

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DONALD J. TRUMP FOR	:	CASE NO. 4:20-CV-02078-MWB
PRESIDENT, INC., et al.,	:	
	:	
Plaintiffs,	:	The Hon. Matthew W. Brann
v.	:	
KATHY BOOCKVAR, et al.,	:	
	:	
Defendants.	:	

MOTION TO INTERVENE PURSUANT TO RULE 24(a)
OF THE FED. RULES OF CIVIL PROCEDURE

AND NOW come Intervenors Mike Kelly, Kathy Barnette, Sean Parnell, Luke Negron, David Torres, Clay Breece, Dasha Pruett, Daryl Metcalfe, Cris Dush, Thomas Sankey, Kathy Rapp, Robert Kaufman, Stephanie Borowicz and PA Voters Alliances, by and through their attorneys Thomas W. King, III, and Thomas E. Breth, through Dillon McCandless King Coulter & Graham, LLP, and allege the following:

1. Intervenors are residents in various counties throughout the Commonwealth of Pennsylvania (including within the counties identified by the Boards of Elections in this suit) and all Intervenors voted in their respective counties of residence in the 2020 General Election.

2. PA Voters Alliance is a Pennsylvania unincorporated association whose members include some of the Intervenors. The PA Voter Alliance is an association with members who seek to ensure, as part of the Association's objectives, public confidence in the integrity of Pennsylvania's elections, in election results and election systems, processes, procedures and enforcement and that the public officials act in accordance with the law in exercising their obligations to the people of the Commonwealth of Pennsylvania. PA Voters Alliance asserts the rights of its members as electors within the Commonwealth of Pennsylvania.

3. Intervenor assert that Defendants' conduct violated Intervenor's First Amendment rights by illegally discriminating against the Republican Presidential Candidate, Donald Trump, and favoring the Democrat Presidential Candidate, Joe Biden.

4. Intervenor further assert that Defendants' conduct violated Intervenor's Equal Protection rights by illegally discriminating against Republican Presidential Candidate, Donald Trump, and in favor of Democrat Presidential Candidate, Joe Biden, with no rational reason or purpose.

5. Intervenor further assert that Defendants' conduct violated Intervenor's substantive due process rights to a fair and free election.

6. Intervenor further assert that they can establish a likelihood of success on the merit of their claims based upon the evidence and expert testimony that they would present, if permitted, to intervene.

7. The Supreme Court of Pennsylvania noted that the Elections Code does not provide election officials with procedures for contacting electors and allowing electors to cure defects in mail-in and absentee ballots:

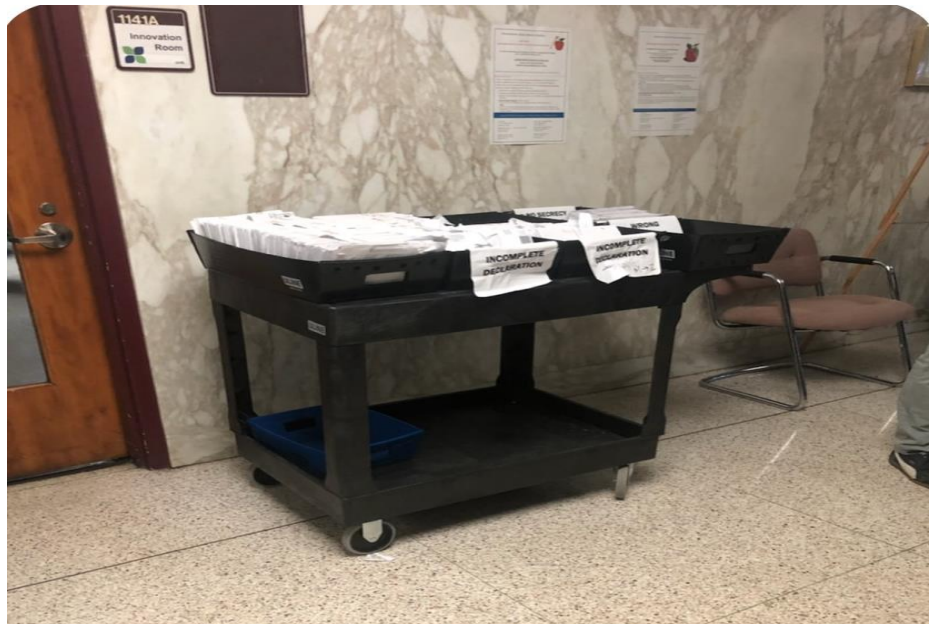
"As noted herein, although the Election Code provides the procedures for casting and counting a vote by mail, it does not provide for the "notice and opportunity to cure" procedure sought by Petitioner. To the extent that a voter is at risk for having his or her ballot rejected due to minor errors made in contravention of those requirements, we agree that the decision to provide a "notice and opportunity to cure" procedure to alleviate that risk is one best suited for the Legislature." *Pennsylvania Democratic Party v. Boockvar*, No. 133 MM 2020, 2020 WL 5554644, at *20 (Pa. Sept. 17, 2020); *see also In re: November 3, 2020 General Election*, 2020 WL 6252803, at *7 (Pa. Oct. 23, 2020)

8. The Supreme Court expressly held that "... [U]nlike in-person voters, mail-in or absentee voters are not provided an opportunity to cure perceived defects in a timely manner." *Id.* at p. 20.

9. On November 1, 2020, Frank Dean, Director of Mail-In Elections in Montgomery County, acknowledged that Montgomery County election officials regularly failed to comply with the requirement to safely keep the ballots in sealed or locked containers until pre-canvassed by the board of elections.

10. Director Dean confirmed that election officials daily evaluated and identified ballots for potential defects, such as, omitted secrecy envelopes and incomplete declarations. In addition, election officials weighed the ballot envelopes to determine whether secrecy envelopes were contained within the outer envelopes. Under-weight ballot envelopes were segregated from other ballot envelopes so that election official could permit electors to alter the envelopes.

11. The photograph below shows some of the thousands of absentee and mail-in ballots pre-canvassed by the Board of Elections in violation of the Election Code.¹ These defective ballots were not secured in any way and were easily accessible to the public.

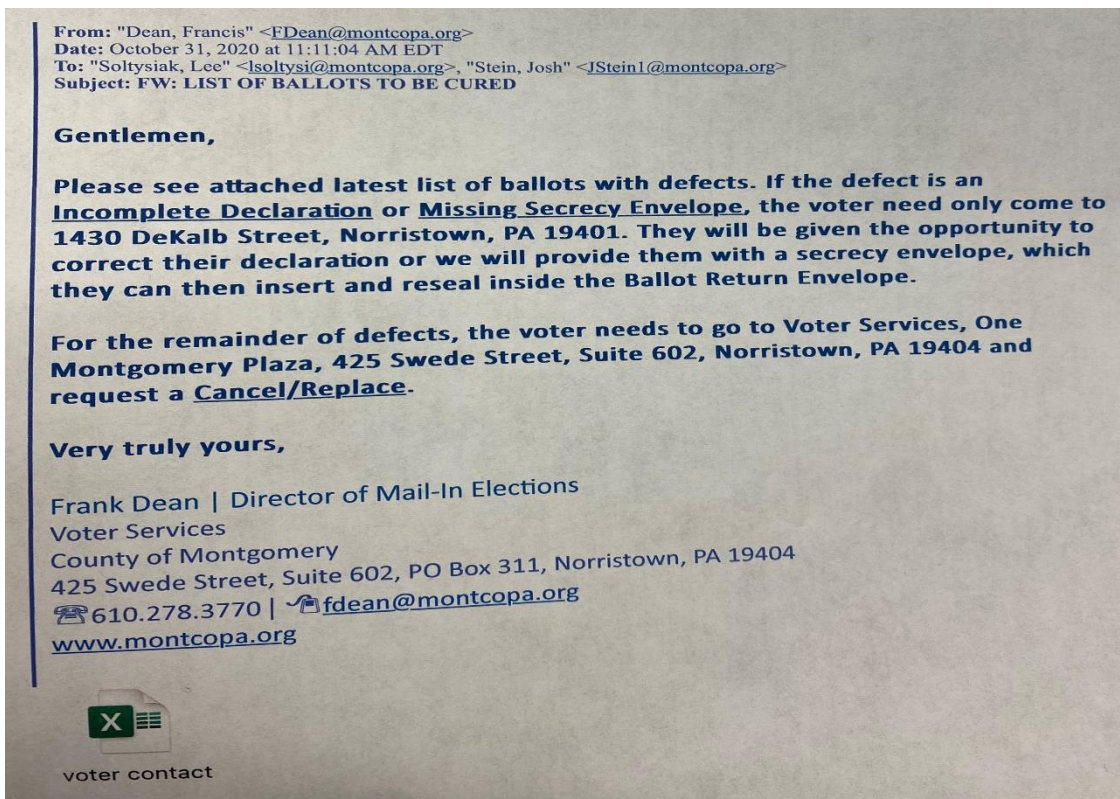


¹ This “Ballots for Sale” photo was taken on 11/01/2020 by Robert Gillies during a tour of the Montgomery County mail-in ballot storage and canvass facility.

12. In violation of electors' right to secrecy in their ballots, election officials used the information gathered through their inspection of the ballot envelopes to identify the names of electors who had cast potentially defective ballots.

13. With this information, the election officials accessed the Statewide Uniform Registry of Electors ("SURE") System to compile lists of available confidential elector information including, each elector's name, street address, email address, telephone number, precinct, voter identification number and a description of the potential defect in the ballot envelope.

14. In an October 31, 2020, e-mail, Director Dean emailed the latest list of confidential elector information to other election officials, Lee Soltysiak and Josh Stein, and wrote:



15. There is no authority within the Election Code that authorizes election officials to manually alter the information contained within the SURE system for the purposes described by Director Dean.

16. In order to cancel or replace an elector's absentee or mail-in ballot, election officials would be required to manually alter the information contained in the Commonwealth's Statewide Uniform Registry of Electors ("SURE").

17. There is no authority within the Election Code that authorizes election officials to cancel and/or replace an elector's absentee or mail-in ballot as described by Defendant Dean.

18. Further, in violation of electors' right to secrecy in their ballots, election officials used the information gathered through their inspection of the ballot envelopes to identify the names of electors who had cast potentially defective ballots.

19. The Excel spreadsheet attached to Director Dean's October 31, 2020, e-mail notes that when mail-in or absentee ballot envelopes were found to have such defects, a limited number of electors were provided with the opportunity to alter their ballot envelopes.

20. This picture shows page 1 of 124 pages that include thousands of defective ballot envelopes that elections officials were trying to "cure" in violation of the Election Code.

	A	B	C	D	E	F	G	H	I	J	K	L	M
	ID	Start time	Completion time	Email	Name	Number	Pro-Cont.	Last Name	First Name	Address Line 1	Address Line 2	Issue	
	1	10/21/20 14:35:37	10/21/20 14:40:34	anonymous		006318866-46	132023-1	Young	Celia	611 Green St	Norristown, PA 19401	No secrecy envelope	
	2	10/21/20 14:40:36	10/21/20 14:41:39	anonymous		005931654-46	530301-1	Yi	Suk Kyung	2237 Dock Dr	Lansdale, PA 19446	No secrecy envelope	
	3	10/21/20 14:35:47	10/21/20 14:41:44	anonymous		003575847-46	010100-1	Crist	Gayle	419 Haywood Road	Ambler PA 19002	Incomplete Declaration	
	4	10/21/20 14:41:43	10/21/20 14:43:16	anonymous		102920995-46	401202-2	Kohn	ralph Jr	509 Oak Road	Merion Station, PA 19066	No secrecy envelope	
	5	10/21/20 14:41:54	10/21/20 14:43:48	anonymous		015211425-46	300201-1	Clark Jr.	Thomas	573 Hoyt Rd	Huntingdon Vly, PA 19006	Incomplete Declaration	
	6	10/21/20 14:43:19	10/21/20 14:44:39	anonymous		005940134-46	580101-1	Weiss	Hedy S	1010 Boxwood Ct	King of Prussia, PA 19406	No secrecy envelope	
	7	10/21/20 14:43:55	10/21/20 14:45:13	anonymous		015625135-46	410109-1	Evans	Mildred	753 Welsh Rd APT 403	Huntingdon Vly, PA 19006	Incomplete Declaration	
	8	10/21/20 14:44:41	10/21/20 14:45:50	anonymous		103935579-46	460003-1	Oh	Sun C	904 Barbaras Ct	North Wales, PA 19454	No secrecy envelope	
	9	10/21/20 14:45:21	10/21/20 14:46:31	anonymous		005961588-46	100200-1	Sorens	Audrey	100 West Ave Apt W603	Jenkintown, PA 19046	Incomplete Declaration	
	10	10/21/20 14:45:52	10/21/20 14:47:31	anonymous		102728890-46	460008-1	Sin	Song S	115 Damsen Ln	North Wales, PA 19454	No secrecy envelope	
	11	10/21/20 14:46:39	10/21/20 14:47:38	anonymous		003625566-46	460005-1	Yencha	Virginia	301 Stockton Ct	North Wales, PA 19454	Incomplete Declaration	
	12	10/21/20 14:47:33	10/21/20 14:48:11	anonymous		006373261	460008-1	Hong	James	101 Jonathan Dr	North Wales, PA 19454	No secrecy envelope	
	13	10/21/20 14:47:45	10/21/20 14:49:03	anonymous		005822555-46	590301-1	Mooney Sr.	Donald	1120 York Rd APT 205	Willow Grove, PA 19090	Incomplete Declaration	
	14	10/21/20 14:48:12	10/21/20 14:49:07	anonymous		103746637-46	400601-1	Ciongoli	Suzanne K	211 Broughton Ln	Villanova, PA 19085	No secrecy envelope	
	15	10/21/20 14:49:09	10/21/20 14:50:06	anonymous		006173491-46	120002-1	Stricker	Carrie T	203 Stepmey Pl	Narberth, PA 19072	No secrecy envelope	
	16	10/21/20 14:49:10	10/21/20 14:50:38	anonymous		006061195-46	540501-1	Palme	Robert	1650 Susquehanna Rd 219	Dresher, PA 19025	Incomplete Declaration	
	17	10/21/20 14:50:17	10/21/20 14:51:28	anonymous		006413561-46	010109-1	Hoover	Carolyn	110 Forest Ave Apt A	Ambler, PA 19002	No secrecy envelope	
	18	10/21/20 14:50:43	10/21/20 14:51:55	anonymous		110209001-46	490303-1	Nauman	Haseeb	134 Plymouth Rd Uni 1108	Plymouth Mtn, PA 19462	Resolved	
	19	10/21/20 14:51:30	10/21/20 14:52:42	anonymous		006070883-46	310404-1	Szczurek	Genevieve L	26 North Ave	Wyncote, PA 19095	No secrecy envelope	
	20	10/21/20 14:52:43	10/21/20 14:54:04	anonymous		110837405-46	420002-1	Rhodarmer	Gary	none	none	Resolved	
	21	10/21/20 14:52:06	10/21/20 14:54:57	anonymous		005737265-46	08502-1	Becker	Joan	Moreland Towers, 36 Moreland Ave E, 802	Hatboro, PA 19040	Incomplete Declaration	
	22	10/21/20 14:54:06	10/21/20 14:55:24	anonymous		110454289-46	460003-1	Prabhadesai	Anuya Sachin	102 Sterling Dr	North Wales, PA 19454	Resolved	
	23	10/21/20 14:55:06	10/21/20 14:56:05	anonymous		005787995-46	360301-1	Stewart	Mary	454 Avenue A B	Horsham, PA 19044	Incomplete Declaration	
	24	10/21/20 14:55:36	10/21/20 14:56:38	anonymous		006205876-46	401003-1	Powance	Constance	102 Pennsylvania Ave	Bryn Mawr, PA 19010	Resolved	
	25	10/21/20 14:56:10	10/21/20 14:57:21	anonymous		006275737-46	410100-1	Wright	Walter	cloria Del Manor, 753 Welsh Rd 116	Huntingdon Vly, PA 19006	Incomplete Declaration	
	26	10/21/20 14:56:40	10/21/20 14:57:47	anonymous		016220045-46	300202-1	Brill	Karen D	1551 Huntingdon Pike APT A320	Huntingdon Vly, PA 19006	Incomplete Declaration	
	27	10/21/20 14:57:49	10/21/20 14:58:27	anonymous		005797771-46	310404-1	Wilson	Ernestine	n/a	n/a	Incomplete Declaration	
	28	10/21/20 14:57:27	10/21/20 14:58:42	anonymous		016044690-46	300202-1	Kaufman	Marie	1551 Huntingdon Pike APT A217	Huntingdon Vly, PA 19006	Incomplete Declaration	
	29	10/21/20 14:58:31	10/21/20 14:59:24	anonymous		006116303-46	300401-1	McGinley	Marguerite E	229 Ray St	Jenkintown, PA 19046	Incomplete Declaration	
	30	10/21/20 14:59:28	10/21/20 15:00:13	anonymous		107744416-46	460006-1	Buckenberg	Nicole	n/a	n/a	Incomplete Declaration	
	31	10/21/20 15:00:17	10/21/20 15:01:06	anonymous		014817048-46	300402-1	McShane	Brian Stephen	583 Crefeld Ave	Elkins Park, PA 19027	Incomplete Declaration	
	32	10/21/20 14:58:49	10/21/20 15:01:45	anonymous		021049107-46	400403-1	Altman-McMahon	Michael	260 Montgomery Ave W, APT 303	Audubon, PA 19403	Resolved	
	33	10/21/20 15:01:08	10/21/20 15:01:48	anonymous		005978435-46	430304-1	Masters	Arlene N	15222 Shannondell Dr	n/a	Incomplete Declaration	
	34	10/21/20 15:01:51	10/21/20 15:02:34	anonymous		006238072-46	300702-1	Stein	Sandra E	1250 Greenwood Ave APT 520	Jenkintown, PA 19046	Incomplete Declaration	
	35	10/21/20 15:01:48	10/21/20 15:02:49	anonymous		006163995-46	300601-1	Keim	John	628 Harrison Ave APT A	Glenside, PA 19038	Incomplete Declaration	
	36	10/21/20 15:02:38	10/21/20 15:03:17	anonymous		009596705-46	510002-1	Beese	Mary Ann	702 Twining Way	Collegedale, PA 19426	Incomplete Declaration	
	37	10/21/20 15:02:55	10/21/20 15:03:58	anonymous		015045166-46	590302-1	McAndrew	Mariann	1113 Easton Rd N.	Willow Grove, PA 19090	Incomplete Declaration	
	38	10/21/20 15:03:18	10/21/20 15:04:03	anonymous		005726801-46	65W02-1	Barnett	Ronald B	2062 Julia Dr	Conshohocken, PA 19428	resolved	
	39	10/21/20 15:01:58	10/21/20 15:04:24	anonymous		10722281-46	050900-1	Mackowski	Matthew	309 Washington St APT 3107	Conshohocken, PA 19428	USPS issue	
	40	10/21/20 15:04:05	10/21/20 15:05:44	anonymous		005902791-46	65W02-1	Salle-Barnett	Caryl Marie	2062 Julia Dr	Conshohocken, PA 19428	resolved	
	41	10/21/20 15:04:26	10/21/20 15:05:44	anonymous		104093627-46	050300-1	Romey	Jason	301 Washington St APT 1129	Conshohocken, PA 19428	USPS issue	
	42	10/21/20 15:04:04	10/21/20 15:06:19	anonymous		020676226-46	400403-1	Altman-McMahon	Elizabeth	*None	*None	resolved	
	43	10/21/20 15:05:00	10/21/20 15:06:21	anonymous		006383410-46	320002-1	Tillman	Delores	217 Montgomery Ave Hillcrest Village	Boyetown, PA 19512	Incomplete Declaration	
	44	10/21/20 15:06:24	10/21/20 15:07:07	anonymous		102877706-46	110302-1	Delconte	Ralph Jr	1008 Third St W	Lansdale, PA 19446	Incomplete Declaration	
	45	10/21/20 15:05:55	10/21/20 15:07:25	anonymous		110062625-46	350301-1	Harrington	Erika Eden	2058 Maple Ave APT G3-11	Hatfield, PA 19440	USPS issue	

21. Intervenors also seek an Order from this Honorable Court directing Secretary Boockvar to secure and cease alterations on the records of the SURE System with respect to the 2020 Presidential Election and to prevent the wholesale elimination of the evidence contained on the SURE System as part of a plan to replace the System, at least while election contests/suits are pending. The Secretary of State has otherwise publicly announced her office's intention to proceed with plans to eliminate the SURE System.

22. Despite the clear legal prohibition against efforts to "cure" absentee and mail-in ballot envelopes, Defendant Boockvar issued guidance just hours before Election Day directing county boards of elections to provide electors who have cast defective absentee or mail-in ballots with provisional ballots and to promptly update the SURE system.

23. Deputy Secretary for Elections and Commissions of the Commonwealth issued an email which stated:

Sent: Monday, November 2, 2020 8:38 PM

To: Marks, Jonathan

Subject: Important DOS Email - Clarification regarding Ballots Set Aside During Pre-canvass

*** This is an external email. Please use caution when clicking on links and downloading attachments ***

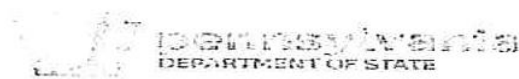
Dear County Election Directors,

The Department of State has been asked whether county boards of elections can provide information to authorized representatives and representatives of political parties during the pre-canvass about voters whose absentee and mail-in ballots have been rejected. The Department issued provisional ballot guidance on October 21, 2020, that explains that voters whose completed absentee or mail-in ballots are rejected by the county board for reasons unrelated to voter qualifications may be issued a provisional ballot. To facilitate communication with these voters, the county boards of elections should provide information to party and candidate representatives during the pre-canvass that identifies the voters whose ballots have been rejected and should promptly update the SURE system.

Kind regards,

Jonathan M. Marks

Deputy Secretary for Elections & Commissions
Pennsylvania Department of State
302 North Office Building | Harrisburg, PA 17120
☎ 717.783.2035 📠 717.787.1734
✉ jmarks@pa.gov



24. In order to obtain a provisional ballot on Election Day, an elector who previously requested an absentee or mail-in ballot must sign an affidavit stating "I do solemnly swear or affirm that my name is ... and that this is the only ballot that I cast in this election." 25 P.S. §3146.8; 25 P.S. §3050.

25. If an elector has already submitted an absentee or mail-in ballot and that ballot was received by his or her county board of elections, the elector cannot truthfully affirm that the provisional ballot is the only ballot cast by them in the election. The provisional ballot is in fact a second ballot cast by them.

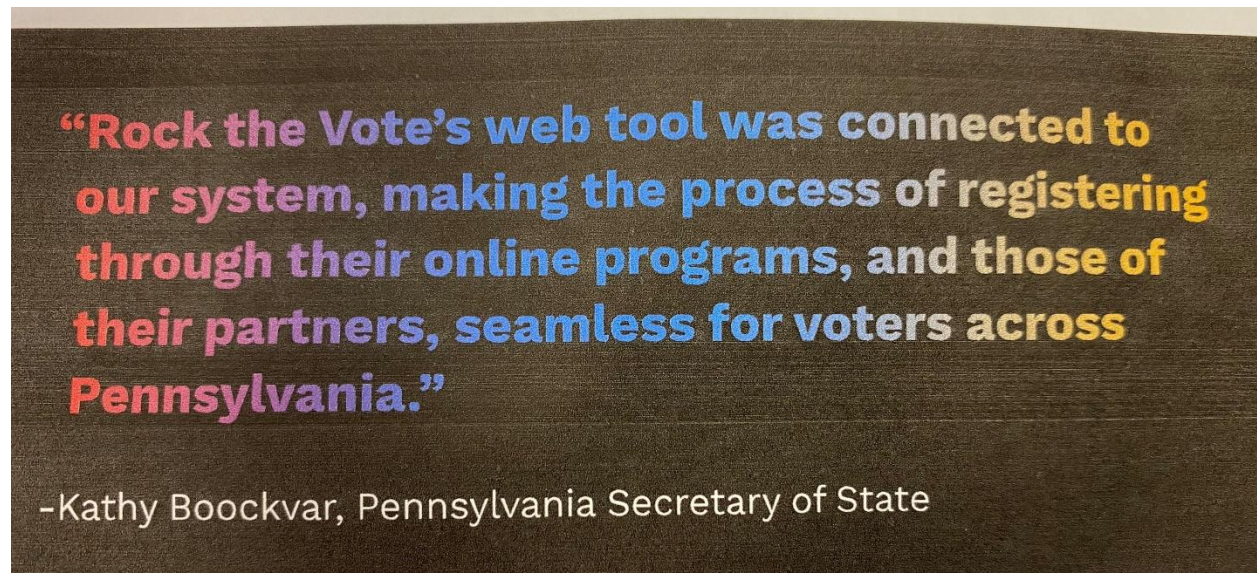
26. Defendants' actions appear to be coordinated with the Democratic Party that apparently considered the matter to be URGENT.



27. Intervenor assert that there were almost 100,000 provisional ballots cast in the 2020 General Election.

28. Intervenor will produce two expert witnesses whose reports are attached hereto and marked Exhibit “A” and “B”. Such experts will identify significant and dispositive discrepancies/error or misconduct which would call into questions the results of the Presidential Election in Pennsylvania. If the Intervenor’s Motion is granted, they will file the Pleading marked as Exhibit “C” and attached hereto. Intervenor will also produce various fact witnesses to substantiate the assertions made in the Motion to Intervene and in the pleading attached hereto.

29. In addition, Defendant Kathy Boockvar, without statutory authorization or legal authority, provided select organizations that have close ties to the Democratic Party and common goals, to directly access to the Commonwealth's SURE System. Defendant Boockvar is quoted as stating:



30. Finally, Intervenor assert that they would be irreparably harmed if an improperly elected President of the United States is sworn in violation of the United States Constitution.

31. In light of the massive nature of Defendants' illegal conduct, it would be an historic constitutional violation of massive proportions to allow Democrat Presidential Candidate Biden to take office based upon election results within the Commonwealth of Pennsylvania that cannot be properly and legally certified as accurate.

32. Intervenors can establish that a significant number of the votes cast by absentee and mail-in ballots were directly impacted by Defendants' illegal and inappropriate conduct.

33. Intervenors can establish that a significant number of the votes cast by provisional ballots were directly impacted by Defendants' illegal and inappropriate conduct.

34. The votes cast using voting machines on Election Day more accurately reflect the will of electorate within the Commonwealth because these votes were less susceptible to Defendants' illegal and inappropriate conduct.

WHEREFORE, showing the above, the proposed Intervenors pray this Honorable Court for an Order granting their Motion to Intervene, and as set forth herein.

Respectfully submitted,

Dated: November 21, 2020

/s/ Thomas W. King, III
Thomas W. King, III (PA I.D. No. 21580)
Email: tking@dmkcg.com
Thomas E. Breth (PA I.D. No. 66350)
Email: tbreth@dmkcg.com
Special Counsel for the Amistad Project
of the Thomas More Society
Dillon, McCandless, King, Coulter
& Graham, L.L.P.
128 West Cunningham Street
Butler, PA 16001
Telephone: (724) 283-2200
Facsimile: (724) 283-2298
Counsel for Intervenors

/s/ Timothy P. Griffin
Timothy P. Griffin (VA. I.D. No. 83195)*

Email: tgriffin@thomasmoresociety.org
Special Counsel for the Amistad Project
of the Thomas More Society
Thomas More Society
Amistad Project
115 Sandiges Road
Amherst, VA 24521
Telephone: (434) 660-6198

**Pro Hac Vice Pending*