

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

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

Plaintiffs,

v.

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

Defendants.

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

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

Plaintiffs respectfully submit the following response to Intervenor-Defendants' Counter Statement of Material Facts, ECF No. 305 ("CSMF"), pursuant to Western District of Pennsylvania LCvR 56(D). For Plaintiffs' counter-statement of undisputed material facts, Plaintiffs respectfully refer the Court to their Local Civil Rule 56(B)(1) Statement (ECF No. 283), the accompanying Appendix (ECF Nos. 277-282) filed with Plaintiffs' April 24, 2023 Cross-Motion for Summary Judgment, as well as the Supplemental Appendix, ECF No. 316, filed May 5, 2023 with Plaintiffs' Omnibus Opposition to Defendants' Motions for Summary Judgment, ECF No. 313, all of which are fully incorporated herein by reference. As set forth in the below responses to Intervenor-Defendants' CSMF—as well as in Plaintiffs' own Motion for Summary Judgment, Plaintiffs' Omnibus Brief in Opposition to Defendants' Motions for Summary Judgment, and the accompanying Reply in Further Support of Plaintiffs' Motion for Summary Judgment—the Intervenor Defendants fail to set forth undisputed material facts supporting entry of summary judgment in their favor.

INTERVENOR-DEFENDANTS' COUNTER STATEMENT OF MATERIAL FACTS

115. Pursuant to Local Rule LCvR 56.C.1.c, Intervenor-Respondents incorporate by reference their Concise Statement of Material Facts, ECF No. 272, as if same were set forth at length herein.

RESPONSE: No response is required.

A. The Date Requirement

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

RESPONSE: Paragraph 116 consists of statements of law to which no response is required. *See also* Pls.' Resp. to Intervenor-Defs.' SMF ¶ 29 (Dkt. 272, 315).

117. 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: Paragraph 117 consists of statements of law to which no response is required. To the extent a response is required, Plaintiffs admit that the Intervenor-Defendants have accurately quoted the cited Pennsylvania statute. *See also* Pls.' Resp. to Intervenor-Defs.' SMF ¶ 30 (Dkt. 272, 315).

118. 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: Paragraph 118 consists of statements of law to which no response is required. *See also* Pls.’ Resp. to Intervenor-Defs.’ SMF ¶ 36 (Dkt. 272, 315).

119. The U.S. Supreme Court vacated the Third Circuit panel’s decision in *Migliori v. Cohen*, 36 F.4th 153 (3d Cir. 2022). *See Ritter v. Migliori*, No. 22-30, 2022 WL 6571686 (U.S. Oct. 11, 2022) (Mem.).

RESPONSE: Admitted. By way of further response, Plaintiffs state that the U.S. Supreme Court did not vacate or reverse the Third Circuit’s decision in *Migliori* on the merits. Rather, the decision was vacated *as moot* pursuant to *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950), in a non-merits, short-form order. *See Ritter v. Migliori*, 143 S. Ct. 297 (Mem.) (2022). Indeed, when the Supreme Court had the opportunity to prevent the Third Circuit’s decision in *Migliori* from taking effect on its merits, it *denied* the losing party’s petition for stay and allowed the result to be carried out. *See Ritter v. Migliori*, 142 S. Ct. 1824 (2022) (Mem). *See also* Pls.’ Resp. to Intervenor-Defs.’ SMF ¶ 40 (Dkt. 272, 315).

120. 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 admit that a *minority* of the Supreme Court

dissented from the majority's decision to let the Third Circuit's *Migliori* decision on the merits take effect. The remaining statements in paragraph 120 are statements of law as to which no response is required. *See also* Pls.' Resp. to Intervenor-Defs.' SMF ¶ 40 (Dkt. 272, 315).

121. 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: Paragraph 121 consists of statements of law to which no response is required. *See also* Pls.' Resp. to Intervenor-Defs.' SMF ¶ 43 (Dkt. 272, 315).

122. 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. 58, Acting Sec'y Ans. 15–23, *Ball v. Chapman*, No. 102 MM 2022 (Oct. 19, 2022).

RESPONSE: Paragraph 122 consists of statements of law to which no response is required. To the extent that a response is required, this paragraph is disputed as stated, but immaterial. Specifically, the cited arguments from the Acting Secretary's brief in *Ball* do not mention the federal Materiality Provision. Regardless, whether a party to the *Ball* litigation argued the *signature* requirement violates the Materiality provision is immaterial to the legal issues presented by the parties' cross-motions for Summary Judgment – *i.e.*, whether the enforcing an envelope

dating requirement to disenfranchise voters violates the Materiality Provision. *See also* Pls.’ Resp. to Intervenor-Defs.’ SMF ¶ 44 (Dkt. 272, 315).

123. 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: Paragraph 123 consists of statements of law to which no response is required. To the extent that a response is required, this paragraph is admitted but immaterial. Whether a party to the *Ball* litigation argued the *secrecy envelope* requirement violates the Materiality Provision is immaterial to the legal issues presented by the parties’ cross-motions for Summary Judgment – *i.e.*, whether enforcing a requirement to date the *outer envelope* so as to disenfranchise voters violates the Materiality Provision. *See also* Pls.’ Resp. to Intervenor-Defs.’ SMF ¶ 45 (Dkt. 272, 315).

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

RESPONSE: Paragraph 124 consists of statements of law to which no response is required. To the extent that a response is required, this paragraph is admitted but immaterial. *See also* Pls.’ Resp. to Intervenor-Defs.’ SMF ¶ 47 (Dkt. 272, 315).

B. The Date Requirement Serves “Unquestionable Purposes”

125. The date requirement has already been used to detect election fraud. *See* Ex. 59, 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 as stated and immaterial. The record in this case, which is consistent with the record adduced in *Chapman v. Berks Cnty. Bd. of Elections* and *Commonwealth v. Mihaliak*, is that the date written on the outer envelope was *not* necessary to detect the election fraud at issue in the irrelevant *Mihaliak* case that Intervenor-Defendants reference here (and further discuss *infra*, at Paragraphs 126-132). Indeed, both the Intervenor-Defendants and the Board of Elections for Lancaster County, where the *Mihaliak* case arose, have *conceded* that the voter-written date on a return envelope is irrelevant to the counties' ability to identify and set aside ballots submitted by or on behalf of deceased voters. See Pls.' SMF (Dkt. 283) at ¶¶ 60-64; Intervenor-Defendants' SMF Resp. (Dkt. 305) at ¶¶ 60-64; LCBOE SMF Resp. (Dkt. 295) at ¶¶ 60-64. This is not surprising given that Christa Miller, the Lancaster County Board of Elections' Rule 30(b)(6) designee in this case and the election official who reported the voter fraud incident to local police, testified that the Lancaster County Board of Elections had already learned that Ms. Mihaliak's mother had died and removed her from the voter rolls before the Board received a mail ballot in her name. APP_00890-91 (Miller Tr.). The situation was consistent with practices across county boards of election, which remove deceased voters from voter rolls as a matter of course upon learning that a registered voter died before 8:00 P.M. on Election Day. 25 P.S. § 3146.8(d); APP_00888-892 (Miller Tr.) (confirming the Lancaster Board has a mechanism for removing

people who die before Election Day from the voter rolls); *id.* at APP_00895-896 (“We receive Department of Health records, as all counties do. And we also use local obituaries or if someone has a death certificate that they have submitted to us.”); *see also* APP_00911-912 (Westmoreland Tr.); APP_01191 (Greenburg Rpt.); APP_01016-1019, APP_01026-1029, APP_01032 (Greenburg Tr.).

Thus, as Ms. Miller admitted at deposition in this case, when the Lancaster Board received a mail ballot purporting to come from Ms. Mihaliak’s mother weeks after her death, they knew the vote was invalid and would not have counted the vote regardless of the date written on the envelope. APP_00888-892. Specifically:

Q. But just focusing on whether this was a valid vote, the date written on the envelope didn’t matter one way or the other?

A. Correct. When we received it back, as we had already removed her, that ballot would have been set to the side.

Id., APP_00892:10-15.

The testimony of a Lancaster commissioner cited in Intervenor-Defendants’ SMF—which was adduced in a different case—indicates, at most, that the handwritten date on the envelope inserted by Ms. Mihaliak may have been helpful to prosecutors in building their case about the already-invalidated ballot within the context of a criminal proceeding. SMF Ex. 11 at 145:16-23; *see also* Pls. SMF (Dkt. 283) at ¶ 60; LCBOE SMF Resp. (Dkt. 295) at ¶ 60 (admitting that the “only other purported use for the voter-

written date identified in discovery by any county is that considering the date written on a voter declaration might aid in prosecution of voter fraud relating to deceased voters”); Intervenor-Defendants’ SMF Resp. (Dkt. 305) at ¶ 60 (same). But as the same commissioner admitted, “it did not affect whether [we] counted that ballot” because the county board had already removed Ms. Mihaliak’s deceased mother from the voter rolls. *Id.* at 145:24-146:1; *see also* APP_00888-892 (Miller Tr.). The record evidence in this case also indicates that law enforcement subsequently determined that there had been a fraud attempt after they questioned Ms. Mihaliak and she admitted her conduct. APP_01042.

In any event, any dispute over the purported value Mihaliak’s handwritten date had in prosecuting fraud in her case is immaterial to the legal issues raised by the parties’ cross-motions for summary judgment – *i.e.*, whether the voter-written dates on return envelopes are material to determining a voter’s qualifications to vote under the Materiality Provision. It is undisputed that, as confirmed by the Lancaster County Board of Elections representative who identified the fraud in that case, the date written on the Mihaliak envelope was immaterial to her eligibility to vote and was *not* used to determine whether the vote could be counted. *Id.* *See also* Pls.’ Resp. to Intervenor-Defs.’ SMF ¶ 48 (Dkt. 272, 315).

126. Last year, officials in Lancaster County discovered that an individual had cast a fraudulent ballot in her deceased mother’s name in *Commonwealth v.*

Mihaliak, No. CR-126-22 (June 3, 2022); see Ex. 55, Affidavit of Probable Cause ¶ 2, Police Criminal Complaint, *Commonwealth v. Mihaliak*, No. CR-126-22 (June 3, 2022) (“Mihaliak Compl.”).

RESPONSE: Admitted and immaterial. By way of further response, Plaintiffs refer to their response to Paragraph 125 above, which is incorporated as if fully restated here. Plaintiffs further note that it is immaterial whether a signature and date is the only information supplied by the voter “on a ballot declaration”¹ because it is undisputed that voter-supplied information on the return envelope is not the county boards of elections’ source of information material to voter eligibility. Specifically, it is undisputed that county boards of elections determine eligibility to vote before issuing mail ballot packages to voters, based on information provided in their voter registration records and mail ballot applications. 25 P.S. § 3150.12b; see also APP_01136 (Pa. Dep’t of State Guidance); APP_00894 (Lancaster Dep.); APP_00916-917 (Westmoreland Dep.); APP_00957-961 (Marks Dep.); APP_01182 (Greenburg Report); APP_001015, APP_001020-1025 (Greenburg Dep.). And it is undisputed that county boards of elections use independent sources to determine when an eligible voter has died before Election Day, regardless of what information is provided “on a ballot

¹ For the purposes of these Responses, Plaintiffs assume that Intervenor-Defendants’ references to the “ballot declaration” are intended to reference the voter declaration printed on mail ballot *return envelopes*. Voter declarations are, as a matter of Pennsylvania law, printed on the outer return envelope and not the ballot itself. 25 P.S. § 3150.14. There is no dispute in this case about any information supplied on any ballot.

declaration.” *See* 25 P.S. § 3146.8(d); APP_00888-892 (Miller Tr.) (confirming the Lancaster Board has a mechanism for removing people who die before Election Day from the voter rolls); *id.* at APP_00895-896 (“We receive Department of Health records, as all counties do. And we also use local obituaries or if someone has a death certificate that they have submitted to us.”); *see also* APP_00911-912 (Westmoreland Tr.); APP_01191 (Greenburg Rpt.); APP_01016-1019, APP_01026-1029, APP_01032 (Greenburg Tr.). *See also* Pls.’ Resp. to Intervenor-Defs.’ SMF ¶ 49 (Dkt. 272, 315).

127. In Lancaster County, the only information a voter is required to supply on a ballot declaration is the date and a signature. *See* Ex. 57, Exemplar Ballot Declaration from Lancaster County Board; *see also* Ex. 53, Greenburg Dep. at 114:23-115:7.

RESPONSE: Admitted and immaterial. By way of further response, Plaintiffs refer to their response to Paragraph 125 above, which is incorporated as if fully restated here. Plaintiffs further note that it is immaterial whether a signature and date is the only information supplied by the voter “on a ballot declaration” because it is undisputed that voter-supplied information on the return envelope is not the county boards of elections’ source of information material to voter eligibility. Specifically, it is undisputed that county boards of elections determine eligibility to vote before issuing mail ballot packages to voters, based on information provided in their voter registration records and mail ballot applications. 25

P.S. § 3150.12b; *see also* APP_01136 (Pa. Dep’t of State Guidance); APP_00894 (Lancaster Dep.); APP_00916-917 (Westmoreland Dep.); APP_00957-961 (Marks Dep.); APP_01182 (Greenburg Report); APP_001015, APP_001020-1025 (Greenburg Dep.). And it is undisputed that county boards of elections use independent sources to determine when an eligible voter has died before Election Day, regardless of what information is provided “on a ballot declaration.” *See* 25 P.S. § 3146.8(d); APP_00888-892 (Miller Tr.) (confirming the Lancaster Board has a mechanism for removing people who die before Election Day from the voter rolls); *id.* at APP_00895-896 (“We receive Department of Health records, as all counties do. And we also use local obituaries or if someone has a death certificate that they have submitted to us.”); *see also* APP_00911-912 (Westmoreland Tr.); APP_01191 (Greenburg Rpt.); APP_01016-1019, APP_01026-1029, APP_01032 (Greenburg Tr.). *See also* Pls.’ Resp. to Intervenor-Defs.’ SMF ¶ 50 (Dkt. 272, 315).

128. 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: Paragraph 128 consists of statements of law to which no response is required. To the extent a response is required, Plaintiffs state that whether boards of elections are permitted to conduct signature

comparisons is immaterial to the issues in this case, and Plaintiffs incorporate by reference to their responses to Paragraphs 125 and 127 above, as if fully restated here. *See also* Pls.’ Resp. to Intervenor-Defs.’ SMF ¶ 51 (Dkt. 272, 315).

129. 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. 55 ¶ 2.

RESPONSE: Disputed as stated and immaterial. The citation does not support the statement that the handwritten envelope date was the “only evidence” indicating a potential attempt at fraud. Plaintiffs refer to their responses to Paragraphs 125 and 127 above, which are incorporated as if fully restated here. *See also* Pls.’ Resp. to Intervenor-Defs.’ SMF ¶ 52 (Dkt. 272, 315).

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

RESPONSE: Disputed as stated and immaterial. The cited evidence does not support the statement that the investigation was “predicated” on the handwritten envelope date, as opposed to the fact that the Lancaster County Board of Elections received a ballot weeks after the voter died, and days after she was removed from the voter rolls, APP_00890-91 (Miller Tr.), and the fact that when law enforcement contacted the daughter, she

admitted to filling out the ballot and signing her mother's name after her death, APP_01042 (Affidavit of Probable Cause). Plaintiffs refer to their responses to Paragraphs 125 and 127 above, which are incorporated as if fully restated here. *See also* Pls.' Resp. to Intervenor-Defs.' SMF ¶ 53 (Dkt. 272, 315).

131. Plaintiffs' putative expert agreed that the date supplied on the *Mihaliak* ballot declaration was the only piece of evidence of fraud on the face of the ballot. Ex. 53 at 114:15-118:2.

RESPONSE: Disputed and immaterial. Plaintiffs specifically dispute the characterization of cited testimony, which cannot be read to say that the date supplied on the envelope declaration in the *Mihaliak* case was the "only piece of evidence of fraud" in that case. Indeed, Mr. Greenburg specifically testified during his deposition that the fact that the county board received Ms. Mihaliak's ballot after learning she was deceased and removing her from the voter rolls was also evidence of fraud "regardless of the handwritten date on that envelope." Pls.' Suppl. Appx., at APP_01581 (Greenburg Tr.). In any event, Mr. Greenburg is not qualified to opine on the quantum of evidence prosecutors had to build a fraud case against Ms. Mihaliak, as he does not purport to be an expert in the *Commonwealth v. Mihaliak* investigation and prosecution. By way of further response, Plaintiffs refer to their responses to Paragraphs 125 and 127 above, which

are incorporated as if fully restated here. *See also* Pls.’ Resp. to Intervenor-Def.’ SMF ¶ 54 (Dkt. 272, 315).

132. Plaintiffs’ putative expert agreed that the date on the ballot declaration helped to detect fraud in *Mihaliak*. *Id.* at 116:19-117:2.

RESPONSE: Admitted in part and disputed in part as stated, but immaterial. By way of further response, Plaintiffs refer to their responses to Paragraphs 125 and 127 above, which are incorporated as if fully restated here. Plaintiffs note further that Mr. Greenburg does not purport to be an expert in the *Commonwealth v. Mihaliak* investigation and prosecution. Specifically, Mr. Greenburg explained that any potential fraud inquiry related to the ballot of a voter who died before 8:00 P.M. on Election Day “doesn't impact whether the county would count it” (*i.e.*, Mr. Greenburg’s area of expertise, in election administration), “but the fraud side is simply related to the law enforcement side” (*i.e.*, outside of Mr. Greenburg’s area of expertise). APP_01031. The reading of the *Mihaliak* complaint Intervenor Defendants had Mr. Greenburg conduct at his deposition is immaterial to the issues raised in the parties’ cross-motions for summary judgment in this case. *See also* Pls.’ Resp. to Intervenor-Def.’ SMF ¶ 55 (Dkt. 272, 315).

C. Military and Overseas Ballots

133. The chief clerk and chief registrar of the Lancaster County Board of Elections and Registration Commission testified at her deposition that “if the date the voter wrote on” the envelope of a “military absentee ballot” was “November 9th,”

that she “would have set it aside pursuant to the” Pennsylvania Supreme Court’s order. Ex. 63 at 15:24-16:16, 64:15-21.

RESPONSE: Admitted.

D. Mr. Jeffrey Greenburg’s Putative Expert Testimony

134. Plaintiffs designated Mr. Jeffrey Greenburg to be an expert witness. *See* Ex. 75, Plaintiffs’ Designation of Expert Witness.

RESPONSE: Admitted. *See also* Pls.’ Resp. to Intervenor-Defs.’ SMF ¶ 126 (Dkt. 272, 315).

135. Mr. Greenburg testified that voters “are required to affirm that they meet the qualifications” to vote “on the voter registration application.” Ex. 53 at 69:13-25.

RESPONSE: Admitted. *See also* Pls.’ Resp. to Intervenor-Defs.’ SMF ¶ 147 (Dkt. 272, 315).

136. Mr. Greenburg testified that voters “provide the information necessary for the boards to verify they are qualified” on “their voter registrations.” Ex. 53 at 69:13-17.

RESPONSE: Admitted. *See also* Pls.’ Resp. to Intervenor-Defs.’ SMF ¶ 148 (Dkt. 272, 315).

137. Mr. Greenburg agreed that providing a signature is not a qualification to vote. Ex. 53, at 76:3-5.

RESPONSE: Admitted and immaterial. *See also* Pls.’ Resp. to Intervenor-Defs.’ SMF ¶ 149 (Dkt. 272, 315).

138. Mr. Greenburg’s “definition of ‘disenfranchised’” was, “in [his] opinion,” “an eligible voter who, for one reason or another, their ballot was not counted.” Ex. 60 at 90:8-14. He stated in his deposition:

If a legally eligible voter’s ballot is not counted, it’s disenfranchisement. When you’re interpreting the law correctly or not, the ability for them to cast that ballot is not happening because of something that either they did or they omitted.

Ex. 53 at 93:3-15.

RESPONSE: Admitted. See also Pls.’ Resp. to Intervenor-Defs.’ SMF ¶ 150 (Dkt. 272, 315).

139. For purposes of his report, Mr. Greenburg classified such voters as “disenfranchise[d]” even if the “election official” “follow[ed] the law” in setting aside the voter’s ballot. *Id.* at 93:9-19.

RESPONSE: Admitted. See also Pls.’ Resp. to Intervenor-Defs.’ SMF ¶ 151 (Dkt. 272, 315).

140. Mr. Greenburg admitted that, in the Mihaliak case, the only piece of information on the face of the ballot indicating that a third party had attempted to vote someone else’s ballot was the handwritten date. *Id.* at 115:8-20.

RESPONSE: Disputed and immaterial. Plaintiffs specifically dispute the characterization of cited testimony, which cannot be read to say that the date supplied on the envelope declaration in the *Mihaliak* case was the “only piece of information” available to uncover a third-party attempt to vote. By way of further response, Plaintiffs refer to their responses to Paragraphs 125, 127, and 131 above, which are incorporated as if fully

restated here. *See also* Pls.’ Resp. to Intervenor-Defs.’ SMF ¶ 152 (Dkt. 272, 315).

141. Mr. Greenburg admitted that, in the Mihaliak case, the date requirement helped to identify fraud. *Id.* at 116:19-117:2.

RESPONSE: Admitted but immaterial. By way of further response, Plaintiffs refer to their responses to Paragraphs 125 and 132 above, which are incorporated as if fully restated here. *See also* Pls.’ Resp. to Intervenor-Defs.’ SMF ¶ 153 (Dkt. 272, 315).

142. Mr. Greenburg agreed that fraud involving mail ballots is possible now and in the future in Pennsylvania. *Id.* at 61:3-9.

RESPONSE: Admitted and immaterial. Plaintiffs specifically note that whether some unidentified or hypothetical form of “fraud involving mail ballots is possible” is irrelevant to the legal issues presented by the parties’ cross-motions for summary judgment. *See also* Pls.’ Resp. to Intervenor-Defs.’ SMF ¶ 154 (Dkt. 272, 315).

143. Mr. Greenburg agreed that the date requirement applies to overseas voters. *Id.* at 84:2-4.

RESPONSE: Admitted. *See also* Pls.’ Resp. to Intervenor-Defs.’ SMF ¶ 155 (Dkt. 272, 315).

Dated: May 10, 2023

Witold J. Walczak (PA 62976)
American Civil Liberties Union of
Pennsylvania
P.O. Box 23058
Pittsburgh, PA 15222
Tel: (412) 681-7736
vwalczak@aclupa.org

Marian K. Schneider (PA 50337)
Stephen Loney (PA 202535)
Kate I. Steiker-Ginzberg (PA 332236)
American Civil Liberties Union of
Pennsylvania
P.O. Box 60173
Philadelphia, PA 19102
mschneider@aclupa.org
sloney@aclupa.org

David Newmann (PA 82401)
Brittany C. Armour (PA 324455)
Hogan Lovells US LLP
1735 Market Street, 23rd Floor
Philadelphia, PA 19103
Tel: (267) 675-4610
david.newmann@hoganlovells.com
brittany.armour@hoganlovells.com
Elizabeth Femia
Hogan Lovells US LLP
390 Madison Avenue
New York, NY 10017
Tel: (212) 918-3813
lisa.femia@hoganlovells.com

Respectfully submitted,

/s/ Ari J. Savitzky
Ari J. Savitzky
Megan C. Keenan
Luis Manuel Rico Román
Sophia Lin Lakin
Adriel I. Cepeda Derieux
American Civil Liberties Union
Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel.: (212) 549-2500
asavitzky@aclu.org
mkeenana@aclu.org
lroman@aclu.org
slakin@aclu.org
acepedaderieux@aclu.org

*Counsel for the Pennsylvania State
Conference of the NAACP, League
of Women Voters of Pennsylvania,
Philadelphians Organized to
Witness, Empower and Rebuild,
Common Cause Pennsylvania,
Black Political Empowerment
Project, Make the Road
Pennsylvania, Barry M. Seastead,
Marlene G. Gutierrez, Aynne
Margaret Pleban Polinski, Joel
Bencan, and Laurence M. Smith*

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2023, I caused a true and correct copy of Plaintiffs' Response to Intervenor-Defendants Counter Statement of Material Facts to be served on counsel to all parties in this matter via the Court's ECF system.

Dated: May 10, 2023

/s/ Ari J. Savitzky
Ari J. Savitzky

Counsel for the Plaintiffs

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