

**In the Supreme Court of the United States**

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STATE OF TEXAS,  
*Plaintiff,*

v.

COMMONWEALTH OF PENNSYLVANIA, STATE OF GEORGIA,  
STATE OF MICHIGAN, AND STATE OF WISCONSIN,  
*Defendants.*

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**MOTION FOR EXPEDITED CONSIDERATION OF THE  
MOTION FOR LEAVE TO FILE A BILL OF COMPLAINT AND  
FOR EXPEDITION OF ANY PLENARY CONSIDERATION OF  
THE MATTER ON THE PLEADINGS IF PLAINTIFFS’  
FORTHCOMING MOTION FOR INTERIM RELIEF IS NOT  
GRANTED**

The State of Texas (“Plaintiff State”) hereby moves, pursuant to Supreme Court Rule 21, for expedited consideration of the motion for leave to file a bill of complaint, filed today, in an original action on the administration of the 2020 presidential election by defendants Commonwealth of Pennsylvania, *et al.* (collectively, “Defendant States”). The relevant statutory deadlines for the defendants’ action based on unconstitutional election results are imminent: (a) December 8 is the safe harbor for certifying presidential electors, 3 U.S.C. § 5; (b) the electoral college votes on December 14, 3 U.S.C. § 7; and (c) the House of Representatives counts votes on January 6, 3 U.S.C. § 15. Absent some form of relief, the defendants will appoint electors based on unconstitutional and deeply uncertain election results, and the House will count those votes on January 6, tainting the election and the future of free elections.

Expedited consideration of the motion for leave to file the bill of complaint is needed to enable the Court to resolve this original action before the applicable statutory deadlines, as well as the constitutional deadline of January 20, 2021, for the next presidential term to commence. U.S. CONST. amend. XX, § 1, cl. 1. Texas respectfully requests that the Court order Defendant States to respond to the motion for leave to file by December 9. Texas waives the waiting period for reply briefs under this Court’s Rule 17.5, so that the Court could consider the case on an expedited basis at its December 11 conference.

Working in tandem with the merits briefing schedule proposed here, Texas also will move for interim relief in the form of a temporary restraining order, preliminary injunction, stay, and administrative stay to enjoin Defendant States from certifying their presidential electors or having them vote in the electoral college. *See* S.Ct. Rule 17.2 (“The form of pleadings and motions prescribed by the Federal Rules of Civil Procedure is followed.”); *cf.* S.Ct. Rule 23 (stays in this Court). Texas also asked in their motion for leave to file that the Court summarily resolve this matter at that threshold stage. Any relief that the Court grants under those two alternate motions would inform the expedited briefing needed on the merits.

Enjoining or staying Defendant States’ appointment of electors would be an especially appropriate and efficient way to ensure that the eventual appointment and vote of such electors reflects a constitutional and accurate tally of lawful votes and otherwise complies with the applicable constitutional and statutory requirements in time for the House to act on January 6. Accordingly, Texas respectfully requests

expedition of this original action on one or more of these related motions. The degree of expedition required depends, in part, on whether Congress reschedules the day set for presidential electors to vote and the day set for the House to count the votes. *See* 3 U.S.C. §§ 7, 15; U.S. Const. art. II, §1m cl. 4.

### **STATEMENT**

Like much else in 2020, the 2020 election was compromised by the COVID-19 pandemic. Even without Defendant States’ challenged actions here, the election nationwide saw a massive increase in fraud-prone voting by mail. *See* BUILDING CONFIDENCE IN U.S. ELECTIONS: REPORT OF THE COMMISSION ON FEDERAL ELECTION REFORM, at 46 (Sept. 2005) (absentee ballots are “the largest source of potential voter fraud”). Combined with that increase, the election in Defendant States was also compromised by numerous changes to the State legislatures’ duly enacted election statutes by non-legislative actors—including both “friendly” suits settled in courts and executive fiats via guidance to election officials—in ways that undermined state statutory ballot-integrity protections such as signature and witness requirements for casting ballots and poll-watcher requirements for counting them. State legislatures have plenary authority to set the method for selecting presidential electors, *Bush v. Gore*, 531 U.S. 98, 104 (2000) (“*Bush II*”), and “significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question.” *Id.* at 113 (Rehnquist, C.J., concurring); *accord Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S. 70, 76 (2000) (“*Bush I*”).

Plaintiff State has not had the benefit of formal discovery prior to submitting this original action. Nonetheless, Plaintiff State has uncovered substantial evidence

discussed below that raises serious doubts as to the integrity of the election processes in Defendant States. Although new information continues to come to light on a daily basis, as documented in the accompanying Appendix (“App.”), the voting irregularities that resulted from Defendant States’ unconstitutional actions include the following:

- Jesse Jacob, a decades-long City of Detroit employee assigned to work in the Elections Department for the 2020 election testified (App. 34a-36a) that she was “instructed not to look at any of the signatures on the absentee ballots, and I was instructed not to compare the signature on the absentee ballot with the signature on file” in direct contravention of MCL § 168.765a(6), which requires all signatures on ballots be verified.
- Ethan J. Pease, a box truck delivery driver subcontracted to the U.S. Postal Service (“USPS”) to deliver truckloads of mail-in ballots to the sorting center in Madison, WI, testified that USPS employees were backdating ballots received after November 3, 2020. Decl. of Ethan J. Pease at ¶¶ 3-13. (App. 149a-51a). Further, Pease testified how a senior USPA employee told him on November 4, 2020 that “An order came down from the Wisconsin/Illinois Chapter of the Postal Service that 100,000 ballots” and how the USPSA dispatched employees to “find[] ... the ballots.” ¶¶ 8-10. One hundred thousand ballots “found” after election day far exceeds former Vice President Biden margin of 20,565 votes over President Trump.

- On August 7, 2020, the League of Women Voters of Pennsylvania and others filed a complaint against Secretary Boockvar and other local election officials, seeking “a declaratory judgment that Pennsylvania existing signature verification procedures for mail-in voting” were unlawful for a number of reasons, *League of Women Voters of Pennsylvania v. Boockvar*, No. 2:20-cv-03850-PBT, (E.D. Pa. Aug. 7, 2020), which the Pennsylvania defendants quickly settled resulting in guidance (App. 109a-114a)<sup>1</sup> issued on September 11, 2020, stating in relevant part: “The Pennsylvania Election Code does not authorize the county board of elections to set aside returned absentee or mail-in ballots based solely on signature analysis by the county board of elections.” App. 113a.
- Acting under a generally worded clause that “Elections shall be free and equal,” PA. CONST. art. I, §5, cl. 1, a 4-3 majority of Pennsylvania’s Supreme Court in *Pa. Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020), extended the statutory deadline for mail-in ballots from Election Day to three days after Election Day and adopted a presumption that even *non-postmarked ballots* were presumptively timely. In addition, a great number of ballots were received after the statutory deadline. Because Pennsylvania misled this Court

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<sup>1</sup> Although the materials cited here are a complaint, that complaint is verified (*i.e.*, declared under penalty of perjury), App. 75a, which is evidence for purposes of a motion for summary judgment. *Neal v. Kelly*, 963 F.2d 453, 457 (D.C. Cir. 1992) (“allegations in [the] verified complaint should have been considered on the motion for summary judgment as if in a new affidavit”).

about segregating the late-arriving ballots and instead commingled those ballots, it is now impossible to verify Pennsylvania’s claim about the number of ballots affected.

- Contrary to Pennsylvania election law on providing poll-watchers access to the opening, counting, and recording of absentee ballots, local election officials in Philadelphia and Allegheny Counties decided not to follow 25 PA. STAT. § 3146.8(b). App. 127a-28a.
- Prior to the election, Secretary Boockvar sent an email to local election officials urging them to provide opportunities for various persons—including political parties—to contact voters to “cure” defective mail-in ballots. This process clearly violated several provisions of the state election code. App. 122a-24a. By removing the ballots for examination prior to seven o’clock a.m. on election day, Secretary Boockvar created a system whereby local officials could review ballots without the proper announcements, observation, and security. This entire scheme, which was only followed in Democrat majority counties, was blatantly illegal in that it permitted the illegal removal of ballots from their locked containers prematurely. App. 122a-24a.
- On December 4, 2020, fifteen members of the Pennsylvania House of Representatives issued a report (App. 139a-45a) to Congressman Scott Perry stating that “[t]he general election of 2020 in Pennsylvania was fraught with ... documented irregularities and improprieties associated with mail-in balloting ... [and] that the reliability of the mail-in votes in the Commonwealth

of Pennsylvania is impossible to rely upon.” The report detailed, *inter alia*, that more than 118,426 mail-in votes either had no mail date, were returned *before* they were mailed, or returned one day after the mail date. The Report also stated that, based on government reported data, the number of mail-in ballots *sent* by November 2, 2020 (2.7 million) somehow ballooned by 400,000, to 3.1 million on November 4, 2020, without explanation.

- On March 6, 2020, in *Democratic Party of Georgia v. Raffensperger*, No. 1:19-cv-5028-WMR (N.D. Ga.), Georgia’s Secretary of State entered a Compromise Settlement Agreement and Release (App. 19a-24a) with the Democratic Party of Georgia (the “Settlement”) to materially change the statutory requirements for reviewing signatures on absentee ballot envelopes to confirm the voter’s identity by making it far more difficult to challenge defective signatures beyond the express mandatory procedures set forth at GA. CODE § 21-2-386(a)(1)(B), which is particularly disturbing because the legislature allowed persons *other than the voter* to apply for an absentee ballot, GA. CODE § 21-2-381(a)(1)(C), which means that the legislature likely was relying heavily on the signature-verification on ballots under GA. CODE § 21-2-386.
- Numerous poll challengers and an Election Department employee whistleblower have testified that the signature verification requirement was ignored in Wayne County in a case currently pending in the Michigan Supreme Court. App. 25a-51a.

- The probability of former Vice President Biden winning the popular vote in the four Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin— independently given President Trump’s early lead in those States as of 3 a.m. on November 4, 2020, is less than one in a quadrillion, or 1 in 1,000,000,000,000,000. For former Vice President Biden to win these four States collectively, the odds of that event happening decrease to less than one in a quadrillion to the fourth power (*i.e.*, 1 in 1,000,000,000,000,000<sup>4</sup>). *See* Decl. of Charles J. Cicchetti, Ph.D. (“Cicchetti Decl.”) at ¶¶ 14-21, 30-31 (App. 4a-7a, 9a).
- The same less than one in a quadrillion statistical improbability of Mr. Biden winning the popular vote in the four Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin—independently exists when Mr. Biden’s performance in each of those Defendant States is compared to former Secretary of State Hilary Clinton’s performance in the 2016 general election and President Trump’s performance in the 2016 and 2020 general elections. Again, the statistical improbability of Mr. Biden winning the popular vote in these **four** States collectively is 1 in 1,000,000,000,000,000<sup>5</sup>. *Id.* 10-13, 17-21, 30-31 (App. 3a-7a, 9a).
- Georgia’s unconstitutional abrogation of the express mandatory procedures for challenging defective signatures on ballots set forth at GA. CODE § 21-2-386(a)(1)(B) resulted in far more ballots with unmatching signatures being counted in the 2020 election than if the statute had been properly applied. The

2016 rejection rate was more than *seventeen times greater* than in 2020. *See* Cicchetti Decl. at ¶ 24 (App. 7a). As a consequence, applying the rejection rate in 2016, which applied the mandatory procedures, to the ballots received in 2020 would result in a net gain for President Trump of 25,587 votes. This would be more than needed to overcome the Biden advantage of 12,670 votes, and Trump would win by 12,917 votes. *See* App. 8a.

- The two Republican members of the Board *rescinded their votes* to certify the vote in Wayne County, and signed affidavits alleging they were bullied and misled into approving election results and do not believe the votes should be certified until serious irregularities in Detroit votes are resolved. *See* Cicchetti Decl. at ¶ 29 (App. 8a).
- The Wayne County Statement of Votes Report lists 174,384 absentee ballots out of 566,694 absentee ballots tabulated (about 30.8%) as counted without a registration number for precincts in the City of Detroit. *See* Cicchetti Decl. at ¶ 27 (App. 8a). The number of votes not tied to a registered voter by itself exceeds Vice President Biden’s margin of margin of 146,007 votes by more than 28,377 votes. The extra ballots cast most likely resulted from the phenomenon of Wayne County election workers running the same ballots through a tabulator multiple times, with Republican poll watchers obstructed or denied access, and election officials ignoring poll watchers’ challenges, as documented by numerous declarations. App. 25a-51a.

As a net result of these challenges, the close election result in Defendant States—on

which the presidential election turns—is indeterminate. Put another way, Defendant States’ unconstitutional actions affect outcome-determinative numbers of popular votes, that in turn affect outcome-determinative numbers of electoral votes.

To remedy Texas’s claims and remove the cloud over the results of the 2020 election, expedited review and interim relief are required. December 8, 2020 is a statutory safe harbor for States to appoint presidential electors, and by statute the electoral college votes on December 14. *See* 3 U.S.C. §§ 7, 15. In a contemporaneous filing, Texas asks this Court to vacate or enjoin—either permanently, preliminarily, or administratively—Defendant States from certifying their electors and participating in the electoral college vote. As permanent relief, Texas asks this Court to remand the allocation of electors to the legislatures of Defendant States pursuant to the statutory and constitutional backstop for this scenario: “Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct.” 3 U.S.C. § 2 (emphasis added); U.S. CONST. art. II, § 1, cl. 2.

Significantly, State legislatures retain the authority to appoint electors under the federal Electors Clause, even if state laws or constitutions provide otherwise. *McPherson v. Blacker*, 146 U.S. 1, 35 (1892); *accord Bush I*, 531 U.S. at 76-77; *Bush II*, 531 U.S. at 104. For its part, Congress could move the December 14 date set for the electoral college’s vote, as it has done before when faced with contested elections. Ch. 37, 19 Stat. 227 (1877). Alternatively, the electoral college could vote on December 14

without Defendant States' electors, with the presidential election going to the House of Representatives under the Twelfth Amendment if no candidate wins the required 270-vote majority.

What cannot happen, constitutionally, is what Defendant States appear to want (namely, the electoral college to proceed based on the unconstitutional election in Defendant States):

When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter.

*Bush II*, 531 U.S. at 104. Proceeding under the unconstitutional election is not an option.

Pursuant to 28 U.S.C. 1251(a), Plaintiff State has filed a motion for leave to file a bill of complaint today. As set forth in the complaint and outlined above, all Defendant States ran their 2020 election process in noncompliance with the ballot-integrity requirements of their State legislature's election statutes, generally using the COVID-19 pandemic as a pretext or rationale for doing so. In so doing, Defendant States disenfranchised not only their own voters, but also the voters of all other States: "the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States." *Anderson v. Celebrezze*, 460 U.S. 780, 795 (1983).

### ARGUMENT

The Constitution vests plenary authority over the appointing of presidential electors with State legislatures. *McPherson*, 146 U.S. at 35; *Bush I*, 531 U.S. at 76-77; *Bush II*, 531 U.S. at 104. While State legislatures need not proceed by popular

vote, the Constitution requires protecting the fundamental right to vote when State legislatures decide to proceed via elections. *Bush II*, 531 U.S. at 104. On the issue of the constitutionality of an election, moreover, the Judiciary has the final say: “It is emphatically the province and duty of the judicial department to say what the law is.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803); *Bush II*, 531 U.S. at 104. For its part, Congress has the ability to set the time for the electoral college to vote. U.S. CONST. art. II, § 1, cl. 3. To proceed constitutionally with the 2020 election, all three actors potentially have a role, given the complications posed by Defendant States’ unconstitutional actions.

With this year’s election on November 3, and the electoral college’s vote set by statute for December 14, 3 U.S.C. § 7, Congress has not allowed much time to investigate irregularities like those in Defendant States before the electoral college is statutorily set to act. But the time constraints are not constitutional in nature—the Constitution’s only time-related provision is that the President’s term ends on January 20, U.S. CONST. amend. XX, § 1, cl. 1—and Congress has both the obvious authority and even a history of moving the date of the electoral college’s vote when election irregularities require it.

Expedited consideration of this matter is warranted by the seriousness of the issues raised here, not only for the results of the 2020 presidential election but also for the implications for our constitutional democracy going forward. If this Court does not halt the Defendant States’ participation in the electoral college’s vote on December 14, a grave cloud will hang over not only the presidency but also the

Republic.

With ordinary briefing, Defendant States would not need to respond for 60 days, S.Ct. Rule 17.5, which is after the next presidential term commences on January 20, 2021. Accordingly, this Court should adopt an expedited briefing schedule on the motion for leave to file the bill of complaint, as well as the contemporaneously filed motion for interim relief, including an administrative stay or temporary restraining order pending further order of the Court. If this Court declines to resolve this original action summarily, the Court should adopt an expedited briefing schedule for plenary consideration, allowing the Court to resolve this matter before the relevant deadline passes. The contours of that schedule depend on whether the Court grants interim relief. Texas respectfully proposes two alternate schedules.

If the Court has not yet granted administrative relief, Texas proposes that the Court order Defendant States to respond to the motion for leave to file a bill of complaint and motion for interim relief by December 9. *See* S.Ct. Rule 17.2 (adopting Federal Rules of Civil Procedure); FED. R. CIV. P. 65; *cf.* S.Ct. Rule 23 (stays). Texas waives the waiting period for reply briefs under this Court's Rule 17.5 and would reply by December 10, which would allow the Court to consider this case on an expedited basis at its December 11 Conference.

With respect to the merits if the Court neither grants the requested interim relief nor summarily resolves this matter in response to the motion for leave to file the bill of complaint, thus requiring briefing of the merits, Texas respectfully proposes

the following schedule for briefing and argument:

December 8, 2020	Plaintiffs' opening brief
December 8, 2020	<i>Amicus</i> briefs in support of plaintiffs or of neither party
December 9, 2020	Defendants' response brief(s)
December 9, 2020	<i>Amicus</i> briefs in support of defendants
December 10, 2020	Plaintiffs' reply brief(s) to each response brief
December 11, 2020	Oral argument, if needed

If the Court grants an administrative stay or other interim relief, but does not summarily resolve this matter in response to the motion for leave to file the bill of complaint, Texas respectfully proposes the following schedule for briefing and argument on the merits:

December 11, 2020	Plaintiffs' opening brief
December 11, 2020	<i>Amicus</i> briefs in support of plaintiffs or of neither party
December 17, 2020	Defendants' response brief(s)
December 17, 2020	<i>Amicus</i> briefs in support of defendants
December 22, 2020	Plaintiffs' reply brief(s) to each response brief
December 2020	Oral argument, if needed

In the event that Congress moves the date for the electoral college and the House to vote or count votes, then the parties could propose an alternate schedule. If any motions to intervene are granted by the applicable deadline, intervenors would file by the applicable deadline as plaintiffs-intervenors or defendants-intervenors, with any still-pending intervenor filings considered as *amicus* briefs unless such

prospective intervenors file or seek leave to file an *amicus* brief in lieu of their still-pending intervenor filings.

**CONCLUSION**

Texas respectfully requests that the Court expedite consideration of its motion for leave to file a bill of complaint based on the proposed schedule and, if the Court neither stays nor summarily resolves the matter and thus sets the case for plenary consideration, that the Court expedite briefing and oral argument based on the proposed schedule.

Dated: December 7, 2020

Respectfully submitted,

/s/ Ken Paxton

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**CERTIFICATE AS TO FORM**

Pursuant to Sup. Ct. Rules 22 and 33, I certify that the foregoing motion are proportionately spaced, has a typeface of Century Schoolbook, 12 points, and contains 15 pages (and 3,550 words), excluding this Certificate as to Form, the Table of Contents, and the Certificate of Service.

Dated: December 7, 2020

Respectfully submitted,

/s/ Ken Paxton

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**CERTIFICATE OF SERVICE**

The undersigned certifies that, on this 7th day of December 2020, in addition to filing the foregoing document via the Court's electronic filing system, one true and correct copy of the foregoing document was served by Federal Express, with a PDF courtesy copy served via electronic mail on the following counsel and parties:

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Executed December 7, 2020, at Washington, DC,

/s/ Lawrence J. Joseph  
Lawrence J. Joseph

## APPENDIX

## **Declaration of Charles J. Cicchetti, Ph.D.**

I, Charles J. Cicchetti, declare and state as follows:

1. I am a resident of the State of California. Since 2016, I have been an independent contractor and work as a Managing Director at Berkeley Research Group, Inc. The views expressed are my own and do not reflect the views of any entities with which I am affiliated. I have personal knowledge of the matters set forth below and could and would testify competently to them if called upon to do so.

### **Professional Background**

2. I am an economist with a BA from Colorado College (1965) and a Ph.D. from Rutgers University (1969), and three years of Post Graduate Research in applied economics and econometrics at Resources For the Future (RFF). I was formally trained statistics and econometrics and accepted as an expert witness in civil proceedings. I have been engaged to design surveys, draw random samples, and analyze and test data for significance, and I have conducted epidemiology analysis using logit models to determine the significance of relative odds of outcomes and relative risk. I have also been tasked with evaluating the work of other experts on the data and methods used and to detect and opine on bias, particularly missing variable bias.

3. I have testified in civil, arbitration, and administrative proceedings as an expert witness hundreds of times since my first appearance in 1967. Much of this work involved data analysis and interpretation, sampling, and survey design.

4. I began my professional career after completing my academic and postdoctoral studies at the University of Wisconsin, Madison, from 1972 to 1985, where I eventually became a tenured Professor of Economics and Environmental Studies. During this period, I also served in other capacities, including an early role as the first economist for the Environmental Defense Fund (EDF), Director of the Wisconsin Energy Office, Special Advisor to the Governor of Wisconsin, and Chair of the Wisconsin Public Service Commission. I had grants from EDF, the Ford Foundation, National Science Foundation, and the Planning and Conservation Fund (California).

5. From 1987 to 1990, I was the Deputy Director of the Energy and Environmental Policy Center at the John F. Kennedy School of Government at Harvard University. I have taught at the

University of Southern California (USC) part-time since 1991, and from 1998 to 2006 I held the Jeffrey J. and Paula Miller Chair in Government, Business and the Economy.

6. I worked for and founded a number of consulting firms specializing in applied economics and econometrics. I currently own Cicchetti Associates, Inc., and I am a member of Berkeley Research Group. I have written more than twenty books and monographs and many peer reviewed articles. A true and correct copy of my *c.v.* is attached as Exhibit 1.

### **Assignment**

7. I was asked to analyze some of the validity and credibility of the 2020 presidential election in key battleground states. I analyzed two things that seem to raise doubts about the outcome. First, I analyzed the differences in the county votes of former Secretary of State Hillary Clinton (Clinton) compared to former Vice President Joseph Biden (Biden). Second, many Americans went to sleep election night with President Donald Trump (Trump) winning key battleground states, only to learn the next day that Biden surged ahead. Therefore, I compared and tested the significance of the change in tabulated ballots earlier in the reporting to subsequent tabulations. For both comparisons I determined the likelihood that the samples of the outcomes for the two Democrat candidates and two tabulation periods were similar and randomly drawn from the same population. I used a standard statistical test in this comparison.

8. I was also asked to compare rejection of ballots in 2016 to 2020 in Georgia. I analyzed data for mail-in ballots and their rejection rates for the two elections. I use this comparison to estimate how the election outcome would be affected if the rejection rate in 2020 was similar to 2016 when there were many fewer absentee mail-in and other early ballots. The increase in voters using early ballots in Georgia for the first time would likely cause errors that would decrease acceptance relative to rejections. Furthermore, the time between the two presidential elections is short enough that significant changes as discussed in this declaration could not be due to underlying changes in demographic factors. It is important to determine if there were instances of opening absentee ballots before election day commenced, which was not permitted. The specific procedures for acceptance/rejection are important because the Settlement reached in Georgia, identified in the complaint, agreed to require three registrars to reject a defective ballot. This change alone would increase acceptance, and likely caused lower rejection rates.

9. I was asked to analyze absentee ballots in Wayne County, Michigan to determine if the reporting satisfied the requirements for tabulating and reporting ballots. I found that Detroit precincts do not provide information on voter registration. These same precincts in Detroit do not report balanced tabulations as required. These failures make it impossible to determine if the ballots tabulated are valid.

## **I. Z-Scores For Georgia<sup>1</sup>**

### **A. Comparing Clinton in 2016 to Biden in 2020 in Georgia**

10. In 2016, Trump won Georgia with 51.0% of the vote compared to Clinton's 45.9% with more than 211,000 votes separating them. In 2016, Clinton received 1,877,963 votes and Trump received 2,089,104. In 2020, Biden's tabulated votes (2,474,507) were much greater than Clinton's in 2016. Trump's votes also increased to 2,461,837. The Biden and Trump percentages of the tabulations were 49.5% and 49.3%, respectively.

11. I tested the hypothesis that the performance of the two Democrat candidates were statistically similar by comparing Clinton to Biden. I use a Z-statistic or score, which measures the number of standard deviations the observation is above the mean value of the comparison being made. I compare the total votes of each candidate, in two elections and test the hypothesis that other things being the same they would have an equal number of votes.<sup>2</sup> I estimate the variance by multiplying the mean times the probability of the candidate not getting a vote. The hypothesis is tested using a Z-score which is the difference between the two candidates' mean values divided by the square root of the sum of their respective variances. I use the calculated Z-score to determine the p-value, which is the probability of finding a test result at least as extreme as the actual results observed. First, I determine the Z-score comparing the number of votes Clinton received in 2016 to the number of votes Biden received in 2020. The Z-score is 396.3. This value corresponds to a confidence that I can reject the hypothesis many times more than one in a quadrillion times<sup>3</sup> that the two outcomes were similar.

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<sup>1</sup> Unless otherwise noted, the data used for Georgia are from the Secretary of State in Georgia.

<sup>2</sup> The mean of a binomial distribution is defined as the probability of candidate getting a vote times the number of votes cast.

<sup>3</sup> A quadrillion is 1 followed by 15 zeros. Z equal to 10 would reject with a confidence of one in a septillion, or one followed by 24 zeros, which would be a billion quadrillion, or a trillion, trillion. As Z increases, the number of zeros increases exponentially. A Z of 396.3 is a chance in 1 in almost an infinite number of outcomes of finding the two results being from the same population, here Georgia voters preferring a Democrat in 2016 being the same as in 2020.

12. Second, since more ballots were cast I performed an additional hypothesis test of the similarity of the Clinton and Biden vote percentages to remove the effect of the difference in the increase number of votes that Biden received relative to Clinton. The estimated Z-score is less because I removed the influence of differences in the number of ballots tabulated in the two elections. I continue to find with very great confidence that I can reject the hypothesis that the percentages of the votes Clinton and Biden achieved in the respective elections are similar. The estimated Z-score is 108.7. The confidence for rejecting the hypothesis remains many times more than one in a quadrillion.<sup>4</sup>

13. There are many possible reasons why people vote for different candidates. However, I find the increase of Biden over Clinton is statistically incredible if the outcomes were based on similar populations of voters supporting the two Democrat candidates. The statistical differences are so great, this raises important questions about changes in how ballots were accepted in 2020 when they would be found to be invalid and rejected in prior elections.

### **B. Comparing Early and Subsequent Tabulations for Georgia<sup>5</sup>**

14. At 3:10 AM EST on November 4 the Georgia reported tabulations were 51.09% for Trump and 48.91% for Biden (eliminating third-party candidates). The total votes reported for the two major candidates were 4,662,328. On November 18 at 2 PM EST, the reported percentages were Trump 49.86% and Biden at 50.14%. The Biden advantage over Trump in the final tabulations reported was less than 14,000 votes, or 0.28%. For this turnaround to occur, the subsequent additional “late” ballots totaling 268,204 votes (5.4% of the votes reported on November 18) had to split 71.60% for Biden and 28.40% for Trump. The two periods report shifts in the percentage favoring Trump from 51.09% to 49.86%, which is a percentage difference of 1.23%.

15. The Georgia reversal in the outcome raises questions because the votes tabulated in the two time periods could not be random samples from the same population of all votes cast. I use a Z-score to test if the votes from the two samples are statistically similar. I estimate a Z-score

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<sup>4</sup> The estimated confidence is actually about 1 in 1 with 2,568 zeros.

<sup>5</sup> The data on the tabulations for early balloting compared to the final tabulations come from the same source for the different time periods and the five battleground states that I analyzed. The source used was: <https://www.270towin.com/2020-election-results-live/>. These are provided by time, date, and state.

of 1,891.<sup>6</sup> There is a one in many more than quadrillions of chances that these two tabulation periods are randomly drawn from the same population. Therefore, the reported tabulations in the early and subsequent periods could not remotely plausibly be random samples from the same population of all Georgia ballots tabulated. This result was not expected because the tabulations reported at 3 AM EST represented almost 95% of the final tally, which makes a finding of similarity for random selections likely and not statistically implausible.

16. Put another way, for the outcome to change, the additional ballots counted would need to be much different than the earlier sample tabulated. Location and types of ballots in the subsequent counts had, in effect, to be from entirely different populations, the early and subsequent periods, and not random selections from the same population. These very different tabulations also suggest the strong need to determine why the outcome changed. I am aware of anecdotal statements from election night that some Democrat strongholds were yet to be tabulated. There was also some speculation that the yet-to-be counted ballots were likely absentee mail-in ballots. Either could cause the latter ballots to be non-randomly different than the nearly 95% of ballots counted by 3AM EST, but I am not aware of any actual data supporting that either of these events occurred. However, given the closeness of the vote in Georgia, 12,670 votes, further investigation and audits should be pursued before finalizing the outcome.

## II. Z-Scores for Other Battleground States

17. I analyzed three additional battleground states, Michigan, Pennsylvania, and Wisconsin. I reviewed similar matters related to Clinton/Biden differences and early tabulated results and outcome reversals. The states all had significant increases in early ballots compared to 2016. This is shown in Table 1 for Georgia and the other three battleground states that I analyzed in some detail.

**Table 1: Early Ballots and Percent Increases Between 2016 and 2020**

State	2016	2020	2020/2016
Georgia	2,438,644	3,957,889	162.30%
Michigan	1,277,405	3,111,414	243.60%
Pennsylvania	288,996	2,504,518	866.60%
Wisconsin	825,620	1,924,838	233.10%

<sup>6</sup> This would be 1 divided by more than 775,000 zeros.

18. I calculated the same Z-scores for Biden and Clinton total ballots and their respective percentage of the votes for the four states. These data were Secretary of State certified tabulations. I analyzed data from what I understand to be a non-partisan neutral source, 270toWin, to compare tabulations when balloting was reported as halted in Georgia discussed above, and Michigan, Pennsylvania, and Wisconsin states at about 3 AM on November 4, 2020. I compared this to the data from other time periods from the same source to avoid any reporting differences. The final tabulations for the two leading candidates that I used in this comparison are tabulations reported November 18, 2020 at 2PM EST.

19. Table 2 shows the Z-scores for Georgia discussed above and the other three states.

**Table 2: Z Scores Battleground States**

	<b>Biden Votes</b>	<b>&amp; Clinton Percentage</b>	<b>Early to Later</b>
<b>Georgia</b>	396.3	108.7	1891
<b>Pennsylvania</b>	290.4	90.7	736
<b>Wisconsin</b>	198.5	77	1271
<b>Michigan</b>	333.1	107.4	586

20. I reject the hypothesis that the Biden and Clinton votes are similar with great confidence many times greater than one in a quadrillion in all four states. Similarly, I reject the hypothesis that the Biden and Clinton percentage of the two leading candidates' votes are similar with confidence exceeding many times one in a quadrillion. In fact, the confidence I reject the similarity in these comparisons with the probability of incorrectly rejecting such hypotheses is equal to about one divided by one with a thousand or more zeros. Further, when all four battleground states have the same Clinton to Biden difference, the probability of such a collective outcome is lower by an exponential factor of four, *i.e.*, the improbability of that collective outcome effectively raises the odds of all four having the same result to the fourth power. The probability of there being no meaningful difference in voter preferences for Clinton and Biden would be approximately one divided by one with about a trillion zeros.

21. The degree of confidence is even greater for rejecting the hypothesis that the early morning after election tabulations and the subsequent tabulations were drawn from the same population of all voters. For example, the Z-score for Michigan is the lowest of the four states

shown. The degree of confidence for rejecting the Michigan hypothesis has a one in one with 74,593 zeros. Georgia had tabulated about 95% of the ballots cast by 3 AM EST. The comparable initial period tabulations in Pennsylvania, Wisconsin, and Michigan were 75%, 89%, and 69%. These are large enough to expect comparable percentages and vote margins for random selections of ballots to tabulate early and later. Again, the chance of this happening in all four states collectively is even far more improbable, and would be about one divided by about one with a quadrillion zeros.

### III. Comparing 2016 Rejection Rates to 2020 Rejection Rates in Georgia

22. In 2016, the rejection rate for mail-in absentee ballots in Georgia was 6.42%.

#### 2016 Mail-in Absentee Ballots

2016 Mail-in Volume	213,033
2016 Mail-in Ballots Rejected	13,677
2016 Mail-in Rejection Rate	6.42%

23. In 2020, many more mail-in absentee ballots were tabulated in Georgia, while the rejection rate dropped to less than 0.37%.

#### 2020 Mail-in Absentee Ballots

2020 Mail in Volume	1,316,943
2020 Mail in Ballots Rejected	4,786
2020 Mail in Rejection Rate	0.3634%

24. There were 1,316,943 absentee mail-in ballots submitted in Georgia in 2020. The Biden and Trump combined absentees mail-in ballots equaled 1,300,886. There were 4,786 absentee ballots rejected in 2020. This is a rejection rate of 0.3634% out of all the absentee mail-in ballots tabulated. This is much smaller than the number of absentee ballots rejected in 2016, when 13,677 absentee mail-in ballots were rejected out of 213,033 submitted. The 2016 rejection rate was 6.42%, which is more than seventeen times greater than 2020. This decrease in rejection rates is very unexpected, since there was more than a six-fold increase in absentee ballot use.

25. If the rejection rate of mailed-in absentee ballots remained the same in 2020 as it was in 2016, there would be 83,517 fewer tabulated ballots for Biden and Trump in 2020. The Secretary of State's certified absentee mail-in ballots for the two major party candidates were

split 34.681% for Trump and 65.319% for Biden. If the higher 2016 rejection rate was applied to the much greater 1,300,886 ballots, and the Biden and Trump shares of rejected ballots was the same as for all absentee mail-in ballots for the two major party candidates, this would decrease Trump votes by 28,965 and Biden votes by 54,552, which is a net gain for Trump of 25,587 votes.

26. The net gain for Trump would be more than the tabulated ballots needed to overcome the Biden advantage of 12,670 votes. Trump would win by 12,917 votes.

#### **IV. Incomplete Ballots and Non-Reporting in Michigan**

27. I analyzed the absentee ballot data for Wayne County, Michigan, at the precinct level. I found that 174,384 absentee ballots out of 566,694 absentee ballots tabulated (about 30.8%) were counted without a registration number for precincts in the City of Detroit starting with Absentee Vote County Board 1 (ACVB 1) through (ACVB 134). In Wayne County, Biden won 68.4% of the ballots tabulated.

28. If this same rate was applied to these votes without a registration number, this would cause Biden to lose about 119,300 votes and Trump's comparable loss with 30.3% of the tabulated vote would be about 52,800 votes. This would be a net gain of about 66,500 votes for Trump in one county if votes without a voter registration were not counted. If the percent voting for Biden was greater, the net gain for Trump would be higher. This seems likely since the precincts were all from Detroit that included absentee ballots without registration identification in their tabulation.

29. Michigan requires precincts to balance their reported tabulations. William C. Hartmann and Monica Palmer (Chairperson) are two of the four members of the Board of Canvassers for Wayne County. They signed affidavits (attached to my declaration) attesting they would not certify Wayne County's vote because about 70% of Detroit's 134 AVCB precincts were not balanced. This means the numbers reported must match the votes tabulated and ballots could be misplaced and unexplained mismatches. Given the number of ballots tabulated without a registration and the number of precincts that are not balanced, there is a need for more complete investigations and audits.

## V. Summary

30. I examine two reasons why further investigation of the vote tally in Georgia, Michigan, Pennsylvania, and Wisconsin is needed given what, in my opinion, are extremely improbable results in the 2020 election for president. First, Biden outperformed Clinton in both total votes and percentage of the final votes in all four states. Second, Trump led in the voting tabulated before about 3 AM the morning after in all four battleground states. When the additional ballots were added, Biden passed Trump in all four states. Battleground states are, by definition, expected to be close to a 50/50 proposition or coin toss. Biden's collective win in all four of those battleground states were with percentage margins that far exceed Clinton's vote results. I find this statistically to be extremely improbable. In my opinion, this difference in the Clinton and Biden performance warrants further investigation of the vote tally particularly in large metropolitan counties within and adjacent to the urban centers in Atlanta, Philadelphia, Pittsburgh, Detroit and Milwaukee.

31. Data from two different years or in two different time periods for random coin tossing would not be expected to be much different than 50 heads and 50 tails. If there were differences, this would suggest something not expected in a fair coin toss game was affecting the outcome. This could be a defect in the coin or the tossing procedures. Discovering differences would with high probabilities require more analyses and investigations to determine what happened and why. In my analysis, I found that the odds of the Clinton/Biden and early versus later tabulations randomly happening in one state are astronomical, and in all four simultaneously occurring nearly incomprehensible. Accordingly, all four battleground states should be thoroughly analyzed, investigated and audited to determine whether the outcome of the vote is accurate. In my opinion, the outcome of Biden winning in all these four states is so statistically improbable, that it is not possible to dismiss fraud and biased changes in the way ballots were processed, validated and tabulated. If the efforts to uncover mistakes and violations are completed, I would not be surprised that there could be a reversal in the outcome of Biden winning in some or all of these four battleground states.

32. I found in Georgia that the rejection rates for absentee ballots in 2020 were much less than in 2016. This is surprising since so many more voters (more than six times as many) used absentee mail-in ballots in 2020 compared to 2016. I found that if the previous 6.42% rejection rate of absentee mail-in ballots in 2016 applied in 2020, there would be about 83,500 fewer votes

for the two major party candidates. I estimate that if the same split of all absentee mail-in ballots for Trump and Biden was applied to the difference in the votes corresponding to the 2016 rejection rate that Trump would have fewer ballots rejected for a net gain in the margin of more than 25,500 votes, and win the Georgia presidential election by nearly 13,000 votes.

33. The statistical differences that I found in Georgia strongly point to the necessity of reviewing all ballots to make certain the sharp decrease in rejections and/or curing were accurate and legally<sup>7</sup> permitted.

34. I analyzed absentee ballots in Wayne County, Michigan. I found 174,384 ballots in Detroit were not matched to registered voters. I further read the Affidavit of two of the four members of the Canvassing Board and learned that about 70% of the Detroit precincts did not balance the votes tabulated as they are required to do so. Both findings strongly support my opinion that the vote tally is materially inaccurate and warrant an investigation and audit of these results.

  
Charles J. Cicchetti, Ph.D.

  
Date

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<sup>7</sup> I am not an attorney, and this is not intended to be a legal opinion.

### AFFIDAVIT

I, Monica Palmer, being first duly sworn, and under oath, state:

1. I am the Chairperson of the Wayne County Board of Canvassers.
2. The Board is a four-member board, required to have two Republican and two Democrat members, and I serve as one of the Republican members.
3. On August 4, 2020, the Michigan primary election was held.
4. On August 18, 2020, the Board held a public meeting at the Board's office in Detroit. I attended the meeting with the other three members of the Board.
5. The Board reviewed the Wayne County election results and considered whether to certify the August 4, 2020 primary election.
6. As reflected in the meeting minutes, Wayne County Election Director Gregory Mahar gave the Board a report at the meeting that included the following findings:
  - Staff encountered difficulties while trying to canvass the City of Detroit absentee precincts. "He indicated that aside from receiving the poll books on the first Friday and Sunday after the canvass began, the list of voters received made it difficult to determine how many voters actually returned their ballot. He reported that the City of Detroit used the QVF printed list of voters but there was also a handwritten list of voters, which is common to use both, but the two lists combined put the precincts severely out of balance."
  - "Director Mahar also reported on the difficulties staff encountered with trying to retabulate any absentee precincts that were out of balance. He stated that according to the Election Management system, he could see the City of Detroit did not scan a single precinct within a batch. When multiple precincts are scanned within a batch, it makes it nearly impossible to retabulate a precinct without potentially disrupting a perfectly balanced precinct."
  - "Deputy Director Jennifer Redmond reported on the irregularities she encountered while trying to retabulate out of balance precincts. She indicated that in some cases staff could not retabulate because the number of physical ballots counted in the container did not match the number of voters according to the poll book. Staff also requested the applications to vote for Detroit precinct 444 and precinct 262. Both containers ha[d] fewer ballots in the container than the number of voters according to the poll book, but what was strange was there appeared to be some missing applications." 4.
7. It was reported that in the August 2020 primary that 72% of Detroit's absentee voting precincts were out of balance.
8. After discussion among the Board members, I voted along with all the other canvassers in a unanimous vote in favor of certifying the August 4, 2020 Primary Election.

9. Although certifying the primary election results, all Board members expressed serious concerns about the irregularities and inaccuracies. The Board unanimously approved a proposed joint resolution titled "Requesting a State Election Monitor and Investigation" that stated "Now Therefore Be it Resolved That. The Board of Canvassers for the County of Wayne, Michigan, request for the Secretary of State as Michigan's Chief Election Officer, to appoint a monitor to supervise the training and administration of the City of Detroit, Absentee Voter Counting Boards in the 2020 November General Election. Be it Finally Resolved, That, the Board of Canvassers for the County of Wayne, Michigan, request an investigation be conducted by the State Department of Elections into the training and processes used by the City of Detroit in the 2020 August Primary Election."
10. On November 3, 2020, the general election was held. I went to observe the election process at the TCF Center on November 3, 2020 and November 4, 2020.
11. Since November 5, I went to the Wayne County Canvas almost every day and helped the Wayne County staff.
12. On November 17, 2020, there was a board of Canvassers meeting scheduled to start at 3:00pm to determine whether or not to certify the November election. The meeting did not begin until 4:46pm.
13. Minutes before the meeting began at 4:46pm, I was given a report on the final canvas. We were not given an executive summary which was customary at most other certification meetings.
14. During this meeting, I determined that more than 70% of Detroit's 134 Absent Voter Counting Boards (AVCB) did not balance and many had no explanation to why they did not balance.
15. Vice-Chair Kinloch made a motion to certify the vote. I noted our prior reservations about unbalanced precincts in August 2020 and determined the record had discrepancies and irregularities and was incomplete.
16. A motion was made to certify the vote, and I voted not to certify. The vote to certify the Wayne County elections failed 2-2.
17. After the vote, my Democrat colleagues chided me and Mr. Hartmann for voting to not certify.
18. After the vote, public comment period began and dozens of people made personal remarks against me and Mr. Hartmann. The comments made accusations of racism and threatened me and members of my family. The public comment continued for over two hours and I felt pressured to continue the meeting without break.
19. After several hours of harsh comments, Vice-Chair Kinloch suggested a potential resolution. Wayne County Corporate Counsel Janet Anderson-Davis told me that I had to certify the vote that night. She told the members their role was ministerial and they could not use their discretion on matters like the record being incomplete. We were told that discretion was outside the board's authority.
20. After being told by Ms. Anderson-Davis that I could not use my discretion regarding the anomalies, I believed I had no choice but to certify the results despite my desire to oppose certification based on the incomplete record.
21. Additionally, we were presented with a resolution that promised a full, independent audit that would present answers to the incomplete record. I voted to agree to certify based on the promise of a full, independent audit. I would not have agreed to vote to certify but for that promise of a full, independent audit.

22. Vice-Chairman Jonathan Kinloch gave me assurances that voting for the certification of the November election would result in a full, independent audit of Detroit's unbalanced precincts. I relied on that assurance and voted to certify the election based on that assurance. Without that assurance I would not have voted to certify the Wayne County November election.
23. Later that evening, I was sent statements that Secretary Jocelyn Benson made saying that she did not view our audit resolution to be binding. Her comments disputed the representations made by Vice-Chair Kinloch on which I relied.
24. As a result of these facts, I rescind my prior vote to certify Wayne County elections.
25. I fully believe the Wayne County vote should not be certified.
26. The Wayne County election had serious process flaws which deserve investigation. I continue to ask for information to assure Wayne County voters that these elections were conducted fairly and accurately. Despite repeated requests, I have not received the requisite information and believe an additional 10 days of canvas by the State Board of Canvassers will help provide the information necessary.
27. I initially voted not to certify the election, and I still believe this vote should *not* be certified and the State Board of Canvassers should canvass for an additional period.
28. Until these questions are addressed, I remain opposed to certification of the Wayne County results.

The above information is true to the best of my information, knowledge, and belief.

I certify under penalty of perjury, that my statement and the evidence submitted with it, are all true and correct.

Printed Name: Monica S Palmer

Signed Name: Monica S Palmer

Date: \_\_\_\_\_

Sworn to before me this 18 day of November 2020 at 9:33 pm

My Commission expires on: 08/3/2022

**JANICE L. DANIELS**  
**NOTARY PUBLIC - STATE OF MICHIGAN**  
**COUNTY OF OAKLAND**  
 My Commission Expires August 3, 2022  
 Acting in the County of WAYNE

## AFFIDAVIT

The Affiant, William C. Hartmann, being first duly sworn, hereby deposes and states as follows:

1. My name is William C. Hartmann. I am an adult citizen, voter, and resident of the State of Michigan.
2. I am a member of the Board of Canvassers of Wayne County, Michigan.
3. I personally observed the Absent Voter Counting Boards in Detroit at TCF Center.
4. Since the election on November 3<sup>rd</sup>, I have attended the Wayne County Canvass on an almost daily basis.
5. On November 17, 2020, at 3:00 p.m. there was a meeting of the Board of Canvassers to determine whether to certify the results of Wayne County. The meeting did not start until 5:00 p.m. We were told it was delayed so that representatives of the Democrat Board members could obtain additional affidavits.
6. At 5:00 p.m. an open meeting and discussion began to discuss the issue of whether to certify the vote. In my review of the results, I determined that approximately 71% of Detroit's 134 Absent Voter Counting Boards (AVCB) were left unbalanced and many *unexplained*. I informed the Board members of the discrepancies, but soon thereafter, a motion to certify was

made by Vice-Chairman Jonathan Kinloch. After further discussion, I renewed my concerns that the reason that the numbers did not balance for the majority of AVCB's in Detroit, and importantly, could not be explained. If the vote totals did not match, there should have been a documented reason explaining why.

7. The Board considered the ultimate question of whether to certify the vote, and the motion to certify the Wayne County elections failed 2-2.
8. This vote was followed by public derision from our two democrat colleagues. I, and Monica Palmer, who also voted against certification, were berated and ridiculed by members of the public and other Board members. This conduct included specious claims that I was racially motivated in my decision. This public ostracism continued for hours during which time we were not provided an opportunity to break for dinner and were not advised that we could depart and resume the hearing on another date.
9. I discussed a potential resolution with Vice-Chair Kinloch in confidence. Ms. Anderson-Davis told us that we must vote to certify on that night. We were told that we could not consider matters such as the unexplained reasons that most of Detroit's AVCB's did not balance and no one knew why. We

were informed that this consideration was outside of the scope of the Board's authority.

10. During the evening, Wayne County counsel, Ms. Janet Anderson-Davis, and my colleagues on the Board, continued to discuss irregularities in the AVCB's. Ms. Anderson-Davis advised the Board that the discrepancies were not a reason to reject the certification, and based on her explicit legal guidance, I was under the belief that I could not exercise my independent judgment in opposition to the certification. Therefore, I voted to certify the results.
11. Late in the evening, I was enticed to agree to certify based on the promise that a full and independent audit would take place. I would not have agreed to the certification but for the promise of an audit.
12. Vice-Chairman Jonathan Kinloch then assured us that if we voted to certify the election, a full, independent, and complete audit of Detroit's election, would be undertaken. We relied on this assurance in coming to an agreement. Without this assurance, I would not have agreed to certify Wayne County on November 17<sup>th</sup>.
13. After the meeting, I was made aware that Michigan Secretary of State, Jocelyn Benson made a public claim that the representations made by Mr. Kinlock, on which we had relied, would not be followed.

- c. I am also concerned about the use of private monies directing local officials regarding the management of the elections, how those funds were used and whether such funds were used to pay election workers. I have not received answers to these questions, and I believe the people of Michigan deserve these answers. Can we release the logs to the tabulators demonstrating what happened in Detroit?
- d. Why do the pollbooks, Qualified Voter Files, and final tallies not match or balance?
- e. 71% of Detroit AVCB's did not balance, why not?
- f. Did the chairperson of each of Detroit's 134 AVCB's keep logs of shift changes?
- g. Why were republicans *not* used in signing seals certified at the end of the night on Monday, and Wednesday evening before ballot boxes were documented, closed, and locked?
- h. How many challenged ballots were counted?
- i. Was any information placed directly into the Qualified Voter Files in the AVCB's?
- j. How many voter birthdates were altered in the pollbooks?

- k. Were ballots counted in TCF that were not reflected in the electronic pollbook or paper supplemental list?
- l. Based upon information and belief, there were over 18,000 same-day registrations in Detroit on November 3. Were these new applicants verified as proper voters prior to the tabulation of their ballots?

18. I voted not to certify, and I still believe this vote should *not* be certified.

19. Until these questions are addressed, I remain opposed to certification of the Wayne County results.

19. The above information is true to the best of my information, knowledge, and belief.

I certify under penalty of perjury, that my statement and the evidence submitted with it, are all true and correct.

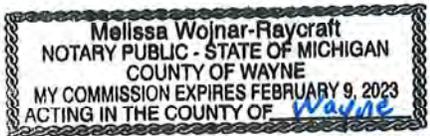
Printed Name: William C. Hartmann

Signed Name: 

Date:

Sworn to before me this 18<sup>th</sup> day of November, 2020 at 6:29pm

Melissa Wojnar-Raycraft  
Notary Public Melissa Wojnar-Raycraft  
My Commission expires on: Feb. 9, 2023



## **COMPROMISE SETTLEMENT AGREEMENT AND RELEASE**

This **Compromise Settlement Agreement and Release** (“Agreement”) is made and entered into by and between the Democratic Party of Georgia, Inc. (“DPG”), the DSCC, and the DCCC (collectively, the “Political Party Committees”), on one side, and Brad Raffensperger, Rebecca N. Sullivan, David J. Worley, Seth Harp, and Anh Le (collectively, “State Defendants”), on the other side. The parties to this Agreement may be referred to individually as a “Party” or collectively as the “Parties.” The Agreement will take effect when each and every Party has signed it, as of the date of the last signature (the “Effective Date”).

**WHEREAS**, in the lawsuit styled as *Democratic Party of Georgia, et al. v. Raffensperger, et al.*, Civil Action File No. 1:19-cv-5028-WMR (the “Lawsuit”), the Political Party Committees have asserted claims in their Amended Complaint [Doc. 30] that the State Defendants’ (i) absentee ballot signature matching procedure, (ii) notification process when an absentee ballot is rejected for any reason, and (iii) procedure for curing a rejected absentee ballot, violate the First and Fourteenth Amendments to the United States Constitution by unduly burdening the right to vote, subjecting similarly situated voters to disparate treatment, and failing to afford Georgia voters due process (the “Claims”), which the State Defendants deny;

**WHEREAS**, the State Defendants, in their capacity as members of the State Election Board, adopted on February 28, 2020 Rule 183-1-14-.13, which sets forth specific and standard notification procedures that all counties must follow after rejection of a timely mail-in absentee ballot;

**WHEREAS**, the State Defendants have a Motion to Dismiss [Doc. 45] pending before the Court, which sets forth various grounds for dismissal of the Amended Complaint, including mootness in light of the State Election Board’s promulgation subsequent to adoption on February 28, 2020 of Rule 183-1-14-.13, which Motion the Political Party Committees deny is meritorious;

**WHEREAS**, all Parties desire to compromise and settle all disputed issues and claims arising from the Lawsuit, finally and fully, without admission of liability, having agreed on the procedures and guidance set forth below with respect to the signature matching and absentee ballot rejection notification and cure procedures; and

**WHEREAS**, by entering into this Agreement, the Political Party Committees do not concede that the challenged laws and procedures are constitutional, and

similarly, the State Defendants do not concede that the challenged laws and procedures are unconstitutional.

**NOW THEREFORE**, for and in consideration of the promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

1. **Dismissal.** Within five (5) business days of March 22, 2020, the effective date of the Prompt Notification of Absentee Ballot Rejection rule specified in paragraph 2(a), the Political Party Committees shall dismiss the Lawsuit with prejudice as to the State Defendants.

2. **Prompt Notification of Absentee Ballot Rejection.**

(a) The State Defendants, in their capacity as members of the State Election Board, agree to promulgate and enforce, in accordance with the Georgia Administrative Procedures Act and State Election Board policy, the following State Election Board Rule 183-1-14-.13 of the Georgia Rules and Regulations:

When a timely submitted absentee ballot is rejected, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure, as provided by O.C.G.A. § 21-2-386, by mailing written notice, and attempt to notify the elector by telephone and email if a telephone number or email is on the elector's voter registration record, no later than the close of business on the third business day after receiving the absentee ballot. However, for any timely submitted absentee ballot that is rejected on or after the second Friday prior to Election Day, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure, as provided by O.C.G.A. § 21-2-386, by mailing written notice, and attempt to notify the elector by telephone and email if a telephone number or email is on the elector's voter registration record, no later than close of business on the next business day.

Ga. R. & Reg. § 183-1-14-.13 Prompt Notification of Absentee Ballot Rejection

(b) Unless otherwise required by law, State Defendants agree that any amendments to Rule 183-1-14-.13 will be made in good faith in the spirit of ensuring that voters are notified of rejection of their absentee ballots with ample time to cure

their ballots. The Political Party Committees agree that the State Election Board's proposed amendment to Rule 183-1-14-.13 to use contact information on absentee ballot applications to notify the voter fits within that spirit.

**3. Signature Match.**

(a) Secretary of State Raffensperger, in his official capacity as Secretary of State, agrees to issue an Official Election Bulletin containing the following procedure applicable to the review of signatures on absentee ballot envelopes by county elections officials and to incorporate the procedure below in training materials regarding the review of absentee ballot signatures for county registrars:

County registrars and absentee ballot clerks are required, upon receipt of each mail-in absentee ballot, to compare the signature or mark of the elector on the mail-in absentee ballot envelope with the signatures or marks in eNet and on the application for the mail-in absentee ballot. If the signature does not appear to be valid, registrars and clerks are required to follow the procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C). When reviewing an elector's signature on the mail-in absentee ballot envelope, the registrar or clerk must compare the signature on the mail-in absentee ballot envelope to each signature contained in such elector's voter registration record in eNet and the elector's signature on the application for the mail-in absentee ballot. If the registrar or absentee ballot clerk determines that the voter's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk must seek review from two other registrars, deputy registrars, or absentee ballot clerks. A mail-in absentee ballot shall not be rejected unless a majority of the registrars, deputy registrars, or absentee ballot clerks reviewing the signature agree that the signature does not match any of the voter's signatures on file in eNet or on the absentee ballot application. If a determination is made that the elector's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk shall write the names of the three elections officials who conducted the signature review across the face of the absentee ballot envelope, which shall be in addition to writing "Rejected" and the reason for the rejection as required under OCGA 21-2-386(a)(1)(C). Then, the registrar or absentee ballot clerk shall

commence the notification procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C) and State Election Board Rule 183-1-14-.13.

(b) The Parties agree that the guidance in paragraph 3(a) shall be issued in advance of all statewide elections in 2020, including the March 24, 2020 Presidential Primary Elections and the November 3, 2020 General Election.

**4. Consideration of Additional Guidance for Signature Matching.** The State Defendants agree to consider in good faith providing county registrars and absentee ballot clerks with additional guidance and training materials to follow when comparing voters' signatures that will be drafted by the Political Party Committees' handwriting and signature review expert.

**5. Attorneys' Fees and Expenses.** The Parties to this Agreement shall bear their own attorney's fees and costs incurred in bringing or defending this action, and no party shall be considered to be a prevailing party for the purpose of any law, statute, or regulation providing for the award or recovery of attorney's fees and/or costs.

**6. Release by The Political Party Committees.** The Political Party Committees, on behalf of themselves and their successors, affiliates, and representatives, release and forever discharge the State Defendants, and each of their successors and representatives, from the prompt notification of absentee ballot rejection and signature match claims and causes of action, whether legal or equitable, in the Lawsuit.

**7. No Admission of Liability.** It is understood and agreed by the Parties that this Agreement is a compromise and is being executed to settle a dispute. Nothing contained herein may be construed as an admission of liability on the part of any of the Parties.

**8. Authority to Bind; No Prior Assignment of Released Claims.** The Parties represent and warrant that they have full authority to enter into this Agreement and bind themselves to its terms.

**9. No Presumptions.** The Parties acknowledge that they have had input into the drafting of this Agreement or, alternatively, have had an opportunity to have input into the drafting of this Agreement. The Parties agree that this Agreement is and shall be deemed jointly drafted and written by all Parties to it, and it shall be interpreted fairly, reasonably, and not more strongly against one Party than the other.

Accordingly, if a dispute arises about the meaning, construction, or interpretation of this Agreement, no presumption will apply to construe the language of this Agreement for or against any Party.

**10. Knowing and Voluntary Agreement.** Each Party to this Agreement acknowledges that it is entering into this Agreement voluntarily and of its own free will and accord, and seeks to be bound hereunder. The Parties further acknowledge that they have retained their own legal counsel in this matter or have had the opportunity to retain legal counsel to review this Agreement.

**11. Choice of Law, Jurisdiction and Venue.** This Agreement will be construed in accordance with the laws of the State of Georgia. In the event of any dispute arising out of or in any way related to this Agreement, the Parties consent to the sole and exclusive jurisdiction of the state courts located in Fulton County, Georgia. The Parties waive any objection to jurisdiction and venue of those courts.

**12. Entire Agreement; Modification.** This Agreement sets forth the entire agreement between the Parties hereto, and fully supersedes any prior agreements or understandings between the Parties. The Parties acknowledge that they have not relied on any representations, promises, or agreements of any kind made to them in connection with their decision to accept this Agreement, except for those set forth in this Agreement.

**13. Counterparts.** This Agreement may be executed in counterparts which, taken together, will constitute one and the same Agreement and will be effective as of the date last set forth below, and signatures by facsimile and electronic mail will have the same effect as the originals.

**IN WITNESS WHEREOF**, the Parties have set their hands and seals to this instrument on the date set forth below.

Dated: March 6, 2020

/s/ Bruce V. Spiva

Marc E. Elias\*  
Bruce V. Spiva\*  
John Devaney\*  
Amanda R. Callais\*  
K'Shaani Smith\*  
Emily R. Brailey\*  
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*\*Admitted Pro Hac Vice*

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*Counsel for State Defendants*

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

---

MELLISSA A. CARONE,

Plaintiff,

AFFIDAVIT OF MELLISSA A.

CARONE

-vs-

CITY OF DETROIT: DETROIT ELECTION  
COMMISSION; JANICE M. WINFREY, in  
her official capacity as the CLERK OF THE  
CITY OF DETROIT and the Chairperson of  
The DETROIT ELECTION COMMISSION;  
CATHY M. GARRETT, in her official  
Capacity as the CLERK OF WAYNE COUNTY  
BOARD OF CANVASSERS,

FILE NO: \_\_\_\_\_ -AW

JUDGE

Defendants,

---

BOBBY TENORIO NOTARY PUBLIC - STATE OF MICHIGAN COUNTY OF WASHTENAW My Commission Expires February 19, 2021 Acting in the County of <u>Wayne</u>
--------------------------------------------------------------------------------------------------------------------------------------------------------------

David A. Kallman (P43200)  
Erin E. Mersino (P70886)  
Jack C. Jordan (P46551)  
Stephan P. Kallman (P75622)

GREAT LAKES JUSTICE CENTER

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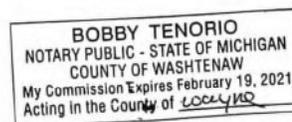
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AFFIDAVIT

The Affiant, Mellissa A. Carone, being the first duly sworn, hereby deposes and states as follows:

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1. My name is Mellissa A. Carone, I was contracted by Dominion Voting Services to do IT work at the TCF Center for the November 3, 2020 election, and I am a resident of Wayne County.
2. I arrived at the TCF Center at approximately 6:15 AM November 3, 2020 and worked until 4:00 AM November 4, 2020. I went home to get some sleep, then arrived back at the TCF Center at 10:00 AM in which I stayed until 1:45 PM. During this time I witnessed nothing but fraudulent actions take place.
3. The counters (which were trained very little or not at all), were handed a "batch" (stack of 50) of mail-in ballots in which they would run through the tabulator. The tabulators would get jammed 4-5 times an hour, when they jammed the computer would put out an error that tells the worker the ballot number that was jammed and gives an option to either discard the batch or continue scanning at which the counter should discard the batch, put the issue ballot on top of the batch and rescan the entire batch. I witnessed countless workers rescanning the batches without discarding them first which resulted in ballots being counted 4-5 times.
4. At approximately midnight I was called over to assist one of the counters with a paper jam and noticed his PC had a number of over 400 ballots scanned- which means one batch was counted over 8 times. This happened countless times while I was at the TCF Center. I confronted my manager, Nick Ikonomakis saying how big of a problem this was, Nick told me he didn't want to hear that we have a big problem. He told me we are here to do assist with IT work, not to run their election.
5. The adjudication process, from my understanding there's supposed to be a republican and a democrat judging these ballots. I overheard numerous workers talking during shift change in which over 20 machines had two democrats judging the ballots-resulting in an unfair process.
6. Next, I want to describe what went on during shift change, it was a chaotic disaster. It took over two hours for workers to arrive at their "assigned areas", over 30 workers were taken upstairs and told they didn't have a job for them to do. These people were chosen to be counters, in which 6 workers admitted to me that they received absolutely no training at all.
7. The night shift workers were free to come and go as they pleased, they could go out and smoke from the counting room. This is illegal, as there were boxes and stacks of ballots everywhere, anyone could have taken some out or brought some in, and No one was watching them.
8. There was two vans that pulled into the garage of the counting room, one on day shift and one on night shift. These vans were apparently bringing food into the building because they only had enough food for not even 1/3 of the workers. I never saw any food coming out of these vans, coincidentally it was announced on the news that Michigan had discovered over 100,000 more ballots- not even two hours after the last van left.
9. When a worker had a ballot that they either could not read, or it had something spilled on it, they would go to a table that had blank ballots on it and fill it out. They were supposed to be filling them out exactly like the one they had received but this was not the case at all. The workers would also sign the name of the person that the ballot belonged to-which is clearly illegal.
10. Samuel Challandes and one more young man in his mid-20 were responsible for submitting the numbers into the main computer. They had absolutely no overhead, my manager Nick would assist them with any questions but Nick was on the floor assisting with IT most of the time.



Appendix - 00159

11. There was a time I overheard Samuel talking to Nick about losing tons of data, they all got on their phones and stepped to the side of the stage. I asked Nick what was going on and he told me it was all taken care of and not to worry about it. I fully believe that this was something very crucial that they just covered up.
12. I was the only republican working for Dominion Voting, and on the stage there was many terrible comments being made by the city workers and Dominion workers about republicans. I did not give out any indication that I was a republican, I have a family at home and knew I was going to have to walk to my car at the end of my shift. If anyone had an American flag on their shirt or mask, they were automatically deemed to be Trump supporters.
13. I called the FBI and made a report with them, I was told that I will be getting a call back.
14. I am doing my best to make sure something is done about this, I was there and I seen all of this take place.

On this 8<sup>th</sup> day of November, 2020, before me personally appeared Mellissa A. Carone, who in my presence did execute the foregoing affidavit, and who, being duly sworn, deposes and states that he has read the foregoing affidavit by him subscribed and knows the contents thereof, and that the same is true of his own knowledge and belief, except as to those matters he states to be on information and behalf, and as to those matters he believes them to be true.

Mellissa A. Carone Mellissa A. Carone 11/08/20

Notary Public, Washtenaw County, Michigan

My Commission Expires: 02 19 2021  
Feb 19, 2021

Bobby Tenorio 11/8/2020

BOBBY TENORIO  
NOTARY PUBLIC - STATE OF MICHIGAN  
COUNTY OF WASHTENAW  
My Commission Expires February 19, 2021  
Acting in the County of Wayne

**AFFIDAVIT**

The Affiant, William C. Hartmann, being first duly sworn, hereby deposes and states as follows:

1. My name is William C. Hartmann. I am an adult citizen, voter, and resident of the State of Michigan.
2. I am a member of the Board of Canvassers of Wayne County, Michigan.
3. I personally observed the Absent Voter Counting Boards in Detroit at TCF Center.
4. Since the election on November 3<sup>rd</sup>, I have attended the Wayne County Canvass on an almost daily basis.
5. On November 17, 2020, at 3:00 p.m. there was a meeting of the Board of Canvassers to determine whether to certify the results of Wayne County. The meeting did not start until 5:00 p.m. We were told it was delayed so that representatives of the Democrat Board members could obtain additional affidavits.
6. At 5:00 p.m. an open meeting and discussion began to discuss the issue of whether to certify the vote. In my review of the results, I determined that approximately 71% of Detroit's 134 Absent Voter Counting Boards (AVCB) were left unbalanced and many *unexplained*. I informed the Board members of the discrepancies, but soon thereafter, a motion to certify was

made by Vice-Chairman Jonathan Kinloch. After further discussion, I renewed my concerns that the reason that the numbers did not balance for the majority of AVCB's in Detroit, and importantly, could not be explained. If the vote totals did not match, there should have been a documented reason explaining why.

7. The Board considered the ultimate question of whether to certify the vote, and the motion to certify the Wayne County elections failed 2-2.
8. This vote was followed by public derision from our two democrat colleagues. I, and Monica Palmer, who also voted against certification, were berated and ridiculed by members of the public and other Board members. This conduct included specious claims that I was racially motivated in my decision. This public ostracism continued for hours during which time we were not provided an opportunity to break for dinner and were not advised that we could depart and resume the hearing on another date.
9. I discussed a potential resolution with Vice-Chair Kinloch in confidence. Ms. Anderson-Davis told us that we must vote to certify on that night. We were told that we could not consider matters such as the unexplained reasons that most of Detroit's AVCB's did not balance and no one knew why. We

were informed that this consideration was outside of the scope of the Board's authority.

10. During the evening, Wayne County counsel, Ms. Janet Anderson-Davis, and my colleagues on the Board, continued to discuss irregularities in the AVCB's. Ms. Anderson-Davis advised the Board that the discrepancies were not a reason to reject the certification, and based on her explicit legal guidance, I was under the belief that I could not exercise my independent judgment in opposition to the certification. Therefore, I voted to certify the results.

11. Late in the evening, I was enticed to agree to certify based on the promise that a full and independent audit would take place. I would not have agreed to the certification but for the promise of an audit.

12. Vice-Chairman Jonathan Kinloch then assured us that if we voted to certify the election, a full, independent, and complete audit of Detroit's election, would be undertaken. We relied on this assurance in coming to an agreement. Without this assurance, I would not have agreed to certify Wayne County on November 17<sup>th</sup>.

13. After the meeting, I was made aware that Michigan Secretary of State, Jocelyn Benson made a public claim that the representations made by Mr. Kinlock, on which we had relied, would not be followed.

14. I thus rescind my prior vote to certify Wayne County.
15. I remain of the firm belief that the Wayne County vote should not be certified. These are more than clerical errors.
16. The Wayne County election was conducted in a manner which calls into serious question whether the voice of Wayne County residents is reflected in the result. During the election process I repeatedly asked for information and data that would help verify the process was accurate and fair. Despite my requests I have not received a written Executive Summary of the election results that could be read. This Executive Summary will tell you which AVCBs are over/under as well as which AVCBs were balanced.
17. Moreover, there are other questions which need to be answered and can only be answered if Wayne County's Canvass is transparent and provides information within its control. This information includes:
- a. The logs indicating when dropbox ballots were collected and delivered, the log of persons who made these deliveries and who had access to dropbox keys and when that access was obtained.
  - b. Similar concerns exist regarding the delivery of ballots to the TCF Center during the night of November 3 and the morning hours of November 4.

- c. I am also concerned about the use of private monies directing local officials regarding the management of the elections, how those funds were used and whether such funds were used to pay election workers. I have not received answers to these questions, and I believe the people of Michigan deserve these answers. Can we release the logs to the tabulators demonstrating what happened in Detroit?
- d. Why do the pollbooks, Qualified Voter Files, and final tallies not match or balance?
- e. 71% of Detroit AVCB's did not balance, why not?
- f. Did the chairperson of each of Detroit's 134 AVCB's keep logs of shift changes?
- g. Why were republicans *not* used in signing seals certified at the end of the night on Monday, and Wednesday evening before ballot boxes were documented, closed, and locked?
- h. How many challenged ballots were counted?
- i. Was any information placed directly into the Qualified Voter Files in the AVCB's?
- j. How many voter birthdates were altered in the pollbooks?

k. Were ballots counted in TCF that were not reflected in the electronic pollbook or paper supplemental list?

l. Based upon information and belief, there were over 18,000 same-day registrations in Detroit on November 3. Were these new applicants verified as proper voters prior to the tabulation of their ballots?

18. I voted not to certify, and I still believe this vote should *not* be certified.

19. Until these questions are addressed, I remain opposed to certification of the Wayne County results.

19. The above information is true to the best of my information, knowledge, and belief.

I certify under penalty of perjury, that my statement and the evidence submitted with it, are all true and correct.

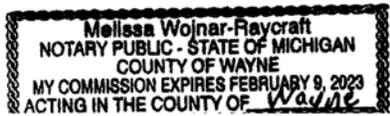
Printed Name: WILLIAM C. HARTMANN

Signed Name: *William C. Hartmann*

Date:

Sworn to before me this 18<sup>th</sup> day of November, 2020 at 6:29pm

*Melissa Wojnar-Raycraft*  
Notary Public *Melissa Wojnar-Raycraft*  
My Commission expires on: Feb. 9, 2023



STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CHERYL A. COSTANTINO and EDWARD P. McCALL, JR.,

Plaintiff,

AFFIDAVIT OF JESSY JACOB

FILE NO: 20-\_\_\_\_\_-AW

-vs-

JUDGE

CITY OF DETROIT; DETROIT ELECTION COMMISSION; JANICE M. WINFREY, in her official capacity as the CLERK OF THE CITY OF DETROIT and the Chairperson of the DETROIT ELECTION COMMISSION; CATHY M. GARRETT, in her official capacity as the CLERK OF WAYNE COUNTY; and the WAYNE COUNTY BOARD OF CANVASSERS,

Defendants.

David A. Kallman (P34200)  
Erin E. Mersino (P70886)  
Jack C. Jordan (P46551)  
Stephen P. Kallman (P75622)

GREAT LAKES JUSTICE CENTER  
Attorneys for Plaintiff  
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Lansing, MI 48917  
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AFFIDAVIT

The Affiant, Jessy Jacob, being first duly sworn, hereby deposes and states as follows:

1. My name is Jessy Jacob. I am an adult citizen and resident of the State of Michigan.
2. I have been an employee for the City of Detroit for decades.
3. I was assigned to work in the Elections Department for the 2020 election.
4. I received training from the City of Detroit and the State of Michigan regarding the election process.

5. I worked at the election headquarters for most of September and I started working at a satellite location for most of October, 2020.
6. I processed absentee ballot packages to be sent to voters while I worked at the election headquarters in September 2020 along with 70-80 other poll workers. I was instructed by my supervisor to adjust the mailing date of these absentee ballot packages to be dated earlier than they were actually sent. The supervisor was making announcements for all workers to engage in this practice.
7. At the satellite location, I processed voter registrations and issued absentee ballots for people to vote in person at the location.
8. I directly observed, on a daily basis, City of Detroit election workers and employees coaching and trying to coach voters to vote for Joe Biden and the Democrat party. I witnessed these workers and employees encouraging voters to do a straight Democrat ballot. I witnessed these election workers and employees going over to the voting booths with voters in order to watch them vote and coach them for whom to vote.
9. During the last two weeks while working at this satellite location, I was specifically instructed by my supervisor not to ask for a driver's license or any photo I.D. when a person was trying to vote.
10. I observed a large number of people who came to the satellite location to vote in-person, but they had already applied for an absentee ballot. These people were allowed to vote in-person and were not required to return the mailed absentee ballot or sign an affidavit that the voter lost the mailed absentee ballot.
11. Whenever I processed an absentee voter application or in-person registration, I was instructed to input the person's name, address, and date of birth into the Qualified Voter File (QVF) system.
12. The QVF system can be accessed and edited by any election processor with proper credentials in the State of Michigan at any time and from any location with internet access.
13. I worked at the satellite location until the polls closed on November 3, 2020 at 8:00 p.m. and properly completed the entry of all absentee ballots into the QVF by 8:30 p.m.

- 14. I then reported to work at the TCF Center on November 4, 2020, at 8:30 a.m. to process ballots. I was instructed not to validate any ballots and not to look for any deficiencies in the ballots.
- 15. Absentee ballots that were received in the mail would have the voter's signature on the envelope. While I was at the TCF Center, I was instructed not to look at any of the signatures on the absentee ballots, and I was instructed not to compare the signature on the absentee ballot with the signature on file.
- 16. All absentee ballots that existed were required to be inputted into the QVF system by 9:00 p.m. on November 3, 2020. This was required to be done in order to have a final list of absentee voters who returned their ballots prior to 8:00 p.m. on November 3, 2020. In order to have enough time to process the absentee ballots, all satellites were instructed to collect the absentee ballots from the drop-box once every hour on November 3, 2020.
- 17. On November 4, 2020, I was instructed to improperly pre-date the absentee ballots receive date that were not in the QVF as if they had been received on or before November 3, 2020. I was told to alter the information in the QVF to falsely show that the absentee ballots had been received in time to be valid. I estimate that this was done to thousands of ballots.
- 18. The above information is true to the best of my information, knowledge, and belief.
- 19. Further affiant says not.

  
 \_\_\_\_\_  
 Jessy Jacob

On this 7th day of November, 2020, before me personally appeared Jessy Jacob, who in my presence did execute the foregoing affidavit, and who, being duly sworn, deposes and states that she has read the foregoing affidavit by her subscribed and knows the contents thereof, and that the same is true of her own knowledge and belief, except as to those matters she states to be on information and belief, and as to those matters she believes them to be true.

  
 \_\_\_\_\_  
 Stephen P. Kallman  
 Notary Public, Eaton County, Michigan  
 My Commission Expires: 11/26/2025

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CHERYL A. COSTANTINO and EDWARD P.  
McCALL, JR.,

Plaintiff,

-vs-

CITY OF DETROIT; DETROIT ELECTION  
COMMISSION; JANICE M. WINFREY, in  
her official capacity as the CLERK OF THE  
CITY OF DETROIT and the Chairperson of  
the DETROIT ELECTION COMMISSION;  
CATHY M. GARRETT, in her official  
capacity as the CLERK OF WAYNE  
COUNTY; and the WAYNE COUNTY  
BOARD OF CANVASSERS,

Defendants.

AFFIDAVIT OF ZACHARY  
LARSEN

FILE NO: 20-\_\_\_\_\_-AW

JUDGE

David A. Kallman (P34200)  
Erin E. Mersino (P70886)  
Jack C. Jordan (P46551)  
Stephen P. Kallman (P75622)  
GREAT LAKES JUSTICE CENTER  
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(517) 322-3207/Fax: (517) 322-3208

AFFIDAVIT

The Affiant, Zachary Larsen, being first duly sworn, hereby deposes and states as follows:

1. My name is Zachary Larsen, I am over the age of eighteen, have personal knowledge of the facts stated in this Affidavit and, if sworn as a witness, I am competent to testify to these facts.

2. I am an attorney in private practice and licensed in the State of Michigan. Prior to my entry into private practice, I served as an Assistant Attorney General for eight years from January 2012 through January 2020, where I was recognized with an award for the quality of my work and served the state on several high-priority litigation matters.

3. In September 2020, I volunteered to serve as a poll challenger for the Michigan Republic Party's election day operations to ensure the integrity of the vote and conformity of the election process to the election laws of Michigan.

4. In preparation for my service, I attended an elections training, reviewed materials relating to the conduct of elections, and read pertinent sections of Michigan's election law.

5. On Election Day, Tuesday, November 3, 2020, I served as a roving attorney and credentialed poll challenger with a group of attorneys and visited approximately 20-30 voting precincts in Lansing, East Lansing, and Williamston, Michigan to confirm that the election was conducted in accordance with law, and on a few occasions, to address complaints raised by specific voters.

6. During my visits to precincts on Election Day, I was allowed to visually inspect the poll book without touching it at every precinct where we asked to review it. In each instance, I was allowed to stand a respectful distance behind the election officials while remaining close enough to read relevant names and numbers.

7. The following day, on Wednesday, November 4, 2020, I arrived at the former Cobo Center, now known as the TCF Center, in Detroit, Michigan to serve as a poll challenger for the absent voter count occurring in Detroit and arrived between 9:30 and 9:45 a.m.

8. Prior to my admission to the floor where the absent voter count was occurring, I received credentials from the Michigan Republican Party and further instruction regarding the process for handling ballots at absent voter counting boards (“AVCBs”).

9. Thereafter, I received a temperature scan from election officials that confirmed I did not have an elevated temperature. I arrived inside, and I was “checked in” by an election official who reviewed my driver’s license and confirmed my credentials and eligibility to serve as a challenger. I was admitted at approximately 10:30 a.m.

10. When I arrived at a counting table and began to observe the process, I noticed immediately that part of the process that was being implemented did not conform to what I had been told in my training and the materials that I had received.

11. Specifically, the information I had received described the process that was supposed to be occurring at the tables as follows.

12. A first election official would scan a ballot. If the scan did not confirm a voter in the poll book, that official would then check the voter against a paper copy “supplemental poll book.”

13. The official would then read the ballot number to a second election official and hand the ballot to that official, who would remove the ballot (while still in the secrecy sleeve) and confirm the ballot number. That second official would then hand the ballot (in the secrecy sleeve) to a third official who would tear the stub off of the ballot, and place the stub in a ballot stub envelope, then pass the remaining ballot to a fourth official.

14. The fourth official would then remove the ballot from the secrecy sleeve, flatten the ballot to ensure it was capable of processing, and visually inspect for rips, tears, or stains before placing the ballot in the “ballots to be tabulated box.” However, if that fourth official identified a

concern, she would place the ballot back in its envelope and into a “problem ballots” box that required additional attention to determine whether they would be processed and counted. A copy of a diagram that I had received on this process is attached as Exhibit A to this affidavit.

15. What I observed immediately was that the secrecy of the ballot was not being respected.

16. Instead, the second official at the table where I was observing was repeatedly placing her fingers into the secrecy sleeve to separate the envelope and visually peek into the envelopes in a way that would allow her to visually observe the ballot and identify some of the votes cast by the voter.

17. Sometimes, the third official whose job was merely to remove the stub from the ballot would likewise remove the ballot from the secrecy sleeve or otherwise peek to observe the ballot. Sometimes a ballot would be removed completely from the secrecy sleeve and then placed back inside and passed along this process.

18. I conferred regarding this issue with another challenger at a nearby table, and he indicated he had observed similar irregularities regarding the use of the secrecy sleeves.

19. When that challenger raised the issue with a supervisor, and he was immediately asked “why does it matter?” and “what difference does it make?”

20. Beyond the legal requirements for maintaining ballot secrecy, both of us were concerned that the violations of the secrecy of the ballot that we witnessed could be or were being used to manipulate which ballots were placed in the “problem ballots” box.

21. Later that morning, at another table, a challenger identified concerns that ballots were being placed into “problem ballots” boxes purportedly based on the reason that the voter had failed to place the ballot in the secrecy sleeve, while other ballots at the same table were being

passed along and placed into the “ballots to be tabulated” box that also did not have secrecy sleeves.

22. I personally observed that several ballots were placed into the “problem ballots” boxed and marked with a sticky note indicating that they were “problem ballots” merely because of the lack of a secrecy sleeve.

23. When I spoke with a supervisor regarding this issue, he explained that these ballots were being placed in the “problem ballots” box for efficiency.

24. From my experience at the first table I had visited (addressed in Paragraphs 15 through 17 above), I had also witnessed ballots that were placed into the “ballots to be tabulated” box that had arrived without a secrecy sleeve. So the differentiation among these ballots despite both ballots arriving in secrecy sleeves was perplexing and again raised concerns that some ballots were being marked as “problem ballots” based on who the person had voted for rather than on any legitimate concern about the ability to count and process the ballot appropriately.

25. Just before noon, I arrived at another table (which I later contemporaneously noted as AVCB # 23), and I conferred with the Republican challenger who had been observing the process from a viewing screen and watching the response of the computer system as ballots were scanned by the first official.

26. I asked the challenger if she had observed anything of concern, and she immediately noted that she had seen many ballots scanned that did not register in the poll book but that were nonetheless processed. Because she needed to leave for lunch, I agreed to watch her table.

27. As I watched the process, I was sensitive to her concern that ballots were being processed without confirmation that the voter was an eligible voter in the poll book, so I stood at the monitor and watched.

28. The first ballot scanned came in as a match to an eligible voter. But the next several ballots that were scanned did not match any eligible voter in the poll book.

29. When the scan came up empty, the first official would type in the name "Pope" that brought up a voter by that last name.

30. I reviewed the running list of scanned in ballots in the computer system, and it appeared that the voter had already been counted as having voted. Then the first official appeared to assign a number to a different voter as I observed a completely different name that was added to the list of voters at the bottom of a running tab of processed ballots on the right side of the screen.

31. That same official would then make a handwritten notation on her "supplemental poll book," which was a hard copy list that she had in front of her at the table.

32. The supplemental poll book appeared to be a relatively small list.

33. I was concerned that this practice of assigning names and numbers indicated that a ballot was being counted for a non-eligible voter who was not in either the poll book or the supplemental poll book. From my observation of the computer screen, the voters were certainly not in the official poll book. Moreover, this appeared to be the case for the majority of the voters whose ballots I had personally observed being scanned.

34. Because of this concern, I stepped behind the table and walked over to a spot behind where the first official was conducting her work.

35. Understanding health concerns due to COVID-19, I attempted to stand as far away from this official as I reasonably could while also being able to visually observe the names on the supplemental poll book and on the envelopes.

36. Partly inhibiting my ability to keep a distance, the tables were situated so that two counting tables were likely a maximum of eight feet apart. In other words, you could not stand more than four feet behind one without being less than four feet from another.

37. As soon as I moved to a location where I could observe the process by which the first official at this table was confirming the eligibility of the voters to vote, the first official immediately stopped working and glared at me. I stood still until she began to loudly and aggressively tell me that I could not stand where I was standing. She indicated that I needed to remain in front of the computer screen.

38. I responded, "Ma'am, I am allowed by statute to observe the process." As I did, a Democratic challenger ran towards me and approached within two feet of me, saying "You cannot speak to her! You are not allowed to talk to her." I responded, "Sir, she spoke to me. I was just answering her."

39. The first official again told me that the only place I was allowed to observe from was at the computer screen. A second official at the table reiterated this. I said that was not true.

40. Both officials then began to tell me that because of COVID, I needed to be six feet away from the table. I responded that I could not see and read the supplemental poll book from six feet away, but I was attempting to keep my distance to the extent possible.

41. Just minutes before at another table, a supervisor had explained that the rules allowed me to visually observe what I needed to see and then step back away. Likewise, on Election Day, I had been allowed to stand at equivalent distance from poll books in Lansing and East Lansing precincts without any problem. With this understanding, I remained in a position where I would be able to observe the supplemental poll book until I could do so for the voter whose ballots had just been scanned and did not register in the poll book.

42. Both officials indicated that I could not remain in a position that would allow me to observe their activities and they were going to get their supervisor.

43. This seemed particularly concerning because the Democratic challenger who raised concerns over my verbal response to the official had been positioned behind the second official (the one who confirms ballots as described in Paragraph 13) no further away than I was from the first official at that time and had not been stationed at the computer screen as the officials repeatedly told me was the only place that I could stay.

44. When the supervisor arrived, she reiterated that I was not allowed to stand behind the official with the supplemental poll book, and I needed to stand in front of the computer screen. I told her that was not true, and that I was statutorily allowed to observe the process, including the poll book.

45. The supervisor then pivoted to arguing that I was not six feet away from the first official. I told her I was attempting to remain as far away as I could while still being able to read the names on the poll book.

46. In an attempt to address her concerns, I took a further step away from the table and indicated I would try to keep my distance, and that I thought I was about six feet away from the first official. The supervisor then stood next to the chair immediately to the left of the first official and indicated that I was “not six feet away from” the supervisor and that she intended to sit in the chair next to the official with the poll book, so I would need to leave.

47. This supervisor had not been at the table at any time during the process, and she had responsibility for numerous ACVBs. Further, the supervisor’s choice of chairs was approximately three feet to the left of the first official and therefore in violation of the six-foot distance rule.

48. Accordingly, I understood that this was a ruse to keep me away from a place where I could observe the confirmation of names in the supplemental poll book. The supervisor began to repeatedly tell me that I “needed to leave” so I responded that I would go speak with someone else or fill out a challenge form.

49. I went to find another attorney serving as a challenger and returned to discuss the matter further with the supervisor. When I returned, she reiterated her assertions and insisted that there was nowhere where I could stand in conformity with the six-foot rule that would allow me to observe the supplemental poll book. Ultimately, to avoid further conflict with the supervisor, I agreed that I would leave that counting table and move to another table.

50. Between 1:30 p.m. and 2 p.m., my colleague and I decided to return to the suite that housed the Republican challengers to get lunch. We left the counting floor and went up to the Republicans second-floor suite.

51. About 30 to 45 minutes later, an announcement was made that challengers needed to return to the floor. As we attempted to return, we were made aware that the officials admitting people had limited the number of election challengers to another 52 people who would be allowed inside. I displayed my credentials and walked up to near the door where a small crowd was gathering to be let in.

52. Shortly thereafter, a man came out to announce that no one would be let in (despite the prior announcement) because the room had reached the maximum number of challengers. As he was asked why we would not be let in, he explained that the maximum number of challengers were determined from the number of names on the sign-in sheet, regardless of how many people had left the room.

53. Many Republican challengers had left the room for lunch without signing out, including myself and my colleague. Accordingly, we were being arbitrarily “counted” towards this capacity limitation without actually being allowed into the room to observe.

54. When challengers raised this issue with the man at the door, he refused to discuss any solutions such as confirming the identify of challengers who had been previously admitted.

55. To the best of my recollection, I was never informed that if I left the room and failed to sign out that I would be refused admission or that there would be no means of confirming that I had been previously admitted.

56. The above information is true to the best of my information, knowledge, and belief.

57. Further affiant says not.

  
Zachary Larsen

On this 8th day of November, 2020, before me personally appeared Zachary Larsen, who in my presence did execute the foregoing affidavit, and who, being duly sworn, deposes and states that he has read the foregoing affidavit by his subscribed and knows the contents thereof, and that the same is true of his own knowledge and belief, except as to those matters he states to be on information and belief, and as to those matters he believes them to be true.

  
Stephen P. Kallman  
Notary Public, Eaton County, Michigan  
My Commission Expires: 11/26/2025

**AFFIDAVIT OF ANDREW JOHN MILLER**

Andrew John Miller, being sworn, declares under penalty of perjury:

1. I am personally familiar with the facts stated in this Affidavit and, if sworn as a witness, am competent to testify to them as well.
2. I am a registered voter in the State of Michigan.
3. I was a poll challenger on Tuesday, November 3, 2020 and Wednesday, November 4, 2020.
4. The table I was at was duplicating ballots and had about 25 ballots to duplicate.
5. One poll worker held the original ballot and a second poll worker duplicated the ballot.
6. The poll worker who duplicated the ballot hovered over the ballot and blocked me from being able to see the duplication process.
7. A third worker was blocking anyone from being able to see this duplication process.
8. I informed a supervisor that I was denied access to see the duplication process and need to review the ballots for accuracy. I was informed that I “couldn’t because the duplication process was personal like voting.”
9. I watched them duplicate 3 or 4 ballots and this happened on each ballot I watched.
10. I challenged these 3 or 4 ballots and the table worker refused to acknowledge my challenge.
11. Additionally, the poll workers refused to enter my challenge into the computer and also refused to enter my challenge into the poll log.
12. On both November 3, 2020 and November 4, 2020, I was instructed to back up 6 feet from the table and I was unable to see what was happening with the ballots from 6 feet away from the table.

1. At one point on November 4, 2020, a democrat challenger was standing between myself and the table where the poll worker was processing the ballots
2. I was instructed to back up 6 feet from the table, however, the democrat challenger, who stood in between where I was standing and the poll worker at the table, was not told they needed to back up.
3. I saw roughly 24 computers on November 3, 2020 and every computer I saw had a red error messages in the lower right-hand corner saying "update overdue." Additionally, not all of the computers indicated the correct time, with some being off by approximately 5 hours. All computers with the incorrect time were synchronized to show the same incorrect time.

Dated: November 8, 2020

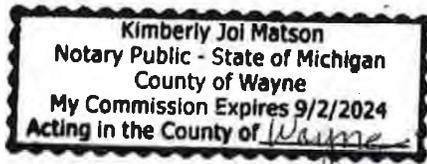
*Andrew J. Miller*  
*Andrew J. Miller*  
Andrew John Miller 11/8/20

Subscribed and sworn to before me on:

is *Kimberly J. Matson* 11/8/2020

Notary public, State of Michigan, County of:

My commission expires: 9/2/2024



**AFFIDAVIT**

I, Monica Palmer, being first duly sworn, and under oath, state:

1. I am the Chairperson of the Wayne County Board of Canvassers.
2. The Board is a four-member board, required to have two Republican and two Democrat members, and I serve as one of the Republican members.
3. On August 4, 2020, the Michigan primary election was held.
4. On August 18, 2020, the Board held a public meeting at the Board's office in Detroit. I attended the meeting with the other three members of the Board.
5. The Board reviewed the Wayne County election results and considered whether to certify the August 4, 2020 primary election.
6. As reflected in the meeting minutes, Wayne County Election Director Gregory Mahar gave the Board a report at the meeting that included the following findings:
  - Staff encountered difficulties while trying to canvass the City of Detroit absentee precincts. "He indicated that aside from receiving the poll books on the first Friday and Sunday after the canvass began, the list of voters received made it difficult to determine how many voters actually returned their ballot. He reported that the City of Detroit used the QVF printed list of voters but there was also a handwritten list of voters, which is common to use both, but the two lists combined put the precincts severely out of balance."
  - "Director Mahar also reported on the difficulties staff encountered with trying to retabulate any absentee precincts that were out of balance. He stated that according to the Election Management system, he could see the City of Detroit did not scan a single precinct within a batch. When multiple precincts are scanned within a batch, it makes it nearly impossible to retabulate a precinct without potentially disrupting a perfectly balanced precinct."
  - "Deputy Director Jennifer Redmond reported on the irregularities she encountered while trying to retabulate out of balance precincts. She indicated that in some cases staff could not retabulate because the number of physical ballots counted in the container did not match the number of voters according to the poll book. Staff also requested the applications to vote for Detroit precinct 444 and precinct 262. Both containers ha[d] fewer ballots in the container than the number of voters according to the poll book, but what was strange was there appeared to be some missing applications." 4.
7. It was reported that in the August 2020 primary that 72% of Detroit's absentee voting precincts were out of balance.
8. After discussion among the Board members, I voted along with all the other canvassers in a unanimous vote in favor of certifying the August 4, 2020 Primary Election.

9. Although certifying the primary election results, all Board members expressed serious concerns about the irregularities and inaccuracies. The Board unanimously approved a proposed joint resolution titled "Requesting a State Election Monitor and Investigation" that stated "Now Therefore Be it Resolved That, The Board of Canvassers for the County of Wayne, Michigan, request for the Secretary of State as Michigan's Chief Election Officer, to appoint a monitor to supervise the training and administration of the City of Detroit, Absentee Voter Counting Boards in the 2020 November General Election. Be it Finally Resolved, That, the Board of Canvassers for the County of Wayne, Michigan, request an investigation be conducted by the State Department of Elections into the training and processes used by the City of Detroit in the 2020 August Primary Election."
10. On November 3, 2020, the general election was held. I went to observe the election process at the TCF Center on November 3, 2020 and November 4, 2020.
11. Since November 5, I went to the Wayne County Canvas almost every day and helped the Wayne County staff.
12. On November 17, 2020, there was a board of Canvassers meeting scheduled to start at 3:00pm to determine whether or not to certify the November election. The meeting did not begin until 4:46pm.
13. Minutes before the meeting began at 4:46pm, I was given a report on the final canvas. We were not given an executive summary which was customary at most other certification meetings.
14. During this meeting, I determined that more than 70% of Detroit's 134 Absent Voter Counting Boards (AVCB) did not balance and many had no explanation to why they did not balance.
15. Vice-Chair Kinloch made a motion to certify the vote. I noted our prior reservations about unbalanced precincts in August 2020 and determined the record had discrepancies and irregularities and was incomplete.
16. A motion was made to certify the vote, and I voted not to certify. The vote to certify the Wayne County elections failed 2-2.
17. After the vote, my Democrat colleagues chided me and Mr. Hartmann for voting to not certify.
18. After the vote, public comment period began and dozens of people made personal remarks against me and Mr. Hartmann. The comments made accusations of racism and threatened me and members of my family. The public comment continued for over two hours and I felt pressured to continue the meeting without break.
19. After several hours of harsh comments, Vice-Chair Kinloch suggested a potential resolution. Wayne County Corporate Counsel Janet Anderson-Davis told me that I had to certify the vote that night. She told the members their role was ministerial and they could not use their discretion on matters like the record being incomplete. We were told that discretion was outside the board's authority.
20. After being told by Ms. Anderson-Davis that I could not use my discretion regarding the anomalies, I believed I had no choice but to certify the results despite my desire to oppose certification based on the incomplete record.
21. Additionally, we were presented with a resolution that promised a full, independent audit that would present answers to the incomplete record. I voted to agree to certify based on the promise of a full, independent audit. I would not have agreed to vote to certify but for that promise of a full, independent audit.

- 22. Vice-Chairman Jonathan Kinloch gave me assurances that voting for the certification of the November election would result in a full, independent audit of Detroit's unbalanced precincts. I relied on that assurance and voted to certify the election based on that assurance. Without that assurance I would not have voted to certify the Wayne County November election.
- 23. Later that evening, I was sent statements that Secretary Jocelyn Benson made saying that she did not view our audit resolution to be binding. Her comments disputed the representations made by Vice-Chair Kinloch on which I relied.
- 24. As a result of these facts, I rescind my prior vote to certify Wayne County elections.
- 25. I fully believe the Wayne County vote should not be certified.
- 26. The Wayne County election had serious process flaws which deserve investigation. I continue to ask for information to assure Wayne County voters that these elections were conducted fairly and accurately. Despite repeated requests, I have not received the requisite information and believe an additional 10 days of canvas by the State Board of Canvassers will help provide the information necessary.
- 27. I initially voted not to certify the election, and I still believe this vote should *not* be certified and the State Board of Canvassers should canvass for an additional period.
- 28. Until these questions are addressed, I remain opposed to certification of the Wayne County results.

The above information is true to the best of my information, knowledge, and belief.

I certify under penalty of perjury, that my statement and the evidence submitted with it, are all true and correct.

Printed Name: Monica S Palmer

Signed Name: Monica Palmer

Date: \_\_\_\_\_  
Sworn to before me this 18 day of November 2020 at 9:33 pm

My Commission expires on: 08/31/2022



**JANICE L. DANIELS**  
**NOTARY PUBLIC - STATE OF MICHIGAN**  
**COUNTY OF OAKLAND**  
My Commission Expires August 3, 2022  
Acting in the County of WAYNE

**DECLARATION OF GREGORY STENSTROM IN SUPPORT OF PLAINTIFFS'  
MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY  
INJUNCTION**

I, Gregory Stenstrom, hereby declare as follows under penalty of perjury:

1. The following statements are based on my personal knowledge, and if called to testify I could swear competently thereto.

2. I am at least 18 years old and of sound mind.

3. I am a citizen of the United States and of the Commonwealth of Pennsylvania. I reside at 1541 Farmers Lane, Glenn Mills, PA 19342. I am an eligible Pennsylvania voter and am registered to vote in Delaware County.

4. I voted in the November 3rd, 2020 general election.

5. The Delaware County Republican Committee appointed me as the sole GOP poll watcher for 36 precincts (1-1 through 11-6), located in Chester City, Pennsylvania, of which I was able to inspect and observe 22 precincts.

6. The Delaware County Board of Elections provided me with a certificate of appointment as a poll watcher.

7. I carried my certificate of appointment with me when I presented at the polling locations in Chester City on Election Day and presented the certificate when requested to do so.

8. I did not attempt to enter the enclosed space within any polling location, nor interfere in any way with the process of voting, nor mark or alter any official election record.

9. On November 3rd, I observed poll workers in multiple assigned Chester City polling places, that included the 1-3, 1-4, 1-6, 2-1, 2-2, 2-3, 11-2, and several others, provide regular ballots, rather than provisional ballots, to voters who were told they had registered to

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vote by mail, without making them sign in the registration book. I challenged the practice in those precincts where I observed it, and while I was present, they then stopped the practice and began providing provisional ballots. I was informed at each polling location by their respective judge of elections that I was the only GOP poll watcher they had seen in this 2020 election, or any other election they could remember.

10. On the evening of November 3rd, I went to the Delco Chester City counting center with my certified poll watcher certificate, to observe, on assignment as the sole poll watcher from the Tom Killion Campaign, as authorized and tasked to do so by Cody Bright, Mr. Killion's campaign manager, at approximately 6pm. Mr. Bright had been informed, and he informed me in turn, that there were "a dozen national level GOP poll watchers" at the counting center observing and monitoring, but he was apparently misinformed. I checked into the building observing their COVID-19 procedures, and took the elevator from the ground floor to the 1<sup>st</sup> floor counting room, was denied entry, surrounded by first four (4) Park Police, and then an additional five (5) joined them. I presented my poll watcher certificate, and refused to leave, and was threatened with physical removal and arrest, which I humorously stated would be agreeable to me, de-escalating the situation, at which point I was informed there was a separate list for "observers," and I had to somehow get on it. I asked if there were any GOP poll watchers in the building and was informed by Deputy Sheriff Donahue that there were two (2) inside. I asked to speak to them, and one man came out. I asked him how he got on the list and he stated he had volunteered via email and been told to go there, with no other explanation as to what he was supposed to do other than "watch," and that he was leaving shortly. I asked him if he knew what he was supposed to be "watching" and if he could see anything at all, and he stated he had

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“no idea,” and “couldn’t see anything from behind the barriers.” I went back to the ground floor  
to figure out how to gain access and make calls.

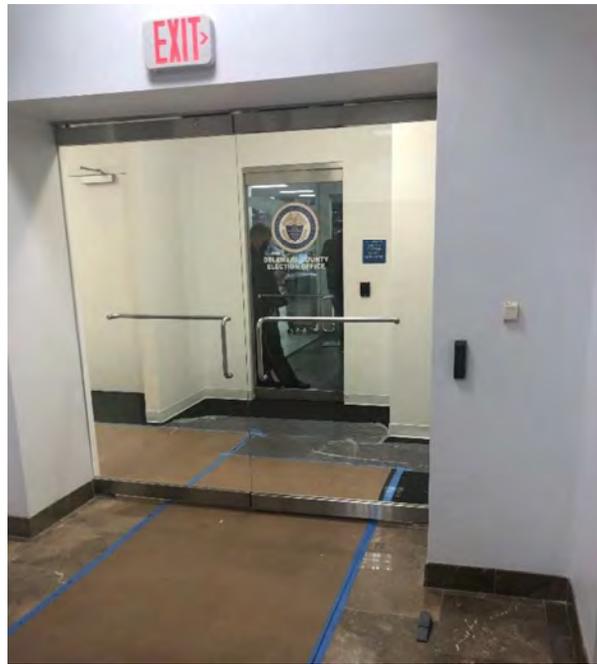


Figure 1 - Entrance to DelCo Vote Counting Center from 1st Floor Elevator bank



Figure 2 - Inner Entrance to DelCo Vote Counting Center - Note DelCo County employee  
approaching to stop photo

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11. While on the ground floor working on obtaining GOP assistance and authorized access, I witnessed organized chaos with rolling racks of mail-in ballots going in different directions with some going to the cafeteria, and some going to and from the main elevators, the separate garage loading dock elevators, and some to and from the back doors closest to the Delaware River, without any chain of custody. There was no apparent process integrity, or obvious way for anyone to determine the origin of any mail-in ballot, or its ingestion, or egress into the system. Some workers sat at cafeteria tables while others brought them boxes of mail-in ballots, while yet others collected and pushed the rolling racks around. Joe Masalta took videos and photos of this operation, and has also completed an affidavit.

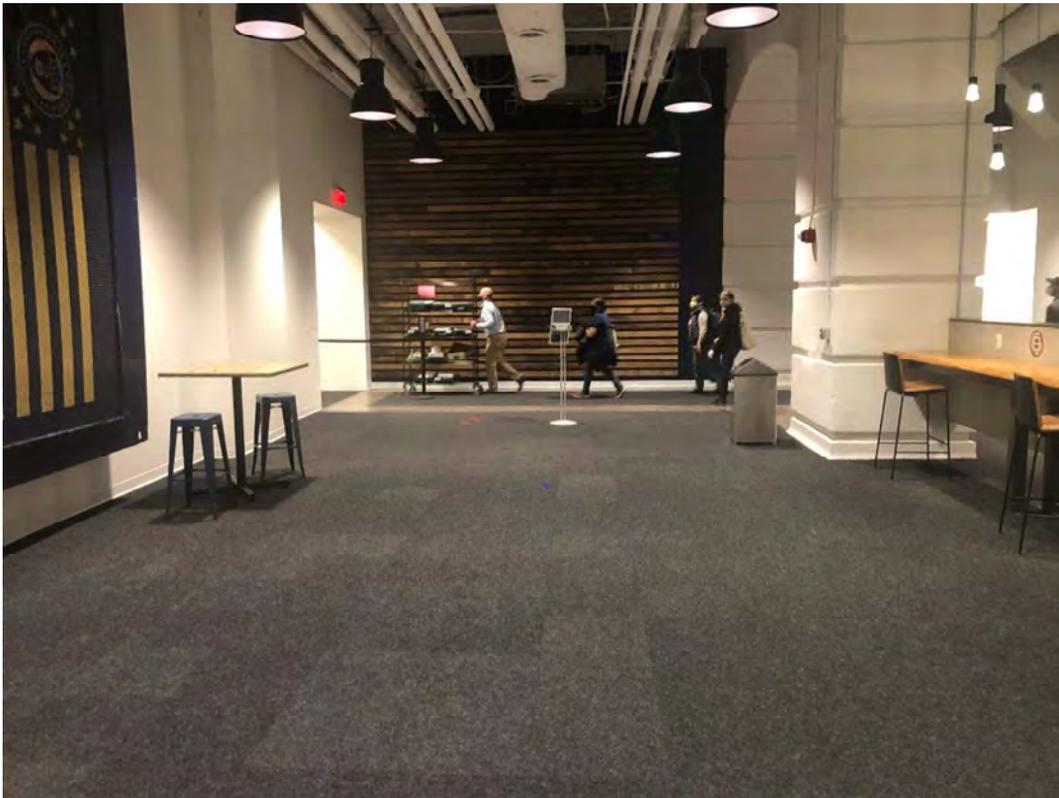


Figure 3 - Election Evening - Multiple Racks of Mail-In ballots in green trays of 500 were going in multiple directions from multiple points of entry up and down elevators that led from the garage loading dock to the top floor of the building.

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12. After seeking legal assistance through multiple avenues, I obtained a lawyer, John McBlain, after a call to the 501C Project Amistad organization, who arrived on site at approximately 10pm, and we went back up to the 1<sup>st</sup> floor counting room. We were met with similar hostility to my earlier experience, and went back to the ground floor where Mr. McBlain made multiple phone calls. I learned he was a former Delaware County Solicitor and familiar to some of Election Board staff. I was subsequently added to the entry list and finally gained access as an official “observer,” along with Mr. Barron Rendel, one of several people I had asked to accompany me, at approximately 11pm, five (5) hours after our arrival.

13. We were the only GOP “observers” in the room, that was otherwise packed with Democrat employees, volunteers, and poll watchers.

14. I observed a counting room for ballots with counting machines. Trays of ballots came in through three doors that appeared to lead from a back office, a second back office supply room, and doors leading from an outside hallway with separate elevator access from the public elevators and the garage loading dock elevators.



Figure 4 - The BlueCrest Sorting Machine Loading Tray section

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15. I had no meaningful opportunity to observe any part of the count: the sorting appeared to have been done elsewhere, and the machines were too far away from the observation position to see any part of the mail-in envelopes or ballots. I observed opened ballots going out the second back office closest to the windows in red boxes after handling and sorting by volunteers, some being placed in green boxes, and ballots from the green boxes being placed in scanners by workers, similar to the scanner I had used to vote myself, but was too far away (30 feet) to be sure. I asked the sheriff where the ballots came from, and where the ones that were leaving the room went, and he said he did not know.

16. I asked Ms. Lorraine Hagan, the elections official in charge of the operations, where the ballots were coming from and how they were being processed. She responded that I was only there to observe, and that I had no right to ask any questions. I said that I wanted to observe the activity in the sequestered room, but she denied my request, stating that the law prohibited access to that room by poll observers. I responded that there was no law denying access to observers, and she then said that it was “a COVID thing.” I pointed out that I have a mask on, and so did the people visible through the door when it opened. She then informed me that she wanted to prevent us from “interfering.” I responded that I was only there to observe and not to interfere, and to make a statement if I observed something wrong. Ms. Hagan said, “I assure you that everything’s fine. There’s no fraud going on.”

17. Shortly after this exchange with Ms. Hagan, workers – who appeared to be volunteers – started bringing in semi-opaque bins with blue folding tops that contained clear plastic bags, approximately 10” square, with each bag containing a scanner cartridge, a USB drive, and a paper tape, and they were brought to the computer tables which contained four (4) computer workstation towers on tables connected to four (4) wall mounted monitors, with one

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workstation tower on the floor under the tables that was not connected to a monitor, for a total of five (5) computers. A flurry of workers started disassembling the bags and separating out the USB sticks, cartridges, and paper tapes from the plastic bags, and dropping them in open cardboard boxes, with two workers sticking the USB drives into the computers to start the election day counts. I immediately objected, and demanded that Mr. McBlain challenge the process, and he again retrieved Ms. Hagan to hear my objections. I asked why the returned items had not come with the sealed bags from the judges of elections, and she explained that they had been taken out of the bags at the three (3) county election “processing centers” by the Sheriffs who were collecting them for ease of transport, and I stated that that was a break in the chain of custody, to which she shrugged her shoulders. I then asked her why they were separating out the USB drives from the cartridges and paper tapes, which was destroying any forensic auditability and further corrupting chain of custody, and she said “that’s how we have always done it,” and again stated I had no right to object, interfere, and was only permitted to observe, turned on her heels and walked away. I pleaded with Mr. McBlain to intervene and at least demand that the USB drives remain with the cartridges and tapes in the plastic bags so we would not have to reassemble them during tabulation, and he did nothing.

18. It is noteworthy that dozens of “volunteer” workers constantly streamed through the counting area unaccompanied, with no check of either ID’s, or names, as the certified poll watchers were, several still wearing “Voter Integrity” lanyards and badges that had been widely distributed by Democrat poll watchers throughout the day, and they walked about unrestricted, and unaccompanied without any scrutiny, many handling ballots.

19. After multiple, similarly caustic exchanges, elections officials continued to refuse access to the back rooms and a line of sight to anything meaningful, and under threat of removal

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by Park Police and Sheriffs we were stuck “observing” in a small box where we could essentially see nothing, and I again conveyed to John McBlain that I wanted to pursue further legal recourse to gain meaningful access, and he left the roped off area to seek Solicitor Manly. At approximately 2:30am he returned, and stated he had a conversation with the President of the Board of Elections, and they had agreed to allow us access to the “back office” and “locked “ballot room” at 9:30 AM the following morning. By that time, and given that any other legal recourse would have taken as long, or longer, and there was nothing meaningful to observe, I objected, but reluctantly agreed and left. I believe counting continued through the night because the count had increased, when I returned several hours later, the count on the tally screen was approximately 140,000 for Biden, and 85,000 for President Trump, and with all Republican candidates of all other races leading their opponents.

20. As agreed only seven (7) hours previous with the Chairman of the Board of Elections and Solicitor Manly, I returned with attorney John McBlain, and Leah Hoopes, an official poll watcher for President Trump, at 9:30 AM. The elections officials ignored us for two hours, and at 11:30 AM, Ms. Hagan informed us that she would give a tour of the Chester City counting center to our group and a few Democrat poll watchers. I stated that I did not want a tour of the facility, that I only wanted them to honor their agreement to allow direct access to the sequestered counting room, and was ignored. Ms. Hagan, along with Ms. Maryann Jackson, another elections official, did not allow us to enter the sequestered counting room. Instead they walked us in an approximate 20-foot circle directly in front of the roped off area we had been restricted to, discussing the basics of election balloting but provided no insight into the purpose of the sequestered counting room.

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21. One comment made by Ms. Hagan led me to think that “pre”-pre-canvassing happened in the back room. The comment indicated that all ballots had been checked before going downstairs to the ground floor cafeteria for pre-canvassing, before being brought back to the 1<sup>st</sup> floor counting area, and entering the main counting room, for accuracy/sufficiency of signature, date, and barcode label, and entry in the Commonwealth SURE system. I specifically asked Ms. Hagan whether the names and signature were matched, and whether the dates and barcode label were accurate. She replied in the affirmative. I then asked whether the names were checked against the voter registration rolls, and she again answered in the affirmative, indicating that people in the back room did the checking.

22. From my vantage point, I observed approximately ten people in the back room through the door when it was opened. Ms. Hagan confirmed that no ballots went through the BlueCrest sorter (photo included herein) without first being checked for name, date, signature, and barcode.

23. I could see 4000-5000 ballots in bins on the racks next to the BlueCrest Sorter, and I asked both Ms. Hagan and Ms. Jackson in front of the group “If all of the mail in ballot envelopes are checked for completion, as you stated, then why are there multiple large bins of ballots on the racks next us between the BlueCrest sorter and ballot extractors labeled “No Name,” “No date,” and “No signature,” on the bins?” The election officials, red faced, declined to answer. At this time, several Democrat observers, including Mr. Richard Schiffer, conferred with myself and Ms. Hoopes and stated that they were now not comfortable with the ballot ingestion process, and the back room, being sequestered from all watcher’s sight, and also wanted to see the back room with us. The bins mentioned above were removed shortly after.

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24. At this time, Ms. Hagan and Ms. Maryann Jackson ended the “tour” to “take a phone call” upon the arrival, and demand of Solicitor Manley Parks, and the “tour” was abruptly ended. I asked Solicitor Parks when that phone call would be done so that we could see the back rooms as promised, and he said he did not know. I asked him if he intended to grant us access as promised, and he simply turned around, and walked into the back room without further comment. Ms. Hagan, Ms. Jackson, and Solicitor Parks never returned, and we left after two (2) hours after having been denied access to the back room.

25. Mr. McBlain, our attorney, went to court and obtained a court order providing access to the room, and texted me that the court order had been signed by Common Pleas Judge Capuzzi at 9:30 PM, and the court order required that observers receive only a five minute observation period in the sequestered room once every two hours.

26. I returned the following morning at 8:30 AM with Ms. Hoopes and the sheriff again barred entry despite the court order. I contacted Judge Capuzzi’s chambers directly and explained to his secretary that the elections officials were not complying with his order. She suggested that I consult with my attorney to follow through, and that she could not discuss the matter further with me.

27. When I returned to the main room, I saw that some areas had been cordoned off, and John McBlain unexpectedly came out from the back room and stated he had conferred with Solicitor Manley Parks and they had mutually agreed to bringing ballots in question out from the sequestered room to the main room so that I didn’t have to go into the back room. Mr. McBlain told me that the elections officials were going to bring 4500 of the 6000 total ballots in the back room out to the main room, and leave the remaining 1500 spoiled ballots in the “spoilage room.” I made Mr. McBlain confirm multiple times that the “universe” of remaining ballots in the back

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room that remained to be processed was, in fact 6,000, and further made him affirm multiple times that he had personally sighted those ballots in the back rooms and storage rooms, and he re-affirmed this multiple times to me,

28. Mr. McBlain stated that their new plan was to re-tabulate the 4500 ballots by re-filling them out with a pen so that they could be read by voting machines, so we could “see everything.” I followed him out of the counting room, and continued to ask him if it was, in fact, legal under election law to cure ballots, and was unconvinced that this was the case, and thought we should challenge it, but he assured me it was “normal” procedure and got on the elevator and left. It was during this time that Leah Hoopes, who had remained behind in the counting room (see her Affidavit) observed Jim Savage, the Delaware County voting machine warehouse supervisor, walk in with about a dozen USB drives in a clear unsealed bag, and she showed me two photos she had been able to surreptitiously take (no photos or camera use was permitted anywhere in the counting rooms despite live streaming cameras throughout the room).

29. I went back outside to see if I could retrieve Mr. McBlain, unsuccessfully, and upon my return to the counting room at approximately 11am, I observed Mr. Savage plugging USB drives into the vote tallying computers. The bag containing those drives was not sealed or secured, and the voting machine cartridges were not present with the drives, and he had no ballots at that time.

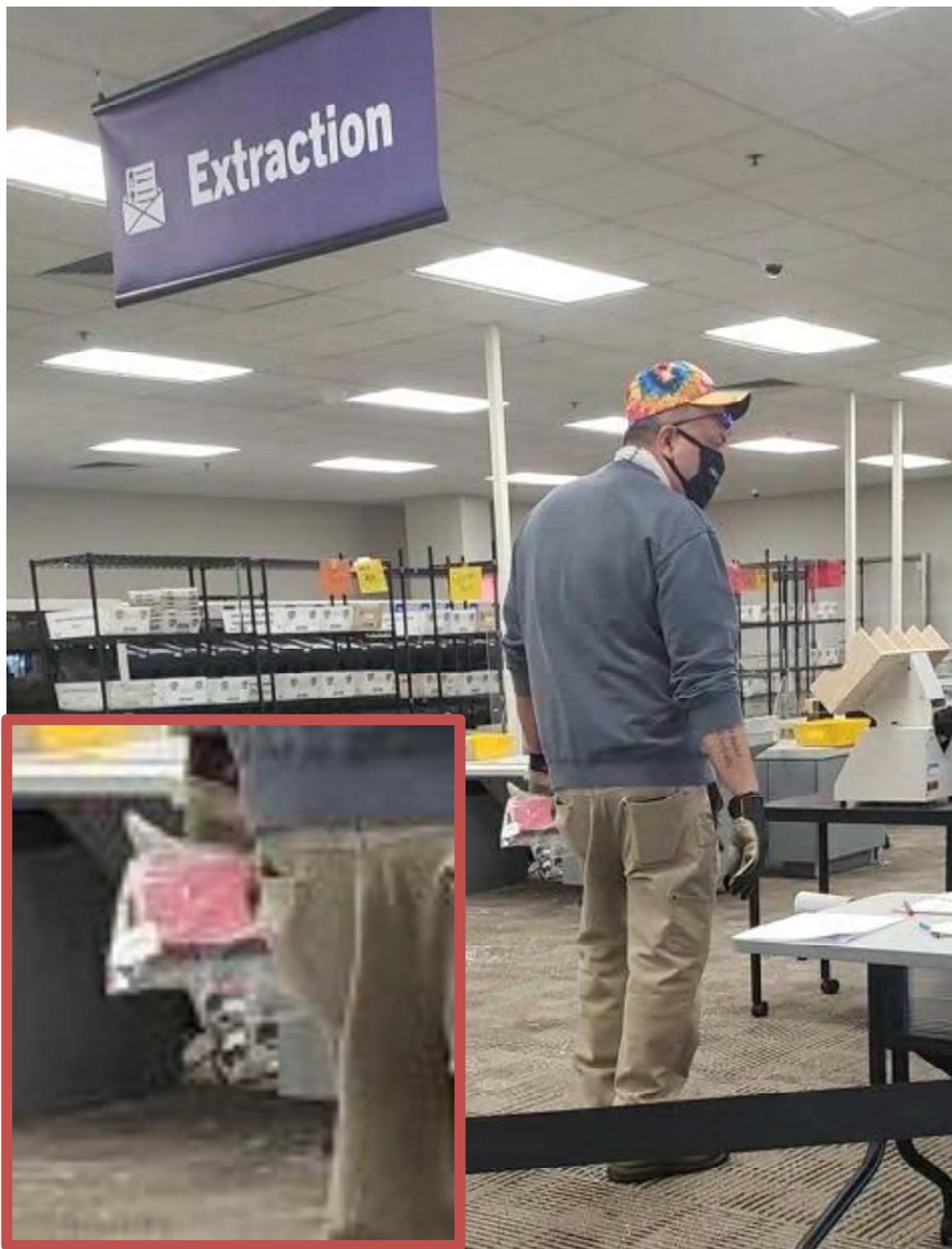


Figure 5 - Delco Voting Machine Warehouse Manager Jim Savage holding bag of USB drives  
Thursday morning

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30. I immediately objected and challenged the uploading of votes from the unsecured drives, and retrieved Deputy Sheriff Mike Donahue with my objection, and he went to the back room to retrieve Ms. Hagan. Ms. Hagan informed me that I could only observe the process but I could not make any comments or ask any questions while Mr. Savage was directly in front of us loading USB sticks, and the display monitors above the computers reflected that they were being updated. I responded that I was indeed observing a person plug USB sticks into the computer without any apparent chain of custody and without any oversight. No one stopped the upload, and Mr. Savage was permitted to continue this process and he was then allowed to walk out without any interference or examination by anyone. I called and texted Mr. McBlain throughout the day without success to get him back to the counting center to address the USB issue, and what was now being reported to me by other GOP observers that there appeared to be more additional paper ballots in excess of the 6000 “universe” coming into the office administration area that McBlain had assured me of, to represent us and get us into the back office and storage room as ordered by the judge. He would not return until approximately 5:30pm.

**31. Approximately one hour after Savage had departed, at 1:06pm, the center published an update on the vote. The numbers moved dramatically as follows: from approximately 140,000 Biden and 85,000 Trump in the morning; to now approximately 180,000 Biden and 105,000 Trump after the 1:06 PM update. (At that 1:06 PM update, ALL Republican candidates who had previous leads were reversed and flipped).**

32. Having seen the USB updates, and now seeing paper ballots in the back office, and other observers reporting that they had seen more ballots as well, I went outside and again called Judge Capuzzi’s office and again spoke with his secretary and explained the situation, and the McBlain had departed and was nonresponsive to calls or texts, and she asked me what I

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wanted the judge to do. I stated that I wanted him to call to demand his order be enforced, and that I would gladly bring my phone back up and hand it to the Sheriff and Solicitor. She stated she could not provide any legal advice, suggested I seek legal counsel, and hung up. She did not realize she had not actually seated the phone in it's receiver and I heard loud laughter from her and a deeper toned laugh from a male before the line went dead, and I returned back inside to the counting floor.

33. At 1:30 PM, Deputy Sheriff Donahue inexplicably informed me I would now be allowed to access the locked ballot room for exactly 5 minutes, after having been denied access despite all previous efforts. We were met by Delaware County Solicitor William F. Martin, and I was joined by Democrat Observer Dr. Jonathan Brisken. On my way to the locked storage room, while passing through what was now referred to as the "back office," I counted 21 white USPS open letter boxes on two racks, on my immediate right after entering the room, labeled "500 ballots" per box. In addition, the approximately 16 cubicles for workers in the same room each contained one box also labeled "500 ballots," for a total of 31 boxes of 500 in that sequestered room. This is the same room that McBlain had stated had 4,500 ballots in it earlier, most of which had been presumably moved to the front of the counting room (and later cured and copied to new ballots) and was supposed to be relatively empty with the exception of "several hundred ballots being processed by workers to update the Commonwealth's SURE system," according to McBlain. This was a delta (difference) of approximately 16,500 ballots in just the "back office."



Figure 6 - Table with 4,500 opened ballots that would reportedly not scan being sorted and cured. Note approximate 10 foot distance from "observer" barrier

34. Just after the two racks with the 21 boxes of 500 unopened ballots each, I observed an open door to a 20'x30' storage room with dozens of semi opaque storage bins with blue folding tops that appeared to have envelopes in them. I could see through to another door that led back into the counting room which was the same door I had seen workers bring red bins full of "spoiled" ballots in the previous evening.

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35. I also saw one shelf just to the left of the locked and secured “ballot room” with 4 sealed boxes. I lifted one box before Solicitor Martin objected that I could not touch anything, and it was heavy, and approximately 30-40 pounds. They appeared to match the description of the boxes described to me earlier by poll watcher Jim Driscoll and another observer with a first name of Paul. If those boxes contained ballots, I estimate that they were about two times the size of the 500-ballot containers, and if full, could have contained an additional 2,500 ballots per box for a total of 10,000.

36. Ms. Hagan unlocked and opened the “ballot room” and Solicitor Hagan entered first and started the timer for 5 minutes, with Sheriff Donahue following us and closing the door behind us. There were multiple racks filled with thousands of unopened mail-in ballots. We were not allowed to take any photos, so I immediately started counting. Labels on some boxes were visible, mostly with names of districts known to trend Republican, including Bethel and Brandywine. I took the following notes at the time:

- a. 5 boxes of 500 labeled 10-12
- b. 5 boxes of 500 labeled 18-20
- c. 1 box of 500 each, labeled 26-28, 50-52, and 58-60.
- d. The remaining boxes did not have markings visible and we were not allowed to touch them to determine their origin.
- e. Democratic poll watcher Dr. Jonathan Briskin also observed these boxes and confirmed the numbers of ballots, and that the total number of ballots was vastly greater than we had been led to believe earlier in the day.
- f. I later observed Dr. Briskin working with a fellow female poll watcher drawing a diagram and detailing what he had seen after we were returned to

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the roped off area in the counting room, and noted it was quite detailed and corroborated what I had observed in the ballot room.

37. In addition to the boxes of unopened mail-in ballots, I observed another shelf that was packed with open and ripped clear plastic bags with cartridges, green security ties, and a 16"x16"x28" cardboard box labeled "CHAIN OF CUSTODY RECEIPTS." In total, I estimated approximately 18,500 unopened mail-in ballots, which Dr. Briskin uncomfortably concurred with.

38. So, after being told the "universe" of total remaining paper ballots to be counted was 6,000 by Mr. McBlain, the 1:30pm tour, on Thursday, two days after election, and 38 hours after being denied access, and having to obtain a court order, I sighted a total of:

- a. 16,500 unopened mail-in ballots in the "back office"
- b. 18,500 unopened mail-in ballots in the locked "ballot room"
- c. Potentially 10,000 ballots in the sealed 30-40-pound boxes outside of the locked ballot room
- d. 4,500 ballots being "cured" in the counting room
- e. For a grand total of 49,500 unopened ballots***

39. To my knowledge, and according to the tally monitor, and as reported on the web, 113,000 mail-in ballots had been requested, and 120,000 mail-in ballots had already been counted, with an approximate outcome of 18,000 for President Trump and 102,000 for Biden already recorded.

40. At that time, I assumed that the approximately 49,500 unopened ballots would also be processed in the pending running of the sorter, envelope-ballot extractors, and scanners, adding those ballots to the overall total.

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41. At 3:30 PM, I again re-entered the room, now accompanied by another Democrat poll watcher who did not provide her name, and in addition to the boxes I previously observed and described above, which remained undisturbed, I saw an additional two racks had been moved into the room, with another 16 additional, new boxes of 500 unopened mail-in ballots with approximately 8000 more unopened mail in ballots labeled 5-2, 6-1, 6-2, and 7-2, with some labels not visible from my position. There were three red “spoiled” ballot boxes with several shed ballots visible in one, and the others appeared to be empty, but I could not verify as I was not allowed to touch anything or take any photos. The 21 boxes in the “back office” were still in place, so this brought the suspected unopened mail in ballot total to **57,500**.

42. I asked Sheriff Donahue when the next machine run that would process the unopened ballots was scheduled for, and was informed that election officials planned on a 4:00PM start, and I could see workers coming in and preparing. I went outside to call GOP officials to see if we could potentially either delay the run, or be permitted to get close enough to the machines to see something, but was unsuccessful.

43. When I returned at 5:30 PM for the next 5 minute tour, I was informed that a Committeewoman, and Delco GOP representative, Val Biancaniello, had been taken in my place by Solicitor Martin, and upon her return I asked her why she would do that, and what she had observed. She stated she had “not seen any fraud” and I again asked her specifically, if she had seen boxes of unopened mail in ballots, and she said “oh, yes, lots of them,” but could not recall any further details. When I pressed her for more details, she became very angry, and told me I needed to “relax,” and that she had “straightened everything out,” and gotten more observers to watch over the re-filling out of the 4,500 ballots that could not be scanned.

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44. It is noteworthy that I was able to see the table of 4500 ballots being curated and re-filled out, and those I was able to see were all for Biden without exception. I asked Joe Driscoll if he had been able to see, and he said he had seen 15 for Biden and 1 for President Trump, before election officials repositioned the barrier moving us back from being able to see.

45. For the 7:30 5-minute inspection, Val vigorously objected to me going back into the room, and demanded we send Attorney Britain Henry instead, who had been convinced to come to the center by Leah Hoopes, and who I had been speaking with for the previous hour. Val stated she had “got him down there,” which was confusing to me, but I agreed it would be a good idea for an attorney to corroborate my observations, and briefed him of the layout, previous observations, and what to look for over Val’s increasingly loud, and impatient objections.

46. Attorney Henry returned from the tour and essentially corroborated my observations, and my understanding is he is preparing a statement of what he observed. I did not understand, and could not reconcile at that time, why the election result counts had remained roughly the same, while the sorters and envelope extraction machines had been running for almost 4 hours, and presumably processing mail in ballots, and at that time attributed it to the count not being updated on the monitor.

47. In the presence of Ms. Biancaniello and Attorney Henry, I asked the now present Mr. McBlain to explain how the USB drives had made their way to the center carried by Mr. Savage. He informed me that in his experience, some USB drives were typically left in voting machines by judges of elections overnight in previous elections, and that Mr. Savage had simply found them in the machines that had been returned from polling locations back to the warehouse, including machines that still had all components in them (USB. Cartridge, and Paper Tape) and that the next day he had transported approximately 24 USB sticks and an assortment of

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cartridges and tapes from the warehouse to the counting center. I pressed him to find out why there had been so many, and why there was no chain of custody, and why Mr. Savage would be involved in entering the USB drives into the computers without any other election officials present, particularly Ms. Hagan, who had overseen the process previously. Mr. McBlain informed me that it had been explained to him that some judges of elections had left entire scanners – with cartridges, USB drives and tapes – and that the moving company had returned them to the warehouse, where Mr. Savage collected everything and put them in bags. This explanation, in part, accounted for the 5 large election judge bags that I witnessed had been carried in by a Sheriff earlier, and I was able to take photos of them being removed from the building later.



Figure 7 – Presumed Cartridges, USB, Paper Tape from scanner, properly sealed with green lock tie, being brought into building on THURSDAY morning by Sheriff, having been allegedly returned to the warehouse WEDNESDAY morning. They were opened without observers in off limits sequestered area



Figure 8 - Five (5) more bags from scanners that had been allegedly "left at polling locations" and brought to counting center THURSDAY afternoon. Sheriff Donahue is on left.

48. I informed Mr. McBlain in the presence of Ms. Biancaniello that I had seen the 30,000 vote jump for Biden after Mr. Savage had plugged in the USB drives earlier, as described above, and asked them both if that was "normal" for previous elections, and they did not respond.

49. Despite my multiple, strong and forceful objections, to the lack of transparency, and what I perceived to be a significant break down in any chain of custody, I was routinely ignored by election officials, and was met by mostly blank stares and shoulder shrugs by Mr. McBlain. I could not understand how the mail-in ballot count remained essentially steady at

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120,000 when myself and multiple others described herein had sighted anywhere from 20,000 to 60,000 unopened mail in ballots AFTER the 120,000 count had already been completed and updated on the <http://DelcoPA.Gov/Vote> website. I do not know where the 120,000 ballots went from the counting room after being counted, and was ignored by Ms. Hagan when I asked her where they were, and denied access to see them. At the end of the day on Thursday, I observed the opaque blue lidded plastic boxes stacked against the wall next to the BlueCrest sorter with what appeared to be mail-in voter envelopes but was not permitted to go near them and find out if they were opened and empty, or still sealed with ballots, or still had ballots in them, and they disappeared from the room shortly after I took the photo below.

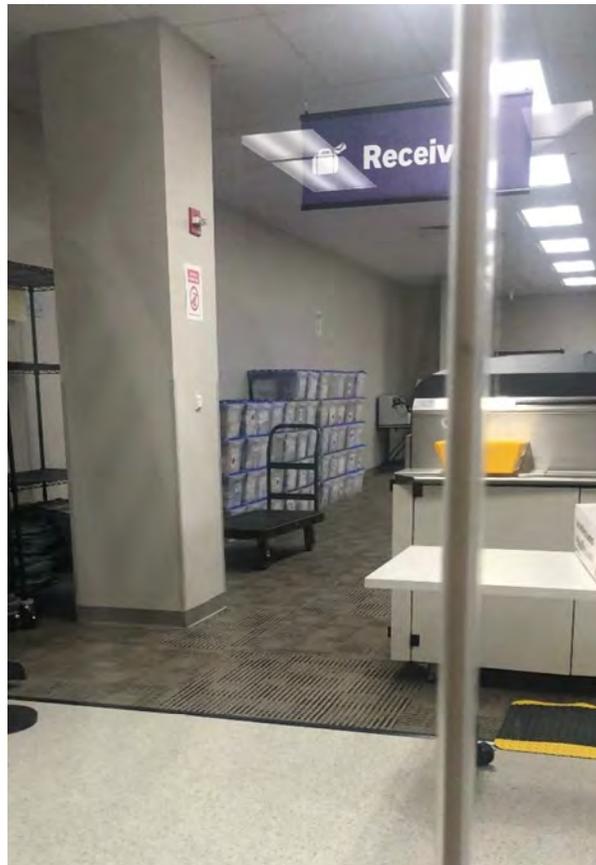
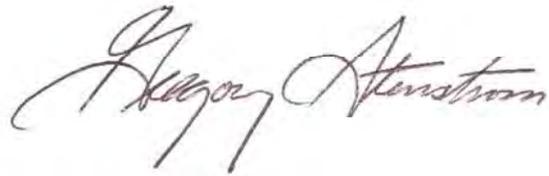


Figure 9 - Bins that had been moved from off limits "Office Space" storage room to another off limits area with what appeared to be envelopes inside to Receiving area near exit doors on Thursday evening - they were removed and gone shortly afterwards.

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50. As a result of the election officials' acts, I was unable to fulfill my responsibilities or exercise my rights as an official observer. I was continuously harassed, threatened, denied access to the room and the ballots, and the election officials were openly hostile and refused to answer questions, repeatedly defied a court order to provide access, and obstructed my ability to observe the count in a way that would enable me to identify irregularities, which is the primary purpose of the observer role.

A handwritten signature in cursive script that reads "Gregory Stenstrom". The signature is written in dark ink and is positioned above a horizontal line.

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Gregory Stenstrom

09 November 2020

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

DONALD J. TRUMP FOR	)	CIVIL ACTION
PRESIDENT, INC.; LAWRENCE	)	
ROBERTS; and	)	
DAVID JOHN HENRY;	)	
	)	
Plaintiffs,	)	
	)	No. 20-CV-02078
v.	)	
	)	
KATHY BOOCKVAR, in her capacity	)	
as Secretary of the Commonwealth of	)	
Pennsylvania; ALLEGHENY	)	
COUNTY BOARD OF ELECTIONS;	)	
CENTRE COUNTY BOARD OF	)	
ELECTIONS; CHESTER COUNTY	)	
BOARD OF ELECTIONS;	)	
DELAWARE COUNTY BOARD OF	)	
ELECTIONS; MONTGOMERY	)	
COUNTY BOARD OF ELECTIONS;	)	
NORTHAMPTON COUNTY BOARD	)	
OF ELECTIONS; and	)	
PHILADELPHIA COUNTY BOARD	)	
OF ELECTIONS;	)	
	)	
Defendants.	)	

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

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

## INTRODUCTION

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

2. Nothing less than the integrity of the 2020 Presidential election is at stake in this action. Defendants, the very officials charged with ensuring the integrity of the election in Pennsylvania, have so mismanaged the election process that no one – not the voters and not President Trump’s campaign – can have any faith that their most sacred and basic rights under the United States Constitution are being protected.

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

4. Allegheny and Philadelphia Counties alone received and processed 682,479 mail-in and absentee ballots without review by the political parties and candidates. These are unprecedented numbers in Pennsylvania’s elections history.

Rather than engaging in an open and transparent process to give credibility to Pennsylvania's brand-new voting system, the processes were hidden during the receipt, review, opening, and tabulation of those 682,479 votes.

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

6. Worse, Democratic-heavy counties illegally advantaged voters in Democratic-heavy counties as compared to those in Republican-heavy counties. Democratic-heavy counties engaged in pre-canvass activities by reviewing received mail-in ballots for deficiencies, such as lacking the inner secrecy envelope or lacking a signature of the elector on the outer declaration envelope. Those offending Counties then would notify those voters in order to allow them to cure their ballot deficiencies by voting provisionally on Election Day or cancelling their previously mailed ballot and issuing a replacement. In other words, those counties provided their mail-in voters with the opportunity to cure mail-in and absentee ballot deficiencies, while Republican-heavy counties, such as Snyder County, followed the law and did not provide a notice and cure process, disenfranchising many.

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

8. “The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” [\*Bush v. Gore\*, 531 U.S. 98, 104-05 \(2000\)](#). All citizens deserve to vote in a transparent system.

9. As evidenced by numerous sworn statements, Defendants’ egregious misconduct has affect all mail-in ballots – which amounted to over 2.6 million of the approximately 6.75 million votes in Pennsylvania – including the mandate that mail-in ballots be post-marked on or before Election Day, and preventing Plaintiff’s poll watchers from observing the receipt, review, opening, and tabulation of mail-in ballots.

10. In a rush to count mail ballots and ensure Democrat Joe Biden is elected, Pennsylvania has created an illegal voting system for the 2020 General Election, devaluing certain votes.

11. Accordingly, Plaintiffs seek an emergency order prohibiting Defendants from certifying the results of the General Election. In the alternative, Plaintiffs seek a permanent injunction requiring the County Election Boards to

invalidate ballots cast by voters who were notified and given an opportunity to cure their invalidly cast mail-in ballot.

### **JURISDICTION AND VENUE**

12. Under [28 U.S.C. §§ 1331 & 1343](#), this Court has subject matter jurisdiction because this action arises under the Constitution and laws of the United States and involves a federal election for President of the United States.

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

### **PARTIES**

14. Plaintiff Donald J. Trump for President, Inc. (hereinafter, the “Trump Campaign”), is the principal committee for the reelection campaign of Donald J. Trump, the 45th President of the United States of America (hereinafter, “President Trump”). President Trump is the Republican nominee for the office of the President of the United States of America in the November 3, 2020 General Election. The Trump Campaign brings this action for itself and on behalf of its candidate, President Trump. As a political committee for a federal candidate, the Trump Campaign has Article III standing to bring this action. *See, e.g., Orloski v. Davis*, 564 F. Supp. 526, 530-31 (M.D. Pa. 1983). *See also Tex. Democratic Party*

*v. Benkiser*, 459 F.3d 582, 587-588 (5th Cir. 2006) (“[A]fter the primary election, a candidate steps into the shoes of his party, and their interests are identical.”); *In re General Election-1985*, 531 A.2d 836, 838 (Pa. Commw. Ct. 1987) (A candidate for office in the election at issue suffers a direct and substantial harm sufficient for standing to contest the manner in which an election will be conducted).

15. Plaintiff David John Henry (hereinafter, “Mr. Henry”) is an adult individual who is a qualified registered elector residing in West Hempfield Township, Lancaster County, Pennsylvania. Mr. Henry constitutes a “qualified elector” as that term is defined in Election Code Section 102(t), [25 P.S. § 2602\(t\)](#). Mr. Henry brings this suit in his capacity as a private citizen. As a qualified elector and registered voter, Mr. Henry has Article III standing to bring this action. See *Orloski*, 564 F. Supp. at 530; *Pierce*, 324 F. Supp. 2d at 692-93. Mr. Henry was notified that his ballot was canceled three days after the election on November 6, 2020. The ballot was cancelled due to it not being enclosed in a secrecy envelope.

16. Plaintiff Lawrence Roberts (hereinafter, “Mr. Roberts”) is an adult individual who is a qualified registered elector residing in Uniontown, Fayette County, Pennsylvania. Mr. Roberts constitutes a “qualified elector” as that term is defined in Election Code Section 102(t), [25 P.S. § 2602\(t\)](#). Mr. Roberts brings this suit in his capacity as a private citizen. As a qualified elector and registered voter,

Mr. Roberts has Article III standing to bring this action. *See Orloski, 564 F. Supp. at 530; Pierce, 324 F. Supp. 2d at 692-93.* Mr. Roberts learned on November 9, 2020 that the voter services website in Pennsylvania indicates that his ballot was canceled. No one called or notified him of that fact.

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

18. Defendants Allegheny, Centre, Chester, Delaware, Philadelphia, Montgomery, and Northampton County Board of Elections (collectively hereinafter, the "County Election Boards") are the county boards of elections in and for the aforementioned counties of the Commonwealth of Pennsylvania as provided by Election Code Section 301, 25 P.S. § 2641. The County Election

Boards “have jurisdiction over the conduct of primaries and elections in such count[ies], in accordance with the provision of [the Election Code.]” *Id.* at § [2641\(a\)](#). The County Election Boards’ general powers and duties are set forth in Election Code Section 302, [25 P.S. § 2642](#). The County Election Boards are executive agencies that carry out legislative mandates, and their duties concerning the conduct of elections are purely ministerial with no exercise of discretion. [Shroyer v. Thomas](#), 81 A.2d 435, 437 (Pa. 1951); [Perles v. Hoffman](#), 213 A.2d 781, 786 (Pa. 1965) (Cohen, J., concurring). See also [Deer Creek Drainage Basin Authority v. County Bd. of Elections](#), 381 A.2d 103, 109 (Pa. 1977) (Pomeroy, J., dissenting) (“A board of elections, it has been well said, “does not sit as a quasi-judicial body adjudicating contending forces as it wishes, but rather as an executive agency to carry out legislative mandates. Its duties are ministerial only.”); [In re Municipal Reapportionment of Township of Haverford](#), 873 A.2d 821, 833, n.18 (Pa. Commw. Ct. 2005) (“The duties of a board of elections under the Election Code are ministerial and allow for no exercise of discretion.”), *appeal denied* [897 A.2d 462 \(Pa. 2006\)](#).

## **FACTUAL ALLEGATIONS**

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

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

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

21. 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).

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

23. 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.”).

24. Because the United States Constitution reserves for state legislatures the power to set the time, place, and manner of holding elections for Congress and the President, state executive officers, including but not limited to Secretary Boockvar, have no authority to unilaterally exercise that power, much less flout existing legislation.

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

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

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

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

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

29. As it exists today, Election Code Section 417, codified at [25 P.S. § 2687](#), creates the position of watcher and entrusts to each candidate for nomination or election at any election, and each political party and each political body which has nominated candidates for such elections, the power to appoint watchers to serve in each election district in the Commonwealth. *See* [25 P.S. § 2687\(a\)](#).

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

31. Under Election Code Section 417(b), watchers may observe the election process from the time the first polling place official appears in the morning to open the polling place until the time the polls are closed and the election returns are counted and posted at the polling place entrance. [25 P.S. § 2687\(b\).](#)

32. In addition to the activities authorized by Election Code Section 417(b), watchers are among those who are authorized under Election Code Section 1210(d), [25 P.S. § 3050\(d\)](#), to challenge any person who presents himself or herself to vote at a polling place on Election Day concerning the voter’s identity, continued residence in the election district, or registration status. *See* [25 P.S. § 3050\(d\)](#) (“any person, although personally registered as an elector, may be

challenged by any qualified elector, election officer, overseer, or *watcher* at any primary or election as to his identity, as to his continued residence in the election district or as to any alleged violation of the provisions of section 1210 of this act, ...”) (emphasis added).

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

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

35. For example, under Election Code Section 310, [25 P.S. § 2650](#), watchers appointed by parties, political bodies, or bodies of citizens may appear “at any public session or sessions of the county board of elections,” and “at any computation and canvassing of returns of any primary or election and recount of ballots or recanvass of voting machines,” in which case such poll watchers may exercise the same rights as watchers at polling places and may raise objections to any ballots or machines for subsequent resolution by the county board of elections and appeal to the courts. [25 P.S. § 2650\(a\) & \(c\)](#).

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

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

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

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

40. Watchers and representatives serve as an important check to ensure transparency and guard against inconsistencies and other wrongdoing by election officials. The need for watchers and representatives is demonstrated by the case of *United States v. DeMuro*, Criminal No. 20-112 (E.D. Pa. unsealed May 21, 2020). In that case, a former Judge of Elections in South Philadelphia pled guilty to adding fraudulent votes to the voting machines during Election Day – also known as “ringing up” votes – and then falsely certifying that the voting machine results were accurate for specific federal, state, and local Democratic candidates in the 2014, 2015, and 2016 primary elections. The scheme involved a political consultant who purportedly solicited monetary payments from the candidates as

“consulting fees,” and then used portions of those funds to pay election board officials, including DeMuro, in return for ringing up votes. DeMuro was able to commit the fraud because there were no poll watchers at his precinct. *See United States v. DeMuro*, Criminal No. 20-112, Information ([Doc. #1](#)) (E.D. Pa Mar. 03, 2020); M. Cavacini, “U.S. Attorney William M. McSwain Announces Charges and Guilty Plea of Former Philadelphia Judge of Elections Who Committed Election Fraud,” U.S. Attys. Office – Pa., Eastern (May 21, 2020) (available at <https://www.justice.gov/usao-edpa/pr/us-attorney-william-m-mcswain-announces-charges-and-guilty-plea-former-philadelphia>).

41. The importance of watchers and representatives serving as an important check in elections is recognized internationally. The International Institute for Democracy and Electoral Assistance issued a publication in 2002 called the *International Electoral Standards: Guidelines for Review the Legal Framework of Elections*. The purpose of the International IDEA standards is to be “used as benchmarks to assess whether or not an election is free and fair.” [International Electoral Standards at v; see also id. at 6](#) (“These international standards are relevant to each component, and necessary for the legal framework to be able to ensure democratic elections. This publication is intended to identify electoral standards which contribute to uniformity, reliability, consistency, accuracy and overall professionalism in elections.”). The sources for the

*Standards* include numerous international Declarations, Charters, and Conventions, including many to which the U.S. is a signatory. See [id. at 7](#).

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

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

[Standards, at 77](#).

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

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

45. “[T]he representatives of parties and candidates should have the right to immediately query decisions made by polling officials or the implementation of

voting procedures . . . .” [Id. at 84](#). Per the *Standards*, representatives of parties and candidates should be permitted “[t]o observe all activity – with the exception of the marking of ballots by voters – within the polling station, from the check counting of ballots and sealing of ballot boxes prior to the commencement of voting to the final packaging of material after close of voting; [t]o challenge the right of any person to vote; [and t]o query any decisions made by polling officials with the polling station[,] committee president and election management officials.” [Id. at 85](#). “The legal framework must also be clear and precise concerning what a domestic observer may not do, for instance, interfere with voting, take a direct part in the voting or counting processes, or attempt to determine how a voter will vote or has voted. It should strike a balance between the rights of observers and the orderly administration of the election processes. But in no case should it hinder legitimate observation, ‘muzzle’ observers, or prevent them from reporting or releasing information that has been obtained through their observations.” [Id. at 90](#).

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

46. Failing to uphold and ensure the adherence to even basic transparency measures or safeguards against the casting of illegal or unreliable ballots creates an obvious opportunity for ineligible voters to cast ballots, results in fraud, and undermines the public’s confidence in the integrity of elections.

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

48. Courts have repeatedly found that mail-in ballots are particularly susceptible to fraud. As Justice Stevens has noted, “flagrant examples of [voter] fraud ... have been documented throughout this Nation’s history by respected historians and journalists,” and “the risk of voter fraud” is “real” and “could affect the outcome of a close election.” [Crawford, 553 U.S. at 195-96](#) (plurality op. of Stevens, J.) (collecting examples). Similarly, Justice Souter observed that mail-in voting is “less reliable” than in-person voting. [Crawford, 553 U.S. at 212, n.4](#) (Souter, J., dissenting) (“[E]lection officials routinely reject absentee ballots on suspicion of forgery.”); [id. at 225](#) (“[A]bsentee-ballot fraud . . . is a documented

problem in Indiana.”). *See also* [Veasey v. Abbott](#), 830 F.3d 216, 239, 256 (5th Cir. 2016) (en banc) (“[M]ail-in ballot fraud is a significant threat” — so much so that “the potential and reality of fraud is much greater in the mail-in ballot context than with in-person voting.”). *See also* [id. at 263](#) (“[M]ail-in voting . . . is far more vulnerable to fraud.”); *id.* (recognizing “the far more prevalent issue of fraudulent absentee ballots”).

49. Pennsylvania is not immune to mail-in ballot fraud. For example, in 1999, former Representative Austin J. Murphy was indicted by a Fayette County grand jury and then convicted of absentee ballot fraud for forging absentee ballots for residents of a nursing home and adding his wife as a write-in candidate for township election judge. *See* B. Heltzel, “Six of seven charges against Austin Murphy dismissed,” Pittsburgh Post-Gazette (June 22, 1999) (available at <http://old.post-gazette.com/regionstate/19990622murphy6.asp>, and referred to and incorporated herein by reference). Similarly, in 2014, Richard Allen Toney, the former police chief of Harmar Township in Allegheny County pleaded guilty to illegally soliciting absentee ballots to benefit his wife and her running mate in the 2009 Democratic primary for town council. *See* T. Ove, “Ex-Harmar police chief pleads guilty to ballot tampering,” Pittsburgh Post-Gazette (Sept. 26, 2014) (available at <https://www.post-gazette.com/local/north/2014/09/26/Ex-Harmar-police-chief-pleads-guilty-to-ballot-tampering-Toney/stories/201409260172>, and

referred to and incorporated herein by reference). Further, in 2015, Eugene Gallagher pled guilty to unlawfully persuading residents and non-residents of Taylor in Lackawanna County to register for absentee ballots and cast them for him during his councilman candidacy in the November 2013 election. *See* J. Kohut, “Gallagher resigns from Taylor council, pleads guilty to three charges,” *The Times-Tribune* (Apr. 3, 2015) (available at [https://www.thetimes-tribune.com/news/gallagher-resigns-from-taylor-council-pleads-guilty-to-three-charges/article\\_e3d45edb-fe99-525c-b3f9-a0fc2d86c92f.html](https://www.thetimes-tribune.com/news/gallagher-resigns-from-taylor-council-pleads-guilty-to-three-charges/article_e3d45edb-fe99-525c-b3f9-a0fc2d86c92f.html)), and referred to and incorporated herein by reference). *See also* [Commonwealth v. Bailey, 775 A.2d 881, 886 \(Pa. Commw. Ct. 2001\)](#) (upholding defendant’s conviction for absentee ballot violations, holding that a county district attorney has jurisdiction to prosecute such claims even in the absence of an investigation and referral by the Bucks County elections board); [In re Center Township Democratic Party Supervisor Primary Election, 4 Pa . D. & C.4th 555, 557-563 \(Pa. Ct. Com. Pl. Beaver 1989\)](#) (court ordered a run-off election after evidence proved that fifteen absentee ballots were applied for and cast by non-existent individuals whose applications and ballots were handled by a political ally of the purported winner).

50. As part of the November 3, 2020 General Election, there are at least two Counties that had suspected instances of mail-in ballot fraud. Fayette County experienced two different issues with their mail-in ballots leading up to Election

Day. First, an issue caused by Pennsylvania’s SURE software system as to the marking of online applications submitted prior to the June primary election with the “permanent mail-in” status caused some voters to receive duplicate ballots for the general election. *See* <https://www.wpxi.com/news/top-stories/election-officials-working-correct-mail-in-ballot-problems-fayette-county/NH5DSEM7EVE7LGZLMAN4CS52YE/>. Prior to November 3, 2020, Fayette County uncovered an incident involving two voters who received mail-in ballots that were already filled out and two ballots that were found at the election bureau already opened with the secrecy envelope and the ballot missing out of those envelopes. Ballots that were already filled out arrived at homes 40 miles apart. *See* <https://www.wtae.com/article/fayette-co-prosecutors-investigating-reports-of-voters-receiving-mail-in-ballots-already-filled-out/34527256>. In late September 2020, officials in Luzerne County discovered that a temporary seasonal elections worker had discarded into a trash bin nine (9) military ballots received in unmarked envelopes, 7 of which were all cast for President Trump. *See* <https://www.wgal.com/article/federal-authorities-investigate-discarded-ballots-in-luzerne-county-pennsylvania/34162209#>.

51. This risk of abuse by absentee or mail-in voting is magnified by the fact that “many states’ voter registration databases are outdated or inaccurate.” Morley, Redlines, p. 2. A 2012 study from the Pew Center on the States – which

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

52. Crucially as it pertains to Pennsylvania’s registered voters, as recently as December 2019, the Auditor General of Pennsylvania, Eugene DePasquale, determined through an audit of Pennsylvania’s Statewide Uniform Registry of Electors (“SURE”), administered by the Department of State, that there are more than 50,000 cases of potentially inaccurate voter records. The Performance Audit Report noted that the audit “found too many instances of potentially bad data and sloppy recordkeeping.” See <https://www.paauditor.gov/press-releases/auditor-general-depasquale-issues-audit-of-voter-registration-system-calls-for-changes-at-pennsylvania-department-of-state>; [https://www.paauditor.gov/Media/Default/Reports/Department%20of%20State\\_SURE%20Audit%20Report%2012-19-](https://www.paauditor.gov/Media/Default/Reports/Department%20of%20State_SURE%20Audit%20Report%2012-19-)

[19.pdf](#). The Department of State was provided 50 recommendations to strengthen their policies and management controls, one of which was to work with counties to resolve records management issues such a duplicative voter records. *See id.* Mr. DePasquale criticized the Pennsylvania Department of State for its “lack of cooperation and a failure to provide the necessary information” during the audit, including the “denial of access to critical documents and excessive redaction of documentation.” *Id.* As a result, the Auditor General was “unable to establish with any degrees of reasonable assurance that the SURE system is secure and that Pennsylvania voter registration records are complete, accurate and in compliance with applicable laws, regulations, and related guidelines.” *Id.*

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

54. One procedural safeguard that any absentee or mail-in ballot voting system must have is the ability of candidates, political parties, and the public at large to engage in meaningful, effective, and actual observation of the inspection, opening, counting, and recording of absentee and mail-in ballots in order to ensure that the election officers are uniformly applying the same rules and procedures to all absentee and mail-in voters and that only legitimately cast votes are counted and recorded.

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

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

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

57. In 1957, the Pennsylvania Constitution was further amended to permit absentee voting for those “qualified electors who may, on the occurrence of any election, be absent from the municipality of their residence, because their duties, occupation or business require them to be elsewhere or who, on the occurrence of any election, are unable to attend at their proper polling places because of illness or physical disability or who will not attend a polling place because of the observance of a religious holiday or who cannot vote because of election day duties, in the case of a county employee[.]” [Pa. Const. art. VII, § 14](#).

58. In 1960, the Election Code was amended to implement the 1957 amendment to the Pennsylvania Constitution. [Absentee Ballots Case, 224 A.2d at](#)

[200](#). See also The Act of January 8, 1960, entitled “An Act amending the Act of June 3, 1937,” P.L. 2135, [25 P.S. §§ 3149.1-3149.9](#) (Supp. 1960).

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

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

61. Because “it is fraught with evils and frequently results in void votes,” Pennsylvania’s laws regarding absentee voting are “strictly construed and the rights created thereunder not extended beyond the plain and obvious intention of the act.” [Canvass of Absentee Ballots of April 28, 1964, Primary Election, 34 Pa. D. & C.2d at 420-21](#) (citing [Decision of County Board of Elections, 29 D.&C.2d 499, 506-7 \(Pa. Ct. Com. Pl. 1962\)](#)). See also [Marks v. Stinson, Civ. A. No. 93-6157, 1994 U.S. Dist. LEXIS 5273, at \\*78 \(E.D. Pa. Apr. 26, 1994\)](#).

62. Moreover, consistent with Pennsylvania’s Statutory Construction Act, the Election Code’s use of the word “shall” to identify the manner and other “technicalities” that an elector must follow to cast an absentee ballot are

“substantive provisions” that are necessary to “safeguard against fraud” and preserve the “secrecy and the sanctity of the ballot and must therefore be observed,” and ballots cast “in contravention of [such] mandatory provision[s] are void.” [\*In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election\*, 843 A.2d 1223, 1231-34 \(Pa. 2004\)](#).

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

64. Act 77 fundamentally changed the administration of elections in the Commonwealth of Pennsylvania in that, for the first time in its history, qualified Pennsylvania electors now have the choice to vote by mail, rather than in person on Election Day, without providing a reason or excuse. See, e.g., [25 P.S. §§ 3150.11-3150.17](#); see also [Pa. Dem. Party v. Boockvar](#), Case No. 133 MM 2020, 2020 Pa. LEXIS 4872, at \* 1 (Pa. Sept. 27, 2020). Previously, the law offered electors who could not vote in person on the designated Election Day the ability to apply for and receive an absentee ballot, verifying they qualified based on a limited number of excuses outlined in the statute. Pennsylvania held its first election under Act 77’s no excuse mail-in ballot scheme during the Primary Election held on June 2, 2020. The November 3, 2020 election was the first General Election in Pennsylvania under the state’s new mail-in voting scheme.

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

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

67. For both absentee and mail-in voting, Act 77 retains the requirement that “the [non-disabled] elector shall send [his or her absentee or mail-in ballot] by mail, postage, except where franked, or deliver it in person to [the] county board of

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

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

[T]he [non-disabled] elector shall, in secret, proceed to mark the ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed “Official Election Ballot.” This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector,

and the address of the elector’s county board of election and the local election district of the elector. The elector shall then fill out, date and sign the declaration printed on such envelope . . . .

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

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

70. These provisions in the Election Code, as amended by Act 77, that identify exactly what an elector “shall” do to properly cast and vote an absentee or mail-in ballot serve to ensure the secrecy of such ballots and to prevent fraud. *See [Absentee Ballots of Nov. 4, 2003 Gen. Election](#), 843 A.2d at 1232. See also *id.* at [1234](#)* (the Election Code’s provisions of how to cast an absentee ballot are “substantive matters—how to cast a reliable vote—and not [] a mere procedural matter” that can be disregarded by a county board of elections); *Appeal of Yerger*, [333 A.2d 902, 907 \(Pa. 1975\)](#) (the validity of a ballot must first be ascertained before any factual inquiry into the intention of the voter); *Appeal of James*, [105](#)

[A.2d 64, 66 \(Pa. 1954\)](#) (“[V]iolations of substantive provisions of the [Election] Code cannot be overlooked on the pretext of pursuing a liberal construction.”).

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

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

73. Additionally, Act 77 requires that “no earlier than seven o’clock A.M. on election day,” the county boards of elections shall meet to conduct a pre-canvass of all absentee and mail-in ballots received to that meeting. Election Code Section 1308(g)(1.1), [25 P.S. § 3146.8\(g\)\(1.1\)](#). During the pre-canvass, the

election officials shall inspect and open the envelopes of all absentee and mail-in ballots, remove such ballots from such envelopes, and count, compute and tally the votes reflected on such ballots. However, as part of the pre-canvass, the county election boards are prohibited from recording or publishing the votes reflected on the ballots that are pre-canvassed. Election Code 102(q.1), [25 P.S. § 2602\(q.1\)](#).

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

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

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

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

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

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

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

79. However, Philadelphians “began in-person mail-in voting at the [S]atellite [O]ffices on September 29, 2020, sometime between 11:30 a.m. and 12:45 p.m.” *Donald. J. Trump for President, Inc. v. Phila. Cnty. Bd. of Elections*, 983 CD 2020, at 7 n. 3 (Pa. Commw. Ct. Oct. 23, 2020) (McCullough, J.) (dissenting).

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

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

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

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

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

83. On the same day its guidance on the use of unmanned drop boxes and other ballot-collection sites was disseminated, the Pennsylvania Department of State, with the knowledge, approval, and/or consent of Secretary Boockvar, published and disseminated to all the County Election Boards another guidance

titled “Pennsylvania Guidance for Missing Official Ballot Envelopes (‘Naked Ballots’).” A true and correct copy of the August 19, 2020 Naked Ballots guidance was available at the Pennsylvania Department of State’s web site at [https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/PADOS\\_NakedBallot\\_Guidance\\_1.0.pdf](https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/PADOS_NakedBallot_Guidance_1.0.pdf).

84. In her Naked Ballot Guidance, Secretary Boockvar espoused “the ... position that naked ballots should be counted pursuant to the Pennsylvania Election Code, furthering the Right to Vote under the Pennsylvania and United States Constitutions[,]” that “[t]he failure to include the inner envelope (‘Secrecy Envelope’) does not undermine the integrity of the voting process[,]” and that “no voter should be disenfranchised for failing to place their ballot in the official election ballot envelope before returning it to the county board of election.” *Id.*

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

86. Following the Pennsylvania Supreme Court’s September 17, 2020 decision, Secretary Boockvar has removed the August 19, 2020 Naked Ballot guidance from the Pennsylvania Department of State’s website. However, she has

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

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

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

88. Under the "Background" section of the September 11, 2020 Guidance, Secretary Boockvar states that "[b]efore sending [an absentee or mail-in] ballot to the applicant, the county board of elections confirms the qualifications of the

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

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

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

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

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

(1) All electors, including any elector that shows proof of identification pursuant to subsection (a), shall

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

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

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

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

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

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

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

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

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

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

98. The Department of State issued an additional deficient guidance related to the issue of signature verification on September 28, 2020 related to the issue of signature verification titled "GUIDANCE CONCERNING CIVILIAN

ABSENTEE AND MAIL-IN BALLOT PROCEDURES.” (App. Ex. 25.)<sup>1</sup> This most recent guidance provides additional information about the acceptance and scrutiny of mail-in and absentee ballots for the General Election and not only fails to remedy but doubles down on the illegal September 11 guidance forbidding signature verification as a reason to set aside both mail-in ballots and ballot applications as well. In this September 28 guidance memo, the Secretary proclaims that “[t]he Election Code does not permit county election officials to reject applications or voted ballots based solely on signature analysis.” (*Id.*, at p. 9.) She then goes even further and pronounces that “[n]o challenges may be made to mail-in and absentee ballots at any time based on signature analysis.” (*Id.*)

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

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<sup>1</sup> Judicial notice of the Secretary’s September 28, 2020 guidance memo is appropriate. See [Miller v. City of Bradford, No. 17-268 Erie, 2019 U.S. Dist. LEXIS 134248, at \\*7 n.4 \(W.D. Pa. Aug. 9, 2019\)](#) (“The Court takes judicial notice of these provisions, as they constitute matters of public record.”).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

122. By enacting the inner secrecy envelope proscription and the other mandates for the casting of a “reliable vote” via an absentee or mail-in ballot, the General Assembly weighed the factors bearing on that question, and it did not vest, and has not vested, any discretion or rule-making authority in Secretary Boockvar and/or the County Election Boards to reweigh those factors in determining whether or not to count a particular absentee or mail-in ballot should be counted.

[Pennsylvania Democratic Party, 2020 Pa. LEXIS 4872 at \\*73.](#)

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

124. Local officials also engaged in media campaigns to encourage voters to remember not to send their ballots in “naked,” *i.e.* without the secrecy envelope.

The “naked ballot” ad campaign even included several local celebrities and election officials appearing on social media topless to remind the public about the inner envelope.

125. As a result, Boards of Elections in many counties decided to follow the rules and not pre-canvass absentee ballots early. For example, a Democrat poll watcher approached Joe Kantz, the Chairman of the Board of Elections for Snyder County, and asked him for information on spoiled ballots so that he, the poll watcher, and his team could cure them. After speaking with the county solicitor, Chairman Kantz declined to violate the statute, instead electing to begin the pre-canvass of mail-in ballots on its statutory start-time: election day.

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

127. Take Philadelphia County, for example. As reflected in a document titled “Cancelled Ballot Notification Information,” Philadelphia County sent a “notification” to voters whose “ballot was cancelled” because, among other reasons, the ballot “was returned without a signature on the declaration envelope” or “was determined to lack a secrecy envelope.” Philadelphia County allowed

those voters to cure this defect by casting a “provisional ballot on Election Day” or requesting “a replacement ballot at a satellite election office.” Philadelphia City Comm’rs, *Cancelled Ballot Notification Information*, [bit.ly/31a08LR](https://bit.ly/31a08LR) (last visited Nov. 7, 2020).

128. To figure out which voters should be notified, Philadelphia County had to inspect the mail-in ballots before election day—in plain violation of state law. *See* 25 P.S. §3146.8. This required substantial manipulation: Officials in Philadelphia County were determining whether ballots were missing an inner secrecy envelope, for example, which cannot be determined without manipulating the outer envelope—feeling the envelope, holding the envelope up to the light, weighing the envelope through sorting or scanning equipment, etc. This kind of tampering squarely undermines the legislature’s “mandate” that mail-in voting cannot compromise “fraud prevention” or “ballot secrecy.” [\*Pa. Democratic Party, 2020 Pa. LEXIS 4872, at \\*26.\*](#)

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

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

131. Because the counties that followed state law and did not provide a cure process are heavily Republican (and counties that violated state law and did provide a cure process are heavily Democratic), Defendants' conduct harmed the Trump Campaign. It deprived the President of lawful votes and awarded his opponent with unlawful votes.

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

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

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

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

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

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

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

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

139. With particular regard to the Philadelphia County Board of Elections, the Board would not permit the Trump Campaign's watchers to be within 6 feet of "all aspects" of the pre-canvassing process in direct contravention of Commonwealth Court Judge Christine Fizzano Cannon's November 5, 2020 Order "requiring that all candidates, watchers, or candidate representatives be permitted to be present for the canvassing process pursuant to 25 P.S. § 2650 and/or 25 P.S. § 3146.8 and be permitted to observe all aspects of the canvassing process within 6

feet.” *See In Re: Canvassing Observation*, 11/05/2020 Order, 1094 C.D. 2020 (Pa. Commw. Ct. 2020).

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

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

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

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

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

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

145. Also in Delaware County, an observer in the county office where mail-in ballots were counted witnessed a delivery on November 5, 2020, of v-cards

or USB drives in a plastic bag with no seal and no accompanying paper ballots. The v-cards or USB drives were taken to the back counting room, where observer access was limited. There was no opportunity to observe what happened to the v-cards or USB drives in the back counting room.

**VII. Need for Emergency Judicial Intervention.**

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

147. For statewide elections involving federal candidates, Defendants' allowance, by act or omission, of the collection and counting of in-person, provisional, and absentee and mail-in ballots in a manner and at locations that are contrary to the Election Code's mandatory provisions (as set forth above)

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

148. Finally, the Defendants' lack of statewide standards and use of a patchwork of ad-hoc rules that vary from county to county in a statewide election involving federal and state-wide candidates violates the Equal Protection Clause of the Fourteenth Amendment. [\*Pierce\*, 324 F. Supp. 2d at 698-99.](#)

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

## **COUNT I**

### **Fourteenth Amendment**

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

### **Denial of Equal Protection**

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

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

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

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

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

153. “The right to vote extends to all phases of the voting process, from being permitted to place one’s vote in the ballot box to having that vote actually counted. Thus, the right to vote applies equally to the ‘initial allocation of the franchise’ as well as ‘the manner of its exercise.’ Once the right to vote is granted,

a state may not draw distinctions between voters that are inconsistent with the guarantees of the Fourteenth Amendment’s equal protection clause.” [Pierce, 324 F. Supp. 2d at 695.](#)

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

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

156. Allowing a patchwork of different rules from county to county, and as between similarly situated absentee and mail-in voters, in a statewide election involving federal and state candidates implicates equal protection concerns.

Pierce, 324 F. Supp. 2d at 698-99. See also Gray, 372 U.S. at 379-81 (a county unit system which weights the rural vote more heavily than the urban vote and weights some small rural counties heavier than other larger rural counties violates the Equal Protection Clause and its one-person, one-vote jurisprudence).

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

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

voters in Democrat-leaning counties who similarly failed to fill out their mail or absentee ballot envelopes had their ballots counted.

159. That “different standards have been employed in different counties across the Commonwealth of Pennsylvania to determine whether an absentee ballot should be counted” is the “kind of disparate treatment” that violates “the equal protection clause because uniform standards will not be used statewide to discern the legality of a vote in a statewide election.” [Pierce, 324 F. Supp. 2d at 699](#).

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

## **COUNT II**

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

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

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

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

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

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

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

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

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

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

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

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

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

Date: November 15, 2020

Respectfully submitted,  
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*Counsel for Plaintiffs*

**VERIFICATION**

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

Date: November 18, 2020

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

December 4, 2020

Congressman Scott Perry  
1207 Longworth House Office  
Building Washington, DC 20515

Congressman Perry;

The general election of 2020 in Pennsylvania was fraught with inconsistencies, documented irregularities and improprieties associated with mail-in balloting, pre-canvassing, and canvassing that the reliability of the mail-in votes in the Commonwealth of Pennsylvania is impossible to rely upon.

The above factors, when combined with the lack of the required associated internal control mechanisms to ensure legality, accountability, accuracy, and the trustworthiness of the results, effectively undermine the trustworthiness of the entire election process.

The House of Representatives of Pennsylvania determined, as a result, that the process by which the President of the United States was determined was so fraught with errors that the legislature introduced [House Resolutions 1094](#) on November 30, 2020 to contest the selection of electors.

The analysis below substantially confirms that the mail-in ballot process in the Commonwealth of Pennsylvania in the 2020 General Election was so defective that it is essential to declare the selection of presidential electors for the Commonwealth to be in dispute. The United States Congress is asked to declare the selection of presidential electors in this Commonwealth to be in dispute and to intervene in the selection of the electors for the Commonwealth of Pennsylvania for the 2020 General Election.

In any process control environment, the system of internal controls is designed to reasonably deter wrongdoing.

In the Sarbanes-Oxley type environment and the Committee on Sponsoring organizations process control environment, the control environment surrounding an election require that the processes utilized be capable of providing reasonable controls to ensure that the election results reflect the will of the voters.

In that regard, the COSO standards (Committee on Sponsoring Organizations) prescribes processes of controls to ensure internal controls are adhered to, for instance, in this case, the accuracy of the election results. COSO and SOX are built on the same model of the system of internal controls

The control environment includes:

1. *Control Environment*

- Exercise integrity and ethical values.
- Make a commitment to competence.
- Use the board of directors and audit committee.
- Facilitate management's philosophy and operating style.
- Create organizational structure.
- Issue assignment of authority and responsibility.
- Utilize human resources policies and procedures.

2. *Risk Assessment*

- Create companywide objectives.
- Incorporate process-level objectives.
- Perform risk identification and analysis.
- Manage change.

3. *Control Activities*

- Follow policies and procedures.
- Improve security (application and network).
- Conduct application change management.
- Plan business continuity/backups.
- Perform outsourcing.

4. *Information and Communication*

- Measure quality of information.
- Measure effectiveness of communication.

5. *Monitoring*

- Perform ongoing monitoring.
- Conduct separate evaluations.

In any system of internal controls, there are audits which would identify control deficiencies, significant deficiencies, and material weaknesses of the system of internal controls. When there are such deficiencies of internal controls of the material weakness nature and/or significant deficiency nature than standards require that the results cannot be relied upon. The accounting

profession has specific guidance on such control environment in AU-314, Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement.

In 2019, Rep. Ryan identified such concerns about the control environment in the Commonwealth and introduced House Bill 1053, Lean Government Operations, to uniformly implement lean operations and an effective system of internal controls. The Governor indicated opposition to the bill and threatened to veto the bill. In the State Government Committee the [bill passed 20-5](#) when the Democrat members placed such significant amendments and opposition from the executive branch to preclude the bill from moving.

This pattern of obstruction to systems of internal controls reinforces the concerns that the control environment did not exist in Pennsylvania's executive branch to warrant confidence that there was any intent to establish an effective system of internal controls over the mail-in ballots in the Commonwealth.

In 2019, we identified such concerns about the control environment in the Commonwealth were identified and a bill to address these concerns was introduced. and introduced House Bill 1053 was introduced to uniformly implement lean government operations in order to uniformly implement lean operations and an effective system of internal controls. The Governor indicated opposition to the bill and threatened to veto the bill. Additionally, Democrat members in the House State Government Committee cited the Governor's opposition to the bill as they sought to defeat the bill through the amendment process. In the State Government Committee the [bill passed 20-5](#) when the Democrat members placed such significant amendments and opposition from the executive branch to preclude the bill from moving.

This pattern of obstruction to systems of internal controls reinforces the concerns that the control environment did not exist in Pennsylvania's executive branch to warrant confidence that there was any intent to establish an effective system of internal controls over the mail-in ballots in the Commonwealth.

In any audit committee the Audit Committee and with auditing standards, the question is always asked in the management representation letters: "Was management (read Executive Branch) able to override the system of internal controls?" Should the answer to that question be YES, which in the instant case, it was, the CPA audit would immediately stop with NO audit opinion issued. Nothing less can should be expected of our election process.

For the reasons below, it is believed that the system of controls over voting within the Commonwealth of Pennsylvania in the 2020 General Election were so flawed as to render the results of the mail-in ballot process incapable of being relied upon. Specific potential remedies are available to include:

1. Revote of the mail in ballots in time to certify the electors for the presidential election.
2. Declare the process of mail in ballots so flawed that the Congress of the United States, as prescribed by the U. S. Constitution would select the PA electors for President.

The evidence of resistance to the implementation to election security safeguards, process flaws, inconsistencies, violations of PA election laws as written, include:

1. Documented objection by leaders of the Democrat Party to object to a study of the election process to preclude the problems that in fact did occur in the 2020 general election. The study was proposed as House Resolution 1032 of 2020 and was abandoned after gross public misrepresentations were made about the true nature of the intent of the resolution. due to public backlash due to the comments (An example of this can be found in the comments of [Representative Malcolm Kenyatta](#).)
2. Actions from the PA Supreme Court which undermined the controls inherent in Act 77 of 2019. The “legislative” overreach by the Supreme Court is the basis of the [impeachment articles against Justice Wecht](#). The controls which were undermined include:
  - a. On September 17, 2020, less than seven weeks before the November 3, 2020 election, the partisan majority on the Supreme Court of the Commonwealth of Pennsylvania unlawfully and unilaterally extended the deadline for mail-in ballots to be received, mandated that ballots mailed without a postmark would be presumed to be received timely, and could be accepted without a verified voter signature.
  - b. On October 23, 2020, less than two weeks before the November 3, 2020 election and upon a petition from the Secretary of the Commonwealth, the Supreme Court of the Commonwealth of Pennsylvania ruled that mail-in ballots need not authenticate signatures for mail-in ballots, thereby treating in-person and mail-in voters dissimilarly and eliminating a critical safeguard against potential election crime.
  - c. Authorized the use of drop boxes for collecting votes with little to no controls proscribed to prevent ballot harvesting.
3. Actions by the Secretary of State which undermined the consistency and controls of the election process during the weeks preceding the General Election of November 3, 2020. The actions by the Secretary led to a [House Resolution](#) to prohibit object to the seating of electors calling the election to be in dispute. These include:
  - a. On November 2, 2020, the night before the November 3, 2020 election and prior to the prescribed time for pre-canvassing mail-in ballots, the office of the Secretary of the Commonwealth encouraged certain counties to notify party and candidate representatives of mail-in voters whose ballots contained defects;
  - b. Heavily Democrat counties permitted mail-in voters to cure ballot defects while heavily Republican counties followed the law and invalidated defective ballots;
  - c. In certain counties in the Commonwealth, watchers were not allowed to meaningfully observe the pre-canvassing and canvassing activities relating to absentee and mail-in ballots;
  - d. In other parts of the Commonwealth, watchers observed irregularities concerning the pre-canvassing and canvassing of absentee and mail-in ballots.
4. Prior attempts to cure the problems associated with Act 77 of 2019, the election Reform Code where incorporated into House Bill 2626 of the 2019-2020 session. The Governor threatened to veto the bill when it became apparent that the Supreme Court was going to incorporate more favorable changes to Act 77 of 2019 than [House Bill 2626](#) authorized.

5. Permitted inconsistent drop box processes by counties with little to no controls or audits processes which essentially gave way to substantial opportunities for ballot harvesting.
6. The Secretary of State has shown bias in get-out-the-vote efforts due to the Secretary's coordination efforts for get out the vote efforts only in Democrat party-controlled counties and localities.

In addition to the concerns of the actions of the Secretary of State and the legislative overreach by the Pennsylvania Supreme Court, the inaccuracies of the actual results themselves call into question the accuracy of the SURE system, the consistency of the application of voting laws throughout the counties. Certain inconsistencies stand out to include:

At the county level the pattern of inconsistencies is easily seen. For instance, Over-vote in Philadelphia County -- On November 4<sup>th</sup> at 11:30am, the DOS posted updated mail in vote counts for Philadelphia County. The number of ballots reported to have been counted was an impossible 508,112 ballots despite the fact that only 432,873 ballots had been issued to voters in that county. Later that day, the ballots counted number was reduced but this begs the question, who had the authority to add and subtract votes on the ballot counts reported to the Department of State? Even if this was simply a data entry error, the lack of internal controls over such reporting necessitates a review of the numbers, the process and system access.

Information Sharing -- Members of the legislature or any oversight body of election inspectors, were not provided access to any data that was not available to the general public in open source records. There are many other anomalies that one could not include in the letter because we have not been provided with the information you need to evaluate. We have had to file right to know Right-to-Know requests to access the data. Whenever the systems lack transparency it is IMPOSSIBLE for anyone to contend that fraud did not occur.

### **Mail Date**

- Ballots Mailed on or BEFORE 9-11-2020. That total is 27995.
- Ballots Mailed on November 1, 2 or 3. That total is 8163.
- Ballots with NO MAILED date. That total is 9005.
- Ballots Returned on or BEFORE the Mailed Date. That total is 58221.
- Ballots Returned one day after Mailed Date. That total is 51200.

### **Voter Date of Birth**

- Mail Votes cast by voters over the age of 100. That total is 1532.
- In Allegheny County, there were 41 ballots mailed to people born on 01/01/1800- making them all 220 years old.
- Mail Votes by voters with NO Date of Birth. That total is 245.

Additionally, in a data file received on November 4, 2020, the Commonwealth's PA Open Data sites reported over 3.1 million mail in ballots sent out. The CSV file from the state on November 4 depicts 3.1 million mail in ballots sent out but on November 2, the information was provided

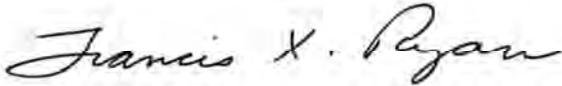
that only 2.7 million ballots had been sent out. This discrepancy of approximately 400,000 ballots from November 2 to November 4 has not been explained.

This apparent discrepancy can only be evaluated by reviewing all transaction logs into the SURE system to determine the access, authority for the entry, the verification of the data entered as well as the authentication of the security certificates of the sites from which the data had been entered.

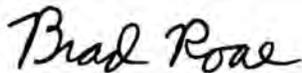
It is also important to note that the Department of State removed all election data from the PA Open Data platform in Mid-November 2020. They provided no explanation for removing the data. That is part of the issue—the data changed over time despite the fact that the number of ballots mailed should not have changed after November 2nd and the number of mail ballots received/cast should not have changed after November 3<sup>rd</sup>.

In light of the above, the mail-in ballot process in the Commonwealth of Pennsylvania in the 2020 General Election was so defective that it is essential to declare the selection of presidential electors for the Commonwealth to be in dispute. The United States Congress is asked to declare the selection of presidential electors in this Commonwealth to be in dispute and to intervene in the selection of the electors for the Commonwealth of Pennsylvania for the 2020 General Election.

Respectfully Submitted,



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101<sup>st</sup> Legislative District, PA



Brad Roae, Member  
6<sup>th</sup> Legislative District, PA



Daryl Metcalfe, Member  
12<sup>th</sup> Legislative District, PA



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39<sup>th</sup> Legislative District, PA



Valerie Gaydos, Member  
44<sup>th</sup> Legislative District, PA



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65<sup>th</sup> Legislative District



Stephanie Borowicz, Member  
76<sup>th</sup> Legislative District, PA



David Rowe, Member  
85<sup>th</sup> Legislative District, PA



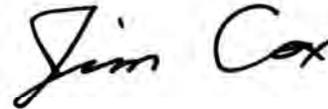
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99<sup>th</sup> Legislative District, PA



Jim Cox, Member  
129<sup>th</sup> Legislative District, PA



Barbara Gleim, Member  
199<sup>th</sup> Legislative District, PA



Russ Diamond, Member  
102<sup>nd</sup> Legislative District

Cc: Members of the United States House of Representatives, Members of the United States Senate, President of the United States, Governor Tom Wolf, Secretary State of Pennsylvania, PA Senator Jake Corman, PA Senator Kim Ward, PA Speaker of the House Bryan Cutler, and PA Representative Kerry Benninghoff



**GUIDANCE CONCERNING EXAMINATION OF ABSENTEE AND  
MAIL-IN BALLOT RETURN ENVELOPES**

**Date: September 11, 2020**

**Version: 1.0**

# EXAMINATION OF ABSENTEE AND MAIL-IN BALLOT RETURN ENVELOPES

## 1 BACKGROUND:

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The Pennsylvania Election Code describes processes that a qualified voter follows to apply for, receive, complete and timely return an absentee or mail-in ballot to their county board of election. These processes include multiple secure methods used by the voter's county board of election to verify that the qualified voter's absentee or mail-in application is complete and that the statutory requirements are satisfied. These include voter identification verification confirmed by either a valid driver's license number, the last four digits of the voter's social security number or other valid photo identification, and unique information on the application including the voter's residence and date of birth. Before sending the ballot to the applicant, the county board of elections confirms the qualifications of the applicant by verifying the proof of identification and comparing the information provided on the application with the information contained in the voter record. If the county is satisfied that the applicant is qualified, the application must be approved. This approval shall be final and binding, except that challenges may be made only on the grounds that the applicant was not a qualified voter, and those challenges must be made to the county prior to five o'clock p.m. on the Friday prior to the election.

Once the qualified voter's absentee or mail-in application is approved, the voter is mailed a ballot with instructions and two envelopes. The outer envelope includes both a unique correspondence ID barcode that links the envelope to the qualified voter's application and a pre-printed Voter's Declaration that the voter must sign representing that the voter is qualified to vote the enclosed ballot and has not already voted. This Guidance addresses the examination of the Voter's Declaration on the ballot return envelope. This Guidance assumes that the voter has satisfactorily completed the steps described above as to application for, receipt and return of an absentee or mail-in ballot.

## 2 RECORDING THE DATE, RETURN METHOD AND BALLOT STATUS FOR RETURNED BALLOTS:

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County boards of elections should have processes in place to record the date, return method, and ballot status for all voted ballots received. County boards of elections must store and maintain returned ballots in a secure location until the ballots may be pre-canvassed or canvassed.

The county board of elections should stamp the date of receipt on the ballot-return. County boards of elections should record the receipt of absentee and mail ballots daily in the SURE system. To record a ballot as returned, the staff should scan the correspondence ID barcode on the outside of the envelope. The correspondence ID on the envelope is unique to each absentee or mail-in voter and each issuance of a ballot to a voter. Once a correspondence ID has been returned in the SURE system, it cannot be returned again. Further, if a ballot issuance record is cancelled by the county board of elections (e.g. voided to reissue a replacement ballot) in the SURE system, the correspondence ID on the cancelled ballot will become invalid. If the same barcode is subsequently scanned, the SURE system will not allow the returned ballot to be marked as being approved for counting.

The county boards of elections should record the date the ballot is received (not the date that the returned ballot is processed). In the event a county board of elections is entering the ballot on a date other than the date the ballot was received, the county personnel should ensure that the SURE record reflects the date of receipt, rather than the date of entry, since by default, SURE will automatically populate both the 'Date Received' and 'Vote Recorded' fields with the current date and time unless users manually correct the date to reflect the date received.

### 3 EXAMINATION OF DECLARATION ON BALLOT RETURN ENVELOPES:

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The county board of elections is responsible for approving ballots to be counted during pre-canvassing.

To promote consistency across the 67 counties, the county boards of elections should follow the following steps when processing returned absentee and mail-in ballots.

After setting aside ballots of elector's who died prior to the opening of the polls, the county board of elections shall examine the Voter's Declaration on the outer envelope of each returned ballot and compare the information on the outer envelope, i.e., the voter's name and address, with the information contained in the "Registered Absentee and Mail-in Voters File, the absentee voter's list and/or the Military Veterans' and Emergency Civilians Absentee Voters File."

If the Voter's Declaration on the return envelope is blank, that ballot return envelope must be set aside and not counted. If the board determines that a ballot should not be counted, the final ballot disposition should be noted in SURE. The ballot return status (Resp Type) should be noted using the appropriate drop-down selection.

If the Voter's Declaration on the return envelope is signed and the county board is satisfied that the declaration is sufficient, the mail-in or absentee ballot should be approved for canvassing unless challenged in accordance with the Pennsylvania Election Code.

The Pennsylvania Election Code does not authorize the county board of elections to set aside returned absentee or mail-in ballots based solely on signature analysis by the county board of elections.

Version	Date	Description	Author
1.0	9.11.2020	Initial document release	

## AFFIDAVIT OF ETHAN J. PEASE

Ethan J. Pease, being first duly sworn to oath, deposes and says as follows:

1. That I am an adult resident of the State of Wisconsin. That I am an individual who was hired through a temp agency, Strategic Resources, for employment at United Mailing Services (hereinafter referred to as "UMS") with an address of 3006 Progress Road, Madison, WI.
2. That I, began employment at UMS on August 26, 2020. That my job title was Route Driver and Box Truck Driver.
3. My first duty was to pick up mail on a route and subsequently deliver said mail to UMS for sorting and metering. My second duty was to sort and take Certified Mail to the lobby of the post office at 3902 Milwaukee Street, Madison, WI (hereinafter referred to as "USPS"). Once sorted and metered, I was to take the UMS sorted mail and deliver to the post office loading docks. On one occasion when I was preparing my load for delivery, I realized I forgot to retrieve ballots for transportation. As a result, I was forced to backtrack and retrieve those ballots, in order to deliver the ballots to the post office. Following this event, I always made sure I had my ballots.
4. There came a time in approximately September or October of 2020 that I began to deliver mail-in ballots from UMS to the USPS as part of my evening delivery duties. I knew that this mail contained ballots, as the bins were marked, "ballots only". These bins would be put on a cart of mail labeled, "for ballots only."
5. On November 2, 2020, I recall only delivering one ballot in my bin to the USPS.
6. On November 3, 2020, I recall having no ballots in the bin for my evening run to the USPS.
7. On two separate occasions during my Certified Mail run, two different employees spoke to me about ballots. Each stated that they had gathered up ballots from our partner companies, including the one that I work for. The first employee stated that the morning of November 4<sup>th</sup>, post office employees had been sent out to gather ballots. Later, the second employee told me they had postmarked ballots that had

been received on November 4<sup>th</sup>, to a postmark of November 3<sup>rd</sup>, in order to be able to turn those ballots into election officials.

8. On November 4, 2020, while in the course of my daily certified mail run delivery, I had a conversation with a senior post office employee of the USPS by the name of Montee. Montee was known to be the lobby supervisor. Montee is described as an African-American male, mid 40's, bald, and at least 6 feet tall.

9. I was asked by Montee on November 4, 2020, "Did you forget any ballots the night before? An order came down from the Wisconsin/Illinois Chapter of the Postal Service that 100,000 ballots were missing." Montee further indicated that "our post office dispatched USPS employees looking for ballots, and only 7 or 8 ballots were found at UMS."

10. On November 4, 2020, Montee stated to me that the USPS dispatched employees "around 4 am" to collect forgotten ballots from their third-party partner companies in the area, including UMS. Montee stated, that "7 or 8 ballots" were found at my work. Montee stated that the "finding of the ballots came down as a direct order from the Wisconsin/Illinois USPS Chapter." Montee told me that someone had found ballots at UMS. I knew this could not be true. Based on my previous experience, I always double-checked to ensure I had obtained the ballots.

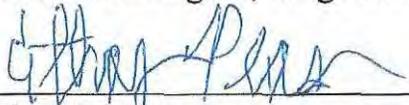
11. At the time, I drove the final truck of mail to be delivered to USPS from UMS, all metered by UMS. On Wednesday, November 4, 2020, Montee asked, if I "had forgotten to bring ballots the previous night." I replied, "No, there were no ballots that I saw to take that night, and there was only one ballot to take the night before." The night before, meaning Tuesday, November 2, 2020. This entire conversation between Montee and I took place between 6:15 pm, and 6:50 pm on November 4<sup>th</sup>, in the lobby of the Milwaukee Street USPS location.

12. On November 5, 2020 I, in the course of my evening Certified Mail run to the USPS, had a conversation with Rachel. Rachel is described as a white female, approximately late 20's, with ginger colored, shoulder length hair. I asked Rachel, "I'm not gonna get in trouble for those ballots the other night?" Rachel replied, "No, you wouldn't. As long as they were all postmarked for the 3<sup>rd</sup>. That's why they had us do that." I understood this to mean that the postal workers backdated the found ballots.

13. I did not bring this to the attention of my supervisors because it appeared to be an anti-Trump atmosphere, due to comments I heard the week prior

to November 3, 2020. I heard those same post office employees making jokes about taking mail in ballots for Trump and throwing them away.

Dated at Arlington, Virginia this 3 day of December, 2020.

  
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Ethan J. Pease

Subscribed and sworn to before me  
This 3rd day of December, 2020

  
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Notary Public

