

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
PENNSYLVANIA DEPARTMENT OF
STATE, and VERONICA DEGRAFFENREID,
Acting Secretary of the Commonwealth of
Pennsylvania,

Petitioners,

No. ____ MD 2021

v.

SENATOR CRIS DUSH, SENATOR JAKE
CORMAN, and THE PENNSYLVANIA
STATE SENATE INTERGOVERNMENTAL
OPERATIONS COMMITTEE,

Respondents.

NOTICE TO PLEAD

To: Senator Cris Dush, Senator Jake Corman, and the Pennsylvania State Senate Intergovernmental Operations Committee:

You are hereby notified to file a written response to the enclosed petition within thirty (30) days from service hereof, in accordance with Pennsylvania Rule of Appellate Procedure 1516(b), or a judgment may be entered against you.

Dated: September 23, 2021

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NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within thirty (30) days after this complaint and notice are served, in accordance with Pennsylvania Rule of Appellate Procedure 1516(b), by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THESE OFFICES MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

MidPenn Legal Services
213-A North Front Street
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CORMAN, and THE PENNSYLVANIA
SENATE INTERGOVERNMENTAL
OPERATIONS COMMITTEE,

Respondents.

No. ____ MD 2021

**PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT IN
EQUITY AND FOR DECLARATORY JUDGMENT**

Introduction

1. Pennsylvania citizens have constitutionally guaranteed rights to free and fair elections and to the protection of their personal information. Both fundamental rights are threatened by the abuse of power at the center of this case.

2. The Commonwealth of Pennsylvania, the Department of State, and Acting Secretary of the Commonwealth Veronica Degraffenreid bring this action to protect nine million Pennsylvania voters from an unlawful attempt to subpoena—and share with unknown third parties—their private information.

3. The Pennsylvania State Senate's Intergovernmental Operations Committee has demanded voters' private information from the Pennsylvania Department of State, not to conduct a good-faith investigation or to further secure Pennsylvania's elections but instead to pursue a disproven narrative designed to undermine faith in the results of Pennsylvania's 2020 presidential election.

4. As has been repeatedly demonstrated, Pennsylvania's 2020 general election was free, fair, and secure.

5. More than that, it was a model of civic engagement. A record number of voters participated. In the face of unprecedented challenges, Pennsylvania's election workers, Republican, Democratic, and Independent, did their jobs. They conducted the election fairly and followed the law.

6. Pennsylvania voters elected candidates from both parties. They awarded their presidential electors to the Democratic candidate and elected a Democratic Attorney General, while simultaneously electing Republicans to the offices of Auditor General and State Treasurer. They also elected a congressional delegation evenly divided between the parties and maintained Republican majorities in the State House and State Senate.

7. Yet for the first time in our nation's modern history, the losing candidate for president refused to accept the outcome of the election. From before the polls closed, former President Trump claimed, without evidence, that there

would be widespread fraud in Pennsylvania and other states. Undaunted by facts disproving his wild allegations, former President Trump continued spreading that message after Election Day.

8. This claim, of course, was a lie. Two separate audits of the results confirmed that President Biden won Pennsylvania. Despite the unprecedented attention that Pennsylvania has received since last November, there is no evidence of widespread fraud in connection with the 2020 election. In fact, a later report on the election found that just three individual cases of fraud in all of Pennsylvania had been identified.

9. Judges across the Commonwealth, in federal and state courts, rejected the barrage of legal cases brought by the former President and his allies.

10. But the notion that the 2020 election was corrupted in some way has persisted, not simply because former President Trump has continued to repeat it, but because his partisans, including those in Pennsylvania, have perpetuated his false claims.

11. To further the false claims, the Intergovernmental Operations Committee, now chaired by Senator Cris Dush and acting at the direction of Senator Jake Corman, is purporting to conduct an investigation into supposed election irregularities—even though the Intergovernmental Operations Committee has no experience, authority, or jurisdiction to oversee election matters.

12. This effort has been under discussion for months, during which time it has been called by different names, led by different members of the State Senate, and focused on different supposed allegations of fraud.

13. Throughout, the purpose has remained the same: To placate former President Trump and his political base and propagate his false allegations while avoiding the embarrassment that has resulted from previous efforts to provide evidence of voter fraud that does not exist.

14. Now, in furtherance of this improper and unprecedented effort, Respondents have issued a broad-ranging, unlawful subpoena to the Secretary of the Commonwealth, demanding constitutionally protected personal information on more than nine million Pennsylvania voters.

15. Among the information requested are driver's license numbers and partial Social Security Numbers for every registered voter in the Commonwealth.

16. Respondents do not plan to (and could not) analyze this private, personal data themselves; rather, they have publicly stated their intention to hand it over to an unknown third-party vendor or vendors. They conceded that it is "absolutely possible" that the vendor will have connections to the perpetrators of some of the most vicious lies about the 2020 election.

17. In addition to jeopardizing Pennsylvanians' privacy, the subpoena also threatens the fundamental right to vote. Pennsylvania citizens will rightly fear that the mere act of registering to vote could subject their personal information to disclosure.

18. For all these reasons, Respondents' subpoena should be declared unlawful and should be quashed and enjoined by this Court.

Jurisdiction

19. The Commonwealth of Pennsylvania, an agency of the Commonwealth government, and an officer of the Commonwealth government are petitioners here. Officers of the Commonwealth government are respondents. This Court therefore has original jurisdiction under 42 Pa. Cons. Stat. § 761(a)(1), (2).

Parties

20. Petitioners in this matter are the Commonwealth of Pennsylvania, the Pennsylvania Department of State, and Veronica Degraffenreid in her role as Acting Secretary of the Commonwealth.

21. Senator Cris Dush, a respondent in this matter, was elected to the Pennsylvania Senate in 2020 to represent the 25th district. He is the Chair of the Pennsylvania State Senate's Intergovernmental Operations Committee. As Chair of that committee, Senator Dush is empowered to sign subpoenas it approves.

22. Senator Jake Corman, a respondent in this matter, was most recently elected to the Pennsylvania Senate in 2018 to represent the 34th district. He currently serves as President Pro Tempore of the Pennsylvania Senate. In that role, he appoints the Chair, Vice Chair and members of all Senate Standing Committees and is an ex-officio member of those same committees.

23. The Intergovernmental Operations Committee (the “Committee”), a respondent in this matter, is a standing committee of the Pennsylvania State Senate. The Committee is chaired by Senator Dush and currently has seven members from the Republican Party and four members from the Democratic Party.

Statement of Facts

I. The 2020 and 2021 Elections in Pennsylvania Were Free, Fair, and Secure

A. Pennsylvania Election Law Establishes How Votes are Cast, Counted, and Certified

24. The Constitution of Pennsylvania protects the right of all eligible citizens of the Commonwealth to vote. It guarantees that “[e]lections shall be free and equal” and that “no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Pa. Cons. art. I, § 5. It further provides that “secrecy in voting shall be preserved.” Pa. Cons. art. VII, § 4.

25. Elections are governed by Pennsylvania’s Election Code and subject to federal law.

26. As required by federal law, any qualified person wishing to register to vote in Pennsylvania must provide a driver's license number or the last four digits of their Social Security number. 52 U.S.C. § 21083(a)(5)(i). Someone who has not been issued either still may register to vote, but will be identified on the Commonwealth's voter rolls by a unique number that the Commonwealth creates for all registered voters. 52 U.S.C. § 21083(a)(5)(ii).

27. Under the Election Code, elections are overseen by individual boards of elections, the vast majority of which are bipartisan. 25 Pa. Stat. § 2641(b). Among other duties, county boards of elections tabulate and certify votes in their respective counties and report those results to the Secretary of the Commonwealth. 25 Pa. Stat. § 2642(k).

28. The Secretary of the Commonwealth, who oversees the Department of State, also performs a number of responsibilities under the Election Code. For instance, the Secretary tabulates the results provided by county boards. 25 Pa. Stat. § 2621(f). The Secretary also provides assistance to the county boards, including by issuing guidance on issues relating to election administration.

29. The Election Code also establishes four exclusive mechanisms to recount or contest election results before the results are officially certified by the Secretary. *See infra* ¶¶ 31, 33, 34, 36.

30. For any election, counties first complete a computation of the votes.
25 Pa. Stat. § 3154(e), (f).

31. A county will conduct a recount or recanvass of the votes in an election district if, prior to completing its computation of the votes, there is a discrepancy in the returns or three voters allege an error. 25 Pa. Stat. § 3154(e).

32. Counties must send unofficial election results to the Secretary no later than a week after Election Day. 25 Pa. Stat. § 3154(f).

33. The Secretary will order a statewide recount or recanvass if the unofficial returns show that a candidate in a statewide race lost by 0.05% or less of the votes cast for that office. 25 Pa. Stat. § 3154(g).

34. A court of common pleas will order a recount or recanvass of the votes in an election district if, within five days after the county completes its computation of the votes but prior to certification, three voters in an election district file a petition alleging fraud or error. 25 Pa. Stat. §§ 3261-3263.

35. If there has been no petition for a recount or recanvass, counties certify their returns five days after reporting their unofficial results and then transmit the certification to the Secretary. 25 Pa. Stat. § 3154(f).

36. A court or legislative body will adjudicate an election contest if, after the county has certified the results, a group of voters file a petition alleging that the election was illegal. 25 Pa. Stat. §§ 3291-3474. The time to file a petition, the

number of voters who must sign the petition, and the court or legislative body that adjudicates the contest depends on the class of election contested. 25 Pa. Stat. §§ 3291, 3312-3313, 3351, 3376, 3401, 3431, 3456. To contest a presidential election, at least one hundred voters must file a petition in this Court within 20 days after the election. 25 Pa. Stat. §§ 3291, 3351-52, 3456-74; 42 Pa. Cons. Stat. § 764(1).

37. After receiving certified returns from the counties, the Secretary counts the votes and certifies the final count. 25 Pa. Stat. § 3159. For presidential elections, the Secretary presents the final returns to the Governor, who issues a certificate of election to the winning candidate. 25 Pa. Stat. § 3166.

B. The General Assembly Adopted Act 77 on a Bipartisan Basis to Expand Voting Opportunities

38. Nearly two years ago, Pennsylvania's General Assembly enacted landmark election legislation, known as Act 77, on a strong bipartisan basis. It received more Republican than Democratic votes in the General Assembly, and was signed into law by a Democratic Governor. Act 77 enhanced Pennsylvanians' opportunity to participate in the democratic process by allowing, for the first time, all qualified voters in Pennsylvania to vote by mail, among other provisions. 25 Pa. Stat. § 3150.11

39. While Act 77 greatly expanded the opportunity for democratic participation, it also raised novel challenges for administering the 2020 primary and general elections—the first two conducted with Act 77 in effect.

40. The 2020 election was also conducted during the ongoing COVID-19 pandemic, which presented a unique set of challenges for election officials.

41. The Department issued several guidance documents to county boards in 2020. Many of these documents provided information for county boards on the implementation of Act 77, including issues relating to the canvassing and counting of mail-in votes. *See, e.g., Pennsylvania Absentee and Mail-in Ballot Return Guidance* (Aug. 19, 2020).

42. These guidance documents were updated throughout the election season as needed to ensure that counties had current information. For instance, the Department issued updated guidance documents in response to litigation that affected the 2020 election.¹

¹ *See, e.g.,* Pa. Dep’t of State, *Guidance Concerning Civilian Absentee and Mail-in Ballots Procedures (Version 1.0)* at 5 (Sept. 28, 2020), <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/DOS%20Guidance%20Civilian%20Absentee%20and%20Mail-In%20Ballot%20Procedures.pdf>; Pa. Dep’t of State, *Canvassing Segregated Mail-in and Civilian Absentee Ballots Received by Mail After 8:00 P.M. on Tuesday, November 3, 2020 and Before 5:00 P.M. on Friday, November 6, 2020 (Version 1.0)* (Nov. 1, 2020), <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Canvassing-Segregated-Ballot-Guidance.pdf>.

C. *The 2020 Election was Free, Fair, and Secure*

43. On November 3, 2020, election officials of every political stripe in all 67 of Pennsylvania's counties conducted the Commonwealth's general election.

44. Despite numerous obstacles, more than 6.9 million people voted in Pennsylvania in 2020.² This record turnout included more than 2.2 million general election voters who cast a mail-in ballot, *see id.* at 20, and nearly 375,000 who voted by absentee ballot, *see id.* at 12.

45. Pennsylvania voters awarded the Commonwealth's 20 electoral votes to Joe Biden, who won the Commonwealth by more than 80,000 votes.³

46. Joe Biden received a majority of all electoral votes and was lawfully elected President of the United States.

47. Pennsylvania voters also elected a Democratic Attorney General, a Republican Treasurer, a Republican Auditor General, and a federal congressional delegation that was evenly divided between the parties, with nine Republicans and nine Democrats. They also elected a Republican State House and State Senate.

² See Pa. Dep't of State, *Report on the 2020 General Election* at 8 (May 14, 2021), <https://www.dos.pa.gov/VotingElections/Documents/2020-General-Election-Report.pdf> ("Act 35 Report").

³ Commonwealth of Pennsylvania Certificate of Ascertainment of Presidential Electors (Nov. 24, 2021), <https://www.archives.gov/files/electoral-college/2020/ascertainment-pennsylvania.pdf>.

48. Additionally, Senator Dush was elected in 2020 to represent Pennsylvania's 25th Senatorial District. Senators David Argall, Scott Hutchinson, and Douglas Mastriano, all of whom are members of the Committee, also were elected in 2020.

49. The election in which Senators Dush, Argall, Hutchinson, and Mastriano ran was conducted fairly and securely, and their elections reflected the will of their voters.

50. Overall, Pennsylvania's 2020 general election was administered fairly, securely, and in accordance with Pennsylvania law by election officials in the Commonwealth's 67 counties.

51. As of May 2021, there were only three documented cases of voter fraud in the 2020 general election in Pennsylvania.⁴

52. There is no evidence of any election fraud or voter fraud that changed the outcome of the 2020 election.

53. For the 2020 presidential election, the statutory basis for a statewide recount was not triggered, no court of common pleas ordered a recount or recanvass, and no election contest was initiated.

⁴ See Act 35 Report, *supra* note 2 at 34.

54. Because counties were not allowed to pre-canvass ballots until Election Day, 25 Pa. Stat. § 3146.8(g)(1.1), and in light of the record turnout, Pennsylvania took several days to report its unofficial election results.

55. For the 2020 presidential election, then-Secretary of the Commonwealth Kathy Boockvar certified the winner on November 24, 2020. That same day, Governor Tom Wolf sent a Certificate of Ascertainment of Pennsylvania's members of the Electoral College to the National Archives as directed by federal law. 3 U.S.C. § 6.

D. Post-Election Audits and Reviews Confirm the Accuracy of the 2020 Election Results

56. As a routine part of the canvassing process that county boards of elections perform under the Election Code, every Pennsylvania county conducted “a statistical recount of a random sample of ballots . . . using manual, mechanical or electronic devices of a type different than those used for the specific election.” 25 Pa. Stat. § 3031.17. The statistical sampling included at least 2,000 ballots or ballots equaling 2 percent of all votes cast in the county. *Id.* Every candidate, or her representative, had a right to be present for that sampling.

57. After certification of the election results, sixty-three of sixty-seven counties participated in a “risk-limiting audit” pilot.⁵ Risk-limiting audits use

⁵ Lancaster, Greene, Franklin, and Beaver were the four counties that declined to participate. Former President Trump won each county by a significant margin. PA Dep't of

“statistical methods to confirm whether reported election outcomes are correct and to detect possible interference.”⁶ They do so by “examin[ing] a random sample of paper ballots, comparing the votes on paper to the totals reported by the vote-counting machines to ensure that the winner actually won.”⁷

58. Pennsylvania’s risk-limiting audit of the 2020 presidential election reviewed more than 45,000 randomly sampled ballots to ensure the accuracy of the presidential election results.⁸ The results of that audit “provided strong evidence of the accuracy of the count of votes cast in the November 2020 presidential election” as the “results of the sample mirrored the reported presidential election results across the participating counties within a fraction of a percentage point.”⁹

State, *Official Returns – Lancaster* (Nov. 3, 2020), <https://www.electionreturns.pa.gov/General/CountyResults?countyName=Lancaster&ElectionID=83&ElectionType=G&IsActive=0>; PA Dep’t of State, *Official Returns – Greene* (Nov. 3, 2020), <https://www.electionreturns.pa.gov/General/CountyResults?countyName=Greene&ElectionID=83&ElectionType=G&IsActive=0>; PA Dep’t of State, *Official Returns – Franklin* (Nov. 3, 2020), <https://www.electionreturns.pa.gov/General/CountyResults?countyName=Franklin&ElectionID=83&ElectionType=G&IsActive=0>; PA Dep’t of State, *Official Returns – Beaver* (Nov. 3, 2020), <https://www.electionreturns.pa.gov/General/CountyResults?countyName=Beaver&ElectionID=83&ElectionType=G&IsActive=0>.

⁶ See Risk-Limiting Audit Pilot of November 2020 Presidential Election Finds Strong Evidence of Accurate Count, Pennsylvania Pressroom (Feb. 5, 2021), <https://www.media.pa.gov/pages/state-details.aspx?newsid=453>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

59. After those audits, both chambers of Pennsylvania’s legislature conducted hearings, heard testimony from witnesses, and gave due consideration to potential legislative changes to state election law based on lessons learned from the 2020 election.

60. In May 2021, the House State Government Committee published a “Comprehensive Review of Pennsylvania’s Election Laws” following “ten hearings with roughly 31.5 hours of total hearing time and hearing from 52 total testifiers including 7 House Members.”¹⁰ The “extensive hearings on the Commonwealth’s election law and administration of elections” sought to “fix any identified problem within the election system and to regain the voters’ trust in [Pennsylvania’s] elections.”¹¹

61. In June 2021, the Senate’s Special Committee on Election Integrity and Reform produced a similar report after holding a series of hearings regarding the administration of elections in Pennsylvania and best practices in other states.¹²

¹⁰ House State Government Committee, *A Comprehensive Review of Pennsylvania’s Election Laws: How Pennsylvania Can Guarantee Rights and Integrity in Our Election System* (May 10, 2021), <http://www.pahousegop.com/Display/SiteFiles/1/OtherDocuments/Election%20Oversight%20Hearing%20Final%20Report.pdf>.

¹¹ *Id.*

¹² Senate Special Committee on Election Integrity and Reform, *Report on the Special Committee’s Findings and Recommendations to the Senate and the Senate State Government Committee* (June 2021), <https://pasenelectioncommittee.com/wp-content/uploads/sites/106/2021/06/election-integrity-report-final.pdf>.

Senator Corman praised the Special Committee, saying “I am extremely proud of the members of this committee for working together across party lines to approach these issues in an open and honest way.”¹³ Senator Corman also said, “I am hopeful that we can build upon [the Special Committee’s] efforts to enact real and meaningful reforms to ensure all Pennsylvanians have an election system they can believe in.”¹⁴

62. Neither committee report identified any fraud or irregularity during the 2020 election that would have affected election results.

E. Unbiased Experts Confirm the Integrity of the 2020 Election

63. Unbiased experts have confirmed that the 2020 general election was free, fair, and secure, in Pennsylvania and elsewhere.

64. On November 12, 2020, the federal Election Infrastructure Government Coordinating Council Executive Committee issued a statement concluding that “[t]he November 3rd election was the most secure in American history,” and that “[t]here is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised. While we know there are many unfounded claims and opportunities for misinformation about the process of

¹³ Sen. Jake Corman, *Senate Special Committee Releases Report on Election Reforms* (June 14, 2021), <https://www.senatorcorman.com/2021/06/14/senate-special-committee-releases-report-on-election-reforms/>.

¹⁴ *Id.*

our elections, we can assure you we have the utmost confidence in the security and integrity of our elections, and you should too.”¹⁵

65. Chris Krebs, the head of the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency during the 2020 general election, wrote on December 1, 2020, that “[t]he 2020 election was the most secure in U.S. history.”¹⁶

66. That same day, then-Attorney General William Barr told the Associated Press that U.S. Attorneys and FBI agents had been investigating and following up on specific complaints and information about the conduct of the election. Attorney General Barr said, “to date, we have not seen fraud on a scale that could have effected a different outcome in the election.”¹⁷

67. Three political scientists from the University of Chicago and Stanford University reviewed eight of the most widespread assertions about fraud in the

¹⁵ Cybersecurity & Infrastructure Security Agency, *Joint Statement From Elections Infrastructure Government Coordinating Council & The Election Infrastructure Sector Coordinating Executive Committees* (Nov. 12, 2020), <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>.

¹⁶ Christopher Krebs, *Trump fired me for saying this, but I’ll say it again: The election wasn’t rigged*, Wash. Post, (Dec. 1, 2020), https://www.washingtonpost.com/opinions/christopher-krebs-trump-election-wasnt-hacked/2020/12/01/88da94a0-340f-11eb-8d38-6aea1adb3839_story.html.

¹⁷ Michael Balsamo, *Disputing Trump, Barr says no widespread election fraud*, Assoc. Press (Dec. 1, 2020), <https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d>.

2020 election, many centered on Pennsylvania, and found “none of them is even remotely convincing. The common logic behind these claims is that, if the election were fairly conducted, some feature of the observed 2020 election result would be unlikely or impossible. In each case, we find that the purportedly anomalous fact is either not a fact or not anomalous.”¹⁸

F. The 2021 Municipal Primary Was Conducted Without Incident

68. On May 28, 2021, Pennsylvania conducted its municipal primary election. In addition to primary elections, Pennsylvanians voted on three constitutional amendments.

69. More than 2.2 million people voted in the 2021 municipal primary election. Of those, more than 550,000 voted through a mail-in ballot.

70. Pennsylvania’s 2021 municipal primary election was administered fairly, securely, and in accordance with Pennsylvania Law.

71. Pennsylvania’s administration of the 2021 municipal primary election has not been beset by allegations of improprieties.

¹⁸ Andrew C. Eggers, et al., *No Evidence for Voter Fraud: A Guide to Statistical Claims about the 2020 Election* at 1 (Feb. 3, 2021), https://stanforddpl.org/papers/eggers_et_al_2021_stastical_claims_election/.

II. The 2020 Presidential Election Has Been Subjected to an Unprecedented Campaign of Unfounded Attacks

72. The 2020 presidential election was the first time in our nation's modern history that the losing candidate and his supporters refused to acknowledge the true results of a free and fair election. Former President Trump and his supporters have promoted a lie that President Biden's electoral victory was the result of a "rigged election." As a so-called "swing state," Pennsylvania has been a primary target of this disinformation campaign.

73. This false narrative amplified a message that then-President Trump started spreading even before the 2020 presidential election.

74. Repeated false claims of a rigged election deliberately eroded the confidence that Pennsylvania voters once felt in election results.

75. Senator Dush, Senator Corman, and other members of the Committee have followed former President Trump's lead and persistently worked to undermine voters' confidence in the integrity of Pennsylvania's 2020 presidential election.

76. These attacks on the 2020 election have taken many different forms. Former President Trump and his supporters—including Respondents—have filed and supported frivolous lawsuits that unsuccessfully sought to overturn the results in various states. The same people have encouraged federal and state elected officials to disregard the votes of their constituents and declare President Trump

the winner, culminating in the attack on the U.S. Capitol on January 6. And they have continued to undermine the election by pushing for needless and redundant “audits” to manufacture evidence of fraud.

A. Former President Trump and Pennsylvania Legislators Falsely Alleged that the 2020 Election Was Fraudulent

77. Former President Trump began preparing to question a possible electoral defeat before the election was held. In the weeks leading up to November 3, he repeatedly alleged that the election would be stolen from him. For example, at an August 17, 2020, campaign rally, Trump said, “The only way we’re going to lose this election is if the election is rigged.”¹⁹ During a September 29, 2020, presidential debate, Trump falsely told the more than 73 million Americans watching that “[i]t’s a rigged election,” that Democrats “cheat,” and that “bad things happen in Philadelphia [elections]. Bad things.”²⁰

78. His efforts intensified the evening of the election. He sent multiple false tweets claiming that he had won; that the election was being stolen from him; and that he was the victim of widespread voter fraud. For example, early on the morning of November 4, 2020, he sent two Tweets saying “We are up BIG, but

¹⁹ Terrance Smith, *Trump has longstanding history of calling elections ‘rigged’ if he doesn’t like the results*, ABC News (Nov. 11, 2020), <https://abcnews.go.com/Politics/trump-longstanding-history-calling-elections-rigged-doesnt-results/story?id=74126926>.

²⁰ September 29, 2020 Presidential Debate Transcript, <https://www.debates.org/voter-education/debate-transcripts/september-29-2020-debate-transcript/>.

they are trying to STEAL the election.”²¹ In another tweet sent early on November 4, he said, “I will be making a statement tonight. A Big WIN!”²² And later that morning he tweeted, “Last night I was leading, often solidly, in many key States, in almost all instances Democrat run & controlled. Then, one by one, they started to magically disappear as surprise ballots dumps were counted.”²³

79. Pennsylvania was a primary focus of these efforts. For example, the then-President falsely tweeted that “[t]hey are finding Biden votes all over the place — in Pennsylvania, Wisconsin, and Michigan. So bad for our Country!”²⁴ He later falsely claimed that “They are working hard to make [our] 500,000 vote advantage in Pennsylvania disappear — ASAP....”²⁵

80. In fact, Pennsylvania’s bipartisan election officials were performing their duties under the Election Code and methodically counting all votes. Because the Election Code does not authorize county boards of elections to pre-canvass

²¹ Donald Trump (@realDonaldTrump), Twitter (Nov. 4, 2020, 12:44 am), <https://www.thetrumparchive.com>; Donald Trump (@realDonaldTrump), Twitter (Nov. 4, 2020, 12:49 am), <https://www.thetrumparchive.com>.

²² Donald Trump (@realDonaldTrump), Twitter (Nov. 4, 2020, 12:45 am), <https://www.thetrumparchive.com>

²³ Donald Trump (@realDonaldTrump), Twitter (Nov. 4, 2020, 10:04 am), <https://www.thetrumparchive.com>.

²⁴ Donald Trump (@realDonaldTrump), Twitter (Nov. 4, 2020, 11:55 am), <https://www.thetrumparchive.com>.

²⁵ Donald Trump (@realDonaldTrump), Twitter (Nov. 4, 2020, 12:01 pm), <https://www.thetrumparchive.com>.

mail-in votes before Election Day, the counting of all mail-in votes took several days following Election Day.

81. After election results confirmed President Biden's victory, former President Trump amplified his lies about the election. He repeatedly concocted allegations about the election, including that Dominion Voting Systems deleted or switched Pennsylvanians' votes from then-President Trump to President Biden. On November 28, 2020, then-President Trump falsely tweeted that "[m]ore than one million Pennsylvania mail ballots were 'created out of thin air.'"

82. Regrettably, many of Pennsylvania's legislative leaders refused to condemn the then-President's attacks and refused to defend the integrity of the Commonwealth's bipartisan election officials. Many even perpetuated the same lies.

83. In fact, the Majority Leader of the Pennsylvania State Senate stated that her house would be "bombed tonight" if she resisted claims that the election was rigged.²⁶

84. Shortly after unofficial results showed that President Biden won the 2020 presidential election, Senator Mastriano claimed at a rally with former

²⁶ John Bowden, *Pennsylvania GOP leader on breaking with Trump on election: 'I'd get my house bombed tonight'*, The Hill (Dec. 9, 2020), <https://thehill.com/homenews/state-watch/529580-pennsylvania-gop-leader-on-breaking-with-trump-on-election-id-get-my>.

President Trump’s supporters that “[Democrats] want to cheat in the election, and they will.”²⁷

85. About three weeks after the election, Senator Mastriano staged a hearing in Gettysburg, joined by former President Trump and members of his legal team, including Rudolph Giuliani. Senator Mastriano introduced poll watchers who claimed to have witnessed irregularities that led to a stolen election.²⁸

86. Senator Dush has asserted that “nobody in the Commonwealth of Pennsylvania can tell you who the winner was in any of these races from November 2020.”²⁹

B. Numerous Lawsuits Failed to Provide Any Evidence of Irregularities During the 2020 Election

87. While former President Trump and his supporters were continuing to make false statements about the 2020 Election, his attorneys and others were trying to block the election results by filing factually baseless and frivolous lawsuits.

²⁷ Stephen Caruso, *State Lawmakers, militia Rally at State Capitol Staring Down Trump Loss*, Penn. Capital Star (Nov. 7, 2020), <https://www.penncapital-star.com/livefeed/state-lawmakers-militia-rally-at-state-capitol-staring-down-trump-loss/>.

²⁸ Eliza Griswold, *Trump’s Battle to Undermine the Vote In Pennsylvania*, The New Yorker (Nov. 27, 2020), <https://www.newyorker.com/news/us-journal/trumps-battle-to-undermine-the-vote-in-pennsylvania>.

²⁹ Jan Murphy, *Pa. Sen. Cris Dush Talk About Election Review, His Doubts of the Vote Count and How Donald Trump ‘Is Watching’*, PennLive (Aug. 27, 2021), <https://www.pennlive.com/news/2021/08/pa-sen-cris-dush-talks-about-election-review-his-doubts-of-the-vote-count-and-how-donald-trump-is-watching.html>.

88. Those lawsuits repeated many of the same frivolous allegations that former President Trump and his supporters had made.

89. Those lawsuits were universally rejected by courts.

90. For instance, the Trump Campaign, in a federal court lawsuit filed by Mr. Giuliani, sought to block certification of the results of Pennsylvania's presidential election. That lawsuit alleged that counties with Democratic majorities broke the law to advantage Democratic voters and accused Pennsylvania election officials of "favor[ing] Biden over Trump" leading to "over 70,000 mail and other mail ballots which favor Biden [being] improperly counted."

91. Both the district court and the court of appeals rejected these allegations. The district court described the suit as based on "strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence." *Donald J. Trump for President, Inc. v. Boockvar*, 502 F. Supp. 3d 899, 906 (M.D. Pa. 2020). The United States Court of Appeals for the Third Circuit wrote, "Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here." *Donald J. Trump for President, Inc. v. Sec'y of Pennsylvania*, 830 F. App'x 377, 381 (3d Cir. 2020).

92. As a result of his conduct in the Pennsylvania lawsuit, during the Gettysburg hearing, and in other cases, Mr. Giuliani's New York law license was suspended by the Appellate Division of the New York Supreme Court, First Judicial Department, pending completion of a full investigation into his conduct. *In re Giuliani*, 146 N.Y.S.3d 266 (N.Y. App. Div. 2021).

93. The court found that there was “uncontroverted evidence that [Mr. Giuliani] communicated demonstrably false and misleading statements to courts, lawmakers and the public at large in his capacity as lawyer for former President Donald J. Trump.” *Id.* at 268. The court specifically identified numerous false and misleading statements he had made regarding the 2020 election in Pennsylvania, including allegations regarding the total number of mail-in and absentee ballots requested and returned during the election. *See id.* at 273-75.

94. It further determined: “These false statements were made to improperly bolster [Mr. Giuliani's] narrative that due to widespread voter fraud, victory in the 2020 United States presidential election was stolen from his client. *Id.* at 268.

95. Separately, Republican Members of Congress filed a lawsuit seeking to stop the certification of the 2020 election results, arguing that Act 77—which had been passed more than one year prior to the election, and had been in effect for

the 2020 primary—was unconstitutional. *See Kelly v. Commonwealth*, No. 620 M.D. 2020 (Pa. Commw. Ct. filed Nov. 20, 2020)

96. The Pennsylvania Supreme Court rejected this lawsuit, and the U.S. Supreme Court declined to review that decision. *Kelly v. Commonwealth*, 240 A.3d 1255 (Pa. 2020); *Kelly v. Pennsylvania*, 141 S. Ct. 1449 (2021) (denying certiorari).

97. Nevertheless, members of the Pennsylvania General Assembly, including Senators Dush and Mastriano, filed an amicus brief with the U.S. Supreme Court explicitly requesting that the Court issue an injunction to prevent certification of the 2020 presidential election results. *See Br. for Members of the Pennsylvania General Assembly as Amicus Curiae Supporting Petitioners, Kelly v. Pennsylvania*, No. 20A98 (2020) (Dec. 4, 2020).³⁰

98. Several members of the General Assembly who signed this amicus brief in support of the challenge to Act 77 had, in fact, voted for Act 77 the prior year.

99. On December 7, 2020, the State of Texas, later joined by seventeen other states, sought leave to file an original action in the U.S. Supreme Court challenging the election results in Pennsylvania and three other states. Motion for

³⁰ Motion For Leave To File Brief As Amicus Curiae And Brief For Members Of The Pennsylvania General Assembly, As Amicus Curiae In Support Of Applicants/Petitioners, *Kelly v. Pennsylvania*, S. Ct. No. 20A98, 2020 WL 7391540 (filed Dec. 4, 2020).

Leave to File Bill of Complaint, *Texas v. Pennsylvania*, No. 22O155 (S. Ct. Dec. 7, 2020). Texas’s action repeated many of the same frivolous claims that had been repeatedly rejected by courts.

100. On December 10, 2020, Senators Corman, Mastriano, Argall, Hutchinson, and Judy Ward—all members of the Committee—filed an amicus brief in support of Texas’s request that the U.S. Supreme Court stop Pennsylvania from certifying the results of its 2020 presidential election. *See* Brief on Behalf of Certain Select Pennsylvania State Senators as Amici Curiae in Support of No Party, *Texas v. Pennsylvania*, No. 22O155 (S. Ct. Dec. 10, 2020).

101. On December 11, 2020, the Supreme Court denied Texas’s request for leave to file the complaint, concluding that Texas lacked “a judicially cognizable interest in the manner in which another State conducts its elections.” *Texas v. Pennsylvania*, 141 S. Ct. 1230 (2020) (No. 22O155).

C. Former President Trump and Pennsylvania Legislators Attempt to Obstruct Counting of Electoral College Votes

102. Under the Electoral Count Act, Congress meets in a joint session on January 6 of the year following a presidential election to count the electoral votes cast by the states. *See* 3 U.S.C. § 15. The Vice President presides over this joint session of Congress.

103. Once it became clear that he had lost the election, then-President Trump and his supporters carried out a campaign to have Congress reject the

legitimate electors from Pennsylvania and other states and replace them with electors who supported President Trump.

104. On November 28, 2020, Senator Mastriano stated on Steve Bannon's podcast that "We're going to take our power back; we're going to seat the [Trump] electors."³¹ Despite citing no evidence, Mastriano claimed that Secretary Boockvar and other Democrats "cheated."³²

105. On November 30, 2020, Senator Mastriano and three other senators asked the Pennsylvania General Assembly to "take back the power to designate Presidential electors of the State of Pennsylvania for the December 2020 meeting of the Electoral College" from the voters of the Commonwealth.³³ Although the request referenced purported election anomalies, the Senators cited no specific instances of election fraud.

106. On December 2, 2020, fourteen Republican members of the General Assembly, including Senator Dush, petitioned the Governor to convene a Special Session on election issues, claiming that "substantial questions remain that have

³¹ Jon Alexander, *Pa. state senator urges GOP to vote in Trump electors*, The Morning Call (Nov. 28, 2020), <https://www.pressreader.com/search?query=%22state%20senator%20urges%20GOP%20to%20vote%20in%20Trump%20electors%22>.

³² *Id.*

³³ Michael Cooper-White, *State Sen. Mastriano Seeks to Invalidate Election*, Gettysburg Times (Nov. 30, 2020), https://www.gettysburgtimes.com/news/local/article_ae6130cc-8a56-53f9-84f0-524a70a72c08.html.

thus far gone unanswered regarding the 2020 election” warranting further legislative oversight of election agencies.³⁴

107. On December 4, 2020, sixty Republican members of the General Assembly, including Senators Dush, Mastriano, and Judy Ward, asked Pennsylvania’s congressional delegation to reject the electors for Joe Biden.³⁵

108. On December 23, 2020, Senator Dush co-wrote a letter to then-Vice President Michael Pence asking him “to consider and weigh the validity of purported Electors and Electoral votes representing the Commonwealth of Pennsylvania.”³⁶ The letter listed numerous purported “infringements” to the Commonwealth’s election and explicitly asked the Vice President “to reject the Electoral College votes received from the Commonwealth of Pennsylvania during the Joint Session of Congress on January 6, 2021.”³⁷ Senator Dush stated that he

³⁴ Rep. Daryl Metcalfe, *PA Lawmakers Circulating Petition for Special Session on Election Issues* (Dec. 4, 2020), <http://www.pahousegopnews.com/Broadcast/ViewBroadcastV2.ashx?%252fJWN6tSbSGykwu0Nl0MzXmsrpG0Sv9vLac%252bECSB53yzp0eIWYAn02g%253d%253d>.

³⁵ Letter from Rep. Seth Grove, et al. to Hon. Bob Casey, et al. (Dec. 4, 2020), [http://www.pahousegopnews.com/AttachedFiles/12.04.20%20Congress%20Election%202020%20\(002\).pdf](http://www.pahousegopnews.com/AttachedFiles/12.04.20%20Congress%20Election%202020%20(002).pdf).

³⁶ Letter from Russ Diamond, et al. to Vice President Michael R. Pence (Dec. 23, 2020), <https://web.archive.org/web/20210124112906/http://www.repdiamond.com/>.

³⁷ *Id.*

and his fellow Senators “are prepared to appoint Electors for President and Vice President, if called upon to do so.”³⁸

109. On December 29, 2020, Senator Mastriano tweeted that “Electoral irregularities are real and prevalent in Pennsylvania. Sadly, despite evidence, our Governor and State Department Secretary refuse to investigate.”³⁹

110. On December 30, 2020, Senators Dush, Mastriano, and Judy Ward—among others—wrote a letter to Senator Mitch McConnell asserting that the “2020 presidential election should not have been certified in Pennsylvania” based on “mounting and overwhelming evidence depicting election irregularities and extensive potential fraud.”⁴⁰ The letter listed as “key findings” a number of theories with no basis in fact.⁴¹ The Senators asked that Senator McConnell use his powers to “dispute the certification until an investigation is completed.”⁴²

111. On January 1, 2021, Senator Dush posted a lengthy diatribe on his public Facebook profile entitled, “THERE WAS NOT A LAWFUL ELECTION

³⁸ *Id.*

³⁹ Doug Mastriano (@SenMastriano), Twitter (Dec. 29, 2020, 12:12 PM), <https://mobile.twitter.com/senmastriano/status/1343968123859427328>.

⁴⁰ Letter from Sen. Doug Mastriano, et al. to Senator Mitch McConnell (Dec. 30, 2021), <https://senatorjudyward.com/wp-content/uploads/sites/92/2021/01/1-McConnell-investigatetr.pdf>.

⁴¹ *Id.*

⁴² *Id.*

IN PENNSYLVANIA NOVEMBER 3rd!”⁴³ In the post, Senator Dush made a number of legally and factually dubious claims purporting to demonstrate that the election was “fraudulent.” Among those claims was a baseless assertion that “there have been many reports of unlawful acts as well as malfeasance, misfeasance and possible fraudulent activities,” which according to Senator Dush furthered “the original crime against The People of Pennsylvania in the conducting of what was fraudulently called an ‘election’ on November 3rd.” In the post, Senator Dush proclaimed, without basis, “There was no election. There was a scam.”

112. On January 2, 2021, then-President Trump pressured Georgia Secretary of State Brad Raffensperger to “find” 11,780 votes—one more than Joe Biden’s margin of victory in Georgia. Then-President Trump told Secretary Raffensperger that “there’s nothing wrong with saying that, you know, um, that you’ve recalculated.”⁴⁴

113. On January 4, 2021, Republican members of the Pennsylvania Senate, including Senators Corman and Dush, wrote a letter to Senator McConnell and Representative Kevin McCarthy asking that Congress to delay certification of the

⁴³ Sen. Cris Dush, Facebook (Jan. 1, 2021), <https://www.facebook.com/SenatorCrisDushPA/posts/3574068596003258>.

⁴⁴ John Bowden, *Trump asked Georgia secretary of state to ‘find’ 11.7k ballots, recalculate election result*, The Hill (Jan. 3, 2021), <https://thehill.com/homenews/administration/532433-trump-asked-georgia-secretary-of-state-to-find-116k-ballots>.

election results based on alleged “inconsistencies” in the election and stating incorrectly that there was a pending case before the U.S. Supreme Court that might affect the outcome of Pennsylvania’s election.⁴⁵

114. At a January 5, 2021, rally in Harrisburg, held to encourage state legislators to decertify President Biden’s electoral victory, Senator Dush again questioned the legality of the November 2020 election. Senator Dush repeated his assertions that the November election was “unlawful,” and further proclaimed that the “judicial branch and executive branch” have “taken it upon themselves to take your sovereignty and write law.” Senator Dush urged people to take action against the certification of the presidential electors: “Let’s get spines in the backs of people who are called lesser magistrates, if someone tries to enforce something, . . . the lesser magistrates have a responsibility not to comply.”⁴⁶

115. On January 6, 2021, then-President Trump proclaimed during a rally of his supporters near the U.S. Capitol that “[t]hey rigged it like they’ve never rigged an election before.” Then-President Trump explained that his election assault would not relent, stating “[w]e will never concede, it doesn’t happen. You

⁴⁵ Letter from Sen. Jake Corman, et al. to Sen. Mitch McConnell and Rep. Kevin McCarthy (Jan. 4, 2021), <https://www.scribd.com/document/489945100/GOP-Senate-letter-to-Congress>.

⁴⁶ Steve Marroni & Chris Mautner, *‘Hear Us Roar’ rally in Harrisburg seeks to decertify Pa. ’s votes*, PennLive (Jan. 5, 2021), <https://www.pennlive.com/elections/2021/01/hear-us-roar-rally-in-harrisburg-seeks-to-decertify-pas-votes.html>.

don't concede when there's theft involved. Our country has had enough. We will not take it anymore and that's what this is all about."

116. At the same rally, then-President Trump described purported election fraud in Pennsylvania that, he claimed, was outcome determinative. Then-President Trump falsely claimed that there were more votes cast than voters in Pennsylvania, that thousands of dead people voted in Pennsylvania, that "[o]ver 14,000 ballots were cast by out-of-state voters," and that "[f]our hundred thousand ballots appeared from nowhere right after the election."

117. Then-President Trump asserted that some Pennsylvania State Senators were prepared to "recertify their votes. They want to recertify. But the only way that can happen is if Mike Pence agrees to send it back. Mike Pence has to agree to send it back."

118. Once the rally ended, attendees and others stormed the U.S. Capitol in an effort to prevent members of Congress and then-Vice President Pence from discharging their constitutional duty to count the Electoral College votes. Although the insurrection did not succeed, multiple people died during or after the riot and over 100 police officers were injured while protecting the Capitol.

119. After the attack on the U.S. Capitol was repulsed, and as those who stormed the Capitol were being removed, then-President Trump tweeted, "These are the things and events that happen when a sacred landslide election victory is so

unceremoniously & viciously stripped away from great patriots who have been badly & unfairly treated for so long.”

120. Senator Mastriano was a scheduled speaker for at the January 6, 2021, rally at the U.S. Capitol.⁴⁷ Video evidence suggests Senator Mastriano was at the Capitol as it was attacked, and was approaching a police barrier near the Capitol that was being removed by someone who was not a uniformed officer.⁴⁸

121. Even after the Capitol was stormed, eight of Pennsylvania’s eighteen members of Congress voted against certifying the 2020 Presidential election.⁴⁹

122. After the violent attack on the U.S. Capitol, Senator Corman stated that he stood by his decision to ask Congress to delay certification.

123. The day that President Biden was sworn into office, Senator Dush introduced Senate Resolution 9, declaring that Pennsylvania’s election was

⁴⁷ Randy DeSoto, *Pro-Trump January 6 rally promises to be ‘wild’ time*, The Western Journal (Jan. 1, 2021) (identifying Mastriano as a scheduled speaker), <https://www.westernjournal.com/pro-trump-january-6-rally-capitol-hill-promises-wild-time/>; *see also* WildProtest.com (Jan. 6, 2021, 12:50 AM) (same), <https://archive.ph/6RzUY> (archiving <https://wildprotest.com/>).

⁴⁸ *Id.*; *see also* Jeremy Roebuck et al., *Pa. GOP lawmaker Doug Mastriano says he left the Capitol area before the riot. New videos say otherwise*, Philadelphia Inquirer (May 25, 2021), <https://www.inquirer.com/news/doug-mastriano-capitol-riot-pennsylvania-video-20210525.html>; Josephine Harvey, *Videos Contradict State Lawmaker’s Claim He Left Capitol While It Was ‘Still Peaceful.’*, Huffington Post (May 26, 2021), https://www.huffpost.com/entry/doug-mastriano-capitol-riot_n_60ac5e99e4b019ef10de09c7.

⁴⁹ Karen Yourish et al., *The 147 Republicans Who Voted to Overturn Election Results*, N.Y. Times (Jan. 7, 2021), <https://www.nytimes.com/interactive/2021/01/07/us/elections/electoral-college-biden-objectors.html>.

“unlawful, void ab initio and invalid, and that the Commonwealth of Pennsylvania has failed to appoint electors of President and Vice President on the day prescribed by law.”⁵⁰

*D. Former President Trump and Pennsylvania Legislators
Continue to Stoke Distrust in Election Results*

124. Months after President Biden’s inauguration, former President Trump continues to promote the false narrative of his victory and assail public officials and others who do not do the same.

125. Former President Trump is still attempting to coerce state officials to declare him the winner of the 2020 presidential election. On September 17, 2021, former President Trump sent Secretary Raffensperger a letter falsely asserting that there had been fraud in the Georgia election and demanding that Raffensperger “start the process of decertifying the Election, or whatever the correct legal remedy is, and announce the true winner.”⁵¹

126. To discredit the presidential election results, former President Trump is also encouraging “audits” of state elections.⁵²

⁵⁰ Senate Resolution No. 9 (introduced Jan. 20, 2021), <https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2021&sessInd=0&billBody=S&billTyp=R&billNbr=0009&pn=0047>.

⁵¹ Liz Harrington (@realLizUSA), Twitter (Sept. 17, 2021, 11:22 AM), <https://twitter.com/realLizUSA/status/1438886054380154884/photo/1>.

⁵² See Jeremy Stahl, *Pennsylvania’s So-Called Election Audit Is Another Attempt to Discredit Trump’s 2020 Loss*, Slate.com (Sept. 15, 2021), <https://slate.com/news-and-politics/2021/09/pennsylvania-gop-audit-trump-2020-loss.html>.

127. In June 2021, after Senator Corman complimented the work of the Senate’s Special Committee on Election Integrity and Reform and expressed a hope for meaningful reforms, former President Trump released a statement asking “Why is State Senator Jake Corman of Pennsylvania fighting so hard that there not be a Forensic Audit of the 2020 Presidential Election Scam? Corman is fighting as though he were a Radical Left Democrat.... Other State Senators want this Forensic Audit to take place—immediately. I feel certain that if Corman continues along this path of resistance, with its lack of transparency, he will be primaried and lose by big numbers.”⁵³

128. In Arizona, insistence that the results of the 2020 presidential election were fraudulent inspired some state senators to subpoena ballots and election apparatus from Maricopa County to perform a “forensic audit.” The “audit” was initiated after independent, federally accredited auditors had completed their work and after an official hand count audit of ballots found no irregularities in the county’s votes.

129. The Arizona State Senate hired Cyber Ninjas, a company with no experience auditing elections, to lead the “audit.”

⁵³ Donald J. Trump, *Statement by Donald J. Trump, 45th President of the United States of America* (June 14, 2021), <https://www.donaldjtrump.com/news/statement-by-donald-j-trump-45th-president-of-the-united-states-of-america-06.14.21-02>.

130. Once underway, the Maricopa County “audit” was marred by a lack of transparency, questionable methodologies, bizarre practices—such as scouring ballots for bamboo fibers—and troubling security concerns. One Cyber Ninjas subcontractor drove undisclosed election data and other materials to a private home in Montana to perform unknown tests without any disclosed processes or oversight.⁵⁴

131. These documented problems have led election officials of both political parties to denounce the Maricopa County “audit.” The Republican Chairman of the Maricopa County Board of Supervisors described the “audit” as a “grift disguised as an audit.”⁵⁵

132. Despite the Maricopa County “audit” being widely discredited, the Arizona State Senate and Cyber Ninjas have made outlandish claims about what the “audit” has purportedly revealed, including that the county deleted voter

⁵⁴ Maritsa Georgiou, Arizona voting system data sent to Montana lab as part of latest audit, NBC Montana (June 3, 2021), <https://nbcmontana.com/news/local/arizona-voting-system-data-sent-to-montana-lab-as-part-of-latest-audit>.

⁵⁵ Michael Wines, *Arizona Vote Review Is ‘Political Theater’ and ‘Sham,’ G.O.P. Leaders Say*, N.Y. Times (May 17, 2021), <https://www.nytimes.com/2021/05/17/us/arizona-audit-trump.html>.

databases⁵⁶ and that there were 74,000 plus “extra” ballots voted in the county.⁵⁷

While several false claims were later retracted, they were first used as proof that the election was “rigged.”⁵⁸

E. Threats Against Election Workers and Voters

133. As a result of the lies and misinformation spread about the 2020 election, election workers in Pennsylvania and elsewhere have been subject to harassment, intimidation, and threats.

134. For instance, a Republican Commissioner in Philadelphia has received numerous threats, including messages calling him “a traitor.” He has been told he would be “FATALLY SHOT” and that there would be “HEADS ON SPIKES” as a result of his actions.⁵⁹

⁵⁶ Jane C. Timm, *Arizona GOP's election auditors backtrack on destroyed data claim*, NBC News (May 19, 2021), <https://www.nbcnews.com/politics/elections/company-conducting-arizona-gop-s-election-audit-backtracks-deleted-database-n1267900>.

⁵⁷ Steve Goldstein & Mark Brodie, *How 2 Arizona Journalists Debunked Cyber Ninjas' Claim About 74,000 Ballots*, KJZZ (Aug. 4, 2021), <https://kjzz.org/content/1705516/how-2-arizona-journalists-debunked-cyber-ninjas-claim-about-74000-ballots>.

⁵⁸ *Arizona Republican calls Trump 'deleted database' statement 'unhinged'*, The Guardian (May 16, 2021), <https://www.theguardian.com/us-news/2021/may/16/arizona-republican-trump-deleted-database-statement-unhinged>; <https://apnews.com/article/technology-joe-biden-arizona-government-and-politics-ap-fact-check-0e7fad7e5bdf02d953c6b90a474267cc>; Jonathan Cooper, *AP FACT CHECK: Trump makes false claims about Arizona audit*, AP News (July 17, 2021), <https://apnews.com/article/technology-joe-biden-arizona-government-and-politics-ap-fact-check-0e7fad7e5bdf02d953c6b90a474267cc>

⁵⁹ Brennan Center for Justice & the Bipartisan Policy Center, *Election Officials Under Attack How to Protect Administrators and Safeguard Democracy* (June 16, 2021), https://www.brennancenter.org/sites/default/files/2021-06/BCJ-129%20ElectionOfficials_v7.pdf (emphasis original).

135. Other county election officials have been threatened in the wake of activities undertaken by members of the Committee.

136. In response to such threats, the U.S. Department of Justice launched a task force on threats against election workers in June 2021. At the time, the Deputy Attorney General noted that there had “been a significant increase in the threat of violence against Americans who administer free and fair elections throughout our Nation.”⁶⁰

137. Since the beginning of 2020, approximately one-third of Pennsylvania’s election workers have left their jobs.⁶¹

138. Efforts to delegitimize Pennsylvania’s 2020 election results are now directly contributing to poll worker attrition and the Commonwealth is now facing a shortage of people willing to staff polling places on Election Day. Election workers have told county administrators that they have been harassed and intimidated by people claiming that the results of the last election were fraudulent.

139. In the summer of 2021, some residents of York County began reporting that people were coming to their doors to make inquiries about how they

⁶⁰ Dep. Atty. Gen. Lisa O. Monaco, Guidance Regarding Threats Against Election Workers (June 25, 2021), <https://www.justice.gov/dag/page/file/1406286/download>.

⁶¹ Anthony Izaguirre, *Exodus of election officials raises concerns of partisanship*, AP (June 13, 2021), <https://apnews.com/article/election-officials-retire-trump-2020-threats-misinformation-3b810d8b3b3adee2ca409689788b863f>.

had voted in the 2020 general election. After receiving complaints about the activity, the York County Commission referred the issue to the police.⁶² A similar door knocking effort was planned in Lancaster County in August.⁶³

III. The Committee Has Initiated an Unlawful “Investigation” of Pennsylvania’s Elections

140. In the wake of the prolonged and concerted effort to cast doubt on the results of the 2020 presidential election, and in spite of comprehensive hearings already conducted by the Senate’s Special Committee on Election Integrity and Reform and the House State Government Committee, *see supra* ¶¶ 59-62, the Intergovernmental Operations Committee has begun an unlawful “investigation” into the November 2020 and May 2021 elections. Pursuant to this investigation, the Committee has improperly issued the subpoena challenged here.

⁶² Teresa Boeckel, ‘*This is 100% voter intimidation*’: Residents in York County questioned about their vote, York Daily Record (July 29, 2021), <https://www.ydr.com/story/news/2021/07/29/york-county-voter-intimidation-alleged-residents-asked-about-elections-investigation-follows/5418312001/>; Logan Hullinger, ‘Election integrity committee’ in York County accused of voter intimidation, York Dispatch (July 29, 2021), *available at* 2021 WLNR 24541847.

⁶³ Carter Walker, *Online Group Planning Door Knocking Campaign in Lancaster County in Attempt to Audit 2020 Election*, LancasterOnline (Aug 6, 2021), https://lancasteronline.com/news/politics/online-group-planning-door-knocking-campaign-in-lancaster-county-in-attempt-to-audit-2020-election/article_22c94daa-f62e-11eb-ae92-e7453d40446f.html.

A. *The Committee's Attempts to "Audit" and "Investigate" Recent Elections*

141. The Committee's current effort began earlier this summer, when then-Chair of the Committee Senator Mastriano publicly pushed to "audit" Pennsylvania's recent elections.

142. In June 2021, Senators Mastriano and Dush toured the facility where Cyber Ninjas was performing its Maricopa County "audit." After his visit, Senator Mastriano wrote that "[a] county audit like the one authorized by the Arizona State Senate is critically necessary for our Commonwealth."⁶⁴ Senator Dush praised the Arizona audit as "very professional"⁶⁵ and opined that it "is what we should be doing here in Pennsylvania."⁶⁶ Senator Dush added that the Cyber Ninjas are "going to set the standard for any future forensic audits of elections."⁶⁷

143. On July 7, 2021, Senator Mastriano, as Chair of the Committee, issued a "Request for Information Pertaining to the 2020 General Election and

⁶⁴ Sen. Doug Mastriano, *Op-Ed: Observations after touring Arizona's Election Audit Operation*, SenatorMastriano.com (June 9, 2021), <https://senatormastriano.com/2021/06/09/op-ed-observations-after-touring-arizonas-election-audit-operation/>.

⁶⁵ Sen. Cris Dush, *Sen. Dist. 25 Telephone Town Hall*, Facebook (July 13, 2021), https://www.facebook.com/watch/live/?v=510629936819053&ref=watch_permalink.

⁶⁶ Marcie Schellhammer, *Pa. state senator visits Ariz., pushes for election audit*, Olean Times Herald (June 5, 2021), https://www.oleantimesherald.com/news/pa-state-senator-visits-ariz-pushes-for-election-audit/article_5efd09f4-7c0e-54d0-ab84-871c09d19aed.html?fbclid=IwAR1b84EKgSqUXWrL9-bBMMaI_V-oCMB2Hl3yBwYyen2T5SwtwANOMx-dL9I.

⁶⁷ Sen. Cris Dush, *My Trip to Arizona and Other Updates*, Facebook (June 4, 2021), <https://www.facebook.com/SenatorCrisDushPA/videos/688676965258866>.

2021 Primary Election” to the Boards of Elections of Philadelphia, Tioga, and York counties. A true and correct copy of Senator Mastriano’s letter to the Philadelphia Board of Elections is attached as Exhibit A. The stated intent of the Request for Information was to conduct a “forensic investigation of the election results and processes for the 2020 General Election and 2021 Primary.” Ex. A at 3.

144. The Request for Information sought access to and disclosure of 48 different categories of election materials, including electronic voting systems, tabulation equipment, ballot marking and sorting equipment, and ballots cast, as well as voter rolls, voter identification information, and more.

145. On July 14, 2021, the York County Board of Commissioners responded that they would not comply, and corrected Senator Mastriano’s claim that certain election practices had “damaged the integrity and confidence in our election process.”⁶⁸ The letter explained all the ways in which the Board had “upheld [its] commitment of being transparent and accountable not only in elections but in all we do for the residents of York County.”⁶⁹

146. On July 29, 2021, the Tioga County Commissioners also responded that they would not comply with the request for information.⁷⁰

⁶⁸ Ltr. from Julie Wheeler, et al., to Sen. Mastriano (July 14, 2021).

⁶⁹ *Id.*

⁷⁰ Ltr. from Christopher P. Gabriel to Sen. Mastriano (July 29, 2021).

147. On July 30, 2021, the Philadelphia City Commissioners declined to provide the requested materials or participate in the “forensic investigation.” In doing so, the Commissioners noted that Philadelphia’s election equipment had been certified by state and federal authorities, that courts had repeatedly found no evidence of election malfeasance, and that Philadelphia had participated in all required audits, reviews and certifications of the elections.⁷¹

148. On information and belief, the Tioga County Board of Election commissioners received death threats as a result of declining to participate in the “forensic audit.”⁷²

149. On August 20, 2021, Senator Corman removed Senator Mastriano as Chair of the Committee, and appointed Senator Dush to replace him.⁷³

150. On August 20, 2021, Senator Dush said in a statement that “[t]here have been stories that Senate Pro Tempore Corman has moved this investigation to me for the purpose of killing it. The opposite is true. We should have been having

⁷¹ Ltr. from Lisa Deeley to Sen. Mastriano (July 30, 2021).

⁷² See John Beauge, *Election audit supporter condemns death threats received by Tioga County commissioners*, PennLive (Aug. 2, 2021), <https://www.pennlive.com/news/2021/08/election-audit-supporter-condemns-death-threats-received-by-tioga-county-commissioners.html>; Rhea Jah, *Tioga County officials reportedly received death threats amidst election audit debate* (July 22, 2021), <https://www.mytwintiers.com/news-cat/politics/tioga-county-officials-reportedly-received-death-threats-amidst-the-election-audit-decision/>.

⁷³ Sen. Jake Corman, *Corman Issues Statement on Forensic Investigation of Recent Elections, Mastriano Obstruction* (Aug. 20, 2021), <https://www.senatorcorman.com/2021/08/20/corman-issues-statement-on-forensic-investigation-of-recent-elections-mastriano-obstruction/>.

hearings and moving toward a more formalized plan to conduct an investigation weeks ago.”⁷⁴

151. On September 2, 2021, Senator Dush announced that the Committee was conducting an “investigation into Pennsylvania’s election system” and “into the 2020 General Election and the 2021 Primary Election.”⁷⁵

152. That same day, Senator Dush also launched a website to “encourag[e] Pennsylvanians to share any potential violations of election law or voting irregularities they ha[d] witnessed personally.”⁷⁶ The Senate Special Committee on Election Integrity and Reform had already received more than 20,000 public comments on the 2020 election.⁷⁷ The Special Committee did not identify any comment as containing a credible allegation of fraud or misconduct.

⁷⁴ Pennsylvania Senate Republicans, *Senator Cris Dush Issues Statement on Election Integrity Review* (Aug. 20, 2021), <https://www.pasenategop.com/blog/senator-cris-dush-issues-statement-on-election-integrity-review/>.

⁷⁵ Pa. Senate Republicans, *Senate Intergovernmental Operations Committee Plans First Public Hearing of Election Investigation* (Sept. 2, 2021), <https://www.pasenategop.com/blog/senate-intergovernmental-operations-committee-plans-first-public-hearing-of-election-investigation/>.

⁷⁶ Pennsylvania Senate Republicans, *Senate Intergovernmental Operations Committee Invites Public to Submit Sworn Testimony in Election Investigation* (Sept. 2, 2021), <https://www.pasenategop.com/blog/senate-intergovernmental-operations-committee-invites-public-to-submit-sworn-testimony-in-election-investigation/>; Pennsylvania Senate Intergovernmental Operations Comm., *Election Investigation Sworn Testimony*, <https://intergovernmental.pasenategop.com/electioninvestigation/> (last visited Sept. 20, 2021).

⁷⁷ Senate Special Committee in Election Integrity and Reform, *Report on the Special Committee’s Findings and Recommendations to the Senate and the Senate State Government Committee* at 7, <https://pasenelectioncommittee.com/wp-content/uploads/sites/106/2021/06/election-integrity-report-final.pdf>.

153. After Senator Corman directed the Committee's leadership change, he said former President Trump is "comfortable with where we're heading and so we're going to continue that work."⁷⁸

154. Senator Corman said in defense of the investigation, "I don't necessarily have faith in the [election] results. . . . I think there were many problems in our election that we need to get to the bottom of."⁷⁹

155. Senator Dush told PennLive that he had been in touch with former President Trump regarding his audit plans. "He congratulated me and said that he wanted to have confidence in me," Senator Dush said of his conversation with the former President. "He's going to be watching me."⁸⁰

B. The Committee's September 9 Hearing Supplies No Evidence of Fraud

156. As the first step of its "investigation," the Committee held a "Public Hearing on the Investigation of the 2020 General Election and the 2021 Primary

⁷⁸ Marc Levy & Sam Dunklau, *Hearings in election 'investigation' to begin this week, Corman says*, WITF (Aug. 23, 2021), <https://www.witf.org/2021/08/23/hearings-in-election-investigation-to-begin-this-week-corman-says/>.

⁷⁹ Andrew Seidman, *Top Pa. GOP lawmaker says hearings will begin this week to start 'forensic investigation' of 2020 election*, The Philadelphia Inquirer (Aug. 24, 2021), <https://www.inquirer.com/politics/pennsylvania/jake-corman-pennsylvania-election-audit-hearings-20210823.html>.

⁸⁰ Sara Murray, *Republican state senator kicks off audit push in Pennsylvania*, CNN.com (Sept. 9, 2021), <https://www.cnn.com/2021/09/09/politics/pennsylvania-audit-state-senator/index.html>.

Election” on September 9, 2021. A true and correct copy of the September 9 hearing transcript is attached as Exhibit B.⁸¹

157. Fulton County Commissioner Stuart Ulsh was the only official to testify at the September 9 hearing.

158. Commissioner Ulsh is a supporter of former President Trump’s efforts to undermine confidence in the results of the 2020 presidential election. For example, on November 9, 2020, two days after the Pennsylvania race was called for President Biden, Commissioner Ulsh wrote in an email to two Pennsylvania legislators:

The people are asking who all is in this fight with Senator Mastriano It couldn’t hurt the Trump campaign if our state representatives all got involved. If we don’t stop this election problems, next will be worse. If there were 109 House and 27 Senate with Senator Mastriano, it would all -- it would be a big help.⁸²

159. Commissioner Ulsh testified that a company he authorized to “investigate” how Fulton County conducted the 2020 general election, did not identify any fraud in Fulton County’s election. Ex. B at 52:10-55:10, 63:3-16,

⁸¹ See also Senate Intergovernmental Operations Committee, *Public Hearing on the Investigation of the 2020 General Election and the 2021 Primary Election* (Sept. 9, 2021), <https://intergovernmental.pasenategop.com/intergovernmental-090821/>.

⁸² *Fulton County Commissioners Ask Sen. Judy Ward and Rep. Jesse Topper To Help Overturn Election Results In November*, Penn. Spotlight (Aug. 11, 2021), <http://www.paspotlight.org/2021/fulton-county-commissioners-ask-sen-judy-ward-and-rep-jesse-topper-to-help-overturn-election-results-in-november>.

66:9-13. The company investigated Fulton County at the behest of Senators Mastriano and Judy Ward.⁸³

160. Secretary Degraffenreid provided written testimony, but did not attend the September 9 hearing in light of pending litigation, including litigation with Commissioner Ulsh and other Fulton County officials concerning election matters.⁸⁴

C. The Committee's September 15 Hearing to Approve the Subpoena

161. On September 15, 2021, the Committee held a "Voting Meeting – Consideration of a Motion to Authorize the Issuance of Subpoenas." A true and correct copy of the September 15 hearing transcript is attached as Exhibit C.⁸⁵

162. Senator Dush began by moving to issue a subpoena and read a list of document requests into the record. Ex. C at 5:22-8:19. In introducing the subpoena, Senator Dush framed the Committee's investigation in broad terms, referring to

⁸³ Jeremy Duda, *Group led by 'kraken' lawyer Sidney Powell hired the firm recounting AZ's election to probe election in Fulton Co.*, Pennsylvania Capital-Star (May 24, 2021), <https://www.penncapital-star.com/government-politics/group-led-by-kraken-lawyer-sidney-powell-hired-the-firm-recounting-azs-election-to-probe-a-pa-election/>; Jeremy Duda, *Wake Technology Services audited a Pennsylvania election as part of the #StopTheSteal movement* (May 21, 2021), <https://www.azmirror.com/2021/05/21/wake-technology-services-audited-a-pennsylvania-election-as-part-of-the-stopthesteal-movement/>

⁸⁴ See Letter from Acting Secretary Veronica Degraffenreid to Senator Cris Dush & Senator Anthony Williams (Sept. 9, 2021), <https://intergovernmental.pasenategop.com/wp-content/uploads/sites/14/2021/09/090921-Degraffenreid-letter-to-Senate-IOC.pdf>.

⁸⁵ See also Senate Intergovernmental Operations Committee, *Voting Meeting – Consideration of a motion to authorize the issuance of subpoenas* (Sept. 15, 2021), <https://intergovernmental.pasenategop.com/intergovernmental-091521/>.

“this body’s investigation into the 2020 general election and 2021 primary election and how the election code is working after the sweeping changes of Act 77 of 2020.” Ex. C at 4:14-16. In response to questions, however, Senator Dush described a very different focus: an audit to verify the identity of Pennsylvanians who voted in the 2020 general election and their eligibility to vote.

SENATOR SANTARSIERO: Thank you, Mr. Chairman. I just have a few questions, if I may. First, I’m trying to understand the breadth of the subpoena and what is being requested. Can you explain why it is that the proposed subpoena would be requesting Social Security and driver’s license numbers?

SENATOR DUSH: Those documents are part of any audit that the auditor general would conduct or anybody who is **looking to verify the identity of individuals and their place of residence and their eligibility to vote.**

SENATOR SANTARSIERO: Okay. Well, why are we trying to verify the identity of these individuals? There are almost seven million people, for example, who voted in the November 20 2020 elections, both in person and by mail-in and absentee ballot. Why are we trying to verify their identities?

SENATOR DUSH: **Because there have been questions regarding the validity of people who have voted, whether or not they exist. Again, we are not responding to proven allegations. We are investigating the allegations to determine whether or not they are factual.**

Id. at 16:22-17:20 (emphasis added); *see also id.* at 16:18-21 (Social Security and driver’s license numbers are needed to assess the “veracity of the individual voters and whether or not they were authorized”); *id.* at 19:12-13 (“Again, it is to verify

the individuals.”); *id.* at 20:2-5 (“This is an investigation to determine if there are failures with regard to ensuring the integrity of the voter registration system.”).

163. When questioned, Senator Dush indicated that he would retain a third-party vendor to conduct an investigation. *Id.* at 20:12-14. He explained that the vendor had not been chosen but would be selected by Senator Dush, his team, Senate Republican legal counsel, and possible outside counsel. *Id.* at 20:15-25. But Senator Dush declined to identify who exactly would be vetting potential vendors and did not describe the vetting process being used. *Id.* at 20:6-26:17.

164. Senator Dush declined to identify which vendors he was considering for the job and what access they would have to the information requested. *Id.* at 22:10-25:13. He would not rule out retaining vendors associated with former Trump campaign lawyer Sidney Powell or those who had worked for candidates in the elections under investigation. *Id.* at 25:21-26:11, 39:10-40:11.

165. Senator Dush did not identify any *evidence* of fraud or other material irregularities in the 2020 or 2021 elections that would justify the subpoena. In fact, Senator Dush conceded that he believes the prior election audits were done properly and accurately, on a bipartisan basis, and that Republican election commissioners acknowledge that the audits were done accurately and effectively. *Id.* at 60:4-25.

166. Rather, Senator Dush and other Republican members claimed that the investigation was based on “questions” about the integrity of the election. *See id.* at 17:15-20 (statement of Sen. Dush); 56:18-20 (Sen. Judy Ward referring to the unanswered “questions” of her “outraged” constituents). These “questions” are the same ones pushed by former President Trump and his supporters—including Senators Dush and Corman—to falsely claim that President Biden did not win Pennsylvania in the 2020 general election.

167. Senator Dush indicated that the investigation would be open ended:

SENATOR WILLIAMS: Well, I got that, but do we know what the magnitude of costs of this activity may be? Have you gotten estimates about what this may cost?

SENATOR DUSH: We’re getting estimates on specific elements and then if evidence leads to further inquiry, ***then that has the potential to grow***. So, as it relates right now, we’re working on a limited scope and a limited investigation within the questions that have been raised about what has gone on so far, and then we’ll see where it goes from there.

Id. at 62:2-12 (emphasis added).

168. The Committee voted on party lines to authorize Senator Dush to issue a subpoena *duces tecum* (the “Subpoena”), with all seven Republican

members voting in favor, and all four Democratic members voting in opposition.

See id. at 65:1-66:12.⁸⁶

D. The Subpoena

169. On September 15, 2021, the Committee issued and served the Subpoena, demanding that the Secretary produce seventeen categories of documents no later than October 1, 2021 at 4:00 p.m. A true and correct copy of the Subpoena is attached as Exhibit D. A true and correct copy of the Certificate of Service is attached as Exhibit E.

170. The Subpoena seeks detailed information about *every* Pennsylvania registered voter, including names, addresses, dates of birth, detailed voting history, driver's license numbers, and partial Social Security numbers.

171. The Subpoena also seeks information about the Department of State's communications with county election officials between May 1, 2020 and May 31, 2021; election procedures and policies in effect between August 1, 2020 and June 30, 2021; materials used to train election workers between August 1, 2020 and June 30, 2021; a copy of the certified results of the November 2020 general election and 2021 primary election; reports of audits and/or reviews of the Statewide Uniform Registry of Electors (SURE) system from 2018 to the present;

⁸⁶ *See also* Senate Committee Roll Call Votes, Intergovernmental Operations Committee (Sept. 15, 2021), <https://www.legis.state.pa.us/cfdocs/legis/RCC/Public/listVoteSummary.cfm?sYear=2021&sInd=0&cteeCde=57&theDate=09/15/2021&RollCallId=457>.

and 2021 voter registration reports submitted to the Department of State. Ex. D at 1-3.

172. The Subpoena is signed by Senator Dush in his capacity as Chair of the Committee and purports to be “issued pursuant to permission granted to the Chair of the Senate Intergovernmental Operations Committee and in accord with the Constitution and Rules of the Senate of Pennsylvania.” *Id.* at 3.

E. The Committee Has Not Identified Adequate Measures to Protect the Private, Personal Information It Demands

173. When Pennsylvania law permits disclosure of personal information about Pennsylvania voters, the law circumscribes disclosure to protect privacy and personal security.

174. Although the Department of State and counties release certain voter information in “public information lists” upon request, Pennsylvania law limits what personal information can be disclosed. 25 Pa. Cons. Stat. § 1404; 4 Pa. Code § 183.14.

175. All or part of a voter’s Social Security and driver’s license number cannot be disclosed. 25 Pa. Cons. Stat. § 1404(a)(1); 4 Pa. Code § 183.14(c)(3). In addition, state and federal judges, state and federal law enforcement officers, state prosecutors, parole officers, correctional employees, individuals with a Protection from Abuse order, individuals granted a protection order due to stalking, and other

individuals who can demonstrate a threat to personal safety can request that their home addresses be not disclosed. 4 Pa. Code § 183.14(c)(4)-(5).

176. Public information lists can be used only for purposes related to elections, political activities, or law enforcement, and a person obtaining the list must so attest in writing. 25 Pa. Cons. Stat. § 1404(b)(3), (c)(2); 4 Pa. Code § 183.14(b)(4)-(5). The lists cannot be used for commercial purposes. 25 Pa. Cons. Stat. § 1207(b). The lists also cannot be published on the Internet. 4 Pa Code § 183.14(k).

177. The Department and counties must also release certain voter information in “street lists” upon request, and Pennsylvania law likewise limits when the information is disclosed, who receives the information, and what can be disclosed. 25 Pa. Cons. Stat. § 1403; 4 Pa. Code § 183.13.

178. A county must also release absentee and mail-in voters’ names and addresses upon request, but cannot provide driver’s license numbers, or all or part of the Social Security numbers. 25 Pa. Stat. §§ 3146.9(b), (c), 3150.17(b), (c).

179. The Department and counties must allow public inspection by a Pennsylvania voter of certain records in controlled circumstances. 25 Pa. Stat. §§ 2622, 2648, 1207. Even then, personal voter information cannot be used for commercial or improper purposes. 25 Pa. Cons. Stat. § 1207(b). Counties cannot make partial Social Security numbers or driver’s license numbers available for

public inspection. 25 Pa. Stat. §§ 3146.9(a); 3150.17(a); 2602(z.5). Likewise, the Department does not make partial Social Security or driver's license numbers available for public inspection.

180. The Department takes additional steps to protect the personal information of Pennsylvania voters. For example, the Department and counties have SURE kiosks that allow access to certain voter information, but only if the user of the kiosk first attests that the information will only be used for purposes related to elections, political activities, or law enforcement. The kiosk does not allow access to Social Security or driver's license numbers and can only display a limited number of records. In addition, if a court needs to access the SURE system as part of a nomination challenge or other election matter, the Department has created a separate SURE view to avoid sharing Social Security or driver's license numbers in open court.

181. Upon information and belief, the Committee has not implemented basic security protocols to ensure that the information requested in the Subpoena remains safe and secure and is not misused.

182. Instead, Senator Dush, his staff, Senate Republican legal counsel, and possible outside counsel intend to transfer the requested information to unknown third-party vendor. Ex. C at 20:8-21:22. Upon information and belief, Senator Dush has not yet selected a vendor nor established the scope of access the vender

will have to the personal information of more than nine million Pennsylvania voters. *Id.* 20:8-21:4, 23:13-25:13. Senator Dush refused to share any information about the prospective vendors, whether they are qualified to securely handle the personal information of more than nine million Pennsylvania voters, and whether they have conflicts of interest. *See supra* ¶¶ 163–**Error! Reference source not found..**

183. Senate Majority Leader Kim Ward acknowledged that Pennsylvanians are rightfully concerned about the disclosure of their private, personal information sought in the Subpoena, and admitted that even she does not know what will happen with that information: “And yeah, (the last four digits of your Social Security is) scary — and the license. So, I don’t know what’s going to happen with those things.”⁸⁷

CLAIM I
Declaratory Judgment and Injunctive Relief
(Violation of the Right to Privacy)

184. Petitioners reallege and incorporate by reference the preceding allegations in this Petition as if fully set forth herein.

⁸⁷ Bob Mayo, *Voters’ private info subpoenaed by State Senate Republicans; Democrats challenge move in court*, WTAE Pittsburg (Sept. 21, 2021), <https://www.wtae.com/article/voters-private-info-subpoenaed-by-state-senate-republicans-democrats-challenge-move-in-court/37671056#>.

185. “[T]he legislature’s investigative role, like any other governmental activity, is subject to the limitations placed by the Constitution on governmental encroachments on individual freedom and privacy.” *Com. ex rel. Carcaci v. Brandamore*, 459 Pa. 48, 53 (1974); *see also Annenberg v. Roberts*, 333 Pa. 203, 216 (1938).

186. The Pennsylvania Constitution protects the right of Pennsylvanians to informational privacy, which includes the right to control access to and the dissemination of personal information. Pa. Cons. art. I, § 1; *Pennsylvania State Educ. Ass’n v. Commonwealth Dep’t of Cmty. & Econ. Dev.*, 637 Pa. 337, 350-54 (2016).

187. Before the disclosure of any private, personal information, the Pennsylvania Constitution requires a balancing of whether the right of informational privacy outweighs the public’s interest in disclosure. *See, e.g., Reese v. Pennsylvanians for Union Reform*, 643 Pa. 530, 555-57 (2017).

188. People whose personal information is subject to potential disclosure must be given notice and an opportunity to be heard. *City of Harrisburg v. Prince*, 219 A.3d 602, 619 (Pa. 2019).

189. The Commonwealth has a quasi-sovereign interest in protecting Pennsylvanians’ right to privacy.

190. The Pennsylvania Constitution also protects Pennsylvanians' reasonable expectations of privacy. Pa. Cons. art. I, § 8.

191. “[W]hen the legislature undertakes to investigate a matter, and in the course thereof it seeks to obtain records in which one has a reasonable expectation of privacy, a subpoena therefor should not issue except upon a showing of probable cause that the particular records sought contain evidence of civil or criminal wrongdoing.” *Lunderstadt v. Pennsylvania House of Representatives Select Comm.*, 513 Pa. 236, 248 (1986).

192. Paragraphs 4 through 13 of the Subpoena demand access to and disclosure of the name, address, date of birth, driver's license number, and last four digits of the Social Security number for each of more than nine million registered voters in Pennsylvania.

193. A person's address, date of birth, driver's license number, and last four digits of the Social Security number are, both independently and in the aggregate, personal information protected by the Pennsylvania Constitution's guarantee of informational privacy.

194. The Committee has identified no public interest that would be served by disclosure of Pennsylvanians' private information.

195. Pennsylvania voters have a well-recognized privacy interest in their personal information that heavily outweighs any public interest the Committee purports to have in obtaining personal information for all Pennsylvania voters.

196. Pennsylvanians also have a reasonable expectation of privacy in their date of birth, driver's license number, and last four digits of the Social Security number, both independently and in the aggregate.

197. Various federal and state laws exhibit the privacy interest held in all or part of a Social Security number, a driver's license number, an address, and a date of birth.

198. The personal information requested in the Subpoena is personally identifiable—*i.e.*, it permits the identity of the individual to be directly inferred.

199. The personal information requested by the Subpoena—*i.e.*, name, birth date, address, driver's license number, and last four digits of the Social Security number—can be used to commit identity theft and financial fraud because this information is used by federal, state, and local agencies, as well as by financial institutions and other businesses, as a means of identifying an individual.

200. The personal information requested by the Subpoena—*i.e.*, name, birth date, address, and driver's license number or last four digits of the Social Security number—can be used to tamper with and change an individual's voter

registration.⁸⁸ Changes include changing the voter's name, the voter's address, and the voter's party affiliation.

201. The personal information requested by the Subpoena—*i.e.*, name, birth date, address, and driver's license number or last four digits of the Social Security number—also can be used to request a mail-in ballot for the voter and have it sent to a different mailing address.

202. The Committee's interest in the requested information is not in furtherance of a legitimate legislative purpose, and so does not outweigh the privacy interests of over nine million Pennsylvanians.

203. Even if the Committee's Subpoena was issued for a legitimate legislative purpose, there is no discernible reason—and the Committee has not articulated one—why the Committee must obtain the partial Social Security number, driver's license number, address, and date of birth for more than nine million Pennsylvania voters to take legislative action.

204. The Committee's interest in the requested information also does not outweigh the risks attendant to the Committee's, or an unidentified third party's, unregulated access to over nine million Pennsylvanians' private, personal information.

⁸⁸ See, e.g., Pa. Dep't of State, *Voter Registration Application*, <https://www.pavoter.services.pa.gov/Pages/VoterRegistrationApplication.aspx>.

205. The Committee has not demonstrated probable cause that the partial Social Security number, driver's license number, and date of birth for more than nine million voters contain evidence of civil or criminal wrongdoing.

206. Because compliance with the Subpoena would violate Pennsylvanians' constitutional right to privacy and because the Subpoena was issued without probable cause, paragraphs 4 through 13 of the Subpoena are unenforceable.

CLAIM II
Declaratory Judgment and Injunctive Relief
(Violations of the Right to Free Elections and the Right to Vote under the
Pennsylvania and U.S. Constitutions)

207. Petitioners reallege and incorporate by reference the preceding allegations in this Petition as if fully set forth herein.

208. "[T]he legislature's investigative role, like any other governmental activity, is subject to the limitations placed by the Constitution on governmental encroachments on individual freedom and privacy." *Carcaci*, 459 Pa. at 53; *see also Annenberg*, 333 Pa. at 216.

209. In Pennsylvania, the right to vote in democratic elections is fundamental. *See Banfield v. Cortes*, 631 Pa. 229, 265 (2015).

210. To protect the integrity of the fundamental right to vote, the Pennsylvania Constitution requires that "Elections shall be free and equal; and no

power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Pa. Cons. art. I, § 5.

211. The so-called “free and equal” clause is “given the broadest interpretation, one which governs all aspects of the electoral process.” *League of Women Voters v. Commonwealth*, 645 Pa. 1, 117 (2018).

212. The “expansive sweep of the words ‘free and equal’” is “indicative of the framers’ intent that all aspects of the electoral process, to the greatest degree possible, be kept open and unrestricted to the voters of our Commonwealth, and, also, conducted in a manner which guarantees, to the greatest degree possible, a voter’s right to equal participation in the electoral process for the selection of his or her representatives in government.” *Id.* at 100.

213. Pennsylvania’s “free and equal” clause safeguards against acts that “shall impair the right of suffrage rather than facilitate or reasonably direct the manner of its exercise.” *Id.* at 108-09 (quoting Charles R. Buckalew, *An Examination of the Constitution of Pennsylvania. Exhibiting The Derivation and History of Its Several Provisions*, Article I at 10 (1883)). The “free and equal” clause therefore must be interpreted to avoid “discouraging voters from participating in the electoral process,” as may be the case if, for example, a voter believes their vote does not count. *Id.* at 117.

214. Under the U.S. Constitution, “all qualified voters have a constitutionally protected right to vote.” *Reynolds v. Sims*, 377 U.S. 533, 554 (1964). The right to vote is a “fundamental political right” because it is “preservative of all rights.” *Id.* at 562.

215. Violations of the U.S. Constitution may arise when government action has a deterrent or chilling effect on a person’s willingness to exercise a constitutional right. *Laird v. Tatum*, 408 U.S. 1, 11 (1972).

216. The Commonwealth has a quasi-sovereign interest in Pennsylvanians’ willingness to exercise their fundamental right to vote.

217. The Committee has demanded a package of voters’ private, personal information, including partial Social Security numbers, driver’s license numbers, dates of birth, addresses, and names, and has publicly stated it plans to transfer that information to an unidentified third party.

218. If the Committee receives and shares with an unknown third party voters’ private, personal information, including partial Social Security numbers, driver’s license numbers, dates of birth, and addresses, current and prospective voters will fear that voting in future elections may risk the disclosure of private, personal information to either partisan actors or unknown third parties. They will also fear the intentional or unintentional misuse of that private, personal information.

219. Qualified voters who fear that voting will risk the intentional or unintentional misuse of private, personal information will be discouraged from exercising their fundamental right to vote and from participating in the electoral process.

220. Actions that discourage voters from exercising the fundamental right to vote interfere with the free exercise of the right of suffrage.

221. Because compliance with the Subpoena would violate both the Pennsylvania Constitution and U.S. Constitution, the Subpoena is unenforceable.

CLAIM III
Declaratory Judgment and Injunctive Relief
(Not In Furtherance of a Legitimate Legislative Purpose)

222. Petitioners reallege and incorporate by reference the preceding allegations in this Petition as if fully set forth herein.

223. The Pennsylvania General Assembly has statutory authority to issue subpoenas and compel testimony. 46 Pa. Stat. § 61; Senate Rule 14(d)(3).

224. The Pennsylvania General Assembly's investigatory power and subpoena power are not unlimited. *See Carcaci*, 459 Pa. at 53.

225. Courts protect against legislative compulsion to disclose information where the investigation will not further a legitimate legislative purpose. *Watkins v. United States*, 354 U.S. 178, 187, (1957); *see also Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031-32 (2020); *Carcaci*, 459 Pa. at 53.

226. At the hearing to approve the subpoena, Senator Dush claimed that the purpose for the subpoena was to gather private, personal information on millions of voters to verify the identity of Pennsylvanians who voted in the 2020 general election and their eligibility to vote. He made this claim despite the fact that Senator Dush and Committee members have not identified any evidence of voter fraud in that election.

227. Fraud investigations are the domain of the executive branch, and thus the search for election fraud does not serve any legitimate legislative purpose. *See Mazars*, 140 S. Ct. at 2032.

228. Further, there is no discernible reason—and the Committee has not articulated one—why the Committee must obtain the partial Social Security number, driver’s license number, address, and date of birth for more than nine million Pennsylvania voters to take legislative action.

229. Nor is the Committee’s investigation a genuine effort to assess “how the election code is working after the sweeping changes of Act 77 of 2020” and inform future legislation. Ex. C at 4:14-16.

230. In fact, Senators Corman and Dush—as well as other Committee and other state and national elected officials— have engaged in a prolonged, bad faith campaign to stoke distrust in Pennsylvania’s election administration.

231. Senator Dush has a long history of parroting former President Trump's baseless allegations of widespread voter fraud, has sought to disenfranchise millions of Pennsylvanians by attempting to overturn the results of the 2020 election, and has spent nearly a year promoting baseless conspiracy theories and allegations of widespread fraud in a blatant attempt to sow distrust in Pennsylvania's elections and American democracy. *See supra* ¶¶ 72–132.

232. The Subpoena cannot be divorced from the effort by former President Trump and his supporters, including Senators Corman and Dush, to promote distrust in the 2020 presidential election generally, and the results of Pennsylvania's election particularly. *See supra* ¶¶ 72–132.

233. The demand for private, personal information of more than nine million Pennsylvania voters is disconnected from any legitimate legislative need.

234. Because the Subpoena is not in furtherance of a legitimate legislative purpose, it is unenforceable.

CLAIM IV
Declaratory Judgment and Injunctive Relief
(Outside the Committee's Subject Matter Area and
Issued Without Authority)

235. Petitioners reallege and incorporate by reference the preceding allegations in this Petition as if fully set forth herein.

236. Pennsylvania's Senate Rules authorize each Standing Committee "[t]o maintain a continuous review of the work of the Commonwealth agencies concerned with their subject areas and the performance of the functions of government within each such subject area." Pa. Senate Rule 14(d)(1).

237. The Senate established the Committee in a 2011 resolution amending the Rules of the Senate. *See* Pennsylvania Senate Resolution No. 45, Session of 2011 (Feb. 28, 2011). As former Senate President Pro Tempore Joe Scarnati explained ahead of the Resolution, the new Committee on Intergovernmental Operations would allow for intensive review of plans to overhaul state agencies or to redirect their operations.⁸⁹

238. Senator Lloyd Smucker, the first Committee Chair, echoed this scope, announcing that the Committee would "have jurisdiction over proposals to

⁸⁹ *Senator Smucker Named Committee Chairman*, States News Service (Jan. 4, 2011).

restructure state government, such as consolidating state agencies, with the purpose of cutting costs and improving efficiency.”⁹⁰

239. Senator Mastriano—a current Committee member and its former Chair—has acknowledged the limited focus of the Committee, describing it as focused on “review[ing] proposals aimed at reducing red tape, streamlining government operations, enhancing government transparency and reforming the state’s regulatory code.”⁹¹

240. A review of Committee votes since its inception also demonstrates that its authority and expertise does not extend to elections. Until issuance of the Subpoena for election records, the Committee had never taken a vote that concerned Pennsylvania voting and election procedures in the nine years of its existence.⁹²

⁹⁰ *Id.*

⁹¹ See Sen. Doug Mastriano, *Mastriano Reappointed Chair of Senate Intergovernmental Operations Committee* (Jan. 13, 2021), <https://senatormastriano.com/2021/01/13/mastriano-reappointed-chair-of-senate-intergovernmental-operations-committee/>.

⁹² See Senate Committee Roll Call Votes: Intergovernmental Operations 2011 – 2012 Regular Session, <https://www.legis.state.pa.us/cfdocs/legis/RCC/PUBLIC/listVotes.cfm?SPick=20110&chamber=S&cteeCde=57> (five votes in 2012); Senate Committee Roll Call Votes: Intergovernmental Operations 2013 – 2014 Regular Session, <https://www.legis.state.pa.us/cfdocs/legis/RCC/PUBLIC/listVotes.cfm?SPick=20130&chamber=S&cteeCde=57> (four votes in 2013-14); Senate Committee Roll Call Votes: Intergovernmental Operations 2015 – 2016 Regular Session, <https://www.legis.state.pa.us/cfdocs/legis/RCC/PUBLIC/listVotes.cfm?SPick=20150&chamber=S&cteeCde=57> (two votes in 2015-16); Senate Committee Roll Call Votes: Intergovernmental Operations 2017 – 2018 Regular Session, <https://www.legis.state.pa.us/cfdocs/cteeInfo/index.cfm?Code=57&CteeBody=S&SessYear=2017> (no votes in 2017-18); Senate Committee Roll Call Votes: Intergovernmental Operations 2019 – 2020 Regular Session, <https://www.legis.state.pa.us/cfdocs/legis/RCC/PUBLIC/listVotes.cfm?SPick=20190>

241. By comparison, the State Government Committee has held four Committee votes in 2021 alone that involve voting and election procedures.⁹³ This is consistent with the long-standing understanding that election matters fall under the jurisdiction of the State Government Committee, and consistent practice of referring such matters to that committee.

242. The Senate President Pro Tempore consistently designates the State Government Committee as the standing committee responsible for reviewing regulations related to the Department of State. *See, e.g.*, 51 Pa. B. 775 (Feb. 13, 2021); 49 Pa. B. 597 (Feb. 9, 2019). Furthermore, the Department of State regularly works with and reports to the State Government Committee on election and voting matters. *See, e.g.*, 25 Pa. Stat. § 2627; 71 Pa. Stat. § 279.6.

243. A legislature's internal rules are enforceable. *See, e.g., Barenblatt v. U.S.*, 360 U.S. 109, 116 (1959). And it is fundamental that a Senate committee's investigative authority is tied to the scope of the authority vested in it by the Senate. *See Watkins*, 354 U.S. at 206.

&chamber=S&cteeCde=57 (eight votes in 2019-20); Senate Committee Roll Call Votes: Intergovernmental Operations 2021 – 2022 Regular Session, <https://www.legis.state.pa.us/cfdocs/legis/RCC/PUBLIC/listVotes.cfm?SPick=20210&chamber=S&cteeCde=57> (six votes in 2021).

⁹³ *See* Senate Committee Roll Call Votes, Senate of Pennsylvania Session of 2021 - 2022 Regular Session, Recent Committee Roll Calls: State Government 2021 – 2022 Regular Session, <https://www.legis.state.pa.us/cfdocs/legis/RCC/PUBLIC/listVotes.cfm?SPick=20210&chamber=S&cteeCde=41> (reflecting votes on legislation amending the Pennsylvania Election Code and provisions of the Pennsylvania Constitution regarding electors).

244. When evaluating subpoenas issued by a legislative committee, courts properly consider “whether the inquiry is within the authority of the issuing party.” *Lunderstadt*, 513 Pa. at 242. Legislative committees “are not to set themselves up as courts or grand juries rather than as entities intended to investigate and report on conditions for the information of members of the legislature.” *Id.* at 245; *see also McGinley v. Scott*, 401 Pa. 310, 323 (1960) (“[L]egislative investigations must be kept strictly within their proper bounds if the orderly and long-established processes of our coordinate branches of government are to be maintained.”).

245. The Intergovernmental Operations Committee is not responsible for voting and elections; this responsibility lies with the State Government Committee. Instead, the Intergovernmental Operations Committee is tasked with overseeing agency regulatory activity, with a particular focus on matters related to the Regulatory Review Act.

246. The Subpoena is unenforceable because elections are outside the Committee’s subject area and the Intergovernmental Operations Committee did not have authority to issue the Subpoena.

CLAIM V
Declaratory Judgment and Injunctive Relief
(Unlawful Demand for Critical Infrastructure Information)

247. Petitioners reallege and incorporate by reference the preceding allegations in this Petition as if fully set forth herein.

248. Federal law, including the Critical Infrastructure Information Act of 2002, 6 U.S.C. §§ 671-674, and the USA PATRIOT Act, 42 U.S.C. § 5195c, protect critical infrastructure and critical infrastructure information.

249. “Critical infrastructure” is “systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.” 42 U.S.C. § 5195c.

250. In January 2017, the U.S. Department of Homeland Security designated election systems as critical infrastructure.

251. “Critical infrastructure information” is “information not customarily in the public domain and related to the security of critical infrastructure or protected systems,” including information about “infrastructure or protected system to resist [] interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit.” 6 U.S.C. § 671(3).

252. The Protected Critical Infrastructure Information (PCII) Program protects critical infrastructure information from public disclosure. 6 U.S.C. § 673.

253. If a State has voluntarily submitted critical infrastructure information as part of the PCII Program and the submission is not in lieu of compliance with any regulatory requirement, then the information cannot (1) be made available under any State or local public records law, (2) be disclosed or distributed to any party without written consent of the person or entity submitting the information, or (3) “be used other than for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act.” 6 U.S.C. § 673(a)(1)(E).

254. Paragraph 16 of the Subpoena demands critical infrastructure information that the Department has properly submitted to the U.S. Department of Homeland Security under the PCII Program.

255. Because paragraph 16 of the Subpoena demands PCII, those records are protected from disclosure by federal law. The records can only be accessed in accordance with strict safeguarding and handling requirements, and only by those with an absolute need to know in order to perform homeland security duties.

256. The Committee is not authorized to access PCII. It does not perform homeland security duties and it is not requesting the information for the purpose of protecting critical infrastructure. Nor has the Committee implemented basic protocols to safeguard the security and privacy of information requested in the Subpoena.

257. The Subpoena is unenforceable to the extent it demands PCII in violation of federal law.

CLAIM VI
Declaratory Judgment and Injunctive Relief
(Unlawful Demand for Material Protected by
the Deliberative Process Privilege)

258. Petitioners reallege and incorporate by reference the preceding allegations in this Petition as if fully set forth herein.

259. Under the deliberative process privilege, government agencies may withhold “confidential deliberations of law or policymaking, reflecting opinions, recommendations or advice.” *Comm. v. Vartan*, 557 Pa. 390, 399 (1999) (quoting *Redland Soccer Club, Inc. v. Dep’t of the Army of the United States*, 55 F.3d 827, 853 (3d Cir. 1995)).

260. The deliberative process privilege exists “to allow the free exchange of ideas and information within government agencies.” *Vartan*, 557 Pa. at 399. As a result, it “benefits the public, and not the officials who assert the privilege.” *Id.* at 400.

261. The Subpoena demands “all reports of audits and/or reviews of the SURE system conducted by or for the Department of State between 2018 and the present.” Ex. D at 2, ¶ 16.

262. Included within the scope of this request may be confidential reviews and audits, prepared for the purpose of considering future changes to the SURE system, as well as discussions about these potential changes.

263. The Subpoena also demands a “copy of each and every version of all directives, guidance(s), policies, or procedures in effect at any time between August 1, 2020 and June 30, 2021 relating to elections, election systems, mail-in ballot applications, ballots, voting, compliance with state or federal election laws, polling places, and/or poll watchers.” Ex. D at 1, ¶ 2.

264. Although the best reading of paragraph 2 refers only to final directives, guidance, policies, and procedures, the Committee may intend the Subpoena to reach draft documents and discussions about those drafts.

265. Materials covered by paragraphs 2 and 16 are deliberative in character and that were made before the relevant deliberative process was completed. As a result, those materials are protected by the deliberative process privilege.

266. The Subpoena is unenforceable to the extent it seeks the production of material protected by the deliberative process privilege.

CLAIM VII
Declaratory Judgment and Injunctive Relief
(Overbreadth)

267. Petitioners reallege and incorporate by reference the preceding allegations in this Petition as if fully set forth herein.

268. The Subpoena demands production of seventeen separate categories of information and is overly broad and unduly burdensome.

269. Of the categories, eleven demand records, including private, personal information about Pennsylvania voters. Ten of these requests would require production of millions of such records, while the eleventh would require generating a non-existent compilation of information.

270. The Committee has not demonstrated why its investigation justifies the production of such an enormous volume of private, personal data.

271. The Subpoena is therefore unenforceable.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that the Court order the following relief:

- (A) Declare that the Subpoena *Duces Tecum* issued by the Pennsylvania State Senate Intergovernmental Operations Committee on September 15, 2021 is invalid and unenforceable because it:
 - i. Was not issued for a legitimate legislative purpose;

- ii. Concerns matters outside the Intergovernmental Operations Committee's subject matter area;
 - iii. Was issued without probable cause to seek information in which Pennsylvanians have a reasonable expectation of privacy;
 - iv. Demands information protected by the deliberative process privilege; and
 - v. Is overbroad.
- (B) Declare that compliance the Subpoena *Duces Tecum* issued by the Pennsylvania State Senate Intergovernmental Operations Committee on September 15, 2021 would:
- i. Violate the informational privacy rights of the more than nine million registered voters in Pennsylvania under Article I, Section 1 of the Pennsylvania Constitution;
 - ii. Violate the guarantee that elections shall be free and equal under Article I, Section 5 of the Pennsylvania Constitution;
 - iii. Interfere with the free exercise of the right of suffrage, in violation of Article I, Section 5 of the Pennsylvania Constitution;

- iv. Violate the fundamental right to vote under the First and Fourteenth Amendments of the U.S. Constitution; and
- v. Violate 6 U.S.C. § 673, prohibiting the disclosure of Critical Infrastructure Information.

(C) Enjoin Respondents from taking any further action to enforce the Subpoena *Duces Tecum* issued on September 15, 2021.

(D) Grant such other relief as is appropriate.

Dated: September 23, 2021

Respectfully submitted,

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/s/

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CERTIFICATE OF COMPLIANCE

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

Dated: September 23, 2021

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Attorney General
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VERIFICATION

I hereby verify that the statements made in the foregoing Petition for Review are true and corrected based upon my personal knowledge or information and belief.

I understand that false statements therein are subject to penalties of 18 Pa. Con. Stat. § 4904, relating to unsworn falsification to authorities.

September 23, 2021

SIGNATURE

NAME

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the following persons by certified mail, which service satisfies the requirements of

Pa.R.A.P. 121:

Senator Cris Dush
16 East Wing, Main Capitol
Harrisburg, PA 17120-3025

Senator Jake Corman
Room 350 Main Capitol Building
Harrisburg, PA 17120-3034

c/o Senator Jake Corman, Senate President Pro Tempore
Senate Intergovernmental Operations Committee
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c/o Senator Cris Dush, Committee Chair
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September 23, 2021

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