

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Pennsylvania Senate Intergovernmental
Operations Committee,

Petitioner,

v.

Pennsylvania Department of State, et al.,

Respondents.

No. 95 MD 2022

**BRIEF IN SUPPORT OF RESPONDENTS' PRELIMINARY OBJECTIONS
TO PETITIONER'S PETITION FOR REVIEW**

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. FACTUAL BACKGROUND.....	2
A. The Committee’s “Investigation” and Subpoena.....	2
B. The Committee’s Inactivity	4
III. ARGUMENT	4
A. THE PETITION FOR REVIEW FAILS AS A MATTER OF LAW BECAUSE THE COMMITTEE HAS NOT AUTHORIZED THIS LITIGATION.....	4
B. COUNT I FAILS AS A MATTER OF LAW BECAUSE PETITIONER IS NOT ENTITLED TO A WRIT OF MANDAMUS.....	9
1. Petitioner Does Not Have a Clear Right to the Records.....	10
a. <i>The Statutes the Petitioner Relies Upon Do Not Clearly Entitle It to the Requested Records</i>	10
b. <i>The Request for Records Is Subject to Constitutional Limitations and Other Laws Governing Disclosure of Sensitive Information</i>	13
2. Responding to a Records Request is Not a Ministerial Act.....	18
CONCLUSION.....	20

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Annenberg v. Roberts</i> , 2 A.2d 612 (Pa. 1938).....	5
<i>Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n</i> , 576 U.S. 787 (2015).....	8
<i>Camiel v. Select Comm. On State Contract Praes. of House of Representatives</i> , 324 A.2d 862 (Pa. Commw. Ct. 1974)	12
<i>Chadwick ex rel. Chadwick v. Dauphin Cnty. Office of Coroner</i> , 905 A.2d 600 (Pa. Commw. Ct. 2006)	9
<i>Comm. on Judiciary, U.S. House of Representatives v. Miers</i> , 558 F. Supp. 2d 53 (D.D.C. 2008).....	7, 8
<i>Comm. on Judiciary of U.S. House of Representatives v. McGahn</i> , 968 F.3d 755 (D.C. Cir. 2020).....	7
<i>Commonwealth v. Vartan</i> , 733 A.2d 1258 (Pa. 1999).....	17
<i>Commonwealth ex rel. Carcaci v. Brandamore</i> , 327 A.2d 1 (Pa. 1974).....	12, 14
<i>Donahue v. State Civ. Serv. Comm’n</i> , No. 84 MD 2020, 2020 WL 6155681 (Pa. Commw. Ct. Oct. 21, 2020).....	19, 20
<i>Fagan v. Smith</i> , 41 A.3d 816 (Pa. 2012).....	18
<i>Greidinger v. Davis</i> , 988 F.2d 1344 (4th Cir. 1993)	16
<i>Jackson v. Vaughn</i> , 777 A.2d 436 (Pa. 2001).....	9
<i>League of Women Voters v. Commonwealth</i> , 178 A.3d 737 (Pa. 2018).....	16

<i>Lore v. Sobolevitch</i> , 675 A.2d 805 (Pa. Commw. Ct. 1996)	6, 7
<i>Maute v. Frank</i> , 670 A.2d 737 (Pa. Commw. Ct. 1996)	14, 15
<i>Pa. State Educ. Ass'n v. Commonwealth, Dep't of Cmty. & Econ. Dev.</i> , 148 A.3d 142 (Pa. 2016)	15
<i>Phila. Firefighters' Union, Local 22 v. City of Phila.</i> , 119 A.3d 296 (Pa. 2015)	18
<i>Project Vote/Voting for Am., Inc. v. Long</i> , 752 F. Supp. 2d 697 (E.D. Va. 2010)	16
<i>Raines v. Byrd</i> , 521 U.S. 811 (1997)	8
<i>Reese v. Pennsylvanians for Union Reform</i> , 173 A.3d 1143 (Pa. 2017)	14, 15
<i>Seeton v. Adams</i> , 50 A.3d 268 (Pa. Commw. Ct. 2012)	18
<i>Tindell v. Dep't of Corr.</i> , 87 A.3d 1029 (Pa. Commw. Ct. 2014)	10
<i>True the Vote v. Hosemann</i> , 43 F. Supp. 3d 693 (S.D. Miss 2014)	16
Statutes and Rules	
2 U.S.C. § 288b(b)	7
6 U.S.C. §§ 671-674	16
42 U.S.C. § 5195c	16
42 U.S.C. § 5195c(e)	17
25 Pa. Cons. Stat. Ann. § 1222(a)	19
25 Pa. Cons. Stat. Ann. § 1222(f)	19
25 Pa. Stat. § 2621	19
46 P.S. § 61	5
71 P.S. § 272(a)	11

71 P.S. § 801	11
Pa. S. Rule 14.....	5
Pa. S. Rule 15.....	5
Pa. R.C.P. 1028(5)	4
Pa. R.C.P. 2002(a).....	6
Other Authorities	
Pa. Const. art. I, § 5.....	16
Pa. Const. art. II, § 1	5
Pa. Const. art. II, § 11	5

The Pennsylvania Department of State and Acting Secretary of the Commonwealth Leigh Chapman (collectively, “Respondents”) file this Brief in support of their Preliminary Objections to the Petition for Review (“Petition”) filed by the Pennsylvania Senate Intergovernmental Operations Committee (“Petitioner”).

I. INTRODUCTION

This case is ostensibly an action by the Senate Intergovernmental Operations Committee (“Committee”) to enforce a September 15, 2021, subpoena to the Department of State (“Department”) demanding, among other items, records containing driver’s license numbers, partial Social Security numbers, addresses, and dates of birth for all nine million registered Pennsylvania voters (the “Subpoena”). Although the Petition was filed in the Committee’s name, neither the Committee nor the Senate ever authorized it. Instead, it appears that Committee Chair Senator Cris Dush has taken it upon himself to unilaterally bring this suit in the Committee’s name. But he has no authority to do so. Because neither the Committee nor the Senate has authorized this suit, and because Senator Dush has no authority to unilaterally act for the Committee, the Committee lacks capacity to sue. This suit therefore must be dismissed in its entirety.

Furthermore, Count I of the Petition must be dismissed for additional reasons. The Petitioner cannot establish a right to a writ of mandamus under Count

I because it does not have a clear right to relief under 71 P.S. § 272 or § 801, the statutes it seeks to enforce. First, the Committee has not actually sought records pursuant to those statutes. Second, even if the Committee’s Subpoena is reconceived as an administrative request for records, the Department does not have a ministerial duty to respond. On its face, the demand for information implicates several constitutional rights and a federal law that limits what information the Department may produce. Just the need to consider the import of those constitutional provisions and federal law means the Secretary’s duty to respond is not ministerial. Finally, mandamus is not appropriate where the Department’s response to the Subpoena is not a mere ministerial duty.

Accordingly, the Petition must be dismissed in its entirety.

II. FACTUAL BACKGROUND

A. The Committee’s “Investigation” and Subpoena

On September 9, 2021, the Committee held its first ever election-related hearing. *See generally* Hr’g Tr. (Sept. 9, 2021) (Ex. 1). The sole topic was the Department’s election related guidance during the 2020 election. *Id.* Only one official, Fulton County Commissioner Stuart Ulsh, testified at the September 9 hearing. *Id.* Former Acting Secretary Veronica Degraffenreid provided written testimony but did not personally attend the September 9 hearing in light of pending

litigation, including litigation that Commissioner Ulsh and Fulton County officials brought against her concerning election matters. *Id.*

The following week, the Committee held a short meeting at which it voted along party lines to issue a subpoena *duces tecum* to the Department, demanding it produce seventeen separate categories of documents. Hr’g Tr. (Sept. 15, 2021) at 4:14-16 (Ex. 2). The Subpoena seeks detailed information about every registered Pennsylvania voter, including names, addresses, dates of birth, detailed voting histories, driver’s license numbers, and partial Social Security numbers. Petition, Ex. A. The Subpoena also seeks reports of audits and/or reviews of the Statewide Uniform Registry of Electors (“SURE”) system from 2018 to the present. *Id.* ¶ 16. That request encompasses sensitive information about Pennsylvania’s election systems that, if disclosed, could make those systems vulnerable to attack. Marks Decl., ¶ 39 (Ex. 3).¹ And the Subpoena demands the Department’s communications with county election officials between May 1, 2020, and May 31, 2021, Subpoena ¶ 1; election procedures and policies in effect between August 1, 2020, and June 30, 2021, *id.* ¶ 2; materials used to train election workers between August 1, 2020, and June 30, 2021, *id.* ¶ 3; a copy of the certified results of the November 2020 general election and 2021 primary election, *id.* ¶ 15; and 2021

¹ This declaration was attached as Exhibit G to the Memorandum in Support of the Commonwealth Petitioners’ Application for Summary Relief in *Costa v. Corman*, No. 310 MD 2021.

voter registration reports submitted to the Department, *id.* ¶ 17. The Committee has never explained why it needs all the information requested in the Subpoena or what exactly it plans to do with the information.

B. The Committee’s Inactivity

The Committee went more than six months—from September 15, 2021, to March 31, 2022—without holding a single public hearing or meeting on anything, much less on its election “investigation.” Pet’r’s Answer to Prelim. Obj. ¶ 32. On March 31, 2022, the Committee convened for the first time since voting to issue the Subpoena to hold a hearing about ballot drop boxes. *Id.* ¶ 33. The Committee has never met to discuss the Subpoena or the related supposed “investigation,” and it has never voted to enforce the Subpoena. *Id.* ¶ 34. Nor has the full Senate voted to enforce the Subpoena or authorized the Committee to do so. *Id.* ¶ 35. Senator Cris Dush, the Chair of the Committee on Intergovernmental Affairs, verified the Petition in this matter. *Id.* ¶ 40.

III. ARGUMENT

A. THE PETITION FOR REVIEW FAILS AS A MATTER OF LAW BECAUSE THE COMMITTEE HAS NOT AUTHORIZED THIS LITIGATION

This Court should dismiss the Petition for Review because neither the Senate nor Committee has authorized a suit to enforce the Subpoena, and Senator Dush alone cannot act on behalf of either without such authorization. This suit must therefore be dismissed in its entirety. Pa. R.C.P. 1028(5).

The Commonwealth’s legislative power is vested in its General Assembly. Pa. Const. art. II, § 1. Article II, Section 11 of the Pennsylvania Constitution provides that “[*e*]ach *House* shall have power to determine the rules of its proceedings and . . . *to enforce obedience* to its process[.]” Pa. Const. art. II, § 11 (emphasis added). And 46 P.S. § 61 states, “[*e*]ach *branch of the legislature* shall have the power to issue their subpoena, as heretofore practiced, into any part of the commonwealth” (emphasis added). The General Assembly may authorize other entities—such as a committee—to exercise its legislative power, but the exercise of legislative power must fit within the scope of delegated authority. *Annenberg v. Roberts*, 2 A.2d 612, 616 (Pa. 1938).

The Pennsylvania Senate has authorized the Committee to exercise certain aspects of legislative power and delegated to the Committee Chair a narrow set of powers. *See generally* Pa. S. Rule 14 (providing for Senate standing committees and designating their responsibilities and powers); Pa. S. Rule 15 (providing Committee Officers with specified powers and responsibilities). There is no delegation of authority, in the rules or elsewhere, that allows any single Senator—whether a committee chair or otherwise—to unilaterally bring suit in a committee’s name. The Senate has not even authorized committees to authorize lawsuits. Until it does, that power remains with the full body.

In Pennsylvania “all actions shall be prosecuted by and in the name of the

real party in interest.” Pa. R.C.P. 2002(a). The “real party in interest” in an action is “a person who has the power to discharge the duties created and to control a cause of action and the proceedings brought to enforce it.” *Lore v. Sobolevitch*, 675 A.2d 805, 808 (Pa. Commw. Ct. 1996). “To be the real party in interest, then, one must not merely have an interest in the result of the action, but must be in such command of the action as to be legally entitled to give a complete acquittal or discharge to the other party upon performance.” *Id.*

Here, as Petitioner admits, the Committee has neither met nor held any vote about whether to enforce the Subpoena. Pet’r’s Answer to Prelim. Obj. ¶ 34. Without such a vote, at a minimum, the Committee itself—the real party in interest—has not authorized this suit.

Based on his verification of the Petition, it appears instead that Senator Dush brought this action and intends to pursue it in the Committee’s name. *Id.* ¶ 40. But nothing in Pennsylvania law, and no act of the Pennsylvania Senate, authorizes a single senator to unilaterally initiate litigation in the name of a committee.

Moreover, Senator Dush cannot be the real party in interest in this action. Senator Dush is the Chair of the Senate Intergovernmental Operations Committee, but he is not the Committee. Senator Dush has no authority to unilaterally bring suit on behalf of the Committee without, at a minimum, the Committee’s authorization. So too, Senator Dush is not “legally entitled to give a complete

acquittal or discharge” upon performance. *See Lore*, 675 A.2d at 808.

In fact, it is doubtful that the Committee itself could initiate litigation to enforce the subpoena unilaterally without authorization from the Senate. In addressing the authority of congressional committees or other legislative to pursue litigation to enforce subpoenas, courts have consistently looked to the existence of express authorization from the full body, often in the form of a resolution. *See Comm. on Judiciary of U.S. House of Representatives v. McGahn*, 968 F.3d 755, 762 (D.C. Cir. 2020) (en banc) (allowing committee to proceed with lawsuit to enforce subpoena where the full House had expressly authorized the litigation by resolution); *Comm. on Judiciary, U.S. House of Representatives v. Miers*, 558 F. Supp. 2d 53, 63 (D.D.C. 2008) (permitting lawsuit brought by committee to proceed where full House of Representatives had passed resolution authorizing its filing); *see also* 2 U.S.C. § 288b(b) (“The [Senate Legal] Counsel shall bring a civil action to enforce a subp[o]ena of the Senate or a committee or subcommittee of the Senate under section 288d of this title only when directed to do so by the adoption of a resolution by the Senate.”). For instance, in *Miers*, the court concluded that “the fact that the House has issued a subpoena ***and explicitly authorized this suit*** . . . is the key factor that moves this case from the impermissible category of an individual plaintiff asserting an institutional injury . . . to the permissible category of an institutional plaintiff asserting an institutional

injury.” 558 F. Supp. 2d at 71 (emphasis added) (citations omitted).²

The implications of permitting Senator Dush to act unilaterally for the Committee would be absurd. Consider, for example, a hypothetical situation in which Senator Jay Costa, another Committee member, voluntarily dismissed this action on behalf of the Committee. That act would have no more or less authority than Senator Dush’s independent decision to initiate this action. Or imagine a situation in which Senator Dush purported to settle with the Department, but then a week later the Committee as a whole voted to continue the action. In that situation, the will of the Committee as the named Petitioner necessarily would control, underscoring that Senator Dush does not have the power to “give a complete acquittal or discharge” to the Committee, and thus had no authority to initiate this suit.

References by Petitioner to the scope of powers that each house of the General Assembly possesses fail to grapple with the fundamental problem here.

² These principles apply outside of the subpoena context as well. For instance, in *Raines v. Byrd*, the Court held that individual legislators could not bring an action asserting an “institutional injury” to their houses where they were not expressly authorized to do so. *See* 521 U.S. 811, 829 (1997) (“We attach some importance to the fact that appellees have not been authorized to represent their respective Houses of Congress in this action, and indeed both Houses actively oppose their suit.”); *see also* *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 802 (2015) (upholding standing of legislature to bring litigation where both house had voted to authorize suit).

The issue here is not what the Senate *may* do (either itself or by delegation to Committee or even a single senator). The issue is that neither the Senate nor the Committee has *in fact* authorized this action, and neither has *in fact* authorized a single senator to initiate litigation in the name of the Committee.

It is undisputed that neither the Senate nor the Committee has voted to enforce the Subpoena. Senator Dush has taken unilateral action as an individual legislator and attempted to exercise legislative power without the authority to do so. Because an action to enforce the Subpoena has never been validly authorized, this Court should dismiss the Petition for Review for lack of capacity to sue.

B. COUNT I FAILS AS A MATTER OF LAW BECAUSE PETITIONER IS NOT ENTITLED TO A WRIT OF MANDAMUS

Petitioner is not entitled to a writ of mandamus ordering Respondents to produce critical election security information and the personal information of more than nine million Pennsylvanians. A writ of mandamus “is an extraordinary writ that will only lie to compel official performance of a ministerial act or mandatory duty where there is a clear legal right in the plaintiff, a corresponding duty in the defendant, and want of any other appropriate and adequate remedy.” *Jackson v. Vaughn*, 777 A.2d 436, 438 (Pa. 2001). “As a high prerogative writ, mandamus writs are rarely issued and never where the plaintiff seeks to interfere with a public official’s exercise of discretion.” *Chadwick ex rel. Chadwick v. Dauphin Cnty.*

Office of Coroner, 905 A.2d 600, 603 (Pa. Commw. Ct. 2006). A writ of mandamus is available only to “enforce rights that have been clearly established.” *Tindell v. Dep’t of Corr.*, 87 A.3d 1029, 1034 (Pa. Commw. Ct. 2014).

Here, mandamus relief is unavailable for two reasons. First, Petitioner has no clear right to relief under 71 P.S. § 272 or § 801, and the requests are subject to constitutional and other legal limitations. Second, mandamus is inappropriate where, as here, the Department’s duty is not ministerial. Accordingly, Count I is legally insufficient and must be dismissed.

1. Petitioner Does Not Have a Clear Right to the Records

Senator Dush does not have a clear right to the requested records. Neither of the statutes on which Petitioner purports to rely give it a clear right to the requested records, and in any case, Respondents have raised significant privacy, privilege, and security concerns that preclude mandamus relief.

a. *The Statutes the Petitioner Relies Upon Do Not Clearly Entitle It to the Requested Records*

Petitioner points to two scarcely used statutes in the Administrative Code for the bold proposition it is “clearly” entitled to the millions of requested records. To the extent Petitioner has properly invoked those statutes—and it has not—there is nothing “clear” about them.

First, neither the Committee (nor Senator Dush) has ever actually asked the Department to produce records pursuant to 71 P.S. § 272 or § 801. Instead, the

Committee issued a Subpoena. Nothing in the Committee's Subpoena references § 272 or § 801, and it has never been clearly established that those provisions provide the basis either for a legislative committee or an individual senator to enforce a subpoena or for a writ of mandamus to lie. The applicability of Sections 272 and 801 to a legislative subpoena would be an issue of first impression. That alone shows that Petitioner's right to relief is not clearly established.

Second, even if Petitioner had properly invoked § 272 or § 801, those statutes do not "clearly" entitle it to mandamus relief. Both statutes concern the circumstances under which the legislature may review Department records. Section 272 empowers the Acting Secretary "[t]o permit any committee of either branch of the General Assembly to inspect and examine the books, papers, records, and accounts, filed in the department, and to furnish such copies or abstracts therefrom, as may from time to time be required." 71 P.S. § 272(a). Section 801 describes various duties of the Acting Secretary, including that "[t]he books, papers and accounts of the secretary shall be open to the inspection and examination of committees of each branch of the legislature, and secretary shall furnish such copies, or abstracts, therefrom, as may from time to time be required." 71 P.S. § 801. Neither statute defines the circumstance in which the provision of such materials is "required." No case has ever examined the statutes at issue, much less analyzed under what circumstances inspection of Department records

may “be required.” In addition, this Court noted in an earlier order regarding this same Subpoena that legislatures do not have an unlimited right to require information: “Broad as it is, however, the legislature’s investigative role, like any other governmental activity, is subject to the limitations placed by the Constitution on governmental encroachments on individual freedom and privacy.”

Memorandum & Order (“*Costa Mem. & Order*”) at 3, *Costa v. Corman* (“*Costa*” or “*Costa*, No. 310 MD 2021”), Nos. 310 MD 2021, 322 MD 2021, 323 MD 2021 (Pa. Commw. Ct. Jan. 10, 2022) (per curium) (quoting *Commonwealth ex rel. Carcaci v. Brandamore*, 327 A.2d 1, 4 (Pa. 1974)). Where this Court has already indicated that “material issues of fact” precluded enforcement of the Subpoena, *see Costa Mem. & Order* at 6, Petitioner cannot possibly show that the statutory language clearly entitles it to mandamus relief.

Third, any request for materials under § 272 or § 801 must necessarily be made for a proper legislative purpose, and the Committee has no such purpose. The Senate’s investigative power is subject to important limits, including that any action be taken in furtherance of a proper legislative purpose. *Brandamore*, 327 A.2d at 3-4; *Camel v. Select Comm. On State Contract Pracs. of House of Representatives*, 324 A.2d 862, 869 (Pa. Commw. Ct. 1974). As Respondents have previously argued in detail, the Committee has repeatedly shifted its justifications for the Subpoena, and the purported justifications are either

illegitimate, pretextual, or have no connection to the material sought. *See, e.g.*, Oct. 14, 2021 Mem. in Supp. of Commonwealth Pet’rs’ App. for Summ. Relief at 27-33 (“Pa. Br.”), *Costa*, No. 310 MD 2021; Nov. 8, 2021 Pa. Reply at 7-10, 21-32, *Costa*, No. 310 MD 2021. Because the Subpoena has not been issued for a legitimate legislative purpose, Petitioner has no clear right to relief.

Fourth, § 272 and § 801 do not clearly authorize a legislative committee to require an agency to provide materials when the committee intends to distribute those materials to a third party, private entity. The statutes mention “inspection” and “examination” of certain documents by a legislative committee but do not clearly apply when a legislative committee intends to turn over Department documents to a third party. And concerns about third party access to Department documents are especially acute where, as here, there are factual questions about the private party’s capacity to safeguard the documents. *See Costa* Mem. & Order at 5 (ruling there is “a substantial factual question surrounding the federal protection requirements and the capability of the Senate Committee’s contracted vendor, Envoy Sage, LLC, to protect the infrastructure information.”).

b. *The Request for Records Is Subject to Constitutional Limitations and Other Laws Governing Disclosure of Sensitive Information*

Even if the Committee had properly invoked § 272 and § 801, a writ of mandamus cannot issue because those statutes do not provide a clear right to

access documents that are protected by constitutional and other legal limitations.

Statutory requests for information are subject to external limitations, including constitutional and federal law at issue here. *See Reese v. Pennsylvanians for Union Reform*, 173 A.3d 1143, 1159 (Pa. 2017) (finding every government disclosure of personal information must be balanced against the right to informational privacy); *Brandamore*, 327 A.2d at 4. By itself, the need to consider if the request for records implicates these limitations defeats mandamus relief. *See Maute v. Frank*, 670 A.2d 737, 739 (Pa. Commw. Ct. 1996) (finding mandamus inappropriate where a balancing test must be applied pursuant to the Pennsylvania Constitution and the Religious Freedom Restoration Act).

Here, production of the requested documents under either § 272 and § 801 or via Subpoena implicates (1) millions of Pennsylvanians’ constitutional right to privacy; (2) Pennsylvanians’ right to fair elections and the free exercise of the right to vote as provided for in the Pennsylvania and U.S. Constitutions; (3) federal law protecting the disclosure of Protected Critical Infrastructure Information (“PCII”); and (4) common law protections associated with privileged information. Because this Court must balance the requests for documents with these constitutional and legal principles, it cannot be said that Petitioner has any “clear” right to relief.³

³ Respondents intend to explain why production of these records will lead to violations of the Pennsylvania and U.S. Constitution and federal law in their

First, Article I, Section 1 of the Pennsylvania Constitution protects the right of Pennsylvanians to informational privacy, which is the “right of the individual to control access to, or the dissemination of, personal information about himself or herself.” *Pa. State Educ. Ass’n v. Commonwealth, Dep’t of Cmty. & Econ. Dev.*, 148 A.3d 142, 150 (Pa. 2016).

The right to informational privacy can be infringed only if a compelling interest in disclosure outweighs individuals’ privacy interests. *Id.* at 158. And, because the constitutional right to privacy applies anytime a third-party exercises control over an individual’s personal information, the individual’s interests must be balanced before any personally identifying information is disclosed, whether pursuant to a statute or subpoena. *See Reese*, 173 A.3d at 1159. The need to balance interests *before* producing voters’ personal information defeats any assertion that Petitioner has a clear right to that information. *Maute*, 670 A.2d at 739.⁴

Second, requiring disclosure of every voter’s personal information,

response to the Committee’s Application for Summary Relief (as Respondents did in *Pennsylvania v. Dush*, 322 MD 2021 (Pa. Commw. Ct.)). Here, Respondents must only show that such a weighing of rights defeats mandamus relief.

⁴ Indeed, based on these (and other) arguments regarding the privacy interests at stake, this Court previously determined no party “established a clear right to relief” given the “outstanding issues of material fact.” *See Costa Mem. & Order* at 6. The Court’s holding on this point requires dismissal of the Committee’s mandamus claim.

including driver's license and partial Social Security numbers, implicates Pennsylvanians' right to free elections and to freely exercise the right to vote as protected by the Pennsylvania and U.S. Constitutions. Article 1, Section 5 of the Pennsylvania Constitution commands that "Elections shall be free and equal" and that "no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Pa. Const. art. I, § 5. Article I, Section 5 also prohibits acts that "discourag[e] voters from participating in the electoral process." *League of Women Voters v. Commonwealth*, 178 A.3d 737, 814 (Pa. 2018).

The U.S. Constitution likewise carefully protects against acts that might discourage an individual from exercising the right to vote. Multiple courts have held that the unwanted sharing of voters' personal information has such an effect. *See, e.g., Greidinger v. Davis*, 988 F.2d 1344, 1353-54 (4th Cir. 1993); *True the Vote v. Hosemann*, 43 F. Supp. 3d 693, 739 (S.D. Miss 2014); *Project Vote/Voting for Am., Inc. v. Long*, 752 F. Supp. 2d 697, 711-12 (E.D. Va. 2010). Because the requests for records must be balanced against the right to vote as protected by the U.S. Constitution and the Pennsylvania Constitution, Petitioner cannot demonstrate a clear right to relief, and mandamus cannot lie.

Third, some of the information sought by the Committee implicates PCII, which is barred from disclosure under federal law. 6 U.S.C. §§ 671-74; 42 U.S.C. § 5195c. "Critical infrastructure" are "systems and assets" that are "so vital to the

United States” that their incapacity or destruction “would have a debilitating impact on security, national economic security, national public health[,] or safety,” 42 U.S.C. § 5195c(e), and election systems are one type of critical infrastructure. The Committee is not authorized to access PCII under federal law. Because the Court must evaluate whether the requested documents would constitute such protected information, Petitioner has no clear right to relief.⁵

Fourth, the Committee and Senator Dush appear to demand production of material that may be protected by the deliberative process privilege. In particular, paragraph 16 of the Subpoena requests draft documents and discussions about those drafts that are protected. *See* Pa. Br. at 69, *Costa*. Under the deliberative process privilege, the government may “withhold documents containing ‘confidential deliberations of law or policymaking, reflecting opinions, recommendations or advice.’” *Commonwealth v. Vartan*, 733 A.2d 1258, 1263 (Pa. 1999) (plurality) (citation omitted). Because this Court must determine whether production of the requested records would violate this privilege, Petitioner has no clear right to relief.

⁵ After extensive briefing on this issue, this Court determined that, as with the constitutional privacy issues, summary relief on the issue of PCII was inappropriate. The Court found there was “a substantial factual question surrounding the federal protection requirements and the capability of the Senate Committee’s contracted vendor, Envoy Sage, LLC, to protect the infrastructure information.” *See Costa* Mem. & Order at 5. Again, this Court’s previous finding is dispositive as to whether mandamus here is appropriate.

2. Responding to a Records Request is Not a Ministerial Act

A writ of mandamus is inappropriate to “compel performance of a discretionary act or to govern the manner of performing [the] required act.” *Phila. Firefighters’ Union, Local 22 v. City of Phila.*, 119 A.3d 296, 304 (Pa. 2015) (alteration in original) (quoting *Fagan v. Smith*, 41 A.3d 816, 817 (Pa. 2012)). Nor can it be used “to revise a public official’s decision that results from the exercise of discretion.” *Seeton v. Adams*, 50 A.3d 268, 273 (Pa. Commw. Ct. 2012).

Responding to a request for sensitive records is not a ministerial act the Acting Secretary could be “required to perform upon a given state of facts and in a prescribed manner in obedience to the mandate of legal authority.” *Phila. Firefighters’ Union*, 119 A.3d at 303 (citation omitted). As noted, the Subpoena seeks, among other things, voters’ sensitive personal identifying information, PCII, and privileged material. Respondents must object to a records request where they believe that it is without a proper legal basis or where compliance with the request could conflict with other provisions of the Pennsylvania Election Code, federal law, or the Pennsylvania and U.S. Constitutions. The Department must review all potentially responsive documents to determine whether they are responsive, whether they are privileged—and if so, what privilege applies—and whether production of the requested records would conflict with federal or state laws protecting the right to privacy or expose sensitive election infrastructure

information.

An executive official’s judgment and discretion is necessarily implicated by a request for sensitive departmental records. As the Commonwealth’s chief election officer, the Acting Secretary is charged with “exercis[ing] in the manner provided by this act all powers granted” to her in the election code. 25 Pa. Stat. § 2621. Among other things, she is charged with developing and establishing the SURE system and promulgating regulations necessary to administer the system which stores the private information of all Pennsylvania electors. 25 Pa. Cons. Stat. Ann. §§ 1222(a), (f). While performing her role as chief elections officer she must act in compliance with the Pennsylvania and federal Constitution as well as an array of complex Commonwealth and federal election laws.

In short, Respondents have ample bases to exercise their judgment and discretion in determining the proper response to the Committee’s request—regardless of whether it was made pursuant to the Subpoena⁶ or by statute—as the

⁶ Petitioner seemingly asserts that it is entitled to mandamus relief ordering Respondents to comply with the Subpoena. *See* Petition, ¶ 41. But Petitioner cannot seek a writ of mandamus ordering Respondents to comply with the Subpoena. “Simply because [Petitioner] was dissatisfied with [Respondents’] exercise of [their] judgment in responding to the Subpoena does not entitle [it] to mandamus relief.” *Donahue v. State Civ. Serv. Comm’n*, No. 84 MD 2020, 2020 WL 6155681, at *4 (Pa. Commw. Ct. Oct. 21, 2020).

The *Donahue* decision is on point. There, petitioner subpoenaed the Department of Human Services (“DHS”) and sought to enforce the subpoena by seeking a writ of mandamus in Commonwealth Court. *Id.* at *1. The court found

Respondents would with any sensitive records request.

Petitioner, however, asserts that a writ of mandamus is an appropriate vehicle to obtain the requested materials because the provision of such materials is a “ministerial” or “mandatory, non-discretionary obligation.” Petition, ¶¶ 43, 55. According to Petitioner, Respondents must robotically respond to a broad and intrusive records request that would turn over the personal identifying information of millions of Pennsylvania voters to a private, third-party entity retained by the Committee. That is incorrect. Petitioner may disagree with how Respondents exercised their discretion, but it cannot credibly dispute the seriousness of the constitutional and federal legal issues that are implicated by its request or that the Acting Secretary has a duty to exercise careful judgment and discretion before handing over PCII and the sensitive, private information of millions of Pennsylvania electors. Nothing about the Committee’s request could be characterized as triggering a merely “ministerial” response from Respondents. Mandamus relief should be denied on that basis alone.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court

that DHS had already met its obligations where it “reviewed the Subpoena requests, determined that the requested documents could not be produced, and timely notified [petitioner] of the reasons why.” *Id.* at *4. Here, just as in *Donahue*, Petitioner cannot force Respondents to rubber stamp a subpoena by seeking mandamus relief.

sustain their Preliminary Objections and enter an order dismissing the Petition for Review.

Respectfully submitted,

Dated: July 27, 2022

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Attorneys for Respondents

EXHIBIT 1

Page 1

TRANSCRIPTION OF
PUBLIC HEARING ON THE INVESTIGATION OF THE 2020
GENERAL ELECTION AND THE 2021 PRIMARY ELECTION
SEPTEMBER 9, 2021

REPORTED BY: MARICOPA REPORTING, INC.
SOMMER E. GREENE, RMR 8686 E. SAN ALBERTO, #300
CERTIFIED COURT REPORTER SCOTTSDALE, ARIZONA 85258
CERTIFICATE NO. 50622 480.597.4744

Page 2

1 SEPTEMBER 9, 2021

2

3

4

5 SENATOR DUSH: I now call this public

6 hearing of the Senate Intergovernmental Operations

7 Committee to order.

8 Today, we will be hearing testimony

9 regarding the Pennsylvania Department of State's

10 last-minute guidance before the 2020 general

11 election. Today's hearing and the investigation we

12 are conducting in this committee are not about

13 President Trump as some have -- as some reports in

14 the news have implied.

15 This investigation is not about

16 overturning the results of any election, as some

17 would suggest. That horse is out of the barn as

18 far as this investigation is concerned.

19 Rather, this investigation is about

20 looking intensely into the general election held

21 November 2020 and the primary election held in May

22 of 2021, to evaluate our election code is working

23 and to confirm whether or not these things and

24 their worth -- if there were things that need to be

25 changed in the law to make our elections run better

Page 3

1 for everyone.

2 It's particularly important that we

3 perform these reviews as an aid in determining --

4 determining if legislative changes are necessary

5 now because the 2020 general election and '21

6 primary represent some of the first elections under

7 Act 77 of 2020 and Act 12 of 2021. I don't believe

8 anyone would argue that Act 77 significantly

9 changed how Pennsylvania conducts its elections at

10 the municipal, county, and state levels of

11 government.

12 Consequently, the impacts and execution

13 of our election code must be looked in -- looked at

14 to determine if further legislation is needed to

15 correct any ambiguous sections, confusing sections,

16 and/or sections that our sister branch of

17 government deemed unconstitutional. That is our

18 job as the legislative branch.

19 However, some of our fellow

20 Pennsylvanians may not clearly understand why this

21 is our job as the legislative branch and, more

22 specifically, why this committee was selected to

23 conduct this investigation. Those are appropriate

24 questions.

25 In fact, the first question, which must

Page 4

1 be asked and answered in the affirmative by any

2 governmental authority is, do we have the authority

3 to take this action?

4 The initial part of this hearing will

5 lay out that authority to the people of the

6 Commonwealth so that if someone asked that question

7 in the future, all one has to do is refer the

8 questioner to the video of this hearing.

9 The Pennsylvania senate's authority,

10 responsibility, and organization are primarily

11 governed by four documents; three of which are

12 specific to Pennsylvania.

13 These are the US Constitution, the

14 Pennsylvania Constitution, the Rules of the Senate

15 and Mason's Manual of Legislative Procedure.

16 For this investigation, we really start

17 with the Pennsylvania Constitution. And that's

18 appropriate. It is -- it is comprised of 11

19 articles or sections. The 11 articles are often

20 considered to be in order of importance, especially

21 the first several.

22 For instance, Article I is our written

23 Declaration of Rights as Pennsylvanians. We, the

24 people of Pennsylvania, wanted to make sure the

25 government we created could never overstep its

Page 5

1 given authority and never infringe upon this list
 2 of 29 precious rights. Unfortunately, most people
 3 don't realize that in Pennsylvania, we actually do
 4 have 29 enumerated rights listed clearly in our
 5 Constitution. I recommend everyone actually look
 6 up and see what your 29 rights as Pennsylvanians
 7 actually are.

8 Before we go further, let me quickly
 9 describe where the concept of our constitutional
 10 government come -- came from. You see, people have
 11 always had a dis- -- a distrust, rightly so, of
 12 those who have influence and authority over their
 13 daily lives. There is something within each and
 14 every American and Pennsylvanian that understands
 15 that those who have such power can possibly have
 16 motivations to abuse it to their own ends.

17 In the United States, the people
 18 understood this at our founding. They understood
 19 the inherent propensity in this fallen world for
 20 those who have power to seek even greater power,
 21 especially through government.

22 The system of checks and balances that
 23 this Republican form of government was set up in a
 24 manner in which acknowledges that inherent
 25 propensity, while also recognizing the need of

Page 6

1 having a civil government capable of protecting the
 2 rights of the individual.

3 The quote from Commentaries on the
 4 Constitution of Pennsylvania by Thomas Raeburn
 5 White, a book that I think everybody in the
 6 Commonwealth should get as part of their seventh
 7 grade civics course or Pennsylvania government
 8 course, the book most often cited by the
 9 Pennsylvania courts on constitutional principles
 10 under the law.

11 I quote, When the Declaration of
 12 Independence severed the bonds which joined the
 13 American colonies to the government of Great
 14 Britain, the sovereignty, formally exercised by the
 15 King and Parliament, descended upon the American
 16 people. As the ordinary governmental functions
 17 could not be exercised by the people acting
 18 directly, it became necessary for them to establish
 19 governments to which they could delegate certain of
 20 their powers, end quote.

21 Let me reemphasize two points in that
 22 comment.

23 One, sovereignty. One usually uses the
 24 term in regard to kings, emperors, Caesar, and
 25 other -- other monarchical governments -- monarchical

Page 7

1 government systems. Sovereigns make the rules.
 2 The people of America recognize that they were in
 3 the position of making the rules in America.

4 Second, they also realize that they
 5 could not all be making their own rules about how
 6 to -- they and their neighbors should interact with
 7 one another on a one-by-one basis, but needed some
 8 form of governance by which they could come to --
 9 to agreement on rules to solve this. They chose a
 10 Republican form of governance under covenants
 11 called constitutions.

12 Again, quoting from Commentaries, the
 13 definition of the term "constitution." Quote,
 14 Whatever may be the definition of constitution in
 15 its broad sense, in America, it is understood to
 16 mean a written instrument enacted by the people
 17 acting directly in their sovereign capacity.

18 Again, the people are the sovereigns.
 19 The sovereigns acting collectively make the rules.
 20 The sovereigns have chosen to use a covenant called
 21 the Constitution to set those rules in place.

22 Now, let's go back to the -- how the
 23 Senate is governed and how it derives its
 24 authority, responsibilities, and organizations.
 25 After declaring our rights in the first

Page 8

1 article, the most important articles, our ancestors
 2 in Pennsylvania set up the next most important
 3 thing in forming a government, the legislature.
 4 The legislature is the rules committee. The
 5 legislature is set up in Article II and the process
 6 of legislation is set up in Article III.

7 You see, the legislature makes all the
 8 laws or rules necessary for the government to
 9 function through being the cont- -- continual and
 10 most direct voice of Pennsylvanians within
 11 government.

12 Without the legislation making --
 13 without the legislature making the laws, there
 14 wouldn't be much of an organized functioning
 15 society able to sys- -- systematically function,
 16 economically settle disputes, and provide a safe
 17 place to live.

18 Immediately, in Article II and III, the
 19 Senate, along with the House of Representatives, is
 20 established and given the job of legislating,
 21 passing laws. It clearly states this is our job.

22 Now, forgetting for a moment all the
 23 serious concerns and some unfortunate jokes
 24 Pennsylvanians have about how good our lawmaking
 25 is, we do try our best to pass good laws. But as

Page 9

1 we all know from our everyday lives, in everything
 2 we do as humans, there is room for improvement;
 3 nothing is perfect.
 4 Sometimes, although we try to
 5 anticipate the effects of our laws and how they
 6 will work in as many different situations as
 7 possible, sometimes circumstances arise that we
 8 just can't anticipate. And in those situations,
 9 the law we've written may not be sufficiently
 10 developed to adapt to and accommodate those
 11 circumstances in a way that comports to our
 12 original -- original intent.
 13 Unfortunately, I think many
 14 Pennsylvanians will agree with this last point. We
 15 don't always see the impacts of the laws we create
 16 beforehand. We don't always see the second and
 17 third order impacts of what will happen before we
 18 make that vote.
 19 In those cases, we need to go back and
 20 investigate those impacts to improve the law. This
 21 is what we are doing here.
 22 The legislature did not fully see the
 23 impacts of 77 -- Act 77 and what they would do to
 24 our electoral system, particularly when combined
 25 with a pandemic and how the people of Pennsylvania

Page 10

1 would feel about it before it was passed. Now
 2 we're going back to take a look and see if anything
 3 needs to change.
 4 Some people will say that what I just
 5 explained is not enough to justify why our
 6 committee is doing what it's doing. So let me
 7 explain a little more about how the Senate operates
 8 and why the Intergovernmental Operations Committee
 9 is the lead -- is leading the Senate election
 10 investigation.
 11 In Article II, Section 11, entitled,
 12 Powers of Each House, in addition to what the
 13 Pennsylvania Constitution says about how the Senate
 14 should operate, it states that the Senate will also
 15 determine the rules of our proceedings. This is
 16 where the third document that govern -- governs the
 17 Senate comes into play, the Senate rules.
 18 Every session, the Senate votes to
 19 approve the rules, ru- -- rules which these days
 20 only change slightly from session to session. The
 21 current -- current 38 Senate rules are necessary to
 22 govern how day-to-day operations occur. Things
 23 that are important, but not so much that they need
 24 to be part of the Constitution.
 25 But since the consti- -- Constitution

Page 11

1 specifically states that each house of the General
 2 Assembly has the power to make their own rules and
 3 no other branch has the authority to dispute our
 4 rules and how the Senate operates, these rules are
 5 vitally important.
 6 The last document I mentioned that
 7 governs how the Senate operates really is an
 8 extension of the Senate rules and is also something
 9 the majority of America's state legislatures use to
 10 guide how they operate. It's Mason's Manual of
 11 Legislative Procedure.
 12 In fact, Senate Rule No. 26 states in
 13 summary that, whatever is not covered by our
 14 specific Pennsylvania Senate rules, Mason's Manual
 15 is the authority and our rule book.
 16 In fact, it is so well recognized to
 17 both the United States and the Pennsylvania Supreme
 18 Courts quote it as an authoritative voice or source
 19 in their decisions.
 20 So why are we here in the
 21 Intergovernmental Operations Committee?
 22 Well, Senate Rule 14 establishes what
 23 all of our committees will be for the session.
 24 Committees are smaller groups of senators that
 25 focus on specific areas of law or legislation.

Page 12

1 Currently, we have 22 committees. There is nothing
 2 specifically establishing a committee's
 3 jurisdiction, but we try to use commonsense names
 4 of committees to indicate what they are typically
 5 responsible for handling.
 6 For example, the Banking Insurance
 7 Committee regularly focuses on and is -- has
 8 responsibility for any legislation or legal matter
 9 regarding banking and insurance.
 10 It is the same concept for the Aging
 11 and Youth Committee and the Education Committee.
 12 We can guess, looking at their names, what top- --
 13 what topics are likely to come before them.
 14 The concept is no different for this
 15 committee. The Intergovernmental Operations
 16 Committee, although we can certainly understand if
 17 the general public might not immediately associate
 18 the committee's name with elections. However, the
 19 meaning of the Intergovernmental -- of
 20 intergovernmental is multiple levels of government
 21 and how they interact.
 22 So while our local government committee
 23 focuses just on municipal and county government
 24 issues, and our state government committee focuses
 25 on state government issues, an appropriate focus

Page 13

1 for the Intergovernmental Operations Committee is
 2 legislation and laws that involve multiple levels
 3 of government.
 4 I already mentioned how elections are a
 5 multilevel enterprise that runs the entire gamut of
 6 levels of government. Election law and execution
 7 of all federal, state, county, and municipal
 8 governments, which fits right into the definition
 9 of intergovernmental, multiple level -- levels of
 10 government.
 11 Now, we know why we're here in the
 12 Intergovernmental Operations Committee. But still,
 13 some people still might say we don't have the power
 14 to investigate elections.
 15 Well, according to our rules, whose
 16 power and authority comes directly from the
 17 Pennsylvania Constitution, we do.
 18 Senate Rule 14 governs committee
 19 actions. While there may be details contained in
 20 it, Rule 14 specifically states, the standing
 21 committee is authorized to require public
 22 officials -- "A standing committee is authorized to
 23 require public officials and employees and private
 24 individuals to appear before the standing committee
 25 for the purpose of submitting information to it."

Page 14

1 It goes on to say that this is necessary, as we
 2 discussed earlier, to enable us to write good and
 3 effective legislation because we need information
 4 to make the best decisions we can.
 5 This is also referred to as an
 6 investigation. It's not a criminal investigation,
 7 but rather an investigation to gather and study
 8 evidence on a particular topic. This hearing is on
 9 the impacts of Act 77 on the Pennsylvania
 10 elections.
 11 Going another step further, Mason's
 12 Manual, the countrywide recognized manual for
 13 legislative operations and the extension of our
 14 Senate rules, mentions legislation -- legislative
 15 investigations many times. In fact, Chapter 73 is
 16 an entire chapter dedicated to just how to conduct
 17 legislative investigations.
 18 Critical specific passages from Mason's
 19 Manual include Section 795, paragraph 1, "The right
 20 of the legislative body to make investigations in
 21 order to assist it in the preparation of wise and
 22 timely laws must exist as an indispensable incident
 23 and auxiliary to the proper exercise of legislative
 24 power."
 25 This has been recognized from the

Page 15

1 earliest times in the history of the US
 2 legislation, both federal and state, and from even
 3 earlier -- earlier epochs in the development of
 4 British jurisprudence.
 5 Mason's Manual Section 795, paragraph
 6 2, "The legislature has the power to investigate
 7 any subject regarding which it may desire
 8 information in connection with the proper discharge
 9 of its function to enact, amend or reveal statutes
 10 or to perform any other act delegated to it by the
 11 Constitution."
 12 Section 795, paragraph 13, "In the
 13 exercise of its power to make investigations, a
 14 legislature may incur reasonable necessary expenses
 15 payable out of the public funds."
 16 Section 757, paragraph 2, "Legislatures
 17 use several mechanisms to oversee the operation of
 18 the executive branch. These include program
 19 evaluation and performance auditing units, review
 20 and analysis of agency budgets, and review of
 21 administrative regulations."
 22 It cannot be disputed that elections
 23 are subject -- are a subject on which the
 24 legislation is appropriate. Our United States
 25 Constitution provides at Article I, Section 4, that

Page 16

1 at times -- that the times, places, and manner of
 2 holding elections for senators and representatives
 3 are to be prescribed by the state legislatures.
 4 Our Pennsylvania Constitution contains
 5 an entire article, Article VII, on elections and
 6 specifically contemplates in Section 6, the passage
 7 of laws, regulating the holding of elections,
 8 placing certain parameters on those laws, and
 9 specifying the General Assembly's role in the
 10 passage of those general laws on elections. This
 11 committee, therefore, is clearly gathering
 12 information on a subject on which the legislature
 13 is permitted to enact laws.
 14 So with all that being said, this is
 15 why we find ourselves here today. To -- continuing
 16 to investigate if our election laws are correct as
 17 written or if they need to be modified.
 18 Our big evidence that we need to be
 19 modified is the very fact that so many court cases
 20 were filed and litigated over the November 2020
 21 election. Most of these cases were filed because
 22 the parties alleged an ambiguity in the law that
 23 related to the -- that needed to be clarified and
 24 resolved for the operation of whatever -- whatever
 25 upcoming election existed.

Page 17

1 Our sister branch of government
 2 ultimately decided there were ambiguous --
 3 ambiguous sections, confusing sections and/or
 4 unconstitutional sections.
 5 Therefore, we're going to gather as
 6 much evidence as necessary to figure out what our
 7 election laws need to be and to restore the faith
 8 of Pennsylvanians in that election system.
 9 One last thing before I end my remarks.
 10 Subpoenas. There's been news,
 11 speculations and public arguments about subpoenas.
 12 As the chairman of this committee, it is my firm
 13 position with respect to subpoenas that we will
 14 follow the advice of counsel and longstanding
 15 Senate precedent in determining whether and when
 16 subpoenas are necessary. The power to issue a
 17 subpoena isn't unlimited and we must ensure sound
 18 legal footing before we proceed down that path.
 19 In addition, we must be ready, willing,
 20 and able to actually review and utilize
 21 meaningfully any information that we receive in
 22 response to our subpoenas. Having a hearing like
 23 this one that we're having today allows us the room
 24 to satisfy -- satisfy those consi- --
 25 considerations.

Page 18

1 Keep in mind, also, that the power to
 2 issue a subpoena is not held by one person. The
 3 issuance of a subpoena is a committee action.
 4 In conclusion, this committee
 5 appreciates the foundational work conducted by the
 6 bipartisan Senate Special Committee on Election
 7 Integrity and Reform chaired by Senators Langerholc
 8 and Street. We -- we will build on their excellent
 9 work, not repeat it.
 10 This committee also appreciates the
 11 foundational work of Representative Gross, House
 12 State Government Committee, and the report they
 13 produced summarizing their efforts.
 14 I now defer to Sen- -- Senator
 15 Williams, the Democratic Chair of the
 16 Intergovernmental Operations Committee to offer
 17 introductory remarks.
 18 SENATOR WILLIAMS: Thank you,
 19 Mr. Chairman. And thank you all for gathering here
 20 today.
 21 I'll say a majority of my life, my
 22 family and I have been involved in what we would
 23 consider the advancement of this country. That's
 24 not a perfect union. It, nonetheless, is a
 25 construct of perspectives' opinions in different

Page 19

1 types of human beings.
 2 Our family in particular admitted
 3 itself to this country generations ago. It's noted
 4 through its military service, its sacrifice in
 5 public service, and a variety of other means.
 6 I personally, through my childhood,
 7 experienced some of the greatest moments in the
 8 transition and evolution of this country during the
 9 civil rights movement. But not only people of
 10 color, but women, disabled, and veterans benefitted
 11 by extraordinary legislation and public policy
 12 which advanced this nation to truly include all
 13 Americans in the American dream.
 14 This is expressed singly and most
 15 importantly through one's right to vote. Democrats
 16 since the '60s have been very committed to the
 17 process of opening up the opportunity to express
 18 itself -- express one's self through the right to
 19 vote. Certainly, the historic legislation that
 20 allowed every individual, and particularly
 21 African-Americans, the right to vote in the '60s,
 22 up until currently advancing mail-in voting.
 23 Today, I'm almost in disbelief. I sit here mostly
 24 in frustration.
 25 I've been a member of the General

Page 20

1 Assembly for over 30 years. Two-thirds of that
 2 time has been in this body. In all my time here,
 3 through all the great victories and upsetting
 4 defeats, bipartisan breakthroughs and partisan
 5 obstructions, my resolve to work with whomever and
 6 however to help the people of this Commonwealth,
 7 the constituents in my district, as well as yours,
 8 achieve a better life has never wavered.
 9 What is occurring today is the exact
 10 opposite of that objective. What is happening here
 11 today is a travesty, plain and simple. This isn't
 12 about gathering information to help improve the
 13 election process and it certainly isn't about
 14 seeking truth on behalf of the citizens of
 15 Pennsylvania. This isn't even a real
 16 investigation. This exercise is one part of the
 17 ongoing nationally orchestrated attack on our
 18 electoral system.
 19 This is an attack on one of our
 20 greatest freedoms. It's an attack on our right to
 21 vote. This entire tragic charade has been going on
 22 for ten months now. Although, in actuality, the
 23 first seeds were planted even before the election
 24 took place last year. But here we sit, in
 25 September 2021, still giving oxygen to the big lie.

Page 21

1 Because as long as that lie exists, it will remain
 2 a rallying cry in the deceptive attempts to sow
 3 doubt in the minds of electorate and help promote
 4 changes to our electoral system that are partisan
 5 and create a system to overturn election results
 6 that are unfavorable -- unfavorable to one party.
 7 This sham review is not the pursuit of
 8 transparency. The goal is simply to stoke distrust
 9 and division with not just in our political
 10 families, but across this country. And the most
 11 exasperating part of it all is that everyone on
 12 this panel knows that, we know this, and you know
 13 this. And yet here we sit, witnessing the
 14 exploitation of the people out there who honestly
 15 believe that the lies they've been told about
 16 so-called irregularities and rigging is the basis
 17 of which is not founded in fact. Because they
 18 trust what they are told and by whom they are told.
 19 This is sad and it's wrong. Notwithstanding the
 20 sheer ruthlessness and cruelty of which I just
 21 described, let's go through the other reasons why
 22 this is such an appalling situation.
 23 While the rules of the Senate may seem
 24 tenuous -- tedious and sometimes admittedly
 25 archaic, they are rules. The rules are grounded in

Page 22

1 the ideals of openness and fairness and they aren't
 2 rules that we're just supposed to follow. They are
 3 rules that we as a body vote on and approve at the
 4 beginning of each legislative session. Underscore
 5 collectively vote upon these rules, including the
 6 committee structure and its purposes.
 7 Within these rules is the outline of
 8 our committee structure and what each specific
 9 committee struc- -- functions and jurisdiction is
 10 within the confines of our branch's role in the
 11 system of checks and balances.
 12 That leads me to here. Where I can
 13 tell you, as both the current ranking member of
 14 this committee and as a part of the ranking member
 15 of the state government committee, we have no
 16 authority to over- -- or oversight or subpoena
 17 power over -- over any election-related matters.
 18 We all know, at least those of us who
 19 know how to do our jobs and our obligation to
 20 our -- to our oath of office know, the state
 21 government committee oversees matters of elections
 22 and matters of election code.
 23 While it is our job to protect the
 24 people's right to vote and ensure the ballot access
 25 for all, this committee is operating out of its

Page 23

1 purview, and it's acting recklessly in that -- in
 2 that process, with only political motive in mind.
 3 We are fearful. This sets a dangerous
 4 precedent in which it becomes a super committee.
 5 And with self-appointed authority that has no
 6 checks and no balances and no limits.
 7 Another reminder I have for everyone is
 8 that Act 77, which includes the most significant
 9 updates to the Pennsylvania election code in
 10 decades, included provisions that allow for vote by
 11 mail. It was passed with overwhelming bipartisan
 12 votes in both chambers of the General Assembly.
 13 But now that they didn't get the result
 14 they wanted in only one race on the ballot, mind
 15 you, they're calling for an investigation that
 16 could potentially be used as an exercise to get rid
 17 of mail-in voting and other means that make voting
 18 more accessible to all citizens of Pennsylvania.
 19 There are legislators who filed suit
 20 just last week to have the law ruled
 21 unconstitutional and overturned. The very law,
 22 that of the 13, 11 voted for. I was involved as a
 23 Democratic chair of the state government committee.
 24 People fought tooth and nail to get that
 25 legislation passed as swiftly as possible so that

Page 24

1 provisions would be in place in time for the 2020
 2 election.
 3 The last time I checked, we support the
 4 freedom to vote. So why are senate republicans
 5 looking to disrupt that freedom with an anti-voter
 6 investigation? Voters pick the leaders. Our
 7 leaders do not pick which voters to hear and which
 8 voters to silence. This is making a mockery of
 9 that sacred right.
 10 The 2020 election has been litigated
 11 many times and each claim of any impropriety has
 12 been proven false. Multiple legitimate audits have
 13 been conducted and the election has been certified
 14 since late last year. The call for additional
 15 reviews of election results that have been audited
 16 multiple times and certified for over nine months
 17 only serves to challenge our values as
 18 Pennsylvanians.
 19 Audits at the -- at the -- the county
 20 level and state levels have already been conducted
 21 pursuant to state law. We do not need further
 22 evidence that our elections were properly
 23 administered and free of fraud, particularly
 24 through audits lacking any legal authority.
 25 All the facts clearly show that the

Page 25

1 election results were fair and valid. Over 50
 2 courts across the country, independently of one
 3 another, have examined these claims and found them
 4 to be completely baseless. And speaking of the
 5 2020 election results, half of the Senate was on
 6 that same ballot. Let me repeat. And in speaking
 7 of 2020 election results, half of the Senate,
 8 Republican and Democrat, was on the same ballot.
 9 Including a dozen Republican state senators who
 10 won -- who won reelection and other winning
 11 elections to the Senate for the first time and some
 12 who are on this committee. Yet one of them
 13 questions the integrity of these results.
 14 And least we not forget, for the first
 15 time in 60 years, Pennsylvanians elected
 16 Republicans to the post of state treasurer,
 17 defeating an incumbent Democrat, an auditor
 18 general, and came within reach of out-sitting a
 19 sitting Democratic Attorney General.
 20 This is not a sign of a stolen
 21 election. This is a betrayal of a sacred trust.
 22 This is about the big lie that may have been begun
 23 by feeding into the whims of a former president
 24 that has quickly spread like wildfire throughout
 25 this country and it's corrupting our discourse and

Page 26

1 retribution is sought at all levels of elected
 2 office.
 3 But if you don't want to believe me,
 4 because my candidate was on the winning side of the
 5 election, take it from the reputable Republicans,
 6 reputable Republicans who stand firmly with this
 7 truth.
 8 This ill-conceived investigation is
 9 also a gross misuse of taxpayers' money for
 10 political purposes. Wasteful spending by counties
 11 being forced to chase a basic conspiracy -- basis
 12 conspiracy theory is no way to use taxpayers'
 13 money.
 14 Further unnecessary investigations are
 15 going to be expensive and a waste.
 16 And speaking of counties who may be
 17 strapped with this burden, just a few days ago,
 18 Senate Republicans could not even cite which
 19 counties their investigations would focus upon.
 20 Again, no one is looking for the
 21 answers to made-up problems that are dangling in
 22 front of the people. Those answers don't exist
 23 because this is a sham. It's all just perpetuating
 24 a lie to get as many people upset and as confused
 25 to the point where they are too turned against --

Page 27

1 too turned off about the process to participate or
 2 worse. You fall into the category of those who are
 3 trying to disenfranchise under the ruse of election
 4 security reforms.
 5 Instead of a sham investigation being
 6 conducted on the big lie, we encourage our
 7 colleagues to focus on real election improvements.
 8 And our counties are pleading for -- to -- are
 9 pleading for us to assist them in carrying our
 10 elections more efficiently and inclusively. Both
 11 Democratic and Republican counties are asking for
 12 precanvassing of mail-in ballots. Democrat and
 13 Republican counties are asking for drop-box
 14 security. Democrat and Republican counties are
 15 asking for sufficient resources to support poll
 16 workers. Democrat and Republican counties are
 17 asking for new technology requirements. These
 18 calls are not new. Counties have been asking for
 19 our help since 2020 primary in June.
 20 We had the entire summer and fall to
 21 pass a measure that would relieve some of these
 22 burdens in time for the November election. They
 23 warned us of the challenges they face and beg- --
 24 begged us for help in upgrading the process.
 25 And yet, the majority in charge of

Page 28

1 setting the agenda won't act to implement those
 2 needed improvements.
 3 In a time where we have real issues to
 4 tackle in Pennsylvania, why would Senate
 5 Republicans waste valuable time and resources in
 6 pursuit of the big lie?
 7 Anyone who is making the sham review a
 8 priority is not showing concern for our collective
 9 constituents. How will this review benefit
 10 constituents?
 11 Will it keep people in their homes?
 12 Will it create new jobs?
 13 Will it help individuals making a fair
 14 living wage?
 15 Will it help businesses recover from
 16 the economic hardships of the pandemic which has
 17 been caused?
 18 Will it provide our students with
 19 educational opportunities?
 20 Will it provide broadband
 21 infrastructure so people in rural Pennsylvania and
 22 urban communities can have access to today's
 23 technology?
 24 Will it eradicate toxic schools?
 25 Address the gun violence that is

Page 29

1 devastating so many areas across Pennsylvania?
 2 Will it keep our elderly nursing home
 3 residents residing safe and healthy?
 4 Will it help clean up those victims
 5 from climate change and the floods which are
 6 occurring almost every month?
 7 The 2020 presidential election results
 8 reflect votes made by Americans, making key
 9 decisions that impact their lives, like pandemic
 10 relief, health care and economic well-being. This
 11 anti-voter investigation disregards those decisions
 12 and the values that guided voting across the
 13 commonwealth. We see through those people who
 14 spread lies, refuse to govern in our interests, and
 15 pass laws -- laws to silence our votes and our
 16 voices.
 17 Pennsylvanians deserve leadership that
 18 deliver for our families and implement standards
 19 that protect our rights, not those that stifle
 20 them. Doing the right thing is difficult and
 21 shouldn't be deemed courageous. It's what we were
 22 sent here to do. That's what I was sent here to do
 23 over 30 years ago. It's our sworn duty and our
 24 moral obligation.
 25 Living with the fact of knowing, lying

Page 30

1 at the expense of those who put their trust in us,
 2 is a real burden to carry. Let us move past
 3 further review of the fair and credible election
 4 results of 2020 and get down to doing the people's
 5 business.
 6 Thank you, Mr. Chairman.
 7 SENATOR DUSH: Thank you, Chairman.
 8 Before we continue, I'd like to run
 9 through some quick housekeeping items for the
 10 members and panelists.
 11 First, everyone is muted until their --
 12 it's their turn to speak. Members, you will be
 13 unmuted when asking a question and will remain
 14 unmuted through the duration of the answer. In an
 15 effort to get as many questions as possible, with
 16 the exception of the chairs, members are limited to
 17 one question at a time and we will allow as many
 18 questions as possible to stay within our timeframe.
 19 Members, please continue to contact
 20 committee staff to participate in each round.
 21 As a reminder to all members and
 22 testifiers, this hearing is being recorded and
 23 live-streamed. Testimony and the hearing's
 24 recording will be available on our committee's
 25 website.

Page 31

1 At this time, we'll move to testimony
 2 and we are blessed to have Stuart Ulsh,
 3 Commissioner of the Fulton County, with us to
 4 testify. And Mr. Ulsh, you're recognized for your
 5 testimony.
 6 COMMISSIONER ULSH: All right. Thank
 7 you, Chairman.
 8 Good afternoon, Senators. My name is
 9 Stuart Ulsh. I am a chairman of the Fulton County
 10 Board of Commissioners, county commissioners, and
 11 the board of elections. I want to thank you all
 12 for the opportunity for testifying before your
 13 committee.
 14 Prior to the 2020 general election, the
 15 board of elections received numerous guidance and
 16 other directives from the Secretary of the
 17 Commonwealth, Kathy Bookvar, including the night
 18 before the election.
 19 Our board, along with all of our
 20 election employees, worked very hard to understand
 21 and follow with the information and guidance
 22 received from Secretary Bookvar. I personally had
 23 numerous conversations with her before, during, and
 24 after the November general election. Our board of
 25 election has the power under the Pennsylvania law

Page 32

1 to inspect, investigate, and safeguard our own
 2 elections in Fulton County.
 3 In December of last year, we decided to
 4 authorize Wake TSI to review our handling of the
 5 elections --
 6 SENATOR DUSH: Commissioner, can I -- I
 7 apologize. I forgot, I neglected something. I
 8 need you to -- if you'd please rise and raise your
 9 right hand.
 10 COMMISSIONER ULSH: Oh.
 11 SENATOR DUSH: I've got to get you
 12 sworn in. And that's my fault.
 13 Do you swear the statements that you've
 14 already made and that you are going to proceed to
 15 make, and the answers to questions will be
 16 truthful, honest and complete to the best of your
 17 knowledge, so help you God?
 18 COMMISSIONER ULSH: I do.
 19 SENATOR DUSH: Thank you.
 20 COMMISSIONER ULSH: And thank you,
 21 Chairman.
 22 Okay. Our election board has the power
 23 under Pennsylvania law to inspect, investigate and
 24 safeguard our own elections of Fulton County. In
 25 December of last year, we decided to authorize Wake

Page 33

1 TSI to review our handling of the elections and to
 2 provide us with a report.
 3 After Wake TSI conducted its
 4 investigation of the elections, Fulton County
 5 posted a copy of the Wake's report on the county's
 6 website. At that point, we were asked to provide
 7 the acting Secretary of the Commonwealth, Veronica
 8 Dagraffenreid, a letter explaining, excuse me, what
 9 was done during our investigation. We provided a
 10 letter as requested by the acting Secretary.
 11 Shortly thereafter, we were notified by the acting
 12 Secretary by -- that both Fulton County Dominion
 13 machines were decertified.
 14 With no other options available, Fulton
 15 County has been forced to initiate litigation
 16 against the acting Secretary, challenging her
 17 decision to decertify Fulton County election
 18 machines.
 19 Our case against the acting Secretary
 20 is currently pending in the Commonwealth courts. I
 21 have been asked by my legal counsel to refrain from
 22 answering questions regarding the litigation at
 23 this time, so I will -- I will not be answering
 24 such questions. But I am here today to speak in
 25 the effects of guidance, often confusing and some

Page 34

1 time contradictory in the elections of 2020.
 2 Thank you, sir.
 3 SENATOR DUSH: Thank you, Commissioner.
 4 And we do have some questions. I'm going to start
 5 with Senator Ward.
 6 SENATOR WARD: Thank you so much,
 7 Chairman. Thank you, Commissioner Ulsh, for being
 8 here today.
 9 First of all, how long have you been a
 10 commissioner?
 11 COMMISSIONER ULSH: Five and a half
 12 years.
 13 SENATOR WARD: Okay. And in that time,
 14 you have overseen quite a few elections. Is that
 15 correct?
 16 COMMISSIONER ULSH: Yes.
 17 SENATOR WARD: You mentioned in your
 18 testimony that previous Secretary of State, Kathy
 19 Boockvar, contacted you before, during, and after
 20 the November 2020 election. Is that correct?
 21 COMMISSIONER ULSH: Yes. She's
 22 contacted me quite a few times.
 23 SENATOR WARD: Was that customary for
 24 the Department of State to reach out and especially
 25 the Secretary herself?

Page 35

1 COMMISSIONER ULSH: This was the first
 2 I've talked to the Secretary of the Commonwealth.
 3 I haven't -- I haven't had any conversations with
 4 her in any other elections, no.
 5 SENATOR WARD: What sort of questions
 6 did she ask?
 7 COMMISSIONER ULSH: The one -- the one
 8 conversation was calling to see -- this was on
 9 election day -- was calling to see if we had any
 10 counts of how many absentee and mail-in ballots
 11 we've received.
 12 And then on another call, she called
 13 and asked how things was going and if we needed any
 14 help with anything, that they was there to help us
 15 if we was having problems with anything.
 16 SENATOR WILLIAMS: Mr. Chairman? I'm a
 17 need -- I -- I need to interrupt.
 18 I heard the witness testify to the fact
 19 that he was not able to answer questions based upon
 20 litigation. I'm listening to my colleague ask
 21 questions, which, in fact, can be parts of evidence
 22 introduced into trial. So I need to understand
 23 what the standard's going to be, because if the
 24 gentleman's going to answer questions, we're going
 25 to ask questions and we're not going to be

Page 36

1 constrained by the questions that we're going to
 2 ask. But we are going to be respectful of the
 3 gentleman as he relates to being controlled by his
 4 litigation.
 5 So I understand that the gentleman
 6 wants to cooperate, but he's already set a standard
 7 by which we need to -- to operate in, and I just
 8 need to have clarity -- we, as members of this
 9 committee, need to have clarity about what that
 10 line's going to be and how far we're allowed to go.
 11 SENATOR DUSH: Commissioner, your
 12 litigation does not include -- is not directed at
 13 the -- the plethora of guidances that came out from
 14 the Secretary and the -- the meetings and the
 15 conversations that happened as a result of that.
 16 Am I correct?
 17 COMMISSIONER ULSH: No, our litigation
 18 doesn't have anything to do with what went on on
 19 election day.
 20 SENATOR DUSH: Thank you.
 21 Senator Ward, go ahead.
 22 SENATOR WARD: Thank you.
 23 I just -- had you -- had you completed
 24 your thought about what sorts of questions
 25 Secretary Boockvar, then-Secretary Boockvar, asked

Page 37

1 of you?

2 COMMISSIONER ULSH: In the one -- one

3 occasion she called back and asked me, on election

4 day, this had been in the afternoon, if we had any

5 counts of ballots received. And then she went on

6 to another phone call and called and asked me if I

7 had any counts between Trump and Biden. And

8 that's -- and there was other calls, but I didn't

9 answer anything after that.

10 SENATOR WARD: Okay. I -- I -- just

11 hearing that, I find that very, very unusual.

12 Especially the Secretary of State calling you

13 herself. She must have, I'm assuming, felt

14 concerned about what was happening in Fulton

15 County.

16 I find this just another example of

17 activities that created confusion and concerns

18 about the election process. And this is why I

19 believe that this committee needs to strongly

20 pursue answers to these and other questions.

21 And I have a great deal of respect for

22 the Minority Chair, greatly respect him, but I have

23 constituents that are asking questions. They want

24 answers. And if you believe that these results of

25 the election were accurate, it should be no problem

Page 38

1 to go over the process and to investigate these

2 questions. I think it speaks to the very

3 foundation of our Democratic society.

4 I want to thank Commissioner Ulsh for

5 being here today and for his steadfast commitment

6 to voter integrity.

7 Thank you very much.

8 COMMISSIONER ULSH: Thank you, Senator.

9 SENATOR WILLIAMS: Mr. Chairman, I'm

10 still not clear. Well, let me -- for the record,

11 I -- I want all my colleagues, Democrat and

12 Republican, to understand that the manner in which

13 we do our work today hopefully will be civil and

14 that's my intent. And I appreciate the comments by

15 my colleague and I respect her as well. And I

16 understand our constituents are asking us questions

17 because they've been presented facts that frankly

18 aren't accurate.

19 Nonetheless, the comments about the

20 Secretary will be a part of a -- a hear- -- of a

21 case, potential litigation.

22 Is that your attorney sitting to your

23 left?

24 COMMISSIONER ULSH: Yes.

25 SENATOR WILLIAMS: All right. If

Page 39

1 that's part of the litigation and we're making

2 comments to that, we're setting a record. We are

3 estab- -- we're -- we're estab- -- we are

4 establishing a profile on behalf of the Secretary.

5 She's not able to be here because of the

6 litigation. It's inappropriate --

7 SENATOR DUSH: Chairman -- Chairman,

8 one -- one point of content. Individuals have the

9 right against self-incrimination.

10 SENATOR WILLIAMS: They do.

11 SENATOR DUSH: The department does not.

12 SENATOR WILLIAMS: But -- well --

13 SENATOR DUSH: And we're -- when it

14 comes to the litigation, the litigation, my

15 understanding, is against the Department. Is that

16 not correct? Is it the Secretary? Is she included

17 individually?

18 All right. When it comes to this

19 testimony, those actions before that -- the

20 Secretary had taken, as comes before this

21 committee, it is -- I know what I want to say and

22 I'm having -- I'm having a difficult time with it.

23 These committee hearings are necessary

24 to get to the bottom of the questions and the

25 actions that the Department took. These -- these

Page 40

1 actions, these last-minute directives, again, those

2 are not part of the litigation. However, I don't

3 know if there's any intent to use those actions as

4 part of that case.

5 But I can tell you right now that we

6 have just cause to ask these questions as it

7 relates to those last-minute guidances and how they

8 impacted the operations of the county elections

9 offices, as well as even down to the precinct

10 level.

11 SENATOR WILLIAMS: Mr. Chairman, I

12 would suggest this. That certainly those questions

13 will be asked and they'll probably be asked in the

14 court of law. And for those who will give

15 guidance, establishing a profile of the Secretary

16 who heads a department in which the litiga- --

17 litigation is being engaged is a challenge to not

18 step beyond a line.

19 If we choose to do that, then, again, I

20 will -- I will remind the gentleman, we will ask

21 questions and we'll ask questions that will be

22 balanced.

23 The portrayal of the Secretary asking

24 questions clearly implied that there was a purpose

25 beyond her given sworn responsibilities as the

Page 41

1 Secretary. I think the term was used "odd," which
 2 will lead to a further investigation. That
 3 certainly implies something. Implication is a part
 4 of a process of building a case. That's all I'm
 5 saying.
 6 If you choose to ask the questions,
 7 that's your right. If you choose to incriminate
 8 himself, that's his right. I'm not sure he would
 9 do it in front of a responsible attorney, but
 10 that's what they choose to do. If you choose to do
 11 that, we are going to ask questions. We're
 12 prepared to cooperate with the committee in any
 13 manner and format that it lays out, but some of the
 14 questions are making all of us very uncomfortable
 15 in the manner in which we're approaching it.
 16 SENATOR DUSH: Chairman, I appreciate
 17 that and we're not going to stop questions. If the
 18 commissioner's attorney deems this that we tread
 19 in -- that we're treading into that area, then he
 20 has a responsibility to ensure that his client does
 21 not so tread. And we will proceed along those
 22 lines.
 23 Are there any other questions?
 24 Commissioner, I have a couple.
 25 What do you feel were the most

Page 42

1 significant pieces of last-minute guidance, whether
 2 officially as a guidance document or less formally
 3 in e-mail communications generally? As it relates
 4 to what was given to the county election officials
 5 by the Department of State.
 6 COMMISSIONER ULSH: I don't know.
 7 There was a lot coming up to it and we're a small
 8 county and, of course, we have a small staff.
 9 It -- there -- it was all pretty much put together
 10 at a last minute.
 11 I guess the biggest -- the hard- -- our
 12 hardest thing was, is to make sure we kept things
 13 straight with the mail-ins and the absentees, as
 14 far as what we dealt with in our office.
 15 SENATOR DUSH: The -- so there was a --
 16 was this amount of guidance, was that unusual for
 17 an election?
 18 COMMISSIONER ULSH: This is the first
 19 I've seen any of this. And I -- I don't remember
 20 of anything coming up to an election of the prior
 21 elections.
 22 SENATOR DUSH: Would -- would you say
 23 it's a small amount, a significant amount, or was
 24 it overwhelming to you? How -- your own words, how
 25 would you characterize it?

Page 43

1 COMMISSIONER ULSH: It was overwhelming
 2 for a small county and a small staff.
 3 SENATOR DUSH: What -- what kind of
 4 impacts did that have on you and your staff?
 5 COMMISSIONER ULSH: Everybody was -- we
 6 double-checked everything that we was doing as we
 7 was working along with it to make sure we was
 8 following protocol. Went back, researched and
 9 everything that we received. So, basically, it
 10 was -- it -- it cost a lot more work for everybody.
 11 SENATOR DUSH: Did it interfere with
 12 any of your other duties as it relates to the
 13 election, you or your election staff?
 14 COMMISSIONER ULSH: It -- it was a
 15 burden, it was actually -- it worked everybody
 16 extra. Everybody put more hours in. We had to
 17 actually -- the people that does it have other
 18 jobs, too. We had to put everything completely off
 19 and their only thing was -- was sat in that room
 20 and take care of everything that was coming in.
 21 SENATOR DUSH: Was this election
 22 conducted any differently than previous elections
 23 due to the last-minute guidances?
 24 COMMISSIONER ULSH: We just had a lot
 25 more time in it. And we -- of course there was --

Page 44

1 there -- there was a lot of different -- like in
 2 the protocols, things you had to do different.
 3 So, basically, just the storage and
 4 the -- everything. I mean, just keeping other
 5 containers to keep ballots in and all that,
 6 everything that led up to it.
 7 SENATOR DUSH: What would you suggest
 8 to correct or mitigate those kinds of impacts in
 9 future elections?
 10 COMMISSIONER ULSH: Don't change
 11 election laws up to six months before an election.
 12 SENATOR DUSH: Thank you.
 13 Would -- did any of the instructions,
 14 suggestions or recommendations from the Department
 15 leading up to the election, in your mind, diverge
 16 from what you believed the election code required?
 17 COMMISSIONER ULSH: Now repeat that.
 18 Sorry.
 19 SENATOR DUSH: Title 25, under which
 20 the election -- which is the election code, were
 21 there any of the instructions or suggestions from
 22 the Department that you're aware of that diverge
 23 from Title 25?
 24 COMMISSIONER ULSH: I -- I can't tell
 25 you it didn't. I -- I would have to read across it

Page 45

1 all to see. I mean, I -- I can't -- nothing comes
 2 out to me without reading it.
 3 SENATOR DUSH: All right.
 4 Are there any other questions, any
 5 other -- who want to offer questions?
 6 Senator Costa.
 7 SENATOR COSTA: Thank you very much,
 8 Mr. Chairman, and thank you for testifying.
 9 Just a couple of a detailed questions.
 10 You serve as the chairman of the commission, board
 11 of commissioners?
 12 COMMISSIONER ULSH: I do.
 13 SENATOR COSTA: Are you also on the
 14 board of elections as well?
 15 COMMISSIONER ULSH: I'm a chairman of
 16 the board of elections also.
 17 SENATOR COSTA: Is there an election
 18 director in your department -- in your county or do
 19 you serve in that capacity as well?
 20 COMMISSIONER ULSH: No, we have an
 21 election director.
 22 SENATOR COSTA: And that election
 23 director is the one I presume who was also very
 24 active in this con- -- in things you described,
 25 many of the changes that took place. Is that

Page 46

1 correct?
 2 COMMISSIONER ULSH: Yes.
 3 SENATOR COSTA: He's not here today.
 4 Is that correct?
 5 COMMISSIONER ULSH: It's a lady, but,
 6 no, she's not here.
 7 SENATOR COSTA: She's not here, excuse
 8 me.
 9 As it relates to -- as I understand
 10 your testimony, you're stating that there were some
 11 changes that were implemented during the course of
 12 the election via the Secretary's guidance that were
 13 burdensome and caused folks to work a little extra
 14 and sort of missed the opportunity to do other
 15 things they should have been doing. And I can
 16 understand that.
 17 Would you agree that this is one of the
 18 highest vote totals we've ever had in your county?
 19 COMMISSIONER ULSH: It's the highest we
 20 had in -- since I was commissioner, yes.
 21 SENATOR COSTA: And --
 22 COMMISSIONER ULSH: But not -- not
 23 major major, but it was higher.
 24 SENATOR COSTA: Okay. And do you know
 25 whether or not, based upon -- my understanding was

Page 47

1 you went back and checked to make sure you did
 2 things you were supposed to do and you did them in
 3 accordance with the guidelines. Is that correct?
 4 COMMISSIONER ULSH: We -- we went back
 5 and reviewed as things was going just to -- before
 6 we -- like even before election day, we looked at
 7 things over, looked -- just re- -- re- -- re- --
 8 get it familiar with us.
 9 SENATOR COSTA: And through that
 10 review, did you determine that there were any
 11 irregularities that occurred that you had done that
 12 needed to be significantly modified, or were any
 13 fraudulent activities taking place in your review?
 14 Did you determine that at all?
 15 COMMISSIONER ULSH: There was stuff as
 16 it went on that looked like -- there was things
 17 that went on as we was reading across it. It was
 18 like changing the one was put in right before, like
 19 contradicting what was already in. So which made
 20 things a little confusing.
 21 SENATOR COSTA: Okay. It was
 22 confusing, but not fraudulent?
 23 COMMISSIONER ULSH: I don't know if it
 24 was fraudulent or not. It was confusing to us.
 25 SENATOR COSTA: That's all the

Page 48

1 questions I have, Mr. Chairman.
 2 SENATOR DUSH: Thank you. The Chair
 3 recognizes Senator Gephardt.
 4 SENATOR GEPHARDT: Commissioner Ulsh,
 5 good afternoon. Thank you for taking the time to
 6 appear before our committee today. I'd really just
 7 like to ask you a few questions about the mail-in
 8 ballots and specifically the ones that arrived
 9 without a secrecy envelope with them.
 10 When -- If a -- if a ballot did arrive
 11 and it wasn't in the secrecy envelope, did you
 12 count those ballots once they were received?
 13 COMMISSIONER ULSH: Yes, Senator, thank
 14 you.
 15 We -- as we got them, we didn't have a
 16 lot of that in Fulton County. But there was -- it
 17 was changed back and forwards.
 18 I mean, as we was reading their
 19 directives, what to do. And if -- if there was one
 20 that wasn't in the secret envelope, it was
 21 followed, you know, with what was said to do with
 22 it.
 23 But then we had some -- we had some
 24 that wasn't returned and, of course, they
 25 provisional voted and then we had to go through all

Page 49

1 that procedure.

2 So I mean, I can't tell you how many it

3 was, but anything that -- anything that did

4 receive, it was followed to protocol with what the

5 directive said.

6 SENATOR GEPHARDT: Right.

7 And have you had any discussions, do

8 you know or have you heard of any counties that

9 might have handled it differently than that?

10 COMMISSIONER ULSH: I haven't talked to

11 no other counties. No.

12 SENATOR GEPHARDT: Okay. And did the

13 Department of State's guidance to count and then

14 the Supreme Court's decision not to count ballots

15 without secrecy envelopes, did that cause any

16 confusion or any lack of confidence in how you were

17 processing them?

18 COMMISSIONER ULSH: It -- it was -- it

19 was definitely confusing.

20 Actually, we have a -- a contact number

21 that we'd call if there was something going on, you

22 need a quick answer. There was calls made from our

23 director to them just to get a quick answer on what

24 to do in the cases that was coming up. And it

25 was -- it basically was dealt with at that time,

Page 50

1 what they told her on the answer, whenever she was

2 on the call with them.

3 SENATOR GEPHARDT: That -- that was my

4 final question. Thank you for your time.

5 COMMISSIONER ULSH: All right. Thanks.

6 SENATOR DUSH: Chairman Santarsiero --

7 I mean Senator Santarsiero.

8 SENATOR SANTARSIERO: Thank you. Thank

9 you, Mr. Chairman.

10 Commissioner Ulsh, I want to first make

11 sure I'm pronouncing that correctly. With my last

12 name, I'm sensitive to that.

13 Let me -- let me ask you first,

14 Commissioner, if I may, prior to the start of the

15 hearing this afternoon, did any member of the

16 General Assembly or any staff person talk to you

17 about this hearing today?

18 COMMISSIONER ULSH: Not about the

19 hearing, other than just if I was available to come

20 down to testify.

21 SENATOR SANTARSIERO: Okay. So the

22 extent of the -- and who did you speak to about

23 that?

24 COMMISSIONER ULSH: I talked to Joseph.

25 SENATOR SANTARSIERO: Joseph?

Page 51

1 COMMISSIONER ULSH: I don't know his

2 last name.

3 SENATOR SANTARSIERO: Okay.

4 SENATOR DUSH: My chief of staff.

5 SENATOR SANTARSIERO: Okay. Okay.

6 Thank you, Mr. Chairman.

7 You didn't have any other conversation

8 about any other topic?

9 COMMISSIONER ULSH: No. Just other

10 than with my attorney.

11 SENATOR SANTARSIERO: Okay. So in a

12 May 4, 2001, letter -- 2021 letter to the

13 Department of State, Ms. Hess, who's the elections

14 director. Correct?

15 COMMISSIONER ULSH: Hess? Yes.

16 SENATOR SANTARSIERO: She said, "In

17 December 2020, various members of the Pennsylvania

18 legislature contacted the Fulton County election

19 office and asked if we would allow Wake TSI to do

20 an audit to prove to the voters that the 2020

21 general election was run appropriately."

22 Who were the members of the General

23 Assembly who contacted the elections office?

24 COMMISSIONER ULSH: Well, I'd -- I was

25 in conversation with Senator Ward.

Page 52

1 SENATOR SANTARSIERO: Senator Ward?

2 COMMISSIONER ULSH: Yes.

3 SENATOR SANTARSIERO: Okay. Did you

4 have a conversation with any other senator?

5 COMMISSIONER ULSH: No.

6 SENATOR SANTARSIERO: Okay. Did anyone

7 else on the board of commissioners or in the

8 elections office have conversations at that time

9 with any other senator or representative?

10 COMMISSIONER ULSH: Not that I'm aware

11 of.

12 SENATOR SANTARSIERO: Okay. And what

13 was -- what did Senator Ward say to you?

14 COMMISSIONER ULSH: She just asked me

15 if I would -- if I had -- would be interested or if

16 I had any thoughts of doing an investigation of our

17 elections.

18 SENATOR SANTARSIERO: Okay. What was

19 your response?

20 COMMISSIONER ULSH: What was my

21 response?

22 SENATOR SANTARSIERO: Correct.

23 COMMISSIONER ULSH: I -- I actually,

24 with all the -- the changes and everything that was

25 going on, it was already on my mind, wondering what

Page 53

1 to do to double-check ourselves. And when the
 2 question was asked to me, I -- I wanted to know
 3 myself if everything was done properly.
 4 SENATOR SANTARSIERO: Okay. And did
 5 you share that conversation, the substance of your
 6 conversation, with your other commissioners?
 7 COMMISSIONER ULSH: We talked -- I -- I
 8 made the remark that I wouldn't make any decisions
 9 without having it brought up in our meeting, in our
 10 commissioners' meeting.
 11 SENATOR SANTARSIERO: That you had that
 12 conversation with both of the other commissioners?
 13 COMMISSIONER ULSH: Yes.
 14 SENATOR SANTARSIERO: Okay. And who
 15 proposed this company, Wake TSI?
 16 COMMISSIONER ULSH: The name was brung
 17 up from the senators, but I -- it wasn't guaranteed
 18 that that was who was doing it. I actually Googled
 19 them and checked them out to see what credentials
 20 they had.
 21 And after looking at that, I had no
 22 reason not to think that they couldn't do the job
 23 that we was wanting them to do. So then I
 24 actually, at that point, was in contact with them.
 25 SENATOR SANTARSIERO: Okay. You -- you

Page 54

1 just said that was brought up by the senators. Who
 2 were the senators who brought up that name?
 3 COMMISSIONER ULSH: Well, it was
 4 just -- the name was just brung up. It was
 5 whenever me and Judy was talking, the name was
 6 brought up that -- that this would be somebody that
 7 you could contact.
 8 SENATOR SANTARSIERO: Okay. Did -- did
 9 she suggest that it was someone -- the company that
 10 you should contact or one of others that you could
 11 consider?
 12 COMMISSIONER ULSH: It was just the
 13 name that I could -- that I could talk to, if I was
 14 interested.
 15 SENATOR SANTARSIERO: Okay. So she
 16 wanted you to contact them, if you were interested?
 17 COMMISSIONER ULSH: She -- she referred
 18 to the name and said if I -- if I wanted to contact
 19 them, I was welcome to.
 20 SENATOR SANTARSIERO: What -- and did
 21 you, at that point, contact Wake TSI?
 22 COMMISSIONER ULSH: I did.
 23 SENATOR SANTARSIERO: Okay. And
 24 what -- and what -- then when you talked to them, I
 25 assume the -- the issue of what the investigation

Page 55

1 would cost came up, did it not?
 2 COMMISSIONER ULSH: I -- I talked --
 3 talked to them and asked them what extent they
 4 would do in the investigation.
 5 SENATOR SANTARSIERO: Okay.
 6 COMMISSIONER ULSH: And what all it
 7 would consist of.
 8 SENATOR SANTARSIERO: Okay. And --
 9 COMMISSIONER ULSH: And basically when
 10 they would be available to do it.
 11 SENATOR SANTARSIERO: Okay. And did
 12 they tell you what the cost would be? I'm
 13 assuming, as a commissioner, you were concerned
 14 about that, were you not?
 15 COMMISSIONER ULSH: There wasn't no
 16 cost involved with us.
 17 SENATOR SANTARSIERO: It was --
 18 COMMISSIONER ULSH: We have a report --
 19 their report's on our -- the County of Fulton's
 20 website. I put it there for transparency reasons.
 21 SENATOR SANTARSIERO: Yeah --
 22 COMMISSIONER ULSH: I want everybody to
 23 know what it says. You're more than welcome to go
 24 in there and pull it off. It tells you everything
 25 about that.

Page 56

1 SENATOR SANTARSIERO: I'm going to get
 2 to that in a moment, but --
 3 COMMISSIONER ULSH: Okay.
 4 SENATOR SANTARSIERO: -- but first I
 5 want to try and understand.
 6 So they -- they told you that this was
 7 going to be -- they could do this at no cost to the
 8 county.
 9 COMMISSIONER ULSH: I would like for
 10 you to refer to our Wake Technology report on our
 11 website.
 12 SENATOR SANTARSIERO: Oh, I --
 13 COMMISSIONER ULSH: I can't remember
 14 everything word for word it says on it. I don't
 15 want to say something and it's not exactly word for
 16 word. I'd refer to that.
 17 SENATOR SANTARSIERO: No, and I
 18 appreciate that, but I'm trying to ask you now your
 19 recollection of your conversation with Wake TSI
 20 when you contacted them about potentially using
 21 them to do this investigation.
 22 I'd assume -- as a former township
 23 supervisor, I know cost was always an issue for our
 24 board, I'm sure for your board of commissioners it
 25 is, too. They told you that it would be no cost to

Page 57

1 the county. What was your understanding as to who
 2 was paying for this?
 3 COMMISSIONER ULSH: Myself was, as same
 4 as you, I might worry about the cost for the Fulton
 5 County, too, for the taxpayers.
 6 SENATOR SANTARSIERO: Right.
 7 COMMISSIONER ULSH: Whenever I say it
 8 was free to you, that's all I was concerned about.
 9 SENATOR SANTARSIERO: Okay. So you --
 10 you made no inquiry as to who was -- who was paying
 11 for it?
 12 COMMISSIONER ULSH: I just wanted to
 13 make sure Fulton County taxpayers wasn't paying for
 14 it.
 15 SENATOR SANTARSIERO: Did you -- did
 16 you ever wonder yourself as to who might be paying
 17 for this?
 18 COMMISSIONER ULSH: I actually made the
 19 offer that I would kick into it if I had to.
 20 SENATOR SANTARSIERO: Okay. And what
 21 was the response?
 22 COMMISSIONER ULSH: You don't need to
 23 worry about it, it's paid for.
 24 SENATOR SANTARSIERO: Okay. They
 25 didn't explain who paid for it?

Page 58

1 COMMISSIONER ULSH: I honestly never
 2 asked the question.
 3 SENATOR SANTARSIERO: Okay. So you
 4 were talking a moment ago --
 5 SENATOR DUSH: Senator, I want to go on
 6 to others and then we'll circle back to you.
 7 SENATOR SANTARSIERO: Okay. Thank you,
 8 Mr. Chairman.
 9 SENATOR DUSH: Next, Senator Argall.
 10 SENATOR ARGALL: Thank you,
 11 Mr. Chairman.
 12 Commissioner, in my academic work in
 13 previous years, I've spent a lot of time studying
 14 and teaching about the distrust of government.
 15 Sometimes my students would come to class and say,
 16 well, it was because of something that happened in
 17 Iraq or Afghanistan, and I would talk to them about
 18 growing up during the Vietnam era and Watergate.
 19 And some of my more astute students would take it
 20 all the way back to the Declaration of
 21 Independence. Americans, for a lot of good
 22 reasons, have always had a pretty considerable
 23 distrust to government.
 24 I'm curious, and you've got a broad
 25 jurisdiction as a county commissioner, how often

Page 59

1 are you asked questions about -- from your
 2 constituents, about people who are distrustful of
 3 the way that we conduct elections here in
 4 Pennsylvania, especially 2020, 2021?
 5 SENATOR ULSH: It was actually talked
 6 about how do we know things was right, how do we --
 7 how do we have trust in everything? I've had
 8 multiple people say they'll never vote again
 9 because of everything that they seen on TV.
 10 Everything that they heard was going on. That was
 11 one of the things that led me to do what I done.
 12 66 -- 67 counties in Pennsylvania.
 13 Fulton County made it 66 counties still talk about
 14 it. Fulton County doesn't.
 15 SENATOR ARGALL: In -- in terms of
 16 the -- the ranking, would this be in the distrust
 17 of government, the conduct of elections, would this
 18 be in the top 10 issues that people address you at
 19 when you're at the Eagle Scout banquet or the
 20 county commissioners' meeting? Would it be in the
 21 top three? Is it -- is it number one? How -- how
 22 does it rank in -- in all of the issues --
 23 COMMISSIONER ULSH: As far as
 24 government, it's -- it's probably five.
 25 SENATOR ARGALL: Okay.

Page 60

1 COMMISSIONER ULSH: It's probably in
 2 the middle.
 3 SENATOR ARGALL: Okay.
 4 COMMISSIONER ULSH: But as far as local
 5 government, I'm really big on transparency.
 6 Anybody that knows me in Fulton County knows --
 7 knows that. They don't really talk about that in
 8 Fulton County as a local government because they
 9 know I'm an open book.
 10 SENATOR ARGALL: Uh-huh.
 11 COMMISSIONER ULSH: So I guess I would
 12 put it a five.
 13 SENATOR ARGALL: Okay. How can this
 14 Senate help you to answer those questions from
 15 people that are distrusting the process?
 16 COMMISSIONER ULSH: My biggest thing
 17 is -- and, of course, we've -- we went through an
 18 investigation, so I -- I put that behind me. I had
 19 to sign papers that proven the results. I wanted
 20 to sleep at night knowing that they was correct to
 21 my -- best of my knowledge. I put mine behind me.
 22 As far as anybody else that would have
 23 that question and go to sleep at night, I -- I
 24 couldn't even imagine doing that. I -- I think if
 25 there's nothing odd, you feel there's nothing odd,

Page 61

1 there's no reason to show it.
 2 And there possibly could be a problem.
 3 An accident they made on their own. But without
 4 doing it, how you ever knowing that? As yourself,
 5 how do you ever know that?
 6 So, I mean, I guess you probably should
 7 follow your heart on it, I guess. I don't know how
 8 else to put it.
 9 SENATOR ARGALL: Okay. Now it's been
 10 suggested to us that from time to time that we
 11 should ignore the -- the -- the thousands of
 12 constituents who have contacted us, just as they've
 13 contacted you, and I, for one, simply I'm not about
 14 to ignore my constituents. I think we need to help
 15 them get the answers that they deserve. Thank you.
 16 Thank you, Mr. Chairman.
 17 SENATOR DUSH: Thank you.
 18 And I'll remind the members, we
 19 sunshined -- sunshined this as reference to Act 77
 20 and how the regulatory issues of the last-minute
 21 guidances came down that impacted it, and I think
 22 we're going a little bit far afield in some of
 23 these lines of questioning and I'd appreciate
 24 members sticking to that.
 25 Next we have Senator Hughes.

Page 62

1 SENATOR HUGHES: Thank you,
 2 Mr. Chairman.
 3 Chairman Ulsh, good to see you. Good
 4 to meet you, sir.
 5 So you're chair of the -- the
 6 commission. Right?
 7 COMMISSIONER ULSH: Yes, Senator --
 8 SENATOR HUGHES: Okay. How long --
 9 COMMISSIONER ULSH: Good to meet you,
 10 too, yes.
 11 SENATOR HUGHES: Okay. How long have
 12 you served in that position, sir?
 13 COMMISSIONER ULSH: I've been there
 14 like five -- five and a half years.
 15 SENATOR HUGHES: Always as chair?
 16 COMMISSIONER ULSH: Yes.
 17 SENATOR HUGHES: Okay. Very good.
 18 Thank you.
 19 And just -- just so I can have the --
 20 the facts in -- in my mind, the total vote in
 21 Fulton County for president was -- what was that
 22 number?
 23 COMMISSIONER ULSH: 9,000, 9500.
 24 SENATOR HUGHES: About 9500 votes
 25 total. Okay. And, of course, there were about 7.8

Page 63

1 million votes cast for president in the 2020
 2 election and there's about 9500 in Fulton County.
 3 So in the -- in the -- your
 4 investigation, was there any fraudulent voting ever
 5 found out? Found in the votes.
 6 COMMISSIONER ULSH: Our report come
 7 back -- it's in our report, but, no, nothing was
 8 found. Everything was ran in Fulton County --
 9 SENATOR HUGHES: Everything was square,
 10 up and up, no fraudulent voting?
 11 COMMISSIONER ULSH: That's -- that's
 12 what our report has, yes.
 13 SENATOR HUGHES: That's what the report
 14 says?
 15 COMMISSIONER ULSH: Uh-huh.
 16 SENATOR HUGHES: Okay. Well, that's
 17 good. That's good. That's a testimony of you,
 18 sir, and your operation.
 19 COMMISSIONER ULSH: I'm sleeping good
 20 at night.
 21 SENATOR HUGHES: All right. And -- and
 22 all of those hard-working folks who put off
 23 everything, we -- that was observed, that is a -- a
 24 reality across the state. You know, I mean, you
 25 know, I'm from Philly, so, you know, kind of like

Page 64

1 central conversation and -- and lots of workers,
 2 you know, lots of cameras and things like that.
 3 So the scrutiny was -- was intense and
 4 the workers put a lot of extra time in -- into the
 5 process. But congratulations on there and not
 6 finding any fraudulent, fraudulent activity.
 7 Did you feel it -- as chairman, when
 8 you -- this was Act 77, we got a lot of new -- a
 9 lot of new rules coming in. This is probably the
 10 biggest change in -- in election law in
 11 Pennsylvania for decades. Okay? You know, first
 12 time really full effect of mail-in voting, right,
 13 in a major way. It -- it would -- it would seem to
 14 me that getting a call directly from the Secretary
 15 would be a welcome thing, because in this case,
 16 she's -- she was the boss, right? You know,
 17 that -- you're hearing from the boss about how the
 18 rules should be played out in a major change in
 19 election with a record turnout.
 20 What was your -- what was your take on
 21 that?
 22 COMMISSIONER ULSH: I -- as far as her
 23 calling me? To me, it's just another day. That --
 24 on election day, it was just another day to me.
 25 SENATOR HUGHES: Uh-huh.

Page 65

1 COMMISSIONER ULSH: But it -- I was
 2 there in prior elections. Actually, I called her
 3 on one occasion and she never returned my phone
 4 call.
 5 SENATOR HUGHES: Okay.
 6 COMMISSIONER ULSH: But that was back a
 7 couple years earlier.
 8 SENATOR HUGHES: Previously?
 9 COMMISSIONER ULSH: Yes.
 10 SENATOR HUGHES: Prior to the act,
 11 prior to the --
 12 COMMISSIONER ULSH: Yes, it was before
 13 the 2020 election.
 14 SENATOR HUGHES: Yeah, yeah.
 15 COMMISSIONER ULSH: And I have yet to
 16 get that phone call back.
 17 SENATOR HUGHES: Okay. All right.
 18 Well, we had a big election since then that --
 19 COMMISSIONER ULSH: Well, I mean, I'm
 20 glad to hear from her. I -- I was glad she was
 21 there.
 22 SENATOR HUGHES: Well, we got a new
 23 Secretary now, so, you know.
 24 So -- so record turnout, lots of staff
 25 time put in to make sure everything worked right.

Page 66

1 And in the end -- and it wasn't even -- it wasn't
 2 even close in Fulton County, as I understand it,
 3 all right. It was about a big, big difference
 4 between Trump and Biden in Fulton County. Would
 5 that be correct?
 6 COMMISSIONER ULSH: That's what I read.
 7 SENATOR HUGHES: Yeah, that's what you
 8 read, okay.
 9 And so -- and so, no -- in -- in -- in
 10 your efforts, your analysis, Wake TSI, whatever,
 11 no -- no fraudulent voting.
 12 COMMISSIONER ULSH: Our report says
 13 there was no findings.
 14 SENATOR HUGHES: No findings. I think
 15 it's important for the record, all right, and
 16 it's -- I think it's a testimony to yourself, to
 17 fellow commissioners, but especially to the -- the
 18 staff, you know, the folks who, you know, grind it
 19 out every day in that process, that their hard work
 20 has been verified, certified, if you will, that
 21 there was no issues or no problems that they did a
 22 damn good job on that -- on that election in Fulton
 23 County to make sure everything ran according to
 24 Hoyle, even with a lot of changes happening moving
 25 up to election day.

Page 67

1 So, Mr. Chairman, I have no further
 2 questions. But I do want to commend you, Chairman,
 3 and -- and your folks who -- who had to grind it
 4 out in a very turbulent environment. So thank you
 5 very much.
 6 COMMISSIONER ULSH: Thank you.
 7 SENATOR HUGHES: Appreciate you.
 8 SENATOR DUSH: Thank you, Senator
 9 Hughes.
 10 For the second time, Senator
 11 Santarsiero.
 12 SENATOR SANTARSIERO: Thank you,
 13 Mr. Chairman, Commissioner Ulsch.
 14 I just want to go back to that issue of
 15 the Wake TSI report and the payment for it.
 16 So, sitting here today, do you have an
 17 understanding as to who paid for that report?
 18 COMMISSIONER ULSH: It's -- it's in our
 19 report. I -- I believe it was -- I can't even
 20 remember what it was. There's been so much stuff
 21 through my head here. I can't even remember
 22 honestly.
 23 SENATOR SANTARSIERO: Okay. So you
 24 mentioned before that the report is -- is posted
 25 online. My understanding is there was a draft of

Page 68

1 the report issued back in February. Do you recall
 2 that?
 3 COMMISSIONER ULSH: Repeat that. Sorry
 4 about that.
 5 SENATOR SANTARSIERO: Excuse me?
 6 COMMISSIONER ULSH: Repeat that.
 7 Sorry.
 8 SENATOR SANTARSIERO: Sure.
 9 My understanding is that there was an
 10 initial draft of the Wake TSI report issued back in
 11 February.
 12 COMMISSIONER ULSH: There was an
 13 initial draft that actually was confidential.
 14 SENATOR SANTARSIERO: Okay.
 15 COMMISSIONER ULSH: It wasn't a report,
 16 it was a draft for proofreading.
 17 SENATOR SANTARSIERO: Okay.
 18 COMMISSIONER ULSH: I don't know how
 19 you got that. That never should have been out.
 20 SENATOR SANTARSIERO: Well, its -- its
 21 reference to it and quotes from it are -- are
 22 reported in the press. I think the Washington Post
 23 did --
 24 COMMISSIONER ULSH: I've -- I've been
 25 trying to find out how that got out because I would

Page 69

1 like to know that.

2 SENATOR SANTARSIERO: Okay. Well, be

3 that as it -- as it may, the -- the initial draft

4 report said in two places that the person who had

5 requested the audit in Fulton was Pennsylvania

6 State Senator Mariscano. Now, as an Italian

7 American, I know our names are often butchered. I

8 assume that was a reference to Senator Mastriano.

9 Does that comport with your memory, did

10 Senator Mastriano was he involved in asking for

11 this -- this audit?

12 COMMISSIONER ULSH: We still talking

13 about the draft report?

14 SENATOR SANTARSIERO: Correct.

15 COMMISSIONER ULSH: I don't want to --

16 don't want to make any comment about the draft

17 report because my e-mail was hacked. I would like

18 to know how you got that.

19 SENATOR SANTARSIERO: Well, I'm -- I'm

20 reading this from an article in the Washington

21 Post. That's how I got it.

22 COMMISSIONER ULSH: Okay.

23 SENATOR SANTARSIERO: And I can tell

24 you the date of that article is June 6, 2021.

25 COMMISSIONER ULSH: Okay. Thank you.

Page 70

1 SENATOR SANTARSIERO: Okay. But,

2 again, my -- my question stands --

3 COMMISSIONER ULSH: I -- I -- I know

4 Doug Mastriano afterwards was involved with the

5 conversations. But before the -- before the -- the

6 analysis, before the investigation happened, I had

7 no conversation with Doug Mastriano about any of

8 it. I didn't know he was even involved with it. I

9 had no conversation with Doug Mastriano.

10 SENATOR SANTARSIERO: Oh, so -- Okay.

11 So just so I understand, when did you understand

12 that he was involved? When did you first

13 understand that?

14 COMMISSIONER ULSH: After the

15 investigation was done and the report come out.

16 SENATOR SANTARSIERO: Okay.

17 SENATOR DUSH: Senator, if we could

18 stick to the -- what was actually sunshined in this

19 hearing, which is the actions that led up to and

20 during the last-minute guidance from the Secretary.

21 That's what we were sunshined for and I would

22 appreciate if we would stick to that.

23 SENATOR SANTARSIERO: Okay. Well,

24 Mr. Chairman, I -- I -- I appreciate that. I -- my

25 understanding is, though, that Commissioner Ulsh

Page 71

1 has been asked here today as a representative of

2 Fulton County. This hearing is about Fulton County

3 and the election that happened last November. And

4 that seems to me to be inexplicably linked to the

5 subsequent event of the request to have this

6 outside company, Wake TSI, come in and perform an

7 alleged investigation. So I would think that that

8 is relevant to our discussion here today.

9 Are you saying that I should not be

10 asking any questions about Wake TSI?

11 SENATOR DUSH: There -- the Wake TSI

12 investigation is -- as it relates to the specific

13 actions that we sunshined, which are the -- the

14 guidances which led up to this election, as well as

15 during the election, that is what has been

16 sunshined and I'd appreciate it if you stick to

17 the -- the purpose that is stated in the sunshine

18 law for this hearing.

19 SENATOR SANTARSIERO: Okay. But -- and

20 I -- and I -- I do want to respect that,

21 Mr. Chairman, so I'm just trying to understand what

22 the parameters are.

23 If the Wake TSI investigation dealt

24 with that topic, then I would assume that there

25 would be no objection to my asking questions about

Page 72

1 the Wake TSI investigation.

2 SENATOR DUSH: As it relates to how

3 Wake TSI described what happened during that --

4 during those guidances, I don't have any problem

5 with. But, as I said, I do want to stick with what

6 the law requires us to sunshine and if you would

7 stick to that subject matter, I'd appreciate it.

8 Thank you.

9 SENATOR SANTARSIERO: Okay. Well --

10 okay. Let me -- let me -- let me try it this way

11 then.

12 I want to try to understand the

13 distinctions that were made or the differences

14 between the draft report that came out in February

15 and then the one that was ultimately made public in

16 May. And is that -- that's when it was posted by

17 the county, correct, in May, the final report from

18 Wake TSI?

19 SENATOR DUSH: Yes.

20 SENATOR SANTARSIERO: Okay. Again, my

21 understanding is that in the draft report, the --

22 the report concluded, quote, That no anomalous or

23 unusual incidents reported during the election

24 process and that the election was, quote, Well run,

25 followed all commonwealth and federal guidelines

Page 73

1 and was conducted in a diligent and effective
 2 manner, end quote.
 3 And I want to share my colleague
 4 Senator Hughes in congratulating you on that and --
 5 and that conclusion.
 6 But then the final version of the
 7 report that was posted in May went beyond that in
 8 that same notation and it -- it included a number
 9 of issues and those included three related to
 10 Dominion voting systems, and I wondered whether you
 11 could tell us why that was changed, why that was
 12 added into the report that was not in the original
 13 draft.
 14 COMMISSIONER ULSH: Okay. Senator,
 15 first of all, I didn't write the report, so I had
 16 no -- I -- I didn't write it, didn't tell them what
 17 to put in it. The report's what they did in the
 18 investigation and they filed it.
 19 As far as the draft report, I won't
 20 make any comment on that because that's not public
 21 information.
 22 SENATOR SANTARSIERO: Okay. But you
 23 did receive that draft report.
 24 COMMISSIONER ULSH: I -- I'm just
 25 saying that's not public information.

Page 74

1 SENATOR SANTARSIERO: Well --
 2 COMMISSIONER ULSH: That's not. My --
 3 my e-mail was hacked.
 4 SENATOR SANTARSIERO: Your e-mail -- so
 5 you're saying that your e-mail that had the draft
 6 report in it was hacked.
 7 COMMISSIONER ULSH: I'm just saying
 8 that shouldn't have been out because that was
 9 confidential. It wasn't a final report.
 10 SENATOR SANTARSIERO: Let me --
 11 SENATOR DUSH: Senator --
 12 SENATOR SANTARSIERO: Yes.
 13 SENATOR DUSH: We're going far afield
 14 again from the actions of the directives that were
 15 implemented. I'm going to move on. I've got a
 16 list of other things that we have to do for the --
 17 for this.
 18 Are there any other members who have
 19 any questions before I move on to the Secretary?
 20 Yes, Chairman Williams.
 21 SENATOR WILLIAMS: Thank you,
 22 Mr. Chairman.
 23 We looked at the -- the website and we
 24 could not find any related information with regard
 25 to cost. Where else can we find it and who paid?

Page 75

1 COMMISSIONER ULSH: You said you looked
 2 at our website and there's nothing on it?
 3 SENATOR WILLIAMS: The website that you
 4 referred us to earlier in your testimony, which you
 5 said --
 6 COMMISSIONER ULSH: County of Fulton.
 7 SENATOR WILLIAMS: There's no --
 8 there's no --
 9 COMMISSIONER ULSH: There's no report
 10 on that?
 11 SENATOR WILLIAMS: No.
 12 COMMISSIONER ULSH: I -- I can assure
 13 you there is.
 14 SENATOR WILLIAMS: The report's there,
 15 but the cost is not.
 16 COMMISSIONER ULSH: The cost, I don't
 17 know. I honestly can't tell you, but it tells you
 18 in there who paid for it, is what I said. I don't
 19 know nothing about cost. I have no idea what it
 20 cost. I just said it says in there who paid for
 21 it.
 22 SENATOR WILLIAMS: Right. So where
 23 will we find in your public records --
 24 COMMISSIONER ULSH: I --
 25 SENATOR WILLIAMS: -- who paid for it?

Page 76

1 COMMISSIONER ULSH: I don't have that
 2 in my public records because it didn't come out of
 3 our budget. I don't know -- I don't know what it
 4 cost. I honestly can't tell you that. But it does
 5 report in there who paid for it.
 6 SENATOR WILLIAMS: So we're saying that
 7 there's no record in Fulton County --
 8 COMMISSIONER ULSH: We keep records on
 9 our budget what we --
 10 SENATOR WILLIAMS: Okay.
 11 COMMISSIONER ULSH: -- out of our
 12 budget.
 13 SENATOR WILLIAMS: I understand that,
 14 but it's a related item. It's a related expense
 15 and you said you don't have it, fine.
 16 But you're also suggesting that
 17 there's -- that you don't have knowledge of where
 18 to find who paid for this?
 19 COMMISSIONER ULSH: It --
 20 SENATOR WILLIAMS: You do -- before --
 21 Let me phrase this before you answer. And I --
 22 because you may not want to answer. Because, you
 23 know, that kind of answer was you don't know and we
 24 can't find it is a significant issue in the public
 25 domain. If the public -- Let me finish.

Page 77

1 If we as public officials cannot
 2 identify where that kind of cost was, who paid for
 3 it, there is implicit in that there's potential
 4 conflict of interest, which is part of why we're
 5 here today.
 6 So your answer's troubling because
 7 you're not giving us any guideline of where to go
 8 to find out who paid it. That to me is kind of
 9 shocking to suggest that the person who heads this
 10 area doesn't have any knowledge of where...
 11 If you don't know who paid for it, I'll
 12 accept that. It's hard for me to accept that you
 13 don't know where to go to find it. That's what I'm
 14 confused about.
 15 COMMISSIONER ULSH: You're saying you
 16 want to know who paid for it?
 17 SENATOR WILLIAMS: Yes.
 18 COMMISSIONER ULSH: And I told you it's
 19 on our report on our website. It says that in
 20 there who paid for it.
 21 SENATOR WILLIAMS: Did we just not look
 22 for that? We've had three people look for it and
 23 they've not found it.
 24 COMMISSIONER ULSH: Could you give me a
 25 minute?

Page 78

1 SENATOR WILLIAMS: Absolutely.
 2 COMMISSIONER ULSH: We don't have the
 3 report. There anything else you could talk about
 4 while I'm looking for this or -- this thing is
 5 80-some pages long?
 6 SENATOR WILLIAMS: It's how many pages?
 7 Is there anybody else who could get that for you
 8 that you could ask them to forward to us?
 9 COMMISSIONER ULSH: I don't mind. I
 10 don't rely on people to get things done.
 11 SENATOR DUSH: Commissioner, did you
 12 say it's 80-some pages long?
 13 THE WITNESS: It's like 80-some pages
 14 long. 70-some pages.
 15 SENATOR DUSH: All right. We're not
 16 going to -- we're not going to wait for that --
 17 COMMISSIONER ULSH: I don't know -- I
 18 don't know where it's at in it, though. I couldn't
 19 tell you.
 20 SENATOR DUSH: If you can get the
 21 information to us --
 22 COMMISSIONER ULSH: I can do that.
 23 SENATOR DUSH: We will forward that.
 24 We have --
 25 SENATOR WILLIAMS: I have one last

Page 79

1 question.
 2 SENATOR DUSH: Thank you, Commissioner.
 3 Go ahead.
 4 SENATOR WILLIAMS: The comment about
 5 the Secretary calling you, does that suggest that
 6 that affected any operation, other than time and
 7 guidance? Did it affect your directives to people
 8 or did it affect any portion of the election or --
 9 or any outcome?
 10 COMMISSIONER ULSH: If anything I did,
 11 I talked to my office personnel, wanted to know if
 12 things was going okay, if there was a problem
 13 because it made me feel like there was a flag going
 14 up in Harrisburg, that we was doing something
 15 wrong.
 16 SENATOR WILLIAMS: Okay. But that's
 17 your personal interpretation.
 18 COMMISSIONER ULSH: Yeah. No as far
 19 as -- as far as what everybody was doing, everybody
 20 did their job.
 21 SENATOR WILLIAMS: And she did not
 22 say -- you said you were concerned by her call,
 23 that a yellow flag went up because of her call. I
 24 guess because she didn't call you two years ago or
 25 call you back, I could understand that. What I'm

Page 80

1 saying to you, though, there's nothing she actually
 2 said that suggested or implied or inferred that
 3 there was a problem in Fulton County from her
 4 department's perspective?
 5 COMMISSIONER ULSH: And I didn't say
 6 yellow flag, I said red flag.
 7 SENATOR WILLIAMS: Okay. Let's say --
 8 let's say fire flag, whatever.
 9 COMMISSIONER ULSH: Okay. But -- but
 10 I'm just letting you know that whenever she called
 11 me, this was the first time I've ever got a call
 12 from the Department of State.
 13 SENATOR WILLIAMS: I got it, but you're
 14 not answering.
 15 COMMISSIONER ULSH: So, the first thing
 16 about they're seeing something on the computer that
 17 we're doing that's making a question.
 18 SENATOR WILLIAMS: That's your
 19 interpretation.
 20 COMMISSIONER ULSH: Because -- that's
 21 my interpretation. And all I did was called my
 22 people and say, what's going on? Are you'uns okay?
 23 And everything was fine.
 24 SENATOR WILLIAMS: I noticed you have a
 25 ring on your finger. Are you a married guy?

Page 81

1 COMMISSIONER ULSH: Say again.
 2 SENATOR WILLIAMS: I noticed you have a
 3 ring on your finger. Are you a married guy?
 4 COMMISSIONER ULSH: Yeah.
 5 SENATOR WILLIAMS: Okay.
 6 COMMISSIONER ULSH: I don't know what
 7 it has to do with this.
 8 SENATOR WILLIAMS: I'm going to tell
 9 you what it has to do with it. I'll tell you
 10 directly what it has to do with it. I'm a married
 11 guy, too. You said your interpretation. You're a
 12 married guy, I'm a married guy. When my wife says
 13 something, and I start interpreting, I get in
 14 trouble. Okay?
 15 So I'm suggesting to you that you're
 16 testifying here today for a reason. Your
 17 interpretation -- and I asked you a very specific
 18 question. I said did she say anything
 19 specifically, you didn't give me an answer. You
 20 went to your interpretation. I'm asking you for
 21 her words, out of her mouth, without your
 22 interpretation, without you editing it, without you
 23 providing other colorization to it. I'm asking
 24 you: Did she say anything in her comments to you
 25 that suggested or said directly, there's a problem

Page 82

1 in Fulton County?
 2 COMMISSIONER ULSH: I -- I told what
 3 you she asked me. I didn't say anything else other
 4 than that.
 5 SENATOR WILLIAMS: So the answer to my
 6 question is?
 7 COMMISSIONER ULSH: I -- I told you the
 8 questions that she asked me and I took that for
 9 what it was. She just asked me the questions and I
 10 answered her.
 11 SENATOR WILLIAMS: So there's nothing
 12 she said --
 13 COMMISSIONER ULSH: I never -- I never
 14 said she made me worried. I just asked my people
 15 if everything was fine.
 16 SENATOR WILLIAMS: All right. Fine.
 17 Thank you.
 18 SENATOR DUSH: All right. Chairman
 19 Williams -- Well, no, all right.
 20 You have closing remarks? I'm going to
 21 be doing my closing remarks and I'm going to be
 22 listing a few questions that we would have been
 23 asking the Department of State should they be
 24 there.
 25 Please, go ahead.

Page 83

1 SENATOR WILLIAMS: Well, let me --
 2 apologies, Mr. --
 3 One, I would hope that from this brief
 4 exchange that those who are watching across the
 5 Commonwealth of Pennsylvania would understand that
 6 those of us who are on the Democratic side of the
 7 aisle are not in opposition to any investigation,
 8 any review, or, in fact, any audit that would be
 9 required by facts, evidence, information, that
 10 would suggest that something was done improperly
 11 during the course of this past election cycle
 12 that's under review today. Be very clear that
 13 members on this side of the aisle in the past have
 14 actually asked for those review and investigations
 15 of individuals, as well as organizations that are
 16 involved in areas that we have found to be of
 17 question as it relates to this past election cycle.
 18 And, in fact, we've asked that of a
 19 member of the Senate who was involved in activity
 20 that we thought undergirded this actual election
 21 cycle. And to date we've gotten no response.
 22 To the gentleman who testified, we
 23 thank him for his service. We thank him for his
 24 information and we look forward to the details that
 25 we've asked of the committee and we ask that all of

Page 84

1 us receive that information because we do believe
 2 it may shed some light on questions that have been
 3 raised and, Mr. Chairman, we thank you for
 4 organizing the process. Thank you.
 5 SENATOR HUGHES: Mr. Chairman.
 6 SENATOR DUSH: Senator Hughes.
 7 SENATOR HUGHES: Yeah. If -- if I may,
 8 I'm -- I'm reading from a Pennsylvania Spotlight
 9 article, dated August 11th, that refers to
 10 communication -- e-mail communication from Fulton
 11 County commissioner -- Fulton County commissioners.
 12 It says -- and I can share this with the committee
 13 if you would like, Mr. Chairman.
 14 SENATOR DUSH: You may.
 15 SENATOR HUGHES: Commissioner Ulsh
 16 e-mailed Commissioner Bunch, Senator Ward and
 17 Representative Topper from his private e-mail
 18 account on November 9th stating, quote, The people
 19 are asking who all is in this fight with Senator
 20 Mastriano, end quote. He continued --
 21 SENATOR DUSH: Senator Hughes, this --
 22 again, we sunshined this for a specific reason.
 23 SENATOR HUGHES: Well, this relates to
 24 the -- this relates to the validity of -- of -- of
 25 the election and validity of everything that

Page 85

1 occurred leading up to it, Mr. Chairman.
 2 If you -- if you read the rest of
 3 what's been reported here as a quote, "It couldn't
 4 hurt the Trump campaign if our state
 5 representatives all got involved. If we don't stop
 6 this election problems, next will be worse. If
 7 there were 109 House and 27 Senate with Senator
 8 Mastriano, it would all -- it would be a big help.
 9 The people need this. Respect their vote."
 10 SENATOR DUSH: Okay. Senator Hughes,
 11 I've listened --
 12 SENATOR HUGHES: I'm -- I'm reading
 13 from -- from August 11th --
 14 SENATOR DUSH: Senator Hughes.
 15 SENATOR HUGHES: -- article written
 16 in --
 17 SENATOR DUSH: Senator Hughes, you're
 18 out of order. This was specifically sunshined --
 19 SENATOR HUGHES: I'm not out of order.
 20 I'm very much in order, sir. Okay?
 21 SENATOR DUSH: This was specific
 22 sunshined for the last-minute guidance. We're on a
 23 very divergent track right now. And --
 24 SENATOR HUGHES: All of this relates,
 25 Mr. Chairman.

Page 86

1 SENATOR DUSH: This -- again --
 2 SENATOR HUGHES: All of this relates.
 3 SENATOR DUSH: It's not --
 4 SENATOR HUGHES: But I guess in the
 5 end, since the report indicated there was no
 6 fraudulent voting that occurred in Fulton County, I
 7 guess it's not an issue, which is really what we're
 8 trying to get at. But we need to be real careful
 9 how we conduct this proceeding if there's
 10 communications talking that kind of lean to a
 11 slight or a slant one per -- one candidate versus
 12 the other. And how this process works.
 13 SENATOR DUSH: Senator Hughes, we have
 14 invited the Secretary of State to be here to answer
 15 to these questions and others. The Department of
 16 State has refused to now participate in this and
 17 this line of questioning, as relates to
 18 Commissioner Ulsh, is over. We're going to move on
 19 to the next session.
 20 Commissioner, and I do appreciate your
 21 time and your attendance here, as well as your
 22 testimony. And on behalf I'm sure of members on
 23 both sides of the aisle here, the -- our heartfelt
 24 thanks go out to the precincts, the people who
 25 worked the precincts and who worked in the county

Page 87

1 voting election offices. I've seen it myself.
 2 It's -- the training that goes into it ahead of
 3 time is pretty arduous. Some of the changes that
 4 came down last minute were very stressful, I know,
 5 to you and other counties that I've talked with.
 6 And I do appreciate, again, all of those people
 7 because without all of you, the wheels come off the
 8 bus. None of us would be sitting up here. There
 9 wouldn't be anybody in a sworn elective position.
 10 So my thanks to you very much and to
 11 your staff, as well as those throughout the
 12 Commonwealth in all 67 counties. Thank you.
 13 COMMISSIONER ULSH: Thank you,
 14 Chairman. Thanks, all you senators.
 15 SENATOR DUSH: And before we close,
 16 since the Department of State declined to attend
 17 today's hearing to testify, I would like to read
 18 some of the questions for the Department into the
 19 record.
 20 And we received a declination notice
 21 last week, and then we received another one half an
 22 hour before the hearing. And again they had stated
 23 that the purpose -- the reason for their not
 24 attending was that they had pending litigation --
 25 litigation and I will reiterate that government

Page 88

1 agencies do not have the right against
 2 self-incrimination and that the actions that were
 3 taken -- if actions were taken, then we have the
 4 right to proceed as a legislature because we have
 5 an upcoming election here in November. We have
 6 another one -- another primary coming -- coming in
 7 the spring.
 8 And just as we did several times over
 9 the last year and a half with COVID-19, we've shown
 10 that we can respond with alacrity. That we can get
 11 out there and get things done and pass bills and
 12 get them done with speed and with a purpose. So
 13 there is no time to sit on the sidelines with this.
 14 And, for the record, some of the
 15 questions: One, would you please define the
 16 guidance -- define guidance for the committee and
 17 what guidance is legally binding.
 18 Under what statutory authority is the
 19 guidance binding?
 20 Under what statutory authority is it
 21 issued?
 22 Is official guidance the only way that
 23 counties are provided with feedback, instructions,
 24 or recommendations in administering elections or
 25 interpreting the code?

Page 89

1 What are other ways -- what other ways
 2 are counties provided with explanations from the
 3 department regarding how to administer the
 4 election?
 5 Who typically sends those e-mail
 6 questions to the county?
 7 Before a guidance is issued or an
 8 informal e-mail is sent, is there an internal
 9 process that the guidance or e-mail goes through in
 10 terms of review before it's issued to the counties?
 11 Who's typically involved in that
 12 process?
 13 Is the process the same regardless of
 14 whether it's a guidance or an e-mail?
 15 Are guidances in e-mails to be given
 16 legal standing?
 17 Under what statutory authority do they
 18 have any legal standing?
 19 How often on average are e-mails
 20 typically sent to the counties providing feedback,
 21 recommendations, and instructions on administering
 22 elections?
 23 In the 2020 general election, were
 24 there more or less e-mails than usual sent to the
 25 counties? If more, why?

Page 90

1 What about during the '21 primary, the
 2 2021 primary, were there more or less e-mails than
 3 average that were sent to the counties? Again, why
 4 do you think that might be?
 5 I understand the Deputy Secretary
 6 Jonathan Marks sent an e-mail giving guidance
 7 regarding ballots received after 8 p.m. of election
 8 night and before 5 p.m. Friday, November 5th. What
 9 was the major need to send this guidance so close
 10 to the election?
 11 Who decided to send the guidance so
 12 close to the election?
 13 What other kinds of issues were
 14 addressed in e-mails sent by the Department leading
 15 up to the 2020 general election?
 16 How many examples of e-mails sent to --
 17 sent leading up to 20- -- we would like to have
 18 examples of the e-mails sent leading up to the 2020
 19 election.
 20 Could you please provide copies of all
 21 the e-mails that were transmitted to county
 22 election officials regard- -- regarding guidance
 23 from August 1st until November 30th?
 24 Is it true that the Department of State
 25 issued guidance that the counties should count

Page 91

1 naked ballots, ballots that have been placed
 2 directly in a return envelope and are missing the
 3 secrecy envelope, but the -- the Pennsylvania
 4 Supreme Court ruled against that guidance?
 5 When Secretary Boockvar testified
 6 before Representative Grove's committee in the
 7 House, she stated that guidance was issued because
 8 counties did not know what to do about the
 9 signatures. The signature verification has been
 10 part of our election security for a very long time.
 11 What was it about the November 2020 election that
 12 suddenly made this a significant issue?
 13 Isn't signature verification part of
 14 the in-person voting process?
 15 How was signature verification supposed
 16 to occur for in-person voting?
 17 Prior to the election, the Pennsylvania
 18 courts heard a suit over whether voters could or
 19 should be given the ability to correct defects in
 20 their mail-in ballots or cure them.
 21 Are you aware that Secretary Boockvar,
 22 in the PA Supreme Court case on curing ballots in
 23 November 2020, stated that "Logistical policy
 24 decisions like the ones implicated herein are more
 25 properly addressed by the legislature and not the

Page 92

1 courts"?)
 2 Is it evident through Secretary
 3 Boockvar's statement that it was not the purview of
 4 the Executive Branch to construct electoral -- or
 5 election logistical policy? Therefore, would you
 6 agree with Secretary Boockvar and the PA Department
 7 of State that the Pennsylvania General Assembly
 8 legislation -- the Pennsylvania General Assembly
 9 legislate election logistical policy?
 10 Are you aware that in the same court
 11 case mentioned previously that the Pennsylvania
 12 Supreme Court decision specifically stated that
 13 these logistical issues should be decided through
 14 legislation stating that in light of the open
 15 policy questions, attendant to that decision
 16 relating to curing ballots, including what the
 17 precise contours of the proced- -- procedure would
 18 be, how the con- -- concomitant burdens would be
 19 addressed and how the procedure would impact the
 20 confidentiality and counting of ballots, all of
 21 which are best left to the legislative branch of
 22 the Pennsylvania government?
 23 Is it true that Secretary Boockvar,
 24 when she petitioned the PA Supreme Court concerning
 25 signature verification in October of 2020, stated

Page 93

1 that she could -- was concerned that counties might
 2 improvise ad hoc procedures which would vary from
 3 county to county creating a significant risk of
 4 error and uncertainty in the review of ballots.
 5 Despite the Secretary and the Court
 6 stating that the matter of curing ballots should
 7 proceed through the legislative process, did the
 8 Department issue guidance or recommendations on
 9 curing ballots?
 10 To your knowledge, were the -- were
 11 there counties who permitted voters to, in any way,
 12 cure their ballots?
 13 What's your understanding of how
 14 counties permitted such cure?
 15 How many counties permitted these cure
 16 processes?
 17 Did they all use the same processes, to
 18 your understanding?
 19 We have heard that both the executive
 20 and judicial branches specifically stated that
 21 creating the logistical process of curing ballots
 22 is the purview of the legislature. However, prior
 23 to writing such logistical election policy, would
 24 you agree that it would be incumbent on the General
 25 Assembly -- Assembly to thoroughly study the matter

Page 94

1 of curing ballots?
 2 Is it true that Secretary Boockvar,
 3 when she petitioned the PA Supreme Court concerning
 4 signature verification in October 2020, stated that
 5 she was concerned that there are no standards or
 6 guidelines contained within the code governing how
 7 an election official should perform such a
 8 comparison?
 9 Would it follow, then, that if the
 10 legislature desired to legislate signature
 11 verification back into the election code, the
 12 General Assembly would need to provide standards
 13 and guidelines for counties to follow specifically
 14 and to uniformly conduct such signature
 15 verification?
 16 Would it also follow that the General
 17 Assembly, before legislating such standards and
 18 guidelines, study the matter in depth to ensure the
 19 best signature verification standards and
 20 procedures are contained in our election code?
 21 I will add that the auditor general --
 22 the Democratic auditor general -- in 2019 issued a
 23 scathing examination of what our next hearing is
 24 going to cover. The SURE system. And I would
 25 request that the Secretary be prepared and the

Page 95

1 Department be prepared to testify on that audit
 2 report and to have answers to the findings that
 3 were in that report.
 4 I now recess this Senate
 5 Intergovernmental --
 6 SENATOR HUGHES: Mr. Chairman --
 7 Mr. Chairman --
 8 SENATOR DUSH: -- Operations Committee
 9 until the --
 10 SENATOR HUGHES: Mr. Chairman, before
 11 you recess --
 12 SENATOR DUSH: -- call of the chair.
 13 SENATOR HUGHES: -- I wanted to do
 14 something for the record. Before you recess the
 15 meeting. It's a re- -- it's a request --
 16 SENATOR DUSH: We're at ease. We're at
 17 ease.
 18 SENATOR HUGHES: Thank you.
 19 SENATOR DUSH: The letter is submitted
 20 for the record.
 21 SENATOR HUGHES: Mr. Chairman, I now --
 22 SENATOR DUSH: I now recess this Senate
 23 Intergovernmental Operations Committee. The letter
 24 will be posted on the Senate's web page.
 25

Page 96

1 CERTIFICATE
 2
 3 I, Sommer E. Greene, Certified Court
 4 Reporter for the State of Arizona, certify:
 5 That the foregoing proceedings were
 6 transcribed by me, that the audio transcription was
 7 taken down by me in shorthand and thereafter
 8 reduced to print by computer-aided transcription
 9 under my direction; that the foregoing pages are a
 10 full, true, and accurate transcript of all
 11 proceedings, all to the best of my skill and
 12 ability.
 13 I FURTHER CERTIFY that I am in no way
 14 related to nor employed by any of the parties
 15 hereto, nor am I in any way interested in the
 16 outcome hereof.
 17 DATED this 16th day of September, 2021.
 18
 19
 20 _____
 21 Sommer E. Greene
 22 Certified Court Reporter No. 50622
 23 For the State of Arizona
 24
 25

EXHIBIT 2

1 PENNSYLVANIA SENATE INTERGOVERNMENTAL
2 OPERATIONS COMMITTEE

3 + + + + +

4 VOTING MEETING -
5 CONSIDERATION OF A MOTION TO AUTHORIZE
6 THE ISSUANCE OF SUBPOENAS

7 + + + + +

8 Wednesday, September 15, 2021

9 + + + + +

10 A public hearing of the Pennsylvania Senate
11 Intergovernmental Operations Committee convened,
12 pursuant to notice, at 9:30 EDT; Senator Cris Dush,
13 Chairman, presiding.

14 SENATE COMMITTEE MEETING MEMBERS PRESENT:

15 OFFICERS:

16 CRIS DUSH, Chairperson

17 ANTHONY H. WILLIAMS, Minority Chair

18 MAJORITY:

19 SCOTT E. HUTCHINSON, Vice Chair

20 JAKE CORMAN, Ex-Officio

21 DAVID G. ARGALL

22 CHRIS GEBHARD

23 DOUG MASTRIANO

24 JUDY WARD

25 MINORITY:

JAY COSTA

VINCENT J. HUGHES

STEVEN J. SANTARSIERO

STAFF:

NATHANIEL R. SANKO, Legislative
Assistant/Clerk

The transcript constitutes the minutes from
the Senate Intergovernmental Operations Committee held
on September 15, 2021.

Page 2

T-A-B-L-E O-F C-O-N-T-E-N-T-S

PAGE

1		
2		
3		
4	Meeting called to order	3
5	Motion by Chairman Dush for consideration to	
6	authorize the issuance of subpoenas	4
7	Committee discussion re motion	8
8		
9	Ruling	59
10	Adjournment	59
11	Reporter's Certificate	60
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

Page 4

1 SENATOR SANTARSIERO: Here.

2 THE CLERK: Judy Ward?

3 SENATOR WARD: Here.

4 THE CLERK: Anthony Williams?

5 SENATOR WILLIAMS: Present.

6 THE CLERK: Dush?

7 SENATOR DUSH: Present.

8 THE CLERK: Corman?

9 SENATOR CORMAN: Here.

10 SENATOR DUSH: A quorum having been

11 established, good morning everyone. It has been made

12 plain that the Department of State and Acting Secretary

13 Degraffenreid are not willing to participate in this

14 body's investigation into the 2020 general election and

15 2021 primary election and how the election code is

16 working after the sweeping changes of Act 77 of 2020.

17 In order to determine the necessity and

18 scope, in terms of legislative action, it is essential

19 that the Legislature have access to the relevant

20 information in regarding -- in regard to the

21 aforementioned elections.

22 As such, pursuant to the powers granted to

23 the Senate Committees via Senate Rule 14D and Article

24 II, Section 11 of the Pennsylvania Constitution as well

25 as Pennsylvania Statue 46 subsection 61, I make the

Page 3

P-R-O-C-E-E-D-I-N-G-S

1 (9:30 a.m.)

2 SENATOR DUSH: We will now call this meeting

3 of the Senate Intergovernmental Operations Committee to

4 order.

5

6 In order to establish a quorum, Nate, please

7 call the role.

8 THE CLERK: Argall?

9 SENATOR ARGALL: Here.

10 THE CLERK: Costa?

11 SENATOR COSTA: Here.

12 THE CLERK: Gebhard?

13 SENATOR GEBHARD: Here.

14 THE CLERK: Hughes?

15 UNIDENTIFIED: Proxy.

16 SENATOR HUGHES: Here.

17 UNIDENTIFIED: He was here. I don't know

18 where he went.

19 UNIDENTIFIED: He went to the restroom.

20 UNIDENTIFIED: Restroom. Okay.

21 THE CLERK: Hutchinson?

22 SENATOR HUTCHINSON: Here.

23 THE CLERK: Mastriano?

24 SENATOR MASTRIANO: Proxy here.

25 THE CLERK: Santarsiero?

Page 5

1 motion to authorize and direct the senate secretary to

2 prepare a subpoena directed to the Acting Secretary of

3 State, Veronica Degraffenreid, requesting the following

4 information:

5 (1) any and all communications; emails,

6 letters, notes of calls and/or meetings or otherwise

7 from the Department of State to any county election

8 director or member of a county election board between

9 May 1st, 2020 and May 31st, 2021;

10 (2) a copy of each and every version of all

11 directives, guidances, policies and procedures in

12 effect at any time between August 1st, 2020 and June

13 30th, 2021 relating to elections, election systems,

14 mail-in ballot applications, ballots, voting,

15 compliance with state or federal election laws, polling

16 places and/or poll watchers;

17 (3) All training materials used to train

18 county election workers, poll workers, poll watchers,

19 judges of elections, inspectors, clerks and all persons

20 who staffed voting offices between August 1st, 2020 and

21 May 31st, 2021;

22 (4) a complete list containing the name, date

23 of birth, driver's license number, last four digits of

24 Social Security number, address and date of last voting

25 activity of all registered voters within the

Page 6

1 Commonwealth of Pennsylvania as of May 1st, 2021 by
 2 county;
 3 (5) A complete list containing the name, date
 4 of birth, driver's license number, last four digits of
 5 Social Security number, address and date of last voting
 6 activity of all registered voters within the
 7 Commonwealth of Pennsylvania as of November 1st, 2020
 8 by county;
 9 (6) a complete list containing the name, date
 10 of birth, driver's license number, last four digits of
 11 Social Security number and address of all individuals
 12 who voted in person in the November 2020 General
 13 election by county;
 14 (7) a complete list containing the name, date
 15 of birth, driver's license number, last four digits of
 16 Social Security number and addresses of all individuals
 17 who voted by mail-in ballot in the November 2020
 18 General election by county;
 19 (8) a complete list containing the name, date
 20 of birth, driver's license number, last four digits of
 21 Social Security number and address of all individuals
 22 who voted by absentee ballot in the November 2020
 23 General election by county;
 24 (9) a complete list containing the name, date
 25 of birth, driver's license number, last four digits of

Page 7

1 Social Security number and address of all individuals
 2 who voted by provisional ballot in the November 2020
 3 General election by county;
 4 (10) a complete list containing the name,
 5 date of birth, driver's license number, last four
 6 digits of Social Security number and address of all
 7 individuals who voted in person in the May 2021 primary
 8 election by county;
 9 (11) a complete list containing the name,
 10 date of birth, driver's license number, last four
 11 digits of Social Security number and address of all
 12 individuals who voted in person in the May 2021 primary
 13 election by county;
 14 (12) a complete list containing the name,
 15 date of birth, driver's license number, last four
 16 digits of Social Security number and address of all
 17 individuals who voted by absentee ballot in the May
 18 2021 primary election by county;
 19 (13) a complete list containing the name,
 20 date of birth, driver's license number, last four
 21 digits of Social Security number and address of all
 22 individuals who voted by provisional ballot in the May
 23 2021 primary election by county;
 24 (14) a complete list of all changes to voter
 25 records made between May 31st, 2020 and May 31st, 2021;

Page 8

1 (15) a copy of the certified results for each
 2 and every race and or ballot question on the May 2020
 3 general and the May 2021 primary elections;
 4 (16) a copy of all reports of audits and/or
 5 reviews of the Sure System conducted by or for the
 6 Department of State between 2018 and the present,
 7 including but not limited to any audits conducted under
 8 25 Pennsylvania Consolidated Statutes 1803(a);
 9 (17) a copy of the annual reports submitted
 10 to the Department in 2021 pursuant to Title 4,
 11 Pennsylvania Code 183.7; 4 PA Code 183.7.
 12 These subpoenas shall direct the production
 13 of requested records be made to the Office of General
 14 Counsel for the Senate Republican Caucus by no later
 15 than 4:00 p.m. on Friday, October 1st, 2021.
 16 The senate secretary shall further be
 17 authorized to, in turn, direct senate security to
 18 appropriately serve these subpoenas as required by law.
 19 Is there a second to the motion?
 20 SENATOR CORMAN: Mr. Chairman? Mr. Chairman?
 21 SENATOR DUSH: Senator Ward seconds the
 22 motion. Are there any questions or discussion
 23 regarding the motion? The Chair recognizes the
 24 minority chair, Senator Williams.
 25 SENATOR WILLIAMS: I have attempted to

Page 9

1 accommodate the process, even though I differ with the
 2 process. I came here prepared to follow what was
 3 outlined in terms of what was going to happen. There
 4 was an opening statement, which I feel and felt was
 5 important to provide with regard to perspective about
 6 what the proceedings are today.
 7 I did interrupt and ask for acknowledgement
 8 on the seconding of the motion, which was not
 9 recognized. I want to ask that I have latitude in
 10 responding to these subpoenas, in terms of the comments
 11 I may make. I'm asking on behalf of myself solely, not
 12 the other members, so that I can get as a part of the
 13 record a reaction on the side of the minority portion.
 14 SENATOR DUSH: Senator, you're recognized for
 15 the comments.
 16 SENATOR WILLIAMS: Thank you, Mr. Chairman.
 17 In January, Senator Pro Tem, Jake Corman, created and
 18 appointed, along with recommendations from Senator Jay
 19 Costa, members to the Special Commission on Election
 20 Integrity. From this bipartisan committee, there were
 21 recommendations on how to improve, protect, and support
 22 voter participation.
 23 During those proceedings, the County
 24 Commissioner's Association of Pennsylvania, an non-
 25 profit and non-partisan association, representing 67

Page 10

1 counties, provided specific insight and guidance of
 2 needed resources for counties across the Commonwealth
 3 of Pennsylvania. To date, none of those
 4 recommendations have been enacted.

5 Nonetheless, here we sit prepared to vote on
 6 subpoenas that may or may not be a violation of federal
 7 law, that may or may not be jurisdictionally
 8 appropriate based upon this committee and based upon
 9 the non-participation in our last hearing at the
 10 Department of State.

11 Regardless of the fact that the Department
 12 has before the election and since the election provided
 13 specific comment reported before committees regarding
 14 their activities. Regardless of the fact that this
 15 committee and the republicans are quite aware that they
 16 have taken the Department to court and, therefore,
 17 limit what the Department can say in public
 18 proceedings.

19 We're also here based upon the testimony of
 20 the Fulton County Commissioner, Stuart Ulsh, which,
 21 frankly, raises more questions than provided answers or
 22 insight. What was stated on the record, there was no
 23 evidence of fraud in his county nor consequence of
 24 election manipulation.

25 Further, he provided what many of us see as

Page 11

1 an alarming line of information, information that a
 2 private vendor potentially without sunshine or public
 3 knowledge, has access to their voter file information.

4 The entirety of our proceedings today,
 5 issuing subpoenas, is based upon such a non-credible
 6 foundation, going well beyond and is very troubling,
 7 and, in fact, leads us to darker days in this country,
 8 such as when hearings like these during the McCarthy
 9 era were held, where voices were silenced and liberties
 10 were denied, being bullied by the power of the
 11 government.

12 It is no exaggeration to say to protect one's
 13 right to vote, is parallel to those dark days and space
 14 in this country. This equates to a pure, unadulterated
 15 power grab, unfounded in fact, widely unpopular and
 16 aimed to suppress voters' rights targeted to stack the
 17 deck, aimed at gross misuse of taxpayers' dollars.
 18 This is an attack on our country's greatest freedom.
 19 It's an attack on our right to vote.

20 Today the republicans are taking a giant leap
 21 from fanning the flames of voter obstruction to a
 22 blowtorch on democracy. Not only are the subpoenas
 23 that you are set to authorize being carelessly rushed
 24 without evidence to warrant them, there's also no
 25 ground to stand on. This action is clearly a violation

Page 12

1 of the separation of powers. This investigation is
 2 either a untimely election contest or an election
 3 audit, probably both. The senate does not have the
 4 authority to perform either.

5 And in the substance of these subpoenas, the
 6 public should be forewarned of the overreaching,
 7 overarching nature contained in these subpoenas,
 8 specifically for the government to have access to your
 9 Social Security numbers should be scary to all of us.

10 This information that will be provided will
 11 be forwarded to a private vendor. For those who come
 12 from counties that are truly concerned about the
 13 government, its overreaching and desire your privacy,
 14 this should be seen as a betrayal of those who are here
 15 to represent you.

16 Further, the information that we now see
 17 based upon the activity going on in Arizona, and make
 18 no mistake, this is an attempt, and an Arizona type
 19 forensic audit is being investigated by the federal
 20 Department of Justice and may well be, in fact, a
 21 violation of federal law.

22 As my friend, Senator Costa and others last
 23 week and others before him have stated, we're at a
 24 crossroads. For those of us who want to preserve the
 25 constitution, it is our sworn responsibility to follow

Page 13

1 it in this commonwealth, this is a clear, clear pattern
 2 that troubles all of us.

3 Senator Corman suggested today, in a
 4 published newspaper article, that there should be an
 5 investigation. We agree. We agree with him. We
 6 believe that what has been revealed by testimony in
 7 careless newspaper reports, there seems to be potential
 8 for a legal activity conspiring to change the results
 9 of this election, information being --

10 SENATOR DUSH: Mr. Chairman, you're
 11 questioning the integrity of the integrity of the chair
 12 and going to motives. Under Rule 10(b), I've clearly
 13 laid out where the purpose of this investigation and
 14 what it's to be used for. It is not for several of the
 15 points that you've made. I've given, you know, some
 16 latitude, but at this point, you have to stop making
 17 false accusations about the intent of this
 18 investigation and of the chair. You're going to the
 19 motives of the chair, which under senate rules is not
 20 authorized. You may proceed.

21 SENATOR WILLIAMS: Thank you. For the
 22 record, I am not questioning the motives of the chair.
 23 There's nothing in my statement that suggests it's the
 24 motives of the chair. It doesn't even personalize it
 25 to the extent that the member is involved.

Page 14

1 SENATOR DUSH: Senator --
 2 SENATOR WILLIAMS: But it does --
 3 SENATOR DUSH: -- when you say that the
 4 motive of this is for some purpose other than the
 5 stated motives and the intent of this committee and
 6 this investigation, you are questioning the motive of
 7 the chair.
 8 SENATOR WILLIAMS: I'm reacting to what has
 9 been publicly documented in a newspaper article --
 10 SENATOR DUSH: Not on this chairman's
 11 directives and my statements. You're using other
 12 people's comments. You are not using the statements of
 13 this chairman. And I'm the one who determines the
 14 direction of this investigation.
 15 SENATOR WILLIAMS: This committee is
 16 sanctioned by the body as a total. No committee
 17 operates independent of the senate. It only operates
 18 from the permission of those who are in leadership. So
 19 with all due respect, there's nothing that any
 20 committee chair, including you, can certainly suggest
 21 operates independently of that process.
 22 So, therefore, with all due respect, Mr.
 23 Chairman, this is a response to a statement made by the
 24 member that sanctions the committee, that appoints the
 25 chairman of this committee, and allows for the work of

Page 15

1 this committee and directed the work of this committee
 2 and stated publicly in many and numerous newspaper
 3 reports, including today.
 4 So to suggest that the chairman is solely
 5 responsible and solely under attack, is not consistent
 6 with the facts, nor is it consistent with any pattern
 7 that has occurred within the senate prior to his
 8 arrival as a chairman or will go forward. That's the
 9 reality. That's not an exaggeration. That's a
 10 statement of the fact. So I would like to continue
 11 with regard to how the senate is proceeding, not the
 12 chairman.
 13 SENATOR DUSH: Proceed.
 14 SENATOR WILLIAMS: Thank you. We believe now
 15 that has been revealed by testimony in countless
 16 newspaper reports, that there seems to be the potential
 17 for activity, which may be considered to be illegal.
 18 Information being given to a private vendor without a
 19 public notification and a continuing drumbeat to avoid
 20 any kind of rescission of that potentially illegal
 21 activity is of great concern.
 22 While this reminds us, again, of another era.
 23 When the Watergate Committee began its investigation,
 24 it headed in one direction, and quickly discovered by
 25 the statement of facts and details that indeed there

Page 16

1 were unscrupulous and illegal activities in a pointedly
 2 different direction. We suggest that Senator Corman
 3 and the like indeed investigate those significant
 4 findings and those proceedings.
 5 Lastly, we sit in the shadow of 911 where we
 6 as a collective nation weep and mourn and remember the
 7 tragedy which occurred. And I'm drawn to the comments
 8 made by former President Bush, "We're greater as a
 9 collective as opposed to divided."
 10 So while we sit here in the minority, we will
 11 continue the battle and the fight for those of us who
 12 believe in what President Bush believes in and every
 13 good and godly given American in Pennsylvania believes
 14 in, their God-given right to be considered equal. And
 15 that's expressed through their franchise and their
 16 right to vote. Thank you, Mr. Chairman.
 17 SENATOR DUSH: Thank you, Chairman. Are
 18 there any other questions or discussion on the motion?
 19 THE CLERK: Senator Santarsiero, Mr.
 20 Chairman.
 21 SENATOR DUSH: Senator Santarsiero.
 22 SENATOR SANTARSIERO: Thank you, Mr.
 23 Chairman. I just have a few questions, if I may.
 24 First, I'm trying to understand the breadth of the
 25 subpoena and what is being requested. Can you explain

Page 17

1 why it is that the proposed subpoena would be
 2 requesting Social Security and driver's license
 3 numbers?
 4 SENATOR DUSH: Those documents are part of
 5 any audit that the auditor general would conduct or
 6 anybody who is looking to verify the identity of
 7 individuals and their place of residence and their
 8 eligibility to vote.
 9 SENATOR SANTARSIERO: Okay. Well, why are we
 10 trying to verify the identity of these individuals?
 11 There are almost seven million people, for example, who
 12 voted in the November 2020 elections, both in person
 13 and by mail-in and absentee ballot. Why are we trying
 14 to verify their identities?
 15 SENATOR DUSH: Because there have been
 16 questions regarding the validity of people who have
 17 voted, whether or not they exist. Again, we are not
 18 responding to proven allegations. We are investigating
 19 the allegations to determine whether or not they are
 20 factual.
 21 SENATOR SANTARSIERO: Toward what end?
 22 Toward what end would you?
 23 SENATOR DUSH: If we have some errors within
 24 the voter registration system which allow for such
 25 activity, then we have a responsibility as a

Page 18

1 Legislature to create legislation, which will prevent
 2 that from happening in future elections.
 3 SENATOR SANTARSIERO: Well, we have
 4 legislation right now that requires certain threshold
 5 requirements for someone to be able to vote. Why
 6 specifically would we need this information for the
 7 nearly seven million people who voted. We've heard
 8 through our special committee earlier this year from a
 9 number of county elections officials across
 10 Pennsylvania and we heard as recently as last week from
 11 a county election official in Fulton County that there
 12 were no issues. Why do we need this information?
 13 SENATOR DUSH: The commissioner from Fulton
 14 County was commenting on the counts. He was not
 15 commenting on the veracity of the individual voters and
 16 whether or not they were authorized. And to the first
 17 part of your question, if all those protections that
 18 you described are in place and we still discover that
 19 there were issues, then we do have a responsibility to
 20 clarify or improve on the legislation that you've
 21 described.
 22 SENATOR SANTARSIERO: Beyond understanding
 23 that someone may or may not have voted properly, what
 24 are you going to use this information for? I'm still
 25 trying to struggling with the information. You're

Page 19

1 asking for a lot of information. You're asking for the
 2 identification, the Social Security numbers and
 3 driver's license numbers for nearly seven million
 4 people. What do you hope to do with that information?
 5 SENATOR DUSH: That's already been asked and
 6 answered.
 7 SENATOR SANTARSIERO: Well, I don't know that
 8 you've really answered the question, because there have
 9 been allegations about last year's election. I
 10 understand that. They've been proven to be without
 11 merit. Why do we now need this information?
 12 SENATOR DUSH: Again, it is to verify the
 13 individuals. I will -- and as to your comments on the
 14 outside vendors for this purpose, we have the Secretary
 15 of State authorized that distribution of that exact
 16 same information to a number of third-party vendors up
 17 to the election.
 18 SENATOR SANTARSIERO: Mr. Chairman, I don't
 19 think I've asked any questions about outside vendors
 20 yet. I --
 21 SENATOR DUSH: Actually, you did.
 22 SENATOR SANTARSIERO: You may be anticipate,
 23 but you said so we could verify the voter, but why do
 24 we need to verify -- I'm trying to understand why we
 25 need to verify -- why does this committee -- this body

Page 20

1 need to verify those voters from 2020?
 2 SENATOR DUSH: That question again has been
 3 asked and answered. This is an investigation to
 4 determine if there are failures with regard to ensuring
 5 the integrity of the voter registration system.
 6 SENATOR SANTARSIERO: All right. Let me go
 7 on to another topic that I would like to try to get
 8 some understanding of. If this information, if the
 9 subpoenas are voted out today, and the information is
 10 provided, who is going to have access to the
 11 information?
 12 SENATOR DUSH: We are still working on
 13 getting the contracts finalized on a vendor who is
 14 capable of conducting such an investigation.
 15 SENATOR SANTARSIERO: Who is we in that
 16 sentence, if I could?
 17 SENATOR DUSH: Myself and my team.
 18 SENATOR SANTARSIERO: And who is your team?
 19 SENATOR DUSH: My staff as well as the legal
 20 counsel who will be assisting.
 21 SENATOR SANTARSIERO: And who is that legal
 22 counsel?
 23 SENATOR DUSH: The senate republican legal
 24 counsel right now. There's a possibility of hiring
 25 outside counsel too. We haven't finalized that.

Page 21

1 SENATOR SANTARSIERO: All right. So the
 2 senate republican caucus is going to determine who is
 3 going to be hired to review this information? Am I
 4 understanding that correctly?
 5 SENATOR DUSH: I have been tasked with
 6 running this committee. I will be making a choice
 7 after conferring with legal counsel, and then we will
 8 proceed from there. But that has not been finalized
 9 yet.
 10 SENATOR SANTARSIERO: All right. In any
 11 event, it's legal counsel that you are going to choose.
 12 SENATOR DUSH: That is correct.
 13 SENATOR SANTARSIERO: Okay. And do you have
 14 a list of vendors right now that you're considering
 15 that you can share with the committee?
 16 SENATOR DUSH: I don't have anybody that I'm
 17 willing to share at this point.
 18 SENATOR SANTARSIERO: That you're willing to
 19 share at this point. And why is that? Why would you
 20 not be willing to share that information right now?
 21 SENATOR DUSH: Because I have not completed
 22 vetting those candidates.
 23 SENATOR SANTARSIERO: Okay. Are they vendors
 24 that are located inside the Commonwealth of
 25 Pennsylvania?

Page 22

1 SENATOR DUSH: Both inside and outside.
 2 SENATOR SANTARSIERO: Okay. Are they vendors
 3 located within the United States of America?
 4 SENATOR DUSH: Absolutely.
 5 SENATOR SANTARSIERO: Okay. And are these
 6 vendors, do they -- who's funding these vendors.
 7 SENATOR DUSH: It will come out of senate
 8 funds.
 9 SENATOR SANTARSIERO: It will come out of
 10 senate funds. The vendors themselves, do we know who
 11 their clients are outside of potentially this
 12 committee?
 13 SENATOR DUSH: As I said, I'm in the process
 14 of vetting those possible vendors.
 15 SENATOR SANTARSIERO: Okay. And when you've
 16 completed your what you describe as your vetting, are
 17 you going to be sharing that publicly?
 18 SENATOR DUSH: I'm sorry. Could you repeat
 19 the question?
 20 SENATOR SANTARSIERO: Well, so my question,
 21 what I'm trying to get to, Mr. Chairman, is, obviously,
 22 I think it should be the goal of this committee,
 23 certainly the goal of the state senate to operate in as
 24 open and transparent a manner as possible. I'm a bit
 25 concerned about what you're describing now, because it

Page 23

1 seems contrary to that goal. But my question is with
 2 respect to this vetting that you're doing, are you
 3 ultimately going to make that information available to
 4 the public?
 5 SENATOR DUSH: That information will be made
 6 available, but at this point, we're off the topic of
 7 the subpoenas in particular. And as to the
 8 understanding --
 9 SENATOR SANTARSIERO: Mr. Chairman?
 10 SENATOR DUSH: I would ask the member if you
 11 have questions regarding the subpoenas and we will
 12 proceed from there.
 13 SENATOR SANTARSIERO: Mr. Chairman, I
 14 strongly, with all due respect, disagree with that.
 15 You are proposing that this committee vote on the issue
 16 of subpoenas that potentially would result in the
 17 production of a voluminous amount of information about
 18 individual Pennsylvania citizens.
 19 The question is about what happens to that
 20 information when it comes in? Who has access to that
 21 information? Who are those people? And how are they
 22 chosen? I think are direct -- those are questions that
 23 are directly relevant to the question before this
 24 committee, which is whether or not we should issue
 25 these subpoenas.

Page 24

1 How can we vote on whether we should issue
 2 these subpoenas if we don't know, ultimately, what's
 3 going to happen to this information and who's going to
 4 have access to it? So I would respectfully disagree.
 5 Now, my question is whoever --
 6 SENATOR DUSH: Well, to answer your question,
 7 the senate secretary is going to prepare the subpoena,
 8 directing the Secretary of State to produce the
 9 documents and these will come to the senate, and they
 10 will be held in the legal counsel's office until such
 11 time as we have a finalized agreement and a contract
 12 for the investigator.
 13 And, again, I go back we need to be pursuing
 14 questions on the substance of this subpoena. We have
 15 the authority to do this, and we are working to ensure
 16 that everything is in proper place. The storage of
 17 that information will be held in a secure location and
 18 capable under the counsel's office, just like any other
 19 legal documents are secured within the senate legal
 20 offices, and we will take proper care of it.
 21 Are there any other questions --
 22 SENATOR SANTARSIERO: I have several others,
 23 if I may, Mr. Chairman. So will this whatever vendor
 24 is ultimately chosen, will this vendor have complete
 25 access to all the information that is produced as a

Page 25

1 consequence of these subpoenas?
 2 SENATOR DUSH: Could you repeat the question?
 3 SENATOR SANTARSIERO: Will the vendor who is
 4 ultimately chosen have complete access to all the
 5 information that may be produced as a consequence of
 6 the issuance of these subpoenas?
 7 SENATOR DUSH: Potentially yes. That will be
 8 part of the discussion that I will be having with our
 9 legal team as to what specifically will be given.
 10 SENATOR SANTARSIERO: So to understand your
 11 answer the scope of the access that the vendor will
 12 have will be decided by you and your legal team?
 13 SENATOR DUSH: That is correct.
 14 SENATOR SANTARSIERO: Okay. And in going
 15 through this vetting process, is one of the factors
 16 you're discussing what kind of experience these vendors
 17 have with reviewing election results?
 18 SENATOR DUSH: Absolutely. And as well any
 19 similar investigative capabilities that may be
 20 required.
 21 SENATOR SANTARSIERO: Okay. Getting back to
 22 the issue of the vendors, do we know whether any of
 23 these vendors have any relationship with the lawyer,
 24 Sydney Powell?
 25 SENATOR DUSH: You're off topic on this.

Page 26

1 SENATOR SANTARSIERO: No, I don't think so,
 2 Mr. Chairman, with all due respect. You're talking
 3 about vetting vendors who potentially, we don't know,
 4 because you haven't really answered.
 5 SENATOR DUSH: Actually, the answer to that
 6 is I really don't know, because it is not something
 7 that is relevant to my determination as to whether
 8 these people have qualities. You're going --
 9 SENATOR SANTARSIERO: So it's possible then.
 10 SENATOR DUSH: It's absolutely possible.
 11 Putting a man on the moon was found to be possible.
 12 SENATOR SANTARSIERO: Is it possible that
 13 these vendors are in any way receive funding from the
 14 Lydon Harry Bradley Foundation?
 15 SENATOR DUSH: Again, I don't know.
 16 SENATOR SANTARSIERO: Okay. But it's
 17 possible.
 18 SENATOR DUSH: Do you have a point?
 19 SENATOR SANTARSIERO: Yeah. I would have
 20 thought that the point was self-evident.
 21 SENATOR DUSH: Have a point that is relevant
 22 to this.
 23 SENATOR SANTARSIERO: It's absolutely
 24 relevant. Mr. Chairman, with all due respect, you are
 25 asking this committee to consider the issuance of a

Page 27

1 subpoena that is requesting personal information about
 2 nearly seven million Pennsylvanians. You have yet to
 3 explain who exactly is going to have access to that
 4 information.
 5 You have not indicated that there would be
 6 anyone making decisions regarding the access to that
 7 information other than yourself and some undefined
 8 legal team that may or may not yet have been chosen.
 9 And you're asking this committee to vote on whether
 10 these subpoenas should be issued without having any of
 11 that information.
 12 And I would argue that each one of us, as
 13 elected representatives of nearly 260,000 people in
 14 each of our districts, that we have duty to those
 15 people, many of whom voted in last November's election
 16 to know exactly where their information is going and
 17 who's going to have access to it. They cast votes
 18 under the law, under their freedom as Americans to cast
 19 votes in an election, with no expectation, no
 20 reasonable expectation that some private company not
 21 chosen by them, not chosen in a democratic fashion,
 22 because this committee doesn't seem to have any ability
 23 to make that decision.
 24 SENATOR DUSH: I think that --
 25 SENATOR SANTARSIERO: Allow me to finish,

Page 28

1 please, if I may.
 2 SENATOR DUSH: Well, I want to make a point
 3 here. The Secretary of State issued authorization for
 4 people to have access to all of that to one
 5 subcontractor, a political activist organization, which
 6 then was given the ability to, without any kind of
 7 vetting, push that out to others. I think there was
 8 somewhere around forty of them that had access to all
 9 of that information. So I have a hard time
 10 understanding your line of questioning on this.
 11 SENATOR SANTARSIERO: Mr. Chairman, when --
 12 SENATOR DUSH: You're --
 13 SENATOR SANTARSIERO: Mr. Chairman, the
 14 Secretary --
 15 SENATOR DUSH: The governor's own
 16 department --
 17 SENATOR SANTARSIERO: The Secretary of the
 18 Commonwealth has legal authority to conduct
 19 investigations into the conduct of elections. Now --
 20 SENATOR DUSH: That was not an investigation.
 21 SENATOR SANTARSIERO: Now, Mr. --
 22 SENATOR DUSH: That was authorization to Sure
 23 system.
 24 SENATOR SANTARSIERO: Mr. Chairman? Mr.
 25 Chairman, what you are proposing today, which is the

Page 29

1 issue in front of us, not what any secretary of state
 2 may or may not have done at any time in the past, is
 3 whether this committee should issue subpoenas that
 4 include personal information for nearly seven million
 5 Pennsylvanians. And you are incapable right now today,
 6 while we are considering this vote, to tell the members
 7 of this committee and the public who exactly is going
 8 to have access to that information, how that
 9 information is going to be used, and whether or not
 10 that information is going to be made public.
 11 You can't even tell us today who is going to
 12 be part of your team making those decisions. You're
 13 not willing to let us know what vendors are being
 14 considered. You're not describing what you term as
 15 vetting process is, and yet you're asking us to vote on
 16 the issuance of a subpoena that will collect that
 17 information.
 18 And, Mr. Chairman, I think, you know, we come
 19 here today asked to vote on something as substantial as
 20 this, that we should have that information in front of
 21 us, and, frankly, the public should have that
 22 information in front of us. I'm very concerned, very
 23 concerned that this committee, and ultimately this body
 24 is not being transparent. Moreover, I'm concerned that
 25 everything you're describing, in terms of the decisions

Page 30

1 in this process, the decisions as who should be hired
 2 as a vendor to review this information, the decisions
 3 about how that investigation, that review should take
 4 place is a partisan one. You've said it yourself.
 5 It's the republican caucus that will be
 6 making these decisions. Now, it may well be, and I
 7 think we all know, that this chamber has a majority of
 8 republicans, but the state senate, democrats and
 9 republicans alike, were elected to represent the people
 10 of this commonwealth in the state senate of
 11 Pennsylvania.
 12 And what you're now describing sounds very
 13 much to me like a partisan investigation, so much so
 14 that you're not even willing to share the details of
 15 that --
 16 SENATOR DUSH: All right. I'm done. Again,
 17 you're going to Rule 10(b), questioning the motives of
 18 the chair. The chair now recognizes Senator Corman.
 19 SENATOR CORMAN: Thank you, Mr. Chairman.
 20 Just a couple comments. You know when my friends over
 21 here, you know, pose something, which is certainly
 22 within their right. That's allowed. But when people
 23 are many times opposed to things, the best way to get
 24 other people to oppose to things is to make them
 25 scared. They should be scared of something. I guess

Page 31

1 my question for all of us is what are we scared of?
 2 SENATOR WILLIAMS: Mr. Chairman? Mr.
 3 Chairman, if I could just briefly interrupt. The
 4 chairman just criticized my colleague for impugning the
 5 motives --
 6 SENATOR CORMAN: That's a fair point. Fair
 7 point.
 8 SENATOR WILLIAMS: -- impugning the motives
 9 and -- thank you, sir.
 10 SENATOR CORMAN: Fair point.
 11 SENATOR WILLIAMS: Please recognize that.
 12 Thank you.
 13 SENATOR CORMAN: Fair point.
 14 SENATOR DUSH: The chair recognizes that
 15 and --
 16 SENATOR CORMAN: Fair point.
 17 SENATOR DUSH: Thank you.
 18 SENATOR CORMAN: But the question, in
 19 general, is, you know, what would any of us,
 20 republican, democrat, people of Pennsylvania, be afraid
 21 of, of this investigation? You know, all we're doing
 22 is seeking facts, seeking information, so that we can
 23 make better public policy.
 24 My good friend, Senator Williams, made
 25 mention of some public comments of my own, talking

Page 32

1 about we're looking to undermine an election. That's
 2 far from the truth. The Legislature, let me be very
 3 clear, Legislature has not authority to overturn an
 4 election. When there was a lot of human cry back in
 5 December about reappointing electors under the federal
 6 constitution, we said no. We can't do that.
 7 The state statute is very clear, that the
 8 winner of the popular vote certified by the Department
 9 of State, appoints the electors of that party. And we
 10 made no move in this general assembly or this senate to
 11 change that. That is the law.
 12 Any contest of any election, whether it be
 13 for the President of the United States, whether it be
 14 or governor, whether it be for Legislature, whether it
 15 be for county commissioner, whatever, are done through
 16 the courts. All contests are done through the courts.
 17 And the courts will ultimately have the say as they did
 18 in this particular last election on numerous races.
 19 And they made a decision. So there's no movement or
 20 discussion of that point.
 21 The point is we have public that is concerned
 22 about how the last election was conducted. And just as
 23 there was many concerns in 2016 from my friends, and
 24 particularly in Washington, D.C. on the other side of
 25 the aisle, there was a great debate about Russian

Page 33

1 collusion for two years why the democrats in D.C. were
 2 in the minority and then when they came into the
 3 majority, conducted investigations into Russian
 4 collusion. And even though there was, you know, very
 5 little facts behind that, they continued and continued
 6 and continued until, ultimately, an independent council
 7 was appointed, and then the final --
 8 SENATOR WILLIAMS: Mr. Chairman? Mr.
 9 Chairman, I have no problem with the gentleman speaking
 10 extemporaneously about Russian or China or whatever he
 11 wants to talk about, but I do know for the record, that
 12 when my colleague was attempting to question specific
 13 items he was constrained. Also, for the record, to my
 14 friend, I didn't suggest, and I didn't say in my
 15 comments anything about undermining what I said was
 16 comments in the paper talked about an investigation, of
 17 which we will follow up and support him in that effort
 18 to follow the details and the facts.
 19 So all I'm suggesting is that whatever we're
 20 going to do, the pattern be the same for every member
 21 of the committee. And certainly I respect my
 22 colleague, and I always have for a long time, and if he
 23 has full reign to talk about things such as that on the
 24 national stage, I only think it's appropriate that we
 25 have the same consideration.

Page 34

1 SENATOR DUSH: Thank you, Chairman. And I do
 2 agree. Let's try and keep this on topic.
 3 SENATOR CORMAN: So the point is I think that
 4 someone who I believe who has served with my colleagues
 5 for 20 years plus that, whether we agree to disagree
 6 credibility is important for all of us. And,
 7 obviously, this investigation, which gets a lot of
 8 attention, will be judged by its results. And what is
 9 most important to me, is the credibility of it. And I
 10 understand some of the questions by the gentleman from
 11 Bucks County and his concerns about the credibility.
 12 I could tell you this from my perspective,
 13 and I'm not speaking for the chair. The chair will
 14 make these decisions, you know, we didn't went outside
 15 sources when we talked about this paying for this,
 16 because, you know, republicans wouldn't like it if
 17 George Soros was funding investigations, right, nor
 18 should democrats like it if people with partisan
 19 leanings are paying for this on the outside. We felt
 20 very uncomfortable and didn't believe -- this is
 21 something the senate believes in. This is something
 22 that needs to be done. Then, you know, this is a
 23 public event, and the public, you know, should do that.
 24 And individuals who, ultimately are hired by the chair
 25 in this committee, should have that same type of

Page 35

1 credibility.
 2 People that have a track record of doing
 3 whatever investigations in their past that have that
 4 credibility. I think that is the most important, so
 5 that when we look at the results of this, when we look
 6 at the results of this at the end of the day, that
 7 whether it's your eyes or my eyes or independent eyes,
 8 we can look at what we found is credible and then
 9 hopefully, it'll accomplish one of two things; either
 10 will give us action items to better our laws moving
 11 forward for the next election, or we can dispel a lot
 12 of the concerns about the last election.
 13 One of those two things will happen at the
 14 end of the day. And I think both of those are good. I
 15 think both of those are productive for our
 16 commonwealth. Either we better our laws or we dispel a
 17 lot of the concerns that the people of Pennsylvania
 18 have. And you may not agree with those concerns, but I
 19 can tell you in my years in the senate, I have not had
 20 any issue and I've received more phone calls, more
 21 voter contacts, more people walking up to me in the
 22 street, and, look perception is reality.
 23 Not to get too far off topic, but I'm sure
 24 many people thought about the Russian collusion. That
 25 was their perception, that was their reality. And so,

Page 36

1 that investigation found out there was nothing. So
 2 people were more comfortable with the fact that Russia
 3 didn't get involved in our elections in 2016. Maybe
 4 that'll be the same here. I don't know. But, again,
 5 one of two things will happen, either we will fins
 6 things where we can improve our laws, or we will find
 7 nothing that will then dispel a lot of people's
 8 concerns, and we call can be more confident in our
 9 system moving forward.
 10 So, you know, I'd say well, we can do this
 11 together. We can do it with credibility. That is our
 12 goal, and I think that's the goal of the chair. That's
 13 the goal of myself as the pro tem. I know that's a
 14 goal. And we've had these discussions at caucus. If
 15 we're going to do this, let's do it right, so that the
 16 people of Pennsylvania will have confidence in whatever
 17 result we obtain. Thank you, Mr. Chair.
 18 SENATOR COSTA: Mr. Chairman, may I --
 19 SENATOR DUSH: I'm going to, as I'm looking
 20 at the clock, we're getting it to the point where if
 21 we're going to have the vote on this motion, we're
 22 going to have to limit further comments to about five
 23 minutes per member. And I will go to -- are there any
 24 members who have yet to speak that have comments?
 25 SENATOR WILLIAMS: Mr. Chairman --

Page 37

1 SENATOR DUSH: One moment. I'd like to have
 2 an answer to that question first, Mr. Chairman. Are
 3 there others?
 4 SENATOR COSTA: I just have one follow up
 5 question.
 6 SENATOR WILLIAMS: Mr. Chairman? Wait. Wait
 7 a minute. Mr. Chairman, you made a comment, and if
 8 we're going to follow a process, then you make a
 9 comment, we get to react.
 10 SENATOR DUSH: And I'm going to recognize --
 11 SENATOR WILLIAMS: And --
 12 SENATOR DUSH: -- Senator Costa.
 13 SENATOR WILLIAMS: -- before you do that, you
 14 put parameters on my members of five minutes prior to
 15 after another gentleman on committee spoke for ten.
 16 SENATOR DUSH: Senator --
 17 SENATOR WILLIAMS: And so Mr. Chair --
 18 SENATOR DUSH: Senator Santarsiero had more
 19 than time.
 20 SENATOR WILLIAMS: I'm not discussing any
 21 particular member. I'm talking about going forward.
 22 SENATOR DUSH: We've --
 23 SENATOR WILLIAMS: I'm suggesting to you that
 24 you put a time limit on the members, and to my
 25 knowledge, there's no other business other than this

Page 38

1 today. So if it takes the entire day, so be it. This
 2 is a significant moment. This is a significant asking
 3 of the general public. And there are several items to
 4 be discussed as we proceed.

5 Now, I have no idea as to whether members
 6 want to talk for two minutes, ten seconds or 20
 7 minutes. I don't know. But I do find it a bit
 8 disingenuous to make an announcement that we are now
 9 confined to five minutes after my friend, colleague and
 10 leader of the senate speaks at length about a variety
 11 of items. That doesn't -- that's not consistent with
 12 what we should do as a body.

13 SENATOR DUSH: Chairman, the individual who
 14 spoke prior to that and took even longer, and that was
 15 member of your side. So, and there were a number of
 16 topics discussed by him as well. From this point
 17 forward, given the time constraints that we have, I am
 18 going to limit until five minutes. And then if we've
 19 got time, we'll come back for a second round. Senator
 20 Costa, you're recognized.

21 SENATOR COSTA: Mr. Chairman, I would ask
 22 that you recognize Senator Santarsiero, then Senator
 23 Hughes and then myself. That was what we'd hoped to be
 24 able to achieve at this point.

25 SENATOR SANTARSIERO: And I will not take

Page 39

1 anywhere near five minutes, Mr. Chairman. You have my
 2 word on that.

3 SENATOR DUSH: Thank you.

4 SENATOR SANTARSIERO: If I may? Thank you.
 5 Mr. chairman, I just want to say, first, I
 6 wholeheartedly agree with Senator Corman that
 7 credibility is a critical issue here. So I guess I
 8 have another question for you, if I may. Leaving aside
 9 the payment information, as to where the founding comes
 10 from the vendor, can you say to us today that no vendor
 11 will be chosen who has at any time had any connection
 12 with any of the candidates, particularly the
 13 presidential candidates, but, frankly, any of the
 14 candidates who ran in last November's election?

15 SENATOR DUSH: That would be a very difficult
 16 task given that there is going to be a need to have
 17 multiple investigators, multiple areas of expertise,
 18 and the relationships that one has with how narrowly
 19 defined are we going to be going with these
 20 relationships? We live in a world where people are
 21 getting more and more actively involved with the
 22 political sphere. So am I going to be examining this
 23 in a way that will try and engender confidence on the
 24 part of the people of the commonwealth as to the
 25 outcomes.

Page 40

1 So the vetting process will be rigorous. We
 2 will be making sure that we're applying some
 3 significant measure of ensuring that the people will
 4 have faith in that. I'm not going to be hiring
 5 political activists to become investigators.

6 SENATOR SANTARSIERO: But it is possible,
 7 based on what you just said, that the vendor or vendors
 8 hired may have worked for one or more campaigns in last
 9 year's elections.

10 SENATOR DUSH: Again, anything is possible,
 11 but it's not where I'm going with this.

12 SENATOR SANTARSIERO: Thank you, Mr.
 13 Chairman. I have no further questions.

14 SENATOR DUSH: The chair recognizes Senator
 15 Hughes.

16 SENATOR HUGHES: Thank you, Mr. Chairman.
 17 And I'll try to get -- be as succinct as I possibly
 18 can, although there is a tremendous amount of
 19 information and conversation that needs to be had with
 20 this; obviously, I'll be voting no on the motion to
 21 subpoena documents and records with the Department of
 22 State.

23 We have every reason, every right to be
 24 candid about what happens with these documents, with
 25 this information. It's profuse public information --

Page 41

1 driver's licenses, voting records, Social Security
 2 information -- when Republican members of the Senate
 3 will obviously have access to this information and
 4 those Republican members of the Senate were involved in
 5 the insurrection and, in fact -- excuse me --

6 SENATOR DUSH: The Senator is out of line.

7 SENATOR HUGHES: I am not out of line; I am
 8 very much in line.

9 You are asking for prolific information --

10 SENATOR DUSH: The hearing will be at ease.
 11 The hearsay is at ease.

12 Cut the feed.
 13 (Pause)

14 SENATOR DUSH: The committee is back in
 15 session.

16 SENATOR HUGHES: May I continue, Mr.
 17 Chairman?

18 SENATOR DUSH: You may.

19 SENATOR HUGHES: All right. Mr. Chairman, the
 20 information that you're requesting is going to be made
 21 available to, at least, we can only infer, to at least
 22 Republican members of this committee. Don't know if
 23 it's going to be available to Democratic members.

24 We do know that Republican members of the
 25 Senate were in Washington, D.C. on January 6th, which

Page 42

1 was Insurrection Day. We do know that Republican
 2 members of this committee were in communication with
 3 last week's testifier about, within a week after the
 4 November 3rd election about how to impact the results
 5 of the election.

6 So, we do not have a full --
 7 SENATOR DUSH: Senator --
 8 SENATOR HUGHES: -- understanding --
 9 SENATOR DUSH: -- we're at ease.

10 (Pause)
 11 SENATOR DUSH: If we could wrap this up?
 12 SENATOR HUGHES: Thank you, Mr. Chairman.
 13 Mr. Chairman, I've been a member of the
 14 Pennsylvania Legislature for 34 years. I have
 15 introduced thousands of bills, worked with hundreds of
 16 staffers who assisted me in drafting legislation and
 17 advised me on the information that we needed to draft
 18 those bills.

19 I can honestly say that never in my 34 years
 20 has someone told me I needed the names, addresses,
 21 driver's license numbers, and Social Security numbers
 22 of my fellow Pennsylvanians to draft a bill. Never.

23 If that's the reason the majority gives us
 24 for needing this information and for issuing the
 25 subpoena to help draft legislation, Mr. Chairman,

Page 43

1 that's absurd and the majority knows it; however, the
 2 majority also knows it needs to create a legislative
 3 purpose to justify their fishing expedition for voters'
 4 personal information or their subpoenas will likely
 5 with declared invalid by the courts.

6 So here we are. Be clear: We don't need any
 7 voters' name, address, driver's license number, or
 8 Social Security number to draft legislation on any
 9 subject. We don't need the name, address, driver's
 10 license number, or Social Security number of every
 11 person who voted in person in 2020 to draft voting
 12 legislation. We certainly don't need that information
 13 from 6.9 million Pennsylvania voters, which is what the
 14 subpoena seeks. We don't need the personal information
 15 from 6.9 million Pennsylvania voters to draft
 16 legislation on in-person voting, or absentee voting, or
 17 mail-in voting, or voting by provisional ballot. We
 18 don't need subpoena records about when a voter last
 19 exercised his or her right to vote to draft
 20 legislation.

21 A person's constitutional right to vote and
 22 First Amendment rights includes the right not to vote
 23 if he or she does not want to. And whether a person
 24 exercises that right consistently or occasionally, is
 25 none of this committee's business.

Page 44

1 That is the information that the subpoena
 2 seeks and it is just wrong. But these are not the only
 3 reasons that aisle be voting no.

4 It struck me driving here today that for all
 5 of our differences about the 2020 election and this
 6 process, Republicans and Democrats claim to agree on
 7 two things: we want this process to be transparent and
 8 we want the results to be credible.

9 Democrats thought we took a small step
 10 forward in that regard with Senator Dush, yourself, Mr.
 11 Chairman, replaced Mr. Mastriano as chairman, amid
 12 accusations that Mr. Mastriano retreated from
 13 conducting an investigation and that he was only ever
 14 interested in politics and showmanship and not actually
 15 getting things done.

16 SENATOR DUSH: All right. The member is
 17 suspended from further comment, because he is, again,
 18 violating Rule 10 --

19 SENATOR HUGHES: I'm just quoting -- I'm
 20 quoting the comments.

21 SENATOR DUSH: It's not a quote --

22 SENATOR HUGHES: These are public comments
 23 that were made public, Mr. Chairman.

24 SENATOR DUSH: Senator, you're out of order.
 25 The chairman recognizes Senator Costa.

Page 45

1 SENATOR COSTA: Thank you very much, Mr.
 2 Chairman.

3 As it relates to --

4 SENATOR HUGHES: So, I'm done speaking; is
 5 that what the deal is?

6 SENATOR COSTA: That's exactly what the
 7 chairman has ruled.

8 SENATOR HUGHES: So, I'm done speaking by
 9 quoting the public record by yourself and the president
 10 pro tem?

11 SENATOR DUSH: We're at ease.

12 SENATOR HUGHES: These are comments about why
 13 the change was made.

14 SENATOR COSTA: We are extremely disappointed
 15 that the nature of our comments and the length of our
 16 comments are being cut off by you. I think this was
 17 mentioned by Senator Williams. This is a significant
 18 conversation and as we mentioned earlier, we're at the
 19 crossroads here in terms of who we are and what we're
 20 going to do as a Commonwealth and as a committee and as
 21 a body -- a section of our Senate.

22 We strongly believe that and continue to
 23 believe that we have a lot of issues here. My
 24 colleague has eloquently talked about the concerns that
 25 have been raised with respect to the release of all of

Page 46

1 this information. Nearly seven million individuals'
 2 Social Security numbers, addresses, other information
 3 that's being requested here; again, not known who's
 4 going to have access to them, not known what their ties
 5 or relationships with or other organizations.
 6 None of that vetting process is being done in
 7 a bipartisan way; it's strictly being done by you and
 8 your small team that you've indicated.
 9 And the question that I have, and one I'd
 10 like to have answered, will the individuals who are on
 11 this committee who participated in the full county
 12 election issue that took place when they audited that
 13 election -- where they found no fraud, by the way --
 14 will those individuals be directly involved in your
 15 discussions, with respect to your vetting and making a
 16 determination of who's going to be involved and what
 17 entity or third-party contractor will be selected?
 18 SENATOR DUSH: We have not made that
 19 determination yet. We are in the process of working
 20 with the legal team on how that is going to occur.
 21 SENATOR COSTA: When you say, "Working with
 22 the legal team," would a legal team determine for you
 23 whether or not the senators who were referenced in the
 24 previous testimony from the gentleman from Fulton
 25 County, who will make that determination to what

Page 47

1 degree?
 2 Because, as was indicated by Senator
 3 Williams, there are a lot of concerns about what took
 4 place there, which is another path that we may need to
 5 be looking at, collectively, and quite frankly, given
 6 what the Department of Justice has issued to, and the
 7 courts have issued, with respect to the Arizona
 8 situation, which is analogous to what is being done
 9 here, in our view, we believe that there are a lot of
 10 concerns about folks who were involved in that
 11 conversation that we need to look at, as well.
 12 So, my question is, will you not have members
 13 who participated in the Fulton County conversation
 14 regarding that audit, not participate in your decision-
 15 making process?
 16 SENATOR DUSH: I will be making that
 17 determination. I have not made that determination as
 18 of yet.
 19 SENATOR COSTA: Mr. Chairman, again, we
 20 reiterate our concern about a lot of decisions that
 21 have not been head at this point. And you're asking us
 22 to cast votes on a significant matter, as was described
 23 multiple times by my colleagues.
 24 It's wholly inappropriate to us to go down
 25 this path without having the ample knowledge and

Page 48

1 information.
 2 Mr. Chairman, to that end, I move that we
 3 table these subpoena motions to such a time that we
 4 have more information about who's going to be involved,
 5 what members of this committee who participated in
 6 various activities outside of this place and outside of
 7 this Commonwealth, and in other ways, until we know
 8 who's going to be involved in your discussions about
 9 who's going to be selected along those lines.
 10 So, I move that we table these subpoenas
 11 until such time as we have more information about the
 12 scope of the subpoenas and the nature of what's going
 13 to be done with this information, nearly seven million
 14 records.
 15 SENATOR SANTARSIERO: I second that.
 16 THE CLERK: So, moved and seconded, that we
 17 table the motion; Senator Santarsiero seconded.
 18 SENATOR DUSH: The chair recognizes the
 19 motion and the second by Senator Santarsiero on the
 20 move to table this vote.
 21 Nate, will you take a roll.
 22 THE CLERK: Argall?
 23 SENATOR ARGALL: No.
 24 THE CLERK: Argall, no.
 25 Costa?

Page 49

1 SENATOR COSTA: Aye.
 2 THE CLERK: Costa, aye.
 3 Gebhard?
 4 SENATOR GEBHARD: No.
 5 THE CLERK: Gebhard, no.
 6 Hughes?
 7 SENATOR HUGHES: Aye.
 8 THE CLERK: Hughes, aye.
 9 Hutchison?
 10 SENATOR HUTCHINSON: No.
 11 THE CLERK: Hutchison, no.
 12 Mastriano?
 13 SENATOR MASTRIANO: Proxy, no.
 14 THE CLERK: Mastriano, proxy, no.
 15 Santarsiero?
 16 SENATOR SANTARSIERO: Aye.
 17 THE CLERK: Santarsiero, aye.
 18 Judy Ward?
 19 SENATOR WARD: No.
 20 THE CLERK: Judy Ward, nay.
 21 Anthony Williams?
 22 SENATOR WILLIAMS: No -- I mean, aye. Sorry.
 23 THE CLERK: Williams, aye.
 24 Dush?
 25 SENATOR DUSH: Nay.

Page 50

1 THE CLERK: Dush, nay.
 2 Corman?
 3 SENATOR CORMAN: No.
 4 THE CLERK: No.
 5 SENATOR DUSH: The vote is 7:4. The motion
 6 fails.
 7 SENATOR WILLIAMS: Mr. Chairman, as a matter
 8 of record, did the gentleman provide a proxy to the
 9 committee?
 10 SENATOR DUSH: He has.
 11 SENATOR COSTA: Mr. Chairman, may I
 12 continual?
 13 SENATOR DUSH: Senator Costa is recognized.
 14 SENATOR COSTA: Thank you, Mr. Chairman.
 15 Mr. Chairman, I guess to summarize our
 16 position in this matter is that we believe that despite
 17 how it is being labeled by our colleagues on the other
 18 side of the aisle as, say, an investigation, a review,
 19 whatever you want to call it, we believe that it is
 20 clearly, clearly -- all sides indicate that it an
 21 election contest; something that this committee simply
 22 has no jurisdiction over or no ability to do.
 23 This is clearly a "separation of powers"
 24 issue. This is a Legislature trying to engage itself
 25 into a process by which our statutes clearly define

Page 51

1 when election contests take place: immediately after
 2 the election, 20-some-days or so before they have to be
 3 filed, and the courts determine whether there's any
 4 validity to those allegations that were made in that
 5 election contest.
 6 We cannot, some 10, 11 months later come back
 7 and try to do another election contest. That is what
 8 the crux of this is about.
 9 Secondly, there is another issue that we
 10 continue to raise with respect to the authority of this
 11 particular intergovernmental affairs committee that we
 12 talked about in the past and what's been raised in the
 13 past. We continue to believe that the purview of this
 14 subject matter belongs in the Secretary of State and
 15 our State Government Committee, chaired by Senator --
 16 Member, Senator Williams, a longtime standing member
 17 and chairperson of that committee. We believe that
 18 that's where this conversation should be taking place.
 19 This committee, as the chairman knows, and my
 20 colleague, Senator Corman knows, was created about 10
 21 years ago, not for the purpose of doing what we're
 22 doing today; but simply, quite frankly, to add another
 23 committee so we had enough members serving committee
 24 assignments as chairpersons -- let's be frank -- and
 25 that's why it was created. And it has never had the

Page 52

1 authority to deal with these types of matters.
 2 Historically, for generations and decades and
 3 decades and decades, the State Government Committee had
 4 jurisdiction over election matters, not this committee;
 5 in fact, this committee, even in a published record in
 6 the "Pennsylvania Bulletin," signed by the President
 7 Pro Tem Corman, states unequivocally, as it relates to
 8 regulatory activities, which is what we're looking at
 9 here, and guidelines and the like, that that
 10 jurisdiction for elections in the Department of State
 11 falls within the Department of State.
 12 In fact, the only place, the only thing cited
 13 for this committee, and that document that was
 14 published in the "Pennsylvania Bulletin," was
 15 independent regulatory review commission matters.
 16 That's the only identify -- the opportunity for this
 17 committee to examine those types of things.
 18 And, historically, if you go back and look at
 19 every single piece of legislation that's been
 20 introduced into this committee since its creation,
 21 none, if any, have dealt with election law, at any
 22 point in time, other than this conversation that's
 23 taking place.
 24 So, to summarize our position, there is --
 25 this is a situation where it's a "separation of powers"

Page 53

1 issue and that no matter you want to call it, however
 2 you want to color it, it is an election contest. It's
 3 not permitted by the statutes. It's not permitted by
 4 this committee to exercise.
 5 And the second issue, as it relates to this
 6 authority, this committee, we continue to hold that,
 7 and those are going to be the issues that we're going
 8 to continue to rise through this process.
 9 We are elected to vote -- to make sure that
 10 we protect the people's privacy, with respect to their
 11 ballot, with respect to their vote. And we believe in
 12 looking to do the things that are taking place here,
 13 with respect to Social Security numbers, with respect
 14 to addresses, driver's licenses, you name it, clearly
 15 violates that authority for us to be able to do that
 16 and protect people's ability to vote and the sanctity
 17 of their vote, and that's really what's at issue here,
 18 and that's what we're going to continue to take
 19 exception to.
 20 Thank you, Mr. Chairman.
 21 SENATOR DUSH: Thank you, Senator.
 22 And just one quick --
 23 THE CLERK: Mr. Chairman?
 24 SENATOR DUSH: -- response.
 25 THE CLERK: You need to recognize Jake.

Page 54

1 SENATOR DUSH: Senator Corman?
 2 SENATOR CORMAN: I will be very brief, and I
 3 appreciate the second time.
 4 First of all, we, as the Senate, determine
 5 jurisdiction. Clearly, intergovernmental affairs,
 6 elections are held by both, local and state government.
 7 So, clearly if we determined that intergovernmental
 8 affairs is the proper place to review something like
 9 this, it is our decision and we have made it.
 10 Secondly, and most importantly, something
 11 that I have always tried to be, and I think my
 12 colleagues on the other side would agree, I like to
 13 stand up for the institution of the Senate. It is
 14 something that I something that I have been a part of
 15 almost all of my life and it's something that is very,
 16 very important to me, the institution, itself.
 17 And I believe in the institution, that part
 18 of our process is to gather sensitive information, and
 19 so we will be responsible and make sure that that
 20 information is kept secure and there is no process that
 21 it gets leaked out in and used for other purposes.
 22 You know, hopefully -- not hopefully -- we
 23 will do a much better job than what we've seen in this
 24 administration, who has had significant data breaches
 25 over their time here; more than any administration I've

Page 55

1 ever dealt with. So, the institution, the Senate will
 2 do its job; we will gather sensitive information, we
 3 will review sensitive information, and then we will
 4 secure that information. That is my pledge. That is
 5 something that is paramount.
 6 Again, the institution of the Senate has the
 7 right, and should, perform oversight over State
 8 Government Executive Branch. That is our role and we
 9 will continue to provide that role.
 10 Thank you, Mr. Chairman.
 11 SENATOR COSTA: Mr. Chairman, can I just
 12 briefly respond to a couple of things?
 13 SENATOR DUSH: No.
 14 SENATOR COSTA: Very briefly, please.
 15 SENATOR DUSH: One second.
 16 SENATOR COSTA: Thank you.
 17 SENATOR DUSH: I went, specifically, on the
 18 hearing last week over the elements of the
 19 Constitution, the statute, the Senate Rules, and
 20 Mason's Manual that clearly identify the authority of
 21 this body in the Senate and this committee, in
 22 particular, to conduct these investigations.
 23 I invite anyone, anyone who has questions
 24 about that authority to go and watch that hearing --
 25 it's available online -- then to examine for yourself

Page 56

1 where we have it. And if you want to go in and examine
 2 the Constitution, the statute, the Senate Rules, or the
 3 Mason's Manual, in which the Senate has delegated some
 4 of that guidance, then I invite you to take a look at
 5 it.
 6 The Chair recognizes Senator Ward.
 7 SENATOR WARD: Thank you, Chairman.
 8 I sit here and I listen to my colleagues on
 9 the other side of the aisle and like Pro Tempore
 10 Corman, and, you know, we had a data breach in the
 11 Department of Health that released personal health
 12 information on our Pennsylvanians and I have not heard
 13 any comments from my colleagues on the other side of
 14 the aisle.
 15 This investigation is a process and we have
 16 to get it right. There are many steps in this process
 17 and they have to have integrity.
 18 My constituents, I say this all the time,
 19 have been outraged by -- their questions have gone on
 20 answered. They want us to look at the process.
 21 It is paramount to our democratic process.
 22 We must restore their trust and the trust of all
 23 Pennsylvanians.
 24 Thank you, Mr. Chairman.
 25 SENATOR DUSH: Thank you, Senator Ward.

Page 57

1 And for a second time, Senator Costa.
 2 SENATOR COSTA: Thank you, Mr. Chairman.
 3 And just very briefly, in response to the
 4 president pro tem's comments about the institution, we
 5 all share the concerns and respect for this
 6 institution; that's precisely why we raise the issue
 7 with respect to the jurisdiction of this committee.
 8 The gentleman indicated that we decide what
 9 committees, what jurisdiction they have. My
 10 recollection was we had no vote. I don't remember this
 11 committee deciding whether or not we would accept
 12 subject matter jurisdiction over this matter.
 13 So, while that may have been a unilateral
 14 decision that was made, it's one that we continue to
 15 disagree with.
 16 With respect to the concern about the
 17 information that's going to be shared with these third-
 18 party vendors, I, too, believe that we have an
 19 obligation to ensure that not only our members do not
 20 disseminate this information, but more importantly,
 21 that the third-party vendors do not disseminate it.
 22 And while we take great steps in terms of
 23 confidentiality, and more importantly, both, for
 24 members, staff, attorneys, outside counsel, and these
 25 third-party folks, there needs to be significant

Page 58

1 consequences to any breach of that duty. And we need
 2 to lay out -- and any agreement that you're preparing
 3 needs to include things where there are significant
 4 impacts to those folks who are doing that.

5 If it's a member of this committee or the
 6 members of our body that does something, they need to
 7 be sanctioned in a significant way, because this is
 8 extremely important, relevant data information that
 9 people have. It is not -- again, we continue to
 10 believe that it is not our authority or duty to this,
 11 to issue these subpoenas, but it is the Secretary of
 12 State's and her responsibility to do those types of
 13 things that were done; it was mentioned earlier.

14 But, clearly, we have an obligation to
 15 protect this vital information of folks and we need to
 16 make certain that those sanctions are significant along
 17 those lines.

18 Thank you, Mr. Chairman.

19 SENATOR ARGALL: Mr. Chairman, if I may?

20 SENATOR DUSH: Senator Argall?

21 SENATOR ARGALL: The question of which
 22 committee should move forward with this has been
 23 discussed at great length.

24 As the Chairman of the State Government
 25 Committee, I suggested several months ago, because of a

Page 59

1 considerable workload with State Committee
 2 congressional redirecting, lobbying reform, election
 3 reform legislation that I'm moving ahead with the
 4 minority chairman, Senator Sharif Street, and a host of
 5 other issues, that it would be helpful to balance the
 6 labor and, in my mind, this committee makes perfect
 7 sense to move forward on this issue.

8 The subject of separation of powers has also
 9 been discussed. I spent most of my academic career in
 10 reviewing those kinds of issues and I think we would
 11 all agree on this committee that the Senate of
 12 Pennsylvania should not act as the governor's lap dog.
 13 We should not act as the lap dog for the Secretary of
 14 the Commonwealth.

15 We should provide oversight and I believe
 16 that is exactly what we should do beginning today with
 17 the issuing of these subpoenas.

18 SENATOR DUSH: Thank you, Senator.

19 Senator Williams, for final comments before
 20 the vote.

21 SENATOR WILLIAMS: Thank you, Mr. Chairman.
 22 I actually have questions. So, to that end,
 23 does the chair or the body acknowledge that the
 24 Department of State is the agency that has the
 25 responsibility to oversee election procedures, review

Page 60

1 them, update them, and maintain the integrity of the
 2 process of the Commonwealth of Pennsylvania?

3 SENATOR DUSH: The chair recognizes that.

4 SENATOR WILLIAMS: Does the chair acknowledge
 5 the fact that audits were, in fact, done and, in fact,
 6 Pennsylvania was, I guess, the first of a few states to
 7 actually do these types of audits.

8 Does the chair acknowledge that those audits
 9 were done properly and accurately?

10 SENATOR DUSH: Having seen the reports, but
 11 not having access to the actual investigators, I
 12 believe that they are, but I do not know for certain.

13 SENATOR WILLIAMS: Does the chair acknowledge
 14 the fact that the manner in which those audits were
 15 done included a bipartisan process; meaning that the
 16 commissioners on the ground, whether they were
 17 Democrats or Republicans, were involved?

18 SENATOR DUSH: The chair so recognizes.

19 SENATOR WILLIAMS: Does the chair recognize
 20 that, in fact, many areas that would be deemed as
 21 "Republican areas" that those commissioners, in fact,
 22 acknowledge that audits were done and done accurately
 23 and effectively?

24 SENATOR DUSH: Within the scope of the
 25 audits, it does.

Page 61

1 SENATOR WILLIAMS: To the question at hand,
 2 which the public will, I guess, at some point in time,
 3 catch up with what we're doing -- I'm sure they will
 4 ask why we're doing it -- the question I have is, of
 5 the committee, who will pay?

6 I don't necessarily mean what vendor, because
 7 I understand that not to be deemed yet, but will this
 8 be a taxpayer-paid activity or a "funded by a non-
 9 outside entity" activity?

10 SENATOR DUSH: The chair has been asked and
 11 answered that question before, and, again, our intent
 12 right now, and as far as I know, we're going to be able
 13 to do it, it will be funded within the Senate.

14 SENATOR WILLIAMS: So, it will be a
 15 taxpayers-paid audit?

16 SENATOR DUSH: Correct -- well, no. It will
 17 be a taxpayer-funded investigation, to verify.

18 SENATOR WILLIAMS: Okay. Taxpayer-funded
 19 event -- investigation -- whatever way we're describing
 20 it -- I'm not caught up in that -- but the taxpayers
 21 will be paying for this?

22 SENATOR DUSH: That is correct.

23 SENATOR WILLIAMS: Does the gentleman know
 24 what the limitations are of what that expense might be?

25 SENATOR DUSH: They're going to have to fall

Page 62

1 within our budget.

2 SENATOR WILLIAMS: Well, I got that, but do

3 we know what the magnitude of costs of this activity

4 may be? Have you gotten estimates about what this may

5 cost?

6 SENATOR DUSH: We're getting estimates on

7 specific elements and then if evidence leads to further

8 inquiry, then that has the potential to grow.

9 So, as it relates right now, we're working on

10 a limited scope and a limited investigation within the

11 questions that have been raised about what has gone on

12 so far, and then we'll see where it goes from there.

13 SENATOR WILLIAMS: Is it hundreds of

14 thousands of dollars or millions of dollars?

15 SENATOR DUSH: Again, I don't have the full

16 -- I don't have that yet.

17 SENATOR WILLIAMS: Before that determination

18 of how the taxpayers will pay this or how much they

19 will pay, will that be made available to the public or

20 at least to all bodies involved in this committee?

21 SENATOR DUSH: Yes.

22 SENATOR WILLIAMS: And, lastly, to the point

23 of this has to be done with credibility, just for those

24 who need to know, our early audits were done in a

25 bipartisan manner.

Page 63

1 I reflect upon my friend and colleague who

2 talked about the State Government activity. While I

3 appreciate his recommendation, there's a phrase: The

4 tyranny of the majority.

5 I'm not to say that he's a part of the

6 tyranny but be very clear. An arbitrary decision made

7 by an individual member of this process has never been

8 the process that we have followed. That's why we are

9 conflicted with whether this committee actually should

10 have the jurisdiction.

11 So, my decision to say it shouldn't and his

12 decision to say it should, is not the manner in which

13 we should be proceeding. We should be proceeding in a

14 public manner that the public is engaged and

15 acknowledges such recommendations and shift in powers

16 or responsibilities.

17 We've not done that. The rules of the Senate

18 laid out what our committee responsibilities are at the

19 beginning of our session. There's not ever been a

20 discussion about how we change that, and to that end,

21 again, remains the question about whether this

22 committee is allowed to do what it's doing today.

23 And, lastly, to my friend's comment about

24 credibility, both my friends' comments about

25 credibility, credibility is borne out of the public

Page 64

1 trust. That means the public needs to be engaged.

2 That means all parties of the public, Democratic and

3 Republican, need to be involved.

4 So, if there's any expectation that out of

5 this investigation, this particular investigation, will

6 come some elevated confidence of what was done, that

7 can't be done without full inclusion of all the

8 decisions which are being made. And to date, the

9 vendors who are being selected, the lawyers who are

10 involved are not Democrat and Republican; they're

11 simply Republican. I'm not admonishing. I'm not

12 suggesting ill-intent, but I am being very, very clear;

13 that only underscores that which divides us and is

14 consistently pushing us towards extremes in this

15 endeavor and the manner in which we operate in our

16 political events to date.

17 I would suggest to the chair that if they're

18 going to proceed in this investigation, that all

19 parties should be involved, including vetting who those

20 vendors may be.

21 Thank you, Mr. Chairman.

22 SENATOR DUSH: Thank you, Chairman.

23 SENATOR ARGALL: Mr. Chairman, a question?

24 SENATOR DUSH: We're going to --

25 SENATOR ARGALL: Question, Mr. Chairman.

Page 65

1 SENATOR DUSH: Nate, please call the roll on

2 the motion.

3 SENATOR ARGALL: A question, Mr. Chairman?

4 One more question; it's a yes-or-no answer.

5 THE CLERK: Argall?

6 SENATOR ARGALL: Aye.

7 THE CLERK: Costa?

8 SENATOR COSTA: No.

9 THE CLERK: Costa, no.

10 Gebhard?

11 SENATOR GEBHARD: Aye.

12 THE CLERK: Gebhard, aye.

13 Hughes?

14 SENATOR HUGHES: No.

15 THE CLERK: Hughes, no.

16 Hutchison?

17 SENATOR HUTCHINSON: Aye.

18 THE CLERK: Hutchison, aye.

19 Mastriano?

20 SENATOR MASTRIANO: Proxy, aye.

21 THE CLERK: Santarsiero?

22 senator SANTARSIERO: No.

23 THE CLERK: Santarsiero, no.

24 Ward, Judy?

25 SENATOR WARD: Yes.

1 THE CLERK: Ward, Judy, yes.
 2 Williams, Anthony?
 3 SENATOR WILLIAMS: No.
 4 THE CLERK: Anthony Williams, no.
 5 Dush?
 6 SENATOR DUSH: Aye.
 7 THE CLERK: Dush, aye.
 8 Corman?
 9 SENATOR CORMAN: Aye.
 10 THE CLERK: Corman, aye.
 11 SENATOR DUSH: By a vote of 7:4, the majority
 12 having voted in the affirmative, the motion carries.
 13 The Senate Intergovernmental Operations
 14 Committee now stands in recess until call of the chair.
 15 (Whereupon, at 10:48 a.m., the committee
 16 hearing concluded.)
 17
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 25

1 CERTIFICATE
 2 This is to certify that the foregoing transcript
 3 In the matter of: Voting Meeting -
 4 Consideration of a motion
 5 to authorize the issuance of subpoenas
 6 Before: Pennsylvania Senate
 7 Intergovernmental Operations
 8 Committee
 9 Date: September 15, 2021
 10 Place: 172 Main Capitol, Room 8 EB East
 11 Wing, Harrisburg, Pennsylvania, 17120
 12 was duly recorded and accurately transcribed under my
 13 direction; further, that said transcript is a true and
 14 accurate record of the proceedings.
 15
 16
 17
 18
 19 /s/ CHRIS HOFER
 20
 21
 22
 23
 24
 25

1	31st 5:9,21 7:25,25 34 42:14,19 3rd 42:4	absurd 43:1 academic 59:9 accept 57:11 access 4:19 11:3 12:8 20:10 23:20 24:4,25 25:4,11 27:3,6,17 28:4,8 29:8 41:3 46:4 60:11 accommodate 9:1 accomplish 35:9 accurate 67:14 accurately 60:9,22 67:12 accusations 13:17 44:12 achieve 38:24 acknowledge 59:23 60:4,8,13,22 acknowledgement 9:7 acknowledges 63:15 act 4:16 59:12,13 acting 4:12 5:2 action 4:18 11:25 35:10 actively 39:21 activist 28:5 activists 40:5 activities 10:14 16:1 48:6 52:8 activity 5:25 6:6 12:17 13:8 15:17 15:21 17:25 61:8 61:9 62:3 63:2 actual 60:11 add 51:22 address 5:24 6:5 6:11,21 7:1,6,11 7:16,21 43:7,9	addresses 6:16 42:20 46:2 53:14 adjournment 2:10 administration 54:24,25 admonishing 64:11 advised 42:17 affairs 51:11 54:5 54:8 affirmative 66:12 aforementioned 4:21 afraid 31:20 agency 59:24 ago 51:21 58:25 agree 13:5,5 34:2 34:5 35:18 39:6 44:6 54:12 59:11 agreement 24:11 58:2 ahead 59:3 aimed 11:16,17 aisle 32:25 44:3 50:18 56:9,14 alarming 11:1 alike 30:9 allegations 17:18 17:19 19:9 51:4 allow 17:24 27:25 allowed 30:22 63:22 allows 14:25 amendment 43:22 america 22:3 american 16:13 americans 27:18 amid 44:11 amount 23:17 40:18
1 5:5 10 7:4 13:12 30:17 44:18 51:6,20 10:48 66:15 11 4:24 7:9 51:6 12 7:14 13 7:19 14 7:24 14d 4:23 15 1:6,23 8:1 67:9 16 8:4 17 8:9 17120 67:11 172 67:10 1803 8:8 183.7 8:11 183.7. 8:11 1st 5:9,12,20 6:1,7 8:15	4 4 2:6 5:22 8:10,11 46 4:25 4:00 8:15 5 5 6:3 59 2:8,10 6 6 6:9 6.9 43:13,15 60 2:11 61 4:25 67 9:25 6th 41:25 7 7 6:14 77 4:16 7:4 50:5 66:11 8 8 2:7 6:19 67:10 9 9 6:24 911 16:5 9:30 1:9 3:2 a a.m. 3:2 66:15 ability 27:22 28:6 50:22 53:16 able 18:5 38:24 53:15 61:12 absentee 6:22 7:17 17:13 43:16 absolutely 22:4 25:18 26:10,23		
2	2 5:10 20 34:5 38:6 51:2 2016 32:23 36:3 2018 8:6 2020 4:14,16 5:9 5:12,20 6:7,12,17 6:22 7:2,25 8:2 17:12 20:1 43:11 44:5 2021 1:6,23 4:15 5:9,13,21 6:1 7:7 7:12,18,23,25 8:3 8:10,15 67:9 25 8:8 260,000 27:13		
3	3 2:4 5:17 30th 5:13		

<p>ample 47:25 analogous 47:8 announcement 38:8 annual 8:9 answer 24:6 25:11 26:5 37:2 65:4 answered 19:6,8 20:3 26:4 46:10 56:20 61:11 answers 10:21 anthony 1:13 4:4 49:21 66:2,4 anticipate 19:22 anybody 17:6 21:16 applications 5:14 applying 40:2 appointed 9:18 33:7 appoints 14:24 32:9 appreciate 54:3 63:3 appropriate 10:8 33:24 appropriately 8:18 arbitrary 63:6 areas 39:17 60:20 60:21 argall 1:15 3:8,9 48:22,23,24 58:19 58:20,21 64:23,25 65:3,5,6 argue 27:12 arizona 12:17,18 47:7 arrival 15:8 article 4:23 13:4 14:9</p>	<p>aside 39:8 asked 19:5,19 20:3 29:19 61:10 asking 9:11 19:1,1 26:25 27:9 29:15 38:2 41:9 47:21 assembly 32:10 assignments 51:24 assistant 1:21 assisted 42:16 assisting 20:20 association 9:24 9:25 attack 11:18,19 15:5 attempt 12:18 attempted 8:25 attempting 33:12 attention 34:8 attorneys 57:24 audit 12:3,19 17:5 47:14 61:15 audited 46:12 auditor 17:5 audits 8:4,7 60:5,7 60:8,14,22,25 62:24 august 5:12,20 authority 12:4 24:15 28:18 32:3 51:10 52:1 53:6 53:15 55:20,24 58:10 authorization 28:3 28:22 authorize 1:4 2:6 5:1 11:23 67:5 authorized 8:17 13:20 18:16 19:15 available 23:3,6 41:21,23 55:25</p>	<p>62:19 avoid 15:19 aware 10:15 aye 49:1,2,7,8,16 49:17,22,23 65:6 65:11,12,17,18,20 66:6,7,9,10</p> <p style="text-align: center;">b</p> <p>b 2:1 13:12 30:17 back 24:13 25:21 32:4 38:19 41:14 51:6 52:18 balance 59:5 ballot 5:14 6:17,22 7:2,17,22 8:2 17:13 43:17 53:11 ballots 5:14 based 10:8,8,19 11:5 12:17 40:7 battle 16:11 began 15:23 beginning 59:16 63:19 behalf 9:11 believe 13:6 15:14 16:12 34:4,20 45:22,23 47:9 50:16,19 51:13,17 53:11 54:17 57:18 58:10 59:15 60:12 believes 16:12,13 34:21 belongs 51:14 best 30:23 betrayal 12:14 better 31:23 35:10 35:16 54:23 beyond 11:6 18:22 bill 42:22 bills 42:15,18</p>	<p>bipartisan 9:20 46:7 60:15 62:25 birth 5:23 6:4,10 6:15,20,25 7:5,10 7:15,20 bit 22:24 38:7 blowtorch 11:22 board 5:8 bodies 62:20 body 14:16 19:25 29:23 38:12 45:21 55:21 58:6 59:23 body's 4:14 borne 63:25 bradley 26:14 branch 55:8 breach 56:10 58:1 breaches 54:24 breadth 16:24 brief 54:2 briefly 31:3 55:12 55:14 57:3 bucks 34:11 budget 62:1 bulletin 52:6,14 bullied 11:10 bush 16:8,12 business 37:25 43:25</p> <p style="text-align: center;">c</p> <p>c 2:1 3:1 67:1,1 call 3:3,7 36:8 50:19 53:1 65:1 66:14 called 2:4 calls 5:6 35:20 campaigns 40:8 candidates 21:22 39:12,13,14 candor 40:24</p>
--	--	---	--

<p>capabilities 25:19</p> <p>capable 20:14 24:18</p> <p>capitol 67:10</p> <p>care 24:20</p> <p>career 59:9</p> <p>careless 13:7</p> <p>carelessly 11:23</p> <p>carries 66:12</p> <p>cast 27:17,18 47:22</p> <p>catch 61:3</p> <p>caucus 8:14 21:2 30:5 36:14</p> <p>caught 61:20</p> <p>certain 18:4 58:16 60:12</p> <p>certainly 14:20 22:23 30:21 33:21 43:12</p> <p>certificate 2:11</p> <p>certified 8:1 32:8</p> <p>certify 67:2</p> <p>chair 1:13,14 8:23 8:24 13:11,18,19 13:22,24 14:7,20 30:18,18 31:14 34:13,13,24 36:12 36:17 37:17 40:14 48:18 56:6 59:23 60:3,4,8,13,18,19 61:10 64:17 66:14</p> <p>chaired 51:15</p> <p>chairman 1:10 2:5 8:20,20 9:16 13:10 14:13,23,25 15:4,8,12 16:16,17 16:20,23 19:18 22:21 23:9,13 24:23 26:2,24 28:11,13,24,25</p>	<p>29:18 30:19 31:2 31:3,4 33:8,9 34:1 36:18,25 37:2,6,7 38:13,21 39:1,5 40:13,16 41:17,19 42:12,13,25 44:11 44:11,23,25 45:2,7 47:19 48:2 50:7 50:11,14,15 51:19 53:20,23 55:10,11 56:7,24 57:2 58:18,19,24 59:4 59:21 64:21,22,23 64:25 65:3</p> <p>chairman's 14:10</p> <p>chairperson 1:12 51:17</p> <p>chairpersons 51:24</p> <p>chamber 30:7</p> <p>change 13:8 32:11 45:13 63:20</p> <p>changes 4:16 7:24</p> <p>china 33:10</p> <p>choice 21:6</p> <p>choose 21:11</p> <p>chosen 23:22 24:24 25:4 27:8 27:21,21 39:11</p> <p>chris 1:16 67:19</p> <p>cited 52:12</p> <p>citizens 23:18</p> <p>claim 44:6</p> <p>clarify 18:20</p> <p>clear 13:1,1 32:3,7 43:6 63:6 64:12</p> <p>clearly 11:25 13:12 50:20,20,23 50:25 53:14 54:5 54:7 55:20 58:14</p>	<p>clerk 1:21 3:8,10 3:12,14,21,23,25 4:2,4,6,8 16:19 48:16,22,24 49:2,5 49:8,11,14,17,20 49:23 50:1,4 53:23,25 65:5,7,9 65:12,15,18,21,23 66:1,4,7,10</p> <p>clerks 5:19</p> <p>clients 22:11</p> <p>clock 36:20</p> <p>code 4:15 8:11,11</p> <p>colleague 31:4 33:12,22 38:9 45:24 51:20 63:1</p> <p>colleagues 34:4 47:23 50:17 54:12 56:8,13</p> <p>collect 29:16</p> <p>collective 16:6,9</p> <p>collectively 47:5</p> <p>collusion 33:1,4 35:24</p> <p>color 53:2</p> <p>come 12:11 22:7,9 24:9 29:18 38:19 51:6 64:6</p> <p>comes 23:20 39:9</p> <p>comfortable 36:2</p> <p>comment 10:13 37:7,9 44:17 63:23</p> <p>commenting 18:14 18:15</p> <p>comments 9:10,15 14:12 16:7 19:13 30:20 31:25 33:15 33:16 36:22,24 44:20,22 45:12,15 45:16 56:13 57:4</p>	<p>59:19 63:24</p> <p>commission 9:19 52:15</p> <p>commissioner 10:20 18:13 32:15</p> <p>commissioner's 9:24</p> <p>commissioners 60:16,21</p> <p>committee 1:1,9 1:11,23 2:7 3:4 9:20 10:8,15 14:5 14:15,16,20,24,25 15:1,1,23 18:8 19:25 21:6,15 22:12,22 23:15,24 26:25 27:9,22 29:3,7,23 33:21 34:25 37:15 41:14 41:22 42:2 45:20 46:11 48:5 50:9 50:21 51:11,15,17 51:19,23,23 52:3,4 52:5,13,17,20 53:4 53:6 55:21 57:7 57:11 58:5,22,25 59:1,6,11 61:5 62:20 63:9,18,22 66:14,15 67:8</p> <p>committee's 43:25</p> <p>committees 4:23 10:13 57:9</p> <p>commonwealth 6:1,7 10:2 13:1 21:24 28:18 30:10 35:16 39:24 45:20 48:7 59:14 60:2</p> <p>communication 42:2</p> <p>communications 5:5</p>
---	--	--	---

company 27:20 complete 5:22 6:3 6:9,14,19,24 7:4,9 7:14,19,24 24:24 25:4 completed 21:21 22:16 compliance 5:15 concern 15:21 47:20 57:16 concerned 12:12 22:25 29:22,23,24 32:21 concerns 32:23 34:11 35:12,17,18 36:8 45:24 47:3 47:10 57:5 concluded 66:16 conduct 17:5 28:18,19 55:22 conducted 8:5,7 32:22 33:3 conducting 20:14 44:13 conferring 21:7 confidence 36:16 39:23 64:6 confident 36:8 confidentiality 57:23 confined 38:9 conflicted 63:9 congressional 59:2 connection 39:11 consequence 10:23 25:1,5 consequences 58:1 consider 26:25 considerable 59:1 consideration 1:4 2:5 33:25 67:4	considered 15:17 16:14 29:14 considering 21:14 29:6 consistent 15:5,6 38:11 consistently 43:24 64:14 consolidated 8:8 conspiring 13:8 constituents 56:18 constitutes 1:22 constitution 4:24 12:25 32:6 55:19 56:2 constitutional 43:21 constrained 33:13 constraints 38:17 contacts 35:21 contained 12:7 containing 5:22 6:3,9,14,19,24 7:4 7:9,14,19 contest 12:2 32:12 50:21 51:5,7 53:2 contests 32:16 51:1 continual 50:12 continue 15:10 16:11 41:16 45:22 51:10,13 53:6,8,18 55:9 57:14 58:9 continued 33:5,5,6 continuing 15:19 contract 24:11 contractor 46:17 contracts 20:13 contrary 23:1 convened 1:9	conversation 40:19 45:18 47:11 47:13 51:18 52:22 copy 5:10 8:1,4,9 corman 1:15 4:8,9 8:20 9:17 13:3 16:2 30:18,19 31:6,10,13,16,18 34:3 39:6 50:2,3 51:20 52:7 54:1,2 56:10 66:8,9,10 correct 21:12 25:13 61:16,22 correctly 21:4 cost 62:5 costa 1:18 3:10,11 9:19 12:22 36:18 37:4,12 38:20,21 44:25 45:1,6,14 46:21 47:19 48:25 49:1,2 50:11,13,14 55:11,14,16 57:1,2 65:7,8,9 costs 62:3 council 33:6 counsel 8:14 20:20 20:22,24,25 21:7 21:11 57:24 counsel's 24:10,18 counties 10:1,2 12:12 countless 15:15 country 11:7,14 country's 11:18 counts 18:14 county 5:7,8,18 6:2,8,13,18,23 7:3 7:8,13,18,23 9:23 10:20,23 18:9,11 18:11,14 32:15 34:11 46:11,25	47:13 couple 30:20 55:12 court 10:16 courts 32:16,16,17 43:5 47:7 51:3 create 18:1 43:2 created 9:17 51:20 51:25 creation 52:20 credibility 34:6,9 34:11 35:1,4 36:11 39:7 62:23 63:24,25,25 credible 11:5 35:8 44:8 cris 1:9,12 critical 39:7 criticized 31:4 crossroads 12:24 45:19 crux 51:8 cry 32:4 cut 41:12 45:16
d			
d 3:1 d.c. 32:24 33:1 41:25 dark 11:13 darker 11:7 data 54:24 56:10 58:8 date 5:22,24 6:3,5 6:9,14,19,24 7:5 7:10,15,20 10:3 64:8,16 67:9 david 1:15 day 35:6,14 38:1 42:1 days 11:7,13 51:2			

deal 45:5 52:1 dealt 52:21 55:1 debate 32:25 decades 52:2,3,3 december 32:5 decide 57:8 decided 25:12 deciding 57:11 decision 27:23 32:19 47:14 54:9 57:14 63:6,11,12 decisions 27:6 29:12,25 30:1,2,6 34:14 47:20 64:8 deck 11:17 declared 43:5 deemed 60:20 61:7 define 50:25 defined 39:19 degraffenreid 4:13 5:3 degree 47:1 delegated 56:3 democracy 11:22 democrat 31:20 64:10 democratic 27:21 41:23 56:21 64:2 democrats 30:8 33:1 34:18 44:6,9 60:17 denied 11:10 department 4:12 5:7 8:6,10 10:10 10:11,16,17 12:20 28:16 32:8 40:21 47:6 52:10,11 56:11 59:24 describe 22:16	described 18:18 18:21 47:22 describing 22:25 29:14,25 30:12 61:19 desire 12:13 despite 50:16 details 15:25 30:14 33:18 determination 26:7 46:16,19,25 47:17,17 62:17 determine 4:17 17:19 20:4 21:2 46:22 51:3 54:4 determined 54:7 determines 14:13 differ 9:1 differences 44:5 different 16:2 difficult 39:15 digits 5:23 6:4,10 6:15,20,25 7:6,11 7:16,21 direct 5:1 8:12,17 23:22 directed 5:2 15:1 directing 24:8 direction 14:14 15:24 16:2 67:13 directives 5:11 14:11 directly 23:23 46:14 director 5:8 disagree 23:14 24:4 34:5 57:15 disappointed 45:14 discover 18:18	discovered 15:24 discussed 38:4,16 58:23 59:9 discussing 25:16 37:20 discussion 2:7 8:22 16:18 25:8 32:20 63:20 discussions 36:14 46:15 48:8 disingenuous 38:8 dispel 35:11,16 36:7 disseminate 57:20 57:21 distribution 19:15 districts 27:14 divided 16:9 divides 64:13 document 52:13 documented 14:9 documents 17:4 24:9,19 40:21,24 dog 59:12,13 doing 23:2 31:21 35:2 51:21,22 58:4 61:3,4 63:22 dollars 11:17 62:14,14 doug 1:16 draft 42:17,22,25 43:8,11,15,19 drafting 42:16 drawn 16:7 driver's 5:23 6:4 6:10,15,20,25 7:5 7:10,15,20 17:2 19:3 41:1 42:21 43:7,9 53:14 driving 44:4	drumbeat 15:19 due 14:19,22 23:14 26:2,24 duly 67:12 dush 1:9,12 2:5 3:3 4:6,7,10 8:21 9:14 13:10 14:1,3 14:10 15:13 16:17 16:21 17:4,15,23 18:13 19:5,12,21 20:2,12,17,19,23 21:5,12,16,21 22:1 22:4,7,13,18 23:5 23:10 24:6 25:2,7 25:13,18,25 26:5 26:10,15,18,21 27:24 28:2,12,15 28:20,22 30:16 31:14,17 34:1 36:19 37:1,10,12 37:16,18,22 38:13 39:3,15 40:10,14 41:6,10,14,18 42:7 42:9,11 44:10,16 44:21,24 45:11 46:18 47:16 48:18 49:24,25 50:1,5,10 50:13 53:21,24 54:1 55:13,15,17 56:25 58:20 59:18 60:3,10,18,24 61:10,16,22,25 62:6,15,21 64:22 64:24 65:1 66:5,6 66:7,11 duty 27:14 58:1,10 <p style="text-align: center;">e</p> e 1:14 2:1,1 3:1,1 67:1,1 earlier 18:8 45:18 58:13
---	---	--	--

<p>early 62:24 ease 41:10,11 42:9 45:11 east 67:10 eb 67:10 edt 1:9 effect 5:12 effectively 60:23 effort 33:17 either 12:2,4 35:9 35:16 36:5 elected 27:13 30:9 53:9 election 4:14,15,15 5:7,8,13,15,18 6:13,18,23 7:3,8 7:13,18,23 9:19 10:12,12,24 12:2,2 13:9 18:11 19:9 19:17 25:17 27:15 27:19 32:1,4,12,18 32:22 35:11,12 39:14 42:4,5 44:5 46:12,13 50:21 51:1,2,5,7 52:4,21 53:2 59:2,25 elections 4:21 5:13 5:19 8:3 17:12 18:2,9 28:19 36:3 40:9 52:10 54:6 electors 32:5,9 elements 55:18 62:7 elevated 64:6 eligibility 17:8 eloquently 45:24 emails 5:5 enacted 10:4 endeavor 64:15 engage 50:24</p>	<p>engaged 63:14 64:1 engender 39:23 ensure 24:15 57:19 ensuring 20:4 40:3 entire 38:1 entirety 11:4 entity 46:17 61:9 equal 16:14 equates 11:14 era 11:9 15:22 errors 17:23 essential 4:18 establish 3:6 established 4:11 estimates 62:4,6 event 21:11 34:23 61:19 events 64:16 evidence 10:23 11:24 62:7 evident 26:20 ex 1:15 exact 19:15 exactly 27:3,16 29:7 45:6 59:16 exaggeration 11:12 15:9 examine 52:17 55:25 56:1 examining 39:22 example 17:11 exception 53:19 excuse 41:5 executive 55:8 exercise 53:4 exercised 43:19 exercises 43:24 exist 17:17</p>	<p>expectation 27:19 27:20 64:4 expedition 43:3 expense 61:24 experience 25:16 expertise 39:17 explain 16:25 27:3 expressed 16:15 extemporaneously 33:10 extent 13:25 extremely 45:14 58:8 extremes 64:14 eyes 35:7,7,7</p> <hr/> <p style="text-align: center;">f</p> <hr/> <p>f 2:1 67:1 fact 10:11,14 11:7 11:15 12:20 15:10 36:2 41:5 52:5,12 60:5,5,5,14,20,21 factors 25:15 facts 15:6,25 31:22 33:5,18 factual 17:20 fails 50:6 failures 20:4 fair 31:6,6,10,13 31:16 faith 40:4 fall 61:25 falls 52:11 false 13:17 fanning 11:21 far 32:2 35:23 61:12 62:12 fashion 27:21 federal 5:15 10:6 12:19,21 32:5 feed 41:12</p>	<p>feel 9:4 fellow 42:22 felt 9:4 34:19 fight 16:11 file 11:3 filed 51:3 final 33:7 59:19 finalized 20:13,25 21:8 24:11 find 36:6 38:7 findings 16:4 finish 27:25 fin 36:5 first 16:24 18:16 37:2 39:5 43:22 54:4 60:6 fishing 43:3 five 36:22 37:14 38:9,18 39:1 flames 11:21 folks 47:10 57:25 58:4,15 follow 9:2 12:25 33:17,18 37:4,8 followed 63:8 following 5:3 foregoing 67:2 forensic 12:19 forewarned 12:6 former 16:8 forty 28:8 forward 15:8 35:11 36:9 37:21 38:17 44:10 58:22 59:7 forwarded 12:11 found 26:11 35:8 36:1 46:13 foundation 11:6 26:14</p>
---	--	---	---

<p>founding 39:9 four 5:23 6:4,10 6:15,20,25 7:5,10 7:15,20 franchise 16:15 frank 51:24 frankly 10:21 29:21 39:13 47:5 51:22 fraud 10:23 46:13 freedom 11:18 27:18 friday 8:15 friend 12:22 31:24 33:14 38:9 63:1 friend's 63:23 friends 30:20 32:23 63:24 front 29:1,20,22 full 33:23 42:6 46:11 62:15 64:7 fulton 10:20 18:11 18:13 46:24 47:13 funded 61:8,13,17 61:18 funding 22:6 26:13 34:17 funds 22:8,10 further 8:16 10:25 12:16 36:22 40:13 44:17 62:7 67:13 future 18:2</p>	<p>38:3 generations 52:2 gentleman 33:9 34:10 37:15 46:24 50:8 57:8 61:23 george 34:17 getting 20:13 25:21 36:20 39:21 44:15 62:6 giant 11:20 give 35:10 given 13:15 15:18 16:13,14 25:9 28:6 38:17 39:16 47:5 gives 42:23 go 15:8 20:6 24:13 36:23 47:24 52:18 55:24 56:1 goal 22:22,23 23:1 36:12,12,13,14 god 16:14 godly 16:13 goes 62:12 going 9:3 11:6 12:17 13:12,18 18:24 20:10 21:2 21:3,11 22:17 23:3 24:3,3,7 25:14 26:8 27:3 27:16,17 29:7,9,10 29:11 30:17 33:20 36:15,19,21,22 37:8,10,21 38:18 39:16,19,19,22 40:4,11 41:20,23 45:20 46:4,16,20 48:4,8,9,12 53:7,7 53:18 57:17 61:12 61:25 64:18,24</p>	<p>good 4:11 16:13 31:24 35:14 gotten 62:4 government 11:11 12:8,13 51:15 52:3 54:6 55:8 58:24 63:2 governor 32:14 governor's 28:15 59:12 grab 11:15 granted 4:22 great 15:21 32:25 57:22 58:23 greater 16:8 greatest 11:18 gross 11:17 ground 11:25 60:16 grow 62:8 guess 30:25 39:7 50:15 60:6 61:2 guidance 10:1 56:4 guidances 5:11 guidelines 52:9</p>	<p>heard 18:7,10 56:12 hearing 1:8 10:9 41:10 55:18,24 66:16 hearings 11:8 hearsay 41:11 held 1:23 11:9 24:10,17 54:6 help 42:25 helpful 59:5 hired 21:3 30:1 34:24 40:8 hiring 20:24 40:4 historically 52:2 52:18 hofer 67:19 hold 53:6 honestly 42:19 hope 19:4 hoped 38:23 hopefully 35:9 54:22,22 host 59:4 hughes 1:19 3:14 3:16 38:23 40:15 40:16 41:7,16,19 42:8,12 44:19,22 45:4,8,12 49:6,7,8 65:13,14,15</p>
<p>g</p>	<p>h</p>	<p>h 1:13 hand 61:1 happen 9:3 24:3 35:13 36:5 happening 18:2 happens 23:19 40:24 hard 28:9 harrisburg 67:11 harry 26:14 head 47:21 headed 15:24 health 56:11,11</p>	<p>human 32:4 hundreds 42:15 62:13 hutchinson 1:14 3:21,22 49:10 65:17 hutchison 49:9,11 65:16,18</p>

<p style="text-align: center;">i</p> <p>idea 38:5</p> <p>identification 19:2</p> <p>identify 52:16 55:20</p> <p>identities 17:14</p> <p>identity 17:6,10</p> <p>ii 4:24</p> <p>illegal 15:17,20 16:1</p> <p>immediately 51:1</p> <p>impact 42:4</p> <p>impacts 58:4</p> <p>important 9:5 34:6,9 35:4 54:16 58:8</p> <p>importantly 54:10 57:20,23</p> <p>improve 9:21 18:20 36:6</p> <p>impugning 31:4,8</p> <p>inappropriate 47:24</p> <p>incapable 29:5</p> <p>include 29:4 58:3</p> <p>included 60:15</p> <p>includes 43:22</p> <p>including 8:7 14:20 15:3 64:19</p> <p>inclusion 64:7</p> <p>independent 14:17 33:6 35:7 52:15</p> <p>independently 14:21</p> <p>indicate 50:20</p> <p>indicated 27:5 46:8 47:2 57:8</p> <p>individual 18:15 23:18 38:13 63:7</p> <p>individuals 6:11 6:16,21 7:1,7,12</p>	<p>7:17,22 17:7,10 19:13 34:24 46:1 46:10,14</p> <p>infer 41:21</p> <p>information 4:20 5:4 11:1,1,3 12:10 12:16 13:9 15:18 18:6,12,24,25 19:1 19:4,11,16 20:8,9 20:11 21:3,20 23:3,5,17,20,21 24:3,17,25 25:5 27:1,4,7,11,16 28:9 29:4,8,9,10 29:17,20,22 30:2 31:22 39:9 40:19 40:25,25 41:2,3,9 41:20 42:17,24 43:4,12,14 44:1 46:1,2 48:1,4,11 48:13 54:18,20 55:2,3,4 56:12 57:17,20 58:8,15</p> <p>inquiry 62:8</p> <p>inside 21:24 22:1</p> <p>insight 10:1,22</p> <p>inspectors 5:19</p> <p>institution 54:13 54:16,17 55:1,6 57:4,6</p> <p>insurrection 41:5 42:1</p> <p>integrity 9:20 13:11,11 20:5 56:17 60:1</p> <p>intent 13:17 14:5 61:11 64:12</p> <p>interested 44:14</p> <p>intergovernmental 1:1,9,23 3:4 51:11 54:5,7 66:13 67:7</p>	<p>interrupt 9:7 31:3</p> <p>introduced 42:15 52:20</p> <p>invalid 43:5</p> <p>investigate 16:3</p> <p>investigated 12:19</p> <p>investigating 17:18</p> <p>investigation 4:14 12:1 13:5,13,18 14:6,14 15:23 20:3,14 28:20 30:3,13 31:21 33:16 34:7 36:1 44:13 50:18 56:15 61:17,19 62:10 64:5,5,18</p> <p>investigations 28:19 33:3 34:17 35:3 55:22</p> <p>investigative 25:19</p> <p>investigator 24:12</p> <p>investigators 39:17 40:5 60:11</p> <p>invite 55:23 56:4</p> <p>involved 13:25 36:3 39:21 41:4 46:14,16 47:10 48:4,8 60:17 62:20 64:3,10,19</p> <p>issuance 1:4 2:6 25:6 26:25 29:16 67:5</p> <p>issue 23:15,24 24:1 25:22 29:1,3 35:20 39:7 46:12 50:24 51:9 53:1,5 53:17 57:6 58:11 59:7</p>	<p>issued 27:10 28:3 47:6,7</p> <p>issues 18:12,19 45:23 53:7 59:5 59:10</p> <p>issuing 11:5 42:24 59:17</p> <p>it'll 35:9</p> <p>items 33:13 35:10 38:3,11</p> <p>itis 40:6</p> <p style="text-align: center;">j</p> <p>j 1:19,19</p> <p>jake 1:15 9:17 53:25</p> <p>january 9:17 41:25</p> <p>jay 1:18 9:18</p> <p>job 54:23 55:2</p> <p>judged 34:8</p> <p>judges 5:19</p> <p>judy 1:17 4:2 49:18,20 65:24 66:1</p> <p>june 5:12</p> <p>jurisdiction 50:22 52:4,10 54:5 57:7 57:9,12 63:10</p> <p>jurisdictionally 10:7</p> <p>justice 12:20 47:6</p> <p>justify 43:3</p> <p style="text-align: center;">k</p> <p>keep 34:2</p> <p>kept 54:20</p> <p>kind 15:20 25:16 28:6</p> <p>kinds 59:10</p> <p>know 3:17 13:15 19:7 22:10 24:2</p>
---	--	--	---

<p>25:22 26:3,6,15 27:16 29:13,18 30:7,20,21 31:19 31:21 33:4,11 34:14,16,22,23 36:4,10,13 38:7 41:22,24 42:1 48:7 54:22 56:10 60:12 61:12,23 62:3,24 knowledge 11:3 37:25 47:25 known 46:3,4 knows 43:1,2 51:19,20</p>	<p>24:10,19,19 25:9 25:12 27:8 28:18 46:20,22,22 legislation 18:1,4 18:20 42:16,25 43:8,12,16,20 52:19 59:3 legislative 1:21 4:18 43:2 legislature 4:19 18:1 32:2,3,14 42:14 50:24 length 38:10 45:15 58:23 letters 5:6 liberties 11:9 license 5:23 6:4,10 6:15,20,25 7:5,10 7:15,20 17:2 19:3 42:21 43:7,10 licenses 41:1 53:14 life 54:15 limit 10:17 36:22 37:24 38:18 limitations 61:24 limited 8:7 62:10 62:10 line 11:1 28:10 41:6,7,8 lines 48:9 58:17 list 5:22 6:3,9,14 6:19,24 7:4,9,14 7:19,24 21:14 listen 56:8 little 33:5 live 39:20 lobbying 59:2 local 54:6 located 21:24 22:3 location 24:17</p>	<p>long 33:22 longer 38:14 longtime 51:16 look 35:5,5,8,22 47:11 52:18 56:4 56:20 looking 17:6 32:1 36:19 47:5 52:8 53:12 lot 19:1 32:4 34:7 35:11,17 36:7 45:23 47:3,9,20 lydon 26:14</p>	<p>matter 47:22 50:7 50:16 51:14 53:1 57:12,12 67:3 matters 52:1,4,15 mccarthy 11:8 mean 49:22 61:6 meaning 60:15 means 64:1,2 measure 40:3 meeting 1:3,11 2:4 3:3 67:3 meetings 5:6 member 5:8 13:25 14:24 23:10 33:20 36:23 37:21 38:15 42:13 44:16 51:16 51:16 58:5 63:7 members 1:11 9:12,19 29:6 36:24 37:14,24 38:5 41:2,4,22,23 41:24 42:2 47:12 48:5 51:23 57:19 57:24 58:6 mention 31:25 mentioned 45:17 45:18 58:13 merit 19:11 million 17:11 18:7 19:3 27:2 29:4 43:13,15 46:1 48:13 millions 62:14 mind 59:6 minority 1:13,18 8:24 9:13 16:10 33:2 59:4 minute 37:7 minutes 1:22 36:23 37:14 38:6 38:7,9,18 39:1</p>
I		m	
<p>I 2:1 labeled 50:17 labor 59:6 laid 13:13 63:18 lap 59:12,13 lastly 16:5 62:22 63:23 latitude 9:9 13:16 law 8:18 10:7 12:21 27:18 32:11 52:21 laws 5:15 35:10,16 36:6 lawyer 25:23 lawyers 64:9 lay 58:2 leader 38:10 leadership 14:18 leads 11:7 62:7 leaked 54:21 leanings 34:19 leap 11:20 leaving 39:8 legal 13:8 20:19,21 20:23 21:7,11</p>		<p>magnitude 62:3 mail 5:14 6:17 17:13 43:17 main 67:10 maintain 60:1 majority 1:14 30:7 33:3 42:23 43:1,2 63:4 66:11 making 13:16 21:6 27:6 29:12 30:6 40:2 46:15 47:15 47:16 man 26:11 manipulation 10:24 manner 22:24 60:14 62:25 63:12 63:14 64:15 manual 55:20 56:3 mason's 55:20 56:3 mastriano 1:16 3:23,24 44:11,12 49:12,13,14 65:19 65:20 materials 5:17</p>	

<p>mistake 12:18 misuse 11:17 moment 37:1 38:2 months 51:6 58:25 moon 26:11 morning 4:11 motion 1:4 2:5,7 5:1 8:19,22,23 9:8 16:18 36:21 40:20 48:17,19 50:5 65:2 66:12 67:4 motions 48:3 motive 14:4,6 motives 13:12,19 13:22,24 14:5 30:17 31:5,8 mourn 16:6 move 32:10 48:2 48:10,20 58:22 59:7 moved 48:16 movement 32:19 moving 35:10 36:9 59:3 multiple 39:17,17 47:23</p>	<p>nay 49:20,25 50:1 near 39:1 nearly 18:7 19:3 27:2,13 29:4 46:1 48:13 necessarily 61:6 necessity 4:17 need 18:6,12 19:11 19:24,25 20:1 24:13 39:16 43:6 43:9,12,14,18 47:4 47:11 53:25 58:1 58:6,15 62:24 64:3 needed 10:2 42:17 42:20 needing 42:24 needs 34:22 40:19 43:2 57:25 58:3 64:1 never 42:19,22 51:25 63:7 newspaper 13:4,7 14:9 15:2,16 non 9:24,25 10:9 11:5 61:8 notes 5:6 notice 1:9 notification 15:19 november 6:7,12 6:17,22 7:2 17:12 42:4 november's 27:15 39:14 number 5:23,24 6:4,5,10,11,15,16 6:20,21,25 7:1,5,6 7:10,11,15,16,20 7:21 18:9 19:16 38:15 43:7,8,10,10</p>	<p>numbers 12:9 17:3 19:2,3 42:21 42:21 46:2 53:13 numerous 15:2 32:18</p>	<p>opportunity 52:16 oppose 30:24 opposed 16:9 30:23 order 2:4 3:5,6 4:17 44:24</p>
<p style="text-align: center;">n</p>		<p style="text-align: center;">o</p>	
<p>n 2:1,1 3:1 name 5:22 6:3,9 6:14,19,24 7:4,9 7:14,19 43:7,9 53:14 names 42:20 narrowly 39:18 nate 3:6 48:21 65:1 nathaniel 1:21 nation 16:6 national 33:24 nature 12:7 45:15 48:12</p>	<p>o 2:1,1 3:1 obligation 57:19 58:14 obstruction 11:21 obtain 36:17 obviously 22:21 34:7 40:20 41:3 occasionally 43:24 occur 46:20 occurred 15:7 16:7 october 8:15 office 8:13 24:10 24:18 officers 1:12 offices 5:20 24:20 official 18:11 officials 18:9 officio 1:15 okay 3:20 17:9 21:13,23 22:2,5,15 25:14,21 26:16 61:18 one's 11:12 online 55:25 open 22:24 opening 9:4 operate 22:23 64:15 operates 14:17,17 14:21 operations 1:1,9 1:23 3:4 66:13 67:7</p>	<p>organization 28:5 organizations 46:5 outcomes 39:25 outlined 9:3 outraged 56:19 outside 19:14,19 20:25 22:1,11 34:14,19 48:6,6 57:24 61:9 overarching 12:7 overreaching 12:6 12:13 oversee 59:25 oversight 55:7 59:15 overturn 32:3</p>	
		<p style="text-align: center;">p</p>	<p>p 3:1 p.m. 8:15 pa 8:11 page 2:2 paid 61:8,15 paper 33:16 parallel 11:13 parameters 37:14 paramount 55:5 56:21 part 9:12 17:4 18:17 25:8 29:12 39:24 54:14,17 63:5 participate 4:13 47:14 participated 46:11 47:13 48:5</p>

<p>participation 9:22 10:9</p> <p>particular 23:7 32:18 37:21 51:11 55:22 64:5</p> <p>particularly 32:24 39:12</p> <p>parties 64:2,19</p> <p>partisan 9:25 30:4 30:13 34:18</p> <p>party 19:16 32:9 46:17 57:18,21,25</p> <p>path 47:4,25</p> <p>pattern 13:1 15:6 33:20</p> <p>pause 41:13 42:10</p> <p>pay 61:5 62:18,19</p> <p>paying 34:15,19 61:21</p> <p>payment 39:9</p> <p>pennsylvania 1:1 1:8 4:24,25 6:1,7 8:8,11 9:24 10:3 16:13 18:10 21:25 23:18 30:11 31:20 35:17 36:16 42:14 43:13,15 52:6,14 59:12 60:2,6 67:6 67:11</p> <p>pennsylvanians 27:2 29:5 42:22 56:12,23</p> <p>people 17:11,16 18:7 19:4 23:21 26:8 27:13,15 28:4 30:9,22,24 31:20 34:18 35:2 35:17,21,24 36:2 36:16 39:20,24 40:3 58:9</p>	<p>people's 14:12 36:7 53:10,16</p> <p>perception 35:22 35:25</p> <p>perfect 59:6</p> <p>perform 12:4 55:7</p> <p>permission 14:18</p> <p>permitted 53:3,3</p> <p>person 6:12 7:7,12 17:12 43:11,11,16 43:23</p> <p>person's 43:21</p> <p>personal 27:1 29:4 43:4,14 56:11</p> <p>personalize 13:24</p> <p>persons 5:19</p> <p>perspective 9:5 34:12</p> <p>phone 35:20</p> <p>phrase 63:3</p> <p>piece 52:19</p> <p>place 17:7 18:18 24:16 30:4 46:12 47:4 48:6 51:1,18 52:12,23 53:12 54:8 67:10</p> <p>places 5:16</p> <p>plain 4:12</p> <p>please 3:6 28:1 31:11 55:14 65:1</p> <p>pledge 55:4</p> <p>plus 34:5</p> <p>point 13:16 21:17 21:19 23:6 26:18 26:20,21 28:2 31:6,7,10,13,16 32:20,21 34:3 36:20 38:16,24 47:21 52:22 61:2 62:22</p>	<p>pointedly 16:1</p> <p>points 13:15</p> <p>policies 5:11</p> <p>policy 31:23</p> <p>political 28:5 39:22 40:5 64:16</p> <p>politics 44:14</p> <p>poll 5:16,18,18</p> <p>polling 5:15</p> <p>popular 32:8</p> <p>portion 9:13</p> <p>pose 30:21</p> <p>position 50:16 52:24</p> <p>possibility 20:24</p> <p>possible 22:14,24 26:9,10,11,12,17 40:6,10</p> <p>possibly 40:17</p> <p>potential 13:7 15:16 62:8</p> <p>potentially 11:2 15:20 22:11 23:16 25:7 26:3</p> <p>powell 25:24</p> <p>power 11:10,15</p> <p>powers 4:22 12:1 50:23 52:25 59:8 63:15</p> <p>precisely 57:6</p> <p>prepare 5:2 24:7</p> <p>prepared 9:2 10:5</p> <p>preparing 58:2</p> <p>present 1:11 4:5,7 8:6</p> <p>preserve 12:24</p> <p>president 16:8,12 32:13 45:9 52:6 57:4</p> <p>presidential 39:13</p>	<p>presiding 1:10</p> <p>prevent 18:1</p> <p>previous 46:24</p> <p>primary 4:15 7:7 7:12,18,23 8:3</p> <p>prior 15:7 37:14 38:14</p> <p>privacy 12:13 53:10</p> <p>private 11:2 12:11 15:18 27:20</p> <p>pro 9:17 36:13 45:10 52:7 56:9 57:4</p> <p>probably 12:3</p> <p>problem 33:9</p> <p>procedures 5:11 59:25</p> <p>proceed 13:20 15:13 21:8 23:12 38:4 64:18</p> <p>proceeding 15:11 63:13,13</p> <p>proceedings 9:6 9:23 10:18 11:4 16:4 67:14</p> <p>process 9:1,2 14:21 22:13 25:15 29:15 30:1 37:8 40:1 44:6,7 46:6 46:19 47:15 50:25 53:8 54:18,20 56:15,16,20,21 60:2,15 63:7,8</p> <p>produce 24:8</p> <p>produced 24:25 25:5</p> <p>production 8:12 23:17</p> <p>productive 35:15</p>
---	---	--	---

<p>profit 9:25 profuse 40:25 prolific 41:9 proper 24:16,20 54:8 properly 18:23 60:9 proposed 17:1 proposing 23:15 28:25 protect 9:21 11:12 53:10,16 58:15 protections 18:17 proven 17:18 19:10 provide 9:5 50:8 55:9 59:15 provided 10:1,12 10:21,25 12:10 20:10 provisional 7:2,22 43:17 proxy 3:15,24 49:13,14 50:8 65:20 public 1:8 10:17 11:2 12:6 15:19 23:4 29:7,10,21 31:23,25 32:21 34:23,23 38:3 40:25 44:22,23 45:9 61:2 62:19 63:14,14,25 64:1,2 publicly 14:9 15:2 22:17 published 13:4 52:5,14 pure 11:14 purpose 13:13 14:4 19:14 43:3 51:21</p>	<p>purposes 54:21 pursuant 1:9 4:22 8:10 pursuing 24:13 purview 51:13 push 28:7 pushing 64:14 put 37:14,24 putting 26:11</p> <p style="text-align: center;">q</p> <p>qualities 26:8 question 8:2 18:17 19:8 20:2 22:19 22:20 23:1,19,23 24:5,6 25:2 31:1 31:18 33:12 37:2 37:5 39:8 46:9 47:12 58:21 61:1 61:4,11 63:21 64:23,25 65:3,4 questioning 13:11 13:22 14:6 28:10 30:17 questions 8:22 10:21 16:18,23 17:16 19:19 23:11 23:22 24:14,21 34:10 40:13 55:23 56:19 59:22 62:11 quick 53:22 quickly 15:24 quite 10:15 47:5 51:22 quorum 3:6 4:10 quote 44:21 quoting 44:19,20 45:9</p> <p style="text-align: center;">r</p> <p>r 1:21 3:1 67:1</p>	<p>race 8:2 races 32:18 raise 51:10 57:6 raised 45:25 51:12 62:11 raises 10:21 ran 39:14 react 37:9 reacting 14:8 reaction 9:13 reality 15:9 35:22 35:25 really 19:8 26:4,6 53:17 reappointing 32:5 reason 40:23 42:23 reasonable 27:20 reasons 44:3 receive 26:13 received 35:20 recess 66:14 recognize 31:11 37:10 38:22 53:25 60:19 recognized 9:9,14 38:20 50:13 recognizes 8:23 30:18 31:14 40:14 44:25 48:18 56:6 60:3,18 recollection 57:10 recommendation 63:3 recommendations 9:18,21 10:4 63:15 record 9:13 10:22 13:22 33:11,13 35:2 45:9 50:8 52:5 67:14</p>	<p>recorded 67:12 records 7:25 8:13 40:21 41:1 43:18 48:14 redirecting 59:2 referenced 46:23 reflect 63:1 reform 59:2,3 regard 4:20 9:5 15:11 20:4 44:10 regarding 4:20 8:23 10:13 17:16 23:11 27:6 47:14 regardless 10:11 10:14 registered 5:25 6:6 registration 17:24 20:5 regulatory 52:8,15 reign 33:23 reiterate 47:20 relates 45:3 52:7 53:5 62:9 relating 5:13 relationship 25:23 relationships 39:18,20 46:5 release 45:25 released 56:11 relevant 4:19 23:23 26:7,21,24 58:8 remains 63:21 remember 16:6 57:10 reminds 15:22 repeat 22:18 25:2 replaced 44:11 reported 10:13</p>
---	---	---	---

<p>reporter's 2:11 reports 8:4,9 13:7 15:3,16 60:10 represent 12:15 30:9 representatives 27:13 representing 9:25 republican 8:14 20:23 21:2 30:5 31:20 41:2,4,22,24 42:1 60:21 64:3 64:10,11 republicans 10:15 11:20 30:8,9 34:16 44:6 60:17 requested 8:13 16:25 46:3 requesting 5:3 17:2 27:1 41:20 required 8:18 25:20 requirements 18:5 requires 18:4 rescission 15:20 residence 17:7 resources 10:2 respect 14:19,22 23:2,14 26:2,24 33:21 45:25 46:15 47:7 51:10 53:10 53:11,13,13 57:5,7 57:16 respectfully 24:4 respond 55:12 responding 9:10 17:18 response 14:23 53:24 57:3 responsibilities 63:16,18</p>	<p>responsibility 12:25 17:25 18:19 58:12 59:25 responsible 15:5 54:19 restore 56:22 restroom 3:19,20 result 23:16 36:17 results 8:1 13:8 25:17 34:8 35:5,6 42:4 44:8 retreated 44:12 revealed 13:6 15:15 review 21:3 30:2,3 50:18 52:15 54:8 55:3 59:25 reviewing 25:17 59:10 reviews 8:5 right 11:13,19 16:14,16 18:4 20:6,24 21:1,10,14 21:20 29:5 30:16 30:22 34:17 36:15 40:23 41:19 43:19 43:21,22,24 44:16 55:7 56:16 61:12 62:9 rights 11:16 43:22 rigorous 40:1 rise 53:8 role 3:7 55:8,9 roll 48:21 65:1 room 67:10 round 38:19 rule 4:23 13:12 30:17 44:18 ruled 45:7 rules 13:19 55:19 56:2 63:17</p>	<p>ruling 2:8 running 21:6 rushed 11:23 russia 36:2 russian 32:25 33:3 33:10 35:24</p> <hr/> <p style="text-align: center;">s</p> <hr/> <p>s 2:1 3:1 67:19 sanctioned 14:16 58:7 sanctions 14:24 58:16 sanctity 53:16 sanko 1:21 santarsiero 1:19 3:25 4:1 16:19,21 16:22 17:9,21 18:3,22 19:7,18,22 20:6,15,18,21 21:1 21:10,13,18,23 22:2,5,9,15,20 23:9,13 24:22 25:3,10,14,21 26:1 26:9,12,16,19,23 27:25 28:11,13,17 28:21,24 37:18 38:22,25 39:4 40:6,12 48:15,17 48:19 49:15,16,17 65:21,22,23 scared 30:25,25 31:1 scary 12:9 scope 4:18 25:11 48:12 60:24 62:10 scott 1:14 second 8:19 38:19 48:15,19 53:5 54:3 55:15 57:1 seconded 48:16,17</p>	<p>seconding 9:8 secondly 51:9 54:10 seconds 8:21 38:6 secretary 4:12 5:1 5:2 8:16 19:14 24:7,8 28:3,14,17 29:1 51:14 58:11 59:13 section 4:24 45:21 secure 24:17 54:20 55:4 secured 24:19 security 5:24 6:5 6:11,16,21 7:1,6 7:11,16,21 8:17 12:9 17:2 19:2 41:1 42:21 43:8 43:10 46:2 53:13 see 10:25 12:16 62:12 seeking 31:22,22 seeks 43:14 44:2 seen 12:14 54:23 60:10 selected 46:17 48:9 64:9 self 26:20 senate 1:1,8,11,23 3:4 4:23,23 5:1 8:14,16,17 12:3 13:19 14:17 15:7 15:11 20:23 21:2 22:7,10,23 24:9,19 30:8,10 32:10 34:21 35:19 38:10 41:2,4,25 45:21 54:4,13 55:1,6,19 55:21 56:2,3 59:11 61:13 63:17 66:13 67:6</p>
--	---	--	---

<p>senator 1:9 3:3,9 3:11,13,16,22,24 4:1,3,5,7,9,10 8:20 8:21,21,24,25 9:14 9:14,16,17,18 12:22 13:3,10,21 14:1,1,2,3,8,10,15 15:13,14 16:2,17 16:19,21,21,22 17:4,9,15,21,23 18:3,13,22 19:5,7 19:12,18,21,22 20:2,6,12,15,17,18 20:19,21,23 21:1,5 21:10,12,13,16,18 21:21,23 22:1,2,4 22:5,7,9,13,15,18 22:20 23:5,9,10,13 24:6,22 25:2,3,7 25:10,13,14,18,21 25:25 26:1,5,9,10 26:12,15,16,18,19 26:21,23 27:24,25 28:2,11,12,13,15 28:17,20,21,22,24 30:16,18,19 31:2,6 31:8,10,11,13,14 31:16,17,18,24 33:8 34:1,3 36:18 36:19,25 37:1,4,6 37:10,11,12,12,13 37:16,16,17,18,18 37:20,22,23 38:13 38:19,21,22,22,25 39:3,4,6,15 40:6 40:10,12,14,14,16 41:6,6,7,10,14,16 41:18,19 42:7,7,8 42:9,11,12 44:10 44:16,19,21,22,24 44:24,25 45:1,4,6</p>	<p>45:8,11,12,14,17 46:18,21 47:2,16 47:19 48:15,17,18 48:19,23 49:1,4,7 49:10,13,16,19,22 49:25 50:3,5,7,10 50:11,13,13,14 51:15,16,20 53:21 53:21,24 54:1,1,2 55:11,13,14,15,16 55:17 56:6,7,25,25 57:1,2 58:19,20,20 58:21 59:4,18,18 59:19,21 60:3,4,10 60:13,18,19,24 61:1,10,14,16,18 61:22,23,25 62:2,6 62:13,15,17,21,22 64:22,23,24,25 65:1,3,6,8,11,14 65:17,20,22,25 66:3,6,9,11 senators 46:23 sensate 24:7 sense 59:7 sensitive 54:18 55:2,3 sentence 20:16 separation 12:1 50:23 52:25 59:8 september 1:6,23 67:9 serve 8:18 served 34:4 serving 51:23 session 41:15 63:19 set 11:23 seven 17:11 18:7 19:3 27:2 29:4 46:1 48:13</p>	<p>shadow 16:5 share 21:15,17,19 21:20 30:14 57:5 shared 57:17 sharif 59:4 sharing 22:17 shift 63:15 showmanship 44:14 side 9:13 32:24 38:15 50:18 54:12 56:9,13 sides 50:20 signed 52:6 significant 16:3 38:2,2 40:3 45:17 47:22 54:24 57:25 58:3,7,16 silenced 11:9 similar 25:19 simply 50:21 51:22 64:11 single 52:19 sir 31:9 sit 10:5 16:5,10 56:8 situation 47:8 52:25 small 44:9 46:8 social 5:24 6:5,11 6:16,21 7:1,6,11 7:16,21 12:9 17:2 19:2 41:1 42:21 43:8,10 46:2 53:13 solely 9:11 15:4,5 soros 34:17 sorry 22:18 49:22 sounds 30:12 sources 34:15</p>	<p>space 11:13 speak 36:24 speaking 33:9 34:13 45:4,8 speaks 38:10 special 9:19 18:8 specific 10:1,13 33:12 62:7 specifically 12:8 18:6 25:9 55:17 spent 59:9 sphere 39:22 spoke 37:15 38:14 stack 11:16 staff 1:20 20:19 57:24 staffed 5:20 staffers 42:16 stage 33:24 stand 11:25 54:13 standing 51:16 stands 66:14 state 4:12 5:3,7,15 8:6 10:10 19:15 22:23 24:8 28:3 29:1 30:8,10 32:7 32:9 40:22 51:14 51:15 52:3,10,11 54:6 55:7 58:24 59:1,24 63:2 state's 58:12 stated 10:22 12:23 14:5 15:2 statement 9:4 13:23 14:23 15:10 15:25 statements 14:11 14:12 states 22:3 32:13 52:7 60:6</p>
--	--	---	--

statue 4:25 statute 32:7 55:19 56:2 statutes 8:8 50:25 53:3 step 44:9 steps 56:16 57:22 steven 1:19 stop 13:16 storage 24:16 street 35:22 59:4 strictly 46:7 strongly 23:14 45:22 struck 44:4 struggling 18:25 stuart 10:20 subcontractor 28:5 subject 43:9 51:14 57:12 59:8 submitted 8:9 subpoena 5:2 16:25 17:1 24:7 24:14 27:1 29:16 40:21 42:25 43:14 43:18 44:1 48:3 subpoenas 1:4 2:6 8:12,18 9:10 10:6 11:5,22 12:5,7 20:9 23:7,11,16,25 24:2 25:1,6 27:10 29:3 43:4 48:10 48:12 58:11 59:17 67:5 subsection 4:25 substance 12:5 24:14 substantial 29:19 succinct 40:17	suggest 14:20 15:4 16:2 33:14 64:17 suggested 13:3 58:25 suggesting 33:19 37:23 64:12 suggests 13:23 summarize 50:15 52:24 sunshine 11:2 support 9:21 33:17 suppress 11:16 sure 8:5 28:22 35:23 40:2 53:9 54:19 61:3 suspended 44:17 sweeping 4:16 sworn 12:25 sydney 25:24 system 8:5 17:24 20:5 28:23 36:9 systems 5:13	tasked 21:5 taxpayer 61:8,17 61:18 taxpayers 11:17 61:15,20 62:18 team 20:17,18 25:9,12 27:8 29:12 46:8,20,22 46:22 tell 29:6,11 34:12 35:19 tem 9:17 36:13 45:10 52:7 tem's 57:4 tempore 56:9 ten 37:15 38:6 term 29:14 terms 4:18 9:3,10 29:25 45:19 57:22 testifier 42:3 testimony 10:19 13:6 15:15 46:24 thank 9:16 13:21 15:14 16:16,17,22 30:19 31:9,12,17 34:1 36:17 39:3,4 40:12,16 42:12 45:1 50:14 53:20 53:21 55:10,16 56:7,24,25 57:2 58:18 59:18,21 64:21,22 thing 52:12 things 30:23,24 33:23 35:9,13 36:5,6 44:7,15 52:17 53:12 55:12 58:3,13 think 19:19 22:22 23:22 26:1 27:24 28:7 29:18 30:7	33:24 34:3 35:4 35:14,15 36:12 45:16 54:11 59:10 third 19:16 46:17 57:17,21,25 thought 26:20 35:24 44:9 thousands 42:15 62:14 threshold 18:4 ties 46:4 time 5:12 24:11 28:9 29:2 33:22 37:19,24 38:17,19 39:11 48:3,11 52:22 54:3,25 56:18 57:1 61:2 times 30:23 47:23 title 8:10 today 9:6 11:4,20 13:3 15:3 20:9 28:25 29:5,11,19 38:1 39:10 44:4 51:22 59:16 63:22 told 42:20 topic 20:7 23:6 25:25 34:2 35:23 topics 38:16 total 14:16 track 35:2 tragedy 16:7 train 5:17 training 5:17 transcribed 67:12 transcript 1:22 67:2,13 transparent 22:24 29:24 44:7 tremendous 40:18 tried 54:11
	t		
	t 2:1,1,1 67:1,1 table 48:3,10,17 48:20 take 24:20 30:3 38:25 48:21 51:1 53:18 56:4 57:22 taken 10:16 takes 38:1 talk 33:11,23 38:6 talked 33:16 34:15 45:24 51:12 63:2 talking 26:2 31:25 37:21 tan 8:15 targeted 11:16 task 39:16		

<p>troubles 13:2 troubling 11:6 true 67:13 truly 12:12 trust 56:22,22 64:1 truth 32:2 try 20:7 34:2 39:23 40:17 51:7 trying 16:24 17:10 17:13 18:25 19:24 22:21 50:24 turn 8:17 two 33:1 35:9,13 36:5 38:6 44:7 type 12:18 34:25 types 52:1,17 58:12 60:7 tyranny 63:4,6</p>	<p>unequivocally 52:7 unfounded 11:15 unidentified 3:15 3:17,19,20 unilateral 57:13 united 22:3 32:13 unpopular 11:15 unscrupulous 16:1 untimely 12:2 update 60:1 use 18:24</p>	<p>vincent 1:19 violates 53:15 violating 44:18 violation 10:6 11:25 12:21 vital 58:15 voices 11:9 voluminous 23:17 vote 10:5 11:13,19 16:16 17:8 18:5 23:15 24:1 27:9 29:6,15,19 32:8 36:21 43:19,21,22 48:20 50:5 53:9 53:11,16,17 57:10 59:20 66:11 voted 6:12,17,22 7:2,7,12,17,22 17:12,17 18:7,23 20:9 27:15 43:11 66:12 voter 7:24 9:22 11:3,21 17:24 19:23 20:5 35:21 43:18 voters 5:25 6:6 11:16 18:15 20:1 43:3,7,13,15 votes 27:17,19 47:22 voting 1:3 5:14,20 5:24 6:5 40:20 41:1 43:11,16,16 43:17,17 44:3 67:3</p>	<p>50:19 53:1,2 56:1 56:20 wants 33:11 ward 1:17 4:2,3 8:21 49:18,19,20 56:6,7,25 65:24,25 66:1 warrant 11:24 washington 32:24 41:25 watch 55:24 watchers 5:16,18 watergate 15:23 way 26:13 30:23 39:23 46:7,13 58:7 61:19 ways 48:7 we've 18:7 36:14 37:22 38:18 54:23 63:17 wednesday 1:6 week 12:23 18:10 42:3 55:18 week's 42:3 weep 16:6 went 3:18,19 34:14 55:17 wholeheartedly 39:6 wholly 47:24 widely 11:15 williams 1:13 4:4 4:5 8:24,25 9:16 13:21 14:2,8,15 15:14 31:2,8,11,24 33:8 36:25 37:6 37:11,13,17,20,23 45:17 47:3 49:21 49:22,23 50:7 51:16 59:19,21 60:4,13,19 61:1,14</p>
<p style="text-align: center;">u</p>	<p style="text-align: center;">v</p>	<p style="text-align: center;">w</p>	
<p>ulsh 10:20 ultimately 23:3 24:2,24 25:4 29:23 32:17 33:6 34:24 unadulterated 11:14 uncomfortable 34:20 undefined 27:7 undermine 32:1 undermining 33:15 underscores 64:13 understand 16:24 19:10,24 25:10 34:10 61:7 understanding 18:22 20:8 21:4 23:8 28:10 42:8</p>	<p>validity 17:16 51:4 variety 38:10 various 48:6 vendor 11:2 12:11 15:18 20:13 24:23 24:24 25:3,11 30:2 39:10,10 40:7 61:6 vendors 19:14,16 19:19 21:14,23 22:2,6,6,10,14 25:16,22,23 26:3 26:13 29:13 40:7 57:18,21 64:9,20 veracity 18:15 verify 17:6,10,14 19:12,23,24,25 20:1 61:17 veronica 5:3 version 5:10 vetting 21:22 22:14,16 23:2 25:15 26:3 28:7 29:15 40:1 46:6 46:15 64:19 vice 1:14 view 47:9</p>	<p>wait 37:6,6 walking 35:21 want 9:9 12:24 28:2 38:6 39:5 43:23 44:7,8</p>	

61:18,23 62:2,13 62:17,22 66:2,3,4 willing 4:13 21:17 21:18,20 29:13 30:14 wing 67:11 winner 32:8 word 39:2 work 14:25 15:1 worked 40:8 42:15 workers 5:18,18 working 4:16 20:12 24:15 46:19 46:21 62:9 workload 59:1 world 39:20 wrap 42:11 wrong 44:2
y
yeah 26:19 year 18:8 year's 19:9 40:9 years 33:1 34:5 35:19 42:14,19 51:21

EXHIBIT 3

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Senator Jay Costa, Senator Anthony H. Williams,
Senator Vincent J. Hughes, Senator Steven J.
Santarsiero, and Senate Democratic Caucus,
Petitioners

v.

Senator Jacob Corman III, Senate Pro Tempore,
Senator Cris Dush, and Senate Secretary-
Parliamentarian Megan Martin,

Respondents

Commonwealth of Pennsylvania, Pennsylvania
Department of State, and Veronica
Degraffenreid, Acting Secretary of the
Commonwealth of Pennsylvania,
Petitioners

v.

Senator Cris Dush, Senator Jake Corman, and the
Pennsylvania State Senate Intergovernmental
Operations Committee,

Respondents

Arthur Harwood, Julie Haywood
Petitioners.

v.

Veronica Degraffenreid, Acting Secretary of
State Commonwealth of Pennsylvania
Respondents

CASES CONSOLIDATED

No. 310 MD 2021

No. 322 MD 2021

No. 323 MD 2021

DECLARATION OF JONATHAN M. MARKS

I, Jonathan M. Marks, declare and affirm under the penalties of 18 Pa. Cons. Stat. § 4904 that:

1. I am the Deputy Secretary for Elections and Commissions at the Pennsylvania Department of State (the Department). I have been employed as Deputy Secretary since February 2019. Prior to serving as Deputy Secretary, I

served as Commissioner for the Bureau of Commissions, Elections and Legislation, and before that, the Division Chief for the Statewide Uniform Registry of Electors (SURE). I have worked at the Department since 1993 and been involved with the Department's election-related responsibilities since 2002.

2. My duties as Deputy Secretary for Elections and Commissions include overseeing the Bureau of Election Security and Technology, the Bureau of Campaign Finance and Civic Engagement and the Bureau of Elections and Notaries. The Bureau of Election Security and Technology is responsible for overseeing election technology, ensuring data integrity, and developing secure administrative procedures related to election administration in Pennsylvania, including administration of the Statewide Uniform Registry of Electors database (SURE).

3. I submit this Declaration in support of Petitioners' application for relief. Given my role and years of experience at the Department, I am personally knowledgeable about the matters referenced in this Declaration and the business records of the Department of State. If called as a witness, I could and would testify competently to the matters set forth below.

I. The Pennsylvania Statewide Uniform Registry of Electors (SURE)

4. The SURE system is Pennsylvania's centralized voter registration and election management system. 25 Pa. Cons. Stat. § 1222. The Department

developed the SURE system to comply with the Help America Vote Act, 52 U.S.C. § 21083, and with Act 3 of 2002. The Department manages and oversees the SURE system, which ensures the accuracy and integrity of voter registration records maintained by the election authorities in each county. The SURE system also facilitates determinations of voter eligibility, maintains precinct data, and produces poll books.

5. The SURE system is not a single database; instead, it is a suite of databases, portals, and applications.

6. The Department and counties use three components of the SURE system to administer elections: SURE Voter Registration, the SURE Agency Portal, and the SURE County Portal. Because these components can access to personal voter information, including driver's license and Social Security numbers, only officials authorized by the Department and by counties can access them.

7. SURE Voter Registration (SURE VR) is an application used by counties to process and maintain voter registration records and to perform a number of election-related tasks, including the management of vote history, absentee and mail-in ballots, poll books, election-related reports, and voter registration correspondence to voters. Special equipment and user credentials are required to access and use SURE VR. The Department has access to SURE VR as part of its management and oversight responsibilities.

8. The SURE Agency Portal is used by Department personnel to maintain elections and campaign finance data. The Department uses the portal to maintain and retrieve the archive of historic election results by precinct and county, manage nomination petitions, and manage campaign finance records.

9. The SURE County Portal provides counties with voter search, provisional ballot processing/certification, and other basic capabilities through a secure web service rather than the specialized equipment required to access SURE VR. Counties can use the portal for seasonal and temporary staff who may need to access basic SURE functionality during an election or other busy period of time. Additionally, counties use the portal to upload election results, certify election results, and certify voter registration statistics.

10. The SURE system also includes additional portals and interfaces accessible by Pennsylvania residents and voters: the SURE Public Portal, SURE Kiosks, and the SURE Online Voter Registration Web Application Programming Interface (OVR Web API). These portals and interfaces cannot access driver's license or Social Security numbers and do not provide direct or indirect access to SURE VR, the SURE County Portal, or the SURE Agency Portal.

11. The SURE Public Portal is accessible through the Department's website, where the public can register to vote online, check their voter registration

status, locate their polling place, and check the status of their absentee or mail-in ballot.

12. SURE Kiosks are located in county election offices, in courts, and at the Department and allow the public to search public countywide or statewide voter registration rolls, as necessary. To search public statewide voter registration rolls, the user of the kiosk must first attest under penalty of perjury that the information will only be used for purposes related to elections, political activities, or law enforcement. The kiosk can only display a limited number of voter records.

13. In 2016, the Department developed and launched the OVR Web API¹ to increase access to voter registration. OVR Web API allows Pennsylvania agencies, organizations, and political campaigns to develop electronic applications (i.e., “apps”) to help residents register to vote. The Pennsylvania agency, organization, or political campaign must sign an agreement with the Department and undergo testing to ensure that the app properly displays all the fields that a voter must fill out under Pennsylvania law (e.g., name, address, citizenship status, etc.).

¹ Pa. Dep’t of State, *Pennsylvania’s Online Voter Registration Web application Programming Interface (PA OVR WebAPI)* (Apr. 2021), <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Pages/PA-Online-Voter-Registration-Web-API---RFC.aspx>.

14. Pennsylvania agencies such as the Department of Health, the Department of Human Services, and the Department of Labor and Industry have built apps using OVR Web API to enable a resident to register to vote while also applying for other benefits, such as public assistance.

15. An app built with OVR Web API functions similarly to the Department's online voter registration website: the app allows a qualified resident to submit a voter registration application to the Department, which forwards the application to the respective county boards of elections.

16. Any app built with OVR Web API does not connect to, or have any access to, SURE VR, the SURE Agency Portal, or the SURE County Portal.

17. Likewise, the Pennsylvania agency, organization, or political campaign that built the app does not connect to, or have any access to, SURE VR, the SURE Agency Portal, or the SURE County Portal.

II. Voter Registration in Pennsylvania

18. To register to vote in Pennsylvania, a qualified resident must provide the county in which they reside with certain personal information, including their name, address, date of birth, and either their driver's license or last four digits of their Social Security number. *See* 52 U.S.C. § 21083(a)(5)(A); 25 Pa. Cons. Stat. § 1327.

19. In Pennsylvania, voter registration is entrusted by statute to the counties. 25 Pa. Cons. Stat. § 1203. All voter registration applications are reviewed, verified, approved, and retained by the respective county. 25 Pa. Cons. Stat. § 1328. Once a voter registration application is approved by the county, the voter's personal information is stored in SURE VR.

20. Pennsylvania provides numerous ways for its residents to register to vote. Qualified residents can submit or mail paper applications to a county. They can submit electronic applications through the SURE Public Portal, which hosts the Department's online voter registration website. They can register through certain Pennsylvania agencies, including the Pennsylvania Department of Transportation, as part of an application for other benefits, such as a driver's license. *See* 25 Pa. Cons. Stat. § 1201(1)-(2). And they can submit electronic voter registration applications using apps built with OVR Web API.

21. The Department forwards voter registration applications submitted via its online voter registration website, submitted electronically via other agencies, and submitted via apps built with OVR Web API to the respective county for review, verification, and approval.

III. Pennsylvania Law and Department Practice Limit Access to Voter Information

22. Pennsylvania law and the Department carefully control access to voter's personal information.

23. Only persons authorized by the Department or by a county can access SURE VR, the SURE Agency Portal, or the SURE County Portal and view driver's license and partial Social Security numbers.

24. If the Department provides persons outside the Department with access to SURE VR, the SURE Agency Portal, or personal voter information, it does so only under contractual agreements that limit access to the SURE system, restrict how personal voter information can be used, and prohibit retention or dissemination of personal voter information. The Department conducts background checks, including criminal background checks, on any person the Department hires or retains who will have access to the SURE system.

25. The Department does not make the driver's license or partial Social Security numbers of voters accessible by the public.

26. Pennsylvania law requires the Department to release certain voter information on "public information lists" and "street lists." 25 Pa. Cons. Stat. §§ 1404, 1403; 4 Pa. Code §§ 183.14, 183.13. But the Department does not release driver's license or partial Social Security numbers on these lists. *See* 25 Pa. Cons. Stat. §§ 1404(a)(1), 1403(a); 4 Pa. Code §§ 183.14(c)(3), 183.13(a), (c)(5)(iii).

27. The Department must allow public inspection of certain election and voter records, 25 Pa. Stat. § 2622; 25 Pa. Cons. Stat. § 1207. When complying with

these requests, the Department does not allow public inspection of driver's license or partial Social Security numbers.

28. Occasionally, a court will need access to SURE data as part of a nomination challenge or other election matter. To protect voter privacy and security, the county official will use the default County Portal voter search page, which does not display partial Social Security or driver's license numbers. This avoids displaying partial Social Security and driver's license numbers in open court. If the court asks to see a part of the County Portal that does display partial Social Security or driver's license numbers, the Department has instructed county officials to ask that the projector be turned off.

29. Pennsylvania law and Department regulations further protect the privacy and security of voters' other personal information.

30. State law provides that voter lists can be used only for purposes related to elections, political activities, or law enforcement, and a person obtaining either the public information list or street list must confirm compliance in writing under penalty of perjury. 25 Pa. Cons. Stat. § 1404(b)(3), (c)(2); 4 Pa. Code §§ 183.14(b)(4)-(5), 183.13(c)(2).

31. Pursuant to state law, the Address Confidentiality Program (ACP) protects the addresses of victims of domestic violence, sexual assault, stalking, and their families by requiring the Department and counties to use substitute personal

information in the SURE database and in election materials. 23 Pa. Cons. Stat. §§ 6701-13. When an ACP participant registers to vote, the county enters in the SURE system the participant's ACP number as their first name, "ACP" as their last name, "ACP [precinct number]" as the street address, a P.O. Box in Harrisburg as the mailing address, and 01/01/1900 as the date of birth. The county does not enter the ACP participant's driver's license or Social Security number into the SURE VR. ACP participants appear in poll books and on public information lists under the substitute information.

32. By regulation, the Department allows state and federal judges, state and federal law enforcement officers, state prosecutors, parole officers, correctional employees, individuals with a Protection from Abuse order, individuals granted a protection order due to stalking, and other individuals who can demonstrate a threat to personal safety to request that their home addresses not appear on public information lists. 4 Pa. Code § 183.14(c)(4)-(5).

IV. The Subpoena Requests Protected Critical Infrastructure Information

33. In January 2017, the U.S. Department of Homeland Security designated election systems as critical infrastructure. Among the election infrastructure so designated were voter registration databases, voting systems, and other technology used to manage elections and to report and validate results.

34. “Critical infrastructure” are “systems and assets” that are “so vital to the United States” that their incapacity or destruction “would have a debilitating impact on security, national economic security, national public health[,] or safety.” 42 U.S.C. § 5195c.

35. Federal law protects critical infrastructure and critical infrastructure information. 6 U.S.C. §§ 671-674; 42 U.S.C. § 5195c. Critical infrastructure is “information not customarily in the public domain and related to the security of critical infrastructure or protected systems” and includes “the ability of any critical infrastructure to resist interference,” “any planned or past assessment . . . of the vulnerability of critical infrastructure,” and “security testing, risk evaluation thereto, risk management planning, or risk audit.” 6 U.S.C. § 671(3).

36. The Protected Critical Infrastructure Information (PCII) Program protects critical infrastructure information from public disclosure. 6 U.S.C. § 673; 6 C.F.R. §§ 29.1-29.9. To be covered by the PCII Program, a State must voluntarily submit critical infrastructure information not in lieu of compliance with any regulatory requirement. 6 U.S.C. § 673(a)(1); 6 C.F.R. § 29.5. When reports are submitted for PCII protection, those reports have the presumption of protection pending review. Once covered, the information cannot be made available under any State or local public records law, be disclosed or distributed to any party without written consent of the person or entity submitting the information, or be

used other than for the purpose of protecting critical infrastructure or protected systems. 6 U.S.C. § 673(a)(1); 6 C.F.R. § 29.8.

37. In accordance with federal law and U.S. Department of Homeland Security practice, the Department has properly submitted critical infrastructure information about the SURE system to the U.S. Department of Homeland Security. This information is PCII.

38. Separately, the Department protects sensitive security information about the SURE system pursuant to Commonwealth data and IT security policies, including Pennsylvania Office of Administration/Office of Information Technology ITP-SEC019 and the Department's Traffic Light Protocol.

39. Paragraph 16 of the Subpoena demands disclosure of records that constitute PCII under federal law and sensitive security information under Commonwealth practice: specifically, records that provide detail about the Department's IT architecture and identify potential risks and vulnerabilities in the SURE system and the Department's IT infrastructure. These records would create a roadmap about how to attack the SURE system. As a result, these records can only be accessed in accordance with strict safeguarding and handling requirements, and only by those with an absolute need to know in order to perform homeland security duties.

V. The Auditor General's Audit of the SURE System

40. In June 2018, the Department asked the Pennsylvania Department of Auditor General (DAG) to perform an audit of the SURE system to assess its accuracy, operability, and efficiency. The audit was conducted pursuant to an Interagency Agreement between the Department and DAG.

41. The audit covered the period of January 1, 2016, to April 16, 2019.

42. The DAG published its final report in December 2019.²

43. The terms of the Department's Interagency Agreement made clear that DAG would protect the security and privacy of all data exchanged during the audit and would maintain data integrity as required by Pennsylvania Office of Administration/Office of Information Technology requirements. DAG agreed to destroy all data provided by the Department once the data was no longer needed. Only authorized personnel from DAG and the Department with a business need would have access to the data exchanged during the audit.

44. Data and systems security concerns were paramount in the Department's negotiations and dealings with the DAG in the course of their performance of the audit.

² Dep't of Auditor Gen., *Performance Audit Report, Pennsylvania Department of State, Statewide Uniform Registry of Electors* (Dec. 2019), https://www.paauditor.gov/Media/Default/Reports/Department%20of%20State_SURE%20Audit%20Report%2012-19-19.pdf.

A. The Department Provided DAG Auditors with Restricted Access to the SURE System Under Controlled Conditions

45. The Department and the DAG established protocols to address all aspects of data security. The Department provided DAG auditors with limited and restricted access to the SURE system and SURE system data under carefully controlled circumstances to reduce the risk of inadvertent intrusions into or tampering with the SURE system and prevent the unauthorized disclosure of information, including private, personal voter information.

46. For example, the Department gave the DAG auditors access to a snapshot of several tables in SURE VR contained sensitive personal information about registered voters in Pennsylvania. To ensure the security of the snapshot, it was stored on an encrypted external hard drive, which was kept in the Department's Office of Chief Counsel in a secure lock box within a locked cabinet. Only the auditors had a key to the lockbox, and only Department Chief Counsel personnel had a key to the cabinet.

47. The Department also gave "read-only" SURE user credentials to certain DAG auditors to allow them to review the SURE system. Because the access was "read-only," the DAG auditors could not input or change any information in the SURE system. They could not copy any information in the SURE system to duplicate it. Although the DAG auditors could view private, personal voter information in the SURE system, DAG auditors were not permitted

to carry such information out of the building, either in their working papers or by other means.

48. To access the snapshot and the read-only version of the SURE system, DAG auditors had to come to the Department's office in the North Office Building and use Department equipment and hardware. When needed during the audit, the DAG auditors and Department personnel would retrieve the hard drive from the lock box in the locked cabinet. The auditors would then connect the hard drive to a Department workstation with no wireless access in a room in the basement of the Department. If the auditors wanted to check a specific voting record in the SURE system, they would use their read-only credentials on a Department workstation in the same room. One member of Department staff, typically an employee of the Bureau of Elections Security and Technology, was physically present in the room to monitor use of the snapshot and access to the SURE system. Each evening, on the days when they needed the hard drive, the DAG auditors and Department personnel would replace the hard drive in the lock box, which would then be placed back inside the locked cabinet.

49. The Department also provided the DAG auditors with a copy of the full voter export, which does not contain driver's license or partial Social Security numbers.

50. DAG auditors also visited with select county election officials as part of the audit. The Department facilitated these visits by providing a Department staff member to be present for the auditors' discussions with counties. The purpose of having a Department staff member present was to ensure data and system security to the maximum extent possible.

B. The Department Withheld PCII relating to the SURE system from the Auditor General in Accordance with Federal Law

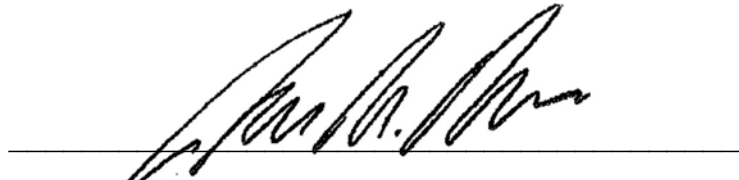
51. Because election systems are critical infrastructure, *see* Part III, *supra*, federal law governs what information about election systems can be shared, even with other state agencies when they perform audits.

52. In the course of conducting the audit, the DAG requested security reports related to the SURE system. The Department Office of Chief Counsel explained to DAG auditors that the requested reports were PCII and could not be released.

53. In order to cooperate with the DAG while respecting the information-sharing restrictions imposed by federal law, the Department provided the DAG auditors with an affidavit regarding information technology security protocols relating to the SURE system.

I declare that the facts set for in this Declaration are true and correct. I understand that this Declaration is made subject to the penalties for unsworn falsification to authorities set forth in 18 Pa. Cons. Stat. § 4904.

Executed on this 13th day of October, 2021

A handwritten signature in black ink, appearing to read "Jonathan M. Marks", is written over a horizontal line.

Jonathan M. Marks
Deputy Secretary for Elections and Commissions
Pennsylvania Department of State

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: July 27, 2022

/s/ Bradie R. Williams
Bradie R. Williams

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the following persons by regular mail, which service satisfies the requirements of Pa.

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