

**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-Def’s 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 Interrog. #1.

- **RESPONSE:** Undisputed.

b. It set aside 49 mail ballots with undated or misdated ballot declarations. *Id.* at Interrog. #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 Interrog. #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 Interrog. #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 Interrogs. #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 Interrog. #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 Interrog-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 Interrog. #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 Interrog. #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 Interrog. #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 Interrog. #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 with 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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