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December 16, 2021

Dan McGrath
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Re: FOIA-2021-00653
21-cv-1079 (D.D.C.)
VRB:JMB:JMS

Dear Dan McGrath:

This is the final response to your Freedom of Information Act (FOIA) request, dated and received in this Office on January 25, 2021, in which you requested "[t]he brief drafted by an outside lawyer acting on behalf of President Trump regarding challenges to the 2020 presidential election results for the Department of Justice to file with the Supreme Court."

Please be advised that a search in response to the above-referenced request has been conducted, and the document responsive to your request, consisting of fifty-six pages, was located. At this time, I have determined that this fifty-six page document is appropriate for release without withholdings, and a copy is enclosed.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2018). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you have any questions regarding this response, please contact M. Andrew Zee of the Department's Civil Division, Federal Programs Branch, at (415) 436-6646.

Sincerely,

Jonathan Breyan

Jonathan Breyan
Senior Supervisory Attorney
for
Vanessa R. Brinkmann
Senior Counsel

Enclosure

No. _____, Original

In the Supreme Court of the United States

THE UNITED STATES OF AMERICA

Plaintiff,

v.

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

Defendants.

BILL OF COMPLAINT

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BILL OF COMPLAINT

Our Country is deeply divided in a manner not seen in well over a century. More than 77% of Republican voters believe that "widespread fraud" occurred in the 2020 general election while 97% of Democrats say there was not.[1] On December 7, 2020, the State of Texas filed an action with this Court, *Texas v. Pennsylvania, et al.*, alleging the same constitutional violations in connection with the 2020 general election pled herein. Within three days *eighteen* other states sought to intervene in that action or filed supporting briefs. On December 11, 2020, the Court summarily dismissed that action stating that Texas lacked standing under Article III of the Constitution. The United States therefore brings this action to ensure that the U.S. Constitution does not become simply a piece of parchment on display at the National Archives.

Two issues regarding this election are not in dispute. First, about eight months ago, a few non-legislative officials in the states of Georgia, Michigan, Wisconsin, Arizona, Nevada and the Commonwealth of Pennsylvania (collectively, "Defendant States") began using the COVID-19 pandemic as an excuse to unconstitutionally revise or violate their states' election laws. Their actions all had one effect: they uniformly weakened security measures put in place *by legislators* to protect the integrity of the vote. These

[1]https://www.courant.com/politics/hc-pol-q-poll-republicans-believe-fraud-20201210-pcie3uqqvrhyvnt7geohhsyepe-story.html

changes squarely violated the Electors Clause of Article II, Section 1, Clause 2 vesting state legislatures with plenary authority to make election law. These same government officials then flooded the Defendant States with millions of ballots to be sent through the mails, or placed in drop boxes, with little or no chain of custody.[2] Second, the evidence of illegal or fraudulent votes, with outcome changing results, is clear—and growing daily.

Since *Marbury v. Madison* this Court has, on significant occasions, had to step into the breach in a time of tumult, declare what the law is, and right the ship. This is just such an occasion. In fact, it is situations precisely like the present—when the Constitution has been cast aside unchecked—that leads us to the current precipice. As one of the Country's Founding Fathers, John Adams, once said, "You will never know how much it has cost my generation to preserve your freedom. I hope you will make a good use of it." In times such as this, it is the duty of the Court to act as a "faithful guardian[] of the Constitution." THE FEDERALIST NO. 78, at 470 (C. Rossiter, ed. 1961) (A. Hamilton).

Against that background, the United States of America brings this action against Defendant States based on the following allegations:

NATURE OF THE ACTION

1. The United States challenges Defendant States' administration of the 2020 election under the

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[2] https://georgiastarnews.com/2020/12/05/dekalb-county-cannot-find-chain-of-custody-records-for-absentee-ballots-deposited-in-drop-boxes-it-has-not-been-determined-if-responsive-records-to-your-request-exist/

Electors Clause of Article II, Section 1, Clause 2, and the Fourteenth Amendment of the U.S. Constitution.

2. This case presents a question of law: Did Defendant States violate the Electors Clause (or, in the alternative, the Fourteenth Amendment) by taking—or allowing—non-legislative actions to change the election rules that would govern the appointment of presidential electors?

3. Those unconstitutional changes opened the door to election irregularities in various forms. The United States alleges that each of the Defendant States flagrantly violated constitutional rules governing the appointment of presidential electors. In doing so, seeds of deep distrust have been sown across the country. In *Marbury v. Madison*, 5 U.S. 137 (1803), Chief Justice Marshall described "the duty of the Judicial Department to say what the law is" because "every right, when withheld, must have a remedy, and every injury its proper redress."

4. In the spirit of *Marbury v. Madison*, this Court's attention is profoundly needed to declare what the law is and to restore public trust in this election.

5. As Justice Gorsuch observed recently, "Government is not free to disregard the [Constitution] in times of crisis. … Yet recently, during the COVID pandemic, certain States seem to have ignored these long-settled principles." *Roman Catholic Diocese of Brooklyn, New York v. Cuomo*, 592 U.S. ____ (2020) (Gorsuch, J., concurring). This case is no different.

6. Each of Defendant States acted in a common pattern. State officials, sometimes through pending litigation (*e.g.*, settling "friendly" suits) and sometimes unilaterally by executive fiat, announced

new rules for the conduct of the 2020 election that were inconsistent with existing state statutes defining what constitutes a lawful vote.

7. Defendant States also failed to segregate ballots in a manner that would permit accurate analysis to determine which ballots were cast in conformity with the legislatively set rules and which were not. This is especially true of the mail-in ballots in these States. By waiving, lowering, and otherwise failing to follow the state statutory requirements for signature validation and other processes for ballot security, the entire body of such ballots is now constitutionally suspect and may not be legitimately used to determine allocation of the Defendant States' presidential electors.

8. The rampant lawlessness arising out of Defendant States' unconstitutional acts is described in a number of currently pending lawsuits in Defendant States or in public view including:

- *Dozens of witnesses testifying under oath about*: the physical blocking and kicking out of Republican poll challengers; thousands of the same ballots run multiple times through tabulators; mysterious late night dumps of thousands of ballots at tabulation centers; illegally backdating thousands of ballots; signature verification procedures ignored;[3]
- *Videos of*: poll workers erupting in cheers as poll challengers are removed from vote counting centers; poll watchers being blocked from entering

[3]Complaint (Doc. No. 1), *Donald J. Trump for President, Inc. v. Benson*, 1:20-cv-1083 (W.D. Mich. Nov. 11, 2020) at ¶¶ 26-55 & Doc. Nos. 1-2, 1-4.

vote counting centers—despite even having a court order to enter; suitcases full of ballots being pulled out from underneath tables after poll watchers were told to leave.

- *Facts for which no independently verified reasonable explanation yet exists*: On October 1, 2020, in Pennsylvania a laptop and several USB drives, used to program Pennsylvania's Dominion voting machines, were mysteriously stolen from a warehouse in Philadelphia. The laptop and the USB drives were the *only* items taken, and potentially could be used to alter vote tallies; In Michigan, which also employed the same Dominion voting system, on November 4, 2020, Michigan election officials have admitted that a purported "glitch" caused 6,000 votes for President Trump to be wrongly switched to Democrat Candidate Biden. A flash drive containing tens of thousands of votes was left unattended in the Milwaukee tabulations center in the early morning hours of Nov. 4, 2020, without anyone aware it was not in a proper chain of custody.

9. Nor was this Court immune from the blatant disregard for the rule of law. Pennsylvania itself played fast and loose with its promise to this Court. In a classic bait and switch, Pennsylvania used guidance from its Secretary of State to argue that this Court should not expedite review because the State would segregate potentially unlawful ballots. A court of law would reasonably rely on such a representation. Remarkably, before the ink was dry on the Court's 4-4 decision, Pennsylvania changed that guidance, breaking the State's promise to this Court. *Compare Republican Party of Pa. v. Boockvar*, No. 20-542, 2020

U.S. LEXIS 5188, at *5-6 (Oct. 28, 2020) ("we have been informed by the Pennsylvania Attorney General that the Secretary of the Commonwealth issued guidance today directing county boards of elections to segregate [late-arriving] ballots") (Alito, J., concurring) *with Republican Party v. Boockvar*, No. 20A84, 2020 U.S. LEXIS 5345, at *1 (Nov. 6, 2020) ("this Court was not informed that the guidance issued on October 28, which had an important bearing on the question whether to order special treatment of the ballots in question, had been modified") (Alito, J., Circuit Justice).

10. Expert analysis using a commonly accepted statistical test further raises serious questions as to the integrity of this election.

11. The probability of former Vice President Biden winning the popular vote in four of the Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin—independently given President Trump's early lead in those States as of 3 a.m. on November 4, 2020, is less than one in a quadrillion, or 1 in 1,000,000,000,000,000. For former Vice President Biden to win these four States collectively, the odds of that event happening decrease to less than one in a quadrillion to the fourth power (*i.e.*, 1 in 1,000,000,000,000,000[4]). *See* Decl. of Charles J. Cicchetti, Ph.D. ("Cicchetti Decl.") at ¶¶ 14-21, 30-31. *See* App. __a-__a.[4]

12. 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.

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[4] All exhibits cited in this Complaint are in the Appendix to the United States' forthcoming motion to expedite ("App. 1a_____").

Biden's vote totals in the five urban areas in these four Defendant States, where he overperformed Secretary Clinton in all but one of the five urban areas. *See* Supp. Cicchetti Decl. at ¶¶ 4-12, 20-21. (App. __a-__a).

13. The same less than one in a quadrillion statistical improbability of Mr. Biden winning the popular vote in these four Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin—independently exists when Mr. Biden's performance in each of those Defendant States is compared to former Secretary of State Hilary Clinton's performance in the 2016 general election and President Trump's performance in the 2016 and 2020 general elections. Again, the statistical improbability of Mr. Biden winning the popular vote in these four States collectively is 1 in 1,000,000,000,000,000[5]. *Id.* 10-13, 17-21, 30-31.

14. Put simply, there is substantial reason to doubt the voting results in the Defendant States.

15. By purporting to waive or otherwise modify the existing state law in a manner that was wholly *ultra vires* and not adopted by each state's legislature, Defendant States violated not only the Electors Clause, U.S. CONST. art. II, § 1, cl. 2, but also the Elections Clause, *id.* art. I, § 4 (to the extent that the Article I Elections Clause textually applies to the Article II process of selecting presidential electors).

16. Voters who cast lawful ballots cannot have their votes diminished by states that administered their 2020 presidential elections in a manner where it is impossible to distinguish a lawful ballot from an unlawful ballot.

17. The number of absentee and mail-in ballots that have been handled unconstitutionally in

Defendant States greatly exceeds the difference between the vote totals of the two candidates for President of the United States in each Defendant State.

18. In December 2018, the Caltech/MIT Voting Technology Project and MIT Election Data & Science Lab issued a comprehensive report addressing election integrity issues.[5] The fundamental question they sought to address was: "How do we know that the election outcomes announced by election officials are correct?"

19. The Caltech/MIT Report concluded: "Ultimately, the only way to answer a question like this is to rely on procedures that independently review the outcomes of elections, to detect and correct material mistakes that are discovered. In other words, elections need to be audited." *Id*. at iii. The Caltech/MIT Report then set forth a detailed analysis of why and how such audits should be done for the same reasons that exist today—a lack of trust in our voting systems.

20. In addition to injunctive relief sought for this election, the United States seeks declaratory relief for all presidential elections in the future. This problem is clearly capable of repetition yet evading review. The integrity of our constitutional democracy requires that states conduct presidential elections in accordance with the rule of law and federal constitutional guarantees.

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[5]Summary Report, Election Auditing, Key Issues and Perspectives attached at _____ (the "Caltech/MIT Report") (App. __a -- __a).

JURISDICTION AND VENUE

21. This Court has original and exclusive jurisdiction over this action because it is a "controvers[y] between the United States and [Defendant] State[s]" under Article III, § 2, cl. 2 of the U.S. Constitution and 28 U.S.C. § 1251(b)(2) (2018).

22. In a presidential election, "the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States." *Anderson v. Celebrezze*, 460 U.S. 780, 795 (1983). The constitutional failures of Defendant States injure the United States as *parens patriae* for all citizens because "'the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.'" *Bush v. Gore*, 531 U.S. 98, 105 (2000) (quoting *Reynolds v. Sims*, 377 U. S. 533, 555 (1964)) (*Bush II*). In other words, United States is acting to protect the interests of *all* citizens—including not only the citizens of Defendant States but also the citizens of their sister States—in the fair and constitutional conduct of elections used to appoint presidential electors.

23. Although the several States may lack "a judicially cognizable interest in the manner in which another State conducts its elections," *Texas v. Pennsylvania*, No. 22O155 (U.S. Dec. 11, 2020), the same is not true for the United States, which has *parens patriae* for the citizens of each State against the government apparatus of each State. *Alfred L. Snapp & Son v. Puerto Rico,* 458 U.S. 592, 610 n.16 (1982) ("it is the United States, and not the State, which represents them as *parens patriae*") (interior quotation omitted). For *Bush II*-type violations, the

United States can press this action against the Defendant States for violations of the voting rights of Defendant States' own citizens.

24. This Court's Article III decisions limit the ability of citizens to press claims under the Electors Clause. *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (distinguishing citizen plaintiffs from citizen relators who sued in the name of a state); *cf. Massachusetts v. EPA,* 549 U.S. 497, 520 (2007) (courts owe states "special solicitude in standing analysis"). Moreover, redressability likely would undermine a suit against a single state officer or State because no one State's electoral votes will make a difference in the election outcome. This action against multiple State defendants is the only adequate remedy to cure the Defendant States' violations, and this Court is the only court that can accommodate such a suit.

25. As federal sovereign under the Voting Rights Act, 52 U.S.C. §§10301-10314 ("VRA"), the United States has standing to enforce its laws against, *inter alia,* giving false information as to his name, address or period of residence in the voting district for the purpose of establishing the eligibility to register or vote, conspiring for the purpose of encouraging false registration to vote or illegal voting, falsifying or concealing a material fact in any matter within the jurisdiction of an examiner or hearing officer related to an election, or voting more than once. 52 U.S.C. § 10307(c)-(e). Although the VRA channels enforcement of some VRA sections—namely, 52 U.S.C. § 10303-10304—to the U.S. District Court for the District of Columbia, the VRA does not channel actions under § 10307.

26. Individual state courts or U.S. district courts do not—and under the circumstance of contested elections in multiple states, *cannot*—offer an adequate remedy to resolve election disputes within the timeframe set by the Constitution to resolve such disputes and to appoint a President via the electoral college. No court—other than this Court—can redress constitutional injuries spanning multiple States with the sufficient number of states joined as defendants or respondents to make a difference in the Electoral College.

27. This Court is the sole forum in which to exercise the jurisdictional basis for this action.

PARTIES

28. Plaintiff is the United States of America, which is the federal sovereign.

29. Defendants are the Commonwealth of Pennsylvania and the States of Georgia, Michigan, Arizona, Nevada, and Wisconsin, which are sovereign States of the United States.

LEGAL BACKGROUND

30. Under the Supremacy Clause, the "Constitution, and the laws of the United States which shall be made in pursuance thereof … shall be the supreme law of the land." U.S. CONST. Art. VI, cl. 2.

31. "The individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the electoral college." *Bush II*, 531 U.S. at 104 (citing U.S. CONST. art. II, § 1).

32. State legislatures have plenary power to set the process for appointing presidential electors: "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors." U.S. CONST. art. II, §1, cl. 2; *see also Bush II*, 531 U.S. at 104 ("[T]he state legislature's power to select the manner for appointing electors is *plenary*." (emphasis added)).

33. At the time of the Founding, most States did not appoint electors through popular statewide elections. In the first presidential election, six of the ten States that appointed electors did so by direct legislative appointment. *McPherson v. Blacker*, 146 U.S. 1, 29-30 (1892).

34. In the second presidential election, nine of the fifteen States that appointed electors did so by direct legislative appointment. *Id.* at 30.

35. In the third presidential election, nine of sixteen States that appointed electors did so by direct legislative appointment. *Id.* at 31. This practice persisted in lesser degrees through the Election of 1860. *Id.* at 32.

36. Though "[h]istory has now favored the voter," *Bush II*, 531 U.S. at 104, "there is no doubt of the right of the legislature to resume the power [of appointing presidential electors] at any time, for *it can neither be taken away nor abdicated*." *McPherson*, 146 U.S. at 35 (emphasis added); *cf.* 3 U.S.C. § 2 ("Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct.").

37. Given the State legislatures' constitutional primacy in selecting presidential electors, the ability to set rules governing the casting of ballots and counting of votes cannot be usurped by other branches of state government.

38. The Framers of the Constitution decided to select the President through the Electoral College "to afford as little opportunity as possible to tumult and disorder" and to place "every practicable obstacle [to] cabal, intrigue, and corruption," including "foreign powers" that might try to insinuate themselves into our elections. THE FEDERALIST NO. 68, at 410-11 (C. Rossiter, ed. 1961) (Madison, J.).

39. Defendant States' applicable laws are set out under the facts for each Defendant State.

FACTS

40. The use of absentee and mail-in ballots skyrocketed in 2020, not only as a public-health response to the COVID-19 pandemic but also at the urging of mail-in voting's proponents, and most especially executive branch officials in Defendant States. According to the Pew Research Center, in the 2020 general election, a record number of votes—about 65 million—were cast via mail compared to 33.5 million mail-in ballots cast in the 2016 general election—an increase of more than 94 percent.

41. In the wake of the contested 2000 election, the bipartisan Jimmy Carter-James Baker commission identified absentee ballots as "the largest source of potential voter fraud." BUILDING CONFIDENCE IN U.S. ELECTIONS: REPORT OF THE COMMISSION ON FEDERAL ELECTION REFORM, at 46 (Sept. 2005).

42. Concern over the use of mail-in ballots is not novel to the modern era, Dustin Waters, *Mail-in Ballots Were Part of a Plot to Deny Lincoln Reelection in 1864*, WASH. POST (Aug. 22, 2020),[6] but it remains a *current* concern. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 194-96 & n.11 (2008); *see also* Texas Office of the Attorney General, *AG Paxton Announces Joint Prosecution of Gregg County Organized Election Fraud in Mail-In Balloting Scheme* (Sept. 24, 2020); Harriet Alexander & Ariel Zilber, *Minneapolis police opens investigation into reports that Ilhan Omar's supporters illegally harvested Democrat ballots in Minnesota*, DAILY MAIL, Sept. 28, 2020.

43. Absentee and mail-in voting are the primary opportunities for unlawful ballots to be cast. As a result of expanded absentee and mail-in voting in Defendant States, combined with Defendant States' unconstitutional modification of statutory protections designed to ensure ballot integrity, Defendant States created a massive opportunity for fraud. In addition, the Defendant States have made it difficult or impossible to separate the constitutionally tainted mail-in ballots from all mail-in ballots.

44. Rather than augment safeguards against illegal voting in anticipation of the millions of additional mail-in ballots flooding their States, Defendant States *all* materially weakened, or did away with, security measures, such as witness or signature verification procedures, required by their respective legislatures. Their legislatures established those commonsense safeguards to prevent—or at least reduce—fraudulent mail-in ballots.

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[6]https://www.washingtonpost.com/history/2020/08/22/mail-in-voting-civil-war-election-conspiracy-lincoln/

45. Significantly, in Defendant States, Democrat voters voted by mail at two to three times the rate of Republicans. Former Vice President Biden thus greatly benefited from this unconstitutional usurpation of legislative authority, and the weakening of legislatively mandated ballot security measures.

46. The outcome of the Electoral College vote is directly affected by the constitutional violations committed by Defendant States. Those violations proximately caused the appointment of presidential electors for former Vice President Biden. The United States as a sovereign and as *parens patriae* for all its citizens will therefore be injured if Defendant States' unlawfully certify these presidential electors and those electors' votes are recognized.

47. In addition to the unconstitutional acts associated with mail-in and absentee voting, there are grave questions surrounding the vulnerability of electronic voting machines—especially those machines provided by Dominion Voting Systems, Inc. ("Dominion") which were in use in all of the Defendant States (and other states as well) during the 2020 general election.

48. As initially reported on December 13, 2020, the U.S. Government is scrambling to ascertain the extent of broad-based hack into multiple agencies through a third-party software supplied by vendor known as SolarWinds. That software product is used throughout the U.S. Government, and the private sector including, apparently, Dominion.

49. As reported by CNN, what little we know has cybersecurity experts extremely worried.[7] CNN also quoted Theresa Payton, who served as White House Chief Information Officer under President George W. Bush stating: "I woke up in the middle of the night last night just sick to my stomach. . . . On a scale of 1 to 10, I'm at a 9 — and it's not because of what I know; it's because of what we still don't know."

50. Disturbingly, though the Dominion's CEO denied that Dominion uses SolarWinds software, a screenshot captured from Dominion's webpage shows that Dominion does use SolarWinds technology.[8] Further, Dominion apparently later altered that page to remove any reference to SolarWinds, but the SolarWinds website is still in the Dominion page's source code. *Id*.

Commonwealth of Pennsylvania

51. Pennsylvania has 20 electoral votes, with a statewide vote tally currently estimated at 3,363,951 for President Trump and 3,445,548 for former Vice President Biden, a margin of 81,597 votes.

52. On December 14, 2020, the Pennsylvania Republican slate of Presidential Electors, met at the State Capital and cast their votes for President

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[7] https://www.cnn.com/2020/12/16/tech/solarwinds-orion-hack-explained/index.html

[8] https://www.theepochtimes.com/dominion-voting-systems-ceo-says-company-has-never-used-solarwinds-orion-platform_3619895.html

Donald J. Trump and Vice President Michael R. Pence.[9]

53. The number of votes affected by the various constitutional violations exceeds the margin of votes separating the candidates.

54. Pennsylvania's Secretary of State, Kathy Boockvar, without legislative approval, unilaterally abrogated several Pennsylvania statutes requiring signature verification for absentee or mail-in ballots. Pennsylvania's legislature has not ratified these changes, and the legislation did not include a severability clause.

55. On August 7, 2020, the League of Women Voters of Pennsylvania and others filed a complaint against Secretary Boockvar and other local election officials, seeking "a declaratory judgment that Pennsylvania existing signature verification procedures for mail-in voting" were unlawful for a number of reasons. *League of Women Voters of Pennsylvania v. Boockvar*, No. 2:20-cv-03850-PBT, (E.D. Pa. Aug. 7, 2020).

56. The Pennsylvania Department of State quickly settled with the plaintiffs, issuing revised guidance on September 11, 2020, stating in relevant part: "The Pennsylvania Election Code does not authorize the county board of elections to set aside returned absentee or mail-in ballots based solely on signature analysis by the county board of elections."

57. This guidance is contrary to Pennsylvania law. First, Pennsylvania Election Code mandates that, for non-disabled and non-military

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[9] https://www.foxnews.com/politics/republican-electors-pennsylvania-georgia-vote-for-trump

voters, all applications for an absentee or mail-in ballot "shall be signed by the applicant." 25 PA. STAT. §§ 3146.2(d) & 3150.12(c). Second, Pennsylvania's voter signature verification requirements are expressly set forth at 25 PA. STAT. 350(a.3)(1)-(2) and § 3146.8(g)(3)-(7).

58. The Pennsylvania Department of State's guidance unconstitutionally did away with Pennsylvania's statutory signature verification requirements. Approximately 70 percent of the requests for absentee ballots were from Democrats and 25 percent from Republicans. Thus, this unconstitutional abrogation of state election law greatly inured to former Vice President Biden's benefit.

59. In addition, in 2019, Pennsylvania's legislature enacted bipartisan election reforms, 2019 Pa. Legis. Serv. Act 2019-77, that set *inter alia* a deadline of 8:00 p.m. on election day for a county board of elections to receive a mail-in ballot. 25 PA. STAT. §§ 3146.6(c), 3150.16(c). Acting under a generally worded clause that "Elections shall be free and equal," PA. CONST. art. I, § 5, cl. 1, a 4-3 majority of Pennsylvania's Supreme Court in *Pa. Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020), extended that deadline to three days after Election Day and adopted a presumption that even *non-postmarked ballots* were presumptively timely.

60. Pennsylvania's election law also requires that poll-watchers be granted access to the opening, counting, and recording of absentee ballots: "Watchers shall be permitted to be present when the envelopes containing official absentee ballots and mail-in ballots are opened and when such ballots are counted and

recorded." 25 PA. STAT. § 3146.8(b). Local election officials in Philadelphia and Allegheny Counties decided not to follow 25 PA. STAT. § 3146.8(b) for the opening, counting, and recording of absentee and mail-in ballots.

61. Prior to the election, Secretary Boockvar sent an email to local election officials urging them to provide opportunities for various persons—including political parties—to contact voters to "cure" defective mail-in ballots. This process clearly violated several provisions of the state election code.

- Section 3146.8(a) requires: "The county boards of election, upon receipt of official absentee ballots in sealed official absentee ballot envelopes as provided under this article and mail-in ballots as in sealed official mail-in ballot envelopes as provided under Article XIII-D,1 shall safely keep the ballots in sealed or locked containers until they are to be canvassed by the county board of elections."
- Section 3146.8(g)(1)(ii) provides that mail-in ballots shall be canvassed (if they are received by eight o'clock p.m. on election day) in the manner prescribed by this subsection.
- Section 3146.8(g)(1.1) provides that the first look at the ballots shall be "no earlier than seven o'clock a.m. on election day." And the hour for this "pre-canvas" must be publicly announced at least 48 hours in advance. Then the votes are counted on election day.

62. By removing the ballots for examination prior to seven o'clock a.m. on election day, Secretary Boockvar created a system whereby local officials could review ballots without the proper

announcements, observation, and security. This entire scheme, which was only followed in Democrat majority counties, was blatantly illegal in that it permitted the illegal removal of ballots from their locked containers prematurely.

63. Statewide election officials and local election officials in Philadelphia and Allegheny Counties, aware of the historical Democrat advantage in those counties, violated Pennsylvania's election code and adopted the differential standards favoring voters in Philadelphia and Allegheny Counties with the intent to favor former Vice President Biden. *See* Verified Complaint (Doc. No. 1), *Donald J. Trump for President, Inc. v. Boockvar*, 4:20-cv-02078-MWB (M.D. Pa. Nov. 18, 2020) at ¶¶ 3-6, 9, 11, 100-143.

64. Absentee and mail-in ballots in Pennsylvania were thus evaluated under an illegal standard regarding signature verification. It is now impossible to determine which ballots were properly cast and which ballots were not.

65. The changed process allowing the curing of absentee and mail-in ballots in Allegheny and Philadelphia counties is a separate basis resulting in an unknown number of ballots being treated in an unconstitutional manner inconsistent with Pennsylvania statute. *Id.*

66. In addition, a great number of ballots were received after the statutory deadline and yet were counted by virtue of the fact that Pennsylvania did not segregate all ballots received after 8:00 pm on November 3, 2020. Boockvar's claim that only about 10,000 ballots were received after this deadline has no way of being proven since Pennsylvania broke its promise to the Court to segregate ballots and co-

mingled perhaps tens, or even hundreds of thousands, of illegal late ballots.

67. On December 4, 2020, fifteen members of the Pennsylvania House of Representatives led by Rep. Francis X. Ryan issued a report to Congressman Scott Perry (the "Ryan Report," App. 139a-144a) stating that "[t]he general election of 2020 in Pennsylvania was fraught with inconsistencies, documented irregularities and improprieties associated with mail-in balloting, pre-canvassing, and canvassing that the reliability of the mail-in votes in the Commonwealth of Pennsylvania is impossible to rely upon."

68. The Ryan Report's findings are startling, including:

- Ballots with NO MAILED date. That total is 9,005.
- Ballots Returned on or BEFORE the Mailed Date. That total is 58,221.
- Ballots Returned one day after Mailed Date. That total is 51,200.

Id. 143a.

69. These nonsensical numbers alone total 118,426 ballots and exceed Mr. Biden's margin of 81,660 votes over President Trump. But these discrepancies pale in comparison to the discrepancies in Pennsylvania's reported data concerning the number of mail-in ballots distributed to the populace—now with no longer subject to legislated mandated signature verification requirements.

70. The Ryan Report also stated as follows:

> [I]n a data file received on November 4, 2020, the Commonwealth's PA Open Data sites reported over 3.1 million mail in ballots sent out. The CSV file from the state on November 4 depicts 3.1 million mail in ballots sent out but on November 2, the information was provided that only 2.7 million ballots had been sent out. ***This discrepancy of approximately 400,000 ballots from November 2 to November 4 has not been explained***.

Id. at 143a-44a. (Emphasis added).

71. The Ryan Report stated further: "This apparent [400,000 ballot] discrepancy can only be evaluated by reviewing all transaction logs into the SURE system [the Statewide Uniform Registry Electors]."[10]

72. In its opposition brief to Texas's motion to for leave file a bill of complaint, Pennsylvania said 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 discussed above.[11]

73. With respect to the 400,000 discrepancy in mail-in ballots Pennsylvania sent out as reported on November 2, 2020 compared to November 4, 2020 (one day after the election), Pennsylvania asserted

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[10] Ryan Report at App. __a [p.5].

[11] Pennsylvania Opposition To Motion For Leave To File Bill of Complaint and Motion For Preliminary Injunction, Temporary Restraining Order, or Stay ("Pennsylvania Opp. Br.") filed December 10, 2020, Case No. 220155.

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 offered *no support* for its conclusory assertion. *Id.* at 6. Nor did Pennsylvania rebut the assertion in the Ryan Report that the "discrepancy can only be evaluated by reviewing all transaction logs into the SURE system."

74. These stunning figures illustrate the out-of-control nature of Pennsylvania's mail-in balloting scheme. Democrats submitted mail-in ballots at more than two times the rate of Republicans. This number of constitutionally tainted ballots far exceeds the approximately 81,660 votes separating the candidates.

75. This blatant disregard of statutory law renders all mail-in ballots constitutionally tainted and cannot form the basis for appointing or certifying Pennsylvania's presidential electors to the Electoral College.

76. According to the U.S. Election Assistance Commission's report to Congress *Election Administration and Voting Survey: 2016 Comprehensive Report*, in 2016 Pennsylvania received 266,208 mail-in ballots; 2,534 of them were rejected (.95%). *Id.* at p. 24. However, in 2020, Pennsylvania received more than 10 times the number of mail-in ballots compared to 2016. As explained *supra*, this much larger volume of mail-in ballots was treated in an unconstitutionally modified manner that included: (1) doing away with the Pennsylvania's signature verification requirements; (2) extending that deadline to three days after Election Day and adopting a presumption that even *non-postmarked ballots* were

presumptively timely; and (3) blocking poll watchers in Philadelphia and Allegheny Counties in violation of State law.

77. These non-legislative modifications to Pennsylvania's election rules appear to have generated an outcome-determinative number of unlawful ballots that were cast in Pennsylvania. Regardless of the number of such ballots, the non-legislative changes to the election rules violated the Electors Clause.

State of Georgia

78. Georgia has 16 electoral votes, with a statewide vote tally currently estimated at 2,458,121 for President Trump and 2,472,098 for former Vice President Biden, a margin of approximately 12,670 votes.

79. On December 14, 2020, the Georgia Republican slate of Presidential Electors, including Petitioner Electors, met at the State Capital and cast their votes for President Donald J. Trump and Vice President Michael R. Pence.[12]

80. The number of votes affected by the various constitutional violations far exceeds the margin of votes dividing the candidates.

81. Georgia's Secretary of State, Brad Raffensperger, without legislative approval, unilaterally abrogated Georgia's statutes governing the date a ballot may be opened, and the signature verification process for absentee ballots.

82. O.C.G.A. § 21-2-386(a)(2) prohibits the opening of absentee ballots until after the polls open

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[12] https://www.foxnews.com/politics/republican-electors-pennsylvania-georgia-vote-for-trump

on Election Day: In April 2020, however, the State Election Board adopted Secretary of State Rule 183-1-14-0.9-.15, Processing Ballots Prior to Election Day. That rule purports to authorize county election officials to begin processing absentee ballots up to *three weeks* before Election Day. Outside parties were then given early and illegal access to purportedly defective ballots to "cure" them in violation of O.C.G.A. §§ 21-2-386(a)(1)(C), 21-2-419(c)(2).

83. Specifically, Georgia law authorizes and requires a single registrar or clerk—after reviewing the outer envelope—to reject an absentee ballot if the voter failed to sign the required oath or to provide the required information, the signature appears invalid, or the required information does not conform with the information on file, or if the voter is otherwise found ineligible to vote. O.C.G.A. § 21-2-386(a)(1)(B)-(C).

84. Georgia law provides absentee voters the chance to "cure a failure to sign the oath, an invalid signature, or missing information" on a ballot's outer envelope by the deadline for verifying provisional ballots (*i.e.*, three days after the election). O.C.G.A. §§ 21-2-386(a)(1)(C), 21-2-419(c)(2). To facilitate cures, Georgia law requires the relevant election official to notify the voter in writing: "The board of registrars or absentee ballot clerk shall promptly notify the elector of such rejection, a copy of which notification shall be retained in the files of the board of registrars or absentee ballot clerk for at least two years." O.C.G.A. § 21-2-386(a)(1)(B).

85. There were 284,817 early ballots corrected and accepted in Georgia out of 4,018,064 early ballots used to vote in Georgia. Former Vice President Biden received nearly twice the number of

mail-in votes as President Trump and thus materially benefited from this unconstitutional change in Georgia's election laws.

86. In addition, on March 6, 2020, in *Democratic Party of Georgia v. Raffensperger*, No. 1:19-cv-5028-WMR (N.D. Ga.), Georgia's Secretary of State entered a Compromise Settlement Agreement and Release with the Democratic Party of Georgia (the "Settlement") to materially change the statutory requirements for reviewing signatures on absentee ballot envelopes to confirm the voter's identity by making it far more difficult to challenge defective signatures beyond the express mandatory procedures set forth at GA. CODE § 21-2-386(a)(1)(B).

87. Among other things, before a ballot could be rejected, the Settlement required a registrar who found a defective signature to now seek a review by two other registrars, and only if a majority of the registrars agreed that the signature was defective could the ballot be rejected but not before all three registrars' names were written on the ballot envelope along with the reason for the rejection. These cumbersome procedures are in direct conflict with Georgia's statutory requirements, as is the Settlement's requirement that notice be provided by telephone (*i.e.*, not in writing) if a telephone number is available. Finally, the Settlement purports to require State election officials to consider issuing guidance and training materials drafted by an expert retained by the Democratic Party of Georgia.

88. Georgia's legislature has not ratified these material changes to statutory law mandated by the Compromise Settlement Agreement and Release, including altered signature verification requirements

and early opening of ballots. The relevant legislation that was violated by Compromise Settlement Agreement and Release did not include a severability clause.

89. This unconstitutional change in Georgia law materially benefitted former Vice President Biden. According to the Georgia Secretary of State's office, former Vice President Biden had almost double the number of absentee votes (65.32%) as President Trump (34.68%). *See* Cicchetti Decl. at ¶ 25, App. 7a-8a.

90. The effect of this unconstitutional change in Georgia election law, which made it more likely that ballots without matching signatures would be counted, had a material impact on the outcome of the election.

91. Specifically, there were 1,305,659 absentee mail-in ballots submitted in Georgia in 2020. There were 4,786 absentee ballots rejected in 2020. This is a rejection rate of .37%. In contrast, in 2016, the 2016 rejection rate was 6.42% with 13,677 absentee mail-in ballots being rejected out of 213,033 submitted, which more than *seventeen times greater* than in 2020. *See* Cicchetti Decl. at ¶ 24, App. 7a.

92. If the rejection rate of mailed-in absentee ballots remained the same in 2020 as it was in 2016, there would be 83,517 less tabulated ballots in 2020. The statewide split of absentee ballots was 34.68% for Trump and 65.2% for Biden. Rejecting at the higher 2016 rate with the 2020 split between Trump and Biden would decrease Trump votes by 28,965 and Biden votes by 54,552, which would be a net gain for Trump of 25,587 votes. This would be more than needed to overcome the Biden advantage of 12,670

votes, and Trump would win by 12,917 votes. *Id.* Regardless of the number of ballots affected, however, the non-legislative changes to the election rules violated the Electors Clause.

93. In addition, Georgia uses Dominion's voting machines throughout the State. Less than a month before the election, the United States District Court for the Northern District of Georgia ruled on a motion brought by a citizen advocate group and others seeking a preliminary injunction to stop Georgia from using Dominion's voting systems due to their known vulnerabilities to hacking and other irregularities. *See Curling v. Raffensperger*, 2020 U.S. Dist. LEXIS 188508, No. 1:17-cv-2989-AT (N.D. GA Oct.11, 2020).

94. Though the district court found that it was bound by Eleventh Circuit law to deny plaintiffs' motion, it issued a prophetic warning stating:

> The Court's Order has delved deep into the true risks posed by the new BMD voting system as well as its manner of implementation. These risks are neither hypothetical nor remote under the current circumstances. ***The insularity of the Defendants' and Dominion's stance here in evaluation and management of the security and vulnerability of the BMD system does not benefit the public or citizens' confident exercise of the franchise.*** The stealth vote alteration or operational interference risks posed by malware that can be effectively invisible to detection, whether intentionally seeded or not, are high once implanted, if equipment and software systems are not properly protected, implemented, and audited.

Id. at *176 (Emphasis added).

95. One of those material risks manifested three weeks later as shown by the November 4, 2020 video interview of a Fulton County, Georgia Director

of Elections, Richard Barron. In that interview, Barron stated that the tallied vote of over 93% of ballots were based on a "review panel['s]" determination of the voter's "intent"—not what the voter actually voted. Specifically, he stated that "so far we've scanned 113,130 ballots, we've adjudicated over 106,000. . . . The only ballots that are adjudicated are if we have a ballot with a contest on it in which there's some question as to how the computer reads it so that the vote review panel then determines voter intent."[13]

96. This astounding figure demonstrates the unreliability of Dominion's voting machines. These figures, in and of themselves in this one sample, far exceeds the margin of votes separating the two candidates.

97. Lastly, on December 17, 2020, the Chairman of the Election Law Study Subcommittee of the Georgia Standing Senate Judiciary Committee issued a detailed report discussing a myriad of voting irregularities and potential fraud in the Georgia 2020 general election (the "Report").[14] The Executive Summary states that "[t]he November 3, 2020 General Election (the 'Election') was chaotic and any reported results must be viewed as untrustworthy". After detailing over a dozen issues showing irregularities and potential fraud, the Report concluded:

> The Legislature should carefully consider its obligations under the U.S. Constitution. If a

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[13] https://www.c-span.org/video/?477819-1/fulton-county-georgia-election-update at beginning at 20 seconds through 1:21.

[14] (App. __a -- __a)

> majority of the General Assembly concurs with the findings of this report, the certification of the Election should be rescinded and the General Assembly should act to determine the proper Electors to be certified to the Electoral College in the 2020 presidential race. Since time is of the essence, the Chairman and Senators who concur with this report recommend that the leadership of the General Assembly and the Governor immediately convene to allow further consideration by the entire General Assembly.

State of Michigan

98. Michigan has 16 electoral votes, with a statewide vote tally currently estimated at 2,650,695 for President Trump and 2,796,702 for former Vice President Biden, a margin of 146,007 votes. In Wayne County, Mr. Biden's margin (322,925 votes) significantly exceeds his statewide lead.

99. On December 14, 2020, the Michigan Republican slate of Presidential Electors *attempted* to meet and cast their votes for President Donald J. Trump and Vice President Michael R. Pence but were denied entry to the State Capital by law enforcement. Their tender of their votes was refused. They instead met on the grounds of the State Capital and cast their votes for President Donald J. Trump and Vice President Michael R. Pence.[15]

100. The number of votes affected by the various constitutional violations exceeds the margin of votes dividing the candidates.

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[15]https://thepalmierireport.com/michigan-state-police-block-gop-electors-from-entering-capitol/

101. Michigan's Secretary of State, Jocelyn Benson, without legislative approval, unilaterally abrogated Michigan election statutes related to absentee ballot applications and signature verification. Michigan's legislature has not ratified these changes, and its election laws do not include a severability clause.

102. As amended in 2018, the Michigan Constitution provides all registered voters the right to request and vote by an absentee ballot without giving a reason. MICH. CONST. art. 2, § 4.

103. On May 19, 2020, however, Secretary Benson announced that her office would send unsolicited absentee-voter ballot applications by mail to all 7.7 million registered Michigan voters prior to the primary and general elections. Although her office repeatedly encouraged voters to vote absentee because of the COVID-19 pandemic, it did not ensure that Michigan's election systems and procedures were adequate to ensure the accuracy and legality of the historic flood of mail-in votes. In fact, it did the opposite and did away with protections designed to deter voter fraud.

104. Secretary Benson's flooding of Michigan with millions of absentee ballot applications prior to the 2020 general election violated M.C.L. § 168.759(3). That statute limits the procedures for requesting an absentee ballot to three specified ways:

> An application for an absent voter ballot under this section may be made in *any of the following ways*:
>
> (a) By a written request signed by the voter.
>
> (b) On an absent voter ballot application form provided for that purpose by the clerk of the city or township.

(c) On a federal postcard application.

M.C.L. § 168.759(3) (emphasis added).

105. The Michigan Legislature thus declined to include the Secretary of State as a means for distributing absentee ballot applications. *Id.* § 168.759(3)(b). Under the statute's plain language, the Legislature explicitly gave *only local clerks* the power to distribute absentee voter ballot applications. *Id.*

106. Because the Legislature declined to explicitly include the Secretary of State as a vehicle for distributing absentee ballots applications, Secretary Benson lacked authority to distribute even a single absentee voter ballot application—much less the *millions* of absentee ballot applications Secretary Benson chose to flood across Michigan.

107. Secretary Benson also violated Michigan law when she launched a program in June 2020 allowing absentee ballots to be requested online, *without* signature verification as expressly required under Michigan law. The Michigan Legislature did not approve or authorize Secretary Benson's unilateral actions.

108. MCL § 168.759(4) states in relevant part: "An applicant for an absent voter ballot shall sign the application. Subject to section 761(2), a clerk or assistant clerk shall not deliver an absent voter ballot to an applicant who does not sign the application."

109. Further, MCL § 168.761(2) states in relevant part: "The qualified voter file must be used to determine the genuineness of a signature on an application for an absent voter ballot", and if "the signatures do not agree sufficiently or [if] the signature is missing" the ballot must be rejected.

110. In 2016 only 587,618 Michigan voters requested absentee ballots. In stark contrast, in 2020, 3.2 million votes were cast by absentee ballot, about 57% of total votes cast – and more than *five times* the number of ballots *even requested* in 2016.

111. Secretary Benson's unconstitutional modifications of Michigan's election rules resulted in the distribution of millions of absentee ballot applications without verifying voter signatures as required by MCL §§ 168.759(4) and 168.761(2). This means that *millions* of absentee ballots were disseminated in violation of Michigan's statutory signature-verification requirements. Democrats in Michigan voted by mail at a ratio of approximately two to one compared to Republican voters. Thus, former Vice President Biden materially benefited from these unconstitutional changes to Michigan's election law.

112. Michigan also requires that poll watchers and inspectors have access to vote counting and canvassing. M.C.L. §§ 168.674-.675.

113. Local election officials in Wayne County made a conscious and express policy decision not to follow M.C.L. §§ 168.674-.675 for the opening, counting, and recording of absentee ballots.

114. Michigan also has strict signature verification requirements for absentee ballots, including that the Elections Department 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. *See* MCL § 168.765a(6).

115. However, Wayne County made the policy decision to ignore Michigan's statutory signature-verification requirements for absentee ballots. Former Vice President Biden received approximately 587,074, or 68%, of the votes cast there compared to President Trump's receiving approximate 264,149, or 30.59%, of the total vote. Thus, Mr. Biden materially benefited from these unconstitutional changes to Michigan's election law.

116. Numerous poll challengers and an Election Department employee whistleblower have testified that the signature verification requirement was ignored in Wayne County in a case currently pending in the Michigan Supreme Court.[16] For example, Jesse Jacob, a decades-long City of Detroit employee assigned to work in the Elections Department for the 2020 election testified that:

> Absentee ballots that were received in the mail would have the voter's signature on the envelope. While I was at the TCF Center, I was instructed not to look at any of the signatures on the absentee ballots, and I was instructed not to compare the signature on the absentee ballot with the signature on file.[17]

117. In fact, a poll challenger, Lisa Gage, testified 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

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[16] *Johnson v. Benson*, Petition for Extraordinary Writs & Declaratory Relief filed Nov. 26, 2020 (Mich. Sup. Ct.) at ¶¶ 71, 138-39, App. 25a-51a.

[17] *Id.*, Affidavit of Jessy Jacob, Appendix 14 at ¶15, attached at App. 34a-36a.

signature had been verified at the TCF Center in accordance with MCL § 168.765a(6).[18]

118. The TCF was the only facility within Wayne County authorized to count ballots for the City of Detroit.

119. Additional public information confirms the material adverse impact on the integrity of the vote in Wayne County caused by these unconstitutional changes to Michigan's election law. For example, the Wayne County Statement of Votes Report lists 174,384 absentee ballots out of 566,694 absentee ballots tabulated (about 30.8%) as counted without a registration number for precincts in the City of Detroit. *See* Cicchetti Decl. at ¶ 27, App. ___a. The number of votes not tied to a registered voter by itself exceeds Vice President Biden's margin of margin of 146,007 votes by more than 28,377 votes.

120. The extra ballots cast most likely resulted from the phenomenon of Wayne County election workers running the same ballots through a tabulator multiple times, with Republican poll watchers obstructed or denied access, and election officials ignoring poll watchers' challenges, as documented by numerous declarations. App. 25a-51a.

121. In addition, a member of the Wayne County Board of Canvassers ("Canvassers Board"), William Hartman, determined that 71% of Detroit's Absent Voter Counting Boards ("AVCBs") were unbalanced—*i.e.*, the number of people who checked in did not match the number of ballots cast—without explanation. *Id*. at ¶ 29.

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[18] Affidavit of Lisa Gage ¶ 17 (App. ___a).

122. On November 17, 2020, the Canvassers Board deadlocked 2-2 over whether to certify the results of the presidential election based on numerous reports of fraud and unanswered material discrepancies in the county-wide election results. A few hours later, the Republican Board members reversed their decision and voted to certify the results after severe harassment, including threats of violence.

123. The following day, the two Republican members of the Board *rescinded their votes* to certify the vote and signed affidavits alleging they were bullied and misled into approving election results and do not believe the votes should be certified until serious irregularities in Detroit votes are resolved. *See* Cicchetti Decl. at ¶ 29, App. ___a.

124. Michigan admitted in a filing with this Court 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. *See* State of Michigan's Brief In Opposition To Motions For Leave To File Bill of Complaint and For Injunctive Relief at 15 (filed Dec. 10, 2020), Case No. 220155.

125. Lastly, on November 4, 2020, Michigan election officials in Antrim County admitted that a purported "glitch" in Dominion voting machines caused 6,000 votes for President Trump to be wrongly switched to Democrat Candidate Biden in just one county. Local officials discovered the so-called "glitch" after reportedly questioning Mr. Biden's win in the heavily Republican area and manually checked the vote tabulation.

126. The Dominion voting tabulators used in Antrim County were recently subjected to a forensic

audit.[19] Though Michigan's Secretary of State tried to keep the Allied Report from being released to the public, the court overseeing the audit refused and allowed the Allied Report to made public.[20] The Allied Report concluded that "the vote flip occurred because of machine error built into the voting software designed to create error."[21] In addition, the Allied report revealed that "all server security logs prior to 11:03 pm on November 4, 2020 are missing and that there was other "tampering with data." *See* Allied Report at ¶¶ B.16-17 (App. ___a).

127. Further, the Allied Report determined that the Dominion voting system in Antrim County was designed to generate an error rate as high as 81.96% thereby sending ballots for "adjudication" to determine the voter's intent. *See* Allied report at ¶¶ B.2, 8-22 (App. __a--__a).

128. Notably, the extraordinarily high error rate described here is consistent with the same situation that took place in Fulton County, Georgia with an enormous 93% error rate that required "adjudication" of over 106,000 ballots.

129. These non-legislative modifications to Michigan's election statutes resulted in a number of constitutionally tainted votes that far exceeds the margin of voters separating the candidates in

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[19] Antrim Michigan Forensics Report by Allied Security Operations Group dated December 13, 2020 (the "Allied Report") (App. __a -- __a);

[20] https://themichiganstar.com/2020/12/15/after-examining-antrim-county-voting-machines-asog-concludes-dominion-intentionally-designed-to-create-systemic-fraud/

[21] Allied Report at ¶¶ B.4-9 (App. __a).

Michigan. Regardless of the number of votes that were affected by the unconstitutional modification of Michigan's election rules, the non-legislative changes to the election rules violated the Electors Clause.

State of Wisconsin

130. Wisconsin has 10 electoral votes, with a statewide vote tally currently estimated at 1,610,151 for President Trump and 1,630,716 for former Vice President Biden (*i.e.*, a margin of 20,565 votes). In two counties, Milwaukee and Dane, Mr. Biden's margin (364,298 votes) significantly exceeds his statewide lead.

131. On December 14, 2020, the Wisconsin Republican slate of Presidential Electors met at the State Capital and cast their votes for President Donald J. Trump and Vice President Michael R. Pence.[22]

132. In the 2016 general election some 146,932 mail-in ballots were returned in Wisconsin out of more than 3 million votes cast.[23] In stark contrast, 1,275,019 mail-in ballots, nearly a 900 percent increase over 2016, were returned in the November 3, 2020 election.[24]

133. Wisconsin statutes guard against fraud in absentee ballots: "[V]oting by absentee ballot is a privilege exercised wholly outside the traditional safeguards of the polling place. The legislature finds that the privilege of voting by absentee ballot must be

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[22] https://wisgop.org/republican-electors-2020/.

[23] Source: U.S. Elections Project, *available at*: http://www.electproject.org/early_2016.

[24] Source: U.S. Elections Project, *available at*: https://electproject.github.io/Early-Vote-2020G/WI.html.

carefully regulated to prevent the potential for fraud or abuse[.]" WISC. STAT. § 6.84(1).

134. In direct contravention of Wisconsin law, leading up to the 2020 general election, the Wisconsin Elections Commission ("WEC") and other local officials unconstitutionally modified Wisconsin election laws—each time taking steps that weakened, or did away with, established security procedures put in place by the Wisconsin legislature to ensure absentee ballot integrity.

135. For example, the WEC undertook a campaign to position hundreds of drop boxes to collect absentee ballots—including the use of unmanned drop boxes.[25]

136. The mayors of Wisconsin's five largest cities—Green Bay, Kenosha, Madison, Milwaukee, and Racine, which all have Democrat majorities—joined in this effort, and together, developed a plan use purportedly "secure drop-boxes to facilitate return of absentee ballots." Wisconsin Safe Voting Plan 2020, at 4 (June 15, 2020).[26]

137. It is alleged in an action recently filed in the United States District Court for the Eastern District of Wisconsin that over five hundred

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[25] Wisconsin Elections Commission Memoranda, To: All Wisconsin Election Officials, Aug. 19, 2020, *available at*: https://elections.wi.gov/sites/elections.wi.gov/files/2020-08/Drop%20Box%20Final.pdf. at p. 3 of 4.

[26] Wisconsin Safe Voting Plan 2020 Submitted to the Center for Tech & Civic Life, June 15, 2020, by the Mayors of Madison, Milwaukee, Racine, Kenosha and Green Bay *available at*: https://www.techandciviclife.org/wp-content/uploads/2020/07/Approved-Wisconsin-Safe-Voting-Plan-2020.pdf.

unmanned, illegal, absentee ballot drop boxes were used in the Presidential election in Wisconsin.[27]

138. However, the use of *any* drop box, manned or unmanned, is directly prohibited by Wisconsin statute. The Wisconsin legislature specifically described in the Election Code "Alternate absentee ballot site[s]" and detailed the procedure by which the governing body of a municipality may designate a site or sites for the delivery of absentee ballots "other than the office of the municipal clerk or board of election commissioners as the location from which electors of the municipality may request and vote absentee ballots and to which voted absentee ballots shall be returned by electors for any election." Wis. Stat. 6.855(1).

139. Any alternate absentee ballot site "shall be staffed by the municipal clerk or the executive director of the board of election commissioners, or employees of the clerk or the board of election commissioners." Wis. Stat. 6.855(3). Likewise, Wis. Stat. 7.15(2m) provides, "[i]n a municipality in which the governing body has elected to an establish an alternate absentee ballot sit under s. 6.855, the municipal clerk shall operate such site as though it were his or her office for absentee ballot purposes and shall ensure that such site is adequately staffed."

140. Thus, the unmanned absentee ballot drop-off sites are prohibited by the Wisconsin Legislature as they do not comply with Wisconsin law

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[27] *See* Complaint (Doc. No. 1), *Donald J. Trump, Candidate for President of the United States of America v. The Wisconsin Election Commission*, Case 2:20-cv-01785-BHL (E.D. Wisc. Dec. 2, 2020) (Wisconsin Trump Campaign Complaint") at ¶¶ 188-89.

expressly defining "[a]lternate absentee ballot site[s]". Wis. Stat. 6.855(1), (3).

141. In addition, the use of drop boxes for the collection of absentee ballots, positioned predominantly in Wisconsin's largest cities, is directly contrary to Wisconsin law providing that absentee ballots may only be "mailed by the elector, or delivered *in person* to the municipal clerk issuing the ballot or ballots." Wis. Stat. § 6.87(4)(b)1 (emphasis added).

142. The fact that other methods of delivering absentee ballots, such as through unmanned drop boxes, are *not* permitted is underscored by Wis. Stat. § 6.87(6) which mandates that, "[a]ny ballot not mailed or delivered as provided in this subsection may not be counted." Likewise, Wis. Stat. § 6.84(2) underscores this point, providing that Wis. Stat. § 6.87(6) "shall be construed as mandatory." The provision continues—"Ballots cast in contravention of the procedures specified in those provisions may not be counted. *Ballots counted in contravention of the procedures specified in those provisions may not be included in the certified result of any election*." Wis. Stat. § 6.84(2) (emphasis added).

143. These were not the only Wisconsin election laws that the WEC violated in the 2020 general election. The WEC and local election officials also took it upon themselves to encourage voters to unlawfully declare themselves "indefinitely confined"—which under Wisconsin law allows the voter to avoid security measures like signature verification and photo ID requirements.

144. Specifically, registering to vote by absentee ballot requires photo identification, except for those who register as "indefinitely confined" or

"hospitalized." WISC. STAT. § 6.86(2)(a), (3)(a). Registering for indefinite confinement requires certifying confinement "because of age, physical illness or infirmity or [because the voter] is disabled for an indefinite period." *Id.* § 6.86(2)(a). Should indefinite confinement cease, the voter must notify the county clerk, *id.*, who must remove the voter from indefinite-confinement status. *Id.* § 6.86(2)(b).

145. Wisconsin election procedures for voting absentee based on indefinite confinement enable the voter to avoid the photo ID requirement and signature requirement. *Id.* § 6.86(1)(ag)/(3)(a)(2).

146. On March 25, 2020, in clear violation of Wisconsin law, Dane County Clerk Scott McDonnell and Milwaukee County Clerk George Christensen both issued guidance indicating that all voters should mark themselves as "indefinitely confined" because of the COVID-19 pandemic.

147. Believing this to be an attempt to circumvent Wisconsin's strict voter ID laws, the Republican Party of Wisconsin petitioned the Wisconsin Supreme Court to intervene. On March 31, 2020, the Wisconsin Supreme Court unanimously confirmed that the clerks' "advice was legally incorrect" and potentially dangerous because "voters may be misled to exercise their right to vote in ways that are inconsistent with WISC. STAT. § 6.86(2)."

148. On May 13, 2020, the Administrator of WEC issued a directive to the Wisconsin clerks prohibiting removal of voters from the registry for indefinite-confinement status if the voter is no longer "indefinitely confined."

149. The WEC's directive violated Wisconsin law. Specifically, WISC. STAT. § 6.86(2)(a) specifically

provides that "any [indefinitely confined] elector [who] is no longer indefinitely confined … shall so notify the municipal clerk." WISC. STAT. § 6.86(2)(b) further provides that the municipal clerk "shall remove the name of any other elector from the list upon request of the elector or upon receipt of reliable information that an elector no longer qualifies for the service."

150. According to statistics kept by the WEC, nearly 216,000 voters said they were indefinitely confined in the 2020 election, nearly a fourfold increase from nearly 57,000 voters in 2016. In Dane and Milwaukee counties, more than 68,000 voters said they were indefinitely confined in 2020, a fourfold increase from the roughly 17,000 indefinitely confined voters in those counties in 2016.

151. On December 16, 2020, the Wisconsin Supreme Court ruled that Wisconsin officials, including Governor Evers, unlawfully told Wisconsin voters to declare themselves "indefinitely confined"—thereby avoiding signature and photo ID requirements. *See Jefferson v. Dane County*, 2020 Wisc. LEXIS 194 (Wis. Dec. 14, 2020). Given the near fourfold increase in the use of this classification from 2016 to 2020, tens of thousands of these ballots could be illegal. The vast majority of the more than 216,000 voters classified as "indefinitely confined" were from heavily democrat areas, thereby materially and illegally, benefited Mr. Biden.

152. Under Wisconsin law, voting by absentee ballot also requires voters to complete a certification, including their address, and have the envelope witnessed by an adult who also must sign and indicate their address on the envelope. *See* WISC. STAT. § 6.87. The sole remedy to cure an "improperly completed

certificate or [ballot] with no certificate" is for "the clerk [to] return the ballot to the elector[.]" *Id.* § 6.87(9). "If a certificate is missing the address of a witness, the ballot *may not be counted*." *Id.* § 6.87(6d) (emphasis added).

153. However, in a training video issued April 1, 2020, the Administrator of the City of Milwaukee Elections Commission unilaterally declared that a "witness address may be written in red and that is because we were able to locate the witnesses' address for the voter" to add an address missing from the certifications on absentee ballots. The Administrator's instruction violated WISC. STAT. § 6.87(6d). The WEC issued similar guidance on October 19, 2020, in violation of this statute as well.

154. In the Wisconsin Trump Campaign Complaint, it is alleged, supported by the sworn affidavits of poll watchers, that canvas workers carried out this unlawful policy, and acting pursuant to this guidance, in Milwaukee used red-ink pens to alter the certificates on the absentee envelope and then cast and count the absentee ballot. These acts violated WISC. STAT. § 6.87(6d) ("If a certificate is missing the address of a witness, the ballot may not be counted"). *See also* WISC. STAT. § 6.87(9) ("If a municipal clerk receives an absentee ballot with an improperly completed certificate or with no certificate, the clerk may return the ballot to the elector . . . whenever time permits the elector to correct the defect and return the ballot within the period authorized.").

155. Wisconsin's legislature has not ratified these changes, and its election laws do not include a severability clause.

156. In addition, 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, testified that USPS employees were backdating ballots received after November 3, 2020. Decl. of Ethan J. Pease at ¶¶ 3-13. Further, Pease testified how a senior USPS employee told him on November 4, 2020 that "[a]n order came down from the Wisconsin/Illinois Chapter of the Postal Service that 100,000 ballots were missing" and how the USPS dispatched employees to "find[] . . . the ballots." *Id.* ¶¶ 8-10. One hundred thousand ballots supposedly "found" after election day would far exceed former Vice President Biden margin of 20,565 votes over President Trump.

State of Arizona

157. Arizona has 11 electoral votes, with a state-wide vote tally currently estimated at 1,661,677 for President Trump and 1,672,054 for former Vice President Biden, a margin of 10,377 votes. In Arizona's most populous county, Maricopa County, Mr. Biden's margin (45,109 votes) significantly exceeds his statewide lead.

158. On December 14, 2020, the Arizona Republican slate of Presidential Electors met at the State Capital and cast their votes for President Donald J. Trump and Vice President Michael R. Pence.[28]

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[28] https://arizonadailyindependent.com/2020/12/14/az-democrat-electors-vote-biden-republicans-join-pennsylvania-georgia-nevada-in-casting-electoral-college-votes-for-trump/

159. Since 1990, Arizona law has required that residents wishing to participate in an election submit their voter registration materials no later than 29 days prior to election day in order to vote in that election. Ariz. Rev. Stat. § 16-120(A). For 2020, that deadline was October 5.

160. In *Mi Familia Vota v. Hobbs*, No. CV-20-01903-PHX-SPL, 2020 U.S. Dist. LEXIS 184397 (D. Ariz. Oct. 5, 2020), however, a federal district court violated the Constitution and enjoined that law, extending the registration deadline to October 23, 2020. The Ninth Circuit stayed that order on October 13, 2020 with a two-day grace period, *Mi Familia Vota v. Hobbs*, 977 F.3d 948, 955 (9th Cir. 2020).

161. However, the Ninth Circuit did not apply the stay retroactively because neither the Arizona Secretary of State nor the Arizona Attorney General requested retroactive relief. *Id.* at 954-55. As a net result, the deadline was unconstitutionally extended from the statutory deadline of October 5 to October 15, 2021, thereby allowing potentially thousands of illegal votes to be injected into the state.

162. In addition, on December 15, 2020, the Arizona state Senate served two subpoenas on the Maricopa County Board of Supervisors (the "Maricopa Board") to audit scanned ballots, voting machines, and software due to the significant number of voting irregularities. Indeed, the Arizona Senate Judiciary Chairman stated in a public hearing earlier that day that "[t]here is evidence of tampering, there is evidence of fraud" with vote in Maricopa County. The Board then voted to refuse to comply with those subpoenas necessitating a lawsuit to enforce the

subpoenas filed on December 21, 2020. That litigation is currently ongoing.

State of Nevada

163. Nevada has 6 electoral votes, with a statewide vote tally currently estimated at 669,890 for President Trump and 703,486 for former Vice President Biden, a margin of 33,596 votes. Nevada voters sent in 579,533 mail-in ballots. In Clark County, Mr. Biden's margin (90,922 votes) significantly exceeds his statewide lead.

164. On December 14, 2020 the Republican slate of Presidential Electors met at the State Capital and cast their votes for President Donald J. Trump and Vice President Michael R. Pence.[29]

165. In response to the COVID-19 pandemic, the Nevada Legislature enacted—and the Governor signed into law—Assembly Bill 4, 2020 Nev. Ch. 3, to address voting by mail and to require, for the first time in Nevada's history, the applicable county or city clerk to mail ballots to all registered voters in the state.

166. Under Section 23 of Assembly Bill 4, the applicable city or county clerk's office is required to review the signature on ballots, without permitting a computer system to do so: "The *clerk or employee shall check* the signature used for the mail ballot against all signatures of the voter available in the records of the clerk." *Id.* § 23(1)(a) (codified at NEV. REV. STAT. § 293.8874(1)(a)) (emphasis add). Moreover, the system requires that two or more employees be included: "If at least two employees in the office of the clerk believe there is a reasonable question of fact as to whether the

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[29] https://nevadagop.org/42221-2/

signature used for the mail ballot matches the signature of the voter, the clerk shall contact the voter and ask the voter to confirm whether the signature used for the mail ballot belongs to the voter." *Id.* § 23(1)(b) (codified at NEV. REV. STAT. § 293.8874(1)(b)). A signature that differs from on-file signatures in multiple respects is inadequate: "There is a reasonable question of fact as to whether the signature used for the mail ballot matches the signature of the voter if the signature used for the mail ballot differs in multiple, significant and obvious respects from the signatures of the voter available in the records of the clerk." *Id.* § 23(2)(a) (codified at NEV. REV. STAT. § 293.8874(2)(a)). Finally, under Nevada law, "each voter has the right … [t]o have a uniform, statewide standard for counting and recounting all votes accurately." NEV. REV. STAT. § 293.2546(10).

167. Nevada law does not allow computer systems to substitute for review by clerks' employees.

168. However, county election officials in Clark County ignored this requirement of Nevada law. Clark County, Nevada, processed all its mail-in ballots through a ballot sorting machine known as the Agilis Ballot Sorting System ("Agilis"). The Agilis system purported to match voters' ballot envelope signatures to exemplars maintained by the Clark County Registrar of Voters.

169. Anecdotal evidence suggests that the Agilis system was prone to false positives (*i.e.*, accepting as valid an invalid signature). Victor Joecks, *Clark County Election Officials Accepted My Signature—on 8 Ballot Envelopes*, LAS VEGAS REV.-J. (Nov. 12, 2020) (Agilis system accepted 8 of 9 false signatures).

170. Even after adjusting the Agilis system's tolerances outside the settings that the manufacturer recommends, the Agilis system nonetheless rejected approximately 70% of the approximately 453,248 mail-in ballots.

171. More than 450,000 mail-in ballots from Clark County either were processed under weakened signature-verification criteria in violation of the statutory criteria for validating mail-in ballots. The number of contested votes exceeds the margin of votes dividing the parties.

172. With respect to approximately 130,000 ballots that the Agilis system approved, Clark County did not subject those signatures to review by two or more employees, as Assembly Bill 4 requires. To count those 130,000 ballots without review not only violated the election law adopted by the legislature but also subjected those votes to a different standard of review than other voters statewide.

173. With respect to approximately 323,000 ballots that the Agilis system rejected, Clark County decided to count ballots if a signature matched at least one letter between the ballot envelope signature and the maintained exemplar signature. This guidance does not match the statutory standard "differ[ing] in multiple, significant and obvious respects from the signatures of the voter available in the records of the clerk."

174. Out of the nearly 580,000 mail-in ballots, registered Democrats returned almost twice as many mail-in ballots as registered Republicans. Thus, this violation of Nevada law appeared to materially benefited former Vice President Biden's vote tally. Regardless of the number of votes that were affected

by the unconstitutional modification of Nevada's election rules, the non-legislative changes to the election rules violated the Electors Clause.

COUNT I: ELECTORS CLAUSE

175. The United States repeats and re-alleges the allegations above, as if fully set forth herein.

176. The Electors Clause of Article II, Section 1, Clause 2, of the Constitution makes clear that only the legislatures of the States are permitted to determine the rules for appointing presidential electors. The pertinent rules here are the state election statutes, specifically those relevant to the presidential election.

177. Non-legislative actors lack authority to amend or nullify election statutes. *Bush II*, 531 U.S. at 104 (quoted *supra*).

178. Under *Heckler v. Chaney*, 470 U.S. 821, 833 n.4 (1985), conscious and express executive policies—even if unwritten—to nullify statutes or to abdicate statutory responsibilities are reviewable to the same extent as if the policies had been written or adopted. Thus, conscious and express actions by State or local election officials to nullify or ignore requirements of election statutes violate the Electors Clause to the same extent as formal modifications by judicial officers or State executive officers.

179. The actions set out in Paragraphs 41-128 constitute non-legislative changes to State election law by executive-branch State election officials, or by judicial officials, in Defendant States Pennsylvania, Georgia, Michigan, Wisconsin, Arizona, and Nevada in violation of the Electors Clause.

180. Electors appointed to Electoral College in violation of the Electors Clause cannot cast constitutionally valid votes for the office of President.

COUNT II: EQUAL PROTECTION

181. The United States repeats and re-alleges the allegations above, as if fully set forth herein.

182. The Equal Protection Clause prohibits the use of differential standards in the treatment and tabulation of ballots within a State. *Bush II*, 531 U.S. at 107.

183. The one-person, one-vote principle requires counting valid votes and not counting invalid votes. *Reynolds*, 377 U.S. at 554-55; *Bush II*, 531 U.S. at 103 ("the votes eligible for inclusion in the certification are the votes meeting the properly established legal requirements").

184. The actions set out in Paragraphs ____(Georgia), ____(Michigan), ___(Pennsylvania), ___ (Wisconsin), ____ (Arizona), and ____ (Nevada) created differential voting standards in Defendant States Pennsylvania, Georgia, Michigan, Wisconsin, [Arizona (maybe not)], and Nevada in violation of the Equal Protection Clause.

185. The actions set out in Paragraphs ____ (Georgia), _____ (Michigan), _____(Pennsylvania), _____ (Wisconsin), ____ (Arizona). And _____ (Nevada) violated the one-person, one-vote principle in Defendant States Pennsylvania, Georgia, Michigan, Wisconsin, Arizona, and Nevada.

186. By the shared enterprise of the entire nation electing the President and Vice President, equal protection violations in one State can and do adversely affect and diminish the weight of votes cast in other States that lawfully abide by the election

structure set forth in the Constitution. The United States is therefore harmed by this unconstitutional conduct in violation of the Equal Protection or Due Process Clauses.

COUNT III: DUE PROCESS

187. The United States repeats and re-alleges the allegations above, as if fully set forth herein.

188. When election practices reach "the point of patent and fundamental unfairness," the integrity of the election itself violates substantive due process. *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978); *Duncan v. Poythress*, 657 F.2d 691, 702 (5th Cir. 1981); *Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1183-84 (11th Cir. 2008); *Roe v. State of Ala. By & Through Evans*, 43 F.3d 574, 580-82 (11th Cir. 1995); *Roe v. State of Ala.*, 68 F.3d 404, 407 (11th Cir. 1995); *Marks v. Stinson*, 19 F. 3d 873, 878 (3rd Cir. 1994).

189. Under this Court's precedents on procedural due process, not only intentional failure to follow election law as enacted by a State's legislature but also random and unauthorized acts by state election officials and their designees in local government can violate the Due Process Clause. *Parratt v. Taylor*, 451 U.S. 527, 537-41 (1981), *overruled in part on other grounds by Daniels v. Williams*, 474 U.S. 327, 330-31 (1986); *Hudson v. Palmer*, 468 U.S. 517, 532 (1984). The difference between intentional acts and random and unauthorized acts is the degree of pre-deprivation review.

190. Defendant States acted unconstitutionally to lower their election standards—including to allow invalid ballots to be counted and valid ballots to not be counted—with the express

intent to favor their candidate for President and to alter the outcome of the 2020 election. In many instances these actions occurred in areas having a history of election fraud.

191. The actions set out in Paragraphs ____ (Georgia), _____ (Michigan), _____ (Pennsylvania), _____ (Wisconsin), ____ (Arizona), and _____ (Nevada) constitute intentional violations of State election law by State election officials and their designees in Defendant States Pennsylvania, Georgia, Michigan, Wisconsin, and Arizona, and Nevada in violation of the Due Process Clause.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully request that this Court issue the following relief:

A. Declare that Defendant States Pennsylvania, Georgia, Michigan, Wisconsin, Arizona, and Nevada administered the 2020 presidential election in violation of the Electors Clause and the Fourteenth Amendment of the U.S. Constitution.

B. Declare that the electoral college votes cast by such presidential electors appointed in Defendant States Pennsylvania, Georgia, Michigan, Wisconsin, Arizona, and Nevada are in violation of the Electors Clause and the Fourteenth Amendment of the U.S. Constitution and cannot be counted.

C. Enjoin Defendant States' use of the 2020 election results for the Office of President to appoint presidential electors to the Electoral College.

D. Enjoin Defendant States' use of the 2020 election results for the Office of President to appoint presidential electors to the Electoral College and authorize, pursuant to the Court's remedial authority,

the Defendant States to conduct a special election to appoint presidential electors.

E. Enjoin Defendant States' use of the 2020 election results for the Office of President to appoint presidential electors to the Electoral College and authorize, pursuant to the Court's remedial authority, the Defendant States to conduct an audit of their election results, supervised by a Court-appointed special master, in a manner to be determined separately.

F. Award costs to the United States.

G. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

December ____, 2020