

**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

**REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT OF DEFENDANT-INTERVENORS CITIZENS
FOR PENNSYLVANIA'S FUTURE AND SIERRA CLUB**

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INTRODUCTION

Nothing in Plaintiffs' response brief fixes the twin flaws that permeate their claims: (1) Plaintiffs fail to show any voter fraud, let alone fraud that is connected to their claims and proposed remedies; and (2) Neither equal protection nor due process requires a state to *limit* voting access or throw out legitimate votes based on the mere specter of purported voter fraud.

First, Plaintiffs lack any evidence of voter fraud and are unable to connect the negligible evidence of a few simple mistakes to their claims and the extraordinary relief they seek. Plaintiffs' "disputed" and "undisputed" facts (ECF 552 at 3-5) do not establish a single fact about a single fraudulent vote or any credible threat of fraud. And Plaintiffs' repeated reference to conclusory "allegations" of injury (*id.* at 9, 11, 14, 31) are patently insufficient. This is summary judgment, and mere allegations no longer suffice. Plaintiffs were granted extensive discovery with which to develop evidence. Their failure to adduce any evidence of voter fraud whatsoever, or the credible threat of such fraud, merely validates the conclusion of the Pennsylvania Supreme Court and the Pennsylvania Secretary of the Commonwealth: voter fraud is vanishingly rare and there is no real risk of voter fraud in the upcoming election.

Second, Plaintiffs have no valid legal claim and ignore the mountain of case law rejecting their specious and discredited theory that there is a right to have states restrict voting based on the fiction that non-existent voter fraud is diluting voters' votes. Rather than address this established case law, and the absence of any case adopting their theory, Plaintiffs dress up their claims with quotations about the importance of the right to vote. Shorn of its rhetoric, what Plaintiffs actually ask this Court to do is restrict people from voting and disenfranchise them based on the illusion that some, or even one (*see* ECF 552 at 68-69) of them, may be voting fraudulently. In short, Plaintiffs are arguing that the U.S. Constitution dictates that the Commonwealth of Pennsylvania *must* prioritize Plaintiffs' unproven potential harm of voter fraud over the benefit of ensuring the

right and ability of its citizens to have their votes counted, and that this Court should decide exactly how to effectuate that prioritization in every detail (from drop boxes to poll watchers to signature verification). This argument is legally and factually baseless, and if accepted, would embroil courts in unmanageable and politicized supervision of state election processes. Plaintiffs' claims must be dismissed.

ARGUMENT

I. PLAINTIFFS FAIL TO PROVIDE ANY EVIDENCE CONNECTING THEIR ALLEGED INJURY TO THEIR REQUESTED RELIEF

Plaintiffs' response brief, just like Plaintiffs' opening brief, relies on supposed voter fraud to establish an injury, but fails to provide any evidence of this fraud. Nor do Plaintiffs explain why this Court should reject the Pennsylvania Supreme Court's finding that concerns about fraud "are unsubstantiated and are specifically belied by the Act 35 report issued by the Secretary on August 1, 2020 concerning mail in voting in the Primary Election." *Pennsylvania Democratic Party v. Boockvar*, — A.3d —, 2020 WL 5554644 at *30 (Pa. Sept. 17, 2020). And while Plaintiffs continue to make conclusory assertions of fraud, they barely even attempt to connect these assertions to the actual claims, instead relying on mere speculation that their requested relief would reduce fraud.

A. There Is No Evidence That Additional Ballot Drop-Off Locations Increase Voting Fraud

Plaintiffs fail to provide any evidence that drop boxes will increase voting fraud. Plaintiffs do not dispute that voters already can use thousands of mailboxes to deposit ballots, and thus the supposed concern with third-party delivery of ballots cannot be addressed by prohibiting drop boxes. Instead, Plaintiffs suggest that drop boxes provide "another opportunity for third party abuse of the mail-in ballot process," ECF 552 at 69, but Plaintiffs do not explain why any such additional opportunity matters given that there are already thousands of mailboxes where someone

who wanted to engage in such abuse could do so. In fact, Plaintiffs conceded that mailboxes could be used just as easily if someone wanted to engage in third-party delivery.¹

The only difference Plaintiffs suggest is that there will be more votes in drop boxes than in mailboxes, supposedly making drop boxes a superior target for an attempt to destroy votes. *Id.* at 71. But this speculation comes without any citation to anything because there is no evidence of anyone tampering with a ballot drop box or attempting to destroy the ballots therein (a criminal offense in Pennsylvania, 25 P.S. § 3517)—whether in Pennsylvania or any other state. Indeed, as Defendants’ experts explained in unrebutted reports (backed by evidence rather than idle speculation), drop boxes are substantially *more* secure than mailboxes. *See, e.g.*, ECF 546-14, Report of Paul Gronke ¶ 27 (“A company that makes drop boxes for ten states describes many of the features that make drop boxes for elections mail even more secure than regular postal ‘blue boxes.’ These include ‘ADA compliance (drive up and walk up options), 3/16 to 1/2 inch steel; no grip points for forced entry; doors resist impact and prying; lock body is never exposed outside the box thereby protecting against tampering.’”); *id.* ¶ 30 (“With respect to chain of custody, drop boxes eliminate one link in the chain (i.e., further handling by the Postal Service), and by implication provide a more secure method of returning mail ballots than by using the mail.”); ECF 546-15, Report of Amber McReynolds ¶ 47 (“A drop-box provided by a county board of elections is secure, and has additional safeguards that are not available through a United States Postal Service mailbox.”); *id.* ¶ 49 (“Accessible drop boxes also reduce the risk of mass collection of

¹ *See* Ex. T (Representative Glenn Thompson Tr.) 88:22-89:1 (“Q. It’s no harder to drop that third-party collected ballot into a U.S. Postal Service blue box than it is to drop in any board of elections unmanned drop box; correct? A. That’s correct.”); Ex. S (Representative Guy Reschenthaler Tr.) 87:21-88:1 (“Q. That’s the same risk with a mailbox and a drop box, isn’t it? A. I didn’t mean to interrupt you. Yeah, sure, you still have the same risk of stuffing -- you still have the same risk of collecting ballots.”).

ballots or ballot harvesting. When voters are given more options to return their ballots directly to elections officials such as via drop boxes, they are less likely to seek or accept an intermediary's assistance with returning their ballots.”). And Plaintiffs themselves conceded that they are unaware of any attempt to destroy or tamper with ballots submitted via drop box, or with the drop boxes themselves.²

Nor do Plaintiffs identify any actual evidence of fraud in the use of drop boxes. Plaintiffs falsely assert that “[i]t is undisputed that the use of unstaffed drop boxes encourages fraud and invites ballot destruction.” ECF 552 at 66. In fact, Defendants and Intervenors disputed precisely this point, ECF 542 at 1, and did so by marshalling overwhelming evidence.³ Plaintiffs cannot

² See Ex. S (Reschenthaler Tr.) 90:1-12 (“Q. And again, you're not aware of any instance of ballot tampering or destruction specifically that's animating these concerns; is that right? MR. MERCER: Objection to form. THE WITNESS: It's a possibility – it's a possibility that concerns me”); Ex. R (Representative John Joyce Tr.) 46:11-47:22 (“Q. You're not aware of anybody taking ballots out of a drop box and changing the voter's intent decision; right? A. No, sir. Q. You're not aware of anyone destroying ballots in a drop box and destroying the drop box itself; correct? A. No, sir. ... Q. Sir, no, I understand. I just want to make sure that we're clear that you've never heard of those things happening in Pennsylvania and you've never heard of them happening in any other state. Is that correct? MR. MERCER: Objection to form. THE WITNESS: Yes, sir.”); Ex. T (Thompson Tr.) 81:4-15 (“Q. With respect to that last point of harm and vandalism, are you aware of any instance, either in the Pennsylvania primary or in any other election in the United States, in any time period of incidents where ballot drop boxes have been vandalized, destroyed, or the votes inside have been damaged in some way? MR. MERCER: Objection to form. THE WITNESS: I have no personal knowledge, but I'm not sure where these ballots in Luzerne County came from, so I don't know. But I'm not aware of anything personally, no.”).

³ See, e.g., ECF 542 at 1 (“Plaintiffs have adduced no evidence—none—of any voter fraud in the Pennsylvania primary, or a single voter's intention to engage in fraudulent voting in the upcoming general election in connection with the use of the drop boxes”); *id.* at 3 (“[A] Trump campaign operative—designated to speak under oath on behalf of the RNC and the Trump campaign—confirmed that he is not aware of any instance of a voting drop-box or its contents being destroyed, or of anyone threatening to do the same, anywhere in Pennsylvania.”); *id.* at 5, citing ECF 546-15, Report of Amber McReynolds (“drop boxes do not create an increased opportunity for fraud, and reduce the risk of third party delivery of ballots”); *id.* at 7 (“None of the county election officials that Plaintiffs deposed could identify specific instances of fraud.”); *id.* at 10 (“Plaintiffs provide no reason (let alone evidence) to believe drop boxes are more likely to lead

hide their failure to adduce any actual, contrary evidence by falsely asserting that there is in fact no dispute. As to the evidence, the four unsubstantiated photographs from social media and one county video to which Plaintiffs repeatedly refer (ECF 552 at 22, 64, 67, 68) simply do not show that more than one nondisabled voter's ballot was cast. And Plaintiffs' assertion (*id.* at 69) that Defendants did not prove the contrary misunderstands that it is *Plaintiffs'* burden to prove the basis for their claims. Regardless, despite having months, Plaintiffs failed to investigate the actual facts underlying these photos and posts (*see* ECF 542 at 11-12) and Defendants' experts thoroughly refute that drop boxes encourage voter fraud, as Defendant-Intervenors explained (ECF 542 at 10, 12-13) and Plaintiffs ignore.

Plaintiffs' so-called expert, Greg Riddlemoser, adds nothing. Mr. Riddlemoser provides no legitimate analysis or opinion on the risk of fraud from drop boxes, and instead, like Plaintiffs, is content to rest his views on pure conjecture. *See* ECF 504-19 at 15. The paucity of Plaintiffs' evidence is, indeed, underscored by the degree to which Plaintiffs desperately cling to Mr. Riddlemoser's expert report. ECF 552 at 22, 64, 67. Mr. Riddlemoser's report does not provide any actual support for his unfounded *ipse dixit* that drop boxes create a risk of fraud, nor is he even qualified to offer opinions on drop boxes at all. During the period in which Mr. Riddlemoser was a county election official in Virginia, Virginia did not use drop boxes.⁴ Mr. Riddlemoser lacks

to voter fraud than mailboxes.”); *id.*, ECF 546-14, quoting Report of Professor Gronke (“‘Drop boxes have been in use for years all over the country and are secure’ and that he is ‘not aware of any reports that drop boxes are a source for voter fraud.’”); *id.* at 12 n.6 (“Plaintiffs’ assertions that drop boxes will not have adequate security is entirely speculative and lacks any evidentiary support.”).

⁴ Amy Friedenberger, *Gov. Ralph Northam signs legislation to allow ballot drop boxes for November's election*, Roanoke Times-Dispatch (Sept. 4, 2020), https://roanoke.com/news/local/gov-ralph-northam-signs-legislation-to-allow-ballot-drop-boxes-for-novembers-election/article_a26aca3e-1e3c-5951-b44c-5682f83e2026.html.

any experience or expertise that would permit this Court to credit his views as to the use or security features of drop boxes.⁵ Furthermore, as Defendant-Intervenors have previously argued (ECF 542 at 5-6), Mr. Riddlemoser's opinions as to "voter fraud" are fundamentally flawed because they are premised on the warped view that *any* violation of the election code constitutes "voter fraud." *See* 504-19 at 2. Mr. Riddlemoser offers no basis, in the law or otherwise, for this indefensible cornerstone of his report.

Upon examination, Mr. Riddlemoser offers just *two sentences* reflecting his opinion as to how drop boxes purportedly increase the risk of fraud, and those two sentences are pure conjecture, and thus fail *Daubert's* reliability standard. *See Karlo v. Pittsburgh Glass Works, LLC*, 849 F.3d 61, 80–81 (3d Cir. 2017) (expert testimony fails *Daubert's* reliability standard if based on "subjective belief and unsupported speculation.") (quotation marks omitted). First, Mr. Riddlemoser states that "[u]nstaffed drop boxes offer, in my opinion, the least amount of electoral security, integrity, and uniformity and lead to voter fraud and vote dilution." ECF 504-19 at 15. He does not provide any basis for this opinion other than to acknowledge that the Secretary has issued guidance on the use of drop boxes. In fact, the Secretary's August 19, 2020 guidance provides nine different specifications for how to ensure the security of drop boxes. *See* ECF 546-8 at 6. Second, Mr. Riddlemoser repeats that "[i]n [his] opinion, the use of unmanned drop boxes presents the easiest opportunity for voter fraud." ECF 504-19 at 16. Again, he provides no basis for that opinion. Rather than substantiate his views, Mr. Riddlemoser offers his musings on the

⁵ While Mr. Riddlemoser asserts that there is no relevant distinction between a drop box and a "postal mailbox," except that "the Pennsylvania General Assembly has determined that the use of those postal mailboxes are authorized" (ECF 504-19 at 15), he appears not to appreciate that the same is true of drop boxes, which were expressly permitted by the Pennsylvania legislature, and approved by the Pennsylvania Supreme Court. *See Pennsylvania Democratic Party v. Boockvar*, 2020 WL 5554644 at *10.

security features that he believes drop boxes should have. *Id.* Having never administered an election in which drop boxes were used, nor studied the use of drop boxes in other states, Mr. Riddlemoser is not qualified to offer these opinions and his speculative *ipse dixit* on the subject is entitled to no weight. Far from providing Plaintiffs' support, Plaintiffs' reliance on Mr. Riddlemoser's opinions exposes Plaintiffs' utter lack of evidentiary support for their claims.

B. There Is No Evidence That Pennsylvania's Long-Standing Requirement That Electors Watch Polls In Their Own County Increases Voting Fraud

Plaintiffs also fail to provide any evidence of an injury from the requirement that poll watchers must watch polls in their own county. *See* Second Am. Compl., ECF 461 ¶¶ 51, 192; *see id.* at 80-81 §§ D, I. The Pennsylvania Supreme Court has already decided this issue, and Plaintiffs do not defend their argument that this ruling applied only to a facial challenge, which is simply erroneous. *See* ECF 542 at 14-16. Regardless, Plaintiffs do not identify any actual evidence to suggest that the county residency requirement will increase voter fraud. Indeed, Plaintiffs admit that they do not even know whether the requirement will affect their ability to find sufficient poll watchers. *See* ECF 552 at 76-77. Instead, they suggest it suffices for them to assert it is "unlikely" they will be able to find sufficient poll watchers. *Id.* at 77. However, an unsupported assertion of a mere likelihood plainly does not suffice for a claim to survive summary judgment. *See NLRB v. FES, A Div. of Thermo Power*, 301 F.3d 83, 95 (3d Cir. 2002) ("[A]n unsupported, conclusory assertion is inadequate to satisfy the movant's burden of proof on summary judgment.").

C. There Is No Evidence That Secretary Boockvar's Guidance Will Increase Voting Fraud

Plaintiffs similarly fail to provide evidence of a connection between Secretary Boockvar's guidance on signature verification and a supposed increase in voting fraud. Plaintiffs also ignore the evidence (ECF 542 at 17) that signature verification often leads to the improper discarding of valid votes. There is no evidentiary basis to believe—let alone to require that the Commonwealth

of Pennsylvania accept—that signature verification will make the counting of legitimate votes more (rather than less) accurate.

II. PLAINTIFFS HAVE NOT ESTABLISHED ANY CONSTITUTIONAL RIGHT THAT COULD HAVE BEEN INFRINGED

A. Plaintiffs Have No Cognizable Claim Based On So Called Vote Dilution

Unsurprisingly, Plaintiffs fail to provide any cogent defense of the new constitutional claim they seek: a right under the U.S. Constitution to limit ballot drop boxes, to poll watch outside of their own counties, or to dictate how Pennsylvania examines signatures on ballots. Plaintiffs first try, unsuccessfully, to define the supposed right broadly as the “fundamental right to vote.” ECF 552 at 53. But no one is preventing Plaintiffs from voting, and all of the citizen Plaintiffs insist that they will be voting. Plaintiffs next retreat to the idea that the “right is to have [their] votes counted on equal terms.” *Id.* at 54. But Plaintiffs’ votes are counted and weighted equally with everyone else in Pennsylvania—unlike the cases Plaintiffs cite, where some votes literally were counted or weighted less than others. Thus, the right Plaintiffs actually seek to protect is, in fact, the right not to have purported voter fraud make the election unfair. However, Pennsylvania already makes voter fraud illegal, and thus again, this alleged right could aid Plaintiffs only if was further defined as the right to have Pennsylvania prevent voter fraud in the particular manners that Plaintiffs prefer. Of course, there is no such right.

Even putting aside the lack of a cognizable right, there is no impairment of any right here, however it is defined. Plaintiffs claim that they are injured from “non-equal treatment and/or the dilution or debasement of their legitimately cast votes.” ECF 552 at 12. The former is addressed *infra* at II.B, but as to “dilution or debasement,” Plaintiffs simply ignore the numerous cases categorically rejecting such a theory. *See* ECF 542 at 18-19 (citing *Short v. Brown*, 893 F.3d 671, 677 (9th Cir. 2018); *Gamza v. Aguirre*, 619 F.2d 449, 453 (5th Cir. 1980); *Shannon v. Jacobowitz*,

394 F.3d 90, 96 (2d Cir. 2005); *Bennett v. Yoshina*, 140 F.3d 1218, 1226-27 (9th Cir. 1998); *Haakenson v. Parkhouse*, 312 F. Supp. 929, 932 (E.D. Pa. 1970)). And Plaintiffs do not dispute that all of the cases they rely upon concern *restraints* on voting rights, not *increasing* the ability of others to vote. Plaintiffs ignore this critical distinction.

Indeed, the very idea of vote dilution is nonsensical here because the question remains: Diluted as compared to whom? Unlike the “one person, one vote” cases Plaintiffs repeatedly quote, every voter in Pennsylvania will have his or her vote counted for exactly as much as every other voter. Thus, by “vote dilution,” Plaintiffs really mean that their votes would be worth more if other people voted less. But there is, obviously, no constitutional right to have other people not vote. And to the extent Plaintiffs rely on the theory that some of these votes supposedly would be fraudulent, again there is a total lack of evidence to support this fiction, and no legal basis to require Pennsylvania to prevent voter fraud in the manner Plaintiffs prefer, drawing courts into intractable political debates over every election rule.

B. Plaintiffs’ Equal Protection “Uniformity” Claim Fails On The Merits

Plaintiffs similarly fail to provide any legal support for their argument that any disparity in election procedures in different counties constitutes a constitutional violation. Remarkably, Plaintiffs simply ignore the circuit courts that consistently and uniformly have rejected such a claim. *See* ECF 542 at 24 (citing *Short*, 893 F.3d at 679; *Wexler v. Anderson*, 452 F.3d 1226, 1231 (11th Cir. 2006); *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 635 (6th Cir. 2016)). Plaintiffs likewise ignore that their theory would invalidate countless election procedures in every state, given the widespread intrastate differences in voting procedures, which simply reflect different needs in different places. Moreover, Plaintiffs do not even attempt to defend their prior invocation of *Bush v. Gore*, 531 U.S. 98 (2000) (per curiam). Instead, Plaintiffs rely (ECF 552 at 54) only on *Pierce v. Allegheny County Bd. Of Elections*, 324 F. Supp. 2d 684, 697 (W.D. Pa.

2003), ignoring Defendant-Intervenors' explanation (ECF 542 at 24-25) as to why *Pierce* is irrelevant here.

Beyond the lack of any support in precedent, Plaintiffs appear to fundamentally misunderstand Equal Protection principles in seeking strict scrutiny here. Strict scrutiny applies only where a law treats people differently based on a suspect classification or an uneven impairment of fundamental rights. *See, e.g., Armour v. City of Indianapolis, Ind.*, 132 S. Ct. 2073, 2080 (2012) (“This Court has long held that a classification neither involving fundamental rights nor proceeding along suspect lines ... cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose.”) (quotation marks omitted). Plaintiffs do not claim that there is any suspect classification here and instead rest on the fundamental-rights prong. *See* ECF 552 at 54.

However, as explained above, there is no fundamental right or impairment of such a right at issue here. Indeed, Plaintiffs cite no case ever applying strict scrutiny—or any heightened scrutiny—to state action to ensure that more voters have access to vote and have their votes counted. There is no *Anderson-Burdick* balancing to be done here because there is *no burden* on Plaintiffs' right to vote. Indeed, in the Third Circuit, courts routinely apply rational-basis review to voting rules that do not actually impair the right to vote. *See Biener v. Calio*, 361 F.3d 206, 215 (3d Cir. 2004) (declining to apply the *Anderson* balancing test and instead applying rational basis because plaintiff “cannot establish an infringement on the fundamental right to vote”); *Donatelli v. Mitchell*, 2 F.3d 508, 514-15 & n.10 (3d Cir. 1993) (declining to apply *Anderson* or *Burdick*'s intermediate standards because plaintiffs failed to “articulate[] what fundamental constitutionally protected right ha[d] been infringed that would merit application of strict scrutiny”); *Republican Party of Pennsylvania v. Cortés*, 218 F. Supp. 3d 396, 409 (E.D. Pa. 2016) (“Because Section

2687(b) [the poll watcher residency restriction] places no burden on Plaintiffs' constitutional rights, the statute need only withstand rational-basis review.”); *see also Obama for Am. v. Husted*, 697 F.3d 423, 429 (6th Cir. 2012) (“If a plaintiff alleges only that a state treated him or her differently than similarly situated voters, without a corresponding burden on the fundamental right to vote, a straightforward rational basis standard of review should be used.”). Even applying an *Anderson-Burdick* analysis, heightened scrutiny could not apply because Plaintiffs have provided no evidence (nor have they alleged any facts beyond tautological legal conclusions) that their right to vote has or will be burdened severely; to the extent there is any constitutional injury at all (which there is not), the “character and magnitude” of such injury is so miniscule as to be indiscernible. *See Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983). And there is no plausible argument that the actions here fail rational-basis review.

Finally, Plaintiffs do not respond at all to the critical point that if there were unlawful disparate treatment between counties, the proper remedy would not be to restrict ballot access but to require greater access uniformly.

C. Plaintiffs Have No Cognizable Claim To Challenge Secretary's Boockvar's Guidance

Plaintiffs also fail to establish that this Court should not abstain regarding any challenges to Secretary's Boockvar's guidance on signature verification. Plaintiffs' only argument (ECF 552 at 30, 31-36) is that state law is supposedly clear on this issue, but as this Court has held repeatedly for Plaintiffs' claims based on state law, there are substantial ambiguities in Pennsylvania election law that are best addressed by the state courts in the first instance. Plaintiffs provide no reason why they cannot seek such relief in the state courts.

Moreover, to the extent Plaintiffs complain that the guidance will be applied unevenly, this complaint is overblown (even assuming such lack of uniformity could give rise to an Equal

Protection claim, which it cannot). At most, Plaintiffs purport to identify seven counties that have indicated that their review might, potentially, result in rejecting ballots based on signature comparison alone. ECF 552 at 34. At least one of those counties, however—Berks County—has not stated that it will be rejecting ballots solely based on signature comparison, but rather that it will examine the signature included on declarations as part of their review, which is no surprise as the Election Code and Secretary of the Commonwealth guidance specifically provide for confirming that a signature is included as part of the review of the declaration to determine its sufficiency. ECF 532-2 at 5 (“Berks County will not reject an absentee or mail-in ballot based solely upon signature analysis in conformance with applicable guidance from the Commonwealth.”). In any event, even if six of Pennsylvania’s 67 counties did, *arguendo*, reject ballots based solely on signature comparison and contrary to the Secretary of the Commonwealth’s guidance, the question of whether that approach is correct remains anchored in Commonwealth Election Law and should be pursued in Commonwealth courts consistent with this Court’s abstention on other Commonwealth law issues. *See* ECF 409, August 23 Order, at 12-13 (“The Pullman abstention doctrine ‘directs that federal courts should abstain from rendering a decision when difficult and unsettled questions of state law must be resolved before a substantial federal constitutional question can be decided.’”). Indeed, on October 4, 2020, the Secretary of the Commonwealth filed an application with the Supreme Court of Pennsylvania seeking clarification of Pennsylvania law regarding rejecting or challenging applications or ballots based on signature comparison. *See* ECF 557-1 (Application for Invocation of King’s Bench Power to Declare Proper Construction of Election Code, Docket 149 MM 2020). It is therefore likely the Supreme Court of Pennsylvania will answer precisely the questions Plaintiffs seek to put before this Court.

D. There Is No Evidence The Elections Clause Has Been Violated

Plaintiffs finally make no argument as to why their Elections Clause claim is supposedly valid. As Defendant-Intervenors explained (ECF 542 at 29-31), this claim is legally baseless, as there is no plausible argument that executive and administrative officials cannot issue rules and regulations to enforce and implement the laws enacted by Pennsylvania's General Assembly.

CONCLUSION

For the foregoing reasons and those stated in Defendant-Intervenors' opening brief, the Court should dismiss Plaintiffs' Second Amended Complaint, grant summary judgment in favor of Defendants, deny Plaintiffs' motion for summary judgment, and deny Plaintiffs' request for injunctive relief.

Dated: October 5, 2020

Respectfully submitted,

/s/ Eliza Sweren-Becker

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CERTIFICATE OF SERVICE

I, Eliza Sweren-Becker, certify that I served the foregoing Reply Memorandum of Law in Support of Motion for Summary Judgment of Defendant-Intervenors Citizens for Pennsylvania's Future and Sierra Club on the following counsel who are registered as CM/ECF filing users who have consented to accepting electronic service through CM/ECF:

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Dated: October 5, 2020

Respectfully submitted,
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