

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

Donald J. Trump for President, Inc.,  
Lawrence Roberts, and David John Henry,  
  
Plaintiffs,

v.

Kathy Boockvar, in her capacity as  
Secretary of the Commonwealth of  
Pennsylvania, Allegheny County Board of  
Elections, Centre County Board of  
Elections, Chester County Board of  
Elections, Delaware County Board of  
Elections, Montgomery County Board of  
Elections, Northampton County Board of  
Elections, and Philadelphia County Board  
of Elections,

Defendants,

v.

DNC Services Corporation/Democratic  
National Committee,

Proposed Intervenor-Defendant.

No. 4:20-cv-02078-MWB  
(Judge Matthew W. Brann)

**INTERVENOR DNC'S MEMORANDUM IN OPPOSITION TO MOTION  
FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY  
INJUNCTION**

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## INTRODUCTION

The injunctive relief Plaintiffs seek, now three days before the county certification deadline, is extraordinary and wholly unjustified. They ask the Court to enjoin Defendants from certifying the results of the presidential election so that the Trump Campaign can engage in a “simple” audit of 1.5 million mail ballots, gather evidence to support their accusations, and petition this Court to then “declare Trump the winner.” Pls.’ Mem. 2. But Plaintiffs have the legal standard entirely backwards: Plaintiffs must demonstrate that they have a likelihood of success on the merits *before* obtaining such relief; a preliminary injunction is not a fact-finding tool to confirm speculative claims. Despite opportunities to amend their Complaint and preliminary injunction motion, Plaintiffs’ arguments have unraveled as the Third Circuit has definitively established that they lack standing, and the purported differential procedures or violations of election laws they allege (incorrectly) do not implicate the federal constitution at all. *Bognet v. Sec’y of the Commonwealth of Pa.*, No. 20-3214, 2020 WL 6686120, at \*15 (3d Cir. Nov. 13, 2020). That is “not how the Equal Protection Clause works.” *Id.* Finally, it is telling that despite proclaiming to this Court that they were prepared to present hundreds of affidavits and extensive evidence of misconduct, no such evidence can be found anywhere in what is now Plaintiffs’ second motion for preliminary injunction.

Having confirmed that there is little more than speculation and conjecture behind Plaintiffs' claims, the certification of election results must proceed as scheduled under Pennsylvania law; otherwise, the Commonwealth would risk upending the series of carefully choreographed election administration procedures and deadlines designed to ensure that Pennsylvania voters can send their chosen electors to Congress in advance of the federal safe harbor deadline and the meeting of the electoral college. In other words, the injunction requested here is not merely a "slight delay," as Plaintiffs suggest, Pls.' Mem. 25, but rather the potential disenfranchisement of millions of Commonwealth voters—all because Plaintiffs *claim*, but have no evidence to show, that there are enough "illegal ballots" that would have changed the election result *id.* at 2, 25.

As the Trump Campaign once argued successfully before the Eastern District of Pennsylvania, an injunction that prevents the Commonwealth from timely certifying election results is improper. *See Stein v. Cortes*, 223 F. Supp. 3d 423, 442 (E.D. Pa. 2016). And while the Trump Campaign now advances the opposite view, *Stein's* conclusion remains correct today. The federal Constitution does not permit the type of judicial oversight into the Commonwealth's election procedures that Plaintiffs seek, never mind that Pennsylvania law establishes a detailed and comprehensive election contest procedure as the exclusive remedy for challenges to election results. Plaintiffs' motion thus provides no basis for their extraordinary

demand to prevent certification of election results, nor does it justify the consequent intrusion on state sovereignty necessary to impose such relief, which does violence to the constitutional voting rights protections that Plaintiffs purport to advance.

### **BACKGROUND**

Plaintiffs' motion seeks injunctive relief based on allegations that "are wholly disconnected from the underlying claims" in their Amended Complaint. *Williams v. Overmyer*, No. 1:17-cv-251, 2020 WL 674228, at \*2 (W.D. Pa. Feb. 11, 2020). The operative Complaint before this Court is Plaintiffs' Amended Complaint, ECF No. 125, filed on November 15, 2020, three days after Defendants and Intervenor moved to dismiss Plaintiffs' original Complaint. That pleading does not include the Fourteenth Amendment Due Process Clause claim upon which Plaintiffs now seek relief, nor does it assert the denial of access to observe ballots during canvassing as the basis for their constitutional claims. *See* Pls.' Mem. 6-7, 15, 21-23. Thus, Plaintiffs request an injunction that "is not of the same character, and deals with a matter lying wholly outside of the issues in the suit." *Stewart v. Verano*, No. 1:13-CV-2518, 2015 WL 1636124, at \*2 (M.D. Pa. Apr. 8, 2015) ("In sum, a federal district court lacks jurisdiction over claims raised in a motion for injunctive relief where those matters unrelated to the underlying complaint."); *Pacific Radiation Oncology, LLC v. Queen's Med. Ctr.*, 810 F.3d 631, 633 (9th Cir. 2015) ("When a plaintiff seeks injunctive relief based on claims not pled in the complaint, the court

does not have the authority to issue an injunction.”); *Adams v. Freedom Forge Corp.*, 204 F.3d 475, 484 (3d Cir. 2000) (affirming denial of injunction, where plaintiffs’ alleged harm was “insufficiently related to the complaint and [did] not deserve the benefits of protective measures that a preliminary injunction afford”).

In any event, even assuming the claims set forth in Plaintiffs’ motion were properly before this Court, their request for relief attempts to end-run the Commonwealth’s procedures for resolving claims of election irregularities or of non-compliance with state statutes. Pennsylvania law provides robust opportunities for Plaintiffs to address the purported election irregularities they allege here, and even to contest the election results. Indeed, the Trump Campaign has already availed itself of some of these state remedies.

#### **I. Election Contests And Other State Law Remedies that Plaintiffs Bypassed**

Pennsylvania’s Election Code provides several avenues through which aggrieved individuals may raise claims of fraud or irregularities in the electoral process, if they can muster adequate proof. The earlier in the process a litigant asserts these claims, the more robust the opportunities to address them. For example, there are multiple avenues to challenge a voter’s registration, 25 P.S. §§ 1329, 1509, and Plaintiffs had the opportunity to challenge applications for absentee or mail-in

ballots on the ground that the voter is not qualified to vote until the Friday before the election. *Id.* §§ 3146.2b(c), 3150.12b(a)(2).

Once ballots have been cast, the grounds for challenging the results are also set forth in detail under Pennsylvania law. During the canvass, three voters in any election district may request a recanvass of that district's votes by submitting an affidavit affirming that "an error, although not apparent on the face of the returns, has been committed." 25 P.S. § 3154(e). Within five days of the canvass in a county being complete, voters may initiate a recount or recanvass in the Court of Common Pleas if either (1) three voters plead a particular act of fraud or error and offer prima facie evidence in support of the allegation, or (2) three voters in *each precinct* in the Commonwealth sign a verified petition alleging that, upon reliable information, they believe that fraud or error was committed in the computation of the votes cast, in the marking of the ballots, or otherwise in connection with such ballots. *Id.* § 3263(a)(1). In other words, after the canvassing is complete, voters seeking to overturn the results for a statewide office must either have widespread factual support of Commonwealth-wide error or concrete evidence of fraud.

Finally, within 20 days after the election—this year, by November 23, 2020—an individual may file an election contest in Pennsylvania's Commonwealth Court. 25 P.S. § 3456; *see also* 42 Pa.C.S. § 764(1) (noting the Commonwealth Court has exclusive original jurisdiction over these contested nominations and elections). The

petition for contest must “concisely set forth the cause of the complaint, showing wherein it is claimed that the primary or election is illegal.” 25 P.S. § 3456.<sup>1</sup> To succeed in an election contest, the petitioner must show “the illegal acts are so irregular and the election so infected with fraud that the result cannot be ascertained.” *In re Contest of Election for Off. of City Treasurer from Seventh Legislative Dist. (Wilkes-Barre City) of Luzerne Cnty.*, 400 Pa. 507, 512 (1960); *cf. Pfuhl v. Coppersmith*, 253 A.2d 271, 273 (Pa. 1969) (explaining that unless the petition “aver[s] plainly and distinctly such facts which if sustained by proof would require the court to set aside the result” of the election, the petition should be dismissed). This requirement is not unlike the federal standard, which demands a showing that an election is fundamentally unfair before the results can be undone. *Stein*, 223 F. Supp. 3d at 438 (collecting cases).

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<sup>1</sup> There are consequences in state court to filing an election contest in bad faith. If the Commonwealth Court ultimately determines that the complaint is “without probable cause,” the Petitioner is liable for the full cost of the election contest. 25 P.S. § 3469.



## II. Courts Have Roundly Rejected The Trump Campaign's And Others' Attempts To Delay Certification And Invalidate Ballots

Rather than pursue these legal remedies, the Trump Campaign has filed a bevy of lawsuits to prevent votes from being counted, and more recently to prevent certification of election results. Relevant here, the Campaign filed suit in several county Courts of Common Pleas alleging that unlawful mail-in or absentee ballots (“mail ballots”) were counted for various reasons, including missing information on mail ballot declarations. The vast majority of these courts, applying Pennsylvania law, have rejected the Trump Campaign’s claims, finding that the challenged ballots were indeed validly cast and should be counted. *See In re: Canvass of Absentee and Mail Ballots of Nov. 3, 2020 Gen. Election*, Nos. 201100874-76, 78 (Pa. Ct. Com. Pl. Nov. 13, 2020) (upholding Philadelphia Board of Election’s decision to count mail ballots without a handwritten name, address, or date where county is not required to verify voter’s eligibility to vote) (Ex. A-D); *Donald J. Trump for President, Inc. v. Montgomery Cnty. Bd. of Elections*, No. 2020-18680 (Pa. Ct. Com. Pl. Nov. 13, 2020) (upholding Montgomery County Board of Election’s decision to count mail ballots without a handwritten address) (Ex. E); *but see In re: 2,349 Ballots in the 2020 Gen. Election*, No. 162 C.D. 2020 (Pa. Commw. Ct. Nov. 19, 2020) (reversing Allegheny Court of Common Pleas’ decision to count mail ballots lacking a handwritten date on the affidavit, even if that ballot was received by

Election Day) (Ex. F), *appeal and stay pending appeal granted*, No. 337 WAL 2020 (Pa. Nov. 20, 2020) (Ex. R). On November 18, the Pennsylvania Supreme Court accepted an application from Philadelphia County to exercise extraordinary jurisdiction over these cases and provide a Commonwealth-wide resolution to these issues. *See Order Granting Application, In re: Canvass of Absentee and Mail-in Ballots of Nov. 3, 2020 Gen. Election*, Nos. 89-93 EM 2020 (Pa. Nov. 18, 2020) (Ex. G). A definitive ruling from the Pennsylvania Supreme Court on these “counting” issues is therefore imminent.

These Pennsylvania rulings comprise only a subset of the nearly 30 state and federal court decisions around the country that have rejected the Trump Campaign’s and its allies’ efforts to stop the counting of votes or the certification of election results.<sup>2</sup>

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<sup>2</sup> *Costantino v. Detroit*, No. 20-014780-AW (Mich. Cir. Ct. Nov. 13, 2020) (Michigan) (denying preliminary injunction against certification of election results in Wayne County based on claims of purported fraud) (Ex. H); *Donald J. Trump for President, Inc. v. Benson*, Opinion & Order, No. 20-000225-MZ (Mich. Ct. Cl. Nov. 6, 2020) (Michigan) (denying the Trump Campaign’s emergency motion to cease all counting and processing of absentee ballots and noting plaintiffs provided no admissible evidence supporting their claims) (Ex. I); *Donald J. Trump for President Inc. v. Phila. Cnty. Bd. of Elections*, No. 2:20-CV-05533-PD, ECF No. 5 (E.D. Pa. Nov. 5, 2020) (denying the Trump Campaign’s emergency motion to stop the Philadelphia County Board of Elections from counting ballots) (Ex. J); *Kraus v. Cegavske*, Order at 9, No. 20-OC-00142 (Nev. Dist. Ct. Oct. 29, 2020) (Nevada) (finding Trump Campaign’s allegations that observers were not able to observe the process, or that Nevada’s signature matching process was unreliable to be wholly without merit), *motion for stay denied*, No. 82018 (Nev. Nov. 3, 2020) (Ex. K);

### III. Certification Deadlines Are Instrumental To Ensuring The Commonwealth's Representation In The Electoral College

While Plaintiffs seek a preliminary injunction to allow more time to gather evidence and conduct a “statistical expert analysis” to prove their case, Pls.’ Mem. 2, *any* disruption in the certification process at this late hour threatens serious consequences. The electoral college meets on December 14 to choose the next president, 3 U.S.C. § 7, and the federal safe harbor deadline is December 8. *Id.* § 5. Pennsylvanians will be represented in this process when a slate of electors—chosen by the vote of the people on November 3—meet and cast their votes. 25 P.S. §§ 3191-92 (electors must meet at noon the day directed by Congress). But to meet these deadlines, county boards must certify their election results by three days from now, November 23—the statutorily-mandated deadline for certification. *Id.* § 2642(k). The Secretary of State must then compute the returns of the election and

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*Stokke v. Cegavske*, No. 2:20-CV-02046, ECF No. 27 (D. Nev. Nov. 6, 2020) (Nevada) (denying plaintiffs’ motion for a preliminary injunction and TRO to halt ballot counting in Clark County, Nevada) (Ex. L); *In re: Enforcement of Election Laws and Securing Ballots Cast or Received After 7:00 P.M. on Nov. 3, 2020*, No. SPCV2000982-J3 (Ga. Sup. Ct. Nov. 5, 2020) (Georgia) (denying the Trump Campaign’s petition to segregate certain ballots and noting “there is no evidence the ballots referenced in the petition [were invalid]” and “there is no evidence that the Chatham County Board of Elections or the Chatham County Board of Registrars has failed to comply with the law”) (Ex. M); *Stoddard v. City Election Comm’n*, Opinion & Order at 2-3, No. 20-014604-CZ (Mich. Cir. Ct. Nov. 6, 2020) (Michigan) (denying the Election Integrity Fund’s motion for a preliminary injunction to prohibit Detroit from certifying its results, explaining that “[b]oth Republican and Democratic inspectors were present [for the counting of absentee ballots]”) (Ex. N).

provide them to the Governor. *Id.* § 3166. The Governor must then certify the slate of electors by issuing a certificate of election. *Id.*; 3 U.S.C. § 6. In other words, the result of the election must be conclusively determined on a short timeline, or Pennsylvania’s entire electorate may be disenfranchised.

### ARGUMENT

“[P]reliminary injunctions ... [are] extraordinary in nature and available only in limited circumstances.” *Robb v. Lock Haven Univ.*, No. 17-CV-00964, 2017 WL 2506434, at \*1 (M.D. Pa. June 9, 2017) (Brann, J.). For that reason, the “drastic remedy” of a preliminary injunction is “one that should not be granted unless the movant, by *a clear showing*,” demonstrates its entitlement to relief. *See Thakker v. Doll*, 451 F. Supp. 3d 358, 364 (M.D. Pa. 2020) (emphasis added) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)). In order to prevail, “[a] plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Pennsylvania v. Trump*, 351 F. Supp. 3d 791, 810 (E.D. Pa. 2019) (quoting *Winter v. NRDC*, 555 U.S. 7, 20 (2008)). In particular, to secure injunctive relief, a plaintiff must establish the first prong—a likelihood of success on the merits of its claims—by “clear evidence.” *Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 526 (3d Cir. 2018), *cert. denied*, 139 S. Ct. 2636 (2019); *see also Am. Express*

*Travel Related Servs., Inc. v. Sidamon-Eristoff*, 669 F.3d 359, 366 (3d Cir. 2012) (“The moving party’s failure to show a likelihood of success on the merits must necessarily result in the denial of a preliminary injunction.”) (internal quotation marks omitted).<sup>3</sup>

Plaintiffs do not even pretend they can make such a showing on their sole claim that remains live; indeed, they suggest the Court focus on the irreparable harm they supposedly face. Instead, Plaintiffs implore the Court to grant them a “short period” so they can engage in a fishing expedition in the hope of turning their speculation into a plausible basis for relief. *Id.* at 17. That is not the purpose of preliminary injunctive relief, and in any normal case their motion would be easily disposed of. Of course, this is no normal case, and the effects of entertaining Plaintiffs’ meritless legal theory would extend far beyond the parties.

The Court must consider these consequences before granting a preliminary injunction. While Plaintiffs claim that “[a] sufficient showing on the first two factors can suffice,” Pls. Mem. 13 (one of which they disclaim responsibility to show), that is incorrect. Courts must consider the harm to other parties and the public interest

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<sup>3</sup> While Plaintiffs contend Defendants should “bear the burden of proving the mail voters were legal,” Pls.’ Mem. 23 (capitalization altered), this Court has made clear “*the movant* will bear the ultimate burden of establishing *all four elements*,” which, of course, includes the burden of establishing a likelihood of success. *T.W. by & through Waltman v. S. Columbia Area Sch. Dist.*, No. 4:20-CV-01688, 2020 WL 5751219, at \*3 (M.D. Pa. Sept. 25, 2020) (Brann, J.) (emphasis added).

before issuing an injunction. *See Winter*, 555 U.S. at 32; *see also Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (“In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.”). Here, the relief Plaintiffs now seek threatens to throw into limbo the results of the 2020 Presidential Election for the entire country. The Court should reject Plaintiffs’ extraordinary and drastic request, and grant Defendants’ motions to dismiss.

**I. Plaintiffs Have Not Shown That They Are Likely to Succeed On the Merits Of Their Claims**

Plaintiffs have not, as they must, demonstrated that they are likely to succeed on the merits of their claims.

**A. Plaintiffs Lack Standing**

Plaintiffs cannot obtain any preliminary injunction because they lack standing to assert the claims they continue to press, brought under the Equal Protection, Electors, Elections Clauses. The Third Circuit’s decision in *Bognet v. Secretary of the Commonwealth of Pennsylvania* is dispositive of all of those claims, foreclosing any injunction—and indeed, requiring dismissal. 2020 WL 6686120.

*Bognet* held that equal-protection injury based on a claim that “state actors count[ed] ballots in violation of state election law” is neither “concrete” nor “particularized,” as Article III requires. *Id.* at \*9-14. As the Third Circuit explained, the Equal Protection Clause is “concerned with votes being *weighed differently*.” *Id.*

at \*11 (emphasis added). To permit standing based on non-compliance with state law “would transform every violation of state election law (and, actually, every violation of every law) into a potential federal equal-protection claim.” *Id.* at \*11 (quoting *Donald J. Trump for President, Inc. v. Boockvar*, --- F. Supp. 3d. ----, 2020 WL 5997680, at \*46 (W.D. Pa. Oct. 10, 2020)). Plaintiffs’ Equal Protection Clause claim, which remains premised on a challenge to Defendants’ use of “unlawful” election procedures, presents “a ‘paradigmatic generalized grievance that cannot support standing’” and cannot survive the Third Circuit’s decision. *Id.* at \*12 (citation omitted). *See* Pls.’ Mem. 15 (“Defendants violated the Equal Protection Clause ... by counting votes that were unlawful under the Pennsylvania Election Code.”). To the extent Plaintiffs assert vote *denial*, that injury is “fairly traceable” only to *other counties* that chose not to assist voters in exercising their rights. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). And any claim based on vote denial would also fail the redressability prong of standing because a judgment disenfranchising hundreds of thousands of voters who cast lawful ballots in *other* counties could not redress any injury caused by Plaintiffs’ own county boards of elections, neither of which are named as defendants in this action. *See id.*

*Bognet* rejected any notion that simply being a candidate is enough to establish standing to challenge election procedures. As the Third Circuit explained, a candidate is not injured “in a *particularized* way when, in fact, all candidates in

Pennsylvania, including [the plaintiff's] opponent, are subject to the same rules.” 2020 WL 6686120, at \*8 (emphasis added). Under *Bognet*, Plaintiffs must show that “counting more timely cast votes would lead to a *less* competitive race,” “that a greater proportion of [defective] mailed ballots” would be cast for Vice President Biden, and that “such votes” were cast in “sufficient ... number[s] to change the outcome of the election to [Trump’s] detriment.” *Id.*

Plaintiffs make no effort show any of these things. The closest they come is to speculate that “[t]here is every reason to believe the number of non-compliant ballots is in the tens of thousands.” Pls.’ Mem. 17. Plaintiffs point to the fact that 37,000 mail ballots were rejected in Pennsylvania’s 2020 Primary Election. But they fail to contend with the fact that a major cause of such “non-compliance” (and the reason for Plaintiff Henry’s own ballot cancellation) was voters’ failure to include the required inner secrecy envelope with their mail ballot.<sup>4</sup> As Plaintiffs acknowledge in their Amended Complaint, after the Primary Election in June, “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 [General E]lection, repeated those instructions on its website and on its social media

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<sup>4</sup> Katie Meyer, “*Naked Ballot*” Rule Could Lead To Thousands Of Pa. Votes Getting Rejected, NPR (Oct. 1, 2020), <https://www.npr.org/2020/10/01/918368319/naked-ballot-rule-could-lead-to-thousands-of-pa-votes-getting-rejected>.



postings,” and “[l]ocal officials ... engaged in media campaigns to encourage voters to remember not to send their ballots in ... without the secrecy envelope.” Am. Compl. ¶¶ 123-24; *see also id.* ¶ 124 (“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.”). It seems logical that those publicity campaigns significantly decreased the rate at which such “naked” ballots were returned during the General Election.

Plaintiffs otherwise make no attempt to show the sort of concrete, particularized injury Article III demands. They do not attempt to show, for instance, that disqualified mail ballots in the counties that did not offer notification procedures would have skewed toward President Trump or that the lack of notification and the opportunity to cure those ballots in “Republican controlled counties” (Pls. Mem. 5) would have benefited Vice President Biden. To the contrary, Vice President Biden won a majority of the mail ballots in all but four of Pennsylvania’s 67 counties—including more than twice as many mail ballots as President Trump in both Lancaster and Fayette Counties.<sup>5</sup> Thus, even if it were true that “a voter with a defective ballot in the Democrat controlled Defendant counties was likely to be told in advance to

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<sup>5</sup> See Dep’t of State, *2020 Presidential Election Unofficial Results*, <https://www.electionreturns.pa.gov/General/CountyBreakDownResults?officeId=1&districtId=1&ElectionID=undefined&ElectionType=undefined&IsActive=undefined> (visited Nov. 19, 2020).

cast a provisional ballot, while similarly situated voters in Republican controlled counties were not” (Pls.’ Mem 5), Plaintiffs cannot show such different treatment would have made any difference to the outcome of the election.

Finally, Plaintiffs lack standing to assert a violation of the Elections or Electors Clauses. Recognizing this, Plaintiffs have abandoned that claim. *Id.* at 7 n.7; *see* ECF No. 124 at 1 (Plaintiffs “acknowledge that—because the General Assembly is not a party here—*Bognet* forecloses their allegations that they have standing to pursue their Elections and Electors Clauses claims.”). Plaintiffs are correct. Confirming what the Supreme Court has held time and time again, the Third Circuit in *Bognet* held that private individuals like Plaintiffs here—voters and a candidate for federal office—lack standing to assert claims under the Elections and Electors Clauses. *Bognet*, 2020 WL 6686120, at \*6.

Plaintiffs lack standing and therefore cannot show a likelihood of success on the merits.

**B. Plaintiffs’ Request for Injunctive Relief Is Barred by the Eleventh Amendment**

As detailed in the DNC’s motion to dismiss and reply, Plaintiffs have attempted to dress state law claims up with a federal constitutional gloss, but they cannot evade the strictures of the Eleventh Amendment merely by applying different labels to what are essentially alleged violations of Pennsylvania’s Election Code.

*See* ECF No. 144 at 12-14; ECF No. 178 at 17-18. The Supreme Court’s decision in *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 106 (1984), establishes that the Eleventh Amendment gives state officials immunity from suits in federal court based on violations of state law, including suits for prospective injunctive relief. *Id.*

Both the relief Plaintiffs request in their motion for a preliminary injunction and the nature of their claims make clear that, however stylized, they seek nothing more than a federal court injunction directing state officials to act in accordance with state law. *See, e.g.*, Pls.’ Mem. at 5 (complaining that “invalid votes were counted contrary to Pennsylvania law”); *id.* at 6 (arguing that “election boards flouted the requirements of the Election Code by counting [certain] ballots”); *id.* at 9 (“Despite the clear commands of the Election Code, [the Secretary] and the other Defendants systematically disregarded key ballot integrity and security measures associated with mail-in votes.”); *id.* (complaining that “[c]ounty boards have continued ignoring Pennsylvania law”). Indeed, at two points Plaintiffs make the flaw in their position explicit, stating that “Defendants violated the Equal Protection Clause, Due Process Clause and Electors Clauses of the Constitution by counting votes that were unlawful under the Pennsylvania Election Code.” *Id.* at 15; *see also id.* at 22 (“Defendants

violated the Constitution by counting votes that were unlawful under the Pennsylvania Election Code.”).<sup>6</sup>

Plaintiffs are wrong in asserting that Defendants violated state law, *see* ECF No. 105 at 38-40, but even if they were right, those violations fail to give rise to federal constitutional claims. *See Balsam v. Sec’y of N.J.*, 607 F. App’x 177, 183 (3d Cir. 2015) (rejecting Plaintiffs’ argument that “because their state law claims [were] premised on violations of the federal Constitution and [sought] prospective injunctive relief,” the Eleventh Amendment did not apply and correspondingly holding claims jurisdictionally barred); *McMullen v. Maple Shade Twp.*, 643 F.3d 96, 98 (3d Cir. 2011) (affirming district court’s dismissal of case for failing to state a violation of any federal right because “[d]espite [Plaintiff’s] best efforts to dress-up [his] claim in the federal garb of the Fourth Amendment, at bottom, these claims remain state law claims”). Plaintiffs have done nothing more than attempt to “dress-

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<sup>6</sup> As noted in the DNC’s motion to dismiss, this is plainly incorrect because “[m]ere violation of a state statute does not infringe the federal Constitution.” *Snowden v. Hughes*, 321 U.S. 1, 11 (1944); *see also, e.g., Bognet*, 2020 WL 6686120, at \*11 (“Violation of state election laws by state officials or other unidentified third parties is not always amenable to a federal constitutional claim.”); *Shipley v. Chicago Bd. of Election Comm’rs*, 947 F.3d 1056, 1062 (7th Cir. 2020) (“A violation of state law does not state a claim under § 1983, and, more specifically, a deliberate violation of state election laws by state election officials does not transgress against the Constitution.”); *Martinez v. Colon*, 54 F.3d 980, 989 (1st Cir. 1995) (“[T]he Constitution is not an empty ledger awaiting the entry of an aggrieved litigant’s recitation of alleged state law violations—no matter how egregious those violations may appear within the local legal framework.”).

up [their state law] claim[s] in the federal garb” of the Fourteenth Amendment and the Electors Clause, but that does not make them any less state law claims. *McMullen*, 643 F.3d at 98.

By asking this Court to issue an injunction against the Secretary, a state official, Plaintiffs’ requested relief squarely contradicts the Supreme Court’s directive in *Pennhurst*, which makes plain that such injunctions against state officials are outside this Court’s jurisdiction under the Eleventh Amendment.

### **C. Plaintiffs’ Equal Protection Claim Fails As A Matter of Law**

Plaintiffs’ equal protection claim fails because they cannot show that Defendants burdened anyone’s right to vote by notifying voters about defects with their mail ballots and giving those voters the opportunity to cast a replacement or provisional ballot. Plaintiffs’ equal protection claim must be analyzed under the *Anderson-Burdick* balancing test. *Rogers v. Corbett*, 468 F.3d 188, 193 (3d Cir. 2006). That test employs a “flexible standard” that recognizes that “[e]lection laws will invariably impose some burden upon individual voters,” and that not all such burdens are unconstitutional. *Burdick v. Takushi*, 504 U.S. 428, 433-34 (1992). Under *Anderson-Burdick*, “the State’s important regulatory interests are generally sufficient to justify” “reasonable, nondiscriminatory restrictions” on the right to vote. *Id.* at 434 (internal quotation marks omitted).

As Defendants explain in their motion to dismiss and reply (*see* ECF No. 105 at 27-30; ECF No. 178 at 12-14), Defendants’ notification procedures did not burden anyone’s right to vote; they only “ma[d]e[] it easier for some voters to cast their ballots.” *Short v. Brown*, 893 F.3d 671, 677 (9th Cir. 2018). To the extent Plaintiffs characterize the supposed dilution of their votes as a burden, they misunderstand the law. As Judge Ranjan explained last month in rejecting the Trump Campaign’s vote-dilution theories, a “complain[t] that the state is *not* imposing a restriction on *someone else’s* right to vote” is not cognizable under the Equal Protection Clause. *Donald J. Trump for President, Inc.*, 2020 WL 5997680, at \*44 (emphasis in original). Any minimal burden, moreover, is readily justified by the strong interest in protecting the fundamental right to vote and “to have [one’s] vote[] counted.” *See Reynolds v. Sims*, 377 U.S. 533, 554 (1964). Plaintiffs are thus not likely to succeed in establishing an equal protection claim based on Defendants’ notification procedures.

Plaintiffs likewise fail to show a likelihood of success based on any other election practice. Plaintiffs do not even attempt to argue that Defendants violated the Equal Protection Clause based on where canvass watchers were permitted to stand. *See* Pls.’ Mem. at 18-21. One practice that Plaintiffs mention in passing—the alleged “segregat[ing]” or “commingl[ing]” of ballots—is never mentioned in the Amended Complaint. *See id.* at 19; *see also Pennsylvania ex rel. Zimmerman v.*

*Pepsico, Inc.*, 836 F.2d 173, 181 (3d. Cir. 1988) (“It is axiomatic that the complaint may not be amended by the briefs.”) (citation omitted); *First Health Grp. Corp. v. Nat’l Prescription Adm’rs, Inc.*, 155 F. Supp. 2d 194, 233 n.10 (M.D. Pa. 2001) (“This Court will not award a preliminary injunction on grounds not raised in the complaint.”). And a similar problem precludes any argument based on supposedly inconsistent counting of “ballots [whose outer envelope contains] no signatures, no dates, or an incomplete address.” See Pls. Mem. 19. The Amended Complaint contains only a generic, cursory allegation that “voters in Republican-leaning counties who failed to fully fill out their mail or absentee ballot envelopes had their ballots rejected,” and the opposite was true for those in “Democrat-leaning counties.” Am. Compl. ¶ 158. That is not enough to have put any such practice at issue in this litigation. See *Moneyham v. Ebbert*, 723 F. App’x 89, 92 (3d Cir. 2018) (per curiam) (“The District Court was correct to deny this requested injunction because it involved allegations unrelated to the complaint.”).

In any event, Plaintiffs are wrong that Defendants violated the Equal Protection Clause just because different counties might have taken different approaches to accepting mail ballots whose outer envelope was missing certain non-substantive information. The Sixth Circuit rejected precisely such an argument in *Northeast Ohio Coalition for the Homeless v. Husted*, 837 F.3d 612 (6th Cir. 2016) (“*NEOCH*”). As Judge Boggs explained in his opinion for the court, plaintiffs in

that case had presented “uncontested evidence” that the practices of different counties “var[ied], and sometimes considerably.” *Id.* at 635. A ballot with the wrong street number was accepted by nine counties but rejected by eleven; a ballot with a missing or incorrect street name was accepted by 8 counties but rejected by eight other counties; ballots with an unconfirmed address were accepted by two counties and rejected by nine others; a ballot with a commercial, rather than a residential, address was accepted by four counties while two other counties might or might not accept it; a ballot with the correct birth year, but an incorrect month or date, was accepted by seven counties and rejected by eight others; and ballots on which the voter wrote the current date rather than their birth date were accepted by four counties and rejected by nine other counties. *See Ne. Ohio Coal. for the Homeless v. Husted*, 2016 WL 3166251, at \*17 (S.D. Ohio June 7, 2016). Yet this wide county-to-county variation presented no constitutional concerns because

Arguable differences in how elections boards apply uniform statewide standards to the innumerable permutations of ballot irregularities, although perhaps unfortunate, are to be expected, just as judges in sentencing-guidelines cases apply uniform standards with arguably different results. In fact, that flexibility is part and parcel of the right of “local entities, in the exercise of their expertise, [to] develop different systems for implementing elections.”

*NEOCH*, 837 F.3d at 636 (quoting *Bush*, 531 U.S. at 109). Because “[m]any courts ... have recognized that counties may, consistent with equal protection, employ entirely different election procedures and voting systems within a single state,”



Plaintiffs’ new theory of equal-protection harm fails. *Donald J. Trump for President, Inc.*, 2020 WL 5997680, at \*44 (collecting cases). Indeed, Pennsylvania law delegates to the county boards of elections the obligation to “examine the declaration on each envelope” and determine that the “declaration is sufficient,” 25 P.S. § 3146.8(e), thus conferring significant discretion on those local entities—and confirming that there can be no constitutional violation in this statutory design.

Even apart from these dispositive legal defects, Plaintiffs cannot show a likelihood of success because none of the evidence they submitted in support of their motion, including the handful of vague declarations they attach, remotely establishes the sweeping theory of differential treatment on which they rely. Mr. Hetak states that an email sent on October 26 from one of the Secretary’s systems informed him that his ballot had been cancelled. Pls.’ Mot. Ex. 15 ¶ 4. That actually *contradicts* Plaintiffs’ theory of differential treatment because it shows that a *statewide* system was providing notice to voters when their ballots were cancelled. Plaintiff Henry’s declaration is inconclusive about whether his ballot was ever received, so it shows nothing about whether Lancaster County did or did not notify voters about defective ballots. Pls.’ Mot. Ex. 13 ¶¶ 2, 3.

Plaintiffs’ remaining declarations show, at most, that one county (Philadelphia) arranged for voters to be notified about defective ballots, *see* Pls. Mot. Ex. 12, while three other counties did not, *see* Pls. Mot. Exs. 14, 16, 17. That is a

far cry from establishing a statewide scheme to treat Democratic and Republican counties differently in order to tilt the election away from President Trump and toward Vice President Biden. Plaintiffs' unsubstantiated rhetoric cannot nudge their claim across the "plausibility" threshold required by *Ashcroft v. Iqbal*, 556 U.S. 662, 681-84 (2009). Plaintiffs must allege far more to overturn the presumption of regularity that surrounds the official acts at issue in this case. *See id.*; *Hartman v. Moore*, 547 U.S. 250, 263-65 (2006).

#### **D. Plaintiffs' Due Process Claim Fails**

Plaintiffs did not raise due process claims in their First Amended Complaint, so their due process arguments cannot form the basis of a preliminary injunction. *See Moneyham*, 723 F. App'x at 92. Their arguments are also meritless. Plaintiffs argue that Pennsylvania law violates due process if it does not allow poll watchers "meaningful observation." Pls.' Mem. at 22. But "there is no ... constitutional right to serve as a poll watcher." *Donald J. Trump for President, Inc.*, 2020 WL 5997680, at \*67; *see also Republican Party of Pa. v. Cortés*, 218 F. Supp. 3d 396, 406 (E.D. Pa. 2016). And even if Defendants did violate the Pennsylvania observer statute (an argument now definitively rejected by the Pennsylvania Supreme Court), Plaintiffs have not connected this state-law violation to any due process right.

The cases Plaintiffs cite, *see* Pls.' Mem at 21-22, do not advance their claims here. Unlike Plaintiffs' claims, those cases involved actual, systemic ballot

miscounting. For example, *Marks v. Stinson* involved “massive absentee ballot fraud” in which a candidate induced hundreds of voters to submit fraudulent absentee ballot applications, with the deliberate assistance of state election officials. 19 F.3d at 888. In *Hoblock* and *Griffin*, election officials systemically refused to tally valid absentee ballots. *Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77, 98 (2d Cir. 2005); *Griffin*, 570 F.2d at 1074. And *Krieger* involved ballots that omitted a candidate’s name. *Krieger v. Peoria*, No. CV-14-01762-PHX-DGC, 2014 WL 4187500, at \*1 (D. Ariz. Aug. 22, 2014).

In their First Amended Complaint, however, Plaintiffs do not allege that any ballots were miscounted or that any fraudulent ballots were cast, and the evidence they now offer does not establish a *prima facie* due process violation. For example, Plaintiffs cite their notices of appeal in Bucks County and Montgomery County. Pls.’ Mot., Exs. 7, 8. But the Trump Campaign conceded in those cases and other state law actions (as they did in this case at Tuesday’s hearing) that they are not alleging that fraudulent votes were counted. In Philadelphia County, the Trump Campaign confirmed that it was “not proceeding based on allegations of fraud or misconduct.” Ex. O.<sup>7</sup> In Montgomery County, the Campaign’s counsel confirmed that she had no “knowledge” of “any fraud” or “undue or improper influence” with

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<sup>7</sup> *In re Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 Gen. Election*, No. 2011-874-878, at 13-14 (Pa. Ct. Com. Pl. Nov. 13, 2020).

respect to the “592 disputed ballots” being challenged. Ex. P.<sup>8</sup> Similarly, in Bucks County, the Campaign stipulated that it “do[es] not allege, *and there is no evidence of*, any fraud[,], ... any misconduct[,], any impropriety[,], ... [or] any undue influence [...] with respect to the challenged ballots.” Ex. Q; *see also id.* (“Petitioners do not allege, and there is no evidence, that any of the challenged ballots were cast by someone other than the electors whose signature is on the outer envelope.”).<sup>9</sup>

Nor have Plaintiffs put forth any evidence of fraud in this case; their evidence relates to the counties’ notification procedures. At most, Plaintiffs assert “garden variety election irregularities,” not the kind of “fundamentally unfair” practices that give rise to a due process violation. *See Bennett v. Yoshina*, 140 F.3d 1218, 1226 (9th Cir. 1998).

## **II. The Equities Do Not Favor An Injunction**

Even if Plaintiffs’ case on the merits were not as weak as it is, Plaintiffs have not come close to justifying the grossly disproportionate injunction they seek, nor have they demonstrated any equitable right to relief. Instead, their naked attempt to “declare Trump the winner,” Pls.’ Mem. at 2, threatens to “abrogate the right of

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<sup>8</sup> Tr., *Donald J. Trump for President, Inc. v. Bucks Cty. Bd. of Elections*, No. 2020-18680, at 11 (Pa. Ct. Com. Pl. Nov. 10, 2020).

<sup>9</sup> Stipulated Facts, *Donald J. Trump for President, Inc. v. Bucks Cnty. Bd. of Elections*, No. 2020-5786, ¶¶ 27-30, 34 (Pa. Ct. Com. Pl. Nov. 19, 2020).

millions of Pennsylvanians to select their President and Vice President.” *Stein*, 223 F. Supp. 3d at 442.

Disenfranchising even “a single voter is a matter for grave concern,” *Serv. Emps. Int’l Union, Local 1 v. Husted*, 906 F. Supp. 2d 745, 750 (S.D. Ohio 2012), and Plaintiffs’ casual embrace of the notion that millions of ballots solemnly cast by Pennsylvanians “could be from Mickey Mouse” recklessly disregards the rights of citizens of this Commonwealth to have their ballots counted.

And the harm to those voters from casting their ballots into doubt—and ultimately causing widespread disenfranchisement—vastly outweighs any potential harm to Plaintiffs. Indeed, Plaintiffs cannot demonstrate any real harm that they or anyone else will suffer absent injunctive relief. The requested injunction should be denied.

**A. Plaintiffs Have An Adequate Remedy At Law And Will Not Be Irreparably Injured In The Absence Of An Injunction**

The availability of adequate state remedies, the admitted lack of evidence offered in support of Plaintiffs’ motion, and Plaintiffs’ delay in bringing this litigation doom any argument that Plaintiffs will face irreparable injury absent a preliminary injunction. The “extraordinary remedy” of injunctive relief is “unavailable absent a showing of irreparable injury and no adequate remedy at law.” *Flynn v. U.S. by & through Eggers*, 786 F.2d 586, 590 (3d Cir. 1986); *see also Bey*

*v. DeRose*, No. 4:CV-14-1612, 2014 WL 5035417, at \*2 (M.D. Pa. Oct. 8, 2014). And, importantly here, “[s]peculative injury does not constitute a showing of irreparable harm.” *Ledoue v. Sabol*, No. 1:10-CV-02268, 2011 WL 2746258, at \*2 (M.D. Pa. July 12, 2011) (citing *Cont’l Grp., Inc. v. Amoco Chems. Corp.*, 614 F.2d 351, 359 (3d Cir. 1980)).

Plaintiffs have adequate remedies at law in the form of state election contests, recounts, and recanvasses, all of which they may pursue to address claims of fraud or irregularity—if they were supported by actual evidence (which they are not). *See supra* at 4-6. The Trump Campaign has also raised some of the purported state law violations they assert here in state courts, as demonstrated by the exhibits attached to their motion for a preliminary injunction. *See* ECF No. 182-8 (*In Re: Canvass of Absentee and Mail-In Ballots of November 3, 2020 General Election*, No. 20-05786-35 (Bucks Cnty. Ct. Common Pleas Nov. 9, 2020)); ECF No. 182-9 (*In Re: Canvass of Absentee and Mail-In Ballots of November 3, 2020 General Election*, No. 2020-18680 (Montgomery Cnty. Ct. Common Pleas Nov. 5, 2020)).<sup>10</sup> Indeed, just two days

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<sup>10</sup> The Trump Campaign lost both cases referenced in those exhibits and chose not to appeal those decisions, but it provides no reason why that forum could not provide an adequate remedy at law. *See In Re: Canvass of Absentee and Mail-In Ballots of November 3, 2020 General Election*, No. 20-05786-35, slip. op. at 21 (Bucks Cnty. Ct. Common Pleas Nov. 19, 2020)); *In Re: Canvass of Absentee and Mail-In Ballots of November 3, 2020 General Election*, No. 2020-18680, slip. op. at 11 (Montgomery Cnty. Ct. Common Pleas Nov. 13, 2020).

ago the Pennsylvania Supreme Court granted an application to consider the Trump Campaign's challenge to counting mail ballots in which the voter declaration is not completely filled out, another practice Plaintiffs complain of that, once again, can be addressed by the Commonwealth's courts. *See, e.g., Order, In Re: Canvass of Absentee and Mail-in Ballots of Nov. 3, 2020 Gen. Election*, Nos. 89-93 EM 2020 (Pa. Nov. 18, 2020).

But despite the abundance of state law remedies, Plaintiffs ask this federal court to allow them to bypass those forums without any explanation for why these remedies are inadequate. And just four years ago, the Trump Campaign itself argued that Pennsylvania's election processes precluded the kind of injunction it now seeks from this Court. *See* Brief of Donald J. Trump for President, Inc. in Opposition to Plaintiffs' Motion for Preliminary Injunction, *Stein*, No. 16-CV-06287, ECF No. 38 (E.D. Pa. Dec. 8, 2016). The Trump Campaign was right four years ago and is wrong now. *Cf. González-Cancel v. Partido Nuevo Progresista*, 696 F.3d 115, 120 (1st Cir. 2012) ("Where, as here, a plaintiff is aware of, yet fails to fully use, an adequate state administrative or judicial process to address a local election dispute, a claim that the election process created fundamental unfairness to warrant federal intervention cannot survive.").

The admitted speculative nature of Plaintiffs' claims also demonstrates a lack of irreparable injury. Plaintiffs have asked this Court to upend Pennsylvania's

election process not to remedy a proven injury, but to allow them to search for ballots that—they hope—may substantiate their contentions, an acknowledgement that they lack evidence to support their spectacular allegations. *See* Pls.’ Mem. at 2 (noting that Plaintiffs’ request relief so that they can conduct an “exercise [that] will determine whether Plaintiffs can prove their case”). That is not an appropriate ground to delay the certification process in a presidential election. Even in a more mundane setting, a preliminary injunction is “an extraordinary remedy never awarded as of right.” *Winter*, 555 U.S. at 24. Such relief requires Plaintiffs to establish that they already have a *likelihood* of success on the merits, *id.* at 32—not a mere hope of prevailing in the future. *Cf. id.* at 22 (preliminary injunction may not be awarded based on “possibility” of irreparable harm). Plaintiffs’ unsupported surmise that something may turn up is not a sufficient justification to delay or overturn the results of a presidential election. *See, e.g., Pfuhl*, 253 A.2d at 275 (refusing to “follow a contestant on a fishing expedition” in the hope that the petitioner could find enough evidence to overturn the result in an election contest).

Finally, Plaintiffs’ undue delay in bringing this litigation, *see* ECF No. 144 at 17-19, undermines any contention that they have suffered irreparable harm. *See Acierno v. New Castle Cnty.*, 40 F.3d 645, 655 (3d Cir. 1994). They challenge election procedures that in some instances have been in place for weeks before



election day.<sup>11</sup> “A long delay by plaintiff after learning of the threatened harm also may be taken as an indication that the harm would not be serious enough to justify a preliminary injunction.” Wright & Miller, 11A *Federal Practice and Procedure*, § 2948.1 (3d ed., Apr. 2017 update).

## **B. The Balance Of Equities Weighs Against Issuing The Injunction**

While Plaintiffs will suffer no real harm if the injunction is denied, granting an injunction would cause both Defendants and the DNC—and, yet more importantly and profoundly, the millions of Pennsylvanians who voted in the election—significant, irreparable harm that could not be adequately redressed at a later date.

### **1. The Requested Injunction Would Likely Prevent Defendants From Timely Certifying The Results Of The Election**

Though Plaintiffs minimize the scope of the requested preliminary injunction, labeling it only a “slight delay,” their requested relief could well prevent certification of election results on a Commonwealth-wide basis until it is too late for the results to be certified in time to meet the federal safe-harbor deadline for Pennsylvania’s

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<sup>11</sup> See, e.g., Pa. Dep’t of State, *Guidance Concerning Examination of Absentee and Mail-In Ballot Return Envelopes* (Sept. 11, 2020), <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Examination%20of%20Absentee%20and%20MailIn%20Ballot%20Return%20Envelopes.pdf> (providing the steps each county board of elections would follow to process returned mail ballots).

electoral votes (December 8) or even the meeting of the electors to cast their votes (December 14). Pls.’ Mem. at 2, 25.

The Electoral College meets on December 14, and Plaintiffs’ suggestion that their injunction will not harm anyone, *id.* at 25, ignores the cascading consequences of the requested delay. Under Pennsylvania law, the last day for counties to certify their returns to the Secretary is November 23 (i.e., in three days). *See* 25 P.S. § 2642(k). The purpose of the county certification deadline is to ensure that the Secretary of State has time to process and compute those returns as required under Pennsylvania law, which are then sent to the Governor, who will ascertain the number of votes given and issue certificates of election by December 8 based on the choice of Pennsylvania’s voters. *See id.* § 3166; 3 U.S.C. § 5 (establishing the federal “safe harbor” deadline of December 8, 2020); *Stein*, 223 F.Supp. 3d at 426 (“Pennsylvania has opted into the federal ‘safe harbor’ that allows it to determine conclusively its Presidential Electors through state procedures. The safe harbor requires Pennsylvania to make a final determination of its Electors at least six days before the Electoral College meets.”). Pennsylvania’s electors then must vote when the electoral college convenes on December 14. 3 U.S.C. § 7.

Any intervention into state certification procedures would be wholly unwarranted, based on essentially non-existent evidence of election irregularities, and could well cause the Commonwealth to miss these state-mandated deadlines,

which are in place precisely so that Pennsylvania can ensure that its chosen slate of electors are accepted by Congress without question.<sup>12</sup> It is only in the rarest of circumstances that federal courts have taken such drastic measures to prevent or delay the certification of election results, and only where the evidence establishes that there was a fundamental failure of the election process. *Stein*, 223 F. Supp. 3d at 438 (collecting cases).<sup>13</sup>

Plaintiffs' unsupported allegations do not even hint at the kind of systemic fraud or irregularities that could support such relief. Plaintiffs' First Amended Complaint—the operative complaint—removed their due process claim alleging fundamental unfairness in the election, and the only “evidence” for the number of allegedly unlawful ballots appears to be that 37,000 mail ballots were rejected in Pennsylvania's *primary* election. Pls.' Mem. at 17. That irrelevant statistic—which ignores all of the experience that election officials and voters gained as a result of the primary, as well as the robust public education efforts after the primary to show voters how to correctly vote by mail, *supra* at 14-15—cannot justify a

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<sup>12</sup> Similarly, the DNC and Vice President Biden, would suffer severe harm if elections returns were not timely processed and Pennsylvania's 20 electoral votes were not awarded to the Vice President, despite his leading in the Commonwealth by over 81,000 votes.

<sup>13</sup> It is telling that Plaintiffs now say that they “do not seek to enjoin the certification of any other Pennsylvania election” (Pls. Mem. 1)—including state legislative elections in which Republicans maintained a majority in both houses of the General Assembly—only the election that the Trump Campaign lost.

Commonwealth-wide halt to certification of election results that would require circumstances akin to a “total failure to conduct the election.” *See Stein*, 223 F. Supp. 3d at 438. Indeed, when litigants in Michigan asked a court to do precisely what Plaintiffs ask here—to delay a state’s certification of their results under state law—the court refused to do so, concluding “[i]t would be an unprecedented exercise of judicial activism for this Court to stop the certification process of the Wayne County Board of Canvassers. The Court cannot defy a legislatively crafted process,” Opinion & Order at 11, *Costantino*, No. 20-014780-AW. Similarly, just yesterday, the Northern District of Georgia flatly refused to enjoin Georgia election officials from certifying results, concluding at the end of a hearing that “[t]o halt the certification at literally the 11th hour would breed confusion and significant disenfranchisement.”<sup>14</sup>

## **2. The Requested Injunction Will Cause Irreparable Harm To Other Parties**

The requested injunction would cause irreparable harm to the DNC and, more importantly, to the millions of Pennsylvanians who cast votes in the election and who expect that their choice in the presidential election will be expeditiously

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<sup>14</sup> A. Judd, *Trump allies draw Georgia into election conspiracy claims*, The Atlanta Journal-Constitution, Nov. 19, 2020, <https://www.ajc.com/politics/election/judge-rejects-trump-supporters-attempt-to-reject-election-results/GMSGXDY4AZFEXOGBNOLGBZ45NI>; *see Wood v. Raffensperger*, No. 1:20-cv-04651, ECF No. 52 (Minute Order denying request for temporary injunction) (Ex. \*\*).

certified and transmitted to Congress for the counting of the electoral votes. At a minimum, the delay Plaintiffs seek would have the effect of calling into question all the mail-in votes that were cast in the Defendant counties, including—but not limited to—those cast for the Biden-Harris ticket and other Democratic candidates; it could also have the effect of invalidating every ballot cast in Pennsylvania, if it results in Pennsylvania’s inability to send its chosen slate of electors to Congress. Plaintiff has not come close to justifying those dramatically adverse consequences for Pennsylvania voters and for the DNC.

### **3. The Public Interest Does Not Favor The Injunction**

“In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.” *Weinberger*, 456 U.S. at 312; *Republican Party of Pa. v. Cortes*, 218 F. Supp. 3d 396, 412 (E.D. Pa. 2016). Here, the requested relief injures the public interest for two distinct reasons.

First, the requested injunction would impose inordinate discovery obligations on the same local and state officials who are charged with ensuring that Pennsylvania’s tabulation of all votes in *every federal and state election* is finalized and certified. Heaping onerous discovery on these officials will make it difficult for them to carry out their mandatory functions in the manner (i.e., in the time and pace) that the General Assembly has directed. The public has a strong interest in ensuring

that the results in all elections from president on down to local races are accurately and promptly finalized. Plaintiffs' unprecedented requested relief will harm that interest.

Second, the requested injunction would cause irreparable harm to the DNC and, more importantly, to the millions of Pennsylvanians who cast votes in the *presidential election* and who expect that their choices will expeditiously be certified and transmitted to Congress for the counting of the electoral votes. The public consequences of this requested relief are monumental and weigh heavily against a preliminary injunction.

If Plaintiffs' request is granted, it could "well ensure that no Pennsylvania vote counts," abrogating the rights of Pennsylvania voters to select the next President and render their votes meaningless. *Stein*, 223 F. Supp. 3d at 442. This "would be both outrageous and completely unnecessary." *Id.* Indeed, it is this requested relief—rather than any alleged Election Code violation—that threatens to deprive countless Pennsylvanians, including the DNC's members, of their constitutional right to vote and to have their votes counted. *See, e.g., Reynolds*, 377 U.S. at 555 n.29 ("There is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth. The right to vote includes the right to have the ballot counted.") (internal quotation marks omitted).

Were this Court to enjoin certification of Pennsylvania’s presidential election results, Pennsylvanians’ confidence in free and fair elections would also be irreparably damaged. Pennsylvanians—during a global pandemic—turned out to vote in record numbers. A court order obstructing the will of those voters, when Vice President Biden currently leads by more than 81,000 votes in the Commonwealth, would deeply diminish voters’ faith in the electoral process—a sentiment that would persist long after this election. *See Hardin v. Montgomery*, 495 S.W.3d 686, 711 (Ky. 2016) (noting “the destabilization of election results that would occur if we cast aside election results for trivial reasons or unsubstantiated accusations” would be “corrosive to the public’s trust in fair elections”); *One Wis. Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896, 903 (W.D. Wis. 2016), *aff’d in part, rev’d in part on other grounds sub nom. Luft v. Evers*, 963 F.3d 665 (7th Cir. 2020) (“a preoccupation with mostly phantom election fraud leads to real incidents of disenfranchisement, which undermine rather than enhance confidence in elections.”). The balance of equities accordingly tips decidedly against Plaintiffs; and their ultimate goal—to discard lawfully-cast ballots—disserves the Commonwealth and the interests of its citizens.

### CONCLUSION

For the reasons stated herein, the DNC requests that this Court deny Plaintiffs’ motion for a temporary restraining order and preliminary injunction.

Dated: November 20, 2020

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Respectfully submitted,

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*Counsel for Intervenor DNC*

*\*Special Appearance*



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document, memorandum in support, and proposed order were electronically filed on November 20, 2020, via the Court's CM/ECF System, which will send notification of such filing to counsel of record for Plaintiffs.

/s/ Ari Holtzblatt

Counsel for Intervenor DNC

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

Donald J. Trump for President, Inc.,  
Lawrence Roberts, and David John Henry,  
  
Plaintiffs,

v.

Kathy Boockvar, in her capacity as  
Secretary of the Commonwealth of  
Pennsylvania, Allegheny County Board of  
Elections, Centre County Board of  
Elections, Chester County Board of  
Elections, Delaware County Board of  
Elections, Montgomery County Board of  
Elections, Northampton County Board of  
Elections, and Philadelphia County Board  
of Elections,

Defendants,

v.

DNC Services Corporation/Democratic  
National Committee,  
  
Proposed Intervenor-Defendant.

No. 4:20-cv-02078-MWB  
(Judge Matthew W. Brann)

**DECLARATION OF ARI HOLTZBLATT IN SUPPORT OF  
DEFENDANT-INTERVENOR'S OPPOSITION TO MOTION FOR  
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I, Ari Holtzblatt, declare as follows:

1. I am counsel for Defendant-Intervenor DNC Services Corporation/Democratic National Committee. I have personal knowledge of the facts set forth below.
2. Attached hereto as Exhibit A is a true and correct copy of the Opinion

in *In re: Canvass of Absentee and Mail Ballots of Nov. 3, 2020 General Election*, Nos. 201100874 (Pa. Ct. Com. Pl. Nov. 13, 2020).

3. Attached hereto as Exhibit B is a true and correct copy of the Opinion in *In re: Canvass of Absentee and Mail Ballots of Nov. 3, 2020 General Election*, Nos. 201100875 (Pa. Ct. Com. Pl. Nov. 13, 2020).

4. Attached hereto as Exhibit C is a true and correct copy of the Opinion in *In re: Canvass of Absentee and Mail Ballots of Nov. 3, 2020 General Election*, Nos. 201100877 (Pa. Ct. Com. Pl. Nov. 13, 2020).

5. Attached hereto as Exhibit D is a true and correct copy of the Opinion in *In re: Canvass of Absentee and Mail Ballots of Nov. 3, 2020 General Election*, Nos. 201100878 (Pa. Ct. Com. Pl. Nov. 13, 2020).

6. Attached hereto as Exhibit E is a true and correct copy of the decision in *Donald J. Trump for President, Inc. v. Montgomery Cnty. Bd. of Elections*, No. 2020-18680 (Pa. Ct. Com. Pl. Nov. 13, 2020).

7. Attached hereto as Exhibit F is a true and correct copy of the decision in *In re: 2,349 Ballots in the 2020 General Election*, No. 1162 C.D. 2020 (Pa. Com. Ct. Nov. 19, 2020).

8. Attached hereto as Exhibit G is a true and correct copy of the Pennsylvania Supreme Court's Order Granting Application in *In re: Canvass of Absentee and Mail-in Ballots of Nov. 3, 2020 Gen. Election*, Nos. 89-93 EM 2020

(Pa. Nov. 18, 2020).

9. Attached hereto as Exhibit H is a true and correct copy of the decision in *Costantino v. City of Detroit*, No. 20-014780-AW (Mich. Cir. Ct. Nov. 13, 2020).

10. Attached hereto as Exhibit I is a true and correct copy of the Opinion & Order in *Donald J. Trump for President, Inc. v. Benson*, No. 20-000225-MZ (Mich. Ct. Cl. Nov. 6, 2020).

11. Attached hereto as Exhibit J is a true and correct copy of the decision in *Donald J. Trump for President Inc. v. Phila. Cnty. Bd. of Elections*, No. 2:20-CV-05533-PD, ECF No. 5 (E.D. Pa. Nov. 5, 2020).

12. Attached hereto as Exhibit K is a true and correct copy of the decision in *Kraus v. Cegavske*, Order at 9, No. 20-OC-00142 (Nev. Dist. Ct. Oct. 29, 2020), *motion for stay denied*, No. 82018 (Nev. Nov. 3, 2020).

13. Attached hereto as Exhibit L is a true and correct copy of the docket in *Stokke v. Cegavske*, No. 2:20-CV-02046 (D. Nev.).

14. Attached hereto as Exhibit M is a true and correct copy of the decision in *In re: Enforcement of Election Laws and Securing Ballots Cast or Received After 7:00 P.M. on Nov. 3, 2020*, No. SPCV2000982-J3 (Ga. Sup. Ct. Nov. 5, 2020).

15. Attached hereto as Exhibit N is a true and correct copy of the Opinion & Order in *Stoddard v. City Election Comm'n*, No. 20-014604-CZ (Mich. Cir. Ct. Nov. 6, 2020).

16. Attached hereto as Exhibit O is a true and correct copy of excerpts of the November 13, 2020 Transcript of Proceedings in the Court of Common Pleas for Philadelphia County, Pennsylvania, in *In re Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 Gen. Election*, No. 2011-874-878 (Pa. Ct. Com. Pl. Nov. 13, 2020).

17. Attached hereto as Exhibit P is a true and correct copy of excerpts of the November 10, 2020 Transcript of Proceedings in the Court of Common Pleas for Montgomery County, Pennsylvania, in *Donald J. Trump for President, Inc. v. Montgomery Cty. Bd. of Elections*, No. 2020-18680 (Pa. Ct. Com. Pl. Nov. 10, 2020).

18. Attached hereto as Exhibit Q is a true and correct copy of the Stipulated Facts filed by the parties in *Donald J. Trump for President, Inc. v. Bucks Cnty. Bd. of Elections*, No. 2020-5786 (Pa. Ct. Com. Pl. Nov. 16, 2020).

19. Attached hereto as Exhibit R is a true and correct copy of Order in *In re: 2,349 Ballots In The 2020 General Election*, No. 337 WAL 2020 (Pa. Sup. Ct. Nov. 20, 2020).

20. Attached hereto as Exhibit S is a true and correct copy of the docket in *Wood v. Raffensperger*, No. 1:20-cv-04651 (N.D. Ga. Nov. 19, 2020).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 20, 2020.

/s/ Ari Holtzblatt

Ari Holtzblatt

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# EXHIBIT A

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IN RE: CANVASS OF ABSENTEE AND MAIL-IN  
BALLOTS OF NOVEMBER 3, 2020 GENERAL  
ELECTION

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

NOVEMBER TERM, 2020

No. 201100874

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**ORDER**

AND NOW, to-wit, this 13<sup>th</sup> day of November, 2020, upon consideration of Petitioner Donald J. Trump for President, Inc.'s Notice of Appeal via Petition for Review of the Decision of the Philadelphia County Board of Elections, the response of the Philadelphia County Board of Elections and the submissions on behalf of Intervenor, DNA Services Corp./Democratic National Committee and the arguments of counsel, it appearing that Petitioner has properly and timely sought review of the decision of the Board of Elections pursuant to 25 Pa. C.S.A. §3146(g)(6), it further appearing that Petitioner is not contending that there has been fraud, that there is evidence of fraud or that the ballots in question were not filled out by the elector in whose name the ballot was issued, and it further appearing that Petitioner does not allege fraud or irregularity in the canvass and counting of the ballots, and the Court finding that the Intervenor's Objection to the consideration of the appeal as an "eligibility challenge" pursuant to 25 Pa. C.S.A. §3146.8 is a mischaracterization of the above-referenced review (and therefore a meritless objection), the Court finds as follows:

1. Petitioner asserts a challenge to the decision of the Board of Elections to count the votes represented in the grouping designated Category 3, those being 1,211 ballots on



which the outer envelope contains only the Elector's signature but which do not have the date, printed name or the elector's address filled out in the space provided.

2. The envelope provided to the elector from the Secretary of State of the Commonwealth contains a direction in the form of a checklist on the back of the envelope that directs the elector to sign the declaration, but makes no mention of filling out the date or other information.
  3. The Election Code provides that a voter shall "fill out, date and sign the declaration" on the outer envelope.
  4. The term "fill out" in the Code is not a defined term and is ambiguous.
  5. The pre-printed ballot already contains the elector's name and address on the pre-printed exterior envelope.
  6. Neither a date nor the elector's filling out of the printed name or of the address are requirements necessary to prevent fraud.
  7. The Petitioner concedes that all ballots by a qualified elector in this category were timely received.
  8. The Election Code directs the Court of Common Pleas in considering appeals from the County Board of Elections to make such decree as right and justice may require.
- 25 Pa. C.S.A. §3157.

WHEREFORE, the Court ORDERS and DECREES that the Petition is **DENIED**. The Court further ORDERS AND DECREES that the decision of the Philadelphia County Board of Elections in canvassing and counting 1,211 absentee and mail-in ballots containing the elector's signature on the Declaration envelope but missing the date and other "fill out" information is

**AFFIRMED** as in accordance with the provisions of the Election Code and the decisions of the Courts interpreting the Code.

BY THE COURT,

  
Crumlish, J.

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# EXHIBIT B

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IN RE: CANVASS OF ABSENTEE AND MAIL-IN  
BALLOTS OF NOVEMBER 3, 2020 GENERAL  
ELECTION

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

NOVEMBER TERM, 2020

No. 201100875

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**ORDER**

AND NOW, to-wit, this 13<sup>th</sup> day of November, 2020, upon consideration of Petitioner Donald J. Trump for President, Inc.'s Notice of Appeal via Petition for Review of the Decision of the Philadelphia County Board of Elections, the response of the Philadelphia County Board of Elections and the submissions on behalf of Intervenors, DNA Services Corp./Democratic National Committee and the arguments of counsel, it appearing that Petitioner has properly and timely sought review of the decision of the Board of Elections pursuant to 25 Pa. C.S.A. §3146(g)(6), it further appearing that Petitioner is not contending that there has been fraud, that there is evidence of fraud or that the ballots in question were not filled out by the elector in whose name the ballot was issued, and it further appearing that Petitioner does not allege fraud or irregularity in the canvass and counting of the ballots, and the Court finding that the Intervenor's Objection to the consideration of the appeal as an "eligibility challenge" pursuant to 25 Pa. C.S.A. §3146.8 is a mischaracterization of the above-referenced review (and therefore a meritless objection), the Court finds as follows:

1. Petitioner asserts a challenge to the decision of the Board of Elections to count the votes represented in the grouping designated Category 4, those being 1,259 ballots on which the outer envelope contains only the Elector's signature and hand-printed address but which do not have the date on which the Elector signed the envelope.

2. The envelope provided to the elector from the Secretary of State of the Commonwealth contains a direction in the form of a checklist on the back of the envelope that directs the elector to sign the declaration, but makes no mention of filling out the date or other information.
3. The Election Code provides that a voter shall “fill out, date and sign the declaration” on the outer envelope.
4. The term “fill out” in the Code is not a defined term and is ambiguous.
5. The pre-printed ballot already contains the elector’s name and address on the pre-printed exterior envelope.
6. Neither a date nor the elector’s filling out of the printed name or of the address are requirements necessary to prevent fraud.
7. The Petitioner concedes that all ballots by a qualified elector in this category were timely received.
8. The Election Code directs the Court of Common Pleas in considering appeals from the County Board of Elections to make such decree as right and justice may require.  
25 Pa. C.S.A. §3157.

WHEREFORE, the Court ORDERS and DECREES that the Petition is **DENIED**. The Court further ORDERS AND DECREES that the decision of the Philadelphia County Board of Elections in canvassing and counting 1,259 absentee and mail-in ballots containing the elector’s signature, hand-printed name and address on the Declaration envelope but missing the date is

**AFFIRMED** as in accordance with the provisions of the Election Code and the decisions of the Courts interpreting the Code.

BY THE COURT,

  
\_\_\_\_\_  
Crumlish, J.

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# EXHIBIT C

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IN RE: CANVASS OF ABSENTEE AND MAIL-IN  
BALLOTS OF NOVEMBER 3, 2020 GENERAL  
ELECTION

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

NOVEMBER TERM, 2020

No. 201100877

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**ORDER**

AND NOW, to-wit, this 13<sup>th</sup> day of November, 2020, upon consideration of Petitioner Donald J. Trump for President, Inc.'s Notice of Appeal via Petition for Review of the Decision of the Philadelphia County Board of Elections, the response of the Philadelphia County Board of Elections and the submissions on behalf of Intervenor, DNA Services Corp./Democratic National Committee and the arguments of counsel, it appearing that Petitioner has properly and timely sought review of the decision of the Board of Elections pursuant to 25 Pa. C.S.A. §3146(g)(6), it further appearing that Petitioner is not contending that there has been fraud, that there is evidence of fraud or that the ballots in question were not filled out by the elector in whose name the ballot was issued, and it further appearing that Petitioner does not allege fraud or irregularity in the canvass and counting of the ballots, and the Court finding that the Intervenor's Objection to the consideration of the appeal as an "eligibility challenge" pursuant to 25 Pa. C.S.A. §3146.8 is a mischaracterization of the above-referenced review (and therefore a meritless objection), the Court finds as follows:

1. Petitioner asserts a challenge to the decision of the Board of Elections to count the votes represented in the grouping designated Category 3, those being 860 ballots on which the outer envelope contains the Elector's signature, hand-printed name and date but which do not have the elector's address filled out in the space provided.



2. The envelope provided to the elector from the Secretary of State of the Commonwealth contains a direction in the form of a checklist on the back of the envelope that directs the elector to sign the declaration, but makes no mention of filling out the date or other information.
3. The Election Code provides that a voter shall “fill out, date and sign the declaration” on the outer envelope.
4. The term “fill out” in the Code is not a defined term and is ambiguous.
5. The pre-printed ballot already contains the elector’s name and address on the pre-printed exterior envelope.
6. Neither a date nor the elector’s filling out of the printed name or of the address are requirements necessary to prevent fraud.
7. The Petitioner concedes that all ballots by a qualified elector in this category were timely received.
8. The Election Code directs the Court of Common Pleas in considering appeals from the County Board of Elections to make such decree as right and justice may require.  
25 Pa. C.S.A. §3157.

WHEREFORE, the Court ORDERS and DECREES that the Petition is **DENIED**. The Court further ORDERS AND DECREES that the decision of the Philadelphia County Board of Elections in canvassing and counting 860 absentee and mail-in ballots containing the elector’s signature, hand-printed name and date on the Declaration envelope but missing the hand-written

address is **AFFIRMED** as in accordance with the provisions of the Election Code and the decisions of the Courts interpreting the Code.

BY THE COURT,

  
Crumlish, J.

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# EXHIBIT D

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IN RE: CANVASS OF ABSENTEE AND MAIL-IN  
BALLOTS OF NOVEMBER 3, 2020 GENERAL  
ELECTION

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

NOVEMBER TERM, 2020

No. 201100878

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**ORDER**

AND NOW, to-wit, this 13<sup>th</sup> day of November, 2020, upon consideration of Petitioner Donald J. Trump for President, Inc.'s Notice of Appeal via Petition for Review of the Decision of the Philadelphia County Board of Elections, the response of the Philadelphia County Board of Elections and the submissions on behalf of Intervenor, DNA Services Corp./Democratic National Committee and the arguments of counsel, it appearing that Petitioner has properly and timely sought review of the decision of the Board of Elections pursuant to 25 Pa. C.S.A. §3146(g)(6), it further appearing that Petitioner is not contending that there has been fraud, that there is evidence of fraud or that the ballots in question were not filled out by the elector in whose name the ballot was issued, and it further appearing that Petitioner does not allege fraud or irregularity in the canvass and counting of the ballots, and the Court finding that the Intervenor's Objection to the consideration of the appeal as an "eligibility challenge" pursuant to 25 Pa. C.S.A. §3146.8 is a mischaracterization of the above-referenced review (and therefore a meritless objection), the Court finds as follows:

1. Petitioner asserts a challenge to the decision of the Board of Elections to count the votes represented in the grouping designated Category 3, those being 4,466 ballots on which the outer envelope contains the Elector's signature and the date but which do not have the printed name or the elector's address filled out in the space provided.

2. The envelope provided to the elector from the Secretary of State of the Commonwealth contains a direction in the form of a checklist on the back of the envelope that directs the elector to sign the declaration, but makes no mention of filling out the date or other information.
  3. The Election Code provides that a voter shall “fill out, date and sign the declaration” on the outer envelope.
  4. The term “fill out” in the Code is not a defined term and is ambiguous.
  5. The pre-printed ballot already contains the elector’s name and address on the pre-printed exterior envelope.
  6. Neither a date nor the elector’s filling out of the printed name or of the address are requirements necessary to prevent fraud.
  7. The Petitioner concedes that all ballots by a qualified elector in this category were timely received.
  8. The Election Code directs the Court of Common Pleas in considering appeals from the County Board of Elections to make such decree as right and justice may require.
- 25 Pa. C.S.A. §3157.

WHEREFORE, the Court ORDERS and DECREES that the Petition is **DENIED**. The Court further ORDERS AND DECREES that the decision of the Philadelphia County Board of Elections in canvassing and counting 4,466 absentee and mail-in ballots containing the elector’s signature and the date on the Declaration envelope but missing the other “fill out” information

(hand-printed name and address) is **AFFIRMED** as in accordance with the provisions of the Election Code and the decisions of the Courts interpreting the Code.

BY THE COURT,

  
\_\_\_\_\_  
Crumlish, J.

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# EXHIBIT E

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COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA  
CIVIL ACTION

DONALD J. TRUMP FOR PRESIDENT, INC.,	:	
et al.,	:	
<i>Plaintiffs/ Petitioners</i>	:	NO. 2020-18680
	:	
v.	:	
	:	
MONTGOMERY COUNTY BOARD OF	:	
ELECTIONS,	:	
<i>Defendant/ Respondent</i>	:	
	:	
DEMOCRATIC NATIONAL COMMITTEE,	:	
et al.,	:	
<i>Intervenor</i>	:	

HAAZ, J.

November 13, 2020

**MEMORANDUM AND ORDER**

**I. INTRODUCTION**

Petitioners, Donald J. Trump for President, Inc., et al., filed a Petition for Review of Decision by the Montgomery County Board of Elections (the “Board”) on November 5, 2020 seeking to invalidate about six hundred (600) absentee and mail-in ballots cast by voters in the November 3, 2020 General Election. Petitioners seek review of the Board’s decision to overrule Petitioners’ objections to count these ballots. Petitioners allege these challenged ballots were cast in violation of 25 P.S. §§ 3146.6(a) and 3150.16(a) because the electors failed to fill out their address immediately below their signed declaration on the outer envelope of the absentee and mail-in ballots. A telephone conference was held on November 6, 2020 where the parties agreed to submit stipulated facts. The Democratic National Convention (“DNC”) and the Montgomery County Democratic Committee moved to intervene in the action. Petitioners and Respondent did not object and these motions were granted by the court.



## II. STIPULATED FACTS

The parties stipulated to the following facts:

1. Electors of the Commonwealth of Pennsylvania may choose to cast their vote in any primary or election by absentee or by mail-in ballot.
2. In both instances, the elector who desires to cast a vote either by absentee ballot or mail-in ballot must request such a ballot from the county board of elections, in this case, Respondent.
3. Upon application to, and approval of that application by Respondent, the elector is provided balloting materials that include: 1) instructions as to how the elector is to complete and return the ballot; 2) the ballot; 3) an inner secrecy envelope into which the ballot is to be placed; and 4) an outer envelope into which the secrecy envelope containing the ballot is to be placed and returned to Respondent.
4. When the balloting materials are sent to the elector by Respondent, pre-printed on the reverse side of the outer envelope is a voter's declaration.
5. Underneath the voter's declaration is a place for the voter to sign, date, and print their name and address.
6. Also pre-printed on the same side of the outer envelope as the voter's declaration is a unique nine-digit bar code that links the outer envelope to the voter's registration file contained in the Statewide Uniform Registry of Electors ("SURE") system. Also, in most cases, the elector's name and address is pre-printed on that side of the envelope.<sup>1</sup>
7. On the front side of the outer envelope is preprinted the Respondent's address where the ballot is to be sent as well as a place in the upper left-hand corner where the elector may indicate his or her return address by writing it thereon or affixing a label.

<sup>1</sup> Footnote 1 of the parties' stipulation states as follows:

Of the 592 ballots at issue, 509 of those ballots have the voter's address pre-printed on the outer envelope to the right of the voter's declaration. This was done by the Board when it sent the ballot materials to the elector who had requested them. Of these 509 "pre-printed address" ballots, 266 voters also affixed their address in the space provided for return addresses on the front of the envelope. So, for 266 of these ballots, the voter's address actually appears twice. For the remaining 83 ballots, the pre-printed address was blacked-out in order to facilitate the delivery of the ballot materials by the USPS. In 47 of these "blacked-out ballots," the voter wrote their address on the space provided for a return address on the front of the outer envelope. 36 out of 592 ballots have an outer envelope with no easily discernable voter address. However, all 592 ballots contain the bar code that links each one to the SURE system and the specific voter's information – including address – is visible when scanned.

8. The Board has received 592 absentee and mail-in ballots where electors have signed the voter's declaration and provided a date, but have not printed their complete address in the space provided below the Declaration on the outer envelope.
9. Respondent has segregated and not opened nor counted these 592 ballots.
10. When Respondent brought the existence of this group of unopened ballots to the attention of Petitioners' counsel, an objection was verbally lodged.
11. Respondent has verbally overruled that objection and intends to open and count these ballots subject to a ruling of this honorable Court.
12. A true and correct copy of the instructions to absentee and mail-in electors contained in the ballot packages is attached hereto as Exhibit "A."
13. True and correct copies of examples of unopened absentee and mail-in ballots (front and back) that are part of, and indicative of, the 592 ballots at issue before this Court are attached as Exhibits "B" through "E" respectively.<sup>2</sup>

Stipulated Facts, filed 11/9/20.

Respondent and Intervenor filed responses in opposition to the Petition on November 9, 2020. The court heard oral argument on November 10, 2020. Petitioners stated they were not claiming any voter fraud, undue or improper influence regarding the challenged ballots at issue. N.T. 11/10/20, at 11.

The parties stipulated that all of the 592 ballots at issue are signed and dated. All of the outer declaration envelopes contain the electors' signatures directly below the Voter's Declaration which states as follows:

I hereby declare that I am qualified to vote from the below stated address at this election; that I have not already voted in this election; and I further declare that I marked my ballot in secret. I am qualified to vote the enclosed ballot. I understand I am no longer eligible to vote at my polling place after I return my voted ballot. However, if my ballot is not received by the county, I understand I may only vote by provisional ballot at my polling place, unless I surrender my

<sup>2</sup> Exhibits A through E are appended hereto.

balloting materials, to be voided, to the judge of elections at my polling place.

Exhibits B-E, Stipulated Facts, filed 11/9/20. Beneath the elector's declaration and signature are areas for the elector to indicate the date they voted, their printed name and address.

Petitioners claim the Board violated the requirements of 25 P.S. §§ 3146.6(a) and 3150.16(a) by canvassing and counting absentee and mail-in ballots where the outer declaration envelope has not been properly "filled out" with the elector's address. The Board maintains the above provisions do not require the elector to provide their address and the outer envelopes comply with the above statutory requirements.<sup>3</sup>

### III. DISCUSSION

The five statutory provisions of the Election Code at issue do not specifically require the absentee or mail-in elector to provide their address below the declaration on the outer envelope. 25 P.S. §§ 3146.6(a) and 3150.16(a) govern voting by absentee and mail-in electors. Sections 3146.4. and 3150.14(b) address the form of the declaration on the outer envelope. Section 3146.8(g) addresses the county board's obligations related to canvassing.

25 P.S. § 3146.6(a) states the following regarding absentee ballots:

(a) Except as provided in paragraphs (2) and (3), at any time after receiving an official absentee ballot, but on or before eight o'clock P.M. the day of the primary or election, the 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.** Such envelope shall then be securely sealed and the elector shall send same by mail,

<sup>3</sup> Both the Board and Intervenor, DNC, have argued that the 2020 amendments to the Election Code have eliminated time-of-canvassing challenges entirely from § 3146.8(g)(3). The court is not addressing the merits of this argument.

postage prepaid, except where franked, or deliver it in person to said county board of election.

25 P.S. § 3146.6(a) (emphasis added). The same requirements are set forth with respect to mail-in ballots. *See* 25 P.S. § 3150.16(a) (“The elector shall then fill out, date and sign the declaration printed on such envelope.”).

Sections 3146.4 and 3150.14(b), regarding absentee and mail-in ballots respectively, both delegate the form of the declaration to the Secretary of the Commonwealth. For absentee ballots, Section 3146.4 states as follows:

. . . On the larger of the two envelopes, to be enclosed within the mailing envelope, shall be printed the form of the declaration of the elector, and the name and address of the county board of election of the proper county. The larger envelope shall also contain information indicating the local election district of the absentee voter. Said form of declaration and envelope shall be as prescribed by the Secretary of the Commonwealth and shall contain among other things a statement of the electors qualifications, together with a statement that such elector has not already voted in such primary or election . . .  
25 P.S. § 3146.4.

For mail-in ballots, the statute provides:

(b) Form of declaration and envelope.-- The form of declaration and envelope shall be as prescribed by the Secretary of the Commonwealth and shall contain, among other things, a statement of the elector's qualifications, together with a statement that the elector has not already voted in the primary or election.  
25 P.S. § 3150.14(b).

These two provisions, specific to the content of the voter declaration, do not require the elector's address to be included in the declaration or for the elector to write it in.

The pre-canvassing or canvassing of ballots is processed as follows:

When the county board meets to pre-canvass or canvass absentee ballots and mail-in ballots under paragraphs (1), (1.1) and (2), 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) (emphasis added).

The court agrees with the Board’s interpretation of § 3146.6(a) and 3150.16(a). The statutory provisions provide that “[t]he elector shall then fill out, date and sign the declaration printed on such envelope.” 25 P.S. §§ 3146.6(a), 3150.16(a). The Legislature did not include a requirement that the elector include their address on the outer envelope. By contrast, in sections 3146.6(a)(3) and 3150.16(a.1), the Legislature explicitly imposed the requirement of a “Complete Address of Witness” when an elector is unable to sign the declaration due to illness or physical disability.<sup>4</sup> Sections 3146.6(a) and 3150.16(a) do not include an explicit requirement to include the address of the elector as is clearly stated and required in subsequent subsections of the same statute. “It is a well established principle of statutory interpretation that we ‘may not supply omissions in the statute when it appears that the matter may have been intentionally omitted.’” *In*

<sup>4</sup> By comparison, 25 P.S. § 3150.16(a.1) states as follows:

**(a.1) Signature.**—Any elector who is unable to sign the declaration because of illness or physical disability, shall be excused from signing upon making a declaration which shall be witnessed by one adult person in substantially the following form:

I hereby declare that I am unable to sign my declaration for voting my mail-in ballot without assistance because I am unable to write by reason of my illness or physical disability. I have made or received assistance in making my mark in lieu of my signature.

(Mark)

(Date)

(Complete Address of Witness)

(Signature of Witness)

*re November 3, 2020 General Election*, No. 149 MM 2020, 2020 WL 6252803, at \*14 (Pa. Oct. 23, 2020) (citing *Sivick v. State Ethics Commission*, No. 62 MAP 2019, 2020 WL 5823822, at \*10 (Pa. Oct. 1, 2020)) (holding, *inter alia*, that the Election Code does not require signature comparison).

The instructions by the Board accompanying each absentee or mail-in ballot do not inform the voter that their address is required or that its omission will invalidate their ballot. The instructions state “Be sure that you **sign** and **date** your [return] envelope.” Exhibit A, Stipulated Facts, filed 11/9/20 (emphasis in original). Underneath that instruction, it is stated “**Please Note:** *Your ballot cannot be counted without a signature on the return envelope.*” *Ibid*. The instructions do not state that a ballot will be not be counted without an address on the outer declaration envelope. Additionally, the checkbox reminder on the top of the outer envelope only asks the elector if they have signed the declaration in their own handwriting and if they have put their ballot inside the secrecy envelope and placed it in the outer envelope. It would be patently improper and unfair to invalidate a ballot where a voter reasonably relies upon lawful voting instructions by their election board.<sup>5</sup> *In re Recount of Ballots Cast in General Election on November 6, 1973*, 325 A.2d 303, 308-309 (Pa. 1974) (“[T]he invalidation of a ballot where the voter has complied with all instructions communicated to him and in the absence of any evidence of improper influence having been exerted, invalidation would necessarily amount to an unreasonable encroachment upon the franchise and the legislative enactment should not be interpreted to require such a result.”) (holding that votes must be counted where electors failed to remove, as explicitly required by the Election Code, a perforated corner containing identifying information where “[t]here was no direction on

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<sup>5</sup> The court is aware that “erroneous guidance from the Department or county boards of elections cannot nullify the express provisions of the Election Code.” *In re Scroggin*, 237 A.3d 1006, 1021 (Pa. Sept. 17, 2020). However, the court finds that requiring an elector to “fill out” their address on the outer envelope is not expressly stated in the Election Code. The Board’s instructions to voters is consistent with the requirements of the Election Code.

the face of the ballot instructing the voter of the need to remove that particular portion before casting the ballot”).

Petitioners urge the court to construe “fill out” in Sections 3146.6(a) and 3150.16(a) to mean “fill out your address in order for your vote to be counted.” The Election Code does not explicitly state as such and the court will not add language to the statute imposing a voting condition which the Legislature did not specifically include. Even if one assumes, *arguendo*, that the address requirement may be required, 556 of 592 challenged ballots include the electors’ addresses on the outer declaration envelopes (266 of which contain both the electors’ pre-printed addresses and hand-written/typed mailing labels on the return addresses of the outer envelope, 243 of which contain the electors’ pre-printed addresses, and 47 of which contain the electors’ hand-written/typed mailing labels on the return addresses of the outer envelope). The remaining 36 ballots contain a bar code which links the outer envelope to the voter’s registration file contained in the Statewide Uniform Registry of Electors system (validating their addresses) provided to state election officials earlier in 2020.<sup>6</sup> By signing and dating the declaration, the elector has declared they are “qualified to vote the enclosed ballot.”<sup>7</sup>

<sup>6</sup> In order to vote by absentee or mail-in ballot, an elector must submit an application where he or she must attest to their address at least annually or for each election. *See* 25 P.S. § 3150.12(g)(1) (“A mail-in ballot application mailed to an elector under this section [permanent mail-in voting list], which is completed and timely returned by the elector, shall serve as an application for any and all primary, general or special elections to be held in the remainder of that calendar year and for all special elections to be held before the third Monday in February of the succeeding year.”); 25 P.S. § 1350.12(b)(1)(ii) (requiring an application for mail-in ballot to contain the length of time the elector has been a resident of the voting district); 25 P.S. § 3146.2(e.1); 25 P.S. § 3146.2(b). There is no similar requirement for an in-person voter. While an in-person voter could vote at the polls without having submitted their address for many years, a mail-in or absentee elector can only receive a ballot if they have provided an address and attested to its accuracy as set forth above.

<sup>7</sup> 25 P.S. § 2811 – Qualifications of Electors – states that every citizen of the Commonwealth at least eighteen years of age, if properly registered, shall be entitled to vote if the elector possesses the following qualifications:

- (1) He or she shall have been a citizen of the United States at least one month.
- (2) He or she shall have resided in the State ninety days immediately preceding the election.



Voters should not be disenfranchised by reasonably relying upon voting instructions provided by election officials which are consistent with the Election Code. There is a “longstanding and overriding policy in this Commonwealth to protect the elective franchise.” *Pennsylvania Democratic Party v. Boockvar*, No. 133 MM 2020, 2020 WL 5554644, at \*9 (citing *Shambach v. Bickhart*, 845 A.2d 793, 798 (Pa. 2004)). “[A]lthough election laws must be strictly construed to prevent fraud, they ordinarily will be construed liberally in favor of the right to vote.” *Ibid.* “[B]allots containing mere minor irregularities should only be stricken for compelling reasons.” *Shambach v. Bickhart*, 845 A.2d 793, 798 (Pa. 2004). The Supreme Court has recognized that “marking a ballot in voting is not a matter of precision engineering but of an unmistakable registration of the voter’s will in substantial conformity to the statutory requirements.” *Id.* at 799 (citing *Appeal of Gallagher*, 41 A.2d 630, 632-33 (Pa. 1945)).

Petitioners’ concerns about a voter’s address are legitimate. A voter’s address is a core qualification to vote. It is true that 36 of the outer envelopes in this case do not contain any written or pre-printed indicia of the voter’s address. This omission should not, and will not, disqualify a declared, qualified voter from participating in this election – particularly where the bar code confirms the recently declared address of the mail-in voter with the state registry and where no claim of fraud or improper influence is alleged.

#### IV. CONCLUSION

The Election Code does not require a voter to provide their address on the declaration envelope. The Montgomery County Board of Elections properly was satisfied, in accordance with section 3146.8(g)(3), that the voters’ declarations are “sufficient.” The court finds that the Board

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(3) He or she shall have resided in the election district where he or she shall offer to vote at least thirty days immediately preceding the election, except that if qualified to vote in an election district prior to removal of residence, he or she may, if a resident of Pennsylvania, vote in the election district from which he or she removed his or her residence within thirty days preceding the election.



properly overruled Petitioners' objections to all 592 challenged ballots. These ballots must be counted.

Accordingly, based upon all of the foregoing, the court denies Plaintiffs' petition for review and will enter the accompanying order.

BY THE COURT:



\_\_\_\_\_  
RICHARD P. HAAZ, J.

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COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA  
CIVIL ACTION

DONALD J. TRUMP FOR PRESIDENT, INC.,	:	
et al.,	:	
<i>Plaintiffs/ Petitioners</i>	:	NO. 2020-18680
	:	
v.	:	
	:	
MONTGOMERY COUNTY BOARD OF	:	
ELECTIONS,	:	
<i>Defendant/ Respondent</i>	:	
	:	
DEMOCRATIC NATIONAL COMMITTEE, et al.	:	
<i>Intervenor</i>	:	

**ORDER**

**AND NOW**, this 13<sup>th</sup> day of November, 2020, upon consideration of the Petition for Review of Decision by the Montgomery County Board of Elections filed on behalf of Petitioners Donald J. Trump for President, Inc., Republican National Committee, Heidelbaugh for Attorney General, Inc., Garrity for PA, and Daniel J. Wissert, and the responses in opposition thereto filed by Respondent Montgomery County Board of Elections, Intervenor Democratic National Committee, *Amici Curiae* on behalf of the NAACP-Pennsylvania State Conference, Common Cause Pennsylvania, League of Women Voters of Pennsylvania, and the Black Political Empowerment Project, it is hereby **ORDERED and DECREED** that said Petition for Review is **DENIED**. The Montgomery County Board of Elections is **ORDERED** to count the 592 ballots which are the subject of the petition.

BY THE COURT:



\_\_\_\_\_  
RICHARD P. HAAZ, J.

This Memorandum and Order has been e-filed on 11/13/20.

Copies sent via Prothonotary to the parties of record.

Michael Kehs, Esq., Andrea Grace, Esq., Michael Jorgensen, Court Administration, Civil Division



\_\_\_\_\_  
Secretary

# EXHIBIT A

RETRIEVED FROM DEMOCRACYDOCKET.COM



## WARNING: This envelope is classified SECRET//

Keep your envelope in a secure location.

Do not open this envelope until you are instructed to do so. If you are instructed to open this envelope, do so in the presence of a designated official. Do not open this envelope until you are instructed to do so.

You must keep this envelope in a secure location until you are instructed to open it. Do not open this envelope until you are instructed to do so. If you are instructed to open this envelope, do so in the presence of a designated official. Do not open this envelope until you are instructed to do so.

## WARNING: This envelope is classified SECRET//



### THANK YOU VERY MUCH

Do not open this envelope until you are instructed to do so. If you are instructed to open this envelope, do so in the presence of a designated official. Do not open this envelope until you are instructed to do so.



### PACK AND SEAL YOUR ENVELOPE FOR MAILING OR DROP-OFF

1. Place the letter in the Official Envelope, insert the envelope and seal the envelope. Do not open this envelope until you are instructed to do so.
2. Place the Official Envelope in the Official Envelope. Do not open this envelope until you are instructed to do so.

Do not open this envelope until you are instructed to do so. If you are instructed to open this envelope, do so in the presence of a designated official. Do not open this envelope until you are instructed to do so.



### SIGN AND SEAL THE RETURN ENVELOPE

1. Fill in the return address of the official who sent you the letter.
2. Seal the return envelope with a seal.

Do not open this envelope until you are instructed to do so. If you are instructed to open this envelope, do so in the presence of a designated official. Do not open this envelope until you are instructed to do so.



### RETURN

Do not open this envelope until you are instructed to do so.

Do not open this envelope until you are instructed to do so. If you are instructed to open this envelope, do so in the presence of a designated official. Do not open this envelope until you are instructed to do so.

Do not open this envelope until you are instructed to do so. If you are instructed to open this envelope, do so in the presence of a designated official. Do not open this envelope until you are instructed to do so.

You must keep this envelope in a secure location until you are instructed to open it. Do not open this envelope until you are instructed to do so. If you are instructed to open this envelope, do so in the presence of a designated official. Do not open this envelope until you are instructed to do so.

You must keep this envelope in a secure location until you are instructed to open it. Do not open this envelope until you are instructed to do so. If you are instructed to open this envelope, do so in the presence of a designated official. Do not open this envelope until you are instructed to do so.

## EXHIBIT B

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# EXHIBIT C

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## EXHIBIT D

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# EXHIBIT E

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# EXHIBIT F

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**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

In Re: 2,349 Ballots in the :  
2020 General Election : No. 1162 C.D. 2020  
Appeal of: Nicole Zicarelli : Submitted: November 19, 2020  
:

**BEFORE: HONORABLE P. KEVIN BROBSON, Judge**  
**HONORABLE PATRICIA A. McCULLOUGH, Judge**  
**HONORABLE MICHAEL H. WOJCIK, Judge**

***OPINION NOT REPORTED***

**MEMORANDUM OPINION**  
**BY JUDGE BROBSON**

**FILED: November 19, 2020**

Nicole Zicarelli, a Republican candidate for State Senator from the 45th Senatorial District in the General Election (Candidate), initiated a statutory appeal under the Pennsylvania Election Code<sup>1</sup> (Election Code) in the Court of Common Pleas of Allegheny County (Common Pleas Court) from a decision by the Allegheny County Board of Elections (Elections Board) to canvass and count 2,349 absentee or mail-in ballots for the November 3, 2020 General Election (General Election) notwithstanding the lack of a date of signature by the elector on the statutorily required elector declaration on the outside envelope of the ballots. On appeal, the Common Pleas Court rejected the Campaign Committee's arguments and affirmed the Elections Board's decision in a November 18, 2020 Order.<sup>2</sup>

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<sup>1</sup> Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§ 2600-3591.

<sup>2</sup> On application by Candidate, this Court issued an Order late on November 18, 2020, enjoining the Elections Board from canvassing and counting the disputed ballots and directed that the Elections Board segregate those ballots pending further order of the Court.

The Committee filed a timely appeal from the Common Pleas Court's order with this Court, contending that the disputed ballots are invalid and cannot be counted. The parties have submitted briefs in support of their respective arguments on the merits.

Given the exigency,<sup>3</sup> we dispense with an extensive summary of the parties' respective positions on appeal. Generally, the Candidate alleges that the absentee and mail-in ballots that are the subject of this appeal are defective and, therefore, cannot be counted under the Election Code. The Elections Board and DNC Services Corp./Democratic National Committee (DNC)<sup>4</sup> generally contend that we must interpret and apply the Election Code to enfranchise, rather than disenfranchise voters. This means, according to the Elections Board and the DNC, that what they term "minor irregularities" in elector declarations can, and in this case should, be overlooked in the absence of any evidence of fraud.

Each county board of election is required to provide the mail-in ballot elector with the following: (1) two envelopes—an inner secrecy envelope in which the executed ballot is placed and an outer mailing envelope in which the secrecy envelope (containing the executed ballot) is placed for mailing (or drop off); (2) a list of candidates, if authorized; and (3) "the uniform instructions in form and substance as prescribed by the Secretary of the Commonwealth and nothing else." Sections 1304 and 1304-D(c) of the Election Code, 25 P.S. §§ 3146.4, 3150.14(c). The outer mailing envelope must include an elector declaration and the name and

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<sup>3</sup> "The integrity of the election process requires immediate resolution of disputes that prevent certification." *In re 2003 Election for Jackson Twp. Supervisor*, 840 A.2d 1044, 1046 (Pa. Cmwlth. 2003) (Kelly, S.J.).

<sup>4</sup> Though not a named party originally, the Common Pleas Court granted the DNC intervenor status as a respondent.

address of the proper county board of election. Sections 1304 and 1304-D(a) of the Election Code. The form of the declaration is left up to the Secretary of the Commonwealth (Secretary). It must, however, include “a statement of the elector’s qualifications, together with a statement that the elector has not already voted in the primary or election.” Sections 1304 and 1304-D(b) of the Election Code. The Secretary adopted a form declaration that includes the required statutory language and space for the elector to sign, date, and fill out the elector’s name and address.

In its recent decision in *In re November 3, 2020 General Election*, \_\_\_ A.3d \_\_\_ (Pa., No. 149 MM 2020, filed Oct. 23, 2020), the Pennsylvania Supreme Court reviewed the requirements in the Election Code with respect to the elector declaration on mail-in and absentee ballots. To execute a mail-in or absentee ballot, the Election Code requires the elector to “fill out, date and sign the declaration printed on [the outside] envelope.” Sections 1306(a) and 1306-D(a), 25 P.S. §§ 3146.6(a), 3150.16(a). During the pre-canvass or canvass of mail-in and absentee ballots, the board of election “is required to determine if the ballot declaration is ‘sufficient.’” *In re: November 3, 2020 Gen. Election*, \_\_\_ A.3d at \_\_\_, slip op. at 25 (quoting Section 1308(g)(3) of the Election Code,<sup>5</sup> 25 P.S. § 3146.8(g)(3)). With respect to determining the sufficiency of the declaration, the Pennsylvania Supreme Court explained the boards of election’s obligation: “[I]n determining whether the declaration is ‘sufficient’ for a mail-in or absentee ballot at canvassing, the county board *is required* to ascertain whether the declaration on the return envelope has been filled out, *dated*, and signed. This is the extent of the board’s obligation in this regard.” *Id.* (emphasis added).

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<sup>5</sup> Added by the Act of March 6, 1951, P.L. 3.

The concern that an elector might fail to “fill out” the declaration in full, let alone date and sign the declaration, in part prompted the Pennsylvania Democratic Party and Democratic elected official and candidates (Democratic Party) to initiate a suit in this Court’s original jurisdiction against the Secretary and every Pennsylvania county board of election earlier this year, seeking declaratory and injunctive relief. The Pennsylvania Supreme Court, pursuant to Section 726 of the Judicial Code, 42 Pa. C.S. § 726, assumed jurisdiction over the case to address issues relating to the interpretation and implementation of Act 77 of 2019<sup>6</sup>—the statute that amended the Election Code to authorize mail-in voting (a/k/a no-excuse absentee voting).

Among the issues/concerns raised by the Democratic Party was that electors may submit their mail-in or absentee ballots with “minor facial defects resulting from their failure to comply with the statutory requirements for voting by mail.” *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 372 (Pa. 2020). The Democratic Party asked the Pennsylvania Supreme Court to require county boards of election to give those electors notice and an opportunity to cure the defective ballots. In advancing that argument, the Democratic Party relied on the same principles the Board relies on in this case—*i.e.*, liberal construction of the Election Code requirements and the favoring of enfranchising voters, not disenfranchising them. *Id.* at 372-73. The Secretary opposed the relief requested:

Unlike the other claims asserted herein, the Secretary opposes [p]etitioner’s request for relief in this regard. She counters that there is no statutory or constitutional basis for requiring the [b]oards [of election] to contact voters when faced with a defective ballot and afford them an opportunity to cure defects. The Secretary further notes that, while [p]etitioner relies on the Free and Equal Elections Clause [of the

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<sup>6</sup> Act of October 31, 2019, P.L. 552, No. 77 (Act 77).

Pennsylvania Constitution], that Clause cannot create statutory language that the General Assembly chose not to provide.

The Secretary submits that so long as a voter follows the requisite voting procedures, he or she “will have an equally effective power to select the representative of his or her choice.” Emphasizing that [p]etitioner presents no explanation as to how the [b]oards [of election] would notify voters or how the voters would correct the errors, the Secretary further claims that, while it may be good policy to implement a procedure that entails notice of defective ballots and an opportunity to cure them, *logistical policy decisions like the ones implicated herein are more properly addressed by the Legislature, not the courts.*

*Pa. Democratic Party v. Boockvar*, 238 A.3d at 373 (emphasis added) (citations omitted) (quoting *League of Women Voters v. Cmwlth.*, 178 A.3d 737, 809 (Pa. 2018)). Apparently persuaded by the Secretary’s arguments, the Pennsylvania Supreme Court rejected the request for a judicially mandated notice and opportunity to cure:

Upon review, we conclude that the [b]oards [of election] are not required to implement a “notice and opportunity to cure” procedure for mail-in and absentee ballots that voters have filled out incompletely or incorrectly. Put simply, as argued by the parties in opposition to the requested relief, [p]etitioner has cited no constitutional or statutory basis that would countenance imposing the procedure [p]etitioner seeks to require (*i.e.*, having the [b]oards [of election] contact those individuals whose ballots the [b]oards [of election] have reviewed and identified as including “minor” or “facial” defects—and for whom the [b]oards [of election] have contact information—and then afford those individuals the opportunity to cure defects until the [federal Uniformed and Overseas Citizens Absentee Voting Act<sup>7</sup>] deadline).

While the Pennsylvania Constitution mandates that elections be “free and equal,” it leaves the task of effectuating that mandate to the Legislature. As noted herein, 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 sought by [p]etitioner. *To 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, we agree that the decision to provide a “notice and*

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<sup>7</sup> 52 U.S.C. §§ 20301-20311.



*opportunity to cure” procedure to alleviate that risk is one best suited for the Legislature.* We express this agreement 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. Thus, for the reasons stated, the [p]etitioner is not entitled to the relief it seeks in Count III of its petition.

*Id.* at 374 (emphasis added) (citation omitted).

We must presume that the Elections Board was aware of the Pennsylvania Supreme Court’s decision in *In re: November 3, 2020 General Election* and its earlier decision in *Pennsylvania Democratic Party* when the Elections Board began the canvass and pre-canvass process for mail-in and absentee ballots. The Elections Board chose, nonetheless, to ignore its obligations under the Election Code to determine the sufficiency of the mail-in and absentee ballots at issue, as recapitulated by the Supreme Court in *In re: November 3, 2020 General Election*, and apparently took the Pennsylvania Supreme Court’s decision in *Pennsylvania Democratic Party* as both a ruling against a notice and opportunity to cure remedy for defective ballots and an invitation to, instead, simply *ignore* defects when canvassing and pre-canvassing. In so doing, the Elections Board even acted in conflict with September 28, 2020 guidance from the Secretary: “At the pre-canvass or canvass, as the case may be, the county board of election[] should . . . [s]et aside any ballots without a filled out, dated and signed declaration envelope.” Pennsylvania Dep’t of State, *Guidance Concerning Civilian Absentee and Mail-In Ballot Procedures*, 9/28/2020, at 8, available at <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/DOS%20Guidance%20Civilian%20Absentee%20and%20Mail-In%20Ballot%20Procedure>

[s.pdf](#) (last visited Nov. 20, 2020).<sup>8</sup> Where the Elections Board tacitly derived its authority to ignore its statutory obligation to determine the sufficiency of ballots and to violate the will of the General Assembly reflected in Act 77, approved by the Governor, and the guidance of the Secretary is a mystery.

The General Assembly's authority in this regard, however, is certain. Under the United States Constitution, the General Assembly determines the "Times, Places and Manner of holding Elections for . . . Representatives," subject to any rules that Congress may establish.<sup>9</sup> The General Election, during which the voters of Pennsylvania select their representatives to the United States House of Representatives, falls within the provision. Even in cases involving the right to vote, the rules of statutory construction apply. *See In re: November 3, 2020 Gen. Election*, \_\_\_ A.3d at \_\_\_, slip op. at 19-20; *Pa. Democratic Party*, 238 A.3d at 355-56. The Pennsylvania Supreme Court has already determined that the above statutory language regarding the casting and pre-canvassing and canvassing of mail-in and absentee ballots is "plain," *In re: November 3, 2020 Gen. Election*, \_\_\_ A.3d at \_\_\_, slip op. at 24, and "unambiguous," *id.*, slip op. at 25, with respect to an elector's obligation to "fill out, date and sign" the declaration and the county board of election's obligation to determine the sufficiency of that declaration. The constitutionality of these provisions is not in question here. It is not the judiciary's role, let alone the role of the Elections Board, to relax or ignore

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<sup>8</sup> We note that the Pennsylvania Supreme Court cited to this supplemental guidance from the Secretary in its opinion in *In re: November 3, 2020 Gen. Election*, \_\_\_ A.3d at \_\_\_, slip op. at 4.

<sup>9</sup> U.S. Const. art. I, § 4, cl. 1 ("Elections Clause"). The full text of the Elections Clause provides: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

requirements that the General Assembly, with the Governor's approval, chose to include in the Election Code.

In this regard, while we recognize the well-settled principle of statutory construction that the Election Code should be liberally construed in favor of voter enfranchisement, not disenfranchisement, like all principles of statutory construction this rule is only implicated where there is ambiguity in the Election Code. *See In re: Canvassing Observation*, \_\_\_ A.3d \_\_\_, (Pa., No. 30 EAP 2020, filed Nov. 13, 2020), slip op. at 15-16; *Pa. Democratic Party*, 238 A.3d at 356. In *In re Canvass of Absentee Ballots of Nov. 4, 2003 General Election*, 843 A.2d 1223 (Pa. 2004), the Pennsylvania Supreme Court reversed a decision by this Court that would have allowed the Elections Board to count absentee ballots that were hand-delivered by a third person on behalf of electors *who were not disabled*. Then, and now, the Election Code expressly prohibits this practice. This Court's reason for disregarding the mandatory language of the Election Code that authorized only "in person" delivery as an alternative to mail was our view "that it was more important to protect the interest of the voters by not disenfranchising them than to adhere to the strict language of the statute under these circumstances." *In re Canvass of Absentee Ballots of Nov. 4, 2003 General Election*, 839 A.2d 451, 460 (Pa. Cmwlth.) (en banc), *rev'd*, 843 A.2d 1223 (Pa. 2004).

In reversing this Court, the Pennsylvania Supreme Court looked to the rules of statutory construction. *In re Canvass of Absentee Ballots of Nov. 4, 2003 General Election*, 843 A.2d at 1230. Critically for purposes of this matter, in terms of the Election Code, the Supreme Court held: "[A]ll things being equal, the law will be construed liberally in favor of the right to vote *but at the same time, we cannot ignore the clear mandates of the Election Code*." *Id.* at 1231 (emphasis added).

The relevant language in Section 1306(a) of the Election Code provided at the time what it provides today: “[T]he elector *shall* send [the absentee ballot] by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.” (Emphasis added.) The Supreme Court held that the General Assembly’s use of the word “shall” had a clear “imperative or mandatory meaning.” *In re Canvass of Absentee Ballots of Nov. 4, 2003 General Election*, 843 A.2d at 1231. While the appellees argued that the word should be construed liberally (as directory and not mandatory) in favor of the right to vote, the Supreme Court disagreed:

In Section [1306(a)], there is nothing to suggest that an absentee voter has a choice between whether he mails in his ballot or delivers his ballot in person, or has a third-party deliver it for him. To construe Section [1306(a)] as merely directory would render its limitation meaningless and, ultimately, absurd.

*Id.* at 1232.<sup>10</sup> Alternatively, even if the statutory language were ambiguous, the Court held that “there is an obvious and salutary purpose—grounded in hard experience—behind the limitation upon the delivery of absentee ballots.” *Id.* The court explained:

The provision at issue limits the number of third persons who unnecessarily come in contact with the ballot and thus provides some safeguard that the ballot was filled out by the actual voter, and not by a perpetrator of fraud, and that once the ballot has been marked by the actual voter in secret, no other person has the opportunity to tamper

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<sup>10</sup> The dissent chooses to rely on *Appeal of James*, 105 A.2d 64 (Pa. 1954), a case that did not involve mail-in or absentee ballots, but whether actual votes cast for one candidate in particular on election day should count where the intent of the electors to vote for that particular candidate was clearly manifested, albeit imperfectly, on the actual ballot. *Appeal of James* does not stand for the proposition that courts can and should disregard the clear and unambiguous terms of the Election Code, as the Pennsylvania Supreme Court’s more recent pronouncements cited above establish. This case is about whether electors followed the law in submitting their ballots. Accordingly, *In re Canvass of Absentee Ballots of Nov. 4, 2003 General Election* is much more on point than *Appeal of James*.

with it, or even to destroy it. The provision, thus, is consistent with the spirit and intent of our election law, which requires that a voter cast his ballot alone, and that it remain secret and inviolate.

*Id.* (citation omitted). The Supreme Court concluded:

Our precedent is clear: we cannot simply ignore substantive provisions of the Election Code. . . . [S]o-called technicalities of the Election Code are necessary for the preservation of secrecy and the sanctity of the ballot and must therefore be observed—particularly where, as here, they are designed to reduce fraud.

*Id.* at 1234.

Here, we agree with, and are bound by, the Pennsylvania Supreme Court's ruling in *In re: November 3, 2020 General Election* that Sections 1306(a) (absentee ballots), 1306-D(a) (mail-in ballots), and 1308(g)(3) (pre-canvass and canvass) of the Election Code, are plain and unambiguous. The General Assembly's use of the word "shall" in these provisions has a clear imperative and mandatory meaning. *In re Canvass of Absentee Ballots of Nov. 4, 2003 General Election*, 843 A.2d at 1231. The elector "**shall** . . . fill out, date and sign the declaration." The board of election "**shall** examine the declaration on the envelope of each ballot" and be "satisfied that the declaration is sufficient." A sufficient declaration is one where the elector filled out, dated, and signed the declaration. *In re: November 3, 2020 Gen. Election*, \_\_\_ A.3d at \_\_\_, slip op. at 25. To remove the date requirement would constitute a judicial rewrite of the statute, which, as the Pennsylvania Supreme Court recently held, "would be improper." *In re: Canvassing Observation*, \_\_\_ A.3d at \_\_\_, slip. op. at 17.<sup>11</sup>

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<sup>11</sup> See also *In re Silcox*, 674 A.2d 224, 225 (Pa. 1996) (holding that signatures on nomination petition without date must be stricken under clear and unambiguous language of statute, reasoning that "until the legislature chooses to amend [the statutory requirement for a date], we are constrained to find that the elector shall sign the petition as well as add . . . date of signing").

As noted above, the Election Code requires the county boards of election to determine whether absentee and mail-in ballots are satisfactory. Under the law, a satisfactory ballot is one where the elector has filled out, signed, and dated the statutorily-required declaration. This was the policy choice of the General Assembly and the Governor in approving Act 77, and it is not the role of this Court or the Elections Board to second guess those policy choices. It is a myth that all ballots must be counted in the absence of proof of fraud. Ballots, under the law, may be set aside for “fraud *or* error.” See Section 1407(b) of the Election Code, 25 P.S. § 3157 (emphasis added). While there may not be an allegation of fraud in this matter, there was clear error *at two levels*. First, the electors erred in failing to date their declarations, as required by the Election Code.<sup>12</sup> Second, the Elections Board erred when it failed to execute its duty during the canvass and pre-canvass process to determine the sufficiency of the declarations and set deficient ballots aside. Accordingly, the Common Pleas Court erred as a matter of law by failing to reverse the Elections Board’s determinations with respect to counting these defective mail-in and absentee ballots.

Even if we were to conclude that one of the relevant provisions of the Election Code suffered from some ambiguity that required us to resort to statutory construction to discern the General Assembly’s intent, our result would be the same.

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<sup>12</sup> This is not a situation involving an ambiguity or question as to what an elector must do to cast a ballot and, seeking assistance, a confused elector relies on advice of a local election official. As noted above, the Pennsylvania Supreme Court has already held that there is no ambiguity in this scheme as far as what the Election Code requires of the elector and the boards of election in determining whether a mail-in or absentee ballot is satisfactory. Moreover, there is simply no evidence that the electors who signed their declarations in this case failed to date the declaration in reliance on advice from a public official. See *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d at 1234 n.14 (rejecting reliance argument where no evidence of reliance and where alleged advice is in clear contravention of law).

As was the case in *In re Canvass of Absentee Ballots of Nov. 4, 2003 General Election*, there is an obvious and salutary purpose behind the requirement that a voter date the declaration. The date provides a measure of security, establishing the date on which the elector actually executed the ballot in full, ensuring their desire to cast it in lieu of appearing in person at a polling place. The presence of the date also establishes a point in time against which to measure the elector's eligibility to cast the ballot, as reflected in the body of the declaration itself.<sup>13</sup>

While we realize that our decision in this case means that some votes will not be counted, the decision is grounded in law. It ensures that the votes will not be counted because the votes are invalid as a matter of law. Such adherence to the law ensures equal elections throughout the Commonwealth, on terms set by the General Assembly. The danger to our democracy is not that electors who failed to follow the law in casting their ballots will have their ballots set aside due to their own error; rather, the real danger is leaving it to each county board of election to decide what laws must be followed (mandatory) and what laws are optional (directory), providing a patchwork of unwritten and arbitrary rules that will have some defective ballots counted and others discarded, depending on the county in which a voter resides. Such a patchwork system does not guarantee voters an "equal" election,<sup>14</sup>

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<sup>13</sup> In this regard, it does not matter whether the ballots at issue in this case were, setting aside these defects, otherwise valid. Our Election Code does not contemplate a process that bogs down county boards of election or the many election day volunteers to track down voters who committed errors of law in casting their ballots in order to verify the information that the elector, through his or her own negligence, failed to provide on the elector's mail-in or absentee ballot. *See Pa. Democratic Party*, 238 A.3d at 373-34. Decisions as to whether these defective ballots must be set aside are to be made at the canvass or pre-canvass based on objective criteria established by the General Assembly and what is before the elections board—that being the ballot itself. *See id.* at 388-89 (Wecht, J., concurring).

<sup>14</sup> "Elections shall be free and equal." Pa. Const. art. I, § 5.



particularly where the election involves inter-county and statewide offices. We do not enfranchise voters by absolving them of their responsibility to execute their ballots in accordance with law.

Accordingly, the Common Pleas Court's order is reversed. This matter is remanded to the Common Pleas Court to issue an order sustaining the Campaign Committee's challenge to the Elections Board's determination and directing the Elections Board to exclude the challenged 2,349 ballots from the certified returns of election for the County of Allegheny under Section 1404 of the Election Code, 25 P.S. § 3154.

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P. KEVIN BROBSON, Judge

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: 2,349 Ballots in the  
2020 General Election  
Appeal of: Nicole Zicarelli

## ORDER

AND NOW, this 19th day of November, 2020, the November 18, 2020 Order of the Court of Common Pleas of Allegheny is REVERSED, and this matter is REMANDED to the court of common pleas for further proceedings in accordance with the accompanying opinion.

P. KEVIN BROBSON, Judge

**Certified from the Record**

NOV 19 2020

## And Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: 2,349 Ballots in the :  
2020 General Election :  
: No. 1162 C.D. 2020  
Appeal of: Nicole Zicarelli :

BEFORE: HONORABLE P. KEVIN BROBSON, Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE MICHAEL H. WOJCIK, Judge

DISSENTING OPINION  
BY JUDGE WOJCIK

FILED: November 19, 2020

I respectfully dissent from the majority's decision to reverse the order of the Court of Common Pleas of Allegheny County (trial court) in this matter.

The Pennsylvania Supreme Court has explained:

'The power to throw out a ballot for minor irregularities, like the power to throw out the entire poll of an election district for irregularities, must be exercised very sparingly and with the idea in mind that either an individual voter or a group of voters are not to be disfranchised at an election except for compelling reasons. \* \* \* 'The purpose in holding elections is to register the actual expression of the electorate's will' and that 'computing judges' should endeavor 'to see what was the true result.' There should be the same reluctance to throw out a single ballot as there is to throw out an entire district poll, for sometimes an election hinges on one vote.'

In resolving election controversies it would not be amiss to consider the following criteria:

1. Was any specific provision of the Election Code violated?

2. Was any fraud involved?
3. Was the will of the voter subverted?
4. Is the will of the voter in doubt?
5. Did the loser suffer an unfair disadvantage?
6. Did the winner gain an unfair disadvantage?

*Appeal of James*, 105 A.2d 64, 67 (Pa. 1954) (citation omitted). It is undisputed that only the first of the foregoing six criteria is at issue with respect to the contested ballots herein.

Regarding the submission of a vote by absentee ballot, Section 1306(a) of the Pennsylvania Election Code<sup>1</sup> provides, in relevant part:

[A]t any time after receiving an official absentee ballot, but on or before eight o'clock P.M. the day of the primary or election, the 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. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

Likewise, with respect to voting by mail-in ballot, Section 1306-D(a) of the Pennsylvania Election Code<sup>2</sup> states:

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<sup>1</sup> Act of June 3, 1937, P.L. 1333, added by the Act of March 6, 1951, P.L. 3, as amended, 25 P.S. §3146.6(a).

At any time after receiving an official mail-in ballot, but on or before eight o'clock P.M. the day of the primary or election, the mail-in 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. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

In light of the foregoing statutory requirements, the majority seeks to disenfranchise 2,349 registered voters who timely returned their absentee or mail-in ballots to the Allegheny County Board of Elections (Board), which ballots were sealed in secrecy envelopes and inserted in sealed outer envelopes containing a declaration that the voters signed, but did not date, and which ballots the Board received by 8:00 p.m. on the date of the General Election, November 3, 2020. Unlike the majority, I do not believe that *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020), compels such a massive disenfranchisement as that case addressed a voter's ability to cure a "minor" defect on a mail-in or absentee ballot declaration page that consisted of a voter failing to "fill out, date and sign the declaration." In contrast, this case involves neither a voter's ability to cure a defective declaration page nor an unsigned declaration page. Moreover, as

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(continued...)

<sup>2</sup> Added by the Act of October 31, 2019, P.L. 552, 25 P.S. §3150.16a.

noted above, this case does not involve any claim that any of the ballots in question were in any way fraudulent.

There is no dispute that the voters who cast the questioned 2,349 ballots were qualified, registered electors. Moreover, there is no allegation that any of the 2,349 voters in question had voted more than once. Importantly, there is no allegation that the subject 2,349 ballots were not received by the Board prior to the deadline for receipt on General Election Day. The only sin that would lead these votes to be discarded is that the qualified, registered voters failed to enter a date on the declaration portion of the ballot's outer envelope. I would agree that an entirely blank declaration properly would be discarded, as this is the situation contemplated by *Boockvar*. I would suppose that a declaration that the voter did not sign likewise would be discarded, as there would be no confirmation that the ballot is genuinely that of the registered elector. Both of these results would ameliorate purported voter fraud, which is not at issue here.

What then is the protection afforded by the insertion of a date in the declaration? I would posit that it is to ensure that the ballot was timely cast, that is, before the 8:00 p.m. deadline on General Election Day. This interest is protected in this case by the Board's procedures, *i.e.*, the ballots were processed in the Statewide Uniform Registry of Electors and time stamped when received by the Board. Thus, I would hold that this process ensures that the ballots were timely cast.

The majority posits that the voter's entry of the date onto the declaration is material in that it measures a point in time to establish a voter's eligibility to cast a vote. This is simply incorrect, as the date on which a voter fills in a mail-in or absentee ballot is not the critical date, it is receipt on or before

General Election Day that is determinative. If a voter fills in a mail-in or absentee ballot, including the complete declaration, and dies prior to General Election Day, the vote is not valid regardless of when it was executed.<sup>3</sup>

I view the requirement of a voter-inserted date on the declaration as similar to the issue of the color of ink that is used to fill in the ballot. As outlined above, Sections 1306(a) and 1306-D(a) of the Pennsylvania Election Code plainly state the voter “*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.” 25 P.S. §§3146.6(a), 3150.16(a) (emphasis added). Our Supreme Court approved the marking of absentee ballots with green or red pen to be appropriate despite the General Assembly’s use of the word “shall” when describing the method of marking the ballots. *See In re Luzerne County Return Board*, 290 A.2d 108, 109 (Pa. 1972). There, our Supreme Court construed the Election Code liberally so as to not disenfranchise Pennsylvania voters over a technicality.<sup>4</sup> In light of the foregoing criteria, I would do so here as well, and I

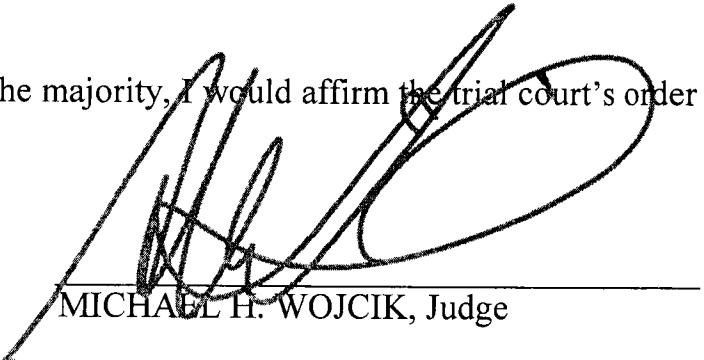
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<sup>3</sup> In this regard, I strongly disagree with the majority’s reliance on case law interpreting the inapposite provisions of the Pennsylvania Election Code requiring the inclusion of the date of signature on nomination petitions as that requirement implicates a distinct consideration relating to the timeliness of the circulation of the petitions. As indicated, the timeliness of the ballots cast herein is not at issue.

<sup>4</sup> Similarly, I would revisit the so-called “naked ballot” issue where counties have been instructed to disqualify mail-in and absentee ballots that were returned without first being sealed in the “secrecy envelope.” I believe that the “secrecy envelope” is an anachronism that should have been abandoned when the Pennsylvania Election Code was recently amended. Under the prior version, absentee ballots were delivered to the corresponding polling places and opened there after the polls closed on General Election Day. Typically, there were a mere handful of absentee ballots at each poll. Without the “secrecy envelope,” there was a high probability that the poll worker would know the voters whose absentee ballots were opened there, which would impair those voters’ right to cast a secret ballot. As a result of the recent amendments to the Pennsylvania Election Code, mail-in and absentee ballots are retained at a centralized location **(Footnote continued on next page...)**

would not blithely disenfranchise those 2,349 voters who merely neglected to enter a date on the declaration of an otherwise properly executed and timely-submitted ballot.

Accordingly, unlike the majority, I would affirm the trial court's order in this case.



MICHAEL H. WOJCIK, Judge

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**(continued...)**

and opened *en masse* beginning on General Election Day. Under the current regime, in cases of “naked ballots,” I would favor a voter’s right to cast a vote over the right to cast a secret ballot, because I believe that it is extremely unlikely that the election official who opens the envelope would know the voter whose ballot is being processed.

# EXHIBIT G

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**IN THE SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICT**

IN RE: CANVASS OF ABSENTEE AND	:	Nos. 89-93 EM 2020
MAIL-IN BALLOTS OF NOVEMBER 3, 2020	:	
GENERAL ELECTION	:	
	:	
	:	
	:	
PETITION OF: PHILADELPHIA COUNTY	:	
BOARD OF ELECTIONS	:	
	:	
	:	
	:	
	:	

**ORDER**

**PER CURIAM**

**AND NOW**, this 18<sup>th</sup> day of November, 2020, the Application for the Court to Exercise Extraordinary Jurisdiction over the Commonwealth Court's Cases Docketed at 1140 CD 2020, 1139 CD 2020, 1138 CD 2020, 1137 CD 2020, and 1136 CD 2020, filed by the Philadelphia County Board of Elections, is hereby **GRANTED** with respect to the following issue:

Does the Election Code require county boards of elections to disqualify mail-in or absentee ballots submitted by qualified electors who signed their ballot's outer envelopes but did not handwrite their name, their address, and/or a date, where no fraud or irregularity has been alleged?

The Commonwealth Court shall immediately transfer the contents of its records for these cases to this Court, including the briefs requested and received from the parties.

Chief Justice Saylor and Justice Mundy note their dissent.

# EXHIBIT H

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STATE OF MICHIGAN

IN THE THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

Cheryl A. Costantino and  
Edward P. McCall, Jr.  
Plaintiffs,

Hon. Timothy M. Kenny  
Case No. 20-014780-AW

City of Detroit; Detroit Election  
Commission; Janice M. Winfrey,  
in her official capacity as the  
Clerk of the City of Detroit and  
the Chairperson and the Detroit  
Election Commission; Cathy Garrett,  
In her official capacity as the Clerk of  
Wayne County; and the Wayne County  
Board of Canvassers,  
Defendants.

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**OPINION & ORDER**

At a session of this Court  
Held on: November 13, 2020  
In the Coleman A. Young Municipal Center  
County of Wayne, Detroit, MI

PRESENT: Honorable Timothy M. Kenny  
Chief Judge  
Third Judicial Circuit Court of Michigan

This matter comes before the Court on Plaintiffs' motion for preliminary injunction, protective order, and a results audit of the November 3, 2020 election. The Court having read the parties' filing and heard oral arguments, finds:

With the exception of a portion of Jessy Jacob affidavit, all alleged fraudulent claims brought by the Plaintiffs related to activity at the TCF Center. Nothing was alleged to

have occurred at the Detroit Election Headquarters on West Grand Blvd. or at any polling place on November 3, 2020.

The Defendants all contend Plaintiffs cannot meet the requirements for injunctive relief and request the Court deny the motion.

When considering a petition for injunction relief, the Court must apply the following four-pronged test:

1. The likelihood the party seeking the injunction will prevail on the merits.
2. The danger the party seeking the injunction will suffer irreparable harm if the injunction is not granted.
3. The risk the party seeking the injunction would be harmed more by the absence an injunction than the opposing party would be by the granting of the injunction.
4. The harm to the public interest if the injunction is issued. *Davis v City of Detroit Financial Review Team*, 296 Mich. App. 568, 613; 821 NW2nd 896 (2012).

In the *Davis* opinion, the Court also stated that injunctive relief "represents an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity." *Id.* at 612 fn 135 quoting *Senior Accountants, Analysts and Appraisers Association v Detroit*, 218 Mich. App. 263, 269; 553 NW2nd 679 (1996).

When deciding whether injunctive relief is appropriate MCR 3.310 (A)(4) states that the Plaintiffs bear the burden of proving the preliminary injunction should be granted. In cases of alleged fraud, the Plaintiff must state with particularity the circumstances constituting the fraud. MCR 2.112 (B) (1)

Plaintiffs must establish they will likely prevail on the merits. Plaintiffs submitted seven affidavits in support of their petition for injunctive relief claiming widespread voter

fraud took place at the TCF Center. One of the affidavits also contended that there was blatant voter fraud at one of the satellite offices of the Detroit City Clerk. An additional affidavit supplied by current Republican State Senator and former Secretary of State Ruth Johnson, expressed concern about allegations of voter fraud and urged "Court intervention", as well as an audit of the votes.

In opposition to Plaintiffs' assertion that they will prevail, Defendants offered six affidavits from individuals who spent an extensive period of time at the TCF Center. In addition to disputing claims of voter fraud, six affidavits indicated there were numerous instances of disruptive and intimidating behavior by Republican challengers. Some behavior necessitated removing Republican challengers from the TCF Center by police.

After analyzing the affidavits and briefs submitted by the parties, this Court concludes the Defendants offered a more accurate and persuasive explanation of activity within the Absent Voter Counting Board (AVCB) at the TCF Center.

Affiant Jessy Jacob asserts Michigan election laws were violated prior to November 3, 2020, when City of Detroit election workers and employees allegedly coached voters to vote for Biden and the Democratic Party. Ms. Jacob, a furloughed City worker temporarily assigned to the Clerk's Office, indicated she witnessed workers and employees encouraging voters to vote a straight Democratic ticket and also witnessed election workers and employees going over to the voting booths with voters in order to encourage as well as watch them vote. Ms. Jacob additionally indicated while she was working at the satellite location, she was specifically instructed by superiors not to ask for driver's license or any photo ID when a person was trying to vote.

The allegations made by Ms. Jacob are serious. In the affidavit, however, Ms. Jacob does not name the location of the satellite office, the September or October date these

acts of fraud took place, nor does she state the number of occasions she witnessed the alleged misconduct. Ms. Jacob in her affidavit fails to name the city employees responsible for the voter fraud and never told a supervisor about the misconduct.

Ms. Jacob's information is generalized. It asserts behavior with no date, location, frequency, or names of employees. In addition, Ms. Jacob's offers no indication of whether she took steps to address the alleged misconduct or to alter any supervisor about the alleged voter fraud. Ms. Jacob only came forward after the unofficial results of the voting indicated former Vice President Biden was the winner in the state of Michigan.

Ms. Jacob also alleges misconduct and fraud when she worked at the TCF Center. She claims supervisors directed her not to compare signatures on the ballot envelopes she was processing to determine whether or not they were eligible voters. She also states that supervisors directed her to "pre-date" absentee ballots received at the TCF Center on November 4, 2020. Ms. Jacob ascribes a sinister motive for these directives. Evidence offered by long-time State Elections Director Christopher Thomas, however, reveals there was no need for comparison of signatures at the TCF Center because eligibility had been reviewed and determined at the Detroit Election Headquarters on West Grand Blvd. Ms. Jacob was directed not to search for or compare signatures because the task had already been performed by other Detroit city clerks at a previous location in compliance with MCL 168.765a. As to the allegation of "pre-dating" ballots, Mr. Thomas explains that this action completed a data field inadvertently left blank during the initial absentee ballot verification process. Thomas Affidavit, #12. The entries reflected the date the City received the absentee ballot. *Id.*

The affidavit of current State Senator and former Secretary of State Ruth Johnson essentially focuses on the affidavits of Ms. Jacob and Zachery Larsen. Senator Johnson believed the information was concerning to the point that judicial intervention was needed and an audit of the ballots was required. Senator Johnson bases her assessment entirely on the contents of the Plaintiffs' affidavits and Mr. Thomas' affidavit. Nothing in Senator Johnson's affidavit indicates she was at the TCF Center and witnessed the established protocols and how the AVCB activity was carried out. Similarly, she offers no explanation as to her apparent dismissal of Mr. Thomas' affidavit. Senator Johnson's conclusion stands in significant contrast to the affidavit of Christopher Thomas, who was present for many hours at TCF Center on November 2, 3 and 4. In this Court's view, Mr. Thomas provided compelling evidence regarding the activity at the TCF Center's AVCB workplace. This Court found Mr. Thomas' background, expertise, role at the TCF Center during the election, and history of bipartisan work persuasive.

Affiant Andrew Sitto was a Republican challenger who did not attend the October 29<sup>th</sup> walk-through meeting provided to all challengers and organizations that would be appearing at the TCF Center on November 3 and 4, 2020. Mr. Sitto offers an affidavit indicating that he heard other challengers state that several vehicles with out-of-state license plates pulled up to the TCF Center at approximately 4:30 AM on November 4<sup>th</sup>. Mr. Sitto states that "tens of thousands of ballots" were brought in and placed on eight long tables and, unlike other ballots, they were brought in from the rear of the room. Sitto also indicated that every ballot that he saw after 4:30 AM was cast for former Vice President Biden.

Mr. Sitto's affidavit, while stating a few general facts, is rife with speculation and guess-work about sinister motives. Mr. Sitto knew little about the process of the absentee voter counting board activity. His sinister motives attributed to the City of Detroit were negated by Christopher Thomas' explanation that all ballots were delivered to the back of Hall E at the TCF Center. Thomas also indicated that the City utilized a rental truck to deliver ballots. There is no evidentiary basis to attribute any evil activity by virtue of the city using a rental truck with out-of-state license plates.

Mr. Sitto contends that tens of thousands of ballots were brought in to the TCF Center at approximately 4:30 AM on November 4, 2020. A number of ballots speculative on Mr. Sitto's part, as is his speculation that all of the ballots delivered were cast for Mr. Biden. It is not surprising that many of the votes being observed by Mr. Sitto were votes cast for Mr. Biden in light of the fact that former Vice President Biden received approximately 220,000 more votes than President Trump.

Daniel Gustafson, another affiant, offers little other than to indicate that he witnessed "large quantities of ballots" delivered to the TCF Center in containers that did not have lids were not sealed, or did not have marking indicating their source of origin. Mr. Gustafson's affidavit is another example of generalized speculation fueled by the belief that there was a Michigan legal requirement that all ballots had to be delivered in a sealed box. Plaintiffs have not supplied any statutory requirement supporting Mr. Gustafson's speculative suspicion of fraud.

Patrick Colbeck's affidavit centered around concern about whether any of the computers at the absent voter counting board were connected to the internet. The answer given by a David Nathan indicated the computers were not connected to the



internet. Mr. Colbeck implies that there was internet connectivity because of an icon that appeared on one of the computers. Christopher Thomas indicated computers were not connected for workers, only the essential tables had computer connectivity. Mr. Colbeck, in his affidavit, speculates that there was in fact Wi-Fi connection for workers use at the TCF Center. No evidence supports Mr. Colbeck's position.

This Court also reads Mr. Colbeck's affidavit in light of his pre-election day Facebook posts. In a post before the November 3, 2020 election, Mr. Colbeck stated on Facebook that the Democrats were using COVID as a cover for Election Day fraud. His predilection to believe fraud was occurring undermines his credibility as a witness.

Affiant Melissa Carone was contracted by Dominion Voting Services to do IT work at the TCF Center for the November 3, 2020 election. Ms. Carone, a Republican, indicated that she "witnessed nothing but fraudulent actions take place" during her time at the TCF Center. Offering generalized statements, Ms. Carone described illegal activity that included, untrained counter tabulating machines that would get jammed four to five times per hour, as well as alleged cover up of loss of vast amounts of data. Ms. Carone indicated she reported her observations to the FBI.

Ms. Carone's description of the events at the TCF Center does not square with any of the other affidavits. There are no other reports of lost data, or tabulating machines that jammed repeatedly every hour during the count. Neither Republican nor Democratic challengers nor city officials substantiate her version of events. The allegations simply are not credible.

Lastly, Plaintiffs rely heavily on the affidavit submitted by attorney Zachery Larsen. Mr. Larsen is a former Assistant Attorney General for the State of Michigan who alleged mistreatment by city workers at the TCF Center, as well as fraudulent activity by election workers. Mr. Larsen expressed concern that ballots were being processed without confirmation that the voter was eligible. Mr. Larsen also expressed concern that he was unable to observe the activities of election official because he was required to stand six feet away from the election workers. Additionally, he claimed as a Republican challenger, he was excluded from the TCF Center after leaving briefly to have something to eat on November 4<sup>th</sup>. He expressed his belief that he had been excluded because he was a Republican challenger.

Mr. Larsen's claim about the reason for being excluded from reentry into the absent voter counting board area is contradicted by two other individuals. Democratic challengers were also prohibited from reentering the room because the maximum occupancy of the room had taken place. Given the COVID-19 concerns, no additional individuals could be allowed into the counting area. Democratic party challenger David Jaffe and special consultant Christopher Thomas in their affidavits both attest to the fact that neither Republican nor Democratic challengers were allowed back in during the early afternoon of November 4<sup>th</sup> as efforts were made to avoid overcrowding.

Mr. Larsen's concern about verifying the eligibility of voters at the AVCB was incorrect. As stated earlier, voter eligibility was determined at the Detroit Election Headquarters by other Detroit city clerk personnel.

The claim that Mr. Larsen was prevented from viewing the work being processed at the tables is simply not correct. As seen in a City of Detroit exhibit, a large monitor was

at the table where individuals could maintain a safe distance from poll workers to see what exactly was being performed. Mr. Jaffe confirmed his experience and observation that efforts were made to ensure that all challengers could observe the process.

Despite Mr. Larsen's claimed expertise, his knowledge of the procedures at the AVCB paled in comparison to Christopher Thomas'. Mr. Thomas' detailed explanation of the procedures and processes at the TCF Center were more comprehensive than Mr. Larsen's. It is noteworthy, as well, that Mr. Larsen did not file any formal complaint as the challenger while at the AVCB. Given the concerns raised in Mr. Larsen's affidavit, one would expect an attorney would have done so. Mr. Larsen, however, only came forward to complain after the unofficial vote results indicated his candidate had lost.

In contrast to Plaintiffs' witnesses, Christopher Thomas served in the Secretary of State's Bureau of Elections for 40 years, from 1977 through 2017. In 1981, he was appointed Director of Elections and in that capacity implemented Secretary of State Election Administration Campaign Finance and Lobbyist disclosure programs. On September 3, 2020 he was appointed as Senior Advisor to Detroit City Clerk Janice Winfrey and provided advice to her and her management staff on election law procedures, implementation of recently enacted legislation, revamped absent voter counting boards, satellite offices and drop boxes. Mr. Thomas helped prepare the City of Detroit for the November 3, 2020 General Election.

As part of the City's preparation for the November 3<sup>rd</sup> election Mr. Thomas invited challenger organizations and political parties to the TCF Center on October 29, 2020 to have a walk-through of the entire absent voter counting facility and process. None of Plaintiff challenger affiants attended the session.

On November 2, 3, and 4, 2020, Mr. Thomas worked at the TCF Center absent voter counting boards primarily as a liaison with Challenger Organizations and Parties. Mr. Thomas indicated that he “provided answers to questions about processes at the counting board’s resolved dispute about process and directed leadership of each organization or party to adhere to Michigan Election Law and Secretary of State procedures concerning the rights and responsibilities of challengers.”

Additionally, Mr. Thomas resolved disputes about the processes and satisfactorily reduced the number of challenges raised at the TCF Center.

In determining whether injunctive relief is required, the Court must also determine whether the Plaintiffs sustained their burden of establishing they would suffer irreparable harm if an injunction were not granted. Irreparable harm does not exist if there is a legal remedy provided to Plaintiffs.

Plaintiffs contend they need injunctive relief to obtain a results audit under Michigan Constitution Article 2, § IV, Paragraph 1 (h) which states in part “the right to have the results of statewide elections audited, in such as manner as prescribed by law, to ensure the accuracy and integrity of the law of elections.” Article 2, § IV, was passed by the voters of the state of Michigan in November, 2018.

A question for the Court is whether the phrase “in such as manner as prescribed by law” requires the Court to fashion a remedy by independently appointing an auditor to examine the votes from the November 3, 2020 election before any County certification of votes or whether there is another manner “as prescribed by law”.

Following the adoption of the amended Article 2, § IV, the Michigan Legislature amended MCL 168.31a effective December 28, 2018. MCL 168.31a provides for the Secretary of State and appropriate county clerks to conduct a results audit of at least

one race in each audited precinct. Although Plaintiffs may not care for the wording of the current MCL 168.31a, a results audit has been approved by the Legislature. Any amendment to MCL 168.31a is a question for the voice of the people through the legislature rather than action by the Court.

It would be an unprecedented exercise of judicial activism for this Court to stop the certification process of the Wayne County Board of Canvassers. The Court cannot defy a legislatively crafted process, substitute its judgment for that of the Legislature, and appoint an independent auditor because of an unwieldy process. In addition to being an unwarranted intrusion on the authority of the Legislature, such an audit would require the rest of the County and State to wait on the results. Remedies are provided to the Plaintiffs. Any unhappiness with MCL 168.31a calls for legislative action rather than judicial intervention.

As stated above, Plaintiffs have multiple remedies at law. Plaintiffs are free to petition the Wayne County Board of Canvassers who are responsible for certifying the votes. (MCL 168.801 and 168.821 et seq.) Fraud claims can be brought to the Board of Canvassers, a panel that consists of two Republicans and two Democrats. If dissatisfied with the results, Plaintiffs also can avail themselves of the legal remedy of a recount and a Secretary of State audit pursuant to MCL 168.31a.

Plaintiff's petition for injunctive relief and for a protective order is not required at this time in light of the legal remedy found at 52 USC § 20701 and Michigan's General Schedule #23 – Election Records, Item Number 306, which imposes a statutory obligation to preserve all federal ballots for 22 months after the election.

In assessing the petition for injunctive relief, the Court must determine whether there will be harm to the Plaintiff if the injunction is not granted, as Plaintiffs' existing legal

remedies would remain in place unaltered. There would be harm, however, to the Defendants if the Court were to grant the requested injunction. This Court finds that there are legal remedies for Plaintiffs to pursue and there is no harm to Plaintiffs if the injunction is not granted. There would be harm, however, to the Defendants if the injunction is granted. Waiting for the Court to locate and appoint an independent, nonpartisan auditor to examine the votes, reach a conclusion and then finally report to the Court would involve untold delay. It would cause delay in establishing the Presidential vote tabulation, as well as all other County and State races. It would also undermine faith in the Electoral System.

Finally, the Court has to determine would there be harm to the public interest. This Court finds the answer is a resounding yes. Granting Plaintiffs' requested relief would interfere with the Michigan's selection of Presidential electors needed to vote on December 14, 2020. Delay past December 14, 2020 could disenfranchise Michigan voters from having their state electors participate in the Electoral College vote.

### Conclusion

Plaintiffs rely on numerous affidavits from election challengers who paint a picture of sinister fraudulent activities occurring both openly in the TCF Center and under the cloak of darkness. The challengers' conclusions are decidedly contradicted by the highly-respected former State Elections Director Christopher Thomas who spent hours and hours at the TCF Center November 3<sup>rd</sup> and 4<sup>th</sup> explaining processes to challengers and resolving disputes. Mr. Thomas' account of the November 3<sup>rd</sup> and 4<sup>th</sup> events at the TCF Center is consistent with the affidavits of challengers David Jaffe, Donna MacKenzie and Jeffrey Zimmerman, as well as former Detroit City Election Official, now contractor, Daniel Baxter and City of Detroit Corporation Counsel Lawrence Garcia.

Perhaps if Plaintiffs' election challenger affiants had attended the October 29, 2020 walk-through of the TCF Center ballot counting location, questions and concerns could have been answered in advance of Election Day. Regrettably, they did not and, therefore, Plaintiffs' affiants did not have a full understanding of the TCF absent ballot tabulation process. No formal challenges were filed. However, sinister, fraudulent motives were ascribed to the process and the City of Detroit. Plaintiffs' interpretation of events is incorrect and not credible.

Plaintiffs are unable to meet their burden for the relief sought and for the above mentioned reasons, the Plaintiffs' petition for injunctive relief is DENIED. The Court further finds that no basis exists for the protective order for the reasons identified above. Therefore, that motion is DENIED. Finally, the Court finds that MCL 168.31a governs the audit process. The motion for an independent audit is DENIED.

It is so ordered.

This is not a final order and does not close the case.

November 13, 2020

  
Hon. Timothy M. Kenny  
Chief Judge  
Third Judicial Circuit Court of Michigan

# EXHIBIT I

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**STATE OF MICHIGAN**  
**COURT OF CLAIMS**

DONALD J. TRUMP FOR PRESIDENT, INC.  
and ERIC OSTEGREN,

**OPINION AND ORDER**

Plaintiffs,

v

Case No. 20-000225-MZ

JOCELYN BENSON, in her official capacity as  
Secretary of State,

Hon. Cynthia Diane Stephens

Defendants.

\_\_\_\_\_ /

Pending before the Court are two motions. The first is plaintiffs' November 4, 2020 emergency motion for declaratory relief under MCR 2.605(D). For the reasons stated on the record and incorporated herein, the motion is DENIED. Also pending before the Court is the motion to intervene as a plaintiff filed by the Democratic National Committee. Because the relief requested by plaintiffs in this case will not issue, the Court DENIES as moot the motion to intervene.

According to the allegations in plaintiffs' complaint, plaintiff Eric Ostegren is a credentialed election challenger under MCL 168.730. Paragraph 2 of the complaint alleges that plaintiff Ostegren was "excluded from the counting board during the absent voter ballot review process." The complaint does not specify when, where, or by whom plaintiff was excluded. Nor does the complaint provide any details about why the alleged exclusion occurred.

The complaint contains allegations concerning absent voter ballot drop-boxes. Plaintiffs allege that state law requires that ballot containers must be monitored by video surveillance. Plaintiff contends that election challengers must be given an opportunity to observe video of ballot drop-boxes with referencing the provision(s) of the statute that purportedly grant such access, . See MCL 168.761d(4)(c).

Plaintiffs' emergency motion asks the Court to order all counting and processing of absentee ballots to cease until an "election inspector" from each political party is allowed to be present at every absent voter counting board, and asks that this court require the Secretary of State to order the immediate segregation of all ballots that are not being inspected and monitored as required by law. Plaintiffs argue that the Secretary of State's failure to act has undermined the rights of all Michigan voters. While the advocate at oral argument posited the prayer for relief as one to order "meaningful access" to the ballot tabulation process, plaintiffs have asked the Court to enter a preliminary injunction to enjoin the counting of ballots. A party requesting this "extraordinary and drastic use of judicial power" must convince the Court of the necessity of the relief based on the following factors:

(1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued. [*Davis v Detroit Fin Review Team*, 296 Mich App 568, 613; 821 NW2d 896 (2012).]

As stated on the record at the November 5, 2020 hearing, plaintiffs are not entitled to the extraordinary form of emergency relief they have requested.

## I. SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS

### A. OSTEGREN CLAIM

Plaintiff Ostegren avers that he was removed from an absent voter counting board. It is true that the Secretary of State has general supervisory control over the conduct of elections. See MCL 168.21; MCL 168.31. However, the day-to-day operation of an absent voter counting board is controlled by the pertinent city or township clerk. See MCL 168.764d. The complaint does not allege that the Secretary of State was a party to or had knowledge of, the alleged exclusion of plaintiff Ostegren from the unnamed absent voter counting board. Moreover, the Court notes that recent guidance from the Secretary of State, as was detailed in matter before this Court in *Carra et al v Benson et al*, Docket No. 20-000211-MZ, expressly advised local election officials to admit credentialed election challengers, provided that the challengers adhered to face-covering and social-distancing requirements. Thus, allegations regarding the purported conduct of an unknown local election official do not lend themselves to the issuance of a remedy against the Secretary of State.

### B. CONNARN AFFIDAVIT

Plaintiffs have submitted what they refer to as “supplemental evidence” in support of their request for relief. The evidence consists of: (1) an affidavit from Jessica Connarn, a designated poll watcher; and (2) a photograph of a handwritten yellow sticky note. In her affidavit, Connarn avers that, when she was working as a poll watcher, she was contacted by an unnamed poll worker who was allegedly “being told by other hired poll workers at her table to change the date the ballot was received when entering ballots into the computer.” She avers that this unnamed poll worker later handed her a sticky note that says “entered receive date as 11/2/20 on 11/4/20.” Plaintiffs contend that this documentary evidence confirms that some unnamed persons engaged in

fraudulent activity in order to count invalid absent voter ballots that were received after election day.

This “supplemental evidence” is inadmissible as hearsay. The assertion that Connarn was informed by an unknown individual what “other hired poll workers at her table” had been told is inadmissible hearsay within hearsay, and plaintiffs have provided no hearsay exception for either level of hearsay that would warrant consideration of the evidence. See MRE 801(c). The note—which is vague and equivocal—is likewise hearsay. And again, plaintiffs have not presented an argument as to why the Court could consider the same, given the general prohibitions against hearsay evidence. See *Ykimoff v Foote Mem Hosp*, 285 Mich App 80, 105; 776 NW2d 114 (2009). Moreover, even overlooking the evidentiary issues, the Court notes that there are still no allegations implicating the Secretary of State’s general supervisory control over the conduct of elections. Rather, any alleged action would have been taken by some unknown individual at a polling location.

### C. BALLOT BOX VIDEOS

It should be noted at the outset that the statute providing for video surveillance of drop boxes only applies to those boxes that were installed after October 1, 2020. See MCL 168.761d(2). There is no evidence in the record whether there are any boxes subject to this requirement, how many there are, or where they are. The plaintiffs have not cited any statutory authority that requires any video to be subject to review by election challengers. They have not presented this Court with any statute making the Secretary of State responsible for maintaining a database of such boxes. The clear language of the statute directs that “[t]he city or township clerk must use video monitoring of that drop box to ensure effective monitoring of that drop box.” MCL 168.761d(4)(c). Additionally, plaintiffs have not directed the Court’s attention to any authority directing the

Secretary of State to segregate the ballots that come from such drop-boxes, thereby undermining plaintiffs' request to have such ballots segregated from other ballots, and rendering it impossible for the Court to grant the requested relief against this defendant. Not only can the relief requested not issue against the Secretary of State, who is the only named defendant in this action, but the factual record does not support the relief requested. As a result, plaintiffs are unable to show a likelihood of success on the merits.

## II. MOOTNESS

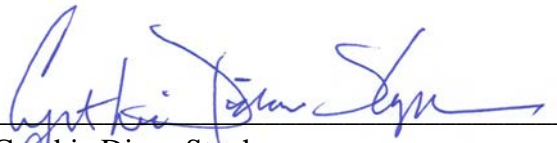
Moreover, even if the requested relief could issue against the Secretary of State, the Court notes that the complaint and emergency motion were not filed until approximately 4:00 p.m. on November 4, 2020—despite being announced to various media outlets much earlier in the day. By the time this action was filed, the votes had largely been counted, and the counting is now complete. Accordingly, and even assuming the requested relief were available against the Secretary of State—and overlooking the problems with the factual and evidentiary record noted above—the matter is now moot, as it is impossible to issue the requested relief. See *Gleason v Kincaid*, 323 Mich App 308, 314; 917 NW2d 685 (2018).

IT IS HEREBY ORDERED that plaintiff's November 4, 2020 emergency motion for declaratory judgment is DENIED.

IT IS HEREBY FURTHER ORDERED that proposed intervenor's motion to intervene is DENIED as MOOT.

This is not a final order and it does not resolve the last pending claim or close the case.

November 6, 2020



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Cynthia Diane Stephens  
Judge, Court of Claims

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# EXHIBIT J

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

DONALD J. TRUMP FOR  
PRESIDENT, INC.

Plaintiffs,

v.

PHILADELPHIA COUNTY BOARD  
OF ELECTIONS,

Defendant.

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Civ. No. 20-5533

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**ORDER**

As stated during today's Emergency Injunction Hearing, in light of the Parties' agreement, Plaintiff's Motion (Doc. No. 1) is **DENIED without prejudice.**

**AND IT IS SO ORDERED.**

*/s/ Paul S. Diamond*

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Paul S. Diamond, J.



# EXHIBIT K

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AUDREY HOWLAND

BY  DEPUTY

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY**

-oOo-

**FRED KRAUS, an individual registered  
to vote in Clark County, Nevada,  
DONALD J. TRUMP FOR PRESIDENT,  
INC., and the NEVADA REPUBLICAN  
PARTY,**

**Petitioners,**

**vs.**

**BARBARA CEGAVSKE, in her official  
capacity as Nevada Secretary of State,  
JOSEPH P. GLORIA, in his official  
capacity as Registrar of Voters for Clark  
County, Nevada,**

**Respondents.**

CASE NO. 20 OC <sup>00142</sup> ~~00004~~ 1B

DEPT. 2

**ORDER DENING EMERGENCY PETITION FOR WRIT OF MANDAMUS, OR  
IN THE ALTERNATIVE, WRIT OF PROHIBITION**

**PROCEDURAL BACKGROUND**

Before the Court is the Emergency Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition. The Court held an evidentiary hearing on October 28, 2020.

## ISSUES

Do Petitioners have standing to bring these claims?

Has Registrar Joseph P. Gloria failed to meet his statutory duty under NRS 293B.353(1) to allow members of the general public to observe the counting of ballots?

Has Registrar Gloria unlawfully precluded Petitioners from the use and enjoyment of a right to which Petitioners are entitled?

Has Registrar Gloria exercised discretion arbitrarily or through mere caprice?

Has Registrar Gloria acted without or in excess of authorized powers?

Has Secretary of State Barbara Cegavske failed to meet any statutory duty under NRS 293B.353(1) to allow members of the general public to observe the counting of ballots?

Has Secretary of State Barbara Cegavske unlawfully precluded Petitioners from the use and enjoyment of a right to which Petitioners are entitled?

Has Secretary Cegavske exercised discretion arbitrarily or through mere caprice?

Has Secretary Cegavske acted without or in excess of authorized powers?

Has Secretary of State Cegavske unlawfully precluded Petitioners the use and/or enjoyment of a right to which Petitioners are entitled?

Have Petitioners proved they are entitled to a writ of mandamus on their equal protection claims?

## FACTS

It is important to note the factual context in which this case arose. All of the states in the United States are attempting to hold elections under the health, political, social, and economic consequences of the COVID-19 pandemic. Nevada's state and county election officials had relatively little time to assess, plan, modify, and implement procedures that are quite different from the established election procedures in an effort

1 to provide safe, open elections that would not result in long waiting lines. The  
2 modification of procedures includes fewer polling places, a very large increase in mail-in  
3 voting, and long lines as a result of social distancing.

4 A second important context is that this lawsuit was filed October 23, 2020—11  
5 days before the general election.

6 Every Nevada county is required to submit to the Secretary of State, by April 15,  
7 2020, the county's plan for accommodation of members of the general public who  
8 observe the processing of ballots. NRS 293B.354(1). Registrar Gloria did not submit a  
9 plan by April 15, 2020.

10 Registrar Gloria submitted a plan to the Secretary of State on October 20, 2020.  
11 A copy of the plan is attached as Exhibit 1.

12 Historically, the Secretary of State has not sent letters or other notification to the  
13 counties approving the counties' plans.

14 The Secretary of State's office reviewed Registrar Gloria's plan, concluded it  
15 complied with the law, and Secretary Cegavske issued a letter to Registrar Gloria on  
16 October 22, 2020. The letter is attached as Exhibit 2. The Secretary did not write that  
17 Registrar Gloria's plan was "approved," but it is clear from the letter that the plan was  
18 approved with a suggestion to that the Registrar consider providing additional seating in  
19 public viewing areas for observers to view the signature verification process to the extent  
20 feasible while ensuring that no personally identifiable information is observable by the  
21 public.

22 A copy of all 17 county plans were admitted as exhibits. Clark County's plan is not  
23 substantially different from the plan of any of the other 16 counties, and none of the  
24 plans is substantially different from the plans of previous years.

25 Clark County uses an electronic ballot sorting system, Agilis. No other Nevada  
26 county uses Agilis. Some major metropolitan areas including Cook County, Illinois, Salt  
27

1 Lake City, Utah, and Houston, Texas use Agilis. Some Nevada counties use other brands  
2 of ballot sorting systems.

3 Registrar Gloria decided to purchase Agilis because of the pandemic and the need  
4 to more efficiently process ballot signatures.

5 One of Petitioners' attorneys questioned Registrar Gloria about Agilis in earlier  
6 case, Corona v. Cegavske, but never asked Registrar Gloria to stop using Agilis.

7 Clark County election staff tested Agilis by manually matching signatures. Clark  
8 County election staff receives yearly training on signature matching from the Federal  
9 Bureau of Investigation. The last training was in August of this year.

10 For this general election Clark County is using the same they used for the June  
11 primary election. No evidence was presented that the setting used by Clark County  
12 causes or has resulted in any fraudulent ballot being validated or any valid ballot  
13 invalidated.

14 No evidence was presented of any Agilis errors or inaccuracies. No evidence was  
15 presented that there is any indication of any error in Clark County's Agilis signature  
16 match rate.

17 Registrar Gloria opined that if Clark County could not continue using Agilis the  
18 county could not meet the canvass deadline which is November 15, 2020. The Court  
19 finds that if Clark County is not allowed to continue using Agilis the county will not meet  
20 the canvass deadline.

21 When the envelope containing mail-in ballots are opened the ballot and envelope  
22 are separated and not kept in sequential order. Because they are not kept in sequential  
23 order it would be difficult to identify a voter by matching a ballot with its envelope.

24 This is the first election in Registrar Gloria's 28 years of election experience in  
25 Clark County that there are large numbers of persons wanting to observe the ballot  
26 process.

1 Persons that observe the ballot process sign an acknowledgment and a memo  
2 containing instructions to the observer. A copy of an acknowledgment and memo are  
3 attached as Exhibit 3.

4 People hired by the Registrar to manage the people wanting to observe the ballot  
5 process are called ambassadors. The observer acknowledgment states observers are  
6 prohibited from talking to staff. The memo explains the role of ambassadors and invites  
7 observers to inform their ambassador they have a question for election officials or the  
8 observer may pose a question directly to an election official.

9 Registrar Gloria is not aware of any observer complaints.

10 Several witnesses supporting Petitioners and called by Petitioners testified: they  
11 saw ballots that had been removed from the envelope left alone; runners handle ballots  
12 in different ways, including taking the ballots into an office, taking ballots into "the  
13 vault" and/or otherwise failing to follow procedure, but no procedure was identified;  
14 inability to see some tables from the observation area; inability to see into some rooms;  
15 inability to see all election staff monitors; inability to see names on monitors; saw a  
16 signatures she thought did not match but admitted she had no signature comparison  
17 training; and/or trouble getting to where they were supposed to go to observe and  
18 trouble being admitted to act as observer at the scheduled time.

19 No evidence was presented that any party or witness wanted to challenge a vote  
20 or voter, or had his or her vote challenged.

21 No evidence was presented that there was an error in matching a ballot signature,  
22 that any election staff did anything that adversely affected a valid ballot or failed to take  
23 appropriate action on an invalid ballot.

24 No evidence was presented that any election staff were biased or prejudiced for or  
25 against any party or candidate.

One Petitioner witness did not raise issues regarding things she observed with an ambassador but instead went to the Trump Campaign. No issue was ever raised as a result of her observations or report to the Trump Campaign.

Washoe County is using cameras to photograph or videotape the ballot process.  
No Nevada county hand-counts ballots.

## LEGAL PRINCIPLES

### Standing

Nevada law requires an actual justiciable controversy as a predicate to judicial relief. *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986). For a controversy to exist the petitioner must have suffered a personal injury and not merely a general interest that is common to all members of the public. *Schwarz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016).

### Mandamus and Prohibition

A court may issue a writ of mandamus “to compel the performance of an act which the law especially enjoins as a duty resulting from an office . . . ; or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is unlawfully precluded by such . . . person.” NRS 34.160. A court may issue a writ of mandamus “when the respondent has a clear, present legal duty to act.” *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603, 637 P.2d 534 (1981). The flip side of that proposition is that a court cannot mandate a person take action if the person has no clear, present legal duty to act. Generally, mandamus will lie to enforce ministerial acts or duties and to require the exercise of discretion, but it will not serve to control the discretion.” *Gragson v. Toco*, 90 Nev. 131,

133 (1974). There is an exception to the general rule: when discretion “is exercised arbitrarily or through mere caprice.” *Id.*

“Petitioners carry the burden of demonstrating that extraordinary relief is warranted.” *Pan v. Dist. Ct.*, 120 Nev. 222, 228 (2004).

The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal . . . or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal . . . or person. NRS 34.320.

A writ of prohibition “may be issued . . . to a person, in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law.” NRS 34.330.

## **Voting Statutes**

NRS 293B.353 provides in relevant part:

1. The county . . . shall allow members of the general public to observe the counting of the ballots at the central counting place if those members do not interfere with the counting of the ballots.

2. The county . . . may photograph or record or cause to be photographed or recorded on audiotape or any other means of sound or video reproduction the counting of the ballots at the central counting place.

3. A registered voter may submit a written request to the county . . . clerk for any photograph or recording of the counting of the ballots prepared pursuant to subsection 2. The county . . . clerk shall, upon receipt of the request, provide the photograph or recording to the registered voter at no charge.

NRS 293B.354 provides in relevant part:

1. The county clerk shall, not later than April 15 of each year in which a general election is held, submit to the Secretary of State for approval a written plan for the accommodation of members of the general public who observe the delivery, counting, handling and processing of ballots at a polling place, receiving center or central counting place.

...



3. Each plan must include:

- (a) The location of the central counting place and of each polling place and receiving center;
- (b) A procedure for the establishment of areas within each polling place and receiving center and the central counting place from which members of the general public may observe the activities set forth in subsections 1 and 2;
- (c) The requirements concerning the conduct of the members of the general public who observe the activities set forth in subsections 1 and 2; and
- (d) Any other provisions relating to the accommodation of members of the general public who observe the activities set forth in subsections 1 and 2 which the county . . . considers appropriate.

AB 4 section 22 provides in relevant part:

1. For any affected election, the county . . . clerk, shall establish procedures for the processing and counting of mail ballots.

2. The procedures established pursuant to subsection 1:

- (a) May authorize mail ballots to be processed and counted by electronic means; and
- (b) Must not conflict with the provisions of sections 2 to 27, inclusive, of this act.

AB 4 section 23 provides in relevant part:

1. . . . for any affected election, when a mail ballot is returned by or on behalf of a voter to the county . . . clerk . . . and a record of its return is made in the mail ballot record for the election, the clerk or an employee in the office of the clerk shall check the signature used for the mail ballot in accordance with the following procedure:

- a. The clerk or employee shall check the signature used for the mail ballot against all signatures of the voter available in the records of the clerk.

AB 4 section 25 provides in relevant part:

1. The counting procedures must be public.

## ANALYSIS

### **Petitioners failed to prove they have standing to bring their Agilis, observation, ballot handling or secrecy claims.**

As set forth above for a justiciable controversy to exist the petitioner must have suffered a personal injury and not merely a general interest that is common to all members of the public. Petitioners provided no evidence of any injury, direct or indirect, to themselves or any other person or organization. The evidence produced by Petitioners shows concern over certain things these observers observed. There is no evidence that any vote that should lawfully be counted has or will not be counted. There is no evidence that any vote that should lawfully not be counted has been or will be counted. There is no evidence that any election worker did anything outside of the law, policy, or procedures. Petitioners do not have standing to maintain their mandamus claims.

Likewise, Petitioners provided no evidence of a personal injury and not merely a general interest that is common to all members of the public regarding the differences between the in-person and mail-in procedures. Petitioners provided no evidence of any injury, direct or indirect, to themselves or any other person or organization as a result of the different procedures. All Nevada voters have the right to choose to vote in-person or by mail-in. Voting in person and voting by mailing in the ballot are different and so the procedures differ. There is no evidence that anything the State or Clark County have done or not done creates two different classes of voters. There is no evidence that anything the State or Clark County has done values one voter's vote over another's.

1 There is no evidence of any debasement or dilution of any citizen's vote. Petitioners do  
2 not have standing to bring their equal protection claims.

3  
4 **Petitioners failed to prove Registrar Gloria failed to meet his**  
5 **statutory duty under NRS 293B.353(1) to allow members of the general**  
6 **public to observe the counting of ballots?**

7  
8 Petitioners argued they have a right to observers having meaningful observation  
9 under NRS 293B.353(1) and AB 4 sec. 25. NRS 293B.353(1) provides in relevant part,  
10 "[t]he county . . . shall allow members of the general public to observe the counting of  
11 the ballots . . . ." AB 4 sec. 25 provides in relevant part "[t]he counting procedure must  
12 be public." The statutes do not use the modifier "meaningful."

13 The Nevada Legislature codified the right of the public to observe the ballot  
14 counting procedure in NRS 293B.353 and 293B.354, and AB 4 section 25(1). NRS  
15 293B.354(1) requires each county to annually submit a plan to the Secretary of State.  
16 NRS 293B. 354(3) states the requirements of the plan. The statutory requirements of  
17 the plan are very general. The legislature left to the election professionals, the Secretary  
18 of State and the county elections officials, wide discretion in establishing the specifics of  
19 the plan. Petitioners failed to prove either Secretary Cegavske or Registrar Gloria  
20 exercised their discretion arbitrarily or through mere caprice.

21  
22 The fact that Registrar failed to timely submit a plan was remedied by submitting  
23 the plan late and the Secretary of State approving the plan.

24 Petitioners seem to request unlimited access to all areas of the ballot counting  
25 area and observation of all information involved in the ballot counting process so they  
26

1 can verify the validity of the ballot, creating in effect a second tier of ballot counters  
2 and/or concurrent auditors of the ballot counting election workers. Petitioners failed to  
3 cite any constitutional provision, statute, rule, or case that supports such a request. The  
4 above-cited statutes created observers not counters, validators, or auditors. Allowing  
5 such access creates a host of problems. Ballots and verification tools contain confidential  
6 voter information that observers have not right to know. Creating a second tier of  
7 counters, validators, or auditors would slow a process the Petitioners failed to prove is  
8 flawed. The request if granted would result in an increase in the number of persons in  
9 the ballot processing areas at a time when social distancing is so important because of  
10 the COVID-19 pandemic.

11  
12 Petitioners have failed to prove Registrar Gloria has interfered with any right they  
13 or anyone else has as an observer.

14 Petitioners claim a right to have mail-in ballots and the envelopes the ballots are  
15 mailed in to be kept in sequential order. Petitioners failed to cite Constitutional  
16 provision, statute, rule, or case that creates a duty for Nevada registrars to keep ballots  
17 and envelopes in sequential order. Because they failed to show a duty they cannot  
18 prevail on a mandamus claim that requires proof a duty resulting from office. Because  
19 there is no duty or right to sequential stacking the Court cannot mandate Registrar  
20 Gloria to stack ballots and envelopes sequentially.

21  
22 Because there is not right to sequential stacking the Court cannot mandate the use and  
23 enjoyment of that "right."

24 Plaintiffs want the Court to mandate Registrar Gloria allow Petitioners to  
25 photograph of videotape the ballot counting process. The legislature provided in NRS  
26

1 293B.353(2) the procedure for photographing or videotaping the counting of ballots.

2 The county may photograph or videotape the counting and upon request provide a copy  
3 of the photographs or videotapes.

4 Petitioners failed to cite any constitutional provision, statute, rule, or case that  
5 gives the public the right to photograph or videotape ballot counting.

6 Petitioners failed to prove Secretary Cegavske or Registrar Gloria exercised her or  
7 his discretion arbitrarily or through mere caprice in any manner. Therefore, the Court  
8 cannot mandate Registrar Gloria to require sequential stacking of ballots and envelopes.  
9

10 Petitioners requested the Court mandate Registrar Gloria provide additional  
11 precautions to ensure the secrecy of ballots. Petitioners failed to prove that the secrecy  
12 of any ballot was violated by anyone at any time. Petitioners failed to prove that the  
13 procedures in place are inadequate to protect the secrecy of every ballot.

14 Petitioners also request the Court mandate Registrar Gloria stop using the Agilis  
15 system. Petitioners failed to show any error or flaw in the Agilis results or any other  
16 reason for such a mandate. Petitioners failed to show the use of Agilis caused or resulted  
17 in any harm to any party, any voter, or any other person or organization. Petitioners  
18 failed Registrar Gloria has a duty to stop using Agilis.  
19

20 AB 4 passed by the legislature in August 2020 specifically authorized county  
21 officials to process and count ballots by electronic means. AB 4, Sec. 22(2)(a).

22 Petitioners' argument that AB 4, Sec. 23(a) requires a clerk or employee check the  
23 signature on a returned ballot means the check can only be done manually is meritless.  
24 The ballot must certainly be checked but the statute does not prohibit the use of  
25 electronic means to check the signature.  
26

**Equal Protection**

There is no evidence that in-person voters are treated differently than mail-in voters. All Nevada voters have the right to choose to vote in-person or by mail-in. Voting in person and voting by mailing in the ballot are different and so the procedures differ. Nothing the State or Clark County have done creates two different classes of voters. Nothing the State or Clark County has done values one voter's vote over another's. There is no evidence of debasement or dilution of a citizen's vote.

**CONCLUSIONS OF LAW**

Petitioners do not have standing to bring these claims.

Registrar Joseph P. Gloria has not failed to meet his statutory duty under NRS 293B.353(1) to allow members of the general public to observe the counting of ballots.

Registrar Gloria has not precluded Petitioners from the use and enjoyment of a right to which Petitioners are entitled.

Registrar Gloria has not exercised discretion arbitrarily or through mere caprice.

Registrar Gloria has not acted without or in excess of authorized powers.

Secretary of State Barbara Cegavske has not failed to meet any statutory duty under NRS 293B.353(1) to allow members of the general public to observe the counting of ballots.

Secretary of State Barbara Cegavske has not unlawfully precluded Petitioners from the use and enjoyment of a right to which Petitioners are entitled.

Secretary Cegavske has not exercised discretion arbitrarily or through mere caprice.

1 Secretary Cegavske has not acted without or in excess of authorized powers.

2 Secretary of State Cegavske has not precluded Petitioners the use and/or  
3 enjoyment of a right to which Petitioners are entitled.

4 Petitioners failed to prove they are entitled to a writ of mandamus on any of their  
5 claims.

6  
7 **ORDER**

8 The Petition for Writ of Mandamus or in the Alternative for Writ of Prohibition is  
9 denied.  
10

11 October 29, 2020.

12  
13   
14 \_\_\_\_\_  
15 James E. Wilson, Jr.  
16 District Judge  
17  
18  
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27



**CERTIFICATE OF SERVICE**

I certify that I am an employee of the First Judicial District Court of Nevada; that on the 2 day of November 2020, I served a copy of this document by placing a true copy in an envelope addressed to:

Brian R. Hardy, Esq.  
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the envelope sealed and then deposited in the Court's central mailing basket in the court clerk's office for delivery to the USPS at 1111 South Roop Street, Carson City, Nevada, for mailing.

  
Billie Shadron  
Judicial Assistant





## Election Department

965 Trade Dr • Ste A • North Las Vegas NV 89030  
Voter Registration (702) 455-8683 • Fax (702) 455-2793

Joseph Paul Gloria, Registrar of Voters  
Lorena Portillo, Assistant Registrar of Voters

October 20, 2020

The Honorable Barbara K. Cegavske  
Secretary of State  
State of Nevada  
101 N. Carson St., Suite 3  
Carson City, Nevada 89701-4786

Attention: Wayne Thorley  
Deputy Secretary of State for Elections

RE: Accommodation of Members of the General Public at Polling Places, Mail Ballot Processing, and at the Central Counting Place

Dear Secretary Cegavske:

In accordance with NRS 293B.354, I am forwarding to you the following guidelines which are provided to our polling place team leaders and our election staff to ensure we accommodate members of the general public who wish to observe activities within a polling place and/or at the central counting facilities.

### **Polling Places (Early Voting and Election Day)**

Designated public viewing areas are established in each polling place, both early voting and Election Day vote centers, where individuals may quietly sit or stand and observe the activities within the polling place.

#### **Observation guidelines:**

- Observers may not wear or display political campaign items
- Observers may not photograph, or record by any other means, any activity at any early voting or Election Day polling place
- Use of cell phones is prohibited in the polling place
- Observers may not disrupt the voting process
- If observers have questions, they must direct them to the polling place team leader

Page 2

Secretary of State Barbara K. Cegavske

March 14, 2018

### **Mail Ballot Processing (Warehouse & Flamingo-Greystone Facility)**

The general public is allowed, according to the NRS, to observe the counting of mail ballots. In addition, as a courtesy, members of the general public are also being allowed to observe our mail ballot processing procedures, which occur prior to tabulation.

Due to space limitations we are processing our mail ballots in two different facilities:

- 965 Trade Dr., North Las Vegas, NV 89030
  - AGILIS mail ballot processing
  - Signature audit team
  - Tabulation
    - Ballot duplication
- 2030 E. Flamingo Road, Las Vegas, NV 89119
  - Counting Board
    - Ballot duplication

#### **Observation guidelines:**

- Observers may not wear or display political campaign items
- Observers may not photograph, or record by any other means, any activity at any early voting or Election Day polling place
- Use of cell phones is prohibited in the polling place
- Observers may not disrupt the voting process
- If observers have questions, they must direct them to the polling place team leader

### **Election Night (Warehouse Tabulating)**

In front of our tabulation area an area is provided for any observer who wishes to observe our counting activity. Reports are provided after each update to the general public and are also available on our website for review. The general public may access the website through our free county wi-fi access on their personal devices should they choose to do so.

The public viewing area allows the general public to view the tabulation room, where the processing of election night results may be observed through windows that provide full view of all counting activity. Observers are not allowed inside the room because of congestion and COVID restrictions.

The Registrar is available to answer questions, although it should be noted that very few

Page 3


Secretary of State Barbara K. Cegavske

March 14, 2018

individuals from the public have been at the Election Center Warehouse on election night since 2000. This will probably be different this year due to increased interest in observing our activities.

In accordance with NRS 293B.354, at link provided here is a link to the vote center polling places that will be used in the General Election on November 3, 2020 in Clark County. <https://cms8.revize.com/revize/clarknv/Election%20Department/VC-Web-20G.pdf?t=1602940110601&t=1602940110601>. An electronic copy is also attached to the e-mail.

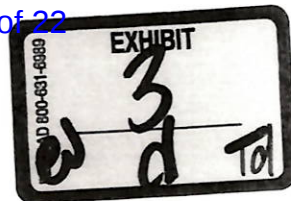
Sincerely,

A handwritten signature in black ink, appearing to read "Joseph P. Gloria". The signature is fluid and cursive, with a large initial "J" and a distinct "G" at the end.

Joseph P. Gloria  
Registrar of Voters

Enclosures

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## OBSERVATION OF POLLING PLACE OR CLARK COUNTY ELECTION DEPARTMENT LOCATIONS ACKNOWLEDGEMENT

In accordance with NAC 293.245 (full text included in page 2):

I, VIRGINIA STEWART, by signing this form, hereby acknowledge that during the time I observe the conduct of voting or of any election related process, I am prohibited from the following activities:

1. Talking to voters or staff within the polling place or Election Department location;
2. Using any technical devices within the polling place or Election Department location;
3. Advocating for or against a candidate, political party or ballot question;
4. Arguing for or against or challenging any decisions of the county or city election personnel and;
5. Interfering with the conduct of voting or any election related process.

I further acknowledge that I may be removed from the polling place by the county or city clerk for violating any provisions of Title 24 of the Nevada Revised Statutes or any of the restrictions described herein.

Representing Group/Organization:

Republican Party

Contact Information:

6196568405

Signature:

[Signature]

Print Name:

VIRGINIA STEWART

Date:

10/27/20

Polling Place or Election Department Location:

TRAD

October 21, 2020

Memo to Election Observers in the Greystone or County Election Department buildings:

Thank you for choosing to observe our voting process.

The department brought in additional staff to provide adequate supervision and security for observation areas. These staff, whom we call ambassadors, will accompany you while you are in our facilities.

Our ambassadors are not permanent Election Department employees and receive no training in our election processes, and so they are not able to accurately answer your questions about elections.

If you have any questions about the processes you are observing or other election-related questions, please inform the ambassador that you have a question for County Election Department officials. (The ambassador will create a list of questions from observers to relay to Election officials.) Or, you may choose to wait and pose their question to the Election official directly.

At this time, we plan to make Election Department officials available to observers around 9 a.m. and 3 p.m. daily to respond to any questions or concerns. These meetings will occur at both the Greystone and Election Department buildings

Thank you for our understanding.

Sincerely,

Joe Gloria

Clark County Registrar of Voters

**BARBARA K. CEGAVSKE**  
*Secretary of State*

**STATE OF NEVADA**

**SCOTT W. ANDERSON**  
*Chief Deputy Secretary of State*

**MARK A. WLASCHIN**  
*Deputy Secretary for Elections*



**OFFICE OF THE  
SECRETARY OF STATE**

October 22, 2020

Mr. Joe Gloria, Registrar of Voters  
965 Trade Drive, Suite A  
North Las Vegas, NV 89030-7802  
[jpg@ClarkCountyNV.gov](mailto:jpg@ClarkCountyNV.gov)  
via Email

**Re: Revision of Observation Plan**

Mr. Gloria,

Over the last few days, a potential opportunity for improvement to your elections process observation plan have come to light that the Secretary of State believes to be worth considering. We have received Clark County's plan for accommodating election observers. In addition to the items detailed in your plan, we would request that you consider implementing the following:

Provide additional seating in the public viewing area for observing the signature verification process to the extent feasible while ensuring that no Personally Identifiable Information (PII) is observable to the public. This increase in seating should ensure meaningful observation.

If you have any questions regarding this letter and my determination in this matter, please contact me at (775) 684-5709.

Respectfully,

A handwritten signature in black ink that reads "Barbara K. Cegavske".

Barbara K. Cegavske  
Secretary of State

# EXHIBIT L

RETRIEVED FROM DEMOCRACYDOCKET.COM

**United States District Court**  
**District of Nevada (Las Vegas)**  
**CIVIL DOCKET FOR CASE #: 2:20-cv-02046-APG-DJA**

Stokke et al v. Cegavske et al  
Assigned to: Judge Andrew P. Gordon  
Referred to: Magistrate Judge Daniel J. Albregts  
Cause: 28:1331 Fed. Question

Date Filed: 11/05/2020  
Jury Demand: None  
Nature of Suit: 441 Civil Rights: Voting  
Jurisdiction: Federal Question

**Plaintiff**

**Jill Stokke**

represented by **David C OMara**  
The OMara Law Firm, P.C.  
311 E. Liberty Street  
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775-323-1321  
Fax: 775-323-4082  
Email: david@omaralaw.net  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Chris Prudhome**

represented by **David C OMara**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Merchant for Congress**

represented by **David C OMara**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Rodimer for Congress**

represented by **David C OMara**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**Barbara K. Cegavske**  
*Secretary of State, in her official capacity*

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**Gregory Louis Zunino**  
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775-684-1137



Fax: 775-684-1108  
Email: GZunino@ag.nv.gov  
*LEAD ATTORNEY*  
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**Defendant**

**Joseph P. Gloria**  
*Clark County Registrar of Voters, in his  
official capacity*

represented by **Mary-Anne M. Miller**  
Clark County District Attorney  
Civil Division  
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 202-654-6200  
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### Intervenor Defendant

**Nevada State Democratic Party**

represented by **Abha Khanna**  
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*LEAD ATTORNEY*  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Bradley Scott Schrager**  
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*ATTORNEY TO BE NOTICED*

**Daniel Bravo**  
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*ATTORNEY TO BE NOTICED*

**John Devaney**  
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*LEAD ATTORNEY*  
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*ATTORNEY TO BE NOTICED*

### Amicus

**Clark County Democratic Party**  
 601 S. 6th St  
 Las Vegas, NV 89101  
 702518-4529

represented by **Robert J. Kern**  
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 (702) 518-4529  
 Fax: (702) 825-5872  
 Email: Robert@Kernlawoffices.com  
*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
11/05/2020	<a href="#"><u>1</u></a>	COMPLAINT against Barbara K. Cegavske, Joseph P. Gloria (Filing fee \$400 receipt number 0978-6245490) by Jill Stokke, Rodimer for Congress, Merchant for Congress,

		Chris Prudhome. Proof of service due by 2/3/2021. (Attachments: # <a href="#">1</a> Civil Cover Sheet, # <a href="#">2</a> Summons, # <a href="#">3</a> Summons) (OMara, David)
		NOTICE of Certificate of Interested Parties requirement: Under Local Rule 7.1-1, a party must <u>immediately</u> file its disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court. (Entered: 11/05/2020)
11/05/2020		Case randomly assigned to Judge Gloria M. Navarro and Magistrate Judge Daniel J. Albregts. (AF) (Entered: 11/05/2020)
11/05/2020	<a href="#">2</a>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Gloria M. Navarro on 11/5/2020. By Deputy Clerk: Aaron Blazeovich. With good cause appearing, the Honorable Judge Gloria M. Navarro recuses herself in this action. IT IS ORDERED that this action is referred to the Clerk for random reassignment of this case for all further proceedings. ( <b>no image attached</b> ) (Copies have been distributed pursuant to the NEF - ASB) (Entered: 11/05/2020)
11/05/2020	<a href="#">3</a>	Emergency MOTION for Preliminary Injunction by Plaintiffs Merchant for Congress, Chris Prudhome, Rodimer for Congress, Jill Stokke. Responses due by 11/19/2020. (Attachments: # <a href="#">1</a> Declaration, # <a href="#">2</a> Declaration) (OMara, David) Modified on 11/5/2020 (AF). (Entered: 11/05/2020)
11/05/2020	<a href="#">4</a>	MOTION to Expedite <i>Hearing and Briefing</i> re <a href="#">3</a> Motion for Preliminary Injunction by Plaintiffs Merchant for Congress, Chris Prudhome, Rodimer for Congress, Jill Stokke. (OMara, David) (Entered: 11/05/2020)
11/05/2020	<a href="#">5</a>	CLERK'S NOTICE that this case is randomly reassigned to Judge Andrew P. Gordon. All further documents must bear the correct case number 2:20-cv-02046-APG-DJA. ( <b>no image attached</b> ) (AF) (Entered: 11/05/2020)
11/06/2020	<a href="#">6</a>	NOTICE of Appearance by attorney Gregory Louis Zunino on behalf of Defendant Barbara K. Cegavske. (Zunino, Gregory) (Entered: 11/06/2020)
11/06/2020	<a href="#">7</a>	NOTICE of Appearance by attorney Craig A. Newby on behalf of Defendant Barbara K. Cegavske. (Newby, Craig) (Entered: 11/06/2020)
11/06/2020	<a href="#">8</a>	STANDING ORDER. This case has been assigned to the Honorable Andrew P. Gordon. Judge Gordon's Chambers Practices, which are posted on the U.S. District Court, District of Nevada public website, may also be accessed directly via this hyperlink: <a href="http://www.nvd.uscourts.gov">www.nvd.uscourts.gov</a> . (Copies have been distributed pursuant to the NEF - EDS) (Entered: 11/06/2020)
11/06/2020	<a href="#">9</a>	Summons Issued as to All Defendants. (JM) (Entered: 11/06/2020)
11/06/2020	<a href="#">10</a>	MOTION to Intervene as Defendants by DNC and Nevada State Democratic Party re <a href="#">1</a> Complaint by Intervenor Defendants Democratic National Committee, Nevada State Democratic Party. Responses due by 11/20/2020. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C) (Schrager, Bradley) (Entered: 11/06/2020)
11/06/2020	<a href="#">11</a>	ORDER. IT IS ORDERED that <a href="#">4</a> the plaintiffs' motion to expedite hearing and briefing is GRANTED. The plaintiffs' <a href="#">3</a> motion for temporary restraining order and preliminary injunction is set for telephonic hearing today, 11/6/2020, at 2:00 p.m. PST. IT IS FURTHER ORDERED that the defendants may file a response to the motion for preliminary injunction by 12:00 p.m. PST today. Signed by Judge Andrew P. Gordon on 11/6/2020. (Copies have been distributed pursuant to the NEF - JQC) (Entered: 11/06/2020)
11/06/2020	<a href="#">12</a>	CERTIFICATE of Interested Parties by Democratic National Committee, Nevada State Democratic Party. There are no known interested parties other than those participating in

		the case (Schrager, Bradley) (Entered: 11/06/2020)
11/06/2020	<a href="#">13</a>	RESPONSE to <a href="#">3</a> Motion for Preliminary Injunction, by Intervenor Defendants Democratic National Committee, Nevada State Democratic Party. Replies due by 11/13/2020. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Exhibit 3, # <a href="#">4</a> Exhibit 4) (Schrager, Bradley) (Entered: 11/06/2020)
11/06/2020	<a href="#">14</a>	NOTICE of Appearance by attorney Mary-Anne M. Miller on behalf of Defendant Joseph P. Gloria. (Miller, Mary-Anne) (Entered: 11/06/2020)
11/06/2020	<a href="#">15</a>	CERTIFICATE of Interested Parties by Merchant for Congress, Chris Prudhome, Rodimer for Congress, Jill Stokke. There are no known interested parties other than those participating in the case (OMara, David) (Entered: 11/06/2020)
11/06/2020	<a href="#">16</a>	RESPONSE to <a href="#">3</a> Motion for Preliminary Injunction, by Defendant Barbara K. Cegavske. Replies due by 11/13/2020. (Newby, Craig) (Entered: 11/06/2020)
11/06/2020	<a href="#">17</a>	MOTION/VERIFIED PETITION for Permission to Practice Pro Hac Vice by John M. Devaney and DESIGNATION of Local Counsel Bradley S. Schrager (Filing fee \$ 250 receipt number 0978-6246405) by Intervenor Defendants Democratic National Committee, Nevada State Democratic Party. (Schrager, Bradley) (Entered: 11/06/2020)
11/06/2020	<a href="#">18</a>	CERTIFICATE OF SERVICE for <a href="#">3</a> Motion for Preliminary Injunction, <a href="#">1</a> Complaint,, <a href="#">11</a> Order on Motion to Expedite,,, <a href="#">4</a> Motion to Expedite by Plaintiffs Merchant for Congress, Chris Prudhome, Rodimer for Congress, Jill Stokke. (OMara, David) (Entered: 11/06/2020)
11/06/2020	<a href="#">19</a>	DECLARATION re <a href="#">16</a> Response by Defendant Barbara K. Cegavske. (Zunino, Gregory) (Entered: 11/06/2020)
11/06/2020	20	MINUTE ORDER IN CHAMBERS of the Honorable Judge Andrew P. Gordon on 11/6/2020. Todays 2 p.m. hearing inStokke et al. v. Cegavske et al. (2:20-cv-2046)is TELEPHONIC ONLYIT WILL NOT BE HELD IN THE COURTROOM.Public and Media may attend the hearing by calling either:(877) 336-1831 and entering Access Code 6948860 or(888) 808-6929 and entering Access Code 2178469Be advised that recording, taping, streaming, or otherwise broadcasting district court hearings is expressly prohibited by this Courts General Order 2017-02 and Judicial Conference policy. So recording, taping, streaming, or otherwise broadcasting the audio or any photograph or video of this hearing for public dissemination is prohibited.(no image attached) (Copies have been distributed pursuant to the NEF - KSR) (Entered: 11/06/2020)
11/06/2020	21	NOTICE TO COUNSEL PURSUANT TO LOCAL RULE IA 11-2. Counsel Marc E Elias and Abha Khanna to comply with completion and filing of the Verified Petition and Designation of Local Counsel. For your convenience, click on the following link to obtain the form from the Court's website - <a href="http://www.nvd.uscourts.gov">www.nvd.uscourts.gov</a> .  Upon approval of the Verified Petition, counsel is required to register for the Court's Case Management and Electronic Case Filing (CM/ECF) system and the electronic service of documents. Please visit the Court's website <a href="http://www.nvd.uscourts.gov">www.nvd.uscourts.gov</a> to register Attorney. Verified Petition due by 11/20/2020. (no image attached) (EDS) (Entered: 11/06/2020)
11/06/2020	<a href="#">22</a>	Motion for Leave to Appear as Amicus Curiae by Amicus Clark County Democratic Party. (Kern, Robert) Modified on 11/6/2020 (EDS). (Entered: 11/06/2020)
11/06/2020	23	CLERK'S NOTICE. Attorney Action Required to ECF No. <a href="#">22</a> Motion for Leave to Appear as Amicus Curiae. Document was not filed pursuant to LR IC 2-2(b). For each type of relief requested or purpose, a separate document must be filed. Counsel is advised to refile the Motion for Leave to File Amicus Curiae Brief and the Brief of Amicus Curiae

		Opposing the Grant of a Preliminary Injunction contained in ECF No. <a href="#">22</a> as separate entries. (no image attached) (EDS) (Entered: 11/06/2020)
11/06/2020	<a href="#">24</a>	MOTION for Leave to File <i>Amicus Brief</i> re <a href="#">3</a> Motion for Preliminary Injunction, by Amicus Clark County Democratic Party. (Attachments: # <a href="#">1</a> Supplement Amicus Brief) (Kern, Robert) (Entered: 11/06/2020)
11/06/2020	<a href="#">25</a>	PROPOSED BRIEF re <a href="#">3</a> Motion for Preliminary Injunction, <a href="#">24</a> Motion for Leave to File Document by Amicus Clark County Democratic Party. (Kern, Robert) Modified on 11/6/2020 (EDS). (Entered: 11/06/2020)
11/06/2020	<a href="#">26</a>	MOTION/VERIFIED PETITION for Permission to Practice Pro Hac Vice by Abha Khanna and DESIGNATION of Local Counsel Bradley S. Schrager (Filing fee \$ 250 receipt number 0978-6247297) by Intervenor Defendants Democratic National Committee, Nevada State Democratic Party. (Schrager, Bradley) (Entered: 11/06/2020)
11/06/2020	<a href="#">27</a>	MINUTES OF PROCEEDINGS - Video Motion Hearing held on 11/6/2020 before Judge Andrew P. Gordon. Crtrm Administrator: <i>M. Johansen</i> ; Pla Counsel: <i>David OMara</i> ; Def Counsel: <i>John Devaney, Mary-Anne Miller, Aaron Ford, Bradley Schrager, Craig Newby, Daniel Bravo, Gregory Louis Zunino, Jessica Adair AGO, Kyle George, Wayne Thorley</i> ; Court Reporter: <i>Heather Newman</i> ; Time of Hearing: 2:08 p.m. - 4:12 p.m.; Courtroom: 6C; The court makes preliminary remarks and hears arguments of counsel regarding plaintiffs' emergency motion for temporary restraining order and motion for preliminary injunction ECF No. <a href="#">3</a> . As stated on the record, the motion for temporary restraining order and motion for preliminary injunction ECF No. <a href="#">3</a> are denied. The motion to intervene by defendants DNC and Nevada State Democratic Party ECF No. <a href="#">10</a> is granted. The minutes of this proceeding and the transcript will serve as the Court's official ruling. No separate order to follow. (no image attached) (Copies have been distributed pursuant to the NEF - MAJ) (Entered: 11/06/2020)
11/09/2020	<a href="#">28</a>	ORDER <b>approving</b> ECF No. <a href="#">17</a> Verified Petition for Permission to Practice Pro Hac Vice as to attorney John M. Devaney and approving Designation of Local Counsel Bradley S. Schrager. Signed by Judge Andrew P. Gordon on 11/9/2020. Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website <a href="http://www.nvd.uscourts.gov">www.nvd.uscourts.gov</a> (Copies have been distributed pursuant to the NEF - LW) (Entered: 11/09/2020)
11/09/2020	<a href="#">29</a>	ORDER <b>approving</b> ECF No. <a href="#">26</a> Verified Petition for Permission to Practice Pro Hac Vice as to attorney Abha Khanna and approving Designation of Local Counsel Bradley S. Schrager. Signed by Judge Andrew P. Gordon on 11/9/2020. Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website <a href="http://www.nvd.uscourts.gov">www.nvd.uscourts.gov</a> (Copies have been distributed pursuant to the NEF - LW) (Entered: 11/09/2020)
11/17/2020	<a href="#">30</a>	TRANSCRIPT of Proceedings, 27 Order on Motion for Preliminary Injunction,,,,, Order on Motion to Intervene,,,,, Motion Hearing,,,,, held on 11/06/2020, before Judge Andrew P. Gordon. Court Reporter: Heather Newman, HN@nvd.uscourts.gov. Any Redaction Request is due by 12/8/2020. Redacted Transcript Deadline is set for 12/18/2020. Release of the Transcript Restriction is set for 2/15/2021. Before release date, the transcript may be viewed at the court public terminal or purchased through the Court Reporter. Transcript Order form is available on court website. After that date it may be obtained through the Court Reporter or PACER. (HKN) (Entered: 11/17/2020)

Transaction Receipt			
11/20/2020 12:25:12			
<b>PACER Login:</b>	wcphd0009:2559904:0	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	2:20-cv-02046- APG-DJA
<b>Billable Pages:</b>	6	<b>Cost:</b>	0.60

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# EXHIBIT M

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e-Filed in Office  
Tammie Mosley  
Clerk of Superior Court  
Chatham County  
Date: 11/5/2020 12:17 PM  
Reviewer: CM

IN THE SUPERIOR COURT OF CHATHAM COUNTY  
STATE OF GEORGIA

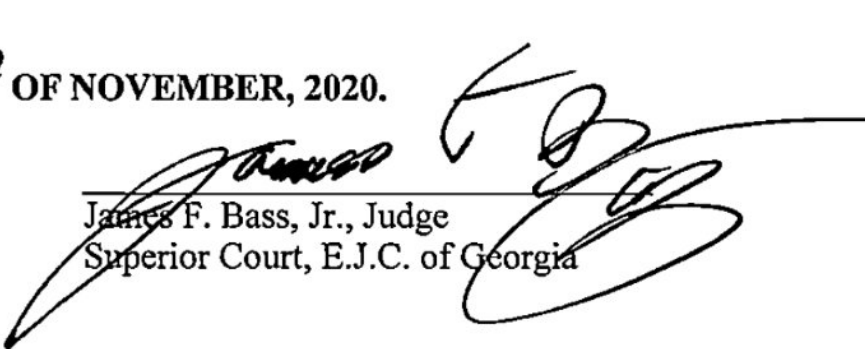
IN RE: ENFORCEMENT OF ELECTION :  
LAWS AND SECURING BALLOTS :  
CAST OR RECEIVED AFTER 7:00 P.M. : SPCV2000982-J3  
ON NOVEMBER 3, 2020, :  
:

**ORDER ON PETITION TO COMMAND ENFORCEMENT**  
**OF ELECTION LAWS**

Before the Court is a Petition to Command Enforcement of Election Laws which was filed by the Georgia Republican Party and Donald J. Trump for President, Inc. The matter was heard via Webex on November 5, 2020. Having read and considered said petition, all argument and evidence of record, including the evidence presented at the hearing, and the applicable law, the Court finds that there is no evidence that the ballots referenced in the petition were received after 7:00 p.m. on election day, thereby making those ballots invalid. Additionally, there is no evidence that the Chatham County Board of Elections or the Chatham County Board of Registrars has failed to comply with the law.

**WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the above petition is **DISMISSED**.

**SO ORDERED, THIS THE 5<sup>th</sup> DAY OF NOVEMBER, 2020.**

  
James F. Bass, Jr., Judge  
Superior Court, E.J.C. of Georgia

cc: All parties



# EXHIBIT N

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STATE OF MICHIGAN

IN THE THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

Sarah Stoddard and  
Election Integrity Fund,

v

Hon. Timothy M. Kenny  
Case No. 20-014604-CZ

City Election Commission of  
The City of Detroit and  
Janice Winfrey, in her official  
Capacity as Detroit City Clerk and  
Chairperson of the City Election  
Commission, and  
Wayne County Board of  
Canvassers,

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**OPINION & ORDER**

At a session of this Court  
Held on: November 6, 2020  
In the Coleman A. Young Municipal Center  
County of Wayne, Detroit, MI

PRESENT: Honorable Timothy M. Kenny  
Chief Judge  
Third Judicial Circuit Court of Michigan

Plaintiffs Sarah Stoddard and the Election Integrity Fund petition this Court for preliminary injunctive relief seeking:

1. Defendants be required to retain all original and duplicate ballots and poll books.
2. The Wayne County Board of Canvassers not certify the election results until both Republican and Democratic party inspectors compare the duplicate ballots with original ballots.
3. The Wayne County Board of Canvassers unseal all ballot containers and remove all duplicate and original ballots for comparison purposes.
4. The Court provide expedited discovery to plaintiffs, such as limited interrogatories and depositions.

When considering a petition for injunctive relief the Court must apply the following four-prong test:

1. The likelihood the party seeking the injunction will prevail on the merits.
2. The danger the party seeking the injunction will suffer irreparable harm if the injunction is not granted.
3. The risk the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the injunction.
4. The harm to the public interest if the injunction is issued. *Davis v City of Detroit Financial Review Team*, 296 Mich. App. 568, 613; 821 NW2d 896 (2012).

In the *Davis* opinion, the Court also stated that injunctive relief "represents an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity" Id at 612 fn 135, quoting *Senior Accountants, Analysts & Appraisers Ass'n v. Detroit*, 218 Mich. App. 263, 269; 553 NW2d 679 (1996).

When deciding whether injunctive relief is appropriate MCR 3.310 (A)(4) indicates that the plaintiff bears the burden of proving the preliminary injunction should be granted.

Plaintiffs' pleadings do not persuade this Court that they are likely to prevail on the merits for several reasons. First, this Court believes plaintiffs misinterpret the required placement of major party inspectors at the absent voter counting board location. MCL 168.765a (10) states in part "At least one election inspector from each major political party must be present at the absent voter counting place..." While plaintiffs contends the statutory section mandates there be a Republican and Democratic inspector at each table inside the room, the statute does not identify this requirement. This Court believes the plain language of the statute requires there be election inspectors at the TCF Center facility, the site of the absentee counting effort.

Pursuant to MCL 168.73a the County chairs for Republican and Democratic parties were permitted and did submit names of absent voter counting board inspectors to the City of Detroit Clerk. Consistent with MCL 168.674, the Detroit City Clerk did make appointments of inspectors. Both Republican and Democratic inspectors were present throughout the absent voter counting board location.

An affidavit supplied by Lawrence Garcia, Corporation Counsel for the City of Detroit, indicated he was present throughout the time of the counting of absentee

ballots at the TCF Center. Mr. Garcia indicated there were always Republican and Democratic inspectors there at the location. He also indicated he was unaware of any unresolved counting activity problems.

By contrast, plaintiffs do not offer any affidavits or specific eyewitness evidence to substantiate their assertions. Plaintiffs merely assert in their verified complaint "Hundreds or thousands of ballots were duplicated solely by Democratic party inspectors and then counted." Plaintiffs' allegation is mere speculation.

Plaintiffs' pleadings do not set forth a cause of action. They seek discovery in hopes of finding facts to establish a cause of action. Since there is no cause of action, the injunctive relief remedy is unavailable. *Terlecki v Stewart*, 278 Mich. App. 644; 754 NW2d 899 (2008).

The Court must also consider whether plaintiffs will suffer irreparable harm. Irreparable harm requires "A particularized showing of concrete irreparable harm or injury in order to obtain a preliminary injunction." *Michigan Coalition of State Employee Unions v Michigan Civil Service Commission*, 465 Mich. 212, 225; 634 NW2d 692, (2001).

In *Dunlap v City of Southfield*, 54 Mich. App. 398, 403; 221 NW2d 237 (1974), the Michigan Court of Appeals stated "An injunction will not lie upon the mere apprehension of future injury or where the threatened injury is speculative or conjectural."

In the present case, Plaintiffs allege that the preparation and submission of "duplicate ballots" for "false reads" without the presence of inspectors of both parties violates both state law, MCL 168.765a (10), and the Secretary of State election manual. However, Plaintiffs fail to identify the occurrence and scope of any alleged violation. The only "substantive" allegation appears in paragraph 15 of the First Amended Complaint, where Plaintiffs' allege "on information and belief" that hundreds or thousands of ballots have been impacted by this improper practice. Plaintiffs' Supplemental Motion fails to present any further specifics. In short, the motion is based upon speculation and conjecture. Absent any evidence of an improper practice, the Court cannot identify if this alleged violation occurred, and, if it did, the frequency of such violations. Consequently, Plaintiffs fail to move past mere apprehension of a future injury or to establish that a threatened injury is more than speculative or conjectural.

This Court finds that it is mere speculation by plaintiffs that hundreds or thousands of ballots have, in fact, been changed and presumably falsified. Even with this assertion, plaintiffs do have several other remedies available. Plaintiffs are entitled to bring their challenge to the Wayne County Board of Canvassers pursuant to MCL 168.801 *et seq.* and MCL 168.821 *et seq.* Additionally, plaintiffs can file for a recount of the vote if they believe the canvass of the votes suffers from fraud or mistake. MCL 168.865-168.868. Thus, this Court cannot conclude that plaintiffs would experience irreparable harm if a preliminary injunction were not issued.

Additionally, this Court must consider whether plaintiffs would be harmed more by the absence of injunctive relief than the defendants would be harmed with one.


If this Court denied plaintiffs' request for injunctive relief, the statutory ability to seek relief from the Wayne County Board of Canvassers (MCL 168.801 *et seq.* and MCL 168.821 *et seq.*) and also through a recount (MCL 168.865-868) would be available. By contrast, injunctive relief granted in this case could potentially delay the counting of ballots in this County and therefore in the state. Such delays could jeopardize Detroit's, Wayne County's, and Michigan's ability to certify the election. This in turn could impede the ability of Michigan's elector's to participate in the Electoral College.

Finally, the Court must consider the harm to the public interest. A delay in counting and finalizing the votes from the City of Detroit without any evidentiary basis for doing so, engenders a lack of confidence in the City of Detroit to conduct full and fair elections. The City of Detroit should not be harmed when there is no evidence to support accusations of voter fraud.

Clearly, every legitimate vote should be counted. Plaintiffs contend this has not been done in the 2020 Presidential election. However, plaintiffs have made only a claim but have offered no evidence to support their assertions. Plaintiffs are unable to meet their burden for the relief sought and for the above-mentioned reasons, the plaintiffs' petition for injunctive relief is denied.

It is so ordered.

November 6, 2020  
Date

  
Hon. Timothy M. Kenny  
Chief Judge  
Third Judicial Circuit Court of Michigan

# EXHIBIT O

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FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
COURT OF COMMON PLEAS FOR PHILADELPHIA COUNTY  
ELECTION COURT

- - -

In re: :  
: CASE NOS. 2011-00874  
: 2011-00875  
CANVASS OF ABSENTEE AND : 2011-00876  
MAIL-IN BALLOTS OF : 2011-00877  
NOVEMBER 3, 2020 GENERAL : 2011-00878  
ELECTION :  
: Filed on behalf of:  
: Donald J. Trump for  
: President, Inc.  
:

- - -

Friday, November 13, 2020

- - -

MOTIONS COURT, TRAFFIC COURT

800 SPRING GARDEN STREET

PHILADELPHIA, PA

- - -

BEFORE: THE HONORABLE JAMES C. CRUMLISH, J.

- - -

MOTION

- - -

1 facts or may be different.

2 MS. KERNS: Sure, Your Honor. The  
3 facts are actually related. The Clerk's  
4 officer had actually asked me to put them in  
5 five different petitions. That's the only  
6 reason that there are five different petitions  
7 before Your Honor. I had originally planned to  
8 just file one petition and list the different  
9 categories.

10 THE COURT: My question, Ms. Kerns,  
11 is: There are five categories, but each have  
12 distinct and different facts upon which you  
13 rely upon to object; is that correct?

14 MS. KERNS: Yes. There are five  
15 different categories of ballots, and in each  
16 category, there's a different issue. Just by  
17 way of example, category 3 is where the voter  
18 had only signed and not provided any other  
19 information, and then each category has a  
20 description as to something that the voter did  
21 not do on the declaration. But, it's five  
22 different categories.

23 THE COURT: Having read your moving  
24 papers, would you agree with me that you are  
25 not proceeding based on allegations of fraud or



1 misconduct; is that correct?

2 MS. KERNS: I am not proceeding on  
3 those allegations. I'm simply proceeding on  
4 3157 of the election code as well as 3246.

5 THE COURT: All right. More directly  
6 to my question, you are not alleging fraud or  
7 irregularity as the basis, you are alleging an  
8 error of law; is that correct?

9 MS. KERNS: I'm alleging that these  
10 ballots were not filled out correctly, yes.  
11 That's what I'm alleging.

12 THE COURT: It is important, and I'd  
13 ask you to listen carefully if I'm not being  
14 clear. You are alleging that the Board  
15 committed an error of law in deciding to vote  
16 to count these ballots; is that correct?

17 MS. KERNS: Yes.

18 THE COURT: Okay. Now I'll hear from  
19 the other parties, and we will then proceed to  
20 the petitioners' argument. Who would go first  
21 in this group of esteemed colleagues?

22 MS. HANGLEY: I believe I would, Your  
23 Honor, after Ms. Kerns.

24 THE COURT: Fine, thank you.

25 Ms. Hangley.

<p><b>COURT CRIER:</b> [2] 5/21 7/11 <b>MR. BONIN:</b> [2] 71/24 72/2 <b>MR. GORDON:</b> [23] 4/6 5/12 6/5 6/12 6/17 8/14 11/3 11/8 16/3 16/8 16/17 16/23 17/3 46/19 46/23 68/11 68/13 71/18 74/13 74/16 75/25 77/4 77/6 <b>MR.</b> <b>MCDONALD:</b> [4] 5/13 6/21 8/16 8/22 <b>MS. HANGLEY:</b> [14] 8/2 14/22 15/1 15/7 28/22 28/24 33/14 33/16 34/8 38/11 39/19 53/2 53/19 64/15 <b>MS. KERNS:</b> [82] <b>THE COURT</b> <b>REPORTER:</b> [2] 11/6 11/9 <b>THE COURT:</b> [119]</p>	<p>00874 [1] 1/6 00875 [1] 1/7 00876 [1] 1/7 00877 [1] 1/8 00878 [1] 1/8 0878 [2] 19/24 20/3 <b>1</b> 10:05 p.m [1] 72/5 12 [2] 74/19 75/6 1201 [1] 2/19 121 [1] 3/7 13 [1] 1/13 1420 [1] 2/4 1515 [1] 2/14 1735 [1] 3/3 19102 [2] 2/4 2/15 19103 [2] 2/10 3/4 19107 [1] 3/8 1979s [1] 55/22 <b>2</b> 200 [1] 2/4 2000 [1] 76/25 2011-00874 [1] 1/6 2011-00875 [1] 1/7 2011-00876 [1] 1/7 2011-00877 [1] 1/8 2011-00878 [1] 1/8 201100874 [2] 4/3 7/16 2020 [3] 1/8 1/13 7/18</p>	<p>27th [1] 2/9 <b>3</b> 3146 [1] 48/5 3146.6 [5] 20/11 32/1 32/7 48/9 49/3 3146.8 [7] 49/4 69/4 74/17 74/22 75/13 75/20 76/19 3146.84 [1] 48/19 315 [1] 32/5 3150 [1] 20/21 3150.16 [1] 32/8 3157 [9] 11/17 11/25 14/4 20/6 74/1 75/5 75/9 76/12 79/11 3246 [2] 14/4 20/7 3246.8 [2] 51/13 52/6 326873 [1] 8/18 3rd [1] 57/18 <b>4</b> 4,466 [3] 19/20 22/21 37/24 4,500 [2] 28/25 39/25 4,600 [1] 27/23 400 [1] 3/7 4900 [1] 2/19</p>
<p><b>0</b> 00 [1] 1/16</p>		

<b>6</b>	<b>69/2 71/6 75/8</b>	<b>act [11] 43/3 52/9</b>
<b>6th [1] 57/18</b>	<b>75/13</b>	<b>71/5 71/12 71/15</b>
<b>7</b>	<b>above [2] 62/7 81/4</b>	<b>74/2 74/19 74/19</b>
<b>77 [6] 71/5 71/12</b>	<b>abrogated [1] 66/3</b>	<b>75/5 75/6 77/25</b>
<b>71/15 74/2 74/19</b>	<b>absences [1] 60/6</b>	<b>action [1] 9/25</b>
<b>75/5</b>	<b>absentee [24] 1/7</b>	<b>actual [1] 37/3</b>
<b>8</b>	<b>7/17 17/16 18/16</b>	<b>actually [6] 13/3</b>
<b>8,000 [4] 17/6 68/16</b>	<b>22/7 23/11 23/12</b>	<b>13/4 37/1 37/22</b>
<b>69/2 69/11</b>	<b>29/23 29/25 30/5</b>	<b>37/22 49/16</b>
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# EXHIBIT P

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IN THE COURT OF COMMON PLEAS IN AND FOR  
THE COUNTY OF MONTGOMERY, PENNSYLVANIA  
CIVIL TRIAL DIVISION

- - -

DONALD J. TRUMP FOR PRESIDENT, INC., : NO. 2020-18680  
GARRITY FOR PA, :  
HEIDELBAUGH FOR ATTORNEY GENERAL, INC., :  
REPUBLICAN NATIONAL COMMITTEE, :  
DANIEL J. WISSERT, :  
Plaintiffs, :  
vs. :  
MONTGOMERY COUNTY BOARD OF ELECTIONS, :  
Defendant, :  
and :  
DEMOCRATIC SERVICES CORPORATION/ :  
DEMOCRATIC NATIONAL COMMITTEE, :  
Intervenor, :  
and :  
DEMOCRATIC SERVICES CORPORATION/ :  
DEMOCRATIC NATIONAL COMMITTEE, :  
Pro Hac Vice Attorney, :  
and :  
UZOMAN N. NKWONTA, :  
Pro Hac Vice Attorney. :

- - -

Petition for Review of Decision by  
Montgomery County Board of Elections

- - -

Tuesday, November 10, 2020  
Commencing at 9:00 a.m.

- - -

Bernadette Black Berardinelli, RDR, CRR, CRC  
Official Court Reporter  
Taken Remotely Via Videoconference  
Montgomery County Courthouse  
Norristown, Pennsylvania

- - -

BEFORE: THE HONORABLE RICHARD P. HAAZ, JUDGE



1 TRUMP v. MONTGOMERY COUNTY BOARD OF ELECTIONS

2 THE COURT: In your petition, which is  
3 right before me -- and I read it several times -- you  
4 don't claim that any electors or the Board of the  
5 County were guilty of fraud, correct? That's correct?

6 MR. GOLDSTEIN: Your Honor, accusing  
7 people of fraud is a pretty big step. And it is rare  
8 that I call somebody a liar, and I am not calling the  
9 Board of the DNC or anybody else involved in this a  
10 liar. Everybody is coming to this with good faith.  
11 The DNC is coming with good faith. We're all just  
12 trying to get an election done. We think these were a  
13 mistake, but we think they are a fatal mistake, and  
14 these ballots ought not be counted.

15 THE COURT: I understand. I am asking  
16 you a specific question, and I am looking for a  
17 specific answer. Are you claiming that there is any  
18 fraud in connection with these 592 disputed ballots?

19 MR. GOLDSTEIN: To my knowledge at  
20 present, no.

21 THE COURT: Are you claiming that there  
22 is any undue or improper influence upon the elector  
23 with respect to these 592 ballots?

24 MR. GOLDSTEIN: To my knowledge at  
25 present, no.

1 TRUMP v. MONTGOMERY COUNTY BOARD OF ELECTIONS

2 THE COURT: Does it make a difference  
3 whether a claim of irregularity or technical  
4 noncompliance with the election code is made with or  
5 without an accompanying claim of fraud or improper  
6 influence?

7 MR. GOLDSTEIN: It does not. I mean, to  
8 claim the technical defects are immaterial, which is in  
9 some sense some of the thrust of what the DNC argued,  
10 is really to misperceive what is going on in the  
11 election code. The election code is technical.

12 These requirements are all technical.  
13 And some of them sit in that code for reasons that are  
14 a mystery for all of us. I mean, I sort of recounted  
15 for you my view of why the elector signing in his own  
16 hand is material. The DNC have their reasons for why  
17 they think it is material or immaterial. The fact of  
18 the matter is, it is in the code. The code is itself  
19 technical. Those technicalities are part and parcel of  
20 the law and a violation of the results in a ballot that  
21 can't be counted.

22 THE COURT: All right. I don't have any  
23 questions for you.

24 I have a question for generally whoever  
25 prepared the stipulation. So I will ask it of you and

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**IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA**

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

Petitioners,

v.

BUCKS COUNTY BOARD OF ELECTIONS,

Defendant,

No. 2020-05786

DNC SERVICES CORP. / DEMOCRATIC  
NATIONAL COMMITTEE,

Intervenor-Defendant

**STIPULATED FACTS**

Petitioners Donald J. Trump for President Inc., the Republican National Committee, Heidelbaugh for Attorney General, Inc., and Garrity for PA (“Petitioners”), Bucks County Board of Elections (“Defendant” or the “Board”), DNC Services Corp./Democratic National Committee (“DNC”), by and through their undersigned counsel, hereby stipulate to the following facts as follows:

**BACKGROUND**

1. On November 13, 2020, Petitioners certify that a true and correct copy of the following documents were served pursuant tot 25 P.S. § 3157 upon Jessica VanderKam; Matt Hoover; Christopher Serpico; Ronnie E. Fuchs; Matthew I. Vahey; Thomas Panzer; and Joseph Cullen:

- the Order of Pre-trial Conference and Stipulation of Facts;
- the Order scheduling a Hearing for the 17th day of November, 2020, at 2:00 p.m. in Courtroom #410 of the Bucks County Justice Center; and
- the Petition for Review of the Decision by the Bucks County Board of Election.

2. Electors of the Commonwealth of Pennsylvania may choose to cast their vote in any primary or election by absentee ballot or by mail-in ballot.

3. In both instances, the elector who desires to cast a vote either by absentee ballot or mail-in ballot must submit an application for such a ballot from the county board of elections, in this case, Defendant.



4. In submitting such application, the elector must supply the address at which they registered to vote and sign a declaration affirming, among other things, that they are “eligible to vote by mail-in [or absentee] ballot at the forthcoming primary or election,” and that “all of the information” supplied in the mail-in or absentee ballot application is “true and correct.”

5. An elector who wishes to vote by mail or absentee must submit an application for mail-in or absentee ballot prior to each election unless they elect to receive such ballots for the whole year, in which case they must submit an application the following year if they wish to receive another mail-in or absentee ballot.

6. Before sending an absentee or mail-in ballot to the elector, the county board of elections must confirm the elector’s qualifications, including the elector’s address inputted on the application.

7. Upon the county board of elections’ approval of the application, the elector is provided balloting materials that include: 1) the ballot; 2) instructions as to how the elector is to complete and return the ballot; 3) an inner secrecy envelope into which the ballot is to be placed; and 4) an outer envelope into which the secrecy envelope containing the ballot is to be placed and returned to Defendant.

### **THE CHALLENGED BALLOTS**

8. When Defendant sent balloting materials to the elector, pre-printed on the reverse side of the outer envelope is a voter’s declaration.

9. Underneath the voter’s declaration is the directive: “Voter, sign or mark here.”

10. Above the declaration, on the envelope flap, is a checklist for the voter, asking:

“Did you....

- Sign the voter’s declaration in your own handwriting?
- Put your ballot inside the secrecy envelope and place it in here?”



11. Pre-printed on the same side of the outer envelope as the voter's declaration is a unique nine-digit bar code that links the outer envelope to the voter's registration file contained in the Statewide Uniform Registry of Electors ("SURE") system.

12. After receiving a mail-in or absentee ballot envelope, Defendant scans the unique nine-digit bar code on the envelope linking to the SURE system.

13. The elector's name and address is also pre-printed on a label affixed approximately one inch below the voter's declaration.

14. On the front side of the outer envelope is preprinted the Defendant's address where the ballot is to be sent as well as blank lines in the upper left-hand corner where the elector may indicate his or her return address by writing it in the allotted space or affixing an address label.

15. The General Assembly delegated to the Secretary of State the authority to determine the form of the voter declaration for absentee and mail-in ballots.

16. On September 11, 2020, the Secretary of State issued Guidance Concerning Examination of Absentee and Mail-in Ballot Return Envelopes ("9.11.20 Guidance"). A true and correct copy of the 9.11.20 Guidance is attached as Exhibit A.

17. On November 3, 2020, Defendant met to prec canvass mail-in and absentee ballots pursuant to 25 P.S. § 3146.8(g).

18. On November 7, 2020, during the course of the canvass meeting and in the presence of any and all interested Authorized Representatives who were provided an opportunity to present argument, Defendant met to determine, pursuant to 25 P.S. § 3146.8(g)(3), whether certain declarations on the outer envelopes of certain ballots were "sufficient." Authorized Representatives Joseph Cullen, Thomas Panzer, Matthew Hoover, Ronnie Fuchs, and Chris Serpico, were present at the meeting.

19. The Board made findings and decisions with respect to ten different categories of ballots, accepting some categories for canvassing and excluding others, as reflected in the Board's Written Decision attached hereto as Exhibit B.

20. The Board did not accept 110 outer envelopes that lacked an elector's signature.

21. The Board did not accept 13 outer envelopes which reflected a different voter's name than what was printed on the envelope's label.

22. The Board did not accept 708 ballots that were not contained within a secrecy envelope.

23. The Board did not accept 21 ballots that had markings on the privacy envelopes that did identify of the elector.

24. Petitioners challenge ballots accepted by the Board in the following categories. In each category, the issue identified is the only alleged irregularity.

- Category 1: 1,196 ballots with no date or a partial date handwritten on the outer envelope;
- Category 2: 644 ballots with no handwritten name or address on the outer envelope;
- Category 3: 86 ballots with a partial written address on the outer envelope;
- Category 4: 246 ballots with a mismatched address on the outer envelope;
- Category 5: 69 ballots with "unsealed" privacy envelopes;
- Category 6: 7 ballots with markings on the privacy envelope that did not identify the identity of the elector, the elector's political affiliation, or the elector's candidate preference.

25. A list of all electors whose ballots have been challenged by Petitioner is attached hereto as Exhibit C through Exhibit F.

26. Exemplars of Declarations of challenged ballots are attached hereto as Exhibit G.

27. Petitioners do not allege, and there is no evidence of, any fraud in connection with the challenged ballots.

28. Petitioners do not allege, and there is no evidence of, any misconduct in connection with the challenged ballots.

29. Petitioners do not allege, and there is no evidence of, any impropriety in connection with the challenged ballots

30. Petitioners do not allege, and there is no evidence of, any undue influence committed with respect to the challenged ballots.

31. Petitioners do not allege, and there is no evidence, that Defendant counted ballots without signatures on the outer envelope.

32. Petitioners do not allege, and there is no evidence, that Defendant counted “naked ballots” (ballots that did not arrive in a secrecy envelope).

33. Petitioners do not challenge the eligibility of the electors who cast the ballots at issue, and there is no evidence that any of the electors was ineligible to vote in the election.

34. Petitioners do not allege, and there is no evidence, that any of the challenged ballots were cast by, or on behalf of, a deceased person.

35. Petitioners do not allege, and there is no evidence, that any of the challenged ballots were cast by someone other than the electors whose signature is on the outer envelope.

36. Petitioners did not challenge the electors’ applications for the absentee or mail-in ballots on or before the Friday before the November 3rd election.

37. No mail-in or absentee ballots were mailed out to electors before October 7, 2020.

38. Excluding the 627 ballots subject to the order issued by Justice Alito of the U.S. Supreme Court as discussed below, each of the remaining challenged ballots in the instant Petition was timely received by Defendant before 8:00 p.m. on Election Day, November 3, 2020.

39. Petitioners challenged all ballots received after 8:00 p.m., on the Tuesday November 3, 2020, which were set aside and separated into five (5) categories as follows: (1) Ballots Postmarked November 3rd or earlier; (2) Ballots with Illegible Postmarks; (3) Ballots with No Postmark; (4) Ballots Postmarked after November 3rd; and (5) Miscellaneous.

40. The Pennsylvania Supreme Court in *Pa. Democratic Party v. Boockvar*, No. 133 MM 2020, 2020 WL 5554644, (Pa. Sept. 17, 2020) held that all mail-in ballots which were postmarked on or prior to November 3, 2020, or that did not bear a postmark, and were received on November 3, 2020 after 8:00 p.m. and before 5:00 p.m. on Friday November 6, 2020, must be counted.

41. Defendant found that 627 ballots received after 8:00 p.m. on November 3, 2020 must be counted under this decision.

42. Defendant determined all other ballots received after 8:00 p.m. on November 3, 2020 could not be canvassed under the above-referenced Pennsylvania Supreme Court decision.

43. The court must deny Petitioners challenge to the 627 ballots received after 8:00 p.m., on November 3, 2020 due to the current Pennsylvania Supreme Court precedent. However, all parties agree that Defendant must segregate and canvass these ballots in a manner compliant with the United States Supreme Court Order of Justice Samuel Alito.

44. Excluding the 627 ballots subject to the order issued by Justice Alito of the U.S. Supreme Court, the remaining challenged ballots were completed and recieved between October 7 and November 3, 2020.

45. When received by Defendant, each of the challenged ballots was inside a privacy envelope, and the privacy envelope was inside a sealed outer envelope with a voter's declaration that had been signed by the elector.

46. With respect to Category 5 (69 ballots in "unsealed" privacy envelopes), Defendant could not determine whether the privacy envelopes were initially sealed by the elector but later became unsealed.

47. The electors whose ballots are being challenged in this case have not been notified that their ballots are being challenged.

48. Relevant statutes include the following sections of the Pennsylvania election code:

- 25 P.S. § 3146.4
- 25 P.S. § 3146.6
- 25 P.S. § 3146.8
- 25 P.S. § 3150.16

49. Relevant case law includes:

- *Appeal of McCracken*, 88 A.2d 787, 788 (Pa. 1952);
- *Appeal of James*, 105 A.2d 64 (Pa. 1954);
- *Ross Nomination Petition*, 190 A.2d 719, 719 (Pa. 1963);
- *Weiskerger Appeal*, 290 A.2d 108, 109 (1972);
- *Shambach v. Bickhart*, 845 A.2d 793, 798 (Pa. 2004);

- *Pa. Democratic Party v. Boockvar*, No. 133 MM 2020, 2020 WL 5554644, at \*30 (Pa. Sept. 17, 2020);
- *In re Nov. 3, 2020 Gen. Election*, No. 149 MM 2020, 2020 WL 6252803 (Pa. Oct. 23, 2020).

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Dated: November 16, 2020

Respectfully submitted,

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By: /s/\_\_\_\_\_

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# EXHIBIT R

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**IN THE SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT**

IN RE: 2,349 BALLOTS IN THE 2020 GENERAL ELECTION	:	No. 337 WAL 2020
	:	
	:	
	:	
PETITION OF: ALLEGHENY COUNTY BOARD OF ELECTIONS	:	Petition for Allowance of Appeal from the Order of the Commonwealth Court

**ORDER**

**PER CURIAM**

**AND NOW**, this 20<sup>th</sup> day of November, 2020, the Petition for Allowance of Emergency Appeal is hereby **GRANTED IN PART**, limited to the following issue:

Does the Election Code require the Allegheny County Board of Elections to disqualify mail-in ballots submitted by qualified electors who signed their ballot's outer envelopes but did not handwrite a date, where no other fraud or irregularity has been alleged, and the ballot is timely received?

The order of the Commonwealth Court dated November 19, 2000 is hereby **STAYED** pending resolution of this appeal.

This appeal is hereby CONSOLIDATED with *In re: Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election, Appeal of Donald J. Trump for President, Inc.*, Nos. 31-35 EAP 2020, J-118A-E-2020.

For disposition of this matter, the Court will rely on the briefs filed in the Commonwealth Court at No. 1162 CD 2020.

# EXHIBIT S

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**U.S. District Court  
Northern District of Georgia (Atlanta)  
CIVIL DOCKET FOR CASE #: 1:20-cv-04651-SDG**

Wood v. Raffensperger et al  
Assigned to: Judge Steven D. Grimberg  
Cause: 42:1983 Civil Rights Act

Date Filed: 11/13/2020  
Jury Demand: None  
Nature of Suit: 441 Civil Rights: Voting  
Jurisdiction: Federal Question

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*ATTORNEY TO BE NOTICED*

**Kevin J. Hamilton**

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**Intervenor Defendant**

**Georgia State Conference of the NAACP**

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**Julie Marie Houk**



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**Intervenor Defendant**

**Georgia Coalition for the Peoples'  
Agenda, Inc.**

represented by **Ezra David Rosenberg**  
(See above for address)  
*LEAD ATTORNEY*  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**John Michael Powers**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Jon M. Greenbaum**  
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*LEAD ATTORNEY*  
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**Julie Marie Houk**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Bryan Ludington Sells**  
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**Intervenor Defendant**

**Helen Butler**

represented by **Ezra David Rosenberg**  
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*LEAD ATTORNEY*  
*PRO HAC VICE*  
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**John Michael Powers**  
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**Julie Marie Houk**  
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**Bryan Ludington Sells**  
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**Intervenor Defendant**

**James Woodall**

represented by **Ezra David Rosenberg**  
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**John Michael Powers**  
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**Intervenor Defendant**

**Melvin Ivey**

represented by **Ezra David Rosenberg**  
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**John Michael Powers**  
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**Jon M. Greenbaum**  
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**Bryan Ludington Sells**  
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*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
11/13/2020	<a href="#">1</a>	COMPLAINT filed by L. Lin Wood, Jr.. (Filing fee \$400.00, receipt number BGANDC-10373555) (Attachments: # <a href="#">1</a> Exhibit -A -Litigation Settlement, # <a href="#">2</a> Verification regarding Election, # <a href="#">3</a> Civil Cover Sheet)(eop) Please visit our website at <a href="http://www.gand.uscourts.gov/commonly-used-forms">http://www.gand.uscourts.gov/commonly-used-forms</a> to obtain Pretrial Instructions and Pretrial Associated Forms which includes the Consent To Proceed Before U.S. Magistrate form. (Entered: 11/13/2020)
11/13/2020	<a href="#">2</a>	EIGHTH AMENDMENT TO GENERAL ORDER 20-01 RE: COURT OPERATIONS UNDER THE EXIGENT CIRCUMSTANCES CREATED BY COVID-19 AND RELATED CORONA VIRUS. Signed by Judge Thomas W. Thrash, Jr. on 9/28/20. (eop) (Entered: 11/13/2020)
11/13/2020	<a href="#">3</a>	Certificate of Interested Persons by L. Lin Wood, Jr. (Smith, Ray) (Entered: 11/13/2020)
11/16/2020	<a href="#">4</a>	STANDING ORDER Regarding Civil Litigation. Signed by Judge Steven D. Grimberg on November 16, 2020. (ash) (Entered: 11/16/2020)
11/16/2020	<a href="#">5</a>	AMENDED COMPLAINT against All Defendants filed by L. Lin Wood, Jr. (Attachments: # <a href="#">1</a> Exhibit Exhibit A to Amended Complaint: Litigation Settlement, # <a href="#">2</a> Exhibit Exhibit B to Amended Complaint: Coleman Affidavit, # <a href="#">3</a> Exhibit Exhibit C to Amended Complaint: Deidrich Affidavit, # <a href="#">4</a> Affidavit Amended Complaint Verification) (Smith, Ray) Please visit our website at <a href="http://www.gand.uscourts.gov/commonly-used-forms">http://www.gand.uscourts.gov/commonly-used-forms</a> to obtain Pretrial Instructions and Pretrial Associated Forms which includes the Consent To Proceed Before U.S. Magistrate form. (Entered: 11/16/2020)
11/17/2020	<a href="#">6</a>	Emergency MOTION for Temporary Restraining Order <b>IMMEDIATE HEARING REQUESTED</b> with Brief In Support by L. Lin Wood, Jr. (Attachments: # <a href="#">1</a> Exhibit A Litigation Settlement, # <a href="#">2</a> Exhibit B Coleman Affidavit, # <a href="#">3</a> Exhibit C Deitrich Affidavit, # <a href="#">4</a> Exhibit D Volyes Affidavit, # <a href="#">5</a> Exhibit E Zeher Affidavit, # <a href="#">6</a> Exhibit F Romero Affidavit, # <a href="#">7</a> Exhibit G Reyes Affidavit, # <a href="#">8</a> Exhibit H Johnston Affidavit, # <a href="#">9</a> Exhibit I

		Silva Affidavit, # <a href="#">10</a> Exhibit J O'Neal Affidavit, # <a href="#">11</a> Exhibit K Fisher Affidavit, # <a href="#">12</a> Exhibit L Savage Affidavit, # <a href="#">13</a> Exhibit M Peterford Affidavit, # <a href="#">14</a> Exhibit N Redacted Declaration, # <a href="#">15</a> Exhibit O Makridis Declaration, # <a href="#">16</a> Exhibit P Failure Study, # <a href="#">17</a> Exhibit R Moore Affidavit, # <a href="#">18</a> Exhibit S S. Hall Affidavit, # <a href="#">19</a> Exhibit T R Hall Affidavit, # <a href="#">20</a> Exhibit U Hartman Affidavit)(Smith, Ray) (Entered: 11/17/2020)
11/18/2020	<a href="#">7</a>	Supplemental MOTION for Temporary Restraining Order <i>to File Exhibit Q to Motion, Ramsland Affidavit</i> by L. Lin Wood, Jr. (Attachments: # <a href="#">1</a> Exhibit Q Ramsland Affidavit) (Smith, Ray) (Entered: 11/18/2020)
11/18/2020	<a href="#">8</a>	MOTION to Intervene <i>as Defendants</i> with Brief In Support by Democratic Party of Georgia, Inc., DSCC, DCCC. (Attachments: # <a href="#">1</a> Exhibit A: Proposed Intervenors' Proposed Motion to Dismiss, # <a href="#">2</a> Exhibit B: Proposed Intervenors' Brief in Support of Proposed Motion to Dismiss, # <a href="#">3</a> Exhibit C: Proposed Intervenors' Proposed Answer to Amended Complaint)(Sparks, Adam) (Entered: 11/18/2020)
11/18/2020	<a href="#">9</a>	APPLICATION for Admission of Marc Erik Elias Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10388354).by DCCC, DSCC, Democratic Party of Georgia, Inc.. (Sparks, Adam) <b>Documents for this entry are not available for viewing outside the courthouse.</b> (Entered: 11/18/2020)
11/18/2020	<a href="#">10</a>	APPLICATION for Admission of Amanda R. Callais Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10388395).by DCCC, DSCC, Democratic Party of Georgia, Inc.. (Sparks, Adam) <b>Documents for this entry are not available for viewing outside the courthouse.</b> (Entered: 11/18/2020)
11/18/2020	<a href="#">11</a>	APPLICATION for Admission of Kevin J. Hamilton Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10388415).by DCCC, DSCC, Democratic Party of Georgia, Inc.. (Sparks, Adam) <b>Documents for this entry are not available for viewing outside the courthouse.</b> (Entered: 11/18/2020)
11/18/2020	<a href="#">12</a>	APPLICATION for Admission of Amanda J. Beane Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10388436).by DCCC, DSCC, Democratic Party of Georgia, Inc.. (Sparks, Adam) <b>Documents for this entry are not available for viewing outside the courthouse.</b> (Entered: 11/18/2020)
11/18/2020	<a href="#">13</a>	APPLICATION for Admission of Alexi M. Velez Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10388444).by DCCC, DSCC, Democratic Party of Georgia, Inc.. (Sparks, Adam) <b>Documents for this entry are not available for viewing outside the courthouse.</b> (Entered: 11/18/2020)
11/18/2020	<a href="#">14</a>	APPLICATION for Admission of Matthew Mertens Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10388463).by DCCC, DSCC, Democratic Party of Georgia, Inc.. (Sparks, Adam) <b>Documents for this entry are not available for viewing outside the courthouse.</b> (Entered: 11/18/2020)
11/18/2020	<a href="#">15</a>	APPLICATION for Admission of Emily Brailey Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10388481).by DCCC, DSCC, Democratic Party of Georgia, Inc.. (Sparks, Adam) <b>Documents for this entry are not available for viewing outside the courthouse.</b> (Entered: 11/18/2020)
11/18/2020	<a href="#">16</a>	APPLICATION for Admission of Gillian Kuhlmann Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10388493).by DCCC, DSCC, Democratic Party of Georgia, Inc.. (Sparks, Adam) <b>Documents for this entry are not available for viewing outside the courthouse.</b> (Entered: 11/18/2020)
11/18/2020	<a href="#">17</a>	NOTICE of Appearance by Charlene S McGowan on behalf of Anh Le, Matthew Mashburn, Brad Raffensperger, Rebecca N. Sullivan, David J. Worley (McGowan,

		Charlene) (Entered: 11/18/2020)
11/18/2020	<a href="#">18</a>	NOTICE of Appearance by Russell D. Willard on behalf of Anh Le, Matthew Mashburn, Brad Raffensperger, Rebecca N. Sullivan, David J. Worley (Willard, Russell) (Entered: 11/18/2020)
11/18/2020	<a href="#">19</a>	Certificate of Interested Persons by DCCC, DSCC, Democratic Party of Georgia, Inc.. (Sparks, Adam) (Entered: 11/18/2020)
11/18/2020	<a href="#">20</a>	Amended MOTION to Supplement <a href="#">7</a> Supplemental MOTION for Temporary Restraining Order to File Exhibit Q to Motion, Ramsland Affidavit by L. Lin Wood, Jr. (Attachments: # <a href="#">1</a> Exhibit Q Ramsland Affidavit)(Smith, Ray) (Entered: 11/18/2020)
11/18/2020	<a href="#">21</a>	NOTICE OF VIDEO PROCEEDING re: <a href="#">6</a> Emergency MOTION for Temporary Restraining Order <b>IMMEDIATE HEARING REQUESTED</b> . Motion Hearing set for 11/19/2020 at 03:00 PM in No Courtroom before Judge Steven D. Grimberg. Connection Instructions: <a href="https://ganduscourts.zoomgov.com/j/1609807754">https://ganduscourts.zoomgov.com/j/1609807754</a> ; Meeting ID: 160 980 7754; Passcode: 841353. You must follow the instructions of the Court for remote proceedings available <a href="#">here</a> . The procedure for filing documentary exhibits admitted during the proceeding is available <a href="#">here</a> . <i>Photographing, recording, or broadcasting of any judicial proceedings, including proceedings held by video teleconferencing or telephone conferencing, is strictly and absolutely prohibited.</i> (ash) (Entered: 11/18/2020)
11/18/2020	<a href="#">22</a>	MOTION to Intervene by Georgia State Conference of the NAACP, Georgia Coalition for the Peoples' Agenda, Inc., Helen Butler, James Woodall, Melvin Ivey. (Attachments: # <a href="#">1</a> Exhibit 1 - Woodall declaration, # <a href="#">2</a> Exhibit 2 - Ivey declaration, # <a href="#">3</a> Exhibit 3 - Powers declaration)(Sells, Bryan) (Entered: 11/18/2020)
11/18/2020	<a href="#">23</a>	APPLICATION for Admission of Jon Greenbaum Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10390836).by Helen Butler, Georgia Coalition for the Peoples' Agenda, Inc., Georgia State Conference of the NAACP, Melvin Ivey, James Woodall. (Sells, Bryan) <b>Documents for this entry are not available for viewing outside the courthouse.</b> (Entered: 11/18/2020)
11/18/2020	<a href="#">24</a>	APPLICATION for Admission of Julie Houk Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10391209).by Helen Butler, Georgia Coalition for the Peoples' Agenda, Inc., Georgia State Conference of the NAACP, Melvin Ivey, James Woodall. (Sells, Bryan) <b>Documents for this entry are not available for viewing outside the courthouse.</b> (Entered: 11/18/2020)
11/18/2020	<a href="#">25</a>	APPLICATION for Admission of John Powers Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10391214).by Helen Butler, Georgia Coalition for the Peoples' Agenda, Inc., Georgia State Conference of the NAACP, Melvin Ivey, James Woodall. (Sells, Bryan) <b>Documents for this entry are not available for viewing outside the courthouse.</b> (Entered: 11/18/2020)
11/18/2020	<a href="#">26</a>	CERTIFICATE of Compliance with Court's Standing Order (Smith, Ray) (Entered: 11/18/2020)
11/18/2020	<a href="#">27</a>	APPLICATION for Admission of Ezra Rosenberg Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10391419).by Helen Butler, Georgia Coalition for the Peoples' Agenda, Inc., Georgia State Conference of the NAACP, Melvin Ivey, James Woodall. (Sells, Bryan) <b>Documents for this entry are not available for viewing outside the courthouse.</b> (Entered: 11/18/2020)
11/19/2020	<a href="#">28</a>	MOTION to Supplement <a href="#">22</a> MOTION to Intervene with updated Butler declaration by Helen Butler, Georgia Coalition for the Peoples' Agenda, Inc., Georgia State Conference of



		the NAACP, Melvin Ivey, James Woodall. (Attachments: # <a href="#">1</a> Exhibit 1 - Butler declaration)(Sells, Bryan) (Entered: 11/19/2020)
11/19/2020		APPROVAL by Clerks Office re: <a href="#">9</a> APPLICATION for Admission of Marc Erik Elias Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10388354).. Attorney Marc E. Elias added appearing on behalf of DCCC, DSCC, Democratic Party of Georgia, Inc. (nmb) (Entered: 11/19/2020)
11/19/2020	<a href="#">29</a>	CERTIFICATE of Compliance <i>with the Court's Standing Order Regarding Civil Litigation</i> (Sells, Bryan) (Entered: 11/19/2020)
11/19/2020		APPROVAL by Clerks Office re: <a href="#">10</a> APPLICATION for Admission of Amanda R. Callais Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10388395).. Attorney Amanda R. Callais added appearing on behalf of DCCC, DSCC, Democratic Party of Georgia, Inc. (nmb) (Entered: 11/19/2020)
11/19/2020		APPROVAL by Clerks Office re: <a href="#">11</a> APPLICATION for Admission of Kevin J. Hamilton Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10388415).. Attorney Kevin J. Hamilton added appearing on behalf of DCCC, DSCC, Democratic Party of Georgia, Inc. (nmb) (Entered: 11/19/2020)
11/19/2020		APPROVAL by Clerks Office re: <a href="#">12</a> APPLICATION for Admission of Amanda J. Beane Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10388436).. Attorney Amanda J. Beane added appearing on behalf of DCCC, DSCC, Democratic Party of Georgia, Inc. (nmb) (Entered: 11/19/2020)
11/19/2020		RETURN of <a href="#">27</a> APPLICATION for Admission of Ezra Rosenberg Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10391419). to attorney for correction re: case number. (cdg) (Entered: 11/19/2020)
11/19/2020		APPROVAL by Clerks Office re: <a href="#">15</a> APPLICATION for Admission of Emily Brailey Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10388481). Attorney Emily Rachel Brailey added appearing on behalf of DCCC, DSCC, Democratic Party of Georgia, Inc. (cdg) (Entered: 11/19/2020)
11/19/2020	<a href="#">30</a>	NOTICE Of Filing Attorney Declaration by L. Lin Wood, Jr (Attachments: # <a href="#">1</a> Exhibit Attorney Declarations)(Smith, Ray) (Entered: 11/19/2020)
11/19/2020		APPROVAL by Clerks Office re: <a href="#">25</a> APPLICATION for Admission of John Powers Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10391214). Attorney John Michael Powers added appearing on behalf of Georgia State Conference Of the NAACP, et al. (cdg) Modified on 11/19/2020 to correct party appearing on behalf of (cdg). (Entered: 11/19/2020)
11/19/2020	<a href="#">31</a>	RESPONSE in Opposition re <a href="#">6</a> Emergency MOTION for Temporary Restraining Order <b>IMMEDIATE HEARING REQUESTED</b> <i>Proposed Intervenor-Defendant Political Party Committees' Response in Opposition to Plaintiff's Emergency Motion for Injunctive Relief</i> filed by DCCC, DSCC, Democratic Party of Georgia, Inc.. (Sparks, Adam) (Entered: 11/19/2020)
11/19/2020	<a href="#">32</a>	APPLICATION for Admission of Ezra Rosenberg Pro Hac Vice.by Helen Butler, Georgia Coalition for the Peoples' Agenda, Inc., Georgia State Conference of the NAACP, Melvin Ivey, James Woodall. (Sells, Bryan) <b>Documents for this entry are not available for viewing outside the courthouse.</b> (Entered: 11/19/2020)
11/19/2020		APPROVAL by Clerks Office re: <a href="#">13</a> APPLICATION for Admission of Alexi M. Velez Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10388444).. Attorney Alexi Machek Velez added appearing on behalf of DCCC, DSCC, Democratic Party of Georgia, Inc. (nmb) (Entered: 11/19/2020)

11/19/2020	<a href="#">33</a>	AFFIDAVIT re <a href="#">31</a> Response in Opposition to Motion, <i>Attorney Declaration of Amanda R. Callais</i> by DCCC, DSCC, Democratic Party of Georgia, Inc.. (Attachments: # <a href="#">1</a> Ex. 1 - SOS Notice 2020.11.09, # <a href="#">2</a> Ex. 2 - The Hill 2020.11.11, # <a href="#">3</a> Ex. 3 - SOS Press release 2020.11.13, # <a href="#">4</a> Ex. 4 - OEB 2020.11.12, # <a href="#">5</a> Ex. 5 - OEB 2020.05.01, # <a href="#">6</a> Ex. 6 - SOS Press Release 2020.11.18, # <a href="#">7</a> Ex. 7 - SEB Notice 2020.03.05, # <a href="#">8</a> Ex. 8 - Official Election Results 2020.11.18, # <a href="#">9</a> Ex. 9 - SOS Facebook Post 2020.11.15, # <a href="#">10</a> Ex. 10 - Reuters 2020.11.11, # <a href="#">11</a> Ex. 11 - Washington Post 2020.11.16, # <a href="#">12</a> Ex. 12 - CBS News 2020.11.13, # <a href="#">13</a> Ex. 13 - AJC 2020.10.19, # <a href="#">14</a> Ex. 14 - AJC 2020.11.15, # <a href="#">15</a> Ex. 15 - OEB 2020.11.13, # <a href="#">16</a> Ex. 16 - Rodden Expert Report 2020.11.18)(Sparks, Adam) (Entered: 11/19/2020)
11/19/2020		APPROVAL by Clerks Office re: <a href="#">23</a> APPLICATION for Admission of Jon Greenbaum Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10390836). Attorney Jon M. Greenbaum added appearing on behalf of Helen Butler, Georgia Coalition for the Peoples' Agenda, Inc., Georgia State Conference of the NAACP, Melvin Ivey, James Woodall (cdg) (Entered: 11/19/2020)
11/19/2020	<a href="#">34</a>	RESPONSE in Opposition re <a href="#">6</a> Emergency MOTION for Temporary Restraining Order <b>IMMEDIATE HEARING REQUESTED</b> filed by Anh Le, Matthew Mashburn, Brad Raffensperger, Rebecca N. Sullivan, David J. Worley. (Attachments: # <a href="#">1</a> Affidavit of Chris Harvey)(McGowan, Charlene) (Entered: 11/19/2020)
11/19/2020	<a href="#">35</a>	NOTICE Of Filing by L. Lin Wood, Jr re <a href="#">6</a> Emergency MOTION for Temporary Restraining Order <b>IMMEDIATE HEARING REQUESTED</b> (Attachments: # <a href="#">1</a> Exhibit to TRO Motion Thorne Affidavit)(Smith, Ray) (Entered: 11/19/2020)
11/19/2020	<a href="#">36</a>	NOTICE Of Filing 2020.11.19 PPC Notice of Intent to Rely on Exhibits and Affidavits by DCCC, DSCC, Democratic Party of Georgia, Inc. re <a href="#">21</a> Notice of Video/Telephone Proceeding,,, (Sparks, Adam) (Entered: 11/19/2020)
11/19/2020		APPROVAL by Clerks Office re: <a href="#">14</a> APPLICATION for Admission of Matthew Mertens Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10388463).. Attorney Matthew Mertens added appearing on behalf of DCCC, DSCC, Democratic Party of Georgia, Inc. (nmb) (Entered: 11/19/2020)
11/19/2020		ORDER granting <a href="#">9</a> Application for Admission Pro Hac Vice of Marc Erik Elias. Approved by Judge Steven D. Grimberg on November 19, 2020. If the applicant does not have CM/ECF access in the Northern District of Georgia already, they must request access at <a href="http://pacer.gov">http://pacer.gov</a> . If they have electronically filed in this district in a previous case, please omit this step.(ash) (Entered: 11/19/2020)
11/19/2020		ORDER granting <a href="#">10</a> Application for Admission Pro Hac Vice of Amanda R. Callais. Approved by Judge Steven D. Grimberg on November 19, 2020. If the applicant does not have CM/ECF access in the Northern District of Georgia already, they must request access at <a href="http://pacer.gov">http://pacer.gov</a> . If they have electronically filed in this district in a previous case, please omit this step.(ash) (Entered: 11/19/2020)
11/19/2020		ORDER granting <a href="#">11</a> Application for Admission Pro Hac Vice of Kevin J. Hamilton. Approved by Judge Steven D. Grimberg on November 19, 2020. If the applicant does not have CM/ECF access in the Northern District of Georgia already, they must request access at <a href="http://pacer.gov">http://pacer.gov</a> . If they have electronically filed in this district in a previous case, please omit this step.(ash) (Entered: 11/19/2020)
11/19/2020	<a href="#">37</a>	CERTIFICATE of Compliance <i>with Court's Standing Order</i> (Powers, John) (Entered: 11/19/2020)
11/19/2020		ORDER granting <a href="#">12</a> Application for Admission Pro Hac Vice of Amanda J. Beane.

		Approved by Judge Steven D. Grimberg on November 19, 2020. If the applicant does not have CM/ECF access in the Northern District of Georgia already, they must request access at <a href="http://pacer.gov">http://pacer.gov</a> . If they have electronically filed in this district in a previous case, please omit this step.(ash) (Entered: 11/19/2020)
11/19/2020		ORDER granting <a href="#">15</a> Application for Admission Pro Hac Vice of Emily Brailey. Approved by Judge Steven D. Grimberg on November 19, 2020. If the applicant does not have CM/ECF access in the Northern District of Georgia already, they must request access at <a href="http://pacer.gov">http://pacer.gov</a> . If they have electronically filed in this district in a previous case, please omit this step.(ash) (Entered: 11/19/2020)
11/19/2020		ORDER granting <a href="#">25</a> Application for Admission Pro Hac Vice of John Powers. Approved by Judge Steven D. Grimberg on November 19, 2020. If the applicant does not have CM/ECF access in the Northern District of Georgia already, they must request access at <a href="http://pacer.gov">http://pacer.gov</a> . If they have electronically filed in this district in a previous case, please omit this step.(ash) (Entered: 11/19/2020)
11/19/2020		ORDER granting <a href="#">13</a> Application for Admission Pro Hac Vice of Alexi M. Velez. Approved by Judge Steven D. Grimberg on November 19, 2020. If the applicant does not have CM/ECF access in the Northern District of Georgia already, they must request access at <a href="http://pacer.gov">http://pacer.gov</a> . If they have electronically filed in this district in a previous case, please omit this step.(ash) (Entered: 11/19/2020)
11/19/2020		ORDER granting <a href="#">23</a> Application for Admission Pro Hac Vice of Jon Greenbaum. Approved by Judge Steven D. Grimberg on November 19, 2020. If the applicant does not have CM/ECF access in the Northern District of Georgia already, they must request access at <a href="http://pacer.gov">http://pacer.gov</a> . If they have electronically filed in this district in a previous case, please omit this step.(ash) (Entered: 11/19/2020)
11/19/2020		ORDER granting <a href="#">14</a> Application for Admission Pro Hac Vice of Matthew Mertens. Approved by Judge Steven D. Grimberg on November 19, 2020. If the applicant does not have CM/ECF access in the Northern District of Georgia already, they must request access at <a href="http://pacer.gov">http://pacer.gov</a> . If they have electronically filed in this district in a previous case, please omit this step.(ash) (Entered: 11/19/2020)
11/19/2020	<a href="#">38</a>	NOTICE Of Filing by Democratic Party of Georgia, Inc. re <a href="#">31</a> Response in Opposition to Motion, <i>Affidavits In Support Of</i> <a href="#">31</a> (Attachments: # <a href="#">1</a> Affidavit 1: Shameika Vailes, # <a href="#">2</a> Affidavit 2: Angela Thomas, # <a href="#">3</a> Affidavit 3: Kimberly Brandon, # <a href="#">4</a> Affidavit 4: Doris Sumner, # <a href="#">5</a> Affidavit 5: Robin Lourie, # <a href="#">6</a> Affidavit 6: Olivia Alston, # <a href="#">7</a> Affidavit 7: Russell Cason, # <a href="#">8</a> Affidavit 8: Steve Young, # <a href="#">9</a> Affidavit 9: Beth Graham, # <a href="#">10</a> Affidavit 10: Rebecca Short, # <a href="#">11</a> Affidavit 11: Sara Ghazal, # <a href="#">12</a> Affidavit 12: Sharon Zydney, # <a href="#">13</a> Affidavit 13: Komal Patel)(Sparks, Adam) (Entered: 11/19/2020)
11/19/2020		APPROVAL by Clerks Office re: <a href="#">16</a> APPLICATION for Admission of Gillian Kuhlmann Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10388493). Attorney Gilliam Kuhlmann added appearing on behalf of DCCC, DSCC, Democratic Party of Georgia, Inc. (cdg) (Entered: 11/19/2020)
11/19/2020		APPROVAL by Clerks Office re: <a href="#">24</a> APPLICATION for Admission of Julie Houk Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10391209). Attorney Julie Marie Houk added appearing on behalf of Helen Butler, Georgia Coalition for the Peoples' Agenda, Inc., Georgia State Conference of the NAACP, Melvin Ivey, James Woodall (cdg) (Entered: 11/19/2020)
11/19/2020		ORDER granting <a href="#">16</a> Application for Admission Pro Hac Vice of Gillian Kuhlmann. Approved by Judge Steven D. Grimberg on November 19, 2020. If the applicant does not have CM/ECF access in the Northern District of Georgia already, they must request access



		at <a href="http://pacer.gov">http://pacer.gov</a> . If they have electronically filed in this district in a previous case, please omit this step.(ash) (Entered: 11/19/2020)
11/19/2020		ORDER granting <a href="#">24</a> Application for Admission Pro Hac Vice of Julie Houk. Approved by Judge Steven D. Grimberg on November 19, 2020. If the applicant does not have CM/ECF access in the Northern District of Georgia already, they must request access at <a href="http://pacer.gov">http://pacer.gov</a> . If they have electronically filed in this district in a previous case, please omit this step.(ash) (Entered: 11/19/2020)
11/19/2020	<a href="#">39</a>	RESPONSE in Opposition re <a href="#">6</a> Emergency MOTION for Temporary Restraining Order <b>IMMEDIATE HEARING REQUESTED</b> filed by Helen Butler, Georgia Coalition for the Peoples' Agenda, Inc., Georgia State Conference of the NAACP, Melvin Ivey, James Woodall. (Powers, John) (Entered: 11/19/2020)
11/19/2020	<a href="#">40</a>	CERTIFICATE of Compliance <i>with the Court's Standing Order on Civil Litigation</i> (Sells, Bryan) (Entered: 11/19/2020)
11/19/2020		APPROVAL by Clerks Office re: <a href="#">32</a> APPLICATION for Admission of Ezra Rosenberg Pro Hac Vice.. Attorney Ezra David Rosenberg added appearing on behalf of Helen Butler, Georgia Coalition for the Peoples' Agenda, Inc., Georgia State Conference of the NAACP, Melvin Ivey, James Woodall (cdg) (Entered: 11/19/2020)
11/19/2020	<a href="#">41</a>	CERTIFICATE of Compliance <i>Amanda J. Beane</i> (Sparks, Adam) (Entered: 11/19/2020)
11/19/2020	<a href="#">42</a>	CERTIFICATE of Compliance <i>Amanda R. Callois</i> (Sparks, Adam) (Entered: 11/19/2020)
11/19/2020	<a href="#">43</a>	CERTIFICATE of Compliance <i>Susan P. Coppedge</i> (Sparks, Adam) (Entered: 11/19/2020)
11/19/2020	<a href="#">44</a>	CERTIFICATE of Compliance (Greenbaum, Jon) (Entered: 11/19/2020)
11/19/2020	<a href="#">45</a>	CERTIFICATE of Compliance <i>Kevin J. Hamilton</i> (Sparks, Adam) (Entered: 11/19/2020)
11/19/2020	<a href="#">46</a>	CERTIFICATE of Compliance <i>Halsey G. Knapp, Jr.</i> (Sparks, Adam) (Entered: 11/19/2020)
11/19/2020	<a href="#">47</a>	CERTIFICATE of Compliance <i>Joyce Gist Lewis</i> (Sparks, Adam) (Entered: 11/19/2020)
11/19/2020	<a href="#">48</a>	CERTIFICATE of Compliance <i>Adam M. Sparks</i> (Sparks, Adam) (Entered: 11/19/2020)
11/19/2020	<a href="#">49</a>	CERTIFICATE of Compliance (McGowan, Charlene) (Entered: 11/19/2020)
11/19/2020	<a href="#">50</a>	CERTIFICATE of Compliance <i>of Russell D. Willard</i> (McGowan, Charlene) (Entered: 11/19/2020)
11/19/2020	<a href="#">51</a>	APPLICATION for Admission of Susan Baker Manning Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10394814).by Helen Butler, Georgia Coalition for the Peoples' Agenda, Inc., Georgia State Conference of the NAACP, Melvin Ivey, James Woodall. (Sells, Bryan) <b>Documents for this entry are not available for viewing outside the courthouse.</b> (Entered: 11/19/2020)
11/19/2020	<a href="#">52</a>	Minute Entry for proceedings held before Judge Steven D. Grimberg: Hearing held on Plaintiff's <a href="#">6</a> Emergency Motion for Temporary Restraining Order. The Court GRANTED Intervenor Defendants Democratic Party of Georgia, Inc., DSCC, and DCCC's <a href="#">8</a> Motion to Intervene as Defendants. The Court DENIED Plaintiff's <a href="#">6</a> Motion for Temporary Restraining Order. A written order will follow. (Court Reporter Alicia Bagley)(jed) (Entered: 11/20/2020)
11/20/2020		RETURN of <a href="#">51</a> APPLICATION for Admission of Susan Baker Manning Pro Hac Vice (Application fee \$ 150, receipt number AGANDC-10394814). to attorney for correction. (cdg) (Entered: 11/20/2020)

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