

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

SENATOR JAY COSTA, SENATOR :
 ANTHONY H. WILLIAMS, SENATOR : **CASES**
 VINCENT J. HUGHES, SENATOR STEVEN : **CONSOLIDATED**
 J. SANTARSIERO, AND SENATE :
 DEMOCRATIC CAUCUS, : No. 310 MD 2021
 Petitioners, :

V.

SENATOR JACOB CORMAN III, SENATE :
 PRESIDENT PRO TEMPORE, SENATOR :
 CRIS DUSH, AND SENATE SECRETARY- :
 PARLIAMENTARIAN MEGAN MARTIN, :
 Respondents. :

COMMONWEALTH OF PENNSYLVANIA, :
 PENNSYLVANIA DEPARTMENT OF STATE, : No. 322 MD 2021
 AND LEIGH CHAPMAN, ACTING :
 SECRETARY OF THE COMMONWEALTH :
 OF PENNSYLVANIA, :
 Petitioners, :

V.

SENATOR CRIS DUSH, SENATOR JAKE :
 CORMAN, AND THE PENNSYLVANIA :
 STATE SENATE INTERGOVERNMENTAL :
 OPERATIONS COMMITTEE, :
 Respondents. :

ARTHUR HAYWOOD :
 JULIE HAYWOOD, : No. 323 MD 2021

V.

LEIGH CHAPMAN, ACTING SECRETARY :
 OF STATE, COMMONWEALTH OF :
 PENNSYLVANIA, :
 Respondent. :

BRIEF OF PETITIONERS ARTHUR HAYWOOD AND JULIE HAYWOOD
IN RESPONSE TO THE COURT'S JANUARY 25, 2022 ORDER

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BRIEF OF PETITIONERS ARTHUR HAYWOOD AND JULIE HAYWOOD IN
RESPONSE TO THE COURT’S JANUARY 25, 2022 ORDER

Petitioners, Arthur and Julie Haywood (collectively referred to herein as the “Haywoods”), by and through undersigned counsel, Legis Group, LLC, hereby submit this Brief pursuant to the Court order dated January 25, 2022, ordering the parties to brief the court on its jurisdiction over their petitions for review.

ARGUMENT

I. THIS COURT HAS JURISDICTION BECAUSE THE HAYWOODS’ PETITION FOR PROTECTION OF THEIR CONSTITUTIONAL RIGHTS IS RIPE FOR REVIEW.

The Haywood’s Petition is ripe for review. Supreme Court caselaw is consistent in that the courts will not interfere in public officers’ subpoena demands until contempt proceedings are initiated. However, as explained below, Pennsylvania courts in equity have jurisdiction over such matters **prior to** a confrontation. In *Pennsylvania Crimes Commission*, the court found that the Petitioners’ request for review would not be ripe until

the Crimes Commission invoked enforcement proceedings, as their subpoena was unlike a judicial one where they have the power to enforce compliance. 309 A. 2d 401, 404-05.

Notably, however, the Crimes Commission argued that the petitioners had a lack of standing to intervene in the judicial enforcement of the Commission's subpoena because they had not made a showing of any “legally enforceable interest” in the requested documents.

This is wholly inapposite to the Haywood matter. The Haywoods are not objecting to the subpoena because they have “a general interest in avoiding investigation.” They have much more: they have a legally enforceable privacy interest in avoiding disclosure of the last four digits of their social security numbers and driver’s license information. That interest is grounded in the Pennsylvania Constitution. Furthermore, as outlined below, the Haywoods are not subject to a subpoena, so they have no other recourse than petitioning the court to protect their constitutional rights. Unlike the Petitioner in *PA Crimes Commission*, they are not worried about potentially being implicated criminally, or about the potential for future embarrassment. Instead, they are concerned regarding breaches of their identity and threats to their free exercise of the right to vote.

This matter is ripe for review despite the holding in *Cathcart v. Crumlish*. The court there held that the appellants’ petition was not ripe because it found that they would suffer no irreparable harm, or any harm at all because appellees were not given the power to enforce compliance by imprisonment or fine. 189 A. 2d 243, 245 (Pa. 1963). The

Crumlish holding, however, does not apply to the Haywoods for two reasons. One, the Haywoods have not been subpoenaed, so they are not subject to contempt proceedings. However, as individuals who have voted in the elections at issue in the subpoena, their constitutionally protected information is at issue. The Haywoods have a right to protection from any encroachments on their individual freedoms and privacy.

Notwithstanding the contempt issue, which is further explained in Section III, this court has set forth the power to restrain public officers in order to protect citizens' rights before a requesting party has brought the matter to a court's attention. *See Camiel v. Select Committee on State Contract Practices of House of Representatives*, 324 A. 2d 862, 866 (Pa. Cmwlth. 1974) (subpoena to political committee demanding documentation of contributions and sales and advertisements regarding any committee-sponsored events). In that case, Camiel filed a motion to quash the subpoena at law. While the court in *Camiel* found it did not have authority to restrain the legislative subpoena, it held that a court **sitting in equity** may restrain public officers to protect a citizen's constitutional rights after service of a subpoena and **before** a confrontation. *Id.*

By specifying when a court may restrain officers of the public, the Court in *Camiel* went one step further than that of the holding in *Annenberg v. Roberts*, 2 Ad. 2d 612, 618 (Pa. 1938) (parties in interest in a matter involving a demand by a nonjudicial body "must also have an opportunity for judicial hearing if their rights are to be determined

and preserved;” subpoenas commanding plaintiffs to produce items before the commission were “void” in that they do not show the “demands are germane to the inquiry authorized.”)

Here, where petitioners have brought this matter **in equity**, and the Subpoena demands that the Department of State disclose to the Committee and a virtually unknown vendor the names, addresses and partial social security numbers of nine million Pennsylvania voters, the Court has that power based on its own holding in *Camiel*.

The line of cases above demonstrate that **prior** to the release of information, no matter who is demanding the release, where certain privacy rights are implicated, such as that in one’s social security number and driver’s license information, the court must engage in a balancing test to determine whether the right to privacy outweighs the requesting party’s countervailing interest in receipt of the information. The Pennsylvania Courts have held, on several occasions, that **prior** to the release of information, where certain privacy rights are implicated, the court must engage in a balancing test to determine whether the right to privacy outweighs the public’s interest in dissemination. *See PSEA v. Department of Community and Economic Development*, 637 Pa. 337, 340. (Certain information, including home addresses, implicate the right to privacy under Article I, Sec. 1)(also citing *Sapp Roofing Co. v. Sheet Metal Int’l, Local No. 12*, 552 Pa. 105 (1988); *Pa. State Univ. v. Retirement*

Board, 594 Pa. 244 (2007)) A balancing test is required before the disclosure of any personal information. *See Reese v. Pennsylvanians for Union Reform*, 643 Pa. 530, 534 (2017). As such, this controversy is properly ripe for this court to review.

II. THIS COURT HAS JURISDICTION BECAUSE THE HAYWOODS HAVE NO REMEDY AT LAW.

Under Pennsylvania Rule of Civil Procedure 234.4, a party may file a motion to quash a subpoena, notice to attend or notice to produce. The court will then have a hearing, after which it may draft an order to protect a person, witness or party from unreasonable annoyance, embarrassment, oppression, burden or expense. *Id.* In *Cathcart v. Crumlish*, the court found that equity had no jurisdiction because there was an adequate remedy for the Petitioners at law—there would be no recourse to Petitioners until the subpoenaing party brought them before a court of law. That case is inapposite to the Haywoods in this matter because they have **no** remedy at law: unlike the Petitioners in *Cathcart*, the Haywoods have not been subpoenaed. They do not have the option of a wait-and-see approach because they cannot be hauled into court, fined, imprisoned or ultimately held in contempt. However, they stand the risk of irreparable harm by having their private information released if this court

determines it has no jurisdiction over this matter. They also stand the risk of harm if the General Assembly compels the Department of State to release the Haywood's constitutionally protected information, as explained in Section III.

The court in *Lunderstadt v. Pennsylvania House of Representatives Select Committee* found that the plaintiffs had a reasonable expectation of privacy and that a subpoena issued by a legislative select committee should not issue unless there was "probable cause that particular records sought contain evidence of civil or criminal wrongdoing." 519 A. 2d 408, 410 (Pa. 1986) In that case, a legislative committee required the subpoenaed parties to produce monthly statements of any and all checking and savings accounts, and financial statements and transfer documents from stocks, bonds and a plethora of other accounts. While the Supreme Court recognized that the legislative power to investigate is corollary to the power to legislate, the court balanced that with the scope of the information requested pursuant to a subpoena and the interest of individuals in maintaining privacy.

The Court in *Lunderstadt* recognized that "even when a legislative committee is acting within its proper ambit, the privacy interests of those being investigated are inherently at risk" and individuals should be protected against "fishing expeditions." *Id.* at 413. The Intergovernmental Committee has not provided any evidence of the materiality of the demand for an individual's drivers' license number or last four digits

of their social security number. The court found that the **paramount concern for privacy is sacrosanct** when it was "first adopted as part of our organic law in 1776 and continues to enjoy the mandate of the people of the Commonwealth." This court has a similar concern for the constitutionally protected privacy of the Haywoods, and of nine million voters. When balanced against the interests of the Committee, which, to date, have not been articulated as to why they need this private information, the Haywoods' privacy supersedes the Committee interests.

Although the Haywoods had to act quickly to protect their private information, as it was demanded to be released within two weeks of its issue, the Haywoods were not in a position to file a "motion to quash" in this matter, either, as the court ruled in *Camiel*. They had an immediate need to stop the access to and sharing of this information and filed this action in equity. They requested the subpoena be quashed. The Haywoods are in the precarious position of being directly affected by the Court's decision in this matter. They have no remedy at law, so they must rely on the equity jurisdiction of the Court in this matter to protect the encroachments on their individual freedoms and privacy.

For the reasons stated above, the court is in exactly the right position to hear whether the Department of State must release this information. The Haywoods have no other remedy.

III. BOTH THE GENERAL ASSEMBLY’S CONTEMPT POWER TO IMPRISON A NON-COMPLIANT WITNESS AND THE CRIMINAL CONTEMPT STATUTE TRIGGER THE COURT’S JURISDICTION IN THIS MATTER.

A. The General Assembly’s Power to punish persons for contempt of proceedings allows the court to hear this matter.

The contempt power of the general assembly¹ triggers the court’s jurisdiction of this matter. According to Pennsylvania Constitution Article II, § 11,

“each House shall have power to determine the rules of its proceedings and punish its members or other persons for contempt or disorderly behavior in its presence, to enforce obedience to its process, to protect its members against violence or offers of bribes or private solicitation, and, with the concurrence of two-thirds, to expel a member, but not a second time for the same cause, and shall have all other powers necessary for the Legislature of a free State. A member expelled for corruption shall not thereafter be eligible to either House, and punishment for contempt or disorderly behavior shall not bar an indictment for the same offense.”

Similarly, *Commonwealth ex. Rel Carcaci v. Brandamore* affirms the statute, holding that a branch of legislature may “commit a witness to prison” for refusal to answer questions

¹ The Intergovernmental Operations Committee is not the General Assembly as a whole, but the Committee can present to the General Assembly a vote to hold contempt hearings.

“duly propounded,” with only the caveat that this procedure must be conducted with due process to persons subject to contempt proceedings. 327 A. 2d 1, 5 (Pa.1974).

For the reasons outlined above, the Haywoods are not subject to contempt proceedings. However, if the General Assembly has the power to punish and/or commit to prison the subpoenaed party, i.e. the Department of State, the Court’s jurisdiction is triggered in this matter. Unlike the appellees in *Cathcart*, the contempt power of the General Assembly may force the Secretary of State to be placed in “the unfortunate dilemma of having to disobey the [Committee’s] subpoena at [her] peril in order to contest the validity.” 189 A. 2d at 246.

Pennsylvania courts have ruled against placing parties subject to contempt proceedings in the untenable position where the content demanded by the subpoena unduly interferes with the right of individual privacy. In the instant matter, the Department of State would have to choose between possible contempt proceedings, or release of millions of voters’ private information. This position triggers this court’s jurisdiction. If this Honorable court finds it does not have jurisdiction, the Haywoods’ constitutionally protected information stands the possibility of release, and irreparable harm as explained *supra* and in the Haywoods’ Petition for Review. Furthermore, if the court, sitting in equity finds that the production and sharing of the Haywoods’ partial social security numbers and drivers’ license information does not implicate constitutional

rights, the Department of State would be left in the same position, and the Haywoods would suffer irreparable harm. The Haywoods, once more, have no other recourse. As a result, the Court's jurisdiction in this matter is clear.

B. The possibility of a conviction for misdemeanor of the third degree is a trigger of the Court's jurisdiction in this matter.

According to 18 Pa. C.S. § 5110, a person is guilty of a misdemeanor of the third degree if he neglects or refuses to appear in the presence of either branch of the General Assembly, after being duly served with a subpoena to appear. Without discussion of whether this applies to the Secretary of State, the same reasoning stated in Section A applies here. In the event that the Court finds it does not have jurisdiction based on the provisions in the above statute, the Haywoods would be harmed in the same manner as outlined in Section A, resulting in the inequitable result of irreparable harm.

For the reasons stated above, this court in equity has jurisdiction to hear this consolidated matter.

CONCLUSION

WHEREFORE, for the above stated reasons the Petitioners, pray that this Court hear this matter.

Respectfully Submitted by

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DATE: February 15, 2022

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

Dated: February 15, 2022

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CERTIFICATE OF COMPLIANCE

This brief complies with the word-count limitations of Pa R.A.P. 2135 because it contains 2458 words, including footnotes, based on the word count of the word processing system used to prepare it.

Dated: February 15, 2022 /s/Tamika N. Washington

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