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REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS



By email

October 31, 2020

Timothy E. Gates
Chief Counsel
PA Department of State
Office of Chief Counsel
306 North Office Building
Harrisburg, PA 17120
tgates@pa.gov

Re: Press Access to Polling Locations

Dear Mr. Gates:

We are attorneys with the Pennsylvania NewsMedia Association and Reporters Committee for Freedom of the Press, two non-profit organizations advocating on behalf of journalists.

We are asking the Department of State to issue immediate clarification about journalists' access to polling locations on Election Day. We have received several reports of county officials prohibiting access to entire buildings where voting takes place. Such a restriction is problematic and raises significant constitutional issues.

As you know, the Pennsylvania Election Code and Third Circuit jurisprudence allow a ten-foot barrier between First Amendment activity and the "polling place," but only to the extent that term is defined by law. The Election Code defines "polling place" as "the room provided in each election district for voting at a primary or election." 25 P.S. 2602(q); emphasis added; *see also* 25 P.S. 2730 requiring the polling place "shall consist of a single room...".

This definition was discussed by the Third Circuit Court of Appeals in a constitutional challenge to the ten-foot barrier and it played an important role in the court's constitutional analysis. *See P.G. Publishing Co. v. Aichele*, 705 F.3d 91 (3d Cir. 2013), fn 22. Careful review of the Election Code and Third Circuit precedent make clear that the Election Code allows a ten-foot barrier between First Amendment activity and the room where voting takes place. However, neither the Election Code nor constitutional jurisprudence allow election officials to extend the barrier to entire

buildings, and such an interpretation ignores the plain language of the Election Code itself as well as binding precedent.

To the extent counties wish to impose a ten-foot barrier on press access to the room where voting takes place, the county is so empowered by the Election Code and we do not object to such a limitation. However, attempts to extend the ten-foot barrier to entire buildings where voting takes place raise significant constitutional concerns that must be addressed before Election Day.

Thank you for your prompt response.

Sincerely,

/s/Melissa Melewsky
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/s/Paula Knudsen Burke
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Cc: Wanda Murren, Director, Office of Communications and Press
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