UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Sean Parnell and Luke Negron, Plaintiffs, v. Allegheny County Board of Elections; Rich Fitzgerald, in his official capacity as a member of the Allegheny County Board of Elections; Samuel DeMarco III, in his official capacity as a member of the Allegheny County Board of Elections; and Bethany Hallam, in her official capacity as a member of the Allegheny County Board of Elections, Defendants.	No. 20-cv-1570

PROPOSED INTERVENORS-DEFENDANTS' BRIEF IN SUPPORT OF MOTION TO INTERVENE

I. INTRODUCTION

Once again, this Court is asked to weigh in on questions of state law currently being litigated in state courts, and to micromanage local election officials in administering an election. Plaintiffs Sean Parnell and Luke Negron, Republican candidates for Pennsylvania's 17th and 18th Congressional Districts respectively, attempt to invoke a previously-unrecognized (and non-existent) right to poll watch in satellite early voting sites. They also ask this Court to channel the ballots of 28,000 voters into a challenge process that requires each ballot to be individually adjudicated even though the challenge process for mail-in and absentee ballots was specifically abolished by the Pennsylvania Legislature earlier this year. The remedy they seek is dramatic; yet, like the plaintiffs in the recently dismissed *Trump for America, Inc. v. Boockvar*, No. 20-966 (W.D. Pa.), Parnell and Negron have not identified any injury to their own interests cognizable under federal law: there is still no constitutional right to poll watch, nor are they injured by state law limitations on poll watching. Furthermore, their requested remedy—subjecting tens of thousands of ballots to a time-consuming challenge process without any basis to question the eligibility of any specific voter—not only violates state law, it tramples the constitutional rights of voters and improperly injects this Court into election administration decisions that state officials are better equipped to make. It will also significantly delay the canvassing process and resolution of the election.

Proposed Intervenors DCCC and Conor Lamb have a significant interest in the outcome of this litigation. Congressman Conor Lamb is the Democratic incumbent in Pennsylvania's 17th Congressional District. DCCC is the national congressional committee of the Democratic Party as defined by 52 U.S.C. § 30101(14) with a mission of electing Democrats to Congress in Pennsylvania's 18 congressional districts including the two that include Allegheny County. If

Plaintiffs are granted the relief they request, Proposed Intervenors will be required to expend significant resources to ensure that their challenged supporters' votes are counted and to ensure adequate representation at satellite early voting sites, which, to this point, have been free of party appointed poll watchers.

Allegheny County, whose interests are defined by its duty to administer elections, does not adequately represent the interests of the Proposed Intervenors. For the reasons that follow, this Court should find that the Proposed Intervenors are entitled to intervene in this case as a matter of right under Rule 24(a)(2). In the alternative, they should be granted permissive intervention pursuant to Rule 24(b). In accordance with Rule 24(c), a proposed Answer is attached as Exhibit A.

II. BACKGROUND

Less than a week ago, on October 16, 2020, the Republican Candidates filed this lawsuit against the Allegheny County Board of Elections and its members in their official capacity. ECF No. 1. On the same day, the Republican Candidates filed their motion for a temporary restraining order. ECF No. 2. On Tuesday, this Court entered a scheduling order as to the poll watching claim, and yesterday as to the Elections Clause claim. ECF Nos. 11, 12. Proposed Intervenors are prepared to comply with the schedule set by the Court.

Plaintiffs, the Republican Candidates, assert two claims: (1) that the Equal Protection Clause of the U.S. Constitution requires Pennsylvania to allow poll watchers in satellite offices and (2) that Allegheny County's remedial plan to address 28,000 ballots that were misprinted and sent to voters violates Pennsylvania's Election Code and therefore the Elections Clause of the U.S. Constitution. Neither have merit.

A. Plaintiffs' Poll Watching Claim

The Republican Candidates demand a new, judicially-created right to staff poll watchers at satellite offices of the Allegheny County Board of Elections. But the Pennsylvania Legislature has chosen to permit poll watchers only in limited, carefully enumerated circumstances. These restrictions apply equally to poll watchers appointed by all candidates and parties. Specifically, as relevant here, all candidates are entitled to appoint two poll watchers for each election district where the candidate is on the ballot, and the poll watchers may be present "in the polling place" during a specified period beginning the morning of election day. 25 P.S. § 2687(b). Those poll watchers are entitled to challenge a voter's identity or residence if they have a good faith basis to do so.[1] A "polling place" is not the same as a Board of Elections satellite office. Whereas the Election Code defines "polling place" to mean "the room provided in each election district for voting," *id.* § 2602(q), satellite offices serve an entire county, which contains multiple election districts. And while the polling places are open only on election day, *see id.* §§ 2687(b), 3048(a), satellite offices serve voters in the weeks before the election.

There is no right to poll watch at satellite offices under Pennsylvania law. The Pennsylvania Court of Common Pleas, in a case addressing an identical claim, rejected the argument that poll watchers are entitled to serve at satellite offices of county boards of elections, concluding that these offices are not "polling places" as that term is used in the Election Code. *Donald J. Trump for President, Inc. v. Philadelphia Cnty. Bd. of Elections*, No. 200902035 (Pa. Ct. Common Pleas 2020) ("For this court to read into the Election Code the right of watchers to be present in Board of Elections' offices, which the Legislature did not expressly provide, would be the worst sort of

[1] Guidance Concerning Poll Watchers and Authorized Representatives, Pa. Dept. of State, (Oct. 6, 2020), https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Poll%20Watcher%20Guidance%20Final%2010-6-2020.pdf.

judicial activism."). That decision ends the matter. As the Pennsylvania Supreme Court explained in *Pennsylvania Democratic Party v. Boockvar*, No. 133 MM 2020, 2020 WL 5554644, at *30 (Pa. Sept. 17, 2020), the right to poll watch under Pennsylvania law is a statutory right created and defined by the Election Code.

There is also no right to poll watch under federal law. In three recent cases, state and federal courts in Pennsylvania have held as much, rebuffing efforts by candidates to expand their ability to appoint poll watchers. *See Donald J. Trump for President, Inc. v. Boockvar*, No. 2:20-CV-966, 2020 WL 5997680, at *2 (W.D. Pa. Oct. 10, 2020) (upholding statutory limits on poll watchers because "the job of an elected judge isn't to suggest election improvements, especially when those improvements contradict the reasoned judgment of democratically elected officials"); *Republican Party of Pennsylvania v. Cortés*, 218 F. Supp. 3d 396, 414 (E.D. Pa. 2016), ("Because the Pennsylvania Election Code, not the United States Constitution, grants parties the ability to appoint poll watchers, the state is free to regulate their use and its decision to do so does not implicate or impair any protected associational rights."); *Pennsylvania Democratic Party*, 2020 WL 5554644, at *30.

The Republican Candidates nonetheless ask this Court to break from these prior, recent decisions and issue injunctive relief granting parties and candidates the right to appoint poll watchers for satellite offices, presumably with the power to challenge voters.

B. Plaintiffs' Elections Clause Claim

The Republican Candidates also take issue with Allegheny County's handling of a ballot misprint. After 28,879 voters received misprinted ballots, Allegheny County sent out a new batch of ballots to those voters and developed a system to ensure that each voters' ballot was counted only once. *See* ECF No. 1-5. Specifically, the county is "manually locating and segregating all

ballots received by voters that were included in" the misprinted batch. *Id.* Only one ballot will be counted for each voter. *Id*

1. Pennsylvania's Mail Ballot Canvassing Procedures

The Republican Committees argue that Allegheny County's remedial plan violates the Election Code and therefore presents an Elections Clause violation. Specifically, they argue that it violates 25 P.S. § 3146.8(a) which provides that county boards of elections are to "safely keep the ballots in sealed or locked containers until they are to be canvassed." *See* ECF No. 1 ¶ 85. Allegheny County's remedial plan does not violate 25 P.S. § 3146.8(a) or any other part of the Election Code. The Pennsylvania Legislature has delegated certain powers and duties related to the manner in which elections are conducted to county boards of elections. County boards of elections are charged with "procur[ing] ballots" for use in elections. 25 P.S. § 2642(c). And when a mistake or omission occurs in the printing of official ballots, the Pennsylvania Legislature has delegated to county boards of election the duty to correct that mistake. 25 P.S. § 2970. County boards of elections are also charged with receiving "the returns of all primaries and elections," and "canvass[ing] and comput[ing] the same." 25 P.S. § 2642(k).

Upon receipt of absentee and mail-in ballots, county boards of elections are to "safely keep the ballots in sealed or locked containers until they are to be canvassed." 25 P.S. § 3146.8(a). But handling and reviewing the envelopes of those ballots as they are placed in sealed or locked containers does not amount to pre-canvassing or canvassing those ballots. Pennsylvania defines "pre-canvass" as "the inspection and opening of all envelopes, the removal of such ballots from the envelopes and the counting, computing and tallying of the votes reflected on the ballots." 25 P.S. § 2602(q.1). Likewise, Pennsylvania defines "canvass" as "the gathering of ballots after the final pre-canvass meeting and the counting, computing and tallying of the votes reflected on the ballots." 25 P.S. § 2602(a.1).

No provision of the Election Code prevents county boards of elections from handling or reviewing ballot envelopes, or even setting aside certain ballots for further review in advance of the pre-canvass and canvass process. *See generally* 25 P.S. § 3146.1 *et seq*. Instead, the Election Code *requires* county boards of elections to scan mail ballots as they are received in order to determine whether a voter has cast their ballot. *See id.* § 3150.16(b)(1) ("The district register at each polling place shall clearly identify electors who have received and voted mail-in ballots . . . ."). It also requires county boards of election to segregate certain absentee and mail-in ballots before canvassing begins. *See, e.g.*, *id.*. § 3146.8(d) (requiring ballots to be set aside "[w]henever" appropriate evidence indicates the voter has died prior to the opening of the ballots); *id.* § 3146.8(g)(5) (requiring ballots cast by challenged electors to be placed "in a secure, safe and sealed container").

Consistent with those provisions, many county boards of election reissue ballots to voters who have already cast official absentee or mail-in ballots. *See, e.g.*, Chester County, *2020 General Election FAQs*, https://chesco.org/4760/FAQ ("What do I do if my mail-in ballot is damaged? Do I need to return the damaged ballot? Yes, return the ballot, the secrecy envelope, and the outer envelope to Chester County Voter Services and we would reissue your ballot."). This process is also contemplated by guidance from the Department of State. *See* Pa. Dep't of State, Guidance Concerning Examination of Absentee And Mail-In Ballot Return Envelopes (Sept. 11, 2020) at 2, https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Examination%20of%20Absentee%20and%20Mail-In%20Ballot%20Return%20Envelopes.pdf. ("Further, if a ballot issuance record is cancelled by the county board of elections (e.g. voided to reissue a replacement ballot) in the SURE system, the correspondence ID on the cancelled ballot will become invalid."). When counties do reissue absentee and mail-in ballots, the Election Code does not require them to

reissue only provisional ballots—provisional ballots are issued only to in-person voters. *See* 25 P.S. §§ 3050; 3150.16(b)(2).

2. The Requested Relief

While Allegheny County's remedial plan does not violate the Election Code, the Republican Candidates' requested relief does. Their Complaint does not ask for any specific relief related to the misprinted ballots, but at the initial status conference, the Republican Candidates indicated that they want all ballots cast by these 28,000 voters to be marked as challenged ballots.

The Pennsylvania Legislature deliberately removed any opportunity to challenge voted mail-in and absentee ballots from the Election Code. Section 3146.8 governs the canvassing of absentee and mail-in ballots, and previously included an explicit challenge process for ballots. Prior to March 2020, Section 3146.8(g) provided an unambiguous right for third parties to challenge an absentee or mail-in ballot. *See* 25 P.S. § 3146.8(g)(2)-(3) (2019) ("Representatives shall be permitted to challenge any absentee elector or mail-in elector in accordance with the provisions of paragraph (3)" and "the county board . . . shall give any candidate representative or party representative present an opportunity to challenge any absentee elector or mail-in elector").

When the General Assembly passed Act 12 of 2020, however, it deliberately removed any opportunity to challenge voted absentee and mail-in ballots. The Legislature deleted from the Election Code the explicit reference to the challenge process for absentee and mail-in ballots. *See* Act of Mar. 27, 2020, P.L. 41, No. 12 ("Act 12"). Section 3146.8(g)(4) now directs that [a]ll absentee ballots which have not been challenged under section [3146.2b] and all mail-in ballots which have not been challenged under [3150.12b] . . . *shall be counted and included with the*

returns of the applicable election district . . .") (emphasis added).[2] The two provisions referenced in Section 3146.8(g)(4)—sections 3146.2b and 3150.12b—only allow challenges to absentee and mail-in ballot *applications* and require that such challenges be entered no later than 5 p.m. on the Friday before the election. The Pennsylvania Supreme Court has held the word "shall" will not be interpreted as "anything less than mandatory." *Penn. Dem. Party v. Boockvar*, No. 133 MM 2020, 2020 WL 5554644, at *25 (Pa. Sept. 17, 2020). Further, even absentee and mail-in ballot applications may only be challenged on the basis that the applicant is not a qualified elector. 25 P.S. §§ 3146.2b(c); 3150.12b(a)(2).

A challenge process for mail-in and absentee ballots threatens to delay election results significantly, especially when layered on top of an application challenge process. County boards of elections must provide notice to all challenged absentee and mail-in voters and to every individual who made the challenge. *Id.*. § 3146.8(g)(5). A formal hearing on each challenged ballot must be held. *Id*. During such hearings, county boards of elections must hear testimony relating to the challenge. *Id.* Both the challenged voter and the challenger may present witnesses at that hearing. *Appeal of Petrucci*, 38 Pa. D. & C.2d 675 (Pa. Com. Pl. 1965). Precisely to avoid the delay that would result from mass challenges of absentee and mail-in ballots, the Pennsylvania Legislature introduced the changes to the canvassing procedures in Act 12 to ensure the timely resolution of the election results in Pennsylvania. Second consideration of SB 422 (Act 12), Remarks From House Journal, March 24, 2020

[2] Mail-in and absentee ballots are still issued to voters before, and sometimes after, their applications are challenged. In those instances, the ballot itself will be set aside while the challenge to the application is pending. 25 P.S. § 3146.8(g)(5)-(7). Thus, some parts of the Election Code still refer to challenging a "ballot." 25 P.S. § 3146.8(f). In light of the clear statutory history, however, those references should be understood to refer to the ballot associated with a challenged application.

https://www.legis.state.pa.us/WU01/LI/HJ/2020/0/20200324.pdf#page=21 ("[W]e do not want a delay of several weeks before there is actually a result.").

III. LEGAL STANDARD

Intervention as of right must be granted when (1) the motion to intervene is timely, (2) the proposed intervenors possess an interest in the subject matter of the action; (3) denial of the motion to intervene would affect or impair the proposed intervenors' ability to protect their interests, and (4) the proposed intervenors' interests are not adequately represented by the existing parties to the lawsuit. Fed. R. Civ. P. 24(a)(2); *Harris v. Pernsley*, 820 F.2d 592, 596 (3d Cir. 1987). Permissive intervention may be granted when the proposed intervenors have "a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). In deciding whether to grant permissive intervention, the court should consider whether "intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

IV. ARGUMENT

A. Proposed Intervenors are entitled to intervene as of right.

Proposed Intervenors meet each of the factors governing intervention as of right.

1. The motion to intervene is timely.

First, their motion to intervene is timely. Proposed Intervenors sought intervention at the earliest possible stage of this action, and their intervention will neither delay the resolution of this matter nor prejudice any party. The Republican Candidates filed their Complaint on Friday, October 16 and served Defendants on Monday. ECF Nos. 1, 13–16. This motion to intervene follows just six days after the Complaint was filed and before Defendants have filed any substantive responses. While a telephonic conference was held to set a briefing schedule on Plaintiffs' motion for temporary restraining order, ECF No. 10, no hearing on the merits has occurred. Proposed Intervenors are prepared to meet the briefing schedule set by the Court. Under

these circumstances, the motion is timely. *See, e.g.*, *In re Cmty. Bank of N. Virginia*, 418 F.3d 277, 314 (3d Cir. 2005) (finding intervention timely where hearing schedule had been set but no hearing had yet been conducted).

2. Proposed Intervenors have a significant protectible interest in the outcome of the litigation.

Second, Proposed Intervenors have a significant protectible interest in the outcome of this litigation. "To meet this prong of the test for intervention as of right, the legal interest asserted must be a cognizable legal interest, and not simply an interest "'of a general and indefinite character.'" *Brody By and Through Sigzidis v. Spang*, 957 F.2d 1108, 1116 (6th Cir. 1992) (quoting *Harris*, 820 F.2d at 601). As an initial matter, Proposed Intervenors—Congressman Lamb, who is running against Plaintiff Parnell in the upcoming election, and DCCC, which represents the interests of every Democratic candidate for Congress impacted by the challenged policies—have the same interest in the challenged policies as Plaintiffs do. To the extent that Plaintiffs have standing then certainly Proposed Intervenors have an adequate interest to justify intervention.

Congressman Lamb and DCCC's interest in opposing the relief sought is more concrete and acute than Plaintiffs' interest in bringing the litigation in the first instance. Congressman Lamb's supporters have the right to have their ballot counted without being subject to a challenge process outside of limited circumstances permitted under Pennsylvania law. Relevant here, a voters' residency or identity may be challenged on election day at in-person polling locations. 25 P.S. § 3050(d). And voters' qualifications to vote may be challenged when they submit their applications for absentee and mail-in ballots. *See* I.B. Once challenged, the voters' ballot is subject to additional scrutiny and an adjudicatory process in front of the county election board before it will be counted. 25 P.S. §§ 3050; 3146.8.

This lawsuit seeks to expand the category of voters who will be subject to the challenge process. The Republican Candidates have asked that poll watchers be permitted at satellite locations, allowing them to challenge voters submitting absentee and mail-in ballots pursuant to the in-person voting challenge provisions. And the Republican Candidates have asked to apply this challenge process wholesale to 28,000 ballots simply because of election worker error. In related circumstances, courts have held that requiring voters to cast provisional ballots because of election official error, which is in effect what would be required here if Plaintiffs prevail, unduly burdens the right to vote. *See, e.g.*, *N.e. Ohio Coal. For Homeless v. Husted*, 696 F.3d 580, 595 (6th Cir. 2012). Proposed Intervenors' have a cognizable interest in protecting their voters from being subject to this additional burden on voting. *Donald J. Trump for President, Inc. v. Bullock*, No. CV 20-66-H-DLC, 2020 WL 5810556, at *2 (D. Mont. Sept. 30, 2020) (noting that DCCC was permitted to intervene in case regarding constitutionality of Montana's mail ballot procedures); *Donald J. Trump for President, Inc. v. Murphy*, No. 320-CV-10753-MAS-ZNQ, 2020 WL 5229209, at *1 (D.N.J. Sept. 1, 2020) (granting DCCC's motion to intervene in case regarding counting procedures for mail ballots); *Donald J. Trump for President, Inc. v. Cegavkse*, No. 2:20-CV-1445 JCM (VCF), 2020 WL 5229116, at *1 (D. Nev. Aug. 21, 2020) (granting DCCC motion to intervene to defend state election law); *Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351, at *4 (E.D. Cal. June 10, 2020) (granting DCCC's motion to intervene in challenge to vote-by-mail executive order); *Paher v. Cegavske*, Case No. 3:20-cv-00243-MMD-WGC, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (granting DCCC's motion to intervene in election procedures challenge by conservative interest group); *cf. DCCC v. Ziriax*, No. 20-CV-211-JED-JFJ, 2020 WL 5569576, at *2 (N.D. Okla. Sept. 17, 2020) ("DCCC and the Democratic candidates it supports . . . have an interest in ensuring that Democratic voters in Oklahoma have an opportunity

to express their will regarding Democratic Party candidates running for elections."). That is especially true here where Proposed Intervenors will be required to expend significant resources to assist voters in having their ballots counted if the Republican Candidates are successful in this litigation. *E.g.*. *Issa*, 2020 WL 3074351, at *3 (explaining courts "routinely" find a protectible interest where proposed intervenors will be required to "divert[] their limited resources to educate their members on the election procedures."); *cf. NEOCH v. Husted*, 837 F.3d 612, 624 (6th Cir. 2016) (holding diversion of resources sufficient for Article III purposes).

3. Denial of the motion to intervene will impair Proposed Intervenors' ability to protect their interests.

Third, denial of the motion to intervene will, as a practical matter, impair or impede Proposed Intervenors' ability to protect these interests. Where a proposed intervenor has a protectible interest in the outcome of the litigation, courts have "little difficulty concluding" that their interests will be impaired. *Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011). When considering this factor, courts "look[] to the 'practical consequences' of denying intervention." *Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 909 (D.C. Cir. 1977); Fed. R. Civ. P. 24 notes ("If an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene...."). Intervention is warranted if the proposed remedy threatens to harm intervenors. *Brody By & Through Sugzdinis v. Spang*, 957 F.2d 1108, 1123 (3d Cir. 1992); *United States v. Alcan Aluminum, Inc.*, 25 F.3d 1174, 1185 n. 15 (3d Cir. 1994).

There can be no doubt that disposition of this matter has the potential to impair Proposed Intervenors' ability to protect their interests. The Republican Candidates seek to channel the ballots of 28,000 voters into a lengthy challenge process. This challenge process not only threatens to

significantly delay the resolution of the election but will require Proposed Intervenors to expend significant resources, money and time, to ensure that their voters' ballots are counted.

4. Proposed Intervenors interests are not adequately represented by Defendants.

Fourth, Proposed Intervenors' interests are not adequately represented by Defendants. The burden to satisfy this factor is "minimal." *Dev. Fin. Corp. v. Alpha Hous. & Health Care, Inc.*, 54 F.3d 156, 162 (3d Cir. 1995). Intervenors need not show that representation *will* be inadequate, only that it "'*may* be' inadequate." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972) (emphasis added) (quoting 3B J. Moore, Federal Practice 24.09-1(4) (1969)). When one of the original parties to the suit is a government entity, whose positions "are necessarily colored by its view of the public welfare rather than the more parochial views of a proposed intervenor whose interest is personal to it," the Third Circuit has found that "the burden [of establishing inadequacy of representation] is comparatively light." *Kleissler*, 157 F.3d at 972. The Allegheny County Board of Elections' stake in this lawsuit is defined solely by its statutory duties to conduct elections. Proposed Intervenors' interest is in winning the November Election by ensuring that as many of their voters can vote as possible, and in *not* being required to expend substantial additional resources to do so. Because these interests are sharply different, political actors have routinely been permitted to intervene in actions where election officials are named as defendants. *Issa v. Newsom*, 2020 WL 3074351, at *4 ("While Defendants' arguments turn on their inherent authority as state executives and their responsibility to properly administer election laws, the Proposed Intervenors are concerned with ensuring their party members and the voters they represent have the opportunity to vote in the upcoming federal election, advancing their overall electoral prospects, and allocating their limited resources to inform voters about the

election procedures."); *see also Donald J. Trump for President, Inc.*, 2020 WL 5229209, at *1; *Donald J. Trump for President, Inc.*, 2020 WL 5229116, at *1; *Paher*, 2020 WL 2042365, at *2.

B. Proposed Intervenors are also entitled to permissive intervention.

If the Court does not grant intervention as a matter of right, Proposed Intervenors respectfully request that the Court exercise its discretion to allow them to intervene under Rule 24(b). The Court has broad discretion to grant a motion for permissive intervention when the Court determines that: (1) the proposed-intervenor's claim or defense and the main action have a question of law or fact in common, and that (2) the intervention will not unduly delay or prejudice the adjudication of the original parties' rights. *See* Fed. R. Civ. P. 24(b)(1)(B) and (b)(3); *Brody*, 957 F.2d at 1115; *League of Women Voters of Virginia v. Virginia State Bd. of Elections*, No. 6:20-CV-00024, 2020 WL 2090678, at *5 (W.D. Va. Apr. 30, 2020). Even where courts find intervention as of right may be denied, permissive intervention might nonetheless be proper or warranted. *See Hoots*, 672 F.2d at 1136.

Proposed Intervenors easily meet the requirements of permissive intervention. First, the Proposed Intervenors will inevitably raise common questions of law and fact including whether the Republican Candidates have standing, whether their supporters have a right to poll watch, and whether tens of thousands of voters should be channeled into a challenge process abolished for absentee band mail-in ballots by the Pennsylvania Legislature. Second, for the reasons set forth above, the motion to intervene is timely, and, given the early stage of this litigation, intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. Proposed Intervenors are prepared to proceed in accordance the Court's current schedule, and their intervention will only serve to contribute to the full development of the factual and legal issues before the Court.

V. CONCLUSION

For the reasons stated, Proposed Intervenors are entitled to intervention as of right. In the alternative, they request that the Court grant them permissive intervention.

Dated: October 22, 2020.

Respectfully submitted,

/s/

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**Motions for Admission Pro Hac Vice Forthcoming*

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CERTIFICATE OF SERVICE

I hereby certify that on Thursday, October 22, 2020, I filed a copy of the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/
Counsel for Proposed Intervenors