

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

DONALD J. TRUMP FOR )  
PRESIDENT, INC.; and, )  
REPUBLICAN NATIONAL )  
COMMITTEE, )

Petitioners, )

v. )

KATHY BOOCKVAR, in her capacity )  
as Secretary of the Commonwealth of )  
Pennsylvania; ADAMS COUNTY )  
BOARD OF ELECTIONS; )  
ALLEGHENY COUNTY BOARD OF )  
ELECTIONS; ARMSTRONG )  
COUNTY BOARD OF ELECTIONS; )  
BEAVER COUNTY BOARD OF )  
ELECTIONS; BEDFORD COUNTY )  
BOARD OF ELECTIONS; BERKS )  
COUNTY BOARD OF ELECTIONS; )  
BLAIR COUNTY BOARD OF )  
ELECTIONS; BRADFORD COUNTY )  
BOARD OF ELECTIONS; BUCKS )  
COUNTY BOARD OF ELECTIONS; )  
BUTLER COUNTY BOARD OF )  
ELECTIONS; CAMBRIA COUNTY )  
BOARD OF ELECTIONS; CAMERON )  
COUNTY BOARD OF ELECTIONS; )  
CARBON COUNTY BOARD OF )  
ELECTIONS; CENTRE COUNTY )  
BOARD OF ELECTIONS; CHESTER )  
COUNTY BOARD OF ELECTIONS; )  
CLARION COUNTY BOARD OF )  
ELECTIONS; CLEARFIELD )  
COUNTY BOARD OF ELECTIONS; )  
CLINTON COUNTY BOARD OF )  
ELECTIONS; COLUMBIA COUNTY )  
BOARD OF ELECTIONS; )

No. 602 MD 2020

CRAWFORD COUNTY BOARD OF )  
ELECTIONS; CUMBERLAND )  
COUNTY BOARD OF ELECTIONS; )  
DAUPHIN COUNTY BOARD OF )  
ELECTIONS; DELAWARE COUNTY )  
BOARD OF ELECTIONS; ELK )  
COUNTY BOARD OF ELECTIONS; )  
ERIE COUNTY BOARD OF )  
ELECTIONS; FAYETTE COUNTY )  
BOARD OF ELECTIONS; FOREST )  
COUNTY BOARD OF ELECTIONS; )  
FRANKLIN COUNTY BOARD OF )  
ELECTIONS; FULTON COUNTY )  
BOARD OF ELECTIONS; GREENE )  
COUNTY BOARD OF ELECTIONS; )  
HUNTINGDON COUNTY BOARD )  
OF ELECTIONS; INDIANA COUNTY )  
BOARD OF ELECTIONS; )  
JEFFERSON COUNTY BOARD OF )  
ELECTIONS; JUNIATA COUNTY )  
BOARD OF ELECTIONS; )  
LACKAWANNA COUNTY BOARD )  
OF ELECTIONS; LANCASTER )  
COUNTY BOARD OF ELECTIONS; )  
LAWRENCE COUNTY BOARD OF )  
ELECTIONS; LEBANON COUNTY )  
BOARD OF ELECTIONS; LEHIGH )  
COUNTY BOARD OF ELECTIONS; )  
LUZERNE COUNTY BOARD OF )  
ELECTIONS; LYCOMING COUNTY )  
BOARD OF ELECTIONS; MCKEAN )  
COUNTY BOARD OF ELECTIONS; )  
MERCER COUNTY BOARD OF )  
ELECTIONS; MIFFLIN COUNTY )  
BOARD OF ELECTIONS; MONROE )  
COUNTY BOARD OF ELECTIONS; )  
MONTGOMERY COUNTY BOARD )  
OF ELECTIONS; MONTOUR )  
COUNTY BOARD OF ELECTIONS; )  
NORTHAMPTON COUNTY BOARD )

OF ELECTIONS; )  
 NORTHUMBERLAND COUNTY )  
 BOARD OF ELECTIONS; PERRY )  
 COUNTY BOARD OF ELECTIONS; )  
 PHILADELPHIA COUNTY BOARD )  
 OF ELECTIONS; PIKE COUNTY )  
 BOARD OF ELECTIONS; POTTER )  
 COUNTY BOARD OF ELECTIONS; )  
 SCHUYLKILL COUNTY BOARD OF )  
 ELECTIONS; SNYDER COUNTY )  
 BOARD OF ELECTIONS; )  
 SOMERSET COUNTY BOARD OF )  
 ELECTIONS; SULLIVAN COUNTY )  
 BOARD OF ELECTIONS; )  
 SUSQUEHANNA COUNTY BOARD )  
 OF ELECTIONS; TIOGA COUNTY )  
 BOARD OF ELECTIONS; UNION )  
 COUNTY BOARD OF ELECTIONS; )  
 VENANGO COUNTY BOARD OF )  
 ELECTIONS; WARREN COUNTY )  
 BOARD OF ELECTIONS; )  
 WASHINGTON COUNTY BOARD )  
 OF ELECTIONS; WAYNE COUNTY )  
 BOARD OF ELECTIONS; )  
 WESTMORELAND COUNTY )  
 BOARD OF ELECTIONS; WYOMING )  
 COUNTY BOARD OF ELECTIONS; )  
 and YORK COUNTY BOARD OF )  
 ELECTIONS, )  
 )  
 Respondents. )  
 )

**NOTICE TO PLEAD**

You are hereby notified to file a written response to the enclosed Application for Special Relief in the Form of a Special, Preliminary, and/or Permanent Injunction

within twenty (20) days, or within the time set by order of the court, or service hereof  
or a Judgment may be entered against you.

Respectfully Submitted,

Dated: November 4, 2020

/s/ Ronald L. Hicks, Jr.  
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**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

DONALD J. TRUMP FOR	)	
PRESIDENT, INC.; et al.,	)	
	)	
Petitioners,	)	
	)	
v.	)	No. 602 MD 2020
	)	
KATHY BOOCKVAR, et al.,	)	
	)	
Respondents.	)	

**APPLICATION FOR SPECIAL RELIEF IN THE FORM OF A  
SPECIAL, PRELIMINARY, AND/OR PERMANENT INJUNCTION**

Pursuant to Rule 1532 of the Pennsylvania Rules of Appellate Procedure, Petitioners, Donald J. Trump for President, Inc. and Republican National Committee (hereinafter collectively referred to as “Petitioners”), respectfully move for special relief in the form of a preliminary, special, and/or permanent injunction enjoining Respondents, Kathy Boockvar, as the Secretary of the Commonwealth of Pennsylvania (hereinafter referred to as “Secretary Boockvar”), and the 67 County Boards of Elections (hereinafter referred collectively with Secretary Boockvar as “Respondents”), from canvassing and counting absentee and mail-in ballots who fail to provide proof of identification that can be verified by the county boards of elections by the sixth (6<sup>th</sup>) calendar day following the November 3, 2020 General Election as mandated by Section 1308(h)(3) of the Pennsylvania Election Code, 25 P.S. § 3146.8(h)(3).

## INTRODUCTION

1. On November 1, 2020, Secretary Boockvar published and delivered to all 67 of the County Elections Boards written “guidance” stating that an absentee or mail-in ballot of an elector whose proof of identification was not received or could not be verified at the time the ballot was delivered could be counted if the elector provides the requisite proof of identification to the county elections board by “the sixth calendar day following *the canvassing, or on or before Thursday, November 12.*” See “CANVASSING SEGREGATED MAIL-IN AND CIVILIAN ABSENTEE BALLOTS RECEIVED BY MAIL AFTER 8:00 P.M. ON TUESDAY, NOVEMBER 3, 2020 AND BEFORE 5:00 P.M. ON FRIDAY, NOVEMBER 6, 2020,” dated November 1, 2020, version 1.0 (available online at <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Canvassing-Segregated-Ballot-Guidance.pdf> and hereinafter referred to as “November 1, 2020 Guidance.”)

2. The Secretary’s November 1, 2020 Guidance is contrary to the clear and unambiguous language of Election Code Section 1308(h)(3) which mandates the last date for the elector’s provision of identification as *Monday, November 9, 2020*, which is the sixth calendar following the November 3, 2020 General Election. See 25 P.S. § 3146.8(h)(3) (“(h) For those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified: ... (3)

If an elector fails to provide proof of identification that can be verified by the county board of elections by the sixth calendar day following the election, then the absentee ballot or mail-in ballot shall not be counted.”). *See also* 25 P.S. § 3146.8(h)(2).

3. As neither Secretary Boockvar nor the County Elections Boards have any authority to re-write the Election Code or administer the November 3, 2020 General Election in a manner that is inconsistent and/or directly contrary to the Election Code’s clear and unambiguous mandates, Petitioners seek special, preliminary, and/or permanent injunctive relief to enjoin Respondents’ attempted extension of the Election Section 1308’s six calendar day statutory period.

4. Without an injunction, Petitioners will be irreparably harmed, and they have no adequate remedy at law.

5. Accordingly, Petitioners pray that this Court enjoin the Respondents from violating the Election Code, Section 1308’s six calendar day statutory period and from canvassing and counting any absentee or mail-in ballot where an elector who is required to provide proof of identification that can be verified by the county board of elections fails to do so on or before Monday, November 9, 2020.

### **BACKGROUND**

6. Contemporaneously with the filing of this Application, Petitioners have filed a Petition for Review, a true and correct copy of which is attached hereto as Exhibit “A.”

7. On November 3, 2020, a General Election was held in which several candidates for federal and state offices were on the ballot, including without limitation the reelection campaign of Donald J. Trump, the 45th President of the United States of America and the Republican nominee for the office of the President of the United States of America (hereinafter, “President Trump”).

8. On November 1, 2020, two days before the November 3, 2020 General Election, Secretary Boockvar sent to every county elections board in the Commonwealth of Pennsylvania written guidance titled “CANVASSING SEGREGATED MAIL-IN AND CIVILIAN ABSENTEE BALLOTS RECEIVED BY MAIL AFTER 8:00 P.M. ON TUESDAY, NOVEMBER 3, 2020 AND BEFORE 5:00 P.M. ON FRIDAY, NOVEMBER 6, 2020.” A true and correct copy of the November 1, 2020 is attached to the Petition for Review as Exhibit “1” and is available online at <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Canvassing-Segregated-Ballot-Guidance.pdf>.

9. The November 1, 2020 Guidance serves as an update to guidance that Secretary Boockvar and the Pennsylvania Department of State issued on October 28, 2020, concerning the segregation and canvassing of absentee and mail-in ballots cast in the November 3, 2020 General Election.

10. In the November 1, 2020 Guidance, Secretary Boockvar told the County Elections Boards that:



...

Additionally, the county board of elections should not open or count any of the following specific types of ballots pending further review as follows:

If proof of identification for an absentee or mail-in voter was not received or could not be verified, the ballot should not be counted unless the elector provides proof of identification that can be verified by the county board ***by the sixth calendar day following the canvassing, or on or before Thursday, November 12.***

...

See November 1, 2020 Guidance, p. 3 (emphasis added).

11. Section 1308(h) of the Pennsylvania Election Code, codified at 25 P.S.

§ 3146.8(h), provides:

For those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified:

...

(2) If the proof of identification is received and verified ***prior to the sixth calendar day following the election,*** then the county board of elections shall canvass the absentee ballots and mail-in ballots under this subsection in accordance with subsection (g)(2).

(3) If an elector fails to provide proof of identification that can be verified by the county board of elections ***by the sixth calendar day following the election,*** then the absentee ballot or mail-in ballot ***shall not be counted.***

See 25 P.S. § 3146.8(h)(2) & (3) (emphasis added).

12. Section 102(f) of the Pennsylvania Election Code, codified at 25 P.S. § 2602(f), defines the word “election” to mean “any general, municipal, special, or primary election, unless otherwise specified.” 25 P.S. § 2602(f).

13. Moreover, Section 102(h) of the Pennsylvania Election Code, codified at 25 P.S. § 2602(h), defines the word “general election” to mean “the election which the Constitution of this Commonwealth requires to be held in even-numbered years.” 25 P.S. § 2602(h).

14. Article VII, Section 2 of the Pennsylvania Constitution defines a “general election” to be “[t]he general election ... held biennially on the Tuesday next following the first Monday of November in each even-numbered year” unless the General Assembly, by two-thirds consent of all members of each House, fixes a different day. Pa. Const. Art. VII, § 2.

15. The November 3, 2020 General Election constitutes an “election” and “general election” as those terms are defined in Section 102(f) and (h) of the Pennsylvania Election Code, and Article VII, Section 2 of the Pennsylvania Constitution.

16. The sixth calendar day following the November 3, 2020 General Election is Sunday, November 8, 2020.

16. Section 103(e) of the Election Code provides:

In determining or reckoning any period of time mentioned in this act, the day upon which the act is done, paper filed,

or notice given, shall be excluded from, and the date of the primary, election, hearing or other subsequent event, as the case may be, shall be included in the calculation or reckoning: Provided, however, That if the last day upon which any act may be done, paper filed, or notice given, shall fall on a Sunday or a legal holiday, the next following ordinary business day shall be considered as the last day for said purpose.

*See* 25 P.S. § 2603(e).

17. Pursuant to Section 2603(e) of the Election Code, because the sixth calendar day following the November 3, 2020 General Election falls on Sunday, November 8, 2020, the sixth calendar period under Election Code Section 1308(h)(3) expires on Monday, November 9, 2020.

18. The clear, plain, and unambiguous language of Section 1308(h)(3) of the Election Code provides that if an absentee or mail-in voter elector who is required to provide proof of identification that can be verified by the county elections fails to provide that proof by Monday, November 9, 2020, “then the absentee ballot or mail-in ballot shall not be counted.” 25 P.S. § 3146.8(h)(3).

19. The November 1, 2020 Guidance is in clear contravention of 25 P.S. § 3146.8(h)(3) because it allows for the counting of absentee or mail-in ballots for electors who provide their required proof of identification to the county elections boards on a day beyond Section 3146.8(h)(3)’s sixth calendar day statutory period.

## INJUNCTIVE RELIEF

20. Petitioners move this Court for an Order declaring Secretary Boockvar's guidance to be invalid and enjoining the County Elections Boards from canvassing and counting any absentee or mail-in ballot where an elector who is required to provide proof of identification that can be verified by the county board of elections fails to do so on or before Monday, November 9, 2020.

21. Pursuant to Pa. R.A.P. 1532(a), this Court may order special relief, including a preliminary or special injunction "in the interest of justice and consistent with the usages and principles of law."

22. The standard for obtaining a preliminary injunction under this rule is the same as that for a grant of preliminary injunction pursuant to the Pennsylvania Rules of Civil Procedure. *Shenango Valley Osteopathic Hosp. v. Dep't of Health*, 451 A.2d 434, 439 (Pa. Commw. Ct. 2004).

23. Preliminary injunctive relief may be granted at any time following the filing of a Petition for Review. *See* Pa. R.A.P. 1532(a).

24. For the reasons stated above and in Petitioners' Petition for Review, Petitioners meet all of the elements for the entering of a preliminary injunction in this case.

WHEREFORE, for all of the foregoing reasons and those alleged in the Petition for Review, Petitioners respectfully request that this Honorable Court grant

their Application for Special Relief in the Nature of a Preliminary Injunction and enter an order enjoining Respondents, their agents, servants, and officers, and others from permitting absentee and mail-in voters an opportunity to provide missing proof of identification on or after November 9, 2020 in direct contravention of the Pennsylvania Election Code, and prohibiting Respondents from counting any absentee and mail-in ballots of voters whose proof of identification was not received and verified by November 9, 2020.

Respectfully submitted,

Dated: November 4, 2020

/s/ Ronald L. Hicks, Jr.  
Ronald L. Hicks, Jr. (PA #49520)  
Jeremy A. Mercer (PA #86480)  
Carolyn B. McGee (PA #208815)  
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*Counsel for Petitioners*

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	)	
Respondents.	)	

**[PROPOSED] ORDER**

Upon consideration of Petitioners’ Application for Special Relief in the Form of a Special, Preliminary, and/or Permanent Injunction under Pa. R.A.P. 1532 prohibiting Respondents, their agents, servants, and officers, and others from permitting absentee and mail-in voters an opportunity to provide missing proof of identification on or after November 9, 2020, in direct contravention of the Pennsylvania Election Code, and prohibiting Respondents from counting any absentee and mail-in ballots of voters whose proof of identification was not received and verified by November 9, 2020;

It appearing to the Court that Petitioners are likely to succeed on the merits of their action, that they will suffer irreparable injury if the requested relief is not issued, that Respondents will not be harmed if the request relief is issued, and that the public interest favors the entry of such an order, it is, therefore,

ORDERED that Petitioners' Application is hereby GRANTED;

ORDERED that Respondents and anyone acting on their behalf are enjoined from permitting absentee and mail-in voters an opportunity to provide missing proof of identification on or after November 9, 2020; and,

ORDERED that Respondents and anyone acting on their behalf are enjoined from counting any absentee and mail-in ballots cast by voters whose proof of identification was not received and verified by November 9, 2020;

Date: \_\_\_\_\_

Time: \_\_\_\_\_

---

Judge of the Commonwealth Court of  
Pennsylvania

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Ronald L. Hicks, Jr.  
Ronald L. Hicks, Jr.  
PA Supreme Court No. 49520



# **EXHIBIT A**

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

DONALD J. TRUMP FOR )  
PRESIDENT, INC.; and )  
REPUBLICAN NATIONAL )  
COMMITTEE, )

Petitioners, )

v. )

KATHY BOOCKVAR, in her capacity ) No. \_\_\_\_\_ MD 2020  
as Secretary of the Commonwealth of )  
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 and YORK COUNTY BOARD OF )  
 ELECTIONS, )  
 )  
 Respondents. )  
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**NOTICE**

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Petition for Review and Notice are served, or within any other timeframe as ordered by the Court, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth

against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Petitioners. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Dauphin County Lawyer Referral Service  
213 North Front Street  
Harrisburg, Pennsylvania 17101  
(717) 232-7536

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KATHY BOOCKVAR, et al.,	)	
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**PETITION FOR REVIEW**  
**IN THE NATURE OF A COMPLAINT IN EQUITY**

Petitioners, Donald J. Trump for President, Inc., and the Republican National Committee (hereinafter collectively referred to as “Petitioners”), respectfully file this Petition for Declaratory and Injunctive Relief against Respondent Kathy Boockvar in her official capacity as Secretary of the Commonwealth of Pennsylvania (hereinafter referred to as “Secretary Boockvar”), and each of the 67 Pennsylvania County Boards of Elections (hereinafter referred collectively with Secretary Boockvar as “Respondents”), and in support thereof, aver as follows.

**INTRODUCTION**

1. On Sunday, November 1, 2020, two days before the date of the general election on November 3, 2020 and before pre-canvassing was scheduled to begin in each of the 67 Counties at 7:00 a.m. on Election Day on November 3, 2020 Respondent, Secretary Kathy Boockvar published and delivered yet one more

guidance letter contradicting the Election Code. This new flagrant attack on the legislature's authority was sent to every county in the Commonwealth of Pennsylvania. See "CANVASSING SEGREGATED MAIL-IN AND CIVILIAN ABSENTEE BALLOTS RECEIVED BY MAIL AFTER 8:00 P.M. ON TUESDAY, NOVEMBER 3, 2020 AND BEFORE 5:00 P.M. ON FRIDAY, NOVEMBER 6, 2020," dated November 1, 2020, version 1.0 (available online at <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Canvassing-Segregated-Ballot-Guidance.pdf> and hereinafter referred to as "November 1, 2020 Guidance", a true and correct copy of which is attached hereto as **Exhibit 1**).

2. In this guidance, Secretary Boockvar re-writes the Election Code by *sua sponte* resetting the deadline for absentee and mail-in voters to provide missing proof of identification. She unilaterally extends it the "sixth day following the canvassing, or on or before Thursday, November 12". See **Exhibit 1** at p. 3.

3. However, Section 1308(h) of Pennsylvania's Election Code, codified at 25 P.S. § 3146.8(h), requires that if a voter's identification is not received and verified "by the sixth day following *the election*", those ballots "*shall* not be counted." See 25 P.S. § 3146.8(h)(2) & (3) (emphases added).

4. As it pertains to the November 3, 2020 General Election, this deadline is Monday, November 9, 2020. The Secretary's unlawful guidance seeks to extend this by three days to November 12, 2020.

5. For these reasons, Petitioners seek declaratory relief that the November 1, 2020 guidance is in contravention of the clear requirements of Section 1308(h) of the Election Code, and preliminary, special, and/or permanent injunctive relief directing the County Boards of Elections to adhere to these provisions of the Election Code Section 1308(h) and not count those absentee and mail-in ballots of voters whose identification is not received and verified by November 9, 2020.

### **STATEMENT OF JURISDICTION**

6. This Court has original jurisdiction over this action pursuant to 42 Pa.C.S. § 761(a)(1).

### **PARTIES SEEKING RELIEF**

7. Petitioner, Donald J. Trump for President, Inc. (hereinafter, the “Trump Campaign”), is the principal committee for the reelection campaign of Donald J. Trump, the 45th President of the United States of America (hereinafter, “President Trump”). President Trump is the Republican nominee for the office of the President of the United States of America in the ongoing General Election. The Trump Campaign brings this action for itself and on behalf of its candidate, President Trump. President Trump is a “candidate” as that term is defined in Election Code Section 102(a), codified at 25 P.S. §§ 2602(a). *See Rowland v. Smith*, 83 Pa. D. & C. 99, 101-2 (Pa. Ct. Com. Pl. Dauphin 1952) (“candidate” under the Election Code includes one who is a candidate for nomination for President of the United States).



As a political committee for a federal candidate, the Trump Campaign has Article III standing to bring this action. *See, e.g., Orloski v. Davis*, 564 F. Supp. 526, 530-31 (M.D. Pa. 1983). *See also Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 587-588 (5th Cir. 2006) (“after the primary election, a candidate steps into the shoes of his party, and their interests are identical.”); *In re General Election-1985*, 531 A.2d 836, 838 (Pa. Commw. Ct. 1987) (a candidate for office in the election at issue suffers a direct and substantial harm sufficient for standing to contest the manner in which an election will be conducted).

8. Petitioner, Republican National Committee (hereinafter, the “RNC”) is a national political committee that leads the Republican Party of the United States (hereinafter, the “Republican Party”). The RNC works to elect Republican candidates to state and federal offices throughout the United States, including in the Commonwealth of Pennsylvania, and it organizes and operates the Republican National Convention through which its members nominate their candidates for President and Vice President of the United States. The Republican Party includes over thirty million (30,000,000) registered Republicans in all fifty (50) states, the District of Columbia, and the U.S. territories, and constitutes a “political party” as that term is defined in Election Code Section 801, 25 P.S. § 2831. The RNC brings this action for itself, the Republican Party, all of its members, all registered Republican voters, and all nominated Republican candidates in the November 3,

2020 General Election in the Commonwealth of Pennsylvania. As a political committee, the RNC has Article III standing to bring this action. *See, e.g., Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 573-74 (6<sup>th</sup> Cir. 2004); *Pa. Democratic Party v. Republican Party of Pa.*, 2016 U.S. Dist. LEXIS 153944, at \*8-9 (E.D. Pa. Nov. 7, 2016); *Democratic Exec. Comm. v. Detzner*, 347 F. Supp. 3d 1017, 1025 (N.D. Fl. 2018); *Orloski*, 564 F. Supp. at 530-31.

9. Respondent, Secretary Boockvar is the Secretary of the Commonwealth. In this role, Secretary Boockvar leads the Pennsylvania Department of State. As Secretary, she is Pennsylvania's Chief Elections Officer and a member of the Governor's Executive Board. The Pennsylvania Constitution vests no powers or duties in Secretary Boockvar as they relate to the administration of elections. *Perzel v. Cortes*, 870 A.2d 759, 764 (Pa. 2005). Instead, her general powers and duties concerning elections are set forth in Election Code Section 201, codified at 25 P.S. § 2621. Under the Election Code, Secretary Boockvar acts primarily in a ministerial capacity and has no power or authority to intrude upon the province of the Pennsylvania General Assembly. *Perzel*, 870 A.2d at 764; *Hamilton v. Johnson*, 141 A. 846, 847 (Pa. 1928). Secretary Boockvar is sued in her official capacity.

10. Adams County Board of Elections, Allegheny County Board of Elections, Armstrong County Board of Elections, Beaver County Board of Elections,

Bedford County Board of Elections, Berks County Board of Elections, Blair County Board of Elections, Bradford County Board of Elections, Bucks County Board of Elections, Butler County Board of Elections, Cambria County Board of Elections, Cameron County Board of Elections, Carbon County Board of Elections, Centre County Board of Elections, Chester County Board of Elections, Clarion County Board of Elections, Clearfield County Board of Elections, Clinton County Board of Elections, Columbia County Board of Elections, Crawford County Board of Elections, Cumberland County Board of Elections, Dauphin County Board of Elections, Delaware County Board of Elections, Elk County Board of Elections, Erie County Board of Elections, Fayette County Board of Elections, Forest County Board of Elections, Franklin County Board of Elections, Fulton County Board of Elections, Greene County Board of Elections, Huntingdon County Board of Elections, Indiana County Board of Elections, Jefferson County Board of Elections, Juniata County Board of Elections, Lackawanna County Board of Elections, Lancaster County Board of Elections, Lawrence County Board of Elections, Lebanon County Board of Elections, Lehigh County Board of Elections, Luzerne County Board of Elections, Lycoming County Board of Elections, McKean County Board of Elections, Mercer County Board of Elections, Mifflin County Board of Elections, Monroe County Board of Elections, Montgomery County Board of Elections, Montour County Board of Elections, Northampton County Board of Elections, Northumberland County

Board of Elections, Perry County Board of Elections, Philadelphia County Board of Elections, Pike County Board of Elections, Potter County Board of Elections, Schuylkill County Board of Elections, Snyder County Board of Elections, Somerset County Board of Elections, Sullivan County Board of Elections, Susquehanna County Board of Elections, Tioga County Board of Elections, Union County Board of Elections, Venango County Board of Elections, Warren County Board of Elections, Washington County Board of Elections, Wayne County Board of Elections, Westmoreland County Board of Elections, Wyoming County Board of Elections, and York County Board of Elections (collectively hereinafter, the “County Election Boards”), are the county boards of elections in and for each county of the Commonwealth of Pennsylvania as provided by Election Code Section 301, codified at 25 P.S. § 2641. The County Election Boards “have jurisdiction over the conduct of primaries and elections in such count[ies], in accordance with the provision of [the Election Code.]” *Id.* at § 2641(a). The County Election Boards’ general powers and duties are set forth in Election Code Section 302, codified at 25 P.S. § 2642. The County Election Boards are executive agencies that carry out legislative mandates, and their duties concerning the conduct of elections are purely ministerial with no exercise of discretion

## **FACTUAL BACKGROUND**

11. Yesterday, the November 3, 2020 General Election was held across the United States, with many states having already declared the winners in their jurisdictions.

12. However, in Pennsylvania, we are days away from being able to declare the results of the election. This is largely the result of the fact that absentee and mail-in ballots are still being pre-canvassed and counted. Once the pre-canvassing process is completed for those ballots received by the County Boards of Election prior to Election Day on November 3, 2020, the Counties will then begin their canvassing process.

13. While the Counties continue their pre-canvass and canvassing processes today and into the following days, absentee and mail-in ballots are still currently being received and, under the Pennsylvania Supreme Court's September 17, 2020 decision, issued in *Pennsylvania Democratic Party v. Boockvar*, No. 133 MM 2020, 2020 Pa. LEXIS 4872 (Pa., Sept. 17, 2020),<sup>1</sup> and may be received until 5 p.m. on Friday, November 6, 2020, if postmarked by November 3, 2020.

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<sup>1</sup> The Pennsylvania Supreme Court's decision as it relates to the 3-day extension of the absentee and mail-in ballot return date is pending before the United States Supreme Court via a petition for certiorari filed on October 23, 2020. *See Republican Party of Pennsylvania v. Kathy Boockvar, Secretary of Pennsylvania*, Case No. 20-542 (U.S.).

14. Just two days before Election Day on Sunday, November 1, 2020, Secretary Boockvar issued directions to each of the 67 County Boards of Elections stating, in relevant part:

[I]f county board of elections should not open or count any of the following specific types of ballots pending further review as follows:

If proof of identification for an absentee or mail-in voter was not received or could not be verified, the ballot should not be counted unless the elector provides proof of identification that can be verified by the county board *by the sixth calendar day following the canvassing, or on or before Thursday, November 12.*

See **Exhibit 1**, at p. 3 (emphasis added).

15. These instructions directing the Counties to afford absentee and mail-in voters extra time – 3 days beyond November 9, 2020, – to cure their failure to provide proof of identification is in direct contravention of Pennsylvania’s Election Code.

16. Section 1308 of Pennsylvania’s Election Code, codified section 25 P.S. § 3146.8(h), clearly and mandatorily provides:

For those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified:

(1) (Deleted by amendment).

(2) If the proof of identification is received and verified *prior to the sixth calendar day following the election*, then the county board of elections shall canvass the

absentee ballots and mail-in ballots under this subsection in accordance with subsection (g)(2).

(3) If an elector fails to provide proof of identification that can be verified by the county board of elections **by the sixth calendar day following the election**, then the absentee ballot or mail-in ballot **shall not be counted**.

25 P.S. § 3146.8(h) (emphases added).

17. Subparts (2) and (3) of Election Code Section 1308(h) provides for a six calendar day statutory period in which voters may satisfy proof of their identity and is triggered by and expressly tied to election day. *See id.* (stating “following the election”). These provisions are clear, unequivocal and mandatory.

18. The word “election” “shall mean any general, municipal, special or primary election, unless otherwise specified.” *See* Election Code Section 102(f), 25 P.S. § 2602(f).

19. The words “general election” “shall mean the election which the Constitution of this Commonwealth requires to be held in even-numbered years.” *See* Election Code Section 102(h), 25 P.S. § 2602(h).

20. There can be no dispute that the “election,” as defined by Election Section 102(f) for the 2020 General Election was Tuesday, November 3, 2020.

21. Election Code Section 103(e), codified at 25 P.S. § 2603(e), states in full:

In determining or reckoning any period of time mentioned in this act, the day upon which the act is done, paper filed,

or notice given, shall be excluded from, and the date of the primary, election, hearing or other subsequent event, as the case may be, shall be included in the calculation or reckoning: Provided, however, That if the last day upon which any act may be done, paper filed, or notice given, shall fall on a Sunday or a legal holiday, the next following ordinary business day shall be considered as the last day for said purpose.

25 P.S. § 2603(e)

22. Thus, the six calendar day statutory period “following the election” ends on Monday, November 9, 2020.

23. However, Secretary Boockvar’s November 1, 2020 guidance illegally extends the six calendar day statutory period by another three days (for a total of a nine day period) until November 12 by tying the commencement of the period to “following the canvassing” instead of “following the election.”

24. There is nothing in Pennsylvania’s Election Code or elsewhere under Pennsylvania law that permits Secretary Boockvar to rewrite our laws in this fashion.

25. The November 1, 2020 guidance violates the canvassing provisions of the Election Code, specifically Section 1308 codified at Section 3146.8(h).

26. If Secretary Boockvar’s guidance is allowed to continue, it will undoubtedly create a high risk of jeopardizing the integrity of the November 3, 2020 General Election by allowing for the counting and canvassing of absentee and mail-in ballots by electors who fail to provide by November 9, 2020, the requisite proof of identification, as mandated by the General Assembly.



27. Critically, the November 1, 2020 guidance will further delay the 67 County Boards of Elections' abilities to finish the canvassing process and tabulation of votes and cause the tabulation of ballots which, under the electoral scheme enacted by the General Assembly, are determined "shall not be counted." *See* 25 P.S. § 3146.8(h)(3).

28. While the rest of the country will know which candidates won in each of the other states, Pennsylvanians may be forced to wait yet another several days for the outcome of the election – all because of guidance that directly violates the Election Code.

**COUNT I**  
**DECLARATORY AND SPECIAL INJUNCTIVE RELIEF**

29. Petitioners incorporate the foregoing paragraphs as if fully set forth at length.

30. Respondents have a duty to comply with the laws of the Commonwealth of Pennsylvania.

31. "The Commonwealth expects that all officials charged with the duty of guarding and computing the votes of qualified electors will obey the letter and spirit of the applicable law in respect to that duty; only by such obedience to the law will the possibility of fraud be reduced to a minimum." *Appeal of Simon*, 353 Pa. 14, 46 A.2d 243, 245 (1946). The failure of the Respondents to comply with the plain

requirements of Pennsylvania's Election Code entitles Petitioners to the relief they seek herein.

32. Petitioners have no adequate remedy at law to redress the harm as a result of Respondents' violation of the Pennsylvania Election Code.

33. Injunctive relief is necessary to prevent the substantial injury and immediate and irreparable harm that Petitioners would suffer if Respondents are permitted to violate the laws of the Commonwealth of Pennsylvania, specifically Section 1308 of the Election, codified at 25 P.S. § 3146.8(h), by extending the six calendar statutory period three days to November 12.

34. A greater injury would occur in refusing the injunction than granting it because the Respondents are illegally and unilaterally extending the General Election in Pennsylvania by yet another 3 days until November 12, 2020 by allowing absentee and mail-in voters additional time beyond the six calendar day statutory period "following the election" to provide missing proof of identification.

35. Respondents' actions increase the risk of jeopardizing the integrity of the November 3, 2020 general election.

WHEREFORE, Petitioners respectfully request entry of declaratory and special injunctive and/or preliminary injunctive relief in their favor and against Respondents prohibiting Respondents from permitting absentee and mail-in voters an opportunity to provide missing proof of identification on or after November 8,

2020 in direct contravention of the Pennsylvania Election Code, and/or from prohibiting the Respondents from counting any absentee and mail-in ballots of voters whose proof of identification was not received and verified by November 9, 2020.

Respectfully Submitted,

Dated: November 4, 2020

/s/ Ronald L. Hicks, Jr.

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**ATTORNEY VERIFICATION**

I, Ronald L. Hicks, Jr., am authorized to make this verification. I verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of perjury of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

*/s/ Ronald L. Hicks, Jr.*

Ronald L. Hicks, Jr.

## **CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Ronald L. Hicks, Jr.  
Ronald L. Hicks, Jr.  
PA Supreme Court No. 49520

# **EXHIBIT 1**



**CANVASSING SEGREGATED MAIL-IN AND CIVILIAN  
ABSENTEE BALLOTS RECEIVED BY MAIL AFTER 8:00 P.M. ON  
TUESDAY, NOVEMBER 3, 2020 AND BEFORE 5:00 P.M. ON  
FRIDAY, NOVEMBER 6, 2020**

**Date: November 1, 2020**

**Version: 1.0**

On October 28, 2020, the Department of State issued guidance related to the segregation of mail-in and civilian absentee ballots received by mail after 8:00 P.M. on Tuesday November 3, 2020 and before 5:00 P.M. on Friday, November 6, 2020. In doing so, the Department of State indicated it would update the county boards of elections on how to canvass those segregated ballots. That guidance follows:

1. All directions in the guidance issued on October 28, 2020 concerning the segregation and logging of ballots received during this defined post-election period continue to apply. Specifically, mail-in and civilian absentee ballots received by mail after 8:00 P.M. on November 3 and before 5:00 P.M. on November 6 shall be identified and segregated from all other voted ballots and shall be maintained, preserved and appropriately logged as directed in the October 28, 2020 guidance.
2. One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the ballots are canvassed.
3. By statute, no challenges by authorized representatives or any third party are permitted during canvass of the mail-in and absentee ballots.
4. To facilitate transparency and ensure that all validly cast ballots are counted, it is critically important that county boards maintain accurate records of the disposition of ballots received during this period as directed below.

#### **Canvass Procedures**

- Guidance concerning mail-in and absentee ballots previously provided by the Department, including the guidance issued on August 19, 2020, September 11, 2020, and September 28, 2020, continues to apply unless otherwise specified herein.
- The county board of elections shall canvass segregated absentee and mail-in ballots received after 8:00 P.M. on Tuesday November 3, 2020, and before 5:00 P.M. on Friday, November 6, 2020 as soon as possible upon receipt of the ballots and within the period specified by law for the canvass. The canvass meeting shall continue until all segregated absentee and mail-in ballots have been canvassed.
- The county board of elections shall examine the voter declaration on each envelope to ensure that it is executed and signed and verify that the voter's name appears on the approved list of mail-in and absentee voters.
- The county board of elections should set aside and should not open or count any of the following:
  - Ballots cast by any voter who died prior to the opening of the polls on November 3, 2020.
  - Ballots containing a postmark that is after November 3, 2020.
  - Ballots with a missing or illegible postmark containing a voter declaration that is dated after November 3, 2020.



- Ballots (whenever postmarked) received by mail after 5:00 P.M. on Friday, November 6, 2020.
- Additionally, the county board of elections should not open or count any of the following specific types of ballots pending further review as follows:
  - If proof of identification for an absentee or mail-in voter was not received or could not be verified, the ballot should not be counted unless the elector provides proof of identification that can be verified by the county board by the sixth calendar day following the canvassing, or on or before Thursday, November 12.
  - For ballots of voters whose applications were challenged prior to the challenge deadline (5:00 P.M. on Friday, October 30, 2020), those ballots should not be counted pending completion of the challenge procedure in the Election Code. Ballot applications can only be challenged on the basis that the applicant is not qualified to vote. Ballots associated with applications timely challenged on this basis must be placed in a secure, safe, and sealed container until the board of elections schedules a formal hearing on the challenged ballots. The time set for the hearing shall be within three (3) days after November 6. The hearing procedure shall comply with the Election Code and shall be the same procedure for challenged ballots received prior to 8:00 P.M. on Tuesday, November 3, 2020.
- Other than ballots falling into one of the categories set forth above, mail-in and civilian absentee ballots that comply with the Election Code and the Department’s prior guidance shall be canvassed as follows:
  - Ballots with a postmark on or before November 3, 2020 are valid and must be counted.
  - Ballots that lack a postmark or other proof of mailing, or for which the postmark or other proof of mailing is illegible, are presumed to have been mailed by Tuesday, November 3, 2020, and are valid and must be counted, unless a preponderance of the evidence demonstrates that the ballot was mailed after November 3, 2020.
  - County boards of elections are instructed to maintain separate counts for each of the following categories of ballots: (i) ballots with a postmark on or before November 3, 2020 which are counted; (ii) ballots without a postmark (or with an illegible postmark) which are presumed to have been mailed prior to Election Day and which are counted; and (iii) ballots without a postmark (or with an illegible postmark) which are determined by a preponderance of the evidence to have been mailed after Election Day and which are not counted.
- Consistent with the Department’s prior guidance, county boards of elections are instructed to set aside any ballots that lack the inner secrecy envelope and any ballots in

secrecy envelopes that contain any text, mark, or symbol which reveals the identity of the voter, the voter's political affiliation, or the voter's candidate preference.

- The county boards of elections shall count, compute, and separately tally the ballots approved for canvassing. These separate ballot tallies shall distinguish between: (i) ballots counted with a postmark prior to November 3, 2020 and (ii) ballots counted with an illegible or no postmark that were presumed to have been mailed on or before November 3.
- Counties shall maintain in a safe and secure location all ballots and ballot envelopes that are canvassed pursuant to this guidance.

<b>Version</b>	<b>Date</b>	<b>Description</b>
1.0	11.1.2020	Initial document release