

Exhibit A

David Newmann (Pa. No. 82401)
Jasmeet K. Ahuja (Pa. No. 322093)
Robert E. Beecher (Pa. No. 327410)
HOGAN LOVELLS US LLP
1735 Market Street, 23rd Floor
Philadelphia, PA 19103
Telephone: 267-675-4610
Facsimile: 267-675-4601

Michelle Kanter Cohen*
Jon Sherman*
Cecilia Aguilera*
FAIR ELECTIONS CENTER
1825 K Street NW, Suite 450
Washington, DC 20006
Telephone: 202-331-0014

(additional counsel listed on next page)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JACQUELYN CRAMER,

Petitioner,

v.

No.

KATHY BOOCKVAR, IN HER
CAPACITY AS SECRETARY OF THE
COMMONWEALTH OF
PENNSYLVANIA; AND JESSICA
MATHIS, IN HER CAPACITY AS
DIRECTOR OF THE BUREAU OF
ELECTION SERVICES AND NOTARIES
OF THE PENNSYLVANIA
DEPARTMENT OF STATE,

Respondents.

NOTICE TO PLEAD

TO:

Secretary Kathy Boockvar

Office of the Secretary
302 North Office Building, 401 North Street
Harrisburg, PA 17120

Director Jessica Mathis

Pennsylvania Department of State
Bureau of Election Services and Notaries
210 North Office Building, 401 North Street
Harrisburg, PA 17120

You are hereby notified to file a written response to the enclosed Complaint within twenty (20) days from service hereof or a judgment may be entered against you.

/s/ David Newmann

David Newmann (Pa. No. 82401)
Jasmeet K. Ahuja (Pa. No. 322093)
Robert E. Beecher (Pa. No. 327410)
HOGAN LOVELLS US LLP
1735 Market Street, 23rd Floor
Philadelphia, PA 19103
Telephone: 267-675-4610
Facsimile: 267-675-4601

Daniel Landesberg*
HOGAN LOVELLS US LLP
555 13th Street NW
Washington, DC 2004
Telephone: 202-637-5600
Facsimile: 202-637-5601

Michelle Kanter Cohen*
Jon Sherman*
Cecilia Aguilera *

*Not admitted in Pennsylvania, *pro hac vice* motions to be filed.

FAIR ELECTIONS CENTER
1825 K Street NW, Suite 450
Washington, DC 20006
Telephone: (202) 331-0114

*Attorneys for Petitioner
Jacquelyn Cramer*

David Newmann (Pa. No. 82401)
Jasmeet K. Ahuja (Pa. No. 322093)
Robert E. Beecher (Pa. No. 327410)
HOGAN LOVELLS US LLP
1735 Market Street, 23rd Floor
Philadelphia, PA 19103
Telephone: 267-675-4610
Facsimile: 267-675-4601

Michelle Kanter Cohen*
Jon Sherman*
Cecilia Aguilera*
FAIR ELECTIONS CENTER
1825 K Street NW, Suite 450
Washington, DC 20006
Telephone: 202-331-0014

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JACQUELYN CRAMER,

Petitioner,

v.

No.

KATHY BOOCKVAR, IN HER
CAPACITY AS SECRETARY OF THE
COMMONWEALTH OF
PENNSYLVANIA; JESSICA MATHIS, IN
HER CAPACITY AS DIRECTOR OF THE
BUREAU OF ELECTION SERVICES AND
NOTARIES OF THE PENNSYLVANIA
DEPARTMENT OF STATE,

Respondents.

**PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT
FOR EMERGENCY DECLARATORY AND INJUNCTIVE RELIEF**

Petitioner Jacquelyn Cramer files this Petition for Review in the Nature of A Complaint for Emergency and Declaratory Injunctive Relief against Respondents Kathy Boockvar, in her capacity as Acting Secretary of the Commonwealth of

Pennsylvania, and Jessica Mathis, in her capacity as Director of the Bureau of Election Services and Notaries of the Pennsylvania Department of State, states as follows.

INTRODUCTION

1. This lawsuit is about protecting the fundamental right to vote guaranteed by the Pennsylvania Constitution, and ensuring that Pennsylvania voters do not have to choose between exercising that fundamental right and protecting their health. In the context of the Covid-19 pandemic and unprecedented delays in delivery of U.S. mail, failsafe alternatives for expedited delivery of ballots are required to ensure that every eligible voter who requests a mail-in ballot obtains a ballot in time to vote without going to the polls. This relief is necessary and appropriate to permit the citizens of the Commonwealth to vote *safely* for local, state, and national leaders during a pandemic that has required massive disruptions to daily life. Despite efforts to address the pandemic's impact on other aspects of the voting process, no other pending litigation or government proposal addresses how to ensure timely delivery of ballots when, as expected, significant quantities of ballots are not delivered in time, or not delivered at all. This Complaint does.

2. As the November 2020 election approaches, the threat of the Covid-19 pandemic looms over Pennsylvanians' ability to have their voices heard in the

Fall. Epidemiologists and infectious disease experts alike have stated that Covid-19 transmission will continue at the current rate or higher through the Fall. No vaccine or widely available therapeutic treatments have yet been shown to significantly alter the trajectory of the Covid-19 outbreak, and, in any event, no such interventions are expected to be widely available and administered such that they could have a meaningful impact by November 2020. Thus, because Covid-19 transmission will at least be as serious in November 2020 as it is today, relief is necessary to protect the voting rights of eligible Pennsylvanians who, in the context of the ongoing pandemic, will be required to vote by mail or absentee ballot in November.

3. Caused by a novel coronavirus and transmitted by asymptomatic and otherwise-healthy or presymptomatic, Covid-19-positive individuals, as well as the symptomatic, Covid-19 threatens the health of millions of Americans, especially elderly people and those with certain pre-existing medical conditions, many of which, like cancer, obesity, and diabetes, are common. As infections and deaths continue to mount, the fallout from Covid-19 has severely strained health care systems, the economy, and all levels and branches of government.

4. This public health crisis continues to endanger the machinery of our democracy by threatening massive disruptions in election administration in a presidential election year that was already on track for exceptionally high

registration rates and turnout. During the primary season, many states were compelled to take drastic measures to counteract the spread of Covid-19, including postponing elections, which bought some time for state and local election officials' to prepare. Pennsylvania postponed its primary to June 2, 2020, but the unprecedented surge in voting by mail nevertheless strained the systems of ballot preparation and delivery. At least thousands of voters who requested mail or absentee ballots never received these ballots in the mail or received them too late to actually vote by them. Now, heading into a presidential election with a projection of an even higher demand for mail-in ballots, the U.S. Postal Service's (the "USPS") operations have been severely disrupted by policy changes and the decommissioning of mail sorting machines, threatening continued mail ballot delivery delays and failures this fall. For these reasons, voters need a fail-safe option to receive a replacement mail or absentee ballot if their previously-requested ballot does not arrive in time by USPS mail.

5. The Pennsylvania Constitution provides: "Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Pa. Const. art. I, § 5. The Commonwealth recognizes the right of suffrage as a "fundamental" right. *Bergdoll v. Kane*, 731 A.2d 1261, 1269 (Pa. 1999) (citation omitted). The right to vote is "the most treasured prerogative of citizenship [I]t may not be impaired or infringed upon

in any way except through fault of the voter himself.” *Appeal of Norwood*, 116 A.2d 552, 553 (Pa. 1955).

6. Courts in the Commonwealth have repeatedly held that elections are free and equal when they are “open to all qualified electors”; “every voter has the same right as any other voter”; “each voter . . . has the right to cast his ballot and have it honestly counted”; “the *regulation of the right to exercise the franchise does not deny the franchise itself*”; and “*no constitutional right of the qualified elector is subverted or denied.*” *In re 1991 Pa. Legis. Reapportionment Comm’n*, 609 A.2d 132, 142 (Pa. 1992), *abrogated on other grounds by Holt v. 2011 Legis. Reapportionment Comm’n*, 38 A.3d 711 (Pa. 2012), (emphasis added) (internal quotation marks omitted) (quoting *City Council of City of Bethlehem v. Marcincin*, 515 A.2d 1320, 1323 (Pa. 1986)).

7. Elections are not “free” when thousands of Pennsylvania voters are disenfranchised due to the consequences of a pandemic or must risk their lives to ensure their votes will be counted. And elections are not “equal” when voters in one region of the Commonwealth—southeast Pennsylvania—face grossly disparate burdens on their right to vote—and ultimately disenfranchisement—because they have the misfortune of living in the region that has been hit hardest by a deadly virus.

8. Fortunately, there are measures this Court can order to ensure that eligible Pennsylvania voters receive a ballot, even when election office or postal service delays prevent them from arriving on time by mail. Petitioner’s proposed remedies in these circumstances—electronic delivery of absentee and mail ballots to affected voters, authorizing such voters to use a downloadable write-in ballot, and authorizing them to designate a person to pick up their previously-requested ballot in the week before the election—will ensure that voters who have not received their timely-requested ballots can still receive their ballots in time to vote without going to the polls.

PARTIES

Petitioner

9. Petitioner Jacquelyn Cramer is a 72-year-old retiree with hypertension, high cholesterol, and glaucoma, who is, and at all relevant times has been, a permanent resident of O’Hara Township and a registered voter of Allegheny County, Pennsylvania. In May, she applied for an absentee ballot for the primary election held on June 2, 2020 as well as the November 2020 election. She did not receive the ballot she requested for the June election. Jacquelyn went to her polling place to see whether she could safely vote in person. However, she was not able to even park in the parking lot; the polling place was very crowded. Jacquelyn quickly realized that she could not vote in person because of the crowded

conditions and resulting danger of contracting Covid-19. She lives with and cares for her 94-year-old mother and can neither take the risk of contracting nor transmitting Covid-19 to her. Her mother had breast cancer with metastasis to a lung and the mediastinum and, as a result, had one third of a lung removed. She also has high blood pressure. Due to the risk posed by Covid-19, her mother has not left their home since March 13 and has only been outside on the back patio. Ms. Cramer is strictly following social distancing protocols and has limited her ventures outside the home to grocery shopping, obtaining prescriptions and eyeglasses, and doctor appointments, and critical errands that can be accomplished without leaving her vehicle. Ms. Cramer is a regular voter in all elections, including local elections.

Respondents

10. Respondent Kathy Boockvar is the Secretary of the Commonwealth of Pennsylvania and is sued only in her official capacity. In that capacity, she is Pennsylvania's Chief Election Official and a member of the Governor's Executive Board. Respondent Boockvar's responsibilities include the general supervision and administration of Pennsylvania's elections and election laws. 25 P.S. § 2621.

11. Respondent Jessica Mathis is the Director of the Bureau of Election Services and Notaries of the Pennsylvania Department of State and is sued in her

official capacity only. In that capacity, she supervises and administers Pennsylvania's elections and electoral process.

JURISDICTION

12. The Court has original jurisdiction over this Verified Complaint pursuant to 42 Pa.C.S. § 761(a).

FACTUAL ALLEGATIONS

The Covid-19 Pandemic

13. In December 2019, health officials in mainland China detected a novel coronavirus, SARS-CoV-2, which causes a disease known as Covid-19. On January 30, 2020, the World Health Organization ("WHO") declared Covid-19 to be a "Public Health Emergency of International Concern." On March 11, 2020, the WHO declared that it had become a pandemic. Covid-19 has now spread throughout the world, including to every state in the United States and throughout Pennsylvania.

14. The novel coronavirus that causes Covid-19 continues to spread at an unprecedented pace around the world and particularly within the United States. As of September 1, 2020, there have been 6,004,443 confirmed cases in the United States and 183,050 deaths nationwide.¹ As of the evening of August 28, 2020, the

¹ See *U.S. COVID-19 Cases and Deaths by State*, Ctrs. for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited Sept. 1, 2020).

Pennsylvania Department of Health Services had confirmed 132,834 positive cases of coronavirus in Pennsylvania and 7,655 deaths in the Commonwealth.²

15. Covid-19 is highly contagious in significant part because of its capacity for asymptomatic and presymptomatic transmission. The disease is highly lethal, particularly for people with underlying health conditions or comorbidities that put them at severe risk of complications or death from the disease.

16. According to the U.S. Centers for Disease Control and Prevention, (“CDC”), individuals are at higher risk of severe complications and death from Covid-19 if they are 65 years or older or have underlying health conditions and diseases, including cancer, chronic kidney disease, chronic obstructive pulmonary disease, serious heart conditions, obesity (body mass index (“BMI”) of 30 or higher), Type 2 diabetes, sickle cell disease, and immunocompromised state from a solid organ transplant.³ In addition, the CDC cautions that people with the following conditions *may* also be at increased risk from Covid-19: moderate to severe asthma; cerebrovascular disease; cystic fibrosis; hypertension; immunocompromised state from blood or bone marrow transplant; immune

² *COVID-19 Data for Pennsylvania*, Pa. Dep’t of Health, <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Coronavirus.aspx> (last visited Aug. 28, 2020); *Weekly Report for Deaths Attributed to COVID-19*, Pa. Dep’t of Health (Aug. 28, 2020), <https://www.health.pa.gov/topics/Documents/Diseases%20and%20Conditions/COVID-19%20Death%20Reports/Weekly%20Report%20of%20Deaths%20Attributed%20to%20COVID-19%20--%202020-08-28.pdf>.

³ See *People with Certain Med. Conditions*, Ctrs. for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last updated Aug. 14, 2020).

deficiencies; HIV; use of corticosteroids, or use of other immune weakening medicines; neurological conditions; liver disease; pregnancy; pulmonary fibrosis; smoking; thalassemia; and Type 1 diabetes.⁴

17. Severe Covid-19 cases can cause pneumonia, acute respiratory distress syndrome, kidney failure, liver failure, strokes, heart attacks, cardiac inflammation, and gastrointestinal infections, among others.⁵ Furthermore, everyone is at some risk of severe complications and death from Covid-19, as health officials have also associated Covid-19 with pulmonary embolism and stroke in younger patients without known risk factors⁶ and inflammatory disease in young children.⁷ Many critical care patients ultimately die.

18. The threat of airborne transmission of SARS-CoV-2, the virus that causes Covid-19, in indoor settings like polling places is real, substantial, and not meaningfully mitigated by any of the available protective measures.

19. The virus spreads through respiratory droplets that can suspend in the air and then be transmitted when inhaled. These respiratory droplets are emitted

⁴ *Id.*

⁵ Meredith Wadman et al., *How does coronavirus kill? Clinicians trace a ferocious rampage through the body, from brain to toes*, *Science* (Apr. 17, 2020), <https://www.sciencemag.org/news/2020/04/how-does-coronavirus-kill-clinicians-trace-ferocious-rampage-through-body-brain-toes>.

⁶ Robert Glatter, M.D., *Why is COVID-19 Coronavirus Causing Strokes in Young And Middle-Aged People?*, *Forbes* (Apr. 27, 2020), <https://www.forbes.com/sites/robertglatter/2020/04/27/why-is-covid-19-coronavirus-causing-strokes-in-young-and-middle-aged-people/>.

⁷ Pam Belluck, *New Inflammatory Condition in Children Probably Linked to Coronavirus, Study Finds*, *N.Y. Times* (last updated May 21, 2020), <https://www.nytimes.com/2020/05/13/health/coronavirus-children-kawasaki-pmis.html>.

when an individual coughs and sneezes, or even when an individual is simply talking. And because these droplets are somewhat large, they can travel short distances in the air (around 6 feet) to infect those who come into contact with them. In other words, these large respiratory droplets create the risk of spread from close quarters with infected individuals. Although masks and hand hygiene can mitigate the spread of the respiratory droplets, they cannot completely prevent transmission, especially when masks are not constructed or worn properly⁸ and where Pennsylvania law does not require voters to wear masks at polling places.

20. There is a gathering scientific consensus that Covid-19 spreads as an aerosol; in other words, through direct inhalation even in settings where two individuals do not have contact with each other. Aerosol transmission is much harder to control via traditional control methods, such as handwashing or masks, than transmission through large droplets. During aerosol transmission, small respiratory droplets can linger in the air in small particles known as “droplet nuclei.” Because of the particles’ smaller size, they can travel further distances—some evidence suggests up to 25 feet—and expand the range in which people can be infected. As a result of this type of airborne spread, one’s risk of infection

⁸ See *CDC on HomemadeMasks*, Ctrs. For Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-make-cloth-face-covering.html> (last updated July 6, 2020); *How to WearMasks*, Ctrs. for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-wear-cloth-face-coverings.html> (last updated Aug. 7, 2020).

increases in indoor, poorly-ventilated areas where multiple people are congregated, even when individuals maintain social distance.

21. Moreover, since Covid-19 can be transmitted by symptomatic, presymptomatic, and asymptomatic people, individuals can spread the disease before realizing they are infected and self-quarantining. The CDC has also warned that presymptomatic and asymptomatic Covid-19-positive individuals can transmit the disease to others.⁹ As a result, voters can spread the disease at a polling place before they even realize they are infected.

22. The long-term effects of Covid-19 on health are currently unknown. But medical experts are increasingly seeing evidence that infection can have long-lasting effects. Current evidence suggests that infected patients can suffer from long-term damage, including lung scarring, heart damage, and neurological and mental health effects.¹⁰

23. Leading epidemiologists anticipate that the pandemic will continue throughout the end of 2020 and likely well into 2021, if not beyond. Given the current prevalence and transmission of Covid-19, as well as the failures of federal, state, and local governments to bring the virus under control, it is highly likely that Covid-19 will continue to circulate at its current level or at an even higher level

⁹ *How It Spreads*, Ctrs. for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html> (last updated June 16, 2020).

¹⁰ Lois Parshley, *The emerging long-term complications of Covid-19, explained*, Vox (June 12, 2020), <https://www.vox.com/2020/5/8/21251899/coronavirus-long-term-effects-symptoms>.

through October and November of 2020. Herd immunity is unlikely to be reached in Pennsylvania or the United States by the time voting occurs this Fall, and an effective vaccine is extremely unlikely to have been tested, manufactured in sufficient quantities, and widely distributed before November. And while some drugs have some efficacy in reducing the duration of the illness, pharmaceutical treatments are unlikely to have a substantial impact on the transmission of the virus and the risk of severe disease or death by November 2020.

24. Covid-19 has severely affected the State of Pennsylvania. As new infections continue to grow, many voters, especially those at high risk, continue to self-isolate for fear of contracting Covid-19, and for fear of transmitting the disease, regardless of whether they have symptoms of the disease.

25. Covid-19 will have an unprecedented impact on the nation's upcoming elections. Before the Covid-19 pandemic, the Brookings Institution predicted that "turnout in 2020 could break all records and test our election machinery as it has never been tested before."¹¹ Other experts also anticipate record-breaking turnout in the 2020 presidential election.¹² Even with the

¹¹ William A. Galston, *What does high voter turnout tell us about the 2020 elections?*, Brookings Inst. (Nov. 20, 2019), <https://www.brookings.edu/blog/fixgov/2019/11/20/what-does-high-voter-turnout-tell-us-about-the-2020-elections/>.

¹² See, e.g., Susan Milligan, *Preparing for a Voter Surge*, U.S. News & World Report (Sept. 20, 2019), <https://www.usnews.com/news/elections/articles/2019-09-20/experts-predict-huge-turnout-in-2020>; Nate Cohn, *Huge Turnout Is Expected in 2020. So Which Party Would Benefit?* N.Y. Times (July 15, 2019), <https://www.nytimes.com/2019/07/15/upshot/2020-election-turnout-analysis.html>; Ronald Brownstein, *Brace for a Voter-Turnout Tsunami*, The Atlantic (June 13,

pandemic in full effect, experts continue to predict a record turnout, perhaps the highest in over a century.¹³

26. The CDC has recommended that states encourage mail-in voting in elections whenever possible in order to combat the spread of Covid-19.¹⁴ Governor Tom Wolf in fact encouraged voters to request a mail ballot for the June 2, 2020 election in order to vote safely during the pandemic.¹⁵

27. On March 6, 2020, Governor Wolf signed an emergency disaster declaration to increase support to state agencies involved in the response to the virus. The order directed the Pennsylvania Emergency Management Agency Director to assume command and control of statewide emergency operations and directed all departments and agencies to use all available resources and personnel as necessary to cope with the emergency situation.¹⁶

28. On March 13, 2020, President Donald Trump proclaimed a National Emergency concerning Covid-19.

2019), <https://www.theatlantic.com/politics/archive/2019/06/2020-election-voter-turnout-could-be-record-breaking/591607/>.

¹³ William A. Galston, *Election 2020: A once-in-a-century, massive turnout?*, Brookings Inst. (Aug. 14, 2020), <https://www.brookings.edu/blog/fixgov/2020/08/14/election-2020-a-once-in-a-century-massive-turnout/>.

¹⁴ *Considerations for Election Polling Locations and Voters*, Ctrs. for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last visited Aug. 23, 2020).

¹⁵ Press Release, *Gov. Wolf Encourages Voters to Apply for a Mail-in Ballot* (Apr. 22, 2020) <https://www.governor.pa.gov/newsroom/gov-wolf-encourages-voters-to-apply-for-a-mail-in-ballot/>.

¹⁶ Proclamation of Disaster Emergency, Commonwealth of Pa. Off. of the Governor (Mar. 6, 2020), <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf> (“Governor’s Proclamation”).

29. On March 19, 2020, Governor Wolf ordered all non-life-sustaining businesses in Pennsylvania to close their physical locations to slow the spread of Covid-19.¹⁷ The Supreme Court upheld the Governor’s order as a proper exercise of the police power and consistent with statutory and constitutional authority. *Friends of Danny DeVito v. Wolf*, 227 A.3d 872 (Pa. 2020).

30. On March 25, 2020, in light of the devastating impact of Covid-19 was having on the state of Pennsylvania, the legislature voted to delay the state’s primary election by five weeks, postponing the election from April 28 to June 2, 2020.¹⁸ The Governor signed the bill on March 27, 2020.¹⁹ Under the statute, registered voters had until 5 p.m. on May 26, 2020, to sign up to vote by mail, and until 8 p.m. on Election Day, to return their voted ballot.

31. On April 1, 2020, Governor Tom Wolf issued an order directing individuals to stay at home in all 67 of Pennsylvania’s counties. Importantly, the Executive Order specified that “gatherings of individuals outside of the home are

¹⁷ Order of the Governor of the Commonwealth of Pa. Regarding the Closure of All Bus. that are not Life Sustaining, Commonwealth of Pa. Off. of the Governor (Mar. 19, 2020), <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-TWW-COVID-19-business-closure-order.pdf>.

¹⁸ 2020 Pa. Legis. Serv. Act 2020-12 (S.B. 422); Commonwealth of Pa. Legis. Journal, *Session of 2020, 204th of the Gen. Assembly* (Mar. 25, 2020), <https://www.legis.state.pa.us/WU01/LI/SJ/2020/0/Sj20200325.pdf#page=11>; see also Jan Murphy, *Bill delaying Pa. primary to June 2 heads to Gov. Wolf’s desk*, Penn Live (Mar. 25, 2020), <https://www.pennlive.com/news/2020/03/postponement-of-pa-primary-to-june-2-wins-legislative-approval.html>.

¹⁹ Pa. Act of Mar. 27, 2020, P.L. 41, No. 12.

generally prohibited except as may be required to access, support, or provide life-sustaining services.”²⁰

32. On May 7, 2020, as part of ongoing disease management protocols, the Governor issued an Amendment to his original stay-at-home order.²¹ The Amendment extended the effect of the original Executive Order through June 4, 2020, while noting that its “requirements may be suspended for specific counties as part of the gradual and strategic approach to reopening the Commonwealth.”²² Over the course of the next month, the Commonwealth began to allow businesses previously deemed non-life-sustaining to reopen on the condition that they follow safety guidance for staff, customers, and facilities.

The Disruption of the U.S. Postal Service

33. The U.S. Postal Service (“USPS”) is experiencing severe delays in delivering the mail, and these problems have already impacted voters. The *Philadelphia Inquirer* has estimated that 92,000 more Pennsylvanians would have

²⁰ Order of the Governor of the Commonwealth of Pa. for Individuals to Stay at Home, Commonwealth of Pa. Off. of the Governor (Apr. 1, 2020), <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200401-GOV-Statewide-Stay-at-Home-Order.pdf> (“Executive Order”).

²¹ Amendment to Order of the Governor of the Commonwealth of Pa. for Individuals to Stay at Home, Commonwealth of Pa. Off. of the Governor (May. 7, 2020), <https://www.governor.pa.gov/wp-content/uploads/2020/05/20200507-TWW-Stay-at-Home-Order-Amendment.pdf> (“The Amendment”).

²² *Id.*

voted in the June 2020 primary but for processing or delivery delays in the last three weeks before the primary election.²³

34. The recently-appointed Postmaster General Louis DeJoy has ordered a number of policy changes that have already caused severe backlogs around the country. First, he has ended overtime pay for USPS employees and instructed carriers to depart processing facilities for their routes at specified times each day, regardless of whether mail scheduled to go out that day remains unprocessed. Second, over 650 mail sorting machines have been removed and/or decommissioned nationwide. In Pennsylvania, “[a]t least 26 mail scanning and sorting machines have been taken offline — and, in most cases, promptly trashed or taken offsite — at eight mail processing sites this summer across the state. . . . In Scranton, for example, only machines used to handle mail surges were removed, while Harrisburg’s initial process capacity has been halved with the loss of a postage canceling device.”²⁴ According to USPS itself, the reduction in mail sorting capacity in Philadelphia alone is 310,000 pieces of mail per hour.²⁵

²³ Jonathan Lai, *Pa. ’s mail ballot problems kept tens of thousands from voting in a pandemic primary*, Phila. Inquirer (July 30, 2020), <https://www.inquirer.com/politics/election/pa-mail-ballot-deadlines-disenfranchisement-20200730.html>.

²⁴ Emily Previti, *The postal serv. has been removing machines from Pa. sorting facilities. How is that affecting the state’s election planning?*, WITF (Aug. 21, 2020), <https://www.witf.org/2020/08/21/the-postal-service-has-been-removing-machines-from-pennsylvania-sorting-facilities-how-is-that-affecting-the-states-election-planning/>.

²⁵ Erin Cox et al., *Postal Serv. warns 46 states their voters could be disenfranchised by delayed mail-in ballots*, Wash. Post (Aug. 14, 2020), <https://www.washingtonpost.com/local/md->

Postmaster General DeJoy informed Congress that he had no intention of ordering the restoration or reinstallation of any of the mail sorting machines taken offline.

35. Indeed, the Commonwealth, along with other states, recently sued USPS in federal court for election-related service reductions, including failure to properly postmark Election Mail, and failure to adhere to USPS's longstanding practice of treating Election Mail as high priority, first class mail.²⁶

36. USPS itself has reported a substantial decline in its capacity and speed nationwide.²⁷ Since the recent changes were implemented, service performance for pre-sort first class mail and marketing mail processing times are both down nearly 8 points from their baselines.²⁸

37. Additionally, USPS threatened Pennsylvania election officials, warning that voters may well be disenfranchised due to mail delivery delays.²⁹

politics/usps-states-delayed-mail-in-ballots/2020/08/14/64bf3c3c-dcc7-11ea-8051-d5f887d73381_story.html.

²⁶ Complaint, *Pennsylvania et al. v. DeJoy*, No. 2:20-04096 (E.D. Pa. Aug. 21, 2020).

²⁷ U.S. Postal Serv., *Serv. Performance Measurement: PMG Briefing* (Aug. 12, 2020), *available at*

https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/PMG%20Briefing_Service%20Performance%20Management_08_12_2020.pdf.

²⁸ *Id.* at 5, 17.

²⁹ Erin Cox et al., *Postal Serv. warns 46 states their voters could be disenfranchised by delayed mail-in ballots*, *Wash. Post* (Aug. 14, 2020), https://www.washingtonpost.com/local/md-politics/usps-states-delayed-mail-in-ballots/2020/08/14/64bf3c3c-dcc7-11ea-8051-d5f887d73381_story.html; *see also* Ex. A, Letter from United States Postal Service to Secretary of the Commonwealth of Pennsylvania (July 29, 2020).

Defendants' Responsibilities with Respect to Mail-in and Absentee Ballots

38. The Secretary prescribes the form of absentee and mail-in ballot applications, 25 P.S. §§ 3146.2, 3150.12, the form and contents of envelopes for absentee and mail-in ballots, 25 P.S. §§ 3146.4, 3150.14, and the form of absentee and mail-in ballots themselves, 25 P.S. §§ 3146.3, 3150.13. The Code also empowers the Secretary to “develop an electronic system through which all qualified electors may apply for” absentee and mail-in ballots. 25 P.S. §§ 3146.2, 3150.12. For military and overseas voters, the Secretary must “[e]stablish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots and other information.” 25 Pa.C.S. § 3503. The Secretary is also a member of the Voting Standards Development Board, which is established within the Department of State “for the purpose of developing uniform and nondiscriminatory standards that define what constitutes a vote.” 25 P.S. § 2624. The Secretary also administers the SURE system, which serves both as the voter registration database as well as the system for processing absentee and mail ballots. 25 Pa.C.S. § 1222(f).

Requesting, Casting, and Returning a Mail-in or Absentee Ballot in Pennsylvania

39. In 2019, Pennsylvania enacted (and modified in March 2020) a law allowing any registered qualified elector to cast a mail ballot. 25 P.S. §§ 3150.11-3150.12b; *see* Act of Oct. 31, 2019 (“Act 77”), P.L. 552, No. 77. Voters who meet

specific qualifications may also vote with an absentee ballot. 25 P.S. § 3146.1. To receive a mail-in or absentee ballot under the Pennsylvania Election Code, voters must apply for a ballot. 25 P.S. §§ 3146.2, 3150.12. Voters with a PennDOT license can currently do so online.³⁰ Voters without a PennDOT ID must currently submit a paper request.³¹

40. Pennsylvania law provides for two categories of ballots that may be submitted via mail: “absentee” ballots and “mail-in” ballots. Absentee ballots are available to, among others, people who are unable to vote in person due to a physical disability or illness, people who expect to be absent from the municipality of their residence on Election Day due to work, and people who cannot vote in person because of a religious holiday. 25 P.S. § 3146.1.

41. Any registered voter, regardless of whether they qualify for an absentee ballot, may vote by “mail-in” ballot, without providing a justification. 25 P.S. §§ 3150.11–3150.12b; *see* Act 77.

42. The deadline for voters to apply for an absentee ballot or a mail-in ballot is “five o’clock P.M. of the first Tuesday prior to the day of any primary or election.” 25 P.S. §§ 3146.2a(a), 3150.12a(a).

³⁰ *Voting by Mail-in or Absentee Ballot*, Pa. Dep’t of State, Votes PA, <https://www.votespa.com/Voting-in-PA/Pages/Mail-and-Absentee-Ballot.aspx> (last visited Aug. 27, 2020).

³¹ *Id.*

43. “A qualified elector ... may apply at any time before any primary or election for an official mail-in ballot” 25 P.S. § 3150.12.

44. Registered voters in Pennsylvania can apply for and obtain mail-in ballots in a variety of ways: in person at any County Board of Elections office; on a form addressed to the Secretary of the Commonwealth or the board of elections office of the county in which the qualified elector's voting residence is located; or online at <https://www.pavoterservices.pa.gov/OnlineAbsenteeApplication/#/OnlineAbsenteeBegin>. Voters have the option to be added to a “permanent mail-in voting list,” for which a mail-in ballot application effective for the remaining elections in the calendar year will be automatically mailed to a voter at the beginning of each year. 25 P.S. § 3150.12(g).

45. The same deadlines for requesting and submitting ballots apply to absentee voters and mail-in voters. Voters must apply for an absentee or mail-in ballot by “five o’clock P.M. [on] the first Tuesday prior to the day of any primary or election.” 25 P.S. §§ 3146.2a(a), 3150.12a(a). If the application is approved, the board must deliver or mail the ballot to the voter. See 25 P.S. §§ 3146.2a(a.3)(3), 3150.12b(a)(1), 3146.5, 3150.15. The voter’s absentee or mail-in ballot must be received by the county board of elections “on or before eight o’clock P.M. the day

of the primary or election” to count, 25 P.S. §§ 3146.6(c), 3146.8(g)(1)(ii), 3150.16(c).

46. Overseas and military voters are able to obtain absentee ballots delivered electronically. 25 Pa.C.S. § 3508, which by its terms implements parts of UOCAVA, provides that “[a] covered voter may request that a ballot and balloting materials be sent to the voter by mail or by Internet delivery.”

47. County Boards of Elections must

commence to deliver or mail official mail-in ballots as soon as a ballot is certified and the ballots are available. While any proceeding is pending in a Federal or State court which would affect the contents of any ballot, the county board of elections may await a resolution of that proceeding but in any event, shall commence to deliver or mail official mail-in ballots not later than the second Tuesday prior to the primary or election.

25 P.S. § 3150.15. As additional applications are received and approved, the county boards are required by statute to deliver or mail official mail-in ballots to the additional electors within 48 hours of receipt. *Id.*

48. The same “deliver or mail” language, as well as the timeframe to deliver or mail the ballot applies to absentee ballots as well. 25 P.S. § 3146.5.

49. If a voter has requested a mail ballot or absentee ballot, they may not vote by regular ballot in person on Election Day, unless the voter brings the ballot to the polls to be spoiled. 25 P.S. §§ 3146.3(e), 3150.13(e). Voters can personally hand-deliver their own ballot to their county board of elections office by 8:00 p.m.

on Election Day. *See* 25 P.S. §§ 3146.6(a), 3150.16(a). Those voters who never received their requested ballot have only one option: cast a provisional ballot in person. 25 P.S. §§ 3146.3(e), 3150.16(b)(2).

50. In *Drenth v. Boockvar*, a federal judge granted a TRO ordering the Commonwealth of Pennsylvania to provide digitally accessible write-in ballots (“AWIBs”) to blind Pennsylvania voters for the June 2 primary election. No. 1:20-CV-00829, 2020 WL 2745729 (M.D. Pa. May 27, 2020). Following that, on August 12, 2020, the Department finalized a contract for a remote ballot marking system with a vendor, Democracy Live. The system will be in use for the November 2020 general election. This system is

a cloud-based platform that will allow county election officials to upload their ballot definition files exported from their county’s election management software associated with the voting system in use in that county. Once the ballot definition files are uploaded by the county election officials, the remote ballot marking system will create an accessible ballot for the voter. An eligible voter who applies for an accessible ballot will be able to access the ballot through a web link. The voter will then be able to vote on the accessible ballot by marking his choices and will be able to use a variety of assistive technologies while doing so.

Drenth v. Boockvar, No. 1:20-CV-00829, 2020 WL 4805621, at *3–4 (M.D. Pa. Aug. 18, 2020) (record citations omitted).

51. The Department has also resolved to issue guidance to county boards of elections in time for the November 2020 election that would instruct the boards

to send a return envelope that is larger than the security envelope to voters voting through the remote ballot marking system and that would instruct counties to accept the return envelopes as long as the voter's signature appeared anywhere on the envelope. *Id.* at *4. Thus, the infrastructure to provide downloadable, printable replacement mail or absentee ballots already exists in Pennsylvania.

Risks of Forcing Voters to Appear In Person to Vote

52. The threat of contracting Covid-19, which is particularly acute in confined spaces like polling sites, has fundamentally changed election administration in Pennsylvania.

53. Voting in person creates substantial health risks. The virus may be spread through close contact with other persons, even if an individual wears a mask to the polls—which in any event is not required under Pennsylvania law. Moreover, the use of shared voting machines and interactions with instruments that many others have touched also may spread Covid-19. In addition, due to airborne spread, voters also face risk from congregating in poorly ventilated areas where multiple people are coming in and out of the same location, such as polling places, even when individuals maintain social distance.

54. Forcing voters to appear to vote in person creates an unnecessarily high risk of transmission of Covid-19 because voters will potentially be forced to stand in long lines to cast their votes on Election Day. They will also have to

congregate in confined polling places with election workers and other voters, contrary to social distancing guidelines.

55. The risk of long lines and crowded polling places is particularly acute where many counties have eliminated significant numbers of polling places due to the inability to recruit the necessary number of poll workers. Montgomery County reduced its polling places by 60 percent in the June primary, and Philadelphia reduced its polling places by 77 percent.³²

56. Petitioner and voters in the same circumstances each face an increased risk of severe illness or death if they contract Covid-19 due their ages and pre-existing conditions. If Petitioner and similarly situated voters do not receive their mail ballot in time to cast it in the General Election on November 3, 2020, they will have to choose between exercising their right to vote and their health—even their lives.

Failures to Process Absentee and Mail-in Ballot Requests and Deliver Ballots to Voters

57. Following the enactment of Act 77 and subsequent amendments, Pennsylvania has substantially increased access to and reliance on absentee and mail ballots for the 2020 elections. Whereas the 2016 presidential primary saw

³² Jonathan Lai, *Philly will have way fewer polling places for next month's primary because of coronavirus. Find yours here.*, Phila. Inquirer (May 12, 2020), <https://www.inquirer.com/politics/election/philadelphia-new-polling-places-2020-primary-20200512.html>.

only 107,000 voters receive approval to cast an absentee ballot, more than 1.8 million voters applied for and were approved to vote by mail for the 2020 June presidential primary.³³ Due to the pandemic, this volume far outpaces the expected use of the vote-by-mail system when it was enacted.³⁴ Of the 2.8 million votes cast in the 2020 primary election, approximately half – or 1.4 million – ultimately were cast by mail.³⁵ Importantly, the increase in mail-in ballots was accompanied by a dramatic reduction in polling places, particularly in some of Pennsylvania’s most populous counties.³⁶

58. Nevertheless, voters in the June primary election faced catastrophic and systemic failures to timely prepare and deliver ballots by mail. The total number of voters disenfranchised in the June primary is unknown. But the facts on the ground are sobering at best. Thousands of voters received their ballots too late

³³ Jonathan Tamari & Jonathan Lai, *What we’re watching for in Tuesday’s unprecedented Pa. primary election*, Phila. Inquirer (June 2, 2020), <https://www.inquirer.com/news/pa-primary-2020-what-to-watch-20200602.html>

³⁴ Andrea Hsu et al., *'Swing County, USA' Prepares For Unprecedented Influx Of Ballots By Mail*, Nat'l Public Radio (July 21, 2020), <https://www.npr.org/2020/07/21/893115504/swing-county-u-s-a-prepares-for-unprecedented-influx-of-ballots-by-mail>.

³⁵ Mark Scoloro, *Some Counting Continues, a Week After Pa. 's Primary*, Associated Press (June 9, 2020), <https://www.usnews.com/news/best-states/pennsylvania/articles/2020-06-09/some-counting-continues-a-week-after-pennsylvanias-primary>.

³⁶ Alecia Reid, *Pandemic Forces Pa. Elections Offs. To Consolidate Polling Sites By 75% For Primary*, CBS Philly (May 13, 2020), <https://philadelphia.cbslocal.com/2020/05/13/pandemic-forces-philadelphia-elections-officials-to-consolidate-polling-sites-by-75-for-primary>; see also Letter from Mike Turzai, Jason Orititay, Bob Brooks, Michal Puskaric, Natalie Mihalek and Lori Mizgorski to Kathryn Boockvar (May 21, 2020), available at <http://www.pahousegop.com/Display/SiteFiles/1/2020/allegheypoll.pdf>.

to cast and deliver or postmark them.³⁷ Pennsylvania’s Election Code required counties to mail out absentee and mail ballots for approved applications by Tuesday, May 19,³⁸ yet state data indicates that they were unable to do so. As of May 21, statewide, a mere 11 days before the primary, county boards of elections had not yet sent out absentee or mail ballots for 241,270 voters who had submitted applications, and had not approved 172,929 applications.³⁹ More specifically, while 1,528,212 overall applications had been approved, the counties had only mailed 1,459,871 of those ballots.⁴⁰ In other words, at least 68,321 approved mail or absentee voters received their ballots very close to the election or after it, jeopardizing those voters’ ability to complete and return those ballots in a timely fashion.

59. Statewide more than fifty thousand voters who had requested a mail or absentee ballot voted provisionally in person.⁴¹

60. Delays and backlogs were particularly acute in many populous counties. Local officials, overwhelmed by the unprecedented increase in ballot

³⁷ Jonathan Lai, *Tens of thousands of Pa. mail ballots were turned in after the deadline. Nov. could be worse.*, Phila. Inquirer (June 10, 2020), <https://www.inquirer.com/politics/election/pa-mail-ballots-deadline-2020-primary-election-20200610.html>.

³⁸ Suppl. Decl. of Jonathan Marks ¶ 2, Deputy Sec’y for Elections and Comm’ns for Pa., *Crossey v. Boockvar*, No. 266 MD 2020 (Pa. Commw. Ct. May 22, 2020) [Marks Decl.], <http://www.pacourts.us/assets/files/page-1305/file-9375.pdf>, Ex. C.

³⁹ *Id.* ¶¶ 5-7.

⁴⁰ *Id.*

⁴¹ Pa. Dep’t of State, Pa. 2020 Primary Election, Act 35 of 2020 Report at 14, 22 (Aug. 1, 2020), <https://www.dos.pa.gov/VotingElections/Documents/2020-08-01-Act35Report.pdf>.

requests and simultaneously stymied in their ability to work together in person due to social distancing, undertook heroic efforts to fulfill vote-by-mail requests. But as one group of officials aptly put it, “counties were expecting about 30 inches of snow. What we’re getting is the equivalent of 10 feet and it’s going to get worse.”⁴²

61. Montgomery County, which experienced more than a ten-fold increase in ballot requests, typified the challenges counties faced in timely delivering ballots.⁴³ To accommodate the increase in ballot requests, county officials worked nights and evenings, but the county was unable to secure the additional staff it needed to process ballots because of the statewide lockdown.⁴⁴ In the face of those staffing challenges, as well as the strain of working in accordance with social distancing guidelines, errors proliferated. As of May 21, the county had not sent ballots to approximately 6,431 approved mail or absentee voters.⁴⁵ Those who did receive a timely ballot faced challenges, too. Montgomery County also sent the wrong ballots to 1,984 voters as a result of a computer error.⁴⁶

⁴² Cnty. Election Off. Notes for Senate Hearing, at 2 (April 30, 2020), <https://stategovernment.pasenategop.com/wp-content/uploads/sites/30/2020/04/tioga-county.pdf>.

⁴³ Decl. of Karley Sisler, Director of the Office of Voter Services for Montgomery County, *Crossey v. Boockvar*, No. 266 MD 2020 (Pa. Commw. Ct. May 6, 2020) [Sisler Decl.], https://moritzlaw.osu.edu/electionlaw/litigation/documents/Crossey_Boockvar_3.pdf.

⁴⁴ *Id.* ¶ 4.

⁴⁵ Marks Decl. ¶ 12.

⁴⁶ Jonathan Lai, *Montgomery Cnty. sent 2,000 Pa. voters the wrong ballots for next week’s primary*, Phila. Inquirer (May 26, 2020),

Unfortunately, despite weeks of voter complaints, the county realized that the issue was widespread a mere two weeks before Election Day.⁴⁷ Over five thousand voters in the county who had requested mail or absentee ballots voted provisionally in the county.⁴⁸

62. Philadelphia County also struggled to meet its obligations to send voters ballots in a timely manner. Due to a combination of factors – including a surge of paper ballot applications, which take longer to process than online applications, Covid-19-related staffing shortages and social distancing rules, and an outage in Philadelphia’s Verizon connection, which covered the network connection with the election database – the county faced a significant backlog in its delivery of mail-in ballots to voters.⁴⁹ As of May 21, Philadelphia County had mailed out only 142,836 ballots, though it had approved 159,772 mail-in ballot requests.⁵⁰ In other words, the county had not yet sent ballots to almost ten percent of approved voters, or 16,936 people. In addition, the county had failed to process another 19,769 applications.⁵¹ Those delays had direct consequences for voters, as more than 14,600 ballots in the county would ultimately arrive after the original

<https://www.inquirer.com/politics/election/montgomery-county-pa-wrong-primary-ballots-20200526.html>.

⁴⁷ *Id.*

⁴⁸ Pa. Dep’t of State, Pa. 2020 Primary Election, Act 35 of 2020 Report at 14, 22 (Aug. 1, 2020), <https://www.dos.pa.gov/VotingElections/Documents/2020-08-01-Act35Report.pdf>.

⁴⁹ Marks Decl. ¶¶ 13-14.

⁵⁰ Marks Decl. ¶ 15.

⁵¹ *Id.*

Election Day deadline of June 2.⁵² Similarly, Allegheny County had 9,400 ballots arrive after the original deadline, Montgomery County had more than 5,800, Delaware County had 2,500, and Bucks County had more than 1,200.⁵³

63. Because Covid-19 is statistically far riskier for those over the age of sixty-five, voters in that age group are more likely to face significant health risks when voting in person. However, thousands of voters over the age of sixty-five who requested mail or absentee ballots far in advance of the June primary had not received them two weeks before the election. Department of State data suggests that, two weeks before the election, county officials had failed to mail ballots to at least 6,700 voters over the age of sixty-five whose ballot requests had been approved at least one month in advance. One week before the election, there were at least 7,000 absentee or mail-in ballots that had not yet been mailed to voters over the age of sixty-five with approved applications and where those voters ultimately did not have a ballot marked as returned.⁵⁴

64. In light of challenges to voters from Covid-19 and civil unrest, on June 1, 2020, Governor Tom Wolf signed an executive order extending the deadline for county election offices in Allegheny, Dauphin, Delaware, Erie,

⁵² Jonathan Lai, *Tens of thousands of Pa. mail ballots were turned in after the deadline. Nov. could be worse.*, Phila. Inquirer (June 10, 2020), <https://www.inquirer.com/politics/election/pa-mail-ballots-deadline-2020-primary-election-20200610.html>.

⁵³ *Id.*

⁵⁴ OpenDataPA, *2020 Primary Election Mail Ballot Requests*, Commonwealth of Pennsylvania, <https://data.pa.gov/Government-Efficiency-Citizen-Engagement/2020-Primary-Election-Mail-Ballot-Requests-Departm/853w-ecfz/data> (last updated Aug. 3, 2020).

Montgomery and Philadelphia counties to receive absentee or mail ballots to 5 p.m. on June 9, 2020. Under the executive order, all ballots still had to be postmarked no later than Tuesday, June 2, 2020.⁵⁵ State data suggests that delays in delivering ballots may have led to as many as 75,700 mail-in ballots arriving after the June 2 Election Day deadline.⁵⁶ Of course, the executive order was no consolation to the thousands of voters who did not receive their ballot before June 2.

65. Data from the Department of State suggests that at least a thousand voters with approved applications *never* received their ballots in the mail or otherwise. While all of these voters had their applications for mail ballots submitted and approved by the May 26 deadline, the Department of State has no record of these voters having been mailed a ballot. Thus, while thousands of voters received their ballots too late to cast and deliver or *postmark* them by June 2, some voters never received them *at all*. Given the health risks associated with voting in person, failure to deliver these ballots in a timely fashion was not just administrative error; it was a dangerous impediment to these voters' ability to cast

⁵⁵ Exec. Order 2020-02: Extension of Deadline for Receipt of Absentee and Mail-In Ballots in Certain Counties, Commonwealth of Pennsylvania Governor's Office (Jun. 1, 2020), <https://www.governor.pa.gov/wp-content/uploads/2020/06/20200601-EO-Deadline-Extension.pdf>.

⁵⁶ Jonathan Lai, *Tens of thousands of Pa. mail ballots were turned in after the deadline. Nov. could be worse.*, Phila. Inquirer (June 10, 2020), <https://www.inquirer.com/politics/election/pa-mail-ballots-deadline-2020-primary-election-20200610.html>.

a ballot in the June primary, particularly those voters at high risk for severe complications from Covid-19.

66. The challenges in Delaware County were particularly striking. As the County noted, the

consequences of the COVID-19 pandemic have converged into a perfect storm in which requests for mail-in and absentee ballots have far exceeded the Bureau of Elections' expectations and capacity to process. Notwithstanding the heroic efforts of the Bureau and its staff to preserve the constitutional rights of all Delaware County citizens, it simply was unable to process all mail-in requests by the statutory deadline.⁵⁷

As of May 21, Delaware County had 31,139 ballot applications (forty percent of the total applications it had received) for which it had either (a) not processed the application or (b) not yet sent out a ballot, despite the application being approved.⁵⁸

Ultimately, the significant backlog in mail-in and absentee ballots caused the county to mail thousands of ballots in the days leading up to the election, including mailing approximately 5,760 to 6,000 ballots the day before the election.⁵⁹ Overall, the County states that it mailed between 24,240 and 25,250 ballots between May 29 and June 1, thereby very likely depriving the affected voters of an opportunity

⁵⁷ Emergency Pet. ¶ 11, *In re: Extension of Time for Absentee and Mail-in Ballots to be Received by Mail and Counted in the 2020 Primary Election*, No. CV-2020-003416 (Delaware Cnty. Ct. Com. Pl. 2020), <https://www.delcopa.gov/electionsbureau/pdfs/2020/BOEPetitionforExtension.pdf>.

⁵⁸ Marks Decl. ¶ 16.

⁵⁹ Emergency Pet. ¶ 13, *In re: Extension of Time for Absentee and Mail-in Ballots to be Received by Mail and Counted in the 2020 Primary Election*, No. CV-2020-003416 (Delaware Cnty. Ct. C.P. 2020), <https://www.delcopa.gov/electionsbureau/pdfs/2020/BOEPetitionforExtension.pdf>.

to submit those ballots by June 2.⁶⁰ The County acknowledged that most of those would “not be received in time for voters to return them by the deadline.”⁶¹ The Governor included Delaware County in his executive order extending the deadline for receiving mail ballots.⁶² However, that extension almost certainly proved insufficient for many affected voters, as it is inconceivable that each of the approximately 25,000 voters could receive, complete, and timely return a ballot mailed to them just one or two days before the election.

67. Not only did Delaware County mail ballots late, but in the chaos leading up to Election Day, county officials also identified between 400 to 500 voters that they were certain would not receive their ballots until *after* Election Day.⁶³ Because those voters’ ballots would not arrive before the election, officials had originally simply given up on sending them. Instead, the county changed course, asking the Delaware County Court of Common pleas, in an emergency petition, for an extension. The court obliged, and in a June 2 (Election Day) order, allowed those 400 to 500 voters to have their ballots counted so long as they were

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Jonathan Lai, *Courts extend Pa. mail ballot deadlines in Bucks and Delaware Counties*, Phila. Inquirer (June 2, 2020), <https://www.inquirer.com/politics/election/bucks-delaware-county-mail-ballot-deadlines-extended-20200602.html>.

⁶³ Emergency Pet. ¶ 14, *In re: Extension of Time for Absentee and Mail-in Ballots to be Received by Mail and Counted in the 2020 Primary Election*, No. CV-2020-003416 (Delaware Cnty. Ct. C.P. 2020), <https://www.delcopa.gov/elections/bureau/pdfs/2020/BOEPetitionforExtension.pdf>.

returned by 5 p.m. on June 12, even if those ballots were not mailed or postmarked by June 2.⁶⁴

68. USPS has faced challenges across the country as states increase access to absentee voting to avoid the spread of Covid-19.⁶⁵ As Karley Sisler, Director of the Office of Voter Services for Montgomery County, noted, delays in working with the postal service significantly hindered the county's ability to distribute ballots and resulted in an increase in delivery times.⁶⁶ The delays, outside the Defendants' control, made it difficult for voters who requested ballots in a timely fashion to submit those ballots before the June 2 election.⁶⁷ And USPS delays—which are certain to be aggravated under pandemic conditions and have already increased due to recent policy changes—caused problems at every step of the vote-by-mail process, including the receipt of applications, delivery of ballots, and return of those ballots. Moreover, even when voters did timely receive their ballots, additional mail delivery issues continued to arise. One media report found that completed mail ballots were being returned to voters instead of delivered to the

⁶⁴ *Id.*; see also Order, *In Re: Extension of Time*, at 2-3 (Delaware Cnty. Ct. C.P. (June 2, 2020), <http://www.pacourts.us/assets/files/page-1305/file-9439.pdf>).

⁶⁵ Brian Naylor, *As More Ams. Prepare To Vote By Mail, Postal Serv. Faces Big Challenges*, Nat'l Public Radio (May 30, 2020), <https://www.npr.org/2020/05/30/865258362/as-more-americans-prepare-to-vote-by-mail-postal-service-faces-big-challenges>.

⁶⁶ Sisler Decl. ¶ 6.

⁶⁷ Marks Decl. ¶ 12.

elections office in Allegheny County.⁶⁸ While it is not clear just how many voters were disenfranchised due to the mail delivery errors, postal carriers said they had never seen the issue occur “at this scale,” and one postal supervisor claimed that mail-in ballots were being returned to voters “all over Pittsburgh.”⁶⁹

69. All of these factors made it extremely difficult to process and deliver ballots to voters. Voters like Petitioner Cramer who requested their ballots weeks in advance of the June primary never received their ballots in the mail—not before, on, or after Election Day. Put simply, the absence of a fail-safe in the face of these systematic problems jeopardized the rights of thousands of voters, ultimately leaving them with an unconscionable choice: risk their health by voting in person or forfeit their fundamental right to vote.

70. Due to the systemic challenges in delivering mail-in ballots and the absence of a back-up plan to deliver the ballots any other way, an unprecedented number of voters were forced to cast provisional ballots in the June 2020 primary.⁷⁰

⁶⁸ Juliette Rihl, *Reports emerge of completed mail-in ballots being returned to voters instead of delivered to Allegheny Cnty. elections off.*, Public Source (June 1, 2020), <https://www.publicsource.org/reports-emerge-of-completed-mail-in-ballots-being-returned-to-voters-instead-of-delivered-to-allegheny-county-elections-office/>.

⁶⁹ *Id.*

⁷⁰ *Lots of mail ballots and voter enthusiasm for Pa. primary. But results could take days: Live updates*, Phila. Inquirer (June 2, 2020), <https://www.inquirer.com/politics/election/live/pa-2020-primary-election-philadelphia-live-updates-results-20200602.html> (“Officials work to restock supplies as voters show up to polls after not receiving mail ballots”).

71. Montgomery County also struggled to procure enough provisional ballots for voters who did not receive their ballots in the mail.⁷¹ “Montgomery County had 60,000 provisional ballots flown in Monday from its printer in Ohio in preparation for high demand at polling places, and a roving team of seven county staffers—dedicated exclusively to provisional ballots—ha[d] been responding to restock polling places as they run low.”⁷² Even if voters decided to risk voting in person, provisional ballots alone were an insufficient safeguard.

72. Turnout in the June election totaled approximately 2.8 million.⁷³ It is inevitable that counties will not be able to handle nearly double the volume of mail ballot requests in a timely fashion this fall. Pennsylvania had 8,599,294 registered voters as of June 2, 2020.⁷⁴ In 2016, 6,115,402 voters cast ballots for President.⁷⁵ If the same number of voters vote in November and if, as in June, around half of

⁷¹ *Lots of mail ballots and voter enthusiasm for Pa. primary. But results could take days: Live updates*, Phila. Inquirer (June 2, 2020), <https://www.inquirer.com/politics/election/live/pa-2020-primary-election-philadelphia-live-updates-results-20200602.html>.

⁷² *Id.*

⁷³ Mark Scolforo, *Some counting continues, a week after Pa. 's primary*, WHYY (June 9, 2020), <https://whyy.org/articles/some-counting-continues-a-week-after-pennsylvanias-primary/>.

⁷⁴ Pa. Dep't of State, *2020 Voter Registration Statistics – Off.*, Commonwealth of Pa. (June 2, 2020), <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics/Documents/2020%20Primary%20VR%20Stats%20%20FINAL.pdf>.

⁷⁵ Pa. Dep't of State, *2016 Presidential Election*, Commonwealth of Pa., <https://electionreturns.pa.gov/General/SummaryResults?ElectionID=54&ElectionType=G&IsActive=0> (last visited Aug. 25, 2020).

those voters cast mail-in/absentee ballots,⁷⁶ municipal clerks will need to process a *minimum* of 3 million ballot requests and successfully deliver the same number by mail in the fall. Assuming the 1 to 1.25 ratio of returned mail-in ballots to total issued mail-in ballots holds from the June primary election,⁷⁷ then clerks will need to issue over 3.5 million mail-in ballots.

73. Due to the lack of adequate funding, staffing, and supplies, Pennsylvania election officials at the state and local level will not be able to fully meet the demand in a timely way with such an enormous increase in mail-in/absentee ballot requests. Defendants appear to acknowledge this conclusion as well, insofar as the Secretary of State has expressed her desire to provide counties assistance in what she deems “a very, very challenging job.”⁷⁸ But the Commonwealth has not proposed how voters can be guaranteed the ability to vote in light of the twin obstacles of the pandemic and unprecedented delays in delivery of U.S. mail. Indeed, expanded access to mail-in applications, greater time for counties to count ballots, and other tweaks around the edges cannot solve the

⁷⁶ Marc Levy, *Fixing Pa. mail-in vote glitches goes down to wire*, The Times (Aug. 24, 2020), <https://www.timesonline.com/story/news/2020/08/24/fixing-pennsylvania-mail-vote-glitches-goes-down-wire/3424779001/>.

⁷⁷ OpenDataPA, *2020 Primary Mail Ballots Returned %*, Commonwealth of Pennsylvania, <https://data.pa.gov/dataset/2020-Primary-Mail-Ballots-Returned-/m5hb-icht> (last visited Aug. 25, 2020).

⁷⁸ Jan Murphy, *Pa. primary election ‘went remarkably smoothly’ despite many challenges*, Penn Live (June 3, 2020), <https://www.pennlive.com/news/2020/06/pa-primary-election-went-remarkably-smoothly-despite-many-challenges.html>.

problem of an overwhelming demand for mail-in and absentee ballots and a lack of staff and resources to match that demand.

74. The only way to overcome these obstacles is to provide a failsafe means of delivering ballots on an expedited basis if they fail to arrive on time by mail. Three such alternatives readily present themselves. Petitioner's proposed remedies of email delivery of absentee ballots and/or authorizing voters to use a downloadable write-in ballot, and allowing a voter to designate a person to pick up their previously-requested ballot in the week before the election will significantly alleviate the burden on voters statewide. Providing such a fail-safe option is the only way to guarantee that at-risk voters can access the ballot in the likely event that counties are once again overwhelmed by a deluge of mail-in ballot requests. However, if those alternatives are not made available to voters and election officials alike (who both stand to benefit), Defendants cannot and will not be able to guarantee that the labor-intensive tasks of processing over 3.5 million ballot requests, entering data and printing labels for all those ballots, and then mailing them off will not once again cause the system to overload. Defendants cannot guarantee that USPS will timely deliver ballots to mail/absentee voters. And, most importantly, Defendants cannot guarantee they will do any of these things in the context of an ongoing, if not resurgent, public health crisis. Given the concrete evidence of a systemic failure to keep up with the demand for mail and absentee

ballots in a much lower turnout primary election, action should be taken to safeguard voters' constitutional rights. A presidential election is no time to leave voters without a fail-safe and allow electoral disarray to proceed unabated.

Fail-Safe Remedies for Ballot Preparation and Delivery Failures

75. The following proposed remedies for the disenfranchisement caused by ballot preparation and delivery failures are intended to serve as last resorts or fail-safes for voters such as Petitioner. They should not be used by voters or election officials in the first instance, but rather only after a timely-requested mail-in or absentee ballot fails to arrive with sufficient time for it to be filled out and timely returned. If a timely-requested ballot does not arrive in the mail, then voters such as Petitioner must be afforded one or more of the following fail-safe alternatives: (a) electronic delivery of the ballot; (b) access to and permission to vote a state write-in ballot, like those ordered in the TRO as to the June election in *Drenth v. Boockvar*, No. 1:20-CV-00829, 2020 WL 2745729 (M.D. Pa. May 27, 2020).; and/or (c) a voter may designate an agent to pick up a replacement for a previously-requested ballot that the voter did not receive. Granted, these solutions to the constitutional problem of ballot preparation and delivery failures that continue to threaten at-risk Pennsylvania voters and their caregivers with disenfranchisement will not work for all voters, particularly those who lack printers or who cannot identify a person who is able to pick up the ballot in person

on their behalf. But for the many Covid-19 vulnerable voters who simply cannot safely vote in person, these fail-safes will prove their only available means to vote when a ballot does not arrive in the mail timely or at all.

A. Electronic Delivery of Mail/Absentee Ballots

76. The Pennsylvania Election Code instructs county boards of elections to “deliver or mail” absentee and mail-in ballots to absentee and mail-in electors, respectively. 25 P.S. §§ 3146.5, 3150.15. The word “deliver” is not defined in any Definitions section of Chapter 25, which governs elections. *See* 25 P.S. §§ 2602, 2745, 2831, 3001, 3031.1, 3035.1, 3150.1, 3150.21, 3241, 3595.102, 3596.102; 25 Pa.C.S. §§ 701, 1102, 3502. A military or overseas voter “may request that a ballot and balloting materials be sent to the voter by mail or by Internet delivery.” 25 Pa.C.S. § 3508(c), reflecting the Legislature’s judgment that Internet delivery is a form of “delivery.”

77. The VotesPA website offers several options for military or overseas voters to obtain an absentee or mail-in ballot via email.⁷⁹ Voters can either mark the box that says e-mail preference in block 5 on the Federal Post Card Application Form or contact their local County Election Office by e-mail or phone. After completing one of these options, the voter then receives an e-mail telling them that

⁷⁹ *Info. for Mil. and Overseas Voters*, Votes PA, <https://www.votespa.com/Voting-in-PA/Pages/Military-and-Overseas-Voters.aspx> (last visited Aug. 28, 2020).

their ballot is ready, which they can then download from www.pavoterservices.pa.gov.

78. 25 Pa.C.S. § 3508(c) requires online delivery for military and overseas voters who request it, but neither mandates or prohibits online delivery of domestic civilian ballots. Leaving the form of delivery unspecified as to domestic civilian voters preserves a broader range of delivery options, including, for example, in-person delivery. Accordingly, nothing in the Election Code precludes county boards of elections from fulfilling their statutory mandate to “deliver or mail” absentee and mail-in ballots to voters by electronically transmitting the ballot.

79. Indeed, one federal court has already recognized that online delivery of ballots represents a reasonable accommodation in light of Covid-19. In *Drenth v. Boockvar*, a federal judge granted a TRO ordering the Commonwealth of Pennsylvania to provide digitally-accessible write-in ballots to blind Pennsylvania voters for the June 2 primary election.⁸⁰ The Court, in issuing its order, noted that failure to provide an electronic ballot would effectively force blind voters, who may not be able to fill out a paper ballot without assistance, “to choose between forfeiting their right to vote privately and independently or risking their health and safety by traveling to a polling place to vote in person.” *Id.* at *5. The court

⁸⁰ No. 1:20-CV-00829, 2020 WL 2745729 (M.D. Pa. May 27, 2020).

therefore required the state to provide blind voters with a list of the candidates on the ballot for their voting district along with an accessible electronic form on which they could type in their choices for each office. After filling out their ballot digitally, blind voters could print out the ballot and mail it in, just as would occur with any absentee ballot. As such, leveraging electronic delivery of ballots could help voters who do not timely receive their mail-in or absentee ballot to avoid the same dilemma, whereby they are forced to choose between their health and their right to vote. This is particularly true given that the infrastructure to deliver individual voters now exists in Pennsylvania, due to the recent finalization of the contract to utilize the Democracy Live software to provide voters who need them with downloadable, accessible ballots.⁸¹

80. The difficulty Defendants, county election boards, and the USPS face in trying to fully keep up with the demand for mail-in absentee ballots during this Covid-19 pandemic requires an alternative fail-safe option of electronic delivery of replacement mail-in/absentee ballots. It need not and should not be a first resort; it is a last resort. However, to prevent disenfranchisement when ballots fail to arrive timely in the mail such that voters can timely cast and return them, Petitioner respectfully requests that this Court order Defendants to establish a failsafe system to electronically deliver and/or instruct county election directors to electronically

⁸¹ See *infra* ; *Drenth v. Boockvar*, No. 1:20-CV-00829, 2020 WL 4805621, at *3–4 (M.D. Pa. Aug. 18, 2020) (record citations omitted).

deliver replacement mail or absentee ballots to voters who timely requested those ballots be delivered by mail but did not receive them by the eighth day before an election during the pandemic, including the November 3, 2020 general election. Electronic delivery will greatly alleviate the administrative burden on county election directors' offices in mailing out replacement ballots for those that do not arrive timely in the mail.

B. Write-In Absentee Ballots

81. A downloadable ballot is not new to Pennsylvania, which has already implemented the Federal Write-in Absentee Ballot (“FWAB”) for years. Used for military and overseas voters under Pennsylvania’s enactment of federal law the FWAB is downloadable and printable at: <https://www.fvap.gov/uploads/FVAP/Forms/fwab2013.pdf>. The voter must assemble the envelope, and the voter fills out both a voter information sheet and the official back-up ballot. Pennsylvania law requires a military or overseas voter to first apply for an absentee ballot with the absentee ballot application or federal postcard application before using the FWAB. 25 Pa.C.S. § 3506. FWABs are counted under various rules that allow for the voter’s intent to be determined without regard to misspellings, abbreviations, or the like. *See* 52 U.S.C. § 20303(c)(3). These ballots are accepted for federal and state offices under Pennsylvania law. 25 Pa.C.S. § 3510.

82. The principle behind allowing use of the FWAB is that a voter who is overseas will face hardship or potential disenfranchisement if this option is not made available to them. The Covid-19 pandemic now threatens many *domestic* civilian voters with hardship and potential disenfranchisement; in the context of this public health emergency, their right to vote is entitled to the same protection.

83. In the context of the pandemic, affording domestic civilian voters the right to cast downloadable write-in ballots to the same extent as overseas civilian voters who use a downloadable ballot, including for all offices in an election, would also cure the state constitutional violations caused by the lack of a fail-safe option for voters who request an absentee ballot during this pandemic because they cannot safely vote in person and whose absentee ballot never arrives in the mail. Petitioner respectfully requests that this Court order this as relief in the alternative or in addition to the email delivery of ballots in the narrow circumstance where a voter timely requests a mail-in absentee ballot be delivered by mail but does not receive that ballot by the eighth day before the November 3, 2020 general election.

C. Use of An Agent to Retrieve Replacement for Undelivered, Timely Requested Ballot

84. While electronic delivery methods will benefit many voters who do not receive their timely-requested ballots, some at-risk voters who do not receive

their ballots will not have access to the technology needed to retrieve their ballot electronically.

85. In some states, for example, in Florida, a voter may designate an agent to retrieve their vote-by-mail ballot.⁸² Under that state’s law, voters “may designate in writing a person to pick up the ballot for the elector; however, the person designated may not pick up more than two vote-by-mail ballots per election, other than the designee’s own ballot, except that additional ballots may be picked up for members of the designee’s immediate family”⁸³ The designated person is required to provide written, signed authorization by the voter and the designated person’s picture ID, and must complete an official state-designed affidavit signed under penalty of perjury stating the person is authorized by the voter to pick up the ballot.⁸⁴

86. In the context of the pandemic, allowing voters to designate an individual to pick up a timely-requested main-in/absentee ballot that was not received in the mail would provide an additional fail-safe for those voters who cannot access the Internet and/or print out an electronically-delivered ballot.

⁸² Fla. Stat. § 101.62(4)(c)(4).

⁸³ *Id.*

⁸⁴ *Id.*; *see also* Fla. Dep’t of State, Form DS-DE 37, <https://dos.myflorida.com/media/701775/dsde37.pdf>; *cf.* Mich. Comp. Laws Ann. § 168.759(b) (2020) (emergency ballot process includes opportunity to have a ballot delivered to the applicant through a deputy or election assistant, or at the election official’s approval, to a person named by the voter in the application).

COUNT I
EMERGENCY DECLARATORY AND INJUNCTIVE RELIEF FOR
VIOLATION OF FREE AND EQUAL ELECTIONS CLAUSE

87. Petitioner re-alleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

88. The right to vote is a fundamental right in the Commonwealth of Pennsylvania. Pa. Const. art. I, § 5. Article I, Section 5 of the Pennsylvania Constitution provides that “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.” *Id.* The Pennsylvania Supreme Court recently reviewed the history of the Free and Equal Elections Clause, affirming that:

[E]lections are free and equal within the meaning of the 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.

League of Women Voters v. Commonwealth, 110, 178 A.3d 737, 810 (2018)

(quoting *Winston v. Moore*, 91 A. 520, 523 (1914)); *see also Applewhite v.*

Commonwealth of Pa., No. 330 M.D. 2012, 2014 WL 184988, at *19 (quoting same).

89. Echoing the expansive right to suffrage contemplated by the Pennsylvania Constitution, courts in the Commonwealth have repeatedly held that the right of suffrage “is a fundamental one” and the “most treasured prerogative of citizenship through which other rights flow.” *Applewhite v. Commonwealth of Pa.*, No. 330 M.D. 2012, 2014 WL 184988, at *19 (Jan. 17, 2014) (internal quotation marks and citations omitted).

90. In the context of the 2020 general election, the Covid-19 pandemic and delays in delivery of election mail predicted by both the Commonwealth and the USPS, the failure to timely provide all voters who requested them with mail-in or absentee ballots in time to vote them forces voters who do not receive their requested ballots to vote in person. For voters who are at high risk for complications or death from Covid-19 or who are caring for or living with such individuals, that failure makes exercising Pennsylvania’s fundamental right to vote so difficult or risky as to amount to an effective denial.

91. The failure to timely provide voters with ballots and the further failure to provide voters with failsafe alternative ballot delivery methods so that they can timely receive replacement mail-in or absentee ballots to vote safely when those initially-requested ballots do not arrive on time in the mail denies Petitioner Cramer and similarly-situated individuals the right to vote in violation of the Free and Equal Elections Clause of the Pennsylvania Constitution.

92. Many qualified voters in Pennsylvania with a Covid-19-vulnerable household member cannot cast a ballot in person because they reasonably fear that they or their household member will become infected with Covid-19, develop complications, and die. If they do not receive their mail ballots in time to vote them and have them be counted, they will be disenfranchised as Petitioner Cramer was in June.

93. Article VII, § 6 of the Pennsylvania Constitution provides:

All laws regulating the holding of elections by the citizens, or for the registration of electors, shall be uniform throughout the State, except that laws regulating and requiring the registration of electors may be enacted to apply to cities only, provided that such laws be uniform for cities of the same class

Pa. Const. art. VII, § 6.

94. No compelling state interest justifies the disenfranchisement of voters due to any administrative burden of processing requests for replacement mail or absentee ballots via alternative ballot delivery methods such as online access, email, or designee pick-up.

95. Accordingly, in the context of the deadliest pandemic in one hundred years and the massive influx of mail or absentee ballot applications that cannot all be timely processed by election officials or timely delivered by USPS, the lack of fail-safe options to deliver replacement mail or absentee ballots to voters who do not receive their initially-requested mail or absentee ballots in the mail poses

insurmountable burdens on the fundamental right to vote. This practice violates the guarantee of “free and equal” elections under the Pennsylvania Constitution.

96. An actual controversy exists between Petitioner and Respondents regarding Petitioner’s rights and Respondents’ obligations under the Pennsylvania Constitution, Act 77 and other above-mentioned laws. Entry of declaratory relief pursuant to 42 Pa.C.S. §§ 7532 and 7533 is necessary to address and resolve such controversy. Such relief should be entered on an emergency basis to ensure that it can be implemented in time to protect Petitioner’s and other Pennsylvania voters’ rights in the 2020 General Election. Supplemental relief in the nature of a permanent injunction should be entered pursuant to 42 Pa.C.S. § 7538(a) to effectuate such declaratory relief.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Honorable Court enter judgment in her favor and against Defendants:

a. Declaring that, in the context of the 2020 general election, the Covid-19 pandemic and delays in delivery of election mail predicted by both the Commonwealth and the USPS, the failure to provide all voters who requested them with mail-in or absentee ballots in time to vote them by mail violates Pa. Const. art. I, § 5. Article I, Section 5, Pa. Const. art. VII, § 6 and Act 77.

b. Enjoining Defendants to remedy the lack of a fail-safe option for voters who previously and timely requested a mail or absentee ballot by mail delivery but who do not receive that ballot in the mail, for the November general election and additional elections held during the course of the pandemic, by:

1. Establishing a process by which voters who previously and timely requested a mail-in or absentee ballot by mail delivery but who do not receive that ballot in the mail in time to submit it, may have a ballot electronically delivered to them, *e.g.*, accessed online and downloaded through the Democracy Live platform, and/or emailed to the voter with appropriate security measures, along with all the materials necessary to cast that ballot including its certificate envelope;

2. Causing to be counted in the November 2020 general election results of mail-in or absentee ballots that are electronically delivered, *e.g.*, accessed online and downloaded through the Democracy Live platform, and/or emailed to voters, and are timely returned in any way permitted under Pennsylvania law or court orders, by voters who previously and timely requested a mail-in or absentee ballot by mail delivery but did not receive that ballot in the mail in time to vote it; and

3. Prohibiting the rejection and/or refusal to count and certify as part of official election results mail-in and absentee ballots that were electronically

delivered, *e.g.*, accessed online and downloaded through the Democracy Live platform, and/or emailed to voters that are timely returned in any way permitted under Pennsylvania law or court orders by voters who previously and timely requested a mail-in or absentee ballot by mail delivery but did not receive that ballot in the mail in time to vote it; and;

c. In the alternative or in addition to the relief outlined in subsection (b), for the duration of the pandemic, enjoining Defendants to:

1. Establish a process including a uniform statewide form by which voters who previously and timely requested a mail-in or absentee ballot by mail delivery and who do not receive their requested ballot, and cannot retrieve and print out such ballot via alternative electronic delivery methods as set out above, be authorized to, via affidavit, designate an individual who can retrieve the unvoted ballot from the election board and deliver it to the voter;

2. Establish a system by which voters who previously and timely requested a mail ballot or an absentee ballot by mail delivery, may download, vote, and return in any way permitted under Pennsylvania law or court orders an emergency write-in ballot package, containing a write-in ballot, instructions for filling out the ballot, a candidate list for the voter's precinct, and a bar code sufficient to identify the ballot envelope;

3. Direct county officials to permit voters who previously and timely requested a mail-in ballot or an absentee ballot by mail delivery, to download, vote, and return in any way permitted under Pennsylvania law or court orders an emergency write-in ballot package, containing a write-in ballot, instructions for filling out the ballot, a candidate list for the voter's precinct, and a bar code sufficient to identify the ballot envelope;

4. Direct county officials to process and count emergency write-in ballots submitted under paragraph (b)(2)-(3) above that are timely returned in any way permitted under Pennsylvania law or court orders by voters who previously and timely requested a mail-in or absentee ballot by mail delivery;

5. Count and certify as part of official election results emergency write-in ballots submitted under paragraph (b)(2)-(3) above that are timely returned in any way permitted under Pennsylvania law or court orders by voters who previously and timely requested a mail-in or absentee ballot by mail delivery;

d. Declare that electronic ballot delivery, the downloading of ballots, and ballot pick-up via a designated person are all fully consistent with existing Pennsylvania laws requiring election officials to "deliver or mail official" ballots to voters, 25 P.S. §§ 3150.15, 3146.5; and

e. Award any other relief as is just and necessary.

Dated: September 1, 2020

Respectfully submitted,

/s/ David Newmann

David Newmann (Pa. No. 82401)
Jasmeet K. Ahuja (Pa. No. 322093)
Robert E. Beecher (Pa. No. 327410)
HOGAN LOVELLS US LLP
1735 Market Street, 23rd Floor
Philadelphia, PA 19103
Telephone: 267-675-4610
Facsimile: 267-675-4601

Daniel Landesberg*
HOGAN LOVELLS US LLP
555 13th Street NW
Washington, DC 2004
Telephone: 202-637-5600
Facsimile: 202-637-5601

Michelle Kanter Cohen*
Jon Sherman*
Cecilia Aguilera *
FAIR ELECTIONS CENTER
1825 K Street NW, Suite 450
Washington, DC 20006
Telephone: (202) 331-0114

*Attorneys for Petitioner
Jacquelyn Cramer*

*Not admitted in Pennsylvania; *pro hac vice* motion to be filed.

VERIFICATION

I state that I am a Plaintiff in this matter, and that the factual averments set forth in the foregoing Complaint, as they relate to me personally, are true and correct to the best of my knowledge, information, and belief.

I understand that the statements herein are made subject to the penalties of 18 Pa. Cons. Stat. § 4904 relating to unsworn falsification to authorities.

DATED: ___Sep. 1, 2020___

A rectangular box containing a handwritten signature in cursive script, which reads "Jacquelyn Cramer".

(Signature)

Jacquelyn Cramer