

Subject: [Records Center] Public Records Request :: R000074-020921
Date: Thursday, May 13, 2021 at 8:20:08 AM Pacific Daylight Time
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EXTERNAL SENDER

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RE: PUBLIC RECORDS REQUEST of February 09, 2021, Reference # - R000074-020921

Dear Khahilia Shaw,

In response to your public records request pursuant to La. R.S. 44:1 et seq, which our office received on February 09, 2021, the information you requested has been processed. You sought records related to the following:

- “1. All email communications (including emails, complete email chains, calendar invitations, and attachments thereto) between (a) any of the Louisiana Office of the Attorney General officials listed in Column A, below, and (b) any of the external parties listed in Column B, below.**
- 2. All text messages or communications on messaging applications similar in form to text messages (including, but not limited to, Signal, WhatsApp, Facebook Messenger, and Twitter direct messages) between (a) any of the Louisiana Office of the Attorney General officials listed in Column A, below, and (b) any of the external parties listed in Column B, below.**
- 3. All records reflecting the content of any meetings or calls between (a) any of the Louisiana Office of the Attorney General officials listed in Column A, below, and (b) any of the external parties listed in Column B, below, including, but not limited to, agendas, meeting minutes or summaries (including handwritten notes and informal email summaries), and any materials exchanged by participating parties.**

**Column A: Louisiana Office of
the Attorney General Officials**

Column B: External Parties

**i. Jeff Landry, Attorney
General, or anyone
communicating on his behalf
(such as an assistant or
scheduler)**

**ii. Anyone serving as Chief of
Staff to Attorney General
Landry**

**iii. Elizabeth Murrill, Solicitor
General**

**State Attorneys General (including the
named attorneys general and anyone
communicating on their behalf such as
a Chief of Staff, assistant or
scheduler):**

i. Steve Marshall, Alabama

ii. Leslie Rutledge, Arkansas

iii. Ashley Moody, Florida

iv. Curtis Hill, Indiana (former)

v. Derek Schmidt, Kansas

vi. Lynn Fitch, Mississippi

**vii. Eric Schmitt, Missouri
Attorney General, or Justin
Smith, Deputy Attorney
General**

viii. Tim Fox, Montana (former)

ix. Doug Peterson, Nebraska

**x. Wayne Stenehjem, North
Dakota**

xi. Mike Hunter, Oklahoma

xii. Alan Wilson, South Carolina

xiii. Jason Raynsborg, South Dakota

xiv. Herbert Slatery, Tennessee

xv. Ken Paxton, Texas

xvi. Sean Reyes, Utah

xvii. Patrick Morrissey, West Virginia

Other:

**i. John Sauer, Missouri Solicitor
General (including, but not
LA-AG-21-0186**

- 3 -

limited to, at

John.Sauer@ago.mo.gov)

U.S. Department of Justice:

- i. Bill Barr, former Attorney General**
- ii. Jeffrey Rosen, former Acting Attorney General**
- iii. Will Levi, former Chief of Staff to Attorney General Barr**
- iv. Rachel Bissex, former Deputy Chief of Staff to Attorney General Barr**
- v. Patrick Hovakimian, Chief of Staff to former Acting Attorney General Rosen**
- vi. Jeffrey Wall, former Solicitor General**
- vii. Jeffrey Clark, former Acting Assistant Attorney General, Civil Division**

Please provide all responsive records from November 3, 2020, through January 20, 2021.”

After a diligent search, our office has identified records which are responsive to your request. Copies of these records are available for download from our office's Public Records Center. Please log in to the [Public Records Center](#) at the following link to retrieve the appropriate responsive documents.

[Public Records Request - R000074-020921](#)

Our office has withheld some responsive documents, as they are privileged through either the common interest privilege (La. C.E. Art. 506) or a part of the deliberative process. La. Dept. of Ins. v. Theriot, 64 So.3d 854, 861 (La. App. 1 Cir. 5/3/11).

If our office can be of any further assistance, please let us know.

Sincerely,

Les Theriot
Assistant Attorney General

To monitor the progress or update this request please log into the [Public Records Center](#)



From: "Sauer, John" <John.Sauer@ago.mo.gov>
Sent: 11/9/2020 1:00:50 PM -0600
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CC: "Smith, Justin" <Justin.Smith@ago.mo.gov>; "Johnson, Jeff" <Jeff.Johnson@ago.mo.gov>
Subject: Republican Party of Penn. v. Boockvar, No. 20-542, and Scarnati v. Boockvar, No. 20-574 - Amicus Brief of Ten States supporting Petitioner
Attachments: 2020-11-09 - Republican Party of Pa. v. Boockvar - Amicus Brief of Missouri et al. - Final With Tables.pdf; Boockvar Pet Amici Cert Compliance.pdf; Boockvar Pet Amici Cert Service.pdf

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All-

Attached please find the multistate amicus brief of Missouri, Alabama, Arkansas, Florida, Kentucky, Louisiana, Mississippi, South Carolina, South Dakota, and Texas. This has just been electronically submitted in both Republican Party of Pennsylvania v. Boockvar and Scarnati v. Boockvar. The hard copies will be FedExed to the Court today as well. Thanks a lot to everyone for reviewing this brief on such short notice!! We really appreciate your support on this important issue.

Thanks a lot,

John Sauer

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Nos. 20-542, 20-574

In the Supreme Court of the United States

REPUBLICAN PARTY OF PENNSYLVANIA,
Petitioner,

v.

KATHY BOOCKVAR, IN HER OFFICIAL CAPACITY AS
PENNSYLVANIA SECRETARY OF STATE, ET AL.,
Respondents.

JOSEPH B. SCARNATI, III, ET AL.
Petitioners,

v.

KATHY BOOCKVAR, IN HER OFFICIAL CAPACITY AS
PENNSYLVANIA SECRETARY OF STATE, ET AL.,

On Petitions for Writs of Certiorari to the
Pennsylvania Supreme Court

**BRIEF OF THE STATE OF MISSOURI
AND NINE OTHER STATES AS AMICI
CURIAE IN SUPPORT OF PETITIONERS**

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TABLE OF CONTENTS

STATEMENT OF INTEREST OF *AMICI*
CURIAE AND SUMMARY OF ARGUMENT1

REASONS FOR GRANTING THE PETITIONS3

I. The Election Clauses’ Separation-of-Powers
Provisions Safeguard Liberty.....4

II. Voting by Mail Creates Unique Risks of
Fraud, Including in Pennsylvania.8

III. The Pennsylvania Supreme Court’s Decision
Exacerbated the Risks of Ballot Fraud.....16

Conclusion20

TABLE OF AUTHORITIES

Cases

<i>Alden v. Maine</i> , 527 U.S. 706 (1999).....	7
<i>All. for Retired Americans v. Sec’y of State</i> , 2020 WL 625526 (Me. Oct. 23, 2020)	20
<i>Anderson v. Celebrezze</i> , 460 U.S. 780 (1983).....	2, 6
<i>Anderson v. United States</i> , 417 U.S. 211 (1974).....	2, 3
<i>Arizona Democratic Party v. Hobbs</i> , 976 F.3d 1081 (9th Cir. 2020).....	20
<i>Bond v. United States</i> , 564 U.S. 211 (2011).....	6, 7
<i>Bush v. Gore</i> , 531 U.S. 98 (2000).....	4, 5
<i>Bush v. Palm Beach Cty. Canvassing Bd.</i> , 531 U.S. 70 (2000).....	4, 5
<i>Com. v. Bailey</i> , 775 A.2d 881 (Pa. Commw. Ct. 2001)	15
<i>Common Cause Indiana v. Lawson</i> , 977 F.3d 663 (7th Cir. 2020).....	20
<i>Crawford v. Marion County Election Bd.</i> , 553 U.S. 181 (2008).....	9

<i>DCCC v. Ziri</i> ax, No. 20-CV-211-JED-JFJ, 2020 WL 5569576 (N.D. Okla. Sept. 17, 2020)	20
<i>Dem. Nat’l Comm. v. Wisc. State Leg.</i> , No. 20A66 (U.S. Oct. 26, 2020)	20
<i>FERC v. Mississippi</i> , 456 U.S. 742 (1982).....	7
<i>Gregory v. Ashcroft</i> , 501 U.S. 452 (1991).....	7
<i>League of Women Voters of Delaware, Inc. v. Dep’t of Elections</i> , No. CV 2020-0761-SG, 2020 WL 5998161 (Del. Ch. Oct. 9, 2020)	20
<i>League of Women Voters of Michigan v. Sec’y of State</i> , No. 353654, 2020 WL 3980216 (Mich. Ct. App. July 14, 2020).....	20
<i>Marks v. Stinson</i> , No. CIV. A. 93-6157, 1994 WL 146113 (E.D. Pa. Apr. 26, 1994).....	15
<i>Missouri State Conference of the National Association for the Advancement of Colored People, et al. v. State of Missouri, et al.</i> , 607 S.W.3d 728 (Mo. banc Oct. 9, 2020)	16
<i>Morrison v. Olson</i> , 487 U.S. 654 (1988).....	6

New Georgia Project v. Raffensperger,
976 F.3d 1278 (11th Cir. 2020).....20

New York v. United States,
505 U.S. 144 (1992).....7

Org. for Black Struggle v. Ashcroft,
No. 20-3121, 2020 WL 6257167 (8th Cir. Oct. 23,
2020).....20

Republican Party of Pennsylvania v. Boockvar,
No. 20-542, 2020 WL 6304626 (U.S. Oct. 28, 2020)5

Statutes

U.S. CONST. art. I, § 4, cl. 21, 3, 4

U.S. CONST. art. II, § 1, cl. 2.....4

U.S. CONST. art. II, § 1, cl. 4.....1, 3, 4

Other Authorities

BUILDING CONFIDENCE IN U.S. ELECTIONS: REPORT OF
THE COMMISSION ON FEDERAL ELECTION REFORM, at
46 (Sept. 2005)9

Jonathan Dienst et al., *NJ NAACP Leader Calls for
Paterson Mail-In Vote to Be Canceled Amid Cor-
ruption Claims*, NBC NEW YORK (May 27, 2020) 14

Federal Farmer, No. 12 (1788), *reprinted in* 2 THE
FOUNDERS’ CONSTITUTION8

Sarah Fenske, *FBI, Secretary of State Asking Ques-
tions About St. Louis Statehouse Race*, RIVERFRONT
TIMES (Aug. 16, 2016)12

GAO-14-634, <i>Elections: Issues Related to State Voter Identification Laws 62-63</i> (U.S. Gov't Accountability Office Sept. 2014)	10, 11, 12, 13, 14
Richard Gonzales, <i>North Carolina GOP Operative Faces New Felony Charges That Allege Ballot Fraud</i> , NPR.ORG, (July 30, 2019)	13
Brian Heffernan, <i>Berkeley Mayor Hoskins Charged with 5 Felony Counts of Election Fraud</i> , ST. LOUIS PUBLIC RADIO (Nov. 21, 2019)	12
Bill Heitzel, <i>Six of seven charges against Austin Murphy dismissed</i> , PITTSBURGH POST-GAZETTE (June 22, 1999)	15
Heritage Foundation, <i>Election Fraud Cases</i> (visited Nov. 6, 2020)	11
<i>In re: Investigation of Irregularities Affecting Counties Within the 9th Congressional District</i> , North Carolina Board of Elections, Evidentiary Hearing	13
Ben Kochman, <i>Bronx politician pleads guilty in absentee ballot scheme for Assembly election</i> , NEW YORK DAILY NEWS (Nov. 22, 2016)	14
Joseph Kohut, <i>Gallagher resigns from Taylor council pleads guilty to three charges</i> , THE TIMES-TRIBUNE (Apr. 3, 2015)	15
News21, <i>Election Fraud in America</i> (visited Nov. 6, 2020)	11

T. Ove, *Ex-Harmar police chief pleads guilty to ballot tampering*, PITTSBURGH POST-GAZETTE (Sept. 26, 2014) 15

Alex Rose, *Collingsdale man charged with voter fraud*, DELAWARE COUNTY TIMES (Nov. 21, 2018) 15

THE FEDERALIST NO. 57, at 350 (C. Rossiter, ed. 2003) (Madison, J.) 8

The Original Scope of the Congressional Power to Regulate Elections, 13 U. PA. J. CONST. L. 1 (2010) 8, 9, 10

U.S. Dep’t of Justice, *Federal Prosecution of Election Offenses* (8th ed. Dec. 2017) 10, 17

**STATEMENT OF INTEREST OF *AMICI*
CURIAE AND SUMMARY OF ARGUMENT**

The Pennsylvania Supreme Court's decision overstepped its constitutional responsibility, encroached on the authority of the Pennsylvania legislature, and violated the plain language of the Election Clauses. *See* U.S. CONST. art. I, § 4, cl. 2; *id.* art. II, § 1, cl. 4. Worse still, the decision exacerbated the risk of mail-in ballot fraud by permitting mail-in ballots that are not postmarked or have no legible postmark to be received and counted several days after the election. The decision provided a window of time after Election Day, when the preliminary results were announced, in which unscrupulous actors could attempt to influence a close Presidential election in Pennsylvania and elsewhere. And it enhanced the opportunities for fraud by requiring boards of elections to count late-received ballots even if there is no evidence that those ballots were cast before Election Day, because they have no legible postmark.

Amici are the States of Missouri, Alabama, Arkansas, Florida, Kentucky, Louisiana, Mississippi, South Carolina, South Dakota, and Texas. *Amici* have at least two compelling interests in the outcome of this case. *First*, the States have a strong interest in safeguarding the separation of powers among state actors in the regulation of Presidential elections. The U.S. Constitution's Election Clauses reflect a carefully calibrated balance of power among state actors, and they assign specific functions to the "Legislature thereof" in each State. *Id.* Our system of federalism relies on separation of powers to preserve liberty at every level of government, and the separation of powers in the Election Clauses is no exception to this principle. The States thus have a strong interest in

preserving the proper roles of state legislatures and state courts in the administration of federal elections, and thus safeguarding the individual liberty of their citizens.

Second, States outside Pennsylvania have a strong interest in preventing the effective invalidation of their own voters' choices through illegal voting in Pennsylvania. This Court has long recognized that "in the context of 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, 794–95 (1983). "For the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation." *Id.*

The decision below raises two concerns about illegal voting. First, ballots cast outside the clear and unambiguous rules established by the Pennsylvania legislature are illegal. Second, by exacerbating the risks of fraud, the Pennsylvania Supreme Court's decision raises the specter of late voting that is not just illegal, but outright fraudulent. As this Court has stated: "Every voter" in a federal election, "whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his vote fairly counted, without its being distorted by fraudulently cast votes." *Anderson v. United States*, 417 U.S. 211, 227 (1974). Regardless of the election's outcome, only *legal* ballots should be counted.

As with other separation-of-powers provisions in the Constitution, the Election Clauses' explicit allocation of authority to state legislatures to regulate federal elections is a structural check on governmental power that preserves liberty.

Encroachment on this authority by another state actor undermines the specific design for separation of powers in the Constitution. The violation of separation of powers in this case threatens the liberty of all Americans, not just Pennsylvanians. And it diminishes one of their most precious liberties—the right to vote for President of the United States.¹

REASONS FOR GRANTING THE PETITIONS

“Our constitutional system of representative government only works when the worth of honest ballots is not diluted by invalid ballots procured by corruption.” U.S. Dep’t of Justice, *Federal Prosecution of Election Offenses* (8th ed. Dec. 2017), at 1. “When the election process is corrupted, democracy is jeopardized.” *Id.* “Every voter” in a federal election, “whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his vote fairly counted, without its being distorted by fraudulently cast votes.” *Anderson*, 417 U.S. at 227.

The Pennsylvania Supreme Court’s decision overstepped its constitutional authority and encroached on the authority granted to the Pennsylvania legislature by the plain text of the U.S. Constitution’s Election Clauses. *See* U.S. CONST. art. I, § 4, cl. 2; *id.* art. II, § 1, cl. 4. It thus undermined Americans’ liberty by violating the separation of powers set forth in the Election Clauses.

The decision also aggravated the risks of fraud, abuse, and the appearance of fraud and abuse in

¹ This brief is filed under Supreme Court Rule 37.4, and all counsel of record received timely notice of the intent to file this amicus brief under Rule 37.2.

voting by mail in Pennsylvania. It permitted unscrupulous actors to know results reported on Election Day before deciding to pursue fraudulent activities. It enhanced opportunities for such illicit acts by ordering boards of elections to count mail-in ballots even if they have no postmark or no legible postmark, and thus no indication that they were sent on or before Election Day.

These choices undermined public confidence in the Presidential election in Pennsylvania and created unwarranted opportunities for fraud. This Court should grant expedited review and reverse the decision below.

I. The Election Clauses' Separation-of-Powers Provisions Safeguard Liberty.

Article II requires that each State “shall appoint” its Presidential electors “in such Manner as the *Legislature thereof* may direct.” U.S. CONST. art. II, § 1, cl. 4 (emphasis added); *see also id.* art. I, § 4, cl. 2 (providing that, in each State, the “Legislature thereof” shall establish “[t]he Times, Places and Manner of holding Elections for Senators and Representatives”).

Thus, “in the case of a law enacted by a state legislature applicable not only to elections to state offices, but also to the selection of Presidential electors, the legislature is not acting solely under the authority given it by the people of the State, but by virtue of a direct grant of authority made under Art. II, § 1, cl. 2, of the United States Constitution.” *Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S. 70, 76 (2000). “[T]he state legislature’s power to select the manner for appointing electors is plenary.” *Bush v. Gore*, 531 U.S. 98, 104 (2000). And a state supreme

court cannot invoke a state constitution to circumscribe that legislative power. *Palm Beach Cty. Canvassing Bd.*, 531 U.S. at 77.

Here, “[t]he Supreme Court of Pennsylvania has issued a decree that squarely alters an important statutory provision enacted by the Pennsylvania Legislature pursuant to its authority under the Constitution of the United States to make rules governing the conduct of elections for federal office.” *Republican Party of Pennsylvania v. Boockvar*, No. 20-542, 2020 WL 6304626, at *1 (U.S. Oct. 28, 2020) (Statement of Alito, J.). In doing so, the Court (1) admitted that the Legislature’s Election Day deadline was unambiguous, (2) conceded that the Election Day deadline was constitutional on its face, (3) relied on the slimmest of evidentiary rationales for its decision, (4) departed its own prior holding on the exact same question just a few months earlier, and (5) disregarded an admirably clear severability clause that was enacted by the Pennsylvania legislature for the very purpose of *preventing* Pennsylvania courts from making such post-hoc changes to Pennsylvania’s mail-in voting system. *See id.* at *1–2; *see also* App. 43a, 44a, 45a–47a, 48a & n.26. The decision also contradicted the overwhelming weight of authority from other courts, including this Court, that have addressed the same question during this election cycle. *See infra* Part III.

In the course of this jurisprudential misadventure, the Pennsylvania Supreme Court encroached upon the “plenary” authority of the Pennsylvania legislature over the conduct of the Presidential election in that State. *Bush*, 531 U.S. at 104. This encroachment on the authority explicitly granted to another state actor in the regulation of

Presidential elections constitutes a clear violation of the separation of powers. “[I]n the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation.” *Anderson*, 460 U.S. at 794–795.

In every other context, this Court has recognized that the separation-of-powers provisions in the Constitution, which allocate authority to specific governmental actors to the exclusion of others, are designed to preserve liberty. “It is the proud boast of our democracy that we have ‘a government of laws, and not of men.’” *Morrison v. Olson*, 487 U.S. 654, 697 (1988) (Scalia, J., dissenting). “The Framers of the Federal Constitution . . . viewed the principle of separation of powers as the absolutely central guarantee of a just Government.” *Id.* “Without a secure structure of separated powers, our Bill of Rights would be worthless, as are the bills of rights of many nations of the world that have adopted, or even improved upon, the mere words of ours.” *Id.* “The purpose of the separation and equilibration of powers in general . . . was not merely to assure effective government but to preserve individual freedom.” *Id.* at 727.

This principle of preserving liberty applies both to the horizontal separation of powers among the branches of government, and the vertical separation of powers between the federal government and the States. “The federal system rests on what might at first seem a counterintuitive insight, that ‘freedom is enhanced by the creation of two governments, not one.’” *Bond v. United States*, 564 U.S. 211, 220–21

(2011) (quoting *Alden v. Maine*, 527 U.S. 706, 758 (1999)). “[F]ederalism secures to citizens the liberties that derive from the diffusion of sovereign power.” *Bond*, 564 U.S. at 221 (2011) (quoting *New York v. United States*, 505 U.S. 144, 181 (1992)). “Federalism also protects the liberty of all persons within a State by ensuring that laws enacted in excess of delegated governmental power cannot direct or control their actions.” *Id.* Moreover, “federalism enhances the opportunity of all citizens to participate in representative government.” *FERC v. Mississippi*, 456 U.S. 742, 789 (1982) (O’Connor, J., concurring in part and dissenting in part). “Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.” *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991).

The Election Clauses’ grant of authority to state *Legislatures* implements both horizontal and vertical separation of powers. The Clauses allocate to each State—not to federal actors—the authority to dictate the manner of selecting Presidential electors. And within each State, they explicitly allocate that authority to a single branch of state government: to the “Legislature thereof.”

It is no accident that the Constitution allocates such authority to state Legislatures, rather than executive officers such as Governors, or judicial officers such as state Supreme Courts. The Constitutional Convention’s delegates frequently recognized that the Legislature is the branch most responsive to the People and most democratically

accountable. *See, e.g.*, Robert G. Natelson, *The Original Scope of the Congressional Power to Regulate Elections*, 13 U. PA. J. CONST. L. 1, 31 (2010) (collecting ratification documents expressing that state legislatures were most likely to be in sympathy with the interests of the people); Federal Farmer, No. 12 (1788), *reprinted in* 2 THE FOUNDERS' CONSTITUTION (Philip B. Kurland & Ralph Lerner eds., 1987) (arguing that electoral regulations “ought to be left to the state legislatures, they coming far nearest to the people themselves”); THE FEDERALIST NO. 57, at 350 (C. Rossiter, ed. 2003) (Madison, J.) (stating that the “House of Representatives is so constituted as to support in its members an habitual recollection of their dependence on the people”); *id.* (stating that the “vigilant and manly spirit that actuates the people of America” is greatest restraint on the House of Representatives).

Democratic accountability in the method of selecting the President of the United States is a powerful bulwark safeguarding individual liberty. By identifying the “Legislature thereof” in each State as the regulator of elections for federal officers, the Election Clauses prohibit the very arrogation of power over Presidential elections by non-legislative officials that the Pennsylvania Supreme Court perpetrated in this case. By violating the Constitution’s separation of powers, the Pennsylvania Supreme Court undermined the liberty of all Pennsylvanians, and, in this Presidential election, the liberty of all Americans.

II. Voting by Mail Creates Unique Risks of Fraud, Including in Pennsylvania.

The Pennsylvania Supreme Court’s decision suffers from another critical defect: it enhanced the

risks of fraudulent voting by mail. Overwhelming public evidence demonstrates that voting by mail presents unique opportunities for fraud and abuse, opportunities which unscrupulous actors have often exploited. The decision below exacerbated these risks.

For decades, responsible observers have cautioned about the grave risks of fraud in voting by mail. In *Crawford v. Marion County Election Board*, this Court held that fraudulent voting “perpetrated using absentee ballots” demonstrates “that not only is the risk of voter fraud real but that *it could affect the outcome of a close election.*” *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 195-96 (2008) (opinion of Stevens, J.) (emphasis added).

The Carter-Baker Commission on Federal Election Reform emphasized the same concern. The bipartisan Commission—co-chaired by former President Jimmy Carter and former Secretary of State James A. Baker—determined that “[a]bsentee ballots remain 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).² According to the Carter-Baker Commission, “[a]bsentee balloting is vulnerable to abuse in several ways.” *Id.* These abuses include interception of blank ballots, “pressure” and “intimidation” of elderly and vulnerable voters, “vote buying schemes” that are “far more difficult to detect when citizens vote by mail,” and ballot tampering by third-party operatives after a ballot is marked. *Id.* The Commission noted that “absentee balloting in other states has been a major source of fraud.” *Id.* at

² Available at <https://www.legislationline.org/download/id/1472/file/-3b50795b2d0374cbef5c29766256.pdf>.

35. And the Commission recommended that “States ... need to do more to prevent ... absentee ballot fraud.” *Id.* at v.

The most recent edition of the U.S. Department of Justice’s Manual on *Federal Prosecution of Election Offenses*, published by its Public Integrity Section, highlights the very same concerns. See U.S. Dep’t of Justice, *Federal Prosecution of Election Offenses* (8th ed. Dec. 2017), at 28-29 (“DOJ Manual”).³ The Manual states: “Absentee ballots are particularly susceptible to fraudulent abuse because, by definition, they are marked and cast outside the presence of election officials and the structured environment of a polling place.” *Id.* The Manual reports that “the more common ways” that election-fraud “crimes are committed include ... [o]btaining and marking absentee ballots without the active input of the voters involved.” *Id.* at 28. And the Manual notes that “[a]bsentee ballot frauds” committed both with and without the voter’s participation are “common.” *Id.* at 29.

Similarly, the U.S. Government Accountability Office concluded that many crimes of election fraud likely go undetected. In 2014, discussing election fraud, the GAO reported that “crimes of fraud, in particular, are difficult to detect, as those involved are engaged in intentional deception.” GAO-14-634, *Elections: Issues Related to State Voter Identification Laws* 62-63 (U.S. Gov’t Accountability Office Sept. 2014).⁴

³ Available at <https://www.justice.gov/criminal/file/1029066/download>.

⁴ Available at <https://www.gao.gov/assets/670/665966.pdf>.

Despite the difficulties of detecting fraud schemes, recent experience contains many well-documented examples of absentee ballot fraud. For example, the News21 database, which was compiled to *refute* arguments that voter fraud is prevalent, found 491 known and reported cases of absentee ballot fraud over the 12-year period from 2000 to 2012—approximately 41 cases per year. See News21, *Election Fraud in America* (visited Nov. 6, 2020).⁵ This database reports that “Absentee Ballot Fraud” was “[t]he most prevalent fraud” in America, comprising “24 percent (491 cases)” of all cases reported in the public records surveyed. *Id.* Moreover, the database indicates that this number undercounts the total incidence of reported cases of absentee ballot fraud, because it was based on public-record requests to state and local government entities, many of which did not respond. *Id.*

Likewise, the Heritage Foundation’s online database of election-fraud cases—which includes only a “sampling” of cases that resulted in an *adjudication* of fraud, such as a criminal conviction or civil penalty—identified 207 cases of proven “fraudulent use of absentee ballots” in the United States. The Heritage Foundation, *Election Fraud Cases* (visited Nov. 6, 2020).⁶ This database identifies 24 cases of proven election fraud in Pennsylvania, including four cases of criminal convictions for fraudulent use of

⁵ Available at <https://votingrights.news21.com/interactive/election-fraud-data-base/&xid=17259,15700023,15700124,15700149,15700186,15700191,15700201,15700237,15700242>

⁶ Available at https://www.heritage.org/voterfraud/search?combine=&state=All&year=&case_type=All&fraud_type=24489&page=12.

absentee ballots in Pennsylvania since 2010. *See id.* Again, this database undercounts the incidence of cases of election fraud: “The Heritage Foundation’s Election Fraud Database presents a sampling of recent proven instances of election fraud from across the country. This database is not an exhaustive or comprehensive list.” *Id.*

The public record abounds with recent examples of such fraudulent absentee-ballot schemes, including many examples in *amici* States, and many examples in Pennsylvania. For example, in November 2019, the mayor of Berkeley, Missouri was indicted on five felony counts of absentee ballot fraud for changing votes on absentee ballots to help him and his political allies to get elected. Brian Heffernan, *Berkeley Mayor Hoskins Charged with 5 Felony Counts of Election Fraud*, ST. LOUIS PUBLIC RADIO (Nov. 21, 2019).⁷ Mayor Hoskins’ scheme included “going to the home of elderly ... residents” to harvest absentee ballots, “filling out absentee ballot applications for voters and having his campaign workers do the same,” and “altering absentee ballots” after he had procured them from voters. *Id.* Again, in 2016, a State House race in Missouri was overturned amid allegations of widespread absentee-ballot fraud that had occurred across multiple election cycles in the same community. Sarah Fenske, *FBI, Secretary of State Asking Questions About St. Louis Statehouse Race*, RIVERFRONT TIMES (Aug. 16, 2016).⁸ One candidate stated that it was widely known in the community

⁷ Available at <https://news.stlpublicradio.org/post/berkeley-mayor-hoskins-charged-5-felony-counts-election-fraud#stream/0>

⁸ Available at <https://www.riverfronttimes.com/newsblog/2016/08/16/fbi-secretary-of-state-asking-questions-about-st-louis-statehouse-race>.

that the incumbent ran an “absentee game” that resulted in the mail-in vote tipping the outcome in her favor in multiple close elections. *Id.*

Other States have similar experiences. In 2018, a federal Congressional race was overturned in North Carolina, and eight political operatives were indicted for fraud, in an absentee-ballot fraud scheme that sufficed to change the outcome of the election. Richard Gonzales, *North Carolina GOP Operative Faces New Felony Charges That Allege Ballot Fraud*, NPR.ORG, (July 30, 2019).⁹ The indicted operatives “had improperly collected and possibly tampered with ballots,” and were charged with “improperly mailing in absentee ballots for someone who had not mailed it themselves.” *Id.*

In the North Carolina case, the lead investigator testified that the investigation was “a continuous case” over two election cycles, and that the scheme involved collecting absentee ballots from voters, altering the absentee ballots, and forging witness signatures on the ballots. *See In re: Investigation of Irregularities Affecting Counties Within the 9th Congressional District*, North Carolina Board of Elections, Evidentiary Hearing, at 2-3.¹⁰ The investigators described it as a “coordinated, unlawful, and substantially resourced absentee ballots scheme.” *Id.* at 2. According to the investigators’ trial presentation, the investigation involved 142 voter interviews, 30 subject and witness interviews, and subpoenas of documents, financial records, and phone

⁹ Available at <https://www.npr.org/2019/07/30/746800630/north-carolina-gop-operative-faces-new-felony-charges-that-allege-ballot-fraud>.

¹⁰ Available at https://images.radio.com/wbt/Voter%20ID_%20Website.pdf.

records. *Id.* at 3. The perpetrators collected absentee ballots and falsified ballot witness certifications outside the presence of the voters. *Id.* at 10, 13. The congressional election at issue was decided by margin of less than 1,000 votes. *Id.* at 4. The scheme involved the submission of well over 1,000 fraudulent absentee ballots and request forms. *Id.* at 11. The perpetrators took extensive steps to conceal the fraudulent scheme, which lasted over multiple election cycles before it was detected. *Id.* at 14.

Similarly, in 2016, a politician in the Bronx was indicted and pled guilty to 242 counts of election fraud based on an absentee ballot fraud scheme. Ben Kochman, *Bronx politician pleads guilty in absentee ballot scheme for Assembly election*, NEW YORK DAILY NEWS (Nov. 22, 2016).¹¹ Despite pleading guilty to 242 felonies involving absentee ballot fraud in an election that was decided by two votes, the defendant received no jail time and vowed to run for office again after a short disqualification period. *Id.*

The increases in mail-in voting due to the COVID-19 pandemic increased such opportunities for fraud. For instance, in May 2020, the leader of the New Jersey NAACP called for an election in Paterson, New Jersey to be overturned due to widespread mail-in ballot fraud. See Jonathan Dienst et al., *NJ NAACP Leader Calls for Paterson Mail-In Vote to Be Canceled Amid Corruption Claims*, NBC NEW YORK (May 27, 2020).¹² “Invalidate the election. Let’s do it again,”

¹¹ Available at <http://www.nydailynews.com/new-york/nyc-crime/bronx-pol-pleads-guilty-absentee-ballot-scheme-article-1.2884009>.

¹² Available at <https://www.nbcnewyork.com/news/politics/nj-naacp-leader-calls-for-paterson-mail-in-vote-to-be-canceled-amid-fraud-claims/2435162/>.

[the NAACP leader] said amid reports more that 20 percent of all ballots were disqualified, some in connection with voter fraud allegations.” *Id.*

Hundreds of other reported cases highlight the same concerns about the vulnerability of voting by mail to fraud and abuse. Most notable here, the public reports indicate recurring issues of absentee-ballot fraud in Pennsylvania in particular. *See, e.g., Alex Rose, Collingsdale man charged with voter fraud, DELAWARE COUNTY TIMES* (Nov. 21, 2018) (*available at* <https://bit.ly/356c5wd>) (perpetrator confessed to having third parties sign absentee ballots of deceased voters); Joseph Kohut, *Gallagher resigns from Taylor council pleads guilty to three charges, THE TIMES-TRIBUNE* (Apr. 3, 2015) (*available at* <https://bit.ly/36i3HcJ>); T. Ove, *Ex-Harmar police chief pleads guilty to ballot tampering, PITTSBURGH POST-GAZETTE* (Sept. 26, 2014) (*available at* <https://bit.ly/32j4HMk>) (defendant “admitted that he violated election laws by soliciting absentee ballots for his wife and a running mate in the 2009 Democratic primary for township supervisor”); *Com. v. Bailey*, 775 A.2d 881, 883 (Pa. Commw. Ct. 2001) (candidate convicted of absentee ballot fraud); Bill Heitzel, *Six of seven charges against Austin Murphy dismissed, PITTSBURGH POST-GAZETTE* (June 22, 1999) (*available at* <https://bit.ly/2I9KlxU>) (grand jury found that three individuals “forged absentee ballots for nursing home residents,” amid allegations that “fraudulent voting has been practiced for decades, is widespread and benefits several entrenched elected officials” in the county); *Marks v. Stinson*, No. CIV. A. 93-6157, 1994 WL 146113, at *7–22 (E.D. Pa. Apr. 26, 1994) (documenting a coordinated and extensive campaign of absentee ballot fraud).

Just a few weeks ago, a Missouri court considered extensive expert testimony reviewing absentee-ballot fraud cases like these, and it aptly summarized their common features. *Findings of Fact, Conclusions of Law, and Final Judgment in Mo. State Conference of the NAACP v. State*, No. 20AC-CC00169-01 (Circuit Court of Cole County, Missouri Sept. 24, 2020), *aff'd*, 607 S.W.3d 728 (Mo. banc Oct. 9, 2020). The court held that cases of absentee-ballot fraud “have several common features that persist across multiple recent cases: (1) close elections; (2) perpetrators who are candidates, campaign workers, or political consultants, not ordinary voters; (3) common techniques of ballot harvesting, (4) common techniques of signature forging, (5) fraud that persisted across multiple elections before it was detected, (6) massive resources required to investigate and prosecute the fraud, and (7) lenient criminal penalties.” *Id.* at 17. The court concluded that “fraud in voting by mail is a recurrent problem, that it is hard to detect and prosecute, that there are strong incentives and weak penalties for doing so, and that it has the capacity to affect the outcome of close elections.” *Id.* For the same reasons, this Court should also recognize that “the threat of mail-in ballot fraud is real.” *Id.* at 2.

III. The Pennsylvania Supreme Court’s Decision Exacerbated the Risks of Ballot Fraud.

In addition to violating the Election Clauses, the decision below exacerbated the risks fraud and abuse in mail-in voting in Pennsylvania. First, it created a post-election window of time during which nefarious actors could wait and see whether the Presidential election would be close, and whether perpetrating

fraud in Pennsylvania would be worthwhile. Second, it enhanced the opportunities for fraud by mandating, in a cursory footnote, that late ballots must be counted even when they are not postmarked or have no legible postmark, and thus there is no evidence they were mailed by Election Day. This decision created needless vulnerability to actual fraud and undermined public confidence in a Presidential election.

First, the U.S. Department of Justice’s Manual on *Federal Prosecution of Election Offenses* emphasizes that election fraud typically occurs when the parties anticipate a close election, creating a strong motive to try to flip the outcome of the election through fraudulent activity. DOJ Manual, at 2-3, 27. As the Manual states, “the conditions most conducive to election fraud are close factional competition within an electoral jurisdiction for an elected position that matters.” *Id.* at 2-3. “Election fraud does not normally occur in jurisdictions where one political faction enjoys widespread support among the electorate, because in such a situation it is usually unnecessary or impractical to resort to election fraud in order to control local public offices.” *Id.* at 27. “Instead, election fraud occurs most frequently when there are fairly equal political factions, and when the stakes involved in who controls public offices are weighty.” *Id.* “In sum, election fraud is most likely to occur in electoral jurisdictions where there is close factional competition for an elected position that matters.” *Id.*

The cases of absentee-ballot fraud discussed above confirm the DOJ’s insight. They repeatedly show that the motive for absentee-ballot fraud is strongest, and fraud is most likely to occur, when the expected outcome of the decision is close. For example, the

notorious absentee-ballot fraud in the 2018 North Carolina congressional race occurred in an election that was decided by less than 1,000 votes of over 280,000 cast. The Hoskins indictment in St. Louis, Missouri occurred after a series of elections that were decided by tiny margins of less than 100 votes. The indictment of Bronx assemblyman Hector Ramirez occurred after an election that was decided by two votes. The public record contains many other similar examples of absentee ballot fraud in close elections.

In a typical Presidential election, it is often hard to predict in advance whether the outcome will be close in any particular State, and whether that State's decision will affect the outcome of the election. But the Pennsylvania Supreme Court's decision in this case created a window of time for unscrupulous actors to wait and see until after Election Day whether the outcome would be close enough—both in Pennsylvania, and in the nation as a whole—to make attempting fraud worthwhile.

To be sure, certain designated categories of ballots, such as military and overseas ballots, may be received after Election Day in any election, and for good reasons. But the Pennsylvania decision here extended that post-Election Day deadline to many more voters in Pennsylvania. And, in the process, it stripped away critical safeguards against fraud, as discussed below. Combined, these factors created an unnecessary risk of fraud in voting by mail.

Second, the Pennsylvania Supreme Court's decision enhanced the opportunities to commit such fraud. Footnote 26 of the Supreme Court's decision states as follows:

We likewise incorporate the Secretary's recommendation addressing ballots received

within this period that *lack a postmark or other proof of mailing*, or for which *the postmark or other proof of mailing is illegible*. Accordingly, in such cases, we conclude that a ballot received on or before 5:00 p.m. on November 6, 2020, will be *presumed to have been mailed by Election Day* unless a preponderance of the evidence demonstrates that it was mailed after Election Day.

App. 48a, n.26 (emphases added). In other words, the court ordered that any ballot received within three days after Election Day would be deemed timely cast even if there was no evidence that it was submitted before Election Day. *Id.*

As the numerous cases discussed above show, *see supra* Part II, fraud in voting by mail frequently involves the interception, alteration, and fraudulent submission of absentee or mail-in ballots. This was true in the North Carolina absentee-ballot fraud scheme in 2018, in both Missouri examples discussed above, in the Bronx assemblyman scheme, and in some of the Pennsylvania examples cited above, among many others. *See supra* Part II. Many such schemes have occurred in recent years, and that they have evaded detection over multiple election cycles. It is unknown how many such schemes may simply go undetected permanently. The Pennsylvania court's decision, therefore, needlessly exacerbated the risk of fraudulent voting.

Finally, there was no strong reason to create these risks of fraud. The Pennsylvania decision in this case is an outlier that rests on a feeble justification of putative mailing delays, unsupported by hard evidence. Many similar cases in States across the country sought to extend Election-Day receipt

deadlines, and the vast majority of them were rejected. *See, e.g., Dem. Nat’l Comm. v. Wisc. State Leg.*, No. 20A66 (U.S. Oct. 26, 2020) (affirming the Court of Appeals’ stay of a six-day extension to receive ballots after Election Day). As the Seventh Circuit stated, “laws setting an Election-Day deadline for receipt of all ballots are valid during a pandemic, as they are valid without one.” *Common Cause Indiana v. Lawson*, 977 F.3d 663 (7th Cir. 2020); *see also Org. for Black Struggle v. Ashcroft*, No. 20-3121, 2020 WL 6257167, at *3 (8th Cir. Oct. 23, 2020); *New Georgia Project v. Raffensperger*, 976 F.3d 1278, 2020 WL 5877588 (11th Cir. 2020); *Arizona Democratic Party v. Hobbs*, 976 F.3d 1081, 2020 WL 5903488 (9th Cir. 2020); *Dem. Nat’l Comm. v. Wisc. State Leg.*, No. 20A66 (U.S. Oct. 26, 2020); *League of Women Voters of Delaware, Inc. v. Dep’t of Elections*, No. CV 2020-0761-SG, 2020 WL 5998161, at *4 (Del. Ch. Oct. 9, 2020); *All. for Retired Americans v. Sec’y of State*, 2020 WL 625526, *7 (Me. Oct. 23, 2020); *League of Women Voters of Michigan v. Sec’y of State*, No. 353654, 2020 WL 3980216, at *12 (Mich. Ct. App. July 14, 2020), *appeal denied*, 946 N.W.2d 307 (Mich. 2020); *DCCC v. Ziriak*, No. 20-CV-211-JED-JFJ, 2020 WL 5569576, at *20 (N.D. Okla. Sept. 17, 2020).

CONCLUSION

This Court should grant the petitions, grant expedited review, and reverse the Pennsylvania Supreme Court’s judgment.

November 9, 2020

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Nos. 20-542, 20-574

In the Supreme Court of the United States

REPUBLICAN PARTY OF PENNSYLVANIA,
Petitioner,

v.

KATHY BOOCKVAR, IN HER OFFICIAL CAPACITY AS PENNSYLVANIA SECRETARY OF
STATE, ET AL.,
Respondents.

JOSEPH B. SCARNATI, III, ET AL.
Petitioners,

v.

KATHY BOOCKVAR, IN HER OFFICIAL CAPACITY AS PENNSYLVANIA SECRETARY OF
STATE, ET AL.,
Respondents.

On Petitions for Writs of Certiorari to the Pennsylvania Supreme Court

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the Brief of Missouri and Nine Other States as *Amici Curiae* in Support Petitioners in the above captioned cases contains 5,068 words as determined by the word counting feature of Microsoft Word, excluding the parts of the brief that are exempted by Supreme Court Rule 33.1(d).

November 9, 2020

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REPUBLICAN PARTY OF PENNSYLVANIA,
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KATHY BOOCKVAR, IN HER OFFICIAL CAPACITY AS PENNSYLVANIA SECRETARY OF
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STATE, ET AL.,
Respondents.

On Petitions for Writs of Certiorari to the Pennsylvania Supreme Court

CERTIFICATE OF SERVICE

In accordance with Rule 29.5(b) and the Court's April 15, 2020 Order, I certify that the required copies of the Brief of Missouri and Nine Other States as *Amici Curiae* in Support Petitioners in the above captioned cases have been sent to the U.S. Supreme Court by commercial overnight delivery, and electronic copies were served by electronic mail on the following parties listed below on November 9, 2020.

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All-

Attached are the final PDF documents, which have now been electronically filed. Thanks again for everyone's support on such short notice!!

Thanks, John Sauer

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No. 22O155, Original

In the Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

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

Defendants.

On Motion for Leave to File Bill of Complaint

**MOTION OF STATES OF MISSOURI,
ARKANSAS, LOUISIANA, MISSISSIPPI, SOUTH
CAROLINA, AND UTAH TO INTERVENE AND
PROPOSED BILL OF COMPLAINT IN
INTERVENTION**

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TABLE OF CONTENTS

I. The Intervening States Satisfy the Requirements for Intervention As of Right 2

II. The Intervening States Satisfy the Standards for Permissive Intervention 5

CONCLUSION 5

TABLE OF AUTHORITIES

Cases

<i>Anderson v. Celebrezze</i> , 460 U.S. 780 (1983).....	3
<i>Anderson v. United States</i> , 417 U.S. 211 (1974).....	3
<i>Arizona v. California</i> , 460 U.S. 605 (1983).....	2
<i>Commonwealth of Kentucky v. Indiana</i> , 281 U.S. 163 (1930).....	4
<i>Delaware v. New York</i> , 507 U.S. 490 (1993).....	1
<i>Texas v. New Jersey</i> , 373 U.S. 948 (1963).....	1
<i>Trbovich v. United Mine Workers of America</i> , 404 U.S. 528 (1972).....	4
<i>United States v. Louisiana</i> , 354 U.S. 515 (1957).....	1, 4, 5

Statutes

U.S. CONST. art. II, § 1, cl. 2.....	3
--------------------------------------	---

Rules

Fed. R. Civ. P. 24(a)(2)	2
--------------------------------	---

Federal Rule of Civil Procedure 24.....2
Federal Rule of Civil Procedure 24(a)2
Federal Rule of Civil Procedure 24(b)5

Motion to Intervene and Brief in Support

The States of Missouri, Arkansas, Louisiana, Mississippi, South Carolina, and Utah (“Intervening States”), through their undersigned counsel, respectfully file this motion for leave to intervene in this action and join Plaintiffs’ Bill of Complaint, as modified by proposed intervenor President Donald J. Trump, in the event that this Court grants Plaintiff leave to file the Bill of Complaint. In support of this Motion, the Intervening States state as follows:

This Court permits States to intervene in original actions when “the issues in the litigation are so related to the possible interests of [the intervening states] ... in the subject matter of th[e] suit, that the just, orderly, and effective determination of such issues requires that they be adjudicated in a proceeding in which all the interested parties are before the Court.” *United States v. Louisiana*, 354 U.S. 515, 515–16 (1957) (granting Alabama, Florida, Mississippi, and Texas leave to intervene); *see also*, *e.g.*, *Delaware v. New York*, 507 U.S. 490, 497 (1993) (permitting Michigan, Maryland, Nebraska, and the District of Columbia to intervene); *Texas v. New Jersey*, 373 U.S. 948 (1963) (granting Florida’s motion to intervene). The Court’s power to permit intervention arises from both “the Federal Rules of Civil Procedure” and the “general equity powers” of the Court. *United States v. Louisiana*, 354 U.S. at 515; *see also* Sup. Ct. R. 17.2 (providing that, in an original action, “[t]he form of pleadings and motions prescribed by the Federal Rules of Civil Procedure is followed”).

Federal Rule of Civil Procedure 24 permits intervention as of right and by the Court's leave. The Intervening State Plaintiffs satisfy both standards here, and the Court should grant the motion.

I. The Intervening States Satisfy the Requirements for Intervention As of Right.

Federal Rule of Civil Procedure 24(a) provides: "On timely motion, the court must permit anyone to intervene who ... (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). The Intervening States satisfy the standards to intervene in this action as of right.

First, the Intervening States' Motion is unquestionably timely. They filed this Motion to Intervene within three days of the filing of Plaintiff's Motion for Leave to File Bill of Complaint, and within two days of receiving notice of the Motion. In addition, the Bill of Complaint has not yet been filed, and the Intervening States seek leave to join it as soon as it is filed. Accordingly, the request for intervention is filed at the case's earliest possible procedural juncture. See *Arizona v. California*, 460 U.S. 605, 615 (1983) (permitting intervention when no adverse party could show how its interests "would be prejudiced or this litigation unduly delayed").

Second, the Intervening States claim an interest relating to the property or transaction that is the subject of the action. They share Plaintiff State of Texas's and Intervenor Donald J. Trump's concerns

about the unconstitutional administration of the Presidential election in the Defendant States, and its impact on voters in the Intervening States. As this Court has stated, “in the context of a Presidential election,” actions in the Defendant States “implicate a uniquely important national interest,” because “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, 794–95 (1983). “For the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation.” *Id.* Further, the Intervening States have a strong interest in ensuring that the unconstitutional administration of elections in the Defendant States does not compromise ballot security and unfairly dilute the votes of voters in the Intervening States. “Every voter” in a federal election, “has a right under the Constitution to have his vote fairly counted, without its being distorted by fraudulently cast votes.” *Anderson v. United States*, 417 U.S. 211, 227 (1974).

Third, the Intervening States’ interests may be impaired or impeded by the disposition of this action. In the event that this Court grants leave to file the Bills of Complaint, this Court’s adjudication of the merits of Plaintiff’s claims would likely impair or impede the Intervening States’ ability to advance similar claims and interests, including the claim that non-legislative actors in each Defendant State unconstitutionally encroached upon the authority of the “Legislature thereof” to control the administration of Presidential elections in that State. U.S. CONST. art. II, § 1, cl. 2.

Fourth, the Intervening States’ interests are not adequately represented by the existing parties in the case. The Intervening States do not doubt that Plaintiff State of Texas will vigorously and effectively litigate this case, but the Attorney General of each individual State is best situated to represent the interests of that State and its People. The requirement for adequacy of representation is “minimal,” *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972), and the undersigned Attorneys General respectfully submit that they are the most adequate representatives of their respective States. *Cf. Commonwealth of Kentucky v. Indiana*, 281 U.S. 163, 173 (1930) (“[B]y virtue of the original jurisdiction over controversies between states, [a State] must be deemed to represent all its citizens.”). Moreover, Plaintiff State of Texas has consented to the intervention requested in this Motion, as has counsel for President Trump.¹

¹ The Intervening States previously filed an *amicus curiae* brief in this case, along with other States, supporting the Motion for Leave to File Bill of Complaint. Their prior participation as *amici curiae* is fully consistent with granting them leave to participate as parties if the Court grants the Motion for Leave to File Bill of Complaint. *See, e.g., United States v. Louisiana*, 354 U.S. at 515 (granting leave to intervene to the State of Texas based in part on “the representations made by the State of Texas in its *amicus curiae* brief”); *see also* S. SHAPIRO, K. GELLER, T. BISHOP, E. HARTNETT & D. HIMMELFARB, *SUPREME COURT PRACTICE* § 10.10 n.37 (10th ed. 2013).

II. The Intervening States Satisfy the Standards for Permissive Intervention.

In the alternative, the Intervening States satisfy the standards for permissive intervention under Federal Rule of Civil Procedure 24(b). That Rule provides that “[o]n timely motion, the court may permit anyone to intervene who ... has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b). For the reasons stated above, this Motion is unquestionably timely, and the Intervening States seek to join the Plaintiff’s Bill of Complaint with the additions and modifications of President Trump, so it is unquestionable that they share “a claim or defense that shares with the main action a common question of law or fact.” *Id.* Given the great importance of the constitutional issues raised in this case, the Intervening States should also be granted permissive intervention as well.

CONCLUSION

For the reasons stated, the Intervening States request that this Court grant them leave to intervene as Plaintiffs in the event that the Court grants leave to file the Bill of Complaint.

December 10, 2020

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In the Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

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

Defendants.

On Motion for Leave to File Bill of Complaint

**BILL OF COMPLAINT IN INTERVENTION OF
MISSOURI, ARKANSAS, LOUISIANA,
MISSISSIPPI, SOUTH CAROLINA AND UTAH**

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BILL OF COMPLAINT IN INTERVENTION

The States of Missouri, Arkansas, Louisiana, Mississippi, South Carolina and Utah seek to intervene in an original action proposed by the State of Texas against the States of Pennsylvania, Georgia, Michigan, and Wisconsin. Donald J. Trump, President of the United States and candidate for re-election to the Office of the Presidency at the general election that was held on November 3, 2020, has sought to intervene and proposed his own Bill of Complaint in Intervention. The Intervening State Plaintiffs adopt by reference and join in the Bill of Complaint submitted by Plaintiff State of Texas as modified by President Trump's Bill of Complaint in Intervention in all aspects, including the statements of Jurisdiction, the Parties, Additional Facts, Count I (alleging a violation of the Elector's Clause) and the Prayer for Relief. The Intervening States further state:

PARTIES

1. The State of Missouri, an Intervening State Plaintiff, is a sovereign State of the United States of America.
2. The State of Arkansas, an Intervening State Plaintiff, is a sovereign State of the United States of America.
3. The State of Louisiana, an Intervening State Plaintiff, is a sovereign State of the United States of America.

4. The State of Mississippi, an Intervening State Plaintiff, is a sovereign State of the United States of America.

5. The State of South Carolina, an Intervening State Plaintiff, is a sovereign State of the United States of America.

6. The State of Utah, an Intervening State Plaintiff, is a sovereign State of the United States of America.

December 10, 2020

Respectfully submitted,

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In the Supreme Court of the United States

STATE OF TEXAS,
Plaintiff,

v.

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

On Motion for Leave to File Bill of Complaint

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the Motion of States of Missouri, Arkansas, Louisiana, Mississippi, South Carolina and Utah to Intervene and Proposed Bill of Complaint in Intervention in the above captioned case contains 1,479 words as determined by the word counting feature of Microsoft Word, excluding the parts of the brief that are exempted by Supreme Court Rule 33.1(d).

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STATE OF TEXAS,
Plaintiff,

v.

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

On Motion for Leave to File Bill of Complaint

CERTIFICATE OF SERVICE

In accordance with Rule 29.5(b) and the Court's April 15, 2020 Order, I certify that all parties required to be served, have been served, and that the required copies Motion of States of Missouri, Arkansas, Louisiana, Mississippi, South Carolina, and Utah to Intervene and Proposed Bill of Complaint in Intervention in the above captioned case have been sent to the U.S. Supreme Court by overnight delivery, and electronic copies were served by electronic mail on the following parties listed below on December 10, 2020.

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December 10, 2020

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All-

Thank you all for joining this amicus brief on such short notice. Attached are the final PDFs of the Amicus Brief and Certificates. We ended up with a 17-State coalition, which is an extremely strong group for such a short turnaround. Our press officer has requested that this be embargoed until 3:30 pm Central. Thank you all for your support on this important project!

Thank you,

John Sauer

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No. 220155, Original

In the Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

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

Defendants.

On Motion for Leave to File Bill of Complaint

**BRIEF OF STATE OF MISSOURI AND
16 OTHER STATES AS *AMICI CURIAE* IN
SUPPORT OF PLAINTIFF'S MOTION FOR
LEAVE TO FILE BILL OF COMPLAINT**

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TABLE OF CONTENTS

STATEMENT OF INTEREST OF *AMICI*1

SUMMARY OF ARGUMENT2

ARGUMENT3

 I. The Separation-of-Powers Provision of the
 Electors Clause Is a Structural Check on
 Government That Safeguards Liberty4

 II. Stripping Away Safeguards From Voting by
 Mail Exacerbates the Risks of Fraud8

 III. The Bill of Complaint Alleges that the De-
 fendant States Unconstitutionally Abol-
 ished Critical Safeguards Against Fraud in
 Voting by Mail 16

CONCLUSION22

TABLE OF AUTHORITIES

Cases

<i>Alden v. Maine</i> , 527 U.S. 706 (1999).....	6
<i>Anderson v. Celebrezze</i> , 460 U.S. 780 (1983).....	1, 5
<i>Anderson v. United States</i> , 417 U.S. 211 (1974).....	2
<i>Bond v. United States</i> , 564 U.S. 211 (2011).....	6
<i>Bush v. Gore</i> , 531 U.S. 98 (2000).....	4, 5, 19
<i>Bush v. Palm Beach Cty. Canvassing Bd.</i> , 531 U.S. 70 (2000).....	4
<i>Crawford v. Marion County Election Bd.</i> , 553 U.S. 181 (2008).....	8
<i>FERC v. Mississippi</i> , 456 U.S. 742 (1982).....	6
<i>Gregory v. Ashcroft</i> , 501 U.S. 452 (1991).....	6
<i>Moore v. Ogilvie</i> , 394 US 814 (1969).....	19

Morrison v. Olson,
487 U.S. 654 (1988).....5

NAACP v. State of Missouri, No. 20AC-CC00169-01
(Circuit Court of Cole County, Missouri Sept. 24,
2020), *aff'd*, 607 S.W.3d 728 (Mo. banc Oct. 9,
2020)15, 17

New York v. United States,
505 U.S. 144 (1992).....6

Republican Party of Pennsylvania v. Boockvar,
No. 20-542, 2020 WL 6304626 (U.S. Oct. 28, 2020)5

Statutes

U.S. CONST. art. I, § 4, cl. 24

U.S. CONST. art. II, § 1, cl. 4.....4, 7, 16

Other Authorities

BUILDING CONFIDENCE IN U.S. ELECTIONS: REPORT OF
THE COMMISSION ON FEDERAL ELECTION REFORM, at
46 (Sept. 2005)9

Jonathan Dienst et al., *NJ NAACP Leader Calls for
Paterson Mail-In Vote to Be Canceled Amid Cor-
ruption Claims*, NBC NEW YORK (May 27, 2020) 15

Federal Farmer, No. 12 (1788), *reprinted in* 2 THE
FOUNDERS’ CONSTITUTION (Philip B. Kurland &
Ralph Lerner eds., 1987)7

Sarah Fenske, <i>FBI, Secretary of State Asking Questions About St. Louis Statehouse Race</i> , RIVERFRONT TIMES (Aug. 16, 2016)	12
GAO-14-634, <i>Elections: Issues Related to State Voter Identification Laws 62-63</i> (U.S. Gov't Accountability Office Sept. 2014)	10, 11
Richard Gonzales, <i>North Carolina GOP Operative Faces New Felony Charges That Allege Ballot Fraud</i> , NPR.ORG, (July 30, 2019)	13
Brian Heffernan, <i>Berkeley Mayor Hoskins Charged with 5 Felony Counts of Election Fraud</i> , ST. LOUIS PUBLIC RADIO (Nov. 21, 2019)	12
<i>In re: Investigation of Irregularities Affecting Counties Within the 9th Congressional District</i> , North Carolina Board of Elections, Evidentiary Hearing, at 2-3	13
Ben Kochman, <i>Bronx politician pleads guilty in absentee ballot scheme for Assembly election</i> , NEW YORK DAILY NEWS (Nov. 22, 2016)	14
Robert G. Natelson, <i>The Original Scope of the Congressional Power to Regulate Elections</i> , 13 U. PA. J. CONST. L. 1, 31 (2010)	7
News21, <i>Election Fraud in America</i>	11
THE FEDERALIST NO. 57, at 350 (C. Rossiter, ed. 2003) (Madison, J.)	7
The Heritage Foundation, <i>Election Fraud Cases</i> ...	11, 12

U.S. Dep't of Justice, *Federal Prosecution of Election Offenses* (8th ed. Dec. 2017)3, 4

STATEMENT OF INTEREST OF *AMICI*

“In the context of a Presidential election,” state actions “implicate a uniquely important national interest,” because “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, 794–95 (1983). “For the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation.” *Id.*

Amici curiae are the States of Missouri, Alabama, Arkansas, Florida, Indiana, Kansas, Louisiana, Mississippi, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, and West Virginia.¹ *Amici* have several important interests in this case. *First*, the States have a strong interest in safeguarding the separation of powers among state actors in the regulation of Presidential elections. The Electors Clause of Article II, § 1 carefully separates power among state actors, and it assigns a specific function to the “Legislature thereof” in each State. U.S. CONST. art. II, § 1, cl. 4. Our system of federalism relies on separation of powers to preserve liberty at every level of government, and the separation of powers in the Electors Clause is no exception. The States have a strong interest in preserving the proper roles of state legislatures in the administration of federal elections, and thus safeguarding the individual liberty of their citizens.

¹ This brief is filed under Supreme Court Rule 37.4, and all counsel of record received timely notice of the intent to file this amicus brief under Rule 37.2.

Second, amici States have a strong interest in ensuring that the votes of their own citizens are not diluted by the unconstitutional administration of elections in other States. When non-legislative actors in other States encroach on the authority of the “Legislature thereof” in that State to administer a Presidential election, they threaten the liberty, not just of their own citizens, but of every citizen of the United States who casts a lawful ballot in that election—including the citizens of *amici* States.

Third, for similar reasons, amici States have a strong interest in safeguarding against fraud in voting by mail during Presidential elections. “Every voter” in a federal election, “has a right under the Constitution to have his vote fairly counted, without its being distorted by fraudulently cast votes.” *Anderson v. United States*, 417 U.S. 211, 227 (1974). Plaintiff’s Bill of Complaint alleges that non-legislative actors in the Defendant States stripped away important safeguards against fraud in voting by mail that had been enacted by the Legislature in each State. *Amici* States share a vital interest in protecting the integrity of the truly national election for President and Vice President of the United States.

SUMMARY OF ARGUMENT

The Bill of Complaint raises constitutional questions of great public importance that warrant this Court’s review. First, like every similar provision in the Constitution, the separation-of-powers provision of the Electors Clause provides an important structural check on government designed to protect individual liberty. By allocating authority over

Presidential electors to the “Legislature thereof” in each State, the Clause separates powers both vertically and horizontally, and it confers authority on the branch of state government most responsive to the democratic will. Encroachments on the authority of state Legislatures by other state actors violate the separation of powers and threaten individual liberty.

The unconstitutional encroachments on the authority of state Legislatures in this case raise particularly grave concerns. For decades, responsible observers have cautioned about the risks of fraud and abuse in voting by mail, and they have urged the adoption of statutory safeguards to prevent such fraud and abuse. In the numerous cases identified in the Bill of Complaint, non-legislative actors in each Defendant State repeatedly stripped away the statutory safeguards that the “Legislature thereof” had enacted to protect against fraud in voting by mail. These changes removed protections that responsible actors had recommended for decades to guard against fraud and abuse in voting by mail. The allegations in the Bill of Complaint raise important questions about election integrity and public confidence in the administration of Presidential elections. This Court should grant Plaintiff leave to file the Bill of Complaint.

ARGUMENT

The Electors Clause provides that each State “shall appoint” its Presidential electors “in such Manner as the *Legislature thereof* may direct.” U.S. CONST. art. II, § 1, cl. 4 (emphasis added). Moreover, “[o]ur constitutional system of representative government only works when the worth of honest

ballots is not diluted by invalid ballots procured by corruption.” U.S. Dep’t of Justice, *Federal Prosecution of Election Offenses*, at 1 (8th ed. Dec. 2017). “When the election process is corrupted, democracy is jeopardized.” *Id.* The proposed Bill of Complaint raises serious concerns about both the constitutionality and ballot security of election procedures in the Defendant States. Given the importance of public confidence in American elections, these allegations raise questions of great public importance that warrant this Court’s expedited review.

I. The Separation-of-Powers Provision of the Electors Clause Is a Structural Check on Government That Safeguards Liberty.

Article II requires that each State “shall appoint” its Presidential electors “in such Manner as the *Legislature thereof* may direct.” U.S. CONST. art. II, § 1, cl. 4 (emphasis added); *see also id.* art. I, § 4, cl. 2 (providing that, in each State, the “Legislature thereof” shall establish “[t]he Times, Places and Manner of holding Elections for Senators and Representatives”).

Thus, “in the case of a law enacted by a state legislature applicable not only to elections to state offices, but also to the selection of Presidential electors, the legislature is not acting solely under the authority given it by the people of the State, but by virtue of a direct grant of authority made under Art. II, § 1, cl. 2, of the United States Constitution.” *Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S. 70, 76 (2000). “[T]he state legislature’s power to select the

manner for appointing electors is plenary.” *Bush v. Gore*, 531 U.S. 98, 104 (2000).

Here, as set forth in the Bill of Complaint, non-legislative actors in each Defendant State have purported to “alter[] an important statutory provision enacted by the [State’s] Legislature pursuant to its authority under the Constitution of the United States to make rules governing the conduct of elections for federal office.” *Republican Party of Pennsylvania v. Boockvar*, No. 20-542, 2020 WL 6304626, at *1 (U.S. Oct. 28, 2020) (Statement of Alito, J.). See Bill of Complaint, ¶¶ 41-127. In doing so, these non-legislative actors may have encroached upon the “plenary” authority of those States’ respective legislatures over the conduct of the Presidential election in each State. *Bush v. Gore*, 531 U.S. at 104. This encroachment on the authority of each State’s Legislature violated the separation of powers set forth in the Electors Clause. “[I]n the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation.” *Anderson*, 460 U.S. at 794–795.

In every other context, this Court recognizes that the Constitution’s separation-of-powers provisions are designed to preserve liberty. “It is the proud boast of our democracy that we have ‘a government of laws, and not of men.’” *Morrison v. Olson*, 487 U.S. 654, 697 (1988) (Scalia, J., dissenting). “The Framers of the Federal Constitution . . . viewed the principle of separation of powers as the absolutely central guarantee of a just Government.” *Id.* “Without a

secure structure of separated powers, our Bill of Rights would be worthless, as are the bills of rights of many nations of the world that have adopted, or even improved upon, the mere words of ours.” *Id.* “The purpose of the separation and equilibration of powers in general . . . was not merely to assure effective government but to preserve individual freedom.” *Id.* at 727.

This principle of preserving liberty applies both to the horizontal separation of powers among the branches of government, and the vertical separation of powers between the federal government and the States. “The federal system rests on what might at first seem a counterintuitive insight, that ‘freedom is enhanced by the creation of two governments, not one.’” *Bond v. United States*, 564 U.S. 211, 220–21 (2011) (quoting *Alden v. Maine*, 527 U.S. 706, 758 (1999)). “[F]ederalism secures to citizens the liberties that derive from the diffusion of sovereign power.” *Bond*, 564 U.S. at 221 (2011) (quoting *New York v. United States*, 505 U.S. 144, 181 (1992)). “Federalism also protects the liberty of all persons within a State by ensuring that laws enacted in excess of delegated governmental power cannot direct or control their actions.” *Id.* Moreover, “federalism enhances the opportunity of all citizens to participate in representative government.” *FERC v. Mississippi*, 456 U.S. 742, 789 (1982) (O’Connor, J., concurring in part and dissenting in part). “Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny

and abuse from either front.” *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991).

The explicit grant of authority to state *Legislatures* in the Electors Clause effects both a horizontal and a vertical separation of powers. The Clause allocates to each State—not to federal actors—the authority to dictate the manner of selecting Presidential Electors. And within each State, it explicitly allocates that authority to a single branch of state government: to the “Legislature thereof.” U.S. CONST. art. II, § 1, cl. 4.

It is no accident that the Constitution allocates such authority to state Legislatures, rather than executive officers such as Secretaries of State, or judicial officers such as state Supreme Courts. The Constitutional Convention’s delegates frequently recognized that the Legislature is the branch most responsive to the People and most democratically accountable. *See, e.g.*, Robert G. Natelson, *The Original Scope of the Congressional Power to Regulate Elections*, 13 U. PA. J. CONST. L. 1, 31 (2010) (collecting ratification documents expressing that state legislatures were most likely to be in sympathy with the interests of the people); Federal Farmer, No. 12 (1788), *reprinted in* 2 THE FOUNDERS’ CONSTITUTION (Philip B. Kurland & Ralph Lerner eds., 1987) (arguing that electoral regulations “ought to be left to the state legislatures, they coming far nearest to the people themselves”); THE FEDERALIST NO. 57, at 350 (C. Rossiter, ed. 2003) (Madison, J.) (stating that the “House of Representatives is so constituted as to support in its members an habitual recollection of their dependence on the people”); *id.* (stating that the “vigilant and manly spirit that actuates the people of

America” is greatest restraint on the House of Representatives).

Democratic accountability in the method of selecting the President of the United States is a powerful bulwark safeguarding individual liberty. By identifying the “Legislature thereof” in each State as the regulator of elections for federal officers, the Electors Clause of Article II, § 1 prohibits the very arrogation of power over Presidential elections by non-legislative officials that the Defendant States perpetrated in this case. By violating the Constitution’s separation of powers, these non-legislative actors undermined the liberty of all Americans, including the voters in *amici* States.

II. Stripping Away Safeguards From Voting by Mail Exacerbates the Risks of Fraud.

By stripping away critical safeguards against ballot fraud in voting by mail, non-legislative actors in the Defendant States inflicted another grave injury on the conduct of the recent election: They enhanced the risks of fraudulent voting by mail without authority. An impressive body of public evidence demonstrates that voting by mail presents unique opportunities for fraud and abuse, and that statutory safeguards are critical to reduce such risks of fraud.

For decades prior to 2020, responsible observers emphasized the risks of fraud in voting by mail, and the importance of imposing safeguards on the process of voting by mail to allay such risks. For example, in *Crawford v. Marion County Election Board*, this Court held that fraudulent voting “perpetrated using absentee ballots” demonstrates “that not only is the risk of voter fraud real but that *it could affect the*

outcome of a close election.” Crawford v. Marion County Election Bd., 553 U.S. 181, 195-96 (2008) (opinion of Stevens, J.) (emphasis added).

As noted by Plaintiff, the Carter-Baker Commission on Federal Election Reform emphasized the same concern. The bipartisan Commission—co-chaired by former President Jimmy Carter and former Secretary of State James A. Baker—determined that “[a]bsentee ballots remain 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) (“Carter-Baker Report”).² According to the Carter-Baker Commission, “[a]bsentee balloting is vulnerable to abuse in several ways.” *Id.* “Blank ballots mailed to the wrong address or to large residential buildings might be intercepted.” *Id.* “Citizens who vote at home, at nursing homes, at the workplace, or in church are more susceptible to pressure, overt and subtle, or to intimidation.” *Id.* “Vote buying schemes are far more difficult to detect when citizens vote by mail.” *Id.*

Thus, the Commission noted that “absentee balloting in other states has been a major source of fraud.” *Id.* at 35. It emphasized that voting by mail “increases the risk of fraud.” *Id.* And the Commission recommended that “States ... need to do more to prevent ... absentee ballot fraud.” *Id.* at v.

The Commission specifically recommended that States should implement and reinforce safeguards to prevent fraud in voting by mail. The Commission recommended that “States should make sure that

² Available at <https://www.legislationline.org/download/id/1472/file/-3b50795b2d0374cbef5c29766256.pdf>.

absentee ballots received by election officials before Election Day are kept secure until they are opened and counted.” *Id.* at 46. It also recommended that States “prohibit[] ‘third-party’ organizations, candidates, and political party activists from handling absentee ballots.” *Id.* And the Commission highlighted that a particular state “appear[ed] to have avoided significant fraud in its vote-by-mail elections by introducing *safeguards to protect ballot integrity, including signature verification.*” *Id.* at 35 (emphasis added). The Commission concluded that “[v]ote by mail is ... likely to increase the risks of fraud and contested elections ... where the safeguards for ballot integrity are weaker.” *Id.*

The most recent edition of the U.S. Department of Justice’s Manual on *Federal Prosecution of Election Offenses*, published by its Public Integrity Section, highlights the very same concerns about fraud in voting by mail. U.S. Dep’t of Justice, *Federal Prosecution of Election Offenses* (8th ed. Dec. 2017), at 28-29 (“DOJ Manual”).³ The Manual states: “Absentee ballots are particularly susceptible to fraudulent abuse because, by definition, they are marked and cast outside the presence of election officials and the structured environment of a polling place.” *Id.* The Manual reports that “the more common ways” that election-fraud “crimes are committed include ... [o]btaining and marking absentee ballots without the active input of the voters involved.” *Id.* at 28. And the Manual notes that “[a]bsentee ballot

³ Available at <https://www.justice.gov/criminal/file/1029066/download>.

frauds” committed both with and without the voter’s participation are “common.” *Id.* at 29.

Similarly, the U.S. Government Accountability Office concluded that many crimes of election fraud likely go undetected. In 2014, discussing election fraud, the GAO reported that “crimes of fraud, in particular, are difficult to detect, as those involved are engaged in intentional deception.” GAO-14-634, *Elections: Issues Related to State Voter Identification Laws* 62-63 (U.S. Gov’t Accountability Office Sept. 2014).⁴

Despite the difficulties of detecting fraud schemes, recent experience contains many well-documented examples of absentee ballot fraud. For example, the News21 database, which was compiled to *refute* arguments that voter fraud is prevalent, identified 491 cases of absentee ballot over the 12-year period from 2000 to 2012—approximately 41 cases per year. See News21, *Election Fraud in America*.⁵ This database reports that “Absentee Ballot Fraud” was “[t]he most prevalent fraud” in America, comprising “24 percent (491 cases)” of all cases reported in the public records surveyed. *Id.* Moreover, the database indicates that this number undercounts the total incidence of reported cases of absentee ballot fraud, because it was based on public-record requests to state and local government entities, many of which did not respond. *Id.*

⁴ Available at <https://www.gao.gov/assets/670/665966.pdf>.

⁵ Available at <https://votingrights.news21.com/interactive/election-fraud-data-base/&xid=17259,15700023,15700124,15700149,15700186,15700191,15700201,15700237,15700242>

Likewise, the Heritage Foundation’s online database of election-fraud cases—which includes only a “sampling” of cases that resulted in an *adjudication* of fraud, such as a criminal conviction or civil penalty—identified 207 cases of proven “fraudulent use of absentee ballots” in the United States. The Heritage Foundation, *Election Fraud Cases*.⁶ Again, this database undercounts the incidence of cases of election fraud: “The Heritage Foundation’s Election Fraud Database presents a sampling of recent proven instances of election fraud from across the country. This database is not an exhaustive or comprehensive list.” *Id.*

The public record abounds with recent examples of such fraudulent absentee-ballot schemes. For example, in November 2019, the mayor of Berkeley, Missouri was indicted on five felony counts of absentee ballot fraud for changing votes on absentee ballots to help him and his political allies to get elected. Brian Heffernan, *Berkeley Mayor Hoskins Charged with 5 Felony Counts of Election Fraud*, ST. LOUIS PUBLIC RADIO (Nov. 21, 2019).⁷ Mayor Hoskins’ scheme included “going to the home of elderly ... residents” to harvest absentee ballots, “filling out absentee ballot applications for voters and having his campaign workers do the same,” and “altering absentee ballots” after he had procured them from voters. *Id.* Again, in 2016, a state House race in Missouri was overturned amid allegations of

⁶ Available at https://www.heritage.org/voterfraud/search?combine=&state=All&year=&case_type=All&fraud_type=24489&page=12.

⁷ Available at <https://news.stlpublicradio.org/post/berkeley-mayor-hoskins-charged-5-felony-counts-election-fraud#stream/0>

widespread absentee-ballot fraud that had occurred across multiple election cycles in the same community. Sarah Fenske, *FBI, Secretary of State Asking Questions About St. Louis Statehouse Race*, RIVERFRONT TIMES (Aug. 16, 2016).⁸ One candidate stated that it was widely known in the community that the incumbent ran an “absentee game” that resulted in the absentee vote tipping the outcome in her favor in multiple close elections. *Id.*

Other States have similar experiences. In 2018, a federal Congressional race was overturned in North Carolina, and eight political operatives were indicted for fraud, in an absentee-ballot scheme that sufficed to change the outcome of the election. Richard Gonzales, *North Carolina GOP Operative Faces New Felony Charges That Allege Ballot Fraud*, NPR.ORG, (July 30, 2019).⁹ The indicted operatives “had improperly collected and possibly tampered with ballots,” and were charged with “improperly mailing in absentee ballots for someone who had not mailed it themselves.” *Id.*

In the North Carolina case, the lead investigator testified that the investigation was “a continuous case” over two election cycles, and that the scheme involved collecting absentee ballots from voters, altering the absentee ballots, and forging witness signatures on the ballots. *See In re: Investigation of Irregularities Affecting Counties Within the 9th*

⁸ Available at <https://www.riverfronttimes.com/newsblog/2016/08/16/fbi-secretary-of-state-asking-questions-about-st-louis-statehouse-race>.

⁹ Available at <https://www.npr.org/2019/07/30/746800630/north-carolina-gop-operative-faces-new-felony-charges-that-allege-ballot-fraud>.

Congressional District, North Carolina Board of Elections, Evidentiary Hearing, at 2-3.¹⁰ The investigators described it as a “coordinated, unlawful, and substantially resourced absentee ballots scheme.” *Id.* at 2. According to the investigators’ trial presentation, the investigation involved 142 voter interviews, 30 subject and witness interviews, and subpoenas of documents, financial records, and phone records. *Id.* at 3. The perpetrators collected absentee ballots and falsified ballot witness certifications outside the presence of the voters. *Id.* at 10, 13. The congressional election at issue was decided by margin of less than 1,000 votes. *Id.* at 4. The scheme involved the submission of well over 1,000 fraudulent absentee ballots and request forms. *Id.* at 11. The perpetrators took extensive steps to conceal the fraudulent scheme, which lasted over multiple election cycles before it was detected. *Id.* at 14.

Similarly, in 2016, a politician in the Bronx was indicted and pled guilty to 242 counts of election fraud based on an absentee ballot fraud scheme. Ben Kochman, *Bronx politician pleads guilty in absentee ballot scheme for Assembly election*, NEW YORK DAILY NEWS (Nov. 22, 2016).¹¹ Despite pleading guilty to 242 felonies involving absentee ballot fraud in an election that was decided by two votes, the defendant received no jail time and vowed to run for office again after a short disqualification period. *Id.*

¹⁰ Available at https://images.radio.com/wbt/Voter%20ID_%20Website.pdf.

¹¹ Available at <http://www.nydailynews.com/new-york/nyc-crime/bronx-pol-pleads-guilty-absentee-ballot-scheme-article-1.2884009>.

The increases in mail-in voting due to the COVID-19 pandemic likewise increased opportunities for fraud. For instance, in May 2020, the leader of the New Jersey NAACP called for an election in Paterson, New Jersey to be overturned due to widespread mail-in ballot fraud. See Jonathan Dienst et al., *NJ NAACP Leader Calls for Paterson Mail-In Vote to Be Canceled Amid Corruption Claims*, NBC NEW YORK (May 27, 2020).¹² “Invalidate the election. Let’s do it again,’ [the NAACP leader] said amid reports more that 20 percent of all ballots were disqualified, some in connection with voter fraud allegations.” *Id.*

Hundreds of other reported cases highlight the same concerns about the vulnerability of voting by mail to fraud and abuse. Recently, a Missouri court considered extensive expert testimony reviewing absentee-ballot fraud cases like these. *Findings of Fact, Conclusions of Law, and Final Judgment in Mo. State Conference of the NAACP v. State*, No. 20ACC00169-01 (Circuit Court of Cole County, Missouri Sept. 24, 2020), *aff’d*, 607 S.W.3d 728 (Mo. banc Oct. 9, 2020) (“*Mo. NAACP*”). The court held that cases of absentee-ballot fraud “have several common features that persist across multiple recent cases: (1) close elections; (2) perpetrators who are candidates, campaign workers, or political consultants, not ordinary voters; (3) common techniques of ballot harvesting; (4) common techniques of signature forging; (5) fraud that persisted across multiple elections before it was detected; (6) massive resources

¹² Available at <https://www.nbcnewyork.com/news/politics/nj-naacp-leader-calls-for-paterson-mail-in-vote-to-be-canceled-amid-fraud-claims/2435162/>.

required to investigate and prosecute the fraud; and (7) lenient criminal penalties.” *Id.* at 17. Thus, the court concluded “that fraud in voting by mail is a recurrent problem, that it is hard to detect and prosecute, that there are strong incentives and weak penalties for doing so, and that it has the capacity to affect the outcome of close elections.” *Id.* The court held that “the threat of mail-in ballot fraud is real.” *Id.* at 2.

III. The Bill of Complaint Alleges that the Defendant States Unconstitutionally Abolished Critical Safeguards Against Fraud in Voting by Mail.

The Bill of Complaint alleges that non-legislative actors in each Defendant State unconstitutionally abolished or diluted statutory safeguards against fraud enacted by their state Legislatures, in violation of the Presidential Electors Clause. U.S. CONST. art. II, § 1, cl. 4. All the unconstitutional changes to election procedures identified in the Bill of Complaint have two common features: (1) They abrogated statutory safeguards against fraud that responsible observers have long recommended for voting by mail, and (2) they did so in a way that predictably conferred partisan advantage on one candidate in the Presidential election. Such allegations are serious, and they warrant this Court’s review.

Abolishing signature verification. First, the proposed Bill of Complaint alleges that non-legislative actors in Pennsylvania, Michigan, and Georgia unilaterally abolished or weakened signature-verification requirements for mailed ballots. It alleges that Pennsylvania’s Secretary of State

abrogated Pennsylvania’s statutory signature-verification requirement for mail-in ballots in a “friendly” settlement of a lawsuit brought by activists. Bill of Complaint, ¶¶ 44-46. It alleges that Michigan’s Secretary of State permitted absentee ballot applications online, with no signature at all, in violation of Michigan statutes, *id.* ¶¶ 85-89; and that election officials in Wayne County, Michigan simply disregarded statutory signature verification requirements, *id.* ¶¶ 92-95. And it alleges that Georgia’s Secretary of State unilaterally abrogated Georgia’s statute authorizing county registrars to engage in signature verification for absentee ballots in another lawsuit settlement. *Id.* ¶¶ 66-72.

In addition to violating the Electors Clause, these actions, as alleged, contradict fundamental principles of ballot security. As noted above, the Carter-Baker Report highlighted the importance of “*signature verification*” as a critical “safeguard[] to protect ballot integrity” for ballots cast by mail. Carter-Baker Report, *supra*, at 35 (emphasis added). Without safeguards such as signature verification, the Report stated that “[v]ote by mail is ... likely to increase the risks of fraud and contested elections ... where the safeguards for ballot integrity are weaker.” *Id.* The importance of signature verification is hard to overstate, because absentee-ballot fraud schemes commonly involve “common techniques of signature forging,” typically by nefarious actors who are unfamiliar with the voter’s signature. *Mo. NAACP, supra*, at 17. Verifying the voter’s signature thus provides a fundamental safeguard against fraud.

Insecure ballot handling. The Bill of Complaint alleges that non-legislative actors changed

or abolished statutory rules for the secure handling of absentee and mail-in ballots in Pennsylvania, Michigan, and Wisconsin. It alleges that election officials in Democratic areas of Pennsylvania violated state statutes by opening and reviewing mail-in ballots that were required to be kept locked and secure until Election Day. Bill of Complaint, ¶¶ 50-51. It alleges that Michigan’s Secretary of State, acting in violation of state law, sent 7.7 million unsolicited absentee-ballot applications to Michigan voters, thus “flooding Michigan with millions of absentee ballot applications prior to the 2020 general election.” *Id.* ¶¶ 80-84. And it alleges that the Wisconsin Election Commission violated state law by placing hundreds of unmonitored boxes for the submission of absentee and mail-in ballots around the State, concentrated in heavily Democratic areas. *Id.* ¶¶ 107-114.

In addition to violating the Electors Clause, these actions, as alleged, contradict commonsense ballot-security recommendations. The Department of Justice’s Manual on *Federal Prosecution of Election Offenses* notes that vulnerability to mishandling is what makes absentee ballots “particularly susceptible to fraudulent abuse” because “they are marked and cast outside the presence of election officials and the structured environment of a polling place.” DOJ Manual, at 28-29. According to the Manual, “[o]btaining and marking absentee ballots without the active input of the voters involved” is one of “the more common ways” that election fraud “crimes are committed.” *Id.* at 28. For this reason, the Carter-Baker Commission made recommendations in favor of preventing such insecurity in the handling of ballots. For example, the Commission recommended that

“States should make sure that absentee ballots received by election officials before Election Day are kept secure until they are opened and counted.” *Id.* at 46. It also recommended that States “prohibit[] ‘third-party’ organizations, candidates, and political party activists from handling absentee ballots.” *Id.*

Inconsistent Statewide Standards. The Bill of Complaint alleges that the Defendant States provided different standards and treatment for mail-in ballots submitted in different areas of each State, and that this differential treatment uniformly provided a partisan advantage to one side in the Presidential election. It alleges that election officials in Philadelphia and Allegheny County, Pennsylvania, applied different standards to voters in those Democratic strongholds than applied to other voters in Pennsylvania, in violation of state law. Bill of Complaint, ¶¶ 52-54. Similarly, it alleges that Milwaukee, Wisconsin violated state law by authorizing election officials to “correct” disqualifying omissions on ballot envelopes by entering information that the voter should have entered with a red pen, while no similar “correction” process was granted to other voters in that State. *Id.* ¶¶ 123-127. And it alleges that Wayne County, Michigan provided differential treatment of its voters, in violation of state statutes, by simply ignoring statutorily required signature-verification requirements. *Id.* ¶¶ 92-95.

Such differential treatment, as alleged under circumstances raising concerns of partisan bias, contradicts universal recommendations for integrity and public confidence in elections. As this Court stated in *Bush v. Gore*, “[t]he idea that one group can be granted greater voting strength than another is

hostile to the one man, one vote basis of our representative government.” 531 U.S. at 107 (quoting *Moore v. Ogilvie*, 394 US 814 (1969)). The Carter-Baker Report noted that “inconsistent or incorrect application of electoral procedures may have the effect of discouraging voter participation and may, on occasion, raise questions about bias in the way elections are conducted.” Carter-Baker Report, at 49. “Such problems raise public suspicions or may provide grounds for the losing candidate to contest the result in a close election.” *Id.*

Excluding Bipartisan Observers. The Bill of Complaint alleges that certain counties in Defendant States excluded bipartisan observers from the ballot-opening and ballot-counting processes. For example, it alleges that election officials in Philadelphia and Allegheny County, Pennsylvania, violated state law by excluding Republican observers from the opening, counting, and recording of absentee ballots in those counties. Bill of Complaint, ¶ 49. And it alleges that election officials in Wayne County, Michigan violated state statutes by systematically excluding poll watchers from the counting and recording of absentee ballots. *Id.* ¶¶ 90-91.

Such actions, as alleged, raise concerns about the integrity of the vote count in those counties. As the Carter-Baker Report emphasized, States should “provide observers with meaningful opportunities to monitor the conduct of the election.” Carter-Baker Report, at 47. “To build confidence in the electoral process, it is important that elections be administered in a neutral and professional manner,” without the appearance of partisan bias.” *Id.* at 49. When observers of one political party are illegally and

systematically excluded from observing the vote count, “the appearance of partisan bias” is inevitable. *Id.* For counties in Defendant States to exclude Republican observers weakens public confidence in the electoral process and raises grave concerns about the integrity of ballot counting in those counties.

Extending the Deadline to Receive Ballots.

The Bill of Complaint alleges that a non-legislative actor in Pennsylvania—its Supreme Court—extended the statutory deadline to receive absentee and mail-in ballots without authorization from the “Legislature thereof,” and that it directed that ballots with illegible postmarks or no postmarks at all would be deemed timely if received within the extended deadline. Bill of Complaint, ¶¶ 48, 55. Again, these non-legislative changes raise concerns about election integrity in Pennsylvania. They created a post-election window of time during which nefarious actors could wait and see whether the Presidential election would be close, and whether perpetrating fraud in Pennsylvania would be worthwhile. And they enhanced the opportunities for fraud by mandating that late ballots must be counted even when they are not postmarked or have no legible postmark, and thus there is no evidence they were mailed by Election Day.

These changes created needless vulnerability to actual fraud and undermined public confidence in the election. As the Department of Justice’s Manual of *Federal Prosecution of Election Offenses* states, “the conditions most conducive to election fraud are close factional competition within an electoral jurisdiction for an elected position that matters.” DOJ Manual, at 2-3. “[E]lection fraud is most likely to occur in electoral jurisdictions where there is close factional

competition for an elected position that matters.” *Id.* at 27. That statement exactly describes the conditions in each of the Defendant States in the recent Presidential election.

CONCLUSION

The allegations in the Bill of Complaint raise important constitutional issues under the Electors Clause of Article II, § 1. They also raise serious concerns relating to election integrity and public confidence in elections. These are questions of great public importance that warrant this Court’s attention. The Court should grant the Plaintiff’s Motion for Leave to File Bill of Complaint.

December 9, 2020

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No. 22O155

In the Supreme Court of the United States

STATE OF TEXAS,
Plaintiff,

v.

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

On Motion for Leave to File Bill of Complaint

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the Brief of Missouri and 16 Other States as *Amici Curiae* in Support of Plaintiff's Motion for Leave to File Bill of Complaint in the above captioned case contains 5,166 words as determined by the word counting feature of Microsoft Word, excluding the parts of the brief that are exempted by Supreme Court Rule 33.1(d).

December 9, 2020

Respectfully submitted,

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No. 22O155

In the Supreme Court of the United States

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

On Motion for Leave to File Bill of Complaint

CERTIFICATE OF SERVICE

In accordance with Rule 29.5(b) and the Court's April 15, 2020 Order, I certify that the required copies of the Brief of Missouri and 16 Other States as *Amici Curiae* in Support of Plaintiff's Motion for Leave to File a Bill of Complaint in the above captioned case have been sent to the U.S. Supreme Court by commercial overnight delivery, and electronic copies were served by electronic mail on the following parties listed below on December 9, 2020.

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December 9, 2020

Respectfully submitted,

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From: "Sauer, John" <John.Sauer@ago.mo.gov>
Sent: 12/9/2020 5:50:50 AM -0600
To: "Murrill, Elizabeth" <MurrillE@ag.louisiana.gov>
Subject: Re: Texas v. Pennsylvania, et al. - Amicus Brief of Missouri, at al. - Joins requested by 1:00 p.m. Central Tomorrow, 12/9

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Thanks Liz!!!

Sent from my iPhone

> On Dec 8, 2020, at 8:40 PM, Murrill, Elizabeth <MurrillE@ag.louisiana.gov> wrote:

>
> Louisiana joins. Thanks for your work. Liz
>
> Liz Murrill
> Solicitor General
> State of Louisiana
> Attorney General Jeff Landry
> 225-326-6766 (direct)
> 225-456-7544 (cell)

>
>
> On Dec 8, 2020, at 6:11 PM, Sauer, John <John.Sauer@ago.mo.gov> wrote:
>

[REDACTED]

[REDACTED]