

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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602 MD 2020

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**DONALD J. TRUMP FOR PRESIDENT, INC., and  
REPUBLICAN NATIONAL COMMITTEE,**

Petitioners,

v.

**KATHY BOOCKVAR, in her capacity as  
Secretary of the Commonwealth of Pennsylvania, et al.,**

Respondents.

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**MEMORANDUM OF LAW IN SUPPORT OF  
PETITIONERS' PETITION FOR REVIEW  
IN THE NATURE OF A COMPLAINT IN EQUITY**

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**PORTER WRIGHT MORRIS  
& ARTHUR LLP**

Ronald L. Hicks, Jr. (PA #49520)  
Jeremy A. Mercer (PA #86480)  
Carolyn B. McGee (PA #208815)  
Six PPG Place, Third Floor  
Pittsburgh, PA 15222  
(412) 235-4500 (Telephone)  
(412) 235-4510 (Fax)  
rhicks@porterwright.com  
jmercer@porterwright.com  
cmcgee@porterwright.com

*Counsel for Petitioners*

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## **STATEMENT OF JURISDICTION**

This Court has original jurisdiction over this action pursuant to 42 Pa.C.S. § 761(a)(1), which grants the Commonwealth Court of Pennsylvania original jurisdiction over civil actions against a Commonwealth government, including any officer of the Commonwealth acting in her official capacity.

## **ORDER OR OTHER DETERMINATION IN QUESTION**

Petitioners seek a declaratory judgment from this Court affirming the clear and unambiguous language of Election Code Section 1308(h)(3) which mandates the last date for the elector's provision of identification as Monday, November 9, 2020, which is the sixth calendar following the November 3, 2020 General Election. *See* 25 P.S. § 3146.8(h)(3) (“(h) For those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified: ... (3) If an elector fails to provide proof of identification that can be verified by the county board of elections by the sixth calendar day following the election, then the absentee ballot or mail-in ballot shall not be counted.”). *See also* 25 P.S. § 3146.8(h)(2).

Petitioners also seek a declaratory judgment from this Court that Respondent, Secretary of the Commonwealth of Pennsylvania, Kathy Boockvar (“Secretary Boockvar”), does not possess the authority to alter and unilaterally extend the statutory deadline of November 9, 2020, for absentee and mail-in electors to provide proof of missing identification if such identification was not received and verified by Election Day by Respondents, the 67 County Boards of Elections (the “County Election Boards”), and that a ballot should not be counted unless the elector provides proof of identification that can be verified by the county board by Monday, November 9, 2020. As such, Secretary Boockvar’s November 1, 2020 “guidance” titled “CANVASSING SEGREGATED MAIL-IN AND CIVILIAN ABSENTEE

BALLOTS RECEIVED BY MAIL AFTER 8:00 P.M. ON TUESDAY, NOVEMBER 3, 2020 AND BEFORE 5:00 P.M. ON FRIDAY, NOVEMBER 6, 2020” (available online at <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Canvassing-Segregated-Ballot-Guidance.pdf> and hereinafter referred to as “November 1, 2020 Guidance.”) is invalid, void and contrary to the express terms of Pennsylvania’s Election Code.



**STATEMENT OF BOTH THE SCOPE OF REVIEW**  
**AND STANDARD OF REVIEW**

This petition for review “requires this Court to engage in statutory interpretation of the Election Code, which, as a question of law, is subject to a de novo standard of review and a plenary scope of review.” *Banfield v. Cortés*, 110 A.3d 155, 166 (Pa. 2015) (citing *Sch. Dist. of Philadelphia v. Dep’t of Educ.*, 92 A.3d 746, 751 (Pa. 2014)).

## STATEMENT OF THE QUESTIONS INVOLVED

1. Whether the statutory deadline for receipt and verification of missing proof of identification for an absentee or mail-in voters for the November 3, 2020 General Election is Monday, November 9, 2020, pursuant to 25 P.S. § 3146.8(h)(3) and 25 P.S. § 2603(e)?

*Suggested answer: Yes.*

2. Whether Secretary Boockvar lacks the authority to alter the statutory deadline for receipt and verification of missing proof of identification for an absentee or mail-in voters?

*Suggested answer: Yes.*

## **STATEMENT OF THE CASE**

### **I. FORM OF ACTION AND PROCEDURAL HISTORY.**

This is a case of original jurisdiction filed in this Court on November 4, 2020. Contemporaneous with the Petition of Review, Petitioners filed an Application for Special Relief in the form of a special, preliminary, and/or permanent injunction. On November 5, 2020, President Judge Mary Hannah Leavitt entered an Order temporarily granting the Application for Relief to maintain the status quo pending the disposition of this case on the merits. The Order also directs the Respondents County Election Boards to segregate ballots for which identification is received and verified on November 10, 11, and 12, 2020, from ballots for which identification is received and verified on or before November 9, 2020, and that those segregated ballots shall not be counted until further order of this Court.

### **II. PRIOR DETERMINATIONS.**

There are no prior determinations at issue in this Petition for Review.

### **III. CHRONOLOGICAL STATEMENT OF FACTS.**

#### **A. The Parties.**

Petitioner, Donald J. Trump for President, Inc. (hereinafter, the “Trump Campaign”), is the principal committee for the reelection campaign of Donald J. Trump, the 45th President of the United States of America (hereinafter, “President Trump”). President Trump is the Republican nominee for the office of the President of the United States of America in the ongoing 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), codified at 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 standing to bring this action. *See, e.g., In re General Election-1985*, 531 A.2d 836, 838 (Pa. Commw. Ct. 1987) (a candidate for office in the election at issue suffers a direct and substantial harm sufficient for standing to contest the manner in which an election will be conducted).

Petitioner, 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 standing to bring this action. *See In re Canvass of Absentee Ballots of November 4, 2003*, 839 A.2d 451, 457 (Pa. Commw. Ct. 2003) (“political bodies [have] standing to appeal a decision ... regarding the allowance or disallowance of votes”), *rev’d on other grounds*, 843 A.2d 1223 (Pa. 2004).

Respondent, Secretary Boockvar is the Secretary of the Commonwealth. In this role, Secretary Boockvar leads the Pennsylvania Department of State. As Secretary, she is identified as Pennsylvania’s Chief Elections Officer and a member of the Governor’s Executive Board. Secretary Boockvar is sued in her official capacity.

Respondents 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, codified at 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, codified at 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.

**B. Secretary Boockvar’s November 1, 2020 Illegal Guidance Published To the County Election Boards Extending The Proof of Identification Deadline from November 9, 2020 to November 12, 2020.**

On November 3, 2020, a General Election was held in which several candidates for federal and state offices were on the ballot, including without limitation the reelection campaign of Donald J. Trump, the 45th President of the United States of America and the Republican nominee for the office of the President of the United States of America.

On Sunday, November 1, 2020, just two days before the General Election on November 3, 2020 and before the pre-canvass meetings were scheduled to begin in each of the 67 Counties at 7:00 a.m. on Election Day, Respondent, Secretary Kathy published and delivered a guidance letter to the 67 County Election Boards. *See* the parties’ joint Stipulated Record, R-3-R-6 (“CANVASSING SEGREGATED MAIL-IN AND CIVILIAN ABSENTEE BALLOTS RECEIVED BY MAIL AFTER 8:00 P.M. ON TUESDAY, NOVEMBER 3, 2020 AND BEFORE 5:00 P.M. ON FRIDAY, NOVEMBER 6, 2020,” dated November 1, 2020, version 1.0 (available online at

<https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Canvass>

[ing-Segregated-Ballot-Guidance.pdf](#) and hereinafter referred to as “November 1, 2020 Guidance.”). The November 1, 2020 Guidance serves as an update to guidance that Secretary Boockvar and the Pennsylvania Department of State issued on October 28, 2020, concerning the segregation and canvassing of absentee and mail-in ballots cast in the November 3, 2020 General Election

Among other things, Secretary Boockvar’s provided the following instruction:

...

Additionally, the county board of elections should not open or count any of the following specific types of ballots pending further review as follows:

“If proof of identification for an absentee or mail-in voter was not received or could not be verified, the ballot should not be counted unless the elector provides proof of identification that can be verified by the county board by the sixth calendar day **following the canvassing**, or on or before **Thursday, November 12.**”

*See* November 1, 2020 Guidance at 3, R-5. Secretary Boockvar’s November 1, 2020 Guidance, issued on the eve of the General Election, also addressed issues related to the three-day extension for mail-in and absentee ballots returns blessed by Pennsylvania Supreme Court’s September 17, 2020 decision, issued in *Pennsylvania Democratic Party v. Boockvar*, No. 133 MM 2020, 2020 Pa. LEXIS 4872 (Pa., Sept. 17, 2020).<sup>1</sup>

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<sup>1</sup> The Pennsylvania Supreme Court’s decision as it relates to the three-day extension of the absentee and mail-in ballot return date is pending before the United

The November 1, 2020 Guidance’s clauses concerning proof of identification curing was not limited, however, to those ballots received during the three-day extension period for mail-in and absentee ballots. Instead, it applies broadly to *all* mail-in and absentee ballots that may have unverifiable proof of identification, undercutting any argument by Secretary Boockvar that the purpose of the guidance is to provide remediation to those voters that returned their ballots during the extended return period.

Section 1308(h) of Pennsylvania’s Election Code, codified at 25 P.S. § 3146.8(h), requires that if a voter’s identification is not received and verified “by the sixth day following *the election*”, those ballots “*shall* not be counted.” See 25 P.S. § 3146.8(h)(2) & (3) (emphases added). Section 1308(h) of the Pennsylvania Election Code, codified at 25 P.S. § 3146.8(h), states more fully :

For those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified:

...

(2) If the proof of identification is received and verified *prior to the sixth calendar day following the election*, then the county board of elections shall canvass the absentee ballots and mail-in ballots under this subsection in accordance with subsection (g)(2).

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States Supreme Court via a petition for certiorari filed on October 23, 2020. See *Republican Party of Pennsylvania v. Kathy Boockvar, Secretary of Pennsylvania*, Case No. 20-542 (U.S.).



(3) If an elector fails to provide proof of identification that can be verified by the county board of elections ***by the sixth calendar day following the election***, then the absentee ballot or mail-in ballot ***shall not be counted***.

See 25 P.S. § 3146.8(h)(2) & (3) (emphasis added). If the deadline is calculated as the statute is written, then as it pertains to the November 3, 2020 General Election, this deadline for voters to resolve proof of identification issues is Monday, November 9, 2020, not November 12, 2020.

**C. Calculation of the Proof of Identification Deadline under Pennsylvania’s Election Code.**

Section 102(f) of the Pennsylvania Election Code, codified at 25 P.S. § 2602(f), defines the word “election” to mean “any general, municipal, special, or primary election, unless otherwise specified.” 25 P.S. § 2602(f). Moreover, Section 102(h) of the Pennsylvania Election Code, codified at 25 P.S. § 2602(h), defines the word “general election” to mean “the election which the Constitution of this Commonwealth requires to be held in even-numbered years.” 25 P.S. § 2602(h).

Article VII, Section 2 of the Pennsylvania Constitution defines a “general election” to be “[t]he general election ... held biennially on the Tuesday next following the first Monday of November in each even-numbered year” unless the General Assembly, by two-thirds consent of all members of each House, fixes a different day. Pa. Const. Art. VII, § 2. The November 3, 2020 General Election constitutes an “election” and “general election” as those terms are defined in Section

102(f) and (h) of the Pennsylvania Election Code, and Article VII, Section 2 of the Pennsylvania Constitution.

Section 103(e) of the Election Code provides:

In determining or reckoning any period of time mentioned in this act, the day upon which the act is done, paper filed, or notice given, shall be excluded from, and the date of the primary, election, hearing or other subsequent event, as the case may be, shall be included in the calculation or reckoning: Provided, however, That if the last day upon which any act may be done, paper filed, or notice given, shall fall on a Sunday or a legal holiday, the next following ordinary business day shall be considered as the last day for said purpose.

*See* 25 P.S. § 2603(e).

Pursuant to Section 2603(e) of the Election Code, because the sixth calendar day following the November 3, 2020 General Election falls on Sunday, November 8, 2020, the sixth calendar period under Election Code Section 1308(h)(3) expires on Monday, November 9, 2020.

**D. Secretary Boockvar’s Lack Of Statutory Authority To Implement New Election Rules.**

The Pennsylvania Constitution vests no powers or duties in Secretary Boockvar as they relate to the administration of elections. *Perzel v. Cortes*, 870 A.2d 759, 764 (Pa. 2005). 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. *Id.* at 764; *Hamilton v. Johnson*,

141 A. 846, 847 (Pa. 1928). Instead, her general powers and duties concerning elections are set forth in Election Code Section 201, codified at 25 P.S. § 2621. The Secretary's powers include determining the form of petitions, examining and approving voting machines, certifying the names of candidates for elections, receiving and demanding reports from the county board of elections, receiving and certifying elections results; developing training programs; and ordering recounts or recanvasses. 25 P.S. § 2621. None of those duties include extending statutorily prescribed deadlines by at her own whim and whenever she unilaterally deems appropriate.

## **SUMMARY OF ARGUMENT**

The statutorily prescribed deadline for voters to resolve proof of identification issues during this November 3, 2020 General Election is November 9, 2020—six days after the election as calculated in accordance with 25 P.S. § 2603(e). Secretary Boockvar’s November 1, 2020 Guidance, directed County Election Boards to extend that deadline until November 12, 2020—six days after the canvass – is void and contrary to Pennsylvania’s Election Code.

Secretary Boockvar lacks the authority to extend that deadline on her accord. Secretary Boockvar’s unlawful guidance clearly violates established state law, improperly usurps the authority of the Pennsylvania General Assembly, and has a substantial and broad impact on the Commonwealth of Pennsylvania’s administration of the tabulation of votes for the General Election.

## **ARGUMENT IN SUPPORT OF PETITIONERS' REQUEST FOR RELIEF**

This is a simple matter of statutory construction, and two statutes are at play. First, Section 1308(h) of Pennsylvania's Election Code, codified at 25 P.S. § 3146.8(h), provides the time by which voters must resolve proof of identification issues in order to have their mail-in and absentee ballots counted, and that statute calculates the identification deadline the date of the "election," not any other date. Second, 25 P.S. §§ 2621(a)-(g) grants the Secretary of the Commonwealth her powers and duties, and those powers do not include extending statutorily prescribed deadlines or the power to issue guidance encouraging County Boards of Elections to violate the law.

### **I. THE NOVEMBER 1, 2020 GUIDANCE IS VIOLATED AND INVALID UNDER PENNSYLVANIA'S ELECTION CODE.**

The simple, plain, unambiguous language of 25 P.S. § 3146.8(h)(3) sets the deadline by which voters must resolve proof of identification issues. Pursuant to 1 P.S. § 1921(b), "[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 its spirit." No ambiguity exists in the statute concerning the proof-of-identification deadline for mail-in or absentee ballots: "If an elector fails to provide proof of identification . . . by the sixth calendar day following the election, then the absentee ballot or mail-in ballot shall not be counted."

The deadline statute provides a cure mechanism for voters that fail to provide verifiable proof of identification. That cure mechanism, however, does not provide voters with a right to cure into perpetuity. Rather, the deadline set by the statute makes clear that the clock begins running on the cure period on the day “following the election.” 25 P.S. § 3146.8(h)(3). The 2020 General Election occurred on November 3, 2020. By statutory construction, the cure period terminates on November 9, 2020.

The deadline statute is equally unambiguous in the consequences that arise if a voter fails to provide verifiable proof of identification prior to the deadline. In mandatory language the statute provides that the ballot “shall not be counted.” No ballot that has not cured a proof of identification deficiency on or before November 9, 2020, may be counted in the 2020 General Election.

## **II. SECRETARY BOOCKVAR LACKED THE AUTHORITY TO ISSUE THE NOVEMBER 1, 2020 GUIDANCE.**

Ignoring the date set by the General Assembly, Secretary Boockvar assumed power for herself to change it, but Secretary does not possess the power to revise the Election Code. The November 1, 2020 guidance represents a serious threat to the integrity of the Commonwealth of Pennsylvania’s election results. The guidance has a significant and broad impact that wrongfully purports to invalidate existing Election Code because it applies to all types of ballots where proof of identification

for an absentee or mail-in voter were not received or could not be verified by November 9, 2020, regardless of the method of delivery.

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)). 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).

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).

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.”).

The Pennsylvania Constitution vests no powers or duties in Secretary of State 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, 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).

Under Election Code Section 201, Secretary Boockvar has no rule-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 v. Cortes*, 870 A.2d at 764 (Pa. 2004); *Hamilton v. Johnson*, 41 A. at 847 (Pa. 1928).



On Sunday, November 1, 2020, two days before the date of the general election on November 3, 2020, and before pre-canvassing was scheduled to begin in each of the 67 Counties at 7:00 a.m. on Election Day on November 3, 2020 Respondent Secretary Kathy published and delivered yet more “guidance” contradicting the Election Code. This new, flagrant attack on the legislature’s authority was sent to every county in the Commonwealth of Pennsylvania. *See* the parties’ joint Stipulated Record, R-14-R-15.

In this guidance, Secretary Boockvar re-writes the Election Code by *sua sponte* resetting the deadline for absentee and mail-in voters to provide missing proof of identification. She unilaterally extends it the “sixth day following the canvassing, or on or before Thursday, November 12”. R-5. Even if Secretary Boockvar did have rule-making authority, which she does not for the reasons stated above, she certainly does not have the authority to issue guidance that is in direct contradiction with the express terms of our Election Code. Moreover, the County Election Boards do not have the authority to enforce and follow the Secretary’s unlawful November 1, 2020 guidance.

The November 1, 2020 guidance directly violates Section 1308(h) of Pennsylvania’s Election Code, codified at 25 P.S. § 3146.8(h), which requires that if a voter’s identification is not received and verified “by the sixth day following *the election*”, those ballots “*shall* not be counted.” *See* 25 P.S. § 3146.8(h)(2) & (3)

(emphases added). As it pertains to the November 3, 2020 General Election, this deadline is Monday, November 9, 2020. The Secretary's unlawful guidance seeks to extend this by three days to November 12, 2020.

As neither Secretary Boockvar nor the County Elections Boards have any authority to re-write the Election Code or administer the November 3, 2020 General Election in a manner that is inconsistent and/or directly contrary to the Election Code's clear and unambiguous mandates, Petitioners seek special, preliminary, and/or permanent injunctive relief to enjoin Respondents' attempted extension of the Election Section 1308's six calendar day statutory period and ask the Court to direct the County Boards of Elections to adhere to these provisions of the Election Code, Section 1308(h) and not count those absentee and mail-in ballots of voters whose identification is not received and verified by November 9, 2020.

**III. THE SECRETARY'S NOVEMBER 1, 2020 GUIDANCE REPRESENTS A SUBSTANTIAL THREAT TO THE INTEGRITY OF THE ELECTION BECAUSE IT IS BROADLY WRITTEN TO APPLY TO ALL ABSENTEE AND MAIL-IN BALLOTS.**

The November 1, 2020 guidance is broadly written to include all ballots where proof of identification for an absentee or mail-in voter was not received or could not be verified by Election Day. The guidance contains no language that limits the scope of its applicability with respect to the method of delivery of the ballots.

Secretary Boockvar has previously argued that the scope of the November 1, 2020 guidance should be construed narrowly to only absentee and mail-in ballots that were delivered by U.S. mail. The Secretary has justified this purported “narrow scope” by referencing her intent at the time she issued the guidance.

However, the written guidance contains no limiting language to support the Secretary’s argument that its applicability is limited to absentee and mail-in ballots delivered only by U.S. mail. Instead, as written, the relevant language within the guidance regarding the extension of proof-of identification date clearly applies to all mail-in and absentee ballots, including those delivered in person to the county elections board office, a satellite office, or a drop box. R-5. Secretary Boockvar’s *post hoc* arguments about her purported intent do not change the fact that the guidance, which was distributed to and relied upon by all 67 counties (R-14-R-15), lacks any language whatsoever that narrows the scope of applicability to absentee and mail-in ballots received only by U.S. mail.

### **CONCLUSION**

Pennsylvania elections must be free, fair, well-run, and compliant with the Pennsylvania Election Code as written by the General Assembly. Secretary Boockvar’s attempt to institute new rules, on ad hoc basis and on the eve of the General Election through the issuance of the November 1, 2020 guidance is an attack on the rule of law and the integrity of the Commonwealth of Pennsylvania’s

November 3, 2020 General Election. Petitioners respectfully request the Court to enter an order permanently enjoining Respondents, their agents, servants, and officers, and others from permitting absentee and mail-in voters an opportunity to provide missing proof of identification on or after November 9, 2020 in direct contravention of the Pennsylvania Election Code, and prohibiting Respondents from counting any absentee and mail-in ballots of voters whose proof of identification was not received and verified by November 9, 2020. Specifically, for those ballots for which proof of identification was not received until November 10, 11 and 12, 2020, they should be set aside and not counted during the County Election Boards canvassing.

Date: November 10, 2020

Respectfully submitted,

/s/ Ronald L. Hicks, Jr.

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

Jeremy A. Mercer (PA # 86480)

Carolyn B. McGee (PA #208815)

Porter Wright Morris & Arthur, LLP

Six PPG Place, Third Floor

Pittsburgh, PA 15222

(412) 235-4500 (Telephone)

(412) 235-4510 (Fax)

*rhicks@porterwright.com*

*jmercerc@porterwright.com*

*cmcgee@porterwright.com*

*Counsel for Petitioners*

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing Petitioners' Memorandum of Law complies with the length requirements of Pa. R.A.P. 2135. According to the word count of the word processing system used to prepare this Memorandum of Law, the brief contains 4,274 words, not including the supplementary matter as described in Pa. R.A.P. 2135(b).

Date: November 10, 2020

Respectfully submitted,

/s/ Ronald L. Hicks, Jr.

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

Jeremy A. Mercer (PA # 86480)

Carolyn B. McGee (PA #208815)

Porter Wright Morris & Arthur, LLP

Six PPG Place, Third Floor

Pittsburgh, PA 15222

(412) 235-4500 (Telephone)

(412) 235-4510 (Fax)

*rhicks@porterwright.com*

*jmercerc@porterwright.com*

*cmcgee@porterwright.com*

*Counsel for Petitioners*

**CERTIFICATE OF COMPLIANCE**

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

Date: November 10, 2020

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/s/ Ronald L. Hicks, Jr.

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

Jeremy A. Mercer (PA # 86480)

Carolyn B. McGee (PA #208815)

Porter Wright Morris & Arthur, LLP

Six PPG Place, Third Floor

Pittsburgh, PA 15222

(412) 235-4500 (Telephone)

(412) 235-4510 (Fax)

*rhicks@porterwright.com*

*jmercerc@porterwright.com*

*cmcgee@porterwright.com*

*Counsel for Petitioners*

**PROOF OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of November, 2020, a true and correct copy of the foregoing Memorandum of Law was served upon all counsel of record via the PAC File notification system and upon all unrepresented parties via first class mail.

/s/ Ronald L. Hicks, Jr.

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

Jeremy A. Mercer (PA # 86480)

Carolyn B. McGee (PA #208815)

Porter Wright Morris & Arthur, LLP

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Pittsburgh, PA 15222

(412) 235-4500 (Telephone)

(412) 235-4510 (Fax)

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*jmercerc@porterwright.com*

*cmcgee@porterwright.com*

*Counsel for Petitioners*