

From: [michael farris](#)
To: [Jeff Young](#)
Subject: Updated complaint
Date: Monday, November 30, 2020 10:07:34 AM
Attachments: State-v-States-Compl 2020-11-30 v4 DRAFT.docx

Jeff,

Please find a much improved version of the complaint attached.

I will call you to update you on the alternatives.

Thanks so much.

Mike

No. _____, Original

In the Supreme Court of the United States

STATE OF A,

Plaintiff,

v.

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

Defendants.

BILL OF COMPLAINT

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TABLE OF CONTENTS

	Pages
Bill of Complaint	1
Nature of the Action	2
Jurisdiction and Venue	5
Parties	6
Legal Background	6
Facts	9
Commonwealth of Pennsylvania	11
1. Violation of Electors Clause	12
2. Violation of Fourteenth Amendment	16
State of Arizona	17
1. Violation of Electors Clause	17
2. Violation of Fourteenth Amendment	18
State of Georgia	18
1. Violation of Electors Clause	18
2. Violation of Fourteenth Amendment	20
State of Michigan	21
1. Violation of Electors Clause	21
2. Violation of Fourteenth Amendment	25
State of Minnesota	26
State of Nevada	27
1. Violation of Electors Clause	29
2. Violation of Fourteenth Amendment	30
State of Wisconsin	31
1. Violation of Electors Clause	33
2. Violation of Fourteenth Amendment	37
Count I: Electors Clause	37
Count II: Equal Protection (Differential Standards)	38
Count III: Equal Protection (One Man, One Vote) .	39

Count IV: Due Process (Intentional Noncompliance).....	39
Prayer for Relief	41

“[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 Either the Constitution matters and must be followed, even when some officials consider it inconvenient or out of date, or it is simply a piece of parchment on display at the National Archives.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 freedoms. Using the COVID-19 pandemic as a justification, a few government officials in the defendant States—Arizona, Georgia, Michigan, Minnesota, Nevada, Pennsylvania, and Wisconsin—the “Defendant States”) usurped their legislatures’ authority and unconstitutionally revised their State’s election laws. For the first time in history, these 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, nonsensically 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 Citizens and States together in our Republic—injuring the States which are faithful to the Constitution and the votes of their citizens which these States have a duty to protect.

Against that background, the State of [A] (“Plaintiff State”) brings this action against the Commonwealth of Pennsylvania and the States of Arizona, Georgia, Michigan, Minnesota, Nevada, and Wisconsin (collectively, the “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 of the U.S. Constitution and the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

2. We do not know the extent of wrongdoing and abusive practices that took place during the 2020 election. What we do know is that each of these States flagrantly violated constitutional norms with respect to the fundamental democratic process of voting. 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.

3. The COVID-19 pandemic has impacted nearly every aspect of civic life during 2020, and the Presidential election was not immune. For the first time in history, a majority of Americans cast ballots by mail—a historically and mechanistically suspect voting method—with the entire process of voting and counting votes drastically affected.

4. However, 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 election that were inconsistent with existing state statutes defining what constitutes a lawful vote.

6. The chaos produced by these new rules gave opportunity for a great variety of improper activity in violation of state election statutes, principles of equal protection, and basic standards of due process.

7. The Defendant States also failed to properly segregate ballots in a manner that permits accurate analysis to determine which ballots were legitimate 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.

8. 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

secretly 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).

9. By purporting to waive and otherwise change 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).

10. In addition, the failure to follow existing law violates the Equal Protection and Due Process Clauses of the U.S. Constitution. “The press of time does not diminish the constitutional concern.” *Bush v. Gore*, 531 U.S. 98, 108 (2000) (per curiam) (*Bush II*). 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.

11. 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.

12. 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

13. 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).

14. 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 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)).

15. 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); *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 State.

16. Individual states 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 injury spanning multiple States with the sufficient number of states joined as defendants or respondents to make a difference in the electoral college.

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

PARTIES

18. Plaintiff is the State of A, which is a sovereign State of the United States.

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

LEGAL BACKGROUND

20. 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.

21. "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).

22. Rather, 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)).

23. At 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).

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

25. 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.

26. 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.").

27. Given the State legislatures' primacy in selecting presidential electors, statutes governing the casting of ballots and counting of votes cannot be usurped by other branches of state government.

28. When a State legislature chooses to select presidential electors through popular election, the State's electoral process must honor constitutional guarantees of equal protection and due process:

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 104 (emphasis added).

29. The Founders 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.).

30. Under the Due Process Clause, "No State shall ... deprive any person of life, liberty, or property,

without due process of law[.]” U.S. CONST. amend. XIV, § 1, cl. 3.

31. 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.

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

FACTS

33. 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. The Defendant States flooded their populace with millions of absentee and mail-in ballots unlike any other election in the history of this Country. Established controls to deter voter fraud, such as signature verification systems and procedures, were materially weakened or abandoned outright.

34. 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).

35. 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

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

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. For example, responding to claims that thousands of fraudulent ballots were cast in the 2004 election in Milwaukee, a police investigation found that “more ballots [were] cast than voters recorded.” SPECIAL INVESTIGATIONS UNIT, MILWAUKEE POLICE DEPT, REPORT ON THE INVESTIGATION INTO THE NOV. 2, 2004 GENERAL ELECTION IN THE CITY OF MILWAUKEE, at 5 (2008); ROSE GILL HEARN, COMMISSIONER, NEW YORK CITY DEPT OF INVESTIGATION, REPORT ON THE NEW YORK CITY BOARD OF ELECTIONS’ EMPLOYMENT PRACTICES, OPERATIONS, AND ELECTION ADMINISTRATION, at 13 (December 2013).

36. Absentee and mail-in voting are the primary opportunities for unlawful ballots to be cast. As the direct result of expanded absentee and mail-in voting in Defendant States coupled with the abandonment of statutory protections designed to ensure ballot integrity, the Defendant States created a chaotic mess that makes it impossible to remove the constitutional taint from all mail-in ballots.

37. 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%.

38. Incredibly, 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 away with, signature verification procedures required by their respective legislatures. Their legislatures established those commonsense safeguards to prevent—or at least reduce—fraudulent mail-in ballots by checking the voter signature on the ballot with the voter signature on file with the State.

39. 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 unlawful usurpation of legislative authority.

40. 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

41. 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.

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

1. Violation of Electors Clause

43. Pennsylvania's Secretary of State, Kathy Boockvar, without legislative approval, unilaterally abrogated several Pennsylvania statutes requiring signature verification for absentee or mail-in ballots.

44. 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).

45. 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."

46. 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).

47. The Pennsylvania Department of State's guidance unlawfully 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 illegal abrogation of state election law greatly inured to former Vice President Biden's benefit.

48. 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.

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

50. Pennsylvania's election law also 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 decided not to follow 25 PA. STAT. § 3146.8(b) for the opening, counting, and recording of absentee and

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

- 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 this 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.

51. By removing the ballots for examination prior to seven a.m. on election day, Secretary Boockvar created a system whereby local officials could open and review ballots without the proper announcements and security. This entire scheme,

which was only followed in Democrat majority counties, was blatantly illegal in that it permitted the removal of ballots from their locked containers prematurely, which resulted in information about voters being released to political parties and others so they could harvest votes that might otherwise be rejected based on ballot invalidity.

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

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

54. 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.

55. The process of allowing curing of absentee and mail-in ballots in Allegheny and Philadelphia counties is a separate basis for holding that all mail-in ballots in those jurisdictions are constitutionally tainted.

56. 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.

57. This blatant flouting of statutory law renders all mail-in ballots constitutionally suspect and cannot form the basis for assigning Pennsylvania's electors to the electoral college.

2. Violation of Fourteenth Amendment

58. The above-alleged facts also demonstrate that Pennsylvania's conduct of the presidential election impermissibly failed to follow even rudimentary standards of due process and thus dilutes the value of the votes of Plaintiff State's voters. These *ultra vires* actions violate both the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment *vis-à-vis* voters in Plaintiff State.

59. As discussed above, Pennsylvania broke its promise to this Court to segregate ballots received after 8 pm on November 3, 2020. On November 11, 2020, Secretary Boockvar stated that an estimated 10,000 ballots were received after November 3, 2020. However, because Pennsylvania failed to segregate ballots received after 8 pm on November 3, 2020 from those received before that time, that figure is impossible to verify.

60. These non-legislative usurpations, as described above, generated significant voting irregularities in the Commonwealth of Pennsylvania and Philadelphia and Alleghany Counties, in violation of the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

61. 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. Defendant materially increased the number of votes for former Vice President Biden by: (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.

62. These non-legislative modifications to Pennsylvania's election rules generated an outcome-determinative number of unlawful ballots that were cast in Pennsylvania.

State of Arizona

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

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

1. Violation of Electors Clause

65. Arizona's Election Procedures Manual ("EPM") has the force of law pursuant to ARIZ. REV. STAT. § 16-452. The EPM mandates that "[u]pon receipt of the return envelope with an early ballot and completed affidavit, a County Recorder or other officer in charge of elections shall compare the signature on the affidavit with the voter's signature in the voter's registration record." EPM at p.68.

66. Further, the EPM grants political party observers permission to observe all significant voting or processing activities at the voting location.

67. Maricopa County did not administer the EPM's signature-comparison requirement and excluded observers.

2. Violation of Fourteenth Amendment

68. More than 1.6 million mail-in ballots were processed at the Maricopa County Tabulation Election Center.

69. Mail-in ballots in Maricopa County faced a different level of review than mail-in ballots in other Arizona counties.

State of Georgia

70. 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.

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

1. Violation of Electors Clause

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

73. 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.

74. 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).

75. 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).

76. 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).

77. 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 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 and unrealistic 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.

78. 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, and the relevant legislation did not include a severability clause.

79. This unlawful change in Georgia law materially benefited 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).

2. Violation of Fourteenth Amendment

80. These non-legislative usurpations generated significant voting irregularities in the State of Georgia as described above, in violation of the Due Process Clause of the Fourteenth Amendment.

State of Michigan

81. 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.

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

1. Violation of Electors Clause

83. Michigan's Secretary of State, Jocelyn Benson, without legislative approval, unilaterally abrogated two Michigan statutes related to absentee ballot applications and signature verification.

84. 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.

85. On May 19, 2020, however, Michigan's Secretary of State's 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.

86. 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).

87. The Michigan Legislature thus declined to include the Secretary of State as a means for distributing absentee ballots. *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.*

88. Because the Legislature declined to explicitly include the Secretary of State as a vehicle for distributing absentee ballots, 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.

89. 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.

90. 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.”

91. 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.

92. 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.

93. Secretary Benson’s unlawful actions 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.

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

95. 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.

96. 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).

97. However, Wayne County made the policy decision to ignore signature-verification requirements for absentee ballots.

98. These non-legislative modifications to Michigan's election statutes resulted in a number of invalid votes that far exceeds the margin of voters separating the candidates in Michigan. For example, the weakening or abandonment of the signature verification rules in Wayne County make it possible for illegal ballots to be counted.

99. 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. Moreover, unless an audit is performed there is no way to know how many of these votes are valid.

100. 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. No State or local election official has attempted to justify these incongruities.

101. On November 17, 2020, 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.

102. 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.

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

2. Violation of Fourteenth Amendment

104. These non-legislative usurpations generated significant voting irregularities in the State of Michigan and Wayne County as described above, in violation of the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

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

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

signatures on the absentee ballots, and I was instructed not to compare the signature on the absentee ballot with the signature on file.

In contrast, election officials in other Michigan counties followed the requirements of Michigan law in this respect.

State of Minnesota

106. 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.

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

108. Absentee ballots were requested in the name of more than two million Minnesotans.

109. For statewide elections including federal 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").

110. For statewide elections including federal 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").

111. 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 infects most absentee ballots cast this election.

112. 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.

113. This non-legislative usurpation generated unlawful votes, in violation of not only the Electors Clause but also the Due Process Clause of the Fourteenth Amendment.

State of Nevada

114. 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. In Clark County, Mr. Biden's margin (90,922 votes) significantly exceeds his statewide lead.

115. 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.

116. Clark County was the only county in the State of Nevada to utilize the Agilis system during the 2020 election. Although no other State using the Agilis system allowed the Agilis system to decide the ultimate validity of ballots, Clark County sought to do so.

117. 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).

118. Signature exemplars obtained from the Nevada Department of Motor Vehicles were below the minimum resolution that the Agilis system requires to function properly.

119. 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. Faced with a large amount of rejected ballots, Clark County violated Nevada election law and the U.S. Constitution in the following two respects.

120. More than 450,000 mail-in ballots from Clark County either were processed under more lax signature-verification criteria than the rest of Nevada, or were processed under criteria that Clark County consciously and expressly adopted in derogation of the statutory criteria for validating

mail-in ballots. That number of contested votes exceeds the margin of votes dividing the parties.

1. Violation of Electors Clause

121. 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.

122. 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).

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

124. 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.

125. 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.”

126. Out of over 582,000 mail-in ballots, registered Democrats returned almost twice as many mail-in ballots as registered Republicans. Thus, this violation of Nevada law materially benefited former Vice President Biden’s vote tally.

2. Violation of Fourteenth Amendment

127. By adopting its own standards to review absentee ballots, Clark County used a different—and more permissive—standard to evaluate mail-in ballots than the standard used in the rest of Nevada, in violation of the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

State of Wisconsin

128. 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.

129. In the 2016 general election some 146,932 mail-in ballots were returned in Wisconsin out of more than 3 million votes cast.² In stark contrast, 1,275,019 mail-in ballots, nearly a 900% increase over 2016, were returned in the November 3, 2020 election.³

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

131. The mayors of Wisconsin's five largest cities—Green Bay, Kenosha, Madison, Milwaukee, and Racine, which all have Democrat majorities—decided to collaborate in an effort to maximize voting from their cities; that plan included the use of purportedly “secure drop-boxes to facilitate return of absentee ballots.” Wisconsin Safe Voting Plan 2020, at 4 (June 15, 2020).

132. Drop boxes are not “mail boxes.” The Wisconsin Election Commission's guidance regarding un-manned absentee ballot drop boxes contained

² Source: U.S. Elections Project, *available at*: http://www.electproject.org/early_2016.

³ Source: U.S. Elections Project, *available at*: <https://electproject.github.io/Early-Vote-2020G/WI.html>.

absolutely no uniform guidance, instructions or standards for local election officials regarding election night procedures, removing absentee ballots from the boxes, transport of the ballots to wards or counting centers, procedures for maintaining the security and chain of custody of the absentee ballots and for ensuring public accountability and observation throughout the process. These are all important aspects of the integrity of an election for which the Wisconsin Legislature has shown a strong concern in the Election Code. It is estimated that upwards of five hundred un-manned, illegal, absentee ballot drop boxes were used in the Presidential election in Wisconsin.

133. The Mayors' plan to use "drop-boxes to facilitate return of absentee ballots" 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).

134. 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).

135. Noncompliance with several sections of Wisconsin’s elections statutes—including WISC. STAT. § 6.87(4)(b)—renders an absentee ballot ineligible for being counted in an election:

[W]ith respect to matters relating to the absentee ballot process, ss. 6.86, 6.87 (3) to (7) and 9.01 (1) (b) 2. and 4. shall be construed as mandatory. Ballots cast in contravention of the procedures specified in those provisions may not be counted.

WISC. STAT. § 6.84(2).

136. All absentee ballots collected and submitted from drop-boxes by Green Bay, Kenosha, Madison, Milwaukee, and Racine are thus unlawful votes that cannot lawfully count in Wisconsin’s election.

1. Violation of Electors Clause

137. 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).

138. Wisconsin law requires individual voters to mail or deliver their completed absentee ballots to the relevant clerk: “The envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.” WISC. STAT. § 6.87(4)(b).

139. 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).

140. Wisconsin election procedures for voting absentee based on indefinite confinement can circumvent the photo ID requirement and signature requirement and open up avenues for election irregularities. *Id.* § 6.86(1)(ag)/(3)(a)(2).

141. 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.

142. 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).”

143. 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.”

144. 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.”

145. According to statistics kept by the Wisconsin Elections Commission, nearly 216,000 voters said they were indefinitely confined in the 2020 election, up from almost 57,000 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.

146. Democrats vote by mail to a significantly greater extent than Republicans, and the heavily Democratic Milwaukee and Dane Counties had higher incidences of permanently self-identified “indefinitely confined” voters than other Wisconsin counties, which—together with the increase in permanently confined voters—artificially and unlawfully increased former Vice-President Biden’s vote totals.

147. Because of the greater potential for persons to use “indefinitely confined” absentee voter status because of the lack of a requirement for a photo ID, the WEC administrator’s directive resulted in numerous persons casting ballots as “indefinitely confined” absentee voters who were not eligible to vote as “indefinitely confined” absentee voters.

148. 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).

149. As received, each absentee ballot must be sealed in an 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).

150. 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.

151. Wisconsin’s election statutes prohibit 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).

152. In addition, in a training video issued April 1, 2020, the Administrator of the City of Milwaukee Elections Commission 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 thereby violating that statute as well.

153. Acting pursuant to this guidance, canvass workers in Milwaukee used red-ink pens to alter the certificates on the absentee envelope and then cast and count the absentee ballot. These acts violated WISC. STAT. §§ 6.87(6d), 6.87(9).

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

2. Violation of Fourteenth Amendment

155. These non-legislative usurpations generated significant voting irregularities in the State of Wisconsin and Dane and Milwaukee Counties as described above, in violation of the Equal Protection and Due Process Clauses of the Fourteenth Amendment. For example, the relaxation of signature requirements and witness address requirements for absentee ballots made it possible for unlawful or irregular ballots to be cast.

COUNT I: ELECTORS CLAUSE

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

157. 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.

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

159. 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.

160. 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 Pennsylvania, Arizona, Georgia, Michigan, Minnesota, Nevada, and Wisconsin, in violation of the Electors Clause.

COUNT II: EQUAL PROTECTION
(DIFFERENTIAL STANDARDS)

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

162. 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.

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

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

164. Plaintiff State repeats and re-alleges the allegations of paragraphs 1-163, above, as if fully set forth herein.

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

166. 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 Pennsylvania, Arizona, Georgia, Michigan, Nevada, and Wisconsin, in violation of the Equal Protection Clause.

COUNT IV: DUE PROCESS
(INTENTIONAL NONCOMPLIANCE)

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

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

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

170. Urban areas under long-term one-party rule in Defendant States acted intentionally to lower their election standards to maximize the turnout in their cities—including to allow invalid voters to go undetected—with the express intent to favor their candidate for President and to alter the outcome of the 2020 election. In many instances—including *inter alia* Milwaukee and Philadelphia Counties—these areas have a history of election fraud.

171. The actions set out in Paragraphs __-__, __-__, __-__, and __-__ constitute intentional violations of State election law by State election

officials and their designees in Defendant States Pennsylvania, Arizona, Georgia, Michigan, Minnesota, Nevada, and Wisconsin, in violation of the Due Process Clause.

PRAYER FOR RELIEF

WHEREFORE, the State of A respectfully requests that this Court issue the following relief:

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

B. Declare that Defendant States Pennsylvania, Arizona, Georgia, Michigan, Minnesota, Nevada, and Wisconsin administered the 2020 election in violation of the Equal Protection Clause.

C. Declare that Defendant States Pennsylvania, Arizona, Georgia, Michigan, Minnesota, Nevada, and Wisconsin administered the 2020 election in violation of the Due Process Clause.

D. Vacate and enjoin Defendant States' certification of the 2020 election results for the office of President, appointment of electors, and any use of the 2020 election results for the office of President unless and 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 or a run-off election in full compliance with State election law—of the winner of their State's general election or, alternatively, that a winner cannot accurately be determined from the election results after including all valid votes and excluding all invalid votes.

E. Vacate and enjoin Defendant States' use for any official purpose of the results of the 2020

election for the office of President unless and until those results are audited via means that reconstruct the votes and ballots as received as compliant with and timely received under State law.

F. Declare that elections under 3 U.S.C. § 1 must be conducted in full compliance with State statutory requirements and procedures enacted prior to the election.

G. Award costs to Plaintiff State.

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

November __, 2020

Respectfully submitted,

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