

Subject: [Records Center] Public Records Request :: R000232-031821
Date: Thursday, May 13, 2021 at 11:14:02 AM Pacific Daylight Time
From: LADOJ – Public Records Center
To: AO Records

EXTERNAL SENDER

--- Please respond above this line ---



RE: PUBLIC RECORDS REQUEST of March 18, 2021, Reference # - R000232-031821

Dear Khahilia Shaw,

In response to your public records request pursuant to La. R.S. 44:1 et seq, which our office received on March 18, 2021, the information you requested has been processed. You sought records related to the following:

**“Please see attached PDF for request.
Entails communications between
AG Landry, SG Murrill, staff, ASG St John
and other individuals
re Texas v. Pennsylvania and other terms”**

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 - R000232-031821](#)

-

Our office has withheld some documents that are privileged. The privilege used in the responsive emails to this request were the attorney work-product privilege. La. R.S. 44:4.1(C).

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: kkobach@gmail.com
Sent: 11/24/2020 9:45:30 AM -0600
To: "Landry, Jeffrey" <LandryJ@ag.louisiana.gov>
Subject: Presidential Election Suit

CAUTION: This email originated outside of Louisiana Department of Justice. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Jeff,

How have you been? I have been watching from Kansas, and I'm happy to see you have continued to fight the good fight! I left you a voicemail message yesterday, but I don't know if I have your correct cell number.

[REDACTED]

[REDACTED]

Would you have a moment to talk today?

Kris Kobach
913-638-5567

The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

PENNSYLVANIA 2020 VOTING ANALYSIS REPORT

11-16-20



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Executive Summary

This scientific analysis of the reported Pennsylvania (PA) 2020 Presidential voting results, is a non-partisan effort by unpaid citizens and volunteer experts. Our only objective is to play a small roll in helping assure that all legal PA votes are counted, *and* that only legal PA votes are counted.

Whether Donald Trump or Joseph Biden wins is not of concern in this analysis — the scientists involved with the report just want the election results to truly reflect the wishes of Pennsylvania voting citizens.

Since there are multiple reports of voting chicanery circulating the Internet, a collection of statisticians and other scientists volunteered to examine the reported PA results from a scientific statistical perspective.

We feel that the best way to do this is to start by putting ourselves in the shoes of bad actors — and then considering how they might go about changing the wishes of PA citizens, into a different result. Some of the actions they might take are:

- 1 - Keep ineligible people (e.g. deceased, moved, etc.) on the voting roles.
(This would disguise actual voter participation rates, allow fabricated votes to be submitted in their names, etc.)
- 2 - Get legislation passed that did not require in-person voter identification.
(This would make it easier for non-citizens, felons, etc. to vote.)
- 3 - Encourage a much higher percentage of voting by mail.
(This would make it much easier to manipulate, as in-person checking is a more secure way to keep track of actual registered citizens, etc.)
- 4 - Discard envelopes and other identifying materials from mail-in votes.
(This makes it very hard to check for duplications, etc.)
- 5 - Count mail-in votes without careful signature or registration verification.
(This makes mail-in an easier choice for manipulators.)
- 6 - Allow votes to count that are received after Election day.
(This can direct where mail-in votes are needed to go.)
- 7 - Stop vote counting for several hours before the final tabulations.
(This allows for an assessment of how many votes are “needed” etc.)
- 8 - Do not allow genuine oversight of voting tabulation.
(This would make it easier to lose or miscalculate actual votes.)
- 9 - Connect voting machines or precincts to the Internet.
(This makes it quite easy for third parties to access and change votes.)
- 10-Distribute manipulations over multiple counties.
(This makes the adjustments more difficult to find.)
- 11-Use multiple tactics to make manipulations.
(This also makes the changes more difficult to find.)
- 12-Make most of the manipulations in unexpected districts.
(In other words don't do as much manipulation where it's expected.)

There are undoubtedly more strategies those who are trying to control our politics would employ — but this is a representative sample. It should also be clear that many of these are difficult to find.

Frequently there is documented proof of some of these voting actions (e.g. leaving non-eligible voters on the rolls). However, these are usually dismissed with cursory responses such as: *we're doing the best that we can*, or *these deviations are not statistically significant*, or *our rolls are as accurate as other states*, or *there are some benefits for doing this (e.g. #3 & #6)*, etc.

However, studies like [this](#) and reports like [this](#) do not instill confidence that election results actually reflect the wishes of actual citizens.

So what can we do as scientists? Clearly we can't verify the legitimacy of every Pennsylvania vote submitted. On the other hand we can (from a scientific perspective and with sufficient data) provide a statistically strong assessment that reported votes in certain locations are statistically unusual. Such a determination should be treated as an indication that some type of accident or purposeful manipulation almost certainly occurred.

Such a science-based statistical analysis can not identify exactly what happened — or prove that fraud was involved. Honest mistakes, unintentional computer glitches, etc. can and do happen.

We approached this project assigning different experts to look at the Pennsylvania data from different perspectives. By-and-large the experts worked mostly independently of each other. As a result, there may be some overlaps in the analyses in the following five “chapters.”

All of the experts agreed that there were major statistical aberrations in some of the Pennsylvania results, that are extremely unlikely to occur naturally.

Using more conventional statistical analyses, we identified eleven (11) counties with abnormal results (see Chapter 2). Due to time, data and manpower limitations, for this Report we focused on the statistical analysis for the worst five (5) counties. **Our strong recommendation is that each of those five Pennsylvania counties has an audited recount.**

If the results of a carefully audited recount are that there is **no** significant change in voting results for all of these five counties (very unlikely), then the authors of this Report recommend that we write off those county deviations as an extreme statistical fluke, and that the Pennsylvania voting results be certified.

On the other hand, if the results of a carefully audited recount are that there **are** significant changes in voting results for some of these five counties, then the authors of this Report recommend that (as a minimum) that the next six (6) statistically suspicious counties also have an audited recount, prior to any certifying of the Pennsylvania voting results.

See **Summary** on the final page, for more conclusions.

— Editor, physicist John Droz, jr.

1 - Time Series Analysis of Trump and Biden Votes in Pennsylvania

[Dr. Louis Anthony Cox, jr.](#)

As shown in Figure 1, data on cumulative counts for Trump and Biden in PA over the course of three days from November 4 to November 7 started with Trump ahead by more than 0.5M (by 540,522) at 11:00 AM on November 4 (time “0” on the left side of Figure 1). By 11:29 AM on November 7 (right end of Figure 1), the Biden curve had caught up with, and slightly exceeded (by 34,202) the Trump curve, with values at that time of 3,344,528 for Biden and 3,310,326 for Trump. The Biden count curve thus starts about 18% below the Trump count curve and ends up being about 1% above it ($34202/3310326 = 0.0103$). Even without detailed analysis, it is visually clear that the final values are remarkably close. This invites the question of whether such a coincidence indicates external intervention to close the initial gap between the curves, or whether it might plausibly have occurred without external intervention.

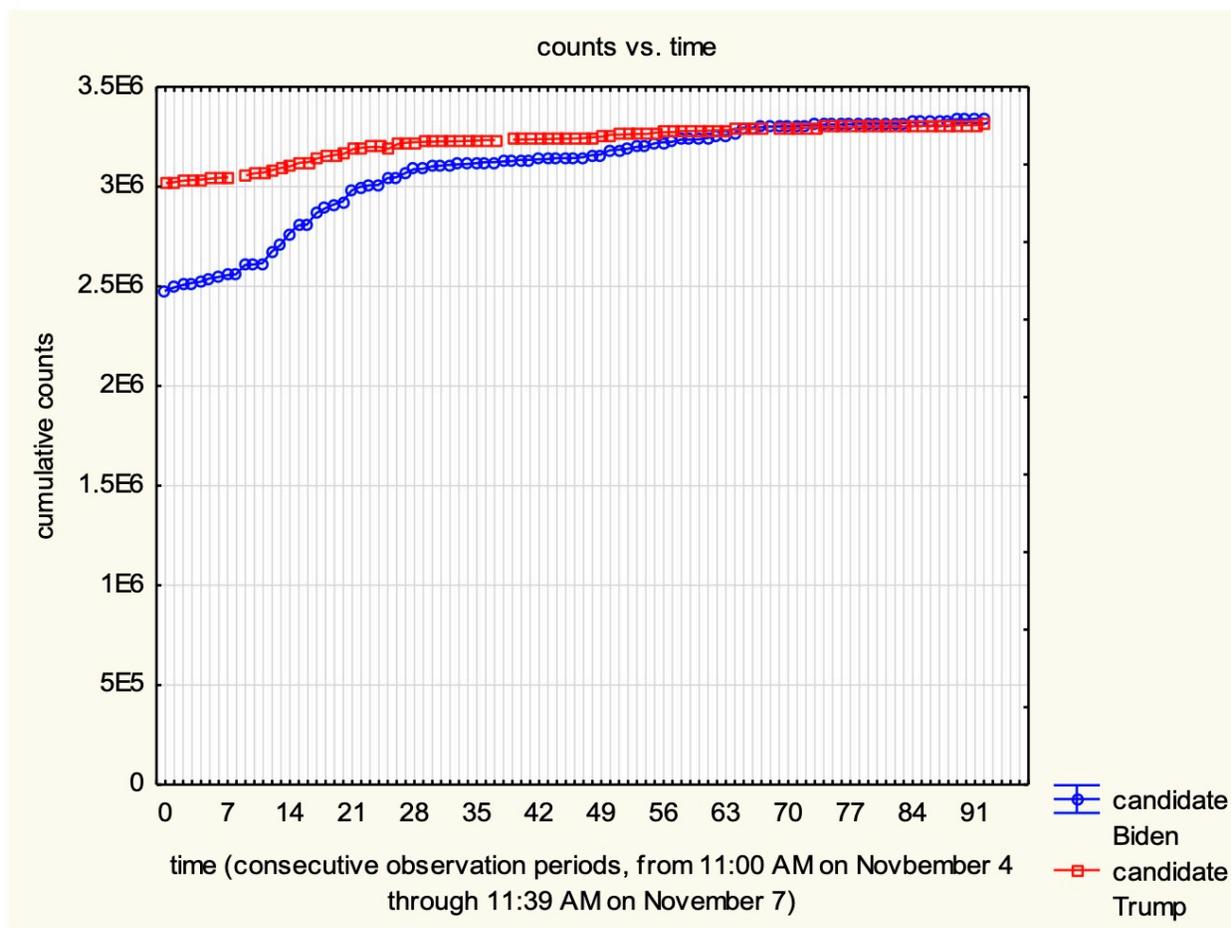


Figure 1. Time courses of Biden and Trump counts in Pennsylvania from 11:00 AM November 3 to 11:29 AM November 7, 2020

How likely it is that such a near-coincidence of final counts (with the Biden curve finishing within about 1% of the Trump curve) would occur in the absence of external interference that brings the two curves together so closely? Although history never reveals its alternatives, computational statistics can help to determine what is plausible. Figure 2 shows the approximate frequency distribution (histogram) of increments for Biden counts from period to period, with most being relatively small (left bar) but a few being an order of magnitude greater (right bar).

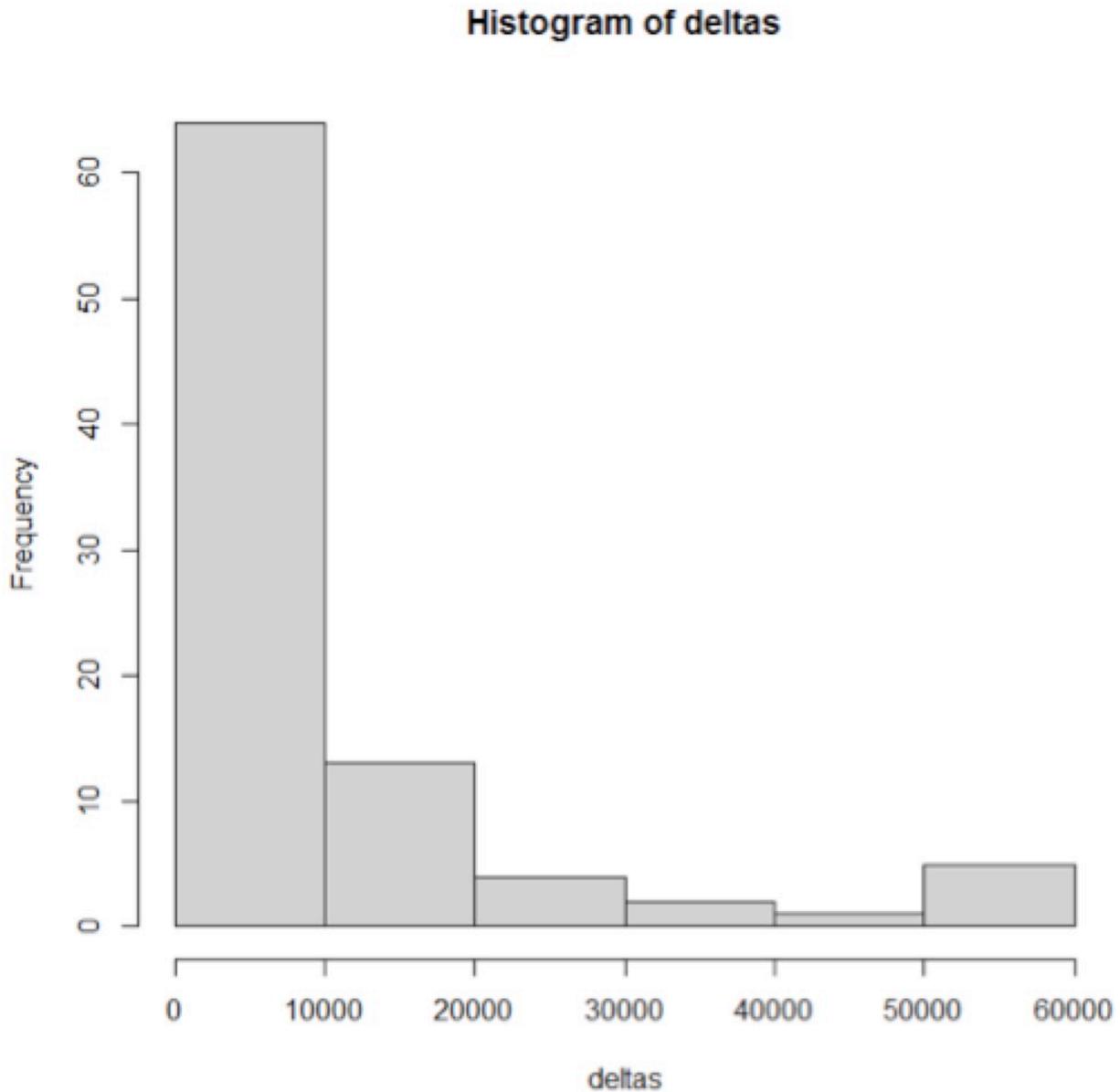


Figure 2. Histogram of deltas (increments between consecutive periods) of Biden counts

Randomly sampling from the distribution of increment sizes many times – a technique called “resampling” – and studying how much the sum of the increments varies across many random resampling scenarios provides one way to gain insight into whether the pattern seen in Figure 1 is unusual enough to indicate likely intervention. Figure 3 show the results of this statistical “bootstrapping” procedure for 10,000 randomly generated resampled (“bootstrapped”) samples from the original data.

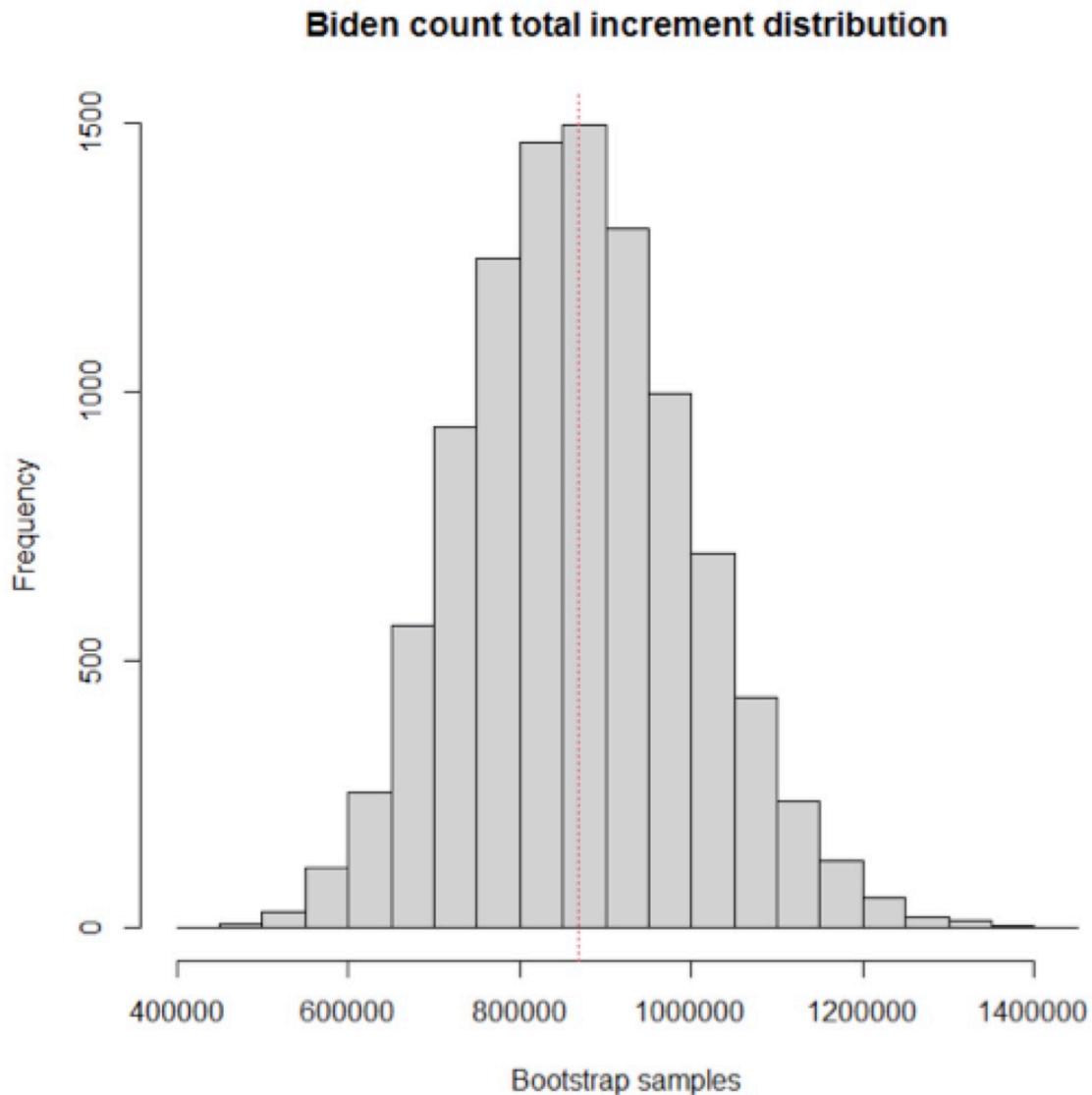


Figure 3. Resampling (using the “bootstrap” method) shows that the sum of 90 increments sampled from the frequency distribution of increments observed in the Biden count time series (see Figure 2) spans a relatively wide range (roughly 3-fold). This makes it unlikely that the time course of Biden counts would end up within 1% of a specific value (here, the Trump final count) by chance.

Figure 3 shows that the total increment in Biden counts over the three-day observation period (modeled as the sum of about 90 consecutive increments) could plausibly have fallen anywhere in a fairly wide range, from less than 600,000 to more than 1,200,000, given the frequency distribution of increment sizes reflected in Figure 2. The probability of the final value falling within about 1% (34,202) of the final Trump value by chance alone is very small.

Conclusion: These calculations deliberately ignore the time patterns in the data (see Figure 1) to focus instead on the variability in the data. Based on this variability, it is not probable that the final Biden count would end up being extremely close (within about 1%) of the final Trump count by chance alone. The two final counts would be expected to differ by more if third parties had no mechanism for tracking or adjusting the Biden counts to the Trump counts.

2 - Pennsylvania County Voting Anomalies

S. Stanley Young, PhD, FASA, FAAAS

This report looks at Pennsylvania county voting, 2008 to 2020. The data set has 67 rows, with one row for each county. The first few rows are given here.

RowID	PA Counties	Obama 2008	Obama 2012	Clinton 2016	Biden2020F
1	Adams	17633	15091	14219	17919
2	Allegheny	373153	352687	367617	415737
3	Armstrong	11138	9045	7178	8352

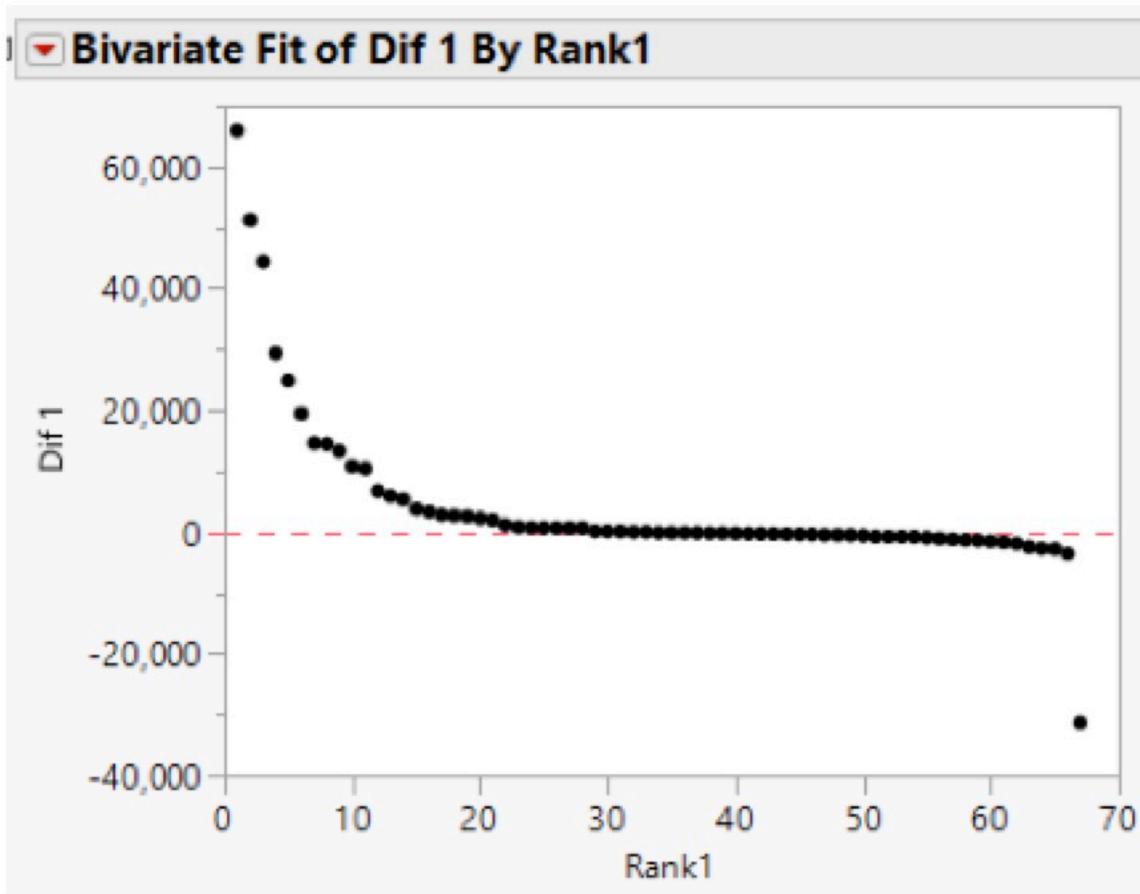
This report is in the form of text describing an item of interest with figures and tables along with discussion.

Summary:

- Philadelphia and Allegheny Counties are deviant in several respects including: they have high Democratic registration; they have a high percentage of voter turnout; the fraction voting changes dramatically from year to year; etc.
- The high vote for Biden counties are doubly unusual (i.e. are outliers) relative to previous presidential elections and relative to the remaining PA counties. Eleven such counties were identified. Together they report an excess of ~299,000 votes over expectation. The top five report about 216,000 votes over expectation. These increases in vote counts are statistically unusual, as most counties provide similar vote counts from Presidential election to Presidential election.
- Among the majority of PA counties, Biden's total was 70%± of registered Democratic voters. Among the ten anomaly counties (after elimination of Allegheny), Biden's total was 101%± of registered Democratic voters. That differential is highly suspicious.
- It makes sense to carefully evaluate the results for the 11 counties that have large increases in votes — i.e have an audited recount. Attention should focus on the top five problematic PA counties.

Item 1 —

Given in the figure on the next page are the change in voting for Biden 2020 relative to the average of three previous presidential elections (I'm calling that Dif1). The differences are ranked and plotted against the size of this difference. The largest increase is on the left and the largest decrease is on the right.



On the righthand side of the figure we see there are some counties where Biden did not do as well as the average. (The rightmost data point is Philadelphia which is a special case and will be covered elsewhere.) Toward the center of the figure we see that there was essentially no change from Biden to the average. It is common for people and counties to vote rather consistently from year to year. At the left side of the figure we see a slight rise, Rank 12 to Rank 22±, which is sort of a mirror image to the far right. The points from Rank 12 to Rank 66 are expected given the nature of voting – i.e. most people vote like they did last time.

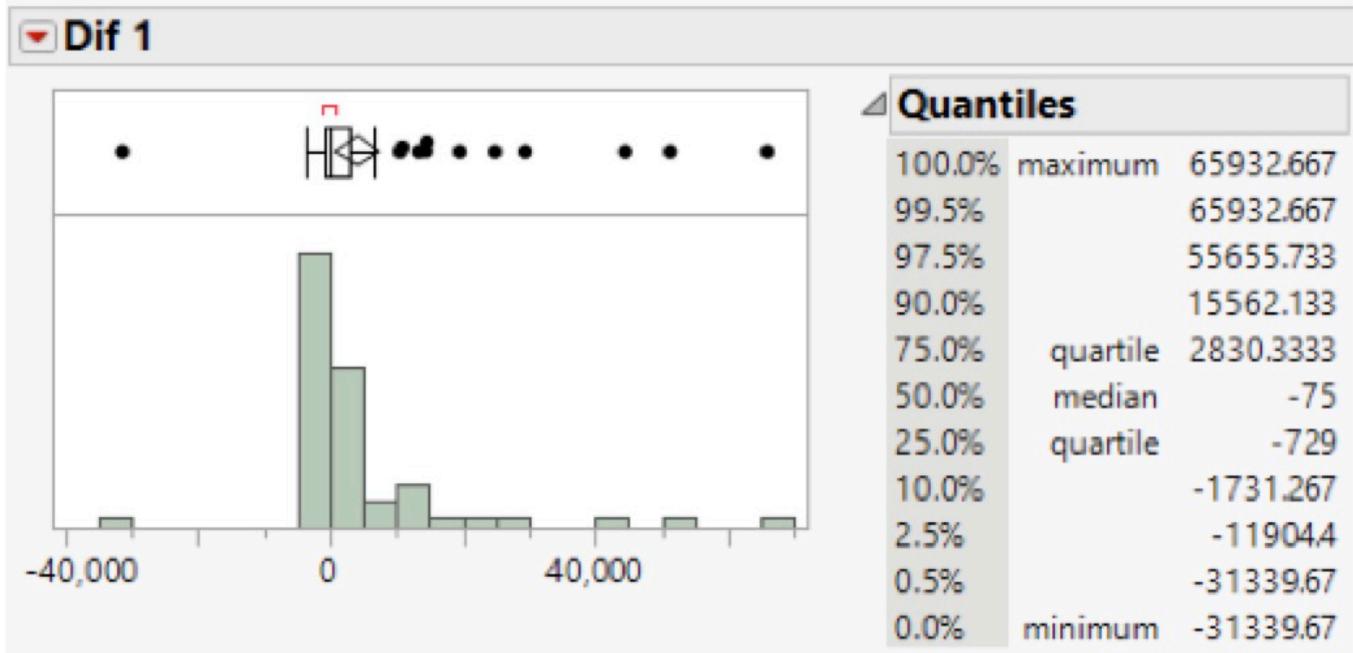
The high values of vote counts, Ranks 1-11, on the left of the figure are substantially anomalous relative to the rest of the data. In the statistical literature they are called outliers – lying away from the body of the data. In these counties Biden did exceptionally well, while in majority of PA counties Biden did as expected (i.e. like previous elections). In some counties the Biden count is actually *lower* than previous Democratic presidential candidates. For 11 PA counties (the left most dots on the graph above, there are much larger increases in votes for Biden than are statistically expected.

Item 2 —

From the data in Item 1, the next page shows a list of the 11 outlier counties, where Montgomery County exhibits the most extreme statistical deviations.

Item 4 —

We now look at the histogram for all the counties, including Philadelphia. (Philadelphia turned in 31,000± votes less than in the average of the prior three presidential elections.)

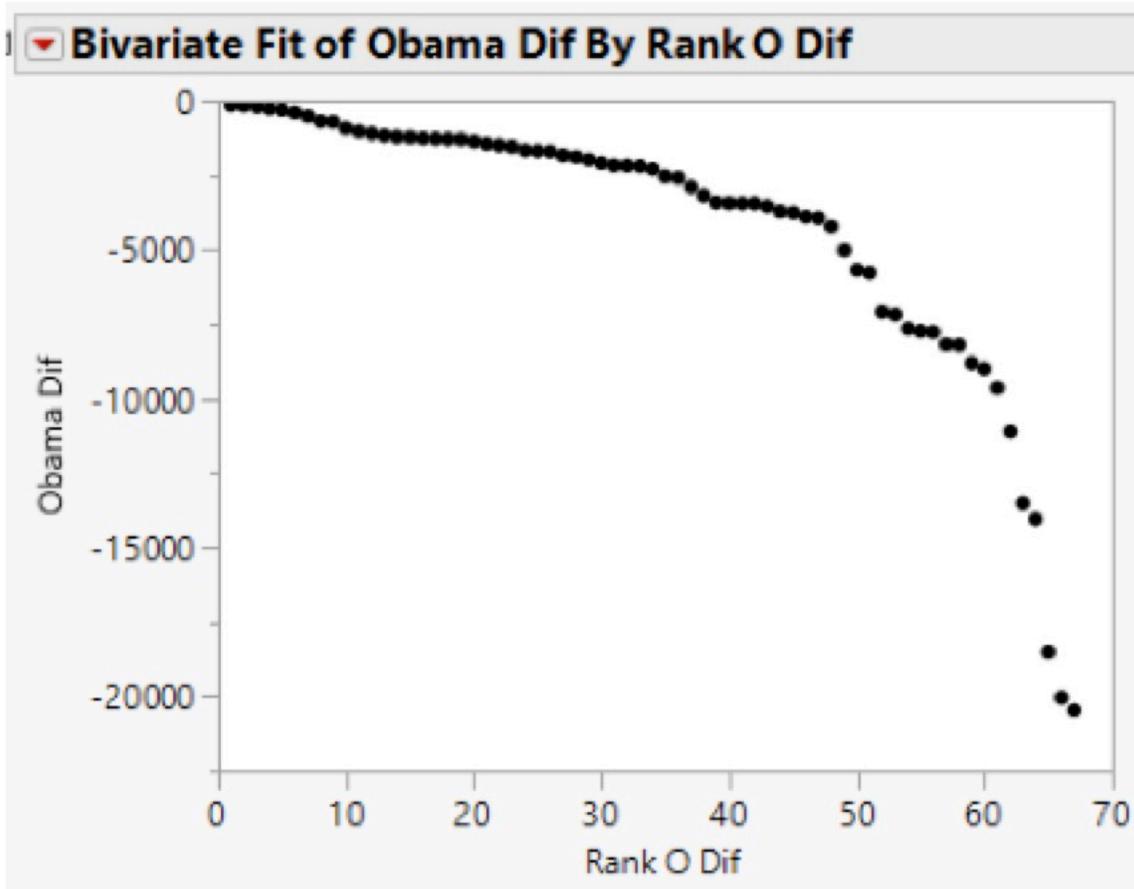


In the center of the figure, from -5,000 to about 6,000 we see bars that resemble a normal distribution; See Item 3. The values above 10,000 appear to be outliers. An outlier is an unusual number relative to other numbers in the collection. It is unusual to see a gain of 10,000 votes or more; reexamine Item 1.

Item 5 —

The changes in vote counts from Obama 2008 to Obama 2012 were mostly negative, give here as Obama Dif and is plotted against their ranks (next page). The votes for Obama were high in 2008. Most counties provided fewer votes in 2012, the down sloping set of points. At the end of this down-sloping drift, there are dramatic falls in vote counts, outliers of votes lost.

RowID	PA Counties	Obama 2008	Obama 2012	Obama Dif	Rank O Dif
6	Berks	97047	83011	-14036	64
9	Bucks	179031	160521	-18510	65
46	Montgomery	253393	233356	-20037	66
2	Allegheny	373153	352687	-20466	67



It is curious that many of the same counties, e.g. Montgomery and Allegheny, come up having large declines with Obama 2012, but having large increases with Biden 2020. These wild swings are extremely unusual as most counties, where voters vote similarly over time.

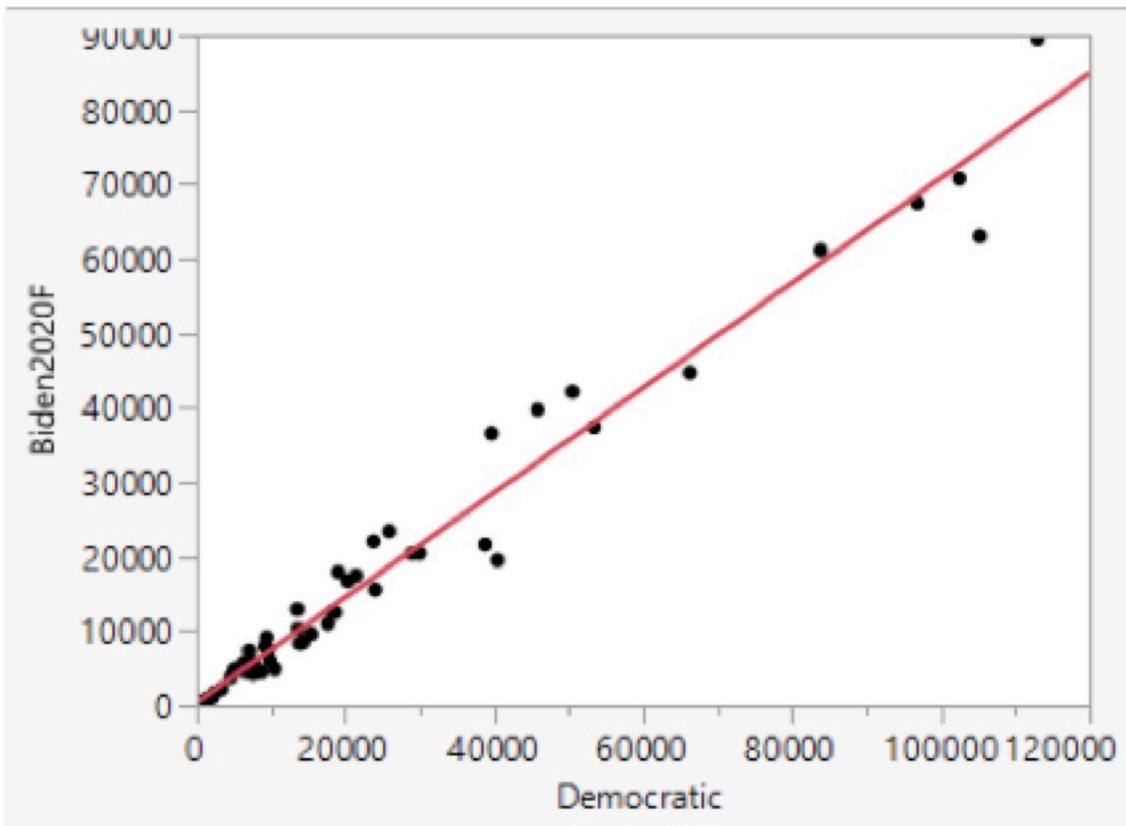
Item 6 —

We seek to estimate the fraction of registered Democratic voters that voted. We want an unbiased estimate, so the 11 outlier counties and Philadelphia were removed from the analysis. 55 PA counties were used for simple linear regression.

The data are fit well with a simple line (see next page)

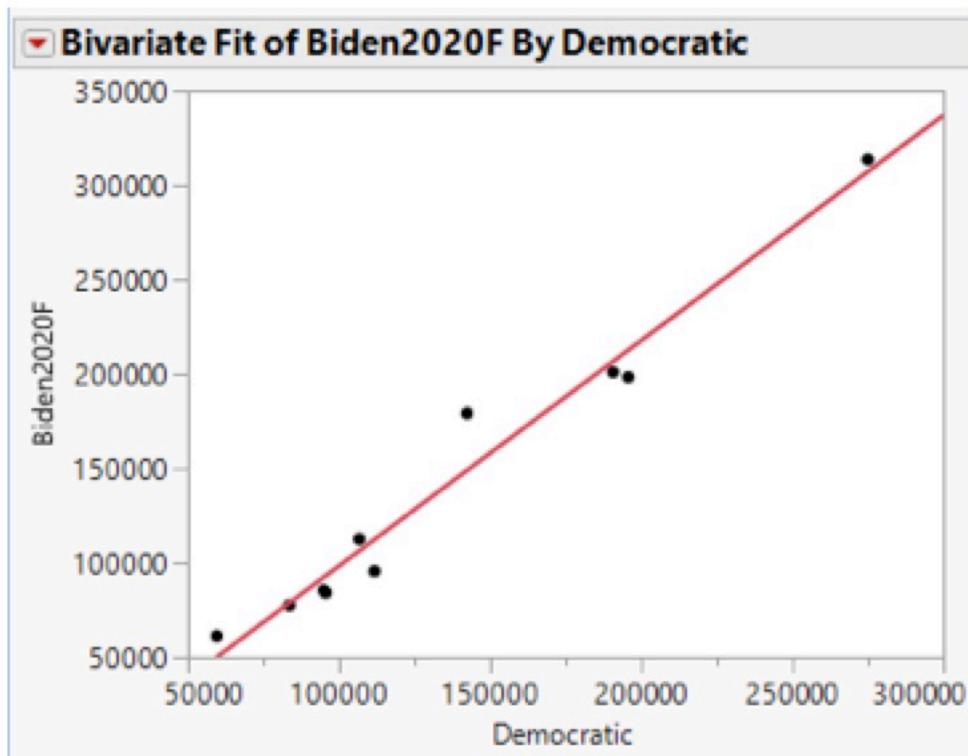
$$\text{Biden2020} = 439.8738 + 0.7036542 * \text{Democratic}$$

This means that we expect 70%± of registered Democratic voters to vote in normal (the majority of) Pennsylvania counties.



Item 7 —

We seek to estimate the fraction of registered Democratic voters that voted among the outlier counties. We want an unbiased estimate, so we removed Allegheny and Philadelphia counties as they are rather unique. Ten counties were used for simple linear regression.



The data are fit well with a simple line (see prior page).

$$\text{Biden2020} = -21215.45 + 1.1943149 * \text{Democratic}$$

This means that the number of Biden votes in ten of the outlier counties was **101%±** of registered Democratic voters (vs the majority of other PA counties where it was **70%±** — an extraordinary statistical difference). That is not logical or reasonably explainable legally. The most likely explanation is that excess votes were added to the Biden total that did not come from voters.

Item 8 —

Our goal here is to estimate the expected relationship of Biden votes to the number of registered Democrats. There are non-problematic counties (55) and there are problematic counties (11 – 1 = 10). Note that Philadelphia and Allegheny counties are omitted. We also want to know the number of actual Biden votes per registered Democrat, separately for non-problematic and problematic counties. We use two methods of simple linear regression. More standard is the *Intercept Model* linear regression. In this method a line is placed through the data without constraint, the line can move and twist. Less standard is the *No Intercept* method. In this method the line is constrained to go through zero on the Y and X axes. Either method can make sense, so we present both. We focus on the slope of each of the four models, Intercept/No intercept, Non-problematic/Problematic. The slope indicates the number of Biden votes expected per registered **Democrat** voter. Here are the four slopes.

	N	55	10
		Non-Problematic	Problematic
Intercept Model		0.7037	1.1943
No Intercept Model		0.7114	1.0654

First consider the 55 non-problematic counties. These are the counties where we did not find evidence of voting problems. The slopes for the two models are quite similar and indicate that **for every 100 increase of registered Democrat voters, there should be a 70± vote increase for Democrats.**

Both slopes for problematic counties are much larger and rather different from each other. That both are over 1.0 indicates that for every 100 registered Democrat voters there are more than 100 Democrat votes, which is quite improbable. The Intercept Model is **not** constrained to pass through 0,0 so it has more freedom to fit the data. Its slope is greater and indicates 119 Democrat votes are occurring for each 100 registered Democrats, again improbable.

The No Intercept Model is constrained to pass through the 0,0 point. With either model, the problematic counties give an improbable result, more Biden votes than there are *registered* (not voting) Democrat voters.

Next, we compute the actual number of Biden votes per registered voter.

	Non-Problematic	Problematic
Actual votes per Reg Dem	72.8531	101.0012

We see that in non-problematic counties that an average of about 72 votes are obtained for each 100 registered voters, which comports with usual voter history. For problematic counties we get an average of 101 voters per 100 voters, which is quite unusual. It is instructive to see the actual data.

RowID	PA Counties	Biden2020F	Democratic	%Democrat
46	Montgomery	313543	274955	114.0
2	Allegheny	415737	555649	74.8
15	Chester	179065	142423	125.7
9	Bucks	198251	195772	101.3
23	Delaware	200911	190702	105.4
36	Lancaster	112536	106762	105.4
21	Cumberland	61168	59656	102.5
48	Northampt...	84145	95710	87.9
39	Lehigh	95539	111803	85.5
22	Dauphin	77387	83635	92.5
67	York	85323	95027	89.8

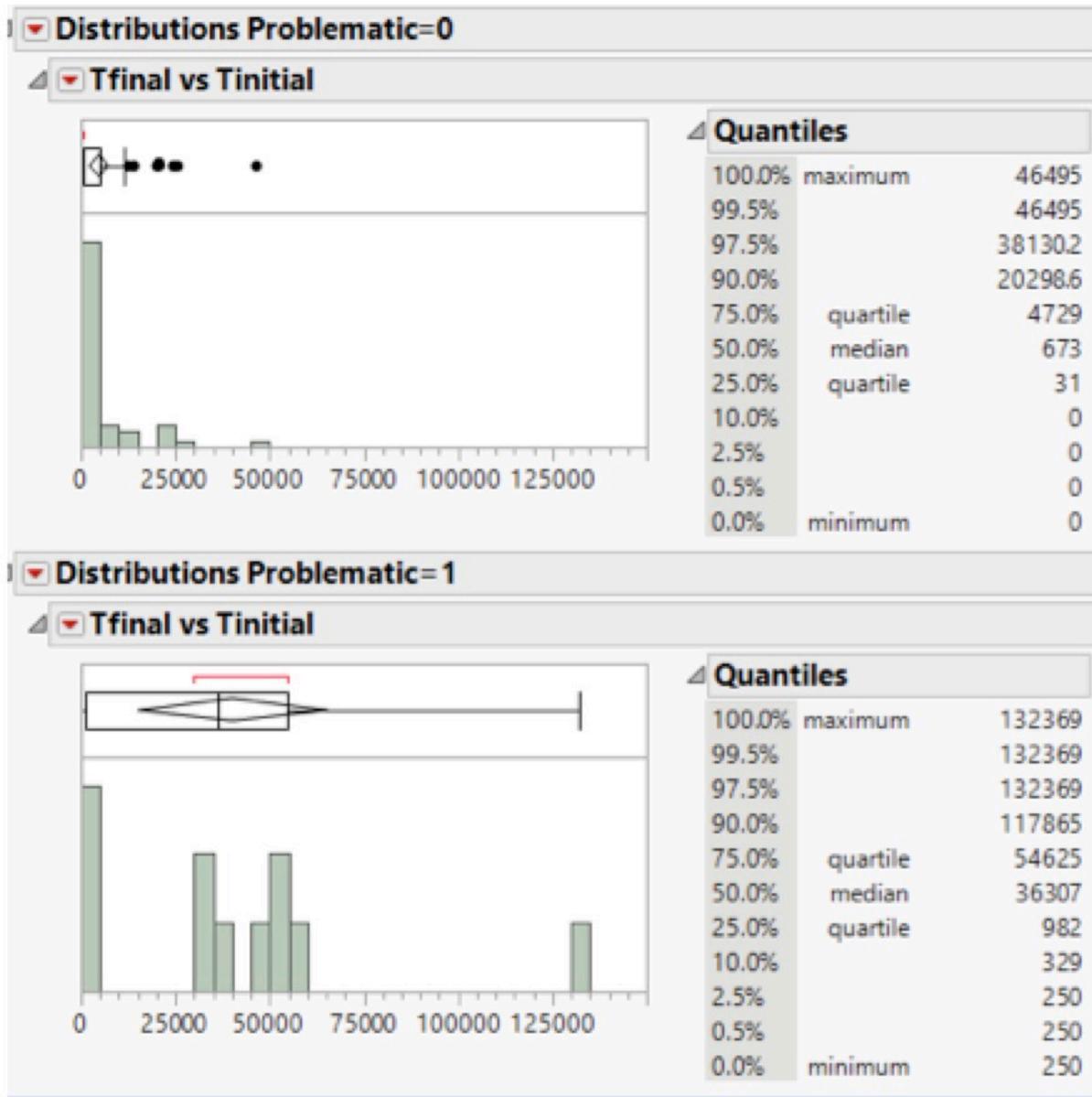
Item 9 —

Vote counts were secured for Wed, Nov 4 and also the final counts. The difference between these counts is the number of mail-in votes. Here we examine the distribution of those votes between problematic and non-problematic PA counties. **Many** more votes were added to the problematic counties compared to the non-problematic counties. As we often do, Philadelphia was not included in the following analysis.

Non-problematic counties (0) added a median of 673 votes per county.

Problematic counties (1) added a median of 36,307 votes per county.

The number of mail-in votes in non-problematic counties can serve as a proxy for “voting/ business as usual”. The mail-in vote for problematic counties can be taken as another aspect of the problematic nature of these counties



3 - A Testable Hypothesis of Fraud using a Predictive Model in the Pennsylvania 2020 Presidential Vote for Montgomery County

(Condensed Version)

Dr. Samuel Culper III, Dr. Nathan Hale, Dr. Abraham Woodhull

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Executive Summary

Analysis – Statistical analysis from a coordinated team of (masked for this report) experts in the field applied classical statistical methods show irregularities in not one, but many major counties in the Pennsylvania 2020 Presidential Election. The analysis couples with extremely large turnouts in excess of 80%, which significantly exceeds similar democrat cities which average around 64%, Philadelphia included. This turnout is also in excess of the same counties’ turnout in the 2008 Obama election. These facts suggest a mathematically extraordinary event occurring in multiple counties simultaneously at a magnitude well above what is needed to change which candidate won Pennsylvania's electoral votes.

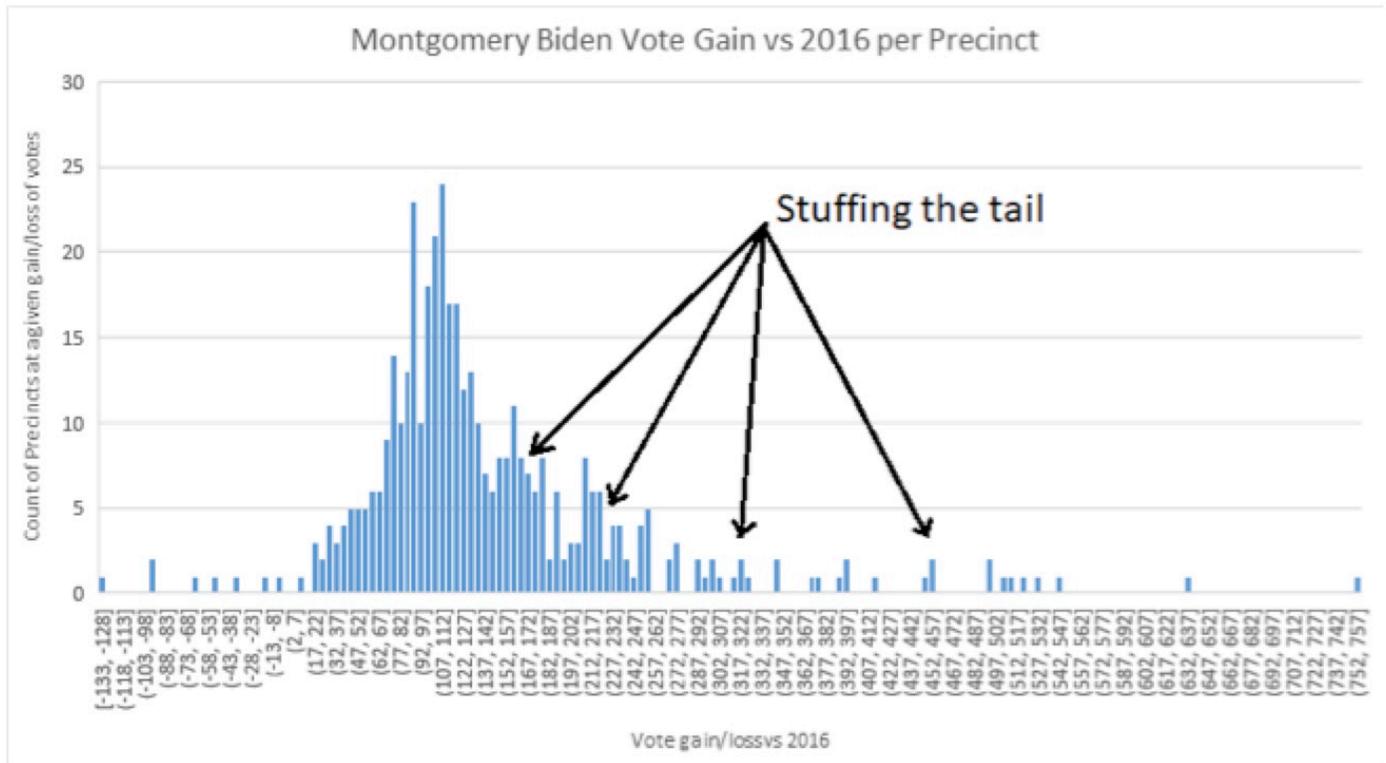
Hypothesis – A predictive model hypothesizes up to 27,000+ votes fraudulent in Montgomery County alone, with the model able to expand to other counties with more time. Biden’s votes alone are being inflated. The hypothesis suggests a singular or small set of actors in a position to intercept and modify all precincts data applied a “stuffing the tail” vote fraud scheme to increase Biden’s votes in democrat heavy districts that would be undetected by the workers at the precincts but exceedingly trivial to detect mathematically.

Testable Proof – Search for forensic voter irregularities in a small selection of unrelated districts in Montgomery County from the list of specific predictions. Not all counties are predicted to have been defrauded. After an audit of the district, the hypothesis should be tested by calculating a quantitative sum of voting irregularities and compared against the prediction value. If the quantitative comparison matches or is reasonably close to the prediction of that district, and proven additionally true across the other unrelated precincts, then the hypothesis is proven true with statistical confidence that voter fraud has occurred at scale.

A more detailed version of this report on the analysis, explanation, and prediction model are available as needed.

Mathematical Evidence of Fraudulent Activity

The Biden vote change over Hillary Clinton’s vote in 2016 in Montgomery County, PA shows a mathematically fraudulent result that is adding votes unnaturally to the tail of the distribution. High turnout or massive changes in voter preferences cannot statistically create this result in any reasonable probability. The signature is mathematical evidence of a classical form of fraud called “stuffing the curve”. The 2008 sub-prime mortgage risk management meltdown is a recent example of this kind of fraud.



Specifically, an actor is adding Biden votes in heavy Democratic districts in excess of the real result with the assumption the addition will not be noticed due to the already high Dem/Rep ratio.

The “stuffing the tail” effect is seen in the following average vote gain over 2016 per precinct.

Curve MEAN	
<i>Trump</i>	50.45
<i>Biden</i>	143.30
<i>Diff</i>	92.85
<i>2020 Dem/Rep Ratio</i>	2.84
<i>%</i>	74D/26R
<i>2016 D/R Ratio</i>	1.57
<i>%</i>	58D/37R

This gain in votes for both Democrat and Republicans is not only representative of increased turnout without any losses to their 2016 take, but an astonishing 16-point increase in the take of new votes favoring Biden, requiring not only a matched turnout of supporters to keep pace with Trump turnout at a higher required multiple, but anomalous amounts of additional new turnout on top. In a large set of precincts the gains by Biden alone exceed 100% of the precinct's new registrations.

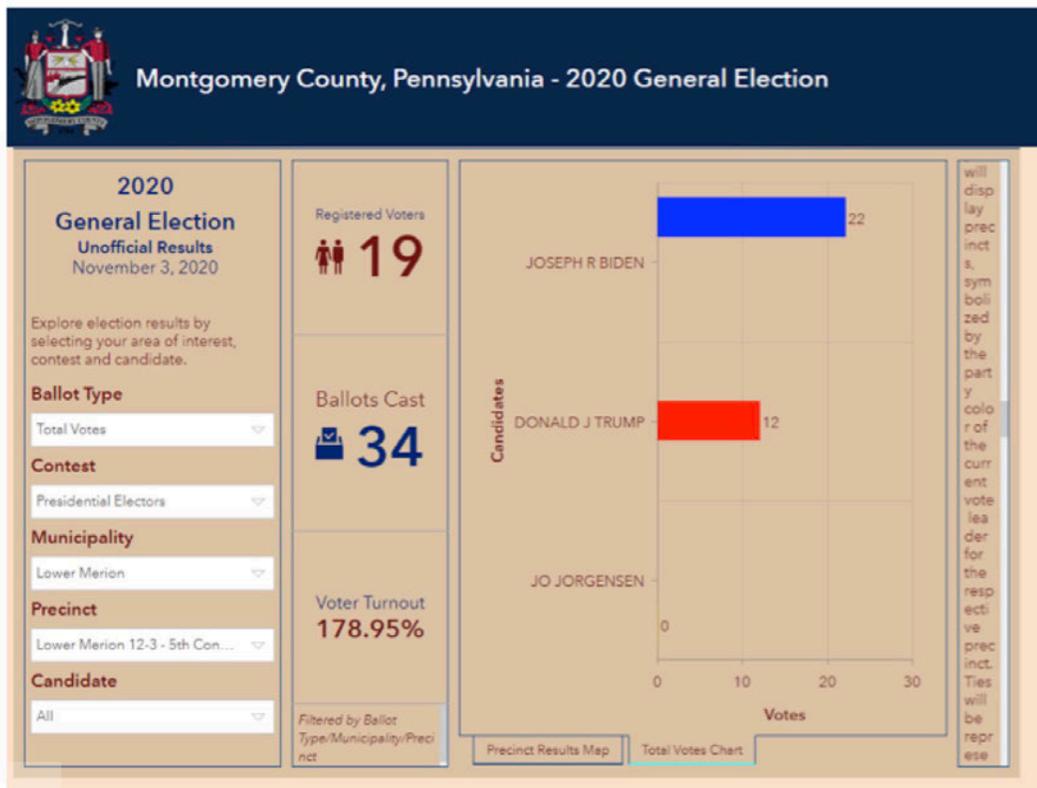
A simple mathematical model hypothesizing voter fraud at a en masse level is constructed to remove the presumed fraudulent additions and identifies down to the precinct level the expected amount of voter irregularities to be found. The hypothesis may be proven or disproven by multiple tests at unrelated precincts and comparing against forensic evidence.

Start here – Lower Merion 12-3

The following screenshots are taken 2:40 AM 11/14/2020 on the Montgomery County results website. The model currently predicts the following amount of fraud in this district:

Actual datapoint		
Predicted Total		
Municipal	District	Fraud Count
Lower Merion	12,3	11

The next screenshot shows this sub district violating by at least 15 votes with the gross, simple prediction provided.



Therefore, one point has already been verified, and this precinct should be examined to explain the obvious “database error” (a.k.a. “fraud” that was too small to be noticed).

The Montgomery Fraud Prediction List Per Precinct

The predicted fraudulent districts at a ratio according to 2016 Dem/Rep distributions, using Trump’s vote as the constant for turnout. Only the top few are listed here, and the full list is available on request. The net predicted set of fraudulent votes that may be tested in Montgomery County is roughly 27,000 votes for Biden alone.

Sorted Prediction			
Municipal	District		Predicted Fraud Count
Trappe Boro		1	353
Upper Providence	Oaks		325
Upper Pottsgrove		1	309
West Norriton	3,1		305
Upper Providence	M-C		281
Upper Providence	Trappe Boro		271
Perkiomen	1,6		268
Skippack		3	267
Lower Providence	3,3		266
Upper Providence	Mingo 2		263
Perkiomen		2	262
Skippack		2	262
Limerick		1	259

4 - A Testable Hypothesis of Fraud using a Predictive Model in the Pennsylvania 2020 Presidential Vote for Allegheny County

(Condensed Version)

Dr. Samuel Culper III, Dr. Nathan Hale, Dr. Abraham Woodhull

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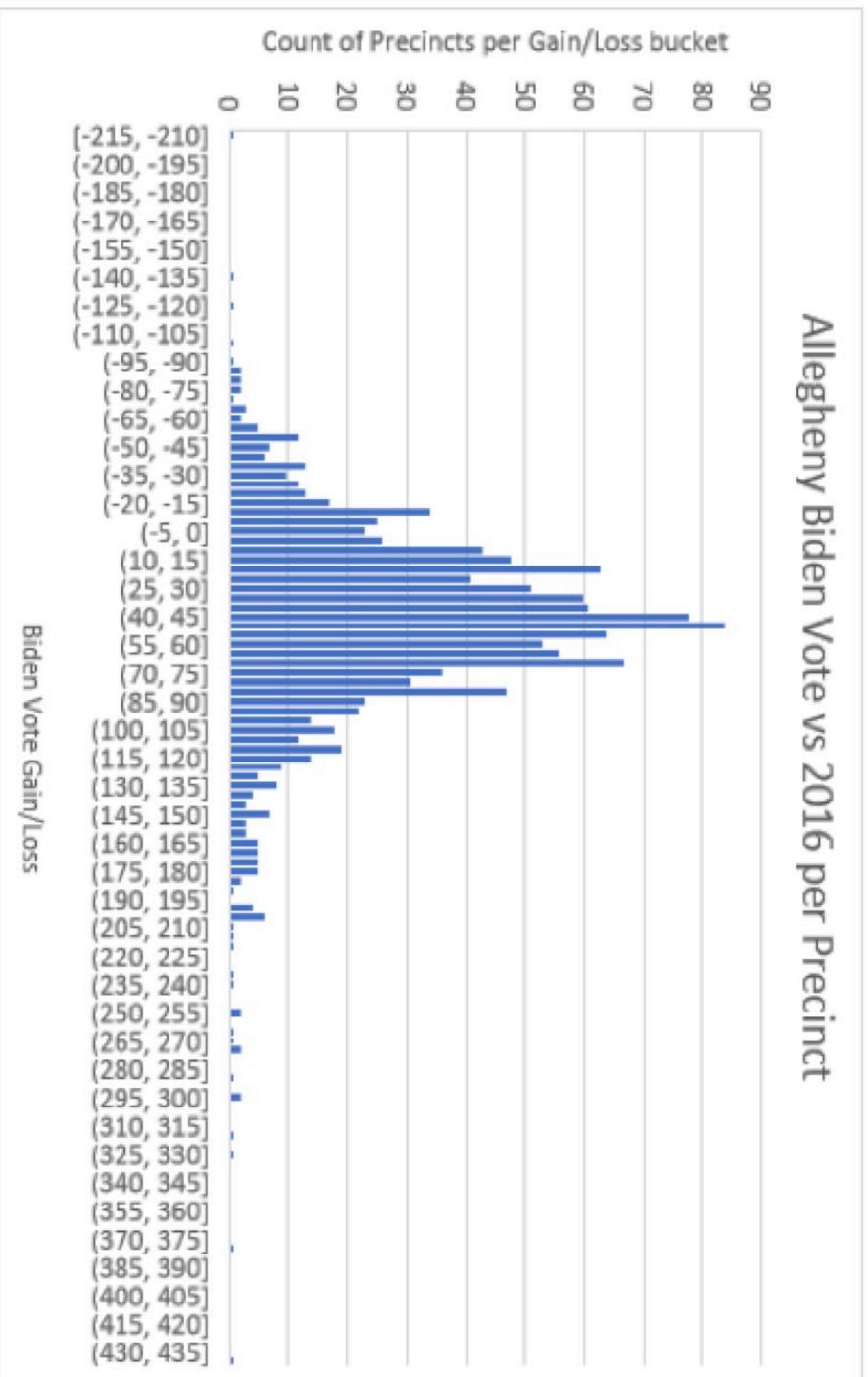
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Testable Proof – Search for forensic voter irregularities in a small selection of unrelated districts in Montgomery County from the list of specific predictions. Not all counties are predicted to have been defrauded. After an audit of the district, the hypothesis should be tested by calculating a quantitative sum of voting irregularities and compared against the prediction value. If the quantitative comparison is reasonably close to the prediction of that district, and proven additionally true across the other unrelated precincts, then the hypothesis is proven true with statistical confidence that voter fraud has occurred at scale.

For details on methods and descriptions, see the full version of the Montgomery County, PA vote prediction report. This report simply details the fraud specific to Allegheny County and where to look.

Mathematical Evidence of Fraudulent Activity

Allegheny County shows a slightly different fraudulent signature than Montgomery County. To see it clearly, we had to take out the outliers and see the proper shape of the distributions:



Initial analysis was a bit of a surprise, as instead of a “stuffing the tail” attack (as in Montgomery), this was a “stuffing the everything...?” kind of behavior. With all precincts game for adding Biden counts, the visualization above suggests it is not a straight multiplier (like Milwaukee: see Milwaukee vote fraud prediction report), and it must be additive.

After filtering out the bad tails and sorting by predicted precinct to again, a target of 2016 Dem/Rep ratios with Trump votes as the control for turnout matching, the answer for the temptation to “stuff the gaussian” was to cover for significant LOSSES in each precinct. In particular the greatest seeming outliers of the fraud prediction are those with almost 50/50 splits Dem/Rep, or slight advantage Republican.

Additionally, Pittsburgh seems to have resulted in some losses for Biden, so selective other districts seemed to plug the hole so as to appear not LOSE to votes locally from 2016.

Ratio target was as such for public data and correction ratio for the prediction. Additionally, as in the other predictors, the extreme MEAN difference of each curve above and beyond the 2016 total gave us a rough starting point on what to correct.

The county in 2016 had roughly a 59/41 (D/R) ratio, but the 2020 election was adding votes above the 2016 total at a ratio of 73/27 (D/R), indicative of the fraud and easy to identify at the precinct level base on each precinct's voter distribution history.

Total prediction hypothesizes that the 2020 election results, which look like this

	2020 Register	Voted	Biden	Trump	D/R
	942851	722145	428876	282170	1.52
<i>turnout</i>	76.59%	share	59.39%	39.07%	

Are instead supposed to look like this:

Total Predicted 2020	Register	Voted	Biden	Trump	D/R	Fraud
	942851	681522	399341	282170	1.42	30518
<i>turnout</i>	72.28%	share	58.60%	41.40%		

which seems to still have a few uncorrected stuffings, but is much closer to the voter behavior differentials as seen in the Trump gaussian control.

The Allegheny Fraud Prediction List Per Precinct

Top cases listed. For full list, see the full Allegheny Fraud Prediction report. 692 / 1321 Precincts are predicted to have fraudulent votes:

Predicted Total

Precinct	Likely Fraud	D/R
MCCANDLESS WARD 6 DIST 3	263	0.97
PINE DIST 5	218	0.72
ROSS WARD 4 DIST 2	207	0.77
OHIO DIST 3	202	1.03
PINE DIST 2	188	0.59
OHIO DIST 2	177	0.75
FRANKLIN PK WARD 2 DIST 3	176	0.94
BETHEL PARK WARD 3 DIST 2	175	0.70
ROBINSON DIST 9	163	0.82
BETHEL PARK WARD 5 DIST 3	163	0.95
N FAYETTE DIST 2	155	0.81
PINE DIST 4	152	0.69

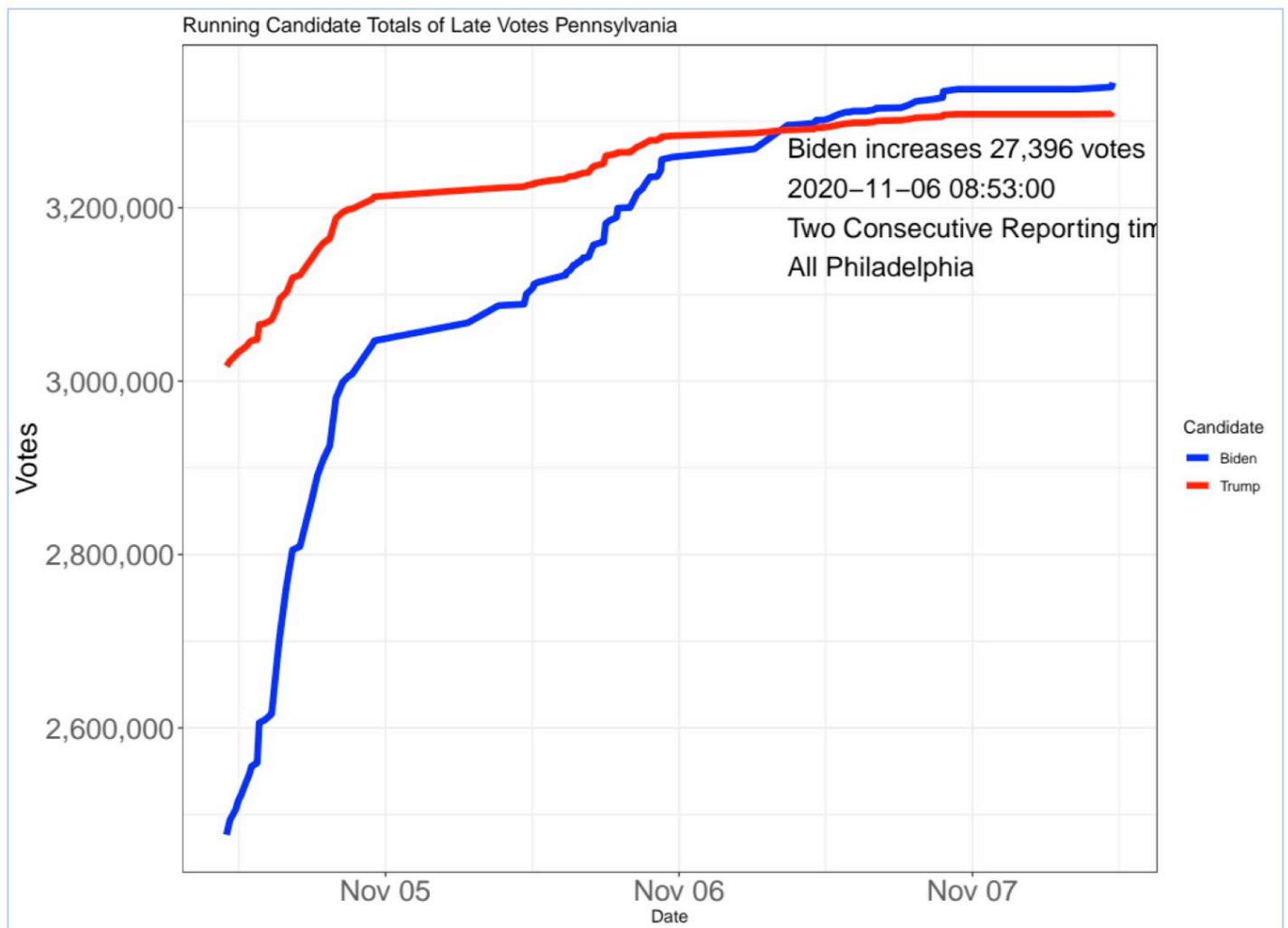
5 - Potential Voter Fraud in Pennsylvania

[Dr. William M. Briggs](#)

I used data provided to me of the hour-by-hour vote totals for both Biden and Trump beginning the day after the election. All analyses were conducted in R (version 3.6.1).

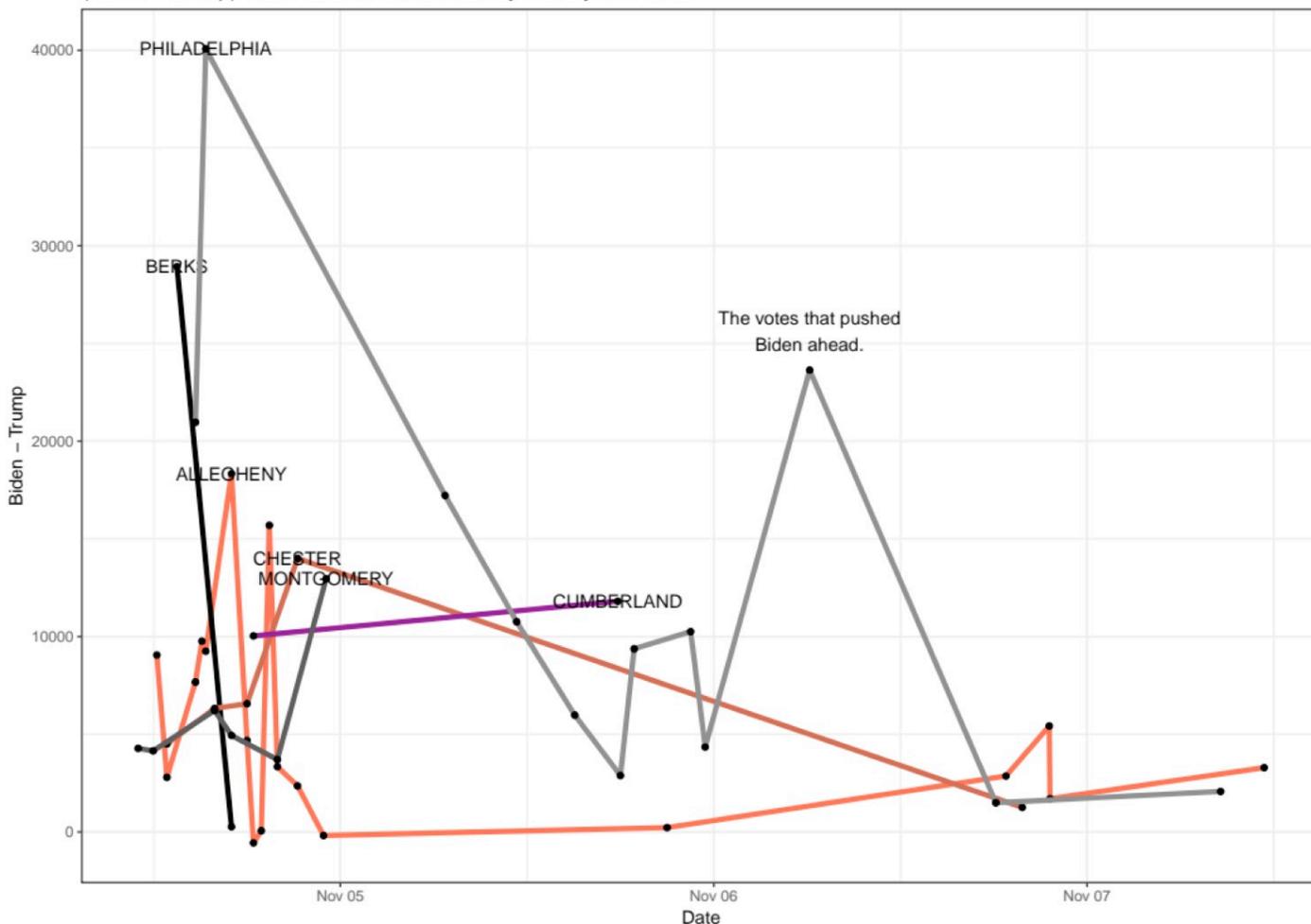
The following plots the cumulative total for both candidates beginning after election night.

VOTE TOTALS



Trump starts well ahead, but due to enormous increases at specific time points (demonstrated next), Biden catches up rapidly. Obviously, those adding the votes in time do not know what the eventual total will be. This is what makes the late addition on the 6th suspicious. Biden's total was augmented by just over 27 thousand votes, which was just enough to put him ahead. The time was also near where the vote count was nearing its end.

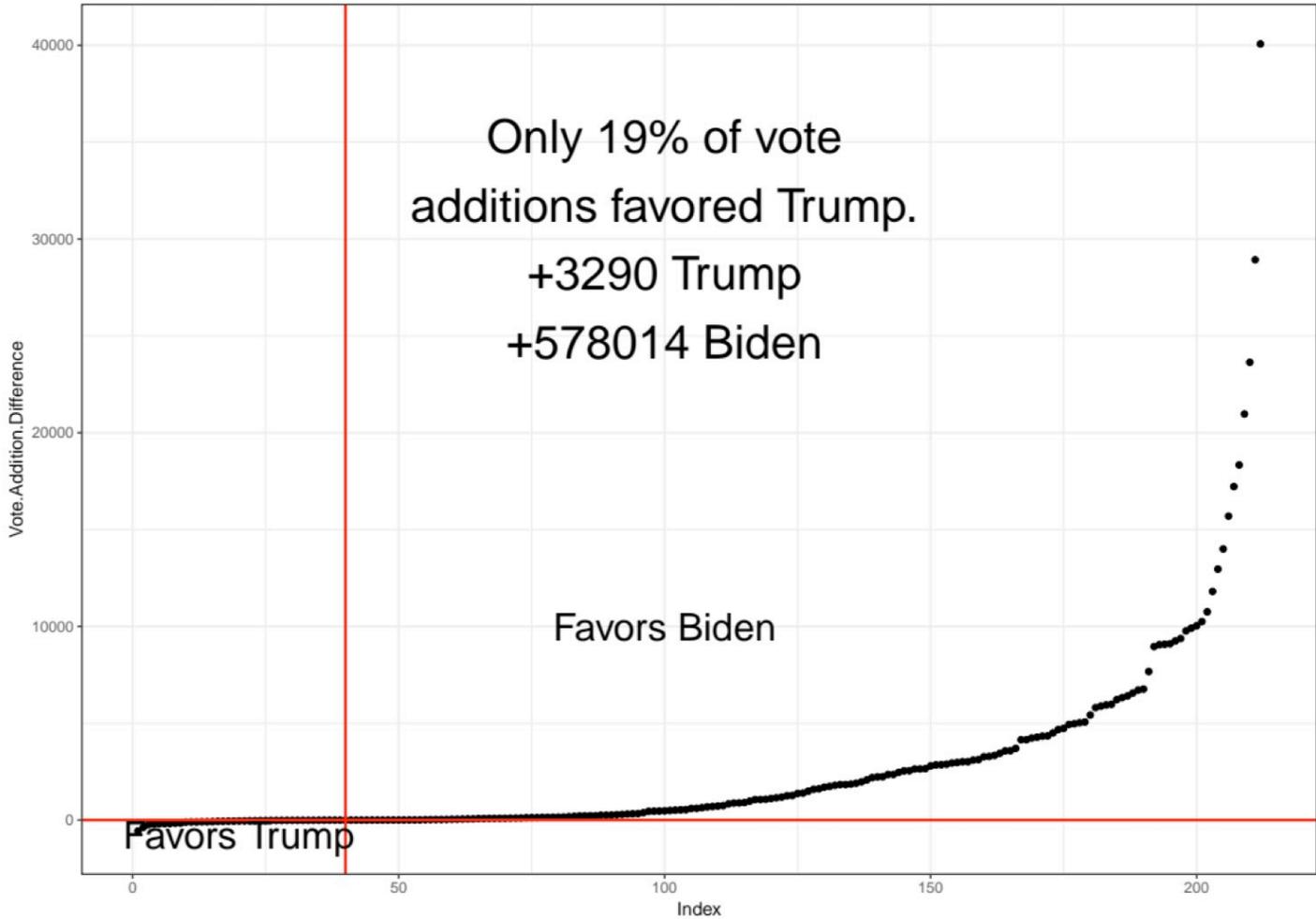
(Biden – Trump) Vote Addition Differences By County and Time



Pictured here are (Biden – Trump) vote differences in time for several counties (all with major additions to the counts). County names appear at the maximum of the difference. Berks, Philadelphia, Chester, Montgomery, Cumberland and Allegheny counties all give early advantage to Biden. But it was Philadelphia county that pushed Biden ahead. No other vote additions after this time were important or came close to changing the lead for Biden. The size of the difference at the late time bears investigation.

Most of the vote changes after election night favored Biden, which is odd. Here is a picture of these sorted from low to high (Biden – Trump) non-zero vote changes.

(Biden – Trump) Vote Addition Differences Across All PA Counties (Sorted)

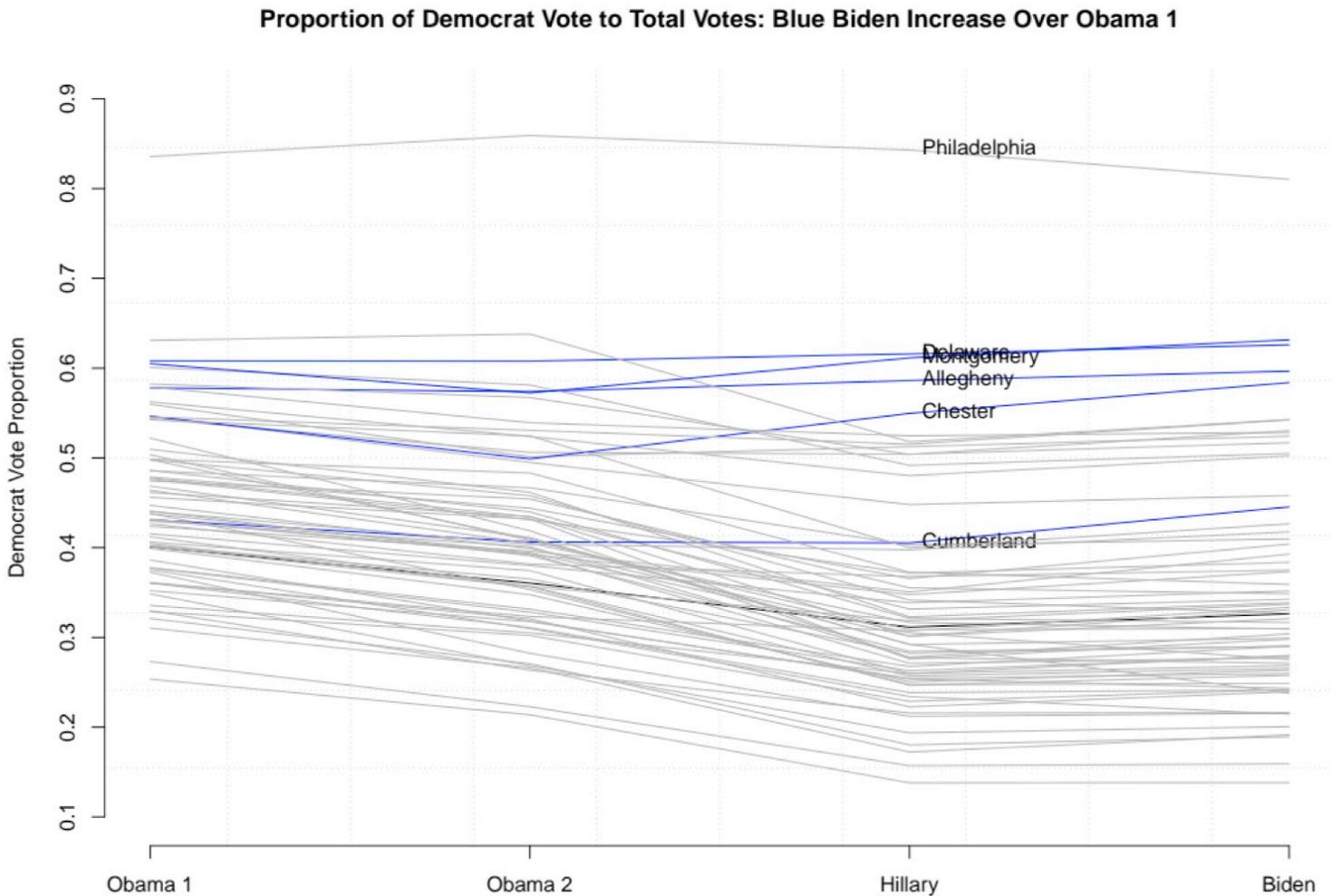


Only 19% of the times when new votes were tallied favored Trump, and for only an advantage of 3,290 votes. 81% of the changes favored Biden, for an advantage of over 550,000 votes. There is also a visible difference in distribution of these additions, centering (as the picture above shows) mainly on Philadelphia county.

This next plot (next page) makes this more apparent. It shows all additions for both candidates, sorted from the counties which added the most votes to the least. Blue dots are votes for Biden, red for Trump. Several counties are highlighted that show curious large additions for Biden.

CURIOUS COUNTIES

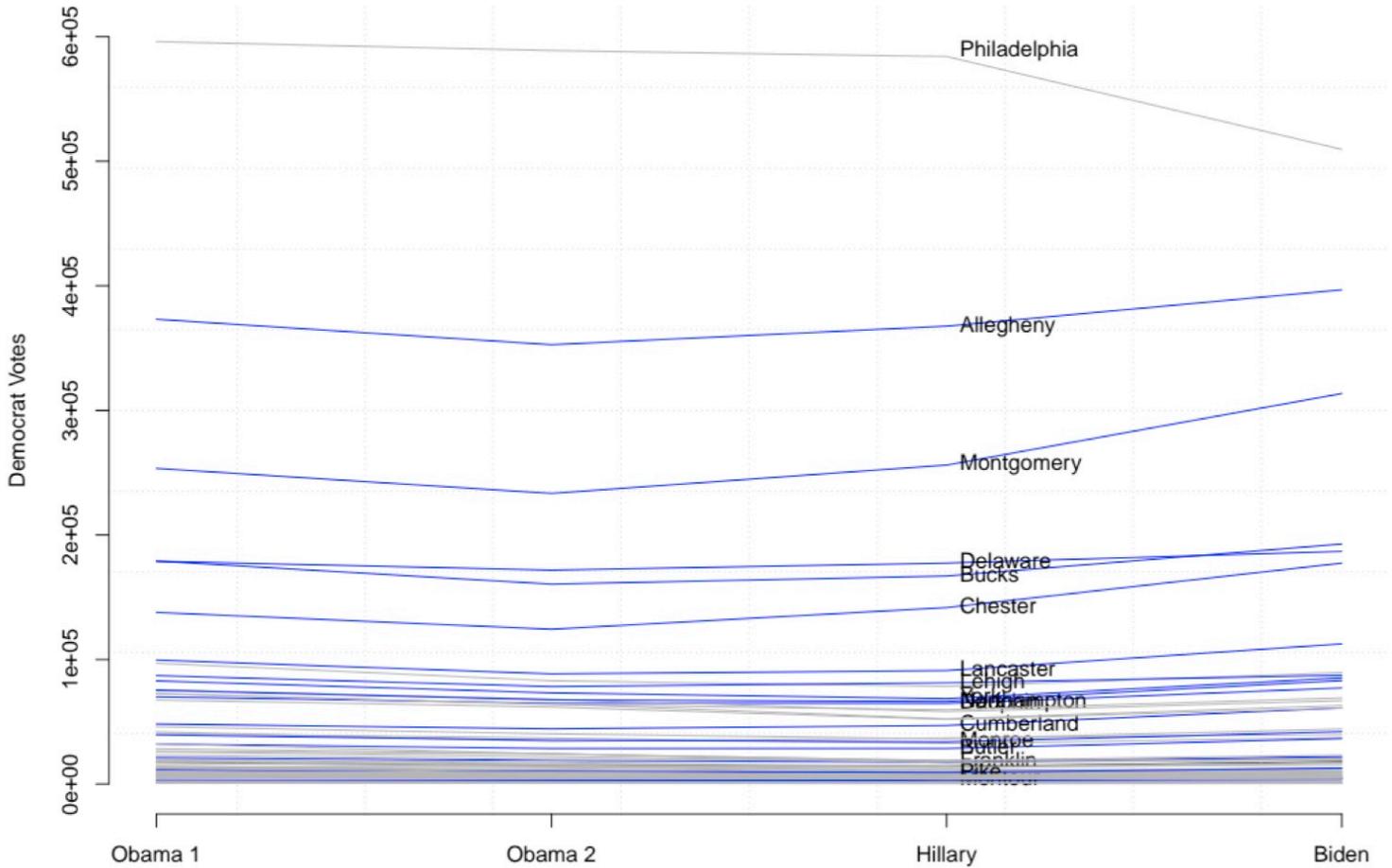
Here is a plot (using data on final election tallies provided by the same source) of the proportion of total votes Democrat presidential candidates received since Obama's first run. Those counties in which Biden improved over Obama's first run are highlighted in blue.



The proportion Democrats had been getting was declining steadily until 2020. Most stayed about the same from Hillary to Biden, but a few rose about their 2008 levels, which is odd, given Obama's gargantuan popular support at the time, and Biden's almost invisible public support in 2020.

The next picture is the same, but for total votes received for Democrat candidates.

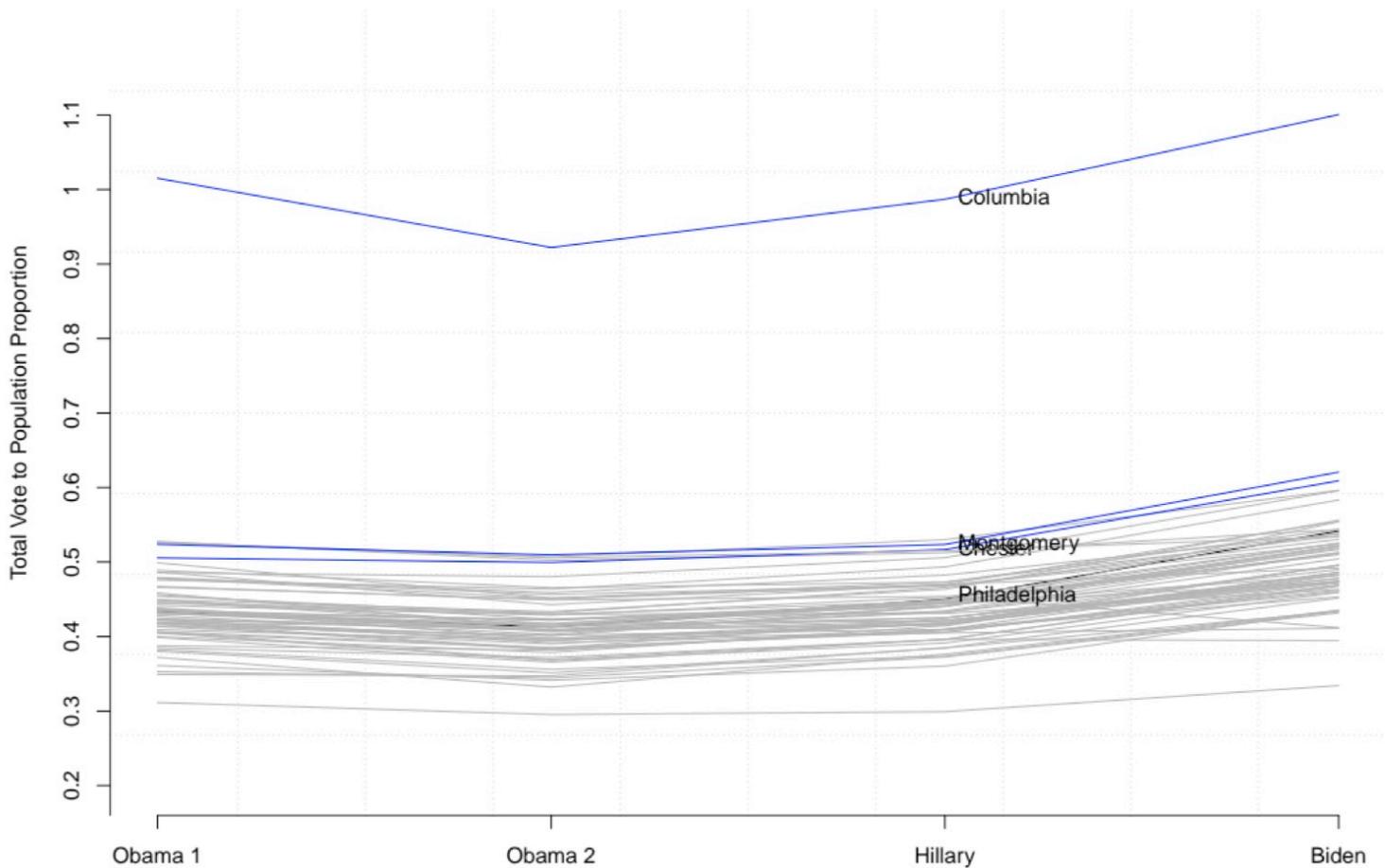
Democrat Votes by Race: Blue Biden Increase Over Obama 1



Again, counties which recorded more votes for Biden are highlighted in blue.

Another way to look at this is the total votes cast for any candidate divided by county population (data on population provided by Wikipedia).

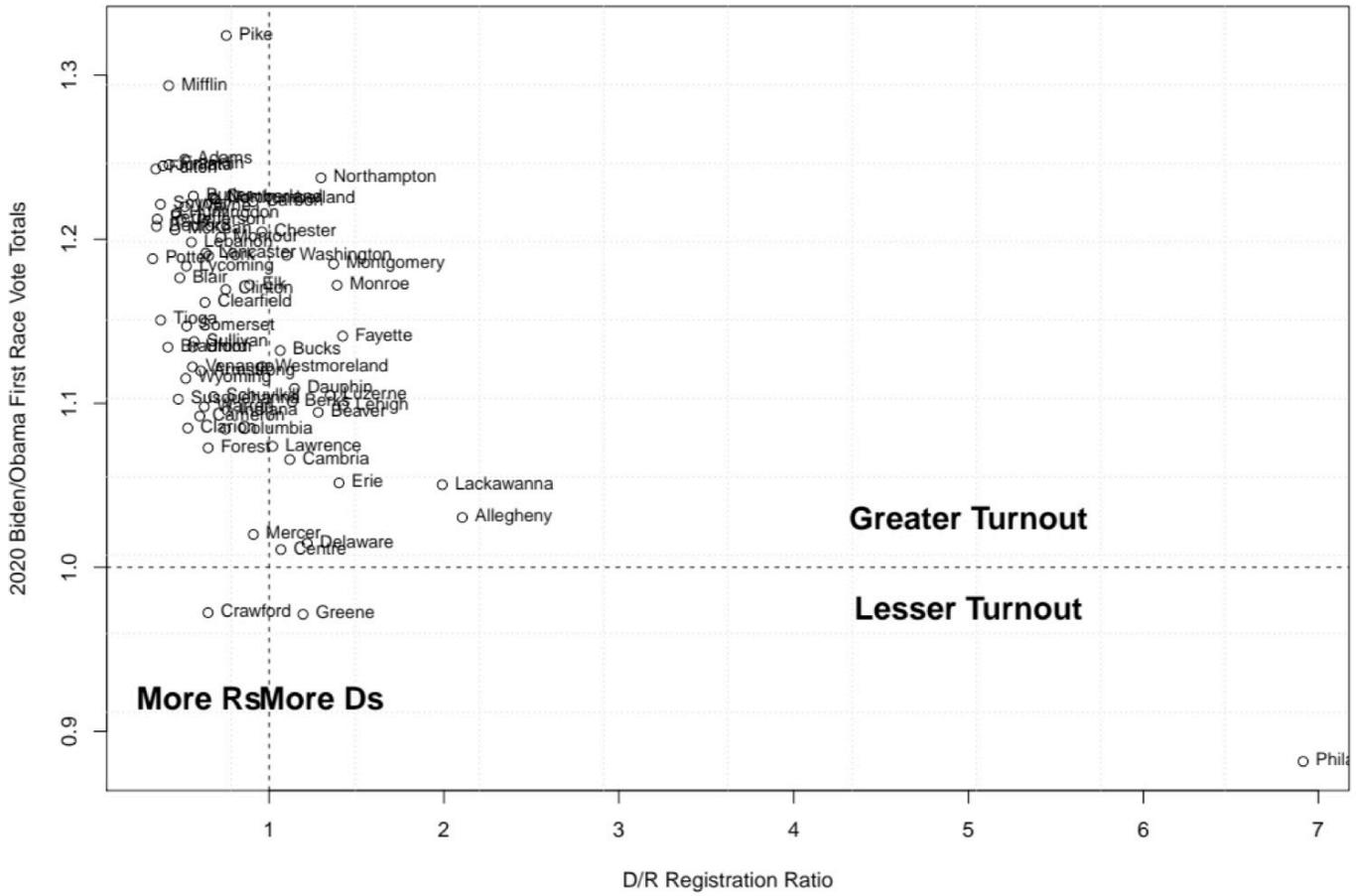
Proportion of Total Vote to Population: Blue Biden Over 60%



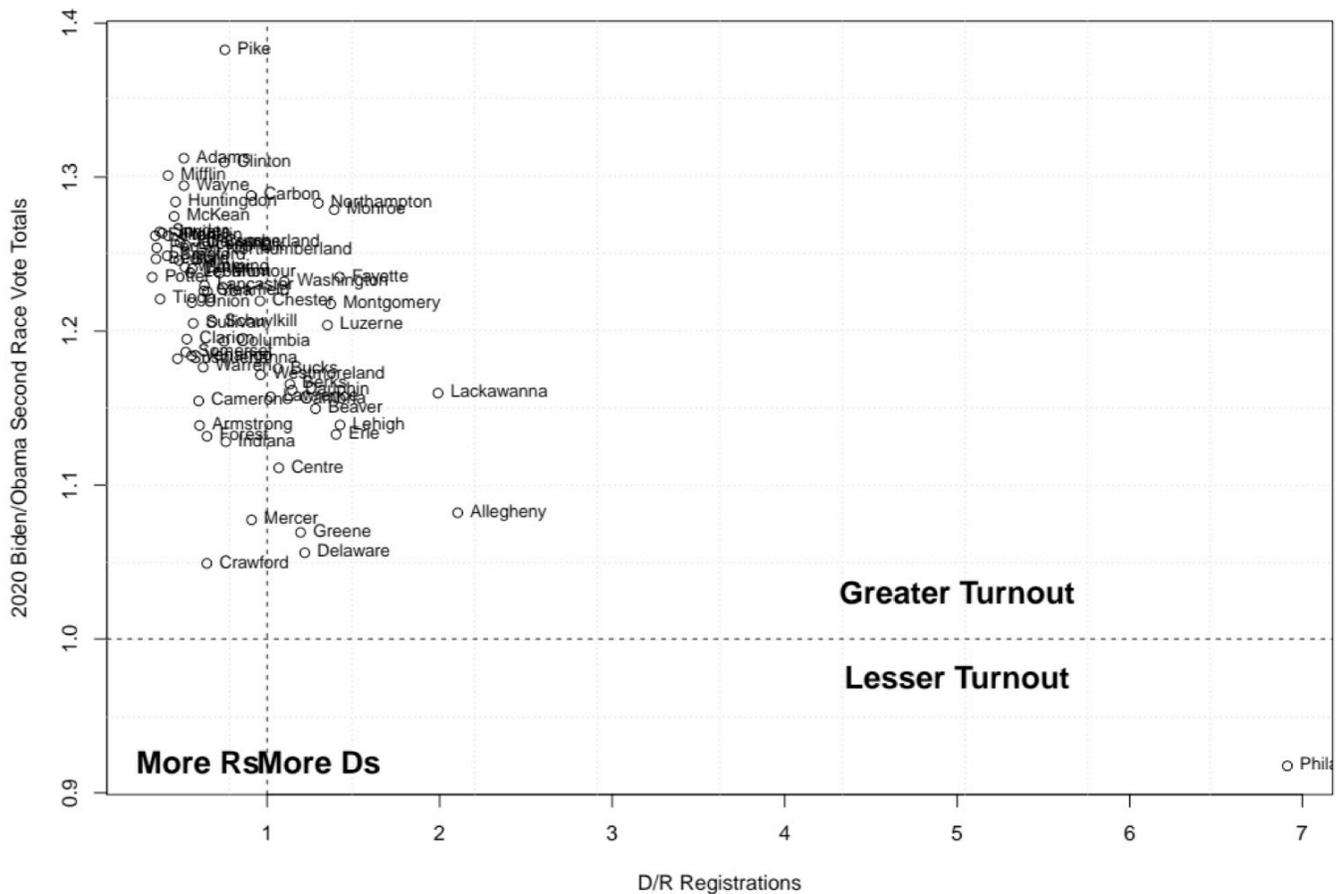
As before, those counties which had higher proportions for Biden than Obama’s first run are highlighted in blue. Philadelphia is also noted since it is so large. Columbia appears to have recorded more votes than persons said to live in the county.

The next series of pictures looks at Biden’s improvement in total race turnout (votes for all candidates), or not, over his Democrat predecessors’ race turnout, by examining the ratio of Biden/Democrat race total votes (for all candidates in any election; this is a measure of turnout) and plotted for each county’s proportion of Democrat to Republican registered voters. Counties with proportions < 1 are predominately Republican.

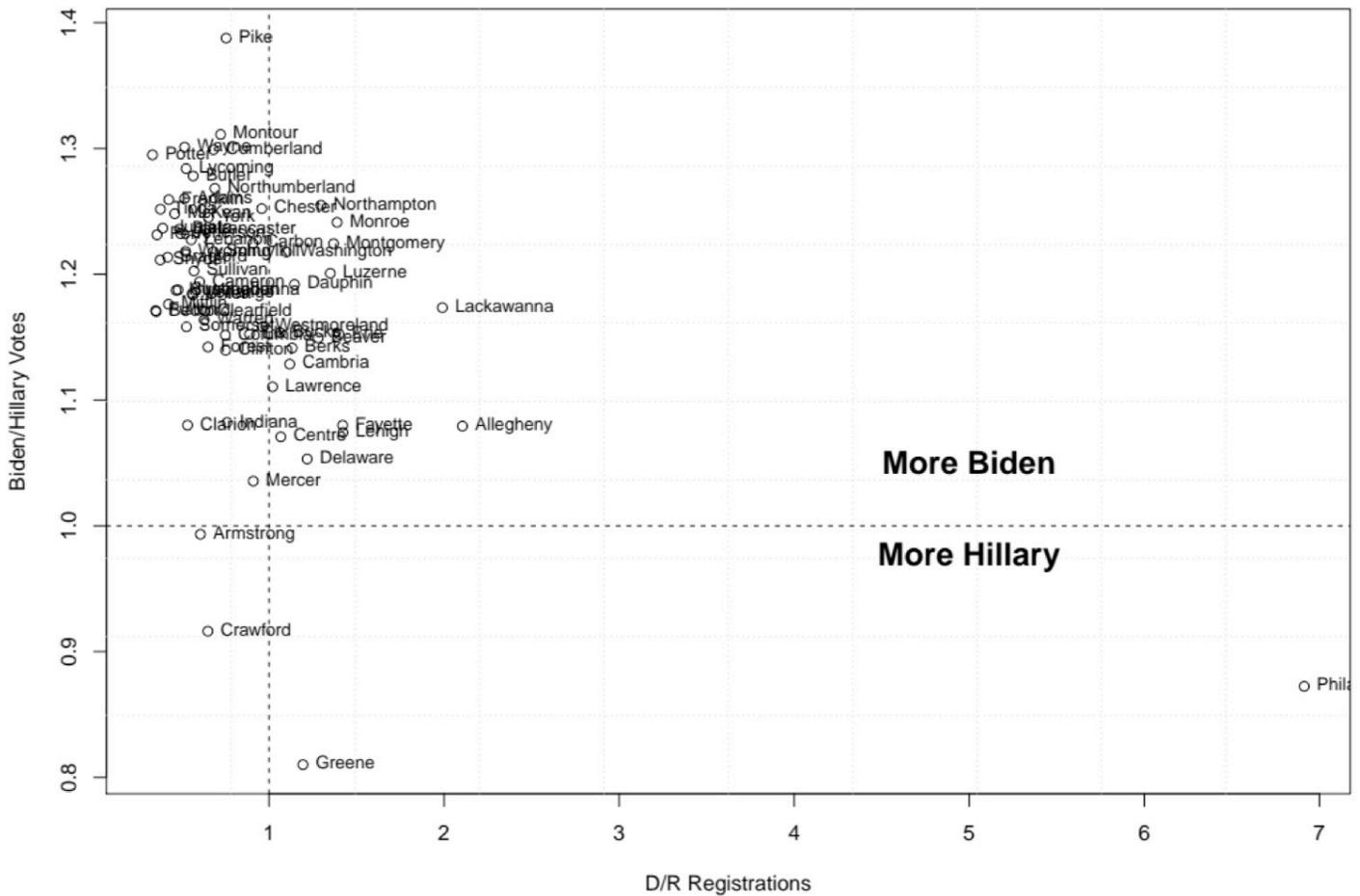
County Level 2020 Biden to Obama First Run Vote Total Ratio by D to R Registration Ratio



County Level 2020 Biden to Obama Second Run Vote Total Ratio by D to R Registration Ratio



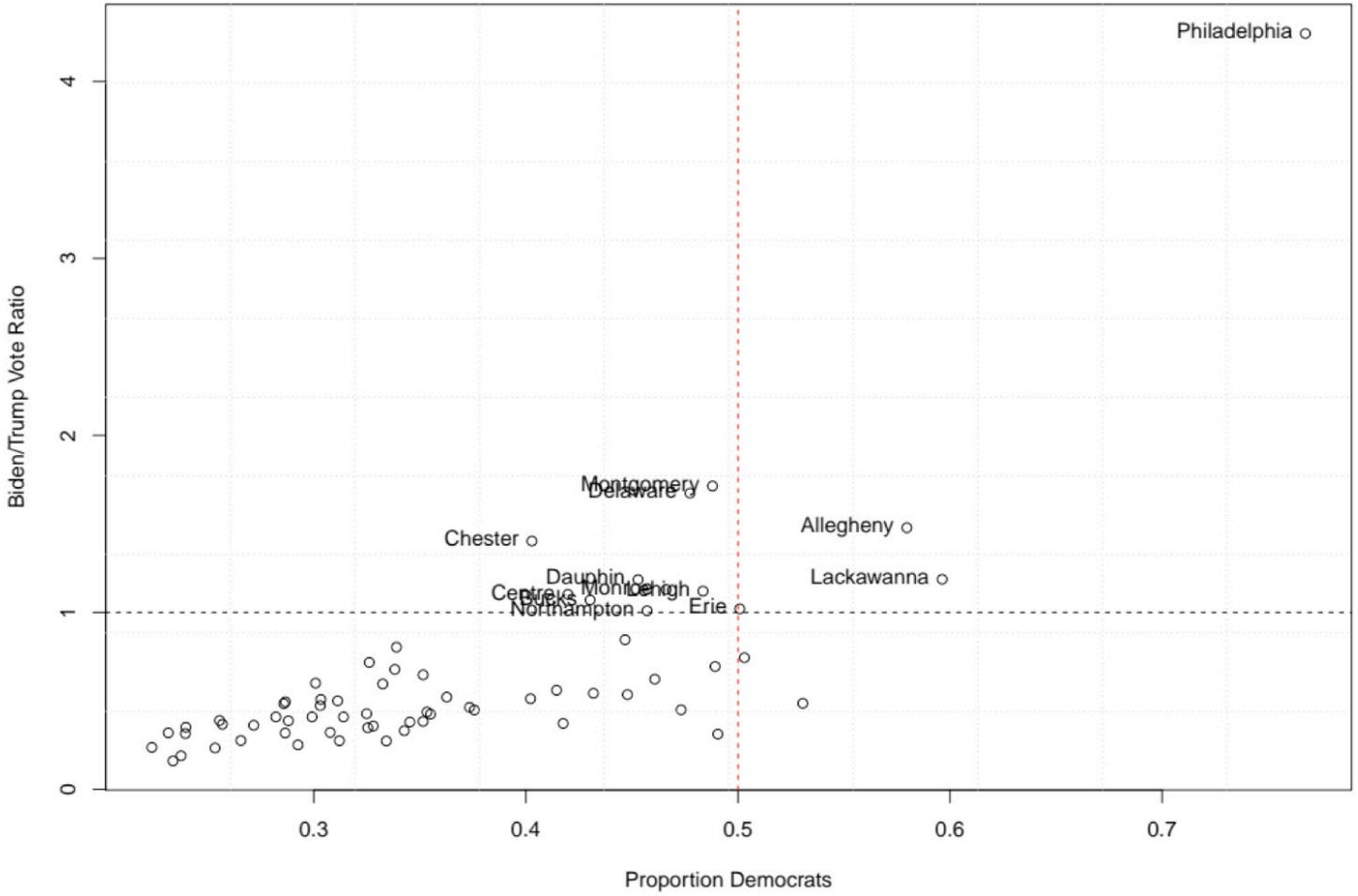
County Level Biden to Hillary Vote Ratio by D to R Registration Ratio



Once more, it's very strange that Biden managed to increase his support over the other Democrat candidates, especially in predominately Republican counties.

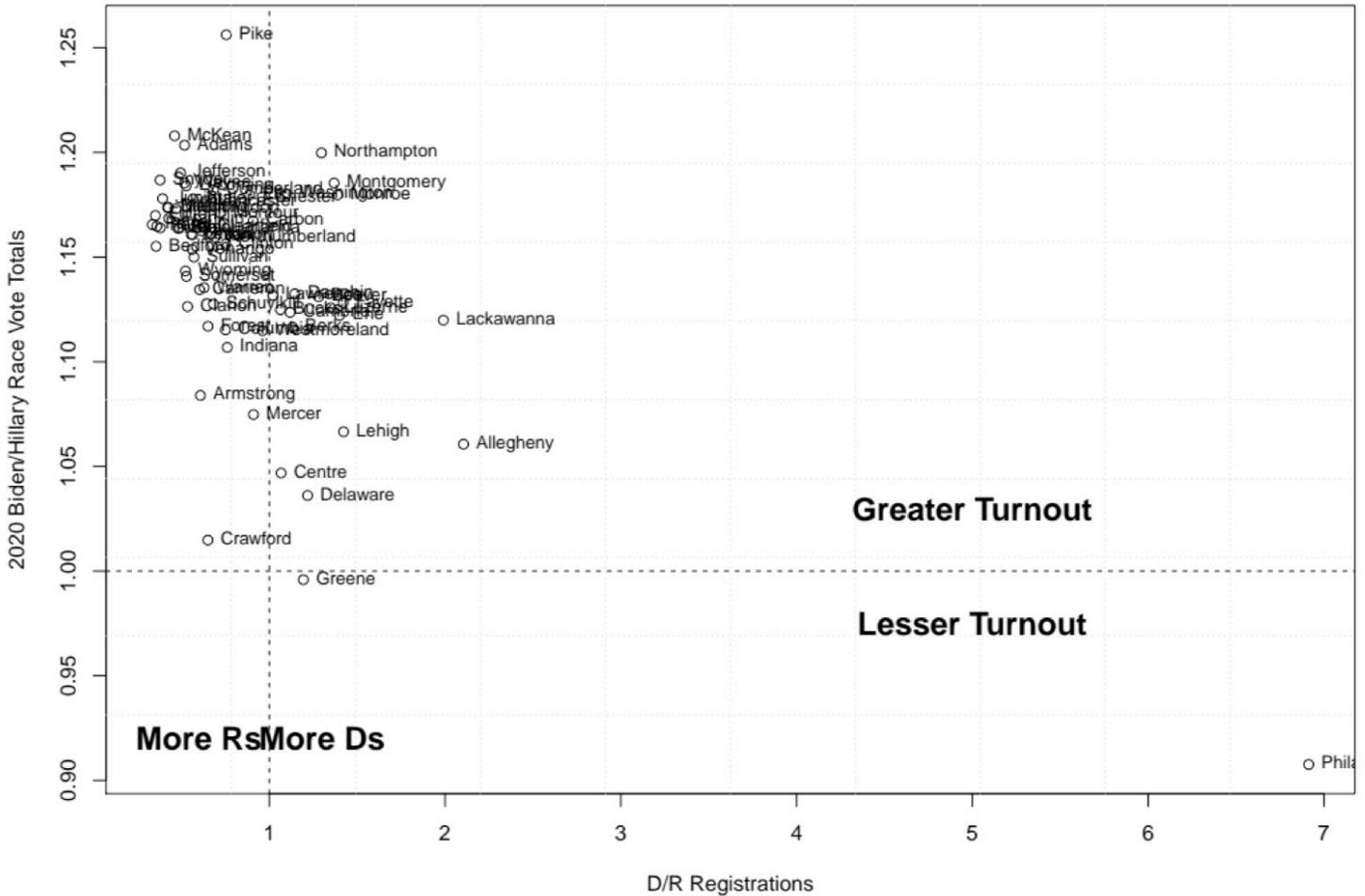
Another way to look at this is plotting the proportion of Democrat to Republican registrations by the ratio of Biden to Trump total votes received in the race.

Proportion of Democratic Registrations by Biden/Trump Votes



Counties which are predominately Republican have “Proportion Democrats” < 0.5. It’s not surprising, necessarily, that Philadelphia county, which is overwhelming Democrat in registrations would have a large Biden/Trump vote ratio. But it is very curious several predominately Republican counties would.

County Level 2020 Biden to Hillary Vote Total Ratio by D to R Registration Ratio



It's very odd the Biden race in total votes bested Obama's first run race total votes (for all candidates) by 20% to 40% in counties which were predominately Republican. In other words, turnout was much higher for 2020 than in Obama's first run against McCain.

MAIL-IN VOTE ANALYSIS

Data on mail-in ballots in Pennsylvania was provided by the same source. It contained the applicant's party affiliation, birth date, the dates the ballots were mailed to applicants, and the dates the ballots were received by authorities. County registration data was used as above, too.

The first thing to note is who requested mail-in ballots. The county ratio of ballots requested by registered voter total is plotted for each party. Dots are red for predominately Republican counties, or Blue for predominately Democrat counties.

Summary

Several nationally recognized statistical experts were asked to examine some 2020 Pennsylvania voting records, and to identify anything they deemed to be statistically significant anomalies — i.e. deviations from the norm.

In the process they by-and-large worked separately, consulted with other experts, analyzed the data they were given from different perspectives, obtained some additional data on their own, etc. — all in a very limited time allotment.

Their one — and only — objective was to try to assure that every legal Pennsylvania vote is counted, and only legal Pennsylvania votes are counted.

The primary takeaway is that ALL of these experts came to the same conclusions:

- 1) There are some major statistical aberrations in the PA voting records, that are extremely unlikely to occur in a normal (i.e. un-manipulated) setting.
- 2) The anomalies almost exclusively happened with the Biden votes. Time and again, using a variety of techniques, the Trump votes looked statistically normal.
- 3) Eleven (out of 67) Pennsylvania counties stood out from all the rest. These counties showed distinctive signs of voting abnormalities — again, all for Biden.
- 4) The total number of suspicious votes in these counties is $300,000\pm$ — which greatly exceeds the reported margin of Biden votes over Trump. (We don't know how many of these are artificial Biden votes, *or* votes switched from Trump to Biden.)
- 5) These statistical analyses do not prove fraud, but rather provide scientific evidence that the reported results are highly unlikely to be an accurate reflection of how Pennsylvania citizens voted.

As stated in the Executive Summary, our strong recommendation is that (as a minimum): **the five worst of the eleven abnormal PA counties have an immediate audited recount.**

If the results of a carefully audited recount are that there is **no** significant change in voting results for all of these five counties (very unlikely), then the authors of this Report recommend that we write off those county deviations as extreme statical flukes, and that the Pennsylvania voting results be certified.

On the other hand, if the results of a carefully audited recount are that there **are** significant changes in voting results for some of these five counties, then the authors of this Report recommend that (as a minimum) that the next six (6) statistically suspicious counties also have an audited recount, prior to any certifying of the Pennsylvania voting results.

In the Supreme Court of Wisconsin

The Wisconsin Voters Alliance, Ronald H. Heuer, William Joseph Laurent, Richard Kucksdorf, James Fitzgerald, Kelly Ruh, William Berglund, John Jaconi, Donna Utschig, Jeff Wellhouse, Kurt Johnson, Thomas Reczek, Linda Sinkula, Atilla Thorbjorsson, Jeff Kleiman, Navin Jarugumilli, Jonathan Hunt, Suzanne Vlach, Jacob Blazkovec, Donald Utschig, Carol Aldinger, Jay Plaumann, Deborah Gorman, Robert R. Liebeck, Valerie M. Bruns Liebeck, Edward Hudak, Ron Cork, Charles Risch, Karl Lehrke, Arnet Holty and Joseph McGrath, PETITIONERS,

v.

Wisconsin Elections Commission, and its members
Ann S. Jacobs, Mark L. Thomsen, Marge Bostelman,
Julie M. Glancey, Dean Knudson, Robert F. Spindell,
Jr., in their official capacities, Governor Tony Evers,
in his official capacity, RESPONDENTS

On Petition For Original Action
Before this Court

EXPERT REPORT OF MATTHEW BRAYNARD

I. INTRODUCTION

I have been retained as an expert witness on behalf of Petitioners in the above captioned proceeding. I expect to testify on the following subject matters: (i) analysis of the database for the November 3, 2020 election for the selection of Presidential Electors in the State of Wisconsin (“State”); (ii) render opinions regarding whether individuals identified in the State’s voter database actually voted; and (iii) render opinions regarding whether individuals identified in the State’s voter database were actually qualified to vote on election day.

This is a statement of my relevant opinions and an outline of the factual basis for these opinions. The opinions and facts contained herein are based on the information made available to me in this case prior to preparation of this report, as well as my professional experience as an election data analyst.

I reserve the right to supplement or amend this statement on the basis of further information obtained prior to the time of trial or in order to clarify or correct the information contained herein.

II. DOCUMENTS REVIEWED

I reviewed the following documents in arriving at my opinions.

1. The voter records and election returns as maintained on the State’s election database;

2. Records maintained by the National Change of Address Source which is maintained by the United States Postal Service and which is available for licensed users on the internet. I am a licensed member.
3. Records developed by the staff of my call centers and social media researchers; and
4. A national voter database maintained by L2 Political;

In addition, I discussed the facts of this matter with Petitioner's attorney Erick G. Kaardal and members of his legal team.

III. PROFESSIONAL QUALIFICATIONS

I have attached hereto as Exhibit 1 a true and correct copy of my resume. As detailed in the resume, I graduated from George Washington University in 2000 with a degree in business administration with a concentration in finance and management information systems. I have been working in the voter data and election administration field since 1996. I have worked building and deploying voter databases for the Republican National Committee, five Presidential campaigns, and no less than one-hundred different campaigns and election-related organizations in all fifty states and the U.S. Virgin Islands. I worked for eight years as a senior analyst at the nation's premier redistricting and election administration firm, Election Data Services, where I worked with states and municipalities on voter databases, delineation, and litigation support related to these matters. Also, while at Election Data Services, I worked under our contract with the US Census Bureau analyzing voting age population. Since 2004, I have worked for my own business, now known as External Affairs, Inc., providing

statistical and data analysis for local, state, and federal candidates and policy organizations in the areas of voter targeting, polling/research, fundraising, branding, and online development and strategy. My firm has worked for over two-hundred candidates from president to town council and over a dozen DC-based policy/advocacy organizations.

With respect to publications I have authored in the last 10 years, I have not authored any publications in the last ten years.

IV. COMPENSATION

I have been retained as an expert witness for Petitioners. I am being compensated for a flat fee of \$40,000.

V. PRIOR TESTIMONY

I have not provided testimony as an expert either at trial or in deposition in the last four years.

VI. STATEMENT OF OPINIONS

As set forth above, I have been engaged to provide expert opinions regarding analysis in the November 3, 2020 election of Presidential electors. Based on my review of the documents set forth above, my discussions with statisticians and analysts working with me and at my direction, my discussions with the attorneys representing the Petitioners, I have the following opinions:

1. It is my opinion, to a reasonable degree of scientific certainty, that in the State, the State's database for the November 3, 2020 election show 96,711 voters whom the state marks as having requested and been sent an absentee ballot did not return it. It is my opinion, to a reasonable degree of scientific certainty, that in my sample

of this universe, 18.12% of these absentee voters in the State did not request an absentee ballot.

2. From the State's database for the November 3, 2020 election and our call center results, it is my opinion to a reasonable degree of scientific certainty that 96,771 individuals whom the State's database identifies as having not returned an absentee ballot, that in my sample of this universe, 15.37% of those absentee voters did in fact mail back an absentee ballot to the clerk's office.
3. From the State's database for the November 3, 2020 election, the NCOA database, and our call center results, it is my opinion to a reasonable degree of scientific certainty that out of the 26,673 individuals had changed their address before the election, that in my sample of this universe, 1.11% of those individuals denied casting a ballot.
4. From the State's database for the November 3, 2020 election and the NCOA database and other state's voter databases, it is my opinion to a reasonable degree of scientific certainty, that at least 6,848 absentee or early voters were not residents of the State when they voted.
5. From the State's database for the November 3, 2020 election and my staff's review of social media for voters who applied for indefinitely confined absentee voting status, it is my opinion to a reasonable degree of scientific certainty, that of the 213,215 who claimed indefinitely confined absentee voter status in the State, that in my sample of this universe, 45.23% of those individuals were not indefinitely confined on Election Day.
6. From the State's database for the November 3, 2020 election and comparing that data to other states voting data and identifying individuals who cast early/absentee ballots in multiple states, it is my opinion to a reasonable degree of scientific certainty, that at least 234 individuals in the State voted in multiple states.

VII. BASIS AND REASONS SUPPORTING OPINIONS.

First, State maintains a database for the November 3, 2020 election which I obtained from L2 Political and which L2 Political obtained from the State's records on, among other things, voters who applied for an absentee or early voter status. I received this database from L2 Political in a table format with columns and rows which can be searched, sorted and filtered. Each row sets forth data on an individual voter. Each

column contained information such as the name of the voter, the voter's address, whether the voter applied for an absentee ballot, whether the voter voted and whether the voter voted indefinitely confined status.

Second, we are able to obtain other data from other sources such as the National Change of Address Database maintained by the United States Postal Service and licensed by L2 Political. This database also in table format shows the name of an individual, the individual's new address, the individual's old address and the date that the change of address became effective.

Third, I conducted randomized surveys of data obtained from the State's database by having my staff or the call center's staff make phone calls to and ask questions of individuals identified on the State's database by certain categories such as absentee voters who did not return a ballot. Our staff, if they talked to any of these individuals, would then ask a series of questions beginning with a confirmation of the individual's name to ensure it matched the name of the voter identified in the State's database. The staff would then ask additional questions of the individuals and record the answers.

Fourth, I had this staff survey a random sample I obtained from the State's database on indefinitely confined voters. The staff conducted research on the internet and social media postings by these individuals. Staff would undertake to determine if the individual was the individual listed on the database meant the State's definition of indefinitely confined. Staff would then attempt to determine if the individuals had posted photos, images or other information demonstrating that the individuals were not indefinitely confined. For instance, if the individual's social media showed a photo on or

near election day of the individual doing something inconsistent with indefinitely confined status such as riding a bike. Staff would then record the results as either “not indefinitely confined,” “confirmed indefinitely confined,” or “inconclusive.”

Fifth, attached as Exhibits 2 is my written analysis of the data obtained.

Below are the opinions I rendered and the basis of the reasons for those opinions.

1. It is my opinion, to a reasonable degree of scientific certainty, that in the State, the State’s database for the November 3, 2020 election show 96,711 voters whom the state marks as having requested and been sent an absentee ballot did not return it. It is my opinion, to a reasonable degree of scientific certainty, that in my sample of this universe, 18.12% of these absentee voters in the State did not request an absentee ballot.

I obtained this data from the State via L2 Political after the November 3, 2020, Election Day. This data identified 96,771 absentee voters who were sent an absentee ballot but who failed to return the absentee ballot.

I then had my staff make phone calls to a sample of this universe. When contacted, I had my staff confirm the individual’s identity by name. Once the name was confirmed, I then had staff ask if the person requested an absentee ballot or not. Staff then recorded the number of persons who answered yes. My staff then recorded that of the 2,114 individuals who answered the question, 1,731 individuals answered yes to the question whether they requested an absentee ballot. My staff recorded that 383 individuals answered no to the question whether they requested an absentee ballot.

Attached as Exhibit 2 is my written analysis containing information from the data above on absentee voters. Paragraph 2 of Exhibit 2 presents this information.

Next, I then had staff ask the individuals who answered yes, they requested an absentee ballot, whether the individual mailed back the absentee ballot or did not mail back the absentee ballot. Staff then recorded that of the 1,626 individuals who answered the question, 325 individuals answered yes, they mailed back the absentee ballot. Staff recorded 1301 individuals answered no, they did not mail back the absentee ballot.

Paragraph 2 of Exhibit 2 presents this information.

Based on these results, 18.12% of our sample of these absentee voters in the State did not request an absentee ballot.

2. From the State's database for the November 3, 2020 election and our call center results, it is my opinion to a reasonable degree of scientific certainty that 96,771 individuals whom the State's database identifies as having not returned an absentee ballot, that in my sample of this universe, 15.37% of those absentee voters did in fact mail back an absentee ballot to the clerk's office.

This opinion includes the analysis set forth above. Among the 1,626 who told our call center that they did request an absentee ballot and answered the second question, 325 told our staff that they mailed the absentee ballot back, which is 15.37% of those whom the State identified as having not returned the absentee ballot the State sent them.

Paragraph 2 of Exhibit 2 presents this information.

3. From the State's database for the November 3, 2020 election, the NCOA database, and our call center results, it is my opinion to a reasonable degree of scientific certainty that out of the 26,673 individuals had changed their address before the election, that in my sample of this universe, 1.11% of those individuals denied casting a ballot.

On Exhibit 2, in paragraph 4, I took the State's database of all absentee or early voters and matched those voters to the NCOA database for the day after election day.

This data identified 26,673 individuals whose address on the State's database did not match the address on the NCOA database on election day. Next, I had my staff call the persons identified and ask these individuals whether they had voted. My call center staff identified 1,607 individuals who confirmed that they had casted a ballot. My call center staff identified 18 individuals who denied casting a ballot. Our analysis shows that 1.11% of our sample of these individuals who changed address did not vote despite the State's data recorded that the individuals did vote.

4. From the State's database for the November 3, 2020 election and the NCOA data and other state's voter data, it is my opinion to a reasonable degree of scientific certainty, that at least 6,848 absentee or early voters were not residents of the State when they voted.

On Exhibit 2, in paragraph 1, I took the State's database of all absentee or early voters and matched those voters to the NCOA database for the day after Election Day. This data identified 6,207 individuals who had moved of the State prior to Election Day. Further, by comparing the other 49 states voter databases to the State's database, I identified 765 who registered to vote in a state other than the State subsequent to the date they registered to vote in the State. When merging these two lists and removing the duplicates, and accounting for moves that would not cause an individual to lose their residency and eligibility to vote under State law, these voters total 6,848.

5. From the State's database for the November 3, 2020 election and my staff's review of social media for voters who applied for indefinitely confined absentee voting status, it is my opinion to a reasonable degree of scientific certainty, that of the 213,215 who claimed indefinitely confined absentee voter status in the State, that in my sample of this universe, 45.23% of those individuals were not indefinitely confined on Election Day.

This opinion is taken from data developed on Exhibit 3. For this determination, I had my staff investigate using the internet and social media the individuals the State's data identified as claiming indefinitely confined status in their absentee ballot applications. The staff conducted research on the internet and social media postings by these individuals. Staff would undertake to determine if the individual was the individual listed on the database as indefinitely confined. Staff would then attempt to determine if the individuals had posted photos, images or other information demonstrating that the individuals were not indefinitely confined. For instance, if the individual's social media showed a photo on or near election day doing something inconsistent with indefinitely confined status such as riding a bike. Staff would then record the results as either "not indefinitely confined," "confirmed indefinitely confined," or "inconclusive."

These results showed that of the 213,215 who claimed indefinitely confined absentee voter status in the State, that in my sample of this universe, 45.23% of those individuals were not indefinitely confined on Election Day.

6. From the State's database for the November 3, 2020 election and comparing that data to other states voting data and identifying individuals who cast early/absentee ballots in multiple states, it is my opinion to a reasonable degree of scientific certainty, that at least 234 individuals in the State voted in multiple states.

On Exhibit 2, in paragraph 2, I had my staff compare the State's early and absentee voters to other states voting data and identified individuals who cast early/absentee ballots in multiple states. My staff located 234 individuals who voted in the State and in other states for the November 3, 2020 general election.

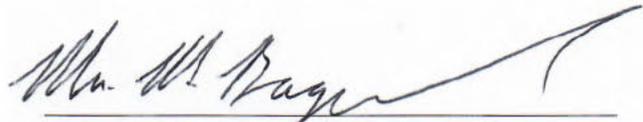
VIII. EXHIBITS TO BE USED AT TRIAL TO SUMMARIZE OR EXPLAIN OPINIONS

At the present time, I intend to rely on the documents produced set forth above as possible exhibits.

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SIGNATURE PAGE TO FOLLOW

Dated: 11/22/2020


Matthew Braynard

MATT BRAYNARD

1521 Boyd Pointe Way #3001, Vienna VA 22182 | 202.423.5333 (c) | matt@braynard.com

Matt Braynard is the president of both political consulting firm External Affairs, Inc., and a voter-registration non-profit, Look Ahead America.

CURRENT EMPLOYMENT

External Affairs, Inc.

Principal

External Affairs, Inc. works for local, state, and federal candidates and policy organizations in the areas of voter targeting, polling/research, fundraising, branding, and online development and strategy. The firm has worked for over two-hundred candidates from president to town council and over a dozen DC-based policy/advocacy organizations.

2004 – Present

Look Ahead America, Inc.

President

Matt founded LAA, a 501(c)(3), along with over thirty other former Trump campaign staffers with the goal of registering and turning out disaffected, patriotic voters.

March 2017 – Present

PREVIOUS EMPLOYMENT

Donald J. Trump for President, Inc.

Director, Data Division

2016

Matt was responsible for developing the voter contact strategy, building technology infrastructure, managing vendor relationships, recruiting the data division staff, and supporting and auditing state efforts on door-to-door, phone, mail, and email operations.

October 2015 – March

Election Data Services, Inc.

Senior Analyst

Matt Braynard was responsible for analyzing and redistricting states and municipal political boundaries, as well as analyzing election result administration data.

2001-2005

Republican National Committee

Political Analyst

Matt Braynard worked in the political analysis department developing and deploying voter targeting databases, and directed the precinct election result research project.

1996, 1998-2001

Luntz Research Companies

Research Consultant

Matt Braynard analyzed survey toplines and cross tabulations to create executive presentation materials.

1997-2001

EDUCATION

Columbia University

Master of Fine Arts

Writing Program

2018

The George Washington University

Bachelors of Business Administration

Concentrations in Finance and Management Information Systems

2000

Date: November 22, 2020

From: Matt Braynard
External Affairs, Inc.
matt@braynard.com
202.423.5333
November 22, 2020

Re: Wisconsin Voter Integrity Project: Illegal Ballots Preliminary Results

This is an outline of the six analysis methods we have applied to the State of Wisconsin ("State") and the results we have obtained as of the date set forth above.

1. Residency Violations

We have evaluated early and absentee voters who were matched to the national change of address database (NCOA) or are found to have registered to vote in other states subsequent to their registration in target states (OOSSR), strongly indicating a violation of residency requirements.

	NCOA	OOSSR	Merged
WI	6,207	765	6,848

The OOSSR would be much higher, but we limited due to the lack of full dates of birth available to us from many states' voter databases. A full, complete birthdate is necessary for our match process.

2. Double Voting (Early/Absentee ONLY)

We compared the target state early and absentee voters to other states voting data and identified individuals who cast early/absentee ballots in multiple states.

WI: 234

3. Confirmation of "Unreturned" Absentee Ballots

I obtained data from the State via L2 Political after the November 3, 2020, Election Day. This data identified 96,771 voters who were sent an absentee ballot but who failed to return the absentee ballot.

We then called a sample of these voters totaling 2,114 individuals to ask if they requested the absentee ballot. Of the 2,114 individuals our call center contacted and spoke with whom the State data identified as having requested an absentee ballot but the data identified as having not returned the ballot, our call center identified 383 individuals who did not request an

absentee ballot. Among those who said they had requested an absentee ballot and answered whether they had mailed the ballot back, 325 individuals told our call center that they returned a ballot

State	Did Not Request	Percentage of 2,114 Sample
Wisconsin	383	18.12%

State	Returned	Percentage of 2,114 Sample
Wisconsin	325	15.37%

4. Confirmation of National Change of Address Voters

We contacted individuals who have been recorded having voted but filed a national change of address to confirm that they did indeed cast a ballot. Once again, our call center staff contacted a random sample of 1,625 individuals from the State data. From these calls, our staff identified 1,607 individuals who told our call center staff they did cast a ballot and 18 individuals who told our call center staff they did not cast a ballot. The following counts and percent of people we reached by phone told us they did NOT cast an early or absentee ballot despite the state recording such a ballot.

State	Total	Percentage of Sample
Wisconsin	18	1.11%

5. Confirmation of Low Propensity in Heavy Turnout Precincts

We reached out to Individuals who were marked as having voted despite never voting, not voting in many years, or just recently registered. We concentrated this in precincts with unusually high turnout.

State	Total	Percentage of Sample
Wisconsin	23	0.66%

Investigator	Total #	On Social Media	Conclusive IC	Conclusive NOT IC	Inconclusive
Mary Davis	16	1	0	1	15
Sarah Dickerson	24	2	0	1	23
Mikaela Hoover	26	2	0	1	25
David Martin	26	3	0	1	25
Joe Dion	20	0	2	0	18
Jena Rutan	11	1	0	1	10
Rob Meissner	25	2	0	2	23
Abigail Leyden	10	4	0	2	8
Barry Doherty*	75	3	0	3	72
Ron Heuer	71	22	0	9	62
Logan	100	44	0	17	83
Jennifer Jackson	25	0	8	0	17
	429	84	10	38	381

From: kkobach@gmail.com
Sent: 11/24/2020 12:13:49 PM -0600
To: "Murrill, Elizabeth" <MurrillE@ag.louisiana.gov>
Subject: RE: Presidential Election Case

CAUTION: This email originated outside of Louisiana Department of Justice. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Liz,

Wow, you have a lot on your plate. [REDACTED]

[REDACTED] I emailed Jeff at

landryj@ag.louisiana.gov. I assume that that is still his email address.

[REDACTED]

Thanks for taking a moment to look at this.

Kris

From: Murrill, Elizabeth <MurrillE@ag.louisiana.gov>
Sent: Tuesday, November 24, 2020 11:54 AM
To: kkobach@gmail.com
Subject: RE: Presidential Election Case

Kris,

Thanks for reaching out. I am on the downhill slope of preparing for a SCOTUS argument **next Wednesday**. I have not had the bandwidth to engage on this until after our case is over (and we have a bug state separation of powers cases pending as well). Jeff is reviewing all of it and Texas is too.

Liz

From: kkobach@gmail.com [<mailto:kkobach@gmail.com>]

Sent: Tuesday, November 24, 2020 9:29 AM
To: Murrill, Elizabeth
Subject: Presidential Election Case

CAUTION: This email originated outside of Louisiana Department of Justice. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Liz,

I hope all is going well.

[REDACTED]

[REDACTED]

Would you have a moment to talk today?

Kris Kobach

913-638-5567

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or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From: kkobach@gmail.com
Sent: 11/25/2020 10:43:51 AM -0600
To: "Murrill, Elizabeth" <MurrillE@ag.louisiana.gov>
Subject: RE: Presidential Election Case

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Someone else in our group has. But if you want to forward this version to your counterpart in TX, please do so.

From: Murrill, Elizabeth <MurrillE@ag.louisiana.gov>
Sent: Wednesday, November 25, 2020 10:37 AM
To: kkobach@gmail.com
Subject: RE: Presidential Election Case

Have you been in touch with Texas?

From: kkobach@gmail.com <kkobach@gmail.com>
Sent: Wednesday, November 25, 2020 10:34 AM
To: Murrill, Elizabeth <MurrillE@ag.louisiana.gov>
Subject: RE: Presidential Election Case

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Liz,

We have revised and streamlined the complaint and brief. Please review these versions if and when you have a moment. Thanks.

Kris

From: Murrill, Elizabeth <MurrillE@ag.louisiana.gov>
Sent: Tuesday, November 24, 2020 11:54 AM
To: kkobach@gmail.com
Subject: RE: Presidential Election Case

Kris,

Thanks for reaching out. I am on the downhill slope of preparing for a SCOTUS argument **next Wednesday**. I have not had the bandwidth to engage on this until after our case is over (and we have a bug state separation of powers cases pending as well). Jeff is reviewing all of it and Texas is too.

Liz

From: kkobach@gmail.com [<mailto:kkobach@gmail.com>]

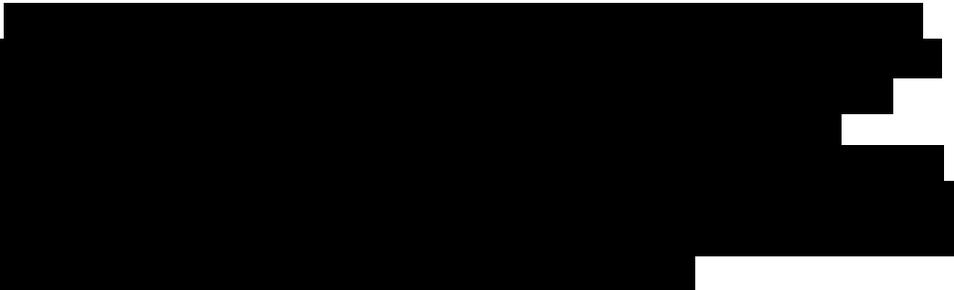
Sent: Tuesday, November 24, 2020 9:29 AM

To: Murrill, Elizabeth

Subject: Presidential Election Case

CAUTION: *This email originated outside of Louisiana Department of Justice. Do not click links or open attachments unless you recognize the sender and know the content is safe.*

Liz,

I hope all is going well. 


Would you have a moment to talk today?

Kris Kobach

913-638-5567

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From: kkobach@gmail.com
Sent: 12/4/2020 12:10:48 PM -0600
To: "Murrill, Elizabeth" <MurrillE@ag.louisiana.gov>
Subject: RE: Modified pleadings in the state v state case

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Okay. Let's talk when you are finished with your hearing, if that works for you.

-----Original Message-----

From: Murrill, Elizabeth <MurrillE@ag.louisiana.gov>
Sent: Friday, December 4, 2020 12:00 PM
To: kkobach@gmail.com
Cc: Landry, Jeffrey <LandryJ@ag.louisiana.gov>
Subject: Re: Modified pleadings in the state v state case

I'm in a hearing all day but will see if one of my team can review revision.

Liz Murrill
Solicitor General
State of Louisiana
Attorney General Jeff Landry
225-326-6766 (direct)
225-456-7544 (cell)

On Dec 4, 2020, at 11:52 AM, "kkobach@gmail.com" <kkobach@gmail.com> wrote:

? CAUTION: This email originated outside of Louisiana Department of Justice. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Liz,

[REDACTED]

[REDACTED]

[REDACTED]

Thanks.

Kris

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<LA-v-States-Compl 2020-12-04 v2.docx>

<LA-v-State-Brief-2020-12-04 v2.docx>

<State-v-State-Motion-2020-12-04 v2.docx> The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. To reply to our e-mail administrator directly, please send an e-mail to postmaster@ag.state.la.us.

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From: "Murrill, Elizabeth" <MurrillE@ag.louisiana.gov>
Sent: 11/23/2020 4:35:06 PM -0600
To: phillip.jauregui@gmail.com
CC: Mark Martin <mmartin@regent.edu>; Kurt Olsen <ko@klafterolsen.com>
Subject: RE: Attorney General Jeff Landry

I was in moots all day. will see if he is free

-----Original Message-----

From: phillip.jauregui@gmail.com [mailto:phillip.jauregui@gmail.com]
Sent: Monday, November 23, 2020 2:36 PM
To: Murrill, Elizabeth
Cc: Mark Martin; Kurt Olsen
Subject: RE: Attorney General Jeff Landry

CAUTION: This email originated outside of Louisiana Department of Justice. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Liz,

[REDACTED]

[REDACTED]

Liz, any chance we might brief you and General Landry tomorrow?

Thanks, Phillip

-----Original Message-----

From: Murrill, Elizabeth <MurrillE@ag.louisiana.gov>
Sent: Friday, November 20, 2020 7:24 PM
To: phillip.jauregui@gmail.com
Cc: Mark Martin <mmartin@regent.edu>; Mrdck7@aol.com; Tom Smith <Thomsmyth@aol.com>
Subject: Re: Attorney General Jeff Landry

Phillip- I am discussing with Jeff. I have a SCOTUS argument in Dec. 2, and we have an expedited brief due on a big COVID-related state SCT appeal due next week too. [REDACTED]

[REDACTED]

Liz

Liz Murrill
Solicitor General
State of Louisiana
Attorney General Jeff Landry
225-326-6766 (direct)
225-456-7544 (cell)

On Nov 20, 2020, at 3:56 PM, "phillip.jauregui@gmail.com" <phillip.jauregui@gmail.com> wrote:

? CAUTION: This email originated outside of Louisiana Department of Justice. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Liz,

I met you by phone last year concerning the June Medical case. (Great job in your arguments!)

[REDACTED]

[REDACTED]

[REDACTED]

Warmest regards,

Phillip Jauregui

[REDACTED]

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<GM State v State Draft 11.20 (002).docx> The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. To reply to our e-mail administrator directly, please send an e-mail to postmaster@ag.state.la.us.

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postmaster@ag.state.la.us.

No. _____, Original

In the Supreme Court of the United States

STATE OF LOUISIANA, STATE OF A, AND STATE OF B,
Plaintiff,

v.

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

Defendants.

BILL OF COMPLAINT

First A. Surname*
Solicitor General of State
Attorney General's Office
000 Street Ave.
Capitol City, ST 00000
(111) 222-3333
fsurname@oag.StateA.gov

* *Counsel of Record*

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“[T]hat form of government which is best contrived to secure an impartial and exact execution of the law, is the best of republics.”

—John Adams

BILL OF COMPLAINT

Our Country stands at an important crossroads. Either the Constitution matters and must be followed, even when some officials consider it inconvenient or out of date, or it is simply a piece of parchment on display at the National Archives. We ask the Court to choose the former.

Lawful elections are at the heart of our constitutional republic. Using the COVID-19 pandemic as a justification, a few government officials in the defendant States Georgia, Michigan, Minnesota, Nevada, Pennsylvania, and Wisconsin—(the “Defendant States”) usurped their legislatures’ authority and unconstitutionally revised their State’s election laws. As a result of these unconstitutional changes, election officials flooded their States with millions of ballots to be sent through the mails, or placed in drop boxes, with little or no chain of custody and, at the same time, weakened the strongest security measures protecting the integrity of the vote—signature verification and witness requirements.

In defying the Constitution, the Defendant States weaken the bonds that hold States together in our Republic—injuring the States that are faithful to the Constitution and violating the terms on which electors are to be appointed to the Electoral College.

Against that background, the States of Louisiana, A, and B, bring this action against Defendant States based on the following allegations:

NATURE OF THE ACTION

1. Plaintiff State challenges the Defendant States' administration of the 2020 election under the Electors Clause of Article II, Section 1, Clause 2, of the U.S. Constitution.

2. This case presents a pure question of law: did the Defendant States violate the Electors Clause by taking non-legislative actions to change the election rules that would govern the appointment of presidential electors?

3. Those unconstitutional changes appear to have opened the door to election fraud in various forms. We do not know the extent of fraudulent and abusive practices that took place during the 2020 election. However, this case is not dependent upon a factual showing that such fraud and abuse occurred. What we do know is that each of the Defendant States flagrantly violated constitutional rules governing the appointment of Presidential Electors. In doing so, seeds of deep distrust have been sown across the country. In the spirit of *Marbury v. Madison*, this Court's attention is profoundly needed to declare what the law is.

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

5. Each of the Defendant States acted in a common pattern. State officials, sometimes in combination with the judiciary and sometimes unilaterally, announced new rules for the conduct of the 2020 election that were inconsistent with existing state statutes defining what constitutes a lawful vote.

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

7. The actions of the Pennsylvania Secretary of State before this Court epitomize the blatant disregard for the rule of law that took place in this election cycle. In a classic bait and switch, Pennsylvania used guidance from its Secretary of State to argue that this Court should not expedite review because the State would segregate potentially unlawful ballots. A court of law would reasonably rely on such a representation. Remarkably, before the ink was dry on the Court's 4-4 decision, Pennsylvania changed that guidance, breaking the State's promise to this Court. *Compare Republican Party of Pa. v. Boockvar*, No. 20-542, 2020 U.S. LEXIS 5188, at *5-6 (Oct. 28, 2020) ("we have been informed by the Pennsylvania Attorney General that the Secretary of the Commonwealth issued guidance today directing county boards of elections to segregate [late-arriving]

ballots”) (Alito, J., concurring) *with Republican Party v. Boockvar*, No. 20A84, 2020 U.S. LEXIS 5345, at *1 (Nov. 6, 2020) (“this Court was not informed that the guidance issued on October 28, which had an important bearing on the question whether to order special treatment of the ballots in question, had been modified”) (Alito, J., Circuit Justice).

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

9. The voters of Plaintiff State are entitled to a presidential election in which the votes from each of the states are counted only if the ballots are cast and counted in a manner that complies with the pre-existing laws of each state. *See Anderson v. Celebrezze*, 460 U.S. 780, 795 (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.”). Voters who cast lawful ballots cannot have their votes diminished by states that administered their 2020 presidential elections in a manner where it is impossible to distinguish a lawful ballot from an unlawful ballot.

10. The number of mail-in ballots that have been handled unconstitutionally in the Defendant States greatly exceeds the difference between the two candidates for President of the United States in each Defendant State.

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

JURISDICTION AND VENUE

12. This Court has original and exclusive jurisdiction over this action because it is a “controvers[y] between two or more States” under Article III, § 2, cl. 2 of the U.S. Constitution and 28 U.S.C. § 1251(a) (2018).

13. In a presidential election, “the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States.” *Anderson*, 460 U.S. at 795. The constitutional failures of Defendant States injure Plaintiff States because “the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Bush II*, 531 U.S. at 105 (quoting *Reynolds v. Sims*, 377 U. S. 533, 555 (1964)). In other words, Plaintiff States are acting to protect the interests of respective citizens in the fair and constitutional conduct of elections in all States to appoint Presidential Electors.

14. This Court’s Article III decisions indicate that only a state can bring certain claims. *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (distinguishing citizen plaintiffs from citizen relators who sued in the name of a state); *cf. Massachusetts v. EPA*, 549 U.S. 497, 520 (2007) (courts owe “special solicitude in

standing analysis”). Moreover, redressability and mootness would undermine a suit against a single state officer. *Green v. Mansour*, 474 U.S. 64, 66-67 (1985) (*Ex parte Young* exception to sovereign immunity is unavailable for past violations). This action is the only adequate remedy for Plaintiff States.

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

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

PARTIES

17. Plaintiffs are the State of Louisiana, the State of A, and the State of B, which are sovereign States of the United States.

18. Defendants are the Commonwealth of Pennsylvania and the States of Georgia, Michigan, Minnesota, Nevada, and Wisconsin, which are sovereign states of the United States.

LEGAL BACKGROUND

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

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

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

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

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

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

25. Though “[h]istory has now favored the voter,” *Bush II*, 531 U.S. at 104, “there is no doubt of the right of the legislature to resume the power [of appointing presidential electors] at any time, for *it can neither be taken away nor abdicated*.” *McPherson*, 146

U.S. at 35 (emphasis added); *cf.* 3 U.S.C. § 2 (“Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct.”).

26. Given the State legislatures’ constitutional primacy in selecting Presidential Electors, the ability to set rules governing the casting of ballots and counting of votes cannot be usurped by other branches of state government.

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

28. The Defendant States’ applicable laws are set out under the facts for each Defendant State.

FACTS

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

30. In the wake of the contested 2000 election, the bipartisan Jimmy Carter-James Baker

commission identified absentee ballots as “the largest source of potential voter fraud.” BUILDING CONFIDENCE IN U.S. ELECTIONS: REPORT OF THE COMMISSION ON FEDERAL ELECTION REFORM, at 46 (Sept. 2005).

31. Concern over the use of mail-in ballots is not novel to the modern era, Dustin Waters, *Mail-in Ballots Were Part of a Plot to Deny Lincoln Reelection in 1864*, WASH. POST (Aug. 22, 2020),¹ but it remains a current concern. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 194-96 & n.11 (2008); see also Texas Office of the Attorney General, *AG Paxton Announces Joint Prosecution of Gregg County Organized Election Fraud in Mail-In Balloting Scheme* (Sept. 24, 2020); Harriet Alexander & Ariel Zilber, *Minneapolis police opens investigation into reports that Ilhan Omar's supporters illegally harvested Democrat ballots in Minnesota*, DAILY MAIL, Sept. 28, 2020.

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

33. Rather than augment safeguards against illegal voting in anticipation of the millions of additional mail-in ballots flooding their States, the Defendant States *all* materially weakened, or did

¹ <https://www.washingtonpost.com/history/2020/08/22/mail-in-voting-civil-war-election-conspiracy-lincoln/>

away with, security measures, such as witness or signature verification procedures, required by their respective legislatures. Their legislatures established those commonsense safeguards to prevent—or at least reduce—fraudulent mail-in ballots.

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

35. The outcome of the Electoral College vote is directly affected by the constitutional violations committed by the Defendant States. Plaintiff State complied in all respects with the Constitution in the process of appointing Presidential Electors for President Trump. Defendant States violated the Constitution in the process of appointing presidential electors, and that violation proximately caused the appointment of presidential electors for former Vice President Biden. Plaintiff State will therefore be injured if the Defendant States' unlawfully appointed electors are certified.

Commonwealth of Pennsylvania

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

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

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

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

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

41. This guidance is contrary to Pennsylvania law. First, Pennsylvania Election Code mandates that, for non-disabled and non-military voters, all applications for an absentee or mail-in ballot “shall be signed by the applicant.” 25 PA. STAT. §§ 3146.2(d) & 3150.12(c). Second, Pennsylvania’s voter signature verification requirements are expressly set forth at 25 PA. STAT. 350(a.3)(1)-(2) and § 3146.8(g)(3)-(7).

42. The Pennsylvania Department of State’s guidance unconstitutionally did away with

Pennsylvania’s statutory signature verification requirements. Approximately 70 percent of the requests for absentee ballots were from Democrats and 25 percent from Republicans. Thus, this unconstitutional abrogation of state election law greatly inured to former Vice President Biden’s benefit.

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

44. Pennsylvania’s election law also requires that poll-watcher be granted access to the opening, counting, and recording of absentee ballots: “Watchers shall be permitted to be present when the envelopes containing official absentee ballots and mail-in ballots are opened and when such ballots are counted and recorded.” 25 PA. STAT. § 3146.8(b). Local election officials in Philadelphia and Allegheny Counties decided not to follow 25 PA. STAT. § 3146.8(b) for the opening, counting, and recording of absentee and mail-in ballots.

45. Prior to the election, Secretary Boockvar sent an email to local election officials urging them to provide opportunities for various persons—including political parties—to contact voters to “cure” defective

mail-in ballots. This process clearly violated several provisions of the state election code.

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

46. By removing the ballots for examination prior to seven o’clock a.m. on election day, Secretary Boockvar created a system whereby local officials could open and review ballots without the proper announcements, observation, and security. This entire scheme, which was only followed in Democrat majority counties, was blatantly illegal in that it permitted the illegal removal of ballots from their locked containers prematurely.

47. Statewide election officials and local election officials in Philadelphia and Allegheny Counties, aware of the historical Democrat advantage in those counties, appear to have violated

Pennsylvania's election code and adopted the differential standards favoring voters in Philadelphia and Allegheny Counties with the intent to favor former Vice President Biden.

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

49. In addition, a great number of ballots were received after the statutory deadline and yet were counted by virtue of the previously described decision of the Supreme Court of Pennsylvania.

50. In addition, the changed process allowing the curing of absentee and mail-in ballots in Allegheny and Philadelphia counties is a separate basis resulted in an unknown number of ballots being treated in an unconstitutional manner inconsistent with Pennsylvania statute.

51. Approximately 2.5 million ballots in Pennsylvania were mail-in ballots. This number of constitutionally-tainted ballots far exceeds the approximately 81,660 votes separating the candidates.

52. This blatant disregard of statutory law renders all mail-in ballots constitutionally suspect and cannot form the basis for appointing Pennsylvania's Electors to the Electoral College.

53. According to the U.S. Election Assistance Commission's report to Congress *Election Administration and Voting Survey: 2016 Comprehensive Report*, in 2016 Pennsylvania received 266,208 mail-in ballots; 2,534 of them were rejected (.95%). *Id.* at p. 24. However, in 2020, Pennsylvania

received more than 10 times the number of mail-in ballots compared to 2016. As explained *supra*, this much larger volume of mail-in ballots was treated in an unconstitutionally-modified manner that included: (1) doing away with the Pennsylvania's signature verification requirements; (2) extending that deadline to three days after Election Day and adopting a presumption that even *non-postmarked ballots* were presumptively timely; and (3) blocking poll watchers in Philadelphia and Allegheny Counties in violation of State law.

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

State of Georgia

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

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

57. Georgia's Secretary of State, Brad Raffensperger, without legislative approval, unilaterally abrogated Georgia's statute governing the signature verification process for absentee ballots.

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

on Election Day: In April 2020, however, the State Election Board adopted Secretary of State Rule 183-1-14-0.9-.15, Processing Ballots Prior to Election Day. That rule purports to authorize county election officials to begin processing absentee ballots up to three weeks before Election Day.

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

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

61. On March 6, 2020, in *Democratic Party of Georgia v. Raffensperger*, No. 1:19-cv-5028-WMR (N.D. Ga.), Georgia’s Secretary of State entered a Compromise Settlement Agreement and Release with the Democratic Party of Georgia (the “Settlement”) to materially change the statutory requirements for reviewing signatures on absentee ballot envelopes to confirm the voter’s identity by making it far more

difficult to challenge defective signatures beyond the express mandatory procedures set forth at GA. CODE § 21-2-386(a)(1)(B).

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

63. Georgia's legislature has not ratified these material changes to statutory law mandated by the Compromise Settlement Agreement and Release, including altered signature verification requirements and early opening of ballots. The relevant legislation that was violated by Compromise Settlement Agreement and Release did not include a severability clause.

64. This unconstitutional change in Georgia law appeared to materially benefit former Vice President Biden. According to the Secretary of State's office, former Vice President Biden had almost double the number of absentee votes (849,729) as President Trump (451,157).

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

66. Specifically, there were 1,305,659 absentee mail-in ballots submitted in Georgia in 2020. There were 4,786 absentee ballots rejected in 2020. This is a rejection rate of .37%. In contrast, in 2016, the 2016 rejection rate was 6.42% with 13,677 absentee mail-in ballots being rejected out of 213,033 submitted, which more than *seventeen times greater* than in 2020. See Decl. of Charles J. Cicchetti, Ph.D. at ____ attached hereto as Ex. ____.

67. If the rejection rate of mailed-in absentee ballots remained the same in 2020 as it was in 2016, there would be 83,823 less tabulated ballots in 2020. The statewide split of absentee ballots was 34.68% for Trump and 65.32% for Biden. Rejecting at the higher 2016 rate with the 2020 split between Trump and Biden would decrease Trump votes by 29,062 and Biden votes by 54,761, which would be a net gain for Trump of 25,700 votes. This would be more than needed to overcome the Biden advantage of 12,670 votes, and Trump would win by 13,030 votes. *Id.* Regardless of the number of ballots affected, however, the non-legislative changes to the election rules violated the Electors Clause.

State of Michigan

68. Michigan has 16 electoral votes, with a statewide vote tally currently estimated at 2,650,695 for President Trump and 2,796,702 for former Vice President Biden, a margin of 146,007 votes. In Wayne

County, Mr. Biden's margin (322,925 votes) significantly exceeds his statewide lead.

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

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

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

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

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

An application for an absent voter ballot under this section may be made in *any of the following ways*:

- (a) By a written request signed by the voter.
- (b) On an absent voter ballot application form provided for that purpose by the clerk of the city or township.
- (c) On a federal postcard application.

M.C.L. § 168.759(3) (emphasis added).

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

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

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

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

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

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

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

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

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

83. Michigan also has strict signature verification requirements for absentee ballots, including that the Elections Department place a

written statement or stamp on each ballot envelope where the voter signature is placed, indicating that the voter signature was in fact checked and verified with the signature on file with the State. *See* MCL § 168.765a(6).

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

85. Numerous poll challengers and an Election Department employee whistleblower have testified that the signature verification requirement was ignored in Wayne County in a case currently pending in the Michigan Supreme Court.² For example, Jesse Jacob, a decades-long City of Detroit employee assigned to work in the Elections Department for the 2020 election testified that:

Absentee ballots that were received in the mail would have the voter’s signature on the envelope. While I was at the TCF Center, I was instructed not to look at any of the signatures on the absentee ballots, and I was

² *Johnson v. Benson*, Petition For Extraordinary Writs & Declaratory Relief filed Nov. 26, 2020 (Mich. Sup. Ct.) at ¶¶ 71, 138-39.

instructed not to compare the signature on the absentee ballot with the signature on file.

Id., Affidavit of Jessie Jacobs, Appendix 14 at ¶15.

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

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

88. Additional public information confirms the material adverse impact on the integrity of the vote in Wayne County caused by these unconstitutional changes to Michigan's election law. For example, the Wayne County Statement of Votes Report lists approximately 173,000 votes with no registered voters listed for them (*i.e.*, 173,000 votes that do not link to *any voter registrations*). See <https://www.waynecounty.com/elected/clerk/election-results.aspx> (beginning on Page 93 under the heading City of Detroit). The number of votes not tied to a registered voter by itself exceeds Vice President Biden's margin of margin of 146,007 votes by more than 27,000 votes.

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

90. On November 17, 2020, the Canvassers Board deadlocked 2-2 over whether to certify the

results of the presidential election based on numerous reports of fraud and unanswered material discrepancies in the county-wide election results. A few hours later, the Republican Board members reversed their decision and voted to certify the results after severe harassment, including threats of violence.

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

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

State of Minnesota

93. Minnesota has 10 electoral votes, with a statewide vote tally currently estimated at 1,484,065 for President Trump and 1,717,077 for former Vice President Biden, a margin of 233,012 votes.

94. In Minnesota, voters requested more than 1.5 million absentee ballots, more than three times the number of absentee ballots requested in 2016. Democrats voted by mail at a ratio of more than two to one to Republican voters.

95. For statewide elections including presidential elections, Minnesota requires that mail-in ballots be witnessed by a registered Minnesota voter, a notary, or person otherwise authorized to administer oaths and that the voter display their blank ballot to their witness who must attest that the voter completed the ballot in the witness's presence

without showing how the voter voted. MINN. STAT. § 203B.07(3)(1)-(3) (“Witness Requirement”).

96. For statewide elections including presidential elections, Minnesota further requires that hand-delivered ballots received after 3:00 p.m. and mail-in ballots received after 8:00 pm. on Election Day “shall be marked as received late by the county auditor or municipal clerk, and must not be delivered to the ballot board.” MINN. STAT. § 203B.08(3) (“Receipt Deadline”).

97. On July 17, 2020, in *LaRose v. Simon*, No. 62-CV-20-3149, 2d Judicial Dist, (Ramsey Cty.), Minnesota’s Secretary of State entered a Stipulation and Partial Consent Decree (the “Partial Consent Decree”) for the 2020 general election to enjoin the Witness Requirement altogether and to extend the Receipt Deadline for mail-in ballots from Election Day to 5 business days after Election Day. In *Carson v. Simon*, 978 F.3d 1051 (8th Cir. Oct. 29, 2020), the U.S. Court of Appeals for the Eighth Circuit entered a preliminary injunction requiring the segregation of ballots received after the statutory deadline, without modifying the alteration of the Witness Requirement, which affects the majority of the absentee ballots cast this election.

98. Minnesota’s legislature has not approved or authorized the weakened standards in the Partial Consent Decree, and the relevant legislation did not include a severability clause.

99. This unconstitutional non-legislative usurpation of the legislature’s sole authority to set rules for the appointment of Electors generated unlawful votes and violated the Electors Clause.

State of Nevada

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

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

102. Under Section 23 of Assembly Bill 4, the applicable city or county clerk’s office is required to review the signature on ballots, without permitting a computer system to do so: “The *clerk or employee shall check* the signature used for the mail ballot against all signatures of the voter available in the records of the clerk.” *Id.* § 23(1)(a) (codified at NEV. REV. STAT. § 293.8874(1)(a)) (emphasis add). Moreover, the system requires that two or more employees be included: “If at least two employees in the office of the clerk believe there is a reasonable question of fact as to whether the signature used for the mail ballot matches the signature of the voter, the clerk shall contact the voter and ask the voter to confirm whether the signature used for the mail ballot belongs to the voter.” *Id.* § 23(1)(b) (codified at NEV. REV. STAT. § 293.8874(1)(b)). A signature that differs from on-file signatures in multiple respects is inadequate: “There is a reasonable question of fact as to whether the signature used for the mail ballot matches the

signature of the voter if the signature used for the mail ballot differs in multiple, significant and obvious respects from the signatures of the voter available in the records of the clerk.” *Id.* § 23(2)(a) (codified at NEV. REV. STAT. § 293.8874(2)(a)). Finally, under Nevada law, “each voter has the right ... [t]o have a uniform, statewide standard for counting and recounting all votes accurately.” NEV. REV. STAT. § 293.2546(10).

103. Nevada law does not allow computer systems to substitute for review by clerks’ employees.

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

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

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

107. More than 450,000 mail-in ballots from Clark County either were processed under weakened signature-verification criteria in violation of the statutory criteria for validating mail-in ballots. The

number of contested votes exceeds the margin of votes dividing the parties.

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

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

110. Out of the nearly 580,000 mail-in ballots, registered Democrats returned almost twice as many mail-in ballots as registered Republicans. Thus, this violation of Nevada law appeared to materially benefited former Vice President Biden’s vote tally. Regardless of the number of votes that were affected by the unconstitutional modification of Nevada’s election rules, the non-legislative changes to the election rules violated the Electors Clause.

State of Wisconsin

111. Wisconsin has 10 electoral votes, with a statewide vote tally currently estimated at 1,610,151 for President Trump and 1,630,716 for former Vice President Biden (*i.e.*, a margin of 20,565 votes). In two

counties, Milwaukee and Dane, Mr. Biden's margin (364,298 votes) significantly exceeds his statewide lead.

112. In the 2016 general election some 146,932 mail-in ballots were returned in Wisconsin out of more than 3 million votes cast.³ In stark contrast, 1,275,019 mail-in ballots, nearly a 900 percent increase over 2016, were returned in the November 3, 2020 election.⁴

113. Wisconsin statutes guard against fraud in absentee ballots: “[V]oting by absentee ballot is a privilege exercised wholly outside the traditional safeguards of the polling place. The legislature finds that the privilege of voting by absentee ballot must be carefully regulated to prevent the potential for fraud or abuse[.]” WISC. STAT. § 6.84(1).

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

115. For example, the WEC undertook a campaign to position hundreds of drop boxes to collect

³ Source: U.S. Elections Project, *available at*: http://www.electproject.org/early_2016.

⁴ Source: U.S. Elections Project, *available at*: <https://electproject.github.io/Early-Vote-2020G/WI.html>.

absentee ballots—including the use of unmanned drop boxes.⁵

116. The mayors of Wisconsin’s five largest cities—Green Bay, Kenosha, Madison, Milwaukee, and Racine, which all have Democrat majorities—joined in this effort, and together, developed a plan use purportedly “secure drop-boxes to facilitate return of absentee ballots.” Wisconsin Safe Voting Plan 2020, at 4 (June 15, 2020).⁶

117. It is alleged in an action recently filed in the United States District Court for the Eastern District of Wisconsin that over five hundred unmanned, illegal, absentee ballot drop boxes were used in the Presidential election in Wisconsin.⁷

118. However, the use of *any* drop box, manned or unmanned, is directly prohibited by Wisconsin statute. The Wisconsin legislature specifically described in the Election Code “Alternate

⁵ Wisconsin Elections Commission Memoranda, To: All Wisconsin Election Officials, Aug. 19, 2020, *available at*: <https://elections.wi.gov/sites/elections.wi.gov/files/2020-08/Drop%20Box%20Final.pdf>. at p. 3 of 4.

⁶ Wisconsin Safe Voting Plan 2020 Submitted to the Center for Tech & Civic Life, June 15, 2020, by the Mayors of Madison, Milwaukee, Racine, Kenosha and Green Bay *available at*: <https://www.techandciviclelife.org/wp-content/uploads/2020/07/Approved-Wisconsin-Safe-Voting-Plan-2020.pdf>.

⁷ See Complaint (Doc. No. 1), *Donald J. Trump, Candidate for President of the United States of America v. The Wisconsin Election Commission*, Case 2:20-cv-01785-BHL (E.D. Wisc. Dec. 2, 2020) (Wisconsin Trump Campaign Complaint”) at ¶¶ 188-89.

absentee ballot site[s]” and detailed the procedure by which the governing body of a municipality may designate a site or sites for the delivery of absentee ballots “other than the office of the municipal clerk or board of election commissioners as the location from which electors of the municipality may request and vote absentee ballots and to which voted absentee ballots shall be returned by electors for any election.” Wis. Stat. 6.855(1).

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

120. Thus, the unmanned absentee ballot drop-off sites are prohibited by the Wisconsin Legislature as they do not comply with Wisconsin law expressly defining “[a]lternate absentee ballot site[s]”. Wis. Stat. 6.855(1), (3).

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

122. The fact that other methods of delivering absentee ballots, such as through unmanned drop

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

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

124. Specifically, registering to vote by absentee ballot requires photo identification, except for those who register as “indefinitely confined” or “hospitalized.” WISC. STAT. § 6.86(2)(a), (3)(a). Registering for indefinite confinement requires certifying confinement “because of age, physical illness or infirmity or [because the voter] is disabled for an indefinite period.” *Id.* § 6.86(2)(a). Should indefinite confinement cease, the voter must notify the county clerk, *id.*, who must remove the voter from indefinite-confinement status. *Id.* § 6.86(2)(b).

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

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

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

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

129. The WEC’s directive violated Wisconsin law. Specifically, WISC. STAT. § 6.86(2)(a) specifically provides that “any [indefinitely confined] elector [who] is no longer indefinitely confined ... shall so notify the municipal clerk.” WISC. STAT. § 6.86(2)(b) further provides that the municipal clerk “shall remove the name of any other elector from the list upon request of the elector or upon receipt of reliable information that an elector no longer qualifies for the service.”

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

said they were indefinitely confined in 2020, a fourfold increase from the roughly 17,000 indefinitely confined voters in those counties in 2016.

131. Under Wisconsin law, voting by absentee ballot also requires voters to complete a certification, including their address, and have the envelope witnessed by an adult who also must sign and indicate their address on the envelope. *See* WISC. STAT. § 6.87. The sole remedy to cure an “improperly completed certificate or [ballot] with no certificate” is for “the clerk [to] return the ballot to the elector[.]” *Id.* § 6.87(9). “If a certificate is missing the address of a witness, the ballot *may not be counted.*” *Id.* § 6.87(6d) (emphasis added).

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

133. In the Wisconsin Trump Campaign Complaint, it is alleged, supported by the sworn affidavits of poll watchers, that canvas workers carried out this unlawful policy, and acting pursuant to this guidance, in Milwaukee used red-ink pens to alter the certificates on the absentee envelope and then cast and count the absentee ballot.⁸ These acts violated WISC. STAT. § 6.87(6d) (“If a certificate is missing the address of a witness, the ballot may not

⁸ See “Wisconsin Trump Campaign Complaint” at ¶¶ 235-48.

be counted”). *See also* WISC. STAT. § 6.87(9) (“If a municipal clerk receives an absentee ballot with an improperly completed certificate or with no certificate, the clerk may return the ballot to the elector . . . whenever time permits the elector to correct the defect and return the ballot within the period authorized.”).

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

COUNT I: ELECTORS CLAUSE

135. Plaintiff State repeats and re-alleges the allegations of paragraphs 1-134, above, as if fully set forth herein.

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

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

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

139. The actions set out in Paragraphs 29-134 constitute non-legislative changes to State election law by executive-branch State election officials, or by judicial officials, in Defendant States Pennsylvania, Georgia, Michigan, Minnesota, Nevada, and Wisconsin, in violation of the Electors Clause.

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

PRAYER FOR RELIEF

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

A. Declare that Defendant States Pennsylvania, Georgia, Michigan, Minnesota, Nevada, and Wisconsin administered the 2020 presidential election in violation of the Electors Clause.

B. Declare that any Electoral College votes cast by such Electors appointed in the Defendant States Pennsylvania, Georgia, Michigan, Minnesota, Nevada, and Wisconsin are in violation of the Electors Clause and cannot be counted.

C. Enjoin Defendant States' use of the 2020 election results for the office of President to appoint Electors to the Electoral College, unless the legislatures of Defendant States review the 2020 election results and decide by legislative resolution to use those results in a manner to be determined by the legislatures that is consistent with the Constitution.

D. If any of the Defendant States have already appointed Electors to the Electoral College using the 2020 election results, direct such States' legislatures, pursuant to 3 U.S.C. § 2 and U.S. CONST.

art. II, §1, cl. 2, to appoint a new set of Electors in a manner that does not violate the Electors Clause, or to appoint no Electors at all.

E. Award costs to Plaintiff State.

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

December __, 2020

Respectfully submitted,

First A. Surname*
Solicitor General of State
Attorney General's Office
000 Street Ave.
Capitol City, ST 00000
(111) 222-3333
fsurname@oag.StateA.gov

* Counsel of Record

No. _____, Original

In the Supreme Court of the United States

STATE OF LOUISIANA, STATE OF A, AND STATE OF B,
Plaintiffs,

v.

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

Defendants.

**BRIEF IN SUPPORT OF MOTION FOR
LEAVE TO FILE BILL OF COMPLAINT**

First A. Surname*
Solicitor General of State
Attorney General's Office
000 Street Ave.
Capitol City, ST 00000
(111) 222-3333
fsurname@oag.StateA.gov

* Counsel of Record

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No. _____, Original

In the Supreme Court of the United States

STATE OF LOUISIANA, STATE OF A, AND STATE OF B,

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

Defendants.

**BRIEF IN SUPPORT OF
MOTION FOR LEAVE TO FILE**

Pursuant to S.Ct. Rule 17.3 and U.S. CONST. art. III, § 2, the States of Louisiana, A, and B (collectively, the “Plaintiff States”) respectfully submits this brief in support of its Motion for Leave to File a Bill of Complaint against the States of Georgia, Michigan, Minnesota, and Wisconsin and the Commonwealth of Pennsylvania (collectively, the “Defendant States”).

STATEMENT OF THE CASE

Lawful elections are at the heart of our freedoms. “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 10 (1964). Trust in the integrity of that process

is the glue that binds our citizenry and the States in this Union.

Elections face the competing goals of maximizing and counting *lawful* votes but minimizing and excluding *unlawful* ones. *Reynolds v. Sims*, 377 U.S. 533, 554-55 (1964); *Bush v. Gore*, 531 U.S. 98, 103 (2000) (“the votes eligible for inclusion in the certification are the votes meeting the properly established legal requirements”) (“*Bush II*”); compare 52 U.S.C. § 20501(b)(1)-(2) (2018) with *id.* § 20501(b)(3)-(4). Moreover, “the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Reynolds*, 377 U.S. at 555. Reviewing election results requires not only counting lawful votes but also eliminating unlawful ones.

It is an understatement to say that 2020 was not a good year. In addition to a divided and partisan national mood, the country faced the COVID-19 pandemic. Certain officials in the Defendant States presented the pandemic as the justification for ignoring state laws regarding absentee and mail-in voting. The Defendant States flooded their citizenry with tens of millions of ballot applications and ballots ignoring statutory controls as to how they were received, evaluated, and counted. Whether well intentioned or not, these unconstitutional and unlawful changes had the same *uniform effect*—they made the 2020 election less secure in the Defendant States. Those changes were made in violation of relevant state laws and were made by non-legislative entities, without any consent by the state legislatures.

These unlawful acts thus directly violated the Constitution. U.S. CONST. art. I, § 4; *id.* art. II, § 1, cl. 2.

This case presents a pure question of law: did the Defendant States violate the Electors Clause by taking non-legislative actions to change the election rules that would govern the appointment of presidential electors? Although those non-legislative changes undoubtedly facilitated the casting and counting of ballots in violation of the law, we may never know the full extent of wrongdoing and abusive practices that took place during the election of 2020. What we do know is that each of these States flagrantly violated the statutes enacted by relevant State legislatures, thereby violating the Electors Clause of Article II, Section 1, Clause 2 of the Constitution. By these unlawful acts, the Defendant States have not only tainted the integrity of their own citizens' vote, but their actions have also debased the votes of citizens in the States who remained loyal to the Constitution.

Elections for federal office must comport with federal constitutional standards, *see Bush II*, 531 U.S. at 103-105, and executive branch government officials cannot subvert these constitutional requirements, no matter their stated intent. For presidential elections, each State must appoint its Electors to the electoral college in a manner that complies with the Constitution, specifically the Electors Clause requirement that only state *legislatures* may set the

rules governing the appointment of electors and the elections upon which such appointment is based.¹

Constitutional Background

The Electors Clause 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. 2 (emphasis added); *cf. id.* art. I, cl. 4 (similar for time, place, and manner of federal legislative elections). “[T]he state legislature’s power to select the manner for appointing electors is *plenary*,” *Bush II*, 531 U.S. at 104 (emphasis added), and sufficiently *federal* for this Court’s review. *Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S. 70, 76 (2000) (“*Bush I*”). This textual feature of our Constitution was adopted to ensure the integrity of the presidential selection process: “Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption.” FEDERALIST NO. 68 (Alexander Hamilton). When a State conducts a popular election to appoint electors, the State must comply with all constitutional requirements. *Bush II*, 531 U.S. at 104. When a State fails to conduct a valid election—for any reason—the electors may be appointed on a subsequent day in such

¹ Subject to override by Congress, State legislatures have the exclusive power to regulate the time, place, and manner for electing Members of Congress, *see* U.S. CONST. art. I, § 4, which is distinct from legislatures’ exclusive and plenary authority on the appointment of presidential electors. When non-legislative actors purport to set State election law for presidential elections, they violate both the Elections Clause and the Electors Clause.

a manner *as the legislature of such State may direct.*”
3 U.S.C. § 2 (emphasis added).

Non-Legislative Changes Made in Violation of the Electors Clause

As set forth in the Complaint, executive and judicial officials made significant changes to the legislatively-defined election rules in the Defendant States. *See* Compl. at ¶¶ 29-134. Taken together, these non-legislative changes did away with statutory ballot-security measures for absentee and mail-in ballots such as signature verification, witness requirements, and statutorily-authorized secure ballot drop-off locations.

Citing the COVID-19 pandemic, Defendant States gutted the safeguards for absentee ballots through non-legislative actions, despite knowledge that absentee ballots are “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) (hereinafter, “CARTER-BAKER”), which is magnified when absentee balloting is shorn of ballot-integrity measures such as signature verification, witness requirements, or outer-envelope protections, or when absentee ballots are processed and tabulated without bipartisan observation by poll watchers.

Without Defendant States’ combined 72 electoral votes, President Trump appears to have 232 electoral votes, and former Vice President Biden appears to have 234. Thus, Defendant States’ electors will determine the outcome of the election. Alternatively, if Defendant States are unable to certify 37 or more

electors, neither candidate will have a majority in the Electoral College, in which case the election would devolve to the House of Representatives under the Twelfth Amendment.

STANDARD OF REVIEW

This Court considers two primary factors when it decides whether to grant a State leave to file a bill of complaint against another State: (1) “the nature of the interest of the complaining State,” and (2) “the availability of an alternative forum in which the issue tendered can be resolved.” *Mississippi v. Louisiana*, 506 U.S. 73, 77 (1992) (internal quotations omitted) Because original proceedings in this Court follow the Federal Rules of Civil Procedure, S.Ct. Rule 17.2, the facts for purposes of a motion for leave to file are the well-pleaded facts alleged in the complaint. *Hernandez v. Mesa*, 137 S.Ct. 2003, 2005 (2017). The complaint must set out “a short and plain statement of the claim showing that the pleader is entitled to relief.” FED. R. CIV. P. 8(a)(2).

ARGUMENT

I. THIS COURT HAS JURISDICTION OVER PLAINTIFF STATES’ CLAIMS.

In order to grant leave to file, this Court first must assure itself of its jurisdiction, *Steel Co. v. Citizens for a Better Env’t.*, 523 U.S. 83, 95 (1998); *cf. Foman v. Davis*, 371 U.S. 178, 182 (1962) (courts deny leave to file amended pleadings that would be futile). That standard is met here. The Plaintiff States’ fundamental rights and interests are at stake. This

Court is the *only* venue that can protect the Plaintiff States' Electoral College votes from being cancelled by the unlawful and constitutionally-tainted votes cast by Electors appointed by the Defendant States.

A. The claims fall within this Court's constitutional and statutory subject-matter jurisdiction.

The federal judicial power extends to "Controversies between two or more States." U.S. CONST. art. III, § 2, and Congress has placed the jurisdiction for such suits exclusively with the Supreme Court: "The Supreme Court shall have original *and exclusive* jurisdiction of all controversies between two or more States." 28 U.S.C. § 1251(a) (emphasis added). This Court not only is a permissible court for hearing this action; it is the only court that can hear this action quickly enough to render relief sufficient to avoid constitutionally tainted votes in the Electoral College and to place the appointment of the Defendant States' Electors before their legislatures pursuant to 3 U.S.C. § 2 in time for a vote in the House of Representatives on January 6, 2021. *See* 3 U.S.C. § 15. With that relief in place, the House can resolve the election on January 6, 2021, in time for the president to be selected by the constitutionally set date of January 20. U.S. CONST. amend. XX, § 1.

B. The claims arise under the Constitution.

When States violate their own election laws, they may argue that these violations are insufficiently federal to allow review in this Court. *Cf. Foster v. Chatman*, 136 S.Ct. 1737, 1745-46 (2016) (this Court lacks jurisdiction to review state-court decisions that "rest[] on an adequate and independent state law

ground”). That attempted evasion would fail for two reasons.

First, in the election context, a state-court remedy or a state executive’s administrative action purporting to alter state election statutes implicates the Electors Clause. *See Bush II*, 531 U.S. at 105. Even a plausible federal-law defense to state action arises under federal law within the meaning of Article III. *Mesa v. California*, 489 U.S. 121, 136 (1989) (holding that “it is the raising of a federal question in the officer’s removal petition that constitutes the federal law under which the action against the federal officer arises for Art. III purposes”). Constitutional arising-under jurisdiction exceeds statutory federal-question jurisdiction of federal district courts,² and—indeed—we did not even have federal-question jurisdiction until 1875. *Merrell Dow Pharm.*, 478 U.S. at 807. The Plaintiff States’ Electoral Clause claims arise under the Constitution and so are *federal*, even if the only claim is that the Defendant States violated their own state election statutes. Moreover, as is explained below, the Defendant States’ actions injure the interests of Plaintiff States in the appointment of Electors to the Electoral College in a manner that is consistent with the Constitution.

Given this federal-law basis against these state actions, the state actions are not “independent” of the federal constitutional requirements that provide this

² The statute for federal-officer removal at issue in *Mesa* omits the well-pleaded complaint rule, *id.*, which is a *statutory* restriction on federal-question jurisdiction under 28 U.S.C. § 1331. *See Merrell Dow Pharm., Inc. v. Thompson*, 478 U.S. 804, 808 (1986).

Court jurisdiction. *Fox Film Corp. v. Muller*, 296 U.S. 207, 210-11 (1935); *cf. City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 164 (1997) (noting that “even though state law creates a party’s causes of action, its case might still ‘arise under’ the laws of the United States if a well-pleaded complaint established that its right to relief under state law requires resolution of a substantial question of federal law” and collecting cases) (internal quotations and alterations omitted). Plaintiff States’ claims therefore fall within this Court’s arising-under jurisdiction.

Second, state election law is not purely a matter of state law because it applies “not only to elections to state offices, but also to the election of Presidential electors,” meaning that state law operates, in part, “by virtue of a direct grant of authority made under Art. II, § 1, cl. 2, of the United States Constitution.” *Bush I*, 531 U.S. at 76. Logically, “any state authority to regulate election to [federal] offices could not precede their very creation by the Constitution,” meaning that any “such power had to be delegated to, rather than reserved by, the States.” *Cook v. Gralike*, 531 U.S. 510, 522 (2001) (internal quotations omitted). “It is no original prerogative of State power to appoint a representative, a senator, or President for the Union.” J. Story, 1 COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 627 (3d ed. 1858). For these reasons, any “significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question.” *Bush II*, 531 U.S. at 113 (Rehnquist, C.J., concurring).

Under these circumstances, this Court has the power both to review and to remedy a violation of the

Constitution. Significantly, parties do not need winning hands to establish jurisdiction. Instead, jurisdiction exists when “the right of the petitioners to recover under their complaint will be sustained if the Constitution and laws of the United States are given one construction,” even if the right “will be defeated if they are given another.” *Bell v. Hood*, 327 U.S. 678, 685 (1946). At least as to *jurisdiction*, a plaintiff need survive only the low threshold that “the alleged claim under the Constitution or federal statutes [not] ... be immaterial and made solely for the purpose of obtaining jurisdiction or ... wholly insubstantial and frivolous.” *Id.* at 682. The Bill of Complaint meets that test.

C. The claims raise a “case or controversy” between the States.

Like any other action, an original action must meet the Article III criteria for a case or controversy: “it must appear that the complaining State has suffered a wrong through the action of the other State, furnishing ground for judicial redress, or is asserting a right against the other State which is susceptible of judicial enforcement according to the accepted principles of the common law or equity systems of jurisprudence.” *Maryland v. Louisiana*, 451 U.S. 725, 735-36 (1981) (internal quotations omitted). Plaintiff States have standing under those rules.³

³ At its constitutional minimum, standing doctrine measures the necessary effect on plaintiffs under a tripartite test: cognizable injury to the plaintiffs, causation by the challenged conduct, and redressable by a court. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992). The rules for standing in state-versus-state actions is the same as the rules in other

With voting, “the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Bush II*, 531 U.S. at 105 (quoting *Reynolds*, 377 U.S. at 555). In presidential elections, “the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States.” *Anderson v. Celebrezze*, 460 U.S. 780, 795 (1983). Thus, votes in the Defendant States affect the votes in the Plaintiff States, as set forth in more detail below.

1. Plaintiff States suffer an injury in fact.

The citizens of Plaintiff States have the right to demand that all other States abide by the constitutionally-set rules in appointing Presidential Electors to the Electoral College. “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 10 (1964); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (“the political franchise of voting” is “a fundamental political right, because preservative of all rights”). “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.” *Anderson v. United States*, 417 U.S. 211, 227 (1974);

actions under Article III. See *Maryland v. Louisiana*, 451 U.S. 725, 736 (1981).

Baker v. Carr, 369 U.S. 186, 208 (1962). Put differently, “a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction,” *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972), and—unlike the residency durations required in *Dunn*—the “jurisdiction” here is the entire United States. In short, the rights at issue are congeable under Article III.

Significantly, the Plaintiff States press their own form of voting-rights injury *as States*. As with the one-man, one-vote principle for congressional redistricting in *Wesberry*, the equality of the States arises from the structure of the Constitution, not from the Equal Protection or Due Process Clauses. *See Wesberry*, 376 U.S. at 7-8; *id.* n.10 (expressly not reaching claims under Fourteenth Amendment). Whereas the House represents the People proportionally, the Senate represents the States. *See* U.S. CONST. art. V, cl. 3 (“no state, without its consent, shall be deprived of its equal suffrage in the Senate”). While Americans likely care more about who is elected President, the States have a distinct interest in who is elected *Vice President* and thus who can cast the tie-breaking vote in the Senate. Through that interest, States suffer an Article III injury when another State violates federal law to affect the outcome of a presidential election. This injury is particularly acute in 2020, where a Senate majority often will hang on the Vice President’s tie-breaking vote because of the nearly equal—and, depending on the outcome of Georgia run-off elections in January, possibly *equal*—balance between political parties. Quite simply, it is vitally important to the States who becomes Vice President.

Because individual citizens may arguably suffer only a generalized grievance from Electors Clause violations, States have standing where their citizen voters would not, *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (distinguishing citizen plaintiffs from citizen relators who sued in the name of a state). In *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007), this Court held that states seeking to protect their sovereign interests are “entitled to special solicitude in our standing analysis.” *Id.* at 520. While *Massachusetts* arose in a different context—the same principles of federalism apply equally here to require special deference to the sovereign states on standing questions.

In addition to standing for their own injuries, States can assert *parens patriae* standing for their citizens who are Presidential Electors.⁴ Like legislators, Presidential Electors assert “legislative injury” whenever allegedly improper actions deny them a working majority. *Coleman v. Miller*, 307 U.S. 433, 435 (1939). The Electoral College is a zero-sum game. If the Defendant States’ unconstitutionally appointed Electors vote for a presidential candidate opposed by the Plaintiff States’ Electors, that operates to defeat the Plaintiff States’ interests.⁵

⁴ “The ‘*parens patriae*’ doctrine ... is a recognition of the principle that the state, when a party to a suit involving a matter of sovereign interest, ‘must be deemed to represent all its citizens.’” *New Jersey v. New York*, 345 U.S. 369, 372-73 (1953) (quoting *Kentucky v. Indiana*, 281 U.S. 163, 173 (1930)).

⁵ Because the Plaintiff States appointed their Electors fully consistent with the Constitution, they suffer injury if their Electors are defeated by the Defendant States’ unconstitutionally appointed Electors. This injury is all the more acute

Indeed, even without an electoral college majority, Presidential Electors suffer the same voting-debasement injury as voters generally: “It must be remembered that ‘the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.’” *Bush v. Gore*, 531 U.S. 98, 105 (2000) (quoting *Reynolds v. Sims*, 377 U. S. 533, 555 (1964)) (“*Bush II*”). Those injuries to Electors serve as an Article III basis for a *parens patriae* action by their States.

2. The Defendant States caused the injuries.

Non-legislative officials in the Defendant States either directly caused the challenged violations of the Electors Clause or, in the case of Georgia, acquiesced to them in settling a federal lawsuit. The Defendants thus caused the Plaintiffs’ injuries.

3. The requested relief would redress the injuries.

This Court has authority to redress the Plaintiff States’ injuries, and the requested relief will do so.

because Plaintiff States have taken steps to prevent fraud. For example, Louisiana requires voters to show photo identification, LA. REV. STAT. § 18:1309(D)(1)(a), verifies absentee ballots, *id.* § 18:1313.1(G), and expressly allows parishes with more than 1,000 absentee ballots to begin the preparing and verifying those ballots on the day before Election Day. *Id.* 18:1313.1(A). Unlike the Defendant States, the Plaintiff States neither weakened nor allowed the weakening of their ballot-integrity statutes by non-legislative means.

First, while the Defendant States are responsible for their elections, this Court has authority to enjoin reliance on *unconstitutional* elections:

When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter.

Bush v. Gore, 531 U.S. 98, 104 (2000); *City of Boerne v. Flores*, 521 U.S. 507, 524 (1997) (“power to interpret the Constitution in a case or controversy remains in the Judiciary”). The Plaintiff States do not ask this Court to decide who won the election; they only ask that the Court enjoin the clear violations of the Electors Clause of the Constitution.

Second, the relief that the Plaintiff States request—namely, remand to the State legislatures to allocate Electors in a manner consistent with the Constitution—does not violate the Defendant States’ rights or exceed this Court’s power. The power to select Electors is a plenary power of the legislatures, and this remains so, without regard to state law:

This power is conferred upon the legislatures of the States by the Constitution of the United States, and cannot be taken from them or modified by their State constitutions.... Whatever provisions may be made by statute, or by the state constitution, to choose electors by the people, there is no doubt of the right of the legislature to resume the power at any

time, for it can neither be taken away nor abdicated.

McPherson v. Blacker, 146 U.S. 1, 35 (1892) (internal quotations omitted); accord *Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S. 70, 76-77 (2000); *Bush II*, 531 U.S. at 104.

Third, uncertainty of how the Defendant States' legislatures will allocate their electors is irrelevant to the question of redressability:

If a reviewing court agrees that the agency misinterpreted the law, it will set aside the agency's action and remand the case – even though the agency ... might later, in the exercise of its lawful discretion, reach the same result for a different reason.

FEC v. Akins, 524 U.S. 11, 25 (1998). The Defendant States' legislatures would remain free to exercise their plenary authority under the Electors Clause in any *constitutional* manner they wish. For example, they may review the presidential election results in their State and determine that winner would be the same, notwithstanding the violations of state law in the conduct of the election. Or they may appoint the Electors themselves, either appointing all for one presidential candidate or dividing the State's Electors and appointing some for one candidate and some for another candidate. Or they may take any number of actions that would be consistent with the Constitution. Under *Akins*, the simple act of reconsideration under lawful means is redress enough.

Fourth, the requested relief is consistent with federal election law: "Whenever any State has held an

election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct.” 3 U.S.C. § 2. Regardless of the statutory deadlines for the Electoral College to vote, this Court could enjoin reliance on the results from constitutionally-tainted November 3 election, remand the appointment of Electors to the Defendant States, and order the Defendant States’ legislatures to certify their Electors in a manner consistent with the Constitution, which could be accomplished well in advance of the statutory deadline of January 6 for House to count the electors’ votes. 3 U.S.C. § 15.

D. Plaintiff States have prudential standing.

Beyond the constitutional baseline, standing doctrine also poses prudential limits like the zone-of-interests test, *Ass’n of Data Processing Serv. Org., Inc. v. Camp*, 397 U.S. 150, 153 (1970)., and the need for those seeking to assert absent third parties’ rights to have their own Article III standing and a close relationship with the absent third parties, whom a sufficient “hindrance” keeps from asserting their rights. *Kowalski v. Tesmer*, 543 U.S. 125, 128-30 (2004). Prudential doctrines pose no barrier here.

First, the injuries asserted here are “arguably within the zone of interests to be protected or regulated by the ... constitutional guarantee in question.” *Camp*, 397 U.S. at 153. The Court has relied on the structure of the Constitution to provide the one-man, one-vote standard, *Wesberry*, 376 U.S. at 7-8 & n.10, and this case is no different. The structure

of the Electoral College provides that each State is allocated a certain number of Electors depending upon that State's representation in Congress and that each State must abide by constitutional requirements in the appointment of its Electors. When the elections in one State violate those requirements in a presidential election, the interests of the citizens in other States are harmed.

Second, even if *parens patriae* standing were not available, States have their own injury, a close relationship with their citizens, and citizens may arguable lack standing to assert injuries under the Electors Clause. *See, e.g., Bognet v. Sec'y Pa.*, No. 20-3214, 2020 U.S. App. LEXIS 35639, at *18-26 (3d Cir. Nov. 13, 2020). States, by contrast, have standing to assert such injuries. *Lance*, 549 U.S. at 442 (distinguishing citizen plaintiffs who suffer a generalized grievance from citizen relators who sued in the name of a state); *cf. Massachusetts*, 549 U.S. at 520 (federal courts owe "special solicitude in standing analysis"). Moreover, anything beyond Article III is merely prudential. *Caplin & Drysdale v. United States*, 491 U.S. 617, 623 n.3 (1989). Thus, States also have third-party standing to assert their citizens' injuries.

E. This action is not moot and will not become moot.

None of the looming election deadlines are constitutional, and they all are within this Court's power to enjoin. Indeed, if this Court vacated a State's appointment of Electors, those Electors could not vote on December 14, 2020; if the Court vacated their vote after the fact, the House of Representatives could not

count those votes on January 6, 2021. There would be ample time for the Defendant States' legislatures to appoint new Electors in a manner consistent with the Constitution. Any remedial action can be complete well before January 6, 2020. Indeed, even the swearing in of the next President on January 20, 2021, will not moot this case because review could outlast even the selection of the next President under "the 'capable of repetition, yet evading review' doctrine," which applies "in the context of election cases ... when there are 'as applied' challenges as well as in the more typical case involving only facial attacks." *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 463 (2007) (internal quotations omitted); *accord Norman v. Reed*, 502 U.S. 279, 287-88 (1992). Mootness is not, and will not become, an issue here.

F. This matter is ripe for review.

The Plaintiff States' claims are clearly ripe now, but they were not ripe before the election: "A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998) (internal quotations and citations omitted).⁶ Prior to the election, there was no reason to know who would win the vote in any given State.

⁶ It is less clear whether this matter became ripe on or soon after election night when the networks "called" the election for Mr. Biden or significantly later when enough States certified their vote totals to give him 270-plus anticipated votes in the electoral college.

Ripeness also raises the question of laches, which Justice Blackmun called “precisely the opposite argument” from ripeness. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 915 n.16 (1990) (Blackmun, J., dissenting). Laches is an equitable defense against unreasonable delay in commencing suit. *Petrella v. MGM*, 572 U.S. 663, 667 (2014). This action was neither unreasonably delayed nor is prejudicial to the Defendant States.

Before the election, the Plaintiff States had no ripe claim against a Defendant State:

“One cannot be guilty of laches until his right ripens into one entitled to protection. For only then can his torpor be deemed inexcusable.”

What-A-Burger of Va., Inc. v. Whataburger, Inc., 357 F.3d 441, 449-50 (4th Cir. 2004) (quoting 5 J. Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 31: 19 (4th ed. 2003); *Gasser Chair Co. v. Infanti Chair Mfg. Corp.*, 60 F.3d 770, 777 (Fed. Cir. 1995) (same); *Profitness Physical Therapy Ctr. v. Profit Orthopedic & Sports Physical Therapy P.C.*, 314 F.3d 62, 70 (2d Cir. 2002) (same). The Plaintiff States could not have brought this action before the election results. Nor did the full extent of the county-level deviations from election statutes in the Defendant States become evident until days after the election. Neither ripeness nor laches presents a timing problem here.

G. This action does not raise a non-justiciable political question.

The “political questions doctrine” does not apply here. Under that doctrine, federal courts will decline to review issues that the Constitution delegates to one

of the other branches—the “political branches”—of government. While picking Electors involves political rights, the Supreme Court has ruled in a line of cases beginning with *Baker* that constitutional claims related to voting (other than claims brought under the Guaranty Clause of Article IV, §4) are justiciable in the federal courts. As the Court held in *Baker*, litigation over political rights is not the same as a political question:

We hold that this challenge to an apportionment presents no nonjusticiable “political question.” The mere fact that the suit seeks protection of a political right does not mean it presents a political question. Such an objection “is little more than a play upon words.”

Baker, 369 U.S. at 209. This is no political question; it is a constitutional one that this Court should answer.

H. No adequate alternate remedy or forum exists.

In determining whether to hear a case under this Court’s original jurisdiction, the Court has considered whether a plaintiff State “has another adequate forum in which to settle [its] claim.” *United States v. Nevada*, 412 U.S. 534, 538 (1973). This equitable limit does not apply here because Plaintiff States cannot sue Defendant States in any other forum.

To the extent that Defendant States wish to avail themselves of 3 U.S.C. § 5’s safe harbor, *Bush I*, 531 U.S. at 77-78, this action will not meaningfully stand in their way:

The State, of course, after granting the franchise in the special context of Article II,

can take back the power to appoint electors. ...
There is no doubt of the right of the legislature
to resume the power at any time, for it can
neither be taken away nor abdicated[.]

Bush II, 531 U.S. at 104 (citations and internal quotations omitted).⁷ The Defendant States’ legislature will remain free under the Constitution to appoint electors or vote in any *constitutional* manner they wish. The only thing that they cannot do—and should not wish to do—is to rely on an allocation conducted in violation of the Constitution to determine the appointment of presidential electors.

Moreover, if this Court agrees with the Plaintiff States that the Defendant States’ appointment of Electors under the recently conducted elections would be unconstitutional, then the statutorily-created safe harbor cannot be used as a justification for a violation of the Constitution. The safe-harbor framework created by statute would have to yield in order to ensure that the Constitution was not violated.

It is of no moment that Defendants’ *state laws* may purport to tether state legislatures to popular votes. Those state limits on a state legislature’s exercising federal constitutional functions cannot block action because the federal Constitution “transcends any limitations sought to be imposed by the people of a State” under this Court’s precedents. *Leser v. Garnett*, 258 U.S. 130, 137 (1922); *see also Bush I*, 531 U.S. at

⁷ Indeed, the Constitution also includes another backstop: “if no person have such majority [of electoral votes], then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot.” U.S. CONST. amend. XII.

77; *United States Term Limits v. Thornton*, 514 U.S. 779, 805 (1995) (“the power to regulate the incidents of the federal system is not a reserved power of the States, but rather is delegated by the Constitution”).

As this Court recognized in *McPherson v. Blacker*, the authority to choose presidential electors:

is conferred upon the legislatures of the states by the Constitution of the United States, and cannot be taken from them or modified by their state constitutions. ... *Whatever provisions may be made by statute, or by the state constitution, to choose electors by the people, there is no doubt of the right of the legislature to resume the power at any time, for it can neither be taken away or abdicated.*

146 U.S. 1, 35 (1892) (emphasis added) (internal quotations omitted). The Defendant States would suffer no cognizable injury from this Court’s enjoining their reliance on an unconstitutional vote.

II. THIS CASE PRESENTS A CONSTITUTIONAL QUESTION OF IMMENSE NATIONAL CONSEQUENCE THAT WARRANTS THIS COURT’S DISCRETIONARY REVIEW.

Electoral integrity ensures the legitimacy of not just our governmental institutions, but the Republic itself. *See Wesberry*, 376 U.S. at 10. “Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.” *Purcell*, 549 U.S. at 4. Against that backdrop, few cases could warrant this Court’s review more than this one. In addition, the constitutionality of the process for

selecting the President is of extreme national importance. If the Defendant States are permitted to violate the requirements of the Constitution in the appointment of their Electors, the resulting vote of the Electoral College not only lacks constitutional legitimacy, but the Constitution itself will be forever sullied.

Though the Court claims “discretion when accepting original cases, even as to actions between States where [its] jurisdiction is exclusive,” *Wyoming v. Oklahoma*, 502 U.S. 437, 450 (1992) (internal quotations omitted), this is not a case where the Court should apply that discretion “sparingly.” *Id.* While Plaintiff States dispute that exercising this Court’s original jurisdiction is discretionary, see Section III, *infra*, the clear unlawful abrogation of the Defendant States’ election laws designed to ensure election integrity by a few officials, and examples of material irregularities in the 2020 election cumulatively warrant this Court’s exercising jurisdiction as this Court’s “unsought responsibility to resolve the federal and constitutional issues the judicial system has been forced to confront.” *Bush II*, 531 U.S. at 111; see also *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) (“It is emphatically the province and duty of the judicial department to say what the law is.”). While isolated irregularities could be “garden-variety” election irregularities that do not raise a federal question,⁸ the closeness of the presidential election

⁸ “To be sure, ‘garden variety election irregularities’ may not present facts sufficient to offend the Constitution’s guarantee of due process[.]” *Hunter v. Hamilton Cty. Bd. of Elections*, 635 F.3d 219, 232 (6th Cir. 2011) (quoting *Griffin*, 570 F.2d at 1077-79)).

results, combined with the unconstitutional setting-aside of state election laws by non-legislative actors call both the result and the process into question.

A. The 2020 election suffered from serious irregularities that constitutionally prohibit using the reported results.

The Defendant States' administration of the 2020 election violated the Electors Clause, which renders invalid any appointment of Electors based upon those election results, unless the relevant State legislatures review and modify or expressly ratify those results as sufficient to determine the appointment of Electors. For example, even without fraud or nefarious intent, a mail-in vote not subjected to the State legislature's ballot-integrity measures cannot be counted. It does not matter that a judicial or executive officer sought to bypass that screening in response to the COVID pandemic: the choice was not theirs to make. "Government is not free to disregard the [the Constitution] in times of crisis." *Roman Catholic Diocese of Brooklyn, New York v. Cuomo*, 592 U.S. ____ (Nov. 25, 2020) (Gorsuch, J., concurring). With all unlawful votes discounted, the election result is an open question that this Court must address. Under 3 U.S.C. § 2, the State legislatures may answer the question, but the question must be asked here.

1. Defendant States violated the Electors Clause by modifying their legislatures' election laws through non-legislative action.

The Electors Clause grants authority to *State Legislatures* under both horizontal and vertical separation of powers. It provides authority 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. 2. State legislatures’ primacy *vis-à-vis* non-legislative actors—whether State or federal—is even more significant than congressional primacy *vis-à-vis* State legislatures.

The State legislatures’ authority is plenary. *Bush II*, 531 U.S. at 104. It “cannot be taken from them or modified” even through “their state constitutions.” *McPherson*, 146 U.S. at 35; *Bush I*, 531 U.S. at 76-77; *Bush II*, 531 U.S. at 104. The Framers allocated election authority to State legislatures as the branch closest—and most accountable—to the People. *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 Founding-era documents); *cf.* THE FEDERALIST NO. 57, at 350 (C. Rossiter, ed. 2003) (Madison, J.) (“House of Representatives is so constituted as to support in its members an habitual recollection of their dependence on the people”). Thus, only the State legislatures are permitted to create or modify the respective State’s rules for the appointment of presidential electors. U.S. CONST. art. II, § 1, cl. 2.

Regulating election procedures is necessary both to avoid chaos and to ensure fairness:

Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections; as

a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.

Burdick v. Takushi, 504 U.S. 428, 433 (1992) (interior quotations omitted). Thus, for example, deadlines are necessary to avoid chaos, even if some votes sent via absentee ballot do not arrive timely. *Rosario v. Rockefeller*, 410 U.S. 752, 758 (1973). Even more importantly in this pandemic year with expanded mail-in voting, ballot-integrity measures—*e.g.*, witness requirements, signature verification, and the like—are an essential component of any legislative expansion of mail-in voting. *See* CARTER-BAKER, at 46 (absentee ballots are “the largest source of potential voter fraud”). Though it may be tempting to permit a breakdown of the constitutional order in the face of a global pandemic, the rule of law demands otherwise.

Specifically, because the Electors Clause makes clear that state legislative authority is exclusive, non-legislative actors lack authority to *amend* statutes. *Republican Party of Pa. v. Boockvar*, No. 20-542, 2020 U.S. LEXIS 5188, at *4 (Oct. 28, 2020) (“there is a strong likelihood that the State Supreme Court decision violates the Federal Constitution”) (Alito, J., concurring); *Wisconsin State Legis.*, No. 20A66, 2020 U.S. LEXIS 5187, at *11-14 (Oct. 26, 2020) (Kavanaugh, J., concurring in denial of application to vacate stay); *cf. Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972) (“it is not within our power to construe and narrow state laws”); *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 509-10 (2010)

(“editorial freedom ... [to “blue-pencil” statutes] belongs to the Legislature, not the Judiciary”). That said, courts can enjoin elections or even enforcement of *unconstitutional* election laws, but they cannot rewrite the law in federal presidential elections.

For example, if a state court enjoins or modifies ballot-integrity measures adopted to allow absentee or mail-in voting, that invalidates ballots cast under the relaxed standard unless the legislature has—prior to the election—ratified the new procedure. Without pre-election legislative ratification, results based on the treatment and tabulation of votes done in violation of state law cannot be used to appoint Presidential Electors.

Elections must be lawful contests, but they should not be mere *litigation contests* where the side with the most lawyers wins. As with the explosion of nationwide injunctions, the explosion of challenges to State election law for partisan advantage in the lead-up to the 2020 election “is not normal.” *Dep’t of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring in the grant of stay). Nor is it healthy. Under the “*Purcell* principle,” federal courts generally avoid enjoining state election laws in the period close to an election. *Purcell*, 549 U.S. at 4-5 (citing “voter confusion and consequent incentive to remain away from the polls”). *Purcell* raises valid concerns about confusion in the run-up to elections, but judicial election-related injunctions also raise *post-election* concerns. For example, if a state court enjoins ballot-integrity measures adopted to secure absentee or mail-in voting, that invalidates ballots cast under the relaxed standard unless the State legislature has had

time to ratify the new procedure. Without either pre-election legislative ratification or a severability clause in the legislation that created the rules for absentee voting by mail, the state court's actions operate to violate the Electors Clause.

2. State and local administrator's systemic failure to follow State election qualifies as an unlawful amendment of State law.

When non-legislative state and local executive actors engage in systemic or intentional failure to comply with their State's duly enacted election laws, they adopt by executive fiat a *de facto* equivalent of an impermissible amendment of State election law by an executive or judicial officer. *See* Section II.A.1, *supra*. This Court recognizes an executive's "consciously and expressly adopt[ing] a general policy that is so extreme as to amount to an abdication of its statutory responsibilities" as another form of reviewable final action, even if the policy is not a written policy. *Heckler v. Chaney*, 470 U.S. 821, 833 n.4 (1985) (interior quotations omitted); *accord id.* at 839 (Brennan, J., concurring). Without a *bona fide* amendment to State election law *by the legislature*, executive officers must follow state law. *Cf. Morton v. Ruiz*, 415 U.S. 199, 235 (1974); *Service v. Dulles*, 354 U.S. 363, 388-89 (1957). The wrinkle here is that the non-legislative actors lack the authority under the federal Constitution to enact a *bona fide* amendment, regardless of whatever COVID-related emergency power they may have.

This form of executive nullification of State law by statewide, county, or city officers is a variant of

impermissible amendment by a non-legislative actor. *See* Section II.A.1, *supra*. Such nullification is always unconstitutional, but it is especially egregious when it eliminates legislative safeguards for election integrity (*e.g.*, signature and witness requirements for absentee ballots, poll watchers⁹). Systemic failure by statewide, county, or city election officials to follow State election law is no more permissible than formal amendments by an executive or judicial actor.

B. A ruling on the 2020 election would preserve the Constitution and help prevent irregularities in future elections.

In addition to ensuring that the 2020 presidential election is resolved in a manner consistent with the Constitution, this Court must review the violations that occurred in the Defendant States to enable Congress and State legislatures to avoid future chaos and constitutional violations. Unless this Court acts to review this presidential election, these unconstitutional and unilateral violations of state election laws will continue in the future.

Regardless of how the 2020 election resolves and whatever this Court does with respect to the 2020 election, it is imperative for our system of government

⁹ Poll watchers are “prophylactic measures designed to prevent election fraud,” *Harris v. Conradi*, 675 F.2d 1212, 1216 n.10 (11th Cir. 1982), and “to insure against tampering with the voting process.” *Baer v. Meyer*, 728 F.2d 471, 476 (10th Cir. 1984). For example, poll monitors reported that 199 Chicago voters cast 300 party-line Democratic votes, as well as three party-line Republican votes in one election. *Barr v. Chatman*, 397 F.2d 515, 515-16 & n.3 (7th Cir. 1968).

that elections follow the clear constitutional mandates for all future elections. Just as this Court in *Bush II* provided constitutional guidance to all states regarding the equal treatment of ballots from county to county in 2000, this Court should now provide a clear statement that non-legislative modification of rules governing presidential elections violate the Electors Clause. Such a ruling will discourage in the future the kind of non-legislative election modifications that proliferated in 2020.

III. REVIEW IS NOT DISCRETIONARY.

Although this Court's original-jurisdiction precedents would justify the Court's hearing this matter under the Court's discretion, *see* Section II, *supra*, Plaintiff States respectfully submit that the Court's review is not discretionary. To the contrary, the plain text of § 1251(a) provides *exclusive* jurisdiction, not discretionary jurisdiction. *See* 28 U.S.C. §1251(a). In addition, no other remedy exists for these interstate challenges, *see* Section I.H, *supra*, and *some* court must have jurisdiction for these weighty issues. *See Mostyn v. Fabrigas*, 98 Eng. Rep. 1021 (K.B. 1774) ("if there is no other mode of trial, that alone will give the King's courts a jurisdiction"). As individual Justices have concluded, the issue "bears reconsideration." *Nebraska v. Colorado*, 136 S.Ct. 1034, 1035 (2016) (Thomas, J., dissenting, joined by Alito, J.); *accord New Mexico v. Colorado*, 137 S.Ct. 2319 (2017) (Thomas, J., dissenting) (same). Plaintiff States respectfully submit that that reconsideration would be warranted to the extent that the Court does not elect to hear this matter in its discretion.

**IV. THIS CASE WARRANTS SUMMARY
DISPOSITION OR EXPEDITED BRIEFING.**

The issues presented here are neither fact-bound nor complex, and their vital importance urgently needs a resolution. Plaintiff States will move this Court for expedited consideration but also suggest that this case is a prime candidate for summary disposition because the material facts—namely, that the COVID-19 pandemic prompted non-legislative actors to unlawfully modify Defendant States’ election laws, and carry out an election in violation of basic voter integrity statutes—are not in serious dispute. *California v. United States*, 457 U.S. 273, 278 (1982); *South Carolina v. Katzenbach*, 383 U.S. 301, 307 (1966). This case presents a pure question of law that does not require the finding of additional facts. Nor is the question of law so complex that highly-expedited briefing or summary disposition would be inappropriate.

CONCLUSION

Leave to file the Bill of Complaint should be granted.

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December __, 2020

Respectfully submitted,

First A. Surname*
Solicitor General of State
Attorney General's Office
000 Street Ave.
Capitol City, ST 00000
(111) 222-3333
fsurname@oag.StateA.gov

* Counsel of Record

No. _____, Original

In the Supreme Court of the United States

STATE OF LOUISIANA, STATE OF A, AND STATE OF B,
Plaintiffs,

v.

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

Defendants.

**MOTION FOR LEAVE TO FILE BILL OF
COMPLAINT, BILL OF COMPLAINT, AND
BRIEF IN SUPPORT**

First A. Surname*
Solicitor General of State
Attorney General's Office
000 Street Ave.
Capitol City, ST 00000
(111) 222-3333
fsurname@oag.StateA.gov

* *Counsel of Record*

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No. _____, Original

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v.

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

Defendants.

MOTION FOR LEAVE TO FILE
BILL OF COMPLAINT

Pursuant to 28 U.S.C. § 1251(a) and this Court’s Rule 17, the States of Louisiana, A, and B respectfully requests leave to file the accompanying Bill of Complaint against the States of Georgia, Michigan, Minnesota, Nevada, and Wisconsin and the Commonwealth of Pennsylvania (collectively, the “Defendant States”) challenging their administration of the 2020 federal elections.

As set forth more fully in both the accompanying brief and complaint, the 2020 election suffered from significant and unconstitutional irregularities in the Defendant States:

- Non-legislative actors’ purported amendments to States’ duly enacted election laws, in violation of the Electors Clause’s vesting State legislatures

with plenary authority regarding the appointment of Presidential Electors.

- The appearance of voting irregularities in the Defendant States that would be consistent with the unconstitutional relaxation of ballot-integrity protections in those States' election laws.

The non-legislative amendments of state election law violate the Electors Clause, *Bush v Gore*, 531 U.S. 98, 113 (2000) (“significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question”) (Rehnquist, C.J., concurring), even if there ultimately is an explanation for the perceived voting irregularities.

Taken together, these flaws affect an outcome-determinative numbers of popular votes in a group of States that cast outcome-determinative numbers of electoral votes. This Court should grant leave to file the complaint and, ultimately, enjoin the use of unlawful election results without review and ratification by the Defendant States' legislatures and remand to the Defendant States' respective legislatures to appoint Presidential Electors in a manner consistent with the Electors Clause and pursuant to 3 U.S.C. § 2.

December __, 2020

3

Respectfully submitted,

First A. Surname*
Solicitor General of State
Attorney General's Office
000 Street Ave.
Capitol City, ST 00000
(111) 222-3333
fsurname@oag.StateA.gov

* Counsel of Record

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WISCONSIN,

Defendants.

BILL OF COMPLAINT

[This is a placeholder.]

December __, 2020

Respectfully submitted,

First A. Surname*
Solicitor General of State
Attorney General's Office
000 Street Ave.
Capitol City, ST 00000
(111) 222-3333
fsurname@oag.StateA.gov

* Counsel of Record

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Defendants.

BRIEF IN SUPPORT OF
MOTION FOR LEAVE TO FILE

[This is a placeholder.]

December __, 2020

Respectfully submitted,

First A. Surname*
Solicitor General of State
Attorney General's Office
000 Street Ave.
Capitol City, ST 00000
(111) 222-3333
fsurname@oag.StateA.gov

* Counsel of Record

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**In the Supreme Court of the United
States**

THE STATE OF A, AND THE STATE OF B

Plaintiffs,

v.

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

Defendants.

BILL OF COMPLAINT

First A. Surname*
Solicitor General of State
Attorney General's Office
000 Street Ave.
Capitol City, ST 00000
(111) 222-3333
fsurname@oag.StateA.gov

* *Counsel of Record*

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BILL OF COMPLAINT

The State of A and the State of B (“Plaintiff States”) brings this action against the States of Arizona, Georgia, Michigan, Nevada, and Wisconsin and the Commonwealth of Pennsylvania (collectively, the “Defendant States”) based on the following allegations:

NATURE OF THE ACTION

1. Plaintiff States challenges the Defendant States’ administration of the 2020 presidential election under the Electors Clause and the Equal Protection Clause of the Fourteenth Amendment and thus ask this Court to provide the American people a result they can trust and an appointment of Electors to the Electoral College that is consistent with the U.S. Constitution.

2. The COVID-19 pandemic has affected nearly every aspect of civic life during 2020, and the Presidential election was not immune. Executive branch and judicial officials in the Defendant States took actions to modify the election process. Although these actions were doubtless well intentioned, they altered the process for selecting electors in violation of Article II, Section 1, clause 2 of the Constitution (“Each State shall appoint, in such a manner as *the Legislature* thereof may direct, a Number of Electors....”). *Id.* (emphasis added).

3. The pandemic has produced a once-in-a-lifetime election that requires once-in-a-lifetime intervention by States and this Court to ensure that the appointment of presidential electors is consistent with the requirements of the U.S. Constitution.

JURISDICTION AND VENUE

4. This Court has original and exclusive jurisdiction over this action because it is a “controvers[y] between two or more States” under Article III, § 2, cl. 2 of the U.S. Constitution and 28 U.S.C. § 1251(a).

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

6. This Court’s Article III decisions suggest that only a state can bring certain claims. *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (distinguishing citizen plaintiffs from citizen relators who sued in the name of a state); *Massachusetts v. EPA*, 549 U.S. 497, 520 (2007) (courts owe “special solicitude in standing analysis”). Moreover, redressability and mootness would undermine a suit against a single state officer. *Green v. Mansour*, 474 U.S. 64, 66-67 (1985) (*Ex parte Young* exception to sovereign immunity is unavailable for past violations). This action is the only adequate remedy for State plaintiffs.

PARTIES

7. Plaintiff is the State of A, which is a sovereign State of the United States, and the State of B, which is a sovereign State of the United States.

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

LEGAL BACKGROUND

9. Under the Supremacy Clause, the “Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the

land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.” U.S. CONST. Art. VI, cl. 2.

10. State legislatures have plenary power to set the process for appointing presidential electors: “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors.” U.S. CONST. art. II, §1, cl. 2. “[T]he state legislature’s power to select the manner for appointing electors is *plenary*”:

The State, of course, after granting the franchise in the special context of Article II, can take back the power to appoint electors. There is *no doubt of the right of the legislature to resume the power at any time, for it can neither be taken away nor abdicated*[.]

Bush v. Gore, 531 U.S. 98, 104 (2000) (“*Bush II*”) (emphasis added); *cf.* 3 U.S.C. § 2 (“Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct.”).

11. The Constitution includes the Electors Clause “to afford as little opportunity as possible to tumult and disorder” and to place “every practicable obstacle [to] cabal, intrigue, and corruption,” including “foreign powers” and to — that might insinuate themselves into our elections. THE FEDERALIST NO. 68, at 410-11 (C. Rossiter, ed. 1961) (Madison, J.).

12. Under the Equal Protection Clause, “No State shall ... deny to any person within its

jurisdiction the equal protection of the laws[.]” U.S. CONST. amend. XIV, § 1, cl. 4.

13. The Defendant States’ applicable laws are set out under the facts for each Defendant State.

FACTS

14. The use of absentee ballots skyrocketed in 2020, not only as a public-health response to the COVID-19 pandemic but also at the urging of mail-in voting’s proponents. Particularly problematic was that certain Defendant States flooded their State with millions of absentee ballot applications, and even ballots themselves, *en masse*, to every registered millions voter, sometimes multiple times. Normal controls, such as signature verification requirements, designed to deter voter fraud were not designed to handle the up to ten-fold increase of millions of ballot applications and ballots.

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

16. Mail-in voting is the largest source of voter fraud. As the direct result of expanded mail-in voting in Defendant States, the 2020 election experienced elevated levels of fraudulent voting in the form of ineligible people voting, as well as the submission of fraudulent ballots in the name of registered voters, but without their knowledge.

17. In the 2020 election, Defendant States – or their subdivisions – used voting software and hardware marketed as “Democracy Suite 5.5” by

Dominion Voting Systems Corp. (“Dominion”), a privately held company.

18. In the statement accompanying its denial, the Texas Secretary of State concluded that “the examiner reports raise concerns about whether the Democracy Suite 5.5-A system is suitable for its intended purpose; operates efficiently and accurately; and is safe from fraudulent or unauthorized manipulation. Therefore, the Democracy Suite 5.5-A system and corresponding hardware devices do not meet the standards for certification prescribed by Section 122.001 of the Texas Election Code,” as shown in a decision by a decision from the Northern District of Georgia in a challenge to Georgia’s adoption of the Dominion system. *Curling v. Raffensperger*, No. 1:17-cv-2989-AT, 2020 U.S. Dist. LEXIS 188508, at *35 n.32 (N.D. Ga. Oct. 11, 2020) (emphasis in *Curling*). The Georgia court found the plaintiff’s evidence persuasive and strong but denied a preliminary injunction because there was not enough time for Georgia to adopt a new paper-backed system. *Id.* at *108-11. The court concluded with this warning, “[t]he Plaintiffs’ national cybersecurity experts convincingly present evidence that this is not a question of ‘might this actually ever happen?’ — but ‘when it will happen,’ Given the masking nature of malware and the current systems described here, if the State and Dominion simply stand by and say, ‘we have never seen it,’ the future does not bode well.” *Id.* at *177.

19. Dominion’s manual for its election suite shows the ability to alter votes as a feature of that system.

20. Consistent with Texas’s finding as quoted in *Curling*, Dominion’s election data are open to fraudulent and unauthorized manipulation.

21. Although Dominion’s voting systems at the polling place are not supposed to be connected to the internet, they can be either directly or indirectly through a LAN network, and further, data streams for Defendant States’ post-polling election *results* are stored on servers that are accessible via the internet and stored abroad (*i.e.*, outside the reach of United States laws and State law).

22. As set forth in Paragraphs XX and XX it appears likely that election results in certain Defendant States were altered materially to change the winner of the 2020 election for President, either by third-party “hackers” with stolen access to Dominion-controlled voting data or by corrupt election officials with access to that voting data. Plaintiff States will submit expert affidavits to demonstrate the technical and statistical plausibility of data manipulation as the explanation for these anomalies in the election data.

23. In a presidential election, “the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States.” *Anderson v. Celebrezze*, 460 U.S. 780, 795 (1983). The constitutional failures of Defendant States injure Plaintiff State because “the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Bush II*, 531 U.S. at 105 (quoting *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)).

24. Because the Electors to be appointed to the Electoral College by the Defendant States will be voting for or against the candidates supported by the Electors of the Plaintiff States, the outcome of the Electoral College vote is directly affected by the constitutional violations committed by the Defendant States. Put differently, the Plaintiff States complied in all respects with the Constitution in the process of appointing their Electors; whereas the Defendant States did not. The Plaintiff States will therefore be injured if the Defendant States are permitted to appoint Electors in violation of the Constitution.

Commonwealth of Pennsylvania

25. Pennsylvania has 20 electoral votes, with a state-wide vote margin currently estimated at 3,363,951 for President Trump and 3,445,548 for former Vice President Biden, a margin of 81,597 votes. In two urban and more heavily Democrat counties (Philadelphia and Allegheny), Mr. Biden's margin (618,011 votes) significantly exceeds his statewide lead.

26. Without analyzing unlawful election standards, the number of illegal votes counted and legal votes not counted dwarf the margin dividing the parties. *See* Exhibit E.

27. Pennsylvania's election law requires poll-watcher access to the opening, counting, and recording of absentee ballots: "Watchers shall be permitted to be present when the envelopes containing official absentee ballots and mail-in ballots are opened and when such ballots are counted and recorded." 25 PA. STAT. § 3146.8(b). Local election officials in Philadelphia and Allegheny Counties made a conscious and express policy decision not to follow 25 PA. STAT. § 3146.8(b) for the opening, counting, and

recording of absentee ballots. In contrast, election officials in other Pennsylvania counties followed the requirements of Pennsylvania law in this respect.

28. Local election officials in Philadelphia County contacted voters with improperly completed absentee ballots to allow those voters to cure ballots with more lead time than 25 PA. STAT. § 3146.8(h) allows voters statewide. In contrast, election officials in other Pennsylvania counties followed the requirements of Pennsylvania law in this respect.

29. Statewide election officials and local election officials in Philadelphia and Allegheny Counties adopted the differential standards favoring voters in Philadelphia and Allegheny Counties with the intent to favor former Vice President Biden because of the historical Democrat advantage in those counties.

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

31. Pennsylvania's legislature has not ratified the relaxed deadlines in the *Boockvar* decision, and the legislation did not include a severability clause.

32. According to the U.S. Election Assistance Commission's report to Congress *Election Administration and Voting Survey: 2016 Comprehensive Report*, in 2016 Pennsylvania received 266,208 mail-in ballots; 2,534 of them were rejected (.95%). *Id.* at p. 24. However, in 2020, Pennsylvania received more than 10 times the number of mail-in ballots compared to 2016, but the rejection rate was 31 times less compared to 2016 indicating that a material number of illegal absentee ballots were included in the overall tally. Applying the rejection rate of .95% in 2016 to 2020 would equate to at least 24,882 ballots being rejected instead of a minuscule 951 ballots that were rejected by Pennsylvania officials in 2020. Democrats returned nearly three times as many absentee ballots as Republicans.

33. These non-legislative modifications to Pennsylvania's election rules unintentionally facilitated the significant amount of election fraud that appears to have occurred in Pennsylvania. For example, the delayed acceptance date for mail-in ballots made it possible for those who sought to commit fraud to manufacture additional absentee ballots after election day, and to back-date ballots received after election day. [Insert from expert to be supplied on anomalies in Pennsylvania data: __.]

34. Finally, in Pennsylvania, on October 1, 2020 a laptop and several USB drives, used to program Pennsylvania's Dominion voting machines, were mysteriously stolen from a warehouse in Philadelphia. The laptop and the USB drives were the *only* items taken. See Jeremy Roebuck and Jonathan Lai, *Memory sticks used to program Philly's voting machines were stolen from elections warehouse*, THE PHILADELPHIA INQUIRER, Sept. 30, 2020. This

unresolved theft raises material questions whether Dominion's BMD voting systems have been compromised.

35. [Anything else: __.]

State of Georgia

36. Georgia has 16 electoral votes, with a statewide vote margin currently estimated at 2,458,121 for President Trump and 2,472,098 for former Vice President Biden, a margin of 13,977 votes. In two urban and more heavily Democrat counties (Fulton and Dekalb), Mr. Biden's margin (493,675 votes) significantly exceeds his statewide lead.

37. Without analyzing unlawful election standards, the number of illegal votes counted and legal votes not counted dwarf the margin dividing the parties. *See* Exhibit B.

38. Georgia requires that poll watchers and inspectors have access to vote counting and canvassing. GA. CODE § 21-2-408. Local election officials in Fulton and Dekalb Counties made a conscious and express policy decision not to follow GA. CODE § 21-2-408 for the opening, counting, and recording of absentee ballots. In contrast, other counties in Georgia followed the requirements of Georgia law in this regard.

39. On March 6, 2020, in *Democratic Party of Georgia v. Raffensperger*, No. 1:19-cv-5028-WMR (N.D. Ga.), Georgia's Secretary of State entered a Compromise Settlement Agreement and Release with the Democratic Party of Georgia to relax the Georgia legislature's standard for reviewing signatures on absentee ballot envelopes to confirm the identity of the person submitting the absentee ballot.

40. Georgia's legislature has not ratified the relaxed standards in the Compromise Settlement Agreement and Release, and the legislation did not include a severability clause.

41. These non-legislative modifications to Georgia's election rules unintentionally facilitated the significant amount of election fraud that appears to have occurred in Georgia.

State of Michigan

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

43. Without analyzing unlawful election standards, the number of illegal votes counted and legal votes not counted dwarf the margin dividing the parties. *See* Exhibit C.

44. Michigan requires that poll watchers and inspectors have access to vote counting and canvassing. M.C.L. §§ 168.674-.675. Local election officials in Wayne County made a conscious and express policy decision not to follow M.C.L. §§ 168.674-.675 for the opening, counting, and recording of absentee ballots. In contrast, election officials in other Michigan counties followed the requirements of Michigan law, in this respect.

45. As amended in 2018, the Michigan Constitution provides all registered voters the right to vote absentee without giving a reason. MICH. CONST. art. 2, § 4.

46. On May 19, 2020, Michigan’s Secretary of State’s (“SOS”) announced that her office would send unsolicited absentee-voter ballot applications by mail to all 7.7 million registered Michigan voters prior to the primary and general elections. Although her office repeatedly encouraged voters to vote absentee because of the COVID-19 pandemic, it did not ensure that Michigan’s election systems and procedures were adequate to ensure the accuracy and legality of the historic flood of mail-in votes.

47. Michigan law limits the procedures for requesting an absentee ballot to three specified ways:

An application for an absent voter ballot under this section may be made in *any of the following ways*:

- (a) By a written request signed by the voter.
- (b) On an absent voter ballot application form provided for that purpose by the clerk of the city or township.
- (c) On a federal postcard application.

M.C.L. § 168.759(3) (emphasis added). The Michigan Legislature declined to explicitly include the SOS as a means for distributing absentee ballot applications. *Id.* § 168.759(3)(b). Under the statute’s plain language, the Legislature explicitly gave *only local clerks* the power to distribute absentee voter ballot applications. *Id.* Because the Legislature declined to explicitly include the SOS as a vehicle for distributing absentee ballots, either en masse or even individually, the SOS lacked any authority to distribute absentee voter ballot applications.

48. On November 17, 2020, the Wayne County Board of Canvassers (the “Board”) deadlocked 2-2 over whether to certify the results of the

presidential election based on numerous reports of fraud in the election process in the county. A few hours later, the Republican members of the Board reversed their decision and voted to certify the results after being called racists and threatened with violence.

49. On November 18, 2020 the two Republican members of the Board *rescinded their votes* to certify the vote and signed affidavits alleging they were bullied and misled into approving election results and do not believe the votes should be certified until serious irregularities in Detroit votes are resolved.

50. Michigan also has strict signature verification requirements for absentee ballots including that Elections Department place a written statement or stamp on each ballot envelope where the voter signature is placed, indicating that the voter signature was in fact checked and verified with signature on file with the State. *See* MCL 168.765a(6).

51. Numerous poll challengers and an Election Department employee whistleblower have testified that signature verification requirement was ignored in Wayne County. In contrast, election officials in other Michigan counties followed the requirements of Michigan law, in this respect.

52. These non-legislative modifications to Michigan's election rules unintentionally facilitated the significant amount of election fraud that appears to have occurred in Michigan. For example, the relaxation or abandonment of the signature verification rules in Wayne County made it possible for those who sought to commit fraud to manufacture additional absentee ballots.

53. Candidate Biden won the vote in Wayne County 68% to 31% for President Trump with more than 863,000 votes cast. The vote in Detroit was reportedly 233,908 for Biden compared to 12,654 votes for President Trump.

54. In Michigan, which also employed the same Dominion voting system, on November 4, 2020, Michigan election officials been admitted that a purported “glitch” caused 6,000 votes for President Trump to be wrongly switched to Democrat Candidate Biden in just one county. Local officials discovered the so-called “glitch” after reportedly questioning Biden’s win in the heavily Republican area reportedly and manually checked the vote tabulation. There has been no formal independent determination the true cause of this so-called “glitch.”

State of Wisconsin

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

56. Without analyzing unlawful election standards, the number of illegal votes counted and legal votes not counted dwarf the margin dividing the parties. *See* Exhibit F.

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

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

58. Registering to vote by absentee ballot requires photo identification when registering to vote absentee, except for those who register as “indefinitely confined” or “hospitalized.” WISC. STAT. § 6.86(2)(a), (3)(a). Registering for indefinite confinement requires certifying confinement “because of age, physical illness or infirmity or is disabled for an indefinite period.” *Id.* § 6.86(2)(a). Should indefinite confinement cease, the voter must notify the county clerk, *id.*, who must remove the voter from indefinite-confinement status. *Id.* § 6.86(2)(b).

59. On May 13, 2020, the Administrator of Wisconsin’s Election Commission (“WEC”) issued a directive to the Wisconsin clerks prohibiting removal of voters from the registry for indefinite-confinement status if the voter is no longer “indefinitely confined.”

60. According to the Braynard Study, attached as appendix 2, an estimated 45.23 % of the 213,215 who claimed indefinitely confined absentee voter status in the State, were not, in fact, indefinitely confined.

61. Voting by absentee ballot requires voters to complete a certification, including their address, and have the envelope witnessed by an adult who also must sign and indicate their address on the envelope. *See* WISC. STAT. § 6.87. The sole remedy to cure an “improperly completed certificate or [ballot] with no certificate” is for “the clerk may return the ballot to the elector[.]” *Id.* § 6.87(9). “If a certificate is missing the address of a witness, the ballot may not be counted.” *Id.* § 6.87(6d).

62. As received, each absentee ballot must be sealed in envelope and delivered on Election Day to the proper ward or election district to be opened “between the opening and closing of the polls on election day ... in the same room where votes are being cast, in such a manner that members of the public can hear and see the procedures.” WISC. STAT. § 6.88(3)(a) (Wisconsin generally); *id.* 7.52(1)-(3) (similar for Milwaukee). If a ballot is determined not to meet the criteria for a valid vote the inspectors or board of absentee ballot canvassers “shall not count the ballot,” *Id.* §§ 6.88(3)(b), 7.52(3)(b), including *inter alia* ballots where a “certification is insufficient, ... the applicant is not a qualified elector in the ward or election district, ... the ballot envelope is open or has been opened and resealed, ... the ballot envelope contains more than one ballot of any one kind or, ... an elector voting an absentee ballot has since died.” *Id.* §§ 6.88(3)(b), 7.52(3)(b). Notwithstanding these requirements for public access, Milwaukee County officials restricted access to the actions of Milwaukee election officials during the review of absentee ballots. In contrast, election officials in other Wisconsin counties followed the requirements of Wisconsin law, in this respect.

63. Wisconsin’s election statute prohibits counting absentee ballots that do not meet all the statutory criteria: “Ballots cast in contravention of the procedures specified in those provisions may not be counted [and] ... may not be included in the certified result of any election.” WISC. STAT. § 6.84(2).

64. In a training video issued April 1, 2020, the Administrator of the City of Milwaukee Elections Commission “witness address may be written in red and that is because we were able to locate the

witnesses' address for the voter" to add an address missing from the certifications on absentee ballots, in circumvention of § 6.87(6d). WEC issued similar guidance on October 19, 2020.

65. Acting pursuant to this guidance, canvas workers in Milwaukee used red-ink pens to alter the certificates on the absentee envelope and then cast and count the absentee ballot, in violation of Wisconsin law.

66. These non-legislative modifications to Wisconsin's election rules unintentionally facilitated the significant amount of election fraud that appears to have occurred in Wisconsin. For example, the relaxation of signature requirements and witness address requirements for mail-in ballots made it possible for those who sought to commit fraud to manufacture additional absentee ballots.

COUNT I: EQUAL PROTECTION
(DIFFERENTIAL STANDARDS)

67. Plaintiff States repeats and re-allege the allegations of paragraphs 1-64, above, as if fully set forth herein.

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

69. The actions set out in Paragraphs __, __, __, __, __, and __ violate created differential voting standards in Defendant States Georgia, Michigan, Pennsylvania, and Wisconsin in violation of the Equal Protection Clause.

COUNT II: EQUAL PROTECTION
(ONE MAN, ONE VOTE)

70. Plaintiff States repeats and re-alleges the allegations of paragraphs 1-67, above, as if fully set forth herein.

71. The one-man, one-vote principle of this Court's Equal Protection cases requires counting all valid votes and not counting all invalid votes. *Reynolds*, 377 U.S. at 554-55; *Bush II*, 531 U.S. at 103 (“the votes eligible for inclusion in the certification are the votes meeting the properly established legal requirements”).

72. The actions set out in Paragraphs __, __, __, __, __, and __ violated the one-man, one-vote principle by systemically *excluding valid* votes and those set out in Paragraphs __, __, __, and __ violate that principle by systemically *including invalid* votes in Defendant States Georgia, Michigan, Pennsylvania, and Wisconsin, in violation of the Equal Protection Clause.

COUNT III: THE ELECTORS CLAUSE

73. Plaintiff States repeat and re-allege the allegations of paragraphs 1-70, above, as if fully set forth herein.

74. The Electors Clause of Article II, Section 1, Clause 2 of the Constitution makes clear that only the legislatures of the States are permitted to determine the rules for appointment of Electors to the Electoral College. The pertinent rules here are the state election laws, specifically those relevant to the presidential election.

75. The actions set out in Paragraphs __, __, __, __, __, and __ constitute non-legislative changes to State election law by executive-branch State

election officials, or by judicial officials, in Defendant States Georgia, Michigan, Pennsylvania, and Wisconsin, in violation of the Electors Clause.

PRAYER FOR RELIEF

WHEREFORE, the State of A and the State of B respectfully request that this Court issue the following relief:

A. Declare that Defendant States Georgia, Michigan, Pennsylvania, and Wisconsin administered the 2020 presidential election in violation of the Equal Protection Clause.

B. Declare that Defendant States Georgia, Michigan, Pennsylvania, and Wisconsin administered the 2020 presidential election in violation of the Electors Clause.

C. Preliminarily enjoin Defendant States' appointment of Electors, and any use of the 2020 election results for the office of president until the legislatures thereof – pursuant to 3 U.S.C. § 2 and the Electors Clause, U.S. CONST. art. II, §1, cl. 2, advise this Court, after investigation, (1) of the winner of their State's general election – after including all valid votes and excluding all invalid votes – or (2) that a winner cannot be determined, or (3) that the legislature will appoint the State's Electors in another manner that is consistent with the requirements of the Electors Clause and the Equal Protection Clause.

D. Award costs to the Plaintiff States.

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

November __, 2020

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Respectfully submitted,

First A. Surname*
Solicitor General of State
Attorney General's Office
000 Street Ave.
Capitol City, ST 00000
(111) 222-3333
fsurname@oag.StateA.gov

* Counsel of Record

Ex. 1a

Ex. A – Pennsylvania		
Type*	Description	Votes
1) Illegal Votes Counted	Estimate of ballots requested in the name of a registered Republican by someone other than that person	
2) Legal Votes Not Counted	Estimate of Republican ballots that the requester returned but were not counted	
3) Illegal Votes Counted	Electors voted where they did not reside.	
4) Illegal Votes Counted		
5) Illegal Votes Counted	Out of State Residents Voting in State	
6) Illegal Votes Counted	Double Votes	
TOTAL 1 & 2		
TOTAL		

* Types may overlap (e.g., if out-of-state residents vote twice).

Ex. 2a

Ex. B – Georgia		
Type*	Description	Votes
1) Illegal Votes Counted	Estimate of ballots requested in the name of a registered Republican by someone other than that person	
2) Legal Votes Not Counted	Estimate of Republican ballots that the requester returned but were not counted	
3) Illegal Votes Counted	Electors voted where they did not reside.	
4) Illegal Votes Counted		
5) Illegal Votes Counted	Out of State Residents Voting in State	
6) Illegal Votes Counted	Double Votes	
TOTAL 1 & 2		
TOTAL		

Ex. 3a

Ex. C – Michigan		
Type*	Description	Votes
1) Illegal Votes Counted	Estimate of ballots requested in the name of a registered Republican by someone other than that person	
2) Legal Votes Not Counted	Estimate of Republican ballots that the requester returned but were not counted	
3) Illegal Votes Counted	Electors voted where they did not reside.	
4) Illegal Votes Counted		
5) Illegal Votes Counted	Out of State Residents Voting in State	
6) Illegal Votes Counted	Double Votes	
TOTAL 1 & 2		
TOTAL		

Ex. 4a

Ex. D – Michigan		
Type*	Description	Votes
1) Illegal Votes Counted	Estimate of ballots requested in the name of a registered Republican by someone other than that person	
2) Legal Votes Not Counted	Estimate of Republican ballots that the requester returned but were not counted	
3) Illegal Votes Counted	Electors voted where they did not reside.	
4) Illegal Votes Counted		
5) Illegal Votes Counted	Out of State Residents Voting in State	
6) Illegal Votes Counted	Double Votes	
TOTAL 1 & 2		
TOTAL		

Ex. 5a

No. _____, Original

In the Supreme Court of the United States

STATE OF A, AND STATE OF B,

Plaintiffs,

v.

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

Defendants.

**BRIEF IN SUPPORT OF MOTION FOR
LEAVE TO FILE BILL OF COMPLAINT**

First A. Surname*
Solicitor General of State
Attorney General's Office
000 Street Ave.
Capitol City, ST 00000
(111) 222-3333
fsurname@oag.StateA.gov

* *Counsel of Record*

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No. _____, Original

In the Supreme Court of the United States

STATE OF A, STATE OF B, STATE OF C, STATE OF D,
AND STATE OF E,

Plaintiffs,

v.

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

Defendants.

**BRIEF IN SUPPORT OF
MOTION FOR LEAVE TO FILE**

Pursuant to S.Ct. Rule 17.3, the States of A and B, (collectively, “Plaintiff States”) respectfully submit this brief in support of their Motion for Leave to File a Bill of Complaint against the States of Georgia, Michigan, and Wisconsin and the Commonwealth of Pennsylvania (collectively, “Defendant States”).

STATEMENT OF THE CASE

The American People deserve lawful presidential elections: “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*,

376 U.S. 1, 10 (1964). Even in a good year, elections face the competing goals of maximizing and counting *lawful* votes but minimizing and excluding *unlawful* ones. *Reynolds v. Sims*, 377 U.S. 533, 554-55 (1964); *Bush v. Gore*, 531 U.S. 98, 103 (2000) (“the votes eligible for inclusion in the certification are the votes meeting the properly established legal requirements”); compare 52 U.S.C. § 20501(b)(1)-(2) (2018) *with id.* § 20501(b)(3)-(4).

In terms of election regularity, it is an understatement to say that 2020 was not a good year. In addition to an evenly divided and partisan national mood, the country faced the COVID-19 pandemic and an unparalleled expansion of mail-in voting. The pandemic was also presented as the justification for last-minute changes of the rules for voting and tabulating votes in the Defendant States. Those changes were made in violation of relevant state laws and were made by non-legislative entities, without any consent by the state legislatures. Those changes also facilitated much of the election fraud that occurred in Defendant States.

As set forth in the accompanying complaint and this brief, the 2020 election turned out as badly as it could have. Each side believes it rightfully won, and there may not be a remaining paper trail that will completely assure the losing side that the vote went against it. But elections for federal office must comport with federal constitutional standards, see *Bush v. Gore*, 531 U.S. 98, 103-105 (2000) (“*Bush II*”), and partisans cannot subvert constitutional requirements in order to pursue their preferred electoral outcomes.

Each State, in appointing its Electors to the Electoral College, must do so in a manner that complies with the Constitution. The constitutional requirements at issue in 2020 are the same constitutional requirements that were discussed by this Court in *Bush II*—namely the Equal Protection Clause’s requirement that a State may not have county-by-county variation in how votes are tabulated, and the Electors Clause requirement that only state *legislatures* may set the rules governing the appointment of electors and the elections upon which such appointment is based.

LEGAL BACKGROUND

The right to vote is protected by the Equal Protection Clause. U.S. CONST. amend. XIV, § 1. Because “the right to vote is personal,” *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964) (alterations omitted), “[e]very 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.” *Anderson v. United States*, 417 U.S. 211, 227 (1974); *Baker v. Carr*, 369 U.S. 186, 208 (1962). Invalid or fraudulent votes debase or dilute the weight of each validly cast vote. *Bush II*, 531 U.S. at 105. The unequal treatment of votes within a state, and unequal standards for processing votes raise equal protection concerns. *Id.*

In addition, the Electors Clause found in Article II of the United States Constitution 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. 2 (emphasis added). “[T]he state legislature’s power to select the manner for appointing electors is *plenary*,” *Bush II*, 531 U.S. at 104 (emphasis added), and sufficiently *federal* for this Court’s review. *Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S. 70, 76 (2000) (“*Bush I*”). This textual feature of our constitution was adopted to ensure the integrity of the presidential selection process. See Federalist No. 68 (Alexander Hamilton) (“Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption.”). When a state conducts a popular election to appoint electors that fails to comport with minimal standards under the U.S. Constitution, *Bush II*, 531 U.S. at ____, “the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct.”

STATEMENT OF FACTS

Because original proceedings in this Court follow the Federal Rules of Civil Procedure, S.Ct. Rule 17.2, the facts for purposes of a motion for leave to file are the well-pleaded facts alleged in the complaint. *Hernandez v. Mesa*, 137 S.Ct. 2003, 2005 (2017). The complaint must set out “a short and plain statement of the claim showing that the pleader is entitled to relief.” FED. R. CIV. P. 8(a)(2). For each of the Defendant States, the relevant facts are set out below.

Citing the COVID-19 pandemic, Defendant States reduced the safeguards for absentee ballots – despite knowledge that absentee ballots are “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) (hereinafter, “CARTER-BAKER”), and absentee ballot fraud actually occurring in the 2018 congressional elections. See Emery P. Dalesio, *North Carolina Elections Head Says Ballots Handled Illegally*, ASSOCIATED PRESS (Feb. 18, 2019) (describing illegal absentee ballot harvesting scheme in the Ninth Congressional District of North Carolina). Especially when shorn of ballot-integrity measures such as signature verification, witness requirements, or outer envelope protections, or when absentee ballots are processed and tabulated without bipartisan observation, voting by mail is highly susceptible to administrative corruption and electoral fraud.

As laid out in Plaintiff States’ Complaint at __-__, executive, judicial officials made significant changes to the legislatively-defined election rules in those states. Most notably, those changes greatly relaxed the signature requirements for absentee ballots, operated to prevent Republican poll watchers from observing the opening of absentee ballot envelopes, and permitted the acceptance of ballots days after election day. Those changes facilitated a significant amount of election fraud that appears to have occurred in the Defendant States. In addition, because many of these changes were made or implemented only in certain counties, the treatment and tabulation of ballots varied a great deal from county to county in Defendant States.

In the urban areas of Fulton and DeKalb Counties in Georgia, Wayne County in Michigan, Philadelphia and Allegheny Counties in Pennsylvania, and

Milwaukee County in Wisconsin, former Vice President Biden's margin of victory exceeded his statewide lead in each Defendant State. President Trump led in the rest of each Defendant State, excluding those urban areas.

Pennsylvania (Philadelphia County) and Michigan (Wayne County) failed to allow poll watchers in the manner required by State law to the disadvantage of other areas of those States that did comply with State law.¹ See Compl. ¶¶ __, __. Georgia and Pennsylvania modified their election law via non-legislative court orders that their legislatures did not ratify. See Compl. ¶¶ __, __.

In Pennsylvania, significant statistical anomalies occurred. According to a panel of experts who analyzed the reported vote totals in Pennsylvania, the reported totals in eleven counties were so out of alignment with the results of past presidential elections in those counties and the results of other counties in Pennsylvania in 2020, that it is highly improbable that those vote totals are accurate. In addition, the results of the votes that were tabulated beginning in the early morning hours of November 4, 2020, were so different from those tabulated on election day, as to be statistically suspect. See Pennsylvania 2020 Voting Analysis Report, attached as _____

¹ These intrastate differences matter. Pennsylvania, for example, is often described as "Philadelphia and Pittsburgh separated by Alabama." Demetri Sevastopulo, *Donald Trump's path to victory runs through Pennsylvania*, FINANCIAL TIMES, Oct. 27, 2020.

In Wisconsin, state law requires that each absentee ballot must be sealed in envelope and delivered on Election Day to the proper ward or election district to be opened “between the opening and closing of the polls on election day ... in the same room where votes are being cast, in such a manner that members of the public can hear and see the procedures.” Wisc. Stat. § 6.88(3)(a) (Wisconsin generally); *id.* 7.52(1)-(3) (similar for Milwaukee). If a ballot is determined not to meet the criteria for a valid vote the inspectors or board of absentee ballot canvassers “shall not count the ballot,” *Id.* §§ 6.88(3)(b), 7.52(3)(b), including *inter alia* ballots where a “certification is insufficient, ... the applicant is not a qualified elector in the ward or election district, ... the ballot envelope is open or has been opened and resealed, ... the ballot envelope contains more than one ballot of any one kind or, ... an elector voting an absentee ballot has since died.” *Id.* §§ 6.88(3)(b), 7.52(3)(b). Notwithstanding these requirements for public access, Milwaukee County officials restricted access to the actions of Milwaukee election officials during the review of absentee ballots. In contrast, election officials in other Wisconsin counties followed the requirements of Wisconsin law, in this respect.

Wisconsin law also imposes strict signature requirements on absentee ballots. Voting by absentee ballot requires voters to complete a certification, including their address, and have the envelope witnessed by an adult who also must sign and indicate their address on the envelope. *See* Wisc. Stat. § 6.87. The sole remedy to cure an “improperly completed

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

Nevertheless, in a training video issued April 1, 2020, the Administrator of the City of Milwaukee Elections Commission “witness address may be written in red and that is because we were able to locate the witnesses’ address for the voter” to add an address missing from the certifications on absentee ballots, in circumvention of § 6.87(6d). WEC issued similar guidance on October 19, 2020. Acting pursuant to this guidance, canvas workers in Milwaukee used red-ink pens to alter the certificates on the absentee envelope and then cast and count the absentee ballot, in violation of Wisconsin law.

Without Defendant States’ combined 62 electoral votes, President Trump appears to have 232 electoral votes, and former Vice President Biden appears to have 244. Thus, Defendant States’ electors will determine the outcome of the election. Alternatively, if Defendant States are unable to certify 26 or more electors, neither candidate will have a majority in the Electoral College, in which case the election would devolve to the House of Representatives under the Twelfth Amendment.

ARGUMENT

I. THIS COURT HAS JURISDICTION OVER THE PLAINTIFF STATES’ CLAIMS.

In order to grant leave to file, this Court first must assure itself of its jurisdiction, *Steel Co. v. Citizens for a Better Env’t.*, 523 U.S. 83, 95 (1998); *cf. Foman v.*

Davis, 371 U.S. 178, 182 (1962) (courts deny leave to file pleadings that would be futile), but that standard is easily met here.

A. The claims fall within this Court’s constitutional and statutory subject-matter jurisdiction.

The federal judicial power extends to “Controversies between two or more States.” U.S. CONST. art. III, § 2, and Congress has placed the jurisdiction for such suits exclusively with the Supreme Court: “The Supreme Court shall have original *and exclusive* jurisdiction of all controversies between two or more States.” 28 U.S.C. § 1251(a) (emphasis added). This Court not only is a permissible court for hearing this action; it is the only court that can hear this action quickly enough to render dispositive and non-appealable relief sufficient for the Electoral College to cast its votes, for the House of Representatives to act if necessary, and for the president to be selected by the constitutionally-set date of January 20. U.S. Const. Amend XX, § 1.

B. The claims arise under the United States Constitution.

When States violate their own election laws, they may argue that these violations do not warrant review in this Court. *Cf. Foster v. Chatman*, 136 S.Ct. 1737, 1745-46 (2016) (this Court lacks jurisdiction to review state-court decisions that “rest[] on an adequate and independent state law ground”). That attempted evasion fails for two reasons.

First, a state court’s remedy or a state executive’s administrative action implicates several strands of

federal election law, as well as equal-protection and Electors-Clause principles. *See Bush II*, 531 U.S. at 105. Even a plausible federal-law defense to state action arises under federal law within the meaning of Article III. *Mesa v. California*, 489 U.S. 121, 136 (1989) (holding that “it is the raising of a federal question in the officer’s removal petition that constitutes the federal law under which the action against the federal officer arises for Art. III purposes”).² Given federal-law bases that restrict state action, the underlying state action is not “independent” of the federal statutory and constitutional requirements that provide this Court jurisdiction. *Fox Film Corp. v. Muller*, 296 U.S. 207, 210-11 (1935); *cf. City of Chicago v. Int’l Coll. of Surgeons*, 522 U.S. 156, 164 (1997) (noting that “even though state law creates a party’s causes of action, its case might still ‘arise under’ the laws of the United States if a well-pleaded complaint established that its right to relief under state law requires resolution of a substantial question of federal law” and collecting cases) (internal quotations and alterations omitted). Plaintiff States’ claims therefore fall within this Court’s arising-under jurisdiction.

Second, state election law is not purely a matter of state law because it applies “not only to elections to state offices, but also to the election of Presidential electors,” meaning that state law, in part, “by virtue of a direct grant of authority made under Art. II, § 1,

² The statute for federal-officer removal at issue in *Mesa* overcomes the well-pleaded complaint rule, *id.*, which is a statutory restriction on jurisdiction under 28 U.S.C. § 1331. *See Merrell Dow Pharm., Inc. v. Thompson*, 478 U.S. 804, 808 (1986).

cl. 2, of the United States Constitution.” *Bush I*, 531 U.S. at 76. Logically, “any state authority to regulate election to [federal] offices could not precede their very creation by the Constitution,” meaning that any “such power had to be delegated to, rather than reserved by, the States.” *Cook v. Gralike*, 531 U.S. 510, 522 (2001) (internal quotations omitted). “It is no original prerogative of State power to appoint a representative, a senator, or President for the Union.” J. Story, 1 COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 627 (3d ed. 1858). For these reasons, any “significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question.” *Bush II*, 531 U.S. at 113 (Rehnquist, C.J., concurring).

Under these circumstances, this Court has the power to a violation of the Constitution. Significantly, parties do not need winning hands to establish jurisdiction. Instead, jurisdiction exists when “the right of the petitioners to recover under their complaint will be sustained if the Constitution and laws of the United States are given one construction,” even if the right “will be defeated if they are given another.” *Bell v. Hood*, 327 U.S. 678, 685 (1946). At least as to *jurisdiction*, a plaintiff need survive only the low threshold that “the alleged claim under the Constitution or federal statutes [not] ... be immaterial and made solely for the purpose of obtaining jurisdiction or ... wholly insubstantial and frivolous.” *Id.* at 682. The Bill of Complaint meets that test.

C. The claims raise a “case or controversy” between the States.

Like any other action, an original action also must meet the Article III criteria for a case or controversy: “it must appear that the complaining State has suffered a wrong through the action of the other State, furnishing ground for judicial redress, or is asserting a right against the other State which is susceptible of judicial enforcement according to the accepted principles of the common law or equity systems of jurisprudence.” *Maryland v. Louisiana*, 451 U.S. 725, 735-36 (1981) (internal quotations omitted). Plaintiff States meet all Article III criteria. There are three forms of injury that the Plaintiff States suffer in this case.

First, the Electoral College is a zero-sum game. If the unconstitutionally-appointed Electors of the Defendant States vote for a presidential candidate opposed by the Electors of the Plaintiffs States, that operates to defeat the interests of the Plaintiffs States. The Electors of the Plaintiff States are appointed in a manner fully consistent with the Constitution. The Plaintiff States suffer injury if their Electors are defeated by the unconstitutionally-appointed Electors of the Defendant States. This injury is all the more poignant because Plaintiff States have taken steps to prevent the sort of fraud that occurred in Defendant States. For example States A and B both require voters to present photo identification. Stat. cite____. States A and B also enforce strict signature verification requirements in the absentee ballot process. Stat. cite____. And Plaintiff States’ elections did not violate the Equal

Protection Clause or the Electors Clause as Defendant States' elections did.

Second, a State can assert *parens patriae* standing for its citizens: “The ‘*parens patriae*’ doctrine ... is a recognition of the principle that the state, when a party to a suit involving a matter of sovereign interest, ‘must be deemed to represent all its citizens.’” *New Jersey v. New York*, 345 U.S. 369, 372-73 (1953) (quoting *Kentucky v. Indiana*, 281 U.S. 163, 173 (1930)). In a presidential election, “the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States.” *Anderson v. Celebrezze*, 460 U.S. 780, 795 (1983). To be sure, then, lawful voters in Plaintiff States suffer injury when Defendant States condone or tolerate illegal election practices in some or all of their counties. “Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). Moreover, a citizen voter asserts a personal right – not a generalized grievance – for the concern that fraudulent or unlawful votes debased or diluted that citizen’s vote. Compare *Reynolds*, 377 U.S. at 561-62 (“the right to vote is personal”) (alterations omitted) with *Lance*, 549 U.S. at 441-42 (failure to follow Elections Clause, without more, is a generalized grievance). A State can assert the injuries to its citizens – and *a fortiori* to its Electors – against other States’ election practices that debase the voting rights of those two classes of citizens.³

³ Because Plaintiff States and their citizens suffer concrete injuries, Plaintiff States also can assert standing to enforce

Third, whereas the House represents the People through proportional representation, the Senate represents the States equally. The States have a distinct interest in who is elected Vice President and thus who can cast the tie-breaking vote in the Senate. Through this interest, each State suffers an Article III injury when another State violates the Constitution to affect the outcome of a presidential election. This injury is particularly acute in 2020, where the control of the Senate may depend on the Vice President's tie-breaking vote because of the nearly equal balance between political parties. Moreover, as to injuries to a State, federal courts owe "special solicitude in standing analysis" under *Massachusetts v. EPA*, 549 U.S. 497, 520 (2007). Plaintiff States thus can assert Article III injury in their own right. In addition, this Court has suggested that States have standing where their citizen voters would not, *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (distinguishing citizen plaintiffs from citizen relators who sued in the name of a state).

As to the 2020 election, review could outlast even the selection of the next President under an exception to mootness: "the 'capable of repetition, yet evading review' doctrine, in the context of election cases, is appropriate when there are 'as applied' challenges as well as in the more typical case involving only facial attacks." *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 463 (2007) (internal quotations omitted); accord *Norman v. Reed*, 502 U.S. 279, 287-88 (1992). Consequently, this Court should review the 2020

election procedures. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573 & n.7 (1992). Indeed, these procedural injuries lower the Article III threshold for immediacy and redressability. *Id.*

election to explicate the legal standards that apply to future elections, even if those standards do not end up curing the 2020 election.

D. No adequate alternate remedy or forum exists.

In determining whether to hear a case under this Court’s original jurisdiction, the Court has considered whether the plaintiff State “has another adequate forum in which to settle [its] claim.” *United States v. Nevada*, 412 U.S. 534, 538 (1973). This equitable limit does not apply here because Plaintiff States cannot sue Defendant States in any other forum.

To the extent that Defendant States wish to avail themselves of 3 U.S.C. § 5’s safe harbor, *Bush I*, 531 U.S. at 77-78, this action will not meaningfully stand in their way:

The State, of course, after granting the franchise in the special context of Article II, can take back the power to appoint electors. ... There is no doubt of the right of the legislature to resume the power at any time, for it can neither be taken away nor abdicated[.]

Bush II, 531 U.S. at 104 (citations and internal quotations omitted).⁴ The Defendant States’ legislature will remain free under the federal Constitution to appoint electors or vote in any *lawful* manner they

⁴ Indeed, the Constitution also includes another backstop: “if no person have such majority [of electoral votes], then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot.” U.S. CONST. amend. XII.

wish. The only thing that they cannot do – and should not wish to do – is to rely on an allocation conducted in violation of the Constitution determine the allocation of presidential electors.

Moreover, if this Court agrees with Plaintiff States that the Defendant States’ appointment of electors under the recently-conducted elections would be unconstitutional, then the statutorily-created safe harbor cannot be used as a justification for a violation of the Constitution. The safe-harbor framework created by statute would have to yield in order to ensure that the Constitution was not violated.

It is of no moment that Defendants’ *state laws* may purport to tether state legislatures to popular votes. Those state limits on a state legislature’s exercising federal constitutional functions cannot block action because the federal Constitution “transcends any limitations sought to be imposed by the people of a State” under this Court’s precedents. *Leser v. Garnett*, 258 U.S. 130, 137 (1922); *see also Bush I*, 531 U.S. at 77; *United States Term Limits v. Thornton*, 514 U.S. 779, 805 (1995) (“the power to regulate the incidents of the federal system is not a reserved power of the States, but rather is delegated by the Constitution”).

As this Court recognized in *McPherson v. Blacker*, the authority to choose presidential electors:

is conferred upon the legislatures of the states by the Constitution of the United States, and cannot be taken from them or modified by their state constitutions. ... *Whatever provisions may be made by statute, or by the state constitution, to choose electors by the people, there is no doubt of the right of the*

legislature to resume the power at any time, for it can neither be taken away or abdicated.

146 U.S. 1, 35 (1892) (emphasis added) (internal quotations omitted). The Defendant States would suffer no cognizable injury from this Court’s enjoining their reliance on an unconstitutional vote.

II. THIS CASE PRESENTS TWO CONSTITUTIONAL QUESTIONS OF IMMENSE NATIONAL CONSEQUENCE THAT WARRANT DISCRETIONARY REVIEW.

Electoral integrity ensures the legitimacy of our governmental institutions. *See Wesberry v. Sanders*, 376 U.S. at 10. “Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.” *Purcell*, 549 U.S. at 4. Against that backdrop, few cases could warrant this Court’s review more than this one. In addition, the constitutionality of the process for selecting the President is of obvious national importance. If some States violate the requirements of the Constitution in the appointment of their Electors, the resulting vote of the Electoral College lacks constitutional legitimacy.

Though the Court claims “discretion when accepting original cases, even as to actions between States where [its] jurisdiction is exclusive,” *Wyoming v. Oklahoma*, 502 U.S. 437, 450 (1992) (internal quotations omitted), this is not a case where the Court should apply that discretion “sparingly.” *Id.* This Court, like other federal courts, has a “virtually unflagging obligation ... to exercise the jurisdiction

given [it],” *Colorado River Water Conserv. Dist. v. U.S.*, 424 U.S. 800, 817 (1976). When, as here, federal questions arise in a presidential election, it becomes this Court’s “unsought responsibility to resolve the federal and constitutional issues the judicial system has been forced to confront.” *Bush II*, 531 U.S. at 111; *see also Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) (“It is emphatically the province and duty of the judicial department to say what the law is.”). As outlined in the following five subsections, each category of election irregularities warrants this Court’s review.

A. Defendant States Violated the Electors Clause in Modifying the Requirements of the 2020 Election.

The Electors Clause grants sole authority to the state Legislatures to dictate the manner of selecting Presidential electors. The Clause explicitly allocate that authority to a single branch of state government: to the “Legislature thereof.” U.S. Const. Art. II, § 1, cl. 2. The state legislatures’ authority is plenary. *Bush II*, 531 U.S. at 104. It “cannot be taken from them or modified” even through “their state constitutions.” *McPherson*, 146 U.S. at 35; *Bush I*, 531 U.S. at 76-77. The Framers allocated election authority to state legislatures as the branch closest – and most accountable – to the People. *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 Founding-era documents); *cf.* THE FEDERALIST NO. 57, at 350 (C. Rossiter, ed. 2003) (Madison, J.) (“House of Representatives is so

constituted as to support in its members an habitual recollection of their dependence on the people”). Thus, only the state legislatures are permitted to create or modify the respective states’ rules for the appointment of constitutional electors. U.S. Const. Art. II, § 1, cl. 2.

Regulating election procedures is necessary both to avoid chaos and to ensure fairness:

Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections; as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.

Burdick v. Takushi, 504 U.S. 428, 433 (1992) (interior quotations omitted). Thus, for example, deadlines are a necessary to avoid chaos, even if some votes sent via absentee ballot do not arrive timely. *Rosario v. Rockefeller*, 410 U. S. 752, 758 (1973). Even more importantly in this pandemic year with expanded mail-in voting, ballot-integrity measures – e.g., witness requirements, signature verification, and the like – are an essential component of any legislative expansion of mail-in voting. See CARTER-BAKER, at 46 (absentee ballots are “the largest source of potential voter fraud”). Though it may be tempting to permit a breakdown of the constitutional order during a global pandemic, the rule of law demands otherwise.

Specifically, because the Electors Clause makes clear that state legislative authority is exclusive, non-legislative actors lack authority to *amend* statutes.

Republican Party of Pa. v. Boockvar, No. 20-542, 2020 U.S. LEXIS 5188, at *4 (Oct. 28, 2020) (“there is a strong likelihood that the State Supreme Court decision violates the Federal Constitution”) (Alito, J., concurring); *Wisconsin State Legis.*, No. 20A66, 2020 U.S. LEXIS 5187, at *11-14 (Oct. 26, 2020) (Kavanaugh, J., concurring in denial of application to vacate stay).

For example, if a state court enjoins or modifies ballot-integrity measures adopted to allow absentee or mail-in voting, that invalidates ballots cast under the relaxed standard unless the state legislature has had time to ratify the new procedure. Without either pre-election legislative ratification or a severability clause to the legislation that authorized absentee voting by mail, inadequately vetted absentee ballots are unlawful and should not count.

When non-legislative state and local executive actors engage in systemic or intentional failure to comply with their State’s duly enacted election laws, they adopt by executive fiat a *de facto* equivalent of an impermissible amendment of State election law by an executive or judicial officer. *See* Section II.A.1, *supra*. This Court recognizes an executive’s “consciously and expressly adopt[ing] a general policy that is so extreme as to amount to an abdication of its statutory responsibilities” as another form of reviewable final action, even if the policy is not a written policy. *Heckler v. Chaney*, 470 U.S. 821, 833 n.4 (1985) (interior quotations omitted); *accord id.* at 839 (Brennan, J., concurring). Without a *bona fide* amendment to State election law *by the legislature*, executive officers must follow state law. *Cf. Morton v.*

Ruiz, 415 U.S. 199, 235 (1974); *Service v. Dulles*, 354 U.S. 363, 388-89 (1957). The wrinkle here is that the non-legislative actors lack the authority under the federal Constitution to enact a *bona fide* amendment, regardless of whatever COVID-related emergency power they may have. For example, if a state or local election official suspends or modifies statutory poll-watching requirements for counting absentee ballots, that invalidates ballots cast under the relaxed standard.

This form of executive nullification of State law by statewide or county officers is a variant of impermissible amendment by a non-legislative actor. Such nullification is always unconstitutional, but it is especially egregious when it eliminates legislative safeguards for election integrity (e.g., signature and witness requirements for absentee ballots, poll watchers⁵). Systemic failure by statewide or county election officials to follow State election law is no more permissible than formal amendments by an executive or judicial actor.

⁵ Poll watchers are “prophylactic measures designed to prevent election fraud,” *Harris v. Conradi*, 675 F.2d 1212, 1216 n.10 (11th Cir. 1982), and “to insure against tampering with the voting process.” *Baer v. Meyer*, 728 F.2d 471, 476 (10th Cir. 1984). For example, poll monitors reported that 199 Chicago voters cast 300 party-line Democratic votes, as well as three party-line Republican votes in one election. *Barr v. Chatman*, 397 F.2d 515, 515-16 & n.3 (7th Cir. 1968).

B. Defendant States Violated the Equal Protection Clause by Allowing Different Election Rules to Apply in Different Counties.

In each of the Defendant States, important rules governing the validity, receipt, and counting of ballots were modified in a manner that varied from county to county. These variations from county to county violated the Equal Protection Clause, as this Court explained at length in *Bush II*. Each vote must be treated equally. “When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter.” *Bush II*, 531 U.S. at _____. The Equal Protection Clause demands uniform “statewide standards for determining what is a legal vote.” *Id.* at _____.

Differential intrastate voting standards are “hostile to the one man, one vote basis of our representative government.” *Bush II*, 531 U.S. at 107 (internal quotations omitted). These variations from county to county also appear to have operated to affect the election result. For example, the relaxations of poll-watcher requirements that occurred in Michigan’s Wayne County may have contributed to the unusually high number of votes that Vice-President Biden gained in that county, compared to the votes for President Obama 2008 and 2012, and Secretary Clinton in 2016.

Regardless of whether the modification of legal standards in some counties in the Defendant States

tilted the election outcome in those States, it is clear that the standards for determining what is a legal vote varied greatly from county to county. That constitutes a clear violation of the Equal Protection Clause; and it calls into question the constitutionality of any Electors appointed by Defendant States based on such an election.

While Plaintiff States dispute that exercising this Court’s original jurisdiction is discretionary, see Section III, *infra*, the many anecdotal irregularities in the 2020 election⁶ cumulatively warrant exercising jurisdiction. Although isolated irregularities could be “garden-variety” election disputes that do not raise a federal question,⁷ the closeness of election results in swing states combines with unprecedented expansion in the use of fraud-prone mail-in ballots – many of which were also mailed *out* without verification – combined with COVID-related relaxations of state law by non-legislative actors, call both the result and the process into question. For an office as important as the presidency, the clear violations of the Constitution, coupled with the mere inference of a fraudulent election outcome demands the attention of this Court.

⁶ The irregularities include illegal votes that were counted, lawful votes that were not counted, polling officials backdating absentee ballots, and computer inaccuracies reflecting fraud, error, or “hacking.”

⁷ “To be sure, ‘garden variety election irregularities’ may not present facts sufficient to offend the Constitution’s guarantee of due process[.]” *Hunter v. Hamilton Cty. Bd. of Elections*, 635 F.3d 219, 232 (6th Cir. 2011) (quoting *Griffin v. Burns*, 570 F.2d 1065, 1077-79 (1st Cir. 1978)).

III. REVIEW IS NOT DISCRETIONARY.

Although this Court’s original-jurisdiction precedents would justify the Court’s hearing this matter under the Court’s discretion, *see* Section II, *supra*, Plaintiff States respectfully submit that the Court’s review is not discretionary. To the contrary, the plain text of § 1251(a) provides *exclusive* jurisdiction, not discretionary jurisdiction. *See* 28 U.S.C. §1251(a). In addition, no other remedy exists for these interstate challenges, *see* Section I.E, *supra*, and *some* court must have jurisdiction for these weighty issues. *See Mostyn v. Fabrigas*, 98 Eng. Rep. 1021 (K.B. 1774). As individual Justices have concluded, the issue “bears reconsideration.” *Nebraska v. Colorado*, 136 S.Ct. 1034, 1035 (2016) (Thomas, J., dissenting, joined by Alito, J.); *accord New Mexico v. Colorado*, 137 S.Ct. 2319 (2017) (Thomas, J., dissenting) (same). Plaintiff States respectfully submit that that reconsideration would be warranted, to the extent that the Court does not elect to hear this matter in its discretion.

CONCLUSION

Leave to file the Bill of Complaint should be granted.

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Respectfully submitted,

First A. Surname*
Solicitor General of State
Attorney General's Office
000 Street Ave.
Capitol City, ST 00000
(111) 222-3333
fsurname@oag.StateA.gov

* Counsel of Record