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June 16, 2022

VIA ELECTRONIC FILING

United States District Court

Eastern District of Pennsylvania

RE: *Dondiego v. Leigh County Board of Elections*. No: 22-2111

Dear Judge Schmel:

On behalf of Defendant Northampton County Board of Elections, I write in response to the letter of June 15, 2022, from Attorney Thomas W. King, III on behalf of the Intervenor-Defendants Pennsylvania Republican Party and Republican National Committee. Defendant Northampton County respectfully requests that this Court enter an Order dismissing this lawsuit.

The Defendant Northampton County takes no position on the first two issues of the June 15, 2022, with respect to consent of all parties. This Court may dismiss an action at plaintiff's request by court order on terms that the court considers proper. See Fed. R.C.P. 41(a)(2). Under this section of the Rules, the consent of Intervenor-Defendants Pennsylvania Republican Party and Republican National Committee is immaterial.

With respect to the last point raised in Attorney King's June 15, 2022 letter, the settlement agreements do not violate the Pennsylvania Election Code. Disclosure to the representatives of political parties or candidates of the identities of voters whose ballots are set aside during the pre-canvass does not constitute "results" as defined by the Pennsylvania Election Code.

The Pennsylvania Election Code defines a pre-canvass at 25 P.S. §2602(q.1):

[T]he inspection and opening of all envelopes containing official absentee ballots or mail-in ballots, the removal of such ballots from the envelopes and the counting, computing and tallying of the votes reflected on the ballots.

The term does not include the recording or publishing of the votes reflected on the ballots.

The pre-canvass is permitted to start at seven o'clock A.M. on Election Day. 25 P.S. §3146.8(g)(1.1). "No person observing, attending or participating in a pre-canvass meeting may disclose the results of any portion of any pre-canvass meeting prior to the close of the polls." Id.

While the word "results" itself is not specifically defined in the Election Code, the definition of "pre-canvass" in 25 P.S. §2602(q.1) illustrates that the General Assembly's intent with respect to Section 3146.8(g) was to prevent anyone from publicly disclosing any vote totals, partial or full, prior to the close of the polls on Election Day. The term "results" cannot be reasonably read to prohibit the disclosure of the identity of voters whose votes have been set aside. A ballot which is set aside during the pre-canvass does not have the "votes reflected on the ballots" recorded or published.

Elsewhere in the Election Code, the word "result" or "results" is used to refer to the number of votes cast at an election or the identity of the individual who obtained the most votes in a particular race. See e.g. 25 P.S. §3067(a) ("...The judge of election and the minority inspector shall then...read from the counters or from one of the proof sheets [of a voting machine]...and announce, in distinct tones, the designation or designating number and letter on each counter for each candidate's name, **the result** as shown by the counter numbers...") (**emphasis added**); 25 P.S. §3154(d)(2) ("The said proof sheets [of voting machines] shall be deemed to be the primary evidence of **the result** of the election...") (**emphasis added**); 25 P.S. §3157(b) ("None of the orders or decisions of either the county board or the court of common pleas on appeal shall be deemed a final adjudication regarding **the results** of any primary or election, so as to preclude any contest thereof...") (**emphasis added**).

The Intervenor-Defendants Pennsylvania Republican Party and Republican National Committee are attempting to contort and distort the plain meaning of the word "results" to prohibit the disclosure of information concerning the identity of voters whose ballots are set aside during the pre-canvass. Based upon this manufactured and unreasonable interpretation of the word "results," Intervenor-Defendants Pennsylvania Republican Party and Republican National Committee baldly claim, without legal basis, that disclosing the identity of voters whose ballots are set aside during the pre-canvass somehow is "illegal." This is just plain wrong.

The word "result" or "results" as used in the Election Code means the votes reflected on the ballots. It cannot be fairly read to include the identity of voters whose ballots are set aside during a pre-canvass.

In addition, the Department of State issued guidance on November 2, 2020, indicating that county boards of elections may provide information to party or candidate representatives whose ballots are set aside during the pre-canvass. (See e-mail from Jonathan Marks dated November 2, 2020, and Provisional Ballot Guidance, attached collectively as Exhibit "A").

The Northampton County Republican Committee attempted to halt this practice in Northampton County during the November 2020 Election by making an oral motion for preliminary injunction, which was denied by the Northampton County Court of Common

Pleas. (See copy of Order of Court dated November 3, 2020, and Order of Court dated November 5, 2020 of the Honorable Michael J. Koury, Jr., attached collectively as Exhibit "B"). Although the Northampton County Republican Committee appealed Judge Koury's Order, the appeal was discontinued pending resolution of the case of Hamm v. Boockvar filed to Pennsylvania Commonwealth Court Docket No. 600 MD 2020. The Hamm case in the Commonwealth Court was discontinued on February 16, 2021, and the Commonwealth Court never addressed this issue on the merits.

Intervenor-Defendants' Pennsylvania Republican Party and Republican National Committee objection to the resolution of this lawsuit is without legal basis and disrupts the certification, without just cause, the results of the May 17, 2022 Primary Election. While the Election Code does not prohibit the disclosure of the identity of voters whose ballots are set aside during the pre-canvass, if any interested party desires to challenge this process, the proper forum is a challenge to a provisional ballot as set forth in the Election Code. There is nothing to be gained for this Court to maintain jurisdiction over this matter.

Defendant Northampton County Board of Elections respectfully requests that this Court enter an Order dismissing this lawsuit based on the terms filed with the Court.

Respectfully Submitted,
/s/ Richard E. Santee
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