

State Legislators File Federal Civil Rights Lawsuit against President Biden, Governor Shapiro, and PA Department of State Officials

January 25, 2024. *Harrisburg, PA* – The foundation of stable and fair governance lies in the balance of power meticulously woven into the fabric of our constitutional republic. Legislators who represent the voices of the people must craft the rules that govern elections, and the executives must faithfully implement and enforce those rules. This division prevents the manipulation of laws for personal or political gain and fosters a system where laws reflect the needs of the people, not the whims of partisan executive officials.

To restore that delicate balance of power, 24 Pennsylvania lawmakers have filed a federal civil rights complaint in the Middle District Court of PA against President Biden, Governor Shapiro, and representatives of the Pennsylvania Department of State alleging federal civil rights violations. Through the Elections Clause and the Electors Clause of the United States Constitution, state legislators are granted unique, particular constitutional rights to determine the manner of elections. There is no role for the President, the Governor or other nonlegislative executive officials to create or rewrite laws or disregard the laws established by the legislature. Unfortunately, they have done just that.

Representative Dawn Keefer, lead plaintiff in this case said, “The citizens of Pennsylvania have been victimized by extraordinary overreach of executive officials who have made changes to election laws with no authority to do so. If we don’t take action to stop this, there is no limit to the changes they might make to further erode Pennsylvania’s election system in 2024 and beyond.”

The Elections Clause of the U.S. Constitution assigns the duty of determining the time, place, and manner of elections to state legislators. The Electors Clause grants state legislatures plenary federal authority to enact statutes governing presidential elections. The decision in *Moore v Harper* made it clear that “it is the state legislatures that must provide a complete code for congressional regulations relating to elections.” Article VII, Section 1 of the Pennsylvania Constitution, clearly assigns the duty of passing laws involving the registration of electors to the Pennsylvania General Assembly.

President Biden, Governor Shapiro, and the PA Department of State (DOS) have each unconstitutionally excluded Pennsylvania lawmakers from the process of regulating federal elections for President and Congress. Through these unlawful changes, they have removed guardrails on fair elections that were carefully enacted by the legislature and have deprived the legislators of their particular civil rights.

In March 2021, President Biden signed Executive Order 14019 giving federal agencies unprecedented power to unilaterally make changes to the manner of elections. The EO requires all federal agencies to identify and partner with third-party nongovernmental organizations chosen by the Biden administration whose names and roles are willfully withheld from the public. Under EO 14019, taxpayer resources will be used to support the efforts of the third-party NGOs to do voter registration drives and get out the vote (GOTV) activities.

In 2022, the Pennsylvania legislature passed Act 88 which included provisions to eliminate the influence of nongovernmental third-party organizations on Pennsylvania elections. Pennsylvania law prohibits public officials from entering into agreements with third party entities for the registration of voters. EO 14019 conflicts with established PA law and violates the legislators’ federal civil rights.

On September 19, 2023, Governor Shapiro, through a press release, announced that he was unilaterally changing voter registration laws by enacting automatic voter registration. Through the years, several attempts have been made by Pennsylvania lawmakers through the use of the proper legislative process, to implement

automatic voter registration in Pennsylvania. All have failed. In fact, at the time Shapiro announced this change, there was another bill pending in the legislature to enact automatic voter registration.

Through his edict, Governor Shapiro directed PennDOT to disregard existing PA law requiring an opt-in for voter registration applications. Governor Shapiro's edict is an abusive and capricious exercise of executive power which usurps the function of the Pennsylvania legislature.

Pennsylvania is one of 15 states that do not require identification to vote. More problematic is the fact that Pennsylvania does not require verification of identity, eligibility, or residency to register to vote. The reason for this is that the verification requirements, put into place by the duly elected state legislators, were removed via an unlawful directive from the Department of State.

The Secretary of the Commonwealth, acting through the Pennsylvania Department of State, routinely issues guidance and directives that contradict the law including a 2018 "Directive Concerning HAVA-Matching Drivers' Licenses or Social Security Numbers for Voter Registration Applications." This guidance instructs county boards to register applicants to vote even if the applicant provides invalid identification. Under the Directive, if an applicant simply affirms that they meet the age, citizenship, and the residency requirements to become a qualified elector, the applicant must be registered – regardless of verification of identity and eligibility. This Directive is in willful contravention to clearly established Pennsylvania law which requires verification of voter eligibility and correctly completed voter registration applications. See 25 Pa.C.S.A. § 1328.

The U.S. Constitution operates as a limitation upon the State in respect to any attempt to circumscribe legislative power to regulate federal elections. Rule changes by executive officials who lack the authority to do so are severely damaging the separation of powers and the electoral system on which our self-governance so heavily depends. The President, the Governor, the DOS through the Secretary of the Commonwealth and the Deputy Secretary, have repeatedly violated and continue to violate the Electors Clause and the Elections Clause by usurping the rights of state legislators and changing Pennsylvania election laws via Executive Order, edicts, and directives, without the state legislators' participation.

Relief Requested

The relief requested is for a declaratory judgment: (1) that President Biden's Executive Order, Governor Shapiro's Edict, and the DOS's Directives are unconstitutional and violate the Elections Clause and the Electors Clause as they seek to regulate the registration of Pennsylvania electors without the state legislators' approval and participation; and (2) an order enjoining President Biden, Governor Shapiro and the PA DOS from engaging in any actions which support their unconstitutional efforts to subvert PA election law; and (3) an order that prohibits President Biden, Governor Shapiro and the PA DOS from making future changes to the elections process in Pennsylvania without following the proper, lawful, legislative process.

Attorney Erick Kaardal, a partner of Mohrman, Kaardal & Erickson, P.A., has been representing people suing the government to improve it for over 30 years. For election integrity, Kaardal has listed 63 examples of election integrity successes, including 2 U.S. Supreme Court victories, here: www.mkllaw.com

The Election Research Institute is a nonprofit organization dedicated to restoring trust in U.S. elections through research, education, and litigation support; to protecting voting rights by identifying and mitigating vulnerabilities in election systems; and to advocating for lawful, fair elections and government transparency. Karen DiSalvo is a licensed Pennsylvania attorney, of counsel to Mohrman Kaardal & Erickson, and the Vice President of the Election Research Institute.