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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE HONORABLE MIKE KELLY, SEAN PARNELL, THOMAS A. FRANK, NANCY KIERZEK, DEREK MAGEE, ROBIN SAUTER, MICHAEL KINCAID, and WANDA LOGAN,

Plaintiffs,

v.

COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA GENERAL ASSEMBLY, HONORABLE THOMAS W. WOLF, KATHY BOOCKVAR,

Defendants.

Docket No. ___ M.D. 2020

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Filed on behalf of Plaintiffs, The Honorable Mike Kelly, Sean Parnell, Thomas A. Frank, Nancy Kierzek, Derek Magee, Robin Sauter, Michael Kincaid, and Wanda Logan

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE HONORABLE MIKE KELLY, SEAN PARNELL, THOMAS A. FRANK, NANCY KIERZEK, DEREK MAGEE, ROBIN SAUTER, MICHAEL KINCAID, and WANDA LOGAN

Plaintiffs,

v. Docket No. ___ M.D. 2020

COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA GENERAL ASSEMBLY, HONORABLE THOMAS W. WOLF, KATHY BOOCKVAR,

Defendants.

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. TIDS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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Harrisburg, Pennsylvania 17101
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THE HONORABLE MIKE KELLY, SEAN PARNELL, THOMAS A. FRANK, NANCY KIERZEK, DEREK MAGEE, ROBIN SAUTER, MICHAEL KINCAID, and WANDA LOGAN,

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Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs the Honorable Mike Kelly, Sean Parnell, Thomas A. Frank, Nancy Kierzek, Derek Magee, Robin Sauter, and Wanda Logan, hereby files the following Complaint against defendants, the Commonwealth of Pennsylvania, and in support thereof avers as follows:

Introduction

1. This is an action seeking a declaration that the universal mail-in ballot provisions of a law called Act 77 (Act of October 31, 2019, P.L. 552, No. 77 ("Act 77"); *see also* 25 Pa.Stat. §§ 3146.6(c), 3150.16(c)) are unconstitutional and an injunction prohibiting certification of the results of the November 3, 2020 election

in Pennsylvania and/or requiring any such certification to be rescinded, and for other appropriate relief. Act 77 is the most expansive and fundamental change to the Pennsylvania voting code, implemented illegally, to date. Under the Act, and the mail-in ballot scheme it implements, any and all qualified electors are eligible to vote by mail, and no justification needs to be provided. As with prior historical attempts to illegally expand mail-in voting by statute, which have been struck down going as far back as the Military Absentee Ballot Act of 1839, Act 77 is another illegal attempt to override the limitations on absentee voting prescribed in the Pennsylvania Constitution, without first following the necessary procedure to amend the constitution to allow for the expansion.

Parties

2. Plaintiff the Honorable Mike Kelly (hereinafter "Representative Kelly") is an adult individual who is a qualified registered elector residing in Butler County, a member of the Republican Party, and the United States Representative for the 16th Congressional District of Pennsylvania. Representative Kelly was recently re-elected to represent the 16th Congressional District, which includes all of Erie, Crawford, Mercer, and Lawrence counties, as well as part of Butler County. Representative Kelly constitutes both a "candidate" and a "qualified elector" as those terms are defined in Election Code Section 102(a) and

(t), 25 P.S. § 2602(a) & (t). Representative Kelly brings this suit in his capacity as a candidate for federal office and a private citizen.

3. Plaintiff Sean Parnell is an adult individual who is a registered qualified elector residing in Allegheny County, a member of the Republican Party, and a candidate for U.S. Representative for the 17th Congressional District of Pennsylvania, which includes all of Beaver County, and parts of Butler and Allegheny counties. Mr. Parnell constitutes both a "candidate" and a "qualified elector" as those terms are defined in Election Code Section 102(a) and (t), 25 P.S. § 2602(a) & (t). Mr. Parnell brings this suit in his capacity as a candidate for federal office and a private citizen.

4. Plaintiff Wanda Logan is an adult individual who is a registered qualified elector residing Philadelphia County, Pennsylvania, a member of the Republican Party, and a candidate for the Pennsylvania House of Representatives for the 190th district. Ms. Logan constitutes both a "candidate" and a "qualified elector" as those terms are defined in Election Code section 102(a) and (t), 25 P.S. § 2602(a) & (t). Ms. Logan brings this suit in her capacity as a candidate for state office and a private citizen.

5. Plaintiff Thomas A. Frank is an adult individual who is a registered qualified elector residing in Erie County, Pennsylvania. Mr. Frank constitutes a

"qualified elector" as that term is defined in Election Code Section 102(t), 25 P.S. § 2602(t). Mr. Frank brings this suit in his capacity as a private citizen.

6. Plaintiff Nancy Kierzek is an adult individual who is a registered qualified elector residing in Erie County, Pennsylvania. Ms. Kierzek constitutes a "qualified elector" as that term is defined in Election Code Section 102(t), 25 P.S. § 2602(t). Ms. Kierzek brings this suit in her capacity as a private citizen.

7. Plaintiff Derek Magee is an adult individual who is a registered qualified elector residing in Mercer County, Pennsylvania. Mr. Magee constitutes a "qualified elector" as that term is defined in Election Code Section 102(t), 25 P.S. § 2602(t). Mr. Magee brings this suit in his capacity as a private citizen.

8. Plaintiff, Michael Kincaid is an adult individual who is a registered qualified elector residing in Allegheny County, Pennsylvania. Mr. Kincaid constitutes a "qualified elector" as that term is defined in Election Code Section 102(t), 25 P.S. § 2602(t). Mr. Kincaid brings this suit in his capacity as a private citizen.

9. Plaintiff, Robin Sauter is an adult individual who is a registered qualified elector residing in Mercer County, Pennsylvania. Ms. Sauter constitutes a "qualified elector" as that term is defined in Election Code Section 102(t), 25 P.S. § 2602(t). Ms. Sauter brings this suit in her capacity as a private citizen.

10. Defendant the Commonwealth of Pennsylvania has its capital located in Harrisburg, Pennsylvania.

11. Defendant the Pennsylvania General Assembly is the state legislature for the Commonwealth of Pennsylvania and is comprised of the State House and State Senate. The General Assembly convenes in the State Capitol building in Harrisburg, Pennsylvania.

12. The U.S. Constitution provides that the Legislatures of each state shall direct the manner for appointing electors for President and Vice President. The General Assembly is named as a party who would be at least partially responsible for implementing the relief Plaintiffs seek.

13. Defendant, the Honorable Thomas W. Wolf (hereinafter, "Governor Wolf"), is the Governor of the Commonwealth of Pennsylvania with a principal office address at Office of the Governor, 508 Main Capitol Building, Harrisburg, Pennsylvania 17120. Governor Wolf is responsible for enumerating and ascertaining the number of votes given for the election of presidential electors, causing certificates of election to be delivered to presidential electors, signing bills into law, issuing writs of election, and general superintendence over the executive branch of government.

14. Defendant, Kathy Boockvar (hereinafter, "Secretary Boockvar"), is the Secretary of the Commonwealth of Pennsylvania with a principal office

address at 302 N Office Building, Harrisburg, PA 17120. Secretary Boockvar is charged with the general supervision and administration of Pennsylvania's elections and election laws; tabulating, computing, canvassing, and certifying the votes cast for candidates for state and federal office; delivering to the President of the Senate the returns for certain elections; and other related responsibilities.

Jurisdiction

15. This Court has original jurisdiction over this action pursuant to 42 Pa.Cons.Stat. § 761(a)(1) ("Against the Commonwealth government, including any officer thereof, acting in his official capacity").

Material Facts

I. Background

16. Article VII of the Pennsylvania Constitution ("Pennsylvania Constitution") provides two exclusive mechanisms by which a qualified elector may cast his or her vote in an election: 1) by submitting his or her vote *in propria persona* at the polling place on election day; and 2) by submitting an absentee ballot, but only if the qualified voter satisfies the conditions precedent to meet the requirements for one of the four limited, exclusive circumstances under which absentee voting is authorized under the Pennsylvania Constitution (Art. VII, § 14).

17. Mail-in voting, in the form implemented through Act 77 is an attempt by the legislature to fundamentally overhaul the Pennsylvania voting system and permit universal, no-excuse, mail-in voting absent any constitutional authority.

18. The Pennsylvania Constitution since 1838 has required voting to be *in propria persona* (in person), "at the election" (polling place), in the county in which an eligible voter resides.

19. This principle has been upheld by the Pennsylvania Supreme Court in several cases going back to the first major attempt to expand absentee voting in 1864.

20. Over time, exceptions to in-person voting have been added to the Pennsylvania Constitution through constitutional amendments, which includes specific exceptions for military personnel, disabled veterans, religious observations, and other circumstances.

21. 1967 marked the first of several recent attempts to amend the Pennsylvania Constitution in order to expand the exceptions for which absentee voting would be allowed, beyond the previously identified classes of active military and veterans.

22. In 1967, the legislature went through the formal procedure for amending the Pennsylvania Constitution.

23. The 1967 amendment resulted in the addition of Article VII, Section 14, which holds the current provision outlining the limited circumstance under which an elector is permitted to vote without being present at the polling location – "absentee voting." Pa. Const. Art. VII, § 14.

24. After following the constitutionally mandated procedure for properly amending the constitution in 1967, the legislature then enacted election code provisions that allowed for absentee ballots to be cast in the four (4) exclusive circumstances authorized under Article VII, Section 14.

25. Article XI, Section 1 of the Pennsylvania Constitution establishes the mandatory procedural requirements that must be strictly followed in order to amend the Constitution.

26. Pursuant to Article XI, Section 1, a proposed constitutional amendment must be approved by a majority vote of the members of both the Pennsylvania House of Representatives and Senate in two consecutive legislative sessions, then the proposed amendment must be published for three months ahead of the next general election in two newspapers in each county, and finally it must be submitted to the qualified electors as a ballot question in the next general election and approved by a majority of those voting on the amendment.

27. Similar to previous absentee voting legislation found to be unconstitutional under Pennsylvania law, the legislature did not follow the necessary procedures for amending the constitution before enacting Act 77.

28. In 2019, the legislature recognized that there was no constitutional authority for the no-excuse mail-in voting scheme that it desired to implement through Act 77, and concurrently initiated the process of proposing an amendment to the constitution in order to amend the constitutional provisions concerning absentee voting to allow for no excuse mail-in voting.

29. However, pursuant to the Pennsylvania Constitution, Article XI, §1, an amendment to the Constitution must be approved by a majority of the members of both the Senate and House of Representatives in two separate legislative sessions, then submitted as a ballot question to be voted on by the electors.

30. If, after approval by two legislative sessions, a majority of the electors then vote to approve the proposed constitutional amendment, only then will the amendment take effect.

31. Although Act 77 has the effect of attempting to amend the Pennsylvania Constitution, it never went through the procedural requirements for such an amendment and has no legal effect.

32. Neither Act 77 nor the contemporaneous proposed constitutional amendment initiated by the legislature have been approved by a majority vote of

both the House and Senate in two consecutive legislative sessions, nor has either been submitted to the qualified electors as a ballot question and approved by a majority vote of the citizens.

33. Despite the lack of constitutional authority to pass a universal mail-in voting scheme – a scheme which far eclipses any previously conscribed absentee voting scheme – the legislature proceeded to implement Act 77 anyway, in direct contravention of the Pennsylvania Constitution.

34. Put differently, the legislature first recognized their constitutional constraints and the need to amend the constitution in order to enact mail-in voting, sought to amend the constitution to lawfully allow for the legislation they intended to pass, and subsequently abandoned their efforts to comply with the constitution and instead enacted Act 77 irrespective of their actual knowledge that they lacked the legal authority to do so unless and until the proposed constitutional amendment was ratified by approval of a majority of the electors voting on the proposed amendment.

35. The mail-in ballot scheme under Act 77 is therefore unconstitutional on its face and must be struck down as void *ab initio*.

II. The In-Progress Efforts to Amend the Pennsylvania Constitution to Allow No Excuse Absentee Voting

36. In 2019, the Pennsylvania General Assembly again began the process for amending Article VII, Section 14 of the Pennsylvania Constitution; this time in

order to permit absentee voting for all voters through Senate Bill 411, 2019 (later incorporated into Senate Bill 413).

37. The legislative history of the proposed amendment recognizes that "Pennsylvania's current Constitution restricts voters wanting to vote by absentee ballot to [specific] situations…" The amendment proposes to "eliminate these limitations, empowering voters to request and submit absentee ballots for any reason – allowing them to vote early and by mail." Senator Mike Folmer, et al., Senate Co-Sponsorship Memoranda (Jan. 29, 2019, 10:46 AM), https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20190&cosponId=28056 (emphasis added).

38. Introduced on March 19, 2019, S.B. 413 as originally filed was a joint resolution proposing an amendment to the Pennsylvania Constitution related to judicial retention elections and contained nothing related to the constitution's absentee voting provision.

39. The bill passed out of the Senate on October 22, 2019 and was sent to the House where it was referred to the House Committee on State Government a few days later.

40. On April 6, 2020, S.B. 413 was reported as amended from committee.

41. S.B. 413's caption was changed from the introduced version which read: "A Joint Resolution proposing separate and distinct amendments to the

Constitution of the Commonwealth of Pennsylvania, further providing for tenure of justices, judges and justices of the peace," to "A Joint Resolution proposing separate and distinct amendments to the Constitution of the Commonwealth of Pennsylvania, further providing for tenure of justices, judges and justices of the peace; and **further providing for absentee voting**." (emphasis added).

42. In its amended form with the added provisions seeking to amend the Pennsylvania Constitution's absentee voting restrictions, S.B. 413 was passed by a majority of both Houses and filed with the Office of the Secretary of the Commonwealth on April 29, 2020.

43. S.B. 413 will need to be passed by a majority vote in both the Senate and House of Representatives in the next legislative session and then appear on the November 2021 general election ballot to be approved by a majority of the electors in order to be ratified and properly approved pursuant to the established procedures set forth under the Pennsylvania Constitution.

44. If properly approved and ratified by a majority of voters in 2021, S.B. 413 will amend Article VII, Section 14 as follows:

> (a) The Legislature shall, by general law, provide a manner in which, and the time and place at which, qualified electors ~~who may, on the occurrence of any election, be absent from the municipality of their residence, because their duties, occupation or business require them to be elsewhere or who, on the occurrence of any election, are unable to attend at their proper polling places because of illness or physical disability or who will not attend a polling place because of the observance of a~~

~~religious holiday or who cannot vote because of election day duties, in the case of a county employee,~~ may vote, and for the return and canvass of their votes in the election district in which they respectively reside. **A law under this subsection may not require a qualified elector to physically appear at a designated polling place on the day of the election.**

~~(b) For purposes of this section, "municipality" means a city, borough, incorporated town, township or any similar general purpose unit of government which may be created by the General Assembly.~~.

45. The General Assembly later went on to establish a "Select Committee on Election Integrity" to "investigate, review and make recommendations concerning the regulation and conduct of the 2020 general election." Pa. H. Res. No. 1032, Printer's No. 4432, Session of 2020 (Sep. 28, 2020), https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2019&sessInd=0&billBody=H&billTyp=R&billNbr=1032&pn=4432

46. The resolution establishing the committee noted that the "Commonwealth has traditionally only allowed absentee voting by individuals with a statutorily defined excuse to do so, such as a physical disability or absence from their municipality on election day." *Id.* (emphasis added).

47. It further notes that "[b]efore the enactment of Act 77 of 2019, for an individual to vote absentee in this Commonwealth, the individual must have provided a permissible reason to do so…." *Id.*

48. It is expressly acknowledged that Act 77 of 2019, "created a new category of mail-in voting … [whereby] mail-in voters do not have to provide a

customary reason to vote by mail and are able to return their ballots several days later than had traditionally been allowed." *Id.*

49. As with every other amendment to the Pennsylvania Constitution, S.B. 413 faces additional hurdles and requirements imposed by the Pennsylvania Constitution before it becomes law, and its changes have any valid, legally binding effect.

50. A majority of the Pennsylvania Senate and House of Representatives will each need to vote to approve the proposed constitutional amendment again in the upcoming 2020-2021 Session.

51. If the General Assembly again passes the proposed amendment in that session, it will then need to be published publicly in two newspapers in each county for the three months prior to the 2021 general election, and presented to the voters as a ballot question.

52. Pennsylvania voters will have the final say on whether to approve the proposed constitutional amendment that seeks to establish no-excuse mail-in/absentee voting as a constitutionally authorized method of voting in Pennsylvania elections for the very first time.

53. Unless and until the procedures for proposing and approving such an amendment are strictly complied with, the only lawful and constitutional methods of voting in Pennsylvania are in-person voting and absentee voting for those who

qualify for one of the four exclusive, limited circumstances under which absentee voting is constitutionally authorized under Article VII, Section 14.

III. Act 77 of 2019

54. On October 31, 2019, Governor Wolf signed Act 77 of 2019 into law, which implemented sweeping reforms to the elections process in Pennsylvania.

55. Among other changes, Act 77 "create[ed] a new option to vote by mail without providing an excuse"; allowed voters to request and submit mail-in or absentee ballots up to 50 days before an election; and established a semi-permanent mail-in and absentee ballot voter list. *See, e.g.*, Press Release, Governor Wolf Signs Historic Election Reform Bill Including New Mail-in Voting, Governor Tom Wolf (Oct. 31, 2019).

56. In effect, Act 77 created an entire class of electors who are shown to have received a mail-in ballot, despite never actually receiving a mail-in ballot.

57. There is similarly a whole class of voters who received unsolicited or unrequested mail-in ballots that never voted via mail-in ballot and never intended to vote by mail.

58. The Election Code, as amended by Act 77, does not provide voters any meaningful method of disputing a mail-in or absentee ballot that has been submitted in their name, even where a ballot is improperly submitted by another individual.

59. Even under circumstances where a voter is absolutely certain that he or she did not submit a mail-in ballot, if the voting records suggest that such a ballot has purportedly been received from that voter, the voter is effectively deprived of their right to cast a vote as a direct and proximate result of the enactment of Act 77.

60. But for the mail-in voting scheme created under Act 77, enacted in direct contravention of Article VII, Section 14 of the Pennsylvania Constitution, the same voter would be entitled to exercise their fundamental constitutional right to vote and would be entitled to cast a ballot when they appeared in person at the polls on election day.

IV. The November 3, 2020 General Elections

61. Voting at the Pennsylvania General Election (the "General Election") was held on November 3, 2020.

62. The November 3, 2020, General Election was administered by Pennsylvania election officials pursuant to Act 77, which included allowing for universal, no-excuse mail-in ballots to be counted, in violation of the Pennsylvania Constitution.

63. The process of certifying the returns and results of the General Election is currently underway.

64. Should the Commonwealth fail to make a choice for presidential and vice-presidential electors at the General Elections, the electors may be appointed on a subsequent day in such manner as the Pennsylvania General Assembly may direct. *See* 3 U.S.C. § 2.

COUNT I
Declaratory Judgment

65. Plaintiffs hereby incorporate by reference each of the preceding paragraphs as if fully set forth herein.

66. Act 77 is illegal and void *ab initio* because it attempts to vastly expand the exceptions to *in propria persona* voting requirements beyond what is presently authorized under the Pennsylvania Constitution.

67. No legislative enactment may contravene the requirements of the Pennsylvania Constitution.

68. In order to be a "qualified elector," and therefore generally entitled to vote, the Pennsylvania Constitution requires the following:

1. 18 years of age.
2. A Citizen of the United States for at least one month.
3. Residence in Pennsylvania for the 90 days immediately preceding the election.
4. Residence in the "election district where he or she ***shall offer to vote*** at least 60 days immediately preceding the election …."

Pa. Const. Art. VII, § 1 (emphasis added).

69. To "offer to vote" by ballot is to present one's self, with proper qualifications, at the time and place appointed, and to make manual delivery of the ballot to the officers appointed by law to receive it, not to send a ballot by mail.

70. Article VII, Section 5 of the Pennsylvania Constitution also prescribes that "[a]ll elections by the citizens shall be by ballot or by such other method as may be prescribed by law: **Provided, [t]hat secrecy in voting be preserved**." Pa. Const. Art VII, § 5 (emphasis added).

71. In Pennsylvania, the secrecy provision remains part of our fundamental law.

72. Article VII, Section 14 of the Pennsylvania Constitution provides exemptions to the *in propria persona* voting requirements of the Pennsylvania Constitution, for four specific circumstances:

> (a) The Legislature shall, by general law, provide a manner in which, and the time and place at which, qualified electors who may, on the occurrence of any election, be absent from the municipality of their residence, because their duties, occupation or business require them to be elsewhere or who, on the occurrence of any election, are unable to attend at their proper polling places because of illness or physical disability or who will not attend a polling place because of the observance of a religious holiday or who cannot vote because of election day duties, in the case of a county employee, may vote, and for the return and canvass of their votes in the election district in which they respectively reside.
>
> (b) For purposes of this section, "municipality" means a city, borough, incorporated town, township or any similar general purpose unit of government which may be created by the General Assembly.

Pa. Const. Art. VII, § 14.

73. The Pennsylvania Constitution does not provide a mechanism for the Legislature to allow for absentee voting lacking those circumstances described in Article VII, Section 14.

74. Act 77 unconstitutionally expands the scope of absentee voting permitted by the Pennsylvania Constitution to all voters.

75. Newly-created 25 P.S., Chapter 14, Article XIII-D, § 3510 (25 Pa.Stat. § 3150.11) states:

> § 3150.11. Qualified mail-in electors.
> (a) General rule.-- A qualified mail-in elector shall be entitled to vote by an official mail-in ballot in any primary or election held in this Commonwealth in the manner provided under this article.
> (b) Construction.-- The term "qualified mail-in elector" shall not be construed to include a person not otherwise qualified as a qualified elector in accordance with the definition in section 102(t).

76. Absentee voting is defined in 25 P.S., Chapter 14, Article 13. 3146.1 (25 Pa.Stat. § 3146.1), which outlines a variety of categories of eligibility that are each consistent with Article VII, Section 14 of the Pennsylvania Constitution.

77. In enacting Act 77, the Legislature created a fictitious distinction between the pre-existing "Absentee Voting" and newly created "Mail-In Voting."

78. In reality, there is no distinction except that Mail-In Voting is simply Absentee Voting without any of the inconvenient conditions precedent that the

Pennsylvania Constitution requires in order for someone to be permitted to cast a ballot without being physically present at the polls on election day.

79. In other words, Absentee Voting is only Constitutionally authorized under the four limited circumstances specifically delineated under Article VII, Section 14, whereas Act 77 opens Absentee Voting to any and all other qualified voters in the Commonwealth who do not meet the constitutional requirements for Absentee Voting, without excuse or limitation, and simply relabels the voting mechanism as "Mail-In Voting" as opposed to "Absentee Voting."

80. Taking an inartful twist such as simply renaming the mechanism yields a distinction without a difference.

81. The Legislature further attempted to disguise the obvious redundancy between Mail-In Voting and Absentee Voting by refusing to add "Mail-In Voting" to 25 P.S. Article XIII (which governs "Voting By Qualified Absentee Elector) and instead created a new Article (25 P.S. Article XIII-D, "Voting By Qualified Mail-In Electors).

82. By doing this, it appears the Legislature intended to obscure that the two are the same, except that Absentee Voters are required to satisfy additional conditions mandated by the Pennsylvania Constitution whereas Mail-In Voters are not.

83. The goal is clear: vastly expand Absentee Voting and remove all conditions precedent and requirements to make it a universal voting mechanism, while obscuring the fact that such voting method would violate the Pennsylvania Constitution and could only be properly enacted through a Constitutional Amendment.

84. However, renaming a vast, unconstitutional expansion of Absentee Voting as "Mail-In Voting" cannot, and does not, make the conduct valid or effective as a matter of law.

85. The authority vested in the Legislature to pass general laws concerning the manner in which voters can vote by absentee ballot is explicitly (and inherently) limited only to the four enumerated circumstances where absentee voting is authorized.

86. Therefore, any attempt to expand the definition of an absentee voter conflicts with and exceeds the authority established by the Pennsylvania Constitution, and a Constitutional Amendment is required in order for such an expansion to have any legal effect.

87. Section 11 of Act 77 also contains a non-severability clause, which requires that the entire act be rendered void if certain provisions of Act 77 are held invalid. *See* Act of October 31, 2019, P.L. 552, No. 77, at Section 11 ("Sections 1, 2, 3, 3.2, 4, 5, 5.1, 6, 7, 8, 9 and 12 of this act are nonseverable. If any provision of

this act or its application to any person or circumstance is held invalid, the remaining provisions or applications of this act are void."). Several of the provisions noted in the non-severability clause of Act 77 include changes to the Election Code relating to no-excuse mail-in voting; including Section 8, which contains most of the provisions for the new mail-in voting system. *Id.* at Section 8. Because Section 8 and other sections of Act 77 containing provisions for the mail-in ballot system are invalid, Act 77 must be struck down in its entirety.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter a declaratory judgment declaring unconstitutional and void *ab initio* the Act 77 provisions that created a new option to vote by mail without providing an excuse, declaring Act 77 void in its entirety due to Act 77's non-severability clause, declaring invalid any certification of results that include the tabulation of unauthorized votes, including mail-in ballots which did not meet the Constitutional requirements, awarding Plaintiffs' reasonable costs and expenses of this action, including attorneys' fees and costs and granting such further legal and equitable relief as this Court deems just and proper.

COUNT II
Prohibitory Injunction

88. Plaintiffs hereby incorporate by reference each of the preceding paragraphs as if fully set forth herein.

There is no adequate redress at law.

89. The harm caused by Act 77's allowance of improper mail-in ballots cannot adequately be compensated by damages or otherwise be adequately redressed at law.

90. If the requested relief is not granted, Defendants will continue to wrongfully count and certify improper mail-in ballots that are not permitted under the Pennsylvania Constitution.

91. Refusing injunctive relief will result in greater harm than granting it.

92. There would be no harm in requiring Defendants to refrain from certifying improper mail-in ballots, or to rescind any such certification.

93. The harm in denying the requested injunctive relief and allowing Defendants to continue to wrongfully count and certify improper mail-in ballots is clearly greater than any harm Defendants could suggest from granting the requested relief.

Injunction will restore the status quo.

94. An injunction will restore the status quo as it existed prior to Defendants' unlawful actions.

95. There is a clear right to relief and a likelihood of success on the merits.

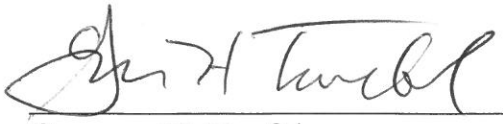
96. Plaintiffs have a clear right to relief on the merits, including a clear right to preliminary mandatory and prohibitive injunctive relief.

97. To the extent that the public interest is impacted, it will be served rather than harmed by granting the injunction.

98. The proposed injunctive relief is narrowly tailored and restores the status quo as it existed prior to Defendants' wrongful conduct.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an order, declaration, and/or injunction that prohibits Defendants from certifying the results of the General Elections which include mail-in ballots which Defendants improperly permitted on a statewide basis; prohibits Defendants from certifying the results of the General Elections which include the tabulation of unauthorized votes, including mail-in ballots which did not meet the Constitutional requirements and, instead, compels Defendants to certify the results of the election based solely on the legal votes or, alternatively, directs that the Pennsylvania General Assembly choose Pennsylvania's electors; award Plaintiffs' reasonable costs and expenses of this action, including attorneys' fees and costs; and provide such other and further legal and equitable relief as this Court deems just and proper.

Respectfully submitted,



Gregory H. Teufel
Brandon M. Shields

Attorneys for Plaintiffs

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE HONORABLE MIKE KELLY, SEAN PARNELL, THOMAS A. FRANK, NANCY KIERZEK, DEREK MAGEE, ROBIN SAUTER, MICHAEL KINCAID, and WANDA LOGAN

Plaintiffs,

v. Docket No. ___ M.D. 2020

COMMONWEALTH OF PENNSYLVANIA,

Defendants.

NOTICE TO PARTICIPATE

TO: Josh Shapiro, Esq.
Attorney General
Office of the Attorney General
1600 Strawberry Square
Harrisburg, PA 17120

If you intend to participate in this proceeding in the Commonwealth Court of Pennsylvania, you must serve and file a notice of or application for intervention under Pa.R.A.P. 1531 within thirty days.

Date: November 21, 2020

Gregory H. Teufel
Brandon M. Shields

Attorneys for Plaintiffs

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

Date: November 21, 2020

Gregory H. Teufel, Esq.

VERIFICATION

The Honorable Mike Kelly, the undersigned individual, deposes and says that the averments in the foregoing Complaint are true and correct to the best of his knowledge, information and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

Date: November 20, 2020

_____

The Honorable Mike Kelly

VERIFICATION

Sean Parnell, the undersigned individual, deposes and says that the averments in the foregoing Complaint are true and correct to the best of his knowledge, information and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

Date: November 20, 2020

Sean Parnell (Nov 20, 2020 22:45 EST)

Sean Parnell

VERIFICATION

Thomas A. Frank, the undersigned individual, deposes and says that the averments in the foregoing Complaint are true and correct to the best of his knowledge, information and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

Date: November 20, 2020

Thomas A. Frank