaintiffs seek an order, declaration, and/or injunction that requires county election boards to verify the identification and qualification for each applicant of an absentee or mail-in ballot, and to properly enforce which voters can and cannot vote on Election Day at the polling place after having applied for and either voted or not voted their absentee or mail-in ballots. Finally, Plaintiffs seek an order, declaration, and/or injunction that permits poll watchers, regardless of their county of residence, to be present in all locations where votes are cast, including without limitation where absentee or mail-in ballots are being returned before and on Election Day and at any pre-canvass meetings.

## **COUNT I**

### **First and Fourteenth Amendments**

### **[U.S. Const. Art. I § 4, cl. 1](#); [Art. II, § 1, cl. 2](#); Amend. [I](#) and [XIV](#), [42 U.S.C. § 1983](#) **Infringement of the Right to Vote Through Invalid Enactment of Regulations Affecting the Time, Place and Manner of Election by Pennsylvania’s Executive Branch****

193. Plaintiffs refer to and incorporate Paragraphs 1 through 192 of this Complaint as though the same were repeated at length herein.

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

195. 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 v. Burns\*, 570 F.2d 1065, 1077-78 \(1st Cir. 1978\)](#).

196. 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](#).

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 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](#).

199. 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.

200. The Pennsylvania Election Code mandates that the County Election Boards shall determine the qualifications of all absentee and mail-ballot applicants by verifying their proof of identification and comparing the information provided on the applications with the information contained on the applicants’ permanent registration cards, and for all absentee and mail-in ballots by approved non-disabled electors, the elector “shall” “enclose and securely seal” the voted ballot

in the “Official Election Ballot” secrecy envelope with no text, mark, or symbol which reveals the elector’s identity, political affiliation or candidate preference, “shall” place the secrecy envelope in the second envelope and “shall ... fill-out, date and sign the declaration printed on such envelope,” and then “shall” mail or personally delivered the voted ballot to only the county boards of elections to ensure that the ballots are properly cast, kept secret, and not subject to fraud. *See* [25 P.S. §§ 3146.6\(a\), 3150.16\(a\) & 3146.8\(g\)\(4\)\(i\)-\(iv\)](#).

201. Rather than heeding these mandates, Defendants have knowingly authorized, allowed, and/or permitted some, but not all, of the County Election Boards to not verify the identification and/or qualifications of all absentee and mail ballot applicants, and/or to collect absentee and mail-in ballots at locations other than their offices, including without limitations mobile sites and locations that the Election Code has mandated shall not serve as polling places, and/or to utilize “drop boxes” and other unmonitored and/or unsecured means. Also, some, but not all, of the County Election Boards count absentee and mail-in ballots that lack the “Official Election Ballot” secrecy envelope, contain a text, mark, or symbol thereon, 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, despite the Election Code’s contrary mandate.

202. Permitting absentee and mail ballot applications to be approved without identification or confirmation of the applicant or his or her qualifications and/or permitting absentee and mail-in ballots of non-disabled electors to be collected at locations other than the offices of the county boards of elections and/or through “drop boxes” and other unmonitored and/or unsecured means and/or to be counted when not cast in the manner mandated by the

Election Code allows illegal absent and mail-in voting, ballot harvesting, and other fraud to occur and/or go undetected, and will result in dilution of validly cast ballots.

203. By permitting absentee and mail ballot applications to be approved without identification or confirmation of the applicant or his or her qualifications, by unilaterally establishing drop boxes and other locations for the return of absentee and mail-in ballots, and by counting improperly cast absentee and mail-in ballots, both in contradiction of Pennsylvania's statutory law, Defendants have increased the potential for ballot fraud or tampering, thus infringing the right to vote as secured to Plaintiffs and their members by the First and Fourteenth Amendments to the United States Constitution, without any authority to do so.

204. Defendants have acted and will continue to act under color of state law to violate the right to vote as secured by the First and Fourteenth Amendments to the United States Constitution.

205. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined and compelled to enforce the mandates of the Election Code.

## **COUNT II**

### **Fourteenth Amendment**

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

### **Denial of Equal Protection**

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

206. Plaintiffs refer to and incorporate Paragraphs 1 through 205 of this Complaint as though the same were repeated at length herein.

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

208. The Equal Protection Clause prevents the government from treating similarly situated voters differently without a compelling justification for doing so. [Bush, 531 U.S. at 104-05](#) (“[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.”).

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

210. The Pennsylvania Election Code mandates that all absentee and mail-in ballots by non-disabled electors “shall” be enclosed in the “Official Election Ballot” secrecy envelope with no text, mark, or symbol which reveals the elector’s identity, political affiliation or candidate preference, and then “shall” be mailed or personally delivered to only the county boards of elections to ensure that the ballots are properly cast, kept secret, and not subject to fraud. *See* [25 P.S. §§ 3146.6\(a\), 3150.16\(a\) & 3146.8\(g\)\(4\)\(i\)-\(iv\)](#).

211. Rather than heeding this mandate, Defendants have knowingly authorized, allowed, and/or permitted some, but not all, of the County Election Boards to collect absentee and mail-in ballots at locations other than their offices, including without limitations mobile sites and locations that the Election Code has mandated shall not serve as polling places, and/or to utilize drop boxes and other unmonitored and/or unsecured means. Also, some, but not all, of the County Election Boards count absentee and mail-in ballots that lack the “Official Election Ballot” secrecy envelope, contain a text, mark, or symbol thereon, 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 despite the Election Code’s contrary mandate.

212. Permitting absentee and mail-in ballots of non-disabled electors to be collected at locations other than the offices of the county boards of elections and/or through “drop boxes” and

other unmonitored and/or unsecured means and to be counted when not cast in the manner mandated by the Election Code allows illegal absent and mail-in voting, ballot harvesting, and other fraud to occur and/or go undetected, and will result in dilution of validly cast ballots.

213. Defendants, through their intentional, negligent, or reckless acts or omissions, have violated the Elections and Electors Clauses of the United States Constitution and infringed upon the equal protection rights of Plaintiffs, their members, and all qualified Pennsylvania voters.

214. Defendants have acted and will continue to act under color of state law to violate the Equal Protection Clause of the United States Constitution.

215. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined and compelled to enforce the mandates of the Election Code.

### **COUNT III**

**Pennsylvania Equal Protection and Free and Equal Elections**  
**[Pa. Const. art. VII, § 1](#), [art. I, § 28](#), & [art. I, § 5](#)**  
**Infringement of the Right to Vote Through Invalid Enactment of Regulations**  
**Affecting the Time, Place and Manner of Election by Pennsylvania's Executive Branch**  
**and Denial of Equal Protection via Disparate Treatment of Absentee/Mail-In Voters**  
**Amongst Different Counties**

216. Plaintiffs refer to and incorporate Paragraphs 1 through 215 of this Complaint as though the same were repeated at length herein.

217. The Pennsylvania Constitution also bestows the right to vote upon qualified citizens and to equal protection in the enjoyment of that right. *See* [Pa. Const. art. VII, § 1](#) & [art. I, § 28](#).

218. Further, the Free and Equal Elections Clause of the Pennsylvania Constitution, provides that “[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” [Pa. Const. art. I, § 5](#).

219. A free and fair election requires ballot security.

220. For the same reasons Defendants have violated the United States Constitution's Elections and Electors Clauses and its First and Fourteenth Amendments and Equal Protection Clause by their intentional, negligent, or reckless failure or refusal to enforce the Election Code's mandated concerning the collection of absentee and mail-in ballots (as stated more fully in Paragraphs 193 through 215 of this Complaint), Defendants have violated the Equal Protection and Free and Equal Elections Clauses of the Pennsylvania Constitution and have infringed upon the rights of Plaintiffs and all qualified Pennsylvania voters protected thereby.

221. Defendants have acted and will continue to act under color of state law to violate the Equal Protection and Free and Equal Elections Clauses of the Pennsylvania Constitution.

222. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined and compelled to enforce the mandates of the Election Code.

#### **COUNT IV**

**First and Fourteenth Amendments**  
**U.S. Const. Amend. I and XIV, 42 U.S.C. § 1983**  
**Infringement of the Right to Vote Through Failure to Sufficiently Safeguard Against**  
**Dilution of Vote by Fraud or Tampering: Poll Watcher Residency Restriction &**  
**Polling Place Restriction**

223. Plaintiffs refer to and incorporate Paragraphs 1 through 222 of this Complaint as though the same were repeated at length herein.

224. In statewide and federal elections conducted in the Commonwealth of Pennsylvania, including without limitation the upcoming November 3, 2020 General Election, Plaintiffs and all qualified voters in the Commonwealth of Pennsylvania, regardless of their location or residence, have a vested interest in ensuring that the electoral process is properly administered in every election district.

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

226. In statewide and federal elections conducted in the Commonwealth of Pennsylvania, including without limitation the upcoming November 3, 2020 General Election, Election Code Section 417, [25 P.S. § 2687](#), arbitrarily and unreasonably distinguishes between qualified voters within the Commonwealth of Pennsylvania by limiting their service as a poll watcher to only the county of their residence and by limiting their service as a poll watcher to monitoring only in-person voting at the polling place on Election Day.

227. The Commonwealth has no legitimate interest in arbitrarily restricting the right of any of its qualified voters from serving as a poll watcher to monitor the drop off of absentee and mail-in ballots before Election Day, regardless in what county those ballots may be cast.

228. By failing to allow Pennsylvania voters to serve as poll watchers in counties other than their county of residence or monitor the drop off of absentee and mail-in ballots, Election Code Section 417, [25 P.S. § 2687](#), makes it extremely difficult or functionally impracticable for candidates and parties to ensure that they have poll watchers at all locations where ballots are being cast in connection with the November 2020 General Election – including remote drop boxes (which Plaintiffs contend are not permitted under the Election Code) – thus fostering an environment that encourages ballot fraud or tampering, and preventing the Commonwealth, candidates, and political parties from ensuring that the General Election is free, fair, and transparent.

229. By failing to take basic precautions to protect against ballot fraud or tampering, Defendants have infringed upon the right to vote as secured to Plaintiffs and their members by the

First and Fourteenth Amendments to the United States Constitution without any compelling reason to do so.

230. On its face and as applied to the 2020 General Election, Election Code Section 417's residency requirement and its "polling place" requirement deny qualified voters in the Commonwealth of Pennsylvania of their fundamental right to a free, fair, and transparent public election process.

231. Defendants have acted and will continue to act under color of state law to violate the right to vote as secured by the First and Fourteenth Amendments to the United States Constitution.

232. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined and compelled to enforce the mandates of the Election Code.

### **COUNT V**

**Pennsylvania Equal Protection and Free and Equal Elections**  
**[Pa. Const. art. VII, § 1](#), [art. I, § 28](#), & [art. I, § 5](#)**  
**Infringement of the Right to Vote Through Failure to Sufficiently Safeguard Against**  
**Dilution of Vote by Fraud or Tampering: Poll Watcher Residency Restriction &**  
**Polling Place Restriction**

233. Plaintiffs refer to and incorporate Paragraphs 1 through 232 of this Complaint as though the same were repeated at length herein.

234. For the same reasons Election Code Section 417's county residency requirement and polling place restriction violate the United States Constitution's First and Fourteenth Amendments and its Equal Protection Clause (as stated more fully in Paragraphs 223 through 232 of this Complaint), Election Code Section 417's county residency requirement and polling place restriction violate the Equal Protection and Free and Equal Elections Clauses of the Pennsylvania

Constitution and infringe upon the rights of Plaintiffs and all qualified Pennsylvania voters protected thereby.

235. Defendants have acted and will continue to act under color of state law to violate the Equal Protection and Free and Equal Elections Clauses of the Pennsylvania Constitution.

236. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined and compelled to enforce the mandates of the Election Code.

## **COUNT VI**

### **First and Fourteenth Amendments**

#### **U.S. Const. Amend. I and XIV, 42 U.S.C. § 1983**

#### **Infringement of the Right to Vote Through Failure to Sufficiently Safeguard Against Dilution of Vote by Fraud or Tampering: Failure to Notice Drop Box Location**

237. Plaintiffs refer to and incorporate Paragraphs 1 through 236 of this Complaint as though the same were repeated at length herein.

238. In statewide and federal elections conducted in the Commonwealth of Pennsylvania, including without limitation the upcoming November 3, 2020 General Election, Plaintiffs and all qualified voters in the Commonwealth of Pennsylvania, regardless of their location or residence, have a vested interest in ensuring that the electoral process is properly administered in every election district.

239. In the June 2, 2020 Primary Election, some of the County Election Boards, with Secretary Boockvar's knowledge and consent, established drop box and mobile drop box drop off locations for absentee and mail-in ballots in contradiction of state law while providing insufficient public notice regarding the location of these drop boxes or mobile locations.

240. The Election Code requires the County Election Boards to provide not less than twenty (20) days' public notice of the location of all polling places where an election is to be held, and not less

than five (5) days' public notice before closing or opening a new polling place. *See* Election Code Section 526(a) & (c), [25 P.S. § 2726\(a\) & \(c\)](#); *see also* Election Code Section 106, [25 P.S. § 2606](#).

241. Moreover, the Election Code provides certain criteria that govern the selectin of sites for polling places. *See* Election Code Sections 527-529.1, 25 P.S. §§ [2727-2729.1](#).

242. Defendants failed to comply with either the Election Code's notice requirements or these site selection requirements when establishing drop boxes and mobile drop boxes for absentee and mail-in ballots in connection with the June 2, 2020 primary election.

243. In doing so, Defendants increased the likelihood that they would confuse voters and prevent candidates or political parties from notifying voters about the availability and location of the drop boxes or adequately monitoring the drop boxes, thus fostering an environment that encourages ballot fraud or tampering, and preventing the Commonwealth, candidates, and political parties from ensuring that the General Election is free, fair, and transparent.

244. On information and belief, Plaintiffs believe that Defendants intend to repeat this practice in the upcoming November 3, 2020 General Election.

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

246. By failing to comply with Pennsylvania's statutory notice, Defendants have failed to enact minimal safeguards against dilution of the right to vote by fraudulent ballots or tampering and thus infringe the right of qualified voters in the Commonwealth of Pennsylvania to a free, fair, and transparent public election process.

247. Defendants have acted and will continue to act under color of state law to violate the right to vote as secured by the First and Fourteenth Amendments to the United States Constitution.

248. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined and compelled to enforce the mandates of the Election Code.

### **COUNT VII**

**Pennsylvania Equal Protection and Free and Equal Elections**  
**Pa. Const. art. VII, § 1, art. I, § 28, & art. I, § 5**  
**Infringement of the Right to Vote Through Failure to Sufficiently Safeguard Against Dilution of Vote by Fraud or Tampering: Failure to Notice Drop Box Location**

249. Plaintiffs refer to and incorporate Paragraphs 1 through 248 of this Complaint as though the same were repeated at length herein.

250. For the same reasons Defendants' failure to provide the statutory or otherwise adequate notice of drop box locations violates the United States Constitution's First and Fourteenth Amendments and its Equal Protection Clause (as stated more fully in Paragraphs 237 through 248 of this Complaint), Defendants' failure to provide the statutory or otherwise adequate notice of drop box locations violates the Equal Protection and Free and Equal Elections Clauses of the Pennsylvania Constitution and infringes upon the rights of Plaintiffs and all qualified Pennsylvania voters protected thereby.

251. Defendants have acted and will continue to act under color of state law to violate the Equal Protection and Free and Equal Elections Clauses of the Pennsylvania Constitution.

252. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined and compelled to enforce the mandates of the Election Code.

**COUNT VIII**

**First and Fourteenth Amendments  
U.S. Const. Amend. I and XIV, 42 U.S.C. § 1983  
Infringement of the Right to Vote Through Improper Voting at Polling Places**

253. Plaintiffs refer to and incorporate Paragraphs 1 through 252 of this Complaint as though the same were repeated at length herein.

254. Under Act 77, an elector who requests an absentee or mail-in ballot and who is not shown on the district register as having voted that ballot may vote a regular ballot in-person at the polling place if the elector remits his or her unvoted absentee or mail-in ballot and the envelope containing the elector's declaration to the judge of elections to be spoiled and the elector signs the requisite statement declaring that he or she has not voted the absentee or mail-in ballot and has requested it to be spoiled. *See* [25 P.S. §§ 3146.6\(b\)\(3\) & 3150.16\(b\)\(3\)](#).

255. In the June 2, 2020 Primary Election, many of the County Election Boards, following the misinformation provided in the January 30, 2020 and March 5, 2020 Guidelines, denied electors who had applied for but not voted their absentee or mail-in ballots the right to vote a regular ballot in person at the polling locations, whereas other counties followed the dictates of the Election Code and Act 77 and allowed such electors to vote a regular ballot upon the spoliation of their ballots.

256. The result of the County Election Boards' refusal and/or failure to allow voters who sought to have their absentee and mail-in ballots spoiled at the polling place on Election Day and vote a regular ballot left these electors with their votes subject to the Election Code's provisional ballot challenges, in direct contravention of the Election Code's mandates.

257. Moreover, some counties failed to follow the dictates of the Act 77 and the Election Code which bar electors who had voted an absentee and mail-in ballot from voting any ballot at the polling place, including without limitation a provisional ballot.

258. The result of the County Election Boards' refusal and/or failure to bar voters who had already voted an absentee and mail-in ballot from voting at their polling places was the existence of double votes being casted and counted.

259. On information and belief, Plaintiffs believe that Defendants intend to repeat this practice in the upcoming November 3, 2020 General Election.

260. Defendants have a duty to follow basic minimum safeguards to guard against deprivation of the right to vote by allowing those who are entitled to vote cast regular ballots and by preventing the dilution of validly cast ballots by improperly cast and/or fraudulent ballots.

261. By failing to comply with the Election Code and Act 77, Defendants have failed to enact minimal safeguards against deprivation of the right to vote and thus infringe the right of qualified voters in the Commonwealth of Pennsylvania to a free, fair, and transparent public election process.

262. Defendants have acted and will continue to act under color of state law to violate the right to vote as secured by the First and Fourteenth Amendments to the United States Constitution.

263. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined and compelled to enforce the mandates of the Election Code.

**COUNT VIX**

**Pennsylvania Equal Protection and Free and Equal Elections  
Pa. Const. art. VII, § 1, art. I, § 28, & art. I, § 5  
Infringement of the Right to Vote Through Improper Voting at Polling Places**

264. Plaintiffs refer to and incorporate Paragraphs 1 through 263 of this Complaint as though the same were repeated at length herein

265. For the same reasons Defendants' failure to follow basic minimum safeguards to guard against deprivation of the right to vote by allowing those who are entitled to vote cast regular ballots and by preventing the dilution of validly cast ballots by improperly cast and/or fraudulent ballots violates the United States Constitution's First and Fourteenth Amendments and its Equal Protection Clause (as stated more fully in Paragraphs 253 through 263 of this Complaint), Defendants' failure to comply with the Election Code and Act 77's provisions concerning who is entitled to vote regular and provisional ballots at the polling place violates the Equal Protection and Free and Equal Elections Clauses of the Pennsylvania Constitution and infringes upon the rights of Plaintiffs and all qualified Pennsylvania voters protected thereby.

266. Defendants have acted and will continue to act under color of state law to violate the Equal Protection and Free and Equal Elections Clauses of the Pennsylvania Constitution.

267. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined and compelled to enforce the mandates of the Election Code.

WHEREFORE, Plaintiffs ask this Court to enter judgment in their favor and provide the following relief:

A. An order or declaration that the return of absentee and mail-in ballots by non-disabled electors to locations other than the respective office of the County Election Boards violates the Pennsylvania Election Code and the United States and Pennsylvania Constitutions;

B. In the alternative to the relief requested in Subparagraph (A), an order or declaration that Defendants must comply with Pennsylvania laws governing notice of changes to polling locations and site criteria for polling locations when establishing locations other than their respective offices to which voters may return absentee and mail-in ballots, and ensure that all counties utilize that option;

C. An order or declaration that the counting of absentee and mail-in ballots that lack an “Official Election Ballot” secrecy envelope, contain on that envelope any text, mark, or symbol which reveals the elector’s identity, political affiliation, or candidate preference, does 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 violates the Pennsylvania Election Code and the United States and Pennsylvania Constitutions;

D. An order or declaration enjoining the enforcement of Election Code Section 417’s residency and “polling place” requirements for poll watchers as a violation of the rights secured by the United States and Pennsylvania Constitutions;

E. An order or declaration mandating that County Election Boards verify the identification and qualification for each applicant of an absentee or mail-in ballot by comparing the application information to the information contained on the applicant’s permanent registration card;

F. An order or declaration mandating that County Election Boards permit those electors who have applied but not voted their absentee and mail-in ballots to vote regular ballots

upon having the electors' non-voted absentee and mail-in ballots spoiled at their polling places, and that County Election Boards deny those electors who have voted their absentee and mail-in ballots from casting any ballot, regular or provisional.

G. A preliminary and permanent injunction prohibiting Defendants, and all other persons acting in concert with them, from collecting absentee and mail-in ballots (i) in locations other than in the office of each of the County Election Boards and/or (ii) through unsecured and unmonitored drop boxes and other similar means;

H. A preliminary and permanent injunction prohibiting Defendants, and all other persons acting in concert with them, from counting absentee and mail-in ballots that lack an "Official Election Ballot" 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;

I. A preliminary and permanent injunction prohibiting Defendants, and all other persons acting in concert with them, from restricting poll watchers, regardless of their county of residence, to be present in all locations where votes are cast, including without limitation where absentee or mail-in ballots are being returned before and on Election Day and at any pre-canvass meetings;

J. A preliminary and permanent injunction requiring the County Election Boards to verify the identification and qualification for each applicant of an absentee or mail-in ballot by comparing the application information to the information contained on the applicant's permanent registration card;

K. A preliminary and permanent injunction requiring the County Election Boards to permit those electors who have applied but not voted their absentee and mail-in ballots to vote regular ballots upon having the electors' non-voted absentee and mail-in ballots spoiled at their polling places, and that County Election Boards deny those electors who have voted their absentee and mail-in ballots from casting any ballot, regular or provisional.

L. Plaintiffs' reasonable costs and expenses, including attorneys' fees; and

M. All other relief that Plaintiffs are entitled to and that the Court deems just and proper.

Date: July 27, 2020

Respectfully submitted,

PORTER WRIGHT MORRIS & ARTHUR LLP

By: /s/ Ronald L. Hicks, Jr.

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Jeremy A. Mercer (PA #86480)  
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and

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justin.clark@electionlawllc.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: July 27, 2020

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

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing Amended Complaint to be filed this 27th day of July, 2020, via ECF, which system will serve notice of same on all parties registered to receive same via the ECF system. For any party who has yet to enter an appearance, the undersigned certifies that a copy of the foregoing filing will be served on that party via U.S. Mail and a copy sent to the County Solicitor, if known, via email or fax.

Respectfully submitted,

PORTER WRIGHT MORRIS & ARTHUR LLP

By: /s/ Ronald L. Hicks, Jr.

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and

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(admitted pro hac vice – ECF #10)

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*Counsel for Plaintiffs*

# **EXHIBIT 1**

**From:** Marks, Jonathan <[jmarks@pa.gov](mailto:jmarks@pa.gov)>  
**Sent:** Thursday, May 28, 2020 7:44 PM  
**To:** Marks, Jonathan <[jmarks@pa.gov](mailto:jmarks@pa.gov)>  
**Subject:** Important DOS Email re: Absentee/Mail-in Ballot Canvass  
**Importance:** High

To all county election officials.

I hope you are all safe and well.

The department has received some questions from county officials in recent days regarding the proper disposition of absentee or mail-in ballots cast by voters who did not enclose their voted ballots in the official election ballot envelope ("secrecy" or "inner" envelope).

Though the Election Code requires county boards of elections to set aside absentee or mail-in ballots enclosed in official election ballot envelopes that contain "any text, mark or symbol which reveals the identity of the elector," there is **no statutory requirement, nor is there any statutory authority**, for setting aside an absentee or mail-in ballot solely because the voter forgot to properly insert it into the official election ballot envelope. See 25 P.S. § 3146.8(g)(4)(ii).

To preserve the secrecy of such ballots, the board of elections in its discretion may develop a process by which the members of the pre-canvass or canvass boards insert these ballots into empty official election ballot envelopes or privacy sleeves until such time as they are ready to be tabulated.

Please consult with your solicitor about your plans to deal with such instances should they occur during the pre-canvass or canvass.

Thank you for everything you are doing to administer the 2020 Primary while coping with the unique challenges presented by COVID-19.

Kind regards,

Jonathan M. Marks  
Deputy Secretary for Elections & Commissions  
Pennsylvania Department of State  
302 North Office Building | Harrisburg, PA 17120  
☎ 717.783.2035 📠 717.787.1734  
✉ [jmarks@pa.gov](mailto:jmarks@pa.gov)

# **EXHIBIT B**

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

DONALD J. TRUMP FOR	)	Civil Action
PRESIDENT, INC.; <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	No.: 2-20-CV-966
v.	)	
	)	
KATHY BOOCKVAR; <i>et al.</i> ,	)	
	)	
Defendants.	)	Judge J. Nicholas Ranjan

**MOTION FOR  
A SPEEDY DECLARATORY JUDGMENT HEARING  
AND EXPEDITED DISCOVERY**

The relief requested in this action is necessary to ensure that the November 3, 2020, General Election in Pennsylvania is conducted with integrity, that all Pennsylvanians who validly vote have their vote counted, and that the election is free, fair, and comports with the United States and Pennsylvania Constitutions. While we are not yet on the eve of an election, the 2020 General Election is fewer than one hundred thirty (130) days away. Accordingly, Plaintiffs,<sup>1</sup> by their undersigned counsel and pursuant to Rules 57 and 26 of the Federal Rules of Civil Procedure, respectfully request that this Honorable Court order a speedy declaratory judgment hearing and expedited discovery. In support of this Motion, Plaintiffs aver as follows:

1. As explained in Plaintiffs' Verified Complaint for Declaratory and Injunctive Relief, which is incorporated by reference, serious deviations from Pennsylvania's Election Code

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<sup>1</sup> Plaintiffs are: (1) the principal committee for the reelection campaign of President Donald J. Trump, (2) four members of the United States House of Representatives, representing the 13th, 14th, 15th, and 16th Congressional Districts of Pennsylvania and seeking reelection to another term in office; (3) a national political committee that leads the Republican Party of the United States; and (4) two qualified registered electors residing in Pennsylvania who would like to poll watch in counties outside their residential counties.

occurred during the recent Primary Election that Plaintiffs believe are likely to occur in the upcoming General Election.

2. Those deviations undermine the integrity of the election results and impinge upon the constitutional rights of Plaintiffs and all other eligible registered voters in Pennsylvania to have their vote counted and not diluted.

3. Furthermore, the unsupportable restrictions on poll watchers further diminishes the guarantees of free and fair elections by, among other things, locking poll watchers out from certain vote counting and unnecessarily and improperly restricting the locations where poll watchers can do just that – watch the polls to ensure the integrity of the election process.

4. Those serious deviations from the Pennsylvania Election Code, which highlighted the impact of the restrictions on poll watchers, were on full display in the delayed June 2, 2020, Primary Election conducted by Defendants in Pennsylvania, with other examples and repercussions coming to light after the polls closed.

5. Consequently, on June 29, 2020, Plaintiffs initiated this litigation to ensure that the upcoming 2020 General Election in Pennsylvania is free, fair, transparent, and conducted with integrity.<sup>2</sup>

6. The upcoming 2020 General Election is fewer than 130 days from now. Therefore, expedited consideration of this matter would provide all parties sufficient time to implement any necessary changes and avoid confusion.

7. Plaintiffs are doing what they can to expedite the consideration of this matter, including service of the summons and complaint on all sixty-eight (68) named Defendants and the

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<sup>2</sup> Although Plaintiffs filed their complaint on June 29, 2020, the case was not officially docketed and the summons to each of the Defendants were not issued until June 30, 2020.

Attorney General of the Commonwealth by way of private process servers. *See* Fed. R. Civ. P. 4(b), (c)(2) & (j)(2)(A) & (B); Pa. R. Civ. P. 400(b)(1) & 422(a).

8. Plaintiffs request discovery on an expedited basis to determine information relevant to their allegations including, but not limited to:

- a. How many applications Defendants received and processed for absentee and mail-in ballots for the June 2, 2020, Primary Election in comparison to previous years;
- b. What procedures Defendants utilized to process or reject applications for absentee and mail-in ballots and deliver the ballots to all accepted applicants for the June 2, 2020, Primary Election, including any problems or other issues that Defendants experienced with such applications or ballot delivery;
- c. What procedures Defendants utilized to allow electors to return or deliver voted absentee and mail-in ballots, including whether Defendants permitted ballot harvesting, other third-party delivery methods, or postage pre-payment or franking, and any problems or other issues that Defendants experienced with such returned ballots;
- d. To what extent Defendants utilized or funded drop boxes and/or mobile voting/collection/drop-off locations for electors to submit their voted absentee and mail-in ballots, and Defendants' reasons and decisions for using or not using such collection methods;
- e. How Defendants determined where to establish the locations for any drop boxes and/or mobile voting/collection stations/devices, and the communications that Defendants had between themselves and/or with candidates, political parties, and others about such drop boxes or locations and when and how notice of them would be given to the voters;
- f. How many voted absentee and mail-in ballots Defendants received in the June 2, 2020, Primary Election in comparison to prior years, and the procedures and processed that were used to confirm that the ballots returned were cast by those who were registered to vote and had applied for absentee or mail-in ballots;
- g. What procedures Defendants followed to notify the local election boards which voters (1) had not applied for and returned an absentee or mail-in ballot and were registered to

vote-in person on Election Day; (2) which voters had applied for and returned an absentee or mail-in ballot and were not entitled to vote-in person on Election Day; and (3) which voters were required to vote provisionally, and to ensure that voters did not vote in more than one manner or, if they did, that only one vote was counted;

- h. What procedures were used to canvass and count absentee and mail-in ballots, including without limitation those that are delivered by third parties or cast without a secrecy envelope or with a marked secrecy envelope, including any pre-canvassing;
- i. How many challenges Defendants received to absentee or mail-in ballots and what procedures Defendants followed for resolving those challenges;
- j. The history of reported voter or voting fraud in each county, and the degree to which Defendants have investigated and responded to all such reports; and
- k. What procedures Defendants have for issuing poll watchers certificates or credentials, and the full extent of the rules or regulations, if any, that are enforced by Defendants with regards to poll watching.

9. The targeted discovery sought by Plaintiffs is relevant to their requests for declaratory relief.<sup>3</sup>

10. Rule 57 of the Federal Rules of Civil Procedure provides, in relevant part, that “[t]he court may order a speedy hearing of a declaratory judgment action.” Fed. R. Civ. P. 57.

11. Under Rule 57, a district court possesses “broad discretion” in deciding whether expedited proceedings are warranted, and this discretion stems from district courts’ “inherent authority to manage their dockets and courtrooms with a view toward the efficient and expedient

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<sup>3</sup> In their complaint, Plaintiffs have also sought preliminary and permanent injunctive relief. But, Plaintiffs recognize that the current length of time until the upcoming 2020 General Election counsels against the filing of a preliminary injunction motion if other means of case expedition will lead to the necessary relief in a timely manner. Thus, to conserve judicial resources, Plaintiffs are attempting to meet that need by way of a speedy declaratory judgment hearing and expedited discovery. As the time until the General Election draws to a close, though, should it become necessary to do so to ensure free and fair elections conducted with integrity, Plaintiffs reserve the right to file and seek appropriate injunctive relief.

resolution of cases.” *Cty. of Butler v. Wolf*, No. 2:20-cv-677, 2020 U.S. Dist. LEXIS 93484, at \*6 (W.D. Pa. May 28, 2020) (quoting *Walsh/Granite Jv v. Hdr Eng'g, Inc.*, 2018 U.S. Dist. LEXIS 232490, 2018 WL 10228391 (W.D. Pa. Jan. 3, 2018)).

12. Factors for a district court to consider under Rule 57 include:
  - a. “[W]hether expediting determination of the requested declaratory judgment ‘will streamline and narrow issues for discovery and trial, even if it will not entirely resolve the controversy[;]’”
  - b. Whether the “determination [of the requested declaratory judgment is] largely one of law, and factual issues (while expedited discovery is permitted and frequently granted) are not predominant[;]” and
  - c. Whether there are “imminent or ongoing violations of important rights.”

*Cty. of Butler*, 2020 U.S. Dist. LEXIS 93484, at \*6-\*7 (citations omitted).

13. Unlike preliminary injunction proceedings, a party “need not establish immediate and irreparable injury to justify expedited review under Rule 57.” *Cty. of Butler*, 2020 U.S. Dist. LEXIS 93484, at \*14, n. 3. But even if irreparable injury is a factor, “federal courts have long held that the deprivation of constitutional rights – particularly rights enshrined in the First Amendment – is presumed to be irreparable,” and therefore supports expedited review under Rule 57. *Id.*

14. Additionally, Rule 26 of the Federal Rules of Civil Procedure permits discovery to take place on an expedited basis, prior to a Rule 26(f) conference, when such discovery is “authorized by ... court order.” Fed. R. Civ. P. 26(d).

15. “A district court has wide latitude in structuring discovery and its rulings will not be overturned absent a showing of a clear abuse of discretion.” *Westchester Fire Ins. Co. v. Household Int’l, Inc.*, 167 Fed. App’x 895, 899 n.2 (3d Cir. 2006) (citing *McMullen v. Bay Ship Mgmt.*, 335 F.3d 215, 217 (3d Cir. 2003)).

16. “The latitude given the district court extends as well to the manner in which it orders the course and scope of discovery.” *Ardrey v. United Parcel Servs.*, 798 F.2d 679, 682 (4th Cir. 1986) (citing *Eggleston v. Chicago Journeymen Plumbers Etc.*, 657 F.2d 890, 902 (7th Cir. 1981); *Sanders v. Shell Oil Co.*, 678 F.2d 614, 618 (5<sup>th</sup> Cir. 1982)). *See also* *Cty. of Butler*, 2020 U.S. Dist. LEXIS 93484, at \*16 (“The Court has the authority to streamline, limit and shorten the discovery process in a manner best suited to the case at hand.”).

17. While the Third Circuit has not provided authoritative guidance on the test to use to determine whether to grant an expedited discovery request, this Court and its sister courts in this Circuit have analyzed the question under a good cause standard. *See, e.g., Samuel, Son & Co. v. Beach*, No. 13-cv-128, 2013 WL 4855325, 2013 U.S. Dist. LEXIS 129486, at \*6–\*7 (W.D. Pa. Sept. 11, 2013) (recognizing that courts should consider whether “the plaintiff’s need for expedited discovery, in consideration of the administration of justice, outweighs the possible prejudice or hardship to the defendant”); *Kone Corp. v. TyssenKrupp USA, Inc.*, No. 11-465-LPS-CJB, 2011 WL 4478477, 2011 U.S. Dist. LEXIS 109518, at \*10 (D. Del. Sept. 26, 2011) (same).

18. All the foregoing factors and elements are met in this case, counseling in favor of granting the relief requested, both in terms of a speedy declaratory judgment hearing and expedited discovery.

19. Few rights, if any, are more important than the right to free and fair elections, conducted with integrity and transparency, the very right at issue in this case.

20. Also, the subject matters of the requested expedited discovery are limited and targeted to recent and likely easily accessible information necessary to allow this Court to make a timely determination of the important constitutional rights Plaintiffs seek to defend.

21. Although service upon Defendants is still being effectuated,<sup>4</sup> there is very little, if any, prejudice or hardship to the Defendants if they are required to respond to limited, targeted discovery and ultimately required to comply with the law and ensure that the upcoming November 3, 2020, General Election is conducted freely, fairly, and with integrity and transparency.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant this Motion. A proposed Order is attached for the Court's consideration.

Respectfully submitted,

PORTER WRIGHT MORRIS & ARTHUR LLP

Date: July 1, 2020

By: /s/ Ronald L. Hicks, Jr.

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Justin Clark (DC #499621)  
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matthew.morgan@electionlawllc.com  
justin.clark@electionlawllc.com

*Counsel for Plaintiffs*

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<sup>4</sup> Because Defendants are still being served, counsel for Plaintiffs has not been able to confer with Defendants and their counsel or obtain their consent to the relief requested in this Motion.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **MOTION** is being served along with the Summons and Complaint on each Defendant and the Attorney General of the Commonwealth of Pennsylvania.

Respectfully submitted,

PORTER WRIGHT MORRIS & ARTHUR LLP

By: /s/ Ronald L. Hicks, Jr.

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*Counsel for Plaintiffs*

# **EXHIBIT C**

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

DONALD J. TRUMP FOR  
PRESIDENT, INC., et al.,

Plaintiffs,

v.

KATHY BOOCKVAR, et al.,

Defendants.

}  
}  
} 2:20-cv-966-NR  
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**SCHEDULING ORDER**

The parties in this lawsuit assert that they share a mutual interest in ensuring that the November 2020 general election be free and fair, and that the voting procedures in place be safe, secure, and accessible to the voters of this Commonwealth. The dispute here, of course, is how to go about doing that, especially in light of the current public-health pandemic.

The parties appear to have different views as to whether and how to implement any mail-in voting procedures in November, with Plaintiffs contending that the mail-in voting procedures in the primaries resulted in “disenfranchisement of voters, questions about the accuracy of election results, and ultimately chaos.” As such, Plaintiffs, who are candidates or electors in the upcoming election, filed this lawsuit and have moved for a speedy hearing on their declaratory claims (with expedited discovery), so that any of the past problems can be resolved before November.

Defendants are election officers and boards of elections, and they oppose the motion for a speedy hearing. Many of them claim that they intend to move to dismiss this case for fundamental legal defects in the complaint; they also argue that the proposed discovery is burdensome, and say, in any event, much

of the relevant information will be made available on August 1, 2020, as part of the statutorily required report on the primary election.

After carefully considering all of the parties' arguments, the Court will grant in part and deny in part the motion for a speedy hearing and expedited discovery. The Court orders that a speedy hearing is proper and authorized by federal law in this context, and, accordingly, schedules one to begin on September 22, 2020. *See Cty. of Butler v. Wolf*, No. 2:20-CV-677, 2020 WL 2769105, at \*5-6 (W.D. Pa. May 28, 2020) (Stickman, J.). Specifically, an expedited timeline is necessary in this case to allow for the resolution of Plaintiffs' claims in advance of the November general election.

The Court is also mindful, however, of the need to ensure proportionality in discovery, especially in light of the expedited timeline, and Defendants' competing obligations to administer the upcoming general election. As such, the Court will encourage early filing of all dispositive motions, and narrow the scope of any expedited discovery to mainly focus on the information in the August 1, 2020, report on the primary election, which is information that Defendants have stated that they can readily provide.

The Court ORDERS as follows:

**I. Evidentiary Hearing**

(1) An evidentiary hearing on Plaintiffs' Motion for Speedy Declaratory Judgment [ECF 6] will be held on **September 22 and 23, 2020**, commencing at **9:30 AM** each day.

(2) The tentative plan is to hold the hearing in person. If public-health risks exist at that time, the Court may convert the hearing to a remote one, using videoconferencing technology.

## **II. Motions to Dismiss**

(3) All Defendants are authorized to file Rule 12 motions in the ordinary timeframe contemplated by Rule 12(a). However, the Court encourages Defendants who wish to expedite the process to file Rule 12 motions by **July 24, 2020**. Indeed, if Defendants raise threshold standing or abstention arguments, motions to dismiss on those grounds should be filed as quickly as possible. For all Rule 12 motions, briefs shall be limited to 20 pages.

(4) Plaintiffs shall have seven days to respond to all motions to dismiss. Thus, if a motion is filed on **July 24, 2020**, responses are due **July 31, 2020**. Response briefs shall be limited to 20 pages.

(5) Reply briefs in support of motions to dismiss are optional and must be filed within three days of a response brief. They are limited to 5 pages. No sur-replies will be authorized, given the compressed schedule.

(6) Consistent with the Court's Practices and Procedures Section II(c), discovery will not be stayed pending resolution of the Rule 12 motions.

(7) Regarding motions to dismiss, as well as all other motions, all parties are entitled to file their own briefs. However, if the purpose of the brief is to restate those arguments made by another party, a party is encouraged not to file a brief. Rather, that party should file a one-sentence document specifying which filing is being joined. This document should be labeled a "Joinder" on the ECF system, rather than a "Motion for Joinder."

## **III. Discovery Deadlines**

### **A. Preliminary Matters**

(8) Discovery will be limited to serving written interrogatories, requests for production of documents, and conducting depositions as set forth below.

**B. Interrogatories, Requests for Production & Rule 502 Order**

(9) Each party will be limited to **15** interrogatories and **15** requests for production per party, per each target of that discovery, including subparts. No requests for admission will be permitted.

(10) The parties shall meet and confer by **July 22, 2020** as to the scope of relevant discovery, taking into account the information that will be disclosed with the August 1, 2020, report of the primary election. To provide guidance to the parties regarding that conference, the Court notes that, at a minimum, the August 1, 2020, report, and the data submissions under 71 P.S. § 279.6(c), should be produced by Defendant Secretary Boockvar to all other parties (including any Intervenors). Any additional discovery beyond that must: (i) not be duplicative of materials received in connection with the report; and (ii) be narrowly tailored to the implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.

(11) All written discovery requests must be served by **July 24, 2020**.

(12) All responses to written discovery, including producing all items and documents, shall be made by **August 5, 2020**.

a. The parties shall not serve boilerplate interrogatories and document requests, and their written responses shall not contain boilerplate general objections. Any objections must be stated with specificity as to a particular request or will otherwise be deemed waived.

(13) To the extent that there are disputes regarding the scope of fact discovery, the parties must meet and confer to attempt to resolve those disputes. The Court will hold a telephonic status conference on **August 6**,

**2020**, at **2:00 PM** to discuss the status of fact discovery, resolve any initial disputes, and discuss any requests to alter this order. If future disputes arise, the parties must adhere to the process set forth in the Court's Practices and Procedures Section II(e).

(14) Pursuant to Local Rule 16.1(D), and to aid in the implementation of Fed. R. Evid. 502, the following is ordered in the event of an inadvertent disclosure of any privileged or trial preparation/attorney work product material:

- a. The producing party shall promptly notify all receiving parties of the inadvertent production of any privileged or trial preparation material. Any receiving party who has reasonable cause to believe that it has received privileged or trial preparation material shall promptly notify the producing party.
- b. Upon receiving notice of inadvertent production, any receiving party shall immediately retrieve all copies of the inadvertently disclosed material and sequester such material pending a resolution of the producing party's claim either by the Court or by agreement of the parties.
- c. If the parties cannot agree as to the claim of privilege, the producing party shall move the Court for a resolution within 30 days of the notice set forth in subparagraph (a). Nothing herein shall be construed to prevent a receiving party from moving the Court for a resolution, but such motion must be made within the 30-day period.

### **C. Depositions**

(15) Each “side”—(1) Plaintiffs; (2) Defendants; and (3) Intervenor—shall be permitted to conduct no more than **30 hours** of depositions per side prior to the hearing.

- a. Given the ongoing public-health crisis, all depositions must be conducted by remote means, unless all attendees and the deposition witness agree to conduct the deposition in person.
- b. Each “side” shall confer amongst themselves to agree on how to divide their 30 hours of deposition time.
- c. The party taking the deposition must “keep the clock”; recesses do not count against the time.
- d. The time limits for depositions shall not include any expert depositions.
- e. Any party may seek leave for additional deposition time, upon filing a motion explaining the need for the deposition testimony.
- f. All fact-witness depositions must be completed by **August 26, 2020**.

### **D. Expert Reports**

(16) All affirmative expert reports shall be completed and simultaneously produced by **August 12, 2020**. Rebuttal expert reports shall be completed and produced by **August 19, 2020**. All expert depositions shall be completed by **August 26, 2020**.

### **E. Modifications to Discovery Schedule**

(17) The discovery deadlines set forth above may be modified only by leave of Court.

#### **IV. Pre-Hearing Briefing**

(18) The parties shall submit pre-hearing briefs, not to exceed 20 pages, by **September 15, 2020 by 5:00 PM**. Though it is not mandatory, it would be helpful for the parties to submit tentative proposed findings of fact, which can be referred to during the hearing to guide the Court as it considers witness testimony.

(19) The parties shall submit motions *in limine* and *Daubert* motions by **September 15, 2020 by 5:00 PM**. Responses to motions *in limine* and *Daubert* motions must be submitted by **September 18, 2020 by 5:00 PM**. Moving and response briefs shall not exceed 10 pages. No reply briefs are permitted.

#### **V. Exhibit & Witness Lists**

(20) The parties shall exchange exhibits and provide the Court with electronic copies of exhibits by **September 15, 2020 by 5:00 PM**. Exhibits should be pre-marked and e-mailed to the Court's courtroom deputy at alexander\_vahlsing@pawd.uscourts.gov. The Court prefers to receive each exhibit as a separately labeled document or file.

(21) The parties shall exchange witness lists by **September 15, 2020 by 5:00 PM** and e-mail the Court their witness lists, as well. The parties shall include proposed time limits for the testimony of each witness.

(22) All direct testimony (*i.e.*, testimony of non-adverse witnesses) shall be entered by written declarations, such that the hearing can focus mostly on cross-examination of witnesses. The parties must file witness declarations by **September 15, 2020 by 5:00 PM**.

#### **VI. Pre-Hearing Teleconference**

(23) A pre-hearing teleconference will take place on **September 10, 2020 at 3:00 PM**. The parties shall confer ahead of time as to the proposed

time parameters for each side in presenting its case, and be prepared to discuss that on the call.

## **VII. Hearing Procedures**

(24) **Hours.** Unless otherwise ordered, court will be in session from 9:30 AM to 6:00 PM, with a short break for lunch.

(25) **No Opening Statements.** Because the parties will have already submitted pre-hearing briefs, opening statements will not be necessary. The parties should assume that the Court has carefully reviewed their submissions prior to the hearing and is familiar with their respective positions.

(26) **Closing Arguments.** Closing arguments will be authorized, with each side being allotted no more than 30 minutes per side. Counsel may use exhibits, PowerPoints, or other demonstratives in closings, provided that the same have been given to opposing counsel beforehand.

(27) **Use of Exhibits.** Because counsel will have previously marked and exchanged all exhibits and provided copies to the Court, it is not necessary to show exhibits to opposing counsel prior to using them. When presenting a new exhibit, counsel should clearly identify the exhibit they are referring to.

(28) **Examination of Witnesses.** Co-counsel are not permitted to split up the examination of a witness.

(29) **Objections.** Counsel should state the legal basis for any objection in a summary fashion (*e.g.* hearsay, lacks foundation, etc.). Speaking objections are not permitted. The Court will prompt counsel if further explanation or argument is required to resolve an objection.

(30) **Use of Technology.** The parties should use trial presentation technology, courtroom technology, and trial exhibit summaries pursuant to Fed. R. Evid. 1006 to the fullest extent possible. This includes where counsel is using a deposition transcript or written statement to impeach a witness.

Plaintiffs' counsel is instructed to serve a copy of this order by overnight mail (and email, if feasible) on all Defendants (or their counsel) who have not yet entered appearances in this case.

Dated: July 17, 2020

BY THE COURT:

*/s/ J. Nicholas Ranjan*

\_\_\_\_\_  
United States District Judge

# **EXHIBIT D**



(ii) be narrowly tailored to the implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election. To the extent there is disagreement among any parties regarding the meaning of “implementation of the mail-in and poll-watching procedures” as it pertains to the amended complaint, those parties must meet and confer. If no resolution is reached by **Sunday, August 9, 2020**, then a party seeking relief must file a motion to compel by **Monday, August 10, 2020**. Responses are due by **Tuesday, August 11, 2020**. Moving and response briefs shall not exceed 10 pages. No reply briefs are permitted. The motion and response should include proposed orders, and include a specific amount for incurred attorneys’ fees, as the Court intends to award attorneys’ fees if authorized by Rule 37.

(3) A party responding to written discovery requests must serve written responses (and documents, if applicable) on the party that propounded those requests, as well as all other parties in this action.

(4) All responses to written discovery, including producing all items and documents, shall be made by **August 10, 2020 at 12:00 PM**. The parties may agree among themselves to a short extension of this deadline.

(5) Those parties seeking a protective order in this case must confer and file a joint motion for entry of protective order by **August 10, 2020 at 10:00 AM**.

(6) All affirmative expert reports shall be completed and simultaneously produced by **August 26, 2020**. Rebuttal expert reports shall be completed and produced by **September 2, 2020**. All expert depositions shall be completed by **September 9, 2020**.

### **III. Summary-Judgment Briefing**

(7) To the extent any party wishes to file a motion for summary judgment, it must be filed by **September 4, 2020**. Responses must be filed by **September 11, 2020**. Moving and response briefs shall not exceed 30 pages. No reply briefs are permitted.

(8) As set forth in Local Rule of Civil Procedure 56(a), the Court, in its discretion, may establish its own requirements for motions for summary judgment. Pursuant to that discretion, the Court instructs the parties not to separately file concise statements of material facts. Instead, the parties should include a “facts” section in their briefs setting forth a narrative of the facts that the filing party contends are undisputed and material, including any facts which for purposes of the summary judgment motions only are assumed to be true. The parties must cite to a particular pleading, deposition, answer to interrogatory, admission on file, or other part of the record supporting each statement of fact in the brief. All cited documents must be compiled in a separately filed appendix (with each exhibit in the appendix being a separate PDF document).

Unless otherwise modified above, the terms of the prior scheduling order [ECF 124] remain in effect.

Dated: August 6, 2020

BY THE COURT:

/s/ J. Nicholas Ranjan  
United States District Judge

# **EXHIBIT E**

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

DONALD J. TRUMP FOR PRESIDENT, ) CIVIL ACTION  
INC.; GLENN THOMPSON; MIKE KELLY; )  
JOHN JOYCE; GUY RESCHENTHALER; )  
REPUBLICAN NATIONAL COMMITTEE; )  
MELANIE STRINGHILL PATTERSON; and )  
CLAYTON DAVID SHOW, )

Plaintiffs, )

v. )

No. 2-20-cv-966

KATHY BOOCKVAR, in her capacity as )  
Secretary of the Commonwealth of )  
Pennsylvania; ADAMS COUNTY BOARD )  
OF ELECTIONS; ALLEGHENY COUNTY )  
BOARD OF ELECTIONS; ARMSTRONG )  
COUNTY BOARD OF ELECTIONS; )  
BEAVER COUNTY BOARD OF )  
ELECTIONS; BEDFORD COUNTY BOARD )  
OF ELECTIONS; BERKS COUNTY BOARD )  
OF ELECTIONS; BLAIR COUNTY BOARD )  
OF ELECTIONS; BRADFORD COUNTY )  
BOARD OF ELECTIONS; BUCKS )  
COUNTY BOARD OF ELECTIONS; )  
BUTLER COUNTY BOARD OF )  
ELECTIONS; CAMBRIA COUNTY BOARD )  
OF ELECTIONS; CAMERON COUNTY )  
BOARD OF ELECTIONS; CARBON )  
COUNTY BOARD OF ELECTIONS; )  
CENTRE COUNTY BOARD OF )  
ELECTIONS; CHESTER COUNTY BOARD )  
OF ELECTIONS; CLARION COUNTY )  
BOARD OF ELECTIONS; CLEARFIELD )  
COUNTY BOARD OF ELECTIONS; )  
CLINTON COUNTY BOARD OF )  
ELECTIONS; COLUMBIA COUNTY )  
BOARD OF ELECTIONS; CRAWFORD )  
COUNTY BOARD OF ELECTIONS; )  
CUMBERLAND COUNTY BOARD OF )  
ELECTIONS; DAUPHIN COUNTY BOARD )  
OF ELECTIONS; DELAWARE COUNTY )  
BOARD OF ELECTIONS; ELK COUNTY )  
BOARD OF ELECTIONS; ERIE COUNTY )  
BOARD OF ELECTIONS; FAYETTE )  
COUNTY BOARD OF ELECTIONS; )

FOREST COUNTY BOARD OF )  
ELECTIONS; FRANKLIN COUNTY )  
BOARD OF ELECTIONS; FULTON )  
COUNTY BOARD OF ELECTIONS; )  
GREENE COUNTY BOARD OF )  
ELECTIONS; HUNTINGDON COUNTY )  
BOARD OF ELECTIONS; INDIANA )  
COUNTY BOARD OF ELECTIONS; )  
JEFFERSON COUNTY BOARD OF )  
ELECTIONS; JUNIATA COUNTY BOARD )  
OF ELECTIONS; LACKAWANNA )  
COUNTY BOARD OF ELECTIONS; )  
LANCASTER COUNTY BOARD OF )  
ELECTIONS; LAWRENCE COUNTY )  
BOARD OF ELECTIONS; LEBANON )  
COUNTY BOARD OF ELECTIONS; )  
LEHIGH COUNTY BOARD OF )  
ELECTIONS; LUZERNE COUNTY BOARD )  
OF ELECTIONS; LYCOMING COUNTY )  
BOARD OF ELECTIONS; MCKEAN )  
COUNTY BOARD OF ELECTIONS; )  
MERCER COUNTY BOARD OF )  
ELECTIONS; MIFFLIN COUNTY BOARD )  
OF ELECTIONS; MONROE COUNTY )  
BOARD OF ELECTIONS; MONTGOMERY )  
COUNTY BOARD OF ELECTIONS; )  
MONTOUR COUNTY BOARD OF )  
ELECTIONS; NORTHAMPTON COUNTY )  
BOARD OF ELECTIONS; )  
NORTHUMBERLAND COUNTY BOARD )  
OF ELECTIONS; PERRY COUNTY BOARD )  
OF ELECTIONS; PHILADELPHIA )  
COUNTY BOARD OF ELECTIONS; PIKE )  
COUNTY BOARD OF ELECTIONS; )  
POTTER COUNTY BOARD OF )  
ELECTIONS; SCHUYLKILL COUNTY )  
BOARD OF ELECTIONS; SNYDER )  
COUNTY BOARD OF ELECTIONS; )  
SOMERSET COUNTY BOARD OF )  
ELECTIONS; SULLIVAN COUNTY )  
BOARD OF ELECTIONS; SUSQUEHANNA )  
COUNTY BOARD OF ELECTIONS; TIOGA )  
COUNTY BOARD OF ELECTIONS; UNION )  
COUNTY BOARD OF ELECTIONS; )  
VENANGO COUNTY BOARD OF )  
ELECTIONS; WARREN COUNTY BOARD )

OF ELECTIONS; WASHINGTON COUNTY )  
BOARD OF ELECTIONS; WAYNE )  
COUNTY BOARD OF ELECTIONS; )  
WESTMORELAND COUNTY BOARD OF )  
ELECTIONS; WYOMING COUNTY )  
BOARD OF ELECTIONS; and YORK )  
COUNTY BOARD OF ELECTIONS, )  
 )  
Defendants. )

**MOTION TO INTERVENE BY THE PENNSYLVANIA STATE DEMOCRATIC PARTY  
AND INDIVIDUAL CANDIDATES AND VOTERS UNDER FEDERAL RULE OF CIVIL  
PROCEDURE 24**

Pursuant to Fed. R. Civ. P. 24(a) and (b) of the Federal Rules of Civil Procedure, non-parties the Pennsylvania State Democratic Party, Congressman Dwight Evans, State Senators Sharif Street and Vincent Hughes, State Representatives Danillo Burgos, Morgan Cephas, Austin Davis, Isabella Fitzgerald, Edward Gainey, Jordan Harris, Mary Isaacson, Malcolm Kenyatta, Patty Kim, Stephen Kinsey, Peter Schweyer, and candidates for office Nina Ahmad, Anton Andrew, Janet Diaz, Manuel M. Guzman, Jr., Rick Krajewski, (“Candidates”), and State Senators Art Haywood and Anthony Williams (“Non-Candidate Legislators”) (collectively “Intervenors”) move for leave to intervene in this action to defend against claims of violations of the United States Constitution, Pennsylvania Constitution, and Pennsylvania Election Law asserted by Plaintiffs Donald J. Trump for President, Inc., Glenn Thompson, Mike Kelly, John Joyce, Guy Reschenthaler, the Republican National Committee, Melanie Stringhill Patterson, and Clayton David Show (collectively “Plaintiffs”) in the above-captioned matter. In support of this Motion, Intervenors incorporate by reference its Brief in Support of its Motion to Intervene.

Further, pursuant to Fed. R. Civ. P. 24(c), Intervenors request this Court deem its Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) filed.

Respectfully submitted,

/s/ A. Michael Pratt

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*Attorneys for Intervenors*

Dated: July 13, 2020

**CERTIFICATE OF SERVICE**

I, A. Michael Pratt, hereby certify that on July 13, 2020, I caused a true and correct copy of the foregoing Motion to Intervene, Brief in Support, Proposed Order, and Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), Brief in Support, and Proposed Order to the Motion to Dismiss to be served on counsel of record for Plaintiffs and Defendants listed on the docket via the Court's ECF system.

*/s/ A. Michael Pratt* \_\_\_\_\_  
A. Michael Pratt

# **EXHIBIT F**



## **BACKGROUND**

On June 29, 2020, Plaintiffs, who are Republican candidates or electors in the upcoming November 2020 general election, filed this lawsuit seeking declaratory and injunctive relief in advance of the election. [ECF 4]. They subsequently amended their complaint on July 27, 2020. [ECF 234]. Defendants are the Secretary of the Commonwealth, as well as the boards of elections for all 67 counties in Pennsylvania.

Two weeks after the lawsuit was filed, on July 13, 2020, the Pennsylvania State Democratic Party and various Democratic candidates and non-candidate legislators filed a motion to intervene, arguing that they have a distinct interest in “protecting Democratic candidates in competing in a free and fair election and further protecting registered Democratic voters’ rights to an effective vote.” [ECF 85, p. 14].

On July 15, 2020, the NAACP Pennsylvania State Conference, Common Cause Pennsylvania, League of Women Voters of Pennsylvania, and several individual electors moved to intervene, arguing that they have a distinct interest in “protecting their own and their members’ rights to vote safely in the midst of a pandemic[.]” [ECF 104, p. 19].

On July 20, 2020, Citizens for Pennsylvania’s Future and the Sierra Club filed their motion to intervene, arguing that they have a distinct interest “in empowering traditionally underrepresented communities to participate in the electoral process” through mail-in voting. [ECF 138, p. 12].

Finally, on July 24, 2020, the Pennsylvania Alliance for Retired Americans and several retired voters moved to intervene, arguing that they have a distinct interest in “safely exercis[ing] their right to vote through the use of mail ballots” delivered to drop-boxes. [ECF 200, p. 15].

All proposed intervenors have argued that they are entitled to intervene as of right or permissively under Federal Rule of Civil Procedure 24.

Plaintiffs have opposed the final three motions to intervene [ECF 103; ECF 137; ECF 199], advancing essentially the same arguments in each brief. They argue that the proposed intervenors fail to meet Rule 24's requirements for intervention as a matter of right or by permission, since proposed intervenors "lack a discrete, substantial, legally protectable interest in the outcome of this suit, and they cannot overcome the presumption that Defendants and/or other intervening parties are adequately representing their interests." [ECF 177, p. 2; ECF 224, p. 2; ECF 304, p. 2]. They also argue that the proposed intervenors fail to identify the claims and defenses to which they are a proper party as required by Rule 24(c). [ECF 177, p. 1; ECF 224, p. 1; ECF 304, p. 1].

The motions are fully briefed and ready for disposition. After considering the papers, the Court finds, in its discretion, that all proposed intervenors should be granted leave to permissively intervene.

### **DISCUSSION & ANALYSIS**

Rule 24 provides two procedural avenues for an entity that was not named as a party to a lawsuit to seek to insert itself into the proceedings. Those are designated under the Rule as "intervention of right," Fed. R. Civ. P. 24(a), and "permissive intervention," Fed. R. Civ. P. 24(b).

To intervene as a matter of right under Rule 24(a)(2), the proposed intervenor must demonstrate: "(1) the application for intervention is timely; (2) the applicant has a sufficient interest in the litigation; (3) the interest may be affected or impaired, as a practical matter by the disposition of the action; and (4) the interest is not adequately represented by an existing party in the

litigation.” *In re Cmty. Bank of N. Virginia*, 418 F.3d 277, 315 (3d Cir. 2005) (quoting *Harris v. Pernsley*, 820 F.2d 592, 596 (3d Cir. 1987)).

Permissive intervention under Rule 24(b), on the other hand, allows for intervention under more relaxed conditions. The Rule permits a party to intervene by demonstrating: (1) a timely application for intervention; and (2) that the party’s claim or defense shares a common question of law or fact with the underlying action. *See* Fed. R. Civ. P. 24(b)(1)(B). When reviewing a request for permissive intervention, the court must also consider whether permissive intervention would “unduly delay or prejudice the adjudication of the rights of the original parties.” *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 779 n. 6 (3d Cir.1994) (quoting Fed. R. Civ. P. 24(b)(3)).

“Whether to allow a party to permissively intervene is left to the sound discretion of the Court.” *Worthington v. Bayer Healthcare, LLC*, Civ. No. 11–2793(ES)(CLW), 2011 WL 6303999, at \*8 (D.N.J. Dec. 15, 2011) (citation omitted); *Brody By & Through Sugzdinis v. Spang*, 957 F.2d 1108, 1124 (3d Cir. 1992) (“[A]s the doctrine’s name suggests, [it] is within the discretion of the district court” whether to grant permissive intervention) (citation omitted). “The purpose of permissive intervention is to avoid a multiplicity of suits by settling related controversies in a single action.” *Wolf by Wolf v. Procter & Gamble Co.*, 555 F.Supp. 613, 627–28 (D.N.J. 1982) (citation omitted).

Here, the Court need not address intervention by right, since permissive intervention is appropriate—the proposed intervenors’ requests to intervene are timely, the grounds they present share a common question of law or fact with the underlying action, and there is no undue delay or prejudice involved.

First, the proposed intervenors meet the threshold inquiry of whether their motions are timely. *See NAACP v. New York*, 413 U.S. 345, 365 (1973).

“Rule 24 does not set forth a specific time limit governing the filing of a motion to intervene. Therefore, the determination of whether the motion has been timely filed is left to the discretion of the trial court.” *League of Women Voters of Haverford Twp. v. Bd. of Comm’rs. of Haverford Twp.*, No. CIV.A. 86-0546, 1986 WL 3868, at \*2 (E.D. Pa. Mar. 27, 1986). Here, it is apparent that all proposed intervenors moved in a timely way; indeed, they all moved in the few weeks between when Plaintiffs filed the initial complaint and when they amended. *See id.* (“There is no question that the applicants have made a timely motion to intervene having filed their motion within one month of the filing of plaintiff’s complaint. This is not a case where the applicants have sat on their rights or failed to protect their interests.”); *Ass’n for Fairness in Bus., Inc. v. New Jersey*, 193 F.R.D. 228, 232 (D.N.J. 2000) (permissive intervention granted where case was in preliminary stage of litigation).

Second, the proposed intervenors’ interests have a question of law or fact in common with this lawsuit. Namely, the proposed intervenors’ interest in the constitutionality of Pennsylvania’s voting procedures, mainly through the use of drop-boxes for mail-in voting, goes to the heart of Plaintiffs’ action. *See League of Women Voters*, 1986 WL 3868, at \*2 (residents of township who were registered to vote permissively allowed to intervene since “[t]heir claim concerning the Board of Commissioners’ failure to redistrict is identical to the claim raised by the original parties”); *Pierce v. Allegheny County Bd. of Elections*, 324 F. Supp. 2d 684, 688 (W.D. Pa. 2003) (Conti, J.) (noting intervention of the Pennsylvania Democratic State Committee to Republican political candidates’ challenge against county board of elections regarding third-party delivery of absentee ballots); *Stein v. Cortes*, 223 F. Supp. 3d 423, 429 (E.D. Pa. 2016) (noting the intervention of the Republican Party to a lawsuit demanding a recount for the 2016 general election).

Third, intervention at this time will not unduly delay or prejudice the adjudication of the rights of Plaintiffs, since the case has not progressed to a stage where intervention would be burdensome. Indeed, Plaintiffs only filed their amended complaint last week. *See League of Women Voters*, 1986 WL 3868, at \*2; *E.E.O.C. v. Northwestern Human Servs.*, No. Civ.A. 04-CV-4531, 2005 WL 2649324, at \*4 (E.D. Pa. Oct. 14, 2005) (“Defendant is unlikely to experience any undue delay or prejudice. Discovery is ongoing[.]”). While the hearing on Plaintiffs’ requests for declaratory relief is about two months away, the proposed intervenors will nonetheless be able to fully comply with this Court’s pre-hearing scheduling order, without delaying or prejudicing Plaintiffs’ rights, including preparation for the hearing.

Finally, the Court notes that Plaintiffs argue that some of the proposed intervenors violated Rule 24(c). Rule 24(c) provides that a proposed intervenor must set forth a “pleading that sets out the claim or defense for which intervention is sought.” However, the Court finds that the proposed intervenors’ failure to attach such a document is not fatal to their motions “because ‘the failure to comply with the Rule 24(c) requirement for a pleading is a purely technical defect which does not result in the disregard of any substantial right.’” *PPL Energyplus, LLC v. Solomon*, No. CV 11-745 (PGS), 2011 WL 13128622, at \*3 (D.N.J. July 19, 2011) (quoting *Westchester Fire Ins. Co. v. Mendez*, 585 F.3d 1183, 1188 (9th Cir. 2009)). Noncompliance with Rule 24(c) is not fatal if the potential intervenor clearly states the grounds for intervention, which is what each proposed intervenor has done here. *See Pereira v. Foot Locker, Inc.*, No. 07-cv-2157, 2009 WL 4673865, at \*5 (E.D. Pa. Dec. 7, 2009) (“The interpretation of this rule is generally liberal, particularly when the actions of the movant have provided the basis and nature for their intervention.”) (citation omitted).

Under these circumstances, permissive intervention is appropriate.

**CONCLUSION**

AND NOW, this 3<sup>rd</sup> day of August, 2020, the Court hereby **ORDERS** that proposed intervenors' motions to intervene, [ECF 83; ECF 103; ECF 137; ECF 199], are **GRANTED**.

BY THE COURT:

*/s/ J. Nicholas Ranjan*

United States District Judge

# **EXHIBIT G**

ORIGINAL

FILED

05/27/2020

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: OP 20-0293

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 20-0293

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**FILED**

**MAY 27 2020**

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

COREY STAPLETON, in his official capacity as  
Montana Secretary of State,

Petitioner,

v.

ORDER

THIRTEENTH JUDICIAL DISTRICT COURT,  
YELLOWSTONE COUNTY, HON. DONALD L.  
HARRIS, Presiding,

Respondent.

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Montana Secretary of State Corey Stapleton, by and through the Montana Attorney General, seeks a writ of supervisory control and immediate partial stay of an order entered on Friday, May 22, 2020, by the Thirteenth Judicial District Court, the Hon. Donald L. Harris, presiding, in that court's Cause No. DV 20-408. We have amended the caption to reflect the appropriate parties to a supervisory control petition. Stapleton has filed a separate notice of appeal from the District Court's preliminary injunction and requests this Court to either entertain the petition or set an expedited briefing schedule on the appeal.

The petition arises from an action filed in mid-March by Robyn Driscoll, the Montana Democratic Party, and the Democratic Senatorial Campaign Committee challenging the constitutionality of two provisions of Montana law, the 2017 Montana Ballot Interference Prevention Act, §§ 13-35-701 through 13-35-705, MCA, and the election-day receipt deadline for absentee ballots set forth in § 13-13-201(3), MCA. The plaintiffs filed a motion for preliminary injunction six weeks later. In the meantime, Governor Steve Bullock entered a statewide directive on March 25, permitting counties to conduct all-mail-ballot elections to protect against public health threats from the novel coronavirus. In response, every county in Montana implemented a mail-ballot election for the 2020 election cycle.

After receiving all parties' briefs and affidavits, and upon their waiver of a hearing, the District Court entered findings of fact, conclusions of law, and an order granting the preliminary injunction. The court determined the plaintiffs had made out a prima facie case and were likely to prevail on the merits of their claims that both provisions were unconstitutional as neither advances a legitimate state interest and both place significant burdens on the fundamental right to vote. The District Court entered its preliminary injunction ten days before the June 2, 2020 primary election and two weeks after election administrators mailed ballots to all Montana voters. Those ballots include instructions to voters in three separate places that ballots must be *received* by the election office by 8:00 p.m. on Election Day, June 2.

The Secretary of State does not challenge the District Court's preliminary injunction against the Ballot Interference Prevention Act, only its order prohibiting enforcement of the election-day receipt deadline. The court's order temporarily invalidates three separate statutes: §§ 13-13-201(3), 13-13-211(3), and 13-19-106(5)(b), MCA, each of which imposes the election-day receipt deadline for absentee or mail-in ballots. The court directed in relevant part that "[a]ll absentee ballots postmarked on or before election day shall be counted, if otherwise valid, provided such ballots are received by the deadline for federal write-in ballots for military and overseas voters[.]"

The petition argues that this Court's exercise of supervisory control is appropriate because the District Court's ruling is a mistake of law with urgent statewide ramifications that make direct appeal an inadequate remedy. Should the Court choose to have the case proceed on appeal, the petition seeks an immediate stay of the order enjoining the election-day receipt deadline. The Secretary of State includes a copy of the motion for stay he filed in the District Court on the day its order was entered, along with the affidavit of Elections Director Dana Corson explaining the effect the order will have on other statutory deadlines and why a stay is necessary to prevent increased public confusion of voters regarding the essential timelines for casting ballots. Corson's affidavit also explains that the District Court's order did not address ballot deadlines for disabled voters in § 13-13-246(2)(c) and

(d), MCA, creating disparity in administration of the election. Notwithstanding the filing of his motion, the Secretary of State seeks immediate relief here given the impending primary election.

As the Secretary of State recognizes, orders granting injunctions are immediately appealable. M. R. App. P. 6(3)(e). *State v. BNSF Ry. Co.*, 2011 MT 108, ¶ 15, 360 Mont. 361, 254 P.3d 561. Where appeal is an adequate remedy, this Court will decline its discretion to exercise supervisory control. M. R. App. P. 14(3). The Court determines that the ordinary course of appeal, with an expedited briefing schedule, affords adequate time to address the issues the Secretary of State presents with the benefit of the record and full development of the arguments by both parties. The Court agrees with the Secretary of State, however, that it is appropriate to stay the District Court's order enjoining enforcement of the election-day receipt deadline in order to maintain the status quo pending consideration of the issues.

Status quo means "the last actual, peaceable, noncontested condition which preceded the pending controversy." *Weems v. State*, 2019 MT 98, ¶ 26, 395 Mont. 350, 440 P.3d 4 (internal quotations and citations omitted). That condition, in place for many years, is that ballots cast by mail must be received in the election administrator's office by 8:00 p.m. on election day. This year's all-mail-ballot primary election is a first for Montana and presents an unusual situation. Election administrators have responded swiftly to ensure that ballots were timely mailed to voters across Montana. Because those ballots include express directive that they will not be counted unless received by the 8 p.m. election-day deadline, we conclude that there is good cause to maintain the election-day deadline for this primary election in order to avoid voter confusion and disruption of election administration.

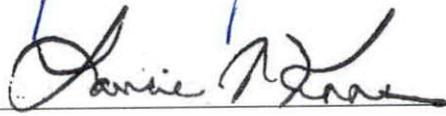
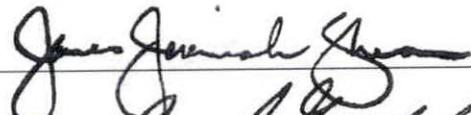
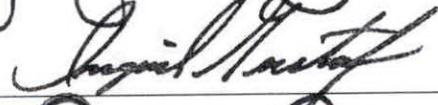
IT IS THEREFORE ORDERED that the District Court's order enjoining the Secretary of State and others acting in concert with him from enforcing the election-day receipt deadline for absentee and mail ballots is hereby STAYED pending this Court's consideration of the merits of the legal issues presented. That portion of the court's order preliminarily enjoining the enforcement of the Ballot Interference Prevention Act, § 13-35-

701, MCA, is undisturbed and remains in effect without objection by the Secretary of State.

IT IS FURTHER ORDERED that the petition for writ of supervisory control is DENIED. The matter shall proceed under this Court's Cause No. DA 20-0495 with submission of briefs in accordance with M. R. App. P. 13. Notwithstanding that the District Court record has yet to be transmitted, Appellant Corey Stapleton's Opening Brief shall be due within thirty days of the date of this Order. It is the Court's intent to have briefing completed by mid-August to allow sufficient time for consideration and ruling in advance of preparations for the November general election. To that end, extensions will not be granted.

The Clerk is directed to provide immediate notice of this Order to all counsel of record in Yellowstone County Cause No. DV 20-408 and to the Thirteenth Judicial District Court, the Hon. Donald L. Harris, presiding.

Dated this 27 day of May, 2020.

  
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Justices

Given the fundamental right of voting, I would not grant a stay. This is a unique situation of course, as there has never been an all-mail election in Montana. More significantly, we have not had all of the usual polling places closed. Allowing ballots to be

counted in the same manner as military ballots is not a significant distinction from the current system.

  
\_\_\_\_\_  
Chief Justice

Justice Dirk Sandefur would join Chief Justice McGrath in denying the stay.

  
\_\_\_\_\_  
Justice

# **EXHIBIT H**

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

KIRK NIELSEN et al.,

Plaintiffs,

v.

CONSOLIDATED

CASE NO. 4:20cv236-RH-MJF

RON DESANTIS et al.,

Defendants.

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**ORDER DENYING A PRELIMINARY  
INJUNCTION ON ALL ISSUES BUT ONE**

The plaintiffs in these consolidated actions challenge Florida voting procedures. Three sets of plaintiffs have filed separate motions for a preliminary injunction. This order denies the motions on all issues but one and provides an abbreviated explanation. A more complete explanation is unnecessary because trial is imminent. Findings of fact and conclusions of law will be announced after the trial.

**I. Governing Standard**

As a prerequisite to a preliminary injunction, a plaintiff must establish a substantial likelihood of success on the merits, that the plaintiff will suffer

irreparable injury if the injunction does not issue, that the threatened injury outweighs whatever damage the proposed injunction may cause a defendant, and that the injunction will not be adverse to the public interest. *See, e.g., Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1354 (11th Cir. 2005); *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc).

## II. Likelihood of Success

This order addresses likelihood of success on the merits for only some of the claims and expresses no opinion on the others. The parties should draw no inference one way or the other about likely success on items not addressed in this section of this order. The ruling does not limit the evidence that may be presented or foreclose a contrary ruling at the forthcoming trial on the merits.

First, the plaintiffs are not likely to succeed on their claim that the defendants must provide postage for mailing in a ballot. The Twenty-Fourth Amendment prohibits a state from denying or abridging the right to vote in a federal election by reason of failure to pay “any poll tax or other tax.” The amendment means what it says. *See Jones v. DeSantis*, No. 4:19cv300, 2020 WL 2618062 at \*27-29 (N.D. Fla. May 24, 2020). Postage charged by the United States Postal Service—like the fee charged by any other courier or the bus fare for getting to the polls to vote in person—is not a tax prohibited by the Twenty-Fourth

Amendment. And the requirement to pay postage also does not violate any other federal provision.

Second, the plaintiffs have not established that they are likely to succeed on their challenge to the election-day deadline for receipt of a mailed ballot. *See VoteVets Action Fund v. Detzner*, No. 4:18-cv-524-MW/CAS (N.D. Fla. Nov. 16, 2018); *see also Friedman v. Snipes*, 345 F. Supp. 2d 1356, 1376-77 (S.D. Fla. 2004). The plaintiffs say a Supervisor of Elections should accept ballots postmarked on or before election day, even if received later at the Supervisor's office. A state could reasonably so provide; some do. But at least as shown by this record, a state could also reasonably decide, as Florida has, to require receipt on or before election day. This eliminates the problem of missing, unclear, or even altered postmarks, eliminates delay that can have adverse consequences, and eliminates the remote possibility that in an extremely close election—Florida has had some—a person who did not vote on or before election day can fill out and submit a ballot later.

Third, the Williams plaintiffs have not established likely success on some of the many items on their list of challenged provisions. *See* ECF No. 68 (also docketed in Case No. 1:20cv67 as ECF No. 108). This is so for items 1, 2, 3, 4, 5, 6, 7, 15, 17, 18, 25, 30, and 33. The Williams plaintiffs have not established likely success on items 3, 4, and 5 because the claims are unlikely to succeed on the

merits based on the existing declarations of the covid-19 emergency, and the possibility of a different emergency declaration is too speculative to constitute an injury in fact.

### **III. Irreparable Harm to the Plaintiffs**

The relevant time frame for analyzing irreparable harm is from now until issuance of a ruling after the July 20 trial. With one exception addressed below, the plaintiffs have failed to show that they will suffer irreparable harm during that period in the absence of a preliminary injunction. Part of the explanation is that no elections will occur during that period—with the possible exception of one local election the plaintiffs have not even mentioned—and the plaintiffs can work around the alleged registration deficiencies.

This is an alternative basis for the denial of a preliminary injunction on the claims for which, as set out in section II above, the plaintiffs have not shown likely success on the merits. This is the sole basis for the denial of a preliminary injunction on other claims. This makes it unnecessary to address the other prerequisites to a primary injunction: damage the proposed injunction may cause a defendant and the public interest.

The exception is the claim that blind individuals have a right to cast a remote secret ballot. The Grubb plaintiffs say at least 45 days will be required for the State to order and put in place the system they say is necessary to redress the denial of

this right. The defendants have not yet responded to the Grubb motion. This order expresses no opinion on any of the four prerequisites to a preliminary injunction on this claim.

#### **IV. Conclusion**

For these reasons,

IT IS ORDERED:

1. The Williams plaintiffs' preliminary-injunction motion, ECF No. 86, is denied in part and remains pending in part.
2. The Nielsen plaintiffs' preliminary-injunction motion, ECF No. 89, is denied.
3. The Grubb plaintiffs' preliminary-injunction motion, ECF No. 230, remains pending.

SO ORDERED on June 24, 2020.

s/Robert L. Hinkle  
United States District Judge

# **EXHIBIT I**

TLP: WHITE



# Pennsylvania

## Absentee and Mail-in Ballot Return Guidance

Date: August 19, 2020

Version: 1.0

TLP: WHITE

**BACKGROUND**

Under Pennsylvania law, in addition to using the mail, voters may return their own voted absentee or mail-in ballot in-person. The ballot may be returned to each county election board’s primary office as well as to other offices and locations designated by the board to receive ballots (hereinafter referred to as “Ballot Return Sites”), including secure ballot return receptacles (commonly referred to as “drop-boxes”) that are easily identifiable.

This document provides guidance on how each county should establish a ballot return and collection plan for their county prior to each election.

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# 1 ESTABLISHING A BALLOT RETURN AND COLLECTION PLAN

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## 1.1 BALLOT RETURN SITES

For each election, county boards of elections should establish a plan and adopt procedures for how voters in their county may return their own voted absentee and mail-in ballots to the county board of elections. The initial plan should be submitted to the Department of State on or before 45 days prior to the election.

County boards of elections may establish multiple ballot return locations where voters may return their own voted ballot. At these sites, the county may provide voters with access to a secure ballot return receptacle for this purpose.

## 1.2 LOCATION OF BALLOT RETURN SITES

### 1.2.1 Location of Ballot Return Sites

Sites may include, but are not limited to, city and municipal facilities, public libraries, county facilities, or other locations designated by the board to receive ballots. When choosing a location, counties should consider, at a minimum, the following:

- locations that serve heavily populated urban/suburban areas, as well as rural areas.
- locations near heavy traffic areas such as commercial corridors, large residential areas, major employers and public transportation routes.
- locations that are easily recognizable and accessible within the community.
- locations in areas in which there have historically been delays at existing polling locations, and areas with historically low turnout.
- proximity to communities with historically low vote by mail usage.
- proximity to language minority communities.
- proximity to voters with disabilities.
- proximity to communities with low rates of household vehicle ownership.
- proximity to low-income communities.
- access to accessible and free parking.
- the distance and time a voter must travel by car or public transportation.

### 1.2.2 Hours of Operation

Business hours for sites do not have to be limited to weekdays or normal business hours. Counties are encouraged to offer business hours outside of these time frames, including weeknights or weekend hours to enable maximum flexibility and convenience to voters.

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### 1.3 PROVIDING NOTICE OF LOCATION OF COUNTY ELECTION OFFICES AND BALLOT RETURN SITES

A list of the ballot return sites and county election offices, including the dates and hours they are open, should be made public as early as possible. At least 7-10 days after submission of the plan to the Department of State, the county board of elections should provide notice of the county's ballot return plan by posting a notice in the county elections office and in a highly visible location on the county's website. The board may also post copies of the notice at such other locations it deems appropriate for the efficient notification of voters. The notification should also be included in absentee and mail-in voting materials sent to voters. At a minimum, the notice should include the following:

- ballot return deadline.
- list of county election offices and ballot return sites, including building names and street address.
- days and hours of operation, including election day hours.
- contact information for the county board of elections.
- accessibility information.

The list posted on the county's website should be in a format that is accessible for people with disabilities. In the event of any changes to site location operations, the county board of elections should post the updated information on the official election website within 24 hours.

### 1.4 CONFIRMATION OF PLAN READINESS

A county's initial absentee and mail-in ballot return plan should be submitted to the Department of State, Bureau of Election Security and Technology ("BEST") no later than 45 days before an election. If the Bureau of Election Security and Technology requests modifications to a plan, the county election office should submit a modified plan within 7 days of the request. If the county board of elections determines that it is in the best interest of their voters to alter their plan or increase/decrease the number of ballot return sites they may submit a supplemental plan to BEST no later than 25 days before the election with notice to the public within 5 days of submission.

## 2 BALLOT RETURN SITE DESIGN AND REQUIREMENTS

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### 2.1 TYPES OF BALLOT RETURN SITES

County boards of elections may establish sites where voters may return their own voted ballot. The site should provide voters access to a ballot return receptacle that is secure.

All return sites should be accessible at least during regular business hours beginning not less than 30 days before the day of the election, and on the day of the election. Return sites should have the same features, and be of substantially similar design, color scheme, and signage to facilitate identification by the public.

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## 2.2 SECURE RECEPTACLES (“DROP-BOXES”)

Each ballot return site should have a secure receptacle that permits voters to return their own voted ballot. A postage stamp is not needed on the return envelope when depositing a ballot at a ballot return site. The receptacle should be designed to function as follows:

- hardware should be operable without any tight grasping, pinching, or twisting of the wrist.
- hardware should require no more than 5 lbs. of pressure for the voter to operate.
- receptacle should be operable within reach-range of 15 to 48 inches from the floor or ground for a person utilizing a wheelchair.

Other design requirements include:

- The drop-box should provide specific points identifying the slot where ballots are inserted. The drop-box may have more than one ballot slot (e.g. one for drive-by ballot return and one for walk-up returns).
- To ensure that only ballot material can be deposited and not be removed by anyone but designated county board of election officials, the opening slot of a drop-box should be too small to allow tampering or removal of ballots.
- The opening slot should also minimize the ability for liquid to be poured into the drop-box or rainwater to seep in.

The county boards of election should determine receptacle size based on the use and needs of the location. The receptacle should be securely fastened to a stationary surface, to an immovable object, or placed behind a counter.

## 2.3 SIGNAGE

In determining the design and functions of ballot return sites, county boards of elections should design them in such a way that they are official and secure. To this end, the county board of elections must ensure each return site is marked with official signage (“Official Ballot Return Site” or “Official Ballot Return.”) Counties should not display traditional “Vote Here” signs at designated ballot return sites. Signage should adhere to the following:

- Signage should be in all languages required under the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10503).
- Signage should display language stating that counterfeiting, forging, tampering with, or destroying ballots is a second-degree misdemeanor pursuant to sections 1816 and 1817 of the Pennsylvania Election Code (25 P.S. §§ 3516 and 3517).
- Signage should also provide a statement that third-party return of ballots is prohibited unless the person returning the ballot is rendering assistance to a disabled voter or an emergency absentee voter. Such assistance requires a declaration signed by the voter and the person rendering assistance.

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- Signage should provide a statement requesting that the designated county elections official should be notified immediately in the event the receptacle is full, not functioning, or is damaged in any fashion, and should provide a phone number and email address for such purpose.

## 2.4 ACCESSIBILITY OF BALLOT RETURN SITES

County boards of elections should ensure that ballot return sites are accessible to voters with disabilities, and should also ensure the following:

- If a site has only one ballot return receptacle, the design and placement of that site should meet the accessibility requirements.
- At a site with multiple drop-boxes, if not all drop-boxes meet the accessibility requirements outlined in this subdivision, then each inaccessible return site should have directional signage indicating the location of an accessible drop-box.

## 2.5 SECURITY

County boards of election must ensure the following when establishing ballot return sites:

- Only personnel authorized by the county board of elections should have access to the ballots inside of a drop-box.
- Drop-boxes should be secured in a manner to prevent their unauthorized removal.
- All drop-boxes should be secured by a lock and sealed with a tamper-evident seal. Only authorized election officials designated by the county board of elections may access the keys and/or combination of the lock.
- Drop-boxes should be securely fastened in a manner as to prevent moving or tampering, such as fastening the drop-box to concrete or an immovable object.
- During the hours when the staffed return site is closed or staff is unavailable, the drop-box should be placed in a secure area that is inaccessible to the public and/or otherwise safeguarded.
- The county boards of election should ensure adequate lighting is provided at all ballot return sites when the site is in use.
- When feasible, ballot return sites should be monitored by a video security surveillance system, or an internal camera that can capture digital images and/or video. A video security surveillance system can include existing systems on county, city, municipal, or private buildings. Video surveillance should be retained by the county election office through 60 days following the deadline to certify the election.
- To prevent physical damage and unauthorized entry, the drop-box at a ballot return site located outdoors should be constructed of durable material able to withstand vandalism, removal, and inclement weather.

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### 3 BALLOT COLLECTION AND CHAIN OF CUSTODY PROCEDURES

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The county board of elections should develop ballot collection and chain of custody procedures for ballots returned to a county election office or a ballot return site. These procedures may not be inconsistent with Pennsylvania law or Department of State directives.

#### 3.1 BALLOT COLLECTION AT BALLOT RETURN SITES

- Ballots should be collected from ballot return sites only by personnel authorized by the county board of elections and at times determined by the board of elections, at least every 24 hours, excluding Saturdays and Sundays.
- The county board of elections should designate at least two election officials to collect voted ballots from a ballot return site. Each designated election official should carry identification or an official designation that identifies them as an election official authorized to collect voted ballots.
- Election officials designated to collect voted ballots by the board of elections should sign a declaration declaring that he or she will timely and securely collect and return voted ballots, will not permit any person to tamper with a ballot return site or its contents, and that he or she will faithfully and securely perform his or her duties.
- The designated election officials should retrieve the voted ballots from the ballot return site and place the voted ballots in a secure ballot transfer container.
- The designated election officials should note on *Ballot Return Site Collection Forms* the site and unique identification number of the ballot return site and the date and time of retrieval.

#### 3.2 TRANSPORT AND RECEIPT OF RETRIEVED BALLOTS TO THE BOARD OF ELECTIONS

- Ballots collected from any ballot return site should be immediately transported to the county board of elections.
- Upon arrival at the office of the county board of elections, the county board of elections, or their designee(s), should note the time of arrival on the same form, as described above.
- The seal number should be verified by a county election official or a designated representative.
- The county board of elections, or their designee(s), should inspect the drop-box or secure ballot transfer container for evidence of tampering and should receive the retrieved ballots by signing the retrieval form and including the date and time of receipt. In the event tampering is evident, that fact must be noted on the retrieval form.
- The completed collection form should be maintained in a manner prescribed by the board of elections to ensure that the form is traceable to its respective secure ballot container.
- The county elections official at the county election office or central count location should note the number of ballots delivered on the retrieval form.

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### 3.3 ELECTION DAY AND POST-ELECTION PROCEDURES

- The county board of elections should arrange for authorized personnel to retrieve ballots on election night and transport them to the county board of elections for canvassing of the ballots.
- Authorized personnel should be present at ballot return sites immediately prior to 8:00 p.m. or at the time the polls should otherwise be closed.
- At 8:00 p.m. on election night, or later if the polling place hours have been extended, all ballot return sites, and drop-boxes must be closed and locked.
- Staff must ensure that no ballots are returned to ballot return site after the close of polls.
- After the final retrieval after the closing of the polls, the drop-box must be removed or locked and/or covered to prevent any further ballots from being deposited, and a sign shall be posted indicating that polling is closed for the election.

## 4 PROCESSING OF COLLECTED BALLOTS

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Any ballots collected from a return site should be processed in the same manner as mail-in ballots personally delivered to the central office of the county board of elections official by the voter and ballots received via the United States Postal Service or any other delivery service.

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Version History:

Version	Date	Description	Author
1.0	8.19.2020	Initial document release	Bureau of Election Security and Technology