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March 5, 2018

By ECF

The Honorable Paul S. Diamond
United States District Judge
Eastern District of Pennsylvania
Philadelphia, PA 19106

Re: Stein v. Cortes, No. 2:16-CV-6287-PD

Your Honor:

Plaintiffs write to alert the court to new evidence published recently that is directly relevant to Plaintiffs' opposition to the motion to dismiss and their cross-motion for summary judgment.

On February 24, 2018, NPR broadcast an interview with Marian K. Schneider, the Commonwealth's Deputy Secretary for Elections and Administration from early 2015 to May 2017, and until last year, the number two official in charge of Pennsylvania elections under defendant Cortés.¹

The former Deputy Secretary told NPR that the "few" jurisdictions that continue to use "unverifiable voting systems"—including the direct-recording electronic ("DRE") machines used throughout most of the Commonwealth—are vulnerable to hacking:

[T]hey're computers, and all computers have a level of risk. The key is to manage the risk—get it as close to zero as possible—but also have a way to recover in the event that something happens. And the way we recover in voting is by having a voter-marked paper ballot or other paper record that can't be altered by software that we can use to check the electronic tallies.

¹ "In 2015, Governor Tom Wolf appointed Schneider as Deputy Secretary for Elections and Administration at Pennsylvania's Department of State where she oversaw the Department's Elections Bureau." *Verified Voting Blog: Verified Voting Names Voting Rights Lawyer and Pennsylvania Election Official Marian K. Schneider New President*, Oct. 20, 2017, <https://www.verifiedvoting.org/verified-voting-names-voting-rights-lawyer-and-pennsylvania-election-official-marian-k-schneider-new-president/>.

EMERY CELLI BRINCKERHOFF & ABADY LLP

Page 2

What's the Best Way to Verify Votes? NPR, Feb. 24, 2018, available at <https://www.npr.org/2018/02/24/588500078/whats-the-best-way-to-verify-votes>. Ms. Schneider admitted that, with DREs like those used in Pennsylvania, “if [the vote] is wrong, there’s no way of knowing whether it’s wrong or how to check it.” *Id.*

The Commonwealth’s former Deputy Secretary for Elections also admitted that Pennsylvania’s election system is vulnerable and needs to be fixed:

I’d like to see more urgency in replacing these unverifiable systems. I think that in states that have them still, there’s a huge impact. You know, there’s five states that a hundred percent of voters use them. There’s another eight states where a significant percentage of voters use them, including Pennsylvania. So we need to move towards getting systems in which you can recover in case there’s an event.

Id.

Ms. Schneider has personal knowledge of the Commonwealth’s election system. She and Mr. Cortés ran it together for two years. Ms. Schneider admits that (i) Pennsylvania’s DRE voting machines are vulnerable to hacking; (ii) votes on those machines are “unverifiable”; and (iii) “urgency” is required to replace these unverifiable systems with a verifiable system like paper ballots.

These admissions from the former number two election official in Pennsylvania contradict Defendants’ claim that the case is moot, as the same vulnerabilities that affected the 2016 election and that Ms. Schneider identifies remain in place today. They also support Plaintiffs’ claims that Pennsylvania’s election system denies citizens their right to ensure that their votes are accurately counted.

Respectfully,

/s/

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c. All Counsel of Record (by ECF)