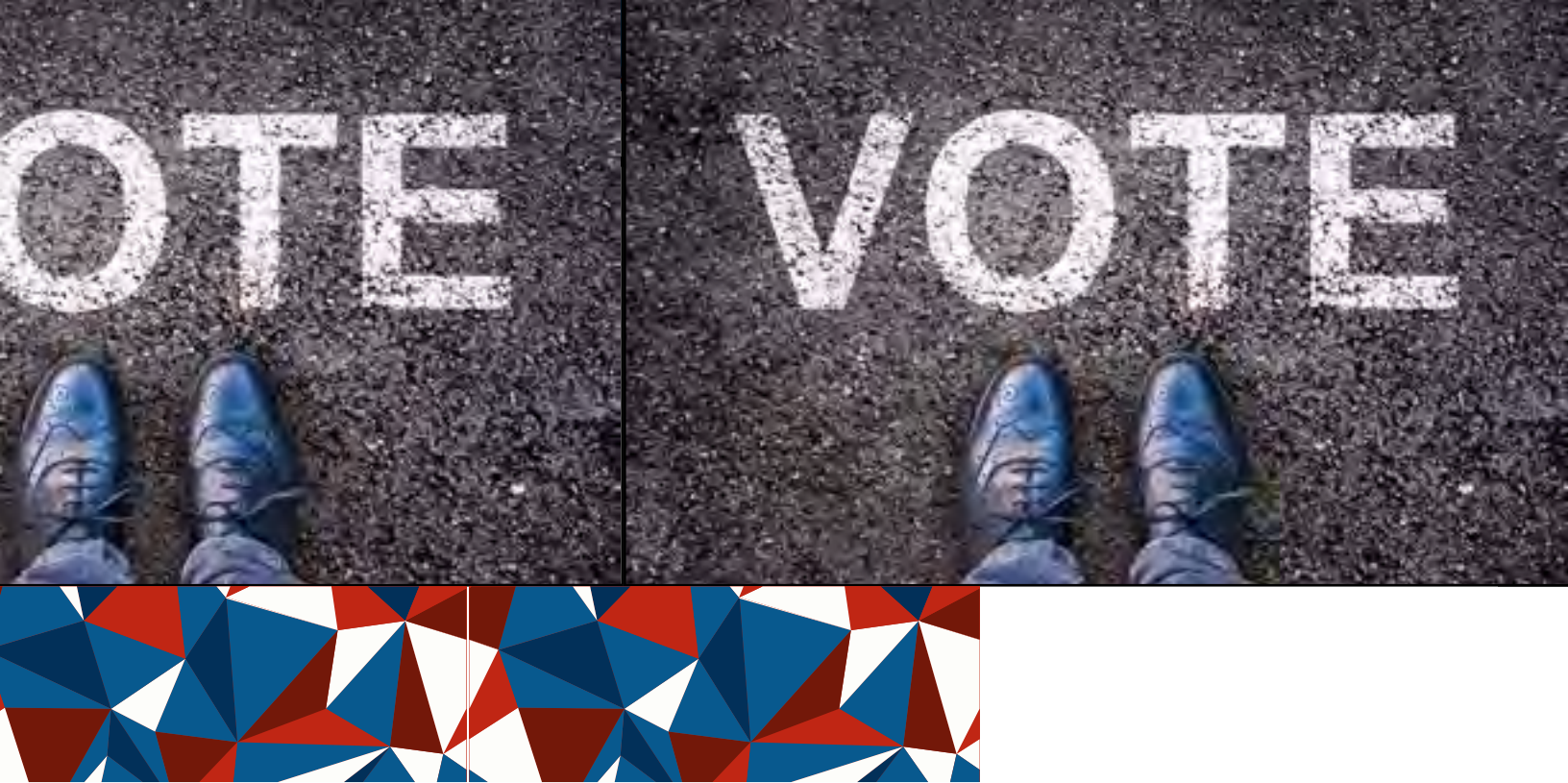


A Judge's Bench Guide to
**Adjudicating Fast-Paced,
High-Profile Election Cases**





A Publication of The National Judicial College

This publication was produced based on the NJC Course *Election Challenges and Disputes* in March 2024 in Chicago, Illinois. Relying on the faculty/participant presentations and discussions in Chicago, NJC Course Attorney Alf W. Brandt developed and the Lead Judicial Faculty Member Edward T. Wahl edited the publication.



Judge Edward T. Wahl, Minnesota Fourth Judicial District

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- **Leita Walker**, Ballard Spahr (Minneapolis)
- **Mark Winne**, Reporter, WSB TV (Atlanta)
- **Stacey Witalec**, Public Information Officer, Pennsylvania Supreme Court

Course Organizing Committee. The course's organizing committee also included **Honorable Brian Amero** (Chief Judge, Superior Court of Henry County, Georgia) and **Honorable Renee Cohn-Jubelirer** (President Judge, Commonwealth Court of Pennsylvania). They and their experience in adjudicating election cases contributed valuable insight to shaping what judges needed to learn from this election law course at this point in American history.

Webinars. This publication includes lessons from and links to three webinars that provided prerequisite information of state/federal election law and judicial ethics for participation in the in-person course. These webinars provided the legal foundation for course participants to learn the fundamentals of election law and focus their time together on engaging each other and sharing their insights and information. We recognize and thank the presenters who created this foundation of law and ethics for the course:

- Federal Election Law: **Debo Adegbile** (Wilmer Hale; former member of United States Civil Rights Commission) and **Derek Muller** (Professor, Notre Dame Law School)
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Preface

We live in turbulent times. This year we have seen vigorous advocacy and energetic politicking in elections at all levels of our government. And the months ahead may feature actions by outsiders and opponents who intend to sow chaos to disrupt our elections. Even in the best of times, the ordinary exercise of free speech, elections, and democracy can be disorderly and disruptive. But disruption must not prevail this fall, and the wild race to November must not careen out of control. One way to help keep elections on track is to turn to well-established state and federal election laws. When we do this, non-partisan state court judges can serve as “the guardrails of democracy,” in the words of one observer.

This assignment is daunting. Most state court judges are neutral generalists, not refined experts in narrow specialties. Our expertise lies in managing complex disputes to reach fair decisions based on due process. To do this, we use skills that will serve us well in election disputes. The skills we use in case management, discovery, motions, evidence, experts, and remedies are what we need to handle election cases. In the materials that follow, we review these basic skills to highlight checklists that neutral, skilled judges use in complex, fast-paced civil cases. In many respects, election cases will simply be “old wine in new bottles.”

But well-prepared judges also will need to understand special principles of election law. In the discussion that follows, we review these principles. Some state-specific election law issues will be new to generalist judges. For example, state statutes regulate parties and elections. And constitutional rights – federal and state – are an important overlay that will influence many cases. Common law principles interpret these statutes and constitutional rights and will also require careful study.

The challenge for neutral state court judges is to be prepared and informed for the election contests to come – at least as well-informed and well-prepared as the parties and lawyers who will appear before us. We hope these materials will help state court judges meet this challenge and navigate the bumpy road ahead.

Honorable Edward T. Wahl
Minneapolis, Minnesota
July 2024

Note: This Bench Guide offers hyperlinks (in blue) to external resources and the exemplars and documents in the appendix.



Why a bench guide for election cases?

In this presidential election year, federal and state judges are likely to have responsibility for adjudicating disputes and cases related to elections. This year's presidential election may come down to a limited number of "swing states" with close vote tallies. State courts already have adjudicated cases related to ballot access and voting procedures. The United States Supreme Court adjudicated a dispute about ballot access in Colorado.

In 2022, Congress passed the Electoral Count Reform Act that explicitly recognized a role for state courts in adjudicating issues related to appointment of presidential electors. In 2023, the Supreme Court recognized state court authority in election cases, specifically in redistricting and alleged gerrymandering cases. See, [Moore v. Harper, 600 US 1 \(2023\)](#). The conditions in this year's election, including the attempted assassination on former President Donald J. Trump, put the responsibility of state courts at the center of the election controversy. The judicial branch must fulfill its responsibility to adjudicate the nation's election cases and controversies, to protect the Rule of Law and ensure a peaceful transfer of power.

NJC 2024 Election Program. In light of election conditions this year, the National Judicial College (NJC) convened an election law course, *Election Challenges and Disputes*. The course included three webinars on state and federal election law and judicial ethics in the election context. The in-person program, held in March 2024 in Chicago, included four segments, addressing:

- pre-election litigation and judicial preparation
- judicial practice for fast-paced, post-election cases
- election official preparation for a safe and secure 2024 election
- controversy beyond the courtroom (news media and courthouse security)

The faculty, led by Minnesota Judge Edward Wahl (member of NJC Faculty Council), included judges who had adjudicated recent election cases. The faculty also included two secretaries of state who oversee their states' elections, Georgia's Brad Raffensperger and Minnesota's Steve Simon (then President-Elect of the National Association of Secretaries of State), who shared the work of state and local election officials across the nation in preparing for the 2024 election.

The course also attracted participation from several judges who had adjudicated election cases in the last four years. Faculty and participants engaged each other on best practices and lessons learned from their experiences. By the end of the course, the judges concluded that they wanted their judicial colleagues, in their state and across the nation, to learn the lessons they had gained from the course and their experience. NJC agreed to develop this publication, drawing on the materials and discussions from the course. The judges' lessons appear in the body of this publication as well as at the end of each section.

More Election Cases. As shown in the NJC webinar on state election law, election cases have increased in number since 2018, in both federal and state courts. Both the 2020 and the 2022 elections generated more election cases, and many of those cases showed up on state court dockets. According to the University of Wisconsin School of Law State Democracy Research Initiative, the 2018 election generated 226 cases, with 70 in federal courts and 156 in state courts. In 2020, a presidential election year, the total number of cases peaked at 543 cases, but there was rough parity between federal and state courts (282/261). In 2022, state courts adjudicated 293 of the 407 election cases. Given conditions this year, state courts may see even more election cases.



Preparing for an election case

While you may adjudicate pre-election cases, such as those related to ballot access and voting procedure, your opportunity to prepare for an election challenge case is limited. You will not know which facts and law will be litigated. If, however, you are assigned to election cases, then you may wish to review election conditions in your jurisdiction. Some state/local laws connect the court to election officials. For example, the Chief Judge of the Cook County Circuit Court (Illinois) appoints members to the Board of Election Commissioners. In Georgia, superior court judges adjudicate election cases and some superior courts may appoint the county election official, depending on local rules.

Open Meeting with Election Officials and Lawyers.

If possible, before election cases are filed, you may wish to meet with your jurisdiction’s election official, in open court with notice to local election lawyers and political parties. The Cook County (Chicago) Circuit Court’s election judges convene such a meeting several months before the election. Both judges and lawyers find the meetings productive for preparing the court for rapid adjudication of election controversies, before the election official deadlines for actions (e.g., printing ballots) required to manage the election.

Anticipating the Claims. Recent election cycles

have generated a wide range of election cases. The nature of those cases continues to evolve, in light of evolving Supreme Court precedent as well as changing state election laws and practices. The case types listed below reflect cases that have appeared on state court dockets in recent years, in order to help judges review their state laws on these issues.

Election Case Trends. Since 2020, election cases in state courts have increased and some case types have emerged more commonly. In many states, the executive and legislative branches of state government have reviewed and/or changed election management practices, which has led to litigation. For more information on specific election cases, you may review the [Major Pending Election Cases](#) database at Ohio State University. Ohio State also offers a comprehensive database of all cases involving the 2020 presidential election results, accessible from that same database webpage. In recent years, cases on certain topics have emerged to suggest trends for what cases may be filed in 2024.

- **COVID Voting Rules/Practices.** In the wake of the COVID pandemic in 2020, several states adjusted their voting procedures to minimize COVID risks for voters and encourage voting. Those changes resulted in cases challenging those rules and practices. Since 2020, several state legislatures addressed their voting rules in light

Election Cases Generally


- voter id laws
- voter registration laws
- redistricting/reapportionment
- machine certification
- mail-in ballot laws
- ballot access for candidates
- early voting challenges
- ballot initiatives

Election Day Cases

- canvassing/pre-canvassing
- paper ballot problems
- machine errors
- provisional ballots
- poll watchers
- voter intimidation/discrimination
- electioneering
- long lines/extended hours
- ballot format
- safety (voters & officials)

Post-Election Cases

- mail-in ballot counting
- provisional ballots
- vote-count observers
- machine malfunctions
- ballot impoundments
- certification issues
- presidential elector appointments
- recounts



of what they learned that year, and some changes were litigated in the 2022 election cycle.

- **Vote Certification.** Certification is a statutory process by which officials sign off on the completion of election results. Since 2020, the mandatory duty of election officials to certify results has been the focus of both increased academic attention and controversy. In 2022, the New Mexico Supreme Court ordered the Otero County Commission to certify election results. According to the Washington Post, “[s]ince 2020, county-level election officials in five key battleground states – Georgia, Arizona, Michigan, Nevada and Pennsylvania – have tried to block the certification of vote tallies in both primaries and general elections.” In 2024, there have already been several instances of local officials attempting to block certification during primary elections, with some of those efforts leading to litigation.
- **Voter Intimidation/Discrimination Cases.** As the nation has become polarized and allegations of “illegal aliens” voting have emerged, some have proposed that poll watchers prepare to object to voters who they think are not authorized. Such poll watchers and their actions may generate cases on either voter qualification or allegations of voter intimidation. Today, some states provide polling place security to protect voters to reduce the risk of voter intimidation. Concerns about voter intimidation have led to passage or implementation of federal and state laws and policies to guard against voter intimidation, election worker intimidation, and disruption of the voting process. An overview of laws that serve as guardrails against the intimidation of voters and election workers and the disruption of the voting process, including laws in 12 states where the risk of disruption is high, is available here.
- **Challenges to Absentee Ballot Rules.** The rules and regulations regarding vote by mail vary from state to state. In the wake of the expansion of voting by mail that took place during the COVID pandemic, restrictions on voting by mail have been the subject of significant attention from both legislatures and litigants. Cases in this area run the gamut, from challenges to rules governing the submission of absentee ballots and signature verification procedures to cases seeking restrictions on unmonitored drop boxes and prohibitions on the counting of absentee ballots that arrive after Election Day.
- **Voter List Maintenance.** States and localities are primarily responsible for maintaining voter registration lists, with the National Voter Registration Act (NVRA) providing guardrails to ensure that states strike a balance between facilitating voter registration and maintaining accurate lists of eligible voters. Although there have long been battles over how election officials maintain and update voter rolls, attacks on voter list maintenance practices have intensified in the aftermath of the 2020 election. In addition to federal claims under the NVRA, politicians and activists have also brought state-law challenges to voter list maintenance practices.
- **Hand Counting of Ballots.** Following false allegations about voting machine accuracy in the 2020 elections, some public leaders and activists have pushed election officials to hand count all ballots instead. In 2022, local officials in Nevada and Arizona announced plans to do full hand counts of ballots in addition to voting machine counts. Private parties sued in both instances, arguing that state law does not permit full hand counts. Nearly all election jurisdictions in the U.S. use voting machines to count ballots; most of the jurisdictions that perform hand counts instead have fewer than 1,000 voters (and just 0.2% of all U.S. voters live in these jurisdictions).
- **Voting Machines.** Activists and political candidates have brought suits challenging the use of voting machines in specific states or local jurisdictions (including in Arkansas, Maryland, and Pennsylvania). These lawsuits have argued that the voting machines in use do not comply with state law and/or federal voluntary certification standards for voting machines (which are often incorporated by state law), or make more vague allegations that voting machines are not secure.



- **Poll Watchers.** Many lawsuits have centered on the rights of poll watchers (sometimes called observers, monitors or challengers, depending on the state), members of political campaigns, parties, nonpartisan groups, and the public who observe the election process to promote transparency and compliance with state and federal law. The role of poll observers has received heightened attention in recent years as the pandemic brought focus to more aspects of the election process (early voting locations, mail processing facilities, ballot counting facilities, etc.) that people wished to observe and as election-focused groups have sought to recruit poll observers in larger numbers. Groups that

organize poll observers have sued to enforce compliance with state law or seek greater access to more of the election process. An overview of laws that regulate poll watchers, including laws in 12 states where the risk of disruption is high, is available [here](#).

Lessons Learned- Preparation

- Ensure full transparency of the court’s preparations for election cases. If you convene a meeting with the election officials, give notice to the local bar, election lawyers and the local political parties.
- Convene the meeting with election officials to ask about:
 - preparations for a safe and secure election
 - plans and deadlines for counting ballots
 - awareness of developing or pending election disputes

Webinars

As mentioned throughout this publication, the NJC held a series of webinars on election law topics. The links to the webinars are below:

[Federal Election Law for State Courts](https://judges.docebosaas.com/learn/course/652/federal-election-law-for-state-courts?generated_by=21198&hash=8a73d689d46de9b9d9e2544147b853f3f9f3dae1) - https://judges.docebosaas.com/learn/course/652/federal-election-law-for-state-courts?generated_by=21198&hash=8a73d689d46de9b9d9e2544147b853f3f9f3dae1

[Judicial Ethics in the Election Context](https://judges.docebosaas.com/learn/course/653/judicial-ethics-in-the-election-context?generated_by=21198&hash=0d43efb26fb9d1047af691e884d3a4b468c2d113) - https://judges.docebosaas.com/learn/course/653/judicial-ethics-in-the-election-context?generated_by=21198&hash=0d43efb26fb9d1047af691e884d3a4b468c2d113

[State Election Law and Issues](https://judges.docebosaas.com/learn/course/654/state-election-law-and-issues?generated_by=21198&hash=00f1d446ff7ebb3784537a392f394b12c45595cd) - https://judges.docebosaas.com/learn/course/654/state-election-law-and-issues?generated_by=21198&hash=00f1d446ff7ebb3784537a392f394b12c45595cd

Please note, the registration to view the webinar recordings is different from the one you use to register for NJC courses. You must create an NJC On-Demand account if you do not have one already. If there are problems with existing or creating credentials, feel free to reach out to our NJC Online Program Manager, Elizabeth Morgan-Beesley, at morganbeesley@judges.org. The links will allow you to self-enroll, pending our administration’s approval.

I. Day One – Case Filed Setting Your Course

An election case may be filed at any time, even on Election Day as voting continues. The allegations may address any number of actions by government officials at the local or state level. Your case may require immediate, same-day adjudication to address a voting problem at an individual precinct or in a region. This resource material seeks to address post-election cases that require adjudication after the polls close. While some references, such as the link to your state's election law bench book, may be helpful to Election Day cases, this bench book best serves judges with cases involving cases, motions and trials after the election, which often draw widespread public attention.

Need for Speed. The day of filing – Day One – marks a critical start for a fast-paced adjudication of election controversies. Your actions on this first day will set the pace for the rest of the case. Given state and federal deadlines for “final” decisions on vote counting and elections, the judicial branch has only days or weeks to complete the adjudication, including appeals. While the executive branch has prepared for the election for months or years, the law requires the judicial branch to expedite the adjudicatory process, so that peaceful transitions in the executive and legislative branches will proceed in an orderly and timely fashion. In order to promptly comply with the election deadlines that your state legislature and the Congress have set, the court must shift its attention completely to the election case, particularly if it has not prepared for adjudicating this case. This resource material seeks to provide the necessary information and the recommendations from other judges who have adjudicated these election cases.

Election Day Management Issues – Resolve Immediately. If a case shows up on your docket on Election Day, you may need to resolve the issue immediately. Issues and conflicts over election-day management often arise. These cases may relate to opening hours, candidate electioneering, voting

facility problems, or election worker security. If the issue shows up on your docket, then you have a duty to resolve the issue immediately. Many state laws allow local courts to resolve election day issues with limited process. Pennsylvania, for example, requires courts of common pleas to remain open in continuous session on election day and “settle summarily controversies that may arise with respect to the conduct of the election” Section 1206 of the Election Code, 25 P.S. §3046.

A. Retrieve State Election Law Resources

The United States Constitution provides for states to establish the rules for electing their members of Congress:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

Your state's election law, therefore, provides the foundation for your decisions, except when Congress passes national rules, as it has done for counting electoral votes for president in the 2022 Electoral Count Reform Act. One of your first actions therefore requires gathering your state's election laws, including your state constitution. See, [Moore v. Harper, 600 US 1 \(2023\)](#) (state election laws remain subject to judicial review under state constitutions and other law). Here are links that may assist your gathering of state law resources:

- [Your State's Digital Election Law Bench Book](#) (NCSC/William & Mary Law School)
- [Your State's Constitution](#) (University of Wisconsin Law School)

State Constitution. As discussed in the NJC webinar on state election law, state constitutions often have more provisions about voting than the U.S. Constitution. They set higher standards for protecting voting rights. The provisions may include provisions on popular sovereignty (putting power

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in the people’s hands), suffrage, voter equality, and direct democracy (including voter rights to amend the state constitution). Your state’s constitution may, therefore, affect how your state’s statutes may be interpreted and, possibly, the outcome of your election case. You may ask the lawyers at the first status conference how the state constitution affects the case. For more information on state constitutions, you may consult the University of Wisconsin website above or:

- G. Alan Tarr, *Understanding State Constitutions*
- John J. Dinan, *The American State Constitutional Tradition*
- Robert F. Williams, *The Law of American State Constitutions*

B. Identify State/Federal Deadlines for Election Decisions


States set the deadlines for the counting of ballots and certification of the voting results in most

cases. Congress, however, has set the deadlines for governors to submit their states’ votes in the electoral college. In fact, the 2022 Electoral Count Reform Act set clearer deadlines for state action, but allowed for state court adjudication. The deadlines you may wish to consider vary by state.

State Court Role in Electoral Vote Count. As discussed in the NJC federal Election Law webinar, the Electoral Count Reform Act, 3 U.S.C. §15, (ECRA) provided for state court roles in disputes over their state’s electoral votes. The National Conference of State Legislatures offers a [helpful 2023 explanation of how the federal ECRA will affect states](#), identifying the issues that legislatures may wish to address. If your state did address ECRA issues in state law, you may wish to determine how your state’s changes may affect your decisions. In any case, the key federal ECRA sections, with state court provisions in bold, include:

3 U.S.C. § 5(a)(1): Not later than the date that is 6 days before the time fixed for

Executive Branch Action	Deadline
General Election	November 5, 2024
Arrival of Ballots for Counting (In-Person, Provisional, Absentee)	Election Day + Variable Number of Days
Adjudicating Absentee/Provisional Ballots	Variable (Days)
Ballot Challenges	Variable (Days)
Audits of Counts	Variable/Not Required
Local Certification of Vote Counts	Variable (1-4 Weeks)
State Certification of Vote Counts	Variable or Unspecified
Filing Challenge to Certification	Variable - 24 Hours?
Certificate of Ascertainment of Appointment of Electors Issued	December 11, 2024
Meeting and Vote of Electors in Their States (deadline for state court action)	December 17, 2024
Deadline for Electoral Votes to be Received	December 25, 2024
119th Congress Convenes	January 3, 2025
Congress Counts Electoral Votes	January 6, 2025



the meeting of the electors, the executive of each State shall issue a certificate of ascertainment of appointment of electors, under and in pursuance of the laws of such State providing for such appointment and ascertainment enacted prior to election day.

3 U.S.C. § 5(c)(1)(B): Any certificate of ascertainment of appointment of electors required to be issued or revised by any State or Federal judicial relief granted prior to the date of the meeting of electors shall replace and supersede any other certificates submitted pursuant to this section.

3 U.S.C. § 5(d)(2): This subsection [regarding venue and expedited adjudication in federal court]

... shall not be construed to preempt or displace any existing State or Federal cause of action.

Voting Rights Act. The NJC Federal Election Law Webinar also explained how the federal Voting Rights Act applies to elections in each state. The Act bars any state voting qualification, practice or procedure that *results* in denial or abridgment of voting rights. The Act also requires that such judgments be made based on the “totality of the circumstances.” The relevant sections include:

52 USC §10301(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which *results in* a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b). [Emphasis added.]

(b) A violation of subsection (a) is established if, based on the **totality of circumstances**, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open

to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice

Recent Supreme Court decisions on this provision may be found at:

[*Brnovich v. Democratic National Committee*, 594 U.S. 647 \(2021\)](#)

[*Allen v. Milligan*, 599 US 1 \(2023\)](#)

C. Review Pleadings for Parties, Evidentiary and Legal Issues

A Day One review of the pleadings will help expedite the adjudication and prepare you to manage an effective status conference the next day. The state and federal laws setting near-immediate deadlines for adjudication of election challenges make this immediate review a necessity for setting aggressive motion and trial deadlines the next day. Reviewing the parties and the legal issues on Day One will help anticipate claims, defenses, discovery issues, and pre-trial motions, which may arise as early as the next day.

Parties. Your state law may identify the specific parties who may participate in a lawsuit challenging an election. *See, e.g.,* O.C.G.A. § 21-2-520 (GA). It also may impose terms on service of process, such as serving the relevant election official regardless whether they are a party. These requirements may appear in either your Election Code or your Civil Code, so it would be best to check both. The named parties also may help you identify potential issues of standing or removal to federal court.

Legal Theories. Identifying the legal theories in the complaint may help direct you to the statutes and court decisions that require your review in their entirety. They may suggest review of law review articles and other legal materials by your law clerk or court attorney. These legal theories also may be part of litigation in other regions or states, which you can ask plaintiffs’ attorneys the next day.



The Lawyers. In order to convene an effective Day Two status conference, you or your court staff will need to identify and contact all the lawyers, for the named parties as well as for election officials who may not be named. Lawyers for the election officials may be helpful to your understanding the statutory deadlines that their clients face and may affect the litigation. (Your court assistant may need to contact the election officials to identify their lawyers.) The lawyers for all sides may have anticipated and prepared for the case. The lawyers' names and contact information will be critical to setting the next day's status conference. As your staff checks for lawyer contact information, you may wish to check whether they are admitted to practice in your jurisdiction or seek approval of their admission *pro hac vice*. Given the short timelines, you may seek to resolve this issue on Day One.

Evidence. The pleading of the facts may suggest potential evidentiary issues for motions and trial. Given the nature of political campaigns and elections, the "facts" of what actually happened may be at the core of the dispute. You may wish to ask lawyers, starting at the status conference, about the nature and authentication of evidence supporting their pleadings. With the emergence of artificial intelligence in recent years, the possibility that "deep fakes" may be presented as evidence has increased, requiring closer examination of authenticity and other evidentiary issues, as described in section IV.B and IV.C. Identifying those issues on Day One will help you and the lawyers prepare to address them.

D. Set Day-Two Status Conference

Expedited adjudication of election cases requires an early status conference that can set immediate-term dates and deadlines for discovery, motions, and trial. Setting an effective status conference requires identifying a broad set of issues and participants. The issues include setting dates for discovery, motions (preliminary, dispositive, pre-trial and evidentiary motions), and trial. An effective notice to status conference participants would go to all named parties, as well as election officials without

regard to whether they are a named party. The notice should require parties to arrive prepared to offer plans for discovery and motions.


Election Official Participation. Complaints in election cases may not name the official administering the election. The officials nevertheless will need to participate in the litigation in some form. Some state laws specifically identify the election official as a necessary party for certain types of election cases. In the wake of disputes over the 2020 elections, state and local election officials across the nation have made extraordinary effort to ensure a safe and secure 2024 election. Election officials may contribute significant evidence to the adjudication of the dispute. Therefore, regardless who is named in the complaint or what state law requires, notice of the case status conference needs to include notice to the relevant election officials.

E. Plan for Establishing Record

The high-profile and fast-paced nature of election challenge cases requires great transparency in adjudication, and preparation for an immediate appeal to an appellate court. Achieving those objectives requires a thorough, complete, and clear written record from the very beginning. Written decisions, even in short form, are preferable to oral decisions from the bench, for explaining your decisions to the public. Establishing that record will require courthouse resources – court reporters, law clerks and recording technology. On Day One, you may wish to talk to all available and relevant courthouse staff about the practices that will create a complete record.

F. Meet with Courthouse Security

A high-profile election challenge case may create security issues that you and your courthouse may not previously have encountered. While you may not have any responsibility for courthouse security, your adjudication of this kind of case may call on you to lead your colleagues in ensuring an adequate courthouse security plan. More importantly, you need to make plans for your personal security at work and home, consulting with law enforcement about your personal security practices.



Multiple Law Enforcement Agencies. You can start with your courthouse security team, but you also may wish to ask that team about how they are engaging other law enforcement agencies with authority outside the courthouse. The grounds around your courthouse may have one agency, and the streets around your courthouse may have another. You also need to consider your personal security when you are at home, possibly in another law enforcement agency's jurisdiction. All the agencies need to coordinate your personal and courthouse security, anticipating that hundreds or even thousands may show up for your proceedings.

One Lead Law Enforcement Officer. Security conditions inside and outside the courthouse could change rapidly, requiring quick decisions and response from multiple agencies. Effective security management requires one law enforcement official with authority to coordinate multiple law enforcement agencies. In the law enforcement

community, this practice is known as “unified command” for situations where multiple agencies have responsibility and authority.


US Marshals Service Assistance. The US Marshals Service protects federal courthouses, but also offers assistance to state and local courthouse security officials, through its [National Center for Judicial Security](#). If you are adjudicating a presidential election case, federal security agencies, such as the Secret Service, may become involved in the security of your proceedings.

G. Meet with Judicial/Court Public Information Officers

Codes of Judicial Conduct limit what you can say about a case or proceedings, particularly outside the courtroom. Your case may nevertheless draw the attention of state, national and international news media, seeking information about the case's status

Lessons Learned for Day One

- **Prepare and Set Clear Course for Fast-Paced Adjudication**
 - Identify state and federal law deadlines for decisions on elections.
 - Identify legal and factual issues before they are argued.
 - External election deadlines are intrusive and demanding, and may limit availability of discovery and qualified expert witnesses for trial.
- **Maximize Clarity and Transparency from the Start**
 - Work with courthouse PIO to build respectful, constructive relationship with news media.
 - Invite election officials to status conference, to allow their work on a safe and secure 2024 election to gain public attention and contribute to the adjudication of the case.
 - Ensure news media get full information and notice of incorrect stories about judicial process.
 - Create written record, explaining your reasoning for every decision, even setting next day's status conference.
 - Identify and confirm available resources to assist in creating the written record quickly.
 - The compressed adjudication timeline may lead to courtroom conflict that distracts public attention from the issues in dispute and the reasoning of your decisions. Make an extra effort to maintain a calm demeanor for all involved.
- **Work with law enforcement on security, and take responsibility for your personal security**
 - Identify protection of election officials and election workers as priority during court proceedings.



and your decisions. While you may decide what happens in your courtroom, questions and demands for information, as well as for access for news media, will come to you and others in your courthouse. In order for you to focus on adjudication, you need to engage whatever courthouse public information resources are available to you. They can manage the news media and assist in providing your written orders and decisions to the public.

Meeting with Courthouse Public Information Officer. Your presiding judge or the courthouse administrator may have an employee responsible for public information. Start by meeting with them, asking them about:

- Previous experience with high-profile court cases
- Availability of media relations resources in your judicial system, such as public information officers employed by your Supreme Court or the Administrative Office of the Courts
- Contacts from the news media that already have occurred
- Facilities (rooms, recordings, video) available to news media outside your courtroom
- Rules on cameras in the courtroom, livestreaming video (including your responsibility for making decisions on such issues)

In order to keep your focus on the case, you may pass responsibility to the public information officer, provided you have a clear agreement on what they need from you to keep the news media briefed and away from you. Charge your PIO with developing a media plan for the case, which should include media coverage of proceedings and distribution of court filings and documents. It may be beneficial for the PIO to set up a webpage to quickly distribute documents for the case, which will reduce inquiries to the court clerk's office while improving public access and transparency.

II. Day Two - Convening Status Conference & Orders

The status conference on Day Two will set the path forward for you to adjudicate this case successfully. Convening and managing this status conference, resulting in orders necessary for the orderly and timely adjudication of the case, requires the knowledge you developed on Day One and a preliminary plan for the issues you wish to address in orders after the conference. The objectives for this status conference include:

- Ensuring due process of the claims within the legal time constraints of state and federal law
- Providing a framework for exchange of evidence, discovery, and rapid resolution of discovery disputes
- Narrowing factual and legal issues in dispute
- Establishing resources to assist the court in adjudicating the disputes, including the court's appointment of an independent data scientist who can interpret the necessary data science for the court in order to comply with the legal deadlines for the adjudication
- Setting aggressive but realistic deadlines for discovery, motions, and trial

A. Convene Status Conference - On the Record

This status conference will be unlike many others you have convened. Instead of relying on the lawyers to identify the issues and their preferences for case management, the short deadlines require more active court management. You will need to start on identifying potential issues and convey your plans for orders. An agenda for this conference may include:

- Notice of Issues That You and Your Courthouse Plan to Address:
 - Decorum of lawyers and parties
 - Courthouse security
 - News media participation, including cameras in the courtroom
 - Immediate discovery and exchange of evidence; e-discovery protocols


- Election deadlines and early deadlines for motions and trial
- Election Official Opportunity (if not a named party) to Identify Their Deadlines to Certify Results
- Clarification of Which State or Federal Laws that the Parties Plan to Apply to the Case
- Parties' Plans for Adjudicating Issues Common to Election Cases
 - Court's Jurisdiction (federal/state), including jurisdiction and cases in other courts
 - Standing/Parties
 - Equity/Laches
 - Mootness
 - Expert Data Analysis, Interpretation and Conclusions
- Court's Need for Independent Data Expert Assistance, Given the Short Deadlines the Law Imposes
- Election Officers' Pre-Election Preparation for Safe and Secure 2024 Election
- Parties' Needs for Discovery
- Discovery/Privacy Issues
 - What is exempt from disclosure?
 - Protective order? Redactions?
 - Is an *in camera* review necessary? Special master?
 - Will a public official have to create a new record to respond?
- Third-Party Discovery
- What is unduly burdensome, invasive, or expensive for a non-party?
- Can the court narrow the scope?
- What is within the non-party's possession, custody, or control?
- Should the cost be shifted to the inquiring party?
- Attorney Responsibility for Computer-Generated Evidence or Argument
- Issues That Are *Necessary* for Each Party to Prevail in This Case
 - Expedited adjudication may require narrowing issues not necessary to a party's success.
- Plans for Preliminary, Dispositive and Pre-trial Motions

B. Issue Scheduling & Decorum Orders – Set Expectations

Your issuing orders sets expectations for parties, attorneys and the public, as to how the case will proceed. In order to move the case forward quickly, the court may need to issue its post-conference orders as soon after the conference concludes as possible. You may find exemplar scheduling and decorum orders in [the appendix included in this document](#). While your narrowing the specific issues may be unique to the case, the exemplar orders identify issues and rules that may be common to

Lessons Learned for Day Two

- Decorum order sets the tone for the litigation, for lawyers, parties (including self-represented litigants), and, just as importantly, the general public, who may engage in the case in some way.
- Invite state and local election officials, even if they are not parties, to participate in the status conference, to help you and the parties understand their post-election work and the pending deadlines.
- Provide immediate record of status conference, by either transcript or audio recording, to allow the news media to confirm what they heard in the status conference, and in the subsequent trial.



these high-profile election cases. You may consider issuing some common orders, particularly on evidence exchange and discovery, the same day, and then issue subsequent orders in the days that follow.

Scheduling Order. Look first to the deadlines for the executive branch (including election officials) to make decisions, and develop the case’s scheduling order back from those deadlines. This ensures that your decision will maximize its impact on the outcome and possibly allow for an appeal. In cases related to the Electoral College, federal law imposes a hard deadline on your decision “prior to” December 17 in order to affect your state’s appointment of Electors. You may wish to include dates/deadlines for:

- Submission of Motions/Responses
- Pre-Trial Memos & Motions Hearing
- Trial

Appointment of Court Data Expert. If you decide to appoint an independent data expert to assist you in understanding the data and arguments, your state law may provide the mechanism for the appointment and disclosure of their conclusions. If state law does not specify a process for the parties to discover the issues on which you sought assistance, you may wish to provide an expedited discovery method as to the expert’s assistance.

Expedited Discovery. In order to comply with deadlines for adjudication, the scope of discovery will require some limits. Parties must resolve discovery disputes immediately and may seek your intervention. Some states have set specific discovery rules for election cases. *See, e.g., Martin v. Fulton County Board of Registration & Elections, 307 Ga. 193 (2019).* You may wish to establish a process for emergency discovery hearings, using remote-access technology. To ensure the public and the appellate court understand your discovery decisions, however, a written decision is necessary.

Decorum Order. Attorneys can set the tone for the parties, the court, and the public in offering respect and civility to each other, so that the court may focus its attention on the disputed issues. In this fast-paced litigation, neither the court nor the parties have time to spend on resolving disputes over decorum.

Engagement from the public and the news media make the need for explicit rules on decorum that much more important.

Hold Order. Federal and state law require election officials to retain and preserve voting records. 52 U.S.C. §20701, for example, requires all state and local election officers to “retain and preserve . . . all record and papers . . . relating to any application, registration, payment of poll tax, or other act requisite to voting” for 22 months after federal elections. Your initial orders may address:

- Who holds the voting documents, data and equipment
- Terms for holding voting data and equipment during the litigation
- Party access to voting data and equipment
- Terms for sealing and unsealing voting data and equipment

III. Day Three Until Trial

After you have sent the parties off to do discovery and prepare motions, you have time to prepare for adjudicating the issues that will arise in the weeks ahead. First, you may wish to gather the necessary courtroom resources, such as court attorneys/law clerks and court reporters.

A. Gather Necessary Resources

Once you have set your path for adjudicating the election case quickly, now is the time to circle back with those who you asked for plans, on the news media and courthouse security.

News Media Plan Review. Availability of alternative space and Internet access for the news media will affect the space for the news media in your courtroom. Reporters often prefer to sit in the courtroom, to observe all the activity, including the activity of those who are not on camera for a video feed. They may resist placement in an adjacent space, and their lawyers may file a motion for access. (You may review a media lawyer’s arguments about their client’s access to the courtroom here in the appendix of this document. When you review your courthouse news media plan, consider how courthouse staff have addressed:

- News media location and video feed
- Press conference locations
- Livestreaming of hearings/trial
- Cameras in the courtroom
- Use of reporting devices (cell phones, laptops, social media)
- Internet access in courthouse

Many states and courts have specific rules that apply to media equipment in the courtroom, including cameras and microphones. Make sure you and your public information officer are familiar with and are following any rules. In many instances, “pooling” may be required, which means only one or two cameras (one video, one still) are allowed in the courtroom and other media “pick up the feed” from another location in the courthouse. Pooling requirements may be included in your decorum order. It is standard for the media to determine who the “pool” will be and for the public information officer to work directly with the pool camera and other media. If video cameras are permitted in the courtroom, it should be noted that the media should be prohibited from adding additional microphones anywhere in the courtroom. Additional mics cannot be controlled by court officers or the court audio system and may pick up sidebars or other confidential conversations.

Courthouse Security Plan. For these election cases, courthouse security likely requires coordination from several law enforcement agencies. Your courthouse may have facilities that foster greater security, or you may have limited security resources. For this case, your review of the security plan should include consideration of:

- Leader of unified command
- Secure access to/from the courthouse for you, parties/lawyers, jurors, and courthouse staff
- Secure escape routes for you and others in your courthouse
- Contingency plans for explosions and other disruptions
- Crowd control
- Plans for law enforcement weapons
- Security when you are at home

B. Appoint/Consult with Court Data

Expert

If you have been able to arrange appointment of an independent data expert, your challenge becomes identifying an independent expert. State universities often have data experts who are independent and available in the short term. Stanford University Professor Justin Grimmer has offered to assist The National Judicial College in identifying available independent data experts for judges with election cases. Once you have appointed an independent expert, they may be able to:

- Explain the allegations and theories presented in the complaint.
- Help develop questions for you to ask the parties and their data experts.
- Describe the data expert community’s standards for expertise and reaching a conclusion.

C. Hear Motions in Order, First Things First

In the days that follow the status conference, as parties pursue discovery and file motions, hearing motions in order, perhaps even starting with dispositive motions, makes your work most efficient. Those motions offer the possibility that the case will be adjudicated before the parties invest their time and resources in preparing for trial.

Standing. Once the court’s jurisdiction is addressed and the proper parties, as defined in state law, are in the case, defendants may move to dismiss based on standing. One 2020 election case decision described standing as requiring plaintiff to demonstrate a “personal stake” in the outcome:

1. An “injury-in-fact;”
2. An injury traceable to the alleged acts of the defendant(s) being challenged; and
3. The injury is likely redressable by a favorable judicial decision.

Trump v. Wisconsin Election Commission, 983 F.3d 919, 924 (7th Cir. 2020) (plaintiff met his burden).

Timing and the *Purcell* Principle. Federal courts generally hold a presumption against last-minute

changes to election procedures. In *Purcell v. Gonzales*, 549 U.S. 1 (2006), the Supreme Court reversed an October 2006 9th Circuit decision blocking an Arizona voter ID law during that year’s midterm election the following month.

Equity/Laches. While state courts are not bound by the *Purcell* Principle, they may apply similar principles in equity. Under the equitable doctrine of laches, a claim is barred when:

1. The lapse of time and
2. The claimant’s neglect in asserting rights
3. Prejudiced the adverse party.

Several 2020 election case decisions addressed the laches doctrine:

- Georgia finished purging voter lists 90 days before the election; any claim should have been made then, before the election. *Boland v. Raffensperger*, Civil Action No. 2020CV343018 (Fulton County, GA; Dec. 8, 2020).
- Poll watchers followed the same procedures in November and August; any complaint should have been made earlier, when cure was possible. *Ward v. Jackson*, Case No. CV 2020-105285 (Maricopa County, AZ; Dec. 4, 2020), *aff rmed*, AZ Supreme Court (Dec. 8, 2020).
- “Allowing the President to raise his arguments, at this late date, after Wisconsin has tallied the votes and certified the election outcome, would impose unquestionable harm on the defendants, and the State’s voters . . .” *Trump v. Wisconsin Election Commission*, 983 F.3d 919, 924 (7th Cir. 2020).

Mootness. “An issue is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief. . . . Mootness concerns the availability of relief, not the existence of a lawsuit or an injury.” *Wood v. Raffensperger*, 981 F.3d 1307, 1317 (11th Cir. 2020). Several 2020 election cases ruled on mootness:

- *Bowyer v. Ducey*, 506 F. Supp. 3d 699 (D. Ariz. 2020)(“Because this Court cannot de-certify the results, it would be meaningless to grant Plaintiffs any of the remaining relief they seek.”)

- *Matter of De Zanett v. Village of Tuxedo Park*, Supreme Court of New York, Orange County (September 18, 2023) (Plaintiff “seeks relief related to the pre-canvass exclusion of absentee ballots that were submitted by persons who were not registered to vote by the alleged cutoff date . . . The canvass and recanvass already occurred. Thus, the relief of excluding any such ballots is moot. Once votes are counted, those votes cannot be “uncounted.”)
- *Boland v. Raffensperger*, Civ. Ac, No. 2020 CV 343018 (Fulton Co., GA; Dec. 8, 2020) (Claims moot: results certified by Secretary of State and the Governor and then re-certified; certificate of ascertainment was transmitted to the Archivist of the US.)

D. Plan Trial Logistics for High-Profile Case: Preparing the Courthouse

Trial logistics for a high-profile election case may require an unusual amount of consideration and collaboration with courthouse staff. This kind of case affects the entire courthouse and requires assistance from a wide range of courthouse staff. While you are in trial, the crowds in and around the courthouse will change the courthouse work routine and staff may need to take precautions for their own security. You may wish to convene a meeting with your presiding judge, the courthouse administrator, and staff who may be involved in some way. Discussion needs to address:

- Security: Judge, Jury (?), Witnesses, Courthouse, Public (Inside/Outside)
- Public Access: Overflow Space, Online Streaming
- Media Access: Cameras in Courtroom, Access to News Media Seats
- Staff Preparation: Understanding the Case and the Public Interest
- Public Information: Briefing the News Media and Public Regarding Case Progress/ Decisions

Lesson Learned for Preparing for Trial

- An independent data expert helps you come up to speed on the allegations and evidence, preparing you to ask productive questions of lawyers, parties and witnesses, particularly expert witnesses.

IV. The Trial

Once the case survives motions to dismiss and discovery, preparing for trial requires the parties to work out their differences on plans for trial. A helpful tool is requiring both parties to develop a joint trial memorandum for you to consider in your trial plan. The memorandum needs to address:

- Exhibit lists
- Fact witnesses with proffer
- Unresolved preliminary matters
- Expert witnesses
- Expected time to try
- Stipulations
- Legal issues to be decided
- Evidentiary Issues (authentication?)

A. Understand Your Responsibilities in High-Profile Election Case Trials

The faculty and participants in NJC's 2024 *Election Challenges and Disputes* course discussed the importance of the judge's responsibilities in these high-profile cases and trials. They recommended consideration of these points, which may be common sense to you but are important to these kinds of high-profile cases, to ensure the court remains independent and impartial:

- Protect election integrity/voter confidence
- Protect the court
- Beware of turf wars
- Don't become the story; it's not about you
- Stay conscious of the judicial code of conduct
- Manage disputing lawyers carefully
 - Set expectations (early, consistently, and often)

- Bar surprises
- Full/fair/equal opportunity and process
- Slow to anger, slow to sanction
- Be clear to all parties and the public on:
 - Advance decorum order
 - Cameras/livestream
 - Attire/accessories
 - Recording devices
 - Courtroom security
- Address the needs of the press/news media:
 - Texting/recording in courtroom?
 - Adjacent space with video feed/internet access
 - Press conference area
- Don't ignore the press.

B. Examine Expert Evidence at Pre-Trial Hearing

With an expedited adjudication, a pre-trial hearing allows for resolution of certain trial issues that may shorten the length of the trial. These hearings may address common pre-trial issues: *in limine* motions on witnesses and documentary evidence, witness subpoenas, and privileges. Election cases involving a large volume of ballots may make expert testimony central to the dispute. The pre-trial hearing *before* the trial date offers the opportunity to resolve expert testimony disputes so that parties may be able to reformulate their trial strategy.

Expert Testimony Standards and Factors. Your pre-trial legal review, preparation and consultation with an independent data expert will help you

NOTE: Given the diversity of state rules of evidence, this resource will rely largely on analysis of the Federal Rules of Evidence (FRE) to address the issues that arise in election cases. Your state law may be different, but the Federal Rules provide a framework for your analysis of evidentiary issues.



Federal Rule 702:

Qualified witness may testify in the form of an opinion if:

- a) The expert’s scientific, technical, or specialized knowledge
- b) is helpful to the trier of fact to understand the evidence or to determine a fact in issue;
- c) testimony is based on sufficient facts and data;
- d) testimony is product of reliable principles and methods;
- e) principles and methods are reliably applied to the facts.

Daubert Factors/Questions:

- a) Has the expert’s technique been generally accepted in the relevant scientific community?
 - b) Has the expert’s technique been tested?
 - c) Has it been peer-reviewed?
 - d) Error rate for the technique? Is the error rate acceptable?
 - e) Do standards control application of the expert’s technique?
 - f) Other factors: Daubert factors are not an exclusive list.
- See, Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 113 S.Ct. 2786 (1993)

Frye Factors/Questions:

- 1. Will specialized knowledge help the trier of fact to understand an issue or determine a fact?
 - 2. Is the witness qualified as an expert based on knowledge, experience, training or education?
 - 3. Does expert opinion have foundational reliability? Does witness reliably apply principles of the expert’s technique?
 - 4. Is the underlying scientific evidence generally accepted in the relevant scientific community?
- See, Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923)

adjudicate expert testimony disputes quickly. Your judgment as to the qualification of an expert witness will depend on your state law, but several models may be informative – Federal Rule of Evidence 702, the *Daubert* standard and the *Frye* standards. As suggested in *Forensic Science*,

“[L]ack of rigor in the assessment of the scientific validity of scientific evidence is not just a hypothetical problem but a real and significant weakness in the judicial system...” --PCAST, *Forensic Science* at 22 (2016). Considering factors from several sources, in addition to your state law, may provide greater rigor to your judgments on expert testimony.

Kinds of Experts in Election Cases. Expert witnesses in election cases may offer expertise in: statistics, handwriting, paper (quality, creasing, source), voting machines and fraud, deep fakes and disinformation, or computer science, or other specialized areas of expertise.

Questions for Proposed Expert Witnesses. In judging whether to allow an expert to testify as to their opinion, you may wish to lead the questioning, which can reduce the hearing time required to

consider their qualifications. Here are some questions you may ask:

Who is the expert?

- Relevant expertise: scientific, technical or specialized knowledge?
- Helpful?
- Signed expert report?

Data and Method

- Does the expert report provide transparency for data, process, and conclusions?
- Clearly described procedures?
- Data available for scrutiny?
- Does the report cite relevant academic literature?

Is the opinion true? Does it make sense?

- Copy and Paste Errors?
- Errors in Interpretation?
- Simple Falsehoods?

Comparison/Contrast. If the expert claims the election is anomalous, is the expert clear about the comparison?

- How does the expert define “anomalous?”
- Does the expert apply their method to historical data?

•
Method: Does the expert evaluate the false positive when merging data?

- Merging: combine information from distinct data?
- Risk: merge distinct records and label legal votes as illegal?
- Measure False Positive Rate: simple internet search?

Error rate: Does the expert provide a measure of accuracy?

- Classification: fraudulent?
- Evaluate: apply method where answer is known
- Accuracy: Share of times method is correct

Expert Witness Checklist

In order to draw together the many factors and questions for you to consider in exercising your judgment on expert witnesses, this checklist identifies many of the key issues:

- Qualification
- Sufficiency of facts and data
- Helpful to trier of fact
- Reliable principles and methods
- Reliable application
- Accepted by relevant expert community
- Error rate

C. Consider Other Evidentiary Issues in Context of 2024 Election Year

Election cases in 2024 may raise evidentiary issues unique to the context of a campaign and an election in a deeply polarized nation with advanced technology. Counting ballots has come a long way from the days of hand-counting in-person, paper ballots. The “hanging chads” controversy in Florida in 2000 no longer arises, but questions about paper ballots and adequacy of voting machines have emerged as significant challenges for election officials.

Protection/Management of Ballots/Voting

Machines. Disputes over ballot counts may come down to a limited number of ballots, on paper or in a machine. Such cases may allege problems with specific ballots, or they may allege an incorrect total number of votes counted for the entire county or state. In any case, the judge has the responsibility to protect the ballots and voting machines from access by those who may tamper with the ballots. Some state laws specify the requirements for ballot protections. Some cases may challenge how election officials have fulfilled their duty to protect ballots, making this judicial responsibility central to the adjudication.

Video/Audio Recordings – “Deepfakes” and Artificial Intelligence.

With the development of digital video and artificial intelligence, video and audio recordings that are not “real” have appeared, on social media and in courtrooms. In a heated election contest, such “deepfakes” may arise and lead to controversy that ends up in the courtroom. Evidence that is fake or doctored, however, is not new to judges and requires judicial practices that can reveal whether the evidence is “real” or not. You may wish to consider these questions:

- Is the evidence authentic?
- Is genuine evidence fake?
- Does evidence appear legitimate, or has it created public skepticism?

A 2022 law review article, [*Deepfakes on Trial: a Call to Expand the Trial Judge’s Gatekeeping Role to Protect Legal Proceedings from Technological Fakery*](#), argues that the “existing legal standards governing the authentication of evidence are inadequate because the rules were developed before the advent of deepfake technology.” It suggests that judges should play a greater role in evaluating the authenticity of deepfake recordings.

Rules for Authentication. Federal Rule of Evidence 901 provides one framework for considering questions of authenticity. Your state law may impose similar or different rules on authenticity. In any case, FRE 901 may be helpful to your considering evidence

of authenticity, particularly for what may be alleged as deepfakes. It requires the proponent of the evidence to “produce evidence sufficient to support a finding that the item is what the proponent claims it is.” It offers examples of what may be sufficient evidence for authenticity, describing evidence for authenticating these kinds of evidence:

- 1) Testimony of a witness with knowledge.
- 2) Nonexpert opinion about handwriting.
- 3) Comparison by an expert witness or the trier of fact.
- 4) Distinctive characteristics and the like.
- 5) Opinion about a voice.
- 6) Evidence about a telephone conversation
- 7) Evidence about public records.
- 8) Evidence about ancient documents or data compilations.
- 9) Evidence about a process or system.
- 10) Methods provided by a statute or rule.

Best Evidence Rule - Original or Duplicate? The Federal Rules of Evidence relaxed the “best evidence rule” to the extent it is understood to require an original over a copy. FRE 1001 defines “original” as the “writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it.” FRE 1002-04 allow duplicates unless “a genuine question is raised about the original’s authenticity or the circumstances make it unfair to admit the duplicate.”

- ❑ **Relevance:** Is the ESI relevant under Rule 401?
- ❑ **Authentication:** Is it authentic under Rule 901? Or, can the proponent show that the electronically stored information is what it purports to be?
- ❑ **Hearsay:** Is it hearsay under Rule 801? If so, is it covered by an applicable exception?
- ❑ **Best Evidence:** Is it an original or duplicate under the original writing rule, or if not, is there admissible secondary evidence to prove the content of the electronically stored information?

Evidence Checklist for Electronically Stored Information. Given that election/voting data is often stored electronically, you may encounter questions or issues about “electronically stored information.” You may consider these issues/questions as you consider electronically stored information:

D. Establish Workable Relief and Remedies

The timing of the case’s filing and the nature of the allegations will affect the relief and remedies available to the court. Remedies, and their availability, may be raised as an issue either at the outset, as discussed in section III.B., or after liability has been determined. Pending deadlines for vote certification or appointment of presidential electors make judicial decisions on remedies time-critical and central to the adjudication. You will have limited time to decide on the remedy.

Issues to Consider. In crafting remedies, you may wish to consider these issues:

- Statutory authority
- Type of case
- What the parties seek
- The broader field of the controversy
- Butterfly effect
- How to avoid turf wars

Types of Remedies. Remedies you may consider include, but are not limited to:

- General Remedy Categories
 - Injunctions [See below.]
 - Declaratory Judgment [For example, Pennsylvania law provides for declaratory judgments, “to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” 42 Pa. C.S. § 7541(a)]
 - Writ of Mandamus [PURPOSE: Compel official performance of ministerial act or mandatory duty where there is a lack of any other

adequate and appropriate remedy. See, *Otter v. Cortes*, 980 A.2d 1283 (Pa. 2009)]

- Impoundment [PURPOSE: Preserve evidence. See, e.g. *County of Fulton v Secretary of the Commonwealth*, 292 A.3d 974 (Pa. 2023)]

- Election Day Remedies

- Switch to paper ballots
- Extend polling place hours
- Extend voting deadlines
- Other relief as necessary to address immediate need for justice [Most state laws give courts wide latitude to do justice on Election Day.]

- Vote-Count Remedies

- Recounts – directing process for counting of ballots
- Injunctions on tabulation, certification, or appointment of electors (within federal deadlines)
- Setting aside elections
- Ballot/machine impoundment
- Notice/opportunity to cure
- Ballot/voting machine impoundment
- New elections

Injunctions. You likely have addressed questions about injunctions and know the factors that your state law requires you to determine. The factors below are common to state laws and are offered here for your convenience, to reference as you review the factual findings:

- Necessary to prevent immediate and irreparable (not compensable) harm
- Balancing of harms weighs in favor of granting
- Restores/maintains status quo prior to

alleged wrongful conduct

- Likely to prevail on the merits
- Reasonably suited to abate harm
- Will not adversely affect public interest

If you are considering a permanent or final injunction, you may wish to determine whether there is a clear right to relief and no other adequate remedy at law.


E. Write Your Written Decisions for Public Understanding

In high-profile election cases, your written decisions will address an audience beyond the lawyers and the parties. Your audience extends beyond the bench and bar. You are writing your decision for the general public's understanding. Their understanding of how and why you made your decision will help build public confidence in the election process and state courts' ability to do justice. Your decision will help bring them into the courtroom, to understand the dispute and the evidence. The best decisions will help the general public understand the outcome and reasoning, as well as the potential implications for their own voting rights and our democracy.

In a 2020 decision in *Donald J. Trump for President, Inc. v. Boockvar*, US District Court Judge Matthew W. Brann (M.D. Pa) put his decision in the context of the effect of the plaintiffs' requested relief on the other Pennsylvania voters:

Here, leveling up to address the alleged cancellation of Plaintiffs' votes would be easy; the simple answer is that their votes would be counted. But Plaintiffs do not ask to level up. Rather, **they seek to level down, and in doing so, they ask the Court to violate the rights of over 6.8 million Americans. It is not in the power of this Court to violate the Constitution.** "The disenfranchisement of even one person validly exercising his right to vote is an extremely serious matter." "To the extent that a citizen's right to vote is debased, he is that much less a citizen." [Emphasis added and footnotes removed.]

In crafting your written decisions, you consider the law and the evidence. You, however, may



have before you more information about what happened in your courtroom and courthouse, for you to consider as you write. You had an in-person audience, whose reactions to the evidence may reflect the interests and concerns in the general public. You have the context of the 2024 election year in which the lawyers and parties litigated. At the core of the dispute, as Judge Brann noted, you have the United States Constitution, to place all the law and the evidence into the framework for your decision.

Appeals. Given the timing of your decision and election deadlines, the parties may not have sufficient time for an appeal, even an emergency appeal. If they do appeal, however, your written decision may give the appellate court a sufficient foundation for a speedy decision.

Lessons Learned for Trial and Decision

- Emphasize the importance of authenticating election/campaign evidence, in light of development and use of artificial intelligence.
- Minimize last-minute judicial interference in elections.
- Maximize clarity in direction to election officials, as early as possible.

V. Conclusion

The nation’s deep divisions and the potential for extremely close elections in seven states may call for state courts to play an important role in adjudicating election challenges and disputes. State courts, particularly in the “swing states” where election cases may more likely arise, must be prepared, before Election Day in November. As soon as polls close, there will be little or no time for judges to learn the fundamentals of state and federal election laws. Election cases require adjudication in a matter of weeks. This election law resource material offers judges quick-reference resources, to assist them in resolving whatever disputes arise . . .

THE NATIONAL  JUDICIAL COLLEGE
Est. 1965

A Judge's Bench Guide to **Adjudicating Fast-Paced, High-Profile Election Cases**

Appendix

Scheduling Orders

Ken Martin v. Steve Simon, Minnesota Secretary of State
Leigh M. Chapman v Berks County Board of Electors
Timothy R. Bonner et al. v. Leigh Chapman
Republican National Committee et al. v. Leigh Chapman - September 9
Republican National Committee et al. v. Leigh Chapman - September 13
Republican National Committee et al. v. Leigh Chapman - December 7
Representative Bryan Cutler v. Leigh Chapman - December 22
Representative Bryan Cutler v. Leigh Chapman - January 3
Representative Bryan Cutler v. Leigh Chapman - January 6
Sydney Hovis v. Leigh Chapman
Joy Schwartz et al. v. Al Schmidt, et al - July 7
Joy Schwartz et al. v. Al Schmidt, et al - June 9
In re: Contest of November 7, 2023 Election of Towamencin Township Appeal - December 27
In re: Contest of November 7, 2023 Election of Towamencin Township Appeal - December 26
Pennsylvania Sample Scheduling Order

Case Consolidation

Doug McLinko v. Commonwealth of Pennsylvania et al v. Veronica Degraffenreid, et al

Decorum Orders

Commonwealth of Pennsylvania v. Bryan Kohberger
Pennsylvania Draft Decorum Order

Pennsylvania Courts High-Profile Trials Checklist

Media Truck Parking - Pennsylvania Judicial Center

Pennsylvania News Media Sample Credential

Ballard Spahr Request For Media Coverage/Revision of Federal Rule of Criminal Procedure 53

Pennsylvania Courts General Election Media Plan - Emergencies

Cameras In The Courtroom - *Chauvin* Case (MN)

Closing Trial by Preventing Gallery From Seeing Video Footage - *Noor* case

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Ken Martin,

Petitioner,

v.

Steve Simon, Minnesota Secretary of State,

Respondents.

Judge Edward T. Wahl

No. A24-0216

SCHEDULING ORDER

Pursuant to Minn. Gen. R. Prac. 111.03, **IT IS HEREBY ORDERED:**

1. **E-Filing:**

- A. All attorneys representing parties in the above-captioned matter must sign up for the electronic case service list for the above-captioned matter **within three days from the date of this Order.** The Court will distribute all courtesy copies in this file electronically. **If an attorney does not sign up for the electronic case service list, the Court will not send that attorney or that attorney’s client a hard copy of documents filed by the Court.**
- B. Please note original documents should be filed with the Supreme Court with a courtesy copy sent to Judge Edward Wahl via the clerk’s email listed below. Hard-copy courtesy copies are optional.

2. **Trial Date:**

- A. If this case is not resolved, the Court will conduct a hearing on March 11, 2024 (the “Trial-Ready Date”).
- B. Trial will begin each day at 9:00AM and end at 4:30PM. The Court will take required breaks of 20 minutes each morning and afternoon and each day at noon for 90 minutes.

3. **Discovery:**

- A. **Initial Disclosures:** If they have not already done so, the parties may serve Rule 26.01(a) initial disclosures **within three days of this Order.**
- B. **Written Discovery:** Plaintiff may serve written discovery on Defendant Legal Marijuana Now Party (“LMN”) on or before noon on March 2,

2024. Defendant LMN will respond with objections by March 4, 2024 and will produce responsive documents by March 6, 2024.

- C. **Discovery Disputes:** No discovery dispute may be brought to the attention of the Court unless the parties have conferred and made a good-faith effort to settle their dispute pursuant to Minn. R. Civ. P. 37.01 (b) and Minn. Gen. R. Prac. 115.10. Pursuant to Minn. Gen. R. Prac. 115.04(d), **the party raising an unresolved discovery issue must first arrange a telephone conference with the Court to determine if the dispute can be resolved without a formal motion.** One day before the telephone conference, the parties must submit a letter brief, no more than two pages long, outlining their positions.

4. **Deadlines:**

- A. **Joint statement of the case:** The parties must serve and file a joint statement of the case pursuant to Minn. Gen. R. Prac. 112.01 signed by counsel for all parties and all pro se parties, no later than **March 8.**
- B. **Pre-trial disclosures:** The parties must exchange and file witness and exhibit lists no later than **March 8,** pursuant to Rule 26.01(c)(1).
- C. **Trial memoranda:** Trial briefs are optional. Parties may serve and file trial memoranda and deliver a copy to chambers by **March 8** to ensure review of submissions before the first day of trial.
- D. **Proposed findings of fact and conclusions of law:** Parties must serve proposed findings of fact and conclusions of law no later than **March 13.**
- E. **Legal Memoranda:** Post-trial memoranda are optional. Parties may serve post-trial memoranda by **March 15.**

5. **Clerk:** The parties may contact the clerk through the contact information below:

Philip LaPlante
(612) 348-0896
Philip.LaPlante@courts.state.mn.us

All questions regarding case scheduling should be referred to the clerk. The clerk should be copied on **all** correspondence with the Court. All copies of proposed orders, stipulations, or the like should be sent to the clerk in word format.

6. **Courtesy Copies:** Two courtesy copies of all motions and memoranda filed with the Court may be sent or delivered directly to Judge Wahl's chambers. Courtesy copies must be hard copies. All draft orders and proposed documents that are e-filed must be emailed to Judge Wahl's law clerk, using the contact information provided below, in **Microsoft Word** format.

7. **Sanctions:** Failure to comply with this Order may subject a party to appropriate sanctions, including the assessment of costs, dismissal, entry of default judgment, striking of pleadings, or such other relief as the Court may deem appropriate.

8. **Professional Courtesy:** The attorneys must familiarize themselves with the Minnesota General Rules of Practice for District Courts, paying close attention to Title I, Rules 1 and 2. The standard of integrity and courtesy the Court expects from all attorneys and *pro se* litigants appears in the Professional Aspirations approved by the Minnesota Supreme Court on January 11, 2001.

Dated: March 1, 2024

BY THE COURT:

Clerk Contact:

Philip LaPlante
(612) 348-0896
Philip.LaPlante@courts.state.mn.us



Edward T. Wahl
Judge of District Court

NOTE: If you are aware of any party or attorney not listed above, please immediately notify the Law Clerk at the number indicated above.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Leigh M. Chapman, Acting	:	
Secretary of the Commonwealth	:	
and the Pennsylvania Department	:	
of State,	:	
	:	
Petitioners	:	
	:	
v.	:	
	:	
Berks County Board of Elections,	:	
Fayette County Board of Elections,	:	
and Lancaster County Board	:	
of Elections,	:	
	:	
Respondents	:	No. 355 M.D. 2022

PER CURIAM

ORDER

NOW, July 13, 2022, upon consideration of Petitioners’ Emergency Application for Peremptory Judgment and Summary Relief and the Memorandum of Law in Support (Emergency Application), it is hereby ORDERED as follows:

1. Hearing on Petitioners’ Emergency Application is scheduled for Thursday, July 28, 2022, at 10:00 a.m., in Courtroom 3001, Pennsylvania Judicial Center, Third Floor, 601 Commonwealth Avenue, Harrisburg, Pennsylvania.
2. Petitioners are directed to secure the service of a court stenographer for the proceedings.
3. Respondents shall PACFile and serve an answer to the Emergency Application no later than 4:00 p.m. on Tuesday, July 19, 2022.
4. The Acting Secretary of the Commonwealth shall immediately transmit a copy of this order to Respondents.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Timothy R. Bonner, P. Michael Jones, :
David H. Zimmerman, Barry J. :
Jozwiak, Kathy L. Rapp, David :
Maloney, Barbara Gleim, Robert :
Brooks, Aaron J. Bernstine, Timothy F. :
Twardzik, Dawn W. Keefer, Dan :
Moul, Francis X. Ryan, and Donald :
"Bud" Cook, :

Petitioners :

v. :

No. 364 M.D. 2022

Leigh M. Chapman, in her official :
capacity as Acting Secretary of the :
Commonwealth of Pennsylvania, and :
Commonwealth of Pennsylvania, :
Department of State, :

Respondents :

PER CURIAM

ORDER

NOW, August 18, 2022, upon consideration of Petitioners' Application for Summary Relief and Expedited Briefing, to the extent Petitioners seek an expedited briefing schedule, the Application is **GRANTED** as set forth below.

In light of the Preliminary Objections filed by Respondents and Intervenor-Respondents, Democratic Senatorial Campaign Committee and Congressional Campaign Committee, and Democratic National Committee and Pennsylvania Democratic Party (collectively, preliminary objections), all of which are potential bars to the relief requested in Petitioners' Petition for Review in the Nature of an Action for a Declaratory Judgment, the preliminary objections shall be heard simultaneously with Petitioners' Application for Summary Relief and Respondents'

Cross-Application for Summary Relief (collectively, dispositive motions). Accordingly, the Court establishes the following schedule:

(1) Cross-applications for summary relief by Intervenor-Respondents, **if any**, shall be filed **no later than August 24, 2022**.

(2) Responses to all dispositive motions and any pending preliminary objections, if not previously filed, shall be filed **no later than September 2, 2022**.

(3) The parties shall file a brief (8 copies) in support of their respective dispositive motion **no later than September 9, 2022**. The parties shall file a brief (8 copies) in opposition to the opposing party's/parties' dispositive motion(s) **no later than September 23, 2022**. The parties may file a reply brief (8 copies) **no later than September 30, 2022**. **Any reply brief shall be limited to responding to the arguments raised in the opposing party's/parties' brief and should not be duplicative of arguments previously made.** Pa.R.A.P. 2113(a).

(4) Respondents and Intervenor-Respondents shall each file a brief (8 copies) in support of their respective preliminary objections **no later than September 9, 2022**. Petitioners shall file briefs (8 copies) in opposition to each set of preliminary objections **no later than September 23, 2022**. Respondents and Intervenor-Respondents may file a reply brief (8 copies) **no later than September 30, 2022**. **Any reply brief shall be limited to responding to the arguments raised in the Petitioners' brief and should not be duplicative of arguments previously made.** Pa.R.A.P. 2113(a).

(5) **No extensions will be granted absent extenuating circumstances.**

The Prothonotary is directed to list all preliminary objections and dispositive motions in this matter on the October argument list to be heard before the Court

en banc in Pittsburgh on **October 12, 2022**. Forty (40) minutes shall be set aside for argument. Petitioners will make their arguments first and shall have 20 minutes to present their arguments in support of their respective application for summary relief and in opposition to the opposing parties' application(s) for summary relief and preliminary objections. Respondents and Intervenor-Respondents will share a total of 20 minutes to present their respective arguments. The parties shall advise the Court how they intend to divide their shared time at the commencement of argument.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Republican National Committee; :
National Republican Senatorial :
Committee; National Republican :
Congressional Committee; Republican :
Party of Pennsylvania; David Ball; :
James D. Bee; Debra A. Biro; Jesse D. :
Daniel; Gwendolyn Mae Deluca; Ross :
M. Farber; Connor R. Gallagher; Lynn :
Marie Kalcevic; Linda S. Kozlovich; :
William P. Kozlovich; Vallerie :
Siciliano-Biancaniello; S. Michael :
Streib, :

Petitioners :

v. :

No. 447 M.D. 2022

Leigh M. Chapman, in her official :
capacity as Acting Secretary of the :
Commonwealth; Jessica Mathis, in :
her official capacity as Director of the :
Pennsylvania Bureau of Election :
Services and Notaries; Adams County :
Board of Elections; Allegheny County :
Board of Elections; Armstrong County :
Board of Elections; Beaver County :
Board of Elections; Bedford County :
Board of Elections; Berks County Board :
of Elections; Blair County Board of :
Elections; Bradford County Board of :
Elections; Bucks County Board of :
Elections; Butler County Board of :
Elections; Cambria County Board of :
Elections; Cameron County Board of :
Elections; Carbon County Board of :
Elections; Centre County Board of :
Elections; Chester County Board of :
Elections; Clarion County Board of :
Elections; Clearfield County Board of :
Elections; Clinton County Board of :
Elections; Columbia County Board of :

Elections; Crawford County Board of :
Elections; Cumberland County Board :
of Elections; Dauphin County Board of :
Elections; Delaware County Board of :
Elections; Elk County Board of :
Elections; Erie County Board of :
Elections; Fayette County Board of :
Elections; Forest County Board of :
Elections; Franklin County Board of :
Elections; Fulton County Board of :
Elections; Greene County Board of :
Elections; Huntingdon County Board :
of Elections; Indiana County Board of :
Elections; Jefferson County Board of :
Elections; Juniata County Board of :
Elections; Lackawanna County Board :
of Elections; Lancaster County Board :
of Elections; Lawrence County Board :
of Elections; Lebanon County Board :
of Elections; Lehigh County Board of :
Elections; Luzerne County Board of :
Elections; Lycoming County Board of :
Elections; McKean County Board of :
Elections; Mercer County Board of :
Elections; Mifflin County Board of :
Elections; Monroe County Board of :
Elections; Montgomery County Board :
of Elections; Montour County Board of :
Elections; Northampton County Board :
of Elections; Northumberland County :
Board of Elections; Perry County :
Board of Elections; Philadelphia County :
Board of Elections; Pike County Board :
of Elections; Potter County Board of :
Elections; Schuylkill County Board of :
Elections; Snyder County Board of :
Elections; Somerset County Board of :
Elections; Sullivan County Board of :
Elections; Susquehanna County Board :
of Elections; Tioga County Board of :
Elections; Union County Board of :
Elections; Venango County Board of :
Elections; Warren County Board of :

Elections; Wayne County Board of :
Elections; Westmoreland County Board :
of Elections; Wyoming County Board of :
Elections; and York County Board of :
Elections, :
Respondents :

PER CURIAM

ORDER

NOW, September 9, 2022, upon consideration of Petitioners' Application for Special Relief in the Form of a Preliminary Injunction under Pa.R.A.P. 1532 (Application for Preliminary Injunction), and the Memorandum of Law in Support of the Application for Preliminary Injunction, it is hereby ORDERED as follows:

1. Hearing on Petitioners' Application for Preliminary Injunction is scheduled for Wednesday, September 28, 2022, at 10:00 a.m., in Courtroom 3001, Pennsylvania Judicial Center, Third Floor, 601 Commonwealth Avenue, Harrisburg, Pennsylvania, and will continue daily thereafter until concluded.
2. Petitioners are directed to secure the services of a court stenographer for the hearing.
3. Any party who opposes the pending Application for Preliminary Injunction shall file and serve an answer in opposition thereto **no later than 12:00 noon on Friday, September 16, 2022**. Any party who fails to file an answer by 12:00 noon on Friday, September 16, 2022, will be considered by the Court to be unopposed to the Application for Preliminary Injunction.
4. The parties shall file a joint stipulation of facts **no later than 12:00 noon on Monday, September 19, 2022**, indicating which county boards of elections have implemented, or plan to implement, notice and opportunity to cure procedures with respect to absentee and/or mail-in ballots.

5. A status conference is scheduled for Thursday, September 22, 2022, at 10:00 a.m., via WebEx videoconferencing, for the purpose of discussing the hearing, including the anticipated number of witnesses and exhibits, estimated duration of the hearing, and logistics.

6. Each party shall email the name, email address, and mobile telephone number of all counsel who intend to participate in the status conference to the following email address: CommCourtRemote@pacourts.us by **no later than 4:00 p.m. on Monday, September 19, 2022**. The Court will provide counsel with the information for connecting to the WebEx conference.

7. To facilitate participation, various WebEx applications are available for download at pacourts.webex.com. Please see the Protocol for WebEx Video Proceedings attached to this Order. The parties are directed to connect to the WebEx video conference 15 minutes before the starting time. In the event of technical difficulties, please contact the Court's IT staff at 717-255-1626.



Protocol for WebEx Video Proceedings

Protocol BEFORE the conference:

The Court shall provide counsel with the information for connecting to the video conference. This invitation will be sent by email.

It is the responsibility of counsel to provide the connection information to their clients.

It is the responsibility of all parties to provide the Court with their contact information. An email address will be required to join the video.

All participants must appear by video connection unless otherwise authorized by the Court.

Email invitations will be promptly sent to participants. If a participant has not received the email invitation from the Court, please check your SPAM or Junk folder before contacting the Court.

All parties must connect to the argument or call into the video system at least 15 minutes before the scheduled start time.

Minimum Technology requirements:

All attorneys and pro se parties appearing before the Court must have one of the following:

- A computer with a functioning web camera, microphone and speakers;

- A video conferencing system that supports Session Initiation Protocol (SIP) calling;

- A tablet device that supports Cisco WebEx with a functioning forward facing camera, microphone and speakers; or

- An alternative device used to connect to Cisco WebEx in the past.

If you experience audio issues with your computer/tablet audio, the Court recommends that you have our system call you by using the option listed in 0 below.

The Court's IT Department will endeavor to contact counsel in advance of the argument to test their connection to the WebEx platform.

Ground Rules and Video Conferencing Etiquette:

When not speaking, please mute your microphone. This helps prevent background noise.

Earbuds or headphones are preferable to avoid feedback.

Be aware of your behavior. Because you are on a video conference, people can see what you are doing at all times and *WebEx video conferences are recorded*. Further, others may view the proceedings via public livestream web link that will be provided to the parties and posted to the Court's website in advance of the proceeding.

If connecting from a laptop, plug in the laptop wall power.

Follow all instructions in the video conference invitation and note important supplemental information, such as a backup phone number in case you are disconnected.

Please be respectful; speak slowly and only one at a time.

Try not to speak over other parties. There is a slight delay when using video technology.

Technical Support

If you have any questions or need technical assistance, contact 717-255-1626.

1. Invitation from the Court:

Prior to your scheduled argument, you will receive an email from the Court with connection instructions. Please make sure to monitor your SPAM or Junk folder so that you receive the message. It should come from @pacourts.us. Here is the information from a sample invitation.

Commonwealth Court Legal Systems invites you to join this Webex meeting.

Meeting number (access code): 613 778 564 ③
Meeting password: Cy54FR39aBE

Wednesday, March 25, 2020
8:00 am | (UTC-04:00) Eastern Time (US & Canada) | 10 mins

Join meeting ①

Join by phone

Tap to call in from a mobile device (attendees only)

1-855-244-8681 Call-in toll-free number (US/Canada) ②

1-650-479-3207 Call-in toll number (US/Canada)

[Toll-free calling restrictions](#)

Join from a video system or application

Dial [613778564@pacourts.webex.com](tel:613778564@pacourts.webex.com) ④

You can also dial 173.243.2.68 and enter your meeting number.

Join using Microsoft Lync or Microsoft Skype for Business

Dial [613778564.pacourts@lync.webex.com](tel:613778564.pacourts@lync.webex.com) ⑤

In the invitation, there are multiple connection options:

WebEx: Click on the Green *Join Meeting* button. ①

Phone: Dial either of the numbers listed under *Join by phone*. ②

When prompted, enter the Meeting number (access code) listed near the top of the invitation. ③

Use the SIP dial in connection number provided for non-WebEx devices such as video conferencing systems. ④

Microsoft Lync/Skype for Business connection information is also provided. ⑤

Controls while connected to WebEx:

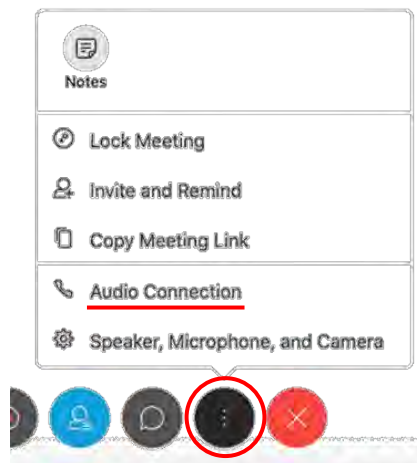
Once connected to a meeting, if you move your mouse, the below control panel should appear. These are the normal controls, but some of them may be disabled which means they will not appear. The icons will be the same.



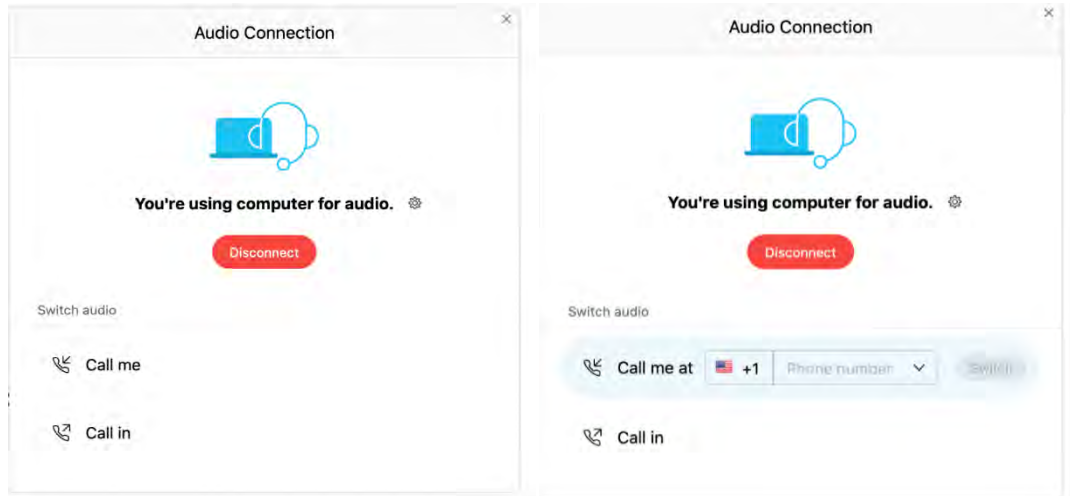
From left to right, the controls are:

- Mute/unmute microphone
- Turn on/off camera
- Share your desktop
- Recording control (Only available to the Court)
- Open/Close the participant list
- Chat windows
- Options – has more controls available
- End Meeting

Under the More Options button (7 above, the 3 dots icon). If you are having audio difficulties with your computer audio, you can have the system call you. Click on the 3 dots icon and then choose Audio Connection.



Click on the option “Call Me”. Enter the phone number that the system should call and press the switch button. When the call comes in, you will be prompted to press “1” to connect.



At the end of your call, press the red X to be disconnected.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Republican National Committee; :
National Republican Senatorial :
Committee; National Republican :
Congressional Committee; Republican :
Party of Pennsylvania; David Ball; :
James D. Bee; Debra A. Biro; Jesse D. :
Daniel; Gwendolyn Mae Deluca; Ross :
M. Farber; Connor R. Gallagher; Lynn :
Marie Kalcevic; Linda S. Kozlovich; :
William P. Kozlovich; Vallerie :
Siciliano-Biancaniello; S. Michael :
Streib, :

Petitioners :

v. :

No. 447 M.D. 2022

Leigh M. Chapman, in her official :
capacity as Acting Secretary of the :
Commonwealth; Jessica Mathis, in :
her official capacity as Director of the :
Pennsylvania Bureau of Election :
Services and Notaries; Adams County :
Board of Elections; Allegheny County :
Board of Elections; Armstrong County :
Board of Elections; Beaver County :
Board of Elections; Bedford County :
Board of Elections; Berks County Board :
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Elections; Lycoming County Board of :
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Elections; Mercer County Board of :
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Elections; Montgomery County Board :
of Elections; Montour County Board of :
Elections; Northampton County Board :
of Elections; Northumberland County :
Board of Elections; Perry County :
Board of Elections; Philadelphia County :
Board of Elections; Pike County Board :
of Elections; Potter County Board of :
Elections; Schuylkill County Board of :
Elections; Snyder County Board of :
Elections; Somerset County Board of :
Elections; Sullivan County Board of :
Elections; Susquehanna County Board :
of Elections; Tioga County Board of :
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Elections; Warren County Board of :

Elections; Wayne County Board of :
Elections; Westmoreland County Board :
of Elections; Wyoming County Board of:
Elections; and York County Board of :
Elections, :
Respondents :

PER CURIAM

ORDER

NOW, September 13, 2022, upon consideration of the Application for Leave to Intervene filed by the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee (DSCC and DCCC), and the Application for Leave to Intervene and Memorandum of Law in Support thereof filed by the Democratic National Committee and the Pennsylvania Democratic Party (DNC and PDP) (collectively, Proposed Intervenors), and in light of the status conference scheduled for Thursday, September 22, 2022, via WebEx videoconferencing, and the in-person hearing scheduled for Wednesday, September 28, 2022, in this matter, it is hereby ORDERED as follows:

1. Any party who opposes the pending Applications for Leave to Intervene, filed by the DSCC and DCCC, and the DNC and PDP, respectively, shall file and serve an answer in opposition thereto **no later than 12:00 noon on Monday, September 19, 2022**. Any party who fails to file an answer by 12:00 noon on Monday, September 19, 2022, will be considered by the Court to be unopposed to the Applications for Leave to Intervene.
2. Proposed Intervenors are granted leave to participate in the aforementioned status conference scheduled for Thursday, September 22, 2022, at 10:00 a.m., via WebEx videoconferencing, subject to the Court's future disposition of their respective Applications for Leave to Intervene.

3. Proposed Intervenors shall email the name, email address, and mobile telephone number of all counsel who intend to participate in the status conference to the following email address: CommCourtRemote@pacourts.us by **no later than 4:00 p.m. on Monday, September 19, 2022**, pursuant to Paragraph 6. of this Court's September 9, 2022 Order. The Court will provide counsel with the information for connecting to the WebEx conference.
4. To facilitate participation, various WebEx applications are available for download at pacourts.webex.com. Please see the Protocol for WebEx Video Proceedings attached to this Order. The parties are directed to connect to the WebEx video conference 15 minutes before the starting time. In the event of technical difficulties, please contact the Court's IT staff at 717-255-1626.
5. The Court will confirm the schedule, sequence, and procedures for the in-person hearing presently scheduled for Wednesday, September 28, 2022, at 10:00 a.m., in this matter, as well as any intervention hearing(s), by separate order following the status conference. The parties and Proposed Intervenors shall be prepared to discuss the Applications for Leave to Intervene during the status conference.
6. All provisions of this Court's September 9, 2022 Order remain in effect.



Protocol for WebEx Video Proceedings

Protocol BEFORE the conference:

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It is the responsibility of all parties to provide the Court with their contact information. An email address will be required to join the video.

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Email invitations will be promptly sent to participants. If a participant has not received the email invitation from the Court, please check your SPAM or Junk folder before contacting the Court.

All parties must connect to the argument or call into the video system at least 15 minutes before the scheduled start time.

Minimum Technology requirements:

All attorneys and pro se parties appearing before the Court must have one of the following:

A computer with a functioning web camera, microphone and speakers;

A video conferencing system that supports Session Initiation Protocol (SIP) calling;

A tablet device that supports Cisco WebEx with a functioning forward facing camera, microphone and speakers; or

An alternative device used to connect to Cisco WebEx in the past.

If you experience audio issues with your computer/tablet audio, the Court recommends that you have our system call you by using the option listed in 0 below.

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When not speaking, please mute your microphone. This helps prevent background noise.

Earbuds or headphones are preferable to avoid feedback.

Be aware of your behavior. Because you are on a video conference, people can see what you are doing at all times and *WebEx video conferences are recorded*. Further, others may view the proceedings via public livestream web link that will be provided to the parties and posted to the Court's website in advance of the proceeding.

If connecting from a laptop, plug in the laptop wall power.

Follow all instructions in the video conference invitation and note important supplemental information, such as a backup phone number in case you are disconnected.

Please be respectful; speak slowly and only one at a time.

Try not to speak over other parties. There is a slight delay when using video technology.

Technical Support

If you have any questions or need technical assistance, contact 717-255-1626.

1. Invitation from the Court:

Prior to your scheduled argument, you will receive an email from the Court with connection instructions. Please make sure to monitor your SPAM or Junk folder so that you receive the message. It should come from @pacourts.us. Here is the information from a sample invitation.

Commonwealth Court Legal Systems invites you to join this Webex meeting.

Meeting number (access code): 613 778 564 ③
Meeting password: Cy54FR39aBE

Wednesday, March 25, 2020
8:00 am | (UTC-04:00) Eastern Time (US & Canada) | 10 mins

Join meeting ①

Join by phone

Tap to call in from a mobile device (attendees only)

1-855-244-8681 Call-in toll-free number (US/Canada) ②

1-650-479-3207 Call-in toll number (US/Canada)

[Toll-free calling restrictions](#)

Join from a video system or application

Dial [613778564@pacourts.webex.com](tel:613778564@pacourts.webex.com) ④

You can also dial 173.243.2.68 and enter your meeting number.

Join using Microsoft Lync or Microsoft Skype for Business

Dial [613778564.pacourts@lync.webex.com](tel:613778564.pacourts@lync.webex.com) ⑤

In the invitation, there are multiple connection options:

WebEx: Click on the Green *Join Meeting* button. ①

Phone: Dial either of the numbers listed under *Join by phone*. ②

When prompted, enter the Meeting number (access code) listed near the top of the invitation. ③

Use the SIP dial in connection number provided for non-WebEx devices such as video conferencing systems. ④

Microsoft Lync/Skype for Business connection information is also provided. ⑤

Controls while connected to WebEx:

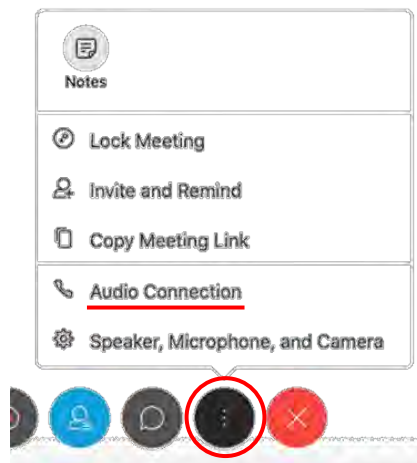
Once connected to a meeting, if you move your mouse, the below control panel should appear. These are the normal controls, but some of them may be disabled which means they will not appear. The icons will be the same.



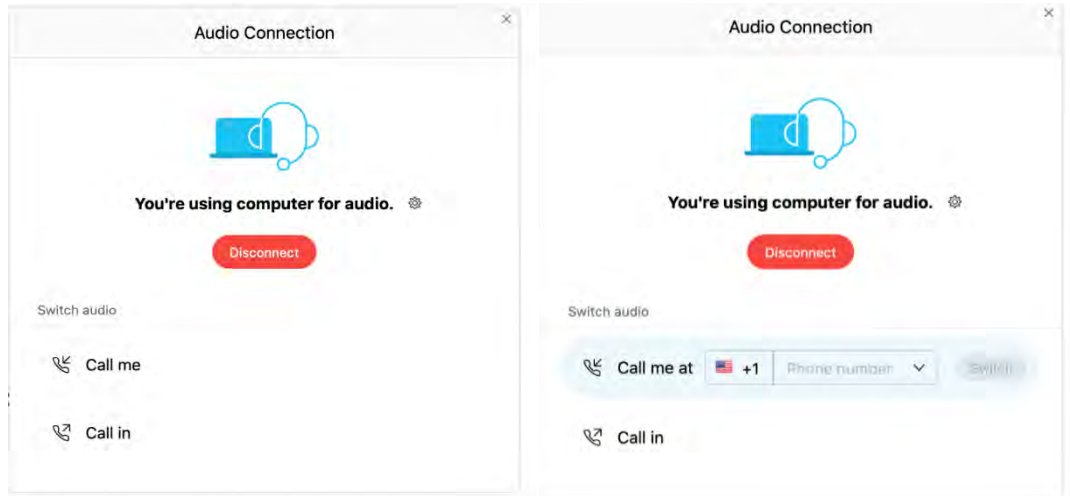
From left to right, the controls are:

- Mute/unmute microphone
- Turn on/off camera
- Share your desktop
- Recording control (Only available to the Court)
- Open/Close the participant list
- Chat windows
- Options – has more controls available
- End Meeting

Under the More Options button (7 above, the 3 dots icon). If you are having audio difficulties with your computer audio, you can have the system call you. Click on the 3 dots icon and then choose Audio Connection.



Click on the option “Call Me”. Enter the phone number that the system should call and press the switch button. When the call comes in, you will be prompted to press “1” to connect.



At the end of your call, press the red X to be disconnected.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Republican National Committee; :
National Republican Senatorial :
Committee; National Republican :
Congressional Committee; Republican :
Party of Pennsylvania; David Ball; :
James D. Bee; Debra A. Biro; Jesse D. :
Daniel; Gwendolyn Mae Deluca; Ross :
M. Farber; Connor R. Gallagher; Lynn :
Marie Kalcevic; Linda S. Kozlovich; :
William P. Kozlovich; Vallerie :
Siciliano-Biancaniello; S. Michael :
Streib, :

Petitioners :

v. :

No. 447 M.D. 2022

Leigh M. Chapman, in her official :
capacity as Acting Secretary of the :
Commonwealth; Jessica Mathis, in :
her official capacity as Director of the :
Pennsylvania Bureau of Election :
Services and Notaries; Adams County :
Board of Elections; Allegheny County :
Board of Elections; Armstrong County :
Board of Elections; Beaver County :
Board of Elections; Bedford County :
Board of Elections; Berks County Board :
of Elections; Blair County Board of :
Elections; Bradford County Board of :
Elections; Bucks County Board of :
Elections; Butler County Board of :
Elections; Cambria County Board of :
Elections; Cameron County Board of :
Elections; Carbon County Board of :
Elections; Centre County Board of :
Elections; Chester County Board of :
Elections; Clarion County Board of :
Elections; Clearfield County Board of :
Elections; Clinton County Board of :
Elections; Columbia County Board of :

Elections; Crawford County Board of :
Elections; Cumberland County Board :
of Elections; Dauphin County Board of :
Elections; Delaware County Board of :
Elections; Elk County Board of :
Elections; Erie County Board of :
Elections; Fayette County Board of :
Elections; Forest County Board of :
Elections; Franklin County Board of :
Elections; Fulton County Board of :
Elections; Greene County Board of :
Elections; Huntingdon County Board :
of Elections; Indiana County Board of :
Elections; Jefferson County Board of :
Elections; Juniata County Board of :
Elections; Lackawanna County Board :
of Elections; Lancaster County Board :
of Elections; Lawrence County Board :
of Elections; Lebanon County Board :
of Elections; Lehigh County Board of :
Elections; Luzerne County Board of :
Elections; Lycoming County Board of :
Elections; McKean County Board of :
Elections; Mercer County Board of :
Elections; Mifflin County Board of :
Elections; Monroe County Board of :
Elections; Montgomery County Board :
of Elections; Montour County Board of :
Elections; Northampton County Board :
of Elections; Northumberland County :
Board of Elections; Perry County :
Board of Elections; Philadelphia County :
Board of Elections; Pike County Board :
of Elections; Potter County Board of :
Elections; Schuylkill County Board of :
Elections; Snyder County Board of :
Elections; Somerset County Board of :
Elections; Sullivan County Board of :
Elections; Susquehanna County Board :
of Elections; Tioga County Board of :
Elections; Union County Board of :
Elections; Venango County Board of :
Elections; Warren County Board of :

Elections; Wayne County Board of :
Elections; Westmoreland County Board :
of Elections; Wyoming County Board of:
Elections; and York County Board of :
Elections, :
Respondents :

PER CURIAM

ORDER

NOW, December 7, 2022, upon consideration of the Preliminary Objections to Petitioners’ Petition for Review Directed to Court’s Original Jurisdiction Seeking Declaratory and Injunctive Relief, filed by (1) the Montgomery County Board of Elections on September 16, 2022; (2) the Democratic Senatorial Campaign Committee (DSCC) and the Democratic Congressional Campaign Committee (DCCC), docketed on September 22, 2022; (3) the Democratic National Committee (DNC) and the Pennsylvania Democratic Party (PDP), docketed on September 22, 2022; (4) Leigh M. Chapman, in her official capacity as Acting Secretary of the Commonwealth, and Jessica Mathis, in her official capacity as Director of the Pennsylvania Bureau of Election Services and Notaries (collectively, Commonwealth Respondents), on October 6, 2022; and (5) the Philadelphia County Board of Elections on October 28, 2022, it is hereby **ORDERED** as follows:

1. The Montgomery County Board of Elections, the DSCC and the DCCC, the DNC and PDP, Commonwealth Respondents, and the Philadelphia County Board of Elections shall file and serve Briefs in Support of their respective Preliminary Objections (8 copies) **no later than January 6, 2023.**
2. It appears that Petitioners have already filed Responses in opposition to the Preliminary Objections of the Montgomery County Board of

Elections, the DNC and PDP, DSCC and DCCC, and Commonwealth Respondents. As such, Petitioners shall file and serve a Response in opposition to the Preliminary Objections of the Philadelphia County Board of Elections (8 copies), as well as an Omnibus Brief (8 copies) responding to all of the aforementioned Preliminary Objections **no later than February 6, 2023**.

Following the filing of the above briefs, the Court shall determine whether this matter will be argued or decided on the papers submitted.

Certified from the Record
DEC -7 2022
And Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Representative Bryan Cutler,
Leader of the Republican Caucus
of the Pennsylvania House of
Representatives,

Petitioner

v.

Leigh M. Chapman, Acting Secretary
of the Commonwealth, The
Pennsylvania Department of State,
and The Board of Elections of
Allegheny County,

Respondents

No. 588 M.D. 2022

PER CURIAM

ORDER

NOW, December 22, 2022, given the exigency of this matter, and following a Status Conference during which the Parties, House Democratic Caucus Leader Intervenor Joanna E. McClinton (House Democratic Caucus Leader Intervenor), and Proposed Intervenor Pennsylvania Democratic Party (Proposed Intervenor PDP) agreed to an expedited briefing schedule, it is hereby **ORDERED** as follows:

1. Respondents, House Democratic Caucus Leader Intervenor, and Proposed Intervenor PDP shall PACFile and serve responsive pleadings or Preliminary Objections to the Petition for Review in the Nature of a Complaint for Declaratory Judgment, with respective Briefs in Support thereof (4 copies), **no later than Wednesday, December 28, 2022.**
2. Petitioner shall PACFile and serve a Brief in Support of his Emergency Application for Special Relief in the Nature of a Preliminary Injunction

(Emergency Application) (4 copies) **no later than Wednesday, December 28, 2022.**

3. Respondents, House Democratic Caucus Leader Intervenor, and Proposed Intervenor PDP shall PACFile and serve any Briefs in Opposition to the Emergency Application (4 copies) **no later than Wednesday, January 4, 2023.**
4. Petitioner shall PACFile and serve a Brief in Opposition to all Preliminary Objections (4 copies) that have or may be filed **no later than Wednesday, January 4, 2023.**
5. The Parties, House Democratic Caucus Leader McClinton, and Proposed Intervenor PDP shall continue to use their best efforts to reach a Stipulation or Proposed Stipulation regarding the special election currently scheduled for Tuesday, February 7, 2023, for the 32nd Legislative District, which shall be PACFiled and served **no later than 12:00 p.m. Friday, December 23, 2022.**
6. The Parties, House Democratic Caucus Leader McClinton, and Proposed Intervenor PDP shall PACFile and serve a joint stipulation of facts **no later than Wednesday, December 28, 2022.**
7. Notwithstanding the above briefing deadlines, the Parties and Proposed Intervenor PDP are strongly encouraged to continue their good faith efforts to resolve this dispute.
8. The Court will schedule expedited argument/hearing in this matter for a date and time after January 4, 2023, by separate order, if necessary.

No extensions of these agreed-to deadlines will be granted absent exigent circumstances.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Representative Bryan Cutler,	:	
Leader of the Republican Caucus	:	
of the Pennsylvania House of	:	
Representatives,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 588 M.D. 2022
	:	
Leigh M. Chapman, Acting Secretary	:	
of the Commonwealth, The	:	
Pennsylvania Department of State,	:	
and The Board of Elections of	:	
Allegheny County,	:	
	:	
Respondents	:	

PER CURIAM

ORDER

NOW, January 3, 2023, argument on Petitioner’s Emergency Application for Special Relief in the Nature of a Preliminary Injunction, along with any answers thereto; the Preliminary Objections to the Petition for Review in the Nature of a Complaint for Declaratory Judgment, and any responses filed thereto; and Proposed Intervenor Pennsylvania Democratic Party’s Petition for Intervention, which Petitioner Representative Bryan Cutler, Leader of the Republican Caucus of the Pennsylvania House of Representatives, opposes, is scheduled for January 11, 2023, at 2:00 p.m. before a panel of judges sitting in Courtroom 3002, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Harrisburg, Pennsylvania.¹

¹ The argument will be live streamed via a link posted on the Court’s website and published on its social media.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Representative Bryan Cutler,	:	
Leader of the Republican Caucus	:	
of the Pennsylvania House of	:	
Representatives,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 588 M.D. 2022
	:	
Leigh M. Chapman, Acting Secretary	:	
of the Commonwealth, The	:	
Pennsylvania Department of State,	:	
and The Board of Elections of	:	
Allegheny County,	:	
	:	
Respondents	:	

PER CURIAM

ORDER

NOW, January 6, 2023, upon consideration of Intervenor Joanna E. McClinton’s Emergency Application for Disposition on Motion Pursuant to Pa.R.A.P. 1972 (Emergency Application), and the answers and letters filed in response thereto, it is hereby **ORDERED** that the Emergency Application and answers/letters thereto shall be argued before the panel at the same time as Petitioner’s Emergency Application for Special Relief in the Nature of a Preliminary Injunction, the Preliminary Objections, and Proposed Intervenor Pennsylvania Democratic Party’s Petition for Intervention, as set forth in this Court’s January 3, 2023 Order.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sydney Hovis	:	
	:	
Petitioner	:	
	:	
v.	:	No. 431 M.D. 2022
	:	
Leigh M. Chapman, in her	:	
official capacity as Acting Secretary	:	
of the Commonwealth, and the	:	
Pennsylvania Department of State,	:	
Respondents	:	

PER CURIAM

ORDER

NOW, September 7, 2022, upon consideration of the Application for Leave to Intervene as Objectors and the Application to Rescind August 30, 2022 Orders (Applications), filed by Patrick J. Stefano, Edward Franks, Angelitto Passaniti, and Greg Chrash (collectively, Proposed Intervenors), it is hereby ORDERED as follows:

1. A hearing on the Application for Leave to Intervene as Objectors is scheduled for Monday, September 19, 2022, at 10:00 a.m., by WebEx video conferencing. Argument on the Application to Rescind August 30, 2022 Orders will be heard at the conclusion of the hearing on the Application for Leave to Intervene as Objectors.
2. Proposed Intervenors shall secure the services of a court reporter for the hearing and argument and provide the Court with the name, email address, and mobile telephone number of the court stenographer to CommCourtRemote@pacourts.us **no later than 4:00 p.m. on Wednesday, September 14, 2022.**

3. The parties shall file and serve answers addressing both Applications **no later than noon on Friday, September 9, 2022**. Any party who fails to file a response will be considered by the Court to be unopposed to the relief requested in the Applications.
4. The parties and Proposed Intervenors shall contemporaneously file and serve briefs in support of their respective positions as to both Applications **no later than 4:00 p.m. on Monday, September 12, 2022**.
5. Any responsive briefs shall be contemporaneously filed and served **no later than noon on Thursday, September 15, 2022**.
6. The parties and Proposed Intervenors shall each file and serve a prehearing memorandum **no later than 4:00 p.m. on Wednesday, September 14, 2022**, setting forth their respective lists of all witnesses to be called at the hearing with a short offer of proof for each witness, the curriculum vitae and report for any expert witness, and a list of exhibits. The parties and Proposed Intervenors shall also provide the names, email addresses, and mobile telephone numbers of any witnesses to CommCourtRemote@pacourts.us **no later than 4:00 p.m. on Wednesday, September 14, 2022**. All parties and Proposed Intervenors are directed to provide their witnesses with copies of the exhibits in advance of the hearing to which the witnesses can refer during their testimony.
7. Each party and Proposed Intervenor(s) shall email the name, email address, and mobile telephone number for all counsel anticipated to participate to the following email address:

CommCourtRemote@pacourts.us **no later than 4:00 p.m. on Wednesday, September 14, 2022.** The Court will provide counsel with the information for connecting to the WebEx hearing.

8. To facilitate participation, various WebEx applications are available for download at pacourts.webex.com. Please see the Protocol for WebEx Video Proceedings attached to this Order. The parties, Proposed Intervenors, and all witnesses are directed to connect to the WebEx video conference 15 minutes before the starting time. In the event of technical difficulties, please contact the Court's IT staff at 717-255-1626.



Protocol for WebEx Video Proceedings

Protocol BEFORE the hearing:

The Court shall provide counsel with the information for connecting to the video hearing. This invitation will be sent by email.

It is the responsibility of counsel to provide the connection information to their client and witnesses where appropriate.

It is the responsibility of all parties to provide the Court with their contact information. An email address will be required to join the video.

All participants must appear by video connection unless otherwise authorized by the Court.

Email invitations will be promptly sent to participants. If a participant has not received the email invitation from the Court, please check your SPAM or Junk folder before contacting the Court.

All parties must connect to the hearing or call into the video system at least 15 minutes before the scheduled start time.

Minimum Technology requirements:

All attorneys, pro se parties, and witnesses appearing before the Court must have one of the following:

A computer with a functioning web camera, microphone and speakers;

A videoconferencing system that supports Session Initiation Protocol (SIP) calling;

A tablet device that supports Cisco WebEx with a functioning forward facing camera, microphone and speakers; or

An alternative device used to connect to Cisco WebEx in the past.

If you experience audio issues with your computer/tablet audio, the Court recommends that you have our system call you by using the option listed in 0 below.

The Court's IT Department will endeavor to contact counsel in advance of the conference to test their connection to the WebEx platform.

Ground Rules and Video Hearings Etiquette:

When not speaking, please mute your microphone. This helps prevent background noise.

Earbuds or headphones are preferable to avoid feedback.

Be aware of your behavior. Because you are on a video hearing, people can see what you are doing at all times and *WebEx video hearings are recorded*. Further, others may view the proceedings via public livestream web link that will be provided to the parties and posted to the Court's website in advance of the proceeding.

If connecting from a laptop, plug in the laptop wall power.

Follow all instructions in the video hearing invitation and note important supplemental information, such as a backup phone number in case you are disconnected.

Please be respectful; speak slowly and only one at a time.

Try not to speak over other parties. There is a slight delay when using video technology.

Technical Support

If you have any questions or need technical assistance, contact 717-255-1626.

1. Invitation from the Court:

Prior to your scheduled hearing, you will receive an email from the Court with connection instructions. Please make sure to monitor your SPAM or Junk folder so that you receive the message. It should come from @pacourts.us. Here is the information from a sample invitation.

Commonwealth Court Legal Systems invites you to join this Webex meeting.

Meeting number (access code): 613 778 564 ③
Meeting password: Cy54FR39aBE

Wednesday, March 25, 2020
8:00 am | (UTC-04:00) Eastern Time (US & Canada) | 10 mins

Join meeting ①

Join by phone

Tap to call in from a mobile device (attendees only)

1-855-244-8681 Call-in toll-free number (US/Canada) ②

1-850-479-3207 Call-in toll number (US/Canada)

[Toll-free calling restrictions](#)

Join from a video system or application

Dial [613778564@pacourts.webex.com](tel:613778564@pacourts.webex.com) ④

You can also dial 173.243.2.68 and enter your meeting number.

Join using Microsoft Lync or Microsoft Skype for Business

Dial [613778564@pacourts@lync.webex.com](tel:613778564@pacourts@lync.webex.com) ⑤

In the invitation, there are multiple connection options:

WebEx: Click on the Green *Join Meeting* button. ①

Phone: Dial either of the numbers listed under *Join by phone*. ②

When prompted, enter the Meeting number (access code) listed near the top of the invitation. ③

Use the SIP dial in connection number provided for non-WebEx devices such as video conferencing systems. ④

Microsoft Lync/Skype for Business connection information is also provided. ⑤

Controls while connected to WebEx:

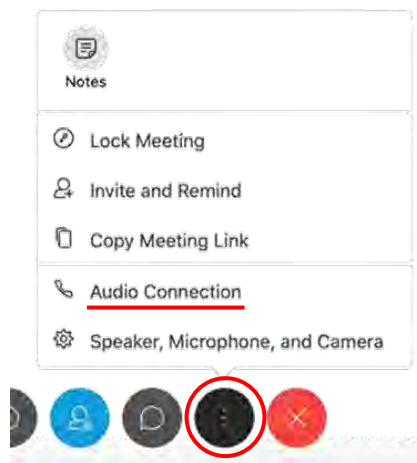
Once connected to a meeting, if you move your mouse, the below control panel should appear. These are the normal controls, but some of them may be disabled which means they will not appear. The icons will be the same.



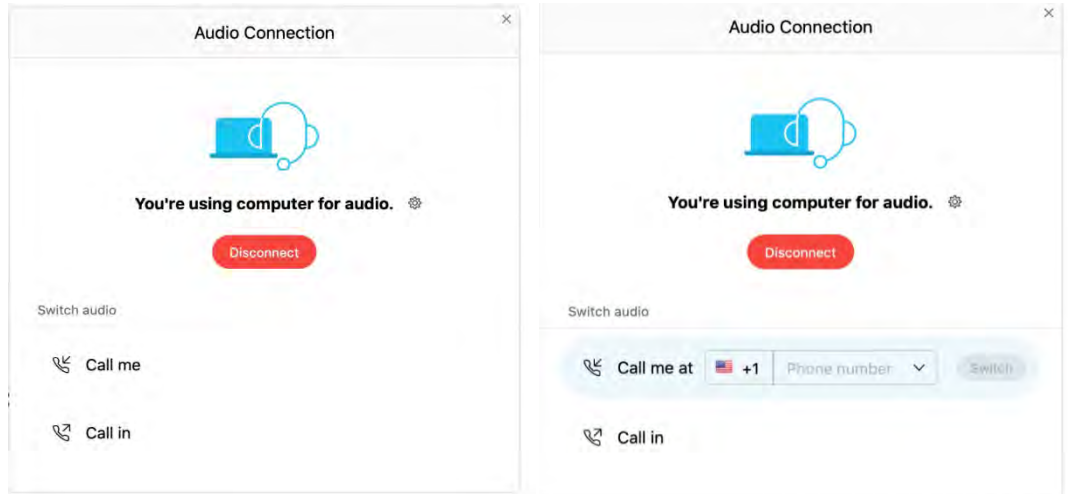
From left to right, the controls are:

- Mute/unmute microphone
- Turn on/off camera
- Share your desktop
- Recording control (Only available to the Court)
- Open/Close the participant list
- Chat windows
- Options – has more controls available
- End Meeting

Under the More Options button (7 above, the 3 dots icon). If you are having audio difficulties with your computer audio, you can have the system call you. Click on the 3 dots icon and then choose Audio Connection.



Click on the option “Call Me”. Enter the phone number that the system should call and press the switch button. When the call comes in, you will be prompted to press “1” to connect.



At the end of your call, press the red X to be disconnected.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joy Schwartz, and	:	
Gregory Stenstrom,	:	
and Leah Hoopes,	:	
and Paul Rumley,	:	
	:	
Petitioners	:	
	:	
v.	:	No. 258 M.D. 2023
	:	
Acting Secretary of the Commonwealth	:	
of Pennsylvania Al Schmidt and	:	
Delaware County and	:	
Delaware County Park Police	:	
Department and James Allen, Delaware	:	
County Director of Elections, in his	:	
personal capacity and John S. Diehl,	:	
Delaware County Park Police Chief,	:	
in his personal capacity,	:	
	:	
Respondents	:	

ORDER

NOW, July 7, 2023, following a prehearing status conference with the parties, it is hereby ORDERED as follows:

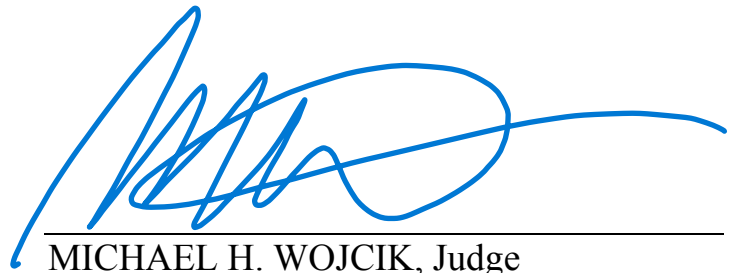
1. **By no later than Monday, July 17, 2023**, Petitioners’ may file with the Court and shall serve on Respondents an amended petition for review to accompany their Rule 1033 Amendment Application for Leave to Amend Petition (Application to Amend), filed on June 30, 2023. The Application to Amend will be held in abeyance pending the Court’s receipt of Petitioners’ amended petition for review.
2. **By no later than 12:00 p.m. on Monday, July 10, 2023**, Petitioners shall file with the Court and serve on Respondents a response to

Respondents' respective Preliminary Objections raising only lack of subject matter jurisdiction as a bar to this action. Respondents may file reply briefs to Petitioners' response to the Preliminary Objections **by no later than 4:30 p.m. on Monday, July 10, 2023**. The Court will hear argument on the Preliminary Objections raising lack of subject matter jurisdiction, Petitioners' response, and any reply thereto at the beginning of the hearing on Petitioners' Second Request for Emergency Special and Summary Relief, as set forth in this Court's June 9, 2023 Order.

3. **By no later than 12:00 p.m. on Monday, July 10, 2023**, Petitioners shall also file with the Court and serve on Respondents an expert report for any expert witness(es) identified in Petitioners' Pre-hearing Memorandum, filed on July 7, 2023.
4. As discussed at the prehearing status conference, the Court will allow remote witness testimony via WebEx video conferencing at the hearing. Accordingly, **by no later than 10:00 a.m. on Monday, July 10, 2023**, the parties shall file a list(s) of witnesses who will testify remotely by sending a copy of such list(s) to Catherine.Arrigo@pacourts.us **ONLY**. **The list(s) shall include the name, email address, and telephone number for each witness who will testify remotely**. The Court will provide counsel and/or witnesses with the information for connecting to the hearing.
5. To facilitate participation in the hearing, various WebEx applications are available for download at pacourts.webex.com. **Please see the Protocol for WebEx Video Proceedings, attached to this Order.**

The witnesses participating remotely are directed to connect to the hearing 15 minutes before the starting time. In the event of technical questions or difficulties **ONLY**, please contact the Court's IT staff at 717-255-1626. All other inquiries should be directed to the Prothonotary's Office or the Office of Chief Legal Counsel.

6. As further discussed at the prehearing status conference, the parties are strongly encouraged to enter into stipulations of fact prior to the hearing to streamline these proceedings.



MICHAEL H. WOJCIK, Judge



Protocol for WebEx Video Proceedings

1. Protocol BEFORE the hearing:

- a. On or about twenty-four (24) hours before the scheduled hearing, the Court shall provide counsel and the court reporter with the information for connecting to the video hearing, including the date and time of the hearing. This invitation will be sent by email.
- b. It is the responsibility of counsel to provide the connection information to their clients and witnesses.
- c. It is the responsibility of all parties to provide the Court with their contact information. An email address will be required to join the video.
- d. A witness list must be provided to the Court by the date set forth in the court's scheduling order, and otherwise no later than forty-eight (48) hours before the hearing, with a valid email address for each witness. The Court will provide the attorneys with a contact email to which the witness list should be sent. The witness list shall include the case caption and docket number and the full name of each prospective witness.
- e. All participants must appear by video connection unless otherwise authorized by the Court.
- f. Email invitations will be sent to participants 24 hours before the hearing. If a participant has not received the email invitation from the Court, please check your SPAM or Junk folder before contacting the Court.
- g. All parties and witnesses must connect to the hearing or call into the video system at least 15 minutes before the scheduled start time.

2. Minimum Technology requirements:

- a. All attorneys, pro se parties and witnesses appearing before the Court must have one of the following:
 - i. A computer with a functioning web camera, microphone and speakers;

- ii. A video conferencing system that supports Session Initiation Protocol (SIP) calling;
 - iii. A tablet device that supports Cisco WebEx with a functioning forward facing camera, microphone and speakers; or
 - iv. An alternative device used to connect to Cisco WebEx in the past.
- b. If you experience audio issues with your computer/tablet audio, the Court recommends that you have our system call you by using the option listed below.
 - c. The Court's IT Department will endeavor to contact counsel and witnesses in advance of the hearing to test their connection to the WebEx platform.

3. Ground Rules and Video Conferencing Etiquette:

- a. When not speaking, please mute your microphone. This helps prevent background noise.
- b. Earbuds or headphones are preferable to avoid feedback.
- c. Be aware of your behavior. Because you are on a video conference, people can see what you are doing at all times and *WebEx video conferences are recorded*. Further, others may view the proceedings via public livestream web link that will be provided to the parties and posted to the Court's website in advance of the proceeding.
- d. If connecting from a laptop, plug in the laptop wall power.
- e. Follow all instructions in the video conference invitation and note important supplemental information, such as a backup phone number in case you are disconnected.
- f. Please be respectful; speak slowly and only one at a time.
- g. Try not to speak over other parties. There is a slight delay when using video technology.
- h. The Court appointed crier will be on the call to open and close court and to swear-in witnesses if needed.

Technical Support

If you have any questions or need technical assistance, contact 717-255-1626.

4. Invitation from the Court:

- a. Prior to your scheduled hearing, you will receive an email from the Court with connection instructions. Please make sure to monitor your SPAM or Junk folder so that you receive the message. It should come from @pacourts.us. Here is the information from a sample invitation.

Commonwealth Court Legal Systems invites you to join this Webex meeting.

Meeting number (access code): 613 778 564 ③
Meeting password: Cy54FR39aBE

Wednesday, March 25, 2020
8:00 am | (UTC-04:00) Eastern Time (US & Canada) | 10 mins

[Join meeting](#) ①

Join by phone
Tap to call in from a mobile device (attendees only)
[1-855-244-8681](#) Call-in toll-free number (US/Canada) ②
[1-650-479-3207](#) Call-in toll number (US/Canada)
[Toll-free calling restrictions](#)

Join from a video system or application ④
Dial [613778564@pacourts.webex.com](#)
You can also dial 173.243.2.68 and enter your meeting number.

Join using Microsoft Lync or Microsoft Skype for Business ⑤
Dial [613778564@pacourts@lync.webex.com](#)

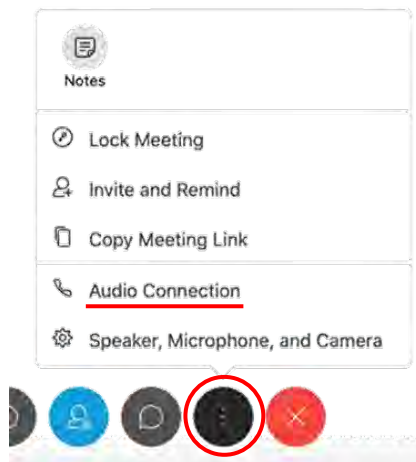
- b. In the invitation, there are multiple connection options:
- i. WebEx: Click on the Green *Join Meeting* button. ①
 - ii. Phone: Dial either of the numbers listed under *Join by phone*. ②
When prompted, enter the Meeting number (access code) listed near the top of the invitation. ③
 - iii. Use the SIP dial in connection number provided for non-WebEx devices such as video conferencing systems. ④
 - iv. Microsoft Lync/Skype for Business connection information is also provided. ⑤

5. Controls while connected to WebEx:

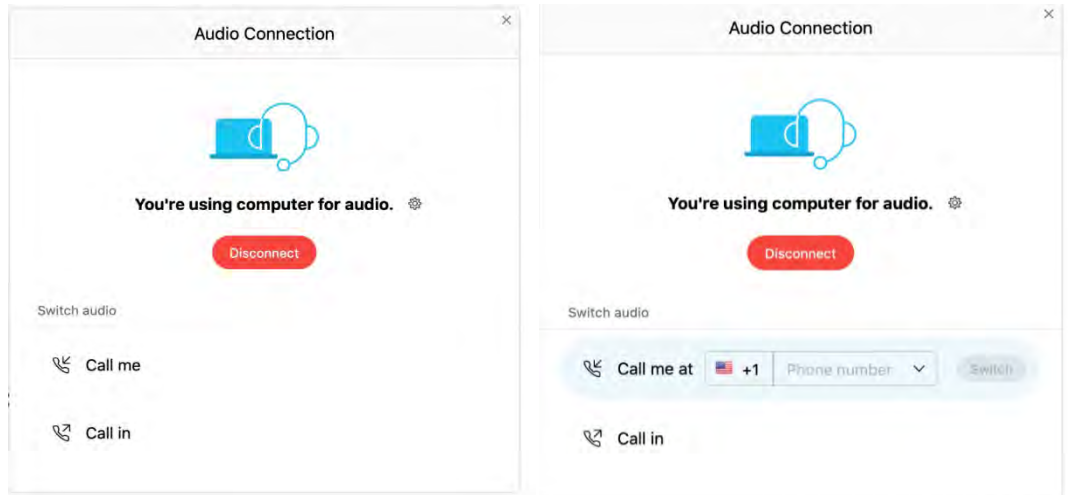
- a. Once connected to a meeting, if you move your mouse, the below control panel should appear. These are the normal controls, but some of them may be disabled which means they will not appear. The icons will be the same.



- b. From left to right, the controls are:
- i. Mute/unmute microphone
 - ii. Turn on/off camera
 - iii. Share your desktop
 - iv. Recording control (Only available to the Court)
 - v. Open/Close the participant list
 - vi. Chat windows
 - vii. Options – has more controls available
 - viii. End Meeting
- c. Under the More Options button (7 above, the 3 dots icon). If you are having audio difficulties with your computer audio, you can have the system call you. Click on the 3 dots icon and then choose Audio Connection.



- d. Click on the option “Call Me”. Enter the phone number that the system should call and press the switch button. When the call comes in, you will be prompted to press “1” to connect.



- e. At the end of your call, press the red X to be disconnected.

6. Procedures regarding Exhibits:

- a. Exhibits should be pre-marked numerically: i.e., P-1, P-2, etc.; and R-1, R-2, etc.
- b. Be aware of personal identifying or confidential information contained in exhibits used during a video hearing, and redact where appropriate consistent with the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.
- c. No later than the date on any order of the Court, or in the absence of a specific date, twenty-four (24) hours prior to the hearing, counsel shall upload all exhibits intended for use during the hearing to the link provided to counsel and should email the Court at CommCourtRemote@pacourts.us to confirm all exhibits have been successfully uploaded. Parties are directed to provide their witnesses with copies of the exhibits in advance of the hearing to which the witnesses can refer during their testimony.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joy Schwartz, and	:	
Gregory Stenstrom,	:	
and Leah Hoopes,	:	
and Paul Rumley,	:	
	:	
Petitioners	:	
	:	
v.	:	No. 258 M.D. 2023
	:	
	:	
Acting Secretary of the Commonwealth	:	
of Pennsylvania Al Schmidt and	:	
Delaware County and	:	
Delaware County Park Police	:	
Department and James Allen, Delaware	:	
County Director of Elections, in his	:	
personal capacity and John S. Diehl,	:	
Delaware County Park Police Chief,	:	
in his personal capacity,	:	
	:	
Respondents	:	

PER CURIAM

ORDER

NOW, June 9, 2023, upon consideration of Petitioners’ Second Request for Emergency Special and Summary Relief (Emergency Application), filed on June 4, 2023, it is hereby ORDERED as follows:

1. Hearing on Petitioners’ Emergency Application is scheduled for Tuesday, July 11, 2023, at 1:30 p.m., in Courtroom 3001, Third Floor, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Harrisburg, Pennsylvania.

2. **By no later than Thursday, July 6, 2023**, the parties each shall file and serve a prehearing memorandum setting forth their respective witness list, the curriculum vitae and expert report for any expert

witness, and a list of exhibits, and contemporaneously exchange their exhibits (pre-marked) for use during the hearing.

3. A prehearing status conference is scheduled for Friday, July 7, 2023, at 10:00 a.m., by telephone conference call, for the purpose of providing the Court with a status update regarding the requested records at issue in this case and to discuss the logistics of the hearing scheduled for July 11, 2023. The Court will contact Petitioners and lead counsel for Respondents to provide call-in information for the conference call.

Petitioners shall promptly serve a copy of this Order on Respondents and thereafter promptly file a proof of service of same with the Court.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In re: Contest of November 7, 2023 :
Election of Towamencin Township :
:
:
:
:
:
Appeal of: Shannon L. Main, Holly A. :
Bechtel, Nancy J. Becker, David Allen :
Brady, Richard D. Costlow, George :
H. Frisch, Earl G. Godshall, Marilyn :
Godshall, Alyson Horcher, Leo F. :
Horcher III, Kris A. Kazmar, Michael E. :
Main, Cynthia M. Manero, Bruce C. :
Marger, Bruce R. Marger III, Kathryn J. :
Marger, Margrit D. Marino, Joseph F. :
Meehan, Richard Mullen, Karen L. :
Nuss, Thomas A. Nuss III, Beth :
Pickford, Scott E. Pickford, Delyne :
D. Rogiani, Kevin Rossi, Nicole M. :
Rossi, Janella J. Santiago, Kelly L. :
Secoda, Michael Secoda and Kristin :
R. Warner :

No. 1482 C.D. 2023

PER CURIAM

ORDER

NOW, December 27, 2023, upon consideration of the parties’ Joint Application for Relief in the Nature of a Motion to Appear via Video Conference (Application) at the scheduled hearing on Appellants’ “Application for Relief in the Nature of a Motion for Summary Judgment/Relief or, *in the Alternative*, Application for Relief in the Nature of a Request for Emergency Preliminary Injunction” (Emergency Application), the Application is GRANTED. Within the Application, the parties jointly represent that they “do not foresee the need for and do not intend to call any witnesses . . . as it is [their] mutual belief the Application can be decided

entirely upon legal arguments without witness testimony.” (Application ¶ 3.) The parties also represent that they anticipate filing a joint stipulation of facts/evidence. (*Id.* ¶ 5.) Considering these representations and the time-sensitive nature of this matter, the proceeding on the Emergency Application scheduled for **Thursday, December 28, 2023, at 10:00 a.m.** will now be held via WebEx videoconferencing.¹ Appellants remain obligated to secure the services of a court stenographer for the proceeding, and the stenographer shall be prepared to transcribe the proceedings remotely via WebEx.

Further, whereas the parties do not anticipate the presentation of witness testimony, no party need file a witness or exhibit list or exchange pre-marked exhibits as directed by the December 26, 2023 Order. Any party anticipating the need to present testimonial or documentary evidence shall promptly notify the parties and the Court of the same prior to the proceeding.

Each party shall email the name, email address, and mobile telephone number of all counsel who intend to participate in the proceeding to the following email address: CommCourtRemote@pacourts.us by **no later than 4:00 p.m. on Wednesday, December 27, 2023**. The Court will provide counsel with the information for connecting to the WebEx conference. To facilitate participation, various WebEx applications are available for download at pacourts.webex.com. Please see the Protocol for WebEx Video Proceedings attached to this Order. The parties are directed to connect to the WebEx video conference 15 minutes before the starting time. In the event of technical difficulties, please contact the Court’s IT staff at 717-255-1626.

¹ The proceeding will be available to watch via a public livestream weblink posted on the Court’s website.

In all other respects, the Court's scheduling order of December 26, 2023, remains unchanged.



Protocol for WebEx Video Proceedings

Protocol BEFORE the conference:

The Court shall provide counsel with the information for connecting to the video conference. This invitation will be sent by email.

It is the responsibility of counsel to provide the connection information to their clients.

It is the responsibility of all parties to provide the Court with their contact information. An email address will be required to join the video.

All participants must appear by video connection unless otherwise authorized by the Court.

Email invitations will be promptly sent to participants. If a participant has not received the email invitation from the Court, please check your SPAM or Junk folder before contacting the Court.

All parties must connect to the proceeding or call into the video system at least 15 minutes before the scheduled start time.

Minimum Technology requirements:

All attorneys and pro se parties appearing before the Court must have one of the following:

A computer with a functioning web camera, microphone and speakers;

A video conferencing system that supports Session Initiation Protocol (SIP) calling;

A tablet device that supports Cisco WebEx with a functioning forward facing camera, microphone and speakers; or

An alternative device used to connect to Cisco WebEx in the past.

If you experience audio issues with your computer/tablet audio, the Court recommends that you have our system call you by using the option listed in 0 below.

The Court's IT Department will endeavor to contact counsel in advance of the proceeding to test their connection to the WebEx platform.

Ground Rules and Video Conferencing Etiquette:

When not speaking, please mute your microphone. This helps prevent background noise.

Earbuds or headphones are preferable to avoid feedback.

Be aware of your behavior. Because you are on a video conference, people can see what you are doing at all times and *WebEx video conferences are recorded*. Further, others may view the proceedings via public livestream web link that will be provided to the parties and posted to the Court's website in advance of the proceeding.

If connecting from a laptop, plug in the laptop wall power.

Follow all instructions in the video conference invitation and note important supplemental information, such as a backup phone number in case you are disconnected.

Please be respectful; speak slowly and only one at a time.

Try not to speak over other parties. There is a slight delay when using video technology.

Technical Support

If you have any questions or need technical assistance, contact 717-255-1626.

Invitation from the Court:

Prior to your scheduled proceeding, you will receive an email from the Court with connection instructions. Please make sure to monitor your SPAM or Junk folder so that you receive the message. It should come from @pacourts.us. Here is the information from a sample invitation.

Commonwealth Court Legal Systems invites you to join this Webex meeting.

Meeting number (access code): 613 778 564 ③
Meeting password: Cy54FR39aBE

Wednesday, March 25, 2020
8:00 am | (UTC-04:00) Eastern Time (US & Canada) | 10 mins

[Join meeting](#) ①

Join by phone
Tap to call in from a mobile device (attendees only)
1-855-244-8681 Call-in toll-free number (US/Canada) ②
1-650-479-3207 Call-in toll number (US/Canada)
[Toll-free calling restrictions](#)

Join from a video system or application
Dial **613778564@pacourts.webex.com** ④
You can also dial 173.243.2.68 and enter your meeting number.

Join using Microsoft Lync or Microsoft Skype for Business
Dial **613778564@pacourts@lync.webex.com** ⑤

In the invitation, there are multiple connection options:

WebEx: Click on the Green *Join Meeting* button. ①

Phone: Dial either of the numbers listed under *Join by phone*. ②

When prompted, enter the Meeting number (access code) listed near the top of the invitation. ③

Use the SIP dial in connection number provided for non-WebEx devices such as video conferencing systems. ④

Microsoft Lync/Skype for Business connection information is also provided. ⑤

Controls while connected to WebEx:

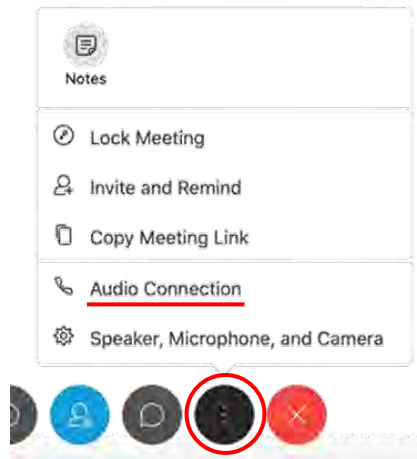
Once connected to a meeting, if you move your mouse, the below control panel should appear. These are the normal controls, but some of them may be disabled which means they will not appear. The icons will be the same.



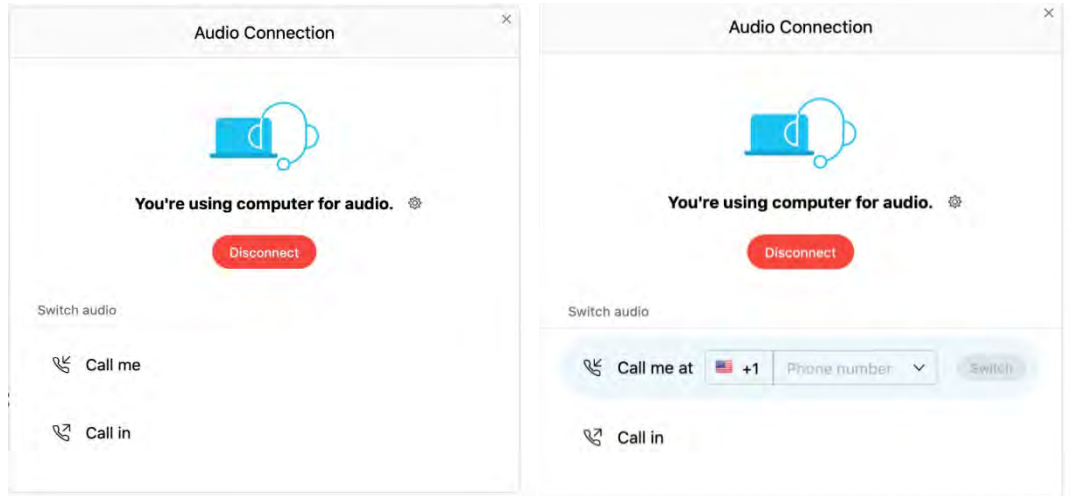
From left to right, the controls are:

- Mute/unmute microphone
- Turn on/off camera
- Share your desktop
- Recording control (Only available to the Court)
- Open/Close the participant list
- Chat windows
- Options – has more controls available
- End Meeting

Under the More Options button (7 above, the 3 dots icon). If you are having audio difficulties with your computer audio, you can have the system call you. Click on the 3 dots icon and then choose Audio Connection.



Click on the option “Call Me”. Enter the phone number that the system should call and press the switch button. When the call comes in, you will be prompted to press “1” to connect.



At the end of your call, press the red X to be disconnected.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In re: Contest of November 7, 2023 :
Election of Towamencin Township :

Appeal of: Shannon L. Main, Holly A. :
Bechtel, Nancy J. Becker, David Allen :
Brady, Richard D. Costlow, George :
H. Frisch, Earl G. Godshall, Marilyn :
Godshall, Alyson Horcher, Leo F. :
Horcher III, Kris A. Kazmar, Michael E. :
Main, Cynthia M. Manero, Bruce C. :
Marger, Bruce R. Marger III, Kathryn J. :
Marger, Margrit D. Marino, Joseph F. :
Meehan, Richard Mullen, Karen L. :
Nuss, Thomas A. Nuss III, Beth :
Pickford, Scott E. Pickford, Delyne :
D. Rogiani, Kevin Rossi, Nicole M. :
Rossi, Janella J. Santiago, Kelly L. :
Secoda, Michael Secoda and Kristin :
R. Warner :

No. 1482 C.D. 2023

PER CURIAM

ORDER

NOW, December 26, 2023, upon review of Appellants’ “Application for Relief in the Nature of a Motion for Summary Judgment/Relief or, *in the Alternative*, Application for Relief in the Nature of a Request for Emergency Preliminary Injunction” (Application), it is hereby ORDERED that:

1. Appellees the Montgomery County Board of Elections and Kofi Osei shall file and serve their respective answers to the Application no later than **Wednesday, December 27, 2023, at 12:00 p.m.**

2. A hearing on the Application is scheduled for **Thursday, December 28, 2023, at 10:00 a.m.** in Courtroom 3001, Third Floor, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Harrisburg, Pennsylvania. The hearing will be available to watch via a public livestream weblink posted on the Court's website.

3. Appellants shall secure the services of a court stenographer for the hearing.

4. In addition to being prepared to present legal argument during the hearing, the parties shall file any memoranda of law in support of their respective positions **no later than 4:00 p.m. on Thursday, December 28, 2023.**

5. The parties shall each file a list of all witnesses to be called at the hearing with a short offer of proof for each witness, the curriculum vitae and expert report for any expert witness, and a list of exhibits, **no later 4:00 p.m. on Wednesday, December 27, 2023.**

6. The parties shall consult in good faith prior to the filing of their list of witnesses and exhibits and, if possible, enter into evidentiary and/or factual stipulations and/or agreed-upon protocols in order to streamline the proceedings. The parties may PAC-File any joint stipulations or protocols prior to the hearing.

7. To the extent practicable, the parties shall exchange their respective pre-marked exhibits in advance of the hearing and shall prepare copies of exhibits for reference by witnesses during their testimony.

Appellants shall **immediately** serve a copy of this Order on counsel for Appellees and file proof of service with the Court no later than **Tuesday, December 26, 2023, 3:00 p.m.**

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: _____ :
NOMINATION PETITIONS/PAPERS :
OF _____ : No. *

SCHEDULING and CASE MANAGEMENT ORDER

PER CURIAM

NOW, _____, upon consideration of the Petition to Set Aside
Nomination Petitions/Papers (Objection Petition):

1. IT IS HEREBY ORDERED:

A. Hearing on the Objection Petition is scheduled for
_____, in Courtroom Number _____,
_____, Pennsylvania.
Objector is directed to secure the services of a court stenographer for the hearing.
Failure of Objector to secure the services of a court stenographer may result in the
dismissal of this matter.

B. If signature lines are challenged, Objector shall secure, by request
or subpoena, the presence of a **Statewide Uniform Registry of Electors (SURE)**
system operator at the hearing.

C. Service of the Objection Petition on Candidate and this Order on
all parties is complete upon the posting of the Objection Petition and this Order on the
Court's website in accordance with this Court's Notice and Order in *In re: Objections
to Nomination Petitions/Papers of Candidates for Statewide and State-Level Office*
(Pa. Cmwlth., No. 126 Misc. Dkt. No. 3, July 19, 2023).

D. At the hearing, Objector shall offer proof of timely service of the Objection Petition on the Secretary of the Commonwealth.

2. It is FURTHER ORDERED that the parties shall comply with the following in advance of the hearing:

A. Objector shall file a list of all witnesses to be called at the hearing and the curriculum vitae and expert report for each expert witness. Any witness not identified may be precluded from testifying except for good cause shown.

B. Candidate shall file a list of all witnesses to be called at the hearing and the curriculum vitae and expert report for each expert witness. Any witness not identified may be precluded from testifying except for good cause shown.

3. If signature line challenges are at issue, it is FURTHER ORDERED that the parties shall comply with the following in advance of the hearing:

A. Objector and Candidate or Candidate's representative and, if appropriate, a SURE system operator, shall meet to review each and every challenged signature line.

B. Objector and Candidate shall file a stipulation of the parties that identifies:

- (a) the total number of completed signature lines submitted;
- (b) the total number of uncontested signature lines submitted;

- (c) the total number of signature lines challenged;
- (d) each and every signature line to which there is an objection, identified by page number and line number, and the basis for the objection;
- (e) each and every signature line to be stricken as invalid or for which an objection is to be withdrawn, identified by page number and line number, if the parties can reach such a stipulation.

C. Candidate shall file a list of all signature lines, identified by page number and line number, that are facially defective and that Candidate intends to rehabilitate. Candidate shall also state the manner in which Candidate intends to rehabilitate the signature lines.

4. Objector and Candidate may each file a memorandum of law in support of their respective positions. No further memoranda will be permitted unless ordered by the Court.

5. Unless otherwise ordered, the parties shall file all items required or permitted by paragraphs 2, 3 and 4 of this Order no later than 48 hours in advance of the hearing. Filing may be accomplished by PACFile (the Pennsylvania appellate court electronic filing system) or by email to CommCourtFiling@pacourts.us. Parties may **not** file by facsimile without express prior permission from the Court.

6. Failure to comply with any provision of this Order may preclude the noncompliant party from entering any evidence, and may result in the imposition of monetary sanctions.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Doug McLinko,	:	
	:	
Petitioner	:	CASES CONSOLIDATED
	:	
v.	:	No. 244 M.D. 2021
	:	
Commonwealth of Pennsylvania,	:	
Department of State; and	:	
Veronica Degraffenreid, in her	:	
official capacity as Acting Secretary	:	
of the Commonwealth of Pennsylvania,	:	
Respondents	:	
	:	
Timothy R. Bonner, P. Michael Jones,	:	
David H. Zimmerman, Barry J. Jozwiak,	:	
Kathy L. Rapp, David Maloney,	:	
Barbara Gleim, Robert Brooks,	:	
Aaron J. Bernstine, Timothy F.	:	
Twardzik, Dawn W. Keefer,	:	
Dan Moul, Francis X. Ryan, and	:	
Donald "Bud" Cook,	:	
Petitioners	:	
	:	
v.	:	No. 293 M.D. 2021
	:	
Veronica Degraffenreid, in her official	:	
capacity as Acting Secretary of the	:	
Commonwealth of Pennsylvania, and	:	
Commonwealth of Pennsylvania,	:	
Department of State,	:	
Respondents	:	

PER CURIAM

ORDER

AND NOW, this 24th day of September, 2021, upon consideration of the cross-applications for summary relief filed in the matter at No. 244 M.D. 2021,

and the second matter at No. 293 M.D. 2021, which also raises a constitutional challenge to the Act of October 31, 2019, P.L. 552, No. 2019-77, the request for consolidation, and upon finding that prospective relief, as requested by petitioners, is not available for the November 2021 election because it is already underway as set forth in the Jonathan Marks' Affidavit, 08/26/2021, ¶¶25,26 filed in No. 244 M.D. 2021, the Court hereby ORDERS the following:

1. The order of September 3, 2021, entered in No. 293 M.D. 2021, is rescinded, and the above-captioned matters are hereby consolidated. All filings shall use the consolidated caption set forth above.

2. The consolidated petitions for review shall be given expedited consideration.

3. The response to the petition for review and dispositive motions, if any, in No. 293 M.D. 2021 shall be filed on or before September 30, 2021. Cross-dispositive motions, if any, shall be filed five days later.

4. Respondents' brief in support of their preliminary objections to the petition for review at No. 244 C.D. 2021 shall be filed on or before October 8, 2021, and McLinko's brief in opposition is due 15 days thereafter.

5. The prothonotary shall list all preliminary objections or dispositive motions at the next available *en banc* argument session.

**COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA	:	NO. 682 MD 2022
	:	
v.	:	
	:	
BRYAN KOHBERGER,	:	
Defendant	:	

DECORUM ORDER

AND NOW, this 2nd day of January, 2023, after consultation with the District Court Administrator, the Administrative Office of the Pennsylvania Courts (AOPC), the Pennsylvania Association of Broadcasters (PAB), Pennsylvania NewsMedia Association (PNA), and the Monroe County Sheriff, the following Order is entered.

The terms of this Order apply to the conduct of all scheduled court proceedings held in the Monroe County Courthouse.

The provisions noted as "Mandatory" shall be applied by the Court and enforced accordingly by its officers and agents. The provisions noted as "Informational" are intended to provide meaningful structure and guidelines to those reporters and members of the general public who will be attending any of the court proceedings.

MANDATORY

1. All reporters and members of the general public must enter the Courthouse via the Monroe Street entrance. Access via other Courthouse entrances will not be permitted except for American with Disabilities Act (ADA) accommodations. ADA accessible access is through the Sarah Street entrance. All reporters and members of the general public must submit to security screening both at the Monroe Street (or Sarah Street) entrance and the entrance to the courtroom, as required by the Sheriff.
2. Reporters and members of the general public will be admitted to the courtroom between 15 and 45 minutes prior to the scheduled start time.
3. No one will be admitted to the courtroom less than 15 minutes prior to the scheduled start time, except as authorized by the Sheriff. All reporters and members of the public must be seated before the proceeding begins.
4. The following applies to all persons attending a court proceeding:

- a. Reporters will be permitted to use laptops, electronic tablets, or similar devices in the courtroom for the sole purpose of note-taking. Transmission from or recording by laptops, electronic tablets, or any electronic device in the courtroom is prohibited.
- b. Members of the general public and the Media are permitted to carry cell phones in the courthouse but all such devices must be turned OFF before entering any courtroom, except as permitted in Subparagraph 4(f).
- c. Except as permitted in Subparagraph 4(f), any use of Internet or telephone service for transmission, video and/or sound recording, or any other electronic duplication via cell phone or similar device is prohibited in the Courthouse.
- d. Except as permitted in Administrative Order 1 AD 2023, Re: Electronic Device and Advanced Communication Technology (ACT) Use in the Monroe County Court of Common Pleas and Magisterial District Courts and Subparagraph 4(f), no photography, videography or recording device of any type may be used anywhere in the Courthouse.
- e. Except as specifically approved by the Court, no news media interviews whatsoever shall be conducted anywhere in the Courthouse (including corridors, hallways, elevators, interior/exterior steps, and walkways to the Monroe Street and Sarah Street entrances of the Courthouse).
- f. Reporters may use Courtroom 7 to prepare and file stories before and after the Court Hearing. All reporters are reminded that they shall not electronically transmit stories, pictures, or video anywhere in the Courthouse except as provided in this Subparagraph.
- g. No filming or photography will be permitted on Courthouse property or along any of the sidewalks immediately surrounding and adjacent to the Courthouse except as provided for in paragraph 4(f) herein and in Administrative Order 1 AD 2023, Re: Electronic Device and Advanced Communication Technology

(ACT) Use in the Monroe County Court of Common Pleas and Magisterial District Courts.

5. The Sheriff of Monroe County, in consultation with the Court, shall have authority to make such reasonable rules and regulations as may be required to provide adequate security intended to assure the safety of all those in the Courthouse and on the Courthouse grounds as well as the orderly conduct of any court proceeding. These regulations may include, but are not limited to, the following:
 - a. Limiting the number of media personnel in the staging areas to ensure that facilities are not overtaxed.
 - b. No person will be permitted to bring backpacks, large purses, or satchels of any kind into the courtroom, except as authorized by the Sheriff.
 - c. No person will be permitted to bring food or beverages into the courtroom.
 - d. No person, except those authorized by the Court, will be permitted beyond the bar of the courtroom.
6. Any person who violates the provisions of this Order is subject to penalties for contempt of court (including fines or summary incarceration) under any applicable statute, order, or rule of court. In addition, any reporter, and the news organization the reporter represents, will be summarily prohibited from attendance for the balance of the proceeding, and, in the discretion of the Court, may be prohibited from attending any subsequent proceedings in the case.

INFORMATIONAL

7. Upon entering the Courthouse and the courtroom, reporters must present credentials from their media outlet, which must include a photo. Those who do not have media credentials with a photo must present their media credential together with another valid photo identification.
8. Orders of the Court will be published on the website of the Court of Common Pleas, 43rd Judicial District (www.monroepacourts.us) and on www.pacourts.us and the Pennsylvania Courts' social media pages: Twitter: @PACourts and Facebook: @PennsylvaniaCourts.

9. Limited parking is available near the Courthouse. Reporters and members of the public who will be attending a court hearing should allow ample time to find parking and make their way to the Courthouse. Please note that courthouse construction is ongoing and there may be limited parking together with road closures.
10. Reporters are reminded that Pennsylvania law prohibits parking within fifteen (15) feet of a fire hydrant, within twenty (20) feet of a crosswalk at an intersection, and otherwise parking in a manner that prevents vehicles from traveling on streets. Damage caused to county and/or borough property will be reported immediately to law enforcement and a police report will be filed.
11. The courthouse will open at 8: 30 am and the hearing is currently scheduled for 3:30 pm in Courtroom 1.
12. There are limited public restrooms in the Courthouse.

Inquiries regarding court processes and procedures may be directed to the Administrative Office of Pennsylvania Courts, Stacey Witalec, Director of Communications/Spokesperson at 717-877-2997 or Stacey.Witalec@pacourts.us.

BY THE COURT:



MARGHERITA PATTI-WORTHINGTON, P.J.

Clerk of Courts
JAN 2 '23 PM2:09

DRAFT

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS

V. : COUNTY, PENNSYLVANIA

:

DECORUM ORDER

AND NOW, this _____ day of , 202X, in the exercise of its inherent power to provide for the orderly disposition of all trial and court related proceedings, and upon consultation with the and the following Order is entered;

The terms of this Order apply to the preliminary hearing scheduled to begin at 11:00 a.m. on , in the (“Justice Center”), , Pennsylvania.

The provisions noted as “Mandatory” shall be applied by the Court and enforced accordingly by court personnel and the Sheriff. The provisions noted as “Informational” are intended to provide meaningful structure and guidance to the press and members of the public who will be attending the proceedings.

Additional information will be made available on the Administrative Office of Pennsylvania Courts website at

<https://www.pacourts.us/news-and-statistics/cases-of-public-interest/commonwealth-v-margera-chester-county>

DRAFT

MANDATORY

1. Court Access: All members of the public and members of the media must enter the Justice Center through the front entrance located on , unless modified by the Court. Access from other courthouse entrances will not be permitted.

2. Policies regarding the working press:
 - a. There will a formal credentialing process. The press must have a form of organization credentials to be recognized as “working press”. Self-credential persons shall be considered members of the public.

 - b. Working press will be admitted to the Courtroom beginning at 10:30 a.m. on a first come basis and will sit in an area designated by the Sheriff. There will be a seat available at all times for one designated representative of the local newspaper.

 - c. The Sheriff will assume that any reporter with current credentials issued by a news organization is, for the purposes of this proceeding, working press.

 - d. Working press may possess computers or other electronic note taking devices, including cell phones in the Courtroom. However, cell phones cannot be used for conversations while in a courtroom.

 - e. There shall be no video or audio recording of any kind while in the Justice Center.

 - f. A sketch artist(s) will be permitted, if requested, subject to appropriate security clearances.

3. Policies regarding the public:

DRAFT

- a. The public will be admitted to the Courtroom beginning at 10:45 a.m. and will be seated where designated by the Sheriff.
 - b. No member of the public is permitted to display in any Courtroom cell phones, computers, electronic recording devices or similar equipment. If such equipment is displayed, it shall be subject to confiscation and the individual will be removed from the courtroom. All such equipment shall be turned off (not just placed into “vibrate” mode) prior to entering the Courtroom.
4. Courtroom: The proceeding will occur in Courtroom #1 of the Justice Center.
 5. Allocation of Courtroom Seats:
 - a. During the preliminary hearing:
 1. Families of victim and defendant, if requested, to be assigned by Sheriff and court personnel
 2. Working Press – to be assigned by Sheriff and court personnel
 - c. A reallocation in assigned seating categories at the sole discretion of the Court and Sheriff.
 - d. Subject to the above provisions, seating shall be on a first come basis.
 6. Public Admittance: Members of the public will be admitted to Courtroom #1 and on a first come basis. There will be no pre-selection for the public.
 - a. Members of the public attending court proceedings shall abide by all rules and regulations governing individuals using the court facilities at the Justice Center as previously established by the Court and as established in this Order.

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b. The Court reserves the right to establish and implement additional rules and regulations or modify same as, in its sole discretion, are necessary for the proper order and process of jury selection and all court proceedings.

7. Courtroom Attire and Accessories:

a. Persons in the courtroom must be dressed in appropriate courtroom attire. This means the best business attire at your disposal. No shorts or sleeveless “tank tops” shall be permitted in the courtroom.

b. No signs, banners, company or media logos, messages, clothing with messages, or other distracting, disruptive, or potentially prejudicial material may be brought into, worn, or displayed in the courtrooms or security areas.

8. Courtroom Demeanor:

a. At the end of the court session, all shall remain seated until the judge and defendant have left the courtroom and the Sheriff/courtroom personnel has given permission to leave.

b. Persons in the courtroom must remain silent during all proceedings. There will be no talking or other gesturing/signaling of approval or disapproval of any statements, actions, testimony or rulings during court proceedings.

c. Children are permitted in the courtroom only if they can conform their demeanor to that required of adults by the court.

d. There will be no reading of newspapers, magazine, books, electronic devices or other materials in the courtroom during court proceedings.

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e. There will be no drinks, food, chewing gum, smoking, or chewing tobacco in the courtroom, except for water provided by court personnel to the witnesses, or counsel, except with the permission of the Court.

f. As in all cases, the atmosphere in the courtroom must be quiet, calm, and deliberative. All persons attending the proceeding must commit to a serious attitude while attending any court proceeding.

9. Leaving the Courtrooms: Those seated in a courtroom during proceedings are expected to remain in their seats until the Court either calls a recess or the session has ended. If a person is required to leave a courtroom during any proceeding, that person shall do so in a prompt, quiet manner so as not to disrupt the proceedings. Any person leaving may be asked to delay re-entry into the courtroom at the sole discretion of the Sheriff or court personnel so as not to disrupt court proceedings. Those who leave an area deemed secure by the Sheriff may be required to undergo a security screening before being readmitted.

10. Electronic Devices:

a. All members of the working press and the public shall abide by the existing Chester County Court of Common Pleas' policy regarding the possession and/or use of any cell phone, laptop computer, smart phone, or similar electronic device while in the Justice Center, except as may be modified by this Order. All members of the working press and the public intending to attend any proceedings must familiarize themselves with the County policy on electronic devices in the Justice Center prior to the date of attendance at any court proceeding.

b. All cell phones and electronic devices must be turned off (not just put in "vibrate" mode) prior to entering any courtroom and such devices shall not be utilized or displayed (must be out of sight) under all circumstances while in a courtroom. Any individual who violates this policy shall be removed from the

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courtroom and required to surrender the cell phone and/or electronic device to the custody of the Sheriff. Such device may also be subject to examination or confiscation if circumstances require.

c. The only exception to the above requirement is that members of the working press may use electronic devices for the sole purpose of note-taking. Transmission from these devices or internet use is strictly prohibited while in the Justice Center except if such transmission occurs within other areas designated by the Court or Sheriff.

d. There shall be no video or audio recording of any kind while in the Justice Center.

e. There shall be no transmission of any electronic information or any internet use at any time while in the Justice Center except as set forth in paragraph 10(c) above regarding the working press.

f. This Court reserves the right to implement additional rules and regulations or modify all those in existence regarding the possession and/or use of electronic devices in the Justice Center.

11. Sanction for Improper Use of Electronic Device: Any working press or member of the public who violates any provision of this Order or the Chester County Court of Common Pleas policy regarding the use of electronic devices in the Justice Center, in addition to other sanctions noted in this Order, may be subject to the penalties of contempt (including fines or summary incarceration) under any applicable statute, order or rule of Court. In addition, any working press or news organization that violates this Order, or that broadcasts or publishes any information or image in violation of this Order, in the discretion of the Court, may also lose the privilege to attend any further court proceedings.

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12. Interviews:

a. No news media interviews whatsoever shall be conducted in any courtroom or in the Justice Center, including corridors, hallways, elevators, interior and exterior steps or property. Interviews may be conducted in the front area outside of the Justice Center or other approved area as designated by the Sheriff. At no time should any interview take place in a location that may be overheard by a potential witness or selected juror.

13. Photography:

a. There shall be no photographs taken in the Justice Center.

b. At no time shall any witness who is a minor be photographed or such image be published or otherwise displayed.

15. Sanctions:

There will be no prior warnings. Any violation of this Order or other Court Orders, written or verbal, and any conduct the Court finds disruptive of any proceedings may result in:

a. A written or verbal Court Order of temporary or permanent exclusion from the courtroom or Justice Center;

b. A Contempt of Court finding and sanction which can result in confinement in jail for up to six (6) months and/or a fine for each offense.

c. Such other sanctions as deemed necessary by the Court to ensure the proper administration of justice.

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16. Notice of this Order and Court Policies:

This Order and Court policies shall be posted on the Administrative Office of Pennsylvania Courts website at <https://www.pacourts.us/news-and-statistics/cases-of-public-interest/commonwealth-v-margera-chester-county> and shall be posted outside the courtroom. This information shall also be distributed to counsel for the defense, district attorney as well as the Sheriff and others, as required by the Sheriff and the Court. A copy of this Order may also be obtained at the Office of the Chester County Court Administrator.

17. All other questions related to these proceedings can be directed to .

BY THE COURT:

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COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS

V. : COUNTY, PENNSYLVANIA

:

DECORUM ORDER

AND NOW, this _____ day of , 202X, in the exercise of its inherent power to provide for the orderly disposition of all trial and court related proceedings, and upon consultation with the and the following Order is entered;

The terms of this Order apply to the preliminary hearing scheduled to begin at 11:00 a.m. on , in the (“Justice Center”), , Pennsylvania.

The provisions noted as “Mandatory” shall be applied by the Court and enforced accordingly by court personnel and the Sheriff. The provisions noted as “Informational” are intended to provide meaningful structure and guidance to the press and members of the public who will be attending the proceedings.

Additional information will be made available on the Administrative Office of Pennsylvania Courts website at

<https://www.pacourts.us/news-and-statistics/cases-of-public-interest/commonwealth-v-margera-chester-county>

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MANDATORY

1. Court Access: All members of the public and members of the media must enter the Justice Center through the front entrance located on , unless modified by the Court. Access from other courthouse entrances will not be permitted.

2. Policies regarding the working press:
 - a. There will a formal credentialing process. The press must have a form of organization credentials to be recognized as “working press”. Self-credential persons shall be considered members of the public.

 - b. Working press will be admitted to the Courtroom beginning at 10:30 a.m. on a first come basis and will sit in an area designated by the Sheriff. There will be a seat available at all times for one designated representative of the local newspaper.

 - c. The Sheriff will assume that any reporter with current credentials issued by a news organization is, for the purposes of this proceeding, working press.

 - d. Working press may possess computers or other electronic note taking devices, including cell phones in the Courtroom. However, cell phones cannot be used for conversations while in a courtroom.

 - e. There shall be no video or audio recording of any kind while in the Justice Center.

 - f. A sketch artist(s) will be permitted, if requested, subject to appropriate security clearances.

3. Policies regarding the public:

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- a. The public will be admitted to the Courtroom beginning at 10:45 a.m. and will be seated where designated by the Sheriff.
 - b. No member of the public is permitted to display in any Courtroom cell phones, computers, electronic recording devices or similar equipment. If such equipment is displayed, it shall be subject to confiscation and the individual will be removed from the courtroom. All such equipment shall be turned off (not just placed into “vibrate” mode) prior to entering the Courtroom.
4. Courtroom: The proceeding will occur in Courtroom #1 of the Justice Center.
5. Allocation of Courtroom Seats:
- a. During the preliminary hearing:
 1. Families of victim and defendant, if requested, to be assigned by Sheriff and court personnel
 2. Working Press – to be assigned by Sheriff and court personnel
 - c. A reallocation in assigned seating categories at the sole discretion of the Court and Sheriff.
 - d. Subject to the above provisions, seating shall be on a first come basis.
6. Public Admittance: Members of the public will be admitted to Courtroom #1 and on a first come basis. There will be no pre-selection for the public.
- a. Members of the public attending court proceedings shall abide by all rules and regulations governing individuals using the court facilities at the Justice Center as previously established by the Court and as established in this Order.

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b. The Court reserves the right to establish and implement additional rules and regulations or modify same as, in its sole discretion, are necessary for the proper order and process of jury selection and all court proceedings.

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DRAFT

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e. There shall be no transmission of any electronic information or any internet use at any time while in the Justice Center except as set forth in paragraph 10(c) above regarding the working press.

f. This Court reserves the right to implement additional rules and regulations or modify all those in existence regarding the possession and/or use of electronic devices in the Justice Center.

11. Sanction for Improper Use of Electronic Device: Any working press or member of the public who violates any provision of this Order or the Chester County Court of Common Pleas policy regarding the use of electronic devices in the Justice Center, in addition to other sanctions noted in this Order, may be subject to the penalties of contempt (including fines or summary incarceration) under any applicable statute, order or rule of Court. In addition, any working press or news organization that violates this Order, or that broadcasts or publishes any information or image in violation of this Order, in the discretion of the Court, may also lose the privilege to attend any further court proceedings.

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a. There shall be no photographs taken in the Justice Center.

b. At no time shall any witness who is a minor be photographed or such image be published or otherwise displayed.

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a. A written or verbal Court Order of temporary or permanent exclusion from the courtroom or Justice Center;

b. A Contempt of Court finding and sanction which can result in confinement in jail for up to six (6) months and/or a fine for each offense.

c. Such other sanctions as deemed necessary by the Court to ensure the proper administration of justice.

DRAFT

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17. All other questions related to these proceedings can be directed to .

BY THE COURT:

Pennsylvania Courts High Profile Trials Checklist

Name of Trial:

Date:

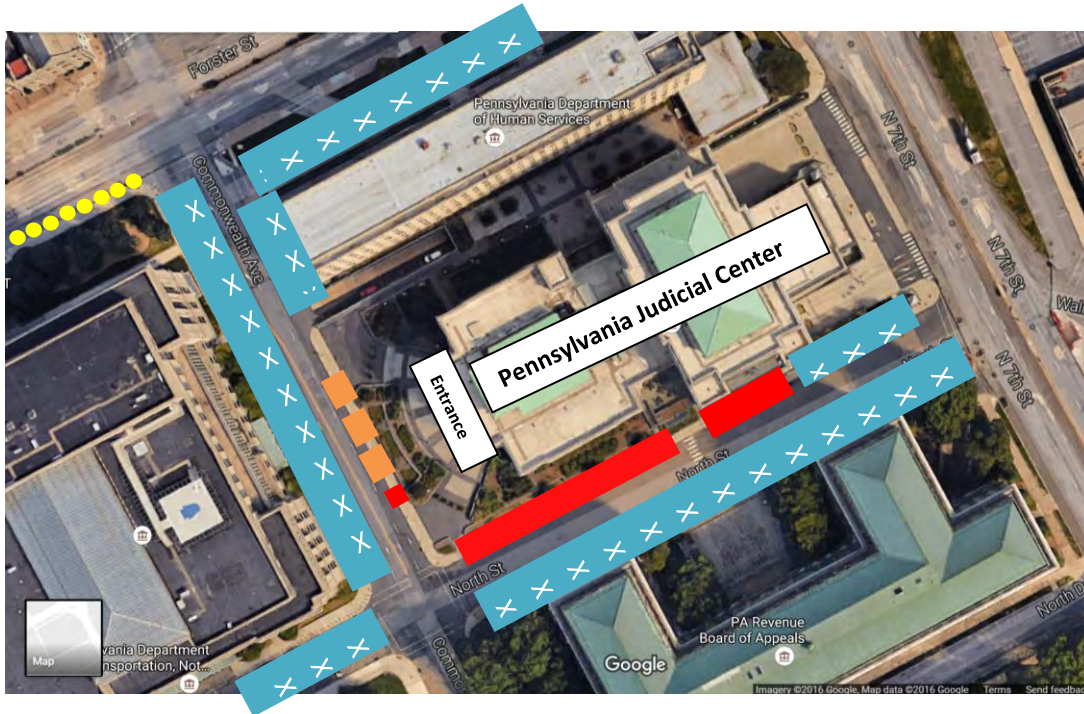
TASK	OWNER	STATUS	NOTES
Determine where Sat. Trucks can park	Court/AOPC		
Determine SAT parking times	Court/Police/AOPC		
Parking for support vehicles	Court/AOPC		
STAFF parking	Court/AOPC		
Satellite courtroom needed?	Court		
Sound System in Sat. ctrm	Court/AOPC		
Decorum Order	Court		
Determine location for presser -- mult box, podium and cable	Court/AOPC		<i>Backup plan for inclement weather?</i>
Determine In/Out shots	Court/AOPC		<i>If using barricades, keep distance back from those entering/exiting</i>
Sat truck park assignments			<i>Depending on court location, may need to bring extra gas</i>
Ariel Map with assignments	AOPC		
Police presence	Court/local police		
Block off spots with orange cones	Court/local police		
Cattle shoots necessary?	Court		
Remind stations to bring cable jackets			
WiFi	Court		
Trucks can park wrong direction / ladders	AOPC		
Credentialing			

Courtroom Reporter Assignments			
Pool Camera coverage? Pool Photographer			
Sketch artist			
Allow tents?	Court/AOPC		
Test sound system day of	AOPC		
Bring paper, sharpie, tape, parking vest, water	AOPC		
Confirm with court -- arrival time, where will they walk, witness, different entrance, etc., time media can enter court	AOPC		
Collect cell phone numbers from organizers / distribute to Court, PBA, PNA, AOPC	AOPC		
SAT. Coordinates?			
Keep Trucks away from cross walks	AOPC		
NO reporters on steps of courthouse / some may allow on sides just not in path of door	AOPC		
Email updates for reporters during jury deliberations.	AOPC		
Email pool photographers with a heads-up participants arrival	AOPC		
Things during TRIAL: witness list, juror list, exhibits, verdict sheet	AOPC		
TENT to cover podium equipment	AOPC		

Media Truck Parking at the Pennsylvania Judicial Center

601 Commonwealth Ave., Harrisburg, Pa 17106

The Matter of the 2016 Presidential Election | Commonwealth Court | Dec. 5, 2016



- **Reserved Sat Trucks** (NBC National, Fox News, CBS Newspath)
- **Production News Vans** (first come, first served -- spaces end at spot 101 -- WHTM, WCAU, WPVI, WTXF, WGAL, WHP, WPMT, Ruptly-TV, KDKA-TV, WFMZ 69)
- ▲ **Other optional parking** (5 spaces along Soldier's Grove – see image below)
- **Metered Parking** (limited meters available up and down Forster Street)
- XXXXXXXX **No Parking** XXXXXXXX



Parking questions, please call or text Kim Bathgate, Communications Office at 717-317-1285 (cell).



**MEDIA CREDENTIAL
COURTROOM C**

YC.news

SEAT No. 9

*Commonwealth v. William Henry Cosby
TRIAL*



MONTGOMERY COUNTY

Pennsylvania

**In the
Appellate Court of Illinois
First Judicial District - Fifth Division**

TIFFANY HENYARD,)	Appeal from the Circuit Court of
)	Cook County
Plaintiff-Appellee,)	
)	
v.)	No. 22 CH 3835
)	
MUNICIPAL OFFICERS OF THE VILLAGE)	
OF DOLTON, <i>et al.</i> ,)	The Honorable Paul Karkula,
)	Judge Presiding.
Defendant-Appellants)	
)	
(KAREN YARBROUGH, in her official capacity)	
as Cook County Clerk, Defendant-Appellee).)	

ORDER

This case comes before the court on: (1) the motion for stay filed by defendants-appellants the Municipal Officers of the Village of Dolton (Municipal Officers), and the response thereto, with its exhibits; and (2) the motion for expedited appeal filed by the Municipal Officers. This court finds that there is not enough time left before the June 28, 2022 General Primary Election to provide sufficient opportunity for counsel to brief, and for this court to analyze, the issues presented. Tinkering with the ballot at this late stage is a recipe for confusion and chaos. See, *e.g.*, *Scheidler v. Cook Cnty. Officers Electoral Bd.*, 276 Ill. App. 3d 297, 300 (1995). Accordingly, this court hereby ORDERS:

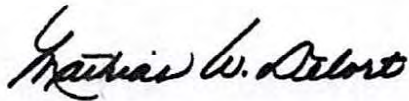
1. The motion for stay is GRANTED IN PART and DENIED IN PART. At this time, this court makes absolutely no determination of likelihood of success on the merits for either side. However, this court finds that the election, already underway, should not be disrupted. Therefore, the June 22, 2022 order of the circuit court of Cook County is stayed pending appeal. The defendant-appellee Cook County Clerk shall conduct the elections on the subject referenda as certified to her, including counting all votes cast, and releasing interim, unofficial, and final official tallies in the normal and customary manner. However, the Cook County Clerk as canvassing authority (10 ILCS 5/1-8, 22-17 (West 2020)) shall neither canvass the votes cast on, nor proclaim the results on, the subject referenda, pending further order of this court. If the released vote totals show that the voters have approved either referendum, that

approval will have no force or effect until further order of this court. This stay is issued without bond.

2. The motion for expedited schedule is treated as a motion for accelerated docket pursuant to Illinois Supreme Court Rule 311(b) and, as such, is GRANTED IN PART and DENIED IN PART. On or before July 20, 2022, counsel for the Cook County Clerk shall file a status report indicating the final results of the elections and, if possible, a declaration of the number of voters in the Village of Dolton who were unable to vote on the referenda during the early voting period due to the Clerk's implementation of the circuit court's stay order. Depending on the results of the elections, this court will entertain a motion to dismiss the appeal in whole or in part as moot. The docketing statement and the full circuit court record are due July 27, 2022. The appellants' brief is due August 10, 2022. The appellees' briefs are due August 31, 2022. The reply brief is due September 8, 2022. From this point forward, the parties' filings shall comply with Ill. Sup. Ct. R. 311(b)(1). The appellants' request to submit memoranda in lieu of briefs and a supporting record in lieu of the circuit court record is DENIED.

3. Pursuant to Ill. App. Ct. (1st) R. 8, the clerk shall designate this appeal as "ready" and randomly assign it to an authoring justice and panel in the Fifth Division.

ENTER:



Presiding Justice

ORDER ENTERED

JUN 24 2022

APPELLATE COURT FIRST DISTRICT

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12th Floor
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Tel: 612.371.6222
Fax: 612.371.3207
walkerl@ballardspahr.com

October 5, 2023

Via Email and Fedex

H. Thomas Byron III, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE, Room 7-300
Washington, DC 20544
RulesCommittee_Secretary@ao.uscourts.gov

Re: Revising Federal Rule of Criminal Procedure 53

Dear Secretary Byron:

This firm represents a coalition of media organizations¹ who write to request that the Judicial Conference revise Rule 53 of the Criminal Rules of Procedure to permit broadcasting of criminal proceedings or to at least create an “extraordinary case” exception to the prohibition on broadcasting. We make this request now because of the fast-approaching trial in *United States v. Donald J. Trump*, 23-cr-257-TSC (D.D.C.), and respectfully request that the Advisory Committee on Criminal Rules consider including this on the agenda of its upcoming October 26, 2023 meeting in Minneapolis.

We understand that, even at the most expedited pace, rule changes take significant time and that it may not be possible to revise the rule before the unprecedented and historic trial of a former President begins. Nevertheless, we ask that every effort be made to change

¹ The media organizations are Advance Publications, Inc., American Broadcasting Companies, Inc. d/b/a ABC News, The Associated Press, Bloomberg L.P., Cable News Network, Inc., CBS Broadcasting, Inc., Dow Jones & Company, Inc., publisher of The Wall Street Journal, The E.W. Scripps Company (operator of Court TV), Los Angeles Times Communications LLC, National Association of Broadcasters, National Cable Satellite Corporation d/b/a C-SPAN, National Press Photographers Association, News/Media Alliance, The New York Times Company, POLITICO LLC, Radio Television Digital News Association, Society of Professional Journalists, TEGNA Inc., Univision Networks & Studios, Inc., and WP Company LLC d/b/a The Washington Post.

October 5, 2023

Page 2

the rule as quickly as possible. Indeed, even if the Judicial Conference declines to expedite this request, the case against former President Donald J. Trump shows why the prohibitions of Rule 53 should be reconsidered. We respectfully request, therefore, that the Judicial Conference begin the rule-change process now, regardless how long the process takes, so that a revised rule is in place for the next trial of such significant public interest and concern.

In the case pending in the U.S. District Court for the District of Columbia, former President and current presidential candidate Mr. Trump has been indicted for conspiring to obstruct the certification of the 2020 presidential electoral vote in Congress on January 6, 2021. The jury trial is scheduled for March 4, 2024. This case is of interest to all American voters still struggling to make sense of the 2020 presidential election and its aftermath, and who have an opportunity to vote for or against Mr. Trump should he become his party's nominee in the 2024 presidential election. If Americans do not have confidence that Mr. Trump is being treated fairly by the justice system, there is a very real chance they will reject the verdict (whatever it is) and that their faith in democracy and our institutions will be further diminished. Recent and painful events in our Nation's Capital show that, taken to an extreme, this sort of doubt and cynicism can lead to violence.

Yet currently Rule 53 prohibits all but a few Americans—those who have the resources and wherewithal to travel to the courthouse and wait in line for a limited number of seats—from watching a trial the likes of which the nation has never experienced. At best, Americans will learn about the trial by consuming news reports about it. Of course, those news reports cannot replicate the experience of watching the trial itself, and there is no guarantee that Americans will trust the secondhand reporting they read, watch or hear. At worst, Americans will turn to social media and other unreliable sources, and they will be manipulated by those who seek to spin the events of the day and who have no regard for the truth.

The media coalition has extensive experience livestreaming and broadcasting court proceedings. The overwhelming majority of state courts permit some electronic coverage of criminal and civil court proceedings, certain federal courts permit cameras in the courtroom during civil proceedings, and all federal appellate courts and the U.S. Supreme Court provide audio recordings of hearings online, in both criminal and civil cases, without redistribution limitations. Judges and attorneys who have participated in trials where cameras were present report that, far from causing disruptions, the cameras were hardly noticed, and full video coverage increased the public's confidence in the process.

The media coalition therefore requests that the Judicial Conference revise Rule 53 to permit broadcasting of proceedings in federal court. Alternatively, the coalition requests a revision to Rule 53 that would create an "extraordinary case" exception to the ban on broadcasting so that, at the very least, cases like the one against Mr. Trump can be monitored in real time by the American public. The media coalition stands at the ready to sort out the

logistics of camera coverage with the Judicial Conference (or the trial judge) if the rule is revised.

Several Other Congressional and Judicial Proceedings Were Initiated Against Mr. Trump for His Claims About the 2020 Election; All Have Been or Will Be Televised

On November 3, 2020, Joseph R. Biden, Jr. was elected President of the United States. Then-President Trump, however, refused to concede, “claiming that the election was ‘rigged’ and characterized by ‘tremendous voter fraud and irregularities[.]’”² On January 6, 2021, ahead of the Joint Session of Congress to certify the election results, “President Trump took the stage at a rally of his supporters on the Ellipse, just south of the White House.”³ Following Trump’s speech, supporters “– including some armed with weapons and wearing full tactical gear – marched to the Capitol and violently broke into the building to try and prevent Congress’s certification of the election results.”⁴ “The events of January 6, 2021 marked the most significant assault on the Capitol since the War of 1812.”⁵

On August 1, 2023, the United States government indicted Mr. Trump in the U.S. District Court for the District of Columbia on four counts of criminal conspiracy for “spread[ing] lies that there had been outcome-determinative fraud in the election and that he had actually won” the 2020 presidential election, and having done so “to make his knowingly false claims appear legitimate, create an intense national atmosphere of mistrust and anger, and erode public faith in the administration of the election.”⁶ Mr. Trump’s rhetoric proved to be effective, and many Americans still believe that Biden illegitimately won the 2020 election.⁷

² *Trump v. Thompson*, 20 F.4th 10, 17 (D.C. Cir. 2021), *cert. denied*, 142 S. Ct. 1350 (2022).

³ *Id.* at 17-18.

⁴ *Id.* at 18.

⁵ *Id.* at 18-19.

⁶ See Indictment, *United States v. Trump*, No. 23-cr-257-TSC (D.D.C. Aug. 1, 2023) (ECF 1) at ¶ 2.

⁷ “The poll finds that 3 in 10 Americans (30%) – including two-thirds (68%) of Republicans – believe that Joe Biden only won the presidency because of voter fraud.” *Most Say Fundamental Rights Under Threat - Partisan identity determines which specific rights people feel are at risk*, Monmouth Univ. (June 20, 2023), https://www.monmouth.edu/polling-institute/reports/monmouthpoll_US_062023/.

The case in Washington D.C. is just one of many proceedings against Mr. Trump for his speech and conduct leading up to the January 6 riots. First, one week after the riots, the U.S. House of Representatives adopted an Article of Impeachment against Mr. Trump for incitement of insurrection.⁸ In February 2021, House Impeachment Managers conducted a five-day trial before the U.S. Senate voted to acquit Mr. Trump.⁹ Then, on June 28, 2021, the House created a Select Committee to investigate the “facts, circumstances, and causes relating to” the January 6 attack on the Capitol, and “factors related to such attack.”¹⁰ The Final Report of the Select Committee referred Mr. Trump and others for possible prosecution. On August 14, 2023, Mr. Trump and 18 co-defendants were indicted in Georgia state court for allegedly violating Georgia’s RICO Act and other charges related to the 2020 election.

Each of these other proceedings against Mr. Trump have been or will be televised, and the public has watched. For Mr. Trump’s second impeachment trial, “an average of 11 million viewers watched the opening arguments across MSNBC, CNN, Fox, ABC and CBS.”¹¹ At least 20 million watched the first day of the House Select Committee hearings, and on average, 13 million viewers watched over the following days.¹² Note these numbers

⁸ H.R. Res. 24, 117th Cong. (Jan. 13, 2021), <https://www.congress.gov/bill/117th-congress/house-resolution/24>.

⁹ See Nicholas Fandos & Emily Cochrane, *Impeachment Trial: Trump Is Acquitted by the Senate*, N.Y. Times (Feb. 13, 2021), <https://www.nytimes.com/live/2021/02/13/us/impeachment-trial>. Notably, when the Senate sits for an impeachment trial, it does so as a “High Court.” See *Impeachment*, United States Senate, <https://www.senate.gov/about/powers-procedures/impeachment/senate-impeachment-role.htm>.

¹⁰ H.R. Res. 503, 117th Cong. § 3(1) (2021) at 4-5, <https://rules.house.gov/sites/republicans.rules118.house.gov/files/BILLS-117hres503ih.pdf>.

¹¹ Brian Stelter, *How many people are watching the impeachment trial? Here are the numbers...*, CNN (Feb. 12, 2021), <https://www.cnn.com/2021/02/11/media/us-senate-impeachment-trial-reliable-sources/index.html>.

¹² John Koblin, *At Least 20 Million Watched Jan. 6 Hearing*, N.Y. Times (June 10, 2022), <https://www.nytimes.com/2022/06/10/business/media/jan-6-hearing-ratings.html>; Rick Porter, *TV Ratings: January 6 Hearings Draw 17.7M in Primetime*, Hollywood Reporter (July 22, 2022), <https://www.hollywoodreporter.com/tv/tv-news/tv-ratings-thursday-july-21-2022-1235185046/>.

do not include online viewers. And in Georgia, the presiding judge has made all hearings available on the court's YouTube channel and permitted broadcast news media to have "pool" cameras, where groups of news organizations combine their resources and share camera access, in the courtroom. By all accounts, this has gone smoothly, and videos of entire proceedings remain available online.¹³

In sum, the public has become accustomed to watching proceedings against Mr. Trump for his claims about the 2020 election results. The federal trial in Washington D.C. is of at least equal public interest and historical import as these other proceedings, and the public should be able to watch that trial, just as it was able to watch Mr. Trump's impeachment trial, and just as it will be able to watch state court trials of the additional charges brought against Mr. Trump.

Trials Are Already Public Events; Permitting Cameras Simply Transforms the Constitutional Right of Access from a Theoretical Right Into One Citizens Can Actually Exercise

"A trial is a public event. What transpires in the court room is public property." *Craig v. Harney*, 331 U.S. 367, 374 (1947). The First Amendment guarantees this right of access because it "enhances the quality and safeguards the integrity of the factfinding process, with benefits to both the defendant and to society as a whole." *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982). "[P]ublic access to the criminal trial fosters an appearance of fairness, thereby heightening public respect for the judicial process." *Id.*; see also *Press-Enter. Co. v. Superior Court*, 464 U.S. 501, 508 (1984) ("[K]nowledge that anyone is free to attend gives assurance that established procedures are being followed and that deviations will become known."). Access also serves a therapeutic and "prophylactic purpose, providing an outlet for community concern, hostility, and emotion." *Richmond Newspapers v. Virginia*, 448 U.S. 555, 571 (1980). "Without an awareness that society's responses to criminal conduct are underway, natural human reactions of outrage and protest are frustrated and may manifest themselves in some form of vengeful 'self-help'" *Id.*

In other words, trial participants generally have no expectation of privacy when in court, and transparency serves all interests. Cameras do not present some new threat to privacy or fair trial rights. Our Founders decided long ago that transparency and the orderly administration of justice go hand in hand. As the U.S. Supreme Court recognized seventy-

¹³ E.g., *WATCH: Fulton County court holds hearing on 2020 election subversion case*, Wash. Post (Sept. 6, 2023), <https://www.youtube.com/watch?v=lqNPqAWhta8>; *Georgia Election Interference Court Hearing*, C-SPAN (Sept. 14, 2023), <https://www.c-span.org/video/?530445-1/georgia-election-interference-court-hearing>.

five years ago, “This nation’s accepted practice of guaranteeing a public trial to an accused has its roots in our English common law heritage,” which long ago came to “distrust . . . secret trials.”¹⁴

The trial of a former President presents serious impediments to physical attendance. Indeed, for Mr. Trump’s arraignment on August 11, in addition to the courtroom, the court set aside 100 seats in two separate media rooms for members of the media, as well as a public overflow rooms with 80 additional seats.¹⁵ Yet even if every single courtroom (other than the trial courtroom) in the Elijah Barrett Prettyman U.S. Courthouse were used for overflow seating, only a minute fraction of the 81.3 million people who voted for President Biden—the victims of this alleged conspiracy—would be able to attend and observe the proceedings for themselves. And even if more seats are made available, it is unreasonable to believe that ordinary Americans (who have jobs other than covering trials) can afford to take time off work, find childcare, get themselves to the courthouse, and spend hours—if not days—not only sitting in a courtroom but also waiting in line for a seat. In all likelihood, no more than a few ordinary, non-journalist citizens within the District will be able to attend. Clearly, Americans who live hundreds, or thousands of miles away cannot attend the trial—though they were just as impacted by the allegations at the center of it, and by the outcome of the trial, as any other American.

To that end, Mr. Trump’s attorney has repeatedly stated that he wants cameras in the courtroom for the D.D.C. trial:

“If I appear in court, I’m going to be representing not only the President of the United States, but the sovereign citizens of this country, who deserve to hear the truth. The first thing we would ask for is let’s have . . . cameras in the courtroom, so all Americans can see what’s happening in our criminal justice system. And I would hope that the Department of Justice would join in that effort so that we take that curtain away and all Americans get to see what’s happening.”¹⁶

¹⁴ *In re Oliver*, 333 U.S. 257, 268 (1948).

¹⁵ *Pub. & Media Advisory*, U.S. Dist. Ct. for the Dist. of Columbia, <https://www.dcd.uscourts.gov/sites/dcd/files/Public%20and%20Media%20Advisory%20for%20Friday,%20August%202011,%202023.pdf>.

¹⁶ *He did ‘absolutely nothing wrong’: Trump attorney John Lauro*, Fox News (July 21, 2023), <https://www.foxnews.com/video/6331632263112>, at 6:05-6:31; *see also* Anders

Many others are also urging that the District Court in Washington D.C. should permit broadcasting of Mr. Trump's proceeding:

- A spokesperson for the Republican-majority House Judiciary Committee told *The Washington Examiner* that they “support cameras in this limited but extraordinary circumstance” of Mr. Trump’s trial for alleged attempts to subvert the 2020 election results.¹⁷
- Jon Sale, who served as an Assistant Special Watergate Prosecutor, recently stated that he used to be against cameras in the courtroom, but in the D.C. case, “I strongly believe this case needs to be televised because the American people need to see the story, so we don’t become numb to this.”¹⁸
 - Dozens of Democratic lawmakers have also suggested that the Conference permit the trial to be televised, for “[i]f the public is to fully accept the outcome, it will be vitally important for it to witness, as directly as possible, how the trials are conducted, the strength of the evidence adduced and the credibility of witnesses.”¹⁹
- Former Acting U.S. Solicitor General Neal Katyal has advocated for broadcasting the trial, arguing a broadcast “would be less vulnerable to the distortions and

Hagstrom, *Trump attorney calls for Jan. 6 trial to be televised, accuses prosecutors of hiding trial*, Fox News (Aug. 6, 2023), <https://www.foxnews.com/politics/trump-attorney-calls-jan-6-trial-be-televised-accuses-prosecutors-hiding-trial>; *Trump lawyer: I personally want cameras in courtroom*, CNN (Aug. 6, 2023), <https://www.cnn.com/videos/politics/2023/08/06/sotu-lauro-court-cams.cnn>.

¹⁷ Kaelen Deese, *House Judiciary Republicans favor Trump courtroom cameras due to ‘extraordinary circumstance’*, Wash. Examiner (Aug. 9, 2023), <https://www.washingtonexaminer.com/policy/courts/donald-trump-indicted-jim-jordan-schiff-cameras-courtroom>.

¹⁸ *Former Watergate prosecutor ‘strongly believes’ cameras should be in courtroom*, MSNBC (Aug. 17, 2023), <https://www.youtube.com/watch?v=i0Uo5ztMbn8>, at 2:21-2:34.

¹⁹ Adam Schiff et al., *Letter to The Hon. Roslynn R. Mauskopf* (Aug. 3, 2023), https://schiff.house.gov/imo/media/doc/trump_trial_transparency_letter.pdf.

misrepresentations that will inevitably be part of the highly charged, politicized discussion flooding the country as the trial plays out.”²⁰

Providing citizens with remote video access of the trial would provide many benefits to observers, including “(1) education about the timing and procedural handling of litigation events; (2) acculturation to the tone, tenor, and mechanics of the courtroom; (3) the opportunity to judge the fairness of the court’s procedures; and (4) the ability to form impressions about the judge and other courtroom actors.”²¹

These interests are all the more acute here, where Mr. Trump is now claiming the criminal proceedings are “election interference” by the prosecutors, and were initiated to derail his 2024 campaign for President.²² In fact, prosecutors have told the court that Mr. Trump’s “relentless public posts marshaling anger and mistrust in the justice system, the Court, and prosecutors have already influenced the public[,]” and have asked the court to enter an order limiting Mr. Trump’s extrajudicial statements about the case to prevent prejudicing the jury pool.²³

In summary, Mr. Trump, as well as lawmakers and attorneys from diverse backgrounds and political perspectives, all acknowledge that political candidates, pundits, and all major news outlets will be providing condensed coverage of the proceedings for those unable to attend in person. The public should not be limited to relying on secondhand

²⁰ Neal Katyal, *Opinion - Why the Trump trial should be televised*, Wash. Post (Aug. 3, 2023), <https://www.washingtonpost.com/opinions/2023/08/03/trump-trial-tv-broadcast/>.

²¹ Jordan M. Singer, *Judges on Demand: The Cognitive Case for Cameras in the Courtroom*, 115 Colum. L. Rev. 79 (2015) (“Singer”), <https://columbialawreview.org/content/judges-on-demand-the-cognitive-case-for-cameras-in-the-courtroom/>.

²² Donald Trump (@realDonaldTrump), Truth Social (Aug. 30, 2023, 3:21 PM) <https://truthsocial.com/@realDonaldTrump/posts/110980188106641474>; see also @realDonaldTrump, Truth Social (Aug. 8, 2023, 9:54 PM) <https://truthsocial.com/@realDonaldTrump/posts/110857162338915853> (“The system is Rigged & Corrupt, very much like the Presidential Election of 2020.”).

²³ Gov’t’s Opposed Mot. To Ensure That Extrajudicial Statements Do Not Prejudice These Proceedings, *United States v. Trump*, No. 23-cr-00257-TSC (D.D.C. Sept. 15, 2023) (ECF 57) at 12.

accounts when video technology is readily available for them to observe and form their own conclusions regarding the legitimacy of the proceedings.

Previously Expressed Concerns About Cameras in Courts Were Never Supported by Any Evidence and Have Been Proven Wrong

Times have changed in the decades since Rule 53's ban on cameras was adopted in 1946. In terms of logistics, camera technology has become much less conspicuous. Even as early as 1996, "equipment [wa]s no more distracting in appearance than reporters with notebooks or artists with sketch pads," and the technology has only become more discrete.²⁴ Now, the media will typically use a single, stationary pool camera, which produces no noise and requires no lighting other than existing courtroom lighting, and can be operated remotely if necessary. Often cameras are mounted near the ceiling and trial participants do not even know they are there (or they soon forget). Microphones affixed to tables can be as small as the erasers found on the ends of pencils.

Cameras and recording devices are also becoming less remarkable because of their ubiquity. Forty-nine states and the District of Columbia either permit journalists to capture proceedings on their own cameras, or authorize courts to provide video or audio webcast proceedings, or both, and all federal appellate courts and the U.S. Supreme Court make audio of arguments *in both civil and criminal cases* available online.²⁵ In 1990 and in 2011, the Judicial Conference authorized pilot programs permitting electronic media coverage of civil proceedings in federal courts for a certain number of years, and video is still permitted for certain Ninth Circuit arguments and in certain civil proceedings in three districts in the Ninth Circuit.

Common concerns have been that cameras could intimidate witnesses, influence jury deliberations, or that attorneys and judges might play to the cameras. But study after study of state programs has concluded that in-court cameras have not impaired the administration of justice.²⁶ In 1994, the Federal Judicial Center published a comprehensive study of its first

²⁴ *Katzman v. Victoria's Secret Catalogue*, 923 F. Supp. 580, 582 (S.D.N.Y. 1996).

²⁵ *Cameras In The Courts – A State-By-State Coverage Guide*, Radio Television Digital News Ass'n, <https://courts.rtdna.org/cameras-overview.php>.

²⁶ See, e.g., *In re Petition of Post-Newsweek Stations, Fla., Inc.*, 370 So. 2d 768, 775 (Fla. 1979) (finding that, after a one-year experiment, concern that cameras in the courtroom would negatively affect lawyers, judges, witnesses or jurors was "unsupported by any evidence."). See also N.Y. State Comm. to Review Audio Visual Coverage of Ct. Proceedings, *An Open Courtroom: Cameras in N.Y. Cts. 1995-1997* (Apr. 4, 1997); *Report of the Comm. on Audio-Visual Coverage of Ct. Proceedings* (May 1994); Ernest H. Short & Assocs., *Evaluation of Cal.'s Experiment with Extended Media Coverage of Cts.* (Sept.

pilot program, which reported that “[j]udges and attorneys who had experience with electronic media coverage under the program generally reported observing small or no effects of camera presence on participants in the proceedings, courtroom decorum, or the administration of justice,” and most “believe electronic media presence has minimal or no detrimental effects on jurors or witnesses.”²⁷ Judge’s attitudes about electronic media coverage “were initially neutral and became more favorable after experience under the pilot program.”²⁸ Similarly, the 2011 pilot program proved to be “an extraordinary resource for federal adjudication, providing a modern window into the courthouse for busy lawyers, anxious litigants, and a curious public.”²⁹ According to a Federal Judicial Center study, nearly three-fourths of judges and attorneys who participated in a video-recorded proceeding during this pilot program stated that they were in favor of video recording proceedings, and nearly two-thirds of judges polled, including those who participated and those who did not, said they would allow video recordings if the Judiciary permitted them.³⁰

The biggest and most extensive camera experiment was during the COVID-19 national emergency, when state and federal courts were forced to adjust to social distancing, stay-at-home orders, and remote access. All courts had to switch to video or teleconferencing to function.³¹ Minnesota in particular had two pandemic-induced camera experiences with high-profile criminal trials of intense public interest: first Derek Chauvin’s trial for the murder of George Floyd, and then Kimberly Potter’s trial for the manslaughter of Daunte Wright. Both were livestreamed, gavel-to-gavel, due to pandemic restrictions that severely limited the number of spectators allowed to attend the trials in person. And the livestreaming of both received praise from many, even most, quarters, including some unexpected ones:

1981), *Report of the Chief Admin. Judge to the Legislature, the Governor, and the Chief Judge of the State of N.Y. on the Effect of Audio-Visual Coverage on the Conduct of Jud. Proceedings* (Mar. 1989).

²⁷ Fed. Jud. Ctr., *Elec. Media Coverage of Fed. Civil Proceedings* at 7 (1994).

²⁸ *Id.*

²⁹ *Singer*, <https://columbialawreview.org/content/judges-on-demand-the-cognitive-case-for-cameras-in-the-courtroom/>.

³⁰ Fed. Jud. Ctr., *Video Recording Courtroom Proceedings in United States District Courts: Report on a Pilot Project* (2016).

³¹ *Jud. Authorizes Video/Audio Access During COVID-19 Pandemic* (Mar. 31, 2020), <https://www.uscourts.gov/news/2020/03/31/judiciary-authorizes-videoaudio-access-during-covid-19-pandemic>.

- Attorney General Keith Ellison, whose office opposed camera coverage of the Chauvin trial and filed an unsuccessful motion asking the court to reconsider its decision to allow such coverage, said in an interview after trial concluded: “It worked out better than I thought. I’ll say, hey, I can be wrong and I guess I was a little bit.” In the same interview, prosecution team member Steve Schleicher compared the cameras to “shopping at Target. You didn’t really notice. You just go in and you do your thing.” Prosecution team member Jerry Blackwell, now a federal judge for the U.S. District Court for the District of Minnesota, agreed. “When you’re in the courtroom there’s no cognizance or awareness or thought ...of who’s watching,” he said.³²
- Mary Moriarty, the Public Defender in Hennepin County, Minnesota, for more than thirty-one years and now the Hennepin County Attorney, tweeted, “I was against cameras in the courtroom at the beginning of this trial, but I may have to move off that position because this trial exposed so much of what happens the public has no way of knowing.”³³
- The Chief Judge of the U.S. District Court for the District of Minnesota Patrick J. Schiltz told the *Star Tribune* that when he learned the Chauvin trial would be livestreamed, “I thought that was a huge mistake but by the time he was done I admitted I was wrong.” Judge Schiltz explained his change of heart this way: “It really helped people see what a criminal trial looked like”; they were able to see how “careful” such trials are often managed while also observing the more monotonous, technical moments of a trial.³⁴
- Perhaps most notably, the judge who oversaw the Chauvin trial—The Honorable Peter A. Cahill—explained in a written comment to the Minnesota Advisory Committee on Rules of Criminal Procedure that although he had previously “opposed the use of cameras in the courtroom in criminal cases,” his “recent experience in *State v. Chauvin* has changed my opinion such that I now believe cameras in the courtroom can be helpful in promoting trust and confidence in the

³² Paul Blume (@PaulBlume_FOX9), Twitter (Apr. 26, 2021, 4:47 PM), https://twitter.com/PaulBlume_FOX9/status/1386784094911008768 at :01-:05, 2:09-2:16.

³³ See Mary Moriarty (@MaryMoriarty), Twitter (Apr. 21, 2021, 8:18 PM), <https://twitter.com/MaryMoriarty/status/1385025113867702273>.

³⁴ Stephen Montemayor, *New chief federal Judge Patrick Schiltz sees caseloads, security as Minnesota court’s top issues*, *Star Tribune* (July 11, 2022), <https://www.startribune.com/new-chief-federal-judge-patrick-schiltz-sees-caseloads-security-as-minnesota-courts-top-issues/600189351>.

judicial process and are sometimes necessary to safeguard both the defendant's right to a public trial and the public's right of access to criminal trials."³⁵

- And although she was less vocal than Judge Cahill in advocating for a rule change, The Honorable Regina Chu, who oversaw the Potter trial, told the *Star Tribune* that both the Potter and Chauvin trials proved to her that cameras can be present in the courtroom without being disruptive. "I forgot they were even there"³⁶

In the wake of the success of these televised trials, the Minnesota Supreme Court issued an order amending the general rules of practice for state district courts in order to provide judges broad discretion to allow video coverage at most criminal trials.³⁷ Following the COVID-19 videoconferencing experiment, Colorado similarly passed legislation to provide remote public access to criminal court proceedings with limited exemptions.³⁸ Colorado Judge William Bain, who led committee recommending the rules change, commented "I think it's been revolutionary, what we've done not only for the benefit of the parties and attorneys, but the public is much more easily seeing a whole lot more of what we do than they did three years ago, when the only way to see what was going on in court was to come to the courtroom."³⁹

This has also been the experience of other countries. In his recent annual address to the Commonwealth's judges and magistrates, Lord Chief Justice Burnett of Maldon, the

³⁵ Letter from Hon. Peter A. Cahill to Advisory Comm. On Rules of Crim. Proc. re: Cameras in the courtroom (Jan. 28, 2022), see <https://mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-20-12951-TKL/KLT-EmmyParsonsDeclaration.pdf> at Ex. A.

³⁶ Paul Walsh, *As retirement looms, Judge Regina Chu reflects on a long career, impact of Kimberly Potter trial*, *Star Tribune* (Apr. 1, 2022), <https://www.startribune.com/regina-chu-judge-who-presided-over-kimberly-potter-trial-is-retiring/600161338/>.

³⁷ Order Promulgating Amendments to the Gen. Rules of Practice for the Dist. Cts., *In re Rules of Crim. Proc.*, No. ADM10-8049 (Minn. Mar. 15, 2023).

³⁸ H.R. 23-1182, 74th Gen. Assemb., Reg. Sess. (Colo. June 7, 2023), https://leg.colorado.gov/sites/default/files/2023a_1182_signed.pdf.

³⁹ Jeffrey A. Roberts, *Legislation or a new judicial branch policy could make livestreaming of court proceedings more commonplace in Colo.*, *Colo. Freedom of Info. Coalition* (Feb. 6, 2023), <https://coloradofoic.org/legislation-or-a-new-judicial-branch-policy-could-make-livestreaming-of-court-proceedings-more-commonplace-in-colorado/>.

highest sitting jurist in England and Wales, titled his speech “Open Justice Today.” He spoke of the positive outcomes of broadcasting proceedings during the COVID emergency, and commented that “[i]n the context particularly of controversial constitutional challenges, the contemporaneous broadcasting of proceedings has been seen to enhance public understanding, support the legitimacy of the decision made by the court and the willingness of the public and politicians to accept the outcome.”⁴⁰

Any Concerns About the Integrity of Mr. Trump’s D.D.C. Trial Would Not Be Intensified by Cameras; Rather Those Concerns Would Be Alleviated

Allowing cameras at Mr. Trump’s trial will not increase the publicity it receives. Mr. Trump’s attorney already is regularly appearing on national news syndicates to present his client’s case, and the case is already a presidential campaign talking point. Without doubt, the public and media will be closely watching the D.D.C. trial, regardless whether cameras are present. If the trial is not televised, secondhand extrajudicial interviews and summaries will be the only information that the public receives. Cameras simply ensure that Americans can see what transpires for themselves.

In a similarly high-profile context, Judge Cahill took this into account when addressing objections by Chauvin’s co-defendants to broadcasting of their trial, after Chauvin was convicted:

As the notoriety of these cases is neither enhanced nor diminished by livestreaming, the defense arguments fail. The joint trial of these defendants, as was the case with the trial of their co-defendant Derek Chauvin, can be expected to receive ubiquitous media coverage given the vast public interest whether or not the joint trial is livestreamed. That is simply the nature of highly publicized trials in which the public and media have an intense interest.⁴¹

⁴⁰ Speech by the Lord Chief Justice: Commonwealth Judges & Magistrates Conf. 2023 (Sept. 10, 2023), <https://www.judiciary.uk/speech-by-the-lord-chief-justice-commonwealth-judges-and-magistrates-conference-2023/>. The Lord Chief Justice, noting that sentencings have been broadcast in England and Wales since July 2022, observed that the “innovation has been a success, and successful beyond our expectations.” *Id.* He added, “When people have the whole picture they are less likely to criticise unfairly. It has become clear that the availability of [sentencings] to commentators and journalists has improved the quality of reporting. If I may say so, it has also helped enhance understanding . . . amongst politicians and policy makers.” *Id.*

⁴¹ Order Denying Mot. to Reconsider Nov. 4 Order Allowing Audio & Video Coverage of Trial, *State v. Thao et. al*, Nos. 27-CR-20-12949, 27-CR-20-12951, 27-CR-20-12953 (Minn.

Mr. Trump’s lawyer has already stated the former President believes televising the trial will make it *more* fair to him. And it is certainly more fair to the American public to provide audiovisual access to the criminal trial of the man they elected as President (and may elect again). Some 155 million people voted in the 2020 election, but unless audiovisual recording and telecasting of the proceedings is allowed, only a few dozen people will be able to watch the proceedings.

Beyond the often-raised argument that cameras somehow increase publicity and jeopardize a defendants’ fair trial rights, opponents of cameras in courts argue that cameras may dissuade witnesses from participating or impact the attorneys’ or the jurors’ abilities to fulfill their respective duties. Those concerns have not been borne out by evidence, and they certainly have no merit with regard to the trial of Mr. Trump.

Witnesses are already subject to public scrutiny. The witnesses will be named, their pictures will be published, and their testimony will be picked apart. This will happen regardless whether cameras are in the room. The witnesses should know this from firsthand experience, as the trial of Mr. Trump is not likely to be their first time testifying. Many witnesses in the case against the former President will likely have already had to testify in video depositions during the January 6 Committee’s investigation, or live at the January 6 Committee hearings, and video of their testimony is available online.⁴² And, within hours of the indictment coming down in the D.D.C. case, almost all of the unnamed “co-conspirators” mentioned had been identified—and all are well-known because of the congressional proceedings and Georgia case concerning election interference claims.⁴³

Likewise, any potential juror almost certainly will be familiar with the highly publicized nature of this case. Questions they are asked during *voir dire* will be reported.

4th Jud. Dist. Jan. 11, 2022) at 4, <https://mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-20-12951-TKL/Order.pdf>.

⁴² See Select Jan. 6th Comm. Final Report & Supporting Materials Collection, <https://www.govinfo.gov/collection/january-6th-committee-final-report>.

⁴³ E.g., Holly Bailey et al., *Here are the Trump co-conspirators described in the DOJ indictment*, Wash. Post (Aug. 1, 2023), <https://www.washingtonpost.com/national-security/2023/08/01/doj-trump-indictment-trump-coconspirators/>; Anders Hagstrom, *Who are the 6 co-conspirators named in Trump’s Jan. 6 indictment? Here’s what we know*, Fox News (Aug. 2, 2023), <https://www.foxnews.com/politics/who-6-co-conspirators-named-trumps-jan-6-indictment-heres-what-we-know>.

Even their names may ultimately be released to the public after trial. The judge can address any risk that cameras will impact their deliberations by addressing the issue during *voir dire*, and by giving explicit instructions throughout the trial and before the jury retires to deliberate. Additionally, the media coalition will not film or photograph the jury if so instructed. The media regularly televise proceedings in courtrooms where rules prohibit taking photos or video of the jury and the media abide by these rules.

The attorneys and judge will likewise be fully aware their conduct will be closely watched by the public and media. And more than that, attorneys and judges who have participated in filmed trials state the cameras did not affect their ability to do their jobs.⁴⁴ As for the concern that certain trial participants may be motivated to “play to the camera,” the more logical view is that cameras, given the public scrutiny they facilitate, cause trial participants to be on their best behavior, not their worst.

Without cameras, “sound bites” from out-of-court interviews will be played, perhaps juxtaposed against photographs of participants. Citizens will judge the proceedings with whatever information made available to them, however truncated, salacious, biased, or inaccurate. For millions of citizens with a democratic interest in the trial, a *per se* rule that closes the courthouse door to all but the few dozen people who manage to secure a spot on a court bench fails to vindicate their access rights.

“People in an open society do not demand infallibility from their institutions,” the Supreme Court has explained, “*but it is difficult for them to accept what they are prohibited from observing.*” *Richmond Newspapers*, 448 U.S. at 572 (emphasis added). Cameras are an important part of transparency and access. And, increasingly, previously hypothesized risks attendant to cameras in the courtroom are being proven wrong, not by legal arguments, but by the experience of courts that are permitting cameras in courtrooms all around this country every day.

Decades ago, the Court recognized that a “responsible press has always been regarded as the handmaiden of effective judicial administration, *especially in the criminal field.*” *Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966) (emphasis added). Because few citizens have time to attend criminal trials, the First Amendment empowers the media to act as their surrogates and “bring to bear the beneficial effects of public scrutiny upon the administration of justice.” *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 491-92 (1975). As Justice Stewart (joined by a plurality of Justices) observed nearly fifty years ago, “The Constitution requires sensitivity to [the press’s] role [as a surrogate], and to the special needs

⁴⁴ *Supra* at 10-12.

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of the press in performing [that role] effectively,” including by using “cameras and sound equipment” to convey “sights and sounds to those who cannot personally visit the place.” *Houchins v. KQED, Inc.*, 438 U.S. 1, 17 (1978) (Stewart, J., concurring in judgment); *see also id.* at 39 n.36 (Stevens, J., dissenting) (noting that permitting the press’s use of audio/visual equipment “redound[s] to the benefit of the public interested in obtaining information” about the government). The best way to do this is to allow the media to use the best technology at its disposal. That’s not a notepad and paper. It’s not a typewriter or even a laptop. It’s a camera.

We all share an equal stake in the historic trial of our former President. Without cameras in the courtroom, the public will not have equal opportunity to assess the process and the result.

Very truly yours,

A handwritten signature in blue ink that reads "Charles D. Tobin". The signature is written in a cursive style with a large initial "C".

Charles D. Tobin

A handwritten signature in blue ink that reads "Leita Walker". The signature is written in a cursive style with a large initial "L".

Leita Walker



General Election Media Plan

(Emergency Media Plan for high-profile, contested election involving appellate court litigation)

Agencies involved – State Supreme Court, Commonwealth Court, Administrative Office of Pennsylvania Courts, Commonwealth and State Supreme Court Prothonotaries, Department of General Services/Capitol Police and Commonwealth Media Services, the Department of State (Secretary, Commissioner Bureau of Commissions, Elections and Legislation), and, possibly, the State Police and City Police for additional security purposes, and Governor's General Counsel office to be kept apprised of court proceedings.

Objectives – Coordinate agencies' efforts to:

- 1) Secure the court's control of a high-profile case
- 2) Effectively balance issues of public access vs. fair and undisrupted proceedings
- 3) Ensure timely access to court proceedings and documents
- 4) Convey to the public and the media the fair, efficient and impartial manner in which the court operates.

Legal Jurisdiction – Pursuant to the Judicial Code and the Election Code, the Commonwealth Court's original jurisdiction extends to all Objection Petition cases involving statewide and state-level offices, as well as other election-related litigation in which the Secretary of the Commonwealth or other state government officer or entity is a party. These original jurisdiction matters are subject to an appeal as of right to the State Supreme Court, and in some instances have resulted in review by the U.S. Supreme Court. In addition, the Commonwealth Court's appellate jurisdiction extends to Objection Petition cases involving local offices that are initially heard in the Courts of Common Pleas.

Types of challenges – Pre-election, day of election, and post-election.

Locations – Harrisburg and possibly Pittsburgh and/or Philadelphia Commonwealth Court Administrative Offices, Leroy K. Irvis Building and Supreme

Court, State Capitol facilities (Commonwealth Media Center and/or Forum Building). Note: Commonwealth Court may select regional locations for hearings

Timelines – by type of challenge:

Pre-election – Objections to a candidate’s nomination petitions/papers can be raised up to seven days after the last day for filing the nominations petitions/papers. Counties need at least four weeks to prepare election voting machines and to print paper ballots, leaving no more than eight weeks for both the original and appellate courts to adjudicate challenges to nomination petitions/papers. In addition, other election-related litigation that involves ballot access and election procedures must be handled on a very expedited or emergency basis.

Election Day – disputes involving poll workers, voters, political parties and poll monitors, problems with voter registration, and absentee and emergency absentee voting may arise election day.

Post-Election – The Election Code requires an automatic statewide recount where a statewide candidate loses by one-half of one percent or less based upon the unofficial returns. The Secretary of the Commonwealth can declare a recount as late as the second Thursday following the day of the election and the recount must be scheduled to be held by the third Wednesday following the day of the election and be completed by noon on the following Thursday. Any person aggrieved by an order or decision of a county board in a statewide recount may appeal within two days of the order to the Commonwealth Court.

The Commonwealth Court would not likely receive the case until the last week of November, leaving a few weeks for adjudication by the Commonwealth Court, the Supreme Court of Pennsylvania, and the Supreme Court of the United States. Litigation would have to be resolved before the Electoral College meets in mid-December.

Preparation for of Media

Commonwealth Court – Consider issuing decorum orders as a critical tool in controlling the media and the public. In consultation with law enforcement officials, AOPC, and Prothonotaries, the order(s) should define the rules regarding access, behavior, parking, security and the use of electronic devices and limits to photography.

Determine whether court proceedings will be televised.



Determine if overflow room should be set with live monitors.

Determine if audio of proceedings should be provided

The court may wish to consider a provision in the decorum order that the media and the public not be permitted to leave the courtroom until the attorneys and case participants were outside? (*Empty building in an orderly fashion*).

The court may wish to require that media interviews be conducted outside the courtroom.

Prothonotaries –

Dissemination of copies of filings, rulings, orders, schedules and opinions and prepare them for AOPC Web site and social media posting.

Prepare to discuss the filing process.

Site Preparation – Courtroom seating-- Standard practice is to provide seating on a first-come, first-serve basis for all.

- Maximize seating for both media and public
- Consider only one or two law clerks to remain in chambers
- Reserve four seats for legislative and executive branches
- If needed, set up speaker system in the chambers
- How many seats for the media, how many for the general public? First come, first serve basis or assigned seating for both?
- How do you determine media from public?

AOPC – The AOPC Communications team will be responsible for managing messaging and managing the media, acting as the single source for media contact and dissemination of information.

Credentialing the media – Produce photo credentials quickly, AOPC staff and Prothonotary staff to work with the Department of General Services.

Media Seating

What is the assigned seating?

If court proceedings are televised, set up overflow media room with closed circuit broadcast with mult-box.



Designate a single spokesperson with direct relationship with to the court on overall policy and process issues and prothonotary and/or a deputy during media briefings to assist in explaining process issues.

Designate a single point of contact for disseminating information and holding briefings.

Designate a location(s) for face-to-face interviews.

Gather all the media in one location. Determine the timing of briefings. Dictated by court action to some extent but consideration should be given to set briefing times, perhaps, morning and afternoon briefings regardless if there are any new developments in the case.

Ensure the setting is accessible, appropriate and will accommodate media crowd. Seating, podium, good visual background (no reflective material behind podium) Consider photo opportunities and b-roll beyond the talking head. Place for microphones, good lighting? How will official enter? Establish ground rules up front. Who, when, where? If miced with pool camera, audio.... Set rules as to when it is turned on and off.

If crowds obscure vantage points, encourage networks to set up their own pool camera(s).

Media overflow room(s) – establish remote connection for viewing

AOPC staff attorneys should be on hand to provide assistance should the need arise.

Briefing subjects could include assignment of judges, explanation of docket material and what's publicly available a certain times.

Secretary, Counsel from the Department of State and Commissioner of the Bureau of Elections may be available for briefings.

Consider providing experts in field of election law. Identify outside law expert(s) to comment on what judges are ruling on.

PIO will provide relevant Judiciary background (its procedures and critical personnel).



Provide canned information for media about judiciary, Supreme, Commonwealth court policies rules, etc.

The PIO will use external contacts to assist during this process. Along with Commonwealth Media Services, groups such as the Pennsylvania Bar Association/law schools and Pennsylvania Legislative Correspondents and local media would be involved in the process/contingency plan.

The PIO will compile and disseminate materials. Posting materials on the AOPC Web site is encouraged, reducing paper use.

Web Site – AOPC Judicial Automation Staff will be responsible and has prepared to handle the tremendous increase of Web traffic.

- Should the court decide to televise or provide audio of court proceedings, would video or audio be posted on AOPC Web site/social media?
- Should streaming audio/video be available on the Web site/social media?
- Consider setting up special Web site or special section on the Web-site for one-stop shop of court filings, postings, and related materials, perhaps evidence.
- Additional JAD staff on “standby” to respond to potential system, Web site problems
- Set up Q and A forum on Web site to daily collect media questions and provide answers
- Establish direct line of communication with agencies involved.
- Establish an internal communication network for e-mail communications and document access.

Department of General Services – Capitol Police – Coordinate with DGS/State Police Crowd control, capitol police, parking, credentialing. The Capitol Police will be responsible for establishing and maintaining security in and surrounding the Commonwealth and Supreme Court courtrooms.

Parking for 50 or more satellite trucks may be needed in close proximity of the courtrooms and Forum Building. Streets may have to be blocked off and/or areas designated for satellite truck parking.

Department of State – To handle recount proceedings.

Election officials available to discuss oversight of election process.



Cameras in the Courtroom The *Chauvin* Case (MN)

We briefed this issue many times, both because the co-defendants were set to be tried separately and because the pandemic created a moving target of whether spectators would be allowed in the courtroom or whether livestreaming was the only way to ensure compliance with the First and Sixth Amendments. All the pleadings in the case can be found at <https://mncourts.gov/StateofMinnesotavDerekChauvin>.

Our first filing on the issue was on 12/14/20. You can find the related oppositions, replies, orders, there too.

The issue came up again after Chauvin was convicted, in anticipation of his co-defendants' trials. See <https://mncourts.gov/Media/StateofMinnesotavThomasLane.aspx> and the media filing on 9/1/2021 (related order on 1/11/2022), as well as the filing on 4/8/2022 (related order on 4/25/2022) and on 5/24/2022. The order for that last one is at <https://mncourts.gov/Media/StateofMinnesotavJAlexanderKueng.aspx> at 6/6/2022.

You might also look at *Liu v. Liu*, 27-CV-19-5911, where we intervened to object to use of a courtroom that was not able to accommodate many spectators. That case settled right before trial.

Closing Trial by Preventing Gallery From Seeing Video Footage – The *Noor* Case

Below are filings by the media in the trial of former police officer Mohamed Noor. The first brief is probably the most interesting – out of concern for the deceased victim's privacy, the judge had proposed that when footage of the shooting/death were shown to the jury, monitors would be turned away from the gallery so that no member of the press or public would be able to see the footage. She later reversed in an order at <https://www.mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-18-6859/OrderandMemorandumOpinionReBWCandSketchArtist041019.pdf>.

A fun fact I can share with the audience: Noor's attorney was a bit dismayed when we objected and got the court to reverse itself, because he believed this would have been a partial closure of the trial, a violation of the Sixth Amendment and a structural error almost ensuring a successful appeal. I had lunch with the attorney last week. Noor is out of prison, working at a nonprofit, and giving back to his community.

<https://www.mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-18-6859/MemoranduminSupportofMotion040219.pdf>

<https://www.mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-18-6859/MediaCoalitionsResponsetoStatesPositionreCopyingofTrialExhibits051619.pdf>

<https://www.mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-18-6859/StatesLettertoJudgeQuaintanceonDataPracticesRequestreTrialExhibits051619.pdf>

<https://www.mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-18-6859/OrderonCourtExhibits061019.pdf>