

GJP

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

16

5524

REPUBLICAN PARTY OF  
PENNSYLVANIA, MONICA MORRILL,  
RALPH E. WIKE III, HELEN BANUSHI,  
RONALD J. FERRANCE, JR., JOSEPH J.  
O'HARA, DONNA DONAT, JAMES  
CAFFREY, AND GAYLE MICHAEL,  
Plaintiffs

CIVIL ACTION

NO.

v.

PEDRO A. CORTES, in his capacity as  
Secretary of the Commonwealth of  
Pennsylvania

Defendant

**VERIFIED COMPLAINT**

1. This action, by voters of the Commonwealth of Pennsylvania and the Republican Party of Pennsylvania, seeks a declaratory judgment that the Election Code illegally and arbitrarily restricts poll watchers from serving only in the county of their residence, in contravention of the United States and Pennsylvania Constitutions.

**JURISDICTION AND VENUE**

2. This is an action of declaratory judgment to determine a question in actual controversy between the parties under the provisions of 28 U.S.C. § 2201.

3. The jurisdiction of this Court is based upon 28 U.S.C. §§ 1331 and 1367.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

**THE PARTIES**

5. Plaintiff, the Republican Party of Pennsylvania brings this action in its own capacity and, as a major political party, 25 P.S. §2831(a) and the State committee for the

Republican Party in Pennsylvania, 25 P.S. §2834, with 350 members and over 200 candidates running for elected office in this year's General election, on behalf of all of its members and candidates.

6. Plaintiff, Monica Morrill, is a duly qualified registered elector residing in Somerset County. *A true and correct copy of the voter registrations are attached hereto collectively as Exhibit A and incorporated by reference hereat.*

7. Plaintiff Ralph E. Wike III, is a duly qualified registered elector residing in Delaware County.

8. Plaintiff Helen Banushi, is a duly qualified registered elector residing in Philadelphia County.

9. Plaintiff Ronald J. Ferrance Jr., is a duly qualified registered elector residing in Luzerne County.

10. Plaintiff Joseph J. O'Hara is a duly qualified registered elector residing in Luzerne County.

11. Plaintiff Donna Donat, is a duly qualified registered elector residing in Philadelphia County.

12. Plaintiff James Caffrey, is a duly qualified registered elector residing in Montgomery County.

13. Plaintiff Gayle Michael, is a duly qualified registered elector residing in Montgomery County.

14. Defendant, Pedro A. Cortes is the current Secretary of the Commonwealth of Pennsylvania. This action is brought against him in his official capacity.

15. The Secretary of the Commonwealth is Pennsylvania's Chief Election Officer and is responsible for overseeing elections in Pennsylvania. *See* 25 P.S. §§ 2621, 2865.

#### **STATUTORY AND CONSTITUTIONAL BACKGROUND**

16. The United States Constitution provides for the people's right to vote, and prohibits the denial or abridgement of such right. *See: U.S. Const. amend. XV, IX, XIV, XVI.*

17. The Pennsylvania Constitution also bestows the right to vote upon qualified citizens. *Pa. Const. art. VII, §1.*

18. Open elections are crucial to democracy – a government of the people, by the people, and for the people.

19. Citizens have a fundamental right to a fair and honest election process.

20. Elections in Pennsylvania are entirely governed and regulated by statute. *See: 25 P.S. §2600, et. seq. ("Election Law").*

21. To ensure the integrity of elections in Pennsylvania, the Election Law provides for the appointment by each candidate, political party, and political body, of poll watchers to serve in each election district in the Commonwealth. *25 P.S. §2687.*

22. Poll watchers fulfill a critical function in Pennsylvania elections.

23. The ability of candidates, political parties, and political bodies to appoint poll watchers, and the poll watchers' duties have been a part of the Pennsylvania Election law since 1937. *See: 25 P.S. §2687 credits.*

24. The most recent amendment to *25 P.S. §2687* was an expansion of a poll watcher's geographic territory from a single polling place to an entire county.

25. Poll watchers are allowed to observe the conduct of the election in the polling place throughout the entire day and make strike off lists of voters, but must not interfere in any way with the election process.

26. Watchers may observe the election process from the time the first polling place official appears in the morning to open the polling place, through and including the time the polls are closed and the election returns are counted and posted at the polling place entrance.

25 P.S. § 2687(b)

27. From the time that the election officers meet to open the polls and until the counting of the votes is complete, a watcher representing each political party and its candidates at a general, municipal or special election shall be present in the polling place outside the enclosed space. 25 P.S. § 2687(b)

28. After the close of the polls and while the ballots are being counted, all the watchers for candidates and political parties or bodies shall be permitted to be in the polling place outside the enclosed space. 25 P.S. § 2687(b)

29. Watchers shall be permitted to be present when the envelopes containing official absentee ballots are opened and when such ballots are counted and recorded. 25 P.S. § 3146.8(b)

30. Any watcher shall have the opportunity to challenge any absentee elector upon the ground or grounds (1) that the absentee elector is not a qualified elector; or (2) that the absentee elector was within the municipality of his residence on the day of the primary or election during the period the polls were open, except where he was in military service or except in the case where his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability; or (3) that the absentee elector was able to appear personally at the polling place on the day of the primary or election during the period the polls were open in the case his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability. 25 P.S. § 3146.8(c)

31. Watchers shall be permitted to keep a list of voters. 25 P.S. § 2687(b)

32. During times when voters are not present or voting, watchers can ask the Judge of Elections to inspect the voting check list and either of the two numbered lists of voters, but cannot mark or alter those lists. 25 P.S. § 2687(b)

33. Any person who presents himself or herself to vote may be challenged by a watcher as to his or her identity, his or her continued residence in the election district, or as to any alleged violation of 25 P.S. § 3050(d). 25 P.S. § 3050(d)

34. 25 P.S. § 2687 of the Pennsylvania Election Code controls the residency requirement for poll watchers.

35. Specifically, § 2687(b) provides that “[e]ach watcher so appointed must be a qualified registered elector of the county in which the election district for which the watcher was appointed is located.”

36. In Pennsylvania, all Congressional electoral districts exist in multiple counties.

37. Similarly, many districts for members of the Pennsylvania General Assembly exist in multiple counties. See, e.g., Pennsylvania House of Representatives Districts: 6, 8, 10, 13, 14, 15, 16, 17, 26, 33, 39, 40, 46, 49, 50, 51, 52, 54, 55, 59, 60, 63, 64, 65, 66, 67, 68, 69, 71, 73, 75, 76, 78, 81, 82, 84, 85, 86, 92, 98, 104, 107, 108, 110, 111, 117, 118, 124, 125, 128, 129, 131, 134, 139, 152, 157, 160, 166, 171, 172, 183, 185, 187, 189, 191, 193, and 194; and, Pennsylvania Senate Districts: 4, 7, 8, 9, 12, 14, 15, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 37, 40, 41, 44, 45, 46, 47, 48, and 50.

38. As a result, and by way of example, a voter in the 172nd District of the Pennsylvania House of Representatives living in Philadelphia County has a direct interest in the conduct of elections in Montgomery County, as voting in Montgomery County affects in a real

and meaningful way the votes cast in Philadelphia County for a candidate in the electoral contest for the 172nd District.

39. However, should that hypothetical Philadelphia County voter wish to be a poll watcher in the 172nd District, the Election Code bars that voter from participating in the electoral process in every part of that district merely by the happenstance of the voter's county of residency.

40. Another example is the 78<sup>th</sup> District of the Pennsylvania House of Representatives which is located partially in Franklin and Bedford Counties, and all of Fulton County.

41. Should a Franklin County voter wish to be a poll watcher in the 78<sup>th</sup> District, the Election Code bars that voter from participating in the electoral process in every part of that district merely by the happenstance of the voter's county of residence. The same applies to a voter in that District in Fulton or Bedford County as well.

42. Once statutorily credentialed as a poll watcher (or an individual who would serve as a poll watcher, but for the residency requirement), that poll watcher engages in core political speech protected by the First and Fourteenth Amendments.

43. Specifically, a statutorily credentialed poll watcher (or an individual who would serve as a poll watcher but for the residency requirement), engages in protected speech by, *inter alia*, reporting incidents of potential violations of the Election Code (or other regulations or criminal statutes) during the conduct of an election.

44. This speech is especially critical to protect when, as here, a voter may cast a vote for a candidate, but be unable to monitor (as a poll watcher) the election for that candidate because the polling place at which the voter wishes to monitor is in the same *electoral district* – but not the *county* – as the voter/poll watcher.

45. The Commonwealth has no compelling interest in limiting political speech in this fashion.

46. The Commonwealth's arbitrary exclusion of voters/poll watchers from serving as such in their own legislative district (albeit, across the political line of a county) has real, demonstrable impacts on all Plaintiffs to this action.

47. For example, Plaintiff the Republican Party of Pennsylvania has an interest in having its poll watchers monitor the polls within Philadelphia County to ensure the integrity of the vote on behalf of its numerous federal and state electoral candidates (both statewide candidates and those running in districts that include Philadelphia County).

48. The Republican Party of Pennsylvania has a corresponding interest in protecting the integrity of the vote on behalf of its registered electors, both those within Philadelphia County and those throughout the Commonwealth, who are voting for federal and statewide Republican candidates.

49. According to statistics collected and disseminated by the Commonwealth Department of State, in some Pennsylvania counties, the number of voters registered as Democrats versus the number of registered Republicans is significantly disparate. *See: [www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics](http://www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics); [http://www.philadelphiavotes.com/files/departments-reports/Historical\\_Registration\\_1940-2016.pdf](http://www.philadelphiavotes.com/files/departments-reports/Historical_Registration_1940-2016.pdf)*

50. For example, in Philadelphia County, there exist 66 voting wards which are divided into 1,686 divisions (the "Philadelphia Divisions"). *See: <http://www.philadelphiavotes.com/en/resources-a-data/political-maps>*

51. Republicans are not a majority of registered voters in any ward in Philadelphia County. *See: [www.philadelphiavotes.com](http://www.philadelphiavotes.com)*

52. In some contiguous geographic areas of the Commonwealth, such as in Fulton, Franklin, Bedford, Huntingdon and Perry counties, of the two main political parties, Republicans account for almost 70% of the voters, thereby placing Democrats at a disadvantage in staffing polling places with Democratic poll watchers. *See: [www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics](http://www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics)*

53. As a result of the Commonwealth's arbitrary restriction on poll watchers, candidates, political parties and political bodies are unjustifiably burdened in their attempts to locate available, qualified registered electors who can serve as poll watchers.

54. As a further result of the Commonwealth's arbitrary restriction on poll watchers, political bodies are even more disadvantaged than the two major political parties.

55. The Commonwealth's restriction on poll watchers has no rational basis.

56. Poll watchers serve the important purpose of assuring voters, candidates, political parties, and political bodies, who may question the fairness of the election process, that the same is conducted in compliance with the law, and is done in a correct manner which protects the integrity and validity of the vote.

57. The Pennsylvania State Legislature has recognized the inequity and arbitrariness of the current Election Law as it pertains to restrictions on poll watchers, and as a result, House Bill 29 is pending in the Pennsylvania House of Representatives to allow registered voters throughout the state to serve as poll watchers in each of the Commonwealth's election districts. *See House bill 29 attached as Exhibit "B" hereto.*



58. Specifically, the House Co-Sponsorship Memorandum notes that it is “arbitrary to limit the ability of a registered voter to serve as watcher outside of his or her county of residence. Many of the Commonwealth’s elections have statewide and federal implications, which mean Pennsylvania’s registered voters, regardless of location, have a vested interest in ensuring that the electoral process is properly administered in every election district.” *See Memorandum attached as Exhibit “C” hereto.*

59. House Bill 29 passed the State Government Committee unopposed, with a unanimous bipartisan vote. *PA House Committee Roll Call Votes, State Government Committee, June 14, 2016*, <http://www.legis.state.pa.us/cfdocs/legis/RCC/PUBLIC/listVotes.cfm?chamber=H&SPick=20150&theDate=06/14/2016&cteeCde=36>

#### **COUNT I – VIOLATION OF THE UNITED STATES CONSTITUTION**

60. All of the foregoing paragraphs are incorporated by reference as if each was fully set forth herein.

#### ***Due Process and Equal Protection [Voting As A Fundamental Right]***

61. Voting is a fundamental right protected by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.

62. The Equal Protection Clause prevents the government from treating people differently without sufficient justification.

63. The requirement of equal treatment is particularly stringently enforced as to laws that affect the exercise of fundamental rights, including the right to vote. *See: Dunn v. Blumstein*, 405 U.S. 330 (1972); *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966).

64. The Pennsylvania poll watcher statute arbitrarily and unreasonably distinguishes between voters within the same electoral district by allowing some, but not others, to serve as poll watchers.

65. For these reasons, the Pennsylvania statute is unconstitutional.

*Due Process and Equal Protection*  
*[Integrity of the Vote]*

66. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution guarantees the voting populace the right to effectively cast a vote.

67. Therefore, the Equal Protection Clause's coverage extends to the manner of the exercise of the vote, and may not value one person's vote more than another's by allowing a vote to be diluted.

68. On its face and as applied, 25 P.S. § 2687(b)'s residency requirement denies Pennsylvanians the right to effectively cast a vote.

69. Under 25 P.S. § 2687(b), a Pennsylvania voter living in an electoral district straddling two or more county lines is unable to serve as a poll watcher in the entirety of her own electoral district.

70. This voter therefore is prevented from insuring the integrity of the electoral process, and thus the efficacy of her own vote, if she wishes to monitor a polling station in her own electoral district that happens to be across a county line.

71. Likewise, the Republican Party of Pennsylvania, and all of its candidates and registered electors, have a right to have their elections and votes for federal and statewide offices be conducted effectively and meaningfully, such that no vote is diluted or tainted.

72. Poll watchers serve the vital function in elections of ensuring that all votes cast everywhere are legitimate, and do not serve to negate or undermine voter choices made throughout the Commonwealth.

73. In a county such as Philadelphia, 25 P.S. § 2687(b) acts to arbitrarily and unfairly handicap one political party by perpetuating a chronic inability of one political party to fully and

fairly staff polling places with poll watchers, while the other political party is able to fully staff polling places within the county.

74. In the absence of § 2687(b), the Republican Party of Pennsylvania, and all of its registered electors and candidates, would not be artificially and unlawfully hampered from staffing every county polling station with credentialed poll watchers.

75. The Commonwealth has no compelling interest in arbitrarily restricting the right of any of its citizens from casting a vote, either a vote cast for a candidate whose district covers two counties, or one cast for a national or statewide candidate.

76. The Commonwealth has no compelling interest in arbitrarily limiting the right of Pennsylvania voters to meaningfully and effectively cast a vote.

WHEREFORE, Plaintiffs respectfully request judgment in their favor and request this Court: 1) enter an order declaring and adjudging that 25 P.S. § 2687(b) is unconstitutional; and 2) enter a preliminary and permanent injunction enjoining the Commonwealth from enforcing 25 P.S. § 2687(b)'s residency requirement for poll watchers.

## **COUNT II – VIOLATION OF THE UNITED STATES CONSTITUTION**

77. All of the foregoing paragraphs are incorporated by reference as if each was fully set forth herein.

### ***Protected Political Speech and Free Association***

78. Poll watching constitutes core political speech protected by the First and Fourteenth Amendments to the United States Constitution.

79. Poll watching constitutes free association with candidates, political parties, and political bodies.

80. The Commonwealth's arbitrary residency requirement for permitting otherwise credentialed poll watchers to participate in the electoral process totally restricts this form of

political speech and free association for both poll watchers and the political parties they represent.

81. The Commonwealth has no compelling interest in restricting political speech or free association with § 2687(b)'s residency requirement.

WHEREFORE, Plaintiffs respectfully request judgment in their favor and request this Court: 1) enter an order declaring and adjudging that 25 P.S. § 2687(b) is unconstitutional; and 2) enter a preliminary and permanent injunction enjoining the Commonwealth from enforcing 25 P.S. § 2687(b)'s residency requirement for poll watchers.

### **COUNT III- VIOLATION OF THE PENNSYLVANIA CONSTITUTION**

82. All of the foregoing paragraphs are incorporated by reference as if each was fully set forth herein.

83. Article I, Sec. 7 of the Pennsylvania Constitution guarantees at least the same level of substantive free speech protection as the First Amendment of the United States Constitution.

84. Article I, Sec. 5 and 26 of the Pennsylvania Constitution guarantee equal protection under the law, and free and equal elections.

85. Accordingly, and for the same reasons that 25 P.S. § 2687(b) violates the United States Constitution, § 2687(b)'s residency requirement violates the Pennsylvania Constitution as well.

WHEREFORE, Plaintiffs respectfully request judgment in their favor and request this Court: 1) enter an order declaring and adjudging that 25 P.S. § 2687(b) is unconstitutional; and 2) enter a preliminary and permanent injunction enjoining the Commonwealth from enforcing 25 P.S. § 2687(b)'s residency requirement for poll watchers.

/s/ Scot R. Withers

LAMB MCERLANE PC

Scot R. Withers

24 E. Market St. PO Box 565

West Chester, PA 19381

Phone: 610-430-8000

Fax: 610-696-6668

Attorney ID 84309

OBERMAYER REBMANN MAXWELL &  
HIPPEL, LLP

Rebecca L. Warren

1500 Market Street, Suite 3400

Philadelphia, PA 19102

Phone: 717-221-1602

Fax: 267-675-4781

Attorney ID 63669

THE BANKS LAW GROUP

Matthew B. Banks

845 North Park Road, Suite 102

Wyomissing, PA 19610

Phone: 610-816-6414

Attorney ID 312355

*Attorneys for all Plaintiffs*

***OF COUNSEL, REPUBLICAN PARTY OF  
PENNSYLVANIA:***

OBERMAYER REBMANN MAXWELL &  
HIPPEL, LLP

Lawrence J. Tabas

1500 Market Street, Suite 3400

Philadelphia, PA 19102

Phone: 215-665-3158

Fax: 267-675-4781

Attorney ID 27815

*Attorney for Plaintiff Republican Party of  
Pennsylvania*

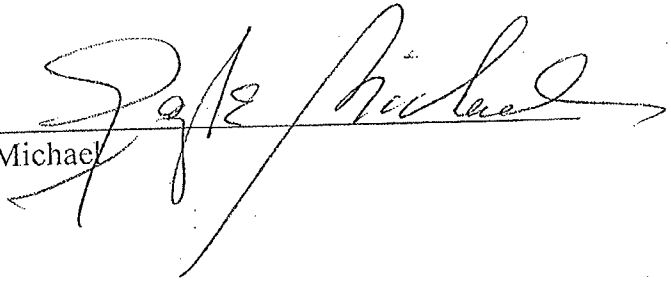
# VERIFICATION

I declare under penalty of perjury that the foregoing Verified Complaint is true and correct.

Date:

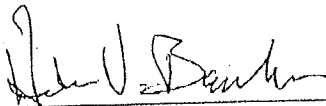
October 20, 2016

Gayle Michael

A handwritten signature in cursive script, appearing to read "Gayle Michael", written over a horizontal line.

**VERIFICATION**

I, Helen V. Banushi, Plaintiff in the foregoing Complaint, verify that statements made herein are true and correct to the best of my knowledge, information and belief. I further understand that any false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Helen V. Banushi  
Plaintiff

Date: 1/18/16

## VERIFICATION

I declare under penalty of perjury that the foregoing Verified Complaint is true and correct.

REPUBLICAN PARTY OF PENNSYLVANIA

Date: 10-12-16

By: 

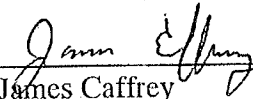
Bob Bozzuto, Executive Director



### VERIFICATION

I declare under penalty of perjury that the foregoing Verified Complaint is true and correct.

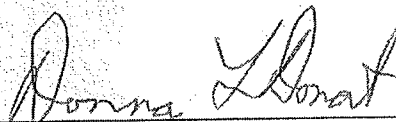
Date: 10-20-2016

  
James Caffrey

### VERIFICATION

I declare under penalty of perjury that the foregoing Verified Complaint is true and correct.

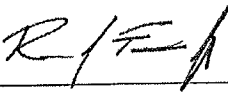
Date: 10/19/16

  
\_\_\_\_\_  
Donna Donat

### VERIFICATION

I declare under penalty of perjury that the foregoing Verified Complaint is true and correct.

Date: 10-12-16

  
\_\_\_\_\_  
Ronald J. Ferrance, Jr.

### VERIFICATION

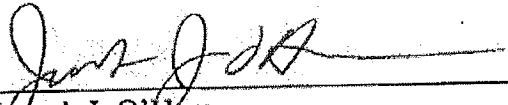
I declare under penalty of perjury that the foregoing Verified Complaint is true and correct.

Date: October 21, 2016 Monica Morrill  
Monica Morrill

# VERIFICATION

I declare under penalty of perjury that the foregoing Verified Complaint is true and correct.

Date: 10-20-14

  
\_\_\_\_\_  
Joseph J. O'Hara

**EXHIBIT "A"**

<b>Voter ID:</b>	103355851-58	<b>Count</b>	SOMERSET
<b>Name:</b>	MORRILL, MONICA		
<b>Date Of Birth:</b>	9/26/1975		
<b>Addre</b>	216 E MAIN ST STOYSTOWN, PA 15563		
<b>Confidential</b>	No		
<b>Date of</b>	04/05/2012	<b>Status</b>	04/05/2012
<b>Status:</b>	Active		
<b>Party:</b>	REPUBLICAN		
<b>Last Date</b>	04/21/2016		
<b>Precinct</b>	STOYSTOWN BORO , 60-1		

<b>Voter ID:</b>	005517044-40	<b>Count</b>	LUZERNE
<b>Name:</b>	FERRANCE, RONALD J JR		
<b>Date Of Birth:</b>	10/5/1970		
<b>Addre</b>	573 ORCHARD ST HANOVER TWP, PA 18706		
<b>Confidential</b>	No		
<b>Date of</b>	02/05/1998	<b>Status</b>	02/05/1998
<b>Status:</b>	Active		
<b>Party:</b>	REPUBLICAN		
<b>Last Date</b>	03/03/2016		
<b>Precinct</b>	HANOVER TWP W 06 , 260600		

<b>Voter ID:</b>	006037076-46	<b>Count</b>	MONTGOMERY
<b>Name:</b>	MICHAEL, GAYLE G		
<b>Date Of Birth:</b>	12/6/1938		
<b>Addre</b>	108 LELAND RD BALA-CYNWYD, PA 19004		
<b>Confidential</b>	No		
<b>Date of</b>	08/29/1996	<b>Status</b>	08/29/1996
<b>Status:</b>	Active		
<b>Party:</b>	REPUBLICAN		
<b>Last Date</b>	08/29/1996		
<b>Precinct</b>	LOWER MERION 3-1 , 400301-1		

**Voter ID:** 016216467-51      **Count** PHILADELPHIA  
**Name:** BANUSHI, HELEN V  
**Date Of Birth:** 7/12/1952  
**Addre** 4026 GREEBY ST PHILADELPHIA, PA 19135  
**Confidential** No  
**Date of** 10/06/2003  
**Status:** Active      **Status** 10/06/2003  
**Party:** REPUBLICAN  
**Last Date** 12/31/2004  
**Precinct** PHILA WD 55 DIV 06 , 5506-1

**Voter ID:** 016046068-51      **Count** PHILADELPHIA  
**Name:** DONAT, DONNA L  
**Date Of Birth:** 12/19/1963  
**Addre** 8025 TERRY ST PHILADELPHIA, PA 19136  
**Confidential** No  
**Date of** 03/10/1984  
**Status:** Active      **Status** 03/10/1984  
**Party:** REPUBLICAN  
**Last Date** 03/10/1984  
**Precinct** PHILA WD 64 DIV 03 , 6403-1

**Voter ID:** 010184373-23      **Count** DELAWARE  
**Name:** WIKE, RALPH E III  
**Date Of Birth:** 4/26/1980  
**Addre** 286 SAXER AVE SPRINGFIELD, PA 19064  
**Confidential** No  
**Date of** 04/08/1998  
**Status:** Active      **Status** 04/08/1998  
**Party:** REPUBLICAN  
**Last Date** 06/15/2012  
**Precinct** SPRINGFIELD TOWNSHIP 4TH WARD 2ND PREC ,



<b>Voter ID:</b>	006033896-46	<b>Count</b>	MONTGOMERY
<b>Name:</b>	CAFFREY, JAMES J JR		
<b>Date Of Birth:</b>	12/2/1953		
<b>Addre</b>	43 SYLVANIA AVE N JENKINTOWN, PA 19046		
<b>Confidential</b>	No		
<b>Date of</b>	08/29/1996		
<b>Status:</b>	Active	<b>Status</b>	08/29/1996
<b>Party:</b>	REPUBLICAN		
<b>Last Date</b>	08/29/1996		
<b>Precinct</b>	ROCKLEDGE , 180001-1		

<b>Voter ID:</b>	005487443-40	<b>Count</b>	LUZERNE
<b>Name:</b>	OHARA, JOSEPH J		
<b>Date Of Birth:</b>	10/6/1960		
<b>Addre</b>	7357 BLUE RIDGE TRL MOUNTAIN TOP, PA 18707		
<b>Confidential</b>	No		
<b>Date of</b>	02/05/1998		
<b>Status:</b>	Active	<b>Status</b>	02/05/1998
<b>Party:</b>	REPUBLICAN		
<b>Last Date</b>	04/15/2016		
<b>Precinct</b>	DORRANCE TWP , 140000		

**EXHIBIT “B”**

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 29

Session of  
2015

INTRODUCED BY SACCONI, BARRAR, GILLEN, MCGINNIS, GABLER,  
EVERETT, METCALFE, TRUITT AND GIBBONS, JANUARY 21, 2015

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JANUARY 21, 2015

AN ACT

1 Amending the act of June 3, 1937 (P.L.1333, No.320), entitled  
2 "An act concerning elections, including general, municipal,  
3 special and primary elections, the nomination of candidates,  
4 primary and election expenses and election contests; creating  
5 and defining membership of county boards of elections;  
6 imposing duties upon the Secretary of the Commonwealth,  
7 courts, county boards of elections, county commissioners;  
8 imposing penalties for violation of the act, and codifying,  
9 revising and consolidating the laws relating thereto; and  
10 repealing certain acts and parts of acts relating to  
11 elections," in district election officers, further providing  
12 for appointment of watchers.

13 The General Assembly of the Commonwealth of Pennsylvania  
14 hereby enacts as follows:

15 Section 1. Section 417(b) of the act of June 3, 1937  
16 (P.L.1333, No.320), known as the Pennsylvania Election Code,  
17 amended October 8, 2004 (P.L.807, No.97), is amended to read:

18 Section 417. Appointment of Watchers.--

19 \* \* \*

20 (b) Each watcher so appointed must be a qualified registered  
21 elector of [the county in which the election district for which  
22 the watcher was appointed is located] this Commonwealth. Each  
23 watcher so appointed shall be authorized to serve in the

1 election district for which the watcher was appointed and, when  
2 the watcher is not serving in the election district for which  
3 the watcher was appointed, in any other election district [in  
4 the county in which the watcher is a qualified registered  
5 elector] located in the same county as the election district to  
6 which the watcher is appointed: Provided, That only one watcher  
7 for each candidate at primaries, or for each party or political  
8 body at general, municipal or special elections, shall be  
9 present in the polling place at any one time from the time that  
10 the election officers meet prior to the opening of the polls  
11 under section 1208 until the time that the counting of votes is  
12 complete and the district register and voting check list is  
13 locked and sealed, and all watchers in the room shall remain  
14 outside the enclosed space. It shall not be a requirement that a  
15 watcher be a resident of the election district for which the  
16 watcher is appointed. After the close of the polls and while the  
17 ballots are being counted or voting machine canvassed, all the  
18 watchers shall be permitted to be in the polling place outside  
19 the enclosed space. Each watcher shall be provided with a  
20 certificate from the county board of elections, stating his name  
21 and the name of the candidate, party or political body he  
22 represents. Watchers shall be required to show their  
23 certificates when requested to do so. Watchers allowed in the  
24 polling place under the provisions of this act, shall be  
25 permitted to keep a list of voters and shall be entitled to  
26 challenge any person making application to vote and to require  
27 proof of his qualifications, as provided by this act. During  
28 those intervals when voters are not present in the polling place  
29 either voting or waiting to vote, the judge of elections shall  
30 permit watchers, upon request, to inspect the voting check list

1 and either of the two numbered lists of voters maintained by the  
2 county board: Provided, That the watcher shall not mark upon or  
3 alter these official election records. The judge of elections  
4 shall supervise or delegate the inspection of any requested  
5 documents.

6 \* \* \*

7 Section 2. This act shall take effect in 60 days.

## **EXHIBIT “C”**

# Pennsylvania House of Representatives

10/02/2016 02:58 PM

<http://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20150&cosponId=15453>[Home](#) / House Co-Sponsorship Memoranda

## House Co-Sponsorship Memoranda

House of Representatives  
Session of 2015 - 2016 Regular Session

### MEMORANDUM

**Posted:** December 2, 2014 12:16 PM  
**From:** [Representative Rick Saccone](#)  
**To:** All House members  
**Subject:** Amending the Pennsylvania Election Code, former HB 1827

Currently, the Election Code of 1937 requires watchers to be registered voters of the county in which the election district for which the watcher was appointed to is located. In the near future, I will be introducing legislation that will permit a registered voter of this Commonwealth to be appointed as a watcher in any election district located in Pennsylvania.

I believe it is arbitrary to limit the ability of a registered voter to serve as watcher outside of his or her county of residence. Many of the Commonwealth's elections have statewide and federal implications, which mean Pennsylvania's registered voters, regardless of location, have a vested interest in ensuring that the electoral process is properly administered in every election district.

Even in State Assembly races, districts encompass more than one county. This legislation would allow poll watchers, recruited by a candidate, to work in any county where that person is needed and not limited to only the county where the poll watcher resides.

I encourage you to support this good government legislation.



Introduced as [HB29](#)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

---

REPUBLICAN PARTY OF  
PENNSYLVANIA, MONICA MORRILL,  
RALPH E. WIKE III, HELEN BANUSHI,  
RONALD J. FERRANCE, JR., JOSEPH J.  
O'HARA, DONNA DONAT, JAMES  
CAFFREY, AND GAYLE MICHAEL,  
Plaintiffs

CIVIL ACTION

NO.

v.

PEDRO A. CORTES, in his capacity as  
Secretary of the Commonwealth of  
Pennsylvania

Defendant

---

**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2016, upon consideration of Plaintiffs' Emergency Motion for Temporary Restraining Order and Permanent Injunction, IT IS HEREBY ORDERED that Plaintiffs' Motion is GRANTED as follows:

Until such time as the Pennsylvania Legislature enacts a permanent measure amending or modifying 25 P.S. § 2687(b) to allow watchers to serve in any Election District in the Commonwealth, the following shall apply:

1. The Secretary of the Commonwealth is permanently enjoined from enforcing 25 P.S. § 2687(b) to the extent that it restricts a watcher to serving in the County in which the watcher is a qualified registered elector of the Commonwealth.
2. Every watcher who is a qualified registered elector of the Commonwealth who has been appointed as provided in 25 P.S. § 2687(a) shall be authorized to serve not only in the



Election District for which the watcher was appointed, but shall also be allowed to serve in any other Election District in the Commonwealth.

3. All other provisions of 25 P.S. § 2687 that do not conflict with this Order continue to apply.

BY THE COURT:

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

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

---

REPUBLICAN PARTY OF  
PENNSYLVANIA, MONICA MORRILL,  
RALPH E. WIKE III, HELEN BANUSHI,  
RONALD J. FERRANCE, JR., JOSEPH J.  
O'HARA, DONNA DONAT, JAMES  
CAFFREY, AND GAYLE MICHAEL,  
Plaintiffs

CIVIL ACTION

NO.

v.

PEDRO A. CORTES, in his capacity as  
Secretary of the Commonwealth of  
Pennsylvania

Defendant

---

**PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER  
AND PERMANENT INJUNCTION**

Pursuant to Fed.R.Civ.P. 65(a) and (b), Plaintiffs Republican Party of Pennsylvania, Monica Morrill, Ralph E. Wike III, Helen Banushi, Ronald J. Ferrance Jr., Joseph J. O'Hara, Donna Donat, James Caffrey and Gayle Michael (collectively the "Plaintiffs"), hereby move the Court for a temporary restraining order and permanent injunction, which take effect immediately, and enjoin Defendant Secretary of the Commonwealth of Pennsylvania, Pedro A. Cortes, and his agents from enforcing 25 P.S. §2687 against out-of-county poll watchers, and last until such time as the Legislature enacts remedial legislation that cures the constitutional defects of that provision.

In support of this Motion, the Plaintiffs incorporate their Verified Complaint and attached Memorandum of Law, and state that: all relevant factors weigh in favor of granting the relief requested; Plaintiffs will be immediately and irreparably harmed if the relief is not granted;

Plaintiffs have established that greater injury would result from denying the injunction than from granting it; and, Plaintiffs' right to relief is clear. Indeed, the public will also be benefitted by an injunction, in that there is a strong public interest ensuring and upholding the integrity of the voting process.

/s/ Scot R. Withers

LAMB MCERLANE PC

Scot R. Withers

24 E. Market St. PO Box 565

West Chester, PA 19381

Phone: 610-430-8000

Fax: 610-696-6668

Attorney ID 84309

OBERMAYER REBMANN MAXWELL &  
HIPPEL, LLP

Rebecca L. Warren

1500 Market Street, Suite 3400

Philadelphia, PA 19102

Phone: 717-221-1602

Fax: 267-675-4781

Attorney ID 63669

THE BANKS LAW GROUP

Matthew B. Banks

845 North Park Road, Suite 102

Wyomissing, PA 19610

Phone: 610-816-6414

Attorney ID 312355

*Attorneys for all Plaintiffs*

***OF COUNSEL, REPUBLICAN PARTY OF  
PENNSYLVANIA:***

OBERMAYER REBMANN MAXWELL &  
HIPPEL, LLP

Lawrence J. Tabas

1500 Market Street, Suite 3400

Philadelphia, PA 19102

Phone: 215-665-3158

Fax: 267-675-4781

Attorney ID 27815

*Attorney for Plaintiff Republican Party of  
Pennsylvania*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

---

REPUBLICAN PARTY OF  
PENNSYLVANIA, MONICA MORRILL,  
RALPH E. WIKE III, HELEN BANUSHI,  
RONALD J. FERRANCE, JR., JOSEPH J.  
O'HARA, DONNA DONAT, JAMES  
CAFFREY, AND GAYLE MICHAEL,  
Plaintiffs

v.

PEDRO A. CORTES, in his capacity as  
Secretary of the Commonwealth of  
Pennsylvania

Defendant

---

CIVIL ACTION

NO.

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR  
TEMPORARY RESTRAINING ORDER AND PERMANENT INJUNCTION**

**I. BACKGROUND**

Plaintiffs, the Republican Party of Pennsylvania and duly registered electors of the Commonwealth of Pennsylvania, Monica Morrill, Ralph E. Wike III, Helen Banushi, Ronald J. Ferrance, Jr., Joseph J. O'Hara, Donna Donat, James Caffrey and Gayle Michael, initiated this action against Defendant, Pedro A. Cortes, Secretary of the Commonwealth of Pennsylvania and Pennsylvania's Chief Election Officer responsible for overseeing elections in Pennsylvania, seeking a declaratory judgment that the Pennsylvania Election Code illegally and arbitrarily restricts poll watchers from serving only in the county of their residence, in contravention of the United States and Pennsylvania Constitutions.

The United States Constitution provides for the people's right to vote, and prohibits the denial or abridgement of such right. *See* U.S. Const. amend. XV, IX, XIV, XVI. The

Pennsylvania Constitution also bestows the right to vote upon qualified citizens. Pa. Const. art. VII, § 1. Elections in Pennsylvania are entirely governed and regulated by statute. *See* 25 P.S. §§ 2600 *et. seq.* (the “Election Law”). To ensure the integrity of elections in Pennsylvania, the Election Law provides for the appointment by each candidate, political party, and political body, of poll watchers to serve in each election district in the Commonwealth. 25 P.S. § 2687. The ability of candidates, political parties, and political bodies to appoint poll watchers, and the poll watchers’ duties have been a part of the Pennsylvania Election law since 1937. *See* 25 P.S. § 2687 *credits*. The most recent amendment to 25 P.S. § 2687 was an expansion of a poll watcher’s geographic territory from a single polling place to an entire county.

Poll watchers fulfill a critical function in Pennsylvania elections. Poll watchers are allowed to observe the conduct of the election in the polling place throughout the entire day and make strike off lists of voters, but must not interfere in any way with the election process.

Pursuant to the Election Law:

- Watchers may observe the election process from the time the first polling place official appears in the morning to open the polling place, through and including the time the polls are closed and the election returns are counted and posted at the polling place entrance. 25 P.S. § 2687(b).
- From the time that the election officers meet to open the polls and until the counting of the votes is complete, a watcher representing each political party and its candidates at a general, municipal or special election shall be present in the polling place outside the enclosed space. 25 P.S. § 2687(b).

- After the close of the polls and while the ballots are being counted, all the watchers for candidates and political parties or bodies shall be permitted to be in the polling place outside the enclosed space. 25 P.S. § 2687(b).
- Watchers shall be permitted to be present when the envelopes containing official absentee ballots are opened and when such ballots are counted and recorded. 25 P.S. § 3146.8(b).
- Any watcher shall have the opportunity to challenge any absentee elector upon the ground or grounds (1) that the absentee elector is not a qualified elector; or (2) that the absentee elector was within the municipality of his residence on the day of the primary or election during the period the polls were open, except where he was in military service or except in the case where his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability; or (3) that the absentee elector was able to appear personally at the polling place on the day of the primary or election during the period the polls were open in the case his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability. 25 P.S. § 3146.8(e)
- Watchers shall be permitted to keep a list of voters. 25 P.S. § 2687(b).
- During times when voters are not present or voting, watchers can ask the Judge of Elections to inspect the voting check list and either of the two numbered lists of voters, but cannot mark or alter those lists. 25 P.S. § 2687(b).
- Any person who presents himself or herself to vote may be challenged by a watcher as to his or her identity, his or her continued residence in the election district, or as to any alleged violation of 25 P.S. § 3050(d). 25 P.S. § 3050(d).

The Pennsylvania Election Code controls the residency requirement for poll watchers. Specifically, Section 2687(b) provides that “[e]ach watcher so appointed must be a qualified registered elector of the county in which the election district for which the watcher was appointed is located.” 25 P.S. § 2687.

In Pennsylvania, all Congressional electoral districts exist in multiple counties. Similarly, many districts for members of the Pennsylvania General Assembly exist in multiple counties.<sup>1</sup> As a result, and by way of example, a voter in the 172nd District of the Pennsylvania House of Representatives living in Philadelphia County has a direct interest in the conduct of elections in Montgomery County, as voting in Montgomery County affects in a real and meaningful way the votes cast in Philadelphia County for a candidate in the electoral contest for the 172nd District. However, should that hypothetical Philadelphia County voter wish to be a poll watcher in the 172nd District, the Election Code bars that voter from participating in the electoral process in every part of that district merely by the happenstance of the voter’s county of residency. Another example is the 78<sup>th</sup> District of the Pennsylvania House of Representatives which is located partially in Franklin and Bedford Counties, and all of Fulton County. Should a Franklin County voter wish to be a poll watcher in the 78<sup>th</sup> District, the Election Code bars that voter from participating in the electoral process in every part of that district merely by the happenstance of the voter’s county of residence. The same applies to a voter in that District in Fulton or Bedford County as well.

---

<sup>1</sup> See, e.g., Pennsylvania House of Representatives Districts: 6, 8, 10, 13, 14, 15, 16, 17, 26, 33, 39, 40, 46, 49, 50, 51, 52, 54, 55, 59, 60, 63, 64, 65, 66, 67, 68, 69, 71, 73, 75, 76, 78, 81, 82, 84, 85, 86, 92, 98, 104, 107, 108, 110, 111, 117, 118, 124, 125, 128, 129, 131, 134, 139, 152, 157, 160, 166, 171, 172, 183, 185, 187, 189, 191, 193, and 194; and, Pennsylvania Senate Districts: 4, 7, 8, 9, 12, 14, 15, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 37, 40, 41, 44, 45, 46, 47, 48, and 50.

According to statistics collected and disseminated by the Commonwealth Department of State, in some Pennsylvania counties, the number of voters registered as Democrats versus the number of registered Republicans is significantly disparate. *See:* [www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics](http://www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics); [http://www.philadelphiavotes.com/files/department-reports/Historical\\_Registration\\_1940-2016.pdf](http://www.philadelphiavotes.com/files/department-reports/Historical_Registration_1940-2016.pdf). For example, in Philadelphia County, there exist 66 voting wards which are divided into 1,686 divisions (the “Philadelphia Divisions”). *See:* <http://www.philadelphiavotes.com/en/resources-a-data/political-maps>. Republicans are not a majority of registered voters in any ward in Philadelphia County. *See:* [www.philadelphiavotes.com](http://www.philadelphiavotes.com).

In some contiguous geographic areas of the Commonwealth, such as in Fulton, Franklin, Bedford, Huntingdon and Perry counties, of the two main political parties, Republicans account for almost 70% of the voters, thereby placing Democrats at a disadvantage in staffing polling places with Democratic poll watchers. *See:* [www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics](http://www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics).

The Pennsylvania State Legislature has recognized the inequity and arbitrariness of the current Election Law as it pertains to restrictions on poll watchers, and as a result, House Bill 29 is pending in the Pennsylvania House of Representatives to allow registered voters throughout the state to serve as poll watchers in each of the Commonwealth’s election districts. *See House bill 29 attached as Appendix “A” hereto*. Specifically, the House Co-Sponsorship Memorandum notes that it is “arbitrary to limit the ability of a registered voter to serve as watcher outside of his or her county of residence. Many of the Commonwealth’s elections have statewide and federal implications, which mean Pennsylvania’s registered voters, regardless of location, have a vested



interest in ensuring that the electoral process is properly administered in every election district.”

*See Memorandum attached as Appendix “B” hereto.*

House Bill 29 passed the State Government Committee unopposed, with a unanimous bipartisan vote. *PA House Committee Roll Call Votes, State Government Committee, June 14, 2016*, <http://www.legis.state.pa.us/cfdocs/legis/RCC/PUBLIC/listVotes.cfm?chamber=H&SPick=20150&theDate=06/14/2016&cteeCde=36>

## **II. QUESTION PRESENTED**

Whether, pursuant to Fed.R.Civ.P. 65(a) and (b), a temporary restraining order and permanent injunction should be issued to take effect immediately, enjoining Defendant, the Secretary of the Commonwealth of Pennsylvania, Pedro A. Cortes, and his agents from enforcing 25 P.S. § 2687 against out-of-county poll watchers, until such time as the Legislature enacts remedial legislation that cures the constitutional defects of that provision?

*Suggested Answer: YES*

## **III. ARGUMENT**

### **A. Standards for injunctive relief**

Preliminary injunctions and Temporary Restraining Orders (“TROs”) are reserved for emergency circumstances where the rights of a party are in urgent need of protection. *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 422 (4th Cir. 1999) (citing *Granny Goose Foods, Inc. v. Local 70, Brotherhood of Teamsters*, 415 U.S. 423, 439 (1974)). A preliminary injunction is intended to preserve the status quo pending a final trial on the merits, whereas a TRO maintains the status quo until a preliminary injunction hearing can be held. *Id.* Federal Rule of Civil Procedure 65 governs use of TROs and preliminary injunctions.

Preliminary injunctive relief is appropriate where “the exigencies of the situation demand” speedy action to protect the plaintiffs’ rights. *Wetzel v. Edwards*, 635 F.2d 283, 286 (4th Cir. 1980). The four factors to be considered by the Court in issuing a preliminary injunction are: (1) whether Plaintiffs have demonstrated a reasonable probability of success on the merits; (2) whether Plaintiffs will suffer irreparable harm should the Court deny relief; (3) whether granting preliminary relief will result in even greater harm to the Secretary of the Commonwealth; and (4) whether granting the requested relief behooves the public interest. *ACLU v. Reno*, 217 F.3d 162, 172 (3d Cir. 2000); *Allegheny Energy, Inc. v. DQE, Inc.*, 171 F.3d 153, 158 (3d Cir. 1999).

There are no disputed facts in this case. All of the statistics relied on by Plaintiffs were collected and disseminated by the Commonwealth Department of State. Fed.R.Civ.P. 65(a)(2) enables this Court to order the advancement of a trial on the merits and its consolidation with the hearing on an application for a preliminary injunction. *See* Fed.R.Civ.P. 65(a)(2), Advisory Committee Notes, 1966 Amendment. Plaintiffs intend to rest on their pleadings, presenting no witnesses or additional evidence, and request that this Court consolidate the trial and the hearing, providing all parties with the opportunity to present their cases in oral argument.

The requirements for granting a permanent injunction differ from the standards for granting a preliminary injunction. *American Civil Liberties Union of New Jersey v. Black Horse Pike Regional Bd. of Educ.*, 84 F.3d 1471, 1477 (3rd Cir. 1996). The Court may grant a permanent injunction only when the plaintiffs succeed on the merits of their claims, meeting their burden of proof. *Id.* at 1477. In this case, Plaintiffs must establish by a preponderance of the evidence that Pennsylvania’s law violates their protected constitutional rights. This Court must also find that no available remedy at law exists, and that the balance of the equities favors

granting injunctive relief. *Ciba-Geigy Corp. v. Bolar Pharmaceutical Co.*, 747 F.2d 844, 850 (3rd Cir. 1984), *cert. denied*, 471 U.S. 1137 (1985).

**B. Enforcing 25 P.S. § 2687 against out-of-county poll watchers violates the United States and Pennsylvania Constitutions**

**1. Poll watchers are necessary to ensure that the process is conducted fairly and to promote integrity in the outcome of the elections**

There is no freedom more fundamental in America than the freedom to vote. It is both a right and a privilege; the integrity of which must, as a matter of principle, be perpetually preserved and protected. It is the integrity of the vote that safeguards the integrity of our democratic process. Open elections are crucial to democracy—a government of the people, by the people, and for the people. Citizens have a fundamental right to a fair and honest election process, and a free and fair election requires ballot security.

Poll watchers are vital to protecting ballot security and the franchise itself, as a right to vote without the necessary structure to administer the conduct of elections renders those votes—and thus that right—ineffective. Consequently, the Supreme Court has recognized that “States may, and inevitably must, enact reasonable regulations of parties, elections and ballots to reduce election- and campaign-related disorder.” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). Political parties and candidates have important interests at stake in elections, and poll watchers serve to protect those interests by preventing malfeasance, misconduct, and technical discrepancies that could alter the valid results of an election.

Pennsylvania’s statutory provision for poll watchers can be viewed as a pre-emptive move aimed at promoting the State’s compelling interest in ensuring that the process is conducted fairly and to promote integrity in the outcome of the elections. Poll watchers shine a light on the official election process; they mitigate legitimate concerns about the impartiality of

election officials and the occurrence of innocent errors by polling staff. Because election officials have significant authority over the conduct of elections, well-trained poll watchers can provide a “check and balance” in polling precincts where there are concerns about official partisan bias. Poll watchers can also be helpful in preventing more than intentional fraud, by identifying and bringing to election officials’ attention mistakes in registration or eligibility, which election officials may inadvertently overlook. Poll watchers also monitor the voter verification process and provision of ballots for the voters to cast, and raise challenges concerning suspected ineligible voters. Poll watchers not only serve to stop other citizens from violating election laws, but also to stop government election officials from allowing other citizens to violate election laws.

Poll watchers thus shine a light on polling place procedures to prevent the violation of election law—by the polling place official, the putative voter, or a combination of both—from diluting legal votes. For when unqualified electors are permitted to vote within a district, the legitimate votes of all qualified electors in that district are diluted and their fundamental right to vote is therefore violated. All Americans who are eligible should have the opportunity to vote, but their ballots should not be diluted.

**2.     Enforcing 25 P.S. § 2687 against out-of-county poll watchers violates  
       Due Process and Equal Protection**

Voting is a fundamental right protected by the Due Process<sup>2</sup> and Equal Protection<sup>3</sup> Clauses of the Fourteenth Amendment to the United States Constitution. The Equal Protection

---

<sup>2</sup> The Due Process Clauses of the United States and Pennsylvania Constitutions are “coextensive”. *Commonwealth of Pa., Dept. of Transp. v. Taylor*, 841 A.2d 108, 114 n.6 (Pa. 2004).

<sup>3</sup> “[F]ederal and state equal protection rights are coextensive.” *Robinson Township v. Commonwealth*, 83 A.3d 901, 1117 n.10 (2013) (citing *Driscoll v. Corbett*, 69 A.3d 197, 209 (Pa. 2013); *Erfer v. Commonwealth*, 794 A.2d 325, 332 (Pa. 2002)).

Clause prevents the government from treating people differently without sufficient justification. The requirement of equal treatment is particularly stringently enforced as to laws that affect the exercise of fundamental rights, including the right to vote. *See Dunn v. Blumstein*, 405 U.S. 330 (1972); *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966). The Pennsylvania poll watcher statute arbitrarily and unreasonably distinguishes between voters within the same electoral district by allowing some, but not others, to serve as poll watchers, and is therefore unconstitutional.

The Equal Protection Clause also guarantees the voting populace the right to effectively cast a vote. Therefore, the Equal Protection Clause's coverage extends to the manner of the exercise of the vote, and may not value one person's vote more than another's by allowing a vote to be diluted. On its face and as applied, 25 P.S. § 2687(b)'s residency requirement denies Pennsylvanians the right to effectively cast a vote.

Pennsylvania law prohibits citizens from serving as poll watchers outside their counties of residence. Under 25 P.S. § 2687(b), each poll watcher "must be a qualified registered elector of the county in which the election district for which the watcher was appointed is located." Thus, poll watchers may not serve in districts outside the counties where they live.

Section 2687(b) appears to assume that each district is located in a single county by referring to "*the* county in which the election district is located", (emphasis supplied), but that is often not the case. Instead, most districts include portions of multiple counties, and Section 2687(b) causes particular problems in those districts that straddle multiple counties. In such districts, Section 2687(b) prohibits poll watchers from serving in their own electoral districts in precincts that are in a different county from the district in which the poll watcher lives. The statute thus discriminates not only between Pennsylvanians based on their counties of

residence, but it discriminates between different registered voters *in the same district* based on their counties of residence. Such discrimination is not rationally related to any legitimate purpose of the Commonwealth, and *a fortiori* does not meet the strict-scrutiny test applicable to laws abridging fundamental rights, including the right of political participation.

Under the Due Process and the Equal Protection Clauses, Americans enjoy the fundamental right to participate in politics, whether through speech,<sup>4</sup> voting,<sup>5</sup> participating in political organizations,<sup>6</sup> or running for office.<sup>7</sup> Laws that permit some people, but not others, to exercise fundamental rights—especially the fundamental right to participate in the political process—are subject to strict scrutiny. *See Dunn v. Blumstein*, 405 U.S. 330, 336-37 (1972); *Kramer v. Union Free School District No. 15*, 395 U.S. 621, 629 (1969); *Harper v. Virginia Board of Elections*, 383 U.S. 663, 665 (1966).

Serving as a poll watcher both *protects* these fundamental rights and *is itself* an exercise of those rights. Poll watchers protect the integrity of the voting process, and thereby protect the rights of eligible voters by ensuring that the value of their votes is not undermined or diluted by misapplication of law. That function of protecting the fundamental right to vote is enough by itself to trigger strict scrutiny. *See Reynolds v. Sims*, 377 U.S. 533, 562 (1966) (“Especially since

---

<sup>4</sup> *See Brown v. Hartlage*, 456 U.S. 45, 52-54 (1982); *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971) (“[I]t can hardly be doubted that the [First Amendment] has its fullest and most urgent application precisely to the conduct of campaigns for political office.”); *Mills v. Alabama*, 384 U.S. 214, 218-19 (1966) (“Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs.”).

<sup>5</sup> *See, e.g., Wesberry v. Sanders*, 376 U.S. 1, 17-18 (1964) (“No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.”).

<sup>6</sup> *See Cousins v. Wigoda*, 419 U.S. 477, 487 (1975); *Kusper v. Pontikes*, 414 U.S. 51, 56-57 (1973).

<sup>7</sup> *See, e.g., Bullock v. Carter*, 405 U.S. 134, 143-44 (1972).

the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.”); *see also Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (identifying “the political franchise of voting” as “a fundamental political right, because preservative of all rights”).

Even where fundamental rights are not at issue, the Equal Protection Clause prevents the government from treating people differently without sufficient justification. *See United States v. Windsor*, 133 S. Ct. 2675 (2013); *Romer v. Evans*, 517 U.S. 620 (1996); *City of Cleburn v. Cleburn Living Center*, 473 U.S. 432 (1985). Under this “rational-basis” test, state laws must bear a reasonable relationship to a legitimate governmental interest. *See, e.g., F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920) (“The classification must be reasonable, not arbitrary and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.”).

Under 25 P.S. § 2687(b), a Pennsylvania voter living in an electoral district straddling two or more county lines is unable to serve as a poll watcher in the entirety of her own electoral district. This voter therefore is prevented from insuring the integrity of the electoral process, and thus the efficacy of his or her own vote, if the voter wishes to monitor a polling station in the voter’s own electoral district that happens to be across a county line.

Likewise, the Republican Party of Pennsylvania, and all of its candidates and registered electors, have a right to have their elections and votes for federal and statewide offices be conducted effectively and meaningfully, such that no vote is diluted or tainted. Poll watchers serve the vital function in elections of ensuring that all votes cast everywhere are legitimate, and do not serve to negate or undermine voter choices made throughout the Commonwealth.

In a county such as Philadelphia, 25 P.S. § 2687(b) acts to arbitrarily and unfairly handicap one political party by perpetuating a chronic inability of one political party to fully and fairly staff polling places with poll watchers, while the other political party is able to fully staff polling places within the county. In the absence of Section 2687(b), the Republican Party of Pennsylvania, and all of its registered electors and candidates, would not be artificially and unlawfully hampered from staffing every county polling station with credentialed poll watchers.

The Pennsylvania statute arbitrarily and unreasonably distinguishes between voters within the same electoral district by allowing some, but not others, to serve as poll watchers. The Pennsylvania statute is therefore unconstitutional, whether the statute is evaluated under strict scrutiny or rational-basis scrutiny.

Whatever the ostensible purpose of the county-residency requirement, there is no reason to believe that registered voters in Pennsylvania are capable of serving that purpose when acting within their own counties, but not when acting in the county next door—or a county across the Commonwealth. The lack of a rational basis supporting Pennsylvania's law is particularly clear when one considers that the law prohibits Pennsylvania citizens—registered Pennsylvania voters—from watching polls *even in their own districts* if they wish to observe voting in a precinct that is located across the county line. The Commonwealth has no compelling interest in arbitrarily restricting the right of any of its citizens from casting a vote, either a vote cast for a candidate whose district covers two counties, or one cast for a national or statewide candidate. Likewise, the Commonwealth has no compelling interest in arbitrarily limiting the right of Pennsylvania voters to meaningfully and effectively cast a vote.

Pennsylvania undoubtedly has a legitimate and compelling interest in ensuring the integrity of the election process. Poll watchers occupy a crucial role in fulfilling that function.



But the Commonwealth's county-residency requirement inhibits that function by making it difficult for parties to staff each precinct with poll watchers.

3. **Enforcing 25 P.S. § 2687 against out-of-county poll watchers violates protected political speech and free association**

Once statutorily credentialed as a poll watcher (or an individual who would serve as a poll watcher, but for the residency requirement), that poll watcher engages in core political speech protected by the First Amendment<sup>8</sup> and Fourteenth Amendment to the United States Constitution. Specifically, a statutorily credentialed poll watcher (or an individual who would serve as a poll watcher but for the residency requirement), engages in protected speech by, *inter alia*, reporting incidents of potential violations of the Election Code (or other regulations or criminal statutes) during the conduct of an election. This speech is especially critical to protect when, as here, a voter may cast a vote for a candidate, but be unable to monitor (as a poll watcher) the election for that candidate because the polling place at which the voter wishes to monitor is in the same *electoral district* – but not the *county* – as the voter/poll watcher. Every law that regulates an election, “whether it governs the registration and qualification of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects—at least to some degree—the individual’s right to vote and his right to associate with others for political ends.” *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983).

Poll watchers are also exercising their rights and the Party’s rights to speech and political association. Poll watching constitutes free association with candidates, political parties, and political bodies. Poll watchers are representatives of their parties, and poll watchers’ function is to call attention—and serve as witnesses—to election irregularities. By interfering with the

---

<sup>8</sup> Article I, Sec. 7 of the Pennsylvania Constitution guarantees at least the same level of substantive free speech protection as the First Amendment of the United States Constitution.

parties' choices of poll watchers, the county-residency requirement abridges those fundamental rights. *Cf. California Democratic Party v. Jones*, 530 U.S. 567 (2000) (striking down a state law interfering with parties' right to choose their own nominees); *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214 (1989) (striking down a state law limiting parties' right to choose their own leaders). The county-residency requirement for poll watchers is therefore unconstitutional unless it satisfies strict scrutiny, which requires that the state law be necessary (or "narrowly tailored") to achieve a compelling governmental interest. *See, e.g., Kramer v. Union Free School District No. 15*, 395 U.S. 621, 627 (1969).

The Commonwealth's arbitrary residency requirement for permitting otherwise credentialed poll watchers to participate in the electoral process totally restricts this form of political speech and free association for both poll watchers and the political parties they represent. The Commonwealth has no compelling interest in restricting political speech or free association with Section 2687(b)'s residency requirement.

**C. Plaintiffs will suffer irreparable harm should the Court deny relief**

Irreparable injury may be presumed in cases involving an alleged violation of a constitutional right. *See Tenaflly Eruv Assoc., Inc. v. Borough of Tenaflly*, 309 F.3d 144, 178 (3d Cir. 2002); 11 C. Wright & A. Miller, *FEDERAL PRACTICE AND PROCEDURE*, § 2948, at 440 (1973); *see also generally Golden Triangle News, Inc. v. Corbett*, 689 A.2d 974, 985 (Pa. Cmwlth. 1997) ("We agree that a purposeful suppression of speech by the government constitutes irreparable harm for injunction purposes."); *Pennsylvania Public Utility Commission v. Israel*, 52 A.2d 317, 321 (Pa. 1947) (holding that when the Legislature declares certain conduct to be unlawful, it is tantamount to calling it injurious to the public, and to continue such unlawful conduct constitutes irreparable injury for purposes of seeking injunctive relief);

Denying the requested relief could have a determinative effect on the outcome of the election. In light of the severity of the consequences of not insuring a fair election process that expresses the true will of the people, injunctive relief clearly is appropriate.

**D. No adequate remedy at law exists**

Since Plaintiffs are not suing for damages, but instead to have this Court “restrain portions of a State statute relevant to their current election process, there is no adequate remedy at law.” *Morrill v. Weaver*, 224 F.Supp.2d 882, 893 n.13 (E.D. Pa. 2002).

**E. The balance of the equities favors granting injunctive relief**

There is no doubt that Pennsylvania has a legitimate interest in ensuring that the process is conducted fairly and to promote integrity in the outcome of the elections. Each illegitimately cast ballot undermines the validity of an election, cancelling out a legally-cast ballot for the opposition, and distorting outcomes. It also undermines an individual’s fundamental right to vote by diluting each vote’s value.

The chief public policy role of a poll watcher is to observe the election process on election day on behalf of the candidates, political parties, and the voters, to ensure that the process is conducted fairly and to promote integrity in the outcome of the elections. The Supreme Court has repeatedly held that conducting elections fairly and according to law is a compelling state interest. *See Crawford v. Marion County Election Bd.*, 553 U.S. 181, 196 (2008) (“There is no question about the legitimacy or importance of the State’s interest in counting only the votes of eligible voters.”); *see also Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (“A State indisputably has a compelling interest in preserving the integrity of its election process”) (quoting *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989)); *Burson v. Freeman*, 504 U.S. 191, 199 (1992) (affirming that “a state has a compelling

interest in ensuring that an individual's right to vote is not undermined by fraud in the election process"). Voting malfeasance dilutes the pool of votes, thereby distorting election results and undercutting the value of each legitimately-cast ballot. As the Supreme Court noted in *Purcell v. Gonzalez*, voter malfeasance impairs individuals' right to vote "as effectively as by wholly prohibiting the free exercise of the franchise." 549 U.S. at 4 (quoting *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)).

The compelling interest at play in this matter is as much in preventing voter malfeasance as it is in detecting it. The pre-emptive actions of poll watchers is particularly important in the area of election administration, where accuracy in the vote totals can tip the balance in a close election. Additionally, preserving the fairness and integrity of the electoral process necessarily tends to avoid costly and unsettling post-election court contests.

The Commonwealth has no compelling interest in limiting political speech in this fashion. The Commonwealth's arbitrary exclusion of voters/poll watchers from serving as such in their own legislative district (albeit, across the political line of a county) has real, demonstrable impacts on all Plaintiffs to this action.

For example, Plaintiff the Republican Party of Pennsylvania has an interest in having its poll watchers monitor the polls within Philadelphia County to ensure the integrity of the vote on behalf of its numerous federal and state electoral candidates (both statewide candidates and those running in districts that include Philadelphia County). The Republican Party of Pennsylvania has a corresponding interest in protecting the integrity of the vote on behalf of its registered electors, both those within Philadelphia County and those throughout the Commonwealth, who are voting for federal and statewide Republican candidates.

As a result of the Commonwealth's arbitrary restriction on poll watchers, candidates, political parties and political bodies are unjustifiably burdened in their attempts to locate available, qualified registered electors who can serve as poll watchers. As a further result of the Commonwealth's arbitrary restriction on poll watchers, political bodies are even more disadvantaged than the two major political parties.

The Commonwealth's restriction on poll watchers has no rational basis. Poll watchers serve the important purpose of assuring voters, candidates, political parties, and political bodies, who may question the fairness of the election process, that the same is conducted in compliance with the law, and is done in a correct manner which protects the integrity and validity of the vote.

#### **IV. CONCLUSION**

Our democratic process is best served by the public's confidence in the conduct of elections and their outcome. Whether a voter's candidate wins or loses, the most important thing is that the public accepts the outcome with the confident knowledge that the election was conducted fairly and according to law.

WHEREFORE, Plaintiffs, the Republican Party of Pennsylvania and duly registered electors of the Commonwealth of Pennsylvania, Monica Morrill, Ralph E. Wike III, Helen Banushi, Ronald J. Ferrance, Jr., Joseph J. O'Hara, Donna Donat, James Caffrey and Gayle Michael, respectfully request that this Honorable Court enter a temporary restraining order and permanent injunction, pursuant to Fed.R.Civ.P. 65(a) and (b), to take effect immediately, enjoining Defendant, the Secretary of the Commonwealth of Pennsylvania, Pedro A. Cortes, and his agents from enforcing 25 P.S. § 2687 against out-of-county poll watchers, until such time as the Legislature enacts remedial legislation that cures the constitutional defects of that provision.

Respectfully submitted,

/s/ Scot R. Withers

LAMB MCERLANE PC

Scot R. Withers

24 E. Market St. PO Box 565

West Chester, PA 19381

Phone: 610-430-8000

Fax: 610-696-6668

Attorney ID 84309

OBERMAYER REBMANN MAXWELL &  
HIPPEL, LLP

Rebecca L. Warren

1500 Market Street, Suite 3400

Philadelphia, PA 19102

Phone: 717-221-1602

Fax: 267-675-4781

Attorney ID 63669

THE BANKS LAW GROUP

Matthew B. Banks

845 North Park Road, Suite 102

Wyomissing, PA 19610

Phone: 610-816-6414

Attorney ID 312355

*Attorneys for all Plaintiffs*

***OF COUNSEL, REPUBLICAN PARTY OF  
PENNSYLVANIA:***

OBERMAYER REBMANN MAXWELL &  
HIPPEL, LLP

Lawrence J. Tabas

1500 Market Street, Suite 3400

Philadelphia, PA 19102

Phone: 215-665-3158

Fax: 267-675-4781

Attorney ID 27815

*Attorney for Plaintiff Republican Party of  
Pennsylvania*

## **APPENDIX “A”**

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 29

Session of  
2015

INTRODUCED BY SACCONI, BARRAR, GILLEN, MCGINNIS, GABLER,  
EVERETT, METCALFE, TRUITT AND GIBBONS, JANUARY 21, 2015

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JANUARY 21, 2015

AN ACT

1 Amending the act of June 3, 1937 (P.L.1333, No.320), entitled  
2 "An act concerning elections, including general, municipal,  
3 special and primary elections, the nomination of candidates,  
4 primary and election expenses and election contests; creating  
5 and defining membership of county boards of elections;  
6 imposing duties upon the Secretary of the Commonwealth,  
7 courts, county boards of elections, county commissioners;  
8 imposing penalties for violation of the act, and codifying,  
9 revising and consolidating the laws relating thereto; and  
10 repealing certain acts and parts of acts relating to  
11 elections," in district election officers, further providing  
12 for appointment of watchers.

13 The General Assembly of the Commonwealth of Pennsylvania

14 hereby enacts as follows:

15 Section 1. Section 417(b) of the act of June 3, 1937  
16 (P.L.1333, No.320), known as the Pennsylvania Election Code,  
17 amended October 8, 2004 (P.L.807, No.97), is amended to read:

18 Section 417. Appointment of Watchers.--

19 \* \* \*

20 (b) Each watcher so appointed must be a qualified registered  
21 elector of [the county in which the election district for which  
22 the watcher was appointed is located] this Commonwealth. Each  
23 watcher so appointed shall be authorized to serve in the



1 election district for which the watcher was appointed and, when  
2 the watcher is not serving in the election district for which  
3 the watcher was appointed, in any other election district [in  
4 the county in which the watcher is a qualified registered  
5 elector] located in the same county as the election district to  
6 which the watcher is appointed: Provided, That only one watcher  
7 for each candidate at primaries, or for each party or political  
8 body at general, municipal or special elections, shall be  
9 present in the polling place at any one time from the time that  
10 the election officers meet prior to the opening of the polls  
11 under section 1208 until the time that the counting of votes is  
12 complete and the district register and voting check list is  
13 locked and sealed, and all watchers in the room shall remain  
14 outside the enclosed space. It shall not be a requirement that a  
15 watcher be a resident of the election district for which the  
16 watcher is appointed. After the close of the polls and while the  
17 ballots are being counted or voting machine canvassed, all the  
18 watchers shall be permitted to be in the polling place outside  
19 the enclosed space. Each watcher shall be provided with a  
20 certificate from the county board of elections, stating his name  
21 and the name of the candidate, party or political body he  
22 represents. Watchers shall be required to show their  
23 certificates when requested to do so. Watchers allowed in the  
24 polling place under the provisions of this act, shall be  
25 permitted to keep a list of voters and shall be entitled to  
26 challenge any person making application to vote and to require  
27 proof of his qualifications, as provided by this act. During  
28 those intervals when voters are not present in the polling place  
29 either voting or waiting to vote, the judge of elections shall  
30 permit watchers, upon request, to inspect the voting check list

1 and either of the two numbered lists of voters maintained by the  
2 county board: Provided, That the watcher shall not mark upon or  
3 alter these official election records. The judge of elections  
4 shall supervise or delegate the inspection of any requested  
5 documents.

6 \* \* \*

7 Section 2. This act shall take effect in 60 days.

## **APPENDIX “B”**

# Pennsylvania House of Representatives

10/02/2016 02:58 PM

<http://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20150&cosponId=15453>[Home](#) / House Co-Sponsorship Memoranda

## House Co-Sponsorship Memoranda

House of Representatives  
Session of 2015 - 2016 Regular Session

### MEMORANDUM

**Posted:** December 2, 2014 12:16 PM  
**From:** [Representative Rick Saccone](#)  
**To:** All House members  
**Subject:** Amending the Pennsylvania Election Code, former HB 1827

Currently, the Election Code of 1937 requires watchers to be registered voters of the county in which the election district for which the watcher was appointed to is located. In the near future, I will be introducing legislation that will permit a registered voter of this Commonwealth to be appointed as a watcher in any election district located in Pennsylvania.

I believe it is arbitrary to limit the ability of a registered voter to serve as watcher outside of his or her county of residence. Many of the Commonwealth's elections have statewide and federal implications, which mean Pennsylvania's registered voters, regardless of location, have a vested interest in ensuring that the electoral process is properly administered in every election district.

Even in State Assembly races, districts encompass more than one county. This legislation would allow poll watchers, recruited by a candidate, to work in any county where that person is needed and not limited to only the county where the poll watcher resides.

I encourage you to support this good government legislation.



Introduced as [HB29](#)

## CIVIL COVER SHEET

16

5524

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

REPUBLICAN PARTY OF PENNSYLVANIA, MONICA MORRILL,  
RALPH E. WIKER III, HELEN BANUSHI, RONALD J. FERRANCE JR.,  
JOSEPH J. O'HARA, DONNA DONAT, JAMES CAFFREY AND GAYLE  
MICHAEL

(b) County of Residence of First Listed Plaintiff statewide  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

SCOT R. WITHERS, LAMB MCERLANE PC, 24 EAST MARKET STREET,  
PO BOX 565, WEST CHESTER, PA 19381 (610-430-8000); LAWRENCE J.  
TABAS, OBERMAYER REBMANN MAXWELL & HIPPEL LLP, 1500  
MARKET STREET, SUITE 3400, PHILADELPHIA PA 19102 (215-665-3000);  
ET AL AS SET FORTH IN COMPLAINT

## DEFENDANTS

PEDRO A. CORTES, in his capacity as Secretary of the Commonwealth of  
Pennsylvania

County of Residence of First Listed Defendant statewide  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
		<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC 2201 and US and PA Constitutions

Brief description of cause:

Declaratory Judgment Action - Unconstitutionality

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE  
10/21/2016

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

# UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 112 State Street, Harrisburg, PA 17101

Address of Defendant: 302 North office Bldg Harrisburg, PA 17120

Place of Accident, Incident or Transaction: Statewide  
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases  
(Please specify) constitution

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify) \_\_\_\_\_

## ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, \_\_\_\_\_, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 10-21-16

Scott R. With  
Attorney-at-Law

84309  
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 10-21-16

Scott R. With  
Attorney-at-Law

84309  
Attorney I.D.#

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

CASE MANAGEMENT TRACK DESIGNATION FORM

Republican Party of Pennsylvania, Monica  
Morrill, Ralph E Wike III, Helen Banus'hi, Ronald  
J. Ferrance Jr., Joseph J. O'Hara, Donna Dorat,  
James Caffrey + Gayle Michael

CIVIL ACTION

NO.

PEDRO A CORTES, in capacity as Secretary of Commonwealth of PA

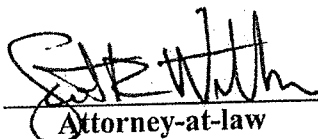
In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (✓)

10-21-16

Date

  
Attorney-at-law

PLAINTIFFS

Attorney for

610-430-8000

Telephone

610-692-0877

FAX Number

SWITHERS@LAMBMcERLANE.COM

E-Mail Address