
COMMISSIONER OMAR SABIR in :
his official capacity :
Philadelphia City Hall, :
Room 132, :
Philadelphia, PA 19107 :
: :
Respondents. :
:

COMPLAINT IN MANDAMUS

Petitioner, wishing to preserve the integrity of the November 3, 2020 General Election, and wishing to ensure all ballots cast in the city of Philadelphia are done so in accordance with the law of the Commonwealth of Pennsylvania (the “Commonwealth”), and seeking to vindicate his rights to perform his sworn duties and having the laws of the Commonwealth faithfully executed by the Philadelphia County Board of Elections (the “Board of Elections”) and the individual Philadelphia City Commissioners acting in their official capacities (the “Commissioners”), hereby petitions this Court to issue a writ of mandamus requiring the Respondents to (1) comply with the statutory deadline of 5 p.m. on Tuesday, October 27, 2020 for accepting mail-in and absentee ballot applications and disqualify mail-in and absentee ballots processed after such deadline; (2) notify all electors who submitted an absentee ballot application after the statutory deadline of their failure to meet the statutory deadline for a mail-in ad absentee ballot and their opportunity to vote in person on November 3, 2020; and, (3) issue provisional ballots, rather than replacement mail-in or absentee ballots, where required by Commonwealth law. *See* 25 P.S. § 3146.2a(a); 25 P.S. § 3146.6(b)(2)-(3); 25 P.S. § 3150.12a(a); 25 P.S. § 3150.12a(a); 25 P.S. § 3150.16(b)(2)-(3).

PARTIES, JURISDICTION, AND VENUE

1. Petitioner Hugh J. Woodruff is a Minority Inspector for the 18th Division of the 54th Ward in Philadelphia County, Pennsylvania.

2. Petitioner Hugh J. Woodruff was elected to the position of Minority Inspector in the year 2017.

3. Petitioner Hugh J. Woodruff is not a candidate for public office in the 2020 General Election. Petitioner Woodruff is up for reelection in 2021.

4. Petitioner Hugh J. Woodruff will serve as a Minority Inspector during the General Election in the Commonwealth of Pennsylvania on November 3, 2020.

5. Respondent Philadelphia County Board of Elections is responsible for overseeing the conduct of elections in Philadelphia County, including the conduct of election personnel at polling locations throughout the county as well as at the County Board of Elections and satellite election offices throughout Philadelphia County. Its principal place of business is located at Philadelphia City Hall, Room 142, 1400 John F. Kennedy Blvd., Philadelphia, PA 19107.

6. Respondent Lisa M. Deeley is a Philadelphia City Commissioner. She is the Chairwoman of the Philadelphia City Commissioners Office. The Philadelphia City Commissioners are elected by the citizens of the County of Philadelphia to four-year terms and are responsible for voter registration and conducting elections. Her official address is City Hall Room 130, Philadelphia, PA 19107.

7. Respondent Al Schmidt is a Philadelphia City Commissioner. He is the Vice-Chair of the Philadelphia City Commissioners Office. The Philadelphia City

Commissioners are elected by the citizens of the County of Philadelphia to four-year terms and are responsible for voter registration and conducting elections. His official address is City Hall Room 134, Philadelphia, PA 19107.

8. Respondent Omar Sabir is a Philadelphia City Commissioner. He is the Secretary of the Philadelphia City Commissioners Office. The Philadelphia City Commissioners are elected by the citizens of the County of Philadelphia to four-year terms and are responsible for voter registration and conducting elections. His official address is City Hall Room 132, Philadelphia, PA 19107.

9. This Court has jurisdiction over this petition pursuant to 42 Pa. C.S. § 931(a).

10. Pursuant to Pa. R. Civ. P. 1092(c), this Court is the proper venue to resolve this dispute.

FACTUAL BACKGROUND

Petitioner Woodruff

11. In Pennsylvania, “[a]ll primaries and elections shall be conducted in each election district by a district election board consisting of a judge of election, a majority inspector of election and a minority inspector of election, assisted by clerks and machine inspectors in certain cases[.]” 25 P.S. § 2671.

12. Petitioner Woodruff is the Minority Inspector for the 18th Division of the 54th Ward in Philadelphia County, Pennsylvania.

13. Prior to each primary or general election, Petitioner Woodruff must be “duly sworn in the presence of each other and of the watchers and overseers.” 25 P.S. § 2676.

14. Petitioner Woodruff must swear to the following oath:

“I [Hugh Woodruff] do swear (or affirm) that I will as an inspector attend the ensuing election (or primary) during the continuance thereof, and that I will not admit any person to vote, except such as I shall firmly believe to be registered and entitled to vote at such election (or primary), according to the provisions of the Constitution and laws of this Commonwealth, that I will not vexatiously delay or refuse to permit any person to vote whom I shall believe to be entitled to vote as aforesaid, that I will make a true and perfect return of the said election (or primary), and that I will in all things truly, impartially and faithfully perform my duties therein, to the best of my judgment and ability; and that I am not directly or indirectly interested in any bet or wager on the result of this election (or primary).

25 P.S. § 2678 (emphasis added).

15. As more fully described herein, Respondents’ actions impede Petitioner Woodruff’s ability to faithfully adhere to his sworn oath.

Respondents are Accepting and Processing Absentee Ballot Applications Received After the Statutory Deadline

16. The deadline for processing mail-in and absentee ballot applications is 5:00 p.m. on the first Tuesday prior to the day of an election. 25 P.S. § 3146.2a(a) (“Applications for absentee ballots shall be processed if received not later than five o’clock P.M. of the first Tuesday prior to the day of any primary or election.”); 25 P.S. § 3150.12a(a) (“Applications for mail-in ballots shall be processed if received not later than five o’clock P.M. of the first Tuesday prior to the day of any primary or election.”).

17. Under Commonwealth law, the deadline for Respondents to accept mail-in and absentee ballot applications for processing this election cycle was October 27, 2020 at 5:00 p.m. 25 P.S. § 3146.2a(a); 25 P.S. § 3150.12a(a).

18. On October 26, 2020, Respondent Commissioners published on their website an announcement stating that “all satellite election offices will open on 9:30 a.m., and if submitting an application for a mail-in ballot, you must be in line by 5:00 p.m.”¹

19. According to reports, “officials allowed voters to apply for ballots as long as they were in line by 5 p.m., and passed out applications to those in line.”²

20. According to reports, Respondent Commissioners “intend to process [applications] for all who were in line by 5 p.m., and the offices will remain open until they are served.”³

Respondents are Issuing Regular Replacement Absentee Ballots to Voters Rather Than Provisional Ballots

21. Electors who request a mail-in or absentee ballot, and are ultimately shown on the district register as having not voted such ballot, may vote by provisional ballot under 25 P.S. § 3050. 25 P.S. § 3146.6(b)(2); 25 P.S. § 3150.16(b)(2).

22. Electors who request a mail-in or absentee ballot, and are ultimately shown on the district register as having not voted such ballot, may also vote at their

¹ *October 27th Hours of Operation for all Satellite Election Offices*, Office of the Philadelphia City Commissioners, https://www.philadelphiavotes.com/en/home/item/1871-oct27_operation_hours, (last visited Oct. 27, 2020).

² McCrystal and Lai, *Voters remain in line as Pa. deadline for mail ballots passes*, Philadelphia Inquirer, <https://www.inquirer.com/politics/election/live/elections-2020-candidates-updates-news-pennsylvania-20201027.html> (last visited Oct. 28, 2020).

³ *Id.*

designated polling place if (i) the elector remits the ballot and the envelope containing the declaration of the elector to the judge of elections to be spoiled and (2) the elector signs a statement subject to the penalties under 18 P.S. § 4904 in the form prescribed by law. 25 P.S. § 3146.6(b)(3); 25 P.S. § 3150.16(b)(3).

23. On October 26, 2020, Deputy City Commissioner Nick Custodio confirmed that the Respondent Commissioners had approved the provision of replacement mail-in ballots at designated city locations for all voters who had applied but had yet to receive them.⁴

24. Deputy City Commissioner Nick Custodio also confirmed that electors will be able to get a new mail-in ballot should the elector have used the wrong color ink when completing it.⁵

25. If the voter does not remit her ballot, the voter must cast a provisional, not a regular absentee ballot but Respondents are disregarding the statutory requirements. 25 P.S. § 3146.6(b)(2); 25 P.S. § 3146.6(b)(3); 25 P.S. § 3150.16(b)(2); 25 P.S. § 3150.16(b)(3).

ARGUMENT

Introduction

26. The long-term viability of democratic self-governance in the Commonwealth, and throughout the world, rests heavily on the mutual understanding between the people and the leaders they charge with governing them

⁴ Marin, Max. *Get in Line by 5 PM: Philadelphia Expands Satellite Election office Hours for Ballot Request Deadline*, BillyPenn, <https://billypenn.com/2020/10/26/pennsylvania-mail-ballot-deadline-philadelphia-expands-election-office-hours-5pm-cutoff/> (last visited Oct. 27, 2020).

⁵ *Id.*

that the laws promulgated in the peoples' name are to be carried-out and faithfully executed by the elected and unelected officials of the Commonwealth alike. PA. Const. Art. IV § 2.

27. When officials of the Commonwealth charged with uniformly applying the law abrogate their duty to do so, their actions pose an existential threat to the government's legitimacy as it leaves the governed unable to ascertain which laws they are subject to, rendering such an entity no longer the "government of laws" our founding fathers envisioned.⁶

28. Moreover, laws, even bad ones, as President Lincoln declared, should be "religiously enforced" because it is only through strict enforcement of all laws that the people can understand their adverse effects and move to elect new representatives who would ensure that the "bad" laws are repealed.⁷

29. There is no greater responsibility placed on Commonwealth officials by the people they have been charged with governing than when such officials are tasked with carrying out an election in strict accordance with the applicable laws of the Commonwealth, because it is only the faith of the people in their leaders to carry out and enforce the laws scrupulously that enables election results, and the power such elections bestow, to carry any mandate of legitimacy or the proverbial "consent of the governed."

⁶ Tapscott, Mark, *Whatever Happened to a 'government of laws, not of men'*, The Washington Examiner (Nov. 1, 2012, 12:00 A.M.), <https://www.washingtonexaminer.com/whatever-happened-to-a-government-of-laws-not-of-men>.

⁷ Goodlatte, Bob, *The President's Duty to Faithfully Execute the Law*, The Heritage Foundation, (Nov. 6, 2014), <https://www.heritage.org/report/the-presidents-duty-faithfully-execute-the-law>.

30. When the governed are given good reason to doubt that they are being treated uniformly under the law, especially when such disparate treatment occurs in the application of election law in the midst of an election, the threat this perception poses to such a government's legitimacy is likely dire.

31. In *Pierce v. Allegheny County Bd. Of Elections*, 324 F.Supp.2d 684 (W.D. Pa. 2003) the court acknowledged that the fundamental right to vote is cherished in our society because "it is preservative of other basic civil and political rights," and further recognized that the right to vote extends to all phases of voting "from being permitted to place one's vote in the ballot box" to "having that vote actually counted," rendering states unable to "draw distinctions between voters that are inconsistent with the guarantees of the Fourteenth Amendment's equal protection clause."⁸

32. In *Bush v. Gore*, 531 U.S. 98, 104-05 (2000) the Court found that Florida's disparate method of determining a legal vote amounted to an unconstitutional abridgment of the right to vote, holding that "[h]aving once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another."

33. Respondents here have and continue to perpetrate the same unconstitutional action as their Floridian counterparts in *Bush v. Gore*, namely, they have enabled voters in Philadelphia County to be treated differently than those in other counties across the Commonwealth by refusing to enforce the law as written as it relates to accepting mail-in and absentee ballot applications and providing

⁸ *Id.* at 694-695 (citing *Bush v. Gore*, 531 U.S. 98, 104 (2000); *Reynolds v. Sims*, 377 U.S. 533, 562 (1964); *United States v. Mosley*, 238 U.S. 383, 386 (1915)).

replacement ballots, thereby enhancing the right to vote of certain Commonwealth citizens over others. 25 P.S. § 3146.2a; 25 P.S. § 3146.6(b)(2), (3).

I. Mandamus is Appropriate to Compel Compliance with a Ministerial or Mandatory Duty.

“The writ of mandamus exists to compel official performance of a ministerial act or mandatory duty.” *Fagan v. Smith*, 41 A.3d 816, 818 (Pa. 2012). This Court “may issue a writ of mandamus where the petitioners have a clear legal right, the responding public official has a corresponding duty, and no other adequate and appropriate remedy at law exists.” *Id.* Each of these requirements is satisfied here.

II. Respondents Have a Ministerial and Mandatory Duty to Comply with and Enforce the Requirements of the Pennsylvania Election Code.

A. Respondents Are Not Complying with Their Mandatory Duty to Reject Applications for Mail-in and Absentee Ballots Received After the Statutory Deadline.

34. Pennsylvania law commands Respondents to accept all mail-in and absentee ballot applications that arrive by 5:00 on the Tuesday before election day. 25 P.S. § 3146.2a(a); 25 P.S. § 3150.12a(a). By extension, absentee ballot applications received *after* that deadline should not be accepted and processed.⁹

35. Respondents have stated an intention to accept applications received after the 5 p.m. statutory deadline, and according to reports, Respondents have in fact accepted applications received after the 5 p.m. deadline.

⁹ See *In re Canvass of Absentee Ballots of November 4, 2003 General Election*, at 244 (finding that “[t]he word ‘shall’ carries an imperative or mandatory meaning” citing *Obeneder v. Link Computer Corp.*, 696 A.2d 148 150 (1997)(finding that “[b]y definition, ‘shall’ is mandatory.”)).

36. Respondents are thus not complying with their ministerial and mandatory duties under Pennsylvania law.

B. Respondents Are Not Complying with Their Mandatory Duty to Require Electors to Cast Provisional Ballots if They Have Requested but Not Remitted Their Absentee Ballot.

37. Pennsylvania law provides,

Any elector who receives and votes an absentee ballot pursuant to section 1301 shall not be eligible to vote at a polling place on election day. The district register at each polling place shall clearly identify electors who have received and voted absentee ballots as ineligible to vote at the polling place, and district election officers shall not permit electors who voted an absentee ballot to vote at the polling place.

25 P.S. § 3146.6(b)(1).

38. Pennsylvania law also provides,

Any elector who receives and votes a mail-in ballot under section 1301-D shall not be eligible to vote at a polling place on election day. The district register at each polling place shall clearly identify electors who have received and voted mail-in ballots as ineligible to vote at the polling place, and district election officers shall not permit electors who voted a mail-in ballot to vote at the polling place.

25 P.S. § 3150.16(b)(1).

39. Pennsylvania law provides two voting options for electors who have requested a mail-in or absentee ballot but have either not received the ballot or not voted the ballot.

40. Pennsylvania law provides that electors who request a mail-in or absentee ballot, and are ultimately shown on the district register as having not voted such ballot, may vote by provisional ballot under 25 P.S. § 3050. 25 P.S. § 3146.6(b)(2); 25 P.S. § 3150.16(b)(2).

41. Electors who request a mail-in or absentee ballot, and are ultimately shown on the district register as having not voted such ballot, may also vote at their designated polling place if (i) the elector remits the ballot and the envelope containing the declaration of the elector to the judge of elections to be spoiled and (2) the elector signs a statement subject to the penalties under 18 P.S. § 4904 in the form prescribed by law. 25 P.S. § 3146.6(b)(3); 25 P.S. § 3150.16(b)(3).

42. Nevertheless, on October 26, 2020, Deputy City Commissioner Nick Custodio confirmed that the Respondent Commissioners had approved the provision of replacement mail-in ballots at designated city locations for all voters who had applied but had yet to receive them.¹⁰

43. Deputy City Commissioner Nick Custodio also confirmed that electors will be able to get a new mail-in ballot should the voter have used the wrong color ink when completing it.¹¹

44. Upon information and belief, Respondent Commissioners are issuing replacement mail-in and absentee in accordance with their stated intentions to do so.

45. Respondent Commissioners are thus not complying with their mandatory duty to require electors to cast provisional ballots if they have requested but have not remitted their absentee ballot in the manner required by law.

III. Respondents Have No Discretion to Accept Applications Received After the Statutory Deadline or Disregard Provisional Balloting Requirements.

¹⁰ Marin, Max. *Get in Line by 5 PM: Philadelphia Expands Satellite Election office Hours for Ballot Request Deadline*, BillyPenn, <https://billypenn.com/2020/10/26/pennsylvania-mail-ballot-deadline-philadelphia-expands-election-office-hours-5pm-cutoff/>, (last visited Oct. 27, 2020).

¹¹ *Id.*

46. Respondents may argue that the relevant sections of the Election Code are sufficiently ambiguous to support their interpretation of the statute and may even contend that their actions regarding the carrying out of the election process reflect the true spirit of the law.

47. However, the Court in *In re Canvass of Absentee Ballots of November 4, 2003 General Election*, 577 Pa. 231 (2004) emphasized that “when the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit” and that “it is only when the words of a statute ‘are not explicit’ that a court may resort to other considerations, such as the statute’s perceived purpose.”¹²

48. Here, the relevant statutory language is unambiguous, as it lays out plainly (i) the exact deadline for when mail-in and absentee ballot applications may be accepted for processing, 25 P.S. § 3146.2a(a); 25 P.S. § 3150.12a(a); and, (ii) the means by which electors who had requested a mail-in or absentee ballot but did not receive it, can vote in the applicable election, 25 P.S. § 3146.6(b)(2)-(3); 25 P.S. § 3150.16(b)(2)-(3). Respondents have a mandatory duty to enforce these requirements.

49. The above statutory language is in stark contrast to the language of 25 P.S. § 3060(e) which explicitly states that all qualified electors who arrive at a polling place before it is closed, but are unable to cast their vote prior to closing, shall nonetheless be entitled to vote.¹³

¹² *In re Canvass of Absentee Ballots of November 4, 2003 General Election*, at 243.

¹³ “When the hour for closing the polls shall arrive, all qualified electors who have already qualified, and are inside the enclosed space, shall be permitted to vote; and, in addition thereto, all those qualified electors who are in the

50. The lack of ambiguity in both statutes leaves no room for differing interpretations of what they command, one statute prohibiting the acceptance of mail-in and absentee ballot applications if they are received after the applicable deadline and the other allowing those electors in line prior to the deadline the ability to vote thereafter regardless.¹⁴

51. With regard to the distribution of new mail-in or absentee ballots, if voters used an incorrect ink or did not receive their absentee ballots, both 25 P.S. § 3050, 25 P.S. § 3146.6(b)(2), and 25 P.S. § 3150.16(b)(2) make it clear that those individuals should only be entitled to vote at their designated polling place either by provisional ballot or via the specified statutory process, 25 P.S. § 3146.6(b)(3); 25 P.S. § 3150.16(b)(3).

52. Respondents may argue that the Election Code is “to be liberally construed in order to save every possible ballot,” and, therefore, the voters should be provided the opportunity to vote absentee, regardless if this conflicts with the letter of the law.¹⁵

53. However, the situation at present is easily distinguishable from that presented in *In re April 10, 1984 Election of East Whiteland Tp., Chester County*, 483 A. 2d 1033 (1984) because (1) the issue here is not to determine whether to accept actual ballots cast or not, rather it is to ensure that the laws of the election process in the Commonwealth are uniformly applied to all of its citizens when it comes to

polling place outside the enclosed space waiting to vote and all those voters who are in line either inside or outside of the polling place waiting to vote, shall be permitted to do so, if found qualified.” 25 P.S. § 3060(e).

¹⁴ 25 P.S. § 3060(e); 25 P.S. § 3146.2a.

¹⁵ *In re April 10, 1984 Election of East Whiteland Tp., Chester County*, 483 A. 2d 1033, 1036 (1984).

applying to vote absentee and (2) even if the situation at bar involves the rejection of ballots cast inconsistent with Commonwealth law the court has recognized that “[w]hile it is true that a defect which is minor or technical in nature will not void an otherwise valid ballot, violations of substantive provisions of the Code cannot be overlooked on the pretext of pursuing a liberal construction.”¹⁶

54. Here, the Election Code explicitly and unambiguously lists the rules regarding the process by which an elector may apply and vote by mail-in or absentee ballot in the Commonwealth, therefore respondents’ non-performance of their duties in ensuring such requirements are followed is unjustifiable.

IV. Petitioner Has Standing to Seek Mandamus Relief.

55. Petitioner Hugh J. Woodruff is a Minority Inspector for the 18th Division of the 54th Ward in Philadelphia County, Pennsylvania.

56. As an inspector, Petitioner Woodruff is a member of the election board and is required, with other members of the election board, to “meet in the respective places appointed for holding the election in each election district at least thirty minutes before the hour for opening the polls on the day of each primary and election.” 25 P.S. § 3048(a).

57. On Election Day, Petitioner Woodruff might be designated by the judge of elections “to have custody of the district register and to make the entries therein,”¹⁷

¹⁶ *Id.*

¹⁷ The term “district register” means “the cards containing all or any part of the registry list of qualified electors of the same election district, as prepared by the registration commissions.” 25 P.S. § 2602(e).

as required by the Election Code. 25 P.S. § 3048(c). If Petitioner Woodruff is not so designated, he might have one of the following duties:¹⁸

58. “In districts in which ballots are used, the other inspector shall have charge of the receipt and deposit of ballots in the ballot box[.]” 25 P.S. § 3048(c).

59. “In districts in which voting machines are used, the other inspector or clerk shall have custody of the ‘Voting Check List,’ and shall place the voter’s certificates therein as they are received and approved.” 25 P.S. § 3048(c).

60. Pennsylvania law provides, “[t]he district register at each polling place shall clearly identify electors who have received and voted absentee ballots as ineligible to vote at the polling place, and district election officers shall not permit electors who voted an absentee ballot to vote at the polling place.” 25 P.S. § 3146.6(b)(1).

61. Pennsylvania law provides further, “The district register at each polling place shall clearly identify electors who have received and voted mail-in ballots as ineligible to vote at the polling place, and district election officers shall not permit electors who voted a mail-in ballot to vote at the polling place.” 25 P.S. § 3150.16(b)(1).

62. Pennsylvania law provides further, “Not less than five days preceding the election, the chief clerk shall prepare a list for each election district showing the names and post office addresses of all voting residents thereof to whom official absentee or mail-in ballots shall have been issued.” 25 P.S. § 3146.2c. The list must be “delivered to the judge of election in the election district” and posted “in a

¹⁸ “[T]he judge of election may make other arrangements for the division of the duties imposed by th[e] act, so long as each election officer and clerk is assigned some specific duty to perform.” 25 P.S. § 3048(c).

conspicuous place within the polling place [and] . . . kept so posted throughout the time that the polls are open.” *Id.*

63. Respondents’ actions will cause the aforementioned district register and mail-in and absentee ballot list to include electors who submitted an application after the statutory 5:00 p.m. deadline and who should not have received a mail-in or absentee ballot. In other words, Petitioner Woodruff and other members of the election board will be issued an inaccurate list of electors who have been issued or voted a mail-in or absentee ballot.

64. Petitioner Woodruff is required to swear an oath to conduct the election and permit or not permit voting “according to the provisions of the Constitution and laws of this Commonwealth.” 25 P.S. § 2678.

65. However, Respondents’ actions command Petitioner Woodruff to instead conduct the election using inaccurate elector information compiled in disregard of the laws of the Commonwealth.

66. Respondent’s actions thus harm Petitioner Woodruff because they cause confusion and impede his ability to adhere to his sworn oath. 25 P.S. § 2678.

67. For example, as a result of Respondents’ actions, Petitioner Woodruff will be unable to determine whether electors appearing in person to vote on Election Day were lawfully issued an official mail-in or absentee ballot such that the electors must vote provisionally or must remit their ballots prior to voting a regular ballot, or whether those electors must do neither because their mail-in or absentee ballots were not lawfully issued in the first place.

68. These harms are a direct result of Respondents' refusal to comply with their mandatory duties under Pennsylvania law.

69. As a member of the election board, Petitioner Woodruff has a clear legal right to receive correct and accurate information regarding qualified electors and absentee ballots (or to not receive intentionally inaccurate information regarding the same) so that he can faithfully comply with his sworn oath and perform the duties required of him by law.

70. Petitioner Woodruff has no other remedy to compel Respondents' compliance and to cure his injuries.

V. Requested Relief

71. Sufficient time remains to provide those electors who submitted applications and received mail-in or absentee ballots beyond the 5 p.m. deadline with notice that their ballots were received in violation of the Election Code and therefore, they should appear to vote on Election Day.

72. In addition, Respondents should be precluded from providing any additional mail-in absentee ballots to electors as it is now past the statutory deadline of October 27th at 5:00 p.m. 25 P.S. § 3146.2a(a).

73. In addition, Respondents should be precluded from issuing replacement ballots in a manner not permitted by law. Respondents should be required to enforce the provisional balloting requirements of the Commonwealth.

74. Upon information and belief, Respondents can administer this election without further disruption if they provide electors with notice regarding the issues

pertaining to their mail-in and absentee ballots, which will ensure that voters in Philadelphia County are not treated differently than electors in other counties across the Commonwealth in violation of the Equal Protection Clause of the Fourteenth Amendment. U.S. Const. Amend. XIV.

CONCLUSION

1. WHEREFORE, Petitioner respectfully requests that this Court enter an order requiring Respondents to (1) disqualify mail-in and absentee ballots issued after the statutory deadline in contravention of Commonwealth law; (2) provide notice to those electors that received mail-in and absentee ballots after the statutory deadline in violation of Commonwealth law that they must vote in person; (3) provide those electors with the option to exercise their fundamental right to vote on Election Day in the manners proscribed by Commonwealth law; (4) issue provisional ballots rather than replacements ballots to electors who claim they did not receive a mail-in or absentee ballot or marked their mail-in or absentee ballot using the wrong color ink, 25 P.S. § 3146.2a(a); 25 P.S. § 3146.6(b)(2)-(3); 25 P.S. § 3150.12a(a); 25 P.S. § 3150.16(b)(2)-(3); and, (5) award any other appropriate relief.

Respectfully submitted,

By: /s/ Walter S. Zimolong

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Pro hoc vice motion pending

Dated: October 29, 2020.

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, in accordance with Pa.R.Civ.P. 205.4(g)(1)(ii), the foregoing paper was electronically filed with the Philadelphia County Court of Common Pleas electronic filing system website and is available for review on the Philadelphia County Court of Common Pleas electronic filing system's website, which filing constitutes proper service upon counsel of record.

Date: October 29, 2020.

/s/ Walter S. Zimolong

VERIFICATION

I, Hugh J. Woodruff, state that the facts above set forth are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Signature

Date