No. 22O155, Original

In the Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

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

Defendants.

MOTION TO ENLARGE WORD-COUNT LIMIT AND REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

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MOTION TO ENLARGE WORD-COUNT LIMIT

Movant State of Texas respectfully requests this Court's leave to file a single combined reply of 5,400 words in support of its Motion for Leave to File a Bill of Complaint against four defendant States, each of which filed a separate response to Texas's motion.

December 11, 2020 Respectfully submitted,

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Defendants.

REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE

Pursuant to S.Ct. Rule 17.5, the State of Texas ("Plaintiff State") respectfully submits this reply in support of its Motion for Leave to File a Bill of Complaint against the Commonwealth of Pennsylvania and the States of Georgia, Michigan, and Wisconsin (collectively, "Defendant States").

INTRODUCTION

By this Reply, Texas addresses Defendant States' arguments that Texas fails to state a claim because the challenged actions did not change or violate state election statutes. In an effort to obfuscate their unconstitutional abrogation of election security measures in the name of COVID-19, Defendant States tack between misstating the facts pled in the Complaint and arguing that this Court can ignore the

express language in those statutes. Neither approach has merit.

Texas addresses Defendant States' arguments against Texas's standing and purportedly alternate remedies to this action in its separate reply in support of the motion for interim relief.

ARGUMENT

I. DEFENDANT STATES' FACTUAL ARGUMENTS LACK MERIT.

Defendant States' factual defense of the administration of the 2020 election lacks merit. Thus, Texas states a claim on those issues.

A. Pennsylvania's critiques of the evidence are false.

Pennsylvania attacks Dr. Cicchetti's probability analysis calculating that the statistical chances of Mr. Biden's winning the election in the Defendant States individually and collectively, given the known facts, are less than one in a quadrillion. Penn. Br. 6-8. Pennsylvania argues that Dr Cicchetti did not take into account that "votes counted later were indisputably *not* 'randomly drawn' from the same population of votes" in his analysis. Penn. Br. 6-8. Pennsylvania is wrong.

First, Dr. Cicchetti *did* take into account the possibility that votes were not randomly drawn in the later time period but, as stated in his original Declaration, he is not aware of any data that would support such an assertion. *See* Supplemental Declaration of Charles Cicchetti ("Supp. Cicchetti Decl.") ¶¶ 2-3. (App. 152a-153a). Second, although Pennsylvania argues that such data is

"indisputabl[e]", Pennsylvania offers in support nothing other than counsel's assertion. Unsworn statements of counsel, however, are not evidence. *See Frazier v. United States*, 335 U.S. 497, 503 (1948).

In fact, Pennsylvania's rebuttal to Dr. Cicchetti's analysis consists solely of ad hominem attacks, calling it "nonsense" and "worthless". Penn Br. 6, 8. Notably, a subsequent analysis by Dr. Cicchetti, comparing Mr. Biden's underperformance in the Top-50 urban areas in the Country relative to former Secretary Clinton's performance in the 2016 election, reinforces the unusual statistical improbability of Mr. Biden's vote totals in the five urban areas in the Defendant States. *See* Supp. Cicchetti Decl. at ¶¶ 4-12, 20-21. (App. 154a-158a).

Pennsylvania also tries to explain away the reported 400,000 discrepancy between the number of mail-in ballots Pennsylvania sent out as reported on November 2, 2020 (2.7 million) and the figure reported on November 4, 2020 (3.1 million) as described in the Ryan Report. Penn. Br. 6-8; Compl. ¶ 59. Pennsylvania again conclusorily asserts that the discrepancy is purportedly due to the fact that "[o]f the 3.1 million ballots sent out, 2.7 million were mail-in ballots and 400,000 were absentee ballots." Pennsylvania Br. 6. However, as fifteen Pennsylvania legislators stated in the Ryan Report, signed on December 4, 2020: "This discrepancy ... *has not been explained*." Compl. ¶ 59. Compl. ¶ 59 (App. 143a-44a). The Ryan Report states further: "This apparent discrepancy can only be evaluated by reviewing all transaction logs into the SURE system..." (App. 144a).

Pennsylvania's unsupported explanation has no merit.

Notably, Pennsylvania says nothing about the 118,426 ballots that had no mail date, were nonsensically returned *before* the mailed date, or were improbably returned one day after the mail date. ¶ 57. Lastly, Pennsylvania argues that it did not break its promise to this Court to segregate ballots received after November 3, 2020. Penn. Br. 6. Justice Alito's order dated November 6, 2020 belies that argument. *See* Compl. ¶ 8. And because Pennsylvania broke its promise to this Court, it is not possible to determine how many tens, or even hundreds of thousands of illegal late ballots were wrongfully counted. Compl. ¶ 55.

B. Georgia's critiques of the evidence are false.

Georgia argues that the "[r]ejection rates for *signatures* on absentee ballots remained largely unchanged" as between the 2018 and 2020 elections, referring the Court to *Wood v. Raffensperger*, No. 1:20-cv-04651-SDG, 2020 WL 6817513, at *10 (N.D. Ga. Nov. 20, 2020) ("*Wood*"). Georgia Br. 4. Georgia's reliance on *Wood* is misplaced because the analysis therein related to rejection rates for absentee ballots—as opposed to the mail-in ballots analyzed by Dr. Cicchetti. Supp. Cicchetti Decl. ¶¶ 13-19. (App. 158a-60a). Georgia's rejection rate comparison is therefore inapposite. *Id*.

Specifically, the district court in *Wood* cited to "ECF 33-6" (*id*. at n.30) which is the affidavit of Chris Harvey, Georgia Director of Elections. First, the Harvey Affidavit itself does not cite any evidence for

signature rejection rates; rather, it relies solely upon a complaint in an unrelated action. Supp. Cicchetti Decl. ¶¶ 14-15. (App. 158a-59a) (citing *Democratic Party of Georgia et al. v. Raffensperger*). Second, as explained by Dr. Cicchetti, the Harvey Affidavit relies on 2018 data which does not provide an accurate comparison with a presidential election year. *Id.* ¶¶ 19, 22. (App. 160a-62a). More importantly, the Harvey affidavit discusses absentee ballots—*not mail-in ballots* at issue here and as analyzed by Dr. Cicchetti. Mail-in ballots are subject to much higher rejection rates. Indeed, in 2018, the rejection rate for mail-in ballots was actually 3.32% or more than twenty times higher than the rejection rate for the absentee ballots that Georgia incorrectly compares to dispute Dr. Cicchetti's analysis. . *Id.* at ¶¶ 16-18. (App. 159a-60a). In short, Georgia's attempt to rebut Dr. Cicchetti's analysis fails. *Id.* ¶ 22. (App. 161a-62a).

C. Michigan's critiques of the evidence are false.

Michigan's argument against the evidence of irregularities in Wayne County's election process fares no better. First, Michigan concedes that, with respect to the ballots issued pursuant to the Secretary of State's unlawful mailing of ballot applications and online ballot applications—which also did not comply with statutory signature verification requirements—"there is no way to associate the voter who used a particular application with his or her ballot after it is voted." Mich. Br. 9; Compl. ¶¶ 81-87. Michigan's "heads we win, tails you lose" defense should be rejected. This is a problem solely of the Secretary of State's own making.

Michigan also admits that it "is at a loss to explain the[] allegations" showing that Wayne County lists 174,384 absentee ballots that do not tie to a registered voter. Mich. Br. 15; Compl. ¶ 97. That is precisely the point. And it illustrates exactly why the Court should grant Plaintiff's motion.

Similarly, Michigan's argument that the fact that 71% of Detroit's Absent Voter Counting Boards ("AVCBs") were unbalanced provides no basis not to certify results is false. Mich. Br. 16. In fact, while Michigan asserts that this "can happen for a number of innocuous reasons" it nonetheless offers no explanation for the highly suspicious circumstances: that this out of balance situation resulted in more than 174,000 votes not being tied to a registered voter; that two members of the Wayne County Board of Canvassers initially voted against certification based on these issues, then voted in favor of certification after receiving both threats and assurances of an immediate audit; and then rescinded their certification votes after the promised audit was refused. Compl. ¶¶ 99-101. Texas understands that these issues involving Wayne County's irregular votes have not been adjudicated, and Michigan does not contend otherwise. But it is suggestive at this preliminary stage of the proceeding.

Lastly, Michigan's attempts to argue away the evidence showing that Wayne County had a policy of not performing signature verifications as required under MCL § 168.765a(6) are misplaced. Mich. Br. 14-15; Compl. ¶¶ 85-87, 92-95. Michigan cites the affidavit of Christopher Thomas, a consultant for Detroit, used in litigation in Michigan state court, as

evidence for its assertion. Mich. Br. 11, 15-16. Thomas, however, does not state that he personally observed signatures being verified in accordance with MCL § 168.765a(6). That statute requires that the clerk place a "written statement" or "stamp" on each ballot envelope where the voter signature is placed, indicating that the voter signature was in fact checked and verified with the signature on file with the State. Compl. ¶ 92. Thus, contrary to Michigan's argument, Thomas' assertions do not rebut the testimony of Jessy Jacob, a decades-long City of Detroit employee stating that election workers were instructed not to compare signatures. *Id*. ¶ 94. In fact, a poll challenger, Lisa Gage, testified in an affidavit that has not been submitted in any prior litigation, that not a single one of the several hundred to a thousand ballot envelopes she observed had a written statement or stamp indicating the voter signature had been verified at the TCF Center in accordance with MCL § 168.765a(6). Affidavit of Lisa Gage ¶ 17. (App. 165a).

D. Wisconsin's critiques of the evidence are false.

Wisconsin argues that "Texas offers no proof of a single voter who cast a ballot in the general election who did *not* qualify for indefinite confinement status." Wisc. Br. 31. Under Wisconsin law, "indefinite confinement status" allows a voter to avoid Wisconsin's statutory photo identification and signature verification requirements. Compl. ¶¶ 115-17. The number of people claiming this special status exploded from fewer than 57,000 voters in 2016 to nearly 216,000 in 2020. Compl. ¶ 122. Wisconsin

claims this increase was due to more people voting by mail in 2020. Wisc. Br. 31.

Voting by mail, however, has *nothing* to do with being classified as "indefinitely confined." Wisconsin offers no plausible justification for this nearly four-fold increase in voters claiming this special status. Wisconsin also ignores the fact that the Wisconsin Supreme Court found that clerks in Dane County and Milwaukee County had earlier violated Wisconsin law by issuing guidance stating that all voters should identify themselves as "indefinitely confined" on absentee ballot applications because of the COVID-19 pandemic. Compl. ¶¶ 118-19. Despite that order, the WEC again violated Wisconsin law and issued a directive to the Wisconsin clerks prohibiting removal of voters from the registry for indefinite-confinement status even if the voter is no longer "indefinitely confined," thereby cementing this improper practice in the 2020 general election. *Id*. at ¶¶ 120-21.

Lastly, Wisconsin ignores the sworn testimony of Ethan J. Pease, a box truck delivery driver subcontracted to the U.S. Postal Service ("USPS") to deliver truckloads of mail-in ballots to the sorting center in Madison, WI, who testified that USPS employees were backdating ballots received after November 3, 2020. Compl. ¶127. (App. 149a-151a). Further, Pease testified how a senior USPS employee told him on November 4, 2020 that "An order came down from the Wisconsin/Illinois Chapter of the Postal Service that 100,000 ballots" had been misplaced and described how the USPS dispatched employees to "find[] ... the ballots." *Id*. (App. 150a).

II. DEFENDANT STATES' LEGAL ARGUMENTS LACK MERIT.

Defendant States' arguments that administration of the 2020 election complied with their State election statutes lack merit. Thus, Texas states a claim on these issues.

A. Pennsylvania changed its deadline for receiving ballots through judicial, not legislative, action.

Pennsylvania argues that there actually "was no state law violation" when the Pennsylvania Supreme Court "temporarily modified" by three days the statutory deadline for receiving mail-in and absentee ballots. Pennsylvania Br. 5. Why not? Because, according to Pennsylvania, "the state Constitution required it." *Id*. In other words, Pennsylvania appears to be arguing that state law is not really changed if the changing of the law is done by a state's Supreme Court and it asserts a basis in the state Constitution for doing so. Aside from the obviously tortured reasoning of this argument, there are three additional problems with Pennsylvania's argument.

First, the Electors Clause does not contain a proviso permitting judicial modification of the state legislature's manner for appointing Presidential Electors. A State's Electors are to be appointed "in such Manner as the Legislature thereof may direct." U.S. Const, art. II, § 1, cl. 2. "[T]he state legislature's power to select the manner for appointing electors is plenary." *Bush v. Gore*, 531 U.S. 98, 104 (2000) ("*Bush II*"). A precursor to Pennsylvania's argument was addressed by Justice Rehnquist in *Bush II*, when he pointed out that the Elector's Clause did not permit

the Florida Supreme Court to modify the plain terms of Florida law. He acknowledged this Court's general deference to state courts in interpreting state law. "But, with respect to a Presidential election, the [state] court must be both mindful of the legislature's role under Article II in choosing the manner of appointing electors and deferential to those bodies expressly empowered by the legislature to carry out its constitutional mandate." *Id*. at 114 (Rehnquist, C.J., concurring). As he observed, "This inquiry does not imply a disrespect for state *courts* but rather a respect for the constitutionally prescribed role of state *legislatures*." *Id*. at 115 (emphasis in original). Because the state court "significantly departed from the statutory framework," its holding could not stand. *Id*. at 122. In the instant case, the Pennsylvania legislature's statutory deadline was expressed in unmistakably plain terms: "a completed absentee ballot must be received in the office of the county board of elections no later than eight o'clock P.M. on the day of the primary or election." 25 P.S. § 3146.6(c). The Pennsylvania Supreme Court's addition of three days after the election was a direct and significant departure from the statutory framework.

Second, the fact that the Pennsylvania Supreme Court purported to modify this clear statutory deadline by relying on the Pennsylvania Constitution is of no moment here. The court did not rely on anything in the Pennsylvania Constitution specific to the deadline for receiving absentee ballots. Instead, the court relied on the generally-worded edict that "Elections shall be free and equal." Pa. Const. art. I, § 5, cl. 1; *Democratic Party v. Boockvar*, 238 A.3d 345

(Pa. 2020). It is a stretch to find a conflict between a statutory deadline that is applied equally to all absentee ballots and a constitutional mandate that elections be equal. But even if there were such a conflict, a state constitution cannot deprive a state legislature of its authority under the *federal* Constitution to direct the manner in which Electors shall be appointed. U.S. Const. art. II, § 1, cl. 2. The Supremacy Clause makes clear that the U.S. Constitution is the "supreme Law of the Land … any Thing in the *Constitution* or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI (emphasis added).

Third, the only case support offered by Pennsylvania for its strained argument is *Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, 576 U.S. 787, 817-18 (2015). Pennsylvania Br. 5. However, that case is inapposite, as it concerned the Elections Clause of Article I, not the Electors Clause of Article II. Moreover, the question in that case was whether the state could by citizen's initiative assign redistricting to a commission. The Court concluded, "We resist reading the Elections Clause to single out federal elections as the one area in which States may not use citizen initiatives as an alternative legislative process." *Id.* at 817. Clearly, the decisions of the Pennsylvania Supreme Court cannot be described as "alternative legislative process." For all of these reasons, Pennsylvania's argument must fail.

B. Pennsylvania cannot ignore the express terms of state law concerning signatures.

With respect to Pennsylvania's non-legislative changes to the signature requirements of state law, the Pennsylvania Brief bends the meaning of words to the breaking point. Pennsylvania asserts that "the alleged violations of state law were not, in fact, violations." Pennsylvania Br. 19. Pennsylvania then follows that assertion with the claim: "An analysis of a voter's signature is not permitted by state law." *Id.* (with a "see" citation to *In re Nov. 3, 2020 Elections*, 2020 WL 652803 at *12). These dissembling statements completely misrepresent what the text of Pennsylvania law says.

The words of Pennsylvania law are clear: "The application of any qualified elector … for an official absentee ballot in any primary or election shall be signed by the applicant…." 25 P.S. § 3146.2(d). "**Signature required.** Except as provided in subsection (d), the application of a qualified elector under section 1301-D for an official mail-in ballot in any primary or election shall be signed by the applicant." 25 P.S. § 3150.12. 25 P.S. §§ 3146.6(a) and 3150.16(a) require a voter submitting an absentee or mail-in ballot to "fill out and sign the declaration" printed on the ballot return envelope. The signed declaration on the envelope of each ballot must be verified: "When the county board meets to pre-canvass or canvass absentee ballots and mail-in ballots … the board shall examine the declaration on the envelope of each ballot not set aside under subsection (d) and shall compare the information thereon with that

contained in the 'Registered Absentee and Mail-in Voters File,' the absentee voters' list and/or the 'Military Veterans and Emergency Civilians Absentee Voters File,' whichever is applicable." 25 P.S. § 3146.8. Finally, signatures at the polling place must also be verified, according to Pennsylvania law: "Such election officer … shall compare the elector's signature on his voter's certificate with his signature in the district register." 25 P.S. § 3050(a.3)(2).

Pennsylvania does not deny that on September 11, 2020, the Pennsylvania Secretary of State quickly settled with the League of Women Voters of Pennsylvania, which had filed a complaint a month earlier seeking "a declaratory judgment that Pennsylvania's existing signature verification procedures for mail-in voting" were unlawful. *League of Women Voters of Pennsylvania v. Boockvar*, No. 2:20-cv-03850-PBT (E.D. Pa. Aug. 7, 2020). The League of Women Voters did not have the same difficulty seeing the "existing signature verification procedures" that now seems to afflict Pennsylvania. In any event, the Secretary of State was willing to do away with such verification procedures. This sue-and-settle arrangement eliminated any signature verification requirement regarding absentee or mail-in ballots. It also constituted a non-legislative change to the rules for appointing Presidential Electors in Pennsylvania.

In subsequent litigation before the Pennsylvania Supreme Court, the Pennsylvania Secretary of State took the position that the signature verification requirement with respect to absentee or mail-in ballots was not explicit enough in state law. The court

agreed, effectively ratifying the Secretary of State's September declaration eliminating such requirements. According to the court, although a signature was required, it need not be verified. *See In re November 3, 2020 Gen. Election*, 2020 WL 6252803 (Oct. 3, 2020). Thus, the judicial branch agreed with the sue-and-settle revision of the law made by the executive branch. But the legislative branch never assented to such changes. As the Amicus Brief of seventy Members of the Pennsylvania General Assembly maintains, the "legislative prerogative to determine the times, places and manner of conducting elections has been usurped by officials from other branches of state government…" Penn. Gen. Assembly Members' Amicus Br. 7. This usurpation violates the Electors Clause of the United States Constitution, regardless of whether or not it has the blessing of Pennsylvania's judicial branch.

C. The Michigan Secretary of State violated state statute when she mailed absentee ballot applications.

Michigan argues that, even though Michigan law provides for only three methods by which a voter may receive an absent voter ballot application, M.C.L. § 168.759(3), and even though "the clerk of the city or township" is the only government official empowered by the statute to send an unrequested application, M.C.L. § 168.759(3)(b), nevertheless the Michigan Secretary of State possesses unwritten authority under state law to mail absent voter ballot applications to every registered voter in the State. Michigan Br. 6-7. In support of this argument, Michigan cites the majority opinion of a divided

Michigan Court of Appeals panel. *Id.* at 6, citing *Davis v. Secretary of State,* 2020 WL 5552822 at *6 (Sept. 2020). Michigan's argument falls short, for three reasons.

First, as Michigan acknowledges, the cited case is currently on appeal to the Michigan Supreme Court. Case No. 162007; Michigan Br. 6. It is far from a settled interpretation of Michigan law recognized by the high court of that State. The unusual interpretation of Michigan law offered by the lower court, which was the subject of a dissent, cannot be relied upon by this Court, as it will not be the final opinion on the matter offered by the Michigan judiciary.

Second, this Court must itself look to the plain phrasing of the text of Michigan law. It is clear that in a statute such as M.C.L. § 168.759, which expressly lists those mechanisms by which a voter can receive an absent voter ballot application, the canon of *expressio unius est exclusio alterius* applies. This interpretive canon, which was appropriately applied by the dissenting judge in the Michigan Court of Appeals, holds that the listing of one or more things in a statute must be understood to exclude those things *not* listed. As this Court has explained, "the canon *expressio unius est exclusio alterius* does not apply to every statutory listing or grouping; it has force only when the items expressed are members of an 'associated group or series,' justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence." *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003). That is certainly the case here. Three associated mechanisms for receiving

an absent voter ballot application are listed. M.C.L. § 168.759(3)(b). The Secretary of State is plainly *not* listed in M.C.L. § 168.759(3)(b), which gives exclusive authority to the clerks of the cities and townships of Michigan to mail out absent voter applications. That authority was provided only to the clerks for good reason: they are the officials entrusted with the authority to send out and process absent voter ballots, M.C.L. § 168.759(2), (4)-(5); they are the officials entrusted with the authority to provide notice of Michigan elections, M.C.L. § 78.21(1); and they are entrusted with the duty of "keep[ing] safeguarded all official ballots for absent voters' use." M.C.L. § 168.715. This is consistent with the practice of most states, which entrust solely to county or municipal clerks the authority to manage the mail-in voting process. *See, e.g.*, K.S.A. 25-1120 (Kansas county election officers given authority to oversee advance voting ballots and envelopes).

Third, neither the statutes of Michigan nor the Michigan Constitution provides sweeping authority to the Secretary of State to do whatever she deems appropriate in overseeing the State's elections. Rather, the Secretary of State is a single executive heading a principal department; accordingly, the Secretary of State shall "perform duties prescribed by law." Const 1963, art 5, § 9. The laws of Michigan do not anywhere prescribe the duty of mailing absent voter ballot applications to the Secretary of State. On the contrary, that duty is prescribed only to the clerks of the cities and townships. M.C.L. § 168.759(3)(b). For these reasons, Michigan's argument is contrary to

the plain meaning of the text of Michigan law and must be rejected.

D. Georgia abrogated its statutes.

Georgia claims that measures taken by its state and local election officials "complied with Georgia law." Georgia Br. 3. But later, Georgia admits that it *did not comply* with at least one Georgia law, falsely asserting that it needed to allow for the processing of absentee ballots before election day because "there was a significant risk that the ballots could not be processed quickly enough on election day to meet other statutory requirements in a timely manner." *Id.* at 25. Georgia, however, never mentions what those supposed "other statutory requirements" were.

Even if we assume they were referring to provisions like that contained in Ga. Code Ann. § 21-2-493—that the Superintendent of elections shall "publicly commence the computation and canvassing of the returns at or before 12:00 Noon on the day following the … election," Georgia fails to explain how the statutory authority "To employ such assistants as may be necessary," Ga. Code Ann. § 21-2-31, would not make it possible to comply with both statutory provisions. Instead, the Secretary of State simply issued a directive, State Rule 183-1-14-0.9-.15, to allow absentee ballots to begin to be processed three weeks *before* election day, in violation of unambiguous state law that forbids such processing until "after the opening of the polls" on election day. O.C.G.A. § 21-2-386(a)(2).

That provision only allows the "outer envelope" to be "opened" after the polls have been opened, and it forbids even the removing of the contents (*i.e.,* the

inner envelope containing the ballot) or the opening of the inner ballot envelope. *Id.* The next subsection does allow a county election superintendent the discretion to open the inner envelopes and begin tabulating absentee votes "after 7:00 a.m. *on* the day of the … election," but only with seven days' notice, and even then no results can be disclosed until after 7:00 p.m. on election day. O.C.G.A. § 21-2-386(a)(3), (5). Georgia's claim that this alteration of the prohibition on processing absentee ballots prior to election day "was entirely within the scope of [election officials'] delegated authority [under O.C.G.A. § 21-2-31(10)] to determine that it would be more 'fair, legal, and orderly' to permit early processing" is simply false.

The provision Georgia relies on includes the requirement, omitted by Georgia in its brief, that any such action be "consistent with law." *Id.* And its claim that another statute, O.C.G.A. § 21-2-386, allows the election boards "to preliminarily review absentee ballots before Election Day," is a disingenuous sleight-of-hand. The only thing allowed before election day under that statute is the mandate that county registrars comply with Georgia's requirement to validate the voter's registration information and signature on the outer envelope upon receipt, § 21-2-386(a)(1)(B). The remainder of the statute makes clear that Registrars are not even "authorized to open the outer envelopes" until polls open on election day.

More significantly, the Georgia Secretary of State also altered the double signature verification requirement for absentee ballots without legislative approval and required a cumbersome three-person verification process before a ballot could be rejected.

Compl. ¶¶ 70-72; *See also* President Trump's Complaint in Intervention at ¶ 4. Georgia law requires that the signature on any returned absentee ballot be compared with *both* the registration signature and the signature on the application for an absentee ballot. *See* O.C.G.A. § 21-2-386(a)(1)(B) ("Upon receipt of each ballot, … [t]he registrar or clerk … shall compare the signature or mark on the oath with the signature or mark on the absentee elector's voter registration card … *and* application for absentee ballot") (emphasis added). Yet the Secretary agreed in March 2020 to a settlement that allowed absentee ballots to be deemed invalid only if the signature did not match "*any* of the voter's signatures on file in eNet [the voter registration system] *or* on the ballot absentee application." Compromise Settlement Agreement and Release, *Democratic Party of Georgia, et al. v. Raffensperger, et al.*, Civil Action No. 1:19-cv-5028-WMR (N.D. Ga. Mar 6, 2020).

In other words, the Settlement agreed to by the Secretary of State, without approval from the State legislature, allowed for an absentee ballot to be deemed valid if the signature matched *only* the signature on the absentee ballot application, thus removing a significant statutory check against the fraudulent application for and then voting of absentee ballots in the name of someone else. Testimony provided to the Georgia Legislature by University of Georgia Student Grace Lemon, backed up by a sworn affidavit, demonstrated that the Legislature's concern about this kind of fraud was not merely speculative; it happened. She was advised when she went to the polls in Fulton County that someone had applied for and

voted an absentee ballot in her name. *See* https://www.youtube.com/watch?v=hRCXUNOwOjw (beginning at 3:17:17).

In sum, Georgia's claim that "the State and its officers have implemented and followed" the laws enacted by the Legislature is false, but at least Georgia acknowledges in its brief that it is the *Legislature* that has "plenary authority over voting procedures." Georgia Br. at 11; *see also id.* at 12 (citing *McPherson*, 146 U.S. at 35). Neither Texas nor Plaintiff in Intervention Donald Trump seeks to usurp the Georgia Legislature's plenary authority; they merely ask this Court to uphold that plenary authority against violations by non-legislative officials that have resulted in an illegal and unconstitutional election certification, to the detriment of the electoral votes *legally* certified in states such as Texas, and the even greater detriment to the Plaintiff in Intervention.

E. Wisconsin abrogated its statutes.

Wisconsin attempts to deflect the Electors Clause claim by invoking federalism, citing *Shipley v. Chicago Bd. of Election Comm'rs*, 947 F.3d 1056, 1062 (7th Cir. 2020), and other circuit cases having nothing to do with the state legislatures' prerogative under Article II to define the method of appointing Presidential Electors. Wisc. Br. 20. Without any relevant case support, Wisconsin declares that Plaintiff's plain reading of the Electors Clause would "swallow" a "fundamental rule of federalism." *Id.* at 20. However, as noted *supra*, Chief Justice Rehnquist pointed out twenty years ago that such attempts to cloak violations of the Electors Clause in the garments

of federalism are incorrect. Enforcing the Electors Clause "does not imply a disrespect for state *courts* but rather a respect for the constitutionally prescribed role of state *legislatures*." *Bush II,* 531 U.S. at 115 (Rehnquist, C.J., concurring) (emphasis in original).

Aware that Chief Justice Rehnquist's analysis of the Electors Clause deflates its federalism argument, Wisconsin resorts to dismissing the Rehnquist concurrence: "that opinion did not garner a majority and thus has no precedential effect." Wisc. Br. 23. It may not have precedential effect; but it certainly has persuasive effect. And Wisconsin offers no rebuttal to Chief Justice Rehnquist's reasoning.

Instead, Wisconsin takes an unusual course in its Brief. Wisconsin does not deny Plaintiff's contention that executive and judicial actors modified the express requirements of state law as laid out in Plaintiff's Complaint. Rather, Wisconsin claims that the State legislature implicitly agreed to have its rules for the appointing of Presidential Electors changed by the executive and judicial branches. This agreement is found nowhere in state law. Rather it comes from the penumbras and emanations of having three branches of government.

According to Wisconsin, it is simply "axiomatic" that "executive branch officials, in order to carry out their constitutional function of executing statutes, necessarily must interpret the meaning of those statutes and must exercise executive judgment." Wisc. Br. 25. By "interpret" Wisconsin evidently means "change the meaning of." And Wisconsin claims it is "equally axiomatic … that the executive branch's interpretation and application of state statutes in

particular situations are subject to review by the judicial branch." *Id.* 26. In other words, according to Wisconsin, by being part of this three-branches-of-government arrangement, the legislature conceded the power to modify statutes to the other two branches. Under this theory, Electors Clause violations would never occur, because every change wrought by the judiciary or the executive branch always has the implicit approval of the legislative branch. Such a view would render meaningless the grant of authority to state legislatures in the Electors Clause.

Wisconsin also argues that the fact that Wis. Stat. § 6.87(4)(b)1 permits absentee ballots to be returned through "deliver[y] in person, to the municipal clerk" demonstrates that drop boxes are legal under Wisconsin law. Not so. The plain statutory language cited by Wisconsin by its own terms renders the use of unmanned drop boxes per se illegal under Wisconsin law. Compl. ¶¶ 110-14. Similarly, Wisconsin's argument that the Wisconsin Supreme Court "approved" of certain officials unilaterally expanding the definition "indefinitely confined" to include *every* voter due to COVID-19 is absurd. Wisc. Br. 30-31; Compl. ¶¶ 115-22. In fact, the Supreme Court rejected the unlawful expansion of "indefinitely confined"—which does away with Wisconsin's signature verification and photo identification requirements. Compl. ¶ 119.

III. THIS CASE WARRANTS SUMMARY DISPOSITION OR EXPEDITED BRIEFING.

Although Defendant States dispute that the Court should hear this action in its discretion and dispute

the laws and facts, Defendant States offer no reason against deciding this action summarily if the Court rules for Texas on the facts and law.

CONCLUSION

Leave to file the Bill of Complaint should be granted.

December 11, 2020 Respectfully submitted,

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Supplemental Declaration of Charles J. Cicchetti, Ph.D.

1. I am the same Person who filed a declaration previously in this Matter. I am responding to three specific responses to my initial declaration in the Defendants' Opposition to Motions in the Matter No. 220115.

Early Tabulations

2. Defendants refer to my earlier Declaration where I report anomalous differences between tabulated ballots before 3 AM EST and subsequent tabulations. Pennsylvania misstates what I say and calls my analysis "nonsense" on page 6 of their Brief.

This is what I actually said:

> There is a one in many more than quadrillions of chances that these two tabulation periods are randomly drawn from the same population. Therefore, the reported tabulations in the early and subsequent periods could not remotely plausibly be random samples from the same population of all Georgia ballots tabulated. This result was not expected because the tabulations reported at 3 AM EST represented almost 95% of the final tally, which makes a finding of similarity for random selections likely and not statistically implausible.
>
> Put another way, for the outcome to change, the additional ballots counted would need to be much different than the earlier sample tabulated. Location and types of ballots in the subsequent counts had, in effect, to be from entirely different populations, the early and

> subsequent periods, and not random selections from the same population. These very different tabulations also suggest the strong need to determine why the outcome changed. I am aware of anecdotal statements from election night that some Democrat strongholds were yet to be tabulated. There was also some speculation that the yet-to-be counted ballots were likely absentee mail-in ballots. Either could cause the latter ballots to be non-randomly different than the nearly 95% of ballots counted by 3AM EST, but I am not aware of any actual data supporting that either of these events occurred. However, given the closeness of the vote in Georgia, 12,670 votes, further investigation and audits should be pursued before finalizing the outcome. (Initial Cicchetti Declaration, paragraph 16, page 5 of 10.)

3. Pennsylvania's Brief states at page 7 of that:

> But the votes counted later were indisputably *not* "randomly drawn" from the same population of votes, as those counted earlier were predominantly in-person votes while those counted later were predominantly mail-in votes.

I noted that possibility in my Initial Declaration. Specifically, I tested the hypothesis that the vote probability for major party candidates (vote propensity vote rate) differed in early and late period. I concluded that it does from the large z score. This analysis did not attempt to speculate about why there was a difference—though I expressly noted possible unverified anecdotal explanations described above. Because these anecdotal explanations are not verified,

they are not included in my statistical analysis. The vote patterns I analyzed were different and I ascribe the likelihood of finding such patterns from the same population with the same rate of vote propensity as vanishingly small, just as it would be very unlikely to get many heads in coin tossing followed by many tails. My conclusion was simply that there were significant differences in the four battleground states. I conclude more narrowly that what happened in the four battleground states and when it happened should not be dismissed as coincidence.

The Pennsylvania Brief actually repeats what I observed "could" be an explanation related to the types of ballots and location, but the authors do not offer any data or supporting facts that explain what "might" have happened and why. I continue to recommend that more investigations and ballot audits are necessary before the unusual and yet similar differences across all four states could have occurred coincidentally.

Indeed, my belief as to unusual statistical anomaly of Biden's win in these States, individually or collectively, is reinforced by my subsequent analyses, described below.

Clinton Compared to Biden Among Urban Voters

4. Pennsylvania's Motion also avers on page 8 that my analysis of the Clinton and Biden performances are "worthless" because comparisons of "successive elections" are "worthless".

This what I said:

> I continue to find with very great confidence that I can reject the hypothesis that the percentages of the votes Clinton and Biden achieved in the respective elections are

> similar. The estimated Z-score is 108.7. The confidence for rejecting the hypothesis remains many times more than one in a quadrillion.[4]
>
> There are many possible reasons why people vote for different candidates. However, I find the increase of Biden over Clinton is statistically incredible if the outcomes were based on similar populations of voters supporting the two Democrat candidates. The statistical differences are so great, this raises important questions about changes in how ballots were accepted in 2020 when they would be found to be invalid and rejected in prior elections.

Subsequent to filing my initial declaration, I read reports concerning urban percentage vote that made me look for other data. I was particularly interested in reports that Clinton performed better in urban areas than Biden, despite his winning more total votes. I investigated further and found some reasons why I am glad I urged a need for further inquiry in my initial declaration.

5. In 2016 limited to the major-party candidates Clinton had 51% of all the votes nationally compared to Trump's 49%. She won in counties with large urban areas with a much larger percent than Trump. Her share of the votes in counties where the Top-50 cities are located was 67.8% compared to Trump's 32.2%.

6. Biden did not do as well as relative to Clinton in 2020 the counties. He had a lead in the Top-50 cities of 66.4% compared to Trump's 33.6% ignoring third part shares. The difference in Democrat vote

percentage between 2020 and 2016 is a loss of 1.4% from Biden compared to Clinton.

7. I used a multivariate regression analysis for the votes cast in every county in the USA in both 2016 and 2020. I found that Trump performed much better among Hispanic and African American voters in 2020 than in 2016. This cut Biden's urban vote share in 2020 relative to Clinton in 2016. While Biden still won these urban counties, he underperformed Clinton.

8. I separately analyzed Biden and Clinton's vote shares in the five major cities in the four battleground states of Georgia, Michigan, Pennsylvania, and Wisconsin. I found the comparison to be contrary to the national comparison results where Clinton had higher percentages that Biden in the Top-50 urban counties. I removed the four battleground states for the Top-50 cities and the loss in Democrat vote percentages is 1.4%, with Clinton getting 67.8% and Biden getting 66.4%. In four of the five most populous counties for the cities in these four states, Biden had higher percentages than Clinton when all major and minor party candidates are included. Biden won:

a. Fulton County, GA (Atlanta) 72.6% compared to 68.9% for Clinton , or by 3.7% more.

b. Wayne County, MI (Detroit) 68.5% compared to 66.8% for Clinton, or 1.7% more.

c. Allegheny, PA (Pittsburgh) 59.7% compared to 56.5% for Clinton, or 3.2% more.

d. Milwaukee, WI (Milwaukee) 69.4% compared to 65.6% for Clinton, or 3.8% more.

e. Philadelphia, PA was the exception where Biden had a very high 81.4% compared to an even higher percentage of 82.5% for Clinton, or 1.1% less.

9. Biden's votes did not perform as well as Clinton in the larger urban areas nationally because while still winning among Hispanics and African Americans he lost ground to Trump when compared to Clinton. However, he performed better in the major urban counties in the four battleground states. The Pennsylvania Brief credits efforts to get out the vote, but offers no data or facts to support its claim. Biden's win in these urban areas in the four battleground states is also consistent with any efforts to count votes that would otherwise have been rejected or otherwise not be valid. Maybe, there was some of both. The conflicting results in battleground urban counties is unusual and justifies further investigation to determine how Biden gained in four out of five major urban areas in the four battleground states compared to his somewhat weaker relative performance in the Top-50 urban areas in the Country compared the Clinton's in 2016.

10. Biden did not perform as well in combined Top-50 urban areas than Clinton did in 2016 because Trump gained bigger percentage shares from Hispanics and African Americans. In contrast, Biden actually had higher percentages in four of the five urban centers in the four battleground states of Georgia, Michigan, Pennsylvania and Wisconsin. I think the unusual fact pattern deserves more scrutiny.

11. Coincidences are possible, but relying on them is questionable. Analyzing data and stubborn facts are a better way to determine what we observe. The facts show that while Biden had more ballots in urban areas than Clinton, she outperformed him in terms of the percentage of the vote she received. Further analyses shows that she had more Hispanic

and African American support with less votes being cast in 2016.

12. Contrary to the dismissal that the results are "worthless" in the Pennsylvania Motion (page 8), it is worthwhile to understand that in the battleground states comprised of the four defendants that in four of the five urban areas Biden had higher percentages than Clinton. This result is surprising given the Trump national gains in support from Hispanics and African Americans. This contrary observation supports further investigation to determine what happened and why. This would not be a worthless outcome.

Georgia Rejection Rates

13. Georgia's Brief in opposition discusses the finding in my declaration that the 2020 rejection rate in Georgia was "seventeen times greater" in the presidential election in 2016 compared to 2020. (Initial Cicchetti Declaration, paragraph 24, page 7 of 10). I also explained that more than six-times as many mail-in ballots were used in 2020, which suggests other things being the same there would be more rejections due to increased use of mail-in ballots by so many voters in Georgia.

14. Georgia's Brief suggests other things were not the same because of "extensive public and private educational efforts regarding voting procedures" (Georgia Br. Statement 1, page 5). Georgia does not provide any data or analysis for this statement. Instead, Georgia refers indirectly to an Affidavit from Chris Harvey, cited in a district court opinion, who discusses 2018 rejections relying on data from a third party source. Georgia Br. 4. In his affidavit, Harvey in turn cites Democratic party of

Georgia et al. v. Raffensperger, Civil Action No.1:19-cv-5028-WMR, First Amended Complaint, paragraphs 2 through 4, for unverified data

15. Presidential elections, as in 2016 and 2020, are not necessarily the same as general elections like 2018. In my analysis I focused exclusively on mail-in ballot rejections, not all absentee ballots that Mr. Harvey discusses. I use county data for mail-in ballots from the U.S Election Assistance Commission's Election Administration and Voting Survey (EAVS) for 2016 and 2018. For 2020 I use Secretary of State data. I find the data leads to very different results and conclusions than Mr. Harvey reports, which the Georgia Brief uses.

15. Specifically, Mr. Harvey states that "The rejection rate of absentee ballots with missing or not matching signatures in the 2020 General Election was 0.15%, the same rejection rate for signature issues as the 2018 General Election." (Harvey Affidavit, paragraph 6, page 5.) This claimed similarity that Mr. Harvey avers does not match what I find.

16. Therefore, I analyzed rejection for the data I cite for just "mail-in ballots" for Georgia counties in 2018 to hypothetically test Harvey's proposed use of 2018 data (which I still believe is not appropriate as it is a non-presidential election year)—and applied the 2018 county data for Georgia for mail-in ballots as I did for 2016 in my initial declaration. (Mail-in ballots are not the same as absentee ballots. Mail-in ballots are a distinct category of ballots apart from absentee ballots because they can be used on election day and dropped-off early in Georgia.) I find in 2018, there were 218,858 mail-in ballots counted and 7,512 mail-in ballots rejected. The corresponding

rejection rate for all mail-in ballots in 2018 in Georgia was more than 3.32%, and in counties that Biden won the rejection rate exceeded 3.70% and in 2020 Trump counties it was 2.73%. The rejection rate for mail-in ballots in the EAVS 2018 data is more than twenty times the rate for absentee ballots of .15% the Mr. Harvey reported and the Georgia brief used.

18. For 2020, I use rejection rates for the counties in Georgia based on Secretary of State data. In my initial declaration, I explained that there would be 83,517 fewer tabulated ballots, if the EAVS mail-in ballot rejection rate of 6.42% in 2016 was applied to the 2020 mail-in ballots. If I apply the EAVS 2018 mail-in ballot rejection rate of 3.32%, there would be 38,937 fewer ballots and disproportionately more would be for mail-in ballots in counties that Biden won in 2020. Biden's has a slim margin, less than the 12,670 that I used in my initial declaration.

19. Mr. Harvey uses absentee ballots, and he is *not* reporting results or data related to mail-in ballot rejections. He offers no specific reasons why a non-presidential election year 2018 comparator should be used rather than the last presidential election. Mr. Harvey's Affidavit cites third party data from a complaint filed in previous litigation and does not use the widely used EAVS data from the U.S. Election Assistance Commission. Mr. Harvey obfuscates the very sharp reduction in 2020 mail-in ballot rejections relative to both 2018 and 2020, which I think is a better comparator. The accumulated effects are very problematic when so many more mail-in votes, seventeen times more than 2016 and six times more than 2018, were mailed-in and counted in 2020.

Conclusions

20. I stand by my conclusions form my prior declaration. The subsequent explanation of my use of the widely accepted Z-score is intended to focus on what I said and concluded with respect to the highly improbable differences between the earlier tabulations before 3 AM EST the morning after the election and subsequently in the four battleground states. Things were very different in terms of the propensity of votes for Biden and the change in the reported outcome. These changes were not simply coincidences. Therefore, I continue to recommend that further investigations and audits should be done to nearly everyone's satisfaction.

21. In this spirit, I further analyzed data to determine what caused Clinton to win with bigger urban area margins in 2016 compared to Biden's urban voter margins in 2020. I discovered the Trump improvements with Hispanic and African American voters accounted for his improvement in 2020 compared to 2016 in terms of the percent of urban vote that he won. Trump's relative gains explain why nationally Biden's percentage of the urban vote fell behind Clinton. The clarification is a national outcome. I also found and report here that in four of the five major urban areas in the Defendants' battleground states that Biden had, contrary to national results, higher margins than Clinton. This raises additional concerns about the turn-around from the early morning tabulations favoring Trump to the final tabulations resulting in Biden's win in the four battleground states.

22. I analyzed Georgia's response to my analysis related to differences in rejection rates in the

2020 presidential election. I previously explained that if the 2016 rejection rate was applied to the much greater number of mail-in ballots in 2020 that Trump would win Georgia. In its brief, Georgia's counters that 2018 rejection rates should be used rather than 2016. I do not agree because presidential elections are often different than off-year elections. Nevertheless, I analyzed the widely used EAVS data for 2018 and determined that any Georgia assertion was wrong concerning nearly similar 2018 and 2020, and very low absentee, not mail-in, rejection rates. I show that using the EAVS data from 2018 to estimate expected 2020 mail-in rejections would translate to 38,937 additional rejected statewide mail-in ballots, which are about three times greater than Biden's difference using 12,670 votes, or less.

/s/ Charles Cicchetti

Charles Cicchetti, Ph.D.

December 11, 2020

AFFIDAVIT OF LISA GAGE

Lisa Gage, being sworn, declares under penalty of perjury:

1. I am personally familiar with the facts stated in this Affidavit and, if sworn as a wit- ness, am competent to testify to them as well.

2. I am a registered voter in the State of Michigan.

3. I was a Republican Poll Challenger on November 3, and November 4, 2020.

4. On November 3, 2020 I was observing at TCF Center in Detroit Michigan.

5. I began observing the processing and counting of absentee ballots at 7:00 am on No- vember 3, 2020. There were approximately 140 tables with five poll workers at each table.

6. I observed several irregularities with the 20-30 tables I was able to spend time observ- ing in detail.

7. I was not assigned to a specific precinct. The first precinct table I observed only had 10 ballots. I then moved on to another table with no GOP Challenger present.

8. Generally, the process I observed, was that the person that was at thee-poll computer would first scan the bar code on the envelope with a hand-held scanner. The voter's name, date of birth, and registration status would appear on a computer monitor on the table. If the voter's name did not appear on the computer monitor, poll workers were supposed to type in the voter's name, and if the name did not appear, check for the voter's name on an Absentee Voter List ("AV List"). The AV List would include vot- ers who registered and voted on Monday and Tuesday, election day.

9. After checking that information, the envelope was to be passed to another person who separated the envelope from the secrecy envelope that contained the ballot.

10. The next person would take the ballot out of the secrecy envelope and pass the ballot to the next worker who would roll it to flatten it, tear off the perforated stub with the ballot number, and then put the ballot into a box identified as the "tabulation box" with other processed ballots that was then taken to a tabulator when the box had up to 50 ballots. I would estimate that I saw thousands of ballots placed in the tabulation box during the time I worked at the TCF.

11. There was no signature comparison being conducted on absentee ballots. There were stacks of ballots in "post office" bins in their envelopes, on tables identified by precinct number.

12. Between 9:00 and 9:30 am, I asked a supervisor about signature comparison for the ballots currently on the table. She was a slightly overweight, African-American woman with shoulder length hair. She wore one of the white shirts with an election insignia on the shirt. As with all other election workers, she did not have a name tag. This supervisor told me "that was done somewhere else".

13. A poll worker said "we have 10 ballots, just like yesterday (meaning Monday)". When I heard this, I approached a supervisor because I thought it was unusual that there would be just 10 on one day and then just 10 the next day. The supervisor told me that they had ballots on Tuesday that they had "partially processed on Monday." This supervisor wore a white shirt with election insignia and no name tag, but was a different supervisor identified in

paragraph 11. With these repeat ballots, the poll workers followed the 5 step process outlined above.

14. Later that morning approximately between 11:45am and 12:30pm, a third supervisor announced that they "needed to catch up". This supervisor was tall, approximately 5'9" average build, late 40', early 50-ish, short hair, African-American woman. She also wore the white shirt with election insignia with no name tag. At this point the ballots were just divided up between each of the poll worker at the table who opened envelopes, pulled the stub and put the ballots in the tabulator box. The entire 5 step process was entirely abandoned. There was no scanning of the outside of the envelope to check for registration status, there was no signature, or ballot number verification.

15. There was no post mark verification ; there was no ballot review for stray marks; there was no verification of the voter existing in the data base; there was no signature com- parison or authentication.

16. I estimate that thousands ballots were processed this way.

17. None of the outer envelopes that I observed, included any additional written state- ments or stamps in addition to the signature, and if there had been I would have no- ticed them. I estimate these outer envelopes that I was able to see to be at least several hundred to a thousand.

18. These non-verified ballots were then placed in a box and then a separate worker took the box to the tabulator, without any review.

19. As a challenger I was prohibited from observing the postmarks. I was told many times by a supervisor that I had to "stand away".

20. As a challenger I was prohibited from observing the ballot duplication process by poll workers moving in front of me to block me from watching the duplication process. Poll works are supposed to have three people involved in the duplication process: a Democrat, a Republican, and an independent observing the process. One of the three would mark the duplicate ballot, while another person called out the selections.

21. Once the duplicate was made, the poll workers deposited the original into an envelope, marked 'Originals'. As poll challengers were not able to see what happened to the en- velope. I asked a Supervisor as to the disposition of the originals, and was told the originals envelope will stay in the supplies box. Having observed other challengers being escorted out of the site, and the noticeable disgust at my asking questions, I felt that too much inquiry could result into dismissal from the site.

22. Over the course of the day, I changed my tactic and would ask a variety of supervisors a question instead of multiple questions to any one or two supervisors. I left the TCF Center on November 3, 2020 mid-afternoon as it appeared no more ballots were com- ing in. Contributing to my decision to leave was that GOP challengers were denied the ability to sit in unoccupied chairs by either poll workers or supervisors. We were not allowed to pull chairs away from the table; we were not permitted to leave to get food and were told by republican resources that if we left we would not be able to re- turn. Other GOP

challengers and myself observed Democrat challengers sit at the ta- bles with the poll workers. We were not even permitted to place a water bottle on an unused comer of the tables. We were left to juggle water bottles pens, note papers and other documents, making note taking difficult.

23. On November 4, 2020, I returned to TCF at 6:30am.

24. I returned to the same general area I had been on the day before. I started observing four tables but eventually observed many different tables.

25. I observed incomplete and inconsistent E-poll documentation, table to table.

26. The E-poll system allowed ballot acceptance even when date of birth and/or voter registration dates were suspect. For example, I observed a voter date of birth 20 years AFTER the date of voter registration. The poll worker simply processed the ballot without inquiry. I tried to challenge this ballot and was told that the ballot would go into the "problem bin". The "problem bin" was at the table. At various times the "problem bin" would be taken the "bull pen" or in some cases, directly to the tabula- tion area.

27. On one occasion I witnessed two of the ballots that I challenged, being fed through the tabulator without adjudication. The poll worker that processed this ballot saw me watching this process and stared back at me with indignation.

28. I specifically observed 26 ballots that were not verified with either e-poll or the AV list. This list of 26 is attached. I attempted to challenge these 26 ballots, although the poll workers would not acknowledge my challenges. The 26 ballots on this list

were observed by me in the span of a few hours. There were other ballots that I could have challenged for the same reasons, but these 26 were the ones that I was able to write down as the pace of processing increased. The 26 were observed in a couple of hours at a single table on Wednesday November 4. There were over 140 tables in the count- mg room.

29. Each of the ballots on the list of 26 I challenged were tabulated without adjudication. It can be observed that these ballots were sequential, highly suggestive of fraud, due to the fact that each clerk must assign a ballot number as the applications for absent voter ballots arrive in the clerk's office. The chance of the same ballots being applied for and then returned for tabulation as the same time is remote.

30. When the military ballots came in, I observed, all were in the E-poll system. However there were inconsistencies between dates of birth and voter registration on the vast majority of the ballots I observed. For example, I observed an active duty ballot, with a voter date of birth of 1938, with a voter registration date of 2020.

31. I made a point to examine every military ballot for date of birth and date of voter reg- istration. A vast majority contained dates of birth between 1938 and 1960 for active duty ballots. They had e-poll addresses of Detroit, MI, rather than a deployment loca- tion. Also there were only a handful of "voting locations" identified in the e-poll for approximately 100 ballots. I noticed that these same "voting locations" would come up again and again as these military ballots were being processed. I would estimate this to be approximately 100 ballots at the

multiple tables I was observing. There were approximately 143 tables.

32. Of all the military ballots I observed, none were in AV envelopes. There were less than 5 in larger manila envelopes, the rest were in standard white business envelopes.

33. I observed the opening of military ballots that arrived in standard white business en- velopes. I did not see any voter signature certificates come out of these envelopes as required by law.

34. I observed the duplication process of the each of the military ballots onto the machine readable ballot forms. The original, 8/5xl1 papers were put back in their mailing en- velopes and placed in the originals envelope.

35. During a time when there was no activity, I observed that the system clock time on the screen saver on the E-poll system monitors varied by up to 5 hours, thereby rendering inability to verify date and time stamp for data verification later. This would make it easy for ballots to be excluded if a review was time specific.

36. I also experienced attempts at intimidation. When I began challenging ballots I was approached by individuals identifying as from the NAACP or a "civil rights group" accusing me of acting in "bad faith"; telling me that I was violating "civil rights" by challenging ballots.

37. I was able to resist the intimidation but I did observe other Republican poll chal- lengers become visibly upset by this activity. I was asked to replaced several poll chal- lengers who had become rattled. I observed a Republican poll challenger arrested for taking off his mask when he experienced

breathing problems. The poll workers would cheer and clap whenever a Republican poll challenged was escorted out.

38. I was also approached by an "activists" who inserted himself into a particular chal- lenge discussion, offering his opinion that my challenge was in bad faith. He later identified himself as a University of Michigan Law School student, stating he and others decided to come to TCF to be involved.

39. Once the actual attorneys were present, these activists moved on.

40. Other forms of intimidation were body blocking, deprivation of chairs to sit in. Then when Republican poll challengers left to get food or drink, they were denied re-entry.

41. Dated: December 10, 2020

Subscribed and sworn to before me on:

/s/ Sarah C. Wood

Notary public, State of Michigan, County of: Ionia

My commission expires: 5/16/21