

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

DONALD J. TRUMP FOR PRESIDENT,)
INC., *et al.*,)

Plaintiffs,)

v.)

KATHY BOOCKVAR, in her capacity as)
Secretary of the Commonwealth of)
Pennsylvania, *et al.*,)

Defendants.)

Civil Action No. 2:20-cv-00966-NR

Judge J. Nicholas Ranjan

**DEFENDANT-INTERVENORS CITIZENS FOR PENNSYLVANIA’S FUTURE AND
SIERRA CLUB’S MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO
COMPEL DISCOVERY FROM PLAINTIFFS**

INTRODUCTION

Plaintiffs chose to file an Amended Complaint replete with salacious allegations and dire warnings about the potential consequences if Pennsylvania and its counties are permitted to administer the 2020 election in a manner that Plaintiffs oppose. Plaintiffs chose to interlace these allegations of fraud and impropriety throughout their pleading, contending for example in the opening paragraph that Defendants’ use of drop-boxes “provides fraudsters an easy opportunity to engage in ballot harvesting, manipulate or destroy ballots, manufacture duplicitous votes, and sow chaos[.]” Amended Complaint ¶1. These allegations of fraud continue throughout the Amended Complaint, culminating in causes of action explicitly premised on “Dilution of Vote by Fraud or Tampering.” *See id.* ¶¶ 228, 229, 243. Apparently unwilling (or unable) to engage in discovery supporting these fraud-based allegations, Plaintiffs attempt to simply ignore them and focus only on their claims of statutory interpretation or equal protection (*see e.g.*, ¶¶ 206-267; *see* ECF 346 (MTD reply at1)). But Plaintiffs do not get to pick and choose which of their allegations are subject to discovery, and cannot decline to provide discovery concerning the alleged voter fraud or impropriety they pled so long as those allegations remain part of their Amended Complaint. Plaintiffs must either be compelled to provide discovery concerning their fraud-based allegations or be precluded from pursuing these claims going forward, including by not pursuing affirmative discovery of Defendants or third parties relating to claims of vote fraud.

ARGUMENT

I. The Narrowed Discovery Sought By Defendant-Intervenors Is Carefully Targeted and Entirely Appropriate

The Amended Complaint baldly asserts the existence of voter fraud through “invalid,” “illegal” and “unreliable” voting that Plaintiffs allege will dilute votes and make the election unfair. Am. Compl. ¶¶ 24, 26. Plaintiffs target two aspects of Pennsylvania’s election process—

the vote-by-mail procedures, including the use of drop boxes, and the eligibility rules for poll watchers. *E.g.*, Am. Compl. ¶¶ 1, 3, 103, 165. Plaintiffs presume—without any supporting facts or credible allegations—that the conduct they challenge will increase voter fraud and create equal protection violations, and that the remedies they seek will reduce it. Intervenor (and Defendants generally) are now entitled to test the accuracy and credibility of Plaintiffs’ fraud-based allegations and assertions of purported injury, and Plaintiffs’ objectives in pursuing the remedy they seek. (*See, e.g.*, ECF 297 (Intervenors’ Motion to Dismiss)).

The discovery Intervenor seek is neither controversial nor disproportionate. Intervenor have requested documents relevant to the harms Plaintiffs allege, including the basis for their claims of voter fraud, vote dilution, and unequal treatment of voters, as well as documents that are likely to undermine these allegations. Fed. R. Civ. P. 26(b)(1) provides in relevant part: “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Intervenor’s discovery requests fall well within Rule 26’s broad scope.

Nonetheless, based on the Court’s August 11, 2020 guidance, Intervenor significantly narrowed their requests as detailed below, and met and conferred with Plaintiffs on the morning of August 12. With respect to Plaintiffs’ allegations regarding vote-by-mail procedures, Intervenor confirmed that as to their RFP No. 1, they only seek documents concerning “vote-by-mail, absentee voting, and Drop Boxes,” to the extent those documents relate to Plaintiffs’ allegations of fraud.¹ That would include documents, data, analysis and communications relating only to the allegations Plaintiffs pled in their Amended Complaint concerning:

¹ In light of the Court’s guidance, Intervenor have withdrawn RFP Nos. 2-6 as relates to expedited discovery, which sought a broader range of documents relating to various demographic

- non-uniform procedures concerning drop boxes in Pennsylvania. Am. Compl. ¶ 1 (alleging “inconsistently-enforced regulations of . . . unsecured drop-boxes”), ¶ 162 et seq.
- fraudulent voting resulting from the use of drop boxes, absentee ballots, or vote-by-mail in Pennsylvania (*id.* (alleging “threat” of counting of “fraudulent or otherwise ineligible ballots”)), ¶¶ 202-03; 212, 225, 228-29, 243-46;
- fraud resulting from the use of third-party groups to collect absentee or mail ballots in Pennsylvania (*id.* ¶ 1 (warning of “fraudsters” who “engage in ballot harvesting, manipulate or destroy ballots, manufacture duplicitous votes, and sow chaos”), ¶¶ 73-77;
- the existence and/or prevalence of fraud, ballot harvesting, ballot manipulation or destruction, or duplicitous voting in Pennsylvania, *id.*;
- the prevalence and/or counting of absentee or mail ballots in Pennsylvania that lack a secrecy envelope, whose envelope contains any text, mark, or symbol which reveals the elector’s identify, political affiliation, or candidate preference, or whose envelope does not include on the outside envelope a completed declaration signed by the elector, *id.*, ¶¶ 5, 91, 153.

Plaintiffs stated on this meet and confer that they would continue to resist discovery of these narrowed discovery categories, contending that the Court’s guidance did not require them to provide any of the requested discovery concerning their fraud allegations. Plaintiffs also “reserved the right,” however, to include factual disclosures relating to fraud at a later date as part of any expert reports, but maintained that they were not obligated to produce any such material now, as part of expedited discovery. There is no basis for Plaintiffs to avoid or defer their basic discovery obligations as to the allegations in the Amended Complaint.

information. *See* RFP No. 2 (documents concerning the demographic breakdown of voters who use or are likely to use vote-by-mail, absentee voting, and/or Drop Boxes); RFP Nos. 3 and 4 (concerning the partisan breakdown of voters who use or are likely to use vote-by-mail, absentee voting, and/or Drop Boxes); RFP Nos. 5 and 6 (relationship of such procedures to voter turnout and predicted electoral outcomes). Intervenors have also substantially narrowed RFP No. 15, and now seek only documents relating to allegations of fraud involving the collection of ballots by third parties.

Intervenors are unquestionably entitled to documents that support Plaintiffs’ allegations in their Amended Complaint, as well as documents that undermine those same allegations. It is black letter law that Plaintiffs cannot only produce evidence supporting their litigation position. *See Masterfile Corp. v. Bigsy Music*, 2011 WL 13227712, at *6 (E.D. Pa. 2011) (“Rule 26 authorizes broad discovery;” “parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense”). Plaintiffs must also, subject to principles of proportionality, produce documents that directly undermine the credibility and plausibility of their vote fraud allegations, including documents that discuss or suggest that Plaintiffs seek the relief requested here, not because they have evidence of fraud or impropriety, but because they are using such allegations as a pretext to impair voting in a way that may impact the outcome of the election. Although Plaintiffs may have a legitimate interest in combatting voter fraud, they may not “pretextually employ said interest to mask invidious aims.” *North Carolina State Conference of NAACP v. Cooper*, 430 F. Supp.3d 15, 44 (M.D. N.C. 2019) (concerning voter identification laws that were “pretextual cures for problems that did not exist”). Discovery into the interests and objectives of Plaintiffs’ lawsuit will “aid [the Court] in understanding the circumstances giving rise to the claim in this lawsuit,” including the validity of Plaintiffs’ claims of injury. *See, Riggs. v. Deutsche Bank Alex Brown, Inc.*, 2005 WL 8175065, at *1 (D.N.J. Sep. 6, 2005); *see also Arconic Inc. v. Novelis, Inc.*, 2018 WL 5660142, at *3 (W.D. Pa. 2018) (permitting discovery into the “motives for the . . . decision to file this lawsuit”).²

Despite Intervenors’ significant narrowing, Plaintiffs continue to refuse to provide any documents concerning their fraud-based allegations, asserting on both the parties’ August 10 and

² Such discovery will also support Intervenors’ defenses that instances of voter fraud are exceedingly rare and that Plaintiffs’ desired relief in this case is unrelated to a purported concern over voter fraud.

August 12 meet and confers that their claims have nothing to do with voter fraud and solely relate to the non-uniform procedures counties may adopt in the upcoming general election, *see, e.g.* ECF 346, MTD reply at 1, and claims of equal protection, and that they thus had no obligation to produce discovery relating to their fraud allegations – whether supporting or undermining those allegations.³ Notably, Plaintiffs’ position stands in stark contrast to their posture in *seeking* discovery, where Plaintiffs have served and are pressing extensive requests on Defendants and third parties in this action. *See* Exhibit B (attaching a true and correct copy of Plaintiffs’ discovery requests). Indeed at the same time Plaintiffs have been telling this Court such discovery should be off limits, just Monday Plaintiffs served a broad third-party subpoena on the nonpartisan good government group the Committee of Seventy, which seeks, among other categories, broad-based discovery concerning the motivation for and partisan implications of drop boxes.⁴ Intervenors are entitled to the same, proportionate and reciprocal, discovery from the party that chose to commence this litigation.

There is no reason why Plaintiffs, having advanced the allegations and claims they have, should not be ordered to also produce materials relevant to their various allegations of fraud.

³ With respect to Intervenors’ requests concerning Plaintiffs’ poll watcher claims, Plaintiffs confirmed that, in light of the Court’s August 11 guidance, they would produce documents relating to plans for recruiting, training and staffing poll watchers applicable to Pennsylvania in the 2020 election. Plaintiffs confirmed that they would produce such materials that were applicable to Pennsylvania, whether formally denominated as such, addressing Intervenors’ concern that Plaintiffs would not read the Court’s guidance too narrowly. The Court’s intervention is thus not required as to poll watching discovery at this time.

⁴ *See* Exhibit C (Request 4 seeking “[a]ny and all communications with any political party or candidate for elected office regarding the use of drop boxes, mobile ballot collection centers, and/or similar collection/drop-off locations”; Request 6 seeking “[a]ny and all documents relating to the use of drop boxes, mobile ballot collection centers, and or similar collection/drop-off locations” during the 2020 primary and general elections.).

II. Plaintiffs Should Be Precluded From Asserting Claims and Seeking Related Discovery For Which They Refuse To Provide Discovery

As Intervenor's foreshadowed in their Motion to Dismiss Reply (ECF 346), Plaintiffs appear to have abandoned their allegations and claims based on vote fraud. While Plaintiffs' remaining "non uniform" equal protection claims are equally meritless and requires dismissal (*see id.*), if Plaintiffs have, in fact, abandoned their vote fraud allegations and claims and will refuse to provide any discovery concerning these claims and allegations, the Court may, pursuant to FRCP 37, preclude Plaintiffs from further pursuing these claims or seeking any discovery from any Defendant or third party related in any way to their vote fraud allegations and claims. Fed. R. Civ. P. 37(b)(2)(A) (expressly providing Court with right to prevent a party "from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence."); *see In re Orthopedic Bone Screw Products Litigation*, 1998 WL 254038, at *5 (E.D. Pa. 1998) (applying discovery sanctions where "[t]he record evidences an ongoing difficulty experienced by the [moving party] in attempting to receive discoverable documents relating to the [moving party's] claims."). Intervenor respectfully submit that Plaintiffs' claims and allegations should be subject to reasonable discovery, and if not should be foreclosed.

Dated: August 12, 2020

Respectfully submitted,

/s/ Eliza Sweren-Becker

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*Counsel for Proposed Defendant-
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Future and Sierra Club*

CERTIFICATE OF SERVICE

I, Eliza Sweren-Becker, certify that I served the foregoing MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT-INTERVENORS CITIZENS FOR PENNSYLVANIA’S FUTURE AND SIERRA CLUB’S MOTION TO COMPEL, which was sent automatically by CM/ECF to the following counsel who are registered as CM/ECF filing users who have consented to accepting electronic service through CM/ECF:

All counsel of record

Dated: August 12, 2020

Respectfully submitted,

/s/ Eliza Sweren-Becker

*Counsel for Proposed Defendant-
Intervenors Citizens for Pennsylvania’s
Future and Sierra Club*

**IN THE UNITED STATES DISTRICT COURT
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DONALD J. TRUMP FOR
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)

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)

) No.: 2-20-CV-966

)

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)

) Judge J. Nicholas Ranjan

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**PLAINTIFFS' RESPONSES TO DEFENDANT-INTERVENORS
CITIZENS FOR PENNSYLVANIA'S FUTURE AND SIERRA CLUB'S
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO PLAINTIFFS**

Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure, Local Rules 33 and 34, and the Court's July 17, 2020 Scheduling Order (ECF #124), Plaintiffs hereby provide the following objections and responses to the First Set of Requests for Production of Documents of Defendant-Intervenors Citizens for Pennsylvania's Future and Sierra Club.

GENERAL OBJECTIONS/STATEMENTS

1. Plaintiffs object to the Instructions to the extent that they can be construed to seek production or disclosure of any attorney-client privileged information, attorney work product, or other confidential/protected information. Any substantive responses provided are being provided without disclosing or producing attorney-client privileged information, attorney work product, or other confidential/protected information.

2. Plaintiffs object to Instruction #1's temporal scope given the limited scope of the discovery allowed by the Scheduling Order (ECF#124). Plaintiffs are following the parameters of the Scheduling Order, not Instruction #1.

3. Plaintiffs object to Instruction #2, which attempts to impose upon Plaintiffs a

supplemental obligation that is not co-extensive with that provided in Rule 26(e)(1). Plaintiffs will comply with the provisions of Rule 26(e)(1), if necessary, not with the supplementation obligation contained in Instruction #2.

4. Plaintiffs object to Instruction #6's requirement that responsive documentation are to be produced as "kept in such Plaintiff's usual course of business". That instruction is contrary to the Federal Rules of Civil Procedure, specifically Rule 34(b)(2)(E)(i), which expressly allows the responding party to produce the documentation/information in the manner in which the documentation/information is kept in the usual course of business or organized by request.

5. Plaintiffs also object to the use of "abbreviation" in Instruction #6. Plaintiffs are unsure what that word means in the context of Instruction #6. Accordingly, Plaintiffs are not agreeing to comply with that Instruction in producing any responsive documents.

6. Plaintiffs object to Instruction #8 related to production of documents. If a responsive document happens to be attached to a non-responsive document or to a privileged document, that non-responsive document or privileged document will not be produced.

7. Plaintiffs object to Instruction #13's requirement as to destroyed documents. No such obligation exists under law. Therefore, Plaintiffs will not abide by that instruction, which, among other things, requires Plaintiffs to create documents in response to these Interrogatories/Document Requests.

8. Plaintiffs object to the Instructions related to producing documentation without redactions. If redactions are necessary and appropriate, documents will be produced with redactions.

9. Plaintiffs also object to the extent the Document Requests may be read as

requiring that the originals of any responsive document be provided to propounding defendants' counsel. The Federal Rules of Civil Procedure, specifically Rule 34(b)(2)(B) expressly permits the responding party to produce copies of same instead of the originals. That is what Plaintiffs are opting to do here. No originals will be produced; any responsive documents/ESI will be produced as a copy.

10. Plaintiffs note that the Document Requests did not specify the form for producing electronically stored information ("ESI"). Accordingly, Plaintiffs will produce any responsive ESI in a reasonably usable form. *See* FED.R.CIV.P. 34(b)(2)(E)(ii).

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1

Any and all Documents, records, data, and/or internal and external Communications from January 1, 2019 until July 1, 2020, concerning vote-by-mail, absentee voting, and Drop Boxes.

Response: Plaintiffs object to this Document Request on the ground that it seeks information on topics outside the limited scope of the expedited discovery ordered by the Court. In response to objections by myriad defendants to the timing and scope of discovery, the Court entered an Order on July 17, 2020, ([ECF #124](#)) that allowed discovery on an expedited basis but only on a limited scope. Any discovery beyond the scope of the reports to the Secretary of the Commonwealth by the County Boards of Election as contemplated by [71 P.S. § 279.6\(c\)](#) "must (i) not be duplicative of materials received in connection with the report, and (ii) be narrowly tailored to the implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election." [ECF #124](#), p.4, ¶II.B.10.

This Document Request goes beyond the scope of the approved discovery in that it seeks information not about the "implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election," [ECF #124](#), p.4, ¶II.B.10, but about Plaintiffs documentation in general about "vote-by-mail, absentee voting, and Drop Boxes." Furthermore, it is not Plaintiffs' who implement any of those items but the Defendants. Therefore Plaintiffs read the scope of discovery as relating to the official implementation of the two noted procedures by the Secretary and/or the Counties. Moreover, it is the Secretary and the Counties who will bear the burden of demonstrating the procedures they implement and enforce are constitutional. Therefore, this Production Request is improper.

Additionally, Plaintiffs object to this Document Request on the ground of relevance. The Election Code, as passed by the General Assembly, permits voting by mail (both mail-in and absentee)—as long as that voting complies with the statutory requirements. Thus, no matter who the voter, that voter must comply with the statutory requirements before the ballot he/she casts is a valid one

entitled to be counted. Plaintiffs are seeking to ensure the legislative requirements are enforced.

Plaintiffs' Amended Complaint is asking the Court to issue relief in the form of, among other things, a declaratory and injunctive judgment that the Secretary of the Commonwealth and all of the Boards of Election follow the provisions of the Election Code in a uniform manner. As this Court noted years ago: "A state must impose uniform statewide standards in each county in order to protect the legality of a citizen's vote. Anything less implicates constitutional problems under the equal protection clause of the Fourteenth Amendment." *Pierce v. Allegheny County Bd. of Elections*, 324 F. Supp. 2d 684, 697 (W.D. Pa. 2003). Plaintiffs' claim is based upon the inconsistent enforcement of the Election Code requirements across the Commonwealth, which is a violation of Plaintiffs' constitutional rights. Plaintiffs' claim also is based upon the failure of the Secretary and all of the County Election Boards to follow the requirements under the Election Code for properly administering Pennsylvania's absentee and mail-in voting scheme, which also violates their constitutional rights. The Pennsylvania General Assembly established the requirements that must be followed for ballots to be cast legally, requirements the Pennsylvania Supreme Court has recognized are designed to reduce fraud. Neither the Secretary of the Commonwealth nor the County Election Boards have the ability to ignore, modify, restrict, or expand upon those requirements. Even if the Secretary or a Board of Elections were to view those legislatively-enacted requirements as mere "technicalities," they still have an obligation to enforce those requirements. As the Pennsylvania Supreme Court recently noted, "so-called technicalities of the Election Code are necessary for the preservation of secrecy and the sanctity of the ballot and must therefore be observed" *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223, 1234 (Pa. 2004); see also *id.*, at 1231-32 (noting that "shall" in the Election Code, including its use in Section 3146.6(a) concerning absentee voting, is mandatory). The same language that was interpreted in 2003 by the Pennsylvania Supreme Court was used and adopted by the General Assembly in Act 77.

In light of above objections, on which Plaintiffs stand, no documents will be produced.

REQUEST FOR PRODUCTION NO. 2

Any and all Documents, records, data, and/or internal and external Communications concerning the demographic breakdown, including but not limited to race and age, of voters who use or are likely to use vote-by-mail, absentee voting, and/or Drop Boxes.

Response: Plaintiffs object to this Document Request on the ground that it seeks information on topics outside the limited scope of the expedited discovery ordered by the Court. In response to objections by myriad defendants to the timing and scope of discovery, the Court entered an Order on July 17, 2020, ([ECF #124](#)) that allowed discovery on an expedited basis but only on a limited scope. Any discovery beyond the scope of the reports to the Secretary of the Commonwealth by the County Boards of Election as contemplated by [71 P.S. § 279.6\(c\)](#) "must (i) not be duplicative of materials received in connection with the report, and (ii) be narrowly tailored to the implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election." [ECF #124](#), p.4, ¶II.B.10.

This Document Request goes beyond the scope of the approved discovery in that it seeks information not about the “implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10. Instead, it seeks documents on “the demographic breakdown, including but not limited to race and age, of voters who use or are likely to use vote-by-mail, absentee voting, and/or Drop Boxes.”

Additionally, Plaintiffs object to this Document Request on the ground of relevance. The Election Code, as passed by the General Assembly, permits voting by mail (both mail-in and absentee)—as long as that voting complies with the statutory requirements. Thus, no matter who the voter (or what that voter’s demographic group, race, or age), that voter must comply with the statutory requirements before the ballot he/she casts is a valid one entitled to be counted. Plaintiffs are seeking to ensure the legislative requirements are enforced.

Plaintiffs’ Amended Complaint is asking the Court to issue relief in the form of, among other things, a declaratory and injunctive judgment that the Secretary of the Commonwealth and all of the Boards of Election follow the provisions of the Election Code in a uniform manner. As this Court noted years ago: “A state must impose uniform statewide standards in each county in order to protect the legality of a citizen’s vote. Anything less implicates constitutional problems under the equal protection clause of the Fourteenth Amendment.” [Pierce v. Allegheny County Bd. of Elections](#), 324 F. Supp. 2d 684, 697 (W.D. Pa. 2003). Plaintiffs’ claim is based upon the inconsistent enforcement of the Election Code requirements across the Commonwealth, which is a violation of Plaintiffs’ constitutional rights. Plaintiffs’ claim also is based upon the failure of the Secretary and all of the County Election Boards to follow the requirements under the Election Code for properly administering Pennsylvania’s absentee and mail-in voting scheme, which also violates their constitutional rights. The Pennsylvania General Assembly established the requirements that must be followed for ballots to be cast legally, requirements the Pennsylvania Supreme Court has recognized are designed to reduce fraud. Neither the Secretary of the Commonwealth nor the County Election Boards have the ability to ignore, modify, restrict, or expand upon those requirements. Even if the Secretary or a Board of Elections were to view those legislatively-enacted requirements as mere “technicalities,” they still have an obligation to enforce those requirements. As the Pennsylvania Supreme Court recently noted, “so-called technicalities of the Election Code are necessary for the preservation of secrecy and the sanctity of the ballot and must therefore be observed” [In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election](#), 843 A.2d 1223, 1234 (Pa. 2004); *see also id.*, at 1231-32 (noting that “shall” in the Election Code, including its use in Section 3146.6(a) concerning absentee voting, is mandatory). The same language that was interpreted in 2003 by the Pennsylvania Supreme Court was used and adopted by the General Assembly in Act 77.

In light of above objections, on which Plaintiffs stand, no documents will be produced.

REQUEST FOR PRODUCTION NO. 3

Any and all Documents, records, data, and/or internal and external Communications concerning the partisan breakdown of voters who use or are likely to use vote-by-mail and/or absentee voting in Pennsylvania and elsewhere.

Response: Plaintiffs object to this Document Request on the ground that it seeks information on topics outside the limited scope of the expedited discovery ordered by the Court. In response to objections by myriad defendants to the timing and scope of discovery, the Court entered an Order on July 17, 2020, ([ECF #124](#)) that allowed discovery on an expedited basis but only on a limited scope. Any discovery beyond the scope of the reports to the Secretary of the Commonwealth by the County Boards of Election as contemplated by [71 P.S. § 279.6\(c\)](#) “must (i) not be duplicative of materials received in connection with the report, and (ii) be narrowly tailored to the implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10.

This Document Request goes beyond the scope of the approved discovery in that it seeks information not about the “implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10. Instead, it seeks documents on “the partisan breakdown of voters who use or are likely to use vote-by-mail and/or absentee voting in Pennsylvania *and elsewhere*.” (emphasis added).

Additionally, Plaintiffs object to this Document Request on the ground of relevance. The Election Code, as passed by the General Assembly, permits voting by mail (both mail-in and absentee)—as long as that voting complies with the statutory requirements. Thus, no matter who the voter (or what that voter’s partisan group), that voter must comply with the statutory requirements before the ballot he/she casts is a valid one entitled to be counted. Plaintiffs are seeking to ensure the legislative requirements are enforced.

Plaintiffs’ Amended Complaint is asking the Court to issue relief in the form of, among other things, a declaratory and injunctive judgment that the Secretary of the Commonwealth and all of the Boards of Election follow the provisions of the Election Code in a uniform manner. As this Court noted years ago: “A state must impose uniform statewide standards in each county in order to protect the legality of a citizen’s vote. Anything less implicates constitutional problems under the equal protection clause of the Fourteenth Amendment.” [Pierce v. Allegheny County Bd. of Elections](#), 324 F. Supp. 2d 684, 697 (W.D. Pa. 2003). Plaintiffs’ claim is based upon the inconsistent enforcement of the Election Code requirements across the Commonwealth, which is a violation of Plaintiffs’ constitutional rights. Plaintiffs’ claim also is based upon the failure of the Secretary and all of the County Election Boards to follow the requirements under the Election Code for properly administering Pennsylvania’s absentee and mail-in voting scheme, which also violates their constitutional rights. The Pennsylvania General Assembly established the requirements that must be followed for ballots to be cast legally, requirements the Pennsylvania Supreme Court has recognized are designed to reduce fraud. Neither the Secretary of the Commonwealth nor the County Election Boards have the ability to ignore, modify, restrict, or expand upon those requirements. Even if the Secretary or a Board of Elections were to view those legislatively-enacted requirements as mere “technicalities,” they still have an obligation to enforce those requirements. As the Pennsylvania Supreme Court recently noted, “so-called technicalities of the Election Code are necessary for the preservation of secrecy and the sanctity of the ballot and must

therefore be observed ...” *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223, 1234 (Pa. 2004).; *see also id.*, at 1231-32 (noting that “shall” in the Election Code, including its use in Section 3146.6(a) concerning absentee voting, is mandatory). The same language that was interpreted in 2003 by the Pennsylvania Supreme Court was used and adopted by the General Assembly in Act 77.

In light of above objections, on which Plaintiffs stand, no documents will be produced.

REQUEST FOR PRODUCTION NO. 4

Any and all Documents, records, data, and/or internal and external Communications concerning the partisan breakdown of voters who use or are likely to use Drop Boxes.

Response: Plaintiffs object to this Document Request on the ground that it seeks information on topics outside the limited scope of the expedited discovery ordered by the Court. In response to objections by myriad defendants to the timing and scope of discovery, the Court entered an Order on July 17, 2020, ([ECF #124](#)) that allowed discovery on an expedited basis but only on a limited scope. Any discovery beyond the scope of the reports to the Secretary of the Commonwealth by the County Boards of Election as contemplated by [71 P.S. § 279.6\(c\)](#) “must (i) not be duplicative of materials received in connection with the report, and (ii) be narrowly tailored to the implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10.

This Document Request goes beyond the scope of the approved discovery in that it seeks information not about the “implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10. Instead, it seeks information about “the partisan breakdown of voters who use or are likely to use Drop Boxes.”

Additionally, Plaintiffs object to this Document Request on the ground of relevance. As “drop-boxes” are not authorized under the Election Code, the use of them by any voter, regardless of political affiliation or lack thereof, is not permitted.

Plaintiffs’ Amended Complaint is asking the Court to issue relief in the form of, among other things, a declaratory and injunctive judgment that the Secretary of the Commonwealth and all of the Boards of Election follow the provisions of the Election Code in a uniform manner. As this Court noted years ago: “A state must impose uniform statewide standards in each county in order to protect the legality of a citizen’s vote. Anything less implicates constitutional problems under the equal protection clause of the Fourteenth Amendment.” *Pierce v. Allegheny County Bd. of Elections*, 324 F. Supp. 2d 684, 697 (W.D. Pa. 2003). Plaintiffs’ claim is based upon the inconsistent enforcement of the Election Code requirements across the Commonwealth, which is a violation of Plaintiffs’ constitutional rights. Plaintiffs’ claim also is based upon the failure of the Secretary and all of the County Election Boards to follow the requirements under the Election Code for properly administering Pennsylvania’s absentee and mail-in voting scheme, which also violates their

constitutional rights. The Pennsylvania General Assembly established the requirements that must be followed for ballots to be cast legally, requirements the Pennsylvania Supreme Court has recognized are designed to reduce fraud. Neither the Secretary of the Commonwealth nor the County Election Boards have the ability to ignore, modify, restrict, or expand upon those requirements. Even if the Secretary or a Board of Elections were to view those legislatively-enacted requirements as mere “technicalities,” they still have an obligation to enforce those requirements. As the Pennsylvania Supreme Court recently noted, “so-called technicalities of the Election Code are necessary for the preservation of secrecy and the sanctity of the ballot and must therefore be observed ...” *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223, 1234 (Pa. 2004).; *see also id.*, at 1231-32 (noting that “shall” in the Election Code, including its use in Section 3146.6(a) concerning absentee voting, is mandatory). The same language that was interpreted in 2003 by the Pennsylvania Supreme Court was used and adopted by the General Assembly in Act 77.

In light of above objections, on which Plaintiffs stand, no documents will be produced.

REQUEST FOR PRODUCTION NO. 5

Any and all Documents, records, data, and/or internal and external Communications concerning mail and/or absentee voting and its relationship to voter turnout, including but not limited to general voter turnout and the specific voter turnout of partisan groups or demographic groups, including but not limited to their race and age.

Response: Plaintiffs object to this Document Request on the ground that it seeks information on topics outside the limited scope of the expedited discovery ordered by the Court. In response to objections by myriad defendants to the timing and scope of discovery, the Court entered an Order on July 17, 2020, ([ECF #124](#)) that allowed discovery on an expedited basis but only on a limited scope. Any discovery beyond the scope of the reports to the Secretary of the Commonwealth by the County Boards of Election as contemplated by [71 P.S. § 279.6\(c\)](#) “must (i) not be duplicative of materials received in connection with the report, and (ii) be narrowly tailored to the implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10.

This Document Request goes beyond the scope of the approved discovery in that it seeks information not about the “implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10. Instead, it seeks information about voter turnout and demographics of certain voters.

Additionally, Plaintiffs object to this Document Request on the ground of relevance. The Election Code, as passed by the General Assembly, permits voting by mail (both mail-in and absentee)—as long as that voting complies with the statutory requirements. Thus, no matter who the voter (or what that voter’s partisan group, demographic group, race, or age), that voter must comply with the statutory requirements before the ballot he/she casts is a valid one entitled to be counted. Plaintiffs are seeking to ensure the legislative requirements are enforced.

Plaintiffs' Amended Complaint is asking the Court to issue relief in the form of, among other things, a declaratory and injunctive judgment that the Secretary of the Commonwealth and all of the Boards of Election follow the provisions of the Election Code in a uniform manner. As this Court noted years ago: "A state must impose uniform statewide standards in each county in order to protect the legality of a citizen's vote. Anything less implicates constitutional problems under the equal protection clause of the Fourteenth Amendment." *Pierce v. Allegheny County Bd. of Elections*, 324 F. Supp. 2d 684, 697 (W.D. Pa. 2003). Plaintiffs' claim is based upon the inconsistent enforcement of the Election Code requirements across the Commonwealth, which is a violation of Plaintiffs' constitutional rights. Plaintiffs' claim also is based upon the failure of the Secretary and all of the County Election Boards to follow the requirements under the Election Code for properly administering Pennsylvania's absentee and mail-in voting scheme, which also violates their constitutional rights. The Pennsylvania General Assembly established the requirements that must be followed for ballots to be cast legally, requirements the Pennsylvania Supreme Court has recognized are designed to reduce fraud. Neither the Secretary of the Commonwealth nor the County Election Boards have the ability to ignore, modify, restrict, or expand upon those requirements. Even if the Secretary or a Board of Elections were to view those legislatively-enacted requirements as mere "technicalities," they still have an obligation to enforce those requirements. As the Pennsylvania Supreme Court recently noted, "so-called technicalities of the Election Code are necessary for the preservation of secrecy and the sanctity of the ballot and must therefore be observed" *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223, 1234 (Pa. 2004); see also *id.*, at 1231-32 (noting that "shall" in the Election Code, including its use in Section 3146.6(a) concerning absentee voting, is mandatory). The same language that was interpreted in 2003 by the Pennsylvania Supreme Court was used and adopted by the General Assembly in Act 77.

In light of above objections, on which Plaintiffs stand, no documents will be produced.

REQUEST FOR PRODUCTION NO. 6

Any and all Documents, records, data, and/or internal and external Communications concerning mail and/or absentee voting and its relationship to predicted electoral outcomes for the 2020 General Election.

Response: Plaintiffs object to this Document Request on the ground that it seeks information on topics outside the limited scope of the expedited discovery ordered by the Court. In response to objections by myriad defendants to the timing and scope of discovery, the Court entered an Order on July 17, 2020, ([ECF #124](#)) that allowed discovery on an expedited basis but only on a limited scope. Any discovery beyond the scope of the reports to the Secretary of the Commonwealth by the County Boards of Election as contemplated by [71 P.S. § 279.6\(c\)](#) "must (i) not be duplicative of materials received in connection with the report, and (ii) be narrowly tailored to the implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election." [ECF #124](#), p.4, ¶II.B.10.

This Document Request goes beyond the scope of the approved discovery in that it seeks information not about the “implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10. Instead it seeks information about the relationship between “mail and/or absentee voting” and “predicted electoral outcomes for the 2020 General Election.”

Additionally, Plaintiffs object to this Document Request on the ground of relevance. The Election Code, as passed by the General Assembly, permits voting by mail (both mail-in and absentee)—as long as that voting complies with the statutory requirements. Thus, no matter who the voter (or what that voter’s partisan group, demographic group, race, or age), that voter must comply with the statutory requirements before the ballot he/she casts is a valid one entitled to be counted. Plaintiffs are seeking to ensure the legislative requirements are enforced.

Plaintiffs’ Amended Complaint is asking the Court to issue relief in the form of, among other things, a declaratory and injunctive judgment that the Secretary of the Commonwealth and all of the Boards of Election follow the provisions of the Election Code in a uniform manner. As this Court noted years ago: “A state must impose uniform statewide standards in each county in order to protect the legality of a citizen’s vote. Anything less implicates constitutional problems under the equal protection clause of the Fourteenth Amendment.” [Pierce v. Allegheny County Bd. of Elections](#), 324 F. Supp. 2d 684, 697 (W.D. Pa. 2003). Plaintiffs’ claim is based upon the inconsistent enforcement of the Election Code requirements across the Commonwealth, which is a violation of Plaintiffs’ constitutional rights. Plaintiffs’ claim also is based upon the failure of the Secretary and all of the County Election Boards to follow the requirements under the Election Code for properly administering Pennsylvania’s absentee and mail-in voting scheme, which also violates their constitutional rights. The Pennsylvania General Assembly established the requirements that must be followed for ballots to be cast legally, requirements the Pennsylvania Supreme Court has recognized are designed to reduce fraud. Neither the Secretary of the Commonwealth nor the County Election Boards have the ability to ignore, modify, restrict, or expand upon those requirements. Even if the Secretary or a Board of Elections were to view those legislatively-enacted requirements as mere “technicalities,” they still have an obligation to enforce those requirements. As the Pennsylvania Supreme Court recently noted, “so-called technicalities of the Election Code are necessary for the preservation of secrecy and the sanctity of the ballot and must therefore be observed” [In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election](#), 843 A.2d 1223, 1234 (Pa. 2004).; *see also id.*, at 1231-32 (noting that “shall” in the Election Code, including its use in Section 3146.6(a) concerning absentee voting, is mandatory). The same language that was interpreted in 2003 by the Pennsylvania Supreme Court was used and adopted by the General Assembly in Act 77.

In light of above objections, on which Plaintiffs stand, no documents will be produced.

REQUEST FOR PRODUCTION NO. 7

Any and all Documents, records, data, and/or internal and external Communications concerning or identifying the Persons or entities that may or may not regulate federal elections under the Elections Clause, U.S. Const. art. I, § 4, cl. 1, including but not limited to unpublished and published law review articles, analyses, and other memoranda.

Response: Plaintiffs object to this Document Request on the ground that it seeks information on topics outside the limited scope of the expedited discovery ordered by the Court. In response to objections by myriad defendants to the timing and scope of discovery, the Court entered an Order on July 17, 2020, ([ECF #124](#)) that allowed discovery on an expedited basis but only on a limited scope. Any discovery beyond the scope of the reports to the Secretary of the Commonwealth by the County Boards of Election as contemplated by [71 P.S. § 279.6\(c\)](#) “must (i) not be duplicative of materials received in connection with the report, and (ii) be narrowly tailored to the implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10.

This Document Request goes beyond the scope of the approved discovery in that it seeks information not about the “implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10. Instead, it seeks information about Plaintiffs’ views as to “who can regulate federal elections under the Elections Clause.”

Additionally, Plaintiffs object to this Document Request on the ground of relevance. Plaintiffs’ Amended Complaint is asking the Court to issue relief in the form of, among other things, a declaratory and injunctive judgment that the Secretary of the Commonwealth and all of the Boards of Election follow the provisions of the Election Code in a uniform manner. As this Court noted years ago: “A state must impose uniform statewide standards in each county in order to protect the legality of a citizen’s vote. Anything less implicates constitutional problems under the equal protection clause of the Fourteenth Amendment.” [Pierce v. Allegheny County Bd. of Elections](#), 324 F. Supp. 2d 684, 697 (W.D. Pa. 2003). Plaintiffs’ claim is based upon the inconsistent enforcement of the Election Code requirements across the Commonwealth, which is a violation of Plaintiffs’ constitutional rights. Plaintiffs’ claim also is based upon the failure of the Secretary and all of the County Election Boards to follow the requirements under the Election Code for properly administering Pennsylvania’s absentee and mail-in voting scheme, which also violates their constitutional rights. The Pennsylvania General Assembly established the requirements that must be followed for ballots to be cast legally, requirements the Pennsylvania Supreme Court has recognized are designed to reduce fraud. Neither the Secretary of the Commonwealth nor the County Election Boards have the ability to ignore, modify, restrict, or expand upon those requirements. Even if the Secretary or a Board of Elections were to view those legislatively-enacted requirements as mere “technicalities,” they still have an obligation to enforce those requirements. As the Pennsylvania Supreme Court recently noted, “so-called technicalities of the Election Code are necessary for the preservation of secrecy and the sanctity of the ballot and must therefore be observed” [In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election](#), 843 A.2d 1223, 1234 (Pa. 2004); see also *id.*, at 1231-32 (noting that “shall” in the Election Code, including its use in Section 3146.6(a) concerning absentee voting, is mandatory). The same

language that was interpreted in 2003 by the Pennsylvania Supreme Court was used and adopted by the General Assembly in Act 77.

In light of above objections, on which Plaintiffs stand, no documents will be produced.

REQUEST FOR PRODUCTION NO. 8

Any and all Documents, records, data, and/or internal and external Communications concerning the “constitutional commitment of federal election regulation to the State Legislature.” Complaint at 15.

Response: Plaintiffs object to this Document Request on the ground that it seeks information on topics outside the limited scope of the expedited discovery ordered by the Court. In response to objections by myriad defendants to the timing and scope of discovery, the Court entered an Order on July 17, 2020, ([ECF #124](#)) that allowed discovery on an expedited basis but only on a limited scope. Any discovery beyond the scope of the reports to the Secretary of the Commonwealth by the County Boards of Election as contemplated by [71 P.S. § 279.6\(c\)](#) “must (i) not be duplicative of materials received in connection with the report, and (ii) be narrowly tailored to the implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10.

This Document Request goes beyond the scope of the approved discovery in that it seeks information not about the “implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10. Instead, it seeks information on “the ‘constitutional commitment of federal election regulation to the State Legislature.’”

Additionally, Plaintiffs object to this Document Request on the ground of relevance. Plaintiffs’ Amended Complaint is asking the Court to issue relief in the form of, among other things, a declaratory and injunctive judgment that the Secretary of the Commonwealth and all of the Boards of Election follow the provisions of the Election Code in a uniform manner. As this Court noted years ago: “A state must impose uniform statewide standards in each county in order to protect the legality of a citizen’s vote. Anything less implicates constitutional problems under the equal protection clause of the Fourteenth Amendment.” [Pierce v. Allegheny County Bd. of Elections](#), 324 F. Supp. 2d 684, 697 (W.D. Pa. 2003). Plaintiffs’ claim is based upon the inconsistent enforcement of the Election Code requirements across the Commonwealth, which is a violation of Plaintiffs’ constitutional rights. Plaintiffs’ claim also is based upon the failure of the Secretary and all of the County Election Boards to follow the requirements under the Election Code for properly administering Pennsylvania’s absentee and mail-in voting scheme, which also violates their constitutional rights. The Pennsylvania General Assembly established the requirements that must be followed for ballots to be cast legally, requirements the Pennsylvania Supreme Court has recognized are designed to reduce fraud. Neither the Secretary of the Commonwealth nor the County Election Boards have the ability to ignore, modify, restrict, or expand upon those

requirements. Even if the Secretary or a Board of Elections were to view those legislatively-enacted requirements as mere “technicalities,” they still have an obligation to enforce those requirements. As the Pennsylvania Supreme Court recently noted, “so-called technicalities of the Election Code are necessary for the preservation of secrecy and the sanctity of the ballot and must therefore be observed” *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223, 1234 (Pa. 2004).; *see also id.*, at 1231-32 (noting that “shall” in the Election Code, including its use in Section 3146.6(a) concerning absentee voting, is mandatory). The same language that was interpreted in 2003 by the Pennsylvania Supreme Court was used and adopted by the General Assembly in Act 77.

In light of above objections, on which Plaintiffs stand, no documents will be produced.

REQUEST FOR PRODUCTION NO. 9

Any and all Documents, records, data, and/or internal and external Communications concerning national and Pennsylvania-specific plans for any Ballot Security Program or Poll Watching Program.

Response: Plaintiffs object to this Document Request on the ground that it seeks information on topics outside the limited scope of the expedited discovery ordered by the Court. In response to objections by myriad defendants to the timing and scope of discovery, the Court entered an Order on July 17, 2020, ([ECF #124](#)) that allowed discovery on an expedited basis but only on a limited scope. Any discovery beyond the scope of the reports to the Secretary of the Commonwealth by the County Boards of Election as contemplated by [71 P.S. § 279.6\(c\)](#) “must (i) not be duplicative of materials received in connection with the report, and (ii) be narrowly tailored to the implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10.

This Document Request goes beyond the scope of the approved discovery in that it seeks information not about the “implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10. Instead, it seeks information about two “Programs” (including national aspects thereof) of Plaintiffs, not of the Counties or the Secretary. Plaintiffs read the scope of discovery as relating to the official implementation of the two noted procedures by the Secretary and/or the Counties. It is only the Counties who implement the mail-in procedures for the elections. Thus, the use of the conjunctive “and” can only mean that the mail-in and poll-watching procedures referenced are the official procedures implemented by the County, and not Plaintiffs’ contentions regarding them. Moreover, it is the Secretary and the Counties who will bear the burden of demonstrating the procedures they implement and enforce are constitutional. Therefore, this Document Request is improper.

In light of above objections, on which Plaintiffs stand, no documents will be produced.

REQUEST FOR PRODUCTION NO. 10

Any and all Documents, records, data, and/or internal and external Communications concerning the recruitment of Poll Watchers or any Person or entity to observe polling places, absentee or mail ballot drop-off locations, or locations where votes are counted in Pennsylvania for the 2020 General Election.

Response: Plaintiffs object to this Document Request on the ground that it seeks information on topics outside the limited scope of the expedited discovery ordered by the Court. In response to objections by myriad defendants to the timing and scope of discovery, the Court entered an Order on July 17, 2020, ([ECF #124](#)) that allowed discovery on an expedited basis but only on a limited scope. Any discovery beyond the scope of the reports to the Secretary of the Commonwealth by the County Boards of Election as contemplated by [71 P.S. § 279.6\(c\)](#) “must (i) not be duplicative of materials received in connection with the report, and (ii) be narrowly tailored to the implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10.

This Document Request goes beyond the scope of the approved discovery in that it seeks information not about the “implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10. Instead, it seeks information about Plaintiffs’ recruitment of poll watchers. Plaintiffs read the scope of discovery as relating to the official implementation of the two noted procedures by the Secretary and/or the Counties. It is only the Counties who implement the mail-in procedures for the elections. Thus, the use of the conjunctive “and” can only mean that the mail-in and poll-watching procedures referenced are the official procedures implemented by the County, and not Plaintiffs’ contentions regarding them. Moreover, it is the Secretary and the Counties who will bear the burden of demonstrating the procedures they implement and enforce are constitutional. Therefore, this Document Request is improper.

In light of above objections, on which Plaintiffs stand, no documents will be produced.

REQUEST FOR PRODUCTION NO. 11

Any and all Documents, records, data, and/or internal and external Communications concerning the training of Poll Watchers or any other Person or entity to observe polling places, absentee or mail ballot drop-off locations, or locations where votes are counted in Pennsylvania for the 2020 General Election.

Response: Plaintiffs object to this Document Request on the ground that it seeks information on topics outside the limited scope of the expedited discovery ordered by the Court. In response

to objections by myriad defendants to the timing and scope of discovery, the Court entered an Order on July 17, 2020, ([ECF #124](#)) that allowed discovery on an expedited basis but only on a limited scope. Any discovery beyond the scope of the reports to the Secretary of the Commonwealth by the County Boards of Election as contemplated by [71 P.S. § 279.6\(c\)](#) “must (i) not be duplicative of materials received in connection with the report, and (ii) be narrowly tailored to the implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10.

This Document Request goes beyond the scope of the approved discovery in that it seeks information not about the “implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10. Instead, it seeks internal information about how certain Plaintiffs train their poll watchers. Plaintiffs read the scope of discovery as relating to the official implementation of the two noted procedures by the Secretary and/or the Counties. It is only the Counties who implement the mail-in procedures for the elections. Thus, the use of the conjunctive “and” can only mean that the mail-in and poll-watching procedures referenced are the official procedures implemented by the County, and not Plaintiffs’ contentions regarding them. Moreover, it is the Secretary and the Counties who will bear the burden of demonstrating the procedures they implement and enforce are constitutional. Therefore, this Document Request is improper.

Additionally, Plaintiffs object to this Document Request on the ground of relevance. The training any of the Plaintiffs may provide to poll watchers is not at issue in this case. Plaintiffs’ Amended Complaint is asking the Court to issue relief in the form of, among other things, a declaratory and injunctive judgment that the Secretary of the Commonwealth and all of the Boards of Election follow the provisions of the Election Code in a uniform manner. As this Court noted years ago: “A state must impose uniform statewide standards in each county in order to protect the legality of a citizen’s vote. Anything less implicates constitutional problems under the equal protection clause of the Fourteenth Amendment.” [Pierce v. Allegheny County Bd. of Elections](#), 324 F. Supp. 2d 684, 697 (W.D. Pa. 2003). Plaintiffs’ claim is based upon the inconsistent enforcement of the Election Code requirements across the Commonwealth, which is a violation of Plaintiffs’ constitutional rights. Plaintiffs’ claim also is based upon the failure of the Secretary and all of the County Election Boards to follow the requirements under the Election Code for properly administering Pennsylvania’s absentee and mail-in voting scheme, which also violates their constitutional rights. The Pennsylvania General Assembly established the requirements that must be followed for ballots to be cast legally, requirements the Pennsylvania Supreme Court has recognized are designed to reduce fraud. Neither the Secretary of the Commonwealth nor the County Election Boards have the ability to ignore, modify, restrict, or expand upon those requirements. Even if the Secretary or a Board of Elections were to view those legislatively-enacted requirements as mere “technicalities,” they still have an obligation to enforce those requirements. As the Pennsylvania Supreme Court recently noted, “so-called technicalities of the Election Code are necessary for the preservation of secrecy and the sanctity of the ballot and must therefore be observed ...” [In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election](#), 843 A.2d 1223, 1234 (Pa. 2004); *see also id.*, at 1231-32 (noting that “shall” in the Election Code, including its use in Section 3146.6(a) concerning absentee voting, is mandatory). The same language that was interpreted in 2003 by the Pennsylvania Supreme Court was used and adopted by the General Assembly in Act 77.

In light of above objections, on which Plaintiffs stand, no documents will be produced.

REQUEST FOR PRODUCTION NO. 12

Any and all Documents, records, data, and/or internal and external Communications concerning the assignment, distribution, and/or allocation of Poll Watchers or any other Person or entity to observe polling places, absentee or mail ballot drop-off locations, or locations where votes are counted in Pennsylvania for the 2020 General Election.

Response: Plaintiffs object to this Document Request on the ground that it seeks information on topics outside the limited scope of the expedited discovery ordered by the Court. In response to objections by myriad defendants to the timing and scope of discovery, the Court entered an Order on July 17, 2020, ([ECF #124](#)) that allowed discovery on an expedited basis but only on a limited scope. Any discovery beyond the scope of the reports to the Secretary of the Commonwealth by the County Boards of Election as contemplated by [71 P.S. § 279.6\(c\)](#) “must (i) not be duplicative of materials received in connection with the report, and (ii) be narrowly tailored to the implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10.

This Document Request goes beyond the scope of the approved discovery in that it seeks information not about the “implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10. Instead, it seeks information about internal to Plaintiffs’ information on the use of poll watchers and about the Plaintiffs’ use of poll watchers. Plaintiffs read the scope of discovery as relating to the official implementation of the two noted procedures by the Secretary and/or the Counties. It is only the Counties who implement the mail-in procedures for the elections. Thus, the use of the conjunctive “and” can only mean that the poll-watching procedures referenced also are the official procedures implemented by the County. Moreover, it is the Secretary and the Counties who will bear the burden of demonstrating the procedures they implement and enforce are constitutional. Therefore, this Document Request is improper.

In light of above objections, on which Plaintiffs stand, no documents will be produced.

REQUEST FOR PRODUCTION NO. 13

Any and all Documents, records, data, and/or internal and external Communications concerning any relationship between the demographic breakdown of voters, including but not limited to their race and age, who vote in a particular precinct and the allocation of Poll Watchers or any other

Person or entity to observe polling places, absentee or mail ballot drop-off locations, or locations where votes are counted in Pennsylvania for the 2020 General Election.

Response: Plaintiffs object to this Document Request on the ground that it seeks information on topics outside the limited scope of the expedited discovery ordered by the Court. In response to objections by myriad defendants to the timing and scope of discovery, the Court entered an Order on July 17, 2020, ([ECF #124](#)) that allowed discovery on an expedited basis but only on a limited scope. Any discovery beyond the scope of the reports to the Secretary of the Commonwealth by the County Boards of Election as contemplated by [71 P.S. § 279.6\(c\)](#) “must (i) not be duplicative of materials received in connection with the report, and (ii) be narrowly tailored to the implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10.

This Document Request goes beyond the scope of the approved discovery in that it seeks information not about the “implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10. Instead, it seeks information about some alleged relationship between demographics of voters and the Plaintiffs’ use of poll watchers. Plaintiffs read the scope of discovery as relating to the official implementation of the two noted procedures by the Secretary and/or the Counties. It is only the Counties who implement the mail-in procedures for the elections. Thus, the use of the conjunctive “and” can only mean that the poll-watching procedures referenced also are the official procedures implemented by the County. Moreover, it is the Secretary and the Counties who will bear the burden of demonstrating the procedures they implement and enforce are constitutional. Therefore, this Document Request is improper.

Additionally, Plaintiffs object to this Document Request on the ground of relevance. The Election Code, as passed by the General Assembly, permits poll watchers to be present at any and all polling places. Moreover, those poll watchers perform a valid, valuable, and state-recognized function of helping to ensure the reliability and legality of elections.

Plaintiffs’ Amended Complaint is asking the Court to issue relief in the form of, among other things, a declaratory and injunctive judgment that the Secretary of the Commonwealth and all of the Boards of Election follow the provisions of the Election Code in a uniform manner. As this Court noted years ago: “A state must impose uniform statewide standards in each county in order to protect the legality of a citizen’s vote. Anything less implicates constitutional problems under the equal protection clause of the Fourteenth Amendment.” [Pierce v. Allegheny County Bd. of Elections](#), 324 F. Supp. 2d 684, 697 (W.D. Pa. 2003). Plaintiffs’ claim is based upon the inconsistent enforcement of the Election Code requirements across the Commonwealth, which is a violation of Plaintiffs’ constitutional rights. Plaintiffs’ claim also is based upon the failure of the Secretary and all of the County Election Boards to follow the requirements under the Election Code for properly administering Pennsylvania’s absentee and mail-in voting scheme, which also violates their constitutional rights. The Pennsylvania General Assembly established the requirements that must be followed for ballots to be cast legally, requirements the Pennsylvania Supreme Court has recognized are designed to reduce fraud. Neither the Secretary of the Commonwealth nor the County Election Boards have the ability to ignore, modify, restrict, or expand upon those requirements. Even if the Secretary or a Board of Elections were to view those legislatively-

enacted requirements as mere “technicalities,” they still have an obligation to enforce those requirements. As the Pennsylvania Supreme Court recently noted, “so-called technicalities of the Election Code are necessary for the preservation of secrecy and the sanctity of the ballot and must therefore be observed” *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223, 1234 (Pa. 2004).; *see also id.*, at 1231-32 (noting that “shall” in the Election Code, including its use in Section 3146.6(a) concerning absentee voting, is mandatory). The same language that was interpreted in 2003 by the Pennsylvania Supreme Court was used and adopted by the General Assembly in Act 77.

In light of above objections, on which Plaintiffs stand, no documents will be produced.

REQUEST FOR PRODUCTION NO. 14

Any and all Documents, records, data, and/or internal and external Communications concerning any relationship between the actual or perceived partisan leanings of particular precincts and the allocation of Poll Watchers or any other Person or entity to observe polling places, absentee or mail ballot drop-off locations, or locations where votes are counted in Pennsylvania for the 2020 General Election.

Response: Plaintiffs object to this Document Request on the ground that it seeks information on topics outside the limited scope of the expedited discovery ordered by the Court. In response to objections by myriad defendants to the timing and scope of discovery, the Court entered an Order on July 17, 2020, ([ECF #124](#)) that allowed discovery on an expedited basis but only on a limited scope. Any discovery beyond the scope of the reports to the Secretary of the Commonwealth by the County Boards of Election as contemplated by [71 P.S. § 279.6\(c\)](#) “must (i) not be duplicative of materials received in connection with the report, and (ii) be narrowly tailored to the implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10.

This Document Request goes beyond the scope of the approved discovery in that it seeks information not about the “implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10. Instead, it seeks information about some alleged relationship between the partisan leaning of voting precincts and the Plaintiffs’ use of poll watchers. Plaintiffs read the scope of discovery as relating to the official implementation of the two noted procedures by the Secretary and/or the Counties. It is only the Counties who implement the mail-in procedures for the elections. Thus, the use of the conjunctive “and” can only mean that the poll-watching procedures referenced also are the official procedures implemented by the County. Moreover, it is the Secretary and the Counties who will bear the burden of demonstrating the procedures they implement and enforce are constitutional. Therefore, this Document Request is improper.

Additionally, Plaintiffs object to this Document Request on the ground of relevance. The Election Code, as passed by the General Assembly, permits poll watchers to be present at any and all polling

places. Moreover, those poll watchers perform a valid, valuable, and state-recognized function of helping to ensure the reliability and legality of elections.

Plaintiffs' Amended Complaint is asking the Court to issue relief in the form of, among other things, a declaratory and injunctive judgment that the Secretary of the Commonwealth and all of the Boards of Election follow the provisions of the Election Code in a uniform manner. As this Court noted years ago: "A state must impose uniform statewide standards in each county in order to protect the legality of a citizen's vote. Anything less implicates constitutional problems under the equal protection clause of the Fourteenth Amendment." *Pierce v. Allegheny County Bd. of Elections*, 324 F. Supp. 2d 684, 697 (W.D. Pa. 2003). Plaintiffs' claim is based upon the inconsistent enforcement of the Election Code requirements across the Commonwealth, which is a violation of Plaintiffs' constitutional rights. Plaintiffs' claim also is based upon the failure of the Secretary and all of the County Election Boards to follow the requirements under the Election Code for properly administering Pennsylvania's absentee and mail-in voting scheme, which also violates their constitutional rights. The Pennsylvania General Assembly established the requirements that must be followed for ballots to be cast legally, requirements the Pennsylvania Supreme Court has recognized are designed to reduce fraud. Neither the Secretary of the Commonwealth nor the County Election Boards have the ability to ignore, modify, restrict, or expand upon those requirements. Even if the Secretary or a Board of Elections were to view those legislatively-enacted requirements as mere "technicalities," they still have an obligation to enforce those requirements. As the Pennsylvania Supreme Court recently noted, "so-called technicalities of the Election Code are necessary for the preservation of secrecy and the sanctity of the ballot and must therefore be observed" *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223, 1234 (Pa. 2004); see also *id.*, at 1231-32 (noting that "shall" in the Election Code, including its use in Section 3146.6(a) concerning absentee voting, is mandatory). The same language that was interpreted in 2003 by the Pennsylvania Supreme Court was used and adopted by the General Assembly in Act 77.

In light of above objections, on which Plaintiffs stand, no documents will be produced.

REQUEST FOR PRODUCTION NO. 15

Any and all Documents, records, data, and/or internal and external Communications concerning the use, effectiveness, partisan effects, or electoral value of absentee or mail ballot collection by third-party groups.

Response: Plaintiffs object to this Document Request on the ground that it seeks information on topics outside the limited scope of the expedited discovery ordered by the Court. In response to objections by myriad defendants to the timing and scope of discovery, the Court entered an Order on July 17, 2020, ([ECF #124](#)) that allowed discovery on an expedited basis but only on a limited scope. Any discovery beyond the scope of the reports to the Secretary of the Commonwealth by the County Boards of Election as contemplated by [71 P.S. § 279.6\(c\)](#) "must (i) not be duplicative of materials received in connection with the report, and (ii) be narrowly tailored

to the implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10.

This Document Request goes beyond the scope of the approved discovery in that it seeks information not about the “implementation of the mail-in and poll-watching procedures in the 2020 primary election, and the procedures for the 2020 general election.” [ECF #124](#), p.4, ¶II.B.10. Instead, it seeks information about Plaintiffs’ view on the “use, effectiveness, partisan effects, or electoral value of absentee or mail ballot collection by third-party groups.”

Additionally, Plaintiffs object to this Document Request on the ground of relevance. The Election Code, as passed by the General Assembly, does not permit collection of ballots by third-parties (except that it allows third-parties to return absentee ballots for disabled voters). Thus, anything sought by this Request is irrelevant.

Plaintiffs’ Amended Complaint is asking the Court to issue relief in the form of, among other things, a declaratory and injunctive judgment that the Secretary of the Commonwealth and all of the Boards of Election follow the provisions of the Election Code in a uniform manner. As this Court noted years ago: “A state must impose uniform statewide standards in each county in order to protect the legality of a citizen’s vote. Anything less implicates constitutional problems under the equal protection clause of the Fourteenth Amendment.” [Pierce v. Allegheny County Bd. of Elections](#), 324 F. Supp. 2d 684, 697 (W.D. Pa. 2003). Plaintiffs’ claim is based upon the inconsistent enforcement of the Election Code requirements across the Commonwealth, which is a violation of Plaintiffs’ constitutional rights. Plaintiffs’ claim also is based upon the failure of the Secretary and all of the County Election Boards to follow the requirements under the Election Code for properly administering Pennsylvania’s absentee and mail-in voting scheme, which also violates their constitutional rights. The Pennsylvania General Assembly established the requirements that must be followed for ballots to be cast legally, requirements the Pennsylvania Supreme Court has recognized are designed to reduce fraud. Neither the Secretary of the Commonwealth nor the County Election Boards have the ability to ignore, modify, restrict, or expand upon those requirements. Even if the Secretary or a Board of Elections were to view those legislatively-enacted requirements as mere “technicalities,” they still have an obligation to enforce those requirements. As the Pennsylvania Supreme Court recently noted, “so-called technicalities of the Election Code are necessary for the preservation of secrecy and the sanctity of the ballot and must therefore be observed” [In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election](#), 843 A.2d 1223, 1234 (Pa. 2004).; *see also id.*, at 1231-32 (noting that “shall” in the Election Code, including its use in Section 3146.6(a) concerning absentee voting, is mandatory). The same language that was interpreted in 2003 by the Pennsylvania Supreme Court was used and adopted by the General Assembly in Act 77.

In light of above objections, on which Plaintiffs stand, no documents will be produced.

Respectfully submitted,

PORTER WRIGHT MORRIS & ARTHUR LLP

Date: August 5, 2020

By: /s/ Ronald L. Hicks, Jr.

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Counsel for Plaintiffs

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that I have reviewed the foregoing written answers and that the factual allegations are true and correct.

Date: August 5, 2020

/s/ James J. Fitzpatrick
James J. Fitzpatrick, PA EDO Director
Donald J. Trump for President, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 5, 2020, a true and correct copy of the foregoing **PLAINTIFFS' RESPONSES TO DEFENDANT-INTERVENORS CITIZENS FOR PENNSYLVANIA'S FUTURE AND SIERRA CLUB'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS to PLAINTIFFS** has been served upon the below-identified propounding counsel via email and U.S. mail:

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Counsel for Intervenor-Defendants Citizens for Pennsylvania's Future and Sierra Club

Respectfully submitted,

PORTER WRIGHT MORRIS & ARTHUR LLP

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

DONALD J. TRUMP FOR)	Civil Action
PRESIDENT, INC.; <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	No.: 2-20-CV-966
v.)	
)	
KATHY BOOCKVAR; <i>et al.</i> ,)	
)	
Defendants.)	Judge J. Nicholas Ranjan

**PLAINTIFFS' SET OF WRITTEN INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS DIRECTED TO
DEFENDANT KATHY BOOCKVAR**

Plaintiffs, by their undersigned counsel and pursuant to Rules 26, 33, and 34 of the Federal Rules of Civil Procedure and the Court's July 17, 2020 Scheduling Order, request Defendant Kathy Boockvar, in her capacity as Secretary of the Commonwealth of Pennsylvania, to, within the time period provided under the July 17, 2020 Scheduling Order: (A) answer the within interrogatories individually, separately, and fully, in writing, and under oath; and (B) in addition to the August 1, 2020 report and the data submissions made under 71 P.S. § 279.6(c) that the Court has ordered Defendant to disclose to all other parties, respond in writing to the within requests for production of documents and produce the documents requested herein for inspection and copying at the offices of Porter Wright Morris & Arthur LLP, Six PPG Place, Third Floor, Pittsburgh, PA 15222, or at such alternate location or time as is mutually agreed upon by counsel.

Also, pursuant to Local Rules 33 and 34, Plaintiffs are opting to serve these discovery requests in Writable Electronic Form and are opting to require that responses be provided in electronic form. Any discovery requests served upon Plaintiffs are to be served in Writable Electronic Format as well.

DEFINITIONS

The following definitions shall apply to these Discovery Requests:

1. The terms “refer,” “reflect” or “relate to,” or any form thereof, as used herein shall mean, without limitation, constituting, concerning, referring to, alluding to, responding to, connected with, commenting upon, in respect to, about, regarding, discussing, showing, describing, reflecting or analyzing.

2. The term “concerning” and any variant thereof means, without limitation, constituting, referring to, alluding to, responding to, relating to, connected with, commenting upon, in respect to, about, regarding, discussing, showing, contrasting, comparing, contradicting, describing, reflecting, or analyzing.

3. The term “each,” “any,” and “all” are both singular and plural.

4. The term “document” as used herein shall mean the original (or any copies when originals are not available) and any non-identical copies of any kind of written or graphic matter, however produced or reproduced, and including but not limited to: papers; books; e-mails; letters; photographs; correspondence; telegrams; cables; telex messages; memoranda; notes; notations; work papers; transcripts; resolutions; certificates; opinions; reports; studies; analyses; evaluations; contracts; ledgers; journals; books or records of account; receipts; forms; invoices; calendars; appointment books; diaries; sound recordings; video; computer tapes; magnetic tapes; microfilms; all other records kept or stored by computerized, electronic, photographic, xerographic or mechanical means; and things similar to any of the foregoing however denominated. The term “document” shall be interpreted to include “electronically stored information” as that term is understood in the context of the Federal Rules of Civil Procedure.

5. The term “identify,” as used herein shall mean:

a. With respect to a natural person, to state the person’s full name, present or last known residence and employment addresses, and present or last known business affiliation and title or position, and present, or if known, last known telephone number;

b. With respect to a corporation, to state the corporation’s full name, date and state (or country, if not domestic) of incorporation and address of its principal office or offices;

c. With respect to a person, as defined above, other than a natural person or a corporation, to state its proper name or designation, its principal office address, and its present, or if unknown, its last known telephone number;

d. With respect to a document, whether or not the document is now in existence, to state the date the document bears or bore or, if undated, the date it was written, the name and address of each person who wrote it or who participated in the writing of it, name and address of the person to whom it was addressed and of each person to whom a copy of identified as being directed, the name and address of each person who received a copy of the document, a description of the document (for example, “letter” or “memoranda”), a detailed summary of the contents of the documents, the present location or the custodian of each copy or, if known, its last known location or custodian, if the document is no longer in existence or is no longer in the Your

possession, custody or control, the disposition made of the document, the reason or reasons for the disposition, and the date of the disposition; and

e. With respect to a communication, to state the method of communication (for example, personal conversation, telephone conversation, letter, telex, cable), its date and time, the identity of the person(s) making and the person(s) receiving the communication, the verbatim contents of the communication or, if the verbatim contents of the communication cannot be recalled, a detailed summary of the communication; and the identity of any document referring in any way to the communication (including location and custodian of the document).

6. The term “communication” as used herein shall mean any manner or form of communication or exchange of information, whether oral, written or otherwise, and includes, without limitation, any meeting, conversation, telephone call, letter or exchange of documents.

7. The term “person” as used herein shall mean the plural as well as the singular and shall include any natural person, firm, association, partnership, joint venture, business trust, corporation, governmental or public entity, department, organization, agency, office, or any other entity.

8. The connectives “and” and “or” as used herein shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope. The term “all” as used herein shall be understood to include and encompass “any.” Wherever appropriate in these Requests, the singular form of a word shall include their plural. Likewise, words used in the plural shall also be taken to mean and include the singular. Wherever a masculine pronoun or possessive adjective appears, reference is made to both male and female persons, as appropriate.

9. The terms “You” or “Your” shall refer to Defendant Kathy Boockvar, in her capacity as Secretary of the Commonwealth of Pennsylvania, and any employee, agent, attorney, or other representative acting on her behalf or for the Pennsylvania Department of State or its Bureau of Commissions, Elections and Legislation, including without limitation: Jonathan M. Marks, Deputy Secretary for Elections & Commissions; Veronica Degraffenreid, Special Advisor on Election Modernization; Jessica Mathis, Director of Bureau of Election Services and Notaries; and Michael Moser, Director of Bureau of Election Security and Technology.

10. The term “action” means the case captioned “*Donald J. Trump for President, Inc. et al. v. Kathy Boockvar et al.*,” and pending in the United States District Court for the Western District of Pennsylvania, Case No. 2:20-cv-966.

11. The term “Election Code” means the Pennsylvania Election Code, Act of June 3, 1937, P.L. 1333, as amended and codified at 25 P.S. § 2600, *et seq.*

12. The term “County Election Board” refers to any and all of sixty-seven (67) county boards of elections in the Commonwealth of Pennsylvania as provided by Election Code Section 301, 25 P.S. § 2641, and any employee, agent, attorney, or other representative acting on their behalf or the administrative department, agency, or division responsible for elections, either individually or collectively.

13. The term “District Election Board” refers to any and all of the district election boards within the Commonwealth of Pennsylvania as that term is defined in Election Code Section 401, 25 P.S. § 2671.

14. The term “Procedures, Practices, Rules, Regulations, and/or Instructions” means any and all procedures, practices, rules, regulations, and/or instructions You have implemented, used, followed, and/or communicated, or intend to implement, use, follow, and/or communicate, regardless whether they have been reduced to writing and/or formally adopted.

INSTRUCTIONS

The following instructions shall apply to these Discovery Requests:

1. In responding to these Discovery Requests, You are requested to furnish all information, items and documents known or available to her regardless of whether such information, items and documents are directly in Your possession or that of Your agents, representatives, attorneys or experts.

2. If any requested document or item was in the possession or custody of You or subject to Your control at some point in time, but is no longer, then You must state the following: (a) when the document or item was created; (b) what was done with the document or item; (c) the identity of the current custodian of the document or item; (d) the identity of the person who made the decision to transfer or dispose of the document or item; and (e) the reasons for the transfer or disposal.

3. You shall respond to these Discovery Requests fully and completely. Where precise or exact information, data or dates requested are not available, You shall state approximate information, data or dates with a designation that such information, data or dates are approximate rather than exact. If any of these Discovery Requests cannot be answered fully and completely, You shall respond to the extent possible, specifying the reasons for Your inability to answer the remainder and stating the substance of Your knowledge, information and belief concerning the subject matter of the unanswered portion. Such a statement shall include the steps taken to locate any responsive documents or the requested information. If You encounter any ambiguity in construing these Discovery Requests, state the construction used in answering.

4. All electronically-stored information (“ESI”) shall be produced in its native electronic format or, in the alternative, as single-page .tiff images accompanied by an ASCII load file, including all relevant metadata and email/attachment relationship. In the case of e-mails, such database load file shall include the following metadata fields: to, from, cc, bcc, email subject, date and time sent/received, folder, attachment file name, and full text.

5. Pursuant to Federal Rule of Civil Procedure 26(e), You are directed to supplement or correct any disclosure or response in Your answers and responses to the interrogatories and requests for production of documents contained herein in a timely manner if You learn that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to Plaintiffs during the discovery process or in writing. In addition, should You learn of any new information or documents that render any prior answers or responses to these interrogatories and requests for production of

documents substantially incomplete or inaccurate, You shall supplement Your answer or response and provide an answer or response or adjust Your prior answer or response (whatever might be applicable) to the interrogatory or request for production of documents. *See* Advisory Committee Notes on Rules – 1966 Amendment for Fed. R. Civ. P. 26(e); 4 Moore’s Federal Practice 33.25[4] (2d ed. 1966).

6. In responding to these Discovery Requests, You are requested to produce the original documents as they are kept in the usual course of affairs or to organize and label them to correspond with categories in this discovery request. If any document is responsive to more than one paragraph, You may provide a single copy of the document indicating the paragraphs to which it is responsive in lieu of providing multiple copies.

7. If anything has been deleted or redacted from a document or item produced in response to these Discovery Requests, You must state the following in its response: (a) the nature of the material deleted; (b) the reason for the deletion; and (c) the identity of the person responsible for the deletion.

8. Pursuant to Federal Rule of Civil Procedure 26(b)(5)(A), if You are claiming with respect to any information or documents otherwise discoverable that the information or documents are privileged or subject to protection as trial-preparation material, You shall expressly make the claim and describe the nature of the documents, communications, or tangible things not produced or disclosed — and do so in a manner that, without revealing information itself privileged or protected, will enable Plaintiffs to assess Your claim of privilege or protection. Pursuant to Federal Rule of Civil Procedure 26(b)(5)(B), should You produce information or documents in discovery that are subject to a claim of privilege or of protection as trial-preparation material, You must notify Plaintiffs of Your claim and basis for it.

INTERROGATORIES

1. Please state whether the document attached as Exhibit 1 and titled “Pennsylvania Applications and Balloting Guidance: Mail-in and Absentee Ballots and Voter Registration Changes,” with a date of January 10, 2020, and version number 1.0, sets forth the mail-in and absentee voting Procedures, Practices, Rules, Regulations, and/or Instructions that You have published and/or provided to the County Election Boards for use in the June 2, 2020 Primary Election and the November 3, 2020 General Election.

ANSWER:

2. Please identify all correspondence, memoranda, email messages, postings, or other communications, whether in writing or made orally, that (a) were made by, to, and/or between You and any other person, including without limitation: (i) any political party or body, political committee, political action committee, non-profit organization, or other body of citizens; (ii) any voter or elector in the Commonwealth of Pennsylvania; (iii) any County Election Board; (iv) any District Election Board; and (v) any of Your employees, agents, or other representatives acting on Your behalf; and (b) concern, relate to, describe, explain, or justify the Procedures, Practices, Rules, Regulations, and/or Instructions attached as Exhibit 1, including without limitation any incidents, complaints, concerns, changes, modifications, or supplementation to such Procedures, Practices, Rules, Regulations, and/or Instructions.

ANSWER:

3. Please identify all Procedures, Practices, Rules, Regulations, and/or Instructions that You published and/or provided to the County Election Boards for use in the June 2, 2020 Primary Election and the November 3, 2020 General Election concerning or relating to the use, type, number, location, security, monitoring, advertisement, funding, and other factors or best practices for using drop boxes, mobile ballot collection centers, polling places, or other collection/drop-off locations for in-person return of voted absentee and/or mail-in ballots, including without limitation the guidance mentioned in the two italicized notes on the last page of the document attached as Exhibit 1.

ANSWER:

4. Please identify all correspondence, memoranda, email messages, postings, or other communications, whether in writing or made orally, that (a) were made by, to, and/or between You and any other person, including without limitation: (i) any political party or body, political committee, political action committee, non-profit organization, or other body of citizens; (ii) any voter/elector in the Commonwealth of Pennsylvania; (iii) any County Election Board; (iv) any District Election Board; and (v) any of Your employees, agents, or other representatives acting on Your behalf; and (b) concern, relate to, describe, explain, or justify the Procedures, Practices, Rules, Regulations, and/or Instructions identified in Your answer to the preceding Interrogatory, including without limitation any incidents, complaints, concerns, changes, modifications, or supplementation to such Procedures, Practices, Rules, Regulations, and/or Instructions.

ANSWER:

5. Please state whether the document attached as Exhibit 2 and titled “Pennsylvania Balloting and Envelope Guidance,” with a date of January 30, 2020, and version number 1.0, sets forth the mail-in and absentee balloting Procedures, Practices, Rules, Regulations, and/or Instructions that You published and/or provided to the County Election Boards for use in the June 2, 2020 Primary Election and the November 3, 2020 General Election.

ANSWER:

6. Please identify all correspondence, memoranda, email messages, postings, or other communications, whether in writing or made orally, that (a) were made by, to, and/or between You and any other person, including without limitation: (i) any political party or body, political committee, political action committee, non-profit organization, or other body of citizens; (ii) any voter/elector in the Commonwealth of Pennsylvania; (iii) any County Election Board; (iv) any District Election Board; and (v) any of Your employees, agents, or other representatives acting on Your behalf; and (b) concern, relate to, describe, explain, or justify the Procedures, Practices, Rules, Regulations, and/or Instructions attached as Exhibit 2, including without limitation any incidents, complaints, concerns, changes, modifications, or supplementation to such Procedures, Practices, Rules, Regulations, and/or Instructions.

ANSWER:

7. Please identify all Procedures, Practices, Rules, Regulations, and/or Instructions that You published and/or provided to the County Election Boards for use in the June 2, 2020 Primary Election and/or the November 3, 2020 General Election concerning or relating to the franking or prepayment of postage for either the application for absentee and/or mail-in ballots or the voted absentee and/or mail-in ballots.

ANSWER:

8. Please identify all correspondence, memoranda, email messages, postings, or other communications, whether in writing or made orally, that (a) were made by, to, and/or between You and any other person, including without limitation: (i) any political party or body, political committee, political action committee, non-profit organization, or other body of citizens; (ii) any voter/elector in the Commonwealth of Pennsylvania; (iii) any County Election Board; (iv) any District Election Board; and (v) any of Your employees, agents, or other representatives acting on Your behalf; and (b) concern, relate to, describe, explain, or justify the Procedures, Practices, Rules, Regulations, and/or Instructions identified in Your answer to the preceding Interrogatory, including without limitation any incidents, complaints, concerns, changes, modifications, or supplementation to such Procedures, Practices, Rules, Regulations, and/or Instructions.

ANSWER:

9. Please identify all Procedures, Practices, Rules, Regulations, and/or Instructions that You published and/or provided to the County Election Boards for use in the June 2, 2020 Primary Election and/or the November 3, 2020 General Election concerning or relating to the pre-canvassing, canvassing, counting, and/or tabulation of voted absentee and/or mail-in ballots, and state whether the document attached as Exhibit 3 and with a subject title of “Important DOS Email re: Absentee/Mail-in Ballot Canvass” and a date of May 28, 2020, constitutes part of those Procedures, Practices, Rules, Regulations, and/or Instructions.

ANSWER:

10. Please identify all correspondence, memoranda, email messages, postings, or other communications, whether in writing or made orally, that (a) were made by, to, and/or between You and any other person, including without limitation: (i) any political party or body, political committee, political action committee, non-profit organization, or other body of citizens; (ii) any voter/elector in the Commonwealth of Pennsylvania; (iii) any County Election Board; (iv) any District Election Board; and (v) any of Your employees, agents, or other representatives acting on Your behalf; and (b) concern, relate to, describe, explain, or justify the Procedures, Practices, Rules, Regulations, and/or Instructions identified in Your answer to the preceding Interrogatory, including without limitation any incidents, complaints, concerns, changes, modifications, or supplementation to such Procedures, Practices, Rules, Regulations, and/or Instructions.

ANSWER:

11. Please identify all incidents known or reported to You from the June 2, 2020 Primary Election of: (a) electors who applied for and/or voted an absentee or mail-in ballot and also voted in-person, either on a voting machine or via a paper or provisional ballot, on Election Day at a polling place; (b) electors who received and/or voted more than one absentee or mail-in ballot; (c) non-disabled electors whose absentee or mail-in ballots were mailed or delivered in-person by a person other than the non-disabled electors who voted the absentee or mail-in ballots; and/or (d) electors who claimed that someone had impersonated them and/or cast either in-person, absentee, and/or mail-in ballots for them without their knowledge, consent, or authorization, and for each such incident, state what review or investigation was undertaken by You or any County Election Board in response to the incident, including all determinations made on the incident, legal actions filed, and referrals to law enforcement.

ANSWER:

12. Please state whether the document attached as Exhibit 4 and titled “Pennsylvania Provisional Voting Guidance,” with a date of March 5, 2020, and version number 1.0, sets forth the provisional voting Procedures, Practices, Rules, Regulations, and/or Instructions that You published and/or provided to the County Election Boards for use in the June 2, 2020 Primary Election and the November 3, 2020 General Election.

ANSWER:

13. Please identify all correspondence, memoranda, email messages, postings, or other communications, whether in writing or made orally, that (a) were made by, to, and/or between You and any other person, including without limitation: (i) any political party or body, political committee, political action committee, non-profit organization, or other body of citizens; (ii) any voter/elector in the Commonwealth of Pennsylvania; (iii) any County Election Board; (iv) any District Election Board; and (v) any of Your employees, agents, or other representatives acting on Your behalf; and (b) concern, relate to, describe, explain, or justify the Procedures, Practices, Rules, Regulations, and/or Instructions attached as Exhibit 4, including without limitation any incidents, complaints, concerns, changes, modifications, or supplementation to such Procedures, Practices, Rules, Regulations, and/or Instructions.

ANSWER:

14. Please state whether the document attached as Exhibit 5 and titled “Rights of Watchers, Candidate & Attorneys,” with a date of August, 2008, sets forth the poll watching Procedures, Practices, Rules, Regulations, and/or Instructions that You published and/or provided to the County Election Boards for use in the June 2, 2020 Primary Election and the November 3, 2020 General Election.

ANSWER:

15. Please identify all correspondence, memoranda, email messages, postings, or other communications, whether in writing or made orally, that (a) were made by, to, and/or between You and any other person, including without limitation: (i) any political party or body, political committee, political action committee, non-profit organization, or other body of citizens; (ii) any voter/elector in the Commonwealth of Pennsylvania; (iii) any County Election Board; (iv) any District Election Board; and (v) any of Your employees, agents, or other representatives acting on Your behalf; and (b) concern, relate to, describe, explain, or justify the Procedures, Practices, Rules, Regulations, and/or Instructions attached as Exhibit 5, including without limitation any incidents, complaints, concerns, changes, modifications, or supplementation to such Procedures, Practices, Rules, Regulations, and/or Instructions.

ANSWER:

16. From the June 2, 2020 Primary Election, please identify for each county and the sum for the Commonwealth of Pennsylvania:

- (a) The total number of absentee and mail-in ballots that were returned by mail and of this total, the number of mail-retuned ballots that were: (i) pre-canvassed and counted; (ii) pre-canvassed and not counted; (iii) challenged and counted; (iv) challenged and not counted; (v) canvassed and counted; (vi) canvassed and not counted; and (vii) not canvassed and not counted;
- (b) The total number of absentee and mail-in ballots that were returned in person to the official registered offices of the county boards of elections, and of this total, the number of in-person/office-retuned ballots that were: (i) pre-canvassed and counted; (ii) pre-canvassed and not counted; (iii) challenged and counted; (iv) challenged and not counted; (v) canvassed and counted; (vi) canvassed and not counted; and (vii) not canvassed and not counted; and
- (c) The total number of absentee and mail-in ballots that were returned in person to a drop-box, mobile ballot collection center, polling place, or other collection/drop-off location other than inside the official registered offices of the county boards of elections, and of this total, the number of in-person/office-retuned ballots that were: (i) pre-canvassed and counted; (ii) pre-canvassed and not counted; (iii) challenged and counted; (iv) challenged and not counted; (v) canvassed and counted; (vi) canvassed and not counted; and (vii) not canvassed and not counted.

ANSWER:

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Please produce all documents You referenced, relied upon, reviewed, or consulted when answering the above Interrogatories.

RESPONSE:

2. Please produce all Procedures, Practices, Rules, Regulations, and/or Instructions You implemented, used, followed, and/or communicated in the June 2, 2020 Primary Election, and all Procedures, Practices, Rules, Regulations, and/or Instructions that You intend to implement, use, follow, and/or communicate in the November 3, 2020 General Election, concerning or relating to the receipt, storage, review, delivery, return, collection, and counting of paper ballots, including but not limited to absentee, mail-in, provisional, and alternative emergency ballots, and all correspondence, memoranda, email messages, postings, or other documents reflecting communications, whether in writing or made orally, that (a) were made by, to, and/or between You and any other person, including without limitation: (i) any political party or body, political committee, political action committee, non-profit organization, or other body of citizens; (ii) any voter/elector in the Commonwealth of Pennsylvania; (iii) any County Election Board; (iv) any District Election Board; and (v) any of Your employees, agents, or other representatives acting on Your behalf; and (b) concern, relate to, describe, explain, or justify such Procedures, Practices, Rules, Regulations, and/or Instructions , including without limitation any incidents, complaints, concerns, changes, modifications, or supplementation to such Procedures, Practices, Rules, Regulations, and/or Instructions.

RESPONSE:

3. Please produce all Procedures, Practices, Rules, Regulations, and/or Instructions You implemented, used, followed, and/or communicated in the June 2, 2020 Primary Election, and all Procedures, Practices, Rules, Regulations, and/or Instructions that You intend to implement, use, follow, and/or communicate in the November 3, 2020 General Election, concerning or relating to the pre-canvassing, canvassing, and/or counting of absentee and/or mail-in ballots, including without limitation (a) the timing of when such pre-canvassing, canvassing, and/or counting shall occur; (b) whether absentee and/or mail-in ballots that have been (i) cast either without inner secrecy envelopes, with inner secrecy envelopes with marks, text, or symbols, or without the outside envelope's declaration being filled out, dated, and signed, and/or (ii) delivered in-person by someone other than the electors who voted the ballots should be processed, handled, counted, or disallowed, and (c) whether poll watchers can be present during any such pre-canvassing, canvassing, and/or counting, and all correspondence, memoranda, email messages, postings, or other documents reflecting communications, whether in writing or made orally, that (a) were made by, to, and/or between You and any other person, including without limitation: (i) any political party or body, political committee, political action committee, non-profit organization, or other body of citizens; (ii) any voter/elector in the Commonwealth of Pennsylvania; (iii) any County Election Board; (iv) any District Election Board; and (v) any of Your employees, agents, or other representatives acting on Your behalf; and (b) concern, relate to, describe, explain, or justify such Procedures, Practices, Rules, Regulations, and/or Instructions , including without limitation any incidents, complaints, concerns, changes, modifications, or supplementation to such Procedures, Practices, Rules, Regulations, and/or Instructions.

RESPONSE:

4. Please produce all Procedures, Practices, Rules, Regulations, and/or Instructions You implemented, used, followed, and/or communicated in the June 2, 2020 Primary Election, and all Procedures, Practices, Rules, Regulations, and/or Instructions that You intend to implement, use, follow, and/or communicate in the November 3, 2020 General Election, concerning or relating to the use, type, number, location, security, monitoring, advertisement, funding, and other factors or best practices for using drop boxes, mobile ballot collection centers, polling places, or other collection/drop-off locations to receive voted absentee and/or mail-in ballots, including without limitation documenting security and chain of custody of such delivered ballots, and all correspondence, memoranda, email messages, postings, or other documents reflecting communications, whether in writing or made orally, that (a) were made by, to, and/or between You and any other person, including without limitation: (i) any political party or body, political committee, political action committee, non-profit organization, or other body of citizens; (ii) any voter/elector in the Commonwealth of Pennsylvania; (iii) any County Election Board; (iv) any District Election Board; and (v) any of Your employees, agents, or other representatives acting on Your behalf; and (b) concern, relate to, describe, explain, or justify such Procedures, Practices, Rules, Regulations, and/or Instructions , including without limitation any incidents, complaints, concerns, changes, modifications, or supplementation to such Procedures, Practices, Rules, Regulations, and/or Instructions.

RESPONSE:

5. Please produce all Procedures, Practices, Rules, Regulations, and/or Instructions You implemented, used, followed, and/or communicated in the June 2, 2020 Primary Election, and all Procedures, Practices, Rules, Regulations, and/or Instructions that You intend to implement, use, follow, and/or communicate in the November 3, 2020 General Election, concerning or relating to the circumstances under which a person other than the non-disabled elector may return or deliver an absentee or mail-in ballot for that non-disabled elector, and all correspondence, memoranda, email messages, postings, or other documents reflecting communications, whether in writing or made orally, that (a) were made by, to, and/or between You and any other person, including without limitation: (i) any political party or body, political committee, political action committee, non-profit organization, or other body of citizens; (ii) any voter/elector in the Commonwealth of Pennsylvania; (iii) any County Election Board; (iv) any District Election Board; and (v) any of Your employees, agents, or other representatives acting on Your behalf; and (b) concern, relate to, describe, explain, or justify such Procedures, Practices, Rules, Regulations, and/or Instructions , including without limitation any incidents, complaints, concerns, changes, modifications, or supplementation to such Procedures, Practices, Rules, Regulations, and/or Instructions.

RESPONSE:

6. Please produce all Procedures, Practices, Rules, Regulations, and/or Instructions You implemented, used, followed, and/or communicated in the June 2, 2020 Primary Election, and all Procedures, Practices, Rules, Regulations, and/or Instructions that You intend to implement, use, follow, and/or communicate in the November 3, 2020 General Election, concerning or relating to the processing, verification, acceptance and/or rejection of applications for absentee and/or mail-in ballots, including without limitation whether County Election Boards should mail applications to all registered voters or qualified electors without a signed written request or application from such electors and whether to frank or prepay the postage for any or all completed and returned applications, and all correspondence, memoranda, email messages, postings, or other documents reflecting communications, whether in writing or made orally, that (a) were made by, to, and/or between You and any other person, including without limitation: (i) any political party or body, political committee, political action committee, non-profit organization, or other body of citizens; (ii) any voter/elector in the Commonwealth of Pennsylvania; (iii) any other County Election Board; (iv) any District Election Board; (v) any of Your employees, agents, or other representatives acting on Your behalf; and/or (vi) Secretary Boockvar and/or the Elections Department; and (b) concern, relate to, describe, explain, or justify such Procedures, Practices, Rules, Regulations, and/or Instructions, including without limitation any incidents, complaints, concerns, changes, modifications, or supplementation to such Procedures, Practices, Rules, Regulations, and/or Instructions.

RESPONSE:

7. Please produce all Procedures, Practices, Rules, Regulations, and/or Instructions You implemented, used, followed, and/or communicated in the June 2, 2020 Primary Election, and all Procedures, Practices, Rules, Regulations, and/or Instructions that You intend to implement, use, follow, and/or communicate in the November 3, 2020 General Election, concerning or relating to issuance of absentee and/or mail-in ballots, including without limitation whether County Election Boards should send absentee or mail-in ballots to all registered voters or qualified electors in their county without a signed written request or application from such voters or electors, and/or whether County Election Boards should frank or pre-pay the postage for voted absentee and/or mail-in ballots, and all correspondence, memoranda, email messages, postings, or other documents reflecting communications, whether in writing or made orally, that (a) were made by, to, and/or between You and any other person, including without limitation: (i) any political party or body, political committee, political action committee, non-profit organization, or other body of citizens; (ii) any voter/elector in the Commonwealth of Pennsylvania; (iii) any County Election Board; (iv) any District Election Board; and (v) any of Your employees, agents, or other representatives acting on Your behalf; and (b) concern, relate to, describe, explain, or justify such Procedures, Practices, Rules, Regulations, and/or Instructions , including without limitation any incidents, complaints, concerns, changes, modifications, or supplementation to such Procedures, Practices, Rules, Regulations, and/or Instructions.

RESPONSE:

8. Please produce all Procedures, Practices, Rules, Regulations, and/or Instructions You implemented, used, followed, and/or communicated in the June 2, 2020 Primary Election, and all Procedures, Practices, Rules, Regulations, and/or Instructions that You intend to implement, use, follow, and/or communicate in the November 3, 2020 General Election, concerning or relating to the accreditation of poll watchers, the issuance and verification of poll watcher's certificates, and whether poll watchers are permitted to monitor the issuance, return, casting, and counting of all ballots, including without limitation absentee and/or mail-in ballots, and all correspondence, memoranda, email messages, postings, or other documents reflecting communications, whether in writing or made orally, that (a) were made by, to, and/or between You and any other person, including without limitation: (i) any political party or body, political committee, political action committee, non-profit organization, or other body of citizens; (ii) any voter/elector in the Commonwealth of Pennsylvania; (iii) any County Election Board; (iv) any District Election Board; and (v) any of Your employees, agents, or other representatives acting on Your behalf; and (b) concern, relate to, describe, explain, or justify such Procedures, Practices, Rules, Regulations, and/or Instructions , including without limitation any incidents, complaints, concerns, changes, modifications, or supplementation to such Procedures, Practices, Rules, Regulations, and/or Instructions.

RESPONSE:

9. Please produce all Procedures, Practices, Rules, Regulations, and/or Instructions You implemented, used, followed, and/or communicated in the June 2, 2020 Primary Election, and all Procedures, Practices, Rules, Regulations, and/or Instructions that You intend to implement, use, follow, and/or communicate in the November 3, 2020 General Election, concerning or relating to how County Election Boards or District Election Boards ensure that electors who voted via absentee or mail-in ballot do not vote again in-person on Election Day, or if they do, they do not have more than one of their votes counted, including without limitation how County Election Boards should notify or inform the District Election Boards which voters are entitled to vote on Election Day, either by way of a paper ballot, on a machine, or via a provisional ballot, and how County Election Boards are to mark or supplement the poll books that are delivered to the District Election Boards with such information, and all correspondence, memoranda, email messages, postings, or other documents reflecting communications, whether in writing or made orally, that (a) were made by, to, and/or between You and any other person, including without limitation: (i) any political party or body, political committee, political action committee, non-profit organization, or other body of citizens; (ii) any voter/elector in the Commonwealth of Pennsylvania; (iii) any County Election Board; (iv) any District Election Board; and (v) any of Your employees, agents, or other representatives acting on Your behalf; and (b) concern, relate to, describe, explain, or justify such Procedures, Practices, Rules, Regulations, and/or Instructions , including without limitation any incidents, complaints, concerns, changes, modifications, or supplementation to such Procedures, Practices, Rules, Regulations, and/or Instructions.

RESPONSE:

10. Please produce all documents concerning or relating to all incidents known or reported to You having occurred during the June 2, 2020 Primary Election and involving either:

- a. Electors who applied for and/or voted an absentee or mail-in ballot and also voted in-person, either on a voting machine or via a paper or provisional ballot, on Election Day at a polling place;
- b. Electors who received and/or voted more than one absentee or mail-in ballot;
- c. Non-disabled electors whose absentee or mail-in ballots were mailed or delivered in-person by a person other than the non-disabled electors who voted the absentee or mail-in ballots; and/or
- d. Electors who claimed that someone had impersonated them and/or cast either in-person, absentee, and/or mail-in ballots for them without their knowledge, consent, or authorization;

including without limitation all investigative or case files, law enforcement or other civil, criminal, or administrative referrals or proceedings, notes, memoranda, correspondence, email messages, and other documents reflecting communications, whether in writing or orally, that (a) were made by, to, and/or between You and any other person, including without limitation: (i) any political party or body, political committee, political action committee, non-profit organization, or other body of citizens; (ii) any voter/elector in the Commonwealth of Pennsylvania; (iii) any County Election Board; (iv) any District Election Board; and (v) any of Your employees, agents, or other representatives acting on Your behalf; and (b) concern, relate to, describe, or explain such incidents and the determinations made about such incidents.

RESPONSE:

Respectfully submitted,

PORTER WRIGHT MORRIS & ARTHUR LLP

Date: July 24, 2020

By: /s/ Ronald L. Hicks, Jr.

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EXHIBIT 1

TLP: WHITE



Pennsylvania
Applications and Balloting Guidance:
Mail-in and Absentee Ballots
and Voter Registration Changes

Date: January 10, 2020

Version: 1.0

TLP: WHITE

Act 77 of 2019 provides that voters in Pennsylvania can cast their vote early by either mail-in or absentee ballot. The Act also modifies voter registration requirements. The following guidelines define both what is required by Act 77 and what is permissible under Act 77 or some other portion of the Election Code.

Voter Registration

- The voter registration deadline is now fifteen (15) days before the election. Therefore, voter registration applications must now be **received** by the county board of elections no later than fifteen (15) days before the election.
- Applicants may either return their application in person or it must be received by mail by the county board of elections by the deadline. Previously, counties accepted applications postmarked by the deadline, but that is no longer permitted.
 - Voter registration applications submitted online are timely if they are submitted before midnight on the 15th day prior to a primary or election.
- If an applicant's voter registration application is rejected, the applicant may appeal that decision to the county board of elections by the 8th day prior to Election Day.

Mail-in and Absentee Balloting – General Provisions

- Qualified voters may apply at any time before any primary or election for a mail-in or absentee ballot (up to the deadline described below), and county boards of elections **must begin** processing applications at least fifty (50) days before the primary or election. County boards of elections **may process applications earlier** than fifty (50) days before the primary or election, **if the county board of elections determines that it is better for its operational needs to do so.**
- The deadline for applying for absentee ballots has not changed, and the new mail-in ballots follows the same application deadline. Applications must be received by the county board of elections by 5:00 P.M. on the Tuesday prior to the primary or election. **However, the deadline for counties to receive voted mail-in or absentee ballots has been extended to 8:00 P.M. on Election Day.**
- **Permanent voter lists:**
 - **For the permanent absentee ballot list, only voters with a permanent illness or disability are eligible;** this section does not apply to voters expecting to be absent from the municipality.
 - Absentee voters who request to be placed on the permanent absentee list no longer have to renew their physician's certification of continued disability every four (4) years or list it on each application.

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- For the permanent mail-in ballot list, any mail-in voter can request to be placed on the permanent mail-in voter list.
- Each year the county must send an application to any voter on the permanent absentee and mail-in voter lists by the first (1st) Monday in February.
- The yearly application serves as a standing request for any election that calendar year **and** for any special election until the third (3rd) Monday in February the next year.
- **Important Changes relating to Returning the Ballot:**
 - A voter who has returned a mail-in or absentee ballot may **not** vote at the polling place on Election Day.
 - If a voter requests but does not return their mail-in or absentee ballot, they may still deliver the ballot in person to a county elections office (CEO) until 8:00 P.M. on Election Day.
 - If a voter cannot return the ballot in person, the voter can vote in person at the voter's polling place on Election Day, but they may only do so by provisional ballot.
 - If a voter whose record in the district poll book indicates that the voter is not eligible to cast a ballot in person on Election Day asserts that they did not cast a mail-in or absentee ballot and is eligible to vote, the voter should be provided a provisional ballot.

Mail-in and Absentee Applications

There are three (3) ways by which voters can apply for mail-in or absentee ballots:

1. In Person
2. Online
3. By Mail

Requirements for in-person applications:

- Voters are permitted to apply in person at a CEO for a mail-in or absentee ballot.
- Voters who apply at a CEO during business hours may request to receive a mail-in or absentee ballot in person while the voter is in the office. **Note:** Please see "Optional county services" below for more information.

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- Once the ballot has been finalized and printed, the county board of elections **must promptly present** the voter with the voter's mail-in or absentee ballot.
- A county board of elections **cannot decline** the voter's application for a mail-in or absentee ballot, unless there is a bona fide objection to the mail-in or absentee ballot application.
- Voters who request a mail-in or absentee ballot in person must be provided an opportunity to privately and secretly mark their ballot. **Note:** *The marking of the ballot in secret does not have to take place in the election offices. It can be provided in a nearby location.*
- Voters are permitted to deliver a mail-in or absentee ballot in-person at a CEO up to 8:00 P.M. on Election Day.

Optional County Services:

- As allowed under existing law, county election boards may provide for mail-in and absentee application processing and balloting at more than one CEO located within county borders.
- Additional business hours for CEOs may be established; hours do not have to be limited to weekdays nor to typical business hours. Counties are encouraged to offer business hours outside of these time frames, including weeknights or weekend hours to enable maximum flexibility and convenience to voters.
- If a county decides to provide additional mail-in and absentee balloting by establishing additional CEOs, the county must account for **all** of the following:
 - Each CEO must be staffed by appointed elections personnel in municipal or county-owned or leased properties selected by the county board of elections for processing applications and in-person voting of both mail-in and absentee ballots.
 - Each CEO must have a secure county network connection that is capable of connecting to the Statewide Uniform Registry of Electors (SURE), and staff trained and approved to access SURE. **NOTE:** *The Department will work with counties to establish secure connections; the county network extension must be approved by the Department.*
 - Each CEO must either have copies of all ballot styles available to be voted in the county, or an on-demand ballot printer capable of printing all ballot styles available to be voted in the county.
 - Each CEO must have a secure ballot collection receptacle to store voted mail-in or absentee ballots submitted at the location.
- When choosing a location for the CEO, counties should consider, at a minimum, the following:
 - Choose locations that serve heavily populated urban/suburban areas, as well as rural areas.

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- For example, counties may want to select accessible locations near heavy traffic areas such as commercial corridors, large residential areas, major employers and public transportation routes.
- In rural areas, locations should be selected that are easily recognizable and accessible within the community.
- Counties may want to select locations in areas in which there have historically been delays at existing polling locations, and areas with historically low turnout.

Requirements for online or mail applications:

- After the ballot has been finalized and printed, the county board of elections **must promptly deliver or mail** the voter's mail-in or absentee ballot, and in any event must deliver ballots by the second (2nd) Tuesday before the election.
- After the county board of elections begins delivering and mailing mail-in and absentee ballots, the county must deliver or mail subsequent ballots requested within forty-eight (48) hours of receipt provided they are approved.
- Whether submitted in person or by mail, all mail-in and absentee ballots must be received by the CEO by 8:00 P.M. on Election Day.

Mail-in and Absentee Ballots

Delivery of Mail-in and Absentee Ballots

- As noted previously, counties **must** begin processing applications for mail-in and absentee ballots at least fifty (50) days before the primary or election or at an earlier time as the county board of elections determines **may** be appropriate.
- Counties **must begin delivering** mail-in or absentee ballots as soon they are certified and available.
- Counties **may** await the outcome of pending litigation that affects the contents of the ballots, but in any event the county **must** begin delivering mail-in or absentee ballots no later than the 2nd Tuesday prior to Election Day.

Collection of Mail-in and Absentee Ballots

- In addition to CEOs, counties may provide for other secure ballot collection locations that the county deems appropriate to accommodate in-person return of voted mail-in and absentee ballots.
- If a county decides to provide for other ballot collection locations, the county should consider the following best practices:

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- The county board of elections should pass a resolution to determine the number and locations of ballot collection locations within the county, and provide public notification of the locations.
- Ensure and document to the Department the security and chain of custody of mail-in and absentee ballots retrieved from ballot collection locations. **NOTE:** *Please contact the Department for guidance on how to document security and chain of custody.*
- Utilize a secure ballot collection receptacle that is designed for this specific purpose. **NOTE:** *Please contact the Department for guidance on factors, best practices, and examples for these receptacles.*
- Officially designate county election personnel who are sworn and authorized to remove mail-in and absentee ballots from ballot collection receptacles.
- Process mail-in and absentee ballots collected from ballot collection locations in the same manner as ballots personally delivered or mailed to the county board of elections.
- Hours of access to and collection from the ballot collection locations do not have to be limited to weekdays nor to typical business hours.
- Public notification should be provided as to the location of collection locations, and clear signage should designate the locations and explain their proper use.

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Version History:

Version	Date	Description	Author
1.0	1.10.2020	Initial document release	Bureau of Election Security and Technology

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EXHIBIT 2

TLP: WHITE



Pennsylvania Balloting and Envelope Guidance

Date: January 30, 2020
Version: 1.0

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Act 77 of 2019 provides that voters in Pennsylvania now have two options to cast their vote early by either civilian absentee or mail-in ballot. Additionally, county election officials have new administrative requirements and the envelope templates have been updated to meet the new requirements of the Election Code. The following guidelines define both what is required by Act 77 and what is permissible under Act 77 or some other portion of the Election Code. The Department of State (DOS) will continue to update this guidance leading up to the 2020 Primary Election.

Who May Vote by Civilian Absentee Ballot¹

- Absentee ballots are for voters, who are not military or overseas voters, who have a reason for absence, including voters who will not be in their municipality on Election Day due to work or vacation, voters who are celebrating a religious holiday, voters with disabilities, and voters such as college students who also may be away from the municipality on Election Day, if they don't choose to vote where they go to school. Absentee ballots are also for those who are unable to attend their polling place due to illness or physical disability.

Who May Vote by Mail-in Ballot²

- If a voter does not qualify as an absentee voter, they are eligible for a mail-in ballot. An excuse is not required for a mail-in ballot. For example, if the voter won't be absent from a municipality on Election Day and would prefer to vote from home, they may request a mail-in ballot.

Deadlines

- Absentee and Mail-in Ballot Request Deadline
 - The deadline to request a mail-in ballot mirrors the absentee deadline. So, both application deadlines are 5:00 p.m. on the Tuesday before the election.
 - 2020 Primary Election Absentee/Mail-In Application Deadline – April 21, 2020
 - 2020 General Election Absentee/Mail-In Application Deadline – October 27, 2020
- Absentee and Mail-in Ballot Return Deadline
 - Act 77 of 2019 changed the deadline for voters to return their completed ballot to the county election office. The deadlines to return the ballot for both absentee and mail-in ballots are the same. The completed ballot must be returned to the county board of elections by 8:00 p.m. on Election Day.
- Emergency Absentee Period (following the initial deadline to request an absentee ballot)

¹ Election Code § 1301, 25 P.S. § 3146.1.

² Election Code § 1301-D, 25 P.S. § 3150.11.

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- An emergency absentee period is still in effect. If a voter learns, after the normal 5:00 p.m. application deadline on the Tuesday before the election, that they will be absent from the municipality on election day, they may apply for an emergency absentee ballot. It's also available for voters who become ill or physically disabled after the normal deadline. The emergency period lasts until 8:00 p.m. on Election Day. Please note the deadline to return a completed emergency absentee ballot is still 8:00 p.m. on Election Day.

Implementation

- Per Act 77 of 2019, the election reform changes will not go into effect until the 2020 Primary Election. Therefore, all previous rules are in effect for special elections prior to the 2020 Primary Election.
 - If there is a special election that falls on 4/28/2020, the new rules will apply to that election as well.
- The new mail-in application form is only effective for the 2020 Primary Election and future elections.
- The new or old absentee form may be accepted by counties prior to the 2020 Primary Election.
 - This means that county boards of election may honor the new absentee ballot request form and the older absentee form

Process for the Voter

- **Requesting a Ballot**
 - **Mail a Paper Ballot Request**
 - A voter may submit a paper application via mail to the county board of elections for absentee and mail-in ballot applications.
 - The new absentee and mail-in forms may be found at the links below:
 - [Paper Absentee Ballot Request Application Form](#)
 - [Paper Mail-in Ballot Request Application Form](#)
 - **Over the Counter Ballot Request**
 - Act 77 of 2019 allows voters to request an absentee or mail-in ballot over the counter. They may also receive and vote the ballot, if it's available, over the

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counter.

- Voters still need to adhere to ID requirements for absentee and mail-in ballot requests.
- The county board of elections **must** ensure voter secrecy is maintained throughout the process, if a voter has requested to vote their ballot in person. The Department is currently developing voter secrecy guidance to provide additional detailed direction to county boards of elections.
- **Submit an Online Ballot Request**
 - A voter may submit either an absentee or mail-in ballot request online via the Department's online portal at PA Voter Services.
 - A voter may access the online application website at the links below:
 - Online absentee ballot request application
 - It's important to note only a paper application can be submitted for a permanent absentee ballot request due to the physician's certification requirement.
 - Online mail-in ballot request application
 - An applicant may submit a permanent mail-in ballot request when completing their online mail-in ballot request application.
- **Emergency ballot period**
 - Voters that become eligible for absentee ballots after the deadline may apply for an emergency absentee ballot after the normal application deadline on the Tuesday before the election.
 - For example, if a voter finds out they will be absent from the municipality but did not learn they would be absent until after the Tuesday before the election, they may apply for an emergency ballot.
 - In order to apply for an emergency ballot, the voter must complete an Emergency Application for Absentee Ballot. The emergency application must be received by the county board of elections by the close of polls on election day, which is 8:00 p.m.
 - In the event the voter is unable to appear at the county board of elections to deliver their application and receive their ballot, they may designate an

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authorized representative. This designation must be made in writing.³

- The designated individual must be authorized, and documentation must be completed prior to handling the ballot on behalf of the voter.
- Multiple voters may designate the same authorized representative.

- **Ballot Request Limit**

- A voter may only qualify for one type of ballot. They will need to determine their qualification between an absentee or mail-in ballot. The Department will have helpful information on VotesPA.com to help the voter determine the appropriate ballot request. In either case, the application request must be submitted by 5:00 p.m. on the Tuesday before the election, unless the voter later qualifies for an emergency absentee ballot.

- **Ballot Return**

- A voter must return their completed ballot by 8:00 pm on Election Day to the county board of elections. Postmarks are not accepted for civilian absentee ballots or for mail-in ballots.

- **Provisional Balloting**

- Once a voter requests a civilian absentee or mail-in ballot, they may only vote a provisional ballot if they show up at their polling place on election day, and the district register shows the voter has not voted an absentee or mail-in ballot.⁴
- If a voter returns their ballot timely, they are no longer permitted to vote at the polling place.
- A provisional ballot remains available for those that didn't request a mail-in or absentee ballot, but aren't in the poll book.

Process For County Elections Officials

- **Accepting Ballot Requests**

- The county board of elections must begin processing civilian absentee and mail-in ballot requests no later than the 50th day before the election.
 - However, the county may choose to accept ballot requests prior to the 50th day before the election.

³ Election Code § 1302.1, 25 P.S. § 3146.2a(a.3)(4).

⁴ Election Code § 1210, 25 P.S. § 3050(a.4)(1).

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- The county boards of elections are still required to accept civilian absentee ballot requests until 5:00 p.m. on the Tuesday before the election. This also applies for mail-in ballot requests.
 - However, the emergency absentee period is still in effect and counties must accept those applications after the 5:00 p.m. deadline on the Tuesday before the election and up to 8:00 p.m. on Election Day.
- The county board of elections **must** only accept the new mail-in request forms for the upcoming 2020 Primary Election.
 - If a voter in a county with a special election scheduled prior to the April 2020 primary submits one of the new mail-in forms, the county is not required to accept those forms as ballot requests for the special election(s). However, counties should contact the voters to inform them that they will only receive a ballot for the April primary, unless they qualify to vote by absentee in the special election.
 - Consistent with Act 77, counties must accept the mail-in applications as a request for the upcoming primary election.
- As mentioned above, the county should accept either the old or new absentee ballot request form.

- **Tracking Ballot Requests**

- Now voters have the ability to track their absentee and mail-in ballot requests, which also includes mailing ballots to the voter and receiving the completed ballot in the county election office.
 - The voter will have the opportunity to visit PA Voter Services to look up their ballot request status online. The functionality will be available online no later than early March 2020.
- A voter will receive notifications via email, if an email was supplied on their civilian absentee or mail-in ballot application. The voter will be notified:
 - when the ballot request is approved;
 - when the ballot label is queued for printing; and
 - when the completed ballot is returned and marked as received in the county board of elections.

- **Poll Books**

- As soon as a voter requests a civilian absentee ballot or mail-in ballot, they are **only** entitled to vote by provisional ballot if they show up at their polling place, and the voter is not shown on the district register as having voted an absentee or mail-in

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ballot.⁵ The poll book will be marked to indicate the voter may only vote provisionally to prompt the poll worker when checking in voters.

- Additionally, if the voter returns their completed ballot timely to the county board of elections, the poll book will indicate the voter's ballot was cast and they are not eligible. This will aid the poll worker when checking in voters to determine if the voter is permitted to vote in person, or to even receive a provisional ballot.
- The watermarks in the poll books as listed above also apply to voters with a permanent flag on their voter record. In either case, the poll worker will be able to determine the best course of action when reviewing the poll book on election day.

- **Provisional Balloting**

- Act 77 of 2019 establishes provisional balloting as the only option for voters to cast their vote in the event their absentee or mail-in ballot is not returned to the county by 8:00 p.m. on election day.
- If a voter returns their ballot timely, they are no longer permitted to vote at the polling place.
- However, if the voter's ballot is not timely returned to the county, they are entitled to vote by provisional ballot only at the polling place.

- **Ballot Design Requirements**

- With the implementation of Act 77 of 2019, absentee ballots and mail-in ballots must be separately marked.
 - Absentee ballots must be marked with "Official Absentee Ballot"⁶
 - Mail-in ballots must be marked with "Official Mail-in Ballot"⁷
- A warning notice is required to be listed on both the absentee and mail-in ballots.
 - Example for Absentee Ballot: "WARNING: If you receive an absentee ballot and return your voted ballot by the deadline, you may not vote at your polling place on election day. If you are unable to return your voted absentee ballot by the deadline, you may vote a provisional ballot at your polling place on election day."
 - Example for Mail-in Ballot: "WARNING: If you receive a mail-in ballot and return your voted ballot by the deadline, you may not vote at your polling place on election day. If you are unable to return your voted mail-in ballot

⁵ Election Code § 1210, 25 P.S. § 3050(a.4)(1).

⁶ Election Code § 1303, 25 P.S. § 3146.3.

⁷ Election Code § 1303-D, 25 P.S. § 3150.13.

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by the deadline, you may vote a provisional ballot at your polling place on election day.”

- **Envelope Design**

- The civilian absentee and mail-in ballot envelopes were streamlined for voter understanding as well as processing at the county election office.
- The new envelope templates make use of white space to optimize instructions and information to the voter in addition to the ballot materials contained within the package.
- The new envelope designs make use of best practices and usability in other state jurisdictions.
- The templates also incorporate visual cues to county election officials to quickly identify types of ballots based on the color and letter designation on the envelope.
- Envelope Packaging
 - County Election Boards are encouraged to share their envelope artwork designs with the Department to ensure compliance with the new envelope templates. This is also an opportunity for the Department to assist the county elections board while implementing the new envelope template.
 - Currently, the Department has developed two (2) variations for absentee or mail-in balloting material
 - Absentee and Mail-in Envelope Variation #1
 - The first variation make use of the #12, #11, and #10 sized windowless envelopes.
 - County election boards have the option to use a county logo on the outer and return envelope.
 - County election boards also have the option to provide their contact information on the outer most envelope.
 - Absentee and Mail-in Envelope Variation #2
 - The second variation make use of the #11, #10, and #9 sized windowless envelopes.

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- Similar to variation #1, County election boards have the option to use a county logo on the outer and return envelope.
 - Similar to variation #1, County election boards also have the option to provide their contact information on the outer most envelope.
- The county board of elections should be mindful of envelope weight between the two envelope variations as the amount of ballot material could increase the cost of postage.
- If the core elements are assembled in the balloting material (i.e. outer envelope, return envelope, secrecy envelope, instructional handouts), the county should choose the envelope template that best meets their balloting needs.
- Please see the supplemental document containing more detailed information about the revised envelope templates [here](#).
- Counties may print one outgoing outer envelope to be used for both absentee and mail-in ballots.
- The return envelopes must be separate as civilian absentee and mail-in ballots require different declarations and are required to be named either "Official Absentee Ballot" or "Official Mail-in Ballot."
- The secrecy envelopes must also be separate, as civilian absentee and mail-in ballots require different titles. They must either be printed as "Official Absentee Ballot" or "Official Mail-in Ballot."
- The return envelopes must include a declaration from the voter stating their qualifications.
- Instructional inserts
 - The Department recommends adding helpful instructions for the voter when they receive the ballot material.
 - Suggested text for consideration will be distributed during the week of January 27, 2020.
- The Department is currently developing a template for larger ballot styles as needed by the county and will issue them in the next week.

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- Counties are encouraged to contact the DOS at RA-STBEST@pa.gov with their envelope size requirements.
- The Department is also developing bilingual templates for county election offices that are required to produce language-compliant balloting material.
- If a county election office requires a different size, they should notify the DOS Bureau of Election Security and Technology for assistance immediately. The Department will quickly update the template to fit your ballot size requirements. You may reach out to the Bureau at RA-STBEST@pa.gov.
- Types of Ballot Envelopes
 - Absentee Ballot
 - Outer Envelope (1st envelope) – this is the outer most envelope that contains all balloting material including the return envelope and secrecy envelope. This is the envelope package that is initially sent to the voter.
 - If the county is considering a merged envelope, the outermost envelope should be titled with “Official Election Ballot.”
 - If the county is considering a separate outermost envelope for a civilian absentee ballot, the envelope must be titled “Official Absentee Ballot.”
 - The outermost envelope must contain blue coloring and two horizontal bars containing the envelope title.
 - Return Envelope (2nd envelope) – this is the return envelope on which the voter will sign their declaration, and within which the voter will seal their secrecy envelope prior to mailing their completed ballot to the county.
 - The return envelope must contain blue coloring and two horizontal bars containing the envelope title.
 - This must read “Official Absentee Ballot.”
 - The specific color palette will be distributed to the county election offices.
 - Absentee Secrecy Envelope (3rd envelope) – this is the secrecy envelope into which the voter will place their voted ballot.
 - The civilian absentee secrecy envelope must be separate from a mail-in secrecy envelope and it must be titled

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“Official Absentee Ballot.”

- The secrecy envelope may not contain any marks other than the envelope title.

- Mail-in Ballot

- Outer Envelope (1st envelope) – this is the outermost envelope that contains all balloting material, including the return envelope, ballot, and secrecy envelope. This is the envelope package that is initially sent to the voter.
 - If the county is considering a merged envelope, the outermost envelope should be titled with “Official Election Ballot.”
 - If the county is considering a separate outermost envelope for mail-in ballots, the envelope must be titled “Official Mail-in Ballot.”
 - The outer most envelope must contain blue coloring and two horizontal bars containing the envelope title.
 - This shade of blue will be lighter versus the absentee ballot envelope and the outer envelope to easily distinguish between the two.
 - The specific color palette will be distributed to the county election offices.
- Return Envelope (2nd envelope) – this is the return envelope on which the voter will sign their declaration, and within which the voter will seal their secrecy envelope prior to mailing their completed ballot to the county.
 - The return envelope must contain blue coloring and two horizontal bars containing the envelope title.
 - The specific color palette will be distributed to the county election offices.
 - This must read “Official Mail-In Ballot.”
- Mail-in Secrecy Envelope (3rd envelope) – this is the secrecy envelope into which the voter will place their voted ballot.
 - The mail-in secrecy envelope must be separate from a civilian absentee secrecy envelope and it shall be titled

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“Official Mail-in Ballot.”

- The secrecy envelope shall contain no other marks other than the envelope title.
- UOCAVA Ballot
 - The template for the UOCAVA ballot remains unchanged. However, the Department intends to update the template following the 2020 Primary Election.
- Provisional Ballot
 - Outer Envelope (1st envelope) – this is the envelope upon which the voter will sign their declaration, and within which the voter will seal their secrecy envelope.
 - The Department anticipates a release of the revised provisional ballot envelope during the week of January 27th
 - Provisional Secrecy Envelope (2nd envelope) – this is the secrecy envelope into which the voter will place their voted ballot.
 - The Department anticipates a release of the revised provisional ballot envelope during the week of January 27th
- Emergency Ballot
 - The Department anticipates the release of a new emergency ballot envelope during the week of January 27th if the county wishes to utilize an envelope for their emergency ballots.
- **Canvassing Ballots**
 - County boards of election may not open civilian absentee or mail-in ballots prior to 8:00 p.m. on Election Day. The canvass is set to begin no earlier than the close of polls.
 - County boards of election are required to keep civilian absentee and mail-in ballots in a sealed or locked container(s) until the canvass begins.
- **Challenging Ballots**

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- The absentee ballot challenge process remains mostly unchanged and now applies to mail-in ballots in addition to civilian absentee ballots.
 - The challenge process now happens at the county board of elections instead of the polling place.
 - Also, an absentee ballot issued due to absence from the municipality may no longer be challenged on the basis the voter was within the municipality on Election Day.
- The county board must give any candidate or party representative an opportunity to challenge an elector's ballot.
- The following are the only grounds for challenging an absentee or mail-in ballot:
 - The absentee or mail-in elector is not a qualified elector;
 - An absentee elector claiming illness or physical disability was able to appear at the polling place.
- Upon challenge of a civilian absentee or mail-in elector, the board shall mark "Challenged" on the envelope with the appropriate challenge reason.
- The challenged civilian absentee or mail-in ballot shall remain unopened until a final determination is made by the county board of election during canvass.

###

Version History:

Version	Date	Description	Author
1.0	1.30.2020	Initial document release	Bureau of Election Security and Technology

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EXHIBIT 3

From: Marks, Jonathan <jmarks@pa.gov>
Sent: Thursday, May 28, 2020 7:44 PM
To: Marks, Jonathan <jmarks@pa.gov>
Subject: Important DOS Email re: Absentee/Mail-in Ballot Canvass
Importance: High

To all county election officials.

I hope you are all safe and well.

The department has received some questions from county officials in recent days regarding the proper disposition of absentee or mail-in ballots cast by voters who did not enclose their voted ballots in the official election ballot envelope ("secrecy" or "inner" envelope).

Though the Election Code requires county boards of elections to set aside absentee or mail-in ballots enclosed in official election ballot envelopes that contain "any text, mark or symbol which reveals the identity of the elector," there is **no statutory requirement, nor is there any statutory authority**, for setting aside an absentee or mail-in ballot solely because the voter forgot to properly insert it into the official election ballot envelope. See 25 P.S. § 3146.8(g)(4)(ii).

To preserve the secrecy of such ballots, the board of elections in its discretion may develop a process by which the members of the pre-canvass or canvass boards insert these ballots into empty official election ballot envelopes or privacy sleeves until such time as they are ready to be tabulated.

Please consult with your solicitor about your plans to deal with such instances should they occur during the pre-canvass or canvass.

Thank you for everything you are doing to administer the 2020 Primary while coping with the unique challenges presented by COVID-19.

Kind regards,

Jonathan M. Marks
Deputy Secretary for Elections & Commissions
Pennsylvania Department of State
302 North Office Building | Harrisburg, PA 17120
☎ 717.783.2035 📠 717.787.1734
✉ jmarks@pa.gov

EXHIBIT 4

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Pennsylvania Provisional Voting Guidance

Date: March 5, 2020
Version: 1.0

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Act 77 of 2019 creates new reasons for issuing/counting provisional ballots in Pennsylvania. The following guidelines define what is required by Act 77 and what is permissible under Act 77 or some other portion of the Election Code. The Department of State (DOS) will continue to update this guidance leading up to the 2020 Primary Election.

Provisional ballots may be issued at the polling place until the close of polls on election day unless a court extends voting hours.

Implementation

- Provisional ballots were originally mandated by section 302 of the Help America Vote Act of 2002 (HAVA).¹
- A voter may be issued a provisional ballot for the reasons below:
 - Voter's name was not in the poll book or supplemental poll book
 - For example, the voter reported to the wrong precinct; or,
 - The voter did not report a recent change in residence to the county election office.
 - A court order was issued for the voter
 - A court order was issued during voting hours
 - Voter identification was not supplied
 - Voter eligibility was challenged by an election official
 - Voter was issued an absentee ballot and it was not returned
 - Voter was issued a mail-in ballot and it was not returned
 - Voter claims they are registered in a political party with which they are not affiliated (for primary elections only)
- The provisional ballot changes included in Act 77 of 2019 go into effect on April 28, 2020.
- If the pollbook shows the voter has returned their absentee or mail-in ballot timely, they are no longer entitled to vote a regular ballot at the polling place.
- Voters who have requested an absentee ballot or mail-in ballot, must vote provisionally at the polling place if they have not returned their ballot.
- Generally, if a voter is not eligible to be issued a regular ballot, under federal law, that voter shall be entitled to vote provisionally at the polling place.

¹ 52 U.S.C. § 21082.

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Process for the Voter

- As a voter, you are entitled to a provisional ballot when your eligibility to vote is uncertain or you are not marked in the poll book as having returned your absentee or mail-in ballot.
- If you have requested an absentee or mail-in ballot for the upcoming election, you may vote by provisional ballot if you don't return your requested ballot before 8:00 p.m. on election day and you chose to show up at the polling place.
- However, if you return your requested absentee or mail-in ballot timely, as in prior to 8:00 p.m. on election day, your vote is considered complete for that election. This means you should not go to a polling place to vote.
- When you are issued a provisional ballot, you must mark the ballot and seal it inside a secrecy envelope.
 - Before you receive and mark your ballot, you must complete the section on the envelope labeled Voter Information, Voter Affidavit for Provisional Ballot, and Current Address where the Voter Lives in front of election officials.
 - After you receive and mark your ballot, you must seal your ballot in the secrecy envelope and then place it in the provisional ballot envelope.
 - Finally, you must fill out the Voter Signature section on the provisional ballot envelope in front of the Judge of Elections and the Minority Inspector. Then, the Judge of Elections and the Minority Inspector will sign and date the envelope after selecting a reason for the ballot.
- A county election official will review your provisional ballot within 7 days of the election and decide if it should be fully counted, partially counted, or not counted.
 - Fully Counted – all contests on the ballot are counted.
 - Partially Counted – some contests, but not all contests on the ballot are counted.
 - Not Counted – No contests on the ballot were counted.
- You can check the status of your provisional ballot after the election, by calling the county board of elections, checking the PA Voter Services website, or calling the PA Department of State. You will need to provide your provisional ballot number or your full name and date of birth.
 - Find the phone number for your county election office online at www.votespa.com/county.
 - The website for PA Voter Services is www.votespa.com/provisional.
 - The phone number for the PA Department of State is 1-877-VOTESPA (1-877-868-3772).

Process for Poll Workers

- County election officials must ensure that poll workers are familiar with provisional voting rules.

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- A county election official or poll worker must notify potential voters that they have a right to use a provisional ballot when they are entitled to receive one.
- When a provisional ballot is issued, the envelope must be completed by both the voter and election official.
- The poll book will be marked with either Absentee - Issue Provisional or Mail-in - Issue Provisional if a voter requested an absentee ballot or mail-in ballot and it was not returned timely. This is an indicator to the poll worker to instruct the voter to cast provisional ballot.
 - If a voter was issued an absentee or mail-in ballot for the upcoming election, they cannot vote a regular ballot.
- The pollbook will be marked with either Absentee – Ballot Cast/Not Eligible or Mail-in – Ballot Cast/Not Eligible if a voter has returned their absentee or mail-in ballot timely. Their vote is considered final at this point. If the voter believes that they have not returned their ballot, under federal law, county election officials must instruct poll workers to offer the voter the opportunity to cast a provisional ballot.

Generally, consistent with the Help America Vote Act, county election officials must instruct poll workers to err on the side of the voter and issue a provisional to any voter if they contest their ballot status.

- If polling place hours are extended beyond 8:00 p.m. due to a court order on election day, all ballots shall be cast via provisional ballot only.

Process For County Elections Officials

- It is recommended counties give at least a week notice that counties will reconcile provisional ballots during the official count, but under no circumstance should the county board of elections schedule the meeting without providing a 48-hour notice, in violation of the open meetings law.
- A provisional ballot can only be considered for counting, with approval from the county board of elections, if the voter is qualified and eligible for the election.
- When determining whether to count a provisional ballot, the county board of elections must reconcile provisional ballots with ballots cast on election day and returned absentee and mail-in ballots. If a voter cast an election day ballot or timely returned their absentee or mail-in ballot, the provisional ballot shall not be counted.
- The county board of elections must review each provisional ballot and determine whether to count it within 7 days of the election.
- The county board of elections must make a determination on the disposition of the provisional ballot within 7 days of the election.
- A provisional ballot may be challenged. If a provisional ballot is challenged during the canvass, the county board must schedule a hearing within 7 days of the challenge to consider the challenge and determine the disposition of the ballot. Additionally, notice must be given to the challenged provisional voter(s).

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- During the official canvass, the County Board of Elections must determine, for each provisional ballot, whether:
 - The provisional ballot is invalid because the voter cast another ballot;
 - The provisional ballot should be counted in full;
 - The provisional ballot should be rejected and the reason(s) for the rejection; or
 - The provisional ballot should be partially counted and the reason(s) for the partial counting.
- Counties are prohibited from counting a provisional ballot from another county.

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Version History:

Version	Date	Description	Author
1.0	3.5.2020	Initial document release	Bureau of Election Security and Technology

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EXHIBIT 5



RIGHTS OF WATCHERS, CANDIDATES & ATTORNEYS

Watchers, Candidates and Attorneys at Sessions of the County Board

Section 310 of the Election Code (Code), 25 P.S. § 2650, outlines the rights of watchers, candidates and attorneys as they relate to sessions of the county board of elections. (Such sessions include the computation, tabulation or canvassing of unofficial election returns on the night of the primary or election and the official computation and canvass that begin on the third day following the primary or election.)

- Any party, political body or body of citizens entitled to have watchers at any primary or election is also entitled to appoint watchers to represent the party, political body or body of citizens at public sessions of the county board. (Such watchers must be qualified electors of the county.) *Section 310(a)*
- Qualified watchers at sessions of the county board may exercise the same rights as poll watchers. *Section 310(a)*
- The county board of elections may limit the number of watchers present at any one time to no more than three for each party, political body or body of citizens. *Section 310(a)*
- Each candidate whose candidacy may be affected by matters pending before the county board, including any computation, canvass, recount or recanvass of returns, is entitled to be present and participate in the proceeding in person or by his or her duly authorized attorney. *Section 310(b)*
- Any candidate, attorney or watcher present at a recount or recanvass is entitled to examine the ballots and raise objections regarding such ballots. *Section 310(c)*

Appointment of Poll Watchers

Section 417 of the Pennsylvania Election Code, 25 P.S. § 2687, provides for the appointment of watchers. Under section 417(a), "[e]ach candidate for...election at any election shall be entitled to appoint two watchers for each election district in which such candidate is voted for." In addition, "[e]ach political party and each political body which has nominated candidates...shall be entitled to appoint three watchers at any general...election for each election district in which the candidates of such party or political body are to be voted for." 25 P.S. § 2687(a).

Act 2004-97 amended section 417(b) of the Code to read as follows:

Each watcher so appointed must be a qualified registered elector *of the county* in which the election district for which the watcher was appointed is located. Each watcher so appointed shall be authorized to serve in the election district for which the watcher was appointed and, when the watcher is not serving in the election district for which the watcher was appointed, in any other election district *in the county* in which the watcher is a qualified registered elector.... It shall not be a requirement that a watcher be a resident of the election district for which the watcher is appointed.

25 P.S. § 2687(b) (emphasis added).

Thus, under section 417(a) of the Code, a candidate, political party or political body is entitled to appoint as a watcher in any election district of a county *any registered qualified elector of that county*, without regard to the election district in which the watcher is a registered qualified elector within the same county.

And as amended by Act 97, any watcher appointed under section 417(a) of the Code is authorized to serve *in any other election district in the same county* when he or she is not serving in the election district for which the watcher was appointed.

Rights of Poll Watchers

Section 417 of the Code, 25 P.S. § 2687, outlines the rights of duly appointed poll watchers.

- Watchers allowed in the polling place are permitted to keep a list of voters. *Section 417(b)*
- Watchers allowed in the polling place are entitled to challenge the qualifications of voters in accordance with the provisions of section 1210(d) of the Code (25 P.S. § 3050(d)). *Section 417(b)*
- Watchers allowed in the polling place are entitled to inspect the voting check list and either of the two numbered lists of voters during those intervals when voters are not present in the polling place, provided that the watcher does not mark upon or alter any of these official records. (The judge of election must either personally supervise or delegate supervision of such inspection of the list or lists.) *Section 417(b)*

Public Inspection of Returns

- The general returns, which are returned **unsealed** by the various election districts, are open to public inspection as soon as they are received from the judges of election. None of the **sealed** election materials returned by the election officers may be opened by any person, unless ordered to do so by the return board or the court of common pleas. Section 1402(a), 25 P.S. § 3152.

Please note that none of the statutory provisions outlined in this document permit watchers, candidates or their attorneys to interfere with, hinder or unlawfully delay a district election board or the county board of elections in the conduct of its duties. Neither do any of these provisions permit watchers, candidates or attorneys to harass or intimidate voters or election officials. Therefore, a county board of elections may issue reasonable regulations, not inconsistent with law, regarding the conduct of its duties and the duties of its local election boards.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 24, 2020, a true and correct copy of the foregoing **SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS** has been served upon each defendant whose has entered an appearance via electronic transmission to that party's counsel of record. For any party who has yet to enter an appearance, the undersigned certifies that on July 24, 2020, a copy of the foregoing discovery has been served on that party via Overnight Mail, postage pre-paid, with a copy electronically transmitted to the County Solicitor, if known, via email or fax.

Respectfully submitted,

PORTER WRIGHT MORRIS & ARTHUR LLP

By: /s/ Ronald L. Hicks, Jr.

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Counsel for Plaintiffs

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Pennsylvania



Donald J. Trump for President, Inc. et al.

Plaintiff

v.

Kathy Boockvar, et al.

Defendant

Civil Action No. 2:20-cv-966

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Committee of Seventy, 123 Broad Street, Suite 1800, Philadelphia, PA 19109

(Name of person to whom this subpoena is directed)

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Notice of Deposition, attached as Exhibit A

Place: video conference

Date and Time:

08/17/2020 9:30 a.m.

The deposition will be recorded by this method: videorecording and stenographically

☒ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

See Document Requests, attached as Exhibit B

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 08/10/2020

CLERK OF COURT

OR

/s/ Ronald L. Hicks, Jr.

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Plaintiffs
Donald J. Trump for President, Inc., et al.

, who issues or requests this subpoena, are:
Ronald L. Hicks, Jr., Porter Wright Morris & Arthur LLP, 6 PPG Pl., 3rd Floor, Pittsburgh, PA 15222, (412) 235-4500
rhicks@porterwright.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 2:20-cv-966

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* _____
 on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named individual as follows: _____
 _____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
 _____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT "A"

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

DONALD J. TRUMP FOR PRESIDENT,)	CIVIL ACTION
INC.; <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	No. 2:20-cv-966-RN
)	
KATHY BOOCKVAR; <i>et al.</i> ,)	
)	
Defendants.)	

**NOTICE OF DEPOSITION DIRECTED TO
DEPONENT DESIGNEE(S)
PURSUANT TO FED. R. CIV. P. 30(b)(6)**

To: All Defendants & Intervenor

PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 30(b)(6), Plaintiffs will take the deposition of third-party witness, Deponent (the "Deponent"), for the purpose of discovery and/or use at trial or hearing, before an officer duly authorized by law to administer oaths, on August 17, 2020, beginning at 9:30 a.m., via video conference before a stenographer and notary public or other officer authorized by law to administer oaths. The deposition shall be recorded by audiovisual and/or stenographic means. Instructions to access the video conference deposition can be found in the attached e-mail.

Pursuant to Federal Rule of Civil Procedure 30(b)(6), Deponent is required to designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf about information known or reasonably available to it regarding the following topics:

1. Deponent's activities relating to drop boxes, mobile ballot collection centers, or similar collection/drop-off locations during the June 2, 2020 Primary Election or the November 3, 2020 General Election.

2. Communications—orally or in writing—regarding the use of, determinations regarding the locations of, securing or monitoring of, or collection of ballots from drop boxes, mobile ballot collection centers, and/or similar collection/drop-off locations during the June 2, 2020 Primary Election or the November 3, 2020 General Election with any of the following:

- a. Pennsylvania Department of State;
- b. Pennsylvania Bureau of Commissions, Elections and Legislation;
- c. Jonathan M. Marks, Deputy Secretary of Elections & Commissions;
- d. Veronica Degraffenreid, Special Advisor on Election Modernization;
- e. Jessica Mathis, Director of Bureau of Election Services and Notaries;
- f. Michael Moser, Director of Bureau of Election Security and Technology;
- g. Commissioner Lisa M. Deeley, Commissioner Al Schmidt, Commissioner Omar Sabir, or the Office of the Philadelphia City Commissioners;
- h. any County Election Board, or any agent or employee of same;
- i. any District Election Board, or any agent or employee of same;
- j. any political party;
- k. any candidate for elected office; or
- l. any news media, including but not limited to television, newspapers, or online publications.

3. The identity of persons working on behalf of the Deponent who were or will be involved in the placement, securing, or monitoring of, or the collection of ballots from drop boxes,

mobile ballot collection centers, and/or similar collection/drop-off locations during the June 2, 2020 Primary Election or the November 3, 2020 General Election.

4. Fees, donations, expenses, money, or any other consideration paid to you by any political party, candidate for elected office, County Election Board, District Election Board in connection with your activities relating to drop boxes, mobile ballot collection centers, and or similar collection/drop-off locations during the June 2, 2020 Primary Election or the November 3, 2020 General Election.

5. Deponent's website and social media pages and/or posts involving its activities relating to drop boxes, mobile ballot collection centers, and/or similar collection/drop-off locations during the June 2, 2020 Primary Election or the November 3, 2020 General Election, including without limitation any website and/or social media posts and/or pages that were removed from public viewing concerning such drop boxes, collection centers, and/or similar collection/drop-off locations during the June 2, 2020 Primary Election.

6. The authentication of all documents produced in response to the subpoena attached to this Notice.

Date: August 10, 2020

Respectfully submitted,

PORTER WRIGHT MORRIS & ARTHUR LLP

By: /s/ Ronald L. Hicks, Jr.

Ronald L. Hicks, Jr. (PA #49520)

Jeremy A. Mercer (PA #86480)

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and

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Matthew.Morgan@electionlawllc.com
justin.clark@electionlawllc.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Notice of Deposition on August 10, 2020, via email on all parties who have entered an appearance in this action. For any party who has yet to enter an appearance, the undersigned certifies that a copy of the foregoing will be served on that party via U.S. Mail and a copy sent to the County Solicitor, if known, via email or fax.

Respectfully submitted,

PORTER WRIGHT MORRIS & ARTHUR LLP

By: /s/ Ronald L. Hicks, Jr.

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Counsel for Plaintiffs

Turoczy, Tracie S.

Subject: Aug 17 Committee of Seventy 30(b)(6)
Location: <https://networkdepositionservices.my.webex.com/networkdepositionservices.my/j.php?MTID=mb14edae4e1bca517ec4092ff82d7d5a1>
Start: Mon 8/17/2020 9:30 AM
End: Mon 8/17/2020 5:30 PM
Show Time As: Tentative
Recurrence: (none)
Meeting Status: Not yet responded
Organizer: NDS Reporting

When it's time, join the Webex meeting here.

Meeting number (access code): 132 275 0277

Meeting password: 2Dskh6vmew6 (23754686 from phones and video systems)

Join meeting

Tap to join from a mobile device (attendees only)

+1-408-418-9388,,1322750277#23754686# United States Toll

Some mobile devices may ask attendees to enter a numeric meeting password.

Join by phone

+1-408-418-9388 United States Toll

Global call-in numbers

Join by video system, application or Skype for business

Dial 1322750277@webex.com

You can also dial 173.243.2.68 and enter your meeting number.

EXHIBIT “B”

DEFINITIONS

1. **“Document,”** as used herein, shall have the broadest sense and meaning, and shall include, without limitation, printed, typed, photo-static, photocopied, photographed, recorded, or reproduced by any other mechanical or manual process or means upon any tangible thing in any form of communication or representation, including letters, words, numbers, pictures, sounds, or symbols, or combinations thereof, including but not limited to all correspondence, memoranda, reports, financial reports, notes, records, letters, envelopes, telegrams, telexes, telecopies, messages (including reports, notes, and memoranda of personal or telephone conversations and conferences), leases, contracts, loan notes, mortgages, secured instruments, applications, agreements, commitments, resolutions, working papers, summaries, accounts, analytical records, reports, and/or summaries of investigations, opinions, reports of consultants, appraisals, books, diaries, calendars, or appointment books, instructions, minutes of all other communications of any type, including interoffice and intra-office communications, and charges, graphs, photographs, phonographs, video or audio tape, or other recordings, punch cards, magnetic tapes, discs, data cells, drums, printouts, and other data compilations, from which information could be obtained (translated, if necessary, through devices into useable forms), and any other writings or documents of whatever description or kinds now in possession, custody, or control of the responding person or entity, his (its) partners, counsel, accountants, agents, employees, or persons acting on behalf of the party responding hereto. The term “document” also shall include specifically, without limitation, duplicate copies bearing notations, comments, writings, or marks not found on the original, and such term shall likewise include all drafts of the original.

Without limitation on the term “control” as used in the preceding paragraph, a document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person.

2. **“Communication”** and **“communications”** means any and all inquiries, discussions, conferences, conversations, negotiations, agreements, meetings, interviews, telephone conversations, letters correspondence, notes, telegrams, facsimiles, electronic mail (e-mail), memoranda, documents, writings, or other forms of communications, including but not limited to both oral and written communications.

3. **“Discussion,” “discussions,” “discuss,” “discusses,” “mention,” “mentions,” “describe,” “describes,” “analyze” or “analyzes”** means any and all inquiries, conferences, conversations, negotiations, agreements or other forms or methods of oral communication or such dialogue sent via e-mail, facsimile, letter, telegram, or other written communication.

4. **“Electronically stored information”** and **“ESI”** means any Information on operational systems including accounting, financial, distribution, or manufacturing systems; E-mail; Instant Messages (IM); Web pages; text messages; cell phone data; Excel spreadsheets and underlying formulae; metadata; computer databases (*i.e.*, Access); erased, fragmented or damaged data; iPhone, Android and/or Blackberry data; and anything stored on computer or other electronic means located on or in, but not limited to cache memory; optical disks; magnetic tapes/back-up

tapes; magnetic disks (hard drive, floppy disks, etc.); PDAs, iPhones, Androids, Blackberries and/or Palm Pilots; cell phones; IM tools; or USB drives.

5. **“Identify,”** as used herein, shall mean that information that provides the name, address, telephone number, date of birth of a natural person (if applicable), and/or name, address, telephone number and the state of incorporation of a corporation (if applicable), and/or the name, address and telephone number of any other type of entity for which the request seeks identification.

6. **“Identity,”** as used herein, shall mean the name, address, telephone number, date of birth of a natural person (if applicable), and/or name, address, telephone number and the state of incorporation of a corporation (if applicable), and/or the name, address and telephone number of any other type of entity for which the request seeks identification.

7. **“Internal communication,” “internal communications,” “record,” “records,” “written communication,” “written communications,” and “written correspondence”** means all data, papers, and books, transcriptions, pictures, drawings or diagrams or every nature, whether transcribed by hand or by some mechanical, electronic, photographic or other means, as well as sound reproductions of oral statements or conversations by whatever means made, including written papers or memoranda which summarize oral conversations, whether in your actual or constructive possession or under your control or not, relating to or pertaining to or in any way to the subject matters in connection which it is used and includes originals, all file copies, all other copies, no matter how prepared and all drafts prepared in connection with such writing, whether used or not, including by way of illustration and not by way of limitation, the following: books; records; reports; contracts; agreements; video, audio and other electronic recordings; memoranda (including written memoranda of telephone conversations, other conversations, discussions, agreements, acts and activities); minutes; diaries; calendars; desk pads; scrapbooks; notes; notebooks; correspondence; drafts; bulletins; electronic mail (e-mail); facsimiles; circulars; forms; pamphlets; notice; statements; journals; postcards; letters; telegrams; publications; inter- and intra- office communications; photocopies; microfilm; maps; drawings; diagrams; sketches; analyses; transcripts; electronically stored information (ESI) and any other documents within defendant’s possession, custody or control from which information can be obtained or translated, if necessary, by detection devices into reasonably usable form, *i.e.*, typed in English.

8. **“Person,”** as used herein, shall mean any individual or entity, whether a corporation, partnership, association, trust, limited partnership, limited liability company, limited liability partnership, trust, estate, unincorporated association, group, or other entity recognized by law, and such term shall also include any and all persons acting, or claiming to act, in a representative capacity therefor, and shall likewise include all agents, employees, attorneys, advisors, partners, associates or other persons or entities working for or on behalf of said person.

9. The words **“any”** and **“all”** shall be read in the conjunctive and not in the disjunctive wherever they appear, and neither of these words shall be interpreted to limit the scope of an Interrogatory or document request. Furthermore, the use of a verb in any tense shall be construed as the use of the verb in all other tenses and the singular form shall be deemed to include the plural,

and vice-versa. The singular form of any noun shall be deemed to include the plural, and vice-versa.

10. **“Relating to”** shall include pertaining to, recording, evidencing, containing, setting forth, reflecting, showing, disclosing, describing, explaining, summarizing, concerning or referring to, whether directly or indirectly.

11. **“Request”** and **“Requests”** mean and are limited to the numerical requests set forth below seeking the production of documents pursuant to the enclosed Subpoena to Produce Documents under Federal Rule of Civil Procedure 45.

12. **“Action”** means *Donald J. Trump for President, Inc. et al. v. Kathy Boockvar et al.*, currently pending in the United States District Court for the Western District of Pennsylvania, Case No. 2:20-cv-966.

13. **“Election Code”** means the Pennsylvania Election Code, Act of June 3, 1937, P.L. 1333, as amended and codified at 25 P.S. § 2600, *et seq.*

14. **“County Election Board”** refers to any and all of sixty-seven (67) county boards of elections in the Commonwealth of Pennsylvania as provided by Election Code Section 301, 25 P.S. § 2641, and any employee, agent, attorney, or other representative acting on their behalf, either individually or collectively.

15. **“District Election Board”** refers to any and all of the district election boards within the Commonwealth of Pennsylvania as that term is defined in Election Code Section 401, 25 P.S. § 2671.

16. **“Pennsylvania Department of State”** refers to the Pennsylvania Department of State, any employee, agent, attorney, or other representative acting on its behalf or its Bureau of Commissions, Elections and Legislation, including without limitation: Kathy Boockvar, Secretary of the Commonwealth of Pennsylvania, Jonathan M. Marks, Deputy Secretary for Elections & Commissions; Veronica Degraffenreid, Special Advisor on Election Modernization; Jessica Mathis, Director of Bureau of Election Services and Notaries; and Michael Moser, Director of Bureau of Election Security and Technology.

DOCUMENTS REQUESTED

1. Any and all communications with the Pennsylvania Department of State, or any agent or employee of same, regarding the placement and/or use of drop boxes, mobile ballot collection centers, and/or similar collection/drop-off locations during the June 2, 2020 Primary Election or the November 3, 2020 General Election, and all correspondence, memoranda, email messages, postings, or other communications, whether in writing or made orally, that (a) were made by, to, and/or between Defendant or any employee, agent or other representative acting on her behalf or for the Pennsylvania Department of State or its Bureau of Commissions, Elections and Legislation, including without limitation: Jonathan M. Marks, Deputy Secretary for Elections & Commissions; Veronica Degraffenreid, Special Advisor on Election Modernization; Jessica Mathis, Director of Bureau of Election Services and Notaries; and Michael Moser, Director of

Bureau of Election Security and Technology, and any other person, including without limitation: any County Election Board; any District Election Board; or any voter/elector in the Commonwealth of Pennsylvania; and (b) concern, relate to, describe, explain, or justify the placement and/or use of such drop boxes, mobile ballot collection centers, and/or similar collection/drop-off locations during the June 2, 2020 Primary Election or the November 3, 2020 General Election, and/or specific instances or complaints related to compliance with the foregoing.

2. Any and all communications with Commissioner Lisa M. Deeley, Commissioner Al Schmidt, Commissioner Omar Sabir, the Office of the Philadelphia City Commissioners, or any agent or employee of same, regarding the use of drop boxes, mobile ballot collection centers, and/or similar collection/drop-off locations during the June 2, 2020 Primary Election or the November 3, 2020 General Election.

3. Any and all communications with any County Election Board or District Election Board, or any agent or employee of same, regarding the use of drop boxes, mobile ballot collection centers, and/or similar collection/drop-off locations during the June 2, 2020 Primary Election or the November 3, 2020 General Election.

4. Any and all communications with any political party or candidate for elected office regarding the use of drop boxes, mobile ballot collection centers, and/or similar collection/drop-off locations during the June 2, 2020 Primary Election or the November 3, 2020 General Election.

5. Any and all communications with news media, including but not limited to television, newspapers, and online publications regarding the use of drop boxes, mobile ballot collection centers, and/or similar collection/drop-off locations during the June 2, 2020 Primary Election or the November 3, 2020 General Election.

6. Any and all documents relating to the use of drop boxes, mobile ballot collection centers, and/or similar collection/drop-off locations during the June 2, 2020 Primary Election or the November 3, 2020 General Election.

7. Any and all documents relating to the determination of where drop boxes, mobile ballot collection centers, and/or similar collection/drop-off locations during the June 2, 2020 Primary Election or the November 3, 2020 General Election should be located.

8. Any and all documents relating to the securing and monitoring of drop boxes, mobile ballot collection centers, or similar collection/drop-off locations during the June 2, 2020 Primary Election or the November 3, 2020 General Election.

9. Any and all documents relating to the collection of ballots from drop boxes, mobile ballot collection centers, and/or similar collection/drop-off locations during the June 2, 2020 Primary Election or the November 3, 2020 General Election.

10. Any and all documents relating to the identity of persons working on behalf of the Committee of Seventy who were involved in the placement, securing, or monitoring of, or the collection of ballots from, drop boxes, mobile ballot collection centers, and/or similar

collection/drop-off locations during the June 2, 2020 Primary Election or the November 3, 2020 General Election.

11. Any and all documents relating to fees, expenses, or costs relating to the use, placement, securing, or monitoring of, or the collection of ballots from, drop boxes, mobile ballot collection centers, and/or similar collection/drop-off locations during the June 2, 2020 Primary Election or the November 3, 2020 General Election.

12. Any and all documents relating to the Committee of Seventy's website and/or social media pages and/or posts that were removed from public viewing and involve the placement and/or use of drop boxes, mobile ballot collection centers, and/or similar collection/drop-off locations during the June 2, 2020 Primary Election or the November 3, 2020 General Election.