

and Equal Protection Clause (Count II). [ECF 1, pp. 11-14]. Along with their Complaint, the Candidates contemporaneously filed a Motion for Temporary Restraining Order. [ECF 2].

On October 19, 2020, this Court entered an Order for a telephonic status conference. [ECF 7]. On October 20, 2020, the status conference was held between the parties. Following the status conference, the Court entered two Orders. [ECF 11, 12]. The first Order requires the parties to meet and confer and file to file “a proposed consent order, competing consent orders, or a status report on th[ose] issues by no later than October 22, 2020.” [ECF 11].

The second Order relates to the Court’s bifurcation of the Candidates two claims; namely, their claims related to the 28,879 mishandled ballots by the Defendants at Count I, their claims related to poll watchers at Count II. [ECF 12]. For now, the Candidates file this Brief in Support of their Motion for Temporary Restraining Order [ECF 2] as to only Count II of their Complaint [ECF 1, pp. 12-14]. *Id.*

II. INTRODUCTION

This year’s election will be unlike any other in recent history primarily due to the COVID-19 pandemic. In light of the pandemic, many elected officials, including the Defendants, have maintained a “well-intentioned effort to protect Pennsylvanians from the virus.” *County of Butler v. Wolf*, 2:20-CV-677, 2020 WL 5510690, at *1 (W.D. Pa. Sept. 14, 2020). “However good intentions toward a laudable end are not alone enough to uphold governmental action against a constitutional challenge.” *Id.* “Indeed, the greatest threats to our system of constitutional liberties may arise when the ends *are* laudable, and the intent *is* good...” *Id.* (emphasis in the original).

There have been various election issues before this Court; however, the present case is not the same. The previous issues raised questions surrounding concrete injuries in fact and involved

many unsettled state law questions from which this Court abstained.¹ But, now the previous concerns have become realities – because it’s undeniable that Defendants expressly denied poll watchers certificates to at least two voters in Allegheny County, Mr. Chew and Mr. Hagerman, and mishandled at least 28,879 mail-in ballots. [ECF 1, ¶¶ 62-70]. What’s worse is that both these errors occurred while voting is taking place at Allegheny County’s Satellite Elections Offices – and will continue to occur *this weekend*.

III. QUESTIONS BEFORE THE COURT²

1. Whether the Plaintiffs, Sean Parnell and Luke Negron, have standing to assert their claims at Count II of their Complaint related to violations of the Equal Protection Clause?

Suggested Answer: Yes.

2. What level of scrutiny should apply to the Court’s analysis of Plaintiffs’ Claims?

Suggested Answer: Strict scrutiny.

IV. ARGUMENT

A. The Plaintiffs Have Article III Standing.

1. The Plaintiffs Have Standing as Candidates.

“Federal courts must determine that they have jurisdiction before proceeding to the merits of any claim.” *Donald J. Trump for Pres., Inc. v. Boockvar*, 2:20-CV-966, 2020 WL 5997680, at *31 (W.D. Pa. Oct. 10, 2020) (citation omitted). Because “[t]he existence of a case or controversy is a prerequisite to all federal actions, including those for declaratory or injunctive relief...[the

¹ Unlike in *Trump for Pres., Inc. v. Boockvar*, 2:20-CV-966, 2020 WL 4920952, at *19 (W.D. Pa. Aug. 23, 2020), the Candidates here are seeking injunctive relief. (“[T]he Court, even if it abstains, must still decide any motions seeking preliminary relief...True, if Plaintiffs had filed a motion for a preliminary injunction, the Court would have likely been required to rule on it before abstaining. See, e.g., *Chez Sez III Corp.*, 945 F.2d at 634 n.4 (noting that the district court had to consider appellants’ request for preliminary relief even though the court decided to abstain under the *Pullman* doctrine); *Pierce*, 324 F. Supp. 2d at 704 (“Notwithstanding a decision to abstain on the merits, this court is still obliged to consider plaintiffs’ request for preliminary relief.”) (citations omitted).” *Id.*

² The questions presented are taken from the issues raised by the Court. [ECF 12].

Court] first must consider” the Candidates’ standing. *Belitskus v. Pizzingrilli*, 343 F.3d 632, 639 (3d Cir. 2003).

“Article III of the Constitution limits the jurisdiction of federal courts to Cases and Controversies.” *Trump v. Boockvar* at *31. (internal quotation marks omitted). “One component of the case-or-controversy requirement is standing, which requires a plaintiff to demonstrate the now-familiar elements of (1) injury in fact, (2) causation, and (3) redressability.” *Id.* (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). “Standing is particularly important in the context of election-law cases.” *Id.*

A party invoking federal jurisdiction must allege facts demonstrating that each of the following elements have been satisfied in order to have standing to pursue the case: (1) the plaintiff “suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). “To establish injury in fact, a plaintiff must show that he or she suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Id.* (quotation omitted). That is, the injury “must actually exist” and “must affect the plaintiff in a personal and individual way.” *Id.* at 1548 (quotation omitted).

Here, the Candidates have pled a sufficient injury. Specifically, they pled that they are seeking election. Their Complaint alleges that if the Court does not act quickly, they will not have any mechanism to enable them to have poll watchers be present at the Satellite Offices during any of the three weekends they were open. Importantly, once this weekend passes, that right will be forever lost.

The Candidates causation and redressability prongs are also met in this case. Based upon the allegations in their Complaint, including the affidavits from Mr. Chew and Mr. Hagerman, their challenge regarding poll watchers is traceable to the Defendants' implementation of policies that are contrary to the Election Code. With regard to redressability, the relief Plaintiffs request would alleviate their injury and provide an opportunity – at least for one of the three weekends the Satellite Offices allowed voting – to allow poll watchers to oversee and observe the validity and integrity of the operations at those locations.

Further, the Candidates' loss of an opportunity to win a Congressional seat at the general election on November 3, 2020, is "an invasion of a legally protected interest that is concrete and particularized, not conjectural or hypothetical." Indeed, the Candidates not having an opportunity to win the Congressional seat on November 3, 2020 is an injury that actually exists and affects the Candidates in a personal and individualized way. This is not a generalized grievance affecting the general public. The general public is not running for Congress; rather, the Candidates are running for Congress.

The Court could compare the instant case to an analogous scenario that occurred in the North Carolina Ninth Congressional District matter in 2018 – wherein election irregularities led to the invalidation of a Congressional election – and a vacant Congressional District disenfranchised voters within that Congressional district until a special election could be held. In that case, election misconduct occurred including illegal ballot harvesting.

The U.S. Constitution, Article I, section 5, states that each House of Congress is the judge of the elections of its members and the final arbiter of contests. While the election contest in the North Carolina Board of Elections was pending, incoming U.S. House Majority Leader Steny Hoyer issued a statement saying House Democrats won't allow Republican Mark Harris to be

sworn in because of the ongoing investigation, “Given the now well-documented election fraud that took place in NC-09, Democrats would object to any attempt by Mr. Harris to be seated on January 3,” Hoyer said, adding that “the integrity of our democratic process outweighs concerns about the seat being vacant at the start of the new Congress.” The North Carolina Board of Elections concurred—refusing to certify the November 2018 results and scheduling a special election on September 10, 2019.

Here, the same thing could happen to the Congressional candidates in this case—having to wait until September of 2021 for a chance to win the Congressional seat. Because such a delay is an injury-in-fact, caused by Defendants’ misconduct and redressable by the Court through an injunction, the Candidates here have standing.

Various courts have held that a candidate for public office may assert the rights of those who wish to vote for him. *Mancuso v. Taft*, 476 F.2d 187, 190 (1st Cir. 1973); *Torres-Torres v. Puerto Rico*, 353 F.3d 79 (1st Cir. 2003). In doing so courts have recognized “a candidate for public office ... is so closely related to and dependent upon those who wish to voter for him and his litigation will so vitally affect their rights that the courts ... permit the candidate to raise constitutional rights of voters.” *Mancuso* 476 F.2d at 190. The Third Circuit has adopted the standard set forth in *Mancuso v. Taft*, noting that a candidate’s ability to raise a voters’ constitutional rights is one of several instances in which third-party standing is commonly recognized. *Pennsylvania Psychiatric Soc. V. Green Spring Health Servs., Inc.*, 280 F.3d 278, 288, *nt.10*, (3rd Cir. 2002); *citing Mancuso v. Taft*, 476 F.2d 187, 190 (1st Cir. 1973).

Lastly, the Supreme Court of the United States has recognized the right of candidates to assert the constitutional rights of their voters in *Bullock v. Carter*, 405 U.S. 134 (1972). In *Bullock*, the Court stated that, “the rights of voters and the rights of candidates do not lend themselves to

neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters.” *Bullock*, 405 U.S. at 143. Pennsylvania’s Election Code recognizes a candidate’s right to represent the interests of the electorate when it states that candidates are “entitled to appoint watchers ... or attorneys to represent such party or political body or *body of citizens* at any public session or sessions of the county board of elections, and at any computation and canvassing of returns of any primary or election ... under the provisions of this act.” 25 P.S. §2650(a). [Emphasis added]

2. The Plaintiffs are Amending their Complaint to include Additional Plaintiffs.

The Court’s point in *Trump v. Boockvar*, regarding standing is well taken when it stated that “[s]tanding is measured based on the theory of harm and the specific relief requested.” *Donald J. Trump for Pres., Inc. v. Boockvar*, 2:20-CV-966, 2020 WL 5997680, at *37 (W.D. Pa. Oct. 10, 2020). In *Trump v. Boockvar*, the remedy sought by plaintiffs was “much broader than simply allowing [plaintiffs] to poll watch in a certain county, but [was] tied to the broader harm of vote dilution...” *Id.*

Here, as Mr. Chew and Mr. Hagerman’s affidavits show, they were specifically denied a poll waters certificate without justification. [ECF 1, ¶ 62]. [ECF 1-3]. Their claims are not broader than simply allowing them to poll watch at the Satellite Offices, distinguishable from *Trump v. Boockvar*. Accordingly, Mr. Chew and Mr. Hagerman would be appropriate parties to this litigation, in addition to the Candidates.

B. The Court Should Apply Strict Scrutiny to its Analysis.

“[The] first step in analyzing [the Candidates’] equal protection claim[] is to determine the appropriate level of scrutiny.” *Belitskus v. Pizzingrilli*, 343 F.3d 632, 643 (3d Cir. 2003) (citing *Reform Party of Allegheny County v. Allegheny County Dept. of Elections*, 174 F.3d 305, 314 (3d

Cir. 1999). “Making this determination requires an analysis of the [denial of poll watchers’] effect on [the Candidates’] rights.” *Id.*

“[A]s a practical matter, there must be substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process.” *Belitskus v. Pizzingrilli*, 343 F.3d 632, 641 (3d Cir. 2003) (quotation omitted). “Nevertheless, a state’s power to regulate elections must be exercised in a manner consistent with the Equal Protection Clause of the Fourteenth Amendment.” (quotation omitted). *Id.* at 641-642.

“[T]he Supreme Court has developed the following balancing test for use in determining the appropriate level of scrutiny:

[A reviewing court] must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests; it must also consider the extent to which those interests make it necessary to burden the plaintiff’s rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional.

Belitskus at 643 (3d Cir. 2003) (citing *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

“Pursuant to this test, the rigorousness of [the] inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens...Fourteenth Amendment rights.” *Id.* (quotation omitted). “[W]hen those rights are subjected to severe restrictions, the regulation must be narrowly drawn to advance a state interest of compelling importance.” *Id.* (quotation omitted). The “first step in applying *Anderson* requires a consideration of the burdens imposed on [the Candidates’] constitutional rights.” *Id.*

“The right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.” *Reynolds v. Sims*, 377 U.S. 533, 554 (1964). “Obviously included with the right to choose, secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted at Congressional elections.” *U.S. v. Classic*, 313 U.S. 299, 315 (1941). When these rights are threatened by actions of the state, the Supreme Court of the United States has typically relied upon strict scrutiny. *See e.g. Reynolds v. Sims*, 377 U.S. 533 (1964); *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966); *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621 (1969).

The Pennsylvania Election Code provides that,

“Each candidate for nomination or election at any election shall be entitled to appoint two watchers for each election district in which such candidate is voted for. Each political party and each political body which has nominated candidates in accordance with the provisions of this act, shall be entitled to appoint three watchers at any general, municipal or special election for each election district in which the candidates of such party or political body are to be voted for. Such watchers shall serve without expense to the county.”

Pa. Stat. Ann. tit. 25, § 2687 (West). Further, the legislative history of the Pennsylvania Election Code indicates that among other purposes, poll watchers were created to safeguard against voter fraud. Poll watchers were created “for filing fees, for poste election procedures, for election recounts, for manner of applying to vote and related matters, for returns, registers and verification, for public inspection of returns, for computation and certification, for judicial review, for opening ballot boxes to determine fraud, for recanvassing to determine fraud and correction of returns.” *Pennsylvania House Journal*, 2004 Reg. Sess. No. 59, SB 346, PN 1864.

“Watchers allowed in the polling place under the provision of [the Election Code], shall be permitted to keep a list of voters and shall be entitled to challenge any person making application to vote and to require proof of [her] qualifications as provided by [the Election Code.]” Pa. Stat.

Ann. tit. 25, § 2687 (West). [ECF 1, ¶ 58]. Watchers are permitted to “inspect the voting check list and either of the two numbered lists of voters maintained by the county board.” *Id.* [ECF 1, ¶ 59].

Here, Defendants denied the Candidates the right to have poll watchers at the Satellite Offices. [ECF 1, ¶¶ 61-64]. This is a severe restriction without a compelling interest and triggers a strict scrutiny analysis.

First, the magnitude of the Candidates’ claims is severe because the Board of Elections has denied them a statutory right under the Pennsylvania Elections Code to have poll watchers present when votes are being cast. Second, the Defendants have put forth no justification for the burden imposed by the denial of poll watchers. To the contrary, the Defendants are restricting their own legitimate government interests in ensuring the integrity of the election. Third, the legitimacy and strength of the Candidates’ and Defendants’ interests should be equally aligned by having poll watchers, rather than denying poll watchers. Fourth, there is no compelling interest to burden the Candidates’ rights.

In sum, Defendants have just as much of an interest in maintaining the integrity of this year’s election as the Candidates, if not more; however, Defendants have summarily denied the Candidates right to have poll watchers at the Satellite Office without any justification. This is evidenced by both Mr. Chew and Mr. Hagerman applying for – and being denied – watcher’s certificates because there were not available and have not yet been printed. [ECF 1-3]. There is simply no legitimate reason why Defendants have denied poll watchers at places where voting occurs. Rather, Defendants’ interests should be aligned with the Candidates in ensuring the integrity of any of the mail-in ballots being cast at the Satellite Offices.

C. Whose Rights have been Violated and How have Those Right been Violated.

In order to fully understand whose rights have been violated by Defendants' conduct and how those rights have been violated, one must scrutinize Pennsylvania's Election Code, as recently amended by the General Assembly. For the reasons set forth below, Plaintiffs, as candidates for Congressional office, as electors within Allegheny County and/or as representatives of a "political body" (Republican Party) and a "body of citizens" (electors of Allegheny County) have had their rights violated by Defendants' conduct. Plaintiffs' rights have been violated by and through Defendants' below described conduct which is in direct violation of Defendants' obligation under Pennsylvania's Election Code.

Plaintiffs, as candidates for Congressional office, as electors within Allegheny County and/or as representatives of a "political body" (Republican Party) and a "body of citizens" (electors of Allegheny County), are "entitled to have watchers at any registration, primary or election" and are also "entitled to appoint watchers ... or attorneys to represent such party or political body or body of citizens at any public session or sessions of the county board of elections, and at any computation and canvassing of returns of any primary or election ... under the provisions of this act." 25 P.S. §2650(a). As more fully described below, Defendants have failed and refused to provide authorization and/or permit watchers as required by Section 2650(a).

Further, Plaintiffs Parnell and Negron, as Congressional candidates, are "entitled to be present in person or by attorney-in-fact duly authorized, and to participate in any proceeding before any county board whenever any matters which may affect his candidacy are being heard, including any computation and canvassing of returns of any primary or election or recount of ballots or recanvass of voting machines affecting his candidacy." 25 P.S. §2650(b). As more fully described

below, Defendants have failed and refused to provide Plaintiffs Parnell and Negron and/or their attorneys-in-fact to participate as required by Section 2650(b).

“[U]pon receipt of official absentee ballots in sealed official absentee ballot envelopes as provided under this article and mail-in ballots as in sealed official mail-in ballot envelopes,” Defendants “shall safely keep the ballots in sealed or locked containers until they are to be canvassed by the county board of elections. 25 P.S. §3146.8. Defendants are obligated to canvass absentee and mail-in ballots in accordance with subsection (g).” 25 P.S. §3146.8.

Pursuant to subsection (g)(1.1) of Section 3146.8, Defendants are required to “meet no earlier than seven o’clock A.M. on election day to pre-canvass all ballots received prior to the meeting.” 25 P.S. §3146.8(g)(1.1). Defendants are further required to “provide at least forty-eight hours’ notice of a pre-canvass meeting by publicly posting a notice of a pre-canvass meeting on its publicly accessible Internet website.” 25 P.S. §3146.8(g)(1.1). At any such pre-canvassing meeting, Plaintiffs and political parties are entitled to have “[o]ne authorized representative in the room in which the absentee ballots and mail-in ballots are pre-canvassed.” 25 P.S. §3146.8(g)(1.1). Pursuant to subsection (g)(1.2) of Section 3146.8, Defendants have the same obligations and Plaintiffs have the same right as subsection (g)(1.1) when the absentee and mail-in ballots are canvassed by Defendants. 25 P.S. §3146.8(g)(1.2).

There is no factual dispute that pursuant to Section 3146.8 of the Election Code, 25 P.S. §3146.8, Defendants have received “official absentee ballots in sealed official absentee ballot envelopes” and official “mail-in ballots in sealed official mail-in ballot envelopes.” Likewise, there is no legal dispute that upon receipt, Defendants are obligated, pursuant to Section 3146.8 of the Election Code, 25 P.S. §3146.8, to “keep the ballots in sealed or locked containers until they are to be canvassed by the county board of elections.” By Defendants’ own admission, they have failed

to safely secure the absentee and mail-in ballots in sealed or locked container until the ballots were canvassed. This violation of the Election Code is one of the injuries-in-fact suffered by Plaintiffs, as Candidates for Congressional office, as electors within Allegheny County and/or as representatives of a “political body” (Republican Party) and a “body of citizens” (electors of Allegheny County).

However, even more egregious is Defendants’ refusal to comply with Sections 2650 and 3146.8 of the Election Code, as it relates to the appointment of “watchers ... or attorneys to represent such party or political body or body of citizens”, 25 P.S. §2650(b), and, “[o]ne authorized representative in the room in which the absentee ballots and mail-in ballots are pre-canvassed.” 25 P.S. §3146.8. There is no factual dispute that Defendants physically accessed, inspected and segregated the official absentee and mail-in ballots. If Defendants’ actions do not meet the definition of “canvassing,” then there is no statutory authority for the actions and such actions are in direct violation of the Election Code which requires the ballots to be kept in sealed or locked containers until the ballots were canvassed. If Defendants’ actions are deemed to be “pre-canvassing” or “canvassing” of the ballots, Defendants have violated the Election Code by failing to provide advanced public notice; by refusing to permit Plaintiffs to have authorized representatives present to observe Defendants’ actions; and, by refusing to permit Plaintiffs or Plaintiffs’ attorneys to be present to observe Defendants’ actions. 25 P.S. §3146.8(g)(1.1), 25 P.S. §3146.8(g)(1.2) and, 25 P.S. §2650(b).

For the reasons articulated above, Plaintiffs, as candidates for Congressional office, as electors within Allegheny County and/or as representatives of a “political body” (Republican Party) and a “body of citizens” (electors of Allegheny County) have had their rights violated by Defendants’ conduct. Plaintiffs’ rights have been violated by and through Defendants’ above-

described conduct which is in direct violation of Defendants' obligation under Pennsylvania's Election Code.

Along with this Brief, Plaintiffs have file emails in response to Defendants' public meeting related to the various actions of Defendants as described herein. Said emails and there content are incorporated herein.

D. The Defendants' Actions Violate Plaintiffs' Equal Protection Rights.

The Equal Protection Clause requires governments to act in a rational and non-arbitrary fashion. [ECF 1, ¶ 88]. The Equal Protection Clause prevents a particular class of individuals from being denied the ability engage in an activity that other similarly situated individuals are allowed to engage in. [ECF 1, ¶ 89]. Defendants' conduct with regard to poll watchers violates the Equal Protection Clause of the 14th Amendment to the United States Constitution. [ECF 1, ¶ 90].

The Court's equal protection analysis in *Trump v. Boockvar*, *supra*, is extremely thorough. As the Court pointed out, the equal protection claims in *Trump v. Boockvar*, ultimately failed because "there [was], in fact, no differential treatment [t]here—a necessary predicate for an equal-protection claim." *Donald J. Trump for Pres., Inc. v. Boockvar*, 2:20-CV-966, 2020 WL 5997680, at *41 (W.D. Pa. Oct. 10, 2020).

In the instant case, there is differential treatment between the Satellite Offices – in effect polling places – and traditional voting precincts. The differential treatment is occurring specifically in Allegheny County and is comparable between two distinct locations. If you cast your vote at your traditional polling place, Pennsylvania law applies. If you cast your vote at a Satellite Office, apparently it does not. Here, the Candidates clearly articulated the claims in their Complaint – namely, that in every other municipality in Allegheny County they will be able to have poll

watchers present, but they cannot have poll watchers present at the Satellite Offices, where votes are clearly being cast. Not only this, but the general confidence of the electorate has been eroded.

E. The Plaintiffs' Specific Relief Requested Will Not Harm Defendants.

1. For the Court to determine the validity of the ballots already cast at the Satellite Offices in Allegheny County; and,

2. Declaratory Judgment that the actions of the Defendants, including, but not limited to the denial of poll watchers, watchers and/or other representatives at the Offices, Satellite Offices and Polls in Allegheny County is unconstitutional; and,

3. Declaratory Judgment that the rights of the voters of Allegheny County have been violated by Defendants' actions; and,

4. A Temporary Restraining Order to enjoin Defendants from engaging in any such future violations and declaring all affected ballots and the replacement ballots as "challenged" (without requiring funds to be deposited by Plaintiffs) and treated as "provisional ballots" under the Election Code of the Commonwealth; and,

5. A Permanent Injunction to prohibit Defendants from denying poll watchers, watchers and/or other representatives at the Offices, Satellite Offices and Polls in Allegheny County; and,

6. Order Defendants to immediately issue watchers certificates to the individuals listed below:

For Candidate Parnell:	Robert Howard
	Jason Singer
	Kim Gatesman
	Barbara Heinz
	Dawn Davies
	Amanda Kelly
	Elaine Gorski
	Ann Murphy

Ann Porter
Quinn Ritchie

For Candidate Negron: Rachael Armstrong
Lynne Ruffing
Eric Williams
Barb Lloyd
Jim Means
Sue Means
Frank Huchrowski
Beth Conway
Larry Conway

7. Order Defendants to properly secure all mail-in ballots as required by law, and to prevent continued violations of the Election Code by Defendants as described herein; and,

8. An award of costs and expenses, including reasonable attorneys' fees, under 42 U.S.C. §§ 1983 and 1988; and,

9. Such other relief as this Court deems appropriate.

Respectfully Submitted,

**DILLON, MCCANDLESS, KING,
COULTER & GRAHAM, LLP**

*Special Counsel for the Amistad Project of
the Thomas More Society*

Dated: October 21, 2020

By: /s/ Thomas W. King, III
Thomas W. King, III
Thomas E. Breth
Jordan P. Shuber

*Counsel for Plaintiffs, Sean Parnell and Luke
Negron*

Voye, David

From: jwallace <jwallace@egmcentral.com>
Sent: Friday, September 11, 2020 4:11 PM
To: # Board of Elections
Subject: Elections Board to Consider Proposal for Additional Offices

Warning! This email was sent from an external source. Please be sure you recognize the sender and use caution when clicking on links and/or opening attachments.

They say they are doing this because "voters remain concerned about COVID". So why not just MAIL in your ballot if you are fearful of being around other people? If you're not one of the fearful then VOTE IN PERSON ON ELECTION DAY! This just opens up the opportunity for fraud.

Their press release states

<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fj.mp%2F3bPZBef&data=02%7C01%7CDavid.Voye%40AlleghenyCounty.US%7Ccb3758a594504b952f7808d8568ec142%7Ce0273d12e4cb4eb19f708bba16fb968d%7C0%7C1%7C637354518415996426&sdata=KQNVOjEmkWdV%2FfRzRsEsXLtWD%2FcZNPYi3JIw1IYwlGI%3D&reserved=0>

"Each office will have access to the Statewide Uniform Registry of Electors (SURE) system and will be staffed by county employees."

Having "access" to the SURE system does not prevent people from committing voter fraud. Will the SURE system be checked and updated with each ballot returned? We know the answer is NO. Every additional location and every additional day exponentially increases the chances of an individual submitting multiple ballots.

This last-minute change to our election process would only invite litigation that ultimately would be a financial drain on the citizens of Allegheny County.

I urge you to prevent this terrible idea from being implemented.

Thank you.

Jeff Wallace

Voye, David

From: erb990 <erb990@aol.com>
Sent: Friday, September 11, 2020 4:25 PM
To: # Board of Elections
Subject: Election

Warning! This email was sent from an external source. Please be sure you recognize the sender and use caution when clicking on links and/or opening attachments.

I am responding to the way to vote this year. There is no reason we can not vote as we have for over hundreds of years with the same polls opened pre covid. If there is a concern as for elderly, do as you do with all other huge stores do, 1 hr or so for them, then the rest of time as usual. For anyone to try to make the case that it is dangerous to vote in person, is lying to everyone, these so called peaceful protest, no problems, walmart, lowes, target, giant eagle etc, same as voting, lining up for getting tablets for schools, on and on. There is no reason that we can not vote as we normally do, to say any different is a complete lie. If you would really think about it it would make sense to keep polls open longer so they are not that crowded. I have my right to vote in person at a location that is not overcrowded by eliminated polling places. Don't violate my rights.

Eric Black
Moon township

Sent from Samsung Galaxy smartphone.

Voye, David

From: Grace Cameron <grccmrn@gmail.com>
Sent: Saturday, September 12, 2020 12:48 PM
To: # Board of Elections
Subject: Public Comment Re: Elections Board to Consider Proposal for Additional Offices

To the Allegheny County Elections Board:

I am writing in response to the memo announcement titled: Elections Board to Consider Proposal for Additional Offices. I would like my to voice my concerns with regard to voting integrity.

First, I commend your efforts to adopt greater health and safety measures in response to CV19. However, I remain concerned about fraudulent voting. What measures is the Board taking to ensure 1) every vote is a verifiable resident of Allegheny County, 2) individual persons votes are counted only once, 3) that there is an auditable chain of custody for each vote, 4) fraudulent or counterfeit mail-in ballots will be detected and not counted, and 5) that voting results will not be manipulated, especially through voting machines, for which several security engineers have discovered insecurities and vulnerabilities to hacking.

Thank you,
Grace Cameron

Voye, David

From: Corinne Price <corinne.e.price@gmail.com>
Sent: Tuesday, September 15, 2020 4:29 AM
To: # Board of Elections
Subject: Thursday, September 17, 2020 - 2 pm Meeting of the Board of Elections

Warning! This email was sent from an external source. Please be sure you recognize the sender and use caution when clicking on links and/or opening attachments.

Dear Allegheny County Board of Elections:

I have a number of questions that I hope can be addressed and read into the record at the Thursday, September 17, 2020 - 2 pm meeting of the Board of Elections.

1) Will there be a new policy to begin counting ballots before Election Day in light of the increased volume due to COVID? If so, starting when?

2) How will mail-in ballots will be counted? Will they be counted by machine or by hand or both? If by hand, who will count them? Will extra people be needed for the expected increase due to COVID? How will these people be selected? Will a person from each party examine and jointly tally each vote?

I think it's important for a representative from each party to jointly tally each vote if they are to be counted by hand.

3) Will everyone who requests a mail-in ballot be notified of the option to have their ballot tracked to receive confirmation that it has been received?

I think it's important for everyone to be aware that this is an option.

4) Can voters also receive confirmation that their ballot has been either tallied or rejected? If a ballot has been rejected due to a missing signature, for example, can the voter go to the Board of Elections to fix it? When ballots are rejected due to a signature anomaly, for example, will these be open to challenge?

I think this will be very important in this pandemic, when mail-in ballots are so controversial and yet so consequential. The number of rejected votes could be greater than the margin of victory.

I am concerned that the politically motivated and/or arbitrary rejection of a small percentage of mail-in votes in key zip codes in a key state like PA could swing the election unless such safeguards are put in place.

There is no information about rejected ballots or challenges to them in the FAQ section of the Board of Elections website, despite my email to David Voye, Division Manager, asking that answers to these questions be added. I hope this issue will be addressed.

5) Is there any history of the theft of ballot deposit boxes? Are there any safeguards to prevent this?

I keep remembering with dread the last scene of The Plot Against America. The theft of ballot deposit boxes or their votes in a few key zip codes could swing the election.

I hope you will address these questions in the 9/17/20 meeting and add the answers to them to the FAQ website section.

Kind regards,

Corinne Price

Voye, David

From: Voye, David
Sent: Monday, September 14, 2020 6:07 PM
To: mahowco1@zoominternet.net; # Board of Elections
Subject: RE: Comments and questions for BOE September 2020

Bob,

Thanks for your email. I received your comments and questions.

From: mahowco1@zoominternet.net <mahowco1@zoominternet.net>
Sent: Monday, September 14, 2020 5:47 PM
To: # Board of Elections <BOE@AlleghenyCounty.us>
Subject: Comments and questions for BOE September 2020

Warning: This email was sent from an external source. Please be sure you recognize the sender and use caution when clicking on links and/or opening attachments.

What controls are in place to make sure that every ballot received by mail or over the counter makes it to the Northside Warehouse, is adequately protected, and counted on Election Day? What type of controls and audits are in place so that we can assure voters their vote is counted?

Will poll watchers at the voting locations be able to verify that the scanners are zeroed out prior to ballots being entered?

Will the scanners keep a running total of the number of ballots cast? If so, what measures will be taken to verify that the number of ballots cast agrees to the number of voters checked in?

At the end of voting will the scanners produce a tape of the total votes cast and precinct election results and will those results be posted at the precinct?

What will voters be told to do if they bring their mail-in or absentee ballot to their polling location?

Thank you for your service and responses.

Please email back to confirm that you received my comments and questions.

Thank you.

Bob Howard, 229 Seasons Drive, Wexford, PA

Marshall Township

Voye, David

From: bahh@zoominternet.net
Sent: Wednesday, September 16, 2020 12:35 PM
To: # Board of Elections
Subject: Comment for meeting Thursday September 17, 2020

Warning! This email was sent from an external source. Please be sure you recognize the sender and use caution when clicking on links and/or opening attachments.

Dear Board of Elections, My comment on setting up 6 remote locations for voting: 1) At these remote locations will the following controls be in place to ensure the integrity of the Election? 2) Will there be Majority and Minority Inspectors at each location? 3) Will there be Poll Watchers at each location? 4) What controls for totals will be in place for each Collection point each day and will these totals be reviewed & approved by the Majority and Minority Inspectors? 5) What safeguards are in place for the paper ballots that have been scanned? Will they be taken to a secure location? 6) Can Voters turn in their Mail-in-Ballots to be spoiled, then Vote in person? 7) How will these scanned Ballots be secured separately from the un-scanned Ballots that are being mailed in daily? Thank you for giving me the opportunity to ask these questions. Sincerely, Barbara Heintz, Bradford Woods, PA

Voye, David

From: Helen M. Hazi <hmhazi@verizon.net>
Sent: Wednesday, September 16, 2020 1:14 PM
To: # Board of Elections; Dave Buchewicz
Subject: Ballot drop off site welcome

Warning! This email was sent from an external source. Please be sure you recognize the sender and use caution when clicking on links and/or opening attachments.

The drop off site of the South Park Ice rink is greatly welcome. However, those of us who have already requested ballots need reassurance that they will come out in time despite the delay caused by the court case. When will this come out? If not soon then we need updates every 2 weeks to keep us in the loop and less anxious!

helen

Helen M. Hazi, Ph.D.
724-348-7009 (Pgh land line for phone calls)
hmhazi@verizon.net (Use for FaceTime/Duo/ZOOM)

My sister's advocate and once an avid learner curious about most things in the universe, but now knowing too much.....because NOW I am on Vigil Day162 in a pandemic.

"If not this, then what? If not now, then when? If not me, then who?"--Helen M. Hazi, activist, June 4, 2020

Voye, David

From: Fyock, Debra R <drf4@pitt.edu>
Sent: Wednesday, September 16, 2020 1:40 PM
To: # Board of Elections
Subject: Comment to the Board of Elections 09/16/2020

Warning! This email was sent from an external source. Please be sure you recognize the sender and use caution when clicking on links and/or opening attachments.

Dear Board of Elections,

Everyday I receive emails from a variety of organizations, giving me advice and imploring me to make a plan to vote. I receive daily calls from other organizations asking me if I have a plan to vote and offering advice. I just received a postcard from the Postal Service with their guidance to help me vote, and assurance that the mail would not let me down. I have seen local Pittsburgh organization's plans for billboards, mailers, signage on buses, all with the same purpose: to alert me, the public, as to how to go about voting in the General Election. So many people reaching out to me to make sure that I know how to make my voice heard this November 3rd.

And it is clear that this is necessary. Recently, when making calls for various candidates, I have spent almost as much time giving information about how to vote in Allegheny County, as I have answering questions about the candidates. On social media, not a day passes without many voting related questions being asked. In the past year, almost everything about voting in Allegheny County has changed. People simply do not know how to cast their ballot. There is NO reason that, less than 50 days before the election, our voters should not know how to vote.

Board Of Elections (BOE), Allegheny County Elections division: where are the phone calls, the emails, the mailers, the tv and social media spots, the billboards, the signage on buses, informing the public about where and how they can get accurate information to vote in this election.

It seems as if you are waiting for us to find you. If the public wants to get information about voting, they must first find and plow through the elections division website, or they can apply for the informative bi-weekly e-newsletter, if they know where to subscribe. Bethany Hallam offers a weekly Voter info-session for those who have heard of it. 3 resources.

I am concerned and frustrated as I hear from people who do NOT know how to vote in this election, and who do not know where to get accurate information on how to vote in this election.

BOE, Allegheny County Elections division- by all means possible, as soon as possible, you need to get the word out that YOU are THE source for trustworthy information about How To Vote in Allegheny County.

I look forward to seeing your broad based, active engagement with the public.

Thank you,

Debra Fyock
15210

Voye, David

From: Ron Bandes <RBandes@c9n.com>
Sent: Sunday, October 18, 2020 6:59 PM
To: # Board of Elections; Hallam, Bethany; DeMarco, Samuel; Executive
Cc: Voye, David; Harhut, Chet
Subject: Public Comment for 10/20/2020 Bd of Elections meeting

Warning! This email was sent from an external source. Please be sure you recognize the sender and use caution when clicking on links and/or opening attachments.

Dear Board of Elections members:

Many voters will be appearing at their assigned polling places on Election Day to cast Provisional Ballots due to problems with their absentee/mail-in ballots. Part of the procedure for processing a provisional ballot at the polls is that a pollworker (usually Judge of Election) must indicate on the Provisional Ballot Envelope (see the attachment) the reason why the voter requested a provisional ballot. None of the reasons on the Provisional Ballot Envelope are applicable to problems with absentee/mail-in ballots. I understand from the Elections Division Manager that the same Provisional Ballot Envelopes used in prior years will be used again in 2020.

VoteAllegheny believes that the best course of action is for the County to print stickers that can be applied to the Provisional Ballot Envelopes, and these stickers would provide pollworkers with two more reasons for a provisional ballot to be cast. The two additional reasons are:

- 1) Voter never received the absentee/mail-in ballot that was sent by the Elections Division.
- 2) Other problem with absentee/mail-in ballot [including lost ballot, made error on ballot, forgot to bring ballot to polling place, forgot to bring declaration envelope to polling place]

These two reasons should not be combined into one. Keeping them separate allows the County to compile statistics on problems with delivering absentee/mail-in ballots to voters.

Sincerely,
Ron Bandes
President, VoteAllegheny

Voye, David

From: Ron Bandes <RBandes@c9n.com>
Sent: Monday, October 19, 2020 2:24 AM
To: # Board of Elections; Hallam, Bethany; DeMarco, Samuel; Executive
Cc: Voye, David; Harhut, Chet
Subject: Public Comment for BoE meeting: Detection of spoiling one ballot while casting another

Warning! This email was sent from an external source. Please be sure you recognize the sender and use caution when clicking on links and/or opening attachments.

Almost 29,000 incorrect absentee/mail-in ballots were sent to voters who subsequently were sent a second, corrected ballot. We know that the Elections Division has said they will segregate both ballots from these voters to ensure that only one of them (preferably the corrected ballot) is cast. This will be done by detecting two declaration envelopes with the same barcode and ensuring that only one of them is counted.

However, there is another scenario which requires a different detection mechanism in order to preclude double voting by any of these voters. A voter could return one absentee/mail-in ballot, either by mail or in person (either way, using the declaration envelope with barcode), and bring the second absentee/mail-in ballot and declaration envelope to their polling place and have the ballot spoiled. Even if the pollworker follows instructions and has the voter sign an affidavit stating that s/he has not submitted a mail-in ballot, and if the voter proceeds with spoiling the mail-in ballot, the voter will then cast a regular ballot, which does not use a declaration envelope. Counting one of these voters' mail-in ballots must wait until after the polls close and the Election District records have been transferred to the Return Board. In this way, a mail-in ballot from one of these voters can be checked against the Election District records to ensure that the voter did not cast a regular ballot. If the voter did cast a regular ballot, the mail-in ballot must not be counted and the voter should be prosecuted.

Does the Elections Division have such a procedure in place to preclude this type of double voting?

Sincerely,
Ron Bandes
President, VoteAllegheny

Voye, David

From: Juliet Zavon <julietzavon@gmail.com>
Sent: Monday, October 19, 2020 10:34 AM
To: # Board of Elections
Subject: public comment for 10/20/20 BOE meeting

Warning! This email was sent from an external source. Please be sure you recognize the sender and use caution when clicking on links and/or opening attachments.

Dear Board Members,

Below please find my public comment to be entered into the record of the BOE meeting. What are the plans/schedule for a response?

Thank you,
Julie Zavon
1318 Malvern Ave.
Pittsburgh, PA 15217

Two Issues:

(1) People calling the Elections Division get a busy signal. On rare occasions when they can leave a message, calls are not returned, leaving voter questions unanswered. This same problem occurred in the weeks leading up to the Primary. Planning for staffing needs is clearly inadequate. This calls into question Elections Division operations at a fundamental level. What methods, outside reviews, or other procedures will be used to ensure this doesn't happen again?

(2) The County learned that incorrect ballots had been sent out from voters themselves who called in to say they'd received the wrong ballot. Incorrect ballots were also sent out in the June primary. Clearly there is a systemic problem in quality control on accuracy of out-going ballots. What changes are planned to prevent this from happening a third time? For comparison, Amazon delivers 20 million packages/day. How many orders are filled incorrectly?