



Voter Protection Program

**“Objections” at the Joint
Session of Congress:
Countering the Lies**

JANUARY 6, 2021



The Voter Protection Program is a nonpartisan project that advances legal strategies and recommendations to protect the vote and make sure every vote is counted. We have a specific focus on the unique tools available to state attorneys general, governors, secretaries of state, and law enforcement officials. Our goal is to promote election integrity and ensure safe, fair, and secure elections. For more information: www.voterprotectionprogram.org.

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INTRODUCTION

During the January 6, 2021, Joint Session of Congress, President Trump's supporters in the House of Representatives and Senate have pledged to reject the electoral votes from several states based on claims of—or, more often, mere allusions to—fraud.

The allegations are meritless. They are either (1) entirely without basis, (2) reflect a profound ignorance of state election law and procedure, and/or (3) seek to argue that the results are unreliable simply because there is no way definitively to prove a negative, that is, that there was no fraud.

The allegations are also past their sell-by date. For two months, President Trump and his supporters have tested their theories in multiple courts of law, and they have ultimately lost every single time. When offered opportunities to present evidence, they have failed. That they remain muddled does not render the situation confusing: President Trump lost the election and nothing in the law or the facts can change the outcome.

Nevertheless, these myths continue to hold sway over some. So, in this guide we offer a state-by-state compendium of the falsehoods that have been circulating and attendant rebuttals. We do so to negate the deleterious effects of the president's ongoing public conspiracy mongering and the lies that we anticipate will be advanced at the Joint Session on January 6. The myths may persevere on the fringe, but we will continue to fight them. Americans can rest easy knowing they are false. The election was free, fair, and conclusive.

ARIZONA

1. Ballot Duplication Errors

Myth:

Votes for Donald Trump were “[flipped](#)” to Joe Biden during the ballot duplication process in Maricopa County. During an inspection of a small sampling of ballots, there were several errors that took votes away from Donald Trump. If that “[error rate](#)” were applied to all the ballots cast in Maricopa County, Donald Trump would win the election.

Facts:

The Chair of the Arizona Republican Party, Kelli Ward, filed a [lawsuit](#) seeking to overturn the presidential election results, claiming that ballot “duplication” errors in Maricopa County led to votes for Donald Trump not being counted.

In Arizona, if a ballot is damaged or defective and cannot be read by the county’s tabulation machines, the ballot is sent to a bipartisan ballot duplication board. Duplication is also required for electronic ballots—ballots sent by uniformed or overseas voters. The duplication boards review the ballot and duplicate the voter’s choices onto a new ballot. The board has the option to use software that auto-populates the duplicated ballot based on a scanned image of the original ballot, then the board reviews the duplicated ballot and makes any necessary corrections to match the original ballot. The board also has the option to manually duplicate the ballot by filling in each vote bubble by hand. The duplicated ballot is then run through the county’s tabulation machines and counted. In total, Maricopa County duplicated 27,869 ballots in this election.

Ward’s lawsuit claimed that the duplication boards may have made errors when duplicating ballots because the duplication software was “highly inaccurate” and required the duplication boards or observers to “catch” errors. She requested a “reasonable inspection,” and the court allowed her to inspect a sampling of 1,626 duplicated ballots. During the inspection, the parties identified nine duplication errors. Six ballots originally cast for Trump had no vote or an overvote on the duplicated ballot (+6 for Trump), and two ballots originally cast for Biden had no vote or an overvote on the duplicate (+2 for Biden). One ballot had a vote for Trump, but the duplicated ballot was erroneously marked as a vote for Biden (+2 for Trump).

These duplication errors resulted in a net gain of six votes for Donald Trump (+8 for Trump, +2 for Biden), or an error rate of .37% in Trump’s favor. Even if this error rate from the small sample size were applied to the entire universe of duplicated ballots, Trump would net only 103 votes, which falls far short of Joe Biden’s [10,457-vote margin](#) of victory in Arizona.

After a two-day evidentiary hearing, the trial court [rejected](#) Ward’s claims and upheld the election results in Arizona. The court found that these few duplication mistakes were innocent human errors, there was no evidence of fraud or misconduct, and the errors wouldn’t make a difference in the outcome of the election. Ward appealed, and the Arizona Supreme Court [affirmed](#). All seven justices unanimously held that “the statistically negligible error presented in this case falls far short of warranting relief” in an election contest, and Ward failed “to present any evidence of ‘misconduct,’ ‘illegal votes’ or



that the Biden Electors ‘did not in fact receive the highest number of votes for office,’ let alone establish any degree of fraud or a sufficient error rate that would undermine the certainty of the election results.”

2. Signature Verification

Myth:

Maricopa County did not let Republican poll observers stand close enough to properly observe election workers while they verified signatures on mail-in ballots. Because observers were unable to see the process up close, election workers may have counted ballots with fraudulent signatures. Without sufficient oversight, these officials may have allowed ineligible voters, or even “dead people” to vote by mail.

Facts:

Arizona has used mail-in voting for [more than two decades](#). Before sending mail-in ballots to Arizona voters, election officials take multiple steps to ensure that the voter is properly registered to vote, still resides at the address listed on their voter registration records, and either requested an early ballot for this election or signed up for Arizona’s Permanent Early Voting List (“PEVL”). When county election officials receive a mail-in ballot, they review the ballot return envelope to make sure it is signed, then compare the signature to the signatures on file in the voter’s registration record. The purpose of the signature review process is to verify the voter’s identity.

Arizona law does not require county election officials to allow observers to watch the signature verification process, but Maricopa County allowed political party observers to do so in this election. In Kelli Ward’s [lawsuit](#) (described above) seeking to overturn the presidential election in Arizona, she claimed that Republican poll observers did not get to sufficiently observe Maricopa County’s signature verification process for mail-in ballots. These observers claimed that they were standing ten to twelve feet away and could not see the voters’ signatures, even when using “binoculars.”

Based on this alleged lack of observation access, Ward requested an “inspection” of mail-in ballots, and the court allowed an inspection of a sampling of 100 ballot return envelopes. Ward hired an expert witness to review the signatures on these 100 ballots to look for evidence of forgery. During the inspection, no one (including Ward’s expert) found any evidence of fraudulent signatures or any reason not to count the mail-in ballots. The Maricopa County Elections Director confirmed that all 100 signatures matched the signatures on file in the county’s voter registration records.

At the end of a two-day evidentiary hearing, the trial court [rejected](#) Ward’s claims about alleged insufficient “observation,” in part because Republican poll observers never raised the claim at a time when it could have been remedied, and instead waited until after Donald Trump lost the election. The court also found that Maricopa County election officials “faithfully” followed Arizona’s signature verification requirements, and there was no evidence of fraud or misconduct. On appeal, the Arizona Supreme Court unanimously [affirmed](#) and upheld Arizona’s election results.

3. Litigation Challenges

Myth:

Ongoing litigation alleges serious problems with Arizona's vote-count procedures, including regarding fraud and ballot duplication.

Facts:

Arizona courts have decisively rejected these claims of fraud and the supposed issues with the election. While it is true that a meritless petition for certiorari remains pending at the United States Supreme Court, the issues raised revolve around state law. Both the Arizona trial court and Arizona Supreme Court rejected the contest suit filed by Kelli Ward. The Arizona Supreme Court decided only state law issues, and in fact expressly held that it “need not decide” if the “federal ‘safe harbor’ deadline applies to this contest.” The trial court held a hearing over two days and found her claims had no merit. The trial court found no fraud, no misconduct, and no illegal votes. The court entered an order “confirming” that President-Elect Biden had won the state's electoral votes. *See Ward v. Jackson*, No. CV2020-015285 (Ariz. Super. Ct., Maricopa Cnty. Dec. 4, 2020). The Arizona Supreme Court unanimously affirmed that ruling, finding that “the challenge fails to present any evidence of ‘misconduct,’ ‘illegal votes’ or that the Biden Electors ‘did not in fact receive the highest number of votes for office,’ let alone establish any degree of fraud or a sufficient error rate that would undermine the certainty of the election results.” *Ward v. Jackson*, CV-20-0343-AP/EL, slip op. at 6 (Ariz. Dec. 8, 2020), *pet. for cert. filed*, No. 20-809 (U.S. Dec. 11, 2020).

Additionally, with respect to ballot duplication, it is reviewed by a two-person bipartisan ballot duplication board. An inspection of duplicated ballots revealed nine errors, which resulted in a net gain of only six votes for Donald Trump. Even if this “error rate” were applied in Trump's favor to the entire universe of duplicated ballots in Arizona, Trump would net only 103 votes, which falls far short of Joe Biden's 10,457-vote margin of victory in Arizona. The claim that ballot duplication errors could have affected “over four hundred fifty thousand ballots statewide” is false. There were only 27,869 total duplicated ballots in Maricopa County. As noted above, the inspection revealed only nine errors in those ballots, and the Arizona Supreme Court held that even if that error rate were applied to all duplicated ballots, it would not change the outcome of the election.

Moreover, just last night, the Arizona Supreme Court affirmed the dismissal of another meritless election contest that was filed in Pinal County—*Burk v. Ducey*, CV-20-0349-AP/EL (Ariz. Jan. 5, 2021). After “consider[ing] the record, the trial court's December 15, 2020 minute entry, and the briefing,” a four-member panel of the Court, concluded that the “contest here failed” because the contestant “is not a qualified elector” and the contest “failed to file a timely contest that complied with the election challenge statutes.” As a result of this ruling, there are no other election contests pending in an Arizona court.

GEORGIA

1. Georgia's signature verification process

A Georgia statute requires election officials to compare the signatures of absentee voters on absentee ballot envelopes to the voters' signatures on registration rolls and if the signatures do not match to reject the ballots, subject to voters' ability to cure their ballots.¹

In March 2020, pursuant to a settlement agreement, the Secretary of State agreed to require three voting registrars to participate in signature verification before an absentee ballot was rejected and to implement procedures to facilitate voters' ability to cure rejected signatures. The new signature verification regulation was implemented for the 2020 general election.

Myth:

- Objectors reportedly will claim that the settlement agreement unlawfully altered the statutorily prescribed process for reviewing signatures, making it much more difficult to challenge signatures that appeared to be invalid.
- The Objectors have pointed to a lawsuit filed by Lin Wood which asserted that the settlement agreement is unconstitutional because the Secretary of State unilaterally altered Georgia election laws.² The Objectors claim that the lawsuit was dismissed by the lower court for largely procedural reasons but that a petition is pending before the Supreme Court.
- President Trump has suggested that a substantial decrease in the percentage of absentee ballots rejected in 2020 compared to 2018 demonstrates that the process failed to detect fraudulently cast ballots.

Facts:

Both federal and Georgia state courts have rejected the argument that the signature verification procedures adopted after the settlement agreement violate the law and upheld the validity of the procedure used for signature validation in the 2020 election.³

- The courts held that the Georgia statute on signature verification gave the Secretary authority to adopt implementing regulations and that the regulation issued by Secretary Brad Raffensperger pursuant to the settlement is consistent both with the statute and with constitutional requirements.⁴

¹ O.C.G.A. § 21-2-386(a).

² See *L. Lin Wood, Jr., v. Brad Raffensperger, et al.*, 1:20-cv-04651-SDG (N.D. Ga.).

³ See *Wood v. Raffensperger*, 2020 WL 6817513 (N.D. Ga. Nov. 20, 2020), *aff'd*, 2020 WL 7094866 (11th Cir. Dec. 5, 2020); *Trump v. Kemp*, 1:20-cv-05310 (N.D. Ga. Jan. 5, 2021); *Boland v. Raffensperger*, Dist. Ct. Fulton County, Docket No. 2020CV 343018, *aff'd*, Case no. S21M0565 (Ga., Dec. 14, 2020).

⁴ *Wood*, 2020 WL 6817513 at *10; *Trump*, 1:20-cv-05310 at *22-*25; *Boland*, No. 2020CV 343018 at 5 n. 3, 5-6.

- Steven Grimberg, a Trump-appointed federal district court judge in the Northern District of Georgia, dismissed the Lin Wood lawsuit in an opinion that fully addressed the merits of Wood’s claims.⁵ In other words, the dismissal was not for largely procedural reasons, as Objectors will claim.
- The Trump-appointed judge found that requiring three registrars rather than one to examine signatures before rejecting a voter’s ballot was not only permissible under the statute and the Constitution but was applied in a wholly uniform manner across the entire state and raised no equal protection or due process issues.⁶
- The opinion was unanimously affirmed by a panel of three federal appellate court judges, including a judge appointed by Trump and a judge appointed by President George W. Bush.⁷ While the plaintiff has asked the Supreme Court to review the case, there is no indication that the Court will do so. The plaintiff asked the Court to consider the case on an expedited basis so that it would be resolved before Georgia’s runoff election on January 5 and before Congress met on January 6.⁸ The Court ignored the request.
- Both federal and state courts held that the signature verification process established pursuant to regulation resulted in “more thorough verification.”⁹
- Both federal and the state courts concluded that the validly adopted regulation should be expected to result in fewer signature rejections not because it made it more difficult to challenge unlawfully cast ballots, but because it was designed to “reduce the number of lawful ballots that are improperly thrown out.”¹⁰
- Trump-appointed Judge Grimberg found that “the percentage of absentee ballots rejected for missing or mismatched information and signature is the exact same for the 2018 election and the General Election” (.15%) despite the increase in the total number of absentee ballots submitted.¹¹

Moreover, courts rejected the argument that the process for matching signatures violated equal protection or due process rights, finding that the theory on which such arguments were based had been “squarely rejected.”¹²

In upholding the validity of the signature verification procedure, Judge Grimberg noted that the settlement agreement had been publicly available and had been in effect for at least three elections prior to the November 2020 election.¹³ No party objected to the regulation before its adoption or its

⁵ *Wood*, 2020 WL 6817513 at *10.

⁶ *Id.* at *9 -*12.

⁷ *Wood v. Raffensperger*, 981 F.3d 1307, 1318 (11th Cir. 2020).

⁸ Motion for Expedited Consideration, *Wood v. Raffensperger*, No. 20-14418 (S. Ct.), filed Dec. 8, 2020.

⁹ *Boland*, No. 2020CV343018 at 5 n. 3; *Wood*, 2020 WL 6817513 at *10.

¹⁰ *Boland*, No. 2020CV343018 at 5 n. 3; *Wood*, 2020 WL 6817513 at *10.

¹¹ *Wood*, 2020 WL 6817513 at *10.

¹² *Id.* at *8-*9.

¹³ *Id.* at *7.

implementation, during the 2020 primary election, or at any time prior to the November election. Only after the November election was this objection raised.¹⁴

2. Alleged unlawful votes in the Georgia election

Myth:

The Objectors point to an election [contest](#) filed by the Trump Campaign in the Fulton County Superior Court which alleges that numerous categories of people cast votes unlawfully, including:

- “As many as 2,560 felons with an uncompleted sentence.” (See Georgia contest, ¶ 61)
- 66,247 underage individuals. (¶ 64)
- 2,423 unregistered people. (¶ 67)
- 4,926 people who were registered to vote in both Georgia and another state. (¶¶ 73-81)
- 1,043 individuals who had illegally registered to vote using a postal office box as their habitation. (¶ 87)
- 8,718 dead people. (¶ 103)

Facts:

- The majority of these numbers were generated by two so-called “experts,” Matthew Braynard and Bryan Geels.
 - Braynard does not have the appropriate qualifications to issue expert testimony on these topics, he does not follow standard methodology in the relevant scientific field, and the survey underlying several of his opinions is fatally flawed. See [Report](#) of Prof. Stephen Ansolabehere for a thorough analysis of the flaws in Braynard’s methodology. (Other expert reports also rebutting these claims are available [here](#) at entry 62).
 - Geels, on the other hand, is prone to misinterpreting minor errors that he found. As MIT Professor Charles Stewart noted in his expert report: “The anomalies Mr. Geels uncovers are generally minor typographical and clerical errors that are neither signs of fraudulent behavior nor [of] lax control over election administration in the state.” (See [Appendix A](#) for Stewart’s expert report).
- The numbers of alleged unlawful votes were generated by cross-checking databases. Matching voters’ names from one database to entries in other databases (like change of address or death records) is highly unreliable, in part because different people with identical names and birth dates are not uncommon in large databases. Georgia’s voter registration database includes

¹⁴

Id.

about 7.7 million people. When it is cross-checked with databases containing hundreds of millions of datapoints, numerous mistaken matches are inevitable.

- As Ansolabehere notes, clerical errors, inconsistencies, and typographical errors in fields such as name, address, and date of birth can create significant errors in attempts to link records across different lists. This includes the example of linking a voter file to National Change of Address, telephone records, death registries, or across different states' voter files. Both false positives (matches that should not have occurred) and false negatives (matches that did not occur but should have) arise.¹⁵
- With the slap-dash sort of effort made by the so-called experts, small inconsistencies that are not in fact errors will result in false positives or false negatives. For example: how does such cross-checking account for someone who may be “Elizabeth” in one list but “Liz” in another? Or a name that appears with a “Jr.” in one list but not in another?
- The methodological flaws of the Braynard and Geels reports were so readily apparent that even basic spot checks revealed how error-filled the allegations were. During a hearing in the Georgia legislature, one state representative, Bee Nguyen, laid out what her quick [research](#) found:
 - Many of the so-called postal boxes which voters were alleged to have unlawfully registered as their habitation were actually the mail centers at large condo complexes.
 - Of the voters alleged to have voted in both Georgia and another state (the so-called “double voters”) Nguyen looked up the first 10 names on the list and found 8 of them listed in Georgia property records as residents. Taking another name from the list—a woman allegedly registered in Georgia and Arizona—she confirmed this person’s residence and voting record in Georgia, and she found another voter with the exact same name listed in the Arizona voter rolls, born in the same year but with a different birth date. She also identified another person on the list in a similar situation: voters had the same name but different birth dates. One of the names on the list of people who had allegedly voted in two states was a person who shared the same name with his father. The Georgian voted in Georgia. His father voted in Maryland. There was no cross-border voting.
- [Reporters](#) who have chased down the allegations also have found that they are riddled with errors.
 - For example, one of the so-called dead voters, “James Blalock,” was in fact his live widow, Mrs. James Blalock, voting while alive.
 - And the dead Linda Kesler did not vote. The live Lynda Kesler did.
 - Meanwhile Deborah Jean Christiansen, a Roswell, Georgia, resident who died in 2019 did not vote. Her voter registration was canceled in 2019, and the county did not mail her a ballot for the Nov. 3, 2020 election. But a different woman also named Deborah Jean

¹⁵ See Ansolabehere, [Response to Matthew Braynard Expert Report](#), at ¶ 32.

Christiansen, who was born in the same year, did vote in Cobb County, Georgia, in 2020. However, that woman has a different birthday and social security number.

- The allegation that people under-17 were allowed to vote misunderstands Georgia [law](#) which allows 17-year-olds to pre-register to vote as long as they turn 18 by election day.

3. Election Observers

Myth:

- Objectors allege that certain Republican observers had a statutory right to observe the electoral process yet have claimed they were not permitted to be present or were prevented from effectively observing the process.
- Objectors also point to affidavits in which a handful of observers claim they observed ballots voted for Trump placed in stacks of ballots being counted for Biden or otherwise being mishandled.

Facts:

- The designation of poll watchers by political parties and establishment of procedures to permit them to observe the electoral process is the responsibility of each of the 159 counties in Georgia. There is no statewide monitoring of this function.
- Furthermore, in an election conducted in the midst of a pandemic, each of the 159 counties was required to balance the close presence of poll watchers to election workers against the requirements for social distancing essential for the protection of public health.
- Given the disparate circumstances existing in thousands of polling places in 159 counties and the absence of detailed statewide standards and monitoring, compounded by the difficulty of conducting an election in the midst of a pandemic, it would be surprising if some poll workers did not believe that a different balance should have been struck between supervision and public safety.
- Nothing in observers' claims was sufficient to establish that the integrity of the electoral process had been compromised.
- As the Trump-appointed federal district court judge in Georgia found, there is no legal "authority providing for a right to unrestrained observation or monitoring of vote counting, recounting, or auditing."¹⁶
- No court has credited claims that ballots were mishandled or miscounted, and Georgia conducted a hand audit of every ballot cast and two recounts. The audit and recounts would have caught any significant error in tabulating ballots.

4. Court Cases Addressing Georgia's Election

¹⁶ Wood, 2020 WL 6817513 at *12.

Myth:

The Objectors claim that lawsuits relating to the election have been dismissed on procedural grounds and have failed to substantively examine the constitutional challenges and allegations of misconduct.

Facts:

Federal and state courts have thoroughly vetted the merits of constitutional challenges and allegations of misconduct and have found that they are meritless.

- Multiple courts have rejected claims that Georgia’s election was unlawful or tainted by misconduct on the merits. As one court explained, allegations of misconduct “rest on speculation,” not fact.¹⁷
- Objectors claim a lawsuit challenging the signature-verification settlement was dismissed on procedural grounds. As noted above, a Trump-appointed judge fully examined the merits and found that the signature-verification procedures adopted after the settlement were consistent with state statute and the Constitution.¹⁸ The opinion was affirmed by a panel of three federal appellate court judges, including a judge appointed by Trump and a judge appointed by President George W. Bush.¹⁹ While the plaintiff has asked the Supreme Court to review the case, there is no indication that the Court will do so.
- Objectors point to a lawsuit involving voting software and the mishandling of ballots that was purportedly dismissed for lack of standing. The case challenged the use of Dominion voting machines in Georgia. In that case, the court found that the plaintiffs improperly filed the suit in federal instead of state court, that plaintiffs lacked standing, and that plaintiffs waited too long to bring the suit when they could have challenged the Dominion machines well before the election.²⁰ Finally, the court found that it could not “substitute its judgment for that of two-and-a-half million Georgia voters who voted for Joe Biden.”²¹ In a very similar suit challenging use of Dominion voting machines in Arizona, brought by the same attorney, the court reached the merits and found that the complaint relied on implausible “innuendos” and “wholly unreliable sources.”²² The court concluded: “Allegations that find favor in the public sphere of gossip and innuendo cannot be a substitute for earnest pleadings and procedure in federal court.”²³
- Objectors also point to the Trump election challenge pending in Fulton County Court. They say that the “case was dismissed for procedural reasons” and that the case “has not been assigned to a judge.” In fact, the case was assigned to a judge in Fulton County, who ordered that the case would proceed in the normal course.²⁴ Trump challenged the judge’s authority to hear the

¹⁷ *Boland*, No. 2020CV343018; *see also Trump*, 1:20-cv-05310 at *22; *In re Enforcement of Election Laws*, No. SPCV2000982-J3 (Ga. Sup. Ct. Chatham Cnty. Nov. 5, 2020).

¹⁸ *Wood*, 2020 WL 6817513 at *9 -*12.

¹⁹ *Wood*, 981 F.3d at 1318.

²⁰ 12/7/2020 Transcript, *Pearson v. Kemp*, No. 1:20-cv-4809 (N.D. Ga.), available at

<https://www.washingtonpost.com/context/judge-dismisses-sidney-powell-bid-to-overturn-biden-win-in-georgia/4f4ffba0-0d59-4516-aea9-738b52f7f925/>.

²¹ *Id.* at 43.

²² *Bowyer v. Ducey*, No. CV-20-02321-PHX-DJH, 2020 WL 7238261, at *14 (D. Ariz. Dec. 9, 2020).

²³ *Id.* at *16.

²⁴ Order on Case Status, *Trump v. Raffensperger*, No. 2020-cv-343255 (Ga. Sup. Ct. Fulton Cnty. Dec. 9, 2020).

case in the Georgia Supreme Court, which refused to intervene.²⁵ The case has not resulted in a ruling at this point. However, Trump filed a similar lawsuit in federal court, claiming the state court was not acting expeditiously in resolving the matter. The federal court denied Trump's motion for emergency relief, rejecting Trump's arguments and finding "the delay is [Trump's] own doing."²⁶ Regardless, the allegations in the suit are meritless, as explained in point 2, above.

²⁵ *Trump v. Raffensperger*, No. S21M0561 (Ga. Dec. 12, 2020).

²⁶ *Trump*, 1:20-cv-05310 at 16.

MICHIGAN

1. Allegations that More than 10,000 Confirmed or Suspected Deceased Individuals Voted

Myth:

A potential objection is that thousands of votes on behalf of deceased individuals were allegedly counted.

Facts:

The Michigan Department of State (DOS) has already rebutted such claims in detail, explaining that, “[b]allots of voters who have died are rejected in Michigan, even if the voter cast an absentee ballot and then died before Election Day. Those who make claims otherwise are wrong, and the lists circulating claiming to show this is happening are not accurate.” Michigan Department of State, *Deceased voters’ ballots are not counted*, Michigan.gov (last visited Jan. 6, 2021), https://www.michigan.gov/documents/sos/Deceased_Voters_Fact_Check_707424_7.pdf.

The DOS notes that it “and news organizations have drawn samples and reviewed samples of lists claiming to show votes cast by deceased individuals in Michigan,” and they are “not aware of a single confirmed case showing that a ballot was actually cast on behalf of a deceased individual.” *Id.* Reasons why these claims have proven to be inaccurate include:

- Many of the allegedly deceased individuals are alive and registered to vote in Michigan, but simply have names similar to deceased individuals who are not registered in the Qualified Voter File.
- “In some cases, because of a clerical error, a ballot will be recorded as cast by a deceased individual when it was actually cast by a living individual with a similar name. For example, a ballot that was cast by John A. Smith, Jr., who is alive, might be accidentally recorded as having been received by John A. Smith, Sr., who is deceased.” *Id.*
- “The Qualified Voter File might contain an erroneous birthdate or a placeholder birthdate that might make it look like an individual must be deceased based on the birthdate, when in fact that voter is alive. For example, an individual might have been born in 1990 but the birthdate was accidentally entered as 1890. Or, if the birthdate is unknown, a placeholder birthdate such as Jan 1, 1900 might be used.” *Id.*
- “In some cases, a deceased individual is still registered to vote, but this does not mean the individual actually voted. Michigan uses death data from the Social Security Administration Master Death Index to regularly remove the names of individuals who are deceased from the Qualified Voter File. In some cases, this process may not identify an individual who has died, in which case that individual will stay on the voter rolls until the local election clerk identifies the



deceased individual's record and cancels it. There are safeguards in place to ensure an absentee ballot cannot be voted on behalf of another individual (deceased or otherwise), including a signature match performed on the signed absentee ballot envelope." *Id.*

2. Antrim County

Myth:

In *King v. Whitmer*, plaintiffs put forth a host of baseless allegations, including with respect to events that occurred in Antrim County that were the result of human error and were quickly identified and corrected. See [First Amended Complaint](#), at 45–66, *King v. Whitmer*, No. 2:20-cv-13134-LVP-RSW (E.D. Mich. Dec. 7, 2020), ECF No. 6.

Facts:

As the Michigan Department of State explained in a November 7, 2020 fact sheet, the error “in reporting unofficial results in Antrim County Michigan was the result of a user error that was quickly identified and corrected; did not affect the way ballots were actually tabulated; and would have been identified in the county canvass before official results were reported even if it had not been identified earlier.” Michigan Department of State, *Isolated User Error in Antrim County Does Not Affect Election Results, Has no Impact on Other Counties or States* Michigan.gov (last visited Jan. 6, 2021), https://www.michigan.gov/documents/sos/Antrim_Fact_Check_707197_7.pdf. The human error involved a failure to update all systems in such a way that they could properly communicate with one another, the result of which was that ballots were tabulated correctly, but the unofficial reports were erroneous. The error was swiftly corrected.

Furthermore, what happened in Antrim County does not have implications for the accuracy of results in other counties because, as DOS explains, “[e]ven if the error had not been noticed and quickly fixed, it would have been caught and identified during the county canvass when printed totals tapes are reviewed.” *Id.* Again, “[t]his was an isolated error, there is no evidence this user error occurred elsewhere in the state, and if it did it would be caught during county canvasses, which are conducted by bipartisan boards of county canvassers.” *Id.*

3. Lack of a Pre-Certification Audit as Allegedly Contrary to Michigan Law

Myth:

Members of Congress may also object on the basis that there was no pre-certification audit of the election results in Michigan, even though one was requested, demanded, or even allegedly promised.

Facts:

Michigan’s statutory scheme is clear that any audits, if appropriate, should happen after the certification is complete. See [Costantino v. City of Detroit](#), No. 20-014780-AW (3rd Cir. Wayne Cty., Mich. Nov. 13, 2020). Canvassing the returns and certifying the results is a purely ministerial function.

Recounts, not audits, are the procedures provided by law to challenge the election result, and even recounts do not delay certification. Michigan law makes clear that an audit “is not a recount and does



not change any certified election results.” MCL 168.31a(2). Accordingly, there is no valid basis to delay certification for an audit, which explicitly has no bearing on the certification process.

On November 19, 2020, Michigan Secretary of State Jocelyn Benson issued a [statement](#) making clear that her office was “on track to perform a statewide risk-limiting audit of November’s general election, which we’ve been building towards and planning for over the last 22 months, as well as local procedural audits of individual jurisdictions.” *See also* Michigan Department of State, *Statewide audit will be paired with audits in more than 200 jurisdictions* Michigan.gov (last visited Jan. 6, 2021), <https://www.michigan.gov/som/0,4669,7-192-26847-547004--,00.html>. Under MCL 168.847, however, this audit could only take place after statewide certification of the results, which is the predicate for the release of ballots and voting equipment.

4. Absent Voter Counting Boards at the Detroit TCF Center

Myth:

Objections may be raised concerning activities and events at Detroit’s centralized Absent Voter Counting Board (“AVCB”) at the TCF Center on November 3 and 4, 2020. Allegations of suspicious, fraudulent, or discriminatory activity at the TCF Center formed the core of many of the post-election lawsuits filed in Michigan’s state and federal courts. *See, e.g., Complaint, Costantino v. City of Detroit*, No. 20-014780-AW (Mich. 3d Cir. Wayne Cty., Nov. 13, 2020).

The thrust of the likely objection can be summed up as follows: Hundreds of Republicans filed affidavits in various actions alleging widespread, allegedly suspicious activity at the TCF Center that may have represented improper attempts to increase the number of votes for Biden (*i.e.*, to “steal the vote”), and Republican challengers were discriminated against and obstructed from meaningfully observing and challenging the irregularities — thus the true outcome is unknowable.

None of these allegations hold up to any scrutiny, and no court has found them credible.

Facts:

In *Costantino v. City of Detroit*, No. 20-014780, slip op. at 3 (Mich. 3d Cir. Wayne Cty., Nov. 13, 2020), Judge Timothy Kenny “analyz[ed] the affidavits and briefs submitted by the parties” and concluded that the TCF election administrators “offered a more accurate and persuasive explanation of activity within the [AVCB] at the TCF Center.” The affidavits submitted in support of a motion for preliminary injunction seeking to block certification of Wayne County’s results were “decidedly contradicted” and “incorrect and not credible.” *Id.* at 12.

Highly respected and long-time State Elections Director Christopher Thomas—who served under governors of both major parties—came out of retirement to serve as special consultant to Detroit and led challenger relations at the TCF Center. He has explained in an affidavit submitted in *Costantino* that “there was no fraud, or even unrectified procedural errors, associated with processing of the absentee ballots for the City of Detroit,” (Thomas Aff. at ¶ 40) ([attached hereto as Appendix C](#)), and that most, if not all, of the alleged irregularities were actually election workers following proper procedure. The misinterpretations of these actions by Republican challengers reflect a lack of understanding about the basics of the election law and procedure and are indicative of the lack of training of those particular Republican challengers.

NEVADA

Many of the attacks on the validity of the vote count in Nevada were comprehensively addressed and rejected after extensive examination of the factual record by Judge James Todd Russell of the First Judicial District Court of the State of Nevada in his order of December 4, 2020. That order granted the motion of the Biden electors to dismiss the statement of contest brought by the Trump electors, and together with other cases, definitively rejected claims of wrongdoing.²⁷ Judge Russell's order was [unanimously affirmed by the Supreme Court of Nevada](#) on December 8, 2020.²⁸

1. Ballot Harvesting

Myth:

Nevada's expansion of mail-in voting resulted in illegal ballot harvesting and fraudulent votes for mail-in ballots.

Facts:

Nevada courts found no fraud for any votes, including mail-in votes.

- “The Court finds there is no evidence that voter fraud rates associated with mail in voting are systematically higher than voter fraud rates associated with other forms of voting. ...[T]he illegal vote rate totaled at most only 0.00054 percent.”²⁹
- Nevada voters followed the law with respect to the collection of ballots.
- Secretary Cegavske, a Republican, defended the integrity of the election. In fact, Secretary Cegavske issues her own “myth versus fact” document that debunks all these conspiracies.³⁰ She states that “we have yet to see any evidence of wide-spread fraud.”³¹ She noted that four separate cases questioned the integrity of the election in Nevada. In all cases, “[a]fter examining records presented, each case was discounted due to a lack of evidence.”³² She said that “we have not been presented with evidence of non-citizens voting in the 2020 election.”³³

2. Voter Fraud – Double Votes, Etc.

Myth:

Fraud occurred at multiple points in the voting process at rates that exceed the margin of victory in the presidential race. Voter fraud rates associated with mail-in voting are systematically higher than voter fraud rates associated with other forms of voting. Some voters were permitted to vote twice and were sent and cast multiple mail ballots. Some voters received and cast multiple mail-in ballots, other voters

²⁷ Judge Russell's Order Granting Mot. to Dismiss Statement of Contest (“Russell Order”) is available at <https://assets.documentcloud.org/documents/20420186/order-granting-motion-to-dismiss-statement-of-contest-1.pdf>.

²⁸ *Law v. Whitmer*, 2020 WL 7240299 (Nev. 2020). Available at [Appendix B](#).

²⁹ Russell Order at ¶¶ 73-74.

³⁰ NVSOS Facts v. Myths Sheet, available at <https://www.nvsos.gov/sos/home/showdocument?id=9191>.

³¹ *Id.* at 1 (Fact #2).

³² *Id.* at 2 (Fact #4).

³³ *Id.* at 2 (Fact #5).

voted twice, votes from deceased voters were improperly cast and counted, and votes cast by persons impersonating others were improperly counted.

Facts:

Nevada courts found, on the basis of both fact evidence and expert testimony, that there is no evidence that voter fraud rates associated with mail voting are systematically higher than voter fraud rates associated with other forms of voting.³⁴

- The expert witness put forward by the Plaintiffs to contest the election in Nevada state court testified that he had no personal knowledge that any voting fraud occurred in Nevada’s 2020 election.³⁵
- Nevada courts found that the record did not support a finding that any Nevada voter voted twice or that any individuals were sent and cast multiple mail ballots, that votes from deceased voters were improperly cast and counted, or that ballots completed and submitted by persons impersonating others were cast or counted.³⁶
- Nevada courts also rejected claims that Nevada failed to maintain its voter lists properly.³⁷
- Nevada courts concluded that there was no evidence that illegal votes were cast and counted or that legal votes not counted at all due to voter fraud.³⁸
- The allegations of Jesse Binnall regarding fraud were rejected by multiple courts. “There is no evidence that any vote that should lawfully not be counted has been or will be counted.”³⁹ Binnall was not denied meaningful discovery. In the contest case (the *Law* case), each party could take up to 15 depositions, and the court held a full evidentiary hearing.⁴⁰ In the *Kraus* case, the court conducted a “ten-hour evidentiary hearing” where the court specifically rejected claims made by Binnall.⁴¹ These cases were affirmed by the Nevada Supreme Court.⁴²
- In total, at least 8 different lawsuits were brought in Nevada challenging the election. All were rejected, and many discussed the merits. These cases are: (1) *Law v. Whitmer*; (2) *Kraus v. Cegavske*; (3) *Trump v. Cegavske*; (4) *Election Integrity Project of Nev. v. State ex rel. Cegavske*; (5) *Stokke v. Cegavske*; (6) *Becker v. Gloria*; (7) *Rodimer v. Gloria*; (8) *Marchant v. Gloria*.⁴³

3. Non-Resident Voters

³⁴ Russell Order at ¶¶ 72-79.

³⁵ *Id.* at ¶ 78.

³⁶ *Id.* at ¶¶ 92-94, 100-101, 102-103.

³⁷ *Id.* at ¶¶ 106-107.

³⁸ *Id.* at ¶¶ 147-156.

³⁹ *Id.* at ¶ 45 (quoting *Krause v. Cegavske*, slip op. at 9).

⁴⁰ *Id.* at 2:2-7.

⁴¹ *Id.* at ¶ 43.

⁴² See, e.g., *id.* at ¶¶ 43-50.

⁴³ *Id.* at ¶¶ 49-54 (recounting cases).

Myth:

Thousands of non-residents illegally voted. A comparison of the voting rolls with the list of voters in the U.S. Postal Service's National Change of Address database demonstrates that thousands of voters who were not residents of Nevada were permitted to vote.

Facts:

This claim was raised and rejected after evidentiary hearings in Nevada courts.⁴⁴

- The allegations were based on a superficial comparison of a list of voters with the USPS's National Change of Address database. In other words, the Trump Campaign and its allies claimed that any voter who had his mail forwarded to an out-of-state address somehow forfeited their right to vote in the Nevada election. Nevada courts correctly rejected these allegations.
- Both federal and state law guarantee the right of citizens to vote in Presidential elections if they change their residence close to the date of the election.⁴⁵ Moreover, federal law prohibits the disenfranchisement of voters based on the kind of cursory examination of voter rolls that formed the basis of the Trump Campaign's allegations⁴⁶ and also guarantees the right of citizens to vote in Presidential elections if they change residences close to the date of the election.⁴⁷
- *First*, it is not unusual for voters to have other temporary addresses while still maintaining Nevada residency. For example, military personnel stationed out-of-state commonly do so and an examination of the information relied on by the Trump Campaign revealed that at least 157 of the alleged-illegal voters had their mail forwarded to an Army Post Office ("APO") or other military addresses.⁴⁸ Many residents also temporarily relocated during the COVID-19 Pandemic. Notably, Nevada is home to 180,000 members of the Church of Jesus Christ of Latter-Day Saints.⁴⁹ Under the superficial and erroneous standards urged by the Trump Campaign, church members undertaking missions out-of-state or in other countries would be disenfranchised simply for having their mail forwarded to their temporary, out-of-state addresses. That is why Nevada law specifically provides that a voter using an out-of-state address does not give up their Nevada residence and is entitled to vote in Nevada.
- *Second*, the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20302, requires states to permit military personnel stationed out of state to vote in their home state's federal elections.
- *Third*, the Voting Rights Act guarantees the right of citizens to vote in Presidential elections if they change residences close to the date (within 30 days) of the election.⁵⁰ Nevada law contains

⁴⁴ *Id.* at ¶¶ 92-97.

⁴⁵ Voting Rights Act of 1965, 52 USC § 10502(e); Nev. Rev. Stat. § 298.250.

⁴⁶ National Voter Registration Act, 52 USC § 20507.

⁴⁷ Voting Rights Act of 1965, 52 USC § 10502(e).

⁴⁸ See Associated Press, *Nevada military voters fear they're part of unsupported fraud claim*, RENO GAZETTE JOURNAL, Nov. 13, 2020, available at <https://www.rgj.com/story/news/politics/2020/11/13/nevada-military-families-drawn-into-gops-unsupported-ballot-fraud-claim/6280312002/>.

⁴⁹ See Newsroom, the Church of Jesus Christ of Latter-Day Saints, Facts and Statistics, Nevada, available at <https://newsroomchurchofjesuschrist.org/fact-and-statistics/state/Nevada>.

⁵⁰ Voting Rights Act of 1965, 52 U.S.C. § 10502(e).

similar protections.⁵¹

- *Fourth*, Nevada law specifically protects the voting rights of Nevada residents who have out-of-state addresses in order to engage in military service,⁵² attend educational institutions,⁵³ or for work.⁵⁴ The Trump Campaign's theories, if adopted, would disenfranchise many Nevadans.

4. Deceased Voters

Myth:

Hundreds of votes were cast by deceased individuals.

Facts:

The Nevada courts reviewed and rejected this claim.⁵⁵

- The contestants' evidence was a hearsay declaration alleging only that a single vote from a deceased wife was counted in the November election.⁵⁶
- The voting rejection log maintained by Clark County showed only two "voter is deceased" entries.⁵⁷
- Testimony established that confirmed deceased individuals are removed from voter rolls.⁵⁸

5. Election Observers

Myth:

Clark County's policy for observation of ballot counting led to voter fraud. Members of the public were denied the right to observe the processing and tabulation of mail ballots and were confined to a small, taped-off area in a corner of the room.

Facts:

After an extensive evidentiary review, Nevada courts rejected allegations that Clark County's policy for observation of ballot counting led to voter fraud or that illegal or improper votes were cast or counted or that legal votes were not counted.⁵⁹

- After considering the evidence, the District Court adjudicating the contest of the election concluded "the record does not support a finding that members of the public were denied the

⁵¹ Nev. Rev. Stat. § 298.250.

⁵² Nev. Rev. Stat. § 293.487.

⁵³ *Id.*

⁵⁴ Nev. Rev. Stat. § 293.497.

⁵⁵ Russell Order at ¶ 101.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Russell Order at ¶¶ 140-156, 162.

right to observe the processing and tabulation of mail ballots.”⁶⁰

- What little evidence proffered to support such claims was hearsay and was contradicted by other testimony by the Plaintiff’s own witnesses.⁶¹
- The Supreme Court of Nevada affirmed all of the District Court’s findings.⁶²

⁶⁰ *Id.* at ¶¶ 110-113.

⁶¹ *Id.* at ¶ 112.

⁶² *Law v. Whitmer*, 2020 WL 7240299 (Nev. 2020).

PENNSYLVANIA

1. Constitutionality of Act 77

Myth:

There may be objections to Act 77 of the Pennsylvania Constitution, which was passed in 2019 by the Republican-controlled state legislature and created no-excuse mail-in voting. See Act of Oct. 31, 2019, P.L. 552, No. 77. Specifically, objectors may argue that Act 77 is unconstitutional because the Pennsylvania General Assembly did not have the authority to enact a mail-in voting scheme without amending the Pennsylvania Constitution. Petitioners in *Kelly v. Commonwealth* argued—after the 2020 primary and general election had taken place, and more than a year after Act 77 passed—that all attempts to expand absentee voting by statute are invalid and “a constitutional amendment is required to expand absentee voting beyond the categories provided in the Pennsylvania Constitution.” [Emergency Application for Writ of Injunction](#), *Kelly v. Commonwealth*, No. 20A98 (Dec. 3, 2020).

Facts:

This argument is without merit and does not in any way render the election outcome unreliable or suggest that the outcome does not reflect the will of the voters. This is a technical legal argument that fails for the following reasons.

First, the General Assembly can lawfully legislate on any matter not prohibited by the Pennsylvania or federal constitutions. See *Stilp v. Commonwealth*, 601 Pa. 429, 435 (2009) (“[P]owers not expressly withheld from the General Assembly inhere in it.”). And the General Assembly has significant latitude within these confines to prescribe how votes may be cast: “All elections by the citizens shall be by ballot or by such other method as may be prescribed by law: Provided, That secrecy in voting be preserved.” Pa. Const. art. VII, § 4. Maintaining secrecy is the Pennsylvania Constitution’s only affirmative limitation on the General Assembly’s prerogative to determine “such other methods” of voting. Act 77 complies with this limitation by requiring mail-in voters to use a secrecy envelope. See *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 380 (Pa. 2020) (finding secrecy envelope provision mandatory). And the General Assembly has long enjoyed broad authority to “regulate elections” and a “wide field for the exercise of its discretion in the framing of acts to meet changed conditions . . . as may arise from time to time.” *Winston v. Moore*, 244 Pa. 447, 455 (1914).

Second, the Pennsylvania Constitution provides that the General Assembly must allow voters in four enumerated categories to cast absentee ballots, but the General Assembly may also go further—by exercising its broad power to “prescribe[]” the permissible “method[s]” of voting, Pa. Const. art. VII, § 4—and allow other categories of voters to vote by mail, including by allowing any voter to opt to cast a mail-in ballot. Moreover, “mail-in” voting pursuant to Act 77 is a new, distinct method of voting compared to “absentee” voting under Article VII of the Pennsylvania Constitution. Compare 25 P.S. §§ 3091-3149.9 (governing “Voting by Qualified Absentee Electors”), with 25 P.S. §§ 3150.11-3150.18 (governing “Voting by Qualified Mail-In Electors”). Indeed, the Pennsylvania Elections Code repeatedly distinguishes between “mail-in” and “absentee” voting and regulates each category differently, including in defining a qualified mail-in versus absentee elector and in regulating service-member absentee



ballots. See 25 P.S. § 2602(z.6) (defining “qualified mail-in elector”); 25 P.S. § 3146.7 (regulating military service-member ballots).⁶³

Thus, unsurprisingly, the emergency application for injunctive relief in *Kelly v. Commonwealth* was summarily denied by the U.S. Supreme Court. [Order in Pending Case, Kelly v. Commonwealth](#), No. 20A98 (Dec. 8, 2020). While the petition for certiorari remains pending, the Court’s decision on the application for emergency relief forecloses any suggestion that the merits of the argument could affect the current slate of presidential electors.

2. Ballot Receipt and Postmark Extension

Myth:

A likely objection concerns the extension of time permitted for mailed ballots to be received and postmarked in Pennsylvania. Objectors may argue that the Pennsylvania Supreme Court’s decision in *Pennsylvania Democratic Party v. Boockvar* unconstitutionally extended the ballot receipt deadline. 238 A.3d 345 (Pa. 2020). In that decision, the Pennsylvania Supreme Court extended the deadline for mailed ballots to be received by three days—from Election Day to 5:00 p.m. on Friday, November 6, 2020—and established a presumption that mail-in ballots received without a legible postmark were timely mailed. *Id.* at 386. Note that, as discussed below, fewer than 10,000 ballots are at issue, which would not come close to changing the outcome in Pennsylvania.

Objectors may argue that those received-by deadlines are unconstitutional because they permit voters to cast ballots after November 3, thereby extending the General Election past the time established by federal law; and that the Electors and Elections Clause of the U.S. Constitution gives the Pennsylvania General Assembly the authority to set the times, places, and manner of federal elections, and the state supreme court unconstitutionally usurped this authority in its decision. See [Petition for a Writ of Certiorari, Republican Party of Pennsylvania v. Boockvar](#), No. 20-542 (Oct. 23, 2020).

Facts:

First, contrary to claims that the Pennsylvania Supreme Court’s decision permitted votes to be cast after November 3, the court there expressly stated that extended ballot receipt deadlines would still “require that all votes be cast by Election Day[.]” *Pennsylvania Democratic Party*, 238 A.3d at 365, n. 20, 371, n. 26.

What the Pennsylvania Supreme Court did permit, given the unprecedented circumstances brought about by COVID-19 and the significant postal delays expected in the return of mail ballots, was a short three-day extension of the *receipt* deadline for mail-in ballots, so that ballots cast by Election Day could still be counted pursuant to the Free and Equal Elections Clause of the Pennsylvania Constitution. *Id.* at 371-72. The court further concluded that voters should not be disenfranchised just because the USPS postmark on their ballot envelope became illegible or absent once in the postal system. *Id.* at 365, n. 20, 371, n. 26.

⁶³ For a more detailed account of these arguments, see [Opposition of Respondents to Emergency Application](#) at 19-21, *Kelly v. Commonwealth*, No. 20A98 (Dec. 8, 2020).



These determinations are fully consistent with federal law, which establishes when federal elections are to be held but not what procedures states may use to determine whether a ballot was timely cast. See [Brief of the Pennsylvania Democratic Party Respondent in Opposition](#) at 32-35, *Republican Party of Pennsylvania*, No. 20-542 (Nov. 30, 2020).

Second, the Pennsylvania Supreme Court’s decision was constitutional. See [Brief in Opposition to Petition for Certiorari](#), *Republican Party of Pennsylvania*, No. 20-542 (Oct. 26, 2020). Contrary to objections that the court usurped the Pennsylvania legislature’s authority, the court performed its constitutional duty by interpreting the state constitution, rather than making or even interpreting statutory election law. *Id.* at 24. Further, any argument that the state legislature is insulated from checks on its election law-making authority is wrong and violates bedrock principles of federalism, separation of powers, and checks and balances, *see id.* at 16-20, and the settled Pennsylvania state law principles of the court’s remedial powers, *see* [Brief of the Pennsylvania Democratic Party Respondents in Opposition](#) at 27-32, *Republican Party of Pennsylvania*, No. 20-542.

Third, the number of ballots received during the extended period—between 8 p.m. on Election Day and the Friday after Election Day—is too small to make a difference to the election result. See Executive Respondents’ Brief in Support of Preliminary Objections at 6, *Metcalfe v. Wolf*, No. 636 M.D. 2020 (Dec. 8, 2020) (citing *Boguet v. Sec’y Commonwealth of Pennsylvania*, No. 20-3214, 2020 WL 6686120 (3d Cir. Nov. 13, 2020)); *see also* *Department of State Provides Updates on Election Results*, Pennsylvania Pressroom (Nov. 13, 2020), <https://www.media.pa.gov/pages/state-details.aspx?newsid=432> (noting that approximately 10,000 ballots cast on or before November 3 were received during the extended period).

3. Notice and Cure of Deficient Ballots

Myth:

There may be objections to the slate of electors sent by Pennsylvania based on the “notice and opportunity to cure” procedure offered in some counties for ballots with minor deficiencies. The Pennsylvania Election Code sets forth requirements for validly cast ballots, including that voters must mark ballots in pen or pencil, place them in secrecy envelopes, and fill out a form on the outer envelope of a vote by mail ballot. Election administrators in some counties contacted voters and provided them an opportunity to cure minor, facial defects in their ballots ahead of the ballot receipt deadline. Secretary of the Commonwealth Kathy Boockvar sent an email to counties encouraging them to assist in curing ballots with the purpose of enfranchising as many Pennsylvanians as possible. As with other alleged ballot issues discussed here, the number of ballots at issue is far too small to change the outcome even if the challenges were valid, which they are not.

The Trump Campaign objected to the fact that some counties permitted voters to cure incomplete or incorrectly completed ballots while other counties did not. For example, in *Donald J. Trump for President, Inc. v. Boockvar*, plaintiffs argued that because notice-and-cure procedures were offered by some counties, including Philadelphia County, but not by others, including Lancaster and York counties, the equal protection rights of voters in the predominantly “Republican” counties without such procedures were violated. No. 4:20 Civ. 02078, 2020 WL 6821992 (M.D. Pa. Nov. 21, 2020), *aff’d sub nom. Donald J. Trump for President, Inc. v. Sec’y Pennsylvania*, 830 Fed. App’x 377 (3d Cir. 2020).



This claim was rejected by the federal courts, including by a panel of the Third Circuit in an opinion authored by Trump-appointed Judge Stephanos Bibas. *Donald J. Trump for President, Inc.*, 830 Fed. App'x 377.

Facts:

First, making it *easier* for some people to vote does not burden the rights of others. “Defendant Counties, by implementing a notice-and-cure procedure, have in fact *lifted* a burden on the right to vote, even if only for those who live in those counties. Expanding the right to vote for some residents does not burden the rights of others.” *Donald J. Trump for President, Inc.*, 2020 WL 6821992, at *12; see also *Texas League of United Latin Am. Citizens v. Hughes*, 978 F.3d 136, 145 (5th Cir. 2020) (“How [the] expansion of voting opportunities burdens anyone’s right to vote is a mystery.”). Indeed, every county in Pennsylvania was free to provide notice-and-cure procedures to voters. And “counties may, consistent with equal protection, employ entirely different election procedures and voting systems within a single state.” *Donald J. Trump for President, Inc. v. Boockvar*, No. 2:20-CV-966, 2020 WL 5997680, at *44 (W.D. Pa. Oct. 10, 2020) (collecting cases).

Second, the counties that employed notice-and-cure procedures did so to ensure the Commonwealth’s “longstanding and overriding policy” of “protect[ing] the elective franchise.” *Shambach v. Bickhart*, 577 Pa. 384, 391 (2004). The deficiencies corrected by counties were garden-variety irregularities in ballots and curing them does not give rise to Constitutional defects absent “intentional or purposeful discrimination.” *Snowden v. Hughes*, 321 U.S. 1, 8 (1944). “No county was forced to adopt notice-and-cure; each county made a choice to do so, or not. Because it is not irrational or arbitrary for a state to allow counties to expand the right to vote if they so choose, Individual Plaintiffs fail to state an equal-protection claim.” *Donald J. Trump for President, Inc.*, 2020 WL 6821992, at *12.

Third, the Pennsylvania Supreme Court has recently held that ballots with minor deficiencies, including ballots that lack a handwritten name, address, or date do not have to be disqualified. “[T]he Election Code does not require boards of elections to disqualify mail-in or absentee ballots submitted by qualified electors who signed the declaration on their ballot’s outer envelope but did not handwrite their name, their address, and/or date, where no fraud or irregularity has been alleged.” *In re: Canvass of Absentee and Mail-in Ballots*, 2020 WL 6875017, at *1 (Pa. Nov. 23, 2020). This undermines the claims that providing notice and cure for some minor, garden-variety deficiencies resulted in the tallying of ballots that should not have been counted. As the Third Circuit noted about the Pennsylvania Supreme Court’s ruling: “That holding undermines the Campaign’s suggestions that defective ballots should not have been counted.” *Donald J. Trump for President, Inc.*, 830 Fed. App'x 377.

Fourth, the total number of ballots that were subject to notice-and-cure procedures is significantly smaller than the vote margin in Pennsylvania. “Of the seven counties whose notice-and-cure procedures are challenged, four (including the three most populous) represented that they gave notice to only about 6,500 voters who sent in defective ballot packages. Even if 10,000 voters got notice and cured their defective ballots, and every single one of them voted for Biden, that is less than an eighth of

the margin of victory.” *Id.* Accordingly, even assuming these ballots were invalid, it would not affect the slate of electors sent by Pennsylvania.⁶⁴

4. Signature Verification

Myth:

Objectors may argue that the Pennsylvania Secretary of the Commonwealth abrogated a signature verification requirement for mail-in ballots. As background, before the election, Secretary Boockvar sought a declaratory decision from the Pennsylvania Supreme Court clarifying whether the Election Code authorizes or requires county election boards to reject absentee or mail-in ballots during pre-canvassing and canvassing based on signature analysis where there are alleged or perceived signature variances. *In re Nov. 3, 2020 Gen. Election*, 240 A.3d 591, 595 (Pa. 2020). The court analyzed the Election Code and held that it did not authorize or require such verification. *Id.* at 611.

Facts:

This issue is simple: The Election Code—which, again, a Republican-controlled state legislature revised in 2019—does not provide for rejecting mail-in ballots based on signature verification. *See id.* at 610 (“[A]t no time did the Code provide for challenges to ballot signatures.”). The court noted that Act 77 also eliminated time-of-canvassing challenges by candidate or party representatives for votes by mail. *Id.* A federal judge also concluded that there was no signature-comparison requirement here. *See Donald Trump for President, Inc. v. Boockvar*, 2020 WL 5997680, at *58 (W.D. Pa. Oct. 10, 2020) (“[T]he Election Code does not impose a signature-comparison requirement for mail-in and absentee ballots[.]”). It is notable that these cases involved straightforward statutory interpretation; this is not a case in which a state court relied on a state constitutional provision to invalidate a law passed by a state legislature.

Finally, here again, there is no allegation of fraud.

5. Observer Access

Myth:

There may be objections to observer access based on the allegedly “uneven treatment” of Trump and Biden poll watchers and representatives. For example, in *In re Canvassing Observation*, plaintiffs argued that poll watchers and observers were denied a “meaningful way” to observe the canvassing of ballots because they were either placed too far from the canvass or their view was obstructed. [No. 30 EAP 2020](#), at 4 (Pa. Nov. 17, 2020). Plaintiffs also alleged that “Democrats who control the Defendant County Election Boards engaged in a deliberate scheme of intentional and purposeful discrimination . . . by excluding Republican and Trump Campaign observers from the canvassing of the mail ballots in

⁶⁴ For a more detailed account of these arguments, *see* Secretary of the Commonwealth Kathy Boockvar’s Brief in Opposition to Motion for Injunctive Relief at 9-11, *Donald J. Trump for President, Inc.*, 830 Fed. App’x 377; and *Donald J. Trump for President, Inc.*, 2020 WL 6821992, at *11-13.



order to conceal their decision not to enforce [certain ballot] requirements.” *Donald J. Trump for President, Inc.*, 830 Fed. App’x 377.

Facts:

The Trump Campaign and its surrogates have tried, unsuccessfully, to equate an alleged lack of observer access with fraudulent results. There has been no credible evidence of significant voter fraud presented in any form. The suggestion that the Trump Campaign and its surrogates were prevented from detecting fraud, and that is tantamount to evidence that there must have been fraud, is absurd.

First, there is no evidence that Trump Campaign poll watchers were treated *differently* than Biden campaign watchers. For there to be an equal protection violation, there must be allegations of differential treatment. At most, the Trump Campaign cites minor, constitutionally insignificant differences across counties in the location of observers, which were justified by differences among counties with respect to size, staffing, and security. As the Third Circuit noted: “A violation of the Equal Protection Clause requires more than variation from county to county. It requires unequal treatment of similarly situated parties. But the Campaign never pleads or alleges that anyone treated it differently from the Biden campaign.” *Donald J. Trump for President, Inc.*, 830 Fed. App’x 377.

Second, there is no right under federal or state law for observers to stand at a particular distance or have a particular view of ballots. The Pennsylvania Supreme Court and the Third Circuit have rejected such claims. As the Third Circuit noted: “The Pennsylvania Supreme Court held that the Election Code requires only that poll watchers be in the room, not that they be within any specific distance of the ballots.” *Id.* (citing *In re Canvassing Observation*, No. 30 EAP 2020, 2020 WL 6737895, at *8-9 (Pa. Nov. 17, 2020)). Similarly, there is no federal right protecting the location or view of observers. *Id.* (noting that the Campaign “cites no federal authority regulating poll watchers or notice and cure.”). As long as observers were allowed in the room, which they were, complaints about minor deviations in the location and view of observers are legally insufficient.⁶⁵

6. Discrepancies in the Number of Ballots

Objectors may argue that discrepancies exist between the number of votes that should have been cast, as measured by poll book signatures and lists of actual voters, and the number of ballots actually cast in Pennsylvania. They may claim that these inconsistencies undermine the legitimacy of the election.

For instance, in *Metcalfe v. Wolf*, the plaintiffs alleged discrepancies based on analysis in a purported expert report (the “Ryan Report”), see [Complaint](#), No. 636 M.D. 2020 (Nov. 23, 2020). A group of Pennsylvania lawmakers released an “analysis” of election data on December 28, 2020. See Statement, PA Lawmakers: Numbers Don’t Add Up, Certification of Presidential Results Premature and In Error, <http://www.repfrankryan.com/News/18754/Latest-News/PA-Lawmakers-Numbers-Don>. The analysis purports to show 202,377 more votes were cast than voters voting.

⁶⁵ For a more detailed account of these arguments, see Secretary of the Commonwealth Kathy Boockvar’s Brief in Opposition to Motion for Injunctive Relief at 10-11, *Donald J. Trump for President, Inc.*, 830 Fed. App’x 377; *Donald J. Trump for President, Inc.*, 2020 WL 6821992 at *13-15; and *Donald J. Trump for President, Inc.*, 830 Fed. App’x 377.



Facts:

The allegations based on the Ryan Report are clearly erroneous. The purported expert report of Pennsylvania House Representative Francis X. Ryan, relied upon in support of ballot discrepancy allegations, misleadingly asserts that there is an unexplained discrepancy of approximately 400,000 ballots between November 2 and November 4. The reason for the discrepancy is that Representative Ryan simply elected not to count 400,000 absentee ballots and only counted mail-in ballots (these are distinct categories in the Pennsylvania Election Code) in his totals.

The Commonwealth of Pennsylvania also thoroughly rebutted the December 28, 2020, analysis. See [Response to December 28, 2020, Release of Misinformation by Group of GOP State House Members](https://www.dos.pa.gov/about-us/Documents/statements/2020-12-29-Response-PA-GOP-Legislators-Misinformation.pdf), Penn. Dept. of State (Dec. 29, 2020), <https://www.dos.pa.gov/about-us/Documents/statements/2020-12-29-Response-PA-GOP-Legislators-Misinformation.pdf>. Its rebuttals include:

- The December 28 analysis is “obvious misinformation.”
- The December 28 analysis compares “very different systems and data points with different timeframes and incomplete information.” It was “based on incomplete data from the Department’s Statewide Uniform Registry of Electors (SURE) system.” Some counties have not finished updating the SURE system. Furthermore, it is the “vote counts certified by the counties, not the uploading of voter histories into the SURE system, that determines the ultimate certification of an election by the counties to the Department, and then in turn, by the secretary based on the county certifications.”
- The House members did not seek complete data or request clarification.
- Evidence of “undervotes” for down-ballot races was entirely consistent with prior presidential-year election cycles.
- “All vote counts are recorded on paper ballots in every county in the Commonwealth, that can be audited or recounted to confirm the accuracy of an election.”

WISCONSIN

1. Claim: Wisconsin state executive officials usurped election authority rightly exerted by the state legislature, thereby facilitating improperly cast votes based on “indefinitely confined” status.

Myth:

Objectors will argue that Wisconsin state officials used the COVID-19 pandemic to circumvent the state law requiring first-time absentee voters to show or upload photo identification to obtain a ballot. One of the few exceptions to this law is if a voter is “indefinitely confined.” Objectors will argue that these requirements had been set by the Wisconsin state legislature, but local election officials took it upon themselves to effectively change election procedure.

Facts:

These arguments failed in several Wisconsin courts which held that the ballots of indefinitely confined voters were cast legitimately under the state’s laws and following the Wisconsin Election Commission (WEC) guidance.

- A majority of the Wisconsin Supreme Court (4-3) concluded that this claim was “meritless on its face” and “wholly without merit.” *Trump v. Biden*, Case No. 2020AP2038, [Opinion](#), at 3, 6. “The Campaign’s request to strike indefinitely confined voters in Dane and Milwaukee Counties as a class without regard to whether any individual voter was in fact indefinitely confined has no basis in reason or law.” *Id.* (Other courts reached the same conclusion in earlier decisions and were proven conclusively correct by the Wisconsin Supreme Court.).
 - On March 31, the Wisconsin Supreme Court [held](#), in the context of a preliminary injunction order, that the Dane County advice was incorrect but approved of the follow up WEC guidance: “We conclude that the WEC’s guidance . . . provides the clarification on the purpose and proper use of the indefinitely confined status that is required at this time.” (Slip Op at 2).
 - This guidance, expressly approved by the Wisconsin Supreme Court both on March 31 and again in *Jefferson v. Dane County*, 2020 WI 90 (Dec. 14, 2020), is the document that GOP talking points inaccurately say was issued “later” than the Supreme Court order having the Dane County Clerk remove his Facebook post (which was online for fewer than 3 days, more than 7 months before the November election).
- After a December 10 trial in [Trump v. Wisconsin Elections Commission \(E.D. Wis.\)](#), the court [dismissed the case](#). The judge in the case, Brett Ludwig, is a Trump appointee. The court found that Trump’s claims “fail as a matter of law and fact.” [Order](#) at 22. In particular, it found that the WEC properly issued the guidance concerning indefinitely confined absentee voters and that its guidance “was not a significant or material departure from legislative direction” and that “defendants acted consistently with, and as expressly authorized by, the Wisconsin Legislature.” *Id.* at 20.



- President Trump appealed *Trump v. WEC* to the Seventh Circuit, which affirmed (in a decision written by another Trump appointee, Judge Michael Scudder).
- The 150,000 votes allegedly cast pursuant to the “indefinitely confined” provision is pure speculation. That is an estimate of how many ballots were requested, but not based on any record of how many were cast and returned. Regardless, there is no evidence—or even a clear, individualized allegation—that any “indefinitely confined” voter cast an invalid or fraudulent vote. To the contrary, [it turns out](#) that most of the ballots requested under the indefinitely confined statute were requested in counties that voted for Trump.
- Wisconsin law—as affirmed by a majority of the Wisconsin Supreme Court in a lawsuit brought by the Republican Party of Wisconsin and decided after the election, *see Jefferson v. Dane County*, 2020 WI 90 (Dec. 14, 2020)—entrusts individual voters to determine whether they qualify to avail themselves of Wisconsin Statute § 6.86(2)(a).
- State law requires that clerks remove a voter from the list only “upon receipt of reliable information that [a voter] no longer qualifies for this service.” Wis. Stat. § 6.86(2)(b). Trump failed to give a single example of a municipal clerk receiving such “reliable information” and failing to remove a voter from the list. In fact, in *Wisconsin Voters Alliance v. Wisconsin Elections Commission*, the plaintiffs offered sworn affidavits from nine county clerks who each swore that if they had received reliable information that an elector was no longer “indefinitely confined,” they would have followed Wisconsin law and removed that elector from the absentee ballot list. *See Wisconsin Voters Alliance v. Wisconsin Elections Commission (Wis.)* ¶81 & Exhs. 17A-I.

Indefinitely confined voters’ ballots complied with a number of additional safeguards that apply to mail-in absentee ballots, including the requirement that each ballot be signed by the voter, witnessed by an adult U.S. citizen, securely stored by the municipal clerk until Election Day, and carefully opened, reviewed, and tabulated during a public canvass.

2. Claim: Wisconsin election officials in the state’s most heavily Democratic counties cured mail-in ballot defects in violation of state law.

Myth:

In a legal filing submitted to the Wisconsin Supreme Court, the Trump campaign argued that election officials and employees in the state’s two largest and most heavily Democratic counties (Milwaukee and Dane) filled in missing information on absentee ballots in violation of Wisconsin election law which specifies that a mail-in ballot may not be counted if it is missing information on the secure envelope. In addition, Wisconsin law prohibits a county clerk from issuing an absentee ballot without a written application.

Facts:

There is no evidence that a single one of these ballots was fraudulently or invalidly cast.

- The fact that a witness did not fully fill out the form is not suspicious. It may be a sign of haste. It often happens when family members living under the same roof witness for one another. They assume that the same address applies across the form.
- In fact, the actions taken by the clerks were in the service of preventing fraud. The only purpose of having address information for the witness is to facilitate investigation of potentially invalid absentee ballots. By looking up the information, the clerks were improving the integrity of the system.
 - There is no evidence that any of the clerks—who, to reiterate, were following WEC guidance that originated under a Republican member of the WEC, was approved by the WI DOJ under a Republican Attorney General and was unanimously adopted by the WEC—filled in incorrect witness information.
 - Indeed, the testimony demonstrated that if clerks had any doubt about the accuracy of the information they were adding, they contacted the voter or returned the ballot to the voter.
- The relevant WEC directives telling clerks to fill in missing information were issued by the WEC in October 2016 and April 2020 and were used in multiple elections without anyone ever challenging them.
- Contrary to the myth above, which suggests that the Wisconsin Supreme Court refused on purely procedural grounds to consider this argument, the objection was heard and rejected by several Wisconsin courts.
 - After a December 10 trial in [*Trump v. Wisconsin Elections Commission \(E.D. Wis.\)*](#), the court [dismissed the case](#) as unable to succeed on December 12. The judge in the case, Brett Ludwig, is a Trump appointee. The court found that Trump’s claims “fail as a matter of law and fact.” [Order](#) at 22. In particular, it found that the WEC properly issued the guidance which “was not a significant or material departure from legislative direction” and that “defendants acted consistently with, and as expressly authorized by, the Wisconsin Legislature.” *Id.* at 20.
 - President Trump appealed to the Seventh Circuit, which affirmed in a decision written by Judge Michael Scudder, a Trump appointee.
 - The Wisconsin Supreme Court rejected this argument in the recount appeal. *See Trump v. Biden*, 2020 WI 91 (Dec. 14, 2020) (final decision in recount challenge that followed the Wisconsin Supreme Court’s initial rejection of the President’s effort to ignore Wisconsin procedure and take his issues with the recount directly to the Supreme Court).
 - On the merits, Justice Hagedorn deemed the claims baseless. “I do not believe the Campaign has established that all ballots where clerks added witness address information were necessarily insufficient and invalid; the addresses provided directly by the witnesses may very well have satisfied the statutory directive. The circuit court’s findings of fact reflect that many of these ballots

contained additions of the state name and/or zip code. I conclude the Campaign failed to provide sufficient information to show all the witness certifications in the group identified were improper, or moreover, that any particular number of ballots were improper.” [Recount appeal](#), Concurrence of Justice Hagedorn, at 8 (PDF at 29). (Note: Justice Hagedorn was former Gov. Scott Walker’s chief legal counsel and also was the swing vote on the appeal.)

- The majority opinion contained additional rationales for rejecting this argument.
 - *First*, it held that the argument was time-barred because the relevant WEC directives telling clerks to fill in information were issued in October 2016 and April 2020, yet Trump’s supporters waited to challenge them until after the November 3 election. Notably, Trump raised this issue only in Dane and Milwaukee Counties and once again was only seeking to invalidate votes in areas not favorable to him. It is thus Trump who is applying a double standard. [Recount appeal](#) at 15-17. “[I]f the relief the Campaign sought was granted, it would invalidate nearly a quarter of a million ballots cast in reliance on interpretations of Wisconsin’s election laws that were well-known before election day. It would apply new interpretive guidelines retroactively to only two counties.” *Id.* at 15.
 - *Second*, as the court concluded, “The claims here are not of improper electoral activity. Rather, they are technical issues that arise in the administration of every election. In each category of ballots challenged, voters followed every procedure and policy communicated to them, and election officials in Dane and Milwaukee Counties followed the advice of WEC where given. Striking these votes now—after the election, and in only two of Wisconsin’s 72 counties when the disputed practices were followed by hundreds of thousands of absentee voters statewide—would be an extraordinary step for this court to take.” *Id.* at 16-17.

With respect to the argument about applications for absentee ballots, amazingly the objectors are arguing that a form that says it is an “Application” is not in fact an application. And the objectors believe that hundreds of thousands of voters who in good faith applied for an absentee ballot using that form should be disenfranchised for this reason.

- An application is an application. The first line of the EL-122 absentee ballot envelope reads: “Official Absentee Ballot Application/Certification.” The WEC’s website clearly states that the EL-122 form serves as an absentee ballot *application* and certificate and has said so for years. See Governor Evers’ Opposition to Petition for Original Action, at 33, *Trump v. Evers*, No. 2020AP001971-OA. And the form itself has been used as an official absentee ballot application and certification since 2011. *Id.* at 33-34.
- There is no evidence that a single one of these ballots was fraudulently or invalidly cast. Nor is there any evidence to substantiate allegations in the recount petition that counties other than Milwaukee and Dane used separate applications instead of the WEC-provided form EL-122.

- Trump’s supporters assert that form EL-122 is not an application because it is not *separate* from the certification. But nothing in Wisconsin law requires separate pieces of paper. Justice Hagedorn’s concurrence specifically rejected this argument. “Section 6.86(1)(ar) contains no requirement that the application and certification appear on separate documents, and the facts demonstrate that the application was completed before voters received a ballot. As best I can discern from this record, EL-122 is a ‘written application’ within the meaning of §6.86(1)(ar). That it also serves as a ballot certification form does not change its status as an application.” [Recount appeal](#), Concurrence of Justice Hagedorn, at 5 (PDF at 26). Thus, Justice Hagedorn concluded “on the merits and the record before us, in-person absentee voters using form EL-122 in Dane and Milwaukee Counties did so in compliance with Wisconsin law.” *Id.* (Note: Justice Hagedorn was former Gov. Scott Walker’s chief legal counsel and also was the swing vote on the appeal.).
- Finally, the Wisconsin Supreme Court rejected this argument because it was raised too late. Indeed, as the court noted, the application form “was in place for over a decade. To strike ballots cast in reliance on that form now, and to do so only in two counties, would violate every notion of equity that undergirds our electoral system.” [Recount appeal](#) at 15-16. Indeed, this form was used when President Trump won Wisconsin in 2016, and President Trump’s own lawyer—Jim Troupis—used this form to cast his in-person absentee ballot in the November 2020 election.

3. Claim: The Madison City Clerk’s office collected absentee ballots in violation of state law.

Myth:

Wisconsin state law specifies that absentee ballots may only be returned by mail or be delivered in person to the clerk’s office. However, in September and October 2020, the city of Madison, Wisconsin held events it called “Democracy in the Park,” during which time it collected absentee ballots at multiple locations in the city.

Objectors will emphasize that although Wisconsin state Republicans warned the city about this effort, the city ignored the warning and collected over 17,000 ballots at these events.

Facts:

There is no evidence that fraudulent votes were cast during these events or that votes were made any easier to cast. Nor is anyone arguing that election officials mishandled the ballots or broke the chain of custody for ballots. Instead, the issue is whether Madison election officials were legally able to collect ballots outdoors in the middle of a pandemic. Objectors want to throw out tens of thousands of ballots cast by voters in good faith reliance on election officials’ guidance.

- Trump cited no evidence that the Democracy in the Park events enabled illegal voting practices. As with all absentee ballots, those returned in the parks had to be signed by the voter and witnessed by an adult U.S. citizen.
- Ballots returned at the Democracy in the Park events were legally accepted in-person by trained election officials in accordance with WEC guidance, using tamper-evident seals and implementing a chain of custody log to ensure further security. See Governor Evers’s

Opposition to Petition for Original Action, at 57-58, *Trump v. Evers*, No. 2020AP001971-OA. As the Wisconsin Supreme Court described the event: “sworn city election inspectors collected completed absentee ballots. The city election inspectors also served as witnesses if an elector brought an unsealed, blank ballot. No absentee ballots were distributed, and no absentee ballot applications were accepted or distributed at these events.” [Recount Appeal Opinion](#) at 12.

- The nitpicking over whether this event was an authorized “in person absentee *voting* site” — which must occur in “offices” under Wisconsin law — or were ballot *return* sites — which are not location specific — was addressed by Justice [Hagedorn](#), a conservative jurist who was former Gov. Scott Walker’s chief legal counsel and who also was the swing vote on the appeal.
 - In his concurrence, Hagedorn noted that the Trump Campaign once again was citing the wrong statute. The Democracy in the Park events were not in-person absentee *voting* sites because “[b]allots were not requested or distributed.” [Recount Appeal Opinion](#) at 10 and those two acts (requesting or distributing) are the core hallmarks of a voting site.
 - Instead, the Democracy in the Parks sites were legal ballot *return* locations: Under the law, a voter must *return* the absentee ballot in a sealed envelope by mail or “in person, to the municipal clerk issuing the ballot or ballots.” Wis. Stat. §6.87(4)(b)1. “The phrase ‘municipal clerk’ has a specific meaning in the election statutes. It is defined as ‘the city clerk, town clerk, village clerk and the executive director of the city election commission and *their authorized representatives.*’ Wis. Stat. §5.02(10) (emphasis added). A sworn city election inspector sent by the clerk to collect ballots would seem to be an authorized representative as provided in the definition.” [Recount Appeal](#), Concurrence of Hagedorn, J. at 9 (PDF at 30). “In short . . . I see no basis to conclude the ballots collected at ‘Democracy in the Park’ events were cast in contravention of Wisconsin law. This challenge fails.” *Id.* at 11.
- Trump’s campaign failed to challenge or stop these events at the time they were held. Instead, they challenged the events months after they occurred and only after Trump lost the election, attempting to nullify tens of thousands of legal votes in the process.
 - Courts have repeatedly held that voters should not have their votes retroactively nullified after the election for having followed the guidance, policies, and court decisions in effect when they cast their ballot. *See, e.g., Griffin v. Burns*, 570 F.2d 1065, 1074-75 (1st Cir. 1978). Retroactively nullifying thousands of Wisconsin votes that were lawfully cast under the rules in place at the time of the vote would violate those voters’ Due Process Clause rights. *Reynolds v. Sims*, 377 U.S. 533, 554 (1964).
 - But even if the challenge against these events had merit, Trump’s belated post-Election Day challenge was barred by the equitable doctrine of laches when he waited to complain about the widely publicized events until months after they had occurred and after allowing more than 17,000 Wisconsin voters to take advantage of

the program. *Wis. Small Business United, Inc. v. Brennan*, 2020 WI 69, ¶111, 393 Wis. 2d 308, 946 N.W.2d 101.

- Indeed, the Wisconsin Supreme Court rejected this argument because the Trump Campaign’s “delay in raising these issues was unreasonable in the extreme, and the resulting prejudice to the election officials, other candidates, voters of the affected counties, and to voters statewide, is obvious and immense.” [Recount Appeal](#) at 9.
- The Trump Campaign never challenged these events at the time. “Election officials in Dane and Milwaukee Counties reasonably relied on the advice of Wisconsin’s statewide elections agency and acted upon it. Voters reasonably conformed their conduct to the voting policies communicated by their election officials.” *Id.* at 13.
- The argument that the Trump Campaign could not have litigated before the election is entirely spurious. After a lawyer for the Wisconsin Assembly Speaker and the then-Wisconsin Senate Majority Leader sent a letter to the City of Madison complaining about Democracy in the Park, several voters filed suit, seeking to remove any cloud of confusion by obtaining a declaratory judgment that the program complied with Wisconsin law. *See Judge v. Board of Canvassers for the City of Madison*, No. 2020CV2029 (Dane Cnty. Cir. Ct. Sep. 30, 2020). As required by Wisconsin law, the legislative officials received service of this lawsuit, and the suit was widely reported. If the Trump campaign, the Republican Party of Wisconsin, or anyone else wished to contest Democracy in the Park before the election, they could and should have intervened in that suit.

4. Claim: The counting of the absentee ballots in the City of Milwaukee was illegal and possibly fraudulent because poll observers were too far away and because there were fraudulent votes.

Myth:

Objectors may allege that poll observers at the central count facility for absentee ballots in Milwaukee were not allowed to get close enough to observe the counting, intimating that fraud occurred. This claim was part of [Trump’s request for a recount](#).

Facts:

This claim is wrong legally and factually.

First, on the law, objectors’ complaints about inadequate access for poll observers are easily dispatched. Wisconsin law grants municipalities discretion to limit observers. The statute unambiguously provides “[t]he chief inspector or municipal clerk may reasonably limit the number of persons representing the same organization who are permitted to observe under this subsection at the same time.” Wis. Stat. § 7.41(1). Likewise, election officials may remove an observer if the observer causes a disruption to election activities or engages in electioneering. Wis. Stat. § 7.41(3).



Thus, while observers may be present during election operations, that right is not absolute and is subject to reasonable limitations. Further, if there were violations of state law, the appropriate remedy is to file a complaint with the WEC, see Wis. Stat. § 5.06 and Wis. Admin. Code ch. EL 20, or for the candidate or political party to seek a declaratory relief on Election Day, not to seek to reject an entire state's electoral college votes.

Second, President Trump had the opportunity—of which he availed himself—to trigger a fully transparent recount. The recount process includes participants from all campaigns and thereby cures any alleged limitation on the participation of observers on Election Day.

Any illegal or fraudulent votes would have been caught in the recount. Even falsely assuming that the Trump Campaign had a right to observe closer and that they could have observed closer, a recount would have found any mistaken or fraudulent votes. The recount, however, actually increased votes for Biden.