No. _____

In the
Supreme Court of the United States

Pennsylvania Voters Alliance, Stephanie Borowicz, Kristine Eng, Theodore A. Dannerth, Eric Kroner, Eric Nelson, Daryl Metcalfe, Dawn Wetzel Keefer, Russ Diamond, Chris Dush, Jim Gregory, Francis Ryan, Michael Harvey, David Torres, Dasha Pruett,

***Petitioner*,**

vs.

Centre County, Delaware County, and the City of Philadelphia, and Kathy Boockvar, in her official capacity as Secretary of the Commonwealth of Pennsylvania,

***Respondents*.**

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT OF COURT OF APPEALS

Erick G. Kaardal, MN ID 229647
Special Counsel to the Amistad Project of the Thomas More Society
Mohrman, Kaardal & Erickson, P.A.
150 South Fifth Street, Suite 3100
Minneapolis, Minnesota 55402
Telephone: 612-341-1074
Email: kaardal@mklaw.com
Counsel of Record

Thomas W. King, III, PA ID 21580
Thomas E. Breth, PA ID 66350
Special Counsel to the Amistad Project of Thomas More Society
Dillon McCandless King Coulter & Graham, LLP
128 West Cunningham Street
Butler, PA 16001
Telephone: (724) 283-2200
E-mail addresses: jshuber@dmkcg.com
relliott@dmkcg.com, tking@dmkcg.com
tbreth@dmkcg.com
Attorneys for Petitioners

QUESTION PRESENTED

The Elections Clause is found in the beginning of the U.S. Constitution at Article I, section 4. The guarantee of federal elections for Congressional members is a "social contract" in which the federal government has a unique federal interest. In this case, a state's local subdivisions have accepted millions from a private, non-profit corporation to pay for federal elections. In exchange for the private federal election grants, the local subdivisions agree to meet the requirements of the grant, to report back to the private, non-profit corporation and to claw-back provisions which are an ongoing liability for the political subdivision.

1. Whether the social contract of the Federal Elections Clause requires exclusively-publicly-funded federal elections, thus prohibiting such private federal election grants.

2. Whether the federal common law under the Elections Clause recognizes such private financing as tortious interference with the social contract embedded in the Elections Clause.

3. Whether the federal common law under the Elections Clause recognizes Article III standing, an actual and concrete injury, for a resident within a political subdivision to challenge the political subdivision accepting private federal election grants interfering with the Elections Clause guarantee of exclusively-publicly-funded federal elections—possibly invalidating the federal election.

LIST OF PARTIES

The petitioners are Pennsylvania Voters Alliance, Stephanie Borowicz, Kristine Eng, Theodore A. Dannerth, Eric Kroner, Eric Nelson, Daryl Metcalfe, Dawn Wetzel Keefer, Russ Diamond, Chris Dush, Jim Gregory, Francis Ryan, Michael Harvey, David Torres, and Dasha Pruett. The respondents are Centre County, Delaware County City of Philadelphia.

CORPORATE DISCLOSURE STATEMENT

Petitioner Pennsylvania Voters Alliance is an unincorporated association, is not a nongovernmental corporation and does not represent a nongovernmental corporation.

STATEMENT OF RELATED CASES

The related cases are:

1. *Pennsylvania Voters Alliance, et al. v. Centre County, et al.,* U.S. District Court for the Middle District of Pennsylvania, Case No. 4:20-CV-01761.
2. *Pennsylvania Voters Alliance, et al. v. Centre County, et al.,* U.S. Court of Appeals for the Third Circuit, Case No. 20-3175.

All the related cases, including the above cases, are itemized and detailed in the table below.

Federal Court	Case Number	Caption Title	Complaint/ Appeal Filing	PI/TRO/Inj. Pending App. Denial
M.D. Pennsylvania	20-cv-1761	Pennsylvania Voters Alliance et al v. Centre County et al	9/25/2020	Compl. dismissed 10/21/2020
Third Circuit	20-3175	(same)	10/22/2020	
E.D. Wisconsin	20-cv-1487	Wisconsin Voters Alliance et al v. City of Racine, et al.	9/24/2020	10/14/2020; 10/21/2020
Seventh Circuit	20-3002	(same)	10/15/2020	10/23/2020
W.D. Michigan	20-cv-0950	Election Integrity Fund et al v. Lansing, City of et al	9/29/2020	10/2/2020; 10/19/2020
Sixth Circuit	20-2048	(same)	10/23/2020	
D. Minnesota	20-cv-2049	Minnesota Voters Alliance et al v. City of Minneapolis	9/24/2020	10/16/2020
N.D. Iowa	20-cv-2078	Iowa Voter Alliance et al v. Black Hawk County et al	10/1/2020	10/20/2020
E.D. Texas	20-cv-0775	Texas Voters Alliance et al v. Dallas County et al	10/9/2020	10/20/2020
N. D. Georgia	20-cv-4198	Georgia Voter Alliance et al v. Fulton County	10/9/2020	
D. South Carolina	20-cv-03710	South Carolina Voter's Alliance et al v. Charleston County et al	10/22/2020	

TABLE OF CONTENTS

Appendix

TABLE OF AUTHORITIES

Cases

Statutes

Other References

Other Authorities

Constitutional Provisions

PETITION FOR WRIT OF CERTIORARI

The Petitioners petition for a writ of certiorari to review the judgment of the United States District Court for the Middle District of Pennsylvania before judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The memorandum and opinion of the district court is published, reported at -- F.Supp.3d-- , 2020 WL 6158309 (October 21, 2020) (Ex. 1, App. 1-20) (with order).

JURISDICTION

The district court has jurisdiction over the Pennsylvania Voters Alliance's amended complaint under 28 U.S.C. 1331 and 1343, and has authority to issue declaratory and injunctive relief under 28 U.S.C. 1343, 1651 and 2201-02. The United States Court of Appeals for the Third Circuit has jurisdiction over Pennsylvania Voters Alliance's appeal of a final district court decision under 28 U.S.C. 1291. This Court has jurisdiction over this petition for writ of certiorari under 28 U. S. C. 2101(e) and this Court's Rule 11.

CONSTITUTIONAL CLAUSES INVOLVED

The United States Constitution, Article I, section 4 contains the Elections Clause:

> Section 4: 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 chusing Senators…

Article I, section 5, makes each House the judge of the elections of its respective members:

> Section 5: Powers and Duties of Congress
> Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members…

STATEMENT OF THE CASE

Pursuant to this Court's Rule 11 and 28 U. S. C. 2101(e), the undersigned, on behalf of the Pennsylvania Voters Alliance and individual petitioner-members, petition for a writ of certiorari to review the final decision of the United States District Court for the Middle District of Pennsylvania dismissing the complaint.

Introduction

As a preliminary matter, this case is a companion to *Citizens United v. Federal Election Com'n*, 558 U.S. 310 (2010) where the Supreme Court held, in part, that the government may not, under the First Amendment, suppress political speech on the basis of the speaker's corporate identity and that the federal statute barring independent corporate expenditures for electioneering communications violated the First Amendment. *Id.* at 365. The result of *Citizens United* was unlimited independent expenditures relating to campaigns. The questions presented in this petition are related to *Citizens United* in that can those unlimited independent expenditures, constitutionally-authorized under the First Amendment according to *Citizens United,* be made to government officials to pay for federal elections.

The answer from petitioners is emphatically "no." The First Amendment does not apply to protect private federal election grants. The Election Clause prohibits private federal election grants. To protect the federal interest in exclusively-publicly-funded federal elections, this Court should identify a patch of federal common law to recognize a private cause of action and standing for the petitioners to obtain prospective relief against such private federal election grants being accepted by local governments.

This Court should develop a patch of federal common law necessary to protect the election process and the right to vote, intertwined as they are, by recognizing a private cause of action and related resident standing in situations where government officials accept private money to pay for federal elections. When election officials accept private money to pay for federal election, the federal election may be invalidated by Congress under the Constitution, Article I, section 5.

During the federal election process, when government officials accept private moneys to pay for federal elections, regardless of its private source and good intentions, the government officials tortiously interfere with the integrity of a core government public function, the federal election process, because the "the right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system." *Burdick v. Takushi*, 504 U.S. 428, 441 (1992).

The Elections Clause is found in the beginning of the U.S. Constitution at Article I, section 4. The guarantee of federal elections for Congressional members is a "social contract" in which the federal government has a unique interest. In this case, a

state's local subdivisions have accepted millions from a private, non-profit corporation to pay for federal elections. In exchange for the private federal election grants, the local subdivisions agree to meet the requirements of the grant, to report back to the private, non-profit corporation and to claw-back provisions which are an ongoing liability for the political subdivision. App. 24.

The petitioners, to make their case under the Elections Clause and related federal common law, introduce three legal propositions which are not affirmed in the current case law precedents.

The first legal proposition is one of constitutional interpretation. *See Ramos v. Louisiana,* 140 S.Ct. 1390, 1409 (2020) (concurring, Sotomeyer, J.) ("Reasonable minds have disagreed over time—and continue to disagree—about the best mode of constitutional interpretation.") The petitioners claim that the social contract of the Federal Elections Clause requires exclusively-publicly-funded federal elections, thus prohibiting the private federal election grants at issue in this case. According to Petitioners, not even Congress can authorize the private funding of our federal elections without violating the Elections Clause.

The second and third legal propositions relate to the federal common law under the Elections Clause. To be sure, there is "no federal general common law." *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938) and "judicial lawmaking in the form of federal common law plays a necessarily modest role," *Rodriguez v. Federal Deposit Insurance Corporation*, 140 S.Ct. 713, 717 (2020). Nonetheless, in specific contexts, "federal common law often plays an important role." *Id.* at 717. Federal "common lawmaking

must be necessary to protect uniquely federal interests." *Id.* (quotations and citations omitted).

The second legal proposition is that the federal common law under the Elections Clause recognizes such private financing as tortious interference with the social contract embedded in the Elections Clause and recognizes citizens as a third party beneficiary of that social contract for lawsuit purposes. *See* "Liability for procuring breach of contract, 26 A.L.R.2d 1227 (1952), superseded in part by "Punitive damages for interference with contract or business relationship," 44 A.L.R.4th 1,078 (Jan. 1, 1986). "The prevailing rule in nearly all American jurisdictions is that a third person may, in his own right and name, enforce a contractual promise made for his benefit even though he is a stranger both to the contract and to the consideration for the contract." 16 Am. Jur. Proof of Facts 2d 55 (1978), *citing* 17 Am. Jur. 2d, Contracts § 302; 59 Am. Jur. 2d, Parties § 36.

The third legal proposition is that the federal common law under the Elections Clause recognizes Article III standing, including an actual and concrete injury, for a resident within a political subdivision to challenge the political subdivision accepting private federal election grants interfering with the citizen's Elections Clause guarantee of exclusively-publicly-funded federal elections. The "rights and obligations of the United States" includes that of the fundamental right to vote, the protection of which is found under the U.S. Constitution. Conducting elections is a core government public function. There should be little doubt that government has a legitimate interest in fair and honest elections. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 834

(1995). As the U.S. Supreme Court has declared that the right to vote is intertwined with the right to participate in an election process of integrity:

> "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." *Wesberry v. Sanders,* 376 U.S. 1, 17 (1964). But the right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system.

Burdick v. Takushi, 504 U.S. 428, 441 (1992), *citing Anderson v. Celebrezze,* 460 U.S. 780, 788 (1983) and *Storer v. Brown,* 415 U.S. 724, 730 (1974). Notably, the U.S. Supreme Court reiterated its long held view that a person's right to vote is "individual and personal in nature." *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018), *quoting Reynolds v. Sims,* 377 U.S. 533, 561 (1964). Thus, "voters who allege facts showing disadvantage to themselves as individuals have standing to sue" to remedy that disadvantage. *Id., quoting Baker v. Carr,* 369 U.S. 186, 206 (1962).

Statement of Facts

The relevant facts about CTCL's federal private election grants to the Respondents.

The attached district court decision is based on undisputed facts about CTCL's private federal election grants to the Respondents. Ex A, App. 1-18; Ex. B, App. 19. The attached J.R. Carlson expert report also provides detail regarding CTCL's private federal election grant program. Ex. C; App. 20-39. The undisputed facts are:

- CTCL, a non-party to this action, is a nonpartisan, nonprofit organization formed in 2012 by a "team of civic technologists, trainers, researchers, election administration and data experts" to "foster a more informed and engaged democracy" and to help "modernize elections."

- CTCL has designated $250,000,000 in grant money, a donation from Jeff Zuckerberg and his spouse, to be paid to election offices across the country "to

help ensure that [these offices] have the staffing, training, and equipment necessary so this November every eligible voter can participate in a safe and timely way and have their vote counted."

- These funds may be used for election-related expenses, including to: maintain in-person polling on election day; obtain personal protective equipment for election officials and voters; support drive-thru voting; publish reminders to voters to update their voter registration information; educate voters on election policies and procedure; recruit and hire poll workers; provide increased cleaning and sanitation at poll sites; train poll workers; expand in-person early voting sites; and deploy additional staff or technology to improve mail ballot processing.

- CTCL provides grant funds to any local election office that applies, and the final grant is calculated using nonpartisan criteria.

- CTCL reports that over 1,100 local election administrators across the country have applied for CTCL grants.

- The Respondents received private federal election grants from CTCL. The City of Philadelphia received $10,012,000. Delaware County received $2,200,000. Centre County received $863,838.

App. 1-39. *Pennsylvania Voters Alliance, et al. v. Centre County, et al.,* --- F.Supp.3d ---- , 2020 WL 6158309 at *1-2 (M.D. Pa. Oct. 21, 2020).

Procedural History

The complaint was filed in U.S. District Court on September 25, 2020, along with a motion for preliminary injunctive relief. The complaint was dismissed on October 21, 2020. The motion for preliminary injunctive relief was denied at the same time. The District Court dismissed the complaint and denied the preliminary injunctive motion for lack of Article III standing. The Notice of Appeal was filed in District Court on October 22, 2020. A motion for injunction pending appeal was filed in the Third Circuit on October 22, 2020. It has not been ruled on yet.

REASONS FOR GRANTING PETITION

The petition for writ of certiorari should be granted for the following reasons.

I. It is of imperative public importance that this Court determine nationwide whether private federal election grants are unconstitutional early in the 2022 federal election cycle.

The Court should grant the petition under this Court's Rule 11 because of the imperative public importance that the 2022 federal elections not be tortiously interfered with by local political subdivisions accepting private federal election grants. Rule 11 states:

> A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court. See 28 U. S. C. § 2101(e).

The Petitioners believe that it is of imperative public importance that the Court determine early in the 2022 federal election cycle, for all the states and Congressional Districts nationwide, whether private federal election grants are unconstitutional. The 2022 federal elections are right around the corner. Preparations for the 2022 federal elections begin immediately after the November 3, 2020 election. Otherwise, without U.S. Supreme Court immediate review, there will be another checkboard pattern of private federal election grants—benefiting certain counties and cities, but not others. If this Court does not grant the petition, the Third Circuit's appellate process could take months, even a year. And, the Third Circuit's decision will only apply to the counties and cities in the Third Circuit. Under this scenario, this Court's review of the Third Circuit's decision would be in the midst of the 2022 campaigns and elections—

a situation to be avoided. The nationwide rules regarding the 2022 elections should be set in 2021—not in 2022. When rules affecting elections are changed in the middle of a federal election year, it is unfair to federal candidates, participants and the public. So, an imperative public interest in this Court granting the Rule 11 petition exists; this Court must determine nationwide in 2021 the constitutionality of private federal election grants to ensure fairness to candidates, participants and the public.

II. This lawsuit is a companion to *Citizens United* because, although corporations and billionaires can constitutionally make unlimited independent expenditures under the First Amendment, corporations and billionaires cannot constitutionally pay for federal elections under the Elections Clause.

This lawsuit challenging private federal election grants is a companion to *Citizens United v. Federal Election Com'n*, 558 U.S. 310 (2010). In *Citizens United,* the Supreme Court held, in part, that the government may not, under the First Amendment, suppress political speech on the basis of the speaker's corporate identity and that the federal statute barring independent corporate expenditures for electioneering communications violated First Amendment. *Id.* at 365. The result of *Citizens United* was unlimited independent expenditures relating to campaigns.

The questions presented in this motion are related to *Citizens United:* can those unlimited independent expenditures, constitutionally-authorized under the First Amendment according to *Citizens United,* be made to government election officials to pay for federal elections and to influence federal election policy?

The Petitioners' answer based on the Elections Clause is an emphatic "no." Corporations and billionaires can constitutionally spend millions on independent

expenditures, but corporations and billionaires cannot constitutionally pay for federal elections. Paying for federal elections is synonymous with influencing federal election policy—as shown with CTCL's requirements with its federal election grants.

The Constitution should be interpreted in this way:

> The First Amendment does not apply to private federal election grants; instead, the Election Clause prohibits private federal election grants.

To protect the federal interest in exclusively-publicly-funded federal elections, the Court should identify a patch of federal common law—distinguishable from the First Amendment relied on in *Citizens United*—recognizing a private cause of action and standing for the Petitioners as residents of Congressional Districts to obtain prospective relief against such private federal election grants. Otherwise, private funding of federal elections will eventually invalidate their Congressional elections under the Elections Clause—which is not in their or the public's interest.

III. This Court should adopt a patch of federal common law under the Elections Clause to preserve federal elections from being invalidated by private money paying for federal elections.

The Court should adopt a patch of federal common law under the Elections Clause necessary to protect the election process and the right to vote, intertwined as they are, by recognizing resident standing and a private cause of action in situations where government officials accept private money to pay for federal elections.

During the federal election process, when government officials accept private moneys to pay for federal elections, regardless of its private source and good intentions, the government officials tortiously interfere with the integrity of a core government public function, the federal election process, because the "the right to vote is the right

to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system." *Burdick v. Takushi*, 504 U.S. 428, 441 (1992)

The Elections Clause is found in the beginning of the U.S. Constitution at Article I, section 4. The guarantee of federal elections for Congressional members is a "social contract" in which the federal government has a unique interest. The Petitioners, to make their case under the Elections Clause and related federal common law, introduce three legal propositions which are not affirmed in the current case law precedents.

The first legal proposition is one of constitutional interpretation. *See Ramos v. Louisiana,* 140 S.Ct. 1390, 1409 (2020) (concurring, Sotomeyer, J.) ("Reasonable minds have disagreed over time—and continue to disagree—about the best mode of constitutional interpretation. ") The Petitioners claim that the social contract of the Federal Elections Clause requires exclusively-publicly-funded federal elections; thus private federal election grants are constitutionally prohibited. According to Petitioners, not even Congress can authorize the private funding of our federal elections without violating the Elections Clause.

The next two legal propositions relate to the federal common law under the Elections Clause. To be sure, there is "no federal general common law." *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938) and "judicial lawmaking in the form of federal common law plays a necessarily modest role," *Rodriguez v. Federal Deposit Insurance Corporation*, 140 S.Ct. 713, 717 (2020). Nonetheless, in specific contexts, "federal common law often plays an important role." *Id.* at 717. Federal "common lawmaking

must be necessary to protect uniquely federal interests." *Id.* (quotations and citations omitted).

The second legal proposition is that the federal common law under the Elections Clause recognizes such private financing as tortious interference with the social contract embedded in the Elections Clause and recognizes citizens as a third party beneficiary of that social contract for lawsuit purposes. *See* "Liability for procuring breach of contract, 26 A.L.R.2d 1227 (1952), superseded in part by "Punitive damages for interference with contract or business relationship," 44 A.L.R.4th 1,078 (Jan. 1, 1986). "The prevailing rule in nearly all American jurisdictions is that a third person may, in his own right and name, enforce a contractual promise made for his benefit even though he is a stranger both to the contract and to the consideration for the contract." 16 Am. Jur. Proof of Facts 2d 55 (1978), *citing* 17 Am. Jur. 2d, Contracts § 302; 59 Am. Jur. 2d, Parties § 36.

The third legal proposition is that the federal common law under the Elections Clause recognizes Article III standing, including an actual and concrete injury, for a citizen within a political subdivision to challenge the political subdivision accepting private federal election grants interfering with the citizen's Elections Clause guarantee of exclusively-publicly-funded federal elections. The "rights and obligations of the United States" includes that of the fundamental right to vote, the protection of which is found under the U.S. Constitution. Conducting elections is a core government public function. There should be little doubt that government has a legitimate interest in fair and honest elections. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 834

(1995). As the U.S. Supreme Court has declared that the right to vote is intertwined with the right to participate in an election process of integrity:

> "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." *Wesberry v. Sanders,* 376 U.S. 1, 17 (1964). But the right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system.

Burdick v. Takushi, 504 U.S. 428, 441 (1992) *citing Anderson v. Celebrezze,* 460 U.S. 780, 788 (1983) and *Storer v. Brown,* 415 U.S. 724, 730 (1974). Notably, the U.S. Supreme Court reiterated its long held view that a person's right to vote is "individual and personal in nature." *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018) *quoting Reynolds v. Sims,* 377 U.S. 533, 561 (1964). Thus, "voters who allege facts showing disadvantage to themselves as individuals have standing to sue" to remedy that disadvantage. *Id., quoting Baker v. Carr,* 369 U.S. 186, 206 (1962).

IV. Under the Elections Clause, counties and cities, as political subdivisions of a state, have no power to accept private money to pay for federal elections.

Under the Elections Clause, counties and cities, as political subdivisions, have no power whatsoever over federal elections. The Elections Clause allocates the powers exclusively to the state legislatures and to Congress:

> 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 chusing Senators. (sic)

U.S. Const., art. I, § 4, cl. 1. The Election Clause's phrase "manner of holding elections" for Senators and Representatives "refers to the entire electoral process, from the first step of registering to the last step of promulgating honest returns." *U.S. v.*

Manning, 215 F. Supp. 272, 284 (W.D. La. 1963). The Supreme Court has stated that the Elections Clause has two functions: "Upon the States it imposes the duty ('*shall* be prescribed') to prescribe the time, place, and manner of electing Representatives and Senators; upon Congress it confers the power to alter those regulations or supplant them altogether." *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 8-9 (2013). The Supreme Court states that the Elections Clause invests the state with power over Congressional elections subject to Congressional control:

> The power of Congress over the "Times, Places and Manner" of congressional elections "is paramount, and may be exercised at any time, and to any extent which it deems expedient; and so far as it is exercised, and no farther, the regulations effected supersede those of the State which are inconsistent therewith." *Ex parte Siebold,* 100 U.S. 371, 392, 25 L.Ed. 717 (1880).

Inter Tribal Council of Arizona, Inc., 570 U.S. at 9. So, the States have "no power qua sovereigns" regarding federal elections; whatever powers the States have regarding federal elections is because Congress allows it. *Fish v. Kobach*, 840 F.3d 710, 731–32 (10th Cir. 2016). Nor does the Constitution impose on the United States the costs incurred by Congress's alterations of federal elections, traditionally borne by the States. *Voting Rights Coalition v. Wilson,* 60 F.3d 1411, 1416 (9th Cir. 1995).

"Accordingly, the logic behind the plain-statement rule—that Congress must be explicit when it encroaches in areas traditionally within a state's core governmental functions—does not apply when Congress acts under the Elections Clause, as it did in enacting the NVRA." *Harkless v. Brunner*, 545 F.3d 445, 455 (6th Cir. 2008). "To this end, state election laws cannot 'directly conflict' with federal election laws on the subject." *Voting for Am., Inc. v. Steen*, 732 F.3d 382, 399 (5th Cir. 2013), quoting *Voting*

for America, Inc. v. Andrade, 488 Fed.Appx. 890, 896 (5th Cir. 2012) (citing *Voting Integrity Project, Inc. v. Bomer,* 199 F.3d 773, 775 (5th Cir.2000)).

To be sure, Governors and independent redistricting committees, established under state law, have been found constitutionally permissible under the Elections Clause. *Smiley v. Holm,* 285 U.S. 355 (1932) (whether Governor of State through veto power shall have part in making of state laws concerning the time, place and manner for holding elections is matter of state policy); *Arizona State Legislature v. Arizona Independent Redistricting Com'n,* 576 U.S. 787 (2015) (Elections Clause did not preclude State's people from creating commissions operating independently of state legislature to establish Congressional Districts).

But, in contrast, counties and cities have no powers over federal election policies under the so-called Dillon's Rule because they are mere political subdivisions of the state. *See Pennsylvania Restaurant and Lodging Association v. City of Pittsburgh,* 211 A.3d 810, 816, n. 3 (Pa. 2019), *citing City of Clinton v. Cedar Rapids & M.R.R. Co.*, 24 Iowa 455, 475 (1868) (Dillon's Rule). Importantly, under the Federal Elections Clause, the federal common law applies. *See Atherton v. F.D.I.C.*, 519 U.S. 213, 218–19 (1997) (citations omitted) (when courts decide to fashion rules of federal common law, the guiding principle is that a significant conflict between some federal policy or interest and the use of state law must first be specifically shown); *United States v. Kimbell Foods, Inc.,* 440 U.S. 715, 728 (1979); *Kamen v. Kemper Financial Services, Inc.,* 500 U.S. 90, 98 (1991). This philosophy of the Dillon's Rule has been adopted by the United States Supreme Court in interpreting federal law with such statements as:

> We think the following principles have been established by them and have become settled doctrines of this court, to be acted upon wherever they are applicable. Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the Federal Constitution. The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.

Hunter v. City of Pittsburgh, 207 U.S. 161, 178–79 (1907). The U.S. Supreme Court, more recently, affirmed the principal of Dillon's Rule:

> The States' political subdivisions have no such inherent power and can levy taxes only to the extent authorized by the State. See 16 E. McQuillin, Law of Municipal Corporations § 44.05, pp. 19–24 (rev.3d ed.2003); see also *Wiggins Ferry,* 107 U.S., at 375, 2 S.Ct. 257 (noting "[t]he power of [a State] to authorize any city within her limits to impose a license tax" on ferries).

Polar Tankers, Inc. v. City of Valdez, Alaska, 557 U.S. 1, 27 (2009). Under federal common law Dillon's Rule, a state's counties and cities have no inherent powers over federal elections separate and apart from express grants of power. And, in this case, state's counties and cities have no express grants of power to accept private federal election grants to fund their own federal election policies because the Elections Clause prohibits it.

Further even if Congress wanted to authorize such private federal election grants to the federal government, states or their political subdivisions, the Elections Clause prohibits Congress from doing that as well. U.S. Const., Art. I, sec. 4.

V. A private cause of action exists under the Elections Clause and related federal common law based on tortious interference with the "social contract" regarding federal elections.

The district court has original jurisdiction over complaints alleging violations of the Elections Clause. 28 U.S.C. 1331 provides "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. 1343, titled "Civil Rights and Elective Franchise," provides that "the district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person" upon certain elaborated grounds. 28 U.S.C. 1343 (a) (3) provides the district court with original jurisdiction "to redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States." 28 U.S.C. 1343 (a) (4) provides the district court with original jurisdiction "to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

In this case, there is a "civil action authorized by law." To protect the federal interest in exclusively-publicly-funded federal elections, the Court should identify a patch of federal common law to recognize a private cause of action and standing for the Petitioners to obtain prospective relief against such private federal election grants.

Specifically, during the federal election process, when government officials accept private moneys to pay for federal elections, regardless of its private source and good intentions, the government officials tortiously interfere with the integrity of a core government public function, the federal election process, because the "the right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system." *Burdick v. Takushi*, 504 U.S. 428, 441 (1992)

Under the Elections Clause, the guarantee of federal elections for Congressional members is a "social contract" in which the federal government has a unique federal interest. In this case, a state's local subdivisions have accepted moneys from a private, non-profit corporation to pay for federal elections. In exchange for the private federal election grants, the local subdivisions agree to meet the requirements of the grant, to report back to the private, non-profit corporation and to claw-back provisions which are an ongoing liability for the political subdivision.

To be sure, there is "no federal general common law." *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938) and "judicial lawmaking in the form of federal common law plays a necessarily modest role," *Rodriguez v. Federal Deposit Insurance Corporation*, 140 S.Ct. 713, 717 (2020). Nonetheless, in specific contexts, "federal common law often plays an important role." *Id.* at 717. Federal "common lawmaking must be necessary to protect uniquely federal interests." *Id.* (quotations and citations omitted).

The federal common law under the Elections Clause recognizes such private financing as tortious interference with the social contract embedded in the Elections Clause and recognizes citizens as a third party beneficiary of that social contract for

lawsuit purposes. *See* "Liability for procuring breach of contract, 26 A.L.R.2d 1227 (1952), superseded in part by "Punitive damages for interference with contract or business relationship," 44 A.L.R.4th 1,078 (Jan. 1, 1986). "The prevailing rule in nearly all American jurisdictions is that a third person may, in his own right and name, enforce a contractual promise made for his benefit even though he is a stranger both to the contract and to the consideration for the contract." 16 Am. Jur. Proof of Facts 2d 55 (1978), *citing* 17 Am. Jur. 2d, Contracts § 302; 59 Am. Jur. 2d, Parties § 36.

Here, it is appropriate for the Court to recognize this tort because there is a significant conflict between the federal policy and the use of state law. *See Atherton v. F.D.I.C.*, 519 U.S. 213, 218–19 (1997) (citations omitted) (when courts decide to fashion rules of federal common law, the guiding principle is that a significant conflict between some federal policy or interest and the use of state law must first be specifically shown); *United States v. Kimbell Foods, Inc.,* 440 U.S. 715, 728 (1979); *Kamen v. Kemper Financial Services, Inc.,* 500 U.S. 90, 98 (1991).

Under the Elections Clause, federal policy constitutionally requires that federal elections be exclusively-publicly-funded. The local government's policies to accept the private moneys to pay for federal elections conflicts with the Elections Clause. Because of this conflict, the federal common law tort should be recognized. If this federal common law tort is recognized under the Elections Clause, then the All Writs Act, 28 U.S.C. 1651, provides the Court with an equitable remedy prior to an election to enjoin local public officials from illegally accepting CTCL's moneys to fund federal elections.

The All Writs Act provides that "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." *Grider v. Keystone Health Plan Cent., Inc.*, 500 F.3d 322, 328 (3rd Cir. 2007), *quoting* 28 U.S.C. 1651(a). "The All Writs Act confers on courts 'extraordinary powers' that are 'firmly circumscribed.' "*Alabama v. U.S. Army Corps of Eng'rs,* 424 F.3d 1117, 1132 (11th Cir.2005) (quoting *ITT Cmty. Dev. Corp. v. Barton,* 569 F.2d 1351, 1358 (5th Cir.1978)).

The U.S. Supreme Court in *FTC v. Dean Foods Co.,* 384 U.S. 597, 606 (1966), held that the All Writs Act where Congress failed to provide a solution regarding preliminary injunctions in Federal Trade Commission matters. At the time, the Federal Trade Commission sought a preliminary injunction under the All Writs Act to stop the respondents from merging until it reviewed the legality of the merger. *Id.* at 605-605. But, respondents argued because Congress had not given the FTC express statutory authority to request preliminary relief, that relief is unavailable. *Id.* at 605-606. The Court agreed with the FTC reasoning that Congress could not have entrusted the enforcement of the Clayton Act to the FTC without allowing the court of appeals to exercise its derivative power under the All Writs Act. *Id.* at 605. Thus, in the absence of explicit congressional direction, courts may exercise their authority under the All Writs Act to ensure effective judicial review.

Similarly, the Constitution, Article I, section 5, leaves to each House of Congress to be judge of its own elections, "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members." But, in this case, Congress

has failed to provide specific pre-election remedies against local public officials when illegally accepting private moneys to fund federal elections. 52 U.S.C. 21112, regarding federal election standards, is too limited requiring only an "appropriate remedy" from the states for HAVA violations, but not the meaningful equitable remedy required prior to the federal election—as demonstrated in this case—to stop local election officials from using private money to fund public elections. So, in this situation, as in *FTC v. Dean Food Co.*, the All Writs Act provides a remedy to the Court based on the federal common law claim described above to provide a pre-election preliminary injunction to enjoin the local election officials from violating federal law by accepting private moneys to pay for federal elections.

VI. Standing exists when private federal election grants invalidate federal elections because a resident not having a Congressional representative is actual and concrete injury.

The district court dismissed the complaint based on standing without analyzing whether the private cause of action under the Elections Clause federal common law exists. If the private cause of action exists, then standing exists because a resident not having a Congressional representative is an actual and concrete injury.

A party invoking federal jurisdiction must allege facts demonstrating that each of the following elements have been satisfied in order to have standing to pursue the case: (1) the plaintiff "suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). "To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected

interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.' " *Id.* (quotation omitted). That is, the injury "must actually exist" and "must affect the plaintiff in a personal and individual way." *Id.* at 1548 (quotation omitted).

The challenged conduct of the Respondents, accepting CTCL's private federal election grants, can be fairly traced to invalidation of Congressional elections—leaving Petitioners without representation in Congress. The Petitioners' disenfranchisement involved with not having a representative in Congress is "an invasion of a legally protected interest that is concrete and particularized, not conjectural or hypothetical." The Petitioners not having a representative in Congress is an injury that actually exists and affects the Petitioners in a personal and individual way. The Petitioners would not be able to exercise their First Amendment rights to communicate with a Congressional representative until a new, valid special election occurred. It is not a generalized grievance affecting the general public. Citizens of Congressional Districts whose public election officials refused the CTCL's private federal election grants would still have representation in Congress.

The 2018 matter of the North Carolina Ninth Congressional District is illustrative for the purpose of standing. In that matter, election misconduct led to invalidation of a Congressional election and a vacant Congressional District seat which disenfranchised voter within the Congressional district until a special election could be held. In that case, election misconduct occurred including illegal ballot harvesting. The U.S. Constitution, Article I, section 5, states that the House is the judge of the elections

of its members and the final arbiter of contests. While the election contest in the North Carolina Board of Elections was pending, incoming U.S. House Majority Leader Steny Hoyer issued a statement saying House Democrats won't allow Republican Mark Harris to be sworn in because of the ongoing investigation, "Given the now well-documented election fraud that took place in NC-09, Democrats would object to any attempt by Mr. Harris to be seated on January 3," Hoyer said, adding that "the integrity of our democratic process outweighs concerns about the seat being vacant at the start of the new Congress."[1] The North Carolina Board of Elections concurred—refusing to certify the November 2018 results and scheduling a special election on September 10, 2019.[2] So, the residents of North Carolina's Ninth Congressional District were without representation in the U.S. House of Representatives from January of 2019 through September 10, 2019—an actual and concrete injury particularized to the residents of that Congressional District.

Similarly, the Petitioners are disenfranchised if the federal courts were to conclude that the private federal election grants invalidate the elections and, in turn, a house of Congress made a decision not to seat a Congressional member for that reason, triggering a special election. Prior to the necessary special election, the Petitioners would not have a Congressional representative which is the type of injury caused by defendant's misconduct which confers standing.

---

[1] *See* https://www.politico.com/story/2018/12/28/nc-election-board-turns-down-request-to-certify-a-gop-victory-before-disbanding-1076617 (last visited Oct. 19, 2020).

[2] *See* https://ballotpedia.org/North_Carolina%27s_9th_Congressional_District_special_ election, 2019 (last visited Oct. 19, 2020).

VII. The Petitioners meet all the requirements for an injunction against the Respondents.

The Court, when deciding this petition, should consider the balancing of the equities. The Petitioners meet all the requirement for an injunction against Respondents. This Court balances the equities when granting injunctions, "Where the question is whether an injunction should be granted the irreparable injury facing the plaintiff must be balanced against the competing equities before an injunction will issue." *Breswick & Co. v. U.S.,* 75 S.Ct. 912, 915 (U.S. 1955), *citing Yakus v. United States*, 321 U.S. 414, 440 (1943). Here, the balance of equities favors the Petitioners. Private unconstitutional interference with the November 3 and future elections pose the same type of "irreparable injury" and are analogous to "irreparable injury" for First Amendment deprivations. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns,* 427 U.S. 347, 373 (1976). There is no adequate legal remedy. As detailed above, private payment for federal elections invalidates Congressional elections and, in turn, the respective houses of Congress may decide the federal elections may need to be re-done by special elections. A do-over in the form of a special Congressional election means that the residents of the Congressional District will not have a Congressional representative, an actual and concrete harm. The balancing of harms favors the issuance of the injunction because the government can use its own resources to fund the federal elections. Sufficient federal and state funds exist; there is no reason that private federal election grants need to be accepted and used. Ex. 2. The public interest factor always favors

valid Congressional elections over Congressional elections rendered invalid by unconstitutional private interference.

CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted.

Dated: October 25, 2020

/s/Erick G. Kaardal
Erick G. Kaardal, MN 229647
Mohrman, Kaardal & Erickson
150 South Fifth Street, Suite 3100
Minneapolis, MN 55402
Telephone: (612) 465-0927
Email: kaardal@mklaw.com
Counsel of Record

Thomas W. King, III, PA ID 21580
Thomas E. Breth, PA ID 66350
Special Counsel to the Amistad Project
of Thomas More Society
Dillon McCandless King Coulter &
Graham, LLP
128 West Cunningham Street
Butler, PA 16001
Telephone: (724) 283-2200
Facsimile: (724) 283-2298
E-mail addresses: jshuber@dmkcg.com
relliott@dmkcg.com
tking@dmkcg.com
tbreth@dmkcg.com
Attorneys for Petitioners

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

PENNSYLVANIA VOTERS ALLIANCE, *et al.*, Plaintiffs, v. CENTRE COUNTY, *et al.*, Defendants.	No. 4:20-CV-01761 (Judge Brann)

MEMORANDUM OPINION

OCTOBER 21, 2020

I. BACKGROUND

Plaintiffs filed this civil rights action to enjoin Centre County, Delaware County, and the City of Philadelphia (collectively "Defendants") from receiving election grants from the Center of Tech and Civic Life ("CTCL").[1] Plaintiffs argue that these grants violate the Election and Equal Protection Clauses of the United States Constitution,[2] and that they are preempted by both the Constitution and federal law.[3]

---

1 Doc. 1. Plaintiffs have since amended their complaint and added Kathy Boockvar, in her capacity as Secretary of the Commonwealth of Pennsylvania, as a Defendant. Doc. 38 at ¶ 196.

2 *Id.* at ¶¶ 102-76.

3 *Id.* at ¶¶ 177-216. Specifically, Plaintiffs argue that these grants are preempted by the Elections Clause, the Supremacy Clause, the Help America Vote Act, and the National Voters Registration Act. *Id.*

A. Plaintiffs

Plaintiffs consist of the Pennsylvania Voters Alliance organization ("PVA") and fourteen individual registered voters who reside in Pennsylvania.[4] These fourteen individuals are residents of Centre County, Delaware County, and the City of Philadelphia.[5] They all generally oppose the election of "progressive" candidates in local, state, and federal elections.[6]

B. CTCL and the CTCL Grants

CTCL, a non-party to this action, is a nonpartisan, nonprofit organization formed in 2012 by a "team of civic technologists, trainers, researchers, election administration and data experts" to "foster a more informed and engaged democracy" and to help "modernize elections."[7] CTCL has designated $250,000,000 in grant money to be paid to election offices across the country "to help ensure that [these offices] have the staffing, training, and equipment necessary so this November every eligible voter can participate in a safe and timely way and have their vote counted."[8]

These funds may be used for election-related expenses, including to: maintain in-person polling on election day; obtain personal protective equipment for election

---

4 *Id.* at ¶¶ 4-18.
5 *Id.* at ¶¶ 5-18.
6 *Id.* Several Plaintiffs are members of the Pennsylvania House of Representatives and several are Republican candidates in the upcoming election. *Id.* at ¶¶ 5, 9-18. But because neither group asserts claims based on these statuses, they will be treated the same as the other individual Plaintiffs.
7 *Id.* at ¶ 44; Doc. 37 at 5.
8 Doc. 38 at ¶ 55.

officials and voters; support drive-thru voting; publish reminders to voters to update their voter registration information; educate voters on election policies and procedure; recruit and hire poll workers; provide increased cleaning and sanitation at poll sites; train poll workers; expand in-person early voting sites; and deploy additional staff or technology to improve mail ballot processing.[9]

CTCL provides grant funds to any local election office that applies, and the final grant is calculated using nonpartisan criteria.[10] CTCL reports that over 1,100 local election administrators across the country have applied for CTCL grants, including eighteen counties within Pennsylvania, as well as the Pennsylvania Department of State.[11] Of these eighteen counties, eleven voted for Donald Trump over Hillary Clinton in the 2016 election, "and five did so by more than a two-to-one margin."[12]

Nevertheless, Plaintiffs claim that CTCL provides funds only to regions that contain "demographics with overwhelmingly progressive voters."[13] Plaintiffs count Defendants among such regions, and note that for the 2016 presidential election,

---

9 *Id.* at ¶ 59.
10 Doc. 37 at 6.
11 *Id.*
12 *Id.*
13 *Id.* at 17. Specifically, Plaintiffs contend that CTCL is "a progressive organization [that] targets urban counties and cities for its private federal election grants to turn out the progressive vote so [that] progressive candidates win." Doc. 38 at ¶ 53.

Hillary Clinton received 84.3% of the votes in Philadelphia, 61.58% of the votes in Delaware County, and 50.93% of the votes in Centre County.[14]

C. Procedural Posture

The genesis of this action stems from Defendants' decision to accept funding from CTCL, allegedly without the consent of the United States Congress or the Commonwealth of Pennsylvania.[15] Each Defendant has accepted grant money from CTCL to varying degrees.[16] This money has been used to fund various election-related initiatives and to defray certain election-related expenses. For example, Defendants have used CTCL moneys to: purchase processing equipment for mail-in and absentee voting; create satellite election offices; install secure drop-boxes; pay for in-person voting expenses; and cover the cost of printing and postage.[17] All three counties have also received election grants under the Help America Vote Act ("HAVA") and the Coronavirus Aid, Relief, and Economic Securities Act, both of which are distributed by the Secretary of the Commonwealth of Pennsylvania.[18]

Plaintiffs allege that Defendants' acceptance of the CTCL grants is unlawful for two reasons. First, they argue that any authority granted to the Defendants to receive these CTCL grants is preempted by the Elections Clause, the Supremacy

---

14 *Id.* at ¶¶ 72-74.
15 *Id.* at ¶¶ 79-83.
16 Philadelphia received $10,012,000, Delaware County received $2,200,000, and Centre County received $863,838. *Id.*; *see* Doc. 37 at 15-16.
17 Doc. 38-3.
18 Doc. 38 at ¶¶ 87-97.

Clause, HAVA, and the National Voters Registration Act.[19] And second, Plaintiffs claim that the grants directly violate the Pennsylvania Election Code, the Election Clause of the United States Constitution, and the Equal Protection Clause of the Fourteenth Amendment.[20] Specifically, Plaintiffs argue that the CTCL grants violate the Equal Protection Clause because only some counties chose to apply for them; thus resulting in those counties with CTCL funding having more money to spend on elections than those who chose to forgo applying.[21] It is this resultant inequity that Plaintiffs argue is unconstitutional.[22]

Plaintiffs have filed a motion for a temporary restraining order and preliminary injunction.[23] They contend that: they are likely to succeed on the merits of their claims; they will be irreparably harmed absent an injunction; there will be little to no harm to Defendants should an injunction issue; and the public interest weighs in favor of an injunction.[24]

Plaintiffs make sweeping constitutional claims. But there is less to this case than meets the eye. That is because, despite their assertions, Plaintiffs cannot satisfy the threshold standing requirement of Article III. The Court thus concludes that it

---

19 *Id.* at ¶¶ 102-76.
20 *Id.* at ¶¶ 176-217.
21 *Id.* at ¶¶ 211, 213.
22 *Id.* Plaintiffs' claims against Defendant Boockvar are premised on the alleged illegality of the CTCL grants. Plaintiffs argue that Boockvar is culpable because she permitted Defendants to accept the grants.
23 Doc. 4.
24 Doc. 5.

cannot reach the merits of Plaintiffs' motion because they lack standing. Accordingly, the complaint will be dismissed without prejudice.[25]

II. DISCUSSION

"Article III of the United States Constitution limits the power of the federal judiciary to 'cases' and 'controversies.'"[26] "For a federal court to exercise jurisdiction under Article III, plaintiffs must allege—and eventually prove—that they hav[e] 'standing' to pursue their claims."[27] "The [United States] Supreme Court has repeatedly described the question of Article III standing as a 'threshold' issue."[28] "It is an 'irreducible constitutional minimum,' without which a court would not have jurisdiction to pass on the merits of the action."[29] "As a result, federal courts 'have an obligation to assure themselves of litigants' standing under Article III.'"[30] As the United States Court of Appeals for the Third Circuit has explained, the "continuing obligation to assure that [courts] have jurisdiction requires that [they] raise the issue of standing sua sponte."[31]

"The plaintiff, 'as the party invoking federal jurisdiction,' bears the burden of establishing the minimal requirements of Article III standing: '(1) an injury in fact,

---

[25] *See Cottrell v. Alcon Labs.*, 874 F.3d 154, 164 n.7 (3d Cir. 2017) ("Because the absence of standing leaves the court without subject matter jurisdiction to reach a decision on the merits, dismissals 'with prejudice' for lack of standing are generally improper").

[26] *Id.* at 161-62 (quoting U.S. Const. art. III).

[27] *Id.*

[28] *Wayne Land & Mineral Grp., LLC v. Delaware River Basin Comm'n*, 959 F.3d 569, 573-74 (3d Cir. 2020) (quoting *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1951 (2019)).

[29] *Id.* at 574 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)).

[30] *Id.* (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 340 (2006) (brackets omitted)).

[31] *Id.* (brackets and ellipsis omitted).

(2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.'"[32] "In assessing whether a plaintiff has carried this burden, [courts must] separate [the] standing inquiry from any assessment of the merits of the plaintiff's claim."[33] "To maintain this fundamental separation between standing and merits at the dismissal stage, [courts] assume for the purposes of [the] standing inquiry that a plaintiff has stated valid legal claims."[34] "While [the Court's] standing inquiry may necessarily reference the nature and source of the claims asserted, [the Court's] focus remains on whether the plaintiff is the proper party to bring those claims."[35]

Plaintiffs assert three theories of standing.[36] First, they argue that the CTCL grants disadvantage the Plaintiffs because they provide an advantage to progressive and Democrat candidates in the counties where Plaintiffs live and vote.[37] Second, they argue that, without injunctive relief, the CTCL grants will delegitimize and thus invalidate the elections, consequently resulting in Plaintiffs lacking political representation until the election can be re-done.[38] Third, Plaintiffs offer the novel

---

32 *Cottrell*, 874 F.3d at 162 (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (ellipsis omitted)).

33 *Id.*

34 *Id.*

35 *Id.* (brackets, citation, and internal quotation marks omitted).

36 Plaintiff PVA premises its associational standing on the standing of its members, the individual named Plaintiffs in this case. Doc. 39 at 4. Accordingly, the Court will analyze Plaintiffs' standing together. Similarly, because Plaintiffs base their theories of standing against all Defendants on the same injuries, the Court will analyze Plaintiffs' standing against the Defendants as a whole.

37 *Id.* at 5-7.

38 *Id.* at 7.

theory that they have suffered an injury as a third-party beneficiary to the "social contract" between the federal government and the individual States.[39]

None of these theories are persuasive. Plaintiffs have not shown that they can satisfy any of the three elements of standing. That is, Plaintiffs have not shown that they will suffer an injury in fact, that any injury is fairly traceable to Defendants, or that any purported injury is likely to be redressable. Consequently, their complaint is dismissed.

A. Injury in Fact

Plaintiffs have not alleged an injury in fact sufficient to support standing. "To establish Article III standing, an injury must be 'concrete, particularized, and actual or imminent.'"[40] Plaintiffs' injuries lack particularity and imminence, and the Court accordingly dismisses this action for lack of standing.

1. Particularity

All three of Plaintiffs' alleged injuries constitute generalized grievances and are thus insufficiently particularized to support standing. Limiting jurisdiction to those cases which are "personal and individual" to the party "ensures that courts exercise power that is judicial in nature."[41] Thus, the Supreme Court has made clear that "[a] federal court is not 'a forum for generalized grievances.'"[42] The

---

[39] *Id.* at 9-10.

[40] *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 409 (2013) (quoting *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149 (2010)).

[41] *Lance v. Coffman*, 549 U.S. 437, 441 (2007).

[42] *Gill v. Whitford*, 183 S. Ct. 1916, 1929 (2018).

Supreme Court defines generalized grievances as those "predicated upon an interest . . . which is held in common by all members of the public."[43] As a result, the Supreme Court has repeatedly rejected challenges to government action premised solely on an individual's general interest in ensuring that the law is followed.[44]

In the voting rights context, the Supreme Court has "long recognized that a person's right to vote is individual and personal in nature."[45] But this right does not give plaintiffs carte blanche to challenge any action that conceivably infringes upon that right. For example, a mere violation of the Elections Clause, on its own, will not support standing because it constitutes a generalized grievance.[46] Nor will "statewide harm" to a voter's interest in "collective representation in the legislature" or in "influencing the legislature's overall 'composition and policymaking.'"[47] To the extent that the latter interest is recognized, it is "embodied in [an individual's] right to vote for [his or her] representative."[48]

In asserting their first theory of standing, Plaintiffs argue that Defendants, by accepting and using CTCL funding, have disadvantaged and wasted Plaintiffs' votes

---

43 *Lance*, 549 U.S. at 441.
44 *E.g.*, *id.* at 442; *United States v. Richardson*, 418 U.S. 166, 176-77 (1974); *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 220-21 (1974).
45 *Lance*, 549 U.S. at 442.
46 *Id.*
47 *Gill*, 138 S. Ct. at 1931.
48 *Id.*

in the upcoming state and federal elections.[49] They claim that Defendants accepted CTCL funding "for the specific purpose to maintain, promote, or favor a historic specific demographic group that can influence the outcome of federal elections within the boundaries of those counties and city."[50] The general crux of this argument seems to be that Defendants' use of CTCL funding will improve voter turnout which in turn will make it more likely that progressive candidates will succeed in the upcoming election.

Importantly, however, Plaintiffs try to dodge the burden of articulating precisely which of their interests have been purportedly infringed. Despite citing their "right to vote," Plaintiffs do not allege that CTCL funding has actually been used to restrict that right. They do not argue that Defendants have used the CTCL funding to impede Plaintiffs' ability to vote or deny them the ability to effectively participate in the upcoming election. Moreover, Plaintiffs remain free to advocate on behalf of their preferred candidates and encourage others to vote.[51] Thus, Plaintiffs' appear to allege only that their right to vote has been infringed because it now might be more difficult for them to elect their preferred candidate.

Plaintiffs' argument is unavailing because, at core, their claim is merely a generalized grievance. Though Plaintiffs have done a valiant job of disguising it,

---

49 Doc. 39 at 6.

50 *Id.*

51 Their efforts may even be more easily rewarded now that Defendants have taken additional steps to facilitate early and in-person voting.

the only interest they have identified is of a general nature: that Plaintiffs ability to influence state and federal elections will be diluted if Defendants take steps that might result in increased voter turnout. This is not a legally cognizable injury under Article III. And it is "precisely the kind of undifferentiated, generalized grievance about the conduct of government that [the Supreme Court has] refused to countenance in the past."[52] The Court therefore finds Plaintiffs' first theory insufficient to support standing.

Plaintiffs' second theory of standing also fails because it constitutes a generalized grievance. Plaintiffs argue that maintaining CTCL's grants to Defendants would result in Plaintiffs losing representation in their individual districts (because the election results would be subsequently invalidated). But the Court is not aware of any cases holding that the right to be politically represented is a legally cognizable interest under Article III. And the Court declines to expand standing doctrine in such a manner, especially given that any right to political representation would be one "held in common by all members" of the county.[53] This injury is not sufficiently particularized, and thus does not satisfy standing.

Finally, Plaintiffs' third theory of injury also constitutes a generalized grievance. They claim that there is a social contract between the federal government and the individual States, and that Plaintiffs, as citizens, are third-party beneficiaries

[52] *Lance*, 549 U.S. at 442.
[53] *Schlesinger*, 418 U.S. at 220.

to this contract. The general thrust of this argument is that Plaintiffs' interest as third-party beneficiaries are harmed whenever the government violates the Constitution, and that this injury is particularized enough to predicate standing.

The Court cannot accept this argument. To adopt Plaintiffs' conception of standing would be to reject the entirety of standing doctrine as it exists today. Under Plaintiffs' theory, any citizen of the United States would have standing to challenge any constitutional violation for any reason. This is simply not supported by precedent or doctrine.[54] And the Court declines to take such an expansive approach in this case.

2. Imminence

Even if Plaintiffs could establish that their first two theories state a particularized and concrete injury, the alleged injuries are far too speculative to support standing.[55] To show standing for an alleged future injury, a party must show that the injury is imminent.[56] "Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure the alleged injury is not too speculative for Article III purposes—that the injury is

---

[54] *Lance*, 549 U.S. at 441 (asserting only that the law has not been followed is insufficient to establish standing); *Richardson*, 418 U.S. at 176-77 (holding that a federal taxpayer does not have standing to challenge certain CIA expenditures as a violation of the Constitution's Accounts Clause absent a showing that he suffered a particular injury); *Schlesinger*, 418 U.S. at 220 ("[S]tanding to sue may not be predicated upon an interest of the kind alleged here which is held in common by all members of the public, because of the necessarily abstract nature of the injury all citizens share.").

[55] It is clear that Plaintiffs' "social contract" theory is too generalized to establish standing.

[56] *Clapper*, 568 U.S. at 409.

certainly impending."[57] Standing thus cannot be predicated on a "highly attenuated chain of possibilities."[58] And courts should exercise caution when determining whether to "endorse standing theories that rest on speculation about the decisions of independent actors."[59]

Plaintiffs' theories of standing fail to show that any alleged injury is certainly impending because they rely on a highly attenuated causal chain of events. For example, both theories require the Court to assume that: (1) CTCL funding will result in higher voter turnout; (2) any higher voter turnout will be in support of progressive candidates; (3) the higher voter turnout will be significant enough to impact the outcome of the election; (4) this turnout will impact the election in favor of progressive candidates; and (5) regarding Plaintiffs' second theory, that a party will challenge the election if this Court does not grant Plaintiffs' motion and that challenge will result in the invalidation of the election results.

None of these assumptions are supported by the record. Defendants have used CTCL funding in a nonpartisan way to facilitate the upcoming election; they have spent the CTCL money to set up satellite election offices, offer dropboxes, and pay for various election-related expenses. Defendants have notably not attempted to use the CTCL funds to increase voter turnout by, for example, implementing get-out-the-vote efforts. There simply is no indication in the record that CTCL funds will

---

[57] *Id.* (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 565 (1992)) (emphasis in original).
[58] *Id.* at 410.
[59] *Id.* at 414.

increase voter turnout at all, which Plaintiffs allege is the root cause of their purported harm.[60]

Further, nothing in the record suggests that, if Defendants' use of the CTCL funding does increase voter turnout, it will necessarily benefit progressive candidates. The implication that increased voter turnout is inherently beneficial to progressive candidates is dubious at best.[61] And the Court finds this assumption far too dependent on the actions of tens, if not hundreds, of thousands of voters to premise standing. As a result, the Court finds that Plaintiffs' injuries are too speculative and not sufficiently imminent to support standing.

B. Causation

Plaintiffs also fail to establish that any alleged injury "is fairly traceable to the challenged conduct of the defendant."[62] In *Allen v. Wright*, the Supreme Court concluded that standing was absent where "[t]he links in the chain of causation between the challenged Government conduct and the asserted injury [we]re far too weak for the chain as a whole to sustain respondents' standing."[63] There, the plaintiffs challenged the Internal Revenue Service's grant of tax-exempt status to

---

60 It could be argued that safer, more efficient funding will increase voter turnout in these areas. However, it is equally likely that even without safe and efficient funding, voters in a presidential election—especially one that is viewed as highly consequential to both Republican and Democratic voters—will still be motivated to turn out in the same numbers regardless of any risks associated with voting during a pandemic.

61 As the adage goes, "a rising tide lifts all boats." *Missouri v. Jenkins*, 515 U.S. 70, 102 (1995).

62 *Cottrell*, 874 F.3d at 162.

63 *Allen v. Wright*, 468 U.S. 737, 759 (1984), *abrogated on other grounds by Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014).

certain racially discriminatory schools, arguing that such tax-exempt status aided the schools in maintaining segregation and, accordingly, in harming their children by forcing them to attend segregated schools.[64]

Such alleged harm was "not fairly traceable to the Government conduct respondents challenge as unlawful" because there was no evidence that "there were enough racially discriminatory private schools receiving tax exemptions in respondents' communities for withdrawal of those exemptions to make an appreciable difference in public school integration."[65] The Supreme Court noted that it was unclear "how many racially discriminatory private schools [we]re in fact receiving tax exemptions," whether the withdrawal of tax-exempt status "from any particular school would lead the school to change its policies," "whether any given parent of a child attending such a private school would decide to transfer the child to public school as a result of any changes in educational or financial policy made by the private school once it was threatened with loss of tax-exempt status," or "whether, in a particular community, a large enough number of the numerous relevant school officials and parents would reach decisions that collectively would have a significant impact on the racial composition of the public schools."[66]

Ultimately, any alleged harm "involve[d] numerous third parties (officials of racially discriminatory schools receiving tax exemptions and the parents of children

---

64 *Id.* at 743-45
65 *Id.* at 757-58.
66 *Id.* at 758.

attending such schools) who may not even exist in respondents' communities and whose independent decisions may not collectively have a significant effect on the ability of public school students to receive a desegregated education."[67] Given that the harm was not directly traceable to the IRS, the Supreme Court concluded that plaintiffs did not have standing to pursue their claims.[68]

Here too, Plaintiffs' alleged harms result from a third-party and, thus, their alleged injuries are not fairly traceable to Defendants. The purported injuries here arise not from Defendants' acceptance of CTCL funds, but from CTCL's decision to allegedly direct those funds to counties with higher rates of progressive voters. Indeed, Plaintiffs make clear in their amended complaint that they are not harmed by the use of funds to secure a safer and more efficient election, but instead "are injured by CTCL's private federal election grants because they are targeted to counties and cities with progressive voter patterns."[69] Because Plaintiffs' injuries are not fairly traceable to Defendants' actions but, instead, to the actions of a non-defendant (CTCL), Plaintiffs do not have standing to pursue their claims in this action.[70]

---

67 *Id.* at 759.
68 *Id.* at 759-60.
69 Doc. 38 at 2.
70 *See Leeke v. Timmerman*, 454 U.S. 83, 86-87 (1981) (injury indirect insufficient to support standing because injury turned on the action of a prosecutor who was not a party not before the court); *Linda R.S. v. Richard D.*, 410 U.S. 614, 617-18 (1973) (injury too indirect to support standing where injury turned on the action of non-party actor).

C. Redressability

Lastly, the Court finds that standing is absent because Plaintiffs have not demonstrated that any purported harm is likely to be redressed by a favorable decision.[71] At bottom, Plaintiffs claim rests on supposition—their conclusion that safer and more efficient voting as a result of CTCL funds will necessarily lead to increased progressive voter turnout, thereby harming Plaintiffs' preferred conservative candidates.

However, as discussed above, there is no evidence that CTCL funds will result in an increase in voter participation. Indeed, a majority of the funding appears to be dedicated to assisting with the processing of mail-in voting and, thus, would appear likely to have no discernable effect on voter turnout. It appears then that the harm alleged by Plaintiffs would instead be caused by the number of progressive voters who may turn out to vote, not by additional funding that increases the safety and efficiency of the election in the Defendant counties. Consequently, simply forcing Defendants to return all CTCL funding is not likely to stem the harm of which Plaintiffs complain, as those voters may still turn out regardless of whether or not Defendants keep or return the CTCL grant.

It is therefore "entirely conjectural whether the . . . activity that affects respondents will be altered or affected by" the Court blocking Defendants from using

[71] *Cottrell*, 874 F.3d at 162.

CTCL funding.[72] Because Plaintiffs' alleged injuries stem from the actions of voters, not Defendants, their claims are not redressable and the Court finds that they lack standing.

III. CONCLUSION

In accordance with the above discussion, Plaintiffs' complaint will be dismissed without prejudice for lack of standing.

An appropriate Order follows.

BY THE COURT:

s/ Matthew W. Brann
Matthew W. Brann
United States District Judge

[72] *Lujan*, 504 U.S. at 571.

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

PENNSYLVANIA VOTERS ALLIANCE, *et al.*, Plaintiffs, v. CENTRE COUNTY, *et al.*, Defendants.	No. 4:20-CV-1761 (Judge Brann)

ORDER

AND NOW, this 21st day of October 2020, in accordance with the accompanying Memorandum Opinion, **IT IS HEREBY ORDERED** that:

1. Plaintiffs' Amended Complaint, Doc. 38, is **DISMISSED** without prejudice.
2. The case is **DISMISSED** and the Clerk of Court is directed to close the case file.
3. Plaintiffs' motions for a temporary restraining order, Docs. 4 and 51, are **DISMISSED**.

BY THE COURT:

s/ Matthew W. Brann
Matthew W. Brann
United States District Judge

Stillwater Technical Solutions

"Complex Problems Solved Well"

October 9, 2020

Mr. Phill Kline
Thomas More Society
309 West Washington Street, Suite 1250
Chicago, IL 60606

Mr. Erick Kaardal
Mohrman, Kaardal and Erickson PA
150 South Fifth Street, Suite 3100
Minneapolis, MN 55402

Re: The Legitimacy and Effect of Private Funding in State and Federal Electoral Processes

Dear Mr. Kline:

Introduction -

Thank you for retaining Stillwater Technical Solutions (STS) to survey the impact of public/private partnership funding on state certified Help America Vote Act (HAVA) implementation plans, and state electoral administrative processes. STS is a non-partisan, for-profit research and public-policy advisory firm specializing in federal and local government administrative procedures, land and natural resource policymaking, local governmental relations, and program management.

Thomas Moore Society (TMS) has retained STS to analyze whether grants from private, non-profit organizations that are independent of state certified HAVA implementation plans and legislative appropriations processes may legitimately be integrated with public funding by local governments for electoral administration. Our brief response, expanded throughout this briefing paper, is that there is no statutory or administrative basis or history for local jurisdictions to solicit or receive private funding outside of state plans or legislative and congressional appropriation processes.

STS was specifically requested to brief TMS on the following questions:

1) Whether state certified HAVA implementation plans or state legislative prerogatives are compromised through the injection of private grants from the Center for Technology and Civic Life (CTCL) into local elections offices;
2) If existing appropriations from federal, state or local sources are sufficient to execute the 2020 elections, making funding from public/private partnerships unnecessary;
3) How the reporting and claw back provisions in CTCL agreements with local governments represent an ongoing liability for local governments, skews state legislative budgeting, and result in inaccurate federal and state audits required for HAVA programs;[1]
4) How injection of CTCL funds in discreet jurisdictions distorts legislative appropriation formulas, resulting in an inequitable distribution of funding throughout the state, contrary to HAVA and state implementation plans.

[1] 41 CFR Part 105-71. *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments*.

Approach -

For this survey, STS analyzed the requirements from the U.S. Elections Assistance Commission (EAC) and provisions in CTCL agreements in the context of the state certified HAVA implementation plans for the states of Wisconsin,[2] Minnesota[3,4] Michigan,[5] and Pennsylvania.[6] These four states were selected because of an early emphasis and focused collaboration between CTCL and large municipalities, as well as the timing of CTCL grants, beginning in late spring 2020. A chronology of the CTCL and local governmental transactions, previously reported by STS, was also integrated in this analysis.[7]

Through assessment of the administrative responsibilities of state electoral commissions, as codified in state HAVA implementation plans, and documentation of vast unaccessed federal appropriations through HAVA and the Coronavirus Aid Relief and Economic Security (CARES) Act,[8] STS was able to demonstrate that there is no deficit of governmental funding available to the states or local jurisdictions for administration of the 2020 elections.

One question that emerges is the history, influence, and impact that private funding could have on the long-term *culture* of state and federal elections. Because large amounts of onshore and offshore funding into non-profit foundations has been documented to influence federal agencies and U.S. policymaking,[9] the potential negative effect of funding on state HAVA implementation programs and local elections is of national import, and beyond the scope of this briefing letter.

Background; Situation Appraisal -

The responsibility to administer state and federal elections is the sole prerogative of the Wisconsin, Minnesota, Michigan, Pennsylvania and remaining state legislatures.[10] Those legislatures maintain responsibility for appropriations and delegation of authority to state electoral commissions, who in turn administrate elections on a statewide basis. The state elections commissions enact administrative policies, support county and municipal officials in their individual precincts, and are responsible to administer and report HAVA expenditures in accordance with certified implementation plans approved by the state legislatures and the EAC.

[2] Certified Wisconsin HAVA State Plan of 2002. WI Elections Board. FR Vol. 69 No. 57 March 24 2004.
[3] Certified Minnesota HAVA State Plan of 2002. Mary Kiffmeyer Secretary. FR Vol. 69 No. 57 March 24 2004.
[4] Publication of States Plan Pursuant to the Help America Vote Act. Federal Register Vol. 74, No 237 Friday December 11, 2009.
[5] Certified Michigan HAVA State Plan of 2002. Terri Lynn Land Secretary. FR Vol. 69 No. 57 March 24 2004.
[6] Certified Pennsylvania HAVA State Plan of 2002. Edward Rendell Governor, P.A. Cortes Secretary FR Vol. 69 No. 57 March 24 2004.
[7] *CTCL Grant Awards History, Chronology, and Issues.* Stillwater Technical Solutions. October 2020.
[8] Federal Election Assistance Commission. *Post Primary CARES Act Expenditure Report. September 22, 2020*.
[9] *The Chain of Command. How Billionaires and Foundations Control Environmental Movement. US Senate Report July 30 2014*.
[10] U.S. Const. Art. I, § 4.

With promulgation of HAVA on October 29, 2002 and assistance from the EAC, individual state legislatures are provided a conduit for federal funding and assistance for reform and administration of electoral programs. At the federal level, auditing is the responsibility of the Office of the Inspector General and any necessary prosecutorial actions are undertaken by the U.S. Attorney General.

Access to federal HAVA funding requires participating state legislatures to prepare and certify detailed state implementation plans that ensure election integrity, provide for security, assure privacy, improve voter access, and provide for reporting and auditing. The state HAVA implementation plans provide measures to upgrade voter systems, standards for database integrity, methods of voter communication, requirements for recruitment and training of poll workers, and many other policies to be implemented by electoral officials at the local level.

Preparation and revision of HAVA implementation plans are governed by the administrative procedure statutes of the individual states. State administrative procedures and other executive branch policies typically impose public notification, opportunity for public comment, and other protective, procedural constraints on executive commissions and agencies before HAVA implementation plans may legitimately be modified.

The ongoing availability of HAVA appropriations to state legislatures is dependent upon compliance with state implementation plans and annual reporting to the EAC. All state certified HAVA elections plans must meet the federal audit standards under the *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments* at 41 CFR Part 105-71.

The CARES Act, signed into law on March 27, 2020, provides an additional $400 million to the EAC, the states, the District of Columbia, and U.S. Territories "*to prevent, prepare for, and respond to coronavirus, domestically or internationally, for the 2020 Federal election cycle*." The CARES Act requires state agencies to coordinate with the Pandemic Response Accountability Committee, and dissemination of CARES Act funding takes place through the existing HAVA state implementation planning process.

It is important to note that large amounts of the CARES Act relief funding appropriated by the EAC to Wisconsin, Minnesota, Michigan, Pennsylvania and the other states for electoral administration is unspent and remains available to municipalities and counties.[11] Because large amounts of federal funding continue to be available, the need for augmentation from the private sector is both unjustified and unwarranted.

In Wisconsin, as of July 10, 2020, the EAC reported that only 60% of the $7,362,345 CARES funding has been spent.[12,13] This makes solicitation of CTCL funding by Racine Mayor Mason for redistribution to the cities of Madison, Milwaukee, Green Bay, and Kenosha unnecessary and outside of the protocols of the Wisconsin HAVA implementation plan for electoral administration.[14]

[11] Federal Election Assistance Commission. Post Primary CARES Act Expenditure Report. September 22, 2020.
[12] Elections Assistance Commission. CARES Act Quarterly Report to the Pandemic Response Committee. July 10, 2020.
[13] Federal Election Assistance Commission. Post Primary CARES Act Expenditure Report. September 22, 2020.
[14] Ibid. Stillwater Technical Solutions Chronology Matrix. October 2020.

Public funding for administration of local elections has also been made available at the individual state level. In Wisconsin, the state legislature sponsored and funded an aid program called *Wisconsin Routes to Recovery*.[15] The *Routes to Recovery* program reimburses local governments for unbudgeted expenditures necessary to respond to the COVID-19 public health emergency.

The CTCL grant program has the appearance of being initiated after the EAC and Congress appropriated HAVA and CARES Act funding, with the range of funded programs being similar to those already provided for in HAVA state implementation plans.[16] Remarkably, the CTCL grant program is being administered at the local level *independent* of the EAC, delegated state commissions, or state HAVA implementation plans. This approach distorts local and state budgeting processes, circumvents mandated funding formulas that provide for uniform and equitable distribution of funding, and bypasses public notification, public comment, and other administrative processes that ensure the public can hold government accountable.

[15] Guidance. Wisconsin Routes to Recovery Reimbursement Program. September 25 2020.

[16] Elections Assistance Commission. Plans for Use of CARES Act Funds. Report to Pandemic Response Committee.

Conflict Summary -

I. Injection of private funding into county and municipal elections circumvents State and Federal appropriations processes, violates protocols in HAVA state implementation plans, and results in inaccurate reporting under HAVA 254(a)(5):

a. The Help America Vote Act (HAVA) prescribes an intergovernmental administrative process that includes the U.S. Election Assistance Commission (EAC), state legislatures, and delegated state commissions.

b. The mechanism and authority for administration of HAVA mandates for both HAVA and CARES Act appropriation funding is prescribed in Wisconsin, Minnesota, Michigan, and Pennsylvania[17] state certified HAVA plans.

c. The individual state HAVA implementation plans incorporate detailed planning requirements for 13 HAVA categories, including election security protocols; standards for voter systems; equipment procurement requirements; voter and electoral official training procedures; provisional voting and balloting processes; provisions to improve voting access; mail-in voter registration requirements; voter complaint resolution protocols; and appropriations monitoring, auditing and reporting protocols.

d. The claw back and reporting provisions in CTCL contracts with local counties and municipalities, if exercised, will result in skewed recordkeeping and state reporting under HAVA 254(a)(5) and the Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments at 41 CFR Part 105-71.

e. The claw back language in the CTCL agreements represents a contingent, ongoing, and long-term liability for local counties and municipalities who access the CTCL grants. The public record already records instances of local governments voting to incorporate CTCL funds in their general budget.

f. Scaled up across the 15 states of known CTCL activity, inaccuracies in state/federal HAVA Title II reporting and auditing resulting from unreported funding and claw back provisions is substantial.

g. The appropriate mechanism for charitable donations to electoral processes is through donations earmarked into the general fund of the individual state legislatures. There is no state or federal statutory authority or mechanism for counties, municipalities, or other local electoral jurisdictions to solicit, receive, or appropriate private funding for administration of public elections beyond the authority of state HAVA implementation plans.

[17] Notice. *Publication of State Plans Pursuant to the Help America Vote Act*. Federal Register Volume 69, No. 57. Wednesday, March 24, 2004.

II. HAVA, CARES, and state appropriations for local elections in Michigan, Wisconsin, Pennsylvania, and Minnesota remain sufficient for the 2020 election cycle, rendering CTCL funding unnecessary:

a. Public appropriations for federal elections through the U.S. Election Assistance Commission (EAC), state matching funds, and other public moneys are the appropriate funding sources for administration of U.S. elections. State-level funding formulas provide for proportional and equitable distribution of funds, ensuring resources are evenly allocated to serve the voting public. State and federal mandates require funding recipients to report how election funding was spent within their jurisdictions.

b. For the 2020 election cycle, federal and state appropriations for administration of local elections have been substantially augmented to address the COVID-19 pandemic by additional funding through the CARES Act and other legislation.

c. Additional COVID-19 pandemic response funding for election administration has been made available through state appropriations and other allocations of public funds. As example, the State of Wisconsin used CARES Act funding and state matches for its *Routes to Recovery Program.*

d. The combination of the HAVA election security and CARES Act funding, along with any state matches, remains adequate to facilitate election operations, upgrade of election-specific hardware and software, cybersecurity, training for voter and elections officials, and COVID-19 specific needs. Publicly sourced funding remains sufficient without any private contributions.

e. Local electoral officials in Michigan who performed due diligence on CTCL grants have observed the sufficiency of CARES Act funding and remarked as to the non-necessity of CTCL grants. Michigan's Oakland County Clerk Lisa Brown decided not to seek CTCL funding because "*We already had an opportunity through the CARES Act to get extra equipment and things we would need at the county level. It seemed to me that they were offering up the same sort of thing*." [21]

f. The 2019 HAVA Title II 251 Report to the EAC from Michigan Secretary Jocelyn Benson documents an unexpended HAVA surplus for administration of statewide elections of $1,285,975.[22] The public record indicates that Secretary Benson was aware of the availability of adequate public funding for dissemination to Ann Arbor, Flint, Lansing, East Lansing, Muskegon, Pontiac, Romulus, Kalamazoo, and Saginaw – jurisdictions currently seeking CTCL funds. This contrasts with Secretary Bensons public promotion of CTCL funding for administration of elections in Michigan.

g. Concerns with CTCL funding include lack of public accountability, no state legislative or EAC oversight, and agreements that require reporting of electoral information from government back to a non-governmental organization.

[21] *Benson accused of letting 'partisan operatives' influence election.* Detroit News. October 6, 2020.
[22] Michigan HAVA 251 Funds Report. December 2019.

Table 1 - HAVA and CARES Funding Plus State Matching Funds for 2020 Elections[23]						
	2019 HAVA Carryover	Election Security	Match	CARES	Match	Total
MI	$6,635,744	$12,053,705	$2,410,741	$11,299,561	$2,259,912	$34,689,663
MN	$6,548,440	$7,418,672	$1,483,734	$6,958,233	$1,391,647	$23,800,726
PA	$3,531,998	$15,175,567	$3,035,113	$14,233,603	$2,844,721	$38,821,002
WI	$4,316,403	$7,850,124	$1,570,025	$7,362,345	$1,472,469	$22,531,366

Table 2 - Estimated CARES Act Expenditures 20 Days Post Primary Election[24]					
	Amount Appropriated	State Match	Initial Total Available	Estimated Expenditure	Available Funds
MI	$11,299,561	$2,249,551	$13,549,112	$6,821,392	$6,727,720 49%
MN	$6,958,233	$1,386,122	$8,344,355	$363,867	$7,980,488 92%
PA	$14,233,603	$2,831,101	$17,064,704	$3,511,525	$13,553,179 79%
WI	$7,362,345	$1,472,469	$8,834,814	$3,228,484	$5,303,330 60%

Table 3 – Government Funding and CTCL Grant Funding		
	2020 HAVA + CARES Funding[25]	2020 CTCL Grants[26, 27]
MI	$28,023,919	$6,369,753 (22.7%)
MN	$17,252,286	$2,297,342 (13.3%)
PA	$35,289,004	$15,824,895 (44.8%)
WI	$18,254,963	$6,946,767 (38.1%)

h. Because of the COVID-19 pandemic, Congress provided additional elections funding through the CARES Act that nearly doubled the funding levels already provided in the annual HAVA funding. Much of the remaining CARES funding has not yet been expended. The CTCL grant funding is predicated on assisting local election offices in meeting unexpected election expenses resulting from the effects of the COVID-19 pandemic. Because adequate provision for meeting those expenses has already been provided though public sources, the CTCL grants are excess to needs.

[23] *Election Assistance Commission—Election Security Grant Funding Chart July 16, 2020* and *Election Assistance Commission—CARES Grant Funding Chart July 22, 2020*

[24] *ESTIMATED CARES Act Expenditures As Reported in 20 Day Post Primary Reports (September 22, 2020 Update)*

[25] Includes federal funding + state matching funds; does not include 2019 carryover.

[26] CTCL grant dollar amount accompanied with size as a percentage of total government funding for the state.

[27] CTCL grant values must be viewed as approximate because the numbers reported by news sources and local governments vary, and grant awards continue.

III. When evaluated in context of the 2016 presidential election, CTCL grant funding patterns demonstrate partisanship in grant funding awards:

a. A review of data for 2020 CTCL grant-making in Michigan, Minnesota, Pennsylvania, and Wisconsin, and incorporation of 2016 presidential election voting records for jurisdictions receiving CTCL grants, reveals a pattern of greater funding being awarded to jurisdictions where candidate Hillary Clinton won versus grant-receiving jurisdictions where candidate Donald Trump won. While CTCL maintains that it is a non-partisan organization and its grants are available to all local jurisdictions, the grant pattern can be understood to have a clear color of partisanship. Attachment A contains charts, graphs and a table supporting this conclusion.

b. **Michigan** - At the time of this survey, CTCL had awarded eleven grants in Michigan. Recipient cities were Detroit ($3,512,000), Lansing ($443,742), East Lansing ($43,850), Flint ($475,625), Ann Arbor ($417,000), Muskegon ($433,580), Pontiac ($405,564), Romulus ($16,645), Kalamazoo ($218,869), and Saginaw ($402,878). In the 2016 election, only Saginaw was won by candidate Donald Trump; the remainder were won by candidate Hillary Clinton. In total, $9,451,235 (95.7%) was awarded to the ten jurisdictions where candidate Clinton won and only $402,878 (4.3%) where candidate Trump won.

c. **Minnesota** - At the time of this survey, the only Minnesota jurisdiction that had been awarded a CTCL grant was Minneapolis, in the amount of $2,297,342. Candidate Hillary Clinton won the 2016 presidential vote in the jurisdiction.

d. **Pennsylvania** - At the time of this survey, CTCL had awarded seven grants in Pennsylvania. Three of these grants were awarded to the cities of Philadelphia ($10,016,074), Erie ($148,729), and Lancaster ($474,202). Five were awarded to counties: Wayne County ($25,000), Northumberland County ($44,811), Center County ($863,828), Delaware County ($2,200,000), and Allegheny County ($2,052,251). A total of $13,063,828 (94.7%) went to jurisdictions where candidate Hillary Clinton won in the 2016 presidential election; only $692,742 (5.3%) went to jurisdictions where candidate Donald Trump won.

e. **Wisconsin** - At the time of this survey, CTCL had awarded multiple grants to five Wisconsin cities: Milwaukee - two for a total of $2,164,500; Madison - two for a total of $1,281,788; Green Bay - two for a total of $1,625,600; Racine - two for a total of $1,002,100; and, Kenosha - two for a total of $872,779. The $60,000 grant to Racine is what remained of a $100,000 CTCL grant to that municipality that included a stipulation that Racine would distribute a $10,000 sub-grant to each of the other four cities. This appears to place Racine in the position of being an agent acting on behalf of CTCL for the purpose of distributing grant moneys along with CTCL instruction. Candidate Hillary Clinton won handily in all five jurisdictions. [28]

[28] Wisconsin Safe Voting Plan. June 15, 2020.

Concluding Remarks and Opinions -

Despite wars, depressions, onshore attacks, Marxism, and other national traumas, the United States, throughout its 224-year history, has been able to successfully navigate electoral processes with reasonable normalcy. The current pandemic, though real, is neither exceptional nor reason to alter longstanding processes or timing of electoral administration.

The national and state governments provide public funding to carry out elections because funding from private sources could subject electoral officials to coercion, manipulation, and corruption. Private funding into local elections, over time and if allowed, will change the culture of how county clerks and municipalities view and access public funding.

With respect to the CTCL grant program itself, injection of funding into local jurisdictions circumvents longstanding administrative processes that protect voters from disenfranchisement, fraud, or an inequitable statewide distribution of funding across the electoral precincts. This condition could foreseeably and negatively affect rural voters or in-person voters.

Based upon the information in this Briefing Paper, STS offers the following actions or activities for consideration by TMS:

1. Administrative, judicial or informational actions aimed at local governments or municipalities receiving CTCL grants;

2. Provision of information to State Attorneys General who are responsible for oversight of nonprofit organizations within their respective states;

3. Provide support and information to local citizenry of CTCL grant receiving counties and municipalities such that they may inform, disagree with, or even formally challenge grant decisions by local commissions.

Please feel free to contact me as you have questions or comments on the enclosed.

Regards,

J.R. Carlson
Managing Partner
Stillwater Technical Solutions

Attachment A

Charts, Graphs and Tables

Note: Variations in grant amounts were reported by editors, the press and in meeting minutes from local governments. These variations might result in perceived inaccuracies in the dollar amounts of some CTCL grants. Because CTCL continues to make grants, source information in these calculations will outdate. The data presented is sufficient and reliable to conclude clear political trends in CTCL grant awarding patterns.

Except where noted, individual grant amounts are linked to source information.

CTCL Michigan Grants[1]

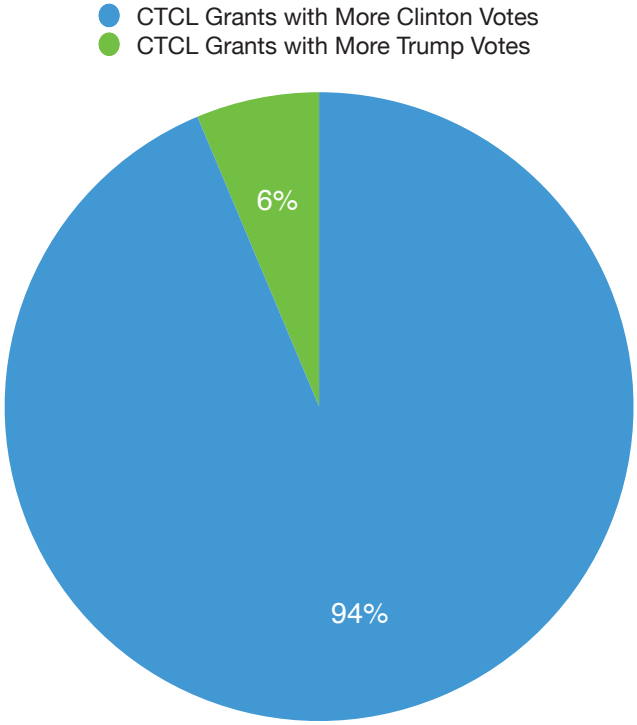


Chart note[1] The chart above contains the sum of CTCL grants to the 10 Michigan Cities listed in Table 1 below.

Table 2

CTCL Grants with More Clinton Votes	CTCL Grants with More Trump Votes
$5,966,875[1]	$402,878[1]

Table 2 note[1]. $5,966,875 and $0 are sums of CTCL's grants to the 10 Michigan cities listed in Table 1 below.

Table 1

City	CTCL Grant with More Clinton Votes	CTCL Grant with More Trump Votes
Detroit	$3,512,000	$0
Lansing	$443,742	$0
East Lansing	$43,850	$0
Flint	$475,625	$0
Ann Arbor	$417,000	$0
Muskegon	$433,580	$0
Pontiac	$405,564	$0
Romulus	$16,645	$0
Kalamazoo	$218,869	$0
Saginaw	$0	$402,878
Total CTCL MI Grant	$5,996,875	$402,878

Clinton Michigan Votes v. Trump Michigan Votes[1]

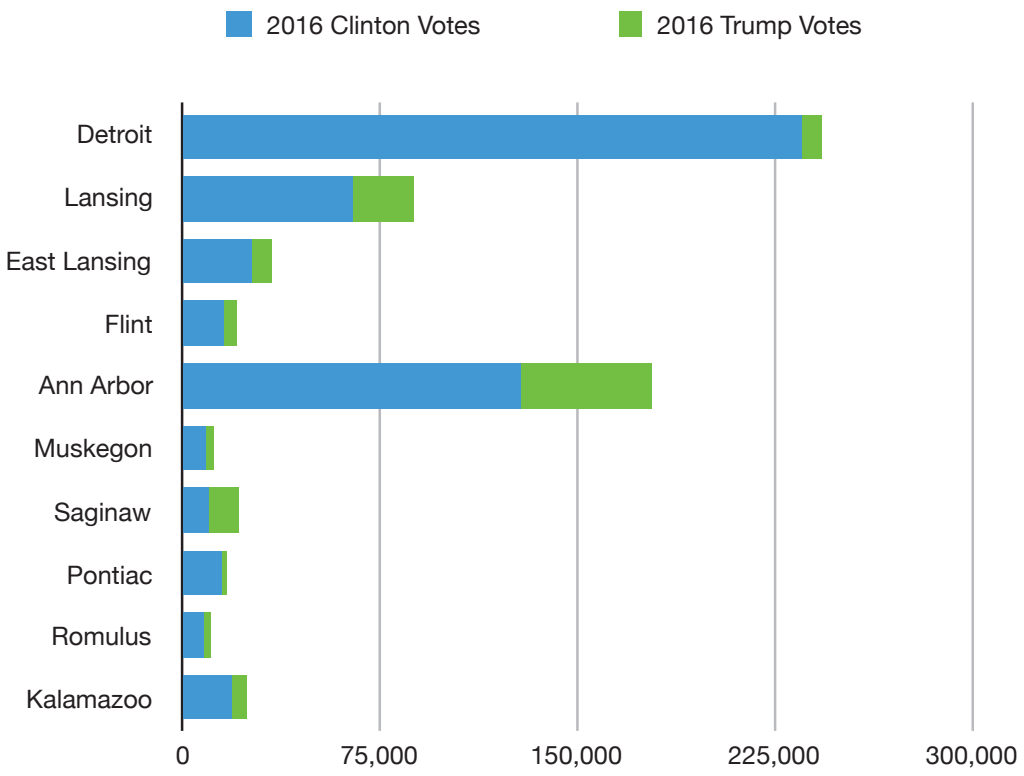


Chart Note[1]. Only the 10 Michigan cities in the above graph received 2020 CTCL funding.

Table 1

City or County	2016 Clinton Votes	2016 Trump Votes
Detroit	234,871	7,682
Lansing	65,272	22,390
East Lansing	26,146	8,294
Flint	16,163	4,677
Ann Arbor	128,025	50,335
Muskegon	8,933	3,372
Saginaw	10,263	11,077
Pontiac	14,351	2,735
Romulus	7,573	3,078
Kalamazoo	18,644	5,456

CTCL Minnesota Grant with More Clinton Votes

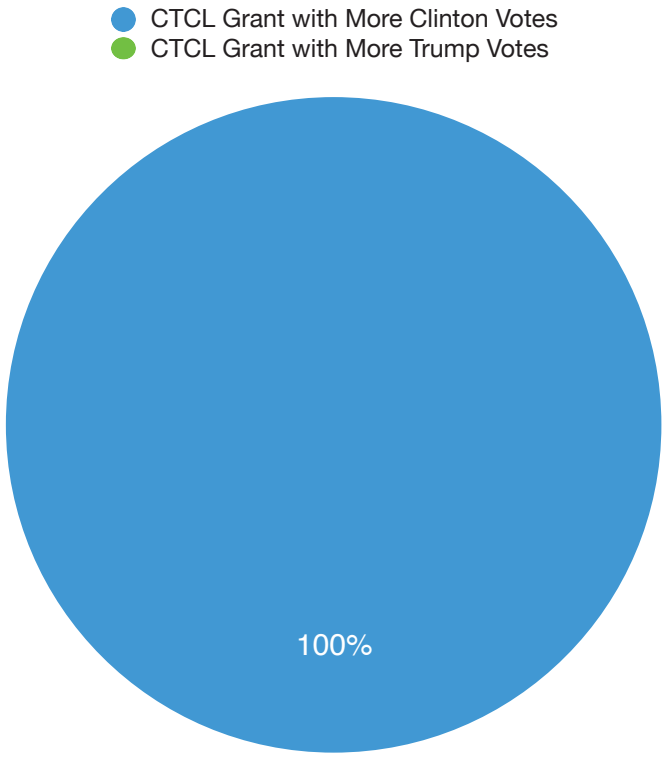


Table 1

City	CTCL Grant with More Clinton Votes	CTCL Grant with More Trump Votes
Minneapolis	$2,297,342	$0

Clinton and Trump Minnesota Votes that Received CTCL Grant in 2020

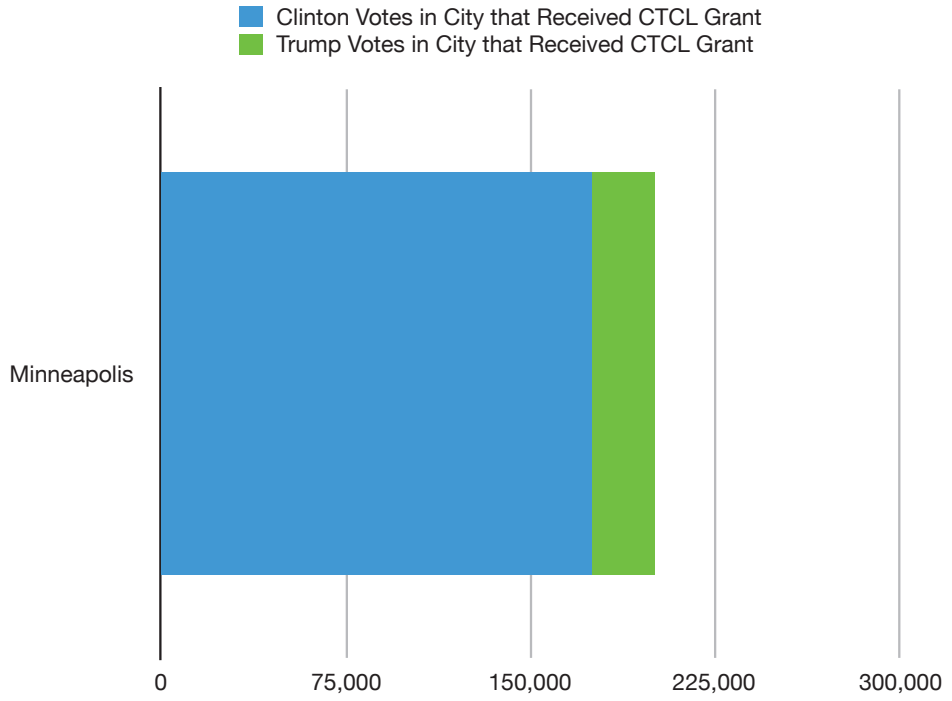


Table 1

City	Clinton Votes in City that Received CTCL Grant	Trump Votes in City that Received CTCL Grant
Minneapolis	174,585	25,693

CTCL Pennsylvania Grants[1]

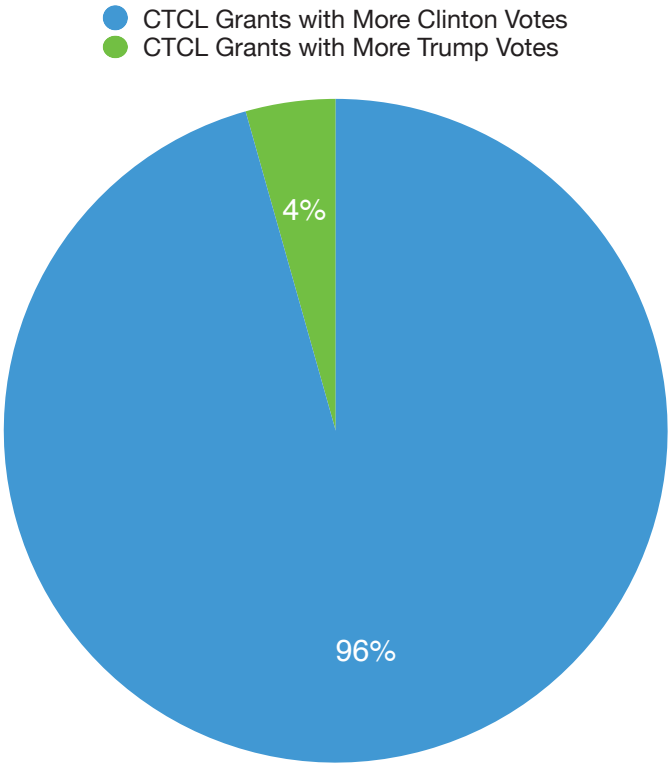


Chart note[1] The chart above contains the sum of CTCL's Pennsylvania grant money listed in Table 2 below

Table 1

CTCL Grants with More Clinton Votes	$15,132,153[1]
CTCL Grants with More Trump Votes	$692,742[1]

Table 1 note[1]. $15,132,153 and $692,742 are sums of the CTCL Pennsylvania grants listed in Table 2 below

Table 2

City or County	CTCL Grant With More Clinton Votes	CTCL Grants with More Trump Votes
Delaware County	$2,200,000	
Philadelphia	$10,016,074	
Centre County	$863,828	
Allegheny County	$2,052,251	
Wayne County		$25,000
Erie		$148,729
Lancaster		$474,202
Northumberland		$44,811
Total CTCL Grants	$15,132,153	$692,742

Pennsylvania Clinton Votes v. Trump Votes[1]

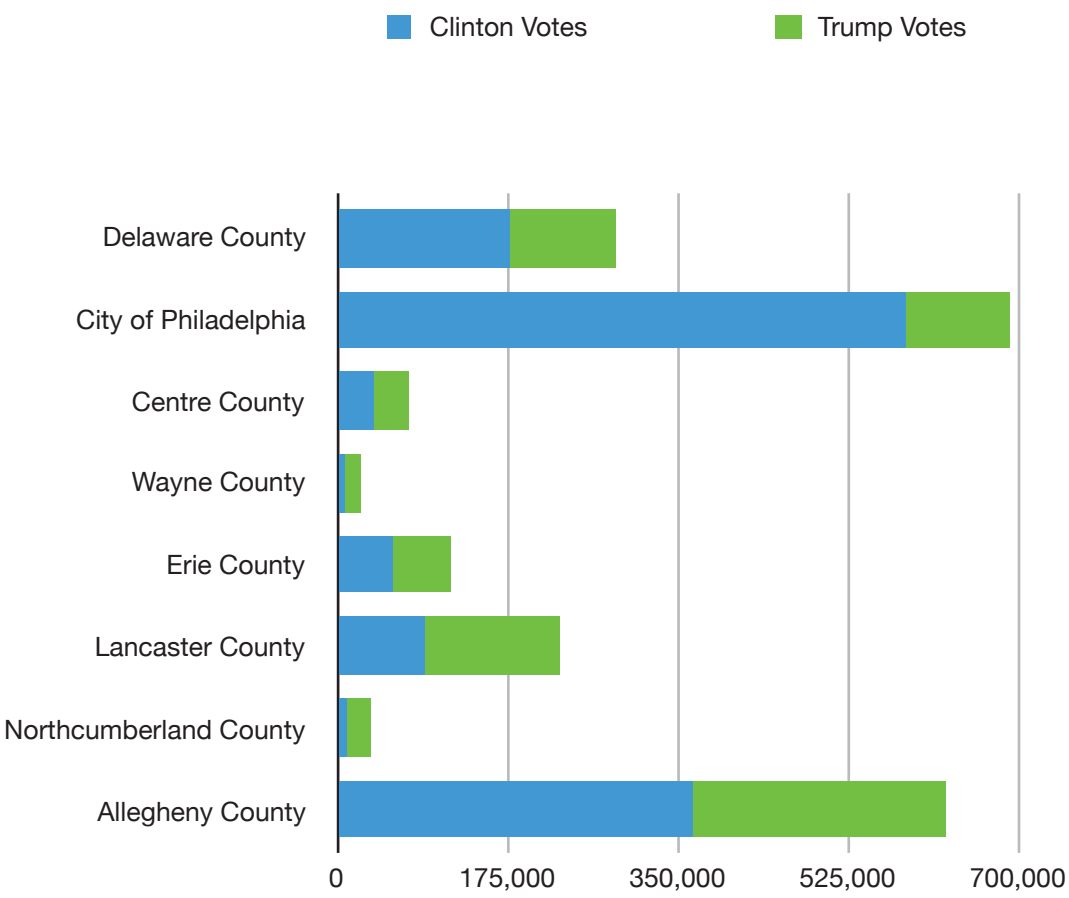


Chart note[1] Only the City of Philadelphia and the seven (7) counties in the above chart received CTCL Pennsylvania grants.

Table 1

	Clinton Votes	Trump Votes
Delaware County	177,402	110,667
City of Philadelphia	584,025	108,748
Centre County	37,088	35,274
Wayne County	7,008	16,244
Erie County	58,112	60,069
Lancaster County	91,093	137,914
Northumberland County	9,788	25,427
Allegheny County	366,934	259,125

CTCL Wisconsin Grants[1]

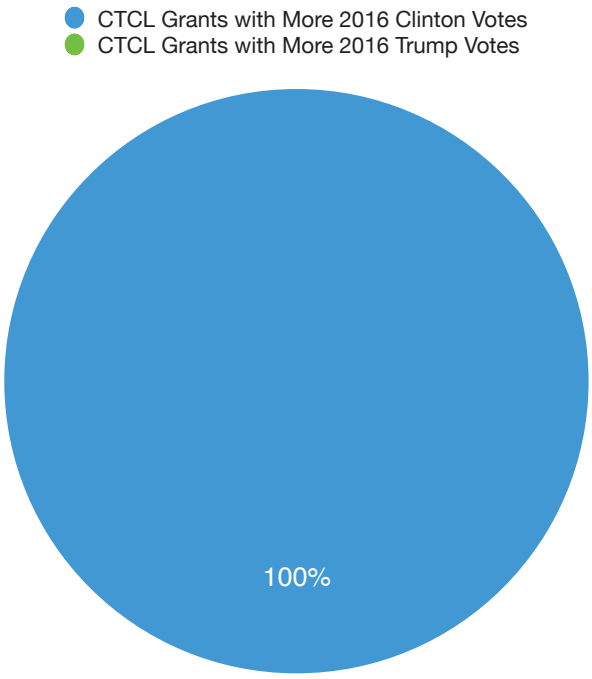


Chart note[1]. The chart above contains the sum of CTCL's 11 grants to five Wisconsin cities listed in Table 1 below.

Table 2

CTCL Grants with More 2016 Clinton Votes	CTCL Grants with More 2016 Trump Votes
$6,946,767[1]	$0[1]

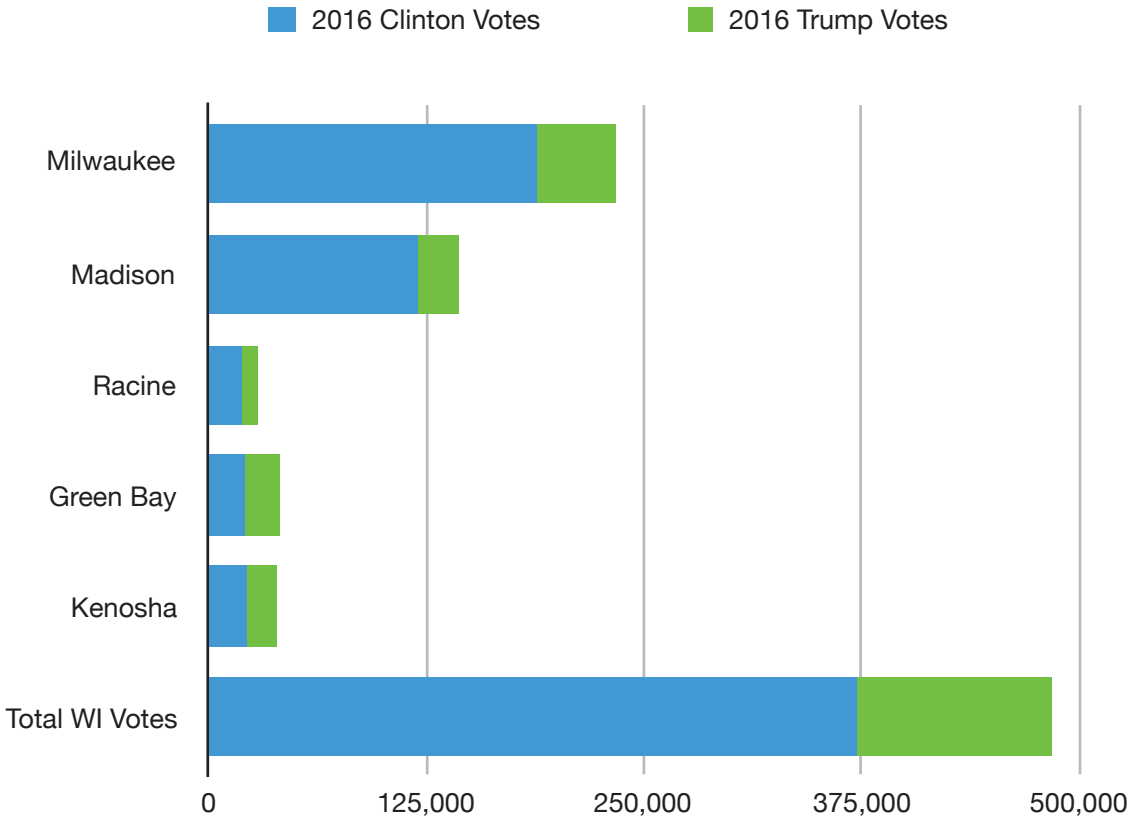
Table 2 note[1]. $6,946,767 and $0 are the sums of CTCL's 11 grants to the five Wisconsin cities in Table 1 below.

Table 1

City	CTCL Grants with More Clinton 2016 Votes	CTCL Grants with 2016 More Trump Votes
Green Bay	$1,093,400	$0
Green Bay	$10,000[1]	$0
Green Bay	$522,200	$0
Kenosha	$862,779	$0
Kenosha	$10,000[1]	$0
Madison	$1,271,788	$0
Madison	$10,000[1]	$0
Milwaukee	$2,154,500	$0
Milwaukee	$10,000[1]	$0
Racine	$942,100	$0
Racine	$60,000[1]	$0
Total CTCL WI Grant	$6,946,767	$0

Table 1 note[1]. CTCL Executive Director Tiana Epps-Johnson wrote Racine Mayor Mason on May 28, 2020. Epps-Johnson letter stated that Racine will receive a $100,000 CTCL grant. As part of CTCL and the City of Racine's agreement, Racine was obligated to redistribute $10,000 to the cities of Green Bay, Kenosha, Madison and Milwaukee and keep the remaining $60,000. There is no hyperlink for these grants.

Clinton Wisconsin Votes v. Trump Wisconsin Votes[1]



Note[1] Only the five Wisconsin cities in the above graph received 2020 CTCL funding

Table 1

CTCL Grant Recipients	2016 Clinton Votes	2016 Trump Votes
Milwaukee	188,653	45,167
Madison	120,078	23,053
Racine	19,029	8,934
Green Bay	21,291	19,821
Kenosha	22,848	15,829
Total WI Votes	371,899	112,804

Clinton won all five Wisconsin cities that received CTCL grants by a margin of 259,096 votes. Trump won Wisconsin by 22,748 votes. CTCL's Wisconsin grant of $6.32 million reached more than three times more Clinton voters (blue in graph) than Trump voters (green in graph). 371,900 Clinton voters / 112,804 Trump voters = 3.30 more Clinton voters

CTCL Grants to MN, WI, MI, and PA

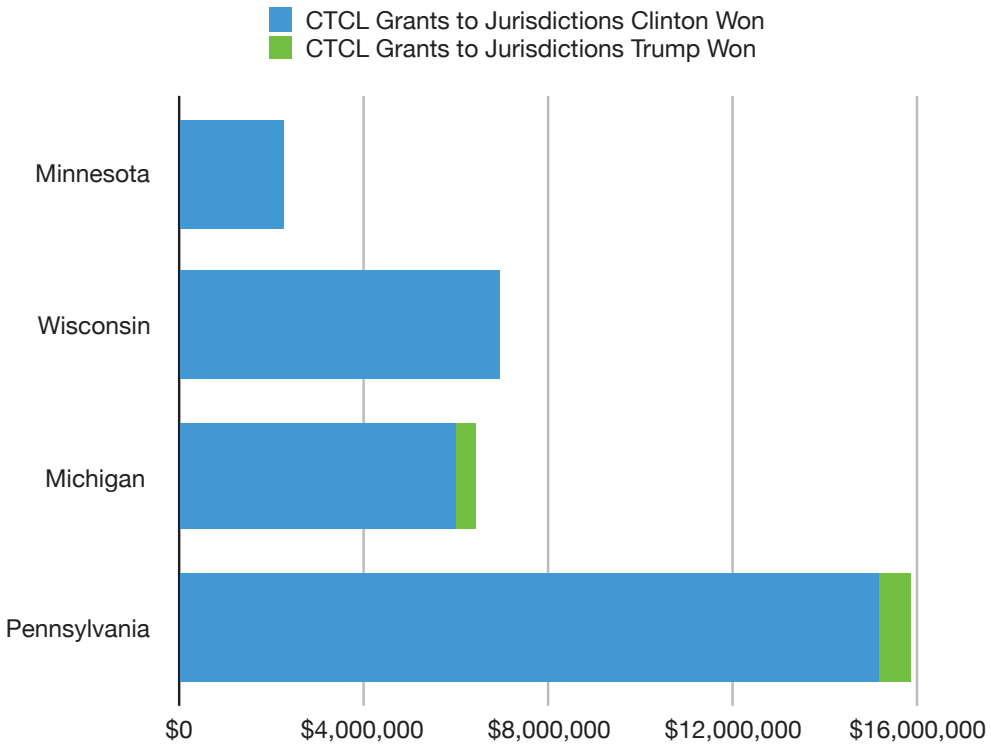


Table 1

State	CTCL Grants to Jurisdictions Clinton Won	CTCL Grants to Jurisdictions Trump Won
Minnesota	$2,297,342	$0
Wisconsin	$6,946,767	$0
Michigan	$5,996,875	$402,878
Pennsylvania	$15,132,153	$692,742

Clinton Votes v. Trump Votes in MN, WI, MI, and PA

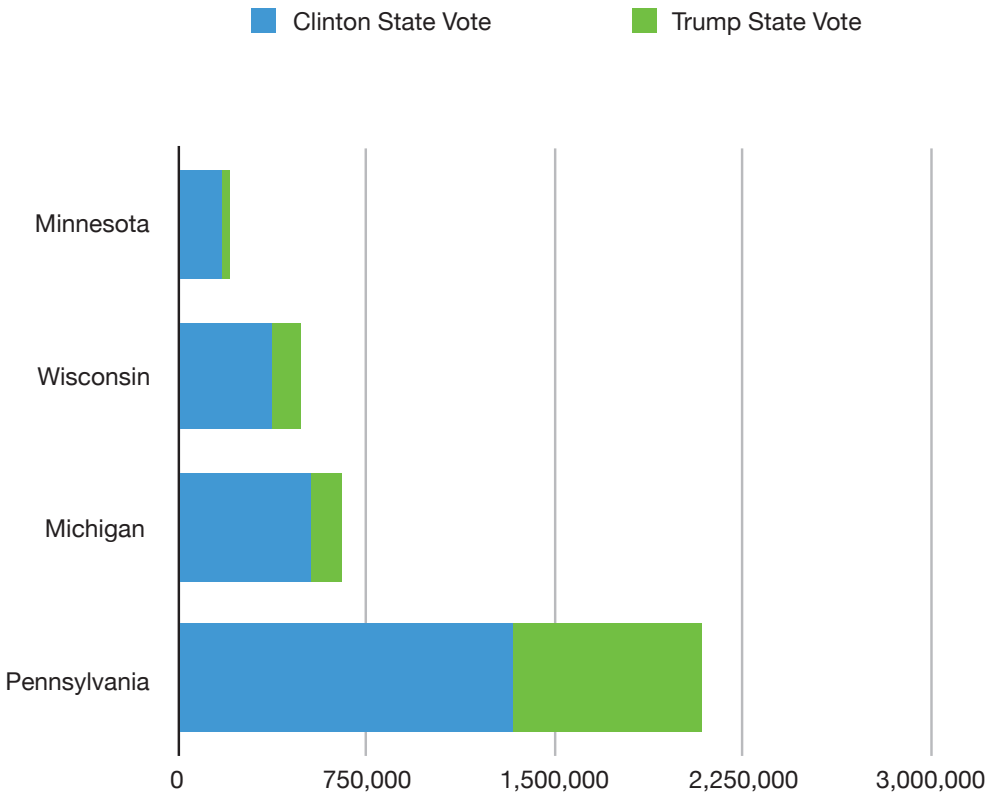


Table 1-1

State	Clinton State Vote	Trump State Vote
Minnesota	174,585	25,693
Wisconsin	371,899	112,804
Michigan	530,241	119,086
Pennsylvania	1,331,450	753,468