

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

JOSEPH DRENTH <i>and</i> NATIONAL	:	
FEDERATION OF THE BLIND OF	:	
PENNSYLVANIA,	:	
Plaintiffs	:	No. 1:20-0829
	:	
v.	:	Judge Wilson
	:	
KATHY BOOCKVAR <i>and</i>	:	Electronically Filed Document
DEPARTMENT OF STATE OF THE	:	
COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
Defendants	:	<i>Complaint Filed 05/21/20</i>

DEFENDANTS' ANSWER TO PLAINTIFFS'
STATEMENT OF MATERIAL FACTS

Kathy Boockvar, Secretary of the Commonwealth in her official capacity, and the Department of State of Pennsylvania (“Defendants”), by and through their undersigned counsel, hereby submit this Answer to Plaintiffs’ Statement of Material Facts.

1. ADMITTED.
2. ADMITTED.
3. ADMITTED.
4. ADMITTED.
5. ADMITTED.
6. ADMITTED.
7. ADMITTED.

8. ADMITTED.

9. ADMITTED.

10. DENIED. The allegations of this Paragraph constitute legal conclusions to which no response is required. As such, this statement of “fact” should be stricken. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Courts have the discretion to either strike a statement for non-compliance with the local rule, or deem the opposing statement admitted. *See, e.g., Armenti v. Tomalis*, 2016 WL 6493483, at *1-2 (M.D. Pa. Nov. 2, 2016). Here, the legal conclusion set forth in this Paragraph should be stricken. By way of further response, it is DENIED that the Defendants are solely responsible for administering Pennsylvania’s election scheme. The powers and duties of the Defendants are delineated in the Pennsylvania Election Code. *See, e.g., 25 Pa. Stat. Ann. § 2621.*

11. DENIED. The allegations of this Paragraph constitute legal conclusions to which no response is required. As such, this statement of “fact” should be stricken. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1

(M.D. Pa. May, 12, 2009). Courts have the discretion to either strike a statement for non-compliance with the local rule, or deem the opposing statement admitted. *See, e.g., Armenti v. Tomalis*, 2016 WL 6493483, at *1-2 (M.D. Pa. Nov. 2, 2016). Here, the legal conclusion set forth in this Paragraph should be stricken. By way of further response, it is DENIED that the Defendants are solely and generally responsible for elections in Pennsylvania. The powers and duties of the Defendants are delineated in the Pennsylvania Election Code. *See, e.g., 25 Pa. Stat. Ann. § 2621.*

12. DENIED. The allegations of this Paragraph constitute legal conclusions to which no response is required. As such, this statement of “fact” should be stricken. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Courts have the discretion to either strike a statement for non-compliance with the local rule, or deem the opposing statement admitted. *See, e.g., Armenti v. Tomalis*, 2016 WL 6493483, at *1-2 (M.D. Pa. Nov. 2, 2016). Here, the legal conclusion set forth in this Paragraph should be stricken. By way of further response, the Election Code speaks for itself and Plaintiffs’ characterizations regarding the law are DENIED. Defendants specifically DENY Plaintiffs’ attempt to minimize the role of County Boards of Elections in election

administration. The powers and duties of the Defendants are delineated in the Pennsylvania Election Code. *See, e.g.*, 25 Pa. Stat. Ann. § 2621.

13. ADMITTED, with the clarification that the Election Code delegates to the Defendants certain specific authority with respect to voting systems, including the authority to examine and approve voting systems for use in the Commonwealth and to revoke approval when necessary. *See* 25 Pa. Stat. Ann. § 3031.5.

14. ADMITTED in part, DENIED in part. It is ADMITTED that the DOS receives federal financial assistance. The allegation that the Defendants “ensure that Pennsylvania’s voting systems and services are accessible” is a legal conclusion to which no response is required, and it should be stricken. The powers and duties of the Defendants are delineated in the Pennsylvania Election Code. *See, e.g.*, 25 Pa. Stat. Ann. § 2621. The Election Code delegates to the Defendants certain specific authority with respect to voting systems. *See* 25 Pa. Stat. Ann. § 3031.5. It is DENIED that the citations to the record support that Defendants are responsible for ensuring that “voting systems *and services*” are accessible. Moreover, the documents reflect that the funds were requested for security purposes, as well as for use in facilitating accessibility.

15. ADMITTED.

16. ADMITTED, with the clarification that voters must submit a timely application for a mail-in ballot to be eligible to vote by mail-in ballot. 25 Pa. Stat. Ann. § 3150.12a(a).

17. ADMITTED, with the clarification that voters must submit a timely application for an absentee ballot to be eligible to vote by absentee ballot. 25 Pa. Stat. Ann. § 3146.2a(a).

18. DENIED. The allegations of this Paragraph constitute legal conclusions to which no response is required. As such, this statement of “fact” should be stricken. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Courts have the discretion to either strike a statement for non-compliance with the local rule, or deem the opposing statement admitted. *See, e.g., Armenti v. Tomalis*, 2016 WL 6493483, at *1-2 (M.D. Pa. Nov. 2, 2016). Here, the legal conclusion set forth in this Paragraph should be stricken. By way of further response, certain voters qualify for emergency absentee ballots that may not otherwise qualify for a mail-in ballot.

19. ADMITTED.

20. ADMITTED.

21. DENIED. Plaintiffs' citations to the record do not support the propositions set forth in this Paragraph and fail to create a genuine dispute of material fact. As such, this "fact" should be stricken. A proper statement of facts should enable "the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record." *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). "Judges are not like pigs, hunting for truffles buried in' the record." *Doebler's Pennsylvania Hybrids, Inc. v. Doebler*, 442 F.3d 812, 820 (3d Cir. 2006), *as amended* (May 5, 2006). Courts have the discretion to either strike a statement for non-compliance with the local rule, or deem the opposing statement admitted. *See, e.g., Armenti v. Tomalis*, 2016 WL 6493483, at *1-2 (M.D. Pa. Nov. 2, 2016). Here, the proposition set forth is not supported by the record and should be stricken. By way of further response, while it is ADMITTED that voters are instructed to take the steps listed in this Paragraph, but it is DENIED that the record supports that votes will not be counted if they fail to do any one of the things listed, such as seal their envelope.

22. DENIED. Plaintiffs' citations to the record do not support the propositions set forth in this Paragraph and fail to create a genuine dispute of material fact. As such, this "fact" should be stricken. A proper statement of facts should enable "the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record." *Pinegar v.*

Shinseki, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). “Judges are not like pigs, hunting for truffles buried in’ the record.” *Doebler’s Pennsylvania Hybrids, Inc. v. Doebler*, 442 F.3d 812, 820 (3d Cir. 2006), *as amended* (May 5, 2006). Courts have the discretion to either strike a statement for non-compliance with the local rule, or deem the opposing statement admitted. *See, e.g., Armenti v. Tomalis*, 2016 WL 6493483, at *1-2 (M.D. Pa. Nov. 2, 2016). Here, the proposition set forth is not supported by the record and should be stricken. By way of further response, assistive technology exists that blind persons can use, including application on cell phones, to read, and assist them in signing, paper documents. *See Drenth Tr.*, pp. 11-16. Plaintiff Drenth admitted that he privately and independently reviewed, marked, assembled, signed and returned his mail-in ballot without relying on assistance from another person. *Drenth Tr.*, 56(18-20); *Drenth Tr.*, 61(6-13), 63(6-13). To the extent that his declaration states otherwise—it is a “sham affidavit.” *Jiminez v. All Am. Rathskeller, Inc.*, 503 F.3d 247, 253 (3d Cir. 2007) (“A sham affidavit is a contradictory affidavit that indicates only that the affiant cannot maintain a consistent story or is willing to offer a statement solely for the purpose of defeating summary judgment. A sham affidavit cannot raise a genuine issue of fact because it is merely a variance from earlier deposition testimony, and therefore no reasonable jury could rely on it to find for the nonmovant.”). The declaration of Lynn Heitz does not create a dispute of fact because she admitted at the hearing on

the Temporary Restraining Order that she did not apply for a mail-in ballot, meaning that she has no first-hand knowledge of the process, and hearsay evidence regarding what she heard about the process is inadmissible. TRO Tr., 31(13-18). Both Mark Senk and Rebecca Weber indicate that, ultimately, they privately and independently marked their ballots, and only needed assistance with mailing their completed ballot, because of confusion with the printout PDF envelope. *See* Weber Dec., ¶¶ 19, 24; Senk Dec., ¶¶ 11, 26. Thus, Plaintiffs' own citations reflect that blind persons can privately and independently mark, assemble, and sign their paper ballots, and return their ballot. The only point at which any person requested assistance from another was for mailing the ballot that had already been cast (Plaintiffs admit that a vote is cast by marking the ballot, *see* SMF, Doc. 49-1, ¶ 21(a)). Notwithstanding the foregoing, there is no controversy with regard to these facts because, unlike the primary, there will be a Remote Ballot Marking System in place for the 2020 General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See* Marks Tr., 113(17-22), 117-19. Moreover, DOS will be issuing guidance to the counties directing them to mail the secrecy envelope and the return envelopes addressed to the respective voter's County Board of Elections at the same time that their ballot is delivered electronically. The Defendants will direct that the return envelope is larger than the secrecy envelope so that the envelopes are distinguishable, and the

electronic instruction will indicate as such. Doc. 51-3, ¶ 20. Defendants will also issue a guidance to the counties in advance of the 2020 General Election requesting the counties to accept the return envelope as long as a signature appears anywhere on the envelope. Marks Declaration, ¶ 21. The record reflects that there is no controversy, or genuine dispute of material fact, regarding accessibility moving forward.

23. ADMITTED in part, DENIED in part. It is ADMITTED that Exhibit 17 is a true and correct copy of an email from W. Murren. The document cited in this Paragraph speaks for itself and Plaintiffs' characterizations are DENIED. The legal conclusion that the mail-in voting program is "inaccessible" is DENIED, and should be stricken. By way of further response, there is no genuine dispute of material fact. This "fact" is not material. There is no controversy with regard to these facts because, unlike the primary, there will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See Marks Tr.*, 113(17-22), 117-19. Moreover, the DOS will be issuing guidance to the counties directing them to mail the secrecy envelope and the return envelopes addressed to the respective voter's County Board of Elections at the same time that their ballot is delivered electronically. The Defendants will direct that the return envelope is larger than the secrecy envelope so that the envelopes are distinguishable, and the

electronic instruction will indicate as such. Doc. 51-3, ¶ 20. Defendants will also issue a guidance to the counties in advance of the General Election directing the counties to accept the return envelope as long as a signature appears anywhere on the envelope. Marks Declaration, ¶ 21. The record reflects that there is no controversy.

24. DENIED. The citation to the record does not reflect the testimony elicited. Mr. Marks clarified that blind voters can vote privately and independently by absentee and mail-in ballot with assistive technology. Marks Tr., 228-29. Indeed, assistive technology exists that blind persons can use, including applications on cell phones, to read, and assist them in signing, paper documents. *See Drenth Tr.*, pp. 11-16.

25. DENIED. The citations to the record do not support the propositions set forth in this Paragraph. As such, this “fact” should be stricken. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). “Judges are not like pigs, hunting for truffles buried in’ the record.” *Doebler’s Pennsylvania Hybrids, Inc. v. Doebler*, 442 F.3d 812, 820 (3d Cir. 2006), *as amended* (May 5, 2006). Courts have the discretion to either strike a statement for non-compliance with the local rule, or deem the opposing statement admitted. *See, e.g., Armenti v.*

Tomalis, 2016 WL 6493483, at *1-2 (M.D. Pa. Nov. 2, 2016). Here, the proposition set forth is not supported by the record and should be stricken. Assistive technology exists that blind persons can use, including application on cell phones, to read, and assist them in signing, paper documents. *See Drenth Tr.*, pp. 11-16. Plaintiff Drenth admitted that he privately and independently reviewed, marked, assembled, signed and returned his mail-in ballot without relying on assistance from another person. *Drenth Tr.*, 56(18-20); *Drenth Tr.*, 61(6-13), 63(6-13). To the extent that his declaration states otherwise—it is a “sham affidavit.” *Jiminez v. All Am. Rathskeller, Inc.*, 503 F.3d 247, 253 (3d Cir. 2007) (“A sham affidavit is a contradictory affidavit that indicates only that the affiant cannot maintain a consistent story or is willing to offer a statement solely for the purpose of defeating summary judgment. A sham affidavit cannot raise a genuine issue of fact because it is merely a variance from earlier deposition testimony, and therefore no reasonable jury could rely on it to find for the nonmovant.”). The declaration of Lynn Heitz does not create a dispute of fact because she admitted at the hearing on the Temporary Restraining Order that she did not apply for a mail-in ballot, meaning that she has no first-hand knowledge of the process, and hearsay evidence regarding what she heard about the process is inadmissible. *TRO Tr.*, 31(13-18). Both Mark Senk and Rebecca Weber indicate that, ultimately, they privately and independently marked their ballots, and only needed assistance with mailing their

completed ballot, because of confusion with the printout PDF envelope. *See* Weber Dec., ¶¶ 19, 24; Senk Dec., ¶¶ 11, 26. Thus, Plaintiffs' own citations reflect that blind persons can privately and independently mark, assemble, and sign their paper ballots, and return their ballot. The only point at which any person requested assistance from another was for mailing the ballot that had already been cast (Plaintiffs admit that a vote is cast by marking the ballot, *see* SMF, Doc. 49-1, ¶ 21(a)). Notwithstanding the foregoing, there is no controversy with regard to these facts because, unlike the primary, there will be a Remote Ballot Marking System in place for the 2020 General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See* Marks Tr., 113(17-22), 117-19. Moreover, the DOS will be issuing guidance to the counties directing them to mail the secrecy envelope and the return envelopes addressed to the respective voter's County Board of Elections at the same time that their ballot is delivered electronically. The Defendants will direct that the return envelope is larger than the secrecy envelope so that the envelopes are distinguishable, and the electronic instruction will indicate as such. Doc. 51-3, ¶ 20. Defendants will also issue a directive to the counties in advance of the 2020 General Election requesting the counties to accept the return envelope as long as a signature appears anywhere on the envelope. Marks Declaration, ¶ 21. Furthermore, Mr. Marks, who is not an expert in accessibility, clarified that blind voters can vote privately and

independently by absentee and mail-in ballot with assistive technology. Marks Tr., 228-29. The record reflects that there is no controversy, or genuine dispute of material fact, regarding accessibility moving forward.

26. DENIED. The citations do the record to not support the propositions set forth in this Paragraph. As such, this “fact” should be stricken. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). “Judges are not like pigs, hunting for truffles buried in’ the record.” *Doebler’s Pennsylvania Hybrids, Inc. v. Doeblner*, 442 F.3d 812, 820 (3d Cir. 2006), *as amended* (May 5, 2006). Courts have the discretion to either strike a statement for non-compliance with the local rule, or deem the opposing statement admitted. *See, e.g., Armenti v. Tomalis*, 2016 WL 6493483, at *1-2 (M.D. Pa. Nov. 2, 2016). Here, the proposition set forth is not supported by the record and should be stricken. Assistive technology exists that blind persons can use, including application on cell phones, to read, and assist them in signing, paper documents. *See Drenth Tr.*, pp. 11-16. Plaintiff Drenth admitted that he privately and independently reviewed, marked, assembled, signed and returned his mail-in ballot without relying on assistance from another person. *Drenth Tr.*, 56(18-20); *Drenth Tr.*, 61(6-13), 63(6-13). To the extent that his declaration states otherwise—it is a “sham affidavit.”

Jiminez v. All Am. Rathskeller, Inc., 503 F.3d 247, 253 (3d Cir. 2007) (“A sham affidavit is a contradictory affidavit that indicates only that the affiant cannot maintain a consistent story or is willing to offer a statement solely for the purpose of defeating summary judgment. A sham affidavit cannot raise a genuine issue of fact because it is merely a variance from earlier deposition testimony, and therefore no reasonable jury could rely on it to find for the nonmovant.”). The declaration of Lynn Heitz does not create a dispute of fact because she admitted at the hearing on the Temporary Restraining Order that she did not apply for a mail-in ballot, meaning that she has no first-hand knowledge of the process, and hearsay evidence regarding what she heard about the process is inadmissible. TRO Tr., 31(13-18). Both Mark Senk and Rebecca Weber indicate that, ultimately, they privately and independently marked their ballots, and only needed assistance with mailing their completed ballot, because of confusion with the printout PDF envelope. *See* Weber Dec., ¶¶ 19, 24; Senk Dec., ¶¶ 11, 26. Thus, Plaintiffs’ own citations reflect that blind persons can privately and independently mark, assemble, and sign their paper ballots, and return their ballot. The only point at which any person requested assistance from another was for mailing the ballot that had already been cast (Plaintiffs admit that a vote is cast by marking the ballot, *see* SMF, Doc. 49-1, ¶ 21(a)). Notwithstanding the foregoing, there is no controversy with regard to these facts because, unlike the primary, there will be a Remote Ballot Marking System in

place for the 2020 General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See Marks Tr.*, 113(17-22), 117-19. Moreover, the DOS will be issuing guidance to the counties directing them to mail the secrecy envelope and the return envelopes addressed to the respective voter's County Board of Elections at the same time that their ballot is delivered electronically. The Defendants will direct that the return envelope is larger than the secrecy envelope so that the envelopes are distinguishable, and the electronic instruction will indicate as such. Doc. 51-3, ¶ 20. Defendants will also issue a directive to the counties in advance of the 2020 General Election requesting the counties to accept the return envelope as long as a signature appears anywhere on the envelope. Marks Declaration, ¶ 21. Furthermore, Mr. Marks, who is not an expert in accessibility, clarified that blind voters can vote privately and independently by absentee and mail-in ballot with assistive technology. Marks Tr., 228-29. The record reflects that there is no controversy, or genuine dispute of material fact, regarding accessibility moving forward.

27. DENIED. The citations to the record do not support the propositions set forth in this Paragraph. As such, this "fact" should be stricken. A proper statement of facts should enable "the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record." *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). "Judges

are not like pigs, hunting for truffles buried in' the record." *Doebler's Pennsylvania Hybrids, Inc. v. Doebler*, 442 F.3d 812, 820 (3d Cir. 2006), *as amended* (May 5, 2006). Courts have the discretion to either strike a statement for non-compliance with the local rule, or deem the opposing statement admitted. *See, e.g., Armenti v. Tomalis*, 2016 WL 6493483, at *1-2 (M.D. Pa. Nov. 2, 2016). Here, the proposition set forth is not supported by the record, and should be stricken. Assistive technology exists that blind persons can use, including application on cell phones, to read, and assist them in signing, paper documents. *See Drenth Tr.*, pp. 11-16. Plaintiff Drenth admitted that he privately and independently reviewed, marked, assembled, signed and returned his mail-in ballot without relying on assistance from another person. *Drenth Tr.*, 56(18-20); *Drenth Tr.*, 61(6-13), 63(6-13). To the extent that his declaration states otherwise—it is a "sham affidavit." *Jiminez v. All Am. Rathskeller, Inc.*, 503 F.3d 247, 253 (3d Cir. 2007) ("A sham affidavit is a contradictory affidavit that indicates only that the affiant cannot maintain a consistent story or is willing to offer a statement solely for the purpose of defeating summary judgment. A sham affidavit cannot raise a genuine issue of fact because it is merely a variance from earlier deposition testimony, and therefore no reasonable jury could rely on it to find for the nonmovant."). The declaration of Lynn Heitz does not create a dispute of fact because she admitted at the hearing on the Temporary Restraining Order that she did not apply for a mail-in ballot,

meaning that she has no first-hand knowledge of the process, and hearsay evidence regarding what she heard about the process is inadmissible. TRO Tr., 31(13-18). Both Mark Senk and Rebecca Weber indicate that, ultimately, they privately and independently marked their ballots, and only needed assistance with mailing their completed ballot, because of confusion with the print out PDF envelope. *See* Weber Dec., ¶¶ 19, 24; Senk Dec., ¶¶ 11, 26. Thus, Plaintiffs' own citations reflect that blind persons are able to privately and independently mark, assemble, and sign their paper ballots, and return their ballot. The only point at which any person requested assistance from another was for mailing the ballot that had already been cast (Plaintiffs admit that a vote is cast by marking the ballot, *see* SMF, Doc. 49-1, ¶ 21(a)). Notwithstanding the foregoing, there is no controversy with regard to these facts because, unlike the primary, there will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See* Marks Tr., 113(17-22), 117-19. Moreover, the DOS will be issuing directives to the counties directing them to mail the secrecy envelope and the return envelopes addressed to the respective voter's County Board of Elections at the same time that their ballot is delivered electronically. The Defendants will direct that the return envelope is larger than the secrecy envelope so that the envelopes are distinguishable, and the electronic instruction will indicate as such. Doc. 51-3, ¶ 20. Defendants will also

issue a directive to the counties in advance of the General Election directing the counties to accept the return envelope as long as a signature appears anywhere on the envelope. Marks Declaration, ¶ 21. Furthermore, Mr. Marks, who is not an expert in accessibility, clarified that blind voters can vote privately and independently by absentee and mail-in ballot with assistive technology. Marks Tr., 228-29. The record reflects that there is no controversy, or genuine dispute of material fact, regarding accessibility moving forward.

28. DENIED. The citations to the record do not support the propositions set forth in this Paragraph. The citations to the record do not support the propositions set forth in this Paragraph. As such, this “fact” should be stricken. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). “Judges are not like pigs, hunting for truffles buried in’ the record.” *Doebler’s Pennsylvania Hybrids, Inc. v. Doebler*, 442 F.3d 812, 820 (3d Cir. 2006), *as amended* (May 5, 2006). Courts have the discretion to either strike a statement for non-compliance with the local rule, or deem the opposing statement admitted. *See, e.g., Armenti v. Tomalis*, 2016 WL 6493483, at *1-2 (M.D. Pa. Nov. 2, 2016). Here, the proposition set forth is not supported by the record, and should be stricken. Assistive technology exists that blind persons can use, including

application on cell phones, to read, and assist them in signing, paper documents. *See* Drenth Tr., pp. 11-16. Plaintiff Drenth admitted that he privately and independently reviewed, marked, assembled, signed and returned his mail-in ballot without relying on assistance from another person. Drenth Tr., 56(18-20); Drenth Tr., 61(6-13), 63(6-13). To the extent that his declaration states otherwise—it is a sham affidavit. *Jiminez v. All Am. Rathskeller, Inc.*, 503 F.3d 247, 253 (3d Cir. 2007) (“A sham affidavit is a contradictory affidavit that indicates only that the affiant cannot maintain a consistent story or is willing to offer a statement solely for the purpose of defeating summary judgment. A sham affidavit cannot raise a genuine issue of fact because it is merely a variance from earlier deposition testimony, and therefore no reasonable jury could rely on it to find for the nonmovant.”). The declaration of Lynn Heitz does not create a dispute of fact because she admitted at the hearing on the Temporary Restraining Order that she did not apply for a mail-in ballot, meaning that she has no first-hand knowledge of the process, and hearsay evidence regarding what she heard about the process is inadmissible. TRO Tr., 31(13-18). Both Mark Senk and Rebecca Weber indicate that, ultimately, they privately and independently marked their ballots, and only needed assistance with mailing their completed ballot, because of confusion with the print out PDF envelope. *See* Weber Dec., ¶¶ 19, 24; Senk Dec., ¶¶ 11, 26. Thus, Plaintiffs’ own citations reflect that blind persons are able to privately and

independently mark, assemble, and sign their paper ballots, and return their ballot. The only point at which any person requested assistance from another was for mailing the ballot that had already been cast (Plaintiffs admit that a vote is cast by marking the ballot, *see* SMF, Doc. 49-1, ¶ 21(a)). Notwithstanding the foregoing, there is no controversy with regard to these facts because, unlike the primary, there will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See* Marks Tr., 113(17-22), 117-19. Moreover, the DOS will be issuing directives to the counties directing them to mail the secrecy envelope and the return envelopes addressed to the respective voter's County Board of Elections at the same time that their ballot is delivered electronically. The Defendants will direct that the return envelope is larger than the secrecy envelope so that the envelopes are distinguishable, and the electronic instruction will indicate as such. Doc. 51-3, ¶ 20. Defendants will also issue a directive to the counties in advance of the General Election directing the counties to accept the return envelope as long as a signature appears anywhere on the envelope. Marks Declaration, ¶ 21. Furthermore, Mr. Marks, who is not an expert in accessibility, clarified that blind voters can vote privately and independently by absentee and mail-in ballot with assistive technology. Marks Tr., 228-29. The record reflects that there is no

controversy, or genuine dispute of material fact, regarding accessibility moving forward.

29. DENIED. The Defendants are going to issue guidance to the counties in advance of the 2020 General Election requesting the counties to accept the return envelope as long as a signature for the blind voter appears anywhere on the envelope. Marks Declaration, ¶ 21. There, is, therefore, no genuine dispute of material fact.

30. DENIED. The Defendants are going to issue guidance to the counties in advance of the General Election requesting the counties to accept the return envelope as long as a signature for the blind voter appears anywhere on the envelope. Marks Declaration, ¶ 21. There, is, therefore, no genuine dispute of material fact.

31. DENIED. The citations to the record do not support the propositions set forth in this Paragraph. The citations to the record do not support the propositions set forth in this Paragraph. As such, this “fact” should be stricken. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). “Judges are not like pigs, hunting for truffles buried in’ the record.” *Doebler’s Pennsylvania Hybrids, Inc. v. Doebler*, 442 F.3d 812, 820 (3d Cir. 2006), *as*

amended (May 5, 2006). Courts have the discretion to either strike a statement for non-compliance with the local rule, or deem the opposing statement admitted. *See, e.g., Armenti v. Tomalis*, 2016 WL 6493483, at *1-2 (M.D. Pa. Nov. 2, 2016). Here, the proposition set forth is not supported by the record, and should be stricken. Defendants’ DENY the premise that Plaintiffs must rely on sighted persons to cast their vote by mail-in voting and must forego the privacy of their choices. Assistive technology exists that blind persons can use, including application on cell phones, to read, and assist them in signing, paper documents. *See Drenth Tr.*, pp. 11-16. Plaintiff Drenth admitted that he privately and independently reviewed, marked, assembled, signed and returned his mail-in ballot without relying on assistance from another person. *Drenth Tr.*, 56(18-20); *Drenth Tr.*, 61(6-13), 63(6-13). To the extent that his declaration states otherwise—it is a sham affidavit. *Jiminez v. All Am. Rathskeller, Inc.*, 503 F.3d 247, 253 (3d Cir. 2007) (“A sham affidavit is a contradictory affidavit that indicates only that the affiant cannot maintain a consistent story or is willing to offer a statement solely for the purpose of defeating summary judgment. A sham affidavit cannot raise a genuine issue of fact because it is merely a variance from earlier deposition testimony, and therefore no reasonable jury could rely on it to find for the nonmovant.”). The declaration of Lynn Heitz does not create a dispute of fact because she admitted at the hearing on the Temporary Restraining Order that she

did not apply for a mail-in ballot, meaning that she has no first-hand knowledge of the process, and hearsay evidence regarding what she heard about the process is inadmissible. TRO Tr., 31(13-18). Both Mark Senk and Rebecca Weber indicate that, ultimately, they privately and independently marked their ballots, and only needed assistance with mailing their completed ballot, because of confusion with the print out PDF envelope. *See* Weber Dec., ¶¶ 19, 24; Senk Dec., ¶¶ 11, 26. Thus, Plaintiffs' own citations reflect that blind persons are able to privately and independently mark, assemble, and sign their paper ballots, and return their ballot. The only point at which any person requested assistance from another was for mailing the ballot that had already been cast (Plaintiffs admit that a vote is cast by marking the ballot, *see* SMF, Doc. 49-1, ¶ 21(a)). Notwithstanding the foregoing, there is no controversy with regard to these facts because, unlike the primary, there will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See* Marks Tr., 113(17-22), 117-19. Moreover, the DOS will be issuing directives to the counties directing them to mail the secrecy envelope and the return envelopes addressed to the respective voter's County Board of Elections at the same time that their ballot is delivered electronically. The Defendants will direct that the return envelope is larger than the secrecy envelope so that the envelopes are distinguishable, and the electronic instruction will indicate as such.

Doc. 51-3, ¶ 20. Defendants will also issue a directive to the counties in advance of the General Election directing the counties to accept the return envelope as long as a signature appears anywhere on the envelope. Marks Declaration, ¶ 21. The record reflects that there is no controversy, or genuine dispute of material fact, regarding accessibility moving forward.

32. ADMITTED. Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 General Election. As such, this “fact” should be stricken. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court ruled that the Plaintiffs’ proposed solution was not feasible, and approved the use of the AWIB as a temporary solution for the June 2020 Primary Election.

33. ADMITTED. Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court ruled that the Plaintiffs’ proposed solution was not feasible, and approved the use of the AWIB as a temporary solution for the June 2020 Primary Election.

34. ADMITTED. Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s

SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court's direct and accurate consideration of Plaintiff's Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, there is no legal obligation regarding private testing of Commonwealth voting systems, and the Court approved the use of the AWIB as a temporary solution for the June 2020 Primary Election.

35. ADMITTED. Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court's direct and accurate consideration of Plaintiff's Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Plaintiffs agreed, and the Court entered an Order reflecting, that only those who had timely applied for a mail-in ballot were eligible.

36. ADMITTED. Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the use of the AWIB as a temporary solution for the June 2020 Primary Election.

37. ADMITTED. Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s

SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court's direct and accurate consideration of Plaintiff's Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the use of the AWIB as a temporary solution for the June 2020 Primary Election.

38. ADMITTED. Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court's direct and accurate consideration of Plaintiff's Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the use of the AWIB as a temporary solution for the June 2020 Primary Election.

39. DENIED. Facts about the AWIB are not material because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the use of the AWIB as a temporary solution for the June 2020 Primary Election. Notwithstanding, the citations to the record do not support the propositions set forth in this Paragraph. Assistive technology exists that blind persons can use, including application on cell phones, to read, and assist them in signing, paper documents. *See Drenth Tr.*, pp. 11-16. Plaintiff Drenth admitted that he privately and independently reviewed, marked, assembled, signed and returned his mail-in ballot without relying on assistance from another person. *Drenth Tr.*, 56(18-20); *Drenth Tr.*, 61(6-13), 63(6-13). To the extent that his declaration states otherwise—it is a sham affidavit. *Jiminez v. All Am. Rathskeller, Inc.*, 503 F.3d 247, 253 (3d Cir.

2007) (“A sham affidavit is a contradictory affidavit that indicates only that the affiant cannot maintain a consistent story or is willing to offer a statement solely for the purpose of defeating summary judgment. A sham affidavit cannot raise a genuine issue of fact because it is merely a variance from earlier deposition testimony, and therefore no reasonable jury could rely on it to find for the nonmovant.”). The declaration of Lynn Heitz does not create a dispute of fact because she admitted at the hearing on the Temporary Restraining Order that she did not apply for a mail-in ballot, meaning that she has no first-hand knowledge of the process, and hearsay evidence regarding what she heard about the process is inadmissible. TRO Tr., 31(13-18). Both Mark Senk and Rebecca Weber indicate that, ultimately, they privately and independently marked their ballots, and only needed assistance with mailing their completed ballot, because of confusion with the printout PDF envelope. *See* Weber Dec., ¶¶ 19, 24; Senk Dec., ¶¶ 11, 26. Thus, Plaintiffs’ own citations reflect that blind persons are able to privately and independently mark, assemble, and sign their paper ballots, and return their ballot. The only point at which any person requested assistance from another was for mailing the ballot that had already been cast (Plaintiffs admit that a vote is cast by marking the ballot, *see* SMF, Doc. 49-1, ¶ 21(a)). Notwithstanding the foregoing, there is no controversy with regard to these facts because, unlike the primary, there will be a Remote Ballot Marking System in place for the General Election that will

allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See Marks Tr.*, 113(17-22), 117-19. Moreover, the DOS will be issuing directives to the counties directing them to mail the secrecy envelope and the return envelopes addressed to the respective voter's County Board of Elections at the same time that their ballot is delivered electronically. The Defendants will direct that the return envelope is larger than the secrecy envelope so that the envelopes are distinguishable, and the electronic instruction will indicate as such. Doc. 51-3, ¶ 20. Defendants will also issue a directive to the counties in advance of the General Election directing the counties to accept the return envelope as long as a signature appears anywhere on the envelope. Marks Declaration, ¶ 21. The record reflects that there is no controversy, or genuine dispute of material fact, regarding accessibility moving forward.

40. DENIED. Facts about the AWIB are not material because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff's SMF because of the “presence of non-material facts” that “hinder rather than facilitate

the Court's direct and accurate consideration of Plaintiff's Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the use of the AWIB as a temporary solution for the June 2020 Primary Election. Notwithstanding, the citations to the record do not support the propositions set forth in this Paragraph. Assistive technology exists that blind persons can use, including application on cell phones, to read, and assist them in signing, paper documents. *See* Drenth Tr., pp. 11-16. Plaintiff Drenth admitted that he privately and independently reviewed, marked, assembled, signed and returned his mail-in ballot without relying on assistance from another person. Drenth Tr., 56(18-20); Drenth Tr., 61(6-13), 63(6-13). To the extent that his declaration states otherwise—it is a sham affidavit. *Jiminez v. All Am. Rathskeller, Inc.*, 503 F.3d 247, 253 (3d Cir. 2007) (“A sham affidavit is a contradictory affidavit that indicates only that the affiant cannot maintain a consistent story or is willing to offer a statement solely for the purpose of defeating summary judgment. A sham affidavit cannot raise a genuine issue of fact because it is merely a variance from earlier deposition testimony, and therefore no reasonable jury could rely on it to find for the nonmovant.”). The declaration of Lynn Heitz does not create a dispute of fact because she admitted at the hearing on the Temporary Restraining Order that she did not apply for a mail-in ballot, meaning that she has no first-hand knowledge of

the process, and hearsay evidence regarding what she heard about the process is inadmissible. TRO Tr., 31(13-18). Both Mark Senk and Rebecca Weber indicate that, ultimately, they privately and independently marked their ballots, and only needed assistance with mailing their completed ballot, because of confusion with the printout PDF envelope. *See* Weber Dec., ¶¶ 19, 24; Senk Dec., ¶¶ 11, 26. Thus, Plaintiffs' own citations reflect that blind persons are able to privately and independently mark, assemble, and sign their paper ballots, and return their ballot. The only point at which any person requested assistance from another was for mailing the ballot that had already been cast (Plaintiffs admit that a vote is cast by marking the ballot, *see* SMF, Doc. 49-1, ¶ 21(a)). Notwithstanding the foregoing, there is no controversy with regard to these facts because, unlike the primary, there will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See* Marks Tr., 113(17-22), 117-19. Moreover, the DOS will be issuing directives to the counties directing them to mail the secrecy envelope and the return envelopes addressed to the respective voter's County Board of Elections at the same time that their ballot is delivered electronically. The Defendants will direct that the return envelope is larger than the secrecy envelope so that the envelopes are distinguishable, and the electronic instruction will indicate as such. Doc. 51-3, ¶ 20. Defendants will also issue a directive to the counties in advance of

the General Election directing the counties to accept the return envelope as long as a signature appears anywhere on the envelope. Marks Declaration, ¶ 21. The record reflects that there is no controversy, or genuine dispute of material fact, regarding accessibility moving forward.

41. DENIED. Facts about the AWIB are not material because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the use of the AWIB as a temporary solution for the June 2020 Primary Election. Notwithstanding, the citations to the record do not support the propositions set forth in this Paragraph. As reflected in their declarations and/or testimony, Rebecca Weber, Mark Senk and Joseph Drenth have printers, and printed their ballots. *See generally*, Doc. 49-17, 49-18; Drenth Tr., pp. 11-16. Plaintiff Drenth admitted that

he privately and independently reviewed, marked, assembled, signed and returned his mail-in ballot without relying on assistance from another person. Drenth Tr., 56(18-20); Drenth Tr., 61(6-13), 63(6-13). To the extent that his declaration states otherwise—it is a sham affidavit. *Jiminez v. All Am. Rathskeller, Inc.*, 503 F.3d 247, 253 (3d Cir. 2007) (“A sham affidavit is a contradictory affidavit that indicates only that the affiant cannot maintain a consistent story or is willing to offer a statement solely for the purpose of defeating summary judgment. A sham affidavit cannot raise a genuine issue of fact because it is merely a variance from earlier deposition testimony, and therefore no reasonable jury could rely on it to find for the nonmovant.”). The declaration of Lynn Heitz does not create a dispute of fact because she admitted at the hearing on the Temporary Restraining Order that she did not apply for a mail-in ballot, meaning that she has no first-hand knowledge of the process, and hearsay evidence regarding what she heard about the process is inadmissible. TRO Tr., 31(13-18). Both Mark Senk and Rebecca Weber indicate that, ultimately, they privately and independently marked their ballots, and only needed assistance with mailing their completed ballot, because of confusion with the printout PDF envelope. *See* Weber Dec., ¶¶ 19, 24; Senk Dec., ¶¶ 11, 26. All were able to print their documents. Also, the lack of a printer is not a problem that only blind persons encounter.

42. DENIED. In the first instance, the use of the term “privately and independently” in the context of the return of a completed ballot, housed within an envelope, is a misnomer. Once the ballot is placed into the sealed envelope, the privacy concerns of the voter should be diminished. With respect to ease of return, there is no controversy with regard to these facts because the DOS will be issuing guidance to the counties directing them to mail the secrecy envelope and the return envelopes addressed to the respective voter’s County Board of Elections at the same time that their ballot is delivered electronically. The Defendants will direct that the return envelope is at least two inches larger than the secrecy envelope so that the envelopes are distinguishable, and the electronic instruction will indicate as such. Doc. 51-3, ¶ 20. Defendants will also issue guidance to the counties in advance of the General Election requesting the counties to accept the return envelope as long as a signature appears anywhere on the envelope. Marks Declaration, ¶ 21. The record reflects that there is no controversy.

43. ADMITTED. Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop*

Borough, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the temporary use of the AWIB for the June 2020 Primary Election.

44. ADMITTED. Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the temporary use of the AWIB for the June 2020 Primary Election.

45. ADMITTED in part, DENIED in part. It is ADMITTED that Mr. Drenth may have been frustrated, but the implication that the AWIB was

inaccessible is DENIED. The AWIB was tested prior to launch to determine if it was compatible with screen reader technology. *See Marks Tr.*, 169(21-24)-170(1-3). Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the temporary use of the AWIB for the June 2020 Primary Election. Notwithstanding, Plaintiff Drenth admitted that, ultimately, he privately and independently reviewed, marked, assembled, signed and returned his mail-in ballot without relying on assistance from another person. *Drenth Tr.*, 56(18-20); *Drenth Tr.*, 61(6-13), 63(6-13). There is also no controversy with regard to these facts because, unlike the primary, there will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See*

Marks Tr., 113(17-22), 117-19. Moreover, the DOS will be issuing directives to the counties directing them to mail the secrecy envelope and the return envelopes addressed to the respective voter's County Board of Elections at the same time that their ballot is delivered electronically. The Defendants will direct that the return envelope is larger than the secrecy envelope so that the envelopes are distinguishable, and the electronic instruction will indicate as such. Doc. 51-3, ¶ 20. Defendants will also issue a directive to the counties in advance of the General Election directing the counties to accept the return envelope as long as a signature appears anywhere on the envelope. Marks Declaration, ¶ 21. The record reflects that there is no controversy, or genuine dispute of material fact, regarding accessibility moving forward.

46. ADMITTED in part, DENIED in part. It is ADMITTED that Mr. Drenth may have had technological issues, but the implication that the AWIB was inaccessible is DENIED. The AWIB was tested prior to launch to determine if it was compatible with screen reader technology. *See* Marks Tr., 169(21-24)-170(1-3). Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be

stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff's SMF because of the "presence of non-material facts" that "hinder rather than facilitate the Court's direct and accurate consideration of Plaintiff's Motion for Partial Summary Judgment."). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the temporary use of the AWIB for the June 2020 Primary Election. Notwithstanding, Plaintiff Drenth admitted that, ultimately, he privately and independently reviewed, marked, assembled, signed and returned his mail-in ballot without relying on assistance from another person. Drenth Tr., 56(18-20); Drenth Tr., 61(6-13), 63(6-13). There is also no controversy with regard to these facts because, unlike the primary, there will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See Marks Tr.*, 113(17-22), 117-19. Moreover, the DOS will be issuing directives to the counties directing them to mail the secrecy envelope and the return envelopes addressed to the respective voter's County Board of Elections at the same time that their ballot is delivered electronically. The Defendants will direct that the return envelope is larger than the secrecy envelope so that the envelopes are distinguishable, and the electronic instruction will indicate as such. Doc. 51-3, ¶ 20. Defendants will also issue a directive to the counties in advance of

the General Election directing the counties to accept the return envelope as long as a signature appears anywhere on the envelope. Marks Declaration, ¶ 21. The record reflects that there is no controversy, or genuine dispute of material fact, regarding accessibility moving forward.

47. ADMITTED in part, DENIED in part. It is ADMITTED that Mr. Drenth may have had technological issues, but the implication that the AWIB was inaccessible is DENIED. The AWIB was tested prior to launch to determine if it was compatible with screen reader technology. *See* Marks Tr., 169(21-24)-170(1-3). Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the temporary use of the AWIB for the June 2020 Primary Election. Notwithstanding, Plaintiff Drenth admitted that,

ultimately, he privately and independently reviewed, marked, assembled, signed and returned his mail-in ballot without relying on assistance from another person. Drenth Tr., 56(18-20); Drenth Tr., 61(6-13), 63(6-13). There is also no controversy with regard to these facts because, unlike the primary, there will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See* Marks Tr., 113(17-22), 117-19. Moreover, the DOS will be issuing directives to the counties directing them to mail the secrecy envelope and the return envelopes addressed to the respective voter's County Board of Elections at the same time that their ballot is delivered electronically. The Defendants will direct that the return envelope is larger than the secrecy envelope so that the envelopes are distinguishable, and the electronic instruction will indicate as such. Doc. 51-3, ¶ 20. Defendants will also issue a directive to the counties in advance of the General Election directing the counties to accept the return envelope as long as a signature appears anywhere on the envelope. Marks Declaration, ¶ 21. The record reflects that there is no controversy, or genuine dispute of material fact, regarding accessibility moving forward.

48. ADMITTED in part, DENIED in part. It is ADMITTED that Mr. Drenth may have had technological issues, but the implication that the AWIB was inaccessible is DENIED. The AWIB was tested prior to launch to determine if it

was compatible with screen reader technology. *See Marks Tr.*, 169(21-24)-170(1-3). Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the temporary use of the AWIB for the June 2020 Primary Election. Notwithstanding, Plaintiff Drenth admitted that, ultimately, he privately and independently reviewed, marked, assembled, signed and returned his mail-in ballot without relying on assistance from another person. *Drenth Tr.*, 56(18-20); *Drenth Tr.*, 61(6-13), 63(6-13). There is also no controversy with regard to these facts because, unlike the primary, there will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See Marks Tr.*, 113(17-22), 117-19. There is no genuine dispute of material fact.

49. ADMITTED in part, DENIED in part. It is ADMITTED that Mr. Drenth may have had technological issues, but the implication that the AWIB was inaccessible is DENIED. The AWIB was tested prior to launch to determine if it was compatible with screen reader technology. *See Marks Tr.*, 169(21-24)-170(1-3). Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the temporary use of the AWIB for the June 2020 Primary Election. Notwithstanding, Plaintiff Drenth admitted that, ultimately, he privately and independently reviewed, marked, assembled, signed and returned his mail-in ballot without relying on assistance from another person. *Drenth Tr.*, 56(18-20); *Drenth Tr.*, 61(6-13), 63(6-13). There is also no controversy with regard to these facts because, unlike the primary, there will be a Remote

Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See Marks Tr.*, 113(17-22), 117-19. There is no genuine dispute of material fact.

50. ADMITTED in part, DENIED in part. It is ADMITTED that Mr. Drenth may have had technological issues, but the implication that the AWIB was inaccessible is DENIED. The AWIB was tested prior to launch to determine if it was compatible with screen reader technology. *See Marks Tr.*, 169(21-24)-170(1-3). Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the temporary use of the AWIB for the June 2020 Primary Election. Notwithstanding, Plaintiff Drenth admitted that, ultimately, he privately and independently reviewed, marked, assembled, signed

and returned his mail-in ballot without relying on assistance from another person. Drenth Tr., 56(18-20); Drenth Tr., 61(6-13), 63(6-13). There is no controversy with regard to these facts because, unlike the primary, there will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See* Marks Tr., 113(17-22), 117-19. There is no genuine dispute of material fact.

51. ADMITTED in part, DENIED in part. It is ADMITTED that Mr. Drenth may have had technological issues, but the implication that the AWIB was inaccessible is DENIED. The AWIB was tested prior to launch to determine if it was compatible with screen reader technology. *See* Marks Tr., 169(21-24)-170(1-3). Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court's direct and accurate consideration of Plaintiff's Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By

way of further response, the Court approved the temporary use of the AWIB for the June 2020 Primary Election. Notwithstanding, Plaintiff Drenth admitted that, ultimately, he privately and independently reviewed, marked, assembled, signed and returned his mail-in ballot without relying on assistance from another person. Drenth Tr., 56(18-20); Drenth Tr., 61(6-13), 63(6-13). There is also no controversy with regard to these facts because, unlike the primary, there will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See* Marks Tr., 113(17-22), 117-19. There is no genuine dispute of material fact.

52. ADMITTED in part, DENIED in part. It is ADMITTED that Mr. Drenth may have had technological issues, but the implication that the AWIB was inaccessible is DENIED. The AWIB was tested prior to launch to determine if it was compatible with screen reader technology. *See* Marks Tr., 169(21-24)-170(1-3). Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of

non-material facts” that “hinder rather than facilitate the Court's direct and accurate consideration of Plaintiff's Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the temporary use of the AWIB for the June 2020 Primary Election. Notwithstanding, Plaintiff Drenth admitted that, ultimately, he privately and independently reviewed, marked, assembled, signed and returned his mail-in ballot without relying on assistance from another person. Drenth Tr., 56(18-20); Drenth Tr., 61(6-13), 63(6-13). There is also no controversy with regard to these facts because, unlike the primary, there will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See* Marks Tr., 113(17-22), 117-19. There is no genuine dispute of material fact.

53. ADMITTED in part, DENIED in part. It is ADMITTED that Mr. Drenth may have had technological issues, but the implication that the AWIB was inaccessible is DENIED. The AWIB was tested prior to launch to determine if it was compatible with screen reader technology. *See* Marks Tr., 169(21-24)-170(1-3). Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL

1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff's SMF because of the "presence of non-material facts" that "hinder rather than facilitate the Court's direct and accurate consideration of Plaintiff's Motion for Partial Summary Judgment."). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the temporary use of the AWIB for the June 2020 Primary Election. Notwithstanding, Plaintiff Drenth admitted that, ultimately, he privately and independently reviewed, marked, assembled, signed and returned his mail-in ballot without relying on assistance from another person. Drenth Tr., 56(18-20); Drenth Tr., 61(6-13), 63(6-13). There is also no controversy with regard to these facts because, unlike the primary, there will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See Marks Tr.*, 113(17-22), 117-19. There is no genuine dispute of material fact.

54. ADMITTED in part, DENIED in part. It is ADMITTED that Mr. Drenth may have had technological issues, but the implication that the AWIB was inaccessible is DENIED. The AWIB was tested prior to launch to determine if it was compatible with screen reader technology. *See Marks Tr.*, 169(21-24)-170(1-3). Facts about the AWIB are not material, however, because the AWIB will not be

used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the temporary use of the AWIB for the June 2020 Primary Election. Notwithstanding, Plaintiff Drenth admitted that, ultimately, he privately and independently reviewed, marked, assembled, signed and returned his mail-in ballot without relying on assistance from another person. Drenth Tr., 56(18-20); Drenth Tr., 61(6-13), 63(6-13). There is also no controversy with regard to these facts because, unlike the primary, there will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See Marks Tr.*, 113(17-22), 117-19. Moreover, the DOS will be issuing directives to the counties directing them to mail the secrecy envelope and the return envelopes addressed to the respective voter’s County Board of Elections

at the same time that their ballot is delivered electronically. The Defendants will direct that the return envelope is larger than the secrecy envelope so that the envelopes are distinguishable, and the electronic instruction will indicate as such. Doc. 51-3, ¶ 20. Defendants will also issue a directive to the counties in advance of the General Election directing the counties to accept the return envelope as long as a signature appears anywhere on the envelope. Marks Declaration, ¶ 21. The record reflects that there is no controversy, or genuine dispute of material fact, regarding accessibility moving forward.

55. ADMITTED. Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken.

56. ADMITTED. Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken.

57. ADMITTED in part, DENIED in part. It is ADMITTED that Mr. Dreth chose, last minute, not to mail his AWIB, and instead take it with him in-person to the polling place, despite his fear of COVID. It is DENIED that Mr. Dreth did not have options to cast his ballot, or that he was denied the opportunity to vote. By way of further response, facts about the AWIB are not material because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that

are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff's SMF because of the "presence of non-material facts" that "hinder rather than facilitate the Court's direct and accurate consideration of Plaintiff's Motion for Partial Summary Judgment."). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken.

58. ADMITTED, with the clarification that Mr. Drenth had the option of returning the AWIB by hand delivery, including through a third party, to the address listed on the return envelope, or to a designated location identified by the county. Marks Dec., ¶ 16. Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable "the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record." *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff's SMF because of the "presence of non-material facts" that "hinder rather than facilitate the Court's direct and accurate consideration of Plaintiff's Motion for Partial Summary Judgment."). Here, all facts about the AWIB are immaterial to the

matter at hand, and should be stricken. By way of further response, the Court approved the temporary use of the AWIB for the June 2020 Primary Election.

59. DENIED. Facts about the AWIB are not material because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the temporary use of the AWIB for the June 2020 Primary Election. Notwithstanding, the citations to the record do not support the propositions set forth in this Paragraph. Assistive technology exists that blind persons can use, including application on cell phones, to read, and assist them in signing, paper documents. *See Drenth Tr.*, pp. 11-16. Plaintiff Drenth admitted that he privately and independently reviewed, marked, assembled, signed and returned his mail-in ballot without relying on assistance from another person. *Drenth Tr.*, 56(18-20); *Drenth*

Tr., 61(6-13), 63(6-13). To the extent that his declaration states otherwise—it is a sham affidavit. *Jiminez v. All Am. Rathskeller, Inc.*, 503 F.3d 247, 253 (3d Cir. 2007) (“A sham affidavit is a contradictory affidavit that indicates only that the affiant cannot maintain a consistent story or is willing to offer a statement solely for the purpose of defeating summary judgment. A sham affidavit cannot raise a genuine issue of fact because it is merely a variance from earlier deposition testimony, and therefore no reasonable jury could rely on it to find for the nonmovant.”). The declaration of Lynn Heitz does not create a dispute of fact because she admitted at the hearing on the Temporary Restraining Order that she did not apply for a mail-in ballot, meaning that she has no first-hand knowledge of the process, and hearsay evidence regarding what she heard about the process is inadmissible. TRO Tr., 31(13-18). Both Mark Senk and Rebecca Weber indicate that, ultimately, they privately and independently marked their ballots, and only needed assistance with mailing their completed ballot, because of confusion with the print out PDF envelope. *See* Weber Dec., ¶¶ 19, 24; Senk Dec., ¶¶ 11, 26. Thus, Plaintiffs’ own citations reflect that blind persons are able to privately and independently mark, assemble, and sign their paper ballots, and return their ballot. The only point at which any person requested assistance from another was for mailing the ballot that had already been cast (Plaintiffs admit that a vote is cast by marking the ballot, *see* SMF, Doc. 49-1, ¶ 21(a)). Notwithstanding the foregoing,

there is no controversy with regard to these facts because, unlike the primary, there will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See Marks Tr.*, 113(17-22), 117-19. Moreover, the DOS will be issuing directives to the counties directing them to mail the secrecy envelope and the return envelopes addressed to the respective voter's County Board of Elections at the same time that their ballot is delivered electronically. The Defendants will direct that the return envelope is larger than the secrecy envelope so that the envelopes are distinguishable, and the electronic instruction will indicate as such. Doc. 51-3, ¶ 20. Defendants will also issue a directive to the counties in advance of the General Election directing the counties to accept the return envelope as long as a signature appears anywhere on the envelope. Marks Declaration, ¶ 21. The record reflects that there is no controversy, or genuine dispute of material fact, regarding accessibility moving forward.

60. ADMITTED in part, DENIED in part. It is ADMITTED that Ms. Weber may have had technological issues, but the implication that the AWIB was inaccessible is DENIED. The AWIB was tested prior to launch to determine if it was compatible with screen reader technology. *See Marks Tr.*, 169(21-24)-170(1-3). By way of further response, the Court approved the temporary use of the AWIB for the June 2020 Primary Election. And, moreover, Ms. Weber, ultimately was

able to privately and independently mark her ballot. *See* Weber Dec., ¶¶ 19, 24. Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. There will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See* Marks Tr., 113(17-22), 117-19. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. The record reflects that there is no controversy, or genuine dispute of material fact, regarding accessibility moving forward.

61. ADMITTED in part, DENIED in part. It is ADMITTED that Ms. Weber may have had technological issues, but the implication that the AWIB was inaccessible is DENIED. The AWIB was tested prior to launch to determine if it was compatible with screen reader technology. *See* Marks Tr., 169(21-24)-170(1-

3). By way of further response, the Court approved the temporary use of the AWIB for the June 2020 Primary Election. And, moreover, Ms. Weber, ultimately was able to privately and independently mark her ballot. *See Weber Dec.*, ¶¶ 19, 24. Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. There will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See Marks Tr.*, 113(17-22), 117-19. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. The record reflects that there is no controversy, or genuine dispute of material fact, regarding accessibility moving forward.

62. ADMITTED in part, DENIED in part. It is ADMITTED that Ms. Weber may have had technological issues, but the implication that the AWIB was

inaccessible is DENIED. The AWIB was tested prior to launch to determine if it was compatible with screen reader technology. *See Marks Tr.*, 169(21-24)-170(1-3). By way of further response, the Court approved the temporary use of the AWIB for the June 2020 Primary Election. And, moreover, Ms. Weber, ultimately was able to privately and independently mark her ballot. *See Weber Dec.*, ¶¶ 19, 24. Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. There will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See Marks Tr.*, 113(17-22), 117-19. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. The record reflects that there is no controversy, or genuine dispute of material fact, regarding accessibility moving forward.

63. ADMITTED. Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. There will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See Marks Tr.*, 113(17-22), 117-19. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the temporary use of the AWIB for the June 2020 Primary Election. Moreover, the DOS will be issuing directives to the counties directing them to mail the secrecy envelope and the return envelopes addressed to the respective voter’s County Board of Elections at the same time that their ballot is delivered electronically. The Defendants will direct that the return envelope is larger than the secrecy envelope so that the envelopes are distinguishable, and the electronic instruction will indicate as such.

Doc. 51-3, ¶ 20. Defendants will also issue a directive to the counties in advance of the General Election directing the counties to accept the return envelope as long as a signature appears anywhere on the envelope. Marks Declaration, ¶ 21. The record reflects that there is no controversy, or genuine dispute of material fact, regarding accessibility moving forward.

64. ADMITTED in part, DENIED in part. It is ADMITTED only that Mr. Senk was able to privately and independently mark his ballot. *See* Senk Dec., ¶¶ 11, 26. It is DENIED that Mr. Senk’s speculation of the experience of other blind voters is admissible. By way of further response, facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. There will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See* Marks Tr., 113(17-22), 117-19. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for

Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. The record reflects that there is no controversy, or genuine dispute of material fact, regarding accessibility moving forward.

65. ADMITTED in part, DENIED in part. It is ADMITTED that Mr. Senk may have had issues printing his envelope, but the implication that the AWIB was inaccessible is DENIED. The AWIB was tested prior to launch to determine if it was compatible with screen reader technology. *See Marks Tr.*, 169(21-24)-170(1-3). By way of further response, the Court approved the temporary use of the AWIB for the June 2020 Primary Election. And, moreover, Mr. Senk, ultimately was able to privately and independently mark his ballot. *See Senk Dec.*, ¶¶ 11, 26. Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. There will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See Marks Tr.*, 113(17-22), 117-19. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa.

Mar. 19, 2009) (striking Plaintiff's SMF because of the "presence of non-material facts" that "hinder rather than facilitate the Court's direct and accurate consideration of Plaintiff's Motion for Partial Summary Judgment."). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. The record reflects that there is no controversy, or genuine dispute of material fact, regarding accessibility moving forward. Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. There will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See Marks Tr.*, 113(17-22), 117-19. By way of further response, the DOS will be issuing directives to the counties directing them to mail the secrecy envelope and the return envelopes addressed to the respective voter's County Board of Elections at the same time that their ballot is delivered electronically. The Defendants will direct that the return envelope is larger than the secrecy envelope so that the envelopes are distinguishable, and the electronic instruction will indicate as such. Doc. 51-3, ¶ 20. Defendants will also issue a directive to the counties in advance of the General Election directing the counties to accept the return envelope as long as a signature appears anywhere on the envelope. Marks Declaration, ¶ 21. The record reflects that there is no controversy, or genuine dispute of material fact, regarding accessibility moving forward.

66. ADMITTED. Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. There will be a Remote Ballot Marking System in place for the General Election that will allow blind persons to receive and mark their ballots in a fully accessible electronic format. *See Marks Tr.*, 113(17-22), 117-19. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the temporary use of the AWIB for the June 2020 Primary Election. Moreover, the DOS will be issuing directives to the counties directing them to mail the secrecy envelope and the return envelopes addressed to the respective voter’s County Board of Elections at the same time that their ballot is delivered electronically. The Defendants will direct that the return envelope is larger than the secrecy envelope so that the envelopes are distinguishable, and the electronic instruction will indicate as such.

Doc. 51-3, ¶ 20. Defendants will also issue a directive to the counties in advance of the General Election directing the counties to accept the return envelope as long as a signature appears anywhere on the envelope. Marks Declaration, ¶ 21. The record reflects that there is no controversy, or genuine dispute of material fact, regarding accessibility moving forward.

67. ADMITTED.

68. ADMITTED.

69. ADMITTED in part, DENIED in part. It is ADMITTED, with the clarification that Plaintiffs and their advocates sent one letter in the fall of 2019, before Act 77 was passed. It is DENIED that the Defendants would have not implemented a RBMS but for the letters referenced. Indeed, the second letter was sent around the time that the Defendants were beginning to look for a vendor, and the third letter was sent well after the Defendants had embarked upon the process.

70. ADMITTED, with the clarification that the Defendants were already in the process of procuring a Remote Ballot Marking System when this correspondence, which speaks for itself, was sent.

71. ADMITTED.

72. ADMITTED.

73. ADMITTED in part, DENIED in part. The allegations of this Paragraph constitute legal conclusions to which no factual response is required,

and those legal conclusions are DENIED, and should be stricken. It is ADMITTED only that a Remote Ballot Marking System will be in place for the November 2020 election, allowing blind voters to receive and mark their ballots electronically in a fully accessible format. Moreover, facts about the AWIB are not material because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff’s SMF because of the “presence of non-material facts” that “hinder rather than facilitate the Court’s direct and accurate consideration of Plaintiff’s Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the AWIB as a temporary solution for the June 2020 Primary Election.

74. ADMITTED. Facts about the AWIB are not material, however, because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable “the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record.” *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that

are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff's SMF because of the "presence of non-material facts" that "hinder rather than facilitate the Court's direct and accurate consideration of Plaintiff's Motion for Partial Summary Judgment."). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the AWIB as a temporary solution for the June 2020 Primary Election.

75. ADMITTED in part, DENIED in part. The allegations of this Paragraph constitute legal conclusions to which no factual response is required, and those legal conclusions are DENIED. It is ADMITTED only that a Remote Ballot Marking System will be in place for the November 2020 election, allowing blind voters to receive and mark their ballots electronically in a fully accessible format. Moreover, facts about the AWIB are not material because the AWIB will not be used for the November 2020 election. A proper statement of facts should enable "the court to identify contested facts expeditiously and [prevent] factual disputes from becoming obscured by a lengthy record." *Pinegar v. Shinseki*, 2009 WL 1324125, at *1 (M.D. Pa. May, 12, 2009). Facts that are immaterial should be stricken and disregarded. *See Hartshorn v. Throop Borough*, 2009 WL 761270, at *3 (M.D. Pa. Mar. 19, 2009) (striking Plaintiff's SMF because of the "presence of non-material facts" that "hinder rather than facilitate the Court's direct and accurate

consideration of Plaintiff's Motion for Partial Summary Judgment.”). Here, all facts about the AWIB are immaterial to the matter at hand, and should be stricken. By way of further response, the Court approved the AWIB as a temporary solution for the June 2020 Primary Election.

76. ADMITTED.

77. ADMITTED.

78. ADMITTED. By way of further response, see the response to Paragraph 80.

79. ADMITTED.

80. ADMITTED with the clarification that there are also TIF images uploaded as well, and that they receive scanned PDFs. Marks Tr., 165-66.

81. DENIED. The citation to the record mischaracterizes Mr. Marks' testimony. Mr. Marks testified that the counties only have an obligation to upload ballots into the SURE system for UOCAVA voters, and that, if there is no UOCAVA request, the Defendants will not have a precinct's unique ballot readily available. Further, Mr. Marks only recalled one occasion when the DOS reached out directly to a county to request a ballot. *See* Marks Tr., 164-65. The proposition set forth in this Paragraph is not supported by a proper citation, and, it, therefore does not give rise to a genuine dispute of material fact.

82. DENIED. *See* TRO Opinion, Doc. 31. By way of further response, the Court rejected the UOCAVA solution as not adequate or feasible.

83. ADMITTED.

84. ADMITTED.

85. ADMITTED.

86. ADMITTED.

87. ADMITTED.

88. DENIED. The citation to the record mischaracterizes Mr. Marks' testimony. Mr. Marks testified that the ballot marking and delivery tool provides the voters with the most access without sacrificing security, and that mitigation efforts are made to ensure security. Marks Tr., 124-25. By way of further response, Mr. Marks clarified that, dissimilarly, the security risk is unacceptable for electronic submission of the ballot. Marks. Tr., 232.

89. ADMITTED in part, DENIED in part. The allegations of this Paragraph set forth legal conclusions to which no factual response is required, and those legal conclusions are DENIED. To the extent deemed factual in nature, it is ADMITTED that a RBMS will be in place for the November 2020 General Election, and that the RBMS will allow blind voters to vote privately and independently without going to their polling places.

90. ADMITTED.

91. ADMITTED in part, DENIED in part. It is ADMITTED that Mr. Drenth and other blind voters want to vote without traveling to a polling place. The remaining allegations of this Paragraph constitute legal conclusions to which no factual response is required. To the extent deemed factual in nature, it is DENIED that blind voters do not have equal and meaningful access to all voting programs in Pennsylvania. There is no evidence that blind voters have been excluded from any voting in any election.

92. DENIED. The allegations set forth in this Paragraph constitute legal conclusions to which no factual response is required.

93. ADMITTED.

94. ADMITTED.

95. ADMITTED.

96. ADMITTED.

97. ADMITTED.

98. ADMITTED in part, DENIED in part. It is ADMITTED that the Defendants encouraged mail-in voting. It is DENIED that mail-in ballots are inaccessible to the blind, who have technology available to read and sign paper documents. *See* Drenth Tr., pp. 11-16. It is further DENIED that the DOS acknowledged that the mail-in ballot program was inaccessible. Defendants'

DENY Plaintiff's characterization of Exhibit 17, which is a writing that speaks for itself.

99. ADMITTED.

100. DENIED. There is no proof that voting in person exposed anyone to COVID in connection with the primary election. By way of further response, the Defendants have ordered Personal Protective Equipment (PPE), cleaning supplies, and have directed other precautions to protect against the spread of COVID-19. Marks. Tr., 230-31.

101. ADMITTED.

102. ADMITTED.

103. DENIED. The allegations of this Paragraph constitute legal conclusions to which no response is required. To the extent that it is deemed factual in nature, it is DENIED. By way of further response, it is DENIED that any one is risking their life by voting in the November 2020 election. The Defendants Defendants have ordered Personal Protective Equipment (PPE), cleaning supplies, and have directed other precautions to protect against the spread of COVID-19. Marks. Tr., 230-31.

Respectfully submitted,

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Date: August 3, 2020

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

JOSEPH DRENTH <i>and</i> NATIONAL FEDERATION OF THE BLIND OF PENNSYLVANIA,	:	
	:	
Plaintiffs	:	No. 1:20-0829
	:	
v.	:	Judge Wilson
	:	
KATHY BOOCKVAR <i>and</i> DEPARTMENT OF STATE OF THE COMMONWEALTH OF PENNSYLVANIA,	:	Electronically Filed Document
	:	
Defendants	:	<i>Complaint Filed 05/21/20</i>

CERTIFICATE OF SERVICE

I, Nicole J. Boland, Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on August 3, 2020, I caused to be served a true and correct copy of the foregoing document to the following:

VIA ECF

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