

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
ERIE DIVISION

PENNSYLVANIA STATE	:	
CONFERENCE OF THE NAACP,	:	
ET. AL.	:	Case No. 1:22-CV-339-SPB
	:	
Plaintiffs,	:	
	:	
v.	:	
AL SCHMIDT, ET. AL.	:	
	:	
Defendants.	:	

MOTION FOR SUMMARY JUDGMENT OF DEFENDANT, LANCASTER
COUNTY BOARD OF ELECTIONS

Under Fed. R. Civ. P. 56, defendant, Lancaster County Board of Elections (“LCBOE”) moves for summary judgment and requests that the Court dismiss all claims against it with prejudice. No plaintiff has Article III standing to maintain any of their claims against LCBOE. Moreover, Count I and Count II should be dismissed as a matter of law. LCBOE includes a memorandum of law, concise statement of undisputed material facts, and appendix with this motion.

Respectfully submitted,

Date: April 21, 2023

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Defendants.	:	
	:	

**MEMORANDUM OF LAW IN SUPPORT MOTION FOR SUMMARY JUDGMENT
OF DEFENDANT LANCASTER COUNTY BOARD OF ELECTIONS**

The court should grant summary judgment to defendant, Lancaster County Board of Elections (“LCBOE”), dismissing all claims against it with prejudice. Each plaintiff lacks Article III standing to maintain any of their claims against LCBOE because no plaintiff has been injured by *the conduct of LCBOE*. Even if plaintiffs did have Article III standing, they cannot maintain a private cause of action to enforce the materiality provision of the Civil Rights Act as the Attorney General of the United States retains exclusive power to enforce it. Finally, plaintiffs cannot maintain a claim under the Fourteenth Amendment because they have not presented any evidence that LCBOE treats mailed military and overseas ballots differently from domestic mailed and absentee ballots.

I. PLAINTIFFS LACK STANDING.

Each plaintiff lacks standing to maintain claims against LCBOE. As the Court is aware, “Article III standing is essential to federal subject matter jurisdiction,” *Hartig Drug Co. Inc. v. Senju Pharm. Co.*, 836 F.3d 261, 269 (3d Cir. 2016), and is “a threshold issue.” *The Pitt News v. Fisher*, 215 F.3d 354, 360 (3d Cir. 2000). It is well settled that “to meet the irreducible constitutional minimum of Article III standing, a plaintiff invoking federal jurisdiction bears the burden of establishing three elements. *Hartig.*, 836 F.3d at 269. They are a plaintiff must have “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338, (2016), as revised (May 24, 2016). Unlike at the pleading stage, at this stage of the proceedings, plaintiffs must produce *evidence* that they have standing to pursue their claims. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561, (1992) (To survive a motion for summary judgment for lack of standing, “the plaintiff can no longer rest on such mere allegations, but must set forth by affidavit or other evidence specific facts.”)

The individual plaintiffs lack standing because none of their injuries were caused by or related to the conduct of the LCBOE. Indeed, no individual plaintiff even lives in Lancaster County and no individual plaintiff ever had a ballot rejected by LCBOE. The associational plaintiffs equally lack standing to maintain claims against LCBOE. The associational plaintiffs lack organizational or associational standing to assert claims on behalf of their individual members because they have not identified

any member that would suffer harm because of the actions of LCBOE. *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 280 (3d Cir. 2014) (To maintain associational standing, “the plaintiff organization must make specific allegations establishing that at least one identified member had suffered or would suffer harm.”) The associational plaintiffs likewise lack standing to assert claims for their own harm because they too have not been injured by the conduct of the LCBOE. Rather, the associational plaintiffs admit they diverted resources because of a Pennsylvania Supreme Court decision, not the actions of LCBOE. Even if they did not make that admission, the associational plaintiffs have not produced any evidence that they ever devoted any resources directed to voters in Lancaster County to begin with. Moreover, regarding the diversion of resources for *future* elections, “spending money in response to that speculative harm cannot establish a concrete injury.” *Donald J. Trump for President, Inc. v. Way*, 2020 WL 6204477, at *8 (D.N.J. Oct. 22, 2020).

A. THE REMAINING INDIVIDUAL PLAINTIFFS ALLEGED HARM IS NOT FAIRLY TRACEABLE TO THE ACTIONS OF LCBOE.

Each of the remaining individual plaintiffs¹, Barry M. Seastead (“Seastead”), Marlene G. Gutierrez (“Gutierrez”), Aynne Margaret Pleban Polinski (“Polinski”), Joel Bencan (“Bencan”), and Laurence M. Smith (“Smith”) lack standing to maintain their claims against LCBOE because, in all events, none of their purported injuries were caused by the conduct of LCBOE. Therefore, the remaining individual plaintiffs cannot satisfy the second element required to maintain standing, which requires that

¹ The Court dismissed plaintiffs Terrizi, Diehl, and Boyle from this case on April 11, 2023 and they are no longer parties to this action. ECF No. 263.

their injuries are caused by “or causally connected and traceable to an action of the defendants.” [The Pitt News, 215 F.3d at 360](#). The remaining individual plaintiffs might have injuries caused by or connected to the action of *other defendants*, but not the actions of LCBOE.

Seastead is a Warren County voter and has been a registered voter in Warren County for decades. Am. Compl., [ECF No. 121](#), ¶ 30. The Warren County Board of Election, not the LCBOE, rejected Seastead’s mailed ballot in the November 2022 election. [Id.](#) Gutierrez is a York County voter and has been a registered voter in York County for over 45 years. [Id.](#), ¶ 32. The York County Board of Elections, not the LCBOE, did not count Gutierrez’s mailed ballot in the November 2022 general election. [Id.](#) Polinski is also a York County voter and has been registered to vote in York County for over 7 years. [Id.](#), ¶ 34. York County Board of Election, not LCBOE, did not count Polinski’s ballot in the November 2022 general election. [Id.](#) Bencan is a Montgomery County voter and has been registered to vote in Montgomery County for many years. [Id.](#), ¶ 34. Montgomery County Board of Elections, not LCBOE, did not count Bencan’s ballot in the November 2022 general election. [Id.](#) Smith too is a Montgomery County voter and has been registered to vote in Montgomery County since 1991. [Id.](#), ¶ 34. Montgomery County Board of Election also did not count Smith’s ballot in the November 2022 general election. In sum, the remaining individual plaintiffs do not live in Lancaster County, are not registered to vote in Lancaster County, have not voted in Lancaster County, do not intend to vote in Lancaster

County, and LCBOE has never rejected any ballots the individual plaintiffs might have cast.

The remaining individual plaintiffs are in the identical position as the plaintiffs in [*Donald J. Trump for President, Inc. v. Boockvar*, 502 F. Supp. 3d 899 \(M.D. Pa.\)](#), *aff'd sub nom. Donald J. Trump for President, Inc. v. Sec'y of Pennsylvania*, 830 F. App'x 377 (3d Cir. 2020). In that case, the district court for the Middle District of Pennsylvania dismissed for lack of standing claims brought by individual voters, whose mailed ballots were not counted in the 2020 presidential election, against various county boards of elections. *Id.* at 912. The district court dismissed their claims because, like the LCBOE here, “[n]one of Defendant Counties received, reviewed, or discarded Individual Plaintiffs' ballots.” *Id.* Here, the Court should reach the same conclusion.

The remaining individual plaintiffs lack standing as to LCBOE and the Court should dismiss with prejudice all claims brought by the individual plaintiffs against LCBOE.

B. THE ASSOCIATIONAL PLAINTIFFS HAVE NOT IDENTIFIED A SPECIFIC MEMBER THAT HAS SUFFERED A CONCRETE HARM CAUSED BY LCBOE OR WHO FACES AN IMPENDING HARM CAUSED BY THE LCBOE.

Certain associational plaintiffs appear to bring claims on behalf of their members. PA NAACP claims “thousands of members . . . are at risk of are at risk of disenfranchisement if Defendants fail to count timely-submitted mail-in ballots based solely on a missing or incorrect date on the return envelope.” Am. Compl., [ECF No. 121](#), ¶ 11, 13. LWV claims its members are “at risk of disenfranchisement if

Defendants fail to count ballots based solely on a missing or incorrect handwritten date on the return envelope.” *Id.*, ¶ 14. Common Cause and Make the Road press similar claims that their members risk disenfranchisement if ballots with missing or incorrect dates are not counted. *Id.*, ¶¶ 21, 26. The associational plaintiffs do have the right to bring claims on behalf of their members. *Pennsylvania Psychiatric Soc. v. Green Spring Health Servs., Inc.*, 280 F.3d 278, 291 (3d Cir. 2002). But the members themselves must have Article III standing and the associational plaintiffs must do more than merely *allege* that their members may be harmed to establish standing. Rather, they must present evidence “establishing that at least one *identified* member ha[s] suffered or would suffer harm.” *New Jersey Physicians, Inc. v. President of U.S.*, 653 F.3d 234, 241 (3d Cir. 2011) (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 129 S.Ct. 1142 (2009) (emphasis added)). The associational plaintiffs have never identified a specific member whose mailed ballot was not counted LCBOE in the November 2022 general election or whose mailed ballot is at risk of not to be counted by LCBOE in the future. Indeed, the associational plaintiffs have not so much as identified a single member who simply intends to vote in a future election in Lancaster County.

Claims of future harm are also not sufficient to confer standing because when that harm is entirely speculative. *Free Speech Coal., Inc. v. Att’y Gen. United States*, 825 F.3d 149, 165 (3d Cir. 2016) (Standing to seek injunctive relief requires a that the threat “must be actual and imminent, not conjectural or hypothetical.”) Here, the associational plaintiffs’ claims of future harm are speculative because the claims

assume (a) that the associational members will vote in Lancaster County, (b) they will vote using absentee or mailed ballots and (c) they are likely to submit the ballot with a missing or incorrect date. Each one of these events must be “certainly impending” for the associational plaintiffs to maintain standing. Standing based this type of “theoretical chain of events” is precisely what this Court rejected in [Boockvar v. Trump](#), 493 F.Supp.3d 331 (W.D.Pa. 2020). There, this Court dismissed claims that the use of unmanned drop boxes for the receipt of mailed ballots would lead to an increased risk of fraud or vote dilution as “too speculative to be concrete.” *Id.* at 377. This Court should again reject claims resting on the “possibility of future injury based on a series of speculative events—which falls short of the requirement to establish a concrete injury.” *Id.* at 377.

Accordingly, the Court should dismiss all claims that the associational plaintiffs proport to maintain on behalf of their individual members.

C. THE ASSOCIATIONAL PLAINTIFFS CANNOT MAINTAIN STANDING BASED ON ALLEGED DIRECT HARMS.

It is true that the associational plaintiffs can maintain standing based on their own injuries. [Warth v. Seldin](#), 422 U.S. 490, 511 (1975). Here, the associational plaintiffs appear to press claims based on their own injuries. Each associational plaintiff claims that if LCBOE does not count mailed ballots with missing or incorrect dates in the future, they will be required to divert resources within their respective organizations. Am. Compl., [ECF No. 121](#), ¶¶ 12, 16, 20, 23, and 28. But, at summary judgment, bare allegations of diversion of resources is not sufficient to confer standing on an organization. [Fair Housing Council of Suburban Philadelphia v. Montgomery](#)

Newspapers, 141 F.3d 71, 78 (3d Cir. 1998). Plaintiffs must present evidence that resources have been diverted and certainly will be diverted in the future because of the conduct of LCBOE. Plaintiffs have not done that.

Like the individual plaintiffs, the associational plaintiffs fail to satisfy the crucial second element of standing requiring causation. The associational plaintiffs have not presented any evidence that they diverted resources fairly traceable *to the actions of LCBOE*. Rather, they admit they diverted resources because of the Pennsylvania Supreme Court's decision in *Ball, et. al. v. Chapman, et. al.*, 102 MM 2022. *See* Ans. to Int. 11, at Appx. Ex. 3-8. The associational plaintiffs have also not presented any evidence that they diverted resources targeted to voters in Lancaster County or have shifted resources towards Lancaster County voters, much less that they shifted resources *because of the conduct of LCBOE*. At least two associational plaintiffs admittedly have no nexus to Lancaster County. Associational plaintiff, BPEP, operates only in "the Pittsburgh Region" and in "predominately Black (sic) neighborhoods in Allegheny County, with some efforts in Westmoreland and Washington Counties." Am. Compl. ECF No. [121](#), ¶¶ 24-25. Likewise, plaintiff Make the Road, operates and serves voters in Berks, Bucks, Lehigh, Northampton, and Philadelphia Counties. Am. Compl., [ECF No. 121](#), ¶ 27.

Moreover, "[s]pending money in response to [a] speculative harm cannot establish a concrete injury." *Donald J. Trump for President, Inc.*, 2020 WL 6204477 at *8. The associational plaintiffs are merely guessing that they will need to spend money because of some future hypothetical event.

Then there is the issue of what resources the associational plaintiffs are diverting in response to future harm. The rules concerning not counting ballots with missing or omitted dates have already been used in one election – the November 2022 general election. Assuming the rules remain in future elections, the associational plaintiffs can hardly be said to be diverting resources to educate voters because of existing procedures. The associational plaintiffs are simply educating their voters on the current procedures, not a sudden change in them.

In sum, the associational plaintiffs have not presented evidence of particularized and concrete harms to their respective organizations caused by the LCBOE. Accordingly, the Court should dismiss with prejudice all claims against the LCBOE.

II. PLAINTIFFS' CLAIMS FOR INJUNCTIVE RELIEF REGARDING THE 2022 ELECTION ARE MOOT.

Apart from a standing issue, plaintiffs' claims are partially moot. Plaintiffs seek injunctive relief regarding the November 2022 election. Plaintiffs ask this Court to enter an injunction against LCBOE prohibiting it from:

- rejecting or otherwise not counting based solely on a missing or incorrect date on Election Day *in 2022*, Am. Compl., ECF No. 121, prayer for relief, ¶ 2(a),
- certifying the results of the *2022 election* unless undated and incorrectly dated ballots are counted, *Id.*, ¶ 2(b), and

- refusing to count ballots cast in the *2022 election* that lacked a date or included an incorrect date, *Id.*, 2(c).

Those claims are moot because the results of that November 2022 election were long ago certified. [*Mirarchi v. Boockvar*, 2021 WL 6197370, at *3 \(E.D. Pa. 2021\)](#) (“[Voter’s] claims for injunctive relief must also be dismissed as moot because they concern past events in connection with the 2020 general election.”) In fact, they had been certified before plaintiffs filed their amended complaint. Accordingly, the Court should dismiss as moot all claims for injunctive relief against LCBOE related to the November 2022 election.

III. THERE IS NO EVIDENCE THAT LCBOE TREATS MILITARY AND OVERSEAS BALLOTS DIFFERENTLY THAN DOMESTIC MAILED AND ABSENTEE BALLOTS.

In Count II of the Amended Complaint, plaintiffs claim the LCBOE violated the Fourteenth Amendment because it “invalidates the mail ballots of otherwise-qualified domestic voters based on trivial paperwork errors while counting the mail ballots of military and overseas voters who make the same immaterial mistake.” Am. Compl., [ECF No. 121](#), ¶ 87. But plaintiffs have no evidence to support this allegation. To the contrary, LCBOE *did not count* any timely received military and overseas ballots in 2022 that contained a missing or incorrect date. *See* LCBOE Ans. to Int., 15 at Appx. Ex. 12. Furthermore, Crista Miller, LCBOE director of elections, testified that military and overseas ballots with missing or incorrect dates were treated the same as “domestic” mailed and absentee ballots. Deposition of Crista Miller, 64:15-21 at Appx. Ex. 11 (“Q. So if you received a military absentee ballot on November

14th, that met the submission deadline; but if the date the voter wrote on that envelope was November 9th, you would have set it aside pursuant to the court order? A. Correct.”) Miller’s testimony is uncontroverted, and plaintiffs have not presented any evidence that LCBOE treated military and overseas ballots differently from so-called domestic mailed ballots in November 2022 and no evidence that they will treat them differently in future elections. Accordingly, the Court should dismiss plaintiffs’ equal protection claims against LCBOE.

IV. THERE IS NO PRIVATE RIGHT OF ACTION TO ENFORCE THE MATERIALITY PROVISIONS OF THE CIVIL RIGHTS ACT.

In Count III plaintiffs bring a claim to enforce 52 U.S.C. § 10101(a)(2)(B) which is also known as materiality provision of the Civil Rights Act (the “Materiality Provision”). Even if plaintiffs had Article III standing as to LCBOE, they cannot maintain a claim to enforce the Materiality Provision because Congress has not authorized a private right of action to enforce it. [*Migliori v. Lehigh Cnty. Bd. of Elections*, 2022 WL 802159, at *11 \(E.D. Pa. 2022\)](#) (“the text and structure of § 10101 create a strong presumption that Congress did not intend to create a private remedy for vindication of the personal right.”)

In *Migliori*, the district court for the Eastern District of Pennsylvania held that plaintiffs could not maintain a claim under the Materiality Provision to compel a county board of elections to count undated and incorrectly dated mailed ballots because Congress had not authorized a private right of action to enforce it. *Id.* at * 11. *Migliori* is identical to this case. Indeed, plaintiffs in *Migliori* were represented by the same counsel, Attorney Loney, that represents plaintiffs in this case. In finding

that the Materiality Provision could not be enforced through a private right of action, the district court found that under prevailing Supreme Court precedent “private rights of action to enforce federal law must be created by Congress,” which is determined by Congressional intent to “create not just a private right of action but also a remedy.” *Id.*, at *5 (quoting [Wisniewski v. Rodale, Inc.](#) 510 F.3d 294, 296 (3d Cir. 2007)). Congressional intent is determined by the text and structure of the statute. [Alexander v. Sandoval](#), 532 U.S. 275, 288 (2001). Without Congressional intent to create a private right of action, “a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute.” *Id.* at 286–87.

In *Sandoval*, the Supreme Court held that there was no private right of action to enforce certain regulations promulgated under Title VI of the Civil Rights Act. There the Court held “the express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others.” *Id.* at 290. The Materiality Provision does express one method of enforcement and that is by the Attorney General of the United States, not a private citizen. [52 U.S.C. § Section 10101\(c\)](#) states

“[w]henever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b), ***the Attorney General may institute for the United States, or in the name of the United States***, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order...”

[52 U.S.C. § 10101\(c\)](#) (emphasis added).

The district court in *Migliori* found that § 10101(c) expressly provides for enforcement by the Attorney General “creates a strong presumption against [an] implied private right[] of action that must be overcome.” [Migliori, 2022 WL 80159 at *10](#). (citing [Wisniewski, 510 F.3d at 205, n. 1](#)) The district court’s holding in *Migliori* is consistent with the holding of the Sixth Circuit of Appeals in [Northeast Ohio Coalition for the Homeless v. Husted, 837 F.3d 612 \(6th Cir. 2016\)](#).² In that case, the Sixth Circuit likewise found that the statutes enforcement remedy by the Attorney General was exclusive. [Id. at 630](#).

Accordingly, even if plaintiffs had sustained an injury-in-fact caused by LCBOE (they have not), the Court should still dismiss Count II of their Amendment Complaint because plaintiffs have no private right of action to enforce [52 U.S.C. § 10101\(a\)\(2\)\(B\)](#).

CONCLUSION

While plaintiffs might have suffered harm because of the conduct of certain other defendants, they have not suffered any harm causally related to any conduct by the LCBOE. Therefore, each plaintiff lacks Article III standing as to LCBOE. Moreover, even if they did have Article III standing, their claims under the Fourteenth Amendment lack any evidentiary support and their claims to enforce the Materiality Provision fail as a matter of law. Accordingly, this Court should grant summary judgment to LCBOE and dismiss all claims against it with prejudice.

² It is true that the Third Circuit found disagreement with the district court’s holding in *Migliori*. [Migliori v. Cohen, 36 F.4th 153 \(3d. Cir. 2022\)](#). But the Supreme Court subsequently vacated the judgment and mandate of the Third Circuit. [See Ritter v. Migliori, 143 S. Ct. 297 \(2022\)](#)

Date: April 21, 2023

Respectfully submitted,

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Elections*

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CERTIFICATE OF SERVICE

I hereby certify the foregoing has been filed electronically and is available for viewing and downloading from the Electronic Case Filing System of the United States District Court for the Western District of Pennsylvania. I further hereby certify that, in accordance with Fed. R. Civ. P. 5, service has been made upon counsel of record via ECF.

Date: April 21, 2023

Respectfully submitted,

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ET. AL.	:	Case No. 1:22-CV-339-SPB
	:	
Plaintiffs,	:	
	:	
v.	:	
AL SCHMIDT, ET. AL.	:	
	:	
Defendants.	:	

ORDER (PROPOSED)

AND NOW, this ____ day of April 2023, upon consideration of the Motion for Summary Judgment of Defendant, Lancaster County Board of Elections, and any response in opposition thereto, it is hereby **ORDERED** that the Motion is **GRANTED** and all claims against the Lancaster County Board of Elections are **DISMISSED WITH PREJUDICE**.

BY THE COURT:

THE HONORABLE SUSAN PARADISE BAXTER

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APPENDIX OF DEFENDANT LANCASTER COUNTY BOARD OF ELECTIONS

DOCUMENT	EXHIBIT
Amended Complaint (ECF No. 121)	1
Order dated April 11, 2023 (ECF No. 263)	2
PA NAACP Answers to Intervenors' Interrogatories	3
LMV Answers to Intervenors' Interrogatories	4
POWER Answers to Intervenors' Interrogatories	5
Common Cause Answers to Intervenors' Interrogatories	6
BPEP Answers to Intervenors' Interrogatories	7
Make the Road Ans. to Intervenors' Interrogatories	8
Pennsylvania Supreme Court Order dated 11/1/22 in <i>Ball, et. al. v. Chapman, et. al.</i> No. 102 MM 2022	9
Pennsylvania Supreme Court Order dated 11/5/22 in <i>Ball, et. al. v. Chapman, et. al.</i> No. 102 MM 2022	10
Deposition transcript of Crista Miller	11
LCBOE Answers to Plaintiffs' Interrogatories	12

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

PENNSYLVANIA STATE CONFERENCE OF THE
NAACP, LEAGUE OF WOMEN VOTERS OF
PENNSYLVANIA, PHILADELPHIANS ORGANIZED
TO WITNESS, EMPOWER AND REBUILD,
COMMON CAUSE PENNSYLVANIA, BLACK
POLITICAL EMPOWERMENT PROJECT, MAKE
THE ROAD PENNSYLVANIA, JEAN TERRIZZI,
BARRY M. SEASTEAD, MARJORIE BOYLE,
MARLENE G. GUTIERREZ, DEBORAH DIEHL,
AYNNE MARGARET PLEBAN POLINSKI, JOEL
BENCAN, and LAURENCE M. SMITH,

Plaintiffs,

v.

LEIGH M. CHAPMAN, in her official capacity as
Acting Secretary of the Commonwealth,
ADAMS COUNTY BOARD OF ELECTIONS,
ALLEGHENY COUNTY BOARD OF ELECTIONS,
ARMSTRONG COUNTY BOARD OF ELECTIONS,
BEAVER COUNTY BOARD OF ELECTIONS,
BEDFORD COUNTY BOARD OF ELECTIONS,
BERKS COUNTY BOARD OF ELECTIONS,
BLAIR COUNTY BOARD OF ELECTIONS,
BRADFORD COUNTY BOARD OF ELECTIONS,
BUCKS COUNTY BOARD OF ELECTIONS,
BUTLER COUNTY BOARD OF ELECTIONS,
CAMBRIA COUNTY BOARD OF ELECTIONS,
CAMERON COUNTY BOARD OF ELECTIONS,
CARBON COUNTY BOARD OF ELECTIONS,
CENTRE COUNTY BOARD OF ELECTIONS,
CHESTER COUNTY BOARD OF ELECTIONS,
CLARION COUNTY BOARD OF ELECTIONS,
CLEARFIELD COUNTY BOARD OF ELECTIONS,
CLINTON COUNTY BOARD OF ELECTIONS,
COLUMBIA COUNTY BOARD OF ELECTIONS,
CRAWFORD COUNTY BOARD OF ELECTIONS,
CUMBERLAND COUNTY BOARD OF ELECTIONS,
DAUPHIN COUNTY BOARD OF ELECTIONS,
DELAWARE COUNTY BOARD OF ELECTIONS,
ELK COUNTY BOARD OF ELECTIONS, ERIE

Civ. No. 22-339

COUNTY BOARD OF ELECTIONS,
FAYETTE COUNTY BOARD OF ELECTIONS,
FOREST COUNTY BOARD OF ELECTIONS,
FRANKLIN COUNTY BOARD OF ELECTIONS,
FULTON COUNTY BOARD OF ELECTIONS,
GREENE COUNTY BOARD OF ELECTIONS,
HUNTINGDON COUNTY BOARD OF ELECTIONS,
INDIANA COUNTY BOARD OF ELECTIONS,
JEFFERSON COUNTY BOARD OF ELECTIONS,
JUNIATA COUNTY BOARD OF ELECTIONS,
LACKAWANNA COUNTY BOARD OF ELECTIONS,
LANCASTER COUNTY BOARD OF ELECTIONS,
LAWRENCE COUNTY BOARD OF ELECTIONS,
LEBANON COUNTY BOARD OF ELECTIONS,
LEHIGH COUNTY BOARD OF ELECTIONS,
LUZERNE COUNTY BOARD OF ELECTIONS,
LYCOMING COUNTY BOARD OF ELECTIONS,
MCKEAN COUNTY BOARD OF ELECTIONS,
MERCER COUNTY BOARD OF ELECTIONS,
MIFFLIN COUNTY BOARD OF ELECTIONS,
MONROE COUNTY BOARD OF ELECTIONS,
MONTGOMERY COUNTY BOARD OF ELECTIONS,
MONTOUR COUNTY BOARD OF ELECTIONS,
NORTHAMPTON COUNTY BOARD OF
ELECTIONS, NORTHUMBERLAND COUNTY
BOARD OF ELECTIONS, PERRY COUNTY BOARD
OF ELECTIONS, PHILADELPHIA COUNTY BOARD
OF ELECTIONS, PIKE COUNTY BOARD OF
ELECTIONS, POTTER COUNTY BOARD OF
ELECTIONS, SCHUYLKILL COUNTY BOARD OF
ELECTIONS, SNYDER COUNTY BOARD OF
ELECTIONS, SOMERSET COUNTY BOARD OF
ELECTIONS, SULLIVAN COUNTY BOARD OF
ELECTIONS, SUSQUEHANNA COUNTY BOARD
OF ELECTIONS, TIOGA COUNTY BOARD OF
ELECTIONS, UNION COUNTY BOARD OF
ELECTIONS, VENANGO COUNTY BOARD OF
ELECTIONS, WARREN COUNTY BOARD OF
ELECTIONS, WASHINGTON COUNTY BOARD OF
ELECTIONS, WAYNE COUNTY BOARD OF
ELECTIONS, WESTMORELAND COUNTY BOARD
OF ELECTIONS, WYOMING COUNTY BOARD OF

ELECTIONS, and YORK COUNTY BOARD OF
ELECTIONS,

Defendants.

**AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiffs—nonpartisan organizations dedicated to promoting American democracy and the participation of Pennsylvania voters in our shared civic enterprise, and a bipartisan group of Pennsylvania voters, ages 64 through 95, all of whom cast mail ballots in the 2022 election—bring this Complaint for declaratory and injunctive relief pursuant to 42 U.S.C. § 1983 and 52 U.S.C. § 10101 to ensure that qualified Pennsylvania voters are not disenfranchised based on an immaterial paperwork error.

2. Defendants, Pennsylvania’s Acting Secretary of the Commonwealth and the 67 Pennsylvania county boards of elections, will not count thousands of timely-received mail ballots submitted for the November 2022 election and future elections by otherwise qualified voters based on a meaningless technicality—that the ballots are missing a handwritten date next to their signature on the return envelope, or because the handwritten date is somehow “wrong.” This refusal to count timely mail ballots submitted by otherwise eligible voters because of a trivial paperwork error violates the Materiality Provision of the Civil Rights Act, which makes it unlawful to deny the right to vote based on an “error or omission” on a voting-related “record or paper” that is “not material in determining whether [a voter] is qualified under State

law to vote in [the] election.” 52 U.S.C. § 10101(a)(2)(B). Because mail ballots in Pennsylvania may, under state law, be completed at “any time,” and because their timeliness is determined by when a local county board of elections receives and date-stamps the ballot, the presence or absence of a handwritten date on the envelope is utterly immaterial to determining whether the ballot was timely received, much less to assessing a voter’s qualifications. *See Migliori v. Cohen*, 36 F.4th 153, 164 (3d Cir.), *vacated as moot*, No. 22-30, 2022 WL 6571686 (U.S. Oct. 11, 2022).

3. In addition to the Materiality Provision, Defendants’ refusal to count timely-received mail ballots based on an immaterial paperwork error also violates the Equal Protection Clause of the Fourteenth Amendment because it imposes arbitrary distinctions between different mail ballot voters that are unsupported by any legitimate government interest (let alone a compelling one).

4. The Plaintiff organizations represent the interests of their combined thousands of members. Many of the Plaintiff organizations’ members are qualified and registered Pennsylvania voters who timely voted by mail-in ballot, some of whom were or will be directly affected by Defendants’ enforcement of the immaterial envelope-date rule in 2022 as well as future elections. The Plaintiff organizations’ expansive get-out-the-vote and voter education efforts are also burdened, even undermined, by hyper-technical rules that disenfranchise thousands of Pennsylvania voters based on an inconsequential paperwork error.

5. As for the individual voter Plaintiffs, they seek to vindicate their fundamental right to vote, which includes having their votes for federal, state, and

local offices counted. The individual Plaintiffs, all of whom were disenfranchised by Defendants' actions, care deeply about their right to vote for numerous reasons, including ensuring representation for themselves and their families, and making themselves heard on the issues that matter to them.

6. Absent declaratory and injunctive relief from this court, the individual voter plaintiffs and the organizational plaintiffs and their members will suffer irreparable harm.

JURISDICTION AND VENUE

7. Plaintiffs bring this civil rights action pursuant to 42 U.S.C. § 1983 to enforce the rights guaranteed by 52 U.S.C. § 10101 and the Fourteenth Amendment. Alternatively, Plaintiffs bring suit directly under Section 10101 via the implied right of action contained within 52 U.S.C. § 10101.

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1343 (civil rights cases).

9. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

10. Venue in this district is proper under 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims occurred in this district and several Defendants conduct business in this district. And venue in the Erie Division is appropriate because the Defendants include the boards of elections in Crawford, Elk, Erie, Forest, McKean, Venango, and Warren Counties, and the Plaintiffs include

organizations with members in those counties as well as individual voters who vote in Crawford and Warren counties. *See* W.D. Pa. LCvR 3.

PARTIES

11. The Pennsylvania State Conference of the NAACP (“the State Conference”) is a non-profit, non-partisan organization that works to improve the political, educational, social, and economic status of African-Americans and other racial and ethnic minorities, to eliminate racial prejudice, and to take lawful action to secure the elimination of racial discrimination, among other objectives. The State Conference has thousands of members who live and/or work in Pennsylvania, many of whom are registered to vote in Pennsylvania and are at risk of disenfranchisement if Defendants fail to count timely-submitted mail-in ballots based solely on a missing or incorrect date on the return envelope.

12. The State Conference advocates for civil rights, including voting rights, for Black Americans, both nationally and in Pennsylvania. Every election cycle, the State Conference engages in efforts to get out the vote, including by educating Black voters in Pennsylvania on different methods of voting, providing educational guides on local candidates to increase voter engagement, and focusing on strategies to eliminate Black voter suppression both nationally and in Pennsylvania.

13. Defendants’ failure to count timely-submitted mail-in ballots based solely on a missing or incorrect date on the return envelope will disenfranchise potentially thousands of voters, directly affecting the State Conference’s members and interfering with its ability to carry out its mission of increasing voter turnout and

participation. Defendants' failure to count such ballots also has caused and will cause the State Conference to divert resources in this and future elections from its existing voter education and mobilization efforts towards investigating and educating voters about any available cure processes or to advocate that new processes be developed to ensure that voters who are eligible and registered and who submitted their ballots on time are not disenfranchised by a trivial paperwork mistake.

14. The League of Women Voters of Pennsylvania ("the League") is a nonpartisan statewide non-profit formed in 1920. The League and its members are dedicated to helping the people of Pennsylvania exercise their right to vote, as protected by the law. The League has 2,500 members across Pennsylvania, including in Crawford, Elk, Erie, Forest, McKean, Venango, and Warren Counties. Members of the League are registered voters in Pennsylvania who regularly vote in state and federal elections, including by mail or absentee ballot. The League's members are at risk of disenfranchisement if Defendants fail to count ballots based solely on a missing or incorrect handwritten date on the return envelope.

15. The League's mission includes voter registration, education, and get-out-the-vote drives. The League conducts voter-registration drives, staffs nonpartisan voter-registration tables, educates incarcerated and formerly incarcerated individuals about their voting rights, and works with local high schools to register new 18-year-old voters. It also maintains an online database called VOTE411, a nonpartisan and free digital voter resource with information available in both

English and Spanish, including voter guides, candidate information, polling rules and locations, and more.

16. Defendants' failure to count timely-submitted mail-in ballots based solely on a missing or incorrect date on the return envelope will disenfranchise potentially thousands of voters, thus directly affecting the League's members and interfering with the League's ability to carry out its mission of increasing voter turnout and participation. And both now and especially in future elections, the Defendants' enforcement of the immaterial envelope-date rule has caused and will cause the League to divert resources from its existing voter-mobilization and education efforts towards identifying voters who neglected to write the date on the return envelope, educating voters about any available cure processes, and advocating for new cure processes to be developed in real time at the county level. For future elections, the League will be forced to dedicate resources to educating voters about strict compliance with hyper-technical rules of Pennsylvania election law so that voters are not disenfranchised over trivial and immaterial paperwork errors.

17. Philadelphians Organized to Witness, Empower and Rebuild ("POWER") is a Pennsylvania nonprofit founded in 2011 to advance concrete policy changes to transform and strengthen communities. POWER is an organization of more than 100 congregations of various faith traditions, cultures and neighborhoods committed to racial and economic justice on a livable planet. One of its five priority areas is civic engagement and organizing communities so that the voices of all faiths, races and income levels are counted and have a say in government.

18. POWER engages directly with people who live in the communities that its member congregations serve. Its civic engagement efforts include voter education programs, voter registration drives, information about applying for mail ballots, completing them properly and returning them on time, and “Souls to the Polls” efforts to encourage congregants to vote. In the 2020 election cycle, POWER contacted more than 700,000 voters and plans to reach a similar number in 2022.

19. In the three weeks leading up to this November’s election, POWER launched a three-week bus tour to promote a vision for building a community in Pennsylvania rooted in inclusivity, diversity and justice. The bus tour scheduled numerous events, including voter registration canvasses and voter education programs that provide information on mail voting.

20. Because of Defendants’ failure to count timely-submitted mail-in ballots based solely on a missing or incorrect date on the return envelope, POWER must divert its limited resources to re-contacting voters to make sure they dated their ballots. Refusing to count votes based on immaterial paperwork errors has a suppressive effect on the communities POWER serves by erecting yet another roadblock preventing them from voting and having their votes counted. In this, as well as future elections, the Defendants’ enforcement of the immaterial envelope-date rule has caused and will cause POWER to divert resources from its existing voter-mobilization and education efforts towards counteracting the disenfranchising effects of the strict enforcement of the envelope-date requirement.

21. Common Cause Pennsylvania (“Common Cause”) is a non-profit political advocacy organization and a chapter of the national Common Cause organization. Common Cause has approximately 36,000 members and supporters in Pennsylvania. These members live in all 67 counties of Pennsylvania, and many members are registered voters in Pennsylvania who are at risk of disenfranchisement if Defendants fail to count timely-submitted mail-in ballots based solely on a missing or incorrect date on the return envelope.

22. Common Cause seeks to increase the level of voter registration and voter participation in Pennsylvania elections, especially in communities that are historically underserved and whose populations have a low propensity for voting. Many of these communities are communities of color.

23. In preparation for the statewide election, Common Cause mobilizes hundreds of volunteers to help fellow Pennsylvanians navigate the voting process and cast their votes without obstruction, confusion, or intimidation. Common Cause leads the nonpartisan Election Protection volunteer program, which aims to ensure voters have access to the ballot box, provide voters with necessary voting information and answer their questions, quickly identify and correct any problems at polling places, and gather information to identify potential barriers to voting. Because of Defendants’ refusal to count timely-submitted mail-in ballots based solely on a missing or incorrect date on the return envelope, in this and future elections Common Cause was required and will be required to divert resources from its existing efforts towards educating voters about the drastic consequences of failing to comply with a

trivial paperwork requirement that was previously understood (including by a panel of federal judges) to be superfluous, and about any available cure processes to prevent the disenfranchisement of its members and other Pennsylvania voters.

24. Black Political Empowerment Project (“B-PEP”) is a non-profit, non-partisan organization that has worked since 1986 to ensure that the Pittsburgh African-American community votes in every election. B-PEP has numerous supporters, of various ages and races, throughout the Pittsburgh Region, working with numerous community organizations to empower Black and brown communities.

25. During every election cycle, B-PEP’s work includes voter registration drives, get-out-the-vote activities, education and outreach about the voting process, and election-protection work. B-PEP focuses these activities in predominantly Black neighborhoods in Allegheny County, with some efforts in Westmoreland and Washington Counties. In preparation for the November 8, 2022, election, B-PEP’s work has included educating its members and voters in predominantly Black communities about the importance of voting, and about how to vote, either in person or by mail. B-PEP’s members include many older voters, who are at particularly high risk of having their ballots disqualified for minor errors, such as omitting the date on the mail-in-ballot-return envelope. B-PEP has an interest in preventing the disenfranchisement of eligible voters who seek to have their votes counted.

26. Make the Road Pennsylvania (“Make the Road PA”) is a not-for-profit, member-led organization formed in 2014 that builds the power of the working-class in Latino and other communities to achieve dignity and justice through organizing,

policy innovation, and education services. Make the Road PA's more than 10,000 members are primarily working-class residents of Pennsylvania, many in underserved communities. Many members of Make the Road PA are registered voters in Pennsylvania and are at risk of disenfranchisement if Defendants fail to count timely-submitted mail-in ballots based solely on a missing or incorrect date on the return envelope.

27. Make the Road PA's work includes voter protection, voter advocacy and voter education on, for example, how to register to vote, how to apply for mail-in/absentee ballots, how to return mail-in/absentee ballots, and where to vote. Make the Road PA has run active programs to register voters in historically underserved communities of color, especially in Berks, Bucks, Lehigh, Northampton and Philadelphia Counties.

28. Defendants' failure to count timely-submitted mail-in ballots based solely on a missing or incorrect date on the return envelope will disenfranchise potentially thousands of voters, thus directly affecting Make the Road PA's members and interfering with Make the Road's ability to carry out its mission of increasing voter turnout and participation. Indeed, because Make the Road PA's efforts are focused on communities where some voters are not native English speakers, the risk that some voters may make a minor paperwork mistake in filling out various forms related to mail or absentee ballot voting is heightened. For example, if a voter followed the date sequencing convention used by many other countries, they may have transposed the day before the month in dating their outer return envelope—

and, on information and belief, that would constitute an “incorrect” date under Defendants’ standards. Defendants’ failure to count timely-submitted mail-in ballots based solely on a missing or incorrect date on the return envelope in this and future elections also has caused and will cause Make the Road PA to divert resources from its existing efforts towards focusing voters on trivial, technical mail ballot rules and towards investigating and educating voters about any available cure processes that might be available for the thousands who will invariably be disenfranchised by a trivial paperwork mistake under Defendants’ current policy.

29. Jean Terrizzi is a Philadelphia voter facing disenfranchisement by Defendants solely because her timely-received mail ballot purportedly lacks a date next to the signature on the outer return envelope. Jean Terrizzi is 95 years old and has lived on the same block in Philadelphia for her entire life. She is qualified to vote in Pennsylvania, has been voting regularly in Philadelphia for decades, and has been voting by mail for the past few years. For the November 8, 2022 election, Terrizzi properly requested a mail-in ballot, marked her ballot, and inserted it into the secrecy envelope and then into an outer envelope on which she signed the declaration. Terrizzi believed she had followed all of the instructions and returned her mail ballot weeks before Election Day. She does not have an email address and did not receive any notification from Defendants that there was any problem with her ballot. She learned on the Sunday before Election Day, after being contacted by a reporter, that her ballot would not be counted. She is physically immobile and was not able to attempt to cure by voting provisionally in person. Voting is important to Terrizzi

because she wants to elect leaders who will support her children, grandchildren, and great-grandchildren living in the Philadelphia area, and she wants her vote for federal and state offices to count in this election. A true and correct copy of Terrizzi's declaration is attached as Ex. A.

30. Barry M. Seastead is a Warren County voter facing disenfranchisement by Defendants solely because his timely-received mail ballot has a purportedly-incorrect date next to the signature on the outer return envelope. Seastead is a 68-year-old retired welder. He has been a registered voter in Warren County for decades, ever since he was legally eligible to vote. He votes regularly, and has been voting by mail for the past few years. For the November 8, 2022 election, Seastead properly requested a mail-in ballot, marked his ballot, and inserted it into the secrecy envelope and then into an outer envelope on which he signed the declaration. Seastead also believes he wrote the date on which he filled out the ballot, and he is unaware of why the Warren County Board of Elections rejected the date he wrote as "incorrect." Because Warren County did not provide him with any notice of its determination that the date he wrote was incorrect, he had no opportunity to cure any defect regarding the date on his outer return envelope prior to Election Day and only learned after Election Day that his vote was not counted. Voting is important to Seastead because he is the grandson of an immigrant and believes that voting is the foundation of this country, and he wants his vote for federal and state offices to count in this election. A true and correct copy of Seastead's declaration is attached as Ex. B.

31. Marjorie Boyle is a Crawford County voter facing disenfranchisement by Defendants solely because her timely-received mail ballot has a missing or purportedly-incorrect date next to the signature on the outer return envelope. Boyle is 76 years old. Before her retirement, she performed clerical work assisting with subsidized housing applications. Boyle is a qualified voter who has been registered to vote in Crawford County since moving there in 2006. For the November 8, 2022 election, Boyle properly requested a mail-in ballot, marked her ballot, and inserted it into the secrecy envelope and then into an outer envelope on which she signed the declaration. She read all the instructions and recalls writing a date while completing her ballot, and she believed she had completed all of the requisite steps. Because Crawford County did not provide her with any notice of the missing date, she had no opportunity to cure any defect regarding the date on her outer return envelope prior to Election Day and only learned after Election Day that her vote was not counted. Voting is important to Boyle because she believes voting allows her to stand up for her rights and issues that are important to her, and she wants her vote for federal and state offices to count in this election. A true and correct copy of Boyle's declaration is attached as Ex. C.

32. Marlene G. Gutierrez is a York County voter facing disenfranchisement by Defendants solely because her timely-received mail ballot lacks a date next to the signature on the outer return envelope. Gutierrez is 64 years old. She works as a corporate travel agent. She first registered to vote in York County when she was 18 years old, and after residing elsewhere for several years, she most recently registered

to vote in York County when she moved back in September 2020. She has been regularly voting by mail for at least twenty years. For the November 8, 2022 election, Gutierrez properly requested a mail-in ballot, marked her ballot, and inserted it into the secrecy envelope and then into an outer envelope on which she signed the declaration. Gutierrez believed she had followed all of the instructions but learned on Election Day that her ballot would not be counted, and she did not have time to cure her ballot. Voting is important to Gutierrez because she wants her preferred political party to represent her, and she wants her vote for federal and state offices to count in this election. A true and correct copy of Gutierrez's declaration is attached as Ex. D.

33. Deborah Diehl is a York County voter facing disenfranchisement by Defendants solely because her timely-received mail ballot has a missing or purportedly-incorrect date next to the signature on the outer return envelope. Diehl is 67 years old. She is a retired nurse. Diehl is a qualified voter who participates regularly in elections: she has been registered to vote in York County for 23 years, and has been a registered Pennsylvania voter since she was 18 years old. She has been voting by mail since 2018 because of a disability. For the November 8, 2022 election, Diehl properly requested a mail-in ballot, marked her ballot, and inserted it into the secrecy envelope and then into an outer envelope on which she signed the declaration. Because York County did not provide her with any notice of the missing date, she had no opportunity to cure any defect regarding the date on her outer return envelope prior to Election Day and only learned after Election Day that her vote was

not counted. Voting is important to Diehl because she strongly believes in exercising her constitutional right to vote and she wants her vote for federal and state offices to count in this election. A true and correct copy of Diehl's declaration is attached as Ex. E.

34. Aynne Margaret Pleban Polinski is a York County voter who is facing disenfranchisement by Defendants solely because her timely-received mail ballot lacks a date next to the signature on the outer return envelope. Polinski is 71 years old. She is a retired art educator, art therapist, and professional artist. Polinski is a qualified voter who participates regularly in elections: she has been a registered voter in York County since 2016 and a registered voter in the Commonwealth of Pennsylvania since she was 18 years old. Polinski has been voting by mail since the June 2020 presidential primary because of the COVID-19 pandemic. For the November 8, 2022 election, Polinski properly requested a mail-in ballot, marked her ballot, and inserted it into the secrecy envelope and then into an outer envelope on which she signed the declaration. Because York County did not provide her with any notice of the missing date, she had no opportunity to cure any defect regarding the date on her outer return envelope prior to Election Day and only learned after Election Day that her vote was not counted. Voting is important to Polinski because she believes everyone has a right to support their preferred candidate and policies, and she wants her vote for federal and state offices to count in this election. A true and correct copy of Polinski's declaration is attached as Ex. F.

35. Joel Bencan is a Montgomery County voter facing disenfranchisement by Defendants solely because his timely-received mail ballot has a purportedly-incorrect date next to the signature on the outer return envelope. Bencan is 71 years old. He is a retired pharmacist. He has been a registered voter for decades and has participated regularly in elections since the Nixon Administration. Bencan began voting by mail in 2020 because of the COVID-19 pandemic and has continued since then to vote by mail. For the November 8, 2022 election, Bencan properly requested a mail-in ballot, marked his ballot, and inserted it into the secrecy envelope and then into an outer envelope on which he signed the declaration. Bencan also recalls writing the date on which he filled out the ballot, and he is unaware of why the Montgomery County Board of Elections rejected the date he wrote as “incorrect.” Because Montgomery County did not provide him with any notice of its determination that the date he wrote was incorrect, he had no opportunity to cure any defect regarding the date on his outer return envelope prior to Election Day. Voting is important to Bencan because he believes each individual vote can make a difference, and he wants his vote for federal and state offices to count in this election. A true and correct copy of Bencan’s declaration is attached as Ex. G.

36. Laurence M. Smith is a Montgomery County voter who is facing disenfranchisement by Defendants solely because his timely-received mail ballot has a missing or purportedly-incorrect date next to the signature on the outer return envelope. Smith is 78 years old. Before his retirement, he worked as an entrepreneur in the medical services industry. He has been a registered voter for decades, and he

has been voting regularly in Montgomery County since moving there in 1991, including voting by mail since 2020. For the November 8, 2022 election, Smith properly requested a mail-in ballot, marked his ballot, and inserted it into the secrecy envelope and then into an outer envelope on which he signed the declaration. Smith believed he had followed all of the necessary steps to complete the declaration, and he is unaware of what the Montgomery County Board of Elections concluded was wrong with the date form. Because Montgomery County did not provide him with any notice of its determination about the date form on his outer return envelope, he had no opportunity to cure any defect prior to Election Day. Voting is important to Smith because Smith is concerned with the increasing polarization across the country, and he wants his vote for federal and state offices to count in this election. A true and correct copy of Smith's declaration is attached as Ex. H.

37. Defendant Acting Secretary Leigh Chapman has the duty “[t]o receive from county boards of elections the returns of primaries and elections, to canvass and compute the votes cast for candidates and upon [ballot] questions as required by the provisions of this act; to proclaim the results of such primaries and elections, and to issue certificates of election to the successful candidates at such elections.” 25 Pa. Stat. § 2621(f). Defendant Acting Secretary Chapman has issued guidance to county boards of elections that timely-submitted mail-in ballots that are determined to have a missing or incorrect date on the return envelope must be segregated and excluded from tabulation for the 2022 election.

38. Defendant County Boards of Elections are county-level executive agencies established under the Pennsylvania Election Code with jurisdiction over the conduct of primaries and elections in each of their respective counties. *See* 25 Pa. Stat. Ann. § 2641. Each elections board Defendant manages all aspects of elections in its respective county. *Id.* Their authority includes canvassing and computing the votes cast in each county’s election districts and then certifying the results of each race to Pennsylvania’s Secretary of the Commonwealth. *See* 25 Pa. Stat. Ann. § 2642.

FACTS

A. Pennsylvania’s Mail Ballot Rules

39. Pennsylvania has long provided absentee-ballot options for voters who cannot attend a polling place on election day. *See* 25 P.S. § 3146.1–3146.9. In 2019, Pennsylvania enacted new mail-in voting provisions, which allow all registered, eligible voters to vote by mail. Act of Oct. 31, 2019, P.L. 552, No. 77, § 8.

40. A voter seeking to vote by mail must complete an application and have their identity and qualifications verified. The voter must provide their name, address, and proof of identification to their county board of elections. 25 P.S. §§ 3146.2, 3150.12. Such proof of identification may include, among other things, a Pennsylvania driver’s license number or the last four digits of the voter’s social security number. 25 P.S. § 2602(z.5)(3). As part of the application process, voters provide all the information necessary for county boards of elections to verify that they are qualified to vote in Pennsylvania—namely, that they are at least 18 years old, have been a U.S. citizen for at least one month, have resided in the election district

for at least 30 days, and are not incarcerated on a felony conviction. 25 Pa. C.S. § 1301.

41. After the application is submitted, the county board of elections confirms applicants' qualifications by verifying their proof of identification and comparing the information on the application with information contained in a voter's record. 25 P.S. §§ 3146.2b, 3150.12b; *see also id.* § 3146.8(g)(4).¹ The county board's determinations on that score are conclusive as to voter eligibility unless challenged prior to Election Day. *Id.* Once the county board verifies the voter's identity and eligibility, it sends a mail-ballot package that contains a ballot, a "secrecy envelope" marked with the words "Official Election Ballot," and the pre-addressed outer return envelope, on which a voter declaration form is printed (the "Return Envelope"). *Id.* §§ 3146.6(a), 3150.16(a). Poll books kept by the county show which voters have requested mail ballots and which have returned them. *Id.* §§ 3146.6(b)(3), 3150.16(b)(3).

42. At "any time" after receiving their mail-ballot package, the voter marks their ballot, puts it inside the secrecy envelope, and places the secrecy envelope in the Return Envelope. 25 P.S. §§ 3146.6(a), 3150.16(a). The voter delivers the ballot, in the requisite envelopes, by mail or in person to their county board of elections. To be considered timely, a county board of elections must receive a ballot by 8 p.m. on Election Day. *Id.* §§ 3146.6(c), 3150.16(c). Upon receipt of a mail ballot, county boards

¹ *See also* Pa. Dep't of State, *Guidance Concerning Examination of Absentee and Mail-In Ballot Return Envelopes* at 2 (Sept. 11, 2020), <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Examination%20of%20Absentee%20and%20Mail-In%20Ballot%20Return%20Envelopes.pdf>.

of elections stamp the Return Envelope with the date of receipt to confirm its timeliness and log it in the Statewide Uniform Registry of Electors (“SURE”) system, the voter registration system used to generate poll books.²

43. Timely absentee and mail-in ballots that county boards of elections have verified consistent with the procedures set forth in § 3146.8(g)(3), that have not been challenged, and for which there is no proof that the voter died prior to Election Day are counted and included with the election results. *Id.* § 3146.8(d), (g)(4).

44. Pennsylvania’s adoption of mail voting has been a boon for voter participation in the Commonwealth. For example, in 2020, 2.7 million Pennsylvanians voted by absentee or mail ballot.³

45. In Pennsylvania’s 2022 general election, approximately 1.4 million mail ballots were requested.

B. Litigation Over the Envelope-Date Requirement

46. This case involves the instructions regarding the Return Envelope in which a voter places their mail ballot, in particular the direction that a voter “shall . . . fill out, date and sign the declaration printed on such envelope.” *See* 25 P.S. §§ 3146.6(a), 3150.16(a). The issue is whether a qualified, registered voter who (1) applies for and obtains a mail ballot, (2) fills it out, places it in the secrecy envelope

² *See, e.g.,* Pa. Dep’t of State, *Guidance Concerning Examination of Absentee and Mail-In Ballot Return Envelopes* at 2–3 (Sept. 11, 2020).

³ Pa. Dep’t of State, *Report on the 2020 General Election* at 9 (May 14, 2021), <https://www.dos.pa.gov/VotingElections/Documents/2020-General-Election-Report.pdf>. For ease of reference, the term “mail ballots” is used herein to encompass both absentee and mail ballots. The relevant rules governing the treatment of absentee and mail ballots are identical.

and the Return Envelope, and signs the declaration on the Return Envelope, and then (3) timely returns the envelope to their local board of elections by 8 p.m. on Election Day as confirmed by an official date stamp, may nevertheless have their vote invalidated because they did not add a superfluous handwritten date next to their signature on the Return Envelope, or because the date they wrote was deemed “incorrect” by a county board of elections.

47. The envelope-dating provision has been the subject of repeated litigation and guidance from the Department of State, including a unanimous Third Circuit panel decision (which was later vacated as moot) that refusing to count ballots on that basis violates federal law.

i. *In re Canvass*

48. In 2020, the Supreme Court of Pennsylvania, in the context of a fast-moving post-election lawsuit, concluded 3-1-3 that otherwise valid mail ballots contained in signed but undated Return Envelopes would be counted in that election. *In re Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058, 1062 (Pa. 2020).

49. The decision from the Supreme Court of Pennsylvania primarily concerned the construction of state law and did not produce a single majority opinion. But a majority of the Court suggested (albeit without deciding) that invalidating votes for failure to comply with the envelope-dating provision “could lead to a violation of federal law by asking the state to deny the right to vote for immaterial reasons,” contrary to the Materiality Provision. *In re Canvass*, 241 A.3d 1058 at 1074

n.5 (opinion announcing the judgment for three Justices); *id.* at 1089 n.54 (Wecht, J., concurring and dissenting) (expressing similar concern). Indeed, Justice Wecht was so concerned that he urged the Pennsylvania General Assembly to review the Election Code with “[the Materiality Provision] in mind.” *Id.*

ii. *Migliori*

50. Earlier this year, a unanimous panel of the Third Circuit concluded that disenfranchising voters based on the envelope-dating provision would violate the Materiality Provision. *Migliori*, 36 F.4th at 162–64; *id.* at 164–66 (Matey, J., concurring).⁴

51. In the 2021 Lehigh County elections, 257 timely-received mail ballots (1% of all mail ballots) were initially excluded based on mail-ballot voters’ inadvertent failure to handwrite a date on the Return Envelope. Three-quarters of the affected voters were over 65 years old, and fifteen of them were older than 90.⁵

52. Consistent with the then-current guidance from the Secretary of the Commonwealth, the Lehigh County Board of Elections counted ballots where the Return Envelopes had “wrong” dates on them, *e.g.*, a voter wrote their own birthdate instead of the date they signed the envelope. As the county clerk explained, he did so because state law “doesn’t say what date.”

⁴ The undersigned counsel represented the plaintiff voters at all stages of the *Migliori* litigation.

⁵ These and other facts from the *Migliori* record are drawn from Joint App’x, *Migliori v. Cohen*, No. 22-1499 (3d Cir.), Dkt.33-2.

53. The Lehigh County Board of Elections ultimately voted to count the 257 mail ballots without a date on the outer envelope, explaining, among other reasons, that the voters had made a “technical error,” that there was no question that the ballots were “received on time,” that “the signatures [on the Return Envelopes] match the poll book,” and that the directive on the Return Envelope to include a date was in small print and could have been made “much more visible to the voters.”

54. However, a candidate for County Court of Common Pleas, who was then leading the vote count by less than 257 votes, challenged the county board’s decision in state court. A divided panel of the Commonwealth Court eventually ruled in his favor in an unpublished decision that briefly mentioned, but did not resolve, the Materiality Provision issue. *See Ritter v. Lehigh Cnty. Bd. of Elections*, No. 1322 C.D. 2021, 272 A.3d 989 (Tbl.), 2022 WL 16577 (Pa. Commw. Ct. Jan. 3, 2022), *appeal denied*, 271 A.3d 1285 (Pa. 2022).

55. A bipartisan group of voters then sued in federal court. After a district judge dismissed their case on procedural grounds, a unanimous three-judge panel of the U.S. Court of Appeals for the Third Circuit reversed, upholding plaintiffs’ right to have their votes counted under federal law. *See Migliori*, 36 F.4th at 162–64; *see also id.* 164–66 (Matey, J., concurring). The court concluded that because omitting the handwritten date on the Return Envelope was not “material in determining whether [a voter] is qualified to vote under Pennsylvania law,” disenfranchising voters based on that omission violated federal law, namely, the Materiality Provision. *Id.* at 162–63. Judge Matey concurred that the defendants had offered “no evidence,

and little argument, that the date requirement for voter declarations under the Pennsylvania Election Code ... is material as defined in § 10101(a)(2)(B).” *Migliori*, 36 F.4th at 165 (Matey, J., concurring). The court ordered Lehigh County to count the 257 mail ballots in undated envelopes.

56. The Court of Common Pleas candidate pressing the appeal, David Ritter, then sought a stay from the U.S. Supreme Court.

57. The Supreme Court denied the stay, with three justices dissenting, thus allowing (indeed, requiring) Lehigh County to count the 257 mail ballots. *See Ritter v. Migliori*, 142 S. Ct. 1824 (2022) (mem.). The 2021 election was then certified with all the ballots counted, which the parties agreed mooted the controversy. The Supreme Court later granted Ritter’s request to vacate the Third Circuit’s decision as moot, pursuant to *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950), which the Court did in a short-form order that did not question the correctness of the Third Circuit’s decision, *see Ritter v. Migliori*, No. 22-30, 2022 WL 6571686 (U.S. Oct. 11, 2022). Vacatur for mootness is not a merits determination and decisions that have been vacated as moot are still “persuasive” authority. *See Polychrome Int’l Corp. v. Krigger*, 5 F.3d 1522, 1534 (3d Cir. 1993).

iii. *McCormick and Berks County*

58. After the Third Circuit’s *Migliori* decision, the Commonwealth Court of Pennsylvania twice held that such mail ballots must be counted as a matter of both state and federal law in suits arising out of the 2022 primary. *Chapman v. Berks Cnty. Bd. of Elections*, No. 355 M.D. 2022, 2022 WL 4100998, at *12–*29 (Pa. Commw.

Ct. Aug. 19, 2022); *McCormick for U.S. Senate v. Chapman*, No. 286 M.D. 2022, 2022 WL 2900112, at *9–*15 (Pa. Commw. Ct. June 2, 2022). These decisions agreed with the *Migliori* panel that the federal Materiality Provision required that result. *See, e.g., Berks Cnty.*, 2022 WL 4100998, at *12–*29 (concluding that “the failure of an elector to handwrite a date on the declaration on the return envelope does not relate to the timeliness of the ballot or the qualification of the elector”).

59. Consistent with those decisions, the Secretary of the Commonwealth advised counties in the months leading up to the 2022 election to count otherwise valid and timely-received mail ballots even where voters omitted a handwritten date, or wrote a plainly wrong date like a birthdate, on the Return Envelope.⁶ The Secretary reaffirmed that guidance after the U.S. Supreme Court vacated on mootness grounds the Third Circuit’s *Migliori* decision.⁷

iv. *Ball v. Chapman*

60. On October 16, 2022, less than a week after the vacatur of the *Migliori* decision, and with voting in the 2022 election already underway, a group of partisan petitioners brought a King’s Bench petition in the Supreme Court of Pennsylvania

⁶ *See* Pa. Dep’t of State, *Guidance Concerning Examination of Absentee and Mail-in Ballot Return Envelopes* (Sept. 26, 2022), <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/2022-09-26-Examination-Absentee-Mail-In-Ballot-Return-Envelopes-3.0.pdf> (advising county boards of elections to “include[] in the canvass and pre-canvass ... [a]ny ballot-return envelope that is undated or dated with an incorrect date but has been timely received”).

⁷ *See* Pennsylvania Pressroom, *Acting Secretary of State Issues Statement on SCOTUS Order on Undated Mail Ballots* (Oct. 11, 2022), <https://www.media.pa.gov/Pages/State-details.aspx?newsid=536>.

seeking to invalidate mail ballots with no handwritten date on the Return Envelope or with an “incorrect” handwritten date on the Return Envelope.

61. On November 1, 2022, the Supreme Court of Pennsylvania issued an order directing that the mail ballots at issue should be segregated and not counted, but indicating that the Court, which currently has only six justices, was deadlocked on whether the federal Materiality Provision prohibited disenfranchising voters on that basis.

62. Following that decision, on November 1, 2022, the Department of State’s Deputy Secretary for Elections and Commissions, Jonathan Marks, sent an email to counties advising elections officials of the Supreme Court of Pennsylvania’s order to “refrain from counting any absentee and mail-in ballots received for the November 8, 2022 general election that are contained in undated or incorrectly dated outer envelopes,” and to “**segregate and preserve** any ballots contained in undated or incorrectly dated outer envelopes.” Deputy Secretary Marks instructed that the elections officials “**must remember to do two things** as [they] pre-canvass and canvass absentee and mail-in ballots: Segregate AND preserve these undated and incorrectly dated ballots; and Do not count the votes cast on ballots with undated or incorrectly dated ballots.” A true and correct copy of the email is attached as Ex. I (all emphasis in original email).

63. On November 3, Acting Secretary Chapman issued new guidance, instructing counties that “ballots which are administratively determined to be undated or incorrectly dated” should be coded as “CANC – NO SIGNATURE within

the SURE system” (*i.e.*, should be cancelled and not accepted) and “segregated from other ballots.” A true and correct copy of the guidance is attached as Ex. J.

64. On November 5, 2022, the Supreme Court of Pennsylvania issued a supplemental order stating that “incorrectly dated outer envelopes” include “(1) mail-in ballot outer envelopes with dates that fall outside the date range of September 19, 2022 through November 8, 2022; and (2) absentee ballot outer envelopes with dates that fall outside the date range of August 30, 2022 through November 8, 2022.” A true and correct copy of that supplemental order is attached as Ex. K.

C. Pennsylvania’s 2022 Election

65. On information and belief, as of November 15, 2022, the Defendant county boards of elections had recorded their receipt of 1,244,072 mail ballots in the Statewide Uniform Registry of Electors.

66. In the 2022 midterm election, which involved elections for the U.S. Senate, U.S. House of Representatives, and Pennsylvania House and Senate offices, the Defendant county boards of elections segregated thousands of mail-in ballots based on missing or incorrect dates on their outer return envelopes. For example, on information and belief:

- a. As of November 16, 2022, Philadelphia had segregated 2,143 ballots with no dates on their return envelopes and 460 ballots that listed purportedly-incorrect dates on their return envelopes.
- b. As of November 7, 2022, Allegheny County had segregated 369 ballots with no dates on their return envelopes and 551 ballots that listed purportedly-incorrect dates on their return envelopes.
- c. As of November 18, 2022, Lehigh County had segregated a total of 223 ballots because there were no dates or purportedly-incorrect dates on their return envelopes.

- d. As of November 5, 2022, Lackawanna County reported that it had segregated 186 ballots with no dates on their return envelopes.
- e. As of November 22, 2022, Erie County had segregated 122 ballots with no dates on their return envelopes and 49 ballots that listed purportedly-incorrect dates on their return envelopes.
- f. As of November 7, 2022, Beaver County had segregated 159 ballots with missing or purportedly-incorrect dates on their return envelopes.
- g. As of November 7, 2022, Butler County had segregated 64 ballots with no dates on their return envelopes.
- h. As of November 21, 2022, Blair County had segregated 26 ballots with no dates on their return envelopes and 28 ballots that listed purportedly-incorrect dates on their return envelopes.
- i. As of November 18, 2022, Crawford County had segregated a total of 51 ballots because there were no dates or purportedly-incorrect dates on their return envelopes.
- j. As of November 7, 2022, Forest County had segregated 39 ballots with missing or incorrect dates on their return envelopes.
- k. As of November 7, 2022, Perry County had segregated 25 ballots with no dates on their return envelopes and 4 ballots that listed purportedly-incorrect dates on their return envelopes.
- l. As of November 10, 2022, Bucks County had segregated 19 ballots with no dates on their return envelopes and 7 ballots that listed purportedly-incorrect dates on their return envelopes.
- m. As of November 14, 2022, Warren County had segregated 10 ballots with no dates on their return envelopes and 8 ballots that listed purportedly-incorrect dates on their return envelopes.
- n. As of November 7, 2022, Mifflin County had segregated 7 ballots with no dates on their return envelopes.
- o. As of November 7, 2022, Cameron County had segregated 5 ballots with no dates on their return envelopes.
- p. As of November 5, 2022, Union County had segregated 5 ballots with no dates on their return envelopes.

67. The above represents only a fraction of the total number of voters affected by this issue, as Plaintiffs have not yet been able to gather data for many of the counties not listed above. In Erie County, for instance, 26,170 voters submitted mail or absentee ballots, meaning the 171 segregated ballots represent approximately .7% of all such ballots cast in that county. And in Forest County, the 39 segregated ballots represent more than 9% of the 412 total mail ballots submitted in that county. Well over a million people voted by mail ballot in 2022. Across the Commonwealth, .7% of all mail ballot voters would represent more than 8,129 votes, and 9% of mail ballot voters would represent more than 117,764 votes.

68. On information and belief, at least 20 counties provided no advance notice to voters that their ballots would not be counted due to the envelope-date rule and/or forbade voters who had their ballot set aside due to the immaterial envelope-date rule from voting provisionally to cure the problem. Many voters, including Plaintiffs Seastead, Boyle, Djehl, Polinski, Bencan, and Smith, accordingly had no opportunity to cure any purported defect involving their date because their county boards of elections failed to provide them with any such notice before Election Day.

69. Moreover, some voters who did receive notice, including Plaintiffs Terrizzi and Gutierrez, were often unable to vote in person on Election Day given their health circumstances and/or because they were not afforded sufficient time to cure their mistake.

70. Voters—including individual Plaintiffs and organizational Plaintiffs’ members—will be disenfranchised if Defendants refuse to count their ballots based on missing or purportedly-incorrect dates on the outer return envelopes.

71. Litigation over the past year has demonstrated that it is Pennsylvania voters who will lose unless this Court enjoins Defendants from disqualifying timely submitted ballots from eligible voters simply because they omitted a meaningless date, or wrote the wrong date, on the Return Envelope. For example, the plaintiffs in *Migliori* were senior citizens who had voted in Lehigh County for decades. They were Republicans and Democrats alike. Like the individual voter Plaintiffs here, and like thousands of the organizational Plaintiffs’ members, they were regular people—a foundry blaster, a teacher, a business owner—who vote in almost every election. They filled out their mail ballots, sent them in on time, and signed the declaration on the Return Envelope, but made a mistake on the Return Envelope by omitting a handwritten date.

72. Moreover, here as in *Migliori*, the affected voters are significantly older than both other Pennsylvanians who voted by mail and all registered Pennsylvania voters. Philadelphia provides a compelling example: There, on information and belief, almost 50% of the affected voters are 65 or older, while only 36% of other Philadelphians who voted by mail are 65 or older and only 20% of all registered Philadelphia voters are 65 or older. And around 23% of the affected voters are 75 or older, while only 15% of other Philadelphians who voted by mail are 75 or older and only 8% of all registered Philadelphia voters are 75 or older.

73. The challenged envelope-date rule disenfranchises even voters who reasonably believed they were complying with all of the proper requirements to cast their ballot. For example, on information and belief, if a voter who was raised in or spent time living overseas followed the date sequencing convention used by many other countries (*i.e.*, day, then month, then year) in dating their outer return envelope, those voters could have their ballots invalidated based on an “incorrect” date.

74. The Materiality Provision of the Civil Rights Act and the Fourteenth Amendment of the United States Constitution requires that the ballots at issue here be counted. The disenfranchisement of the affected voters in 2022 and future elections constitutes irreparable harm for which there is no adequate remedy at law and for which this Court’s intervention is required.

CLAIM FOR RELIEF

Count I: Rejection of Ballots for Immaterial Paperwork Errors or Omissions in Violation of the Materiality Provision of the Civil Rights Act (52 U.S.C. § 10101(a)(2)(B), 42 U.S.C. § 1983)

75. Plaintiffs rely upon all the paragraphs of this Complaint, which are incorporated into this Count I as if fully restated here.

76. The Materiality Provision of the Civil Rights Act prohibits disqualifying voters “because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.” 52 U.S.C. § 10101(a)(2)(B) (formerly codified at 42 U.S.C. § 1971).

77. The Civil Rights Act directs that “vote” in this context means “all action necessary to make a vote effective including, but not limited to, registration or other action required by State law prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office and propositions for which votes are received in an election.” *Id.* § 10101(a)(3)(A), (e).

78. The challenged conduct here tracks exactly what the statute forbids: denying voters the right to have their ballot “counted and included in the appropriate totals of votes cast” based on an immaterial paperwork error on a form made requisite to voting. Specifically, Defendants are poised to invalidate voters’ mail ballots:

- (1) based on an “omission” (namely, leaving off the handwritten date) or an “error” (namely, writing a purportedly incorrect date);
- (2) on a “record or paper” that is “made requisite to voting” (namely, the form declaration printed on the outer Return Envelope);
- (3) that is immaterial to whether the voter “is qualified under State law to vote in [the] election,” or for that matter on whether the mail ballot was timely received (namely, because the handwritten date on the envelope has no bearing on whether a voter meets the age, residency, or citizenship and felony status requirements of state law, or whether the county received the ballot on time.

52 U.S.C. § 10101(a)(2)(B), (e).

79. In Pennsylvania, state law establishes the only “qualifications” needed to “be entitled to vote at all elections.” *See* Pa. Const. art. VII, § 1. In particular, a voter must be at least 18 years old, have been a U.S. citizen for at least one month, have resided in the election district for at least 30 days, and is not presently incarcerated on a felony conviction. 25 Pa. C.S. § 1301.

80. A voter’s failure to handwrite the date next to their signature on the ballot return envelope is not material to determining their qualification to vote. Indeed, as set forth *supra*, Pennsylvania law requires each mail-in voter to demonstrate eligibility and qualification to vote before the voter is even issued a mail-in ballot in the first place. *See* 25 P.S. §§ 3146.2, 3150.12.

81. The date on which a voter signed their return envelope is also immaterial to determining the timeliness of the voter’s ballot. Because a ballot’s timeliness under Pennsylvania law is determined by when it was received and stamped by the county board of elections, 25 P.S. §§ 3146.6(c), 3150.16(c), the date and time at which mail ballots are returned is objectively verifiable—regardless of what, if any, date the voter wrote on the return envelope. *Accord Migliori*, 36 F.4th at 164 (“Upon receipt, the [Board] timestamped the ballots, rendering whatever date was written on the ballot superfluous and meaningless.”).

82. The rejection of otherwise-valid ballots for immaterial errors or omissions on voting-related paperwork is contrary to the Materiality Provision of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B), and will result in the disenfranchisement

of Pennsylvania voters who submitted timely mail-in ballots in the 2022 election and all future elections, unless and until enjoined by this Court.

**Count II: Rejection of Certain Ballots for Immaterial Paperwork Errors
or Omissions in Violation of the Fourteenth Amendment of the
United States Constitution
(42 U.S.C. § 1983)**

83. Plaintiffs rely upon all the paragraphs of this Complaint, which are incorporated into this Count II as if fully restated here.

84. The Equal Protection Clause of the Fourteenth Amendment commands that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV.

85. “[O]nce the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.” *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 665 (1966). And when an equal protection claim involves differential treatment of the right to vote, the Supreme Court has required the application of strict scrutiny because of “the significance of the franchise as the guardian of all other rights.” *Plyler v. Doe*, 457 U.S. 202, 217 n.15 (1982) (collecting cases).

86. Defendants’ interpretation of Pennsylvania law creates differential treatment of the right to vote. Under their interpretation, the Pennsylvania Election Code requires invalidating the ballots of voters who write no date or a purportedly-incorrect date on the outer return envelope in which they submit their mail ballot to the board of elections. 25 P.S. §§ 3146.6(a), 3150.16(a). Yet state law applies a different rule to military and overseas voters who vote by mail, stating that a “voter’s

mistake or omission in the completion of a document” shall *not* invalidate their ballot “as long as the mistake or omission does not prevent determining whether a covered voter is eligible to vote.” 25 Pa. C.S. § 3515(a).

87. Defendants have no legitimate interest, let alone a compelling one, to invalidate the mail ballots of otherwise-qualified domestic voters based on trivial paperwork errors while counting the mail ballots of military and overseas voters who make the same immaterial mistake. Nor could the chosen means of advancing such an interest—disenfranchising qualified, registered domestic voters—be narrowly tailored to achieving any interest the Commonwealth might proffer.

88. Disqualifying some, but not all, voters based on a missing or incorrect date on the return envelope of a mail ballot is especially pernicious because that date has “no relation to voting qualifications.” *Harper*, 383 U.S. at 670. “[T]he right to vote is too precious, too fundamental to be so burdened or conditioned” on such basis. *Id.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in favor of Plaintiffs and provide the following relief:

1. A declaration that rejecting timely submitted mail-in ballots based solely on a missing or incorrect date next to the voter’s signature on the return envelope violates the Materiality Provision of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B), and the Fourteenth Amendment of the United States Constitution;

2. Injunctive relief preliminarily and permanently enjoining Defendants and all persons acting on their behalf from:

- a. Rejecting and/or not counting otherwise-valid mail-in ballots timely submitted by 8:00 p.m. on Election Day, in 2022 and future elections, based solely on a missing or incorrect date on the outer return envelope;
 - b. Certifying any future election in the Commonwealth of Pennsylvania or any Pennsylvania county or locality without counting such mail-in ballots; and
 - c. Refusing to include these ballots when reporting the 2022 election totals on Commonwealth and County websites, voter files, record books, and any other public tallies or recordings;
3. Nominal damages to Plaintiffs Terrizzi, Seastead, Boyle, Gutierrez, Diehl, Polinski, Bencan, and Smith for the completed violation of their legal right to vote under both the Materiality Provision and the Fourteenth Amendment;
 4. An award of costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and
 5. Any such other relief as this Court deems just and appropriate.

Dated: November 30, 2022

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

PENNSYLVANIA STATE CONFERENCE OF THE
NAACP, *et al.*,

Plaintiffs,

v.

LEIGH M. CHAPMAN, in her official capacity as
Acting Secretary of the Commonwealth, *et al.*,

Defendants.

Case No. 1:22-cv-00339-SPB

ORDER

AND NOW, this 11th day of April, 2023, upon consideration of Plaintiffs' Motion to Drop Parties Jean Terrizzi, Deborah Diehl, and Marjorie Boyle and any responses thereto, it is hereby ORDERED that the Motion is GRANTED. Jean Terrizzi, Deborah Diehl and Marjorie Boyle are hereby removed as Plaintiffs in this action, without prejudice.

BY THE COURT



Hon. Susan Paradise Baxter
United States District Judge

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

PENNSYLVANIA STATE CONFERENCE OF
THE NAACP, *et al.*,

Plaintiffs,

v.

AL SCHMIDT, in his official capacity as Acting
Secretary of the Commonwealth, *et al.*,

Defendants.

Case No. 1:22-cv-00339-SPB

**PLAINTIFF PENNSYLVANIA STATE CONFERENCE OF THE NAACP'S
RESPONSES AND OBJECTIONS TO INTERVENOR-DEFENDANTS' FIRST
SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33 and the Local Rules of the U.S. District Court for the Western District of Pennsylvania, Plaintiff Pennsylvania State Conference of the NAACP ("State Conference") serves the following responses and objections to Intervenor-Defendants Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania First Set of Interrogatories (each an "Interrogatory," and, collectively, the "Interrogatories"). All responses and objections contained herein (the "Responses and Objections") and in any supplemental responses are based only upon such information and materials presently available and specifically known to the State Conference. The State Conference reserves the right to amend or supplement the Responses and Objections in accordance with the Court's orders and the Federal Rules of Civil Procedure.

Further discovery, investigation, and legal research may supply additional

facts and/or add meaning to known facts. The following Responses and Objections are provided without prejudice to the State Conference's right at or before any trial to produce evidence of any subsequently discovered facts. By producing any materials in response to these Interrogatories, the State Conference does not concede the relevance or admissibility of the materials or information produced. The State Conference reserves the right to challenge the admissibility of any materials or information produced in response to these Interrogatories on any applicable ground.

GENERAL OBJECTIONS

The following general objections apply to each of the Interrogatories propounded by Intervenor-Defendants and shall have the same force and effect as if set forth in full in response to each of the separately numbered Interrogatories. Each and every one of the following General Objections is hereby incorporated by reference into the State Conference's Responses and Objections. The fact that any General Objection is not specifically listed in response to an Interrogatory does not constitute a waiver of that General Objection or otherwise preclude the State Conference from raising that General Objection at a later time. These General Objections are not in any way limited by the State Conference's Responses and Objections. Any undertaking to search for, or to provide information in response to, the Interrogatories remains subject to each specific objection and General Objection.

1. The State Conference objects to the Requests because they request documents beyond the scope of the claims set forth in the First Amended Complaint or any party's defenses thereto. The State Conference will only produce documents in

response to the Requests that address the scope of the First Amended Complaint in this matter.

2. The State Conference objects to the definition of “PA NAACP,” “you” and “your” to with regard to including “any agents, employees, representatives, or other persons acting or purporting to act on its behalf” in each discovery request, who are not identified, as overly broad, vague, unclear and as requiring an unreasonable investigation to determine the meaning of the same.

3. The State Conference objects to the definitions of “describe,” “describe in detail,” “state,” and “state in detail” as overly broad, vague, unclear and as requiring an unreasonable investigation to determine the meaning of the same, and will provide only that information which is discoverable under the Federal Rules of Civil Procedure, proportional to the needs of the case, and reasonably within the State Conference’s knowledge.

4. The State Conference objects to the definition of “relating to” as overly broad, vague, unclear and as requiring an unreasonable investigation to determine the meaning of the same, and will provide only that information which is discoverable under the Federal Rules of Civil Procedure, proportional to the needs of the case, and reasonably within the State Conference’s knowledge.

5. The State Conference objects to the Interrogatories because they attempt to or purport to impose duties and obligations on the State Conference in addition to or inconsistent with those imposed or authorized by the Federal Rules of Civil Procedure, the Local Rules of the U.S. District Court for the Western District of

Pennsylvania, or the Court's orders in this case.

6. The State Conference objects to the Interrogatories because they are vague, ambiguous, overly broad, lacking in particularity, unduly burdensome or oppressive, or call for information or materials that are neither relevant to any party's claim or defense, nor proportional to the needs of the case.

7. The State Conference objects to the Interrogatories because they purport to require the State Conference to conduct anything beyond a reasonable and diligent search of readily accessible information or materials within its possession, custody, or control, including electronically stored information, from readily accessible sources where responsive information or materials reasonably would be expected to be found.

8. The State Conference objects to each Interrogatory to the extent that it seeks information that (i) is not in the possession, custody, or control of the State Conference, its agents, employees and attorneys; (ii) is in the joint possession of the State Conference and Defendant; or (iii) is as equally accessible to Defendant as to the State Conference.

9. The State Conference objects to the Interrogatories to the extent that they call for information or materials that are available from a more-convenient, more-efficient, less-burdensome, or less-expensive source, or through a more-convenient, more-efficient, less-burdensome, or less-expensive means than the Interrogatories.

10. The State Conference objects to the Interrogatories because they contain

express or implied assumptions of fact or law with respect to matters at issue in this action. the State Conference's responses and objections to the Interrogatories are not intended to, and shall not, be construed as an agreement or concurrence by the State Conference with Defendants' characterization of any facts or circumstances at issue in this action. Instead, the State Conference expressly reserves the right to contest any such characterization as inaccurate.

11. The State Conference objects to the Interrogatories to the extent that they call for information protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, joint-defense or common-interest privileges, or any other applicable law, regulation, privilege, immunity, or discovery protection. The State Conference makes its responses hereto without waiving any privilege or any rights under the attorney work-product doctrine. Specific objections on the grounds of privilege are provided for emphasis and clarity only, and the absence of a specific objection is neither intended, nor should be interpreted, as evidence that the State Conference does not object to any specific Interrogatory on the basis of any applicable law, regulation, privilege, immunity, or protection. To the extent that the State Conference inadvertently provides any privileged or protected information, the State Conference reserves its right to assert all applicable privileges and protections from disclosure.

12. The State Conference objects to each Interrogatory to the extent that it seeks disclosure of facts and information that contain sensitive, confidential, and proprietary business information and/or constitute trade secrets. The State

Conference also objects to each Interrogatory to the extent that it would result in the disclosure of information in violation of privacy rights of individuals under any constitutional, statutory, or common law right of privacy of any person.

13. The State Conference objects to the first Instruction as overly broad and unduly burdensome because it purports to require the State Conference to provide information covering an irrelevant time period. The State Conference will only provide information or materials within a timeframe that is proportional to the needs of the case and appropriate for the Interrogatory at issue.

14. The State Conference provides these Responses and Objections without waiving or intending to waive: (i) any objections as to competency, relevance, materiality, privileged status, or admissibility of any information or materials provided in response to the Interrogatories; (ii) the right to object on any ground to the information or materials provided in response to the Interrogatories at any hearing or trial; or (iii) the right to object on any ground at any time to a demand for further responses to the Interrogatories.

15. The State Conference is responding to these Interrogatories based on the information and materials reasonably available to it at the time the response is made. The State Conference reserves the right to amend or supplement these responses in accordance with the Court's orders and the Federal Rules of Civil Procedure.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

For ease of reference, the State Conference sets out each Interrogatory followed by each response to that Interrogatory.

INTERROGATORY NO. 1: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint, including your challenges to the Date Requirement.

RESPONSE:

The State Conference objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. The State Conference further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection. The State Conference further objects to this Interrogatory on the grounds that seeks legal conclusions.

The State Conference, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 2: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint, including your challenges to the Date Requirement.

RESPONSE:

The State Conference objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. The State Conference further objects to this Interrogatory to the extent it seeks

information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection, and to the extent it calls for a legal conclusion. The State Conference further objects to this Interrogatory because it seeks information already within the possession, custody and/or control of Defendants, or which is equally accessible to Defendant as to the State Conference.

The State Conference, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 3: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint that the Date Requirement is not “material.”

RESPONSE:

The State Conference objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 1. The State Conference incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

The State Conference, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 4: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement violates the Materiality Provision of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B).

RESPONSE:

The State Conference objects to this Interrogatory as cumulative and

duplicative of Interrogatory Number 2. The State Conference incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

The State Conference, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 5: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint that the Date Requirement is not “material.”

RESPONSE:

The State Conference objects to this Interrogatory as cumulative and duplicative of Interrogatory Numbers 1 and 3. The State Conference incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

The State Conference, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 6: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement violates the Materiality Provision of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B).

RESPONSE:

The State Conference objects to this Interrogatory as cumulative and duplicative of Interrogatory Numbers 2 and 4. The State Conference incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above

General Objections.

The State Conference, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 7: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint that the Date Requirement violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

RESPONSE:

The State Conference objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 1. The State Conference incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

The State Conference, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 8: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

RESPONSE:

The State Conference objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 2. The State Conference incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

The State Conference, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 9: Explain in detail all legal and factual bases for your allegations that the Date Requirement imposes a burden on voters.

RESPONSE:

The State Conference objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 1. The State Conference incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

The State Conference, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 10: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement imposes a burden on voters.

RESPONSE:

The State Conference objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 2. The State Conference incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

The State Conference, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 11: Explain in detail all legal and factual bases for your allegations that you have standing to bring this lawsuit.

RESPONSE:

The State Conference objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. The State Conference further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection, and to the extent it calls for legal conclusions.

Subject to and without waiving the foregoing General or specific objections, the State Conference refers to the substance of its pleadings and states that it has standing to challenge application of the mail ballot envelope dating requirement by the Commonwealth of Pennsylvania and the county boards of election to disenfranchise voters caused harm to the State Conference's organization due to the diversion of its limited resources leading up to and during the November 2022 General Election, and because the prospective application of the same requirement will cause the State Conference to continue diverting its limited resources in future elections absent the relief sought in this case.

The State Conference is a non-profit, non-partisan organization that works to improve the political, educational, social, and economic status of African-Americans and other racial and ethnic minorities, among other objectives. The State Conference advocates for civil rights, including voting rights, for Black Americans, both nationally and in Pennsylvania. In the weeks leading up to the November 2022

general election, the State Conference and its units engaged in efforts to get out the vote, including but not limited to educating Black voters in Pennsylvania on different methods of voting, providing educational guides on local candidates to increase voter engagement, and focusing on strategies to eliminate Black voter suppression both nationally and in Pennsylvania.

Following the Pennsylvania Supreme Court's November 1, 2022 decision in *Ball v. Chapman*, No. 102 MM 2022, the boards of elections in the counties where the State Conference operates implemented a rule requiring election officials to set aside—and not count—votes received in mail ballot envelopes missing a meaningless voter-written date or showing a date that the board of elections determined to be “incorrect.”

This abrupt change in voting rules just before Election Day, after many people served by the State Conference's mission had already submitted mail ballots, caused the State Conference and its units to redirect their limited resources, including staff and volunteer time, to efforts to contact and inform voters of this change and educate them as to how to avoid disenfranchisement. The State Conference and its units diverted those resources from their planned efforts to, among other things, phone- and text-banking efforts to mitigate the disenfranchisement threatened by the new envelope date rule (including by using the State Conference's Philadelphia office as the host site for an Election Day command center manned by phone-banking volunteers), as well as creating social media posts to notify voters about the change to the rule and the procedures for curing their ballots. But for application of the rule

at issue in this case, such time and resources dedicated by the State Conference staff and volunteers would have been available for the organization's other efforts to mobilize voters, rather than ensuring voters who were already participating in the political process were not disenfranchised.

Absent the relief requested in this case, the State Conference anticipates that it will need to again divert its staff and volunteer resources to similar voter education and outreach efforts dedicated to preventing disenfranchisement due to meaningless mail ballot envelope dating issues in future elections, instead of having those resources available for its other voter mobilization and education initiatives in the communities it serves. The State Conference also has thousands of members who live and/or work in Pennsylvania, many of whom are registered to vote in Pennsylvania and are at risk of disenfranchisement if Defendants continue to fail to count timely-submitted mail-in ballots based solely on a missing or incorrect date on the return envelope.

By way of further response, and pursuant to Fed. R. Civ. P. 33(d), the State Conference refers to the accompanying production of documents reflecting the State Conference's efforts necessitated by the change in envelope dating rules in Pennsylvania, including but not limited to internal correspondence as well as social media posts and flyers to notify voters about the envelope-dating requirement.

INTERROGATORY NO. 12: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that you have standing to bring this lawsuit.

RESPONSE:

The State Conference objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. The State Conference further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection, and to the extent it calls for a legal conclusion. The State Conference further objects to this Interrogatory because it seeks information already within the possession, custody and/or control of Defendants, or which is equally accessible to Defendant as to the State Conference. The burden of searching the parties' document productions to identify each and every document that may support or refute the State Conference's claims in this matter is just as easily borne by Defendants and is disproportional to the needs of the case.

Subject to and without waiving the foregoing General or specific objections, and pursuant to Fed. R. Civ. P. 33(d), the State Conference refers to the substance of its pleadings, the accompanying production of documents, and the written discovery responses and document productions provided by Defendants in this case.

INTERROGATORY NO. 13: Identify by name each person who you believe has knowledge of facts that support, corroborate, or refute your allegations in the First Amended Complaint, including your challenges to the Date Requirement.

RESPONSE:

The State Conference objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. The

State Conference further objects to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, the State Conference refers to the substance of its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 14: For each person described in your response to the preceding interrogatory, describe in detail your understanding of the facts of which each person has knowledge.

RESPONSE:

The State Conference objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. The State Conference further objects to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, the State Conference refers to the substance of its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 15: Identify by name each person who you believe has knowledge of facts that support, corroborate, or refute your allegations that you have standing to bring this lawsuit.

RESPONSE:

The State Conference objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. The

State Conference further objects to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, the State Conference refers to the substance of its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 16: For each person described in your response to the preceding interrogatory, describe in detail your understanding of the facts of which each person has knowledge.

RESPONSE:

The State Conference objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. The State Conference further objects to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, the State Conference refers to the substance of its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 17: Identify by name all of your members who you allege are harmed by the Date Requirement, state in which county each such member resides, and provide each such member's address.

RESPONSE:

The State Conference objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. The

State Conference specifically objects to this interrogatory as unduly burdensome and not proportional to the needs of the case because the State Conference has standing based on its diversion of resources, separate and apart from any harm that its individual members.

Subject to and without waiving the foregoing General or specific objections, the State Conference states that at this time it is not relying on direct harm to any of its individual constituent-members from the envelope-dating requirement as a basis for standing in this case. However, the State Conference's investigation remains ongoing, and the State Conference reserves the right to supplement or modify these responses based on any additional information it discovers.

INTERROGATORY NO. 18: Describe in detail how you became aware of each of your members who are allegedly harmed by the Date Requirement.

RESPONSE:

The State Conference objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. The State Conference specifically objects to this interrogatory as unduly burdensome and not proportional to the needs of the case because the State Conference has standing based on its diversion of resources, separate and apart from any harm that its individual members.

Subject to and without waiving the foregoing General or specific objections, the State Conference states that at this time it is not relying on direct harm to any of its individual constituent-members from the envelope-dating requirement as a basis for

standing in this case. However, the State Conference's investigation remains ongoing, and the State Conference reserves the right to supplement or modify these responses based on any additional information it discovers.

INTERROGATORY NO. 19: Identify by name all of your members through whom you claim standing to bring this lawsuit, state in which county each such member resides, and provide each such member's address.

RESPONSE:

The State Conference objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. The State Conference specifically objects to this interrogatory as unduly burdensome and not proportional to the needs of the case because the State Conference has standing based on its diversion of resources, separate and apart from any harm that its individual members.

Subject to and without waiving the foregoing General or specific objections, the State Conference states that at this time it is not relying on direct harm to any of its individual constituent-members from the envelope-dating requirement as a basis for standing in this case. However, the State Conference's investigation remains ongoing, and the State Conference reserves the right to supplement or modify these responses based on any additional information it discovers.

INTERROGATORY NO. 20: Describe in detail how you became aware of each of your members through whom you claim standing to bring this lawsuit.

RESPONSE:

The State Conference incorporates the foregoing General Objections, as well as its objections and response to Interrogatory Number 19, as if fully restated herein.

INTERROGATORY NO. 21: Identify all persons or entities acting or purportedly acting on your behalf (yourself included) who supplied information that helped you respond to these Interrogatories or who helped draft any responses to these Interrogatories and identify all related documents.

RESPONSE:

The State Conference objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. The State Conference further objects to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, the State Conference refers to the substance of its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 22: Identify all individuals within Philadelphians Organized to Witness who may have discoverable hard copy documents and ESI in their possession, custody, or control, including the title held by each person, his or her function and duties, and applicable dates of service.

RESPONSE:

The State Conference objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. The State Conference further objects to this Interrogatory as cumulative and duplicative

of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A).

Subject to and without waiving the foregoing General or specific objections, the State Conference refers to the substance of its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 23: For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE:

The State Conference objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. The State Conference further objects to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, the State Conference refers to the substance of its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

Dated: February 17, 2023

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Respectfully submitted,

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VERIFICATION

I, Sandra Thompson, am the President of the Pennsylvania State Conference of the NAACP (“State Conference”), and I hereby verify that I reviewed the foregoing responses to Intervenor-Defendants Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania Interrogatories and that those responses are based on information the State Conference furnished to counsel and/or information that has been gathered by counsel in the course of this lawsuit. I further verify that I read the responses and that they are true and correct to the best of my knowledge, information and belief. To the extent that the contents are that of counsel, I have relied upon counsel in making this verification. I understand that false statements made herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsifications to authorities.



Date: February 17, 2023

Sandra Thompson, President
Pennsylvania State Conference of the
NAACP

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

PENNSYLVANIA STATE CONFERENCE OF THE
NAACP, *et al.*,

Plaintiffs,

v.

AL SCHMIDT, in his official capacity as Acting
Secretary of the Commonwealth, *et al.*,

Defendants.

Case No. 1:22-cv-00339-SPB

**PLAINTIFF LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA'S RESPONSES
AND OBJECTIONS TO INTERVENOR-DEFENDANTS' FIRST SET OF
INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33 and the Local Rules of the U.S. District Court for the Western District of Pennsylvania, Plaintiff League of Women Voters of Pennsylvania (LWVPA or the "League") serves the following responses and objections to Intervenor-Defendants Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania First Set of Interrogatories (each an "Interrogatory," and, collectively, the "Interrogatories"). All responses and objections contained herein (the "Responses and Objections") and in any supplemental responses are based only upon such information and materials presently available and specifically known to LWVPA. LWVPA reserves the right to amend or supplement the Responses and Objections in accordance with the Court's orders and the Federal Rules of Civil Procedure.

Further discovery, investigation, and legal research may supply additional facts and/or add meaning to known facts. The following Responses and Objections are provided without prejudice to LWVPA's right at or before any trial to produce evidence of any subsequently discovered facts. By producing any materials in response to these Interrogatories, LWVPA does

not concede the relevance or admissibility of the materials or information produced. LWVPA reserves the right to challenge the admissibility of any materials or information produced in response to these Interrogatories on any applicable ground.

GENERAL OBJECTIONS

The following general objections apply to each of the Interrogatories propounded by Intervenor-Defendants and shall have the same force and effect as if set forth in full in response to each of the separately numbered Interrogatories. Each and every one of the following General Objections is hereby incorporated by reference into LWVPA's Responses and Objections. The fact that any General Objection is not specifically listed in response to an Interrogatory does not constitute a waiver of that General Objection or otherwise preclude LWVPA from raising that General Objection at a later time. These General Objections are not in any way limited by LWVPA's Responses and Objections. Any undertaking to search for, or to provide information in response to, the Interrogatories remains subject to each specific objection and General Objection.

1. LWVPA objects to the Requests because they request documents beyond the scope of the claims set forth in the First Amended Complaint or any party's defenses thereto. LWVPA will only produce documents in response to the Requests that address the scope of the First Amended Complaint in this matter.

2. LWVPA objects to the definition of "League of Women Voters of Pennsylvania," "you" and "your" to with regard to including "any agents, employees, representatives, or other persons acting or purporting to act on its behalf" in each discovery request, who are not identified, as overly broad, vague, unclear and as requiring an unreasonable investigation to determine the meaning of the same.

3. LWVPA objects to the definitions of “describe,” “describe in detail,” “state,” and “state in detail” as overly broad, vague, unclear and as requiring an unreasonable investigation to determine the meaning of the same, and will provide only that information which is discoverable under the Federal Rules of Civil Procedure, proportional to the needs of the case, and reasonably within LWVPA’s knowledge.

4. LWVPA objects to the definition of “relating to” as overly broad, vague, unclear and as requiring an unreasonable investigation to determine the meaning of the same, and will provide only that information which is discoverable under the Federal Rules of Civil Procedure, proportional to the needs of the case, and reasonably within LWVPA’s knowledge.

5. LWVPA objects to the Interrogatories because they attempt to or purport to impose duties and obligations on LWVPA in addition to or inconsistent with those imposed or authorized by the Federal Rules of Civil Procedure, the Local Rules of the U.S. District Court for the Western District of Pennsylvania, or the Court’s orders in this case.

6. LWVPA objects to the Interrogatories because they are vague, ambiguous, overly broad, lacking in particularity, unduly burdensome or oppressive, or call for information or materials that are neither relevant to any party’s claim or defense, nor proportional to the needs of the case.

7. LWVPA objects to the Interrogatories because they purport to require LWVPA to conduct anything beyond a reasonable and diligent search of readily accessible information or materials within its possession, custody, or control, including electronically stored information, from readily accessible sources where responsive information or materials reasonably would be expected to be found.

8. LWVPA objects to each Interrogatory to the extent that it seeks information that (i) is not in the possession, custody, or control of LWVPA, its agents, employees and attorneys; (ii) is in

the joint possession of LWVPA and Defendant; or (iii) is as equally accessible to Defendant as to LWVPA.

9. LWVPA objects to the Interrogatories to the extent that they call for information or materials that are available from a more-convenient, more-efficient, less-burdensome, or less-expensive source, or through a more-convenient, more-efficient, less-burdensome, or less-expensive means than the Interrogatories.

10. LWVPA objects to the Interrogatories because they contain express or implied assumptions of fact or law with respect to matters at issue in this action. LWVPA's responses and objections to the Interrogatories are not intended to, and shall not, be construed as an agreement or concurrence by LWVPA with Defendants' characterization of any facts or circumstances at issue in this action. Instead, LWVPA expressly reserves the right to contest any such characterization as inaccurate.

11. LWVPA objects to the Interrogatories to the extent that they call for information protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, joint-defense or common-interest privileges, or any other applicable law, regulation, privilege, immunity, or discovery protection. LWVPA makes its responses hereto without waiving any privilege or any rights under the attorney work-product doctrine. Specific objections on the grounds of privilege are provided for emphasis and clarity only, and the absence of a specific objection is neither intended, nor should be interpreted, as evidence that LWVPA does not object to any specific Interrogatory on the basis of any applicable law, regulation, privilege, immunity, or protection. To the extent that LWVPA inadvertently provides any privileged or protected information, LWVPA reserves its right to assert all applicable privileges and protections from disclosure.

12. LWVPA objects to each Interrogatory to the extent that it seeks disclosure of facts and information that contain sensitive, confidential, and proprietary business information and/or constitute trade secrets. LWVPA also objects to each Interrogatory to the extent that it would result in the disclosure of information in violation of privacy rights of individuals under any constitutional, statutory, or common law right of privacy of any person.

13. LWVPA objects to the first Instruction as overly broad and unduly burdensome because it purports to require LWVPA to provide information covering an irrelevant time period. LWVPA will only provide information or materials within a timeframe that is proportional to the needs of the case and appropriate for the Interrogatory at issue.

14. LWVPA provides these Responses and Objections without waiving or intending to waive: (i) any objections as to competency, relevance, materiality, privileged status, or admissibility of any information or materials provided in response to the Interrogatories; (ii) the right to object on any ground to the information or materials provided in response to the Interrogatories at any hearing or trial; or (iii) the right to object on any ground at any time to a demand for further responses to the Interrogatories.

15. LWVPA is responding to these Interrogatories based on the information and materials reasonably available to it at the time the response is made. LWVPA reserves the right to amend or supplement these responses in accordance with the Court's orders and the Federal Rules of Civil Procedure.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

For ease of reference, LWVPA sets out each Interrogatory followed by each response to that Interrogatory.

INTERROGATORY NO. 1: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint, including your challenges to the Date Requirement.

RESPONSE:

LWVPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. LWVPA further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection. LWVPA further objects to this Interrogatory on the grounds that it seeks legal conclusions.

LWVPA, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 2: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint, including your challenges to the Date Requirement.

RESPONSE:

LWVPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. LWVPA further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection, and to the extent it calls for a legal conclusion. LWVPA further objects to this Interrogatory because it seeks information already within the possession, custody and/or control of Defendants, or which is equally accessible to Defendant as to LWVPA.

LWVPA, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 3: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint that the Date Requirement is not “material.”

RESPONSE:

LWVPA objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 1. LWVPA incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

LWVPA, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 4: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement violates the Materiality Provision of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B).

RESPONSE:

LWVPA objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 2. LWVPA incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

LWVPA, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 5: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint that the Date Requirement is not “material.”

RESPONSE:

LWVPA objects to this Interrogatory as cumulative and duplicative of Interrogatory Numbers 1 and 3. LWVPA incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

LWVPA, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 6: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date

Requirement violates the Materiality Provision of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B).

RESPONSE:

LWVPA objects to this Interrogatory as cumulative and duplicative of Interrogatory Numbers 2 and 4. LWVPA incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

LWVPA, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 7: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint that the Date Requirement violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

RESPONSE:

LWVPA objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 1. LWVPA incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

LWVPA, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 8: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

RESPONSE:

LWVPA objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 2. LWVPA incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

LWVPA, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 9: Explain in detail all legal and factual bases for your allegations that the Date Requirement imposes a burden on voters.

RESPONSE:

LWVPA objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 1. LWVPA incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

LWVPA, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 10: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement imposes a burden on voters.

RESPONSE:

LWVPA objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 2. LWVPA incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

LWVPA, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 11: Explain in detail all legal and factual bases for your allegations that you have standing to bring this lawsuit.

RESPONSE:

LWVPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. LWVPA further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the

attorney work-product doctrine, or any other applicable privilege or protection, and to the extent it calls for legal conclusions.

Subject to and without waiving the foregoing General or specific objections, LWVPA refers to its pleadings and states that it has standing to challenge the disenfranchisement of Pennsylvania voters by the application of the mail ballot envelope dating requirement. The enforcement of this rule caused harm to LWVPA's organization due to the diversion of its limited resources leading up to and during the November 2022 General Election, and because the prospective application of the same requirement will cause LWVPA to continue diverting its limited resources in future elections absent the relief sought in this case.

LWVPA is a nonpartisan statewide non-profit formed in 1920. The League and its members are dedicated to helping the people of Pennsylvania exercise their right to vote, as protected by the law. The League encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. The League is a predominantly volunteer organization and has 31 member chapters and one Inter-League Organization operating in 29 counties around the Commonwealth. LWVPA has more than 2,500 individual members who are registered voters and regularly vote in state and federal elections using, among other methods, absentee and mail ballots.

The League's nonpartisan activities include voter registration, education and "get-out-the-vote" drives. The League conducts voter-registration drives, staffs nonpartisan voter-registration tables, educates incarcerated and formerly incarcerated individuals about their voting rights, and works with local high schools to register new 18-year-old voters. It also maintains an online voting tool called VOTE411, a nonpartisan and free digital resource with information

available in both English and Spanish, including registration information, voter guides, candidate information, polling rules and locations. The League's resources are available at various locations on its website here: <https://www.palwv.org/votingstepbystep>; <https://www.palwv.org/voter-services-resources>; <https://www.vote411.org/>

Following the Pennsylvania Supreme Court's November 1, 2022 decision in *Ball v. Chapman, et al.*, No. 102 MM 2022, defendant county boards of elections implemented a rule requiring election officials to set aside—and not count—votes received in mail ballot envelopes missing a meaningless voter-written date or showing a date that the board of elections determined to be “incorrect.” This abrupt change in voting rules just before Election Day, after many people served by LWVPA's mission had already submitted mail ballots, caused LWVPA to redirect its limited resources, including staff and volunteer time, to efforts to inform voters of this change and educate them as to how to avoid disenfranchisement. The League, through its members, scoured any and all publicly available lists and contacted hundreds of Pennsylvania voters to provide them with information to help them cure their ballot or vote provisionally to prevent Defendants' actions from disenfranchising them. Two staff members and approximately 30 volunteers spent time contacting voters. LWVPA members have spoken to affected voters directly through any means possible, including in person, on the phone, and through direct messages on social media.

The League also enlisted staff members and volunteers from its local chapters enlisted and coordinated the chapters' efforts to widely broadcast the potential to cure ballots on social media channels, sharing available information, including, when possible, direct links to undated ballot lists. The League's members spent time creating content for its websites, posting

information on social media and contacting voters when lists of voters with defects in their mail ballots were available. In addition, League members spent precious time attending county Boards of Elections meetings to urge Defendants provide notice and cure opportunities for voters. League volunteers devoted substantial time to such board-of-elections advocacy work in Montgomery County, Allegheny County, and Lancaster County. League members prepared statements and delivered those statements in person at the county meetings. In addition to its advocacy work at county meetings immediately before Election Day, the League and its members spent hours trying to obtain lists of voters whose mail ballots were defective so that those voters could be contacted. Some defendants provided those lists; most did not.

Several members expended considerable time and effort after November 1 to alert voters of the *Ball v Chapman* decision and that voters might be disenfranchised as a result. The efforts of specific members, coordinated by LWVPA, include the following:

- a. The LWV of Lehigh County posted on social media warnings about the need to properly fill out mail ballots and advising voters to contact the Lehigh County Voter Services office if they thought they made a mistake.
- b. The LWV of Lancaster County alerted voters via social media about the impact of the *Ball v Chapman* decision and called out the Lancaster County Board of Elections for failing to contact voters whose ballots would not count because of a mistake on the return envelope. LWV of Lancaster County issued a statement condemning the disenfranchisement of voters because of the unavailability of a cure process and spent time contacting the Board of Elections, attending their meetings and urging the Board to notify voters and allow them to cure.
- c. The LWV of Greater Pittsburgh obtained the list of voters with undated ballots from the Allegheny County Board of Elections and posted it on their website and social media

pages. The LWV of Greater Pittsburgh spent considerable time creating content for its website and social media pages advising voters of the potential disenfranchisement because of undated mail ballot return envelopes and how voters could correct the defect. Greater Pittsburgh LWV also coordinated an effort among its local members to contact voters who had a defective mail ballot return envelope.

d. LWV of Berks County posted on social media about the risk of disenfranchisement and the opportunity for voters to correct defective mail ballot return envelopes.

e. The LWV of Lower Merion & Narberth attended Board of Elections meetings after the court decision and vigorously requested the list of voters who had a defective mail ballot return envelope. This chapter posted widely on social media, alerting voters of the potential for disenfranchisement. Chapter members received calls from voters, and because they had the cure list from Montgomery County, could advise voters about the nature of the problem with their mail ballot and how to correct it. In addition to posting widely on social media, the chapter worked with other civic organizations such as the Rotary Club, Civics, local colleges and universities, PA Youth Vote, NAACP, Colonial Antiracism, Indivisible, among others, to tell voters they could cure a missing date or other defect with their mail ballot at the county's satellite voter services offices. The Chapter emailed more than 250 member-voters with explicit instructions on how to read a notification from the SURE system regarding their mail ballot and what to do if the notice indicated that their ballot was cancelled. The chapter also spent time on social media correcting misinformation about whether curing mail ballots was permissible. The chapter partnered with Bethel AME Church in Ardmore on the Sunday before Election Day to help congregants check the status of their mail ballots and provide instruction on what to do if

there were any problems.

But for application of the rule at issue in this case, such time and resources dedicated by LWVPA staff, members and volunteers would have been available for the organization's other Election Protection and "get out the vote" efforts and helping voters navigate the voting process.

Absent the relief requested in this case, LWVPA anticipates that it will need to again divert its staff and volunteer resources to similar voter education and outreach efforts dedicated to preventing disenfranchisement due to meaningless mail ballot envelope dating issues in future elections, instead of having those resources available for its other voter engagement and community initiatives. LWVPA is already planning to develop a webinar featuring mail voting and how to properly apply for and submit a mail ballot in advance of the 2023 municipal primary. Similarly, LWVPA plans to issue statements, social media posts and other communications about mail ballots, especially the proper way of submitting a mail ballot.

By way of further response, and pursuant to Fed. R. Civ. P. 33(d), LWVPA refers to the descriptions of LWVPA's mission and initiatives publicly available at <https://www.palwv.org/who-we-are>; <https://www.palwv.org/>; <https://www.palwv.org/voter-information>; <https://www.palwv.org/ballot-box-basics>; <https://www.vote411.org/>; and to the accompanying production of documents reflecting the voter education and outreach efforts necessitated by the change in envelope dating rules in Pennsylvania, including but not limited to copies of the social media posts, email communications describing the League's efforts, and public statements issued around the mail ballot envelope dating issue.

INTERROGATORY NO. 12: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that you have standing to bring this lawsuit.

RESPONSE:

LWVPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. LWVPA further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection, and to the extent it calls for a legal conclusion. LWVPA further objects to this Interrogatory because it seeks information already within the possession, custody and/or control of Defendants, or which is equally accessible to Defendant as to LWVPA. The burden of searching the parties' document productions to identify each and every document that may support or refute LWVPA's claims in this matter is just as easily borne by Defendants and is disproportional to the needs of the case.

Subject to and without waiving the foregoing General or specific objections, and pursuant to Fed. R. Civ. P. 33(d), LWVPA refers to its pleadings, the accompanying production of documents, the written discovery responses and document productions provided by Defendants in this case, and the descriptions of LWVPA's mission and initiatives publicly available at <https://www.palwv.org/>; <https://www.palwv.org/who-we-are>; <https://www.palwv.org/election-laws>; <https://www.palwv.org/voter-information>; <https://www.palwv.org/ballot-box-basics>

INTERROGATORY NO. 13: Identify by name each person who you believe has knowledge of facts that support, corroborate, or refute your allegations in the First Amended Complaint, including your challenges to the Date Requirement.

RESPONSE:

LWVPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. LWVPA further object to this

Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, LWVPA refers to its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 14: For each person described in your response to the preceding interrogatory, describe in detail your understanding of the facts of which each person has knowledge.

RESPONSE:

LWVPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. LWVPA further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, LWVPA refers to its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 15: Identify by name each person who you believe has knowledge of facts that support, corroborate, or refute your allegations that you have standing to bring this lawsuit.

RESPONSE:

LWVPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. LWVPA further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, LWVPA refers to its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 16: For each person described in your response to the preceding interrogatory, describe in detail your understanding of the facts of which each person has knowledge.

RESPONSE:

LWVPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. LWVPA further objects to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, LWVPA refers to its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 17: Identify by name all of your members who you allege are harmed by the Date Requirement, state in which county each such member resides, and provide each such member's address.

RESPONSE:

LWVPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. LWVPA specifically objects to this interrogatory as irrelevant because its standing is not based on allegations of harm to members of the organization.

LWVPA, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 18: Describe in detail how you became aware of each of your members who are allegedly harmed by the Date Requirement.

RESPONSE:

LWVPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. LWVPA specifically objects to this interrogatory as irrelevant because its standing is not based on allegations of harm do members of the organization.

Without waiving any of the foregoing objections, the League's efforts before the election identified one voter in Erie County who learned that she had made an immaterial error on her ballot but was able to cure the mistake before 8 pm on Election Day. By way of further answer, the League refers to its response to Interrogatory No. 11 and refers to its accompanying production of documents.

INTERROGATORY NO. 19: Identify by name all of your members through whom you claim standing to bring this lawsuit, state in which county each such member resides, and provide each such member's address.

RESPONSE:

LWVPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. LWVPA specifically objects to this interrogatory as irrelevant because its standing is not based on allegations of harm do members of the organization.

Subject to the foregoing General and specific objections, LWVPA states that it does not claim standing to bring this lawsuit based on the standing of any member of the organization.

INTERROGATORY NO. 20: Describe in detail how you became aware of each of your members through whom you claim standing to bring this lawsuit.

RESPONSE:

LWVPA incorporates the foregoing General Objections, as well as its objections and response to Interrogatory Number 19, as if fully restated herein.

INTERROGATORY NO. 21: Identify all persons or entities acting or purportedly acting on your behalf (yourself included) who supplied information that helped you respond to these Interrogatories or who helped draft any responses to these Interrogatories and identify all related documents.

RESPONSE:

LWVPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. LWVPA further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, LWVPA refers to its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023. In addition, the League received assistance from counsel in preparing its response to these Interrogatories.

INTERROGATORY NO. 22: Identify all individuals within the Black Political Empowerment Project who may have discoverable hard copy documents and ESI in their possession, custody, or control, including the title held by each person, his or her function and duties, and applicable dates of service.

RESPONSE:

LWVPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. LWVPA further object to this

Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A).

Subject to and without waiving the foregoing General or specific objections, LWVPA refers to its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 23: For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE:

LWVPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. LWVPA further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, LWVPA refers to its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

Dated: February 17, 2023

Witold J. Walczak (PA 62976)
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Respectfully submitted,

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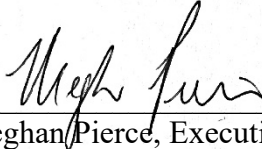
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Conference of the LWVPA, League of
Women Voters of Pennsylvania,
Philadelphians Organized to Witness,
Empower and Rebuild, Common Cause
Pennsylvania, Black Political
Empowerment Project, Make the Road
Pennsylvania, Jean Terrizzi, Barry M.
Seastead, Marjorie Boyle, Marlene G.
Gutierrez, Deborah Diehl, Aynne
Margaret Pleban Polinski, Joel Bencan,
and Laurence M. Smith*

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VERIFICATION

I, Meghan Pierce, am the Executive Director of the League of Women Voters of Pennsylvania (“LWVPA”) and I hereby verify that I reviewed the foregoing responses to Intervenor-Defendants Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania Interrogatories and that those responses are based on information LWVPA furnished to counsel and/or information that has been gathered by counsel in the course of this lawsuit. I further verify that I read the responses and that they are true and correct to the best of my knowledge, information and belief. To the extent that the contents are that of counsel, I have relied upon counsel in making this verification. I understand that false statements made herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsifications to authorities.

Date: February 17, 2023



Meghan Pierce, Executive Director
League of Women Voters of Pennsylvania

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

PENNSYLVANIA STATE CONFERENCE OF
THE NAACP, *et al.*,

Plaintiffs,

v.

AL SCHMIDT, in his official capacity as Acting
Secretary of the Commonwealth, *et al.*,

Defendants.

Case No. 1:22-cv-00339-SPB

**PLAINTIFF PHILADELPHIANS ORGANIZED TO WITNESS, EMPOWER
AND REBUILD'S RESPONSES AND OBJECTIONS TO INTERVENOR-
DEFENDANTS' FIRST SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33 and the Local Rules of the U.S. District Court for the Western District of Pennsylvania, Plaintiff Philadelphians Organized to Witness, Empower and Rebuild (“POWER”) serves the following responses and objections to Intervenor-Defendants Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania First Set of Interrogatories (each an “Interrogatory,” and, collectively, the “Interrogatories”). All responses and objections contained herein (the “Responses and Objections”) and in any supplemental responses are based only upon such information and materials presently available and specifically known to POWER. POWER reserves the right to amend or supplement the Responses and Objections in accordance with the Court’s orders and the Federal Rules of Civil Procedure.

Further discovery, investigation, and legal research may supply additional facts and/or add meaning to known facts. The following Responses and Objections are

provided without prejudice to POWER's right at or before any trial to produce evidence of any subsequently discovered facts. By producing any materials in response to these Interrogatories, POWER does not concede the relevance or admissibility of the materials or information produced. POWER reserves the right to challenge the admissibility of any materials or information produced in response to these Interrogatories on any applicable ground.

GENERAL OBJECTIONS

The following general objections apply to each of the Interrogatories propounded by Intervenor-Defendants and shall have the same force and effect as if set forth in full in response to each of the separately numbered Interrogatories. Each and every one of the following General Objections is hereby incorporated by reference into POWER's Responses and Objections. The fact that any General Objection is not specifically listed in response to an Interrogatory does not constitute a waiver of that General Objection or otherwise preclude POWER from raising that General Objection at a later time. These General Objections are not in any way limited by POWER's Responses and Objections. Any undertaking to search for, or to provide information in response to, the Interrogatories remains subject to each specific objection and General Objection.

1. POWER objects to the Requests because they request documents beyond the scope of the claims set forth in the First Amended Complaint or any party's defenses thereto. POWER will only produce documents in response to the Requests that address the scope of the First Amended Complaint in this matter.

2. POWER objects to the definition of “Philadelphians Organized to Witness,” “you” and “your” to with regard to including “any agents, employees, representatives, or other persons acting or purporting to act on its behalf” in each discovery request, who are not identified, as overly broad, vague, unclear and as requiring an unreasonable investigation to determine the meaning of the same.

3. POWER objects to the definitions of “describe,” “describe in detail,” “state,” and “state in detail” as overly broad, vague, unclear and as requiring an unreasonable investigation to determine the meaning of the same, and will provide only that information which is discoverable under the Federal Rules of Civil Procedure, proportional to the needs of the case, and reasonably within POWER’s knowledge.

4. POWER objects to the definition of “relating to” as overly broad, vague, unclear and as requiring an unreasonable investigation to determine the meaning of the same, and will provide only that information which is discoverable under the Federal Rules of Civil Procedure, proportional to the needs of the case, and reasonably within POWER’s knowledge.

5. POWER objects to the Interrogatories because they attempt to or purport to impose duties and obligations on POWER in addition to or inconsistent with those imposed or authorized by the Federal Rules of Civil Procedure, the Local Rules of the U.S. District Court for the Western District of Pennsylvania, or the Court’s orders in this case.

6. POWER objects to the Interrogatories because they are vague,

ambiguous, overly broad, lacking in particularity, unduly burdensome or oppressive, or call for information or materials that are neither relevant to any party's claim or defense, nor proportional to the needs of the case.

7. POWER objects to the Interrogatories because they purport to require POWER to conduct anything beyond a reasonable and diligent search of readily accessible information or materials within its possession, custody, or control, including electronically stored information, from readily accessible sources where responsive information or materials reasonably would be expected to be found.

8. POWER objects to each Interrogatory to the extent that it seeks information that (i) is not in the possession, custody, or control of POWER, its agents, employees and attorneys; (ii) is in the joint possession of POWER and Defendant; or (iii) is as equally accessible to Defendant as to POWER.

9. POWER objects to the Interrogatories to the extent that they call for information or materials that are available from a more-convenient, more-efficient, less-burdensome, or less-expensive source, or through a more-convenient, more-efficient, less-burdensome, or less-expensive means than the Interrogatories.

10. POWER objects to the Interrogatories because they contain express or implied assumptions of fact or law with respect to matters at issue in this action. POWER's responses and objections to the Interrogatories are not intended to, and shall not, be construed as an agreement or concurrence by POWER with Defendants' characterization of any facts or circumstances at issue in this action. Instead, POWER expressly reserves the right to contest any such characterization as

inaccurate.

11. POWER objects to the Interrogatories to the extent that they call for information protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, joint-defense or common-interest privileges, or any other applicable law, regulation, privilege, immunity, or discovery protection. POWER makes its responses hereto without waiving any privilege or any rights under the attorney work-product doctrine. Specific objections on the grounds of privilege are provided for emphasis and clarity only, and the absence of a specific objection is neither intended, nor should be interpreted, as evidence that POWER does not object to any specific Interrogatory on the basis of any applicable law, regulation, privilege, immunity, or protection. To the extent that POWER inadvertently provides any privileged or protected information, POWER reserves its right to assert all applicable privileges and protections from disclosure.

12. POWER objects to each Interrogatory to the extent that it seeks disclosure of facts and information that contain sensitive, confidential, and proprietary business information and/or constitute trade secrets. POWER also objects to each Interrogatory to the extent that it would result in the disclosure of information in violation of privacy rights of individuals under any constitutional, statutory, or common law right of privacy of any person.

13. POWER objects to the first Instruction as overly broad and unduly burdensome because it purports to require POWER to provide information covering an irrelevant time period. POWER will only provide information or materials within

a timeframe that is proportional to the needs of the case and appropriate for the Interrogatory at issue.

14. POWER provides these Responses and Objections without waiving or intending to waive: (i) any objections as to competency, relevance, materiality, privileged status, or admissibility of any information or materials provided in response to the Interrogatories; (ii) the right to object on any ground to the information or materials provided in response to the Interrogatories at any hearing or trial; or (iii) the right to object on any ground at any time to a demand for further responses to the Interrogatories.

15. POWER is responding to these Interrogatories based on the information and materials reasonably available to it at the time the response is made. POWER reserves the right to amend or supplement these responses in accordance with the Court's orders and the Federal Rules of Civil Procedure.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

For ease of reference, POWER sets out each Interrogatory followed by each response to that Interrogatory.

INTERROGATORY NO. 1: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint, including your challenges to the Date Requirement.

RESPONSE:

POWER objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. POWER further objects to this Interrogatory to the extent it seeks information protected by the

attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection. POWER further objects to this Interrogatory on the grounds that seeks legal conclusions.

POWER, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 2: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint, including your challenges to the Date Requirement.

RESPONSE:

POWER objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. POWER further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection, and to the extent it calls for a legal conclusion. POWER further objects to this Interrogatory because it seeks information already within the possession, custody and/or control of Defendants, or which is equally accessible to Defendant as to POWER.

POWER, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 3: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint that the Date Requirement is not “material.”

RESPONSE:

POWER objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 1. POWER incorporates and restates all of its objections to

Interrogatory Number 1, as well as all of the above General Objections.

POWER, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 4: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement violates the Materiality Provision of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B).

RESPONSE:

POWER objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 2. POWER incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

POWER, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 5: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint that the Date Requirement is not “material.”

RESPONSE:

POWER objects to this Interrogatory as cumulative and duplicative of Interrogatory Numbers 1 and 3. POWER incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

POWER, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 6: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement violates the Materiality Provision of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B).

RESPONSE:

POWER objects to this Interrogatory as cumulative and duplicative of Interrogatory Numbers 2 and 4. POWER incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

POWER, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 7: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint that the Date Requirement violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

RESPONSE:

POWER objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 1. POWER incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

POWER, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 8: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

RESPONSE:

POWER objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 2. POWER incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

POWER, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 9: Explain in detail all legal and factual bases for your allegations that the Date Requirement imposes a burden on voters.

RESPONSE:

POWER objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 1. POWER incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

POWER, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 10: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement imposes a burden on voters.

RESPONSE:

POWER objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 2. POWER incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

POWER, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 11: Explain in detail all legal and factual bases for your allegations that you have standing to bring this lawsuit.

RESPONSE:

POWER objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. POWER further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection, and to the extent it calls for legal conclusions.

Subject to and without waiving the foregoing General or specific objections, POWER refers to its pleadings and states that it has standing to challenge application of the mail ballot envelope dating requirement by the Commonwealth of Pennsylvania and the county boards of election to disenfranchise voters caused harm to POWER's organization due to the diversion of its limited resources leading up to and during the November 2022 General Election, and because the prospective application of the same requirement will cause POWER to continue diverting its limited resources in future elections absent the relief sought in this case.

POWER is a Pennsylvania nonprofit founded in 2011, comprised of more than 100 congregations of various faith traditions, cultures and neighborhoods committed to racial and economic justice on a livable planet. One of POWER's core priorities is promoting civic engagement and organizing in the communities its member congregation serve so that the voices of all faiths, races, and income levels are counted and have a say in government. In the weeks leading up to the November 2022 election, POWER was focused on engaging voters who were not already participating in the political process. In particular, POWER engaged directly with people who live in the communities that its member congregations serve, including but not limited to through pre-planned voter education programs, voter turnout and engagement initiatives (including encouraging mail voters to return their ballots), and "Souls to the Polls" efforts (including providing voters with rides to their polling locations) to encourage congregants and others to vote.

Following the Pennsylvania Supreme Court's November 1, 2022 decision in

Ball v. Chapman, No. 102 MM 2022, the boards of elections in the counties where POWER operates implemented a rule requiring election officials to set aside—and not count—votes received in mail ballot envelopes missing a meaningless voter-written date or showing a date that the board of elections determined to be “incorrect.” Refusing to count votes based on immaterial paperwork errors has a suppressive effect on the communities POWER serves by erecting yet another roadblock preventing them from voting and having their votes counted.

This abrupt change in voting rules just before Election Day, after many people served by POWER’s mission had already submitted mail ballots, caused POWER to redirect its limited resources, including staff and volunteer time, to efforts to re-contact and inform voters of this change and educate them as to how to avoid disenfranchisement. POWER diverted those resources from its planned efforts to, among other things, phone- and text-banking efforts to mitigate the disenfranchisement threatened by the new envelope date rule, as well as stationing POWER volunteers at City Hall to ensure voters returning their mail ballots to that location had correctly dated their return envelopes. But for application of the rule at issue in this case, such time and resources dedicated by POWER staff and volunteers would have been available for the organization’s other efforts to engage *new* voters, rather than ensuring voters who were *already participating* in the political process were not disenfranchised.

Absent the relief requested in this case, POWER anticipates that it will need to again divert its staff and volunteer resources to similar voter education and

outreach efforts dedicated to preventing disenfranchisement due to meaningless mail ballot envelope dating issues in future elections, instead of having those resources available for its other voter mobilization and education initiatives in the communities it serves. By way of further response, and pursuant to Fed. R. Civ. P. 33(d), POWER refers to the accompanying production of documents reflecting POWER's intended efforts and programming surrounding the November 2022 general election, as well as efforts necessitated by the change in envelope dating rules in Pennsylvania, including but not limited to internal correspondence, call scripts, and logs reflecting voter outreach concerning the envelope-dating requirement.

INTERROGATORY NO. 12: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that you have standing to bring this lawsuit.

RESPONSE:

POWER objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. POWER further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection, and to the extent it calls for a legal conclusion. POWER further objects to this Interrogatory because it seeks information already within the possession, custody and/or control of Defendants, or which is equally accessible to Defendant as to POWER. The burden of searching the parties' document productions to identify each and every document that may support or refute POWER's claims in this matter is just as easily borne by Defendants and is disproportional to the needs

of the case.

Subject to and without waiving the foregoing General or specific objections, and pursuant to Fed. R. Civ. P. 33(d), POWER refers to its pleadings, the accompanying production of documents, and the written discovery responses and document productions provided by Defendants in this case.

INTERROGATORY NO. 13: Identify by name each person who you believe has knowledge of facts that support, corroborate, or refute your allegations in the First Amended Complaint, including your challenges to the Date Requirement.

RESPONSE:

POWER objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. POWER further objects to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, POWER refers to Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 14: For each person described in your response to the preceding interrogatory, describe in detail your understanding of the facts of which each person has knowledge.

RESPONSE:

POWER objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. POWER further objects to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, POWER refers to Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 15: Identify by name each person who you believe has knowledge of facts that support, corroborate, or refute your allegations that you have standing to bring this lawsuit.

RESPONSE:

POWER objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. POWER further objects to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, POWER refers to Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 16: For each person described in your response to the preceding interrogatory, describe in detail your understanding of the facts of which each person has knowledge.

RESPONSE:

POWER objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. POWER further objects to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, POWER refers to Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 17: Identify by name all of your members who you allege are harmed by the Date Requirement, state in which county each such member resides, and provide each such member's address.

RESPONSE:

POWER objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. POWER specifically objects to this interrogatory as unduly burdensome and not proportional to the needs of the case because POWER has standing based on its diversion of resources, separate and apart from any harm that its individual members.

Subject to and without waiving the foregoing General or specific objections, POWER states that at this time it is not relying on direct harm to any of its individual constituent-members from the envelope-dating requirement as a basis for standing in this case. However, POWER's investigation remains ongoing, and POWER reserves the right to supplement or modify these responses based on any additional information it discovers.

INTERROGATORY NO. 18: Describe in detail how you became aware of each of your members who are allegedly harmed by the Date Requirement.

RESPONSE:

POWER objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. POWER specifically objects to this interrogatory as unduly burdensome and not proportional

to the needs of the case because POWER has standing based on its diversion of resources, separate and apart from any harm that its individual members.

Subject to and without waiving the foregoing General or specific objections, POWER states that at this time it is not relying on direct harm to any of its individual constituent-members from the envelope-dating requirement as a basis for standing in this case. However, POWER's investigation remains ongoing, and POWER reserves the right to supplement or modify these responses based on any additional information it discovers.

INTERROGATORY NO. 19: Identify by name all of your members through whom you claim standing to bring this lawsuit, state in which county each such member resides, and provide each such member's address.

RESPONSE:

POWER objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. POWER specifically objects to this interrogatory as unduly burdensome and not proportional to the needs of the case because POWER has standing based on its diversion of resources, separate and apart from any harm that its individual members.

Subject to and without waiving the foregoing General or specific objections, POWER states that at this time it is not relying on direct harm to any of its individual constituent-members from the envelope-dating requirement as a basis for standing in this case. However, POWER's investigation remains ongoing, and POWER reserves the right to supplement or modify these responses based on any additional information it discovers.

INTERROGATORY NO. 20: Describe in detail how you became aware of each of your members through whom you claim standing to bring this lawsuit.

RESPONSE:

POWER incorporates the foregoing General Objections, as well as its objections and response to Interrogatory Number 19, as if fully restated herein.

INTERROGATORY NO. 21: Identify all persons or entities acting or purportedly acting on your behalf (yourself included) who supplied information that helped you respond to these Interrogatories or who helped draft any responses to these Interrogatories and identify all related documents.

RESPONSE:

POWER objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. POWER further objects to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, POWER refers to Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 22: Identify all individuals within Philadelphians Organized to Witness who may have discoverable hard copy documents and ESI in their possession, custody, or control, including the title held by each person, his or her function and duties, and applicable dates of service.

RESPONSE:

POWER objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. POWER further objects to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A).

Subject to and without waiving the foregoing General or specific objections, POWER refers to Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 23: For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE:

POWER objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. POWER further objects to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, POWER refers to Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

Dated: February 17, 2023

Witold J. Walczak (PA 62976)
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Respectfully submitted,

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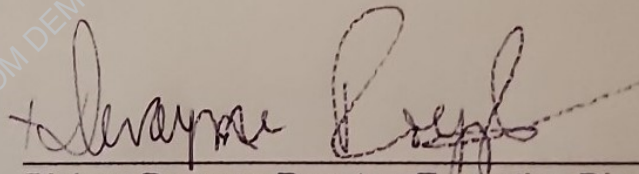
*Counsel for Philadelphians Organized to
Witness, Empower and Rebuild*

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VERIFICATION

I, Bishop Dwayne Royster, am the Executive Director of Philadelphians Organized to Witness, Empower and Rebuild ("POWER"), and I hereby verify that I reviewed the foregoing responses to Intervenor-Defendants Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania Interrogatories and that those responses are based on information POWER furnished to counsel and/or information that has been gathered by counsel in the course of this lawsuit. I further verify that I read the responses and that they are true and correct to the best of my knowledge, information and belief. To the extent that the contents are that of counsel, I have relied upon counsel in making this verification. I understand that false statements made herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsifications to authorities.

Date: February 17, 2023

A handwritten signature in black ink, appearing to read "Bishop Dwayne Royster", written over a horizontal line.

Bishop Dwayne Royster, Executive Director
Philadelphians Organized to Witness,
Empower and Rebuild

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

PENNSYLVANIA STATE CONFERENCE OF THE
NAACP, *et al.*,

Plaintiffs,

v.

AL SCHMIDT, in his official capacity as Acting
Secretary of the Commonwealth, *et al.*,

Defendants.

Case No. 1:22-cv-00339-SPB

**PLAINTIFF COMMON CAUSE PENNSYLVANIA'S RESPONSES AND OBJECTIONS
TO INTERVENOR-DEFENDANTS' FIRST SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33 and the Local Rules of the U.S. District Court for the Western District of Pennsylvania, Plaintiff Common Cause Pennsylvania ("CCPA" or "Common Cause") serves the following responses and objections to Intervenor-Defendants Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania First Set of Interrogatories (each an "Interrogatory," and, collectively, the "Interrogatories"). All responses and objections contained herein (the "Responses and Objections") and in any supplemental responses are based only upon such information and materials presently available and specifically known to CCPA. CCPA reserves the right to amend or supplement the Responses and Objections in accordance with the Court's orders and the Federal Rules of Civil Procedure.

Further discovery, investigation, and legal research may supply additional facts and/or add meaning to known facts. The following Responses and Objections are provided without prejudice to CCPA's right at or before any trial to produce evidence of any subsequently discovered facts. By producing any materials in response to these Interrogatories, CCPA does

not concede the relevance or admissibility of the materials or information produced. CCPA reserves the right to challenge the admissibility of any materials or information produced in response to these Interrogatories on any applicable ground.

GENERAL OBJECTIONS

The following general objections apply to each of the Interrogatories propounded by Intervenor-Defendants and shall have the same force and effect as if set forth in full in response to each of the separately numbered Interrogatories. Each and every one of the following General Objections is hereby incorporated by reference into CCPA's Responses and Objections. The fact that any General Objection is not specifically listed in response to an Interrogatory does not constitute a waiver of that General Objection or otherwise preclude CCPA from raising that General Objection at a later time. These General Objections are not in any way limited by CCPA's Responses and Objections. Any undertaking to search for, or to provide information in response to, the Interrogatories remains subject to each specific objection and General Objection.

1. CCPA objects to the Requests because they request documents beyond the scope of the claims set forth in the First Amended Complaint or any party's defenses thereto. CCPA will only produce documents in response to the Requests that address the scope of the First Amended Complaint in this matter.

2. CCPA objects to the definition of "Common Cause Pennsylvania," "you" and "your" to with regard to including "any agents, employees, representatives, or other persons acting or purporting to act on its behalf" in each discovery request, who are not identified, as overly broad, vague, unclear and as requiring an unreasonable investigation to determine the meaning of the same.

3. CCPA objects to the definitions of "describe," "describe in detail," "state," and "state in

detail” as overly broad, vague, unclear and as requiring an unreasonable investigation to determine the meaning of the same, and will provide only that information which is discoverable under the Federal Rules of Civil Procedure, proportional to the needs of the case, and reasonably within CCPA’s knowledge.

4. CCPA objects to the definition of “relating to” as overly broad, vague, unclear and as requiring an unreasonable investigation to determine the meaning of the same, and will provide only that information which is discoverable under the Federal Rules of Civil Procedure, proportional to the needs of the case, and reasonably within CCPA’s knowledge.

5. CCPA objects to the Interrogatories because they attempt to or purport to impose duties and obligations on CCPA in addition to or inconsistent with those imposed or authorized by the Federal Rules of Civil Procedure, the Local Rules of the U.S. District Court for the Western District of Pennsylvania, or the Court’s orders in this case.

6. CCPA objects to the Interrogatories because they are vague, ambiguous, overly broad, lacking in particularity, unduly burdensome or oppressive, or call for information or materials that are neither relevant to any party’s claim or defense, nor proportional to the needs of the case.

7. CCPA objects to the Interrogatories because they purport to require CCPA to conduct anything beyond a reasonable and diligent search of readily accessible information or materials within its possession, custody, or control, including electronically stored information, from readily accessible sources where responsive information or materials reasonably would be expected to be found.

8. CCPA objects to each Interrogatory to the extent that it seeks information that (i) is not in the possession, custody, or control of CCPA, its agents, employees and attorneys; (ii) is in the joint possession of CCPA and Defendant; or (iii) is as equally accessible to Defendant as to

CCPA.

9. CCPA objects to the Interrogatories to the extent that they call for information or materials that are available from a more-convenient, more-efficient, less-burdensome, or less-expensive source, or through a more-convenient, more-efficient, less-burdensome, or less-expensive means than the Interrogatories.

10. CCPA objects to the Interrogatories because they contain express or implied assumptions of fact or law with respect to matters at issue in this action. CCPA's responses and objections to the Interrogatories are not intended to, and shall not, be construed as an agreement or concurrence by CCPA with Defendants' characterization of any facts or circumstances at issue in this action. Instead, CCPA expressly reserves the right to contest any such characterization as inaccurate.

11. CCPA objects to the Interrogatories to the extent that they call for information protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, joint-defense or common-interest privileges, or any other applicable law, regulation, privilege, immunity, or discovery protection. CCPA makes its responses hereto without waiving any privilege or any rights under the attorney work-product doctrine. Specific objections on the grounds of privilege are provided for emphasis and clarity only, and the absence of a specific objection is neither intended, nor should be interpreted, as evidence that CCPA does not object to any specific Interrogatory on the basis of any applicable law, regulation, privilege, immunity, or protection. To the extent that CCPA inadvertently provides any privileged or protected information, CCPA reserves its right to assert all applicable privileges and protections from disclosure.

12. CCPA objects to each Interrogatory to the extent that it seeks disclosure of facts and

information that contain sensitive, confidential, and proprietary business information and/or constitute trade secrets. CCPA also objects to each Interrogatory to the extent that it would result in the disclosure of information in violation of privacy rights of individuals under any constitutional, statutory, or common law right of privacy of any person.

13. CCPA objects to the first Instruction as overly broad and unduly burdensome because it purports to require CCPA to provide information covering an irrelevant time period. CCPA will only provide information or materials within a timeframe that is proportional to the needs of the case and appropriate for the Interrogatory at issue.

14. CCPA provides these Responses and Objections without waiving or intending to waive: (i) any objections as to competency, relevance, materiality, privileged status, or admissibility of any information or materials provided in response to the Interrogatories; (ii) the right to object on any ground to the information or materials provided in response to the Interrogatories at any hearing or trial; or (iii) the right to object on any ground at any time to a demand for further responses to the Interrogatories.

15. CCPA is responding to these Interrogatories based on the information and materials reasonably available to it at the time the response is made. CCPA reserves the right to amend or supplement these responses in accordance with the Court's orders and the Federal Rules of Civil Procedure.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

For ease of reference, CCPA sets out each Interrogatory followed by each response to that Interrogatory.

INTERROGATORY NO. 1: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint, including your challenges to the Date Requirement.

RESPONSE:

CCPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. CCPA further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection. CCPA further objects to this Interrogatory on the grounds that it seeks legal conclusions.

CCPA, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 2: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint, including your challenges to the Date Requirement.

RESPONSE:

CCPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. CCPA further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection, and to the extent it calls for a legal conclusion. CCPA further objects to this Interrogatory because it seeks information already within the possession, custody and/or control of Defendants, or which is equally accessible to Defendant as to CCPA.

CCPA, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 3: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint that the Date Requirement is not “material.”

RESPONSE:

CCPA objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 1. CCPA incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

CCPA, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 4: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement violates the Materiality Provision of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B).

RESPONSE:

CCPA objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 2. CCPA incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

CCPA, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 5: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint that the Date Requirement is not “material.”

RESPONSE:

CCPA objects to this Interrogatory as cumulative and duplicative of Interrogatory Numbers 1 and 3. CCPA incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

CCPA, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 6: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement violates the Materiality Provision of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B).

RESPONSE:

CCPA objects to this Interrogatory as cumulative and duplicative of Interrogatory Numbers 2 and 4. CCPA incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

CCPA, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 7: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint that the Date Requirement violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

RESPONSE:

CCPA objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 1. CCPA incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

CCPA, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 8: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

RESPONSE:

CCPA objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 2. CCPA incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

CCPA, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 9: Explain in detail all legal and factual bases for your allegations that the Date Requirement imposes a burden on voters.

RESPONSE:

CCPA objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 1. CCPA incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

CCPA, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 10: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement imposes a burden on voters.

RESPONSE:

CCPA objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 2. CCPA incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

CCPA, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 11: Explain in detail all legal and factual bases for your allegations that you have standing to bring this lawsuit.

RESPONSE:

CCPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. CCPA further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the

attorney work-product doctrine, or any other applicable privilege or protection, and to the extent it calls for legal conclusions.

Subject to and without waiving the foregoing General or specific objections, CCPA refers to its pleadings and states that it has standing to challenge the disenfranchisement of Pennsylvania voters through the application of the mail ballot envelope dating requirement. The enforcement of this rule caused harm to CCPA's organization due to the diversion of its limited resources leading up to and during the November 2022 General Election, and because the prospective application of the same requirement will cause CCPA to continue diverting its limited resources in future elections absent the relief sought in this case.

CCPA is a nonpartisan good government organization that stands as an independent voice for positive change, a watchdog against corruption, and a protector against abuse of power. CCPA has approximately 36,000 members in Pennsylvania. These members live in all of the 67 counties in Pennsylvania. CCPA works in the areas of voter access advocacy, election protection, voter education, advocacy, outreach, get out the vote, and grassroots mobilization around voting rights. Since 2016, CCPA has led the Election Protection Coalition's field program in Pennsylvania, organizing and coordinating volunteers to assist voters in the field on Election Day. Additionally, CCPA works with coalition partners to ensure that information about voting, including the mail voting process is accurate. CCPA's voter education efforts include informing members of the public about the process for applying for, and submitting, valid mail ballots its website, on social media, and through outreach to traditional media. CCPA also responded to inquiries from voters both via the nonpartisan Election Protection hotline and directly to CCPA via email/telephone.

Following the Pennsylvania Supreme Court's November 1, 2022 decision in *Ball v.*

Chapman, et al., No. 102 MM 2022, CCPA worked with coalition partners to ensure that information provided to voters was accurate, primarily through its work with the Election Protection Coalition. In addition, CCPA developed, prepared and organized a press briefing with Make the Road PA, All Voting is Local PA and Pennsylvania Voice. The purpose of the briefing was to remind voters to date their mail ballot envelopes and to alert them that their ballot would not count if the date was missing. Given the short time period between the court decision and Election Day, the press briefing was designed to alert as many voters as possible as quickly as possible.

The danger that hundreds of voters could be disenfranchised because of the enforcement of the date requirement on mail ballot return envelopes caused CCPA to divert its limited resources away from its Election Protection and “get out the vote” efforts towards emphasizing the need for voters to handwrite a date on their mail ballot return envelopes. In addition, the nonpartisan Election Protection hotline, which CCPA monitors along with coalition partners, received calls from voters worried about the status of their mail ballots that required response.

In the future, beginning with the election cycle starting now for the May 2023 primary, CCPA will need to devote its limited resources more specifically to the process of applying for and submitting a valid mail ballot because of the confusion generated around the decision in *Ball v. Chapman*. CCPA produces a webinar-format public education series entitled “Demystifying Democracy” that provides valuable information on democracy and voting and is livecast on Facebook and YouTube. Because of voter confusion and the danger of disenfranchisement, CCPA is developing a new webinar on mail voting, specifically focusing on the impact of the enforcement of the date requirement. This webinar is part of a series, but it diverts resources away from providing other important voter education information. Additionally, CCPA will

review its training programs for the Election Protection Coalition and work with coalition partners to make sure that the advice given to voters is accurate and appropriately emphasizes the risk of disenfranchisement caused by the enforcement of the handwritten date rule.

By way of further response, and pursuant to Fed. R. Civ. P. 33(d), CCPA refers to the descriptions of CCPA's work, mission and programs publicly available at <https://www.commoncause.org/pennsylvania/>; <https://www.commoncause.org/pennsylvania/our-work/expand-voting-rights-election-integrity/>; <https://www.commoncause.org/pennsylvania/our-work/expand-voting-rights-election-integrity/voter-registration-and-voting-access-2-2/>; <https://www.commoncause.org/pennsylvania/our-work/expand-voting-rights-election-integrity/voter-registration-and-voting-access/>; <https://www.commoncause.org/voting-tools/>

INTERROGATORY NO. 12: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that you have standing to bring this lawsuit.

RESPONSE:

CCPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. CCPA further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection, and to the extent it calls for a legal conclusion. CCPA further objects to this Interrogatory because it seeks information already within the possession, custody and/or control of Defendants, or which is equally accessible to Defendant as to CCPA. The burden of searching the parties' document productions to identify each and every document that may support or refute CCPA's claims in this matter is just as easily borne by Defendants and is disproportional to the needs of the case.

Subject to and without waiving the foregoing General or specific objections, and pursuant to Fed. R. Civ. P. 33(d), CCPA refers to its pleadings, the accompanying production of documents, the written discovery responses and document productions provided by Defendants in this case, and the descriptions of CCPA's mission and initiatives publicly available at <https://www.commoncause.org/pennsylvania/>; <https://www.commoncause.org/pennsylvania/our-work/expand-voting-rights-election-integrity/>; <https://www.commoncause.org/pennsylvania/our-work/expand-voting-rights-election-integrity/voter-registration-and-voting-access-2-2/>; <https://www.commoncause.org/pennsylvania/our-work/expand-voting-rights-election-integrity/voter-registration-and-voting-access/>; <https://www.commoncause.org/voting-tools/>

INTERROGATORY NO. 13: Identify by name each person who you believe has knowledge of facts that support, corroborate, or refute your allegations in the First Amended Complaint, including your challenges to the Date Requirement.

RESPONSE:

CCPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. CCPA further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, CCPA refers to its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 14: For each person described in your response to the preceding interrogatory, describe in detail your understanding of the facts of which each person has knowledge.

RESPONSE:

CCPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. CCPA further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, CCPA refers to its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 15: Identify by name each person who you believe has knowledge of facts that support, corroborate, or refute your allegations that you have standing to bring this lawsuit.

RESPONSE:

CCPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. CCPA further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, CCPA refers to Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 16: For each person described in your response to the preceding interrogatory, describe in detail your understanding of the facts of which each person has knowledge.

RESPONSE:

CCPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. CCPA further object to this

Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, CCPA refers to Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 17: Identify by name all of your members who you allege are harmed by the Date Requirement, state in which county each such member resides, and provide each such member's address.

RESPONSE:

CCPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. CCPA specifically objects to this interrogatory as irrelevant because its standing is not based on allegations of harm to members of the organization.

CCPA, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 18: Describe in detail how you became aware of each of your members who are allegedly harmed by the Date Requirement.

RESPONSE:

CCPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. CCPA specifically objects to this interrogatory as irrelevant because its standing is not based on allegations of harm do members of the organization.

Without waiving any of the foregoing objections, CCPA's efforts before the election identified one voter in Erie County who learned that she had made an immaterial error on her ballot but was able to cure the mistake before 8 pm on Election Day. By way of further answer,

CCPA refers to its response to Interrogatory No. 11 and refers to its accompanying production of documents.

INTERROGATORY NO. 19: Identify by name all of your members through whom you claim standing to bring this lawsuit, state in which county each such member resides, and provide each such member's address.

RESPONSE:

CCPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. CCPA specifically objects to this interrogatory as irrelevant because its standing is not based on allegations of harm do members of the organization.

Subject to the foregoing General and specific objections, CCPA states that it does not claim standing to bring this lawsuit based on the standing of any member of the organization.

INTERROGATORY NO. 20: Describe in detail how you became aware of each of your members through whom you claim standing to bring this lawsuit.

RESPONSE:

CCPA incorporates the foregoing General Objections, as well as its objections and response to Interrogatory Number 19, as if fully restated herein.

INTERROGATORY NO. 21: Identify all persons or entities acting or purportedly acting on your behalf (yourself included) who supplied information that helped you respond to these Interrogatories or who helped draft any responses to these Interrogatories and identify all related documents.

RESPONSE:

CCPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. CCPA further object to this

Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, CCPA refers to its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023. In addition, CCPA received assistance from counsel in preparing its response to these Interrogatories.

INTERROGATORY NO. 22: Identify all individuals within the Black Political Empowerment Project who may have discoverable hard copy documents and ESI in their possession, custody, or control, including the title held by each person, his or her function and duties, and applicable dates of service.

RESPONSE:

CCPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. CCPA further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A).

Subject to and without waiving the foregoing General or specific objections, CCPA refers to its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 23: For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE:

CCPA objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. CCPA further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R.

Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, CCPA refers to its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023 and its answer to Interrogatory No. 11.

Dated: February 17, 2023

Respectfully submitted,

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Seastead, Marjorie Boyle, Marlene G.
Gutierrez, Deborah Diehl, Aynne
Margaret Pleban Polinski, Joel Bencan,
and Laurence M. Smith*

VERIFICATION

I, Khlaif Ali, am the Executive Director of the Common Cause Pennsylvania (“CCPA”) and I hereby verify that I reviewed the foregoing responses to Intervenor-Defendants Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania Interrogatories and that those responses are based on information CCPA furnished to counsel and/or information that has been gathered by counsel in the course of this lawsuit. I further verify that I read the responses and that they are true and correct to the best of my knowledge, information and belief. To the extent that the contents are that of counsel, I have relied upon counsel in making this verification. I understand that false statements made herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsifications to authorities.

Date: February 17, 2023

Khalif Ali
Khalif Ali, Executive Director

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

PENNSYLVANIA STATE CONFERENCE OF THE
NAACP, *et al.*,

Plaintiffs,

v.

LEIGH M. CHAPMAN, in her official capacity as
Acting Secretary of the Commonwealth, *et al.*,

Defendants.

Case No. 1:22-cv-00339-SPB

**PLAINTIFF BLACK POLITICAL EMPOWERMENT PROJECT'S RESPONSES AND
OBJECTIONS TO INTERVENOR-DEFENDANTS' FIRST SET OF
INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33 and the Local Rules of the U.S. District Court for the Western District of Pennsylvania, Plaintiff Black Political Empowerment Project ("BPEP") serves the following responses and objections to Intervenor-Defendants Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania First Set of Interrogatories (each an "Interrogatory," and, collectively, the "Interrogatories"). All responses and objections contained herein (the "Responses and Objections") and in any supplemental responses are based only upon such information and materials presently available and specifically known to BPEP. BPEP reserves the right to amend or supplement the Responses and Objections in accordance with the Court's orders and the Federal Rules of Civil Procedure.

Further discovery, investigation, and legal research may supply additional facts and/or add meaning to known facts. The following Responses and Objections are provided without prejudice to BPEP's right at or before any trial to produce evidence of any subsequently discovered facts. By producing any materials in response to these Interrogatories, BPEP does not concede the

relevance or admissibility of the materials or information produced. BPEP reserves the right to challenge the admissibility of any materials or information produced in response to these Interrogatories on any applicable ground.

GENERAL OBJECTIONS

The following general objections apply to each of the Interrogatories propounded by Intervenor-Defendants and shall have the same force and effect as if set forth in full in response to each of the separately numbered Interrogatories. Each and every one of the following General Objections is hereby incorporated by reference into BPEP's Responses and Objections. The fact that any General Objection is not specifically listed in response to an Interrogatory does not constitute a waiver of that General Objection or otherwise preclude BPEP from raising that General Objection at a later time. These General Objections are not in any way limited by BPEP's Responses and Objections. Any undertaking to search for, or to provide information in response to, the Interrogatories remains subject to each specific objection and General Objection.

1. BPEP objects to the Requests because they request documents beyond the scope of the claims set forth in the First Amended Complaint or any party's defenses thereto. BPEP will only produce documents in response to the Requests that address the scope of the First Amended Complaint in this matter.

2. BPEP objects to the definition of "Black Political Empowerment Project," "you" and "your" to with regard to including "any agents, employees, representatives, or other persons acting or purporting to act on its behalf" in each discovery request, who are not identified, as overly broad, vague, unclear and as requiring an unreasonable investigation to determine the meaning of the same.

3. BPEP objects to the definitions of "describe," "describe in detail," "state," and "state in

detail” as overly broad, vague, unclear and as requiring an unreasonable investigation to determine the meaning of the same, and will provide only that information which is discoverable under the Federal Rules of Civil Procedure, proportional to the needs of the case, and reasonably within BPEP’s knowledge.

4. BPEP objects to the definition of “relating to” as overly broad, vague, unclear and as requiring an unreasonable investigation to determine the meaning of the same, and will provide only that information which is discoverable under the Federal Rules of Civil Procedure, proportional to the needs of the case, and reasonably within BPEP’s knowledge.

5. BPEP objects to the Interrogatories because they attempt to or purport to impose duties and obligations on BPEP in addition to or inconsistent with those imposed or authorized by the Federal Rules of Civil Procedure, the Local Rules of the U.S. District Court for the Western District of Pennsylvania, or the Court’s orders in this case.

6. BPEP objects to the Interrogatories because they are vague, ambiguous, overly broad, lacking in particularity, unduly burdensome or oppressive, or call for information or materials that are neither relevant to any party’s claim or defense, nor proportional to the needs of the case.

7. BPEP objects to the Interrogatories because they purport to require BPEP to conduct anything beyond a reasonable and diligent search of readily accessible information or materials within its possession, custody, or control, including electronically stored information, from readily accessible sources where responsive information or materials reasonably would be expected to be found.

8. BPEP objects to each Interrogatory to the extent that it seeks information that (i) is not in the possession, custody, or control of BPEP, its agents, employees and attorneys; (ii) is in the joint possession of BPEP and Defendant; or (iii) is as equally accessible to Defendant as to BPEP.

9. BPEP objects to the Interrogatories to the extent that they call for information or materials that are available from a more-convenient, more-efficient, less-burdensome, or less-expensive source, or through a more-convenient, more-efficient, less-burdensome, or less-expensive means than the Interrogatories.

10. BPEP objects to the Interrogatories because they contain express or implied assumptions of fact or law with respect to matters at issue in this action. BPEP's responses and objections to the Interrogatories are not intended to, and shall not, be construed as an agreement or concurrence by BPEP with Defendants' characterization of any facts or circumstances at issue in this action. Instead, BPEP expressly reserves the right to contest any such characterization as inaccurate.

11. BPEP objects to the Interrogatories to the extent that they call for information protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, joint-defense or common-interest privileges, or any other applicable law, regulation, privilege, immunity, or discovery protection. BPEP makes its responses hereto without waiving any privilege or any rights under the attorney work-product doctrine. Specific objections on the grounds of privilege are provided for emphasis and clarity only, and the absence of a specific objection is neither intended, nor should be interpreted, as evidence that BPEP does not object to any specific Interrogatory on the basis of any applicable law, regulation, privilege, immunity, or protection. To the extent that BPEP inadvertently provides any privileged or protected information, BPEP reserves its right to assert all applicable privileges and protections from disclosure.

12. BPEP objects to each Interrogatory to the extent that it seeks disclosure of facts and information that contain sensitive, confidential, and proprietary business information and/or constitute trade secrets. BPEP also objects to each Interrogatory to the extent that it would result in the disclosure of information in violation of privacy rights of individuals under any

constitutional, statutory, or common law right of privacy of any person.

13. BPEP objects to the first Instruction as overly broad and unduly burdensome because it purports to require BPEP to provide information covering an irrelevant time period. BPEP will only provide information or materials within a timeframe that is proportional to the needs of the case and appropriate for the Interrogatory at issue.

14. BPEP provides these Responses and Objections without waiving or intending to waive: (i) any objections as to competency, relevance, materiality, privileged status, or admissibility of any information or materials provided in response to the Interrogatories; (ii) the right to object on any ground to the information or materials provided in response to the Interrogatories at any hearing or trial; or (iii) the right to object on any ground at any time to a demand for further responses to the Interrogatories.

15. BPEP is responding to these Interrogatories based on the information and materials reasonably available to it at the time the response is made. BPEP reserves the right to amend or supplement these responses in accordance with the Court's orders and the Federal Rules of Civil Procedure.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

For ease of reference, BPEP sets out each Interrogatory followed by each response to that Interrogatory.

INTERROGATORY NO. 1: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint, including your challenges to the Date Requirement.

RESPONSE:

BPEP objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. BPEP further objects to this Interrogatory to the

extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection. BPEP further objects to this Interrogatory on the grounds that seeks legal conclusions.

BPEP, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 2: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint, including your challenges to the Date Requirement.

RESPONSE:

BPEP objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. BPEP further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection, and to the extent it calls for a legal conclusion. BPEP further objects to this Interrogatory because it seeks information already within the possession, custody and/or control of Defendants, or which is equally accessible to Defendant as to BPEP.

BPEP, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 3: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint that the Date Requirement is not “material.”

RESPONSE:

BPEP objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 1. BPEP incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

BPEP, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 4: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement violates the Materiality Provision of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B).

RESPONSE:

BPEP objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 2. BPEP incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

BPEP, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 5: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint that the Date Requirement is not “material.”

RESPONSE:

BPEP objects to this Interrogatory as cumulative and duplicative of Interrogatory Numbers 1 and 3. BPEP incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

BPEP, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 6: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement violates the Materiality Provision of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B).

RESPONSE:

BPEP objects to this Interrogatory as cumulative and duplicative of Interrogatory Numbers

2 and 4. BPEP incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

BPEP, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 7: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint that the Date Requirement violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

RESPONSE:

BPEP objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 1. BPEP incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

BPEP, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 8: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

RESPONSE:

BPEP objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 2. BPEP incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

BPEP, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 9: Explain in detail all legal and factual bases for your allegations that the Date Requirement imposes a burden on voters.

RESPONSE:

BPEP objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 1. BPEP incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

BPEP, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 10: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement imposes a burden on voters.

RESPONSE:

BPEP objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 2. BPEP incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

BPEP, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 11: Explain in detail all legal and factual bases for your allegations that you have standing to bring this lawsuit.

RESPONSE:

BPEP objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. BPEP further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection, and to the extent it calls for legal conclusions.

Subject to and without waiving the foregoing General or specific objections, BPEP refers

to its pleadings and states that it has standing to challenge application of the mail ballot envelope dating requirement by the Commonwealth of Pennsylvania and the county boards of election to disenfranchise voters caused harm to BPEP's organization due to the diversion of its limited resources leading up to and during the November 2022 General Election, and because the prospective application of the same requirement will cause BPEP to continue diverting its limited resources in future elections absent the relief sought in this case. BPEP is a mission-based organization dedicated, in part, to election protection, increased voter participation, voter outreach and education about the voting process, and expanding voting access in predominantly Black neighborhoods in Allegheny County, with some efforts in Westmoreland and Washington Counties. Following the Pennsylvania Supreme Court's November 1, 2022 decision in *Ball v. Chapman, et al.*, No. 102 MM 2022, the boards of elections in all of the counties where BPEP operates implemented a rule requiring election officials to set aside—and not count—votes received in mail ballot envelopes missing a meaningless voter-written date or showing a date that the board of elections determined to be “incorrect.” This abrupt change in voting rules just before Election Day, after many people served by BPEP's mission had already submitted mail ballots, caused BPEP to redirect its limited resources, including staff and volunteer time, to efforts to inform voters of this change and educate them as to how to avoid disenfranchisement. BPEP's staff and volunteers expended time and money developing, printing and distributing hundreds of flyers and other educational materials to dozens of churches for the purpose of informing prospective voters of the envelope dating issues generated by the *Ball* decision and, in the days leading up to the 2022 General Election spent valuable time in discussion with county election directors seeking clarity and guidance about their handling of mail ballots. But for application of the rule at issue in this case, such time and resources dedicated by BPEP staff and volunteers would

have been available for the organization's other "get out the vote" efforts and other initiatives serving BPEP's mission, including its Greater Pittsburgh Coalition Against Violence and Corporate Equity and Inclusion Roundtable initiatives. And absent the relief requested in this case, BPEP anticipates that it will again need to divert its staff and volunteer resources to similar voter education and outreach efforts dedicated to preventing disenfranchisement due to meaningless mail ballot envelope dating issues in future elections, instead of having those resources available for its other voter engagement and community initiatives. By way of further response, and pursuant to Fed. R. Civ. P. 33(d), BPEP refers to the descriptions of BPEP's mission and initiatives publicly available at <https://www.b-pep.net/about-us>, <https://www.b-pep.net/civic-engagement-voter-empowerment>, <https://www.b-pep.net/about-3>, and <https://www.b-pep.net/blog>, and to the accompanying production of documents reflecting the voter education and outreach efforts necessitated by the change in envelope dating rules in Pennsylvania, including but not limited to copies of the educational material, flyers and postcards BPEP staff and volunteers developed and distributed to area churches and other community spaces in the final days before the 2022 General Election.

INTERROGATORY NO. 12: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that you have standing to bring this lawsuit.

RESPONSE:

BPEP objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. BPEP further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection, and to the extent it calls for a legal

conclusion. BPEP further objects to this Interrogatory because it seeks information already within the possession, custody and/or control of Defendants, or which is equally accessible to Defendant as to BPEP. The burden of searching the parties' document productions to identify each and every document that may support or refute BPEP's claims in this matter is just as easily borne by Defendants and is disproportional to the needs of the case.

Subject to and without waiving the foregoing General or specific objections, and pursuant to Fed. R. Civ. P. 33(d), BPEP refers to its pleadings, the accompanying production of documents, the written discovery responses and document productions provided by Defendants in this case, and the descriptions of BPEP's mission and initiatives publicly available at <https://www.b-pep.net/about-us>, <https://www.b-pep.net/civic-engagement-voter-empowerment>, <https://www.b-pep.net/about-3>, and <https://www.b-pep.net/blog>.

INTERROGATORY NO. 13: Identify by name each person who you believe has knowledge of facts that support, corroborate, or refute your allegations in the First Amended Complaint, including your challenges to the Date Requirement.

RESPONSE:

BPEP objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. BPEP further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, BPEP refers to Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 14: For each person described in your response to the preceding interrogatory, describe in detail your understanding of the facts of which each person has knowledge.

RESPONSE:

BPEP objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. BPEP further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, BPEP refers to Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 15: Identify by name each person who you believe has knowledge of facts that support, corroborate, or refute your allegations that you have standing to bring this lawsuit.

RESPONSE:

BPEP objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. BPEP further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, BPEP refers to Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 16: For each person described in your response to the preceding interrogatory, describe in detail your understanding of the facts of which each person has knowledge.

RESPONSE:

BPEP objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. BPEP further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, BPEP refers to Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 17: Identify by name all of your members who you allege are harmed by the Date Requirement, state in which county each such member resides, and provide each such member's address.

RESPONSE:

BPEP objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. BPEP specifically objects to this interrogatory as irrelevant because its standing is not based on allegations of harm do members of the organization.

BPEP, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 18: Describe in detail how you became aware of each of your members who are allegedly harmed by the Date Requirement.

RESPONSE:

BPEP objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. BPEP specifically objects to this interrogatory as irrelevant because its standing is not based on allegations of harm do members of the organization.

BPEP, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 19: Identify by name all of your members through whom you claim standing to bring this lawsuit, state in which county each such member resides, and provide each such member's address.

RESPONSE:

BPEP objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. BPEP specifically objects to this interrogatory as irrelevant because its standing is not based on allegations of harm do members of the organization.

Subject to the foregoing General and specific objections, BPEP states that it does not claim standing to bring this lawsuit based on the standing of any member of the organization.

INTERROGATORY NO. 20: Describe in detail how you became aware of each of your members through whom you claim standing to bring this lawsuit.

RESPONSE:

BPEP incorporates the foregoing General Objections, as well as its objections and response to Interrogatory Number 19, as if fully restated herein.

INTERROGATORY NO. 21: Identify all persons or entities acting or purportedly acting on your behalf (yourself included) who supplied information that helped you respond to these Interrogatories or who helped draft any responses to these Interrogatories and identify all related documents.

RESPONSE:

BPEP objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. BPEP further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, BPEP refers to Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 22: Identify all individuals within the Black Political Empowerment Project who may have discoverable hard copy documents and ESI in their possession, custody, or control, including the title held by each person, his or her function and duties, and applicable dates of service.

RESPONSE:

BPEP objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. BPEP further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A).

Subject to and without waiving the foregoing General or specific objections, BPEP refers to Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

INTERROGATORY NO. 23: For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE:

BPEP objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. BPEP further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, BPEP refers to Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) served on February 10, 2023.

Dated: February 17, 2023

Respectfully submitted,

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*Empower and Rebuild, Common Cause
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Empowerment Project, Make the Road
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Margaret Pleban Polinski, Joel Bencan,
and Laurence M. Smith*

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VERIFICATION

I, Tim Stevens, am the Chairman and CEO of Black Political Empowerment Project (“BPEP”), and I hereby verify that I reviewed the foregoing responses to Intervenor-Defendants Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania Interrogatories and that those responses are based on information BPEP furnished to counsel and/or information that has been gathered by counsel in the course of this lawsuit. I further verify that I read the responses and that they are true and correct to the best of my knowledge, information and belief. To the extent that the contents are that of counsel, I have relied upon counsel in making this verification. I understand that false statements made herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsifications to authorities.

Tim Stevens

Date: February 17, 2023

Tim Stevens, Chairman and CEO
Black Political Empowerment Project

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

PENNSYLVANIA STATE CONFERENCE OF THE
NAACP, *et al.*,

Plaintiffs,

v.

LEIGH M. CHAPMAN, in her official capacity as
Acting Secretary of the Commonwealth, *et al.*,

Defendants.

Case No. 1:22-cv-00339-SPB

**PLAINTIFF MAKE THE ROAD PENNSYLVANIA'S RESPONSES AND OBJECTIONS
TO INTERVENOR-DEFENDANTS' FIRST SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33 and the Local Rules of the U.S. District Court for the Western District of Pennsylvania, Plaintiff Make the Road Pennsylvania ("Make the Road" or "MTR") serves the following responses and objections to Intervenor-Defendants Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania First Set of Interrogatories (each an "Interrogatory," and collectively, the "Interrogatories"). All responses and objections contained herein (the "Responses and Objections") and in any supplemental responses are based only upon such information and materials presently available and specifically known to MTR. MTR reserves the right to amend or supplement the Responses and Objections in accordance with the Court's orders and the Federal Rules of Civil Procedure.

Further discovery, investigation, and legal research may supply additional facts and/or add meaning to known facts. The following Responses and Objections are provided without prejudice to MTR's right at or before any trial to produce evidence of any subsequently discovered facts. By producing any materials in response to these Interrogatories, MTR does not concede the relevance

or admissibility of the materials or information produced. MTR reserves the right to challenge the admissibility of any materials or information produced in response to these Interrogatories on any applicable ground.

GENERAL OBJECTIONS

The following general objections apply to each of the Interrogatories propounded by Intervenor-Defendants and shall have the same force and effect as if set forth in full in response to each of the separately numbered Interrogatories. Each and every one of the following General Objections is hereby incorporated by reference into MTR's Responses and Objections. The fact that any General Objection is not specifically listed in response to an Interrogatory does not constitute a waiver of that General Objection or otherwise preclude MTR from raising that General Objection at a later time. These General Objections are not in any way limited by MTR's Responses and Objections. Any undertaking to search for, or to provide information in response to, the Interrogatories remains subject to each specific objection and General Objection.

1. MTR objects to the Requests because they request documents beyond the scope of the claims set forth in the First Amended Complaint or any party's defenses thereto. MTR will only produce documents in response to the Requests that address the scope of the First Amended Complaint in this matter.

2. MTR objects to the definition of "Make the Road Pennsylvania," "you" and "your" to with regard to including "any agents, employees, representatives, or other persons acting or purporting to act on its behalf" in each discovery request, who are not identified, as overly broad, vague, unclear and as requiring an unreasonable investigation to determine the meaning of the same.

3. MTR objects to the definitions of "describe," "describe in detail," "state," and "state in detail" as overly broad, vague, unclear and as requiring an unreasonable investigation to determine

the meaning of the same, and will provide only that information which is discoverable under the Federal Rules of Civil Procedure, proportional to the needs of the case, and reasonably within MTR's knowledge.

4. MTR objects to the definition of "relating to" as overly broad, vague, unclear and as requiring an unreasonable investigation to determine the meaning of the same, and will provide only that information which is discoverable under the Federal Rules of Civil Procedure, proportional to the needs of the case, and reasonably within MTR's knowledge.

5. MTR objects to the Interrogatories because they attempt to or purport to impose duties and obligations on MTR in addition to or inconsistent with those imposed or authorized by the Federal Rules of Civil Procedure, the Local Rules of the U.S. District Court for the Western District of Pennsylvania, or the Court's orders in this case.

6. MTR objects to the Interrogatories because they are vague, ambiguous, overly broad, lacking in particularity, unduly burdensome or oppressive, or call for information or materials that are neither relevant to any party's claim or defense, nor proportional to the needs of the case.

7. MTR objects to the Interrogatories because they purport to require MTR to conduct anything beyond a reasonable and diligent search of readily accessible information or materials within its possession, custody, or control, including electronically stored information, from readily accessible sources where responsive information or materials reasonably would be expected to be found.

8. MTR objects to each Interrogatory to the extent that it seeks information that (i) is not in the possession, custody, or control of MTR, its agents, employees and attorneys; (ii) is in the joint possession of MTR and Defendant; or (iii) is as equally accessible to Defendant as to MTR.

9. MTR objects to the Interrogatories to the extent that they call for information or materials

that are available from a more-convenient, more-efficient, less-burdensome, or less-expensive source, or through a more-convenient, more-efficient, less-burdensome, or less-expensive means than the Interrogatories.

10. MTR objects to the Interrogatories because they contain express or implied assumptions of fact or law with respect to matters at issue in this action. MTR's responses and objections to the Interrogatories are not intended to, and shall not, be construed as an agreement or concurrence by MTR with Defendants' characterization of any facts or circumstances at issue in this action. Instead, MTR expressly reserves the right to contest any such characterization as inaccurate.

11. MTR objects to the Interrogatories to the extent that they call for information protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, joint-defense or common-interest privileges, or any other applicable law, regulation, privilege, immunity, or discovery protection. MTR makes its responses hereto without waiving any privilege or any rights under the attorney work-product doctrine. Specific objections on the grounds of privilege are provided for emphasis and clarity only, and the absence of a specific objection is neither intended, nor should be interpreted, as evidence that MTR does not object to any specific Interrogatory on the basis of any applicable law, regulation, privilege, immunity, or protection. To the extent that MTR inadvertently provides any privileged or protected information, MTR reserves its right to assert all applicable privileges and protections from disclosure.

12. MTR objects to each Interrogatory to the extent that it seeks disclosure of facts and information that contain sensitive, confidential, and proprietary business information and/or constitute trade secrets. MTR also objects to each Interrogatory to the extent that it would result in the disclosure of information in violation of privacy rights of individuals under any constitutional, statutory, or common law right of privacy of any person.

13. MTR objects to the first Instruction as overly broad and unduly burdensome because it purports to require MTR to provide information covering an irrelevant time period. MTR will only provide information or materials within a timeframe that is proportional to the needs of the case and appropriate for the Interrogatory at issue.

14. MTR provides these Responses and Objections without waiving or intending to waive: (i) any objections as to competency, relevance, materiality, privileged status, or admissibility of any information or materials provided in response to the Interrogatories; (ii) the right to object on any ground to the information or materials provided in response to the Interrogatories at any hearing or trial; or (iii) the right to object on any ground at any time to a demand for further responses to the Interrogatories.

15. MTR is responding to these Interrogatories based on the information and materials reasonably available to it at the time the response is made. MTR reserves the right to amend or supplement these responses in accordance with the Court's orders and the Federal Rules of Civil Procedure.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

For ease of reference, MTR sets out each Interrogatory followed by each response to that Interrogatory.

INTERROGATORY NO. 1: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint, including your challenges to the Date Requirement.

RESPONSE:

MTR objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. MTR further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine,

or any other applicable privilege or protection. MTR further objects to this Interrogatory on the grounds that seeks legal conclusions.

MTR, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 2: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint, including your challenges to the Date Requirement.

RESPONSE:

MTR objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. MTR further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection, and to the extent it calls for a legal conclusion. MTR further objects to this Interrogatory because it seeks information already within the possession, custody and/or control of Defendants, or which is equally accessible to Defendant as to MTR.

MTR, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 3: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint that the Date Requirement is not “material.”

RESPONSE:

MTR objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 1. MTR incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

MTR, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 4: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement violates the Materiality Provision of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B).

RESPONSE:

MTR objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 2. MTR incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

MTR, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 5: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint that the Date Requirement is not “material.”

RESPONSE:

MTR objects to this Interrogatory as cumulative and duplicative of Interrogatory Numbers 1 and 3. MTR incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

MTR, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 6: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement violates the Materiality Provision of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B).

RESPONSE:

MTR objects to this Interrogatory as cumulative and duplicative of Interrogatory Numbers

2 and 4. MTR incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

MTR, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 7: Explain in detail all legal and factual bases for your allegations in the First Amended Complaint that the Date Requirement violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

RESPONSE:

MTR objects to this Interrogatory as cumulative and duplicative of Interrogatory Number

1. MTR incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

MTR, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 8: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

RESPONSE:

MTR objects to this Interrogatory as cumulative and duplicative of Interrogatory Number

2. MTR incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

MTR, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 9: Explain in detail all legal and factual bases for your allegations that the Date Requirement imposes a burden on voters.

RESPONSE:

MTR objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 1. MTR incorporates and restates all of its objections to Interrogatory Number 1, as well as all of the above General Objections.

MTR, through its undersigned counsel, refers to the substance of its pleadings and legal filings in this case and otherwise stands on its objections.

INTERROGATORY NO. 10: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that the Date Requirement imposes a burden on voters.

RESPONSE:

MTR objects to this Interrogatory as cumulative and duplicative of Interrogatory Number 2. MTR incorporates and restates all of its objections to Interrogatory Number 2, as well as all of the above General Objections.

MTR, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 11: Explain in detail all legal and factual bases for your allegations that you have standing to bring this lawsuit.

RESPONSE:

MTR objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. MTR further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection, and to the extent it calls for legal conclusions.

Subject to and without waiving the foregoing General or specific objections, MTR refers

to its pleadings and states that it has standing to challenge application of the mail ballot envelope dating requirement by the Commonwealth of Pennsylvania and the county boards of election to disenfranchise voters caused harm to MTR's organization due to the diversion of its limited resources leading up to and during the November 2022 General Election, and because the prospective application of the same requirement will cause MTR to continue diverting its limited resources in future elections absent the relief sought in this case. MTR is a mission-based organization dedicated to building the power of the working-class in Latino and other communities to achieve dignity and justice through organizing, policy innovation, and education services. Make the Road PA's more than 10,000 members are primarily working-class residents of Pennsylvania, many in underserved communities. The work of its staff, members and volunteer network includes substantial field work aimed at voter protection, voter advocacy and voter education on, for example, how to register to vote, how to apply for mail-in/absentee ballots, how to return mail-in/absentee ballots, and where to vote. Make the Road PA has run active programs to register voters in historically underserved communities of color, especially in Berks, Bucks, Lehigh, Northampton and Philadelphia Counties. Its get-out-the-vote efforts in the 2022 General Election alone included knocking on over 300,000 doors and speaking directly with over 29,000 people in these counties. Following the Pennsylvania Supreme Court's November 1, 2022 decision in *Ball v. Chapman, et al.*, No. 102 MM 2022, the boards of elections in all of the counties where MTR operates implemented a rule requiring election officials to set aside—and not count—votes received in mail ballot envelopes missing a meaningless voter-written date or showing a date that the board of elections determined to be “incorrect.” This abrupt change in voting rules just before Election Day, after many people served by MTR's mission had already submitted mail ballots, caused MTR to redirect its limited resources, including staff and volunteer time, to efforts to

inform voters of this change and educate them as to how to avoid disenfranchisement. Moreover, because Make the Road's efforts are focused on communities where many voters are not native English speakers, the risk that some voters may make a minor paperwork mistake in filling out various forms related to mail or absentee ballot voting is heightened. Accordingly, MTR's staff and volunteers directed time and resources in the critical time before Election Day to contacting county election officials to determine how, if at all, they would inform non-English speakers of any problems with the dating of their mail ballot envelopes. MTR's staff and volunteers then conducted extensive phone and text message outreach, on an emergency basis, to its members informing prospective voters of the envelope dating issues generated by the *Ball* decision in the days leading up to the 2022 General Election. But for application of the rule at issue in this case, such time and resources dedicated by MTR staff and volunteers would have been available for the organization's other "get out the vote" efforts and other initiatives serving MTR's mission, including its Immigrant Rights, Education Justice, Housing Justice, Climate Justice and Worker Rights initiatives. And absent the relief requested in this case, MTR anticipates that it will again need to divert significant staff and volunteer resources to similar voter education and outreach efforts dedicated to preventing disenfranchisement due to meaningless mail ballot envelope dating issues in future elections, instead of having those resources available for its other voter engagement and community initiatives. By way of further response, and pursuant to Fed. R. Civ. P. 33(d), MTR refers to the descriptions of MTR's mission and initiatives publicly available at <https://www.maketheroadpa.org/about-us>, <https://www.maketheroadpa.org/democracy>, and <https://www.maketheroadpa.org/organizing>.

INTERROGATORY NO. 12: Identify (including by Bates number once assigned) all documents that support, corroborate, or refute your allegations in the First Amended Complaint that you have standing to bring this lawsuit.

RESPONSE:

MTR objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. MTR further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection, and to the extent it calls for a legal conclusion. MTR further objects to this Interrogatory because it seeks information already within the possession, custody and/or control of Defendants, or which is equally accessible to Defendant as to MTR. The burden of searching the parties' document productions to identify each and every document that may support or refute MTR's claims in this matter is just as easily borne by Defendants and is disproportional to the needs of the case.

Subject to and without waiving the foregoing General or specific objections, and pursuant to Fed. R. Civ. P. 33(d), MTR refers to its pleadings, the accompanying production of documents, the written discovery responses and document productions provided by Defendants in this case, and the descriptions of MTR's mission and initiatives publicly available at <https://www.maketheroadpa.org/about-us>, <https://www.maketheroadpa.org/democracy>, and <https://www.maketheroadpa.org/organizing>. By way of further response, MTR refers Defendants to the anticipated productions of other Plaintiffs, including Common Cause Pennsylvania, reflecting MTR's participation in voter education efforts and press briefings necessitated by the Pennsylvania Supreme Court's decision in *Ball v. Chapman*.

INTERROGATORY NO. 13: Identify by name each person who you believe has knowledge of facts that support, corroborate, or refute your allegations in the First Amended Complaint, including your challenges to the Date Requirement.

RESPONSE:

MTR objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. MTR further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, MTR refers to its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A).

INTERROGATORY NO. 14: For each person described in your response to the preceding interrogatory, describe in detail your understanding of the facts of which each person has knowledge.

RESPONSE:

MTR objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. MTR further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, MTR refers to its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A).

INTERROGATORY NO. 15: Identify by name each person who you believe has knowledge of facts that support, corroborate, or refute your allegations that you have standing to bring this lawsuit.

RESPONSE:

MTR objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. MTR further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, MTR refers to its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A).

INTERROGATORY NO. 16: For each person described in your response to the preceding interrogatory, describe in detail your understanding of the facts of which each person has knowledge.

RESPONSE:

MTR objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. MTR further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, MTR refers to its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A).

INTERROGATORY NO. 17: Identify by name all of your members who you allege are harmed by the Date Requirement, state in which county each such member resides, and provide each such member's address.

RESPONSE:

MTR objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. MTR specifically objects to this interrogatory as irrelevant because its standing is not based on allegations of harm do members of the organization.

MTR, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 18: Describe in detail how you became aware of each of your members who are allegedly harmed by the Date Requirement.

RESPONSE:

MTR objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. MTR specifically objects to this interrogatory as irrelevant because its standing is not based on allegations of harm do members of the organization.

MTR, through its undersigned counsel, stands on its objections.

INTERROGATORY NO. 19: Identify by name all of your members through whom you claim standing to bring this lawsuit, state in which county each such member resides, and provide each such member's address.

RESPONSE:

MTR objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. MTR specifically objects to this interrogatory as irrelevant because its standing is not based on allegations of harm do members of the organization.

Subject to the foregoing General and specific objections, MTR states that it does not claim standing to bring this lawsuit based on the standing of any member of the organization.

INTERROGATORY NO. 20: Describe in detail how you became aware of each of your members through whom you claim standing to bring this lawsuit.

RESPONSE:

MTR incorporates the foregoing General Objections, as well as its objections and response to Interrogatory Number 19, as if fully restated herein.

INTERROGATORY NO. 21: Identify all persons or entities acting or purportedly acting on your behalf (yourself included) who supplied information that helped you respond to these Interrogatories or who helped draft any responses to these Interrogatories and identify all related documents.

RESPONSE:

MTR objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. MTR further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, MTR refers to its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A).

INTERROGATORY NO. 22: Identify all individuals within Make the Road Pennsylvania who may have discoverable hard copy documents and ESI in their possession, custody, or control, including the title held by each person, his or her function and duties, and applicable dates of service.

RESPONSE:

MTR objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. MTR further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A).

Subject to and without waiving the foregoing General or specific objections, MTR refers to its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A).

INTERROGATORY NO. 23: For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE:

MTR objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case. MTR further object to this Interrogatory as cumulative and duplicative of the obligations already imposed under Fed. R. Civ. P. 26(a)(1)(A)(i).

Subject to and without waiving the foregoing General or specific objections, MTR refers to its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A).

Dated: February 17, 2023

Respectfully submitted,

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and Laurence M. Smith*

VERIFICATION

I, Diana Robinson, am the Civic Engagement Director of Make the Road Pennsylvania ("MTR"), and I hereby verify that I reviewed the foregoing responses to Intervenor-Defendants Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania Interrogatories and that those responses are based on information MTR furnished to counsel and/or information that has been gathered by counsel in the course of this lawsuit. I further verify that I read the responses and that they are true and correct to the best of my knowledge, information and belief. To the extent that the contents are that of counsel, I have relied upon counsel in making this verification. I understand that false statements made herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsifications to authorities.

Date: February 17, 2023



Diana Robinson, Civic Engagement Director
Make the Road Pennsylvania

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[J-85-2022]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

DAVID BALL, JAMES D. BEE, JESSE D. : No. 102 MM 2022
DANIEL, GWENDOLYN MAE DELUCA, :
ROSS M. FARBER, LYNN MARIE :
KALCEVIC, VALLERIE SICILIANO- :
BIANCANIELLO, S. MICHAEL STREIB, :
REPUBLICAN NATIONAL COMMITTEE, :
NATIONAL REPUBLICAN :
CONGRESSIONAL COMMITTEE, AND :
REPUBLICAN PARTY OF PENNSYLVANIA, :

Petitioners

v.

LEIGH M. CHAPMAN, IN HER OFFICIAL :
CAPACITY AS ACTING SECRETARY OF :
THE COMMONWEALTH, AND ALL 67 :
COUNTY BOARDS OF ELECTIONS, :

Respondents

PER CURIAM

DECIDED: November 1, 2022

AND NOW, this 1st day of November, 2022, upon review of the briefs of the parties and *amici*, the Petitioners' request for injunctive and declaratory relief is granted in part and denied in part. The Pennsylvania county boards of elections are hereby **ORDERED** to refrain from counting any absentee and mail-in ballots received for the November 8, 2022 general election that are contained in undated or incorrectly dated outer envelopes. See 25 P.S. §3146.6(a) and §3150.16(a).

The Court is evenly divided on the issue of whether failing to count such ballots violates 52 U.S.C. §10101(a)(2)(B).

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We hereby **DIRECT** that the Pennsylvania county boards of elections segregate and preserve any ballots contained in undated or incorrectly dated outer envelopes.

The Republican National Committee, the National Republican Congressional Committee, and the Republican Party of Pennsylvania have standing. Petitioners David Ball, James D. Bee, Jesse D. Daniel, Gwendolyn Mae Deluca, Ross M. Farber, Lynn Marie Kalcevic, Vallerie Siciliano-Biancaniello, and S. Michael Streib are hereby **DISMISSED** from the case for lack of standing.

Opinions to follow.

Chief Justice Todd and Justices Donohue and Wecht would find a violation of federal law.

Justices Dougherty, Mundy and Brobson would find no violation of federal law.

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**[J-85-2022]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

DAVID BALL, JAMES D. BEE, JESSE D. : No. 102 MM 2022
DANIEL, GWENDOLYN MAE DELUCA, :
ROSS M. FARBER, LYNN MARIE :
KALCEVIC, VALLERIE SICILIANO- :
BIANCANIELLO, S. MICHAEL STREIB, :
REPUBLICAN NATIONAL COMMITTEE, :
NATIONAL REPUBLICAN :
CONGRESSIONAL COMMITTEE, AND :
REPUBLICAN PARTY OF PENNSYLVANIA, :

Petitioners

v.

LEIGH M. CHAPMAN, IN HER OFFICIAL :
CAPACITY AS ACTING SECRETARY OF :
THE COMMONWEALTH, AND ALL 67 :
COUNTY BOARDS OF ELECTIONS, :

Respondents

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SUPPLEMENTAL ORDER

PER CURIAM

AND NOW, this 5th day of November, 2022, the Court hereby supplements its per curiam order dated November 1, 2022, wherein we directed, in part, that “[t]he Pennsylvania county boards of elections are hereby ORDERED to refrain from counting any absentee and mail-in ballots received for the November 8, 2022 general election that are contained in undated *or incorrectly* dated outer envelopes.” (Emphasis added.) For purposes of the November 8, 2022 general election, “incorrectly dated outer envelopes” are as follows: (1) mail-in ballot outer envelopes with dates that fall outside the date range

of September 19, 2022, through November 8, 2022; and (2) absentee ballot outer envelopes with dates that fall outside the date range of August 30, 2022, through November 8, 2022. See 25 P.S. §§ 3150.12a, 3150.15, 3146.2a(a), 3146.5(a).

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A True Copy Amy Dreibelbis, Esquire
As Of 11/05/2022


Attest: _____
Deputy Prothonotary
Supreme Court of Pennsylvania

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

PENNSYLVANIA STATE CONFERENCE

OF THE NAACP, et al.,

Plaintiffs,

v.

LEIGH M. CHAPMAN, in her official capacity as

Acting Secretary of the Commonwealth, et al.,

Defendants.

Case No. 1:22-cv-00339-SPB

-- and --

BETTY EAKIN, et al.

Plaintiffs,

v.

ADAMS COUNTY BOARD OF ELECTIONS, et al.

Defendants.

Case No. 1:22-cv-340

Remote Deposition of Crista Miller

Monday, February 13, 2023

11:00 a.m.

Recorded Stenographically by:
Jennifer Miller, RMR, CRR, CCR
Job No.:222617

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Appearances Cont'd

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1 C. Miller

2 A. Military ballots are absentee
3 ballots.

4 Q. So the Pennsylvania Supreme Court
5 said on November 5th, 2022, that an incorrectly
6 dated outer envelope for absentee ballots would
7 be one with a date falling outside the range of
8 August 30th, 2022, through November 8th, 2022.

9 But you still would have counted
10 a military absentee ballot received and dated
11 up through November 15th?

12 A. Received by the 15th. It still would
13 have to be dated by the 8th.

14 Q. Understood.

15 So if you receive a military
16 absentee ballot on November 14th, that met the
17 submission deadline; but if the date the voter
18 wrote on that envelope was November 9th, you
19 would have set it aside pursuant to the court
20 order?

21 A. Correct.

22 Q. Got it.

23 Would the same thing be true of
24 people who might have flipped the day and the
25 month in their -- in how they write their date?

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
ERIE DIVISION

PENNSYLVANIA STATE	:	
CONFERENCE OF THE NAACP, ET.	:	
AL.	:	Case No. 1:22-CV-339-SPB
Plaintiffs,	:	
	:	
v.	:	
LEIGH M CHAPMAN, ET. AL.	:	
Defendants.	:	

**ANSWERS OF DEFENDANT LANCASTER COUNTY BOARD OF ELECTIONS
TO PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSION**

Pursuant to Fed. R. Civ. P. 36, defendant Lancaster County Board of Elections ("LCBOE") answers Plaintiffs' First Set of Requests for Admission as follows:

1. You have never used or referred to the date handwritten on the outer return envelope containing a mail ballot for any purpose related to determining or confirming the mail ballot voter's eligibility (*i.e.*, their age, citizenship, county and duration of residence, and felony status).

ANSWER: Denied.

2. You have never used or referred to the date handwritten on the mail ballot return envelope to establish whether you received the ballot by the applicable deadline.

ANSWER: Denied to the extent that the request is referring to deadline referenced in 25 P.S. § 3150.16(c).

3. You have never used or referred to the date handwritten on the outer

return envelope or on any other paperwork accompanying a returned military overseas ballots for any purpose related to determining or confirming a voter's eligibility (*i.e.*, their age, citizenship, county and duration of residence, and felony status).

ANSWER: Denied.

4. You have never used or referred to the date handwritten on the outer return envelope or on any other paperwork accompanying a returned military overseas ballot to establish whether you received the ballot by the applicable deadline.

ANSWER: Denied.

5. You have not counted mail ballots in connection with the 2022 General Election that were timely received and submitted in signed envelopes but without a handwritten date on the outer return envelope, and You will not count such ballots absent an order of the Court.

ANSWER: Admitted.

6. Pursuant to the Pennsylvania Supreme Court's orders of November 1 and 8, 2022, You have not counted mail ballots in connection with the 2022 General Election that were timely received in signed envelopes that showed a date on the outer return envelope appearing to You to pre-date September 19, 2022, or to postdate November 8, 2022, and You will not count such ballots absent an order of the Court.

ANSWER: Admitted as to the November 1, 2022 order. LCBOE is unable to admit or deny the request regarding the November 8, 2022 order because it is not aware of any order of the Pennsylvania Supreme Court entered on November 8, 2022.

7. Pursuant to the Pennsylvania Supreme Court's orders of November 1 and 8, 2022, You have not counted absentee ballots in connection with the 2022 General Election that were timely received in signed envelopes that showed a date on the outer return envelope appearing to You to pre-date August 30, 2022, or to post-date November 8, 2022, and You will not count such ballots absent an order of the Court that applies to the LCBOE.

ANSWER: Admitted as to the November 1, 2022 order. LCBOE is unable to admit or deny the request regarding the November 8, 2022 order because it is not aware of any order of the Pennsylvania Supreme Court entered on November 8, 2022 that applies to the LCBOE.

8. In carrying out the instructions set forth in the Pennsylvania Supreme Court's order referenced in Requests 4 and 5, You determined whether the date written on the outer envelope was within the "correct" date range based on the American dating convention of writing the month, then day, then year (e.g., MM/DD/YYYY). Thus, for example, if a voter wrote 1/11/2022 as the date on a mail ballot return envelope, You set aside that envelope without counting the ballot or endeavoring to determine whether the date noted was written using a European dating convention of writing the day before the month (i.e., November 1, 2022).

ANSWER: Denied.

Date: January 20, 2023

Respectfully submitted,

/s/ James J. Fitzpatrick

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