



September 17, 2021 Petition for Review; and 2) to enjoin the Respondents and/or the Committee from entering any contract with any as-yet unidentified third-party vendor that the Committee intends to select for the purpose of reviewing the private voter information, including dates of birth, addresses, driver's license numbers and social security numbers, of all registered voters in the Commonwealth, which the Respondents seek to obtain through the September 15 Subpoena. In support of this Application, the Petitioners state as follows:

**RELEVANT FACTUAL BACKGROUND**

**The September 15, 2021 Subpoena**

1. On September 15, 2021, Respondent Senator Cris Dush, as Majority Chair of the Committee, convened a Committee meeting for the sole purpose of issuing to the Acting Secretary of the Commonwealth ("Secretary") the September 15 Subpoena, which seeks to compel the Secretary to produce several categories of election-related materials from the Pennsylvania Department of State ("DOS").
2. The materials demanded under the September 15 Subpoena include names, dates of birth, driver's license numbers, portions of social security numbers and addresses of all registered voters in the Commonwealth.
3. The September 15 Subpoena also demands information relating to the method each voter used to vote in the 2020 General Election, and date of each voter's last voting activity.

4. The September 15 Subpoena directs the Secretary to produce the requested election materials and voter records by October 1, 2021 at 4:00 p.m.

5. The September 15 Subpoena followed several weeks of public statements from Respondents Senators Jacob Corman and Cris Dush which made clear that the Respondents plan to use the Committee to investigate whether any individual who voted in the November 2020 election did so unlawfully.

### **Unidentified Third-Party Vendor**

6. In the course of the September 15, 2021 Committee meeting, Senator Dush referred to his intent to retain a “third-party vendor” for the purpose of reviewing the voter information obtained through the Subpoena and “investigating” allegations of fraud, despite the absence of any basis for the claimed allegations.

7. Senator Dush was unable to describe or identify the “vetting” process for selecting a vendor, much less any process for ensuring that any selected vendor must follow strict protocols for ensuring the security of the voters’ private information.

8. Senator Dush intends to use Commonwealth taxpayer resources to contract with an as-yet unidentified third-party vendor that would be granted access to the private voter information.

## **Previous Investigations Into The 2020 General Election**

9. As part of certifying the results of the 2020 General Election, the county Boards of Election conducted audits of their results, which demonstrated the accuracy of the results.

10. The DOS conducted a “risk-limiting audit,” which also made clear that the 2020 General Election results were accurate and free from interference.

11. The General Assembly conducted extensive factfinding about the 2020 General Election through three separate committees: the Senate Special Committee on Election Integrity and Reform, the House State Government Committee, and the Pennsylvania Election Law Advisory Board. Each of these committees authored a report that detailed recommended changes to the Election Code. In response to certain of the recommended changes, the General Assembly, along partisan lines, passed legislation seeking to amend the Election Code, which Governor Wolf ultimately vetoed.

## **The Petitioners’ Challenge To The September 15 Subpoena**

12. The Committee’s purpose in issuing the September 15 Subpoena, as reflected in press releases and public comment, is an apparent attempt to give legitimacy to claims of voter fraud in the 2020 General Election for which no evidence exists and which the courts have repeatedly dismissed. *See, e.g. Donald J. Trump for President, Inc. v. Secretary of Pa.*, 830 Fed. Appx. 377, 390 (3d Cir.

2020) (noting that “no allegation of fraud (let alone proof)” exists to justify reviewing the 2020 election results, and further noting that the “reasonable county-to-county variation” is nothing more than the normal “jot and tittle of state election law.”). *See also Kelly v. Commonwealth*, 240 A.3d 1255, 1259 (Pa. 2020), *cert. denied sub nom. Kelly v. Pennsylvania*, 141 S. Ct. 1449, 209 L. Ed. 2d 171 (2021) (Wecht, J., concurring) (noting that Petitioners had “failed to allege that even a single mail-in ballot was fraudulently cast or counted.”).

13. Despite public statements concerning the need for an audit and to address grievances remaining among certain voters in respect to the 2020 General Election, the Respondents have attempted to justify their action on the pretext that the information sought through the September 15 Subpoena and the investigation that they seek to conduct would be in furtherance of a “legislative purpose,” which, they contend, may result in legislative amendments to the Election Code.

14. Through the September 15 Subpoena, the Respondents actually seek to engage in an unprecedented and unauthorized challenge to the 2020 Election, which violates the Pennsylvania Election Code and the Pennsylvania Constitution.

15. Even if the “legislative purpose” that the Respondents attempt to contrive for an investigation were not a subterfuge, the arbitrary October 1, 2021 deadline set forth in the September 15 Subpoena would not allow for any reasonable investigation to be conducted or for any lawful legislation to be adopted

for the on-going November 2021 General Election and the 2022 Primary Election is not scheduled until May 17, 2022.

16. On September 17, 2021, the Petitioners filed with this Court their Petition for Review, in the nature of a complaint for declaratory and injunctive relief. With the Petition for Review, the Petitioners seek to prevent the violation of the privacy rights of all Pennsylvania voters. *See* Petitioners' September 17, 2021 Petition for Review, which is incorporated by reference here.

17. The Petitioners have asked the Court to declare that the Respondents' efforts to undertake an election contest and audit of the 2020 election are untimely and unlawful under the Pennsylvania Election Code and the Pennsylvania Constitution.

18. As detailed in the Petition for Review, Petitioners have challenged the September 15 Subpoena as an untimely election contest that violates the separation of powers; as an unlawful audit of the election that violates the Pennsylvania Election Code and the role of the Executive branch in conducting audits; and as an impermissible violation of the privacy rights of Pennsylvania's voters.

19. This Court has previously looked beyond any labels placed on untimely election disputes and has evaluated the substance of those disputes. *See Metcalfe v. Wolf*, Case No. 636 M.D. 2020, 2020 WL 7241120 at \*1 (Pa. Commw. Ct. Dec. 9, 2020) (dismissing Petition for Review and holding that legislative

petitioners sought to hold an “improper and untimely election contest” despite their styling the challenge as a petition for mandamus).

**NATURE OF THE SPECIAL RELIEF REQUESTED**

20. The relief that the Petitioners seek with this Application is limited.

21. The Petitioners ask the Court: 1) to extend the time required for response to the September 15 Subpoena; and 2) to enjoin the Respondents and/or the Committee from entering any contract with any as-yet unidentified third-party vendor that the Committee intends to select for the purpose of reviewing the private voter information sought through the September 15 Subpoena.

22. No legitimate legislative investigation could occur and no lawful legislative act could be undertaken between the October 1, 2021 deadline set forth in the Subpoena and the November 2, 2021 General Election. Thus, extending the time for response to the subpoena until after the issues raised in the Petition for Review have been finally resolved will not result in any type of harm or unreasonable delay.

23. Further, as set forth in the Petition, the Respondents seek to expend taxpayer resources for a third-party vendor who would be tasked with reviewing private voter information for all registered Pennsylvania voters. The “investigation” that a third-party vendor would be retained to conduct would violate voters’ privacy rights and would be unlawful. The injunctive relief that the

Petitioners seek here would prevent the waste of taxpayer resources for an illegitimate aim.

**STANDARDS FOR GRANTING THE SPECIAL RELIEF REQUESTED**

24. The grant of injunctive relief is appropriate where: (1) the relief requested is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; (2) greater harm would result by denying the relief than by granting it; (3) the requested relief will maintain the status quo; (4) the petitioner establishes a clear right to relief; (5) the relief requested is reasonably suited to abate the offending activity; and (6) the relief requested does not adversely affect the public interest. *See, e.g., Com. ex rel. Corbett v. Snyder*, 977 A.2d 28, 41-49 (Pa. Commw. Ct. 2009).

25. The petitioner must address each of these elements. However, the relative importance of each element is not necessarily equal. Where “substantial legal questions” are at play and the petitioners would face significantly greater harm if the court denied the injunction than if the status quo is preserved, the court must afford great weight to the balance of harm. *See Fischer v. Dept. of Pub. Welfare*, 439 A.2d 1172, 1174 (Pa. 1982) (granting preliminary injunction preserving status quo until Commonwealth Court decided the constitutionality of the statute at issue).



26. A preliminary injunction “is designed to preserve the status quo pending final resolution of the underlying issues.” *Id.* Thus, where “the threat of immediate and irreparable harm to the petitioning party is evident, that the injunction does no more than restore the status quo and the greater injury would result by refusing the requested injunction than granting it, an injunction may properly be granted where substantial legal questions must be resolved to determine the rights of the respective parties.” *Id.* See also *Wolk v. School Dist. of Lower Merion*, 228 A.3d 595, 611 (Pa. Commw. Ct. 2020) (“The party seeking a preliminary injunction ‘need not prove the merits of the underlying claim, but need only show that substantial legal questions must be resolved to determine the rights of the parties.’”) (quoting *Snyder*, 977 A.2d at 43)).

27. A great imbalance of harms, coupled with the presence of substantial legal questions, lessens the weight of the other elements underlying a request for injunctive relief.

**REASONS FOR GRANTING  
THE LIMITED SPECIAL RELIEF REQUESTED HERE**

**Relief Is Necessary To Prevent Immediate And Irreparable Harm**

28. The Petitioners ask this Court to extend the October 1, 2021 deadline for responding to the September 15 Subpoena so that the Court has a full opportunity to review the merits of the Petition for Review before the private

information of all of Pennsylvania's registered voters is exposed, causing irreparable, irreversible harm.

29. The exposure of voter information, including portions of social security numbers and driver's license numbers, would be permanent and irreversible. Once this type of information is exposed and provided to an unidentified third-party vendor as selected in a partisan manner, it can never again be effectively concealed.

30. The Petitioners also seek to prevent the wasteful misuse of taxpayer resources on an unidentified third-party vendor.

31. Pennsylvania taxpayers should not be forced to fund the actions of an unknown third-party vendor, with unknown and undefined security protocols, where its intended investigation would be illegal.

**Greater Harm Would Result By Denying The Relief Than By Granting It**

32. If the Court were to deny the relief that the Petitioners request in this Application, Pennsylvania voters would experience immediate threats to their personal data and the misallocation of their taxes toward illegal purposes.

33. By contrast, the Respondents cannot assert any immediate need for the information demanded with the September 15 Subpoena and have no need to contract with a third-party vendor to review information that should not be released to a third-party vendor.

34. The nearest election that any legislative action could influence will not take place until the Primary Election scheduled for May 17, 2022, allowing for ample time to grant the relief requested without any harm to the Respondents, while protecting millions of Pennsylvanians from immediate and irreparable harm.

### **Granting The Requested Relief Would Maintain The Status Quo**

35. The relief that the Petitioners request would allow the status quo of election law in the Commonwealth, as it currently exists, to be maintained.

36. The respective positions and status of the Respondents and Petitioners would continue, until the issues the Petitioners have raised challenging the September 15 Subpoena have been finally resolved.

### **The Petitioners' Right To Relief Is Clear**

37. The Petitioners have presented three counts in their Petition for Review and their right to relief is clear under each count.

38. Constitutional law is clear: the Judiciary has the exclusive authority to investigate and determine the results of a contested Presidential election, including the 2020 General Election. The Legislature does not.

39. The September 15 Subpoena reflects the Committee's efforts to engage in a fishing expedition and an illegitimate election challenge.

40. The September 15 Subpoena seeks to search voluminous records of private voter information for "evidence" that supports – in Majority Chair Dush's

own words – unproven allegations related to the 2020 General Election and imaginary fraudulent votes.

41. Any legitimate legislative investigation into the election processes, even if specific to concerns of certain prior elections, would require an examination of information that is already available to the Committee, including publicly available DOS Guidance, relevant Election Code provisions, information related to the two completed audits of the 2020 General Election, and testimony from county election officials. As set forth in the Petition for Review, the extensive information the Respondents seeks is intended to further their aim of rehashing the 2020 election, which is an untimely election contest.

42. The Respondents also seek to conduct an election audit, in violation of the Election Code.

43. Audits of executive functions, including the administration of elections, are an exclusive function of the executive branch and not the Legislature, as the General Assembly has recognized in various statutes.

44. The Auditor General has the power to conduct audits for the Commonwealth.

45. In the context of elections, the DOS also has the power to audit election results and did, in fact, conduct two audits of the 2020 General Election,

neither of which revealed any evidence of the fraud that the Respondents are fishing to find.

46. The September 15 Subpoena seeks highly detailed information with the only real purpose of verifying the results of the past Presidential election.

47. Senator Dush has stated that the third-party vendor that the Respondents seek to retain must have experience in conducting audits. Respondents have thus themselves labeled their efforts as an “audit.”

48. Finally, the Pennsylvania Election Code and the DOS regulations protect the requested information from disclosure.

49. Title 25 of the Pennsylvania Consolidated Statutes entrusts specific executive officials with protecting the information that a voter must disclose when registering to vote.

50. The requirements of Title 25 are so serious that the General Assembly included a criminal provision for the unauthorized access to voter records and private information.

51. The September 15 Subpoena seeks unauthorized access to voter records and private information that Pennsylvania law prohibits.

52. For these reasons and for the reasons set forth in the Petition for Review, the Petitioners’ right to relief is clear. The limited relief requested in this

Application will allow for final determination of the issues that the Petitioners have raised.

**The Relief Requested Is Limited And Would  
Address The Immediate Threat Of Irreparable Harm**

53. The Petitioners' requested relief merely maintains the status quo until a final determination on the merits.

54. The relief is narrowly tailored and does not extend further than this maintaining the status quo until a final determination is made.

**The Relief Requested Is In The Public Interest**

55. The requested relief serves the public by ensuring that no protected information of any Pennsylvania resident is exposed before a final determination regarding the illegitimacy of the September 15 Subpoena.

56. The requested relief also serves the public by preventing the Respondents from hastily and irreversibly expending taxpayer money on an effort that is wasteful, invasive and illegal.

For the foregoing reasons, the Petitioners ask this Court to grant the requested relief.

Respectfully submitted,

DENTONS COHEN & GRIGSBY P.C.

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

SENATOR JAY COSTA, SENATOR ANTHONY H. WILLIAMS, SENATOR VINCENT J. HUGHES, SENATOR STEVEN J. SANTARSIERO and SENATE DEMOCRATIC CAUCUS,

Petitioners,

v.

SENATOR JACOB CORMAN III, SENATE PRESIDENT PRO TEMPORE, SENATOR CRIS DUSH and SENATE SECRETARY-PARLIAMENTARIAN MEGAN MARTIN,

Respondents.

No. 310 MD 2021

**ORDER**

AND NOW, this \_\_\_ day of \_\_\_\_\_, 2021, upon consideration of the Petitioners' Application for Special Relief and the response thereto, it is hereby ordered that the Application is granted as follows:

1. The October 1, 2021 deadline for response to the September 15, 2021 Subpoena is extended until final resolution of this matter; and
2. The Respondents and/or the Committee is enjoined from entering into any agreement or contract with a third-party vendor for the purpose of reviewing any of the information sought with the September 15, 2021 Subpoena or any related investigative purpose.

\_\_\_\_\_  
J.



## **CERTIFICATION OF SERVICE**

I, hereby certify that I have this day served a true and correct copy of the foregoing *Application for Special Relief* upon the following persons by U.S. First Class Mail, Postage Prepaid, which service satisfies the requirements of Pa. R.A.P. 121:

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*/s/ Clifford B. Levine* \_\_\_\_\_