No. 20-3371

IN THE

United States Court of Appeals

FOR THE THIRD CIRCUIT

DONALD J. TRUMP FOR PRESIDENT, INC. ET. AL,
Plaintiffs-Appellants,

— v. —

KATHY BOOCKVAR, IN HER CAPACITY AS SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA; ET. AL,
Intervenor-Appellee,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA - CIVIL ACTION NO. 20-CV-02078-MWB

PLAINTIFFS-APPELLANTS' OPENING BRIEF

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November 23, 2020

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INTRODUCTION

On an emergency basis, Plaintiffs/Appellants Donald J. Trump for President, Inc. ("**Trump Campaign**" or "**Campaign**") and two voters ask this Court to reverse the decision below (Opinion, ECF 202) denying their Motion to File a Second Amended Complaint (ECF 172) based solely on alleged undue delay, after the District Court dismissed the First Amended Complaint ("**FAC**" [ECF 125]) with prejudice. The Trump Campaign asks that the matter be remanded to the District Court to decide the Motion to Amend on the merits, and, if the Second Amended Complaint ("**SAC**" [ECF 172-2]) is permitted, to expeditiously hold a hearing of their Renewed Injunctive Relief Motion (ECF 182, 183) in order to prevent awarding Pennsylvania's electors in the Presidential election based on defective mail ballots. Only the winner of the legal ballots – be it President Donald J. Trump or Joseph Biden – should receive Pennsylvania's electors. If the appeal is granted, this Court should retain jurisdiction should any emergency issues arise during remand given the importance and urgency of future review.

The Initial Proceedings

On Monday, November 9, 2020, immediately following the Election, the Trump Campaign and two voters filed a Complaint (ECF 1) in the United States District Court for the Middle District of Pennsylvania asserting claims, *inter alia*, under the Civil Rights Act for violation of the Equal Protection, Due Process, and

the Electors and Election Clause of the United States Constitution, involving Defendants' scheme to favor Joseph Biden over President Trump by counting defective mail ballots sufficient to turn the result of the election.

The District Court held an immediate scheduling conference and on November 10 (ECF 135) directed Defendants to file motions to dismiss on Friday, November 13, with responses due on Sunday, November 15, and oral argument on Tuesday, November 17. The Court also directed Plaintiffs to file their motion for a temporary restraining order and preliminary injunction to prevent Defendant Secretary of the Commonwealth Boockvar and seven Defendant County Boards of Election from certifying the 2020 General Election and scheduled a hearing for Thursday, November 19 – four days before Secretary Boockvar was to certify the Presidential election under Pennsylvania law (ECF 135).

The Unexpected Withdrawal of Plaintiffs' Counsel

Following the filing of the Complaint, the Trump Campaign's longtime, main counsel, Porter Wright Morris & Arthur LLP ("**Porter Wright**"), received threats of violence and economic retaliation and withdrew on November 13 (ECF 117). The Campaign's remaining attorney, Linda Kerns, a sole practitioner, received a threatening telephone call from opposing counsel, Kirkland & Ellis (Motion for Sanctions, ECF 131). Rather than oppose the motions to dismiss, she filed the FAC

(ECF 125), which incorrectly omitted numerous allegations and counts.[1]

Plaintiffs Immediately Engage New Counsel and Request Leave to Amend

The Campaign engaged Scaringi & Scaringi PC ("**Scaringi**") in Pennsylvania, and former New York Mayor Rudolph Giuliani ("**Giuliani**"), as new counsel. On Monday, November 16, new counsel informed the Court that the Campaign intended to move for leave to file a SAC, which was intended to correct the omission of certain allegations and counts in the FAC, as well as to include allegations based on continuing investigation, and requested the Court briefly adjourn the argument scheduled for the next day, November 17. (Motion, ECF 152). The Court denied the request to adjourn (ECF 153).

The November 17 Argument

At the November 17 argument, the Campaign again informed the Court that it wanted to move to amend the Complaint. (Transcript, ECF 199, at 13, 22, 153, 196) The Court directed the Campaign to respond to motions to dismiss the FAC and move to amend on Wednesday, November 18, and file a renewed motion for injunctive relief on Thursday, November 19. (Transcript, ECF 199, at 152-154) The Campaign filed the Motion to Amend (ECF 172), attaching the proposed SAC (ECF

[1] Ms. Kerns later withdrew on November 19, 2020 (ECF 174). Apparently terminated for its misconduct directed at Ms. Kerns, Kirkland & Ellis withdrew on November 20 (ECF 192).

172-2), as well as a Supplement to its Motion to Amend (ECF 185), and a Reply brief regarding its Renewed Motion for Temporary Restraining Order or Preliminary Injunction (ECF 198).

The Decision Denying Leave to Amend

On Saturday evening November 21, the District Court dismissed the Amended Complaint with prejudice. (Opinion, ECF 202). The Court denied leave to amend the Complaint – before Defendants even filed responses – ***solely*** on the basis that "amendment would unduly delay resolution of the[] issues" concerning certification of the Election. *Id.* The Court noted that amendment would require it to set "a new briefing schedule, conduct a second oral argument, and then decide these issues." *Id.* It did not find bad faith, dilatory motive, prejudice or futility. The Court denied the Renewed Injunction Motion as moot. (Order, ECF 203)

Summary

The District Court abused its discretion in denying the Motion to Amend for numerous reasons. This prevents the Campaign from litigating its serious and well-founded claims that Defendants – Secretary Boockvar, and seven County Boards of Elections controlled by Democrats – engaged in a partisan scheme to favor Biden over Trump by counting potentially tens of thousands of defective mail ballots. Contrary to historical practice in Pennsylvania, observation of the canvassing of mail ballots was prevented in order to conceal that defective ballots – *i.e.*, ballots that did

not comply with Pennsylvania's signature, dating, and other requirements, *see* 25 P.S. §§ 3146.8, 3150.16 – were being opened, mixed, and counted because Defendants knew that these ballots would overwhelmingly favor Biden over Trump.[2] In other words, Defendants deliberately counted defective mail ballots because they knew the results would benefit their favored candidate, Biden, in violation of Equal Protection and Due Process under the Civil Rights Act. *See* SAC (ECF 172-2, at 56, 60, 91).[3]

First, the Court abused its discretion in finding undue delay. There was no delay at all – the Court was notified one day after the Amended Complaint that Plaintiffs, represented by new counsel, wished to amend again. It apparently mistakenly believed that relief must be granted by Monday, November 23, the date by which the Secretary certifies the result of the Presidential election under Pennsylvania law. However, the Court disregarded that the real deadline is December 8, 2020, the safe harbor by which electors need be appointed under 3

[2] *See* Motion to Amend (ECF 172, at 8); proposed SAC (ECF 172-2, at 58, 65-67, 76-77); Renewed Injunction Motion (ECF 183, at 5,6), Renewed Injunction Motion Reply (ECF 198, at 6-9).

[3] This Court affirmed similar claims for violation of the Equal Protection and Due Process clauses under the Civil Rights Act arising from a scheme to count illegal absentee ballots in affirming the removal of candidate William Stinson and the certification of candidate Bruce S. Marks in *Marks v. Stinson*, 19 F.3d 873 (3d Cir. 1994), *on remand*, 1994 U.S. Dist. LEXIS 5273 (E.D. Pa. April 26, 1994).

U.S.C. §5. *See* Renewed Injunction Motion (ECF 183, at 7, 25).[4] On Monday, November 16, the Campaign informed the Court of its intent to amend and filed the motion on Wednesday, November 18. There was no reason that the Court could not have adjourned oral argument, allowed filing the Motion to Amend and scheduled a new oral argument date at that time. In any case, there is plenty of time to allow briefing on the Motion to Amend and conduct a hearing on the Renewed Injunction Motion before December 8 in regard to one of the most important disputes imaginable – the true winner of Pennsylvania's electors for President.

Second, even if the Court found delay, it never found that Defendants suffered harm as a result, a requisite for denial. Nor could it – given Defendants had not responded and still have not responded to the Motion to Amend.

Third, the Court also misconstrued the remedy sought. The Campaign is not seeking to disenfranchise 6.8 million Pennsylvanians. (Opinion, ECF 202 at 18, 32) Rather, as explained in numerous filings, including the Renewed Injunction Motion (ECF 183, at 2) and Renewed Injunction Motion Reply (ECF 198, at 24-25), the Campaign only seeks to aside the ***defective*** mail ballots among 1.5 million cast in

[4] Moreover, the Court also has the power to order the Secretary to decertify the results, a remedy approved in *Marks v. Stinson* where this Court affirmed removal of Stinson. 19 F.3d at 873. The Renewed Injunction Motion (ECF 183, at 24-25), and Renewed Injunction Motion Reply (ECF 198, at 21, 26) cited numerous other cases where courts have undone election results.

the defendant Counties.[5] The Campaign's sought remedy is to examine a sample of the mail ballots to determine the defective percentage and engage an expert to calculate the overall defective number among the 1.5 million. The defective ballots should be deducted from Biden's votes, which may change the result of the election. This is the exact process and remedy approved by *Marks v. Stinson*, 1994 U.S. Dist. LEXIS 5273 (E.D. Pa. Apr. 26, 1994), *aff'd*, 19 F.3d 873 (3d Cir. 1994).

Finally, the Court erred in dismissing the Renewed Injunction Motion as moot because it erred in denying the Motion to Amend.

This Court should reverse denial of the motion to amend and direct the District Court below to immediately decide the Motion to Amend on the merits and conduct a hearing on the Renewed Injunction Motion if the SAC states claims.

JURISDICTIONAL STATEMENT

The District Court had subject matter jurisdiction over Plaintiffs' claims under

[5] Contrary to historical practice, Defendants did not allow the Trump Campaign to meaningfully observe the mail ballot canvassing in order to identify defective ballots – making them stay 20 or 30 feet away where one could not even observe the writing on mail ballots with binoculars. At the same time, in the middle of the Election, the Pennsylvania Supreme Court held that Pennsylvania law does not allow observers to meaningfully observe the canvass of mail ballots, *In re Canvassing Observation*, No. 30 EAP 2020 (Pa. Nov. 17, 2020), or to object to their opening, mixing, and counting, *see In re November 3, 2020 Gen. Election*, 2020 Pa. LEXIS 5560 (Pa. Oct. 23, 2020), despite a provision of Pennsylvania law to the contrary, 25 P.S. §3146.8(f), rendering Pennsylvania's mail ballot system so porous that it is unconstitutional under the Due Process Clause.

28 U.S.C. §1331. This Court has jurisdiction under 28 U.S.C. §§ 1291 and 1292(a)(1). This appeal is from the denial of Plaintiffs' motion for preliminary injunction and a final judgment. The District Court entered its order on November 21, 2020, Plaintiffs filed the notice of appeal on November 22, 2020, and this appeal is therefore timely.

STATEMENT OF ISSUES

1. Did the Court abuse its discretion in denying the Motion to Amend, given that there was no undue delay, no prejudice, and it misconstrued the timing and nature of the relief sought?
2. Did the Court err in denying the Renewed Injunction Motion as moot because it erred in denying the Motion to Amend?

STATEMENT OF RELATED CASES

This case has not been before this Court previously.

STATEMENT OF THE CASE AND FACTS

A. Procedural Background

On November 9, 2020, Plaintiffs filed suit against Secretary Boockvar, as well as the County Boards of Elections for the following counties: Allegheny, Centre, Chester, Delaware, Montgomery, Northampton, and Philadelphia (ECF 1). The next day, at a scheduling conference, the Court "learned that several organizations, including the Democratic National Committee, sought to file intervention motions

with the Court." Opinion (ECF 202), at 8. The Court set a briefing schedule, set aside November 17 for oral argument on any motions to dismiss and "told the parties to reserve November 19, 2020 … in the event that the Court determined that an evidentiary hearing was necessary." *Id*.

Defendants filed their motions to dismiss on November 12 (ECF 81, 85, 92, 96). The proposed intervenors filed their motions on November 10 (ECF 30) and November 11 (ECF 39). Plaintiffs filed a motion for a temporary restraining order and preliminary injunction on November 12 (ECF 89).

On November 12, Plaintiffs' counsel Porter Wright withdrew; Ms. Kerns remained and was joined by two out-of-state counsel, Messrs. Scott and Hughes, from Texas, appearing *pro hac vice.*

On November 15, Plaintiffs filed the FAC (ECF 125).

On November 16, Defendants field new motions to dismiss and supporting briefs (ECF 127, 135, 138, 140).

Also on November 16, Plaintiffs' counsel, Kerns, Scott and Hughes, requested permission to withdraw (ECF 151). The District Court granted the withdrawal motions of the Texas attorneys (ECF 154), but initially did not grant Ms. Kerns' request. That same evening, Scaringi entered its appearance on behalf of Plaintiffs (ECF 149).

On the evening of November 16, Plaintiffs moved to postpone the oral

argument scheduled for November 17 and the evidentiary hearing scheduled for November 19 (ECF 152). The Court denied Plaintiffs' motion for a continuance. The Court explained: "[G]iven the emergency nature of th[e] proceeding [before it], and the looming deadline [of November 23] for Pennsylvania counties to certify their election results, postponing those proceedings seemed imprudent." Opinion (ECF 202, at 10).

On November 17, former Mayor Giuliani entered his appearance *pro hac vice* on behalf of Plaintiffs (ECF 156). The District Court heard oral argument on the afternoon of November 17 (Transcript, ECF 199). At the argument, counsel again informed the Court that Plaintiffs intended to move to amend. (*Id*., at 13, 22, 153, 196). At the conclusion of the argument, the Court determined that the November 19 hearing was "no longer needed and cancelled that proceeding." Opinion (ECF 202, at 10). The Court "imposed a new briefing schedule in light of the FAC's filing, which arguably [had] mooted the initial motions to dismiss." *Id*., at 10-11.

On November 18, Plaintiffs submitted their brief in opposition to the motion to dismiss the FAC (ECF 170) and their second Motion to Expedite Discovery (171). Plaintiffs also filed their Motion to Amend to file a SAC (ECF 172).[6]

6 During the oral argument on November 17, Defendants stated that they would not consent to the filing of a third pleading and did not concur in Plaintiffs' motion for leave to file the SAC. Opinion (ECF 202), f.n. 36, at 11.

On November 19, Defendants submitted Reply briefs (ECF 175, 176, 177, 178, 179). Plaintiffs also submitted a Renewed Injunction Motion (ECF 182, 183).

On November 20, Defendants and Intervenors submitted briefs in opposition to the Renewed Injunction Motion (ECF 189, 190, 191, 193, 195, 196).

On November 21, Plaintiffs submitted their Renewed Injunction Motion Reply (198). The District Court dismissed the Amended Complaint with prejudice. (Opinion, ECF 202). The Court denied leave to amend the Complaint and also denied Plaintiffs' Renewed Injunction Motion as moot. (Order, ECF 203)

B. The Proposed SAC

1. The Scheme To Favor Biden over Trump in Violation of Equal Protection

The proposed SAC (ECF 172-2) alleged Defendants participated in an intentional scheme to count defective mail ballots in favor Biden over Trump in violation of the Equal Protection and Due Process clauses under the Civil Rights Act.

First, "Democrats who controlled the Defendant County Election Boards" engaged in a scheme to "count absentee and mail ballots which should have been disqualified." SAC ¶252 at 95. They "carried out this scheme knowing that the absentee and mail ballots that should have been disqualified would overwhelmingly favor Biden because of the registrations of persons who voted by mail, as well as

their knowledge and participation in the Democrat/Biden election strategy, which favored mail-in voting, compared to the Republican/Trump strategy, which favored voting in person at the polls." *Id*. ¶253 at 95. "As a result, Defendant County Election Boards deliberately favored Biden with votes which should not have been counted, effectively stuffing the ballot box in his favor with illegal votes" in violation of *Marks v. Stinson*, 1994 U.S. Dist. LEXIS 5273 (E.D. Pa. Apr. 26, 1994), *aff'd*, 19 F.3d 873 (3d Cir. 1994), *Reynolds v. Sims*, 377 U.S. 533 (1964), *Bush v. Gore*, 531 U.S. 98 (2000), and *Snowden v. Hughes*, 321 U.S. 1 (1943). SAC ¶253 at 95; *see also* ¶168 at 69, ¶177 at 72, ¶179 at 73, ¶194 at 77, ¶223 at 86. The SAC alleges that "a substantial portion of the approximately 1.5 million absentee and mail votes in the Defendant Counties should not have been counted, and the vast majority favored Biden, thus resulting in returns indicating Biden won Pennsylvania." SAC ¶253 at 95-96.

Second, the "Democratic-majority controlled Defendant county boards of elections provided political parties and candidates, including the Trump Campaign, no meaningful access or actual opportunity to review and assess mail-in ballots during the pre-canvassing meetings in order to favor Joseph Biden over President Donald J. Trump." SAC ¶4 at 2-3.

Third, the SAC alleged that the "Democratic controlled County Elections Boards' failure and refusal to set aside and challenge … [defective ballots] resulted

in the arbitrary, disparate, and unequal treatment between those who vote in-person at the polling place versus those who vote by absentee or mail-in ballot – all designed to favor Biden over Trump." SAC ¶110 at 49; *see also* SAC ¶112 at 49-50; SAC ¶117 at 52.

Fourth, the SAC alleged that Secretary Boockvar's Naked Ballot Guidance[7] was issued in order to "encourage the counting of mail ballots which she knew would favor Biden." SAC ¶98 at 44-45. Following the Pennsylvania Supreme Court's decision in *Pennsylvania Democratic Party*, 2020 Pa. LEXIS 4872 (Pa. Sep. 17, 2020), which ruled that the secrecy provision language in Election Code §3150.16(a) is "mandatory," Secretary Boockvar removed the Naked Ballot Guidance from the Pennsylvania Department of State's website. However, she did not issue "any guidance advising all 67 County Election Boards that they must not count non-compliant absentee or mail-in ballots, including, without limitation, those that lack an inner secrecy envelope, contain on that envelope any text, mark, or symbol which reveals the elector's identity, political affiliation, or candidate preference, do not

[7] On August 19, 2020, Secretary Boockvar issued her "**Naked Ballot Guidance**" espousing the "position that naked ballots should be counted pursuant to the Pennsylvania Election Code, furthering the Right to Vote under the Pennsylvania and United States Constitutions[,]" that "[t]he failure to include the inner envelope ('Secrecy Envelope') does not undermine the integrity of the voting process[,]" and that "no voter should be disenfranchised for failing to place their ballot in the official election ballot envelope before returning it to the county board of election." SAC ¶98 at 44-45.

include on the outside envelope a completed declaration that is dated and signed by the elector, and/or are delivered in-person by third-parties for non-disabled voters." SAC ¶¶99-100 at 45.

Fifth, the SAC alleged that "[c]ertain of the Democratic controlled County Election Boards proceeded to pre-canvass mail-in ballot envelopes prior to Election Day in order to favor Biden over Trump." SAC ¶139 at 58. Further, the SAC alleges that "Secretary Boockvar encouraged this unlawful behavior to favor Biden over Trump." SAC ¶142 at 60.

Sixth, the SAC alleged the Trump Campaign believes that "statistical analysis will evidence that over 70,000 mail and other mail ballots which favor Biden were improperly counted – sufficient to turn the election – a remedy expressly applied in *Marks v. Stinson*, 1994 U.S. Dist. LEXIS 5273, at *78 (E.D. Pa. Apr. 26, 1994) which was later affirmed without opinion by the Third Circuit Court of Appeals." SAC ¶18 at 10-11.

Finally, the SAC alleged that, in order to favor Biden over Trump, "Defendants have violated the Equal Protection Clause because as a result of their conduct to obscure access to the vote-counting process, watchers in Allegheny, Philadelphia and other Defendant Counties did not have the same right as watchers in Republican controlled Pennsylvania Counties, such as York, to be present when envelopes containing official absentee and mail-in ballots were reviewed, opened,

counted, and recorded" in order to count defective mail ballots. SAC ¶56 at 64.

2. The Scheme To Favor Biden Over Trump In Violation of Due Process

The SAC alleged that "Democrats who controlled the Defendant County Election Boards engaged in a deliberate scheme of intentional and purposeful discrimination to favor presidential candidate Biden over Trump by excluding Republican and Trump Campaign observers from the canvassing of the mail ballots in order to conceal their decision not to enforce requirements that declarations on the outside envelopes are properly filled out, signed, and dated and had secrecy envelopes as required by 15 PA.S 3146.6(a) and 3150.16 (a) in order to count absentee and mail ballots which should have been disqualified." SAC ¶252 at 95.

3. Pennsylvania's Mail Ballot Scheme As Interpreted By The Pennsylvania Supreme Court Violates Equal Protection and Due Process

Plaintiffs will rely on recent Pennsylvania Supreme Court cases to show that the Pennsylvania's system is porous and lacking in checks and balances and that these eve-of-election changes to Pennsylvania law governing a presidential election are also improper under *Bush v. Gore*, 531 U.S. 98, 104 (2000) (*per curiam*).

On September 17, 2020, the Pennsylvania Supreme Court rejected the Secretary's position that naked ballots should be counted and ruled that "the secrecy provision language in Election Code Section 3150.16(a) is mandatory and the mail-

in elector's failure to comply with such requisite by enclosing the ballot in the secrecy envelope renders the ballot invalid." SAC ¶¶98-99 at 44-45 (*citing Pennsylvania Democratic Party*, 2020 Pa. LEXIS 4872, *72 (Pa. Sep. 17, 2020)).

As a result, some "Democratic controlled County Election Boards proceeded to pre-canvass mail-in ballot envelopes prior to Election Day in order to favor Biden over Trump." SAC ¶139 at 58. "For those ballots that lacked an inner secrecy envelope, the voters were notified prior to Election Day in order to 'cure' the invalidity by voting provisionally on Election Day at their polling location." *Id*. Thus, although the Pennsylvania Supreme Court was clear that the Election Code "does not provide for the 'notice and opportunity to cure' procedure," Defendants favoring Biden nonetheless engaged in notice/cure practice. *Id*. ¶141 at 59, ¶248 at 93-94 (*citing Pa. Democratic*, *supra*). "This kind of tampering squarely undermines the legislature's 'mandate' that mail-in voting cannot compromise 'fraud prevention' or 'ballot secrecy.'" *Id*. ¶141 at 59 (*citing Pa. Democratic*, *supra*).

On October 23, 2020, the Pennsylvania Supreme Court *sua sponte* declared that the provision of the Pennsylvania election code providing for challenging mail ballots by observers on Election Day, 25 P.S. §3146.8(f), was invalid based on the conclusion it was inadvertently contained in the statute. *In re November 3, 2020 Gen. Election*, 2020 Pa. LEXIS 5560 (Pa. Oct. 23, 2020).

On November 17, the Pennsylvania Supreme Court ruled, in a five to two

Opinion, that the Commonwealth's current definition of 'observer' under the state election code is hereby re-defined as 'present in the same building.'" SAC ¶7 at 4; *In Re: Canvassing Operation Appeal of: City of Phila. Bd. of Elections*, No. 30 EAP 2020 (Pa. Nov. 17, 2020). "The majority concluded that the Commonwealth 'did not act contrary to law in fashioning its regulations governing the positioning of candidate representatives during the precanvassing and canvassing process, as the Election Code does not specify minimum distance parameters for the location of such representatives." *Id*. (*quoting Canvassing*, *supra*, at 19).

As a result of the last-minute decisions on the eve of the Presidential election, Pennsylvania no longer allows meaningful observation or challenges to mail ballots that do not comply with Pennsylvania law, *see* 25 P.S. §§ 3146.8, 3150.16, before they are mixed with other ballots and opened – *i.e.*, ballots in secrecy envelopes are separated from the outside envelope, mixed, opened, and counted without any observation or challenge.

The SAC alleged that the "Pennsylvania Supreme Court [has] depart[ed] from Pennsylvania's long-standing practice and concept of observers in the [vote counting] process in the middle of a Presidential election." SAC ¶7 at 4. The SAC alleged that "[w]ith the recent Opinion, the Pennsylvania Supreme Court join[ed] the[] other elected and appointed officials in re-interpreting the plain language of a statute …" and they have "now usurped the Pennsylvania legislature's Constitutional

role as promulgator of the rules for Presidential Electors." SAC ¶16 at 8-9.

The SAC alleged that, based on the Pennsylvania Supreme Court's Opinion in *Canvassing*, *supra*, "Plaintiffs are additionally harmed by further deprivation of their Due Process rights under the Constitution" because "Plaintiffs' franchise was denied by direct, improper, and unconstitutional acts." SAC ¶280 at 101-102. Further, the Pennsylvania Supreme Court holding "permits votes to be counted by counties who followed the meaningful observation argument and by counties refusing watchers," which resulted in "disparate treatment between Pennsylvania counties" and "created a textbook example of Equal protection violation, prohibited by the United States Supreme Court (*Bush v. Gore*)." SAC ¶281 at 102; *see also* SAC ¶301 at 106; SAC ¶321 at 111.

The SAC also alleged that, based on the Pennsylvania Supreme Court's Opinion in *Canvassing*, *supra*, "that declared observers merely be present, but not be provided meaningful review, Plaintiffs are additionally harmed by further deprivation of their Due Process rights under the Constitution." SAC ¶300 at 106; *see also* SAC ¶320 at 110.

4. The SAC Cures Any Possible Deficiencies

The SAC restored many of the allegations and counts of the original Complaint which were incorrectly omitted from the Amended Complaint. In particular, it detailed Defendants' deliberate scheme to count defective mail ballets,

knowing this would improperly favor Biden over Trump. Plaintiffs believe that these allegations and better pleading cures any deficiencies which the Court found in the Amended Complaint. Plaintiffs are not asking this Court to rule on the merits of the Motion to Amend – to the extent Defendants assert futility, either on its own or based on the decision dismissing the FAC (over which Plaintiffs believe there may be no "case or controversy" because they do not intend to prosecute it), it is the District Court's role to resolve these issues in the first instance. But, to assist the Court, Plaintiffs note the following issues:

First, the District Court found the Trump Campaign lacked standing under the Equal Protection clause because the FAC alleged only that some voters were offered "notice and cure" and others were not. It also found it lacked "competitive standing" based on these allegations. (Opinion, ECF 202 at 18-23). But, the Second Amended Complaint states completely different allegations, asserting Defendants engaged in a deliberate scheme to count defective mail ballots in violation of Pennsylvania law requiring signatures and dates, *see* 25 Pa.Stat. §§3146.8, 3150.16,which they knew would favor Biden over Trump, no different than the scheme in *Marks v. Stinson*. *See* SAC (ECF 172-2 at ¶110, at 49; ¶112, at 49-50; ¶117, at 52; ¶168 at 69, ¶177 at 72, ¶179 at 73; ¶194 at 77; ¶223 at 86; ¶252 at 95; ¶253 at 95).

Numerous cases recognized candidates have standing to assert claims when

their opponent receives illegal votes. *See, e.g., Marks v. Stinson*, 19 F.3d at 887-88 (permitting candidate to seek redress for due-process violation resulting from "massive absentee ballot fraud, deception, intimidation, harassment and forgery, [and] many of the absentee votes were tainted"); *Carson v. Simon*, 978 F.3d 1051, 2020 U.S. App. LEXIS 34184, *13 (8th Cir. 2020) (holding candidates have "cognizable interest in ensuring that the final vote tally accurately reflects the legally valid votes cast" and "[a]n inaccurate vote tally is a concrete and particularized injury to candidates," who thus "meet the injury-in-fact requirement" and "have Article III standing as candidates"); *Hunter v. Hamilton County Bd. of Elections*, 850 F.Supp.2d 795, 803 (S.D. Ohio Feb. 8, 2020) ("As a candidate in the … election, [plaintiff] has standing to challenge the Board's treatment of provisional ballots.").

In addition, the SAC asserts violation of Due Process, which was incorrectly omitted from the Amended Complaint. Of course, the voter Plaintiffs have standing because their votes are improperly diluted by a scheme to count defective ballots. *See Reynolds v. Sims*, 377 U.S. 533, 555 (1964) ("[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote."); *Marks*, 19 F.3d at 888 ("[R]ejection of a ballot where the voter has been effectively deprived of the ability to cast a legal vote implicates federal due process concerns.").

Second, the Court found the Trump Campaign did not state plausible Equal Protection claims because it was treated the same as the Biden campaign regarding

the refusal to permit meaningful observations at the canvass of mail ballots, and allowing "notice in cure" in some counties, but not others. *See* Opinion (ECF 202, at 32-36). The SAC has addressed this issue, alleging that Defendants excluded all observers from the canvassing of the mail ballots to conceal defective ballots were being opened, mixed, and counted to benefit Biden. *See* SAC (ECF 172-2, at ¶56, at 64; ¶56, at 64; ¶60, at 65; ¶110 at 49; ¶112 at 49-50; ¶117 at 52; ¶252, at 95; ¶253, at 95).

Plaintiffs also allege that the Defendants implemented "notice in cure" in violation of Pennsylvania law in order to favor Biden in order to increase his votes – an intentional scheme different than that alleged in the Amended Complaint. Thus, Defendants' conduct – while superficially neutral – was, in fact, designed to count defective ballots to favor one candidate over the other. In addition, the SAC also asserts Due Process claims arising from this conduct. This more than satisfies the plausibility requirement under *Twombly*. *Marks v. Stinson* recognized illegally favoring one candidate over the other violated Equal Protection and Due Process. As to the voters, there can be no doubt that they state claims if their votes are diluted. In holding that the normal remedy is to "level up" rather than "level down," under the SAC, the only votes which are being disallowed are those of defective ballots. No legal votes are being excluded.

Third, the SAC now asserts a Due Process claim based on the Pennsylvania

Supreme Court's decisions holding there is no right to challenge mail ballots during the canvassing, *see In re November 3, 2020 Gen. Election, supra,* despite historical practice and a statutory provision to the contrary, see 25 Pa.Stat. §§3146.8(f), and no right for campaigns and parties to meaningful observation during the canvass, *see Canvassing, supra.*, contrary to historical practice. Numerous cases hold that election systems without meaningful safeguards violate due process.[8] The Due Process claim was not included in the FAC; in fact, *Canvassing* was only decided after the FAC was filed. Further, this change in the law and practice in the middle of a Presidential election violates *Bush v. Gore.*

C. Motions for Expedited Discovery

Appellants filed a Motion for Discovery (ECF 118) and a Motion for Expedited Discovery (ECF 171) requesting limited, expedited discovery necessary to substantiate their claims. The Order (ECF 203) denied both motions as moot. However, district courts have the power to order targeted expedited discovery and when movants have shown good cause, as Appellants have done. Appellants'

8 *See, e.g., Griffin*, 570 F.2d at 1077 ("If the election process itself reaches the point of patent and fundamental unfairness, a violation of the due process clause may be indicated and relief under §1983 [is] therefore in order…. [T]here is precedent for federal relief where broad-gauged unfairness permeates an election, even if derived from apparently neutral action."); *New Georgia Project v. Raffesnsperger*, 2020 U.S. Dist. LEXIS 159901, *76 (N.D. Ga. Aug. 31, 2020) (holding receipt deadline for absentee ballots "deprive[d] voters of their liberty interest without adequate procedural safeguards (that is to say, violates due process)").

requested discovery is within the control of Defendants and critically important to proving their allegations at a hearing. In particular, Appellants requested, *inter alia*, access to the 1.5 million mail ballots, or a statistically significant random sample of them, in order for their expert to assess the percentage of defective mail ballots cast in the Defendant Counties – without an opportunity to meaningfully observe or object during canvassing – in accord with the procedure approved by *Marks v. Stinson*, 19 F.3d at 889, f.n.14 ("Courts, with the aid of expert testimony, have been able to demonstrate that a particular result is worthy of the public's confidence even though not established solely by applying mathematics to the record evidence. … What is required is evidence and an analysis that demonstrate that the district court's remedy is worthy of the confidence of the electorate.").

D. Relief Sought in the SAC and Renewed Injunction Motion

In the proposed SAC, Plaintiffs seek to prohibit Defendants from certifying results of the 2020 Presidential general election in Pennsylvania on a statewide basis, including certifying results that include tabulation of unauthorized votes, including mail ballots which did not meet the statutory requirements, mail ballots which were cured without authorization, and any other vote cast in violation of law, and, instead, compel Defendants to certify the election based solely on legal votes. Alternatively, Plaintiffs seek an order that the results of the 2020 Presidential general election are defective, which would allow the Pennsylvania General Assembly to choose

Pennsylvania's electors. Plaintiffs seek a temporary restraining order and preliminary injunction granting appropriate relief during the pendency of this action.

SUMMARY OF ARGUMENT

First, the Court abused its discretion in denying leave to amend on the sole basis of "undue delay" because there was no delay in filing the Motion to Amend (let alone "undue delay"), Defendants were not prejudiced by permitting Plaintiffs to file the SAC, and the Court misconstrued the relevant timeframe and relief sought in this case.

Second, if this Court reverses denial of the Motion to Amend, the denial of the Renewed Injunction Motion as "moot" is wrong as a matter of law.

ARGUMENT[9]

I. THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING LEAVE TO AMEND[10]

The Court abused its discretion in denying leave to amend on the sole basis of "undue delay" because (1) there was no delay in filing the Motion to Amend, let alone "undue delay," (2) Defendants were not prejudiced by permitting Plaintiffs to file the SAC, and (3) the Court misconstrued the relevant timeframe and relief sought

[9] All emphases are added, and citations, quotation marks, footnotes, and brackets are omitted, unless otherwise stated.

[10] This Court reviews a district court's denial of a motion to amend for abuse of discretion. *Geness v. Cox*, 902 F.3d 344 (3d Cir. 2018) (*citing Lake v. Arnold*, 232 F.3d 360, 373 (3d Cir. 2000)).

in this case.

Fed.R.C.P. 15(a)(2) states that leave to amend a complaint "shall be freely given when justice so requires." "The liberal amendment regime helps effectuate the general policy embodied in the Federal Rules favoring resolution of cases on their merits." *Mullin v. Balicki*, 875 F.3d 140, 149 (3d Cir. 2017) (citations and internal quotation marks omitted). "Leave to amend must generally be granted unless equitable considerations render it otherwise unjust." *Arthur v. Maersk, Inc.*, 434 F.3d 196, 204 (3d Cir. 2006).

"Denial of leave to amend can be based on undue delay, bad faith or dilatory motive on the part of the movant; repeated failure to cure deficiencies by amendments previously allowed; prejudice to the opposing party; and futility." *Mullin*, 875 F.3d at 149-50 (*citing Foman v. Davis*, 371 U.S. 178, 182 (1962)). *See also Arthur*, 434 F.3d at 204 (same) (*citing Foman, supra*). "All factors are not created equal, however, as prejudice to the non-moving party is the touchstone for the denial of an amendment." *Id.* at 150 (citations and internal quotation marks omitted). "While abuse of discretion is ordinarily a deferential standard of review, it has bite in this context; the District Court's discretion, circumscribed by … Rule 15's directive in favor of amendment, must be exercised within the context of liberal pleading rules." *Id.* at 151 (citations and internal quotation marks omitted). Here, the Court's only reason for denying leave was alleged undue delay.

A. There Was No Delay, Let Alone Undue Delay

The Court abused its discretion in denying leave to amend because there was no undue delay. "The 'undue delay' factor recognizes that a gap between when amendment becomes possible and when it is actually sought can, in certain circumstances, be grounds to deny leave to amend." *Mullin*, 875 F.3d at 151. "While simple delay cannot justify denying leave to amend by itself, delay that is 'undue'—a delay that is protracted and unjustified—can place a burden on the court or counterparty, or can indicate a lack of diligence sufficient to justify a discretionary denial of leave." *Id.* (*citing Bjorgung v. Whitetail Resort, L.P.*, 550 F.3d 263, 266 (3d Cir. 2008); *Cureton v. Nat'l Collegiate Athletic Ass'n*, 252 F.3d 267 (3d Cir. 2001)). "As there is no presumptive period in which … delay becomes 'undue,' the question of undue delay requires that we focus on the movant's reasons for not amending sooner while bearing in mind the liberal pleading philosophy of the federal rules." *Mullin*, 875 F.3d at 151 (*citing Cureton*, 252 F.3d at 273).

First, Plaintiffs filed their Complaint on November 9, 2020 – six days after the Presidential election (ECF 1). After receiving threats from opposing counsel, the Campaign's main counsel, Porter Wright, withdrew on November 13th (Order, ECF 117). The Campaign's remaining attorney (Kerns) filed the FAC (ECF 125) on November 15th, which incorrectly omitted numerous allegations and counts. On Monday, November 16, new counsel informed the Court (ECF 152) that the

Campaign intended to move for leave to file a SAC(ECF 172-2), which was intended to correct the omission of allegations and counts in the FAC and to include additional allegations based on continuing investigation. Plaintiffs filed a Motion to Amend on November 18 (ECF 172), which attached a copy of the proposed SAC (ECF 172-2). On November 21, 2020, the Court dismissed the FAC with prejudice and denied the Motion to Amend (ECF 203).

The Court did not make any finding that Plaintiffs' counsel was dilatory in filing the Motion to Amend (ECF 202), let alone that any delay was "protracted and unjustified," and, thus, "undue." *Mullin*, 875 F.3d at 151; *Cureton*, 252 F.3d at 273. To the contrary, after original counsel withdrew on Friday, November 13, and the Amended Complaint was filed on Sunday, November 15, Plaintiffs immediately engaged new counsel and informed the Court on the next day, Monday, November 16 that they intended to amend and filed the Motion to Amend on Wednesday, November 18, just two days after new counsel was engaged. This is hardly delay.

Second, the Court's stated justification for undue delay was the need to set a new briefing schedule, have a second oral argument, and decide any issues. But ruling on any motion to amend involves defendants' filing opposition and the Court resolving the matter. The Court also apparently thought there was undue delay because there was insufficient time to hold a hearing before the November 23 certification date. *See* Opinion at 36 ("[T]he deadline for counties in Pennsylvania

to certify their election results to Secretary Boockvar is November 23, 2020, [and therefore] amendment would unduly delay resolution of the issues."). But, this missed the point. The real date – as explained in the Renewed Injunction Motion (ECF 183, at 7, 25) and Renewed Injunction Reply (ECF 198, at 3, 26) is December 8, the safe-harbor provided for certifying electors under 3 U.S.C. §5. If the Court could have held a hearing on Thursday, November 19 in order to determine whether to enjoin certification before Monday, November 23 – a four day gap – it could have easily decided the Motion to Amend and held a hearing before December 4, four days before the December 8 safe harbor, to determine whether any certification should be revoked.[11] It can still do so.

B. There Was No Prejudice to Defendants

"[D]elay alone is an insufficient ground to deny leave to amend[.]" *Geness*, 902 F.3d at 364. Only delays that are either "undue" – which is not the case here – or "prejudicial" warrant denial of leave to amend. *Id.* at 364-65 (*citing Cureton*, 252 F.3d 267, 273 (3d Cir. 2001)).

Critically, the Court did not find that Defendants would be prejudiced by the filing of the SAC (ECF 202). In fact, Defendants never filed responses to the Motion to Amend, so there is no record of any alleged prejudice by the amendment. *See*

[11] As explained in the Renewed Injunction Motion and Renewed Injunction Reply, numerous courts have decertified election results, including *Marks v. Stinson*.

Johnson v. Knorr, 130 Fed.Appx. 552, 555 (3d Cir. 2005) ("[W]e believe the District Court erred by equating delay on [plaintiff's] part with prejudice to [defendant]" because "[d]elay alone … is an insufficient ground to deny an amendment, unless the delay unduly prejudices the non-moving party" and "[i]n his brief to this Court, [defendant] did not specify how allowing the amendment would be prejudicial to him") (*citing Cornell & Co., Inc. v. Occupational Safety & Health Review Comm'n*, 573 F.2d 820, 823 (3d Cir. 1978)).

C. The Court Misconstrued the Remedy Sought

The Court also misconstrued the remedy sought, which may have affected its view of amendment. The Campaign is not seeking to disenfranchise 6.8 million Pennsylvanian voters. Opinion at 18, 32. Instead, it only seeks to set aside the defective ballots among the 1.5 million cast in the defendant Counties. The Campaign seeks to examine a sample of the mail ballots to determine the defective percentage of ballots among the 1.5 million, which should then be deducted from Biden's vote total. This process and remedy was approved in *Marks v. Stinson*, where the court excluded the illegal absentee ballots, decertified Stinson, and certified Marks as the winner. *Marks*, 19 F.3d at 887-88.

In sum, the Court erred in denying the Motion to Amend, particularly given the importance of the constitutional rights at issue in this case. *See District Council 47, AFSCME v. Bradley*, 795 F.2d 310, (3d Cir. 1986) ("the district court at the least

should have granted the plaintiffs leave to amend their complaint to provide sufficient specific factual allegations to demonstrate a causal nexus between the defendants' actions and the alleged violations of constitutional rights.") (*citing Darr v. Wolfe*, 767 F.2d 79, 81 (3d Cir. 1985) ("This Court has consistently held that when an individual has filed a complaint under 1983 which is dismissible for lack of factual specificity, he should be given a reasonable opportunity to cure the defect, if he can, by amendment of the complaint and that denial of an application for leave to amend under these circumstances is an abuse of discretion.").

II. THE DISTRICT COURT ERRED IN DISMISSING THE INJUNCTION MOTION AS A MATTER OF LAW IF IT ERRED IN DENYING THE MOTION TO AMEND

The Court denied the Renewed Injunction Motion solely on the basis that it was rendered "moot" due to it dismissing the FAC (ECF 125) and denying the Motion to Amend (ECF 203). If this Court reverses denial of the Motion to Amend, the denial of the Renewed Injunction Motion as "moot" is wrong as a matter of law. *See AT&T v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1423 (3d Cir. 1994) ("Because we find that the district court committed errors of law in denying [plaintiff's] motion for preliminary injunction against [defendants], we will vacate the Order and of the district court and we will remand the matter for further proceedings."). This Court should therefore vacate the Order denying the Renewed Injunction Motion and remand for a hearing.

III. THIS COURT SHOULD RETAIN JURISDICTION IN THE EVENT OF EMERGENCY APPEALS

If this appeal is granted, given the urgency and great importance of this matter to the nation, and potential need for expedited review of the District Court's future decisions, this Court should retain jurisdiction after remand.[12]

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court reverse the District Court's denial of the Motion to Amend and its Renewed Injunction Motion. This Court should direct the Court below to immediately decide the Motion to Amend on the merits and conduct a hearing on the Renewed Injunction Motion if the Second Amended Complaint states claims, while retaining jurisdiction.

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[12] *See, e,g., Gov't Guarantee Fund of the Republic of Fin. v. Hyatt Corp*., 95 F.3d 291, 297 (3d Cir. 1996) (after granting emergency motion to judgment pending appeal, this Court "accelerated the parties' briefing schedule," and "remanded the case to the district court to fix the amount of the supersedeas bond pursuant to Fed. R. App. P. 8(a), ***while retaining jurisdiction over the appeal***."); *Shahmoon Indus., Inc. v. Imperato*, 338 F.2d 449, 450 (3d Cir. 1964) (granting parties "leave to petition the district court … to amend the pleadings and to take such evidence as might be necessary to resolve … diversity issue" with "***this court retaining jurisdiction of the appeal while this course was being pursued in the court below***."); *Oliver v. Sambor*, 1985 U.S. Dist. LEXIS 18866, *2 (E.D. Pa. June 17, 1985) (noting that the "Court of Appeals, ***while retaining jurisdiction***, remanded the case to th[e] [District] court, [and ordered that where] … the district court [had] granted a motion to dismiss … [but had not] resolve[d] … one remaining claim …. [the Circuit] ***will retain jurisdiction meanwhile***.")).

Respectfully submitted:

Dated: November 23, 2020

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No. 20-3371
IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

DONALD J. TRUMP FOR PRESIDENT, INC. et. al,

Plaintiffs-Appellants,

v.

KATHY BOOCKVAR, in her capacity as Secretary of the Commonwealth of Pennsylvania; et. al,

Defendants-Appellees

CERTIFICATE OF SERVICE

I, Deborah A. Black, Paralegal for Scaringi Law, do hereby certify that I served a true and correct copy of ***Plaintiffs'-Appellants' Opening Brief, ,*** in the above-captioned action, upon all parties via CM/ECF.

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No. 20-3371

IN THE

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FOR THE THIRD CIRCUIT

DONALD J. TRUMP FOR PRESIDENT, INC. ET. AL,
Plaintiffs-Appellants,

— v. —

KATHY BOOCKVAR, IN HER CAPACITY AS SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA; ET. AL,
Intervenor-Appellee,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA - CIVIL ACTION NO. 20-CV-02078-MWB

PLAINTIFFS-APPELLANTS' APPENDIX TO BRIEF - VOL I

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APPENDIX

TABLE OF CONTENTS

VOLUME I

APPEAL,CLOSED,EMERG,WMSPT

United States District Court
Middle District of Pennsylvania (Williamsport)
CIVIL DOCKET FOR CASE #: 4:20-cv-02078-MWB

Donald J. Trump For President, Inc. et al v. Boockvar et al
Assigned to: Honorable Matthew W. Brann
Related Case: 4:20-cv-02088-MWB
Case in other court: 3rd Circuit, 20-03371
Cause: 28:1331 Federal Question: Other Civil Rights

Date Filed: 11/09/2020
Date Terminated: 11/21/2020
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

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Date Filed	#	Docket Text
11/09/2020	1	COMPLAINT against Allegheny County Board of Elections, Kathy Boockvar, Centre County Board of Elections, Chester County Board of Elections, Delaware County Board of Elections, Montgomery County Board of Elections, Northampton County Board of Elections, Philadelphia County Board of Elections (Filing fee $400, Receipt Number APAMDC-5334722), filed by Donald J. Trump For President, Inc., Lawrence Roberts, and David John Henry (Attachments: # 1 Civil Cover Sheet, # 2 Rule 7.1 Disclosure Statement)(cd) (Entered: 11/09/2020)
11/09/2020	2	Summons Issued as to All Defendants and provided TO ATTORNEY ELECTRONICALLY VIA ECF for service on Defendant(s)in the manner prescribed by Rule 4 of the Federal Rules of Civil Procedure. (NOTICE TO ATTORNEYS RECEIVING THE SUMMONS ELECTRONICALLY: You must print the summons and the attachment when you receive it in your e-mail and serve them with the complaint on all defendants in the manner prescribed by Rule 4 of the Federal Rules of Civil Procedure). (Attachments: # 1 Notice/Consent Form, # 2 AO398 Notice, # 3 AO399 Waiver) (cd) (Entered: 11/09/2020)
11/10/2020	3	NOTICE of Appearance by Timothy D. Katsiff on behalf of Delaware County Board of Elections (Katsiff, Timothy) (Entered: 11/10/2020)
11/10/2020	4	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Elizabeth Wingfield on behalf of Delaware County Board of Elections Attorney Elizabeth Wingfield is seeking special admission. Filing fee $ 50, receipt number APAMDC-5335481.. (Wingfield, Elizabeth) (Entered: 11/10/2020)
11/10/2020	5	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Edward D. Rogers on behalf of Delaware County Board of Elections Attorney Edward Rogers is seeking special admission. Filing fee $ 50, receipt number APAMDC-5335486.. (Rogers, Edward) (Entered: 11/10/2020)
11/10/2020		DOCKET ANNOTATION: Clerk verified PA bar records of Attorney Elizabeth Wingfield and Attorney Edward Rogers; Attorney Katsiff is generally admitted to Middle District of PA and is eligible to be associate counsel as listed on the Petitions for Amission. (lg) (Entered: 11/10/2020)
11/10/2020	6	

		NOTICE of Appearance by Virginia Scott on behalf of Allegheny County Board of Elections. (Scott, Virginia) (Entered: 11/10/2020)
11/10/2020	7	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Terence M Grugan on behalf of Delaware County Board of Elections Attorney Terence Grugan is seeking special admission. Filing fee $ 50, receipt number APAMDC-5335655.. (Grugan, Terence) (Entered: 11/10/2020)
11/10/2020	8	NOTICE of Appearance by Keli M. Neary on behalf of Kathy Boockvar (Neary, Keli) (Entered: 11/10/2020)
11/10/2020	9	NOTICE of Appearance by Karen Mascio Romano on behalf of Kathy Boockvar (Romano, Karen) (Entered: 11/10/2020)
11/10/2020	10	NOTICE of Appearance by Stephen Moniak on behalf of Kathy Boockvar (Moniak, Stephen) (Entered: 11/10/2020)
11/10/2020		DOCKET ANNOTATION: Clerk verified PA bar record of Attorney Terence Grugan; Attorney Katsiff is generally admitted to Middle District of PA and is eligible to be associate counsel as listed on the Petition for Amission. (lg) (Entered: 11/10/2020)
11/10/2020	11	NOTICE of Appearance by Nicole J. Boland on behalf of Kathy Boockvar (Boland, Nicole) (Entered: 11/10/2020)
11/10/2020	12	NOTICE of Appearance by Andrew F. Szefi on behalf of Allegheny County Board of Elections. (Szefi, Andrew) (Entered: 11/10/2020)
11/10/2020	13	SPECIAL ADMISSION FORM APPROVED as to Attorney Elizabeth Wingfield. Signed by Honorable Matthew W. Brann on 11/10/2020. (lg) (Entered: 11/10/2020)
11/10/2020	14	SPECIAL ADMISSION FORM APPROVED as to Attorney Edward Rogers. Signed by Honorable Matthew W. Brann on 11/10/2020. (lg) (Entered: 11/10/2020)
11/10/2020	15	SPECIAL ADMISSION FORM APPROVED as to Attorney Terence Grugan. Signed by Honorable Matthew W. Brann on 11/10/2020. (lg) (Entered: 11/10/2020)
11/10/2020		DOCKET ANNOTATION: Attorney Virginia Scott and Attorney Andrew Szefi are required to file for special admission for this case OR make arrangements to be generally admitted to Middle District of PA. (lg) (Entered: 11/10/2020)
11/10/2020		DOCKET ANNOTATION: Attorney Edward D. Rogers is required to file for special admission for this case OR make arrangements to be generally admitted to Middle District of PA. (lg) (Entered: 11/10/2020)
11/10/2020	16	NOTICE of Appearance by Daniel T. Brier on behalf of Kathy Boockvar. (Brier, Daniel) (Entered: 11/10/2020)
11/10/2020	17	NOTICE of Appearance by Donna A. Walsh on behalf of Kathy Boockvar. (Walsh, Donna) (Entered: 11/10/2020)

11/10/2020	18	NOTICE of Appearance by John B. Dempsey on behalf of Kathy Boockvar. (Dempsey, John) (Entered: 11/10/2020)
11/10/2020	19	NOTICE of Appearance by Molly E Meacham on behalf of Centre County Board of Elections (Meacham, Molly) (Entered: 11/10/2020)
11/10/2020	20	NOTICE of Appearance by Michele D. Hangley on behalf of Allegheny County Board of Elections, Montgomery County Board of Elections, Philadelphia County Board of Elections (Hangley, Michele) (Entered: 11/10/2020)
11/10/2020	21	NOTICE of Appearance by Elizabeth A. Dupuis on behalf of Centre County Board of Elections (Dupuis, Elizabeth) (Entered: 11/10/2020)
11/10/2020	22	NOTICE of Appearance by Mark A. Aronchick on behalf of Allegheny County Board of Elections, Montgomery County Board of Elections, Philadelphia County Board of Elections (Aronchick, Mark) (Entered: 11/10/2020)
11/10/2020	23	NOTICE of Appearance by Robert A Wiygul on behalf of Allegheny County Board of Elections, Montgomery County Board of Elections, Philadelphia County Board of Elections (Wiygul, Robert) (Entered: 11/10/2020)
11/10/2020	24	NOTICE of Appearance by Christina C Matthias on behalf of Allegheny County Board of Elections, Montgomery County Board of Elections, Philadelphia County Board of Elections (Matthias, Christina) (Entered: 11/10/2020)
11/10/2020		DOCKET ANNOTATION: Attorney Edward Rogers has been specially admitted in this case; no further action required. (lg) (Entered: 11/10/2020)
11/10/2020		DOCKET ANNOTATION: Attorney Christina Matthias is required to file for special admission for this case OR make arrangements to be generally admitted to Middle District of PA. (lg) (Entered: 11/10/2020)
11/10/2020	25	MOTION to Transfer Case *to Harrisburg Division* by Kathy Boockvar. (Attachments: # 1 Proposed Order)(Brier, Daniel) (Entered: 11/10/2020)
11/10/2020	26	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Daniel T Donovan on behalf of Kathy Boockvar Attorney Daniel Donovan is seeking special admission. Filing fee $ 50, receipt number APAMDC-5336561.. (Donovan, Daniel) (Entered: 11/10/2020)
11/10/2020	27	SCHEDULING ORDER: Telephone Status Conference scheduled for 11/10/2020 at 3:00 PM before Honorable Matthew W. Brann. (See Order for further details.) Signed by Honorable Matthew W. Brann on 11/10/2020. (jr) (Entered: 11/10/2020)
11/10/2020	28	MOTION for Joinder *IN MOTION TO TRANSFER (ECF No. 25)* by Allegheny County Board of Elections, Montgomery County Board of Elections, Philadelphia County Board of Elections.(Hangley, Michele) (Entered: 11/10/2020)
11/10/2020	29	NOTICE of Appearance by Clifford B. Levine on behalf of Democratic National Committee (Levine, Clifford) (Entered: 11/10/2020)

11/10/2020	30	MOTION to Intervene by NAACP Pennsylvania State Conference, Common Cause Pennsylvania, League of Women Voters of Pennsylvania, Black Political Empowerment Project, Lucia Gajda, Stephanie Higgins, Meril Lara, Ricardo Morales, Constance Powers, Natalie Price, Lucia Gajda, Stephanie Higgins, Meril Lara, Tim Stevens, Taylor Stover, Joseph Ayeni. (Attachments: # 1 Proposed Order)(Walczak, Witold) (Entered: 11/10/2020)
11/10/2020	31	BRIEF IN SUPPORT re 30 MOTION to Intervene filed by Joseph Ayeni, Black Political Empowerment Project, Common Cause Pennsylvania, Lucia Gajda, Stephanie Higgins, Meril Lara, League of Women Voters of Pennsylvania, Ricardo Morales, NAACP Pennsylvania State Conference, Natalie Price, Tim Stevens, Taylor Stover. (Attachments: # 1 Exhibit(s) Ex 1 Declaration of Suzanne Almeida for Commlon Cause Pennsylvania, # 2 Exhibit(s) Ex 2 Declaration of Tim Stevens, personally and for B-PEP, # 3 Exhibit(s) Ex 3 Declaration of Kenneth Huston for NAACP PA State Conference, # 4 Exhibit(s) Ex 4 Declaration of Terrie Griffin for League of Women Voters Pennsylvania, # 5 Exhibit(s) Ex 5 Declaration of Stephanie Higgins, # 6 Exhibit(s) Ex 6 Declaration of Lucia Gajda, # 7 Exhibit(s) Ex 7 Declaration of Ricardo Morales, # 8 Exhibit(s) Ex 8 Declaration of Natalie Price, # 9 Exhibit(s) Ex 9 Declaration of Joseph Ayeni, # 10 Exhibit(s) Ex 10 Declaration of Lara, # 11 Exhibit(s) Ex 11 Declaration of Taylor Stover) (Walczak, Witold) Modified on 11/10/2020 (aaa). (Entered: 11/10/2020)
11/10/2020	32	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Virginia Scott on behalf of Allegheny County Board of Elections Attorney Virginia Scott is seeking special admission. Filing fee $ 50, receipt number APAMDC-5336885.. (Scott, Virginia) (Entered: 11/10/2020)
11/10/2020	33	NOTICE of Appearance by Brian J. Taylor on behalf of Northampton County Board of Elections (Taylor, Brian) (Entered: 11/10/2020)
11/10/2020	35	SCHEDULING ORDER - IT IS HEREBY ORDERED that the schedule for briefing, argument, and hearing in this matter is set forth as follows: Plaintiffs shall file their motion seeking injunctive relief by 5:00 PM Thursday, 11/12/2020. Defendants shall file their motion(s) to dismiss by 5:00 PM Thursday, 11/12/2020. Plaintiffs shall file their response to any motions to dismiss by 12:00 PM Sunday, 11/15/2020. Defendants shall file their reply to Plaintiffs' response by 12:00 PM Monday, 11/16/2020. Oral Argument scheduled for 11/17/2020 at 1:30 PM in Williamsport - Courtroom 1 before Honorable Matthew W. Brann. This Court will hold an evidentiary hearing on Thursday, 11/19/2020 at 10:00 AM in Courtroom No. 1, Fourth Floor, United States Courthouse and Federal Building, Williamsport, PA 17701. Signed by Honorable Matthew W. Brann on 11/10/2020. (jr) (Entered: 11/10/2020)
11/10/2020	36	ORDER - IT IS HEREBY ORDERED that Defendant Kathy Boockvar's 25 motion to transfer the action to the Harrisburg Division of the Middle District of Pennsylvania is DENIED. The 28 motion to join in Defendant Boockvar's motion to transfer, filed by multiple Defendants is DENIED AS MOOT. Signed by Honorable Matthew W. Brann on 11/10/2020. (jr) (Entered: 11/10/2020)
11/11/2020	37	

		PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Clifford B. Levine on behalf of Democratic National Committee Attorney Alex Lacey is seeking special admission. Filing fee $ 50, receipt number APAMDC-5338357., filed by on behalf of Democratic National Committee.(Levine, Clifford) (Entered: 11/11/2020)
11/11/2020	38	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Clifford B. Levine on behalf of Democratic National Committee Attorney Kyle Semroc is seeking special admission. Filing fee $ 50, receipt number APAMDC-5338364., filed by on behalf of Democratic National Committee.(Levine, Clifford) (Entered: 11/11/2020)
11/11/2020	39	MOTION to Intervene by Democratic National Committee. (Attachments: # 1 Proposed Order)(Levine, Clifford) (Entered: 11/11/2020)
11/11/2020	40	BRIEF IN SUPPORT re 39 MOTION to Intervene filed by Democratic National Committee.(Levine, Clifford) (Entered: 11/11/2020)
11/11/2020	41	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Jon Greenbaum on behalf of Meril Lara, Taylor Stover, Joseph Ayeni, NAACP Pennsylvania State Conference, Black Political Empowerment Project, League of Women Voters of Pennsylvania, Natalie Price, Stephanie Higgins, Tim Stevens, Common Cause Pennsylvania, Lucia Gajda Attorney Jon Greenbaum is seeking special admission. Filing fee $ 50, receipt number APAMDC-5338738., filed by on behalf of Meril Lara, Taylor Stover, Joseph Ayeni, NAACP Pennsylvania State Conference, Black Political Empowerment Project, League of Women Voters of Pennsylvania, Natalie Price, Stephanie Higgins, Tim Stevens, Common Cause Pennsylvania, Lucia Gajda. (Greenbaum, Jon) (Entered: 11/11/2020)
11/12/2020		DOCKET ANNOTATION: Clerk verified CA bar record of Attorney Jon Greenbaum; Attorney Witold Walczak is generally admitted to Middle District of PA and is eligible to be associate counsel as listed on the Petition for Admission. (lg) (Entered: 11/12/2020)
11/12/2020		DOCKET ANNOTATION: Clerk verified PA bar record of Attorney Virginia Scott. (lg) (Entered: 11/12/2020)
11/12/2020		DOCKET ANNOTATION: Clerk verified Ohio bar record of Attorney Daniel Donovan. (lg) (Entered: 11/12/2020)
11/12/2020		DOCKET ANNOTATION: Doc 42 deleted; incorrectly docketed to this case. (lg) (Entered: 11/12/2020)
11/12/2020	42	NOTICE of Appearance by Timothy P Brennan on behalf of Northampton County Board of Elections (Brennan, Timothy) (Entered: 11/12/2020)
11/12/2020	43	NOTICE of Appearance by Mark A. Aronchick on behalf of Chester County Board of Elections (Aronchick, Mark) (Entered: 11/12/2020)
11/12/2020	44	NOTICE of Appearance by Michele D. Hangley on behalf of Chester County Board of Elections (Hangley, Michele) (Entered: 11/12/2020)
11/12/2020	45	

		NOTICE of Appearance by Robert A Wiygul on behalf of Chester County Board of Elections (Wiygul, Robert) (Entered: 11/12/2020)
11/12/2020	46	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by John Coit on behalf of Allegheny County Board of Elections, Philadelphia County Board of Elections, Chester County Board of Elections, Montgomery County Board of Elections Attorney John G. Coit is seeking special admission. Filing fee $ 50, receipt number APAMDC-5339656., filed by on behalf of Allegheny County Board of Elections, Philadelphia County Board of Elections, Chester County Board of Elections, Montgomery County Board of Elections.(Coit, John) (Entered: 11/12/2020)
11/12/2020	47	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Christina C Matthias on behalf of Allegheny County Board of Elections, Philadelphia County Board of Elections, Chester County Board of Elections, Montgomery County Board of Elections Attorney Christina C. Matthias is seeking special admission. Filing fee $ 50, receipt number APAMDC-5339667., filed by on behalf of Allegheny County Board of Elections, Philadelphia County Board of Elections, Chester County Board of Elections, Montgomery County Board of Elections.(Matthias, Christina) (Entered: 11/12/2020)
11/12/2020	48	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by John B. Hill on behalf of Allegheny County Board of Elections, Philadelphia County Board of Elections, Chester County Board of Elections, Montgomery County Board of Elections Attorney John B. Hill is seeking special admission. Filing fee $ 50, receipt number APAMDC-5339678., filed by on behalf of Allegheny County Board of Elections, Philadelphia County Board of Elections, Chester County Board of Elections, Montgomery County Board of Elections.(Hill, John) (Entered: 11/12/2020)
11/12/2020	49	Supplement by Democratic National Committee. to 37 Petition for Special Admission - Pro Hac Vice, *Alex M. Lacey*. (Levine, Clifford) (Entered: 11/12/2020)
11/12/2020	50	SPECIAL ADMISSION FORM APPROVED as to Attorney Daniel Donovan. Signed by Honorable Matthew W. Brann on 11/12/2020. (lg) (Entered: 11/12/2020)
11/12/2020	51	SPECIAL ADMISSION FORM APPROVED as to Attorney Jon Greenbaum. Signed by Honorable Matthew W. Brann on 11/12/2020. (lg) (Entered: 11/12/2020)
11/12/2020	52	SPECIAL ADMISSION FORM APPROVED as to Attorney Virginia Scott. Signed by Honorable Matthew W. Brann on 11/12/2020. (lg) (Entered: 11/12/2020)
11/12/2020	53	Supplement by Democratic National Committee. to 38 Petition for Special Admission - Pro Hac Vice, *Kyle J. Semroc*. (Levine, Clifford) (Entered: 11/12/2020)
11/12/2020		DOCKET ANNOTATION: Clerk verified PA bar record of Attorney John Coit. (lg) (Entered: 11/12/2020)

11/12/2020		DOCKET ANNOTATION: Clerk verified PA and NY bar records of Attorney Christina Matthias. (lg) (Entered: 11/12/2020)
11/12/2020		DOCKET ANNOTATION: Clerk verified PA bar record of Attorney John B. Hill. (lg) (Entered: 11/12/2020)
11/12/2020		DOCKET ANNOTATION: Clerk verified PA bar record of Attorney Kyle Semroc. (lg) (Entered: 11/12/2020)
11/12/2020	54	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Clifford B. Levine on behalf of Democratic National Committee Attorney Clifford Levine is seeking special admission. Filing fee $ 50, receipt number APAMDC-5339822., filed by on behalf of Democratic National Committee.(Levine, Clifford) (Entered: 11/12/2020)
11/12/2020		DOCKET ANNOTATION: Clerk verified PA bar record of Attorney Alex Lacey. (lg) (Entered: 11/12/2020)
11/12/2020		DOCKET ANNOTATION: Clerk verified PA bar record of Attorney Clifford Levine. (lg) (Entered: 11/12/2020)
11/12/2020	55	MOTION to Intervene by Daniel A. Berger. (Attachments: # 1 Proposed Opposition, # 2 Proposed Order)(lg) (Entered: 11/12/2020)
11/12/2020	56	SPECIAL ADMISSION FORM APPROVED as to Attorney John B. Hill. Signed by Honorable Matthew W. Brann on 11/12/2020. (lg) (Entered: 11/12/2020)
11/12/2020	57	SPECIAL ADMISSION FORM APPROVED as to Attorney Clifford Levine. Signed by Honorable Matthew W. Brann on 11/12/2020. (lg) (Entered: 11/12/2020)
11/12/2020	58	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Clifford B. Levine on behalf of Democratic National Committee Attorney Lalitha Madduri is seeking special admission. Filing fee $ 50, receipt number APAMDC-5339843., filed by on behalf of Democratic National Committee.(Levine, Clifford) (Entered: 11/12/2020)
11/12/2020	59	SPECIAL ADMISSION FORM APPROVED as to Attorney Christina Matthias. Signed by Honorable Matthew W. Brann on 11/12/2020. (lg) (Entered: 11/12/2020)
11/12/2020	60	SPECIAL ADMISSION FORM APPROVED as to Attorney John Coit. Signed by Honorable Matthew W. Brann on 11/12/2020. (lg) (Entered: 11/12/2020)
11/12/2020	61	SPECIAL ADMISSION FORM APPROVED as to Attorney Alex Lacey. Signed by Honorable Matthew W. Brann on 11/12/2020. (lg) (Entered: 11/12/2020)
11/12/2020	62	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Clifford B. Levine on behalf of Democratic National Committee Attorney Uzoma Nkwonta is seeking special admission. Filing fee $ 50, receipt number APAMDC-5339999., filed by on behalf of Democratic National Committee. (Attachments: # 1 Exhibit(s))(Levine, Clifford) (Entered: 11/12/2020)

11/12/2020	63	SPECIAL ADMISSION FORM APPROVED as to Attorney Kyle Semroc. Signed by Honorable Matthew W. Brann on 11/12/2020. (lg) (Entered: 11/12/2020)
11/12/2020	64	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Clifford B. Levine on behalf of Democratic National Committee Attorney John Geise is seeking special admission. Filing fee $ 50, receipt number APAMDC-5340006., filed by on behalf of Democratic National Committee. (Attachments: # 1 Exhibit(s))(Levine, Clifford) (Entered: 11/12/2020)
11/12/2020	65	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Clifford B. Levine on behalf of Democratic National Committee Attorney Marc Elias is seeking special admission. Filing fee $ 50, receipt number APAMDC-5340013., filed by on behalf of Democratic National Committee. (Attachments: # 1 Exhibit(s))(Levine, Clifford) (Entered: 11/12/2020)
11/12/2020		DOCKET ANNOTATION: Clerk verified NY bar record of Attorney John Geise. (lg) (Entered: 11/12/2020)
11/12/2020		DOCKET ANNOTATION: Clerk verified DC bar record of Attorney Marc Elias. (lg) (Entered: 11/12/2020)
11/12/2020		DOCKET ANNOTATION: Clerk verified NY and DC bar records of Attorney Uzoma Nkwonta. (lg) (Entered: 11/12/2020)
11/12/2020		DOCKET ANNOTATION: Clerk verified CA bar record of Attorney Lalitha Madduri. (lg) (Entered: 11/12/2020)
11/12/2020	66	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Clifford B. Levine on behalf of Democratic National Committee Attorney Ari Holtzblatt is seeking special admission. Filing fee $ 50, receipt number APAMDC-5340073., filed by on behalf of Democratic National Committee. (Attachments: # 1 Exhibit(s), # 2 Exhibit(s))(Levine, Clifford) (Entered: 11/12/2020)
11/12/2020	67	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Clifford B. Levine on behalf of Democratic National Committee Attorney Seth Waxman is seeking special admission. Filing fee $ 50, receipt number APAMDC-5340143., filed by on behalf of Democratic National Committee. (Attachments: # 1 Exhibit(s))(Levine, Clifford) (Entered: 11/12/2020)
11/12/2020	68	SPECIAL ADMISSION FORM APPROVED as to Attorney John Geise. Signed by Honorable Matthew W. Brann on 11/12/2020. (lg) (Entered: 11/12/2020)
11/12/2020	69	SPECIAL ADMISSION FORM APPROVED as to Attorney Marc Elias. Signed by Honorable Matthew W. Brann on 11/12/2020. (lg) (Entered: 11/12/2020)
11/12/2020	70	SPECIAL ADMISSION FORM APPROVED as to Attorney Uzoma Nkwonta. Signed by Honorable Matthew W. Brann on 11/12/2020. (lg) (Entered: 11/12/2020)
11/12/2020	71	

		SPECIAL ADMISSION FORM APPROVED as to Attorney Lalitha Madduri. Signed by Honorable Matthew W. Brann on 11/12/2020. (lg) (Entered: 11/12/2020)
11/12/2020	72	ORDER - IT IS HEREBY ORDERED that the ACLU Intervenors' 30 motion to intervene is GRANTED. The DNC's 39 motion to intervene is GRANTED. Daniel A. Berger's 55 motion to intervene is DENIED. The ACLU Intervenors and the DNC may file responsive pleadings, motions, and briefings on the same schedule as the Defendants. Signed by Honorable Matthew W. Brann on 11/12/2020. (jr) (Entered: 11/12/2020)
11/12/2020	73	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by David Meir Zionts on behalf of Joseph Ayeni, Black Political Empowerment Project, Common Cause Pennsylvania, Lucia Gajda, Stephanie Higgins, Meril Lara, League of Women Voters of Pennsylvania, Ricardo Morales, NAACP Pennsylvania State Conference, Natalie Price, Tim Stevens, Taylor Stover Attorney David Zionts is seeking special admission. Filing fee $ 50, receipt number APAMDC-5340792.. (Zionts, David) (Entered: 11/12/2020)
11/12/2020	74	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Shankar Duraiswamy on behalf of Joseph Ayeni, Black Political Empowerment Project, Common Cause Pennsylvania, Lucia Gajda, Stephanie Higgins, Meril Lara, League of Women Voters of Pennsylvania, Ricardo Morales, NAACP Pennsylvania State Conference, Natalie Price, Tim Stevens, Taylor Stover Attorney Shankar Duraiswamy is seeking special admission. Filing fee $ 50, receipt number BPAMDC-5340810.. (Duraiswamy, Shankar) (Entered: 11/12/2020)
11/12/2020	75	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Rani Gupta on behalf of Joseph Ayeni, Black Political Empowerment Project, Common Cause Pennsylvania, Lucia Gajda, Stephanie Higgins, Meril Lara, League of Women Voters of Pennsylvania, Ricardo Morales, NAACP Pennsylvania State Conference, Natalie Price, Tim Stevens, Taylor Stover Attorney Rani Gupta is seeking special admission. Filing fee $ 50, receipt number APAMDC-5340838.. (Gupta, Rani) (Entered: 11/12/2020)
11/12/2020		DOCKET ANNOTATION: Clerk verified DC bar records of Attorney Holtzblatt and Attorney Waxman. (lg) (Entered: 11/12/2020)
11/12/2020		DOCKET ANNOTATION: Clerk verified DC bar records of Attorney Zionts and Duraiswamy and CA bar record of Attorney Gupta. (lg) (Entered: 11/12/2020)
11/12/2020	76	SPECIAL ADMISSION FORM APPROVED as to Attorney Ari Holtzblatt. Signed by Honorable Matthew W. Brann on 11/12/2020. (lg) (Entered: 11/12/2020)
11/12/2020	77	SPECIAL ADMISSION FORM APPROVED as to Attorney Seth Waxman. Signed by Honorable Matthew W. Brann on 11/12/2020. (lg) (Entered: 11/12/2020)
11/12/2020	78	

		SPECIAL ADMISSION FORM APPROVED as to Attorney David Zionts. Signed by Honorable Matthew W. Brann on 11/12/2020. (lg) (Entered: 11/12/2020)
11/12/2020	79	SPECIAL ADMISSION FORM APPROVED as to Attorney Shankar Duraiswamy. Signed by Honorable Matthew W. Brann on 11/12/2020. (lg) (Entered: 11/12/2020)
11/12/2020	80	SPECIAL ADMISSION FORM APPROVED as to Attorney Rani Gupta. Signed by Honorable Matthew W. Brann on 11/12/2020. (lg) (Entered: 11/12/2020)
11/12/2020	81	MOTION to Dismiss *Based on Abstention and Rule 12(b)* by Kathy Boockvar. (Attachments: # 1 Proposed Order)(Brier, Daniel) (Entered: 11/12/2020)
11/12/2020	82	MOTION for Leave to File *Brief in Opposition to Plaintiffs' Motion for Injunctive Relief and in Support of Defendants' Motion to Dismiss* by Charlies W. Dent, et al. Amici Group. (Attachments: # 1 Proposed Brief, # 2 Exhibit(s) 1 to Brief, # 3 Appendix A to Brief, # 4 Proposed Order)(DeAngelo, James) (Entered: 11/12/2020)
11/12/2020	83	NOTICE of Appearance by Claudia De Palma on behalf of Joseph Ayeni, Black Political Empowerment Project, Common Cause Pennsylvania, Lucia Gajda, Stephanie Higgins, Meril Lara, League of Women Voters of Pennsylvania, Ricardo Morales, NAACP Pennsylvania State Conference, Natalie Price, Tim Stevens, Taylor Stover (De Palma, Claudia) (Entered: 11/12/2020)
11/12/2020	84	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Nancy A Temple on behalf of Charlies W. Dent, et al. Amici Group Attorney Nancy A. Temple is seeking special admission. Filing fee $ 50, receipt number APAMDC-5341152., filed by on behalf of Charlies W. Dent, et al. Amici Group.(Temple, Nancy) (Entered: 11/12/2020)
11/12/2020	85	MOTION to Dismiss by Centre County Board of Elections, Delaware County Board of Elections. (Attachments: # 1 Proposed Order Proposed Order) (Meacham, Molly) (Entered: 11/12/2020)
11/12/2020	86	BRIEF IN SUPPORT re 85 MOTION to Dismiss filed by Centre County Board of Elections, Delaware County Board of Elections.(Meacham, Molly) (Entered: 11/12/2020)
11/12/2020	87	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Richard Bernstein on behalf of Charlies W. Dent, et al. Amici Group Attorney Richard D. Bernstein is seeking special admission. Filing fee $ 50, receipt number APAMDC-5341170., filed by on behalf of Charlies W. Dent, et al. Amici Group.(Bernstein, Richard) (Entered: 11/12/2020)
11/12/2020	88	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Ezra D Rosenberg on behalf of Joseph Ayeni, Black Political Empowerment Project, Common Cause Pennsylvania, Lucia Gajda, Stephanie Higgins, Meril Lara, League of Women Voters of Pennsylvania, NAACP Pennsylvania State Conference, Natalie Price, Tim Stevens, Taylor Stover Attorney Ezra D.

		Rosenberg is seeking special admission. Filing fee $ 50, receipt number APAMDC-5341054.. (Rosenberg, Ezra) (Entered: 11/12/2020)
11/12/2020	89	MOTION for Preliminary Injunction by Donald J. Trump For President, Inc.. (Attachments: # 1 Memo Memo In Support, # 2 Appendix Exhibits)(Kerns, Linda) (Entered: 11/12/2020)
11/12/2020	90	MOTION to Dismiss by Joseph Ayeni, Black Political Empowerment Project, Common Cause Pennsylvania, Lucia Gajda, Stephanie Higgins, Meril Lara, League of Women Voters of Pennsylvania, Ricardo Morales, NAACP Pennsylvania State Conference, Natalie Price, Lawrence Roberts, Tim Stevens, Taylor Stover. (Attachments: # 1 Proposed Order)(Walczak, Witold) (Entered: 11/12/2020)
11/12/2020	91	Motion for leave to file brief by Matthew H. Haverstick, Joshua John Voss, Shohin Vance on behalf of Amicus Party Pennsylvania Senate Republican Caucus. (Attachments: # 1 Exhibit(s), # 2 Proposed Order)(Haverstick, Matthew) Modified on 11/13/2020 (to reflect this filing is a motion) (lg). (Entered: 11/12/2020)
11/12/2020		DOCKET ANNOTATION: Attorney Andrew Szefi is directed to file a petition for special admission. (lg) (Entered: 11/12/2020)
11/12/2020	92	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM *OR, IN THE ALTERNATIVE, TO DISMISS PENDING STATE-COURT RESOLUTION OF STATE-LAW QUESTIONS* by Allegheny County Board of Elections, Chester County Board of Elections, Montgomery County Board of Elections, Philadelphia County Board of Elections. (Attachments: # 1 Proposed Order) (Aronchick, Mark) (Entered: 11/12/2020)
11/12/2020	93	BRIEF IN SUPPORT re 81 MOTION to Dismiss *Based on Abstention and Rule 12(b)* filed by Kathy Boockvar. (Attachments: # 1 Exhibit(s) 1, # 2 Exhibit(s) 2, # 3 Exhibit(s) 3, # 4 Exhibit(s) 4, # 5 Exhibit(s) 5, # 6 Exhibit(s) 6, # 7 Exhibit(s) 7, # 8 Exhibit(s) 8, # 9 Exhibit(s) 9, # 10 Appendix Unpublished Opinions)(Brier, Daniel) (Entered: 11/12/2020)
11/12/2020	94	BRIEF IN SUPPORT re 92 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM *OR, IN THE ALTERNATIVE, TO DISMISS PENDING STATE-COURT RESOLUTION OF STATE-LAW QUESTIONS* filed by Allegheny County Board of Elections, Chester County Board of Elections, Montgomery County Board of Elections, Philadelphia County Board of Elections. (Attachments: # 1 Declaration of Michele D. Hangley, # 2 Exhibit(s) 1, # 3 Exhibit(s) 2, # 4 Exhibit(s) 3, # 5 Exhibit(s) 4, # 6 Exhibit(s) 5, # 7 Exhibit(s) 6, # 8 Exhibit(s) 7, # 9 Exhibit(s) 8, # 10 Exhibit(s) 9, # 11 Exhibit (s) 10, # 12 Exhibit(s) 11)(Aronchick, Mark) (Entered: 11/12/2020)
11/12/2020	95	BRIEF IN SUPPORT re 90 MOTION to Dismiss filed by Joseph Ayeni, Black Political Empowerment Project, Lucia Gajda, Stephanie Higgins, Meril Lara, League of Women Voters of Pennsylvania, Ricardo Morales, NAACP Pennsylvania State Conference, Natalie Price, Tim Stevens, Taylor Stover. (Attachments: # 1 Exhibit(s) Exhibits A-E, # 2 Unpublished Opinion(s)) (Walczak, Witold) (Entered: 11/12/2020)

11/12/2020	96	MOTION to Dismiss , MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , MOTION for Joinder by Northampton County Board of Elections. (Attachments: # 1 Proposed Order)(Brennan, Timothy) (Entered: 11/12/2020)
11/12/2020	97	BRIEF IN SUPPORT re 96 MOTION to Dismiss MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM MOTION for Joinder filed by Northampton County Board of Elections.(Brennan, Timothy) (Entered: 11/12/2020)
11/12/2020	98	MOTION to Dismiss by Democratic National Committee. (Attachments: # 1 Proposed Order)(Levine, Clifford) (Entered: 11/12/2020)
11/12/2020	100	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Sophia Lin Lakin on behalf of Joseph Ayeni, Black Political Empowerment Project, Common Cause Pennsylvania, Lucia Gajda, Stephanie Higgins, Meril Lara, League of Women Voters of Pennsylvania, Ricardo Morales, NAACP Pennsylvania State Conference, Natalie Price, Tim Stevens, Taylor Stover Attorney Sophia Lakin is seeking special admission. Filing fee $ 50, receipt number APAMDC-5341607.. (Lakin, Sophia) (Entered: 11/12/2020)
11/12/2020	101	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Sarah E Brannon on behalf of Joseph Ayeni, Black Political Empowerment Project, Common Cause Pennsylvania, Lucia Gajda, Stephanie Higgins, Meril Lara, League of Women Voters of Pennsylvania, Ricardo Morales, NAACP Pennsylvania State Conference, Natalie Price, Tim Stevens, Taylor Stover Attorney Sarah Brannon is seeking special admission. Filing fee $ 50, receipt number APAMDC-5341612.. (Brannon, Sarah) (Entered: 11/12/2020)
11/12/2020	102	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Dale E. Ho on behalf of Joseph Ayeni, Black Political Empowerment Project, Common Cause Pennsylvania, Lucia Gajda, Stephanie Higgins, Meril Lara, League of Women Voters of Pennsylvania, Ricardo Morales, NAACP Pennsylvania State Conference, Natalie Price, Tim Stevens, Taylor Stover Attorney Dale Ho is seeking special admission. Filing fee $ 50, receipt number APAMDC-5341616.. (Ho, Dale) (Entered: 11/12/2020)
11/12/2020	103	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Ihaab Syed on behalf of Joseph Ayeni, Black Political Empowerment Project, Common Cause Pennsylvania, Lucia Gajda, Stephanie Higgins, Meril Lara, League of Women Voters of Pennsylvania, Ricardo Morales, NAACP Pennsylvania State Conference, Natalie Price, Tim Stevens, Taylor Stover Attorney Ihaab Syed is seeking special admission. Filing fee $ 50, receipt number APAMDC-5341617.. (Syed, Ihaab) (Entered: 11/12/2020)
11/12/2020	104	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Adriel I. Cepeda Derieux on behalf of Joseph Ayeni, Black Political Empowerment Project, Common Cause Pennsylvania, Lucia Gajda, Stephanie Higgins, Meril Lara, League of Women Voters of Pennsylvania, Ricardo Morales, NAACP Pennsylvania State Conference, Natalie Price, Tim Stevens, Taylor Stover Attorney Adriel Cepeda Derieux is seeking special admission. Filing fee $ 50, receipt number APAMDC-5341621.. (Cepeda Derieux, Adriel) (Entered: 11/12/2020)

11/12/2020	105	BRIEF IN SUPPORT *(With Corrected Tables and Pagination)* re 98 MOTION to Dismiss filed by Democratic National Committee.(Levine, Clifford) (Entered: 11/12/2020)
11/12/2020	106	Consent MOTION to Withdraw as Attorney *and Supporting Memorandum* by Donald J. Trump For President, Inc., David John Henry, Lawrence Roberts. (Hicks, Ronald) (Entered: 11/12/2020)
11/13/2020		DOCKET ANNOTATION: DOC #99 deleted - refiled at DOC #105. (jr) (Entered: 11/13/2020)
11/13/2020		DOCKET ANNOTATION: Clerk verified IL bar record of Attorney Nancy Temple and DC bar record of Attorney Richard Bernstein. (lg) (Entered: 11/13/2020)
11/13/2020		DOCKET ANNOTATION: Clerk verified NJ and DC bar record of Attorney Ezra Rosenberg. (lg) (Entered: 11/13/2020)
11/13/2020		DOCKET ANNOTATION: Clerk verified MD bar record of Attorney Sarah Brannon. (lg) (Entered: 11/13/2020)
11/13/2020		DOCKET ANNOTATION: Clerk verified NY bar records of Attorney Larkin, Ho, Syed and Durieux. (lg) (Entered: 11/13/2020)
11/13/2020	107	SPECIAL ADMISSION FORM APPROVED as to Attorney Nancy Temple. Signed by Honorable Matthew W. Brann on 11/13/2020. (lg) (Entered: 11/13/2020)
11/13/2020	108	SPECIAL ADMISSION FORM APPROVED as to Attorney Richard Bernstein. Signed by Honorable Matthew W. Brann on 11/13/2020. (lg) (Entered: 11/13/2020)
11/13/2020	109	SPECIAL ADMISSION FORM APPROVED as to Attorney Ezra Rosenberg. Signed by Honorable Matthew W. Brann on 11/13/2020. (lg) (Entered: 11/13/2020)
11/13/2020	110	SPECIAL ADMISSION FORM APPROVED as to Attorney Sophia Lin Lakin. Signed by Honorable Matthew W. Brann on 11/13/2020. (lg) (Entered: 11/13/2020)
11/13/2020	111	SPECIAL ADMISSION FORM APPROVED as to Attorney Sarah Brannon. Signed by Honorable Matthew W. Brann on 11/13/2020. (lg) (Entered: 11/13/2020)
11/13/2020	112	SPECIAL ADMISSION FORM APPROVED as to Attorney Dale Ho. Signed by Honorable Matthew W. Brann on 11/13/2020. (lg) (Entered: 11/13/2020)
11/13/2020	113	SPECIAL ADMISSION FORM APPROVED as to Attorney Ihaab Syed. Signed by Honorable Matthew W. Brann on 11/13/2020. (lg) (Entered: 11/13/2020)
11/13/2020	114	SPECIAL ADMISSION FORM APPROVED as to Attorney Adriel Durieux. Signed by Honorable Matthew W. Brann on 11/13/2020. (lg) (Entered: 11/13/2020)

11/13/2020	115	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Andrew F. Szefi on behalf of Allegheny County Board of Elections Attorney Andrew Szefi is seeking special admission. Filing fee $ 50, receipt number APAMDC-5342843.. (Szefi, Andrew) (Entered: 11/13/2020)
11/13/2020		DOCKET ANNOTATION: Clerk verified PA bar record of Attorney Andrew Szefi. (lg) (Entered: 11/13/2020)
11/13/2020	116	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Linda Ann Kerns on behalf of Donald J. Trump For President, Inc. Attorney John Scott is seeking special admission. Filing fee $ 50, receipt number APAMDC-5343167.. (Kerns, Linda) (Entered: 11/13/2020)
11/13/2020		DOCKET ANNOTATION: Clerk verified Texas bar record of Attorney John Scott. (lg) (Entered: 11/13/2020)
11/13/2020	117	ORDER granting 106 Motion to Withdraw as Attorney. IT IS HEREBY ORDERED that the appearance of Ronald L. Hicks, Jr., Carolyn B. McGee, and Porter Wright Morris & Arthur LLP, is hereby withdrawn as counsel for Plaintiffs. Signed by Honorable Matthew W. Brann on 11/13/2020. (jr) (Entered: 11/13/2020)
11/13/2020		DOCKET ANNOTATION: Attorney Kerns is directed to ensure that Attorney John Scott register as an e-filer as soon as possible; all participating attorneys are required to be e-filers unless they petition the Chief Judge for exemption. (lg) (Entered: 11/13/2020)
11/13/2020	118	MOTION to Compel Discovery by Donald J. Trump For President, Inc.. (Kerns, Linda) (Entered: 11/13/2020)
11/13/2020	119	SPECIAL ADMISSION FORM APPROVED as to Attorney Andrew Szefi. Signed by Honorable Matthew W. Brann on 11/13/2020. (lg) (Entered: 11/13/2020)
11/13/2020	120	NOTICE by Kathy Boockvar *of Supplemental Authority in Support of Motion to Dismiss* (Attachments: # 1 Exhibit(s) A - Bognet Decision)(Brier, Daniel) (Entered: 11/13/2020)
11/13/2020	121	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Marian K Schneider on behalf of Common Cause Pennsylvania Attorney Marian Schneider is seeking special admission. Filing fee $ 50, receipt number APAMDC-5343463.. (Schneider, Marian) (Entered: 11/13/2020)
11/13/2020		DOCKET ANNOTATION: Clerk verified PA bar record of Attorney Marian K. Schneider. (lg) (Entered: 11/13/2020)
11/13/2020	122	SPECIAL ADMISSION FORM APPROVED as to Attorney Marian K. Schneider. Signed by Honorable Matthew W. Brann on 11/13/2020. (lg) (Entered: 11/13/2020)
11/13/2020	123	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Linda Ann Kerns on behalf of Donald J. Trump For President, Inc. Attorney Douglas Hughes is seeking special admission. Filing fee $ 50, receipt number APAMDC-5343708.. (Kerns, Linda) (Entered: 11/13/2020)

11/13/2020	124	REPLY by Donald J. Trump For President, Inc.. to 120 Notice . (Kerns, Linda) (Entered: 11/13/2020)
11/15/2020	125	AMENDED COMPLAINT against All Parties, filed by Donald J. Trump For President, Inc.. (Attachments: # 1 redlined amended complaint)(Kerns, Linda) (Entered: 11/15/2020)
11/15/2020	126	BRIEF IN OPPOSITION re 90 MOTION to Dismiss , 92 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM *OR, IN THE ALTERNATIVE, TO DISMISS PENDING STATE-COURT RESOLUTION OF STATE-LAW QUESTIONS*, 96 MOTION to Dismiss MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM MOTION for Joinder , 82 MOTION for Leave to File *Brief in Opposition to Plaintiffs' Motion for Injunctive Relief and in Support of Defendants' Motion to Dismiss*, 85 MOTION to Dismiss , 81 MOTION to Dismiss *Based on Abstention and Rule 12(b)*, 98 MOTION to Dismiss filed by Donald J. Trump For President, Inc..(Kerns, Linda) (Entered: 11/15/2020)
11/15/2020	127	MOTION to Dismiss *Amended Complaint* by Kathy Boockvar. (Attachments: # 1 Proposed Order)(Brier, Daniel) (Entered: 11/15/2020)
11/15/2020	128	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Remy Green on behalf of Democrats Abroad Attorney Remy Green is seeking special admission. Filing fee $ 50, receipt number APAMDC-5343993.. (Green, Remy) (Entered: 11/15/2020)
11/15/2020	129	MOTION for Leave to File *Amicus Curiae Brief* by Democrats Abroad. (Attachments: # 1 Exhibit(s) Exhibit A - Proposed Amicus Brief on Behalf of Democrats Abroad, # 2 Proposed Order Proposed Order Granting Leave to File)(Green, Remy) (Entered: 11/15/2020)
11/15/2020	130	NOTICE by Kathy Boockvar re 120 Notice *of Supplmental Authority in Support of Motion To Dismiss* (Brier, Daniel) (Entered: 11/15/2020)
11/15/2020	131	MOTION for Order to Show Cause *Relating to Harassment* by Donald J. Trump For President, Inc.. (Attachments: # 1 Proposed Order)(Kerns, Linda) (Entered: 11/15/2020)
11/16/2020		DOCKET ANNOTATION: Clerk verified Texas bar record of Attorney Douglas Hughes. (lg) (Entered: 11/16/2020)
11/16/2020		DOCKET ANNOTATION: Attorney Kerns is directed to ensure that Attorney John Scott and Attorney Douglas Hughes register as an e-filers as soon as possible; all participating attorneys are required to be e-filers unless they petition the Chief Judge for exemption. (lg) (Entered: 11/16/2020)
11/16/2020		DOCKET ANNOTATION: Clerk verified New York bar record of Attorney J. Remy Green; Sean M. Schulz is generally admitted to Middle District of PA and is eligible to be associate counsel as listed on the Petition for Special Admission. (lg) (Entered: 11/16/2020)
11/16/2020	132	RESPONSE by Kathy Boockvar to 131 MOTION for Order to Show Cause *Relating to Harassment* . (Donovan, Daniel) (Entered: 11/16/2020)

11/16/2020	133	SPECIAL ADMISSION FORM APPROVED as to Attorney J. Remy Green. Signed by Honorable Matthew W. Brann on 11/16/2020. (lg) (Entered: 11/16/2020)
11/16/2020	134	Letter from Counsel for Defendants *re: Discovery Disputes*. (Attachments: # 1 Exhibit(s), # 2 Exhibit(s))(Meacham, Molly) (Entered: 11/16/2020)
11/16/2020	135	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Centre County Board of Elections, Delaware County Board of Elections. (Attachments: # 1 Proposed Order)(Meacham, Molly) (Entered: 11/16/2020)
11/16/2020	136	BRIEF IN SUPPORT re 135 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Centre County Board of Elections, Delaware County Board of Elections.(Meacham, Molly) (Entered: 11/16/2020)
11/16/2020	137	REPLY BRIEF re 131 MOTION for Order to Show Cause *Relating to Harassment* filed by Donald J. Trump For President, Inc..(Kerns, Linda) (Entered: 11/16/2020)
11/16/2020	138	MOTION for Joinder *in Secretary of the Commonwealth Kathy Boockvar's Motion to Dismiss Plaintiffs' Amended Complaint [ECF 127] and Notice of Supplemental Authority [ECF 130]* by Allegheny County Board of Elections, Chester County Board of Elections, Montgomery County Board of Elections, Philadelphia County Board of Elections.(Aronchick, Mark) (Entered: 11/16/2020)
11/16/2020	139	REPLY BRIEF re 92 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM *OR, IN THE ALTERNATIVE, TO DISMISS PENDING STATE-COURT RESOLUTION OF STATE-LAW QUESTIONS* filed by Allegheny County Board of Elections, Chester County Board of Elections, Montgomery County Board of Elections, Philadelphia County Board of Elections. (Aronchick, Mark) (Entered: 11/16/2020)
11/16/2020	140	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , MOTION to Dismiss , MOTION for Joinder by Northampton County Board of Elections. (Attachments: # 1 Proposed Order)(Brennan, Timothy) (Entered: 11/16/2020)
11/16/2020	141	BRIEF IN SUPPORT re 140 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM MOTION to Dismiss MOTION for Joinder filed by Northampton County Board of Elections.(Brennan, Timothy) (Entered: 11/16/2020)
11/16/2020	142	REPLY BRIEF re 90 MOTION to Dismiss filed by Joseph Ayeni, Black Political Empowerment Project, Common Cause Pennsylvania, Lucia Gajda, Stephanie Higgins, Meril Lara, League of Women Voters of Pennsylvania, Ricardo Morales, NAACP Pennsylvania State Conference, Natalie Price, Tim Stevens, Taylor Stover. (Attachments: # 1 Exhibit(s) A, # 2 Unpublished Opinion(s))(Walczak, Witold) (Entered: 11/16/2020)
11/16/2020	143	BRIEF IN SUPPORT re 127 MOTION to Dismiss *Amended Complaint*, 81 MOTION to Dismiss *Based on Abstention and Rule 12(b)* filed by Kathy Boockvar. (Attachments: # 1 Exhibit(s) 10 - Guidance Concerning Civilian Absentee & Mail-In Ballot Procedures, # 2 Exhibit(s) 11 - Provisional Voting

		Guidance, # 3 Exhibit(s) 12 - Memorandum and Order, # 4 Appendix Unpublished Opinions)(Brier, Daniel) (Entered: 11/16/2020)
11/16/2020	144	REPLY BRIEF re 98 MOTION to Dismiss filed by Democratic National Committee.(Levine, Clifford) (Entered: 11/16/2020)
11/16/2020	145	MOTION to Dismiss *Plaintiff's First Amended Complaint* by Democratic National Committee. (Attachments: # 1 Proposed Order)(Levine, Clifford) (Entered: 11/16/2020)
11/16/2020	146	ORDER - IT IS HEREBY ORDERED that the 82 motion for leave to file an amicus brief by Charles Dent, et al. is GRANTED. The 91 motion for leave to file an amicus brief by Matthew H. Haverstick, et al. is GRANTED. The 129 motion for leave to file an amicus brief by Democrats Abroad is GRANTED. Signed by Honorable Matthew W. Brann on 11/16/2020. (jr) (Entered: 11/16/2020)
11/16/2020	147	SPECIAL ADMISSION FORM APPROVED as to Attorney John Scott. Signed by Honorable Matthew W. Brann on 11/16/2020. (lg) (Entered: 11/16/2020)
11/16/2020	148	SPECIAL ADMISSION FORM APPROVED as to Attorney Douglas Hughes. Signed by Honorable Matthew W. Brann on 11/16/2020. (lg) (Entered: 11/16/2020)
11/16/2020	149	NOTICE of Appearance by Marc A. Scaringi on behalf of All Plaintiffs (Scaringi, Marc) (Entered: 11/16/2020)
11/16/2020	150	MOTION to Appoint Counsel , MOTION to Amend/Correct , MOTION to Alter Judgment , MOTION to Intervene by Associated Press. (Attachments: # 1 Proposed Order)(Knudsen Burke, Paula) (Entered: 11/16/2020)
11/16/2020	151	MOTION to Withdraw as Attorney *by Kerns, Scott, Hughes* by Donald J. Trump For President, Inc..(Kerns, Linda) (Entered: 11/16/2020)
11/16/2020	152	MOTION to Continue *Oral Argument and Hearing* by Donald J. Trump For President, Inc., David John Henry, Lawrence Roberts. (Attachments: # 1 Proposed Order)(Scaringi, Marc) (Entered: 11/16/2020)
11/16/2020	153	ORDER - IT IS HEREBY ORDERED that Plaintiffs' 152 motion for a continuance (filed on 11/16/2020 at 7:40 PM) is DENIED. Oral argument will take place as scheduled, tomorrow, 11/17/2020. Counsel for the parties are expected to be prepared for argument and questioning. Signed by Honorable Matthew W. Brann on 11/16/2020. (jr) (Entered: 11/16/2020)
11/16/2020	154	ORDER - IT IS HEREBY ORDERED that the appearance of Douglas Bryan Hughes and John Scott is hereby withdrawn as counsel for Plaintiffs. Signed by Honorable Matthew W. Brann on 11/16/2020. (jr) (Entered: 11/16/2020)
11/16/2020	155	NOTICE of Appearance by Benjamin D. Geffen on behalf of Joseph Ayeni, Black Political Empowerment Project, Common Cause Pennsylvania, Lucia Gajda, Stephanie Higgins, Meril Lara, League of Women Voters of Pennsylvania, Ricardo Morales, NAACP Pennsylvania State Conference,

		Natalie Price, Tim Stevens, Taylor Stover (Geffen, Benjamin) (Entered: 11/16/2020)
11/17/2020	156	Petition Pro Hac Vice , PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Marc A. Scaringi on behalf of All Plaintiffs Attorney Rudolph William Giuliani is seeking special admission. Filing fee $ 50, receipt number BPAMDC-5347258., filed by on behalf of All Plaintiffs.(Scaringi, Marc) (Entered: 11/17/2020)
11/17/2020		DOCKET ANNOTATION: Clerk verified NY bar record of Attorney Rudolph Giuliani; Attorney Brian Caffrey is generally admitted to Middle District of Pennsylvania and is eligible to be associate counsel as listed on the Petition for Admission. (lg) (Entered: 11/17/2020)
11/17/2020		DOCKET ANNOTATION: Attorney Scaringi and/or Attorney Caffrey are instructed to have Attorney Giuliani register as an e-filer with Middle District of Pennsylvania as soon as possible; all participating attorneys are required to be e-filers unless they petition the Chief Judge for exemption. (lg) (Entered: 11/17/2020)
11/17/2020	157	ORDER - IT IS HEREBY ORDERED that AP's 150 motion to intervene is DENIED. AP's request for access to the physical courtroom is DENIED. Signed by Honorable Matthew W. Brann on 11/17/2020. (jr) (Entered: 11/17/2020)
11/17/2020	158	SPECIAL ADMISSION FORM APPROVED as to Attorney Rudolph Giuliani. Signed by Honorable Matthew W. Brann on 11/17/2020. (lg) (Entered: 11/17/2020)
11/17/2020	159	RESPONSE by Donald J. Trump For President, Inc., David John Henry, Lawrence Roberts *to Defendants' Discovery Letter*. (Attachments: # 1 Proposed Order)(Scaringi, Marc) (Entered: 11/17/2020)
11/17/2020	161	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Joseph Ayeni, Black Political Empowerment Project, Common Cause Pennsylvania, Lucia Gajda, Stephanie Higgins, Meril Lara, League of Women Voters of Pennsylvania, NAACP Pennsylvania State Conference, Natalie Price, Tim Stevens, Taylor Stover. (Attachments: # 1 Proposed Order)(Gupta, Rani) (Entered: 11/17/2020)
11/18/2020	162	ORDER - IT IS HEREBY ORDERED that the evidentiary hearing previously scheduled for 11/19/2020 is CANCELLED. Linda A. Kerns, Esquire's 131 motion for an order to show cause is DENIED. Plaintiffs will file any brief in opposition to Defendants' motions to dismiss by 5 P.M. on 11/18/2020. Defendants may file any reply briefs by 12 P.M. on 11/19/2020. Plaintiffs may file a new motion for preliminary injunction by 5 P.M. on 11/18/2020. Defendants may file any opposition briefs by 5 P.M. on 11/19/2020. Plaintiffs may file any reply brief by 12 P.M. on 11/20/2020. Plaintiffs may file a motion for leave to file a second amended complaint by 5 P.M. on 11/18/2020. Defendants are not required to file any response to that motion for the time being. Signed by Honorable Matthew W. Brann on 11/18/2020. (jr) (Entered: 11/18/2020)

11/18/2020		DOCKET ANNOTATION: Motion terminated: 138 MOTION for Joinder *in Secretary of the Commonwealth Kathy Boockvar's Motion to Dismiss Plaintiffs' Amended Complaint [ECF 127] and Notice of Supplemental Authority [ECF 130]* filed by Montgomery County Board of Elections, Chester County Board of Elections, Allegheny County Board of Elections, Philadelphia County Board of Elections (NOTE: this document is a Notice of Joinder). (lg) (Entered: 11/18/2020)
11/18/2020	163	Letter from Counsel for Plaintiffs *re: filing Motion for Leave to Amended Complaint*. (Scaringi, Marc) (Entered: 11/18/2020)
11/18/2020	164	MOTION for Extension of Time to Extension of Time to File Motion for PI by Donald J. Trump For President, Inc., David John Henry, Lawrence Roberts. (Attachments: # 1 Proposed Order)(Scaringi, Marc) (Entered: 11/18/2020)
11/18/2020	165	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM *OR, IN THE ALTERNATIVE, TO DISMISS PENDING STATE-COURT RESOLUTION OF STATE-LAW QUESTIONS* by Allegheny County Board of Elections, Chester County Board of Elections, Montgomery County Board of Elections, Philadelphia County Board of Elections. (Attachments: # 1 Proposed Order) (Aronchick, Mark) (Entered: 11/18/2020)
11/18/2020	166	MOTION for Leave to File *Joinder of Amici Curiae Brief of Pennsylvania Senate Republican Caucus* by Bryan Cutler, Kerry Benninghoff. (Attachments: # 1 Proposed Order)(Wallen, Zachary) (Entered: 11/18/2020)
11/18/2020	167	ORDER granting 164 Motion to Extend Time. The deadline for Plaintiffs to file their Motion for Preliminary Injunction is extended to 5:00 P.M. on 11/19/2020. The deadline for Defendants to file any opposition briefs is extended to 5:00 P.M. on 11/20/2020. The deadline for Plaintiffs to file any reply brief is extended to 12:00 P.M. on 11/21/2020. Signed by Honorable Matthew W. Brann on 11/18/2020. (jr) (Entered: 11/18/2020)
11/18/2020		DOCKET ANNOTATION: DOC #168 and #169 deleted. Plaintiffs to refile. (jr) (Entered: 11/18/2020)
11/18/2020	170	BRIEF IN OPPOSITION re 127 MOTION to Dismiss *Amended Complaint* filed by Donald J. Trump For President, Inc., David John Henry, Lawrence Roberts.(Scaringi, Marc) (Entered: 11/18/2020)
11/18/2020	171	MOTION to Expedite by Donald J. Trump For President, Inc.. (Attachments: # 1 Proposed Order, # 2 Statement)(Scaringi, Marc) (Entered: 11/18/2020)
11/18/2020	172	MOTION for Leave to File *to File Second Amended Complaint* by Donald J. Trump For President, Inc., David John Henry, Lawrence Roberts. (Attachments: # 1 Proposed Order, # 2 Exhibit(s), # 3 Exhibit(s))(Scaringi, Marc) (Attachment 1 replaced on 11/19/2020) (jr). (Attachment 2 replaced on 11/19/2020) (jr). (Entered: 11/18/2020)
11/19/2020	173	ORDER - IT IS HEREBY ORDERED that the provisions of Middle District of Pennsylvania Local Rule 83.1.1 are suspended relating to the prohibition against the release of the audio recording of the oral argument conducted before the Court on 11/17/2020 and the audio recording shall be posted on the

		District Court website following the docketing of this Order. The Court believes that the public's interest in this particular case outweighs the Court's general concerns regarding the taping, recording or broadcasting of court proceedings as reflected and articulated in MD LR 83.1.1. Signed by Honorable Matthew W. Brann on 11/19/2020. (jr) (Entered: 11/19/2020)
11/19/2020	174	ORDER - IT IS ORDERED that the appearance of Linda Ann Kerns, Esquire is hereby withdrawn as counsel for the Plaintiffs. Signed by Honorable Matthew W. Brann on 11/19/2020. (jr) (Entered: 11/19/2020)
11/19/2020		DOCKET ANNOTATION: DOC #172-1 and DOC #172-2 were replaced at the request of counsel. NEF regenerated. (jr) (Entered: 11/19/2020)
11/19/2020	175	REPLY BRIEF re 161 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Joseph Ayeni, Black Political Empowerment Project, Common Cause Pennsylvania, Lucia Gajda, Stephanie Higgins, Meril Lara, League of Women Voters of Pennsylvania, Ricardo Morales, NAACP Pennsylvania State Conference, Tim Stevens, Taylor Stover. (Attachments: # 1 Exhibit(s), # 2 Unpublished Opinion(s))(Walczak, Witold) (Entered: 11/19/2020)
11/19/2020	176	REPLY BRIEF re 127 MOTION to Dismiss *Amended Complaint* filed by Kathy Boockvar. (Attachments: # 1 Appendix Unpublished Opinions)(Brier, Daniel) (Entered: 11/19/2020)
11/19/2020	177	REPLY BRIEF re 165 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM *OR, IN THE ALTERNATIVE, TO DISMISS PENDING STATE-COURT RESOLUTION OF STATE-LAW QUESTIONS* filed by Allegheny County Board of Elections, Chester County Board of Elections, Montgomery County Board of Elections, Philadelphia County Board of Elections. (Attachments: # 1 Unpublished Opinion(s))(Aronchick, Mark) Modified on 11/19/2020 (jr). (Entered: 11/19/2020)
11/19/2020	178	REPLY BRIEF re 145 MOTION to Dismiss *Plaintiff's First Amended Complaint* filed by Democratic National Committee. (Attachments: # 1 Exhibit (s) 1)(Nkwonta, Uzoma) (Entered: 11/19/2020)
11/19/2020	179	REPLY BRIEF re 140 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM MOTION to Dismiss MOTION for Joinder , 135 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Centre County Board of Elections, Delaware County Board of Elections, Northampton County Board of Elections.(Meacham, Molly) (Entered: 11/19/2020)
11/19/2020	180	MOTION to Intervene "Motion to Declare Donald J. Trump, Inc. Victorious For Injunctive Relief..." by Jeffrey Cutler, pro se. (Attachment: # 1 Proposed Order)(lg) (Entered: 11/19/2020)
11/19/2020	181	APPENDIX/ADDENDUM by Jeffrey Cutler, pro se to 180 MOTION to Intervene. (Attachments: # 1 Addendum Cont'd, # 2 Addendum Cont'd, # 3 Addendum Cont'd)(lg) (Entered: 11/19/2020)
11/19/2020	182	MOTION Amended Motion for Temporary Restraining Order or Preliminary Injunction , filed by Donald J. Trump For President, Inc., David John Henry,

		Lawrence Roberts. (Attachments: # 1 Proposed Order, # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s))(Scaringi, Marc) (Entered: 11/19/2020)
11/19/2020	183	BRIEF by David John Henry, Donald J. Trump For President, Inc., Lawrence Roberts. *in Support of Renewed Motion for Temporary Restraining Order and Preliminary Injunction*, filed by David John Henry, Donald J. Trump For President, Inc., Lawrence Roberts.(Scaringi, Marc) (Entered: 11/19/2020)
11/20/2020	184	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Mary M McKenzie on behalf of Joseph Ayeni, Black Political Empowerment Project, Common Cause Pennsylvania, Lucia Gajda, Stephanie Higgins, Meril Lara, League of Women Voters of Pennsylvania, Ricardo Morales, NAACP Pennsylvania State Conference, Natalie Price, Tim Stevens, Taylor Stover Attorney Mary McKenzie is seeking special admission. Filing fee $ 50, receipt number APAMDC-5353824.. (McKenzie, Mary) (Entered: 11/20/2020)
11/20/2020		DOCKET ANNOTATION: Clerk verified PA bar record of Attorney Mary McKenzie. (lg) (Entered: 11/20/2020)
11/20/2020	185	BRIEF IN SUPPORT *of Plaintiffs' Motion for Leave to File Second Amended Complaint* re 172 MOTION for Leave to File *to File Second Amended Complaint* filed by Donald J. Trump For President, Inc., David John Henry, Lawrence Roberts.(Scaringi, Marc) (Entered: 11/20/2020)
11/20/2020	186	SPECIAL ADMISSION FORM APPROVED as to Attorney Mary McKenzie. Signed by Honorable Matthew W. Brann on 11/20/2020. (lg) (Entered: 11/20/2020)
11/20/2020	187	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Jonathan Wallace on behalf of Democrats Abroad Attorney Jonathan Wallace is seeking special admission. Filing fee $ 50, receipt number APAMDC-5354866.. (Wallace, Jonathan) (Entered: 11/20/2020)
11/20/2020	188	SPECIAL ADMISSION FORM APPROVED as to Attorney Jonathan Wallace. Signed by Honorable Matthew W. Brann on 11/20/2020. (lg) (Entered: 11/20/2020)
11/20/2020	189	BRIEF IN OPPOSITION re 182 MOTION Amended Motion for Temporary Restraining Order or Preliminary Injunction filed by Delaware County Board of Elections. (Attachments: # 1 Proposed Order, # 2 Exhibit(s) 1 - Parks Declaration, # 3 Exhibit(s) A - to Parks Declaration (DOS Report))(Rogers, Edward) (Entered: 11/20/2020)
11/20/2020	190	BRIEF IN OPPOSITION re 182 MOTION Amended Motion for Temporary Restraining Order or Preliminary Injunction filed by Kathy Boockvar. (Attachments: # 1 Exhibit(s) A, # 2 Exhibit(s) B, # 3 Exhibit(s) C, # 4 Appendix Unpublished Opinions)(Brier, Daniel) (Entered: 11/20/2020)
11/20/2020	191	BRIEF IN OPPOSITION re 182 MOTION Amended Motion for Temporary Restraining Order or Preliminary Injunction filed by Joseph Ayeni, Black

		Political Empowerment Project, Common Cause Pennsylvania, Lucia Gajda, Stephanie Higgins, Meril Lara, League of Women Voters of Pennsylvania, Ricardo Morales, NAACP Pennsylvania State Conference, Natalie Price, Tim Stevens, Taylor Stover. (Attachments: # 1 Exhibit(s) Exhibits A-B, # 2 Exhibit (s) Unpublished cases)(De Palma, Claudia) (Entered: 11/20/2020)
11/20/2020	192	MOTION to Substitute Attorney *and Accordingly Request for Withdrawal of Appearance* by Kathy Boockvar. (Attachments: # 1 Proposed Order)(Brier, Daniel) (Entered: 11/20/2020)
11/20/2020	193	BRIEF IN OPPOSITION re 182 MOTION Amended Motion for Temporary Restraining Order or Preliminary Injunction filed by Allegheny County Board of Elections, Chester County Board of Elections, Montgomery County Board of Elections, Philadelphia County Board of Elections. (Attachments: # 1 Declaration of Andrew F. Szefi, # 2 Affidavit of Seth Bluestein, # 3 Declaration of William Turner, # 4 Declaration of Frank Dean, # 5 Unpublished Opinion(s), # 6 Certificate of Service)(Aronchick, Mark) (Entered: 11/20/2020)
11/20/2020	194	BRIEF IN SUPPORT re 192 MOTION to Substitute Attorney *and Accordingly Request for Withdrawal of Appearance* filed by Kathy Boockvar.(Brier, Daniel) (Entered: 11/20/2020)
11/20/2020	195	BRIEF IN OPPOSITION re 182 MOTION Amended Motion for Temporary Restraining Order or Preliminary Injunction filed by Democratic National Committee. (Attachments: # 1 Declaration in Support of Opposition, # 2 Exhibit(s) A, # 3 Exhibit(s) B, # 4 Exhibit(s) C, # 5 Exhibit(s) D, # 6 Exhibit(s) E, # 7 Exhibit(s) F, # 8 Exhibit(s) G, # 9 Exhibit(s) H, # 10 Exhibit(s) I, # 11 Exhibit(s) J, # 12 Exhibit(s) K, # 13 Exhibit(s) L, # 14 Exhibit(s) M, # 15 Exhibit(s) N, # 16 Exhibit(s) O, # 17 Exhibit(s) P, # 18 Exhibit(s) Q, # 19 Exhibit(s) R, # 20 Exhibit(s) S)(Holtzblatt, Ari) (Entered: 11/20/2020)
11/20/2020	196	REPLY BRIEF re 182 MOTION Amended Motion for Temporary Restraining Order or Preliminary Injunction filed by Centre County Board of Elections, Northampton County Board of Elections. (Attachments: # 1 Proposed Order) (Meacham, Molly) (Entered: 11/20/2020)
11/20/2020	197	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Daniel T. Brier on behalf of Kathy Boockvar Attorney Barry H. Berke is seeking special admission. Filing fee $ 50, receipt number APAMDC-5355652.. (Brier, Daniel) (Entered: 11/20/2020)
11/21/2020	198	REPLY BRIEF re 182 MOTION Amended Motion for Temporary Restraining Order or Preliminary Injunction *in Further Support Thereof* filed by Donald J. Trump For President, Inc., David John Henry, Lawrence Roberts.(Scaringi, Marc) (Entered: 11/21/2020)
11/21/2020	199	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Oral Argument Proceedings, In Re: Motion to Dismiss, held on 11/17/20 before Judge Brann. Court Reporter L. Shuey, Telephone Number 717-215-1270. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may

		be obtained through the Court Reporter or PACER. Redaction Request due 12/14/2020. Redacted Transcript Deadline set for 12/22/2020. Release of Transcript Restriction set for 2/19/2021. (Shuey, Lori) (Entered: 11/21/2020)
11/21/2020	200	MOTION to Intervene *pursuant to Rule 24(a) of the Fed. Rules of Civil Procedure* by Mike Kelly, Kathy Barnette, Sean Parnell, Luke Negron, David Torres, Clay Breece, Dasha Pruett, Daryl Metcalfe, Cris Dush, Thomas Sankey, Kathy Rapp, Robert Kaufman, Stephanie Borowicz, PA Voters Alliances. (Attachments: # 1 Exhibit(s) A, # 2 Exhibit(s) B, # 3 Exhibit(s) C, # 4 Proposed Order)(King, Thomas) (Entered: 11/21/2020)
11/21/2020	201	BRIEF IN SUPPORT *of Motion to Intervene* re 200 MOTION to Intervene *pursuant to Rule 24(a) of the Fed. Rules of Civil Procedure* filed by Kathy Barnette, Stephanie Borowicz, Clay Breece, Cris Dush, Robert Kaufman, Mike Kelly, Daryl Metcalfe, Luke Negron, PA Voters Alliances, Sean Parnell, Dasha Pruett, Kathy Rapp, Thomas Sankey, David Torres.(King, Thomas) (Entered: 11/21/2020)
11/21/2020	202	MEMORANDUM (Order to follow as separate docket entry) re: Defendants' 127 135 140 145 161 165 Motions to Dismiss the First Amended Complaint. Signed by Honorable Matthew W. Brann on 11/21/2020. (jr) (Main Document 202 replaced on 11/23/2020 to replace states with counties in subsection D on page 11) (jr). (Entered: 11/21/2020)
11/21/2020	203	ORDER (memorandum filed previously as separate docket entry) - IT IS HEREBY ORDERED that Defendants' 127 135 140 145 161 165 motions to dismiss the First Amended Complaint are GRANTED WITH PREJUDICE. NO LEAVE TO AMEND IS GRANTED. Defendants' 81 85 90 92 96 98 motions to dismiss the original complaint are DENIED AS MOOT. Plaintiffs' 172 motion for leave to file a second amended complaint is DENIED AS MOOT. Plaintiffs' 89 182 motions for preliminary injunction are DENIED AS MOOT. Plaintiffs' 118 171 motions regarding discovery are DENIED AS MOOT. Further motions 166 180 200 regarding amicus briefing and intervention are DENIED AS MOOT. The case is dismissed and the Clerk of Court is directed to close the case file. Signed by Honorable Matthew W. Brann on 11/21/2020. (jr) (Entered: 11/21/2020)
11/21/2020	204	ORDER granting 192 Motion to Substitute Attorney. Attorney Daniel T. Donovan, Susan M. Davies, and Michael A. Glick of Kirkland and Ellis, LLP terminated. Signed by Honorable Matthew W. Brann on 11/21/2020. (jr) (Entered: 11/21/2020)
11/22/2020	205	NOTICE OF APPEAL in Non-Prisoner Case as to 203 Order (memorandum filed previously as separate docket entry),,, 202 Memorandum (Order to follow as separate docket entry) by Donald J. Trump For President, Inc., David John Henry, Lawrence Roberts. Filing Fee and Docket Fee Paid. Filing fee $ 505, receipt number APAMDC-5355964. Court Reporter Lori Shuey. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (Scaringi, Marc) (Entered: 11/22/2020)

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

DONALD J. TRUMP FOR PRESIDENT, INC., *et al.*, Plaintiffs, v. KATHY BOOCKVAR, *et al.*, Defendants.	No. 4:20-CV-02078 (Judge Brann)

MEMORANDUM OPINION

NOVEMBER 21, 2020

Pending before this Court are various motions to dismiss Plaintiffs' First Amended Complaint. Plaintiffs in this matter are Donald J. Trump for President, Inc. (the "Trump Campaign"), and two voters, John Henry and Lawrence Roberts (the "Individual Plaintiffs").[1] Defendants, who filed these motions to dismiss, include seven Pennsylvania counties (the "Defendant Counties"), as well as Secretary of the Commonwealth Kathy Boockvar.[2]

I. INTRODUCTION

In this action, the Trump Campaign and the Individual Plaintiffs (collectively, the "Plaintiffs") seek to discard millions of votes legally cast by Pennsylvanians from all corners – from Greene County to Pike County, and

[1] Doc. 125.
[2] *Id.* Since the filing of the initial complaint, there have also been several intervenors and amicus petitioners.

everywhere in between. In other words, Plaintiffs ask this Court to disenfranchise almost seven million voters. This Court has been unable to find any case in which a plaintiff has sought such a drastic remedy in the contest of an election, in terms of the sheer volume of votes asked to be invalidated. One might expect that when seeking such a startling outcome, a plaintiff would come formidably armed with compelling legal arguments and factual proof of rampant corruption, such that this Court would have no option but to regrettably grant the proposed injunctive relief despite the impact it would have on such a large group of citizens.

That has not happened. Instead, this Court has been presented with strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence. In the United States of America, this cannot justify the disenfranchisement of a single voter, let alone all the voters of its sixth most populated state. Our people, laws, and institutions demand more. At bottom, Plaintiffs have failed to meet their burden to state a claim upon which relief may be granted. Therefore, I grant Defendants' motions and dismiss Plaintiffs' action with prejudice.

II. BACKGROUND

A. Legal and Factual Background

The power to regulate and administer federal elections arises from the Constitution.[3] "Because any state authority to regulate election to those offices

[3] *Cook v. Gralike*, 531 U.S. 510, 522 (2001).

could not precede their very creation by the Constitution, such power 'had to be delegated to, rather than reserved to by, the States.'"[4] Consequently, the Elections Clause "delegated to the States the power to regulate the 'Times, Places, and Manner of holding Elections for Senators and Representatives,' subject to a grant of authority to Congress to 'make or alter such Regulations.'"[5] Accordingly, States' power to "regulate the incidents of such elections, including balloting" is limited to "the exclusive delegation of power under the Elections Clause."[6]

Pennsylvania regulates the "times, places, and manner" of its elections through the Pennsylvania Election Code.[7] The Commonwealth's Constitution mandates that "[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."[8] Recognizing this as a foundational principle, the Pennsylvania Supreme Court has declared that the purpose of the Election Code is to promote "freedom of choice, a fair election and an honest election return."[9]

In October 2019, the General Assembly of Pennsylvania enacted Act 77, which, "for the first time in Pennsylvania," extended the opportunity for all

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4 *Id.* (quoting *U.S. Term Limits v. Thornton*, 514 U.S. 779, 804 (1995)).
5 *Id.* (quoting U.S. Const. Art. I, § 4, cl. 1).
6 *Id.* at 523.
7 25 P.S. §§ 2601, *et seq.*
8 *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 356 (Pa. 2020) (quoting Pa. Const., Art. I, § 5).
9 *Id.* (quoting *Perles v. Hoffman*, 213 A.2d 781, 783 (Pa. 1965)).

registered voters to vote by mail.[10] Following the beginning of the COVID-19 outbreak in March 2020, the General Assembly enacted laws regulating the mail-in voting system.[11] Section 3150.16 of the Election Code sets forth procedural requirements that voters must follow in order for their ballot to be counted.[12] These procedures require, for example, that voters mark their ballots in pen or pencil, place them in secrecy envelopes, and that ballots be received by the county elections board on or before 8:00 P.M. on Election Day.[13]

Nowhere in the Election Code is any reference to "curing" ballots, or the related practice of "notice-and-cure." This practice involves notifying mail-in voters who submitted procedurally defective mail-in ballots of these deficiencies and allowing those voters to cure their ballots.[14] Notified voters can cure their ballots and have their vote counted by requesting and submitting a provisional ballot.[15]

Recently, the Supreme Court of Pennsylvania in *Democratic Party of Pennsylvania v. Boockvar* addressed whether counties are *required* to adopt a notice-and-cure policy under the Election Code.[16] Holding that they are not, the

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[10] *Id.* at 352 (citing 25 P.S. §§ 3150.11-3150.17). Prior to the enactment of Act 77, voters were only permitted to vote by mail if they could "demonstrate their absence from the voting district on Election Day." *Id.* (internal citations omitted).

[11] *E.g.*, 25 P.S. § 3150.16.

[12] *Id.*

[13] *Id.*

[14] *Pa. Democratic Party*, 238 A.3d at 372.

[15] Doc. 93 at 9.

[16] *Pa. Democratic Party*, 238 A.3d at 374.

court declined to explicitly answer whether such a policy is necessarily *forbidden*.[17]

Following this decision, Secretary Boockvar sent an email on November 2, 2020 encouraging counties to "provide information to party and candidate representatives during the pre-canvass that identifies the voters whose ballots have been rejected" so those ballots could be cured.[18] From the face of the complaint, it is unclear which counties were sent this email, which counties received this email, or which counties ultimately followed Secretary Boockvar's guidance.

Some counties chose to implement a notice-and-cure procedure while others did not.[19] Importantly, however, Plaintiffs allege only that Philadelphia County implemented such a policy.[20] In contrast, Plaintiffs also claim that Lancaster and York Counties (as well as others) did not adopt any cure procedures and thus rejected all ballots cast with procedural deficiencies instead of issuing these voters provisional ballots.[21]

Both Individual Plaintiffs had their ballots cancelled in the 2020 Presidential Election.[22] John Henry submitted his mail-in ballot to Lancaster County; however, it was cancelled on November 6, 2020 because he failed to place his ballot in the

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17 *Id.* (holding only that the Election Code "does not provide for the 'notice and opportunity to cure' procedure sought by Petitioner").
18 Doc. 125 at ¶ 129.
19 *Id.* at ¶¶ 124-27.
20 *Id.* at ¶ 127.
21 *Id.* at ¶ 130.
22 *Id.* at ¶¶ 15-16.

required secrecy envelope.[23] Similarly, after submitting his ballot to Fayette County, Lawrence Roberts discovered on November 9, 2020 that his ballot had been cancelled for an unknown reason.[24] Neither was given an opportunity to cure his ballot.[25]

B. The 2020 Election Results

In large part due to the coronavirus pandemic still plaguing our nation, the rate of mail-in voting in 2020 was expected to increase dramatically. As anticipated, millions more voted by mail this year than in past elections. For weeks before Election Day, ballots were cast and collected. Then, on November 3, 2020, millions more across Pennsylvania and the country descended upon their local voting precincts and cast ballots for their preferred candidates. When the votes were counted, the Democratic Party's candidate for President, Joseph R. Biden Jr., and his running-mate, Kamala D. Harris, were determined to have received more votes than the incumbent ticket, President Donald J. Trump and Vice President Michael R. Pence. As of the day of this Memorandum Opinion, the Biden/Harris ticket had received 3,454,444 votes, and the Trump/Pence ticket had received 3,373,488 votes, giving the Biden ticket a lead of more than 80,000 votes, per the Pennsylvania state elections return website.[26] These results will become

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[23] *Id.* at ¶ 15.
[24] *Id.* at ¶ 16.
[25] *Id.* at ¶¶ 15-16.
[26] Pa. Dep't of State, *Unofficial Returns, Statewide*, https://www.electionreturns.pa.gov/ (last visited on November 21, 2020).

official when counties certify their results to Secretary Boockvar on November 23, 2020 – the result Plaintiffs seek to enjoin with this lawsuit.

C. Procedural History

Although this case was initiated less than two weeks ago, it has already developed its own tortured procedural history. Plaintiffs have made multiple attempts at amending the pleadings, and have had attorneys both appear and withdraw in a matter of seventy-two hours. There have been at least two perceived discovery disputes, one oral argument, and a rude and ill-conceived voicemail which distracted the Court's attention from the significant issues at hand.[27] The Court finds it helpful to place events in context before proceeding further.

In the evening of November 9, 2020, Plaintiffs filed suit in this Court against Secretary Boockvar, as well as the County Boards of Elections for the following counties: Allegheny, Centre, Chester, Delaware, Montgomery, Northampton, and Philadelphia.[28] The original complaint raised seven counts; two equal-protection claims, two due-process claims, and three claims under the Electors and Elections Clauses.[29]

The following day, I convened a telephonic status conference with the parties to schedule future proceedings. During that conference, I learned that several organizations, including the Democratic National Committee, sought to file

[27] Doc. 131 (denied).
[28] *See* Doc. 1.
[29] *Id.*

intervention motions with the Court. Later that day, I set a briefing schedule.[30] Additionally, November 17, 2020 was set aside for oral argument on any motions to dismiss, and the Court further told the parties to reserve November 19, 2020 in their calendars in the event that the Court determined that an evidentiary hearing was necessary. Subsequent to the Court's scheduling order, the proposed-intervenors filed their motions, and the parties filed their briefings. Plaintiffs then filed a motion for a preliminary injunction on November 12, 2020.[31]

On November 12, 2020, Plaintiffs also underwent their first change in counsel. Attorneys Ronald L. Hicks, Jr., and Carolyn B. McGee with Porter Wright Morris & Arthur LLP filed a motion seeking to withdraw from the case. The Court granted this motion, and Plaintiffs retained two attorneys from Texas, John Scott and Douglas Brian Hughes, to serve as co-counsel to their original attorney, Linda A. Kerns.

The next day, November 13, 2020, was a relatively quiet day on the docket for this case, but an important one for the parties. That day, the United States Court of Appeals for the Third Circuit issued a decision in *Bognet v. Secretary Commonwealth of Pennsylvania*.[32] This decision, though not factually connected

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[30] *See* Doc. 35.
[31] Doc. 89.
[32] No. 20-3214, 2020 WL 6686120 (3d Cir. Nov. 13, 2020) (pending publication).

to this matter, addressed issues of standing and equal protection relevant to the Plaintiffs' claims.[33]

Thereafter, on Sunday, November 15, 2020 – the day Plaintiffs' response to Defendants' motions to dismiss was due – Plaintiffs filed a First Amended Complaint (the "FAC") with the Court. This new complaint excised five of the seven counts from the original complaint, leaving just two claims: one equal-protection claim, and one Electors and Elections Clauses claim.[34] In addition, a review of the redline attached to the FAC shows that Plaintiffs deleted numerous allegations that were pled in the original complaint.

Plaintiffs acknowledge that under the Third Circuit's decision in *Bognet*, this Court cannot find that Plaintiffs have standing for their Elections and Electors Clauses claim in the FAC. Plaintiffs represent that they have included this claim in the FAC to preserve the argument for appellate review. Because Plaintiffs have made this concession, and because the Third Circuit's decision in *Bognet* is clear, this Court dismisses Count II for lack of standing without further discussion.

Defendants filed new motions to dismiss and briefs in support thereof on November 16, 2020. That evening, less than 24 hours before oral argument was to begin, Plaintiffs instituted a second series of substitutions in counsel. Ms. Kerns,

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[33] For example, *Bognet* held that only the General Assembly had standing to raise claims under the Elections and Electors Clauses. *Id.* at *7. This ruling effectively shut the door on Plaintiffs' allegations under those clauses of the Constitution.

[34] Doc. 125.

along with Mr. Scott and Mr. Hughes, requested this Court's permission to withdraw from the litigation. I granted the motions of the Texan attorneys because they had been involved with the case for approximately seventy-two hours. Because oral argument was scheduled for the following day, however, and because Ms. Kerns had been one of the original attorneys in this litigation, I denied her request. I believed it best to have some semblance of consistency in counsel ahead of the oral argument. That evening, attorney Marc A. Scaringi entered an appearance on behalf of Plaintiffs. Furthermore, Mr. Scaringi asked the Court to postpone the previously-scheduled oral argument and evidentiary hearing. The Court denied Mr. Scaringi's motion for a continuance; given the emergency nature of this proceeding, and the looming deadline for Pennsylvania counties to certify their election results, postponing those proceedings seemed imprudent.

On November 17, 2020, the Court prepared to address the parties in oral argument. That morning, attorney Rudolph W. Giuliani entered his appearance on behalf of Plaintiffs. With this last-minute appearance, Plaintiffs had made their final addition to their representation.[35] At the conclusion of the argument, I determined that an evidentiary hearing (previously scheduled to take place on November 19, 2020) was no longer needed and cancelled that proceeding. Instead, I imposed a new briefing schedule in light of the FAC's filing, which arguably

[35] Ms. Kerns has since withdrawn from the case.

mooted the initial motions to dismiss. The parties submitted briefing on the issues.[36]

D. Plaintiffs' Claims

Plaintiffs' only remaining claim alleges a violation of equal protection. This claim, like Frankenstein's Monster, has been haphazardly stitched together from two distinct theories in an attempt to avoid controlling precedent. The general thrust of this claim is that it is unconstitutional for Pennsylvania to give counties discretion to adopt a notice-and-cure policy. Invoking *Bush v. Gore*, Plaintiffs assert that such local control is unconstitutional because it creates an arbitrary system where some persons are allowed to cure procedurally defective mail-in ballots while others are not.

Apparently recognizing that such a broad claim is foreclosed under the Third Circuit's decision in *Bognet*, Plaintiffs try to merge it with a much simpler theory of harm based on the cancellation of Individual Plaintiffs' ballots in order to satisfy standing.[37] Because Individual Plaintiffs' votes were invalidated as procedurally

[36] Separately, Plaintiffs filed a motion seeking leave to file a second amended complaint. Doc. 172. Having filed the FAC as of right, Plaintiffs may file a second amended complaint only with the opposing party's written consent or the court's leave. During the oral argument on November 17, 2020, Defendants indicated that they would not consent to the filing of a third pleading and did not concur in the motion for leave to file this second amended complaint.

[37] Plaintiffs initially appeared to base their standing under the Equal Protection Clause on the theory that the notice-and-cure policy unlawfully allowed certain ballots to be counted, and that this inclusion of illegal ballots diluted Plaintiffs' legal votes. Doc. 1. After *Bognet* expressly rejected this theory of standing, however, Plaintiffs have since reversed course and now argue that their standing is based on the cancellation of Individual Plaintiffs' votes and the Trump Campaign's "competitive standing." 2020 WL 6686120, at *9-10; Doc. 124 at 2.

defective, Individual Plaintiffs argue, for purposes of standing, that their claim is based on the denial of their votes. But on the merits, Plaintiffs appear to have abandoned this theory of harm and instead raise their broader argument that the lack of a uniform prohibition against notice-and-cure is unconstitutional.[38] They assert this theory on behalf of both Individual Plaintiffs and the Trump Campaign.

That Plaintiffs are trying to mix-and-match claims to bypass contrary precedent is not lost on the Court. The Court will thus analyze Plaintiffs' claims as if they had been raised properly and asserted as one whole for purposes of standing *and* the merits. Accordingly, the Court considers Plaintiffs as alleging two equal-protection claims. The first being on behalf of Individual Plaintiffs whose ballots were cancelled. And the second being on behalf of the Trump Campaign and raising the broad *Bush v. Gore* arguments that Plaintiffs allege is the main focus of this lawsuit.[39] The Court analyzes both claims separately for purposes of standing and the merits analysis.

III. STANDING

Plaintiffs lack standing to raise either of their claims. "Article III of the United States Constitution limits the power of the federal judiciary to 'cases' and

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To the extent that Plaintiffs may still argue that votes have been unconstitutionally diluted (*see*, FAC ¶ 97), those claims are barred by the Third Circuit's decision in *Bognet*.

[38] Plaintiffs essentially conceded that they were only setting forth the vote-denial theory for purposes of standing when they stated on the record at oral argument that they believed Individual Plaintiffs' votes were *lawfully* cancelled. Hr'g. Tr. 110:22-111:02.

[39] In briefing, Plaintiffs attempt to revive their previously-dismissed poll-watcher claims. Count I does not seek relief for those allegations, but the Court considers them, *infra*.

'controversies.'"[40] To satisfy the case-or-controversy requirement, a plaintiff must establish that they have standing.[41] Standing is a "threshold" issue.[42] It is an "irreducible constitutional minimum," without which a federal court lacks jurisdiction to rule on the merits of an action.[43] Consequently, federal courts are obligated to raise the issue of standing sua sponte.[44]

The plaintiff bears the burden of establishing standing.[45] To demonstrate standing, he must show: (1) an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.[46] "In assessing whether a plaintiff has carried this burden, [courts must] separate [the] standing inquiry from any assessment of the merits of the plaintiff's claim."[47] "To maintain this fundamental separation between standing and merits at the dismissal stage, [courts] assume for the purposes of [the] standing inquiry that a plaintiff has stated valid legal claims."[48] "While [the Court's] standing inquiry may necessarily reference the 'nature and

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40 *Pa. Voters All. v. Centre Cnty.*, No. 4:20-CV-01761, 2020 WL 6158309, at *3 (M.D. Pa. Oct. 21, 2020) (*quoting Cotrell v. Alcon Laboratories*, 874 F.3d 154, 161-62 (3d Cir. 2017)).

41 *Cotrell*, 874 F.3d at 161-62.

42 *Wayne Land & Mineral Grp., LLC v. Del. River Basin Comm'n*, 959 F.3d 569, 573-74 (3d Cir. 2020) (internal citations omitted).

43 *Id.* at 574 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)).

44 *Id.* (quoting *Seneca Reservation Corp. v. Twp. of Highland*, 863 F.3d 245, 252 (3d Cir. 2017).

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

46 *Id.* (quoting *Spokeo,* 136 S. Ct. at 1547).

47 *Id.*

48 *Id.* (citing *Info. Handling Servs., Inc. v. Defense Automated Printing Servs.*, 338 F.3d 1024, 1029 (D.C. Cir. 2003)).

source of the claims asserted,' [the Court's] focus remains on whether the plaintiff is the proper party to bring those claims."[49]

As discussed above, Plaintiffs allege two possible theories of standing. First, Individual Plaintiffs argue that their votes have been unconstitutionally denied. Under this theory, Individual Plaintiffs must show that Defendant Counties' use of the notice-and-cure procedure, as well as Secretary Boockvar's authorization of this procedure, denied Individual Plaintiffs the right to vote.[50] Second, the Trump Campaign maintains that it has competitive standing.[51]

Both theories are unavailing. Assuming, as this Court must, that Plaintiffs state a valid equal-protection claim, the Court finds that Individual Plaintiffs have adequately established an injury-in-fact. However, they fail to establish that it was Defendants who caused these injuries and that their purported injury of vote-denial is adequately redressed by invalidating the votes of others. The Trump Campaign's theory also fails because neither competitive nor associational standing applies, and it does not assert another cognizable theory of standing.

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[49] *Id.* (brackets and internal citations omitted).

[50] As discussed above, to the extent that Plaintiffs would have premised standing on the theory that Pennsylvania's purportedly unconstitutional failure to uniformly prohibit the notice-and-cure procedure constitutes vote-dilution, such an assertion would be foreclosed under *Bognet*. 2020 WL 6686120, at *9-10. Accordingly, the Court will only consider whether Individual Plaintiffs have standing under their vote-denial theory.

[51] In the interest of comprehensiveness, the Court also addresses whether the Trump Campaign has associational standing.

A. Voters

1. Injury in Fact

Individual Plaintiffs have adequately demonstrated that they suffered an injury-in-fact. "[A] person's right to vote is 'individual and personal in nature.'"[52] Accordingly, the denial of a person's right to vote is typically always sufficiently concrete and particularized to establish a cognizable injury.[53] This is true regardless of whether such a harm is widely shared.[54] So long as an injury is concrete, courts will find that an injury in fact exists despite the fact that such harm is felt by many.[55]

This is precisely the situation presented here. Individual Plaintiffs have adequately pled that their votes were denied. As discussed above, the denial of a vote is a highly personal and concrete injury. That Individual Plaintiffs had their ballots cancelled and thus invalidated is sufficiently personal to establish an injury in fact. It is of no matter that many persons across the state might also have had their votes invalidated due to their county's failure to implement a curing

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52 *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018) (quoting *Reynolds v. Sims*, 377 U.S. 533, 561 (1964)).

53 *See Gomillion v. Lightfoot*, 364 U.S. 339, 349 (1960) (Whittaker, J.) (noting the distinction between injuries caused by outright denial of the right to vote versus those caused by reducing the weight or power of an individual's vote). The Court notes that much of standing doctrine as it relates to voting rights arises from gerrymandering or vote-dilution cases, which often involve relatively abstract harms. *See, e.g.*, *Gill*, 138 S. Ct.; *Gaffney v. Cummings*, 412 U.S. 735 (1973); *Reynolds v. Sims*, 377 U.S. 533 (1964)).

54 *See Federal Elections Comm'n v. Akins*, 524 U.S. 11, 24 (1998) (citing *Public Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 449-50 (1989)).

55 *See id.* ("[W]here a harm is concrete, though widely shared, the [United States Supreme] Court has found 'injury in fact.'") (quoting *Public Citizen*, 491 U.S. at 449-50).

procedure. Accordingly, the Court finds that Individual Plaintiffs have established injury in fact.

2. Causation

However, Individual Plaintiffs fail to establish that Defendant Counties or Secretary Boockvar actually caused their injuries. First, Defendant Counties, by Plaintiffs' own pleadings, had nothing to do with the denial of Individual Plaintiffs' ability to vote. Individual Plaintiffs' ballots were rejected by Lancaster and Fayette Counties, neither of which is a party to this case. None of Defendant Counties received, reviewed, or discarded Individual Plaintiffs' ballots. Even assuming that Defendant Counties unconstitutionally allowed *other* voters to cure their ballots, that alone cannot confer standing on Plaintiffs who seek to challenge the denial of *their* votes.

Second, Individual Plaintiffs have not shown that their purported injuries are fairly traceable to Secretary Boockvar. Individual Plaintiffs have entirely failed to establish any causal relationship between Secretary Boockvar and the cancellation of their votes. The only connection the Individual Plaintiffs even attempt to draw is that Secretary Boockvar sent an email on November 2, 2020 to some number of counties, encouraging them to adopt a notice-and-cure policy. However, they fail to allege which counties received this email or what information was specifically included therein. Further, that this email encouraged counties to adopt a notice-and-cure policy does not suggest in any way that Secretary Boockvar intended or

desired Individual Plaintiffs' votes to be cancelled. To the contrary, this email suggests that Secretary Boockvar encouraged counties to allow exactly these types of votes to be counted. Without more, this Court cannot conclude that Individual Plaintiffs have sufficiently established that their injuries are fairly traceable to Secretary Boockvar.[56]

3. Redressability

In large part because the Individual Plaintiffs cannot establish that their injury is "fairly traceable" to the Defendants' conduct, they also cannot show that their injury could be redressed by a favorable decision from this Court.[57] Beyond that substantial hurdle, however, a review of the injury alleged and the relief sought plainly shows that the Individual Plaintiffs' injury would not be redressable. The Individual Plaintiffs base their equal-protection claim on the theory that their

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[56] The Third Circuit has held that a party may have standing "to challenge government action that permits or authorizes third-party conduct that would otherwise be illegal in the absence of the Government's action." *Constitution Party of Pennsylvania v. Aichele*, 757 F.3d 347, 366 (3d Cir. 2014) (quoting *Bloomberg L.P. v. CFTC*, 949 F. Supp. 2d 91, 116 (D.D.C. 2013)). But in that case, standing was permitted to avoid a catch-22 situation where, absent standing against a third-party government actor, a plaintiff would not be able to bring suit against any responsible party. *Id.* at 367. Here, Plaintiffs allege that Secretary Boockvar is responsible for authorizing the unconstitutional actions of Defendant Counties. However, unlike the plaintiffs in *Aichele*, Plaintiffs are able to sue Defendant Counties for their allegedly unconstitutional actions. Moreover, because this Court has already concluded that Plaintiffs lack standing to sue Defendant Counties for their use of the notice-and-cure policy, it would be counterintuitive for Plaintiffs to have standing to challenge Secretary Boockvar's authorization of this policy, which is even further removed from any purported harm that Individual Plaintiffs have suffered.

[57] *See, e.g.*, *Newdow v. Roberts*, 603 F.3d 1002, 1011 (D.C. Cir. 2010) (noting that when an injury is caused by a third party not before the Court, courts cannot "redress injury . . . that results from [such] independent action.") (ellipses and alterations in original) (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976)).

right to vote was denied. Their prayer for relief seeks, in pertinent part: (1) an order, declaration, or injunction from this Court prohibiting the Defendants from certifying the results of the 2020 General Election in Pennsylvania on a Commonwealth-wide basis; and (2) another order prohibiting Defendants from certifying the results which include ballots the Defendants permitted to be cured.

Neither of these orders would redress the injury the Individual Plaintiffs allege they have suffered. Prohibiting certification of the election results would not reinstate the Individual Plaintiffs' right to vote. It would simply deny more than 6.8 million people *their* right to vote. "Standing is measured based on the theory of harm and the specific relief requested."[58] It is not "dispensed in gross: A plaintiff's remedy must be tailored to redress the plaintiff's particular injury."[59] Here, the answer to invalidated ballots is not to invalidate millions more. Accordingly, Plaintiffs have not shown that their injury would be redressed by the relief sought.

B. Trump Campaign

The standing inquiry as to the Trump Campaign is particularly nebulous because neither in the FAC nor in its briefing does the Trump Campaign clearly assert what its alleged injury is. Instead, the Court was required to embark on an

[58] *Donald J. Trump for President, Inc. v. Boockvar*, No. 2:20-CV-966, 2020 WL 5997680, at *37 (W.D. Pa. Oct. 10, 2020) (citing *Gill*, 138 S. Ct. at 1934).

[59] *Gill*, 138 S. Ct. at 1934 (citing *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 (2006)).

extensive project of examining almost every case cited to by Plaintiffs to piece together the theory of standing as to this Plaintiff – the Trump Campaign.

The Trump Campaign first posits that "as a political committee for a federal candidate," it has "Article III standing to bring this action."[60] On its face, this claim is incorrect. Simply being a political committee does not obviate the need for an injury-in-fact, nor does it automatically satisfy the other two elements of standing.

For this proposition, the Trump Campaign relies on two federal cases where courts found associational standing by a political party's state committee. Therefore, the Court considers whether the Trump Campaign can raise associational standing, but finds that those cases are inapposite.[61] First, a candidate's political committee and a political party's state committee are not the same thing. Second, while the doctrine of associational standing is well established, the Trump Campaign overlooks a particularly relevant, very recent decision from another federal court – one where the Trump Campaign itself argued that it had associational standing. In *Donald J. Trump for President, Inc. v. Cegavske*,[62] the Trump Campaign asserted associational standing, and that court rejected this theory.

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60 Doc. 170 at 11.

61 *Texas Democratic Party v. Benkiser*, 459 F.3d 582 (5th Cir. 2006); *Orloski v. Davis*, 564 F. Supp. 526 (M.D. Pa. 1983).

62 No. 2:20-CV-1445, 2020 WL 5626974 (D. Nev. Sept. 18, 2020).

Associational standing allows an entity to bring suit on behalf of members upon a showing that: (1) "its members would otherwise have standing to sue in their own right;" (2) "the interests it seeks to protect are germane to the organization's purpose;" and (3) "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit."[63]

In *Cegavske* (another case in which the Trump Campaign alleged violations of equal protection), the court found that the Trump Campaign failed to satisfy the second prong of associational standing because it "represents only Donald J. Trump and his 'electoral and political goals' of reelection."[64] That court noted that while the Trump Campaign might achieve its purposes through its member voters, the "constitutional interests of those voters are wholly distinct" from that of the Trump Campaign.[65] No different here. Even if the Individual Plaintiffs attempted to vote for President Trump, their constitutional interests are different, precluding a finding of associational standing. In any event, because the Individual Plaintiffs lack standing in this case, the Trump Campaign cannot satisfy the first prong of associational standing either.

The Trump Campaign's second theory is that it has "'competitive standing' based upon disparate state action leading to the 'potential loss of an election.'"[66]

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63 *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977).
64 *Cegavske*, 2020 WL 5626974 at *4 (internal citations omitted).
65 *Id*.
66 Doc. 170 at 11 (citing *Drake v. Obama*, 664 F.3d 774, 783 (9th Cir. 2011)).

Pointing to a case from the United States Court of Appeals for the Ninth Circuit, *Drake v. Obama*,[67] the Trump Campaign claims this theory proves injury-in-fact. First, the Court finds it important to emphasize that the term "competitive standing" has specific meaning in this context. Second, the Trump Campaign's reliance on the theory of competitive standing under *Drake v. Obama* is, at best, misguided. Subsequent case law from the Ninth Circuit has explained that competitive standing "is the notion that 'a candidate or his political party has standing to challenge the *inclusion of an allegedly ineligible rival on the ballot*, on the theory that doing so hurts the candidate's or party's own chances of prevailing in the election.'"[68] In the present matter, there is no allegation that the Democratic Party's candidate for President, or any other candidate, was ineligible to appear on the ballot.

Examination of the other case law cited to by Plaintiffs contradicts their theory that competitive standing is applicable here for the same reason. For example, in *Texas Democratic Party v. Benkiser*, the United States Court of Appeals for the Fifth Circuit found competitive standing in a case in which the Democratic Party petitioned against the decision to deem a candidate ineligible and

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67 664 F.3d.

68 *Townley v. Miller*, 722 F.3d 1128, 1135 (9th Cir. 2013) (emphasis added) (quoting *Drake*, 664 F.3d at 782); *see also Mecinas v. Hobbs*, No. CV-19-05547, 2020 WL 3472552, at *11-12 (D. Ariz. June 25, 2020) (explaining the current state of the doctrine of competitive standing and collecting cases).

replace him with another.[69] Likewise, in *Schulz v. Williams*, the United States Court of Appeals for the Second Circuit found competitive standing where the Conservative party alleged an injury in fact by arguing that a candidate from the Libertarian Party of New York was improperly placed on the ballot for the Governor's race in 1994.[70] By way of yet another example, Plaintiffs' citation to *Fulani v. Hogsett* makes the same point; competitive standing applies to challenges regarding the eligibility of a candidate. There, the Indiana Secretary of State was required to certify the names of candidates for President by a certain date.[71] When the Secretary failed to certify the Democratic and Republican candidates by that date, the New Alliance party challenged the inclusion of those candidates on the ballot, arguing that allowing these ineligible candidates constituted an injury-in-fact.[72] Three other cases relied on by Plaintiffs illustrate separate grounds for stating an injury in fact, all still relating to ballot provisions.[73]

It is telling that the only case from the Third Circuit cited to by Plaintiffs, *Marks v. Stinson*, does not contain a discussion of competitive standing or any other theory of standing applicable in federal court.[74] Simply pointing to another

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69 459 F.3d at 586.
70 44 F.3d 48, 53 (2d Cir. 1994).
71 917 F.2d 1028, 1029-30 (7th Cir. 1990).
72 *Id.*
73 *See Green Party of Tennessee v. Hargett*, 767 F.3d 533, 542-43 (6th Cir. 2014) (finding that Plaintiffs had standing to challenge Tennessee's *ballot-access* laws); *see also Pavek v. Donald J. Trump for President, Inc.*, 967 F.3d 905, 907 (8th Cir. 2020) (finding that Plaintiffs had standing to challenge the *ballot-ordering* provision in Minnesota); *Nelson v. Warner*, No. 3:19-0898, 2020 WL 4582414, at *3 (S.D. W. Va. Aug. 10, 2020) (same).
74 19 F.3d 873 (3d Cir. 1994).

case where a competitor in an election was found to have standing does not establish *competitive standing* in this matter. Without more, this Court declines to take such an expansive view of the theory of competitive standing, particularly given the abundance of guidance from other Circuits, based on Plaintiffs' own citations, limiting the use of this doctrine.

The Trump Campaign has not offered another theory of standing, and therefore, cannot meet its burden of establishing Article III jurisdiction. To be clear, this Court is not holding that a political campaign can never establish standing to challenge the outcome of an election; rather, it merely finds that in this case, the Trump Campaign has not pled a cognizable theory.[75]

IV. MOTION TO DISMISS 12(b)(6)

A. Legal Standard

Under Federal Rule of Civil Procedure 12(b)(6), the Court dismisses a complaint, in whole or in part, if the plaintiff has failed to "state a claim upon which relief can be granted." A motion to dismiss "tests the legal sufficiency of a claim"[76] and "streamlines litigation by dispensing with needless discovery and factfinding."[77] "Rule 12(b)(6) authorizes a court to dismiss a claim on the basis of

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[75] Even assuming, however, that the Trump Campaign could establish that element of standing, it would still fail to satisfy the causation and redressability requirements for the same reasons that the Voter Plaintiffs do. To the extent the Trump Campaign alleges any injury at all, its injury is attenuated from the actions challenged.

[76] *Richardson v. Bledsoe*, 829 F.3d 273, 289 n. 13 (3d Cir. 2016) (Smith, C.J.) (*citing Szabo v. Bridgeport Machines, Inc.*, 249 F.3d 672, 676 (7th Cir. 2001) (Easterbrook, J.)).

[77] *Neitzke v. Williams*, 490 U.S. 319, 326-27 (1989).

a dispositive issue of law."[78] This is true of any claim, "without regard to whether it is based on an outlandish legal theory or on a close but ultimately unavailing one."[79]

Following the Roberts Court's "civil procedure revival,"[80] the landmark decisions of *Bell Atlantic Corporation v. Twombly*[81] and *Ashcroft v. Iqbal*[82] tightened the standard that district courts must apply to 12(b)(6) motions.[83] These cases "retired" the lenient "no-set-of-facts test" set forth in *Conley v. Gibson* and replaced it with a more exacting "plausibility" standard.[84]

Accordingly, after *Twombly* and *Iqbal*, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"[85] "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."[86] "Although the plausibility standard does not impose a probability requirement, it does require a pleading to show more than a sheer possibility that a defendant has acted

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78 *Id.* at 326 (internal citations omitted).
79 *Id.* at 327.
80 Howard M. Wasserman, The Roberts Court and the Civil Procedure Revival, 31 Rev. Litig. 313, 316, 319-20 (2012).
81 550 U.S. 544 (2007).
82 556 U.S. 662 (2009).
83 *Id.* at 670.
84 *Id.*
85 *Id.* at 678 (quoting *Twombly*, 550 U.S. at 570).
86 *Id.*

unlawfully."[87] Moreover, "[a]sking for plausible grounds . . . calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of [wrongdoing]."[88]

The plausibility determination is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense."[89] No matter the context, however, "[w]here a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'"[90]

When disposing of a motion to dismiss, the Court "accept[s] as true all factual allegations in the complaint and draw[s] all inferences from the facts alleged in the light most favorable to [the plaintiff]."[91] However, "the tenet that a court must accept as true all of the allegations contained in the complaint is inapplicable to legal conclusions."[92] "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."[93]

As a matter of procedure, the Third Circuit has instructed that:

> Under the pleading regime established by *Twombly* and *Iqbal*, a court reviewing the sufficiency of a complaint must take three steps. First, it

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87 *Connelly v. Lane Const. Corp.*, 809 F.3d 780, 786 (3d Cir. 2016) (Jordan, J.) (internal quotations and citations omitted).
88 *Twombly*, 550 U.S. at 556.
89 *Iqbal*, 556 U.S. at 679.
90 *Id.* at 678 (*quoting Twombly*, 550 U.S. at 557).
91 *Phillips v. County. of Allegheny*, 515 F.3d 224, 228 (3d Cir. 2008) (Nygaard, J.).
92 *Iqbal*, 556 U.S. at 678;
93 *Id.* (citing *Twombly*, 550 U.S. at 555); *see also Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (Nygaard, J.) ("After *Iqbal*, it is clear that conclusory or 'bare-bones' allegations will no longer survive a motion to dismiss.").

> must tak[e] note of the elements [the] plaintiff must plead to state a claim. Second, it should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. Finally, [w]hen there are well-pleaded factual allegations, [the] court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.[94]

B. Equal Protection

Even if Plaintiffs had standing, they fail to state an equal-protection claim. The Equal Protection Clause of the Fourteenth Amendment commands that no state shall "deny to any person within its jurisdiction the equal protection of the laws."[95] The principle of equal protection is fundamental to our legal system because, at its core, it protects the People from arbitrary discrimination at the hands of the State.

But, contrary to Plaintiffs' assertions, not all "unequal treatment" requires Court intervention.[96] The Equal Protection Clause "does not forbid classifications."[97] It simply keeps governmental decisionmakers from treating similarly situated persons differently.[98] The government could not function if complete equality were required in all situations. Consequently, a classification resulting in "some inequality" will be upheld unless it is based on an inherently suspect characteristic or "jeopardizes the exercise of a fundamental right."[99]

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94 *Connelly*, 809 F.3d at 787 (internal quotations and citations omitted).
95 U.S. Const. Amend. XIV, cl. 1.
96 Doc. 170 at 29.
97 *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992) (citing *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920)).
98 *Id.* (citing *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920)).
99 *Id.* (quoting *McGowan v. Maryland*, 366 U.S. 420, 425-26 (1961)).

One such fundamental right, at issue in this case, is the right to vote. Voting is one of the foundational building blocks of our democratic society, and that the Constitution firmly protects this right is "indelibly clear."[100] All citizens of the United States have a constitutionally protected right to vote.[101] And all citizens have a constitutionally protected right to have their votes counted.[102]

With these background principles firmly rooted, the Court turns to the merits of Plaintiffs' equal-protection claims. The general gist of their claims is that Secretary Boockvar, by failing to prohibit counties from implementing a notice-and-cure policy, and Defendant Counties, by adopting such a policy, have created a "standardless" system and thus unconstitutionally discriminated against Individual Plaintiffs. Though Plaintiffs do not articulate why, they also assert that this has unconstitutionally discriminated against the Trump Campaign.

As discussed above, the Court will address Individual Plaintiffs' and the Trump Campaign's claims separately. Because Individual Plaintiffs premised standing on the purported wrongful cancellation of their votes, the Court will only analyze whether Defendants have impermissibly burdened Individual Plaintiffs' ability to vote. Further, the Court will consider two issues raised by the Trump Campaign; the first being whether it has stated a valid claim alleging discrimination relating to its use of poll-watchers, and the second being whether

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[100] *Reynolds v. Sims*, 377 U.S. 533, 554 (1964).
[101] *Id.* (citing *Ex parte Yarbrough*, 110 U.S. 651 (1884)).
[102] *Id.* (citing *United States v. Mosley*, 238 U.S. 383 (1915)).

the General Assembly's failure to uniformly prohibit (or permit) the notice-and-cure procedure is unconstitutional.

1. Individual Plaintiffs

States have "broad authority to regulate the conduct of elections, including federal ones."[103] "This authority includes 'broad powers to determine the conditions under which the right of suffrage may be exercised.'"[104] Because states must have freedom to regulate elections if "some sort of order, rather than chaos, is to accompany the democratic processes,"[105] such regulation is generally insulated from the stringent requirements of strict scrutiny.[106]

Instead, state regulation that burdens voting rights is normally subject to the *Anderson-Burdick* balancing test, which requires that a court "weigh the asserted injury to the right to vote against the 'precise interests put forward by the State as justifications for the burden imposed by its rule.'"[107] Under this test, "any 'law respecting the right to vote – whether it governs voter qualifications, candidate selection, or the voting process,' is subjected to 'a deferential "important

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[103] *Griffin v. Roupas*, 385 F.3d 1128, 1130 (7th Cir. 2004) (citing U.S. Const. Art. I, § 4, cl. 1).
[104] *Donald J. Trump for President, Inc.*, 2020 WL 5997680, at *38 (quoting *Shelby County, Ala. v. Holder*, 570 U.S. 529, 543 (2013)).
[105] *Id.* (quoting *Burdick v. Takushi*, 504 U.S. 428, 433 (1992)).
[106] *Burdick*, 504 U.S. at 432-33.
[107] *Crawford v. Marion County Election Board*, 553 U.S. 181, 190 (2008) (quoting *Burdick*, 504 U.S. at 434).

regulatory interests" standard for nonsevere, nondiscriminatory restrictions, reserving strict scrutiny for laws that severely restrict the right to vote.'"[108]

The *Anderson-Burdick* balancing test operates on a sliding scale.[109] Thus, more restrictive laws are subject to greater scrutiny. Conversely, "minimally burdensome and nondiscriminatory" regulations are subject to "a level of scrutiny 'closer to rational basis.'"[110] "And where the state imposes no burden on the 'right to vote' at all, true rational basis review applies."[111]

Here, because Defendants' conduct "imposes no burden" on Individual Plaintiffs' right to vote, their equal-protection claim is subject to rational basis review.[112] Defendant Counties, by implementing a notice-and-cure procedure, have in fact *lifted* a burden on the right to vote, even if only for those who live in those counties. Expanding the right to vote for some residents of a state does not burden the rights of others.[113] And Plaintiffs' claim cannot stand to the extent that it complains that "the state is *not* imposing a restriction on *someone else's* right to vote."[114] Accordingly, Defendant Counties' use of the notice-and-cure procedure

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[108] *Donald J. Trump for President*, 2020 WL 5997680, at *39 (quoting *Crawford*, 533 U.S. at 204 (Scalia, J. concurring)).

[109] *See id.* at *40; *see also Arizona Libertarian Party v. Hobbs*, 925 F.3d 1085, 1090 (9th Cir. 2019); *Fish v. Schwab*, 957 F.3d 1105, 1124 (10th Cir. 2020).

[110] *Donald J. Trump for President*, 2020 WL 5997680, at *39 (quoting *Ohio Council 8 Am. Fed'n of State v. Husted*, 814 F.3d 329, 335 (6th Cir. 2016)).

[111] *Id. (citing Biener v. Calio*, 361 F.3d 206, 215 (3d Cir. 2004)).

[112] Even after questioning from this Court during oral argument regarding the appropriate standard of review for their equal-protection claim, Plaintiffs failed to discuss this key aspect of the claim in briefing. *See* Doc. 170.

[113] *See, e.g., Short v. Brown*, 893 F.3d 671, 677 (9th Cir. 2018).

[114] *Donald J. Trump for President*, 2020 WL 5997680, at *44 (emphasis in original).

(as well as Secretary Boockvar's authorization of this procedure) will be upheld unless it has no rational basis.[115]

Individual Plaintiffs' claims fail because it is perfectly rational for a state to provide counties discretion to notify voters that they may cure procedurally defective mail-in ballots. Though states may not discriminatorily sanction procedures that are likely to burden some persons' right to vote more than others, they need not expand the right to vote in perfect uniformity. All Plaintiffs have alleged is that Secretary Boockvar allowed counties to choose whether or not they wished to use the notice-and-cure procedure. No county was forced to adopt notice-and-cure; each county made a choice to do so, or not. Because it is not irrational or arbitrary for a state to allow counties to expand the right to vote if they so choose, Individual Plaintiffs fail to state an equal-protection claim.

Moreover, even if they could state a valid claim, the Court could not grant Plaintiffs the relief they seek. Crucially, Plaintiffs fail to understand the relationship between right and remedy. Though every injury must have its proper redress,[116] a court may not prescribe a remedy unhinged from the underlying right being asserted.[117] By seeking injunctive relief preventing certification of the Pennsylvania election results, Plaintiffs ask this Court to do exactly that. Even

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[115] *Biener*, 361 F.3d at 215.

[116] *Marbury v. Madison*, 5 U.S. 137, 147 (1803).

[117] *Gill*, 138 S. Ct. at 1934 ("A plaintiff's remedy must be tailored to redress the plaintiff's particular injury.") (citing *Cuno*, 547 U.S. at 353).

assuming that they can establish that their right to vote has been denied, which they cannot, Plaintiffs seek to remedy the denial of their votes by invalidating the votes of millions of others. Rather than requesting that their votes be counted, they seek to discredit scores of other votes, but only for one race.[118] This is simply not how the Constitution works.

When remedying an equal-protection violation, a court may either "level up" or "level down."[119] This means that a court may either extend a benefit to one that has been wrongfully denied it, thus leveling up and bringing that person on par with others who already enjoy the right,[120] or a court may level down by withdrawing the benefit from those who currently possess it.[121] Generally, "the preferred rule in a typical case is to extend favorable treatment" and to level up.[122] In fact, leveling down is impermissible where the withdrawal of a benefit would necessarily violate the Constitution.[123] Such would be the case if a court were to remedy discrimination by striking down a benefit that is constitutionally guaranteed.

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[118] Curiously, Plaintiffs now claim that they seek only to enjoin certification of the presidential election results. Doc. 183 at 1. They suggest that their requested relief would thus not interfere with other election results in the state. But even if it were logically possible to hold Pennsylvania's electoral system both constitutional and unconstitutional at the same time, the Court would not do so.

[119] *Heckler v. Matthews*, 465 U.S. 728, 740 (1984) (internal citations omitted).

[120] *Id.* at 741; *Califano v. Westcott*, 443 U.S. 76, 90-91 (1979).

[121] *E.g.*, *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1701 (2017).

[122] *Id.* (internal citations omitted).

[123] *See Palmer v. Thompson*, 403 U.S. 217, 226-27 (1971) (addressing whether a city's decision to close pools to remedy racial discrimination violated the Thirteenth Amendment); *see also Reynolds*, 377 U.S. at 554 (citing *Mosley*, 238 U.S. at 383).

Here, leveling up to address the alleged cancellation of Plaintiffs' votes would be easy; the simple answer is that their votes would be counted. But Plaintiffs do not ask to level up. Rather, they seek to level down, and in doing so, they ask the Court to violate the rights of over 6.8 million Americans. It is not in the power of this Court to violate the Constitution.[124] "The disenfranchisement of even one person validly exercising his right to vote is an extremely serious matter."[125] "To the extent that a citizen's right to vote is debased, he is that much less a citizen."[126]

Granting Plaintiffs' requested relief would necessarily require invalidating the ballots of every person who voted in Pennsylvania. Because this Court has no authority to take away the right to vote of even a single person, let alone millions of citizens, it cannot grant Plaintiffs' requested relief.

2. Trump Campaign

Plaintiffs' brief in opposition to the motions to dismiss spends only *one* paragraph discussing the merits of its equal-protection claim. Plaintiffs raise two arguments as to how equal protection was violated. The first is that "Defendants excluded Republican/Trump observers from the canvass so that they would not

[124] *Marbury*, 5 U.S. at 147.
[125] *Perles v. County Return Bd. of Northumberland County*, 202 A.2d 538, 540 (Pa. 1964) (cleaned up).
[126] *Id.* at 567.

observe election law violations."[127] The second claims that the "use of notice/cure procedures violated equal protection because it was deliberately done in counties where defendants knew that mail ballots would favor Biden/Democrats."[128] The former finds no support in the operative pleading, and neither states an equal-protection violation.

Count I of the FAC makes no mention of disparity in treatment of observers based on which campaign they represented. Instead, Count I discusses the use of "standardless" procedures. These are two separate theories of an equal protection violation. That deficiency aside, to the extent this new theory is even pled, Plaintiffs fail to plausibly plead that there was "uneven treatment" of Trump and Biden watchers and representatives. Paragraphs 132-143 of the FAC are devoted to this alleged disparity. None of these paragraphs support Plaintiffs' argument. A selection below:

- "Defendants have not allowed *watchers and representatives* to be present . . ."[129]
- "In Centre County, the central pre-canvassing location was a large ballroom. The set-up was such that the *poll watchers did not have meaningful access* to observe the canvassing and tabulation process of mail-in and absentee ballots, and in fact, the *poll watchers and observers* who were present could not actually observe the ballots such that they could confirm or object to the validity of the ballots."[130]

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[127] Doc. 170 at 29. Count I makes no mention of the poll-watching allegations, nor does it seek relief for any violation of law on the basis of those allegations. Out of an abundance of caution, however, the Court considers whether these allegations state a claim.

[128] *Id*.

[129] Doc. 125 at ¶ 134 (emphasis added).

[130] *Id*. at ¶ 135 (emphasis added).

- "In Philadelphia County, *poll watchers and canvass representatives* were denied access altogether in some instances."[131]
- "In Delaware County, *observers* were denied access to a back room counting area . . ."[132]

None of these allegations (or the others in this section) claim that the Trump Campaign's watchers were treated *differently* than the Biden campaign's watchers. Simply alleging that poll watchers did not have access or were denied access to some areas does not plausibly plead unequal treatment. Without actually alleging that one group was treated differently than another, Plaintiffs' first argument falls flat.

Likewise, Plaintiffs cannot salvage their notice-and-cure theory by invoking *Bush v. Gore*.[133] Plaintiffs claim that the Equal Protection clause "imposes a 'minimum requirement for nonarbitrary treatment of voters' and forbids voting systems and practices that distribute resources in 'standardless' fashion, without 'specific rules designed to ensure uniform treatment.'"[134] Plaintiffs attempt to craft a legal theory from *Bush*, but they fail because: (1) they misapprehend the issues at play in that case; and (2) the facts of this case are distinguishable.

Plaintiffs' interpretation of *Bush v. Gore* would broaden the application of that case far beyond what the Supreme Court of the United States endorsed. In *Bush*, the Supreme Court stopped a recount of votes in Florida in the aftermath of

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[131] *Id*. at ¶ 136 (emphasis added).
[132] *Id*. at ¶ 137 (emphasis added).
[133] 531 U.S. 98 (2000).
[134] Doc. 170 at 13.

the 2000 Presidential Election. Despite Plaintiffs' assertions, *Bush* does not stand for the proposition that every rule or system must ensure uniform treatment. In fact, the Supreme Court explicitly said so, explaining: "[t]he question before the Court is *not* whether local entities, in the exercise of their expertise, may develop different systems for implementing elections."[135] Instead, the Court explained that its holding concerned a "situation where a state court with the power to assure uniformity has ordered a statewide recount with minimal procedural safeguards."[136] Where a state court has ordered such a remedy, the Supreme Court held that "there must be at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied."[137] In other words, the lack of guidance from a court constituted an equal-protection violation.

In the instant matter, Plaintiffs are not challenging any court action as a violation of equal protection, and they do not allege that Secretary Boockvar's guidance differed from county to county, or that Secretary Boockvar told some counties to cure ballots and others not to. That some counties may have chosen to implement the guidance (or not), or to implement it differently, does not constitute an equal-protection violation. "[M]any courts that have recognized that counties may, consistent with equal protection, employ entirely different election

[135] *Bush*, 531 U.S. at 109 (emphasis added).
[136] *Id.*
[137] *Id.*

procedures and voting systems within a single state."[138] "Arguable differences in how elections boards apply uniform statewide standards to the innumerable permutations of ballot irregularities, although perhaps unfortunate, are to be expected, just as judges in sentencing-guidelines cases apply uniform standards with arguably different results."[139] Requiring that every single county administer elections in exactly the same way would impose untenable burdens on counties, whether because of population, resources, or a myriad of other reasonable considerations.

V. CONCLUSION

Defendants' motions to dismiss the First Amended Complaint are granted with prejudice. Leave to amend is denied. "Among the grounds that could justify a denial of leave to amend are undue delay, bad faith, dilatory motive, prejudice, and futility."[140] Given that: (1) Plaintiffs have already amended once as of right; (2) Plaintiffs seek to amend simply in order to effectively reinstate their initial complaint and claims; and (3) the deadline for counties in Pennsylvania to certify their election results to Secretary Boockvar is November 23, 2020, amendment would unduly delay resolution of the issues. This is especially true because the Court would need to implement a new briefing schedule, conduct a second oral argument, and then decide the issues.

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[138] *Donald J. Trump for President*, 2020 WL 5997680, at *44.
[139] *Northeast Ohio Coalition for the Homeless v. Husted*, 837 F.3d 612, 636 (6th Cir. 2020).
[140] *Lorenz v. CSX Corp.*, 1 F.3d 1406, 1413–14 (3d Cir.1993).

An appropriate Order follows.

BY THE COURT:

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

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

DONALD J. TRUMP FOR PRESIDENT, INC., *et al.*, Plaintiffs, v. KATHY BOOCKVAR, *et al.*, Defendants.	No. 4:20-CV-02078 (Judge Brann)

ORDER

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

1. Defendants' motions to dismiss the First Amended Complaint (Docs. 127, 135, 140, 145, 161, and 165) are **GRANTED WITH PREJUDICE**. **NO LEAVE TO AMEND IS GRANTED**.
2. Defendants' motions to dismiss the original complaint (Docs. 81, 85, 90, 92, 96, and 98) are **DENIED AS MOOT**.
3. Plaintiffs' motion for leave to file a second amended complaint (Doc. 172) is **DENIED AS MOOT**.
4. Plaintiffs' motions for preliminary injunction (Docs. 89 and 182) are **DENIED AS MOOT**.
5. Plaintiffs' motions regarding discovery (Docs. 118 and 171) are **DENIED AS MOOT**.

6. Further motions regarding amicus briefing and intervention (Docs. 166, 180, and 200) are **DENIED AS MOOT**.

7. The case is dismissed and the Clerk of Court is directed to close the case file.

BY THE COURT:

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

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

DONALD J. TRUMP FOR PRESIDENT, INC., *et al.*, Plaintiffs	:	No. 4:20-CV-02078
	:	(Judge Brann)
v.	:	
KATHY BOOCKVAR, *et al.*, Defendants	:	

NOTICE OF APPEAL

Notice is hereby given that Donald J. Trump for President, Inc., Lawrence Roberts, and David John Henry, Plaintiffs in the above-named case, hereby appeal to the United States Court of Appeals for the Third Circuit from the Order issued by the Honorable Matthew W. Brann dated November 21, 2020 (Dkt. No. 203) entering final judgment in favor of Defendants and against the Plaintiffs.

Respectfully submitted:

Dated: November 22, 2020

/s/ Rudolph William Giuliani
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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DONALD J. TRUMP FOR PRESIDENT, INC., et al,	:	CIVIL ACTION
Plaintiffs	:	No. 4:20-cv-02078
v.	:	Judge Brann
KATHY BOOCKVAR, et al,	:	
Defendants	:	

CERTIFICATE OF SERVICE

I, Deborah A. Black, Paralegal for Scaringi Law, do hereby certify that I served a true and correct copy of ***Plaintiffs' Notice of Appeal,*** in the above-captioned action, upon all parties via CM/ECF.

Date: November 22, 2020

/s/ *Deborah A. Black*
Deborah A. Black, Paralegal
For Marc A. Scaringi, Esquire and
Brian C. Caffrey, Esquire