

No. 22O155

In the
Supreme Court of the United States

State of Texas,

Plaintiff,

and

Ronald H. Heuer, John Wood, Angelic Johnson,
Dr. Linda Lee Tarver, Kristina Karamo, Gary
Eisen, John Reilly, Julie Alexander, Matt Maddock,
Daire Rendon, Beth Griffin, Douglas Wozniak,
Michele Hoitenga, Brad Paquette, Rodney
Wakeman, Greg Markkanen and Jack O'Malley,
Joe Bellino, Luke Meerman, Brianna Kahle, Daryl D.
Metcalf, Mike Puskaric, Chris E. Dush,
Thomas R. Sankey III,

Plaintiff-Intervenors,

vs.

Commonwealth of Pennsylvania,
State of Georgia, State of Michigan,
State of Wisconsin,

Defendants.

Allan E. Parker, Jr.
The Justice Foundation
8023 Vantage Dr., Suite 1275
San Antonio, TX 78230
Telephone (210) 614-7157
Email: aparker@txjf.org

Attorneys for Plaintiff-Intervenors

Erick G. Kaardal, MN 229647
Special Counsel to 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
Facsimile: 612-341-1076
Email: kaardal@mklaw.com
Counsel of Record

COMPLAINT-IN-INTERVENTION

The above-named Plaintiff-Intervenors Ronald H. Heuer, John Wood, Angelic Johnson, Dr. Linda Lee Tarver, Kristina Karamo, Gary Eisen, John Reilly, Julie Alexander, Matt Maddock, Daire Rendon, Beth Griffin, Douglas Wozniak, Michele Hoitenga, Brad Paquette, Rodney Wakeman, Greg Markkanen and Jack O'Malley, Joe Bellino, Luke Meerman, Brianna Kahle, Daryl D. Metcalfe, Mike Puskaric, Chris E. Dush, Thomas R. Sankey III, for their complaint-in-intervention allege as follows:

INTRODUCTION

1. The Plaintiff-intervenors file this complaint seeking a declaratory judgment and an injunction against the various Defendants to establish a constitutional process for the selection of Presidential electors from Pennsylvania, Michigan, Wisconsin, and Georgia (“Defendant States”) relating to the November 3, 2020 election of President and Vice President and future elections.

2. The Electors Clause of Article II of the Constitution authorizes the state legislature to direct the manner of appointment of a State’s Presidential electors:

Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress...

3. The Plaintiff-Intervenors claim that the Electors Clause requires each state legislature to conduct post-election certification of the Presidential electors to be submitted to the Vice President for counting by the Vice President on January 6, 2020 under 3 U.S.C. § 15 to elect a President and Vice President. Otherwise, the appointment of the Presidential

electors from that state is constitutionally invalid for electing the President and Vice President.

4. Under the current state laws in the respective states, the state legislatures do not take any votes to certify the Presidential electors. *Cite State Statutes and Constitutions*

5. Thus, the state legislatures of Defendant States and other states violate their express duties under Article II of the U.S. Constitution by wholly delegating the post-election certification of Presidential electors to state election officials and judges.

6. Thus, this case presents a common question of law: do Defendant State Legislatures violate the Electors Clause (or, in the alternative, the Fourteenth Amendment) by delegating wholly the post-election certification of election results to state election officials or judges as a ministerial duty?

7. The respective state legislatures' wholesale delegation to state election officials or judges opened the door to election irregularities in an unprecedented magnitude without post-election state legislative certification.

8. The Plaintiff-Intervenors allege that each of the Defendant States' election officials or judges flagrantly violated state laws governing elections for the appointment of presidential electors.

9. Accordingly, the Plaintiff-Intervenors allege that the Defendant States' state legislatures violated their Article II duties by not conducting post-election certification of the Presidential electors from their respective states.

10. Each of the Defendant States' election officials or judges acted in a common pattern. State officials or judges, sometimes through pending litigation (*e.g.*, settling

“friendly” suits) and sometimes unilaterally by executive fiat, announced new rules for the conduct of the 2020 election which were inconsistent with existing state statutes defining what constitutes a lawful vote.

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

12. The rampant lawlessness arising out of Defendant States election officials’ or judges’ unconstitutional acts is described in a number of currently pending lawsuits in Defendant States or in public view including:

- *Dozens of witnesses testifying under oath about:* the physical blocking and kicking out of Republican poll challengers; thousands of the same ballots run multiple times through tabulators; mysterious late night dumps of thousands of ballots at tabulation centers; illegally backdating thousands of ballots; signature verification procedures ignored; more than 173,000 ballots in the Wayne County, MI center that cannot be tied to a registered voter; See *Appendix* pgs. 637-659; 836-1038; 1234-1314;
- *Absentee ballot errors unacceptably high:* a) Matthew Braynard data analysis based on government post-election data tabulations showing unacceptably high absentee ballot errors in excess of vote margin and b) the government’s pre-election error rate for voting system hardware and software is 0.0008%--which is far exceeded in the respective states’ absentee ballot error rate. See Braynard Declaration, *Appendix* pgs. 1112-1122; Cain Declaration, *Appendix* pgs. 52-59.
- *Election official irregularities:* including election official curing of legally-defective absentee ballots occurred in different ways in Philadelphia, Detroit and Milwaukee in consolidated municipal counting centers; consolidating municipal counting centers into one massive center occurred despite COVID-19 rationale suggesting otherwise; possible breaches in chain of custody of absentee ballot drop box

ballots (additional security measures required (e.g., two persons per key); See Stenstrom Declaration, *Appendix* pgs. 129-151; See *Appendix* pgs. 249-269; 303-383; 660-834; 1201-1227;

- *Disparate impact*: Zuckerberg-funded drop box created disparate impact within states for access to voting and different absentee balloting standards were applied for different parts of state (e.g, curing absentee ballots versus non-curing). See *Appendix* pgs. 353-377;
- *Possible massive government official manipulation of absentee ballots*: the declarations of Jesse Morgan, Greg Stenstrom, Ethan Pease and post service experts suggest possible massive government official manipulation of absentee ballots. See Morgan, Stenstrom and Pease Declarations, *Appendix* pgs. 129-182;
- *Videos of*: poll workers erupting in cheers as poll challengers are removed from vote counting centers; poll watchers being blocked from entering vote counting centers—despite even having a court order to enter; suitcases full of ballots being pulled out from underneath tables after poll watchers were told to leave.
- *Facts for which no independently verified reasonable explanation yet exists*: On October 1, 2020, in Pennsylvania a laptop and several USB drives, used to program Pennsylvania’s Dominion voting machines, were mysteriously stolen from a warehouse in Philadelphia. The laptop and the USB drives were the *only* items taken, and potentially could be used to alter vote tallies; In Michigan, which also employed the same Dominion voting system, on November 4, 2020, Michigan election officials have admitted that a purported “glitch” caused 6,000 votes for President Trump to be wrongly switched to Democrat Candidate Biden. A flash drive containing tens of thousands of votes was left unattended in the Milwaukee tabulations center in the early morning hours of Nov. 4, 2020, without anyone aware it was not in a proper chain of custody.

13. In each of these Defendant States, the state legislature has wholesale delegated post-election certification and verification to election officials and judges as a ministerial duty. *See* Mich. Comp. Laws §§ 168.41, 168.42, 168.46, 168.47; 25 Pa. Consol. Stat. Ann. Ch. 14, §§ 2878, 3191, 3192, 3193; Ga. Code Ann. §§21-2-10, 21-2-11, 21-2-12. 21-2-130, 21-2-17; Wisc. Stat. §§ 8.18, 7.75;

State	Statutes	Content
Michigan	Mich. Comp. Laws §§ 168.41, 168.42, 168.46,	10 years a citizen, Board of Canvassers → Governor → United States Secretary of

	168.47	State, place and manner for certification.
Pennsylvania	25 Pa. Consol. Stat. Ann. Ch. 14, §§ 2878, 3191, 3192, 3193	How elected, time and place for Electoral College, replacing absent electors, process for nomination.
Georgia	Ga. Code Ann. §§21-2-10, 21-2-11, 21-2-12. 21-2-130, 21-2-17	How to address Independent Electors. How to deal with Faithless Electors. Nominations of Presidential Electors.
Wisconsin	Wisc. Stat. §§ 8.18, 7.75	Date, Time, Place, & participants of vote for electoral college members. How to address faithless electors.

14. For example, on November 30, 2020, Wisconsin Governor Tony Evers (D) certified the victory of Joe Biden (D) in Wisconsin in a Certificate of Ascertainment, soon after he received a certification from Ann Jacobs, chairwoman of the Wisconsin Election Commission. See Evers Certificate of Ascertainment, Appendix pgs. 393-394. The Wisconsin Election Commission was due to meet on Tuesday, December 1, 2020. Republican Commissioners Dean Knudson had requested that Jacobs wait until Tuesday, when the Commission was to meet, to determine the results, the statutory deadline. By certifying the election on her own, Jacobs usurped power that belongs to the Wisconsin Election Commission. Wisconsin Statutes § 7.70 sets forth the proper procedure for certifying Wisconsin’s election results. Wisconsin Statutes § 7.70(5)(b) states, “For presidential electors, the commission shall prepare a certificate showing the determination of the results of the canvass and the names of the persons elected, and the governor shall sign, affix the great seal of the state, and transmit the certificate by registered mail to the U.S.

administrator of general services. The governor shall also prepare 6 duplicate originals of such certificate and deliver them to one of the presidential electors on or before the first Monday after the 2nd Wednesday in December.” (Emphasis supplied). In response, the Plaintiff-Intervenors claim that the Wisconsin state legislature is required under the Electors Clause to conduct post-election certification.

15. The federal courts have not been immune from Defendant States’ blatant disregard for the rule of law. Pennsylvania itself played fast and loose with its promise to the U.S. Supreme Court. In a classic bait and switch, Pennsylvania used guidance from its Secretary of State to argue that the U.S. Supreme Court should not expedite review because the State would segregate potentially unlawful ballots. A court of law would reasonably rely on such a representation. Remarkably, before the ink was dry on the Court’s 4-4 decision, Pennsylvania changed that guidance, breaking the State’s promise to the U.S. Supreme Court. *Compare Republican Party of Pa. v. Boockvar*, No. 20-542, 2020 U.S. LEXIS 5188, at *5-6 (Oct. 28, 2020) (“we have been informed by the Pennsylvania Attorney General that the Secretary of the Commonwealth issued guidance today directing county boards of elections to segregate [late-arriving] ballots”) (Alito, J., concurring) *with Republican Party v. Boockvar*, No. 20A84, 2020 U.S. LEXIS 5345, at *1 (Nov. 6, 2020) (“this Court was not informed that the guidance issued on October 28, which had an important bearing on the question whether to order special treatment of the ballots in question, had been modified”) (Alito, J., Circuit Justice).

16. By purporting to waive or otherwise modify the existing state law in a manner that was wholly *ultra vires* and not adopted by each state’s legislature, Defendant States

violated not only the Electors Clause, U.S. CONST. art. II, § 1, cl. 2, but also the Elections Clause, *id.* art. I, § 4 (to the extent that the Article I Elections Clause textually applies to the Article II process of selecting presidential electors).

17. Plaintiff-Intervenors as voters are entitled to a presidential election in which the votes from each of the states are counted only if the ballots are cast and counted in a manner that complies with the pre-existing laws of each state. See *Anderson v. Celebrezze*, 460 U.S. 780, 795 (1983) (“...for the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation.”).

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

19. The number of absentee and mail-in ballots that have been handled unconstitutionally in Defendant States greatly exceeds the difference between the vote totals of the two candidates for President of the United States in each Defendant State.

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

JURISDICTION

21. The District Court has jurisdiction under 28 U.S.C § 1331 (federal question), 28 U.S.C § 1331 (federal question), 28 U.S.C. § 1343 (civil rights and elective franchise), 28 U.S.C. § 2201 (declaratory judgment), 28 U.S.C. § 1651 (“All Writs Act”), 42 U.S.C. § 1983.

22. The District Court has venue under 28 U.S.C. § 1391 because many of the Defendants reside in the District of Columbia and a substantial part of the events or omissions giving rise to the claim occurred or will occur there.

PARTIES

The Plaintiff-Intervenors

23. Certain Plaintiff-Intervenors are state legislators .

24. The Michigan state legislators who are Plaintiff-Intervenors are Gary Eisen, John Reilly, Julie Alexander, Matt Maddock, Daire Rendon, Beth Griffin, Douglas Wozniak, Michele Hoytenga, Brad Paquette, Rodney Wakeman, Greg Markkanen, Jack O'Malley, Joe Bellino, Luke Meerman and Brianna Kahle.

25. The Pennsylvania state legislators who are Plaintiff-Intervenors are Daryl D. Metcalfe, Mike Puskaric, Chris E. Dush and Thomas R. Sankey III.

26. Plaintiff-Intervenor Ronald H. Heuer is a resident, voter and taxpayer in Wisconsin.

27. Plaintiff-Intervenor Daryl Metcalfe is a resident, voter and taxpayer in Pennsylvania.

28. Plaintiff-Intervenor John Wood is a resident, voter and taxpayer in Georgia.

29. Plaintiff-Intervenor Angelic Johnson is a resident, voter and taxpayer in Michigan.

30. Plaintiff-Intervenor Dr. Linda Lee Tarver is a resident, voter and taxpayer in Michigan.

31. Plaintiff-Intervenor Kristina Karamo is a resident, voter and taxpayer in Michigan.

32. All of the Plaintiff-Intervenors voted in the November 3, 2020 election for President and Vice President.

The Plaintiff and Defendants

33. The State of Texas is the Plaintiff.

34. The Commonwealth of Pennsylvania is a Defendant.

35. The State of Michigan is a Defendant.

36. The State of Wisconsin is a Defendant.

37. The State of Georgia is a Defendant.

FACTS

Legal background

38. Under the Supremacy Clause, the “Constitution, and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land.”

U.S. Const. Art. VI, cl. 2.

39. “The individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a

statewide election as the means to implement its power to appoint members of the electoral college.” *Bush II*, 531 U.S. at 104 (citing U.S. CONST. art. II, § 1).

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

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

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

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

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

electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct.”).

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

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

Zuckerberg moneys gifted to urban election officials in swing states who, in turn, violated absentee ballot security measures.

47. In 2020, a systematic effort was launched in swing states, using \$350,000,000 in private money sourced to Mark Zuckerberg, the Facebook billionaire, to illegally circumvent absentee voting laws to cast tens of thousands of illegal absentee ballots.

48. The Zuckerberg-funded private organization, the Center for Technology and Civic Life, gifted millions of dollars to election officials in Democratic Party urban strongholds in Georgia, Wisconsin, Pennsylvania, and Michigan in order for those cities to facilitate the use of absentee voting. See *Appendix* pgs. 247-290; 1168-1249

49. In these states and cities, election officials adopted various respective policies and customs violating state law absentee ballot security measures such as witness address, name and signature and voter address, name and signature. See *Appendix* pgs. 1222-1227

The government's pre-election certification error rate of voting system's software and hardware is 0.0008%.

50. The federal government has a pre-election standard for state voting system's software and hardware.

51. Under federal law, this maximum-acceptable error rate is one in 500,000 ballot positions, or, alternatively one in 125,000 ballots—0.0008 %.

52. Section 3.2.1 of the voting systems standards issued by the Federal Elections Commission (FEC) which were in effect on the date of the enactment of the Help America Vote Act (HAVA) provides that the voting system shall achieve a maximum acceptable error rate in the test process of one in 500,000 ballot positions.

53. A ballot position is every possible selection on the ballot, to include empty spaces. As stated in the voting systems standards (VSS), “[t]his rate is set at a sufficiently stringent level such that the likelihood of voting system errors affecting the outcome of an election is exceptionally remote even in the closest of elections.”

54. An update to the FEC VSS was made by the Election Assistance Commission (EAC) to enhance the FEC VSS standards, which each state has adopted by law.

55. The FEC VSS standard provides for an error rate of one in 125,000 ballots (0.0008%) as an alternative to the one in 500,000 ballot positions to make it easier to calculate the error rate.

56. The FEC standards, which are incorporated into the Help America Vote Act § 301(a)(5), require that all systems be tested in order to certify that they meet the maximum-acceptable error rate set by federal law. See Cain Declaration, *Appendix* pgs. 52-59.

2020 Presidential election and election officials' absentee ballot improprieties and errors

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

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

59. Concern over the use of mail-in ballots is not novel to the modern era, Dustin Waters, *Mail-in Ballots Were Part of a Plot to Deny Lincoln Reelection in 1864*, WASH. POST (Aug. 22, 2020), 3 but it remains a *current* concern. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 194-96 & n.11 (2008); *see also* Texas Office of the Attorney General, *AG Paxton Announces Joint Prosecution of Gregg County Organized Election Fraud in Mail-In Balloting Scheme* (Sept. 24, 2020); Harriet Alexander & Ariel Zilber, *Minneapolis police opens investigation into reports that Ilhan Omar's supporters illegally harvested Democrat ballots in Minnesota*, DAILY MAIL, Sept. 28, 2020.

60. Absentee and mail-in voting are the primary opportunities for unlawful ballots to be cast. As a result of expanded absentee and mail-in voting in Defendant States, combined with Defendant States' unconstitutional modification of statutory protections

designed to ensure ballot integrity, Defendant States created a massive opportunity for fraud. In addition, the Defendant States have made it difficult or impossible to separate the constitutionally tainted mail-in ballots from all mail-in ballots.

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

62. Significantly, in Defendant States, Democrat voters voted by mail at two to three times the rate of Republicans. The Democratic candidate for President thus greatly benefited from this unconstitutional usurpation of legislative authority, and the weakening of legislative mandated ballot security measures.

63. The outcome of the Electoral College vote is directly affected by the constitutional violations committed by Defendant States. Other states complied with the Constitution in the process of appointing presidential electors. Defendant States violated the Constitution in the process of appointing presidential electors by unlawfully abrogating state election laws designed to protect the integrity of the ballots and the electoral process, and those violations proximately caused the unconstitutional appointment of presidential electors. Plaintiff-Intervenors will therefore be injured if Defendant States' unlawful certification of these Presidential electors is allowed to stand.

Commonwealth of Pennsylvania

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

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

66. By letter dated December 13, 2019, the Auditor General of the Commonwealth of Pennsylvania, Eugene A. DePasquale, issued to the Governor of the Commonwealth of Pennsylvania a Performance Audit Report of the Pennsylvania Department of State's Statewide Uniform Registry of Electors. See Auditor General's Performance Audit Report, *Appendix* pgs. 413-604.

72. The Performance Audit Report was conducted pursuant to an Interagency Agreement between the Pennsylvania Department of State and the Pennsylvania Department of the Auditor General.

73. The Performance Audit Report contained seven Findings, to wit:

- i. Finding One: As a result of the Department of State's denial of access to critical documents and excessive redaction of documentation, the Department of the Auditor General was severely restricted from meeting its audit objectives in an audit which the Department of State itself had requested.
- ii. Finding Two: Data analysis identified tens of thousands of potential duplicate and inaccurate voter records, as well as voter records for nearly three thousand potentially deceased voters that had not been removed from the SURE system.
- iii. Finding Three: The Department of State much implement leading information technology security practices and information technology

general controls to protect the SURE system and ensure the reliability of voter registration.

- iv. Finding Four: Voter record information is inaccurate due to weakness in the voter registration application process and the maintenance of voter records in the SURE system.
- v. Finding Five: Incorporating edit checks and other improvements into the design of the replacement system for SURE will reduce data errors and improve accuracy.
- vi. Finding Six: A combination of a lack of cooperation by certain county election offices and PennDOT, as well as source documents not being available for seventy percent of our test sample, resulted in our inability to form any conclusions as to the accuracy of the entire population of voter records maintained in the SURE system.
- vii. Finding Seven: The Department of State should update current job aids and develop additional job aids and guidance to address issues such as duplicate voter records, records of potentially deceased voters on the voter rolls, pending applications, and records retention. See *Appendix* pgs. 419-420.

74. In addition to the Findings, the Performance Audit Report contained specific detailed Recommendations to correct the significant deficiencies identified in the Findings of the Performance Audit Report.

75. Based upon information and belief, Plaintiff-Intervenors averred that Defendant Commonwealth of Pennsylvania failed to implement the Performance Audit Recommendations for the 2020 General Election.

76. To the contrary, in contradiction to the Recommendations, the Secretary of the Commonwealth, Kathy Boockvar, without statutory authorization or legal authority, provided select organizations with close ties to the Democratic Party with direct access to the Commonwealth's SURE System.

77. In 2018, Secretary Boockvar was quoted as stating "Rock the Vote's web tool was connected to our system, making the process of registering through their online programs, and those of their partners, seamless for voters across Pennsylvania." *Rock the Vote, 2018 Annual Report*.

78. In addition, Plaintiff-Intervenors have obtained a sworn Affidavit from Jesse Richard Morgan, who was contracted to haul mail for the United States Postal Service within the Commonwealth of Pennsylvania. Mr. Morgan's Affidavit alleges that he was directed to transport from New York to Pennsylvania what he believes to be completed Pennsylvania ballots in the 2020 General Election. See Morgan Declaration, *Appendix* pgs. 605-632.

79. It is believed and, therefore, averred that this matter is currently under investigation by various entities and that such investigation is essential to the determination of whether or not approximately 200,000 ballots were delivered into the Pennsylvania System improperly or illegally. Pending such determination, there is no possible way that the validity of Pennsylvania's Presidential Election could possibly be certified by the Governor.

80. Further, there is evidence of possible back-dating of ballots in the United States Postal facility at Erie, Pennsylvania. And, further, Francis X. Ryan's Report, discussed in detail below, evidences thousands of questionable or improper ballots cast in the 2020 Presidential Election in Pennsylvania.

81. In addition, Plaintiff-Intervenors have obtained a Declaration from Ingmar Njus in support of Mr. Morgan's Affidavit. See Njus Declaration, *Appendix* pgs. 183-186.

82. In the run-up to the election, the Pennsylvania Supreme Court usurped the powers of the General Assembly when it permitted county boards of election to accept

hand-delivered mail-in ballots at locations other than the respective offices of the boards of election, including through the use of drop-boxes arbitrarily located throughout the county; and, when it extended the deadline for receipt of absentee and mail-in ballots by three days from 8:00 p.m. on Election Day to 5:00 p.m. on November 6, 2020. *Pennsylvania Democratic Party v. Boockvar*, No. 133 MM 2020, 2020 WL 5554644, at *20 (Pa. Sept. 17, 2020); see also *In re: November 3, 2020 General Election*, 2020 WL 6252803, at *7 (Pa. Oct. 23, 2020).

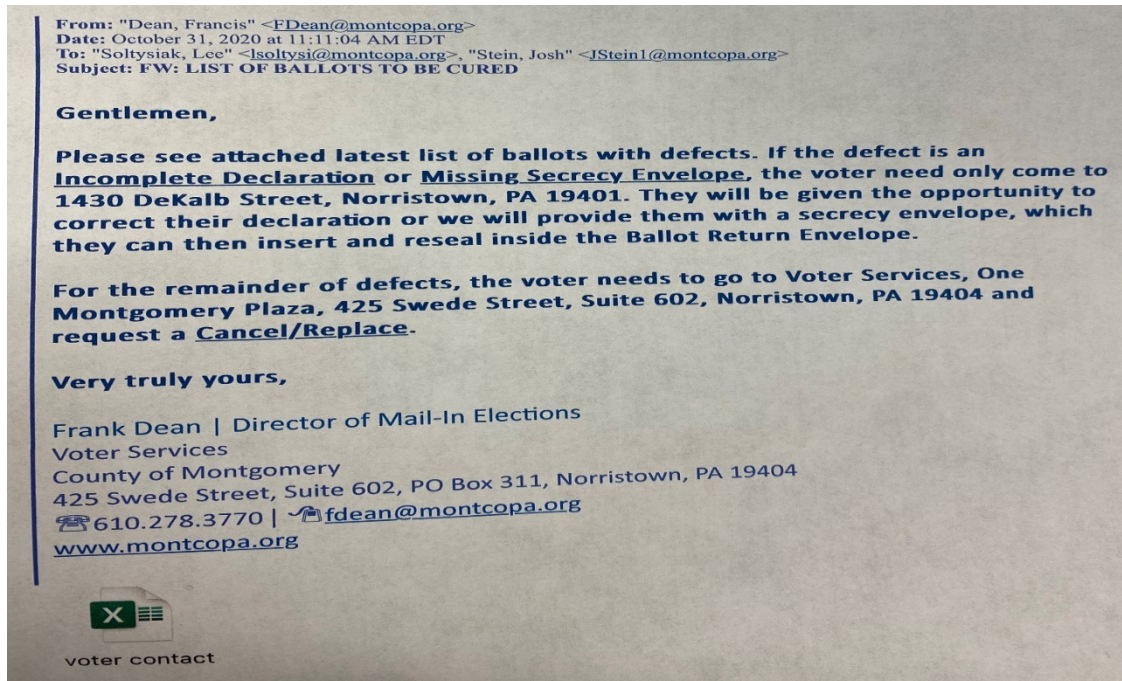
83. In the same Opinion, the Court held that "although the Election Code provides the procedure for casting and counting a vote by mail, it does not provide for the 'notice and opportunity to cure' ..." *Id. at p. 20*.

84. The Court went on to state "... we agree that the decision to provide a 'notice and opportunity to cure' procedure ... is one best suited for the Legislature." *Id. at p. 20*.

85. Of note, Secretary Boockvar agreed with the Court that Pennsylvania's Election Code does not provide a notice and opportunity to cure procedure.

86. Despite the lack of any statutory authorization or legal authority, county boards of elections in democratic counties, such as, Montgomery County, routinely helped identify, facilitate and permitted electors to alter their defective absentee and mail-in ballots in violation of Pennsylvania's Election Code.

87. In an October 31, 2020, e-mail, Frank Dean, Director of Mail-in Elections of Montgomery County emailed the latest list of confidential elector information to two other Montgomery County election officials, Lee Soltysiak and Josh Stein, and wrote:



88. There is no authority within Pennsylvania's Election Code that authorizes election officials to manually alter the information contained within the SURE system for the purposes described by Director Dean.

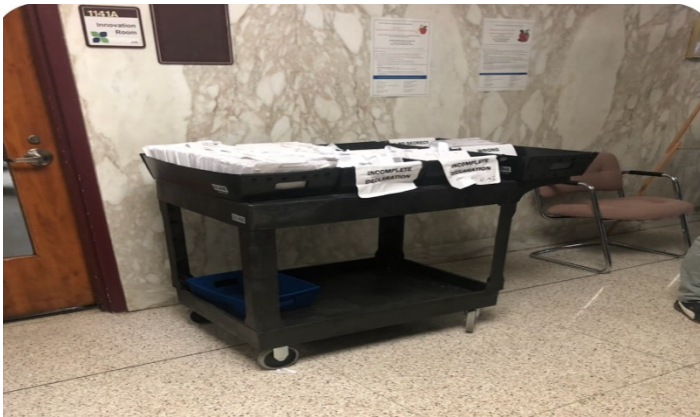
89. In order to cancel or replace an elector's absentee or mail-in ballot, election officials would be required to manually alter or override the information contained in the Commonwealth's Statewide Uniform Registry of Electors ("SURE").

90. There is no authority within Pennsylvania's Election Code that authorizes election officials to cancel and/or replace an elector's absentee or mail-in ballot as described by Director Dean.

91. Further, in violation of electors' right to secrecy in their ballots, election officials in democratic counties, such as Montgomery County, used the information gathered through their inspection of the ballot envelopes to identify the names of electors who had cast defective absentee or mail-in ballot envelopes. *Art. VII, §4 PA Const.*

92. The Excel spreadsheet attached to Director Dean's October 31, 2020, e-mail notes that when mail-in or absentee ballot envelopes were found to be defective, some electors were provided with the opportunity to alter their ballot envelopes.

93. The photograph below shows some of the thousands of absentee and mail-in ballots pre-canvassed by the Montgomery County Board of Elections in violation of the Election Code.¹ These defective ballots were not secured in any way and were easily accessible to the public.



94. Further, the next picture shows page 1 or 124 pages that include thousands of defective ballot envelopes that Montgomery County elections officials were trying to "cure" in violation of Pennsylvania's Election Code and Constitution.

¹ This "Ballots for Sale" photo was taken on 11/01/2020 by Robert Gillies during a tour of the Montgomery County mail-in ballot storage and canvass facility.

ID	A	B	C	D	E	F	G	H	I	J	K	L	M
1	Start time	Completion time	Final	Name	Number	Number	Practitioner	Est Name	First Name	Address Line 1	Address Line 2	Issue	
2	10/21/20 14:35:37	10/21/20 14:40:34	anonymous		006318966-46	330203-1	Young	Celia	Suk Kyung	611 Green St	Norristown, PA 19401	No secrecy envelope	
3	20/21/20 14:40:36	10/21/20 14:41:39	anonymous		005931654-46	530301-1	Yi	Gayle	2237 Dock Dr	Lansdale, PA 19446	No secrecy envelope		
4	30/21/20 14:38:47	10/21/20 14:41:44	anonymous		003575847-46	010100-1	Crist	Thomas	419 Haywood Road	Ambler PA 19002	Incomplete Declaration		
5	40/21/20 14:41:43	10/21/20 14:41:16	anonymous		102020995-46	401202-2	Kohn	ralph Jr	509 Oak Road	Merion Station, 19066	No secrecy envelope		
6	50/21/20 14:41:54	10/21/20 14:43:48	anonymous		015211425-46	300201-1	Clark Jr.	Thomas	273 Hoyt Rd	Huntingdon Vly, PA 19006	Incomplete Declaration		
7	60/21/20 14:43:19	10/21/20 14:44:39	anonymous		005940134-46	58G0010-1	Wells	Hedy S	1010 Boxwood Ct	King of Prussia, PA 19406	No secrecy envelope		
8	70/21/20 14:43:55	10/21/20 14:45:13	anonymous		015625135-46	410100-1	Evans	Mildred	753 Welsh Rd APT 403	Huntingdon Vly, PA 19006	Incomplete Declaration		
9	80/21/20 14:44:41	10/21/20 14:45:50	anonymous		103935579-46	460003-1	Oh	Audrey	904 Barbara Ct	North Wales, PA 19454	No secrecy envelope		
10	90/21/20 14:45:21	10/21/20 14:46:31	anonymous		005961888-46	100200-1	Sorens	Sun C	100 West Ave Apt W603	Jenkintown, PA 19046	Incomplete Declaration		
11	100/21/20 14:45:52	10/21/20 14:47:31	anonymous		102728890-46	460008-1	Sin	Song S	115 Damson Ln	North Wales, PA 19454	No secrecy envelope		
12	110/21/20 14:46:39	10/21/20 14:47:39	anonymous		003625566-46	460005-1	Yenchia	Carrie T	301 Stockton Ct	North Wales, PA 19454	Incomplete Declaration		
13	120/21/20 14:47:33	10/21/20 14:45:11	anonymous		006373261	460008-1	Hong	James	101 Jonathan Dr	North Wales, PA 19454	No secrecy envelope		
14	130/21/20 14:47:45	10/21/20 14:49:03	anonymous		005822555-46	590301-1	Mooney Sr.	Donald	1120 York Rd APT 205	Willow Grove, PA 19090	Incomplete Declaration		
15	140/21/20 14:48:12	10/21/20 14:49:07	anonymous		103746637-46	400601-1	Giongoli	Suzanne K	211 Broughton Ln	Villanova, PA 19085	No secrecy envelope		
16	150/21/20 14:49:09	10/21/20 14:50:06	anonymous		006173491-46	120002-1	Stricker	Carrie E	203 Steppay Pl	Narberth, PA 19072	No secrecy envelope		
17	160/21/20 14:49:10	10/21/20 14:50:38	anonymous		006061195-46	540501-1	Palme	Robert	1650 Susquehanna Rd 219	Dresher, PA 19025	Incomplete Declaration		
18	170/21/20 14:50:17	10/21/20 14:51:28	anonymous		006413561-46	010100-1	Hoover	Carolyn	110 Forest Ave Apt A	Ambler, PA 19002	No secrecy envelope		
19	180/21/20 14:50:43	10/21/20 14:51:55	anonymous		110209001-46	490303-1	Nauman	Haseeb	134 Plymouth Rd Uni 1108	Plymouth MTG, PA 19462	Resolved		
20	190/21/20 14:51:30	10/21/20 14:52:42	anonymous		006070883-46	310404-1	Szczurek	Genevieve L	26 North Ave	Wyncote, PA 19095	No secrecy envelope		
21	200/21/20 14:52:43	10/21/20 14:54:04	anonymous		110837405-46	420002-1	Rhoads	Gary	none	none	Resolved		
22	210/21/20 14:52:06	10/21/20 14:54:57	anonymous		005737265-46	08502-1	Becker	Joan	Woodland Towers, 36 Moreland Ave E, 802	Harboro, PA 19040	Incomplete Declaration		
23	220/21/20 14:54:06	10/21/20 14:55:24	anonymous		110454289-46	460003-1	Prabhudesai	Anuya Sachin	102 Sterling Dr	North Wales, PA 19454	Resolved		
24	230/21/20 14:55:06	10/21/20 14:56:05	anonymous		005787995-46	360301-1	Stewart	Mary	454 Avenue A B	Horsham, PA 19044	Incomplete Declaration		
25	240/21/20 14:55:36	10/21/20 14:56:38	anonymous		006205876-46	401003-1	Powers	Constance	102 Pennsylvania Ave	Bryn Mawr, PA 19010	Resolved		
26	250/21/20 14:56:10	10/21/20 14:57:21	anonymous		006275237-46	401001-1	Wright	Walter	Gloria Dei Manor, 753 Welsh Rd 116	Huntingdon Vly, PA 19006	Incomplete Declaration		
27	260/21/20 14:56:40	10/21/20 14:57:47	anonymous		016220045-46	300202-1	Brill	Karen D	1551 Huntingdon Pike APT A320	Huntingdon Vly, PA 19006	Incomplete Declaration		
28	270/21/20 14:57:49	10/21/20 14:58:27	anonymous		005797771-46	310404-1	Wilson	Earnestine	n/a	n/a	Incomplete Declaration		
29	280/21/20 14:57:37	10/21/20 14:58:42	anonymous		016044690-46	300202-1	Kaufman	Marie	1551 Huntingdon Pike APT A217	Huntingdon Vly, PA 19006	Incomplete Declaration		
30	290/21/20 14:58:31	10/21/20 14:59:24	anonymous		006311693-46	300401-1	McKinley	Marguerite E	229 Hay St	Jenkintown, PA 19046	Incomplete Declaration		
31	300/21/20 14:59:28	10/21/20 15:00:13	anonymous		107744416-46	460006-1	Buckenberger	Nicole	n/a	n/a	Incomplete Declaration		
32	310/21/20 15:00:17	10/21/20 15:01:06	anonymous		014817048-46	300402-1	McShane	Brian Stephen	933 Creffield Ave	Elkins Park, PA 19027	Incomplete Declaration		
33	320/21/20 14:58:49	10/21/20 15:01:45	anonymous		021049107-46	400403-1	Altman-McMahon	Michael	260 Montgomery Ave W, APT 303	*None	resolved		
34	330/21/20 15:01:08	10/21/20 15:01:48	anonymous		005997835-46	430304-1	Masters	Arlene N	15222 Shannondell Dr	Audubon, PA 19403	Incomplete Declaration		
35	340/21/20 15:01:51	10/21/20 15:02:34	anonymous		006238072-46	300702-1	Stein	Sandra E	1250 Greenwood Ave APT 520	Jenkintown, PA 19046	Incomplete Declaration		
36	350/21/20 15:01:48	10/21/20 15:02:49	anonymous		006163995-46	300601-1	Keim	John	628 Harrison Ave APT A	Glenside, PA 19038	Incomplete Declaration		
37	360/21/20 15:02:38	10/21/20 15:03:17	anonymous		009596705-46	510002-1	Beese	Mary Ann	702 Twining Way	Collegeville, PA 19426	Incomplete Declaration		
38	370/21/20 15:02:55	10/21/20 15:03:58	anonymous		015045166-46	590302-1	McAndrew	Mariann	1113 Easton Rd N	Willow Grove, PA 19090	Incomplete Declaration		
39	380/21/20 15:03:18	10/21/20 15:04:03	anonymous		005726801-46	65002-1	Barnett	Ronald B	2062 Julia Dr	Conshohocken, PA 19428	resolved		
40	390/21/20 15:01:58	10/21/20 15:04:24	anonymous		107222281-46	050300-1	Mackowski	Matthew	309 Washington St APT 3107	Conshohocken, PA 19248	USPS Issue		
41	400/21/20 15:04:05	10/21/20 15:04:58	anonymous		005902791-46	65002-1	Gallo-Barnett	Gallo Marie	2062 Julia Dr	Conshohocken, PA 19428	resolved		
42	410/21/20 15:04:26	10/21/20 15:05:44	anonymous		104093627-46	050300-1	Roney	Jason	301 Washington ST APT 1129	Conshohocken, PA 19248	USPS Issue		
43	420/21/20 15:04:04	10/21/20 15:06:19	anonymous		020676226-46	400403-1	Altman-McMahon	Elizabeth	*None	*None	resolved		
44	430/21/20 15:05:00	10/21/20 15:06:23	anonymous		006383410-46	320302-1	Tillman	Delores	217 Montgomery Ave Hillcrest Village	Boyetown, PA 19512	Incomplete Declaration		
45	440/21/20 15:06:24	10/21/20 15:07:07	anonymous		102877706-46	110302-1	Delconte	Ralph Jr	1008 Third St W	Lansdale, PA 19446	Incomplete Declaration		
46	450/21/20 15:05:55	10/21/20 15:07:25	anonymous		110662625-46	350301-1	Harrington	Erika Eden	2058 Maple Ave APT G3-11	Hatfield, PA 19440	USPS Issue		

95. In a further effort to circumvent Pennsylvania's Election Code and the prohibition against efforts to "cure" absentee and mail-in ballot envelopes, Secretary Boockvar, issued guidance, through Jonathan Marks, the Deputy Secretary of Elections and Commissions, just hours before Election Day directing county boards of elections to provide electors who have cast defective absentee or mail-in ballots with provisional ballots and to promptly update the SURE system.

96. The Deputy Secretary for Elections and Commissions issued an email which stated:

Sent: Monday, November 2, 2020 8:38 PM
To: Marks, Jonathan
Subject: Important DOS Email - Clarification regarding Ballots Set Aside During Pre-canvass

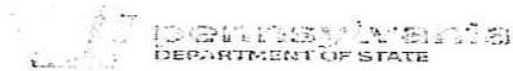
*** This is an external email. Please use caution when clicking on links and downloading attachments ***

Dear County Election Directors,

The Department of State has been asked whether county boards of elections can provide information to authorized representatives and representatives of political parties during the pre-canvass about voters whose absentee and mail-in ballots have been rejected. The Department issued provisional ballot guidance on October 21, 2020, that explains that voters whose completed absentee or mail-in ballots are rejected by the county board for reasons unrelated to voter qualifications may be issued a provisional ballot. To facilitate communication with these voters, the county boards of elections should provide information to party and candidate representatives during the pre-canvass that identifies the voters whose ballots have been rejected and should promptly update the SURE system.

Kind regards,

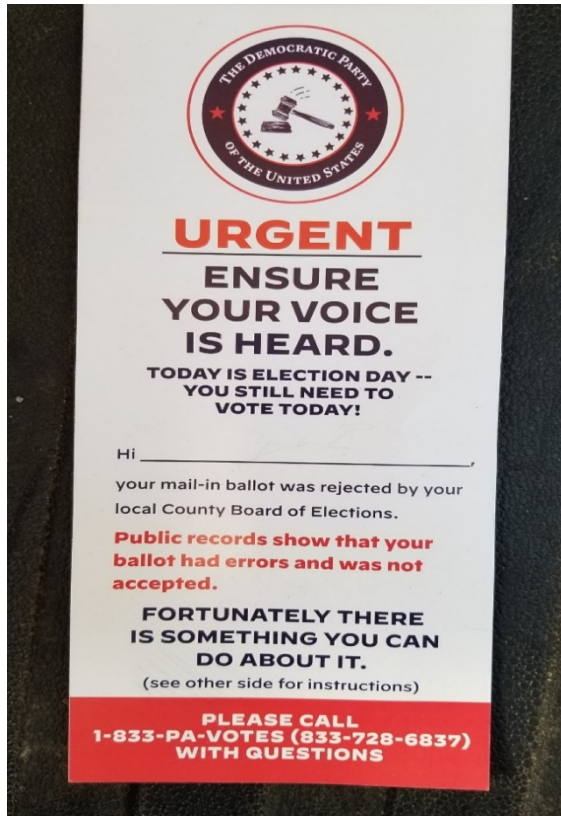
Jonathan M. Marks
Deputy Secretary for Elections & Commissions
Pennsylvania Department of State
302 North Office Building | Harrisburg, PA 17120
☎ 717.783.2035 📠 717.787.1734
✉ jmarks@pa.gov



97. In order to obtain a provisional ballot on Election Day, an elector who previously requested an absentee or mail-in ballot must sign an affidavit stating "I do solemnly swear or affirm that my name is ... and that this is the only ballot that I cast in this election." 25 P.S. §3146.8; 25 P.S. §3050.

98. If an elector has already submitted an absentee or mail-in ballot and that ballot was received by his or her county board of elections, the elector cannot truthfully affirm that the provisional ballot is the only ballot cast by them in the election. The provisional ballot would in fact be a second ballot cast by the elector.

99. Secretary Boockvar's actions appear conveniently timed with the actions of the Democratic Party who apparently considered the matter to be URGENT.



100. Deputy Secretary Marks issued his email at 8:38 p.m. on November 2, 2020, on the Eve of Election Day. Under the Election Code, provisional ballots are only used on Election Day. Less than twelve hours after Deputy Secretary Marks' email, the Democratic Party had printed handbills telling electors "Public records show that your ballot had errors and was not accepted." and to "Go in person to vote at your polling place today by 8:00 EST and ask for a provisional ballot."

101. The effect to utilize provisional ballots to "cure" defective absentee and mail-in ballots is in clear violation of Pennsylvania's Election Code. The number of provisional

ballots cast in Pennsylvania is approximately 90,000 which is significantly higher than previous General Elections.

102. Further, it is not clear what Deputy Secretary Marks intended when he stated "To facilitate communication with these voters, the county boards of elections should provide information to party and candidate representatives during the pre-canvassing that identifies the voters whose ballots have been rejected and should promptly update the SURE system."

103. Pennsylvania's Election Code makes no provision for the acceptance or rejection of ballots during the pre-canvassing process, nor does the Election Code provide boards of elections with the authority to "update the SURE system" so that an electors who previously submitted an absentee or mail-in ballot may vote with a provisional ballot.

104. The Pennsylvania Supreme Court ruled that county boards of elections are prohibited from using signature comparison to challenge and reject absentee or mail-in ballots. *In Re: November 3, 2020, General Election, 149 MM 2020 (Oct. 23, 2020)*.

105. The Court's decision is contrary to the applicable provisions of Pennsylvania's Election Code.

106. In addition, the Pennsylvania Supreme Court ruled that county boards of elections could prevent and exclude designated representatives of the candidates and political parties, who are authorized by the Election Code to observe the pre-canvassing and canvassing of ballots, from being in the room during pre-canvassing and canvassing of ballots. See, *In Re: Canvassing Observation, 30 EAP 2020 (Nov. 17, 2020)*.

107. In predominantly Democratic counties, such as Philadelphia, Delaware and Montgomery Counties, authorized representative of the candidates and the Republican Party attempted to observe the actions of election officials; however, the authorized representatives were routinely denied the access necessary to properly observe the handling of ballot envelopes and ballots during the pre-canvassing and canvassing process.

108. Plaintiff-Intervenors have obtained a sworn Affidavit from Gregory Stenstrom, who was appointed by the Delaware County Republican Party to observe the election process within Delaware County. Mr. Stenstrom attests to numerous election code violations by the Delaware County Board of Elections. Plaintiff-Intervenors have numerous other Declarations regarding similar election code violations in other predominantly Democratic counties. See Stenstrom Declaration, *Appendix* pgs. 129-151.

109. Absentee and mail-in ballots are required to be canvassed in accordance with subsection (g) of Section 3146.8 - Canvassing of official absentee and mail-in ballots. *25 P.S. §3146.8(g) (1)(i-ii) & (1.1)*.

110. Pennsylvania's Election Code defines the term "pre-canvass" to mean "the inspection and opening of all envelopes containing official absentee ballots or mail-in ballots, the removal of such ballots from the envelopes and the counting, computing and tallying of the votes reflected on the ballots. The term does not include the recording or publishing of the votes reflected on the ballots." *25 P.S. § 2602(q.1)*.

111. Prior to any pre-canvassing meeting, county boards of elections are required to provide at least forty-eight hours' notice by publicly posting a notice of a pre-canvass meeting on its publicly accessible Internet website. *25 P.S. § 3146.8(g)(1.1)*.

112. Each candidate and political party is entitled to have one designated and authorized representative in the room any time absentee and mail-in ballots are being canvassed by a board of elections. *25 P.S. §3146.8(g)(2)*.

113. The candidates' watchers or other representatives are permitted to be present any time the envelopes containing absentee and mail-in ballots are opened. *25 P.S. §3146.8*

114. The candidates and political parties are entitled to have watchers present any time there is canvassing of returns. *25 P.S. §2650(a)*.

115. In predominantly Democratic counties, such as Montgomery, election would weigh absentee and mail-in ballot envelopes to determine whether secrecy envelopes were contained within the outer envelopes. Election officials would also review and inspect the absentee and mail-in ballot envelopes to determine whether they complied with the requirements of the Election Code.

116. This pre-canvassing of ballot envelopes is in direct violation of Pennsylvania's Election Code.

117. Under the Election Code, county boards of elections are required, upon receipt of sealed official absentee and mail-in ballot envelopes, to "safely keep the ballots in sealed or locked containers until they are to be canvassed by the county board of elections." *25 P.S. §3146.8(a)*.

118. County boards of elections are prohibited from pre-canvassing absentee and mail-in ballots prior to 7:00 a.m. of Election Day. *25 P.S. § 3146.8(g)(1.1.)*

119. As such, from the time ballot envelopes are received by county boards of elections through 7:00 a.m. on Election Day, the ballot envelopes are to be safely kept in

sealed or locked containers. 25 P.S. §3146.8(a). Stated in a different way, county boards of elections are not permitted to remove absentee and mail-in ballot envelopes from their sealed or locked containers until the ballots are pre-canvassed at 7:00 a.m. on Election Day.

120. Upon information and belief, it is averred that in many predominantly Democratic counties, such as Montgomery County, county election officials routinely violated these provisions of Pennsylvania's Election Code.

121. The Pennsylvania Supreme Court ruled that county boards of elections were not required to enforce or follow Pennsylvania's Election Code requirements for absentee and mail-in ballot envelopes, including the requirements related to elector signatures, addresses, dates, and signed declarations. *In Re: Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election, 31 EAP 2020 (Nov. 23, 2020)*.

122. During pre-canvassing, county boards of elections are required to examine each ballot cast to determine if the declaration envelope is properly completed and to compare the information with the information contained in the Registered Absentee and Mail-in Voters File. 25 P.S. § 3146.8(g)(3).

123. Only then are county boards of elections authorized to open the outer envelope of every unchallenged absentee or mail-in envelope in such a manner so as not to destroy the declaration executed thereon. 25 P.S. § 3146.8(g)(4)(i).

124. In predominantly Democratic counties, such as Allegheny County, election officials disregarded the requirements of the Election Code and counted absentee and mail-in ballot ballots with defective elector signatures, addresses, dates, and signed declarations. *In Re: Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election, 31 EAP 2020*

(*Nov. 23, 2020*). In other counties, such as Westmoreland, such ballots were not counted by the county board of elections.

125. In addition to substantial evidence of the violations of Pennsylvania's Election Code, as set forth above, Plaintiff-Intervenors have produced an expert report authored by Francis X. Ryan who will testify and identify significant and dispositive discrepancies and errors which call into questions the results of the Presidential Election in Pennsylvania. See Ryan Report, Appendix pgs. 660-666.

126. As described above, the 2020 General Election in Pennsylvania was fraught with numerous violations of Pennsylvania's Election Code perpetrated by predominantly Democratic county election officials. In addition, there are countless documented election irregularities and improprieties that prevent an accurate accounting of the election results in the Presidential election.

127. Many of the irregularities directly relate to the county boards of elections' handing of absentee and mail-in ballots; the pre-canvassing and canvassing of ballots; the failure to permit legally appropriate and adequate oversight and transparency of the process; and, the failure to maintain and secure ballot integrity and security throughout the election process.

128. As such, the 2020 General Election results are so severely flawed that it is impossible to certify the accuracy of the purported results.

129. In Pennsylvania, the government data shows election officials' absentee ballot errors of 121,279 far exceed the margin of victory of 81,749.

130. And, the government data shows election officials' absentee ballot error rate of at least 1.43% which far exceeds federal law's pre-election certification error rate for voting systems' hardware and software of 0.0008%.

Pennsylvania Voter Election Contest
Margin +81,749

Type of error*	Description	Margin
1) Unlawful Ballots	Estimate of ballots requested in the name of a registered Republican by someone other than that person ²	53,909
2) Legal Votes Not Counted	Estimate of Republican ballots that the requester returned but were not counted ³	44,892
Total Votes: 98,801	Error Rate (Compared to Total Vote)	1.43%
3) Illegal Votes Counted	Electors voted where they did not reside ⁴	14,328
4) Illegal Votes Counted	Out of State Residents Voting in State ⁵	7,426
5) Illegal Votes Counted	Double Votes ⁶	742
TOTAL		121,297
	Of total votes cast 6,924,006	

See Braynard Decl. and Zhang Decl. *May overlap.

² See Declaration of Steven J. Miller Appendix pg. 1325-1330.

³ See Declaration of Steven J. Miller Appendix pg. 1325-1330.

⁴ See PA Declaration of Matthew Braynard Appendix pg. 1331-1340 ¶3.

⁵ See PA Declaration of Matthew Braynard Appendix pg. 1331-1340.

⁶ See PA Declaration of Matthew Braynard Appendix pg. 1331-1340 ¶4.

State of Georgia

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

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

133. Georgia's Secretary of State, Brad Raffensperger, without legislative approval, unilaterally abrogated Georgia's statute governing the signature verification process for absentee ballots.

134. O.C.G.A. § 21-2-386(a)(2) prohibits the opening of absentee ballots until after the polls open on Election Day: In April 2020, however, the State Election Board adopted Secretary of State Rule 183-1-14-0.9-.15, Processing Ballots Prior to Election Day.

135. That rule purports to authorize county election officials to begin processing absentee ballots up to three weeks before Election Day.

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

137. Georgia law provides absentee voters the chance to “cure a failure to sign the oath, an invalid signature, or missing information” on a ballot's outer envelope by the deadline for verifying provisional ballots (*i.e.*, three days after the election). O.C.G.A. §§ 21-

2-386(a)(1)(C), 21-2-419(c)(2). To facilitate cures, Georgia law requires the relevant election official to notify the voter in writing: “The board of registrars or absentee ballot clerk shall promptly notify the elector of such rejection, a copy of which notification shall be retained in the files of the board of registrars or absentee ballot clerk for at least two years.”

O.C.G.A. § 21-2-386(a)(1)(B).

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

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

140. Georgia's legislature has not ratified these material changes to statutory law mandated by the Compromise Settlement Agreement and Release, including altered signature verification requirements and early opening of ballots. The relevant legislation that was violated by Compromise Settlement Agreement and Release did not include a severability clause.

141. This unconstitutional change in Georgia law materially benefitted former Vice President Biden. According to the Georgia Secretary of State's office, former Vice President Biden had almost double the number of absentee votes (65.32%) as President Trump (34.68%). *See* Cicchetti Decl. at ¶ 25, App. pgs. 1321-1322.

142. Specifically, there were 1,305,659 absentee mail-in ballots submitted in Georgia in 2020. There were 4,786 absentee ballots rejected in 2020. This is a rejection rate of .37%. In contrast, in 2016, the 2016 rejection rate was 6.42% with 13,677 absentee mail-in ballots being rejected out of 213,033 submitted, which more than *seventeen times greater* than in 2020. *See* Cicchetti Decl. at ¶ 24, App. pgs. 1321.

143. If the rejection rate of mailed-in absentee ballots remained the same in 2020 as it was in 2016, there would be 83,517 less tabulated ballots in 2020. The statewide split of absentee ballots was 34.68% for Trump and 65.2% for Biden. Rejecting at the higher 2016 rate with the 2020 split between Trump and Biden would decrease Trump votes by 28,965 and Biden votes by 54,552, which would be a net gain for Trump of 25,587 votes. This would be more than needed to overcome the Biden advantage of 12,670 votes, and Trump would win by 12,917 votes. *Id.* Regardless of the number of ballots affected, however, the non-legislative changes to the election rules violated the Electors Clause.

144. Further, the Zuckerberg-funded absentee drop boxes caused a disparate impact in Georgia

145. Georgia is comprised of 159 counties. In 2016, Hillary Clinton garnered 1,877,963 votes in the state of Georgia.⁷ Clinton won four counties in major population centers, Fulton (297,051), Cobb (160,121), Gwinnett (166,153), and DeKalb Counties (251,370).⁸ These four counties represented 874,695 votes for Hillary Clinton.⁹

146. Georgia has 300 total drop boxes for electors to submit absentee ballots.¹⁰

147. In 2020, Georgia counties utilized CTCL funding to install additional drop boxes in areas that would make it easier for voters to cast their absentee ballot. The four counties won by the Clinton campaign contain a plurality of the drop boxes.

148. Fulton County was home to 39 drop boxes¹¹, Cobb County provided 16 drop boxes,¹² 23 drop boxes in Gwinnett County¹³, and DeKalb County has 34 boxes.¹⁴

149. These four localities account for 112 drop boxes, spread out over 1,587 square miles.¹⁵ Meaning, voters in these four Clinton strongholds have one drop box for every 14

⁷ Georgia Election Results 2016 – The New York Times (nytimes.com)

⁸ Georgia Election Results 2016 – The New York Times (nytimes.com)

⁹ Georgia Election Results 2016 – The New York Times (nytimes.com)

¹⁰ <https://georgiapeanutgallery.org/2020/09/28/drop-box-locations-for-november-3-2020-election/>

¹¹ Fulton County nearly doubles number of ballot drop off boxes (fox5atlanta.com)

¹² <https://www.cobbcounty.org/elections/news/6-additional-absentee-ballot-drop-boxes-available-september-23rd>

¹³ https://www.gwinnettcounty.com/static/departments/elections/2020_Election/pdf/BallotDropBoxMap_2020.pdf

¹⁴ <https://www.dekalbcountyga.gov/sites/default/files/users/user304/DeKalb%20Dropbox%20Locations%20103120%20V7.pdf>

¹⁵ The areas for the respective counties are: Fulton 534 square miles; Cobb 345 square miles; Gwinnett 437 square miles; and DeKalb 271 square miles.

square miles. Meanwhile, in the remaining 155 counties, spread out over 55,926 square miles, a republican voter will find one drop box for every 294 square miles.

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

151. Finally, in Georgia, the government data shows election officials’ absentee ballot errors of 204,143 far exceed the margin of victory of 12,670.

152. And, the government data shows election officials’ absentee ballot error rate of at least 1.28% which far exceeds federal law’s pre-election certification error rate for voting systems’ hardware and software of 0.0008%.

Georgia Voter Election Contest
Margin +12,670

Type of error*	Description	Margin
1) Unlawful Ballots	Estimate of the minimum number of absentee ballots requested which were not requested by the person identified in the state’s database ¹⁶	20,431
2) Legal Votes Not Counted	Estimate of the minimum number of absentee ballots that the requester returned but were not counted ¹⁷	43,688
Category 1 & 2 Total Votes: 64,119	Error Rate (Compared to Total Vote)	1.28%

¹⁶ See GA Zhang Declaration Appendix pg. 1341-1349 ¶ 1.

¹⁷ See GA Zhang Declaration Appendix pg. 1341-1349.

3) Illegal Votes Counted	Electors voted where they did not reside. ¹⁸	138,221
4) Illegal Votes Counted	Out of state residents voting in Georgia ¹⁹	20,312
5) Illegal Votes Counted	Double Votes ²⁰	395
TOTAL		204,143
	of total votes cast 4,998,482	

See Braynard Decl. and Zhang Decl. *May overlap.

State of Michigan

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

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

155. Michigan law generally allows the public the right to observe the counting of ballots. See MCL 168.765a(12) (“At all times, at least 1 election inspector from each major political party must be present at the absent voter counting place and the policies and procedures adopted by the secretary of state regarding the counting of absent voter ballots must be followed.”).

¹⁸ See PA Declaration of Matthew Braynard Appendix pg. 1350-1359 ¶3.

¹⁹ See PA Declaration of Matthew Braynard Appendix pg. 1350-1359.

²⁰ See PA Declaration of Matthew Braynard Appendix pg. 1350-1359 ¶4.

156. The Michigan Constitution provides all lawful voters with “[t]he right to have the results of statewide elections audited, in such a manner as prescribed by law, to ensure the accuracy and integrity of elections.” Const. 1963, art 2, § 4(1)(h).

157. Indeed, “[a]ll rights set forth in this subsection shall be self-executing. This subsection shall be liberally construed in favor of voters’ rights in order to effectuate its purposes.” *Id.* (emphasis added).

158. The public’s right to observe applies to counting both in-person and absentee ballots.²¹

159. Respondents and their agents failed to grant meaningful observation opportunities to the public over the absentee ballots. See Affidavit of Angelic Johnson, Appendix 860-861 at ¶12; Affidavit of Zachary C. Larsen, Appendix 836-845 at ¶¶37-55; Affidavit of G Kline Preston IV, Appendix 886-889 at ¶8; Affidavit of Articia Bomer, Appendix 897-899 at ¶21; Affidavit of Philip O’Halloran, Appendix 900-910 at ¶¶18-19; Affidavit of Robert Cushman, Appendix 928-930 at ¶3; Affidavit of Jennifer Seidl, Appendix 931-938 at ¶6; Affidavit of Andrew Sitto, Appendix 890-893 at ¶¶23; Affidavit of Kristina Karamo, Appendix 894-896 at ¶5; Affidavit of Jennifer Seidl, Appendix 931-938 at ¶35, 936 at ¶42; Affidavit of Cassandra Brown Appendix 939-944 at ¶33; Affidavit of Adam di Angeli, Appendix 951-967 at ¶30; Affidavit of Kayla Toma Appendix 977-983 at ¶¶14-15, 980 at

²¹ Regrettably, Defendants and their agents have exclusive possession of the ballots, ballot boxes, and other indicia of voting irregularities so a meaningful audit cannot timely occur. Normally, “[a] person requesting access to voted ballots is entitled to a response from the public body within 5 to 10 business days; however, the public body in possession of the ballots may not provide access for inspection or copying until 30 days after certification of the election by the relevant board of canvassers.” Op.Atty.Gen.2010, No. 7247, 2010 WL 2710362.

¶21, 981 at ¶¶31-32; Affidavit of Matthew Mikolajczak, Appendix 156; Affidavit of Braden Giacobazzi, Appendix 995-1000 at ¶¶3, 5, 996 at ¶8; Affidavit of Kristy Klamer Appendix 1006-1009 at ¶¶4-5, 1007 at ¶¶6-9.

160. Wayne County is the most populous county in Michigan.

161. Detroit is the largest city in Wayne County.

162. The City of Detroit's observation procedures, for example, failed to ensure transparency and integrity as it did not allow the public to see election officials during key points of absentee ballot processing in the AVCBs at TCF Arena (f/k/a Cobo Hall). *Id.*

163. These irregularities were repeated elsewhere in Wayne County, including in Canton Township, and throughout the State. See generally, Affidavits of Cassandra Brown Appendix 939-944 at ¶34; Lucille Ann Huizinga, Appendix 1016-1020 at ¶31; Laurie Ann Knott, Appendix 1010-1015 at ¶¶34-35; Marilyn Jean Nowak Appendix 1021-1023 at ¶17; Marlene K. Hager, Appendix 1024-1027 at ¶¶19-23; and Sandra Sue Workman Appendix 1028-1032 at ¶33 (allegedly sending ballots from Grand Rapids to TCF Center to be processed and counted).

164. For instance, when absentee ballots arrived, the ballots should have been in an envelope, signed, sealed (and delivered) by the actual voter. Often it was not.

165. Ballots were taken from their envelopes and inspected to determine whether any deficiencies would obstruct the ballot from being fed through a tabulation machine. If any deficiencies existed (or were created by tampering), the ballot was hand duplicated.

166. There are credible allegations that Democrat officials and election workers repeatedly scanned ballots in high-speed scanners, often counting the same ballot more than

once. Affidavit of Articia Bomer, Appendix 897-899 at ¶¶10-11, 13; Affidavit of William Carzon, Appendix 973-976 at ¶8; Affidavit of Matthew Mikolajczak Appendix 985-991; Affidavit of Melissa Carone, Appendix 992-994 at ¶¶3-4.

167. The evidence will also show that these hand duplication efforts ignored the legislative mandate to have one person from each major party sign every duplicated vote (*i.e.*, one Republican and one Democrat had to sign each “duplicated” ballot and record it in the official poll book).

168. Several poll watchers, inspectors, and other whistleblowers witnessed the surge of unlawful practices described above. Affidavit of Melissa Carone, Appendix 992-994 at ¶9.

169. The evidence shows the unlawful practices provided cover for careless or unscrupulous officials or workers to mark choices for any unfilled elections or questions on the ballot, potentially and substantially affecting down ballot races where there are often significant undervotes, or causing the ballots to be discarded due to overvotes.

Summary of Election Malfeasance at the TCF Center Shows Widespread Problems that only this Court can Alleviate in the Short Term.

170. There were many issues of mistake, fraud, and other malfeasance at the TCF Center during the Election and during the counting process thereafter.

171. On election day, election officials at the TCF Center systematically processed and counted ballots from voters whose names failed to appear in either the Qualified Voter File (“QVF”) or in the supplemental sheets. When a voter’s name could not be found, the election worker assigned the ballot to a random name already in the QVF to a person who

had not voted. See Affidavit of Zachary C. Larsen, Appendix 836-845 at ¶33; Affidavit of Robert Cushman, Appendix 928-930 at ¶7.

172. On election day, election officials at the TCF Center instructed election workers to not verify signatures on absentee ballots, to backdate absentee ballots, and to process such ballots regardless of their validity. See Affidavit of Jessy Jacobs, Appendix 846-848 at ¶15.

173. After the statutory deadlines passed and local officials had announced the last absentee ballots had been received, another batch of unsecured and unsealed ballots, without envelopes, arrived in unsecure trays at the TCF Center.

174. There were tens of thousands of these late-arriving absentee ballots, and apparently every ballot was counted and attributed only to Democratic candidates. See Affidavit of John McGrath Appendix 968-972 at ¶8.

175. Election officials at the TCF Center instructed election workers to process ballots that appeared after the election deadline and to inaccurately report or backdate those ballots as having been received before the November 3, 2020, deadline. See Affidavit of Jessy Jacobs, Appendix 846-848 at ¶17.

176. Election officials at the TCF Center systematically used inaccurate information to process ballots. Affidavit of Cassandra Brown, Appendix 939-944 at ¶33.

177. Many times, the election workers overrode the software by inserting new names into the QVF after the election deadline or recording these new voters as having a birthdate of “1/1/1900,” which is the “default” birthday. See Affidavit of John McGrath Appendix 968-972 at ¶8; Affidavit of Kristina Karamo Appendix 894-896 at ¶6; Affidavit of

Robert Cushman, Appendix 928-930 at ¶¶10-12, 930 at ¶16; Affidavit of Jennifer Seidl, Appendix 931-938 at ¶¶52-53; Affidavit of Braden Giacobazzi Appendix 995-1000 at ¶10; Affidavit of Kristy Klamer Appendix 1006-1009 at ¶13.

178. Each day before the election, City of Detroit election workers and employees coached voters to vote for Joe Biden and the Democratic Party candidates. See Affidavit of Jessy Jacobs, Appendix 846-848 at ¶8.

179. These workers, employees, and so-called consultants encouraged voters to vote a straight Democratic Party ticket. These election workers went over to the voting booths with voters to watch them vote and to coach them as to which candidates they should vote for. See Affidavit of Jessy Jacobs, Appendix 846-848 at ¶8.

180. Before and after the statutory deadline, unsecured ballots arrived at the TCF Center loading garage, loose on the floor not in sealed ballot boxes—with no chain of custody and often with no secrecy envelopes. Affidavit of Articia Bomer, Appendix 897-899 at ¶8, 898 at ¶¶9, 18.

181. Election officials and workers at the TCF Center duplicated ballots by hand without allowing poll challengers to check if the duplication was accurate. See Affidavit Andrew Sitto, Appendix 890-893 at ¶9; Affidavit of Philip O'Halloran Appendix 900-910 at ¶22; Affidavit of Eugene Dixon, Appendix 947-48 at ¶5.

182. In fact, election officials repeatedly obstructed poll challengers from observing. See Affidavit of Zachary C. Larsen, Appendix 836-845 at ¶¶37-55; Affidavit of Janice Hermann, Appendix 915-917 at ¶5; Affidavit of Jennifer Seidl, Appendix 931-938 at ¶29, 931-938 at ¶42; Affidavit of Cassandra Brown, Appendix 939-944 at ¶33.

183. Election officials violated the plain language of the law MCL 168.765a by permitting thousands of ballots to be filled out by hand and duplicated on site without oversight from bipartisan poll challengers.

184. After poll challengers started uncovering the statutory violations at the TCF Center, election officials and workers locked credentialed challengers out of the counting room so they could not observe the process, during which time tens of thousands of ballots, if not more, were improperly processed. See Affidavit of Zachary C. Larsen, Appendix 836-845 at ¶¶37-55; Affidavit of Janice Hermann, Appendix 915-917 at ¶5; Affidavit of Jennifer Seidl, Appendix 931-938 at ¶29, 931-938 at ¶32, 931-938 at ¶42; Affidavit of Cassandra Brown, Appendix 939-944 at ¶¶33; Affidavit of Anna England, Appendix 949-950 at ¶¶5,7; Affidavit of Matthew Mikolajczak Appendix 985-991; Affidavit of Braden Giacobazzi, Appendix 995-1000 at ¶6.

Suspicious Funding and Training of Election Workers

185. In September, the Detroit City council approved a \$1 million contract for the staffing firm P.I.E. Management, LLC to hire up to 2,000 workers to work the polls and to staff the ballot counting machines at the TCF Center. P.I.E. Management, LLC is owned and controlled by a Democratic Party operative.

186. A week after approval, P.I.E. Management, LLC began advertising for workers, stating, “Candidates must be 16 years or older. Candidates are required to attend a 3-hour training session before the General Election. The position offers two shifts and pay-rates: 1) From 7 am to 7 pm at \$600.00; and 2) From 10 pm to 6 am at \$650.”

Consequently, these temporary workers were earning at least \$50 per hour—far exceeding prevailing rates at most rural communities.

187. Upon information and belief, the evidence will show that this money and much more came from a single private source: Mark Zuckerberg and his spouse, through the charity called CTCL, which paid over \$400 million nationwide to Democrat-favoring election officials and municipalities. See generally, Expert Report of James Carlson, Appendix 1079-1098.

188. The improper private funding to Michigan exceeded \$9.8 million. *Id.* at 21-30.

Forging Ballots on the QVF

189. Whistleblowers observed election officials processing ballots at the TCF Center without confirming that the voter was eligible to vote. See Affidavit of Zachary C. Larsen, Appendix 836-845 at ¶12.

190. Whistleblowers observed election officials assigning ballots to different voters, causing a ballot being counted for a non-eligible voter by assigning it to a voter in the QVF who had not yet voted. See Affidavit of John McGrath Appendix 968-972 at ¶8; Affidavit of Kristina Karamo Appendix 894-896 at ¶6; Affidavit of Robert Cushman, Appendix 928-930 at ¶¶10-12, 930 at ¶16; Affidavit of Jennifer Seidl, Appendix 931-938 at ¶¶52-53; Affidavit of Braden Giacobazzi Appendix 995-1000 at ¶10; Affidavit of Kristy Klammer Appendix 1006-1009 at ¶13.

Changing Dates on Ballots

191. All lawful absentee ballots were supposed to be in the QVF system by 9:00 p.m. on November 3, 2020.

192. This deadline had to be met to ensure an accurate final list of absentee voters who returned their ballots before the statutory deadline of 8:00 p.m. on November 3, 2020.

193. To have enough time to process the absentee ballots, Respondents told polling locations to collect the absentee ballots from the drop-boxes every hour on November 3, 2020.

194. On November 4, 2020, a City of Detroit election whistleblower at the TCF Center was told to improperly pre-date the receive date for absentee ballots that were not in the QVF as if they had been received on or before November 3, 2020. The Whistleblower swore she was told to alter the information in the QVF to inaccurately show that the absentee ballots had been timely received. She estimates that this was done to thousands of ballots. See Affidavit of Jessy Jacobs, Appendix 846-848 at ¶17.

Double Voting

195. An election worker in the City of Detroit observed several people who came to the polling place to vote in-person, but they had already applied for an absentee ballot. See Affidavit of Jessy Jacobs, Appendix 846-848 at ¶10; Affidavit of Anna England, Appendix 949-950 at ¶45.

196. Election officials allowed these people to vote in-person, and they did not require them to return the mailed absentee ballot or sign an affidavit that the voter lost or “spoiled” the mailed absentee ballot as required by law and policy.

197. This illicit process allowed people to vote in person and to send in an absentee ballot, thereby voting twice. This “double voting” was made possible by the unlawful ways

in which election officials were counting and inputting ballots at the TCF Center from across the City's several polling places.

198. The Secretary of State's absentee ballot scheme exacerbated this "double voting," as set forth further in this Petition. See also, Expert Report of Matthew Braynard, Appendix 1112-1122 at ¶6.

First Wave of New Ballots

199. Early in the morning of November 4, 2020, tens of thousands of ballots were suddenly brought into the counting room at the TCF Center through the back door. See Affidavit of John McGrath Appendix 968-972 at ¶4 (around 3:00 a.m.); Affidavit of Articia Bomer, Appendix 897-899 at ¶18 (around 4:00 a.m.); Affidavit of William Carzon, Appendix 973-976 at ¶11 (around 4:00 a.m.); Affidavit Andrew Sitto, Appendix 890-893 at ¶16 (alleges about 4:30 a.m.).

200. These new ballots were brought to the TCF Center by vehicles with out-of-state license plates. See Affidavit of Andrew Sitto, Appendix 890-893 at ¶15.

201. Whistleblowers claim that all of these new ballots were cast for Joe Biden. See Affidavit of Andrew Sitto, Appendix 890-893 at ¶¶17-18.

202. Upon information and belief, inexplicably, these ballots still do not share or have the markings establishing the proper chain of custody from valid precincts and clerks and are among the approximately 70% of unmatched AVCB errors identified by Palmer and Hartmann.

Second Wave of New Ballots

203. The ballot counters needed to check every ballot to confirm that the name on the ballot matched the name on the electronic poll list—the list of all persons who had registered to vote on or before November 1, 2020 (the QVF).

204. The ballot counters were also provided with supplemental sheets which had the names of all persons who had registered to vote on either November 2, 2020 or November 3, 2020.

205. The validation process for a ballot requires the name on the ballot match with a registered voter on either the QVF or the supplemental sheets.

206. At around 9:00 p.m. on Wednesday, November 4, 2020, several more boxes of ballots were brought to the TCF Center. This was a second wave of new ballots.

207. Election officials instructed the ballot counters to use the “default” date of birth of January 1, 1900, on all of these newly appearing ballots. See Affidavit of John McGrath Appendix 968-972 at ¶¶8; Affidavit of Kristina Karamo Appendix 894-896 at ¶6; Affidavit of Robert Cushman, Appendix 928-930 at ¶¶10-12, 930 at ¶16; Affidavit of Jennifer Seidl, Appendix 931-938 at ¶¶52-53; Affidavit of Braden Giacobazzi Appendix 995-1000 at ¶10; Affidavit of Kristy Klamer Appendix 1006-1009 at ¶13.

208. None of the names on these new ballots corresponded with any registered voter on the QVF or the supplemental sheets. See Affidavit of John McGrath, Appendix 968-972 at ¶¶7, 14, 970 at ¶¶16-18.

209. Despite election rules requiring all absentee ballots to be inputted into the QVF system before 9:00 p.m. the day before, election workers inputted these new ballots into the QVF, manually adding each voter to the list *after* the deadline.

210. Upon information and belief, almost all of these new ballots were entered into the QVF using the “default” date of birth of January 1, 1900. See Affidavit of John McGrath, Appendix 968-972 at ¶8; Affidavit of Kristina Karamo, Appendix 894-896 at ¶6; Affidavit of Robert Cushman, Appendix 928-930 at ¶¶10-12, 930 at ¶16; Affidavit of Jennifer Seidl, Appendix 931-938 at ¶¶52-53; Affidavit of Braden Giacobazzi, Appendix 1995-1000 at ¶10; Affidavit of Kristy Klamer, Appendix 1006-1009 at ¶13.

211. These newly received ballots were either fabricated or apparently cast by persons who were not registered to vote before the polls closed at 8:00 p.m. on election day.

212. Upon information and belief, inexplicably, these ballots still do not share or have the markings establishing the proper chain of custody from valid precincts and clerks and are among the approximately 70% of unmatched AVCB errors identified by Palmer and Hartmann. See *generally* Affidavits of Monica Palmer and William Hartman, Appendix 851-859 at ¶6 and 854 at ¶14.

213. This means there were more votes tabulated than there were ballots in over 71% of the 134 AVCBs in Detroit. That equates to over 95 AVCB being significantly “off.”
Id.

214. According to public testimony before the state canvassers on November 23, City of Detroit Election Consultant Daniel Baxter admitted in some instances the imbalances exceeded 600 votes per AVCB. He did not reveal the total disparity.

Concealing the Malfeasance in Violation of Michigan law.

215. Many election challengers were denied access to observe the counting process by election officials at the TCF Center. See Affidavit of Angelic Johnson, Appendix 860-861 at ¶12; Affidavit of Zachary C. Larsen, Appendix 836-845 at ¶¶37-55; Affidavit of G Kline Preston IV, Appendix 886-889 at ¶8; Affidavit of Articia Bommer, Appendix 897-899 at ¶21; Affidavit of Philip O'Halloran, Appendix 900-910 at ¶¶18-19; Affidavit of Robert Cushman, Appendix 928-930 at ¶3; Affidavit of Jennifer Seidl, Appendix 931-938 at ¶6; Affidavit of Andrew Sitto, Appendix 890-893 at ¶23; Affidavit of Kristina Karamo, Appendix 894-896 at ¶5; Affidavit of Jennifer Seidl, Appendix 931-938 at ¶35, 931-938 at ¶42; Affidavit of Cassandra Brown Appendix 939-944 at ¶33; Affidavit of Adam di Angeli Appendix 951-967 at ¶30; Affidavit of Kayla Toma Appendix 977-983 at ¶¶14-15, 980 at ¶21, 981 at ¶¶31-32; Affidavit of Matthew Mikolajczak Appendix 985-991; Affidavit of Braden Giacobazzi Appendix 995-1000 at ¶¶3, 5, 995-1000 at ¶8; Affidavit of Kristy Klamer Appendix 1006-1009 at ¶¶4-5, 1007 at ¶¶6-9.

216. After denying access to the counting rooms, election officials at the TCF Center used large pieces of cardboard to block the windows to the counting room, thereby preventing anyone from watching the ballot counting process. See Affidavit of Zachary C. Larsen, Appendix 836-845 at ¶52; Affidavit of John McGrath Appendix 968-972 at ¶10; Affidavit of Andrew Sitto, Appendix 890-893 at ¶22.

217. Respondents have continued to conceal their efforts by refusing meaningful bipartisan access to inspect the ballots. Even if Republicans were involved in oversight roles by statute (such as with the Wayne County Canvassing Board), the Republican members

have been harassed, threatened, and doxed (including publicly revealing where their children go to school) to pressure them to capitulate and violate their statutory duties. This conduct is beyond the pale and shocking to the conscience. See Affidavit of William Hartman; Appendix 851-859 at ¶8; Affidavit of Monica Palmer, Appendix 857-859 at ¶¶18-22, and 24; Affidavit of Dr. Philip O'Halloran, Appendix 900-910 at ¶24-25; Affidavit of Jennifer Seidl, Appendix 931-938 at ¶23, 931-938 at ¶¶27, 30-31, 931-938 at ¶¶36-37; Affidavit of Eugene Dixon, Appendix 948 at ¶9; Affidavit of Matthew Mikolajczak, Appendix 985-991; Affidavit of Mellissa Carone Appendix 992-994 at ¶12; Affidavit of Braden Giacobazzi, Appendix 995-1000 at ¶3, 996 at ¶7, 997 at 12, 997-998 at ¶¶12-14; Affidavit of Kaya Toma Appendix 977-983 at ¶15; Affidavit of Kristy Klamer Appendix 1006-1009 at ¶¶4-5, 1007 at ¶¶6-9.

Unsecured QVF Access further Violating MCL 168.765a, *et seq.*

218. Whenever an absentee voter application or in-person absentee voter registration was finished, election workers at the TCF Center were instructed to input the voter's name, address, and date of birth into the QVF system.

219. The QVF system can be accessed and edited by any election processor with proper credentials in the State of Michigan at any time and from any location with Internet access.

220. This access permits anyone with the proper credentials to edit when ballots were sent, received, and processed from any location with Internet access.

221. Many of the counting computers within the counting room had icons that revealed that they were connected to the Internet.

222. Respondent Benson executed a contract to give a private partisan group, Rock the Vote, unfettered real-time access to Michigan's QVF. See Rock the Vote Agreement, Appendix 1152.

223. She sold or gave Michigan citizens' private voter information to private groups in furtherance of her own partisan goals.

224. Benson and the State repeatedly concealed this unlawful contract and have refused to tender a copy despite several lawful requests for the government contract under FOIA.

225. Improper access to the QVF was one of the chief categories of serious concern identified by the Michigan Auditor General's Report, Appendix 1053 at material finding #2.

226. Upon information and belief, Benson made it worse, not better. In the most charitable light, this was incredibly naïve. More cynically, Benson likely acted in furtherance of her partisan political goals and in dereliction of her statutory and constitutional duties.

Unsecured Ballots

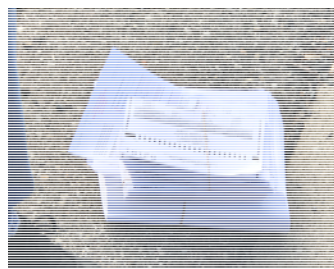
227. A poll challenger witnessed tens of thousands of ballots, and possibly more, being delivered to the TCF Center that were not in any approved, sealed, or tamper-proof container.

228. Large quantities of ballots were delivered to the TCF Center in what appeared to be mail bins with open tops. See Affidavit of Daniel Gustafson, Appendix 945-946 at ¶¶4-6; see the photo of the TCF Center below:



229. These ballot bins and containers did not have lids, were unsealed, and could not have a metal seal. See Affidavit of Rhonda Weber, Appendix 877-879 at ¶3.

230. Some ballots were found unsecured on the public sidewalk outside the Department of Elections in the City of Detroit, reinforcing the claim that boxes of ballots arrived at the TCF Center unsealed, with no chain of custody, and with no official markings. A photograph of ballots found on the sidewalk outside the Department of Elections appears below:



231. The City of Detroit held a drive-in ballot drop off where individuals would drive up and drop their ballots into an unsecured tray. No verification was done. This was not a secured drop-box with video surveillance. To encourage this practice, free food and

beverages were provided to those who dropped off their ballots using this method. See Affidavit of Cynthia Cassell Appendix 862-876 at ¶3 and 862-876 ¶¶9-10.

Breaking the Seal of Secrecy Undermines Constitutional Liberties under Const Art 2, § 4(1)(a).

232. Many times, election officials at the TCF Center broke the seal of secrecy for ballots to check which candidates the individual voted for on his or her ballot, thereby violating the voter's expectation of privacy. See Affidavit of Zachary C. Larsen; Appendix 836-845 at ¶16-18, 20.

233. Voters in Michigan have a constitutional right to open elections, and the Michigan Legislature provided them the right to vote in secret. Respondents' conduct, together with others, violates both of these hallmark principles. See Affidavit of Jennifer Seidl, Appendix 931-938 at ¶18.

234. In Michigan, it is well-settled that the election process is supposed to be transparent and the voter's ballot secret, not the other way around.

235. Here, Respondents' absentee ballot scheme has improperly revealed voters' preferences exposing Petitioners' and similarly-situated voters to dilution or spoliation while simultaneously obfuscating the inner workings of the election process.

236. Now the Respondents seek to perform an "audit" on themselves.
Statewide Irregularities Over Absentee Ballots Reveal Widespread Mistake or Fraud.

237. Whenever a person requested an absentee ballot either by mail or in-person, that person needed to sign the absentee voter application.

256. When the voter returned their absentee ballot to be counted, the voter was required to sign the outside of the envelope that contained the ballot.

257. Election officials who process absentee ballots are required to compare the signature on the absentee ballot application with the signature on the absentee ballot envelope. See Affidavit of Jennifer Seidl, Appendix 931-938 at ¶60.

258. Election officials at the TCF Center, for example, instructed workers not to validate or compare signatures on absentee ballot applications and absentee ballot envelopes to ensure their authenticity and validity. See Affidavit of Jessy Jacobs, Appendix 846-848 at ¶15.

259. Michigan law requires absentee votes to be counted by election inspectors in a particular manner. It requires, in relevant part:

(10) The oaths administered under subsection (9) must be placed in an envelope provided for the purpose and sealed with the red state seal. Following the election, the oaths must be delivered to the city or township clerk. Except as otherwise provided in subsection (12), a person in attendance at the absent voter counting place or combined absent voter counting place shall not leave the counting place after the tallying has begun until the polls close. Subject to this subsection, the clerk of a city or township may allow the election inspectors appointed to an absent voter counting board in that city or township to work in shifts. A second or subsequent shift of election inspectors appointed for an absent voter counting board may begin that shift at any time on election day as provided by the city or township clerk. However, an election inspector shall not leave the absent voter counting place after the tallying has begun until the polls close. If the election inspectors appointed to an absent voter counting board are authorized to work in shifts, at no time shall there be a gap between shifts and the election inspectors must never leave the absent voter ballots unattended. At all times, at least 1 election inspector from each major political party must be present at the absent voter counting place and the policies and procedures adopted by the secretary of state regarding the counting of absent voter ballots must be followed. A person who causes the polls to be closed or who discloses an election result or in any manner characterizes how any ballot being counted has been voted in a

voting precinct before the time the polls can be legally closed on election day is guilty of a felony.

MCL 168.765a (10) (emphasis added).

260. Under MCL 168.31, the Secretary of State can issue instructions and rules consistent with Michigan statutes and the Constitution that bind local election authorities. Likewise, under MCL 168.765a(13), the Secretary can develop instructions consistent with the law for the conduct of Absent Voter Counting Boards (“AVCB”) or combined AVCBs. “The instructions developed under [] subsection [13] are binding upon the operation of an absent voter counting board or combined absent voter counting board used in an election conducted by a county, city, or township.” MCL 168.765a(13).

261. Benson also promulgated an election manual that requires bipartisan oversight:

Each ballot rejected by the tabulator must be visually inspected by an election inspector to verify the reason for the rejection. If the rejection is due to a false read the ballot must be duplicated by two election inspectors who have expressed a preference for different political parties. Duplications may not be made until after 8 p.m. in the precinct (place the ballot requiring duplication in the auxiliary bin). At an AV counting board duplications can be completed throughout the day. NOTE: The Bureau of Elections has developed a video training series that summarizes key election day management issues, including a video on Duplicating Ballots. These videos can be accessed at the Bureau of Elections web site at www.michigan.gov/elections; under “Information for Election Administrators”; Election Day Management Training Videos. Election Officials Manual, Michigan Bureau of Elections, Chapter 8, last revised October 2020.

https://www.michigan.gov/documents/sos/VIII_Absent_Voter_County_Boards_265998_7.pdf (emphasis added).

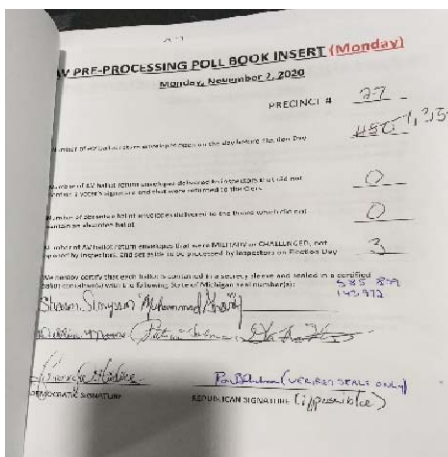
262. Election officials at the TCF Center flouted § 168.765a because there were not, at all times, at least one inspector from each political party at the absentee voter counting place. Rather, the many tables assigned to precincts under the authority of the

AVCB were staffed by inspectors for only one party. Those inspectors alone were deciding on the processing and counting of ballots. See Affidavit of Jennifer Seidl, Appendix 931-938 at ¶9; Affidavit of Eugene Dixon, Appendix 947-948 at ¶5; Affidavit of Mellissa Carone, Appendix 992-994 at ¶5.

263. This processing included the filling out of brand new “cure” or “duplicate” ballots. The process the election officials sanctioned worked in this way. When an absentee ballot was processed and approved for counting, it was fed into a counting machine. Some ballots were rejected—that is, they were a “false read”—because of tears, staining (such as coffee spills), over-votes, and other errors. In some of these cases, inspectors could visually inspect the rejected ballot and determine what was causing the machine to find a “false read.” When this happened, the inspectors could duplicate the ballot, expressing the voter’s intent in a new ballot that could then be fed into the machine and counted.

264. Under § 168.765a and the Secretary of State’s controlling manual, as cited above, an inspector from each major party must be present and must sign to show that they approve of the duplication.

265. Rather than following this controlling mandate, the AVCB was allowing a Democratic Party inspector only to fill out a duplicate. Republicans would sign only “if possible.” See Affidavit of Patricia Blackmer, Appendix 923-927 at ¶11. A photograph evidencing this illicit process appears below:



266. The TCF Center election officials allowed hundreds or thousands of ballots to be “duplicated” solely by the Democratic Party inspectors and then counted in violation of Michigan election law. See Affidavit of Zachary C. Larsen, Appendix 836-845 at ¶¶37-55; Affidavit of Janice Hermann, Appendix 915-917 at ¶¶4-5; Affidavit of Jennifer Seidl, Appendix 931-938 at ¶29, 931-938 at ¶42; Affidavit of Cassandra Brown, Appendix 939-944 at ¶¶33; Affidavit of Philip O’Halloran, Appendix 900-910 at ¶22; Affidavit of Anna England, Appendix 949-950 at ¶8.

267. According to eyewitness accounts, election officials at the TCF Center habitually and systematically disallowed election inspectors from the Republican Party to be present in the voter counting place and refused access to election inspectors from the Republican party to be within a close enough distance from the absentee voter ballots to see for whom the ballots were cast.

268. Election officials at the TCF Center refused entry to official election inspectors from the Republican Party into the counting place to observe the counting of absentee voter ballots. Election officials even physically blocked and obstructed election inspectors from the Republican party by adhering large pieces of cardboard to the

transparent glass doors so the counting of absent voter ballots was not viewable. See Affidavit of Zachary C. Larsen, Appendix 836-845 at ¶¶37-55; Affidavit of Janice Hermann, Appendix 915-917 at ¶5; Affidavit of Jennifer Seidl, Appendix 931-938 at ¶29, 931-938 at ¶32, 931-938 at ¶42; Affidavit of Cassandra Brown, Appendix 939-944 at ¶¶33; Affidavit of Anna England, Appendix 949-950 at ¶¶5,7; Affidavit of Matthew Mikolajczak, Appendix 985-991; Affidavit of Braden Giacobazzi, Appendix 995-1000 at ¶6.

269. Absentee ballots from military members, who tend to vote Republican in the general elections, were counted separately at the TCF Center. All (100%) of the military absentee ballots had to be duplicated by hand because the form of the ballot was such that election workers could not run them through the tabulation machines used at the TCF Center. See Affidavit of Janice Hermann, Appendix 915-917 at ¶16.

270. These military ballots were supposed to be the last ones counted, but there was another large drop of ballots that occurred during the counting of the military absentee ballots. *Id.* see also, Affidavit of Robert Cushman, Appendix 928-930 at ¶¶4-5.

271. Worse, the military absentee ballot count at the TCF Center occurred after the Republican challengers and poll watchers were kicked out of the counting room. *Id.* Affidavit of Jennifer Seidl, Appendix 931-938 at ¶42.

272. The Michigan Legislature also requires City Clerks to post the following absentee voting information anytime an election is conducted that involves a state or federal office:

- a. The clerk must post before 8:00 a.m. on Election Day: 1) the number of absent voter ballots distributed to absent voters 2) the number of absent voter ballots returned before Election Day and 3) the number of absent voter ballots delivered for processing.

b. The clerk must post before 9:00 p.m. on Election Day: 1) the number of absent voter ballots returned on Election Day 2) the number of absent voter ballots returned on Election Day which were delivered for processing 3) the total number of absent voter ballots returned both before and on Election Day and 4) the total number of absent voter ballots returned both before and on Election Day which were delivered for processing.

c. The clerk must post immediately after all precinct returns are complete: 1) the total number of absent voter ballots returned by voters and 2) the total number of absent voter ballots received for processing.

See MCL 168.765(5).

273. Upon information and belief, the clerk for the City of Detroit failed to post by 8:00 a.m. on “Election Day” the number of absentee ballots distributed to absent voters and failed to post before 9:00 p.m. the number of absent voter ballots returned both before and on “Election Day.”

274. According to Michigan Election law, all absentee voter ballots must be returned to the clerk before polls close at 8 p.m. MCL 168.764a. Any absentee voter ballots received by the clerk after the close of the polls on election day should not be counted.

275. The Michigan Legislature allows for early counting of absentee votes before the closings of the polls for large jurisdictions, such as the City of Detroit and Wayne County.

276. Upon information and belief, receiving tens of thousands more absentee ballots in the early morning hours after Election Day and after the counting of the absentee ballots had already concluded, without proper oversight, with tens of thousands of ballots attributed to just one candidate, Joe Biden, confirms that election officials failed to follow proper election protocols and established Michigan election law. See Affidavit of John McGrath Appendix 968-972 at ¶4; Affidavit of Robert Cushman, Appendix 930 at ¶14.

277. Missing the statutory deadline proscribed by the Michigan Legislature for turning in the absentee ballot or timely updating the QVF invalidates the vote under Michigan Election Law and the United States Constitution.

278. Poll challengers observed election workers and supervisors writing on ballots themselves to alter them, apparently manipulating spoiled ballots by hand and then counting the ballots as valid, counting the same ballot more than once, adding information to incomplete affidavits accompanying absentee ballots, counting absentee ballots returned late, counting unvalidated and unreliable ballots, and counting the ballots of “voters” who had no recorded birthdates and were not registered in the QVF or on any supplemental sheets. See Affidavit of Angelic Johnson Appendix 860-861 at ¶7; Affidavit of Adam di Angeli Appendix 963 at ¶61; see also, Affidavit of John McGrath, *supra*; Affidavit of Kristina Karamo, *supra*; Affidavit of Robert Cushman, *supra*; Affidavit of Jennifer Seidl, *supra*; Affidavit of Braden Giacobazzi, *supra*; Affidavit of Kristy Klamer, *supra*.

Flooding the Election with Absentee Ballots was Improper.

279. Michigan does not permit “mail-in” ballots *per se*, and for good reason: mail-in ballots facilitate fraud and dishonest elections. See, e.g., *Veasey v Abbott*, 830 F3d 216, 256, 263 (CA5, 2016) (observing that “mail-in ballot fraud is a significant threat—unlike in-person voter fraud,” and comparing “in-person voting—a form of voting with little proven incidence of fraud” with “mail-in voting, which the record shows is far more vulnerable to fraud”).

280. Yet Respondent Benson’s absentee ballot scheme, as explained in this Petition, achieved the same purpose as mail-in ballots—contrary to Michigan law. In the

most charitable light, this was profoundly naïve and cut against the plain language and clear intent of the Michigan Legislature to limit fraud. More cynically, this was an intentional effort to favor her preferred candidates.

281. Upon information and belief, she put this scheme in place because it is generally understood that Republican voters were more likely to vote in-person. This trend has been true for decades and proved true with this Election too. See Expert Report of John McLaughlin, Appendix 301-303.

282. To counter this (*i.e.*, the fact that Republicans are more likely than Democrats to vote in-person), Respondent Benson implemented a scheme to permit mail-in voting, leading to this dispute and the absentee ballot scheme that unfairly favored Democrats over Republicans.

283. In her letter accompanying her absentee ballot scheme, Respondent Benson misstated, “You have the right to vote by mail in every election.” Playing on the fears created by the current pandemic, Respondent Benson encouraged voting “by email,” stating, “During the outbreak of COVID-19, it also enables you to stay home and stay safe while still making your voice heard in our elections.” Affidavit of Christine Muise, Appendix 880-885 at ¶2, Ex A.

284. Prior to election day, the Democratic Party’s propaganda was to push voters to vote by mail and to vote early. Democratic candidates used the fear of the current pandemic to promote this agenda—an agenda that would benefit Democratic Party candidates. For example, on September 14, 2020, the Democratic National Committee announced the following:

Today Biden for President and the Democratic National Committee are announcing new features on IWillVote.com—the DNC’s voter participation website—that will help voters easily request and return their ballot by mail, as well as learn important information about the voting process in their state as they make their plan to vote.

Previously, an individual could use the site to check or update their registration and find voting locations. Now the new user experience will also guide a voter through their best voting-by-mail option

(available at <https://democrats.org/news/biden-for-president-dnc-announce-new-vote-by-mail-features-on-iwillvote-com/> (last visited Nov. 17, 2020)).

According to the Associated Press:

“We have to make it easier for everybody to be able to vote, particularly if we are still basically in the kind of lockdown circumstances we are in now,” Biden told about 650 donors. “But that takes a lot of money, and it’s going to require us to provide money for states and insist they provide mail-in ballots.”

(available at <https://apnews.com/article/6cf3ca7d5a174f2f381636cb4706f505> (last visited Nov. 17, 2020)).

285. Similar statements were repeatedly publicly on the Secretary of State’s website:

Voters are encouraged to vote at home with an absentee ballot and to return their ballot as early as possible by drop box, in person at their city or township clerk’s office, or well in advance of the election by mail.

https://www.michigan.gov/sos/0,4670,7-127-1633_101996---,00.html (emphasis added).

286. The Michigan Legislature set forth detailed requirements for absentee ballots, and these requirements are necessary to prevent voter fraud because it is far easier to commit fraud via an absentee ballot than when voting in person. See, e.g., *Griffin v Roupas*, 385 F3d 1128, 1130-31 (CA7, 2004) (“Voting fraud is a serious problem in U.S. elections generally . . . and it is facilitated by absentee voting”). Michigan law plainly limits the ways you may get an absentee ballot:

(1) Subject to section 761(3), at any time during the 75 days before a primary or special primary, but not later than 8 p.m. on the day of a primary or special primary, *an elector may apply for an absent voter ballot. The elector shall apply in person or by mail* with the clerk of the township or city in which the elector is registered. The clerk of a city or township shall not send by first-class mail an absent voter ballot to an elector after 5 p.m. on the Friday immediately before the election. Except as otherwise provided in section 761(2), the clerk of a city or township shall not issue an absent voter ballot to a registered elector in that city or township after 4 p.m. on the day before the election. An application received before a primary or special primary may be for either that primary only, or for that primary and the election that follows. An individual may submit a voter registration application and an absent voter ballot application at the same time if applying in person with the clerk or deputy clerk of the city or township in which the individual resides. Immediately after his or her voter registration application and absent voter ballot application are approved by the clerk or deputy clerk, the individual may, subject to the identification requirement in section 761(6), complete an absent voter ballot at the clerk's office.

(2) Except as otherwise provided in subsection (1) and subject to section 761(3), at any time during the 75 days before an election, but not later than 8 p.m. on the day of an election, an elector may apply for an absent voter ballot. *The elector shall apply in person or by mail with the clerk of the township, city, or village in which the voter is registered.* The clerk of a city or township shall not send by first-class mail an absent voter ballot to an elector after 5 p.m. on the Friday immediately before the election. Except as otherwise provided in section 761(2), the clerk of a city or township shall not issue an absent voter ballot to a registered elector in that city or township after 4 p.m. on the day before the election. An individual may submit a voter registration application and an absent voter ballot application at the same time if applying in person with the clerk or deputy clerk of the city or township in which the individual resides. Immediately after his or her voter registration application and absent voter ballot application are approved by the clerk, the individual may, subject to the identification requirement in section 761(6), complete an absent voter ballot at the clerk's office.

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

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

(4) An applicant for an absent voter ballot shall sign the application. Subject to section 761(2), a clerk or assistant clerk shall not deliver an absent voter ballot to an applicant who does not sign the application. A person shall not be in possession of a signed absent voter ballot application except for the applicant; a member of the applicant's immediate family; a person residing in the applicant's household; a person whose job normally includes the handling of mail, but only during the course of his or her employment; a registered elector requested by the applicant to return the application; or a clerk, assistant of the clerk, or other authorized election official. A registered elector who is requested by the applicant to return his or her absent voter ballot application shall sign the certificate on the absent voter ballot application.

(5) The clerk of a city or township shall have absent voter ballot application forms *available in the clerk's office* at all times and shall furnish an absent voter ballot application form to anyone *upon a verbal or written request*.

MCL 168.759 (emphasis added).

287. The Secretary of State sent *unsolicited* absentee ballot applications to every household in Michigan with a registered voter, no matter if the voter was still alive or lived at that address.

288. The Secretary of State also sent absentee ballot requests to non-residents who were temporarily living in Michigan, such as out-of-state students who are unregistered to vote in Michigan.

289. In many instances, the Secretary of State's absentee ballot scheme led to the Secretary of State sending ballot requests to individuals who did *not* request them. See Affidavit of Christine Muise, Appendix 46 at ¶3. Affidavit of Rena M. Lindevaldesen, Appendix 1001-1005 at ¶¶1,3 and 168 ¶5.

Expert Analysis of these statutory violations reveals widespread inaccuracies and loss of election integrity.

290. Petitioners retained experts who analyzed the State’s database for the Election and related data sets, including its own call center results. See generally, Expert Report of Matthew Braynard, Appendix 1112-1122.

291. Petitioners then retained an expert statistician to extrapolate the datasets statewide. See generally, Expert Report of Dr. Quanying “Jennie” Zhang, Appendix 1123-1134.

a. Unlawful unsolicited ballots cast in General Election

292. Braynard opined to a reasonable degree of scientific certainty that out of the 3,507,410 individuals who the State’s database identifies as applying for and the State sending an absentee ballot, that in his sample of this universe, 12.23% of those absentee voters did not request an absentee ballot to the clerk’s office. See Expert Report of Matthew Braynard, Appendix 1112-1122 at ¶1.

293. These data extrapolate with 99% confidence interval that between 326,460 and 531,467 of the absentee ballots the State issued that were counted were not requested by an eligible State voter (unsolicited). Expert Report of Dr. Quanying “Jennie” Zhang, Appendix 1123-1134 at ¶1.

b. Unsolicited ballots not cast in General Election

294. Out of the 139,190 individuals who the State’s database identifies as having not requested (unsolicited) and not returned an absentee ballot, 24.14% of these absentee

voters in the State did not request an absentee ballot. See Expert Report of Matthew Braynard, Appendix 1112-1122 at ¶2.

295. These data extrapolate with 99% confidence interval that between 28,932 and 38,409 of the absentee ballots the State issued were not requested by an eligible State voter (unsolicited). Expert Report of Dr. Quanying “Jennie” Zhang, Appendix 1123-1134 at ¶2.

296. Using the most conservative boundary, taken together, these data suggest Respondents violated Michigan Election Law by sending unsolicited ballots to at least 355,392 people. *Id.* See also, Affidavit of Sandra Sue Workman, Appendix 1028-1032 at ¶28.

*c. Absentee ballots were also cast but not properly counted
(improperly destroyed or spoiled)*

297. Out of the 139,190 individuals who the State’s database identifies as having not returned an absentee ballot, 22.95% of those absentee voters did in fact mail back an absentee ballot to the clerk’s office. See Expert Report of Matthew Braynard, Appendix 1112-1122 at ¶3.

298. This suggests many ballots were destroyed or not counted.

299. These data extrapolate with 99% confidence interval that between 29,682 and 39,048 of absentee ballots that voters returned but were not counted in the State’s official records. Expert Report of Dr. Quanying “Jennie” Zhang, Appendix 1123-1134 at ¶3.

300. Out of the 51,302 individuals that had changed their address before the election who the State’s database shows as having voted, 1.38% of those individuals denied casting a ballot. *Id.* at ¶4.

301. This suggests that bad actors exploited Respondents’ unlawful practice of sending unsolicited ballots and improperly harvested ballots on a widespread scale.

302. Indeed, by not following the anti-fraud measures mandated by the Michigan Legislature, the Secretary of State's absentee ballot scheme invited the improper use of absentee ballots and promoted such unlawful practices as ballot harvesting. See Affidavit of Rhonda Weber, Appendix 877-879 at ¶7.

303. Using the State's databases, the databases of the several states, and the NCOA database, at least 13,248 absentee or early voters were not residents of Michigan when they voted. See Expert Report of Matthew Braynard, Appendix 1112-1122 at ¶5.

304. Of absentee voters surveyed and when comparing databases of the several states, at least 317 individuals in Michigan voted in more than one state. See Expert Report of Matthew Braynard, Appendix 1112-1122 at ¶6.

d. Respondents ignored other statutory signature requirements

305. The Secretary of State also sent ballots to people who requested ballots online, but failed to sign the request. See adverse Affidavit of Jonathan Brater, Head of Elections Appendix 1147-1151 at ¶10.

306. As of October 7, 2020, Brater admits sending at least 74,000 absentee ballots without a signed request as mandated by the Michigan Legislature. *Id.*

307. By the Election, we must infer that the actual number of illegal ballots sent was much higher.

308. According to state records, another 35,109 absentee votes counted by Respondent Benson listed no address. See Braynard Report, *supra*.

309. As a result of the absentee ballot scheme, the Secretary of State improperly flooded the election process with absentee ballots, many of which were fraudulent.

310. The Secretary of State's absentee ballot scheme violated the checks and balances put in place by the Michigan Legislature to ensure the integrity and purity of the

absentee ballot process and thus the integrity and purity of the 2020 general election. See generally, Affidavits of Lucille Ann Huizinga, Appendix 1016-1020 at ¶31; Laurie Ann Knott, Appendix 1010-1015 at ¶¶34-35; Marilyn Jean Nowak Appendix 1021-1023 at ¶17; Marlene K. Hager, Appendix 1024-1027 at ¶¶19-23; and Sandra Sue Workman Appendix 1028-1032 at ¶33.

311. Without limitation, according to state records, 3,373 votes counted in Michigan were ostensibly from voters 100 years old or older. See Braynard, *supra*.

312. According to census data, however, there are only about 1,747 centenarians in Michigan,²² and of those, we cannot assume a 100% voting rate. See McLaughlin, *supra*.

313. According to state records, at least 259 absentee ballots counted listed their official address as “email” or “accessible by email,” which are unlawful *per se* and suggests improper ballot harvesting. See Braynard, *supra*.

314. According to state records, at least 109 people voted absentee from the Center for Forensic Psychiatry at 8303 PLATT RD, SALINE, MI 48176 (not necessarily ineligible felons, but the State does house the criminally insane at this location), which implies improper ballot harvesting.

315. According to state records, at least 63 people voted absentee at PO BOX 48531, OAK PARK, MI 48237, which is registered to a professional guardian and implies improper ballot harvesting.

²² Based on the US Census, 0.0175 percent of Michigan's population is 100 years or older (1,729 centenarians of the total of 9,883,640 people in Michigan in 2010). Census officials estimated Michigan's population at 9,986,857 as of July 2019, which puts the total centenarians at 1,747 or fewer. Source: <https://www.census.gov/content/dam/Census/library/publications/2012/dec/c2010sr-03.pdf>

316. When compared against the national social security and deceased databases, at least 9 absentee voters in Michigan are confirmed dead as of Election Day, which invalidates those unlawful votes. See Braynard, *supra*.

317. Taken together, these irregularities far exceed common sense requirements for ensuring accuracy and integrity.

e. Respondents did not fix other recent errors or serious irregularities either

318. These are the same types of serious concerns raised by the Michigan Auditor General in December 2019, *Appendix* 1039-1078.

319. The Auditor General specifically found several violations of MCL 168.492:

- i. 2,212 Electors voted more than once;
- ii. 230 voters were over 122 years old;²³ *Id.* at 217.
- iii. Unauthorized users had access to QVF; *Id.* at 219; and
- iv. Clerk and Elected Officials had not completed required training. *Id.* at 225.

320. The Auditor General found election officials had not completed required training to obtain or retain accreditation in 14% of counties, 14% of cities, and 23% of townships. *Id.*

321. The Auditor General found 32 counties, 83 cities, and 426 townships where the clerk had not completed initial accreditation training or, if already accredited, all continuing education training as required by law. *Id.*

²³ The oldest living person confirmed by the *Guinness Book of World Records* is 117 years old and she lives in Japan, not Michigan.

322. The Auditor General found 12 counties, 38 cities, and 290 townships where the clerk had not completed the initial accreditation or continuing education training requirements and no other local election official had achieved full accreditation. *Id.*

323. Not only were the Auditor General's red flags ignored by Respondent Benson, but she arguably made them worse through her absentee ballot scheme.

324. This not only suggests malfeasance, but the scheme precipitated and revealed manifest fraud and exploitation at a level Michigan has never before encountered in its elections.

325. The abuses permitted by the Secretary of State's ballot scheme were on display at the TCF Center, and elsewhere throughout the State.

326. Because this absentee ballot scheme applied statewide, it undermined the integrity and purity of the general election statewide, and it dilutes the lawful votes of millions of Michigan voters.

I. Flooding the Election with Private Money also Violates Federal Law and Raises the Appearance of Impropriety.

327. Inappropriate secrecy and lack of transparency began months before Election Day with an unprecedented and orchestrated infusion of hundreds of millions of dollars into local governments nationwide.

328. More than \$9.8 million in private money was poured into Michigan to create an unfair, two-tier election system in Michigan. See Carlson Report, *supra*.

329. This Election will be remembered for the evisceration of state statutes designed to treat voters equally, thereby causing disparate treatment of voters and thus violating the constitutional rights of millions of Michiganders and Americans citizens.

330. To date, Petitioners and related experts and investigations have uncovered more than \$400 million funneled through a collection of non-profits directly to local government coffers nationwide dictating to these local governments how they should manage the election, often contrary to state law. See Carlson Report, *supra*.

331. These funds were mainly used to: 1) pay “ballot harvesters” bounties, 2) fund mobile ballot pick up units, 3) deputize and pay political activists to manage ballots; 4) pay poll workers and election judges (a/k/a inspectors or adjudicators); 5) establish drop-boxes and satellite offices; 6) pay local election officials and agents “hazard pay” to recruit cities recognized as Democratic Party strongholds to recruit other cities to apply for grants from non-profits; 7) consolidate AVCBs and counting centers to facilitate the movement of hundreds of thousands of questionable ballots in secrecy without legally required bi-partisan observation; 8) implement a two-tier ballot “curing” plan that unlawfully counted ballots in Democrat Party strongholds and spoiled similarly situated ballots in Republican Party areas; and 9) subsidized and designed a scheme to remove the poll watchers from one political party so that the critical responsibility of determining the accuracy of the ballot and the integrity of the count could be done without oversight.

332. The Help America Vote Act of 2002 (HAVA) controls how money is spent under federal law. See 42 USC 15301, *et seq*; see also, MCL 168.18. In turn, Congress used HAVA to create the non-regulatory Election Assistance Commission (EAC), which was

delegated the responsibility of providing information, training standards, and funding management to states. The mechanism for administering HAVA is legislatively adopted state HAVA Plans.

333. Michigan's HAVA Plan is undisputed. See Certified Michigan HAVA State Plan of 2003, Terri Lynn Land Secretary, FR Vol. 69. No. 57 March 24 2004.

334. These private funds exceeded the federal government's March 2020 appropriation under HAVA and CARES Acts to help local governments manage the general election during the pandemic.

335. As these unmonitored funds flowed through the pipeline directly to hand-picked cities, the outlines of two-tiered treatment of the American voter began to take place. Local governments in Democrat Party strongholds were flush with cash to launch public-private coordinated voter registration drives allowing private access directly to government voter registration files, access to early voting opportunities, the provision of incentives such as food, entertainment, and gifts for early voters, and the off-site collection of ballots. Outside the urban core and immediate suburbs, unbiased election officials were unable to start such efforts for lack of funding.

336. Difficult to trace private firms funded this scheme through private grants, which dictated methods and procedures to local election officials and where the grantors retained the right to "claw-back" all funds if election officials failed to reach privately set benchmarks—thus entangling the private-public partnership in ways that demand transparency—yet none has been given.

337. The state officials implicated, and the private interests involved, have refused repeated demands for the release of communications outlining the rationale and plan behind spending more than \$400 million provided directly to various election officials before the 2020 general election.

338. These funds greased the skids of Democrat-heavy areas violating mandates of the Michigan Legislature, the Michigan HAVA Plan, the dictates of Congress under HAVA, and equal protection and Separation of Powers demanded under the United States Constitution.

339. In Michigan specifically, CTCL had awarded eleven grants as of the time of this survey. CTCL funded cities were:

- i. Detroit (\$3,512,000);
- ii. Lansing (\$443,742);
- iii. East Lansing (\$43,850);
- iv. Flint (\$475,625);
- v. Ann Arbor (\$417,000);
- vi. Muskegon (\$433,580);
- vii. Pontiac (\$405,564);
- viii. Romulus (\$16,645);
- ix. Kalamazoo (\$218,869); and
- x. Saginaw (\$402,878).

See Expert Report of James Carlson, Appendix 1079-1098 (last updated November 25, 2020).

340. In the 2016 election, then candidate Donald Trump only won Saginaw; then candidate Hillary Clinton won the remaining cities.

341. In 2020, CTCL funneled \$9,451,235 (95.7%) to the ten jurisdictions where candidate Clinton won and only \$402,878 (4.3%) to where candidate Trump won. *Id.*

342. On its face, this raises serious equal protection concerns under *Bush v Gore*, which requires city, county, and state officials to faithfully—and even-handedly—administer Michigan Election Law fairly between cities, counties, and across the state.

II. Private Money Improperly Flooded into Democratic Party strongholds

343. Only the States themselves or certain federal agencies may spend money on federal elections under HAVA.

344. Counties and cities cannot spend money on federal elections without going through the proper state and federal channels under HAVA transparency rules.

345. CTCL's private federal elections grants to the City of Detroit for \$3,512,000 violate federal law—and thus in turn, offend the rights of voters under the Michigan Constitution.

346. CTCL's private federal elections grants to the City of Lansing for \$443,742 violate federal law—and thus in turn, offend the rights of voters under the Michigan Constitution.

347. CTCL's private federal elections grants to the City of Flint for \$475,625 violate federal law—and thus in turn, offend the rights of voters under the Michigan Constitution.

348. CTCL's private federal election grants to the Michigan cities tortiously interfere with Petitioners' legal rights under federal law to legally-authorized, uniform, and fair federal elections. See *The League of Women Voters v Blackwell*, 340 F Supp. 2d 823 (ND Ohio 2004).

349. A government's election policy favoring certain demographic groups injures the disfavored demographic groups. "Parity of reasoning suggests that a government can violate the Elections Clause if it skews the outcome of an election by encouraging and facilitating voting by favored demographic groups." *Young v Red Clay Consol Sch Dist*, 122 A3d 784, 858 (Del Ch 2015).

350. Upon information and belief, the evidence will show that this flood of private money to Democratic-controlled areas improperly skewed the Election results for Joe Biden and unfairly prejudiced Petitioners.

351. Petitioners do not want progressive Democrat candidates to win in the general election, and the Petitioners are injured by CTCL's private federal election grants because they are targeted to cities with progressive voter patterns—causing more progressive Democrat votes and a greater chance that progressive Democrat candidates will win. See, *id.*

352. In Michigan, the government data shows election officials' absentee ballot errors of 548,016 far exceed the margin of victory of 148,152.

353. And, the government data shows election officials' absentee ballot error rate of at least 6.05% which far exceeds federal law's pre-election certification error rate for voting systems' hardware and software of 0.0008%.

Michigan Voter Election Contest
Michigan Margin +148,152

Type*	Description	Margin
1) Unlawful Ballots	Unsolicited Ballots ²⁴	355,392
Category 1	Error Rate (Based on Total Votes)	6.05%
2) Illegal Votes Counted	Estimate of ballots requested in the name of a registered voter. Registered Voter did not request ballot	27,825
3) Legal Votes Not Counted	Estimate of ballots that the requester returned but were not counted ²⁵	29,682
Category 2 and 3 ²⁶ Total Votes: 53,968	Error Rate (Based on Total Votes)	0.97%
4) Illegal Votes Counted	Electors with no address. ²⁷	35,109
5) Illegal Votes Counted	Electors voted listing email only ²⁸	259
6) Unlawful Ballots	No signature required to obtain ballot ²⁹	74,000
7) Illegal Votes Counted	Absentee or Early Voters Not Residents when they voted ³⁰	13,248
8) Illegal Votes Counted	Double Votes (Voted in multiple states) ³¹	317
TOTAL		548,016
	Of total votes cast in MI: 5,547,053	

²⁴ The number of unsolicited ballots come from the combination of 326,460 absentee ballots issued by the State but not requested by an eligible State voter and the 28,932 absentee ballots the State claims were not returned but who claim they in fact mailed their absentee ballot back. Both of these numbers are the conservative end of Dr. Zhang’s 99% confidence interval. Expert Report of Dr. Quanying “Jennie” Zhang, **Appendix** 1123-1134 at ¶2-3.

²⁵ Expert Report of Dr. Quanying “Jennie” Zhang, **Appendix** 1123-1134 at ¶3.

²⁶ Categories 2 and 3 are mutually exclusive.

²⁷ See Zhang Declaration, Appendix pgs. 1123-1134.

²⁸ See Zhang Declaration, Appendix pgs. 1123-1134.

²⁹ See Declaration of Jonathan Brater, Appendix 1147-1151 at ¶ 10.

³⁰ See Expert Report of Matthew Braynard, Appendix 1112-1122 at ¶ 5.

³¹ See Expert Report of Matthew Braynard, Appendix 1112-1122 at ¶ 6.

State of Wisconsin

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

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

378. On November 30, 2020, Governor Tony Evers certified Joe Biden's victory in Wisconsin in a Certificate of Ascertainment, soon after he received a certification from Ann Jacobs, chairwoman of the Wisconsin Election Commission. See Evers Certificate of Ascertainment, Appendix pgs. 393-394. Jacobs signed a statement of canvass to confirm who won the election. The Wisconsin Election Commission was due to meet on Tuesday, December 1, 2020. Republican Commissioners Dean Knudson had requested that Jacobs wait until Tuesday, when the Commission was to meet, to determine the results, the statutory deadline.

379. By certifying the election on her own, Jacobs usurped power that belongs to the Wisconsin Election Commission. Wisconsin Statutes § 7.70 sets forth the proper procedure for certifying Wisconsin's election results. The chairperson is required to examine the certified statements of the county board of canvassers, and obtain input from the county boards if it appears material mistakes have been made. Thereafter, under § 7.70(3)(d), the

chairperson is to “examine and make a statement of the total number of votes cast at any election for the offices involved in the election for president and vice president...” Under § 7.70(3)(f), these statements are to show the “persons’ names receiving votes” and “the whole number of votes given to each...” § 7.70(3)(g) states that following “each other election [other than a primary election] the chairperson of the commission or the chairperson’s designee shall prepare a statement certifying the results of the election and shall attach to the statement a certificate of determination which shall indicate the names of persons who have been elected to any state or national office The chairperson of the commission or the chairperson’s designee shall deliver each statement and determination to the commission.”

380. Wisconsin Statutes § 7.70(5)(b) states what is supposed to come next in a presidential election. “For presidential electors, *the commission* shall prepare a certificate showing the determination of the results of the canvass and the names of the persons elected, and the governor shall sign, affix the great seal of the state, and transmit the certificate by registered mail to the U.S. administrator of general services. The governor shall also prepare 6 duplicate originals of such certificate and deliver them to one of the presidential electors on or before the first Monday after the 2nd Wednesday in December.” (emphasis supplied).

381. As set forth clearly in the statute, Wisconsin law requires the chairperson of the commission to prepare a certificate of the votes received by each candidate in the presidential election, and transmit these results to the commission. Thereafter, the commission is required to prepare a certificate showing the names of the persons elected,

and transmit this certificate to the governor. Only then is the governor authorized to transmit this certificate to the U.S. administrator of general services.

382. Chairwoman Jacobs certified these results, without authority, before the Wisconsin Election Commission meeting, in an attempt to bypass the Wisconsin Election Commission, who had a lawful duty to examine and certify the results for themselves. Chairwoman Jacobs' certification is a usurpation of the statutory authority of the Wisconsin Election Commission. Furthermore, the Governor's Certificate of Ascertainment, based on Chairwoman Jacobs' certification, rather than the lawful certification of the Commission, is a usurpation of authority, and is legally null and void.

383. Further, Wisconsin statutes guard against fraud in absentee ballots: “[V]oting by absentee ballot is a privilege exercised wholly outside the traditional safeguards of the polling place. The legislature finds that the privilege of voting by absentee ballot must be carefully regulated to prevent the potential for fraud or abuse[.]” WISC. STAT. § 6.84(1).

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

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

386. The mayors of Wisconsin's five largest cities—Green Bay, Kenosha, Madison, Milwaukee, and Racine, which all have Democrat majorities—joined in this effort, and

together, developed a plan use purportedly “secure drop-boxes to facilitate return of absentee ballots.” Wisconsin Safe Voting Plan 2020, Affidavit at 249-269 (June 15, 2020).

387. It is alleged in an action recently filed in the United States District Court for the Eastern District of Wisconsin that over five hundred unmanned, illegal, absentee ballot drop boxes were used in the Presidential election in Wisconsin.

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

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

390. Thus, the unmanned absentee ballot drop-off sites are prohibited by the Wisconsin Legislature as they do not comply with Wisconsin law expressly defining “[a]lternate absentee ballot site[s]”. Wis. Stat. 6.855(1), (3).

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

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

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

394. Specifically, registering to vote by absentee ballot requires photo identification, except for those who register as “indefinitely confined” or “hospitalized.” WISC. STAT. §

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

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

396. On March 25, 2020, in clear violation of Wisconsin law, Dane County Clerk Scott McDonnell and Milwaukee County Clerk George Christensen both issued guidance indicating that all voters should mark themselves as “indefinitely confined” because of the COVID-19 pandemic. See *Appendix* pgs. 347-349.

397. Believing this to be an attempt to circumvent Wisconsin’s strict voter ID laws, the Republican Party of Wisconsin petitioned the Wisconsin Supreme Court to intervene. On March 31, 2020, the Wisconsin Supreme Court unanimously confirmed that the clerks’ “advice was legally incorrect” and potentially dangerous because “voters may be misled to exercise their right to vote in ways that are inconsistent with WISC. STAT. § 6.86(2).” See *Appendix* pgs. 347-349.

398. On May 13, 2020, the Administrator of WEC issued a directive to the Wisconsin clerks prohibiting removal of voters from the registry for indefinite-confinement status if the voter is no longer “indefinitely confined.” See *Appendix* pgs. 350-52.

399. The WEC’s directive violated Wisconsin law. Specifically, WISC. STAT. § 6.86(2)(a) specifically provides that “any [indefinitely confined] elector [who] is no longer indefinitely confined ... shall so notify the municipal clerk.” WISC. STAT. § 6.86(2)(b) further provides that the municipal clerk “shall remove the name of any other elector from the list upon request of the elector or upon receipt of reliable information that an elector no longer qualifies for the service.”

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

401. Under Wisconsin law, voting by absentee ballot also requires voters to complete a certification, including their address, and have the envelope witnessed by an adult who also must sign and indicate their address on the envelope. *See* WISC. STAT. § 6.87. The sole remedy to cure an “improperly completed certificate or [ballot] with no certificate” is for “the clerk [to] return the ballot to the elector[.]” *Id.* § 6.87(9). “If a certificate is missing the address of a witness, the ballot *may not be counted.*” *Id.* § 6.87(6d) (emphasis added).

402. However, in a training video issued April 1, 2020, the Administrator of the City of Milwaukee Elections Commission unilaterally declared that a “witness address may be written in red and that is because we were able to locate the witnesses’ address for the voter” to add an address missing from the certifications on absentee ballots. The

Administrator's instruction violated WISC. STAT. § 6.87(6d). The WEC issued similar guidance on October 19, 2020, in violation of this statute as well.

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

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

405. In addition, Ethan J. Pease, a box truck delivery driver subcontracted to the U.S. Postal Service (“USPS”) to deliver truckloads of mail-in ballots to the sorting center in Madison, WI, testified that USPS employees were backdating ballots received after November 3, 2020. Decl. of Ethan J. Pease at 170-182 ¶¶ 3-13. Further, Pease testified how a senior USPS employee told him on November 4, 2020 that “[a]n order came down from the Wisconsin/Illinois Chapter of the Postal Service that 100,000 ballots were missing” and how the USPS dispatched employees to “find[] . . . the ballots.” *Id.* ¶¶ 8-10. One hundred thousand ballots supposedly “found” after election day would far exceed former Vice

President Biden margin of 20,565 votes over President Trump. See Pease Declaration Appendix pgs. 170-182.

406. Finally, in Wisconsin, the government data shows election officials’ absentee ballot errors of 159,559 far exceed the margin of victory of 20,608.

407. And, the government data shows election officials’ absentee ballot error rate of at least 0.89% which far exceeds federal law’s pre-election certification error rate for voting systems’ hardware and software of 0.0008%.

Wisconsin Voter Election Contest
Margin +20,608 votes

Type of error*	Description	Votes
1) Unlawful Ballots	Estimate of the minimum number of absentee ballots requested which were not requested by the person identified in the state’s database ³²	15,423
2) Legal Votes Not Counted	Estimate of ballots that the requester returned but were not counted ³³	13,826
Category 1 & 2 Total Votes: 29,249	Error Rate (Compared to Total Vote)	0.89%
3) Illegal Votes Counted	Electors voted where they did not reside ³⁴	26,673
4) Illegal Votes Counted	Electors who avoided Wisconsin Voter ID laws by voting absentee as an “indefinitely confined”	96,437

³² See Zhang Declaration pg. 1375-1383 ¶ 1.

³³ See Zhang Declaration pg. 1375-1383 ¶ 2.

³⁴ See WI Declaration of Matthew Braynard pg. 1384-1395.

	elector and were not indefinitely confined ³⁵	
5) Illegal Votes Counted	Out of State Residents Voting in State ³⁶	6,848
6) Illegal Votes Counted	Double Votes ³⁷	234
TOTAL		159,559
	Of total votes cast 3,289,946	

See Braynard Decl. and Zhang Decl. *May overlap.

The government data, state-by-state, shows election officials' absentee ballot errors far exceed the margin of victory—and they far exceed the pre-election certification error rate of 0.0008%.

408. The federal government has a pre-election standard for state voting system's software and hardware.

409. As explained above, this maximum-acceptable error rate is one in 500,000 ballot positions, or, alternatively one in 125,000 ballots—0.0008 %. See *Cain supra*.

410. The government data shows Wisconsin, Pennsylvania, Michigan and Georgia election officials' absentee ballot errors³⁸ far exceed the margin of victory.

411. And, as detailed above, the government data in each of the states shows election officials' absentee ballot errors far exceed the federal law's pre-election certification error rate for voting systems' hardware and software.

COUNT I: ELECTORS CLAUSE

412. Plaintiff-Intervenors repeat and re-allege the allegations above, as if fully set forth herein.

³⁵ See WI Declaration of Matthew Braynard pg. 1384-1395 ¶ 5. This number is derived from .4523 * 213,215

³⁶ See WI Declaration of Matthew Braynard pg. 1384-1395 ¶ 4.

³⁷ See WI Declaration of Matthew Braynard pg. 1384-1395 ¶ 6.

³⁸ According to Plaintiffs' analysis, it is possible to have more than one type of error per ballot (e.g., double voting and voting while resident of another state).

413. The Electors Clause of Article II, Section 1, Clause 2, of the Constitution makes clear that only the legislatures of the States are permitted to determine the rules for appointing presidential electors including post-election certification and verification, including for every absentee ballot and every absentee ballot counted or not counted. The pertinent rules here are the state election statutes, specifically those relevant to the presidential election.

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

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

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

417. The state legislatures violated the non-delegation doctrine under Article II by wholesale delegation of post-election certification and delegation to these executive-branch State election officials as a ministerial function.

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

COUNT II: EQUAL PROTECTION

419. Plaintiff-Intervenors repeat and re-allege the allegations above, as if fully set forth herein.

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

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

422. The actions set out in the paragraphs above created differential voting standards in Defendant States Pennsylvania, Georgia, Michigan and Wisconsin in violation of the Equal Protection Clause.

423. The actions set out in the paragraphs above violate the one-person, one-vote principle in Defendant States Pennsylvania, Georgia, Michigan and Wisconsin.

424. Plaintiff-Intervenors are therefore harmed by this unconstitutional conduct in violation of the Equal Protection Clause.

COUNT III: DUE PROCESS

425. Plaintiff repeats and re-alleges the allegations above, as if fully set forth herein.

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

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

428. The difference between intentional acts and random and unauthorized acts is the degree of pre-deprivation review.

429. Defendant States’ election officials acted unconstitutionally to lower their election standards—including to allow invalid ballots to be counted and valid ballots to not be counted—with the express intent to favor their candidate for President and to alter the outcome of the 2020 election. In many instances these actions occurred in areas having a history of election fraud.

430. The actions set out in the paragraphs above constitute intentional violations of State election law by State election officials and their designees in Defendant States Pennsylvania, Georgia, Michigan, and Wisconsin in violation of the Due Process Clause.

431. Plaintiff-Intervenors are therefore harmed by this unconstitutional conduct in violation of the Due Process Clause.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff-Intervenors respectfully request that this Court issue the following relief:

- A. Declare that Defendant States Pennsylvania, Georgia, Michigan, and Wisconsin administration of the 2020 presidential election would be in violation of the Electors Clause and the Fourteenth Amendment of the U.S. Constitution due to the respective state legislature's wholesale delegation of post-election certification to executive branch officials and judges as a ministerial duty unless they conduct post-election certification of the Presidential electors before January 5, 2021;
- B. Enjoin Defendants States Pennsylvania, Georgia, Michigan, and Wisconsin from certifying their Presidential electors for the November 3, 2020 election until their respective state legislatures vote affirmatively on post-election certification;
- C. Declare that Defendant States Pennsylvania, Georgia, Michigan and Wisconsin administration of future elections would be in violation of the Electors Clause and the Fourteenth Amendment of the U.S. Constitution due to the respective state legislature's wholesale delegation of post-election certification to executive branch officials and judges as a ministerial duty;
- D. Award attorney's fees and costs under 42 U.S.C. § 1988 to Plaintiff-Intervenors against State Defendants; and
- E. Grant such other relief as the Court deems just and proper.

DATED: December 10, 2020

/s/Erick G. Kaardal
Erick G. Kaardal (WI0031)
Special Counsel for Amistad Project of
Thomas More Society
Mohrman, Kaardal & Erickson, P.A.
150 South Fifth Street, Suite 3100
Minneapolis, Minnesota 55402
Telephone: (612) 341-1074
Facsimile: (612) 341-1076
Email: kaardal@mklaw.com

Counsel of Record

Allan E. Parker, Jr.
The Justice Foundation
8023 Vantage Dr., Suite 1275
San Antonio, TX 78230
Telephone (210) 614-7157
Email: aparker@txjf.org

Attorneys for Plaintiff-Intervenors