From: William Barr
Subject: Fwd: Affidavit
To: Levi, William (OAG)
Sent: November 10, 2020 4:04 PM (UTC-05:00)
Attached: MediaCopier_20201104_213757.pdf, Declaration_by_Gregory_Stenstrom_of_Delco_Vote_Counting_Center_-_Smooth_-_09NOV2020.pdf, Penrose_Election_Affidavit_8NOV2020_Foreign_Threat_Actors_Version.pdf

Sent from my iPhone

Begin forwarded message:

From: J Michael Kelly (b) (6)
Date: November 10, 2020 at 9:34:57 AM EST
To: Bill Barr (b) (6)
Subject: Fwd: Affidavit

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Begin forwarded message:

From: Rob Spalding (b) (6)
Subject: Affidavit
Date: November 9, 2020 at 9:27:43 PM EST
To: (b) (6) " (b) (6)

Mike,

Here are the affidavits.

I have also attached a statement that explains the importance of these machines.

Best,
Rob

Rob Spalding
(b) (6)

DECLARATION OF GREGORY STENSTROM IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I, Gregory Stenstrom, hereby declare as follows under penalty of perjury:

1. The following statements are based on my personal knowledge, and if called to testify I could swear competently thereto.

2. I am at least 18 years old and of sound mind.

3. I am a citizen of the United States and of the Commonwealth of Pennsylvania. I reside at 1541 Farmers Lane, Glenn Mills, PA 19342. I am an eligible Pennsylvania voter and am registered to vote in Delaware County.

4. I voted in the November 3rd, 2020 general election.

5. The Delaware County Republican Committee appointed me as the sole GOP poll watcher for 36 precincts (1-1 through 11-6), located in Chester City, Pennsylvania, of which I was able to inspect and observe 22 precincts.

6. The Delaware County Board of Elections provided me with a certificate of appointment as a poll watcher.

7. I carried my certificate of appointment with me when I presented at the polling locations in Chester City on Election Day and presented the certificate when requested to do so.

8. I did not attempt to enter the enclosed space within any polling location, nor interfere in any way with the process of voting, nor mark or alter any official election record.

9. On November 3rd, I observed poll workers in multiple assigned Chester City polling places, that included the 1-3, 1-4, 1-6, 2-1, 2-2, 2-3, 11-2, and several others, provide regular ballots, rather than provisional ballots, to voters who were told they had registered to

vote by mail, without making them sign in the registration book. I challenged the practice in those precincts where I observed it, and while I was present, they then stopped the practice and began providing provisional ballots. I was informed at each polling location by their respective judge of elections that I was the only GOP poll watcher they had seen in this 2020 election, or any other election they could remember.

10. On the evening of November 3rd, I went to the Delco Chester City counting center with my certified poll watcher certificate, to observe, on assignment as the sole poll watcher from the Tom Killion Campaign, as authorized and tasked to do so by Cody Bright, Mr. Killion's campaign manager, at approximately 6pm. Mr. Bright had been informed, and he informed me in turn, that there were "a dozen national level GOP poll watchers" at the counting center observing and monitoring, but he was apparently misinformed. I checked into the building observing their COVID-19 procedures, and took the elevator from the ground floor to the 1st floor counting room, was denied entry, surrounded by first four (4) Park Police, and then an additional five (5) joined them. I presented my poll watcher certificate, and refused to leave, and was threatened with physical removal and arrest, which I humorously stated would be agreeable to me, de-escalating the situation, at which point I was informed there was a separate list for "observers," and I had to somehow get on it. I asked if there were any GOP poll watchers in the building and was informed by Deputy Sheriff Donahue that there were two (2) inside. I asked to speak to them, and one man came out. I asked him how he got on the list and he stated he had volunteered via email and been told to go there, with no other explanation as to what he was supposed to do other than "watch," and that he was leaving shortly. I asked him if he knew what he was supposed to be "watching" and if he could see anything at all, and he stated he had

"no idea," and "couldn't see anything from behind the barriers." I went back to the ground floor to figure out how to gain access and make calls.

Figure 1 - Entrance to DelCo Vote Counting Center from 1st Floor Elevator bank

Figure 2 - Inner Entrance to DelCo Vote Counting Center - Note DelCo County employee approaching to stop photo

11. While on the ground floor working on obtaining GOP assistance and authorized access, I witnessed organized chaos with rolling racks of mail-in ballots going in different directions with some going to the cafeteria, and some going to and from the main elevators, the separate garage loading dock elevators, and some to and from the back doors closest to the Delaware River, without any chain of custody. There was no apparent process integrity, or obvious way for anyone to determine the origin of any mail-in ballot, or its ingestion, or egress into the system. Some workers sat at cafeteria tables while others brought them boxes of mail-in ballots, while yet others collected and pushed the rolling racks around. Joe Masalta took videos and photos of this operation, and has also completed an affidavit.

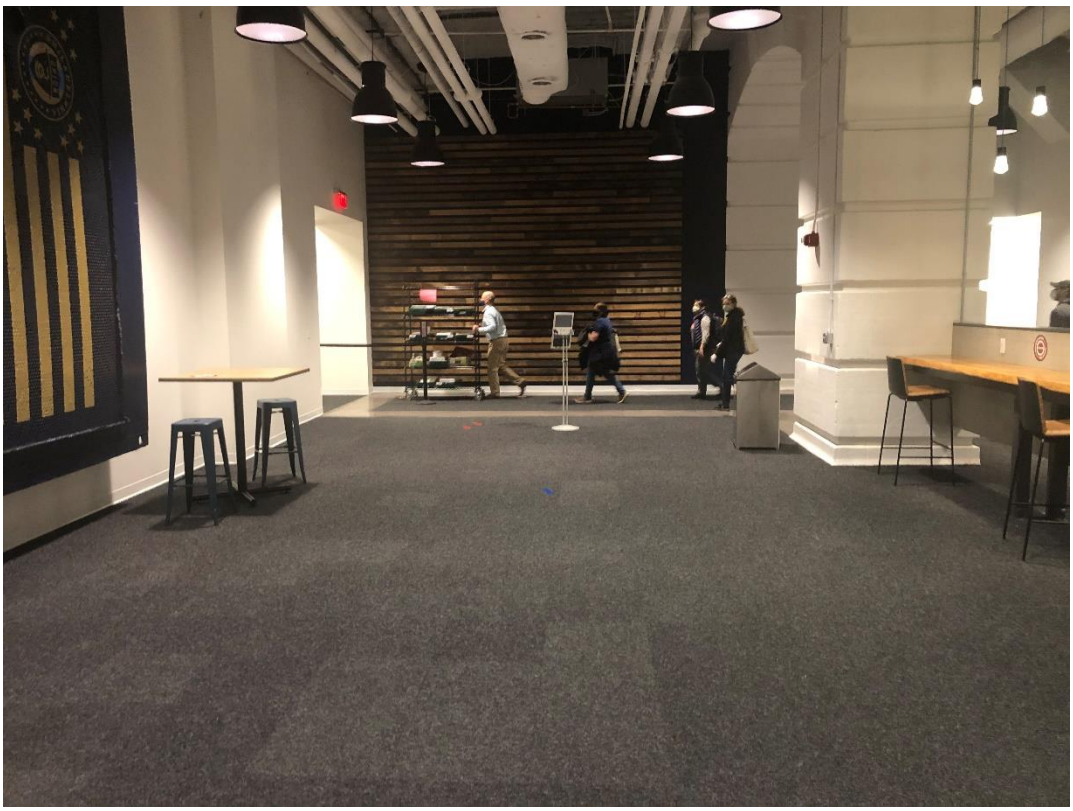

Figure 3 - Election Evening - Multiple Racks of Mail-In ballots in green trays of 500 were going in multiple directions from multiple points of entry up and down elevators that led from the garage loading dock to the top floor of the building.

12. After seeking legal assistance through multiple avenues, I obtained a lawyer, John McBlain, after a call to the 501C Project Amistad organization, who arrived on site at approximately 10pm, and we went back up to the 1st floor counting room. We were met with similar hostility to my earlier experience, and went back to the ground floor where Mr. McBlain made multiple phone calls. I learned he was a former Delaware County Solicitor and familiar to some of Election Board staff. I was subsequently added to the entry list and finally gained access as an official "observer," along with Mr. Barron Rendel, one of several people I had asked to accompany me, at approximately 11pm, five (5) hours after our arrival.

13. We were the only GOP "observers" in the room, that was otherwise packed with Democrat employees, volunteers, and poll watchers.

14. I observed a counting room for ballots with counting machines. Trays of ballots came in through three doors that appeared to lead from a back office, a second back office supply room, and doors leading from an outside hallway with separate elevator access from the public elevators and the garage loading dock elevators.

Figure 4 - The BlueCrest Sorting Machine Loading Tray section

15. I had no meaningful opportunity to observe any part of the count: the sorting appeared to have been done elsewhere, and the machines were too far away from the observation position to see any part of the mail-in envelopes or ballots. I observed opened ballots going out the second back office closest to the windows in red boxes after handling and sorting by volunteers, some being placed in green boxes, and ballots from the green boxes being placed in scanners by workers, similar to the scanner I had used to vote myself, but was too far away (30 feet) to be sure. I asked the sheriff where the ballots came from, and where the ones that were leaving the room went, and he said he did not know.

16. I asked Ms. Lorraine Hagan, the elections official in charge of the operations, where the ballots where coming from and how they were being processed. She responded that I was only there to observe, and that I had no right to ask any questions. I said that I wanted to observe the activity in the sequestered room, but she denied my request, stating that the law prohibited access to that room by poll observers. I responded that there was no law denying access to observers, and she then said that it was "a COVID thing." I pointed out that I have a mask on, and so did the people visible through the door when it opened. She then informed me that she wanted to prevent us from "interfering." I responded that I was only there to observe and not to interfere, and to make a statement if I observed something wrong. Ms. Hagan said, "I assure you that everything's fine. There's no fraud going on."

17. Shortly after this exchange with Ms. Hagan, workers – who appeared to be volunteers – started bringing in semi-opaque bins with blue folding tops that contained clear plastic bags, approximately 10" square, with each bag containing a scanner cartridge, a USB drive, and a paper tape, and they were brought to the computer tables which contained four (4) computer workstation towers on tables connected to four (4) wall mounted monitors, with one

workstation tower on the floor under the tables that was not connected to a monitor, for a total of five (5) computers. A flurry of workers started disassembling the bags and separating out the USB sticks, cartridges, and paper tapes from the plastic bags, and dropping them in open carboard boxes, with two workers sticking the USB drives into the computers to start the election day counts. I immediately objected, and demanded that Mr. McBlain challenge the process, and he again retrieved Ms. Hagan to hear my objections. I asked why the returned items had not come with the sealed bags from the judges of elections, and she explained that they had been taken out of the bags at the three (3) county election "processing centers" by the Sheriffs who were collecting them for ease of transport, and I stated that that was a break in the chain of custody, to which she shrugged her shoulders. I then asked her why they were separating out the USB drives from the cartridges and paper tapes, which was destroying any forensic auditability and further corrupting chain of custody, and she said "that's how we have always done it," and again stated I had no right to object, interfere, and was only permitted to observe, turned on her heels and walked away. I pleaded with Mr. McBlain to intervene and at least demand that the USB drives remain with the cartridges and tapes in the plastic bags so we would not have to reassemble them during tabulation, and he did nothing.

18. It is noteworthy that dozens of "volunteer" workers constantly streamed through the counting area unaccosted, with no check of either ID's, or names, as the certified poll watchers were, several still wearing "Voter Integrity" lanyards and badges that had been widely distributed by Democrat poll watchers throughout the day, and they walked about unrestricted, and unaccompanied without any scrutiny, many handling ballots.

19. After multiple, similarly caustic exchanges, elections officials continued to refuse access to the back rooms and a line of sight to anything meaningful, and under threat of removal

by Park Police and Sheriffs we were stuck "observing" in a small box where we could essentially see nothing, and I again conveyed to John McBlain that I wanted to pursue further legal recourse to gain meaningful access, and he left the roped off area to seek Solicitor Manly. At approximately 2:30am he returned, and stated he had a conversation with the President of the Board of Elections, and they had agreed to allow us access to the "back office" and "locked "ballot room" at 9:30 AM the following morning. By that time, and given that any other legal recourse would have taken as long, or longer, and there was nothing meaningful to observe, I objected, but reluctantly agreed and left. I believe counting continued through the night because the count had increased, when I returned several hours later, the count on the tally screen was approximately 140,000 for Biden, and 85,000 for President Trump, and with all Republican candidates of all other races leading their opponents.

20. As agreed only seven (7) hours previous with the Chairman of the Board of Elections and Solicitor Manly, I returned with attorney John McBlain, and Leah Hoopes, an official poll watcher for President Trump, at 9:30 AM. The elections officials ignored us for two hours, and at 11:30 AM, Ms. Hagan informed us that she would give a tour of the Chester City counting center to our group and a few Democrat poll watchers. I stated that I did not want a tour of the facility, that I only wanted them to honor their agreement to allow direct access to the sequestered counting room, and was ignored. Ms. Hagan, along with Ms. Maryann Jackson, another elections official, did not allow us to enter the sequestered counting room. Instead they walked us in an approximate 20-foot circle directly in front of the roped off area we had been restricted to, discussing the basics of election balloting but provided no insight into the purpose of the sequestered counting room.

21. One comment made by Ms. Hagan led me to think that "pre"-pre-canvasing happened in the back room. The comment indicated that all ballots had been checked before going downstairs to the ground floor cafeteria for pre-canvasing, before being brought back to the 1st floor counting area, and entering the main counting room, for accuracy/sufficiency of signature, date, and barcode label, and entry in the Commonwealth SURE system. I specifically asked Ms. Hagan whether the names and signature were matched, and whether the dates and barcode label were accurate. She replied in the affirmative. I then asked whether the names were checked against the voter registration rolls, and she again answered in the affirmative, indicating that people in the back room did the checking.

22. From my vantage point, I observed approximately ten people in the back room through the door when it was opened. Ms. Hagan confirmed that no ballots went through the BlueCrest sorter (photo included herein) without first being checked for name, date, signature, and barcode.

23. I could see 4000-5000 ballots in bins on the racks next to the BlueCrest Sorter, and I asked both Ms. Hagan and Ms. Jackson in front of the group "If all of the mail in ballot envelopes are checked for completion, as you stated, then why are there multiple large bins of ballots on the racks next us between the BlueCrest sorter and ballot extractors labeled "No Name," "No date," and "No signature," on the bins?" The election officials, red faced, declined to answer. At this time, several Democrat observers, including Mr. Richard Schiffer, conferred with myself and Ms. Hoopes and stated that they were now not comfortable with the ballot ingestion process, and the back room, being sequestered from all watcher's sight, and also wanted to see the back room with us. The bins mentioned above were removed shortly after.

24. At this time, Ms. Hagan and Ms. Maryann Jackson ended the "tour" to "take a phone call" upon the arrival, and demand of Solicitor Manley Parks, and the "tour" was abruptly ended. I asked Solicitor Parks when that phone call would be done so that we could see the back rooms as promised, and he said he did not know. I asked him if he intended to grant us access as promised, and he simply turned around, and walked into the back room without further comment. Ms. Hagan, Ms. Jackson, and Solicitor Parks never returned, and we left after two (2) hours after having been denied access to the back room.

25. Mr. McBlain, our attorney, went to court and obtained a court order providing access to the room, and texted me that the court order had been signed by Common Pleas Judge Capuzzi at 9:30 PM, and the court order required that observers receive only a five minute observation period in the sequestered room once every two hours.

26. I returned the following morning at 8:30 AM with Ms. Hoopes and the sheriff again barred entry despite the court order. I contacted Judge Capuzzi's chambers directly and explained to his secretary that the elections officials were not complying with his order. She suggested that I consult with my attorney to follow through, and that she could not discuss the matter further with me.

27. When I returned to the main room, I saw that some areas had been cordoned off, and John McBlain unexpectedly came out from the back room and stated he had conferred with Solicitor Manley Parks and they had mutually agreed to bringing ballots in question out from the sequestered room to the main room so that I didn't have to go into the back room. Mr. McBlain told me that the elections officials were going to bring 4500 of the 6000 total ballots in the back room out to the main room, and leave the remaining 1500 spoiled ballots in the "spoilage room." I made Mr. McBlain confirm multiple times that the "universe" of remaining ballots in the back

room that remained to be processed was, in fact 6,000, and further made him affirm multiple times that he had personally sighted those ballots in the back rooms and storage rooms, and he re-affirmed this multiple times to me,

28. Mr. McBlain stated that their new plan was to re-tabulate the 4500 ballots by re-filling them out with a pen so that they could be read by voting machines, so we could "see everything." I followed him out of the counting room, and continued to ask him if it was, in fact, legal under election law to cure ballots, and was unconvinced that this was the case, and thought we should challenge it, but he assured me it was "normal" procedure and got on the elevator and left. It was during this time that Leah Hoopes, who had remained behind in the counting room (see her Affidavit) observed Jim Savage, the Delaware County voting machine warehouse supervisor, walk in with about a dozen USB drives in a clear unsealed bag, and she showed me two photos she had been able to surreptitiously take (no photos or camera use was permitted anywhere in the counting rooms despite live streaming cameras throughout the room).

29. I went back outside to see if I could retrieve Mr. McBlain, unsuccessfully, and upon my return to the counting room at approximately 11am, I observed Mr. Savage plugging USB drives into the vote tallying computers. The bag containing those drives was not sealed or secured, and the voting machine cartridges were not present with the drives, and he had no ballots at that time.

Figure 5 - Delco Voting Machine Warehouse Manager Jim Savage holding bag of USB drives Thursday morning

30. I immediately objected and challenged the uploading of votes from the unsecured drives, and retrieved Deputy Sheriff Mike Donahue with my objection, and he went to the back room to retrieve Ms. Hagan. Ms. Hagan informed me that I could only observe the process but I could not make any comments or ask any questions while Mr. Savage was directly in front of us loading USB sticks, and the display monitors above the computers reflected that they were being updated. I responded that I was indeed observing a person plug USB sticks into the computer without any apparent chain of custody and without any oversight. No one stopped the upload, and Mr. Savage was permitted to continue this process and he was then allowed to walk out without any interference or examination by anyone. I called and texted Mr. McBlain throughout the day without success to get him back to the counting center to address the USB issue, and what was now being reported to me by other GOP observers that there appeared to be more additional paper ballots in excess of the 6000 "universe" coming into the office administration area that McBlain had assured me of, to represent us and get us into the back office and storage room as ordered by the judge. He would not return until approximately 5:30pm.

31. Approximately one hour after Savage had departed, at 1:06pm, the center published an update on the vote. The numbers moved dramatically as follows: from approximately 140,000 Biden and 85,000 Trump in the morning; to now approximately 180,000 Biden and 105,000 Trump after the 1:06 PM update. (At that 1:06 PM update, ALL Republican candidates who had previous leads were reversed and flipped).

32. Having seen the USB updates, and now seeing paper ballots in the back office, and other observers reporting that they had seen more ballots as well, I went outside and again called Judge Capuzzi's office and again spoke with his secretary and explained the situation, and the McBlain had departed and was nonresponsive to calls or texts, and she asked me what I

wanted the judge to do. I stated that I wanted him to call to demand his order be enforced, and that I would gladly bring my phone back up and hand it to the Sheriff and Solicitor. She stated she could not provide any legal advice, suggested I seek legal counsel, and hung up. She did not realize she had not actually seated the phone in it's receiver and I heard loud laughter from her and a deeper toned laugh from a male before the line went dead, and I returned back inside to the counting floor.

33. At 1:30 PM, Deputy Sheriff Donahue inexplicably informed me I would now be allowed to access the locked ballot room for exactly 5 minutes, after having been denied access despite all previous efforts. We were met by Delaware County Solicitor William F. Martin, and I was joined by Democrat Observer Dr. Jonathan Brisken. On my way to the locked storage room, while passing through what was now referred to as the "back office," I counted 21 white USPS open letter boxes on two racks, on my immediate right after entering the room, labeled "500 ballots" per box. In addition, the approximately 16 cubicles for workers in the same room each contained one box also labeled "500 ballots," for a total of 31 boxes of 500 in that sequestered room. This is the same room that McBlain had stated had 4,500 ballots in it earlier, most of which had been presumably moved to the front of the counting room (and later cured and copied to new ballots) and was supposed to be relatively empty with the exception of "several hundred ballots being processed by workers to update the Commonwealth's SURE system," according to McBlain. This was a delta (difference) of approximately 16,500 ballots in just the "back office."

Figure 6 - Table with 4,500 opened ballots that would reportedly not scan being sorted and cured. Note approximate 10 foot distance from "observer" barrier

34. Just after the two racks with the 21 boxes of 500 unopened ballots each, I observed an open door to a 20'x30' storage room with dozens of semi opaque storage bins with blue folding tops that appeared to have envelopes in them. I could see through to another door that led back into the counting room which was the same door I had seen workers bring red bins full of "spoiled" ballots in the previous evening.

35. I also saw one shelf just to the left of the locked and secured "ballot room" with 4 sealed boxes. I lifted one box before Solicitor Martin objected that I could not touch anything, and it was heavy, and approximately 30-40 pounds. They appeared to match the description of the boxes described to me earlier by poll watcher Jim Driscoll and another observer with a first name of Paul. If those boxes contained ballots, I estimate that they were about two times the size of the 500-ballot containers, and if full, could have contained an additional 2,500 ballots per box for a total of 10,000.

36. Ms. Hagan unlocked and opened the "ballot room" and Solicitor Hagan entered first and started the timer for 5 minutes, with Sheriff Donahue following us and closing the door behind us. There were multiple racks filled with thousands of unopened mail-in ballots. We were not allowed to take any photos, so I immediately started counting. Labels on some boxes were visible, mostly with names of districts known to trend Republican, including Bethel and Brandywine. I took the following notes at the time:

a. 5 boxes of 500 labeled 10-12
b. 5 boxes of 500 labeled 18-20
c. 1 box of 500 each, labeled 26-28, 50-52, and 58-60.
d. The remaining boxes did not have markings visible and we were not allowed to touch them to determine their origin.
e. Democratic poll watcher Dr. Jonathan Briskin also observed these boxes and confirmed the numbers of ballots, and that the total number of ballots was vastly greater than we had been led to believe earlier in the day.
f. I later observed Dr. Briskin working with a fellow female poll watcher drawing a diagram and detailing what he had seen after we were returned to

the roped off area in the counting room, and noted it was quite detailed and corroborated what I had observed in the ballot room.

37. In addition to the boxes of unopened mail-in ballots, I observed another shelf that was packed with open and ripped clear plastic bags with cartridges, green security ties, and a 16”x16”x28” carboard box labeled “CHAIN OF CUSTODY RECEIPTS.” In total, I estimated approximately 18,500 unopened mail-in ballots, which Dr. Briskin uncomfortably concurred with.

38. So, after being told the “universe” of total remaining paper ballots to be counted was 6,000 by Mr. McBlain, the 1:30pm tour, on Thursday, two days after election, and 38 hours after being denied access, and having to obtain a court order, I sighted a total of:

a. 16,500 unopened mail-in ballots in the “back office”

b. 18,500 unopened mail-in ballots in the locked “ballot room”

c. Potentially 10,000 ballots in the sealed 30-40-pound boxes outside of the locked ballot room

d. 4,500 ballots being “cured” in the counting room

e. For a grand total of 49,500 unopened ballots

39. To my knowledge, and according to the tally monitor, and as reported on the web, 113,000 mail-in ballots had been requested, and 120,000 mail-in ballots had already been counted, with an approximate outcome of 18,000 for President Trump and 102,000 for Biden already recorded.

40. At that time, I assumed that the approximately 49,500 unopened ballots would also be processed in the pending running of the sorter, envelope-ballot extractors, and scanners, adding those ballots to the overall total.

41. At 3:30 PM, I again re-entered the room, now accompanied by another Democrat poll watcher who did not provide her name, and in addition to the boxes I previously observed and described above, which remained undisturbed, I saw an additional two racks had been moved into the room, with another 16 additional, new boxes of 500 unopened mail-in ballots with approximately 8000 more unopened mail in ballots labeled 5-2, 6-1, 6-2, and 7-2, with some labels not visible from my position. There were three red "spoiled" ballot boxes with several shed ballots visible in one, and the others appeared to be empty, but I could not verify as I was not allowed to touch anything or take any photos. The 21 boxes in the "back office" were still in place, so this brought the suspected unopened mail in ballot total to **57,500**.

42. I asked Sheriff Donahue when the next machine run that would process the unopened ballots was scheduled for, and was informed that election officials planned on a 4:00PM start, and I could see workers coming in and preparing. I went outside to call GOP officials to see if we could potentially either delay the run, or be permitted to get close enough to the machines to see something, but was unsuccessful.

43. When I returned at 5:30 PM for the next 5 minute tour, I was informed that a Committeewoman, and Delco GOP representative, Val Biancaniello, had been taken in my place by Solicitor Martin, and upon her return I asked her why she would do that, and what she had observed. She stated she had "not seen any fraud" and I again asked her specifically, if she had seen boxes of unopened mail in ballots, and she said "oh, yes, lots of them," but could not recall any further details. When I pressed her for more details, she became very angry, and told me I needed to "relax," and that she had "straightened everything out," and gotten more observers to watch over the re-filling out of the 4,500 ballots that could not be scanned.

44. It is noteworthy that I was able to see the table of 4500 ballots being curated and re-filled out, and those I was able to see were all for Biden without exception. I asked Joe Driscoll if he had been able to see, and he said he had seen 15 for Biden and 1 for President Trump, before election officials repositioned the barrier moving us back from being able to see.

45. For the 7:30 5-minute inspection, Val vigorously objected to me going back into the room, and demanded we send Attorney Britain Henry instead, who had been convinced to come to the center by Leah Hoopes, and who I had been speaking with for the previous hour. Val stated she had "got him down there," which was confusing to me, but I agreed it would be a good idea for an attorney to corroborate my observations, and briefed him of the layout, previous observations, and what to look for over Val's increasingly loud, and impatient objections.

46. Attorney Henry returned from the tour and essentially corroborated my observations, and my understanding is he is preparing a statement of what he observed. I did not understand, and could not reconcile at that time, why the election result counts had remained roughly the same, while the sorters and envelope extraction machines had been running for almost 4 hours, and presumably processing mail in ballots, and at that time attributed it to the count not being updated on the monitor.

47. In the presence of Ms. Biancaniello and Attorney Henry, I asked the now present Mr. McBlain to explain how the USB drives had made their way to the center carried by Mr. Savage. He informed me that in his experience, some USB drives were typically left in voting machines by judges of elections overnight in previous elections, and that Mr. Savage had simply found them in the machines that had been returned from polling locations back to the warehouse, including machines that still had all components in them (USB. Cartridge, and Paper Tape) and that the next day he had transported approximately 24 USB sticks and an assortment of

cartridges and tapes from the warehouse to the counting center. I pressed him to find out why there had been so many, and why there was no chain of custody, and why Mr. Savage would be involved in entering the USB drives into the computers without any other election officials present, particularly Ms. Hagan, who had overseen the process previously. Mr. McBlain informed me that it had been explained to him that some judges of elections had left entire scanners – with cartridges, USB drives and tapes – and that the moving company had returned them to the warehouse, where Mr. Savage collected everything and put them in bags. This explanation, in part, accounted for the 5 large election judge bags that I witnessed had been carried in by a Sheriff earlier, and I was able to take photos of them being removed from the building later.

Figure 7 – Presumed Cartridges, USB, Paper Tape from scanner, properly sealed with green lock tie, being brought into building on THURSDAY morning by Sheriff, having been allegedly returned to the warehouse WEDNESDAY morning. They were opened without observers in off limits sequestered area

Figure 8 - Five (5) more bags from scanners that had been allegedly "left at polling locations" and brought to counting center THURSDAY afternoon. Sheriff Donahue is on left.

48. I informed Mr. McBlain in the presence of Ms. Biancaniello that I had seen the 30,000 vote jump for Biden after Mr. Savage had plugged in the USB drives earlier, as described above, and asked them both if that was “normal” for previous elections, and they did not respond.

49. Despite my multiple, strong and forceful objections, to the lack of transparency, and what I perceived to be a significant break down in any chain of custody, I was routinely ignored by election officials, and was met by mostly blank stares and shoulder shrugs by Mr. McBlain. I could not understand how the mail-in ballot count remained essentially steady at

120,000 when myself and multiple others described herein had sighted anywhere from 20,000 to 60,000 unopened mail in ballots AFTER the 120,000 count had already been completed and updated on the http://DelcoPA.Gov/Vote website. I do not know where the 120,000 ballots went from the counting room after being counted, and was ignored by Ms. Hagan when I asked her where they were, and denied access to see them. At the end of the day on Thursday, I observed the opaque blue lidded plastic boxes stacked against the wall next to the BlueCrest sorter with what appeared to be mail-in voter envelopes but was not permitted to go near them and find out if they were opened and empty, or still sealed with ballots, or still had ballots in them, and they disappeared from the room shortly after I took the photo below.

Figure 9 - Bins that had been moved from off limits "Office Space" storage room to another off limits area with what appeared to be envelopes inside to Receiving area near exit doors on Thursday evening - they were removed and gone shortly afterwards.

50. As a result of the election officials' acts, I was unable to fulfill my responsibilities or exercise my rights as an official observer. I was continuously harassed, threatened, denied access to the room and the ballots, and the election officials were openly hostile and refused to answer questions, repeatedly defied a court order to provide access, and obstructed my ability to observe the count in a way that would enable me to identify irregularities, which is the primary purpose of the observer role.

Gregory Stenstrom

09 November 2020

IN T HE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

CIVIL DIVISON

DELAWARE COUNTY REPUBLICAN EXECUTIVE COMMITTEE	:	ELECTION LAW NO:
323 West Front Street Media PA, 19063	:	
V.	:	
DELAWARE COUNTY BOARD OF ELECTIONS 201 West Front Street Media, PA 19063	:	

ORDER

AND NOW, to wit, this 4th day of November 2020, upon consideration of Petitioner's Emergency Petition or Relief Seeking Order Granting Access to Canvassing of Official Absentee Ballots and Mail-In Ballots, and the hearing held on November 4, 2020 wherein argument was heard from both Parties, it is hereby **ORDERED** and **DECREED** as follows:

1. Four Observers in total (2 observers from the Republican Party, or affiliated candidates, and 2 observers from the Democratic Party, or affiliated candidates,) are permitted to observe the resolution area at all hours while ballots are being resolved;

2. Two observers (1 representing the Republican Party, or affiliated candidates, and 1 representing the Democratic Party, or affiliated candidates,) are permitted to observe the sorting machine area at all times while the machine is in use. However, all observers shall stand back while the machine is in use due to safety concerns.

3. At two-hour intervals, two observers in total (1 representing the Republican Party, or affiliated candidates, and 1 representing the Democratic party, or affiliated candidates) are permitted to enter the ballot room, to examine the room; however, are not permitted to examine the physical ballots contained within the room, individually. They must be escorted by a member of the Election Board Staff with the time not to exceed five minutes each visit.

4. Any observer may not interference with the process, nor may any observer object to individual ballots.

By the Court:

JUDGE JOHN P. CAPUZZI, SR.

My name is Jim Penrose, I am currently a senior executive at a New York-based cybersecurity firm. My experience includes 23 years in cybersecurity operations, signals intelligence, counterterrorism, network defense, insider threat investigations, and penetration testing. I have a master's degree in Computer Science from George Washington University, and I achieved the rank of Defense Intelligence Senior Level at the National Security Agency (NSA) and served on the NSA advisory board prior to leaving government service in 2014.

I have been closely following the reported "computer glitches" in both Georgia and Michigan that have been attributed to malfunctions in Dominion Voting Systems equipment. In the case of Georgia, the news media indicated that there was an update installed on the Dominion Voting Systems equipment the night before the election.

It is my understanding that these voting systems are typically not Internet connected and therefore are updated only when necessary for their operation; mission critical systems (such as medical systems, banking systems, and public utility systems) would go into a lockdown period ahead of a major event. The ambiguity surrounding any lockdown period with respect to the election is a grave source of concern.

As a career cyber security professional, a veteran of the NSA and information technology operations it is very unusual to deploy updates of any kind within 24 hours of major event that directly impacts the systems being used for a mission critical purpose. In this case, the election is a mission critical function that would be protected from last minute updates to avoid any corruption, regression in the software, or a misconfiguration of the system resulting from the update or an error by a technician deploying the update. Moreover, operators that have been trained to operate mission critical systems are typically briefed on the purpose and impact of the update prior to deployment. In addition, duly authorized leaders, presumably within the Georgia State Board of Elections or County Elections Board would need to be involved in the approval of deploying a last-minute update.

Typically mission critical systems have a highly controlled update process to minimize the risk of such "computer glitches" resulting from an update. The fact that this update was performed the night before the election is counter to all best practices in both the private and public sectors for IT operations and risk management. In both government and industry, the most appropriate next step is a full root cause analysis of the turn of events. The root cause analysis ought to determine the people, processes, and technology that were involved in this incident and illuminate the specific reasons why the "computer glitch" occurred in the first place. Most importantly the root cause analysis should be done comprehensively and thoroughly to ensure that the same type of incident will not occur again.

There are numerous factors that must be investigated in order to determine the root cause of this incident. The State and County elections officials' actions and their procedures deserve full examination to determine what technical update procedures, controls, and approval processes were followed leading to the incident. The aforementioned aspects of the investigation are very important, but in my experience as a cyber security expert, cyber operator, senior leader, and

technologist the most important area to focus on is the source of the update itself. The software development life cycle at Dominion Voting Systems, their supply chain for equipment/cloud resources, contractors, infrastructure, cyber security posture, staff, network connectivity, and field technicians are all aimpoints for cyber threat actors. It is imperative that all of these aspects be examined independently, and that critical forensic disk images, audit trails and logs be preserved to determine the root cause of this incident.

Dominion Voting Systems plays a critical role in the election process in Georgia and many other states. Cyber criminals and state directed/sponsored cyber threat actors are highly likely to target such a firm in order to have a disproportionate impact across numerous states. Many hostile nations seek to economize on their efforts by compromising key firms that yield them the furthest reach and maximum impact with their cyber operations. The extreme threat level to our election from foreign intelligence services and hostile cyber operators calls for a complete investigation of this incident to include the tendrils of Domain Voting Systems that cross connect to other firms, especially those located overseas beyond the jurisdiction of the United States. Readily available statistics indicate that Dominion Voting Systems are used in approximately 2000 jurisdictions and 33 states; they would certainly be an attractive target for cyber threat actors due to their market penetration alone.

My experience in conducting complex, multi-faceted, cyber investigations contains numerous instances where an isolated “crash” or “glitch” in software was the only indication of an expansive cyber operation with widespread impact. Situations where such an update was deployed and the voting systems did not “crash” or “glitch” in noticeable way, would be completely disregarded because there was no incident to investigate at all from the perspective of the users (election officials). Historically, it has been perilous to dismiss these types of incidents as isolated given the inherently abnormal nature of the activity; recall that it is counter to best practice to deploy mission critical updates within 24 hours of the event (the election in this case).

In summary, the past behavior of foreign intelligence services and hostile cyber operators increases the urgency to quickly perform a full root cause analysis investigation into this incident. While what occurred in Georgia may be the most obvious due to the reporting from the local officials, there may be many more incidents that were subtle and well executed by a determined adversary. In my experience investigating cyber-crimes and foreign cyber threat actors there is always something left behind, some kind of “digital dust.” Inevitably, it manifests itself as an isolated incident at first, but when a full root cause analysis is conducted, the systemic compromise of the mission critical systems are revealed.

It is imperative that such a root cause analysis is performed in a forensically sound and transparent fashion, so the public accepts the election results. Such an investigation will provide peace of mind to all parties, and the American people that this incident was truly isolated and not a systemic compromise associated with Dominion Voting Systems equipment. For the good of the United States going forward it is imperative that we learn from every

experience and address any shortcomings as they are detected to reinforce the confidence of every citizen in the integrity of our most basic rights.

From: Michel, Christopher (OAG)
Subject: Fwd: From POTUS
To: Moran, John (OAG)
Sent: December 21, 2020 7:34 PM (UTC-05:00)
Attached: Election Hearing Report.pdf, Kentucky Senate - POTUS Endorsement.pdf

Sent from my iPhone

Begin forwarded message:

From: "Michael, Molly A. EOP/WHO" (b) (6)
Date: December 21, 2020 at 6:44:24 PM EST
To: "Michel, Christopher (OAG)" (b) (6) >
Subject: From POTUS

Hi Chris,

For the AG and Mr. Rosen from POTUS – two attachments on separate topics.

Thanks!

Molly Michael
Executive Assistant to the President
(b) (6) (office)
(b) (6) (cell)

33RD SENATORIAL DISTRICT

SENATE BOX 203033
HARRISBURG, PA 17120-3033
PHONE: 717-787-4651
FAX: 717-772-2753

37 SOUTH MAIN STREET, SUITE 200
CHAMBERSBURG, PA 17201
PHONE: 717-264-6100
FAX: 717-264-3652

16-A DEATRICK DRIVE
GETTYSBURG, PA 17325
PHONE: 717-334-4169
FAX: 717-334-5911

118 CARLISLE STREET, SUITE 309
HANOVER, PA 17331
PHONE: 717-632-1153
FAX: 717-632-1183

DOUG MASTRIANO
SENATOR

COMMITTEES

INTERGOVERNMENTAL OPERATIONS
CHAIR

AGRICULTURE & RURAL AFFAIRS
VICE CHAIR

GAME & FISHERIES

STATE GOVERNMENT

TRANSPORTATION

VETERANS AFFAIRS & EMERGENCY PREPAREDNESS

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December 21, 2020

Election Hearing Report and Assessment

On November 25, we held a hearing in historic Gettysburg where hours of testimony were presented regarding violations of voting law in Pennsylvania. The purpose of the hearing was to find out what happened in Pennsylvania after being contacted by thousands of people from across the Commonwealth sharing stories of violations of election law related to the November 03, 2020 general election. The hearing demonstrated that there is rampant election fraud in Pennsylvania that must be investigated, remedied and rectified.

We heard personal testimony from citizens who experienced violations of their rights. Expert witnesses additionally testified about statistical anomalies that occurred, which changed the outcome of the election. In one such spike, hundreds of thousands of votes were dumped in a processing facility with 570k of these going for former Vice President Biden, and a paltry 3,200 for President Trump (99.54% for Biden and 0.56% for Trump).

Other irregularities included:

- Mail-in ballots were not inspected by Republican representatives in areas of Philadelphia and Allegheny County

- Montgomery County was never provided with guidelines from State Department Secretary about "curing" defective ballots

- Spikes depict more ballots being processed during specific periods than voting machines are capable of tabulating

- The Philadelphia Board of Elections processed hundreds of thousands of mail-in ballots with zero civilian oversight

- Ballots were separated from envelopes in numerous precincts; a recount is useless because the votes cannot be verified

● Observers were corralled behind fencing in Philadelphia, at least 10 feet away from processors; similarly, in Allegheny County, observers were placed at least 15 feet away

● Mail-in ballots were already opened in portions of Allegheny County; no one observed the opening of these ballots

● Illegal "pop-up" election sites developed, where voters would apply, received a ballot and voted

● Forensic evidence in Delaware County has disappeared

● A poll watcher with appropriate certificates and clearances was denied access

● Little observation of ballots in Montgomery County, and no signature verification

● A senior citizen voted for President Trump, but it was not displayed on receipt

● Election workers illegally pre-canvassed ballots in Northampton County; no meaningful canvas observation was permitted

Despite the evidence, our Governor and Secretary of State decline to investigate these serious allegations. It is appalling that elected officials and the mainstream media are refusing to acknowledge the material fact that there are rampant voting problems in our state and show little regard for the sanctity of the election. Every *legal* vote must count and any who cheat in an election must be held accountable. Our Republic cannot long endure without free and fair elections.

The United States of America has spent millions of dollars and put her men and women in harm's way to oversee safer, more reliable and freer elections in Afghanistan, Iraq, Kosovo and Bosnia. Why is the very state where the Light of Liberty was lit in 1776 is unable or unwilling to have elections as free and safe as war torn Afghanistan? Something is seriously wrong in this Commonwealth and unless this is corrected, our republic cannot long endure.

This election is an embarrassment to our nation. John Adams rightly said that, "Facts are stubborn things," and armed with this, as Jesus stated, "We shall know the truth and the truth shall set us free." What happened on November 3, 2020 must be immediately addressed using facts and the personal testimony of the good people of our state.

Sincerely,

Senator Doug Mastriano
33rd Senate District

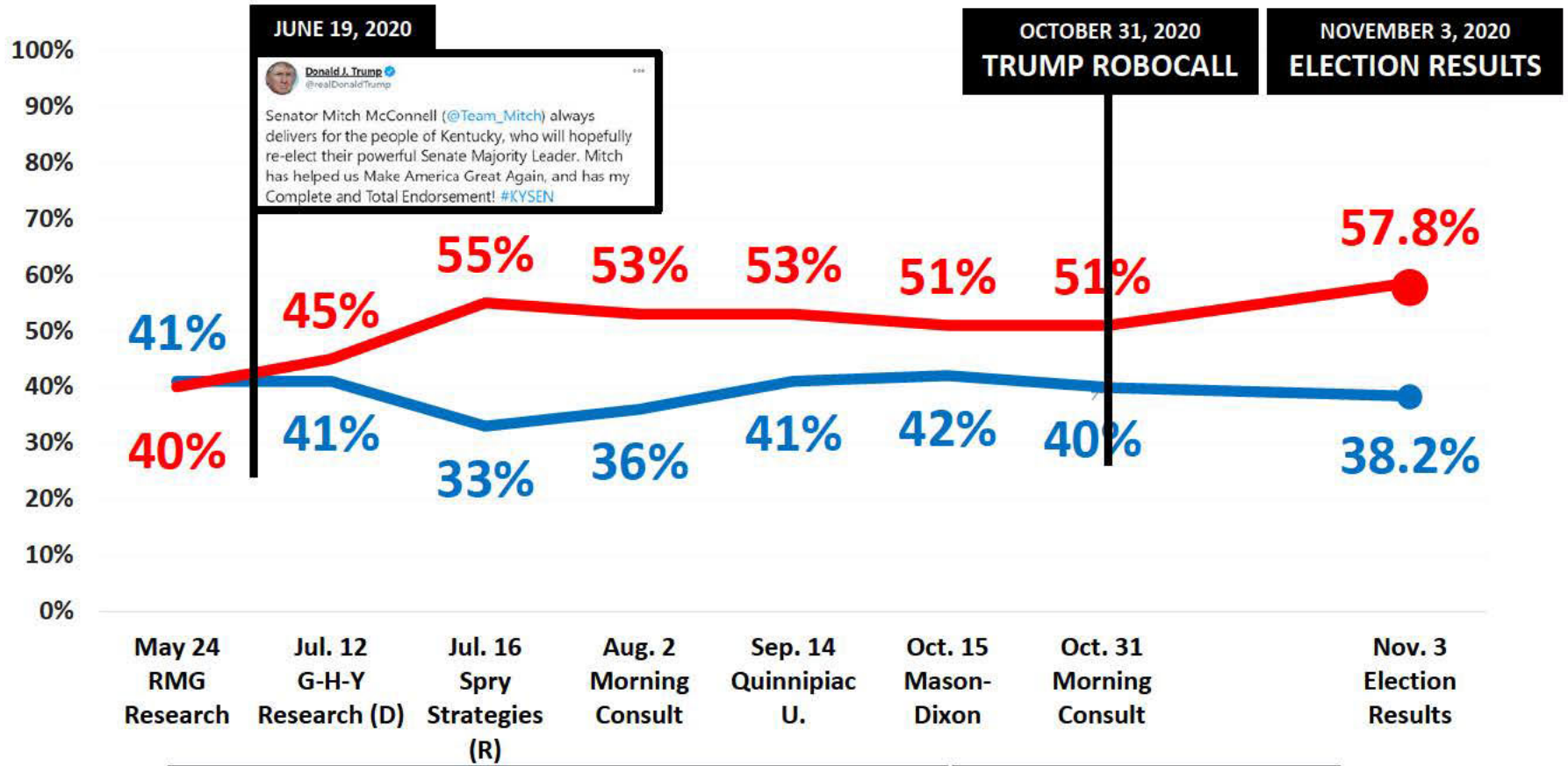
DM/sp/kms

SADLY, MITCH FORGOT. HE WAS THE FIRST ONE OFF THE SHIP!

KENTUCKY-SENATE

Senator Mitch McConnell (R) | General Election: November 3, 2020

GENERAL ELECTION POLLING: McGRATH vs. McCONNELL



2020 PRESIDENTIAL ELECTION RESULTS IN KENTUCKY		2020 MARGIN IN KENTUCKY
Trump 62.1%	Biden 36.2%	Trump +25.9%

From: Donoghue, Richard (ODAG)
Subject: Fwd: Report for Voter Deficit
To: Brady, Scott (USAPAW)
Sent: December 27, 2020 10:05 PM (UTC-05:00)
Attached: Summary PA Election Issues 12222020.pdf, ATT00001.htm, Letter Reply to Sec. Boockvar Lancaster County.pdf, ATT00002.htm, Election Timeline for Butler County - Kim Geyer.pdf, ATT00003.htm, Final Letter to Sen Johnson and Congressman Perry 12222020A(1).pdf, ATT00004.htm

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

Begin forwarded message:

> **From:** Scott Perry <scott@patriotsforperry.com>
> **Date:** December 27, 2020 at 8:42:38 PM EST
> **To:** "Donoghue, Richard (ODAG)" <ricdonoghue@jmd.usdoj.gov>
> **Subject: Fwd: Report for Voter Deficit**
>
> ï»¿
> Sir, as discussed.
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** Frank Ryan (b) (6)
> > **Date:** December 22, 2020 at 5:46:53 PM EST
> > **To:** "Downey, Brian (HSGAC)" <brian_Downey@hsgac.senate.gov>, scott@patriotsforperry.com, "Aument, Ryan" <ryanaument@pasen.gov>, rboop@pasen.gov, bcutler@pahousegop.com, kbenning@pahousegop.com, Jake Smeltz <jsmeltz@pahousegop.com>, bnye@pahousegop.com, Bill Dougherty (b) (6), Heather Honey (b) (6)
> > **Cc:** Frank Ryan <fryan@pahousegop.com>, Rod Corey <rcorey@pahousegop.com>
> > **Subject: Re: Report for Voter Deficit**
> >
> > ï»¿
> > I would ask you to use the following materials. One page was inadvertently not scanned in for the Final Letter to Sen. Johnson and Congressman Perry. Everything else is perfect.
> >
> > I apologize for the inconvenience and truly appreciate your understanding.
> >
> > Semper fi,
> >
> > Frank
> >
> > On Tue, Dec 22, 2020 at 2:55 PM Frank Ryan (b) (6) > wrote:
> > > Please see attached report for inclusion in the U. S. Senate Report as well as the update on the Voter Deficit in the 2020 General Election for President.
> > >
> > > Semper fi,

Frank

--
Francis X. Ryan, KM
Colonel, USMCR (ret)
(b) (6)
(b) (6) (cell)
(b) (6)

Life Lessons Learned Book - www.colfrankryan.com
Revolutionizing Accounting for Decision Making - www.leanabc.com

--
Francis X. Ryan, KM
Colonel, USMCR (ret)
(b) (6)
(b) (6) (cell)
(b) (6)

Life Lessons Learned Book - www.colfrankryan.com
Revolutionizing Accounting for Decision Making - www.leanabc.com

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Third Party entities and major political parties such as the Center for Voter Information purchased older, county voter rolls and mailed out mass distribution via the USPS thousands of unsolicited ballot applications to households and individuals. These mass mailings went to deceased voters, to former homeowners of a current homeowner, and to unregistered voters, to name a few scenarios. In some instances in Butler County, individuals filled out up to 15 different voter applications requesting a mail ballot per person. Each one of these 15 requests for a mail in ballot has to be processed through checks and balances for verification and to prevent duplication, as if it is the only and original request. These third party mailing entities also are generating hundreds of additional phone calls and taking time away from those applications needing to be processed. Adding insult to injury, often times, these third party entities utilize the County's Bureau of Election's return address as printed on the envelope in lieu of their own. This is misleading to the recipient who is led to believe that our county is mass distributing these mailers out? Taxpayers are led to believe we are using tax dollars to mail these mailers out, they are calling to verify that they are already registered as a voter and have been for years? This tactic is costing our taxpayers enormous tax dollars through time, effort, and manpower and distracting counties away from the focus of addressing applications in a timely and efficient manner. These same mailers have added to the confusion and anxiety of every voter wanting to do the right thing and that is, exercise their right to vote. This is a real problem that needs to be addressed.

- Finally, the US Postal Service needs to be addressed for the delay of processing and delivering mail in a timely and efficient manner. Butler County voters experienced many delays in receiving and returning ballots that took up to three to four weeks one way. This created thousands of phone calls. We have many accounts of ballots being mailed at the Butler Post Office across the street from the Bureau of Elections housed in Government Center that took 3-4 weeks and sometimes not at all to be returned to the Election Department. When inquired about, we were told they were considered "lost" in the mail system.
- This timeline is not inclusive of all the Governor's Orders pertaining to the Red-Green, and Yellow Phases and Business Closures.

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

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

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

Leslie Osche
Chairman, Board of Commissioners
Butler County, PA

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December 22, 2020

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

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

Dear Senator Johnson and Congressman Perry,

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

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

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

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

Matter of judicial and administrative re-write election law:

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

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

Errors in Controls

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

Election Issues:

More Votes Counted than voters who voted

INTERIM REPORT TOTALS AS OF 12-20-2020

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

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

People who possibly voted more than once

POSSIBLE DUPLICATE VOTERS

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

Duplicate Ballots: Requested and returned

DUPLICATE MAIL IN BALLOT APPLICATIONS

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

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

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

DUPLICATE APPLICATIONS

	10/16/20 Source: Department of State	
County	Total MIB Requests Approved	Duplicate Requests Rejected
ADAMS	9,695	2,001
ALLEGHENY	190,557	49,025
ARMSTRONG	3,996	1,347
BEAVER	16,893	5,362
BEDFORD	2,906	384
BERKS	42,084	7,544
BLAIR	9,578	2,993
BRADFORD	3,948	500
BUCKS	104,236	21,607
BUTLER	16,718	4,468
CAMBRIA	8,865	1,292
CAMERON	310	98
CARBON	5,670	1,011
CENTRE	17,952	3,483
CHESTER	88,238	24,433
CLARION	2,265	354
CLEARFIELD	4,894	897
CLINTON	2,229	332
COLUMBIA	5,264	693
CRAWFORD	6,584	782
CUMBERLAND	31,206	5,703
DAUPHIN	32,778	7,247
DELAWARE	71,523	15,779
ELK	2,075	472
ERIE	28,685	4,183
FAYETTE	7,595	1,680
FOREST	547	41
FRANKLIN	11,186	1,643
FULTON	904	136
GREENE	2,318	317
HUNTINGDON	1,674	205
INDIANA	5,679	
JEFFERSON	2,664	249
JUNIATA	1,116	281
LACKAWANNA	24,748	7,794
LANCASTER	53,245	8,664
LAWRENCE	7,379	1,113
LEBANON	13,403	2,205
LEHIGH	46,091	9,229
LUZERNE	28,077	11,234
LYCOMING	7,672	1,226
MCKEAN	3,691	403
MERCER	2,668	320
MIFFLIN	21,453	3,661
MONROE	136,758	32,407
MONTGOMERY	1,975	434
MONTOUR	2,292	243
NORTHAMPTON	49,266	6,890
NORTHUMBERLAND	5,696	1,047
PERRY	3,304	545
PHILADELPHIA	233,594	48,727
PIKE	8,305	1,039
POTTER	862	92
SCHUYLKILL	6,813	443
SNYDER	2,523	433
SOMERSET	4,590	359
SULLIVAN	375	39
SUSQUEHANNA	2,853	392
TIOGA	2,361	444
UNION	3,193	508
VENANGO	3,653	747
WARREN	3,032	338
WASHINGTON	21,829	4,567
WAYNE	5,134	684
WESTMORELAND	34,100	12,971
WYOMING	2,313	306
YORK	42,677	10,191
TOTAL		336,001
		as of 10/16/2020

Department of State released data showing the number of duplicate MIB Applications that had been rejected as of 10/16/202.

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

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

SURE IS THE OFFICIAL VOTER RECORD IN PA

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

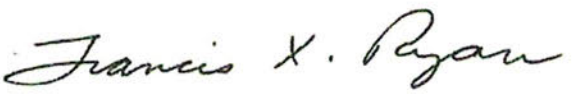
By Statute, the SURE System is the official voter record in Pennsylvania. This record includes the date last voted. Total voters who voted in the General Election on 11/3/2020 was **6,760,230**. Secretary of State Boockvar certified **6,915,283** Votes for just the three major candidates. That alone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

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

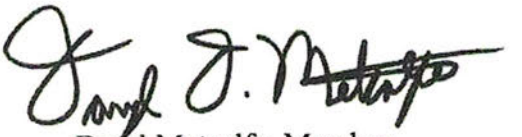
The hotline designated for PA voters to report election issues was not working in the days following the election. The web form to report election issues was not functioning in the days following the election. Data that is supposed to be available to PA voters was removed from the data.pa.gov eliminating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

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

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



Francis X. Ryan, Member
101st Legislative District



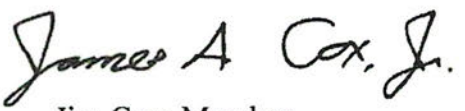
Daryl Metcalfe, Member
12th Legislative District

David Rowe, Member
85th Legislative District

Barbara Gleim
199th Legislative District

Mike Puskaric, Member
39th Legislative District

Cris Dush, Senator-Elect
25th Legislative District



Jim Cox, Member
129th Legislative District

Eric Nelson, Member
57th Legislative District

Kathy Rapp, Member
65th Legislative District

Rob Kauffman, Member
89th Legislative District

Russ Diamond, Member
102nd Legislative District

Brett Miller, Member
41st Legislative District

David Maloney, Member
130th Legislative District

Dawn Keefer, Member
92nd Legislative District

Stephanie Borowicz, Member
76th Legislative District

County of Lancaster

Office of the Commissioners

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

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

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

Dear Secretary Boockvar:

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

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

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

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

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

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

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

The attached "guidance" read:

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

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

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

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

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

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

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

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

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

Sincerely,

Joshua G. Parsons
Chairman, Board of Commissioners

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

PA 2020 ELECTION ISSUES SUMMARY

1

ELECTION ISSUES

- **More Votes Counted than Voters Who Voted**
  - Mail In
  - In Person
- **Duplicate Voters:** People in SURE more than Once
  - Example: Same Name & DOB but different ID #
- **Duplicate Ballots:** Requested and Returned

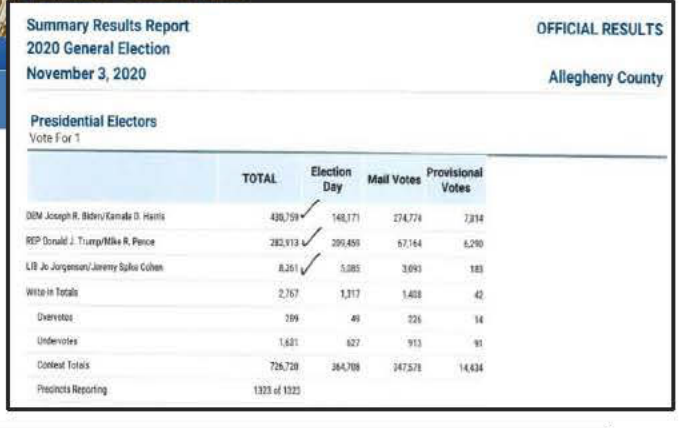
2

More Votes Counted Than Voters Who Voted

Official Voter Records – SURE System

3

VOTES COUNTED – DATA SOURCES



Summary Results Report
2020 General Election
November 3, 2020

OFFICIAL RESULTS
Allegheny County

Presidential Electors
Vote For 1

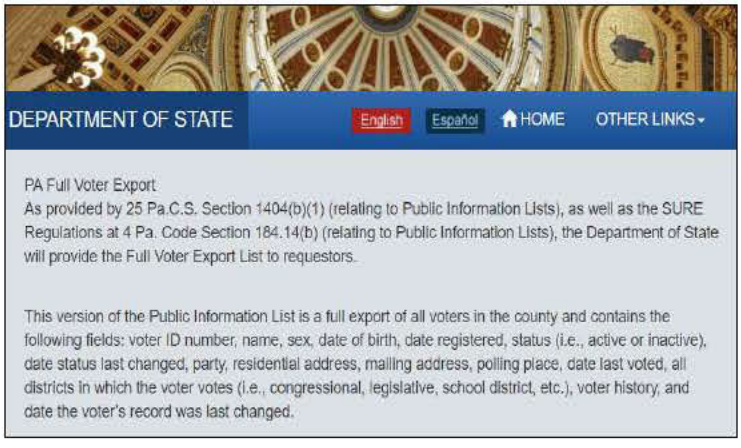
	TOTAL	Election Day	Mail Votes	Provisional Votes
DEM Joseph R. Biden/Kamala D. Harris	430,759	148,171	274,774	7,814
REP Donald J. Trump/Mike R. Pence	282,913	209,459	67,164	6,290
LIB Jo Jorgensen/Jeremy Spike Cohen	8,261	5,085	3,093	183
Write-in Totals	2,767	1,317	1,408	42
Overvotes	399	49	336	14
Undervotes	1,631	627	913	91
Contest Totals	726,728	364,708	347,578	14,434
Precincts Reporting	1323 of 1322			

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

4

VOTERS WHO VOTED – DATA SOURCES

- ADAMS Election Map 20201214
- ADAMS FVE 20201214
- ADAMS Zone Codes 20201214
- ADAMS Zone Types 20201214
- ALLEGHENY Election Map 20201214
- ALLEGHENY FVE 20201214
- ALLEGHENY Zone Codes 20201214
- ALLEGHENY Zone Types 20201214
- ARMSTRONG Election Map 202012...
- ARMSTRONG FVE 20201214
- ARMSTRONG Zone Codes 20201214
- ARMSTRONG Zone Types 20201214



Sources:
https://www.pavoterservices.pa.gov/pages/purchasepafullvoterexport.aspx
and
Official County FVE files directly from the County Dated 12/14/2020

5

DATA FILE DEFINITIONS

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

6

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

SAMPLE COUNTY DATA - CAMERON

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

7

TIMELINESS OF SURE FVE RECORDS

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

Pennsylvania Pressroom

Menu

Department Of State Certifies Presidential Election Results

11/24/2020

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

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

8

INTERIM REPORT TOTALS AS OF 12-20-2020

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

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INTERIM REPORT TOTALS AS OF 12-20-2020

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

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

10

SURE IS THE OFFICIAL VOTER RECORD IN PA

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

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

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

11

VOTER SURPLUS

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

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

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

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

13

COUNTY	TOTAL VOTES 3 MAJOR CANDIDATES	NOTE	TOTAL WRITE IN	TOTAL VOTES FOR PRESIDENT	OVER & UNDER VOTES	TOTAL BALLOTS CAST	TOTAL VOTERS SURE	TOTAL VOTER DEFICIT	TOTAL VOTER SURPLUS
CHESTER	314,502		1,251	315,753	833	316,586	313,543	-3,043	
CLARION	19,493		31	19,524		19,524	19,525		
CLEARFIELD	39,422		74	39,496	114	39,610	39,247	-363	
CLINTON	17,625		36	17,661	55	17,716	17,478	-238	
COLUMBIA	31,171		87	31,258	187	31,445	31,481		36
CRAWFORD	42,004	*	98	42,104		42,104	42,301		
CUMBERLAND	141,595		592	142,187	545	142,732	142,845		113
DAUPHIN	147,368		533	147,901	487	148,388	149,096		708
DELAWARE	327,931	*	1,075	328,329	1,821	330,150	326,142	-4,008	
ELK	16,906		40	16,946	89	17,035	17,077		42
ERIE	137,083	*	347	137,491	453	137,944	138,240		296
FAYETTE	62,139	*	91	62,258	117	62,375	61,952	-423	
FOREST	2,646	*	8	2,621	10	2,631	2,666		35
FRANKLIN	80,783		242	81,025	183	81,208	81,143	-65	
FULTON	7,977		13	7,990	44	8,034	8,016	-18	
GREENE	17,669		0	17,669	0	17,776	17,760	-16	

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

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

16

RELIABILITY OF DATA FROM DEPARTMENT OF STATE

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

- Source: https://www.electionreturns.pa.gov/

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

17

RELIABILITY OF DATA FROM DEPARTMENT OF STATE

Candidate	Election Day	Mail	Provisional	Math Total	Certified Electors	Difference
Biden	1409341	1995691	53168	3458200	3458229	-29
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Write In	0	0	0	0	0	0
Totals	4193889	2616012	105319	6915220	6915283	-63

Pennsylvania Pressroom

11/24/2020

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

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

The Certificate of Ascertainment included the following vote totals:

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

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

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

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DUPLICATE VOTERS

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

19

POSSIBLE DUPLICATE VOTERS

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

*THESE RECORDS HAVE BEEN REFERRED TO LAW ENFORCEMENT FOR INVESTIGATION

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DUPLICATE BALLOTS

Requested & Returned

21

DUPLICATE MAIL IN BALLOT APPLICATIONS

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

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

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

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DUPLICATE APPLICATIONS

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

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

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

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EXAMPLE: LEBANON COUNTY DUPLICATES

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

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THIRD PARTY ACCESS -SURE

Recap of Previous Issues Raised

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DEPARTMENT OF STATE GRANTED ACCESS & AUTHORITY TO THIRD PARTY ENTITIES

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

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

4 Pa. Code § 183.14. Public information lists

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

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

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

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

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

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

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

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

pennsylvania DEPARTMENT OF STATE

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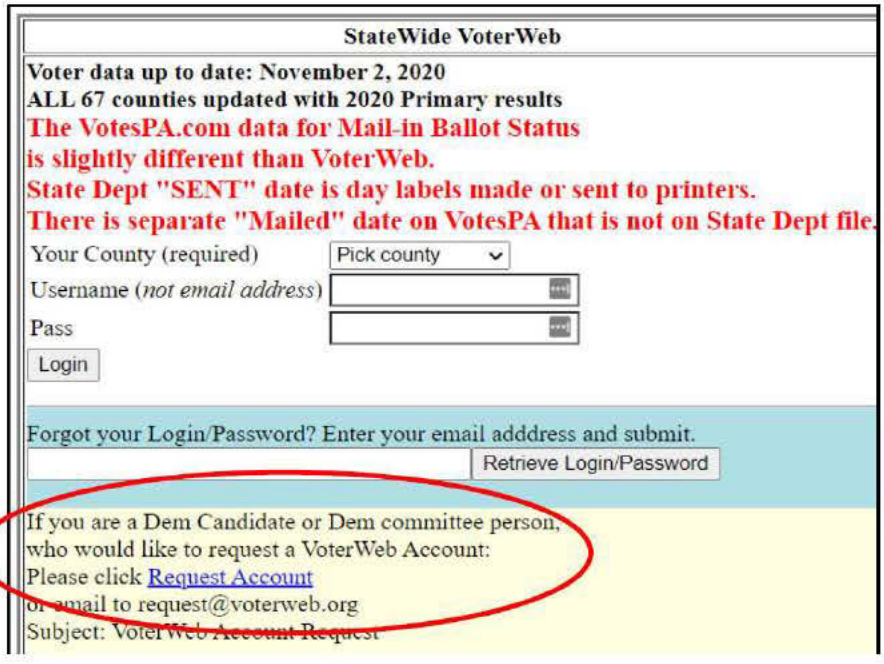

29

From: Clark, Jeffrey (ENRD)
Subject: Two Urgent Action Items
To: Rosen, Jeffrey A. (ODAG); Donoghue, Richard (ODAG)
Sent: December 28, 2020 4:40 PM (UTC-05:00)
Attached: Draft Letter JBC 12 28 20.docx

Jeff and Rich:

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

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

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

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

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

Jeff

Pre-Decisional & Deliberative/Attorney-Client or Legal Work Product
Georgia Proof of Concept

[LETTERHEAD]

The Honorable Brian P. Kemp
Governor
111 State Capitol
Atlanta, Georgia 30334

The Honorable David Ralston
Speaker of the House
332 State Capitol
Atlanta, Georgia 30334

The Honorable Butch Miller
President *Pro Tempore* of the Senate
321 State Capitol
Atlanta, Georgia 30334

December 28, 2020

Dear Governor Kemp, Mr. Speaker, and Mr. President *Pro Tempore*:

The Department of Justice is investigating various irregularities in the 2020 election for President of the United States. The Department will update you as we are able on investigatory progress, but at this time we have identified significant concerns that may have impacted the outcome of the election in multiple States, including the State of Georgia. No doubt, many of Georgia's state legislators are aware of irregularities, sworn to by a variety of witnesses, and we have taken notice of their complaints. *See, e.g.*, The Chairman's Report of the Election Law Study Subcommittee of the Standing Senate Judiciary Committee Summary of Testimony from December 3, 2020 Hearing, http://www.senatorligon.com/THE_FINAL%20REPORT.PDF (Dec. 17, 2020) (last visited Dec. 28, 2020); Debra, Heine, *Georgia State Senate Report: Election Results Are 'Untrustworthy;' Certification Should Be Rescinded*, THE TENNESSEE STAR (Dec. 22, 2020), *available at* https://tennesseestar.com/2020/12/22/georgia-state-senate-report-election-results-are-untrustworthy-certification-should-be-rescinded/ (last visited Dec. 28, 2020).

In light of these developments, the Department recommends that the Georgia General Assembly should convene in special session so that its legislators are in a position to take additional testimony, receive new evidence, and deliberate on the matter consistent with its duties under the U.S. Constitution. Time is of the essence, as the U.S. Constitution tasks Congress with convening in joint session to count Electoral College certificates, *see* U.S. Const., art. II, § 1, cl. 3, consider objections to any of those certificates, and decide between any competing slates of elector certificates, and 3 U.S.C. § 15 provides that this session shall begin on January 6, 2021, with the Vice President presiding over the session as President of the Senate.

The Constitution mandates that Congress must set the day for Electors to meet to cast their ballots, which Congress did in 3 U.S.C. § 7, and which for this election occurred on December 14, 2020. The Department believes that in Georgia and several other States, both a slate of electors supporting Joseph R. Biden, Jr., and a separate slate of electors supporting Donald J. Trump, gathered on that day at the proper location to cast their ballots, and that both sets of those ballots have been transmitted to Washington, D.C., to be opened by Vice President Pence. The Department is aware that a similar situation occurred in the 1960 election. There, Vice President Richard Nixon appeared to win the State of Hawaii on Election Day and Electors supporting Vice President Nixon cast their ballots on the day specified in 3 U.S.C. § 7, which were duly certified by the Governor of Hawaii. But Senator John F. Kennedy also claimed to win Hawaii, with his Electors likewise casting their ballots on the prescribed day, and that by January 6, 1961, it had been determined that Senator Kennedy was indeed the winner of Hawaii, so Congress accordingly accepted only the ballots cast for Senator Kennedy. *See* Jack M. Balkin, *Bush v. Gore and the Boundary Between Law and Politics*, 110 YALE L.J. 1407, 1421 n.55 (2001).

The Department also finds troubling the current posture of a pending lawsuit in Fulton County, Georgia, raising several of the voting irregularities pertaining to which candidate for President of the United States received the most lawfully cast votes in Georgia. *See Trump v. Raffensperger*, 2020cv343255 (Fulton Cty. Super. Ct.). Despite the action having been filed on December 4, 2020, the trial court there has not even scheduled a hearing on matter, making it difficult for the judicial process to consider this evidence and resolve these matters on appeal prior to January 6. Given the urgency of this serious matter, including the Fulton County litigation's sluggish pace, the Department believes that a special session of the Georgia General Assembly is warranted and is in the national interest.

The Electors Clause of the U.S. Constitution provides that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct," electors to cast ballots for President and Vice President. *See* U.S. Const., art. II, § 1, cl. 2. Many State Legislatures originally chose electors by direct appointment, but over time each State Legislature has chosen to do so by popular vote on the day appointed by Congress in 3 U.S.C. § 1 to be the Election Day for Members of Congress, which this year was November 3, 2020. However, Congress also explicitly recognizes the power that State Legislatures have to appoint electors, providing in 3 U.S.C. § 2 that "[w]henever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by [3 U.S.C. § 1], the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct."

The purpose of the special session the Department recommends would be for the General Assembly to (1) evaluate the irregularities in the 2020 election, including violations of Georgia election law judged against that body of law as it has been enacted by your State's Legislature, (2) determine whether those violations show which candidate for President won the most legal votes in the November 3 election, and (3) whether the election failed to make a proper and valid choice between the candidates, such that the General Assembly could take whatever action is necessary to ensure that one of the slates of Electors cast on December 14 will be accepted by Congress on January 6.

While the Department of Justice believes the Governor of Georgia should immediately call a special session to consider this important and urgent matter, if he declines to do so, we share with you our view that the Georgia General Assembly has implied authority under the Constitution of the United States to *call itself into special session* for the limited purpose of considering issues pertaining to the appointment of Presidential Electors. The Constitution specifies that Presidential Electors shall be appointed by the *Legislature* of each State. And the Framers clearly knew how to distinguish between a state legislature and a state executive, so their disparate choices to refer to one (legislatures), the other (executive), or both, must be respected.[1] Additionally,

[1] *See, e.g.*, U.S.C., art. IV, § 4 ("The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of *the Legislature*, *or of the Executive* (when *the Legislature* cannot be convened) against domestic Violence.") (emphases added); *id.* art. VI ("The Senators and Representatives before mentioned, and the Members of the *several State Legislatures*, *and all executive and judicial Officers*, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution ….") (emphasis added); *id.* XVII amend. ("When vacancies happen in the representation of any State in the Senate, *the executive authority of such State* shall issue writs of election to fill such vacancies: Provided, That *the legislature of any State* may empower

when the Constitution intends to refer to laws enacted by the Legislature and signed by the Governor, the Constitution refers to it simply as the "State." *See, e.g.*, U.S. Const., art. I, § 8 ("[Congress may] exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, *by Cession of particular States*, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of *the Legislature of the State* in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings") (emphasis added) (distinguishing between the "State," writ large, and the "Legislature of the State"). The Constitution also makes clear when powers are forbidden to any type of state actor. *See, e.g.*, U.S. Const., art. I, § 10, cl. 1 ("No State shall enter into any Treaty, Alliance, or Confederation …."). Surely, this cannot mean that a State Governor could enter into such a Treaty but a State Legislature could not, or *vice versa*.

Clearly, however, some provisions refer explicitly to state legislatures — and there the Framers must be taken at their word. One such example is in Article V, which provides that a proposed Amendment to the Constitution is adopted "when ratified by the Legislatures of three fourths of the several States," which is done by joint resolution or concurrent resolution. Supreme Court precedent makes clear that the Governor has no role in that process, and that his signature or approval is not necessary for ratification. *See, e.g., Coleman v. Miller*, 307 U.S. 433 (1939). So too, Article II requires action only by the Legislature in appointing Electors, and Congress in 3 U.S.C. § 2 likewise recognizes this Constitutional principle.

The Supreme Court has explained that the Electors Clause "leaves it to the legislature exclusively to define the method" of appointing Electors, vesting the Legislature with "the broadest possible power of determination." *McPherson v. Blecker*, 146 U.S. 1, 27 (1892). This power is "placed absolutely and *wholly* with legislatures." *Id.* at 34-35 (emphasis added). In the most recent disputed Presidential election to reach the Supreme Court, the 2000 election, the Supreme Court went on to hold that when a State Legislature appoints Presidential Electors—which it can do either through statute or through direct action—the Legislature is not acting "solely under the authority given by the people of the State, but by virtue of a direct grant of authority made under Art. II, § 1, cl. 2, of the United States Constitution." *Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S.

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the executive thereof to make temporary appointments until the people fill the vacancies by election *as the legislature may direct*.") (emphases added).

70, 76 (2000). The State Legislature's authority to appoint Electors is "plenary." *Bush v. Gore*, 531 U.S. 98, 104 (2000) (per curiam). And a State Legislature cannot lose that authority on account of enacting statutes to join the National Election. "Whatever provisions may be made by statute, or by the state constitution, to choose electors by the people, there is no doubt of the right of the legislature to resume the power an any time, for it can neither be taken away nor abdicated." *McPherson*, 146 U.S. at 125.

The Georgia General Assembly accordingly must have inherent authority granted by the U.S. Constitution to come into session to appoint Electors, regardless of any purported limit imposed by the state constitution or state statute requiring the Governor's approval. The "powers actually granted [by the U.S. Constitution] must be such as are expressly given, or given by necessary implication." *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 326 (1816). And the principle of necessary implication arises because our Constitution is not prolix and thus does not "provide for minute specification of its powers, or to declare the means by which those powers should be carried into execution." *Id.* Otherwise, in a situation like this one, if a Governor were aware that the Legislature of his State was inclined to appoint Electors supporting a candidate for President that the Governor opposed, the Governor could thwart that appointment by refusing to call the Legislature into session before the next President had been duly elected. The Constitution does not empower other officials to supersede the state legislature in this fashion.

Therefore whether called into session by the Governor or by its own inherent authority, the Department of Justice urges the Georgia General Assembly to convene in special session to address this pressing matter of overriding national importance.

Sincerely,

Jeffrey A. Rosen Acting Attorney General	Richard Donoghue Acting Deputy Attorney General	Jeffrey Bossert Clark (Acting) Assistant Attorney General Civil Division

From: (b) (6) (ODAG)
Subject: RE: 6pm Meeting with Acting AG Rosen:
To: Clark, Jeffrey (CIV)
Cc: (b) (6) (ODAG)
Sent: December 28, 2020 5:02 PM (UTC-05:00)

Great, Thank you.

From: Clark, Jeffrey (CIV) (b) (6)
Sent: Monday, December 28, 2020 4:55 PM
To: (b) (6) (ODAG) (b) (6)
Cc: (b) (6) A. (ODAG) (b) (6)
Subject: RE: 6pm Meeting with Acting AG Rosen:

It should. I may need to leave a (b) (5) settlement meeting slightly early but I'll make it work.

And thankfully my CIV email access has just been restored.

Jeff

From: (b) (6) (ODAG) (b) (6)
Sent: Monday, December 28, 2020 4:54 PM
To: Clark, Jeffrey (CIV) (b) (6)
Cc: (b) (6) (ODAG) (b) (6)
Subject: 6pm Meeting with Acting AG Rosen:

Good Evening, Mr. Clark:
General Rosen & Richard Donoghue would like to meet with you at 6pm. Will that work on your end?

Thanks in advance,

(b) (6)
U.S. Department of Justice
Office of the Deputy Attorney General
(b) (6)

From: Rosen, Jeffrey A. (ODAG)
Subject: Meeting with AAG Clark
To: Clark, Jeffrey (CIV); Donoghue, Richard (ODAG)
Sent: December 28, 2020 5:03 PM (UTC-05:00)
POC:
Attendees: General Rosen, Richard Donoghue and AAG Clark

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

From: Rosen, Jeffrey A. (ODAG)
Subject: Meeting with AAG Clark
To: Rosen, Jeffrey A. (ODAG); Clark, Jeffrey (CIV); Donoghue, Richard (ODAG)
Sent: December 28, 2020 5:03 PM (UTC-05:00)
POC:
Attendees: General Rosen, Richard Donoghue and AAG Clark

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

From: Clark, Jeffrey (CIV)

Subject: Accepted: Meeting with AAG Clark

To: [redacted]. (ODAG); [redacted] (ODAG)

Sent: December 28, 2020 5:06 PM (UTC-05:00)

From:
Subject: RE: Two Urgent Action Items
To: Clark, Jeffrey (ENRD)
Cc: Rosen, Jeffrey A. (ODAG)
Sent: December 28, 2020 5:10 PM (UTC-05:00)

Jeff,

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

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

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

I am available to discuss this when you are available after 6:00 pm but, from where I stand, this is a non-starter.

Rich

From: Clark, Jeffrey (ENRD) <JClark@ENRD.USDOJ.GOV>
Sent: Monday, December 28, 2020 4:40 PM
To: Rosen, Jeffrey A. (ODAG) <jarosen@jmd.usdoj.gov>; Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov>
Subject: Two Urgent Action Items

From: Donoghue, Richard (ODAG)
Subject: RE: Two Urgent Action Items
To: Clark, Jeffrey (ENRD)
Cc: Rosen, Jeffrey A. (ODAG)
Sent: December 28, 2020 5:50 PM (UTC-05:00)

Jeff,

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

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

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

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

Rich

From: Clark, Jeffrey (ENRD) <JClark@ENRD.USDOJ.GOV>
Sent: Monday, December 28, 2020 4:40 PM
To: Rosen, Jeffrey A. (ODAG) <jarosen@jmd.usdoj.gov>; Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov>
Subject: Two Urgent Action Items

From: (b) (6) (ODAG)
Subject: Jeff Clark has arrived
To: Donoghue, Richard (ODAG)
Sent: December 28, 2020 6:01 PM (UTC-05:00)

(b) (6)
U.S. Department of Justice
Office of the Deputy Attorney General
(b) (6)

From: Engel, Steven A. (OLC)
Subject: Re: Tomorrow
To: Donoghue, Richard (ODAG)
Sent: December 28, 2020 11:45 PM (UTC-05:00)

Sure. Will swing by.

Sent from my iPad

> On Dec 28, 2020, at 11:41 PM, Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov> wrote:
>
> Steve,
>
> I think you'll be at the 0900 meeting tomorrow. If you can make it there about 10 minutes early, please come by my office so I can read you into some antics that could potentially end up on your radar. If you're not in by then, no big deal, we can just talk after the meeting.
>
> Thanks,
>
> Rich

From: Engel, Steven A. (OLC)
Subject: RE: Tomorrow
To: Donoghue, Richard (ODAG)
Sent: December 29, 2020 8:49 AM (UTC-05:00)

Just tried you. around for a drop by?

-----Original Message-----
From: Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov>
Sent: Monday, December 28, 2020 11:41 PM
To: Engel, Steven A. (OLC) (b) (5)
Subject: Tomorrow

Duplicative Material

From: Donoghue, Richard (ODAG)
Subject: RE: USA v. Pennsylvania draft complaint Dec 28 2 pm.docx
To: Wall, Jeffrey B. (OSG)
Sent: December 29, 2020 11:49 AM (UTC-05:00)

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

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

Good morning,

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

Thanks and Happy New Year!

Molly

Sent from my iPhone

From: Donoghue, Richard (ODAG)
Subject: FW: USA v. Pennsylvania draft complaint Dec 28 2 pm.docx
To: Steven A. Engel (OLC) (b) (6)
Sent: December 29, 2020 11:49 AM (UTC-05:00)
Attached: USA v. Pennsylvania draft complaint Dec 28 2 pm.docx

JFYI

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

Duplicative Material

No. _____, Original

In the Supreme Court of the United States

THE UNITED STATES OF AMERICA

Plaintiff,

v.

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

Defendants.

BILL OF COMPLAINT

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BILL OF COMPLAINT

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

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

[1]https://www.courant.com/politics/hc-pol-q-poll-republicans-believe-fraud-20201210-pcie3uqqvrhyvnt7geohhsyepe-story.html

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

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

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

NATURE OF THE ACTION

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[4] All exhibits cited in this Complaint are in the Appendix to the United States' forthcoming motion to expedite ("App. 1a_____").

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

13. The same less than one in a quadrillion statistical improbability of Mr. Biden winning the popular vote in these four Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin—independently exists when Mr. Biden's performance in each of those Defendant States is compared to former Secretary of State Hilary Clinton's performance in the 2016 general election and President Trump's performance in the 2016 and 2020 general elections. Again, the statistical improbability of Mr. Biden winning the popular vote in these four States collectively is 1 in 1,000,000,000,000,000[5]. *Id.* 10-13, 17-21, 30-31.

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

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

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

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

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

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

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

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

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[5]Summary Report, Election Auditing, Key Issues and Perspectives attached at _____ (the "Caltech/MIT Report") (App. __a -- __a).

JURISDICTION AND VENUE

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

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

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

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

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

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

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

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

PARTIES

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

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

LEGAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

Commonwealth of Pennsylvania

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Id. 143a.

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

70. The Ryan Report also stated as follows:

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

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

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

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

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

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[10] Ryan Report at App. __a [p.5].

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

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

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

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

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

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

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

State of Georgia

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Id. at *176 (Emphasis added).

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

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

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

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

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

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

[14] (App. __a -- __a)

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

State of Michigan

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

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

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

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[15]https://thepalmierireport.com/michigan-state-police-block-gop-electors-from-entering-capitol/

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

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

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

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

> An application for an absent voter ballot under this section may be made in *any of the following ways*:
>
> (a) By a written request signed by the voter.
>
> (b) On an absent voter ballot application form provided for that purpose by the clerk of the city or township.

(c) On a federal postcard application.

M.C.L. § 168.759(3) (emphasis added).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[18] Affidavit of Lisa Gage ¶ 17 (App. ___a).

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

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

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

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

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

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

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

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

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

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[19] Antrim Michigan Forensics Report by Allied Security Operations Group dated December 13, 2020 (the "Allied Report") (App. __a -- __a);

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

[21] Allied Report at ¶¶ B.4-9 (App. __a).

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

State of Wisconsin

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

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

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

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

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[22] https://wisgop.org/republican-electors-2020/.

[23] Source: U.S. Elections Project, *available at*: http://www.electproject.org/early_2016.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

State of Arizona

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

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

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

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

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

161. However, the Ninth Circuit did not apply the stay retroactively because neither the Arizona Secretary of State nor the Arizona Attorney General requested retroactive relief. *Id.* at 954-55. As a net result, the deadline was unconstitutionally extended from the statutory deadline of October 5 to October 15, 2021, thereby allowing potentially thousands of illegal votes to be injected into the state.

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

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

State of Nevada

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

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

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

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

[29] https://nevadagop.org/42221-2/

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

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

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

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

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

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

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

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

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

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

COUNT I: ELECTORS CLAUSE

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

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

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

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

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

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

COUNT II: EQUAL PROTECTION

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

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

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

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

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

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

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

COUNT III: DUE PROCESS

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

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

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

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

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

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

PRAYER FOR RELIEF

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

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

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

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

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

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

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

F. Award costs to the United States.

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

Respectfully submitted,

December ____, 2020

From: (b) (6) (ATR)
Subject: Phone Message for Mr. Rosen
To: (b) (6) (ODAG); (b) (6) (ODAG)
Sent: December 29, 2020 12:18 PM (UTC-05:00)

Hello

I received a phone call from Mr. Olsen (b) (6). Who stated he is a private attorney and stated he was directed by the President to call Mr. Rosen regarding a private matter.

Thanks,

(b) (6)
Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Phone: (b) (6)
CELL: (b) (6)
Fax: 202-514-0306

From: kurt olsen
Subject: Meeting with AG Rosen
To: Moran, John (ODAG)
Sent: December 29, 2020 12:45 PM (UTC-05:00)
Attached: US-v-States-Compl 2020-12-29 (final draft).docx

Dear John,

Thank you for calling me on behalf of AG Rosen. Attached is a draft complaint to be brought by the United States modeled after the Texas action. As I said on our call, the President of the United States has seen this complaint, and he directed me last night to brief AG Rosen in person today to discuss bringing this action. I have been instructed to report back to the President this afternoon after this meeting. I can be at Main Justice (or anywhere else in the DC Metropolitan area) with an hour's notice. I will call you at 1:15 pm today to follow up on when and where I can meet AG Rosen. Another lawyer may accompany me. Please acknowledge receipt of this email. Thank you.

Sincerely,

Kurt B. Olsen

No. _____, Original

In the Supreme Court of the United States

THE UNITED STATES OF AMERICA

Plaintiff,

v.

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

Defendants.

BILL OF COMPLAINT

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BILL OF COMPLAINT

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

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

[1]https://www.courant.com/politics/hc-pol-q-poll-republicans-believe-fraud-20201210-pcie3uqqvrhyvnt7geohhsyepe-story.html

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

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

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

NATURE OF THE ACTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[4] All exhibits cited in this Complaint are in the Appendix to the United States' forthcoming motion to expedite ("App. 1a_____").

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

13. The same less than one in a quadrillion statistical improbability of Mr. Biden winning the popular vote in these four Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin—independently exists when Mr. Biden's performance in each of those Defendant States is compared to former Secretary of State Hilary Clinton's performance in the 2016 general election and President Trump's performance in the 2016 and 2020 general elections. Again, the statistical improbability of Mr. Biden winning the popular vote in these four States collectively is 1 in 1,000,000,000,000,000[5]. *Id.* 10-13, 17-21, 30-31.

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

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

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

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

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

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

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

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

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[5]Summary Report, Election Auditing, Key Issues and Perspectives attached at _____ (the "Caltech/MIT Report") (App. __a -- __a).

JURISDICTION AND VENUE

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

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

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

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

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

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

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

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

PARTIES

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

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

LEGAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

Commonwealth of Pennsylvania

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Id. 143a.

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

70. The Ryan Report also stated as follows:

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

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

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

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

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

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[10] Ryan Report at App. __a [p.5].

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

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

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

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

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

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

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

State of Georgia

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Id. at *176 (Emphasis added).

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

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

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

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

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

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

[14] (App. __a -- __a)

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

State of Michigan

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

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

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

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[15]https://thepalmierireport.com/michigan-state-police-block-gop-electors-from-entering-capitol/

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

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

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

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

> An application for an absent voter ballot under this section may be made in *any of the following ways*:
>
> (a) By a written request signed by the voter.
>
> (b) On an absent voter ballot application form provided for that purpose by the clerk of the city or township.

(c) On a federal postcard application.

M.C.L. § 168.759(3) (emphasis added).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[18] Affidavit of Lisa Gage ¶ 17 (App. ___a).

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

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

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

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

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

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

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

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

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

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[19] Antrim Michigan Forensics Report by Allied Security Operations Group dated December 13, 2020 (the "Allied Report") (App. __a -- __a);

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

[21] Allied Report at ¶¶ B.4-9 (App. __a).

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

State of Wisconsin

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

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

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

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

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[22] https://wisgop.org/republican-electors-2020/.

[23] Source: U.S. Elections Project, *available at*: http://www.electproject.org/early_2016.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

State of Arizona

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

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

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

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

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

161. However, the Ninth Circuit did not apply the stay retroactively because neither the Arizona Secretary of State nor the Arizona Attorney General requested retroactive relief. *Id.* at 954-55. As a net result, the deadline was unconstitutionally extended from the statutory deadline of October 5 to October 15, 2021, thereby allowing potentially thousands of illegal votes to be injected into the state.

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

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

State of Nevada

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

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

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

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

[29] https://nevadagop.org/42221-2/

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

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

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

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

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

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

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

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

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

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

COUNT I: ELECTORS CLAUSE

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

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

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

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

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

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

COUNT II: EQUAL PROTECTION

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

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

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

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

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

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

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

COUNT III: DUE PROCESS

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

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

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

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

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

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

PRAYER FOR RELIEF

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

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

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

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

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

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

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

F. Award costs to the United States.

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

Respectfully submitted,

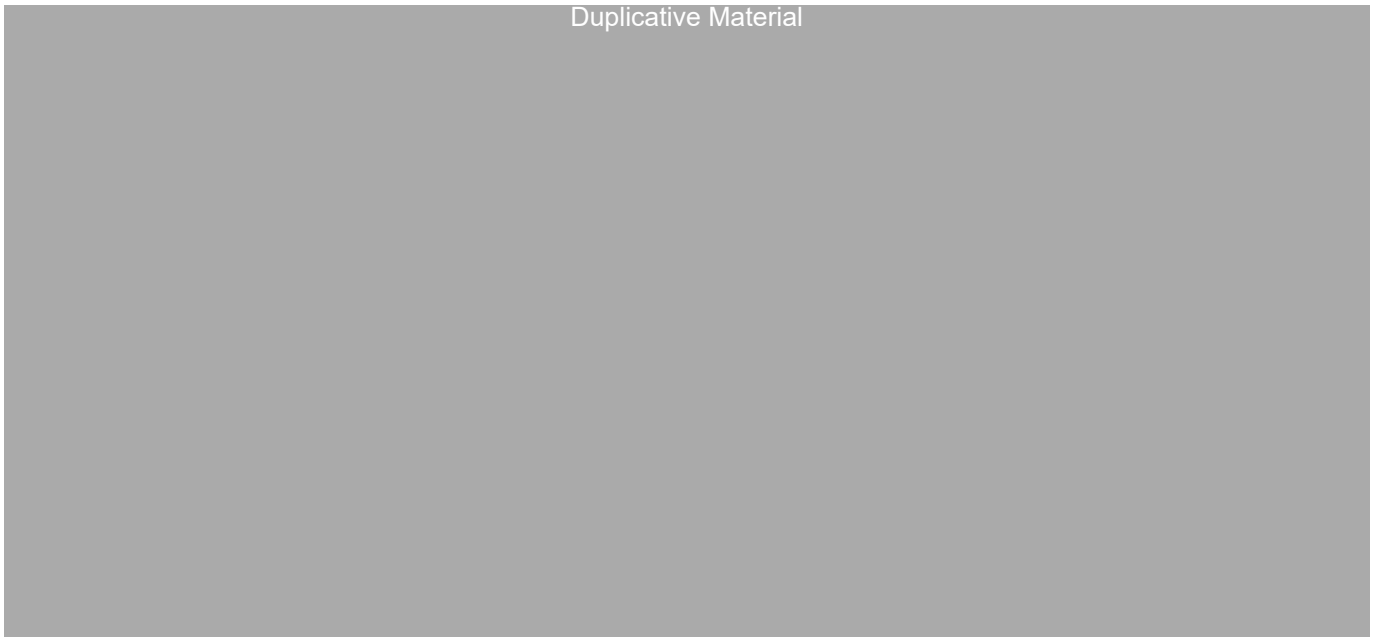
December ____, 2020

From: Moran, John (ODAG)
Subject: Re: Meeting with AG Rosen
To: kurt olsen
Sent: December 29, 2020 12:51 PM (UTC-05:00)

Received.

John

On Dec 29, 2020, at 12:46 PM, kurt olsen [(b) (6)] > wrote:



From: Moran, John (ODAG)
Subject: Fwd: Meeting with AG Rosen
To: Rosen, Jeffrey A. (ODAG)
Sent: December 29, 2020 12:58 PM (UTC-05:00)
Attached: US-v-States-Compl 2020-12-29 (final draft).docx

Sir,

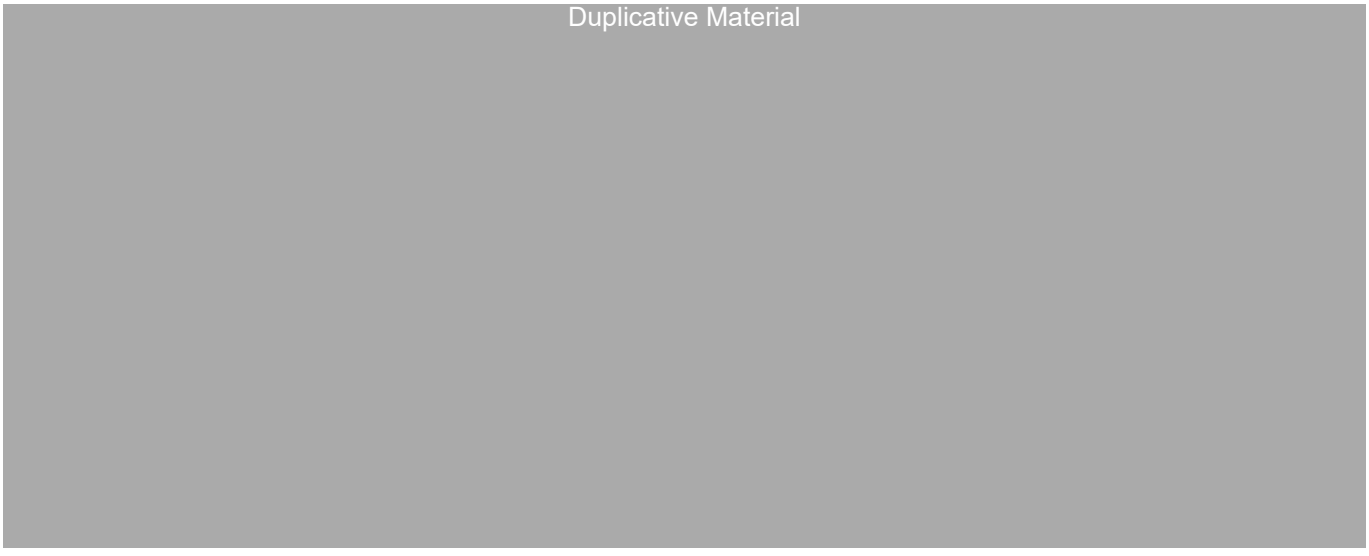
Attached is a proposed draft complaint (on behalf of the United States against several States) that attorney Kurt Olsen would like to discuss with you. As you will see below, he spoke with the President last night and is asking for a meeting with you today. I know that you are currently tied up with other business at the White House, but I wanted to pass this along promptly.

If you are still tied up when Kurt calls me back, I will alert him to that fact.

Regards,
John

Begin forwarded message:

From: kurt olsen (b) (6)
Date: December 29, 2020 at 12:46:38 PM EST
To: "Moran, John (ODAG)" (b) (6) >
Subject: Meeting with AG Rosen



From: Moran, John (ODAG)
Subject: Re: Meeting with AG Rosen
To: Rosen, Jeffrey A. (ODAG)
Sent: December 29, 2020 3:46 PM (UTC-05:00)

Sir,

To keep you up to date, I just missed a call from Mr. Olsen. In addition, I learned through (b) (6) that he had reached out earlier today to someone in the Antitrust Division in an effort to arrange a meeting with you today. She forwarded the inquiry to (b) (6)

Regards,
John

On Dec 29, 2020, at 2:26 PM, Moran, John (ODAG) (b) (6) > wrote:

As a further heads up, Mr. Olsen just called to tell me (a) that he just tried to call you again and (b) that he is in the car driving down to DC (from Maryland) in the hopes of meeting with you at Main Justice later today.

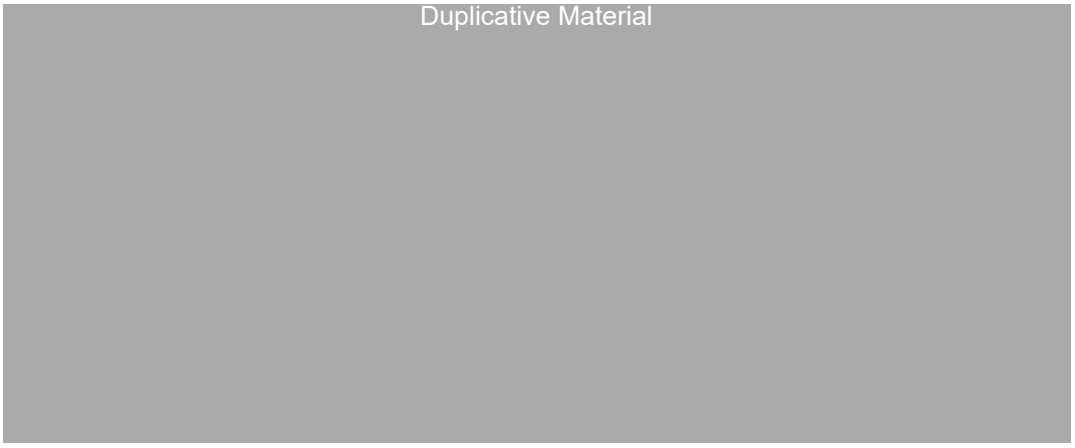
Regards,
John

On Dec 29, 2020, at 1:35 PM, Moran, John (ODAG) (b) (6) > wrote:

I received a follow up call from Mr. Olsen. I explained that you were tied up with other business at the White House. He understood but indicated that, given timing commitments he had made to the President, he needed to make every effort to meet with you this afternoon. He said that he would likely try pinging again periodically if he does not hear back fairly soon.

Regards,
John

On Dec 29, 2020, at 12:57 PM, Moran, John (ODAG) (b) (6) wrote:



From: Moran, John (ODAG)
Subject: Fwd: Request by AG Rosen
To: Rosen, Jeffrey A. (ODAG)
Sent: December 29, 2020 10:03 PM (UTC-05:00)
Attached: S.C. v. Katzenbach_ 383 U.S. 301.docx

Sent from my iPhone

Begin forwarded message:

From: kurt olsen (b) (6)
Date: December 29, 2020 at 9:21:00 PM EST
To: "Moran, John (ODAG)" (b) (6)
Subject: Request by AG Rosen

Dear John,

AG Rosen asked me for any Supreme Court cases discussing the United States as a *parens patriae* in an election case. Attached is *S.C. v. Katzenbach*, 383 U.S. 301 (1966). In this case, South Carolina invoked the Court's original jurisdiction to challenge the constitutionality of the Voting Rights Act, and invoked *parens patriae*. The Court rejected that argument because the United States, not the state, is the *parens patriae*. *Id*. At 324 (stating "Nor does a State have standing as the parent of its citizens to invoke these constitutional provisions against the Federal Government, the ultimate *parens patriae* of every American citizen.")

All the best,

Kurt

On Dec 29, 2020, at 12:50 PM, Moran, John (ODAG) (b) (6) wrote:

Received.

John

On Dec 29, 2020, at 12:46 PM, kurt olsen (b) (6) wrote:

Duplicative Material

User Name: Kurt Olsen
Date and Time: Tuesday, December 29, 2020 8:47:00 PM EST
Job Number: 133075079

Document (1)

1. *S.C. v. Katzenbach, 383 U.S. 301*
Client/Matter: new matter
Search Terms: 383 us 301
Search Type: Natural Language
Narrowed by:

Content Type	Narrowed by
Cases	-None-

S.C. v. Katzenbach

Supreme Court of the United States

January 17-18, 1966, Argued ; March 7, 1966, Decided

No. 22, Orig.

Reporter
383 U.S. 301 *; 86 S. Ct. 803 **; 15 L. Ed. 2d 769 ***; 1966 U.S. LEXIS 2112 ****

SOUTH CAROLINA v. KATZENBACH, ATTORNEY GENERAL

Prior History: **[****1]** ON BILL OF COMPLAINT.

Disposition: Bill of complaint dismissed.

Core Terms

voting, attorney general, political subdivision, tests, registration, election, qualification, appointment, district court, provisions, remedies, right to vote, abridging, color, formula, listing, state law, prescribed, account of race, coverage, five year, sections, Census, cases, prerequisite, registered, declaratory judgment, voting rights, determinations, eligibility

Case Summary

Procedural Posture

Plaintiff State filed a bill of complaint against defendant attorney general to contest the constitutionality of certain remedial provisions of the Voting Rights Act of 1965 (Act), *42 U.S.C.S. § 1973*.

Overview

The State argued that, among other things, the complained of provisions of the Act exceeded the powers of Congress and encroached on an area reserved to the states. The court found that Congress was not limited to forbidding violations of the *Fifteenth Amendment* in general terms and, as against the reserved powers of the states, Congress could use any rational means to effectuate the constitutional prohibition of racial discrimination in voting. The court found that congress was justified in limiting the operation of the Act through the use of a formula to only a handful of states because the record indicated that actual voter discrimination occurred in these states. The court found that the temporary suspension of voter qualifications, such as literacy tests, were not unconstitutional because the record indicated that such tests were traditionally used to disenfranchise minorities and their suspension was a legitimate response to the problem. The court found that the suspension of new voter qualifications pending review was constitutional because the record indicated that states often enacted new laws to perpetuate discrimination in the face of adverse federal court decrees.

Outcome

The court dismissed the State's bill of complaint.

Kurt Olsen

LexisNexis® Headnotes

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > General Overview

Constitutional Law > Congressional Duties & Powers > Bills of Attainder & Ex Post Facto Clause > General Overview

Constitutional Law > Substantive Due Process > Scope

HN1[] Fundamental Rights, Procedural Due Process

The word "person" in the context of the *Due Process Clause of the Fifth Amendment* cannot, by any reasonable mode of interpretation, be expanded to encompass the States of the Union.

Business & Corporate Compliance > ... > Protection of Rights > Federally Assisted Programs > Civil Rights Act of 1964

Constitutional Law > Elections, Terms & Voting > Race-Based Voting Restrictions

Constitutional Law > Elections, Terms & Voting > General Overview

HN2[] Governments, Civil Rights Act of 1964

As against the reserved powers of the states, congress may use any rational means to effectuate the Constitutional prohibition of racial discrimination in voting.

Constitutional Law > Elections, Terms & Voting > Race-Based Voting Restrictions

HN3[] Elections, Terms & Voting, Race-Based Voting Restrictions

See U.S. Const. amend. XV, § 1.

Constitutional Law > Elections, Terms & Voting > Race-Based Voting Restrictions

Constitutional Law > Elections, Terms & Voting > General Overview

HN4[] Elections, Terms & Voting, Race-Based Voting Restrictions

The prohibition against racial discrimination in voting contained in the *Fifteenth Amendment* has always been treated as self-executing and has repeatedly been construed, without further legislative specification, to invalidate state voting qualifications or procedures which are discriminatory on their face or in practice.

Constitutional Law > State Sovereign Immunity > General Overview

Constitutional Law > Elections, Terms & Voting > Race-Based Voting Restrictions

HN5[] Constitutional Law, State Sovereign Immunity

States have broad powers to determine the conditions under which the right of suffrage may be exercised. However, the *Fifteenth Amendment* supersedes contrary exertions of state power. When a state exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right.

Constitutional Law > Elections, Terms & Voting > Race-Based Voting Restrictions

HN6[] Elections, Terms & Voting, Race-Based Voting Restrictions

See U.S. Const. amend. XV, § 2.

Civil Rights Law > Protection of Rights > Voting Rights > General Overview

Constitutional Law > Elections, Terms & Voting > Race-Based Voting Restrictions

Governments > Legislation > Effect & Operation > Amendments

Constitutional Law > Elections, Terms & Voting > General Overview

Governments > Federal Government > US Congress

HN7 **Protection of Rights, Voting Rights**

By adding § 2 to the Fifteenth Amendment, the Framers indicated that Congress was to be chiefly responsible for implementing the rights created in § 1. It is the power of congress which has been enlarged. Congress is authorized to enforce the prohibitions by appropriate legislation. Some legislation is contemplated to make the Civil War amendments fully effective. Accordingly, in addition to the courts, congress has full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting.

Constitutional Law > Elections, Terms & Voting > Race-Based Voting Restrictions

Constitutional Law > Congressional Duties & Powers > Reserved Powers

HN8 **Elections, Terms & Voting, Race-Based Voting Restrictions**

The basic test to be applied in a case to test the constitutionality of legislation enacted pursuant to § 2 of the Fifteenth Amendment is the same as in all cases concerning the express powers of congress with relation to the reserved powers of the states. The classic formulation was laid down 50 years before the *Fifteenth Amendment* was ratified: Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

Constitutional Law > Congressional Duties & Powers > Reserved Powers

Contracts Law > ... > Perfections & Priorities > Perfection > General Overview

Contracts Law > ... > Secured Transactions > Perfections & Priorities > General Overview

HN9 **Congressional Duties & Powers, Reserved Powers**

Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against state denial or invasion, if not prohibited, is brought within the domain of Congressional power.

Constitutional Law > Relations Among Governments > Federal Territory & New States

HN10 **Relations Among Governments, Federal Territory & New States**

The doctrine of equality of states applies only to the terms upon which states are admitted to the Union, and not to the remedies for local evils which have subsequently appeared.

Constitutional Law > Elections, Terms & Voting > Race-Based Voting Restrictions

Evidence > ... > Presumptions > Exceptions > Statutory Presumptions

HN11 **Elections, Terms & Voting, Race-Based Voting Restrictions**

Congress is clearly not bound by the rules relating to statutory presumptions in criminal cases when it prescribes civil remedies against other organs of government under § 2 of the Fifteenth Amendment.

Constitutional Law > ... > Case or Controversy > Constitutionality of Legislation > General Overview

HN12 **Case or Controversy, Constitutionality of Legislation**

Legislation need not deal with all phases of a problem in the same way, so long as the distinctions drawn have some basis in practical experience.

Constitutional Law > Elections, Terms & Voting > Race-Based Voting Restrictions

HN13[] Elections, Terms & Voting, Race-Based Voting Restrictions

Literacy tests and related devices are not in themselves contrary to the Fifteenth Amendment. Of course a literacy test, fair on its face, may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot.

Civil Rights Law > Protection of Rights > Voting Rights > Racial Discrimination

Constitutional Law > Elections, Terms & Voting > Race-Based Voting Restrictions

Governments > Federal Government > Elections

HN14[] Voting Rights, Racial Discrimination

Sections 4 (a)-(d), 5, 6 (b), 7, 9, 13 (a), and certain procedural portions of § 14 of the Voting Rights Act, codified at 42 U.S.C.S. § 1973 (1964) are a valid means for carrying out the commands of the Fifteenth Amendment.

Constitutional Law > Elections, Terms & Voting > Race-Based Voting Restrictions

Governments > Federal Government > Elections

HN15[] Elections, Terms & Voting, Race-Based Voting Restrictions

See 42 U.S.C.S. § 1973.

Lawyers' Edition Display

Summary

By leave of the Court, South Carolina filed in the United States Supreme Court a bill of complaint, seeking a declaration that selected provisions of the Voting Rights Act of 1965 violated the Federal Constitution, and asking for an injunction against enforcement of these provisions by the Attorney General of the United States. More specifically, South Carolina and five other states supporting her attacked the provisions for suspension of literacy and other voting tests (4(a)(c)(d)) in states and political subdivisions to which according to the formula described in 4(b) the new remedies of the Act apply; for termination of coverage (4(a)); for the suspension of all new voting regulations in these states and political subdivisions pending review by federal authorities to determine whether their use would perpetuate voting discrimination (5); for the assignment of federal examiners by the Attorney General to list qualified applicants thereafter entitled to vote in all elections (6(b), 7, 9, 13(a)); and for the exclusive jurisdiction of the United States District Court for the District of Columbia over litigation as to termination of the statutory coverage (14(b)).

The Supreme Court dismissed the bill of complaint. In an opinion by Warren, Ch. J., expressing the views of eight members of the Court, it was held that the challenged provisions of the Act were valid as an appropriate exercise of the power, given to Congress in 2 of the Fifteenth Amendment, to enforce that amendment.

Black, J., agreed with substantially all of the Court's opinion, but dissented from the holding that the provisions in 5 of the Act were valid.

Headnotes

SUPREME COURT OF THE UNITED STATES §51 > state's action against Attorney General -- > Headnote: LEdHN[1][] [1]

Original jurisdiction of the Supreme Court of the United States over a state's suit against the Attorney General of the United States, seeking a declaration of the invalidity, and an injunction against the enforcement of, selected provisions of the Voting Rights Act of 1965 (79 Stat 437) is founded on the presence of a controversy between a state and a citizen of another state under Article 3 2 of the Federal Constitution.

CIVIL RIGHTS §5 > Voting Rights Act -- purpose -- > Headnote:
LEdHN[2][ ] [2]

The Voting Rights Act of 1965 (79 Stat 437), creating stringent new remedies and strengthening existing remedies, is designed by Congress to banish the blight of racial discrimination in voting, which has infected the electoral process in parts of the United States for nearly a century.

CIVIL RIGHTS §5.1 > Voting Rights Act -- validity -- > Headnote:
LEdHN[3A][ ] [3A]LEdHN[3B][ ] [3B]LEdHN[3C][ ] [3C]LEdHN[3D][ ] [3D]

The key provisions of the Voting Rights Act of 1965 (79 Stat 437)--concerning the suspension of literacy and other voting tests (4(a)(c)(d)) in states and political subdivisions to which according to the formula described in 4(b) the new remedies of the Act apply; termination of coverage (4(a)); the suspension of all new voting regulations in these states and political subdivisions pending review by federal authority to determine whether their use would perpetuate voting discriminations (5); the assignment of federal examiners by the Attorney General of the United States to list qualified applicants thereafter entitled to vote in all elections (6(b), 7, 9, 13(a)); and the exclusive jurisdiction of the United States District of Columbia over litigation as to termination of the statutory coverage (14(b))--are within the power of Congress to prescribe under 2 of the *Fifteenth Amendment*, prohibiting racial discrimination in voting, are appropriate means for carrying out Congress' constitutional responsibilities, and are consonant with all other provisions of the Federal Constitution.

CIVIL RIGHTS §5.1 > Voting Rights Act -- constitutionality -- > Headnote:
LEdHN[4][ ] [4]

The constitutional propriety of the Voting Rights Act of 1965 (79 Stat 437) must be judged with reference to the historical experience which it reflects.

SUPREME COURT OF THE UNITED STATES §71 > original jurisdiction -- questions not considered -- > Headnote:
LEdHN[5][ ] [5]

In a suit by a state against the Attorney General of the United States for a declaration of invalidity of the Voting Rights Act of 1965 (79 Stat 437), judicial review of those sections of the statute which are not challenged must await subsequent litigation.

ACTION OR SUIT §14 > DECLARATORY JUDGMENTS §5 > prematurity of suit -- > Headnote:
LEdHN[6][ ] [6]

A state's attack, by suit for a declaration of invalidity and injunction against enforcement, on the criminal sanctions (11, 12(a)-(c)) of the Voting Rights Act of 1965 (79 Stat 437) is premature where no person has yet been subjected to, or even threatened with, these criminal sanctions.

CONSTITUTIONAL LAW §520 > state as "person" -- > Headnote:
LEdHN[7][ ] [7]

The word "person" in the context of the *due process clause of the Fifth Amendment* does not encompass the states of the Union.

ATTAINDER AND OUTLAWRY §2 > CONSTITUTIONAL LAW §68.5 > separation of power -- subjects of protection -- > Headnote:
LEdHN[8][ ] [8]

The bill of attainder clause of Article 1 9 clause 3 of the Federal Constitution and the principle of the separation of powers do not protect states but only individual persons and private groups, those who are peculiarly vulnerable to nonjudicial determinations of guilt; a state has no standing as a parent of its citizens to invoke these constitutional provisions against the Federal Government, the ultimate parens patriae of every American citizen.

exercised, the *Fifteenth Amendment*, prohibiting racial discrimination in voting, supersedes contrary exertions of state power.

CIVIL RIGHTS §5.1 > Voting Rights Act -- validity -- > Headnote:
LEdHN[9][] [9]

Objections raised by a state against the Voting Rights Act of 1965 (79 Stat 437) on the ground that certain provisions constitute a forbidden bill of attainder and impair the doctrine of separation of powers by adjudicating guilt through legislation may be considered only as additional aspects of the question whether Congress exercised its powers under the *Fifteenth Amendment*--which prohibits racial discrimination in voting--in an appropriate manner with relation to the states.

COURTS §92.3 > STATES §18 > state and federal power -- > Headnote:
LEdHN[13][] [13]

When a state exercises power wholly within the domain of state interest, it is insulated from federal judicial review, but such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right.

CIVIL RIGHTS §5.1 > voting -- powers of Congress -- > Headnote:
LEdHN[10][] [10]

As against the reserved powers of the states, Congress, under the *Fifteenth Amendment*, may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting.

CONSTITUTIONAL LAW §7 > enforcement of Fifteenth Amendment -- > Headnote:
LEdHN[14][] [14]

In addition to the courts, Congress has full remedial power to effectuate the *Fifteenth Amendment's* prohibition against racial discrimination in voting.

CONSTITUTIONAL LAW §44 > CIVIL RIGHTS §5 > Fifteenth Amendment -- self-executing provision -- voting -- > Headnote:
LEdHN[11][] [11]

Section one of the *Fifteenth Amendment*, prohibiting racial discrimination in voting, is self-executing, and invalidates, without further legislative specification, state voting qualifications or procedures which are discriminatory on their face or in practice.

UNITED STATES §16 > powers of Congress -- > Headnote:
LEdHN[15][] [15]

In exercising the express powers conferred upon it by the Federal Constitution, Congress may, where the end is legitimate and within the scope of the Constitution, use all means which are appropriate, which are plainly adapted to that end, and which are not prohibited, but are consistent with the letter and spirit of the Constitution.

CIVIL RIGHTS §5 > voting -- Fifteenth Amendment -- > Headnote:
LEdHN[12][] [12]

While states have broad powers to determine the conditions under which the right of suffrage may be

CONSTITUTIONAL LAW §7 > enforcement of Fifteenth Amendment -- > Headnote:
LEdHN[16][] [16]

Under the *Fifteenth Amendment*, prohibiting racial discrimination in voting, the task of fashioning specific remedies or of applying them to particular localities must not necessarily be left entirely to the courts; the power of Congress is complete in itself, may be exercised to its

utmost extent, and acknowledges no limitations other than are prescribed in the Constitution.

CIVIL RIGHTS §5.1 > Voting Rights Act -- remedies -- > Headnote:
LEdHN[17] [17]

Confining the remedies of the Voting Rights Act of 1965 (79 Stat 437) to a small number of states and political subdivisions where immediate actions seemed necessary, is a permissible method, not barred by the doctrine of the equality of states, of dealing with the problem of state racial discrimination in voting, where Congress had learned that substantial voting discrimination presently occurred in certain sections of the country, and it knew of no way of accurately forecasting whether the evil might spread elsewhere in the future.

STATES §3 > STATES §120 > doctrine of equality -- > Headnote:
LEdHN[18] [18]

The doctrine of the equality of states applies only to the terms upon which states are admitted to the Union, and not to the remedies for local evils which have subsequently appeared.

CIVIL RIGHTS §5.1 > Voting Rights Act -- powers of Congress -- > Headnote:
LEdHN[19A] [19A]LEdHN[19B] [19B]

The express powers of enforcement conferred upon Congress by the *Fifteenth Amendment*, which prohibits racial discrimination in voting, are justifiably applied to the specific states and political subdivisions within 4(b) of the Voting Rights Act of 1965 (79 Stat 437) as an appropriate target for the new remedies created by the Act, where Congress had reliable evidence of actual voting discrimination in a great majority of the states and political subdivisions affected by these new remedies and the formula eventually evolved, as expressed in 4(b), was relevant to the problem of voting discrimination, and Congress therefore was entitled to infer a significant danger of the evil in the few remaining states and political subdivisions covered by 4(b).

CIVIL RIGHTS §5.1 > Voting Rights Act -- geographical scope -- > Headnote:
LEdHN[20A] [20A]LEdHN[20B] [20B]

The new remedies of the Voting Rights Act of 1965 (79 Stat 437) are appropriately imposed on Alabama, Louisiana, and Mississippi, in which states federal courts have repeatedly found substantial voting discrimination, and also on Georgia, South Carolina, and large portions of North Carolina, for which states there was more fragmentary evidence of recent voting discrimination; it is also appropriate for Congress to impose the new remedies on the few remaining states and political subdivisions covered by the formula, at least in the absence of proof that they have been free of substantial voting discrimination in recent years.

UNITED STATES §14 > Congress -- source of information -- > Headnote:
LEdHN[21] [21]

In identifying past evils, Congress may avail itself of information from any probative source.

CONSTITUTIONAL LAW §829 > discrimination -- voting -- presumptions. -- > Headnote:
LEdHN[22] [22]

Congress is not bound by due process rules relating to statutory presumptions in criminal cases when prescribing civil remedies against other organs of government under its power to enforce the *Fifteenth Amendment*, prohibiting racial discrimination in voting.

CIVIL RIGHTS §5.1 > Voting Rights Act -- coverage formula -- > Headnote:
LEdHN[23] [23]

In determining the validity of the coverage formula of 4(b) of the Voting Rights Act of 1965 (79 Stat 437), defining the area in which voting tests are suspended by the Act, it is irrelevant that the formula excludes certain localities which do not employ voting tests and devices but for which there is evidence of voting discrimination by other means, where Congress has learned that widespread and persistent discrimination in voting during recent years has typically entailed the misuse of tests and devices, and this was the evil for which the new remedies were specifically designed.

CONSTITUTIONAL LAW §321 > legislation aimed at particular evils -- > Headnote:
LEdHN[24] [24]

Legislation need not deal with all phases of the problem in the same way, so long as the distinctions drawn have some basis in practical experience.

COURTS §530 > federal -- powers of Congress -- > Headnote:
LEdHN[25A] [25A]LEdHN[25B] [25B]

Litigation under 4(a) of the Voting Rights Act of 1965 (79 Stat 437), providing for termination of special statutory coverage at the behest of states and political subdivisions in which the danger of substantial voting discrimination has not materialized during the preceding 5 years, may be appropriately limited by Congress, under its power under *Article 3 1 of the Federal Constitution* to ordain and establish inferior federal tribunals, to the United States District Court for the District of Columbia (14(b) of the Act).

CONSTITUTIONAL LAW §830.7 > COURTS §537.5 > power of Congress -- burden of proof -- > Headnote:
LEdHN[26A] [26A]LEdHN[26B] [26B]

Congress may appropriately put the burden of proving nondiscrimination on the areas seeking termination of coverage under 4(a) of the Voting Rights Act of 1965 (79 Stat 437), particularly since the relevant facts relating to the conduct of voting officials are peculiarly within the knowledge of the states and political subdivisions themselves.

ADMINISTRATIVE LAW §203 > CIVIL RIGHTS §5.1 > Voting Rights Act -- judicial review -- > Headnote:
LEdHN[27] [27]

Section 4(b) of the Voting Rights Act of 1965 (79 Stat 437), insofar as it provides for nonreviewability by the courts of determinations, triggering the application of the coverage formula of 4(b), by the Attorney General and by the Director of the Census as to the percentages of non-white voters, is not invalid on the ground that it allows the new remedies of the Act to be imposed in an arbitrary way.

CIVIL RIGHTS §5 > voting -- racial discrimination -- > Headnote:
LEdHN[28] [28]

While voting qualifications consisting of literacy tests and related devices are not in themselves contrary to the *Fifteenth Amendment*, prohibiting racial discrimination in voting, the Amendment is violated where these tests and devices have been instituted with the purpose of disenfranchising Negroes, have been framed in such a way as to facilitate this aim, and have been administered in a discriminatory fashion for many years.

CIVIL RIGHTS §5.1 > Voting Rights Act -- suspension of literacy tests -- > Headnote:
LEdHN[29] [29]

The suspension, under 4(a) of the Voting Rights Act of 1965 (79 Stat 437), of literacy tests and similar devices for a period of 5 years from the last occurrence of substantial voting discrimination is a legitimate remedy within the power of Congress under the *Fifteenth Amendment*, where Congress believed that states and political subdivisions which had been allowing white illiterates to vote for years could not sincerely complain about dilution of their electorates through the registration of Negro illiterates, and where Congress knew that

continuance of the tests and devices in use at the present time, no matter how fairly administered in the future, would freeze the effect of past discrimination in favor of unqualified white registrants.

COURTS §236.5 > federal -- requisite of "controversy" -- > Headnote:
LEdHN[30][] [30]

The Voting Rights Act of 1965 (79 Stat 437) does not, by authorizing the United States District Court for the District of Columbia in 5 to determine whether new rules, practices, and procedures adopted by the states would violate the *Fifteenth Amendment*, prohibiting racial discrimination in voting, authorize the court to issue advisory opinions in violation of the principles of Article 3 of the Federal Constitution, since a state or political subdivision wishing to make use of a recent amendment to its voting laws has a concrete and immediate "controversy" with the Federal Government, and an appropriate remedy is a judicial determination that continued suspension of the new rule is unnecessary to vindicate rights guaranteed by the *Fifteenth Amendment*.

CIVIL RIGHTS §5.1 > Voting Rights Act -- challenge to eligibility -- > Headnote:
LEdHN[31][] [31]

The provisions of the Voting Rights Act of 1965 (79 Stat 437) requiring that a challenge to a listing on an eligibility list prepared by a federal examiner be made within 10 days after the listing is made available for public inspection 9(a), does not, on account of the briskness of the procedure, violate due process, in view of Congress' knowledge that in some of the areas affected, challenges have been persistently employed to harass registered Negroes.

ADMINISTRATIVE LAW §34 > CIVIL RIGHTS §5.1 > Voting Rights Act -- delegation of powers -- > Headnote:
LEdHN[32][] [32]

Section 6(b) of the Voting Rights Act of 1965 (79 Stat 437) does not, by authorizing the Attorney General of the United States to determine the localities to which federal examiners should be sent, permit this power to be used in an arbitrary fashion, without regard for the purposes of the Act, since 6(b) sets adequate standards to guide the exercise of his discretion, by directing him to calculate the registration ratio of non- whites to whites, and to weigh evidence of good-faith efforts to avoid possible voting discrimination, and since the special termination procedures of 13(a) provide indirect judicial review for the political subdivisions affected, assuring the withdrawal of federal examiners from areas where they are clearly not needed.

Syllabus

Invoking the Court's original jurisdiction under Art. III, § 2, of the Constitution, South Carolina filed a bill of complaint seeking a declaration of unconstitutionality as to certain provisions of the Voting Rights Act of 1965 and an injunction against their enforcement by defendant, the Attorney General. The Act's key features, aimed at areas where voting discrimination has been most flagrant, are: (1) A coverage formula or "triggering mechanism" in § 4 (b) determining applicability of its substantive provisions; (2) provision in § 4 (a) for temporary suspension of a State's voting tests or devices; (3) procedure in § 5 for review of new voting rules; and (4) a program in §§ 6 (b), 7, 9, and 13 (a) for using federal examiners to qualify applicants for registration who are thereafter entitled to vote in all elections. These remedial sections automatically apply to any State or its subdivision which the Attorney General has determined maintained on November 1, 1964, a registration or voting "test or device" (a literacy, educational, character, or voucher requirement as defined in § 4 (c)) and in which according to the Census **[****2]** Director's determination less than half the voting-age residents were registered or voted in the 1964 presidential election. Statutory coverage may be terminated by a declaratory judgment of a three-judge District of Columbia District Court that for the preceding five years racially discriminatory voting tests or devices have not been used. No person in a covered area may be denied voting rights because of failure to comply with a test or device. § 4 (a). Following administrative determinations, enforcement was temporarily suspended of South Carolina's literacy test as well as of tests and devices in certain other areas. The Act further provides

in § 5 that during the suspension period, a State or subdivision may not apply new voting rules unless the Attorney General has interposed no objection within 60 days of their submission to him, or a three-judge District of Columbia District Court has issued a declaratory judgment that such rules are not racially discriminatory. South Carolina wishes to apply a recent amendment to its voting laws without following these procedures. In any political subdivision where tests or devices have been suspended, the Civil Service Commission **[****3]** shall appoint voting examiners whenever the Attorney General has, after considering specified factors, duly certified receiving complaints of official racial voting discrimination from at least 20 residents or that the examiners' appointment is otherwise necessary under the *Fifteenth Amendment.* § 6 (b). Examiners are to transmit to the appropriate officials the names of applicants they find qualified; and such persons may vote in any election after 45 days following transmission of their names. § 7 (b). Removal by the examiners of names from voting lists is provided on loss of eligibility or on successful challenge under prescribed procedures. § 7 (d). The use of examiners is terminated if requested by the Attorney General or the political subdivision has obtained a declaratory judgment as specified in § 13 (a). Following certification by the Attorney General, federal examiners were appointed in two South Carolina counties as well as elsewhere in other States. Subsidiary cures for persistent voting discrimination and other special provisions are also contained in the Act. In addition to a general assault on the Act as unconstitutionally encroaching on States' rights, specific **[****4]** constitutional challenges by plaintiff and certain *amici curiae* are: The coverage formula violates the principle of equality between the States, denies due process through an invalid presumption, bars judicial review of administrative findings, is a bill of attainder, and legislatively adjudicates guilt; the review of new voting rules infringes Art. III by directing the District Court to issue advisory opinions; the assignment of federal examiners violates due process by foreclosing judicial review of administrative findings and impairs the separation of powers by giving the Attorney General judicial functions; the challenge procedure denies due process on account of its speed; and provisions for adjudication in the District of Columbia abridge due process by limiting litigation to a distant forum. *Held*:

1. This Court's judicial review does not cover portions of the Voting Rights Act of 1965 not challenged by plaintiff; nor does it extend to the Act's criminal provisions, as to which South Carolina's challenge is premature. Pp. 316-317.

2. The sections of the Act properly before this Court are a valid effectuation of the *Fifteenth Amendment*. Pp. 308-337.

(a) The Act's **[****5]** voluminous legislative history discloses unremitting and ingenious defiance in certain parts of the country of the *Fifteenth Amendment* (see paragraphs (b)-(d), *infra*) which Congress concluded called for sterner and more elaborate measures than those previously used. P. 309.

(b) Beginning in 1890, a few years before repeal of most of the legislation to enforce the *Fifteenth Amendment*, Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina and Virginia enacted tests, still in use, specifically designed to prevent Negroes from voting while permitting white persons to vote. Pp. 310-311.

(c) A variety of methods was used thereafter to keep Negroes from voting, one of the principal means being through racially discriminatory application of voting tests. Pp. 311-313.

(d) Case-by-case litigation against voting discrimination under the Civil Rights Acts of 1957, 1960, and 1964, has not appreciably increased Negro registration. Voting suits have been onerous to prepare, protracted, and where successful have often been followed by a shift in discriminatory devices, defiance or evasion of court orders. Pp. 313-315.

(e) A State is not a "person" within the meaning **[****6]** of the *Due Process Clause of the Fifth Amendment*; nor does it have standing to invoke the Bill of Attainder Clause of Art. I or the principle of separation of powers, which exist only to protect private individuals or groups. Pp. 323-324.

(f) Congress, as against the reserved powers of the States, may use any rational means to effectuate the constitutional prohibition of racial voting discrimination. P. 324.

(g) The *Fifteenth Amendment*, which is self-executing, supersedes contrary exertions of state power, and its enforcement is not confined to judicial invalidation of racially discriminatory state statutes and procedures or to general legislative prohibitions against violations of the Amendment. Pp. 325, 327.

(h) Congress, whose power to enforce the *Fifteenth Amendment* has repeatedly been upheld in the past, is free to use whatever means are appropriate to carry out

the objects of the Constitution. *McCulloch v. Maryland, 4 Wheat. 316*; *Ex parte Virginia, 100 U.S. 339, 345-346*. Pp. 326-327.

(i) Having determined case-by-case litigation inadequate to deal with racial voting discrimination, Congress has ample authority to prescribe remedies **[****7]** not requiring prior adjudication. P. 328.

(j) Congress is well within its powers in focusing upon the geographic areas where substantial racial voting discrimination had occurred. Pp. 328-329.

(k) Congress had reliable evidence of voting discrimination in a great majority of the areas covered by § 4 (b) of the Act and is warranted in inferring a significant danger of racial voting discrimination in the few other areas to which the formula in § 4 (b) applies. Pp. 329-330.

(l) The coverage formula is rational in theory since tests or devices have so long been used for disenfranchisement and a lower voting rate obviously results from such disenfranchisement. P. 330.

(m) The coverage formula is rational as being aimed at areas where widespread discrimination has existed through misuse of tests or devices even though it excludes certain areas where there is voting discrimination through other means. The Act, moreover, strengthens existing remedies for such discrimination in those other areas. Pp. 330-331.

(n) The provision for termination at the behest of the States of § 4 (b) coverage adequately deals with possible overbreadth; nor is the burden of proof imposed on the States **[****8]** unreasonable. Pp. 331-332.

(o) Limiting litigation to a single court in the District of Columbia is a permissible exercise of power under *Art. III, § 1, of the Constitution*, previously exercised by Congress on other occasions. Pp. 331-332.

(p) The Act's bar of judicial review of findings of the Attorney General and Census Director as to objective data is not unreasonable. This Court has sanctioned withdrawal of judicial review of administrative determinations in numerous other situations. Pp. 332-333.

(q) Congress has power to suspend literacy tests, it having found that such tests were used for discriminatory purposes in most of the States covered; their continuance, even if fairly administered, would freeze the effect of past discrimination; and re-registration of all voters would be too harsh an alternative. Such States cannot sincerely complain of electoral dilution by Negro illiterates when they long permitted white illiterates to vote. P. 334.

(r) Congress is warranted in suspending, pending federal scrutiny, new voting regulations in view of the way in which some States have previously employed new rules to circumvent adverse federal court decrees. P. 335.

(s) The provision **[****9]** whereby a State whose voting laws have been suspended under § 4 (a) must obtain judicial review of an amendment to such laws by the District Court for the District of Columbia presents a "controversy" under Art. III of the Constitution and therefore does not involve an advisory opinion contravening that provision. P. 335.

(t) The procedure for appointing federal examiners is an appropriate congressional response to the local tactics used to defy or evade federal court decrees. The challenge procedures contain precautionary features against error or fraud and are amply warranted in view of Congress' knowledge of harassing challenging tactics against registered Negroes. P. 336.

(u) Section 6 (b) has adequate standards to guide determination by the Attorney General in his selection of areas where federal examiners are to be appointed; and the termination procedures in § 13 (b) provide for indirect judicial review. Pp. 336-337.

Counsel: David W. Robinson II and Daniel R. McLeod, Attorney General of South Carolina, argued the cause for the plaintiff. With them on the brief was David W. Robinson.

Attorney General Katzenbach, defendant, argued the cause pro se. With him on the brief were **[****10]** Solicitor General Marshall, Assistant Attorney General Doar, Ralph S. Spritzer, Louis F. Claiborne, Robert S. Rifkind, David L. Norman and Alan G. Marer.

R. D. McIlwaine III, Assistant Attorney General, argued the cause for the Commonwealth of Virginia, as amicus curiae, in support of the plaintiff. With him on the brief were Robert Y. Button, Attorney General, and Henry T. Wickham. Jack P. F. Gremillion, Attorney General, argued the cause for the State of Louisiana, as amicus curiae, in support of the plaintiff. With him on the brief were Harry J. Kron, Assistant Attorney General, Thomas W. McFerrin, Sr., Sidney W. Provensal, Jr., and Alfred

Avins. Richmond M. Flowers, Attorney General, and Francis J. Mizell, Jr., argued the cause for the State of Alabama, as amicus curiae, in support of the plaintiff. With them on the briefs were George C. Wallace, Governor of Alabama, Gordon Madison, Assistant Attorney General, and Reid B. Barnes. Joe T. Patterson, Attorney General, and Charles Clark, Special Assistant Attorney General, argued the cause for the State of Mississippi, as amicus curiae, in support of the plaintiff. With them on the brief was Dugas Shands, Assistant Attorney **[****11]** General. E. Freeman Leverett, Deputy Assistant Attorney General, argued the cause for the State of Georgia, as amicus curiae, in support of the plaintiff. With him on the brief was Arthur K. Bolton, Attorney General.

Levin H. Campbell, Assistant Attorney General, and Archibald Cox, Special Assistant Attorney General, argued the cause for the Commonwealth of Massachusetts, as amicus curiae, in support of the defendant. With Mr. Campbell on the brief was Edward W. Brooke, Attorney General, joined by the following States through their Attorneys General and other officials as follows: Bert T. Kobayashi of Hawaii; John J. Dillon of Indiana, Theodore D. Wilson, Assistant Attorney General, and John O. Moss, Deputy Attorney General; Lawrence F. Scalise of Iowa; Robert C. Londerholm of Kansas; Richard J. Dubord of Maine; Thomas B. Finan of Maryland; Frank J. Kelley of Michigan, and Robert A. Derengoski, Solicitor General; Forrest H. Anderson of Montana; Arthur J. Sills of New Jersey; Louis J. Lefkowitz of New York; Charles Nesbitt of Oklahoma, and Charles L. Owens, Assistant Attorney General; Robert Y. Thornton of Oregon; Walter E. Alessandroni of Pennsylvania; J. Joseph Nugent of Rhode **[****12]** Island; John P. Connarn of Vermont; C. Donald Robertson of West Virginia; and Bronson C. LaFollette of Wisconsin. Alan B. Handler, First Assistant Attorney General, argued the cause for the State of New Jersey, as amicus curiae, in support of the defendant. Briefs of amici curiae, in support of the defendant, were filed by Thomas C. Lynch, Attorney General, Miles J. Rubin, Senior Assistant Attorney General, Dan Kaufmann, Assistant Attorney General, and Charles B. McKesson, David N. Rakov and Philip M. Rosten, Deputy Attorneys General, for the State of California; and by William G. Clark, Attorney General, Richard E. Friedman, First Assistant Attorney General, and Richard A. Michael and Philip J. Rock, Assistant Attorneys General, for the State of Illinois.

Judges: Warren, Fortas, Harlan, Brennan, Black, Stewart, Clark, White, Douglas

Opinion by: WARREN

Opinion

[*307] **[***774]** **[**807]** MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

LEdHN[1][1] [1]By leave of the *Court, 382 U.S. 898*, South Carolina has filed a bill of complaint, seeking a declaration that selected provisions of the Voting Rights Act of 1965 [1] violate the Federal Constitution, and asking for an injunction against enforcement **[****13]** of these provisions by the Attorney General. Original jurisdiction is founded on the presence of a controversy between a State and a citizen of another State under Art. III, § 2, of the Constitution. See *Georgia v. Pennsylvania R. Co., 324 U.S. 439*. Because no issues of fact were raised in the complaint, and because of South Carolina's desire to obtain a ruling prior to its primary elections in June 1966, we dispensed with appointment of a special master and expedited our hearing of the case.

Recognizing that the questions presented were of urgent concern to the entire country, we invited all of the States **[**808]** to participate in this proceeding as friends of the Court. A majority responded by submitting **[***775]** or joining in briefs on the merits, some supporting South Carolina and others the Attorney General. [2] Seven of these States **[*308]** also requested and received permission to argue the case orally at our hearing. **[****14]** Without exception, despite the emotional overtones of the proceeding, the briefs and oral arguments were temperate, lawyerlike and

[1] 79 Stat. 437, *42 U. S. C. § 1973 (1964 ed., Supp. I)*.

[2] States supporting South Carolina: Alabama, Georgia, Louisiana, Mississippi, and Virginia. States supporting the Attorney General: California, Illinois, and Massachusetts, joined by Hawaii, Indiana, Iowa, Kansas, Maine, Maryland, Michigan, Montana, New Hampshire, New Jersey, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, Vermont, West Virginia, and Wisconsin.

constructive. All viewpoints on the issues have been fully developed, and this additional assistance has been most helpful to the Court.

LEdHN[2][] [2] LEdHN[3A][] [3A]The Voting Rights Act was designed by Congress to banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century. The Act creates stringent new remedies for voting discrimination where it persists on a pervasive scale, and in addition the statute strengthens existing remedies for pockets of voting discrimination **[****15]** elsewhere in the country. Congress assumed the power to prescribe these remedies from § 2 of the Fifteenth Amendment, which authorizes the National Legislature to effectuate by "appropriate" measures the constitutional prohibition against racial discrimination in voting. We hold that the sections of the Act which are properly before us are an appropriate means for carrying out Congress' constitutional responsibilities and are consonant with all other provisions of the Constitution. We therefore deny South Carolina's request that enforcement of these sections of the Act be enjoined.

I.

LEdHN[4][] [4]The constitutional propriety of the Voting Rights Act of 1965 must be judged with reference to the historical experience which it reflects. Before enacting the measure, Congress explored with great care the problem of racial discrimination in voting. The House and Senate Committees on the Judiciary each held hearings for nine days and received testimony from a total of 67 witnesses. [3] **[*309]** More than three full days were consumed discussing the bill on the floor of the House, while the debate in the Senate covered 26 days in all. [4] At the close of these deliberations, the verdict of both **[****16]** chambers was overwhelming. The House approved the bill by a vote of 328-74, and the measure passed the Senate by a margin of 79-18.

Two points emerge vividly from the voluminous legislative history of the Act contained in the committee hearings and floor debates. First: Congress felt itself confronted by an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution. Second: Congress concluded that the unsuccessful remedies which it had prescribed in the past would **[****17]** have to be replaced by sterner and more elaborate measures in order to satisfy **[***776]** the clear commands of the *Fifteenth Amendment*. We pause here to summarize the majority reports of the House and Senate Committees, which document in considerable detail the factual basis for these **[**809]** reactions by Congress. [5] See H. R. Rep. No. 439, 89th Cong., 1st Sess., 8-16 (hereinafter cited as House Report); S. Rep. No. 162, pt. 3, 89th Cong., 1st Sess., 3-16 (hereinafter cited as Senate Report).

[**18]** **[*310]** The *Fifteenth Amendment to the Constitution* was ratified in 1870. Promptly thereafter Congress passed the Enforcement Act of 1870, [6] which made it a crime for public officers and private persons to obstruct exercise of the right to vote. The statute was amended in the following year [7] to provide for detailed federal supervision of the electoral process, from registration to the certification of returns. As the years passed and fervor for racial equality waned, enforcement of the laws became spotty and ineffective, and most of their provisions were repealed in 1894. [8] The remnants have had little significance in the recently renewed battle against voting discrimination.

Meanwhile, beginning in 1890, the States of Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia enacted tests still in use which were specifically designed to prevent Negroes from

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[3] See Hearings on H. R. 6400 before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess. (hereinafter cited as House Hearings); Hearings on S. 1564 before the Senate Committee on the Judiciary, 89th Cong., 1st Sess. (hereinafter cited as Senate Hearings).

[4] See the Congressional Record for April 22, 23, 26, 27, 28, 29, 30; May 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26; July 6, 7, 8, 9; August 3 and 4, 1965.

[5] The facts contained in these reports are confirmed, among other sources, by *United States v. Louisiana, 225 F.Supp. 353, 363-385* (Wisdom, J.), aff'd, *380 U.S. 145*; *United States v. Mississippi, 229 F.Supp. 925, 983-997* (dissenting opinion of Brown, J.), rev'd and rem'd, *380 U.S. 128*; *United States v. Alabama, 192 F.Supp. 677* (Johnson, J.), aff'd, *304 F.2d 583*, aff'd, *371 U.S. 37*; Comm'n on Civil Rights, Voting in Mississippi; 1963 Comm'n on Civil Rights Rep., Voting; 1961 Comm'n on Civil Rights Rep., Voting, pt. 2; 1959 Comm'n on Civil Rights Rep., pt. 2. See generally Christopher, The Constitutionality of the Voting Rights Act of 1965, 18 Stan. L. Rev. 1; Note, Federal Protection of Negro Voting Rights, 51 Va. L. Rev. 1051.

[6] 16 Stat. 140.

[7] 16 Stat. 433.

[8] 28 Stat. 36.

voting. [9] **[****20]** Typically, they made the ability to read and write **[****19]** **[*311]** a registration qualification and also required completion of a registration form. These laws were based on the fact that as of 1890 in each of the named States, more than two-thirds of the adult Negroes were illiterate while less than one-quarter of the adult whites were unable to read or write. [10] At the same time, alternate tests were prescribed in **[***777]** all of the named States to assure that white illiterates would not be deprived of the franchise. These included grandfather clauses, property qualifications, **[**810]** "good character" tests, and the requirement that registrants "understand" or "interpret" certain matter.

The course of subsequent *Fifteenth Amendment* litigation in this Court demonstrates the variety and persistence of these and similar institutions designed to deprive Negroes of the right to vote. Grandfather clauses were invalidated in *Guinn v. United States, 238 U.S. 347*, and *Myers v. Anderson, 238 U.S. 368*. Procedural hurdles were struck down in *Lane v. Wilson, 307 U.S. 268*. The white primary was outlawed in *Smith v. Allwright, 321 U.S. 649*, and *Terry v. Adams, 345 U.S. 461*. Improper challenges were nullified in *United States v. Thomas, 362 U.S. 58*. **[****21]** Racial gerrymandering was forbidden by *Gomillion v. Lightfoot, 364 U.S. 339*. Finally, discriminatory application of voting tests was condemned in *Schnell v. Davis, 336 U.S. 933*; *Alabama **[*312]** v. United States, 371 U.S. 37*; and *Louisiana v. United States, 380 U.S. 145*.

According to the evidence in recent Justice Department voting suits, the latter stratagem is now the principal method used to bar Negroes from the polls. Discriminatory administration of voting qualifications has been found in all eight Alabama cases, in all nine Louisiana cases, and in all nine Mississippi cases which have gone to final judgment. [11] Moreover, in almost all of these cases, the courts have held that the discrimination was pursuant to a widespread "pattern or practice." White applicants for registration have often been excused altogether from the literacy and understanding tests or have been given easy versions, have received extensive help from voting officials, and have been registered despite serious errors in their answers. [12] **[****23]** Negroes, on the other hand, have typically been required to pass difficult **[****22]** versions of all the tests, without any outside assistance and without the slightest error. [13] The good-morals requirement **[*313]** is so vague and subjective that it has constituted an open invitation **[***778]** to abuse at the hands of voting officials. [14] Negroes obliged to obtain vouchers from registered voters have found it virtually impossible to comply in areas where almost no Negroes

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[9] The South Carolina Constitutional Convention of 1895 was a leader in the widespread movement to disenfranchise Negroes. Key, Southern Politics, 537-539. Senator Ben Tillman frankly explained to the state delegates the aim of the new literacy test: "The only thing we can do as patriots and as statesmen is to take from [the 'ignorant blacks'] every ballot that we can under the laws of our national government." He was equally candid about the exemption from the literacy test for persons who could "understand" and "explain" a section of the state constitution: "There is no particle of fraud or illegality in it. It is just simply showing partiality, perhaps, [laughter,] or discriminating." He described the alternative exemption for persons paying state property taxes in the same vein: "By means of the $ 300 clause you simply reach out and take in some more white men and a few more colored men." Journal of the Constitutional Convention of the State of South Carolina 464, 469, 471 (1895). Senator Tillman was the dominant political figure in the state convention, and his entire address merits examination.

[10] Prior to the Civil War, most of the slave States made it a crime to teach Negroes how to read or write. Following the war, these States rapidly instituted racial segregation in their public schools. Throughout the period, free public education in the South had barely begun to develop. See *Brown v. Board of Education, 347 U.S. 483, 489-490, n. 4*; 1959 Comm'n on Civil Rights Rep. 147-151.

[11] For example, see three voting suits brought against the States themselves: *United States v. Alabama, 192 F.Supp. 677*, aff'd, *304 F.2d 583*, aff'd, *371 U.S. 37*; *United States v. Louisiana, 225 F.Supp. 353*, aff'd, *380 U.S. 145*; *United States v. Mississippi, 339 F.2d 679*.

[12] A white applicant in Louisiana satisfied the registrar of his ability to interpret the state constitution by writing, "FRDUM FOOF SPETGH." *United States v. Louisiana, 225 F.Supp. 353, 384*. A white applicant in Alabama who had never completed the first grade of school was enrolled after the registrar filled out the entire form for him. *United States v. Penton, 212 F.Supp. 193, 210-211*.

[13] In Panola County, Mississippi, the registrar required Negroes to interpret the provision of the state constitution concerning "the rate of interest on the fund known as the 'Chickasaw School Fund.'" *United States v. Duke, 332 F.2d 759, 764*. In Forrest County, Mississippi, the registrar rejected six Negroes with baccalaureate degrees, three of whom were also Masters of Arts. *United States v. Lynd, 301 F.2d 818, 821*.

[14] For example, see *United States v. Atkins, 323 F.2d 733, 743*.

are on the rolls. [15]

In recent years, Congress has repeatedly tried to cope with the problem by facilitating case-by-case litigation against voting discrimination. The Civil **[**811]** Rights Act of 1957 [16] authorized the Attorney General to seek injunctions against public and private interference with the right to vote on racial grounds. Perfecting amendments in the Civil Rights Act of 1960 [17] permitted the joinder of States as parties defendant, gave the Attorney General **[****24]** access to local voting records, and authorized courts to register voters in areas of systematic discrimination. Title I of the Civil Rights Act of 1964 [18] expedited the hearing of voting cases before three-judge courts and outlawed some of the tactics used to disqualify Negroes from voting in federal elections.

Despite the earnest efforts of the Justice Department and of many federal judges, these new laws have done little to cure the problem of voting discrimination. According to estimates by the Attorney General during hearings on the Act, registration of voting-age Negroes in Alabama rose only from 14.2% to 19.4% between 1958 and 1964; in Louisiana it barely inched ahead from 31.7% to 31.8% between 1956 and 1965; and in Mississippi it increased only from 4.4% to 6.4% between 1954 and 1964. In each instance, registration of voting-age whites ran roughly 50 percentage points or more ahead of Negro registration.

[*314] **[****25]** The previous legislation has proved ineffective for a number of reasons. Voting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 manhours spent combing through registration records in preparation for trial. Litigation has been exceedingly slow, in part because of the ample opportunities for delay afforded voting officials and others involved in the proceedings. Even when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration. [19] **[****26]** Alternatively, certain local officials have defied and evaded court orders or have simply closed their registration offices to freeze the voting rolls. [20] The provision of the 1960 law authorizing registration by federal officers has had little impact on local maladministration because of its procedural complexities.

During the hearings and debates on the Act, Selma, Alabama, was **[***779]** repeatedly referred to as the pre-eminent example of the ineffectiveness of existing legislation. In Dallas County, of which Selma is the seat, there were four years of litigation by the Justice Department and two findings by the federal courts of widespread voting discrimination. Yet in those four years, Negro registration **[*315]** rose only from 156 to 383, although there are approximately 15,000 Negroes of voting age in the county. Any possibility that these figures were attributable to political apathy was dispelled by the protest demonstrations in Selma in the early months of 1965. The House Committee on the Judiciary summed up the reaction of Congress to these developments in the following words:

"The litigation in Dallas County took more than 4 years to open **[**812]** the door to the exercise of constitutional rights conferred almost a century ago. The problem **[****27]** on a national scale is that the difficulties experienced in suits in Dallas County have been encountered over and over again under existing voting laws. Four years is too long. The burden is too heavy -- the wrong to our citizens is too serious -- the damage to our national conscience is too great not to adopt more effective measures than exist today.

"Such is the essential justification for the pending bill." House Report 11.

II.

The Voting Rights Act of 1965 reflects Congress' firm intention to rid the country of racial discrimination in

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[15] For example, see *United States v. Logue, 344 F.2d 290, 292*.

[16] 71 Stat. 634.

[17] 74 Stat. 86.

[18] 78 Stat. 241, *42 U. S. C. § 1971 (1964 ed.)*.

[19] The Court of Appeals for the Fifth Circuit ordered the registrars of Forrest County, Mississippi, to give future Negro applicants the same assistance which white applicants had enjoyed in the past, and to register future Negro applicants despite errors which were not serious enough to disqualify white applicants in the past. The Mississippi Legislature promptly responded by requiring applicants to complete their registration forms without assistance or error, and by adding a good-morals and public-challenge provision to the registration laws. *United States v. Mississippi, 229 F.Supp. 925, 996-997* (dissenting opinion).

[20] For example, see *United States v. Parker, 236 F.Supp. 511*; *United States v. Palmer, 230 F.Supp. 716*.

voting. [21] The heart of the Act is a complex scheme of stringent remedies aimed at areas where voting discrimination has been most flagrant. Section 4 (a)-(d) lays down a formula defining the States and political subdivisions to which these new remedies apply. The first of the remedies, contained in § 4 (a), is the suspension of literacy tests and similar voting qualifications for a period of five years from the last occurrence of substantial voting discrimination. Section 5 prescribes a second **[*316]** remedy, the suspension of all new voting regulations pending review by federal authorities to determine whether their use would perpetuate **[****28]** voting discrimination. The third remedy, covered in §§ 6 (b), 7, 9, and 13 (a), is the assignment of federal examiners on certification by the Attorney General to list qualified applicants who are thereafter entitled to vote in all elections.

Other provisions of the Act prescribe subsidiary cures for persistent voting discrimination. Section 8 authorizes the appointment of federal poll-watchers in places to which federal examiners have already been assigned. Section 10 (d) excuses those made eligible to vote in sections of the country covered by § 4 (b) of the Act from paying accumulated past poll taxes for state and local elections. Section 12 (e) provides for balloting by persons denied access to the polls in areas where federal examiners have been appointed.

The remaining remedial portions of the Act are aimed at voting discrimination in any area of the country where it may occur. Section 2 broadly prohibits the use of **[****29]** voting rules to abridge exercise of the franchise on racial grounds. Sections 3, 6 (a), and 13 (b) strengthen existing procedures for attacking voting discrimination by means of litigation. Section 4 (e) excuses citizens educated in American schools conducted in a foreign language from **[***780]** passing English-language literacy tests. Section 10 (a)-(c) facilitates constitutional litigation challenging the imposition of all poll taxes for state and local elections. Sections 11 and 12 (a)-(d) authorize civil and criminal sanctions against interference with the exercise of rights guaranteed by the Act.

LEdHN[5][⬆] [5]***LEdHN[6]***[⬆] [6]At the outset, we emphasize that only some of the many portions of the Act are properly before us. South Carolina has not challenged §§ 2, 3, 4 (e), 6 (a), 8, 10, 12 (d) and (e), 13 (b), and other miscellaneous provisions having nothing to do with this lawsuit. Judicial review of these sections must await subsequent litigation. [22] **[*317]** In addition, **[**813]** we find that South Carolina's attack on §§ 11 and 12 (a)-(c) is premature. No person has yet been subjected to, or even threatened with, the criminal sanctions which these sections of the Act authorize. See *United States v. Raines, 362 U.S. 17, 20-24*. **[****30]** Consequently, the only sections of the Act to be reviewed at this time are §§ 4 (a)-(d), 5, 6 (b), 7, 9, 13 (a), and certain procedural portions of § 14, all of which are presently in actual operation in South Carolina. We turn now to a detailed description of these provisions and their present status.

Coverage formula.

The remedial sections of the Act assailed by South Carolina automatically apply **[****31]** to any State, or to any separate political subdivision such as a county or parish, for which two findings have been made: (1) the Attorney General has determined that on November 1, 1964, it maintained a "test or device," and (2) the Director of the Census has determined that less than 50% of its voting-age residents were registered on November 1, 1964, or voted in the presidential election of November 1964. These findings are not reviewable in any court and are final upon publication in the Federal Register. § 4 (b). As used throughout the Act, the phrase "test or device" means any requirement that a registrant or voter must "(1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications **[*318]** by the voucher of registered voters or members of any other class." § 4 (c).

Statutory coverage of a State or political subdivision under § 4 (b) is terminated if the area obtains a declaratory judgment from the District Court for the District of Columbia, determining that tests and devices have not been used during **[****32]** the preceding five years to abridge the franchise on racial grounds. The Attorney General shall consent to entry of the judgment if

[21] For convenient reference, the entire Act is reprinted in an Appendix to this opinion.

[22] Section 4 (e) has been challenged in *Morgan v. Katzenbach, 247 F.Supp. 196*, prob. juris. noted, ***382 U.S. 1007***, and in *United States v. County Bd. of Elections, 248 F.Supp. 316*. Section 10 (a)-(c) is involved in *United States v. Texas, 252 F.Supp. 234*, and in *United States v. Alabama, 252 F.Supp. 95*; see also *Harper* v. *Virginia State Bd. of Elections*, No. 48, 1965 Term, and *Butts* v. *Harrison*, No. 655, 1965 Term, which were argued together before this Court on January 25 and 26, 1966.

he has no reason to believe that the facts are otherwise. § 4 (a). For the purposes of this section, tests and devices are not deemed to have been used in a forbidden manner if the incidents of discrimination are few in number and have been promptly corrected, if their continuing effects have been abated, and if they are **[***781]** unlikely to recur in the future. § 4 (d). On the other hand, no area may obtain a declaratory judgment for five years after the final decision of a federal court (other than the denial of a judgment under this section of the Act), determining that discrimination through the use of tests or devices has occurred anywhere in the State or political subdivision. These declaratory judgment actions are to be heard by a three-judge panel, with direct appeal to this Court. § 4 (a).

South Carolina was brought within the coverage formula of the Act on August 7, 1965, pursuant to appropriate administrative determinations which have not been challenged in this proceeding. [23] On the same day, coverage was also extended to Alabama, **[****33]** Alaska, Georgia, Louisiana, Mississippi, Virginia, 26 counties in North Carolina, and one county in Arizona. [24] Two more counties in Arizona, one county in Hawaii, and one county in Idaho were added to the list on November 19, 1965. [25] **[*319]** Thus far Alaska, the three Arizona counties, and the single county in Idaho have asked the District Court for the District of Columbia to grant a declaratory judgment terminating statutory coverage. [26]

Suspension **[**814]** *of tests*.

In a State or political subdivision covered by § 4 (b) of the Act, no person may be denied the right to vote in any election because of his failure to comply with a "test or device." § 4 (a).

On account of this provision, South Carolina is temporarily barred from **[****34]** enforcing the portion of its voting laws which requires every applicant for registration to show that he:

"Can both read and write any section of [the State] Constitution submitted to [him] by the registration officer or can show that he owns, and has paid all taxes collectible during the previous year on, property in this State assessed at three hundred dollars or more." S. C. Code Ann. § 23-62 (4) (1965 Supp.).

The Attorney General has determined that the property qualification is inseparable from the literacy test, [27] and South Carolina makes no objection to this finding. Similar tests and devices have been temporarily suspended in the other sections of the country listed above. [28]

Review of new rules.

In a State or political subdivision covered by § 4 (b) of the Act, no person may be denied the right to vote **[****35]** in any election because of his failure to comply with a voting qualification or procedure different from those in force on **[*320]** November 1, 1964. This suspension of new rules is terminated, however, under either of the following circumstances: (1) if the area has submitted the rules to the Attorney General, and he has not interposed an objection within 60 days, or (2) if the area has obtained a declaratory judgment from the District Court for the District of Columbia, determining that the rules will not abridge the franchise **[***782]** on racial grounds. These declaratory judgment actions are to be heard by a three-judge panel, with direct appeal to this Court. § 5.

South Carolina altered its voting laws in 1965 to extend the closing hour at polling places from 6 p. m. to 7 p. m. [29] The State has not sought judicial review of this change in the District Court for the District of Columbia, nor has it submitted the new rule to the Attorney General for his scrutiny, although at our hearing the Attorney General announced that he does not challenge the amendment. There are indications in the record that other sections of the country listed above have also altered their voting **[****36]** laws since November 1, 1964. [30]

Federal examiners.

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[23] ***30 Fed. Reg. 9897***.

[24] *Ibid*.

[25] ***30 Fed. Reg. 14505***.

[26] *Alaska* v. *United States*, Civ. Act. 101-66; *Apache County* v. *United States*, Civ. Act. 292-66; *Elmore County* v. *United States*, Civ. Act. 320-66.

[27] *30 Fed. Reg. 14045*-14046.

[28] For a chart of the tests and devices in effect at the time the Act was under consideration, see House Hearings 30-32; Senate Report 42-43.

[29] S. C. Code Ann. § 23-342 (1965 Supp.).

[30] Brief for Mississippi as *amicus curiae*, App.

In any political subdivision covered by § 4 (b) of the Act, the Civil Service Commission shall appoint voting examiners whenever the Attorney General certifies either of the following facts: (1) that he has received meritorious written complaints from at least 20 residents alleging that they have been disenfranchised under color of law because of their race, or (2) that the appointment of examiners is otherwise necessary to effectuate the guarantees of the *Fifteenth Amendment*. In making the latter determination, the Attorney General must consider, among other factors, whether the registration ratio of non-whites to whites seems reasonably attributable to **[*321]** racial discrimination, or whether there is substantial evidence of good-faith efforts to comply with the *Fifteenth Amendment.* § 6 (b). These certifications are not reviewable in any court and are **[****37]** effective upon publication in the Federal Register. § 4 (b).

The examiners who have been appointed are to test the voting qualifications **[**815]** of applicants according to regulations of the Civil Service Commission prescribing times, places, procedures, and forms. §§ 7 (a) and 9 (b). Any person who meets the voting requirements of state law, insofar as these have not been suspended by the Act, must promptly be placed on a list of eligible voters. Examiners are to transmit their lists at least once a month to the appropriate state or local officials, who in turn are required to place the listed names on the official voting rolls. Any person listed by an examiner is entitled to vote in all elections held more than 45 days after his name has been transmitted. § 7 (b).

A person shall be removed from the voting list by an examiner if he has lost his eligibility under valid state law, or if he has been successfully challenged through the procedure prescribed in § 9 (a) of the Act. § 7 (d). The challenge must be filed at the office within the State designated by the Civil Service Commission; must be submitted within 10 days after the listing is made available for public inspection; **[****38]** must be supported by the affidavits of at least two people having personal knowledge of the relevant facts; and must be served on the person challenged by mail or at his residence. A hearing officer appointed by the Civil Service Commission shall hear the challenge and render a decision within 15 days after the challenge is filed. A petition for review of the hearing officer's decision must be submitted within an additional 15 days after service of the decision on the person seeking review. The court of appeals for the **[***783]** circuit in which the person challenged resides is to **[*322]** hear the petition and affirm the hearing officer's decision unless it is clearly erroneous. Any person listed by an examiner is entitled to vote pending a final decision of the hearing officer or the court. § 9 (a).

The listing procedures in a political subdivision are terminated under either of the following circumstances: (1) if the Attorney General informs the Civil Service Commission that all persons listed by examiners have been placed on the official voting rolls, and that there is no longer reasonable cause to fear abridgment of the franchise on racial grounds, or (2) if the political **[****39]** subdivision has obtained a declaratory judgment from the District Court for the District of Columbia, ascertaining the same facts which govern termination by the Attorney General, and the Director of the Census has determined that more than 50% of the non-white residents of voting age are registered to vote. A political subdivision may petition the Attorney General to terminate listing procedures or to authorize the necessary census, and the District Court itself shall request the census if the Attorney General's refusal to do so is arbitrary or unreasonable. § 13 (a). The determinations by the Director of the Census are not reviewable in any court and are final upon publication in the Federal Register. § 4 (b).

On October 30, 1965, the Attorney General certified the need for federal examiners in two South Carolina counties, [31] and examiners appointed by the Civil Service Commission have been serving there since November 8, 1965. Examiners have also been assigned to 11 counties in Alabama, five parishes in Louisiana, and 19 counties in Mississippi. [32] The examiners are listing people found eligible to vote, and the challenge procedure has been **[*323]** employed extensively. **[****40]** [33] No political subdivision has yet sought to have federal examiners withdrawn through the Attorney General or the **[**816]** District Court for the District of Columbia.

III.

These provisions of the Voting Rights Act of 1965 are challenged on the fundamental ground that they exceed the powers of Congress and encroach on an area reserved to the States by the Constitution. South Carolina and certain of the *amici curiae* also attack

[31] ***30 Fed. Reg. 13850***.

[32] ***30 Fed. Reg. 9970-9971, 10863, 12363, 12654, 13849-13850, 15837***; ***31 Fed. Reg. 914***.

[33] See Comm'n on Civil Rights, The Voting Rights Act (1965).

specific sections of the Act for more particular reasons. They argue that the coverage formula prescribed in § 4 (a)-(d) violates the principle of the equality of States, denies due process by employing an invalid presumption and by barring judicial review of administrative findings, constitutes a forbidden bill of attainder, and impairs the separation of powers **[****41]** by adjudicating guilt through legislation. They claim that the review of new voting rules required in § 5 infringes Article III by directing the District Court to issue advisory opinions. They contend that the assignment of federal examiners authorized in § 6 (b) abridges due process by precluding judicial review of administrative findings and impairs the separation of powers by giving the Attorney **[***784]** General judicial functions; also that the challenge procedure prescribed in § 9 denies due process on account of its speed. Finally, South Carolina and certain of the *amici curiae* maintain that §§ 4 (a) and 5, buttressed by § 14 (b) of the Act, abridge due process by limiting litigation to a distant forum.

LEdHN[7][⬆] [7]**LEdHN[8]**[⬆] [8]**LEdHN[9]**[⬆] [9]Some of these contentions may be dismissed at the outset. **HN1**[⬆] The word "person" in the context of the Due Process Clause of the Fifth Amendment cannot, by any reasonable mode of interpretation, be expanded to encompass the States of the Union, and to our knowledge **[*324]** this has never been done by any court. See *International Shoe Co*. v. Cocreham, 246 La. 244, 266, 164 So.2d 314, 322, n. 5; cf. United States v. City of Jackson, 318 F.2d 1, 8 **[****42]** (C. A. 5th Cir.). Likewise, courts have consistently regarded the Bill of Attainder Clause of Article I and the principle of the separation of powers only as protections for individual persons and private groups, those who are peculiarly vulnerable to nonjudicial determinations of guilt. See United States v. Brown, 381 U.S. 437; Ex parte Garland, 4 Wall. 333. Nor does a State have standing as the parent of its citizens to invoke these constitutional provisions against the Federal Government, the ultimate *parens patriae* of every American citizen. Massachusetts v. Mellon, 262 U.S. 447, 485-486; Florida v. Mellon, 273 U.S. 12, 18. The objections to the Act which are raised under these provisions may therefore be considered only as additional aspects of the basic question presented by the case: Has Congress exercised its powers under the Fifteenth Amendment in an appropriate manner with relation to the States?

LEdHN[10][⬆] [10]The ground rules for resolving this question are clear. The language and purpose of the Fifteenth Amendment, the prior decisions construing its several provisions, and the general **[****43]** doctrines of constitutional interpretation, all point to one fundamental principle. **HN2**[⬆] As against the reserved powers of the States, Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting. Cf. our rulings last Term, sustaining Title II of the Civil Rights Act of 1964, in Heart of Atlanta Motel v. United States, 379 U.S. 241, 258-259, 261-262; and Katzenbach v. McClung, 379 U.S. 294, 303-304. We turn now to a more detailed description of the standards which govern our review of the Act.

[*325] **LEdHN[11]**[⬆] [11]**LEdHN[12]**[⬆] [12]**LEdHN[13]**[⬆] [13]**HN3**[⬆] Section 1 of the Fifteenth Amendment declares that "the right of citizens of the United States to vote shall not be denied or abridged by the United **[**817]** States or by any State on account of race, color, or previous condition of servitude." **HN4**[⬆] This declaration has always been treated as self-executing and has repeatedly been construed, without further legislative specification, to invalidate state voting qualifications or procedures which are discriminatory on their face or in practice. See Neal v. Delaware, 103 U.S. 370; Guinn v. United States, 238 U.S. 347; **[****44]** Myers v. Anderson, 238 U.S. 368; Lane v. Wilson, 307 U.S. 268; Smith v. Allwright, 321 U.S. 649; *Schnell v. Davis, 336 U.S. 933*; **[***785]** Terry v. Adams, 345 U.S. 461; United States v. Thomas, 362 U.S. 58; Gomillion v. Lightfoot, 364 U.S. 339; Alabama v. United States, 371 U.S. 37; Louisiana v. United States, 380 U.S. 145.These decisions have been rendered with full respect for the general rule, reiterated last Term in Carrington v. Rash, 380 U.S. 89, 91, that **HN5**[⬆] States "have broad powers to determine the conditions under which the right of suffrage may be exercised." The gist of the matter is that the Fifteenth Amendment supersedes contrary exertions of state power. "When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right." Gomillion v. Lightfoot, 364 U.S., at 347.

[**45]** **LEdHN[14]**[⬆] [14]South Carolina contends that the cases cited above are precedents only for the authority of the judiciary to strike down state statutes and procedures -- that to allow an exercise of this authority by Congress would be to rob the courts of their rightful constitutional role. On the contrary, **HN6**[⬆] § 2 of the

Fifteenth Amendment expressly declares that "Congress shall have power to enforce this article by appropriate legislation." HN7[↑] By adding this **[*326]** authorization, the Framers indicated that Congress was to be chiefly responsible for implementing the rights created in § 1. "It is the power of Congress which has been enlarged. Congress is authorized to *enforce* the prohibitions by appropriate legislation. Some legislation is contemplated to make the [Civil War] amendments fully effective." *Ex parte Virginia, 100 U.S. 339, 345*. Accordingly, in addition to the courts, Congress has full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting.

Congress has repeatedly exercised these powers in the past, and its enactments have repeatedly been upheld. For recent examples, see the Civil Rights Act of 1957, which was **[****46]** sustained in *United States v. Raines, 362 U.S. 17*; *United States v. Thomas, supra*; and *Hannah v. Larche, 363 U.S. 420*; and the Civil Rights Act of 1960, which was upheld in *Alabama v. United States, supra*; *Louisiana v. United States, supra*; and *United States v. Mississippi, 380 U.S. 128*. On the rare occasions when the Court has found an unconstitutional exercise of these powers, in its opinion Congress had attacked evils not comprehended by the *Fifteenth Amendment*. See *United States v. Reese, 92 U.S. 214*; *James v. Bowman, 190 U.S. 127*.

LEdHN[15][↑] [15]HN8[↑] The basic test to be applied in a case involving § 2 of the Fifteenth Amendment is the same as in all cases concerning the express powers of Congress with relation to the reserved powers of the States. Chief Justice Marshall laid down the classic formulation, 50 **[**818]** years before the *Fifteenth Amendment* was ratified:

"Let the end be legitimate, let it be within the scope of the constitution, **[***786]** and all means which are appropriate, which are plainly **[****47]** adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *McCulloch v. Maryland, 4 Wheat. 316, 421*.

[*327] The Court has subsequently echoed his language in describing each of the Civil War Amendments:

HN9[↑] "Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power." *Ex parte Virginia, 100 U.S., at 345-346*.

This language was again employed, nearly 50 years later, with reference to Congress' related authority under § 2 of the Eighteenth Amendment. *James Everard's Breweries v. Day, 265 U.S. 545, 558-559*.

LEdHN[16][↑] [16]We therefore reject South Carolina's argument that Congress may appropriately do no more than to forbid violations of the *Fifteenth Amendment* in general terms -- that the task of fashioning specific remedies **[****48]** or of applying them to particular localities must necessarily be left entirely to the courts. Congress is not circumscribed by any such artificial rules under § 2 of the Fifteenth Amendment. In the oft-repeated words of Chief Justice Marshall, referring to another specific legislative authorization in the Constitution, "This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution." *Gibbons v. Ogden, 9 Wheat. 1, 196*.

IV.

Congress exercised its authority under the *Fifteenth Amendment* in an inventive manner when it enacted the Voting Rights Act of 1965. First: The measure prescribes remedies for voting discrimination which go into **[*328]** effect without any need for prior adjudication. This was clearly a legitimate response to the problem, for which there is ample precedent under other constitutional provisions. See *Katzenbach v. McClung, 379 U.S. 294, 302-304*; *United States v. Darby, 312 U.S. 100, 120-121*. Congress had found that case-by-case litigation was inadequate to combat **[****49]** widespread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably

encountered in these lawsuits. [34] After enduring nearly a century of systematic resistance to the *Fifteenth Amendment*, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims. The question remains, of course, whether the specific remedies prescribed in the Act were an appropriate means of combatting the evil, and to this question we shall presently address ourselves.

LEdHN[17][↑] [17] LEdHN[18][↑] [18]Second: The Act intentionally confines these remedies to **[***787]** a small number of States and political subdivisions which in most instances were familiar to Congress by name. [35] This, too, was a permissible method of dealing with the problem. Congress had learned that substantial voting discrimination **[**819]** presently occurs in certain sections of the country, and it knew no way **[****50]** of accurately forecasting whether the evil might spread elsewhere in the future. [36] In acceptable legislative fashion, Congress chose to limit its attention to the geographic areas where immediate action seemed necessary. See *McGowan v. Maryland, 366 U.S. 420, 427*; *Salsburg v. Maryland, 346 U.S. 545, 550-554*. The doctrine of the equality of States, invoked by South Carolina, does not bar this approach, for HN10[↑] that doctrine applies only to the terms **[*329]** upon which States are admitted to the Union, and not to the remedies for local evils which have subsequently appeared. See *Coyle v. Smith, 221 U.S. 559*, and cases cited therein.

Coverage formula.

LEdHN[19A][↑] [19A]We now consider the related question of whether the specific States and political subdivisions within § 4 (b) of the Act were an appropriate target for the new remedies. South Carolina contends that **[****51]** the coverage formula is awkwardly designed in a number of respects and that it disregards various local conditions which have nothing to do with racial discrimination. These arguments, however, are largely beside the point. [37] Congress began work with reliable evidence of actual voting discrimination in a great majority of the States and political subdivisions affected by the new remedies of the Act. The formula eventually evolved to describe these areas was relevant to the problem of voting discrimination, and Congress was therefore entitled to infer a significant danger of the evil in the few remaining States and political subdivisions covered by § 4 (b) of the Act. No more was required to justify the application to these areas of Congress' express powers under the *Fifteenth Amendment*. Cf. *North American Co*. v. *S. E. C., 327 U.S. 686, 710-711*; *Assigned Car Cases, 274 U.S. 564, 582-583*.

[**52]** LEdHN[20A][↑] [20A] LEdHN[21][↑] [21]To be specific, the new remedies of the Act are imposed on three States -- Alabama, Louisiana, and Mississippi -- in which federal courts have repeatedly found substantial voting discrimination. [38] Section 4 (b) of the Act also embraces two other States -- Georgia and South Carolina -- plus large portions of a third State -- North Carolina -- for which there was more fragmentary evidence of **[*330]** recent voting discrimination mainly adduced by the Justice Department and the Civil Rights Commission. [39] All of these areas were appropriately subjected to the new remedies. In identifying past evils, Congress obviously may avail itself of information from any probative source. See **[***788]** *Heart of Atlanta Motel v. United States, 379 U.S. 241, 252-253*; *Katzenbach v. McClung, 379 U.S., at 299-301*.

[**53]** LEdHN[19B][↑] [19B] LEdHN[20B][↑] [20B] LEdHN[22][↑] [22]The areas listed above, for which there was evidence of actual voting discrimination, share two characteristics incorporated by Congress into the coverage formula: the use of tests and devices for voter registration, and a voting rate in the 1964 presidential election at least 12 points below the national average. Tests and devices are relevant to voting discrimination because of their long history as a tool for perpetrating the evil; a low voting rate is pertinent for the obvious **[**820]** reason that widespread disenfranchisement must inevitably affect the number of actual voters. Accordingly, the coverage formula is rational in both practice and theory. It was therefore permissible to impose the new remedies on the few remaining States and political subdivisions covered by the formula, at least in the absence of proof that they have been free of substantial voting discrimination in recent years. HN11[↑] Congress is clearly not bound by

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[34] House Report 9-11; Senate Report 6-9.

[35] House Report 13; Senate Report 52, 55.

[36] House Hearings 27; Senate Hearings 201.

[37] For Congress' defense of the formula, see House Report 13-14; Senate Report 13-14.

[38] House Report 12; Senate Report 9-10.

[39] Georgia: House Hearings 160-176; Senate Hearings 1182-1184, 1237, 1253, 1300-1301, 1336-1345. North Carolina: Senate Hearings 27-28, 39, 246-248. South Carolina: House Hearings 114-116, 196-201; Senate Hearings 1353-1354.

the rules relating to statutory presumptions in criminal cases when it prescribes civil remedies against other organs of government under § 2 of the Fifteenth Amendment. Compare *United States v. Romano, 382 U.S. 136*; *Tot v. United States, 319 U.S. 463*.

[**54]** *LEdHN[23]*[] [23]*LEdHN[24]*[] [24]It is irrelevant that the coverage formula excludes certain localities which do not employ voting tests and **[*331]** devices but for which there is evidence of voting discrimination by other means. Congress had learned that widespread and persistent discrimination in voting during recent years has typically entailed the misuse of tests and devices, and this was the evil for which the new remedies were specifically designed. [40] At the same time, through §§ 3, 6 (a), and 13 (b) of the Act, Congress strengthened existing remedies for voting discrimination in other areas of the country. *HN12*[] Legislation need not deal with all phases of a problem in the same way, so long as the distinctions drawn have some basis in practical experience. See *Williamson v. Lee Optical Co., 348 U.S. 483, 488-489*; *Railway Express Agency v. New York, 336 U.S. 106*. There are no States or political subdivisions exempted from coverage under § 4 (b) in which the record reveals recent racial discrimination involving tests and devices. This fact confirms the rationality of the formula.

[**55]** *LEdHN[25A]*[] [25A]

Acknowledging the possibility of overbreadth, the Act provides for termination of special statutory coverage at the behest of States and political subdivisions in which the danger of substantial voting discrimination has not materialized during the preceding five years. Despite South Carolina's argument to the contrary, Congress might appropriately limit litigation under this provision to a single court in the District of Columbia, pursuant to its constitutional power under Art. III, § 1, to "ordain and establish" inferior federal tribunals. See *Bowles v. Willingham, 321 U.S. 503, 510-512*; *Yakus v. United States, 321 U.S. 414, 427-431*; *Lockerty v. Phillips, 319 U.S. 182*. At the present time, **[***789]** contractual claims against the United States for more than $ 10,000 must be brought in the Court of Claims, and, until 1962, the District of Columbia was the sole venue of suits against **[*332]** federal officers officially residing in the Nation's Capital. [41] We have discovered no suggestion that Congress exceeded constitutional bounds in imposing these limitations on litigation against the Federal Government, **[****56]** and the Act is no less reasonable in this respect.

LEdHN[26A][] [26A]

South Carolina contends that these termination procedures are a nullity because they impose an impossible burden of proof upon States and political subdivisions entitled to relief. As the Attorney General pointed out during hearings on the Act, however, an area need do no more than submit affidavits from voting officials, asserting that **[**821]** they have not been guilty of racial discrimination through the use of tests and devices during the past five years, and then refute whatever evidence to the contrary may be adduced by the Federal Government. [42] Section 4 (d) further assures that an area need not **[****57]** disprove each isolated instance of voting discrimination in order to obtain relief in the termination proceedings. The burden of proof is therefore quite bearable, particularly since the relevant facts relating to the conduct of voting officials are peculiarly within the knowledge of the States and political subdivisions themselves. See *United States v. New York, N. H. & H. R. Co., 355 U.S. 253, 256, n. 5*; cf. *S. E. C.* v. *Ralston Purina Co., 346 U.S. 119, 126*.

LEdHN[27][] [27]The Act bars direct judicial review of the findings by the Attorney General and the Director of the Census which trigger application of the coverage formula. We reject the claim by Alabama as *amicus curiae* that this provision is invalid because it allows the new remedies of **[*333]** the Act to be imposed in an arbitrary way. The Court has already permitted Congress to withdraw judicial review of administrative determinations in numerous cases involving the **[****58]** statutory rights of private parties. For example, see *United States v. California Eastern Line, 348 U.S. 351*; *Switchmen's Union v. National Mediation Bd., 320 U.S. 297*.In this instance, the findings not subject to review consist of objective statistical

[40] House Hearings 75-77; Senate Hearings 241-243.

[41] Regarding claims against the United States, see *28 U. S. C. §§ 1491*, *1346 (a) (1964 ed.)*. Concerning suits against federal officers, see *Stroud v. Benson, 254 F.2d 448*; H. R. Rep. No. 536, 87th Cong., 1st Sess.; S. Rep. No. 1992, 87th Cong., 2d Sess.; *28 U. S. C. § 1391 (e) (1964 ed.)*; 2 Moore, Federal Practice para. 4.29 (1964 ed.).

[42] House Hearings 92-93; Senate Hearings 26-27.

determinations by the Census Bureau and a routine analysis of state statutes by the Justice Department. These functions are unlikely to arouse any plausible dispute, as South Carolina apparently concedes. In the event that the formula is improperly applied, the area affected can always go into court and obtain termination of coverage under § 4 (b), provided of course that it has not been guilty of voting discrimination in recent years. This procedure serves as a partial substitute for direct judicial review.

Suspension of tests.

LEdHN[28][↑] [28]We now arrive at consideration of the specific remedies prescribed by the Act for areas included within the coverage formula. South Carolina assails the temporary suspension of existing voting qualifications, reciting the rule laid down by *Lassiter v. Northampton* ***[***790]*** *County Bd. of Elections, 360 U.S. 45*, that HN13[↑] literacy **[****59]** tests and related devices are not in themselves contrary to the *Fifteenth Amendment*. In that very case, however, the Court went on to say, "Of course a literacy test, fair on its face, may be employed to perpetuate that discrimination which the *Fifteenth Amendment* was designed to uproot." *Id., at 53*. The record shows that in most of the States covered by the Act, including South Carolina, various tests and devices have been instituted with the purpose of disenfranchising Negroes, have been framed in such a way as to facilitate this aim, and have been administered **[*334]** in a discriminatory fashion for many years. [43] Under these circumstances, the *Fifteenth Amendment* has clearly been violated. See *Louisiana v. United States, 380 U.S. 145*; *Alabama v. United States, 371 U.S. 37*; *Schnell v. Davis, 336 U.S. 933*.

LEdHN[29][↑] [29]The Act suspends literacy tests and similar devices for a period **[****60]** of five years from the last occurrence of substantial voting discrimination. This was a legitimate response to the problem, for which there is ample precedent in *Fifteenth Amendment* cases. *Ibid*. Underlying the response was the feeling that **[**822]** States and political subdivisions which had been allowing white illiterates to vote for years could not sincerely complain about "dilution" of their electorates through the registration of Negro illiterates. [44] Congress knew that continuance of the tests and devices in use at the present time, no matter how fairly administered in the future, would freeze the effect of past discrimination in favor of unqualified white registrants. [45] Congress permissibly rejected the alternative of requiring a complete re-registration of all voters, believing that this would be too harsh on many whites who had enjoyed the franchise for their entire adult lives. [46]

[**61]** *Review of new rules*.

LEdHN[3B][↑] [3B]

The Act suspends new voting regulations pending scrutiny by federal authorities to determine whether their use would violate the *Fifteenth Amendment*. This may have been an uncommon exercise of congressional power, as South Carolina contends, but the Court has recognized that exceptional conditions can justify legislative measures not otherwise appropriate. See *Home* ***[*335]*** *Bldg. & Loan Assn*. v. *Blaisdell, 290 U.S. 398*; *Wilson v. New, 243 U.S. 332*. Congress knew that some of the States covered by § 4 (b) of the Act had resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees. [47] Congress had reason to suppose that these States might try similar maneuvers in the future in order to evade the remedies for voting discrimination contained in the Act itself. Under the compulsion of these unique circumstances, Congress responded in a permissibly decisive manner.

[**62]** LEdHN[25B][↑] [25B] LEdHN[26B][↑] [26B] LEdHN[30][↑] [30]For reasons already **[***791]** stated, there was nothing inappropriate about limiting litigation under this provision to the District Court for the District of Columbia, and in putting the burden of proof on the areas seeking relief. Nor has Congress authorized the District Court to issue advisory opinions, in violation of the principles of Article III invoked by Georgia as *amicus curiae*. The Act automatically suspends the operation of voting regulations enacted after November 1, 1964, and furnishes mechanisms for enforcing the suspension. A State or political subdivision wishing to make use of a recent amendment to its voting laws therefore has a concrete and immediate "controversy" with the Federal Government. Cf. *Public Utilities Comm'n v. United States, 355 U.S. 534, 536-539*; *United States v.*

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[43] House Report 11-13; Senate Report 4-5, 9-12.

[44] House Report 15; Senate Report 15-16.

[45] House Report 15; Senate Report 16.

[46] House Hearings 17; Senate Hearings 22-23.

[47] House Report 10-11; Senate Report 8, 12.

California, 332 U.S. 19, 24-25. An appropriate remedy is a judicial determination that continued suspension of the new rule is unnecessary to vindicate rights guaranteed by the Fifteenth Amendment.

Federal examiners.

LEdHN[3C][↑] [3C]LEdHN[31][↑] [31]The Act authorizes the appointment of federal examiners to list qualified applicants who are thereafter **[*336]** **[****63]** entitled to vote, subject to an expeditious challenge procedure. This was clearly an appropriate response to the problem, closely related to remedies authorized in prior cases. See Alabama v. United States, supra; United States v. Thomas, 362 U.S. 58.In many of the political subdivisions covered by § 4 (b) of the Act, voting officials have persistently employed a variety of procedural tactics to deny Negroes the franchise, often in direct defiance **[**823]** or evasion of federal court decrees. [48] **[****64]** Congress realized that merely to suspend voting rules which have been misused or are subject to misuse might leave this localized evil undisturbed. As for the briskness of the challenge procedure, Congress knew that in some of the areas affected, challenges had been persistently employed to harass registered Negroes. It chose to forestall this abuse, at the same time providing alternative ways for removing persons listed through error or fraud. [49] In addition to the judicial challenge procedure, § 7 (d) allows for the removal of names by the examiner himself, and § 11 (c) makes it a crime to obtain a listing through fraud.

LEdHN[32][↑] [32]In recognition of the fact that there were political subdivisions covered by § 4 (b) of the Act in which the appointment of federal examiners might be unnecessary, Congress assigned the Attorney General the task of determining the localities to which examiners should be sent. [50] There is no warrant for the claim, asserted by Georgia as *amicus curiae*, that the Attorney General is free to use this power in an arbitrary fashion, without regard to the purposes of the Act. Section 6 (b) sets adequate standards to guide the exercise of his discretion, by directing him to calculate the registration ratio of non-whites to whites, and to weigh evidence of good-faith **[*337]** efforts to avoid possible voting discrimination. At the same time, the special termination procedures of § 13 (a) provide indirect judicial review for the political subdivisions affected, assuring the withdrawal of federal examiners from areas where they are **[***792]** clearly not needed. Cf. Carlson v. Landon, 342 U.S. 524, 542-544; Mulford v. Smith, 307 U.S. 38, 48-49. **[****65]**

LEdHN[3D][↑] [3D]

After enduring nearly a century of widespread resistance to the Fifteenth Amendment, Congress has marshalled an array of potent weapons against the evil, with authority in the Attorney General to employ them effectively. Many of the areas directly affected by this development have indicated their willingness to abide by any restraints legitimately imposed upon them. [51] We here hold that HN14[↑] the portions of the Voting Rights Act properly before us are a valid means for carrying out the commands of the Fifteenth Amendment. Hopefully, millions of non-white Americans will now be able to participate for the first time on an equal basis in the government under which they live. We may finally look forward to the day when truly "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

[**66]** The bill of complaint is

Dismissed.

APPENDIX TO OPINION OF THE COURT.

HN15[↑] VOTING RIGHTS ACT OF 1965.

AN ACT

To enforce the fifteenth amendment to the Constitution of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress ***[*338]*** *assembled*, That this Act shall be known as the "Voting Rights Act of 1965."

SEC. 2. No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote

[48] House Report 16; Senate Report 15.

[49] Senate Hearings 200.

[50] House Report 16.

[51] See Comm'n on Civil Rights, The Voting Rights Act (1965).

on account of race or color.

[824]** SEC. 3. (a) Whenever the Attorney General institutes a proceeding under any statute to enforce the guarantees of the *fifteenth amendment* in any State or political subdivision the court shall authorize the appointment of Federal examiners by the United States Civil Service Commission in accordance with section 6 to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the guarantees of the *fifteenth amendment* (1) as part of any interlocutory order if the **[****67]** court determines that the appointment of such examiners is necessary to enforce such guarantees or (2) as part of any final judgment if the court finds that violations of the *fifteenth amendment* justifying equitable relief have occurred in such State or subdivision: *Provided*, That the court need not authorize the appointment of examiners if any incidents of denial or abridgement of the right to vote on account of race or color (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(b) If in a proceeding instituted by the Attorney General under any **[***793]** statute to enforce the guarantees of the *fifteenth amendment* in any State or political subdivision the court finds that a test or device has been used for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, it shall suspend the use of **[*339]** tests and devices in such State or political subdivisions as the court shall determine is appropriate and for **[****68]** such period as it deems necessary.

(c) If in any proceeding instituted by the Attorney General under any statute to enforce the guarantees of the *fifteenth amendment* in any State or political subdivision the court finds that violations of the *fifteenth amendment* justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official **[****69]** of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the court's finding nor the Attorney General's failure to object shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

SEC. 4. (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been **[*340]** made under subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the five years preceding the filing of the **[**825]** action for the purpose or with the effect of denying or abridging **[****70]** the right to vote on account of race or color: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of five years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff.

An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance **[***794]** with the provisions of *section 2284 of title 28 of the United States Code* and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color.

If the Attorney General determines that he has no reason to believe that any such **[****71]** test or device has been used during the five years preceding the filing of the

action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

[*341] (b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

(c) The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate **[****72]** any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(e)(1) Congress hereby declares that to secure the rights under the *fourteenth amendment* of persons educated in American-flag schools in which the predominant **[*342]** classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in **[****73]** a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, **[**826]** State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive **[***795]** of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

SEC. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4 (a) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, such State or subdivision may institute an **[****74]** action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, **[*343]** or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the Attorney General's failure to object nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. Any action under this section shall be **[****75]** heard and determined by a court of three judges in accordance with the provisions of *section 2284 of title 28 of the United States Code* and any appeal shall lie to the Supreme Court.

SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3 (a), or (b) unless a declaratory judgment has been rendered under section 4 (a), the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made

under section 4 (b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the *fifteenth amendment* or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the *fifteenth amendment*), the appointment **[****76]** of examiners is otherwise necessary to **[*344]** enforce the guarantees of the *fifteenth amendment*, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such examiners, hearing officers provided for in section 9 (a), and other persons deemed necessary by the Commission to carry **[***796]** out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by **[**827]** the Civil Service Commission, except the provisions of section 9 of the Act of August 2, 1939, as amended (5 U. S. C. 118i), prohibiting partisan political activity: *Provided*, That the Commission is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have **[****77]** the power to administer oaths.

SEC. 7. (a) The examiners for each political subdivision shall, at such places as the Civil Service Commission shall by regulation designate, examine applicants concerning their qualifications for voting. An application to an examiner shall be in such form as the Commission may require and shall contain allegations that the applicant is not otherwise registered to vote.

(b) Any person whom the examiner finds, in accordance with instructions received under section 9 (b), to have the qualifications prescribed by State law not inconsistent with the Constitution and laws of the United States shall promptly be placed on a list of eligible voters. A challenge to such listing may be made in accordance with section 9 (a) and shall not be the basis for a prosecution under section 12 of this Act. The examiner **[*345]** shall certify and transmit such list, and any supplements as appropriate, at least once a month, to the offices of the appropriate election officials, with copies to the Attorney General and the attorney general of the State, and any such lists and supplements thereto transmitted during the month shall be available for public inspection on **[****78]** the last business day of the month and in any event not later than the forty-fifth day prior to any election. The appropriate State or local election official shall place such names on the official voting list. Any person whose name appears on the examiner's list shall be entitled and allowed to vote in the election district of his residence unless and until the appropriate election officials shall have been notified that such person has been removed from such list in accordance with subsection (d): *Provided*, That no person shall be entitled to vote in any election by virtue of this Act unless his name shall have been certified and transmitted on such a list to the offices of the appropriate election officials at least forty-five days prior to such election.

(c) The examiner shall issue to each person whose name appears on such a list a certificate evidencing his eligibility to vote.

(d) A person whose name appears on such a list shall be removed therefrom by an examiner if (1) such person has been successfully challenged in accordance with the procedure prescribed in section 9, or (2) he has been determined by an examiner to have lost his eligibility to vote under State law **[****79]** not inconsistent with the Constitution and the laws of the United States.

Sec. 8. Whenever an examiner is serving under this Act in any political subdivision, the Civil Service Commission may assign, at the request of the Attorney General, one or more persons, who may be officers of the United States, (1) to **[***797]** enter and attend at any place for holding an election in such subdivision for the purpose **[*346]** of observing whether persons who are entitled to vote are being permitted to vote, and (2) to enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated. Such persons so assigned shall report to an examiner appointed for such political subdivision, to the Attorney General, and if the appointment of examiners has been authorized pursuant to section 3 (a), to the court.

SEC. 9. (a) Any challenge to a listing on an eligibility list prepared by an examiner shall be heard and determined by **[**828]** a hearing officer appointed by and responsible to the Civil Service Commission and under such rules as the Commission shall by

regulation **[****80]** prescribe. Such challenge shall be entertained only if filed at such office within the State as the Civil Service Commission shall by regulation designate, and within ten days after the listing of the challenged person is made available for public inspection, and if supported by (1) the affidavits of at least two persons having personal knowledge of the facts constituting grounds for the challenge, and (2) a certification that a copy of the challenge and affidavits have been served by mail or in person upon the person challenged at his place of residence set out in the application. Such challenge shall be determined within fifteen days after it has been filed. A petition for review of the decision of the hearing officer may be filed in the United States court of appeals for the circuit in which the person challenged resides within fifteen days after service of such decision by mail on the person petitioning for review but no decision of a hearing officer shall be reversed unless clearly erroneous. Any person listed shall be entitled and allowed to vote pending final determination by the hearing officer and by the court.

[*347] (b) The times, places, procedures, and form for **[****81]** application and listing pursuant to this Act and removals from the eligibility lists shall be prescribed by regulations promulgated by the Civil Service Commission and the Commision shall, after consultation with the Attorney General, instruct examiners concerning applicable State law not inconsistent with the Constitution and laws of the United States with respect to (1) the qualifications required for listing, and (2) loss of eligibility to vote.

(c) Upon the request of the applicant or the challenger or on its own motion the Civil Service Commission shall have the power to require by subpena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter pending before it under the authority of this section. In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon **[****82]** application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a hearing officer, there to produce pertinent, relevant, and nonprivileged documentary evidence if so ordered, or there to give testimony **[***798]** touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

SEC. 10. (a) The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons **[*348]** as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

(b) In the exercise **[****83]** of the powers of Congress under section 5 of the fourteenth amendment and section 2 of the fifteenth amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, **[**829]** for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) and the purposes of this section.

(c) The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of *section 2284 of title 28 of the United States Code* and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

(d) During the pendency of such actions, and thereafter if the courts, notwithstanding **[****84]** this action by the Congress, should declare the requirement of the payment of a poll tax to be constitutional, no citizen of the United States who is a resident of a State or political **[*349]** subdivision with respect to which determinations have been made under subsection 4 (b) and a declaratory judgment has not been entered under subsection 4 (a), during the first year he becomes otherwise entitled to vote by reason of registration by State or local officials or listing by an examiner, shall be denied the right to vote for failure to pay a poll tax if he

tenders payment of such tax for the current year to an examiner or to the appropriate State or local official at least forty-five days prior to election, whether or not such tender would be timely or adequate under State law. An examiner shall have authority to accept such payment from any person authorized by this Act to make an application for listing, and shall issue a receipt for such payment. The examiner shall transmit promptly any such poll tax payment to the office of the State or local official authorized to receive such payment under State law, together with the name and address of the applicant.

SEC. 11. (a) No **[****85]** person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this Act or is otherwise qualified to vote, or willfully fail or refuse **[***799]** to tabulate, count, and report such person's vote.

(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 3 (a), 6, 8, 9, 10, or 12 (e).

(c) Whoever knowingly or willfully gives false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another **[*350]** individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than $ 10,000 or imprisoned **[****86]** not more than five years, or both: *Provided, however*, That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, or Delegates or Commissioners from the territories or possessions, or Resident Commissioner of the Commonwealth of Puerto Rico.

(d) Whoever, in any matter within the jurisdiction of an examiner or hearing officer knowingly and willfully falsifies or conceals a material fact, or makes any false, fictitious, or fraudulent statements **[**830]** or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $ 10,000 or imprisoned not more than five years, or both.

SEC. 12. (a) Whoever shall deprive or attempt to deprive any person of any right secured by section 2, 3, 4, 5, 7, or 10 or shall violate section 11 (a) or (b), shall be fined not more than $ 5,000, or imprisoned not more than five years, **[****87]** or both.

(b) Whoever, within a year following an election in a political subdivision in which an examiner has been appointed (1) destroys, defaces, mutilates, or otherwise alters the marking of a paper ballot which has been cast in such election, or (2) alters any official record of voting in such election tabulated from a voting machine or otherwise, shall be fined not more than $ 5,000, or imprisoned not more than five years, or both.

[*351] (c) Whoever conspires to violate the provisions of subsection (a) or (b) of this section, or interferes with any right secured by section 2, 3, 4, 5, 7, 10, or 11 (a) or (b) shall be fined not more than $ 5,000, or imprisoned not more than five years, or both.

(d) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2, 3, 4, 5, 7, 10, 11, or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and **[***800]** including an order directed **[****88]** to the State and State or local election officials to require them (1) to permit persons listed under this Act to vote and (2) to count such votes.

(e) Whenever in any political subdivision in which there are examiners appointed pursuant to this Act any persons allege to such an examiner within forty-eight hours after the closing of the polls that notwithstanding (1) their listing under this Act or registration by an appropriate election official and (2) their eligibility to vote, they have not been permitted to vote in such election, the examiner shall forthwith notify the Attorney General if such allegations in his opinion appear to be well founded. Upon receipt of such notification, the Attorney General may forthwith file with the district court an application for an order providing for the marking, casting, and counting of the ballots of such persons and requiring the inclusion of their votes in the total vote before the results of such election shall be deemed final and any force or effect given thereto. The district court shall hear and determine

such matters immediately after the filing of such application. The remedy provided **[*352]** in this subsection shall not preclude **[****89]** any remedy available under State or Federal law.

(f) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a person asserting rights under the provisions of this Act shall have exhausted any administrative or other remedies that may be provided by law.

SEC. 13. Listing procedures shall be terminated in any political subdivision of any State (a) with respect to examiners appointed pursuant to clause (b) of section 6 whenever the Attorney General notifies the Civil Service Commission, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision with respect to which the Director of the Census has determined that more than 50 per centum of the nonwhite persons of voting age residing therein are registered to vote, (1) that all persons listed by an examiner for such subdivision have been placed on the appropriate voting registration **[**831]** roll, and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race **[****90]** or color in such subdivision, and (b), with respect to examiners appointed pursuant to section 3 (a), upon order of the authorizing court. A political subdivision may petition the Attorney General for the termination of listing procedures under clause (a) of this section, and may petition the Attorney General to request the Director of the Census to take such survey or census as may be appropriate for the making of the determination provided for in this section. The District Court for the District of Columbia shall have jurisdiction to require such survey or census to be made by the Director of the Census and it shall require him to do so if it deems the Attorney **[*353]** General's refusal to request such survey or census to be arbitrary or unreasonable.

SEC. 14. (a) All cases of criminal contempt arising under the provisions of this Act shall be governed by section 151 of the Civil Rights Act of 1957 (*42 U. S. C. 1995*).

(b) No court other than the District Court for the District of Columbia **[***801]** or a court of appeals in any proceeding under section 9 shall have jurisdiction to issue any declaratory judgment pursuant to section 4 or section 5 or any restraining order or **[****91]** temporary or permanent injunction against the execution or enforcement of any provision of this Act or any action of any Federal officer or employee pursuant hereto.

(c) (1) The terms "vote" or "voting" shall include all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

(2) The term "political subdivision" shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

(d) In any action for a declaratory judgment brought pursuant to section 4 or section 5 of this Act, subpenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States: **[****92]** *Provided*, That no writ of subpena shall issue for witnesses without the District of Columbia at a greater distance than one hundred **[*354]** miles from the place of holding court without the permission of the District Court for the District of Columbia being first had upon proper application and cause shown.

SEC. 15. Section 2004 of the Revised Statutes (*42 U. S. C. 1971*), as amended by section 131 of the Civil Rights Act of 1957 (71 Stat. 637), and amended by section 601 of the Civil Rights Act of 1960 (74 Stat. 90), and as further amended by section 101 of the Civil Rights Act of 1964 (78 Stat. 241), is further amended as follows:

(a) Delete the word "Federal" wherever it appears in subsections (a) and (c);

(b) Repeal subsection (f) and designate the present subsections (g) and (h) as (f) and (g), respectively.

SEC. 16. The Attorney General and the Secretary of Defense, jointly, shall make a full and complete study to determine whether, under the laws or practices of any State or States, there are preconditions to voting, which might tend to result in discrimination against citizens serving in the Armed Forces of the United States seeking to vote. Such officials shall, jointly, **[****93]** make a report to the Congress not later than June 30, **[**832]** 1966, containing the results of such study, together with a list of any States in which such preconditions exist, and shall include in such report such recommendations for legislation as they deem advisable to prevent discrimination in voting against citizens serving

in the Armed Forces of the United States.

SEC. 17. Nothing in this Act shall be construed to deny, impair, or otherwise adversely affect the right to vote of any person registered to vote under the law of any State or political subdivision.

SEC. 18. There are hereby authorized **[***802]** to be appropriated such sums as are necessary to carry out the provisions of this Act.

[*355] SEC. 19. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Approved August 6, 1965.

Concur by: BLACK

Dissent by: BLACK

Dissent

MR. JUSTICE BLACK, concurring and dissenting.

I agree with substantially all of the Court's opinion sustaining the power of Congress under § 2 of the Fifteenth Amendment to **[****94]** suspend state literacy tests and similar voting qualifications and to authorize the Attorney General to secure the appointment of federal examiners to register qualified voters in various sections of the country. Section 1 of the Fifteenth Amendment provides that "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." In addition to this unequivocal command to the States and the Federal Government that no citizen shall have his right to vote denied or abridged because of race or color, § 2 of the Amendment unmistakably gives Congress specific power to go further and pass appropriate legislation to protect this right to vote against any method of abridgment no matter how subtle. Compare my dissenting opinion in *Bell v. Maryland, 378 U.S. 226, 318*. I have no doubt whatever as to the power of Congress under § 2 to enact the provisions of the Voting Rights Act of 1965 dealing with the suspension of state voting tests that have been used as notorious means to deny and abridge voting rights on racial grounds. This same congressional **[****95]** power necessarily exists to authorize appointment of federal examiners. I also agree with the judgment of the Court upholding § 4 (b) of **[*356]** the Act which sets out a formula for determining when and where the major remedial sections of the Act take effect. I reach this conclusion, however, for a somewhat different reason than that stated by the Court, which is that "the coverage formula is rational in both practice and theory." I do not base my conclusion on the fact that the formula is rational, for it is enough for me that Congress by creating this formula has merely exercised its hitherto unquestioned and undisputed power to decide when, where, and upon what conditions its laws shall go into effect. By stating in specific detail that the major remedial sections of the Act are to be applied in areas where certain conditions exist, and by granting the Attorney General and the Director of the Census unreviewable power to make the mechanical determination of which areas come within the formula of § 4 (b), I believe that Congress has acted within its established power to set out preconditions upon which the Act is to go into effect. See, *e. g.*, *Martin v. Mott, 12 Wheat. 19*; **[****96]** *United States v. Bush & Co., 310 U.S. 371*; *Hirabayashi v. United States, 320 U.S. 81*.

Though, as I have said, I agree **[***803]** with most of the Court's conclusions, I dissent from its holding that every part **[**833]** of § 5 of the Act is constitutional. Section 4 (a), to which § 5 is linked, suspends for five years all literacy tests and similar devices in those States coming within the formula of § 4 (b). Section 5 goes on to provide that a State covered by § 4 (b) can in no way amend its constitution or laws relating to voting without first trying to persuade the Attorney General of the United States or the Federal District Court for the District of Columbia that the new proposed laws do not have the purpose and will not have the effect of denying the right to vote to citizens on account of their race or color. I think this section is unconstitutional on at least two grounds.

[*357] (a) The Constitution gives federal courts jurisdiction over cases and controversies only. If it can be said that any case or controversy arises under this section which gives the District Court for the District of Columbia jurisdiction to approve **[****97]** or reject state laws or constitutional amendments, then the case or controversy must be between a State and the United States Government. But it is hard for me to believe that a justiciable controversy can arise in the constitutional sense from a desire by the United States Government or some of its officials to determine in advance what

legislative provisions a State may enact or what constitutional amendments it may adopt. If this dispute between the Federal Government and the States amounts to a case or controversy it is a far cry from the traditional constitutional notion of a case or controversy as a dispute over the meaning of enforceable laws or the manner in which they are applied. And if by this section Congress has created a case or controversy, and I do not believe it has, then it seems to me that the most appropriate judicial forum for settling these important questions is this Court acting under its original Art. III, § 2, jurisdiction to try cases in which a State is a party. [1] At least a trial in this Court would treat the States with the dignity to which they should be entitled as constituent members of our Federal Union.

[**98]** The form of words and the manipulation of presumptions used in § 5 to create the illusion of a case or controversy should not be allowed to cloud the effect of that section. By requiring a State to ask a federal court to approve the validity of a proposed law which has in no way become operative, Congress has asked the State to **[*358]** secure precisely the type of advisory opinion our Constitution forbids. As I have pointed out elsewhere, see my dissenting opinion in *Griswold v. Connecticut, 381 U.S. 479, 507, n. 6*, pp. 513-515, some of those drafting our Constitution wanted to give the federal courts the power to issue advisory opinions and propose new laws to the legislative body. These suggestions were rejected. We should likewise reject any attempt by Congress to flout constitutional limitations by authorizing federal courts to render advisory opinions when there is no case or controversy before them. Congress has ample power to protect the rights of citizens to vote **[***804]** without resorting to the unnecessarily circuitous, indirect and unconstitutional route it has adopted in this section.

(b) My second and more basic objection to § 5 is that **[****99]** Congress has here exercised its power under § 2 of the Fifteenth Amendment through the adoption of means that conflict with the most basic principles of the Constitution. As the Court says the limitations of the power granted under § 2 are the same as the limitations imposed on the exercise of any of the powers expressly granted Congress by the Constitution. The classic **[**834]** formulation of these constitutional limitations was stated by Chief Justice Marshall when he said in *McCulloch v. Maryland, 4 Wheat. 316, 421*, "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, *which are not prohibited, but consist with the letter and spirit of the constitution*, are constitutional." (Emphasis added.) Section 5, by providing that some of the States cannot pass state laws or adopt state constitutional amendments without first being compelled to beg federal authorities to approve their policies, so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between state and federal power almost meaningless. One **[*359]** **[****100]** of the most basic premises upon which our structure of government was founded was that the Federal Government was to have certain specific and limited powers and no others, and all other power was to be reserved either "to the States respectively, or to the people." Certainly if all the provisions of our Constitution which limit the power of the Federal Government and reserve other power to the States are to mean anything, they mean at least that the States have power to pass laws and amend their constitutions without first sending their officials hundreds of miles away to beg federal authorities to approve them. [2] Moreover, it seems to me that § 5 which gives federal officials power to veto state laws they do not like is in direct conflict with the clear command of our Constitution that "The United States shall guarantee to every State in this Union a Republican Form of Government." I cannot help but believe that the inevitable effect of any such law which forces any one of the States to entreat federal

[1] If § 14 (b) of the Act by stating that no court other than the District Court for the District of Columbia shall issue a judgment under § 5 is an attempt to limit the constitutionally created original jurisdiction of this Court, then I think that section is also unconstitutional.

[2] The requirement that States come to Washington to have their laws judged is reminiscent of the deeply resented practices used by the English crown in dealing with the American colonies. One of the abuses complained of most bitterly was the King's practice of holding legislative and judicial proceedings in inconvenient and distant places. The signers of the Declaration of Independence protested that the King "has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures," and they objected to the King's "transporting us beyond Seas to be tried for pretended offences." These abuses were fresh in the minds of the Framers of our Constitution and in part caused them to include in Art. 3, § 2, the provision that criminal trials "shall be held in the State where the said Crimes shall have been committed." Also included in the *Sixth Amendment* was the requirement that a defendant in a criminal prosecution be tried by a "jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law."

authorities in far-away places for approval of local laws before they can become effective is to **[*360]** create the impression that the State or States treated in this **[***805]** **[****101]** way are little more than conquered provinces. And if one law concerning voting can make the States plead for this approval by a distant federal court or the United States Attorney General, other laws on different subjects can force the States to seek the advance approval not only of the Attorney General but of the President himself or any other chosen members of his staff. It is inconceivable to me that such a radical degradation of state power was intended in any of the provisions of our Constitution or its Amendments. Of course I do not mean to cast any doubt whatever upon the indisputable power of the Federal Government to invalidate a state law once enacted and operative on the ground that it intrudes into the area of supreme federal power. But the Federal Government has heretofore always been content to exercise this power to protect federal supremacy by authorizing its agents to bring lawsuits against **[**835]** state officials once an operative state law has created an actual case and controversy. A federal law which assumes the power to compel the States to submit in advance any proposed legislation they have for approval by federal agents approaches dangerously near **[****102]** to wiping the States out as useful and effective units in the government of our country. I cannot agree to any constitutional interpretation that leads inevitably to such a result.

[**103]** I see no reason to read into the Constitution meanings it did not have when it was adopted and which have not been put into it since. The proceedings of the original Constitutional Convention show beyond all doubt that the power to veto or negative state laws was denied Congress. On several occasions proposals were submitted to the convention to grant this power to Congress. These proposals were debated extensively and on every occasion when submitted for vote they were overwhelmingly rejected. [3] **[*361]** The refusal to give Congress this extraordinary power to veto state laws was based on the belief that if such power resided in Congress the States would be helpless to function as effective governments. [4] Since that time neither the *Fifteenth Amendment* nor any other Amendment to the Constitution has given the slightest indication of a purpose to grant Congress the power to veto state laws either by itself or its agents. Nor does any provision in the Constitution endow the federal courts with power to participate with state legislative bodies in determining what state policies shall be enacted into law. The judicial power to invalidate a law in a case or controversy after **[****104]** the law has become effective is a long way from the power to prevent a State from passing a law. I cannot agree with the Court that Congress -- denied a power in itself to veto a state law -- can delegate this same power to the Attorney General or the District Court for the District of Columbia. For the effect on the States is the same in both cases -- they cannot pass their laws without sending their agents to the City of Washington to plead to federal officials for their advance approval.

In this and other prior Acts Congress **[***806]** has quite properly vested the Attorney General **[****105]** with extremely broad power to protect voting rights of citizens against discrimination on account of race or color. Section 5 viewed in this context is of very minor importance and in my judgment is likely to serve more as an irritant to **[*362]** the States than as an aid to the enforcement of the Act. I would hold § 5 invalid for the reasons stated above with full confidence that the Attorney General has ample power to give vigorous, expeditious and effective protection to the voting rights of all citizens. [5]

References

Race discrimination

Annotation References:

Race discrimination. 94 L ed 1121, 96 L ed 1291, 98 L **[****106]** ed 882, 100 L ed 488, 3 L ed 2d 1556, 6 L ed 2d 1302, 10 L ed 2d 1105. See also *38 ALR2d 1188*.

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[3] See Debates in the Federal Convention of 1787 as reported by James Madison in Documents Illustrative of the Formation of the Union of the American States (1927), pp. 605, 789, 856.

[4] One speaker expressing what seemed to be the prevailing opinion of the delegates said of the proposal, "Will any State ever agree to be bound hand & foot in this manner. It is worse than making mere corporations of them . . . ." *Id., at 604*.

[5] Section 19 of the Act provides as follows:

"If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby."

What constitutes bill of attainder under the Federal Constitution. 4 L ed 2d 2155.

End of Document

From: Moran, John (ODAG)
Subject: Re: Request by AG Rosen
To: kurt olsen
Sent: December 30, 2020 8:21 AM (UTC-05:00)

Kurt,

As we just discussed, confirming receipt.

John

On Dec 29, 2020, at 9:21 PM, kurt olsen (b) (6) wrote:

Duplicative Material

From: Rosen, Jeffrey A. (ODAG)
Subject: FW: [EXTERNAL] Fwd: December 4, 2020 - Petition and Press Statement - R Smith.docx
To: Donoghue, Richard (ODAG)
Sent: December 30, 2020 10:21 AM (UTC-05:00)
Attached: December 4, 2020 - Press Statement - R Smith.docx, VERIFIED PETITION TO CONTEST GEORGIA ELECTION.pdf

---

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

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

Sent from my iPhone

Begin forwarded message:

> **From:** Mark Meadows [(b) (6)]
> **Date:** December 30, 2020 at 9:28:38 AM EST
> **To:** "Meadows, Mark R. EOP/WHO" [(b) (6)]
> **Subject: [EXTERNAL] Fwd: December 4, 2020 - Petition and Press Statement - R Smith.docx**
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** "Mitchell, Cleta" <CMitchell@foley.com>
> > **Date:** December 30, 2020 at 9:07:45 AM EST
> > **To:** Mark Meadows [(b) (6)]
> > **Subject: December 4, 2020 - Petition and Press Statement - R Smith.docx**
> >
> > This is the petition filed in GA state court and the press release issued about it.
> >
> > I presume the DOJ would want all the exhibits - that's 1800 pages total. I need to get someone to forward that to a drop box.
> >
> > Plus I don't know what is happening re investigating the video issues in Fulton County. And the equipment. We didn't include the equipment in our lawsuit but there are certainly many issues and questions that some resources need to be devoted to reviewing. We had no way to conduct proper due diligence to include the equipment / software.
> >
> > Cleta Mitchell, Esq.
> > Foley & Lardner, LLP
> > cmitchell@foley.com
> > [(b) (6)] (cell)
> > 202.295.4081 (office)
> > Sent from my iPhone

FOR IMMEDIATE RELEASE

December 4, 2020

TRUMP CAMPAIGN FILES ELECTION CONTEST IN GEORGIA

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

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

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

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

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

MORE

2-2-2

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

###

For additional information contact:

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

DONALD J. TRUMP, in his capacity as a Candidate for President, DONALD J. TRUMP FOR PRESIDENT, INC., and DAVID J. SHAFER, in his capacity as a Registered Voter and Presidential Elector pledged to Donald Trump for President,	)	
Petitioners,	)	**CIVIL ACTION FILE NO.**
v.	)	
BRAD RAFFENSPERGER, in his official capacity as Secretary of State of Georgia, REBECCA N. SULLIVAN, in her official capacity as Vice Chair of the Georgia State Election Board, DAVID J. WORLEY, in his official capacity as a Member of the Georgia State Election Board, MATTHEW MASHBURN, in his official capacity as a Member of the Georgia State Election Board, ANH LE, in her official capacity as a Member of the Georgia State Election Board, RICHARD L. BARRON, in his official capacity as Director of Registration and Elections for Fulton County, JANINE EVELER, in her official capacity as Director of Registration and Elections for Cobb County, ERICA HAMILTON, in her official capacity as Director of Voter Registration and Elections for DeKalb County, KRISTI ROYSTON, in her official capacity as Elections Supervisor for Gwinnett County, RUSSELL BRIDGES, in his official capacity as Elections Supervisor for Chatham County, ANNE DOVER, in her official capacity as Acting Director of Elections and Voter Registration for Cherokee County, SHAUNA DOZIER, in her official capacity as Elections Director for Clayton County, MANDI SMITH, in her official capacity as Director of Voter Registration and Elections for Forsyth	)	

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

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

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

INTRODUCTION

1.

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

2.

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

3.

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

4.

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

5.

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

6.

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

7.

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

8.

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

9.

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

10.

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

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

11.

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

12.

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

THE PARTIES

13.

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

14.

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

15.

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

16.

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

17.

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

18.

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

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

19.

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

20.

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

21.

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

22.

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

23.

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

24.

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

25.

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

26.

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

27.

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

28.

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

29.

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

30.

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

31.

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

32.

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

33.

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

34.

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

JURISDICTION AND VENUE

35.

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

36.

Venue is proper before this Court.

FACTUAL BACKGROUND

The Georgia Election Code and Election Contest Provisions

37.

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

38.

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

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

39.

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

40.

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

41.

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

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

The Contested Election

42.

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

43.

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

44.

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

45.

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

46.

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

[3] The first certified number of votes.

47.

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

48.

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

49.

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

50.

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

51.

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

52.

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

53.

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

54.

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

55.

An actual controversy exists.

56.

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

57.

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

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

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

Requirements to Legally Vote in Georgia

58.

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

59.

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

60.

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

61.

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

62.

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

63.

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

64.

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

65.

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

66.

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

67.

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

68.

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

69.

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

70.

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

71.

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

72.

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

73.

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

74.

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

75.

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

76.

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

77.

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

78.

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

79.

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

80.

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

81.

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

82.

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

83.

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

84.

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

85.

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

86.

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

87.

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

88.

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

89.

A postal office box is not a residential address.

90.

One cannot reside within a postal office box.

91.

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

92.

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

93.

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

94.

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

95.

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

96.

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

97.

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

98.

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

99.

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

100.

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

101.

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

102.

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

103.

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

104.

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

105.

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

106.

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

107.

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

108.

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

109.

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

110.

Another Affiant, Sandy Rumph, has stated that her father-in-law, who died on September 9, 2019, had his voter registration change from "deceased" to "active" 8 days ***after*** he passed away. **Exhibit 6** attached hereto and incorporated by reference.

111.

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

112.

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

113.

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

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

114.

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

115.

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

116.

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

117.

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

118.

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

119.

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

120.

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

121.

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

122.

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

123.

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

124.

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

125.

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

126.

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

127.

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

128.

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

129.

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

130.

Respondents then, jointly and severally, improperly counted these illegal votes in the Contested Election. *Id.*

131.

According to State records, Respondents jointly and severally allowed at least 50 individuals to vote whose absentee ballots were returned and accepted prior to the earliest date that absentee ballots were permitted by law to be sent out. *See* **Exhibit 3**.

132.

Respondents then, jointly and severally improperly counted these illegal votes in the Contested Election. *Id.*

133.

An absentee voter's application for an absentee ballot must have been accepted by the election registrar or absentee ballot clerk in order for that individual's absentee ballot vote to be counted. O.C.G.A. § 21-2-385.

134.

In violation of O.C.G.A. § 21-2-385, Respondents, jointly and severally, allowed at least 2 individuals to vote whose absentee ballot applications had been rejected, according to state records. *See* **Exhibit 3**.

135.

Respondents, jointly and severally, improperly counted these illegal votes in the Contested Election. *Id.*

136.

It is not possible for an absentee voter to have applied by mail, been issued by mail, and returned by mail an absentee ballot, and for that ballot to have accepted by election officials, all on the same day.

137.

In violation of O.C.G.A. § 21-2-384, Respondents, jointly and severally, allowed at least 217 individuals to vote whose absentee ballots, according to state records, were applied for, issued, and received all on the same day. *See* **Exhibit 3**.

138.

Respondents then, jointly and severally, improperly counted these illegal votes in the Contested Election. *Id.*

RESPONDENTS FAILED TO COMPLY WITH GEORGIA LAW PROVISIONS FOR MATCHING SIGNATURES AND CONFIRMING VOTER IDENTITY FOR ELECTORS SEEKING TO VOTE ABSENTEE

139.

O.C.G.A. §21-2-381(b) mandates the procedures to be followed by election officials upon receipt of an absentee ballot application:

> "Upon receipt of a timely application for an absentee ballot, a registrar or absentee ballot clerk…shall determine…if the applicant is eligible to vote in the…election involved. In order to be found eligible to vote an absentee ballot by mail, the registrar or absentee ballot clerk **shall compare the identifying information on the application with the information on file in the registrar's office and, if the application is signed by the elector, compare the signature or mark of the elector on the application with the signature or mark of the elector on the elector's voter registration card**. In order to be found eligible to vote an absentee ballot in person…**shall show one of the forms of identification listed in Code Section 21-2-417** and the registrar or absentee ballot clerk **shall compare the**

identifying information on the application with the information on file in the registrar's office." O.C.G.A. § 21-2-381(b) (emphasis added).

140.

O.C.G.A. § 21-2-386(a)(1)(B) mandates the procedures to be followed by election officials upon receipt of an absentee ballot:

> Upon receipt of each [absentee] ballot, a registrar or clerk shall write the day and hour of the receipt of the ballot on its envelope. The registrar or clerk **shall then compare the identifying information on the oath with the information on file in his or her office, shall compare the signature or make on the oath with the signature or mark on the absentee elector's voter card or the most recent update to such absentee elector's voter registration card and application for absentee ballot or a facsimile of said signature or maker taken from said card or application**, and shall, if the information and signature appear to be valid and other identifying information appears to be correct, so certify by signing or initialing his or her name below the voter's oath. Each elector's name so certified shall be listed by the registrar or clerk on the numbered list of absentee voters prepared for his or her precinct. O.C.G.A. § 21-2-386(a)(1)(B) (emphasis added).

141.

O.C.G.A. § 21-2-386(a)(1)(C) mandates the procedures to be followed by election officials with respect to defective absentee ballots:

> **If the elector has failed to sign the oath, or if the signature does not appear to be valid, or if the elector has failed to furnish required information or information so furnished does not conform with that on file in the registrar's or clerk's office**, or if the elector is otherwise found disqualified to vote, the registrar or clerk ***shall*** write across the face of the envelope "Rejected," giving the reason therefor. The board of registrars or absentee ballot clerk ***shall*** promptly **notify the elector of such rejection**, a copy of which notification ***shall*** be retained in the files of the board of registrars or absentee ballot clerk for at least one year. O.C.G.A. § 21-2-386(a)(1)(C) (emphasis added).

RESPONDENT RAFFENSPERGER DISREGARDED THE ELECTION CODE BY FIAT AND INSTRUCTED THE RESPONDENT COUNTIES TO DO LIKEWISE

142.

On March 6, 2020, Respondents Raffensperger and the State Election Board entered into a "Compromise and Settlement Agreement and Release" (the "Consent Decree") in litigation filed by the Democratic Party of Georgia, Inc., the Democrat Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee (collectively the "Democrat Party Agencies").[4] A true and correct copy of the Consent Decree is attached hereto and incorporated by reference as **Exhibit 7**.

143.

The litigation was one of more than one hundred lawsuits nationwide filed by Democrats and partisan affiliates of the Democratic Party to seeking to rewrite the duly enacted election laws of the states. **Exhibit 8** attached hereto and incorporated by reference.

144.

Without legislative authority, Respondents unlawfully adopted standards to be followed by the clerks and registrars in processing absentee ballots inconsistent with the election code.

145.

The Consent Decree exceeded Respondents' authority under the Georgia Constitution. *See* Ga. Const. art. III, §1; **Exhibit 15** attached hereto and incorporated by reference; *see also* O.C.G.A. § 21-2-31 (providing that the State Election Board shall "formulate, adopt, and promulgate such

[4] *See Democratic Party of Georgia, Inc., et al. v. Raffensperger, et al.*, Civil Action File No. 1:19-cv-05028-WMR, Doc. 56-1, Joint Notice of Settlement as to State Defendants, Att. A, Compromise Settlement Agreement and Release (N.D. Ga. Mar. 6, 2020).

rules and regulations, ***consistent with the law***, as will be conducive to the fair, legal, and orderly conduct of primaries and elections" (emphasis added)).

146.

The Consent Decree changed the plain language of the statute for receiving and processing absentee ballot applications and ballots.

147.

The Consent Decree increased the burden on election officials to conduct the mandatory signature verification process by adding additional, cumbersome steps.

148.

For example, the Consent Decree tripled the number of personnel required for an absentee ballot application or ballot to be rejected for signature mismatch.

149.

The unlawful Consent Decree further violated the Election Code by purporting to allow election officials to match signatures on absentee ballot envelopes against the application, rather than the voter file as required by O.C.G.A. §§ 21-2-381, 21-2-385.

RESPONDENTS DID NOT CONDUCT MEANINGFUL VERIFICATION OF ABSENTEE BALLOT APPLICANT AND VOTER IDENTITIES

150.

Notwithstanding the unlawful changes made by the Consent Decree, the mandatory signature verification and voter identification requirements were not altogether eliminated.

151.

Despite the legal requirement for signature matching and voter identity verification, Respondents failed to ensure that such obligations were followed by election officials. **Exhibit 9** attached hereto and incorporated by reference.

152.

According to state records, an unprecedented 1,768,972 absentee ballots were mailed out in the Contested Election. **Exhibit 10** attached hereto and incorporated by reference.

153.

Of the total number of absentee ballots mailed out in the Contested Election, 1,317,000 were returned (i.e., either accepted, spoiled, or rejected). *Id.*

154.

The number of absentee ballots returned in the Contested Election represents a greater than 500% increase over the 2016 General Election and a greater than 400% increase over the 2018 General Election. *Id.*

155.

The state received over a million more ballots in the Contested Election than the 2016 and 2018 General Elections. *Id.*

156.

The number of returned absentee ballots that were rejected in the Contested Election was 4,471, yielding a 0.34% rejection rate. *Id.*

157.

The number of returned absentee ballots that were rejected in the 2016 General Election was 6,059, yielding a 2.90% rejection rate. *Id.*

158.

The number of returned absentee ballots that were rejected in the 2018 General Election was 7,889, yielding a 3.46% rejection rate. *Id.*

159.

Stated differently, the percentage of rejected ballots fell to 0.34% in 2020 from 2.9% in 2016 and 3.46% in 2018, despite a nearly sixfold increase in the number of ballots returned to the state for processing.

160.

The explosion in the number of absentee ballots received, counted, and included in the tabulations for the Contested Election, with the simultaneous precipitous drop in the percentage of absentee ballots rejected, demonstrates there was little or no proper review and confirmation of the eligibility and identity of absentee voters during the Contested Election.

161.

Had the statutory procedure for signature matching, voter identity and eligibility verification been followed in the Contested Election, Georgia's historical absentee ballot rejection rate of 2.90-3.46% applied to the 2020 absentee ballot returned and processed, between 38,250 and 45,626 ballots should have been rejected in the Contested Election. *See* **Exhibit 10**.

RESPONDENTS VIOLATED GEORGIANS' FUNDAMENTAL RIGHT TO A TRANSPARENT AND OPEN ELECTION

162.

A fair, honest, and transparent vote count is a cornerstone of democratic elections. INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE, INTERNATIONAL ELECTORAL STANDARDS, GUIDELINES FOR REVIEWING THE LEGAL FRAMEWORK OF ELECTIONS (2002).

163.

All citizens, including Georgians, have rights under the United States Constitution to the full, free, and accurate elections built upon transparency and verifiability. *Purcell v. Gonzalez*, 549 U.S. 1, 4, 127 S. Ct. 5, 7 (2006) (per curiam).

164.

Citizens are entitled—and deserve—to vote in a transparent system that is designed to protect against vote dilution. *Bush v. Gore*, 531 U.S. 98, 104-05, 121 S. Ct. 525, 529-30 (2000); *Anderson v. United States*, 417 U.S. 211, 227 (1974); *see also Baker v. Carr*, 369 U.S. 186, 208, 82 S. Ct. 691, 705 (1962).

165.

This requires that votes be counted, tabulated and consolidated in the presence of the representatives of parties and candidates and election observers, and that the entire process by which a winner is determined is fully and completely open to public scrutiny. INTERNATIONAL ELECTORAL STANDARDS at 77.

166.

The importance of watchers and representatives serving as an important check in elections is recognized internationally. *Id.*

167.

Georgia law recognizes "the fundamental right of citizens to vote ***and to have their votes counted accurately***." *Martin* at 194 (emphasis added).

168.

The right to have one's vote counted accurately infers a right to a free, accurate, public, and transparent election, which is reflected throughout Georgia election law. *Cf. Ellis v. Johnson*, 263 Ga. 514, 516, 435 S.E.2d 923, 925 (1993) ("Of particular importance is that the General Assembly has provided the public with the right to examine . . . the actual counting of the ballots, . . . and the computation and canvassing of returns . . . .").

169.

Georgia law requires "[s]uperintendents, poll officers, and other officials engaged in the conducting of primaries and elections . . . shall perform their duties in public." O.C.G.A. §21-2-406.

170.

Each political party who has nominated a candidate "shall be entitled to designate … state-wide poll watchers." O.C.G.A. § 21-2-408 (b)(2).

171.

Poll watchers "may be permitted behind the enclosed space for the purpose of observing the conduct of the election and the counting and recording of votes." O.C.G.A. § 21-2-408 (d).

172.

"All proceedings at the tabulating center and precincts shall be open to the view of the public." O.C.G.A, § 21-2-483(b).

173.

Under O.C.G.A. § 21-2-493, "[t]he superintendent shall, at or before 12:00 noon on the day following the primary or election, at his or her office or at some other convenient **public place** at the county seat or in the municipality, of which **due notice of shall have been given** as provided by Code Section 21-2-492, **publicly commence** the computation and canvassing of returns and continue the same from the day until completed." (Emphasis added.)

174.

During the tabulation of votes cast during an election, vote review panels are to convene to attempt to determine a voter's intent when that intent is unclear from the ballot, consisting of equal Republican and Democratic representation. *See* O.C.G.A. § 21-2-483(g)(2).

175.

The activities of the vote review panel are required to be open to the view of the public. *See* O.C.G.A. § 21-2-483(a).

176.

Moreover, Respondent Raffensperger declared that for the Risk Limiting Audit:

> Per the instructions given to counties as they conduct their audit triggered full hand recounts, **designated monitors will be given complete access to observe the process from the beginning**. While the audit triggered recount **must be open to the public and media, designated monitors will be able to observe more closely**. The general public and the press will be restricted to a public viewing area. **Designated monitors will be able to watch the recount while standing close to the elections' workers conducting the recount**.
>
> Political parties are allowed to designate a minimum of two monitors per county at a ratio of one monitor per party for every ten audit boards in a county . . . . **Beyond being able to watch to ensure the recount is conducted fairly and securely**, the two-person audit boards conducting the hand recount call out the votes as they are recounted, **providing monitors and the public an additional way to keep tabs on the process**.[5]

177.

Respondents, jointly and severally, violated Petitioners' fundamental right to a free, accurate, public, and transparent election under the Constitution of the State of Georgia in the Contested Election and the Risk Limiting Audit. *See* composite Affidavit Appendix attached hereto and incorporated by reference as **Exhibit 17**.

178.

Respondents, jointly and severally, violated provisions of the Georgia Election Code mandating meaningful public oversight of the conduct of the election and the counting and recording of votes in the Contested Election and the Risk Limiting Audit. *Id.*

[5] Office of Secretary of State Brad Raffensperger, *Monitors Closely Observing Audit-Triggered Full Hand Recount: Transparency is Built Into Process* (Nov. 17, 2020), https://sos.ga.gov/index.php/elections/monitors_closely_observing_audit_triggered_full_hand_recount_transparency_is_built_into_process.

179.

Respondents, jointly and severally, failed to adhere to Respondent Raffensperger's own guidelines promising a free, accurate, public, and transparent process in the Risk Limiting Audit. *Id.*

RESPONDENTS HAVE ADMITTED MISCONDUCT, FRAUD, AND WIDESPREAD IRREGULARITIES COMMITTED BY MULTIPLE COUNTIES

180.

The Secretary of State has admitted that multiple county election boards, supervisors, employees, election officials and their agents failed to follow the Election Code and State Election Board Rules and Regulations.[6]

181.

The Secretary of State has called The Fulton County Registration and Elections Board and its agents' ("Fulton County Elections Officials") job performance prior to and through the Election Contest "dysfunctional."

182.

The Secretary of State and members of his staff have repeatedly criticized the actions, poor judgment, and misconduct of Fulton County Elections Officials.

[6] Note: These are samples and not an exhaustive list of the Secretary of State's admissions of Respondents' failures and violations of Georgia law.

183.

Fulton County Elections Officials' performance in the 2020 primary elections was so dysfunctional that it was fined $50,000 and subject to remedial measures.

184.

Describing Respondent Barron's Fulton County Elections in the Election Contest, Secretary Raffensperger stated, "Us and our office, and I think the rest of the state, is getting a little tired of always having to wait on Fulton County and always having to put up with [Fulton County Elections Officials'] dysfunction."

185.

The Secretary of State's agent, Mr. Sterling, said initial findings from an independent monitor allegedly show "generally bad management" with Fulton's absentee ballots.[7]

Fulton County Elections' Deception and Fraud

186.

The Secretary of State's Office claims it is currently investigating an incident where Fulton County election officials fraudulently stated there was a "flood" and "a pipe burst," which was later revealed to be a "leaky" toilet.

[7] Ben Brasch, *Georgia Opens 2 Investigations Into Fulton's Elections Operations*, The Atlanta Journal-Constitution (Nov. 17, 2020), https://www.ajc.com/news/atlanta-news/georgia-opens-2-investigations-into-fultons-elections-operations/EVCBN4ZJTZELPDHMH63POL3RKQ/.

187.

At approximately 10:00 p.m. on November 3, 2020, Fulton County Election Officials, who were handling and scanning thousands of ballots at the State Farm Arena, instructed Republican poll watchers and the press that they were finished working for the day and that the Republican poll watchers and the press were to leave. The Fulton County Elections Officials further stated that they would restart their work at approximately 8:00 a.m. on November 4, 2020.

188.

The Fulton County Election Officials lied.

189.

Deliberate misinformation was used to instruct Republican poll watchers and members of the press to leave the premises for the night at approximately 10:00 p.m. on November 3, 2020. **Exhibits 12, 13, and 14** attached hereto and incorporated by reference.

190.

After Fulton County Elections Officials **lied and defrauded** the Republican poll watchers and members of the press, whereby in reasonable reliance the Republican poll watchers and members of the press left the State Farm Arena (where they had been observing the ballots being processed), without public transparency Fulton County Elections Officials continued to process, handle, and transfer many thousands of ballots. *See* **Exhibit 14**.

191.

Fulton County Elections Officials' fraudulent statements not only defrauded the Republican poll watchers and the press, but also deprived every single Fulton County voter,

Georgian, American, and Petitioners of the opportunity for a transparent election process and have thereby placed the Election Contest in doubt.

Spalding County Elections & Voter Registration Supervisor and Her Agents' Failures

192.

Respondent Raffensperger has called for the resignation of the Spalding County Elections and Voter Registration Supervisor, who has, as of this filing, resigned.[8]

193.

Respondent Raffensperger cited "serious management issues and poor decision-making" by Election Supervisor Marcia Ridley during the Contested Election.

Floyd County Elections & Voter Registration Supervisor and Her Agents' Failures

194.

Respondent Raffensperger has called for the resignation of the Executive Director of the Floyd County Board of Registrations and Elections for his failure to follow proper election protocols.[9]

[8] David Wickert, *Georgia Officials Call for Spalding Election Director to Resign*, The Atlanta Journal-Constitution (Nov. 17, 2020), https://www.ajc.com/politics/election/georgia-officials-call-for-spalding-election-director-to-resign/YYUISCBSV5FTHDZPM3N5RJVV6A/.

[9] Jeffrey Martin, Georgia Secretary of State Calls for Resignation of County Election Director After 2,600 Ballots Discovered (Nov. 16, 2020), https://www.newsweek.com/georgia-secretary-state-calls-resignation-county-election-director-after-2600-ballots-discovered-1547874.

RESPONDENTS CONSPIRED TO DISREGARD THE ELECTION CODE AND TO SUBSTITUTE THEIR OWN UNLAWFUL EDICTS

195.

In violation of O.C.G.A. § 21-2-386 et seq. the State Board of Election promulgated a rule that authorized county election board to begin processing absentee ballots on the third Monday preceding the election, provided they give the Secretary of State and the public notice of such intention to begin processing absentee ballots.

196.

Failure to follow the process directed by the statute is a derogation of the Election Code and denies voters the ability to cancel their absentee ballot up until Election Day.

197.

Respondents, jointly and severally, were complicit in conspiring to violate and violating the Election Code.

198.

As a direct and proximate result of Respondents multiple, continued, and flagrant disregard of the Election Code, the outcome of the Contested Election is not capable of being known with certainty.

199.

Petitioners incorporate by reference and reallege all prior paragraphs of this Petition and the paragraphs in the Counts below as though set forth fully herein.

200.

Despite Respondents receiving substantial funding from the Center for Technology and Civic Life (CTCL), Respondents failed to use such funds to train the election workers regarding signature verification, the proper procedures for matching signatures, and how to comply fully with the Election Code. **Exhibit 11** attached hereto and incorporated by reference.

201.

Due to the lack of uniform guidance and training, the signature verification and voter identity confirmation was performed poorly or not at all in some counties and served as virtually no check against improper voting. *See* **Exhibit 9**.

RESPONDENT SECRETARY OF STATE MUST ALLOW AND CONDUCT AN AUDIT OF THE SIGNATURES ON ABSENTEE BALLOT APPLICATIONS AND ABSENTEE BALLOTS IN ORDER TO DETERMINE WHETHER THE SIGNATURES WERE PROPERLY MATCHED PRIOR TO BEING COUNTED AND INCLUDED IN THE TABULATIONS

202.

The data regarding the statistically tiny rejection rate of absentee ballots cast and counted in the Contested Election gives rise to sufficient concerns that there were irregularities that should be reviewed and investigated.

203.

Petitioners have brought these concerns about the signature matching and voter verification process to the attention of Respondent Raffensperger **on five separate occasions** since the Contested Election, requesting that the Secretary conduct an audit of the signatures on the absentee ballot applications and absentee ballots, via Letter on November 10, 2020; Letter on November

12, 2020; Letter on November 23, 2020; Email on November 23, 2020, and again via Letter on November 30, 2020. **Exhibit 18** attached hereto and incorporated by reference.

204.

The Secretary of State is obligated by law to "to permit the public inspection or copying, in accordance with this chapter, of any return, petition, certificate, paper, account, contract, report, or any other document or record in his or her custody." O.G.C.A. § 21-2-586(a).

205.

Failure to comply with any such request by the Secretary of State or an employee of his or her office shall [constitute] a misdemeanor." O.G.C.A. § 21-2-586(a).

206.

The Secretary of State's refusal on five separate occasions to comply with requests to produce the signatures used to request absentee ballots and to confirm the identities of those individuals requesting such ballots in the contested election is a violation of O.G.C.A. § 21 2 586(a).

207.

In order for the Secretary of State to comply with O.G.C.A. § 21-2-586(a), professional handwriting experts recommend a minimum of Ten Thousand (10,000) absentee ballot signatures be professionally evaluated. **Exhibit 16** attached hereto and incorporated by reference.

208.

Petitioners respectfully request that the Court order the production of the records of the absentee ballot applications and absentee ballots, for purposes of conducting an audit of the signatures on absentee ballot applications and absentee ballots cast in the Contested Election.

THERE ARE MYRIAD REPORTS OF IRREGULARITIES AND VIOLATIONS OF THE ELECTION CODE DURING THE CONTESTED ELECTION

209.

Petitioners have received hundreds of incident reports regarding problems, irregularities, and violations of the Election Code during the Contested Election.

210.

From those reports, Petitioners have attached affidavits from dozens of Citizens of Georgia, sworn under penalty of perjury, attesting to myriad violations of law committed by Respondents during the Contested Election. *See* **Exhibit 17**.

211.

The affidavits are attached to this Petition as an Appendix, with details of the multiple violations of law. *Id.*

212.

Also included in the Appendix are sworn declarations from data experts who have conducted detailed analysis of irregularities in the State's voter records. *See* **Exhibits 2, 3, 4, and 10**.

COUNTS

COUNT I:

ELECTION CONTEST

O.C.G.A §21-2-521 *et seq.*

213.

Petitioners incorporate by reference and re-allege paragraphs 1 through 212 this Petition as set forth herein verbatim.

214.

Respondents, jointly and severally, have violated the Constitution of the State of Georgia.

215.

Respondents, jointly and severally, have violated the laws of the State of Georgia.

216.

Respondents, jointly and severally, have violated the Election Code.

217.

Respondents, jointly and severally, have violated State Election Board Rules and Regulations.

218.

Respondents, jointly and severally, have violated the basic tenants of an open, free, and fair election.

219.

Respondents, jointly and severally, have failed in their duties to their constituents, the people of the State of Georgia, and the entire American democratic process.

220.

The Contested Election has been timely and appropriately contested per O.C.G.A. § 21-2-522 et seq.

221.

As a direct and proximate result of Respondents' actions, the Contested Election is fraught with misconduct, fraud, and irregularities.

222.

Due to the actions and failures of Respondents, many thousands of illegal votes were accepted, cast, and counted in the Contested Election, and legal votes were rejected.

223.

The fraud, misconduct, and irregularities that occurred under the "supervision" of Respondents are sufficient to change the purported results of the Contested Election.

224.

The fraud, misconduct, and irregularities that occurred under the "supervision" of Respondents are sufficient to place the Contested Election in doubt.

225.

Respondents' misconduct is sufficient to change the purported results in the Contested Election in President Trump's favor.

226.

Respondents' misconduct is sufficient to place the purported Contested Election results in doubt.

227.

Respondents, jointly and severally, erred in counting the votes in the Contested Election.

228.

Respondents' error in counting the votes in the Contested Election would change the result in President Trump's favor.

229.

Respondents, jointly and severally, erred in declaring the Contested Election results in favor of Mr. Biden.

230.

Respondents' systemic negligent, intentional, willful, and reckless violations of the Georgia Constitution, Georgia law, as well as the fundamental premise of a free and fair election created such error and irregularities at every stage of the Contested Election—from registration through certification and every component in between—that the outcome of the Contested Election is in doubt.

231.

As a result, there is substantial doubt as to the outcome of the Contested Election, and the Contested Election and any certification associated therewith shall be enjoined, vacated, and nullified and either a new presidential election be immediately ordered that complies with Georgia

law or, in the alternative, that such other just and equitable relief is obtained so as to comport with the Constitution of the State of Georgia.[10] *See* O.C.G.A. § 21-2-522.

COUNT II:

VIOLATIONS OF THE GEORGIA CONSTITUTION'S EQUAL PROTECTION PROVISION

232.

Petitioners incorporate by reference and re-allege paragraphs 1 through 212 f this Petition as set forth herein verbatim.

233.

The Constitution of the State of Georgia provides, "Protection and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws." Ga. Const. art. I, § I, para. II.

234.

Under Georgia's Equal Protection Clause, "the government is required to treat similarly situated individuals in a similar manner." *State v. Jackson,* 271 GA 5 (1999), *Favorito v. Handel*, 285 Ga. 795, 798 (2009) (citation and quotations omitted). *See* **Exhibit 15**.

235.

This requires establishing a uniform procedure for all counties to conduct absentee voting, advance voting, and Election Day in-person voting.

[10] In the event this Court enjoins, vacates, and nullifies the Contested Election, the Legislature shall direct the manner of choosing presidential electors. U.S. art II, § 1; *see also Bush v. Gore*, 531 U.S. 98.

236.

Respondents, jointly and severally, failed to establish such uniform procedure for the verification of signatures of absentee ballots.

237.

Respondents, jointly and severally, failed to establish a uniform level of scrutiny for signature matching.

238.

Respondents, jointly and severally, failed to train those who would be conducting signature verification on how to do so.

239.

The burdens of applying for and voting an absentee ballot were different in various counties throughout the State of Georgia.

240.

Electors voting via by absentee mail-in ballot were not required to provide identification, other than a matching signature.

241.

Electors voting in person were required to show photo identification and verify the voter's identity.

242.

The burdens of applying for and voting via absentee mail-in ballot were different from those for absentee in person.

243.

Georgia voters were treated differently depending on how they voted (i.e., whether by mail or in person), where they voted, when they voted, and for whom they voted.

244.

An elector in one county casting a ballot would not have his or her ballot treated in a similar manner as a voter in a different county.

245.

Electors in the same county would not have their ballots treated in a similar manner as electors at different precincts.

246.

Electors in the same precinct would not have their ballots treated in a similar manner whose votes were tabulated using different tabulators.

247.

Respondents, jointly and severally, failed to establish uniform procedures for treating similarly situated electors similarly.

248.

Respondents' systemic failure to even attempt uniformity across the state is a flagrant violation of the Constitution of the State of Georgia.

249.

Such a violation of the rights of the Citizens of Georgia constitutes misconduct and irregularity by election officials sufficient to change or place in doubt the result of the Contested Election.

250.

As a result, there is substantial doubt as to the outcome of the Contested Election, and the Contested Election and any certification associated therewith should be enjoined, vacated, and nullified and either a new presidential election be immediately ordered that complies with Georgia law or such other just and equitable relief is obtained so as to comport with the Constitution of the State of Georgia. *See* O.C.G.A. § 21-2-522.

COUNT III:

VIOLATIONS OF THE GEORGIA CONSTITUTION'S DUE PROCESS PROVISIONS

251.

Petitioners incorporate by reference and re-allege paragraphs 1 through 212 of this Petition and Count II as set forth herein verbatim.

252.

Pursuant to the Constitution of the State of Georgia, "No person shall be deprived of life, liberty, or property except by due process of law." Ga. Const. art. I, § I, para. I.

253.

Moreover, "All citizens of the United States, resident in this state, are hereby declared citizens of this state; and it shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges, and immunities due to such citizenship." Ga. Const. art. I, § 1, para. VII.

254.

The right to vote is a fundamental right.

255.

When a fundamental right is allegedly infringed by government action, substantive due process requires that the infringement be narrowly tailored to serve a compelling state interest. *Old S. Duck Tours v. Mayor & Aldermen of City of Savannah*, 272 Ga. 869, 872, 535 S.E.2d 751, 754 (2000).

256.

By allowing illegal ballots to be cast and counted, Respondents diluted the votes of qualified Georgia electors.

257.

By allowing illegal ballots to be cast and counted, Respondents, by and through their misconduct, allowed the disenfranchisement of qualified Georgia electors.

258.

Respondents, jointly and severally, violated the Due Process protections of qualified Georgia Electors guaranteed by the Georgia State Constitution.

259.

As a result, there is substantial doubt as to the outcome of the Contested Election and any certification associated therewith should be enjoined, vacated, and nullified and either a new presidential election be immediately ordered that complies with Georgia law or such other just and equitable relief is obtained so as to comport with the Constitution of the State of Georgia.

COUNT IV:

DECLARATORY JUDGMENT AND RELIEF

260.

Petitioners incorporate by reference and re-allege paragraphs 1 through 259 of this Petition as set forth herein verbatim.

261.

This claim is an action for a declaratory judgment pursuant to O.C.G.A. §§ 9-4-1 et seq.

262.

An actual controversy is ripe and exists between Petitioners and Respondents with regard to the misconduct, fraud, and irregularities occurring in the Contested Election, specifically including but not limited to:

a. The illegal and improper inclusion of unqualified voters on Georgia's voter list;

b. allowing ineligible voters to vote illegally in the Contested Election;

c. whether the Contested Election results are invalid;

d. whether the Consent Decree is unauthorized under Georgia law such that it is null and void, and unlawfully interfered with the proper administration of the Election Code;

e. whether the results of the Contested Election are null and void.

263.

It is necessary and proper that the rights and status amongst the parties hereto be declared.

264.

This Honorable Court is a Court of Equity and therefore endowed with the authority to hear and the power to grant declaratory relief.

265.

As a result of the systemic misconduct, fraud, irregularities, violations of Georgia law, and errors occurring in the Contested Election and consequently in order to cure and avoid said uncertainty, Petitioners seek the entry of a declaratory judgment providing that:

a. ineligible and unqualified individuals are unlawfully included on Georgia's voter role;

b. unregistered, unqualified, and otherwise ineligible voters cast their votes during the Contested Election;

c. the Consent Decree is unauthorized under Georgia law and is therefore null and void; and

d. the results of the Contested Election are null and void.

COUNT V:

REQUEST FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

266.

Petitioners incorporate by reference and re-allege paragraphs 1 through 265 of this Petition as set forth herein verbatim.

267.

Petitioners seek an emergency temporary restraining order, as well as preliminary and permanent injunctive relief per O.C.G.A. § 9-11-65, to:

a. Order expedited discovery and strict compliance with all open records requests;
b. Order Respondents to respond to this Petition within 3 days;
c. Require Respondents to immediately fulfill their obligations under the Election Code to properly maintain and update Georgia's list of registered voters to remove ineligible voters;
d. Prevent Respondents from allowing unqualified, unregistered, and otherwise ineligible individuals from voting in Georgia elections, including but not limited to the upcoming January 5, 2021 run-off[11];
e. Require an immediate audit of the signatures on absentee ballot applications and ballots as described in Exhibit 16;
f. Enjoin and restrain Respondents from taking any further actions or to further enforce the Consent Decree;
g. Prevent the certification of the results of the Contested Election;

[11] To the extent ineligible voters have already voted absentee for the January 5, 2021, runoff, those votes should be put into a provisional status.

h. Enjoin the Secretary of State from appointing the Electors to the Electoral College;

i. **Order a new Presidential Election to occur at the earliest opportune time**; and

j. For such other relief that this Court deems just and proper under the circumstances.

268.

In the absence of an emergency temporary restraining order and preliminary and permanent injunctions, Petitioners (and the Citizens of Georgia and the United States) will suffer irreparable harm for which there is no adequate remedy at law, while injunctive relief will cause no harm to Respondents.

269.

Immediate and irreparable injury, loss, or damage will result to the Petitioners (as well as the Citizens of Georgia and the United States) if the requested emergency injunctive relief is not granted.

270.

There will be immediate and irreparable damage to the Citizens of Georgia by allowing an illegal, improper, fraudulent, error-ridden presidential election to be certified, thereby improperly appointing Georgia's electors for Mr. Biden even though the Contested Election is in doubt.

271.

There will be irreparable damage to the Citizens of Georgia through their loss of confidence in the integrity of the election process by virtue of the illegal votes included in the tabulations of the Contested Election, which outweighs any potential harm to Respondents.

272.

Granting the requested relief will not disserve the public interest.

273.

Petitioners will be irreparably injured in the event the prayed for injunctive relief is not granted.

274.

It is further in the public interest to grant Petitioner's request for emergency injunctive relief so that Georgia voters can have confidence that the January 5, 2021, Senate election is conducted in accordance with the Election Code.

275.

As early as possible, notice to Respondents of Petitioners' motion for emergency injunctive relief will be made via email and / or telephone.

276.

Petitioners are further entitled to the injunctive relief sought herein because there is a substantial likelihood of success on the merits.

277.

The damage to Petitioners is not readily compensable by money.

278.

The balance of equities favors entry of a temporary restraining order and injunctive relief against Respondents and would not be adverse to any legitimate public interest.

WHEREFORE, Petitioners respectfully pray as follows for emergency and permanent relief as follows:

1. That this Court, pursuant to O. C. G. A. § 21-2-523, expeditiously assign a Superior Court or Senior Judge to preside over this matter;
2. That this Court issue a declaratory judgment that systemic, material violations of the Election Code during the Contested Election for President of the United States occurred that has rendered the Contested Election null and void as a matter of law;
3. That this Court issue a declaratory judgment that systemic, material violations of the Election Code during the Contested Election violated the voters' due process rights under the Georgia Constitution have rendered the Contested Election null and void as a matter of law;
4. That this Court issue a declaratory judgment that systemic, material violations of the Election Code violated the voters' equal protection rights under the Constitution of the State of Georgia that have rendered the Contested Election null and void as a matter of law;
5. That the Court issue an injunction requiring all Respondents to decertify the results of the Contested Election;
6. That the Court order a new election to be conducted in the presidential race, in the entirety of the State of Georgia at the earliest date, to be conducted in accordance with the Election Code;
7. *Alternatively*, that the Court issue an injunction prohibiting the Secretary of State from appointing the slate of presidential electors due to the systemic irregularities in the Contested Election sufficient to cast doubt on its outcome;

8. That the Court order expedited discovery and hearing, since time is of the essence, given the legal requirements that the presidential electors from the State of Georgia are to meet on December 14, 2020, and that the electoral votes from the State of Georgia are to be delivered to and counted by the United States Congress on January 6, 2021;
9. That this Court issue a declaratory judgment that the Consent Decree violates the Constitution of the State of Georgia and the laws of the State of Georgia;
10. *Alternatively*, that the Consent Decree be stayed during the pendency of this matter;
11. That the Court order Respondents to make available 10,000 absentee ballot applications and ballot envelopes from Respondents, as per Exhibit 16, and access to the voter registration database sufficient to complete a full audit, including but not limited to a comparison of the signatures affixed to absentee ballot applications and envelopes to those on file with the Respondents;
12. That the Court order the Secretary of State and other Respondents to release to Petitioners for inspection all records regarding the Contested Election pursuant to O.C.G.A. § 21-2-586;
13. That the Court order all Respondents to immediately identify and remove felons with uncompleted sentences, cross-county voters, out-of-state voters, deceased voters, and other ineligible persons from Respondents' voter rolls within the next 30 days;
14. That the Court declare that all rules adopted by the Respondents Secretary of State or the State Election Board in contravention of the Georgia Election Code be invalidated, specifically regarding the authentication and processing of absentee ballots, to wit State Election Board Rule 183-1-14-0.9-.15;
15. That the Court order such other relief as it finds just and proper.

Respectfully submitted this 4th day of December, 2020.

SMITH & LISS, LLC

/s/ Ray S. Smith III

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From: kurt olsen
Subject: Re: Meeting with AG Rosen @ 11 am
To: Moran, John (ODAG)
Sent: December 30, 2020 10:30 AM (UTC-05:00)
Attached: 122820 Mastriano Ltr. image 2.pdf

Dear John,

This copy of the 12/28/20 Mastriano to the Acting Deputy AG letter may have better resolution than the copy of the letter I attached to the last email. Please forward to AG Rosen. Thank you.

Kurt Olsen

On Dec 30, 2020, at 10:17 AM, kurt olsen [redacted] (b) (6) > wrote:

Thanks, John. Please forward to AG Rosen this copy of the 12/28/20 letter from PA State Senator Mastriano to Acting Deputy Attorney General Richard Donoghue. The letter raises a litany of serious outcome changing issues re: fraudulent and illegal votes in Pennsylvania, and provides an additional justification for the United States to bring an action in the Supreme Court to ensure that these issues are immediately investigated and not swept under the rug.

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SENATOR

COMMITTEES

INTERGOVERNMENTAL OPERATIONS
CHAIR

AGRICULTURE & RURAL AFFAIRS
VICE CHAIR

GAME & FISHERIES

STATE GOVERNMENT

TRANSPORTATION

VETERANS AFFAIRS & EMERGENCY PREPAREDNESS

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December 28, 2020

Acting Deputy Attorney General Richard Donoghue
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

RE: General Election Irregularities in Pennsylvania during the November 2020 cycle

Dear Honorable Donoghue:

Election fraud is real and prevalent in Pennsylvania. Yet, despite evidence, our Governor and Secretary of State inexplicably refuse to investigate. Every legal vote must count. Our Republic cannot long endure without free and fair elections where each person has one legal vote. However, allegations of fraudulent activity, as well as violations of election law in 2020 have placed the nation's eyes upon this Commonwealth.

Several of the key findings are delineated below:

1. Senate Majority Policy Committee November hearing review on statistical anomalies, such as hundreds of thousands of votes being dumped into a processing facility, with 570,000 Vice President Biden, and only 3,200 for President Trump (https://policy.pasenategop.com/112520/).

   Testimony provided at a Senate hearing from witnesses in Philadelphia, Northampton, Luzerne, Montgomery, Allegheny and Delaware counties detailed instances of:

   (a) Interference with poll watchers' ability to perform functions as provided for in the state election code, specifically regarding the submission, review and canvasing of mail-in ballots;

   (b) Delayed opening or closing of polling locations on Election Day;

   (c) Improper forfeiture and spoiling of mail-in ballots;

   (d) Illegal ballot harvesting;

   (e) Improper "curing" of insufficiently completed mail-in ballots;

(f) Poll worker intimidation and harassment;

(g) Voter intimidation;

(h) Improper chain of custody of ballots and election materials;

(i) Submission of fraudulent ballots by an individual other than the named voter.

2. There is a massive ***VOTER DEFICIT*** in Pennsylvania. 205,122 more votes were counted than total number of voters who voted: A comparison of official county election results to the total number of voters who cast ballots November 3, 2020…as recorded by the Department of State…shows the difference of 205,122 more votes cast than voters actually voting. (Rep Frank Ryan, http://www.repfrankryan.com/News/18754/Latest-News/PA-Lawmakers-Numbers-Don%E2%80%99t-Add-Up.-Certification-of-Presidential-Results-Premature-and-In-Error).

3. *Unidentified* Voters: When anyone registers to vote online or by paper, two options are provided for gender: Male or Female. If left blank; gender defaults to "No" – leaving three types of voters: Male, Female and "No." However, there are four genders in state voter rolls: Male, Female, "No" and *Unidentified*. It has been estimated that there are 121,000 "non-female/male voters" on state voter rolls, and 90,000 voted in 2020. Initial assessments have concluded *that at least 1/3 of these "U" voters are fraudulent* (*Unidentified "U" Voters, Kathy Barnette for Congress*); (*Unidentified "U" Voters, Kathy Barnette for Congress);*

4. The mandate by Governor Wolf last year, requiring new voting machines for 2020 raised concerns from county officials and state lawmakers. As a result, 14 counties are using Dominion voting machines. The counties using Dominion voting equipment (1.3 million voters in Pennsylvania): York, Erie, Montgomery, Bedford, Armstrong, Carbon, Crawford, Clarion, Fayette, Luzerne, Fulton, Jefferson, Pike and Warren." ("*As Pennsylvania Counties Ring in the New year with New Voting Machines, Pressure from Election Security Advocates Remains," The PLS Reporter, 01/06/2020*; https://www.pennlive.com/politics/2018/12/county-commissioners-question-the-funding-the-timing-the-need-for-replacing-voting-machines.html; *Questions Abound Over New Voting Machines, Citizens' Voice, 03/22/2019*; https://whyy.org/articles/despite-gop-objections-wolf-moves-to-upgrade-voting-machines-unilaterally/; *As Wolf Administration Pushes to Replace All Voting Machines by 2020, Lawmakers and County Officials Question Rush and Expense, PA Watchdog, 03/29/2019*).

5. Statistical experts examined Pennsylvania voting records and reached conclusions indicating there are "major statistical aberrations" in state voting records that are "unlikely to occur in a normal setting;" eleven counties (Montgomery, Allegheny, Chester, Bucks, Delaware, Lancaster, Cumberland, Northampton, Lehigh, Dauphin, York) showed "distinctive signs of voting abnormalities" for Vice President Biden. These analyses "provide scientific evidence that the reported results are highly unlikely to be an accurate reflection of how Pennsylvania citizens voted." (*Pennsylvania 2020 Voting Analysis Report, 11/16/2020*).

6. Gettysburg Senate Hearing - On November 25, Senator Doug Mastriano, together with Senator David Argall, hosted the Senate Majority Policy Committee hearing in Gettysburg where hours of testimony were presented, reviewed, and vetted regarding voting fraud and violations of voting law in Pennsylvania. The hearing demonstrated that there is rampant election fraud in Pennsylvania that must be investigated, remedied and rectified. The purpose of the hearing was to find out what happened in

Pennsylvania in the aftermath of hearing allegations from thousands of people from across the Commonwealth sharing stories of violations of election law and other infringements of voting law related to the November 03, 2020 general election. We heard eyewitness testimony from citizens who experienced their rights being violated. Additionally, during the hearing, expert witnesses testified to statistical anomalies, where massive quantities of ballots arrived without a chain of custody. **In one such spike, close to 600k votes were dumped in a processing facility with 570k of these votes going for Biden, and a paltry 3,200 for President Trump**. Another witness testified that an election worker was plugging flash drives into voting machines in a heavily democrat area, for no stated purpose.

Other irregularities included in the testimony presented at the hearing included:

(a) Mail-in ballots were not inspected by Republican representatives in portions of Philadelphia and Allegheny County;

(b) Montgomery County was never provided with guidelines from State Department Secretary about "curing" defective ballots;

(c) Timeline spikes depict more ballots being processed during specific periods than voting machines are capable of tabulating;

(d) The Philadelphia Board of Elections processed hundreds of thousands of mail-in ballots with zero civilian oversight.

(e) Ballots were separated from envelopes in numerous precincts; a recount is useless because the votes cannot be verified;

(f) Observers were corralled behind fencing in Philadelphia, at least 10 feet away from processors; similarly, in Allegheny County, observers were placed at least 15 feet away;

(g) Mail-in ballots were already opened in portions of Allegheny County; no one observed the opening of these ballots;

(h) Illegal "pop-up" election sites developed, where voters would apply, receive a ballot and vote;

(i) Forensic evidence in Delaware County has disappeared;

(j) A poll watcher with appropriate certificates and clearances was denied access;

(k) There was no meaningful observation of ballots in Montgomery County, and no signature verification, as well;

(l) A senior citizen voted for President Trump, but it was not displayed on receipt;

(m) Election workers illegally pre-canvased ballots in Northampton County; no meaningful canvas observation was permitted;

(n) several voters from across the state went to vote in person but when they arrived, they were told "they already voted" and were turned away and could not actually vote or were able to fill out a provisional ballot but was it really counted?

Despite the mounting evidence, our Governor and Secretary of State decline to investigate these serious allegations.

The United States of America has spent millions of dollars and put her men and women in harm's way to oversee safer, more reliable and freer elections in Afghanistan, Iraq, Kosovo and Bosnia. Why is the very state where the light of liberty was lit in 1776 is unable or unwilling to have elections as free and safe as war-torn Afghanistan? Something is seriously wrong in this Commonwealth and unless this is corrected, our republic cannot long endure.

The odyssey of PA finding itself in this position began in early 2020. Using the COVID-19 pandemic as a pretense, the Wolf Administration, together with the Pennsylvania Supreme Court, threw voting law into disarray.

The General Assembly (State House and State Senate) are constitutionally responsible for writing election law, not Gov Wolf, Secretary of Secretary Boockvar or the PA Supreme Court. These altered the original meaning of key provisions of Act 77. The state Supreme Court and Secretary Boockvar fundamentally altered and unconstitutionally rewrote the original meaning of key provisions of Act 77.

Voting law, as passed by the General Assembly in 2019, was clear and specific:

- All mail-in ballots must be received by 8 p.m. on Election Day;
- Officials at polling locations must authenticate the signatures of voters;
- County Boards of Elections can conduct pre-canvasing of absentee and mail-in ballots after 8 a.m. on Election Day;
- Defective absentee and mail-in ballots shall not be counted; and
- "Watchers" selected by candidates and political parties are permitted to observe the process of canvasing absentee and mail-in ballots.

The corruption of our election began with Governor Wolf during the COVID crisis. Wolf urged mail in voting upon people with a campaign to perpetuate the dangers of COVID. Likewise, he inferred that polling stations would be closed or undermanned due to the risk of the virus.

But the coup de main was seven weeks before Election Day, where the PA Supreme Court unilaterally – and in direct contravention of the wording of election law – extended the deadline for mailed ballots to be received from Election Day, to three days later. Similarly, the court declared that ballots mailed without a postmark must be counted. Additionally, the court mandated that mail-in ballots lacking a verified signature be accepted.

On the eve of Election Day, the State Department encouraged some counties – but not all – to notify party and candidate representatives of mail-in voters, whose ballots contained disqualifying defects, thereby enabling voters to cure said defects. This was unprecedented as it had never happened before in our Commonwealth. Election law is very specific to the way defects of mail-in ballots are to be treated, and it provides no authority for county officials to contact campaigns, or other political operatives, to affect the cure of such defects.

Actions taken by the PA State Supreme Court and Secretary Boockvar in the 2020 general election were so fraught with inconsistencies, improprieties and irregularities that the results for the office of President of the United States cannot be determined in our state.

This election is an embarrassment to our nation. John Adams rightly said that, "Facts are stubborn things," and armed with this, as Jesus stated, "We shall know the truth and the truth shall set us free." What happened on November 3, 2020 must be immediately addressed using facts and the testimony of the good people of our state.

Sincerely,

Senator Doug Mastriano
33rd Senate District

DM/kms

cc: Hon. United States Attorney William McSwain
U.S. Attorney's Office
504 W. Hamilton St., #3701
Allentown, PA 18101

From: Moran, John (ODAG)
Subject: Fwd: Meeting with AG Rosen @ 11 am
To: Rosen, Jeffrey A. (ODAG)
Sent: December 30, 2020 10:49 AM (UTC-05:00)
Attached: 122820 Mast. Ltr..pdf

Sent from my iPhone

Begin forwarded message:

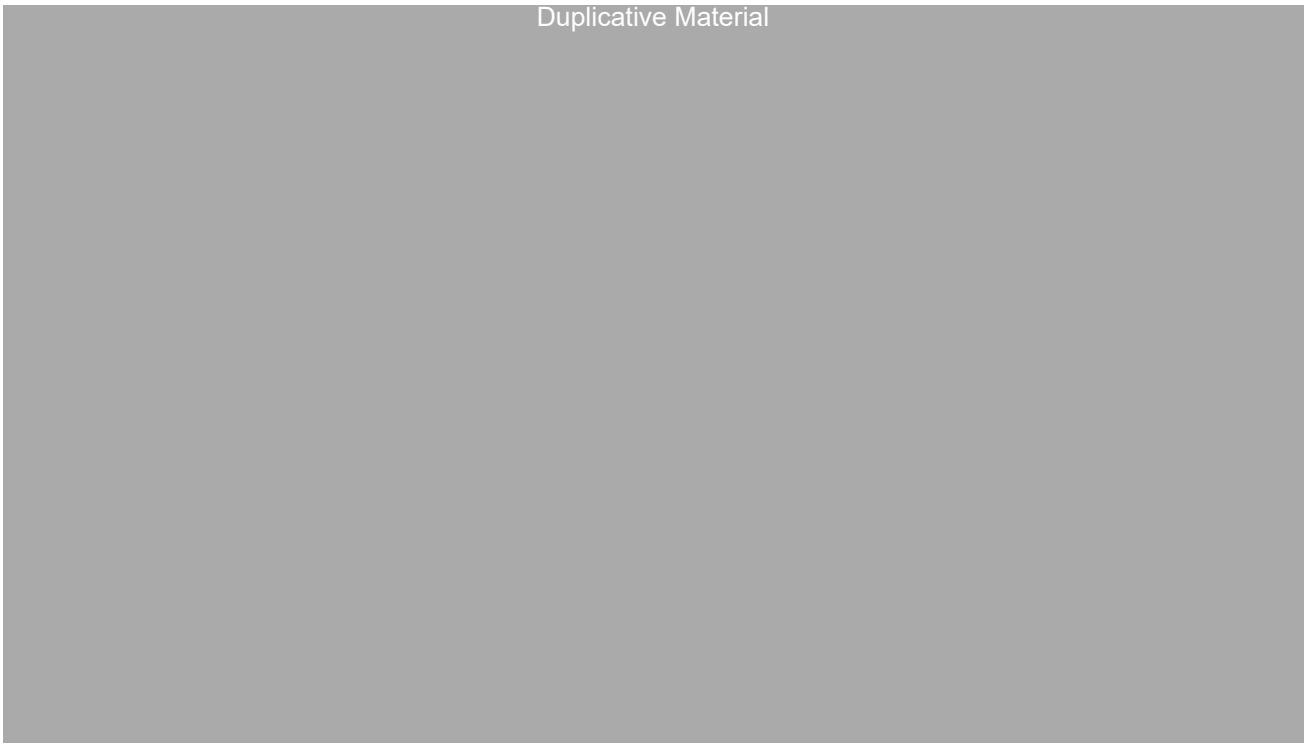
From: kurt olsen [(b) (6)] >
Date: December 30, 2020 at 10:20:42 AM EST
To: "Moran, John (ODAG)" [(b) (6)]
Subject: Re: Meeting with AG Rosen @ 11 am

Thanks, John. Please forward to AG Rosen this copy of the 12/28/20 letter from PA State Senator Mastriano to Acting Deputy Attorney General Richard Donoghue. The letter raises a litany of serious outcome changing issues re: fraudulent and illegal votes in Pennsylvania, and provides an additional justification for the United States to bring an action in the Supreme Court to ensure that these issues are immediately investigated and not swept under the rug.

Sincerely,

Kurt

On Dec 30, 2020, at 8:20 AM, Moran, John (ODAG) [(b) (6)] >> wrote:



33RD SENATORIAL DISTRICT

SENATE BOX 203033
HARRISBURG, PA 17120-3033
PHONE: 717-787-4651
FAX: 717-772-2753

37 SOUTH MAIN STREET, SUITE 200
CHAMBERSBURG, PA 17201
PHONE: 717-264-8100
FAX: 717-264-3652

16-A DEATRICK DRIVE
GETTYSBURG, PA 17325
PHONE: 717-334-4169
FAX: 717-334-8911

118 CARLISLE STREET, SUITE 309
HANOVER, PA 17331
PHONE: 717-632-1153
FAX: 717-632-1183

COMMITTEES

INTERGOVERNMENTAL OPERATIONS
CHAIR

AGRICULTURE & RURAL AFFAIRS
VICE CHAIR

GAME & FISHERIES

STATE GOVERNMENT

TRANSPORTATION

VETERANS AFFAIRS & EMERGENCY PREPAREDNESS

SENATORMASTRIANO.COM
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TWITTER.COM/SENMASTRIANO
INSTAGRAM.COM/SENATORMASTRIANO/

DOUG MASTRIANO
SENATOR

December 28, 2020

Acting Deputy Attorney General Richard Donoghue
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

RE: General Election Irregularities in Pennsylvania during the November 2020 cycle

Dear Honorable Donoghue:

Election fraud is real and prevalent in Pennsylvania. Yet, despite evidence, our Governor and Secretary of State inexplicably refuse to investigate. Every legal vote must count. Our Republic cannot long endure without free and fair elections where each person has one legal vote. However, allegations of fraudulent activity, as well as violations of election law in 2020 have placed the nation's eyes upon this Commonwealth.

Several of the key findings are delineated below:

1. Senate Majority Policy Committee November hearing review on statistical anomalies, such as hundreds of thousands of votes being dumped into a processing facility, with 570,000 Vice President Biden, and only 3,200 for President Trump (https://policy.pasenategop.com/112520/).

   Testimony provided at a Senate hearing from witnesses in Philadelphia, Northampton, Luzerne, Montgomery, Allegheny and Delaware counties detailed instances of:

   (a) Interference with poll watchers' ability to perform functions as provided for in the state election code, specifically regarding the submission, review and canvasing of mail-in ballots;

   (b) Delayed opening or closing of polling locations on Election Day;

   (c) Improper forfeiture and spoiling of mail-in ballots;

   (d) Illegal ballot harvesting;

   (e) Improper "curing" of insufficiently completed mail-in ballots;

page 2

(f) Poll worker intimidation and harassment;

(g) Voter intimidation;

(h) Improper chain of custody of ballots and election materials;

(i) Submission of fraudulent ballots by an individual other than the named voter.

2. There is a massive ***VOTER DEFICIT*** in Pennsylvania. 205,122 more votes were counted than total number of voters who voted. A comparison of official county election results to the total number of voters who cast ballots November 3, 2020…as recorded by the Department of State…shows the difference of 205,122 more votes cast than voters actually voting. (Rep Frank Ryan. http://www.repfrankryan.com/News/18754/Latest-News/PA-Lawmakers-Numbers-Don%E2%80%99t-Add-Up,-Certification-of-Presidential-Results-Premature-and-In-Error).

3. ***Unidentified*** Voters: When anyone registers to vote online or by paper, two options are provided for gender: Male or Female. If left blank; gender defaults to "No" – leaving three types of voters: Male, Female and "No." However, there are four genders in state voter rolls: Male, Female, "No" and ***Unidentified***. It has been estimated that there are 121,000 "non-female/male voters" on state voter rolls, and 90,000 voted in 2020. Initial assessments have concluded ***that at least 1/3 of these "U" voters are fraudulent*** (*Unidentified "U" Voters, Kathy Barnette for Congress*); (*Unidentified "U" Voters, Kathy Barnette for Congress);*

4. The mandate by Governor Wolf last year, requiring new voting machines for 2020 raised concerns from county officials and state lawmakers. As a result, 14 counties are using Dominion voting machines. The counties using Dominion voting equipment (1.3 million voters in Pennsylvania): York, Erie, Montgomery, Bedford, Armstrong, Carbon, Crawford, Clarion, Fayette, Luzerne, Fulton, Jefferson, Pike and Warren." (*"As Pennsylvania Counties Ring in the New year with New Voting Machines, Pressure from Election Security Advocates Remains," The PLS Reporter, 01/06/2020*; https://www.pennlive.com/politics/2018/12/county-commissioners-question-the-funding-the-timing-the-need-for-replacing-voting-machines.html; *Questions Abound Over New Voting Machines, Citizens' Voice, 03/22/2019*; https://whyy.org/articles/despite-gop-objections-wolf-moves-to-upgrade-voting-machines-unilaterally/; *As Wolf Administration Pushes to Replace All Voting Machines by 2020, Lawmakers and County Officials Question Rush and Expense, PA Watchdog, 03/29/2019*).

5. Statistical experts examined Pennsylvania voting records and reached conclusions indicating there are "major statistical aberrations" in state voting records that are "unlikely to occur in a normal setting;" eleven counties (Montgomery, Allegheny, Chester, Bucks, Delaware, Lancaster, Cumberland, Northampton, Lehigh, Dauphin, York) showed "distinctive signs of voting abnormalities" for Vice President Biden. These analyses "provide scientific evidence that the reported results are highly unlikely to be an accurate reflection of how Pennsylvania citizens voted." (*Pennsylvania 2020 Voting Analysis Report, 11/16/2020*).

6. Gettysburg Senate Hearing - On November 25, Senator Doug Mastriano, together with Senator David Argall, hosted the Senate Majority Policy Committee hearing in Gettysburg where hours of testimony were presented, reviewed, and vetted regarding voting fraud and violations of voting law in Pennsylvania. The hearing demonstrated that there is rampant election fraud in Pennsylvania that must be investigated, remedied and rectified. The purpose of the hearing was to find out what happened in

page 3

Pennsylvania in the aftermath of hearing allegations from thousands of people from across the Commonwealth sharing stories of violations of election law and other infringements of voting law related to the November 03, 2020 general election. We heard eyewitness testimony from citizens who experienced their rights being violated. Additionally, during the hearing, expert witnesses testified to statistical anomalies, where massive quantities of ballots arrived without a chain of custody. **In one such spike, close to 600k votes were dumped in a processing facility with 570k of these votes going for Biden, and a paltry 3,200 for President Trump**. Another witness testified that an election worker was plugging flash drives into voting machines in a heavily democrat area, for no stated purpose.

Other irregularities included in the testimony presented at the hearing included:

(a) Mail-in ballots were not inspected by Republican representatives in portions of Philadelphia and Allegheny County;

(b) Montgomery County was never provided with guidelines from State Department Secretary about "curing" defective ballots;

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(m) Election workers illegally pre-canvased ballots in Northampton County; no meaningful canvas observation was permitted;

page 4

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page 5

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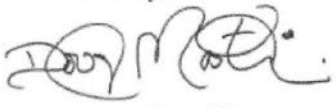
Sincerely,



Senator Doug Mastriano
33rd Senate District

DM/kms

cc: Hon. United States Attorney William McSwain
U.S. Attorney's Office
504 W. Hamilton St., #3701
Allentown, PA 18101

From: Moran, John (ODAG)
Subject: Fwd: Meeting with AG Rosen @ 11 am
To: Rosen, Jeffrey A. (ODAG)
Sent: December 30, 2020 10:49 AM (UTC-05:00)
Attached: 122820 Mastriano Ltr. image 2.pdf

Sent from my iPhone

Begin forwarded message:

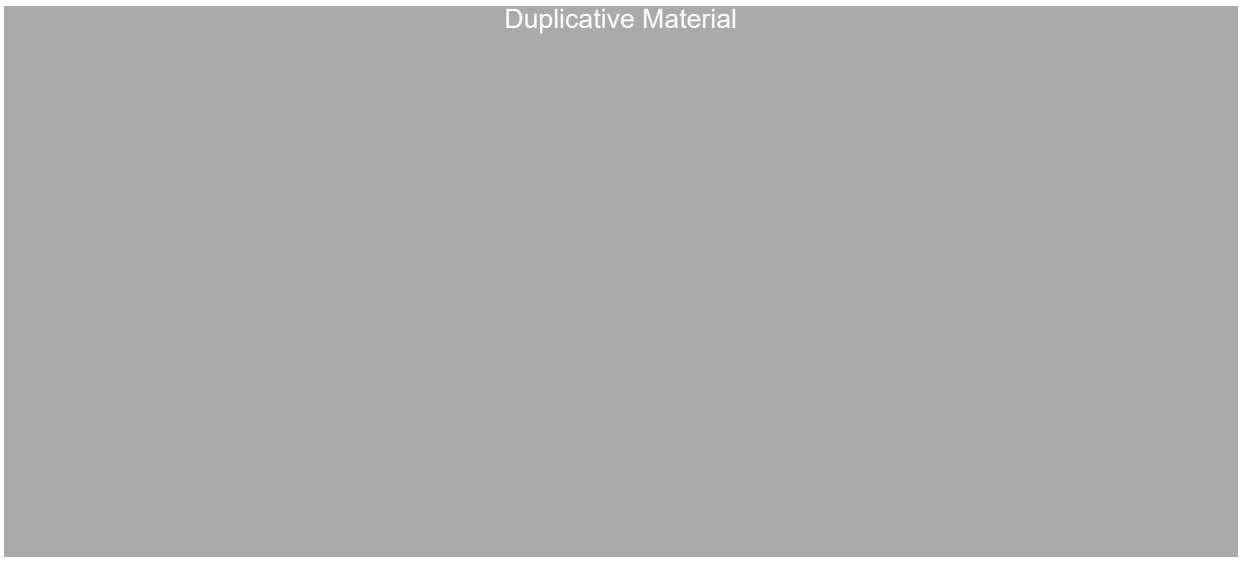
From: kurt olsen (b) (6)
Date: December 30, 2020 at 10:32:20 AM EST
To: "Moran, John (ODAG)" (b) (6)
Subject: Re: Meeting with AG Rosen @ 11 am

From: Moran, John (ODAG)
Subject: Re: Meeting with AG Rosen @ 11 am
To: kurt olsen
Sent: December 30, 2020 10:49 AM (UTC-05:00)

Received.

John

> On Dec 30, 2020, at 10:32 AM, kurt olsen [redacted] (b) (6) [redacted] > wrote:
>



From: (b) (6) (ODAG)
Subject: FW: Meeting with the Acting AG / 31 DEC
To: Rosen, Jeffrey A. (ODAG)
Cc: Donoghue, Richard (ODAG)
Sent: December 31, 2020 9:31 AM (UTC-05:00)

Sir – I will place this information on your calendar.

Thank you,

From: Haidet, Michael B. EOP/WHO (b) (6)
Sent: Thursday, December 31, 2020 9:10 AM
To: (b) (6) (ODAG) (b) (6)
Subject: Meeting with the Acting AG / 31 DEC

Hi (b) (6)

Thanks for connecting. We can confirm a meeting with Acting AG Rosen and the President for today, **Thursday, December 31, 2020 at 3:00 PM (45 min)** in the Oval Office.

Pat Cipollone will also be in attendance.

Please let me know if you have any questions or concerns.

Thanks,
Mike

Michael Haidet
Deputy Assistant to the President
Scheduling and Advance
Desk: (b) (6) | Cell: (b) (6)

From: (b) (6) (ODAG)
Subject: RE: Meeting with the Acting AG / 31 DEC
To: Haidet, Michael B. EOP/WHO
Cc: Morrall, Kimberly E. EOP/WHO
Sent: December 31, 2020 11:12 AM (UTC-05:00)

Great! Thank you,

(b) (6)

From: Haidet, Michael B. EOP/WHO (b) (6)
Sent: Thursday, December 31, 2020 11:08 AM
To: (b) (6) (ODAG) (b) (6)
Cc: Morrall, Kimberly E. EOP/WHO (b) (6)
Subject: RE: Meeting with the Acting AG / 31 DEC

Sounds good. WHMU is tracking that General Rosen will come to EEOB 97 at 1:45 PM.

Thanks,
Mike

From: (b) (6) (ODAG) (b) (6)
Sent: Thursday, December 31, 2020 10:54 AM
To: Haidet, Michael B. EOP/WHO (b) (6)
Cc: Morrall, Kimberly E. EOP/WHO (b) (6)
Subject: RE: Meeting with the Acting AG / 31 DEC

Michael:
Per my discussion with General Rosen, he will be the only one attending the meeting, but will have a pre meeting with Mr. Cippollone at 2pm. In preparation for the meeting, whom should I speak with to schedule the 1:45pm testing?

Respectfully,

(b) (6)
U.S. Department of Justice
Office of the Deputy Attorney General
(b) (6)

From: Haidet, Michael B. EOP/WHO < (b) (6)
Sent: Thursday, December 31, 2020 9:27 AM
To: (b) (6) (ODAG) (b) (6)
Cc: Morrall, Kimberly E. EOP/WHO < (b) (6)
Subject: RE: Meeting with the Acting AG / 31 DEC

Thank you. Adding Kimberly here to assist if needed.

From: (b) (6) (ODAG) (b) (6)
Sent: Thursday, December 31, 2020 9:24 AM
To: Haidet, Michael B. EOP/WHO < (b) (6)
Subject: RE: Meeting with the Acting AG / 31 DEC

Good Morning, Michael:
Thank you for the e-mail. I will confirm if Principal Associate Deputy Attorney General (Richard

Donoghue) will attend.

Respectfully,

(b) (6)
U.S. Department of Justice
Office of the Deputy Attorney General
(b) (6)

From: Haidet, Michael B. EOP/WHO (b) (6)
Sent: Thursday, December 31, 2020 9:10 AM
To: (b) (6) (ODAG) (b) (6)
Subject: Meeting with the Acting AG / 31 DEC

Duplicative Material

From: [redacted] (USMS)
Subject: RE: Meeting with the Acting AG / 31 DEC
To: [redacted] (ODAG); [redacted] (USMS)
Cc: [redacted] (ODAG)
Sent: December 31, 2020 11:47 AM (UTC-05:00)

Thanks [redacted]

[redacted]

From: [redacted] (ODAG) [redacted]
Sent: Thursday, December 31, 2020 11:46 AM
To: [redacted] (USMS) [redacted]; [redacted] (USMS) [redacted]
Cc: [redacted] (ODAG) [redacted]
Subject: RE: Meeting with the Acting AG / 31 DEC

Additional update:

Mr. Donoghue will now accompany General Rosen to the WH and will also be tested. It's not definite as of yet if Mr. Donoghue will attend the Oval office meeting, but just putting this on your radar.T

Thanks,

From: [redacted] (ODAG)
Sent: Thursday, December 31, 2020 11:14 AM
To: [redacted] (USMS) [redacted]; [redacted] (USMS) [redacted]
Cc: [redacted] (ODAG) [redacted]
Subject: RE: Meeting with the Acting AG / 31 DEC

Update:

General Rosen now has a 2pm meeting with Mr. Pat Cipollone in the WHCO. He will depart DOJ at 1:30pm and report to EEOB 97 for testing and then to Mr. Cippollone's office.

Thanks in advance,

From: [redacted] (ODAG)
Sent: Thursday, December 31, 2020 9:28 AM
To: [redacted] (USMS) [redacted]; [redacted] (USMS) [redacted]
Cc: [redacted] (ODAG) [redacted]
Subject: FW: Meeting with the Acting AG / 31 DEC
Importance: High

FYSA – I'm checking to see if Richard Donoghue will attend.

Thanks in advance,

From: Haidet, Michael B. EOP/WHO [redacted]
Sent: Thursday, December 31, 2020 9:10 AM
To: [redacted] (ODAG) [redacted]
Subject: Meeting with the Acting AG / 31 DEC

Duplicative Material

From: (b) (6), (b) (7)(C), (b) (7)(F) (USMS)
Subject: RE: Meeting with the Acting AG / 31 DEC
To: (b) (6) (ODAG); (b) (6), (b) (7)(C), (b) (7)(F) (USMS)
Cc: (b) (6). (ODAG)
Sent: December 31, 2020 11:48 AM (UTC-05:00)

Thanks (b) (6)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C), (b) (7)(F) | Senior Inspector
Judicial Security Division | Dignitary Protection Branch
United States Marshals Service | Washington D.C.
c: (b) (6), (b) (7)(C), (b) (7)(F) | e: (b) (6), (b) (7)(C), (b) (7)(F)

From: (b) (6) (ODAG) (b) (6)
Sent: Thursday, December 31, 2020 11:46 AM
To: (b) (6), (b) (7)(C), (b) (7)(F) (USMS) (b) (6), (b) (7)(C), (b) (7)(F); (b) (6), (b) (7)(C), (b) (7)(F) (USMS) (b) (6), (b) (7)(C), (b) (7)(F)>
Cc: (b) (6) (ODAG) (b) (6)
Subject: RE: Meeting with the Acting AG / 31 DEC

Duplicative Material

From: (b) (6) (ODAG)
Subject: RE: Meeting with the Acting AG / 31 DEC
To: Morrall, Kimberly E. EOP/WHO; Haidet, Michael B. EOP/WHO
Sent: December 31, 2020 1:07 PM (UTC-05:00)

I just submitted.

Respectfully,

(b) (6)
U.S. Department of Justice
Office of the Deputy Attorney General
(b) (6)

From: Morrall, Kimberly E. EOP/WHO (b) (6)
Sent: Thursday, December 31, 2020 12:43 PM
To: (b) (6) (ODAG) (b) (6) >; Haidet, Michael B. EOP/WHO
(b) (6)
Subject: RE: Meeting with the Acting AG / 31 DEC

WAVES link below.

(b) (6)

Thank you,
Kimberly

From: (b) (6) (ODAG) (b) (6)
Sent: Thursday, December 31, 2020 12:40 PM
To: Morrall, Kimberly E. EOP/WHO (b) (6) >; Haidet, Michael B. EOP/WHO
(b) (6)
Subject: RE: Meeting with the Acting AG / 31 DEC

Good Afternoon, Kimberly:
Yes, Mr. Donoghue will be attending with General Rosen at 1:45pm for testing. Can you please send me the waves link.

Respectfully,

(b) (6)
U.S. Department of Justice
Office of the Deputy Attorney General
(b) (6)

From: Morrall, Kimberly E. EOP/WHO (b) (6)
Sent: Thursday, December 31, 2020 12:28 PM
To: Haidet, Michael B. EOP/WHO (b) (6); (b) (6) (ODAG)
(b) (6) >
Subject: RE: Meeting with the Acting AG / 31 DEC

Hi (b) (6),

Will Mr. Richard Donoghue need WAVES to come onto the complex for this meeting and if so, what time?

Thank you,
Kimberly

From: Haidet, Michael B. EOP/WHO (b) (6)
Sent: Thursday, December 31, 2020 11:30 AM
To: (b) (6) (ODAG) (b) (6)
Cc: Morrall, Kimberly E. EOP/WHO < (b) (6)
Subject: Re: Meeting with the Acting AG / 31 DEC

Yes, will do.

On Dec 31, 2020, at 11:27 AM, (b) (6) (ODAG) (b) (6) > wrote:

Mike:
With apologies, may we now add Mr. Richard Donoghue to be included for testing? General Rosen just stated that Mr. Donoghue may attend, but not definite as of yet.

Respectfully,

(b) (6)
U.S. Department of Justice
Office of the Deputy Attorney General
(b) (6)

From: Haidet, Michael B. EOP/WHO < (b) (6)
Sent: Thursday, December 31, 2020 11:08 AM
To: (b) (6) (ODAG) (b) (6) >
Cc: Morrall, Kimberly E. EOP/WHO (b) (6)
Subject: RE: Meeting with the Acting AG / 31 DEC

Duplicative Material

From: Engel, Steven A. (OLC)
Subject: Re: any update?
To: Donoghue, Richard (ODAG)
Sent: December 31, 2020 6:21 PM (UTC-05:00)

Ok.

Sent from my iPhone

On Dec 31, 2020, at 6:18 PM, Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov> wrote:

Just left WH. Will call in a bit.

> On Dec 31, 2020, at 4:20 PM, Engel, Steven A. (OLC) < (b) (6) > wrote:
>
> I'm going to have to head out of the office soon, since (b) (6) . But I'll be available by cell (b) (6) , and could obviously come back to the office if need be.
>
> **Steven A. Engel**
> Assistant Attorney General
> Office of Legal Counsel
> U.S. Department of Justice
> 950 Pennsylvania Ave., N.W.
> Washington, D.C. 20530
> Office: (b) (6)
> (b) (6)

From: Rosen, Jeffrey A. (ODAG)
Subject: Re: Tonight
To: Hovakimian, Patrick (ODAG)
Cc: Donoghue, Richard (ODAG)
Sent: December 31, 2020 6:41 PM (UTC-05:00)

When you are back, please come to my office. Thanks.

Sent from my iPhone

> On Dec 31, 2020, at 6:17 PM, Hovakimian, Patrick (ODAG) <phovakimian4@jmd.usdoj.gov> wrote:
>
> I'll be back in 20.
>
> Patrick Hovakimian
> (b) (6)
>
>> On Dec 31, 2020, at 6:14 PM, Rosen, Jeffrey A. (ODAG) <jarosen@jmd.usdoj.gov> wrote:
>>
>> We are now on way back to DOJ. Might need your help. Could you wait?
>>
>> Sent from my iPhone
>>
>>>> On Dec 31, 2020, at 6:01 PM, Hovakimian, Patrick (ODAG) <phovakimian4@jmd.usdoj.gov> wrote:
>>>
>>> I told (b) (6) he should go ahead and go home if he'd like.
>>>
>>> I'm heading out in a minute too, but available by phone if needed.
>>>
>>> Patrick Hovakimian
>>> (b) (6)

From: Rosen, Jeffrey A. (ODAG)
Subject: RE: Two Urgent Action Items
To: Donoghue, Richard (ODAG)
Sent: January 2, 2021 7:13 PM (UTC-05:00)

Rich, thanks for responding to this earlier. I confirmed again today that I am not prepared to sign such a letter. Jeff

---

From: Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov>
Sent: Monday, December 28, 2020 5:50 PM
To: Clark, Jeffrey (ENRD) <JClark@ENRD.USDOJ.GOV>
Cc: Rosen, Jeffrey A. (ODAG) <jarosen@jmd.usdoj.gov>
Subject: RE: Two Urgent Action Items

Jeff,

I have only had a few moments to review the draft letter and, obviously, there is a lot raised there that would have to be thoroughly researched and discussed. That said, there is no chance that I would sign this letter or anything remotely like this.

While it may be true that the Department "is investigating various irregularities in the 2020 election for President" (something we typically would not state publicly), the investigations that I am aware of relate to suspicions of misconduct that are of such a small scale that they simply would not impact the outcome of the Presidential Election. AG Barr made that clear to the public only last week, and I am not aware of intervening developments that would change that conclusion. Thus, I know of nothing that would support the statement, "we have identified significant concerns that may have impacted the outcome of the election in multiple states." While we are always prepared to receive complaints and allegations relating to election fraud, and will investigate them as appropriate, we simply do not currently have a basis to make such a statement. Despite dramatic claims to the contrary, we have not seen the type of fraud that calls into question the reported (and certified) results of the election. Also the commitment that "the Department will update you as we are able on investigatory progress" is dubious as we do not typically update non-law enforcement personnel on the progress of any investigations.

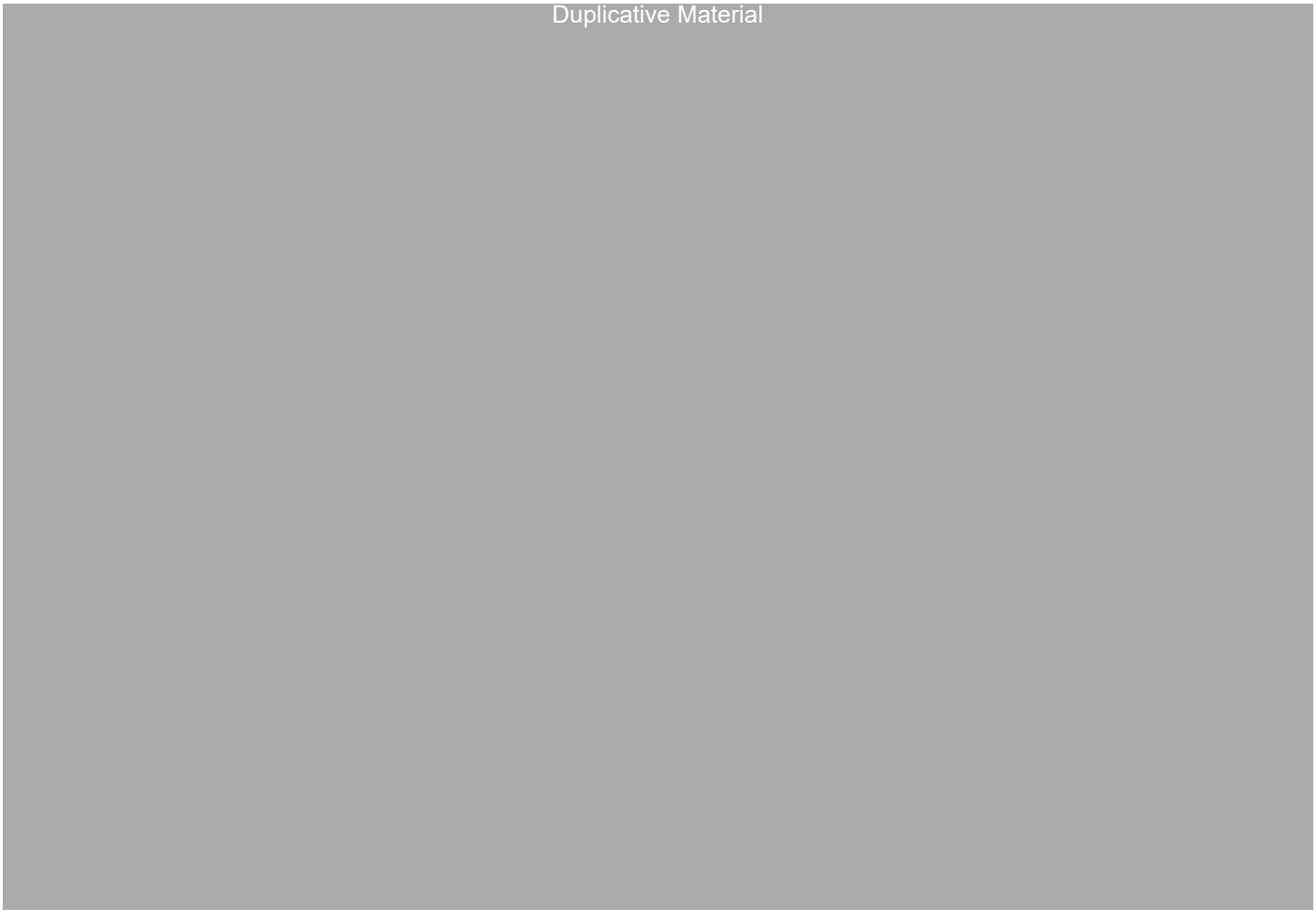
More importantly, I do not think the Department's role should include making recommendations to a State legislature about how they should meet their Constitutional obligation to appoint Electors. Pursuant to the Electors Clause, the State of Georgia (and every other state) has prescribed the legal process through which they select their Electors. While those processes include the possibility that election results may "fail[ ] to make a choice", it is for the individual State to figure out how to address that situation should it arise. But as I note above, there is no reason to conclude that any State is currently in a situation in which their election has failed to produce a choice. As AG Barr indicated in his public comments, while I have no doubt that some fraud has occurred in this election, I have not seen evidence that would indicate that the election in any individual state was so defective as to render the results fundamentally unreliable. Given that, I cannot imagine a scenario in which the Department would recommend that a State assemble its legislature to determine whether already-certified election results should somehow be overridden by legislative action. Despite the references to the 1960 Hawaii situation (and other historical anomalies, such as the 1876 Election), I believe this would be utterly without precedent. Even if I am incorrect about that, this would be a grave step for the Department to take and it could have tremendous Constitutional, political and social ramifications for the country. I do not believe that we could even consider such a proposal without the type of research and discussion that such a momentous step warrants. Obviously, OLC would have to be involved in such discussions.

I am available to discuss this when you are available after 6:00 pm but, from where I stand, this is not even within the realm of possibility.

Rich

From: Clark, Jeffrey (ENRD) <JClark@ENRD.USDOJ.GOV>
Sent: Monday, December 28, 2020 4:40 PM

To: Rosen, Jeffrey A. (ODAG) <jarosen@jmd.usdoj.gov>; Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov>
Subject: Two Urgent Action Items



From: Donoghue, Richard (ODAG)
Subject: Re: Call
To: Engel, Steven A. (OLC)
Sent: January 2, 2021 8:39 PM (UTC-05:00)
(b) (6)

> On Jan 2, 2021, at 8:09 PM, Engel, Steven A. (OLC) (b) (6) > wrote:
>
> Sure. What's your cell?
>
> Sent from my iPhone
>
> On Jan 2, 2021, at 8:08 PM, Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov> wrote:
>
> Steve,
>
> Not urgent, but give me a call when you have 5 minutes free tonight. I want to update you on today's events.
>
> Thanks,
>
> Rich

From: Donoghue, Richard (USANYE)
Subject:
To: Hovakimian, Patrick (ODAG)
Sent: January 3, 2021 4:23 PM (UTC-05:00)

Conf call: (b) (6) , participant passcode: (b) (6) , leader passcode: (b) (6)

From: Hovakimian, Patrick (ODAG)
Subject: FW: Call this afternoon
To: Dreiband, Eric (CRT)
Sent: January 3, 2021 4:30 PM (UTC-05:00)

From: Hovakimian, Patrick (ODAG)
Sent: Sunday, January 3, 2021 4:28 PM
To: Murray, Claire M. (OASG) (b) (6) >; Wall, Jeffrey B. (OSG) (b) (6) >; Delrahim, Makan (ATR) (b) (6) >; Engel, Steven A. (OLC) (b) (6) >; Demers, John C. (NSD) (b) (6) >; Burns, David P. (NSD) (b) (6) >; Burns, David (CRM) (b) (6) >
Cc: Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov>
Subject: Call this afternoon

Apologies for the Sunday reach-out. Please join Rich and me for a call at 4:45 p.m. Dial-in below.

(b) (6), participant passcode: (b) (6)

Patrick Hovakimian
Associate Deputy Attorney General
United States Department of Justice
(b) (6)

From: [redacted] (ODAG)
Subject: Re: Conf call
To: Hovakimian, Patrick (ODAG)
Cc: [redacted] (ODAG)
Sent: January 3, 2021 5:53 PM (UTC-05:00)

Ok, great.

Sent from my iPhone

> On Jan 3, 2021, at 5:52 PM, Hovakimian, Patrick (ODAG) <phovakimian4@jmd.usdoj.gov> wrote:
>
> No problem! I got one and we're good. Thanks [redacted]!
>
> Patrick Hovakimian
> [redacted]
>
>> On Jan 3, 2021, at 5:47 PM, [redacted] (ODAG) <[redacted]> wrote:
>>
>> Patrick - I'm on the road driving and can send one to you in an hour or so. Will that be okay?
>>
>> Thanks,
>>
>> Sent from my iPhone
>>
>>>> On Jan 3, 2021, at 4:20 PM, Hovakimian, Patrick (ODAG) <phovakimian4@jmd.usdoj.gov> wrote:
>>>
>>> Can you please send me a dial in and host code for a call tonight?
>>>
>>> Patrick Hovakimian
>>> [redacted]

From: Delrahim, Makan (ATR)
Subject: Re: Look at the call in Pat H sent you
To: Donoghue, Richard (ODAG)
Sent: January 3, 2021 6:05 PM (UTC-05:00)

I am sorry. Just seeing this. Got back from a [redacted] (b) (6) just now and didn't have my work phone w me, it had been packed in my bag.
Are you available for a call?

Makan Delrahim
Assistant Attorney General
Antitrust Division

> On Jan 3, 2021, at 4:39 PM, Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov> wrote:
>
>

From: Delrahim, Makan (ATR)
Subject: Re: Call this afternoon
To: Hovakimian, Patrick (ODAG)
Cc: Murray, Claire M. (OASG); Wall, Jeffrey B. (OSG); Engel, Steven A. (OLC); Demers, John C. (NSD); Burns, David P. (NSD); Burns, David (CRM); Donoghue, Richard (ODAG)
Sent: January 3, 2021 6:09 PM (UTC-05:00)

I am sorry I missed this. I am just getting this as I didn't have my work phone w me as I was (b) (6) . I have Both phones w me.

Makan Delrahim
Assistant Attorney General
Antitrust Division

On Jan 3, 2021, at 4:28 PM, Hovakimian, Patrick (ODAG) <phovakimian4@jmd.usdoj.gov> wrote:

Apologies for the Sunday reach-out. Please join Rich and me for a call at 4:45 p.m. Dial-in below.

(b) (6) , participant passcode: (b) (6)

Patrick Hovakimian
Associate Deputy Attorney General
United States Department of Justice
(b) (6)

From: Demers, John C. (NSD)
Subject: Re: Call this afternoon
To: Hovakimian, Patrick (ODAG)
Sent: January 3, 2021 9:12 PM (UTC-05:00)

Amazing.

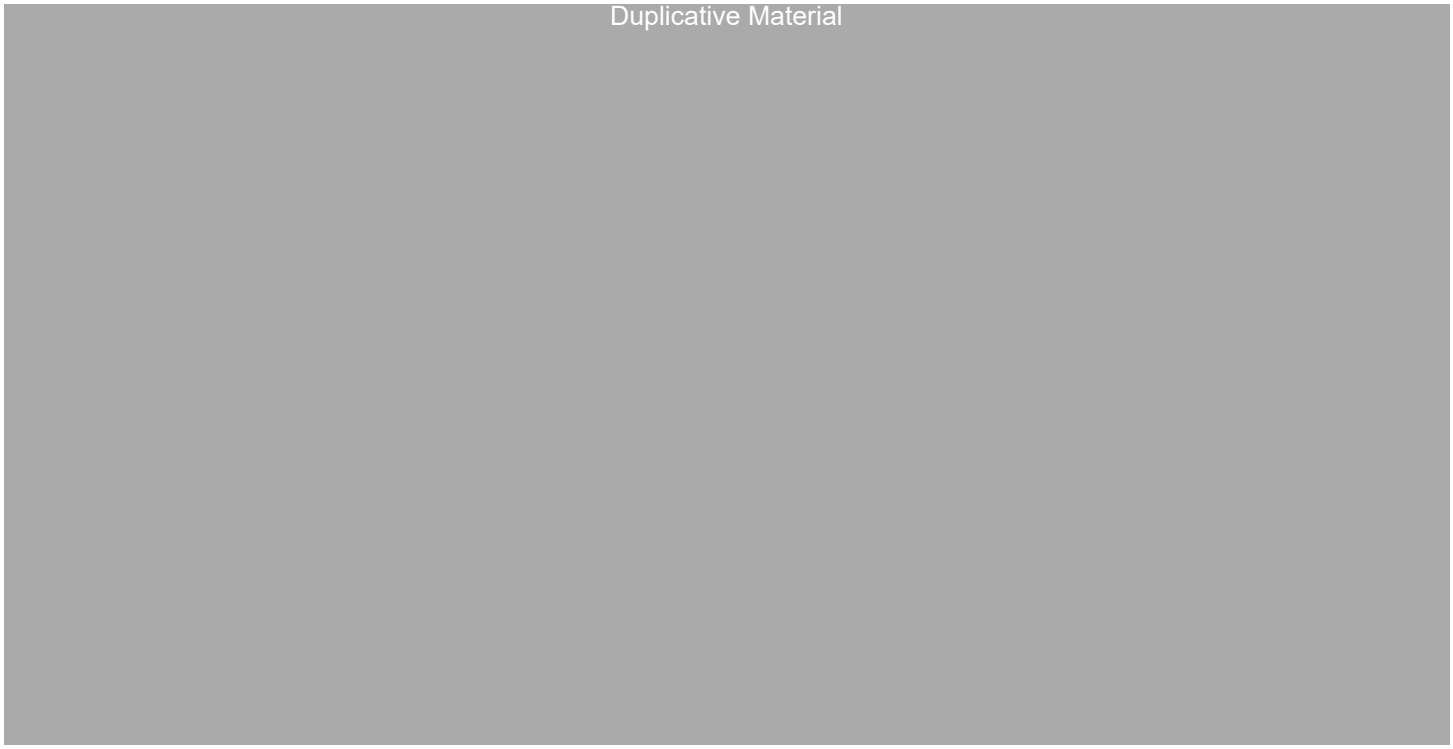
> On Jan 3, 2021, at 9:07 PM, Hovakimian, Patrick (ODAG) <phovakimian4@jmd.usdoj.gov> wrote:
>
> I have only limited visibility into this, but it sounds like Rosen and the cause of justice won. We will convene a call when Jeff is back in the building (hopefully shortly). Thanks.
>
> ---
>
> **From:** Hovakimian, Patrick (ODAG)
> **Sent:** Sunday, January 3, 2021 4:28 PM
> **To:** Murray, Claire M. (OASG) (b) (6) >; Wall, Jeffrey B. (OSG) (b) (6) >; Delrahim, Makan (ATR) (b) (6) >; Engel, Steven A. (OLC) (b) (6) ; Demers, John C. (NSD) < (b) (6) >; Burns, David P. (NSD) (b) (6) >; Burns, David (CRM) (b) (6) >
> **Cc:** Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov>
> **Subject:** Call this afternoon
>
> Duplicative Material

From: Engel, Steven A. (OLC)
Subject: Re: Call this afternoon
To: Hovakimian, Patrick (ODAG)
Cc: Murray, Claire M. (OASG); Wall, Jeffrey B. (OSG); Delrahim, Makan (ATR); Demers, John C. (NSD); Burns, David P. (NSD); Burns, David (CRM); Dreiband, Eric (CRT); Donoghue, Richard (ODAG)
Sent: January 3, 2021 9:28 PM (UTC-05:00)

Still at WH. But that is correct.

Sent from my iPhone

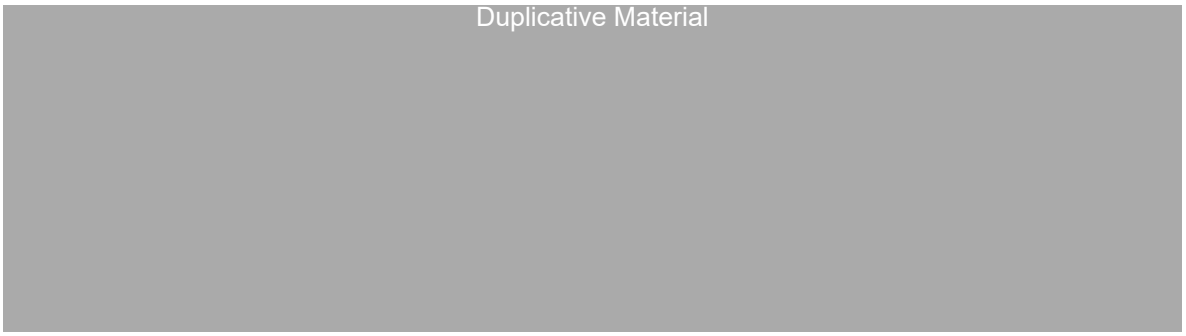
On Jan 3, 2021, at 9:07 PM, Hovakimian, Patrick (ODAG) <phovakimian4@jmd.usdoj.gov> wrote:



From: Donoghue, Richard (ODAG)
Subject: Re: Call this afternoon
To: Hovakimian, Patrick (ODAG)
Cc: Murray, Claire M. (OASG); Wall, Jeffrey B. (OSG); Delrahim, Makan (ATR); Engel, Steven A. (OLC); Demers, John C. (NSD); Burns, David P. (NSD); Burns, David (CRM); Dreiband, Eric (CRT)
Sent: January 3, 2021 9:47 PM (UTC-05:00)

Please call in at 10:00 if you can. Thanks

On Jan 3, 2021, at 4:28 PM, Hovakimian, Patrick (ODAG) <phovakimian4@jmd.usdoj.gov> wrote:



From: Donoghue, Richard (ODAG)
Subject: Please call ASAP
To: Pak, BJay (USAGAN)
Sent: January 3, 2021 10:09 PM (UTC-05:00)

(b) (6)

From: Donoghue, Richard (ODAG)
Subject: Call please
To: (b)(6) per DHS
Sent: January 3, 2021 11:22 PM (UTC-05:00)

Ken - sorry about the time, but can you give me a call ASAP? Thanks, Rich

(b) (6)

From: Raimondi, Marc (PAO)
Subject: FW: comment
To: Donoghue, Richard (ODAG)
Sent: January 5, 2021 5:36 PM (UTC-05:00)

Rich, I wanted to flag this for you. I am on a Core Management Call now on SolarWind but can come by or call as soon as I am off.

From: Perez, Evan [(b) (6)] >
Sent: Tuesday, January 5, 2021 5:33 PM
To: Raimondi, Marc (PAO) [(b) (6)]
Subject: comment

Marc. Not sure if you're the one to handle this, but please advise on any comment from the acting DAG, or direct me to who I can reach out to
For a story on the firing of the U.S. Attorney in Northern District of Georgia, I'm told that the acting DAG had been in touch in recent days with Mr. Pak about the president's concerns that the NDGA US attorney's office had not been able to bring vote fraud cases, given the president's legal team's view that there was plenty of evidence of such fraud. Mr. Pak and his team have not found such evidence to date after weeks of investigation.
Mr. Pak was advised that the president was firing him and that prompted his abrupt email to staff announcing his departure.
I am aware that Mr. Pak had already told people he was planning to leave, even before the firing, so the departure was simply accelerated.

Thanks,

Evan Pérez
Correspondent
CNN
mobile [(b) (6)]
office 202.772.2756
Twitter @evanperez

From: Perez, Evan
Subject: Re: comment
To: Raimondi, Marc (PAO)
Sent: January 5, 2021 5:44 PM (UTC-05:00)

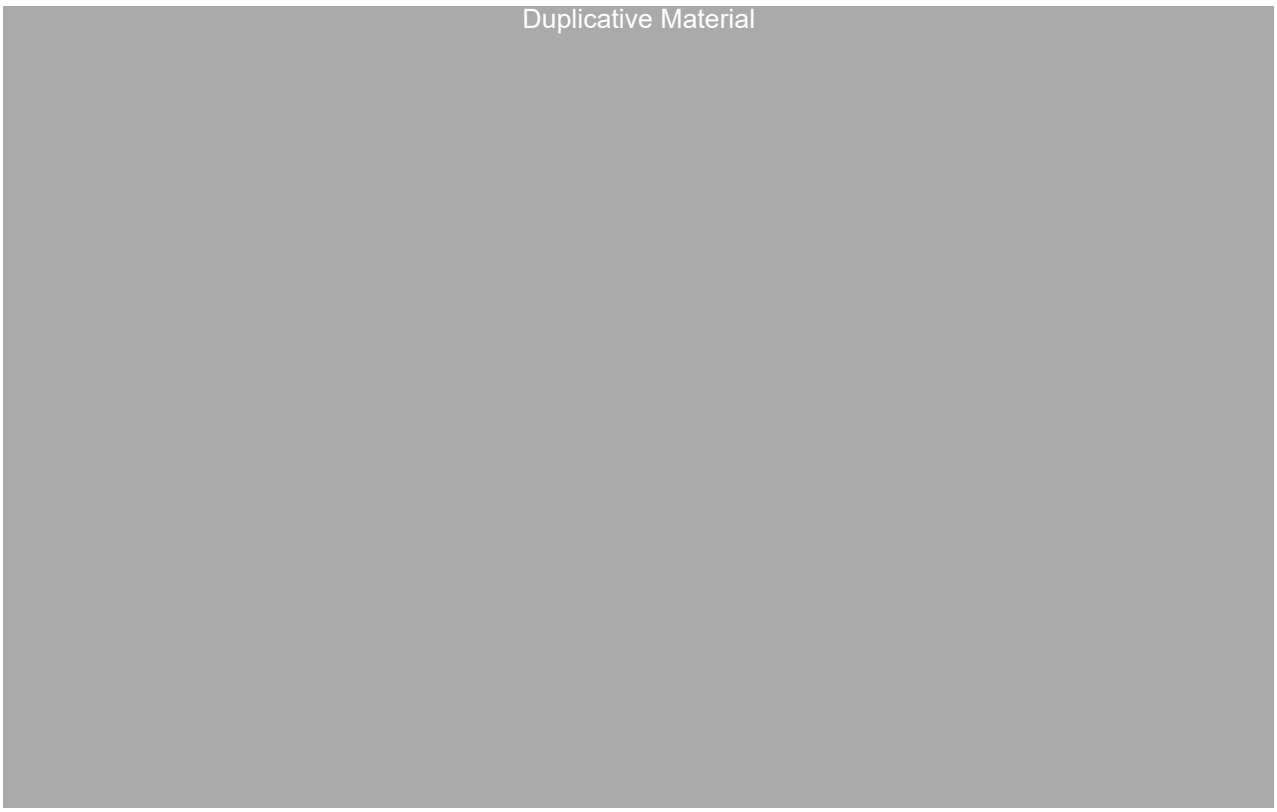
Thank you sir.

Evan Pérez
Correspondent
CNN
mobile (b) (6)
office 202.772.2756
Twitter @evanperez

On Jan 5, 2021, at 5:43 PM, Raimondi, Marc (PAO) (b) (6) > wrote:

I'll get back to you.

From: Perez, Evan (b) (6) >
Sent: Tuesday, January 5, 2021 5:33 PM
To: Raimondi, Marc (PAO) (b) (6)
Subject: comment



From: Raimondi, Marc (PAO)
Subject: FW: BJay Pak
To: Donoghue, Richard (ODAG)
Sent: January 8, 2021 12:12 PM (UTC-05:00)

Can you please call me.

From: Zapotosky, Matt [redacted]
Sent: Friday, January 08, 2021 12:03 PM
To: Raimondi, Marc (PAO) [redacted]>
Subject: BJay Pak

Hi Marc--

Is it true that ODAG called BJay Pak in Atlanta shortly before his resignation and led him to believe he would be forced out shortly before his resignation? Why did that happen? We're writing a story about that and some other business in the Atlanta and Savannah U.S. attorney offices. I've been in touch with the folks down there but wanted to ask you about the ODAG connection.

Many thanks,

Matt Zapotosky | The Washington Post
[redacted] (cell)

From: Raimondi, Marc (PAO)
Subject: Fwd: BJay Pak
To: Donoghue, Richard (ODAG)
Sent: January 9, 2021 11:27 AM (UTC-05:00)

Can you pls call me.

Marc Raimondi
Acting Director of Public Affairs
U.S. Department of Justice
(b) (6)

Begin forwarded message:

From: "Viswanatha, Aruna" (b) (6) >
Date: January 9, 2021 at 11:00:22 AM EST
To: "Raimondi, Marc (PAO)" (b) (6) >
Cc: "Gurman, Sadie" (b) (6) >
Subject: BJay Pak

Hi Marc,
Apologies for the Saturday email but we just heard about this and are planning to report it today -- citing people familiar with the matter, we are told

- White House officials forced the U.S. Attorney in Atlanta, BJay Pak to step down on Monday because President Trump was upset he was not doing enough to investigate allegations of election fraud in the state

- In the days before Mr. Pak's resignation, a senior Justice Department official called Mr. Pak at the behest of the White House and told him he needed to step down because he was not pursuing Mr. Trump's allegations of fraud in voting, ballot destruction, voting-machine manipulation and other charges

- Those are the same allegations that Mr. Raffensperger and other Georgia officials have deemed to be not credible, and we are told that the FBI in Atlanta similarly deemed them to not be credible

Let us know if you would have any comment?

Thank you
-Aruna

From: Raimondi, Marc (PAO)
Subject: Fwd: BJay Pak
To: Donoghue, Richard (ODAG)
Sent: January 9, 2021 12:53 PM (UTC-05:00)

Marc Raimondi
Acting Director of Public Affairs
U.S. Department of Justice
(b) (6)

Begin forwarded message:

From: "Viswanatha, Aruna" (b) (6) >
Date: January 9, 2021 at 12:42:29 PM EST
To: "Raimondi, Marc (PAO)" (b) (6) >
Cc: "Gurman, Sadie" (b) (6)
Subject: Re: BJay Pak

hi there, sorry to bug but should we expect any comment from DOJ? we will need to file soon in connection with news that Trump personally called a. GA sec of state staffer demanding evidence of fraud to use in his lawsuits - clearly there was a much bigger push than previously known by Trump to pressure GA officials to find evidence of election fraud. Thanks

On Sat, Jan 9, 2021 at 10:58 AM Viswanatha, Aruna (b) (6) > wrote:

From: Raimondi, Marc (PAO)
Subject: Re: And there's this from the Wall Street Jounal website
To: Williams, Pete (NBCUniversal)
Sent: January 9, 2021 4:23 PM (UTC-05:00)

Noted

Marc Raimondi
Acting Director of Public Affairs
U.S. Department of Justice
(b) (6)

On Jan 9, 2021, at 4:18 PM, Williams, Pete (NBCUniversal) (b) (6) > wrote:

White House officials pushed Atlanta's top federal prosecutor to resign before Georgia's U.S. Senate runoffs because President Trump was upset he wasn't doing enough to investigate the president's allegations of election fraud, people familiar with the matter said.

A senior Justice Department official, at the behest of the White House, called Trump-appointed U.S. Attorney Byung J. Pak and told him he needed to step down because he wasn't pursuing vote-fraud allegations to Mr. Trump's satisfaction, the people said.

From: Raimondi, Marc (PAO)
Subject: Re: BJay Pak
To: Zapotosky, Matt
Sent: January 9, 2021 4:43 PM (UTC-05:00)

No

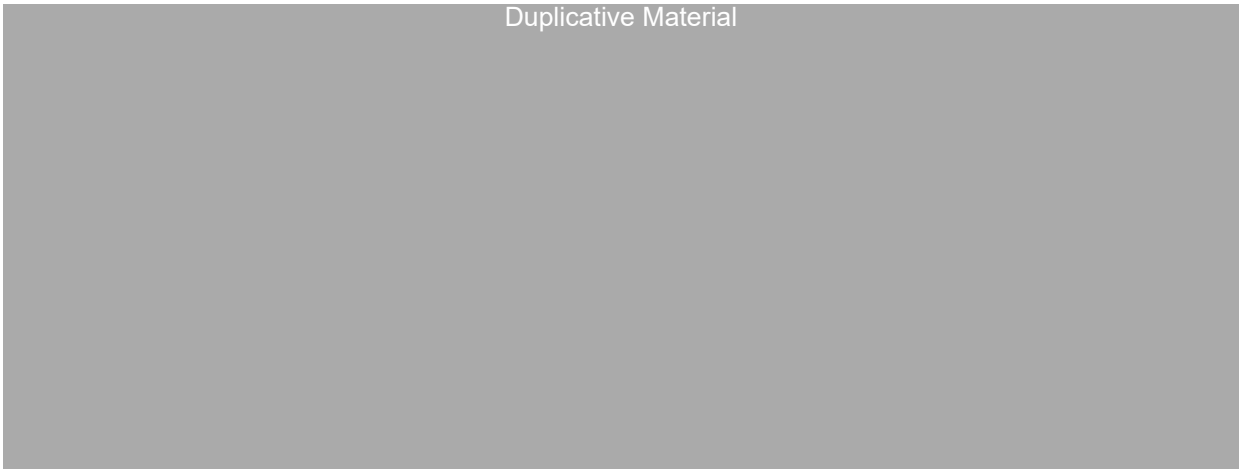
Marc Raimondi
Acting Director of Public Affairs
U.S. Department of Justice
(b) (6)

On Jan 9, 2021, at 4:40 PM, Zapotosky, Matt < (b) (6) > wrote:

Hi Marc— Reupping this. Do you have any comment or guidance on BJay Pak being asked to resign by ODAG after apparently receiving White House pressure to do more to investigate election fraud? Thanks, Matt

Sent from my iPhone

On Jan 8, 2021, at 12:02 PM, Zapotosky, Matt (b) (6) > wrote:



From: Tierney Sneed
Subject: Re: Press inquiry: USA Pak departing earlier than expected
To: Raimondi, Marc (PAO); Press
Sent: January 9, 2021 5:26 PM (UTC-05:00)

Let me know if you have any comment on the WSJ report about Pak's ouster (which matches what I have been hearing as well).

https://www.wsj.com/articles/white-house-forced-georgia-u-s-attorney-to-resign-11610225840

On Mon, Jan 4, 2021 at 12:48 PM Raimondi, Marc (PAO) <(b) (6)> wrote:

> Thank you, I have no comment.
>
> Marc
>
> **From:** Tierney Sneed <(b) (6)
> **Sent:** Monday, January 4, 2021 12:45 PM
> **To:** Raimondi, Marc (PAO) (b) (6) >
> **Subject:** Fwd: Press inquiry: USA Pak departing earlier than expected
>
> Hi Marc,
>
> Tierney Sneed from TPM here. Got a bounceback from Kerri. See below:
>
> ---------- Forwarded message ---------
> From: **Tierney Sneed** (b) (6) >
> Date: Mon, Jan 4, 2021 at 12:42 PM
> Subject: Press inquiry: USA Pak departing earlier than expected
> To: Press <Press@usdoj.gov>, Kupec, Kerri (OPA) <(b) (6)
>
> Hi Kerri,
>
> We've learned that USA BJay Pak is leaving his post today, after previously indicating that the resignation he submitted would be effective on Jan. 20. Do you want to comment/confirm? I am at (b) (6)
>
> Thanks!
>
> Tierney
>
> --
>
> Tierney Sneed
> Talking Points Memo
>
> Cell: (b) (6)

@tierney_megan

--

Tierney Sneed
Talking Points Memo

Cell: (b) (6)

@tierney_megan

--

Tierney Sneed
Talking Points Memo
Cell: (b) (6)
@tierney_megan

From: Ali, Idrees (Reuters)
Subject: Reuters request
To: Raimondi, Marc (PAO)
Sent: January 9, 2021 5:47 PM (UTC-05:00)

Hey Marc,

Hope everything is well. The Wall Street Journal is reporting that at the behest of the White House, a senior Justice Department official called and told U.S. Attorney Byung J. "BJay" Pak he needed to step down because he was not pursuing the voter-fraud allegations to President Donald Trump's satisfaction.

Is there any DOJ comment I can add?

Idrees Ali
National Security Correspondent
Washington D.C.
Thomson Reuters

Mobile: (b) (6)
Email: (b) (6)
Twitter: @idreesali114

From: Raimondi, Marc (PAO)
Subject: Re: WSJ
To: Donoghue, Richard (ODAG)
Sent: January 9, 2021 9:21 PM (UTC-05:00)

Here is the story:

1/9 White House Forced Georgia U.S. Attorney to Resign *Wall Street Journal*
Aruna Viswantha, Sadie Gurman and Cameron McWhirter

White House officials pushed Atlanta's top federal prosecutor to resign before Georgia's U.S. Senate runoffs because President Trump was upset he wasn't doing enough to investigate the president's unproven claims of election fraud, people familiar with the matter said.

A senior Justice Department official, at the behest of the White House, called the Trump-appointed U.S. Attorney Byung J. Pak late on the night of Jan. 3. In that call the official said Mr. Trump was furious there was no investigation related to election fraud and that the president wanted to fire Mr. Pak, the people said.

Mr. Pak resigned abruptly on Monday—the day before the runoffs—saying in an early morning email to colleagues that his departure was due to "unforeseen circumstances."

Mr. Pak, who had a job lined up in the private sector, planned to leave by the end of the administration and had drafted a resignation letter, people familiar with his plans said.

Mr. Pak on Jan. 3 considered leaving early after the public release of a call from the day before between Mr. Trump and Georgia's secretary of state Brad Raffensperger in which the president pushed the official to overturn the November election results, one person said. When Mr. Pak communicated that on the Sunday call, the White House indicated he should leave immediately, the person said.

Mr. Trump then called the prosecutor he wanted to replace Mr. Pak, Savannah's U.S. Attorney Bobby Christine, and told him he was putting him in the job, the person said. In doing so, Mr. Trump bypassed the traditional process in which the office's No. 2 official would fill the vacancy, as well as longstanding protocol that discourages a president from directly contacting Justice Department officials.

It put Mr. Christine in the unusual position of serving as top prosecutor in two districts. Atlanta falls in the Northern District of Georgia, and there is a separate Middle District in the state.

Mr. Christine declined to comment.

The pressure on Mr. Pak was part of Mr. Trump's weekslong push to try to alter presidential election results favoring President-elect Joe Biden, which included his win in Georgia. Mr. Trump this week, following the U.S. Capitol riot, said he would leave office when Mr. Biden is inaugurated.

Senior Justice Department officials including recently departed Attorney General William Barr have said the Justice Department hadn't found evidence of widespread voter fraud that could reverse Mr. Biden's victory, including claims of fraud, ballot destruction and voting-machine manipulation.

The officials have resisted overtures from Mr. Trump and his allies since November to pursue unsubstantiated allegations of election fraud, and no Justice Department officials supported Mr. Pak's dismissal, the people said.

Dozens of state and federal court decisions also have rejected efforts by Mr. Trump and his supporters to challenge election results. And Congress formally certified Mr. Biden's Electoral College victory on Thursday, after a violent pro-Trump mob stormed the Capitol and forced a delay in the process.

The White House and the Justice Department didn't respond to requests for comment.

Mr. Pak's resignation came one day after the public release of the audio of the Jan. 2 call to Georgia's secretary of state. Mr. Trump told Mr. Raffensperger in the roughly hourlong call that the Georgia Republican could face legal action and said he should find nearly 12,000 votes of 5 million cast to reverse Mr. Biden's victory in the state.

Mr. Raffensperger rejected pressure to further investigate an election, telling the president, "The challenge that you have is that the data you have is wrong."

The president also complained on the call that Mr. Pak was a "Never Trumper."

Georgia conducted recounts that didn't change the outcome. Mr. Raffensperger and other Georgia officials investigated various allegations and found no evidence of widespread fraud.

Mr. Christine, who was appointed by Mr. Trump to the Savannah post in 2017, assumed his additional role by a written order of the president on Jan. 4, the same day as Mr. Pak's resignation. Mr. Christine brought with him two lawyers from his Savannah office who were already monitoring for possible election irregularities, people familiar with the matter said.

Spokespeople for Mr. Christine and the U.S. attorney's office in Atlanta declined to comment.

Mr. Trump's call to Mr. Raffensperger came as the president and his supporters since November had pushed to overturn the election results in Georgia, including through public attacks on the state's Republican governor and other officials by Mr. Trump, his lawyer Rudy Giuliani and others.

Mr. Trump personally called a staffer in the Georgia secretary of state's office, demanding that it produce proof of election fraud, an official at that office said on Saturday. The president made that call in December before separate outreach to Mr. Raffensperger.

The Georgia secretary of state's office official on Saturday said the White House called officials and staff at the office for weeks demanding proof of election fraud—even before the Jan. 2 call to Mr. Raffensperger.

"They were desperately trying to find evidence for lawsuits that were about to be thrown out of court," the official said. "They kept telling us that, 'You need to give us the evidence,' and the truth is there isn't any evidence to give."

The Georgia official said staffers were worried when they heard Mr. Pak had resigned, fearing the White House would put in people to investigate those who remained. "Retaliation was very much a concern," the official said.

The Washington Post earlier Saturday reported the phone call between Mr. Trump and the secretary of state staffer.

Federal Bureau of Investigation agents in Atlanta also found the allegations of election fraud in the state lacking and didn't see a need to pursue them, people familiar with the matter said. The FBI's Atlanta office declined to comment.

On the call with Mr. Raffensperger, Ryan Germany, the secretary of state's general counsel, told the president: "What we are seeing is not at all what you are describing."

At one point on the weekend call with Mr. Raffensperger, in which Mr. Trump repeatedly complained about supposed irregularities in Fulton County, which includes most of Atlanta, Mr. Trump apparently referred to Mr. Pak, saying: "I mean, you have your Never Trumper U.S. attorney there."

Colleagues and associates of Mr. Pak said they had viewed Mr. Pak as a proud and early supporter of Mr. Trump, who nominated him to his post in July 2017. Mr. Pak thanked the president by name at his swearing-in ceremony after the Senate confirmed him to the post two months later, and again in the brief statement he released on his resignation. "I am grateful to President Trump and the United States Senate for the opportunity to serve, and to Attorneys General [Jeff] Sessions and [William] Barr for their leadership of the department," Mr. Pak said.

Marc Raimondi
Acting Director of Public Affairs
U.S. Department of Justice
(b) (6)

On Jan 9, 2021, at 8:59 PM, Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov> wrote:

Marc - please send me the full article linked below. Thanks, Rich

https://www.wsj.com/articles/white-house-forced-georgia-u-s-attorney-to-resign-11610225840

From: Raimondi, Marc (PAO)
Subject: Re: WSJ
To: Clark, Melissa D. (PAO)
Cc: Stueve, Joshua (PAO); Mastropasqua, Kristina (PAO); Morales, Arlen M. (PAO); Navas, Nicole (PAO)
Sent: January 9, 2021 9:25 PM (UTC-05:00)

Melissa saves the day! Thank you

Marc Raimondi
Acting Director of Public Affairs
U.S. Department of Justice
(b) (6)

On Jan 9, 2021, at 9:15 PM, Clark, Melissa D. (PAO) (b) (6) > wrote:

Here is the story:

1/9 White House Forced Georgia U.S. Attorney to Resign *Wall Street Journal*

Aruna Viswantha, Sadie Gurman and Cameron McWhirter

White House officials pushed Atlanta's top federal prosecutor to resign before Georgia's U.S. Senate runoffs because President Trump was upset he wasn't doing enough to investigate the president's unproven claims of election fraud, people familiar with the matter said.

A senior Justice Department official, at the behest of the White House, called the Trump-appointed U.S. Attorney Byung J. Pak late on the night of Jan. 3. In that call the official said Mr. Trump was furious there was no investigation related to election fraud and that the president wanted to fire Mr. Pak, the people said.

Mr. Pak resigned abruptly on Monday—the day before the runoffs—saying in an early morning email to colleagues that his departure was due to "unforeseen circumstances."

Mr. Pak, who had a job lined up in the private sector, planned to leave by the end of the administration and had drafted a resignation letter, people familiar with his plans said.

Mr. Pak on Jan. 3 considered leaving early after the public release of a call from the day before between Mr. Trump and Georgia's secretary of state Brad Raffensperger in which the president pushed the official to overturn the November election results, one person said. When Mr. Pak communicated that on the Sunday call, the White House indicated he should leave immediately, the person said.

Mr. Trump then called the prosecutor he wanted to replace Mr. Pak, Savannah's U.S. Attorney Bobby Christine, and

told him he was putting him in the job, the person said. In doing so, Mr. Trump bypassed the traditional process in which the office's No. 2 official would fill the vacancy, as well as longstanding protocol that discourages a president from directly contacting Justice Department officials.

It put Mr. Christine in the unusual position of serving as top prosecutor in two districts. Atlanta falls in the Northern District of Georgia, and there is a separate Middle District in the state.

Mr. Christine declined to comment.

The pressure on Mr. Pak was part of Mr. Trump's weekslong push to try to alter presidential election results favoring President-elect Joe Biden, which included his win in Georgia. Mr. Trump this week, following the U.S. Capitol riot, said he would leave office on Jan. 20 when Mr. Biden is inaugurated.

Senior Justice Department officials including recently departed Attorney General William Barr have said the Justice Department hadn't found evidence of widespread voter fraud that could reverse Mr. Biden's victory, including claims of fraud, ballot destruction and voting-machine manipulation.

The officials have resisted overtures from Mr. Trump and his allies since November to pursue unsubstantiated allegations of election fraud, and no Justice Department officials supported Mr. Pak's dismissal, the people said.

Dozens of state and federal court decisions also have rejected efforts by Mr. Trump and his supporters to challenge election results. And Congress formally certified Mr. Biden's Electoral College victory on Thursday, after a violent pro-Trump mob stormed the Capitol and forced a delay in the process.

The White House and the Justice Department didn't respond to requests for comment.

Mr. Pak's resignation came one day after the public release of the audio of the Jan. 2 call to Georgia's secretary of state. Mr. Trump told Mr. Raffensperger in the roughly hourlong call that the Georgia Republican could face legal action and said he should find nearly 12,000 votes of 5 million cast to reverse Mr. Biden's victory in the state.

Mr. Raffensperger rejected pressure to further investigate an election, telling the president, "The challenge that you have is that the data you have is wrong."

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Spokespeople for Mr. Christine and the U.S. attorney's office in Atlanta declined to comment.

Mr. Trump's call to Mr. Raffensperger came as the president and his supporters since November had pushed to overturn the election results in Georgia, including through public attacks on the state's Republican governor and other officials by Mr. Trump, his lawyer Rudy Giuliani and others.

Mr. Trump personally called a staffer in the Georgia secretary of state's office, demanding that it produce proof of election fraud, an official at that office said on Saturday. The president made that call in December before separate outreach to Mr. Raffensperger.

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At one point on the weekend call with Mr. Raffensperger, in which Mr. Trump repeatedly complained about supposed irregularities in Fulton County, which includes most of Atlanta, Mr. Trump apparently referred to Mr. Pak, saying: “I mean, you have your Never Trumper U.S. attorney there.”

Colleagues and associates of Mr. Pak said they had viewed Mr. Pak as a proud and early supporter of Mr. Trump, who nominated him to his post in July 2017. Mr. Pak thanked the president by name at his swearing-in ceremony after the Senate confirmed him to the post two months later, and again in the brief statement he released on his resignation. “I am grateful to President Trump and the United States Senate for the opportunity to serve, and to Attorneys General [Jeff] Sessions and [William] Barr for their leadership of the department,” Mr. Pak said.

From: Raimondi, Marc (PAO)
Subject: NYT
To: Donoghue, Richard (ODAG); Rosen, Jeffrey A. (ODAG)
Sent: January 10, 2021 12:55 PM (UTC-05:00)

NYT this morning.

Georgia officials reveal third Trump call trying to influence election results.

More than a week before President Trump called Georgia's secretary of state, pressuring him to "find" votes to help overturn his electoral loss, the president made another call, this one to a top Georgia elections investigator, in which he asked the investigator to "find the fraud" in the state.

The earlier phone call, which came to light on Saturday, along with the revelation that White House officials pushed Atlanta's top federal prosecutor to resign, underlined a broader push by Mr. Trump to overturn election results in the state.

Mr. Trump's phone call, made in late December, was first reported by The Washington Post. The content of the Post report was verified by a state elections official who requested anonymity because the official was not authorized to speak about the matter.

In the call, Mr. Trump said the investigator would be a "national hero" for finding evidence of fraud. At the time, Secretary of State Brad Raffensberger's office was conducting an audit of more than 15,000 ballots in Cobb County, a populous suburb of Atlanta that was formerly a Republican stronghold but voted against Mr. Trump in both 2016 and 2020.

The audit appeared to be an effort to placate Mr. Trump and his allies, who repeatedly, and baselessly, argued that he lost the election in Georgia by around 12,000 votes because of a "rigged" system. On Dec. 29, the office of Mr. Raffensperger, a Republican, announced that the audit had found no evidence of fraud.

The December call to the investigator, like the call Mr. Trump made to Mr. Raffensperger, was recorded, the official said. But unlike the call directly to the secretary of state, the newly reported call's audio has not been made public.

A number of legal scholars have said that Mr. Trump's call to Mr. Raffensperger, in which the president seemed to vaguely threaten Mr. Raffensperger with "a criminal offense," may have violated state and federal laws prohibiting election interference, though some also said it may be difficult for prosecutors to pursue the matter.

Earlier in December, Mr. Trump called Gov. Brian Kemp, urging him to convene a special session of the Georgia legislature in hopes that lawmakers would overturn the election results. Mr. Kemp and Mr. Raffensperger have rejected all of Mr. Trump's efforts to get them to help him overturn the election results, even though both are conservative Republicans.

The U.S. attorney in Atlanta faced similar pressure related to false claims of election fraud.

Shortly before the U.S. attorney, Byung J. Pak, abruptly resigned on Monday, the acting deputy attorney general, Richard Donoghue, relayed Mr. Trump's dissatisfaction with his efforts to investigate false claims of mass voter fraud in his district, according to two people familiar with the matter who spoke on the condition of anonymity to disclose details of the phone call.

A Justice Department spokesman declined to comment.

Mr. Pak was also upset when he discovered that Mr. Trump had criticized him during his phone call last Saturday with Mr. Raffensperger.

While Mr. Trump did not call out Mr. Pak by name, he falsely claimed that not enough had been done to uncover mass voter fraud in Fulton County, where Atlanta is. He added, "You have your never-Trumper U.S. attorney there."

Mr. Pak had planned to announce his departure on Monday, the day before the Georgia runoff elections, according to a person familiar with his job search. But dismayed by Mr. Trump's comments, he believed that it would be better to accelerate his departure and resign effective immediately, rather than give several days' notice, according to a third person with knowledge of Mr. Pak's departure.

Mr. Donoghue has also faced pressure to stand up unproven and false claims by Mr. Trump that he would have won the election but for

extensive voter fraud in states like Georgia.

In phone calls and meetings in recent weeks, Mr. Trump pressured and berated politicians and officials, including Mr. Donoghue and the acting attorney general, Jeffrey A. Rosen, for not doing enough to overturn the results of the election, according to a person familiar with the conversations.

Despite Mr. Trump's entreaties to do more on voter fraud, neither Mr. Rosen nor Mr. Donoghue has made any public statements on the matter. They have not supported Mr. Trump's false claims that he won the election or undermined comments made by former Attorney General William P. Barr that there was no need to appoint a special counsel to investigate the matter.

The Wall Street Journal earlier reported that a top Justice Department official had called Mr. Pak.

Officials at the department have quietly pushed back on efforts to undo the election, defending Vice President Mike Pence in a federal lawsuit that sought to pressure him to overturn the results, a move that took Mr. Trump by surprise, according to two people with knowledge of the matter. The case was dismissed.

Adam Goldman contributed reporting.

— Richard Fausset and Katie Benner

From: (b) (6)
Subject: Pak
To: Raimondi, Marc (PAO)
Sent: January 10, 2021 1:37 PM (UTC-05:00)

Isn't this opposite of what you told me? I thought you said no one at DOJ asked him to go
https://www.wsj.com/articles/white-house-forced-georgia-u-s-attorney-to-resign-11610225840

Josh Gerstein
Senior Legal Affairs Contributor
POLITICO
(b) (6) (←please note new email)
(b) (6)

From: Rosen, Jeffrey A. (ODAG)
Subject: FW: Departure Timetable
To: Claire M. Murray (OASG) [redacted]
Sent: January 12, 2021 9:17 PM (UTC-05:00)

Claire, I am not going to respond to Jeff Clark's message given the events that took place with him. Those were not things on which "reasonable minds can differ" and simply move along. It appears he still does not recognize how harmful his actions and proposals were.

Jeff

From: Clark, Jeffrey (CIV) [redacted]
Sent: Friday, January 8, 2021 4:31 PM
To: Rosen, Jeffrey A. (ODAG) <jarosen@jmd.usdoj.gov>; Murray, Claire M. (OASG) [redacted] >
Subject: Departure Timetable
Importance: High

Jeff & Claire,

I wanted to let you know that, pending your reaction, I am planning to leave my DOJ positions on Thursday, January 14, 2021 at circa noon. I have some projects to finish up before then and, of course, will continue to work on normal package flow approval up until the prior evening.

I believe I've left a legacy of accomplishment starting after my confirmation in 2018. For instance, (1) I've almost certainly argued more cases personally than any other AAG in this Administration (achieving about an 85% win rate at this point, though several decisions are still pending, so the final rate may change before the dust settles); (2) working closely with CEQ and indeed helping drive the historic revisions to the NEPA regulations along with you, Jeff, and (3) successfully defending them in district court against being enjoined *twice* — once before they went into effect and once afterwards; (4) winning the sprawling *Juliana* climate change case in the Ninth Circuit challenging the actions or inactions of multiple Cabinet agencies with authority over aspects of energy policy; (5) banning the unlawful device of supplemental environmental projects ("SEPs)—which directly led to that device being banned administratively by EPA Administrator Wheeler as well, all of which fed into the Department's release of (6) the third-party payment zero-point regulations; (7) reorganizing the Civil Division's approval process and making it more electronic; (8) arguing a prominent False Claims Act case in the Third Circuit that will take its place as part of a circuit split and involves defending the Department's broad powers to dismiss *qui tam* matters, and many other achievements. Indeed, the only personal case I have lost at this point (an appeal) was 2-1, garnering a dissent from Judge Lee on the Ninth Circuit.

I will miss the Justice Department and look back very fondly on this, my second stint in the Executive Branch. As you know, I have greatly enjoyed working with both of you and I sincerely hope our friendship continues. On most matters, we have been in total and vigorous agreement or in virtually all situations in at least in substantial agreement. But no one can agree on all things and reasonable minds can differ. Yet friendships and mutual professional respect endure.

In the Civil Division, Jenn Dickey, as the Principal Deputy, will take over from the time of my departure through the end of the day on January 15. Then Jenn and I would recommend to you that John Coghlan, the DAAG over Federal Programs Branch, take over the lead duties in CIV from the time of the 16th before the new Inauguration occurs. Both Jenn and John will be and have been excellent. And in the Environment Division, I believe that will leave my Principal Deputy there, Jon Brightbill, as the Acting ENRD AAG from about midday the 14th forward. He will serve with distinction, as he has since July 2017 as a DAAG, since December 2018 as PDAAG, and since September 2020 performing the duties of the ENRD AAG.

Let me know if you have any questions or objections to that timing plan.

Thanks and God bless you, the Department, and its lawyers and staff!

Jeff

Jeffrey Bossert Clark
Assistant Attorney General
Environment & Natural Resources Division
Acting Assistant Attorney General
Civil Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
(b) (6)

From: Raimondi, Marc (PAO)
Subject: Re: Article Request
To: Donoghue, Richard (ODAG)
Sent: January 14, 2021 9:28 PM (UTC-05:00)

Sorry. Just got home and saw this.

Marc Raimondi
Acting Director of Public Affairs
U.S. Department of Justice
(b) (6)

On Jan 14, 2021, at 9:27 PM, Raimondi, Marc (PAO) (b) (6) > wrote:

U.S. attorney in Georgia: 'There's just nothing to' claims of election fraud A "Stop the Steal" flag flies outside a rally on the eve of Georgia's Jan. 5 run-off elections. (Brian Snyder/Reuters) By Amy Gardner and Matt Zapotosky January 12 at 8:06 PM ET The acting U.S. attorney for the Northern District of Georgia, whose predecessor abruptly resigned one week ago after President Trump complained officials were not doing enough to find election fraud in the state, declared on a call with his staff Monday that "there's just nothing to" the few claims of fraud the office was examining, according to an audio recording obtained by the Atlanta Journal-Constitution. On the call, Bobby Christine, who also serves as the top federal prosecutor in the Southern District of Georgia, suggested that he was surprised to learn the office had not found significant election fraud issues. "Quite frankly, just watching television, you would assume that you got election cases stacked from the floor to the ceiling," Christine said, according to the Atlanta newspaper. "I am so happy to find out that's not the case, but I didn't know coming in." A spokesman for Christine's office declined to comment Tuesday. The Washington Post reported last week that Christine brought with him from the Southern District two prosecutors, Joshua S. Bearden and Jason Blanchard, who previously had been assigned to investigate election fraud matters. He also brought in former federal prosecutor Matt Hart, a lawyer in Birmingham, Ala., who previously handled public corruption cases, on a contract basis, people familiar with the matter told The Post. [New U.S. attorney in Atlanta brings in assistants who worked on election fraud issues, raising fears of political interference] The additions unnerved current and former officials in both the Southern and Northern districts of Georgia, particularly in light of the abrupt resignation of Christine's predecessor, Byung J. "BJay" Pak. "Mr. Pak's forced resignation against the backdrop of White House insistence to prosecute purported election offenses is then followed by the curious appointment of an outsider who immediately brings in election prosecutors from outside the district — it all gives rise to a ready inference that the newcomers are willing to pursue what was troubling enough to cause Mr. Pak to resign," said John Horn, a former U.S. attorney for the Northern District of Georgia. Christine said on the call with the Northern District staff that he brought the two election fraud prosecutors to tackle what he expected would be a "dump truck full" of election files. Instead, he found "very, very few" and dismissed two cases on his first day in office. "We don't have these huge colossal issues that if you turn on the TV, you'd think it'd be," he said. A Justice Department official said Tuesday that the two attorneys Christine brought from the Southern District had returned to their home office. Trump had been upset with what he perceived as a lack of Justice Department action on his unfounded claims in Georgia and across the country, according to people familiar with the matter, who spoke on the condition of anonymity to described the president's views. Precisely how that played into Pak's resignation was unclear, but two people familiar with the matter said he received a call from the Office of Deputy Attorney General, run by Principal Associate Deputy Attorney General Richard P. Donoghue, that led him to believe he should resign. The Justice Department has declined to comment on Pak's departure. His exit came just a day after The Post reported on an call in which Trump urged Republican Brad Raffensperger, the Georgia secretary of state, to "find" enough votes to overturn Trump's election defeat in the state. In the same conversation, Trump cited a "never-Trumper U.S. attorney" in Georgia — a possible reference to Pak — and hinted vaguely and baselessly that Raffensperger's refusal to act on his unfounded fraud claims constituted a "criminal offense." In announcing his departure, Pak released a statement saying that he did "my best to be thoughtful and consistent, and to provide justice for my fellow citizens in a fair, effective and efficient manner." He has declined to comment further. Christine was then directly installed in the post by Trump — bypassing Kurt Erskine, a longtime federal prosecutor who had been Pak's top deputy and would have otherwise assumed the role. Officials with the office

of the Georgia secretary of state have been saying for weeks that President-elect Joe Biden's narrow victory in Georgia was free, fair and untainted by widespread fraud.In his Jan. 2 call with Trump, Raffensperger rejected the president's entreaties to "find the votes" to overturn the results in the state and insisted his assertions about fraud were wrong.['I just want to find 11,780 votes': In extraordinary hour-long call, Trump pressures Georgia secretary of state to recalculate the vote]"This is what we've been saying all along," Gabriel Sterling, a top Raffensperger aide, said Tuesday after the Christine call leaked. "The facts are the facts. The evidence is the evidence. It has clearly shown through multiple law enforcement agencies at the state and federal level that there is simply not enough evidence of widespread voter fraud that would change the outcome of the election."Amy Gardner joined The Washington Post in 2005. She has worked stints in the Virginia suburbs, covered the 2010 midterms and the tea party revolution, and covered the Republican presidential nominating contest in 2011-2012. She was a politics editor for five years and returned to reporting in 2018.Matt Zapotosky covers the Justice Department for The Washington Post's national security team. He has previously worked covering the federal courthouse in Alexandria and local law enforcement in Prince George's County and Southern Maryland.

Marc Raimondi
Acting Director of Public Affairs
U.S. Department of Justice
(b) (6)

On Jan 14, 2021, at 8:31 PM, Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov> wrote:

Marc,

When you get a chance, please send me this article:

https://www.washingtonpost.com/politics/us-attorney-georgia-fraud/2021/01/12/45a527c6-5526-11eb-a817-e5e7f8a406d6_story.html

Thanks,

Rich

Richard P. Donoghue
Principal Associate Deputy Attorney General
Office of the Deputy Attorney General
(b) (6)

From: Rosen, Jeffrey A. (ODAG) </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DE6E209017D74E2C8A8211102BDD6EA0-ROSEN, JEFF>
To: Clark, Jeffrey (CIV); Clark, Jeffrey (ENRD)
Sent: 1/1/2021 8:24:11 PM
Subject: atlanta

BJ Pak's cell is (b) (6)

From: Donoghue, Richard (ODAG) </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS /CN=B24C47BD50254E3BAA797C3981070644-DONAGHUE, R>
To: Clark, Jeffrey (ENRD)
CC: Rosen, Jeffrey A. (ODAG)
Sent: 12/28/2020 5:50:20 PM
Subject: RE: Two Urgent Action Items

Jeff,
I have only had a few moments to review the draft letter and, obviously, there is a lot raised there that would have to be thoroughly researched and discussed. That said, there is no chance that I would sign this letter or anything remotely like this.
While it may be true that the Department "is investigating various irregularities in the 2020 election for President" (something we typically would not state publicly), the investigations that I am aware of relate to suspicions of misconduct that are of such a small scale that they simply would not impact the outcome of the Presidential Election. AG Barr made that clear to the public only last week, and I am not aware of intervening developments that would change that conclusion. Thus, I know of nothing that would support the statement, "we have identified significant concerns that may have impacted the outcome of the election in multiple states." While we are always prepared to receive complaints and allegations relating to election fraud, and will investigate them as appropriate, we simply do not currently have a basis to make such a statement. Despite dramatic claims to the contrary, we have not seen the type of fraud that calls into question the reported (and certified) results of the election. Also the commitment that "the Department will update you as we are able on investigatory progress" is dubious as we do not typically update non-law enforcement personnel on the progress of any investigations.
More importantly, I do not think the Department's role should include making recommendations to a State legislature about how they should meet their Constitutional obligation to appoint Electors. Pursuant to the Electors Clause, the State of Georgia (and every other state) has prescribed the legal process through which they select their Electors. While those processes include the possibility that election results may "fail[ ] to make a choice", it is for the individual State to figure out how to address that situation should it arise. But as I note above, there is no reason to conclude that any State is currently in a situation in which their election has failed to produce a choice. As AG Barr indicated in his public comments, while I have no doubt that some fraud has occurred in this election, I have not seen evidence that would indicate that the election in any individual state was so defective as to render the results fundamentally unreliable. Given that, I cannot imagine a scenario in which the Department would recommend that a State assemble its legislature to determine whether already-certified election results should somehow be overridden by legislative action. Despite the references to the 1960 Hawaii situation (and other historical anomalies, such as the 1876 Election), I believe this would be utterly without precedent. Even if I am incorrect about that, this would be a grave step for the Department to take and it could have tremendous Constitutional, political and social ramifications for the country. I do not believe that we could even consider such a proposal without the type of research and discussion that such a momentous step warrants. Obviously, OLC would have to be involved in such discussions.
I am available to discuss this when you are available after 6:00 pm but, from where I stand, this is not even within the realm of possibility.
Rich

From: Clark, Jeffrey (ENRD) <JClark@ENRD.USDOJ.GOV>
Sent: Monday, December 28, 2020 4:40 PM
To: Rosen, Jeffrey A. (ODAG) <jarosen@jmd.usdoj.gov>; Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov>
Subject: Two Urgent Action Items

Jeff and Rich:
(1) I would like to have your authorization to get a classified briefing tomorrow from ODNI led by DNI Radcliffe on foreign election interference issues. I can then assess how that relates to activating the IEEPA and 2018 EO powers on such matters (now twice renewed by the President). If you had not seen it, white hat hackers have evidence (in the public domain) that a Dominion machine accessed the Internet through a smart thermostat with a net connection trail leading back to China. ODNI may have additional classified evidence.
(2) Attached is a draft letter concerning the broader topic of election irregularities of any kind. The concept is to send it to the Governor, Speaker, and President pro temp of each relevant state to indicate that in light of time

urgency and sworn evidence of election irregularities presented to courts and to legislative committees, the legislatures thereof should each assemble and make a decision about elector appointment in light of their deliberations. I set it up for signature by the three of us. I think we should get it out as soon as possible. Personally, I see no valid downsides to sending out the letter. I put it together quickly and would want to do a formal cite check before sending but I don't think we should let unnecessary moss grow on this
(As a small matter, I left open me signing as AAG Civil — after an order from Jeff as Acting AG designating me as actual AAG of Civil under the Ted Olson OLC opinion and thus freeing up the Acting AAG spot in ENRD for Jon Brightbill to assume. But that is a comparatively small matter. I wouldn't want to hold up the letter for that. But I continue to think there is no downside with as few as 23 days left in the President's term to give Jon and I that added boost in DOJ titles.)
I have a 5 pm internal call with the [redacted] (b) (5)
(b) (5) But I am free to talk on either or both of these subjects circa 6 pm+.
Or if you want to reach me after I reset work venue to home, my cell # is [redacted] (b) (6)
Jeff

From: Jeffrey Rosen [redacted]
To: Clark, Jeffrey (ENRD)
Sent: 12/26/2020 4:31:29 PM
Subject: 7th Circuit
Attachments: ca7-trump-wisconsin-2020-12-24.pdf

https://protect2.fireeye.com/v1/url?k=3100c04b-6e9bf899-3107e4ae-0cc47adc5fdc-0b58d30b9889c99b&q=1&e=652b46fc-c4a0-4ba7-a9f2-5d70cafedb98&u=https%3A%2F%2Fassets.documentcloud.org%2Fdocuments%2F20437488%2Fca7-trump-wisconsin-2020-12-24.pdf

In the

United States Court of Appeals

For the Seventh Circuit

No. 20-3414

DONALD J. TRUMP,

Plaintiff-Appellant,

v.

WISCONSIN ELECTIONS COMMISSION, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of Wisconsin.
No. 2:20-cv-1785 — **Brett H. Ludwig**, *Judge.*

SUBMITTED DECEMBER 21, 2020* — DECIDED DECEMBER 24, 2020

Before FLAUM, ROVNER, and SCUDDER, *Circuit Judges.*

SCUDDER, *Circuit Judge.* Two days after Wisconsin certified the results of its 2020 election, President Donald J. Trump invoked the Electors Clause of the U.S. Constitution and sued

* We have agreed to decide this case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

the Wisconsin Elections Commission, Governor, Secretary of State, and several local officials in federal court. The district court concluded that the President's challenges lacked merit, as he objected only to the administration of the election, yet the Electors Clause, by its terms, addresses the authority of the State's Legislature to prescribe the manner of appointing its presidential electors. So, too, did the district court conclude that the President's claims would fail even under a broader, alternative reading of the Electors Clause that extended to a state's conduct of the presidential election. We agree that Wisconsin lawfully appointed its electors in the manner directed by its Legislature and add that the President's claim also fails because of the unreasonable delay that accompanied the challenges the President now wishes to advance against Wisconsin's election procedures.

I

A

On November 3, the United States held its 2020 presidential election. The final tally in Wisconsin showed that Joseph R. Biden, Jr. won the State by 20,682 votes. On November 30, the Wisconsin Elections Commission certified the results, the Governor signed an accompanying certification, and Wisconsin notified the National Archives that it had selected Biden's ten electors to represent the State in the Electoral College.

Two days later, the President brought this lawsuit challenging certain procedures Wisconsin had used in conducting the election. The President alleged that the procedures violated the Electors Clause of the U.S. Constitution:

> 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 ….

U.S. CONST. art. II, § 1, cl. 2.

To implement the obligation imposed by the Electors Clause, Wisconsin's Legislature has directed that the State's electors be appointed "[b]y general ballot at the general election for choosing the president and vice president of the United States." WIS. STAT. § 8.25(1). It has further assigned "responsibility for the administration of … laws relating to elections and election campaigns" to the Commission. *Id.* § 5.05(1). Municipalities run the election, and each municipality's own clerk "has charge and supervision of elections and registration in the municipality." *Id.* § 7.15(1).

The President alleges that the Commission and municipal officials so misused the power granted to them by the Legislature that they had unconstitutionally altered the "Manner" by which Wisconsin appointed its electors. His allegations challenge three pieces of guidance issued by the Commission well in advance of the 2020 election. (Each guidance document is available on the Commission's website, https://elections.wi.gov.)

First, in March 2020, the Commission clarified the standards and procedures for voters to qualify as "indefinitely confined" and therefore be entitled to vote absentee without presenting a photo identification. See WIS. STAT. §§ 6.86(2)(a), 6.87(4)(b)2. The Commission explained that many voters would qualify based on their personal circumstances and the COVID-19 pandemic, adding that Wisconsin law established no method for a clerk to demand proof of a voter's individual situation. The Wisconsin Supreme Court endorsed the

Commission's interpretation when it enjoined the Dane County Clerk from offering any contrary view of the law. See *Jefferson v. Dane County*, 2020 WI 90 ¶¶ 8–9 (Dec. 14, 2020).

Second, the Commission issued guidance in August 2020 endorsing the use of drop boxes for the return of absentee ballots. The Commission explained that drop boxes could be "staffed or unstaffed, temporary or permanent," and offered advice on how to make them both secure and available to voters during the pandemic.

Third, four years ago, before the 2016 election, the Commission instructed municipal clerks on best practices for correcting a witness's address on an absentee ballot certificate. See WIS. STAT. § 6.87(2), (6d), (9). Clerks were able, the Commission explained, to contact the voter or witness or use another source of reliable information to correct or complete address information on an absentee ballot.

The President's complaint alleges that the Commission, in issuing this guidance, expanded the standards for "indefinitely confined" voters, invited voter fraud by authorizing the use of unstaffed drop boxes, and misled municipal clerks about their powers to complete or correct address information on absentee ballots, all contrary to Wisconsin statutory law. The President sought declaratory and injunctive relief on the view that these alleged misinterpretations of state law "infringed and invaded upon the Wisconsin Legislature's prerogative and directions under [the Electors Clause of] Article II of the U.S. Constitution."

B

After an evidentiary hearing, the district court rejected the President's claims on the merits and entered judgment for the

Commission and other defendants. The Electors Clause, the court determined, addressed the "Manner"—the "approach, form, method, or mode"—by which Wisconsin appointed its electors. For Wisconsin, that meant only by "general ballot at the general election," WIS. STAT. § 8.25(1), with the court further observing that any mistakes in administering the election did not change that the electors were appointed by general election.

Even if the Electors Clause was read more broadly to address the "Manner" in which Wisconsin conducted the election, the district court determined that the Legislature had authorized the Commission to issue the guidance now challenged by the President. None of that guidance, the district court reasoned, reflected such a deviation from the Wisconsin Legislature's directives as to violate the Electors Clause.

The President promptly appealed, and we expedited the case for decision.

II

We begin, as we must, by assessing whether the President has presented a Case or Controversy over which we have jurisdiction. The inquiry turns on the doctrine of standing and, more specifically, whether the President has alleged an injury traceable to the actions of the defendants and capable of being redressed by a favorable judicial ruling. See *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). The district court answered the question in the President's favor. We do too.

On the injury prong of standing, the President has alleged "concrete and particularized" harm stemming from the allegedly unlawful manner by which Wisconsin appointed its electors. *Id.* at 560. As a candidate for elected office, the President's

alleged injury is one that "affect[s] [him] in a personal and individual way." *Id.* at 560 n.1; see also *Carson v. Simon*, 978 F.3d 1051, 1058 (8th Cir. 2020) ("An inaccurate vote tally is a concrete and particularized injury to candidates."). The alleged injury-in-fact is likewise "fairly traceable" to the challenged action of the defendants, see *Allen v. Wright*, 468 U.S. 737, 751 (1984), all of whom played some role in administering the election.

The final requirement for Article III standing—that the alleged injury "likely" would be redressed by a favorable decision—presents a closer question. *Lujan*, 504 U.S. at 561. The difficulty is attributable to the gap between what the President ultimately desires (to be declared the victor of Wisconsin) on one hand, and what a court can award him on the other. But the President's complaint can be read as more modestly requesting a declaration that the defendants' actions violated the Electors Clause and that those violations tainted enough ballots to "void" the election. Were we to grant the President the relief he requests and declare the election results void, the alleged injury—the unlawful appointment of electors—would be redressed. True, our declaration would not result in a new slate of electors. But the fact that a judicial order cannot provide the full extent or exact type of relief a plaintiff might desire does not render the entire case nonjusticiable. See *Church of Scientology v. United States*, 506 U.S. 9, 12–13 (1992). A favorable ruling would provide the opportunity for the appointment of a new slate of electors. From there, it would be for the Wisconsin Legislature to decide the next steps in advance of Congress's count of the Electoral College's votes on January 6, 2021. See 3 U.S.C. § 15. All of this is enough to demonstrate Article III standing.

We also conclude that the President's complaint presents a federal question, despite its anchoring in alleged violations of state law. The Eleventh Amendment and principles of federalism bar federal courts from directing state officials to follow state law. See *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 121 (1984). But we can decide whether their interpretation of state law violated a provision of the federal Constitution, here the Electors Clause. This distinction alleviates any federalism concerns that might otherwise preclude our consideration of the President's claims.

III

On the merits, the district court was right to enter judgment for the defendants. We reach this conclusion in no small part because of the President's delay in bringing the challenges to Wisconsin law that provide the foundation for the alleged constitutional violation. Even apart from the delay, the claims fail under the Electors Clause.

A

The timing of election litigation matters. "[A]ny claim against a state electoral procedure must be expressed expeditiously." *Fulani v. Hogsett*, 917 F.2d 1028, 1031 (7th Cir. 1990) (citing *Williams v. Rhodes*, 393 U.S. 23, 34–35 (1968)). The Supreme Court underscored this precise point in this very election cycle, and with respect to this very State. See *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020). The Court's direction was clear: federal courts should avoid announcing or requiring changes in election law and procedures close in time to voting. Doing so risks offending principles of federalism and reflects an improper exercise of the federal judicial power. Even more, belated election

litigation risks giving voters "incentive to remain away from the polls." *Purcell v. Gonzalez*, 549 U.S. 1, 5 (2006); see also *Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016) ("Call it what you will—laches, the *Purcell* principle, or common sense—the idea is that courts will not disrupt imminent elections absent a powerful reason for doing so."). On this reasoning, we have rejected as late claims brought too close in time *before* an election occurs. See *Democratic Nat'l Comm. v. Bostelmann*, 977 F.3d 639, 642 (7th Cir. 2020); *Jones v. Markiewicz-Qualkinbush*, 842 F.3d 1053, 1060–62 (7th Cir. 2016); *Navarro v. Neal*, 716 F.3d 425, 429 (7th Cir. 2013).

The same imperative of timing and the exercise of judicial review applies with much more force on the back end of elections. Before a court can contemplate entering a judgment that would void election results, it "*must* consider whether the plaintiffs filed a timely pre-election request for relief." *Gjersten v. Bd. of Election Comm'rs*, 791 F.2d 472, 479 (7th Cir. 1986) (emphasis added) (footnote omitted).

These very considerations underpin the doctrine of laches. At its core, laches is about timing. "Laches cuts off the right to sue when the plaintiff has delayed 'too long' in suing. 'Too long' for this purpose means that the plaintiff delayed inexcusably and the defendant was harmed by the delay." *Teamsters & Emps. Welfare Tr. of Ill. v. Gorman Bros. Ready Mix*, 283 F.3d 877, 880 (7th Cir. 2002).

The President had a full opportunity before the election to press the very challenges to Wisconsin law underlying his present claims. Having foregone that opportunity, he cannot now—after the election results have been certified as final—seek to bring those challenges. All of this is especially so given that the Commission announced well in advance of the

election the guidance he now challenges. Indeed, the witness-address guidance came four years ago, before the 2016 election. The Commission issued its guidance on indefinitely confined voters in March 2020 and endorsed the use of drop boxes in August.

Allowing the President to raise his arguments, at this late date, after Wisconsin has tallied the votes and certified the election outcome, would impose unquestionable harm on the defendants, and the State's voters, many of whom cast ballots in reliance on the guidance, procedures, and practices that the President challenges here. The President's delay alone is enough to warrant affirming the district court's judgment.

B

The President would fare no better even if we went further and reached the merits of his claims under the Electors Clause.

Defining the precise contours of the Electors Clause is a difficult endeavor. The text seems to point to at least two constructions, and the case law interpreting or applying the Clause is sparse. This case does not require us to answer the question, as the Commission's guidance did not amount to a violation under the two most likely interpretations.

Recall that the Electors Clause requires each State to "appoint, in such Manner as the Legislature thereof may direct," presidential electors. U.S. CONST. art. II, § 1, cl. 2. By its terms, the Clause could be read as addressing only the manner of appointing electors and thus nothing about the law that governs the administration of an election (polling place operations, voting procedures, vote tallying, and the like). The word "appoint" is capacious, "conveying the broadest power

of determination," including but not limited to the "mode" of popular election. *McPherson v. Blacker*, 146 U.S. 1, 27 (1892). Historically, the states used a variety of manners for appointing electors, such as direct legislative appointment. See *id.* at 29–33. For its part, the Wisconsin Legislature has consistently chosen a general election to appoint its electors. See WIS. STAT. § 8.25(1) (2020); WIS. STAT. §§ 6.3, 7.3 (1849). The complaint does not allege that the Commission's guidance documents shifted Wisconsin from a general election to some other manner of appointing electors, like those used in other states in the past. On this reading of the Electors Clause, the President has failed to state a claim. See FED. R. CIV. P. 12(b)(6).

But perhaps the better construction is to read the term "Manner" in the Electors Clause as also encompassing acts necessarily antecedent and subsidiary to the method for appointing electors—in short, Wisconsin's conduct of its general election. Even on this broader reading, the President's claims still would fall short. In his concurring opinion in *Bush v. Gore*, Chief Justice Rehnquist suggested that the proper inquiry under the Electors Clause is to ask whether a state conducted the election in a manner substantially consistent with the "legislative scheme" for appointing electors. 531 U.S. 98, 113 (2000) (Rehnquist, C.J., concurring). We would not go further and ask, for example, whether Wisconsin's officials interpreted perfectly "[i]solated sections" of the elections code. *Id.* at 114.

The Wisconsin Legislature expressly assigned to the Commission "the responsibility for the administration of … laws relating to elections," WIS. STAT. § 5.05(1), just as Florida's Legislature had delegated a similar responsibility to its Secretary of State. See *Bush*, 531 U.S. at 116 (Rehnquist, C.J., concurring). Florida's legislative scheme included this "statutorily

provided apportionment of responsibility," *id.* at 114, and three Justices found a departure from that scheme when the Florida Supreme Court rejected the Secretary's interpretation of state law. See *id.* at 119, 123. And it was the Minnesota Secretary of State's lack of a similar responsibility that prompted two judges of the Eighth Circuit to conclude that he likely violated the Electors Clause by adding a week to the deadline for receipt of absentee ballots. See *Carson*, 978 F.3d at 1060. By contrast, whatever actions the Commission took here, it took under color of authority expressly granted to it by the Legislature. And that authority is not diminished by allegations that the Commission erred in its exercise.

We confine our conclusions to applications of the Electors Clause. We are not the ultimate authority on Wisconsin law. That responsibility rests with the State's Supreme Court. Put another way, the errors that the President alleges occurred in the Commission's exercise of its authority are in the main matters of state law. They belong, then, in the state courts, where the President had an opportunity to raise his concerns. Indeed, the Wisconsin Supreme Court rejected his claims regarding the guidance on indefinitely confined voters, see *Trump v. Biden*, 2020 WI 91 ¶ 8 (Dec. 14, 2020), and declined to reach the rest of his arguments on grounds of laches.

For our part, all we need to say is that, even on a broad reading of the Electors Clause, Wisconsin lawfully appointed its electors in the manner directed by its Legislature.

For these reasons, we AFFIRM.

From:	Clark, Jeffrey (ENRD) </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5875129421F04DDDAA825F5A484527B3-JCLARK_F6CB>
To:	Rosen, Jeffrey A. (ODAG); Donoghue, Richard (ODAG)
Sent:	12/28/2020 4:40:16 PM
Subject:	Two Urgent Action Items
Attachments:	Draft Letter JBC 12 28 20.docx

Jeff and Rich:

(1) I would like to have your authorization to get a classified briefing tomorrow from ODNI led by DNI Radcliffe on foreign election interference issues. I can then assess how that relates to activating the IEEPA and 2018 EO powers on such matters (now twice renewed by the President). If you had not seen it, white hat hackers have evidence (in the public domain) that a Dominion machine accessed the Internet through a smart thermostat with a net connection trail leading back to China. ODNI may have additional classified evidence.

(2) Attached is a draft letter concerning the broader topic of election irregularities of any kind. The concept is to send it to the Governor, Speaker, and President pro temp of each relevant state to indicate that in light of time urgency and sworn evidence of election irregularities presented to courts and to legislative committees, the legislatures thereof should each assemble and make a decision about elector appointment in light of their deliberations. I set it up for signature by the three of us. I think we should get it out as soon as possible. Personally, I see no valid downsides to sending out the letter. I put it together quickly and would want to do a formal cite check before sending but I don't think we should let unnecessary moss grow on this

(As a small matter, I left open me signing as AAG Civil — after an order from Jeff as Acting AG designating me as actual AAG of Civil under the Ted Olson OLC opinion and thus freeing up the Acting AAG spot in ENRD for Jon Brightbill to assume. But that is a comparatively small matter. I wouldn't want to hold up the letter for that. But I continue to think there is no downside with as few as 23 days left in the President's term to give Jon and I that added boost in DOJ titles.)

I have a 5 pm internal call with the [redacted] (b) (5)
(b) (5) But I am free to talk on either or both of these subjects circa 6 pm+.

Or if you want to reach me after I reset work venue to home, my cell # is [redacted] (b) (6)

Jeff

Pre-Decisional & Deliberative/Attorney-Client or Legal Work Product
Georgia Proof of Concept

[LETTERHEAD]

The Honorable Brian P. Kemp
Governor
111 State Capitol
Atlanta, Georgia 30334

The Honorable David Ralston
Speaker of the House
332 State Capitol
Atlanta, Georgia 30334

The Honorable Butch Miller
President *Pro Tempore* of the Senate
321 State Capitol
Atlanta, Georgia 30334

December 28, 2020

Dear Governor Kemp, Mr. Speaker, and Mr. President *Pro Tempore*:

The Department of Justice is investigating various irregularities in the 2020 election for President of the United States. The Department will update you as we are able on investigatory progress, but at this time we have identified significant concerns that may have impacted the outcome of the election in multiple States, including the State of Georgia. No doubt, many of Georgia's state legislators are aware of irregularities, sworn to by a variety of witnesses, and we have taken notice of their complaints. *See, e.g.*, The Chairman's Report of the Election Law Study Subcommittee of the Standing Senate Judiciary Committee Summary of Testimony from December 3, 2020 Hearing, http://www.senatorligon.com/THE_FINAL%20REPORT.PDF (Dec. 17, 2020) (last visited Dec. 28, 2020); Debra, Heine, *Georgia State Senate Report: Election Results Are 'Untrustworthy;' Certification Should Be Rescinded*, THE TENNESSEE STAR (Dec. 22, 2020), *available at* https://tennesseestar.com/2020/12/22/georgia-state-senate-report-election-results-are-untrustworthy-certification-should-be-rescinded/ (last visited Dec. 28, 2020).

In light of these developments, the Department recommends that the Georgia General Assembly should convene in special session so that its legislators are in a position to take additional testimony, receive new evidence, and deliberate on the matter consistent with its duties under the U.S. Constitution. Time is of the essence, as the U.S. Constitution tasks Congress with convening in joint session to count Electoral College certificates, *see* U.S. Const., art. II, § 1, cl. 3, consider objections to any of those certificates, and decide between any competing slates of elector certificates, and 3 U.S.C. § 15 provides that this session shall begin on January 6, 2021, with the Vice President presiding over the session as President of the Senate.

The Constitution mandates that Congress must set the day for Electors to meet to cast their ballots, which Congress did in 3 U.S.C. § 7, and which for this election occurred on December 14, 2020. The Department believes that in Georgia and several other States, both a slate of electors supporting Joseph R. Biden, Jr., and a separate slate of electors supporting Donald J. Trump, gathered on that day at the proper location to cast their ballots, and that both sets of those ballots have been transmitted to Washington, D.C., to be opened by Vice President Pence. The Department is aware that a similar situation occurred in the 1960 election. There, Vice President Richard Nixon appeared to win the State of Hawaii on Election Day and Electors supporting Vice President Nixon cast their ballots on the day specified in 3 U.S.C. § 7, which were duly certified by the Governor of Hawaii. But Senator John F. Kennedy also claimed to win Hawaii, with his Electors likewise casting their ballots on the prescribed day, and that by January 6, 1961, it had been determined that Senator Kennedy was indeed the winner of Hawaii, so Congress accordingly accepted only the ballots cast for Senator Kennedy. *See* Jack M. Balkin, *Bush v. Gore and the Boundary Between Law and Politics*, 110 YALE L.J. 1407, 1421 n.55 (2001).

The Department also finds troubling the current posture of a pending lawsuit in Fulton County, Georgia, raising several of the voting irregularities pertaining to which candidate for President of the United States received the most lawfully cast votes in Georgia. *See Trump v. Raffensperger*, 2020cv343255 (Fulton Cty. Super. Ct.). Despite the action having been filed on December 4, 2020, the trial court there has not even scheduled a hearing on matter, making it difficult for the judicial process to consider this evidence and resolve these matters on appeal prior to January 6. Given the urgency of this serious matter, including the Fulton County litigation's sluggish pace, the Department believes that a special session of the Georgia General Assembly is warranted and is in the national interest.

The Electors Clause of the U.S. Constitution provides that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct," electors to cast ballots for President and Vice President. *See* U.S. Const., art. II, § 1, cl. 2. Many State Legislatures originally chose electors by direct appointment, but over time each State Legislature has chosen to do so by popular vote on the day appointed by Congress in 3 U.S.C. § 1 to be the Election Day for Members of Congress, which this year was November 3, 2020. However, Congress also explicitly recognizes the power that State Legislatures have to appoint electors, providing in 3 U.S.C. § 2 that "[w]henever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by [3 U.S.C. § 1], the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct."

The purpose of the special session the Department recommends would be for the General Assembly to (1) evaluate the irregularities in the 2020 election, including violations of Georgia election law judged against that body of law as it has been enacted by your State's Legislature, (2) determine whether those violations show which candidate for President won the most legal votes in the November 3 election, and (3) whether the election failed to make a proper and valid choice between the candidates, such that the General Assembly could take whatever action is necessary to ensure that one of the slates of Electors cast on December 14 will be accepted by Congress on January 6.

While the Department of Justice believes the Governor of Georgia should immediately call a special session to consider this important and urgent matter, if he declines to do so, we share with you our view that the Georgia General Assembly has implied authority under the Constitution of the United States to *call itself into special session* for the limited purpose of considering issues pertaining to the appointment of Presidential Electors. The Constitution specifies that Presidential Electors shall be appointed by the *Legislature* of each State. And the Framers clearly knew how to distinguish between a state legislature and a state executive, so their disparate choices to refer to one (legislatures), the other (executive), or both, must be respected.[1] Additionally,

[1] *See, e.g.*, U.S.C., art. IV, § 4 ("The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of *the Legislature, or of the Executive* (when *the Legislature* cannot be convened) against domestic Violence.") (emphases added); *id.* art. VI ("The Senators and Representatives before mentioned, and the Members of the *several State Legislatures, and all executive and judicial Officers,* both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution ....") (emphasis added); *id.* XVII amend. ("When vacancies happen in the representation of any State in the Senate, *the executive authority of such State* shall issue writs of election to fill such vacancies: Provided, That *the legislature of any State* may empower

when the Constitution intends to refer to laws enacted by the Legislature and signed by the Governor, the Constitution refers to it simply as the "State." *See, e.g.*, U.S. Const., art. I, § 8 ("[Congress may] exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, *by Cession of particular States*, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of *the Legislature of the State* in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings") (emphasis added) (distinguishing between the "State," writ large, and the "Legislature of the State"). The Constitution also makes clear when powers are forbidden to any type of state actor. *See, e.g.*, U.S. Const., art. I, § 10, cl. 1 ("No State shall enter into any Treaty, Alliance, or Confederation ...."). Surely, this cannot mean that a State Governor could enter into such a Treaty but a State Legislature could not, or *vice versa*.

Clearly, however, some provisions refer explicitly to state legislatures — and there the Framers must be taken at their word. One such example is in Article V, which provides that a proposed Amendment to the Constitution is adopted "when ratified by the Legislatures of three fourths of the several States," which is done by joint resolution or concurrent resolution. Supreme Court precedent makes clear that the Governor has no role in that process, and that his signature or approval is not necessary for ratification. *See, e.g., Coleman v. Miller*, 307 U.S. 433 (1939). So too, Article II requires action only by the Legislature in appointing Electors, and Congress in 3 U.S.C. § 2 likewise recognizes this Constitutional principle.

The Supreme Court has explained that the Electors Clause "leaves it to the legislature exclusively to define the method" of appointing Electors, vesting the Legislature with "the broadest possible power of determination." *McPherson v. Blecker*, 146 U.S. 1, 27 (1892). This power is "placed absolutely and *wholly* with legislatures." *Id.* at 34-35 (emphasis added). In the most recent disputed Presidential election to reach the Supreme Court, the 2000 election, the Supreme Court went on to hold that when a State Legislature appoints Presidential Electors—which it can do either through statute or through direct action—the Legislature is not acting "solely under the authority given by the people of the State, but by virtue of a direct grant of authority made under Art. II, § 1, cl. 2, of the United States Constitution." *Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S.

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the executive thereof to make temporary appointments until the people fill the vacancies by election *as the legislature may direct*.") (emphases added).

70, 76 (2000). The State Legislature's authority to appoint Electors is "plenary." *Bush v. Gore*, 531 U.S. 98, 104 (2000) (per curiam). And a State Legislature cannot lose that authority on account of enacting statutes to join the National Election. "Whatever provisions may be made by statute, or by the state constitution, to choose electors by the people, there is no doubt of the right of the legislature to resume the power an any time, for it can neither be taken away nor abdicated." *McPherson*, 146 U.S. at 125.

The Georgia General Assembly accordingly must have inherent authority granted by the U.S. Constitution to come into session to appoint Electors, regardless of any purported limit imposed by the state constitution or state statute requiring the Governor's approval. The "powers actually granted [by the U.S. Constitution] must be such as are expressly given, or given by necessary implication." *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 326 (1816). And the principle of necessary implication arises because our Constitution is not prolix and thus does not "provide for minute specification of its powers, or to declare the means by which those powers should be carried into execution." *Id.* Otherwise, in a situation like this one, if a Governor were aware that the Legislature of his State was inclined to appoint Electors supporting a candidate for President that the Governor opposed, the Governor could thwart that appointment by refusing to call the Legislature into session before the next President had been duly elected. The Constitution does not empower other officials to supersede the state legislature in this fashion.

Therefore whether called into session by the Governor or by its own inherent authority, the Department of Justice urges the Georgia General Assembly to convene in special session to address this pressing matter of overriding national importance.

Sincerely,

Jeffrey A. Rosen Acting Attorney General	Richard Donoghue Acting Deputy Attorney General	Jeffrey Bossert Clark (Acting) Assistant Attorney General Civil Division

From: Clark, Jeffrey (ENRD) </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5875129421F04DDDAA825F5A484527B3-JCLARK_F6CB>
To: Jeffrey Rosen
Sent: 12/26/2020 5:20:55 PM
Subject: Re: 7th Circuit

Thanks. Also I'm glad you sent this to my ENRD email.

Civ email on my iPhone is currently down. They are working on fixing it

Sent from my iPhone

On Dec 26, 2020, at 4:31 PM, Jeffrey Rosen [(b) (6)] wrote:

https://protect2.fireeye.com/v1/url?k=3100c04b-6e9bf899-3107e4ae-0cc47adc5fdc-0b58d30b9889c99b&q=1&e=652b46fc-c4a0-4ba7-a9f2-5d70cafedb98&u=https%3A%2F%2Fassets.documentcloud.org%2Fdocuments%2F20437488%2Fca7-trump-wisconsin-2020-12-24.pdf

<ca7-trump-wisconsin-2020-12-24.pdf>

Not Responsive Records

12/30/20 11:23:49 PM EST

(b) (5)

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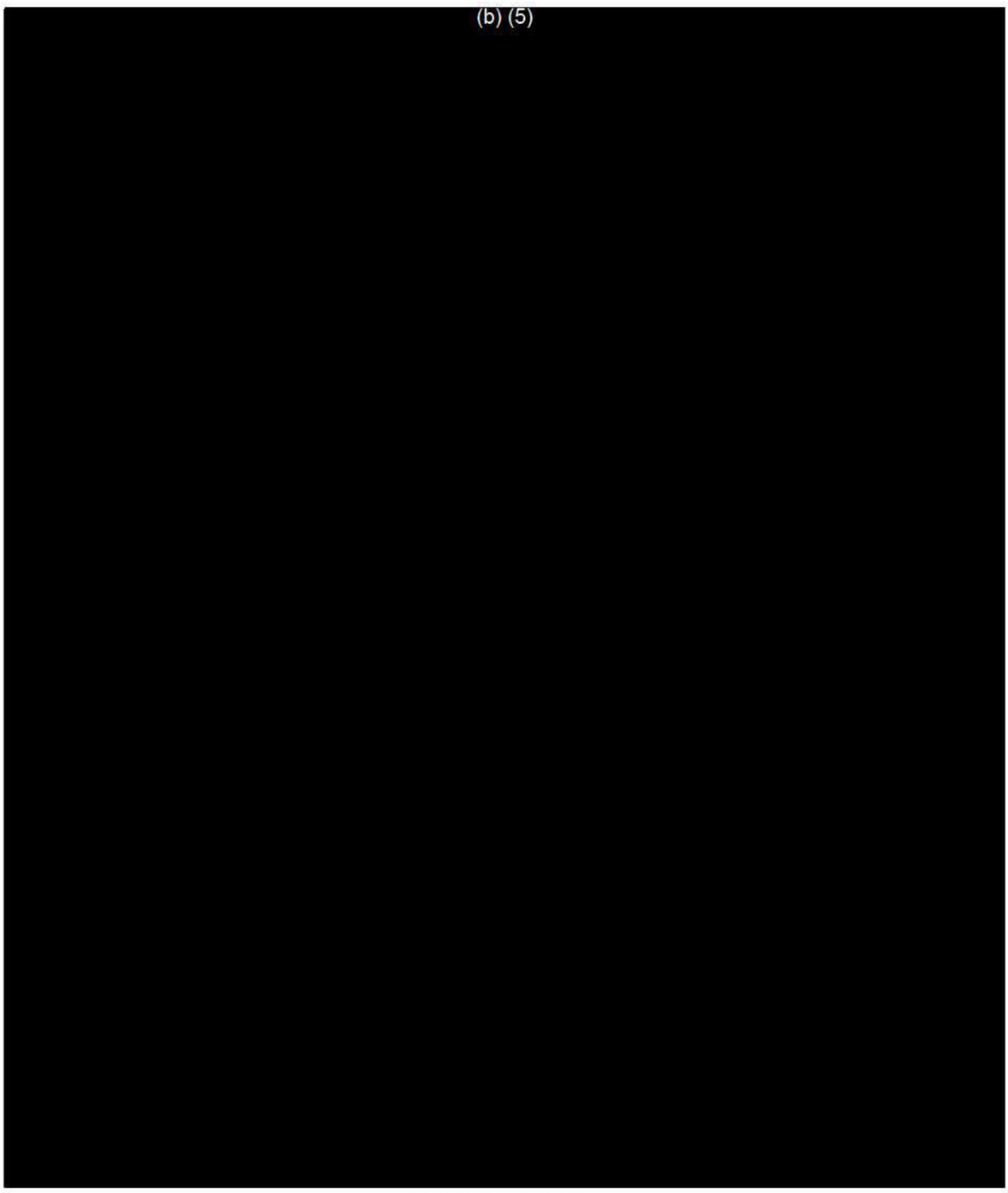

Not Responsive Records

1/3/21 2:43:49 PM EST

Jeff. Just got off phone with Pat P. Please call me when you're ready for me to come up. Thanks

1/3/21 2:50:22 PM EST

Jeff Rosen (+12025323099)

Am ready now

1/3/21 2:51:21 PM EST

Ok coming up

1/3/21 4:53:43 PM EST

Meadows says 615. He will have someone work on logistics

1/3/21 4:54:12 PM EST

Jeff Rosen (+12025323099)

Got it. See you then.

1/3/21 4:54:37 PM EST

Ok. See you over there.

Delivered

To: Clark, Jeffrey (ENRD)[JClark@ENRD.USDOJ.GOV]
From: Clark, Jeffrey (CIV)[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=94034BA2E5F34120911B6F83E0BF05D5-CLARK, JEFF]
Sent: Sat 1/2/2021 1:50:55 PM (UTC)
Subject: Draft Letter JBC 12 28 20.docx
Draft Letter JBC 12 28 20.docx

Sent from my iPhone

Pre-Decisional & Deliberative/Attorney-Client or Legal Work Product
Georgia Proof of Concept

[LETTERHEAD]

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111 State Capitol
Atlanta, Georgia 30334

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December 28, 2020

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While the Department of Justice believes the Governor of Georgia should immediately call a special session to consider this important and urgent matter, if he declines to do so, we share with you our view that the Georgia General Assembly has implied authority under the Constitution of the United States to *call itself into special session* for the limited purpose of considering issues pertaining to the appointment of Presidential Electors. The Constitution specifies that Presidential Electors shall be appointed by the *Legislature* of each State. And the Framers clearly knew how to distinguish between a state legislature and a state executive, so their disparate choices to refer to one (legislatures), the other (executive), or both, must be respected.[1]

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The Supreme Court has explained that the Electors Clause "leaves it to the legislature exclusively to define the method" of appointing Electors, vesting the Legislature with "the broadest possible power of determination." *McPherson v. Blecker*, 146 U.S. 1, 27 (1892). This power is "placed absolutely and *wholly* with legislatures." *Id.* at 34-35 (emphasis added). In the most recent disputed Presidential election to reach the Supreme Court, the 2000 election, the Supreme Court went on to hold that when a State Legislature appoints Presidential Electors—which it can do either through statute or through direct action—the Legislature is not acting "solely under the authority given

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by the people of the State, but by virtue of a direct grant of authority made under Art. II, § 1, cl. 2, of the United States Constitution." *Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S. 70, 76 (2000). The State Legislature's authority to appoint Electors is "plenary." *Bush v. Gore*, 531 U.S. 98, 104 (2000) (per curiam). And a State Legislature cannot lose that authority on account of enacting statutes to join the National Election. "Whatever provisions may be made by statute, or by the state constitution, to choose electors by the people, there is no doubt of the right of the legislature to resume the power an any time, for it can neither be taken away nor abdicated." *McPherson*, 146 U.S. at 125.

The Georgia General Assembly accordingly must have inherent authority granted by the U.S. Constitution to come into session to appoint Electors, regardless of any purported limit imposed by the state constitution or state statute requiring the Governor's approval. The "powers actually granted [by the U.S. Constitution] must be such as are expressly given, or given by necessary implication." *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 326 (1816). And the principle of necessary implication arises because our Constitution is not prolix and thus does not "provide for minute specification of its powers, or to declare the means by which those powers should be carried into execution." *Id.* Otherwise, in a situation like this one, if a Governor were aware that the Legislature of his State was inclined to appoint Electors supporting a candidate for President that the Governor opposed, the Governor could thwart that appointment by refusing to call the Legislature into session before the next President had been duly elected. The Constitution does not empower other officials to supersede the state legislature in this fashion.

Therefore whether called into session by the Governor or by its own inherent authority, the Department of Justice urges the Georgia General Assembly to convene in special session to address this pressing matter of overriding national importance.

Sincerely,

Jeffrey A. Rosen Acting Attorney General	Richard Donoghue Acting Deputy Attorney General	Jeffrey Bossert Clark (Acting) Assistant Attorney General

Civil Division

To: Clark, Jeffrey (ENRD)[JClark@ENRD.USDOJ.GOV]
From: Rosen, Jeffrey A. (ODAG)[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DE6E209017D74E2C8A8211102BDD6EA0-ROSEN, JEFF]
Sent: Fri 1/1/2021 5:31:08 PM (UTC)
Subject: Re: Briefing

Just tried to call you. You should receive a call from him very shortly to set up time for a secure call between the two of you.

Sent from my iPhone

> On Jan 1, 2021, at 12:17 PM, Clark, Jeffrey (ENRD) <JClark@enrd.usdoj.gov> wrote:
>
> Jeff, please let me know if there is any progress on timing for the briefing.
>
> And Happy New Year — may this year be a lot better than 2020! What a year that has been.
>
> Jeff
>
> Sent from my iPhone

To: Clark, Jeffrey (ENRD)[JClark@ENRD.USDOJ.GOV]
From: Klukowski, Kenneth A. (CIV)[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DC123B8BA4634E6CBB9E48E082793AC5-KLUKOWSKI,]
Sent: Mon 12/28/2020 9:19:33 PM (UTC)
Subject: email to you
Draft Letter JBC 12 28 20.docx

Attached

Pre-Decisional & Deliberative/Attorney-Client or Legal Work Product
Georgia Proof of Concept

[LETTERHEAD]

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Civil Division

To: Clark, Jeffrey (CIV)[(b) (6)]
From: Clark, Jeffrey (ENRD)[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5875129421F04DDDAA825F5A484527B3-JCLARK_F6CB]
Sent: Mon 12/28/2020 10:57:31 PM (UTC)
Subject: Draft Letter JBC 12 28 20.docx
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The Electors Clause of the U.S. Constitution provides that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct," electors to cast ballots for President and Vice President. *See* U.S. Const., art. II, § 1, cl. 2. Many State Legislatures originally chose electors by direct appointment, but over time each State Legislature has chosen to do so by popular vote on the day appointed by Congress in 3 U.S.C. § 1 to be the Election Day for Members of Congress, which this year was November 3, 2020. However, Congress also explicitly recognizes the power that State Legislatures have to appoint electors, providing in 3 U.S.C. § 2 that "[w]henever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by [3 U.S.C. § 1], the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct."

The purpose of the special session the Department recommends would be for the General Assembly to (1) evaluate the irregularities in the 2020 election, including violations of Georgia election law judged against that body of law as it has been enacted by your State's Legislature, (2) determine whether those violations show which candidate for President won the most legal votes in the November 3 election, and (3) whether the election failed to make a proper and valid choice between the candidates, such that the General Assembly could take whatever action is necessary to ensure that one of the slates of Electors cast on December 14 will be accepted by Congress on January 6.

While the Department of Justice believes the Governor of Georgia should immediately call a special session to consider this important and urgent matter, if he declines to do so, we share with you our view that the Georgia General Assembly has implied authority under the Constitution of the United States to *call itself into special session* for the limited purpose of considering issues pertaining to the appointment of Presidential Electors. The Constitution specifies that Presidential Electors shall be appointed by the *Legislature* of each State. And the Framers clearly knew how to distinguish between a state legislature and a state executive, so their disparate choices to refer to one (legislatures), the other (executive), or both, must be respected.[1]

[1] *See, e.g.*, U.S.C., art. IV, § 4 ("The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of *the Legislature*, or *of the Executive* (when *the Legislature* cannot be convened) against domestic Violence.") (emphases added); *id.* art. VI ("The Senators and Representatives before mentioned, and the Members of the *several State Legislatures*, and *all executive and judicial Officers*, both of the United States and of the

Additionally, when the Constitution intends to refer to laws enacted by the Legislature and signed by the Governor, the Constitution refers to it simply as the "State." *See, e.g.*, U.S. Const., art. I, § 8 ("[Congress may] exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, *by Cession of particular States*, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of *the Legislature of the State* in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings") (emphasis added) (distinguishing between the "State," writ large, and the "Legislature of the State"). The Constitution also makes clear when powers are forbidden to any type of state actor. *See, e.g.*, U.S. Const., art. I, § 10, cl. 1 ("No State shall enter into any Treaty, Alliance, or Confederation ….") . Surely, this cannot mean that a State Governor could enter into such a Treaty but a State Legislature could not, or *vice versa*.

Clearly, however, some provisions refer explicitly to state legislatures — and there the Framers must be taken at their word. One such example is in Article V, which provides that a proposed Amendment to the Constitution is adopted "when ratified by the Legislatures of three fourths of the several States," which is done by joint resolution or concurrent resolution. Supreme Court precedent makes clear that the Governor has no role in that process, and that his signature or approval is not necessary for ratification. *See, e.g., Coleman v. Miller*, 307 U.S. 433 (1939). So too, Article II requires action only by the Legislature in appointing Electors, and Congress in 3 U.S.C. § 2 likewise recognizes this Constitutional principle.

The Supreme Court has explained that the Electors Clause "leaves it to the legislature exclusively to define the method" of appointing Electors, vesting the Legislature with "the broadest possible power of determination." *McPherson v. Blecker*, 146 U.S. 1, 27 (1892). This power is "placed absolutely and *wholly* with legislatures." *Id.* at 34-35 (emphasis added). In the most recent disputed Presidential election to reach the Supreme Court, the 2000 election, the Supreme Court went on to hold that when a State Legislature appoints Presidential Electors—which it can do either through statute or through direct action—the Legislature is not acting "solely under the authority given

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several States, shall be bound by Oath or Affirmation, to support this Constitution ….") (emphasis added); *id.* XVII amend. ("When vacancies happen in the representation of any State in the Senate, *the executive authority of such State* shall issue writs of election to fill such vacancies: Provided, That *the legislature of any State* may empower *the executive thereof* to make temporary appointments until the people fill the vacancies by election *as the legislature may direct*.") (emphases added).

by the people of the State, but by virtue of a direct grant of authority made under Art. II, § 1, cl. 2, of the United States Constitution." *Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S. 70, 76 (2000). The State Legislature's authority to appoint Electors is "plenary." *Bush v. Gore*, 531 U.S. 98, 104 (2000) (per curiam). And a State Legislature cannot lose that authority on account of enacting statutes to join the National Election. "Whatever provisions may be made by statute, or by the state constitution, to choose electors by the people, there is no doubt of the right of the legislature to resume the power an any time, for it can neither be taken away nor abdicated." *McPherson*, 146 U.S. at 125.

The Georgia General Assembly accordingly must have inherent authority granted by the U.S. Constitution to come into session to appoint Electors, regardless of any purported limit imposed by the state constitution or state statute requiring the Governor's approval. The "powers actually granted [by the U.S. Constitution] must be such as are expressly given, or given by necessary implication." *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 326 (1816). And the principle of necessary implication arises because our Constitution is not prolix and thus does not "provide for minute specification of its powers, or to declare the means by which those powers should be carried into execution." *Id.* Otherwise, in a situation like this one, if a Governor were aware that the Legislature of his State was inclined to appoint Electors supporting a candidate for President that the Governor opposed, the Governor could thwart that appointment by refusing to call the Legislature into session before the next President had been duly elected. The Constitution does not empower other officials to supersede the state legislature in this fashion.

Therefore whether called into session by the Governor or by its own inherent authority, the Department of Justice urges the Georgia General Assembly to convene in special session to address this pressing matter of overriding national importance.

Sincerely,

Jeffrey A. Rosen Acting Attorney General	Richard Donoghue Acting Deputy Attorney General	Jeffrey Bossert Clark (Acting) Assistant Attorney General

Civil Division