

(b) (6) (ODAG)

From: (b) (6) (ODAG)
Sent: Tuesday, December 15, 2020 1:40 PM
To: (b) (6) (ODAG) (b) (6) (ODAG)
Subject: FW: Meeting TODAY with POTUS

Confirmation from WHCO as well.

(b) (6)
Special Assistant
Office of the Deputy Attorney General
Phon (b) (6)

From: Morrall, Kimberly E. EOP/WH (b) (6)
Sent: Tuesday, December 15, 2020 1:39 PM
T (b) (6) (ODAG (b) (6)
C (b) (6) (ODAG (b) (6)
Subject: RE: Meeting TODAY with POTUS

Thank you. I just checked in with Kate Lair and she confirmed she is processing the WAVES for Mr. Donoghue.

Thank you,
Kimberly

From (b) (6) (ODAG (b) (6)
Sent: Tuesday, December 15, 2020 1:30 PM
To: Morrall, Kimberly E. EOP/WH (b) (6)
C (b) (6) (ODA (b) (6)
Subject: RE: Meeting TODAY with POTUS

Thank you Kimberly. We submitted Donoghue's WAVES via a link Kate Lair provided this morning.

I'll update them re testing.

Best,

(b) (6)
Special Assistant
Office of the Deputy Attorney General
Phon (b) (6)

From: Morrall, Kimberly E. EOP/WH (b) (6) >
Sent: Tuesday, December 15, 2020 1:28 PM
T (b) (6) (ODAG (b) (6) (b) (6) (ODAG (b) (6) >
Subject: Meeting TODAY with POTUS
Importance: High

H (b) (6) an (b) (6),

I am told there is a meeting today at 2:15 PM with the President and Deputy AG Rosen and Richard Donoghue will be attending from DOJ. I know the Deputy AG does not need WAVES, but can you send the WAVES link to Mr. Donoghue? Please make sure they both arrive at least 20 min before for testing at EEOB-97, and then proceed to the Upper WW Lobby.

(b) (6)

thank you,

Kimberly Morrall
Special Assistant to the President and Senior Director
Office of Cabinet Affairs
The White House

O (b) (6) C (b) (6)

Donoghue, Richard (ODAG)

From: Donoghue, Richard (ODAG)
Sent: Friday, December 18, 2020 1:34 PM
To: Goldsmith, Andrew (ODAG)
Subject: RE: Four JM Proposals
Attachments: 2020.12.18 final JM provision re election fraud.docx

Andrew,

I've discussed the proposed edits with the AG.

Attached is a slightly-revised version of the 9-85.215 paragraph. It addresses th [REDACTED] (b) (5). I basically accepted their suggested edits as the AG clearly did not intend to constraint their approach to counter voter suppression efforts. To the contrary, the AG was trying to make the general approach of the Department more like CRT's pro-active approach.

On the CRM suggested edit [REDACTED] (b) (5)
[REDACTED]. Even their proposed opening lin [REDACTED] (b) (5)

[REDACTED] He has made it abundantly clear to them over and over that the Department has an obligation to police fraud in an ongoing election, not just deter misconduct in future elections. While there are merits to both sides of the debate, they simply refuse to accept the fact that the AG gets to set Department policy and, thus, the debate is over. As a result, their proposed edits are rejected.

Their prosed para. 9-85.220 is rejected as it is redundant.

Please roll the attached version of 9-85.215 into the JM with the next round of edits.

Thanks,

Rich

From: Goldsmith, Andrew (ODA [REDACTED] (b) (6))
Sent: Wednesday, December 9, 2020 4:25 PM
To: Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov>
Subject: Fwd: Four JM Proposals

Rich - here are CRM's proposed edits and comments on the new JM proposals (which I haven't reviewed yet). We probably should talk about this in the next few days. Thanks - Andrew

Sent from my iPad

Begin forwarded message:

From: "Nazzaro, Samuel (CRM) [REDACTED] (b) (6)" >
Date: December 9, 2020 at 4:18:45 PM EST
To: "Goldsmith, Andrew (ODAG) [REDACTED] (b) (6)"

Subject: RE: Four JM Proposals

Hi Andrew,

Attached are the four proposals with CRM's proposed edits and comments, which for the most part are minor, except as it pertains to the proposed new JM § 9-85.215, "Investigations of Federal Election Fraud."

CRM's edits and comments on new proposed JM § 9-85.215, "Investigations of Federal Election Fraud." are more substantive. CRM understands that this provision has already been reviewed and approved by the Department's reviewing official for JM matters, and is being provided to us as a courtesy. However, as CRM has not had an opportunity to review and comment on the proposed JM revision, CRM submits these proposed edits and comments for consideration. CRM also respectfully suggests that the

(b) (5)
[REDACTED]. Though CRM's attached input addresses certain issues an (b) (5)

[REDACTED] Finally, CRM/PIN has also included a document titled Draft JM Provision re Election Year Sensitivities_PIN.docx, re: 9-85.220 Federal Criminal Investigations in an Election Yea [REDACTED] (b) (5)

Thank you for the opportunity to review and comment.

Please let me know if there is anything else CRM can do to assist in this matter.

Thanks again and best,

Sam

Sam Nazzaro

Senior Counselor to the Assistant Attorney General
Criminal Division
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington , DC 20530-0001

(b) (6) (W)
(b) (6) (M)

From: Goldsmith, Andrew (ODAG [REDACTED] (b) (6))
Sent: Thursday, December 3, 2020 1:35 PM
To: Andrews, Kelli (NS [REDACTED] (b) (6))>; Blaha, Amber (ENRD [REDACTED] (b) (6))>; Gualtieri, David S (ENR [REDACTED] (b) (6))>; Lyons, Samuel R (TA [REDACTED] (b) (6))>; Hubbert, David A. (TAX [REDACTED] (b) (6))>; Oldfield, Sarah (AT [REDACTED] (b) (6))>; Treene, Eric (CR [REDACTED] (b) (6))>; Granston, Michael (CIV [REDACTED] (b) (6))>; Nazzaro, Samuel (CRM [REDACTED] (b) (6))>; Fisanick, Chris A. (USANAC [REDACTED] (b) (6))>; Wong, Norman (USAE0 [REDACTED] (b) (6))>; Hill, John (USADC [REDACTED] (b) (6))>

(b) (6) >; Catizone, Christopher (USAILN (b) (6) >; Troester, Robert (USAOKW (b) (6) >; Backman, David (USAU (b) (6) >; Smachetti, Emily (USAFL (b) (6) >; Smith, David L. (USAEO (b) (6) >; Murrane, Mary (USAMA (b) (6) >; Rolley, Karen (USAEO (b) (6) >; Walsh, Thomas (USAILN (b) (6) >; Burch, Alan (USAEO (b) (6) >
Cc: Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov>; Perkins, Paul (ODAG (b) (6) >; Keilty, Michael (ODAG (b) (6) >; Harris, Stacie B. (ODAG (b) (6) >; Grieco, Christopher (ODAG (b) (6) >; Creegan, Erin (ODAG (b) (6) >; Michel, Christopher (OAG (b) (6) >
Subject: Four JM Proposals

JM Board of Editors –

Good afternoon. I hope everyone had a pleasant Thanksgiving and is safe and healthy. We have four proposed JM revisions, which are described below.

1. **9-85.215 Investigations of Federal Election Fraud** – this proposal concerns the November 9, 2020, Attorney General memo on Post Voting Election Irregularity Inquiries (attached). We are adding this into the JM so that we have an actual policy (as opposed to just a practice) that sets guardrails. The memo has been narrowed down to an appropriate length for the JM, employing an approach we’ve used elsewhere in the JM (e.g., body worn cameras, eCommunications): put the high level points from the memo into the JM, and add a hyperlink in the JM to the AG memo itself. Note that this JM provision has already been reviewed and approved by PADAG Rich Donoghue, the Department’s reviewing official for JM matters, so this is primarily being sent to you as a courtesy.

2. **Adding Operative Language from the Attorney General’s Guidance on Human Trafficking Prosecutions in the Justice Manual** – this set of proposed additions to the Justice Manual is designed t (b) (5)

(b) (5)

3. **Justice Manual’s Capital Crimes chapter** – this proposed addition to the Justice Manual’s Capital Crimes (b) (5)

(b) (5)

4. **9-90.610 ECRA**– this proposal is designed t (b) (5)

(b) (5)

(b) (5)

If you have any comments (or suggested edits) on any of these proposals, please let me know by **5:00 pm on Wednesday December 9th**. Thank you in advance. – Andrew

ANDREW D. GOLDSMITH
Associate Deputy Attorney General &
National Criminal Discovery Coordinator
U.S. Department of Justice
Desk (b) (6)
Cell (b) (6)

9-85.215 Investigations of Federal Election Fraud

In conducting preliminary inquiries or investigations relating to allegations of federal election fraud, Department personnel must exercise care to avoid taking steps that could inadvertently impact an election or create an appearance that the Department is attempting to interfere in an election. While credible allegations should be addressed in a timely and effective manner, it is equally important that Department personnel exercise appropriate caution and maintain the Department's absolute commitment to fairness, neutrality and non-partisanship. As a general matter, it will likely be prudent to conduct a preliminary inquiry (as that term is defined in JM 9-85.210) to initially assess the evidence and to eliminate specious, speculative or far-fetched allegations. Consultation with the Public Integrity Section of the Criminal Division is required to conduct any investigation beyond a preliminary inquiry. Appropriate preliminary inquiries or investigations may be carried out in the period leading up to an election, in the voting phase, in the pre-certification phase and after certification. However, the phase of the election along with all other relevant factors should be taken into consideration when deciding whether it is appropriate to take overt investigative steps. For instance, any risk that overt Department action could impact the outcome of an election is greatly diminished, if it exists at all, once voting has concluded. In situations where claims of misconduct, if true, would clearly not impact the outcome of an election, it may be prudent to defer overt investigation until after the election is certified and all legal challenges are concluded. In situations where claims of misconduct, if true, could impact the outcome of an election, Department personnel should strive to resolve allegations within a timeframe that would allow appropriate authorities to rectify any misconduct.

To view additional guidance on these matters, see the *Attorney General's November 9, 2020 Memorandum on Post-Voting Election Irregularity Inquiries*.

Voters in Antrim County, Michigan, voted on paper ballots. Those records were reviewed yesterday and recounted by hand. This verification, independent of the software and hardware systems in question, returned results that indicates the consistency of the systems, with a 12 vote difference from the previous final tally.¹

The Allied Security Operations Group Antrim Michigan Forensics Report was issued prior to yesterday's hand recount. The report draws conclusions based upon descriptions of software that it is our understanding Antrim County does not own, and for versions of the software we understand to be incompatible with the version of the voting system Antrim County owns.

- The Dominion Voting System's (DVS) Democracy Suite (D-Suite) 5.5 that is used in Antrim County, Michigan was certified by the United States (U.S.) Election Assistance Commission (EAC) on September 14, 2018.² The D-Suite 5.5 voting system is comprised of multiple software, hardware, and firmware components. The back-end computer server system, known as the Election Management System (EMS), is a suite of multiple independent software applications. Antrim County only uses a subset of those software applications.
- It is our understanding that Antrim County does not use the ballot adjudication application software addressed in the report, and does not have compatible systems, mainly the ImageCast Central tabulator and thus has no forensic logs of such systems. The lack of such logs is raised in the report, but given that Antrim County does not use the adjudication application, there would be no logs of such use.
- When hand-marked paper ballots are scanned by a machine, the machine will alert election officials to things like write-in voting, damaged ballots, overvotes, undervotes, and stray marks. The evidence provided in the report that shows screenshots of logs and file settings describe situations where the machine performed the intended processes based on the configuration settings. Counting programmed machine alerts that are for common occurrences in an election does not demonstrate error on the part of the machine, yet the report appears to treat such occurrences as errors for their compilation purposes.
- Discussion of the possibility that Ranked Choice Voting may have been enabled is not applicable given the systems in use in Antrim County. It is our understanding that Dominion Voting System's (DVS) Democracy Suite (D-Suite) 5.5 does not have Ranked Choice Voting capability the screenshot provided is for D-Suite 5.11.³

Discussion in the report is inconsistent with the current voting system certification process in the US Election Assistance Commission's Voluntary Voting System Guidelines.⁴ Finally, we would leave to the Department of Justice evaluation of the references to the Help America Votes Act.

¹ Hendrickson, Clara and Paul Egan, "Antrim County hand tally affirms certified election results." Detroit Free Press. Dec. 17, 2020. "Previous final tally" references the fact that there were acknowledged errors in earlier counts explained as being related to how the machines were used, not errors by the machines themselves.

² https://www.eac.gov/sites/default/files/voting_system/files/DSuite55_CertConf_Scope%28FINAL%29.pdf (last accessed on December 15, 2020)

³ *Ibid*

⁴ https://www.eac.gov/sites/default/files/eac_assets/1/28/VVSG.1.0_Volume_1.PDF (last accessed on December 15, 2020)

Donoghue, Richard (ODAG)

From: Donoghue, Richard (ODAG)
Sent: Wednesday, December 23, 2020 4:12 PM
To: Marc Raimondi (OPA) [REDACTED] (b) (6)
Subject: WaPo Article

Marc not urgent, but when you get time please have someone send the DAG and me the article below, which is mentioned in this afternoon's digest. Thanks, Rich

- "Officials find few possible cases of voter fraud in key states" [WaPo]

Richard P. Donoghue
Principal Associate Deputy Attorney General
Office of the Deputy Attorney General

[REDACTED] (b) (6)

Rosen, Jeffrey A. (ODAG)

From: Rosen, Jeffrey A. (ODAG)
Sent: Thursday, December 24, 2020 4:37 PM
To: Rosen, Jeffrey A. (ODAG)
Subject: FW: fyi

<https://www.justice.gov/usao-mdnc/pr/federal-authorities-charge-nineteen-voter-fraud> (september 2, 2020).

<https://www.justice.gov/usao-ednc/pr/alien-sentenced-active-prison-time-unlawful-voting-2016-general-election>

<https://www.justice.gov/usao-ednc/pr/haitian-citizen-sentenced-voting-alien-2016-general-election>

<https://www.justice.gov/usao-ednc/pr/former-north-carolina-board-elections-election-official-sentenced-prison-aiding-and>

<https://www.justice.gov/usao-ednc/pr/citizen-mexico-sentenced-unlawfully-voting-2016-general-election>

<https://www.justice.gov/usao-ednc/pr/nineteen-foreign-nationals-charged-voting-2016-election>

Donoghue, Richard (ODAG)

From: Donoghue, Richard (ODAG)
Sent: Sunday, December 27, 2020 10:05 PM
To: Brady, Scott (USAPAW)
Subject: Fwd: Report for Voter Deficit
Attachments: Summary PA Election Issues 12222020.pdf; ATT00001.htm; Letter Reply to Sec. Boockvar Lancaster County.pdf; ATT00002.htm; Election Timeline for Butler County - Kim Geyer.pdf; ATT00003.htm; Final Letter to Sen Johnson and Congressman Perry 12222020A(1).pdf; ATT00004.htm

JFYI regarding allegations about PA voting irregularities, for whatever it may be worth.

Begin forwarded message:

From: Scott Perry <scott@patriotsforperry.com>
Date: December 27, 2020 at 8:42:38 PM EST
To: "Donoghue, Richard (ODAG)" <ricdonoghue@jmd.usdoj.gov>
Subject: Fwd: Report for Voter Deficit

?

Sir, as discussed.

Sent from my iPhone

Begin forwarded message:

From: Frank Rya (b) (6)
Date: December 22, 2020 at 5:46:53 PM EST
To: "Downey, Brian (HSGAC)" <brian_Downey@hsgac.senate.gov>, scott@patriotsforperry.com, "Aument, Ryan" <ryanaument@pasen.gov>, rboop@pasen.gov, bcutler@pahousegop.com, kbenning@pahousegop.com, Jake Smeltz <jsmeltz@pahousegop.com>, bnye@pahousegop.com, Bill Dougherty (b) (6) Heather Honey (b) (6)
Cc: Frank Ryan <fryan@pahousegop.com>, Rod Corey <rcoery@pahousegop.com>
Subject: Re: Report for Voter Deficit

?

I would ask you to use the following materials. One page was inadvertently not scanned in for the Final Letter to Sen. Johnson and Congressman Perry. Everything else is perfect.

I apologize for the inconvenience and truly appreciate your understanding.

Semper fi,

Frank

On Tue, Dec 22, 2020 at 2:55 PM Frank Rya [REDACTED] <(b) (6)> wrote:

Please see attached report for inclusion in the U. S. Senate Report as well as the update on the Voter Deficit in the 2020 General Election for President.

Semper fi,

Frank

--

Francis X. Ryan, KM
Colonel, USMCR (ret)

[REDACTED] (b) (6)

[REDACTED] (b) (6) (cell)

[REDACTED] (b) (6)

Life Lessons Learned Book - www.colfrankryan.com

Revolutionizing Accounting for Decision Making - www.leanabc.com

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--

Francis X. Ryan, KM
Colonel, USMCR (ret)

[REDACTED] (b) (6)

[REDACTED] (b) (6) (cell)

[REDACTED] (b) (6)

Life Lessons Learned Book - www.colfrankryan.com

Revolutionizing Accounting for Decision Making - www.leanabc.com

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Election Timeline for Butler County, Pennsylvania/November 12, 2020

In 2016, Butler County had a 72% voter support for Donald J. Trump in comparison to Hilary Clinton at 28%. Pennsylvania ranks 25th for voter participation with 51 percent of the eligible population voting in the 2018 election. Butler County was a stronghold for President Trump in the past as well as other Republican Candidates, I believe, our County was specifically targeted by external forces such as Governor Tom Wolf, Secretary of Commonwealth and State Election Director Kathy Boockvar, Mark Zuckerberg/ Media/ Tech, as well as, Progress PA and Democrats statewide, to name just a few. There is no doubt these entities used their positions to influence the overall outcome of the Pennsylvania 2020 election. Often times this was done under the Covid guise of safeguarding the health, safety, and accessibility of Pennsylvania voters. As a Butler County Commissioner, I witnessed first hand these ongoing efforts made by these entities to chip away preceding and post election through a variety of tactics with the purpose of creating confusion, chaos, and instilling fear...all implemented by design. Changes made "on the fly" to election laws intentionally without our elected state legislature, left Pennsylvania counties isolated and at the mercy of edicts by State officials with no recourse. Counties were left to their own devices and fortitude to determine what was occurring and push back as we did multiple times. What was even more tragic, these changes were most often accomplished under the guise and cover of the Covid pandemic that was used to influence the behavior of the public voter who fell for it hook, line, and sinker by the mail in ballot system which encompassed early voting. One by one, our own Pennsylvania Democratic State Officials stripped each of the previously established safeguards and firewall requirements that protect the integrity of the voter system. It was astonishing the extent and effort these aforementioned entities went to, to influence and marginalize the 2020 vote in any way to the advantage of Presidential Candidate Joe Biden. Progressive entities well understood it would not take much to manipulate and alter the playing field in what was predetermined to be a race separated by less than a 100,000 votes. Secretary Kathy Boockvar went as far as requesting King Bench provisions to be used as a mechanism by the Pennsylvania State Supreme Court, as State Officials were struggling to get Counties to comply with over zealous state edicts and guidance in lieu of laws. Governor Wolf signed a second renewal of his 90 day disaster for the Covid 19 pandemic that would extend beyond the November 3, 2020 election. Naturally, as expected, Covid hype despite evidence would begin to surge prior to and during the election with the intent to keep senior citizens from venturing out to the polls. Democrats were whole heartedly supportive of mail in balloting and they knew Republicans would prefer to vote in person at the polls. Bad weather or a pandemic, could possibly persuade some elderly or unhealthy individuals to stay at home? Hopefully, the Butler County timeline will illuminate a much needed light into the workings of these forces and how they can influence our local, state, and national elections. The data, numbers, and dubious actions compiled in the Butler County timeline demonstrate repeatedly as to the Governor and his Election Administration's great reluctance to follow existing election law and processes, their lack of respect for the Constitution, and the Governor's own defiance to govern with the elected Pennsylvania General

Assembly who represent the voice of and by the people. The people of Pennsylvania deserve to know to the extent and effort made by various entities to marginalize the existing laws and processes governing our Commonwealth's election system in an effort to alter and/or influence a Presidential Election. After all, if our laws and Constitution do not mean or stand for anything and we allow anyone, even a Governor, to over ride laws, even under the conditions of a pandemic, then why have a Constitution? Moving forward we must learn how we must work in each of our own capacities, whether, we are a working man or an elected county commissioner to stand up and protect not only our election system nationwide for the greater good of democracy and our country as a whole. Our future generations of voters and our country depend upon it.

Kimberly D. Geyer, Vice Chairman of the Butler County Commissioners

- Coming into office in 2016, Butler County, like many in PA, were in the process of researching state certified vendors of election equipment and investing into new voter equipment with a paper trail to replace existing equipment which was a touch screen technology and no paper trail. In April 2018, the [Department of State informed counties](#) they must select the new voting systems by the end of 2019 and voters must use the new system no later than the April 2020 primary election. At least 52 counties, or 78 percent, have taken official action toward selecting a new voting system. And 46 counties, or 68 percent, plan to use their new voting system in the November 2019 election. Because Butler County had begun the process of interviewing and acquiring new election equipment prior to the state mandate by the Governor, we felt in a better prepared position prior to our fellow counties who, some, had only begun the process after the 2018 mandate.
- October 31, 2019 Governor Tom Wolf made voting more convenient by signing PA Act 77 of 2019 into law. Without state legislature input, Governor Wolf removed straight party ballot voting. Governor Wolf established the ability for counties to set up temporary polling locations as early voting stations.

Some of the provisions of PA Act 77 of 2019 are as follows: (prior to last minute changes)

- **No excuse mail-in voting**
The law creates a new option to vote by mail without providing an excuse, which is currently required for voters using absentee ballots. Pennsylvania joins 31 other states and Washington, D.C. with mail in voting that removes barriers to elections.
- **50-day mail-in voting period**
All voters can request and submit their mail in or absentee ballot up to 50 days before the election, which is the longest vote by mail period in the country.

- **Permanent mail-in and absentee ballot list**
 Voters can request to receive applications for mail in or absentee ballots for all primary, general and special elections held in a given year. Counties will mail applications to voters on the list by the first Monday of each February. Voters who return an application will receive ballots for each election scheduled through the next February. Pennsylvania is the 12th state to provide voters with the automatic option.
- **15 more days to register to vote**
 The deadline to register to vote is extended to 15 days from 30 days before an election. Cutting the current deadline by half enables more people to participate in elections. The new more flexible and voter friendly deadlines provide more time to register to vote than 24 other states.
- **Creates Early Voting**
 Perhaps without full legislative awareness, Act 77 also creates early voting, which many state legislators did not fully understand as it was not clear in the act. This suddenly created long lines of voters in County election bureau offices in the week(s) leading up to the election, further distracting and hampering the ability to effectively execute actual mail ballot processing and election preparations. (See attached article from Philadelphia 3.0 PAC)
- **Extends mail-in and absentee submission deadlines**
 Voters can submit mail in and absentee ballots until 8:00 p.m. on Election Day. (Later extended to three days post Election Day). The current deadline is 5:00 p.m. on the Friday before an election, which is the most restrictive in the country. Pennsylvanians submitted 195,378 absentee ballots in 2018, but 8,162 more than four percent missed the deadline and were rejected. The national average is only two percent.
- The law also authorizes the governor to pursue a \$90 million bond to reimburse counties for 60 percent of their actual costs to replace voting systems. The new systems have enhanced security to help guard against hacking and produce an anonymous paper record so voters can verify their ballot is correctly marked when casting it. Paper records also allow officials to conduct the most accurate recounts and audits of election results.
- 3/6/20 Covid 19 made its presence known in Butler County. Meanwhile, PA Department of Health Secretary Rachel Levine was providing Pennsylvanians daily televised updates on the Covid pandemic and statewide stay at home, school, and business closures began to be implemented across regions of the PA Commonwealth.
- 3/27/20 Governor Wolf signed Senate Bill 422, which rescheduled Pennsylvania's primary election from April 28 to June 2 due to the COVID 19 emergency.
- 4/22/20 Governor closed Commonwealth with the exception of life sustaining businesses. Schools and childcare facilities closed. Stay at home orders in place.
- 4/22/20 Butler County election director resigns approximately one month ahead of what was to be the May 2020 Presidential Primary before the State

extended it to June 2, 2020. This would be a pattern reoccurring statewide due to frustration by State changes being made on the fly, and increased workloads related to the mail in ballot requirements. More than a 19 of PA's County Election Directors or Deputies resigned or left, that is one in every 3.5 counties. Butler County deputized two long time workers to split the position until posting the job vacancy after the June 2nd Primary.

- 4/28/20 Updated DOS (Dept. of State) guidance began occurring to all counties in regards to preparation of elections (2020 Presidential Primary) and HEIGHTENING Covid 19.
- 5/1/20 DOS asked counties to participate in a technology program called Albert Sensors to have counties connect into and to provide multi state information sharing and analytics. Butler County declined to participate as a pilot county. Butler County had just invested in new technology enhancements and did not want to that to interfere with our new internal technologies and security. (This request will come around again by DOS in the weeks leading to the Fall November election).
- 5/5/20 Butler County represented by two Republican County Commissioners (Osche & Geyer) filed petition for amicus brief for the Friends of Danny Devito case v. Governor Tim Wolf and Rachel Levine, Secretary of Health (respondents) for the statewide business closures and the Constitutional violations represented by Attorney Thomas W. King III.
- 5/7/20 (2:30p.m.) Butler County (Osche & Geyer) files lawsuit in federal district court on behalf of Butler County, and joining counties, Greene, Fayette, and Washington Counties v. Governor Tom Wolf and Rachel Levine, Secretary of Health for violating the constitutional rights of businesses and for the subjective process in determining business closures statewide.
- 5/7/20 Governor Wolf extends Stay at Home order for Counties in the Red to June 4th, two days AFTER the scheduled June 2nd primary further confusing voters, discouraging in person voting, and challenging Counties' ability to recruit adequate numbers of poll workers.
- 5/12/ 5/14/20 Poll Worker Training Occurred over these days with four sessions, two each morning and two each afternoon and one evening. Consider the changes since that time prior to the June 2 Primary and all of the changes that the DOS implemented between the Primary and November 3rd election. The constant barrage of DOS changes made it extremely challenging for Judges of Elections and poll workers to keep abreast of accurate information they needed to operate for election day. See attached letter from a Judge of Election.
- 5/2020 the two Republican county commissioners worked feverishly to equip all 89 precincts with trained poll workers, PPE, and locate new sites for those closed due to the Covid pandemic and the media narrative instilling wide spread fear into former poll workers. It was extremely challenging to get each and every poll open and staffed by those less fearful and willing to work under these conditions. Many older poll workers could not work due to compromised immune systems and it caused us to up our

game on recruiting and training new poll workers. i.e. Former precincts located in churches and schools closed due to the Governor's stay at home orders was in conflict with us as elected officials trying to get the public to understand that elections was a constitutional right and we had to open facilities for voting.

- The State stated they would send PPE to all the counties for their polling sites, such as hand sanitizer and masks. Despite that promise, Butler County went ahead and ordered our own PPE and Plexiglas partitions for the polls and it is a good thing we did, as the State's masks and hand sanitizers arrived the day before the election after we had delivered all the voting equipment to the polls for the June 2nd Primary.
- Training for poll workers was extremely challenging as per trying to secure a county site such as a school or facility that would allow us to hold training during a Covid pandemic and Governor ordered statewide closures. Thankfully, Butler School District and Cranberry Twp. Municipal Building each provided us a physical space to hold poll worker and Judge of Elections trainings. The next challenge was adhering to the Covid compliance while trying to conduct and provide training with masking and people fearful due to the nationwide and statewide narrative coming from the news sources. It certainly created extensive work above and beyond for everyone involved.
- Mid May, Counties received DOS guidance advising Counties may have drop boxes and drop off locations. This last minute change was one that the Butler County Republican Commissioners voted not to implement due to the lack of security issues. May 31st and onward, Butler County had daily protests across from the courthouse in Diamond Park and along Main Street by BLM.
- 5/29/20 Counties received a court order by the DOS to require accessible mail in ballots for ADA individuals and to make arrangements.
- 5/29/20 Counties received DOS guidance on privacy envelopes. All of these guidance's issued by DOS, required all counties to adapt and create changes with their operations and procedures. Another implication was the inability to train our poll workers and Judges of Elections due to the late and daily guidance changes in preparation for and leading up to the June 2nd election.
- 5/29/20 DOS issued guidance no longer requiring voter identification for ballots to be dropped off a drop off sites and drop box locations. Butler County was requiring ID for ballots being dropped off at the Election Bureau.
- 6/1/20 At 6pm Pittsburgh Media News Channels announced publicly that Governor Wolf used executive order to extend the deadline for receiving mail in ballots the night before the June 2nd Primary Election. I watched this announcement in my own living room that evening when I returned home from being at the county all day working. The Governor never bothered to reach out to the counties about this during the workday. Governor Wolf also announced the set up of additional drop boxes for only six of sixty seven counties statewide. This strategic move all added to the public's existing confusion 12 hours before the June 2, 2020 Presidential Election.

- 6/1/20 Governor Wolf also announced on the 6pm television news that ballots must be post marked by June 2nd, but received no later than June 9th for some counties, but not all counties. Again, adding additional public confusion and fear.
- 6/3/20 Governor Wolf amended stay at home order
- 6/5/20 Butler County was one of 12 counties to move to the yellow phase.
- 6/10/20 PA General Assembly passed a concurrent resolution directing Governor Wolf to issue a proclamation or executive order ending his issuance of the March 6 Covid 19 Disaster Emergency which was renewed June 3. Governor follows with statement that any concurrent resolution needs to come to the Governor for approval or disapproval and that orders will remain in place and that the legislature did nothing to end them.
- 6/16/20 Governor Wolf edicts: School Safety & Security Committee and Etc.
- 6/25/20 Governor Wolf and Secretary Levine sign 12 counties moving to the green phase effective the following day.
- 6/29/20 Governor Wolf announces that Lebanon County will move to the green phase of reopening on July 3, putting all counties in green.
- 6/29/20 Governor Wolf announces all businesses across PA can apply for grants to offset lost revenue associated with Covid 19.
- 7/1/20 Governor Wolf signs new order signed by Dr. Rachel Levine that mandates mask wearing directive at all times effective immediately.
- 7/1/20 Received state association communications regarding Trump Campaign and RNC filed law suit pursuant to Governor and DOS Secretary.
- 7/9/20 Governor Wolf signs an executive order protecting renters from evictions or foreclosures in the event they have not received assistance.
- 7/10/20 Governor Wolf signs an executive order authorizing state agencies to conduct administrative proceedings and hearings remotely.
- 7/16/20 Governor Tom Wolf releases federal CARES funding to PA Counties with the exception of Lebanon County who had opened their county despite the Covid associated closures moving from yellow to green on their own.
- 7/16/20 Butler County hires a new Election Director with extensive technical experience and local experience of working at the polls.
- 7/17/20 Federal Court in Pittsburgh, Judge William Stickman IV hears Butler County v. Governor Tom Wolf and Rachel Levine, Secretary of Health
- 7/22/20 Declaratory Judgment Hearing in Federal Court, Pittsburgh by Judge William Stickman
- 7/31/20 DOS announces that the State will provide the entire commonwealth's counties with prepaid postage for their envelopes, so voters would have no excuse for not mailing them. What they didn't tell county officials or the public, is typically, prepaid postage is not automatically postmarked. The State would use federal CARES funding (Covid 19 Relief Funds) to pay for postage. Postmarks matter to prove voters cast their vote on time.

- 8/14/20 Governor Tom Wolf finally concedes and releases federal CARES funding to Lebanon County after with holding it for a month. There is a timeline on these funds to be used before December 30, 2020.
- 8/27/20 The DOS contacted counties about additional second round funding being made available for election system equipment through the \$90 million bond amortization pursuant to Act 77 voting system reimbursements.
- 8/31/20 Governor Wolf signed a second renewal of his 90 day disaster for the Covid 19 pandemic that would extend beyond the November 3, 2020 election.
- 9/2/20 DOS contacts all county commissioners announcing that the non profit Center for Tech and Civic Life has expanded its Covid response grant program to offer all local election jurisdictions in the United States to apply for grants to help ensure staffing, training and equipment for the November 2020 election. The expansion is thanks to a \$250 million contribution from Mark Zuckerberg and his wife, Pricilla Chan, who also made a \$50 million contribution to the Center for Election Innovation and Research, which will offer additional grants to states. Butler County declined to accept these funds to protect the integrity of their election system in Butler County from being influenced by a private/public entity.
- Butler County Election Director informs us that Barbara Smotherman has been assigned to Butler County as the state election liaison. Deputy Smotherman is the Deputy Chief of Staff to DOS Secretary Kathy Boockvar.
- 9/8/20 Governor Wolf puts out an edict that restaurants must have self certification documents in order to open September 21st at 50% occupancy.
- 9/11/20 DOS issues guidance concerning examination of absentee and mail in ballot return envelopes as well as addressing signatures or lack of.
- 9/14/20 Federal Judge William Stickman IV rules that Governor Wolfs orders violated three clauses of the U.S. Constitution, the right of assembly, due process, and equal protection clause. Butler County wins suit.
- 9/14/20 PA State Supreme Court rules that signature verification on a ballot Vs the one in the voter's file no longer matters.
- 9/15/20 Governor and Secretary Levine turn up the news narrative on Covid and Butler County.
- 9/16/20 PA Attorney General issues a stay on judicial decision on federal decision striking down Governor Tom Wolf's business closures.
- 9/17/20 PA State Supreme Court rules ballots mailed back without secrecy envelopes will not be counted in the general election. Known as "naked ballots".
-
- 9/17/20 PA Supreme Court (Democratic Majority) issued the following:
 - Majority opinion in PA Democratic Party et al. v. Boockvar et al. holding as follows:**
 - The Election Code permits county boards of election to accept hand-delivered mail-in ballots at locations other than their office addresses including drop-boxes

- Adopts a three-day extension of the absentee and mail-in ballot received by deadline to allow for the tabulation of ballots mailed by voters via USPS and postmarked by 8:00 pm on Election Day
- Holds that voters are not entitled to notice and an opportunity to cure minor defects resulting from failure to comply with statutory requirements for vote by mail (Yet the DOS made this request on Election Day to Counties with naked ballots) See: 11/3/20
- Holds that a mail-in elector's failure to enclose a ballot in a secrecy envelope renders the ballot invalid
- Finds that the poll watcher residency requirement does not violate the state or federal constitutions
- **Order in Crossey et al v. Boockvar**
 - Dismisses the request to extend the received-by deadline for mail-in ballots as moot based on the decision in PA Democratic Party v. Boockvar
 - Dismisses the request that prepaid postage be provided on mail-in provide funding to county boards of election for postage on mail-in ballots
 - Denies the request that voters be permitted to obtain third-party assistance in return of mail in ballots
 - PA Supreme Court also ruled that the Green Party's candidate for president did not strictly follow procedures for getting on November's ballot and cannot appear on it, and the Department of State has now certified the ballot*.

- *What is important for the public to understand that as of 9 17 20, Counties were unable to print and prepare ballots prior to 9 17 20 due to the lack of a ruling on the Green Party candidate. The ballot was not state certified until this legal decision occurred. Now, counties in PA were racing to print their ballots and get them mailed out to all those who requested mail in ballots which were in the thousands.
- 9/24/2020 Commissioner Osche receives email from an overseas voter in Switzerland who is a dual resident of Butler County who claims she did not receive her email ballot. The election director reported that he had communication from the state indicating this was a "glitch" in the state system related to the secure email. She is a member of a group called "PA Abroad" and claims suspicion as that group believes that only Butler and Cumberland Counties did not send the ballots. After being called out on her reports, she replies that she did subsequently receive her ballot. And so begins the mass reports of voters "not receiving" ballots.
- Butler County began to mail out their ballots to mail in requesters beginning the week of September 28, 2020 and worked 7 days a week to begin to mail out and simultaneously accept applications. Butler County continually hired additional temporary staff and extended hours of service to keep up with all the changes and timelines.
- 10/1/20 Governor Wolf issued an executive order amending the previous order Directing Mitigation Measures, which would go into

effect the following day and would continue to until rescinded or amended in writing.

- 10/8/20 Governor Wolf issues an executive order amending the previous order related to Directing Mitigation Measures which would go into effect the following day until rescinded or amended in writing.
- 10/8/20 We became aware of a problem originating at the Department of State in the SURE System, which is the state's 15 20 year old data election's system and software. Voters who are monitoring the status of their ballot online are suddenly seeing it was mailed out in early September (before the ballot was state certified). Someone at the state level changed something in SURE early October that populated the "Ballot Mailed On" date with the same date his or her application was processed. A similar situation occurred in the Primary. It's happened across the state, and both the SURE helpdesk and DOS are aware of it. This has generated a high volume of calls to the County of folks monitoring their ballot process online.
- Butler County will come to learn from their Election Director that there were several glitches with the SURE system preceding the election.
- Butler County did an extensive mail drop to the U.S. Post Office of approximately 10,000 ballots October 13, 2020, the day after Columbus Day which was observed as a national holiday but in which the elections department worked and another 7,000 mailed out later that week.
- Week of 10/13/20 Democratic Commissioner hears from Governor's Southwest Regional Director about Albert Sensor Technology Pilot and pushes for our County's participation to which we again, decline.
- The week of October 19, 2020, the County began to get calls and complaints by public not receiving their mail in ballot despite requests made in September. The public was told that the ballots were not state certified until 9/17 and printed and mailed out until the 28th.
- 10/19/20 Election Director reports receiving the following memo from PA SURE regarding a "system performance" issue where a permanent mail voter approved for the primary did not have a general election application or label in SURE. It was determined that the permanent record was created after and not at the same time that the record was processed which resulted in no general election application being created for the voter, therefore the voter received no mail in ballot. Counties had no way to identify which voters this affected.
- Week of 10/19/20, PA Department of Health Officials contact the County Commissioners informing them they will be coming into Butler County to set up multiple pop up Covid testing sites throughout the county to begin Covid testing of up to 440 people at each site free

of charge. This process would begin in two days from the call and site locations would not be disclosed until they arrived and set up. Butler County Republican Commissioners pushed back and said NO as our positivity rate was 3.2% the lowest in Western PA at that point in time and with zero patients in our local Butler Health System Hospital. State Dept. of Health staff were insistent and aggressively pushing and informed us that within a day DOH was planning to release a report to the public similar to the one they compiled for Centre County. This report would call for enforcement measures on businesses and state recommendations, as well as, recommend ways in which the State wanted us as a County to spend our federal CARES funding. We delayed DOH's momentum by insisting that surrounding counties given their Covid numbers would see greater benefit than Butler County and are a better use of tax dollars. We had a follow up call on October 26th and when the conversation initiated again, DOH was told this was nothing more than a political attempt to come into Butler County, drive up numbers via testing, and put out a report that misleads our county with misinformation when our positivity rate is only 3.2% in contrast to other counties, such as Westmoreland that had three times our numbers. We communicated that they were attempting to create more chaos in our county to suppress voter turnout by instilling fear and misinformation. We clearly called them out telling them this was political. We suggested they place their pop up site on Slippery Rock University's campus if they were so moved by trying to help their students? Dept. of Health declined and wanted testing sites implemented throughout the county in undisclosed sites. We communicated the upcoming Election was the county priority at that point in time given our extremely low Covid numbers based on the DOH's state dashboard of statewide data.

- 10/22 23/20 Butler County fielded ten thousand calls over the course of weeks leading up to the election from people saying they did not receive their mail in ballot. Hired six additional people to set up a county phone bank ASAP. Worked 18 hour days to call back each and every voter to provide options so they could exercise their right to vote. This included mailing new ballots and voiding the originals and in some cases, over nighting out of state applicants. We also had sheriff deputies deliver ballots to disabled and to those shut in their homes with no recourse. The majority came to the Election Bureau and cast their vote in person via a new mail in ballot. Lines began to form from that day on and we extended our evening hours to accommodate those who worked beyond normal business hours and had weekend hours available on Saturdays.
- 10/26/20 DOS contacts Butler County Election Director of numerous complaints made to DOS and delay of mail concerns specifically for Butler and York County ballots mailed out two weeks ago. DOS, even

communicating that Governor Wolf and his wife's ballots were delayed in the York County mail system arriving a week apart from one and other. 50 minutes later, Western PA USPS Manager Jason Graney requests for our Election Director to call him to discuss matter.

- 10/26/20 Butler County Election Director reports to the Butler County Commissioners that same day, Mr. Graney will investigate the matter with the US Post Office.
- 10/26/20 Continue to field calls from the public and work to enable them to vote by presenting one of four options: going to polls, coming to Election Bureau, mailing a new ballot and voiding the original, or over nighting out of state or to a college or hospital. In the latter days of that same week leading up to the election, people were still calling to say they had not received our new ballot or over night ballot in the mail. We checked to verify their mailing and confirm with callers, that the new ballots were mailed. Confirmed that they were mailed or over nighted.
- Throughout this process, we are still receiving a high volume of requests for mail ballots, many of which are duplicate requests due to the high number of third party mailers voters are receiving at their homes, which is making them, think that their request was not processed. In addition, because of another glitch in the state's SURE system, people are not seeing their ballots being recorded in a timely fashion. This is yet another issue that is consuming staff time and slowing down the mail process.
- Butler County did not use a third party mailing company, as we believe the chain of custody of these ballots is critical. We have a check and balance system in place to be sure that all voters are receiving the correct ballot for their district and/or precinct. We have hired twenty additional temporary staff to assist.
- 10/23/20 Commissioners meet with the Sheriff, District Attorney, and Emergency Services Director to finalize security plan for the county at the polling locations and review our safety plan.
- 10/23/20 ACLU serves the County Elections with a cease and desist order pertaining to our requiring ID when voters turn in ballots at the Election Bureau located in the Government Center on Friday, the 23rd, after work hours. They set a deadline for Monday for a response.
- 10/23/20 PA Supreme Court rules that a voter's absentee or mail in ballot cannot be rejected based solely on a comparison of the signature on the ballot with the voter's signature on their registration form. The ruling came as a result of a King's Bench petition by Kathy Boockvar Secretary of Commonwealth and Elections who used this as a mechanism to get counties to comply as she was struggling with challenges by counties as per guidance vs. law.

- 10/23/20 PA Supreme Court ruled against President Trump and the RNC challenging Secretary Boockvar's interpretation of the election code.
- 10/26/20 Voter Intimidation Guidelines sent by Ali Doyle of Southwest Deputy Director to Governor Wolf
- 10/26/20 Ironically, we received hundreds of intimidating calls about counting "all votes" beginning November 3rd in lieu of November 4th that was inaccurately portrayed by Progress PA and Ben Forstate's inaccurate maps depicting Butler County as the only county in Western PA not counting votes until the day after Election Day. Several numbers coming from a call bank located in Pittsburgh and Northeastern PA were pushing out text messages and social media messages. People statewide were reacting to these messages and harassing our office staff and two Republican Commissioners making demands and threats. Progress PA had our names and phone numbers posted on their Facebook page instructing people to call and pressure the two Republican Commissioners, County Solicitor, and Office Assistant by name and instructed them to "take no prisoners". This is a tactic of technology and there is no recourse for providing accurate information, as that is not the goal. This tactic demonstrated to me how technology and external entities could be used in influencing the election's system, adding to chaos and distraction. Despite that difficult day, we "knew the game being played" and we stayed focus on what really mattered.
- 10/28/20 PA State Supreme Court rules that the time frame for submitting ballots would be extended three days after the election as long as there was a postmark, and if any ballots arrive post election without a postmark, it should be assumed that ballot was cast on time. So, why the rule of a postmark if not now necessary? Or even followed? Please see 7/31/20
- 10/28/20 DOS sends clarifications on Examinations of Absentee and Mail In Envelopes and ID Verification for Ballot Requests
- 10/28/20 DOS sends guidance on Voter ID Not Required for Verification for ballots handed into polling sites and drop boxes
- 10/28/20 DOS sends voter ID requirements
- 10/30/20 DOS sends PA Election Day Communication
- 10/31/20 Secretary Boockvar sends out Important Election Day Reminders
- 11/1/20 DOS sends guidance on canvassing and segregating ballots received post election day.
- 11/2/20 Butler County held an afternoon poll worker training.
- 11/2/20 DOS requesting mock elections to test election results import process. Again, Butler County declined. Another tactic.
- 11/3/20 On Election Day, DOS issues guidance on voters in quarantine related to Covid.

- 11/3/20 On Election Day, mid day, DOS contacts Election Director and County Solicitor asks if the commissioners want those who submitted naked ballots (ballots with no secrecy envelope) to be provided to each political party, so those parties can contact individuals to redo ballot, so it can be counted? Pennsylvania is the first and only state to disqualify ballots received without a required secrecy envelope giving voters no recourse to fix the mistake. Some PA counties allowed this and others did not. It was not consistent statewide.
- 11/3/20 On Election Day, Butler County's 850 ES&S High Speed Scanner breaks and cannot be repaired by a state certified technician. It is brand new, \$100,00 machine has only been used once for the June 2nd Primary Election.
- 11/3/20 On Election Day, We field multiple calls throughout the day requesting tallies and turn out from the State. We provide DOS no information other than to tell them our scanner is down. Our county election team works all day into the night to address scanning without the bigger scanner by using smaller scanning devices.
- 11/3/20 On Election Day, many of our polling locations are running out of ballots, as many people showed up surrendering their mail in ballot and wanting to vote. The costs associated with the mail in debacle have to be exorbitant due to the fact we are printing each person with an additional ballot who does this? Pennsylvania taxpayers should be furious and demanding better.
- 11/4/20 The day after the election we begin to field multiple calls from people demanding their ballots to be counted that are received after 8pm on Election Day threatening to call the ACLU & Authorities.
- 11/4/20 We announce on the 6pm news stations that Butler County is going to segregate ballots coming in after 8pm on Election Day on a daily basis and we are not going to open them, and keep them safe and secure until we receive further guidance from the DOS, to which we were promised ahead of time we would receive, but, had not.
- 11/5/20 DOS reissues guidance on ballot segregation requiring ID verification
- 11/5/20 Based on the news interviews of 11/4/20, people again begin demanding "all ballots to be counted" and for them to be integrated into the official tabulations. Again, we press back. Many of whom I spoke from, were not even from Butler County. Callers were simply reacting to text messages pushed out by anonymous call centers and social media postings.
- 11/5/20 Commonwealth Court Order petitions requiring segregation of all provisional ballots cast on Election Day by voters who also submitted a timely mail in or absentee ballot. These court ordered segregated ballots would be subject to review and validation.
- 11/6/20 Justice Alito issues Order that any ballots received after 8pm on Election Day in PA be segregated and secured and if counted,

counted separately. There is a petition before SCOTUS. Alito orders opposing side to reply by 2pm Saturday, November 7.

- Third Party entities and major political parties such as the Center for Voter Information purchased older, county voter rolls and mailed out mass distribution via the USPS thousands of unsolicited ballot applications to households and individuals. These mass mailings went to deceased voters, to former homeowners of a current homeowner, and to unregistered voters, to name a few scenarios. In some instances in Butler County, individuals filled out up to 15 different voter applications requesting a mail ballot per person. Each one of these 15 requests for a mail in ballot has to be processed through checks and balances for verification and to prevent duplication, as if it is the only and original request. These third party mailing entities also are generating hundreds of additional phone calls and taking time away from those applications needing to be processed. Adding insult to injury, often times, these third party entities utilize the County's Bureau of Election's return address as printed on the envelope in lieu of their own. This is misleading to the recipient who is led to believe that our county is mass distributing these mailers out? Taxpayers are led to believe we are using tax dollars to mail these mailers out, they are calling to verify that they are already registered as a voter and have been for years? This tactic is costing our taxpayers enormous tax dollars through time, effort, and manpower and distracting counties away from the focus of addressing applications in a timely and efficient manner. These same mailers have added to the confusion and anxiety of every voter wanting to do the right thing and that is, exercise their right to vote. This is a real problem that needs to be addressed.
- Finally, the US Postal Service needs to be addressed for the delay of processing and delivering mail in a timely and efficient manner. Butler County voters experienced many delays in receiving and returning ballots that took up to three to four weeks one way. This created thousands of phone calls. We have many accounts of ballots being mailed at the Butler Post Office across the street from the Bureau of Elections housed in Government Center that took 3 4 weeks and sometimes not at all to be returned to the Election Department. When inquired about, we were told they were considered "lost" in the mail system.
- This timeline is not inclusive of all the Governor's Orders pertaining to the Red Green, and Yellow Phases and Business Closures.

Evidence seems to point to a deliberate attempt to create confusion for voters and local election officials including local Judges of Elections, and to delay ballot delivery

to voters through SURE system issues, social media campaigns that encouraged voters to flood election bureaus with phone calls and emails, and early voting in election offices, all which hindered getting mail ballots to voters and forcing our office to cancel many initial mail ballots and issue new ballots. I can't say what happened in other Counties, but it appears Butler County may have been specifically and deliberately targeted by the state in this effort.

The Counties lack of control over mail ballots once they leave our chain of custody is problematic as we have no way of truly knowing what happens with that ballot before it comes back to the bureau. While there has always been absentee balloting, perhaps the early voting process provides a better solution than no excuse mail since it is done in person. Voting by mail, while intended to increase access, unfortunately creates an opportunity for those in power to manipulate and take advantage of vulnerable populations since we truly cannot ensure that it takes place without influence or intimidation. Empowering all to seek the truth about elections and candidates and to exercise their right to vote in person as much as possible should be our message to "disenfranchised" voters. It means that they get to feed their own vote into the scanner and essentially watch it be tallied, vs. relying on someone else to scan your ballot into the system or losing chain of custody of your own ballot. Pennsylvania has a lot of explaining to do and even more work to do to protect future elections from this embarrassing debacle.

*Leslie Osche
Chairman, Board of Commissioners
Butler County, PA*

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December 22, 2020

Senator Ron Johnson, Chairman
Committee on Homeland Security and
Governmental Affairs
328 Hart Senate Office Building
Washington, DC 20510

Congressman Scott Perry
1207 Longworth House Office
Building Washington, DC 20515

Dear Senator Johnson and Congressman Perry,

Once again, I thank you for the opportunity to present to your committee at the United States Senate on December 16, 2020. The following report and attachments are submitted as supplemental materials for the record.

Our concern is and has been the accuracy, transparency, and soundness of the election systems in the Commonwealth of Pennsylvania. Comments from the Secretary of State of the Commonwealth received during the hearing of December 16, 2020 cause additional concern since the ability to review the election results have been hampered by delays in data requests, systems shutdowns, and inaccessibility to the records needed to put to a rationale conclusion the concerns that millions have about this 2020 election ballot irregularities.

In light of our concerns, we researched additional inconsistencies to address more specifically the irregularities that we observed. The irregularities are well beyond any claims that could reasonably be made that it is a lack of experience with the systems that caused the concerns and instead points to significantly defective processes at various points of the vote tabulation from county level to the state level. Systems established to ensure that each voter can have only one vote failed on many levels which prevents any type of verification or reconciliation.

After the more detailed micro analysis of the data, we are still forced to conclude that the general election of 2020 in Pennsylvania was fraught with inconsistencies and documented irregularities associated with mail-in balloting, pre-canvassing, and canvassing to the point that the reliability of voting in the Commonwealth of Pennsylvania is impossible to rely upon.

Matter of judicial and administrative re-write election law:

1. Actions from the PA Supreme Court which undermined the controls inherent in Act 77 of 2019. The controls which were undermined include:
 - a. On September 17, 2020, unilaterally extended the deadline for mail-in ballots to be received to three days after the election, mandated that ballots mailed without a postmark would be presumed to be received, and allowed the use of drop boxes for collection votes.
 - b. On October 23, 2020, upon a petition from the Secretary of the Commonwealth, ruled that mail-in ballots need not authenticate signatures for mail-in ballots thereby treating in-person and mail-in voters dissimilarly and eliminating a critical safeguard against potential election crime
2. Actions and inactions by the Secretary of State which undermined the consistency and controls of the election process during the weeks preceding the General Election of November 3, 2020. The attached detailed letter of concerns from Butler County is but one example of the problems found at the County caused by the Secretary of State.

In addition to the concerns of the actions of the Secretary of State and the legislative overreach by the Pennsylvania Supreme Court, the inaccuracies of the actual results themselves call into question the accuracy of the SURE system, the consistency of the application of voting laws throughout the counties.

Errors in Controls

All of our previous concerns provided during our original testimony remain, but the following analysis of “Voter Deficit” illustrates that beyond the election law issue, there are sufficient numbers of ballots unaccounted for in the data available from the state and county systems to render certifying the election problematic at best.

Election Issues:

More Votes Counted than voters who voted

INTERIM REPORT TOTALS AS OF 12-20-2020

COUNTY	TOTAL VOTES 3 MAJOR CANDIDATES	TOTAL WRITE IN	TOTAL VOTES FOR PRESIDENT	OVER & UNDER VOTES	TOTAL BALLOTS CAST	TOTAL VOTERS SURE	TOTAL VOTER DEFICIT	TOTAL VOTER SURPLUS
	DOS DATA	COUNTY DATA			FVE			
64/67	6,915,283	18,580	6,931,060	29,077	6,962,607	6,760,230	-205,122	2,532

Using the sources and data described in the previous slides, there is a VOTER DEFICIT in Pennsylvania. **205,122** more votes were counted than total number of voters who voted.

People who possibly voted more than once

POSSIBLE DUPLICATE VOTERS



USING THE STATEWIDE FVE, A QUERY OF ALL RECORDS WHERE THE FIRST NAME, LAST NAME AND DATE OF BIRTH MATCHED AND WHERE BOTH RECORDED A VOTE ON 11/3/2020 – PRODUCED **4241 RECORDS**. THESE RECORDS WARRANT INVESTIGATION TO DETERMINE HOW MANY PEOPLE VOTED TWO OR MORE TIMES.

Duplicate Ballots: Requested and returned

DUPLICATE MAIL IN BALLOT APPLICATIONS

- County election officials were inundated with duplicate mail in ballot applications
- It was up to the county to review each new application and make a judgement call about whether to send a second mail in ballot
- There was no accounting of the excess mailed ballots.

Source: <https://www.post-gazette.com/news/politics-state/2020/10/16/pennsylvania-rejected-mail-ballot-applications-duplicates-voters/stories/202010160153>

“Overall, one out of every five requests for mail ballots is being rejected in Pennsylvania. An estimated 208,000 Pennsylvania voters sent in the spurned requests, some submitting them multiple times. Although the state’s email rejecting the requests describes them as duplicates, it doesn’t explain why, prompting some people to reapply. ProPublica and The Inquirer identified hundreds of voters who submitted three or more duplicate applications; one voter appears to have submitted 11 duplicates.”

DUPLICATE APPLICATIONS

County	10/16/20 Source: Department of State Total MIB Requests Approved	Duplicate Requests Rejected
ADAMS	9,695	2,001
ALLEGHENY	190,557	49,025
ARMSTRONG	3,996	1,347
BEAVER	16,893	5,362
BEDFORD	2,906	384
BERKS	42,084	7,544
BLAIR	9,578	2,993
BRADFORD	3,948	500
BUCKS	104,236	21,607
BUTLER	16,718	4,468
CAMBRIA	8,865	1,292
CAMERON	310	98
CARBON	5,670	1,011
CENTRE	17,952	3,483
CHESTER	88,238	24,433
CLARION	2,265	354
CLEARFIELD	4,894	897
CLINTON	2,229	332
COLUMBIA	5,264	693
CRAWFORD	6,584	782
CUMBERLAND	31,206	5,703
DAUPHIN	32,778	7,247
DELAWARE	71,523	15,779

ELK	2,075	472
ERIE	28,685	4,163
FAYETTE	7,595	1,600
FOREST	547	41
FRANKLIN	11,186	1,643
FULTON	904	130
GREENE	2,318	317
HUNTINGDON	1,674	205
INDIANA	8,679	205
JEFFERSON	7,664	249
JUNIATA	1,116	281
LACKAWANNA	24,749	7,794
LANCASTER	53,745	8,664
LAWRENCE	7,379	1,113
LEBANON	13,403	2,205
LEHIGH	46,091	9,229
LEWIS	28,077	11,204
LYCOMING	7,627	1,286
MCKAY	9,691	432
MERCER	2,668	320
MIFFLIN	21,453	3,661
MONROE	138,758	32,437
MONTGOMERY	1,975	434
MONTOUR	2,292	243

MONTOUR	2,292	243
NORTHAMPTON	42,266	6,890
NORTHUMBERLAND	5,576	1,047
PERKY	3,304	545
PHILADELPHIA	233,594	48,727
PIKE	8,305	1,039
POTTER	862	92
SCHUYLER	6,813	443
SNYDER	2,523	433
SOMERSET	4,590	359
SULLIVAN	375	39
SUSQUEHANNA	2,033	392
TIOGA	2,361	444
UNION	3,193	508
VENANGO	3,653	747
WARREN	3,032	339
WASHINGTON	21,829	4,567
WAYNE	5,134	604
WESTMORLAND	34,130	12,871
WYOMING	2,313	306
YORK	42,677	10,191
TOTAL	336,001	as of 10/16/2020

Department of State released data showing the number of duplicate MIB Applications that had been rejected as of 10/16/2020.

DOS did not release the number of duplicates that were mailed.

The evidence presented in the attached report clearly shows that there was no review of the validity of votes and there was no reconciliation of the votes. The review of the data provided in this report, which was available to the Secretary of State, clearly illustrates that the results in PA should not have been certified.

SURE IS THE OFFICIAL VOTER RECORD IN PA

- If SURE data was correct, the election could not be certified due to the discrepancies.
- If SURE data was incorrect, the election could not be certified due to discrepancies.

By Statute, the SURE System is the official voter record in Pennsylvania. This record includes the date last voted. Total voters who voted in the General Election on 11/3/2020 was **6,760,230**. Secretary of State Boockvar certified **6,915,283** Votes for just the three major candidates. That alone is a voter **deficit of 155,053 voters**.

(This does not include write-in votes or over/under votes)

The hotline designated for PA voters to report election issues was not working in the days following the election. The web form to report election issues was not functioning in the days following the election. Data that is supposed to be available to PA voters was removed from the data.pa.gov eliminating statutory requirements for transparency making any challenge to the Secretary of State's assertions a herculean task. We welcome the opportunity to work with the Secretary of State to resolve these concerns and the lack of transparency and inherent weaknesses in the control environment.

The report includes the detailed report of Voter Deficit and a Department of State timeline prepared by officials from Butler County, PA.

In light of the above, the inconsistencies and irregularities in the election process in the Commonwealth of Pennsylvania in the 2020 General Election raise questions about whether the selection of presidential electors for the Commonwealth is in dispute.



Francis X. Ryan, Member
101st Legislative District



Daryl Metcalfe, Member
12th Legislative District



David Rowe, Member
85th Legislative District



Barbara Gleim
199th Legislative District



Mike Puskaric, Member
39th Legislative District




Cris Dush, Senator-Elect
25th Legislative District



Jim Cox, Member
129th Legislative District



Eric Nelson, Member
57th Legislative District



Kathy Rapp, Member
65th Legislative District



Rob Kauffman, Member
89th Legislative District



Russ Diamond, Member
102nd Legislative District



Brett Miller, Member
41st Legislative District



David Maloney, Member
130th Legislative District



Dawn Keefer, Member
92nd Legislative District



Stephanie Borowicz, Member
76th Legislative District



Office of the Commissioners

150 North Queen Street
Suite #715
Lancaster, PA 17603
Phone: 717-299-8300
Fax: 717-293-7208
www.co.lancaster.pa.us

County Commissioners

Joshua G. Parsons, Chairman
Ray D'Agostino, Vice-Chairman
Craig E. Lehman

Hon. Kathy Boockvar
Secretary of the Commonwealth
Pennsylvania Department of State
North Office Building, Suite 302
401 North Office Building
Harrisburg, PA 17120
Via email

Dear Secretary Boockvar:

As you know Act 77 of 2019, which was signed into law by Governor Wolf, created a new mail in ballot option for voters in Pennsylvania. The law as passed by the legislature and signed by the Governor requires that all mailed ballots be received by 8:00 PM on election day.

Subsequently, the Pennsylvania Supreme Court created its own new rule. It ordered that ballots are to be accepted if they are postmarked on or before election day and are received within three days after polls close. Further, a ballot with no postmark or an illegible postmark must also be accepted if it is received by that same date.

That ruling has been appealed to the United States Supreme Court. In the U.S. Supreme Court's denial of a motion to expediate the case, the court appears to have relied on information from your department that you would provide guidance to counties to segregate ballots that come in after election day. It said:

“[W]e have been informed by the Pennsylvania Attorney General that the Secretary of the Commonwealth issued guidance today directing county boards of elections to segregate ballots received between 8:00 p.m. on November 3, 2020, and 5:00 p.m. on November 6, 2020.”

On October 28th, 2020, Lancaster County received an email from Jonathan Marks, Deputy Secretary for Elections & Commissions, stating the following:

“Yesterday the Secretary issued the attached guidance related to mail-in and absentee ballots received from the United States Postal Service after 8:00 p.m. on Tuesday November 3, 2020. The guidance referenced that a motion to expedite a petition for a writ of certiorari related to the three-day extension was pending in



the United States Supreme Court. After the Secretary issued the guidance yesterday, the United States Supreme Court denied the pending motion to expedite consideration of the petition for a writ of certiorari. In doing so, three Justices of the Supreme Court joined in a statement that referenced the guidance that the Secretary issued yesterday directing county boards of elections to segregate ballots received between 8:00 p.m. on November 3, 2020 and 5:00 p.m. on November 6, 2020. Though the Secretary continues to strongly defend the 3 day extension to ensure that every timely and validly cast mail-in and absentee ballot is counted, to ensure uniformity and to respect the United States Supreme Court's consideration of the issues still before it, the Secretary strongly encourages each county board of elections to affirmatively confirm that it will comply with the attached guidance."

The attached "guidance" read:

"The county boards of elections **shall not pre-canvass or canvass any mail-in or civilian absentee ballots** received between 8:00 p.m. on Tuesday, November 3, 2020 and 5:00 p.m. on Friday, November 6, 2020 until further direction is received. These ballots shall be maintained by the county board in a secure, safe and sealed container separate from other voted ballots." [Emphasis added.]

By law, counties have eight days to complete the canvas. We have been informed by our elections office staff that once ballots are canvassed, it is logistically impossible to later remove those ballots from the total count. Thus, the guidance to keep these ballots separate and not canvass them immediately makes sense as they are likely the subject of litigation.

However, on November 1st, 2020, we received new "guidance" from Mr. Marks.

Strangely the new "guidance" has suddenly been changed to the following statement, which is in direct conflict with the earlier "guidance."

"The county board of elections **shall canvass** segregated absentee and mail-in ballots received after 8:00 P.M. on Tuesday November 3, 2020, and before 5:00 P.M. on Friday, November 6, 2020 **as soon as possible upon receipt of the ballots** and within the period specified by law for the canvass. The canvass meeting shall continue until all segregated absentee and mail-in ballots have been canvassed." [Emphasis added.]

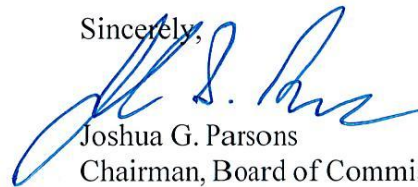
The new guidance is essentially asking us to add any ballots that come in after election day to our total count. In fact, the new "guidance" is strangely asking us to do this as "soon as possible." I anticipate that you would know full well that those contested votes cannot then be removed if the Commonwealth is ordered to do so by the United States Supreme Court.

This is in contravention to your earlier guidance and appears to be in contravention to what the United States Supreme Court relied on from your department. That court, in refusing to expedite the case, surely did not anticipate that you would make those votes impossible to remove from the total count.

As a result, at our Board of Elections meeting on November 2nd, 2020 a majority of the board exercised our legal authority to comply with the law and your first set of guidance and wait to canvass any ballots that come in after election day. We will make further decisions at a future board meeting and, of course, intend to continue to fully comply with the law, including the canvass deadline.

I remain, however, deeply concerned about this strange change in guidance by your department and what it means for the integrity of the election.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. G. Parsons', is written over the word 'Sincerely,'.

Joshua G. Parsons


Chairman, Board of Commissioners

CC: Senator Joe Scarnati, President Pro Tempore, Pennsylvania Senate
Via email
Representative Bryan Cutler, Speaker of the Pennsylvania House of
Representatives
Via email




1

ELECTION ISSUES



- **MORE VOTES COUNTED THAN VOTERS WHO VOTED**
 - MAIL IN
 - IN PERSON
- **DUPLICATE VOTERS:** PEOPLE IN SURE MORE THAN ONCE
 - EXAMPLE: SAME NAME & DOB BUT DIFFERENT ID #
- **DUPLICATE BALLOTS:** REQUESTED AND RETURNED

2




MORE VOTES COUNTED THAN VOTERS WHO VOTED

Official Voter Records – SURE System

3

VOTES COUNTED – DATA SOURCES

These vote totals do not include any votes from mail ballots received between 6 p.m. on election day and 5 p.m. the following Friday.



Sources:
<https://www.electionreturns.pa.gov/>
 and
 Official County Summary Results Reports
 (64 of 67 Counties)

	TOTAL	Election Day	Mail Votes	Provisional Votes
DEM Joseph R. Biden/Kamala D. Harris	430,799	148,171	274,776	7,854
REP Donald J. Trump/Vive R. Pence	282,913	209,495	57,154	5,260
LIB Jo Jorgensen/Jeremy Spike Cohen	8,261	5,085	3,093	183
Write-In Totals	2,707	1,317	1,400	41
Overvotes	359	49	226	14
Undervotes	1,631	627	913	91
Contest Totals	726,720	364,708	347,578	14,434
Precincts Reporting	1323 of 1323			

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VOTERS WHO VOTED – DATA SOURCES

- ADAMS Election Map 20201214
- ADAMS FVE 20201214
- ADAMS Zone Codes 20201214
- ADAMS Zone Types 20201214
- ALLEGHENY Election Map 20201214
- ALLEGHENY FVE 20201214
- ALLEGHENY Zone Codes 20201214
- ALLEGHENY Zone Types 20201214
- ARMSTRONG Election Map 20201214
- ARMSTRONG FVE 20201214
- ARMSTRONG Zone Codes 20201214
- ARMSTRONG Zone Types 20201214



Sources:

<https://www.pavoterservices.pa.gov/pages/purchasepafullvoterexport.aspx>

and

Official County FVE files directly from the County Dated 12/14/2020

5

DATA FILE DEFINITIONS

- **Total Votes for President** – Sum of all votes counted for Biden, Trump, Jorgensen and all write in votes
- **Total Ballots Cast** – Total number of ballots cast in the county
- **Over-Votes** – Ballots cast with more than one selection for President
- **Under-Votes** – Ballots cast with no selection made for President
- **Write-In Votes** – Ballots cast with one write in vote for President
- **Total Voters SURE** – Total number of voters in the FVE who voted in the 2020 General Election 11/3/2020 (files updated 12/14/2020)
- **Voter Deficit** – Difference between the Total Ballots Cast and Total Voters recorded as voting on 11/3/2020 in SURE

6

COUNTY	TOTAL VOTES 3 MAJOR CANDIDATES	N O T E	TOTAL WRITE IN	TOTAL VOTES FOR PRESIDENT	OVER & UNDER VOTES	TOTAL BALLOTS CAST	TOTAL VOTERS SURE	TOTAL VOTER DEFICIT
	DOS DATA		COUNTY DATA				FVE	
CAMERON	2,434		6	2440	15	2455	2450	-5

SAMPLE COUNTY DATA - CAMERON

Cameron County has a voter deficit of 5 – meaning that there were 5 more ballots cast than the number of voters in SURE FVE for Cameron County as of 12/14/2020

7

TIMELINESS OF SURE FVE RECORDS

- Secretary of State certified the election results on 11/24/20.
- SURE FVE Files used for this analysis are dated 12/14/2020, 20 days after the certification

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Department Of State Certifies Presidential Election Results

11/24/2020

Harrisburg, PA - Following certifications of the presidential vote submitted by all 67 counties late Monday, Secretary of State Kathy Boockvar today certified the results of the November 3 election in Pennsylvania for president and vice president of the United States.

Shortly thereafter, as required by federal law, Governor Tom Wolf signed the Certificate of Ascertainment for the slate of electors for Joseph R. Biden as president and Kamala D. Harris as vice president of the United States. The certificate was submitted to the Archivist of the United States.

8

INTERIM REPORT TOTALS AS OF 12-20-2020

- Report contains full data from **64 counties**
 - Write In Votes and Over/Undervotes were not available for all counties. Updates pending.
 - Data is not included for over/undervotes or total ballots cast for the following counties: **Clarion, Crawford & Sullivan**
 - 24 of 67 Counties had vote totals that did not match the Department of State Results
-

9

INTERIM REPORT TOTALS AS OF 12-20-2020

COUNTY	TOTAL VOTES 3 MAJOR CANDIDATES	TOTAL WRITE IN	TOTAL VOTES FOR PRESIDENT	OVER & UNDER VOTES	TOTAL BALLOTS CAST	TOTAL VOTERS SURE	TOTAL VOTER DEFICIT	TOTAL VOTER SURPLUS
	DOS DATA	COUNTY DATA				FVE		
64/67	6,915,283	18,580	6,931,060	29,077	6,962,607	6,760,230	-205,122	2,532

Using the sources and data described in the previous slides, there is a VOTER DEFICIT in Pennsylvania. **205,122** more votes were counted than total number of voters who voted.

10

SURE IS THE OFFICIAL VOTER RECORD IN PA

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By Statute, the SURE System is the official voter record in Pennsylvania. This record includes the date last voted. Total voters who voted in the General Election on 11/3/2020 was **6,760,230**. Secretary of State Boockvar certified **6,915,283** votes for just the three major candidates. That alone is a **voter deficit of 155,053 voters**.

This does not include write in votes or over/under votes which all increase the voter deficit.

11

VOTER SURPLUS

Some counties have more voters than votes counted which is a normal variance. This is a result of several issues including:

- Rejected Provisional Ballots
- Mail-In Ballots Received after 8pm on Election Day
- Naked Ballots
- Mail Ballots with no Signature

The expectation would be that every county would have some votes that were not counted. In PA, **only 18 counties reported a voter surplus**. Despite the fact that every county had some ballots that were rejected.

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COUNTY	TOTAL VOTES 3 MAJOR CANDIDATES	N O T E	TOTAL WRITE IN	TOTAL VOTES FOR PRESIDENT	OVER & UNDER VOTES	TOTAL BALLOTS CAST	TOTAL VOTERS SURE	TOTAL VOTER DEFICIT	TOTAL VOTER SURPLUS
	DOS DATA		COUNTY DATA					FVE	
ADAMS	56,540	*	174	56,809	121	56,930	56,853	77	
ALLEGHENY	719,733	*	2,767	724,800	1,920	726,720	605,754	120,966	
ARMSTRONG	36,370	*	55	36,426	45	36,471	36,147	324	
BEAVER	94,122		275	94,397	248	94,645	94,387	258	
BEDFORD	27,574	*	0	27,610	67	27,677	27,564	113	
BERKS	205,540		584	206,124	1,452	207,576	207,587		11
BLAIR	63,595		153	63,748	141	63,889	63,834	55	
BRADFORD	30,159	*	60	30,232	156	30,388	30,349	39	
BUCKS	396,234		1,057	397,291	1,506	398,797	396,877	1,920	
BUTLER	113,305	*	349	111,309	227	113,899	113,914		15
CAMBRIA	70,574		177	70,751	244	70,995	50,058	20,937	
CAMERON	2,434		6	2,440	15	2,455	2,450	5	
CARBON	33,629	*	38	33,689	64	33,753	33,716	37	
CENTRE	77,493		398	77,891	203	78,094	77,328	766	

13

COUNTY	TOTAL VOTES 3 MAJOR CANDIDATES	N O T E	TOTAL WRITE IN	TOTAL VOTES FOR PRESIDENT	OVER & UNDER VOTES	TOTAL BALLOTS CAST	TOTAL VOTERS SURE	TOTAL VOTER DEFICIT	TOTAL VOTER SURPLUS
CHESTER	314,502			1,251	315,753	833	316,586	313,543	-3,043
CLARION	19,493		31	19,524		19,524	19,525		
CLEARFIELD	39,422		74	39,496	114	39,610	39,247	-363	
CLINTON	17,625		36	17,661	55	17,716	17,478	-238	
COLUMBIA	31,171		87	31,258	187	31,445	31,481		36
CRAWFORD	42,004	*	98	42,104		42,104	42,301		
CUMBERLAND	141,595		592	142,187	545	142,732	142,845		113
DAUPHIN	147,368		533	147,901	487	148,388	149,095		708
DELAWARE	327,931	*	1,075	328,329	1,821	330,150	326,142	-4,008	
ELK	16,906		40	16,946	89	17,035	17,077		42
ERIE	137,083	*	347	137,491	453	137,944	138,240		296
FAYETTE	62,139	*	91	62,258	117	62,375	61,952	-423	
FOREST	2,646	*	8	2,621	10	2,631	2,666		35
FRANKLIN	80,783		242	81,025	183	81,208	81,143	-65	
FULTON	7,977		13	7,990	44	8,034	8,016	-18	
GREENE	17,669		0	17,669	0	17,776	17,760	-16	

14

COUNTY	TOTAL VOTES 3 MAJOR CANDIDATES	N O T E	TOTAL WRITE IN	TOTAL VOTES FOR PRESIDENT	OVER & UNDER VOTES	TOTAL BALLOTS CAST	TOTAL VOTERS SURE	TOTAL VOTER DEFICIT	TOTAL VOTER SURPLUS
HUNTINGDON	22,792		51	22,843	63	22,906	22,872	-34	
INDIANA	41,198		91	41,289	140	41,429	41,026	-403	
JEFFERSON	22,824	*	39	22,800	51	22,851	22,576	-275	
JUNIATA	12,043		29	12,072	36	12,108	12,072	-36	
LACKAWANNA	115,410		285	115,695	338	116,033	116,391		358
LANCASTER	280,239		1,136	281,375	1,163	282,538	281,117	-1,421	
LAWRENCE	46,076		111	46,187	132	46,319	46,023	-296	
LEBANON	71,652		206	71,858	202	72,060	71,524	-536	
LEHIGH	184,713	*	563	185,655	572	186,227	185,450	-777	
LUZERNE	153,321	*	99	153,499	635	154,134	149,877	-4,257	
LYCOMING	59,254		143	59,397	84	59,481	59,367	-114	
McKEAN	19,466		44	19,510	88	19,598	19,569	-29	
MERCER	57,954		163	58,117	178	58,295	58,308		13
MIFFLIN	21,502		45	21,547	56	21,603	21,538	-65	
MONROE	83,829	*	205	82,484	493	82,977	82,765	-212	
MONTGOMERY	510,157		0	510,157	3,238	513,395	508,084	-5,311	
MONTOUR	9,771		46	9,817	31	9,848	9,846	-2	

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COUNTY	TOTAL VOTES 3 MAJOR CANDIDATES	N O T E	TOTAL WRITE IN	TOTAL VOTES FOR PRESIDENT	OVER & UNDER VOTES	TOTAL BALLOTS CAST	TOTAL VOTERS SURE	TOTAL VOTER DEFICIT	TOTAL VOTER SURPLUS
NORTHAMPTON	170,942		457	171,399	762	172,161	171,962	-199	
NORTHUMBERLAND	42,283		100	42,383	209	42,592	42,408	-184	
PERRY	24,652		76	24,728	54	24,782	24,894		112
PHILADELPHIA	741,377	*	2,067	743,966	5,351	749,317	719,024	-30,293	
PIKE	32,554	*		32,616	127	32,743	32,645	-98	
POTTER	9,064		21	9,085	3	9,088	9,119		31
SCHUYLKILL	70,603	*	152	69,672	1,237	70,909	70,974		65
SNYDER	19,140		41	19,181	57	19,238	19,237	-1	
SOMERSET	40,543		83	40,626	90	40,716	40,738		22
SULLIVAN	3,595		3	3,598		3,598	3,613		
SUSQUEHANNA	21,752	*	61	21,325	118	21,443	21,536		93
TIOGA	21,075	*		21,126	81	21,207	21,115	-92	
UNION	20,115		77	20,192	80	20,272	20,221	-51	
VENANGO	26,528		73	26,601	52	26,653	26,608	-45	
WARREN	20,650	*	56	20,345	129	20,474	21,012		538
WASHINGTON	118,478		278	118,756	383	119,139	117,156	-1,983	
WAYNE	28,089		58	28,147	88	28,235	28,231	-4	
WESTMORELAND	204,697	*	486	205,330	758	206,088	202,143	-3,945	
WYOMING	14,858		42	14,900	38	14,938	14,982		44
YORK	238,471	*	582	239,052	613	239,665	238,877	-788	

16

RELIABILITY OF DATA FROM DEPARTMENT OF STATE



Candidate	Election Day	Mail	Provisional	Math Total	Certified Electors	Difference
Biden	1409341	1995691	53168	3458200	3458229	29
Jorgensen	53318	24783	1277	79378	79380	2
Trump	2731230	595538	50874	3377642	3377674	32
Write In	0	0	0	0	0	0
Totals	4193889	2616012	105319	6915220	6915283	63

• Source: <https://www.electionreturns.pa.gov/>

- The DOS Data is not using equations or formulas to populate. This is demonstrated by the mathematical errors on the dashboard.
- Based on the Dashboard, PA actually certified the **incorrect number of electors**
- Data downloaded from the DOS website does not match data reported

17

RELIABILITY OF DATA FROM DEPARTMENT OF STATE



11/24/2020

Harrisburg, PA – Following certifications of the presidential vote submitted by all 67 counties late Monday, Secretary of State Kathy Boockvar today certified the results of the November 3 election in Pennsylvania for president and vice president of the United States.

Shortly thereafter, as required by federal law, Governor Tom Wolf signed the Certificate of Ascertainment for the slate of electors for Joseph R. Biden as president and Kamala D. Harris as vice president of the United States. The certificate was submitted to the Archivist of the United States.

The Certificate of Ascertainment included the following vote totals:

- Electors for Democratic Party candidates Joseph R. Biden and Kamala D. Harris – 3,458,229
- Electors for Republican Party candidates Donald J. Trump and Michael R. Pence – 3,377,674
- Electors for Libertarian Party candidates Jo Jorgensen and Jeremy Spike Cohen – 79,380

Candidate	Election Day	Mail	Provisional	Math Total	Certified Electors	Difference
Biden	1409341	1995691	53168	3458200	3458229	29
Jorgensen	53318	24783	1277	79378	79380	2
Trump	2731230	595538	50874	3377642	3377674	32
Write In	0	0	0	0	0	0
Totals	4193889	2616012	105319	6915220	6915283	63

Due to mathematical errors, the Secretary of State **actually certified the incorrect number of electors**

Source: <https://www.media.pa.gov/pages/State-details.aspx?newsid=435>

18



DUPLICATE VOTERS

Individuals in SURE With Multiple ID Numbers-
Both IDs Shown as Voted 11-3-2020

19




POSSIBLE DUPLICATE VOTERS

USING THE STATEWIDE FVE, A QUERY OF ALL RECORDS WHERE THE FIRST NAME, LAST NAME AND DATE OF BIRTH MATCHED AND WHERE BOTH RECORDED A VOTE ON 11/3/2020 – PRODUCED **4241 RECORDS**. THESE RECORDS WARRANT INVESTIGATION TO DETERMINE HOW MANY PEOPLE VOTED TWO OR MORE TIMES.

*THESE RECORDS HAVE BEEN REFERRED TO LAW ENFORCEMENT FOR INVESTIGATION

20



DUPLICATE BALLOTS

Requested & Returned

21

DUPLICATE MAIL IN BALLOT APPLICATIONS

- County election officials were inundated with duplicate mail in ballot applications
- It was up to the county to review each new application and make a judgement call about whether to send a second mail in ballot
- There was no accounting of the excess mailed ballots.

Source: <https://www.post-gazette.com/news/politics-state/2020/10/16/pennsylvania-rejected-mail-ballot-applications-duplicates-voters/stories/202010160153>

"Overall, one out of every five requests for mail ballots is being rejected in Pennsylvania. An estimated 208,000 Pennsylvania voters sent in the spurned requests, some submitting them multiple times. Although the state's email rejecting the requests describes them as duplicates, it doesn't explain why, prompting some people to reapply. ProPublica and The Inquirer identified hundreds of voters who submitted three or more duplicate applications; one voter appears to have submitted 11 duplicates."

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10/16/20 Source: Department of State			DUPLICATE APPLICATIONS		
County	Total MIB Requests Approved	Duplicate Requests Rejected			
ADAMS	9,695	2,001	ELK	2,075	472
ALLEGHENY	190,557	49,025	ERIE	28,685	4,183
ARMSTRONG	3,996	1,347	FAYETTE	7,595	1,680
BEAVER	16,893	5,362	FOREST	547	41
BEDFORD	2,906	384	FRANKLIN	11,188	1,643
BERKS	42,084	7,544	FULTON	904	139
BLAIR	9,578	2,993	GREENE	2,318	317
BRADFORD	3,948	500	HUNTINGDON	1,674	205
BUCKS	104,236	21,607	INDIANA	8,678	
BUTLER	16,718	4,468	JEFFERSON	2,664	249
CAMBRIA	8,865	1,292	JUNIATA	1,116	281
CAMERON	310	98	LACKAWANNA	24,748	7,794
CARBON	5,670	1,011	LANCASTER	53,245	8,864
CENTRE	17,952	3,483	LAWRENCE	7,379	1,113
CHESTER	88,238	24,433	LEBANON	13,403	2,205
CLARION	2,265	354	LEHIGH	46,091	9,229
CLEARFIELD	4,894	897	LUZERNE	28,077	11,234
CLINTON	2,229	332	LYCOMING	7,622	1,128
COLUMBIA	5,264	693	MCKEAN	9,691	403
CRAWFORD	6,584	782	MERCER	2,668	320
CUMBERLAND	31,206	5,703	MIFFLIN	21,453	3,661
DAUPHIN	32,778	7,247	MONROE	138,758	32,407
DELAWARE	71,523	15,779	MONTGOMERY	1,975	434
			MONTOUR	2,292	243
			MONTOUR	2,292	243
			NORTHAMPTON	42,266	6,850
			NORTHUMBERLAND	5,696	1,047
			PERRY	3,304	545
			PHILADELPHIA	233,594	48,727
			PIKE	8,305	1,039
			POTTER	862	92
			SCHUYLKILL	6,813	443
			SNYDER	2,523	433
			SOMERSET	4,590	359
			SULLIVAN	375	39
			SUSQUEHANNA	2,833	392
			TIOGA	2,361	444
			UNION	3,193	508
			VENANGO	3,653	747
			WARREN	3,032	338
			WASHINGTON	21,829	4,567
			WAYNE	5,154	684
			WESTMORELAND	34,103	12,871
			WYOMING	2,313	306
			YORK	42,677	10,191
			TOTAL		336,001
					as of 10/16/2020

Department of State released data showing the number of duplicate MIB Applications that had been rejected as of 10/16/2020.
DOS did not release the number of duplicates that were approved & mailed.

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EXAMPLE: LEBANON COUNTY DUPLICATES

- Lebanon County has 92,637 registered voters.
- As of 10/16/2020, Lebanon had already received 2205 duplicate mail in ballot applications.
- County election officials had to review and evaluate each application to determine if a second mail in ballot should be mailed
- 804 duplicate ballots were sent to voters in Lebanon County.
- The location of the additional 804 mail in ballots is unknown.

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THIRD PARTY ACCESS -SURE

Recap of Previous Issues Raised

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DEPARTMENT OF STATE GRANTED ACCESS & AUTHORITY TO THIRD PARTY ENTITIES

- Third Party Access to SURE using Web API
- Allowing Third Party Entities authority to use Web API to request Mail In Ballots
- Illegal Use of Voter Registration Data – posting on the internet

26

CHAPTER 183. ESTABLISHMENT, IMPLEMENTATION AND ADMINISTRATION OF THE STATEWIDE UNIFORM REGISTRY OF ELECTORS (SURE System)

4 Pa. Code § 183.14. Public information lists

(i) Within 10 days of receiving a written request accompanied by the payment of the cost of reproduction and postage, the Department or a commission will distribute the public information list to any registrant in this Commonwealth for a reasonable fee, determined by the office providing the copies, as provided by section 1404(c)(1) of the act (relating to public information lists).

(j) The Department and a commission will supply the public information list in a paper copy or in an electronic format.

(k) The list may not be published on the Internet.

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DOS Expanded Third Party Entities Access to Include Mail-In Ballot Requests

On March 5 2020, The Department of State issued an update to the PA OVR Web API Specification document. In that update, they reveal that Posting Entities would be granted access and authority to allow the use of their apps to not only create voter registrations but also to add them to **permanent mail-in list**.

MAIL-IN BALLOT REQUEST OPTION (ACT 77 OF 2019)

As a part of Act 77 of 2019, a new ballot option was introduced for Pennsylvania voters, the mail-in ballot option. This is another option for voters to receive a ballot in the mail and it does not require an excuse to vote. Additionally, a voter who is requesting a mail-in ballot may also request to be added to a permanent mail-in voter list, which is otherwise known as an annual mail-in ballot request. If they opt for the permanent option, they will then receive ballots automatically for the remainder of the calendar year for eligible elections. Then, they will be asked to renew this request each year from the county election office to continue to receive ballots for eligible election.

The process begins with the voter electing to submit a mail-in ballot application. Once their application is completed, processed and approved by the county, the voter will begin to receive their ballots via the address



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StateWide VoterWeb

Voter data up to date: November 2, 2020
ALL 67 counties updated with 2020 Primary results
The VotesPA.com data for Mail-in Ballot Status is slightly different than VoterWeb.
State Dept "SENT" date is day labels made or sent to printers.
There is separate "Mailed" date on VotesPA that is not on State Dept file.

Your County (required) ▼

Username (*not email address*)

Pass

Forgot your Login/Password? Enter your email address and submit.

If you are a Dem Candidate or Dem committee person, who would like to request a VoterWeb Account: Please click [Request Account](#) or email to request@voterweb.org
Subject: VoterWeb Account Request

29

(b) (6) (ODAG)

Subject: Meeting with AAG Clark
Location: DAG's Conference Room 4111

Start: Monday, December 28, 2020 6:00 PM
End: Monday, December 28, 2020 6:30 PM
Show Time As: Tentatively accepted

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: (b) (6) (ODAG)
Required Attendees: Clark, Jeffrey (CIV); Donoghue, Richard (ODAG)

POC:
Attendees: General Rosen, Richard Donoghue and AAG Clark

Note: This meeting is limited to the invited attendees only. You are not authorized to forward this invitation. If you believe other individuals should be included, please contact the ODAG Front Office.

Rosen, Jeffrey A. (ODAG)

Subject: Meeting with AAG Clark
Location: DAG's Conference Room 4111

Start: Monday, December 28, 2020 6:00 PM
End: Monday, December 28, 2020 6:30 PM
Show Time As: Tentatively accepted

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Rosen, Jeffrey A. (ODAG)
Required Attendees: Clark, Jeffrey (CIV); Donoghue, Richard (ODAG)

POC:
Attendees: General Rosen, Richard Donoghue and AAG Clark

Note: This meeting is limited to the invited attendees only. You are not authorized to forward this invitation. If you believe other individuals should be included, please contact the ODAG Front Office.

Donoghue, Richard (ODAG)

From: Donoghue, Richard (ODAG)
Sent: Monday, December 28, 2020 5:50 PM
To: Clark, Jeffrey (ENRD)
Cc: Rosen, Jeffrey A. (ODAG)
Subject: RE: Two Urgent Action Items

Jeff,

I have only had a few moments to review the draft letter and, obviously, there is a lot raised there that would have to be thoroughly researched and discussed. That said, there is no chance that I would sign this letter or anything remotely like this.

While it may be true that the Department “is investigating various irregularities in the 2020 election for President” (something we typically would not state publicly), the investigations that I am aware of relate to suspicions of misconduct that are of such a small scale that they simply would not impact the outcome of the Presidential Election. AG Barr made that clear to the public only last week, and I am not aware of intervening developments that would change that conclusion. Thus, I know of nothing that would support the statement, “we have identified significant concerns that may have impacted the outcome of the election in multiple states.” While we are always prepared to receive complaints and allegations relating to election fraud, and will investigate them as appropriate, we simply do not currently have a basis to make such a statement. Despite dramatic claims to the contrary, we have not seen the type of fraud that calls into question the reported (and certified) results of the election. Also the commitment that “the Department will update you as we are able on investigatory progress” is dubious as we do not typically update non-law enforcement personnel on the progress of any investigations.

More importantly, I do not think the Department’s role should include making recommendations to a State legislature about how they should meet their Constitutional obligation to appoint Electors. Pursuant to the Electors Clause, the State of Georgia (and every other state) has prescribed the legal process through which they select their Electors. While those processes include the possibility that election results may “fail[] to make a choice”, it is for the individual State to figure out how to address that situation should it arise. But as I note above, there is no reason to conclude that any State is currently in a situation in which their election has failed to produce a choice. As AG Barr indicated in his public comments, while I have no doubt that some fraud has occurred in this election, I have not seen evidence that would indicate that the election in any individual state was so defective as to render the results fundamentally unreliable. Given that, I cannot imagine a scenario in which the Department would recommend that a State assemble its legislature to determine whether already-certified election results should somehow be overridden by legislative action. Despite the references to the 1960 Hawaii situation (and other historical anomalies, such as the 1876 Election), I believe this would be utterly without precedent. Even if I am incorrect about that, this would be a grave step for the Department to take and it could have tremendous Constitutional, political and social ramifications for the country. I do not believe that we could even consider such a proposal without the type of research and discussion that such a momentous step warrants. Obviously, OLC would have to be involved in such discussions.

I am available to discuss this when you are available after 6:00 pm but, from where I stand, this is not even within the realm of possibility.

Rich

From: Clark, Jeffrey (ENRD) <JClark@ENRD.USDOJ.GOV>
Sent: Monday, December 28, 2020 4:40 PM

To: Rosen, Jeffrey A. (ODAG) <jarosen@jmd.usdoj.gov>; Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov>
Subject: Two Urgent Action Items

Jeff and Rich:

(1) I would like to have your authorization to get a classified briefing tomorrow from ODNI led by DNI Radcliffe on foreign election interference issues. I can then assess how that relates to activating the IEEPA and 2018 EO powers on such matters (now twice renewed by the President). If you had not seen it, white hat hackers have evidence (in the public domain) that a Dominion machine accessed the Internet through a smart thermostat with a net connection trail leading back to China. ODNI may have additional classified evidence.

(2) Attached is a draft letter concerning the broader topic of election irregularities of any kind. The concept is to send it to the Governor, Speaker, and President pro temp of each relevant state to indicate that in light of time urgency and sworn evidence of election irregularities presented to courts and to legislative committees, the legislatures thereof should each assemble and make a decision about elector appointment in light of their deliberations. I set it up for signature by the three of us. I think we should get it out as soon as possible. Personally, I see no valid downsides to sending out the letter. I put it together quickly and would want to do a formal cite check before sending but I don't think we should let unnecessary moss grow on this

(As a small matter, I left open me signing as AAG Civil after an order from Jeff as Acting AG designating me as actual AAG of Civil under the Ted Olson OLC opinion and thus freeing up the Acting AAG spot in ENRD for Jon Brightbill to assume. But that is a comparatively small matter. I wouldn't want to hold up the letter for that. But I continue to think there is no downside with as few as 23 days left in the President's term to give Jon and I that added boost in DOJ titles.)

I have a 5 pm internal c [REDACTED] (b) (5) [REDACTED]. But I am free to talk on either or both of these subjects circa 6 pm+.

Or if you want to reach me after I reset work venue to home, my cell # [REDACTED] (b) (6)

Jeff

Donoghue, Richard (ODAG)

From: Donoghue, Richard (ODAG)
Sent: Tuesday, December 29, 2020 11:49 AM
To: Wall, Jeffrey B. (OSG)
Subject: RE: USA v. Pennsylvania draft complaint Dec 28 2 pm.docx

Please give me a call (b) (6). Thanks.

From: Michael, Molly A. EOP/WH (b) (6)
Sent: Tuesday, December 29, 2020 11:17 AM
To: Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov>; Wall, Jeffrey B. (OSG (b) (6)
Rosen, Jeffrey A. (ODAG) <jarosen@jmd.usdoj.gov>
Subject: USA v. Pennsylvania draft complaint Dec 28 2 pm.docx

Good morning,

The President asked me to send the attached draft document for your review. I have also shared with Mark Meadows and Pat Cipollone. If you'd like to discuss with POTUS, the best way to reach him in the next few days is through the operators: 202-456-1414

Thanks and Happy New Year!

Molly

Sent from my iPhone

Donoghue, Richard (ODAG)

From: Donoghue, Richard (ODAG)
Sent: Tuesday, December 29, 2020 11:49 AM
To: Steven A. Engel (OLC [REDACTED] (b) (6))
Subject: FW: USA v. Pennsylvania draft complaint Dec 28 2 pm.docx
Attachments: USA v. Pennsylvania draft complaint Dec 28 2 pm.docx

JFYI

From: Michael, Molly A. EOP/WHO [REDACTED] (b) (6)
Sent: Tuesday, December 29, 2020 11:17 AM
To: Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov>; Wall, Jeffrey B. (OSG [REDACTED] (b) (6))
Rosen, Jeffrey A. (ODAG) <jarosen@jmd.usdoj.gov>
Subject: USA v. Pennsylvania draft complaint Dec 28 2 pm.docx

Duplicative Material



No. , Original

In the Supreme Court of the United States

THE UNITED STATES OF AMERICA

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA, STATE OF
STATE OF GEORGIA, STATE OF MICHIGAN, STATE OF
WISCONSIN, STATE OF ARIZONA, AND STATE OF
NEVADA

Defendants.

BILL OF COMPLAINT

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BILL OF COMPLAINT

Our Country is deeply divided in a manner not seen in well over a century. More than 77% of Republican voters believe that “widespread fraud” occurred in the 2020 general election while 97% of Democrats say there was not.¹ On December 7, 2020, the State of Texas filed an action with this Court, *Texas v. Pennsylvania, et al.*, alleging the same constitutional violations in connection with the 2020 general election pled herein. Within three days *eighteen* other states sought to intervene in that action or filed supporting briefs. On December 11, 2020, the Court summarily dismissed that action stating that Texas lacked standing under Article III of the Constitution. The United States therefore brings this action to ensure that the U.S. Constitution does not become simply a piece of parchment on display at the National Archives.

Two issues regarding this election are not in dispute. First, about eight months ago, a few non-legislative officials in the states of Georgia, Michigan, Wisconsin, Arizona, Nevada and the Commonwealth of Pennsylvania (collectively, “Defendant States”) began using the COVID-19 pandemic as an excuse to unconstitutionally revise or violate their states’ election laws. Their actions all had one effect: they uniformly weakened security measures put in place *by legislators* to protect the integrity of the vote. These

¹<https://www.courant.com/politics/hc-pol-q-poll-republicans-believe-fraud-20201210-pcie3uqqvrhyvnt7geohhsyep-story.html>

changes squarely violated the Electors Clause of Article II, Section 1, Clause 2 vesting state legislatures with plenary authority to make election law. These same government officials then flooded the Defendant States with millions of ballots to be sent through the mails, or placed in drop boxes, with little or no chain of custody.² Second, the evidence of illegal or fraudulent votes, with outcome changing results, is clear—and growing daily.

Since *Marbury v. Madison* this Court has, on significant occasions, had to step into the breach in a time of tumult, declare what the law is, and right the ship. This is just such an occasion. In fact, it is situations precisely like the present—when the Constitution has been cast aside unchecked—that leads us to the current precipice. As one of the Country’s Founding Fathers, John Adams, once said, “You will never know how much it has cost my generation to preserve your freedom. I hope you will make a good use of it.” In times such as this, it is the duty of Court duty to act as a “faithful guardian[] of the Constitution.” THE FEDERALIST NO. 78, at 470 (C. Rossiter, ed. 1961) (A. Hamilton).

Against that background, the United States of America brings this action against Defendant States based on the following allegations:

NATURE OF THE ACTION

1. The United States challenges Defendant States’ administration of the 2020 election under the

² <https://georgiastarnews.com/2020/12/05/dekalb-county-cannot-find-chain-of-custody-records-for-absentee-ballots-deposited-in-drop-boxes-it-has-not-been-determined-if-responsive-records-to-your-request-exist/>

Electors Clause of Article II, Section 1, Clause 2, and the Fourteenth Amendment of the U.S. Constitution.

2. This case presents a question of law: Did Defendant States violate the Electors Clause (or, in the alternative, the Fourteenth Amendment) by taking—or allowing—non-legislative actions to change the election rules that would govern the appointment of presidential electors?

3. Those unconstitutional changes opened the door to election irregularities in various forms. The United States alleges that each of the Defendant States flagrantly violated constitutional rules governing the appointment of presidential electors. In doing so, seeds of deep distrust have been sown across the country. In *Marbury v. Madison*, 5 U.S. 137 (1803), Chief Justice Marshall described “the duty of the Judicial Department to say what the law is” because “every right, when withheld, must have a remedy, and every injury its proper redress.”

4. In the spirit of *Marbury v. Madison*, this Court’s attention is profoundly needed to declare what the law is and to restore public trust in this election.

5. As Justice Gorsuch observed recently, “Government is not free to disregard the [Constitution] in times of crisis. ... Yet recently, during the COVID pandemic, certain States seem to have ignored these long-settled principles.” *Roman Catholic Diocese of Brooklyn, New York v. Cuomo*, 592 U.S. (2020) (Gorsuch, J., concurring). This case is no different.

6. Each of Defendant States acted in a common pattern. State officials, sometimes through pending litigation (*e.g.*, settling “friendly” suits) and sometimes unilaterally by executive fiat, announced

new rules for the conduct of the 2020 election that were inconsistent with existing state statutes defining what constitutes a lawful vote.

7. Defendant States also failed to segregate ballots in a manner that would permit accurate analysis to determine which ballots were cast in conformity with the legislatively set rules and which were not. This is especially true of the mail-in ballots in these States. By waiving, lowering, and otherwise failing to follow the state statutory requirements for signature validation and other processes for ballot security, the entire body of such ballots is now constitutionally suspect and may not be legitimately used to determine allocation of the Defendant States' presidential electors.

8. The rampant lawlessness arising out of Defendant States' unconstitutional acts is described in a number of currently pending lawsuits in Defendant States or in public view including:

- *Dozens of witnesses testifying under oath about:* the physical blocking and kicking out of Republican poll challengers; thousands of the same ballots run multiple times through tabulators; mysterious late night dumps of thousands of ballots at tabulation centers; illegally backdating thousands of ballots; signature verification procedures ignored;³
- *Videos of:* poll workers erupting in cheers as poll challengers are removed from vote counting centers; poll watchers being blocked from entering

³Complaint (Doc. No. 1), *Donald J. Trump for President, Inc. v. Benson*, 1:20-cv-1083 (W.D. Mich. Nov. 11, 2020) at ¶¶ 26-55 & Doc. Nos. 1-2, 1-4.

vote counting centers—despite even having a court order to enter; suitcases full of ballots being pulled out from underneath tables after poll watchers were told to leave.

- *Facts for which no independently verified reasonable explanation yet exists:* On October 1, 2020, in Pennsylvania a laptop and several USB drives, used to program Pennsylvania’s Dominion voting machines, were mysteriously stolen from a warehouse in Philadelphia. The laptop and the USB drives were the *only* items taken, and potentially could be used to alter vote tallies; In Michigan, which also employed the same Dominion voting system, on November 4, 2020, Michigan election officials have admitted that a purported “glitch” caused 6,000 votes for President Trump to be wrongly switched to Democrat Candidate Biden. A flash drive containing tens of thousands of votes was left unattended in the Milwaukee tabulations center in the early morning hours of Nov. 4, 2020, without anyone aware it was not in a proper chain of custody.

9. Nor was this Court immune from the blatant disregard for the rule of law. Pennsylvania itself played fast and loose with its promise to this Court. In a classic bait and switch, Pennsylvania used guidance from its Secretary of State to argue that this Court should not expedite review because the State would segregate potentially unlawful ballots. A court of law would reasonably rely on such a representation. Remarkably, before the ink was dry on the Court’s 4-4 decision, Pennsylvania changed that guidance, breaking the State’s promise to this Court. *Compare Republican Party of Pa. v. Boockvar*, No. 20-542, 2020

U.S. LEXIS 5188, at *5-6 (Oct. 28, 2020) (“we have been informed by the Pennsylvania Attorney General that the Secretary of the Commonwealth issued guidance today directing county boards of elections to segregate [late-arriving] ballots”) (Alito, J., concurring) *with Republican Party v. Boockvar*, No. 20A84, 2020 U.S. LEXIS 5345, at *1 (Nov. 6, 2020) (“this Court was not informed that the guidance issued on October 28, which had an important bearing on the question whether to order special treatment of the ballots in question, had been modified”) (Alito, J., Circuit Justice).

10. Expert analysis using a commonly accepted statistical test further raises serious questions as to the integrity of this election.

11. The probability of former Vice President Biden winning the popular vote in four of the Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin—independently given President Trump’s early lead in those States as of 3 a.m. on November 4, 2020, is less than one in a quadrillion, or 1 in 1,000,000,000,000,000. For former Vice President Biden to win these four States collectively, the odds of that event happening decrease to less than one in a quadrillion to the fourth power (*i.e.*, 1 in 1,000,000,000,000,000⁴). *See* Decl. of Charles J. Cicchetti, Ph.D. (“Cicchetti Decl.”) at ¶¶ 14-21, 30-31. *See* App. a- a.⁴

12. Mr. Biden’s *underperformance* in the Top-50 urban areas in the Country relative to former Secretary Clinton’s performance in the 2016 election reinforces the unusual statistical improbability of Mr.

⁴ All exhibits cited in this Complaint are in the Appendix to the United States’ forthcoming motion to expedite (“App. 1a”).

Biden's vote totals in the five urban areas in these four Defendant States, where he overperformed Secretary Clinton in all but one of the five urban areas. *See* Supp. Cicchetti Decl. at ¶¶ 4-12, 20-21. (App. a- a).

13. The same less than one in a quadrillion statistical improbability of Mr. Biden winning the popular vote in these four Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin— independently exists when Mr. Biden's performance in each of those Defendant States is compared to former Secretary of State Hilary Clinton's performance in the 2016 general election and President Trump's performance in the 2016 and 2020 general elections. Again, the statistical improbability of Mr. Biden winning the popular vote in these four States collectively is 1 in 1,000,000,000,000,000⁵. *Id.* 10-13, 17-21, 30-31.

14. Put simply, there is substantial reason to doubt the voting results in the Defendant States.

15. By purporting to waive or otherwise modify the existing state law in a manner that was wholly *ultra vires* and not adopted by each state's legislature, Defendant States violated not only the Electors Clause, U.S. CONST. art. II, § 1, cl. 2, but also the Elections Clause, *id.* art. I, § 4 (to the extent that the Article I Elections Clause textually applies to the Article II process of selecting presidential electors).

16. Voters who cast lawful ballots cannot have their votes diminished by states that administered their 2020 presidential elections in a manner where it is impossible to distinguish a lawful ballot from an unlawful ballot.

17. The number of absentee and mail-in ballots that have been handled unconstitutionally in

Defendant States greatly exceeds the difference between the vote totals of the two candidates for President of the United States in each Defendant State.

18. In December 2018, the Caltech/MIT Voting Technology Project and MIT Election Data & Science Lab issued a comprehensive report addressing election integrity issues.⁵ The fundamental question they sought to address was: “How do we know that the election outcomes announced by election officials are correct?”

19. The Caltech/MIT Report concluded: “Ultimately, the only way to answer a question like this is to rely on procedures that independently review the outcomes of elections, to detect and correct material mistakes that are discovered. In other words, elections need to be audited.” *Id.* at iii. The Caltech/MIT Report then set forth a detailed analysis of why and how such audits should be done for the same reasons that exist today—a lack of trust in our voting systems.

20. In addition to injunctive relief sought for this election, the United States seeks declaratory relief for all presidential elections in the future. This problem is clearly capable of repetition yet evading review. The integrity of our constitutional democracy requires that states conduct presidential elections in accordance with the rule of law and federal constitutional guarantees.

⁵Summary Report, Election Auditing, Key Issues and Perspectives attached at (the “Caltech/MIT Report”) (App. a -- a).

JURISDICTION AND VENUE

21. This Court has original and exclusive jurisdiction over this action because it is a “controvers[y] between the United States and [Defendant] State[s]” under Article III, § 2, cl. 2 of the U.S. Constitution and 28 U.S.C. § 1251(b)(2) (2018).

22. In a presidential election, “the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States.” *Anderson v. Celebrezze*, 460 U.S. 780, 795 (1983). The constitutional failures of Defendant States injure the United States as *parens patriae* for all citizens because “the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Bush v. Gore*, 531 U.S. 98, 105 (2000) (quoting *Reynolds v. Sims*, 377 U. S. 533, 555 (1964)) (*Bush II*). In other words, United States is acting to protect the interests of *all* citizens—including not only the citizens of Defendant States but also the citizens of their sister States—in the fair and constitutional conduct of elections used to appoint presidential electors.

23. Although the several States may lack “a judicially cognizable interest in the manner in which another State conducts its elections,” *Texas v. Pennsylvania*, No. 22O155 (U.S. Dec. 11, 2020), the same is not true for the United States, which has *parens patriae* for the citizens of each State against the government apparatus of each State. *Alfred L. Snapp & Son v. Puerto Rico*, 458 U.S. 592, 610 n.16 (1982) (“it is the United States, and not the State, which represents them as *parens patriae*”) (interior quotation omitted). For *Bush II*-type violations, the

United States can press this action against the Defendant States for violations of the voting rights of Defendant States' own citizens.

24. This Court's Article III decisions limit the ability of citizens to press claims under the Electors Clause. *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (distinguishing citizen plaintiffs from citizen relators who sued in the name of a state); *cf. Massachusetts v. EPA*, 549 U.S. 497, 520 (2007) (courts owe states "special solicitude in standing analysis"). Moreover, redressability likely would undermine a suit against a single state officer or State because no one State's electoral votes will make a difference in the election outcome. This action against multiple State defendants is the only adequate remedy to cure the Defendant States' violations, and this Court is the only court that can accommodate such a suit.

25. As federal sovereign under the Voting Rights Act, 52 U.S.C. §§10301-10314 ("VRA"), the United States has standing to enforce its laws against, *inter alia*, giving false information as to his name, address or period of residence in the voting district for the purpose of establishing the eligibility to register or vote, conspiring for the purpose of encouraging false registration to vote or illegal voting, falsifying or concealing a material fact in any matter within the jurisdiction of an examiner or hearing officer related to an election, or voting more than once. 52 U.S.C. § 10307(c)-(e). Although the VRA channels enforcement of some VRA sections—namely, 52 U.S.C. § 10303-10304—to the U.S. District Court for the District of Columbia, the VRA does not channel actions under § 10307.

26. Individual state courts or U.S. district courts do not—and under the circumstance of contested elections in multiple states, *cannot*—offer an adequate remedy to resolve election disputes within the timeframe set by the Constitution to resolve such disputes and to appoint a President via the electoral college. No court—other than this Court—can redress constitutional injuries spanning multiple States with the sufficient number of states joined as defendants or respondents to make a difference in the Electoral College.

27. This Court is the sole forum in which to exercise the jurisdictional basis for this action.

PARTIES

28. Plaintiff is the United States of America, which is the federal sovereign.

29. Defendants are the Commonwealth of Pennsylvania and the States of Georgia, Michigan, Arizona, Nevada, and Wisconsin, which are sovereign States of the United States.

LEGAL BACKGROUND

30. Under the Supremacy Clause, the “Constitution, and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land.” U.S. CONST. Art. VI, cl. 2.

31. “The individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the electoral college.” *Bush II*, 531 U.S. at 104 (citing U.S. CONST. art. II, § 1).

32. State legislatures have plenary power to set the process for appointing presidential electors: “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors.” U.S. CONST. art. II, §1, cl. 2; *see also Bush II*, 531 U.S. at 104 (“[T]he state legislature’s power to select the manner for appointing electors is *plenary*.” (emphasis added)).

33. At the time of the Founding, most States did not appoint electors through popular statewide elections. In the first presidential election, six of the ten States that appointed electors did so by direct legislative appointment. *McPherson v. Blacker*, 146 U.S. 1, 29-30 (1892).

34. In the second presidential election, nine of the fifteen States that appointed electors did so by direct legislative appointment. *Id.* at 30.

35. In the third presidential election, nine of sixteen States that appointed electors did so by direct legislative appointment. *Id.* at 31. This practice persisted in lesser degrees through the Election of 1860. *Id.* at 32.

36. Though “[h]istory has now favored the voter,” *Bush II*, 531 U.S. at 104, “there is no doubt of the right of the legislature to resume the power [of appointing presidential electors] at any time, for *it can neither be taken away nor abdicated*.” *McPherson*, 146 U.S. at 35 (emphasis added); *cf.* 3 U.S.C. § 2 (“Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct.”).

37. Given the State legislatures' constitutional primacy in selecting presidential electors, the ability to set rules governing the casting of ballots and counting of votes cannot be usurped by other branches of state government.

38. The Framers of the Constitution decided to select the President through the Electoral College "to afford as little opportunity as possible to tumult and disorder" and to place "every practicable obstacle [to] cabal, intrigue, and corruption," including "foreign powers" that might try to insinuate themselves into our elections. *THE FEDERALIST* No. 68, at 410-11 (C. Rossiter, ed. 1961) (Madison, J.).

39. Defendant States' applicable laws are set out under the facts for each Defendant State.

FACTS

40. The use of absentee and mail-in ballots skyrocketed in 2020, not only as a public-health response to the COVID-19 pandemic but also at the urging of mail-in voting's proponents, and most especially executive branch officials in Defendant States. According to the Pew Research Center, in the 2020 general election, a record number of votes—about 65 million—were cast via mail compared to 33.5 million mail-in ballots cast in the 2016 general election—an increase of more than 94 percent.

41. In the wake of the contested 2000 election, the bipartisan Jimmy Carter-James Baker commission identified absentee ballots as "the largest source of potential voter fraud." *BUILDING CONFIDENCE IN U.S. ELECTIONS: REPORT OF THE COMMISSION ON FEDERAL ELECTION REFORM*, at 46 (Sept. 2005).

42. Concern over the use of mail-in ballots is not novel to the modern era, Dustin Waters, *Mail-in Ballots Were Part of a Plot to Deny Lincoln Reelection in 1864*, WASH. POST (Aug. 22, 2020),⁶ but it remains a current concern. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 194-96 & n.11 (2008); see also Texas Office of the Attorney General, *AG Paxton Announces Joint Prosecution of Gregg County Organized Election Fraud in Mail-In Balloting Scheme* (Sept. 24, 2020); Harriet Alexander & Ariel Zilber, *Minneapolis police opens investigation into reports that Ilhan Omar's supporters illegally harvested Democrat ballots in Minnesota*, DAILY MAIL, Sept. 28, 2020.

43. Absentee and mail-in voting are the primary opportunities for unlawful ballots to be cast. As a result of expanded absentee and mail-in voting in Defendant States, combined with Defendant States' unconstitutional modification of statutory protections designed to ensure ballot integrity, Defendant States created a massive opportunity for fraud. In addition, the Defendant States have made it difficult or impossible to separate the constitutionally tainted mail-in ballots from all mail-in ballots.

44. Rather than augment safeguards against illegal voting in anticipation of the millions of additional mail-in ballots flooding their States, Defendant States *all* materially weakened, or did away with, security measures, such as witness or signature verification procedures, required by their respective legislatures. Their legislatures established those commonsense safeguards to prevent—or at least reduce—fraudulent mail-in ballots.

⁶<https://www.washingtonpost.com/history/2020/08/22/mail-in-voting-civil-war-election-conspiracy-lincoln/>

45. Significantly, in Defendant States, Democrat voters voted by mail at two to three times the rate of Republicans. Former Vice President Biden thus greatly benefited from this unconstitutional usurpation of legislative authority, and the weakening of legislatively mandated ballot security measures.

46. The outcome of the Electoral College vote is directly affected by the constitutional violations committed by Defendant States. Those violations proximately caused the appointment of presidential electors for former Vice President Biden. The United States as a sovereign and as *parens patriae* for all its citizens will therefore be injured if Defendant States' unlawfully certify these presidential electors and those electors' votes are recognized.

47. In addition to the unconstitutional acts associated with mail-in and absentee voting, there are grave questions surrounding the vulnerability of electronic voting machines—especially those machines provided by Dominion Voting Systems, Inc. (“Dominion”) which were in use in all of the Defendant States (and other states as well) during the 2020 general election.

48. As initially reported on December 13, 2020, the U.S. Government is scrambling to ascertain the extent of broad-based hack into multiple agencies through a third-party software supplied by vendor known as SolarWinds. That software product is used throughout the U.S. Government, and the private sector including, apparently, Dominion.

49. As reported by CNN, what little we know has cybersecurity experts extremely worried.⁷ CNN also quoted Theresa Payton, who served as White House Chief Information Officer under President George W. Bush stating: “I woke up in the middle of the night last night just sick to my stomach. . . . On a scale of 1 to 10, I’m at a 9 — and it’s not because of what I know; it’s because of what we still don’t know.”

50. Disturbingly, though the Dominion’s CEO denied that Dominion uses SolarWinds software, a screenshot captured from Dominion’s webpage shows that Dominion does use SolarWinds technology.⁸ Further, Dominion apparently later altered that page to remove any reference to SolarWinds, but the SolarWinds website is still in the Dominion page’s source code. *Id.*

Commonwealth of Pennsylvania

51. Pennsylvania has 20 electoral votes, with a statewide vote tally currently estimated at 3,363,951 for President Trump and 3,445,548 for former Vice President Biden, a margin of 81,597 votes.

52. On December 14, 2020, the Pennsylvania Republican slate of Presidential Electors, met at the State Capital and cast their votes for President

⁷ <https://www.cnn.com/2020/12/16/tech/solarwinds-orion-hack-explained/index.html>

⁸ https://www.theepochtimes.com/dominion-voting-systems-ceo-says-company-has-never-used-solarwinds-orion-platform_3619895.html

Donald J. Trump and Vice President Michael R. Pence.⁹

53. The number of votes affected by the various constitutional violations exceeds the margin of votes separating the candidates.

54. Pennsylvania's Secretary of State, Kathy Boockvar, without legislative approval, unilaterally abrogated several Pennsylvania statutes requiring signature verification for absentee or mail-in ballots. Pennsylvania's legislature has not ratified these changes, and the legislation did not include a severability clause.

55. On August 7, 2020, the League of Women Voters of Pennsylvania and others filed a complaint against Secretary Boockvar and other local election officials, seeking "a declaratory judgment that Pennsylvania existing signature verification procedures for mail-in voting" were unlawful for a number of reasons. *League of Women Voters of Pennsylvania v. Boockvar*, No. 2:20-cv-03850-PBT, (E.D. Pa. Aug. 7, 2020).

56. The Pennsylvania Department of State quickly settled with the plaintiffs, issuing revised guidance on September 11, 2020, stating in relevant part: "The Pennsylvania Election Code does not authorize the county board of elections to set aside returned absentee or mail-in ballots based solely on signature analysis by the county board of elections."

57. This guidance is contrary to Pennsylvania law. First, Pennsylvania Election Code mandates that, for non-disabled and non-military

⁹ <https://www.foxnews.com/politics/republican-electors-pennsylvania-georgia-vote-for-trump>

voters, all applications for an absentee or mail-in ballot “shall be signed by the applicant.” 25 PA. STAT. §§ 3146.2(d) & 3150.12(c). Second, Pennsylvania’s voter signature verification requirements are expressly set forth at 25 PA. STAT. 350(a.3)(1)-(2) and § 3146.8(g)(3)-(7).

58. The Pennsylvania Department of State’s guidance unconstitutionally did away with Pennsylvania’s statutory signature verification requirements. Approximately 70 percent of the requests for absentee ballots were from Democrats and 25 percent from Republicans. Thus, this unconstitutional abrogation of state election law greatly inured to former Vice President Biden’s benefit.

59. In addition, in 2019, Pennsylvania’s legislature enacted bipartisan election reforms, 2019 Pa. Legis. Serv. Act 2019-77, that set *inter alia* a deadline of 8:00 p.m. on election day for a county board of elections to receive a mail-in ballot. 25 PA. STAT. §§ 3146.6(c), 3150.16(c). Acting under a generally worded clause that “Elections shall be free and equal,” PA. CONST. art. I, § 5, cl. 1, a 4-3 majority of Pennsylvania’s Supreme Court in *Pa. Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020), extended that deadline to three days after Election Day and adopted a presumption that even *non-postmarked ballots* were presumptively timely.

60. Pennsylvania’s election law also requires that poll-watchers be granted access to the opening, counting, and recording of absentee ballots: “Watchers shall be permitted to be present when the envelopes containing official absentee ballots and mail-in ballots are opened and when such ballots are counted and

recorded.” 25 PA. STAT. § 3146.8(b). Local election officials in Philadelphia and Allegheny Counties decided not to follow 25 PA. STAT. § 3146.8(b) for the opening, counting, and recording of absentee and mail-in ballots.

61. Prior to the election, Secretary Boockvar sent an email to local election officials urging them to provide opportunities for various persons—including political parties—to contact voters to “cure” defective mail-in ballots. This process clearly violated several provisions of the state election code.

- Section 3146.8(a) requires: “The county boards of election, upon receipt of official absentee ballots in sealed official absentee ballot envelopes as provided under this article and mail-in ballots as in sealed official mail-in ballot envelopes as provided under Article XIII-D,¹ shall safely keep the ballots in sealed or locked containers until they are to be canvassed by the county board of elections.”
- Section 3146.8(g)(1)(ii) provides that mail-in ballots shall be canvassed (if they are received by eight o’clock p.m. on election day) in the manner prescribed by this subsection.
- Section 3146.8(g)(1.1) provides that the first look at the ballots shall be “no earlier than seven o’clock a.m. on election day.” And the hour for this “pre-canvas” must be publicly announced at least 48 hours in advance. Then the votes are counted on election day.

62. By removing the ballots for examination prior to seven o’clock a.m. on election day, Secretary Boockvar created a system whereby local officials could review ballots without the proper

announcements, observation, and security. This entire scheme, which was only followed in Democrat majority counties, was blatantly illegal in that it permitted the illegal removal of ballots from their locked containers prematurely.

63. Statewide election officials and local election officials in Philadelphia and Allegheny Counties, aware of the historical Democrat advantage in those counties, violated Pennsylvania's election code and adopted the differential standards favoring voters in Philadelphia and Allegheny Counties with the intent to favor former Vice President Biden. *See Verified Complaint (Doc. No. 1), Donald J. Trump for President, Inc. v. Boockvar*, 4:20-cv-02078-MWB (M.D. Pa. Nov. 18, 2020) at ¶¶ 3-6, 9, 11, 100-143.

64. Absentee and mail-in ballots in Pennsylvania were thus evaluated under an illegal standard regarding signature verification. It is now impossible to determine which ballots were properly cast and which ballots were not.

65. The changed process allowing the curing of absentee and mail-in ballots in Allegheny and Philadelphia counties is a separate basis resulting in an unknown number of ballots being treated in an unconstitutional manner inconsistent with Pennsylvania statute. *Id.*

66. In addition, a great number of ballots were received after the statutory deadline and yet were counted by virtue of the fact that Pennsylvania did not segregate all ballots received after 8:00 pm on November 3, 2020. Boockvar's claim that only about 10,000 ballots were received after this deadline has no way of being proven since Pennsylvania broke its promise to the Court to segregate ballots and co-

mingled perhaps tens, or even hundreds of thousands, of illegal late ballots.

67. On December 4, 2020, fifteen members of the Pennsylvania House of Representatives led by Rep. Francis X. Ryan issued a report to Congressman Scott Perry (the “Ryan Report,” App. 139a-144a) stating that “[t]he general election of 2020 in Pennsylvania was fraught with inconsistencies, documented irregularities and improprieties associated with mail-in balloting, pre-canvassing, and canvassing that the reliability of the mail-in votes in the Commonwealth of Pennsylvania is impossible to rely upon.”

68. The Ryan Report’s findings are startling, including:

- Ballots with NO MAILED date. That total is 9,005.
- Ballots Returned on or BEFORE the Mailed Date. That total is 58,221.
- Ballots Returned one day after Mailed Date. That total is 51,200.

Id. 143a.

69. These nonsensical numbers alone total 118,426 ballots and exceed Mr. Biden’s margin of 81,660 votes over President Trump. But these discrepancies pale in comparison to the discrepancies in Pennsylvania’s reported data concerning the number of mail-in ballots distributed to the populace—now with no longer subject to legislated mandated signature verification requirements.

70. The Ryan Report also stated as follows:

[I]n a data file received on November 4, 2020, the Commonwealth’s PA Open Data sites reported over 3.1 million mail in ballots sent out. The CSV file from the state on November 4 depicts 3.1 million mail in ballots sent out but on November 2, the information was provided that only 2.7 million ballots had been sent out. ***This discrepancy of approximately 400,000 ballots from November 2 to November 4 has not been explained.***

Id. at 143a-44a. (Emphasis added).

71. The Ryan Report stated further: “This apparent [400,000 ballot] discrepancy can only be evaluated by reviewing all transaction logs into the SURE system [the Statewide Uniform Registry Electors].”¹⁰

72. In its opposition brief to Texas’s motion to for leave file a bill of complaint, Pennsylvania said nothing about the 118,426 ballots that had no mail date, were nonsensically returned *before* the mailed date, or were improbably returned one day after the mail date discussed above.¹¹

73. With respect to the 400,000 discrepancy in mail-in ballots Pennsylvania sent out as reported on November 2, 2020 compared to November 4, 2020 (one day after the election), Pennsylvania asserted

¹⁰ Ryan Report at App. a [p.5].

¹¹ Pennsylvania Opposition To Motion For Leave To File Bill of Complaint and Motion For Preliminary Injunction, Temporary Restraining Order, or Stay (“Pennsylvania Opp. Br.”) filed December 10, 2020, Case No. 220155.

that the discrepancy is purportedly due to the fact that “[o]f the 3.1 million ballots sent out, 2.7 million were mail-in ballots and 400,000 were absentee ballots.” Pennsylvania offered *no support* for its conclusory assertion. *Id.* at 6. Nor did Pennsylvania rebut the assertion in the Ryan Report that the “discrepancy can only be evaluated by reviewing all transaction logs into the SURE system.”

74. These stunning figures illustrate the out-of-control nature of Pennsylvania’s mail-in balloting scheme. Democrats submitted mail-in ballots at more than two times the rate of Republicans. This number of constitutionally tainted ballots far exceeds the approximately 81,660 votes separating the candidates.

75. This blatant disregard of statutory law renders all mail-in ballots constitutionally tainted and cannot form the basis for appointing or certifying Pennsylvania’s presidential electors to the Electoral College.

76. According to the U.S. Election Assistance Commission’s report to Congress *Election Administration and Voting Survey: 2016 Comprehensive Report*, in 2016 Pennsylvania received 266,208 mail-in ballots; 2,534 of them were rejected (.95%). *Id.* at p. 24. However, in 2020, Pennsylvania received more than 10 times the number of mail-in ballots compared to 2016. As explained *supra*, this much larger volume of mail-in ballots was treated in an unconstitutionally modified manner that included: (1) doing away with the Pennsylvania’s signature verification requirements; (2) extending that deadline to three days after Election Day and adopting a presumption that even *non-postmarked ballots* were

presumptively timely; and (3) blocking poll watchers in Philadelphia and Allegheny Counties in violation of State law.

77. These non-legislative modifications to Pennsylvania's election rules appear to have generated an outcome-determinative number of unlawful ballots that were cast in Pennsylvania. Regardless of the number of such ballots, the non-legislative changes to the election rules violated the Electors Clause.

State of Georgia

78. Georgia has 16 electoral votes, with a statewide vote tally currently estimated at 2,458,121 for President Trump and 2,472,098 for former Vice President Biden, a margin of approximately 12,670 votes.

79. On December 14, 2020, the Georgia Republican slate of Presidential Electors, including Petitioner Electors, met at the State Capital and cast their votes for President Donald J. Trump and Vice President Michael R. Pence.¹²

80. The number of votes affected by the various constitutional violations far exceeds the margin of votes dividing the candidates.

81. Georgia's Secretary of State, Brad Raffensperger, without legislative approval, unilaterally abrogated Georgia's statutes governing the date a ballot may be opened, and the signature verification process for absentee ballots.

82. O.C.G.A. § 21-2-386(a)(2) prohibits the opening of absentee ballots until after the polls open

¹² <https://www.foxnews.com/politics/republican-electors-pennsylvania-georgia-vote-for-trump>

on Election Day: In April 2020, however, the State Election Board adopted Secretary of State Rule 183-1-14-0.9-.15, Processing Ballots Prior to Election Day. That rule purports to authorize county election officials to begin processing absentee ballots up to *three weeks* before Election Day. Outside parties were then given early and illegal access to purportedly defective ballots to “cure” them in violation of O.C.G.A. §§ 21-2-386(a)(1)(C), 21-2-419(c)(2).

83. Specifically, Georgia law authorizes and requires a single registrar or clerk—after reviewing the outer envelope—to reject an absentee ballot if the voter failed to sign the required oath or to provide the required information, the signature appears invalid, or the required information does not conform with the information on file, or if the voter is otherwise found ineligible to vote. O.C.G.A. § 21-2-386(a)(1)(B)-(C).

84. Georgia law provides absentee voters the chance to “cure a failure to sign the oath, an invalid signature, or missing information” on a ballot’s outer envelope by the deadline for verifying provisional ballots (*i.e.*, three days after the election). O.C.G.A. §§ 21-2-386(a)(1)(C), 21-2-419(c)(2). To facilitate cures, Georgia law requires the relevant election official to notify the voter in writing: “The board of registrars or absentee ballot clerk shall promptly notify the elector of such rejection, a copy of which notification shall be retained in the files of the board of registrars or absentee ballot clerk for at least two years.” O.C.G.A. § 21-2-386(a)(1)(B).

85. There were 284,817 early ballots corrected and accepted in Georgia out of 4,018,064 early ballots used to vote in Georgia. Former Vice President Biden received nearly twice the number of

mail-in votes as President Trump and thus materially benefited from this unconstitutional change in Georgia's election laws.

86. In addition, on March 6, 2020, in *Democratic Party of Georgia v. Raffensperger*, No. 1:19-cv-5028-WMR (N.D. Ga.), Georgia's Secretary of State entered a Compromise Settlement Agreement and Release with the Democratic Party of Georgia (the "Settlement") to materially change the statutory requirements for reviewing signatures on absentee ballot envelopes to confirm the voter's identity by making it far more difficult to challenge defective signatures beyond the express mandatory procedures set forth at GA. CODE § 21-2-386(a)(1)(B).

87. Among other things, before a ballot could be rejected, the Settlement required a registrar who found a defective signature to now seek a review by two other registrars, and only if a majority of the registrars agreed that the signature was defective could the ballot be rejected but not before all three registrars' names were written on the ballot envelope along with the reason for the rejection. These cumbersome procedures are in direct conflict with Georgia's statutory requirements, as is the Settlement's requirement that notice be provided by telephone (*i.e.*, not in writing) if a telephone number is available. Finally, the Settlement purports to require State election officials to consider issuing guidance and training materials drafted by an expert retained by the Democratic Party of Georgia.

88. Georgia's legislature has not ratified these material changes to statutory law mandated by the Compromise Settlement Agreement and Release, including altered signature verification requirements

and early opening of ballots. The relevant legislation that was violated by Compromise Settlement Agreement and Release did not include a severability clause.

89. This unconstitutional change in Georgia law materially benefitted former Vice President Biden. According to the Georgia Secretary of State's office, former Vice President Biden had almost double the number of absentee votes (65.32%) as President Trump (34.68%). *See* Cicchetti Decl. at ¶ 25, App. 7a-8a.

90. The effect of this unconstitutional change in Georgia election law, which made it more likely that ballots without matching signatures would be counted, had a material impact on the outcome of the election.

91. Specifically, there were 1,305,659 absentee mail-in ballots submitted in Georgia in 2020. There were 4,786 absentee ballots rejected in 2020. This is a rejection rate of .37%. In contrast, in 2016, the 2016 rejection rate was 6.42% with 13,677 absentee mail-in ballots being rejected out of 213,033 submitted, which more than *seventeen times greater* than in 2020. *See* Cicchetti Decl. at ¶ 24, App. 7a.

92. If the rejection rate of mailed-in absentee ballots remained the same in 2020 as it was in 2016, there would be 83,517 less tabulated ballots in 2020. The statewide split of absentee ballots was 34.68% for Trump and 65.2% for Biden. Rejecting at the higher 2016 rate with the 2020 split between Trump and Biden would decrease Trump votes by 28,965 and Biden votes by 54,552, which would be a net gain for Trump of 25,587 votes. This would be more than needed to overcome the Biden advantage of 12,670

votes, and Trump would win by 12,917 votes. *Id.* Regardless of the number of ballots affected, however, the non-legislative changes to the election rules violated the Electors Clause.

93. In addition, Georgia uses Dominion's voting machines throughout the State. Less than a month before the election, the United States District Court for the Northern District of Georgia ruled on a motion brought by a citizen advocate group and others seeking a preliminary injunction to stop Georgia from using Dominion's voting systems due to their known vulnerabilities to hacking and other irregularities. *See Curling v. Raffensperger*, 2020 U.S. Dist. LEXIS 188508, No. 1:17-cv-2989-AT (N.D. GA Oct.11, 2020).

94. Though the district court found that it was bound by Eleventh Circuit law to deny plaintiffs' motion, it issued a prophetic warning stating:

The Court's Order has delved deep into the true risks posed by the new BMD voting system as well as its manner of implementation. These risks are neither hypothetical nor remote under the current circumstances. ***The insularity of the Defendants' and Dominion's stance here in evaluation and management of the security and vulnerability of the BMD system does not benefit the public or citizens' confident exercise of the franchise.*** The stealth vote alteration or operational interference risks posed by malware that can be effectively invisible to detection, whether intentionally seeded or not, are high once implanted, if equipment and software systems are not properly protected, implemented, and audited.

Id. at *176 (Emphasis added).

95. One of those material risks manifested three weeks later as shown by the November 4, 2020 video interview of a Fulton County, Georgia Director

of Elections, Richard Barron. In that interview, Barron stated that the tallied vote of over 93% of ballots were based on a “review panel[‘s]” determination of the voter’s “intent”—not what the voter actually voted. Specifically, he stated that “so far we’ve scanned 113,130 ballots, we’ve adjudicated over 106,000. . . . The only ballots that are adjudicated are if we have a ballot with a contest on it in which there’s some question as to how the computer reads it so that the vote review panel then determines voter intent.”¹³

96. This astounding figure demonstrates the unreliability of Dominion’s voting machines. These figures, in and of themselves in this one sample, far exceeds the margin of votes separating the two candidates.

97. Lastly, on December 17, 2020, the Chairman of the Election Law Study Subcommittee of the Georgia Standing Senate Judiciary Committee issued a detailed report discussing a myriad of voting irregularities and potential fraud in the Georgia 2020 general election (the “Report”).¹⁴ The Executive Summary states that “[t]he November 3, 2020 General Election (the ‘Election’) was chaotic and any reported results must be viewed as untrustworthy”. After detailing over a dozen issues showing irregularities and potential fraud, the Report concluded:

The Legislature should carefully consider its obligations under the U.S. Constitution. If a

¹³<https://www.c-span.org/video/?477819-1/fulton-county-georgia-election-update> at beginning at 20 seconds through 1:21.

¹⁴ (App. a -- a)

majority of the General Assembly concurs with the findings of this report, the certification of the Election should be rescinded and the General Assembly should act to determine the proper Electors to be certified to the Electoral College in the 2020 presidential race. Since time is of the essence, the Chairman and Senators who concur with this report recommend that the leadership of the General Assembly and the Governor immediately convene to allow further consideration by the entire General Assembly.

State of Michigan

98. Michigan has 16 electoral votes, with a statewide vote tally currently estimated at 2,650,695 for President Trump and 2,796,702 for former Vice President Biden, a margin of 146,007 votes. In Wayne County, Mr. Biden's margin (322,925 votes) significantly exceeds his statewide lead.

99. On December 14, 2020, the Michigan Republican slate of Presidential Electors *attempted* to meet and cast their votes for President Donald J. Trump and Vice President Michael R. Pence but were denied entry to the State Capital by law enforcement. Their tender of their votes was refused. They instead met on the grounds of the State Capital and cast their votes for President Donald J. Trump and Vice President Michael R. Pence.¹⁵

100. The number of votes affected by the various constitutional violations exceeds the margin of votes dividing the candidates.

¹⁵<https://thepalmerireport.com/michigan-state-police-block-gop-electors-from-entering-capitol/>

101. Michigan's Secretary of State, Jocelyn Benson, without legislative approval, unilaterally abrogated Michigan election statutes related to absentee ballot applications and signature verification. Michigan's legislature has not ratified these changes, and its election laws do not include a severability clause.

102. As amended in 2018, the Michigan Constitution provides all registered voters the right to request and vote by an absentee ballot without giving a reason. MICH. CONST. art. 2, § 4.

103. On May 19, 2020, however, Secretary Benson announced that her office would send unsolicited absentee-voter ballot applications by mail to all 7.7 million registered Michigan voters prior to the primary and general elections. Although her office repeatedly encouraged voters to vote absentee because of the COVID-19 pandemic, it did not ensure that Michigan's election systems and procedures were adequate to ensure the accuracy and legality of the historic flood of mail-in votes. In fact, it did the opposite and did away with protections designed to deter voter fraud.

104. Secretary Benson's flooding of Michigan with millions of absentee ballot applications prior to the 2020 general election violated M.C.L. § 168.759(3). That statute limits the procedures for requesting an absentee ballot to three specified ways:

An application for an absent voter ballot under this section may be made in *any of the following ways*:

- (a) By a written request signed by the voter.
- (b) On an absent voter ballot application form provided for that purpose by the clerk of the city or township.

(c) On a federal postcard application.

M.C.L. § 168.759(3) (emphasis added).

105. The Michigan Legislature thus declined to include the Secretary of State as a means for distributing absentee ballot applications. *Id.* § 168.759(3)(b). Under the statute’s plain language, the Legislature explicitly gave *only local clerks* the power to distribute absentee voter ballot applications. *Id.*

106. Because the Legislature declined to explicitly include the Secretary of State as a vehicle for distributing absentee ballots applications, Secretary Benson lacked authority to distribute even a single absentee voter ballot application—much less the *millions* of absentee ballot applications Secretary Benson chose to flood across Michigan.

107. Secretary Benson also violated Michigan law when she launched a program in June 2020 allowing absentee ballots to be requested online, *without* signature verification as expressly required under Michigan law. The Michigan Legislature did not approve or authorize Secretary Benson’s unilateral actions.

108. MCL § 168.759(4) states in relevant part: “An applicant for an absent voter ballot shall sign the application. Subject to section 761(2), a clerk or assistant clerk shall not deliver an absent voter ballot to an applicant who does not sign the application.”

109. Further, MCL § 168.761(2) states in relevant part: “The qualified voter file must be used to determine the genuineness of a signature on an application for an absent voter ballot”, and if “the signatures do not agree sufficiently or [if] the signature is missing” the ballot must be rejected.

110. In 2016 only 587,618 Michigan voters requested absentee ballots. In stark contrast, in 2020, 3.2 million votes were cast by absentee ballot, about 57% of total votes cast – and more than *five times* the number of ballots *even requested* in 2016.

111. Secretary Benson’s unconstitutional modifications of Michigan’s election rules resulted in the distribution of millions of absentee ballot applications without verifying voter signatures as required by MCL §§ 168.759(4) and 168.761(2). This means that *millions* of absentee ballots were disseminated in violation of Michigan’s statutory signature-verification requirements. Democrats in Michigan voted by mail at a ratio of approximately two to one compared to Republican voters. Thus, former Vice President Biden materially benefited from these unconstitutional changes to Michigan’s election law.

112. Michigan also requires that poll watchers and inspectors have access to vote counting and canvassing. M.C.L. §§ 168.674-.675.

113. Local election officials in Wayne County made a conscious and express policy decision not to follow M.C.L. §§ 168.674-.675 for the opening, counting, and recording of absentee ballots.

114. Michigan also has strict signature verification requirements for absentee ballots, including that the Elections Department place a written statement or stamp on each ballot envelope where the voter signature is placed, indicating that the voter signature was in fact checked and verified with the signature on file with the State. *See* MCL § 168.765a(6).

115. However, Wayne County made the policy decision to ignore Michigan's statutory signature-verification requirements for absentee ballots. Former Vice President Biden received approximately 587,074, or 68%, of the votes cast there compared to President Trump's receiving approximate 264,149, or 30.59%, of the total vote. Thus, Mr. Biden materially benefited from these unconstitutional changes to Michigan's election law.

116. Numerous poll challengers and an Election Department employee whistleblower have testified that the signature verification requirement was ignored in Wayne County in a case currently pending in the Michigan Supreme Court.¹⁶ For example, Jesse Jacob, a decades-long City of Detroit employee assigned to work in the Elections Department for the 2020 election testified that:

Absentee ballots that were received in the mail would have the voter's signature on the envelope. While I was at the TCF Center, I was instructed not to look at any of the signatures on the absentee ballots, and I was instructed not to compare the signature on the absentee ballot with the signature on file.¹⁷

117. In fact, a poll challenger, Lisa Gage, testified that not a single one of the several hundred to a thousand ballot envelopes she observed had a written statement or stamp indicating the voter

¹⁶ *Johnson v. Benson*, Petition for Extraordinary Writs & Declaratory Relief filed Nov. 26, 2020 (Mich. Sup. Ct.) at ¶¶ 71, 138-39, App. 25a-51a.

¹⁷ *Id.*, Affidavit of Jessy Jacob, Appendix 14 at ¶15, attached at App. 34a-36a.

signature had been verified at the TCF Center in accordance with MCL § 168.765a(6).¹⁸

118. The TCF was the only facility within Wayne County authorized to count ballots for the City of Detroit.

119. Additional public information confirms the material adverse impact on the integrity of the vote in Wayne County caused by these unconstitutional changes to Michigan’s election law. For example, the Wayne County Statement of Votes Report lists 174,384 absentee ballots out of 566,694 absentee ballots tabulated (about 30.8%) as counted without a registration number for precincts in the City of Detroit. *See* Cicchetti Decl. at ¶ 27, App. a. The number of votes not tied to a registered voter by itself exceeds Vice President Biden’s margin of margin of 146,007 votes by more than 28,377 votes.

120. The extra ballots cast most likely resulted from the phenomenon of Wayne County election workers running the same ballots through a tabulator multiple times, with Republican poll watchers obstructed or denied access, and election officials ignoring poll watchers’ challenges, as documented by numerous declarations. App. 25a-51a.

121. In addition, a member of the Wayne County Board of Canvassers (“Canvassers Board”), William Hartman, determined that 71% of Detroit’s Absent Voter Counting Boards (“AVCBs”) were unbalanced—*i.e.*, the number of people who checked in did not match the number of ballots cast—without explanation. *Id.* at ¶ 29.

¹⁸ Affidavit of Lisa Gage ¶ 17 (App. a).

122. On November 17, 2020, the Canvassers Board deadlocked 2-2 over whether to certify the results of the presidential election based on numerous reports of fraud and unanswered material discrepancies in the county-wide election results. A few hours later, the Republican Board members reversed their decision and voted to certify the results after severe harassment, including threats of violence.

123. The following day, the two Republican members of the Board *rescinded their votes* to certify the vote and signed affidavits alleging they were bullied and misled into approving election results and do not believe the votes should be certified until serious irregularities in Detroit votes are resolved. *See Cicchetti Decl. at ¶ 29, App. a.*

124. Michigan admitted in a filing with this Court that it “is at a loss to explain the[] allegations” showing that Wayne County lists 174,384 absentee ballots that do not tie to a registered voter. *See State of Michigan’s Brief In Opposition To Motions For Leave To File Bill of Complaint and For Injunctive Relief at 15 (filed Dec. 10, 2020), Case No. 220155.*

125. Lastly, on November 4, 2020, Michigan election officials in Antrim County admitted that a purported “glitch” in Dominion voting machines caused 6,000 votes for President Trump to be wrongly switched to Democrat Candidate Biden in just one county. Local officials discovered the so-called “glitch” after reportedly questioning Mr. Biden’s win in the heavily Republican area and manually checked the vote tabulation.

126. The Dominion voting tabulators used in Antrim County were recently subjected to a forensic

audit.¹⁹ Though Michigan’s Secretary of State tried to keep the Allied Report from being released to the public, the court overseeing the audit refused and allowed the Allied Report to be made public.²⁰ The Allied Report concluded that “the vote flip occurred because of machine error built into the voting software designed to create error.”²¹ In addition, the Allied report revealed that “all server security logs prior to 11:03 pm on November 4, 2020 are missing and that there was other “tampering with data.” See Allied Report at ¶¶ B.16-17 (App. a).

127. Further, the Allied Report determined that the Dominion voting system in Antrim County was designed to generate an error rate as high as 81.96% thereby sending ballots for “adjudication” to determine the voter’s intent. See Allied report at ¶¶ B.2, 8-22 (App. a-- a).

128. Notably, the extraordinarily high error rate described here is consistent with the same situation that took place in Fulton County, Georgia with an enormous 93% error rate that required “adjudication” of over 106,000 ballots.

129. These non-legislative modifications to Michigan’s election statutes resulted in a number of constitutionally tainted votes that far exceeds the margin of voters separating the candidates in

¹⁹ Antrim Michigan Forensics Report by Allied Security Operations Group dated December 13, 2020 (the “Allied Report”) (App. a -- a);

²⁰ <https://themichiganstar.com/2020/12/15/after-examining-antrim-county-voting-machines-asog-concludes-dominion-intentionally-designed-to-create-systemic-fraud/>

²¹ Allied Report at ¶¶ B.4-9 (App. a).

Michigan. Regardless of the number of votes that were affected by the unconstitutional modification of Michigan's election rules, the non-legislative changes to the election rules violated the Electors Clause.

State of Wisconsin

130. Wisconsin has 10 electoral votes, with a statewide vote tally currently estimated at 1,610,151 for President Trump and 1,630,716 for former Vice President Biden (*i.e.*, a margin of 20,565 votes). In two counties, Milwaukee and Dane, Mr. Biden's margin (364,298 votes) significantly exceeds his statewide lead.

131. On December 14, 2020, the Wisconsin Republican slate of Presidential Electors met at the State Capital and cast their votes for President Donald J. Trump and Vice President Michael R. Pence.²²

132. In the 2016 general election some 146,932 mail-in ballots were returned in Wisconsin out of more than 3 million votes cast.²³ In stark contrast, 1,275,019 mail-in ballots, nearly a 900 percent increase over 2016, were returned in the November 3, 2020 election.²⁴

133. Wisconsin statutes guard against fraud in absentee ballots: "[V]oting by absentee ballot is a privilege exercised wholly outside the traditional safeguards of the polling place. The legislature finds that the privilege of voting by absentee ballot must be

²² <https://wisgop.org/republican-electors-2020/>.

²³ Source: U.S. Elections Project, *available at*: <http://www.electproject.org/early> 2016.

²⁴ Source: U.S. Elections Project, *available at*: <https://electproject.github.io/Early-Vote-2020G/WI.html>.

carefully regulated to prevent the potential for fraud or abuse[.]” WISC. STAT. § 6.84(1).

134. In direct contravention of Wisconsin law, leading up to the 2020 general election, the Wisconsin Elections Commission (“WEC”) and other local officials unconstitutionally modified Wisconsin election laws—each time taking steps that weakened, or did away with, established security procedures put in place by the Wisconsin legislature to ensure absentee ballot integrity.

135. For example, the WEC undertook a campaign to position hundreds of drop boxes to collect absentee ballots—including the use of unmanned drop boxes.²⁵

136. The mayors of Wisconsin’s five largest cities—Green Bay, Kenosha, Madison, Milwaukee, and Racine, which all have Democrat majorities—joined in this effort, and together, developed a plan use purportedly “secure drop-boxes to facilitate return of absentee ballots.” Wisconsin Safe Voting Plan 2020, at 4 (June 15, 2020).²⁶

137. It is alleged in an action recently filed in the United States District Court for the Eastern District of Wisconsin that over five hundred

²⁵ Wisconsin Elections Commission Memoranda, To: All Wisconsin Election Officials, Aug. 19, 2020, *available at*: <https://elections.wi.gov/sites/elections.wi.gov/files/2020-08/Drop%20Box%20Final.pdf>. at p. 3 of 4.

²⁶ Wisconsin Safe Voting Plan 2020 Submitted to the Center for Tech & Civic Life, June 15, 2020, by the Mayors of Madison, Milwaukee, Racine, Kenosha and Green Bay *available at*: <https://www.techandciviclelife.org/wp-content/uploads/2020/07/Approved-Wisconsin-Safe-Voting-Plan-2020.pdf>.

unmanned, illegal, absentee ballot drop boxes were used in the Presidential election in Wisconsin.²⁷

138. However, the use of *any* drop box, manned or unmanned, is directly prohibited by Wisconsin statute. The Wisconsin legislature specifically described in the Election Code “Alternate absentee ballot site[s]” and detailed the procedure by which the governing body of a municipality may designate a site or sites for the delivery of absentee ballots “other than the office of the municipal clerk or board of election commissioners as the location from which electors of the municipality may request and vote absentee ballots and to which voted absentee ballots shall be returned by electors for any election.” Wis. Stat. 6.855(1).

139. Any alternate absentee ballot site “shall be staffed by the municipal clerk or the executive director of the board of election commissioners, or employees of the clerk or the board of election commissioners.” Wis. Stat. 6.855(3). Likewise, Wis. Stat. 7.15(2m) provides, “[i]n a municipality in which the governing body has elected to establish an alternate absentee ballot site under s. 6.855, the municipal clerk shall operate such site as though it were his or her office for absentee ballot purposes and shall ensure that such site is adequately staffed.”

140. Thus, the unmanned absentee ballot drop-off sites are prohibited by the Wisconsin Legislature as they do not comply with Wisconsin law

²⁷ See Complaint (Doc. No. 1), *Donald J. Trump, Candidate for President of the United States of America v. The Wisconsin Election Commission*, Case 2:20-cv-01785-BHL (E.D. Wisc. Dec. 2, 2020) (Wisconsin Trump Campaign Complaint”) at ¶¶ 188-89.

expressly defining “[a]lternate absentee ballot site[s]”. Wis. Stat. 6.855(1), (3).

141. In addition, the use of drop boxes for the collection of absentee ballots, positioned predominantly in Wisconsin’s largest cities, is directly contrary to Wisconsin law providing that absentee ballots may only be “mailed by the elector, or delivered *in person* to the municipal clerk issuing the ballot or ballots.” Wis. Stat. § 6.87(4)(b)1 (emphasis added).

142. The fact that other methods of delivering absentee ballots, such as through unmanned drop boxes, are *not* permitted is underscored by Wis. Stat. § 6.87(6) which mandates that, “[a]ny ballot not mailed or delivered as provided in this subsection may not be counted.” Likewise, Wis. Stat. § 6.84(2) underscores this point, providing that Wis. Stat. § 6.87(6) “shall be construed as mandatory.” The provision continues—“Ballots cast in contravention of the procedures specified in those provisions may not be counted. *Ballots counted in contravention of the procedures specified in those provisions may not be included in the certified result of any election.*” Wis. Stat. § 6.84(2) (emphasis added).

143. These were not the only Wisconsin election laws that the WEC violated in the 2020 general election. The WEC and local election officials also took it upon themselves to encourage voters to unlawfully declare themselves “indefinitely confined”—which under Wisconsin law allows the voter to avoid security measures like signature verification and photo ID requirements.

144. Specifically, registering to vote by absentee ballot requires photo identification, except for those who register as “indefinitely confined” or

“hospitalized.” WISC. STAT. § 6.86(2)(a), (3)(a). Registering for indefinite confinement requires certifying confinement “because of age, physical illness or infirmity or [because the voter] is disabled for an indefinite period.” *Id.* § 6.86(2)(a). Should indefinite confinement cease, the voter must notify the county clerk, *id.*, who must remove the voter from indefinite-confinement status. *Id.* § 6.86(2)(b).

145. Wisconsin election procedures for voting absentee based on indefinite confinement enable the voter to avoid the photo ID requirement and signature requirement. *Id.* § 6.86(1)(ag)/(3)(a)(2).

146. On March 25, 2020, in clear violation of Wisconsin law, Dane County Clerk Scott McDonnell and Milwaukee County Clerk George Christensen both issued guidance indicating that all voters should mark themselves as “indefinitely confined” because of the COVID-19 pandemic.

147. Believing this to be an attempt to circumvent Wisconsin’s strict voter ID laws, the Republican Party of Wisconsin petitioned the Wisconsin Supreme Court to intervene. On March 31, 2020, the Wisconsin Supreme Court unanimously confirmed that the clerks’ “advice was legally incorrect” and potentially dangerous because “voters may be misled to exercise their right to vote in ways that are inconsistent with WISC. STAT. § 6.86(2).”

148. On May 13, 2020, the Administrator of WEC issued a directive to the Wisconsin clerks prohibiting removal of voters from the registry for indefinite-confinement status if the voter is no longer “indefinitely confined.”

149. The WEC’s directive violated Wisconsin law. Specifically, WISC. STAT. § 6.86(2)(a) specifically

provides that “any [indefinitely confined] elector [who] is no longer indefinitely confined ... shall so notify the municipal clerk.” WISC. STAT. § 6.86(2)(b) further provides that the municipal clerk “shall remove the name of any other elector from the list upon request of the elector or upon receipt of reliable information that an elector no longer qualifies for the service.”

150. According to statistics kept by the WEC, nearly 216,000 voters said they were indefinitely confined in the 2020 election, nearly a fourfold increase from nearly 57,000 voters in 2016. In Dane and Milwaukee counties, more than 68,000 voters said they were indefinitely confined in 2020, a fourfold increase from the roughly 17,000 indefinitely confined voters in those counties in 2016.

151. On December 16, 2020, the Wisconsin Supreme Court ruled that Wisconsin officials, including Governor Evers, unlawfully told Wisconsin voters to declare themselves “indefinitely confined”—thereby avoiding signature and photo ID requirements. *See Jefferson v. Dane County*, 2020 Wisc. LEXIS 194 (Wis. Dec. 14, 2020). Given the near fourfold increase in the use of this classification from 2016 to 2020, tens of thousands of these ballots could be illegal. The vast majority of the more than 216,000 voters classified as “indefinitely confined” were from heavily democrat areas, thereby materially and illegally, benefited Mr. Biden.

152. Under Wisconsin law, voting by absentee ballot also requires voters to complete a certification, including their address, and have the envelope witnessed by an adult who also must sign and indicate their address on the envelope. *See* WISC. STAT. § 6.87. The sole remedy to cure an “improperly completed

certificate or [ballot] with no certificate” is for “the clerk [to] return the ballot to the elector[.]” *Id.* § 6.87(9). “If a certificate is missing the address of a witness, the ballot *may not be counted.*” *Id.* § 6.87(6d) (emphasis added).

153. However, in a training video issued April 1, 2020, the Administrator of the City of Milwaukee Elections Commission unilaterally declared that a “witness address may be written in red and that is because we were able to locate the witnesses’ address for the voter” to add an address missing from the certifications on absentee ballots. The Administrator’s instruction violated WISC. STAT. § 6.87(6d). The WEC issued similar guidance on October 19, 2020, in violation of this statute as well.

154. In the Wisconsin Trump Campaign Complaint, it is alleged, supported by the sworn affidavits of poll watchers, that canvas workers carried out this unlawful policy, and acting pursuant to this guidance, in Milwaukee used red-ink pens to alter the certificates on the absentee envelope and then cast and count the absentee ballot. These acts violated WISC. STAT. § 6.87(6d) (“If a certificate is missing the address of a witness, the ballot may not be counted”). *See also* WISC. STAT. § 6.87(9) (“If a municipal clerk receives an absentee ballot with an improperly completed certificate or with no certificate, the clerk may return the ballot to the elector . . . whenever time permits the elector to correct the defect and return the ballot within the period authorized.”).

155. Wisconsin’s legislature has not ratified these changes, and its election laws do not include a severability clause.

156. In addition, Ethan J. Pease, a box truck delivery driver subcontracted to the U.S. Postal Service (“USPS”) to deliver truckloads of mail-in ballots to the sorting center in Madison, WI, testified that USPS employees were backdating ballots received after November 3, 2020. Decl. of Ethan J. Pease at ¶¶ 3-13. Further, Pease testified how a senior USPS employee told him on November 4, 2020 that “[a]n order came down from the Wisconsin/Illinois Chapter of the Postal Service that 100,000 ballots were missing” and how the USPS dispatched employees to “find[] . . . the ballots.” *Id.* ¶¶ 8-10. One hundred thousand ballots supposedly “found” after election day would far exceed former Vice President Biden margin of 20,565 votes over President Trump.

State of Arizona

157. Arizona has 11 electoral votes, with a state-wide vote tally currently estimated at 1,661,677 for President Trump and 1,672,054 for former Vice President Biden, a margin of 10,377 votes. In Arizona’s most populous county, Maricopa County, Mr. Biden’s margin (45,109 votes) significantly exceeds his statewide lead.

158. On December 14, 2020, the Arizona Republican slate of Presidential Electors met at the State Capital and cast their votes for President Donald J. Trump and Vice President Michael R. Pence.²⁸

²⁸ <https://arizonadailyindependent.com/2020/12/14/az-democrat-electors-vote-biden-republicans-join-pennsylvania-georgia-nevada-in-casting-electoral-college-votes-for-trump/>

159. Since 1990, Arizona law has required that residents wishing to participate in an election submit their voter registration materials no later than 29 days prior to election day in order to vote in that election. Ariz. Rev. Stat. § 16-120(A). For 2020, that deadline was October 5.

160. In *Mi Familia Vota v. Hobbs*, No. CV-20-01903-PHX-SPL, 2020 U.S. Dist. LEXIS 184397 (D. Ariz. Oct. 5, 2020), however, a federal district court violated the Constitution and enjoined that law, extending the registration deadline to October 23, 2020. The Ninth Circuit stayed that order on October 13, 2020 with a two-day grace period, *Mi Familia Vota v. Hobbs*, 977 F.3d 948, 955 (9th Cir. 2020).

161. However, the Ninth Circuit did not apply the stay retroactively because neither the Arizona Secretary of State nor the Arizona Attorney General requested retroactive relief. *Id.* at 954-55. As a net result, the deadline was unconstitutionally extended from the statutory deadline of October 5 to October 15, 2020, thereby allowing potentially thousands of illegal votes to be injected into the state.

162. In addition, on December 15, 2020, the Arizona state Senate served two subpoenas on the Maricopa County Board of Supervisors (the “Maricopa Board”) to audit scanned ballots, voting machines, and software due to the significant number of voting irregularities. Indeed, the Arizona Senate Judiciary Chairman stated in a public hearing earlier that day that “[t]here is evidence of tampering, there is evidence of fraud” with vote in Maricopa County. The Board then voted to refuse to comply with those subpoenas necessitating a lawsuit to enforce the

subpoenas filed on December 21, 2020. That litigation is currently ongoing.

State of Nevada

163. Nevada has 6 electoral votes, with a statewide vote tally currently estimated at 669,890 for President Trump and 703,486 for former Vice President Biden, a margin of 33,596 votes. Nevada voters sent in 579,533 mail-in ballots. In Clark County, Mr. Biden’s margin (90,922 votes) significantly exceeds his statewide lead.

164. On December 14, 2020 the Republican slate of Presidential Electors met at the State Capital and cast their votes for President Donald J. Trump and Vice President Michael R. Pence.²⁹

165. In response to the COVID-19 pandemic, the Nevada Legislature enacted—and the Governor signed into law—Assembly Bill 4, 2020 Nev. Ch. 3, to address voting by mail and to require, for the first time in Nevada’s history, the applicable county or city clerk to mail ballots to all registered voters in the state.

166. Under Section 23 of Assembly Bill 4, the applicable city or county clerk’s office is required to review the signature on ballots, without permitting a computer system to do so: “The *clerk or employee shall check* the signature used for the mail ballot against all signatures of the voter available in the records of the clerk.” *Id.* § 23(1)(a) (codified at NEV. REV. STAT. § 293.8874(1)(a)) (emphasis add). Moreover, the system requires that two or more employees be included: “If at least two employees in the office of the clerk believe there is a reasonable question of fact as to whether the

²⁹ <https://nevadagop.org/42221-2/>

signature used for the mail ballot matches the signature of the voter, the clerk shall contact the voter and ask the voter to confirm whether the signature used for the mail ballot belongs to the voter.” *Id.* § 23(1)(b) (codified at NEV. REV. STAT. § 293.8874(1)(b)). A signature that differs from on-file signatures in multiple respects is inadequate: “There is a reasonable question of fact as to whether the signature used for the mail ballot matches the signature of the voter if the signature used for the mail ballot differs in multiple, significant and obvious respects from the signatures of the voter available in the records of the clerk.” *Id.* § 23(2)(a) (codified at NEV. REV. STAT. § 293.8874(2)(a)). Finally, under Nevada law, “each voter has the right ... [t]o have a uniform, statewide standard for counting and recounting all votes accurately.” NEV. REV. STAT. § 293.2546(10).

167. Nevada law does not allow computer systems to substitute for review by clerks’ employees.

168. However, county election officials in Clark County ignored this requirement of Nevada law. Clark County, Nevada, processed all its mail-in ballots through a ballot sorting machine known as the Agilis Ballot Sorting System (“Agilis”). The Agilis system purported to match voters’ ballot envelope signatures to exemplars maintained by the Clark County Registrar of Voters.

169. Anecdotal evidence suggests that the Agilis system was prone to false positives (*i.e.*, accepting as valid an invalid signature). Victor Joecks, *Clark County Election Officials Accepted My Signature—on 8 Ballot Envelopes*, LAS VEGAS REV.-J. (Nov. 12, 2020) (Agilis system accepted 8 of 9 false signatures).

170. Even after adjusting the Agilis system's tolerances outside the settings that the manufacturer recommends, the Agilis system nonetheless rejected approximately 70% of the approximately 453,248 mail-in ballots.

171. More than 450,000 mail-in ballots from Clark County either were processed under weakened signature-verification criteria in violation of the statutory criteria for validating mail-in ballots. The number of contested votes exceeds the margin of votes dividing the parties.

172. With respect to approximately 130,000 ballots that the Agilis system approved, Clark County did not subject those signatures to review by two or more employees, as Assembly Bill 4 requires. To count those 130,000 ballots without review not only violated the election law adopted by the legislature but also subjected those votes to a different standard of review than other voters statewide.

173. With respect to approximately 323,000 ballots that the Agilis system rejected, Clark County decided to count ballots if a signature matched at least one letter between the ballot envelope signature and the maintained exemplar signature. This guidance does not match the statutory standard "differ[ing] in multiple, significant and obvious respects from the signatures of the voter available in the records of the clerk."

174. Out of the nearly 580,000 mail-in ballots, registered Democrats returned almost twice as many mail-in ballots as registered Republicans. Thus, this violation of Nevada law appeared to materially benefited former Vice President Biden's vote tally. Regardless of the number of votes that were affected

by the unconstitutional modification of Nevada's election rules, the non-legislative changes to the election rules violated the Electors Clause.

COUNT I: ELECTORS CLAUSE

175. The United States repeats and re-alleges the allegations above, as if fully set forth herein.

176. The Electors Clause of Article II, Section 1, Clause 2, of the Constitution makes clear that only the legislatures of the States are permitted to determine the rules for appointing presidential electors. The pertinent rules here are the state election statutes, specifically those relevant to the presidential election.

177. Non-legislative actors lack authority to amend or nullify election statutes. *Bush II*, 531 U.S. at 104 (quoted *supra*).

178. Under *Heckler v. Chaney*, 470 U.S. 821, 833 n.4 (1985), conscious and express executive policies—even if unwritten—to nullify statutes or to abdicate statutory responsibilities are reviewable to the same extent as if the policies had been written or adopted. Thus, conscious and express actions by State or local election officials to nullify or ignore requirements of election statutes violate the Electors Clause to the same extent as formal modifications by judicial officers or State executive officers.

179. The actions set out in Paragraphs 41-128 constitute non-legislative changes to State election law by executive-branch State election officials, or by judicial officials, in Defendant States Pennsylvania, Georgia, Michigan, Wisconsin, Arizona, and Nevada in violation of the Electors Clause.

180. Electors appointed to Electoral College in violation of the Electors Clause cannot cast constitutionally valid votes for the office of President.

COUNT II: EQUAL PROTECTION

181. The United States repeats and re-alleges the allegations above, as if fully set forth herein.

182. The Equal Protection Clause prohibits the use of differential standards in the treatment and tabulation of ballots within a State. *Bush II*, 531 U.S. at 107.

183. The one-person, one-vote principle requires counting valid votes and not counting invalid votes. *Reynolds*, 377 U.S. at 554-55; *Bush II*, 531 U.S. at 103 (“the votes eligible for inclusion in the certification are the votes meeting the properly established legal requirements”).

184. The actions set out in Paragraphs (Georgia), (Michigan), (Pennsylvania), (Wisconsin), (Arizona), and (Nevada) created differential voting standards in Defendant States Pennsylvania, Georgia, Michigan, Wisconsin, [Arizona (maybe not)], and Nevada in violation of the Equal Protection Clause.

185. The actions set out in Paragraphs (Georgia), (Michigan), (Pennsylvania), (Wisconsin), (Arizona). And (Nevada) violated the one-person, one-vote principle in Defendant States Pennsylvania, Georgia, Michigan, Wisconsin, Arizona, and Nevada.

186. By the shared enterprise of the entire nation electing the President and Vice President, equal protection violations in one State can and do adversely affect and diminish the weight of votes cast in other States that lawfully abide by the election

structure set forth in the Constitution. The United States is therefore harmed by this unconstitutional conduct in violation of the Equal Protection or Due Process Clauses.

COUNT III: DUE PROCESS

187. The United States repeats and re-alleges the allegations above, as if fully set forth herein.

188. When election practices reach “the point of patent and fundamental unfairness,” the integrity of the election itself violates substantive due process. *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978); *Duncan v. Poythress*, 657 F.2d 691, 702 (5th Cir. 1981); *Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1183-84 (11th Cir. 2008); *Roe v. State of Ala. By & Through Evans*, 43 F.3d 574, 580-82 (11th Cir. 1995); *Roe v. State of Ala.*, 68 F.3d 404, 407 (11th Cir. 1995); *Marks v. Stinson*, 19 F. 3d 873, 878 (3rd Cir. 1994).

189. Under this Court’s precedents on procedural due process, not only intentional failure to follow election law as enacted by a State’s legislature but also random and unauthorized acts by state election officials and their designees in local government can violate the Due Process Clause. *Parratt v. Taylor*, 451 U.S. 527, 537-41 (1981), *overruled in part on other grounds by Daniels v. Williams*, 474 U.S. 327, 330-31 (1986); *Hudson v. Palmer*, 468 U.S. 517, 532 (1984). The difference between intentional acts and random and unauthorized acts is the degree of pre-deprivation review.

190. Defendant States acted unconstitutionally to lower their election standards—including to allow invalid ballots to be counted and valid ballots to not be counted—with the express

intent to favor their candidate for President and to alter the outcome of the 2020 election. In many instances these actions occurred in areas having a history of election fraud.

191. The actions set out in Paragraphs (Georgia), (Michigan), (Pennsylvania), (Wisconsin), (Arizona), and (Nevada) constitute intentional violations of State election law by State election officials and their designees in Defendant States Pennsylvania, Georgia, Michigan, Wisconsin, and Arizona, and Nevada in violation of the Due Process Clause.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully request that this Court issue the following relief:

A. Declare that Defendant States Pennsylvania, Georgia, Michigan, Wisconsin, Arizona, and Nevada administered the 2020 presidential election in violation of the Electors Clause and the Fourteenth Amendment of the U.S. Constitution.

B. Declare that the electoral college votes cast by such presidential electors appointed in Defendant States Pennsylvania, Georgia, Michigan, Wisconsin, Arizona, and Nevada are in violation of the Electors Clause and the Fourteenth Amendment of the U.S. Constitution and cannot be counted.

C. Enjoin Defendant States' use of the 2020 election results for the Office of President to appoint presidential electors to the Electoral College.

D. Enjoin Defendant States' use of the 2020 election results for the Office of President to appoint presidential electors to the Electoral College and authorize, pursuant to the Court's remedial authority,

the Defendant States to conduct a special election to appoint presidential electors.

E. Enjoin Defendant States' use of the 2020 election results for the Office of President to appoint presidential electors to the Electoral College and authorize, pursuant to the Court's remedial authority, the Defendant States to conduct an audit of their election results, supervised by a Court-appointed special master, in a manner to be determined separately.

F. Award costs to the United States.

G. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

December , 2020

Donoghue, Richard (ODAG)

From: Donoghue, Richard (ODAG)
Sent: Tuesday, December 29, 2020 6:40 PM
To: Brady, Scott (USAPAW)
Subject: RE: State Department dismisses discrepancies in Pennsylvania election returns | Pennsylvania | thecentersquare.com

And a letter posted on the Sec. of State's website.

<https://www.dos.pa.gov/about-us/Documents/statements/2020-12-29-Response-PA-GOP-Legislators-Misinformation.pdf>

-----Original Message-----

From: Donoghue, Richard (ODAG)
Sent: Tuesday, December 29, 2020 6:38 PM
To: Brady, Scott (USAPAW [REDACTED] (b) (6))
Subject: FW: State Department dismisses discrepancies in Pennsylvania election returns | Pennsylvania | thecentersquare.com

JFYI

-----Original Message-----

From: Richard Donoghue [REDACTED] (b) (6)
Sent: Tuesday, December 29, 2020 5:56 PM
To: Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov>
Subject: State Department dismisses discrepancies in Pennsylvania election returns | Pennsylvania | thecentersquare.com

https://protect2.fireeye.com/v1/url?k=5ff4b609-006f8edb-5ff392ec-0cc47adc5fdc-f22c1d6ee5c69498&q=1&e=8cbc2a2f-40d0-44aa-8923-c1d653c79f32&u=https%3A%2F%2Fwww.thecentersquare.com%2Fpennsylvania%2Fstate-department-dismisses-discrepancies-in-pennsylvania-election-returns%2Farticle_450fd734-4a0e-11eb-94a9-57a7065e52c7.html

Donoghue, Richard (ODAG)

From: Donoghue, Richard (ODAG)
Sent: Tuesday, December 29, 2020 6:57 PM
To: Mastriano, Doug
Subject: RE: Sen Mastriano (PA) letter on election irregularities in Pennsylvania

Sen. Mastriano,

Thank you for the letter. I also received your VM. I or U.S. Attorney Scott Brady will let you know if we need anything further on this.

Thanks again,

Rich Donoghue

From: Mastriano, Dou [REDACTED] (b) (6)
Sent: Tuesday, December 29, 2020 11:28 AM
To: Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov>
Subject: Sen Mastriano (PA) letter on election irregularities in Pennsylvania
Importance: High

Dear AG Donoghue,

As part of my constitutional responsibilities, I held an election hearing on November 25 pertaining to the recent General Election. I am increasingly concerned by broad and extensive irregularities on multiple levels in the Commonwealth that both undermined and undercut the outcome of the presidential election.

Please do not hesitate to reach out to me with any questions.

Sincerely,
Sen Doug Mastriano

[REDACTED] (b) (6)

Rosen, Jeffrey A. (ODAG)

From: Rosen, Jeffrey A. (ODAG)
Sent: Wednesday, December 30, 2020 10:20 AM
To: Donoghue, Richard (ODAG)
Subject: FW: [EXTERNAL] Fwd: December 4, 2020 - Petition and Press Statement - R Smith.docx
Attachments: December 4, 2020 - Press Statement - R Smith.docx; VERIFIED PETITION TO CONTEST GEORGIA ELECTION.pdf

From: Meadows, Mark R. EOP/WH (b) (6)
Sent: Wednesday, December 30, 2020 9:31 AM
To: Rosen, Jeffrey A. (ODAG) <jarosen@jmd.usdoj.gov>
Subject: Fwd: [EXTERNAL] Fwd: December 4, 2020 - Petition and Press Statement - R Smith.docx

Can you have your team look into these allegations of wrongdoing. Only the alleged fraudulent activity.
Thanks Mark

Sent from my iPhone

Begin forwarded message:

From: Mark Meadow (b) (6)
Date: December 30, 2020 at 9:28:38 AM EST
To: "Meadows, Mark R. EOP/WHO (b) (6)" >
Subject: [EXTERNAL] Fwd: December 4, 2020 - Petition and Press Statement - R Smith.docx

?

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Begin forwarded message:

From: "Mitchell, Cleta" <CMitchell@foley.com>
Date: December 30, 2020 at 9:07:45 AM EST
To: Mark Meadow (b) (6) >
Subject: December 4, 2020 - Petition and Press Statement - R Smith.docx

? This is the petition filed in GA state court and the press release issued about it.

I presume the DOJ would want all the exhibits - that's 1800 pages total. I need to get someone to forward that to a drop box.

Plus I don't know what is happening re investigating the video issues in Fulton County. And the equipment. We didn't include the equipment in our lawsuit but there are certainly many issues and questions that some resources need to be devoted to reviewing. We had no way to conduct proper due diligence to include the equipment / software.

Cleta Mitchell, Esq.
Foley & Lardner, LLP
cmitchell@foley.com
[REDACTED] (b) (6) (cell)
202.295.4081 (office)
Sent from my iPhone

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FOR IMMEDIATE RELEASE

December 4, 2020

TRUMP CAMPAIGN FILES ELECTION CONTEST IN GEORGIA

Election Contest Lawsuit Documents Tens Thousands of Illegal Votes Included in the GA Presidential Vote Totals Rendering November 3, 2020 Election Results Null and Void; Suit Asks Court to Vacate and Enjoin the Certification of the Election

ATLANTA, GA - The Trump Campaign filed an election contest today in Georgia state court seeking to invalidate the state's November 3, 2020 presidential election results. Joining President Trump and the Trump campaign in the lawsuit is David Shafer, Chairman of the Georgia Republican Party, who is also a Trump presidential elector.

“What was filed today clearly documents that there are literally tens of thousands of illegal votes that were cast, counted, and included in the tabulations the Secretary of State is preparing to certify,” said Ray S. Smith III, lead counsel for the Trump Campaign. “The massive irregularities, mistakes, and potential fraud violate the Georgia Election Code, making it impossible to know with certainty the actual outcome of the presidential race in Georgia.”

Attached to the complaint are sworn affidavits from dozens of Georgia residents swearing under penalty of perjury to what they witnessed during the election: failure to process and secure the ballots, failure to verify the signatures on absentee ballots, the appearance of mysterious “pristine” absentee ballots not received in official absentee ballot envelopes that were voted almost solely for Joe Biden, failure to allow poll watchers meaningful access to observe the election, among other violations of law.

Data experts also provided sworn testimony in the lawsuit identifying thousands of illegal votes: 2,560 felons; 66,247 underage voters, 2,423 votes from people not registered; 1,043 individuals registered at post office boxes; 4,926 individuals who voted in Georgia after registering in another state; 395 individuals who voted in two states; 15,700 votes from people who moved out of state before the election; 40,279 votes of people who moved without re-registering in their new county; and another 30,000 to 40,000 absentee ballots lacking proper signature matching and verification.

MORE

2-2-2

“The Secretary of State has orchestrated the worst excuse for an election in Georgia history,” added Smith. “We are asking the Court to vacate the certification of the presidential election and to order a new statewide election for president. Alternatively, we are asking the Court to enjoin the certification and allow the Georgia legislature to reclaim its duty under the U.S. Constitution to appoint the presidential electors for the state,” Smith concluded,

###

For additional information contact:

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

**DONALD J. TRUMP, in his capacity as a
Candidate for President, DONALD J.
TRUMP FOR PRESIDENT, INC., and
DAVID J. SHAFER, in his capacity as a
Registered Voter and Presidential Elector
pledged to Donald Trump for President,**

Petitioners,

v.

**BRAD RAFFENSPERGER, in his official
capacity as Secretary of State of Georgia,
REBECCA N. SULLIVAN, in her official
capacity as Vice Chair of the Georgia State
Election Board, DAVID J. WORLEY, in
his official capacity as a Member of the
Georgia State Election Board,
MATTHEW MASHBURN, in his official
capacity as a Member of the Georgia State
Election Board, ANH LE, in her official
capacity as a Member of the Georgia State
Election Board, RICHARD L. BARRON,
in his official capacity as Director of
Registration and Elections for Fulton
County, JANINE EVELER, in her official
capacity as Director of Registration and
Elections for Cobb County, ERICA
HAMILTON, in her official capacity as
Director of Voter Registration and
Elections for DeKalb County, KRISTI
ROYSTON, in her official capacity as
Elections Supervisor for Gwinnett County,
RUSSELL BRIDGES, in his official
capacity as Elections Supervisor for
Chatham County, ANNE DOVER, in her
official capacity as Acting Director of
Elections and Voter Registration for
Cherokee County, SHAUNA DOZIER, in
her official capacity as Elections Director
for Clayton County, MANDI SMITH, in
her official capacity as Director of Voter
Registration and Elections for Forsyth**

CIVIL ACTION FILE NO.

County, AMEIKA PITTS, in her official)
 capacity as Director of the Board of)
 Elections & Registration for Henry)
 County, LYNN BAILEY, in her official)
 capacity as Executive Director of Elections)
 for Richmond County, DEBRA)
 PRESSWOOD, in her official capacity as)
 Registration and Election Supervisor for)
 Houston County, VANESSA WADDELL,)
 in her capacity as Chief Clerk of Elections)
 for Floyd County, JULIANNE ROBERTS,)
 in her official capacity as Supervisor of)
 Elections and Voter Registration for)
 Pickens County, JOSEPH KIRK, in his)
 official capacity as Elections Supervisor)
 for Bartow County, and GERALD)
 MCCOWN, in his official capacity as)
 Elections Supervisor for Hancock County,)
)
 Respondents.)

VERIFIED PETITION TO CONTEST GEORGIA’S PRESIDENTIAL ELECTION
RESULTS FOR VIOLATIONS OF THE CONSTITUTION AND LAWS OF THE STATE
OF GEORGIA, AND REQUEST FOR EMERGENCY DECLARATORY AND
INJUNCTIVE RELIEF

COME NOW Donald J. Trump, in his capacity as a Candidate for President, Donald J. Trump for President, Inc., and David J. Shafer, in his capacity as a Georgia Registered Voter and Presidential Elector pledged to Donald Trump for President (collectively “Petitioners”), Petitioners in the above-styled civil action, by and through their undersigned counsel of record, and file this, their Verified Petition to Contest Georgia’s Presidential Election Results for Violations of the Constitution and Laws of the State of Georgia, and Request for Emergency Declaratory and Injunctive Relief (the “Petition”), respectfully showing this honorable Court as follows:

INTRODUCTION

1.

The United States Constitution sets forth the authority to regulate federal elections: “The Times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.” U.S. Const. art. I, § 4.

2.

With respect to the appointment of presidential electors, the Constitution further provides, “[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in Congress.” U.S. Const. art. II, § 1.

3.

In Georgia, the General Assembly is the “legislature.” *See* Ga. Const. art. III, § 1, para. I.

4.

Pursuant to the legislative power vested in the Georgia General Assembly (the “Legislature”), the Legislature enacted the Georgia Election Code governing the conduct of elections in the State of Georgia. *See* O.C.G.A. §§ 21-2-1 et seq. (the “Election Code”).

5.

Thus, through the Election Code, the Legislature promulgated a statutory framework for choosing the presidential electors, as directed by the Constitution.

6.

In this case, Petitioners present to this Court substantial evidence that the November 3, 2020, Presidential Election in Georgia (the “Contested Election”) was not conducted in accordance with the Election Code and that the named Respondents deviated significantly and substantially from the Election Code.

7.

Due to significant systemic misconduct, fraud, and other irregularities occurring during the election process, many thousands of illegal votes were cast, counted, and included in the tabulations from the Contested Election for the Office of the President of the United States, thereby creating substantial doubt regarding the results of that election.

8.

Petitioners demonstrate that the Respondents’ repeated violations of the Election Code constituted an abandonment of the Legislature’s duly enacted framework for conducting the election and for choosing presidential electors, contrary to Georgia law and the United States Constitution.

9.

Petitioners bring this contest pursuant to O.C.G.A. §21-2-522.

10.

“Honest and fair elections must be held in the selection of the officers for the government of this republic, at all levels, or it will surely fall. If [this Court] place[s] its stamp of approval upon an election held in the manner this one [was] held, it is only a matter of a short time until

unscrupulous men, taking advantage of the situation, will steal the offices from the people and set up an intolerable, vicious, corrupt dictatorship.” *Bush v. Johnson*, 111 Ga. App. 702, 705, 143 S.E.2d 21, 23 (1965).

11.

The Georgia Supreme Court has made clear that it is not incumbent upon Petitioners to show how voters casting irregular ballots would have voted had their ballots been regular. Petitioners “only [have] to show that there were enough irregular ballots to place in doubt the result.” *Mead v. Sheffield*, 278 Ga. 268, 271, 601 S.E.2d 99, 101 (2004) (citing *Howell v. Fears*, 275 Ga. 627, 628, 571 S.E.2d 392, 393 (2002)).

12.

To allow Georgia’s presidential election results to stand uncontested, and its presidential electors chosen based upon election results that are erroneous, unknowable, not in accordance with the Election Code and unable to be replicated with certainty, constitutes a fraud upon Petitioners and the Citizens of Georgia, an outcome that is unlawful and must not be permitted.

THE PARTIES

13.

President Donald J. Trump (“President Trump”) is President of the United States of America and a natural person. He is the Republican candidate for reelection to the Presidency of the United States of America in the November 3, 2020, General Election conducted in the State of Georgia.

14.

Donald J. Trump for President, Inc. is a federal candidate committee registered with, reporting to, and governed by the regulations of the Federal Election Commission, established pursuant to 52 U.S.C. §§ 30101 et seq. as the principal authorized committee of President Trump, candidate for President, which also serves as the authorized committee for the election of the Vice Presidential candidate on the same ticket as President Trump (the “Committee”). The agent designated by the Committee in the State of Georgia is Robert Sinners, Director of Election Day Operations for the State of Georgia for President Trump (collectively the “Trump Campaign”). The Trump Campaign serves as the primary organization supporting the election of presidential electors pledged to President Trump and Vice President Pence.

15.

David J. Shafer (“Elector Shafer”) is a resident of the State of Georgia and an aggrieved elector who was entitled to vote, and did vote, for President Trump in the November 3, 2020, General Election. Elector Shafer is an elector pledged to vote for President Trump at the Meeting of Electors pursuant to United States Constitution and the laws of the State of Georgia.

16.

Petitioners are “Contestants” as defined by O.C.G.A. § 21-2-520(1) who are entitled to bring an election contest under O.C.G.A. § 21-2-521 (the “Election Contest”).

17.

Respondent Brad Raffensperger is named in his official capacity as the Secretary of State of Georgia.¹ Secretary Raffensperger serves as the Chairperson of Georgia’s State Election Board, which promulgates and enforces rules and regulations to (i) obtain uniformity in the practices and proceedings of election officials as well as legality and purity in all primaries and general elections, and (ii) be conducive to the fair, legal, and orderly conduct of primaries and general elections. *See* O.C.G.A. §§ 21-2-30(d), 21-2-31, 21-2-33.1. Secretary Raffensperger, as Georgia’s chief elections officer, is also responsible for the administration of the Election Code. *Id.*

18.

Respondents Rebecca N. Sullivan, David J. Worley, Matthew Mashburn, and Anh Le in their official capacities as members of the Georgia State Election Board (the “State Election Board”), are members of the State Election Board in Georgia, responsible for “formulat[ing], adopt[ing], and promulgat[ing] such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections.” O.C.G.A. § 21-2-31(2). Further, the State Election Board “promulgate[s] rules and regulations to define uniform and nondiscriminatory standards concerning what constitutes a vote and what will be counted as a vote for each category of voting system” in Georgia. O.C.G.A. § 21-2-31(7).

¹ Secretary Raffensperger is a state official subject to suit in his official capacity because his office “imbues him with the responsibility to enforce the [election laws].” *Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011).

19.

Respondent Richard L. Barron is named in his official capacity as Director of Registration and Elections for Fulton County, Georgia, and conducted the Contested Election within that county.

20.

Respondent Janine Eveler is named in her official capacity as Director of Registration and Elections for Cobb County, Georgia, and conducted the Contested Election within that county.

21.

Respondent Erica Hamilton is named in her official capacity as Director of Voter Registration and Elections for DeKalb County, Georgia, and conducted the Contested Election within that county.

22.

Respondent Kristi Royston is named in her official capacity as Elections Supervisor for Gwinnett County, Georgia, and conducted the Contested Election within that county.

23.

Respondent Russell Bridges is named in his official capacity as Elections Supervisor for Chatham County, Georgia, and conducted the Contested Election within that county.

24.

Respondent Anne Dover is named in her official capacity as Acting Director of Elections and Voter Registration for Cherokee County, Georgia, and conducted the Contested Election within that county.

25.

Respondent Shauna Dozier is named in her official capacity as Elections Director for Clayton County, Georgia, and conducted the Contested Election within that county.

26.

Respondent Mandi Smith is named in her official capacity as Director of Voter Registration and Elections for Forsyth County, Georgia, and conducted the Contested Election within that county.

27.

Respondent Ameika Pitts is named in her official capacity as Director of the Board of Elections & Registration for Henry County, Georgia, and conducted the Contested Election within that county.

28.

Respondent Lynn Bailey is named in her official capacity as Executive Director of Elections for Richmond County, Georgia, and conducted the Contested Election within that county.

29.

Respondent Debra Presswood is named in her official capacity as Registration and Election Supervisor for Houston County, Georgia, and conducted the Contested Election within that county.

30.

Respondent Vanessa Waddell is named in her official capacity as Chief Clerk of Elections for Floyd County, Georgia, and conducted the Contested Election within that county.

31.

Respondent Julianne Roberts is named in her official capacity as Supervisor of Elections and Voter Registration for Pickens County, Georgia, and conducted the Contested Election within that county.

32.

Respondent Joseph Kirk is named in his official capacity as Elections Supervisor for Bartow County, Georgia, and conducted the Contested Election within that county.

33.

Respondent Gerald McCown is named in his official capacity as Elections Supervisor for Hancock County, Georgia, and conducted the Contested Election within that county.

34.

All references to Respondents made herein include named Respondent and those election workers deputized by Respondents to act on their behalf during the Contested Election.

JURISDICTION AND VENUE

35.

Jurisdiction is proper in this Court pursuant to O.C.G.A. § 21-2-523(a) as the Superior Court of the county where Secretary Raffensperger, the State Board of Elections, and Respondent Richard L. Barron are located. *See also Ga. Dep't of Human Servs. v. Dougherty Cty.*, 330 Ga. App. 581, 582, 768 S.E.2d 771, 772 (2015).

36.

Venue is proper before this Court.

FACTUAL BACKGROUND

The Georgia Election Code and Election Contest Provisions

37.

The Election Code sets forth the manner in which the Citizens of Georgia are allowed to participate in the Legislature's duty of choosing presidential electors by specifying, *inter alia*, which persons are eligible to register to vote in Georgia, the circumstances and actions by which a voter cancels his or her voter registration, the procedures for voting in person and by absentee ballot, the manner in which elections are to be conducted, and the specific protocols and procedures for recounts, audits, and recanvasses. *See* O.C.G.A. §§ 21-2-1 et seq.

38.

The Election Code in O.C.G.A. § 21-2-522 provides the means for a candidate in a federal election to contest the results of said election based on:

1. Misconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the result;
2. When the defendant is ineligible for the nomination or office in dispute;
3. When illegal votes have been received or legal votes rejected at the polls sufficient to change or place in doubt the result;
4. For any error in counting the votes or declaring the result of the primary or election, if such error would change the results; or
5. For any other cause which shows that another was the person legally nominated, elected, or eligible to compete in a run-off primary or election.²

39.

The results of an election may be set aside when a candidate has “clearly established a violation of *election procedures* and has demonstrated that the violation has placed the result of the election in doubt.” *Martin v. Fulton Cty. Bd. of Registration & Elections*, 307 Ga. 193-94, 835 S.E.2d 245, 248 (2019) (quoting *Hunt v. Crawford*, 270 GA 7, 10, 507 S.E.2d 723 (1998) (emphasis added).

40.

The Election Code “allows elections to be contested through litigation, both as a check on the integrity of the election process and as a means of ensuring the fundamental right of citizens to vote and to have their votes counted securely.” *Martin*, 307 Ga. at 194.

41.

The Georgia Supreme Court has made clear that “it [is] not incumbent upon [Petitioners] to show *how . . . voters would have voted* if their . . . ballots had been regular. [Petitioners] only ha[ve] to show that there were enough irregular ballots to place in doubt the result.” *Mead* at 268 (emphasis added).

² Petitioners do not contest pursuant O.C.G.A. § 21 2 522 Ground (2).

The Contested Election

42.

On November 3, 2020, the Contested Election for electors for President of the United States took place in the State of Georgia.

43.

President Trump, former Vice President Joseph R. Biden (Mr. Biden), and Jo Jorgensen were the only candidates on the ballot for President in the Contested Election.

44.

The original results reported by Secretary Raffensperger for the Contested Election (the “Original Result”) consisted of a purported total of 4,995,323 votes cast, with Mr. Biden “ahead” by a margin of 12,780 votes.

45.

The results of the subsequent Risk Limiting Audit conducted by the Secretary of State (the “Risk Limiting Audit”) included a total of 5,000,585 votes cast, with Mr. Biden “ahead” by a margin of 12,284 votes.

46.

On November 20, 2020, the Contested Election was declared and certified for Mr. Biden by a margin of only 12,670 votes (the “Certified Result”).³

³ The first certified number of votes.

47.

On November 21, 2020, President Trump and the Trump Campaign notified Secretary Raffensperger of President Trump's request to invoke the statutory recount authorized by O.C.G.A. § 21-2-495(c) for elections in which the margin is less than one-half of one percent (the "Statutory Recount"). A true and correct copy of President Trump's request for the Statutory Recount is attached hereto and incorporated by reference as **Exhibit 1**.

48.

The Statutory Recount is ongoing as of the time of the filing of this Petition.

49.

On multiple occasions Secretary Raffensperger announced he does not anticipate the Statutory Recount to yield a substantial change in the results of the Contested Election.

50.

On December 1, 2020, Robert Gabriel Sterling, Statewide Voting System Implementation Manager for the Secretary of State, gave a press conference to discuss the status of the ongoing Statutory Recount.

51.

During his press conference, Mr. Sterling stated that at least two counties needed to recertify their vote counts as the totals reached during the Statutory Recount differed from the Certified Results.

52.

As of the date of this Petition, not all of Georgia's 159 counties have certified their results from the Statutory Recount.

53.

Consequently, as of the date of this Petition, Secretary Raffensperger has yet to certify the results from the Statutory Recount.

54.

The presidential electors of the States are scheduled to meet on December 14, 2020. Therefore, this matter is ripe, and time is of the essence.

55.

An actual controversy exists.

56.

Because the outcome of the Contested Election is in doubt, Petitioners jointly and severally hereby contest Georgia's November 3, 2020, election results for President of the United States pursuant to O.C.G.A. §§ 21-2-521 and 21-2-522 et seq.

57.

Petitioners assert that the laws of the State of Georgia governing the conduct of the Contested Election were disregarded, abandoned, ignored, altered, and otherwise violated by Respondents, jointly and severally, allowing a sufficient number of illegal votes to be included in

the vote tabulations, such that the results of the Contested Election are invalid, and the declaration of the presidential election in favor of Mr. Biden must be enjoined, vacated, and nullified.

**THERE WERE SYSTEMIC IRREGULARITIES AND VIOLATIONS OF THE
GEORGIA ELECTION CODE IN THE CONTESTED ELECTION**

Requirements to Legally Vote in Georgia

58.

The Election Code sets forth the requirements for voting in Georgia, including the requirements that a voter must be: (1) “Registered as an elector in the manner prescribed by law; (2) A citizen of this state and of the United States; (3) At least 18 years of age on or before the date of the...election in which such person seeks to vote; (4) A resident of this state and of the county or municipality in which he or she seeks to vote; and (5) “Possessed of all other qualifications prescribed by law.” O.C.G.A. § 21-2-216(a). “No person shall remain an elector longer than such person shall retain the qualifications under which such person registered.” O.C.G.A. § 21-2-216(f).

59.

In violation of O.C.G.A. § 21-2-216, Respondents, jointly and severally, allowed thousands of unqualified persons to register to vote and to cast their vote in the Contested Election. These illegal votes were counted in violation of Georgia law. **Exhibits 2, 3, 4, and 10** attached hereto and incorporated by reference.

60.

O.C.G.A. § 21-2-216(b) provides that “[n]o person who has been convicted of a felony involving moral turpitude may register, remain registered, or vote except upon completion of the sentence.”

61.

In violation of O.C.G.A. § 21-2-216(b), Respondents, jointly and severally, allowed as many as 2,560 felons with an uncompleted sentence to register to vote and to cast their vote in the Contested Election. **Exhibit 3** attached hereto and incorporated by reference.

62.

In violation of Georgia law, Respondents, jointly and severally, counted these illegal votes in the Contested Election.

63.

“Any person who possesses the qualifications of an elector except that concerning age shall be permitted to register to vote if such person will acquire such qualification within six months after the day of registration.” O.C.G.A. § 21-2-216(c).

64.

In violation of O.C.G.A. § 21-2-216(c), Respondents, jointly and severally, allowed at least 66,247 underage and therefore ineligible people to illegally register to vote, and subsequently illegally vote. *See* **Exhibit 3**.

65.

In violation of Georgia law, Respondents, jointly and severally, counted these illegal votes in the Contested Election.

66.

In order to vote in Georgia, a person must register to vote.

67.

Respondents, jointly and severally, allowed at least 2,423 individuals to vote who were not listed in the State's records as having been registered to vote. *See Exhibit 3.*

68.

Respondents then, jointly and severally, improperly counted these illegal votes in the Contested Election.

69.

Because determining a voter's residency is necessary to confirm he or she is a qualified voter in this state and in the county in which he or she seeks to vote, the Election Code provides rules for determining a voter's residency and when a voter's residency is deemed abandoned. *See* O.C.G.A. § 21-2-217.

70.

"The residence of any person shall be held to be in that place in which such person's habitation is fixed." O.C.G.A. § 21-2-217(a)(1).

71.

Additionally, “[t]he specific address in the county...in which a person has declared a homestead exemption...shall be deemed the person’s residence address.” O.C.G.A. § 21-2-217(a)(14).

72.

A voter loses his or her Georgia and/or specific county residence if he or she: (1) “register[s] to vote or perform[s] other acts indicating a desire to change such person’s citizenship and residence;” (2) “removes to another state with the intention of making it such person’s residence;” (3) “removes to another county or municipality in this state with the intention of making it such person’s residence;” or (4) “goes into another state and while there exercises the right of a citizen by voting.” O.C.G.A. § 21-2-217(a); *see also* O.C.G.A. § 21-2-218(f) (“No person shall vote in any county or municipality other than the county or municipality of such person’s residence except [“an elector who moves from one county...to another after the fifth Monday prior to a[n]...election”] O.C.G.A. § 21-2-218(e).)

73.

In violation of O.C.G.A. § 21-2-217, Respondents, jointly and severally, allowed at least 4,926 individuals to vote in Georgia who had registered to vote in another state after their Georgia voter registration date. *See Exhibit 2.*

74.

It is illegal to vote in the November 3, 2020, general election for president in two different states.

75.

It is long established that “one man” or “one person” has only one vote.

76.

In violation of O.C.G.A. § 21-2-217, Respondents, jointly and severally, allowed at least 395 individuals to vote in Georgia who also cast ballots in another state (the “Double Voters”).

See Exhibit 2.

77.

The number of Double Voters is likely higher than 395, yet Respondents have the exclusive capability and access to data to determine the true number of Double Voters.

78.

Respondents, jointly and severally, improperly counted these illegal votes in the Contested Election.

79.

Despite having the exclusive ability to determine the true number of Double Voters in Contested Election, to date Respondents, jointly and severally, have failed to properly analyze and remove the Double Voters from the election totals.

80.

To date, and despite multiple requests, Respondents, jointly and severally, have failed to provide identifying information or coordinate with the other 49 states and U.S. Territories to adequately determine the number of Double Voters.

81.

Respondents, jointly and severally, improperly counted these illegal votes in the Contested Election.

82.

In violation of O.C.G.A. § 21-2-217, Respondents, jointly and severally, allowed at least 15,700 individuals to vote in Georgia who had filed a national change of address with the United States Postal Service prior to November 3, 2020. *See Exhibit 2.*

83.

Respondents, jointly and severally, improperly counted these illegal votes in the Contested Election.

84.

If a Georgia voter “who is registered to vote in another county...in this state...moves such person’s residence from that county...to another county...in this state,” that voter “shall, at the time of making application to register to vote in that county...provide such information as specified by the Secretary of State in order to notify such person’s former voting jurisdiction of the person’s application to register to vote in the new place of residence and to cancel such person’s registration in the former place of residence.” O.C.G.A. § 21-2-218(b); *see also The Democratic Party of Georgia, Inc. v. Crittenden*, Civil Action File No. 1:18-CV-05181-SCJ, Doc. 33, Supplemental Declaration of Chris Harvey, Elections Director of the Office of the Secretary of State, ¶ 11 (N.D. Ga. Nov. 13, 2018) (“If the state allowed out of county voting, there would be no practical way of knowing if a voter voted in more than one county.”).

85.

In violation of O.C.G.A. § 21-2-218(b), Respondents, jointly and severally, allowed at least 40,279 individuals to vote who had moved across county lines at least 30 days prior to Election Day and who had failed to properly re-register to vote in their new county after moving. **Exhibit 4** attached hereto and incorporated by reference.

86.

Respondents, jointly and severally, improperly counted these illegal votes in the Contested Election.

87.

In violation of O.C.G.A. § 21-2-217, Respondents, jointly and severally, allowed at least 1,043 individuals to cast ballots who had illegally registered to vote using a postal office box as their habitation. *See* **Exhibit 2**.

88.

Respondents then, jointly and severally improperly counted these illegal votes in the Contested Election.

89.

A postal office box is not a residential address.

90.

One cannot reside within a postal office box.

91.

It is a violation of Georgia law to list a postal office box as one's voter place of habitation.
See O.C.G.A. § 21-2-217(a)(1).

92.

A person desiring "to vote at any...general election" must apply to register to vote "by the close of business on the fifth Monday...prior to the date of such...general election." O.C.G.A. § 21-2-224(a).

93.

The application for registration is "deemed to have been made as of the date of the postmark affixed to such application," or if received by the Secretary of State through the United States Postal Service, by "the close of business on the fourth Friday prior to a . . . general election." O.C.G.A. § 21-2-224(c).

94.

In violation of O.C.G.A. § 21-2-224, Respondents, jointly and severally, allowed at least 98 individuals to vote who the state records as having registered after the last day permitted under law. *See* **Exhibit 3**.

95.

Respondents, jointly and severally, improperly counted these illegal votes in the Contested Election.

96.

“Each elector who makes timely application for registration, is found eligible by the board of registrars and placed on the official list of electors, and is not subsequently found to be disqualified to vote shall be entitled to vote in any...election.” O.C.G.A. § 21-2-224(d).

97.

Secretary Raffensperger is required to maintain and update a list of registered voters within this state.

98.

On the 10th day of each month, each county is to provide to the Secretary of State a list of convicted felons, deceased persons, persons found to be non-citizens during a jury selection process, and those declared mentally incompetent. *See* O.C.G.A. § 21-2-231(a)-(b), (d).

99.

In turn, any person on the Secretary of State’s list of registered voters is to be removed from the registration list if the voter dies, is convicted of a felony, is declared mentally incompetent, confirms in writing a change of address outside of the county, requests his or her name be removed from the registration list, or does not vote or update his or her voter’s registration through two general elections. *See* O.C.G.A. §§ 21-2-231, 21-2-232, 21-2-235.

100.

Respondents, jointly and severally, did not update the voter registration list(s).

101.

In violation of O.C.G.A. § 21-2-231(a)-(b) and (d), Respondents, jointly and severally, allowed as many as 10,315 or more individuals to vote who were deceased by the time of Election Day. *See* **Exhibit 3**.

102.

Respondents, jointly and severally, improperly counted these illegal votes in the Contested Election.

103.

Of these individuals, 8,718 are recorded as having perished prior to the date the State records as having accepted their vote. *See* **Exhibit 3**.

104.

Respondents, jointly and severally, improperly counted these illegal votes in the Contested Election.

105.

For example, Affiant Lisa Holst received three absentee mail-in ballots for her late father-in-law, Walter T. Holst, who died on May 13, 2010. **Exhibit 5** attached hereto and incorporated by reference.

106.

Voter history shows that an absentee ballot was returned for Mr. Holst on October 28, 2020.

107.

Someone deceased for 10 years should not have received three absentee ballots.

108.

Someone deceased for 10 years should not have received any absentee ballot.

109.

Someone deceased for 10 years should not have had any absentee ballot counted.

110.

Another Affiant, Sandy Rumph, has stated that her father-in-law, who died on September 9, 2019, had his voter registration change from “deceased” to “active” 8 days *after* he passed away.

Exhibit 6 attached hereto and incorporated by reference.

111.

With his registration status change, his address was also changed online from his real address in Douglasville to an unfamiliar address in DeKalb County. *Id.*

112.

Respondents jointly and severally failed to maintain and update voter registration lists which allowed voter registration information to be changed after the death of an elector.

113.

Respondents jointly and severally failed to maintain and update voter registration lists which allowed absentee ballots to be used fraudulently.

**RESPONDENTS COMMITTED SUBSTANTIAL VIOLATIONS OF GEORGIA LAW
WITH RESPECT TO ABSENTEE BALLOTS**

114.

The Legislature has established procedures for absentee voting in the state.

115.

Pursuant to O.G.C.A. 21-2-381, absentee ballots must be requested by the voter, or the voter's designee, before they can be sent out.

116.

In violation of O.C.G.A. § 21-2-381, Respondent Raffensperger sent unsolicited absentee ballot applications before the 2020 primary election to all persons on the list of qualified electors, whether or not an application had been requested by the voter.

117.

The unlawfully sent applications allowed the recipient to check a box to request an absentee ballot for the Contested Election in advance of the period for which an absentee ballot could be requested.

118.

Individuals wishing to vote absentee may apply for a mail-in ballot “**not more than 180 days prior to the date of the primary or election.**” O.C.G.A. § 21-2-381(a)(1)(A) (emphasis added).

119.

In violation of O.C.G.A. § 21-2-381(a)(1)(A), Respondents, jointly and severally, allowed at least 305,701 individuals to vote who, according to State records, applied for an absentee ballot more than 180 days prior to the Contested Election. *See Exhibit 3.*

120.

Respondents then, jointly and severally, improperly counted these illegal votes in the Contested Election. *Id.*

121.

Pursuant to O.C.G.A. § 21-2-381(b) an absentee voter must have requested an absentee ballot before such ballot is capable of being received by the voter.

122.

If such applicant is eligible under the provisions of the Election Code, an absentee ballot is to be mailed to the voter.

123.

In violation of O.C.G.A. § 21-2-385, Respondents, jointly and severally, allowed at least 92 individuals to vote whose absentee ballots, according to State records, were returned and accepted prior to that individual requesting an absentee ballot. *See Exhibit 3.*

124.

Respondents then, jointly and severally, improperly counted these illegal votes in the Contested Election. *Id.*

125.

Absentee ballots may only be mailed after determining the applicant is registered and eligible to vote in the election. O.C.G.A. § 21-2-381(b)(1).

126.

In violation of O.C.G.A. § 21-2-381(b)(1), Respondents, jointly and severally, allowed state election officials to mail at least 13 absentee ballots to individuals who were not yet registered to vote according to the state's records. *See Exhibit 3.*

127.

Respondents then, jointly and severally, improperly counted these illegal votes in the Contested Election. *Id.*

128.

Pursuant to O.C.G.A. § 21-2-384(a)(2) absentee ballots may not be mailed more than 49 days prior to an election.

129.

Respondents, jointly and severally, mailed at least 2,664 absentee ballots to individuals prior to the earliest date permitted by law. *See Exhibit 3.*

130.

Respondents then, jointly and severally, improperly counted these illegal votes in the Contested Election. *Id.*

131.

According to State records, Respondents jointly and severally allowed at least 50 individuals to vote whose absentee ballots were returned and accepted prior to the earliest date that absentee ballots were permitted by law to be sent out. *See Exhibit 3.*

132.

Respondents then, jointly and severally improperly counted these illegal votes in the Contested Election. *Id.*

133.

An absentee voter's application for an absentee ballot must have been accepted by the election registrar or absentee ballot clerk in order for that individual's absentee ballot vote to be counted. O.C.G.A. § 21-2-385.

134.

In violation of O.C.G.A. § 21-2-385, Respondents, jointly and severally, allowed at least 2 individuals to vote whose absentee ballot applications had been rejected, according to state records. *See Exhibit 3.*

135.

Respondents, jointly and severally, improperly counted these illegal votes in the Contested Election. *Id.*

136.

It is not possible for an absentee voter to have applied by mail, been issued by mail, and returned by mail an absentee ballot, and for that ballot to have accepted by election officials, all on the same day.

137.

In violation of O.C.G.A. § 21-2-384, Respondents, jointly and severally, allowed at least 217 individuals to vote whose absentee ballots, according to state records, were applied for, issued, and received all on the same day. *See Exhibit 3.*

138.

Respondents then, jointly and severally, improperly counted these illegal votes in the Contested Election. *Id.*

RESPONDENTS FAILED TO COMPLY WITH GEORGIA LAW PROVISIONS FOR MATCHING SIGNATURES AND CONFIRMING VOTER IDENTITY FOR ELECTORS SEEKING TO VOTE ABSENTEE

139.

O.C.G.A. §21-2-381(b) mandates the procedures to be followed by election officials upon receipt of an absentee ballot application:

“Upon receipt of a timely application for an absentee ballot, a registrar or absentee ballot clerk...shall determine...if the applicant is eligible to vote in the...election involved. In order to be found eligible to vote an absentee ballot by mail, the registrar or absentee ballot clerk **shall compare the identifying information on the application with the information on file in the registrar’s office and, if the application is signed by the elector, compare the signature or mark of the elector on the application with the signature or mark of the elector on the elector’s voter registration card.** In order to be found eligible to vote an absentee ballot in person...**shall show one of the forms of identification listed in Code Section 21-2-417** and the registrar or absentee ballot clerk **shall compare the**

identifying information on the application with the information on file in the registrar's office.” O.C.G.A. § 21-2-381(b) (emphasis added).

140.

O.C.G.A. § 21-2-386(a)(1)(B) mandates the procedures to be followed by election officials upon receipt of an absentee ballot:

Upon receipt of each [absentee] ballot, a registrar or clerk shall write the day and hour of the receipt of the ballot on its envelope. The registrar or clerk **shall then compare the identifying information on the oath with the information on file in his or her office, shall compare the signature or make on the oath with the signature or mark on the absentee elector's voter card or the most recent update to such absentee elector's voter registration card and application for absentee ballot or a facsimile of said signature or maker taken from said card or application**, and shall, if the information and signature appear to be valid and other identifying information appears to be correct, so certify by signing or initialing his or her name below the voter's oath. Each elector's name so certified shall be listed by the registrar or clerk on the numbered list of absentee voters prepared for his or her precinct. O.C.G.A. § 21-2-386(a)(1)(B) (emphasis added).

141.

O.C.G.A. § 21-2-386(a)(1)(C) mandates the procedures to be followed by election officials with respect to defective absentee ballots:

If the elector has failed to sign the oath, or if the signature does not appear to be valid, or if the elector has failed to furnish required information or information so furnished does not conform with that on file in the registrar's or clerk's office, or if the elector is otherwise found disqualified to vote, the registrar or clerk **shall** write across the face of the envelope "Rejected," giving the reason therefor. The board of registrars or absentee ballot clerk **shall** promptly **notify the elector of such rejection**, a copy of which notification **shall** be retained in the files of the board of registrars or absentee ballot clerk for at least one year. O.C.G.A. § 21-2-386(a)(1)(C) (emphasis added).

**RESPONDENT RAFFENSPERGER DISREGARDED THE ELECTION CODE BY FIAT
AND INSTRUCTED THE RESPONDENT COUNTIES TO DO LIKEWISE**

142.

On March 6, 2020, Respondents Raffensperger and the State Election Board entered into a “Compromise and Settlement Agreement and Release” (the “Consent Decree”) in litigation filed by the Democratic Party of Georgia, Inc., the Democrat Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee (collectively the “Democrat Party Agencies”).⁴ A true and correct copy of the Consent Decree is attached hereto and incorporated by reference as **Exhibit 7**.

143.

The litigation was one of more than one hundred lawsuits nationwide filed by Democrats and partisan affiliates of the Democratic Party to seeking to rewrite the duly enacted election laws of the states. **Exhibit 8** attached hereto and incorporated by reference.

144.

Without legislative authority, Respondents unlawfully adopted standards to be followed by the clerks and registrars in processing absentee ballots inconsistent with the election code.

145.

The Consent Decree exceeded Respondents’ authority under the Georgia Constitution. *See* Ga. Const. art. III, §1; **Exhibit 15** attached hereto and incorporated by reference; *see also* O.C.G.A. § 21-2-31 (providing that the State Election Board shall “formulate, adopt, and promulgate such

⁴ *See Democratic Party of Georgia, Inc., et al. v. Raffensperger, et al.*, Civil Action File No. 1:19 cv 05028 WMR, Doc. 56 1, Joint Notice of Settlement as to State Defendants, Att. A, Compromise Settlement Agreement and Release (N.D. Ga. Mar. 6, 2020).

rules and regulations, *consistent with the law*, as will be conducive to the fair, legal, and orderly conduct of primaries and elections” (emphasis added)).

146.

The Consent Decree changed the plain language of the statute for receiving and processing absentee ballot applications and ballots.

147.

The Consent Decree increased the burden on election officials to conduct the mandatory signature verification process by adding additional, cumbersome steps.

148.

For example, the Consent Decree tripled the number of personnel required for an absentee ballot application or ballot to be rejected for signature mismatch.

149.

The unlawful Consent Decree further violated the Election Code by purporting to allow election officials to match signatures on absentee ballot envelopes against the application, rather than the voter file as required by O.C.G.A. §§ 21-2-381, 21-2-385.

**RESPONDENTS DID NOT CONDUCT MEANINGFUL VERIFICATION OF
ABSENTEE BALLOT APPLICANT AND VOTER IDENTITIES**

150.

Notwithstanding the unlawful changes made by the Consent Decree, the mandatory signature verification and voter identification requirements were not altogether eliminated.

151.

Despite the legal requirement for signature matching and voter identity verification, Respondents failed to ensure that such obligations were followed by election officials. **Exhibit 9** attached hereto and incorporated by reference.

152.

According to state records, an unprecedented 1,768,972 absentee ballots were mailed out in the Contested Election. **Exhibit 10** attached hereto and incorporated by reference.

153.

Of the total number of absentee ballots mailed out in the Contested Election, 1,317,000 were returned (i.e., either accepted, spoiled, or rejected). *Id.*

154.

The number of absentee ballots returned in the Contested Election represents a greater than 500% increase over the 2016 General Election and a greater than 400% increase over the 2018 General Election. *Id.*

155.

The state received over a million more ballots in the Contested Election than the 2016 and 2018 General Elections. *Id.*

156.

The number of returned absentee ballots that were rejected in the Contested Election was 4,471, yielding a 0.34% rejection rate. *Id.*

157.

The number of returned absentee ballots that were rejected in the 2016 General Election was 6,059, yielding a 2.90% rejection rate. *Id.*

158.

The number of returned absentee ballots that were rejected in the 2018 General Election was 7,889, yielding a 3.46% rejection rate. *Id.*

159.

Stated differently, the percentage of rejected ballots fell to 0.34% in 2020 from 2.9% in 2016 and 3.46% in 2018, despite a nearly sixfold increase in the number of ballots returned to the state for processing.

160.

The explosion in the number of absentee ballots received, counted, and included in the tabulations for the Contested Election, with the simultaneous precipitous drop in the percentage of absentee ballots rejected, demonstrates there was little or no proper review and confirmation of the eligibility and identity of absentee voters during the Contested Election.

161.

Had the statutory procedure for signature matching, voter identity and eligibility verification been followed in the Contested Election, Georgia's historical absentee ballot rejection rate of 2.90-3.46% applied to the 2020 absentee ballot returned and processed, between 38,250 and 45,626 ballots should have been rejected in the Contested Election. *See Exhibit 10.*

**RESPONDENTS VIOLATED GEORGIANS' FUNDAMENTAL RIGHT TO A
TRANSPARENT AND OPEN ELECTION**

162.

A fair, honest, and transparent vote count is a cornerstone of democratic elections. INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE, INTERNATIONAL ELECTORAL STANDARDS, GUIDELINES FOR REVIEWING THE LEGAL FRAMEWORK OF ELECTIONS (2002).

163.

All citizens, including Georgians, have rights under the United States Constitution to the full, free, and accurate elections built upon transparency and verifiability. *Purcell v. Gonzalez*, 549 U.S. 1, 4, 127 S. Ct. 5, 7 (2006) (per curiam).

164.

Citizens are entitled and deserve to vote in a transparent system that is designed to protect against vote dilution. *Bush v. Gore*, 531 U.S. 98, 104-05, 121 S. Ct. 525, 529-30 (2000); *Anderson v. United States*, 417 U.S. 211, 227 (1974); see also *Baker v. Carr*, 369 U.S. 186, 208, 82 S. Ct. 691, 705 (1962).

165.

This requires that votes be counted, tabulated and consolidated in the presence of the representatives of parties and candidates and election observers, and that the entire process by which a winner is determined is fully and completely open to public scrutiny. INTERNATIONAL ELECTORAL STANDARDS at 77.

166.

The importance of watchers and representatives serving as an important check in elections is recognized internationally. *Id.*

167.

Georgia law recognizes “the fundamental right of citizens to vote *and to have their votes counted accurately.*” *Martin* at 194 (emphasis added).

168.

The right to have one’s vote counted accurately infers a right to a free, accurate, public, and transparent election, which is reflected throughout Georgia election law. *Cf. Ellis v. Johnson*, 263 Ga. 514, 516, 435 S.E.2d 923, 925 (1993) (“Of particular importance is that the General Assembly has provided the public with the right to examine . . . the actual counting of the ballots, . . . and the computation and canvassing of returns . . .”).

169.

Georgia law requires “[s]uperintendents, poll officers, and other officials engaged in the conducting of primaries and elections . . . shall perform their duties in public.” O.C.G.A. §21-2-406.

170.

Each political party who has nominated a candidate “shall be entitled to designate . . . state-wide poll watchers.” O.C.G.A. § 21-2-408 (b)(2).

171.

Poll watchers “may be permitted behind the enclosed space for the purpose of observing the conduct of the election and the counting and recording of votes.” O.C.G.A. § 21-2-408 (d).

172.

“All proceedings at the tabulating center and precincts shall be open to the view of the public.” O.C.G.A, § 21-2-483(b).

173.

Under O.C.G.A. § 21-2-493, “[t]he superintendent shall, at or before 12:00 noon on the day following the primary or election, at his or her office or at some other convenient **public place** at the county seat or in the municipality, of which **due notice of shall have been given** as provided by Code Section 21-2-492, **publicly commence** the computation and canvassing of returns and continue the same from the day until completed.” (Emphasis added.)

174.

During the tabulation of votes cast during an election, vote review panels are to convene to attempt to determine a voter’s intent when that intent is unclear from the ballot, consisting of equal Republican and Democratic representation. *See* O.C.G.A. § 21-2-483(g)(2).

175.

The activities of the vote review panel are required to be open to the view of the public. *See* O.C.G.A. § 21-2-483(a).

176.

Moreover, Respondent Raffensperger declared that for the Risk Limiting Audit:

Per the instructions given to counties as they conduct their audit triggered full hand recounts, **designated monitors will be given complete access to observe the process from the beginning.** While the audit triggered recount **must be open to the public and media, designated monitors will be able to observe more closely.** The general public and the press will be restricted to a public viewing area. **Designated monitors will be able to watch the recount while standing close to the elections' workers conducting the recount.**

Political parties are allowed to designate a minimum of two monitors per county at a ratio of one monitor per party for every ten audit boards in a county **Beyond being able to watch to ensure the recount is conducted fairly and securely,** the two-person audit boards conducting the hand recount call out the votes as they are recounted, **providing monitors and the public an additional way to keep tabs on the process.**⁵

177.

Respondents, jointly and severally, violated Petitioners' fundamental right to a free, accurate, public, and transparent election under the Constitution of the State of Georgia in the Contested Election and the Risk Limiting Audit. *See* composite Affidavit Appendix attached hereto and incorporated by reference as **Exhibit 17.**

178.

Respondents, jointly and severally, violated provisions of the Georgia Election Code mandating meaningful public oversight of the conduct of the election and the counting and recording of votes in the Contested Election and the Risk Limiting Audit. *Id.*

⁵ Office of Secretary of State Brad Raffensperger, *Monitors Closely Observing Audit Triggered Full Hand Recount: Transparency is Built Into Process* (Nov. 17, 2020), https://sos.ga.gov/index.php/elections/monitors_closely_observing_audit_triggered_full_hand_recount_transparency_is_built_into_process.

179.

Respondents, jointly and severally, failed to adhere to Respondent Raffensperger's own guidelines promising a free, accurate, public, and transparent process in the Risk Limiting Audit.
Id.

**RESPONDENTS HAVE ADMITTED MISCONDUCT, FRAUD, AND WIDESPREAD
IRREGULARITIES COMMITTED BY MULTIPLE COUNTIES**

180.

The Secretary of State has admitted that multiple county election boards, supervisors, employees, election officials and their agents failed to follow the Election Code and State Election Board Rules and Regulations.⁶

181.

The Secretary of State has called The Fulton County Registration and Elections Board and its agents' ("Fulton County Elections Officials") job performance prior to and through the Election Contest "dysfunctional."

182.

The Secretary of State and members of his staff have repeatedly criticized the actions, poor judgment, and misconduct of Fulton County Elections Officials.

⁶ Note: These are samples and not an exhaustive list of the Secretary of State's admissions of Respondents' failures and violations of Georgia law.

183.

Fulton County Elections Officials' performance in the 2020 primary elections was so dysfunctional that it was fined \$50,000 and subject to remedial measures.

184.

Describing Respondent Barron's Fulton County Elections in the Election Contest, Secretary Raffensperger stated, "Us and our office, and I think the rest of the state, is getting a little tired of always having to wait on Fulton County and always having to put up with [Fulton County Elections Officials'] dysfunction."

185.

The Secretary of State's agent, Mr. Sterling, said initial findings from an independent monitor allegedly show "generally bad management" with Fulton's absentee ballots.⁷

Fulton County Elections' Deception and Fraud

186.

The Secretary of State's Office claims it is currently investigating an incident where Fulton County election officials fraudulently stated there was a "flood" and "a pipe burst," which was later revealed to be a "leaky" toilet.

⁷ Ben Brasch, *Georgia Opens 2 Investigations Into Fulton's Elections Operations*, The Atlanta Journal Constitution (Nov. 17, 2020), <https://www.ajc.com/news/atlanta-news/georgia-opens-2-investigations-into-fultons-elections-operations/EVCBN4ZJTZELPDHMH63POL3RKQ/>.

187.

At approximately 10:00 p.m. on November 3, 2020, Fulton County Election Officials, who were handling and scanning thousands of ballots at the State Farm Arena, instructed Republican poll watchers and the press that they were finished working for the day and that the Republican poll watchers and the press were to leave. The Fulton County Elections Officials further stated that they would restart their work at approximately 8:00 a.m. on November 4, 2020.

188.

The Fulton County Election Officials lied.

189.

Deliberate misinformation was used to instruct Republican poll watchers and members of the press to leave the premises for the night at approximately 10:00 p.m. on November 3, 2020.

Exhibits 12, 13, and 14 attached hereto and incorporated by reference.

190.

After Fulton County Elections Officials **lied and defrauded** the Republican poll watchers and members of the press, whereby in reasonable reliance the Republican poll watchers and members of the press left the State Farm Arena (where they had been observing the ballots being processed), without public transparency Fulton County Elections Officials continued to process, handle, and transfer many thousands of ballots. *See Exhibit 14.*

191.

Fulton County Elections Officials' fraudulent statements not only defrauded the Republican poll watchers and the press, but also deprived every single Fulton County voter,

Georgian, American, and Petitioners of the opportunity for a transparent election process and have thereby placed the Election Contest in doubt.

Spalding County Elections & Voter Registration Supervisor and Her Agents' Failures

192.

Respondent Raffensperger has called for the resignation of the Spalding County Elections and Voter Registration Supervisor, who has, as of this filing, resigned.⁸

193.

Respondent Raffensperger cited “serious management issues and poor decision-making” by Election Supervisor Marcia Ridley during the Contested Election.

Floyd County Elections & Voter Registration Supervisor and Her Agents' Failures

194.

Respondent Raffensperger has called for the resignation of the Executive Director of the Floyd County Board of Registrations and Elections for his failure to follow proper election protocols.⁹

⁸ David Wickert, *Georgia Officials Call for Spalding Election Director to Resign*, The Atlanta Journal Constitution (Nov. 17, 2020), <https://www.ajc.com/politics/election/georgia-officials-call-for-spalding-election-director-to-resign/YYUISCBSV5FTHDZPM3N5RJVV6A/>.

⁹ Jeffrey Martin, *Georgia Secretary of State Calls for Resignation of County Election Director After 2,600 Ballots Discovered* (Nov. 16, 2020), <https://www.newsweek.com/georgia-secretary-state-calls-resignation-county-election-director-after-2600-ballots-discovered-1547874>.

**RESPONDENTS CONSPIRED TO DISREGARD THE ELECTION CODE AND TO
SUBSTITUTE THEIR OWN UNLAWFUL EDICTS**

195.

In violation of O.C.G.A. § 21-2-386 et seq. the State Board of Election promulgated a rule that authorized county election board to begin processing absentee ballots on the third Monday preceding the election, provided they give the Secretary of State and the public notice of such intention to begin processing absentee ballots.

196.

Failure to follow the process directed by the statute is a derogation of the Election Code and denies voters the ability to cancel their absentee ballot up until Election Day.

197.

Respondents, jointly and severally, were complicit in conspiring to violate and violating the Election Code.

198.

As a direct and proximate result of Respondents multiple, continued, and flagrant disregard of the Election Code, the outcome of the Contested Election is not capable of being known with certainty.

199.

Petitioners incorporate by reference and reallege all prior paragraphs of this Petition and the paragraphs in the Counts below as though set forth fully herein.

200.

Despite Respondents receiving substantial funding from the Center for Technology and Civic Life (CTCL), Respondents failed to use such funds to train the election workers regarding signature verification, the proper procedures for matching signatures, and how to comply fully with the Election Code. **Exhibit 11** attached hereto and incorporated by reference.

201.

Due to the lack of uniform guidance and training, the signature verification and voter identity confirmation was performed poorly or not at all in some counties and served as virtually no check against improper voting. *See Exhibit 9.*

RESPONDENT SECRETARY OF STATE MUST ALLOW AND CONDUCT AN AUDIT OF THE SIGNATURES ON ABSENTEE BALLOT APPLICATIONS AND ABSENTEE BALLOTS IN ORDER TO DETERMINE WHETHER THE SIGNATURES WERE PROPERLY MATCHED PRIOR TO BEING COUNTED AND INCLUDED IN THE TABULATIONS

202.

The data regarding the statistically tiny rejection rate of absentee ballots cast and counted in the Contested Election gives rise to sufficient concerns that there were irregularities that should be reviewed and investigated.

203.

Petitioners have brought these concerns about the signature matching and voter verification process to the attention of Respondent Raffensperger **on five separate occasions** since the Contested Election, requesting that the Secretary conduct an audit of the signatures on the absentee ballot applications and absentee ballots, via Letter on November 10, 2020; Letter on November

12, 2020; Letter on November 23, 2020; Email on November 23, 2020, and again via Letter on November 30, 2020. **Exhibit 18** attached hereto and incorporated by reference.

204.

The Secretary of State is obligated by law to “to permit the public inspection or copying, in accordance with this chapter, of any return, petition, certificate, paper, account, contract, report, or any other document or record in his or her custody.” O.G.C.A. § 21-2-586(a).

205.

Failure to comply with any such request by the Secretary of State or an employee of his or her office shall [constitute] a misdemeanor.” O.G.C.A. § 21-2-586(a).

206.

The Secretary of State’s refusal on five separate occasions to comply with requests to produce the signatures used to request absentee ballots and to confirm the identities of those individuals requesting such ballots in the contested election is a violation of O.G.C.A. § 21 2 586(a).

207.

In order for the Secretary of State to comply with O.G.C.A. § 21-2-586(a), professional handwriting experts recommend a minimum of Ten Thousand (10,000) absentee ballot signatures be professionally evaluated. **Exhibit 16** attached hereto and incorporated by reference.

208.

Petitioners respectfully request that the Court order the production of the records of the absentee ballot applications and absentee ballots, for purposes of conducting an audit of the signatures on absentee ballot applications and absentee ballots cast in the Contested Election.

THERE ARE MYRIAD REPORTS OF IRREGULARITIES AND VIOLATIONS OF THE ELECTION CODE DURING THE CONTESTED ELECTION

209.

Petitioners have received hundreds of incident reports regarding problems, irregularities, and violations of the Election Code during the Contested Election.

210.

From those reports, Petitioners have attached affidavits from dozens of Citizens of Georgia, sworn under penalty of perjury, attesting to myriad violations of law committed by Respondents during the Contested Election. *See Exhibit 17.*

211.

The affidavits are attached to this Petition as an Appendix, with details of the multiple violations of law. *Id.*

212.

Also included in the Appendix are sworn declarations from data experts who have conducted detailed analysis of irregularities in the State's voter records. *See Exhibits 2, 3, 4, and 10.*

COUNTS

COUNT I:

ELECTION CONTEST

O.C.G.A §21-2-521 *et seq.*

213.

Petitioners incorporate by reference and re-allege paragraphs 1 through 212 this Petition as set forth herein verbatim.

214.

Respondents, jointly and severally, have violated the Constitution of the State of Georgia.

215.

Respondents, jointly and severally, have violated the laws of the State of Georgia.

216.

Respondents, jointly and severally, have violated the Election Code.

217.

Respondents, jointly and severally, have violated State Election Board Rules and Regulations.

218.

Respondents, jointly and severally, have violated the basic tenants of an open, free, and fair election.

219.

Respondents, jointly and severally, have failed in their duties to their constituents, the people of the State of Georgia, and the entire American democratic process.

220.

The Contested Election has been timely and appropriately contested per O.C.G.A. § 21-2-522 et seq.

221.

As a direct and proximate result of Respondents' actions, the Contested Election is fraught with misconduct, fraud, and irregularities.

222.

Due to the actions and failures of Respondents, many thousands of illegal votes were accepted, cast, and counted in the Contested Election, and legal votes were rejected.

223.

The fraud, misconduct, and irregularities that occurred under the "supervision" of Respondents are sufficient to change the purported results of the Contested Election.

224.

The fraud, misconduct, and irregularities that occurred under the "supervision" of Respondents are sufficient to place the Contested Election in doubt.

225.

Respondents' misconduct is sufficient to change the purported results in the Contested Election in President Trump's favor.

226.

Respondents' misconduct is sufficient to place the purported Contested Election results in doubt.

227.

Respondents, jointly and severally, erred in counting the votes in the Contested Election.

228.

Respondents' error in counting the votes in the Contested Election would change the result in President Trump's favor.

229.

Respondents, jointly and severally, erred in declaring the Contested Election results in favor of Mr. Biden.

230.

Respondents' systemic negligent, intentional, willful, and reckless violations of the Georgia Constitution, Georgia law, as well as the fundamental premise of a free and fair election created such error and irregularities at every stage of the Contested Election from registration through certification and every component in between that the outcome of the Contested Election is in doubt.

231.

As a result, there is substantial doubt as to the outcome of the Contested Election, and the Contested Election and any certification associated therewith shall be enjoined, vacated, and nullified and either a new presidential election be immediately ordered that complies with Georgia

law or, in the alternative, that such other just and equitable relief is obtained so as to comport with the Constitution of the State of Georgia.¹⁰ See O.C.G.A. § 21-2-522.

COUNT II:

VIOLATIONS OF THE GEORGIA CONSTITUTION'S EQUAL PROTECTION PROVISION

232.

Petitioners incorporate by reference and re-allege paragraphs 1 through 212 f this Petition as set forth herein verbatim.

233.

The Constitution of the State of Georgia provides, “Protection and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.” Ga. Const. art. I, § I, para. II.

234.

Under Georgia’s Equal Protection Clause, “the government is required to treat similarly situated individuals in a similar manner.” *State v. Jackson*, 271 GA 5 (1999), *Favorito v. Handel*, 285 Ga. 795, 798 (2009) (citation and quotations omitted). See **Exhibit 15**.

235.

This requires establishing a uniform procedure for all counties to conduct absentee voting, advance voting, and Election Day in-person voting.

¹⁰ In the event this Court enjoins, vacates, and nullifies the Contested Election, the Legislature shall direct the manner of choosing presidential electors. U.S. art II, § 1; see also *Bush v. Gore*, 531 U.S. 98.

236.

Respondents, jointly and severally, failed to establish such uniform procedure for the verification of signatures of absentee ballots.

237.

Respondents, jointly and severally, failed to establish a uniform level of scrutiny for signature matching.

238.

Respondents, jointly and severally, failed to train those who would be conducting signature verification on how to do so.

239.

The burdens of applying for and voting an absentee ballot were different in various counties throughout the State of Georgia.

240.

Electors voting via by absentee mail-in ballot were not required to provide identification, other than a matching signature.

241.

Electors voting in person were required to show photo identification and verify the voter's identity.

242.

The burdens of applying for and voting via absentee mail-in ballot were different from those for absentee in person.

243.

Georgia voters were treated differently depending on how they voted (i.e., whether by mail or in person), where they voted, when they voted, and for whom they voted.

244.

An elector in one county casting a ballot would not have his or her ballot treated in a similar manner as a voter in a different county.

245.

Electors in the same county would not have their ballots treated in a similar manner as electors at different precincts.

246.

Electors in the same precinct would not have their ballots treated in a similar manner whose votes were tabulated using different tabulators.

247.

Respondents, jointly and severally, failed to establish uniform procedures for treating similarly situated electors similarly.

248.

Respondents' systemic failure to even attempt uniformity across the state is a flagrant violation of the Constitution of the State of Georgia.

249.

Such a violation of the rights of the Citizens of Georgia constitutes misconduct and irregularity by election officials sufficient to change or place in doubt the result of the Contested Election.

250.

As a result, there is substantial doubt as to the outcome of the Contested Election, and the Contested Election and any certification associated therewith should be enjoined, vacated, and nullified and either a new presidential election be immediately ordered that complies with Georgia law or such other just and equitable relief is obtained so as to comport with the Constitution of the State of Georgia. *See* O.C.G.A. § 21-2-522.

COUNT III:

VIOLATIONS OF THE GEORGIA CONSTITUTION'S DUE PROCESS PROVISIONS

251.

Petitioners incorporate by reference and re-allege paragraphs 1 through 212 of this Petition and Count II as set forth herein verbatim.

252.

Pursuant to the Constitution of the State of Georgia, "No person shall be deprived of life, liberty, or property except by due process of law." Ga. Const. art. I, § I, para. I.

253.

Moreover, “All citizens of the United States, resident in this state, are hereby declared citizens of this state; and it shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges, and immunities due to such citizenship.” Ga. Const. art. I, § 1, para. VII.

254.

The right to vote is a fundamental right.

255.

When a fundamental right is allegedly infringed by government action, substantive due process requires that the infringement be narrowly tailored to serve a compelling state interest. *Old S. Duck Tours v. Mayor & Aldermen of City of Savannah*, 272 Ga. 869, 872, 535 S.E.2d 751, 754 (2000).

256.

By allowing illegal ballots to be cast and counted, Respondents diluted the votes of qualified Georgia electors.

257.

By allowing illegal ballots to be cast and counted, Respondents, by and through their misconduct, allowed the disenfranchisement of qualified Georgia electors.

258.

Respondents, jointly and severally, violated the Due Process protections of qualified Georgia Electors guaranteed by the Georgia State Constitution.

259.

As a result, there is substantial doubt as to the outcome of the Contested Election and any certification associated therewith should be enjoined, vacated, and nullified and either a new presidential election be immediately ordered that complies with Georgia law or such other just and equitable relief is obtained so as to comport with the Constitution of the State of Georgia.

COUNT IV:

DECLARATORY JUDGMENT AND RELIEF

260.

Petitioners incorporate by reference and re-allege paragraphs 1 through 259 of this Petition as set forth herein verbatim.

261.

This claim is an action for a declaratory judgment pursuant to O.C.G.A. §§ 9-4-1 et seq.

262.

An actual controversy is ripe and exists between Petitioners and Respondents with regard to the misconduct, fraud, and irregularities occurring in the Contested Election, specifically including but not limited to:

- a. The illegal and improper inclusion of unqualified voters on Georgia's voter list;
- b. allowing ineligible voters to vote illegally in the Contested Election;
- c. whether the Contested Election results are invalid;

- d. whether the Consent Decree is unauthorized under Georgia law such that it is null and void, and unlawfully interfered with the proper administration of the Election Code;
- e. whether the results of the Contested Election are null and void.

263.

It is necessary and proper that the rights and status amongst the parties hereto be declared.

264.

This Honorable Court is a Court of Equity and therefore endowed with the authority to hear and the power to grant declaratory relief.

265.

As a result of the systemic misconduct, fraud, irregularities, violations of Georgia law, and errors occurring in the Contested Election and consequently in order to cure and avoid said uncertainty, Petitioners seek the entry of a declaratory judgment providing that:

- a. ineligible and unqualified individuals are unlawfully included on Georgia's voter role;
- b. unregistered, unqualified, and otherwise ineligible voters cast their votes during the Contested Election;
- c. the Consent Decree is unauthorized under Georgia law and is therefore null and void; and
- d. the results of the Contested Election are null and void.

COUNT V:
**REQUEST FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF**

266.

Petitioners incorporate by reference and re-allege paragraphs 1 through 265 of this Petition as set forth herein verbatim.

267.

Petitioners seek an emergency temporary restraining order, as well as preliminary and permanent injunctive relief per O.C.G.A. § 9-11-65, to:

- a. Order expedited discovery and strict compliance with all open records requests;
- b. Order Respondents to respond to this Petition within 3 days;
- c. Require Respondents to immediately fulfill their obligations under the Election Code to properly maintain and update Georgia's list of registered voters to remove ineligible voters;
- d. Prevent Respondents from allowing unqualified, unregistered, and otherwise ineligible individuals from voting in Georgia elections, including but not limited to the upcoming January 5, 2021 run-off¹¹;
- e. Require an immediate audit of the signatures on absentee ballot applications and ballots as described in Exhibit 16;
- f. Enjoin and restrain Respondents from taking any further actions or to further enforce the Consent Decree;
- g. Prevent the certification of the results of the Contested Election;

¹¹ To the extent ineligible voters have already voted absentee for the January 5, 2021, runoff, those votes should be put into a provisional status.

- h. Enjoin the Secretary of State from appointing the Electors to the Electoral College;
- i. **Order a new Presidential Election to occur at the earliest opportune time;** and
- j. For such other relief that this Court deems just and proper under the circumstances.

268.

In the absence of an emergency temporary restraining order and preliminary and permanent injunctions, Petitioners (and the Citizens of Georgia and the United States) will suffer irreparable harm for which there is no adequate remedy at law, while injunctive relief will cause no harm to Respondents.

269.

Immediate and irreparable injury, loss, or damage will result to the Petitioners (as well as the Citizens of Georgia and the United States) if the requested emergency injunctive relief is not granted.

270.

There will be immediate and irreparable damage to the Citizens of Georgia by allowing an illegal, improper, fraudulent, error-ridden presidential election to be certified, thereby improperly appointing Georgia's electors for Mr. Biden even though the Contested Election is in doubt.

271.

There will be irreparable damage to the Citizens of Georgia through their loss of confidence in the integrity of the election process by virtue of the illegal votes included in the tabulations of the Contested Election, which outweighs any potential harm to Respondents.

272.

Granting the requested relief will not disserve the public interest.

273.

Petitioners will be irreparably injured in the event the prayed for injunctive relief is not granted.

274.

It is further in the public interest to grant Petitioner's request for emergency injunctive relief so that Georgia voters can have confidence that the January 5, 2021, Senate election is conducted in accordance with the Election Code.

275.

As early as possible, notice to Respondents of Petitioners' motion for emergency injunctive relief will be made via email and / or telephone.

276.

Petitioners are further entitled to the injunctive relief sought herein because there is a substantial likelihood of success on the merits.

277.

The damage to Petitioners is not readily compensable by money.

278.

The balance of equities favors entry of a temporary restraining order and injunctive relief against Respondents and would not be adverse to any legitimate public interest.

WHEREFORE, Petitioners respectfully pray as follows for emergency and permanent relief as follows:

1. That this Court, pursuant to O. C. G. A. § 21-2-523, expeditiously assign a Superior Court or Senior Judge to preside over this matter;
2. That this Court issue a declaratory judgment that systemic, material violations of the Election Code during the Contested Election for President of the United States occurred that has rendered the Contested Election null and void as a matter of law;
3. That this Court issue a declaratory judgment that systemic, material violations of the Election Code during the Contested Election violated the voters' due process rights under the Georgia Constitution have rendered the Contested Election null and void as a matter of law;
4. That this Court issue a declaratory judgment that systemic, material violations of the Election Code violated the voters' equal protection rights under the Constitution of the State of Georgia that have rendered the Contested Election null and void as a matter of law;
5. That the Court issue an injunction requiring all Respondents to decertify the results of the Contested Election;
6. That the Court order a new election to be conducted in the presidential race, in the entirety of the State of Georgia at the earliest date, to be conducted in accordance with the Election Code;
7. *Alternatively*, that the Court issue an injunction prohibiting the Secretary of State from appointing the slate of presidential electors due to the systemic irregularities in the Contested Election sufficient to cast doubt on its outcome;

8. That the Court order expedited discovery and hearing, since time is of the essence, given the legal requirements that the presidential electors from the State of Georgia are to meet on December 14, 2020, and that the electoral votes from the State of Georgia are to be delivered to and counted by the United States Congress on January 6, 2021;
9. That this Court issue a declaratory judgment that the Consent Decree violates the Constitution of the State of Georgia and the laws of the State of Georgia;
10. *Alternatively*, that the Consent Decree be stayed during the pendency of this matter;
11. That the Court order Respondents to make available 10,000 absentee ballot applications and ballot envelopes from Respondents, as per Exhibit 16, and access to the voter registration database sufficient to complete a full audit, including but not limited to a comparison of the signatures affixed to absentee ballot applications and envelopes to those on file with the Respondents;
12. That the Court order the Secretary of State and other Respondents to release to Petitioners for inspection all records regarding the Contested Election pursuant to O.C.G.A. § 21-2-586;
13. That the Court order all Respondents to immediately identify and remove felons with uncompleted sentences, cross-county voters, out-of-state voters, deceased voters, and other ineligible persons from Respondents' voter rolls within the next 30 days;
14. That the Court declare that all rules adopted by the Respondents Secretary of State or the State Election Board in contravention of the Georgia Election Code be invalidated, specifically regarding the authentication and processing of absentee ballots, to wit State Election Board Rule 183-1-14-0.9-.15;
15. That the Court order such other relief as it finds just and proper.

Respectfully submitted this 4th day of December, 2020.

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A Simple Test for the extent of Vote Fraud with Absentee Ballots in the 2020 Presidential Election: Georgia and Pennsylvania Data

John R. Lott, Jr., Ph.D.*

Revised
December 21, 2020

Summary

This study provides measures of vote fraud in the 2020 presidential election. It first compares Fulton county's precincts that are adjacent to similar precincts in neighboring counties that had no allegations of fraud to isolate the impact of Fulton county's vote-counting process (including potential fraud). In measuring the difference in President Trump's vote share of the absentee ballots for these adjacent precincts, we account for the difference in his vote share of the in-person voting and the difference in registered voters' demographics. The best estimate shows an unusual 7.81% drop in Trump's percentage of the absentee ballots for Fulton County alone of 11,350 votes, or over 80% of Biden's vote lead in Georgia. The same approach is applied to Allegheny County in Pennsylvania for both absentee and provisional ballots. The estimated number of fraudulent votes from those two sources is about 55,270 votes.

Second, vote fraud can increase voter turnout rate. Increased fraud can take many forms: higher rates of filling out absentee ballots for people who hadn't voted, dead people voting, ineligible people voting, or even payments to legally registered people for their votes. However, the increase might not be as large as the fraud if votes for opposing candidates are either lost, destroyed, or replaced with ballots filled out for the other candidate. The estimates here indicate that there were 70,000 to 79,000 "excess" votes in Georgia and Pennsylvania. Adding Arizona, Michigan, Nevada, and Wisconsin, the total increases to up to 289,000 excess votes.

* This research purely reflects my own personal views. This research does not represent work done by or for the US Department of Justice, and it has not been approved of by the DOJ.

Introduction

Courts have frequently rejected Republican challenges to the 2020 presidential vote because they want evidence that a case involves enough fraud to alter the vote's outcome in a particular state. Republicans argue that since their observers couldn't watch the vote count, they can't provide that evidence and have asked for discovery. Still, while the courts have agreed that irregularities have occurred, they weren't willing to grant discovery unless Republicans first present enough evidence of fraud to overturn the election. Republicans thus faced a kind of Catch 22.

This paper's approach allows us to quantify how large a potential problem vote fraud and other abnormalities might be in the 2020 election. The process is applicable to other states where precinct-level data is available on voting by absentee and in-person voting.

Concerns over fraud with absentee ballots is not something limited to Republicans in the United States. Indeed, many European countries have voting rules stricter to prevent fraud than what we have in the United States.¹ For example, 74% entirely ban absentee voting for citizens who live in their country. Another 6% allow it, but have very restrictive rules, such as limiting it to those in the military or are in a hospital, and they require evidence that those conditions are met. Another 15% allow absentee ballots but require that one has to present a photo voter ID to acquire it. Thirty-five percent of European countries completely ban absentee ballots for even those living outside their country. The pattern is similar for developed countries.

Many of these countries have learned the hard way about what happens when mail-in ballots aren't secured. They have also discovered how hard it is to detect vote buying when both those buying and selling the votes have an incentive to hide the exchange.

France banned mail-in voting in 1975 because of massive fraud in Corsica, where postal ballots were stolen or bought and voters cast multiple votes. Mail-in ballots were used to cast the votes of dead people.²

The United Kingdom, which allows postal voting, has had some notable mail-in ballot fraud cases. Prior to recent photo ID requirements, [six Labour Party councilors in Birmingham](#) won office after what the judge described as a "massive, systematic and organised" postal voting

¹ John R. Lott, Jr., "Why do most countries ban mail-in ballots?: They have seen massive vote fraud problems," Crime Prevention Research Center, revised October 15, 2020 (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3666259).

² Staff, "In Corsica, the tormented history of the vote by correspondence," World Today News, June 15, 2020 (<https://www.world-today-news.com/in-corsica-the-tormented-history-of-the-vote-by-correspondence/>). Jean-Louis Briquet, "EXPATRIATE CORSICANS AND THE VOTE AU VILLAGE: MECHANISMS OF CONTROL AND EXPRESSIONS OF SENTIMENT (NINETEENTH-TWENTIETH CENTURIES)," *Revue française de science politique (English Edition)* Vol. 66, No. 5 (2016), pp. 43-63; Staff, "Corsicans of France Are Feeling the Sting of Publicity Given to Criminals," New York Times, January 7, 1973 (<https://www.nytimes.com/1973/01/07/archives/corsicans-of-france-are-feeling-the-sting-of-publicity-given-to.html>).

fraud campaign.³ The fraud was apparently carried out with the full knowledge and cooperation of the local Labour party. There was "widespread theft" of postal votes (possibly around 40,000 ballots) in areas with large Muslim populations because Labour members were worried that the Iraq war would spur these voters to oppose the incumbent government.

In 1991, Mexico's 1991 election mandated voter photo-IDs and banned absentee ballots. The then-governing Institutional Revolutionary Party (PRI) had long used fraud and intimidation with mail-in ballots to win elections.⁴ Only [in 2006](#) were absentee ballots again allowed, and then only for those living abroad who requested them at least six months in advance.⁵

Some European countries allow proxy voting, but that is very strictly regulated to minimize fraud. For example, proxy voting requires the verification of photo IDs and signed request forms. In Poland, a power of attorney is necessary to have a proxy vote and then can only be granted by the municipal mayor. In France, you must go in person to the municipality office prior to the elections, provide proof of who you are, provide proof of reason for absence (for example, letter from your employer or medical certificate), and then nominate a proxy. Proxy voting is not only very limited, but it prevents the problem that absentee ballots are unsecured. Proxy voting requires that the proxy vote in-person in a voting booth.

Unsecured absentee ballots create the potential that either fraudulent ballots will be introduced or votes to be destroyed. Some safe guards can at least minimize these problems, such as requiring matching signatures, but even this is not the same as requiring government issued photo voter IDs. Nor does it prevent votes from being destroyed. In addition, one of the controversies in this election was that states such as Georgia, Nevada, Pennsylvania, and Wisconsin did not match signatures on the outer envelopes match the voters' registration records.⁶ Other states, particularly Pennsylvania, were accused of accepting absentee ballots that didn't even have the outer envelope where the voter's signature would be or were missing postmarks.⁷

³ Nick Britten and George Jones, "Judge lambasts postal ballot rules as Labour 6 convicted of poll fraud," The Telegraph (UK), April 2005 (<https://www.telegraph.co.uk/news/uknews/1487144/Judge-lambasts-postal-ballot-rules-as-Labour-6-convicted-of-poll-fraud.html>).

⁴ John R. Lott, Jr., "Evidence of Voter Fraud and the Impact that Regulations to Reduce Fraud Have on Voter Participation Rates," SSRN, August 18, 2006 (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=925611). For example, as a result of fraud in their 1988 Presidential election, absentee ballots were not allowed in Mexico until 2006 (see Associated Press, "Mexican Senate approves mail-in absentee ballots for Mexicans living abroad," AZcentral.com, April 28, 2005 (<http://www.azcentral.com/specials/special03/articles/0428mexicovote-ON.html>)).

⁵ James C. McKinley, Jr., "Lawmakers in Mexico Approve Absentee Voting for Migrants," New York Times, June 29, 2005 (<https://www.nytimes.com/2005/06/29/world/americas/lawmakers-in-mexico-approve-absentee-voting-for-migrants.html>).

⁶ Peter Navarro, "The Immaculate Deception: Six Key Dimensions of Election Irregularities," December 15, 2020.

⁷ Ibid.

Vote fraud concerns are important in that they will not only alter election results, but they can also discourage voter participation.⁸

The following sections provide precinct level estimates for Georgia and Pennsylvania and then look at all the swing states by county to see if counties with fraud had higher turnout rates.

II. Georgia

In Georgia's certified ballot count, former Vice President Joe Biden leads President Trump by 12,670 votes.⁹ Biden won Fulton County by a margin of 243,904 votes, and the absentee ballots in the county by 86,309 votes.¹⁰

Part of the controversy with Fulton County's absentee ballots arises from a burst pipe that resulted in the removal of poll watchers. According to the Chair of the Georgia Republican Party, David J. Shafer, "counting of ballots took place in secret after Republican Party observers were dismissed because they were advised that the tabulation center was shutting down for the night" (Letter dated November 10, 2020 from Doug Collins and David Shafer to Georgia Secretary of State Brad Raffensperger, p. 3).

If election workers counted absentee ballots when Republican observers were not present, is there statistical evidence of bias in the absentee ballot counting? While in-person voting took place at the precinct level, absentee vote counting took place at one common facility at the county level. If the type of fraud that Mr. Shafer worries about occurred, it would have only affected the absentee ballots in Fulton County.

To examine that, I looked at precinct-level data for Fulton County and the four Republican counties that border it and no fraud has been alleged: Carroll, Cherokee, Coweta, and Forsyth.¹¹ The idea is a simple one: compare Trump's share of absentee ballots in precincts adjacent to each other on opposite sides of a county border. The comparison is made between precincts in Fulton and these four other counties as well as between precincts in these four counties where they are adjacent each other. Comparing a county where fraud is alleged to ones without alleged fraud is simpler than comparing counties where there might be hard-to-specify varying degrees of fraud.

⁸ John R. Lott, Jr., "Evidence of Voter Fraud and the Impact that Regulations to Reduce Fraud Have on Voter Participation Rates," Social Science Research Network, 2006 (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=925611).

⁹ "US election 2020: Biden certified Georgia winner after hand recount," BBC, November 20, 2020 (<https://www.bbc.com/news/election-us-2020-55006188>).

¹⁰ This was quite different from previous elections. For example, in 2012, while Obama received 64% of the total vote in Fulton County, he barely received a majority of the absentee vote, taking 50.89% (data from Clark Bensen at Polidata).

¹¹ Corrected data was not available for Fayette County, but including this data resulted in no change in the level of statistical significance for either Tables 1 or 2.

Precincts adjacent to each other on opposite sides of a county border should be relatively similar demographically. In one case, Fulton County precinct ML02A matches up with four different precincts in Cherokee County (Mountain Road 28, Avery 3, Union Hill 38 and a small portion of Freehome 18).¹² The goal is to compare the precincts of Fulton county that are most similar to precincts nearby counties that had no allegations of fraud, in order to isolate the impact of Fulton county's vote-counting process (including potential fraud).

The analysis also accounts for the percent of in-person votes that went for Trump, because if you have two adjacent precincts and they are similar in terms of their demographics and in-person voting, one would expect them to also be roughly similar in terms of their absentee ballots. While Democrats were pushing their voters to vote by absentee ballot, there is no reason to expect that rate to differ between two precincts that are next to each other and are similar in terms of their in-person voting support and their demographics.

I did this test using the data from both 2016 and 2020. There were no serious accusations of fraud with respect to absentee ballots in 2016, so one should expect the absentee ballot percent for Trump in precincts in Fulton county to behave no differently than the adjacent precincts in Carroll, Cherokee, Coweta, and Forsyth.

The results in Table 1 show that in 2016, there was indeed essentially no difference (less than 1 percentage point) between Trump's share of absentee ballots cast in Fulton and other counties.¹³ Trump's share of absentee ballots also matched up closely with his share of in-person votes across the precincts, no matter which county they lay in.

¹² The model is given as:

A = absentee ballots for Trump

TA = total absentee ballots for both candidates

P = in-person votes for Trump

TP = total in-person votes

$a = A/TA$

$p = P/TP$

$Y_i = (a_i^0 - a_i^1)$

where the superscripts 0 and 1 indicate adjacent precincts in neighboring counties

$X_i = (p_i^0 - p_i^1)$

D = 1 if one of the adjacent precincts is in Fulton County (in that case Fulton County is superscript 0), D = 0 otherwise

$Y_i = \alpha + \beta X_i + \delta D * X_i + u_i$, and u is the error term.

Null hypothesis: $\delta = 0$.

Precinct pairs in which one is the Fulton County precinct are no different from other pairs.

Alternative hypothesis: $\delta < 0$.

Precinct pairs in which one is the Fulton County precinct undercounts Trump's absentee ballots.

The other counties are matched west to east and south to north. For a related discussion see Stephen G. Bronars and John R. Lott, Jr., "Criminal Deterrence, Geographic Spillovers, and the Right to Carry Concealed Handguns," *American Economic Review*, May 1998, pp. 475-479.

¹³ The source for the 2016 precinct border lines was obtained here: <http://rynerohla.com/index.html/election-maps/2016-south-atlantic-republican-primaries-by-precinct/>

However, redoing the same test for 2020 shows something quite different (see Table 2). Trump's percentage of absentee votes was now lower in Fulton county border precincts than in the precincts just across the street in neighboring counties. Trump's share was 7.19 percentage points lower on the Fulton county side, and the difference was also statistically significant at the 7% level for a two-tailed t-test.

This is not likely to have been caused by the general shift to absentee voting among Democrats, because the study controlled for in-person voting. In layman's terms, in precincts with alleged fraud, Trump's proportion of absentee votes was depressed – even when such precincts had similar in-person Trump vote shares to their surrounding countries. The fact that the shift happens only in absentee ballots, and when a county line is crossed, is suspicious.

In the first two tables, if the estimate for the "Difference in Trump's percent of the two-candidate in-person vote" between the two adjacent precincts equals 1, it means that the differences in the percent of the in-person vote Trump received in the adjacent precincts would perfectly track the difference in the absentee ballots. In the estimate for 2016, the coefficient of 0.87 is not statistically different from 1. But for the 2020 data, Trump's share of in-person votes did not line up as closely with the differences in absentee ballots, as can be seen in the reduced coefficient of the control variable for Trump's share of in-person votes. Indeed, the coefficient for 2020 (at .5738) is statistically significantly less than 1 at the 0.0000% level for a two-tailed t-test.

This can also not be explained by the general shift in which Democrats were more likely to vote absentee, because the precincts being compared are matched up by location (differing primarily in terms of which side of the county line they lie on) and thus expected to be very similar.

This study goes further and controls for demographic variables, to account for any differences that might still exist. Georgia collects information on registered voters' racial and gender demographics by precinct. Table 3 accounts for the differences in the adjacent precincts by replacing the change in the in-person difference in Trump's share of the votes with detailed demographic information. It provides information on the difference between the precincts in the percent of the population that are black males, black females, Hispanic males, Hispanic females, Asian males, and Asian females. Table 4 then not only includes those variables but then also again the "Difference in Trump's percent of the two-candidate in-person vote." Thus, this estimate uses three ways to account for differences in Trump's share of the absentee ballot vote: geographic closeness for relatively small areas, differences in Trump's share of the in-person vote, and differences in the demographics registered voters.

The results provide consistent estimates that Trump's percentage of absentee votes was consistently lower in Fulton county border precincts than in the precincts just across the street in neighboring counties. The estimates for the Fulton County effect range from 5.8% to 17.3% and again are all statistically significant. The variables for the race and gender demographics are virtually never statistically significant, though that is not particularly surprising given how

highly correlated these variables are. That also makes it difficult to interpret individual coefficients on the demographic variables. However, they are statistically significant as a group (a joint F-test for the demographic variables shown in Tables 3 and 4 finds they have F-values of 4.53 and 4.23, respectively, which are both statistically significant at about the 1 percent level).

This indicates that the demographic values are worth including, and that table 4 is the preferred model. But all models agree that Trump's absentee ballot share was depressed in Fulton County precincts.

Given that there were 145,267 absentee ballots cast for Trump and Biden in Fulton county, even the lowest estimate of the unusual drop off in Trump's share of the absentee ballots for Fulton county of 5.84 percentage points equals approximately 8,280 votes, or 59% of Biden's margin of victory over Trump. There are concerns about vote counting in DeKalb county, but there are no Republican counties adjacent to it for me to use in a test. However, with 128,007 absentee ballots cast for the two major-party candidates in DeKalb, a similar 5.84 percentage point swing for Biden would account for another 7,482 votes. Together this margin in DeKalb and Fulton would more than account for Biden's winning vote share. Indeed, their total of 15,762 would be larger than Biden's certified win.

If there were also fraud in terms of the *in-person* voting in Fulton County that worked to also help Biden, the estimates presented here will underestimate the amount of fraud with the absentee ballots. For example, in Georgia as well as Nevada, Pennsylvania, and Wisconsin there were allegations that large numbers of in-person voters were not legally registered.¹⁴ In Fulton County, Georgia, 2,423 voters were not listed on the State's records as being registered and 2,560 felons who voted had not completed their sentence were registered.¹⁵

Using the average value for these various estimates (7.81%) shows that an unusual drop in Trump's share of the absentee ballots for Fulton County alone of 11,350 votes, or 90% of Biden's vote lead in Georgia.

III. Pennsylvania

In Pennsylvania's initial ballot count, former Vice President Joe Biden leads President Trump by 81,361 votes. Biden won Allegheny and Philadelphia Counties by margins of 146,706 and 471,305 votes, and the absentee vote margins in the county were 206,505 and 310,553 votes. There was also an usually large number of provisional votes in those counties, with Biden leading by 1,489 and 9,045, respectively.

A number of concerns are raised about possible vote fraud in both counties. Republican poll watchers have complained that they were too far away from the ballots to meaningfully

¹⁴ Peter Navarro, "The Immaculate Deception: Six Key Dimensions of Election Irregularities," December 15, 2020.

¹⁵ The Superior Court Of Fulton County State Of Georgia, Trump v. Raffensperger, December 4, 2020.

<https://www.democracydocket.com/wp-content/uploads/sites/45/2020/12/Trump-v.-Raffensperger.pdf>

observe the process.¹⁶ The president's lawyers say that in Pittsburgh and Philadelphia, voters with invalid mail-in/absentee ballots received a notification and were allowed to correct that defect by using a provisional ballot on Election day, whereas election officials in Republican-leaning counties followed election law more strictly and did not give similar notifications to voters with invalid mail-in/absentee ballots.¹⁷ Complaints also arose from voters being required to cast provisional votes because they were identified as having requested a mail-in ballot even though the voter claimed that they had not done so.¹⁸ That raises concerns that someone else other than the registered voter may have voted using that person's absentee ballot.

While there are sworn affidavits attending to these problems, an open question has been whether the level of problems was significant enough to alter the election outcome.

To examine that, I used the same approach with precinct-level data that I did for Georgia. I collected data from adjacent precincts in Allegheny County and the four Republican counties that border it: Beaver, Butler, Washington, and Westmoreland. The comparison is made between Allegheny and these four other counties as well as between these four counties where they are adjacent each other. However, unlike Georgia, I could only obtain the breakdown of absentee and provisional voting for Allegheny County in 2020, so these estimates will look at only the relationship in that year. While large scale fraud is alleged in Philadelphia County, there are no Republican counties adjacent to it for me to use in a test.

The results in Table 5 show that in 2020, Trump's percentage of absentee votes was lower in Allegheny County border precincts than in the precincts just across the street in neighboring counties. Trump's share was 3.4 percentage points lower on the Allegheny County side, and the difference was also statistically significant at the 8% level for a two-tailed t-test. This is about half the size of the gap found in Georgia, but that still represents a net overrepresentation of 11,410 votes for Biden in Allegheny County. If that rate applies to Philadelphia County, that would represent another 12,397 votes for Biden. If the Republican claims are correct about Centre, Chester, Delaware, Montgomery, and Northampton Counties and that rate remains at 3.4 percentage points, their 622,443 absentee ballots between Biden and Trump would imply another 20,909 votes. Combined, that indicates Biden got a total of 44,716 extra votes that are attributable to the difference in county election methods.

¹⁶ Shan Li and Corinne Ramey, "What Are Election Observers? Role at Crux of Trump Lawsuits in Pennsylvania," Wall Street Journal, November 10, 2020 (<https://www.wsj.com/articles/what-are-election-observers-the-role-at-the-crux-of-trump-lawsuits-in-pennsylvania-11605053759>). Daniel Payne, "Pennsylvania poll watcher: 'We literally had no input and no ability to watch anything'," Just the News, November 9, 2020 (<https://justthenews.com/politics-policy/elections/pennsylvania-poll-watcher-we-literally-had-no-input-and-no-ability-watch>).

¹⁷ Rudy Giuliani, "Trump Campaign News Conference on Legal Challenges," C-SPAN, November 19, 2020 (<https://www.c-span.org/video/?478246-1/trump-campaign-alleges-voter-fraud-states-plans-lawsuits>).

¹⁸ Complaint filed in Trump v Boockvar et al in the United States District Court for the Middle District of Pennsylvania (p. 48).

To the extent that one believes that there is fraud in in-person voting, the estimates here will underestimate the amount of fraud in absentee ballots.¹⁹

Because of aforementioned concerns with provisional ballots being offered to solve problems with absentee ballots in Allegheny and Philadelphia Counties, I also used the same test ~~to~~ we have been using to examine them.

Table 6 is the same as Table 5, except it applies to provisional, rather than absentee, votes. While the estimate is quite large, implying a 12.5 percentage point lower rate for Trump in the adjacent precincts in Allegheny County, the result is not statistically significant. But there is a simple reason for this. There are a lot fewer observations as 53 of the 87 observations have no provisional ballots for Trump and, since one cannot divide by zero, those observations are not defined.²⁰

Another way to look at the problem that avoids the loss of these observations is to look at the rate that provisional ballots were used in Allegheny versus the Republican counties. In that case, there is a very clear difference. 1.5% of the votes in border precincts on the Allegheny side involve provisional ballots, which is 3.2 times the 0.48% in the adjacent precincts in the surrounding counties, and that difference is statistically significant at more than the 0.1% level for a two-tailed t-test.²¹

Table 7 looks at the difference in the percent of Biden's votes from provisional ballots in the adjacent precincts after accounting for the same difference for Trump. The share of Biden's votes from provisional ballots is about 1.02 percentage points higher in Allegheny County than in the adjacent precincts, that is about 4,400 more votes for Biden. If the same pattern occurred in Philadelphia, that would be another 6,160 votes.

Again, as a control, I tried running this for Georgia. Given that the claim about warning voters to correct defects in absentee by using a provisional ballot was not applicable to Georgia, one would not expect a statistically significant result for that state. Indeed, those results indicate that for Fulton County the effect was extremely tiny – just 1/20th of the size of the coefficient for Allegheny County – and was statistically insignificant with a t-statistic of only 0.47.

¹⁹ Republicans argue that there is some reason for concern. Pennsylvania has had convictions as recently as this year in Philadelphia where a Philadelphia Judge of Elections was charged with election fraud for allegedly stuffing ballot boxes on behalf of Democratic candidates in three different races (Katie Meyer, "Philly judge of elections pleads guilty to election fraud, accepting bribes," WHYY NPR, May 21, 2020 (<https://whyy.org/articles/philly-judge-of-elections-pleads-guilty-to-election-fraud-accepting-bribes/>)). The president's lawyer, Rudy Giuliani, has also claimed that people from New Jersey illegally voted in Philadelphia (Rick Sobey, "Rudy Giuliani claims Trump campaign has found nationwide Democrat voter fraud conspiracy plot," Boston Herald, November 19, 2020 (<https://www.bostonherald.com/2020/11/19/rudy-giuliani-trump-campaign-has-found-nationwide-voter-fraud-conspiracy-plot/>)).

²⁰ I also ran this regression using the Georgia data, but there were so few places with provisional ballots there were only 12 observations and the Fulton County Effect variable was omitted from the regression.

²¹ The rate is slightly higher for the entire county: 1.98%.

Adding the results together, there are at least 55,270 extra ballots given to Biden. To the extent that there is also some fraud in in-person voting, it is plausible that this total is roughly similar to Biden's margin in Pennsylvania.

Finally, I redid the results from Tables 5, 6, and 7A with data from Polidata on the racial demographics of voting age populations in these precincts. While information on gender wasn't available, data from the 2010 Census was available on the difference between the precincts in the percent of the voting age population that are black, Hispanic, and Asian. The results are similar to what were shown before, though the estimate that corresponds to Table 5 is statistically significant at the 10 percent level for a one-tailed t-test.

IV. Voter Turnout Rate

One objection to the preceding results is that even though the preceding results accounted for three types of differences between precincts (geography as they are across the street from each other, the difference in the in-person vote share for Trump, and demographic variables), there still might be some other difference associated with county lines that might explain the difference in how absentee ballots were voted in 2020. It isn't obvious what that difference would be since the push for absentee ballots by Democrats appears to have been an state level and national level effort. If you had two adjacent precincts next that are the same in terms of support for Trump and demographics, it isn't clear why Democrats wouldn't try to get absentee votes from both precincts. Still, even if such a factor might exist that is independent of fraudulent activity, providing another qualitatively different test might help make that alternative explanation less plausible.

Vote fraud can increase voter turnout rate. Increased fraud can take many forms: higher rates of filling out absentee ballots for people who hadn't voted, dead people voting, ineligible people voting, or even increased payments to encourage legally registered people to vote. The increase might not be as large as the fraud if votes for opposing candidates are either lost, destroyed, or replaced with ballots filled out for the other candidate.

For example, a court case in Georgia Fulton County Superior Court by State Republican Chairman David Shafer and President Donald Trump discovered hundreds of thousands of extra votes: 40,279 people who had moved counties without re-registering; 4,926 voters who had registered in another state after they registered in Georgia; 305,701 people who, according to state records, applied for an absentee ballot past the deadline; 66,247 under 17 years of age, 2,560 felons, 8,718 who were registered after they were dead, and 2,423 who were not on the state's voter rolls.²²

²² Donald J. Trump and David J. Shafer v Brad Raffensperger et al, Fulton County Superior Court, December 4, 2020 (https://cdn.donaldjtrump.com/public-files/press_assets/verified-petition-to-contest-georgia-election.pdf).

In Nevada, over 42,000 voted more than once.²³ Jesse Banal, the lead counsel for the Trump Campaign in testimony before the Senate Hearing on Election Security and Administration, compiled this list by reviewing voter registration lists and finding the same name, address, and birthdate for registered voters. In some cases, two registrants might have the same last name, same birthdate, and same address, but one is “William” and the other “Bill.” Over 1,500 dead people allegedly voted. Another 19,000 people who voted didn’t live in the state (this doesn’t include military voters or students). Over 1,000 listed non-existent addresses.

Similarly, in Madison and Milwaukee, Wisconsin, 28,395 people allegedly voted without identification. Republican lawyers claimed that 200,000 absentee ballots did not have the proper signatures to be allowed to be counted.²⁴ Payments to Native Americans to vote were supposedly “orchestrated by the Biden campaign . . . [with] Visa gift cards, jewelry, and other ‘swag.’”²⁵

Another reason for a higher turnout could be because of a much lower absentee rejection rate. Ballotpedia notes that in the 2016 general election 6.42% of Georgia’s absentee ballots were rejected, but that rate was only 0.60% in 2020 – that is a difference of about 76,971 votes.²⁶ Other swing states also saw a drop, though they were much smaller than Georgia’s. Pennsylvania’s went from 0.95% in 2016 to 0.28% in 2020 – a difference of 17,361 votes.^{27, 28}

²³ Senate Hearing on Election Security and Administration, December 16, 2020 (<https://www.c-span.org/video/?507292-1/senate-hearing-election-security-administration>).

²⁴ Senate Hearing on Election Security and Administration, December 16, 2020 (<https://www.c-span.org/video/?507292-1/senate-hearing-election-security-administration>).

²⁵ Peter Navarro, “The Immaculate Deception: Six Key Dimensions of Election Irregularities,” December 15, 2020. Paul Bedard, “Pro-Biden effort offered Native Americans \$25-\$500 Visa gift cards and jewelry to vote,” Washington Examiner, December 3, 2020 (<https://www.washingtonexaminer.com/washington-secrets/pro-biden-effort-offered-native-americans-25-500-visa-gift-cards-jewelry-to-vote>).

²⁶ “Election results, 2020: Analysis of rejected ballots,” Ballotpedia, December 23, 2020 (https://ballotpedia.org/Election_results,_2020:_Analysis_of_rejected_ballots). The number of absentee ballots cast (1,322,529) is from the Georgia Secretary of State’s website (https://sos.ga.gov/index.php/elections/number_of_absentee_ballots_rejected_for_signature_issues_in_the_2020_election_increased_350_from_2018).

²⁷ The number of absentee ballots cast in Pennsylvania for Biden and Trump were obtained from Pennsylvania’s Secretary of State (<https://www.electionreturns.pa.gov/General/SummaryResults?ElectionID=83&ElectionType=G&IsActive=1>).

²⁸ While it isn’t necessary for the results shown here, a higher turnout rate could also show up from the manufacturing of false ballots. A possible example occurred in Atlanta, where, as noted, election officials ordered ballot-counting stopped because of a water leak. (Frank Chung, “Slow leak’: Text messages cast doubt on Georgia officials’ ‘burst pipe’ excuse for pause in counting,” News.com, November 12, 2020 (<https://www.news.com.au/world/north-america/us-politics/slow-leak-text-messages-cast-doubt-on-georgia-officials-burst-pipe-excuse-for-pause-in-counting/news-story/19176f5113512210517c82debe684392>)). The officials told observers that the vote-counting would start up again in the morning. Then once poll watchers, observers, and the media left, the vote-counting continued with surveillance video caught large boxes of ballots pulled out from underneath a draped table. (“Trump Campaign lawyers present video ‘evidence’ of ballot fraud,” Senate Judiciary Subcommittee, December 4, 2020. <https://www.youtube.com/watch?v=LJ0xDWhWUxk>) On the other hand, Fulton County Elections Director Richard Barron, a Democrat, claims that no one was asked to leave and that observers decided on their own to leave the building in Atlanta. (Staff, “Surveillance Tape Of Vote Counting Breeding False Fraud Claims In Georgia,” Associated Press, December 4, 2020

Nevada's dropped by 0.6 percentage points – 4,143 votes. The only other swing state that Ballotpedia proves an estimate of rejected absentee ballots for was Michigan, and their rate was essentially unchanged from 2016 to 2020, falling from 0.49% to 0.46%.

On the other hand, some aspects of vote fraud can reduce voter turnout. In Arizona, Republican Plaintiffs in the United States District Court for the District of Arizona claim that up to 94,975 voters returned absentee ballots that were marked as unreturned.²⁹ Peter Navarro's election report describes these lost or destroyed ballots as "consistent with allegations of Trump ballot destruction."³⁰

To test whether counties in which fraud was alleged had higher turnout rates, I take the voter turnout rates for the 2016 and 2020 general elections by county for the swing states: Arizona, Florida, Georgia, Michigan, Nevada, North Carolina, Ohio, Pennsylvania, and Wisconsin. The question was whether there was a larger increase in turnout rates for the counties in which vote fraud was alleged relative to other counties. The counties claimed to have had vote fraud are the ones already discussed for Georgia (Fulton and DeKalb) and Pennsylvania (Allegheny, Centre, Chester, Delaware, Montgomery, Northampton, and Philadelphia). For Arizona (Apache, Coconino, Maricopa, and Navajo),³¹ Michigan (Wayne), Nevada (Clark and Washoe),³² and Wisconsin (Dane, Menominee, and Milwaukee)³³.

To account for differences in county turnout rates, I account for that county's turnout rate when Trump ran in 2016 and how heavily Republican or Democrat the counties are based on whether they voted for Trump or Biden. I classify those counties that Trump carried as Republican counties and Biden's ones as Democratic ones. Since the turnout change may differ for Democratic and Republican counties, I separate the counties where Trump and Biden won

(https://www.huffpost.com/entry/video-georgia-election-false-fraud_n_5fcac976c5b619bc4c330575?guccounter=1&guce_referrer=aHR0cHM6Ly9kdWNrZHVja2dvLmNvbS8&guce.) Similarly, Gabriel Sterling, Georgia's voting system implementation manager, says that even if political observers weren't present, Georgia Secretary of State investigators were present. (Twitter post by (<https://twitter.com/GabrielSterling/status/1334825233610633217?s=20>).

²⁹ See the United States District Court for the District of Arizona, Tyler Bowyer et al v. Doug Ducey, December 2, 2020 . <https://www.democracymatters.com/wp-content/uploads/sites/45/2020/12/Bower-Complaint-AZ.pdf>

³⁰ Peter Navarro, "The Immaculate Deception: Six Key Dimensions of Election Irregularities," December 15, 2020.

³¹ John Davidson, "In Nevada, A Corrupt Cash-For-Votes Scheme Is Hiding In Plain Sight," The Federalist, November 18, 2020 (<https://thefederalist.com/2020/11/18/in-nevada-a-corrupt-cash-for-votes-scheme-is-hiding-in-plain-sight/>),

(<https://web.archive.org/web/20201109232825/https://twitter.com/ITCAOnline/status/1319745575064162304>), Anna V. Smith, "How Indigenous voters swung the 2020 election," High Country News, November 6, 2020 (<https://www.hcn.org/articles/indigenous-affairs-how-indigenous-voters-swung-the-2020-election>).

³² Paul Bedard, "Pro-Biden effort offered Native Americans \$25-\$500 Visa gift cards and jewelry to vote," Washington Examiner, December 3, 2020 (<https://www.washingtonexaminer.com/washington-secrets/pro-biden-effort-offered-native-americans-25-500-visa-gift-cards-jewelry-to-vote>).

³³ Scott Bauer, "Wisconsin issues recount order in 2 counties as Trump wanted," Associated Press, November 19, 2020 (<https://apnews.com/article/wisconsin-recount-2-counties-f408a7b43deb96e2ac7ff0b24a2f968a>). See also https://web.archive.org/web/2020111220325/https://www.facebook.com/permalink.php?story_fbid=1539297286270372&id=573103029556474.

with two separate variables. When Biden won a county, the values for the Republican variable are zero. Similarly, when Trump won, the values for the Democratic variable are zero. Elsewhere those variables equal Trump's share of the vote minus Biden's share. Since I have no expectation of whether a change in turnout was linear with respect to how partisan the county was, I also tried including the square of these measures of how partisan these counties were (see Table 9).

I also used data from the U.S. Census Bureau's 2019 American Community Survey on median household income as well as the percent of the population that is female, different racial groups, by highest level of education, and the age groupings as provided by the Census.

The estimates in Table 10 start from the simplest specification to one with more controls, and they imply that the counties where vote fraud is alleged had between 147,000 and 289,000 excess votes. In each case, the county fraud variable's coefficient is statistically significant at least at the 5 percent level for a one-tailed t-test.

The first specification shows that the more heavily Republican a county was, the larger the increase in voter turnout rate over 2016. The opposite is true for more heavily Democratic counties, but that effect is statistically insignificant. The F-test shows Democratic and Republican counties behaved very differently in terms of voter turnout rates. The turnout rate in 2016 by itself explains about half the variation in 2020 voter turnout.

The next estimate looks at both how Democratic or Republican counties are as well as those values squared. Again, the voter turnout rate increased the most in the Republican counties and didn't change in the Democratic ones. While the coefficients for the Republican counties on Trump's win margin and that margin squared weren't individually statistically significant, the F-test shows that they are jointly statistically significant at better than the one percent level.

The following two specifications include the Census information for the counties. Still, they show what should be pretty obvious: Census data on income, race, gender, age, and education are highly correlated with measures of how partisan a county is. When I include the Census data, the Republican partisanship measures are no longer statistically significant, even for the joint F-test. Including all the additional factors explains virtually nothing more in the percent of the variation in turnouts (the R-squares only increase by about one or two percentage points and the difference in adjusted R-squares is even smaller).

The difference in the two specifications involves whether I include the percent of the population that is Native American. Given that the vote-buying schemes were directly related to Native Americans, both the percent of the population that is Native American and the county fraud variable will be highly correlated. The county fraud variable in the fourth specification will thus undercount the impact of vote fraud in that county. The third and fourth estimates imply that there was between a 1.26 and 2.42 percent unexplained increase in voter turnout in counties where fraud was alleged – the equivalent of 150,000 to 289,000 more votes.

In Table 11, I reran the regressions in Table 10 on just the two states that we examined in the earlier sections of this – Georgia and Pennsylvania – as well as the control states swing state (Florida, North Carolina, and Ohio), and the results were slightly larger and consistently statistically significant at around the 5 percent level for a one-tailed t-test. The estimates on the county fraud variable implied excess votes of between 1.37 and 1.53 percent, or about 70,000 to 79,000 votes. The total combined win margin for Biden in Georgia and Pennsylvania was 92,334. Again, my estimates are an underestimate of the fraud if votes for opposing candidates are either lost, destroyed, or replaced with ballots filled out for the other candidate.

V. Conclusion

The precinct level estimates for Georgia and Pennsylvania indicate that vote fraud may account for Biden's win in both states. The voter turnout rate data also indicates that there are significant excess votes in Arizona, Michigan, Nevada, and Wisconsin as well. While the problems shown here are large, there are two reasons to believe that they are underestimates: 1) the estimates using precinct level data assume that there is no fraud occurring with in-person voting and 2) the voter turnout estimates do not account for ballots for the opposing candidate that are lost, destroyed, or replaced with ballots filled out for the other candidate

Table 1: 2016 Difference in Trump's share of the Absentee Ballot Vote between adjacent precincts at the border of Fulton, Carroll, Cherokee, Coweta, and Forsyth Counties			
Control variables	Coefficient	Absolute t-statistic	Level of statistical significance for a two-tailed t-test
Difference in Trump's percent of the two-candidate in-person vote between two precincts	0.8695	4.99	0.0000
Fulton County Effect	-0.008786	0.12	0.908
Intercept	-0.014329	0.25	0.806
Number of Observations 24	F-statistic = 18.05 Level of significance = 0.0000	R-Squared = - 0.6322	

Table 2: 2020 Difference in Trump's share of the Absentee Ballot Vote between adjacent precincts at the border of Fulton, Carroll, Cherokee, Coweta, and Forsyth Counties			
Control variables	Coefficient	Absolute t-statistic	Level of statistical significance for a two-tailed t-test
Difference in Trump's percent of the two-candidate in-person vote between two precincts	0.57381	7.86	0.0000
Fulton County Effect	-0.07185	1.91	0.072
Intercept	0.0632825	2.11	0.048
Number of Observations 22	F-statistic = 54.81 Level of significance = 0.0000	R-Squared = - 0.8523	

Table 3: 2020 Difference in Trump's share of the Absentee Ballot Vote after adjusting for Racial and Gender Demographics of Registered voters			
Control variables	Coefficient	Absolute t-statistic	Level of statistical significance for a two-tailed t-test
Fulton County Effect	-0.1734576	3.56	0.003
Difference in the percent of voters who are black males	-1.9175	1.36	0.195
Difference in the percent of voters who are black females	1.31927	0.98	0.343
Difference in the percent of voters who are Hispanic males	-1.4117	0.53	0.602
Difference in the percent of voters who are Hispanic females	2.0844	1.32	0.208
Difference in the percent of voters who are Asian males	-0.4588	0.27	0.791
Difference in the percent of voters who are Asian females	-0.7029	0.38	0.711
Intercept	0.10648	2.29	0.038
Number of Observations 22	F-statistic = 7.36 Level of significance = 0.0008	R-Squared = - 0.7863	

Table 4: 2020 Difference in Trump's share of the Absentee Ballot Vote after adjusting for Racial and Gender Demographics of Registered voters and the difference in the in-person vote			
Control variables	Coefficient	Absolute t-statistic	Level of statistical significance for a two-tailed t-test
Difference in Trump's percent of the two-candidate in-person vote between two precincts	0.84728	6.52	0.0000
Fulton County Effect	-0.058447	1.94	0.074
Difference in the percent of voters who are black males	-0.94517	1.31	0.214
Difference in the percent of voters who are black females	1.1561	1.71	0.111
Difference in the percent of voters who are Hispanic males	-0.55649	0.42	0.683
Difference in the percent of voters who are Hispanic females	2.09435	2.64	0.020
Difference in the percent of voters who are Asian males	-0.2352	0.28	0.787
Difference in the percent of voters who are Asian females	-0.35253	0.38	0.712
Intercept	0.0717792	3.00	0.010
Number of Observations 22	F-statistic = 30.85 Level of significance = 0.0000	R-Squared = 0.9500	

Table 5: 2020 Difference in Trump's share of the Absentee Ballot Vote between adjacent precincts at the border of Allegheny, Beaver, Butler, Washington, and Westmoreland Counties			
Control variables	Coefficient	Absolute t-statistic	Level of statistical significance for a two-tailed t-test
Difference in Trump's percent of the two-candidate in-person vote in the adjacent precincts	0.359489	5.20	0.0000
Allegheny County Effect	-0.0335925	1.75	0.084
Intercept	0.0374956	2.09	0.039
Number of Observations 87	F-statistic = 13.66 Level of significance = 0.0000	R-Squared = - 0.2454	

Table 6: 2020 Difference in Trump's share of the Provisional Ballots between adjacent precincts at the border of Allegheny, Beaver, Butler, Washington, and Westmoreland Counties			
Control variables	Coefficient	Absolute t-statistic	Level of statistical significance for a two-tailed t-test
Difference in Trump's percent of the two-candidate in-person vote in the adjacent precincts	1.03771	1.86	0.072
Allegheny County Effect	-0.124838	0.88	0.384
Intercept	0.088098	0.66	0.514
Number of Observations 34	F-statistic = 2.44 Level of significance = 0.1036	R-Squared = - 0.1361	

Table 7: 2020 The Difference in the share of Biden’s votes from provisional ballots in adjacent precincts

A) Examining Allegheny, Beaver, Butler, Washington, and Westmoreland Counties

Control variables	Coefficient	Absolute t-statistic	Level of statistical significance for a two-tailed t-test
Difference in the share of Trump’s votes from provisional ballots in the adjacent precincts	0.3639292	3.47	0.001
Allegheny County Effect	0.010184	2.27	0.026
Intercept	-0.0032873	0.96	0.338
Number of Observations 87	F-statistic = 18.90 Level of significance = 0.0000	R-Squared = 0.3104	

B) Examining Fulton, Carroll, Cherokee, Coweta, Fayette, and Forsyth Counties

Difference in the share of Trump’s votes from provisional ballots in the adjacent precincts	0.3990197	8.38	0.000
Fulton County Effect	0.0003418	0.49	0.626
Intercept	-0.0000357	0.06	0.950
Number of Observations 22	F-statistic = 23.60 Level of significance = 0.0000	R-Squared = - 0.7130	

Table 8: Re-estimating Tables 5, 6, and 7A by including Census 2010 Precinct Demographic data on Difference in the percent of the voting age population who are Black, Hispanic, and Asian

Regression Estimate	Coefficient on the Allegheny County Effect	Absolute t-statistic	Level of statistical significance for a two-tailed t-test	
Table 5	-0.0288	1.53	0.131	Number of obs = 87 F-statistic = 8.17 Level of significance F-test = 0.0000 R-square = 0.3353
Table 6	-0.1555	1.13	0.266	Number of obs = 34 F-statistic = 2.46 Level of significance F-test = 0.0577 R-square = 0.3048
Table 7A	0.010048	2.09	0.040	Number of obs = 87 F-statistic = 7.51 Level of significance F-test = 0.0000 R-square = 0.3048

Table 9: Comparing Voter Turnout Rates in 2020 Swing States (Arizona, Florida, Georgia, Michigan, Nevada, North Carolina, Ohio, Pennsylvania, and Wisconsin)			
Variable	Observations	Mean	Standard Deviation
Percent Voter Turnout in 2020 Election	668	.7502149	.0704998
Percent Voter Turnout in 2016 Election	668	.6979785	.0757554
Republican Counties (Trump's minus Biden's share of votes)	668	.18628	.21074
Republican Counties (Trump's minus Biden's share of votes squared)	668	.0790	.1228
Democrat Counties (Trump's minus Biden's share of votes)	668	-.1369	.200619
Democrats Counties (Trump's minus Biden's share of votes squared)	668	.05894	.10930
County where Fraud alleged	668	.02844	.1664

Table 10: Did Counties Accused of Fraud have an unusual increase in Voter Turnout? (Arizona, Florida, Georgia, Michigan, Nevada, North Carolina, Ohio, Pennsylvania, Wisconsin) (absolute t-statistics and the level of significance for a two-tailed t-test are in parentheses)				
Control variables	(1)	(2)	(3)	(4)
County where Fraud alleged	.0124 (1.96, 0.050)	.0123 (1.95, 0.052)	.02423 (3.66, 0.000)	.0126 (1.78, 0.076)
Republican Counties (Trump's minus Biden's share of votes)	0.0149 (2.39, 0.017)	.0129 (0.62, 0.538)	.00317 (0.15, 0.881)	.0047 (0.23, 0.821)
Republican Counties (Trump's minus Biden's share of votes squared)		.0097 (0.32, 0.746)	.01004 (0.33, 0.741)	.0099 (0.33, 0.740)
Joint F-test for Republican Counties		F-test = 4.02	F-test = 0.74	F-test = 0.99
Democrat Counties (Trump's minus Biden's share of votes)	0.0152 (0.23, 0.816)	-.0255 (1.03, 0.301)	-.0130 (0.54, 0.592)	-.0135 (0.56, 0.573)
Democrats Counties (Trump's minus Biden's share of votes squared)		-.0493 (1.28, 0.202)	-.03517 (0.94, 0.350)	-.0340 (0.92, 0.359)
F-test for how turnout rates vary differently between heavily Democratic and Republican counties	F-test = 8.18			
Joint F-test for Democrat Counties		F-test = 1.01	F-test = 0.99	F-test = 0.83
Percent Voter Turnout in 2016 Election	.8653 (62.50, 0.00)	.8661 (62.51, 0.00)	.8090 (46.16, 0.00)	.8060 (46.53, 0.00)
Median household income			2.34e-07 (1.18, 0.238)	4.03e-07 (2.01, 0.044)
Percent Female			.0549 (0.91, 0.364)	.1044 (1.72, 0.087)
Percent Black			-.0112 (-1.12, 0.262)	-.006256 (0.63, 0.529)
Percent Hispanic or Latino			-.03530 (2.27, 0.023)	-.03268 (2.13, 0.034)
Percent Asian			-.29899 (2.94, 0.003)	-.25397 (2.52, 0.012)
Percent Native American				.09038 (4.14, 0.000)
Percent Two or more races			-.4854 (4.46, 0.000)	-.543089 (5.01, 0.000)
Percent High School Graduate			-.0775 (1.98, 0.048)	-.0717 (1.85, 0.064)
Percent Some College or Associate			-.06118 (1.62, 0.105)	-.0706 (1.89, 0.059)
Percent Bachelor's Degree			.06025 (1.04, 0.301)	.054079 (0.94, 0.347)

Percent Graduate or Professional			-.10699 (1.52, 0.129)	-.12516 (1.80, 0.072)
Joint F-test for Census Age Groups			F-test = 3.72	F-test = 1.57
Constant	.1433 (14.30, 0.00)	.1416 (13.60, 0.00)	.16232 (2.11, 0.035)	.06437 (0.81, 0.418)
Number of Observations = 668	F-stat = 983.11 R2 = 0.8557	F-stat = 656.27 R2 = 0.8563	F-stat = 128.44 R2 = 0.8767	F-stat = 128.53 R2 = 0.8800

Table 11: Focusing on Voter Turnout in Georgia and Pennsylvania. Using the specifications shown in Table 10, though not all results are reported. (Florida, Georgia, North Carolina, Ohio, Pennsylvania) (absolute t-statistics and the level of significance for a two-tailed t-test are in parentheses)

Control variables	(1)	(2)	(3)	(4)
County where Fraud alleged	.01370 (1.53, 0.050)	.01532 (1.71, 0.087)	.01469 (1.63, 0.104)	.01454 (1.61, 0.108)

New Mexico List of Complaints

1. Poll Challengers removed from the Absentee Ballot Certification Process
 - a. RPNM notified the Secretary of State in timely fashion and she refused to allow challengers access to the process
 - b. RPNM took this complaint to the NM Supreme Court (4 Democrats, 1 Republican) in timely fashion; they refused to hear the case.
 - c. Local races were lost by a few votes in several counties where the Party was not present to verify the Absentee Ballots.
2. Poll Challengers were unable to adequately do their job
 - a. Some counties forced them away from the ballot counting process, sometimes as much as 50 feet away, making it impossible to verify correct procedures were used.
 - b. Republican Poll Challengers were met with outright hostility by some county clerks.
3. Dominion Machines are the only machines used in New Mexico
 - a. Many Anomalies were encountered
 - i. Vote dumps in the middle of the night when no counting was taking place
 - ii. In each instance of vote dump, the Democrat candidate was the beneficiary.
 - b. Three automatic recounts took place
 - i. Republican challengers were met with hostility and attempts to keep them out of the recount
 - ii. Dominion Representatives were allowed into each recount.
 - iii. Our data team had noticed a pattern in all the Dominion machines where vote totals below 120 votes had one pattern but when the total votes in the machine exceeded that number, the voting pattern was significantly different.
 - iv. In order to test their theory, RPNM instructed our challengers to request that the 100 sample ballots be fed thru the machine a second time.
 1. The Dominion Representatives objected strenuously
 2. The theory was never tested because the County Clerks in each instance gave in to the pressure from the Dominion Representatives.
 - c. Our Data Team has reviewed voter files back to 1992
 - i. They have identified anomalies that have become increasingly sophisticated through the years
 - ii. Recent data patterns suggest between 10-20% vote shifts in recent years, including the 2020 Presidential Election.
4. Absentee ballot requests
 - a. We have documented cases of absentee ballots being requested by someone other than the voter, the signature not the same name as the voter and live absentee ballots were mailed.
5. Other Irregularities
 - a. Multiple documented cases of dead people voting
 - b. Multiple cases of persons who moved out of the state years ago receiving ballots.
6. The Trump Legal team
 - a. Has filed a lawsuit against the SOS

- b. Has filed two IPRA requests to the SOS
 - i. The SOS responded that they would provide the information by 30 December, 2020
 - ii. On 31 December, she notified the Trump team she would not provide the information until January 14, 2021.
- 7. Notarized Affidavits
 - a. RPNM has in hand many signed and notarized affidavits of problems individual voters encountered.
 - b.

Rosen, Jeffrey A. (ODAG)

From: Rosen, Jeffrey A. (ODAG)
Sent: Friday, January 1, 2021 7:13 PM
To: Donoghue, Richard (ODAG)
Subject: RE: [EXTERNAL] Brad Johnson: Rome, Satellites, Servers: an Update - YouTube

Yes. After this message, I was asked to have FBI meet with Brad Johnson, and I responded that Johnson could call or walk into FBI's Washington Field Office with any evidence he purports to have. On a follow up call, I learned that Johnson is working with Rudy Giuliani, who regarded my comments as "an insult". Asked if I would reconsider, I flatly refused, said I would not be giving any special treatment to Giuliani or any of his "witnesses", and re-affirmed yet again that I will not talk to Giuliani about any of this.

From: Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov>
Sent: Friday, January 1, 2021 3:39 PM
To: Rosen, Jeffrey A. (ODAG) <jarosen@jmd.usdoj.gov>
Subject: Re: [EXTERNAL] Brad Johnson: Rome, Satellites, Servers: an Update - YouTube

Pure insanity.

On Jan 1, 2021, at 3:22 PM, Rosen, Jeffrey A. (ODAG) <jarosen@jmd.usdoj.gov> wrote:

?

From: Meadows, Mark R. EOP/WH [REDACTED] (b) (6)
Sent: Friday, January 1, 2021 3:08 PM
To: Rosen, Jeffrey A. (ODAG) <jarosen@jmd.usdoj.gov>
Subject: Fwd: [EXTERNAL] Brad Johnson: Rome, Satellites, Servers: an Update - YouTube

Sent from my iPhone

Begin forwarded message:

From: Mark Meadows [REDACTED] (b) (6)
Date: January 1, 2021 at 3:06:53 PM EST
To: "Meadows, Mark R. EOP/WHO" [REDACTED] (b) (6)
Subject: [EXTERNAL] Brad Johnson: Rome, Satellites, Servers: an Update - YouTube

?

<https://www.youtube.com/watch?>

[v=YwtbK5XXAMk&feature=youtu.be<](https://www.youtube.com/watch?v=YwtbK5XXAMk&feature=youtu.be)

Sent from my iPhone

Rosen, Jeffrey A. (ODAG)

From: Rosen, Jeffrey A. (ODAG)
Sent: Friday, January 1, 2021 8:24 PM
To: Clark, Jeffrey (CIV); Clark, Jeffrey (ENRD)
Subject: atlanta

BJ Pak's cell (b) (6)

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

THE HONORABLE LOUIE
GOHMERT, et al.,

Plaintiffs,

v.

THE HONORABLE MICHAEL R.
PENCE, in his official capacity as Vice
President of the United States,

Defendant.

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Case No. 6:20-cv-660-JDK

ORDER OF DISMISSAL

This case challenges the constitutionality of the Electoral Count Act of 1887, as codified at 3 U.S.C. §§ 5, 15. The Court cannot address that question, however, without ensuring that it has jurisdiction. *See, e.g.*, U.S. CONST. art. III, § 2; *Cary v. Curtis*, 44 U.S. 236, 245 (1845). One crucial component of jurisdiction is that the plaintiffs have standing. This requires the plaintiffs to show a personal injury that is fairly traceable to the defendant’s allegedly unlawful conduct and is likely to be redressed by the requested relief. *See, e.g.*, U.S. CONST. art. III, § 2; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). Requiring plaintiffs to make this showing helps enforce the limited role of federal courts in our constitutional system.

The problem for Plaintiffs here is that they lack standing. Plaintiff Louie Gohmert, the United States Representative for Texas’s First Congressional District, alleges at most an institutional injury to the House of Representatives. Under well-settled Supreme Court authority, that is insufficient to support standing. *Raines v.*

Byrd, 521 U.S. 811, 829 (1997).

The other Plaintiffs, the slate of Republican Presidential Electors for the State of Arizona (the “Nominee-Electors”), allege an injury that is not fairly traceable to the Defendant, the Vice President of the United States, and is unlikely to be redressed by the requested relief.

Accordingly, as explained below, the Court lacks subject matter jurisdiction over this case and must dismiss the action.

I.

A.

The Electors Clause of the U.S. Constitution requires that each state appoint, in the manner directed by the state’s legislature, the number of presidential electors to which it is constitutionally entitled. U.S. CONST. art. II, § 1, cl. 2. Under the Twelfth Amendment, each state’s electors meet in their respective states and vote for the President and Vice President. U.S. CONST. amend XII. The electors then certify the list of their votes and transmit the sealed lists to the President of the United States Senate—that is, the Vice President of the United States. The Twelfth Amendment then provides that, “[t]he President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted.” *Id.* A candidate winning a majority of the electoral votes wins the Presidency. However, if no candidate obtains a majority of the electoral votes, the House of Representatives is to choose the President—with each state delegation having one vote. *Id.*

The Electoral Count Act, informed by the Hayes-Tilden dispute of 1876, sought to standardize the counting of electoral votes in Congress. Stephen A. Siegel, *The Conscientious Congressman's Guide to the Electoral Count Act of 1887*, 56 FLA. L. REV. 541, 547–50 (2004). Section 5 makes states' determinations as to their electors, under certain circumstances, “conclusive” and provides that these determinations govern the counting of electoral votes. 3 U.S.C. § 5. Section 15 requires a joint session of Congress to count the electoral votes on January 6, with the President of the Senate presiding. *Id.* § 15.

During that session, the President of the Senate calls for objections on the electoral votes. Written objections submitted by at least one Senator and at least one Member of the House of Representatives trigger a detailed dispute-resolution procedure. *Id.* Most relevant here, Section 15 requires both the House of Representatives and the Senate—by votes of their full membership rather than by state delegations—to decide any objection. The Electoral Count Act also gives the state governor a role in certifying the state's electors, which Section 15 considers in resolving objections. *Id.* § 6.

It is these dispute-resolution procedures that Plaintiffs challenge in this case.

B.

On December 14, 2020, electors convened in each state to cast their electoral votes. *Id.* § 7; Docket No. 1 ¶ 5. In Arizona, the Democratic Party's slate of eleven electors voted for Joseph R. Biden and Kamala D. Harris. These votes were certified by Arizona Governor Doug Ducey and Arizona Secretary of State Katie Hobbs and submitted as required under the Electoral Count Act. Docket No. 1 ¶ 22. That same

day, the Nominee-Electors state that they also convened in Arizona and voted for Donald J. Trump and Michael R. Pence. *Id.* ¶ 20. Similar actions took place in Georgia, Pennsylvania, Wisconsin, and Michigan (with Arizona, the “Contested States”). *Id.* ¶ 20–21. Combined, the Contested States represent seventy-three electoral votes. *See id.* ¶ 23.

On December 27, Plaintiffs filed this lawsuit, alleging that there are now “competing slates” of electors from the Contested States and asking the Court to declare that the Electoral Count Act is unconstitutional and that the Vice President has the “exclusive authority and sole discretion” to determine which electoral votes should count. *Id.* ¶ 73. They also ask for a declaration that “the Twelfth Amendment contains the exclusive dispute resolution mechanisms” for determining an objection raised by a Member of Congress to any slate of electors and an injunction barring the Vice President from following the Electoral Count Act. *Id.* On December 28, Plaintiffs filed an Emergency Motion for Expedited Declaratory Judgment and Emergency Injunctive Relief (“Emergency Motion”). Docket No. 2. Plaintiffs request “an expedited summary proceeding” under Federal Rule of Civil Procedure 57. *Id.*

On December 31, the Vice President opposed Plaintiffs’ motion. Docket No. 18.

II.

As mentioned above, before the Court can address the merits of Plaintiff’s Emergency Motion, it must ensure that it has subject matter jurisdiction. *See, e.g., Cary*, 44 U.S. at 245 (“The courts of the United States are all limited in their nature and constitution, and have not the powers inherent in courts existing by prescription or by the common law.”); *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 340–41 (2006)

“If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so.”). Article III of the U.S. Constitution limits federal courts to deciding only “cases” or “controversies,” which ensures that the judiciary “respects ‘the proper—and properly limited—role of the courts in a democratic society.’” *DaimlerChrysler*, 547 U.S. at 341 (quoting *Allen v. Wright*, 468 U.S. 737, 750 (1984)); see also *Raines*, 521 U.S. at 828 (quoting *United States v. Richardson*, 418 U.S. 166, 192 (1974)) (“Our regime contemplates a more restricted role for Article III courts . . . ‘not some amorphous general supervision of the operations of government.’”).

“[A]n essential and unchanging part of the case-or-controversy requirement of Article III” is that the plaintiff has standing. *Lujan*, 504 U.S. at 560. The standing requirement is not subject to waiver and requires strict compliance. *E.g.*, *Lewis v. Casey*, 518 U.S. 343, 349 n.1 (1996); *Raines*, 521 U.S. at 819. A standing inquiry is “especially rigorous” where the merits of the dispute would require the Court to determine whether an action taken by one of the other two branches of the Federal Government is unconstitutional. *Raines*, 521 U.S. at 819–20 (citing *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 542 (1986), and *Valley Forge Christian Coll. v. Ams. United for Separation of Church & St., Inc.*, 454 U.S. 464, 473–74 (1982)). This is because “the law of Art. III standing is built on a single basic idea—the idea of separation of powers.” *Allen*, 468 U.S. at 752, *abrogated on other grounds by Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 (2014). Article III standing “enforces the Constitution’s case-or-controversy requirement.”

DaimlerChrysler Corp., 547 U.S. at 342 (quoting *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11 (2004)). And “[n]o principle is more fundamental to the judiciary’s proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.” *Raines*, 521 U.S. at 818.

Article III standing requires a plaintiff to show: (1) that he “has suffered an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical”; (2) that “the injury is fairly traceable to the challenged action of the defendant”; and (3) that “it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *El Paso Cnty. v. Trump*, 982 F.3d 332, 336 (5th Cir. 2020) (quoting *Friends of the Earth, Inc. v. Laidlaw Env’t. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000)). “The party invoking federal jurisdiction bears the burden of establishing these elements,” and “each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.” *Lujan*, 504 U.S. at 561. “At the pleading stage, general factual allegations of injury resulting from the defendant’s conduct may suffice.” *Id.*

III.

Here, Plaintiffs have failed to demonstrate that they have standing to bring the claim alleged in Count I of their complaint.

A.

The first Plaintiff is the Representative for Texas’s First Congressional District, the Honorable Louie Gohmert. Congressman Gohmert argues that he will

be injured because “he will not be able to vote as a Congressional Representative in accordance with the Twelfth Amendment.” Docket No. 2 at 4. Specifically, Congressman Gohmert argues that on January 6, 2021, when Congress convenes to count the electoral votes for President and Vice President, he “will object to the counting of the Arizona slate of electors voting for Biden and to the Biden slates from the remaining Contested States.” Docket No. 1 ¶ 6. If a member of the Senate likewise objects, then under Section 15 of the Electoral Count Act, each member of the House and Senate is entitled to vote to resolve the objections, which Congressman Gohmert argues is inconsistent with the state-by-state voting required under the Twelfth Amendment. Docket No. 2 at 5. Congressman Gohmert argues that the Vice President’s compliance with the procedures of the Electoral Count Act will directly cause his alleged injury. *Id.* at 7. And he argues that a declaration that Sections 5 and 15 of the Electoral Count Act are unconstitutional would redress his alleged injury. *Id.* at 9–10.

Congressman Gohmert’s argument is foreclosed by *Raines v. Byrd*, which squarely held that Members of Congress lack standing to bring a claim for an injury suffered “solely because they are Members of Congress.” 521 U.S. at 821. And that is all Congressman Gohmert is alleging here. He does not identify any injury to himself as an individual, but rather a “wholly abstract and widely dispersed” institutional injury to the House of Representatives. *Id.* at 829. Congressman Gohmert does not allege that he was “singled out for specially unfavorable treatment as opposed to other Members of their respective bodies,” does not claim that he has

“been deprived of something to which [he] *personally* [is] entitled,” and does not allege a “loss of any private right, which would make the injury more concrete.” *Id.* at 821 (emphasis in original). Congressman Gohmert’s alleged injury is “a type of institutional injury (the diminution of legislative power), which necessarily damages all Members of Congress.” *Id.* Under these circumstances, the Supreme Court held in *Raines*, a Member of Congress does not have “a sufficient ‘personal stake’” in the dispute and lacks “a sufficiently concrete injury to have established Article III standing.” *Id.* at 830.

For the first time in their reply brief, Plaintiffs assert that Congressman Gohmert has standing as a Texas voter, relying on *League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 659 F.3d 421, 430 (5th Cir. 2011). Docket No. 30 at 30, 33–34. The Court disagrees. In *LULAC*, the Fifth Circuit held that an individual voter had standing to challenge amendments to the City of Boerne’s city council election scheme that would allegedly deprive him of a “pre-existing right to vote for certain offices.” 659 F.3d at 430. That is not the case here. Congressman Gohmert does not allege that he was denied the right to vote in the 2020 presidential election. Rather, he asserts that under the Electoral Count Act, “he will not be able to vote *as a Congressional Representative* in accordance with the Twelfth Amendment.” Docket No. 2 at 4 (emphasis added). Because Congressman Gohmert is asserting an injury in his role as a Member of Congress rather than as an individual voter, *Raines* controls.

Further weighing against Congressman Gohmert's standing here is the speculative nature of the alleged injury. "To establish Article III standing, an injury must be 'concrete, particularized, and actual or imminent.'" *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (quoting *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149 (2010)); *see also Lujan*, 504 U.S. at 560 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)) (alleged injury cannot be "conjectural" or "hypothetical"). "Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly* impending." *Clapper*, 568 U.S. at 409 (quoting *Lujan*, 504 U.S. at 565 n.2).

Here, Congressman Gohmert's alleged injury requires a series of hypothetical—but by no means certain—events. Plaintiffs presuppose what the Vice President will do on January 6, which electoral votes the Vice President will count or reject from contested states, whether a Representative and a Senator will object under Section 15 of the Electoral Count Act, how each member of the House and Senate will vote on any such objections, and how each state delegation in the House would potentially vote under the Twelfth Amendment absent a majority electoral vote. All that makes Congressman Gohmert's alleged injury far too uncertain to support standing under Article III. *Id.* at 414 ("We decline to abandon our usual reluctance to endorse standing theories that rest on speculation about the decisions of independent actors.").

Accordingly, the Court finds that Congressman Gohmert lacks standing to bring the claim alleged here.

B.

The Nominee-Electors argue that they have standing under the Electors Clause “as candidates for the office of Presidential Elector because, under Arizona law, a vote cast for the Republican Party’s President and Vice President is cast for the Republican Presidential Electors.” Docket No. 2 at 6 (citing ARIZ. REV. STAT. § 16-212). The Nominee-Electors were injured, Plaintiffs contend, when Governor Ducey unlawfully certified and transmitted the “competing slate of Biden electors” to be counted in the Electoral College. *Id.* at 7.

This alleged injury, however, is not fairly traceable to any act of the Vice President. Nor is it an injury likely to be redressed by a favorable decision here. *See Friends of the Earth*, 528 U.S. at 180–81.¹ Plaintiffs do not allege that the Vice President had any involvement in the “certification and transmission of a competing

¹ The Court need not decide whether the Nominee-Electors were “candidates” under Arizona law. Plaintiffs cite *Carson v. Simon*, in which the Eighth Circuit held that prospective presidential electors are “candidates” under Minnesota law and have standing to challenge how votes are tallied in Minnesota. 978 F.3d 1051, 1057 (8th Cir. 2020). But the U.S. District Court for the District of Arizona has distinguished *Carson*, holding that presidential electors in Arizona are ministerial and are “not candidates for office as the term is generally understood” under Arizona law. *Bowyer v. Ducey*, — F. Supp. 3d —, 2020 WL 7238261, at *4 (D. Ariz. Dec. 9, 2020); *see also Feehan v. Wis. Elections Comm’n*, No. 20-CV-1771-PP, 2020 WL 7250219, at *12 (E.D. Wis. Dec. 9, 2020) (nominee-elect is not a candidate under Wisconsin law). “Arizona law makes clear that the duty of an Elector is to fulfill a ministerial function, which is extremely limited in scope and duration, and that they have no discretion to deviate at all from the duties imposed by the statute.” *Bowyer*, 2020 WL 7238261, at *4 (citing ARIZ. REV. STAT. § 16-212(c)). Arizona voters, moreover, vote “for their preferred presidential candidate,” not any single elector listed next to the presidential candidates’ names. *Id.* (citing ARIZ. REV. STAT. § 16-507(b)). The court in *Bowyer* therefore held that nominee-electors in Arizona lacked standing to sue state officials for alleged voting irregularities. *See id.* In any event, even if the Nominee-Electors had standing to sue state officials to redress the injury alleged here, they have not done so. Plaintiffs have named only the Vice President, and they have not shown “a fairly traceable connection between [their] injury and the complained-of conduct of defendant.” *E.g., Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 103 (1998).

slate of Biden electors.” Docket No. 2 at 7. Nor could they. *See* 3 U.S.C. § 6. That act is performed solely by the Arizona Governor, who is a “third party not before the court.” *Lujan*, 504 U.S. at 560–61 (quoting *Simon v. Eastern Ky. Welfare Rts. Org.*, 426 U.S. 26, 41–42 (1976)). Indeed, Plaintiffs acknowledge that their injury was caused by Arizona officials in Arizona, the “Vice President did not cause [their] injury,” and their “unlawful injuries [were] suffered in Arizona.” Docket No. 2 at 7.

The Nominee-Electors argue that their injury is nevertheless fairly traceable to the Vice President because he will “ratify and purport to make lawful the unlawful injuries that Plaintiffs suffered in Arizona.” *Id.* For support, Plaintiffs cite *Sierra Club v. Glickman*, in which the Fifth Circuit held that an environmental injury was fairly traceable to the Department of Agriculture, even though the injury was directly caused by third-party farmers, because the Department had “the ability through various programs to affect the pumping decisions of those third party farmers to such an extent that the plaintiff’s injury could be relieved.” 156 F.3d 606, 614 (5th Cir. 1998). Nothing like that is alleged here. The Vice President’s anticipated actions on January 6 will not affect the decision of Governor Ducey regarding the certification of presidential electors—which occurred more than two weeks ago on December 14. Even “ratifying” or “making lawful” the Governor’s decision, as Plaintiffs argue will occur here, will not have any “coercive effect” on Arizona’s certification of electoral votes. *See Bennett v. Spear*, 520 U.S. 154, 168–69 (1997).

For similar reasons, the Nominee-Electors’ claimed injury is not likely to be redressed here. To satisfy redressability, Plaintiffs must show that it is “likely” their

alleged injury will be “redressed by a favorable decision.” *Lujan*, 504 U.S. at 561. But here, Plaintiffs seek declaratory and injunctive relief as to the manner of the Vice President’s electoral vote *count*. See Docket No. 1 ¶ 73. Such relief will not resolve their alleged harm with respect to Governor Ducey’s electoral vote *certification*. See Docket No. 2 at 7. As the Supreme Court has long held, “a federal court can act only to redress injury that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court.” *Simon*, 426 U.S. at 41–42; see also *El Paso Cnty.*, 982 F.3d at 343 (plaintiff lacks standing where an order granting the requested relief “would not rescind,” and “accordingly would not redress,” the allegedly harmful act).

Even if their injury were the loss of the right to vote in the Electoral College, see Docket No. 2 at 6, Plaintiffs’ requested relief would not redress that injury. Plaintiffs are not asking the Court to order the Vice President to count the Nominee-Electors’ votes, but rather that the Vice President “exercise the exclusive authority and sole discretion in determining which electoral votes to count for a given State,” or alternatively, to decide that no Arizona electoral votes should count. See Docket No. 1 ¶ 73. It is well established that a plaintiff lacks standing where it is “uncertain that granting [the plaintiff] the relief it wants would remedy its injuries.” *Inclusive Comtys. Project, Inc. v. Dep’t of Treasury*, 946 F.3d 649, 657–58 (5th Cir. 2019).


Accordingly, the Court finds that the Nominee-Electors lack standing.²

² Plaintiffs Hoffman and Kern claim without supporting argument that they have standing as members of the Arizona legislature. Docket No. 2 at 4. This claim fails for the reasons Congressman Gohmert’s standing argument fails. See *supra* Part III.A.

IV.

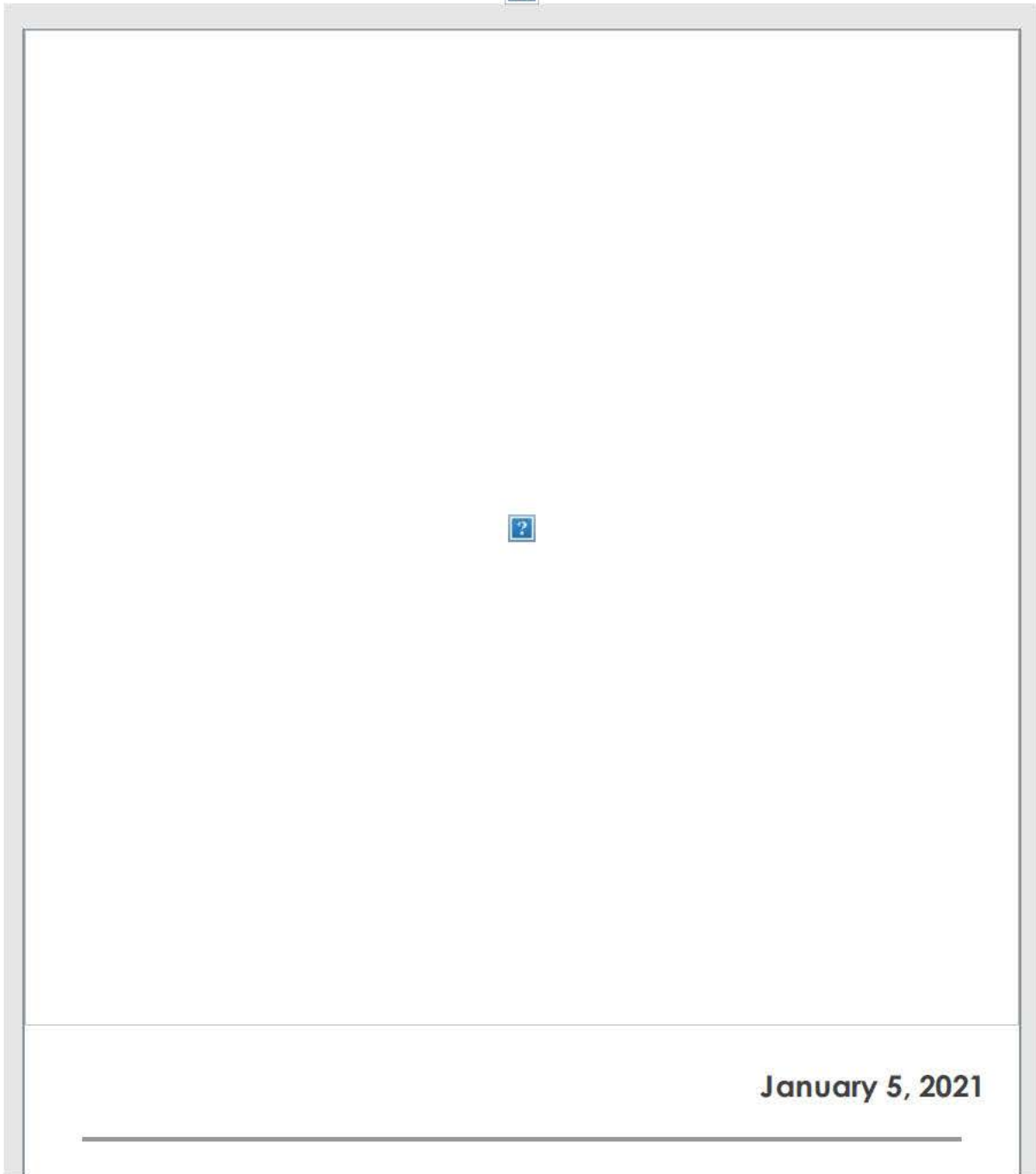
Because neither Congressman Gohmert nor the Nominee-Electors have standing here, the Court is without subject matter jurisdiction to address Plaintiffs' Emergency Motion or the merits of their claim. *HSBC Bank USA, N.A. as Tr. for Merrill Lynch Mortg. Loan v. Crum*, 907 F.3d 199, 202 (5th Cir. 2018). The Court therefore **DISMISSES** the case without prejudice.

So **ORDERED** and **SIGNED** this 1st day of **January, 2021**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE

(b)(6) - Jeffrey Rosen Email Address

From: (b)(6) - Jeffrey Rosen Email Address
Sent: Tuesday, January 5, 2021 5:34 PM
To: Rosen, Jeffrey A. (ODAG)
Subject: Fwd: Hoover Institution Report: Justin Grimmer's Comment on the Extent of Voter Fraud with Absentee Ballots

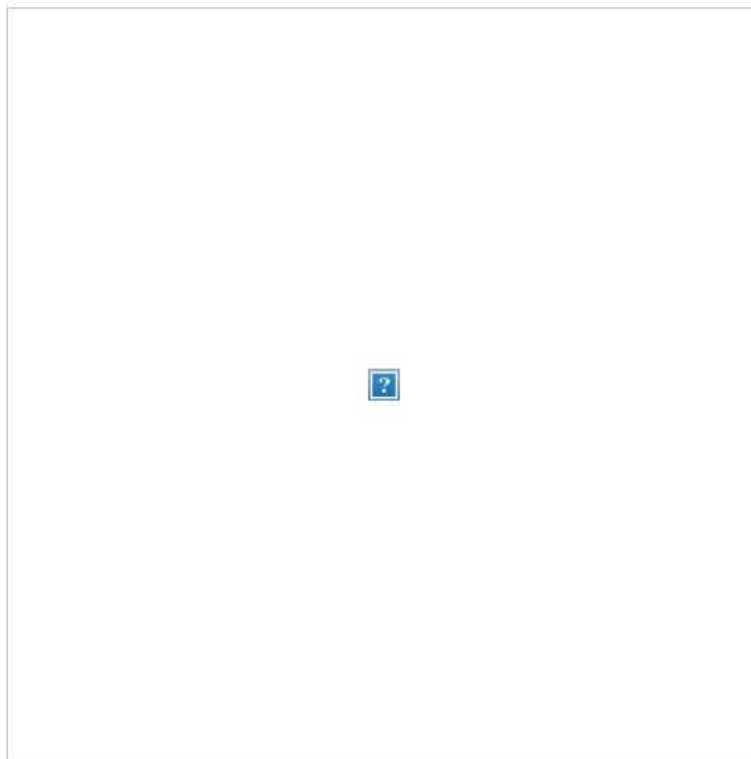


January 5, 2021

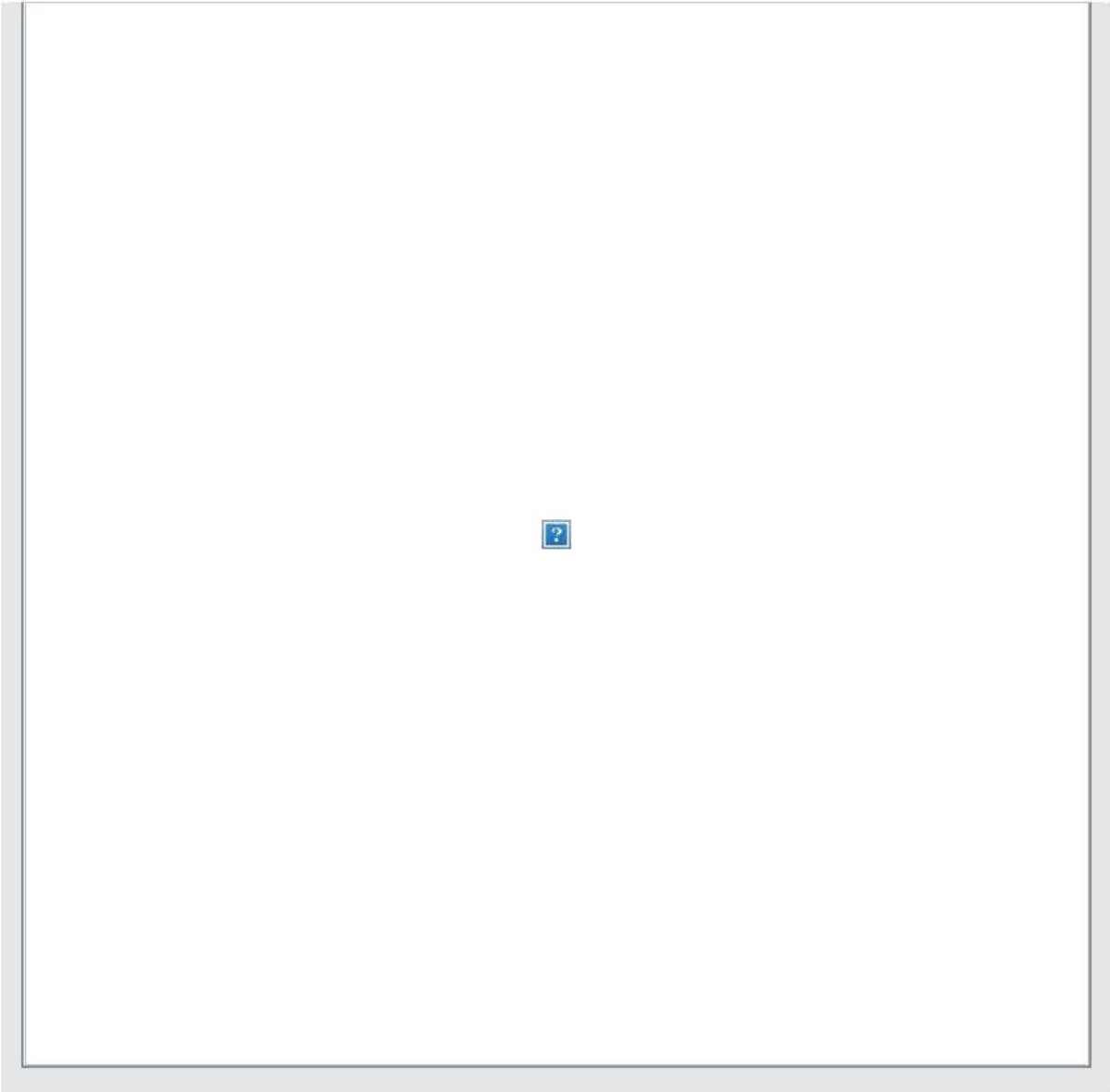
Comment on "A Simple Test for the Extent of Voter Fraud with Absentee Ballots in the 2020 Presidential Election"

Justin Grimmer, Hoover Institution Senior Fellow

"In a recent paper, John Lott Jr. claims to find evidence of anti-Trump fraud in the absentee counting procedure in Fulton County, Georgia, and Allegheny County, Pennsylvania. Using Lott's own data, we show that his claims are utterly baseless. Lott uses an unusual estimation strategy that suffers from a subtle but fundamental flaw: his conclusions about fraud in Fulton and Allegheny counties are entirely dependent on the completely arbitrary order in which pairs of precincts in other counties are entered in the dataset. When we rerun Lott's analysis using an alternative but equally justifiable coding rule, the evidence for anti-Trump fraud in these two counties entirely disappears. When we replace Lott's unusual specification with a more standard estimation strategy, we find absolutely no evidence of fraud. In short, Lott's (2020) analysis provides no evidence of anything distinctive or suspicious about the absentee ballot results in either Fulton County or Allegheny County."



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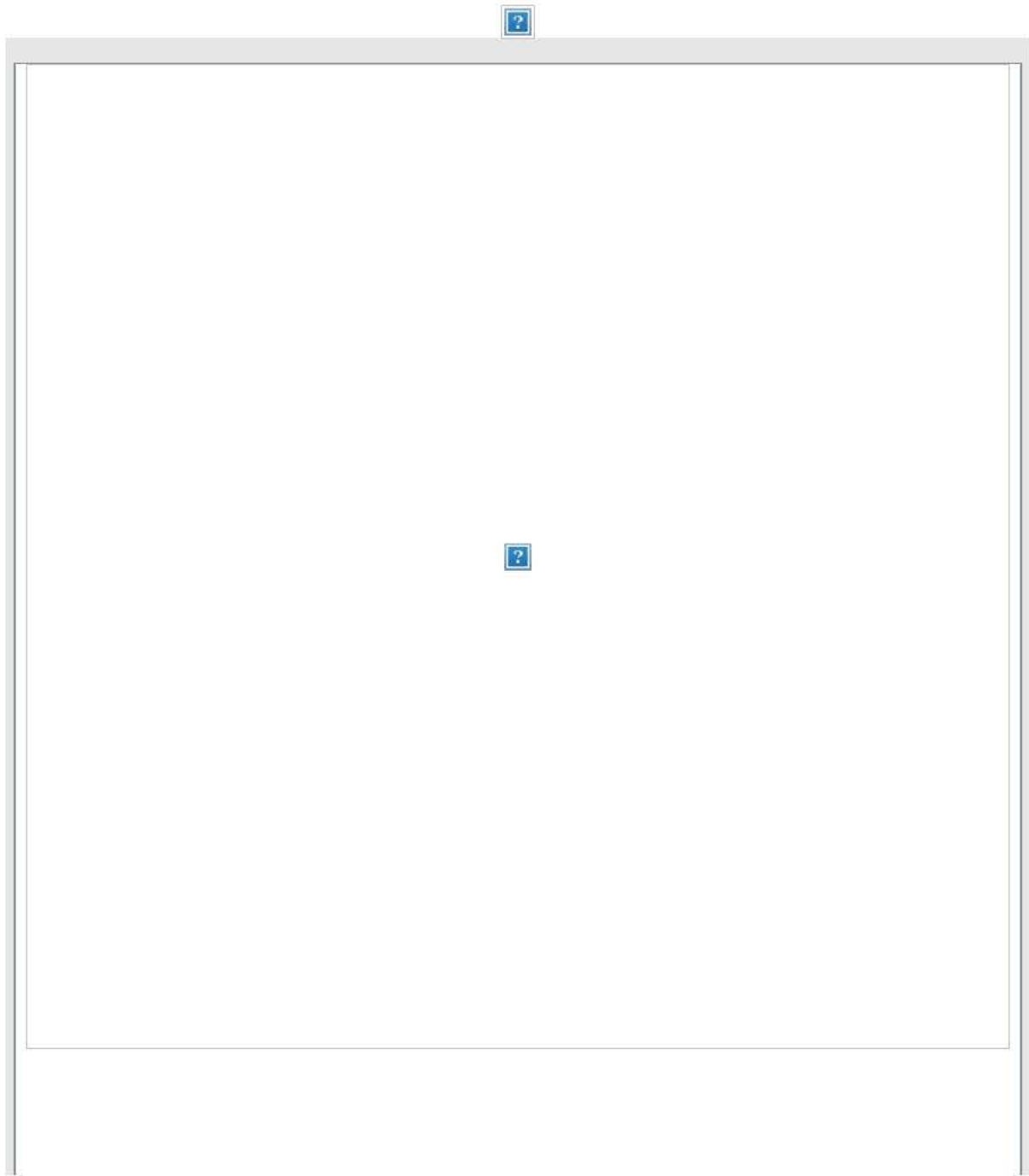
Sent by **(b) (6)** powered by



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Rosen, Jeffrey A. (ODAG)

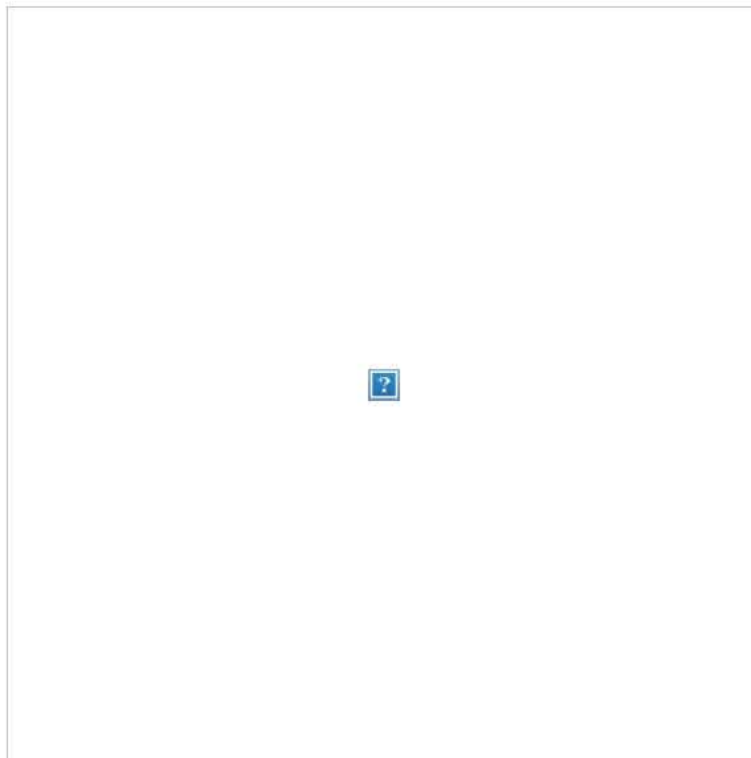
From: Rosen, Jeffrey A. (ODAG)
Sent: Tuesday, January 5, 2021 9:06 PM
To: Donoghue, Richard (ODAG)
Subject: FW: Hoover Institution Report



Comment on "A Simple Test for the Extent of Voter Fraud with Absentee Ballots in the 2020 Presidential Election"

Justin Grimmer, Hoover Institution Senior Fellow

"In a recent paper, John Lott Jr. claims to find evidence of anti-Trump fraud in the absentee counting procedure in Fulton County, Georgia, and Allegheny County, Pennsylvania. Using Lott's own data, we show that his claims are utterly baseless. Lott uses an unusual estimation strategy that suffers from a subtle but fundamental flaw: his conclusions about fraud in Fulton and Allegheny counties are entirely dependent on the completely arbitrary order in which pairs of precincts in other counties are entered in the dataset. When we rerun Lott's analysis using an alternative but equally justifiable coding rule, the evidence for anti-Trump fraud in these two counties entirely disappears. When we replace Lott's unusual specification with a more standard estimation strategy, we find absolutely no evidence of fraud. In short, Lott's (2020) analysis provides no evidence of anything distinctive or suspicious about the absentee ballot results in either Fulton County or Allegheny County."



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Rosen, Jeffrey A. (ODAG)

From: Rosen, Jeffrey A. (ODAG)
Sent: Thursday, January 7, 2021 12:22 PM
To: (b)(6) - Jeffrey Rosen Email Address
Subject: FW: STATEMENT OF ACTING ATTORNEY GENERAL JEFFERY A. ROSEN

seal - centered header for gov delivery



The United States Department of Justice

FOR IMMEDIATE RELEASE
WWW.JUSTICE.GOV/NEWS

THURSDAY, JANUARY 7, 2020

STATEMENT OF ACTING ATTORNEY GENERAL JEFFERY A. ROSEN

WASHINGTON “Yesterday, our Nation watched in disbelief as a mob breached the Capitol Building and required federal and local law enforcement to help restore order. The Department of Justice is committed to ensuring that those responsible for this attack on our Government and the rule of law face the full consequences of their actions under the law. Our criminal prosecutors have been working throughout the night with special agents and investigators from the U.S. Capitol Police, FBI, ATF, Metropolitan Police Department and the public to gather the evidence, identify perpetrators, and charge federal crimes where warranted. Some participants in yesterday’s violence will be charged today, and we will continue to methodically assess evidence, charge crimes and make arrests in the coming days and weeks to ensure that those responsible are held accountable under the law.”

###

AG

21 13

Do not reply to this message. If you have questions, please use the contacts in the message or call the Office of Public Affairs at 202 514 2007.

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Donoghue, Richard (USANYE)

From: Donoghue, Richard (USANYE)
Sent: Thursday, January 7, 2021 8:00 PM
To: Donoghue, Richard (ODAG)
Subject: 1/6/21 Notes

DC Response - 1/6/21

Calls prior

SIOC

WFO - w/ DB

1545 Call [REDACTED] (b)(5), (b)(6) per DOD

Assembly Areas - 119 D St. NE

[REDACTED] Chief Steve Sund

Donoghue, Richard (ODAG)

From: Donoghue, Richard (ODAG)
Sent: Saturday, January 9, 2021 9:00 PM
To: Raimondi, Marc (PAO)
Subject: WSJ

Marc - please send me the full article linked below. Thanks, Rich

<https://www.wsj.com/articles/white-house-forced-georgia-u-s-attorney-to-resign-11610225840>



(U) National Crisis Coordination Center Update: Preventing Violence and Criminal Activity January 2021

1700 10 JANUARY 2021

(U//LES) This update was compiled by the Joint Inter Agency National Crisis Coordination Center in the FBI Strategic Information Operations Center. Information is accurate as of 1700 EST on 10 January 2021. The following agencies contributed to the development of this SITREP: ATF, DEA, DOD, DOJ, DHS, US Park Police, and USMS. Responses provided after the cut off time will be included in the next SITREP.

(U) The information marked (U//LES) in this document is the property of the FBI and may be distributed within the Federal Government (and its contractors), U.S. intelligence, law enforcement, public safety or protection officials, and individuals with a need to know. Distribution beyond these entities without FBI authorization is prohibited. Precautions should be taken to ensure this information is stored and/or destroyed in a manner that precludes unauthorized access. Information bearing the LES caveat may not be used in legal proceedings without first receiving authorization from the originating agency. Recipients are prohibited from subsequently posting the information marked LES on a website or an unclassified network.

(U//LES) Under FBI policy and federal law, no investigative activity may be based solely on First Amendment activity. The FBI does not investigate, collect, or maintain information on U.S. persons solely for the purpose of monitoring activities protected by the First Amendment. Moreover, the FBI will “maintain no record describing how an individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.” Privacy Act of 1974, section (e)(7).

(U//LES) DIOG Appendix L further restricts the collection of information regarding First Amendment protected activity: the FBI may only collect information relating to the exercise of a First Amendment right if (1) the collection is logically related to an authorized investigative purpose, (2) the collection does not materially interfere with the ability of an individual or a group to engage in the exercise of constitutionally protected rights, and (3) the method of collection is the least intrusive alternative that is reasonable, based upon the circumstances of the investigation (b)(7)(E) per FBI

(U//LES) Within this legal, and policy framework, the information requested from field offices in this communication is intended to provide timely information to appropriate law enforcement and/or public safety personnel who are authorized to protect facilities, personnel, and the public from imminent threats of violent and/or criminal activity. This document is meant as a summary of significant investigative highlights and NOT as a comprehensive review of ongoing investigations. The information contained in this communication is NOT to be incorporated into any formal or informal written document nor further disseminated without the authorization of the FBI Headquarters, SIOC. Unauthorized use of this information may jeopardize sensitive national security and/or criminal investigations, result in the possible identification and/or physical harm of human sources or create undue notification into the FBI's interest of intended targets.

(U) This communication is intended to provide timely information to appropriate law enforcement and/or public safety personnel who are authorized to protect facilities, personnel, and the public from imminent threats of violent and/or criminal activity. It is related to and within the scope of an authorized law enforcement investigation or investigative activity. Under FBI policy and federal law, no investigative activity may be based solely on First Amendment activity. The FBI does not investigate, collect, or maintain information on U.S. persons solely for the purpose of monitoring activities protected by the First Amendment.

(U) National Crisis Coordination Center (NC3) Executive Summary

(U//~~FOUO~~) THE FBI, IN CLOSE COORDINATION WITH ITS FEDERAL, STATE, AND LOCAL PARTNERS, CONTINUES TO MONITOR AND RESPOND TO EVENTS RELATED TO THE VIOLENCE ASSOCIATED WITH LAWFUL PROTESTS.

(b)(7)(E) per FBI

(U) ELECTORAL CERTIFICATION AND INAUGURATION 2021

- **(b)(7)(E) per FBI**
- (U//~~FOUO~~) The FBI is investigating the death of US Capitol Police (USCP) Officer Brian Sicknick who died from injuries sustained during the US Capitol breach. There were 14 other officers injured during the incident.
- (U//~~LES~~) As of 1300 on 10 Januar **(b)(7)(E) per FBI**
- **(b)(7)(E) per FBI**
- (U//~~FOUO~~) As of 0900 on 10 January, the FBI has received nearly 45,000 Digital Media Tips (DMT **(b)(7)(E) per FBI**)
- **(b)(7)(E) per FBI**
- **(b)(7)(A), (b)(7)(E) per FBI**

(U) National Threat Picture Through Inauguration 2021

(U) CURRENT FLASHPOINTS AND RESPONSES

(U) Potential of criminal offenses or violence related to the 6 January 2021 Electoral College certification of the 2020 Presidential Election results for situational awareness – past/ongoing (within last 12-24 hours) and planned (next 12-24 hour [REDACTED] *(b)(7)(E) per FBI*

(U) Past/Ongoing in the last 12 24 Hours

- *(U//LES) On 9 January, approximately 100 pro-Trump individuals organized a gathering in the Pacific Beach area of San Diego which prompted anti-Trump individuals to gather and counter-protest in the same area. The opposing individuals pepper sprayed each other, and several physical altercations occurred. There were reports of weapons (knives) and SDPD recovered one fake gun. SDPD arrested three individuals and the individuals eventually dispersed.*

• **(b)(7)(E) per FBI**

(U) Planned in the next 12 24 hours

• **(b)(7)(E) per FBI**

(U) UPCOMING FLASHPOINTS AND RESPONSE

(b)(7)(E) per FBI

(U) Potential Flashpoints

(U) Potential Protests at State Capitols and the US Capitol

- (b)(7)(E) per FBI
-
-
-

(U) Transition and Inauguration

- (b)(7)(E) per FBI
-

(U) Threats related to President-Elect Biden

- (U//LES) Multiple reports indicate various threats to harm President-Elect Biden ahead of the presidential inauguration. Additional reports indicate threats against VP-Elect Harris and Speaker Pelosi.

(U) OTHER

- (U//LES) As of 6 January, the FBI issued a request for information leading to the location, arrest, and conviction of the person(s) responsible for the placement of the suspected pipe bombs on 6 January in Washington, D.C. The FBI is offering a reward of up to \$50,000 for information.
- (U//FOUO) On 6 January, the FBI activated a digital media tip line URL (<https://fbi.gov/USCapitol>) which is now open to the public. As of 0900 on 10 January, FBI has received nearly 45,000 Digital Media Tips (DMT) (b)(7)(E) per FBI

January 11, 2021

Acting Attorney General Jeffrey Rosen
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Request for Special Counsel to Investigate Any Criminal
Interference with the Certification of the Presidential Election

Dear Acting Attorney General Rosen:



National Political
Advocacy Department
915 15th St. NW, 6th FL
Washington, D.C. 20005
aclu.org

Susan Herman
President

Anthony Romero
Executive Director

Ronald Newman
*National Political
Director*

The American Civil Liberties Union (ACLU) strongly urges you to appoint a special counsel to investigate, and if warranted, prosecute President Donald Trump, his associates, and any other federal official who may have been involved in recent attempts to subvert the outcome of the 2020 Presidential election, if those attempts amount to criminal violations of federal civil rights laws, including, but not limited to, Section 241 of Title 18 of the United States Code. By a unanimous vote on January 10, 2021, the ACLU National Board voted to support the impeachment of President Donald Trump because of his pattern of bad-faith conduct designed to subvert the results of a fair and free election. Regardless of what happens in the House or Senate with regard to impeachment and removal, the U.S. Department of Justice should initiate its own investigation to ascertain whether criminal violations of federal civil rights laws occurred.

The outcome of the 2020 presidential election is the most litigated ever in our country's history. More than 60 legal challenges have been filed to throw out lawfully cast ballots. These lawsuits have had a single purpose: to disenfranchise qualified American voters, particularly voters of color, who voted against President Trump. The courts—both federal and state, and including judicial appointees of both political parties—have unanimously rejected these challenges as without basis in fact or law.

Yet the President has not been deterred in his efforts to overturn the results of an election that he lost. Since President-Elect Biden was declared the winner, President Trump and his associates have embarked on a relentless and multi-pronged campaign attempting to overturn the clear results, including, in one instance, by exhorting the Georgia Secretary of State to “find” enough votes that would allow him to win that state—a clear and unambiguous attempt to undermine the will of the voters of Georgia and steal their electoral votes.

In addition to pressuring and threatening state and local officials to reverse election results in his favor, the President has repeatedly

made scores of knowingly false statements attempting to undermine the integrity and legitimacy of the 2020 election, to impugn the votes of Americans in racial minority groups in particular, and to deny his loss at the ballot box. These statements have fueled the prevailing sentiment of his supporters that the election of President-Elect Biden is not legitimate. Following over eight weeks of persistent false statements about the legitimacy of the election results from the President and his surrogates, President Trump led his supporters in a rally on the National Mall at the very moment Congress was meeting to certify the election. After the President said, “we’re going to walk down to the Capitol,” a group of Trump supporters did just that and, once there, many of them broke into the Capitol building and disrupted the joint session of Congress convened to certify the election of Joe Biden to be the 46th President of the United States. Images of these rioters swarming the halls of our Capitol — carrying weapons, tactical gear, restraining zip ties, and, in a symbol of the white supremacy underpinning their violent acts, Confederate flags — while Members of Congress, staff, reporters, and the building’s caretakers fled for their lives will not soon be forgotten.

The President and his enablers must be held accountable for their efforts to subvert the November 2020 election, including for any federal crimes they may have committed in the course of their attempts to overturn the election results.

The President and his advisors have engaged in multiple concerted efforts to pressure or coerce state and local officials to reject, revise, or refuse to certify the vote totals, thereby overturning the results of the election in those states. Although vigorous lobbying of government officials is permissible, the scope and baseless character of the President’s personal intrusion into the machinery of the electoral process at the local and state levels is unprecedented, and the context in which it has taken place cannot be ignored: Election officials in Georgia, Pennsylvania, Arizona, and other states have faced intense pressure and acrimony from the President’s supporters, including death threats.¹

In an especially notorious case, the President called the Georgia Secretary of State on January 2, and, during the call, stated that “I just want to find 11,780 votes”—i.e., enough to overcome the certified margin in the state—and raised the specter of possible criminal liability against him if he did not comply with the President’s demands.

These efforts ultimately failed, and the states performed their duty to certify the proper slates of electors, chosen by their voters. With options to overturn the election narrowing, the President and his enablers trained their sights on the Vice President and Congress as they prepared to certify the result of the electoral college votes. The President pressured the Vice President to refuse to accept the electoral votes of three states—Arizona, Georgia, and Pennsylvania—despite the fact that the Vice President has no legal authority to do so—in order to prevent certification of the presidential election. When that failed, the President exhorted his supporters to go to the Capitol, which they then stormed, disrupting the tally of electoral votes. At least five people died in the resulting chaos.

¹ In at least one case, the President’s pressure was effective: in Wayne County, Michigan, which includes Detroit, two local elections officials attempted to rescind their votes to certify election results roughly 24 hours after being contacted by the President.

Taken together, these acts and others provide evidence of a sustained and concerted attempt on the part of President Trump and his supporters to overturn the results of what his own Department of Homeland Security has called the most secure election in history. The fact that the President was unsuccessful does not and cannot absolve him from facing appropriate consequences for his actions, including criminal penalties if warranted.

Criminal Violations of Federal Civil Rights Laws. As the Department of Justice well knows,² numerous federal laws protect voter participation and the integrity of our elections. Among them is Section 241 of Title 18 of the United States Code, a key civil rights statute, which prohibits conspiracies “to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same.” If the President engaged in acts to prevent the vote of citizens of the United States from being counted and taking effect, those actions amount to unlawful election interference. For example, the President of the United States, during his call with officials from Georgia, urged the officials to “find” precisely enough votes to swing the election in his favor and raised the specter of criminal prosecutions for the officials if they did not succumb to his will. That conversation and any other communications with Georgia officials deserve a thorough examination to determine whether they demonstrate an intent to deprive the people of Georgia of their right to vote, secured to them by the Constitution. There must be a full investigation into President Trump’s various acts that appear to have been intended to overturn or subvert the results of an election he lost. This should also include his actions on January 6, 2021, in relation to the mob attack on the U.S. Capitol.³

Requirement to Appoint a Special Counsel. Justice Department regulations require the Attorney General, or, in cases where the Attorney General is recused, the Acting Attorney General to appoint an outside counsel when a three-prong test is met. First, a “criminal investigation of a person or matter [must be] warranted.”⁴ Second, the “investigation or prosecution of that person or matter by a United States Attorneys’ Office or litigating division of the Department of Justice would present a conflict of interest for the Department.”⁵ Third, “under the circumstances it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter.”⁶ If the regulations’ three-prong test is met, then the Attorney General or Acting Attorney General must select a special counsel from outside the government who would have the authority to secure necessary resources for the investigation and prosecution and have full investigatory and prosecutorial powers.⁷

² See, e.g., Department of Justice, *Federal Prosecution of Election Offenses*, Eighth Edition (December 2017).

³ Of course, if the special counsel determines that any potential defendants should be prosecuted based on their speech alone—as distinguished from the acts carried out as part of a conspiracy that they joined—we trust that the counsel would apply the standard of *Brandenburg v. Ohio*, 395 U.S. 444 (1969) (per curiam), and other relevant First Amendment principles to determine whether the speech is protected.

⁴ 28 C.F.R. § 600.1

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* §§ 600.3-600.6.

There is little doubt that an investigation is warranted in this matter. The President of the United States sought to coerce state officials to manufacture additional votes for him that would swing an election he lost in his favor. He has daily repeated falsely that the election was stolen from him and engaged in numerous other acts attempting to change, reject, subvert, or otherwise undermine the results. The franchise is at the very core of our democracy, and it is a crime to intentionally interfere with its exercise. For those reasons, a criminal investigation is warranted.

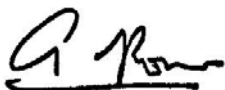
There would be a conflict of interest for the Department of Justice to pursue this investigation under its own authority. The Department of Justice is ultimately supervised by the President, a classic conflict of interest. Given the accusations made by President Trump and his efforts to misuse the Department of Justice's powers for personal gain, to avoid any appearance of bias, an independent special counsel is necessary to promote public trust in the process and to ensure the results of the investigation are respected by everyone, including those that support President Trump.

It would be in the public interest for an outside counsel to pursue this investigation. The integrity of our election is a gravely serious matter, and investigations into its systematic subversion should be conducted with the utmost integrity and clarity.

The faith of the people in their government and their trust in the government's ability to protect their right to vote and to ensure their vote will be counted have been imperiled by the actions of the President. A full investigation, and, if warranted, prosecution, by an independent special counsel are necessary to reveal any criminal activity that may have been perpetrated within the highest halls of power and to hold those responsible to account for their actions.

Thank you for your attention to this urgent request.

Sincerely,



Anthony Romero
Executive Director
American Civil Liberties Union



Monica Hopkins
Executive Director
ACLU of the District of Columbia

Rosen, Jeffrey A. (ODAG)

From: Rosen, Jeffrey A. (ODAG)
Sent: Tuesday, January 12, 2021 9:17 PM
To: Claire M. Murray (OASG [REDACTED] (b) (6))
Subject: FW: Departure Timetable
Importance: High

Claire, I am not going to respond to Jeff Clark's message given the events that took place with him. Those were not things on which "reasonable minds can differ" and simply move along. It appears he still does not recognize how harmful his actions and proposals were.

Jeff

From: Clark, Jeffrey (CIV) <jefclark@CIV.USDOJ.GOV>
Sent: Friday, January 8, 2021 4:31 PM
To: Rosen, Jeffrey A. (ODAG) <jarosen@jmd.usdoj.gov>; Murray, Claire M. (OASG [REDACTED] (b) (6)) >
Subject: Departure Timetable
Importance: High

Jeff & Claire,

I wanted to let you know that, pending your reaction, I am planning to leave my DOJ positions on Thursday, January 14, 2021 at circa noon. I have some projects to finish up before then and, of course, will continue to work on normal package flow approval up until the prior evening.

I believe I've left a legacy of accomplishment starting after my confirmation in 2018. For instance, (1) I've almost certainly argued more cases personally than any other AAG in this Administration (achieving about an 85% win rate at this point, though several decisions are still pending, so the final rate may change before the dust settles); (2) working closely with CEQ and indeed helping drive the historic revisions to the NEPA regulations along with you, Jeff, and (3) successfully defending them in district court against being enjoined *twice* — once before they went into effect and once afterwards; (4) winning the sprawling *Juliana* climate change case in the Ninth Circuit challenging the actions or inactions of multiple Cabinet agencies with authority over aspects of energy policy; (5) banning the unlawful device of supplemental environmental projects ("SEPs") which directly led to that device being banned administratively by EPA Administrator Wheeler as well, all of which fed into the Department's release of (6) the third-party payment zero-point regulations; (7) reorganizing the Civil Division's approval process and making it more electronic; (8) arguing a prominent False Claims Act case in the Third Circuit that will take its place as part of a circuit split and involves defending the Department's broad powers to dismiss *qui tam* matters, and many other achievements. Indeed, the only personal case I have lost at this point (an appeal) was 2-1, garnering a dissent from Judge Lee on the Ninth Circuit.

I will miss the Justice Department and look back very fondly on this, my second stint in the Executive Branch. As you know, I have greatly enjoyed working with both of you and I sincerely hope our friendship continues. On most matters, we have been in total and vigorous agreement or in virtually all situations in at least in substantial agreement. But no one can agree on all things and reasonable minds can differ. Yet friendships and mutual professional respect endure.

In the Civil Division, Jenn Dickey, as the Principal Deputy, will take over from the time of my departure through the end of the day on January 15. Then Jenn and I would recommend to you that John Coghlan, the DAAG over Federal

Programs Branch, take over the lead duties in CIV from the time of the 16th before the new Inauguration occurs. Both Jenn and John will be and have been excellent. And in the Environment Division, I believe that will leave my Principal Deputy there, Jon Brightbill, as the Acting ENRD AAG from about midday the 14th forward. He will serve with distinction, as he has since July 2017 as a DAAG, since December 2018 as PDAAG, and since September 2020 performing the duties of the ENRD AAG.

Let me know if you have any questions or objections to that timing plan.

Thanks and God bless you, the Department, and its lawyers and staff!

Jeff

Jeffrey Bossert Clark
Assistant Attorney General
Environment & Natural Resources Division
Acting Assistant Attorney General
Civil Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

(b) (6)
(b) (6)

January 14, 2021

Jeffrey A. Rosen
Acting Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

Dear Acting Attorney General Rosen:

On January 6, Americans watched in shock and horror as a violent mob opposed to the certification of the 2020 presidential election overran the United States Capitol building, resulting in five deaths and widespread destruction to the seat of our democracy. Since then, federal law enforcement agencies have remained virtually silent regarding these appalling events and the potential for future violence. We, the undersigned organizations, call upon the Administration and federal law enforcement agencies to rectify this unacceptable and alarming failure to provide vital, timely information to members of the press and by extension the American people. The agencies must share information about possible civil unrest in the days leading up to Inauguration Day, January 20, through frequent and regular in-person press briefings so the public and news outlets can be properly informed about viable threats and can take appropriate action to protect themselves.

Following major incidents impacting the safety and security of the nation and the public, government officials normally brief the press quickly and often hold multiple, regular media briefings. For example, the first press conferences by national and local officials following the 1995 bombing of the federal building in Oklahoma City occurred later the same day of the bombing, and, at the request of the Federal Bureau of Investigation (FBI), officials in Oklahoma City formally established a daily press conference with both local and federal officials participating.

Here, however, the various law enforcement agencies investigating the Capitol riot including the U.S. Capitol Police, FBI, Department of Justice (DOJ) and Department of Homeland Security (DHS) and others were slow to hold in-person briefings to explain their findings, answer questions or inform the public about the possibility of future attacks, including at the upcoming inauguration of President-elect Joe Biden and Vice President-elect Kamala Harris. Americans waited almost a full week after the attack for the first press conference by law enforcement about the Capitol riot. This delay in holding even a single briefing needlessly kept citizens in the dark and is both inexcusable and inexplicable, particularly given that federal authorities reportedly have

been seeking the public's help in identifying the perpetrators of the attack. We appreciate the recent decision by the acting U.S. Attorney for the District of Columbia to dedicate a team of federal investigators to specifically look into attacks on journalists, but this is not enough.

Going forward, we urge federal law enforcement agencies and officials to commit to holding regularly scheduled in-person press briefings about the investigations into the January 6 riot and continuing threats to our national and state governments. The media outlets and journalists we represent feel privileged to uphold the First Amendment by informing the public with vital information every day. But to perform their jobs most effectively, law enforcement officials must be more transparent. Given the clear challenges facing our democracy today, greater transparency and openness is a necessary prerequisite for restoring public faith in our political institutions and their operations, including security and law enforcement operations.

We look forward to further discussing these matters with you.

Sincerely,

Asian American Journalists Association
National Association of Black Owned Broadcasters
National Association of Broadcasters
National Association of Hispanic Journalists
Native American Journalists Association
News Leaders Association
News Media Alliance
News Media for Open Government
National Newspaper Association
Online News Association
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cc: Christopher A. Wray, Director, Federal Bureau of Investigation
Pete Gaynor, Acting Secretary, Department of Homeland Security
Yogananda Pittman, Acting Chief, U.S. Capitol Police
Timothy P. Blodgett, Acting Sergeant at Arms, U.S. House of Representatives
Jennifer Hemingway, Acting Sergeant at Arms, U.S. Senate

Donoghue, Richard (ODAG)

From: Donoghue, Richard (ODAG)
Sent: Thursday, January 14, 2021 8:32 PM
To: Marc Raimondi (OPA [REDACTED] (b) (6))
Subject: Article Request

Marc,

When you get a chance, please send me this article:

https://www.washingtonpost.com/politics/us-attorney-georgia-fraud/2021/01/12/45a527c6-5526-11eb-a817-e5e7f8a406d6_story.html

Thanks,

Rich

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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF ARIZONA

10 United States of America,
11 Plaintiff,

12 vs.

13
14 Jacob Anthony Chansley,
15 a.k.a. "Jacob Angeli,"
16 Defendant.

MJ 21-05000
CR21-00003-RCL

**GOVERNMENT'S BRIEF IN SUPPORT
OF DETENTION**

17 **INTRODUCTION AND SUMMARY OF ARGUMENT**

18 The detention hearing for Jacob Anthony Chansley ("Chansley") is scheduled for
19 January 15, 2021, at 2:30 p.m. For the reasons set forth below, the Court should order
20 Chansley to be detained pending trial. Chansley is an active participant in and has made
21 himself the most prominent symbol of a violent insurrection that attempted to overthrow
22 the United States Government on January 6, 2021. Chansley has expressed interest in
23 returning to Washington, D.C. for President-Elect Biden's inauguration and has the ability
24 to do so if the Court releases him. No conditions can reasonably assure his appearance as
25 required, nor ensure the safety of the community.

26 A federal grand jury indicted Chansley on January 11, 2021. (*See* Att. A,
27 Indictment.) The indictment charges two felonies and four misdemeanors arising from
28 Chansley's actions in the Capitol on January 6. Count One, a felony in violation of 18

1 U.S.C. § 231(a)(3), alleges that Chansley “committed and attempted to commit an act to
2 obstruct, impede, and interfere with a law enforcement officer lawfully engaged in the
3 lawful performance of his official duties incident to and during the commission of a civil
4 disorder, and the civil disorder obstructed, delayed, or adversely affected the conduct and
5 performance of a federally protected function.” (Att. A at 1-2.) Count Two, also a felony,
6 alleges that Chansley “attempted to, and did corruptly obstruct, influence, and impede an
7 official proceeding, that is, a proceeding before Congress, by committing an act of civil
8 disorder, and threatening Congressional officials, and unlawfully remaining in a restricted
9 building without lawful authority, and engaging in disorderly and disruptive conduct,” in
10 violation of 18 U.S.C. § 1512(c)(2). (Att. A at 2.)

11 Detention is authorized in this case because, as explained below, Chansley has
12 committed a felony that involves the use of a dangerous weapon (a spear), and there are
13 serious risks that he will flee and obstruct or attempt to obstruct justice. Furthermore, he
14 poses an ongoing danger to the community that no conditions of pretrial release can
15 mitigate. *See* 18 U.S.C. § 1342(f)(E), (f)(2)(A), (f)(2)(B), (g)(4).

16 At the hearing tomorrow, the United States will rely on the Pretrial Services Report
17 (“PTS Report”) on proffered facts contained below detailing the attack on the United States
18 Capitol on January 6, 2021, and on Chansley’s actions before, during, and after the attack
19 that led to his arrest. *United States v. Winsor*, 785 F.2d 755, 756 (9th Cir. 1986) (“[T]he
20 government may proceed in a detention hearing by proffer or hearsay.”). If the Court
21 wishes to hear testimony from a Special Agent with the Federal Bureau of Investigation
22 (FBI), an agent will be available and the United States will be prepared to present such
23 testimony at the hearing.

24 **FACTUAL AND PROCEDURAL HISTORY**

25 The Current Offense. The United States Capitol, located at First Street, SE, in
26 Washington, D.C., is secured 24 hours-a-day by the U.S. Capitol Police. Restrictions
27 around the U.S. Capitol include permanent and temporary security barriers and posts
28 manned by the Capitol Police. Only authorized people with appropriate identification are

1 allowed access inside the U.S. Capitol.

2 On January 6, 2021, the exterior plaza of the Capitol was closed to members of the
3 public and a joint session of the United States Congress convened inside. During the joint
4 session, elected members of the U.S. House of Representatives and the U.S. Senate were
5 meeting in separate Chambers of the Capitol to certify the vote count of the Electoral
6 College of the 2020 Presidential Election, which had taken place on November 3, 2020.
7 The joint session began at approximately 1:00 p.m. Vice President Mike Pence was present
8 and presiding in the Senate Chamber.

9 With the joint session underway, a large crowd gathered outside the U.S. Capitol.
10 As noted above, temporary and permanent barricades were in place around the exterior of
11 the U.S. Capitol building, and U.S. Capitol Police were present and attempting to keep the
12 crowd away from the building and the proceedings underway inside.

13 Between 1:00 p.m. and 2:00 p.m., individuals in the crowd forced their way through,
14 up, and over the barricades and officers of the U.S. Capitol Police, and advanced to the
15 exterior façade of the building. They did so while the joint session was still underway and
16 the exterior doors and windows of the U.S. Capitol were locked or otherwise secured.
17 Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from
18 entering the U.S. Capitol. However, shortly after 2:00 p.m., individuals in the crowd forced
19 entry into the U.S. Capitol, including by breaking windows.

20 Shortly thereafter, members of the United States House of Representatives and
21 United States Senate, including the President of the Senate, Vice President Mike Pence,
22 were instructed to and did evacuate the Chambers. Accordingly, the joint session of the
23 United States Congress was effectively suspended until shortly after 8:00 p.m. Vice
24 President Pence remained in the United States Capitol from the time he was evacuated from
25 the Senate Chamber until the sessions resumed.

26 Chansley was one of the insurrectionists who entered the Capitol building. News
27 and social media coverage of these events confirmed his presence by approximately 2:30
28 p.m. Chansley wore horns, a furry coyote tail headdress, red, white and blue face paint,

1 and tan pants. He was shirtless and carried a bullhorn and a six-foot-long spear with an
2 American flag tied just below the blade. A social media post (credited as Getty images)
3 demonstrates Chansley's conspicuous appearance outside of the Senate Chambers:



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15 U.S. Capitol Police Officer Keith Robishaw is shown on the left in this image.
16 Officer Robishaw was attempting to quell the crowd and move them out of the area.
17 Chansley approached Officer Robishaw and screamed, among other things, that this was
18 their house, and that they were there to take the Capitol, and to get Congressional leaders.
19 Chansley also used his bullhorn to communicate that they were there to take out several
20 United States congressmen.

21 While Officer Robishaw was attempting to quell the crowd, Chansley was using his
22 bullhorn to incite it. Because the Capitol building is cavernous, the sound of Chansley's
23 voice over the bullhorn carried to different areas of the building. Officer Robishaw could
24 hear reactions from a different group of protestors in a different hallway being kept back
25 by other officers when Chansley would yell into the bullhorn. The photograph below
26 depicts their interaction.

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Robishaw and other officers calmed the protestors somewhat and directed them to leave the area from the same way they had entered. Most protestors complied, but Chansley disobeyed the order and instead began heading up a different stairwell towards the Senate floor. Officer Robishaw, alone with more than 25 rioters in the Senate Chamber, attempted to engage with Chansley and asked for his assistance to use the bullhorn to get the protestors out of the Chamber. Instead of doing so, Chansley ran up on the dais where Vice President Pence had been presiding just minutes before, and begin posing on the dais for other rioters to document and photograph, and wrote a note to Vice President Pence



1 saying, “it's only a matter of time, justice is coming.”

2 On January 7, 2021, Chansley called the Washington Field Office of the FBI and
3 requested to speak with law enforcement. Chansley confessed that he was the man
4 photographed at Vice President Pence’s chair on the Senate dais, face painted, carrying the
5 spear and wearing a horned helmet. He said that he was able to get into the United States
6 Senate in D.C. “by the grace of God.” Chansley said that he was glad he sat in the Vice
7 President’s chair because Vice President Pence is a child-trafficking traitor. However,
8 Chansley said he did not mean his note to Vice President Pence “it's only a matter of
9 time, justice is coming” as a threat. Chansley also expressed his interest in returning to
10 Washington D.C. for the inauguration, later telling the FBI: “I’ll still go, you better believe
11 it. For sure I’d want to be there, as a protestor, as a protestor, fuckin’ a.”

12 In an interview with NBC News before his arrest, Chansley boasted about his
13 involvement in the mob that infiltrated the Capitol, driving Congress people and staffers to
14 flee in fear of their lives. “The fact that we had a bunch of our traitors in office hunker
15 down, put on their gas masks and retreat into their underground bunker, I consider that a
16 win,” Chansley said.¹ Chansley stated that he drove to Washington, D.C. as a part of a
17 group effort, with other “patriots” from Arizona, at the request of the President that all
18 “patriots” come to D.C. on January 6, 2021.

19 On January 9, 2021, Chansley drove to the Phoenix FBI field office to continue his
20 interview. Chansley was then unaware of the complaint and arrest warrant, as both were
21 sealed until after his arrest that morning. Twice, Chansley told the FBI that he had plans
22 after the January 9 FBI interview to drive to the Arizona State Capitol. Corroborating his
23 statement, Chansley had his horns, furry coyote tail headdress, face paint, tan pants, six-
24 foot-long spear, and his bullhorn inside the 2003 Hyundai that he parked at the FBI. Also

26 ¹ “Capitol Rioter in Horned Hat Gloats as Feds Work to Identify Suspects,” *available at*
27 <https://www.nbcnews.com/news/us-news/capitol-rioter-horned-hat-gloats-feds-work-identify-suspects-n1253392> (last visited January 13, 2021). All supporting materials
28 referenced in this memorandum are included on a disc submitted to the Court as Attachment B.

1 inside was a rubber hammer-shaped mallet. Chansley did not turn himself in to the FBI,
2 but instead drove to the FBI Building to continue to his interview. However, he was
3 arrested pursuant to the arrest warrant when he did so.

4 The PTS Report. The PTS Report, issued on January 11, 2021, concludes that
5 Chansley poses a risk of nonappearance based on his employment status and substance
6 abuse history, and may pose a danger to the community due to his substance use. (PTS
7 report at 4.) Nevertheless, the PTS Report recommends that Chansley be released pending
8 trial because the risks of flight and danger can be minimized by random drug-testing,
9 employment requirements, and documented travel only for the purpose of Court
10 appearances in the District of Columbia. (PTS report at 4.)

11 Importantly, Chansley lied to the PTS Officer when he stated that he has “never
12 tried any other illicit substance [besides marijuana,] which he smokes three times weekly
13 in the past.” (PTS Report at 2.) As described below, Chansley has described his routine
14 use of psychedelic drugs, including mushrooms and peyote, in recorded interviews on his
15 podcast. Additionally, a full portrait of Chansley’s apparent mental health issues which
16 he has publicly-disseminated, and which include strongly-held false mystical beliefs and
17 leadership in a dangerous extremist group, QAnon founded on an imaginary conspiracy
18 theory were not provided to the PTS officer, and thus not evaluated in the assessment.
19 The PTS Officer also does not appear to have evaluated the continued danger to the
20 community Chansley poses due to his unwillingness to appreciate the illegality of his
21 conduct and self-expressed interest in placing himself in similar circumstances in the
22 future.

23 **ARGUMENT**

24 Detention is authorized in this case under multiple prongs of 18 U.S.C. § 3142.
25 Chansley committed felonies involving the use of a dangerous weapon, and there are
26 serious risks that Chansley will flee and obstruct or attempt to obstruct justice. 18 U.S.C.
27 § 3142(f)(1)(E), (f)(2)(A), (f)(2)(B).

28

1 Chansley is charged with two felonies: committing an act of civil disorder that
2 obstructed the conduct of a federally-protected function, and obstructing an official
3 proceeding. (Att. A at 1-2.) As demonstrated by the photographs above and corroborated
4 by the spear found in his car after he was arrested, the felonies Chansley committed
5 involved the use of a dangerous weapon inside the Capitol building a six-foot spear. *See*
6 *Doty v. Lewis*, 995 F. Supp. 1081, 1084 (D. Ariz. 1998) (referring to “a handmade spear
7 approximately three feet long” as a “dangerous weapon”); *see also United States v. Tumea*,
8 810 F.3d 563, 567 (8th Cir. 2016) (implying that spears are dangerous weapons in the
9 context of a supervised release condition); *United States v. Cabrera*, No. CR. S-05-0347
10 GGH, 2005 WL 3406318, at *2 (E.D. Cal. Dec. 12, 2005) (implying prohibition of
11 dangerous weapons, including spears, into statute prohibiting the possession of firearms in
12 federal facilities).

13 In addition, there is a serious risk that Chansley will obstruct or attempt to obstruct
14 justice in the course of his prosecution in Washington, D.C. The grand jury found probable
15 cause to charge Chansley with obstructing an official Congressional proceeding on January
16 6, 2021. Pictures taken at the scene, and Chansley’s own unapologetic confession and
17 media statements, leave no doubt that he did so. Chansley broke through barricades,
18 unlawfully entered the Capitol Building, disobeyed police orders to leave, refused a police
19 request to quell the crowd using his bullhorn, and instead ran up onto the dais where Vice
20 President Pence had been presiding just minutes before and scrawled a threatening note.
21 His willingness to very publicly attempt to obstruct the official duties of the United States
22 Congress certifying the vote count of the Electoral College makes clear his complete
23 disregard for the importance of following orders during official proceedings such as the
24 D.C. District Court case now charging him with serious crimes.

25 As described more fully below, Chansley also poses serious risks of flight and
26 danger to the community. The Court should order him to be detained because there are no
27 conditions that will reasonably assure his appearance as required and the safety of any other
28 person and the community. 18 U.S.C. § 3142(g).

1 **I. The Court Should Order Detention Based On Chansley’s Risk Of Flight.**

2 As the Court is no doubt aware, “[t]he Bail Reform Act . . . requires a district court
3 to order a defendant detained pending trial if ‘no condition or combination of conditions
4 will reasonably assure the appearance of the person as required.’” *United States v. Gentry*,
5 455 F. Supp. 2d 1018, 1019-20 (D. Ariz. 2006) (quoting 18 U.S.C. § 3142(e)). This
6 analysis involves a “two-step inquiry.” *Id.* First, the court must make a finding as to
7 whether the defendant presents a “serious risk that such person will flee” if not detained.
8 *Id.* at 1020 (quoting 18 U.S.C. § 3142(f)(2)(A)). The government bears the burden of
9 proving such risk of flight by a preponderance of the evidence. *Id.*

10 If the defendant is likely to flee, the court next must determine whether some set of
11 conditions would sufficiently vitiate that risk. *Id.* (citing 18 U.S.C. § 3142(g)).

12 As explained below, these factors compel the conclusion that Chansley is a flight
13 risk and that no combination of conditions exist to overcome this risk.

14 **A. Chansley Is A Flight Risk.**

15 As the PTS Report correctly concludes, Chansley poses a flight risk for multiple
16 independent reasons. He is both unemployed and a regular drug user. In addition, he has
17 the ability to quickly raise large sums of money for travel through non-traditional sources
18 as one of the leaders and mascots of QAnon, a group commonly referred to as a cult, (which
19 preaches debunked and fictitious anti-government conspiracy theories that a deep state is
20 out to take down the current administration), and has previously demonstrated an ability to
21 travel long distances using untraceable methods. Additionally, Chansley is strongly
22 associated with a costume, and is virtually unidentifiable when not wearing it.

23 Critically, Chansley also lied to PTS about his use of drugs. Pre-Trial Services
24 believed Chansley to be a flight risk based on his three-times-a-week marijuana habit, and
25 the United States agrees. But Chansley also told Pre-Trial Services that he had never tried
26 any illicit substances other than that marijuana. (PTS Report at 2.) However, he has
27 publicly detailed in interviews and through online activity that he uses peyote and
28 mushrooms as part of his Shaman practice. He openly stated on his podcast ‘Jake Angeli

1 - Keys for our Ascension’ that he uses illegal substances, admitting to using “psychoactive”
2 and “ceremonial” plants such as cactus and mushrooms as part of his shaman practice. *See*
3 www.podbean.com/media/player/ddgys-c51af9?from_wp&vjs_1&skin_1, at minute
4 25:00. On the podcast, Chansley stated, "I think I was 11 the first time I got high, and it
5 was because God love him, my dad gave it to me."² Chansley also stated that after a stint
6 in the US Navy he “dove head first” into experimenting with psychoactive substances. (*Id.*)
7 He stated that his use of psychoactive substances “gave [him] such a profound spiritual
8 experience that [he] was able to see [his] thoughts.” (*Id.*)

9 Chansley also stated he has no mental health conditions, but publicly-available
10 information and videos reveal a very different picture. Chansley has spoken openly about
11 his belief that he is an alien, a higher being, and he is here on Earth to ascend to another
12 reality.³ He subscribes to QAnon, a group who believes a debunked and fictitious
13 conspiracy claim that Satan-worshipping cannibalistic pedophiles are running a global
14 child sex-trafficking ring and plotting against President Donald Trump.⁴ As an example,
15 in a YouTube video uploaded on January 6, 2021, from approximately minute 9:00
16 forward, Chansley states:

17
18 So in order to beat this evil occultic force you need a light occultic force you
19 need an occultic force that is of the side of God of love on like almost like
20 on the side of the Angels OK as opposed to the demons all right and so as a
21 shaman I am like a multi-dimensional or hyper-dimensional being okay I am
22 able to perceive multiple different frequencies of light beyond my five senses
and it allows me to see into these other higher dimensions that these entities
these pedophiles these rapists these murderers these really high up people

23 ²“HE'S A RIOT, QAnon ‘shaman’ Jake Angeli first got high aged 11, takes psychedelic cactus &
24 used to go to school dressed as Brad Pitt” Emma Perry, (January 8, 2021) available at
25 <https://www.the-sun.com/news/2104357/qanon-horned-shaman-jake-angeli-high-psychedelic-brad-pitt/> (last visited January 13, 2021).

26 ³ Etzimanuel, *QAnon Shaman Jake Angeli Interview ORF*, YouTube (January 6, 2021),
27 available at <http://www.youtube.com/watch?v=22d6tRXxVeg> (last visited January 13, 2021).

28 ⁴ Qanon, [Wikipedia, the Free Encyclopedia](https://en.wikipedia.org/wiki/QAnon), available at <https://en.wikipedia.org/wiki/QAnon>
(last visited January 13, 2021).

1 that they almost like hide in the shadows in nobody can see that because the
2 third eye ain't open okay and that's where things like fluoride and stuff like
3 that comes in so the horns the horns are hey man you mess with the Buffalo
4 you get the horns bro and if you ever tried messing with the Buffalo that
5 doesn't work out too well for many people this right here this is coyote skin
6 according to the Navajo the coyote is like the trickster almost like almost like
7 a benevolent force so I'm wearing the skin of the trickster I got two tails here
8 okay so the trickster messed with the bull got the horns okay and the face
9 paint is representative of the Native American tradition of like donning on
10 warpaint of some sort only this is only this is a war that is of like a spiritual
11 nature okay so because it's a war of a spiritual nature you need symbolism
12 okay in the symbolism here for me is you got the blood on the sign the bullet
13 holes Q sent me this shows the the the secret war in the behind the scene.
14 Hey if you don't know who Q is Q is the highest levels of the military in the
15 intelligence community disseminating above top secret information to pay
16 attention to the republic so we can take our country back from globalists and
17 communists and satanists.⁵

18 In this and other videos of Chansley on YouTube, he states that when you watch television,
19 when you listen to the radio, there are very specific frequencies that are inaudible that
20 actually affect the brain waves of your brain. In a January 8, 2021, interview with the
21 Washington Post, Chansley stated: "What we did on Jan. 6 in many ways was an evolution
22 in consciousness, because as we marched down the street along these ley lines, shouting
23 'USA' or shouting things like 'freedom' ... we were actually affecting the quantum
24 realm."⁶

25 Chansley may have believed that his statement to Pre-Trial Services that he was in
26 "good mental health" was accurate. But if so, his public statements described above
27 demonstrate that he is unhinged from reality, while his actions at the Capitol demonstrate
28 a willingness to act on those mistaken beliefs. He is a flight risk due to this combination.

⁵ Etzimanuel, *QAnon Shaman Jake Angeli Interview ORF*, YouTube (January 6, 2021), available at <http://www.youtube.com/watch?v=22d6tRXxVeg> (last visited January 13, 2021).

⁶ "Trump Supporter in Horns and Fur is Charged in Capitol Riot," Fredrick Kunkle, available at https://www.washingtonpost.com/local/jacob-chansely-horn-qanon-capitol-riot/2021/01/09/5d3c2c96-52b9-11eb-bda4-615aaefd0555_story.html (last visited January 13, 2021).

1 Pre-Trial Services also correctly describes Chansley’s employment status as
 2 contributing to his flight risk. (PTS Report at 4.) It does he has no stable job to tie him
 3 to the community, and instead “sporadically earns money” (PTS Report at 2) by appearing
 4 at protests and riots to lead QAnon followers but the full picture of Chansley’s fund-
 5 raising and off-the-grid travel opportunities deepen the risk. Chansley told FBI agents that
 6 he drove to Washington, D.C. for the January 6 riot “with a group of patriots from here in
 7 Arizona,” who went to Georgia first and then D.C. His criminal activities at the Capitol
 8 therefore could not have been prevented through flight restrictions. Chansley is a high-
 9 profile leader and the self-professed shaman of QAnon, giving him the ability to raise large
 10 sums of money for travel (and other activities) quickly through non-traditional means, as
 11 the tweet below demonstrates.



22 In sum, Chansley is a flight risk, and the conditions that Pre-Trial Services proposes
 23 as mitigating the risk fail to account for his misstatements regarding drug use, mental health
 24 history, and status as a poster child for QAnon.

25 **II. Chansley Is Also A Danger to the Community if Released.**

26 This Court must also consider whether it can reasonably assure the safety of other
 27 persons and the community if it releases Chansley. *See* 18 U.S.C. § 3142(f). It cannot.
 28 Chansley is the radicalized follower-turned-leader of a dangerous extremist group, and a

1 symbol of the insurrection and assault on the Capitol last week. As demonstrated by his
 2 tweet below, Chansley has also previously espoused identifying and then “hanging”
 3 “traitors” within the United States government. Despite the riot on January 6, Chansley
 4 has stated his intent to return to Washington for President-Elect Biden’s inauguration, and
 5 his repeated and demonstrated unwillingness to conform to societal rules suggests a
 6 pending criminal case will not stop him.



15 As widely reported by the news media, the FBI has received information indicating
 16 that “armed protests” are being planned at all 50 state capitols and the U.S. Capitol in
 17 Washington, D.C. in the days leading up to President-elect Joe Biden’s inauguration on
 18 January 20, 2021. Since the January 6 insurrection, violent online rhetoric regarding the
 19 inauguration has increased, with some calling for unspecified “justice” for the fatal
 20 shooting by law enforcement of a participant who had illegally entered the Capitol Building
 21 that day. Others have posted that “many” armed individuals would return on January 19,
 22 according to open source reporting. The recent removal efforts by social media platforms
 23 used by domestic violent extremists may push some to revert back to other platforms they
 24 perceive as more secure, further challenging the government’s ability to identify and warn
 25 of specific threats. Additionally, news reports suggest that the U.S. Capitol siege may just
 26 be the beginning of potentially violent actions from President Trump’s supporters.⁷

27

28 ⁷ “FBI Warns of Plans for Nationwide Armed Protests Next Week” Colleen Long, Michael Balsamo and Michael Kunzelman” (January 11, 2021), available at

1 Against this backdrop, Chansley told the FBI prior to his arrest that he'll "still go,
2 you better believe it." His status as a symbol of the insurrection, his actions inside the
3 Capitol building, and his demonstrated disregard of orders while inside with the goal of
4 disrupting official Congressional proceedings, demonstrate the danger his release would
5 pose. U.S. Capitol Police report that Chansley was among the first inside the Capitol. He
6 made his way into the halls of the Senate and the Senate Chamber within minutes of the
7 rioters breaching the building. At this juncture in our Nation's history, it is hard to imagine
8 a greater risk to our democracy and community than the armed revolution of which
9 Chansley has made himself the symbol.

10 **III. No Conditions Exist To Reasonably Assure Chansley's Appearance or**
11 **Mitigate the Danger.**

12 The PTS Report concludes that conditions of release can minimize the risks of flight
13 and danger posed by Chansley's release. Pre-Trial Services has proposed requiring
14 Chansley to report as directed, travel to the prosecuting district (D.D.C.) with express Court
15 approval, maintain or actively seek employment, and refrain from using or possessing a
16 narcotic drug. The United States respectfully disagrees that such conditions or any
17 others would be adequate to mitigate the risks here.

18 In determining whether conditions of release can reasonably assure the appearance
19 of the defendant as required and the safety of any other person or the community, the Court
20 must take into account four statutory factors: (1) the nature and circumstances of the
21 offense charged; (2) the weight of the evidence against the person; (3) the history and
22 characteristics of the person, including his character, physical and mental condition, family
23 ties, employment, financial resources, length of residence in the community, community

24 [http://www.apnews.com/article/fbi-warns-armed-protests-next-week-](http://www.apnews.com/article/fbi-warns-armed-protests-next-week-ec75b26289166b4afd30c15b0dd2ded5)
25 [ec75b26289166b4afd30c15b0dd2ded5](http://www.apnews.com/article/fbi-warns-armed-protests-next-week-ec75b26289166b4afd30c15b0dd2ded5) (last visited January 13, 2021); "Armed Protests Being
26 Planned at all 50 State Capitols, FBI Bulletin Says: An Internal FBI Note Obtained by ABC News
27 Shows Warnings of "a huge uprising." Aaron Katersky and Ceclia Darrough (January 11, 2021)
28 available at [http://www.abcnews.go.com/US/armed-protests-planned-50-state-capitols-fbi-](http://www.abcnews.go.com/US/armed-protests-planned-50-state-capitols-fbi-bulletin/story?id=75179771)
 [bulletin/story?id=75179771](http://www.abcnews.go.com/US/armed-protests-planned-50-state-capitols-fbi-bulletin/story?id=75179771) (last visited January 13, 2021).

1 ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record
2 concerning appearance at court proceedings; and (4) the nature and seriousness of the
3 danger to any person or community that would be posed by the person's release. 18 U.S.C.
4 § 3142(g); *see also Gentry*, 455 F. Supp. 2d 1019-20. The United States addresses each in
5 turn.

6 Nature of Crime. A key factor to be considered when assessing the adequacy of
7 release conditions is "the nature and circumstances of the crime charged." *See* 18 U.S.C.
8 § 3142(g)(1). Here, this factor is significant. The crimes charged in the indictment involve
9 active participation in an insurrection attempting to violently overthrow the United States
10 Government. By Chansley's own admissions to the FBI and news media, the insurrection
11 is still in progress and he intends to continue participating. Media and FBI reports have
12 detailed carefully-planned insurrection attempts scheduled throughout the country in the
13 coming weeks at every state capital, including the Arizona's capitol. As he admitted, and
14 as corroborated by the items in his car, Chansley expected to go there after his FBI
15 interview (if he had not been arrested). The travel restriction Pre-Trial Services proposes
16 plainly will not prevent Chansley from participating in violent activities in Arizona.

17 Strong evidence, including Chansley's own words and actions at the Capitol,
18 supports that the intent of the Capitol rioters was to capture and assassinate elected officials
19 in the United States Government. Chansley left a note on the Senate Chamber dais, where
20 Vice President Mike Pence had been presiding over the session just minutes before,
21 warning "it's only a matter of time, justice is coming." When questioned as to the meaning
22 of that statement, Chansley went on a lengthy diatribe describing current and past United
23 States political leaders as infiltrators, specifically naming Vice President Mike Pence,
24 former President Barack Obama, former Senator Hillary Clinton and U.S. President-elect
25 Joe Biden as infiltrators involved in various types of wrongdoing. Although he stated his
26 note was not a threat, the Government strongly disagrees. Chansley acted on conspiracy
27 theories he has repeatedly espoused in becoming one of the highest-profile members of a
28 group that attacked a Congressional proceeding, and nothing suggests he has learned from

1 that experience so as to avoid it if on pre-trial release. The nature and circumstances of his
2 offense are grave, and cannot be mitigated by conditions of release.

3 Weight of Evidence. Another factor to be considered when assessing release
4 conditions is “the weight of the evidence against the person.” *See* 18 U.S.C. § 3142(g)(2).
5 Here, this factor also weighs in favor of detention. As a threshold matter, the grand jury
6 already has found that probable cause supports the charges against Chansley. This alone
7 is enough to show that the weight of the evidence supports detention. *United States v.*
8 *Hamlin*, 2007 WL 2225868, *1 (E.D. Mich. 2007) (“Under subsection (g)(2), from the a
9 grand jury having passed an Indictment, there is a definite weight of evidence against the
10 Defendant.”); *United States v. Bradshaw*, 2000 WL 1371517, *4 (D. Kan. 2000) (“[T]he
11 grand jury’s indictment, standing alone, establishes probable cause The Government
12 presented no other evidence. Nor did the defendant. Accordingly, the weight of the
13 evidence must be deemed against the defendant. This factor thus weighs in favor of
14 detention, but only slightly.”). The evidence in this case includes widely-publicized
15 pictures and videos and Chansley’s own admissions. As outlined above, the evidence here
16 is strong.

17 History and Characteristics of the Defendant. The next factor to be considered when
18 assessing release conditions is “the history and characteristics of the” defendant. *See* 18
19 U.S.C. § 3142(g)(3). Here, this factor weighs heavily in favor of detention. Chansley is a
20 self-proclaimed leader of the QAnon.⁸ Other members of this dangerous anti-government
21 conspiracy view him as a leader also, contributing to his ability to travel off-the-grid and
22 fund-raise rapidly through unconventional means. He believes that global elites are
23 running the world, that United States leaders are part of a secret rings of child abusers who
24 practice satanic worship, and other debunked theories. He has repeatedly demonstrated
25 dramatic, erratic behavior, an inability to conform to societal norms, and an unwillingness
26 to appreciate the consequences of his actions. He abides by his own belief system, acts

27
28 ⁸ Etzimanuel, *QAnon Shaman Jake Angeli Interview ORF*, YouTube (January 6, 2021),
available at <http://www.youtube.com/watch?v=22d6tRXxVeg> (last visited January 13, 2021).

1 accordingly regardless of the criminal consequences, and brings others along with him.
2 His ability and willingness to conform his behavior to pre-trial supervision conditions
3 appears to be virtually nil.

4 Even now, Chansley continues to demonstrate a refusal to conform despite personal
5 hardship as a consequence. Chansley's choice to refuse to eat because he is not provided
6 an organic diet in custody is predictive of how he will behave if conditions of pre-trial
7 supervision do not suit him. If released, numerous conditions will alter and affect his
8 routine and set forth daily expectations by which he must confirm. Chansley will not
9 comply.

10 Chansley is a repeated drug user who minimized the extent of his substance use to
11 pre-trial services. He demonstrates scattered and fanciful thoughts, and is unable to
12 appreciate reality. He is the shaman of a dangerous extremist group, putting his beliefs
13 into action by attempting to violently overthrow the United States government. His history
14 and characteristics require detention.

15 Danger to Others. The final factor to be considered when assessing release
16 conditions is the nature and seriousness of the danger to any person or the community that
17 would be posed by the person's release. *See* 18 U.S.C. Section 3142(g)(4). The facts
18 described above demonstrate the grave danger Chansley's release would pose to the
19 community, and are reaffirmed here by reference. Chansley has made himself the symbol
20 of a radicalized insurrection movement, and has professed his intent to act in the future as
21 he did at the Capitol on January 6. Employment conditions, travel restrictions, and a
22 reporting requirement will not mitigate the danger that he will do so.

1 IV. CONCLUSION

2 For the foregoing reasons, the Court should order that Chansley be detained.

3
4 Respectfully submitted this 14th day of January, 2021.

5
6 MICHAEL BAILEY
7 United States Attorney
8 District of Arizona

9 /s/ Kristen Brook
10 KRISTEN BROOK
11 Assistant U.S. Attorney

12 **CERTIFICATE OF SERVICE**

13 I hereby certify that on the 14th day of January, 2021, I electronically filed the
14 foregoing with the Clerk of Court using the CM/ECF system for filing a copy to the
15 following CM/ECF registrant:

16 Gerald Williams, Attorney for the Defendant Jacob Anthony Chansley.

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18 By: /s/ Todd Allison
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