

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Nos. 310, 322 & 323 MD 2021 (CASES CONSOLIDATED)

SENATOR JAY COSTA, ET AL.,

Petitioners,

v.

SENATOR JACOB CORMAN III, ET AL.,

Respondents.

COMMONWEALTH OF PENNSYLVANIA, ET AL.,

Petitioners,

v.

SENATOR CRIS DUSH, ET AL.,

Respondents.

ARTHUR HAYWOOD, ET AL.,

Petitioners,

v.

VERONICA DEGRAFFENREID,

Respondent.

**REPLY BRIEF OF RESPONDENTS SENATOR JAKE CORMAN,
SENATOR CRIS DUSH, AND INTERGOVERNMENTAL
OPERATIONS COMMITTEE IN FURTHER SUPPORT OF
CROSS-APPLICATION FOR SUMMARY RELIEF**

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I. INTRODUCTION

If the “sky is falling” rhetoric from the Petitioners is set aside, this matter is simple. The Committee, a part of the General Assembly, is exercising its constitutional duty to legislate. It is legislating on a topic—elections—that is constitutionally committed **not to** the Department of State, as seemingly Petitioners believe, but to the General Assembly. *See* Pa. Const. art. VII, §§ 1, 2, 3, 4, 6, 9, 11, 13, 14; *see also* U.S. Const. art. I, § 4, cl. 1. Part of that duty to legislate about elections involves gathering facts (which facts in this case have been given by the Department of State to **multiple** other parties without triggering a purported constitutional crisis). Indeed, legislating based on facts gathered *before* legislation is passed is no more exotic than a court requiring discovery before ruling on summary judgment. The General Assembly, like a court, could guess what the facts might be, but good results are founded on knowledge and not speculation.¹ And how is speculation ended? By demanding testimony, records, and other facts to

¹ *See McGrain v. Daugherty*, 273 U.S. 135, 175 (1927) (“A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it.”).

support new legislation, or, as equally possible, to support a belief that no new legislation is needed.

Another basic principle being obfuscated is that beliefs by parties outside the General Assembly about how that body could do its job better or more “wisely” are utterly immaterial.² The Committee is not a public records requester or a private party conducting litigation; it is a part of the General Assembly pursuing the *only* job the General Assembly has—enacting legislation. It remains largely unbridled in that arena, and it is a tall order for a petitioner to compel a court to *restrain* the General Assembly from gathering facts; that is, to have a separate branch of government order another to stop doing what it is constitutionally charged with doing. In fact, judicial decisions dealing with legislative subpoenas (both in this state and federally) routinely wrestle with the fundamental, constitutional tension that arises when a court is asked to tell a legislative body to restrain its conduct.³

² *Hosp. & Healthsystem Ass’n of Pa. v. Com.*, 77 A.3d 587, 603 (Pa. 2013) (“[T]his Court is not tasked with evaluating the wisdom of [the Legislature’s] policy choices.”).

³ *See, e.g., Com. ex rel. Caraci v. Brandamore*, 327 A.2d 1, 4 (Pa. 1974) (“A proper respect for the limits of the judicial function and the doctrine of separation of powers dictates that we leave matters to the legislature.”).

Finally, as much as the Committee attempted to avoid the name-calling war initiated in the opening briefs, the Committee would be willfully blind to the issues that are being put before the Court if it did not at least briefly respond to the *ad hominem* attacks lodged anew in the reply briefs. To that end, whether fraud did or did not occur in the 2020 presidential election, the Subpoena will not impact the outcome of that election. Yet the Petitioners act as if helping Trump could be the *only* purpose of this legislative investigation, and they further act as if election fraud is only a problem if election fraud is actually known. But how does fraud come to light if the question is not examined *well*?⁴ Indeed, as the United States Supreme Court recently declared: “it should go without saying that a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders.” *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321,

⁴ Notably, the Acting Secretary *criticizes* the Auditor General’s 2019 audit report about the SURE system, *see* State Reply at 53 n.8, which report the Costa Petitioners claim is a report the Committee should just rely on without question. *See* Costa Reply at 34 (“If [Respondents] seek to conduct an investigation of the SURE system, they can investigate voters using the publicly available information, or examine the results of audits that the Auditor General and the Secretary have undertaken.”). Furthermore, none of the Petitioners claim (nor could they) that the other examinations of election laws and election data included all of the information requested here, which per se means this examination is of a different variety and scope. In other words, it is simply not a “do-over” of an examination that has already been done.

2348 (2021). As that Court also declared, contrary to the allegations of the Petitioners here, “[u]nder our form of government, legislators have a duty to exercise their judgment and to represent their constituents. It is insulting to suggest that they are mere dupes or tools.” *Id.* at 2350.

Quite right.

In the end, for the additional reasons set forth below, and in the Committee’s opening brief, Petitioners’ pending Applications for Summary Relief should be denied, the Committee’s Cross-Application should be granted, and the Acting Secretary should be immediately compelled to respond to the Subpoena.

II. BACKGROUND

The parties, to varying degrees, have now reached accord on a number of critical facts as well on some basic legal issues.

A. The Parties' Factual Agreements

As to the facts, the parties agree that meaningful portions of the 17 requests in the Subpoena seek public information:

- “Certain information responsive to the Subpoena is publicly available, either through the Department’s website or through the Right-to-Know Law (RTKL).” State Reply at 26; *see also* State Reply, Ex. N-26 (stating “certain of the materials demanded are publicly available without a subpoena”).
- “Although technically ‘public records’ within the possession of the DOS, this personal identification information is far from being subject to ‘public access by ordinary citizens[.]’” Costa Reply at 16; *see also* Costa Reply at 20-22.
- “The fact that some voting records are publicly available does not vitiate voters’ right to privacy.” Intervenor Reply at 14 (heading capitalizations removed); *see also* Intervenor Reply at 4.
- “On request, a county registration commission may provide a list containing individual registered voters in the county to an authorized requester.” Haywood Br. at 12.

Next, most⁵ of the parties further agree that large swaths of the data at issue, including the most-objected-to portions (partial social security numbers and driver's license numbers) have been provided to **multiple** parties:

- State Reply at 11-20, 46-48: discussing access given to (1) BPro, (2) Diverse Technologies Company, (3) Acclaim Systems, (4) ERIC, (5) *Applewhite* petitioners, (6) county commissions, and (7) Auditor General.⁶
- Costa Reply at 22-26: discussing access given to (1) BPro, (2) *Applewhite* petitioners, (3) ERIC, and (4) Auditor General.⁷

⁵ The Haywoods have not commented one way or the other on the access given to various entities, though there is no indication they would deny such access occurred, particularly in light of the Acting Secretary's admissions about the same. *See generally* Haywood Reply.

⁶ In describing the *Applewhite* litigation, the Acting Secretary of the Commonwealth discusses the actions of the "respondents" in that case. *See* State Reply at 18. If not clear to the Court, the named "respondents" in that case were the Secretary of the Commonwealth and the Governor. *See Applewhite v. Com.*, No. 330 MD 2012, 2014 WL 184988, at *1 n.2 (Pa. Cmwlth. Jan. 17, 2014).

⁷ The Acting Secretary and the Costa Petitioners are seemingly at odds, factually, on how sound the Auditor General's audit was, seemingly based on the quality of data he was permitted to access. Indeed, the Acting Secretary openly attacks the audit, stating as follows: "Although the Auditor General claimed to have identified duplicate voter records, Comm. Br. at 25, the Department's investigation revealed that thousands of records flagged as potential concerns 'should not be flagged' and that the Auditor General had made 'significant errors and/or omissions through its analysis[.]'" State Reply at 53 n.8. This contrasts sharply with the Costa Petitioners' argument, which states as follows: "If [Respondents] seek to conduct an investigation of the SURE System, they can investigate voters using publicly available information, or examine the results of audits that the Auditor General and the Secretary have undertaken." Costa Reply at 34.

- Intervenor Reply at 23: discussing access given to (1) private vendors, (2) county voter registration offices, (3) ERIC, and (4) *Applewhite* petitioners.

However, why these previous near-identical disclosures did not trigger a constitutional crisis, like the one claimed by Petitioners here, is presently unclear to the Committee. Some limited insight on this ambiguity, however, was offered by the Acting Secretary, who admitted that the “prior disclosures demonstrate how the Department allows access to voters’ personal information only for overseeing and administering Pennsylvania’s elections[.]” *See* State Reply at 46; *see also* State Reply at 11 (claiming disclosures were authorized under Department’s “statutory obligations”). What was not adequately explained was how the Committee’s requests, issued in pursuit of a *constitutional* mandate to oversee and administer elections (which is even greater than any *statutory* mandate), were meaningfully different.

B. The Parties’ Legal Agreements

In addition to showing some basic, agreed-upon facts, the Petitioners’ reply briefs also reveal a number of legal points with which the Committee agrees. For instance, “[t]he Haywoods concede that there is a critical difference between disclosing information to the public and

disclosing it to another governmental entity for a legitimate legislative purpose[.]” Haywood Reply at 11-12; *accord* Comm. Br. at 52-67.⁸

Next, the Acting Secretary similarly concedes that all “disclosures” are not the same, or at least not of the same constitutional significance. The Acting Secretary does so by stating as follows: “This is not to say the particular circumstances of any contemplated disclosure are irrelevant to Section 1’s balance test. Limited sharing of personal information implicates a different privacy interest than unencumbered public access to information.” State Reply at 42; *accord* Comm. Br. at 52-67.

Further, the Intervenors have now also conceded to legal common ground with the Committee related to disclosures. In particular, the Intervenors admit that not all so-called “disclosures” are in fact that, stating: “But the ‘disclosures’ referenced by Respondents are not disclosures at all—and certainly not public disclosures of millions of voters’ Social Security and driver’s license information.” Intervenor Reply at 17. The Committee attempted to make that same point

⁸ The Haywoods also agree that “[i]t is well settled that the Senate can conduct an investigation or issue a subpoena to the Acting Secretary.” Haywood Reply at 2. The Committee concurs. *See* Comm. Br. at 26-28.

repeatedly in its opening brief; i.e., that the Acting Secretary giving the information to certain entities—like the Committee—is not a “disclosure” of constitutional significance, and is certainly not a *public* “disclosure.” *See* Comm. Br. at 52-67.

Finally, though the Costa Petitioners did not signal agreement with the disclosure issue, they did signal to the Court another accord with the Committee, at least in material part. Specifically, the Costa Petitioners agree that the “legislative subpoena power is broad,” though they note that it has “limitations.” *See* Costa Reply at 30. This coincides precisely with the Committee’s recitation of the relevant law in its opening brief. *See* Comm. Br. at 26-28.

C. The Vendor Contract

In light of these factual and legal agreements, it appears that, ultimately, the only actual question before the Court is whether the Committee can appropriately protect the data when it is produced. That issue is now fully ripe, with the Senate Republican Caucus having now entered into a contract with a vendor—Envoy Sage, LLC—to aid the Committee in its use and review of the subpoenaed information (a letter from the vendor and the contract are attached hereto in the

Supplemental Appendix).⁹ And the answer to that question is on overwhelming yes.

Under the contract, Envoy Sage is contractually required to protect the information it receives, in much the same way BPro, Inc. is required to protect the SURE information BPro has access to. In fact, Envoy Sage must completely secure the information it receives in myriad ways, under the following provisions of the contract:

4.6. All investigative activity and analytics shall be conducted using **current industry best practices**, technology, policies and procedures, and using the utmost care and skill, including, but not necessarily limited to, the standards as set forth by the U.S. Election Assistance Commission, the standards set forth in “Forensic Examination of Digital Evidence: A Guide for Law Enforcement” (published by the United States Department of Justice, Office of Justice Programs, Institute of Justice), and “Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations” (published by the Office of Legal Education Executive Office for United States Attorneys). (Emphasis added.)

4.8. Render such services in a prompt, professional, diligent and workmanlike manner, **consistent with industry standards** applicable to the performance of the services and using the utmost care and skill. (Emphasis added.)

10.1. General. The Vendor agrees to protect the confidentiality of the Client’s confidential information. The

⁹ For the Court’s convenience, the Supplemental Appendix has been numbered beginning with the next number after the last page of the initial Committee Appendix.

Client agrees to protect the confidentiality of Vendor's confidential information. Unless the context otherwise clearly indicates the need for confidentiality, information is deemed confidential only when the party claiming confidentiality designates the information as "confidential" in such a way as to give notice to the other party (for example, notice may be communicated by describing the information, and the specifications around its use or disclosure, in any transfer of custody notice). Neither party may assert that information owned by the other party is such party's confidential information. Notwithstanding the foregoing, all information provided by, or collected, processed, or created on behalf of the Client is confidential information unless otherwise indicated in writing.

10.2. All confidential information of or relating to a party shall be held in confidence by the other party to the same extent and in at least the same manner as such party protects its own confidential or proprietary information. Subject to the other provisions of this Agreement, however, each party shall be permitted to disclose relevant aspects of the other party's Confidential Information to its officers, agents, subcontractors and personnel, and to the officers, agents, subcontractors and personnel of its related affiliates to the extent such disclosure is reasonably necessary for the performance of its duties under this Agreement and Pennsylvania law; however, such party shall take all reasonable measures to ensure that the confidential information is not disclosed or duplicated in contravention of the provisions of this Agreement by such officers, agents, subcontractors and personnel.

10.3. Third Party Information. Vendor understands that its level of access may allow or require it to view or access highly sensitive and confidential Client and third-party data. This data is subject to various state and federal laws, regulations and policies that vary from agency to agency, and from program to program within an agency. If

applicable, prior to deployment of the work, the Vendor must receive and sign off on particular instructions and limitations as may be necessary to protect that information. A sample sign-off is attached as Exhibit "A".

10.3.1. The Vendor hereby certifies and warrants that, after being informed by the Client of the nature of the data which may be implicated and prior to the deployment of the work to be performed, the Vendor is and shall remain compliant with all applicable state and federal laws, regulations and policies regarding the data's protection, and with the requirements memorialized in every completed and signed sign-off document. Every sign-off document completed by the Client and signed by at least one signatory authorized to bind the Vendor is valid and is hereby integrated and incorporated by reference into this Agreement.

10.4. Copying; Disclosure; Termination. The parties agree that confidential information shall not be copied, in whole or in part, or used or disclosed except when essential for authorized activities under this Agreement and, in the case of disclosure, where the recipient of the confidential information has agreed to be bound by confidentiality requirements no less restrictive than those set forth herein. Each copy of confidential information shall be marked by the party making the copy with any notice appearing in the original. Upon expiration or termination of this Agreement or any license granted hereunder, the receiving party will return to the disclosing party, or certify as to the destruction of, all confidential information in the receiving party's possession. A material breach of these requirements may result in termination for default under this Agreement, in addition to other remedies available to the non-breaching party.

10.8. Compliance with Laws. Vendor will comply with all applicable laws or regulations related to the use and disclosure of information, including information that constitutes Protected Health Information (PHI) as defined by

the Health Insurance Portability and Accountability Act (HIPAA).

10.10. Restrictions on Use. All data and all intellectual property provided to the Vendor pursuant to this Agreement or collected or generated by the Vendor on behalf of the Client pursuant to this Agreement shall be used only for the work of this Agreement. No data, intellectual property, documentation or developed works may be used, disclosed, or otherwise opened for access by or to the Vendor or any third party unless directly related to and necessary under the Agreement.

11.1. The Vendor shall comply with all applicable data protection, data security, data privacy and data breach notifications laws, including but not limited to the Breach of Personal Information Notification Act, Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§2301-2329.

11.2.1. The Vendor shall report unauthorized access, use, release, loss, destruction or disclosure of data or confidential information in the possession of the Vendor and/or its subcontractors (“Incident”) to the Client within two (2) hours of when the Vendor knows of or reasonably suspects such Incident, and the Vendor must immediately take all reasonable steps to mitigate any potential harm or further access, use, release, loss, destruction or disclosure of such data or confidential information.

12.2. The Vendor shall be responsible for maintaining the privacy, security and integrity of information and materials in the Vendor’s or its subcontractors’ possession.

12.4. All information and materials shall be destroyed by the Vendor at the Client’s request.

22.1. A Non-Disclosure Agreement (“NDA”) shall be implemented for this Agreement. This NDA shall define the confidentiality of the work, prohibit any disclosure of the

work or results during and after the audit, and the penalties if the NDA is violated.

22.6. The Vendor and all subcontracted organizations shall confirm in writing that employees, second tier subcontractors, and 1099 personnel utilized on this contract are signatories to this Agreement's NDA, are of good character and the NDA violation penalties flow down to them.

22.7. All direct hires and 1099 personnel utilized on this contract shall have background checks conducted prior to commencing work under this Agreement. Backgrounds checks will include, but will not necessarily be limited to: Pennsylvania State Police Criminal Background Check and Federal Criminal History Check. Felony convictions, and/or conviction of any offense which involves some element of deceitfulness, untruthfulness or falsification, shall be disqualifying.

(Supp. Appendix 1279a-1301a.)

The foregoing contractual obligations moot the various "security" concerns raised by Petitioners. *See* State Reply at 10-11,52; Costa Reply at 43; Haywood Reply at 12-13; Intervenor Reply at 2, 5, 21-23. In fact, these provisions reveal the data, when transmitted by the Acting Secretary, will be secure, "consistent with industry standards." (Supp. Appendix 1281a.) Indeed, Envoy Sage follows industry best practices for information security, handling, and disposal. Its company "security policies, standards, and procedures adhere to, or are more rigorous than, guidance from the National Institute of Standards and

Technology Cybersecurity Framework (NIST CSF) [Dept of Commerce], the SANS Institute, and, where applicable, the Multi-State Information Sharing & Analysis Center (MS-ISAC) [Dept of Homeland Security].” (Supp. Appendix 1275a.) Further, the vendor “employs proven cyber security tools to protect data, private information, and identity verification. [The vendor’s] tools use military-grade encryption (256-bit AES0, and provide users with two-factor authentication (2FA) as well as biometric logins.” (Supp. Appendix 1275a.) Accordingly, to the extent Petitioners’ claims are predicated on data breach hypotheticals or purported lack of security, those claims are invalid.

III. ARGUMENT

A. Petitioners have misapplied the summary relief standards.

The Acting Secretary, the Costa Petitioners, and seemingly also the Intervenors, argue the Court can simply rely on the various “evidence” they have filed (which include hearsay news stories and affiants who haven’t been deposed) to summarily rule in their favor under Appellate Rule 1532(b). State Reply at 20; Costa Reply at 4; Intervenor Reply at 10 n.7. The theory underlying this argument is that the Committee, despite no discovery whatsoever occurring in this matter, somehow had an affirmative duty to rebut the “evidence” with counter-affidavits or counter-news stories. That theory is wrong.

To explain, the assertion that the Committee somehow had a duty to come forward at summary *relief* (and not summary *judgment*) with affirmative counter-evidence finds no support in law. As a basic matter, summary relief *is not* summary judgment. See Pa.R.A.P. 1532 Note (stating summary relief is “similar to” summary judgment, but also noting it is similar to judgment on the pleadings).¹⁰ And while summary

¹⁰ If the Petitioners wish to move for summary judgment under Civil Rule 1035.2 and thus bind the Committee to affirmative obligations to come forward with counter-evidence under Civil Rule 1035.3, they can do so after the pleadings close.

relief applications are evaluated according to summary judgment **standards**, see *Delaware Riverkeeper Network v. Pennsylvania Dept. of Env'tl. Protec.*, No. 525 M.D. 2017, 2021 WL 3354898, at *5 (Pa. Cmwlth. Aug. 3, 2021), this does not mean all of the attendant obligations under the summary judgment **rules**, like Civil Rule 1035.3, attach. To the contrary, the Court can, and must, deny summary relief when the Court is not satisfied that the dispute is purely legal, and where discovery would answer critical fact questions. See *Borough of Bedford v. Com., Dept. of Env'tl. Prot.*, 972 A.2d 53, 67-68 (Pa. Cmwlth. 2009) (*en banc*) (denying summary relief because it was “too early in the litigation” to grant judgment to movant where discovery was needed to resolve “central issue”); see also *Hosp. & Healthsystem Ass'n of Pa. v. Com.*, 77 A.3d 587, 606 (Pa. 2013); *Pennsylvania Protec. & Advoc., Inc.*

See Pa.R.C.P. 1035.2; see also *Com. by Kane v. New Foundations, Inc.*, 182 A.3d 1059, 1065 n.3 (Pa. Cmwlth. 2018); *Underground Storage Tank Indemnification Fund v. Morris & Clemm, PC*, 107 A.3d 269, 272 n.7 (Pa. Cmwlth. 2014); *Shaffer-Doan ex rel. Doan v. Dept. of Pub. Welfare*, 960 A.2d 500, 505 n.8 (Pa. Cmwlth. 2008); *Com., Dept. of Transp. v. UTP Corp.*, 847 A.2d 801, 803 (Pa. Cmwlth. 2004); *Wings Field Preservation Associates, L.P., v. Dept. of Transp.*, 776 A.2d 311, 314 n.2 (Pa. Cmwlth. 2001); *Kee v. Pennsylvania Turnpike Commn.*, 722 A.2d 1123, 1125 (Pa. Cmwlth. 1998).

v. Dept. of Educ., 609 A.2d 909, 911 (Pa. Cmwlth. 1992); *Smith v. Owens*, 582 A.2d 85, 86 (Pa. Cmwlth. 1990).¹¹

Moreover, even if the present applications were subject to Civil Rule 1035.3, the Committee affirmatively explained in its opening brief the discovery that would need to be pursued—to be clear, no discovery is needed here, *see infra*—which would include testing the credibility and positions of the various affiants and experts. *See* Comm. Br. at 33-34. This is all that Civil Rule 1035.3 requires. *See* Pa.R.C.P.

1035.3(a)(1); *see also* Pa.R.C.P. 1035.3(b). *See generally* Pa.R.C.P.

1035.3 Note.¹² Furthermore, certain Petitioners allege that alleged motive/pretext “evidence” is relevant to their claims for relief, State Reply at 22-28; Costa Reply at 27-28; and the Committee has pointed to diametrically opposed (actual) evidence on that issue with the Senate record of two September 2021 hearings. *See* Comm. Br. at 5-11. Thus, if

¹¹ While all of the above-cited cases involve summary relief applications, the Costa Petitioners, in support of their summary relief argument, rely in significant part on a case not involving summary relief or even summary judgment. *See* Costa Reply at 4 (citing *Trioliani Group v. City of Pittsburgh Bd. of Appeals*, No. 86 CD 2021, 2021 WL 4126451 (Pa. Cmwlth. July 1, 2021)).

¹² Pa.R.C.P. 1035.3 Note (“If the moving party has supported the motion with oral testimony only, the response may raise the defense that there is a genuine issue of material fact because the cause of action is dependent upon the credibility and demeanor of the witnesses who will testify at trial. *See Nanty-Glo v. American Surety Co.*, 309 Pa. 236, 163 A. 523 (1932); *Penn Center House, Inc. v. Hoffman*, 520 Pa. 171, 553 A.2d 900 (1989).”).

motive evidence is material (it isn't, *see infra*), that issue is factually in dispute.

Therefore, the Petitioners' argument that the Court can summarily rule in their favor due to a purported lack of evidence from the Committee under Appellate Rule 1532(b) is simply incorrect.

B. The Subpoena does not implicate Article I, Section 1's right to informational privacy.

A recurring theme in the filings submitted by each of the Petitioners and the Intervenors is that compliance with the Subpoena would violate the informational right to privacy under Article I, Section 1 of the Pennsylvania State Constitution. *See* Pa. Const. art. I, § 1; *see generally Pennsylvania State Educ. Ass'n v. Com. Dep't of Cmty. & Econ. Dev.*, 148 A.3d 142, 161 (Pa. 2016) (*PSEA*) (expounding upon the privacy rights under that provision). Specifically, challenging the Subpoena under this provision, the Acting Secretary and Intervenors argue that enforcing the Subpoena would entail an unconstitutional "disclosure" of private information in violation of Article I, Section 1.¹³

¹³ The Acting Secretary also argues the Subpoena violates the prohibition against unreasonable searches and seizures found in Article I, Section 8 of the State Constitution, but does not offer any authority for her sweeping interpretation of this constitutional safeguard. In the absence of a developed *Edmunds* analysis, that provision is interpreted coextensively with its federal counterpart. *See Com. v. Sam*,

The Haywoods, for their part, also argue the Subpoena violates their right to informational privacy, but concede that this aspect of their challenge hinges entirely on whether the Subpoena furthers a legitimate legislative purpose. *See* Haywood Reply at 11-12. Finally, relying on the due process component of Article I, Section 1, the Costa Petitioners argue that every voter must be given notice of the potential “disclosure” to the Committee and afforded an opportunity to assert a constitutional claim in advance of any action in compliance with the Subpoena.

As developed below, however, these arguments lack merit because compliance with the Subpoena would not result in a “disclosure” within the meaning of Article I, Section 1 and, thus, the principles articulated in *PSEA* are inapplicable.

952 A.2d 565, 586 (Pa. 2008) (Explaining that “a sufficient rebuttal to [a] generic *Edmunds* argument ... would be simply to cite the many decisions of this Court holding that Article I, Section 8 does not afford greater protection than the Fourth Amendment.”). As the Court explained in *Sam*, “[t]he mere fact that this Court has, under certain circumstances, accorded greater protections to the citizens of this Commonwealth under Article I, Section 8 does not command a reflexive finding in favor of any new right or interpretation asserted.” *Id.* Rather, the panel continued, the Court “should apply the prevailing standard where [its] own independent state analysis does not suggest a distinct standard.” *Id.* Because enforcement of the Subpoena would constitute neither a “search,” nor a “seizure” under prevailing Fourth Amendment jurisprudence, the Article I, Section 8 claim is similarly without merit.

To begin, the Petitioners’ and Intervenors’ Article I, Section 1 argument is predicated on a fundamental misunderstanding of the protections it affords. In this regard, there is no doubt that some—though not all—of the information contained in the SURE database is private information that is generally protected under Article I, Section 1. Yet where both the Acting Secretary and Intervenors are mistaken is in their conception of what type of governmental action is prohibited by the constitutional provision.

Specifically, they argue that complying with the Subpoena would constitute a “disclosure” of such a nature that implicates Article I, Section 1 and the attendant balancing test prescribed by *PSEA*. But the right to informational privacy protects “**public** disclosure” of protected information by the Commonwealth (i.e., dissemination to members of the general public¹⁴); it does not prohibit every governmental act that fits the ordinary definition of “disclosure.” Indeed, **every** Article I, Section 1 case cited by the Petitioners and Intervenors arose in the

¹⁴ *Pennsylvania State Educ. Ass’n v. Com. Dep’t of Cmty. & Econ. Dev.*, 148 A.3d 142, 157 (Pa. 2016); *Pennsylvania State Educ. of Ass’n ex rel. Wilson v. Com., Dep’t of Cmty. & Econ. Dev.*, 50 A.3d 1263, 1266 (Pa. 2012); *Pennsylvania State Educ. Ass’n ex rel. Wilson v. Com., Dep’t of Cmty. & Econ. Dev., Off. of Open Recs.*, 981 A.2d 383, 386 (Pa. Cmwlt. 2009).

context of an actual or threatened public access to personal information. That the overwhelming authority discussing this protection speaks in terms of “public disclosure,” coupled with the Petitioners’ and Intervenors’ failure to offer a single case where the informational right to privacy was implicated where disclosure was *not* to the public, should be sufficient to defeat the Article I, Section 1 theory.

Moreover, the Petitioners and Intervenors acknowledge—either expressly or implicitly—that only *some* types of disclosures trigger Article I, Section 1’s analytical framework. Most notably, the Haywood Petitioners “concede that there is a critical distinction between disclosing information to the public and disclosing it to another government entity for a legitimate legislative purpose[.]” Haywood Reply at 11-12.

Similarly, although the Acting Secretary maintains that Article I, Section 1 and *PSEA*’s attendant test apply to “all government disclosures of personal information,” the substance of her position demonstrates that she, too, does not genuinely subscribe to this argument. Specifically, the Acting Secretary concedes that the information requested in the Subpoena has been (and continues to be)

“disclosed,” at least under the broad interpretation she urges. *See* State Reply at 11-20. Yet, voters have never even been notified of these “disclosures,” or afforded an opportunity to object to their information being “disclosed,” as would be required before the constitutionality of such a disclosure could even be assessed. *See* State Br. at 40; *City of Harrisburg v. Prince*, 219 A.3d 602, 619 (Pa. 2019) (holding that, where privacy rights under Article I, Section 1 are implicated, the affected individuals must be given notice and opportunity to object before the *PSEA* balancing test may be undertaken (internal citations omitted)). Accordingly, unless the Acting Secretary is suggesting that she and the Department have habitually violated Article I, Section 1, she cannot credibly maintain that every instance in which the information is “disclosed” raises an issue of constitutional dimension.

Along these same lines, the Costa Petitioners also appear to believe that, at least under some circumstances, a governmental entity may be given access to the information without triggering the due process requirements they urge, even when the government entity isn’t involved in administering elections. Specifically, the Costa Petitioners herald the Auditor General’s SURE Report—which, it should go without

saying, could only have been compiled by accessing private information—and assert that only the Auditor General has the authority to obtain the data sought by the Subpoena. *See Costa Reply* at 34, 36-38. Unless the Costa Petitioners are suggesting that the privacy rights of every voter were violated by Auditor General DePasquale and then-Secretary Boockvar as a part of the provision of this information to the Auditor General, implicit in their argument is the understanding that disclosing the information requested by the Subpoena does not raise constitutional concerns under Article I, Section 1 in every circumstance.

Finally, given that one of them obtained all of the data sought in the Subpoena only a few years ago—and did so without giving notice to the affected voters, or undertaking the *PSEA* balancing test they insist the Committee is required to satisfy now—Intervenors also recognize that their argument is without merit. Insofar as Intervenor LOWV genuinely believes its own argument (i.e., that every time information in the SURE System is supplied to a person outside of the Department, a “disclosure” has occurred in the constitutional sense), its failure to insist that the affected voters be given notice before it received the

information in the course of the *Applewhite* litigation is troubling—particularly for a group that advocates for the rights of voters.

To summarize, according to Petitioners, it was not a “disclosure” within the meaning of Article I, Section 1 when the information sought by the Subpoena was provided to: (1) third-party vendors (e.g., BPro, Diverse Technologies Company, Acclaim Systems); (2) a quasi-governmental interstate organization (e.g., ERIC); (3) litigants in an action against the Commonwealth (e.g., *Applewhite* petitioners); (4) County officers and their staff; and (5) a different agency of the Commonwealth (e.g., the Auditor General); but, it would be a disclosure, as contemplated by Article I, Section 1, if the voter information were given to the Committee. It is difficult to conceive of a definition of “disclosure” that would justify this approach and, unsurprisingly, none is offered.

Perhaps recognizing that the Acting Secretary and the Costa Petitioners’ framework of “disclosure” is utterly untenable—but overlooking that it, too, has participated in a Constitutional violation under those theories—LOWV also asserts that the Commonwealth is not a single entity. *See* Intervenor Reply at 30-34. Thus, the argument

goes, the Acting Secretary can freely share the information sought by the Subpoena within the Executive branch, but not with the General Assembly or the Judicial Branch.

This argument is contrary to the common understanding of the Commonwealth government. While the Commonwealth is composed of separate but equal branches, these branches nonetheless compose one single unified state government. And, while the separation of powers precepts cited by LOWV certainly require that the three branches maintain their distinct identities relative *to each other*, the Commonwealth is a unitary sovereign in terms of its relationship with its citizens, other states, and the federal government.

For example, the Judicial Code defines “Commonwealth government” as one entity that includes “the courts and other officers or agencies of the unified judicial system, the General Assembly and its officers and agencies, the Governor, and the departments, boards, commissions, authorities and officers and agencies of the Commonwealth.” 42 Pa.C.S. § 102. The Supreme Court has similarly analyzed the concept of the Commonwealth as one unified government in the context of a Commonwealth agency’s assertion of attorney-client

privilege as a basis for non-disclosure of documents to the Office of Attorney General in a grand jury investigation. *In re Thirty-Third Statewide Investigating Grand Jury*, 86 A.3d 204, 223-24 (Pa. 2014). The Court explained that, in those circumstances, the public was the client of the agency's lawyers and the public impliedly waived the attorney-client privilege to the extent that it precludes revealing evidence for such an investigation. *Id.* at 223-24. "To hold otherwise," the Court stated, would equate to a finding that the agency "is independent of the Commonwealth government, is beholden only to itself and, although ... ultimately funded by the public," need not account for its operations to the citizens. *Id.* at 224. This is consistent with the general understanding of the Commonwealth government as one entity with branches that function together in service for the public. Regardless of the different functions the branches perform or whether they may have diverging legal interests at times, they remain one unified Commonwealth government.

Although the LOWV asserts that sharing information between branches of one united government threatens constitutional rights, this ignores the fact that such sharing is common among branches of one

unified government, such as within the federal government. As explained in the Committee’s initial brief, the Privacy Act prohibits a federal agency from publicly disclosing records with individual identifying information, but contains an exception for sharing this information with the House of Representatives or Congress. *See* 5 U.S.C. § 552a(b)(9); *see also* 18 U.S.C. § 2721(b)(1) (providing that a permissible disclosure of a driver’s license number includes to any government agency carrying out its functions). This exception to the general rule acknowledges separate branches of government form one single federal government, including for purposes of sharing information.

In sum, the Subpoena does not implicate Article I, Section 1.

C. Petitioners’ “pretext” arguments fail legally and factually.

The Petitioners collectively argue that somehow the lengthy, on the record, statements by the Committee about the investigation’s avowed purpose, *see* Comm. Br. at 5-10 (quoting September 9 and September 15 hearings), is somehow a “pretext” for its real, purportedly unlawful purpose. *See* State Reply at 25; Costa Reply at 32; *see*

generally Intervenor Brief at 6-9; Haywood PFR ¶¶ 13-25. This argument fails for at least four legal and factual reasons.

First, the basic supposition offered to the Court is that statements from outside the Committee room, including press releases and interviews in news stories (i.e., hearsay), are legally sufficient to definitively show an unlawful legislative purpose. *See, e.g.,* State Reply at 3-10. Not so. In examining whether a legislative subpoena is in furtherance of a lawful purpose, a court must begin with a *presumption* of legitimacy: “We are bound to presume that the action of the legislative body was with a legitimate object, if it is capable of being so construed, and we have no right to assume that the contrary was intended.” *McGrain v. Daugherty*, 273 U.S. 135, 178 (1927) (quoting *People ex rel. McDonald v. Keeler*, 2 N.E. 615, 628 (N.Y. 1885)); *see also* *Com. v. Costello*, 21 Pa. D. 232, 234-35 (Quarter Sessions Phila. 1912) (citing *Keeler*). “To find that a committee’s investigation has exceeded the bounds of legislative power it must be **obvious** that there was a usurpation of functions exclusively vested in the Judiciary or the Executive.” *Tenney v. Brandhove*, 341 U.S. 367, 378 (1951) (emphasis added); *accord* *McGinley v. Scott*, 164 A.2d 424, 431 (Pa. 1960) (“Since

the Senate is without constitutional power to investigate the conduct of a particular district attorney, the proposed investigation of the district attorney of Philadelphia County, pursuant to the resolution here involved, if carried out, would not only serve no useful purpose but would do violence to the principles of our constitutional form of government.”).¹⁵ ¹⁶ In some sense, the standard to be applied, though not expressly articulated as such by any court, appears to be roughly akin to rational basis review, which provides in relevant part:

“legislation is presumed constitutional under a rational basis challenge and the person challenging a statute under the rational basis test has

¹⁵ The United States Supreme Court has recently seemingly added a further exception, not relevant here, to the basic analysis: when Congress seeks personal records of the President, additional considerations regarding the validity of the subpoena are warranted. *See Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2034-36 (2020); *see also id.* at 2036 (“Congressional subpoenas for information from the President, however, implicated special concerns regarding separations of powers.”). While the Acting Secretary significantly relies on *Mazars*, *see* State Reply at 23-25; *see also* Costa Reply at 27-28, the opinion is of little significance here given that the “special concerns” implicated in that case are simply not at issue. *See Mazars*, 140 S. Ct. at 2036.

¹⁶ One court has suggested the presumption can be overcome only if evidence showing some other purpose can be shown to be “the sole or primary objective” of the investigation, and only if that evidence can “negate the presence of other” legitimate purposes for the inquiry. *See Barenblatt v. U.S.*, 240 F.2d 875, 881 (D.C. Cir. 1957), *rev’d*, 354 U.S. 930 (1957), *analysis approved by*, 360 U.S. 109, 133 (1959) (“Having scrutinized this record we cannot say that the unanimous panel of the Court of Appeals which first considered this case was wrong in concluding that ‘the primary purposes of the inquiry were in aid of legislative processes.’ 100 U.S.App.D.C. 19, 240 F.2d at page 881.”).

the burden to show that *under no state of facts* can the classification further any conceivable legitimate state goal.” *Diwara v. State Bd. of Cosmetology*, 852 A.2d 1279, 1284 (Pa. Cmwlth. 2004) (quotations removed; emphasis added).

Here, no party disputes that clear statements were made during the September 9 and September 15 hearings by members of the Intergovernmental Operations Committee regarding a legislative purpose for the Committee’s actions. *See* Comm. Br. at 5-10. Stated otherwise, no Petitioner challenges that lawful, legislative purposes were stated as the intent and aim of the present legislative investigation. The challenge by Petitioners, instead, is chiefly based on their belief that those stated reasons are mere “pretext.”

However, in light of the foregoing caselaw standards for challenging legislative purpose, Petitioners cannot overcome the presumption in the Committee’s favor by simply saying other “evidence” exists to show that certain Committee members might be motivated by something other than the stated purpose. That so-called evidence does not make it “obvious” that the Committee is exercising judicial or executive authority, *see Tenney*, 341 U.S. at 378, or that the Subpoena

is not capable of being construed to serve the stated purpose of furthering election-related legislation. *See McGrain*, 273 U.S. at 178. Rather, their position supports only an improper demand that this Court critically examine the “motives which spurred the exercise of” the Committee’s power, which the Court cannot do. *Barenblatt v. U.S.*, 360 U.S. 109, 132 (1959) (“So long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power.”); *see generally Brnovich*, 141 S. Ct. at 2350. Thus, Petitioners cannot show that no state of facts supports the inquiry advanced by the legislative Subpoena, and consequently their pretext arguments fail.

Second, some of the so-called pretextual purposes are lawful legislative pursuits, even if they are the “real” reason for the Committee’s actions.¹⁷ For instance, the Acting Secretary and the Costa Petitioners expressly claim that the Subpoena is intended to conduct an audit of the 2020 presidential election or to examine its integrity. *See*

¹⁷ To be clear, those pretextual reasons are not the real reason for the Subpoena; the purpose is and remains examining the effect of Acts 77 and 12 on recent elections and examining whether additional legislation is needed to improve the current elections laws in light of the results of the inquiry, as was set forth on the record in the two September 2021 meetings of the Committee.

Costa Reply at 32; State Reply at 25. Even if that were so, how is “auditing” an election and examining its integrity an invalid legislative pursuit?

As was pointed out by the Committee in its opening brief, the “justification for a legislative investigation ... is the ascertainment of facts and other relevant information to aid the members of the legislative bodies in formulating, drafting and enacting remedial or other beneficial laws. Such is the predominant legally permissible purpose of a legislative investigative committee.” *McGinley*, 164 A.3d at 430. And, certainly, examining elections is well-within the Legislature’s scope of duties, *see* Pa. Const. art. VII, §§ 1, 2, 3, 4, 6, 9, 11, 13, 14; *see also* U.S. Const. art. I, § 4, cl. 1, and so is attempting to detect and prevent fraud. *See Brnovich v*, 141 S. Ct. at 2348. Thus, even if reviewing the 2020 presidential election were the sole purpose of the Subpoena, a challenge based on that purpose effectively amounts to an improper lament about legislative *wisdom*, *see infra*, but not a valid complaint about lawful legislative *purpose*.

Third, the Court cannot perform a “wisdom” analysis, which is effectively what the Petitioners are requesting. Briefly on this issue, as

has long been stated, the sagacity of legislative action is not a proper subject matter for court review. *See, e.g., Hosp. & Healthsystem Ass'n of Pa. v. Com.*, 77 A.3d 587, 603 (Pa. 2013) (“[T]his Court is not tasked with evaluating the wisdom of [the Legislature’s] policy choices.”). Yet here, Petitioners seek exactly that. They explain how the investigation could be, in their view, done better or more precisely or with different sources. *See* State Reply at 26-27, 28-32; Costa Reply at 32-33; Intervenor Reply at 11. But those challenges should be taken for what they really are: impermissible second-guessing of the policy choices made by a constituent part of the General Assembly.

Fourth, in a related vein, the Acting Secretary challenges the relevance of the information requested, *see* State Reply at 28-32; *see also* Intervenor Reply at 10-12, but that challenge ignores the low legal standard to be applied to a legislative subpoena, and is, regardless, without factual merit. As to the legal standard, the Acting Secretary fails to acknowledge that a “relevance” analysis for a legislative subpoena is a “minimal evidentiary burden” and requires only that “there must be some evidence establishing that the testimony sought will likely touch upon the subject matter of the underlying

investigation.” *See In re Semeraro*, 515 A.2d 880, 882 (Pa. 1986); Comm. Br. at 85-88 (factually applying *Semeraro*). As to the factual merits, the Acting Secretary incredibly argues that Act 77’s contribution to Pennsylvania election law was rather ministerial, listing six other things the law did before obliquely mentioning its true watershed effect: creating no-excuse mail-in voting. *See State Reply* at 28 (discussing, as seventh change from Act 77, “creating a mail-in voting process”). Notwithstanding the Acting Secretary’s mundane description of the new law, Act 77—as well as Act 12—unquestionably had a “substantial” impact on elections, *see In re November 3, 2020 Gen. Election*, 240 A.3d 591, 595-96 (Pa. 2020), and those new Acts intersected with the SURE-system related information requested by the Subpoena.

Indeed, no-excuse mail-in voting made the *thousands* of duplicate entries identified by the Auditor General, *see SURE Report* at 28-30 (Appendix at 1064a-1066a), an increased problem. This is so because while it is exceedingly difficult for the same person with more than one entry to show up and vote in-person more than once (because, for instance, they might be recognized by poll workers), it would be potentially much easier for that same person to vote using mail-in

means more than once. *See* Comm. Br. at 88 (citing Karen Shuey, *Berks County elections officials turn possible voter fraud case over to district attorney*, Reading Eagle (Sept. 23, 2021) (noting that single voter who had two registrations voted once by mail and once in person during the 2020 election)). Hence, far from being irrelevant to an Act 77 and Act 12 inquiry, the SURE system data, factually, “will likely touch upon the subject matter of the underlying investigation.” *See Semeraro*, 515 A.2d at 882.

Accordingly, for all the reasons set forth above, the “pretext” argument fails legally and factually.

D. The political question doctrine prohibits the Acting Secretary’s and the Haywoods’ proposed inquiry into the Committee’s subject matter jurisdiction.

Despite expressly conceding that the Committee’s purported subject matter jurisdiction is “derive[d] from Senate rules,” the Acting Secretary continues to claim that “[e]lections are outside the Intergovernmental Operations Committee’s assigned subject area.” *See* State Reply at 32-34. The Haywoods raise a similar claim. *See* Haywood Reply at 10. But, as stated in the Committee’s opening brief, review by this Court of the alleged subject matter jurisdiction of *any* Senate

Committee under the Senate’s Rules, let alone the Intergovernmental Operations Committee, is prohibited by the political question doctrine. Indeed, the Pennsylvania Supreme Court’s decision in *Blackwell v. City of Philadelphia*, 684 A.2d 1068, 1071 (Pa. 1996), commands such a result where, as here, the Acting Secretary is seeking to have this Court interpret and apply the Senate’s own Rules in order to limit and restrict the Committee’s subject matter jurisdiction. But here, as in *Blackwell*, such “judicial interference in the legislature’s conduct of its own internal affairs” is, and always has been, barred by the political question doctrine.¹⁸ *Id.* at 1073.

Moreover, even if the political question doctrine did not prohibit this Court from inquiring into the Committee’s subject matter jurisdiction under the Senate’s own Rules (which it does), nowhere in the plain text of the Senate’s Rule is the Committee limited or restricted from issuing subpoenas for election-related matters. Nor does the plain text of the Senate’s Rules grant the State Government

¹⁸ The Acting Secretary attempts to minimize *Blackwell* by emphasizing that it was a “two-Justice plurality.” See State Reply at 33-34. *Blackwell*, however, was considered by only four Justices of the Supreme Court, with two of the Justices joining the opinion announcing the judgment of the court and the other two Justices concurring in the result without opinion. Thus, the “two-Justice plurality” in *Blackwell* is the only opinion and guidance from the Supreme Court in that case.

Committee *exclusive* jurisdiction over election-related matters. Indeed, nowhere in the Senate’s Rules is the subject matter jurisdiction of *any* Senate Standing Committee specifically defined, let alone limited or restricted. To this end, the Acting Secretary and the Haywoods ignore the fact that the Chair of the State Government Committee openly invited the Intergovernmental Operations Committee to help the State Government Committee investigate election-related matters because of the State Government Committee’s existing “considerable workload.” See State PFR, Ex. C at 58:24-59:7. Accordingly, even on the merits, the jurisdiction challenge fails.

E. The Subpoena, by its plain terms alone, cannot be construed as a means for an election contest or an election audit.

The Subpoena does not constitute an election contest or an audit. The Costa Petitioners’ argument otherwise ignores that “election contest” is a term of art specific to the Election Code and nothing in the Subpoena indicates that it could reasonably be construed as such. There is also no indication that the Subpoena can be considered an audit and, further, to hold otherwise is to render meaningless the subpoena power.

Although “[t]he Pennsylvania Election Code does not define the phrase ‘election contest,’” courts have found that “the term does have a specialized, technical and historically recognized connotation as used in the code” based upon caselaw and the statutory language in the Election Code. *In re Bensalem Twp. Supervisor Election Contest*, 26 Pa. D. & C.2d 433, 435 (C.P. Bucks 1962). Election contests, which must be instituted within 20 days of an election, are for the purpose of challenging illegality in elections. 25 P.S. § 3456. In other words, an election contest is only proper to challenge the conduct of an election or the election process itself. *See e.g., In re Petition to Contest Primary Election of May 19, 1988*, 721 A.2d 1156 (Pa. Cmwlth. 1988) (affirming dismissal of claims that were not properly an election contest challenge under the Election Code but a challenge to campaign finance laws); *In re Bensalem Twp.*, 26 Pa. D. & C. 2d at 436 (concluding there was no jurisdiction for an election contest to challenge the eligibility of a candidate to hold office because the Election Code authorizes contests to the election process itself). A legislative probe regarding the function of elections cannot be considered an election contest challenging the legality of past elections.

The Costa Petitioners’ assertion that this Court must consider the “character” and “purpose” of this “legislative action” in evaluating whether the Subpoena is an election contest not only overlooks the specialized meaning of a contest but is premised upon inapposite caselaw addressing the legislative intent and practical effect of enacted statutes. Costa Reply at 34 (quoting *National Fed. Of Independent Business v. Sebelius*, 567 U.S. 519, 565 (2012)). The present dispute is not a challenge to an enacted statute, but solely a question of the validity of the Subpoena. The only relevant consideration for its validity is what the Subpoena itself requests. See *Com. by Packel v. Shults*, 362 A.2d 1129, 1135 (Pa. Cmwlth. 1976). Nothing on the face of the Subpoena indicates the existence of an election contest. Election contests are specific legal actions that should not be conflated with a legitimate legislative investigation for probing into election processes. In asserting otherwise, Costa Petitioners ignore: (1) the specific context and purpose of election contests; (2) the language of the Subpoena itself; and (3) the entirety of the legislative record on the whole setting forth the legitimate legislative purpose for the Subpoena.

Similarly, the Costa Petitioners' assertion that the Subpoena constitutes an impermissible audit ignores the plain language of the Subpoena and its legitimate legislative purpose. The Costa Petitioners' continued reliance upon this Court's definition of audit in *Dep't of Auditor General v. State Empls. Retirement System*, 860 A.2d 206, 210 (Pa. Cmwlth. 2004), overlooks the practical effect of applying such a definition to a legislative investigation. Although Costa Petitioners assert that the purpose of a legislative investigation is to legislate rather than "provide information" or "improve public accountability," see Costa Reply at 37, a necessary part of legislating is gathering and analyzing data for the purpose of legislating. See *McGinley*, 164 A.3d at 430; see also *McGrain*, 273 U.S. at 175. To hold otherwise would be to render any legislative investigation an audit and the subpoena power useless. Finally, simply because the General Assembly has, on occasion, enacted election-related legislation without an investigation, see *id.*, does not preclude the General Assembly from legitimately using that investigatory power now for evaluating the need for legislation.

The Subpoena cannot reasonably be construed as an election contest or audit and, therefore, the Costa Petitioners' claims for relief in Counts I and II fail.

F. The Subpoena does not violate Article I, Section 5.

The Committee's interpretation of Article I, Section 5 is supported by the constitutional text and history, as well as the caselaw interpreting Section 5. According to those sources, Section 5's first clause is broadly interpreted so that "all aspects of the *electoral process*" are free and equal in order to guarantee "equal participation in the *electoral process*." *League of Woman Voters v. Com.*, 178 A.3d 737, 804 (Pa. 2018) (emphasis added). The fulcrum, then, is that Section 5 applies to safeguard the electoral process, or stated differently, the conduct of elections. *See* Thomas Raeburn White, *Commentaries On The Constitution of Pennsylvania* (1907) at 349 (Section 5 was intended "to prevent any outside interference with the free *conduct of elections*." (emphasis added)). The Pennsylvania Supreme Court has never explicitly defined those terms, but the Committee submits that the Court's observations in *Winston v. Moore*, 91 A. 520 (Pa. 1914) (listing criteria that make elections "free and equal"), and the legion caselaw

applying Section 5 to matters implicating the electoral process, are strong support for the position that Section 5 cannot apply to an investigative subpoena that in no way interferes with qualified electors' right to vote.

As for Section 5's second clause, the minutes to the 1873 Constitutional Convention make plain the delegates added the clause to specifically remedy civil mob or military interference with the elections, and therefore that clause does not expand Section 5's reach. See Minutes of Constitutional Convention of 1873 at 672-675;¹⁹ see also Charles R. Buckalew, *An Examination of the Constitution of Pennsylvania. Exhibiting The Derivation and History of Its Several Provisions*, Article I at 9 (1883) ("it may be questioned whether the new clause has added anything to the original meaning or force of the section").²⁰

In any event, the Acting Secretary's claim that the Subpoena implicates the electoral process, and thus Section 5, because it "is for election records and will affect voters' willingness to participate in

¹⁹ Available at <https://www.paconstitution.org/wp-content/uploads/2019/10/D EBATES-A-VOL-4.pdf>.

²⁰ Available at https://www.google.com/books/edition/_vOWeAQAACAAJ?hl=en&gbpv=1.

future elections” is patently false. State Reply at 60.²¹ The data from the November 2021 general municipal election debunks the Acting Secretary’s position. The election data—i.e., the facts—show that turnout for the November 2021 municipal election was actually *higher* than the last municipal election with a State Supreme Court race in 2017, by nearly 700,000 votes.²² Thus, the Acting Secretary is unable to truthfully allege “[t]he undisputed facts establish that the Subpoena will discourage participation in the electoral process.” State Reply at 62.

In sum, the Subpoena does not violate Article I, Section 5.

G. The Subpoena does not violate the United States Constitution.

The Acting Secretary fails to meaningfully contend with or rebut any of the Committee’s arguments in its primary brief. The Acting Secretary continues to rely on inapposite cases that concern the *public*

²¹ The Haywoods’ arguments, which are similar to the Acting Secretary’s, fail for the reasons stated *supra*. See Haywood Reply at 8-9. To the extent the Haywoods challenge the Committee’s subject-matter authority, and the legitimate legislative purpose for issuing the Subpoena, those claims fail for the reasons stated above in this reply.

²² Dep’t of Com., Official Returns-Statewide (Nov. 7, 2017) (showing **2,086,025** total votes cast in Supreme Court race), available at <https://www.electionreturns.pa.gov/General/SummaryResults?ElectionID=59&ElectionType=G&IsActive=0>; Dep’t of Com., Unofficial Returns-Statewide (Nov. 2, 2021) (showing **2,763,265** total votes cast in Supreme Court race), available at <https://www.electionreturns.pa.gov/General/SummaryResults?ElectionID=84&ElectionType=G&IsActive=1> (last visited Nov. 22, 2021).

sharing of voter information and inapposite First Amendment caselaw to support the argument that “conduct that merely chills the exercise of constitutional rights can violate the U.S. Constitution.” State Reply at 62. Moreover, and most importantly, the Acting Secretary’s argument that the “immediate effect of the Subpoena” would be to discourage participation in the election, *see id.*, fell entirely flat in the November 2021 election where voter turnout *increased* from the last municipal election with a Supreme Court race in 2017.

H. The deliberative process privilege is not recognized by the Pennsylvania Supreme Court.

To date, the deliberative process privilege is codified in the RTKL, and recognized in that context by the Pennsylvania Supreme Court. However, a majority of the Pennsylvania Supreme Court has *never* adopted the deliberative process privilege at common law, *see Com. v. Vartan*, 733 A.2d 1258 (Pa.1999) (plurality), and therefore the Acting Secretary’s claim that it applies here fails.

In Pennsylvania, deliberative process has never been formally adopted (outside the RTKL) either statutorily or at common law. The General Assembly has adopted a multitude of other privileges and immunities, but so far has declined to add deliberative process privilege

to that list. *See* 42 Pa.C.S. §§ 5941-5952. That the General Assembly has declined to adopt the privilege is significant because Courts look upon statutory privileges more favorably. *See Reginelli v. Boggs*, 181 A.3d 293, 300 (Pa. 2018).

The Acting Secretary finds no shelter in common law either. Indeed, the Pennsylvania Supreme Court has never recognized the deliberative process privilege outside the context of the Right-to-Know Law.²³ *See LaValle v. Office of General Counsel of Com.*, 769 A.2d 449, 458 (Pa. 2001) (“This Court has not definitively adopted the deliberative process privilege[.]”); *Tribune-Review Pub. Co. v. Dep’t of Comm. and Econ. Develp’t*, 859 A.2d 1261, 1269 (Pa. 2004) (declining to “adopt” the privilege). It appears *Vartan*’s evolution from a non-binding plurality decision to allegedly binding authority finds its taproot in *Joe v. Prison Health Services, Inc.*, 782 A.2d 24, 33 (Pa. Cmwlth. 2001). In *Joe*, the panel acknowledged *Vartan*’s plurality status and that *LaValle* had not adopted the privilege. *Id.* at 33 n.6. But the *Joe* Court went on to apply

²³ The Acting Secretary critiques the Committee’s argument that the RTKL is the only context in which deliberative process is recognized, *see* State Reply at 67 n.13, because cases from this Court have applied the privilege outside that context. Respectfully, as developed more fully herein, the Pennsylvania Supreme Court is the only Court in this Commonwealth with the authority to adopt a new common law privilege, and to date, it has declined to do so.

the privilege anyway. Since *Joe*, it appears other panels have not closely scrutinized *Vartan*'s plurality status, and instead have applied the privilege as though *Vartan* featured a majority opinion. See, e.g., *Ario v. Deloitte & Touche LLP*, 934 A.2d 1290, 1293 (Pa. Cmwlth. 2007) ("Our Supreme Court recognized the 'deliberative process privilege' in [*Vartan*].") (single judge opinion); *Koken v. One Beacon Ins. Co.*, 911 A.2d 1021, 1027 (Pa. Cmwlth. 2006) (applying *Joe* and *Vartan* without acknowledging *Vartan*'s plurality status); *KC Equities v. Dep't of Public Welfare*, 95 A.3d 918, 934 (Pa. Cmwlth. 2014) (applying *Vartan* without acknowledging its plurality status). In this light, the Supreme Court's plurality in *Vartan* and other Commonwealth Court cases applying the privilege outside the RTKL context cannot support the weight that the Acting Secretary rests on them.

In any event, if the privilege is recognized, the Acting Secretary has failed to carry her burden of proving the materials sought are privileged, and has also failed to rebut the Committee's showing of "a

sufficient need for the material.” *See* Comm. Br. at 107-109.²⁴ Thus, the Acting Secretary has failed to establish that the privilege applies here.

I. Title 71 requires the Acting Secretary to provide the Committee with the requested documents.

The Acting Secretary’s argument that Title 71 does not apply fares no better. Sections 272 and 801 *plainly* require the Secretary of the Commonwealth to allow the Committee to inspect and examine its papers and records. 71 P.S. §§ 272, 801.²⁵ ²⁶ According to the Acting

²⁴ It is disingenuous for the Acting Secretary to criticize the Committee’s reliance on *Redland Soccer Club, Inc. v. Dep’t of the Army of the United States*, 55 F.3d 827 (3d Cir. 1995) on the basis that it is a Third Circuit case. *See* State Reply at 69 n.14. *Redland* was cited approvingly by *Vartan* and the Pennsylvania intermediate courts that have adopted (wrongly) *Vartan*’s plurality decision. *See, e.g., Vartan*, 733 A.2d 1258.

²⁵ The Intervenor’s claim that Section 280(a), 71 P.S. § 280, limits Sections 272 and 801 by prohibiting the Secretary from “making public” any confidential information or data. Intervenor Reply at 29. But this claim fails because the Subpoena does not require the Secretary to “make public” any information; the Subpoena requires only an *inter-governmental* transfer of information.

²⁶ The Costa Petitioners’ argument that Section 272(b) applies here is erroneous. *See* Costa Reply at 39-41. Section 272(a) applies to “any committee of a branch of the General Assembly” and Section 272(b) applies more broadly to “any person[.]” *See* 71 P.S. § 272. Because the General Assembly gave subsection (b) a broader scope, it also limited its reach to *public records*. *See id.* Subsection (a) is not limited because it applies only to committees. Thus, the Costa Petitioners’ suggestion that “any person” can obtain the information sought by the Subpoena is undeniably wrong.

Moreover, the Costa Petitioners’ attempt to distinguish *Thornburg v. Lewis*, 470 A.2d 952 (Pa. 1983) on the basis that the Administrative Code provision at issue there required the Governor to provide data “as may be requested,” whereas here the provision requires the Secretary shall provide records “as may from time to time may be required,” is misplaced. The Subpoena *requires* the Secretary to provide the requested information to the Committee, and *Thornburg* merely illustrated the Administrative Code’s application.

Secretary, Section 272 does not apply to internal deliberations because it applies only to external documents “*filed in the department*[.]” See State Reply at 67. However, Section 272 is better interpreted as applying to all documents *kept* in the department because that interpretation is consistent with Section 801, which does not have similar language (and thus applies to all documents in the department), and with *In re Thirty-Third Statewide Investigating Grand Jury*, which emphasized that a similar provision in the Commonwealth Attorney’s Act (“CAA”)²⁷ is interpreted “broadly[.]” 86 A.3d 204, 216 (Pa. 2014).²⁸

Finally, the Haywoods’ attempt to distinguish *Thornburg* likewise fails. See Haywood Reply at 5. The Haywoods assert that *Thornburg* is distinguishable based on the nature of the information sought, but that is irrelevant and shows only that the provision in that case is different from the one at issue here. *Thornburg* is instructive because it interpreted a substantially similar provision in Title 71 to *require* the Governor’s compliance with the committee’s request. Additionally, it is not clear what the Haywoods mean when they allege the committee in *Thornburg* “was operating under the specific function assigned to them under the Administrative Code” and that this Committee is not. The Committee is acting consistent with its authority, *see, e.g.*, Senate Rule 14(d)(3); *see also* Mason’s, § 795, ¶ 4, and, in any event, Title 71 requires the Secretary to comply with the Committee’s Subpoena.

²⁷ See 71 P.S. 732-208 (“The Office of the Attorney General shall have the right to access at all times to the books and papers of any Commonwealth agency necessary to carry out his duties under this act.”).

²⁸ On this point, *In re Thirty-Third*, is not distinguishable on the basis of its “unique context” because the considerations attendant to the attorney-client privilege—long recognized in common law and in statute—are not comparable to those surrounding the deliberative process privilege, which lacks longstanding clout. See 26A Fed. Prac. & Proc. Evid. § 5680 (1st ed.) (“Some courts have said that the [deliberative process] privilege is ‘well-established by a long line of authorities.’ This is a distortion of history. Forty years ago a writer found very little authority for

Next, the Acting Secretary suggests that because Sections 272 and 802 do not “affirmatively abrogate the common law privilege,” she is still free to assert it here. State Reply at 67. But this claim fails for two reasons. First, the Pennsylvania Supreme Court does not recognize deliberative process as a common law privilege. Second, the plain language of Sections 272 and 801 control the interpretation, and neither expressly recognizes the application of an evidentiary privilege. *See In re Thirty-Third*, 86 A.3d at 224 (“Nevertheless, by its plain and broad language, the unqualified (except for the ‘necessary’ proviso) power conferred is not made subject to an exception for attorney-client privilege.”). The silence in Sections 272 and 801 is thus meaningful: no privilege applies.

Finally, as it relates to Title 71, the Costa Petitioners’ argument that Title 71 should not apply because it “was passed in 1929, before the creation of Social Security numbers[,]” Costa Reply at 38, and is

any privilege for communications between government officials. It is only in the last two decades that federal courts have developed the privilege. It has only now begun to spread to the states.”). Moreover, the fact remains that the Court interpreted a nearly identical provision of the CAA—one that also did not allow for any privilege to apply—to preclude the application of a privilege absent express language. *See In re Thirty-Third*, 86 A.3d at 224 (“Nevertheless, by its plain and broad language, the unqualified (except for the ‘necessary’ proviso) power conferred is not made subject to an exception for attorney-client privilege.”).

“outdated[,]” *id.* at 41, is patently absurd. The Costa Petitioners cannot simply put Title 71 out to pasture. Indeed, the “desuetude canon” provides that the “bright-line rule is that a statute has effect until it is repealed. If 10, 20, 100, or even 200 years pass without any known cases applying the statute, no matter: The statute is on the books and continues to be enforceable until its repeal.” Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation Of Legal Texts*, at 336 (1st ed. 2012). This canon is effectively codified in Pennsylvania’s rules of statutory construction, which provide, in pertinent part: “A statute shall not be deemed repealed by failure to use such statute.” 1 Pa.C.S. § 1973. Thus, the Costa Petitioners’ argument is contrary to separation of powers principles because it would effectively allow the judiciary to repeal legislation, and allow it to do so against the express mandate to the contrary in 1 Pa.C.S. § 1973. Accordingly, the Costa Petitioners’ argument is wholly unsupportable.

J. The Acting Secretary’s reply brief only confirms that the Critical Infrastructure Information Act and PATRIOT Act claim fails as a matter of law.

Rather than seasonably acknowledge *Santa Clara*’s in-depth analysis of the CII Act, its intent, and its legislative history, all of which

directly contradict her argument regarding the CII Act, the Acting Secretary merely states “*Santa Clara* is neither binding nor persuasive. The text of 6 C.F.R. § 29.8(d)(2) is clear, and does not include that limitation.” State Reply at 65.

The Acting Secretary’s rejoinder ignores pages 386-387 of *Santa Clara*, where the court actually cites 6 C.F.R. § 29.8(d), and holds that the protected critical infrastructure information (“PCII”) prohibitions against disclosure apply only to information in the hands of the governmental recipient (i.e., in that case, the federal government); it does not apply to information in the hands of the “submitter” (i.e., in this case, the Pennsylvania government). *Cty. of Santa Clara v. Superior Ct.*, 89 Cal. Rptr. 3d 374, 386-87 (Cal. Ct. App. 2009). Accordingly, the Acting Secretary’s citation of 6 C.F.R. § 29.8(d)(2) only affirms that Count V should be dismissed.

The Acting Secretary’s reliance on an unpublished case from New Jersey, which only considers 6 C.F.R. § 29.8(g) and a private citizen seeking government records under New Jersey’s “Open Records Act,” does not revive the claim. State Reply at 65 (citing *Tombs v. Brick Twp. Mun. Utilities Auth.*, No. A-3837-05T5, 2006 WL 3511459, at *2-*3 (N.J.

Super. Ct. App. Div. Dec. 7, 2006)). Aside from the fact that the New Jersey case is devoid of any actual analysis of the CII Act,²⁹ the two parties in this matter are part of the same entity: the Pennsylvania state government. This is readily not a Right-to-Know Law situation like *Tombs*. As a **submitter** of CII, the state government cannot avail itself of the CII Act against itself.

The Acting Secretary's remaining points are equally unavailing. For instance, the Acting Secretary baldly states the Auditor General's SURE Report, and its discussion of this issue, should simply be ignored. *See State Reply* at 64. The Auditor General's report, however, merely confirms the law set forth at length above and in the Commission's opening briefing.

Next, the Acting Secretary also concedes that she has failed to **plead** that the complained of audit reports have been labeled PCII as required by law to even put these statutes into play. *See State PFR ¶¶ 248-57*. Indeed, the Acting Secretary can only cite to the "Marks

²⁹ It also warrants noting that the appellant in the New Jersey matter never disputed that the information was PCII.

Decl.” attached to her brief, which is, of course, not part of the Petition for Review. *See* State Reply at 65.

Lastly, the Acting Secretary offers no response to the argument that the federal statutes she asserted in Count V cannot be used as private causes of action. Indeed, her lone citation-less response amounts to “[we] are not seeking to enforce any provision of the Critical Infrastructure Act.” State Reply at 65. A plain review of Count V shows otherwise. Moreover, the Acting Secretary’s attempt to cast aside *Detroit Int’l Bridge Co. v. Fed. Highway Admin.*, 666 F. Supp. 2d 740 (E.D. Mich. 2009), as irrelevant misses the mark. The Acting Secretary asserted 42 U.S.C. § 5195c as a basis for her claim. *See* State PFR Count V. Thus, *Detroit Int’l* confirms that she is not able to state a private cause of action.

Accordingly, the Acting Secretary’s attempt to defend Count V only confirms that it should be dismissed as a matter of law.

K. The Haywoods admit their claim regarding the Pennsylvania Breach of Personal Information Act is waived.

The Haywoods “concede that their claim pursuant to the Pennsylvania Breach of Personal Information Act (the ‘Act’) was first

mentioned in their Brief.” Haywood Reply at 12. This admission of waiver should end the matter. The Haywoods claim the Committee would not be prejudiced if the Court considered their claim, *see id.*; however, the Committee is prejudiced because it is forced to defend a claim that was not properly preserved. As such, the Haywoods’ claim is waived.

But for good measure, the claim fails on the merits for the reasons developed more fully in the Committee’s principal brief. Comm. Br. at 112-117. The Haywoods fail to meaningfully contend with the Committee’s arguments; instead, they advance bald and conclusory assertions that the Committee is acting outside the Act’s scope, and thus the Subpoena is not a “good faith acquisition of personal information” and is not “for the lawful purpose of the entity” as contemplated by the Act. 73 P.S. § 2302; *see also* Haywood Reply at 13 (conclusory argument that *Dittman v. UPMC*, 196 A.3d 1036 (Pa. 2018) applies here). The Committee, however, is acting within the scope of its authority, *see supra*, and *Dittman*—which created a common-law duty only for employers to exercise reasonable care when collecting and storing its employees’ personal information—does not preclude the

secure government-to-government transfer of personal information pursuant to the constitution, statutes, and a lawful subpoena. Thus, even if this Court concludes the Haywoods' argument is not waived (which it is), the claim falls well-short on the merits.

IV. CONCLUSION

For the foregoing reasons, the Court should deny Petitioners' Applications for Summary Relief, and should grant the Committee's Cross-Application for Summary Relief. In doing so, the Court should specifically enter an order compelling the Acting Secretary to immediately respond to the Subpoena.

Respectfully submitted,

Dated: November 22, 2021

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WORD COUNT CERTIFICATION

I hereby certify that the above brief complies with the word count limit set by the Court's Order of November 5, 2021 (paragraph 2, permitting 14,000 words). Based on the word count feature of the word processing system used to prepare this brief, this document contains 12,202 words, exclusive of the cover page, tables, and the signature block.

Dated: November 22, 2021

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Supplemental Appendix

ENVOY SAGE, LLC

Ms. Clark
General Counsel, Senate Republican Caucus
350 Main Capitol
Harrisburg, PA 17120

18 November 2021

Dear Ms. Clark,

As I am aware, there are a number of provisions in the Master Services Agreement between the parties which speak to the requirement that we comply with various industry standards in performing our work, including 3.9, 4.6, 4.8, 4.9, 26.1.14, as well as a number of provisions that speak to the requirement that services be provided "professionally," including but not necessarily limited to 3.3, 3.4, 4.2, 4.3, 4.5, and 4.8. With specific regard to information security matters, Envoy Sage, LLC follows Industry Best Practices for Information Security, Handling and Disposal.

Our company's information security policies, standards, and procedures adhere to, or are more rigorous than, guidance from the National Institute of Standards and Technology Cybersecurity Framework (NIST CSF) [Dept of Commerce], the SANS Institute, and, where applicable, the Multi-State Information Sharing & Analysis Center (MS-ISAC) [Dept of Homeland Security]. Envoy Sage employs proven cyber security tools to protect data, private information, and identity verification. Our tools use military-grade encryption (256-bit AES), and provide users with two-factor authentication (2FA) as well as biometric logins.

Sincerely,

Steven R. Lahr
Steven R. Lahr (Nov 18, 2021 18:59 EST)

Steven R. Lahr
President



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SERVICE PURCHASE CONTRACT

ISSUING MEMBER/OFFICER & ADDRESS		CONTRACTOR NAME & ADDRESS		Show This Contract Number on Invoices				
Senator Kim Ward 292 Main Capitol Building Harrisburg, PA 17120		Envoy Sage, LLC 4409 Crews Ct Port Charlotte, FL 33962		SP# <u>3921111601A</u>				
Contact Person: Crystal Clark Phone: 717-787-6259 Fax: 717-772-3146		Contact Person: Steven R. Lahr Phone: 202-379-3045 Fax: 202-280-2717		Funding Source: <table style="width: 100%; border: none;"> <tr> <td style="border: none; text-align: center;">CPI</td> <td style="border: none; text-align: center;">APP</td> </tr> <tr> <td style="border: 1px solid black; text-align: center;">41</td> <td style="border: 1px solid black; text-align: center;">30219</td> </tr> </table>	CPI	APP	41	30219
CPI	APP							
41	30219							
EFFECTIVE DATE: 11/18/2021	EXPIRATION DATE: 05/18/2022							
SERVICES SPECIFIED (Describe and list terms & conditions. Use and reference attachments, if necessary)				Quantity				
Specific services to be performed are set forth in Attachment A, which shall be performed in accordance with the terms and conditions set forth in the Master Services Agreement attached hereto as Attachment B. Pricing for work pursuant to this SPC is set forth in Attachment C hereto.				Unit Price				
				Total Price				
				TOTAL (if applicable)				
				\$270,250.00				

In compliance with the contract terms, conditions, and specifications, the undersigned, on behalf of the Contractor, which intends to be legally bound hereby, offers and agrees, to provide the specified services at the price(s) set forth above at the time(s) and point(s) specified. In addition to this document additional terms and conditions may be referenced and made a part hereof as attachments.

Contractor Signatures (In Ink)		
President / Vice President / Manager / Partner / Owner (sign below, print name, and circle title)	Date 11/18/2021	Corporate Secretary / Treasurer (sign below, print name, and circle title)

[Handwritten Signature]

Senate of Pennsylvania Approvals	
Approved as to Legislative Purpose	Date

[Handwritten Signature] 11/19/21

Approved as to Fiscal Responsibility & Availability of Funds	Approved as to Form and Legality
Chief Clerk Or Designee (sign below & print name)	Senate Attorney (sign below & print name)
Date	Date

[Handwritten Signature] 11/19/2021

[Handwritten Signature] 11/19/21

Print and sign two originals -- Contractor Senate

ATTACHMENT A

1. Document analysis for the subpoena (issued 15 September 2021) in support of legislation, as necessary, pertaining to the current election code and the future SURE system.
 - a. Conduct analysis of all communications between the Department of State and local governments/individuals to include training materials. (Subpoenaed Elements 1 – 3)
 - i. Produce a summary of the analysis
 - ii. Produce a recommendation of follow-on actions with justifications
 - iii. Conduct a briefing(s) of summary and recommendations
 - b. Conduct basic analysis of all voter lists for the May 2021 primary election. (Subpoenaed Elements 4,10 – 13, 15)
 - i. Produce a summary of the analysis
 - ii. Produce a recommendation of follow-on actions with justifications
 - iii. Conduct a briefing(s) of summary and recommendations
 - c. Conduct basic analysis of all voter lists for the November 2020 general election. (Subpoenaed Elements 5 – 9, 15)
 - i. Produce a summary of the analysis
 - ii. Produce a recommendation of follow-on actions with justifications
 - iii. Conduct a briefing(s) of summary and recommendations
 - d. Conduct detailed analysis of the complete list of all changes to voter records made between May 31, 2020 and May 31, 2021. (Subpoenaed Elements 14,15)
 - i. Produce a summary of the analysis
 - ii. Produce a recommendation of follow-on actions with justifications
 - iii. Conduct a briefing(s) of summary and recommendations
 - e. Conduct analysis all reports of audits and/or reviews of the SURE system conducted by or for the Department of State between 2018 and the present, including, but not limited to, any audits conducted under 25 Pa.C.S. 1803(a). Conduct analysis of the annual reports submitted to the Department of State pursuant to 4 PA Code 183.17. (Subpoenaed Elements 16 - 17)
 - i. Produce a summary of the analysis
 - ii. Produce a recommendation of follow-on actions with justifications
 - iii. Conduct a briefing(s) of summary and recommendations
2. Provide consultation and advisory activities in support of the Intergovernmental Operations Committee investigation into election integrity to aid in the development of legislation, as necessary, pertaining to the current election code and the future SURE system.
 - a. These activities are to aid in the development of legislation, as necessary, of the current system election code and the future SURE system.
 - b. Activities directed, to include, but not limited to general investigative execution and analysis.

- c. Activities directed, to include, but not limited to support all manner of legislation development to include such items as (policy development & hearing design).
3. Provide multi-faceted general communications services to communicate to people both externally and internally to the Senate. This includes, but is not limited to, consultation, format/channel recommendations analysis, and communicating directly to individuals/groups as approved by the client.
4. Conduct Analysis of the submissions to the Intergovernmental Operations Committee webpage and for election affidavits submitted to the Committee to aid in the development of legislation, as necessary, pertaining to the current election code and the future SURE system.
 - a. Webpage submissions
 - i. Screen approximately 700 emails.
 - ii. Conduct analysis of emails of interest. Approximately 125 emails.
 - iii. Produce a summary of the analysis
 - iv. Produce a recommendation of follow-on actions with justifications
 - v. Conduct a briefing(s) of summary and recommendations
 - b. Affidavits Submitted
 - i. Conduct basic analysis of approximately 100 affidavits.
 - ii. Produce a summary of the analysis
 - iii. Produce a recommendation of follow-on actions with justifications
 - iv. Conduct a briefing(s) of summary and recommendations
5. Conduct analysis of other election integrity initiatives across the nation to aid in the development of legislation, as necessary, pertaining to the current election code and the future SURE system.
 - a. Produce a summary of the analysis
 - b. Produce a recommendation of follow-on actions with justifications
 - c. Conduct a briefing of summary and recommendations

Attachment B
Master Services Agreement
Contract Reference Number: 3921111601A

This Master Services Agreement, herein referred to as the "Agreement," made and entered into as of the _____ of November, 2021, by and between:

the Pennsylvania Senate Republican Caucus, herein referred to as the "Client."

-AND-

Envoy Sage, LLC, a Limited Liability Corporation lawfully incorporated by and operating under the laws of Iowa, and operating in Pennsylvania as a qualified Limited Liability Corporation whose principal place of business is located at 1715 Central Ave, Dubuque, Iowa, herein referred to as the "Vendor."

In this agreement, Client and Vendor will be jointly referred to as the "Parties."

WITNESSETH THAT:

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth in this Agreement, and operating under the jurisdiction of Pennsylvania, the Parties agree as follows:

Performance Work Statement

1. Description of Services (Overview)
 - 1.1. The Vendor shall serve as prime contractor to provide consultation, advisory services, and analysis regarding the conduct of an investigation by the Client into the 2020 General and 2021 Primary Elections in the Commonwealth of Pennsylvania.

2. Background.
 - 2.1. The Client has an urgent and compelling requirement to investigate the conduct of the 2020 General and 2021 Primary Elections to aid in the development of legislation, as necessary.
 - 2.2. The Client has the lawful authority and charter to conduct these investigations, such being derived from its functional role within the Pennsylvania General Assembly.

3. General Performance Objectives.

- 3.1. Provide subject matter expertise regarding election systems and election integrity legislation.
- 3.2. Conduct analysis of pertinent election information that is currently available and/or may become available during the term of this Agreement.
- 3.3. Conduct professional investigations and analysis as may be directed by the Client through individual Service Purchase Contracts.
- 3.4. Deliver professional consultation and advisory services to the Client regarding preliminary research, investigation management, and interpretation of findings.
- 3.5. Conduct thorough and complete analysis of information and data discovered during investigation.
- 3.6. Provide analysis of election audit reports conducted in other U.S. States.
- 3.7. Identify potential additional courses of investigative action.
- 3.8. Deliver consultation and advisory services regarding potential further subjects of investigation related to the 2020 General and 2021 Primary Elections, and investigation management needs associated therewith.
- 3.9. Any information or evidence collected as a result of investigation shall be collected, maintained, and stored (escrowed) following industry best practices for Chain of Custody pursuant to federal law, including, but not limited to state and federal Rules of Evidence, and state and federal election security laws.
- 3.10. Deliver findings in a timely and professional manner. This may include written reports, briefing slides, oral briefings, video conferences, and testimony.

4. Scope.

- 4.1. This Agreement is designed to assist the Client in its analysis of information provided as part of the Client's investigation into the conduct of the 2020 General and 2021 Primary Elections in the Commonwealth of Pennsylvania. Additionally, the purpose of this Agreement is to advise the Client regarding potential legislation associated with that investigation. The intent is to provide the Client with accurate, reliable, and effective consultative and advisory services.
- 4.2. The goal of the Agreement is to deliver a highly professional, fact-based, apolitical investigation for the people of the Commonwealth of Pennsylvania.
- 4.3. This is an urgent and compelling requirement. The Vendor shall operate accordingly. The Vendor shall execute requirements with appropriate speed, without sacrificing quality and professionalism. The Vendor shall deliver professional, unbiased, and discreet services from all personnel and subcontractors.
- 4.4. The investigation effort is not intended to be a media/marketing event for the Vendor and/or the Client, and the Agreement may be terminated for such activity.
- 4.5. All investigative activity and analytics shall be conducted in a highly professional manner and shall be fair and unbiased.

- 4.6. All investigative activity and analytics shall be conducted using current industry best practices, technology, policies and procedures, and using the utmost care and skill, including, but not necessarily limited to, the standards as set forth by the U.S. Election Assistance Commission, the standards set forth in "Forensic Examination of Digital Evidence: A Guide for Law Enforcement" (published by the United States Department of Justice, Office of Justice Programs, Institute of Justice), and "Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations" (published by the Office of Legal Education Executive Office for United States Attorneys).
 - 4.7. Perform all work under this Agreement using personnel that have the necessary skills, training, experience, knowledge, qualifications, and resources to provide and perform the services in accordance with the Agreement.
 - 4.8. Render such services in a prompt, professional, diligent and workmanlike manner, consistent with industry standards applicable to the performance of the services and using the utmost care and skill.
 - 4.9. This is a unique requirement. The Vendor shall react accordingly, and deliver the most technically advanced solutions, which are appropriate for the job. This shall be overlaid with industry proven procedures and best practices for this manner of investigation.
5. Vendor Responsibility.
- 5.1. The Vendor shall be solely responsible for conducting and managing all aspects of the work performed pursuant to this Agreement. The Vendor will be responsible for managing the day-to-day activities including but not limited to: hiring, managing, terminating and paying the Subcontractors and Participants. All Subcontractors and Participants must be approved in advance by the Client.
 - 5.1.1. Upon request of the Client, the Vendor must provide the Client with an unredacted copy of any subcontract between the Vendor and the subcontractor.
 - 5.1.2. The existence of any subcontract shall not change the obligations of the Vendor to the Client under this Agreement.
 - 5.1.3. The Vendor shall be free from political associations, and shall not have any existing business relationships with the Commonwealth of Pennsylvania for complete independence and transparency.
 - 5.1.3.1. "Political association" is defined as active support of a political party or candidate by the Vendor, Vendor's agents, Vendor's subcontractors and/or Vendor's employees.
 - 5.1.3.2. "Active support" is defined as soliciting or making contributions to a candidate, candidate's committee, or a committee of a political party, attending political meetings and rallies, and/or making speeches on behalf of a candidate.
 - 5.1.3.3. "Candidate" shall include any current candidate for office, or any candidate who appeared on either the Primary or General Election ballots in 2020 or 2021 in Pennsylvania.
 - 5.1.4. The Vendor shall not be influenced, in any way that may affect the quality of work and independence of the vendor in performing work under this Agreement,

by any individual or entity, including, but not limited to, state government leaders and legislators, current and former federal government officials and employees, political parties, the press, Pennsylvania voters, and/or any other interested parties.

- 5.1.5. The Vendor shall be responsible for a detailed audit trail of all costs associated with the investigation, maintaining the documentation, and the delivery and presentation of the reports.
 - 5.1.6. The Vendor shall communicate regarding matters related to the work being performed under this Agreement only with individuals designated by the Client, or as otherwise approved by the Client. The Client shall expeditiously resolve any legislative, judicial, or governmental issues so the investigation can be run in an effective and efficient manner. Both Parties shall rapidly collaborate to resolve other issues impacting the investigation.
 - 5.1.7. The Vendor shall prioritize the hiring and staffing with Subcontractors and Participants who have election work experience when possible.
6. Period of Performance.
 - 6.1. The Period of Performance is Six Months from the date of Award, with one additional optional six month period of performance which may be exercised at the discretion of the Client per an Addendum to the Service Purchase Contract.
 - 6.2. Prohibition prior to effective date. No employee or official of the Client has the authority to verbally direct the commencement of any service or delivery of any materials under this Agreement prior to the effective date of the Agreement. The Vendor hereby waives any claim or cause of action for any service performed prior to the effective date of this Agreement.
7. Deliverables.
 - 7.1 Deliverables will be set forth in individual Service Purchase Contracts between the Client and Vendor.
 - 7.2. The Vendor shall, upon request from the Client, orally brief the Client on any deliverable with briefing slides. Additionally, the Vendor shall be prepared to brief in person, via telephone, video teleconference, and shall also be prepared to deliver testimony as directed by the Client.
 - 7.3. All deliverables, to include reports, findings, assessments, and data collected shall be provided to, and become property of the Client.
8. Force Majeure and Notice of Delays.
 - 8.1. Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but aren't limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders,

- natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.
- 8.2. Whenever the Vendor encounters any difficulty that delays or threatens to delay the timely performance of this Agreement (including actual or potential labor disputes), the Vendor shall notify the Client orally within five days and in writing within ten days of the date on which the Vendor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall describe fully such cause and its effect on performance, state whether performance under the contract is prevented or delayed and if performance is delayed, state a reasonable estimate of the duration of the delay. The Vendor shall have the burden of proving that such cause delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Client may reasonably request. After receipt of such notification, the Client may elect either to cancel the Contract or to extend the time for performance as reasonably necessary to compensate for the Vendor's delay. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay. If an extension of any delivery schedule is granted, it will be done consistent with the terms of this Agreement.
- 8.3. In the event of a declared emergency by competent governmental authorities, the Client, by notice to the Vendor, may suspend all or a portion of the Contract.
9. Quality Assurance.
- 9.1. High quality investigation, analysis, and reporting is essential to this program.
- 9.2. The Vendor shall provide a Quality Assurance (QA) Plan within two weeks of contract execution.
- 9.2.1. The QA Plan shall describe the Vendor's plan to manage quality during technical execution, consultation, and reporting. This plan shall be submitted for review/approval by the Client.
10. Confidentiality, Privacy and Compliance.
- 10.1. General. The Vendor agrees to protect the confidentiality of the Client's confidential information. The Client agrees to protect the confidentiality of Vendor's confidential information. Unless the context otherwise clearly indicates the need for confidentiality, information is deemed confidential only when the party claiming confidentiality designates the information as "confidential" in such a way as to give notice to the other party (for example, notice may be communicated by describing the information, and the specifications around its use or disclosure, in any transfer of custody notice). Neither party may assert that information owned by the other party is such party's confidential information. Notwithstanding the foregoing, all information provided by, or collected, processed, or created on behalf of the Client is confidential information unless otherwise indicated in writing.
- 10.2. All confidential information of or relating to a party shall be held in confidence by the other party to the same extent and in at least the same manner as such party protects its own confidential or proprietary information. Subject to the other provisions of this

Agreement, however, each party shall be permitted to disclose relevant aspects of the other party's Confidential Information to its officers, agents, subcontractors and personnel, and to the officers, agents, subcontractors and personnel of its related affiliates to the extent such disclosure is reasonably necessary for the performance of its duties under this Agreement and Pennsylvania law; however, such party shall take all reasonable measures to ensure that the confidential information is not disclosed or duplicated in contravention of the provisions of this Agreement by such officers, agents, subcontractors and personnel.

- 10.3. Third Party Information. Vendor understands that its level of access may allow or require it to view or access highly sensitive and confidential Client and third-party data. This data is subject to various state and federal laws, regulations and policies that vary from agency to agency, and from program to program within an agency. If applicable, prior to deployment of the work, the Vendor must receive and sign off on particular instructions and limitations as may be necessary to protect that information. A sample sign-off is attached as Exhibit "A".
- 10.3.1. The Vendor hereby certifies and warrants that, after being informed by the Client of the nature of the data which may be implicated and prior to the deployment of the work to be performed, the Vendor is and shall remain compliant with all applicable state and federal laws, regulations and policies regarding the data's protection, and with the requirements memorialized in every completed and signed sign-off document. Every sign-off document completed by the Client and signed by at least one signatory authorized to bind the Vendor is valid and is hereby integrated and incorporated by reference into this Agreement.
- 10.3.2. This section does not require a Client to exhaustively list the laws, regulations or policies to which implicated data is subject; the Client is obligated only to list the nature of the data implicated by the Vendor's access, to refer the Vendor to any of its own privacy and security policies, and to specify requirements that are not otherwise inherent in compliance with applicable laws, regulations and policies.
- 10.3.3. The requirements of this section are in addition to and not in lieu of other requirements of this Agreement, its Exhibits, Appendices and Attachments, having to do with data privacy and security.
- 10.3.4. Vendor shall conduct additional background checks, in addition to those otherwise required herein, as may be required by the Client in its sign-off documents. The Vendor shall educate and hold its agents, employees, contractors and subcontractors to standards at least as stringent as those contained in this Agreement. The Vendor shall provide information regarding its agents, employees, contractors and subcontractors to the Client upon request.
- 10.4. Copying; Disclosure; Termination. The parties agree that confidential information shall not be copied, in whole or in part, or used or disclosed except when essential for authorized activities under this Agreement and, in the case of disclosure, where the recipient of the confidential information has agreed to be bound by confidentiality requirements no less restrictive than those set forth herein. Each copy of confidential

information shall be marked by the party making the copy with any notice appearing in the original. Upon expiration or termination of this Agreement or any license granted hereunder, the receiving party will return to the disclosing party, or certify as to the destruction of, all confidential information in the receiving party's possession. A material breach of these requirements may result in termination for default under this Agreement, in addition to other remedies available to the non-breaching party.

- 10.5. Insofar as information is not otherwise protected by law or regulation, the obligations stated in this section do not apply to information:
- Already known to the recipient at the time of disclosure other than through the contractual relationship;
 - Independently generated by the recipient and not derived from the information supplied by the disclosing party;
 - Known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
 - Disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
 - Required to be disclosed by the recipient by law, regulation, court order, or other legal process.
- 10.6. The Vendor shall use the following process when submitting information to the Client it believes to be confidential and/or proprietary information or trade secrets:
- 10.6.1. Prepare and submit an unredacted version of the appropriate document;
- 10.6.2. Prepare and submit a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret. The Vendor shall use a redaction program that ensures the information is permanently and irreversibly redacted; and
- 10.6.3. Prepare and submit a signed written statement that identifies confidential or proprietary information or trade secrets and that states:
- 10.6.3.1. The attached material contains confidential or proprietary information or trade secrets;
- 10.6.3.2. The Vendor is submitting the material in both redacted and unredacted format, if possible, in accordance with 65 P.S. §67.707(b); and
- 10.6.3.3. The Vendor is requesting that the material be considered exempt under 65 P.S. §67.708(b)(11) from public records requests.
- 10.7. Disclosure of Recipient or Benefit Information Prohibited. The Vendor shall not use or disclose any information about a recipient receiving services from, or otherwise enrolled in, a Commonwealth program affected by or benefitting from services under the Agreement for any purpose not connected with the Vendor's responsibilities, except with consent pursuant to applicable law or regulations. All material associated with direct disclosures of this kind (including the disclosed information) shall be provided to the Client prior to direct disclosure.
- 10.8. Compliance with Laws. Vendor will comply with all applicable laws or regulations related to the use and disclosure of information, including information that

- constitutes Protected Health Information (PHI) as defined by the Health Insurance Portability and Accountability Act (HIPAA).
- 10.9. Additional provisions. Additional privacy and confidentiality requirements may be specified in the Agreement.
 - 10.10. Restrictions on Use. All data and all intellectual property provided to the Vendor pursuant to this Agreement or collected or generated by the Vendor on behalf of the Client pursuant to this Agreement shall be used only for the work of this Agreement. No data, intellectual property, documentation or developed works may be used, disclosed, or otherwise opened for access by or to the Vendor or any third party unless directly related to and necessary under the Agreement.

11. Data Breaches or Losses.

- 11.1. The Vendor shall comply with all applicable data protection, data security, data privacy and data breach notifications laws, including but not limited to the Breach of Personal Information Notification Act, Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§2301-2329.
- 11.2. For data and confidential information in the possession, custody, and control of the Vendor or its employees, agents and/or subcontractors:
 - 11.2.1. The Vendor shall report unauthorized access, use, release, loss, destruction or disclosure of data or confidential information in the possession of the Vendor and/or its subcontractors ("Incident") to the Client within two (2) hours of when the Vendor knows of or reasonably suspects such Incident, and the Vendor must immediately take all reasonable steps to mitigate any potential harm or further access, use, release, loss, destruction or disclosure of such data or confidential information.
 - 11.2.2. The Vendor shall provide timely notice to all individuals that may require notice under any applicable law or regulation as a result of an Incident. The notice must be pre-approved by the Client. At the Client's request, Vendor shall, at its sole expense, provide credit monitoring services to all individuals that may be impacted by any Incident requiring notice.
 - 11.2.3. The Vendor shall be solely responsible for any costs, losses, fines, or damages incurred by the Client due to Incidents that are reasonably determined to have occurred with respect to Personal Information in the possession, custody and control of the Vendor and/or its Subcontractors, and as a result of a breach of Vendor or Subcontractor's tangible or electronic data systems, and shall not apply to third-party breaches that are outside of the reasonable control of Vendor or its Subcontractors. In addition, any citizens impacted by such Incidents will be offered at least 12 months of credit monitoring at the expense of the Vendor.
- 11.3. As to data and confidential information fully or partially in the possession, custody or control of the Vendor and the Client, the Vendor shall diligently perform all of the duties required in this section in cooperation with the Client, until the time at which a determination of responsibility for the Incident, and for subsequent action regarding the Incident, is made final.

12. Location, Status and Disposition of Information and Materials.

- 12.1. All information and materials must be stored within the United States.
- 12.2. The Vendor shall be responsible for maintaining the privacy, security and integrity of information and materials in the Vendor's or its subcontractors' possession.
- 12.3. All information and materials shall be provided to the Client upon request, in a form acceptable to the Client, at no cost.
- 12.4. All information and materials shall be destroyed by the Vendor at the Client's request.
- 12.5. All information and materials shall be held for litigation or public records purposes by the Vendor at the Client's request, and in accordance with the security, privacy and accessibility requirements of this Agreement.

Terms and Conditions

13. Contract Cost/Pricing.

- 13.1. This Agreement is a Time and Materials Contract except as otherwise set forth herein.
- 13.2. A rate structure for any work to be performed at any time by Vendor on behalf of Client is attached hereto as Exhibit B.
- 13.3. Travel shall be reimbursed at the IRS mileage rate. Travel costs associated with other forms of travel, or related to hotel or other accommodations must be approved in advance by the Client's designated contract representative.
- 13.4. Contract pricing will be set for specific tasks as delineated by Service Purchase Agreement.

14. Invoice/Payment

- 14.1. The Vendor shall submit invoicing according to the designated supplier portal or invoicing system.
- 14.2. Incremental Invoicing for work performed to date of invoice shall be permitted.
- 14.3. The Client shall have the right to require the Vendor to prepare and submit a "Work In Progress" sheet that contains, at a minimum, the tasks performed, number of hours, and hourly rate.
- 14.4. Upon rendering the Services in accordance with the provisions of the Agreement requirements, the Vendor may submit appropriate invoice(s). Accordingly, the Client shall remit the invoice to the Pennsylvania Office of the State Treasurer within thirty (30) days of submission by the Vendor. Client shall remit payment to the Vendor in the amounts requested for services rendered for each invoice as approved upon receipt of checks for same from the Pennsylvania Office of the State Treasurer, in accordance with the terms and conditions of this Agreement.

15. Insurance

- 15.1. The Vendor shall maintain at its expense and require its agents, contractors and subcontractors to procure and maintain, as appropriate, the following types and amounts of insurance, issued by companies acceptable to the Client and authorized to conduct such business under the laws of the Commonwealth:
- 15.1.1. Workers' Compensation Insurance for all of the Contractor's employees and those of any subcontractor engaged in performing Services in accordance with the Workers' Compensation Act, Act of June 2, 1915, P.L. 736, No. 338, reenacted and amended June 21, 1939, P.L. 520, No. 281, as amended, 77 P.S. §§ 1—2708.
- 15.1.2. Commercial general liability insurance providing coverage from claims for damages for personal injury, death and property of others, including loss of use resulting from any property damage which may arise from its operations under this Contract, whether such operation be by the Contractor, by any agent, contractor or subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than \$500,000 per person and \$2,000,000 per occurrence, personal injury and property damage combined. Such policies shall be occurrence based rather than claims-made policies and shall name the Pennsylvania Senate Intergovernmental Operations Committee, the Senate Republican Caucus, the Senate Democratic Caucus, and the Pennsylvania Senate as additional insureds, as its interests may appear. The insurance shall not contain any endorsements, or any other form designed to limit and restrict any action by the additional insureds against the insurance coverages in regard to the work performed for or materials provided to the Client under this Agreement.
- 15.1.3. Professional and Technology-Based Services Liability Insurance (insuring against damages and claim expenses as a result of claims arising from any actual or alleged wrongful acts in performing cyber and technology activities) in the amount of \$2,000,000, per accident/occurrence/annual aggregate.
- 15.1.4. Professional Liability/Errors and Omissions Insurance in the amount of \$2,000,000, per accident/occurrence/annual aggregate, covering the Vendor, its employees, agents, contractors, and subcontractors in the performance of all services.
- 15.1.5. Network/Cyber Liability Insurance (including coverage for Professional and Technology-Based Services Liability if not covered under Company's Professional Liability/Errors and Omissions Insurance referenced above) in the amount of \$3,000,000, per accident/occurrence/annual aggregate, covering the Vendor, its employees, agents, contractors, and subcontractors in the performance of all services.
- 15.1.6. Completed Operations Insurance in the amount of \$2,000,000, per accident/occurrence/annual aggregate, covering the Vendor, its employees, agents, contractors, and subcontractors in the performance of all services.

- 15.1.7. Comprehensive crime insurance in an amount of not less than \$5,000,000 per claim.
- 15.2 Certificate of Insurance. Prior to commencing Services under the Contract, and annually thereafter, the Vendor shall provide the Client with a copy of each current certificate of insurance required by this section. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed in such a way to cause the coverage to fail to comply with the requirements of this section until at least 15 days' prior written notice has been given to the Client. Such cancellation or change shall not relieve the Vendor of its continuing obligation to maintain insurance coverage in accordance with this section.
- 15.3 Insurance coverage length. The Vendor agrees to maintain such insurance for the life of the Agreement.
- 15.3.1 For the purpose of these provisions, the term Vendor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, Supplies, Services, leased space, construction or other activity, under a contract, grant, lease, Purchase Order or reimbursement agreement with the Client. The term Vendor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Client.
- 15.3.2 The Vendor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Client, that as of the date of its execution of this Agreement, that neither the Vendor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth of Pennsylvania or any governmental entity, instrumentality, or authority and, if the Vendor cannot so certify, then it agrees to submit, along with this Agreement, a written explanation of why such certification cannot be made.
- 15.3.3 The Vendor also certifies, in writing, that as of the date of its execution of this Agreement it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
- 15.3.4 The Vendor's obligations pursuant to these provisions are ongoing from and after the effective date of the Agreement through the termination date thereof. Accordingly, the Vendor shall have an obligation to inform the Client if, at any time during the term of the Agreement, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Vendor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- 15.3.5 The failure of the Vendor to notify the Client of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Agreement with the Vendor.

16. Hold Harmless. The Vendor shall hold the Client, its members, and the Senate of Pennsylvania (the "Indemnified Parties"), harmless from and indemnify them against any and all claims, demands and actions based upon or arising out of any activities performed by the Vendor and its employees and agents under this Agreement and its employees and agents under this Agreement and shall, at the request of the Client, defend any and all actions brought against the Indemnified Parties based upon any such claims or demands.
17. Sovereign Immunity. No provision of this Agreement may be construed to waive or limit the sovereign and other immunities of the Indemnified Parties.
18. Patent, Copyright, Trademark and Trade Secret Protection.
 - 18.1. The Vendor shall hold the Indemnified Parties harmless from any suit or proceeding which may be brought by a third party against the Indemnified Parties for the alleged infringement of any United States or foreign patents, copyrights, trademarks or trade dress, or for a misappropriation of trade secrets arising out of performance of this Agreement, including all work, services, materials, reports, studies, and computer programs provided by the Vendor, and in any such suit or proceeding will satisfy any final award for such infringement, including costs. The Client agrees to give the Vendor prompt notice of any such claim of which it learns.
 - 18.2. The Vendor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Vendor certifies that, in all respects applicable to this Agreement, it has exercised and will continue to exercise due diligence to ensure that all works produced under this Agreement do not infringe on the patents, copyrights, trademarks, trade dress, trade secrets or other proprietary interests of any kind which may be held by third parties. The Vendor also agrees to certify that work produced for the Client under this Agreement shall be free and clear from all claims of any nature.
 - 18.3. If the defense of the suit is delegated to the Vendor, the Vendor shall pay all damages and costs awarded therein against the Client. If information and assistance are furnished by the Client at the Vendor's written request, it shall be at the Vendor's expense, but the responsibility for such expense shall be only that within the Vendor's written authorization.
 - 18.4. If, in the Vendor's opinion, the products, materials, reports, studies, or computer programs furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, trademark or trade dress, or for a misappropriation of trade secret, then without diminishing the Vendor's obligation to satisfy any final award, the Vendor may, at its option and expense:
 - 18.4.1. Substitute functional equivalents for the alleged infringing products, materials, reports, studies, or computer programs; or
 - 18.4.2. Obtain the rights for the Client to continue the use of such products, materials, reports, studies, or computer programs.

- 18.5. If any of the products, materials, reports, studies, or computer programs provided by the Vendor are in such suit or proceeding held to constitute infringement and the use or publication thereof is enjoined, the Vendor shall, at its own expense and at its option, either procure the right to publish or continue use of such infringing products, materials, reports, studies, or computer programs, replace them with non-infringing items, or modify them so that they are no longer infringing.
- 18.6. If the Vendor is unable to do any of the preceding, the Vendor, agrees to pay the Client:
- 18.6.1. Any amounts paid by the Client less a reasonable amount based on the acceptance and use of the deliverable;
 - 18.6.2. Any license fee less an amount for the period of usage of any software; and
 - 18.6.3. The prorated portion of any service fees representing the time remaining in any period of service for which payment was made.
- 18.7. Notwithstanding the above, the Vendor shall have no obligation for:
- 18.7.1. Modification of any product, service, or deliverable provided by the Client;
 - 18.7.2. Any material provided by the Client to the Vendor and incorporated into, or used to prepare, a product, service, or deliverable;
 - 18.7.3. Use of the product, service, or deliverable in other than its specified operating environment;
 - 18.7.4. The combination, operation, or use of the product, service, or deliverable with other products, services, or deliverables not provided by the Vendor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Vendor did not provide;
 - 18.7.5. Infringement of a non-Vendor product alone;
 - 18.7.6. The Client's distribution, marketing or use beyond the scope contemplated by the Agreement; or
 - 18.7.7. The Client's failure to use corrections or enhancements made available to the Client by the Vendor at no charge.
- 18.8. The obligation to indemnify the Client, under the terms of this section, shall be the Vendor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

19. Independent Contractor.

- 19.1. In performing its obligations under this Agreement, the Vendor will act as an independent contractor and not as an employee or agent of the Client.
- 19.2. The Vendor will be responsible for all services and materials provided under this Agreement, whether or not the Vendor provides them directly. Furthermore, the Vendor is the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Agreement.

20. Contract Administration.

- 20.1. Vendor may be required to register with the Pennsylvania Department of General Services website and its Supplier Access Portal.
- 20.2. The Vendor's Program Manager shall provide a Program Kick-Off Meeting Briefing to the Client within five days of contract execution date. This meeting will take a form, and occur in a location, TBD.
- 20.3. The Vendor's Program Manager will coordinate with the Client's designated representative to provide deliverables, and to manage relevant event timings.
- 20.4. The Vendor's Program Manager shall provide periodic Program Updates to the Client's designated representative. This update will take a form, and occur in a location, TBD.

21. Taxes.

- 21.1. The Client is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax-free purchases under registration No. 23740001-K. With the exception of purchases of the following items, no exemption certificates are required, and none will be issued: undyed diesel fuel, tires, trucks, gas-guzzler emergency vehicles, and sports fishing equipment. The Client is also exempt from Pennsylvania sales tax, local sales tax, public transportation assistance taxes, and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this section is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

22. Non-Disclosure and Operational Security

- 22.1. A Non-Disclosure Agreement ("NDA") shall be implemented for this Agreement. This NDA shall define the confidentiality of the work, prohibit any disclosure of the work or results during and after the audit, and the penalties if the NDA is violated.
- 22.2. The NDA template approved for this Agreement is attached as "Exhibit C".
- 22.3. There will immediate termination of any individual that violates the NDA and shall endure the penalties contained in the NDA.
- 22.4. All Vendor provided participants will be governed by a strict Non-Disclosure Agreement. All participants, except for the Client, shall be free from political associations, as defined above in Section 5.1.3.
- 22.5. The Client shall follow internal procedures to ensure investigation non-disclosure rules are set in place, with clear instructions and penalties.
- 22.6. The Vendor and all subcontracted organizations shall confirm in writing that employees, second tier subcontractors, and 1099 personnel utilized on this contract are signatories to this Agreement's NDA, are of good character and the NDA violation penalties flow down to them.

22.7. All direct hires and 1099 personnel utilized on this contract shall have background checks conducted prior to commencing work under this Agreement. Backgrounds checks will include, but will not necessarily be limited to: Pennsylvania State Police Criminal Background Check and Federal Criminal History Check. Felony convictions, and/or conviction of any offense which involves some element of deceitfulness, untruthfulness or falsification, shall be disqualifying.

22.7.1. Before the Client will permit a particular individual to work on any matter under this Agreement, the Vendor must provide written confirmation that the background checks have been conducted.

22.7.2. If, at any time, it is discovered that an employee of the Vendor, an employee of any subcontractor, or any 1099 personnel has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, or breach of trust or fiduciary responsibility or which raises concerns about building, system, information, or personnel security, or is otherwise job-related, the Vendor shall not assign that employee or 1099 personnel to any Client work, shall remove any access privileges already given to the individual, and shall not permit that individual remote access to the Client or the Client's information unless the Client consents, in writing, prior to the access. The Client may withhold its consent in its sole discretion.

22.7.3. Failure of the Vendor to comply with the terms of this section on more than one occasion or Vendor's failure to cure any single failure to the satisfaction of the Client may result in the Vendor being deemed in default of this Agreement.

23. Press Interaction.

23.1. If requested, the Vendor's Investigation Program Manager shall release a prepared Press Release prior to announcement/report release/significant event. The Vendor shall coordinate with the Client's Communication Director and/or designated representative prior to such events.

23.2. In no event shall the Vendor issue press releases or conduct press conferences without the direct involvement and approval of the Client, more specifically the input of the Client's lawyers, to protect the integrity of the Investigation.

24. Officials not to Benefit.

24.1. The Pennsylvania Ethics Act, 65 Pa. C.S. Chapter 11, prohibits the use of the authority of public office or employment, or any confidential information received through the public office or employment, for the private financial benefit of the public official or employee, a member of their immediate family, or a business with which the official, employee or a member of their immediate family is associated. This contract is executed in furtherance of Senate duties.

24.2. No official or employee of the Client, or of the Senate of Pennsylvania who exercises any functions or responsibilities under this Agreement shall participate in any decision relating to this Agreement which affects their personal interest or the interest of any corporation, partnership, or association in which they are, directly or indirectly,

interested; nor shall any such official or employee of the Client, or of the Senate of Pennsylvania, have any interest, direct or indirect, in this Agreement or the proceeds thereof.

25. Assignability.

- 25.1. This contract is binding upon the parties and their respective successors and assigns.
- 25.2. The Vendor may not assign, in whole or in part, the Agreement or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Client, which consent may be withheld at the sole and absolute discretion of the Client.
- 25.3. For the purposes of this Agreement, the term "assign" shall include, but not be limited to, the sale, gift, assignment, encumbrance, pledge, or other transfer of any ownership interest in the Vendor, provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- 25.4. Any assignment consented to by the Client shall be evidenced by a written assignment agreement executed by the Vendor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Agreement and to assume the duties, obligations, and responsibilities being assigned.
- 25.5. Notwithstanding the foregoing, the Vendor may, without the consent of the Client, assign its rights to payment to be received under the Agreement, provided that the Vendor provides written notice of such assignment to the Client together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of the Agreement.
- 25.6. A change of name by the Vendor, following which the Vendor's federal identification number remains unchanged, is not considered to be an assignment. The Vendor shall give the Client written notice of any such change of name.

26. Default.

- 26.1. The Client may, in addition to any other rights it may have under this Agreement, declare the Vendor in default by written notice thereof to the Vendor, and terminate the whole or any part of this Agreement for any of the following reasons:
 - 26.1.1. Failure to begin services within the time specified in the Agreement or as otherwise specified;
 - 26.1.2. Failure to perform the services with sufficient labor, equipment or material to ensure the completion of the specified services in accordance with the Agreement terms;
 - 26.1.3. Unsatisfactory performance of the services;
 - 26.1.4. Failure to meet requirements within the time period(s) specified in the Agreement;
 - 26.1.5. Failure to provide a service that conforms with the specifications referenced in the Agreement;
 - 26.1.6. Discontinuance of the services without approval;

- 26.1.7. Failure to resume a service, which has been discontinued, within a reasonable time after notice to do so;
- 26.1.8. Insolvency or bankruptcy;
- 26.1.9. Assignment made for the benefit of creditors;
- 26.1.10. Failure or refusal, within 10 days after written notice by the Client, to make payment or to show cause why payment should not be made, of any amounts due subcontractors;
- 26.1.11. Failure to protect, repair or make good any damage or injury to property;
- 26.1.12. Breach of any provision of this Agreement;
- 26.1.13. Any breach by the Vendor of any Confidentiality or Non-Disclosure procedures of this Agreement; or
- 26.1.14. Failure to comply with applicable industry standards, customs and practices.

27. Termination.

27.1. For Convenience.

- 27.1.1. The Client may terminate this Agreement in whole or in part without cause by giving the Vendor 30 days' prior written notice whenever the Client shall determine that such termination is in the best interest of the Client. Any such termination shall be effected by delivery to the Vendor of a Notice of Termination specifying the extent to which performance under this Agreement is terminated either in whole or in part and the date on which such termination becomes effective.

In the event of termination under this paragraph, Vendor shall receive payment for all services performed consistent with the terms of the Agreement prior to the effective date of termination and as directed by the Client. In no event shall the Vendor be paid for any loss of anticipated profit (by the Vendor or any subcontractor), loss or use of money, or administrative or overhead costs.

- 27.1.2. The Vendor shall cease services as of the date set forth in the Notice of Termination, and shall be paid only for such services as have already been satisfactorily rendered up to and including the termination date set forth in said notice, or as may be otherwise provided for in said Notice of Termination, and for any such services performed during the 30-day notice period, if such services are requested by the Client, for the collection, assembling, and transmitting to the Client of at least all materials, manuals, magnetic media, studies, drawings, computations, maps, supplies, and survey notes including field books, or other items which were obtained, prepared, or developed as part of the services required under this Agreement.

- 27.2. Non-Appropriation. Any payment obligation or portion thereof of the Client created by this Agreement is conditioned upon the availability and appropriation of funds. When state funds are not appropriated or otherwise made available to support continuation of performance or full performance in a subsequent fiscal year period, the

Client shall have the right to terminate this Agreement in whole or in part.. The Vendor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.

- 27.3. Default. The Client may, in addition to its other rights under this Agreement, terminate this Agreement in whole or in part by providing written notice of default to the Vendor if the Vendor materially fails to perform its obligations under the Agreement and does not cure such failure within 30 days, or if a cure within such period is not practical, commence a good faith effort to cure such failure to perform within a specified period or such longer period as the Client may specify in the written notice specifying such failure, and diligently and continuously proceed to complete the cure. The Client shall provide any notice of default or written cure notice for Agreement terminations.
- 27.3.1. In the event the Client terminates this Agreement in whole or in part as provided in this paragraph, the Client may procure services similar to those so terminated, and the Vendor, in addition to liability for any liquidated damages, shall be liable to the Client for the difference between the Agreement price for the terminated portion of the services and the actual and reasonable costs (but in no event greater than the fair market value) of producing substitute equivalent services for the terminated services, provided that the Vendor shall continue the performance of this Agreement to the extent not terminated under the provisions of this section.
- 27.3.2. Except with regard to defaults of subcontractors, the Vendor shall not be liable for any excess costs if the failure to perform the Agreement arises out of causes beyond the control of the Vendor. Such causes may include, but are not limited to, acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, work stoppages, freight embargoes, acts of terrorism and unusually severe weather. The Vendor shall notify the Client promptly in writing of its inability to perform because of a cause beyond the control of the Vendor.
- 27.3.3. Nothing in this paragraph shall abridge the Client's right to seek to suspend, debar or take other administrative action against the Vendor.
- 27.3.4. If it is later determined that the Client erred in terminating the Agreement for default, then the Agreement shall be deemed to have been terminated for convenience hereunder.
- 27.3.5. If this Agreement is terminated as provided for in this paragraph, the Client may, in addition to any other rights provided in this paragraph, and subject to Pennsylvania law and to other applicable provisions of this Agreement, require the Vendor to deliver to the Client in the manner and to the extent directed by the Client, such materials as the Vendor has specifically produced or specifically acquired for the performance of such part of the Agreement as has been terminated.

- 27.4. The rights and remedies of the Client provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
- 27.5. The Client's failure to exercise any rights or remedies provided in this section shall not be construed to be a waiver by the Client of its rights and remedies in regard to the event of default or any succeeding event of default.
28. Severability.
- 28.1. Should one or more provisions of this Agreement be deemed invalid, unlawful or unenforceable, the remaining provisions shall not in any way be affected and shall continue to be valid, lawful and enforceable.
29. Legal Counsel, Jurisdiction and Compliance with Laws.
- 29.1. Both Parties have the right to obtain legal advice for any or all questions or concerns related to the interpretation, validity or enforceability of this Agreement.
- 29.2. This Agreement, or litigations or legal proceedings that may result from claims, controversies and conflicts on or a violation of its terms and conditions, shall be governed by and subject to the sole jurisdiction of the laws and competent courts of Pennsylvania.
- 29.3. The parties agree that the Commonwealth Court of Pennsylvania and the federal courts of the Middle District of Pennsylvania shall have original and exclusive jurisdiction over disputes under this Contract and the resolution thereof, except as may otherwise be provided herein.
- 29.4. The Vendor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal court in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Vendor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.
- 29.5. The Vendor shall comply with all federal, state and local laws, regulations and policies applicable to its work under this Agreement, including, but not limited to, all statutes, regulations and rules that are in effect as of the effective date of the Agreement and shall procure at its expense all licenses and all permits necessary for the fulfillment of its obligation.
- 29.6. If any existing law, regulation or policy is changed or if any new law, regulation or policy is enacted that affects the work to be performed under this Agreement, the parties shall modify this Agreement, in accordance with the terms hereof, to the extent reasonably necessary to:
- 29.6.1. Ensure such work will be in full compliance with such laws, regulations and policies; and
- 29.6.2. Modify the rates applicable to such work.

30. Right to Know Law.

- 30.1. The Pennsylvania Right to Know Law, 65 P.S. §§67.101, et seq. ("RTKL"), applies to this Agreement.
- 30.2. The RTKL requires the Client to disclose the details of any contract in excess of \$5,000 along with a copy of the contract to the Pennsylvania Treasury for posting on an internet web page available to the general public. The act allows for redaction of information considered to be privileged or proprietary. The Vendor agrees to notify the Client, no later than the execution date of this contract, of any information the Vendor considers to be privileged or proprietary and subject to redaction. Such notice shall be in writing and sent to the Senate Open Records Officer at Room 104, North Office Building, Harrisburg, PA 17120-3052, with a copy to the Issuing Member or Officer at the address contained herein. Such notice shall include a detailed listing of the information to be redacted and the reason(s) for the redaction.
- 30.3. If the Client needs the Vendor's assistance in any matter arising out of the RTKL that is related to this Agreement, it shall notify the Vendor using the legal contact information provided in this Agreement. The Vendor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Client.
- 30.4. Upon written notice from the Client that it requires the Vendor's assistance in responding to a request under the RTKL for information related to this Agreement may be in the Vendor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Vendor shall:
 - 30.4.1. Provide the Client, within 10 days after receipt of written notification, access to, and copies of, any document or information in the Vendor's possession arising out of this Agreement that the Client reasonably believes is Requested Information and may be a public record under the RTKL; and
 - 30.4.2. Provide such other assistance as the Client may reasonably request, in order to comply with the RTKL with respect to this Agreement.
- 30.5. If the Vendor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Vendor considers exempt from production under the RTKL, the Vendor must notify the Client and provide, within 7 days of receiving the written notification a written statement signed by a representative of the Vendor explaining why the requested material is exempt from public disclosure under the RTKL.
- 30.6. The Client will rely upon the written statement from the Vendor in denying a RTKL request for the Requested Information unless the Client determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Client determine that the Requested Information is clearly not exempt from disclosure, the Vendor shall provide the Requested Information within 5 business days of receipt of written notification of the Client's determination.
- 30.7. If the Vendor fails to provide the Requested Information within the time period required by these provisions, the Vendor shall indemnify and hold the Client harmless from any damages, penalties, costs, detriment or harm that the Client may incur as a

result of the Vendor's failure, including any statutory damages assessed against the Client.

- 30.8. The Vendor may file a legal challenge to any Client decision to release a record to the public with the Senate RTK Appeals Officer, or in the Pennsylvania Courts; however the Vendor shall indemnify the Client from any legal expenses incurred by the Client as a result of such a challenge and shall hold the Client harmless for any damages, penalties, costs, detriment or harm that the Client may incur as a result of the Vendor's failure, including any statutory damages assessed against the Client, regardless of the outcome of any such legal challenge. As between the parties, the Vendor agrees to waive all rights or remedies that may be available to it as a result of the Client's disclosure of Requested Information pursuant to the RTKL.
- 30.9. The Vendor's duties relating to the RTKL are continuing duties that survive the expiration of this Agreement and shall continue as long as the Vendor has Requested Information in its possession.

31. Contract Integration.

- 31.1. This Agreement constitutes the final, complete, and exclusive Agreement between the parties, containing all the terms and conditions agreed to by the parties.
- 31.2. All representations, understandings, promises, and agreements pertaining to the subject matter of this Agreement made prior to or at the time this Agreement is executed are superseded by this Agreement.
- 31.3. There are no conditions precedent to the performance of this Agreement except as expressly set forth herein.
- 31.4. No contract terms or conditions are applicable to this Agreement except as they are expressly set forth herein.
- 31.5. The Vendor may not require the Client, or any other individual employed by or associated with the Client to sign, click through, or in any way agree to any terms associated with the use of or interaction with the services being provided hereunder unless the Client has agreed to the terms in writing in advance under this Agreement, and the terms are consistent with this Agreement. Further, changes to terms may be accomplished only by processes set out in this Agreement; no quotations, invoices, business forms or other documentation, or terms referred to therein, shall become part of this Agreement merely by submission to the Client or their ordinary use in meeting the requirements of this Agreement. Any terms imposed upon the Client or any employee or official of the Client in contravention of this provision must be removed at the direction of the Client and shall not be enforced or enforceable against the Client or the employee or official.

32. Amendments and Modifications.

- 32.1. This Agreement, or a part thereof, shall not be modified, amended, revised or deleted without prior written consent from the other party. Unless both Parties have

mutually consented, such modification, amendment, revision or rescindment will not be considered enforceable.

33. Survival. Paragraphs 3, 9, 10, 11, 12, 15, 16, 17, 18, 22, 23, 24, 28, 29 and 30, and any right or obligation of the parties in this Agreement which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration.
34. Notice. Any written notice to any party under this Agreement shall be deemed sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.) with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, sent to the following individuals:

On behalf of the Client:

Crystal H. Clark
General Counsel
Senate Republican Caucus
350 Main Capital
Harrisburg, PA 17120
(717) 787-6259
(717) 772-3146 (fax)
cclark@pasen.gov

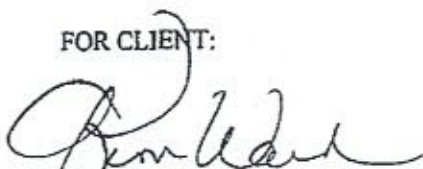
On behalf of the Vendor:

Steven R. Lahr
President
Envoy Sage, LLC
4409 Crews Ct
Port Charlotte, FL 33952
(202) 379-3045
(202) 280-2717 (fax)
s.lahr@envoysage.com

(Signatures On The Following Page)

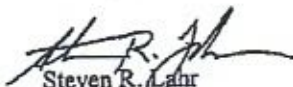
IN WITNESS WHEREOF, the Parties hereto have expressly agreed to the terms and conditions of this Agreement by affixing their signatures below. Client and Vendor have duly enforced this Agreement as of the date first above written.

FOR CLIENT:



Kim Ward
Majority Leader
Pennsylvania Senate Republican Caucus
Commonwealth of Pennsylvania

FOR VENDOR:



Steven R. Lair
President
Envoy Sage, LLC

Exhibit A –
Sample Sign-Off Document

Exhibit B –
Rate Schedule

Exhibit C –
NDA Template

EXHIBIT A

Sign-Off Document No. _____, under the Professional Services Agreement Between
the Pennsylvania Senate Republican Caucus and Envoy Sage LLC

This document becomes, upon its execution by the signatories named below, a legally valid, binding part of the Professional Services Agreement between the Pennsylvania Senate Republican Caucus (Client) and Envoy Sage LLC (Vendor), and is subject to the terms of that Agreement.

1. Scope of Deployment:

2. Nature of Data implicated or potentially implicated:

3. Client Policies to which Vendor is subject (incorporated by reference):

4. Background checks (describe if necessary):

5. Additional requirements (describe with specificity):

Client Contact Person

Signature _____

Date: _____

Vendor Authorized Signatory

Signature _____

Date: _____

Exhibit B
Rate Structure

ID #	Labor Category	Hr Rate
Inv-1	Investigator Lvl 1	65 P.S. § 67.708(b)(11)
Inv-2	Investigator Lvl 2	
Inv-3	Investigator Lvl 3	
Res-1	Researcher Lvl 1	
Res-2	Researcher Lvl 2	
AI - SME	AI SME	
IT -SME	IT Network SME	
CM-SME	Communication & Media SME	
VS-SME	Voting Systems SME	
Dat-A	Data Analyst	
Im-A	Imagery Analyst	
Pap-A	Paper/Document Analyst	
Ink-A	Toner & Ink Analyst	
Fin-A	Financial Analyst	
Cnt-A	Contract Analyst	
Ev-C	Evidence Custodian	
DS-SME	Data Security SME	
Cns-1	Consultant Lvl 1	
Cns-2	Consultant Lvl 2	
Cns-3	Consultant Lvl 3	
Law-1	Legal Consultant Lvl 1	
Law-2	Legal Consultant Lvl 2	
Law-3	Legal Consultant Lvl 3	
Cy-1	Cyber Forensics SME Lvl 1	
Cy-2	Cyber Forensics SME Lvl 2	
Cy-3	Cyber Forensics SME Lvl 3	

Redaction code: 65 P.S. 67§708(b)(11) - A record that constitutes or reveals a trade secret or confidential proprietary information. As asserted by the Vendor per Section 30.

EXHIBIT C

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement ("NDA") is effective as of _____ by and between ENVOY SAGE, LLC (the "Company") and _____, (the "Receiving Party").

The Company has been retained by the Pennsylvania Senate Republican Caucus (the "Caucus") in connection with an investigation into the 2020 General and 2021 Primary Elections, pursuant to a Professional Services Agreement (the "Agreement") dated _____. A true and correct copy of the Agreement can be accessed at (hyperlink), and is incorporated herein by reference as if fully set forth at length.

The Company is prepared to make available to the Receiving Party certain information, including without limitation non-public, confidential, or proprietary information, in connection with Receiving Party's assistance with the work of the Company on behalf of the Caucus under the Agreement (the "Purpose"). In consideration of the mutual promises and covenants contained in this NDA, the disclosure of Subject Information (as defined in Paragraph 2 below) to the Receiving Party, any payments made or potentially to be made by the parties, and for other good and valuable consideration and intending to be legally bound hereby, the parties hereto agree as follows:

1. **Purpose.** The parties desire that the Company will make certain Subject Information available to the Receiving Party, and/or the Receiving Party will independently obtain certain Subject Information, for use in connection with a potential or actual business relationship elsewhere defined, and that the Receiving Party will protect such Subject Information.
2. **Subject Information.** For purposes of this NDA, "Subject Information" means any information disclosed by the Company to the Receiving Party, directly or indirectly, in computer files or writing, orally or by drawings, observations or otherwise, in connection with the Company's work on behalf of the Caucus. It includes, but is not necessarily limited to, information otherwise defined and referenced in Paragraph 10 of the Agreement. It further means any and all information independently obtained by the Receiving Party in connection with services being provided by the Receiving Party in any potential or actual business relationship elsewhere defined between the Company and the Receiving Party for the Caucus. Additionally, "Subject Information" includes any information disclosed by the Company to the Receiving Party, directly or indirectly, in computer files or writing, orally or by drawings, observations or otherwise, that is clearly marked "proprietary," "confidential" or the like, or that is not so marked but is described as proprietary or confidential by the Disclosing Party at the time of disclosure and is verified as such within 30 calendar days in a writing transmitted to the Receiving Party.
3. **Subject Materials.** "Subject Materials" means all tangible materials containing Subject Information, including without limitation written or printed documents, computer disks or tapes, photographs, videos, database information/data, log files, scanned/copied documents, scanned/copied files, scanned/copied artifacts, video or audio recordings, analysis of information and artifacts, investigation findings and conclusions and all subsequent reports, whether machine or user readable.
4. **Ownership.** Unless otherwise agreed in writing, all Subject Information, and all materials (including all documents, drawings, models, apparatus, designs, lists, disks, diskettes, computer memory or storage or other media) furnished to the Receiving Party from whatever source, will remain the property of the Caucus. The Company will not furnish to Receiving Party any Subject Information that the Company does not have the right to furnish. By disclosing information to Recipient, Company does not grant any express or implied right under its patents, copyrights, trademarks, or trade secret information.
5. **Use and Handling of Subject Information.**
 - (a) The Receiving Party agrees not to disclose, distribute, disseminate, or otherwise communicate to any third

party any Subject Information, and agrees to use any Subject Information only for the Purpose. All Subject Information will be treated by the Receiving Party with at least the same degree of care as the Receiving Party uses to protect its own confidential information (and in any event at least a reasonable degree of care). The Receiving Party will disclose such Subject Information only to its employees, consultants, representatives, agents or other affiliated entities (collectively, the "Representatives") who are actively and directly involved in the Purpose, have a need to know, and who have either agreed in writing to be bound by the terms of this NDA, and the terms of the Agreement relating to confidentiality, non-disclosure, privacy, press contacts, etc., or have received such Subject Information pursuant to the terms of non-disclosure agreements signed by such Representatives that are at least as comprehensive and restrictive as the provisions contained in this NDA or are otherwise satisfactory to the Company and Caucus.

(b) The Receiving Party will at all times be responsible for the actions of any Representative that are inconsistent with the terms of this NDA, including former Representatives who no longer have any employment, consulting or other relationship with the Receiving Party or any affiliated entity. The Receiving Party agrees, at its sole expense, to take all reasonable measures, including court proceedings, to restrain the Representatives (including former Representatives) from unauthorized use or disclosure of Subject Information.

(c) The Receiving Party will not rent, sublicense, lease, transfer or assign any rights in the Subject Information in any form to any other person, and will not modify, translate, reverse engineer, decompile, disassemble, create derivative work space upon or copy any software or accompanying documentation that is part of the Subject Information. The Receiving Party will not make any copies of Subject Information except as necessary for the Purpose, and any copies that are made will be identified and included as Subject Information the same as the original.

(d) Nothing in this NDA shall be deemed to, restrict or limit the Company from any use or disclosure of the Subject Information (or information contained therein or derived therefrom), except as provided in the Agreement.

6. Additional Non-Disclosure Obligations. The obligation of the Receiving Party to maintain the confidentiality of any Subject Information WILL EXTEND TO, AND INCLUDE any specific portion of the Subject Information that may exist or emerge (a) in the public domain through no action of the Receiving Party or its Representatives, (b) rightfully received from a third party that has the right to furnish it to the Receiving Party without any restriction on use or disclosure, (c) rightfully known to the Receiving Party without any restriction on use or disclosure prior to its receipt from the Company, (d) generally made available to third parties by unknown or unauthorized disclosing parties, or (e) furnished by members of the media with or without confidential sourcing. The Receiving Party has an obligation to avoid information leakage and to help prevent the furtherance of commentary on Subject Information, regardless of how the Receiving Party may have gained access to specific portions of Subject Information.

7. Requests for Disclosure. In the event that the Receiving Party or any of its Representatives receives a request or is required (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any part of the Subject Information, the Receiving Party agrees (a) to notify immediately the Company and Caucus of the existence and circumstances surrounding such request or requirement, (b) to consult with the Company and Caucus on the advisability of taking legally available steps to resist or narrow such request or requirement, and (c) to assist the Company and Caucus at the Company's expense in seeking a protective order or other appropriate remedy. In the event that such protective order or other remedy is not obtained or the Company and Caucus waives compliance with such requirements in writing, the Receiving Party may disclose to any tribunal only that portion of the Subject Information that the Receiving Party has been advised by written opinion of counsel is legally required to be disclosed, and the Receiving Party will not be liable for such disclosure unless such disclosure was caused by or resulted from a previous disclosure by the Receiving Party or its Representatives not permitted by this NDA.

8. Term and Termination: This NDA shall be effective as of the Effective Date first written above, and shall continue for a period of three (3) years unless it is terminated at a sooner date. It may be terminated immediately with respect to further disclosures upon notice by the Company and Caucus. The Company and/or Caucus may terminate the use of its Subject Information by the Receiving Party at any time upon written notice without any liability under this NDA for such termination.

9. Return of Materials. Upon the request of the Company or Caucus, or at such time as the Receiving Party no longer needs the Subject Information for the Purpose (whichever occurs first), the Receiving Party and its Representatives (a) will promptly cease using all Subject Information, (b) will promptly deliver to the Company (or,

at election of the Company, destroy) all Subject Information, (c) will destroy any other materials (including memoranda, notes and other writings or data, whether tangible or stored in any computer memory or storage medium) containing or reflecting any of the Subject Information (regardless of who prepared such material), and (d) will not retain any copies, extracts or other reproductions (whether tangible or stored in any computer memory or storage medium) of such materials. Compliance with this paragraph will be certified in writing to the Company by an authorized officer of the Receiving Party supervising the return and/or destruction of such materials.

10. No Joint Venture, License, Etc. This NDA is not intended to and will not be construed as creating a joint venture, partnership or other form of business association between the parties, and, except for the use of Subject Information for the limited Purpose set forth in this NDA. No rights or licenses to any patents, trademarks, copyrights, mask works, trade secrets or other intellectual property rights of the Receiving Party are granted or implied under this NDA.

11. Warranties. Each Party represents and warrants that it possesses all necessary powers, rights, and authority to lawfully make the disclosures, representations, and warranties provided for in this NDA.

12. Miscellaneous.

(a) Injunctive Relief: The Receiving Party acknowledges and agrees that any Subject Information that it receives is proprietary to, and a valuable trade secret of, the Company and/or Caucus, and that any unauthorized use or disclosure in breach of this NDA will result in irreparable and continuing harm and loss to the Company and/or Caucus. Accordingly, the Receiving Party consents to the issuance of any injunctive relief or the enforcement of other equitable remedies against it (without bond or other security) to compel performance of any of the terms of this NDA.

(b) Other Relief: The Receiving Party acknowledges that the Caucus may choose to pursue other remedies and relief if there is unauthorized use or disclosure in breach of this NDA. Such remedy and relief may derive from special authority and powers afforded to the Caucus, and is not limited to civil penalties, but includes public options available to the Legislative Branch of Pennsylvania.

(c) Entire Agreement: This NDA states the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, written or oral, with respect to such subject matter. This NDA will be governed by the laws of the Commonwealth of Pennsylvania, notwithstanding any conflicts of laws principles, and the parties consent to the jurisdiction of the state courts of Pennsylvania and the federal courts of the Middle District of Pennsylvania.

(d) Successors and Assigns: The Receiving Party may not assign any of its rights or obligations under this NDA without the prior written consent of the Company. This NDA will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

(e) Headings, Pronouns & Construction. The headings in this NDA are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this NDA or any provision hereof. All pronouns and only variations thereof shall be deemed to refer to masculine, feminine, or neuter, singular or plural as the identity of the Person or Persons may require. Whenever the singular number is used in this NDA and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

(f) Amendments and Waivers: This NDA may not be amended except in writing signed by both parties. Any waiver under this NDA must be in writing, and no failure or delay in exercising any right, power or privilege will operate as such a waiver.

(g) Litigation: In the event of litigation between the parties alleging any breach of this NDA, the prevailing party in such litigation shall be entitled to recover its reasonable attorneys' fees and other reasonable litigation expenses. The "prevailing party" within the meaning of this paragraph includes without limitation a party who agrees to dismiss an action or proceeding upon the other's payment of the sums allegedly due or upon the other's performance of the obligation allegedly breached or who obtains substantially the relief it seeks. The parties agree that any such litigation will be brought in a court of competent jurisdiction located in the Commonwealth of Pennsylvania.

(h) **Severability.** If any of the provisions of this NDA are found to be unenforceable, the remainder shall remain in full force and effect, and the unenforceable provision(s) shall be deemed modified or stricken to the extent required to permit enforcement of the remainder of the NDA.

(i) **Remedies Are Cumulative.** All remedies, whether under this NDA, provided by law or otherwise, will be cumulative and not alternative.

Company

By: _____

Its: _____

Other Party:

By _____

Its _____

ATTACHMENT C

CLIN	Requirements	Est Qty	Unit of Measure	Labor Category	Est # Hrs	Labor Rate	Total
1.a	Conduct Analysis of Communications...	120 Hrs					
1.a.i	Produce Summary			Res-1		65 P.S. § 67.708(b)(11)	\$1,056
1.a.ii	Produce Recommendations			Inv-2		65 P.S. § 67.708(b)(11)	\$4,224
1.a.iii	Produce Briefings			Cns-2		65 P.S. § 67.708(b)(11)	\$14,720
				CM-SME		65 P.S. § 67.708(b)(11)	\$880
					120		\$20,880
1.b	Conduct Analysis of Voter Lists (May 21)...	56 Hrs					
1.b.1	Produce Summary			Dat-A		65 P.S. § 67.708(b)(11)	\$1,680
1.b.ii	Produce Recommendations			Cns-1		65 P.S. § 67.708(b)(11)	\$3,168
1.b.iii	Produce Briefings			Cns-2		65 P.S. § 67.708(b)(11)	\$3,680
					56		\$8,528
1.c	Conduct Analysis of Voter Lists (Nov 20)...	56 Hrs					
1.c.i	Produce Summary			Dat-A		65 P.S. § 67.708(b)(11)	\$1,680
1.c.ii	Produce Recommendations			Cns-1		65 P.S. § 67.708(b)(11)	\$3,168
1.c.iii	Produce Briefings			Cns-2		65 P.S. § 67.708(b)(11)	\$3,680
					56		\$8,528
1.d	Conduct Analysis of Voter Lists (May 20-May 21)...	152 Hrs					
1.d.i	Produce Summary			Dat-A		65 P.S. § 67.708(b)(11)	\$5,040
1.d.ii	Produce Recommendations			Cns-1		65 P.S. § 67.708(b)(11)	\$4,224
1.d.iii	Produce Briefings			Cns-2		65 P.S. § 67.708(b)(11)	\$16,560
					152		\$25,824
1.e	Conduct Analysis of Reports, Audits, Reviews of SURE Sys	200 Hrs					
1.e.i	Produce Summary			Res-1		65 P.S. § 67.708(b)(11)	\$1,584
1.e.ii	Produce Recommendations			Res-2		65 P.S. § 67.708(b)(11)	\$1,840
1.e.iii	Produce Briefings			Inv-2		65 P.S. § 67.708(b)(11)	\$3,168
				Cns-1		65 P.S. § 67.708(b)(11)	\$10,560
				Cns-2		65 P.S. § 67.708(b)(11)	\$12,880
					200		\$30,032

ATTACHMENT C

CLIN	Requirements	Est Qty	Unit of Measure	Labor Category	Est # Hrs	Labor Rate	Total	
2	Consultation & Advisory ISO the IGOC...	319 Hrs						
				Cns-1		\$67,708.00	\$10,560	
				Cns-2		\$67,708.00	\$49,450	
				Cy-3		\$67,708.00	\$3,296	
				Im-A		\$67,708.00	\$1,320	
				Pap-A		\$67,708.00	\$1,056	
					319		\$65,682	
3	Communications Consultation & Support...	80 Hrs						
				CM-SME		\$67,708.00	\$8,800	
4	Conduct Analysis of Submission to IGOC Webpage and Election Affidavits...	120 Hrs						
4.a.i	Webpage (Screen 700 Emails)			Res-2		\$67,708.00	\$1,840	
4.a.ii	Anaylis of emails of interest			Inv-2		\$67,708.00	\$2,112	
4.a.iii	Produce Summary			Cns-1		\$67,708.00	\$5,280	
4.a.iv	Produce Recommendations			Cns-2		\$67,708.00	\$9,200	
4.a.v	Conduct Briefings			Law-3		\$67,708.00	\$3,296	
4.b	Analysis of Affidavits (100)				120		\$21,728	
4.b.i	Conduct Analysis							
4.b.ii	Produce Summary							
4.b.iii	Produce Recommendations							
4.b.iv	Conduct Briefings							
5	Conduct Analysis of other State Integrety Initiatives...	160 Hrs						
5.a	Produce Summary			Res-1		\$67,708.00	\$1,584	
5.b	Produce Recommendations			Res-2		\$67,708.00	\$1,840	
5.c	Conduct Briefings			AI-SME		\$67,708.00	\$1,096	
				IT-SME		\$67,708.00	\$1,008	
				VS-SME		\$67,708.00	\$1,320	
				Cns-1		\$67,708.00	\$4,224	
				Cns-2		\$67,708.00	\$12,880	
				Cy-3		\$67,708.00	\$3,296	
					160		\$27,248	
Total Labor Estimate							\$217,250	
Travel Estimate							\$ 38,000	
ODCs/Material Estimate							\$ 15,000	

ATTACHMENT C

CLIN	Requirements	Est Qty	Unit of Measure	Labor Category	Est # Hrs	Labor Rate	Total
						Total Price Est	\$270,250

Redaction code: 65 P.S. 67§708(b)(11) - A record that constitutes or reveals a trade secret or confidential proprietary information. As asserted by the Vendor per Section 30, Master Services Agreement, Attachment B.

ID #	Labor Category	Hr Rate
Inv-1	Investigator Lvl 1	
Inv-2	Investigator Lvl 2	
Res-1	Researcher Lvl 1	
Res-2	Researcher Lvl 2	
AI - SME	AI SME	
IT -SME	IT Network SME	
CM-SME	Communication & Media SME	
VS-SME	Voting Systems SME	
Dat-A	Data Analyst	
Im-A	Imagery Analyst	
Pap-A	Paper/Document Analyst	
Ink-A	Toner & Ink Analyst	
Fin-A	Financial Analyst	
Cnt-A	Contract Analyst	
Ev-C	Evidence Custodian	
DS-SME	Data Security SME	
Cns-1	Consultant Lvl 1	
Cns-2	Consultant Lvl 2	
Cns-3	Consultant Lvl 3	
Law-1	Legal Consultant Lvl 1	
Law-2	Legal Consultant Lvl 2	
Law-3	Legal Consultant Lvl 3	
Cy-1	Cyber Forensics SME Lvl 1	
Cy-2	Cyber Forensics SME Lvl 2	
Cy-3	Cyber Forensics SME Lvl 3	

65 P.S. § 67.708(b)(11)

Redaction code: 65 P.S. 67§708(b)(11) - A record that constitutes or reveals a trade secret or confidential proprietary information. As asserted by the Vendor per Section 30, Master Services Agreement, Attachment B.