

## SETTLEMENT AGREEMENT AND GENERAL RELEASE OF CLAIMS

This Settlement Agreement and General Release of Claims (“Agreement”) is entered into between the Plaintiff, Judicial Watch, Inc., (“PLAINTIFF”), on one hand, and the Defendants, Al Schmidt, Acting Secretary of the Commonwealth, the Pennsylvania Department of State, and the Commonwealth of Pennsylvania (collectively, the “DEPARTMENT”); The Luzerne County Council, Tim McGinley, and Shelby Watchilla (collectively, “LUZERNE COUNTY”); The Cumberland County Board of Commissioners, Gary Eichelberger, and Bethany Salzarulo (collectively, “CUMBERLAND COUNTY”); The Washington County Board of Commissioners, Diana Irey Vaughan, and Melanie R. Ostrander (collectively, “WASHINGTON COUNTY”); The Indiana County Commissioners, Michael Keith, and Deborah Streams (collectively, “INDIANA COUNTY”); The Carbon County Board of Commissioners, Wayne Nothstein, and Lisa Dart (collectively, “CARBON COUNTY”) (collectively, “DEFENDANTS”), on the other hand (DEFENDANTS and PLAINTIFF, collectively, are referred to herein as the “PARTIES”).

**WHEREAS**, on April 29, 2020, PLAINTIFF initiated an action in the United States District Court for the Middle District of Pennsylvania, captioned *Judicial Watch, Inc., v. Commonwealth of Pennsylvania, et al.*, No. 1:20-cv-00708 (M.D.Pa.) (the “Litigation”) seeking declaratory and injunctive relief pursuant to the National Voter Registration Act of 1993, 52 U.S.C. §§ 20501, *et seq.*, (“NVRA”), against, *inter alia*, the DEPARTMENT;

**WHEREAS**, the Pennsylvania Office of Attorney General represents the DEPARTMENT in this Litigation at the request of the Agency in accordance with § 204(c) of the Commonwealth Attorneys Act, 71 P.S. §§ 732-101, *et seq.*;

**WHEREAS**, on November 8, 2021, PLAINTIFF filed an Amended Complaint which added LUZERNE COUNTY, CUMBERLAND COUNTY, WASHINGTON COUNTY, INDIANA COUNTY, and CARBON COUNTY as Defendants in the Litigation;

**WHEREAS**, the PARTIES now seek to avoid the further costs, expense, and inconvenience that they would encounter should PLAINTIFF's claims be litigated to their ultimate conclusion;

**NOW, THEREFORE**, the PARTIES, intending to be legally bound, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, agree that the Litigation be settled, compromised, and dismissed *with prejudice* on the merits, and that the claims and disputes between the parties shall be dismissed and forever irrevocably released and settled, on the terms and conditions set forth in this Agreement:

### **GENERAL RELEASE**

1. PLAINTIFF, for and in consideration of the mutual promises in this Agreement, including any payment set forth herein, does fully and forever release, acquit, and discharge DEFENDANTS and their respective predecessors, successors, agents, attorneys, representatives, officers, employees, past and present, administrators, heirs, and assigns from any and all manner of actions and causes of action, suits,

grievances, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, claims, and demands whatsoever in law or equity, known or unknown, foreseen or unforeseen, including all claims for attorney's fees under 42 U.S.C. § 1988 or any other federal or state law, which were or could have been set forth in the Litigation, or which PLAINTIFF or PLAINTIFF's heirs, executors, administrators, successors, attorneys, or assigns ever had or now has, for or by reason of any cause, matter, or any thing whatsoever arising out of or related to any claims and/or allegations in the Litigation, existing up until the date that PLAINTIFF executes this Agreement.

2. DEFENDANTS represent that they know of no current claims they have against PLAINTIFF and have no present intention of commencing a lawsuit against PLAINTIFF.

### **SETTLEMENT PAYMENT TERMS**

3. The DEPARTMENT, on behalf of the DEFENDANTS, will pay the total, all-inclusive sum of FIFTEEN THOUSAND DOLLARS AND ZERO CENTS (\$15,000.00) ("Settlement Amount"). The payment shall be made by check ("Settlement Check"), issued by the Commonwealth of Pennsylvania on behalf of the DEPARTMENT, and made payable to "Judicial Watch, Inc." representing all fees and costs agreed to be paid in the Litigation and fully resolving all claims for fees and costs that could have been filed in the Litigation. Counsel for the DEPARTMENT will submit the appropriate paperwork for issuance of the Settlement Check to the Pennsylvania Bureau of Finance and Risk Management no later than 14 days after full execution of this Agreement.

**Payment by any date certain, however, shall not be a condition or requirement of this Agreement.** PLAINTIFF hereby waives the requirements and remedies of Pennsylvania Rule of Civil Procedure 229.1, to the extent it is applicable to this Agreement. Once issued, the Settlement Check will be sent via UPS Overnight to:

Judicial Watch, Inc.  
c/o Steven Wilson  
425 Third Street, SW  
Suite 800  
Washington, DC 20024  
(202) 646-5172

The PARTIES agree that a failure to issue the Settlement Check within six (6) months of the effective date of this agreement would constitute a material breach thereof.

4. The Settlement Amount includes any and all damages, losses, reimbursement of any kind, interest, costs, expert's fees, filing fees, and/or attorney's fees that PLAINTIFF or PLAINTIFF's attorneys sought or could have sought in the above-captioned action or otherwise, pursuant to any federal or state statute or regulation or any rule of court.

5. The PARTIES agree that this payment will be subject to any applicable sections of the Internal Revenue Code. DEFENDANTS makes no assumptions or representations to PLAINTIFF or PLAINTIFF's attorney with regard to whether the Settlement Amount is or is not taxable and, if so, to whom and to what extent. It is further agreed and understood that PLAINTIFF is solely responsible for the tax liabilities and consequences (including any interest or penalties), if any, related to their receipt of

the Settlement Amount, and DEFENDANTS shall bear no responsibility for any such liability or consequences, if any. No part of this settlement amount will be withheld by the Commonwealth as taxes.

### **ADDITIONAL SETTLEMENT TERMS**

5. In addition to payment of the Settlement Amount, the DEFENDANTS further agree, for a period of five years subsequent to the execution of this agreement, to take the following actions:

- a. The DEPARTMENT will publish, annually by June 30th, on the website of the Department of State, with respect to LUZERNE COUNTY, CUMBERLAND COUNTY, WASHINGTON COUNTY, INDIANA COUNTY, and CARBON COUNTY, the following information, for the prior calendar year:
  - i. Total Number of Registered and Eligible Voters, including
    - A. Total Number of Active Voters
    - B. Total Number of Inactive Voters
  - ii. Total number of confirmation notices sent to registered voters (response to EAVS Question A8a), broken out as follows:
    - A. Total number of 'Notice(s) of Change of Address'
    - B. Total number of 'Address Verification Notice(s)'
  - iii. Total number of confirmation notices returned as undeliverable (response to EAVS Question A8d)
    - A. Total number of 'Notice(s) of Change of Address'
    - B. Total number of 'Address Verification Notice(s)'
  - iv. Total number of confirmation notices returned for unknown reasons or no response (response to EAVS Question A8e)
    - A. Total number of 'Notice(s) of Change of Address'
    - B. Total number of 'Address Verification Notice(s)'

- v. Total number of voters removed from the voter registration rolls (response to EAVS Question A9a)
  - vi. Total number of voters removed from the voter registration rolls for failure to respond to confirmation notice and failure to vote in the two most recent federal general elections (response to EAVS Question A(9)(e))
  - vii. Total number of voters removed from the voter registration rolls due to death (response to EAVS Question A9c))
- b. For purposes of the preceding romanettes, the PARTIES agree that:
- i. the phrase “Notice(s) of Change of Address” shall have the same definition as the term ‘NCA’ as defined in 4 Pa. Code § 183.1(a) and as used in 4 Pa. Code § 183.6 and shall mean a type of notice mailed to a registrant upon receipt of information under the National Change of Address Program that the registrant may have moved; and,
  - ii. the phrase “Address Verification Notice” shall have the same definition as the term ‘AVN’ as defined in 4 Pa. Code § 183.1(a) and as used in 4 Pa. Code § 183.6, and shall mean a type of notice which satisfies the requirements of 52 U.S.C. § 20507(d)(2)(A), and begins the removal process described under 52 U.S.C. § 20507(d)(1)(B), irrespective of whether such confirmation notice was sent pursuant to any federal or state law or program.

c. The DEPARTMENT will send notice to all sixty-seven counties in the Commonwealth of their mandatory list maintenance responsibilities under 52 U.S.C. § 20507(d)(3) with specific reference to the U.S. Supreme Court's holding in *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833 (2018), insofar as such holding remains good law.

6. In accordance with Section 204(e) of the Commonwealth Attorneys Act, 71 P.S. § 732-204(e), this Agreement is not a consent decree, it is not intended to be a consent decree, and it should not be construed as a consent decree. This Agreement will not be submitted to any court for formal approval. It is not enforceable in a contempt proceeding. It does not operate as an adjudication on the merits.

7. The PARTIES retain the right to bring legal action to enforce any terms of this Agreement. The PARTIES retain and do not waive any applicable defenses in any such action.

### **NO ADMISSIONS REGARDING MERITS**

8. This Agreement shall not constitute an admission of liability or fault on the part of DEFENDANTS, nor an admission by the PLAINTIFFS that the claims in the Amended Complaint lacked merit, and is entered into by the PARTIES for the sole purpose of avoiding the expenses of further litigation and to terminate all controversies and/or claims, or causes of action of whatsoever nature, known and unknown, including future developments thereof, in any way arising from, related to, growing out of, or in any way connected with the Litigation.

## DISMISSAL OF CURRENT LITIGATION

9. The PARTIES agree that they will sign and submit a stipulation of dismissal with prejudice of the Litigation pursuant to Fed.R.Civ.P. 41(a)(1)(A)(ii) requesting the Court to enter an Order of dismissal *with prejudice* but retaining jurisdiction solely to enforce the terms of this Agreement.

10. The PARTIES may disclose the terms of this Agreement in their discretion.

11. The terms of this Agreement shall not be made a part of the record unless the PARTIES are directed to do so by the Court or move to enforce the terms of the Agreement.

## GOVERNING LAW

12. The PARTIES agree that this Agreement it is to be construed and interpreted under the laws of the Commonwealth of Pennsylvania.

## DESCRIPTIVE HEADINGS

13. The headings used in this Agreement are descriptive only and for the convenience of identifying provisions of this Agreement, and are not determinative of the meaning or effect of such provisions.

## SEVERABILITY

14. The PARTIES agree that the following terms are **not severable** from this agreement: General Release, Settlement Payment Terms, Additional Settlement Terms, Dismissal of Current Litigation, and Authority. If any court or tribunal of competent



jurisdiction determines that any of these provisions is illegal, invalid, or unenforceable, the entire Agreement shall become null and void.

15. The PARTIES agree that all remaining terms are severable. If any court or tribunal of competent jurisdiction determines that any severable provision of this Agreement is illegal, invalid, or unenforceable, such provision shall be severed from this Agreement and the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

### **ENTIRE AGREEMENT; AMENDMENT**

16. This Agreement contains the entire agreement between the PARTIES and supersedes all prior negotiations and/or agreements, proposed or otherwise, written or oral, concerning the subject matter hereof. Each of the PARTIES declares and represents that no promise or agreement has been made other than those expressed herein. No modification of this Agreement shall be binding unless in writing and signed by each of the PARTIES.

### **AUTHORITY**

17. The PARTIES represent and warrant that, as of the date of the execution of this Agreement, each respectively has the right and authority to execute this Agreement. Each of the PARTIES and his/her/its signatory represents that the signatory is either a party or a representative fully authorized to execute this Agreement on behalf of the party for whom he or she signs.

## **SIGNATURES**

18. This Agreement may be executed and delivered in one or more counterparts, each of which shall be considered an original, and it is understood and intended by the parties that the counterparts together represent one document. This Agreement shall become effective when each party has executed and delivered at least one such counterpart, and the effective date of this agreement shall be the date on which all parties will have signed the Agreement, which is the latest date on the signatures below.

19. It is understood and agreed that an electronic, copied, scanned, or faxed signature shall have the same force and effect as an original signature.

**[Remainder of page intentionally blank]**

**IN WITNESS HEREOF**, and intending to be legally bound, the Parties below execute this Agreement:

**For Judicial Watch, Inc.:**

Date Executed: \_\_\_\_\_

By: \_\_\_\_\_

**Eric W. Lee**  
425 Third Street SW  
Suite 800  
Washington, DC 20024  
202-646-0008  
[elee@judicialwatch.org](mailto:elee@judicialwatch.org)

**For the Commonwealth of Pennsylvania and Al Schmidt:**

Date Executed: 4/27/2023

By: **Karen M. Romano**

Digitally signed by Karen M. Romano  
DN: cn=Karen M. Romano, o=Office of Attorney General,  
ou=Chief, Litigation Section,  
email=kromano@attorneygeneral.gov, c=US  
Date: 2023.04.27 12:55:22 -0400

**Karen M. Romano**  
Chief Deputy Attorney General  
Office of Attorney General  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120  
(717) 787-2717  
[kromano@attorneygeneral.gov](mailto:kromano@attorneygeneral.gov)

**For the Luzerne County Council, Tim McGinley, and Shelby Watchilla,**

Date Executed: \_\_\_\_\_

By: \_\_\_\_\_

**Brian Swetz**  
Acting Luzerne County Manager  
20 N. Pennsylvania Avenue  
Wilkes-Barre, PA 18711

IN WITNESS HEREOF, and intending to be legally bound, the Parties below execute this Agreement:

For Judicial Watch, Inc.:

Date Executed: \_\_\_\_\_ By: \_\_\_\_\_  
Eric W. Lee  
425 Third Street SW  
Suite 800  
Washington, DC 20024  
202-646-0008  
[elee@judicialwatch.org](mailto:elee@judicialwatch.org)

For the Commonwealth of Pennsylvania and Al Schmidt:

Date Executed: \_\_\_\_\_ By: \_\_\_\_\_  
Anthony Bowers  
Deputy Attorney General  
Office of Attorney General  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120  
(717) 787-2038  
[abowers@attorneygeneral.gov](mailto:abowers@attorneygeneral.gov)

For the Luzerne County Council, Tim McGinley, and Shelby Watchilla,

Date Executed: 4-17-23 By: Brian A Swetz  
Brian Swetz  
Acting Luzerne County Manager  
20 N. Pennsylvania Avenue  
Wilkes-Barre, PA 18711

**For the Cumberland County Board of Commissioners, Gary Eichelberger, and Bethany Salzarulo**

Date Executed: April 3, 2023 By: 

**Keith O. Brenneman**  
Attorney I.D. No. 47077  
One Courthouse Square, Room 208  
Carlisle, PA 17013  
Telephone: (717) 240-5444  
Fax: (717) 240-5445  
[kobrenneman@cumberlandcountypa.gov](mailto:kobrenneman@cumberlandcountypa.gov)  
Cumberland County Solicitor

**For the Washington County Board of Commissioners, Diana Ireya Vaughan, and Melanie Ostrander:**

Date Executed: \_\_\_\_\_ By: \_\_\_\_\_

**Robert J. Grimm**  
Walsh, Barnes & Zumpella, P.C.  
2100 Corporate Dr.  
Suite 300  
Wexford, PA 15090  
412-258-2255  
[rgrimm@walshlegal.net](mailto:rgrimm@walshlegal.net)

**For the Cumberland County Board of Commissioners, Gary Eichelberger, and Bethany Salzarulo**

Date Executed: \_\_\_\_\_ By: \_\_\_\_\_

**Keith O. Brenneman**  
Attorney I.D. No. 47077  
One Courthouse Square, Room 208  
Carlisle, PA 17013  
Telephone: (717) 240-5444  
Fax: (717) 240-5445  
[kobrenneman@cumberlandcountypa.gov](mailto:kobrenneman@cumberlandcountypa.gov)  
Cumberland County Solicitor

**For the Washington County Board of Commissioners, Diana Irely Vaughan, and Melanie Ostrander:**

Date Executed: 4/12/2023 By: 

**Robert J. Grimm**  
Walsh, Barnes & Zumpella, P.C.  
2100 Corporate Dr.  
Suite 300  
Wexford, PA 15090  
412-258-2255  
[rgrimm@walshlegal.net](mailto:rgrimm@walshlegal.net)

**For the Indiana County Commissioners, Michael Keith, and Debra L. Streams:**

Date Executed: 04/13/2023

By: \_\_\_\_\_



**Sean R. Keegan**  
Babst Calland  
603 Stanwix Street  
Two Gateway Center, 7<sup>th</sup> Floor  
Pittsburgh, PA 15222  
412-773-8721  
[skeegan@babstcalland.com](mailto:skeegan@babstcalland.com)

**For the Carbon County Board of Commissioners, Wayne Nothstein, and Lisa Dart:**

Date Executed: \_\_\_\_\_

By: \_\_\_\_\_

**Gerard J. Geiger**  
Newman Williams  
712 Monroe Street  
Stroudsburg, PA 18360  
570-421-9090  
[ggeiger@newmanwilliams.com](mailto:ggeiger@newmanwilliams.com)

**For the Indiana County Commissioners, Michael Keith, and Deborah L. Streams:**

Date Executed: \_\_\_\_\_

By: \_\_\_\_\_

**Keegan R. Sean**

Babst Calland

603 Stanwix Street

Two Gateway Center, 7<sup>th</sup> Floor

Pittsburgh, PA 15222

412-773-8721

[skeegan@babstcalland.com](mailto:skeegan@babstcalland.com)

**For the Carbon County Board of Commissioners, Wayne Nothstein, and Lisa Dart:**

Date Executed: 2023-04-25

By: \_\_\_\_\_

  
**Gerard J. Geiger**

Newman Williams

712 Monroe Street

Stroudsburg, PA 18360

570-421-9090

[ggeiger@newmanwilliams.com](mailto:ggeiger@newmanwilliams.com)



**IN WITNESS HEREOF**, and intending to be legally bound, the Parties below execute this Agreement:

**For Judicial Watch, Inc.:**

Date Executed: May 2, 2023

By: \_\_\_\_\_

*Eric Lee*

**Eric W. Lee**

425 Third Street SW

Suite 800

Washington, DC 20024

202-646-0008

[elee@judicialwatch.org](mailto:elee@judicialwatch.org)

**For the Commonwealth of Pennsylvania and Al Schmid:**

Date Executed: \_\_\_\_\_

By: \_\_\_\_\_

**Anthony Bowers**

Deputy Attorney General

Office of Attorney General

15<sup>th</sup> Floor, Strawberry Square

Harrisburg, PA 17120

(717) 787-2038

[abowers@attorneygeneral.gov](mailto:abowers@attorneygeneral.gov)

**For the Luzerne County Council, Tim McGinley, and Shelby Watchilla,**

Date Executed: \_\_\_\_\_

By: \_\_\_\_\_

**Brian Swetz**

Acting Luzerne County Manager

20 N. Pennsylvania Avenue

Wilkes-Barre, PA 18711