

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RUTHANN BAUSCH, MARCIA DAY
DONDEGO, JUDITH REED, RHODA
EMEFA AMEDEKU, DANIEL
STROHLER, SHARON STROHLER,
BERNARD BOAKYE BOATENG,
LORI RIEKER and LISA DANNER,

Plaintiffs,

v.

LEHIGH COUNTY BOARD OF
ELECTIONS, NORTHAMPTON
COUNTY BOARD OF ELECTIONS
and LEIGH M. CHAPMAN,
in her capacity as Secretary of the
Commonwealth of Pennsylvania

Defendants.

JURY TRIAL DEMANDED

Civ. No. _____

**BRIEF IN SUPPORT OF MOTION FOR INJUNCTIVE RELIEF AND/OR
TEMPORARY RESTRAINING ORDER**

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs consist of two (2) groups of registered Democrat Pennsylvania voters in Lehigh and Northampton County's State Senate District 14. Plaintiffs Ruthann Bausch, Marcia Day Dondiego, and Judith Reed are among a group of 23 Northampton County voters and Rhoda Emefa Amedeku is among a group of 94 Lehigh County voters ("Plaintiffs 1") whose timely-submitted mail-in ballots for

the May 17, 2022, election will not count because of the meaningless technicality that the ballots were not placed in a “secrecy envelope” before being sent to the Election Boards.

Plaintiffs Daniel Stroehler, Sharon Stroehler, Bernard Boakye Boateng and Lori Reiker are among a group of 25 Northampton County voters and Lisa Danner is among a group of 118 Lehigh County voters (“Plaintiffs 2”) whose timely-mailed ballots for the May 17, 2022, election will not count because the United States Postal Service (“USPS”) failed to prioritize said ballots and failed to deliver them to the Elections Offices in time to be counted.

As more fully set forth in the accompanying Complaint for Emergency Injunctive and Declaratory Relief, all of the plaintiffs are eligible, registered voters in Lehigh and Northampton Counties, all applied for and received their mail ballots from the Election Boards, all completed their ballots, signed the declaration on the outer envelope and sent their mail ballots to the county.

Plaintiffs 1

It is undisputed that Plaintiffs 1’s mail-in ballots were submitted before 8:00 p.m. on Election Day and otherwise complied with all requirements of the mail-in voting law, but for the immaterial failure to include a “secrecy envelope” with their ballot. The missing “secrecy envelopes” do not, however, affect the integrity of the ballot. Neither the Elections Board nor any interested party has contended

otherwise. Whether the voter includes the “secrecy envelope” does not affect either the timeliness of the ballot’s return or the Elections Board’s verification of timeliness. In short, the requirement that the voter write the date is immaterial to the integrity of the electoral process.

Plaintiffs 2

It is undisputed that Plaintiffs 2’s mail-in ballots were mailed before 8:00 p.m. on Election Day and otherwise complied with all requirements of the mail-in voting law, but said ballots were not received by the Election Boards until after 8:00 p.m. on Election Day. Delivery of a voter’s timely-mailed ballot beyond election day at 8 p.m., but prior to when military and overseas ballots are due and prior to when the election boards are required to submit unofficial vote counts to the Commonwealth does not affect the eligibility of the voter, nor does it interfere with the election boards’ ability to timely count votes and submit the information to the Commonwealth. In fact, twenty-one states and territories accept mail-in ballots received after election day, so long as they were postmarked before election day. <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-11-receipt-and-postmark-deadlines-for-absentee-ballots.aspx>. In any one of those states or territories, Plaintiffs 2’s ballots would have been counted.

II. ARGUMENT

The requested injunctive relief is necessary to prevent summary violation of Plaintiffs' most fundamental rights. Rule 65 of the Federal Rules of Civil Procedure requires this Court to consider four factors in deciding Plaintiffs' request for a preliminary injunction: (1) whether Plaintiffs have shown a reasonable probability of success on the merits of their underlying claims; (2) whether Plaintiffs will be irreparably harmed by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the non-moving party; and (4) whether the requested relief is in the public interest." B.H. v. Easton Area Sch. Dist., 725 F.3d 293, 302 (3d Cir. 2013) (en banc). Each and every one of these factors weighs in favor of granting a temporary restraining order and preliminary injunction in this case.

A. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CONSTITUTIONAL AND CIVIL RIGHTS ACT CLAIMS.

Plaintiffs bring this action pursuant to 42 U.S.C. § 1983, which imposes liability for "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the United States. Here, Plaintiffs set forth multiple claims for deprivation of their basic right to vote in violation of the Civil Rights Act of 1964 ("CRA") and the First and Fourteenth Amendments to the U.S. Constitution. Each of those claims is likely to succeed.

1a. Rejecting Plaintiffs' Ballots for the Immaterial Omission of a "Secrecy Envelope" and Ballots that were Mailed Before but not Received Until After 8 p.m. on Election Day Violates the Materiality Provision of the Civil Rights Act of 1964 and Violates the 1st and 14th Amendments to the U.S. Constitution.

Summarily tossing out every mail-in ballot missing a "secrecy envelope" or votes that were mailed before but did not arrive until after 8 pm on Election Day violates the CRA. Section 10101 (formerly codified at 42 U.S.C. § 1971), also known as the "Materiality Provision" of the CRA, states in relevant part that:

[N]o person acting under color of state law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.

52 U.S.C. § 10101(a)(2)(B) (emphasis added). This provision was enacted to end requirements that "served no purpose other than as a means of inducing voter-generated errors that could be used to justify" denying the right to vote. Fla. State Conf. of NAACP v. Browning, 522 F.3d 1153, 1173 (11th Cir. 2008).

Notably, several justices of the Pennsylvania Supreme Court recognized that federal courts have repeatedly "barred the enforcement of several administrative requirements to disqualify electors" under the Materiality Provision, In re 2020 Canvass, 241 A.3d at 1074 n.5 (opinion announcing the judgment), and observed that voiding undated ballots under these circumstances might conflict with the CRA. Id. See also id. at 1089 n.54 (Wecht, J., concurring and dissenting).

a. Discarding mail-in ballots denies the right to vote within the meaning of the Materiality Provision.

The CRA directs that “vote” in this context means “all action necessary to make a vote effective including, but not limited to, registration or other action required by State law prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office and propositions for which votes are received in an election.” *Id.* §§ 10101(a)(3)(A), 10101(e) (emphasis added).

Therefore, the statute “by definition includes not only the registration and eligibility to vote, but also the right to have that vote counted” and “prohibits officials from disqualifying votes for immaterial errors and omissions.” *Ford v. Tenn. Senate*, No. 06-2031-DV, 2006 WL 8435145, at *11 (W.D. Tenn. Feb. 1, 2006). The Department of Justice, which has non-exclusive statutory authority to institute civil actions for violations of the Materiality Provision, is in accord, stating in the DOJ Justice Manual that the Materiality Provision “prohibits any person acting under color of law from denying eligible persons the right to vote or failing or refusing to count their votes,” DOJ Justice Manual § 8-2.271 (2018) (emphasis added).

The CRA’s legislative history confirms that Congress broadly “intended to address those state election practices that increase the number of errors or

omissions on papers or records related to voting and provide an excuse to disenfranchise otherwise qualified voters.” League of Women Voters of Ark. v. Thurston, No. 5:20-CV-05174, 2021 WL 5312640, at *4 (W.D. Ark. Nov. 15, 2021); see also Schwier v. Cox, 340 F.3d 1284, 1294 (11th Cir. 2003) (noting that the provision was intended to prevent elections offices from “requiring unnecessary information”). The legislative history of the provision demonstrates Congressional concern that voters are disenfranchised for immaterial, “hyper-technical” errors that do not place their actual eligibility to vote in doubt. See Justin Levitt, Resolving Election Error: The Dynamic Assessment of Materiality, 54 Wm. & Mary L. Rev. 83, 147–48 (2012).

Here, the Elections Board’s intention to discard votes, apart from any determination as to eligibility of voters, clearly constitutes denial of the right to vote as described in the Materiality Provision.

b. Omission of the secrecy envelope and the USPS failing to timely deliver mail-in ballots constitute “an error or omission on any record or paper related to [an] . . . act requisite to voting.”

The Materiality Provision applies to any “error or omission on any record or paper related to any . . . act requisite to voting.” 52 U.S.C. § 10101(a)(2)(B).

Because the statutory definition of “vote” includes “all action necessary to make a vote effective including . . . casting a ballot, and having such ballot counted,” *id.* § 10101(e), a plain reading of the statute means that the Election Board smay not

deny the right to vote based on an immaterial error or omission occurring at any point in the process, including in the submission of a mail-in ballot. The U.S. District Court for the Northern District of Georgia decision in Martin v. Crittenden is instructive. 347 F. Supp. 3d 1302, 1308–09 (N.D. Ga. 2018).

The court was confronted with rejection of mail-in ballots based on voters’ failure to provide their year of birth, among “other clerical mistakes,” id. at 1306, and found that such rejections violated the CRA’s Materiality Provision, id. at 1308–09. Like the rejection of ballots based on “clerical mistakes” in Martin, the Lehigh and Northampton Counties’ Elections Boards’ rejection of ballots here is governed by the CRA because it is based on “an error or omission on any record or paper related to any . . . act requisite to voting.”

Applying the plain statutory language, any county that rejects ballots that do not include a “secrecy envelope” or that were mailed prior to but not delivered until after 8 pm on Election Day have, under the color of state law, denied the right to vote for failure to comply with an act that the Election Code (as interpreted by the Commonwealth Court in Ritter) has made “requisite to voting.” In addition, as set forth in the Plaintiff Affidavits attached to Plaintiffs’ Complaint, failing to comply with the “secrecy envelope” or “received-by” requirement was “error or omission”.

Finally, the “secrecy envelope” and the package of ballot materials (i.e. ballot, secrecy envelope, and outer envelope) that were mailed by the Plaintiffs is a “record or paper” within the meaning of the Materiality Provision. Like “act requisite to voting,” what qualifies as a “record or paper” is defined by its relevance to the act of voting. In other words, the papers and records covered by the Materiality Provision are those that state law or counties make requisite to voting. Insofar as the Defendants are applying the Election Code in such a way as to require invalidation of ballots lacking a “secrecy envelope” and those mailed to but not received by the Election Boards by 8 pm on Election Day, then the “secrecy envelope” and package of ballot materials are a record or paper relating to . . . [an] act requisite to voting” and violating those provisions constitutes “an error or omission on any record or paper related to [an] . . . act requisite to voting.” 52 U.S.C. § 10101(a)(2)(B).

c. The “secrecy envelope” and “received by” rules are not material to determining a voter’s qualifications.

At least three (3) recent federal cases support the conclusion that state laws requiring voters to include ministerial information on mail-in ballot envelopes violate the CRA Materiality Provision where such information was immaterial to determining a voter’s qualification to vote. Perhaps most importantly is the case of Migliore v. Lehigh County Board of Elections, Case: 22-1499 (3d. Cir. 2022)

where the Third Circuit found that the dating provisions of the Pennsylvania Election Code at 25 Pa.C.S. 3146.6(a) and 3150.16(a), that a voter include the date the outer envelope was signed on the envelope itself, violated the materiality provision of the Voting Rights Act. See also, e.g., Martin, 347 F. Supp. 3d 1302, reconsideration denied, 1:18-CV-4776-LMM, 2018 WL 9943564 (N.D. Ga. Nov. 15, 2018) (birth date requirement); Sixth Dist. of Afr. Methodist Episcopal Church v. Kemp, No. 1:21-CV-01284-JPB, 2021 WL 6495360, at *14 (N.D. Ga. Dec. 9, 2021) (allowing claim under materiality provision to survive a motion to dismiss). Several other federal courts have struck down similarly immaterial administrative requirements precisely because they bore no relationship to voter qualifications. See, e.g., Schwier v. Cox, 439 F.3d 1285, 1286 (11th Cir. 2006) (holding that a Social Security number is not “material” in determining whether a resident is qualified to vote); Wash. Ass'n of Churches v. Reed, 492 F.Supp. 2d 1264 (W.D. Wash. 2006) (enjoining enforcement of “matching” statute, requiring state to match potential voter’s name to Social Security Administration or Department of Licensing database, because failure to match applicant's information was not material to determining qualification to vote).

Similarly, the “secrecy envelope” and “received by” provisions are administrative requirements that are not material to determine a person’s eligibility to vote, and therefore violates the CRA. Indeed, unlike the date-of-birth

requirements at issue in Martin and Sixth District AME Church—which were rejected as “immaterial” within the meaning of the CRA, despite having some use for identity verification—a “secrecy envelope” and the “received by” requirement have no material value in determining whether a Lehigh or Northampton County voter is qualified to vote. See Martin, 347 F. Supp. 3d at 1308–09.

In Pennsylvania, the state constitution establishes the “qualifications” needed in order to “be entitled to vote at all elections.” To qualify as an eligible voter, each individual is only required to be:

- A citizen of the United States;
- Over the age of eighteen (as modified by the Twenty-Sixth Amendment to the United States Constitution);
- A resident of the Commonwealth of Pennsylvania; and
- A resident of the election district in which the person offers to vote.

Pa. Const. Art. VII, § 1. The inclusion of a “secrecy envelope” and the requirement that a mail-in ballot be “received by” Election Day bears no relation to voter qualification in Pennsylvania, especially where there is no question that the ballots were timely mailed before the voting deadline, and were received prior to the date that military and overseas ballots were due and prior to the date the Election Boards are required to submit unofficial vote totals to the Commonwealth.

2. *The Decision to Disenfranchise Plaintiffs Violates the Voters’ Rights Under the First and Fourteenth Amendments to the U.S. Constitution.*

Determining whether a regulation imposes an unconstitutional burden on voting requires application of the framework of Anderson v. Celebrezze, 460 U.S. 780 (1983), and Burdick v. Takushi, 504 U.S. 428 (1992). The Anderson/Burdick framework requires a court to “weigh ‘the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate’ against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’” Burdick, 504 U.S. at 434 (quoting Anderson, 460 U.S. at 788–89). Strict scrutiny applies when the right to vote is “subjected to ‘severe’ restrictions.” Burdick, 504 U.S. at 434. When a challenged regulation “imposes only ‘reasonable, nondiscriminatory restrictions’ upon the First and Fourteenth Amendment rights of voters, ‘the State’s important regulatory interests are generally sufficient to justify’ the restrictions.” Id. (quoting Anderson, 460 U.S. at 788).

Northeast Ohio Coalition for the Homeless v. Husted, 837 F.3d 612 (6th Cir. 2016), is instructive. In Husted, the court held that a rigid requirement for a voter to write their correct address and birthdate on absentee-ballot identification envelopes was not justified by any state interest, even though “the burden is small for most voters.” Id. at 632. The Ohio law at issue required automatic rejection of absentee ballots where the voter incorrectly wrote their address or birthdate on the

identification envelope, meaning “identifiable voters may be disenfranchised based only on a technicality.” Id. Ohio failed to specifically explain how its posited interests in combatting voter fraud and standardizing identification-envelope requirements would be advanced by the requirement. See id. at 631–34.

Additionally, neither interest made it “necessary to burden” voting rights in that manner, as there were sufficient alternatives to address those interests “without the heavy-handed requirement of ballot rejection on a technicality.” Id. at 633–34.

Similarly here, Defendants are imposing a rigid requirement that voters include a “secrecy envelope”, or automatically “be disenfranchised based only on a technicality.” See id. at 632. The burden of requiring voters to include the secrecy envelope for a mail-in ballot is small, but not zero. Like Ohio in Husted, Lehigh County has no “important regulatory interest,” Burdick, 504 U.S. at 434, to justify even this relatively small burden on the fundamental right to vote.

First, a secrecy envelope and the “received by” requirement are not necessary to confirm a voter’s “desire to cast [a mail-in ballot] in lieu of voting in-person. See id. at 1090. The act of requesting a mail-in ballot, filling it out, and returning it before Election Day more than suffices to demonstrate a desire to vote by mail. Even if voters who requested a mail-in ballot later decide to vote in person, they are prevented from doing so under Pennsylvania law unless they return the blank mail-in ballot at the polling place before voting in person. 25 P.S.

§§ 3146.6(b)(1)-(3), 3150.16(b)(1)-(3). Obviously, any individual who mails in the ballot instead of returning a blank ballot at the polling place demonstrates their “desire to cast it in lieu of voting in person,” regardless of whether they add a handwritten date on the return envelope.

Second, the secrecy envelope and “received by” requirements do not “establish[] a point in time against which to measure the elector’s eligibility to cast the ballot.” See In re 2020 Canvass, 241 A.3d at 1090 (Dougherty, J., concurring and dissenting). Rather, Pennsylvania law requires, by statute, that eligibility be determined by each county prior to sending a mail-in ballot. See 25 P.S. §§ 3146.2b, 3150.12b; 25 Pa.C.S. § 1328(b). The only “point in time” against which to measure eligibility under Pennsylvania law is the time at which they request the ballot, regardless of whether they subsequently send it back with a handwritten date or whether they were delivered by Election Day¹.

The “received by” requirement is especially onerous given that forces outside the control of the voter could and have delayed the delivery of votes, rendering them invalid. Delivery of a voter’s timely-mailed ballot beyond election day at 8 p.m., but prior to when military and overseas ballots are due and prior to when the election boards are required to submit unofficial vote counts to the

¹ Military and overseas ballots are deemed timely submitted if received by the county board by 5:00 p.m. on the seventh (7th) day following the election. See 25 Pa.C.S. 3511.

Commonwealth does not affect the eligibility of the voter, nor does it interfere with the election boards' ability to timely count votes and submit the information to the Commonwealth. In fact, twenty-one states and territories accept mail-in ballots received after election day, so long as they were postmarked before election day.

<https://www.ncsl.org/research/elections-and-campaigns/vopp-table-11-receipt-and-postmark-deadlines-for-absentee-ballots.aspx>

Moreover, it is not fault of the voter who timely mails their ballot to the elections' office, but rather an overworked and understaffed USPS that that failed to deliver said ballots in time to be counted. Indeed, Defendant Chapman advised that, referring to mail-in ballot voters, "They definitely don't want to drop that ballot into the mailbox too close to May 17, because we want to assure that their vote is counted." Chapman reminded voters that deliveries are currently taking about three days. <https://www.inquirer.com/news/pennsylvania-mail-in-voting-ballot-law-20220505.html>

Despite Defendant Chapman's acknowledgment in a newspaper interview of mail delays, and the possibility that mail-in ballots may not be counted if they are mailed "too close to May 17", the Secretary of the Commonwealth's office did not release any official guidance, declaration or order to notify the public that it would take three (3) days for a mail-in ballot to be delivered.

The Pennsylvania Supreme Court in See Pa. Democratic Party v. Boockvar, 238 A.3d 345, (Pa. 2020) had opportunity to consider a similar issue when it ruled in favor of a three (3) days extension of the “received by” deadline. The Court stated as follows:

As we have recently seen, an orderly and efficient election process can be crucial to the protection of a voter's participation in that process. Indeed, the struggles of our most populous counties to avoid disenfranchising voters while processing the overwhelming number of pandemic-fueled mail-in ballot applications during the 2020 Primary demonstrates that orderly and efficient election processes are essential to safeguarding the right to vote. *An elector cannot exercise the franchise while her ballot application is awaiting processing in a county election board nor when her ballot is sitting in a USPS facility after the deadline for ballots to be received.*

We are fully cognizant that a balance must be struck between providing voters ample time to request mail-in ballots, *while also building enough flexibility into the election timeline to guarantee that ballot has time to travel through the USPS delivery system to ensure that the completed ballot can be counted in the election.*

We have no hesitation in concluding that the ongoing COVID-19 pandemic equates to a natural disaster. Moreover, the effects of the pandemic threatened the disenfranchisement of thousands of Pennsylvanians during the 2020 Primary, when several of the Commonwealth's county election boards struggled to process the flow of mail-in ballot applications for voters who sought to avoid exposure to the virus. It is beyond cavil that the numbers of mail-in ballot requests for the Primary will be dwarfed by those applications filed during the upcoming highly-contested Presidential Election in the midst of the pandemic where many voters are still wary of congregating in crowded locations such as polling places. We acknowledge that the Secretary has

estimated that nearly three million Pennsylvanians will apply for mail-in applications, in contrast to the 1.5 million cast during the Primary. In light of these unprecedented numbers and the near-certain delays that will occur in Boards processing the mail-in applications, *we conclude that the timeline built into the Election Code cannot be met by the USPS's current delivery standards, regardless of whether those delivery standards are due to recent changes in the USPS's logistical procedures or whether the standards are consistent with what the General Assembly expected when it enacted Act 77.*

Id. (internal citations omitted)(emphasis added)

It is respectfully submitted that the ongoing pandemic, determined by the Governor and Pennsylvania Supreme Court to have constituted a natural disaster, remains a driving force behind a surge in mail-in ballots requested. Indeed, for the May 17, 2022 primary, over 831,000 mail-in ballots were requested, representing roughly 10% of all ballots cast in the election.

<https://www.inquirer.com/news/pennsylvania-mail-in-voting-ballot-law-20220505.html>.

Finally, including the “secrecy envelope” and the “received by” requirement are not necessary to “ensure[] the elector **completed** the ballot within the proper time frame.” See In re 2020 Canvass, 241 A.3d at 1090 (Dougherty, J., concurring and dissenting)(emphasis added).

The use of a “secrecy envelope” and the “received by” requirement, are not supported by any articulable state interest, let alone an important one, especially

were the Election Boards continue to count military and overseas ballots for seven (7) days after Election Day, and unofficial vote totals are not due to the Commonwealth until seven (7) days after Election Day.

Even if Lehigh County could identify some “important regulatory interests” related to the date requirement, those interests do not “make it necessary to burden the plaintiff’s rights,” Burdick, 504 U.S. at 434 (quoting Anderson, 460 U.S. at 789), with “the heavy-handed requirement of ballot rejection on a technicality,” Husted, 837 F.3d at 633². Even though the requirement that voters date the return envelope for a mail-in ballot imposes a relatively small burden on the voter, it nonetheless is unconstitutional because there is no “important regulatory interest” to justify the burden.

B. IN THE ABSENCE OF IMMEDIATE INJUNCTIVE RELIEF, PLAINTIFFS WILL SUFFER IRREPARABLE HARM.

Denial of the right to vote is not compensable by money damages—once certified, an excluded vote cannot be restored—and is therefore considered

² Currently, Pennsylvania is 1 of only 17 U.S. States and territories that require the use of a “secrecy” envelope or sleeve for a mail-in ballot, yet there are 26 states and territories that offer no-excuse absentee voting. See <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-13-states-that-are-required-to-provide-secrecy-sleeves-for-absentee-mail-ballots.aspx>; <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-1-states-with-no-excuse-absentee-voting.aspx>

irreparable harm. See NAACP State Conf. of Pa. v. Cortes, 591 F. Supp. 2d 757, 767 (E.D. Pa. 2008) (holding that failure of electronic voting machines on election day could deprive voters of their ability to cast a ballot and constitutes irreparable harm). Emergency injunctive relief is a staple of election litigation precisely because the denial of either the opportunity to vote or the actual vote itself cannot be otherwise compensated. Voting is fundamental in our democratic process:

Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.

Reynolds v. Sims, 377 U.S. 533, 561–62 (1964). See also Wesberry v. Sanders, 376 U.S. 1, 17 (1964) (“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.”); Counsel of Alt. Pol. Parties v. Hooks, 179 F.3d 64, 70 (3d Cir. 1999) (“[T]he rights of qualified voters to cast their ballots effectively and the rights of individuals to associate for political purposes are of the most fundamental significance under our constitutional structure.”).

Once the Defendants certify the election on June 1, 2022, at 3:00 p.m. Plaintiffs lose any opportunity to obtain meaningful redress. Plaintiffs are not seeking an extended injunction, but only sufficient time to allow for the court to

hear from all interested parties and to consider the underlying merits in an orderly fashion.

C. DEFENDANTS WILL NOT BE HARMED BY ENTRY OF THE REQUESTED PRELIMINARY INJUNCTIVE RELIEF.

Defendants will not suffer significant harm from a brief postponement of the June 1, 2022, 3:00 p.m. scheduled certification to permit orderly resolution of the important constitutional and civil rights issues presented in this case. Nor will the Defendants be harmed by a final ruling from this Court that federal law requires it to count Plaintiffs' ballots. Government agencies complying with the constitution and federal law is always in the public interest. See Swartzwelder v. McNeilly, 297 F.3d 228, 242 (3d Cir. 2002) (holding "the public interest is best served by eliminating . . . unconstitutional restrictions"); Hooks, 121 F.3d at 883–84 ("In the absence of legitimate, countervailing concerns, the public interest clearly favors the protection of constitutional rights."). Since the election has not yet been certified, issuance of a temporary restraining order and preliminary injunctive relief to maintain the status quo pending the outcome of this case is the only way to avoid harm to either side so that the Defendants are not later required to incur additional burdens or expenses to undo a hasty certification.

D. PUBLIC POLICY SUPPORTS THE REQUESTED RELIEF.

The public interest in this matter clearly favors Plaintiffs' position. The requested preliminary injunction will ensure that no eligible, registered voters are unfairly and illegally deprived of their right to vote. The goal of promoting fundamental constitutional rights will thereby be advanced, as will the goal of having elections that result in seating the true winner elected by the people, regardless of which side ultimately prevails after all votes are counted.

IV. CONCLUSION

For all of the foregoing reasons, as well as those set forth in Plaintiffs' accompanying Complaint and Motion for Temporary Restraining Order and Preliminary Injunction, Plaintiffs respectfully request that this Court grant said Motion and enter an order briefly enjoining the Elections Board from certifying the results of the 2022 primary election in Lehigh and Northampton Counties until such time as this Court can consider the merits of Plaintiffs' federal claims.

Respectfully submitted,

MOBILIO WOOD

BY /S/ MATTHEW MOBILIO

DATED: 5/31/22

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