

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

BETTE EAKIN, *et al.*,

Plaintiffs,

v.

ADAMS COUNTY BOARD OF ELECTIONS, *et al.*,

Defendants.

Case No. 1:22-cv-00340-SPB

**PLAINTIFFS' CONSOLIDATED BRIEF IN OPPOSITION TO DEFENDANTS' AND
INTERVENORS' MOTIONS FOR SUMMARY JUDGMENT**

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INTRODUCTION

The motions for summary judgment filed by Defendants Lancaster County Board of Election and Berks County Board of Elections (“County Boards”), ECF No. 280, and Intervenor the Republican National Committee, National Republican Congressional Committee, and the Republican Party of Pennsylvania (“Intervenor”), ECF No. 282, confirm that the material facts in this case are not genuinely disputed. Pennsylvania law requires county boards of elections to reject an otherwise valid mail-in or absentee ballot if, in timely submitting that ballot, the voter mistakenly failed to write a date that the boards deem correct on the ballot return envelope (hereinafter, “Date Provision”), *see* ECF No. 282 at 1, but that handwritten date is irrelevant in determining whether an individual is qualified to vote, *id.* at 13.

Section 101 of the Civil Rights Act prohibits states from refusing to count a person’s ballot on the ground that the person made a mistake on a piece of paper that is immaterial to their qualification to vote. *See* 52 U.S.C. § 10101(a)(2)(B) (the “Materiality Provision”). That is exactly what happens when the County Boards enforce the Materiality Provision—as the Third Circuit recently held in an opinion that, while mooted, clearly reflects that court’s views. *Migliori v. Cohen*, 36 F.4th 153, 164 (3d Cir. 2022), *judgment vacated as moot sub nom. Ritter v. Migliori*, 143 S. Ct. 297 (Mem.) (2022); *see also Real Alts., Inc. v. Sec’y Dep’t of Health & Hum. Servs.*, 867 F.3d 338, 356 (3d Cir. 2017) (opinion vacated on non-merits grounds “sets forth the view of our Court”). Plaintiffs are entitled to judgment as a matter of law on all counts and the Court should deny summary judgment to the County Boards and Intervenor.

Nothing in the County Boards’ or Intervenor’s motions for summary judgment alters this conclusion. Lancaster and Berks Counties’ attempt to attack Plaintiffs’ standing and their right to bring this action fails because the Date Provision has resulted in thousands of ballots being discarded—including those of Plaintiffs’ members and constituents who live and vote across

Pennsylvania, Pls.’ Concise Statement of Material Facts, ECF No. 289, (“CSMF”) ¶¶ 104–05, 113–15, 121; Pls.’ Statement of Additional Material Facts (“SAMF”) ¶¶ 1–3—and will continue to result in otherwise-valid ballots being discarded in future elections. Furthermore, enforcement of the Date Provision requires Plaintiffs to divert resources away from their other activities and towards understanding how each county intends to apply the Date Provision and assisting their members to avoid disenfranchisement. CSMF ¶¶ 99–103, 110–12, 122–23. And well-established case law makes clear that private plaintiffs can sue to enjoin violations of the Materiality Provision. *See, e.g., Schwier v. Cox*, 340 F.3d 1284, 1294-1296 (11th Cir. 2003).

Intervenors take another approach: they attempt to narrow the Materiality Provision to the point of obsolescence by reading into the statute various restrictions that would limit the Provision’s protections to registration materials, and only to information used to determine voter eligibility. The plain text of the Materiality Provision defies these efforts. The law provides broad protection to ensure that qualified voters are not disenfranchised through strict application of needless technicalities such as the Date Provision on papers or records used at any stage of the voting process—from registration to vote counting. *See* 52 U.S.C. § 10101(e) (defining “vote”).

Plaintiffs are entitled to judgment as a matter of law on all counts and the Court should deny summary judgment to the County Boards and Intervenors.

ARGUMENT

I. Plaintiffs have Article III standing for their claims against Lancaster County and Berks County Boards of Elections.

The unrefuted evidence and settled authorities submitted with Plaintiffs’ motion for summary judgment establish that (1) Plaintiffs suffered an injury as a result of the County Boards’ rejection of undated or incorrectly dated ballots (collectively, “undated ballots”); (2) such injury is fairly traceable to the County Boards; and (3) a favorable judicial decision will likely redress

those injuries. *See Cottrell v. Alcon Labs.*, 874 F.3d 154, 162 (3d Cir. 2017). Plaintiffs have members or constituents in both counties whose votes are at risk as a result of the Date Provision, CSMF ¶¶ 104–05, 113–15, 121; SAMF ¶¶ 1–3, and furthermore must divert time and resources away from other projects to learn how each county applies the Date Provision and assist their members to avoid disenfranchisement, CSMF ¶¶ 99–103, 110–12, 122–23.

Despite rejecting a combined total of over 1,000 ballots cast by eligible Pennsylvanians, the Lancaster and Berks County Boards of Election contend that they have caused no injury sufficient to establish standing. Their improbable assertion misapplies the relevant standards and ultimately unravels in the face of Plaintiffs’ unrefuted testimony establishing that Organizational Plaintiffs DSCC, DCCC, and AFT Pennsylvania (the “Federation”) have standing to bring claims against all Defendants, including the County Boards.

A. DSCC, DCCC, and the Federation have associational standing to bring claims on behalf of their members and constituents.

To establish associational standing, an organizational plaintiff must show that: (1) their members and constituents “otherwise have standing in their own right,” (2) “the interests [the organizations] seek[] to protect are germane to [their] purpose,” and (3) the members and constituents’ participation is unnecessary to resolve Plaintiffs’ claims. *Citizens Coal Council v. Matt Canestrone Contracting, Inc.*, 40 F. Supp. 3d 632, 636–37 (W.D. Pa. 2014) (quoting *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977)). Lancaster and Berks Counties do not directly challenge Plaintiffs’ satisfaction of any of these three elements but instead argue that DSCC, DCCC, and the Federation (the “Organizational Plaintiffs”) lack standing on the sole basis that they have failed to identify a specific member that has suffered or will suffer harm because of the Date Provision. ECF No. 280 at 3–4. That is incorrect. All three organizations have identified injured members or constituents, CSMF ¶¶ 80, 121, and both Lancaster and Berks Counties have

admitted to disenfranchising more than a thousand voters collectively in the 2022 general election because of the Date Provision. *See* CSMF ¶¶ 8–10; Pls’ Appendix of Exhibits, ECF No. 290, (“CSMF App.”) at App.273 (Berks County admitting they set aside “782 ballots” because of the Date Provision), App.396 (Lancaster County admitting they “segregated and/or set aside 232 mail ballots” because of the Date Provision).¹ And because these counties have committed to enforcing the Date Provision in future elections, Organizational Plaintiffs’ members and constituents will remain at risk of having their mail ballots rejected.

DSCC, DCCC, and the Federation additionally have third-party standing to protect the rights of their members and constituents in each county. The Third Circuit has recognized that a plaintiff may have standing to assert a non-party’s rights where “the party asserting the right has a close relationship with the person who possesses the right [and] there is a hindrance to the possessor’s ability to protect his own interests.” *Tineo v. Attorney General of the United States*, 937 F.3d 200, 209 (3d Cir. 2019) (quoting *Sessions v. Morales-Santana*, 582 U.S. 47, 57 (2017)). For example, “doctors may be able to assert the rights of patients; lawyers may be able to assert the rights of clients; vendors may be able to assert the rights of customers; and candidates for public office may be able to assert the rights of voters.” *Pa. Psych. Soc’y v. Green Spring Health Servs., Inc.*, 280 F.3d 278, 288 n.10 (3d Cir. 2002). Organizational Plaintiffs satisfy each of the three prerequisites for third party standing, *see id.* at 288–289: they are injured by enforcement of the Date Provision, *see* CSMF ¶¶ 99–103, 110–12, 122–23; SAMF ¶¶ 1–3; each Plaintiff has a close relationship with its members and constituents, *see* CSMF ¶¶ 93, 95–97, 104–05, 108–09,

¹ Of those hundreds of ballots, the specific voter identities were designated as Confidential Information pursuant to the Court’s Protective Order. ECF No. 224. The contents of those ballots—such as the completed ballots themselves, indicating who those individuals actually voted for—were neither requested nor produced.

113–19; and these individuals cannot protect their interests because they cannot determine in advance whether they will forget to date—or incorrectly date—their mail ballot envelope and may not learn of the deprivation of their rights until it is too late, CSMF ¶¶ 8–28, 46–51, 81–90. Plaintiffs therefore have third-party standing to assert the claims of their members and constituents who may inadvertently fail to comply with the Date Provision in future elections. *Cf. June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103, 2173–74 (2020) (Gorsuch, J., dissenting) (recognizing that controlling opinion allowed abortion providers third-party standing to “assert the constitutional rights of an undefined, unnamed, indeed unknown, group of women who they hope will be their patients in the future”), *abrogated on other grounds by Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

B. The Organizational Plaintiffs have direct standing to sue over their own injuries caused by Lancaster and Berks Counties.

Putting aside the injuries suffered by their members and constituents, Organizational Plaintiffs have direct standing because Lancaster and Berks Counties’ actions “impair[] [Plaintiffs’] ability to carry out [their] mission,” resulting in a diversion of resources. *Fair Hous. Rts. Ctr. in Se. Pa. v. Post Goldtex GP, LLC*, 823 F.3d 209, 214 n.5 (3d Cir. 2016); *see also Alexander v. Riga*, 208 F.3d 419, 427 n.4 (3d Cir. 2000). Lancaster and Berks Counties attempt to evade responsibility for any diversion of resources by claiming that they are not responsible for the Date Provision. ECF No. 280 at 5. But as discussed, both counties—along with every other county in Pennsylvania—have admitted that they have refused to count undated or incorrectly dated mail ballots and will continue to do so in future elections. *See* CSMF ¶¶ 8–10; CSMF App. at App.273, App.396. Thus, their actions have directly caused (and will continue to cause) the disenfranchisement of Organizational Plaintiffs’ members and constituents, and consequently the resulting diversion of Organizational Plaintiffs’ resources. *See Freeman v. Corzine*, 629 F.3d 146,

153 (3d Cir. 2010) (recognizing that to show causation, a plaintiff need only show their injury is “fairly traceable” to the challenged conduct, and even “an indirect causal relationship will suffice,” *id.* (quotation omitted)).

The Counties also claim—without support—that because the Date Provision is “already in place and ha[s] already been used in one election,” there is no diversion of resources. ECF No. 280 at 6. But as discussed in Plaintiffs’ Memorandum in Support of their Motion for Summary Judgment, the threat of disenfranchisement caused by Defendants’ enforcement of the Date Provision is ongoing, and will continue to force Organizational Plaintiffs to divert resources in the form of personnel, time, and money away from existing activities such as get-out-the-vote programs, advocacy efforts, or helping voters in other states cure their ballots, and instead toward helping their constituents and members in Pennsylvania ensure their vote is ultimately counted and not set aside because of the Date Provision. CSMF ¶¶ 91–103, 106–12, 115, 117–23. The fact that Organizational Plaintiffs have already been harmed by the Date Provision in a previous election does not prevent them from seeking a remedy to prevent future injury.

Whether asserting claims directly or on behalf of their members and constituents, each Organizational Plaintiff has more than adequately alleged standing to bring claims against Lancaster and Berks Counties.

II. Plaintiffs have a private right to enforce the Materiality Provision of the Civil Rights Act.

Intervenors misrepresent both the text of the Civil Rights Act and the relevant case law to argue that Plaintiffs lack a private right to enforce the Materiality Provision. This argument fails because a private right of action is unequivocally provided through 42 U.S.C. § 1983. *See Migliori*, 36 F.4th at 162; *see also Schwier*, 340 F.3d at 1297; *La Union del Pueblo Entero v. Abbott*, No. 5:21-CV-0844-XR, 2022 WL 3045657, at *29–30 (W.D. Tex. Aug. 2, 2022); *League of Women*

Voters of Ark. v. Thurston, No. 5:20-CV-05174, 2021 WL 5312640, at *4 (W.D. Ark. Nov. 15, 2021); *Tex. Democratic Party v. Hughs*, 474 F. Supp. 3d 849, 859–60 (W.D. Tex. 2020), *rev'd on other grounds by Tex. Democratic Party v. Hughs*, 860 F. App'x 874 (5th Cir. 2021). And if a statute “unambiguously confers an individual right,” Plaintiffs presumptively may enforce it through Section 1983. *Migliori*, 36 F.4th at 159.

The Materiality Provision easily meets this standard because it has “an unmistakable focus” on the individual right to vote. *Grammer v. John J. Kane Reg'l Ctrs.-Glen Hazel*, 570 F.3d 520, 528 (3d Cir. 2009). Specifically, the Materiality Provision prohibits denying “any individual” the right to vote based on “an error or omission on any record or paper relating to any application, registration, or other act requisite to voting” that is “not material in determining whether such individual is qualified . . . to vote.” 52 U.S.C. § 10101(a)(2)(B). As the Third Circuit explained, by “plac[ing] all citizens qualified to vote at the center of its import and provid[ing] that they shall be entitled and allowed to vote,” this language “unambiguously confers a personal right.” *Migliori*, 36 F.4th at 159 (cleaned up).

In this respect, the Materiality Provision’s language is “clearly analogous” to Title VI of the Civil Rights Act, 42 U.S.C. § 2000d (“No person in the United States shall on the ground of race, color, or national origin . . . be subjected to discrimination . . .”) and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (“No person in the United States shall, on the basis of sex . . . be subjected to discrimination . . .”), which contain epitomic rights-creating language. *See Gonzaga Univ. v. Doe*, 536 U.S. 273, 284 & n.3 (2002) (“We have recognized, for example, that Title VI . . . and Title IX . . . create individual rights because those statutes are phrased ‘with an *unmistakable focus* on the benefited class.’”) (emphasis in original); *see also Schwier*, 340 F.3d at 1291, 1296 (finding the Materiality Provision conferred a private right

enforceable through Section 1983). Like Titles VI and IX, the Materiality Provision’s “No person . . . shall” formulation targets “the denial of rights to individuals,” creating an unmistakable federal right. *Schwier*, 340 F.3d at 1291, 1296. “Indeed, the rights-creating language here may be even stronger” than that of Titles VI and IX because the Materiality Provision “explicitly include[s] the word ‘right.’” *Grammer*, 570 F.3d at 531; *see also Wilder v. Va. Hosp. Ass’n*, 496 U.S. 498, 524 (1990) (finding Medicaid Act provision that *required states* to provide for payment of medical services for needy individuals using reasonable rates conferred private rights on medical providers); 52 U.S.C. § 10101(a)(2)(B) (protecting the “*right* of any individual to vote” (emphasis added)).

Because the Materiality Provision unambiguously confers an individual right to voters, it is presumptively enforceable through Section 1983 and Intervenor’s have the burden to demonstrate that Congress intended to exclude the possibility of a private right of action by identifying either “express terms” in the statute foreclosing private enforcement or a “comprehensive remedial scheme” that is more restrictive than Section 1983. *See Gonzaga Univ.*, 536 U.S. at 284; *Grammer*, 570 F.3d at 532. While Intervenor’s point to language enabling the Attorney General to bring suit to enjoin violations of the Materiality Provision, this “is inadequate, without more, to rebut the presumption of a private right of action under § 1983.” *Migliori*, 36 F.4th at 162; *see also Schwier*, 340 F.3d at 1294–96 (holding that the Attorney General’s authority to enforce the Materiality Provision does not preclude private enforcement). Indeed, the primary case they cite in support actually undermines their argument. In *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113 (2005), the Supreme Court considered whether Section 332(c)(7) of the Telecommunications Act was enforceable through § 1983. In determining that it was not, the Supreme Court identified “the dividing line between those cases in which we have held that an action would lie under § 1983 and

those in which we have held that it would not”: “the existence of a more restrictive *private remedy* for statutory violations.” *City of Rancho Palos Verdes*, 544 U.S. at 121 (emphasis added). Intervenor do not (and cannot) identify any such remedial scheme here.

The Supreme Court has further made clear that it does not “lightly conclude that Congress intended to preclude reliance on § 1983” and in the very few instances where it has, “the statutes at issue required plaintiffs to comply with particular procedures and/or to exhaust particular administrative remedies prior to filing suit,” and they involved “unusually elaborate, carefully tailored, and restrictive enforcement schemes.” *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 254-55 (2009) (internal quotations omitted). Section 101 of the Civil Rights Act bears no resemblance to these schemes; to the contrary, the statutory text contemplates private litigation by explaining that federal courts “shall exercise” jurisdiction over “proceedings instituted pursuant to [the statute]” regardless of whether “the party aggrieved shall have exhausted any administrative or other remedies,” 52 U.S.C. § 10101(d).

The legislative history also confirms that Congress intended for the Materiality Provision to remain enforceable through § 1983 actions. In the House Report accompanying the bill establishing the Attorney General’s enforcement authority, the Judiciary Committee recognized that “Section 1983 of Title 42 U.S.C. has been used to enforce the rights, legislatively declared in the existing law.” H.R. Rep. No. 85-291 (1957). The addition of public enforcement by the Attorney General was intended “to provide means for *further* securing and protecting the right to vote,” *id.*, in recognition that “deprivation of the right to vote is the first step on the road to tyranny and dictatorship” and therefore “the right of franchise must be protected by the sovereign,” *id.* As the Eleventh Circuit has recognized, “[t]his language demonstrates an intense focus on protecting the right to vote and does not support the conclusion that Congress meant

merely to substitute one form of protection for another.” *Schwier*, 340 F.3d at 1295.

Intervenors’ position furthermore is not supported by any meaningful authority. Three federal appellate courts have considered whether the Materiality Provision is enforceable through § 1983: The Third Circuit in *Migliori* and the Eleventh Circuit in *Schwier* thoroughly analyzed the issue, evaluating the text, structure, and history of § 10101 to conclude that it could be enforced through a § 1983 action. Intervenors acknowledge *Schwier* but make no effort to engage with the Eleventh Circuit’s reasoning (or with the Third Circuit’s reasoning in *Migliori*). Instead, they rely on the Sixth Circuit’s opinion in *Northeast Ohio Coalition for the Homeless v. Husted*, 837 F.3d 612 (6th Cir. 2016) (“*NEOCH*”). That opinion does not engage with the merits at all; the panel instead briefly discusses the Eleventh Circuit’s reasoning in *Schwier* but acknowledges the binding effect of a previous Sixth Circuit decision. *See NEOCH*, 837 F.3d at 630. That previous decision—*McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000)—devotes exactly ten words to the issue.

The careful and extensive review of the Third Circuit in *Migliori* and the Eleventh Circuit in *Schwier*, including detailed consideration of the text, structure, and history of the Civil Rights Act, stand in stark contrast to the Sixth Circuit’s cursory analysis. Intervenors offer no argument that warrants departure from these courts’ thorough analyses.

III. The Date Provision violates the Materiality Provision.

There are no factual disputes as to whether the Date Provision violates the Materiality Provision; instead, Intervenors advance legal arguments that ignore the text of the statute in favor of hyperbolic claims about the implications of enforcing the statute as written. Because each of their arguments fails, they are not entitled to summary judgment. Judgment instead should be granted to Plaintiffs for the reasons discussed in Plaintiffs’ motion. *See* ECF No. 288.

The Materiality Provision makes it unlawful to:

deny the right of any individual to vote in any election 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). Congress enacted this provision to rid the country of state laws “that increase the number of errors or omissions on papers or records related to voting and provide an excuse to disenfranchise otherwise qualified voters.” *Thurston*, 2021 WL 5312640, at *4. As remedial legislation, the Materiality Provision must be “liberally construed.” *Peyton v. Rowe*, 391 U.S. 54, 65 (1968).

The Materiality Provision’s text consists of three clauses, giving rise to a three-element claim. The first two clauses identify the universe of voting regulations to which the Materiality Provision applies. Clause 1 requires that the regulation result in the “den[ial of] the right of any individual to vote.” 52 U.S.C. § 10101(a)(2)(B). Clause 2 requires that the cause of that denial be “an error or omission on any record or paper relating to any application, registration, or other act requisite to voting.” *Id.* Meanwhile, Clause 3 creates the test for determining the regulation’s legality: If the “error or omission is not material in determining whether such individual is qualified under State law to vote in such election,” enforcement of the regulation is unlawful. *Id.* Intervenor’s argue that rejecting undated or misdated ballots does not violate any of these elements: they claim that the first element is not satisfied because refusing to count a noncompliant ballot does not deprive anyone of the right to vote, ECF No. 282 at 6; that the second element is not satisfied because the Materiality Provision only “regulates requirements and practices related to qualifications and registration to vote, not rules ‘that must be met in order to cast a ballot that will be counted,’” *id.* at 8 (quoting *Ritter*, 142 S. Ct. at 1825 (Alito, J., dissenting from the denial of the application for stay)); and that the third element is not satisfied because casting a mail ballot is voting rather than an act requisite to voting, *id.* at 12. These theories share the same fatal flaw: They are incompatible with the text of the statute.

A. The County Boards' enforcement of the Date Provision results in a denial of the right to vote.

The Date Provision's requirement that county boards reject a mail ballot due to a missing or incorrect written date on its envelope unquestionably denies the right to vote, which includes not only the ability to "cast a ballot," but also to "*have it counted.*" *United States v. Classic*, 313 U.S. 299, 318 (1941) (emphasis added). Congress wrote this understanding directly into the Materiality Provision, explicitly defining the word "vote" as used in the Provision to encompass "all action[s] necessary to make a vote effective, including . . . having [a] ballot counted and included in the appropriate totals of votes cast." 52 U.S.C. § 10101(e); *id.* § 10101(a)(3)(A) (incorporating this definition for purposes of the Materiality Provision's use of the term "vote"). By prohibiting county boards from counting otherwise valid mail ballots due to a missing or incorrect written date on the envelope, the Date Provision denies the right to vote as Congress has explicitly defined that term.

This statute's definition of the term "vote" also forecloses Intervenor's self-refuting argument that the Date Provision's enforcement does not violate the Materiality Provision because "[t]he consequence of . . . noncompliance is not disqualifying the voter, stripping the voter's eligibility to vote, or removing the voter from the list of registered voters, but rather declining to count the voter's (invalid) ballot." ECF No. 282 at 7. Applying the plain text of the Materiality Provision, courts have repeatedly found that it applies to state laws that, like the Date Provision here, do not stand in the way of a voter casting a ballot but instead require rejecting that ballot after submission because of a mistake or omission made by the voter. *See Sixth Dist. of Afr. Methodist Episcopal Church v. Kemp*, No. 1:21-CV-01284-JPB, 2021 WL 6495360, at *14 (N.D. Ga. Dec. 9, 2021) (finding plaintiffs stated a plausible Materiality Provision claim in challenge against requirement that absentee voters write their birth date on their absentee ballot envelope); *Thurston*,

2021 WL 5312640, at *4 (finding plaintiffs stated a plausible Materiality Provision claim in challenge against requirement that absentee voters who have already demonstrated their eligibility to provide similar evidence with their absentee ballot as well); *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1309 (N.D. Ga. 2018) (enjoining county from rejecting absentee ballots due to voter's failure to write correct year of birth on envelope because doing so likely violates the Materiality Provision); *Ford v. Tenn. S.*, No. 06-2031-DV, 2006 WL 8435145, at *11 (W.D. Tenn. Feb. 1, 2006) (explaining Materiality Provision prohibits rejecting a voter's ballot envelope because of the voter's failure to sign both ballot and poll book). Intervenor's meanwhile fail to cite a single decision that relies upon their atextual theory.

B. The Date Provision relates to an application, registration, or other act requisite to voting.

The Date Provision prohibits rejecting a ballot “because of an error or omission on *any* record or paper relating to *any* application, registration, or other act requisite to voting.” 52 U.S.C. § 10101(a)(2)(B) (emphasis added). It requires counties to reject mail ballots due to an “omission” (failing to write the date) or “error” (writing the wrong date) made by the voter on a “paper” (the envelope) relating to an “act requisite to voting” (completing the voter declaration). *Id.*

Intervenor's seek to rewrite the Materiality Provision by arguing that it should apply only when “the error or omission affect[s] a ‘determin[ation] whether such individual is qualified under State law to vote.’” ECF No. 282 at 8 (quoting 52 U.S.C. § 10101(a)(2)(B)); *see also id.* at 9-10. This argument badly misconstrues the statutory text and has been rejected by other courts. *Ford*, 2006 WL 8435145, at *11 (rejecting same argument that the Materiality Provision applies “solely [to] determining eligibility to vote”). It is Clauses 1 and 2 of the Materiality Provision, not Clause 3, that delineate the *type* of voting regulation governed. And their plain text makes clear that the Provision applies to any regulation that denies the right to vote “because of an error or omission

on any record or paper relating to any application, registration, or other act requisite to voting.” 52 U.S.C. § 10101(a)(2)(B).

This is why, in *Migliori*, the Third Circuit determined that the Materiality Provision “applies” to the Date Provision by asking only whether “mail-in ballot[s] [] constitute[] a paper relating to an act for voting.” 36 F.4th at 162 n.56. Having found that the Date Provision “squarely” does so, the court moved on to Clause 3’s test, which determines not whether a regulation falls within the Materiality Provision’s ambit, but instead whether the regulation is lawful. *Id.* at 163–64. Under that test, if the omission or mistake at issue is “material in determining whether such individual is qualified under State law to vote in such election,” the regulation’s enforcement is lawful; if it is immaterial, enforcement is unlawful. 52 U.S.C. § 10101(a)(2)(B). As explained below, the *Migliori* court easily concluded (and Intervenor’s concede) that the Date Provision fails that test.²

If Congress had intended to limit the Materiality Provision to papers and records used to determine a person’s eligibility, it would have stated that it applies only to papers and records relating to *registration*, the phase during which election officials determine a voter’s eligibility. *See Thurston*, 2021 WL 5312640, at *4; *see also* SAMF ¶¶ 4–5. But Congress did the opposite, using expansive language making clear that the Materiality Provision’s scope applies to *any* record

² Intervenor’s claim that *Migliori* is not persuasive authority because it was vacated as moot, and that therefore “[t]he Court should not rely on that analysis,” but the Third Circuit has confirmed that an opinion vacated on non-merits grounds remains highly persuasive. *See Real Alternatives, Inc. v. Sec’y Dep’t of Health & Hum. Servs.*, 867 F.3d 338, 356 (3d Cir. 2017) (“Although our judgment . . . was vacated by the Supreme Court, it nonetheless sets forth the view of our Court. . . . [The Supreme Court] vacated our judgment, . . . but did not attack our reasoning. . . . While [the vacated opinion] is no longer controlling, there is nothing that would require us—or anyone else—to conclude that our reasoning in that opinion was incorrect.”). Intervenor’s attack on *Migliori*’s persuasive value furthermore rings hollow given that their brief cites Justice Alito’s *Ritter* dissent on behalf of only three justices at least a dozen times. *See* ECF No. 282 at 1, 4, 6–9, 12–13.

or paper relating not only to “registration,” but “any . . . *other* act requisite to voting.” 52 U.S.C. § 10101(a)(2)(B) (emphasis added); *see Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008) (noting Supreme Court precedent that “[r]ead naturally, the word ‘any’ has an expansive meaning, that is, ‘one or some indiscriminately of whatever kind’”). To accept Intervenor’s reading of the statute would render that last phrase superfluous. *See Idahoan Fresh v. Advantage Produce, Inc.*, 157 F.3d 197, 202 (3d Cir. 1998) (“In interpreting a statute, courts should endeavor to give meaning to every word which Congress used and therefore should avoid an interpretation which renders an element of the language superfluous.”). If Congress intended to circumscribe the Materiality Provision to constrain its scope only to instances when state actors use the information provided to determine a voter’s eligibility, “it would have said so.” *Puerto Rico v. Franklin Cal. Tax-Free Trust*, 579 U.S. 115, 128 (2016). Not only did Congress *not* adopt this restriction, it included language making clear that it intended the Provision to have a much broader reach. The plain text of the statute forecloses Intervenor’s theory.

Intervenor’s also exaggerate the consequences of Plaintiffs’ interpretation of the Materiality Provision, suggesting that it would prevent states from enacting “*any* requirements for completing ballots . . . that do not confirm the individual’s qualifications to vote.” ECF No. 282 at 13. But the examples they offer to demonstrate this point fall flat because it remains unclear why any of them would violate the Materiality Provision’s plain text the way the Date Provision does. Intervenor’s fail to explain, for example, why the requirements that voters place their mail ballot in a secrecy envelope, *id.* at 14 (citing 25 P.S. §§ 3146.6(a), 3150.16(a)), or appear at a polling place before the polls close amount to “error[s] or omission[s] *on* any record or paper” as required to trigger the Materiality Provision. 52 U.S.C. § 10101(a)(2)(B) (emphasis added). And when a county board declines to count an overvote, ECF No. 282 at 14, it does not deny that voter the ability to vote;

rather, it effectuates the voter's ballot to the fullest practicable extent. *See* 25 P.S. § 3063(a) ("the ballot shall be counted for all offices for which it is properly marked"). Indeed, Intervenor's fail to identify a single example of another instance in which the basic, textual application of the Materiality Provision would invalidate other state voting laws.

Finally, Intervenor's attempt to drag the Date Provision outside of the Materiality Provision's scope by claiming that "casting a ballot . . . constitutes the *act* of voting, not an . . . act *requisite* to voting." ECF No. 282 at 11-12. But this argument immediately falls apart in light of Intervenor's simultaneous admission that "casting a ballot . . . *requires* completing the declaration." *Id.* at 11 (emphasis added). If a voter is required to complete the declaration to cast a ballot, completing the declaration is an act requisite to voting. In any event, this imagined distinction cannot be squared with the statutory text. As explained, the Materiality Provision expressly defines "vote" as including "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." 52 U.S.C. § 10101(a)(3)(A), (e).

C. The handwritten date on a mail ballot's outer envelope is unrelated to the voter's qualifications.

Intervenor's effectively concede the third element of Plaintiffs' Materiality Provision claim. As they explain, "Plaintiffs are entirely correct that compliance with the date requirement is not a qualification to vote." ECF No. 282 at 13. A person is eligible to vote in Pennsylvania if they are at least 18 years old on the day of the next election, have been a citizen of the United States for at least one month before the next election, and have resided in the Pennsylvania election district where they plan to vote for at least 30 days prior to the next election, provided they have not been convicted of a felony within the last five years. 25 P.S. § 2811; 25 Pa. C.S.A. § 1301(a). As the *Migliori* court unanimously concluded (and Intervenor's do not dispute), a voter's failure to write

a correct date on the envelope containing their mail ballot has nothing to do with their qualifications to vote. 36 F.4th at 163; *see also* ECF No. 282 at 13 (“[T]he date requirement is not used to determine whether an individual is ‘qualified under State law to vote.’”). Nor do any of the defendant county board of elections rely upon it to determine whether a ballot was timely submitted. Rejecting mail ballots on this ground plainly violates the Materiality Provision.

IV. The Date Provision violates the First and Fourteenth Amendments under the *Anderson-Burdick* test.

Not only is the Date Provision immaterial to voter qualifications, it also fails to advance any sufficiently weighty state interest and thus violates the First and Fourteenth Amendments. When considering such challenges to state election laws, courts apply the *Anderson-Burdick* balancing test, which weighs the character and magnitude of the burdens imposed against the precise interest that Defendants claim warrants that burden. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *see also Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). “[E]ven when a law imposes only a slight burden on the right to vote, relevant and legitimate interests of sufficient weight still must justify that burden.” *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318–19 (11th Cir. 2019). Because the Date Instruction serves no legitimate purpose in the voting process, the significant burdens imposed by its enforcement are unjustifiable and create unlawful barriers to the franchise.

A. Rejecting mail ballots implicates the fundamental right to vote.

At the outset, Intervenor asks the Court to reject the *Anderson-Burdick* test entirely because the Date Provision regulates only absentee and mail-in voting and therefore purportedly does not implicate a fundamental right. ECF No. 282 at 17. In support of this argument, Intervenor cites *McDonald v. Board of Election Commissioners of Chicago*, 394 U.S. 802, 807–08 (1969), a case that pre-dates *Anderson* itself—and by extension the *Anderson-Burdick* test that courts apply

today. But Intervenor's reliance on *McDonald* to rewrite the *Anderson-Burdick* test suffers from another fundamental flaw: *McDonald* did not insulate absentee voting restrictions from adherence to the constitutional right to vote. *McDonald* simply required the Court to determine whether unsentenced inmates awaiting trial met one of the four *qualifications* under which absentee ballots were provided by Illinois law, with the Court concluding that they could not show they qualified as "physically incapacitated." *Id.* at 803–05, 809–10; *see also O'Brien v. Skinner*, 414 U.S. 524, 529 (1974) ("Essentially the Court's disposition of the claims in *McDonald* rested on failure of proof."); *Goosby v. Osser*, 409 U.S. 512, 520–22 (1973) (finding that *McDonald* suggested different result if plaintiffs had presented evidence that the state was effectively preventing them from voting). And since *McDonald*, the Supreme Court has acknowledged that restrictions on absentee voting *can* impose burdens that violate the Equal Protection Clause. *See Am. Party of Tex. v. White*, 415 U.S. 767, 794 (1974); *O'Brien*, 414 U.S. at 530.

The Supreme Court has also been clear that there are *no litmus tests* dividing appropriate restrictions from invalid ones under its *Anderson-Burdick* framework. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191 (2008). In every case, the court must take a hard look at the evidence and determine whether the burdens imposed by the restrictions are justified by the specific interests set forth by the state. *Anderson*, 460 U.S. at 789–90. To accept Intervenor's argument would be to find that there *is* a broad litmus test shielding a wide array of restrictive voting laws—governing absentee or mail-in voting—from review entirely, a view that the Supreme Court has never endorsed since announcing the *Anderson-Burdick* test. That is why courts have consistently applied the *Anderson-Burdick* test to "a wide range of electoral-process regulations," including "absentee voting, early voting, . . . [and] the counting of ballots[.]" *Mazo v. N.J. Sec'y of State*, 54 F.4th 124, 140–41 (3d Cir. 2022) (collecting cases).

Here, Plaintiffs provided myriad, undisputed evidence that Defendants’ enforcement of the Date Provision has resulted in rejection of otherwise valid ballots and they have committed to do the same in future elections, which burdens the constitutional right to voter.

B. Defendants’ enforcement of the Date Provision imposes a serious burden on Pennsylvanians’ right to vote.

In the 2022 general election, Defendants rejected more than 10,000 otherwise valid and timely received ballots simply because of a missing or incorrect date on the ballot’s outer envelope. CSMF ¶ 10. Courts have consistently held that disenfranchisement for failure to comply with technical requirements, like the Date Provision, imposes a serious burden on the right to vote. *See, e.g., NEOCH*, (holding that rejecting mail ballots based on voters’ failure to write their birthday and address with “technical precision” imposed unjustified burden); *Democratic Exec. Comm. Of Fla.*, 915 F.3d at 1319 (recognizing that absentee ballot signature matching requirement imposed burden of a “risk of disenfranchisement” from a perceived signature mismatch). And courts regularly include the costs of noncompliance with a challenged provision—in this case, being disenfranchised—in their *Anderson-Burdick* analysis of the provision’s burden. *See, e.g., Democratic Exec. Comm. of Fla.*, 915 F.3d at 1319–20; *Council of Alt. Pol. Parties v. Hooks*, 121 F.3d 876 (1997); *NEOCH*, 837 F.3d at 631–34.

Despite the fact that Defendants’ past and future enforcement of the Date Provision has disenfranchised thousands of eligible voters, Intervenor claim that the Date Provision imposes no more than the “usual burdens of voting” such as obtaining a photo identification. ECF No. 282 at 18–21. But there is nothing “usual” about the Date Provision: it requires voters to effectively guess which format their county boards of elections will use, which varies by county and is not explicitly defined anywhere. *See* CSMF ¶¶ 7, 15, 17–18, 25, 27. If voters fail to replicate that format, they must then either follow their county’s specific “cure” procedures (which, if their county even

allows curing in the first instance, may require last-minute travel, *see* CSMF ¶¶ 83–88) or simply not have their vote counted. As the Sixth Circuit recognized in *Northeast Ohio Coalition for the Homeless v. Husted*, even a “burden [that] is small for most voters” may impose an impermissible burden when “none of the precise interests put forward by [the state] justifies it.” 837 F.3d 612, 632 (6th Cir. 2016) (quotation omitted); *see also Crawford*, 553 U.S. at 199 (recognizing possibility that “heavier burden may be placed on a limited number of persons”).

C. The Date Provision does not serve any state interest.

To survive scrutiny under the *Anderson-Burdick* analysis, the burden, “[h]owever slight,” “must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation.” *Crawford*, 553 U.S. at 191 (controlling op.) (internal quotations omitted). The Date Provision fails this test because—unlike the photo identification requirement in *Crawford* or the signature requirement—the Date Provision serves no relevant or legitimate state interest.

While Intervenor claim the Date Provision prevented voter fraud on a single ballot in Lancaster County where the handwritten date post-dated the date the decedent had passed away, this assertion is not supported by the evidence. ECF No. 282 at 19–20. As Lancaster County Board of Elections admitted in deposition testimony, that fraudulent ballot would not have been counted under any circumstance because the deceased had already been removed from the voter rolls before the ballot was received. CSMF ¶ 73; *Chapman v. Berks Cnty. Bd. of Elections*, No. 355 M.D. 2022, 2022 WL 4100998, at *21 n.14 (Pa. Cmwlth. Aug. 19, 2022) (“the ballot at issue had already been separated by the chief clerk because the scan of the return envelope revealed, through the SURE system, that the elector was deceased”); *see also* CSMF ¶ 74; 25 Pa. C.S.A. § 1505(a) (“The Department of Health shall . . . send the name and address of residence of that [deceased] individual to [voter registration] commission . . . [and] [t]he commission shall promptly update information contained in its registration records.”). And as Lancaster County Board of Elections and other

county boards have admitted, election officials do *not* rely on the handwritten date for any purpose other than merely determining that the mail ballot itself complies with the Date Provision—a tautological technical requirement that is unconnected to any legitimate state interest. CSMF ¶¶ 65–68, 76–79.

Intervenors’ repetition of the proposed justifications for the Date Provision expressed in a 2020 case before the Pennsylvania Supreme Court—which the court considered on an expedited timeline in the immediate aftermath of the 2020 election—also ignores critical (and undisputed) evidence, along with the comprehensive analysis of election procedures developed since that time, which shows that the Date Provision does not actually serve any of those purported interests. *See* ECF No. 266 at 20–21 (citing *In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058 (Pa. 2020) (“*In re 2020 Canvass*”), *cert. denied sub nom. Donald J. Trump for President, Inc. v. Degraffenreid*, 141 S. Ct. 1451 (2021)). No county board uses the handwritten date to determine a voter’s qualifications. CSMF ¶¶ 31–32; SAMF ¶¶ 4–5. That date does not serve to ensure timely receipt of mail ballots. CSMF ¶¶ 52–64. It does not serve to detect or prevent fraud. CSMF ¶¶ 65–75. And it serves no other purpose whatsoever, other than mere compliance with the Date Provision itself. CSMF ¶¶ 76–79. *See also* ECF No. 288 at 22–24.

Perhaps sensing the lack of any evidence supporting those interests, Intervenors for the first time advance a new purported state interest—that of “solemnity”—in claiming that adding technical formalities to casting a ballot encourages “deliberation” and “considered decisions.” ECF No. 282 at 20–21.³ But such a purely hypothetical interest is not sufficient to justify the Date

³ Notably, at no point in litigation in any court has the Commonwealth of Pennsylvania claimed

Provision’s specific burden, which disenfranchises thousands of voters. *See Belitskus v. Pizzigrilli*, 343 F.3d 632, 645 (3d Cir. 2003) (requiring evaluation of “precise interests,” including “the extent to which those interests make it necessary” to justify the burden (quoting *Anderson*, 460 U.S. at 789)). It defies logic to claim that needless “formalities” are self-justifying by encouraging “considered decisions” when one such formality is singularly responsible for over 10,000 votes not being counted. ECF No. 282 at 20–21; *see also* CSMF ¶ 10. Nor have Intervenor provided any evidence at all to show that the Date Provision has any effect on promoting more voter contemplation. In reality, the Date Provision needlessly strips voters of their voice due to a technical error; it does not empower them to cast a wiser ballot.

Intervenor also claim for the first time—and again without evidence—that the Date Provision advances a state interest in “safeguarding voter confidence” in Pennsylvania elections. ECF No. 282 at 23 (quoting *Crawford*, 553 U.S. at 191). But such a nebulous interest cannot justify the severe burden of disenfranchising thousands of eligible voters for a purely technical requirement. *See, e.g., Fish v. Schwab*, 957 F.3d 1105, 1132–33 (10th Cir. 2020) (recognizing asserted state interests as “legitimate in the abstract” but rejecting that “those interests make it necessary to burden the plaintiff’s rights”); *see also Ohio State Conf. of N.A.A.C.P. v. Husted*, 768 F.3d 524, 545 (6th Cir. 2014) (“the state must articulate specific, rather than abstract state interests, and explain why the particular restriction imposed is actually necessary”), *vacated on other grounds sub nom. Ohio State Conf. of NAACP v. Husted*, No. 14–3877, 2014 WL 10384647 (6th Cir. Oct. 1, 2014); *Green Party of N.Y. v. N.Y. State Bd. of Elections*, 389 F.3d 411, 421 (2d Cir.

that the interest in “solemnity,” or any other state interest, is furthered by the Date Provision. To the contrary, the Commonwealth forcefully argued before the Third Circuit that the requirement serves no valid state interest and should be struck under the Materiality Provision. *See Amicus Br. of the Commw. of Penn. In Support of Appellants and Reversal at 7, Migliori v. Lehigh County*, No. 22-1499, 2022 WL 1045074 (3d Cir. Apr. 1, 2022), Dkt. No. 42.

2004) (“that the defendants’ asserted interests are important in the abstract does not necessarily mean that its chosen means of regulation will in fact advance those interests”) (cleaned up). After all, voter confidence includes the confidence in “ensur[ing] qualified voters were not disenfranchised by meaningless requirements[.]” *Migliori*, 36 F.4th at 164. In that respect, the Date Provision only undermines voter confidence.

Finally, Intervenor attempts to tie the Date Provision to signature requirements, which are not at issue in this action. ECF No. 282 at 13–15, 19–23. The two requirements differ in several important ways, not least of which being that while county boards have conceded that the Date Provision serves no purpose, they have not made similar concessions about the signature requirement. *See, e.g.*, CSMF ¶¶ 31–32, 54, 57–68, 71–72, 74–79. And while the signature on a declaration may purport to confirm a voter’s identity, no similar claim can be made regarding the handwritten date, which has nothing to do with identifying a voter or determining whether they are qualified to vote. CSMF ¶¶ 31–32.⁴

D. Plaintiffs’ expert testimony shows that the Date Provision disproportionately burdens racial minorities and older voters.

The fact that the Date Provision burdens voters is illustrated through the analysis of Plaintiffs’ expert, Dr. Hopkins, which shows that certain groups of voters—namely Black, Hispanic, and older voters—were disproportionately disenfranchised because of the Date Provision. CSMF ¶¶ 33–43. Using the well-established “cost of voting” framework, Dr. Hopkins showed a “*statistically significant*” relationship between the number of Black or Hispanic residents in a given county and the rate of rejected mail ballots in that county, CSMF ¶¶ 35–37 (emphasis added), which means that this correlation is “extremely unlikely to have emerged by

⁴ Intervenor claims that “Plaintiffs concede that the signature requirement is constitutional,” ECF No. 282 at 19, but fail to provide any evidence of such an alleged concession. In any event, the signature requirement is beyond the scope of this action.

random chance alone.” CSMF App. Ex. I ¶ 34. It also reveals that Defendants’ enforcement of the Date Provision most heavily impacts the least resourced voter populations. *See also id.* at ¶ 11–14, 16, 48–49.

Intervenors miss the point of such analysis, claiming that Plaintiffs are relying on an abnormal burden specific to those groups. ECF No. 282 at 24. But if there were no burden at all associated with the Date Provision, then there would not be a statistically significant relationship between those groups of voters who are least resourced and the number of ballots rejected because of the Date Provision. CSMF App. Ex. I ¶ 34. In other words, Dr. Hopkins’s robust group-level analysis shows that the Date Provision *actually burdens voters* and Intervenors point to no authority that requires Plaintiffs to “calculate” or otherwise quantify the cost to individual voters as their brief suggests. ECF No. 282 at 24–25.⁵

Because Defendants’ enforcement of the Date Provision imposes a serious burden by disenfranchising thousands of Pennsylvania voters for no legitimate state interest, it fails the *Anderson-Burdick* test and violates the First and Fourteenth Amendments.

CONCLUSION

The Court should deny Defendants Lancaster County and Berks County’s and Intervenors’ motions for summary judgment.

⁵ To the extent Intervenors demand that Dr. Hopkins quantify the cost to voters, their argument fundamentally misunderstands the cost of voting framework and contradicts the Supreme Court’s admonition against the use of litmus tests and formulas in the *Anderson-Burdick* analysis. *See Crawford*, 553 U.S. at 191 (rejecting “litmus test for measuring the severity of a burden that a state law imposes”); *Mazo*, 54 F.4th at 146 (citing *Crawford*, 553 U.S. at 191).

Dated: May 5, 2023

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

BETTE EAKIN, *et al.*,

Plaintiffs,

v.

ADAMS COUNTY BOARD OF ELECTIONS, *et al.*,

Defendants.

Case No. 1:22-cv-00340-SPB

**APPENDIX OF EXHIBITS ACCOMPANYING
PLAINTIFFS' STATEMENT OF ADDITIONAL MATERIAL FACTS**

Plaintiffs Bette Eakin, DSCC, DCCC, and AFT Pennsylvania incorporate by reference their previously filed Appendix of Exhibits Accompanying Pls' Concise Statement of Material Facts (ECF No. 290) and further present the following exhibits to accompany their Statement of Additional Material Facts:

Exhibit	Description	Appendix Page Number
N	Second Declaration of Arthur Steinberg (AFT Pennsylvania)	781
O	Deposition Transcript of Jonathan Marks (Excerpted)	784
P	Deposition Transcript of Cody Kauffman (Berks County) (Excerpted)	791
Q	Deposition Transcript of Crista Miller (Lancaster County) (Excerpted)	797
R	Deposition Transcript of Greg McCloskey (Westmoreland County) (Excerpted)	803

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Exhibit N

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

BETTE EAKIN, *et al.*,

Plaintiffs,

v.

ADAMS COUNTY BOARD OF ELECTIONS, *et al.*,

Defendants.

Case No. 1:22-cv-00340-SPB

**SECOND DECLARATION OF ARTHUR STEINBERG IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO DEFENDANTS' AND INTERVENOR-DEFENDANTS'
MOTIONS FOR SUMMARY JUDGMENT**

I, Arthur Steinberg, have personal knowledge of the following facts and declare as follows:

1. I am the President of AFT Pennsylvania and have held that position since 2019.
2. AFT Pennsylvania (the "Federation") is the Pennsylvania affiliate of the American Federation of Teachers and a union of professionals.
3. I have reviewed the Federation's membership records and the Pennsylvania voter file. Based on these records, I can confirm that, in the 2022 general election, at least 1,500 Federation members voted by mail across at least 35 counties in Pennsylvania, including Armstrong, Bedford, Blair, Butler, Cameron, Carbon, Centre, Clarion, Clinton, Columbia, Cumberland, Dauphin, Franklin, Greene, Huntingdon, Indiana, Jefferson, Lancaster, Lebanon, Mercer, Mifflin, Montour, Northumberland, Perry, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Venango, Warren, Washington, Westmoreland, Wyoming, York.

Under 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 5, 2023

Arthur G. Steinberg

Arthur Steinberg

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Exhibit O

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J. Marks

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

-----x
PENNSYLVANIA STATE CONFERENCE OF THE NAACP, et al.,

Plaintiffs,

Case No.

1:22-cv-00339-SPB

vs.

LEIGH M. CHAPMAN, In Her Official Capacity as Acting
Secretary of the Commonwealth, et al.,

Defendants.

- and -

EAKIN, et al.,

Plaintiffs,

Case No.

1:22-cv-00340

vs.

ADAMS COUNTY BOARD OF ELECTIONS, et al.,

Defendants.

REMOTE VIDEOTAPED DEPOSITION OF

JONATHAN M. MARKS

Jefferson Hills, Pennsylvania

Tuesday, February 14, 2023

Reported by:

THOMAS A. FERNICOLA, RPR

JOB NO. 222618

1 J. Marks

2 MR. WALCZAK: It was brilliant.

3 I don't know that I can repeat it.

4 I'll do my best.

5 BY MR. WALCZAK:

6 Q So because there's no witness
7 requirement to that date, there's no way
8 that the Board of Elections can know
9 whether or not the voter inserted a date
10 that reflects the date on which they filled
11 out the ballot or mailed the declaration
12 envelope, correct?

13 A Correct. There would be no way
14 for the County to independently verify, if
15 that's what you're asking.

16 Q And, ultimately, the only date
17 that matters here is whether or not that
18 ballot is received by the statutory
19 deadline of 8:00 on Election Night,
20 correct?

21 A Correct.

22 Q And the County Board of
23 Elections, because they received that date,
24 are in the best position to determine that,
25 correct?

1 J. Marks

2 A Correct.

3 Q I want to talk about what other
4 possible uses the date on the declaration
5 envelope may serve in the election process.

6 So it's not relevant to whether
7 it's timely received, correct?

8 A Correct.

9 Q So correct me if I am wrong, one
10 of the eligibility requirements is that the
11 voter has to be 18, right?

12 A Correct, yes.

13 Q And the person's age would be
14 ascertained at the time of registration,
15 correct?

16 A That's correct, yes.

17 Q So if they submit an application,
18 and the application is returned to them,
19 they're 18 years old, correct?

20 A Correct, or they will at least be
21 18 years old by the date of the next
22 election.

23 Q Same for whether they have been a
24 citizen?

25 A Correct.

1 J. Marks

2 MS. MULLEN: Objection.

3 Q I'm sorry, so citizenship is
4 evaluated at the time of registration,
5 correct?

6 A Yes. At the time of
7 registration, you have to have been a
8 citizen resident of Pennsylvania for 30
9 days prior to the election, so that would
10 have been part of the election process as
11 well.

12 Q Right.

13 So what date the voter writes on
14 the declaration envelope is irrelevant to
15 establishing either of those two
16 eligibility criteria, correct?

17 A Correct.

18 Q And same holds true for whether
19 they've lived in their district for at
20 least 30 days, right?

21 A Correct.

22 Q So the verification that the
23 voter is eligible is really made at the
24 time of the application for the ballot,
25 correct?

1 J. Marks

2 A That's correct, yes.

3 Q So the only other factor when the
4 voter returns the ballot that the County
5 Board of Elections really needs to pay
6 attention to is whether it's signed,
7 correct, whether the declaration is signed?

8 A Correct.

9 Q There's a secrecy envelope?

10 A Correct.

11 Q And that it's timely received?

12 A Correct.

13 Q And whether the date is written
14 on there is irrelevant to any of that,
15 correct?

16 A Yes, that's correct.

17 Q I want to turn just briefly here
18 to UOCAVA.

19 MR. WALCZAK: And, Kathy, I
20 emailed you Exhibit 9 a little bit out
21 of order here. I'll put it in the
22 chat.

23

24

25

1 J. Marks

2 (Marks' Exhibit 9, 2022-09-26 DOS
3 Guidance Federal Voters, was marked for
4 identification, as of this date.)

5 BY MR. WALCZAK:

6 Q Do you have what's been marked as
7 Marks' Exhibit 9?

8 A Yes, guidance concerning Federal
9 voters under UOCAVA?

10 Q Correct.

11 A I do.

12 Q And do you recognize this
13 document?

14 A I do, yes.

15 Q What is it?

16 A It is our guidance to Counties
17 regarding voters who are covered under
18 UOCAVA, specifically, Federal voters,
19 meaning those voters who are entitled to
20 vote in Federal elections per the Federal
21 law.

22 Q So we don't have to get into the
23 details here because I'm not sure they're
24 relevant, but those are basically American
25 citizens living abroad who intend to return

Exhibit P

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1 C. Kauffman

2 IN THE UNITED STATES DISTRICT COURT

3 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

4 -----X
PENNSYLVANIA STATE CONFERENCE OF THE NAACP, et al.,

5 Plaintiffs,

Case No.

1:22-cv-00339-SPB

6 vs.

7 LEIGH M. CHAPMAN, In Her Official Capacity as Acting
Secretary of the Commonwealth, et al.,

8 Defendants.

9 - and -

10 EAKIN, et al.,

11 Plaintiffs,

Case No.

1:22-cv-00340

12 vs.

13 ADAMS COUNTY BOARD OF ELECTIONS, et al.,

14 Defendants.

15 -----X

16 REMOTE VIDEOTAPED DEPOSITION OF

17 CODY L. KAUFFMAN

18 30(b)(6): Berks County Board of Elections
Jefferson Hills, Pennsylvania

19 February 17, 2023

20
21
22
23 Reported by:

24 THOMAS A. FERNICOLA, RPR

25 JOB NO. 222619

1 C. Kauffman

2 "You have never used or referred
3 to the date handwritten on the outer return
4 envelope containing a mail ballot of any
5 purpose related to determining or
6 confirming the mail ballot's voter's
7 eligibility, i.e., their age, citizenship,
8 County, and duration of residence, and
9 felony status."

10 Did I read that correctly?

11 A Yes.

12 Q I'll ask you to take another look
13 at the answer here. It's largely similar,
14 if not identical, to the one you just
15 reviewed; is that right?

16 A Yes, I would say that's fair.

17 Q Okay.

18 So I want to break this response
19 down into a couple of pieces.

20 First, I notice that the Berks
21 County Board stated that it, quote:

22 "Did not use the handwritten date
23 on the outer return envelope of an absentee
24 or mail-in ballot to determine or confirm
25 the following qualifications of the voter

1 C. Kauffman

2 to cast a ballot in that election, and that
3 includes the voter's age, citizenship,
4 County, duration of residence, or felony
5 status."

6 Did I read that part of the
7 response correctly?

8 A You did.

9 Q When Berks County is singling out
10 age, citizenship, County, duration of
11 residence, felony status, that's because
12 those are the qualifications that a County
13 has to verify under Pennsylvania law before
14 a voter can cast their ballot; is that
15 right?

16 A That's fair, yes.

17 Q Just to take a step back from
18 this response for a minute, at what stage
19 does the Berks Board determine those
20 qualifications to vote?

21 A To my knowledge, that would be --
22 those qualifications would be when the
23 elector would submit voter registration
24 information, voter registration
25 application.

1 C. Kauffman

2 Q Whenever a voter submits that
3 information for the registration or for
4 their application for a mail ballot, what
5 information does the Berks Board use to
6 determine whether a voter meets those
7 qualifications?

8 MR. BUKOWSKI: Objection.

9 Compound.

10 MS. KEENAN: I can break that up.

11 BY MS. KEENAN:

12 Q Whenever a voter submits their
13 registry information, what information does
14 the Berks Board use to determine whether
15 that voter is qualified?

16 A Well, they would view the
17 information that would be submitted on the
18 voter registry application.

19 Q Okay.

20 And so you would agree that Berks
21 County does not use the handwritten date on
22 the voter's ballot return envelope to
23 confirm any of those qualifications, right?

24 A Age, citizenship, County,
25 duration of residence, and felony status?

1 C. Kauffman

2 Q Yes, just those five?

3 A I would agree with that.

4 Q That's because the County has
5 other systems for confirming all of those
6 things relevant to voter's qualifications
7 that we just talked about, right?

8 A Correct.

9 Q That's why in that last
10 paragraph, Berks County explains the
11 handwritten date is not used to determine
12 voter's qualifications or eligibility to
13 vote in any election, right?

14 A Yes, as in the paragraph, yes.

15 MR. BUKOWSKI: Can I just ask
16 you -- someone is typing, maybe taking
17 notes, I don't believe it's you.

18 MS. KEENAN: I can hear it as
19 well.

20 MR. BUKOWSKI: Yes, it's somebody
21 else.

22 Whoever it is typing, it is a
23 little distracting. So if you can mute
24 your microphone, that would be great.

25 Apparently, it might be somebody

Exhibit Q

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1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE WESTERN DISTRICT OF PENNSYLVANIA 4

5 PENNSYLVANIA STATE CONFERENCE

6 OF THE NAACP, et al.,

7 Plaintiffs,

8 v.

9 LEIGH M. CHAPMAN, in her official capacity as

10 Acting Secretary of the Commonwealth, et al.,

11 Defendants.

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

13 -- and --

14 BETTY EAKIN, et al.

15 Plaintiffs,

16 v.

17 ADAMS COUNTY BOARD OF ELECTIONS, et al.

18 Defendants.

19 Case No. 1:22-cv-340

20 -----
21 Remote Deposition of Crista Miller

22 Monday, February 13, 2023

23 11:00 a.m.

24 Recorded Stenographically by:
Jennifer Miller, RMR, CRR, CCR
25 Job No.:222617

1 C. Miller

2 that the Lancaster board deemed to be correct
3 on their outer envelopes?

4 A. Correct.

5 MR. LONEY: Those are all of my
6 questions for now. Thank you very much.

7 - - -

8 (Whereupon, there was an
9 off-the-record discussion.)

10 - - -

11 E X A M I N A T I O N

12 - - -

13 BY MR. OSHER:

14 Q. Good afternoon, Ms. Miller. My name
15 is Dan Osher. I represent the plaintiffs in
16 the second of these two cases, and I only have
17 a few questions for you to add on here.

18 Can you remind me? What is your
19 position at the county?

20 A. I am the -- sorry.

21 I am the chief clerk, chief
22 registrar of the Lancaster County Board of
23 Elections and Registration Commission.

24 Q. So how -- can you describe what the
25 relationship is between your position and the

1 C. Miller

2 Board of Elections?

3 A. The Board of Elections directly
4 oversees my position at our office.

5 Q. Understood. Okay.

6 So in terms of when the board
7 actually determines when a person is eligible
8 to vote, when does that occur in the process of
9 a person -- let's say a person moves to
10 Pennsylvania, wants to register to vote and
11 participate in Pennsylvania's elections.

12 When does the Board of Elections
13 determine that that person is eligible to cast
14 a ballot in one of their elections?

15 A. When we are registering them to vote.

16 Q. Okay. After that point, let's say
17 that the person successfully registers to vote,
18 does the board determine whether that voter is
19 eligible to cast the ballot at any point in the
20 future?

21 A. There are many voter roll maintenance
22 programs that we do throughout every single
23 year, so yes.

24 Q. When a person submits a mail ballot
25 application -- and when I say "mail ballot," I

1 C. Miller

2 mean both mail-in ballots and absentee
3 ballots -- does the board make a determination
4 of whether that person is eligible to
5 participate in the election?

6 A. I'm not sure I understand.

7 Q. Sure. So you said -- in response to
8 my question of after the person successfully
9 registers to vote, I asked you does the board
10 make any future determinations about that
11 person's eligibility to participate in
12 elections, and you said the board does roll
13 maintenance.

14 And so my question was: When a
15 person submits an application to vote by mail,
16 whether mail-in or absentee, does the board
17 make a determination again as to whether that
18 voter is eligible to vote?

19 A. Yes. The first thing we do is to
20 make sure that that person is actually a
21 registered voter first before we process any
22 mail ballot applications.

23 Q. Okay. And -- okay. That answered my
24 question. Thank you.

25 So does the Board of Elections

1 C. Miller

2 use the date that is written on the mail ballot
3 return envelope to determine that person's
4 eligibility to vote?

5 A. In a way, yes. Because sometimes,
6 when they come back, if it's a deceased voter,
7 then we have to remove it.

8 Q. Okay. And when is that person's
9 eligibility to vote determined?

10 Is it based on when they
11 submitted the ballot? Is it based on Election
12 Day?

13 What is the date by which you
14 determine that person's eligibility to vote in
15 a particular election?

16 A. We pull deceased voter ballots up
17 through Election Day.

18 Q. So if a person passes away before the
19 election, you say you pull the ballot.

20 What does that mean?

21 A. If we received their ballot -- their
22 voted ballot already, we would then pull that
23 from those received ballots and set aside.

24 Q. And how do you determine whether a
25 person has passed away?

Exhibit R

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

PENNSYLVANIA STATE)

4

C

CONFERENCE OF THE NAACP,
et al.,)

Plaintiffs,)

vs.)

Case No.
1:22-cv-340

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

Defendants.)

BETTY EAKIN, et al.,)

Plaintiffs,)

vs.)

Case No.
1:22-cv-339-
SBP

ADAMS COUNTY BOARD OF
ELECTIONS, et al.,)

Defendants.)

REMOTE ZOOM VIDEOTAPED DEPOSITION OF

GREG MCCLOSKEY

Friday, February 17, 2023

Reported by:

Stacey L. Daywalt

JOB NO. 222666

1 M. McCloskey

2 Westmoreland County Board of Elections use that
3 handwritten date on the mail ballot return
4 envelope for any other purpose that you can
5 think of?

6 A. Just to comply with the election
7 code and the orders.

8 Q. And just to make sure I understand
9 that, what you're saying is Westmoreland County
10 uses the date on the envelope to determine
11 whether the voter complied with the requirement
12 to put the date on the envelope?

13 A. That's correct.

14 Q. Okay. If they include the date --
15 if they don't include the date, it's a
16 noncompliant vote. If they do provide the date
17 that's within the range, it's a compliant vote.

18 Is that basically it?

19 A. Correct.

20 Q. And so apart from determining
21 compliance with the date requirement itself,
22 does the Westmoreland County Board of Elections
23 use the handwritten date on the ballot return
24 envelope for any other purpose that you can
25 think of?

1 M. McCloskey

2 A. We do not.

3 Q. And while we're on the subject of
4 voter qualifications, how does a voter obtain a
5 mail ballot in Westmoreland County?

6 A. They complete an application to
7 request mail-in or absentee ballots or they can
8 also receive it annually through the permanent
9 voter notice program of -- the election bureau,
10 automatically at the beginning of each year,
11 send out an application and request if they
12 want to continue to receive mail-in and
13 absentee ballots for all elections in that
14 year.

15 Q. And when a voter applies to receive
16 a mail ballot through either one of those
17 mechanisms, the board is then required to
18 confirm their qualifications before their
19 application for a mail ballot is approved.
20 Right?

21 A. That's correct.

22 Q. And the board does confirm their
23 qualifications before issuing them a mail
24 ballot. Right?

25 A. We do.

1 M. McCloskey

2 Q. What does the board do to confirm a
3 voter's qualifications when they apply for a
4 mail ballot?

5 A. They verify the voter's name against
6 the voter's registration record, their birth
7 date, their Social Security and/or their
8 driver's license information, their citizenship
9 and how long they've been in the county.

10 Q. And only after you've confirmed all
11 of that information, confirmed and determined
12 their qualification to vote, only after that
13 will you issue them a mail ballot package.
14 Right?

15 A. Correct.

16 Q. So let's go back to RFA 1.

17 But I think we're still sharing that
18 screen. Right? Can you still see RFA No. 1
19 here on your screen?

20 A. Yes.

21 Q. Okay. And we're still on, for the
22 record, the document marked as Westmoreland 2.

23 So just looking at that second
24 paragraph here in the middle, you say, starting
25 with the word "voters": "Voters who returned

1 M. McCloskey

2 ballots without any date on the outer return
3 envelope or dates that fell outside the range
4 defined by the Pennsylvania Supreme Court's
5 supplemental order were not prohibited from
6 voting."

7 Did I read that correctly?

8 A. Yes.

9 Q. And to be clear, you agree that if a
10 voter returned a mail ballot and it didn't have
11 the handwritten date on the outer return
12 envelope, Westmoreland County did not count
13 their ballot. Right?

14 A. Correct.

15 Q. And you agree that if a voter
16 returned a mail ballot with a handwritten date
17 on the outer return envelope that was outside
18 of the range defined by the -- what's referred
19 to here as the supplemental order, Westmoreland
20 County did not count their ballot. Right?

21 A. Correct.

22 Q. And you would also agree that if a
23 voter returned a ballot with a missing or
24 incorrect handwritten date on that outer return
25 envelope, the Board of Elections didn't include

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

BETTE EAKIN, *et al.*,

Plaintiffs,

v.

ADAMS COUNTY BOARD OF ELECTIONS, *et al.*,

Defendants.

Case No. 1:22-cv-00340-SPB

PLAINTIFFS' STATEMENT OF ADDITIONAL MATERIAL FACTS

Plaintiffs Bette Eakin, DSCC, DCCC, and AFT Pennsylvania incorporate by reference their previously filed Concise Statement of Material Facts (ECF No. 289) ("CSMF"). Furthermore, Plaintiffs provide additional material facts as follows:

1. DSCC's constituents, located in every county of Pennsylvania, are at risk of having their otherwise valid ballots cast for Democratic senatorial candidates set aside due to the continued enforcement of the Date Provision. CSMF ¶¶ 104–05; *e.g.*, Pa. Dep't of State, Reporting Center—2022 General Election, available at <https://electionreturns.pa.gov/ReportCenter/Reports> (last accessed on May 3, 2023).¹

2. DCCC's constituents, located in every county of Pennsylvania, are at risk of having their otherwise valid ballots cast for Democratic congressional candidates set aside due to the continued enforcement of the Date Provision. CSMF ¶¶ 113–14; *e.g.*, Pa. Dep't of State, Reporting

¹ "These state election records are public records of which this Court may properly take judicial notice." *Ostrowski v. D'Andrea*, 2017 WL 4020435, at *7 n.3 (M.D. Pa. Aug. 10, 2017), *report and recommendation adopted*, 2017 WL 4015654 (M.D. Pa. Sept. 12, 2017). And "[j]udicial notice may be used in resolving a motion for summary judgment." *Mid-S. Grizzlies v. Nat'l Football League*, 550 F. Supp. 558, 570 n.31 (E.D. Pa. 1982) (citing 10 Wright & Miller, Fed. Prac. & Proc. § 2723 (1973)), *aff'd*, 720 F.2d 772 (3d Cir. 1983).

Center—2022 General Election, available at <https://electionreturns.pa.gov/ReportCenter/Reports> (last accessed on May 3, 2023); Pa. Dep’t of State, Reporting Center—2020 Presidential Election, available at <https://electionreturns.pa.gov/ReportCenter/Reports> (last accessed on May 3, 2023).

3. AFT Pennsylvania’s members, located in at least 35 counties of the Commonwealth, are at risk of having their otherwise valid ballots set aside due to the continued enforcement of the Date Provision. Ex. N (Second AFT Decl.) ¶ 3; CSMF ¶¶ 115–20.

4. The county boards determine a person’s qualifications to vote when they receive that person’s voter-registration application. Ex. O (Marks Dep.) at 136:9–138:2; Ex. P (Kauffman Dep.) at 32:17–25; Ex. Q (Miller Dep.) at 99:6–15.

5. Upon receiving an application for a mail ballot, a county board confirms the voter’s eligibility to vote in that particular election before sending the mail ballot to the voter. Ex. O (Marks Dep.) at 136:9–138:2; Ex. P (Kauffman Dep.) at 32:17–33:18; Ex. Q (Miller Dep.) at 100:14–22; Ex. R (McCloskey Dep.) at 38:15–39:15.

6. County boards do not take any additional steps to confirm the voter’s eligibility to vote upon receiving the voter’s completed mail ballot. CSMF ¶¶ 30–32; Ex. O (Marks Dep.) at 136:9–138:2; Ex. P (Kauffman Dep.) at 32:17–33:18; Ex. Q (Miller Dep.) at 99:6–15, 100:14–22; Ex. R (McCloskey Dep.) at 38:15–39:15.

Dated: May 5, 2023

Adam C. Bonin
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Respectfully submitted,

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

BETTE EAKIN, *et al.*,

Plaintiffs,

v.

ADAMS COUNTY BOARD OF ELECTIONS, *et al.*,

Defendants.

Case No. 1:22-cv-00340-SPB

**PLAINTIFFS' RESPONSE TO DEFENDANT LANCASTER COUNTY BOARD OF
ELECTIONS' CONCISE STATEMENT OF MATERIAL FACTS**

Pursuant to LCvR 56(C) and this Court's Case Management Order (ECF No. 227), Plaintiffs Bette Eakin, DSCC, DCCC, and AFT Pennsylvania hereby reproduce and respond to the Concise Statement of Material Fact, ECF No. 284, submitted by Defendant Lancaster County Board of Elections' ("LCBOE"), and joined by Defendant Berks County Board of Elections, as follows:

1. There are two categories of plaintiffs in this case: the individual plaintiffs and the association plaintiffs. Am. Compl., ECF No. 228, ¶ 12, Appx. Ex. 1.

- **RESPONSE:** Undisputed.

2. The only individual plaintiff is Bette Eakin. *Id.*, ¶ 12.

- **RESPONSE:** Undisputed.

3. Eakin is a registered voter in Erie County. *Id.*

- **RESPONSE:** Undisputed.

4. Eakin believes that if she forgets to include a date on her mail ballot in the future her ballot is at risk of being rejected. *Id.*

- **RESPONSE:** Disputed. Because she is forced to rely on the assistance of others to complete her ballot, Ms. Eakin has no direct control over the way in which her assistant may write the date on her ballot envelope, if at all, and is also concerned that the error of an assistant will jeopardize whether her ballot will be counted. Pls.’ Concise Statement of Material Facts (ECF No. 289) (“CSMF”) ¶¶ 82, 89–90.

5. Eakin is not a Lancaster County voter, has never voted in Lancaster County, has not alleged she intends to vote in Lancaster County, and Lancaster County has never rejected any ballots from Eakin. *Id.*

- **RESPONSE:** Undisputed.

6. The associational plaintiffs are DSCC, DCCC, and AFT Pennsylvania. *Id.*, ¶¶ 13–15.

- **RESPONSE:** Disputed. The use of “associational plaintiffs” in this assertion suggests that Plaintiffs DSCC, DCCC, and AFT Pennsylvania only assert claims on behalf of their members. Plaintiffs DSCC, DCCC, and AFT Pennsylvania also assert claims on their own behalf. CSMF ¶¶ 99–103, 110–112, 122–123.

7. DSCC, DCCC, and AFT claim that *if* ballots containing missing or incorrect dates are rejected in *future* elections they will be forced to “divert resources away from [] existing voter outreach and mobilization efforts towards voter education necessitated specifically by this requirement, and other efforts to ensure that voters who would be disenfranchised as a result have their votes counted.” *Id.*, ¶¶ 13–15.

- **RESPONSE:** Disputed. This assertion incorrectly implies that the

Organizational Plaintiffs (DSCC, DCCC, and AFT Pennsylvania) have identified only future injuries. The Date Provision has injured, and continues to injure, the Organizational Plaintiffs by frustrating their respective missions and erecting obstacles to ensuring all mail ballots cast in favor of candidates that the Organizational Plaintiffs support are counted. CSMF ¶¶ 99, 110, 123. In the 2022 general election, the Date Provision forced Organizational Plaintiffs to divert substantial resources from other activities into educational and curing efforts aimed at preventing otherwise valid votes from being rejected. CSMF ¶¶ 100–101, 122. Absent the requested relief, the Organizational Plaintiffs will be forced to continue diverting resources into measures aimed at both preventing and ameliorating the effects of the Date Provision that would otherwise result in the disenfranchisement of their members and constituents in future elections. CSMF ¶¶ 102–103, 111–112, 123.

8. DSCC, DCCC, and AFT have not identified a specific member whose mailed ballot was not counted by the Lancaster County Board of Elections in the November 2022 general election. Plaintiffs’ Fed. R. Civ. P. 26(a) Int. Disc., Appx. Ex. 2.

- **RESPONSE:** Disputed. DSCC, DCCC, and AFT Pennsylvania are not required to identify a specific member whose mail ballot was not counted in the 2022 general election, thus this statement is not material.

9. DSCC, DCCC, and AFT have not identified a specific member who intends to vote in future elections in Lancaster County. *Id.*

- **RESPONSE:** Disputed, as both DSCC and DCCC assert their claims on behalf of their constituents throughout Pennsylvania, including voters who cast votes

for Democratic candidates in Pennsylvania. CSMF ¶¶ 104–105, 113–114. And, since Plaintiffs do not understand LCBOE to be asserting that there are no Democratic voters in Lancaster County, identification of specific voters is unnecessary. Therefore, this information is not material.

10. In the November 2022 general election, the LCBOE complied with the orders of the Pennsylvania Supreme Court in the matter *Ball, et. al. v. Chapman, et. al.*, No. 101 MM 2022 dated November 1, 2022 and November 5, 2022 respectively.

- **RESPONSE:** The assertion of whether LCBOE’s actions during the 2022 general election “complied with the orders of the Pennsylvania Supreme Court” is a legal conclusion to which no response is required. Furthermore, Plaintiffs lack the information to evaluate this assertion, which is not supported as required by LCvR 56(B)(1) (“A party must cite to a particular pleading, deposition, answer to interrogatory, admission on file or other part of the record supporting the party’s statement . . .”).

11. A true and correct copy of the Pennsylvania Supreme Court’s order dated November 1, 2022 in the matter *Ball, et. al. v. Chapman, et. al.*, No. 101 MM 2022 is attached at Appx. Exhibit 3.

- **RESPONSE:** Undisputed.

12. A true and correct copy of the Pennsylvania Supreme Court’s order dated November 5, 2022 in the matter *Ball, et. al. v. Chapman, et. al.*, No. 101 MM 2022 is attached at Appx. Exhibit 4.

- **RESPONSE:** Undisputed.

Dated: May 5, 2023

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

BETTE EAKIN, *et al.*,

Plaintiffs,

v.

ADAMS COUNTY BOARD OF ELECTIONS, *et al.*,

Defendants.

Case No. 1:22-cv-00340-SPB

**PLAINTIFFS' RESPONSE TO INTERVENOR-DEFENDANTS' CONCISE
STATEMENT OF MATERIAL FACTS**

Pursuant to LCvR 56(C) and this Court's Case Management Order (ECF No. 227), Plaintiffs Bette Eakin, DSCC, DCCC, and AFT Pennsylvania hereby reproduce and respond to Intervenor-Defendants' Concise Statement of Material Fact (ECF No. 283) as follows:

I. THE PARTIES

A. Plaintiffs

1. Plaintiff Bette Eakin pleads that she is a registered voter in Pennsylvania. **Ex. 1**, Am. Compl. ¶ 12 (Dkt. No. 228).

- **RESPONSE:** Undisputed.

2. Ms. Eakin pleads that she did not initially date her absentee or mail-in ballot but was able to cure her ballot with her husband's assistance. *See id.*

- **RESPONSE:** Undisputed.

3. Plaintiff DSCC "is the Democratic Party's national senatorial committee, as defined by 52 U.S.C. § 30101(14). *Id.* ¶ 13.

- **RESPONSE:** Undisputed.

4. Plaintiff DCCC “is the Democratic Party’s national congressional committee as defined by 52 U.S.C. § 30101(14).” *Id.* ¶ 14.

- **RESPONSE:** Undisputed.

5. Plaintiff AFT Pennsylvania “is the Pennsylvania affiliate of the American Federation of Teachers and a union of professionals.” *Id.* ¶ 15.

- **RESPONSE:** Undisputed.

6. Plaintiff Black Political Empowerment Project is “a non-profit, non-partisan organization” whose “work includes voter registration drives, get-out-the-vote activities, education and outreach about the voting process, and election-protection work.” *Id.* ¶¶ 24-25.

- **RESPONSE:** Disputed, as Plaintiffs lack sufficient knowledge to confirm or deny this assertion of fact. Black Political Empowerment Project appears to be a plaintiff in *Pa. State Conf. of NAACP v. Chapman*, No. 1:22-cv-00339-SPB, not in this matter. Furthermore, Intervenor-Defendants appear to be citing paragraphs of the amended complaint in *Pa. State Conf. of NAACP v. Chapman*, No. 1:22-cv-00339-SPB (Dkt. 121).

B. Named Defendants

7. Defendant County Boards of Elections have “jurisdiction over the conduct of primaries and elections in [their respective] count[ies], in accordance with the provisions of this act.” 25 P.S. § 2641(a).

- **RESPONSE:** This assertion is a statement of law rather than of fact, and therefore requires no response.

C. Intervenor-Defendants

8. The Republican National Committee is the national committee of the Republican

Party as defined by 52 U.S.C. § 30101(14).

- **RESPONSE:** This assertion is unsupported, as required by LCvR 56(B)(1) (“A party must cite to a particular pleading, deposition, answer to interrogatory, admission on file or other part of the record supporting the party’s statement . . .”). To the extent a response is required, it is undisputed.

9. The National Republican Congressional Committee is the national congressional committee of the Republican Party as defined by 52 U.S.C. § 30101(14).

- **RESPONSE:** This assertion is unsupported, as required by LCvR 56(B)(1) (“A party must cite to a particular pleading, deposition, answer to interrogatory, admission on file or other part of the record supporting the party’s statement . . .”). To the extent a response is required, it is undisputed.

10. The Republican Party of Pennsylvania is a major political party, 25 P.S. § 2831(a), and the “State committee” for the Republican Party in Pennsylvania, 25 P.S. § 2834, as well as a federally registered “State Committee” of the Republican Party as defined by 52 U.S.C. § 30101(15).

- **RESPONSE:** This assertion is unsupported, as required by LCvR 56(B)(1) (“A party must cite to a particular pleading, deposition, answer to interrogatory, admission on file or other part of the record supporting the party’s statement . . .”). To the extent a response is required, it is undisputed.

11. Any court order purporting to change the law and direct counting of undated or incorrectly dated mail-in or absentee ballots would inflict significant harm on Intervenor-Defendants. *See Ex. 2*, Intervenor-Defendants’ Resps. & Objs. to Plaintiffs’ 1st Set of Interrogs. #1.

- **RESPONSE:** Disputed. This assertion is conclusory and fails to identify the harms that would allegedly be inflicted upon Intervenor-Defendants. Defendants further have identified no admissible evidence that allowing qualified voters' mail ballots to be counted will harm any cognizable interest they possess. Intervenor-Defendants' own self-serving answers to interrogatories served by the *Pa. State Conf. of NAACP* plaintiffs are inadmissible because they are not based on personal knowledge, but merely offer unsupported beliefs and opinions about the integrity of elections and voter confidence or confusion. *See* 10A WRIGHT, MILLER AND KANE, FEDERAL PRACTICE AND PROCEDURE 3d § 2722 (explaining that Rule 56(c) permits the use of answers to interrogatories on a motion for summary judgment, "as long as they satisfy the other requirements in Rule 56 and contain admissible material."); *cf. Barthelemy v. Moon Area Sch. Dist.*, No. 2:16-cv-00542, 2020 WL 1899149, at *18–19 (W.D. Pa. Apr. 16, 2020) (concluding that the court "cannot consider the Defendant's own interrogatory answers for the purposes of assessing Plaintiffs' summary judgment motion").

12. Unlawful counting of ballots undermines the integrity of elections, generates voter confusion, and erodes public confidence in elections. Therefore, unlawful counting of ballots can discourage voters, including Republican voters, from voting or otherwise participating in elections and, thus, change the outcome of election contests in Pennsylvania. *See id.*; *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 197 (2008).

- **RESPONSE:** Disputed. This statement asserts legal conclusions and offers opinions unsupported by any admissible evidence. Intervenor-Defendants' own

self-serving answers to interrogatories served by the *Pa. State Conf. of NAACP* plaintiffs are inadmissible because they are not based on personal knowledge, but merely offer unsupported beliefs and opinions about the integrity of elections and voter confidence or confusion. *See* 10A WRIGHT, MILLER AND KANE, FEDERAL PRACTICE AND PROCEDURE 3d § 2722 (explaining that Rule 56(c) permits the use of answers to interrogatories on a motion for summary judgment, “as long as they satisfy the other requirements in Rule 56 and contain admissible material.”); *cf. Barthelemy v. Moon Area Sch. Dist.*, 2020 WL 1899149, at *18–19 (W.D. Pa. Apr. 16, 2020) (concluding that the court “cannot consider the Defendant’s own interrogatory answers for the purposes of assessing Plaintiffs’ summary judgment motion”).

13. Intervenor-Defendants were the prevailing parties in the *Ball* litigation upholding the date requirement, so any court order invalidating the date requirement harms Intervenor-Defendants’ rights secured in that litigation. *See* **Ex. 2** at Interrog. #1.

- **RESPONSE:** Disputed. This statement asserts a legal conclusion and is unsupported by admissible evidence. Intervenor-Defendants’ own self-serving answers to interrogatories served by the *Pa. State Conf. of NAACP* plaintiffs are inadmissible because they are not based on personal knowledge, but merely offer unsupported beliefs and opinions about the integrity of elections and voter confidence or confusion. *See* 10A WRIGHT, MILLER AND KANE, FEDERAL PRACTICE AND PROCEDURE 3d § 2722 (explaining that Rule 56(c) permits the use of answers to interrogatories on a motion for summary judgment, “as long as they satisfy the other requirements in Rule 56 and contain

admissible material.”); *cf. Barthelemy v. Moon Area Sch. Dist.*, 2020 WL 1899149, at *18–19 (W.D. Pa. Apr. 16, 2020) (concluding that the court “cannot consider the Defendant’s own interrogatory answers for the purposes of assessing Plaintiffs’ summary judgment motion”).

14. As political parties, Intervenor-Defendants expend substantial resources toward educating, mobilizing, assisting, and turning out voters in Pennsylvania and supporting Republican candidates up and down the ballot. *Id.*

- **RESPONSE:** Disputed. This assertion is unsupported by admissible evidence. Intervenor-Defendants’ own self-serving answers to interrogatories served by the *Pa. State Conf. of NAACP* plaintiffs are inadmissible because they are not based on personal knowledge, but merely offer unsupported beliefs and opinions about the integrity of elections and voter confidence or confusion. *See* 10A WRIGHT, MILLER AND KANE, FEDERAL PRACTICE AND PROCEDURE 3d § 2722 (explaining that Rule 56(c) permits the use of answers to interrogatories on a motion for summary judgment, “as long as they satisfy the other requirements in Rule 56 and contain admissible material.”); *cf. Barthelemy v. Moon Area Sch. Dist.*, 2020 WL 1899149, at *18–19 (W.D. Pa. Apr. 16, 2020) (concluding that the court “cannot consider the Defendant’s own interrogatory answers for the purposes of assessing Plaintiffs’ summary judgment motion”).

15. These efforts include devoting time and resources toward training and education programs that ensure that Intervenor-Defendants and their voters understand the rules governing the election process, including applicable dates, deadlines, and requirements for voting by mail or

absentee. *Id.*

- **RESPONSE:** Disputed. This assertion is unsupported by admissible evidence. Intervenor-Defendants’ own self-serving answers to interrogatories served by the *Pa. State Conf. of NAACP* plaintiffs are inadmissible because they are not based on personal knowledge, but merely offer unsupported beliefs and opinions about the integrity of elections and voter confidence or confusion. *See* 10A WRIGHT, MILLER AND KANE, FEDERAL PRACTICE AND PROCEDURE 3d § 2722 (explaining that Rule 56(c) permits the use of answers to interrogatories on a motion for summary judgment, “as long as they satisfy the other requirements in Rule 56 and contain admissible material.”); *cf.* *Barthelemy v. Moon Area Sch. Dist.*, 2020 WL 1899149, at *18–19 (W.D. Pa. Apr. 16, 2020) (concluding that the court “cannot consider the Defendant’s own interrogatory answers for the purposes of assessing Plaintiffs’ summary judgment motion”)

16. The efforts also encompass training, education, and monitoring of the voting and vote counting process in Pennsylvania to ensure it is conducted lawfully. *Id.*

- **RESPONSE:** Disputed. This assertion is unsupported by admissible evidence. Intervenor-Defendants’ own self-serving answers to interrogatories served by the *Pa. State Conf. of NAACP* plaintiffs are inadmissible because they are not based on personal knowledge, but merely offer unsupported beliefs and opinions about the integrity of elections and voter confidence or confusion. *See* 10A WRIGHT, MILLER AND KANE, FEDERAL PRACTICE AND PROCEDURE 3d § 2722 (explaining that Rule 56(c) permits the use of answers

to interrogatories on a motion for summary judgment, “as long as they satisfy the other requirements in Rule 56 and contain admissible material.”); *cf.* *Barthelemy v. Moon Area Sch. Dist.*, 2020 WL 1899149, at *18–19 (W.D. Pa. Apr. 16, 2020) (concluding that the court “cannot consider the Defendant’s own interrogatory answers for the purposes of assessing Plaintiffs’ summary judgment motion”).

17. Any change in the laws governing Pennsylvania elections harms Intervenor-Defendants by rendering their training, voter education, and monitoring programs less effective, wasting the resources they have devoted to such programs, and requiring them to expend new resources to update those programs. *Id.*

- **RESPONSE:** Disputed. This assertion is unsupported by admissible evidence. Intervenor-Defendants’ own self-serving answers to interrogatories served by the *Pa. State Conf. of NAACP* plaintiffs are inadmissible because they are not based on personal knowledge, but merely offer unsupported beliefs and opinions about the integrity of elections and voter confidence or confusion. *See* 10A WRIGHT, MILLER AND KANE, FEDERAL PRACTICE AND PROCEDURE 3d § 2722 (explaining that Rule 56(c) permits the use of answers to interrogatories on a motion for summary judgment, “as long as they satisfy the other requirements in Rule 56 and contain admissible material.”); *cf.* *Barthelemy v. Moon Area Sch. Dist.*, 2020 WL 1899149, at *18–19 (W.D. Pa. Apr. 16, 2020) (concluding that the court “cannot consider Defendant’s own interrogatory answers for the purposes of assessing Plaintiffs’ summary judgment motion”).

18. For instance, the Republican Party of Pennsylvania has statutory rights to appoint poll watchers to observe casting, counting, and canvassing of ballots at the polling place, 25 P.S. § 2687(a), and an “authorized representative” to “remain in the room” at the county board of elections and observe the pre-canvass and canvass of “absentee ballots and mail-in ballots,” *id.* §§ 3146.8(g)(1.1)-(2). *See Ex. 2* at Interrog. #1.

- **RESPONSE:** Whether the Republican Party of Pennsylvania “has statutory rights” is a legal conclusion to which no response is required. To the extent a response is required, Plaintiffs dispute this assertion as it is unsupported by admissible evidence. Intervenor-Defendants’ own self-serving answers to interrogatories served by the *Pa. State Conf. of NAACP* plaintiffs are inadmissible because they are not based on personal knowledge, but merely offer unsupported beliefs and opinions about the integrity of elections and voter confidence or confusion. *See* 10A WRIGHT, MILLER AND KANE, FEDERAL PRACTICE AND PROCEDURE 3d § 2722 (explaining that Rule 56(c) permits the use of answers to interrogatories on a motion for summary judgment, “as long as they satisfy the other requirements in Rule 56 and contain admissible material.”); *cf. Barthelemy v. Moon Area Sch. Dist.*, 2020 WL 1899149, at *18–19 (W.D. Pa. Apr. 16, 2020) (concluding that the court “cannot consider Defendant’s own interrogatory answers for the purposes of assessing Plaintiffs’ summary judgment motion”).

19. The Republican Party of Pennsylvania has exercised these statutory rights in the past several election cycles and will do so again in future election cycles. *Id.* at 9.

- **RESPONSE:** Disputed. This assertion is unsupported by admissible evidence.

Intervenor-Defendants’ own self-serving answers to interrogatories served by the *Pa. State Conf. of NAACP* plaintiffs are inadmissible because they are not based on personal knowledge, but merely offer unsupported beliefs and opinions about the integrity of elections and voter confidence or confusion. *See* 10A WRIGHT, MILLER AND KANE, FEDERAL PRACTICE AND PROCEDURE 3d § 2722 (explaining that Rule 56(c) permits the use of answers to interrogatories on a motion for summary judgment, “as long as they satisfy the other requirements in Rule 56 and contain admissible material.”); *cf.* *Barthelemy v. Moon Area Sch. Dist.*, 2020 WL 1899149, at *18–19 (W.D. Pa. Apr. 16, 2020) (concluding that the court “cannot consider Defendant’s own interrogatory answers for the purposes of assessing Plaintiffs’ summary judgment motion”).

20. In conjunction with its Election Day Operations, the Republican Party of Pennsylvania devotes substantial time and resources toward the recruitment and training of poll workers, poll watchers, and volunteers throughout the 67 counties of the Commonwealth to assist voters on election day, to observe the casting and counting of ballots at the polling place, and to observe the pre-canvass and canvass of absentee and mail-in ballots at the county board of elections. *Id.*

- **RESPONSE:** Disputed. This assertion is unsupported by admissible evidence. Intervenor-Defendants’ own self-serving answers to interrogatories served by the *Pa. State Conf. of NAACP* plaintiffs are inadmissible because they are not based on personal knowledge, but merely offer unsupported beliefs and opinions about the integrity of elections and voter confidence or confusion. *See*

10A WRIGHT, MILLER AND KANE, FEDERAL PRACTICE AND PROCEDURE 3d § 2722 (explaining that Rule 56(c) permits the use of answers to interrogatories on a motion for summary judgment, “as long as they satisfy the other requirements in Rule 56 and contain admissible material.”); *cf.* *Barthelemy v. Moon Area Sch. Dist.*, 2020 WL 1899149, at *18–19 (W.D. Pa. Apr. 16, 2020) (concluding that the court “cannot consider Defendant’s own interrogatory answers for the purposes of assessing Plaintiffs’ summary judgment motion”).

21. As part of its Election Day Operations, the Republican Party of Pennsylvania also devotes substantial time and resources toward the recruitment and training of a “ground team” of lawyers throughout the Commonwealth who stand ready on Election Day to assist poll workers, poll watchers, and volunteers should questions arise as to elections laws or the voting process within the Commonwealth. *Id.*

- **RESPONSE:** Disputed. This assertion is unsupported by admissible evidence. Intervenor-Defendants’ own self-serving answers to interrogatories served by the *Pa. State Conf. of NAACP* plaintiffs are inadmissible because they are not based on personal knowledge, but merely offer unsupported beliefs and opinions about the integrity of elections and voter confidence or confusion. *See* 10A WRIGHT, MILLER AND KANE, FEDERAL PRACTICE AND PROCEDURE 3d § 2722 (explaining that Rule 56(c) permits the use of answers to interrogatories on a motion for summary judgment, “as long as they satisfy the other requirements in Rule 56 and contain admissible material.”); *cf.* *Barthelemy v. Moon Area Sch. Dist.*, 2020 WL 1899149, at *18–19 (W.D. Pa.

Apr. 16, 2020) (concluding that the court “cannot consider the Defendant’s own interrogatory answers for the purposes of assessing Plaintiffs’ summary judgment motion”).

22. The Republican Party of Pennsylvania’s Election Day Operations, training programs, and voter education programs include training and information regarding the requirements for voters to cast lawful and valid ballots, and the governing rules delineating unlawful and invalid ballots and preventing election officials from pre-canvassing, canvassing, or counting such ballots. *Id.*

- **RESPONSE:** Disputed. This assertion is unsupported by admissible evidence. Intervenor-Defendants’ own self-serving answers to interrogatories served by the *Pa. State Conf. of NAACP* plaintiffs are inadmissible because they are not based on personal knowledge, but merely offer unsupported beliefs and opinions about the integrity of elections and voter confidence or confusion. *See* 10A WRIGHT, MILLER AND KANE, FEDERAL PRACTICE AND PROCEDURE 3d § 2722 (explaining that Rule 56(c) permits the use of answers to interrogatories on a motion for summary judgment, “as long as they satisfy the other requirements in Rule 56 and contain admissible material.”); *cf.* *Barthelemy v. Moon Area Sch. Dist.*, 2020 WL 1899149, at *18–19 (W.D. Pa. Apr. 16, 2020) (concluding that the court “cannot consider the Defendant’s own interrogatory answers for the purposes of assessing Plaintiffs’ summary judgment motion”).

23. Any change in the laws governing Pennsylvania elections harms the Republican Party of Pennsylvania by rendering its Election Day Operations, training programs, and voter

education programs less effective, wasting the resources they have devoted to such programs, and requiring them to expend new resources to update those programs. *Id.*

- **RESPONSE:** Disputed. This assertion is unsupported by admissible evidence. Intervenor-Defendants’ own self-serving answers to interrogatories served by the *Pa. State Conf. of NAACP* plaintiffs are inadmissible because they are not based on personal knowledge, but merely offer unsupported beliefs and opinions about the integrity of elections and voter confidence or confusion. *See* 10A WRIGHT, MILLER AND KANE, FEDERAL PRACTICE AND PROCEDURE 3d § 2722 (explaining that Rule 56(c) permits the use of answers to interrogatories on a motion for summary judgment, “as long as they satisfy the other requirements in Rule 56 and contain admissible material.”); *cf. Barthelemy v. Moon Area Sch. Dist.*, 2020 WL 1899149, at *18–19 (W.D. Pa. Apr. 16, 2020) (concluding that the court “cannot consider the Defendant’s own interrogatory answers for the purposes of assessing Plaintiffs’ summary judgment motion”).

24. Any change in the laws governing Pennsylvania elections could affect the outcome of an election in which Intervenor-Defendants, their voters, and their supported candidates exercise their constitutional rights to vote and to participate. *Id.*

- **RESPONSE:** Disputed. This assertion is unsupported by admissible evidence. Intervenor-Defendants’ own self-serving answers to interrogatories served by the *Pa. State Conf. of NAACP* plaintiffs are inadmissible because they are not based on personal knowledge, but merely offer unsupported beliefs and opinions about the integrity of elections and voter confidence or confusion. *See*

10A WRIGHT, MILLER AND KANE, FEDERAL PRACTICE AND PROCEDURE 3d § 2722 (explaining that Rule 56(c) permits the use of answers to interrogatories on a motion for summary judgment, “as long as they satisfy the other requirements in Rule 56 and contain admissible material.”); *cf. Barthelemy v. Moon Area Sch. Dist.*, 2020 WL 1899149, at *18–19 (W.D. Pa. Apr. 16, 2020) (concluding that the court “cannot consider the Defendant’s own interrogatory answers for the purposes of assessing Plaintiffs’ summary judgment motion”).

25. The Third Circuit’s failure to enforce the date requirement in *Migliori v. Cohen* actually did change the outcome of an election in which a Republican candidate had prevailed. *See Ex. 3*, Cert. Pet. at 7-12, *Ritter v. Migliori*, No. 22-30 (U.S. July 7, 2022), https://www.supremecourt.gov/DocketPDF/22/2230/229591/20220707140738344_Ritter%20Petition.pdf.

- **RESPONSE:** This statement asserts a legal conclusion and therefore requires no response. To the extent a response is required, Plaintiffs dispute this assertion as unsupported by admissible evidence, as required by LCvR 56(B)(1) (“A party must cite to a particular pleading, deposition, answer to interrogatory, admission on file or other part of the record supporting the party’s statement . . .”).

II. THE DATE REQUIREMENT

26. Pennsylvania’s election laws provide a date requirement for absentee and mail-in voting. 25 P.S. § 3146.6(a); § 3150.16(a).

- **RESPONSE:** Undisputed.

27. In both provisions, the wording of the date requirement is the same: “The elector shall then fill out, date and sign the declaration printed on such envelope.” 25 P.S. § 3146.6(a); § 3150.16(a).

- **RESPONSE:** Undisputed.

A. The Date Requirement Has Been A Part Of Pennsylvania’s Election Code Since 1945.

28. The first version of the Election Code permitted some active military members to vote by mail. **Ex. 4**, Act of June 3, 1937, P.L. 1333, No. 320, §§ 1327-1330, 1937 Pa. Laws 1333, 1442-44.

- **RESPONSE:** The statutes speak for themselves and no response is required.
To the extent a response is required, Plaintiffs object that this information is not material to the claims in this case.

29. In 1945, the mail ballot provision was amended to require that the jurat on the ballot-return envelope be dated. **Ex. 5**, Act of Mar. 9, 1945, P.L. 29, No. 17, sec. 10, § 1306, 1945 Pa. Laws 29, 37.

- **RESPONSE:** The statutes speak for themselves and no response is required.
To the extent a response is required, Plaintiffs object that this information is not material to the claims in this case.

30. Eighteen years later, the General Assembly enacted the date requirement in its current form, providing that “[t]he elector shall then fill out, date and sign the declaration printed on such envelope.” **Ex. 6**, Act of Aug. 13, 1963, P.L. 707, No. 379, sec. 22, § 1304, 1963 Pa. Laws. 707, 736.

- **RESPONSE:** Disputed, as the cited provision neither includes the quoted text nor includes a requirement that a voter date the declaration.

31. In 2019, the General Assembly passed Act 77, extending the option to vote by mail to all qualified voters, and adopting the date requirement for such ballots. **Ex. 7**, Act 77, P.L. 552, sec. 8 (Oct. 31, 2019).

- **RESPONSE:** Undisputed.

32. Act 77 also provides that section 8—containing the date requirement—is “nonseverable,” and that “[i]f any provision of this act or its application to any person or circumstance is held invalid, the remaining provisions or applications of this act are void.” **Ex. 8**, Act 77, P.L. 552, sec. 11 (Oct. 31, 2019).

- **RESPONSE:** Act 77 speaks for itself and no response is required. To the extent a response is required, Plaintiffs object that this information is not material to the claims in this case.

B. The Date Requirement Has Been A Subject Of Multiple Recent Lawsuits.

33. After seven cases in five courts over two years, the current state of the law is that the General Assembly’s date requirement is mandatory and that any noncompliant absentee or mail-in ballot may not be counted.

- **RESPONSE:** This statement asserts a legal conclusion to which no response is required. To the extent a response is required, it is disputed as the Pennsylvania Supreme Court did not reach a conclusion on whether the date requirement violated federal law. *Ball v. Chapman*, 289 A.3d 1, 9 (Pa. 2023).

34. In 2020, a majority of the Pennsylvania Supreme Court held that the date requirement is mandatory and that election officials may not count any noncompliant ballot in any election after the 2020 general election. *See In re Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058, 1079–80 (2020) (Opinion of Justice Wecht); *id.* at 1090–

91 (Opinion of Justice Dougherty, Chief Justice Saylor, and Justice Mundy).

- **RESPONSE:** The opinions speak for themselves and no response is required.

To the extent a response is required, Plaintiffs object that this information is not material to the claims in this case.

35. In the first two cases following that ruling, the Pennsylvania Commonwealth Court upheld mandatory application of the date requirement. *See In re Election in Region 4 for Downingtown Sch. Bd. Precinct Uwchlan 1*, 272 A.3d 993 (Pa. Commw. 2022) (unpublished), appeal denied, 273 A.3d 508 (Pa. 2022); *Ritter v. Lehigh Cnty. Bd. of Elections*, 272 A.3d 989 (Pa. Commw. 2022) (unpublished), appeal denied, 271 A.3d 1285 (Pa. 2022).

- **RESPONSE:** The opinions speak for themselves and no response is required.

To the extent a response is required, Plaintiffs object that this information is not material to the claims in this case.

36. Four days after the Pennsylvania Supreme Court resolved *Ritter*, individual voters filed a new lawsuit in federal court claiming that the date requirement violates the federal materiality provision, 52 U.S.C. § 10101(a)(2)(B). *See Ex. 9*, Compl., *Migliori v. Lehigh County Bd. of Elections*, No. 5:22-cv-397 (E.D. Pa. Jan. 31, 2022), ECF No. 1.

- **RESPONSE:** Plaintiffs object that this information is not material to the claims in this case.

37. The Third Circuit agreed with the plaintiffs, but the U.S. Supreme Court vacated that decision. *See Migliori v. Cohen*, 36 F.4th 153 (3d Cir. 2022), *cert. granted and judgment vacated*, *Ritter v. Migliori*, No. 22-30, 2022 WL 6571686 (U.S. Oct. 11, 2022) (Mem.).

- **RESPONSE:** Plaintiffs dispute this assertion to the extent it suggests that the Supreme Court vacated the *Migliori* decision for any reason bearing on the

merits. The Supreme Court vacated the *Migliori* decision because the case became moot while the appeal was pending. *Ritter v. Migliori*, 143 S. Ct. 297, 298 (2022).

38. When addressing a request for a stay at an earlier stage in that case, three Justices opined that the Third Circuit’s now-vacated holding was “very likely wrong” on the merits because it rested upon a misconstruction of the materiality provision. *Ritter*, 142 S. Ct. at 1824 (Mem.) (Alito, J., dissenting from the denial of the application for stay).

- **RESPONSE:** Plaintiffs object that this information is not material to the claims in this case, as the dissenting opinion of three justices has no legal effect and is of limited value as persuasive authority.

39. The Commonwealth Court twice invoked the Third Circuit decision to depart from the General Assembly’s date requirement in unpublished, non-precedential cases arising out of the 2022 primary election. *See McCormick for U.S. Senate v. Chapman*, 2022 WL 2900112 (Pa. Commw. June 2, 2022) (unpublished); *Chapman v. Berks Cnty. Bd. of Elections*, 2022 WL 4100998 (Pa. Commw. Aug. 19, 2022) (unpublished).

- **RESPONSE:** Undisputed. Plaintiffs further note that in both cases the Commonwealth Court found *Migliori*’s analysis “persuasive.” *See McCormick for U.S. S. v. Chapman*, No. 286 M.D. 2022, 2022 WL 2900112. at *11–12; *Berks Cnty.*, 2022 WL 4100998, at *27–28; *see also Real Alts., Inc. v. Sec’y Dep’t of Health & Hum. Servs.*, 867 F.3d 338, 356 n.18 (3d Cir. 2017) (reasoning that while Supreme Court vacatur, that did not attack reasoning, of Third Circuit judgment rendered it “no longer controlling, there is nothing that would require us . . . to conclude that our reasoning in that opinion was

incorrect”).

40. Finally, in November 2022, the Pennsylvania Supreme Court exercised its original jurisdiction to reaffirm that the General Assembly’s date requirement is mandatory. *Ball v. Chapman*, 284 A.3d 1189 (Pa. 2022).

- **RESPONSE:** Undisputed.

41. In that litigation, Acting Secretary Leigh M. Chapman agreed that the signature requirement is valid and mandatory and does not violate the federal materiality provision. **Ex. 10**, Acting Sec’y Ans. 15–23, *Ball v. Chapman*, No. 102 MM 2022 (Oct. 19, 2022).

- **RESPONSE:** Disputed. In the cited source, Acting Secretary Chapman neither argued that the signature requirement is “valid”—a term not defined by Intervenor-Defendants—nor that it was mandatory under Pennsylvania law. Secretary Chapman also did not discuss whether the signature requirement violated the federal materiality provision. Instead, she argued that “the voter’s signature on a declaration by itself constitutes the voter’s attestation of their qualifications.” *Id.* at 16–17.

42. The Acting Secretary also conceded in that litigation that the secrecy envelope does not violate the federal materiality provision. *Id.* at 39 n.15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

43. In an opinion that followed, the Pennsylvania Supreme Court held that the date requirement refers to the “day upon which an elector signs the declaration,” and noted that “[t]o hold otherwise would be to require unnecessarily specific drafting on the part of the General Assembly.” *Ball v. Chapman*, 289 A.3d 1, 23 (Pa. 2023).

- **RESPONSE:** Undisputed.

44. The Pennsylvania Supreme Court was evenly divided on whether the federal materiality provision invalidates the date requirement. *Id.* at 9.

- **RESPONSE:** Undisputed.

C. *Commonwealth v. Mihaliak*

45. The date requirement has already been used to detect election fraud. *See Ex. 11*, Tr. of Hearing in *Chapman v. Berks County Bd. of Elections*, No. 355 MD 2022 (Pa. Commw. July 28, 2022), at 100-116, 141-153.

- **RESPONSE:** Disputed. This assertion relies on a deposition transcript from another matter, and the first cited page range provides no support for the assertion. As the depositions taken in this matter make clear,¹ Lancaster County would not have counted that ballot because the county had already removed the deceased voter from the voter rolls following notification from the Pennsylvania Department of Health. Pls.’ Concise Statement of Material Facts (ECF No. 289) (“CSMF”) ¶¶ 73–74. The date written on the outer envelope was not required to detect and remove this ballot. *See* CSMF ¶¶ 65–67, 69–72, 75 (outlining evidence that Lancaster County does not use the handwritten date to detect or prevent fraud); *see also* Int-Defs.’ Ex. 12, Aff. of Probable Cause ¶ 2 (“The [decedent’s] ballot . . . was received on April 28, 2022. . . . [Crista Miller] said Teresa J. Mihaliak was removed from the voter rolls on April 25, 2022.”).

46. Last year, officials in Lancaster County discovered that an individual had cast a

¹ Per the agreement of the parties, and this Court’s Case Management Order, at 2 (ECF No. 227), depositions were taken concurrently with those for *NAACP v. Chapman*, 1:22-cv-339.

fraudulent ballot in her deceased mother's name in *Commonwealth v. Mihaliak*, No. CR-126-22 (June 3, 2022); see **Ex. 12**, Affidavit of Probable Cause ¶ 2, Police Criminal Complaint, *Commonwealth v. Mihaliak*, No. CR-126-22 (June 3, 2022) (“*Mihaliak Compl.*”).

- **RESPONSE:** Disputed. The use of “fraudulent” in this assertion is a legal conclusion. Plaintiffs further dispute the use of “cast” here—no ballot was cast because the deceased voter had been removed from the rolls.

47. In Lancaster County, the only information a voter is required to supply on a ballot declaration is the date and a signature. See **Ex. 13**, Exemplar Ballot Declaration from Lancaster County Board.

- **RESPONSE:** Undisputed.

48. Under the Pennsylvania Supreme Court's current precedent, county boards of elections lack authority to conduct signature comparisons, so they may not check ballots for a non-matching signature, much less use any non-matching signature to detect fraud by a third party. See *In re November 3, 2020 General Election*, 240 A.3d 591 (Pa. 2020).

- **RESPONSE:** Disputed. The Pennsylvania Supreme Court decision cited above “prohibited [county boards of elections] from rejecting absentee or mail-in ballots based on signature comparison conducted by county election officials or employees, or as the result of third-party challenges based on signature analysis and comparisons.” *Id.* at 611.

49. In *Mihaliak*, the only evidence on the face of the ballot declaration indicating that someone other than the decedent had completed the ballot was the handwritten date of April 26, 2022, which was twelve days after the decedent had passed away. See **Ex. 12** ¶ 2.

- **RESPONSE:** Undisputed. However, Lancaster County had already received

notice of decedent's death, and there was no risk that the ballot would be counted. CSMF ¶ 73; Int-Defs' Ex. 12, Aff. of Probable Cause ¶ 2 ("Teresa J. Mihaliak was deceased on April 14, 2022. [Crista] Miller said this was confirmed by an obituary and records from the Department of Health."). The date on the "face of the ballot declaration" is not necessary to detect such issues; if the decedent's ballot envelope had been undated or misdated, the ballot would have been detected and set aside nonetheless, as the county boards receive notification of a voter's death from the Pennsylvania Department of Health by law. CSMF ¶ 74.

50. The investigation into the election fraud committed in *Mihaliak* was predicated upon the date supplied on the ballot declaration. *See id.* ¶ 2.

- **RESPONSE:** Disputed. That the Mihaliak investigation was "predicated" on the date written on the ballot return envelope is entirely unsupported by the cited source, which confirms only that: (1) Lancaster County received a mail ballot for Teresa J. Mihaliak on April 28; (2) the ballot's return envelope was dated April 26; (3) Teresa J. Mihaliak passed away on April 14, as confirmed by an obituary and Department of Health records; and (4) Teresa J. Mihaliak was removed from the voter rolls on April 25, *before Lancaster County received her mail ballot*. Far from supporting the assertion that subsequent investigation was "predicated" on the date on the return envelope, the cited source instead demonstrates that the handwritten date was immaterial to the detection and removal of her ballot. *See also Chapman v. Berks Cnty. Bd. of Elections*, 2022 WL 4100998, at *21 n.14 (Pa. Cmwlth. Aug. 19, 2022) ("the ballot at issue had

already been separated by the chief clerk because the scan of the return envelope revealed, through the SURE system, that the elector was deceased”).

III. THIS LITIGATION

51. Plaintiffs in this case filed suit on November 7, 2022, seeking to invalidate the General Assembly’s date requirement. ECF No. 1.

- **RESPONSE:** Undisputed.

52. Plaintiffs claim that the date requirement—which has been on the books in some form since 1945—violates a provision of the 1964 Civil Rights Act and the Equal Protection Clause of the U.S. Constitution. *Id.*

- **RESPONSE:** The complaint speaks for itself and no response is required. To the extent a response is required, Plaintiffs dispute this assertion to the extent it mischaracterizes Plaintiffs’ constitutional claim, which argues that Defendants’ enforcement of the Date Provision imposes an undue burden on the fundamental right to vote, in violation of the First and Fourteenth Amendments to the U.S. Constitution. Furthermore, the assertion that the date requirement “has been on the books in some form since 1945” is not material to the claims in this case.

A. County Boards Of Elections’ Responses To Discovery Requests Regarding The 2022 General Election.²

53. Allegheny County Board of Elections responded as follows.

- a. It received 161,575 mail ballots, of which 151 were military ballots. **Ex. 14**, Allegheny Cnty. Bd.’s Am. Ans. to Interrog. #1.

² In this Section, Intervenor-Defendants do not provide the predicates to which each county is responding. Based on context, Plaintiffs have assumed that Intervenor-Defendants are generally referencing the interrogatories identified by their citations and exhibits providing county responses and have responded on that basis.

- **RESPONSE:** Undisputed.

b. It set aside 1,009 mail ballots with undated or misdated ballot declarations. **Ex. 15**, Allegheny Cnty. Bd.'s Ans. to Interrog. #2.

- **RESPONSE:** Undisputed.

c. It did not receive any undated or misdated military ballots. *Id.* Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

54. Beaver County Board of Elections responded as follows.

a. It received 15,172 mail ballots, of which 48 were military-overseas ballots. **Ex. 16**, Beaver Cnty. Bd.'s Ans. to Interrog. #1.

- **RESPONSE:** Undisputed.

b. It received 182 mail ballots with undated or misdated ballot declarations, of which 41 were corrected or cured. *Id.* at 8. Of the non-cured mail ballots, 9 were also missing their inner/secretary envelopes. *Id.* at 10. "One voter who had an error on their ballot also had a naked ballot," and though that voter "corrected the ballot envelope prior to [the board's] notice being published," "the ballot was not counted as the error on the ballot was not determined until the pre-canvassing began." *Id.*

- **RESPONSE:** Undisputed, with the understanding that this assertion reflects Beaver County's responses to Interrogatories #2 and 8, not its responses to #1 as suggested by the "*id.*" citation.

c. "No timely-received military-overseas ballots were missing a date or signature or were dated incorrectly." *Id.* Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

55. Bedford County Board of Elections responded as follows.

- a. It received 2,868 mail ballots and 6 military-overseas ballots. **Ex. 17**, Bedford Cnty. Bd., et al. (“BCCZ”) Ans. to Interrog. #1.

- **RESPONSE:** Undisputed.

- b. It did not set aside any mail ballots for a date issue. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

56. Berks County Board of Elections responded as follows.

- a. It received 28,829 mail ballots, including 146 military-overseas ballots. **Ex. 18**, Berks Cnty. Bd.’s Ans. to Interrog. #1.

- **RESPONSE:** Undisputed.

- b. It set aside 782 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

57. Blair County Board of Elections responded as follows.

- a. It received 9,022 mail ballots, and 27 military-overseas ballots. **Ex. 19**, Blair Cnty. Bd.’s Ans. Interrog. #1.

- **RESPONSE:** Undisputed.

- b. It set aside 55 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

- c. It did not receive any undated or misdated military ballots for which the

declaration was on the outside of the return envelope. *Id.* at Interrog. #15.

- **RESPONSE:** Disputed. The interrogatory, and the county's response, reference "timely-received military-overseas ballots" that "the voter failed to date . . . or included a date . . . deemed . . . incorrect." *Id. accord* CSMF App. at App.283 (Ex. J6). The interrogatory does not address whether the declaration itself was on the outside of the return envelope. Furthermore, Plaintiffs object that this information is not material to the claims in this case.

58. Bradford County Board of Elections responded as follows.

- a. It received 2,787 mail ballots, and 16 military-overseas ballots. **Ex. 20**, Bradford Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

- b. It set aside 20 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2. An additional 3 undated/misdated ballots lacked a secrecy envelope. *Id.*

- **RESPONSE:** Undisputed.

- c. It did not receive any undated or misdated military-overseas ballots. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

59. Bucks County Board of Elections responded as follows.

- a. It received 87,321 mail ballots and 466 military-overseas ballots. **Ex. 21**, Bucks Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

b. It set aside 357 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

c. It received 11 military-overseas ballots with undated or misdated ballot declarations. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

d. It counted military-overseas ballots with undated or misdated ballot declarations. *Id.*

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

60. Butler County Board of Elections responded as follows.

a. It received 18,212 mail ballots. **Ex. 22**, Butler Cnty. Bd.'s Ans. Interrogs. #1.

- **RESPONSE:** Undisputed.

b. It set aside 66 mail ballots with undated or misdated ballot declarations. *Id.*

- **RESPONSE:** Undisputed.

c. It did not receive any military-overseas ballots with undated or misdated ballot declarations. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

61. Cambria County Board of Elections responded as follows.

a. It received 9,848 mail and military-overseas ballots. **Ex. 23**, Cambria Cnty.

Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

b. It set aside 38 mail-in/absentee ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

c. It did not receive any military-overseas ballots with undated or misdated ballot declarations. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

62. Cameron County Board of Elections responded as follows.

a. It received 410 mail ballots and 2 military-overseas ballots. **Ex. 24**, Cameron Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

b. It set aside 5 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

c. It did not receive any military-overseas ballots with undated or misdated ballot declarations. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

63. Carbon County Board of Elections responded as follows.

a. It received 4,823 mail ballots and 14 military-overseas ballots. **Ex. 17** at Interrog. #1.

- **RESPONSE:** Undisputed.

b. It set aside 27 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

64. Centre County Board of Elections responded as follows.

a. It received 15,654 mail ballots and 126 military-overseas ballots. *Id.* at Interrog. #1.

- **RESPONSE:** Undisputed.

b. It set aside 116 mail ballots with undated or misdated ballot declarations. **Ex. 25**, Centre County, Montour County and York County Bds.' Supp. Ans. Interrogs. #2.

- **RESPONSE:** Undisputed.

65. Chester County Board of Elections responded as follows.

a. It received 70,023 mail ballots and 638 military/overseas/federal absentee ballots. **Ex. 26**, Chester Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

b. It set aside 116 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2. An additional 19 mail ballots had no date and no signature. *Id.*

- **RESPONSE:** Undisputed.

c. It set aside 12 military/overseas/federal absentee ballots with undated or misdated ballot declarations. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

66. Clarion County Board of Elections responded as follows.

a. It received 12 mail ballots. **Ex. 27**, Clarion Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

b. It set aside 12 mail ballots with undated or misdated ballot declarations. *Id.*

- **RESPONSE:** Undisputed.

67. Clearfield County Board of Elections responded as follows.

a. It received 4,564 mail ballots, including 8 military and civilian overseas ballots.

Ex. 28, Clearfield Cnty. Bd.'s Ans. to Interrogs. #1 & Ex. "Clfd. 1."

- **RESPONSE:** Undisputed.

b. It set aside 12 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

c. It did not receive any military-overseas ballots with undated or misdated ballot declarations. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

68. Clinton County Board of Elections responded as follows.

a. It received 2,248 mail ballots and 14 military-overseas ballots. **Ex. 29**, Clinton Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

b. It set aside 20 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

- c. It did not receive any military-overseas ballots with undated or misdated ballot declarations. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

69. Columbia County Board of Elections responded as follows.

- a. It received 4,168 mail ballots and 11 military-overseas ballots. Ex. 17 at Interrog. #7.

- **RESPONSE:** Undisputed.

- b. It set aside 29 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

70. Crawford County Board of Elections responded as follows.

- a. It received 5,917 mail ballots and 22 military-overseas ballots. **Ex. 30**, Crawford Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

- b. It set aside 49 mail ballots with undated or misdated ballot declarations. *Id.* at Interrogs. #2, 8. It set aside an additional 2 mail ballots with undated or misdated ballot declarations that also lacked a signature. *Id.* at Interrog. #8.

- **RESPONSE:** Undisputed.

- c. It did not receive any military-overseas ballots with undated or misdated ballot declarations. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

71. Cumberland County Board of Elections responded as follows.

- a. It received 26,298 mail ballots and 113 military-overseas ballots. **Ex. 31**, Cumberland Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

- b. It set aside 100 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

- c. It did not receive any military-overseas ballots with undated or misdated ballot declarations. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

72. Dauphin County Board of Elections responded as follows.

- a. It received 25,839 mail ballots and 154 military-overseas ballots. **Ex. 17** at Interrog. #1.

- **RESPONSE:** Undisputed.

- b. It set aside 95 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

73. Delaware County Board of Elections responded as follows.

- a. It received 60,154 mail ballots. **Ex. 32**, Delaware Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

- b. It set aside 114 mail ballots with undated or misdated ballot declarations. *Id.*

at Interrog. #2.

- **RESPONSE:** Undisputed.

- c. It did not receive any military-overseas ballots with undated or misdated ballot declarations. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

74. Elk County Board of Elections responded as follows.

- a. It received 2,012 absentee/mail-in ballots and 19 military-overseas ballots. **Ex. 33**, Elk Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

- b. It received 10 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2. Of those, 7 voters either corrected the error or filed a provisional ballot. *Id.* at Interrog. #13.

- **RESPONSE:** Undisputed.

- c. It did not receive any military-overseas ballots with undated or misdated ballot declarations. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

75. Erie County Board of Elections responded as follows.

- a. It received 26,766 mail-in ballots and 41 military-overseas ballots. **Ex. 34**, Erie Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

- b. It set aside 211 mail ballots with undated or misdated ballot declarations,

including cured ballots. *Id.* at Interrog. #2. An additional 8 mail ballots with undated ballot declarations were also missing a signature. *Id.* at Interrog. #8. 113 of these ballots were cured. *Id.* at Interrog. #13.

- **RESPONSE:** Undisputed.

c. It did not receive any military-overseas ballots with undated or misdated ballot declarations. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

76. Fayette County Board of Elections responded as follows.

a. It received 9,036 mail ballots and 33 military-overseas ballots. **Ex. 35**, Fayette Cnty. Bd.’s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

b. It set aside 137 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2. Eleven of these “signed another voter’s ballot return envelope. *Id.* at Interrog. #8. 93 “[v]oters whose timely received mail ballots were set aside and/or segregated by Fayette County because the signed outer return envelope was missing a date or showed a date the county determined to be incorrect” “came to the Fayette County Election Bureau and cured their mail ballots.” *Id.* at Interrog. #13.

- **RESPONSE:** Undisputed. However, Plaintiffs note that the first quoted text in the final sentence of this assertion is from Fayette County’s response to Interrogatory #11.

c. It stated that it “did not timely receive any military-overseas ballots in the 2022

General Election on which the voter failed to date their voter declaration or included a date that the county deemed to be incorrect.” *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

d. “Dates were not reviewed for military/overseas ballots that were timely received.” **Ex. 36**, Fayette Cnty. Bd.’s Resps. to Requests for Prod. of Docs. #3.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

77. Forest County Board of Elections responded as follows.

a. It received 447 mail ballots and 0 military-overseas ballots. **Ex. 37**, Forest Cnty. Bd.’s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

b. It set aside 38 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2. Of these, two mail ballots were signed by the incorrect person. *Id.* at Interrog. #8. Two ballots were cured. *Id.* at Interrog. #13.

- **RESPONSE:** Undisputed.

78. Franklin County Board of Elections responded as follows.

a. It received 10,496 mail ballots and 68 military-overseas ballots. **Ex. 38**, Franklin Cnty. Bd.’s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

b. It set aside 114 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2. Seven of those were also missing a signature. *Id.* at Interrog. #8.

- **RESPONSE:** Undisputed.

79. Greene County Board of Elections responded as follows.

a. It received 2,384 mail ballots and 7 military-overseas ballots. **Ex. 39**, Greene Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

b. It set aside 11 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

c. It did not receive any military-overseas ballots with undated or misdated ballot declarations. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

80. Huntingdon County Board of Elections responded as follows.

a. It received 2,452 mail ballots and 8 military-overseas ballots. **Ex. 17** at Interrog. #1.

- **RESPONSE:** Undisputed.

b. It set aside 34 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

81. Indiana County Board of Elections responded as follows.

a. It received 2,452 mail ballots and 8 military-overseas ballots. *Id.* at Interrog. #1.

- **RESPONSE:** Disputed. The interrogatory response indicates that Indiana County received 5,910 mail ballots.

b. It set aside 107 mail ballots with undated or misdated ballot declarations. *Id.*

at Interrog. #2.

- **RESPONSE:** Undisputed.

82. Jefferson County Board of Elections responded as follows.

- a. It received 2,278 mail ballots and 12 military-overseas ballots. *Id.* at Interrog. #1.

- **RESPONSE:** Undisputed.

- b. It set aside 23 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

83. Juniata County Board of Elections responded as follows.

- a. It received 1,244 mail-in ballots and 7 military-overseas ballots. **Ex. 40**, Juniata Cnty. Bd.'s Ans. to Interrog. #1.

- **RESPONSE:** Undisputed.

- b. It set aside five mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2. Of those, two were also missing signatures. *Id.* at Interrog. #8. Two ballots were cured. *Id.*

- **RESPONSE:** Undisputed.

- c. In response to whether it counted "timely-received military-overseas ballots in the 2022 General Election if the voter failed to date their voter declaration or included a date that [it] deemed to be incorrect," it responded: "No." *Id.* at Interrog. #15. It set aside one military-overseas ballot with an undated ballot declaration. *Id.* at Interrog. #16. It was also missing a signature. *Id.*

- **RESPONSE:** Undisputed. However, Plaintiffs note that the quoted

language in the first sentence is from the interrogatory itself, rather than the county's response. Furthermore, Plaintiffs object that this information is not material to the claims in this case.

84. Lackawanna County Board of Elections responded as follows.

a. It received 20,759 mail ballots, including 29 military ballots and 26 civilian overseas ballots. **Ex. 41**, Lackawanna Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

b. It set aside 160 mail ballots with undated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

c. It did not deem any military-overseas ballots as incorrect. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

85. Lancaster County Board of Elections responded as follows.

a. It received 34,202 mail ballots and 188 military-overseas ballots. **Ex. 42**, Lancaster Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

b. It set aside 232 mail ballots which had undated or misdated ballot declarations. *Id.* at Interrog. #2. Of those, 51 had additional defects. *Id.* at Interrog. #8.

- **RESPONSE:** Undisputed.

c. It did not receive any military-overseas ballots with undated or misdated ballot declarations. *Id.* at Interrog. #15; **Ex. 43**, Miller Dep. 96:15-98:4.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

86. Lawrence County Board of Elections responded as follows.

a. It received 6,888 mail ballots and 33 military-overseas ballots. **Ex. 17** at Interrog. #1.

- **RESPONSE:** Undisputed.

b. It set aside 107 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Disputed. Lawrence County set aside 15 mail ballots with undated or misdated ballot declarations. *Id.*; accord CSMF App. at App.508 (Ex. J50).

87. Lebanon County Board of Elections responded as follows.

a. It received 10,771 mail ballots and 64 military-overseas ballots. **Ex. 17** at Interrog. #1.

- **RESPONSE:** Undisputed.

b. It set aside 24 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

88. Lehigh County Board of Elections responded as follows.

a. It received 35,425 mail-in/absentee ballots and 101 military/overseas/civilian ballots. **Ex. 44**, Lehigh Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

b. It set aside 390 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2. An additional 23 mail ballots had no date and no signature on their ballot declarations. *Id.*

- **RESPONSE:** Undisputed.

c. It did not review military-overseas ballots for dates. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

89. Luzerne County Board of Elections responded as follows.

a. It received 29,002 mail ballots. **Ex. 45**, Luzerne Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed, with the understanding that Intervenor-Defendants intended to cite to their Ex. 46 instead of their Ex. 45.

b. It set aside 166 mail ballots with undated or misdated ballot declarations. **Ex. 46**, Luzerne Cnty. Bd.'s Am. Ans. to Interrogs. 16 of these voters voted provisionally. **Ex. 45** at Interrog. #7.

- **RESPONSE:** Undisputed, with the understanding that Intervenor-Defendants intended to cite their Ex. 45 for the first sentence and their Ex. 46 for the second sentence, instead of the reverse.

c. It "[d]o[es] not recall any" military-ballots with undated or misdated ballot declarations. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

90. Lycoming County Board of Elections responded as follows.

a. It received 6,474 mail ballots. **Ex. 47**, Lycoming Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

- b. It set aside 36 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2. Six of these voters cast provisional ballots. *Id.* at Interrog. #12.

- **RESPONSE:** Undisputed.

- c. It did not receive any military-overseas ballots with undated or misdated ballot declarations. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

91. McKean County Board of Elections responded as follows.

- a. It received 1,957 mail in ballots and 5 military-overseas ballots. **Ex. 48**, McKean Cnty. Bd.'s Ans. to Interrog. #1.

- **RESPONSE:** Undisputed.

- b. It set aside 35 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

- c. It set aside 5 military-overseas ballots with undated or misdated ballot declarations. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

92. Mercer County Board of Elections responded as follows.

- a. It received 8,220 mail ballots. **Ex. 49**, Mercer Cnty. Bd.'s Ans. to Interrog. #1.

- **RESPONSE:** Undisputed.

- b. It set aside 63 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

c. Though it received “12 mail ballots where the Declaration was unsigned,” “[a]ny ballot that was both unsigned and missing a date were categorized as ‘Unsigned’ since this is a fatal defect outside the scope of current litigation.” *Id.* at Interrog. #8.

- **RESPONSE:** Undisputed.

d. In response to whether it counted “timely-received military-overseas ballots in the 2022 General Election if the voter failed to date their voter declaration or included a date that [it] deemed to be incorrect,” it responded: “This issue did not arise in 2022.” *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

93. Mifflin County Board of Elections responded as follows.

a. It received 2,680 mail-in ballots and 8 military-overseas ballots. **Ex. 50**, Mifflin Cnty. Bd.’s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

b. It set aside 13 mail-in/absentee ballots with undated ballot declarations, exclusive of ballots with other defects. **Ex. 51**, Mifflin Cnty. Bd.’s Resps. to Requests for Prod. of Docs. #2 & Ex. 1.

- **RESPONSE:** Disputed. Plaintiffs note that Mifflin County’s discovery responses were vague and contradictory. Interrogatory #2 asked for the number of “mail ballots . . . received in connection with the 2022 General Election that were signed and timely received but set aside

and/or segregated because they lacked a handwritten date on the outer return envelope or showed a date . . . deemed to be incorrect.” CSMF App. at App.423 (Ex. J33). In its answer, Mifflin County provided only that “[o]n November 8, the Democrat[ic] Committee Chairman ask[ed] for a list of Democrat[ic] ballots which were segregated. List of 10 were emailed and none were corrected.” *Id.* However, in its answer to Interrogatory #8, which asked whether “any mail ballots described in Interrogatory 2 ha[d] any other defects,” Mifflin County provided that 7 ballots were “received after deadline” and 5 ballots were “missing inter envelope,” suggesting that 12 total ballots were set aside. CSMF App. at App.424 (Ex. J33). Given the discrepancy between these answers, and with Mifflin County’s production of 13 undated mail ballots, Plaintiffs adopted its response to Interrogatory #2, which directly asked for the number of ballots set aside in the 2022 general election due to a misdated or undated outer envelope. And, Mifflin County indicated that 10 mail ballots were set aside for noncompliance with the Date Provision. CSMF App. at App.423 (Ex. J33).

- c. It did not receive any military-overseas ballots with undated or misdated ballot declarations. **Ex. 50** at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

94. Monroe County Board of Elections responded as follows.

- a. It received 15,651 mail ballots and 56 military-overseas ballots. **Ex. 17** at

Interrog. #1.

- **RESPONSE:** Undisputed.

- b. It set aside 462 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2. Of these, 191 were cured. *Id.* at Interrog. #13.

- **RESPONSE:** Undisputed.

95. Montgomery County Board of Elections responded as follows.

- a. It received 118,224 mail-in/absentee ballots and 914 military-overseas ballots. **Ex. 52**, Montgomery Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

- b. It set aside 460 mail ballots with undated or misdated ballot declarations. *Id.* 44 of those ballots had other defects. *Id.* at Interrog. #2.

- **RESPONSE:** Disputed. Montgomery County set aside 476 undated or misdated mail ballots, and 31 of those had other defects. CSMF App. at App.429–30 (Ex. J34) (responses to Interrogatories #2, #8).³

- c. In Montgomery County, “[m]ilitary-overseas ballots were checked to make sure the declarations were complete. If the declarations were complete, the ballot was counted. No military-overseas ballots were set aside for having a missing or incorrect date.” *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

96. Montour County Board of Elections responded as follows.

³ Montgomery County provided a second set of responses to interrogatories on Apr. 3, 2023 (“NAACP - Montg County Answers to Ps Interrogs-Replacement Production.pdf”). These were taken to replace in their entirety the County’s initial responses from Jan. 25, 2023.

- a. It received 1,718 mail ballots and 3 military-overseas ballots. **Ex. 25** at Interrog. #1.

- **RESPONSE:** Undisputed.

- b. It set aside 8 mail ballots with undated or misdated ballot declarations. **Ex. 17** at Interrog. #2.

- **RESPONSE:** Undisputed.

97. Northampton County Board of Elections responded as follows.

- a. It received 36,401 mail/absentee ballots, including 91 UMOVA ballots. **Ex. 53**, Northampton Cnty. Bd.'s Ans. to Interrog. #1.

- **RESPONSE:** Undisputed.

- b. It set aside 280 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

98. Northumberland County Board of Elections responded as follows.

- a. It received 4,835 mail ballots and 30 military-overseas ballots. **Ex. 17** at Interrog. #1.

- **RESPONSE:** Undisputed.

- b. It set aside 14 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

99. Perry County Board of Elections responded as follows.

- a. It received 2,340 mail ballots and 4 military ballots. **Ex. 54**, Perry Cnty. Bd.'s Ans. to Interrog. #1.

- **RESPONSE:** Undisputed.

b. It set aside 35 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

100. Philadelphia County Board of Elections responded as follows.

a. It received 133,968 absentee and mail-in ballots, including military- overseas ballots. **Ex. 55**, Philadelphia Cnty. Bd.'s Ans. to Interrogs. #1. It counted 127,934 absentee and mail-in ballots and 1,014 military-overseas ballots. *Id.*

- **RESPONSE:** Undisputed.

b. It set aside 2,617 mail-in and absentee ballots. *Id.* at Interrog. #2. 580 of these voters submitted provisional ballots. *Id.*

- **RESPONSE:** Undisputed.

c. It counted 13 military-overseas ballots with undated ballot declarations. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

101. Potter County Board of Elections responded as follows.

a. It received 888 mail-in ballots, including 2 military-overseas ballots. **Ex. 56**, Potter Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

b. It set aside 11 mail ballots with undated or misdated ballot declarations, not including voters who submitted provisional ballots or ballots with other defects. *Id.* at Interrog. #2.

- **RESPONSE:** Disputed. Potter County set aside 14 undated mail ballots, one of which did not include a signature. *Id;* accord CSMF App. at App.456 (Ex. J39). Intervenor-Defendants' appear to have subtracted the three provisions ballots received by the county—which the county does not specify as cast by those voters whose mail ballots were undated—from this total.

102. Schuylkill County Board of Elections responded as follows.

- a. It received 8,657 mail ballots and 25 military-overseas ballots. **Ex. 57**, Schuylkill Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed, with the understanding that Intervenor-Defendants intended to cite their Ex. 58, rather than their Ex. 57.

- b. It set aside 59 mail ballots with undated or misdated ballot declarations, including one ballot which also was missing a signature and another where the date was missing from the voter assistance declaration. **Ex. 58**, Ex. 2 to Schuylkill Resp. to Requests for Prod. of Docs.

- **RESPONSE:** Undisputed to the extent that the Plaintiffs consider the mail ballot with the date missing from the voter assistance declaration to be an undated mail ballot. Further, Plaintiffs understand Intervenor-Defendants to have intended to cite to either their Ex. 57 or Ex. 58, or both.

- c. It did not receive any military-overseas ballots with undated ballot declarations. **Ex. 57** at Interrog. #1.

- **RESPONSE:** Undisputed, with the understanding that Intervenor-

Defendants intended to cite to their Ex. 58 and to the county's response to Interrogatory #15. Furthermore, Plaintiffs object that this information is not material to the claims in this case.

103. Snyder County Board of Elections responded as follows.

- a. It received 2,286 mail ballots and 5 military-overseas ballots. **Ex. 17** at Interrog. #1.

- **RESPONSE:** Undisputed.

- b. It set aside 9 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

104. Somerset County Board of Elections responded as follows.

- a. It received 4,211 mail ballots, including 47 military-overseas ballots. **Ex. 59**, Somerset Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

- b. It set aside 63 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2. Two also did not contain signatures. *Id.*

- **RESPONSE:** Undisputed, with the understanding that Intervenor-Defendants intended to cite the county's response to interrogatory #8 for the final sentence.

- c. It did not receive any military-overseas ballots with an undated or misdated outer return envelope. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

105. Sullivan County Board of Elections responded as follows.

- a. It received 505 mail ballots and 4 military-overseas ballots. **Ex. 60**, Sullivan Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

- b. It set aside 4 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

- c. It did not receive any military-overseas ballots with undated or misdated ballot declarations. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed, with the understanding that Sullivan County intended to say that it did not receive any undated or misdated military-overseas ballots. Furthermore, Plaintiffs object that this information is not material to the claims in this case.

106. Susquehanna County Board of Elections responded as follows.

- a. It received 3,247 mail-in ballots and 16 military-overseas ballots. **Ex. 61**, Susquehanna Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

- b. It did not set aside any mail ballots for undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

107. Tioga County Board of Elections responded as follows.

- a. It reported that “[o]ut of 2,363 total ballots, 10 were returned.” **Ex. 62**, Tioga Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

b. It set aside four mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

c. It reported that it counted ten military-overseas ballots in which the voter failed to date their voter declaration or which included an incorrect date. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

108. Union County Board of Elections responded as follows.

a. It received 2,997 mail ballots, including 41 military-overseas ballots. **Ex. 63**, Union Cnty. Bd.'s Ans. to Interrog. #1.

- **RESPONSE:** Undisputed.

b. It set aside 23 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

c. It "believes it did not receive any military-overseas ballots that were not counted based on a missing and/or incorrect date on the elector's declaration on the return envelope." *Id.* at Interrog. #16.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

109. Venango County Board of Elections responded as follows.

a. It received 3,027 mail ballots and 35 military-overseas ballots. **Ex. 17** at

Interrog. #1.

- **RESPONSE:** Undisputed.

b. It set aside 42 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

110. Warren County Board of Elections responded as follows.

a. It received 2,266 mail ballots and 8 military ballots. **Ex. 64**, Warren Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

b. It set aside 18 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2. One of these ballots also did not have a signature. *Id.* at Interrog. #8.

- **RESPONSE:** Undisputed.

c. It did not receive any military-overseas ballots that were undated or misdated. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

111. Washington County Board of Elections responded as follows.

a. It received 19,569 mail ballots, including 51 military-overseas ballots. **Ex. 65**, Washington Cnty. Bd.'s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

b. It set aside 66 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

c. It reported that “none of the military-overseas ballots it received in the 2022 General Election were required to be set aside.” *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

112. Wayne County Board of Elections responded as follows.

a. It received 4,692 mail ballots. **Ex. 66**, Wayne Cnty. Bd.’s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

b. It set aside 55 mail ballots with undated or misdated ballot declarations. *Id.* at 8. Fewer than 10 of these were cured. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed, with the understanding that Intervenor-Defendants intended to cite the county’s response to interrogatory #13 for the final sentence.

c. It did not receive any military-overseas ballots with undated or misdated ballot declarations. *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

113. Westmoreland County Board of Elections responded as follows.

a. It received 34,599 mail ballots and 109 military-overseas ballots. **Ex. 67**, Westmoreland Cnty. Bd.’s Ans. to Interrogs. #1.

- **RESPONSE:** Undisputed.

b. It set aside 95 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed.

c. It “did not receive any military-overseas ballots that were not counted based on a missing and/or incorrect date on the elector’s declaration on the return envelope.” *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

114. Wyoming County Board of Elections responded as follows.

a. It received 2,029 mail ballots and 7 military-overseas ballots. **Ex. 68**, Wyoming Cnty. Bd.’s Ans. to Interrog. #1.

- **RESPONSE:** Undisputed.

b. It set aside 17 mail ballots with undated ballot declarations. *Id.* One ballot also was missing a signature on the declaration. *Id.* at Interrog. #2.

- **RESPONSE:** Undisputed, with the understanding that Intervenor-Defendants intended to cite the county’s response to interrogatory #2 for the first sentence and the county’s response to interrogatory #8 for the final sentence.

c. It reported that “[n]o military-overseas ballot was set aside for incorrect or missing date.” *Id.* at Interrog. #15.

- **RESPONSE:** Undisputed. However, Plaintiffs object that this information is not material to the claims in this case.

115. York County Board of Elections responded as follows.

a. It received 37,296 mail ballots and 185 military-overseas ballots. **Ex. 25** at Interrog. #1.

- **RESPONSE:** Undisputed.

b. It set aside 1,354 mail ballots with an undated or misdated ballot declaration.

Id. at Interrog. #2.

- **RESPONSE:** Undisputed.

B. Dr. Daniel Hopkins's Putative Expert Testimony⁴

116. Dr. Daniel Hopkins submitted a putative expert declaration. *See Ex. 69*, Expert Declaration of Daniel Hopkins ("Hopkins Decl.").

- **RESPONSE:** Undisputed.

117. Dr. Hopkins did not assess the benefits of the date requirement. *See Ex. 70*, Hopkins Dep. at 26:9-14.

- **RESPONSE:** Disputed only to the extent this assertion presupposes that the date requirement has benefits. Plaintiffs do not dispute that Dr. Hopkins did not assess whether or to what extent the date requirement has any benefits.

118. Dr. Hopkins conceded, moreover, that he did not measure the cost to any voter of complying with the date requirement. *Id.* at 30:9-13, 30:24-31:1.

- **RESPONSE:** Undisputed, with the understanding that Intervenor-Defendants intended to assert that Dr. Hopkins did not "measure" the cost to any *individual* voter of complying with the date requirement.

119. Dr. Hopkins did not attempt to measure how easy it is for voters to comply with the

⁴ Intervenor-Defendants appear to have mistakenly labeled this header as sub-section "C" in their Concise Statement of Material Facts (ECF No. 283).

Furthermore, this Section reproduces corrected deposition citations, as provided by Intervenor-Defendants' errata for their Concise Statement of Material Facts (ECF No. 304) and corresponding errata for their Exhibit 70 to their Appendix (ECF No. 305).

date requirement, and did not conduct surveys or interviews of voters to ask them how easy or difficult it is to comply with the date requirement. *Id.* at 31:2-9.

- **RESPONSE:** Undisputed.

120. Dr. Hopkins conceded that what he measured is not actually the cost of complying the date requirement. *Id.* at 33:5-11.

- **RESPONSE:** Undisputed, with the understanding that Intervenor-Defendants intended to assert that Dr. Hopkins did not measure the cost to any *individual* voter of complying with the date requirement.

121. Instead, rather than “directly” measure the cost of the date requirement, Dr. Hopkins purported to measure the date requirement’s “differential impact on certain groups of voters.” *Id.* at 30:9-13.

- **RESPONSE:** Disputed only to the extent that the term “purported” attempts to mischaracterize and undermine the quality, reliability, and expertise behind Dr. Hopkins’s analyses. Otherwise, undisputed.

122. Thus, Dr. Hopkins purported to measure the rate of noncompliance with the date requirement among “certain groups of voters” and, thus, the rate at which “certain groups of voters” may experience the consequences of noncompliance with the date requirement. *Id.* at 30:14-23.

- **RESPONSE:** Disputed only to the extent that the term “purported” attempts to mischaracterize and undermine the quality, reliability, and expertise behind Dr. Hopkins’s analyses. Nonetheless, Plaintiffs do not dispute that Dr. Hopkins measured the disproportionate impact of the date requirement.

123. Dr. Hopkins’s report purports to conclude that “the date requirement increases the

cost of voting and imposes the heaviest burdens on individuals who are already highly vulnerable to cost increases and are less likely to overcome them.” **Ex. 69** ¶ 20.

- **RESPONSE:** Disputed only to the extent that the term “purports” attempts to mischaracterize and undermine the quality, reliability, and expertise behind Dr. Hopkins’s analyses.

124. Dr. Hopkins purported to show that the date requirement imposes a greater burden on “older, Black, and Hispanic voters” through “analyses” that “demonstrate” that such voters “were disproportionately likely to submit mail ballots that were rejected due to a failure to satisfy the date requirement.” *Id.* ¶ 23.

- **RESPONSE:** Disputed only to the extent that the term “purported” attempts to mischaracterize and undermine the quality, reliability, and expertise behind Dr. Hopkins’s analyses.

125. That opinion, however, is multiply flawed because Dr. Hopkins’s analyses showed no such thing. *See Ex. 70* at 69:19-21, 71:2-10.

- **RESPONSE:** Disputed, as this assertion is conclusory and entirely unsupported, as required by LCvR 56(B)(1) (“A party must cite to a particular pleading, deposition, answer to interrogatory, admission on file or other part of the record supporting the party’s statement”). The cited material implies that Dr. Hopkins did not determine any specific voter’s race, educational attainment, household income, or English language proficiency, and leaps to the conclusion that this somehow undermines his analyses. However, Intervenor-Defendants provide neither evidence nor any substantive argument to demonstrate why Dr. Hopkins’s analyses are rendered unreliable as a result.

126. Dr. Hopkins did not determine the race or ethnicity of any voter. *See id.* at 69:19-21, 71:2-10, 97:3-16.

- **RESPONSE:** Undisputed. However, Plaintiffs object that identifying the race or ethnicity of any specific individual voter is not material to Dr. Hopkins's analyses or conclusions.

127. Dr. Hopkins's county-level analysis did not examine the cost to any individual or group of voters of complying with the date requirement. *See id.* at 71:25-72:15.

- **RESPONSE:** Undisputed, as to the assertion that Dr. Hopkins' county-level analysis did not examine the cost to any individual voter. However, Plaintiffs dispute the assertion that Dr. Hopkins's county-level analysis did not examine the cost to any group of voters, as that assertion remains unsupported by the cited material. *See, e.g.,* CSMF App. Ex. I ¶¶ 16–20.

128. Rather, it examined “what county-level attributes are associated with counties which have higher or lower ratios of setting aside mail ballots.” *Id.* at 72:7-11.

- **RESPONSE:** Undisputed. Plaintiffs note that the full quoted language reads: “[T]he county level analysis considers the question of what county level attributes are associated with counties which have higher or lower ratios of setting aside mail ballots . . . to all of the mail ballots that they received.” *Id.*

129. Dr. Hopkins's county-level analysis was a regression analysis that purported to examine how the rate of noncompliance with the date requirement would change in a hypothetical county that experienced a change in population from either 0% to 100% Black or 0% to 100% Hispanic. *See Ex. 69* at ¶¶ 25-35.

- **RESPONSE:** Disputed only to the extent that the term “purported” attempts to

mischaracterize and undermine the quality, reliability, and expertise behind Dr. Hopkins's analyses.

130. Dr. Hopkins conceded that there are no counties in Pennsylvania with 100% Black or 100% Hispanic population. *See Ex. 70* at 81:25-82:14.

- **RESPONSE:** Undisputed.

131. Dr. Hopkins admitted that it is not possible from his county-level analysis to determine how much more likely a Black or Hispanic voter is to cast a ballot that does not comply with the date requirement than a white voter. *See id.* at 79:18-80:2.

- **RESPONSE:** Disputed, as this assertion is not supported by the cited source. *See also* Def-Ints' Ex. 70 at 107:10-17 ("as the African-American population of a voter's block group grows, the probability that that voter casts a ballot set aside for date issues rises by that amount").

132. Dr. Hopkins's individual and block-group level analysis examined census block groups in only 10 of Pennsylvania's 67 counties. *See Ex. 69 ¶¶* 36-57.

- **RESPONSE:** Undisputed, with the understanding that the Intervenor-Defendants intended to cite to their Ex. 69 ¶ 39.

133. Dr. Hopkins's individual and block-group level analysis did not examine any census block groups in the remaining 57 Pennsylvania counties. *See id.*; **Ex. 70** at 92:16-93:7.

- **RESPONSE:** Undisputed.

134. Dr. Hopkins's individual and block-group level analysis did not determine the race of any individual or groups of individuals. *See Ex. 70* at 97:3-16.

- **RESPONSE:** Undisputed.

135. Rather, it examined whether certain block-group level attributes, including the

racial composition of the block group's population, have higher or lower ratios of setting aside mail ballots. *See id.* at 97:17-98:19.

- **RESPONSE:** Undisputed.

136. Thus, with respect to race, Dr. Hopkins's individual and block-group level analysis was a regression analysis that purported to examine how the rate of noncompliance with the date requirement would change in a hypothetical census block group that experienced a change in population from either 0% to 100% Black or 0% to 100% Hispanic. *See Ex. 69 ¶¶ 36- 57; Ex. 70 at 101:16-102:17.*

- **RESPONSE:** Disputed only to the extent that the term "purported" attempts to mischaracterize and undermine the quality, reliability, and expertise behind Dr. Hopkins's analyses. Otherwise undisputed, with the understanding that Intervenor-Defendants' citation to Dr. Hopkins's deposition intends to cite to Ex. 70 at 101:23–102:22.

137. Dr. Hopkins conceded that it is not possible from his individual and block-group level analysis to determine how much more likely a Black or Hispanic voter is to cast a ballot that does not comply with the date requirement than a white voter. *See Ex. 70 at 107:10-17.*

- **RESPONSE:** Disputed, as this assertion is not supported by the cited source, which simply reflects the proposition that "as the African-American population of a voter's block group grows, the probability that that voter casts a ballot set aside for date issues rises by that amount." *Id.*

138. Dr. Hopkins reports that a 60-year-old voter is "0.2 percentage points more likely to cast a mail ballot lacking a date" than a 20-year-old voter. *Ex. 69 ¶ 52.*

- **RESPONSE:** Undisputed.

139. Dr. Hopkins calculated the statewide rejection rate for all absentee and mail-in ballots that do not comply with the date requirement as 0.93%, *see id.* ¶ 27, which is “similar” to but “slightly” lower than the rejection rate for ballots that do not comply with the secrecy envelope requirement, **Ex. 70** at 114:14-115:20.

- **RESPONSE:** Undisputed.

140. Dr. Hopkins conceded that “voters who are more familiar with the mail ballot process are less likely to make mistakes that cause mail ballots to be rejected” compared to voters who are less familiar with that process. *Id.* at 108:21-109:3.

- **RESPONSE:** Undisputed.

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