

January 2022

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McCartney, Alyssa F. (2022) "The President Who Cried Voter Fraud: A Recurring Theme of Baseless Allegations," *University of Massachusetts Law Review*: Vol. 17 : Iss. 1 , Article 3.

Available at: <https://scholarship.law.umassd.edu/umlr/vol17/iss1/3>

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The President Who Cried Voter Fraud: A Recurring Theme of Baseless Allegations

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17 U. MASS. L. REV. 81

ABSTRACT

In 2019, Pennsylvania enacted Act 77, the first update to the Pennsylvania Election Code in nearly eighty years. Passed on a bipartisan basis, the law included a measure that permitted “no reason” mail-in ballots. Act 77 allowed any registered voter to request a ballot by mail, fill it out in the applicable time frame, and send it back to be processed. In the wake of a global pandemic that left Americans unable to leave their homes, this necessary update caused quite the controversy only a few months after it was passed. The primary election used the updated process for the first time on June 2, 2020. Receiving nothing but praises and positive feedback, the measures seemed to keep tensions at ease. That is, until the sitting President’s re-election campaign filed suit against Pennsylvania Secretary of State Kathy Boockvar and the Commonwealth’s sixty-seven counties. Explaining a new process comes with challenges, but when you tack on a President purposely fanning the flames of doubt, mail-in ballots proved to be a tough sell. As President Donald J. Trump continued to allege baseless voter fraud accusations, the American people grew more restless in a year that was already full of uncertainty. As a key swing state in presidential elections, Pennsylvania took center stage in Trump’s war on the election “rigged by Democrats.”

This article aims to address Trump’s relentless allegations of voter fraud—something that was sadly not new for him. By analyzing Pennsylvania and offering an insight into Centre County election protocols, this article will squash the baseless accusations to show the election results were fair, free, and unaffected by alleged fraud. Although President Trump refused to concede in hopes of the United States Supreme Court intervening, he lacked any standing and could not offer substantial evidence to support his claims. In short, these frivolous lawsuits were an attempt to undermine our democratic process by a man who has no shame spinning the narrative to suit his needs.

AUTHOR’S NOTE

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Conklin for their time and patience throughout the writing process. This article is dedicated to her father, Tor McCartney, whose unwavering support and pronouncements continue to guide her way.

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INTRODUCTION

“‘Fixed the World’s Series?’ . . . ‘Why isn’t he in jail?’”¹

The year 2020 did not disappoint the “roaring twenties” theme that many were so quick to revive, however, it was not the Gatsbyesque² atmosphere everyone hoped it would be. In less than a year, Americans were introduced to the new decade with a series of monumental events, including the Senate trial for the impeachment of former President Donald J. Trump,³ a global pandemic,⁴ racial injustice movements, the loss of many influential people (we miss you,

¹ F. SCOTT FITZGERALD, *THE GREAT GATSBY* 72 (Vintage Books, 2021) (1925).

² *Gatsbyesque*, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2012).

³ *President Donald Trump Impeached*, HISTORY (Feb. 5, 2020), <https://www.history.com/this-day-in-history/president-trump-impeached-house-of-representatives> [<https://perma.cc/EXG5-G8MC>].

⁴ *Global COVID-19*, CDC (July 28, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/global-covid-19/index.html> [<https://perma.cc/J9EU-PU5R>].

RBG),⁵ and a contentious Supreme Court confirmation.⁶ Then, in the wake of a historic presidential election, Americans were forced to add voter security to the list.⁷

As the election approached and the COVID-19 virus continued to spread, voters turned to mail-in ballots more than ever in an effort to safely exercise their right to vote.⁸ In the past, both Democrats and Republicans widely supported this avenue of voting, but it became a dire partisan issue once President Trump began attacking mail-in voting, claiming it was a “scam.”⁹ His comments regarding mail-in ballots as Election Day drew near were particularly alarming; by condemning mail-in ballots, President Trump was essentially attacking the electoral system itself.¹⁰

This Article analyzes the Trump campaign’s attacks on the mail-in ballot process by offering a unique perspective from the key battleground state of Pennsylvania, which implemented novel changes to its election system in the months leading up to the 2020 election. Part I discusses general background information pertinent to understanding why President Trump’s statements were so alarming, but ultimately not surprising. Part II will provide a brief overview of

⁵ Joan Biskupic & Ariance de Vogue, *Justice Ruth Bader Ginsburg Dead at 87*, CNN (Sept. 19, 2020), <https://www.cnn.com/2020/09/18/politics/ruth-bader-ginsburg-dead/index.html> [<https://perma.cc/DMF3-C8P6>].

⁶ Nicholas Fandos, *Amy Coney Barrett Sworn in as Supreme Court Justice, Cementing Conservative Majority*, N.Y. TIMES (Nov. 8, 2020), <https://www.nytimes.com/live/2020/10/26/us/trump-biden-election?campaign> [<https://perma.cc/2JQ7-ZN5Q>].

⁷ Dan Mangan, Kevin Breuninger & Spencer Kimball, *Iran and Russia Obtained U.S. Voter Registration Data in Effort to Influence Election, National Security Officials Say*, CNBC, <https://www.cnbc.com/2020/10/21/fbi-to-make-an-announcement-on-a-major-election-security-issue.html> [<https://perma.cc/96D7-ZMMJ>] (Oct. 22, 7:53 AM); Bob Ortega & Scott Bronstein, *Trump’s False Claims on Mail-In Voting do More to Harm Elections than Threat of Fraud, Experts Say*, CNN (Sept 3, 2020, 8:22 PM), <https://www.cnn.com/2020/09/03/politics/election-threat-trump-mail-in-voting-claims-invs/index.html> [<https://perma.cc/7X5Q-4R39>].

⁸ Lynne Peoples, *COVID and the U.S. Election: Will the Rise of Mail-In Voting Affect the Result?*, NATURE (Oct. 23, 2020), <https://www.nature.com/articles/d41586-020-02979-x> [<https://perma.cc/8MZA-ATZM?type=image>].

⁹ *Id.*

¹⁰ See Michael Crowley, *Trump Again Says He Would Welcome a ‘Smooth’ Transition. But He Has Conditions*, N.Y. TIMES (Sept. 26, 2020), <https://www.nytimes.com/2020/09/26/us/politics/trump-rally-virginia.html> [<https://perma.cc/R2XG-P6A6>].

United States election laws before thoroughly explaining Pennsylvania’s electoral procedures, focusing on Act 77 and the updated mail-in ballot protocols enacted in the months prior to the 2020 election. It also provides necessary information about the Pennsylvania Secretary of State’s role in administering election procedures and provides insight from two currently elected Centre County officials, Commissioner Michael Pipe and State Representative Scott Conklin, regarding safety protocols used to combat voter fraud—including the fictitious kind—in Centre County.

With these safety protocols in mind, Part III will address the allegations contained in Trump’s complaint against the State of Pennsylvania. It will discuss the initial complaint filed in the Western District of Pennsylvania by addressing specific claims brought against Pennsylvania election officials. It also details why Pennsylvania’s Western District Court dismissed the complaint and sided with then-Secretary of State Boockvar, providing examples from Centre County to show why the allegations were, and continue to be, so incredulous. Finally, Part IV discusses the results and issues posed following the 2020 election. The President’s statements may have instigated the delusional reactions he hoped for, but his claims lacked any concrete evidence or legal standing.

I. PRESIDENT TRUMP’S HISTORY OF BASELESS CLAIMS

“‘Can’t repeat the past?’ . . . ‘Why of course you can!’”¹¹

Just a few months before the election, President Trump refused to say he would unequivocally accept the 2020 election results, a thought terrifying in and of itself.¹² The President repeatedly complained that the ballots were a “disaster,” and stated that the country would have to “see what happens.”¹³ Sadly, the situation went from bad to worse when Trump declared that the only way he could lose would be if the

¹¹ FITZGERALD, *supra* note 1, at 106.

¹² Matthew Choi, *Trump Declines to Commit to a Peaceful Transition of Power After Election*, POLITICO, <https://www.politico.com/news/2020/09/23/trump-peaceful-transition-of-power-420791> [<https://perma.cc/SYW6-JFVW>] (Sept. 23, 2020, 9:26 PM); Kevin Breuninger, *Trump Won’t Commit to Peaceful Transfer of Power if he Loses the Election*, CNBC, <https://www.cnbc.com/2020/09/23/trump-wont-commit-to-peaceful-transfer-of-power-if-he-loses-the-election.html> [<https://perma.cc/Y5ZQ-JENT0>] (Sept. 24, 2020, 10:40 AM).

¹³ Choi, *supra* note 12.

Democrats “cheated.”¹⁴ Yes, the President of the United States declared that the only way he could be defeated was if the other side were to cheat.

Trump’s unsupported accusations should be of no surprise because he sang the same song during the 2016 presidential election. After his election victory, Trump unabashedly stated *he* was the victim of voter fraud, despite the CIA and FBI concluding that the Russian government actually helped him win the election.¹⁵ Then, obviously embarrassed about losing the popular vote by three million, Trump threw anything at the wall that would stick and continued to undermine the election’s integrity. The controversy surrounding the election impacted the nation, and led to a majority of Americans questioning their election system.¹⁶

Prior to his inauguration, Trump began working to undermine the nation’s democracy by repeatedly using social media platforms to foster doubt and to intensify partisanship and hyperpolarization.¹⁷ “[T]he unjustified fear of voter fraud has itself become a threat to America’s democratic principles.”¹⁸ Although Trump offered absolutely no evidence to support his claims of a “rigged election,” this did not stop his supporters from believing the allegations that the “Democrats attempted to rig the election against him.”¹⁹ Trump coined the phrase “fake news” to circulate baseless fears about election integrity.²⁰ The prominent “keyboard warrior” fanned the flames, “[t]hroughout the campaign, and even after his victory, [he] impugned the integrity of the electoral process” by alleging that millions of people illegally voted for Hillary Clinton.²¹ These claims were deemed

¹⁴ Crowley, *supra* note 10.

¹⁵ Anthony J. Gaughan, *Illiberal Democracy: The Toxic Mix of Fake News, Hyperpolarization, and Partisan Election Administration*, 12 DUKE J. CONST. L. & PUB. POL’Y 57, 57-58 (2017).

¹⁶ *Id.* at 58.

¹⁷ *Id.*

¹⁸ *Id.* at 59.

¹⁹ *Id.* at 57.

²⁰ *Id.* at 69; Alex Woodward, “Fake News”: A Guide to Trump’s Favourite Phrase –and the Dangers it Obscures, INDEPENDENT (OCT. 2, 2020, 4:48 PM), <https://www.independent.co.uk/news/world/americas/us-election/trump-fake-news-counter-history-b732873.html> [<https://perma.cc/F5KU-RPN3>].

²¹ Gaughan, *supra* note 15, at 71.

baseless after a series of investigations—including those conducted by his own task force.²²

Like the 2016 election, the 2020 election brought the same claims of voter fraud to the forefront of the political discussion. His false allegations “spread like a virus” in 2016, but in 2020 his rhetoric was not the only virus Americans were facing.²³ Despite the fact that Trump’s claims of widespread voter fraud had no factual basis, his cult-like supporters refused to accept the truth.²⁴ This denial was evidenced in a series of lawsuits leading up to and after the 2020 election, where President Trump urged numerous states to overturn their election results. In Pennsylvania, he specifically targeted the boards of elections and then-Secretary of State Kathy Boockvar, claiming that they violated numerous sections of the Pennsylvania Election Code.²⁵

II. ELECTORAL PROCEDURE

*“Reserving judgments is a matter of infinite hope.”*²⁶

A. Election Administration in the United States

The Federal Congress retains the ability to alter state regulations concerning the time and manner of elections.²⁷ Although Congress has made efforts to make voting safe for all, the offered protections are not always guaranteed. The United States has a long history of voter suppression through various tactics, including the use of poll watchers as a means to intimidate potential voters.²⁸ As early as the 1890s, public claims of election fraud have sparked controversy and led to

²² Marina Villeneuve, *Report: Trump Commission Did Not Find Widespread Voter Fraud*, AP NEWS (Aug. 3, 2018), <https://apnews.com/article/north-america-donald-trump-us-news-ap-top-news-elections-f5f6a73b2af546ee97816bb35e82c18d> [https://perma.cc/DA5L-EHLS].

²³ *Id.* at 92.

²⁴ Gaughan, *supra* note 15, at 92-93.

²⁵ *See generally* Donald J. Trump for President, Inc. v. Boockvar, 493 F. Supp. 3d 331 (W.D. Pa. 2020).

²⁶ FITZGERALD, *supra* note 1, at 6.

²⁷ U.S. CONST. art. I, § 4, cl. 1; Sugarman v. Dougall, 413 U.S. 634,647 (1973) (explaining that the Framers of the Constitution also sought to give the states the power to regulate elections through the Tenth Amendment).

²⁸ Karen Blackistone, *Full and Fair Elections: Political Party Representatives and State Law*, 4 GEO. J. L. & PUB. POL’Y 213, 214 (2006).

calls for more secure, safer elections.²⁹ More recently, the 2000 presidential election, which was decided by fewer than 1,000 votes in some states, created a genuine fear that illegally cast ballots could decide an election.³⁰ But even with this underlying thought, candidates were hesitant to accuse others of “voter fraud,” fearing it may look like voter intimidation.³¹ “Republicans . . . calculated that the number of fraudulent votes prevented by challengers would not outweigh the public relations hit [they] would take for so called ‘intimidation.’”³²

Rooted in our principle of democracy, all eligible citizens have a right to vote for the one candidate they choose.³³ This country was founded on the “consent of the governed,” and without the ability to vote for one’s leader, a fundamental building block of democracy is missing.³⁴ “The right to vote freely for the candidate of one’s choice is the essence of a democracy, and any restrictions on that right strike at the heart of representative government.”³⁵ It is important to maintain a balance between safeguarding fair election results and making sure voters are not discriminated against based on their race, gender, or ethnicity.³⁶ However, the concept of a right to vote and the need to prevent voter fraud live in conflict with one another as “any attempt to secure one comes at the expense of the other.”³⁷

B. Election Code of Pennsylvania

While the Constitution gives the Federal Congress a limited power to regulate elections, the majority of election law in this country comes from the states.³⁸ Within each state, there is a chief election official

²⁹ *Id.*

³⁰ *Id.* at 214.

³¹ *Id.* at 214-15.

³² *Id.* at 215.

³³ *Id.* at 229.

³⁴ *Id.* at 213 (citing THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776)).

³⁵ *Reynolds v. Sims*, 337 U.S. 536, 555 (1964).

³⁶ Blackistone, *supra* note 28, at 234.

³⁷ *Id.* at 229.

³⁸ U.S. CONST. art. I, § 4, cl. 1 (allowing for the Federal Congress to alter certain election regulations by states but granting the states the authority to regulate the time, place and manner of elections); J. Kenneth Blackwell & Kenneth A. Klukowski, *The Other Voting Right: Protecting Every Citizen’s Vote by Safeguarding the Integrity of the Ballot Box*, 28 YALE L. & POL’Y REV. 107, 115 (2009).

who is responsible for ensuring free and fair elections.³⁹ This official executes legislative directives by promulgating rules, directives, and regulations on a host of election related issues.⁴⁰ The chief election official is faced with a rather difficult task of deciding “how to proceed when reality confounds theory.”⁴¹ Immense power rests in the results of these elections, creating “incentives for some to press every advantage, fair or not, to achieve their desired electoral results.”⁴²

The statutory scheme governing Pennsylvania elections is known as the Pennsylvania Election Code. First enacted in 1937, the Code established a county-based system for election administration in Pennsylvania.⁴³ It vested each county board of elections with the discretion to conduct elections and implement procedures to further ensure the honesty, efficiency, and uniformity of Pennsylvania’s elections.⁴⁴ The Code also created the Pennsylvania Election Law Advisory Board, which was designed to “evaluate and make recommendations on: (i) improving the electoral process . . . by amendments or regulations promulgated by the Department of State, and (ii) implementing best practices identified to ensure the integrity and efficiency of the electoral process”⁴⁵

The Code also established the eligibility requirements for voters. To be eligible to vote in Pennsylvania, one must: (1) be a United States citizen thirty days prior to the next election, (2) be a resident of Pennsylvania, and the election district, thirty days prior to the next

³⁹ Daniel P. Tokaji, *The Future of Election Reform: From Rules to Institutions*, 28 *YALE L. & POL’Y REV.* 125, 131-32 (2009). The role of chief election official varies depending on the state. Currently, twenty-four states have their secretary of state as their chief election official. *Election Administration at State and Local Levels*, NAT’L. CONF. OF STATE LEGIS. (Feb. 3, 2020) <https://www.ncsl.org/research/elections-and-campaigns/election-administration-at-state-and-local-levels.aspx> [<https://perma.cc/8MZB-6MD5>].

⁴⁰ Blackwell & Kluklowski, *supra* note 38, at 108-09.

⁴¹ *Id.*

⁴² *Id.* at 108.

⁴³ 25 PA STAT. AND CONS. STAT. § 2641(a) (West 2021) (“There shall be a county board of elections in and for each county of this Commonwealth, which shall have jurisdiction over the conduct of primaries and elections in such county, in accordance with the provisions of [the Election Code].”).

⁴⁴ § 2642 (West 2021).

⁴⁵ § 3150.22(c)(4) (West 2021).

election, and (3) be eighteen on the day of the election.⁴⁶ Those who are eligible to vote must go through the state's registration procedure.⁴⁷ New voters must fill out a registration form which requires several pieces of information, including the voter's home address and social security number.⁴⁸ Voters must also provide valid identification upon arrival at their voting precinct.⁴⁹

After more than eighty years, Pennsylvania enacted Act 77, the first major amendment to the state's Election Code since its adoption.⁵⁰ Through Act 77, Pennsylvania joined thirty-four other states in adopting "no-excuse" mail-in voting, allowing a voter to receive a mail-in ballot without cause.⁵¹ Under the act, electors are still required to request a mail-in ballot just as they were under the original provisions.⁵² When requesting a ballot, voters have to provide their name, date of birth, voting district, length of time residing in the voting district, and their party choice for primary elections.⁵³ The voter must also provide proof of identification in the form of either a driver's license number, the last four digits of the voter's Social Security number, or another form of approved identification.⁵⁴

Another change to the Election Code came in 2020, where, in response to the COVID-19 pandemic, the Pennsylvania General Assembly passed Act 12, which laid out a new election timeline and

⁴⁶ § 2811 (West 2021). *See also Voting in Pennsylvania*, COMMONWEALTH OF PA., <https://www.pa.gov/guides/voting-and-elections/> [<https://perma.cc/VKL4-WCU5>].

⁴⁷ 25 PA STAT. AND CONS. STAT. § 2811 (West 2021); Audio Recording: Interview with Commissioner Michael Pipe on Centre County 2020 Election Procedures, at 04:38 (Oct. 31, 2020) (on file with UMass Law Review) [hereinafter Pipe Interview]. *See also Voting in Pennsylvania*, *supra* note 46.

⁴⁸ *Voting in Pennsylvania*, *supra* note 46.

⁴⁹ *Id.*; 25 PA. STAT. AND CONS. STAT. § 3050(a) (West 2021).

⁵⁰ Act of Oct. 31, 2019, No. 77, 2019 Pa. Laws 552; *Governor Wolf Signs Historic Election Reform Bill Including New Mail-in Voting*, GOVERNOR TOM WOLF, (Oct. 31, 2019) <https://www.governor.pa.gov/newsroom/governor-wolf-signs-election-reform-bill-including-new-mail-in-voting/> [<https://perma.cc/D6QT-F5MA>].

⁵¹ VOPP: Table 1: States with No-Excuse Absentee Voting, NAT'L CONF. STATE LEGISLATURES, (May 1, 2020) <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-1-states-with-no-excuse-absentee-voting.aspx> [<https://perma.cc/WY4V-CP9H>].

⁵² 25 PA. STAT. AND CONS. STAT. § 3146.2(a) (West 2021).

⁵³ § 3150.12(b) (West 2021).

⁵⁴ §§ 3146.2(b), 3150.12(b) (West 2021).

allowed counties to temporarily consolidate polling places and relocate voting centers.⁵⁵ It moved the primary election to June 2, 2020 and required completed applications for mail-in ballots to be submitted to the county office by 5:00 p.m. on October 27, 2020 while the completed ballots had to be received no later than 8:00 p.m. on November 3, 2020.⁵⁶ The Act also modified the mail-in ballot verification process, allowing the county board to exclusively compare the information on the envelope and the information on the list of approved mail-in voters.⁵⁷

C. Implementing Changes to the Election Code

In response to the changes to the Election Code, the Pennsylvania Department of State provided guidance to counties beginning with instructions for processing applications for mail-in ballots.⁵⁸ They detailed the pre-canvassing process—the process by which election workers open, remove, and count the mail-in ballots themselves—which could not begin earlier than 7:00 a.m. on Election Day.⁵⁹ A mail-in ballot voter was also given the option to use drop boxes or drop-off sites.⁶⁰ If a voter did not use a drop box prior to Election Day, the vote would still count if postmarked by 8:00 p.m. on Election Day and received by the county office by 5:00 p.m. on November 6, 2020.⁶¹

In addition to the state-wide procedures, each county also has their own board of elections to further ensure free and fair elections. Two individuals with intimate knowledge of the county system are Scott Conklin and Michael Pipe. Scott Conklin served as the chairman of

⁵⁵ Act of Mar. 27, 2020, No. 12, 2020 Pa. Laws 41 § 1802–B(a), 1804–B(a).

⁵⁶ § 1804–B(a); PA. DEP’T OF STATE, PENNSYLVANIA GUIDANCE FOR MAIL-IN AND ABSENTEE BALLOTS RECEIVED FROM THE UNITED STATES POSTAL SERVICE AFTER 8:00 P.M. ON TUESDAY, NOVEMBER 3, 2020 (2020), <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics/Documents/2020-10-28-Segregation-Guidance.pdf> [hereinafter NOVEMBER 3 GUIDANCE].

⁵⁷ 25 PA. STAT. AND CONS. STAT. §§ 3146.8(g)(3), 3146.2(c) (West 2021).

⁵⁸ PA. DEP’T OF STATE, PENNSYLVANIA ABSENTEE AND MAIL-IN BALLOT RETURN GUIDANCE (2020), https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/PADOS_BallotReturn_Guidance_1.0.pdf [BALLOT RETURN GUIDANCE].

⁵⁹ Act of Mar. 27, 2020, No. 12, 2020 Pa. Laws 41 § 1308(g) (1.1).

⁶⁰ BALLOT RETURN GUIDANCE, *supra* note 58.

⁶¹ NOVEMBER 3 GUIDANCE, *supra* note 56.

both the Board of Centre County and of the Salary Board, in addition to being a member of the Retirement Board, Employee Benefits Trust Board, and Board of Assessment prior to Representing the 77th Legislative District of Pennsylvania.⁶² He is also a small business owner and union member.⁶³ Starting in 2012, Michael Pipe began serving on the Board of Commissioners.⁶⁴ In 2015, Governor Wolf appointed him to serve on Pennsylvania's Workforce Development Board, and in January 2016, he became Chair of the Board of Commissioners.⁶⁵ As Centre County Commissioner, he sat on the 2020 Centre County Board of Elections.⁶⁶

The Election Day protocols followed by the Commonwealth were arguably stricter than those used for the primary elections. Prior to Election Day, officials made two different poll books—one for voters that requested a mail-in ballot, and one for those who did not.⁶⁷ When voters entered their precincts, they were prompted with a series of questions that allowed election officials to follow the appropriate protocol.⁶⁸ The first question asked was whether the voter had requested a mail-in ballot.⁶⁹ If they did not, the poll worker referenced the poll book for those who did not request mail-in ballots.⁷⁰ If the voter did request a mail-in ballot, this prompted poll workers to ask a new series of questions.⁷¹ The voter would initially be asked if they had both the ballot and return envelope with them.⁷² If the voter produced both, workers would have the voter sign a “surrender form”

⁶² *Rep. Scott Conklin*, PA HOUSE, <https://www.pahouse.com/Conklin/About/Biography/> [<https://perma.cc/824C-MNY4>].

⁶³ *Id.*

⁶⁴ *Meet Commissioner Mike*, MIKE PIPE COMMISSIONER, <https://www.mikepipe.com/about> [<https://perma.cc/RE5K-SQSH>].

⁶⁵ *Id.*

⁶⁶ *Election Guide*, CENTRE COUNTY ELECTIONS, <https://centrecountyvotes.com/election-guide/> [<https://perma.cc/KSA9-Q2TL>].

⁶⁷ *See* PA. DEP'T OF STATE, CHECK-IN STATION PROCEDURES (2021), https://help.myworkplace.pa.gov/ucontent/8acc26feaa14e54ae92ab22c3c776_en-US/index.pdf. *See also* Pipe Interview, *supra* note 47.

⁶⁸ *See* sources cited *supra* note 67.

⁶⁹ *See* sources cited *supra* note 67.

⁷⁰ *See* sources cited *supra* note 67.

⁷¹ *See* sources cited *supra* note 67.

⁷² *See* sources cited *supra* note 67.

stating that they no longer wished to vote by mail.⁷³ The worker signed the surrender form at the bottom for an extra layer of security in case any questions arose regarding that specific voter.⁷⁴ This voter could then use a regular ballot.⁷⁵ However, if the voter did not have the mail-in ballot with them, they received a “provisional ballot.”⁷⁶ Multiple workers and officials made sure the book listed the voter, the voter signed the book, and then received a ballot.⁷⁷

Pennsylvania counties were given the opportunity to implement “over the counter mail-in voting,” which allowed a person to request a mail-in ballot in person, immediately fill out the ballot, and then place it in a secure drop box.⁷⁸ Centre County installed eight secure drop-off boxes throughout the county, and each box was monitored by video surveillance.⁷⁹ “Drop boxes are a safe and secure way for Pennsylvania voters to return their mail-in or absentee ballots.”⁸⁰ Centre County also established an early voting site at the Bryce Jordan Center until October 27, 2020, the same day applications for mail-in ballots closed.⁸¹ These additional guidelines followed the new statutory mandate and provided checks and balances to ensure a fair

⁷³ See PA. DEP’T OF STATE, GUIDANCE CONCERNING CIVILIAN ABSENTEE AND MAIL-IN BALLOT PROCEDURES, Version: 1.0, at 7 (2020), <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/DOS%20Guidance%20Civilian%20Absentee%20and%20Mail-In%20Ballot%20Procedures.pdf> [hereinafter CIVILIAN ABSENTEE GUIDANCE]; Pipe Interview, *supra* note 47.

⁷⁴ Pipe Interview, *supra* note 47.

⁷⁵ CIVILIAN ABSENTEE GUIDANCE, *supra* note 73, at 6-7.

⁷⁶ *Id.* at 7; Pipe Interview, *supra* note 47.

⁷⁷ Pipe Interview, *supra* note 47.

⁷⁸ *Id.* A substantial number of voters used this method, but as a county-by-county option a majority of counties opted out. Instead, the counties that took advantage of this system had higher populations, thus reflecting “higher” voter usage. Voters that used this method had to complete the standard mail-in ballot application in order to receive a ballot. *Id.*

⁷⁹ Marley Parish, *Centre County Voters Should Receive Mail-in Ballots Soon. How to Make Sure Yours is Counted*, CENTRE DAILY TIMES (Oct. 14, 2020, 5:20 PM), <https://www.centredaily.com/news/politics-government/election/article246447805.html> [https://perma.cc/QA8P-77YY].

⁸⁰ Pipe Interview, *supra* note 47. See generally Steven M. Bellovin, *Mail-In Ballots Are Secure, Confidential, and Trustworthy*, COLUMBIA NEWS, (Oct. 23, 2020), <https://news.columbia.edu/in-mail-absentee-ballots-secure-vote-election> [https://perma.cc/HCD4-82HY].

⁸¹ Pipe Interview, *supra* note 47.

election—such as nine different teams in the room opening and processing mail-in ballots to spread responsibility.⁸²

There were additional safeguards implemented for those who did not take advantage of early voting and chose to return mail-in ballots to any of the eight secure drop boxes across the county. Typically, the county office would have allowed hand delivery of ballots from voter to staff, but due to the pandemic, election officials allowed drop boxes for health and safety reasons.⁸³ Every drop box remained under 24/7 video surveillance, displayed written notices about the punishments for election tampering or voter fraud, and pertinent phone numbers in case of emergency.⁸⁴ The county followed all guidelines from the Department of State and collaborated with other counties.⁸⁵ At no point were shopping centers, parking lots, fairgrounds, parks, retirement homes, college campuses, fire halls, municipal government buildings, or elected officials' offices used as drop-off locations.⁸⁶ Coincidentally, each drop box had been placed at or within eyesight of local police stations.⁸⁷

When it came to emptying the boxes, a team of two people emptied them once each weekday while accompanied by local sheriff's deputies.⁸⁸ Immediately before opening the drop box, the deputies turned on their body cameras and recorded the entire process.⁸⁹ Centre County also livestreamed the vote-by-mail processing room on YouTube to provide transparency and allow all interested parties to view the process.⁹⁰ In addition to allowing anyone to watch the process in real time, Centre County also created a documented record for any future litigation to disprove any allegations.⁹¹ The County's process, in accordance with state law, allowed each political party's representatives to be present during the

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ BALLOT RETURN GUIDANCE, *supra* note 58, at 7; Pipe Interview, *supra* note 47.

⁸⁹ Pipe Interview, *supra* note 47.

⁹⁰ *Id.*

⁹¹ *Id.*

entire screening.⁹² Any candidate on the ballot was allowed to appoint someone as a poll watcher—an additional assurance of checks and balances.⁹³ Commissioner Pipe believed the poll watchers' presence is a positive one, in "making sure the process is running smoothly."⁹⁴ Watchers are not allowed to "interact with the voters or campaign," but are a necessary part of a safe voting system that Pipe fully supports.⁹⁵

Centre County counted provisional ballots last as an added security measure to make sure that if the voter had actually sent their mail-in ballot previously, they would not be given two votes.⁹⁶ The poll book indicated if a ballot had been returned prior to Election Day, using the statement "returned ballot, do not give them a ballot."⁹⁷ These efforts received widespread support, including from State Representative Scott Conklin, who applauded the initiative to turn the Bryce Jordan Center into what he called the "super box" location.⁹⁸ Representative Conklin placed his complete confidence in Republican Sheriff Bryan Sampsel to provide the necessary security to combat any voter fraud allegations through the use of drop boxes.⁹⁹ These efforts were also supported by Commissioner Pipe, who tried to educate and put voters at ease.¹⁰⁰ Commissioner Pipe addressed concerns and explained the various safeguards to ensure Centre County would not fall victim to fraud or these baseless accusations of impropriety.¹⁰¹ Commissioner Pipe also stressed that all eligible electors had to apply for a mail-in ballot, they were not automatically sent to homes as many were led to

⁹² 25 PA. STAT. AND CONS. STAT. § 3050(a.4)(1) (West 2021); Pipe Interview, *supra* note 47.

⁹³ § 2687(c) (West 2021); Pipe Interview, *supra* note 47.

⁹⁴ Pipe Interview, *supra* note 47.

⁹⁵ *Id.*

⁹⁶ § 3050(a.4)(8) (West 2021); Pipe Interview, *supra* note 47. Centre County designed an auditing process to reject provisional ballots if the record showed of a returned mail-in ballot. Even if a voter cast a provisional ballot, that does not necessarily mean it was counted. *Id.*

⁹⁷ See CHECK-IN STATION PROCEDURES, *supra* note 67; Pipe Interview, *supra* note 47.

⁹⁸ E-mail from Scott Conklin, Pennsylvania State Representative, to author (Oct. 28, 2020, 12:20 EST) (on file with the UMass Law Review).

⁹⁹ *Id.*

¹⁰⁰ Pipe Interview, *supra* note 47.

¹⁰¹ *Id.*

believe.¹⁰² With a large number of phone calls concerning mail-in ballots, the Board of Elections propagated informational resources on their websites to address baseless duplicate voting theories.¹⁰³

Commissioner Pipe stressed to the public that the County took any legitimate concerns people had about drop boxes seriously, and went “above and beyond to make sure [the boxes] were secure, accessible, and reliable.”¹⁰⁴ If both political parties projected the truth, it would have saved the election officials from unwarranted ridicule and reduced voters’ anxiety.¹⁰⁵ His logic? “If you know you’re doing the right thing and you have not only the law on your side, but the moral imperative to expand the vote and give people more of a voice in our democracy you go, and you lead, and you do it.”¹⁰⁶ The drop box method was widely supported and had been used by 2,000 of the 19,000 mail-in ballots cast for the primary.¹⁰⁷ The system appeared to be working as designed, but the perception of the system changed when Trump’s team filed its first lawsuit against Pennsylvania.

III. LEGAL ATTACKS

A. Trump’s Allegations

On June 29, 2020, President Donald Trump’s re-election campaign, the Republican National Committee, and four of Pennsylvania’s congressional members filed suit against then-Secretary of State Kathy Boockvar and the Commonwealth’s sixty-seven County Boards of Elections (“Defendants”).¹⁰⁸ The Trump campaign (“Plaintiffs”) claimed that the broadened eligibility for mail-in ballots for the June 2nd primary violated state law, as well as the Pennsylvania and Federal Constitutions.¹⁰⁹ According to the initial complaint, “[f]ree and fair elections are essential to the right of Americans to choose through their vote whom they elect to represent

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Verified Complaint for Declaratory and Injunctive Relief, Donald J. Trump for President, Inc. v. Boockvar, 493 F. Supp. 3d 331, (W.D. Pa. 2020) (No. 2:20-CV-966), ECF No. 4.

¹⁰⁹ *Id.* at 5.

them” and by “[u]pending our entire election process” Pennsylvania had deprived Americans of that right and implemented a system that invited voter fraud.¹¹⁰ The complaint additionally alleged that Centre County, along with nineteen other counties, violated the Pennsylvania Election Code when they allowed electors to deliver their mail-in and absentee ballots to locations *other than* the County Board of Elections.¹¹¹

Plaintiffs moved for expedited discovery and a declaratory-judgment hearing, which the court partially granted, scheduling a speedy trial and ordering expedited discovery before the hearing.¹¹² When the Defendants filed a motion to dismiss the original complaint, the Plaintiffs filed an amended complaint adding two new counts and a “variety of other drafting changes.”¹¹³ This amended complaint contained three overarching categories of claims, which were based on: (1) vote dilution, (2) poll-watching, and (3) in-person voting.¹¹⁴

The Plaintiffs alleged that the unlawful procedures implemented by the Defendants for the collection and counting of mail-in ballots would allow illegally cast ballots to dilute the effectiveness of valid, legally submitted ballots.¹¹⁵ The contested procedures included those allowing for the inconsistent usage of drop boxes and other satellite ballot-collection sites by individual counties, the verification procedures for qualifications of voters applying for mail-in ballots in person, and the rules for counting non-compliant ballots.¹¹⁶ According to the Plaintiffs,

¹¹⁰ *Id.* at 3.

¹¹¹ *Id.* at 6.

¹¹² Motion for a Speedy Declaratory Judgment Hearing and Expedited Discovery, Donald J. Trump for President, Inc. v. Boockvar, 493 F. Supp. 3d 331 (W.D. Pa. 2020) (No. 2:20-CV-966), ECF No. 6; Scheduling Order at 2, Donald J. Trump for President, Inc. v. Boockvar, 493 F. Supp. 3d 331 (W.D. Pa. 2020) (No. 220-CV-966), ECF 124.

¹¹³ Donald J. Trump for President, Inc. v. Boockvar, 493 F. Supp. 3d 331, 344 (W.D. Pa. 2020); Verified Amended Complaint for Declaratory and Injunctive Relief, Donald J. Trump for President, Inc. v. Boockvar, 493 F. Supp. 3d 331, (W.D. Pa. 2020) (No. 2:20-CV-966), ECF No. 232 [hereinafter First Amended Complaint].

¹¹⁴ Donald J. Trump for President, 493 F. Supp at 344-45; First Amended Complaint, *supra* note 113.

¹¹⁵ First Amended Complaint, *supra* note 113.

¹¹⁶ *See id.*

these procedures, which were implemented at the request of then-Secretary of State Boockvar, constituted an executive overreach.¹¹⁷

The Plaintiffs also challenged the constitutionality of the Pennsylvania Election Code's provision related to poll watchers.¹¹⁸ With regard to mail-in voting, Plaintiffs claimed “poll-watcher restrictions, combined with insecure voting procedures, create[d] unacceptable risks of fraud and vote dilution.”¹¹⁹ Additionally, Plaintiffs asserted that the Election Code permitted a voter that requested a mail-in ballot to still vote in person, so long as they remitted the spoiled ballot.¹²⁰ Plaintiffs alleged that certain counties permitted electors to essentially vote twice—since a person who voted by mail could theoretically also vote in person—in direct violation of the Election Code, as well as state and federal constitutional provisions concerning equal protection.¹²¹ The complaint stopped short of alleging that fraud had affirmatively been committed, rather, it stated a “potential” for fraud to occur if the election process continued as planned.¹²²

Trump's team suggested that the state's guidance, which allowed for some counties to use drop boxes while others did not, would result in differential treatment among voters.¹²³ They argued such discriminatory practices constituted a violation of the Equal Protection Clause.¹²⁴ In an attempt to strengthen the equal protection claim, plaintiffs referenced *Bush v. Gore*.¹²⁵ In that case, the Florida Supreme

¹¹⁷ *Id.* at 35. Plaintiffs claimed that the Secretary's guidance violated the Pennsylvania Constitution and certain provisions of the Election Code, as well as multiple aspects of the U.S. Constitution, including the Equal Protection Clause. *Id.*

¹¹⁸ *Id.* at 21.

¹¹⁹ 493 F. Supp. 3d at 345. Plaintiffs also challenged limiting poll watchers to serving only in their county of residence and to monitoring only in-person voting at the polling place on Election Day. *Id.*; First Amended Complaint, *supra* note 113, at 63.

¹²⁰ First Amended Complaint, *supra* note 113, at 3-4.

¹²¹ *Id.* at 16-17.

¹²² *Id.* at 58-59.

¹²³ Verified Second Amended and Supplemental Complaint for Declaratory and Injunctive Relief at 50-51, Donald J. Trump for President, Inc. v. Boockvar, 493 F. Supp. 3d 331 (W.D. Pa. 2020) (No. 2:20-CV-966) [hereinafter Second Amended Complaint].

¹²⁴ *Id.* at 49-50.

¹²⁵ See *Bush v. Gore*, 531 U.S. 98, 102 (2000).

Court was found to have violated the Equal Protection Clause by allowing counties to use different standards for determining the legality of votes.¹²⁶ Plaintiffs attempted to articulate that counties that used drop boxes would be subject to a higher risk of vote dilution than counties that did not.¹²⁷

President Trump also claimed the county-residency requirement for poll watching burdened fundamental constitutional rights.¹²⁸ The Trump team argued that the residency requirement was unconstitutionally restrictive and would have “real, demonstrable impacts on all Plaintiffs.”¹²⁹ The Plaintiff’s interest in ensuring the presence of poll watchers was important because of the discrepancies between the number of Democratic and Republican voters registered in certain counties.¹³⁰

B. Pennsylvania’s Position in Defense of Election Administration

To ensure the law is appropriately administered, the Secretary of State for the Commonwealth of Pennsylvania serves as the chief elections officer and has a range of responsibilities concerning elections.¹³¹ As secretary of state, Boockvar was tasked with ensuring adequate access to electors while still maintaining a secure ballot box.¹³² In spite of the misinformation that continued to circulate around the electoral system, she fully supported the mail-in ballot process.¹³³ The Secretary was confident because of various factors,

¹²⁶ *Id.* at 107-08 (2000) (holding that the Florida Supreme Court violated the Equal Protection by ratifying election recount procedures that allowed different counties to use varying standards to determine what was a legal vote).

¹²⁷ Second Amended Complaint, *supra* note 123, at 42.

¹²⁸ *Id.* at 60-61.

¹²⁹ *Id.* at 61, 63-64.

¹³⁰ *Id.* at 61.

¹³¹ *See, e.g.*, 25 PA. STAT. AND CONS. STAT. § 1105 (West 2021) (granting the secretary the authority to “prescribe by regulation standardized voter registration or absentee ballot application forms”); § 1222(f) (“The secretary shall promulgate regulations necessary to establish, implement and administer the [Statewide Uniform Registry of Electors] system.”); § 3503(a) (“The secretary is the official . . . responsible for implementing” laws governing military and oversees voters).

¹³² *See* sources cited *supra* note 131; *see also* Blackwell & Klukowski, *supra* note 38, at 108-09.

¹³³ Parish, *supra* note 79.

including “well-trained poll workers, elections office staff, secure ballot drop boxes and upgrades to voting machines across the state.”¹³⁴ In response to President Trump’s complaint, Boockvar stated, “[w]e look at election security across the board in every realm, and I’m so proud of the partners that we work with at the federal, state and local level to make sure that every voter in Pennsylvania can have tremendous confidence.”¹³⁵

Despite this confidence, Pennsylvania remained in a state of confusion just weeks prior to the general election. On September 11, 2020, Secretary Boockvar issued guidance to all county election boards on receiving mail-in ballots.¹³⁶ The guidance instructed workers to compare the declaration on the return envelope with the information contained in the “Registered Absentee and Mail-in Voters File.”¹³⁷ Boockvar advised that “if the declaration is signed and the county board is satisfied that the declaration is sufficient, then the absentee or mail-in ballot should be approved for canvassing unless it is challenged in accordance with the Election Code.”¹³⁸

On October 4, 2020, in an effort to further clarify the language of the election laws, Secretary Boockvar filed an application for invocation of the King’s Bench power to the Pennsylvania Supreme Court, seeking a declaration that, under the Election Code, the county boards were precluded from rejecting absentee or mail-in ballots at canvassing based upon signature comparisons.¹³⁹ Boockvar asserted that a signature comparison requirement would vary from county to

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ See generally PA. DEP’T OF STATE, GUIDANCE CONCERNING EXAMINATION OF ABSENTEE AND MAIL-IN BALLOT RETURN ENVELOPES (2020), <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Examination%20of%20Absentee%20and%20Mail-In%20Ballot%20Return%20Envelopes.pdf>.

¹³⁷ *Id.* at 3.

¹³⁸ *Id.*; See also *In re* November 3, 2020 General Election, 240 A.3d 591, 596 (Pa. 2020).

¹³⁹ Application for Invocation of King’s Bench Power to Declare Proper Construction of Election Code at 2, *In re* November 3, 2020 General Election, 240 A.3d 591 (Pa. 2020) (No. 149 MM 2020) [hereinafter King’s Bench Application]. The effort to clarify this point came in response to the Trump team’s argument that county board members should be able to reject mail-in ballots based on signature comparison. See Second Amended Complaint, *supra* note 123, at 56-58; Donald J. Trump for President, Inc. v. Boockvar, 493 F. Supp. 3d 331, 398 (W.D. Pa. 2020).

county, creating a risk of error and uncertainty given that there were no standards or guidelines in the Election Code.¹⁴⁰ She highlighted the information required when a voter fills out an application for a mail-in ballot, which is then confirmed by the county board of elections, who decides whether the applicant is qualified to receive this ballot.¹⁴¹ Secretary Boockvar believed that the signature requirement would constitute a denial of equal protection, set imprecise standards, and present an “unjustified risk of disenfranchisement” as the ballot could be rejected with no opportunity to be heard on the issue.¹⁴²

In the midst of uncertainty regarding signature comparisons, the Pennsylvania Supreme Court dispelled some confusion on September 17, 2020 when it clarified three issues of state election law in response to separate claims by the Pennsylvania Democratic Party that the extension of the absentee ballot deadline was illegal.¹⁴³ First, it permitted counties under the PA Election Code to establish alternate ballot-collection sites beyond just their official county office locations.¹⁴⁴ The court held that “the Election Code should be interpreted to allow county boards of election to accept hand-delivered mail-in ballots at locations other than their office addresses including drop-off boxes.”¹⁴⁵ The court declined to conduct an equal protection analysis because, at the time, the manner in which each county board

¹⁴⁰ See King’s Bench Application, *supra* note 139.

¹⁴¹ *Id.* at 16-22.

Sections 3150.12(a) and (b)(1)-(2) of the Election Code require the voter to fill out an application form listing his name, address, date of birth, voting district, and the length of time he has resided in the voting district. According to the Secretary, the paper version of that form also requires a voter to sign a declaration that he or she is eligible to vote in the election for which he is requesting a ballot. Upon receipt of this application, a county board of elections confirms whether the applicant is qualified to receive a mail-in ballot under Section 3250.12b by verifying the proof of identification supplied with the application, such as the voter’s drivers’ license number or the last four digits of the voter’s social security number, and the county board compares that information with the voter’s permanent registration card.

In re November 3, 2020 General Election, 240 A.3d 591, 602 (Pa. 2020).

¹⁴² King’s Bench Application, *supra* note 139, at 24-25.

¹⁴³ See Pa. Democratic Party v. Boockvar, 238 A.3d 345, 386 (Pa. 2020).

¹⁴⁴ *Id.* at 361.

¹⁴⁵ *Id.*

of elections would accept the votes was unknown.¹⁴⁶ Thus, no metric existed to measure if one system offered more legal protection than the other.¹⁴⁷ Instead, the court relied heavily on the legislative intent underlying Act 77, which gave electors “options to vote outside of traditional polling places.”¹⁴⁸

Second, the court held that ballots lacking inner secrecy envelopes could not be counted.¹⁴⁹ Once again, the court relied on the General Assembly’s intent to make the secrecy envelope mandatory.¹⁵⁰ The envelope was considered necessary because “during the collection and canvassing processes, when the outer envelope in which the ballot arrived is unsealed and the sealed ballot removed, it should not be readily apparent who the elector is, with what party he or she affiliates, or for whom the elector has voted.”¹⁵¹

Third, applying a rational-basis review, the court declared that Pennsylvania’s county-residency requirement for poll watchers was constitutional.¹⁵² The court applied this standard of review for three reasons: (1) there is no individual constitutional right to serve as a poll watcher, this is conferred by statute, (2) poll watching has no distinct First Amendment protection, and (3) poll watching does not implicate core political speech.¹⁵³

C. The Court Weighs In

Following the Pennsylvania Supreme Court’s ruling on September 17, 2020, which found the mail-in voting protocols constitutional, the Trump campaign’s complaints against Secretary Boockvar were narrowed.¹⁵⁴ In the federal action, the Trump campaign claimed: (1)

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 378. Under Pennsylvania law, mail-in electors are sent an “Official Election Ballot” or secrecy envelope, a declaration envelope, and a mailing envelope, and are required to put the secrecy envelope inside the declaration envelope before placing both inside the mailing envelope. If a voter puts their ballot directly into the declaration envelope, they are sending a “naked” ballot. *Id.* at 374-375; 25 PA. STAT. AND CONS. STAT. §§ 3150.14, 3150.16 (West 2021).

¹⁵⁰ Pa. Democratic Party v. Boockvar, 238 A.3d 345, 378 (Pa. 2020).

¹⁵¹ *Id.*

¹⁵² *Id.* at 386.

¹⁵³ *Id.* at 385.

¹⁵⁴ Donald J. Trump for President, Inc. v. Boockvar, 493 F. Supp. 3d 331, 342 (W.D. Pa. 2020).

“unmanned” drop boxes for mail-in ballots, (2) Secretary Boockvar’s guidance on mail-in ballots signature analysis, and (3) Pennsylvania’s county-residency requirement for poll watchers, as applied, were unconstitutional under the Federal and State Constitutions.¹⁵⁵ The Western District Court of Pennsylvania entered judgment in favor of Boockvar, dismissing all of Trump’s federal constitutional claims.¹⁵⁶

Judge Ranjan concluded that the Plaintiffs lacked Article III standing to pursue their claims, and even if they had standing, their claims failed on the merits.¹⁵⁷ Federal courts adjudicate cases and controversies only when a plaintiff’s injury is “concrete and particularized.”¹⁵⁸ Here, Trump’s campaign attempted to claim an injury of vote dilution because the lack of security measures (such as guards by drop boxes, signature comparison of mail-in ballots, and poll watchers) created an increased risk of voter fraud.¹⁵⁹ Plaintiffs argued that the election security measures put in place by local county election officials would be ineffective, but that their recommended security measures would have helped to prevent the fraud they believed would occur.¹⁶⁰ Judge Ranjan articulated that the Plaintiffs “have pieced together a sequence of uncertain assumptions” concerning potential fraudsters, who they allege would try to commit election fraud through drop boxes, forged ballots, or a shortage of poll watchers.¹⁶¹

Even assuming Trump had standing, the claim would still have lost on the merits.¹⁶² Plaintiffs basically asked the Western District Court to override the judgment of the elected members of the Pennsylvania General Assembly and election officials—the very experts who created and implemented the Election Code under Pennsylvania law.¹⁶³ The court further explained that it is not the job of an unelected

¹⁵⁵ *Id.* See discussion *supra* Section III(b).

¹⁵⁶ 493 F. Supp. 3d at 342.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 342-43.; See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (plaintiffs in federal actions must have suffered an injury which is “concrete and particularized,” “actual or imminent,” and “not conjectural or hypothetical.”).

¹⁵⁹ *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 342 (W.D. Pa. 2020).

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.* at 343.

¹⁶³ *Id.*

federal judge to suggest election improvements, let alone contradict the democratically elected officials on issues so firmly within their purview.¹⁶⁴ As Judge Ranjan said of the legitimacy of election safeguards in the primary:

the Court finds that the election regulations put in place by the [Pennsylvania] General Assembly and implemented by Defendants do not significantly burden any right to vote. They are rational. They further important state interests. They align with the Commonwealth's elaborate election-security measures. They do not run afoul of the United States Constitution. They will not otherwise be second-guessed by this Court.¹⁶⁵

Plaintiffs asserted that Secretary Boockvar's drop-box guidance would produce differences between counties, resulting in differing risks of fraud.¹⁶⁶ According to the court, Trump's campaign failed to understand the necessary theory of harm in routine vote dilution cases.¹⁶⁷ Typically, vote dilution cases arise when a state imposes a restriction that directly impacts the right to vote, which leads to a vote weighing less in one county than it would in another.¹⁶⁸ "In this case, though, Plaintiffs complain that the state is *not* imposing a restriction on *someone else's* right to vote, which, they say, raises the risk of fraud, which, if it occurs, could dilute the value of plaintiffs' vote."¹⁶⁹ As long as it is "consistent with equal protection, [counties] may employ entirely different election procedures and voting systems within a single state."¹⁷⁰ The different drop-box procedures did not mean that votes in certain counties would be valued less than others.¹⁷¹

Judge Ranjan found that the county boards of elections had no obligation to verify signatures, concluding that "the plain language of the Election Code imposes no requirement for signature comparison for mail-in and absentee ballots and applications."¹⁷² The county board's duty is to examine the declaration and determine if the

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 390.

¹⁶⁷ *Id.* at 389.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.* at 398-400.

requirements were met, not to inquire into the authenticity of the signature.¹⁷³

Further, the Plaintiffs failed to establish that the regulatory requirements would lead to an inability to find enough poll watchers.¹⁷⁴ “State law, not the Federal Constitution, grants individuals the ability to serve as poll watchers and parties and candidates the authority to select those individuals.”¹⁷⁵ In order to establish their burden, Plaintiffs had to show that: “(1) the county-residency requirement prevent[ed] them from recruiting enough registered Republican poll watchers in every county, (2) the absence of these Republican poll watchers create[d] a material risk of increased fraud and ballot tampering, and (3) this risk of fraud and ballot tampering w[ould] dilute the value of honestly cast votes.”¹⁷⁶ Once again, Trump’s team failed to offer any concrete evidence to support this assumption, relying only on speculation.¹⁷⁷ Just as the Pennsylvania Supreme Court ruled, even if these speculative claims were true, they were insufficient to transform the requirement for poll watchers to be a resident of the county they intended to serve.¹⁷⁸ The

¹⁷³ *Id.* at 400-01.

[W]hile section 3146.8(g)(3) instructs the election official to “examine the declaration . . . and compare the information thereon with that contained in the [voter’s file],” the provision clarifies that this is so the election official can be “satisfied that the declaration is sufficient.” In other words, the election official must be “satisfied” that the declaration is “fill[ed] out, date[d] and sign[ed],” as required by sections 3150.16(a) and 3146.6(a) of the Election Code. Notably absent is any instruction to verify the signature and set aside the ballot if the election official believes the signature to be non-genuine. There is an obvious difference between checking to see if a signature was provided at all, and checking to see if the provided signature is sufficiently authentic. Only the former is referred to in section 3146.8(g)(3).

Id. (citation omitted).

¹⁷⁴ *Id.* at 415.

¹⁷⁵ *Id.* at 414 (quoting *Republican Party of Pa. v. Cortés*, 218 F. Supp. 3d 396, 414 (E.D. Pa. 2016)).

¹⁷⁶ *Id.* at 415.

¹⁷⁷ *Id.* at 377.

¹⁷⁸ *Id.* at 418 (“Respondent’s speculative claim that it is “difficult” for both parties to fill poll watcher positions in every precinct, even if true, is insufficient to transform the Commonwealth’s uniform and reasonable regulation requiring that poll watchers be residents of the counties they serve into a non-rational policy

county's requirement was not discriminatory, nor did it deny equal access for observing polling places in the election because it does not make casting a vote more difficult.¹⁷⁹

Shortly after the decision by the United States District Court, the Pennsylvania Supreme Court decided Secretary Boockvar's King's Bench petition, providing additional guidance on the validity of the new election measures. The state supreme court reasoned that in expanding voting by mail, the legislative purpose was to streamline the process for canvassing ballots, eliminating the prospect that voters would answer before the board or courts over third-party challenges.¹⁸⁰ The court held that "county boards of elections are prohibited from rejecting absentee or mail-in ballots based on signature comparison conducted by county election officials or employees, or as the result of third-party challenges based on signature analysis and comparisons."¹⁸¹ Recognizing it was the final say in the matter, the Pennsylvania Supreme Court effectively precluded the Trump team from continuing to attack their electoral system.¹⁸²

IV. THE AFTERMATH

*"Life starts all over again when it gets crisp in the fall."*¹⁸³

When Election Day came to an end, President Trump claimed premature victory in Pennsylvania as in-person voters turned out with overwhelming support.¹⁸⁴ Trump continued to belittle the electoral process within Pennsylvania—believing he would secure the twenty electoral votes needed to win re-election by stopping the vote count in the state.¹⁸⁵ The week following the election produced more

choice" (citing Pa. Democratic Party v. Boockvar, 238 A.3d 345, 386 (Pa. 2020)).

¹⁷⁹ *Id.* at 414.

¹⁸⁰ *In re* November 3, 2020 General Election, 240 A.3d 591, 608 (Pa. 2020).

¹⁸¹ *Id.* at 611.

¹⁸² *Id.* at 601.

¹⁸³ FITZGERALD, *supra* note 1, at 114.

¹⁸⁴ Colby Itkowitz et al., *Trump Falsely Asserts Election Fraud, Claims a Victory*, WASH. POST (Nov. 4, 2020), <https://www.washingtonpost.com/elections/2020/11/03/trump-biden-election-live-updates/> [<https://perma.cc/WD3D-U8W2>].

¹⁸⁵ *Id.*

incredulous strings of voter fraud claims.¹⁸⁶ Taking to social media, prominent Republican Party members joined in to challenge the election's integrity.¹⁸⁷ Videos and posts ran rampant across social media spreading misinformation to be shared even after the claims of fraud were publicly denounced.¹⁸⁸

As the ballots continued to be counted two days after Election Day, Trump did not cease the onslaught.¹⁸⁹ No longer did he view himself as a losing candidate, but rather the victim of a widespread conspiracy involving an indefinite number of people planning to steal the election—a plan even he could not explain.¹⁹⁰ Even former Pennsylvania Senator Rick Santorum, who defended Trump on many previous occasions, changed his tone when it came to these accusations. Senator Santorum denounced Trump's accusations as “dangerous” and “shocking” by declaring “counting absentee ballots and counting mail-in-ballots is not fraud.”¹⁹¹

On November 13, 2020, with almost seven million votes cast, Secretary Boockvar continued to sing praises for election workers and was determined not to issue a recount.¹⁹² When the final Pennsylvania election results were published, Trump fell 80,555 votes shy of defeating Joe Biden, gathering 3,377,674 votes to Biden's 3,458,229.¹⁹³ When looking at Centre County alone, Joe Biden won the center of the state with 40,055 total votes.¹⁹⁴ A reported 32,576

¹⁸⁶ Davey Alba, *False Claims Biden 'Lost' Pennsylvania Surge, and Tech Companies Struggle to Keep up*, N.Y. TIMES (Nov. 10, 2020), <https://www.nytimes.com/2020/11/10/technology/biden-lost-pennsylvania-claim.html?searchResultPosition=13> [https://perma.cc/992F-28YD].

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Peter Baker & Maggie Haberman, *In Torrent of Falsehoods, Trump Claims Election is Being Stolen*, N.Y. TIMES, <https://www.nytimes.com/2020/11/05/us/politics/trump-presidency.html?searchResultPosition=15> [https://perma.cc/HM3H-87AP] (Nov. 7, 2020).

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Department of State Provides Update on Election Results*, PA. PRESSROOM (Nov. 13, 2020), <https://www.media.pa.gov/pages/state-details.aspx?newsid=432> [https://perma.cc/Z5NT-UYJG].

¹⁹³ *Joe Biden won in Pennsylvania, Flipping a State Donald Trump Won in 2016*, POLITICO (Jan. 6, 2021, 4:41 PM), <https://www.politico.com/2020election/results/pennsylvania/> [https://perma.cc/DT2V-QAFB].

¹⁹⁴ *2020 Presidential Election Official Returns*, PA. DEP'T OF STATE, <https://www.electionreturns.pa.gov/General/CountyBreakDownResults?officeId>

mail-in ballots were received in the county by November 3, with 25,307 supporting Joe Biden.¹⁹⁵ Despite the cries of a rigged election, Pennsylvania certified the 2020 results on November 24.¹⁹⁶

As we saw in 2016, in the days following November 3, Trump continued to spit falsehoods of an unfair election.¹⁹⁷ Standing in the White House briefing room, he once again declared Democrats were trying to “rig” and “steal” the election.¹⁹⁸ He insisted that the Supreme Court of the United States should decide the outcome.¹⁹⁹ However the Court refused a plea from Pennsylvania Republicans to end the three-day absentee ballot extension.²⁰⁰ Even if the Court were to reexamine this issue, the case only concerned mail-in ballots received after November 3—which would not have given former President Trump enough votes to give him the win he so desperately desired.²⁰¹

=1&districtId=1&ElectionID=83&ElectionType=G&IsActive=0
[<https://perma.cc/M95K-UH2D>].

¹⁹⁵ *Id.*

¹⁹⁶ Brian X. McCrone, *Pennsylvania Certifies Nov. 3 Election Results*, *Gov. Wolf Says*, NBC, <https://www.nbcphiladelphia.com/news/politics/decision-2020/pennsylvania-certifies-nov-3-election-results-gov-wolf-says/2609823/> [<https://perma.cc/BVE9-K7XF>] (Nov. 24, 2020). *See also* GOVERNOR TOM WOLF, CERTIFICATE OF ASCERTAINMENT OF PRESIDENTIAL ELECTORS (2020), <https://www.archives.gov/files/electoral-college/2020/ascertainment-pennsylvania.pdf>.

¹⁹⁷ *Biden Ahead in Georgia and Pennsylvania, Trump Attacks Process*, PBS: NEWS HOUR (Nov. 6, 2020, 9:23 AM), <https://www.pbs.org/newshour/politics/as-more-votes-counted-bidens-lead-in-georgia-and-pennsylvania-grows-trump-attacks-process> [<https://perma.cc/JG5S-NU8M>].

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Republican Party of Pa. v. Boockvar*, 141 S. Ct. 1 (2020) (mem.). *See also* Adam Liptak, *Supreme Court Won't Speed a Do-Over on Pennsylvania's Ballot Deadlines*, N.Y. TIMES (Oct. 28, 2020, 5:51 PM), <https://www.nytimes.com/2020/10/28/us/supreme-court-pennsylvania-ballots.html> [<https://perma.cc/KY9W-X3LR>].

²⁰¹ Andrew Chung & Lawrence Hurley, *U.S. Supreme Court May Not Have Final Say in Presidential Election, Despite Trump Threat*, REUTERS (Nov. 4, 2020, 11:13 AM), <https://www.reuters.com/article/us-usa-election-supreme-court/u-s-supreme-court-may-not-have-final-say-in-presidential-election-despite-trump-threat-idUSKBN27K2JK> [<https://perma.cc/87WW-VLG9>].

CONCLUSION

*“So we beat on, boats against the current, borne back ceaselessly into the past.”*²⁰²

A fundamental stabilizer in American democracy involves the tradition of the losing presidential candidate “accepting defeat gracefully.”²⁰³ Even with the numbers stacked against him, Trump refused to concede the 2020 contest. When he first started his “fraud” tactic in 2016, Trump’s legal team admitted that all evidence showed the election had “not [been] tainted by fraud or mistake.”²⁰⁴ It is no surprise his team continued to attack Pennsylvania by filing lawsuit after lawsuit.²⁰⁵

History repeated itself. The issue was never voter fraud, so what was all this chaos for? David Frum, former Bush presidential speechwriter, warned that the Trump Administration might “usher in a form of populist autocracy by subverting the ‘institutions of democracy and the rule of law.’”²⁰⁶ If Trump’s goal was never to win the election, but rather to cast enough doubt about the results to fan America’s political flames, he took a note right out of his own playbook on how to play dirty.

Following the Electoral College vote that declared President Biden as the new President, Congress certified the vote on January 7, 2021.²⁰⁷ In the weeks between the Electoral College vote and the certification of the votes, former President Trump continued to make assertions that the results were tainted. In Pennsylvania, the litigation that occurred between the primary and general election demonstrated that Pennsylvania’s specific procedures prevented the state from falling victim to any fraud.

²⁰² FITZGERALD, *supra* note 1, at 174.

²⁰³ Gaughan, *supra* note 15, at 91.

²⁰⁴ *Id.* at 72-73.

²⁰⁵ Zach Montague & Alan Feuer, *Trump Campaign Lawyers Step up but are Swiftly Knocked Down*, N.Y. TIMES, <https://www.nytimes.com/2020/11/20/us/politics/trump-election-lawsuits.html?searchResultPosition=5> [<https://perma.cc/8D7K-7BW8>] (Nov. 25, 2020).

²⁰⁶ Gaughan, *supra* note 15, at 60.

²⁰⁷ Lauren Gambino & Daniel Strauss, *Congress Certifies Joe Biden as Next President Hours After Storming of Capitol*, GUARDIAN, (Jan. 7, 2021, 5:27 PM), <https://www.theguardian.com/us-news/2021/jan/06/congress-certify-election-biden-republicans-object> [<https://perma.cc/K6JZ-XGVF>].

As witnessed by the world, Pennsylvania's results were confirmed. Trump's team could not provide any evidence of fraud, showing only that they had spread false information and baseless accusations in attempts to weaken the election's integrity. One thing that the media cannot dictate is the law—no matter how hard former President Trump and his team might have tried. An insight into one Pennsylvania county showed that elected officials took these accusations seriously by implementing rigorous checks and balances. Centre County proved that Trump's frivolous lawsuits had no merit. Trump's accusations were nothing more than a threat to this country's democratic process,²⁰⁸ and his allegations proved to be fruitless and unsupported. In studying a singular county within the key state of Pennsylvania, Americans can feel comforted knowing the safeguards implemented, provided a true, fair, and free mail-in ballot election.

²⁰⁸ See Email from Scott Conklin, *supra* note 98.