

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA
ERIE DIVISION**

BETTE EAKIN, *et al.*,

Plaintiffs,

v.

ADAMS COUNTY BOARD OF ELECTIONS, *et al.*,

Defendants.

Case No. 1:22-cv-00340-SPB

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

In its November 21, 2023 ruling in *Pennsylvania State Conference of NAACP v. Schmidt*, this Court held that Pennsylvania counties' refusal to count mail ballots for failure to provide a correct handwritten date on the outer envelope violates the Materiality Provision of the Civil Rights Act, codified as 52 U.S.C. § 10101(a)(2)(B). *Pa. State Conf. of NAACP v. Schmidt*, No. 1:22-CV-00339, 2023 WL 8091601, at *28–34 (W.D. Pa. Nov. 21, 2023). This Court's ruling was consistent with numerous other federal courts' holdings that the Materiality Provision is privately enforceable, is not limited solely to acts of voter registration, and prevents states from refusing to count ballots for immaterial errors or omissions on a paper requisite to voting. *See, e.g., Vote.Org v. Callanen*, --- F.4th ----, No. 22-50536, 2023 WL 8664636, at *6, *18 (5th Cir. Dec. 15, 2023) (holding that Materiality Provision is privately enforceable via § 1983, "is not textually limited to protecting only one race of voters in order to reach subtle forms of racial discrimination," and extends to requirements imposed by state law); *La Union del Pueblo Entero v. Abbott*, --- F. Supp. 3d ----, No. 5:21-CV-0844-XR, 2023 WL 8263348, at *8, *14–26 (W.D. Tex. Nov. 29, 2023) (holding that rejection of mail ballots for noncompliance with Texas Senate Bill 1's ID matching

provisions violates Materiality Provision), *stayed pending appeal by United States v. Paxton*, No. 23-50885 (5th Cir. Dec. 15, 2023), ECF No. 80-1; *In re Georgia Senate Bill 202*, No. 1:21-CV-01259, 2023 WL 5334582, at *7–11 (N.D. Ga. Aug. 18, 2023) (holding that rejection of absentee ballots for failure to write birthdate on outer envelope violates Materiality Provision).

As this Court subsequently noted, the pending cross motions for summary judgment in this case “raise many of the same arguments and defenses” as those addressed in the Court’s *NAACP* opinion. Briefing Order, ECF No. 348. On the merits, the result here should be the same: The Materiality Provision bars County Defendants from enforcing the date requirement by rejecting valid mail ballots with missing or incorrect dates. Relief further should be ordered against *every* County Defendant because their application of the date requirement will cause harm to the Organizational Plaintiffs,¹ as well as their members and constituents in all sixty-seven counties: Organizational Plaintiffs will be forced to divert resources away from other activities in order to assist voters in complying with the date requirement, and their members and constituents are at risk of disenfranchisement whenever they fail to date their mail ballots correctly. Plaintiffs therefore have both organizational and associational standing against all Defendants.

ARGUMENT

Following this Court’s analysis in the *NAACP* opinion, Plaintiffs easily satisfy all prerequisites for standing to bring claims against every named defendant. *First*, Organizational Plaintiffs have suffered an injury in fact because their members and constituents are at risk of disenfranchisement across Pennsylvania’s counties, and each County Defendant’s enforcement of the date requirement will force Organizational Plaintiffs to divert limited resources to ensure that voters comply with the requirement, and to help voters cure undated or misdated ballots where

¹ Organizational Plaintiffs include DSCC, DCCC, and AFT Pennsylvania (the “Federation”).

permitted. *Second*, Organizational Plaintiffs’ injuries stem directly from each County Defendant’s past and future refusal to count otherwise valid mail ballots that arrive in undated or misdated outer envelopes. Pls.’ Concise Statement of Material Facts ¶¶ 82–90, 99–103, 110–112, 119–123, ECF No. 289 (“CSMF”); Pls.’ Statement of Additional Material Facts ¶¶ 1–3, ECF No. 321 (“SAMF”). *Third*, an injunction prohibiting each and every County Defendant from enforcing the date requirement and rejecting otherwise lawful mail ballots will alleviate Organizational Plaintiffs’ diversion of resources to avoid disenfranchisement of their members and constituents. Because Organizational Plaintiffs have standing for their claims against each County Defendant, this Court’s injunction in *NAACP* should extend across the Commonwealth.

I. Organizational Plaintiffs have standing to obtain an injunction against every Pennsylvania county.

An entity has direct organizational standing when it suffers an injury because of the defendant’s allegedly unlawful conduct. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378–79 (1982). This occurs when defendant’s actions have “perceptibly impaired” the organization’s ability to carry out its mission, as shown through an organization diverting resources to counteract the effects of the challenged conduct. *Id.* at 379. “[T]he injury required for standing need not be actualized. A party facing prospective injury has standing to sue where the threatened injury is real, immediate, and direct.” *Const. Party of Pa. v. Aichele*, 757 F.3d 347, 361 (3d Cir. 2014) (quoting *Davis v. Fed. Election Comm’n*, 554 U.S. 724, 734 (2008)).

Here, every county in Pennsylvania has admitted that they have refused to count undated or incorrectly dated mail ballots in the past and will continue to do so in future elections. *See* CSMF ¶¶ 8–10; CSMF App., Ex. K, at App.530–773, ECF No. 290 (responses to Requests for Admission Nos. 5–8); *see also* Pls.’ Supp. Statement of Material Facts (“SSMF”) ¶¶ 16–17. DSCC and DCCC have over two million constituents in every county in Pennsylvania who voted in 2022

and will likely vote in 2024 for the Democratic senatorial or congressional candidate, and DSCC and/or DCCC will have a candidate on the ballot in every county in Pennsylvania. CSMF ¶¶ 104–05, 113–14; SAMF ¶¶ 1–2; SSMF ¶¶ 6–8, 10. These constituents help select organizational leadership and ultimately determine organizational strategy and political direction; many also provide financial support in the form of political contributions. CSMF ¶¶ 104–05, 113–14; SAMF ¶¶ 1–2; SSMF ¶¶ 6–8, 10; *see Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 344 (1977) (organization has standing to sue on behalf of constituents who have sufficient “indicia of membership” in, and share common interests with, the organization). The Federation has about 25,000 members located across at least 36 counties in Pennsylvania. CSMF ¶¶ 115–16; CSMF App., Ex. D, at App.17 ¶ 9 (Federation member in Philadelphia County in 2022); SAMF ¶ 3; SAMF App., Ex. N at App.782 ¶ 3, ECF No. 322 (list of 35 counties from which Federation members voted by mail in 2022).² Thus, each county’s actions have placed Organizational Plaintiffs’ members and constituents at risk of disenfranchisement for a meaningless error or omission.

This threat of disenfranchisement directly causes the ongoing diversion of Organizational Plaintiffs’ limited resources. *See Freeman v. Corzine*, 629 F.3d 146, 153 (3d Cir. 2010) (recognizing that to show causation, a plaintiff need only show their injury is “fairly traceable” to the challenged conduct, and even “an indirect causal relationship will suffice” (quoting *Toll Bros. v. Twp. of Readington*, 555 F.3d 131, 142 (3d Cir. 2009))). Organizational Plaintiffs ran paid advertisements and conducted get-out-the-vote activities such as mailings, text messaging, phone

² Those 36 counties include: Armstrong, Bedford, Blair, Butler, Cameron, Carbon, Centre, Clarion, Clinton, Columbia, Cumberland, Dauphin, Franklin, Greene, Huntingdon, Indiana, Jefferson, Lancaster, Lebanon, Philadelphia, Mercer, Mifflin, Montour, Northumberland, Perry, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Venango, Warren, Washington, Westmoreland, Wyoming, and York.

banking, and door knocking in support of Democratic candidates in each of Pennsylvania’s 67 counties in 2022, and intend to do so again in 2024. SSMF ¶¶ 1–3, 10–12. Organizational Plaintiffs also separately allocate and devote substantial personnel time and money to assist in curing mail ballots where they anticipate there will be close races. SSMF ¶¶ 4, 13. Because each County Defendant refuses to count undated or incorrectly dated mail ballots, Organizational Plaintiffs must divert personnel time, and money, away from their existing advocacy and get-out-the-vote activities and from helping voters in other states cure their ballots, in order to assist their members and constituents in Pennsylvania to ensure their vote is ultimately counted and not set aside because of the date requirement. CSMF ¶¶ 91–103, 106–12, 115, 117–23. Indeed, DSCC and DCCC have provided uncontested evidence in the form of declarations from senior officers explaining their respective organizations’ diversion of resources caused by the date requirement, which impairs existing and planned activities across each county in Pennsylvania. CSMF App., Ex. B, at App.6–9 ¶¶ 1, 4, 7–9 (DSCC Decl.), Ex. C., at App.11–13 , ¶¶ 1, 7–9 (DCCC Decl.); SSMF ¶¶ 1, 4, 8, 11, 13.³

³ Defendant Lancaster County Board of Elections briefly argues in a footnote to their Opposition to Plaintiffs’ Motion for Summary Judgment that Organizational Plaintiffs cannot use their previously submitted declarations because Organizational Plaintiffs did not disclose the names of their declarants, and that this purported omission was “prejudicial” because it “denied the opportunity” for Defendants to “discover facts known by these individuals.” Lancaster Cnty. Bd. of Elections’ Opp’n to Mot. for Summ. Judgement 6 n.1, ECF No. 306. First, “arguments raised in passing (such as, in a footnote), but not squarely argued, are considered waived.” *John Wyeth & Bro. Ltd. v. CIGNA Int’l Corp.*, 119 F.3d 1070, 1076 n.6 (3d Cir. 1997). Second, there was nothing prejudicial about Plaintiffs’ disclosures: Organizational Plaintiffs disclosed the names and contact information of each of their Executive Directors, noted that their “present and former members, staff, employees, agents, and/or associates . . . will likely have discoverable information[,]” and instructed that “all Plaintiffs (including staff and employees of DSCC, DCCC, and AFT Pennsylvania) should be contacted only through counsel.” SSMF ¶ 15. Thus, Defendants had access to all the necessary information to discover any facts about Organizational Plaintiffs, yet made no effort to do so. In fact, Lancaster County Board of Elections elected not to conduct *any* discovery of *any* Plaintiff in this case.

In addition to causing diversion of resources, the date requirement disenfranchises Organizational Plaintiffs’ members and constituents, thereby reducing the number of votes cast in favor of their preferred candidates and decreasing the likelihood of those candidates’ electoral success, of Democratic representation in Congress, and of implementation of preferred policies. CSMF ¶¶ 92, 99, 107, 110, 117–18, 123; SSMF ¶¶ 6, 8, 16–17. This “perceptibly impair[s]” Organizational Plaintiffs’ respective missions and constitutes an independent injury in fact. *Havens Realty*, 455 U.S. at 379; *cf. Fair Hous. Rts. Ctr. in Se. Pa. v. Post Goldtex GP, LLC*, 823 F.3d 209, 214 n.5 (3d Cir. 2016) (noting when complaint alleged discriminatory housing practices in addition to diversion of resources, “as we have held, the allegation of discrimination is itself the harm” (citing *Alexander v. Riga*, 208 F.3d 419, 424 (3d Cir. 2000))). As discussed, every county in Pennsylvania has been instructed to reject undated or incorrectly dated mail ballots—resulting in over 10,000 mail ballots being excluded in the 2022 general election, including ballots cast by Democratic voters in at least 39 counties—and they will each continue to do so in future elections.⁴ See CSMF ¶¶ 8–10; CSMF App., Ex. K, at App.530–773 (responses to Requests for Admission Nos. 5–8); *see also* SSMF ¶ 16. Moreover, DSCC and DCCC have millions of constituents across every county in Pennsylvania who voted in 2022 or intend to vote in 2024 for the Democratic congressional or senatorial candidate. CSMF ¶¶ 105, 114; SAMF ¶¶ 1–2; SSMF ¶¶ 6–8, 10. Thus,

⁴ County Defendants’ discovery responses show that Democratic voters had their mail ballots rejected for noncompliance with the date requirement in the 2022 general election in 39 counties: Adams, Armstrong, Beaver, Berks, Blair, Butler, Cameron, Centre, Chester, Clarion, Clinton, Crawford, Cumberland, Dauphin, Erie, Forest, Franklin, Greene, Indiana, Juniata, Lancaster, Lawrence, Lehigh, Luzerne, Lycoming, Monroe, Montgomery, Northampton, Northumberland, Perry, Potter, Schuylkill, Sullivan, Tioga, Venango, Washington, Wayne, Westmoreland, Wyoming. SSMF ¶ 16. The remaining 28 County Defendants did not provide information sufficient to determine whether the mail ballots of Democratic voters were set aside for noncompliance with the date requirement in the 2022 general election. SSMF ¶ 17. The threat of Democratic voters’ ballots being rejected for this reason in the future persists so long as any county continues to enforce the date requirement.

there is a “real, immediate, and direct” threat that at least some of DSCC’s and DCCC’s constituents in every county will be disenfranchised because of County Defendants’ conduct in enforcing the date requirement. *Aichele*, 757 F.3d at 361 (quoting *Davis*, 554 U.S. at 734). This causes a “concrete and demonstrable” injury to Organizational Plaintiffs’ missions. *Havens Realty*, 455 U.S. at 379.

II. Organizational Plaintiffs have associational standing in every Pennsylvania county.

Organizational Plaintiffs also assert their claims on behalf of their members and constituents.⁵ These organizations can establish associational standing if: (1) their members and constituents “otherwise have standing in their own right,” (2) “the interests [the organizations] seek[] to protect are germane to [their] purpose,” and (3) neither “the claim[s] asserted nor the relief requested requires” individual participation. *Citizens Coal Council v. Matt Canestrone Contracting, Inc.*, 40 F. Supp. 3d 632, 636–37 (W.D. Pa. 2014) (quoting *Hunt*, 432 U.S. at 343). Each element is satisfied here.

First, Organizational Plaintiffs collectively represent thousands of registered voters in each and every county in Pennsylvania, CSMF ¶¶ 104–05, 113–15; SAMF ¶¶ 1–3, many of whom vote by mail and therefore are at risk of having their mail ballots rejected under the date requirement. These voters thus would “have standing [to sue] in their own right.” *Citizens Coal Council*, 40 F. Supp. 3d at 637; *see* CSMF ¶¶ 119–21; SAMF ¶¶ 1–2; *cf.* CSMF ¶¶ 99–103, 110–12, 122–23.

The Federation, for instance, has approximately 25,000 dues-paying members. CSMF ¶ 115. Because its members typically must work on election day, many choose to vote by mail. CSMF ¶ 119. In the 2022 general election, at least 1,500 Federation members voted by mail across

⁵ In contrast, organizational plaintiffs in *NAACP* asserted direct organizational standing. 2023 WL 8091601, at *5.

36 counties in Pennsylvania.⁶ Enforcing the date requirement in each of these counties increases the risk that Federation members will be disenfranchised for inadvertently submitting an undated or incorrectly dated ballot envelope in future elections. CSMF ¶¶ 115, 119–20; SAMF ¶ 3.

DSCC and DCCC also have standing to sue on behalf of their constituents. Millions of voters across the Commonwealth—including individuals in every single county—support Democratic candidates for seats in Congress. SAMF ¶¶ 1–2; *see* CSMF ¶¶ 104–05, 113–14.⁷ Like the Federation’s members, a significant share of DSCC and DCCC’s constituents vote by mail and are therefore at risk of having their mail ballots rejected for noncompliance with the date requirement in future elections, giving them standing to sue in their own right. *See* CSMF ¶¶ 102–03, 111–12; SAMF ¶¶ 1–2. DSCC’s and DCCC’s constituents also bear sufficient “indicia of membership” in, and share common interests with, each respective party committee. *Hunt*, 432 U.S. at 344. These constituents consist of Democratic voters who support Democratic candidates and “ultimately determine [each party committee’s] strategic and political direction” by electing those candidates to the U.S. Congress, who then select and serve as each party committee’s leadership. CSMF ¶¶ 104, 113; *see, e.g., Doe v. Stincer*, 175 F.3d 879, 886 (11th Cir. 1999)

⁶ These counties include: Armstrong, Bedford, Blair, Butler, Cameron, Carbon, Centre, Clarion, Clinton, Columbia, Cumberland, Dauphin, Franklin, Greene, Huntingdon, Indiana, Jefferson, Lancaster, Lebanon, Mercer, Mifflin, Montour, Northumberland, Perry, Philadelphia, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Venango, Warren, Washington, Westmoreland, Wyoming, York. CSMF App., Ex. D, at App.17 ¶ 9 (Philadelphia County); SAMF App., Ex. N, at App.782 ¶ 3 (other 35 counties).

⁷ *See also* Pa. Dep’t of State, Reporting Center—2022 General Election, available at <https://electionreturns.pa.gov/ReportCenter/Reports> (last accessed on Dec. 19, 2023). “These state election records are public records of which this Court may properly take judicial notice.” *Ostrowski v. D’Andrea*, 2017 WL 4020435, at *7 n.3 (M.D. Pa. Aug. 10, 2017), *report and recommendation adopted*, 2017 WL 4015654 (M.D. Pa. Sept. 12, 2017). And “[j]udicial notice may be used in resolving a motion for summary judgment.” *Mid-S. Grizzlies v. Nat’l Football League*, 550 F. Supp. 558, 570 n.31 (E.D. Pa. 1982) (citing 10 Wright & Miller, Fed. Prac. & Proc. § 2723 (1973)), *aff’d*, 720 F.2d 772 (3d Cir. 1983).

(holding organization had standing to sue on behalf of constituents who “possess the means to influence the priorities and activities the [organization] undertakes”); *Or. Advoc. Ctr. v. Mink*, 322 F.3d 1101, 1110–11 (9th Cir. 2003) (rejecting “formalistic” approach to this analysis and concluding that beneficiaries of organization’s mission were “the functional equivalent of members”). DSCC, DCCC, and their constituents also share common interests: They all seek to elect Democratic candidates in congressional or senatorial elections.

Second, the interests that Plaintiffs seek to protect here are “germane” to each organization’s purpose. *Citizens Coal Council*, 40 F. Supp. 3d at 636–37. DSCC’s and DCCC’s missions are to elect Democratic candidates to the U.S. Senate and U.S. House of Representatives, respectively. CSMF ¶¶ 92, 107. Protecting the voting rights of Pennsylvanians who support Democratic candidates will improve those candidates’ electoral prospects and advance DSCC’s and DCCC’s goals. *See Pa. Democratic Party v. Republican Party of Pa.*, Civ. A. No. 16-5664, 2016 WL 6582659, at *3 (E.D. Pa. Nov. 7, 2016) (recognizing Democratic party committee had standing “to protect the interests of both Democratic candidates running for office and Democratic voters”). Similarly, the Federation’s mission is to advocate for policies that improve public education and advance social justice, which it pursues by supporting the election of candidates who favor such policies. CSMF ¶¶ 117–18. Protecting the voting rights of Pennsylvanians who share these goals allows the Federation to improve the electoral prospects of their preferred candidates, thereby furthering the organization’s mission.

Third, neither the claims nor the requested relief here require the participation of Organizational Plaintiffs’ individual members or constituents in this litigation. *Citizens Coal Council*, 40 F. Supp. 3d at 636–37. Defendants’ rejection of mail ballots for noncompliance with the date requirement violates the plain language of the Materiality Provision. *See* 52 U.S.C. §

10101(a)(2)(B). As this Court’s decision in the parallel case demonstrates, the issues are straightforward and individual participation of voters is not required for Organizational Plaintiffs to assert the rights of their members and constituents. *See NAACP*, 2023 WL 8091601, at *20–22, *30–34.

III. DSCC and DCCC each satisfy the requirements of third-party standing.

Distinct from their associational standing, both DSCC and DCCC satisfy the Third Circuit’s conditions for third-party standing, which provides a separate basis for vindicating the rights of individual voters in every county. *See Holland v. Rosen*, 895 F.3d 272, 287 (3d Cir. 2018) (citing *Pa. Psychiatric Soc’y v. Green Spring Health Servs., Inc.*, 280 F.3d 278, 287–88 (3d Cir. 2002)), cert. denied 139 S. Ct. 440 (2018); *see also Vote.Org*, 2023 WL 8664636, at *5 (finding plaintiff’s “position as a vendor and voting rights organization . . . sufficient to confer third-party standing”). “A plaintiff asserting a third-party claim needs to meet three conditions: (1) the plaintiff must suffer injury; (2) the plaintiff and the third party must have a close relationship; and (3) the third party must face some obstacles that prevent it from pursuing its own claims.” *Holland*, 895 F.3d at 287 (cleaned up) (quoting *Pa. Psychiatric Soc’y*, 280 F.3d at 288–89).

First, DSCC and DCCC suffer direct and indirect injuries, both of which the Third Circuit has recognized as sufficient to satisfy this first element of third-party standing. *See Pa. Psychiatric Soc’y*, 280 F.3d at 289 (finding sufficient for third-party standing of plaintiff psychiatric organization the indirect injuries through two levels of separation of the patients of organization’s psychiatrist membership). Their direct injuries flow from the diversion of resources, CSMF ¶¶ 93–98, 108–09, required to ameliorate the harm caused by continued enforcement of the date requirement on otherwise-eligible Democratic voters, CSMF ¶¶ 99–103, 110–12. *See also supra* Section I. The rejection of otherwise-valid mail ballots cast by Democratic voters also reduces the number of votes cast in favor of DSCC’s and DCCC’s candidates in Pennsylvania, thereby

impairing their prospects of electoral success and of Democratic representation in Congress—all of which impair DSCC’s and DCCC’s organizational missions. CSMF ¶¶ 92–93, 106–07. *Cf. Mecinas v. Hobbs*, 30 F.4th 890, 898 (9th Cir. 2022) (finding standing where “an allegedly unlawful election regulation makes the competitive landscape worse for a candidate or that candidate's party than it would otherwise be if the regulation were declared unlawful”).

Second, DSCC and DCCC have a “close relationship” with Democratic voters in Pennsylvania, which allows them “to effectively advance their [voters’] claims.” *Pa. Psychiatric Soc’y*, 280 F.3d at 289. Democratic voters provide critical financial support to DSCC and DCCC, CSMF ¶¶ 104, 113, and both party committees rely on the support of these voters for their candidates to win their congressional or senatorial elections. CSMF ¶¶ 92, 105, 107, 114; *see also* SAMF ¶¶ 1–2. Through their selection of Pennsylvania’s delegation in Congress, Democratic voters help select the leadership and ultimate strategic and political direction of DSCC and DCCC. CSMF ¶¶ 104, 113. Indeed, the relationship between voters and their candidates or elected officials is the foundation of representative government. *See, e.g., Reynolds v. Sims*, 377 U.S. 533, 562 (1964) (“Legislators represent people Legislators are elected by voters”).

Third, voters who submit undated or incorrectly dated ballots face significant hurdles in protecting their own rights. For one, they would not learn of any such errors in most cases until *after* their mail ballot has been rejected, because Pennsylvania law prohibits all county boards from pre-canvassing mail ballots before the morning of election day. 25 Pa. Stat. Ann. § 3146.8(g)(1.1), (3). And the avenues for relief are even more limited for those who live within one of the 45 (out of 67) counties that did not provide any notice to voters that their ballots had been set aside for a missing or incorrect date. CSMF ¶ 11; *accord* ECF Nos. 311 ¶ 11, 323 ¶ 11.

In determining whether individuals face obstacles to pursuing their own claims for

purposes of third party standing, the standard endorsed by the Third Circuit “does not require an absolute bar from suit, but [rather] ‘some hindrance to the third party’s ability to protect his or her own interests.’” *Pa. Psychiatric Soc’y*, 280 F.3d at 290 (quoting *Powers v. Ohio*, 499 U.S. 400, 405, 411 (1991)). “[A] party need not face insurmountable hurdles to warrant third-party standing.” *Id.* Here, voters in most counties would simply have no opportunity to vindicate their right to have their ballots counted until after the election has already been decided.⁸ And even in the rare occasion that voters receive notice and an opportunity to cure or contest the rejection of their ballots, the various logistical obstacles to obtaining relief, *see, e.g.*, CSMF ¶¶ 81–90, present more than “some hindrance” to their ability to protect their rights and satisfy the third element of third-party standing. *Pa. Psychiatric Soc’y*, 280 F.3d at 290 (quoting *Powers v. Ohio*, 499 U.S. 400, 405, 411 (1991)).

IV. The Court should neither stay, nor defer ruling in, this case.

There is no reason for this Court to postpone reaching a decision in this case until after the Third Circuit resolves the *NAACP* appeal, and good reason for the Court to promptly order injunctive relief on a statewide basis if it concludes—as it should—that Plaintiffs have standing against each County Defendant. In their ongoing appeal of the Court’s order in *NAACP*, Intervenor-Defendants Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania attack the purported “disuniformity” created by

⁸ In the 2022 general election, 45 of 67 Pennsylvania county boards of elections provided no notice to voters that their mail ballots were set aside due to noncompliance with the date requirement. CSMF ¶ 11; *accord* Lancaster Cnty. Bd. of Elections’ Resp. to CSMF ¶ 11, ECF No. 311; Berks Cnty. Bd. of Elections’ Resp. to Pls.’ Mot. for Summ. Judgement ¶ 11, ECF No. 323. Likewise, 37 of 67 county boards provided voters no opportunity to cure their mail ballot if it was rejected under the date requirement. CSMF ¶ 12; *accord* ECF No. 311 ¶ 12; ECF No. 323 ¶ 12. *See also* CSMF ¶ 28 (absent judicial intervention, county boards will not count noncompliant mail ballots); *accord* ECF No. 311 ¶ 28; ECF No. 323 ¶ 28.

the Court's order in *NAACP*. Appellants' Opening Br. 72-73, *Pa. State Conf. of NAACP v. Sec'y Commonwealth of Pa.*, No. 23-3166 (3d Cir. Dec. 27, 2023), ECF No. 97-1. Simultaneously, they seek to prevent the Court from granting statewide relief in *this case*, arguing that the Court should "forbear ruling in this case until all appellate proceedings are completed." Intervenor-Defs.' Supp. Statement Respecting Mot. for Summ. Judgment 1, ECF No. 356. They cannot have it both ways: If Intervenor take issue with the fact that the Court's injunction in *NAACP* applies only to certain counties, this Court should be free to resolve that issue in this case by granting statewide relief now rather than waiting until the Third Circuit considers a potentially moot argument.

Moreover, although Intervenor do not expressly term their request a "stay," that is effectively what they seek. And under the standard that a court considers before issuing a stay pending appeal, Intervenor would not be entitled to such relief.⁹ In such circumstances, a court considers four factors before granting a stay:

(1) whether the appellant has made a strong showing of the likelihood of success on the merits; (2) will the appellant suffer irreparable injury absent a stay; (3) would a stay substantially harm other parties with an interest in the litigation; and (4) whether a stay is in the public interest.

In re Revel AC, Inc., 802 F.3d 558, 565 (3d Cir. 2015). Intervenor have made no effort to demonstrate how any of these factors favor staying this case. And, in fact, a stay would prejudice Plaintiffs by denying them a statewide injunction. As the 2024 election cycles approaches, the public interest favors timely resolution. Voters and election officials across Pennsylvania will all benefit from a steady progression, by both this Court and the Third Circuit, towards resolution of

⁹ Although the factual and legal issues are similar, no order or decision in *this case* is being reviewed by the Third Circuit, only this Court's order in *NAACP*. "When a stay is sought pending the outcome of another case, the standards are slightly different and more difficult . . . to meet." *Heath v. Saul*, No. 19-CV-2228, 2020 WL 1182568, at *3 n.4 (E.D. Pa. Mar. 11, 2020) (citing *Byrd v. Saul*, 2019 WL 3495491, at *1 (E.D. Pa. 2019)).

the disputes over the date requirement. This Court should decline to stay or forebear its ruling.

CONCLUSION

The Court should promptly grant Plaintiffs' motion for summary judgment against each Defendant.

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