



IN THE COURT OF COMMON PLEAS, CHESTER COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES C. ROMINE, ET. AL. : No.  
: :  
Plaintiff : :  
: :  
v. : :  
CHESTER COUNTY BOARD OF : :  
ELECTIONS, ET. AL. : ;  
: :  
Defendant : :  
\_\_\_\_\_

**AMENDED PETITION FOR A SPECIAL AND PRELIMINARY INJUNCTION**

Plaintiffs/petitioners file this amended petition for a special and preliminary injunction and aver as follows:

1. Petitioners incorporate their complaint by reference.  
2. Petitioners file this petition on an emergency basis because it involves the county’s use of ballot drop boxes which the county can begin using to receive mailed or absentee ballots as early as September 19, 2022, which is the first day mailed ballots may be made available to voters.

3. The Pennsylvania constitution requires that “[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Pa. Const. art. I, § 5; *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 356 (Pa. 2020).

4. “The broad text of this specific provision ‘mandates clearly and unambiguously, and in the broadest possible terms, that all elections conducted in

this Commonwealth must be ‘free and equal.’” *Boockvar, 238 A.2d at 356* (quoting *League of Women Voters v. Commonwealth*, 645 Pa. 1, 178 A.3d 737, 804 (2018))

5. “Stated another way, this clause was ‘specifically intended to equalize the power of voters in our Commonwealth's election process[.]’” *Id.* (quoting *League of Women Voters*, 178 A.3d at 812.

6. The purpose of the Election Code is “[t]o obtain freedom of choice, a fair election and an honest election return[.]” *Id.*

7. The Pennsylvania Election Code requires that mailed and absentee ballots must be returned either by mail or in person by the person to whom the ballot belongs, i.e. one person, one ballot.

8. Regarding the return of a mailed ballot, 25 P.S. § 3150.16(a) states “[s]uch envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.”

9. Regarding the return of an absentee ballot, 25 P.S. § 3146.6(a) states the same: “Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.”

10. Mailed or absentee ballots returned by someone other than the voter are void, invalid, and should not be counted. *In re Canvass of Absentee Ballots of November 4, 2003 Gen. Election*, 577 Pa. 231, 843 A.2d 1223 (2004) (“[the] ‘in person’ delivery requirement is mandatory, and that the absentee ballots of non-disabled

persons who had their ballots delivered in contravention of this mandatory provision are void.”); *Donald J. Trump for President, Inc. v. Boockvar*, 2020 WL 5407748, at \*9 (W.D. Pa. Sept. 8, 2020) (“everyone now agrees that the election code forbids third-party ballot delivery.”); *Pierce v. Allegheny Cty. Bd. of Elections*, 324 F.Supp.2d 684, 691 (W.D. Pa. 2003) (entering preliminary injunction voiding and barring the counting of 937 absentee ballots delivered by third parties.)

11. There is a limited exception to this rule.

12. Voters who are disabled, as defined under the Americans with Disabilities Act, may designate an agent to deliver his or her absentee or mailed ballot. *DiPietrae v. City of Philadelphia*, 666 A.2d 1132 (Pa.Cmwlt. 1995), *aff'd*, 543 Pa. 591, 673 A.2d 905 (1996).

13. However, the Commonwealth Secretary of State requires a disabled person to complete a state approved “Designated Agent Form” before an agent may deliver his or her ballot. <https://www.vote.pa.gov/Resources/Documents/Authorize-Designated-Agent-for-Mail-in-or-Absentee-Ballot.pdf>

14. That form must be completed by the voter and the agent. *Id.*

15. The agent or voter must return the completed form to the county board of elections before an agent may deliver a ballot. *Id.*

16. The agent and voter should also retain a copy of the form. *Id.*

17. The mission statement of the Chester County Board of Elections is to “conduct fair, accurate, and impartial elections.”

<https://www.chesco.org/1868/Mission-Goals> (last visited September 13, 2022)

18. The Chester County Board of Elections authorizes the use of ballot drop boxes.

19. The Board of Election understands what the Election Code requires and that it prohibits third-party delivery of mailed or absentee to the drop boxes.

20. Indeed, the Board of Elections affixes to its drop boxes a statement that:

**!!PLEASE READ!!**

You must only return **your own ballot**.

You are **prohibited** from delivering or returning any else's ballot, even if that person is your spouse, parent, child, grandparent, other relative, neighbor or friend.

If a voter has a disability or is voting by emergency absentee ballot, the voter may have someone deliver their ballot, **only if both parties have signed an official written authorization**.

Counterfeiting, forging, tampering with, or destroying ballots is a second-degree misdemeanor pursuant to sections 1816 and 1817 of the Pennsylvania Election Code (25 P.S. §§ 3516 and 3517).

Notify the **CHESTER COUNTY** election office immediately in the vent that this receptable is full, not functioning, or is damaged in any fashion.

Chester County Voter Services

[ccelectionofficials@chesco.org](mailto:ccelectionofficials@chesco.org)

(610) 344-6410

(emphasis original)

21. In the May 2022 primary election, the Board of Elections authorized 13 drop boxes.

22. Upon information and belief, the Board of Elections intends to utilize 13 drop boxes in the 2022 general elections.

23. In the 2022 primary, the Board of Elections had voter services staff members at 11 of the 13 drop boxes to monitor the drop boxes and, to among other things, assure that the drop boxes were used in compliance with the Election Code, including, assuring that only a person was only delivering his or her own ballot to the drop box.

24. Moreover, those 11 drop boxes were only accessible 9 a.m. – 6 p.m. Monday through Friday and 10:00 a.m. – 2 p.m. on Saturday.

25. However, 2 of the drop boxes were accessible 24 hours per day.

26. But those drop boxes, unlike the other 11, were not physically staffed in person and monitored by voter services staff members.

27. Rather, activity at those drop boxes was recorded with security cameras.

28. On May 17, 2022, plaintiff, Campbell, made a right to know request to the Board of Elections seeking a copies of the video recordings of those security cameras.

29. Pursuant to that right to know request, the Board of Elections produced copies of those videos.

30. Those videos showed that over 400 individuals deposited void and invalid ballots at the drop box that was not physically monitored located at 601 Westtown Road, West Chester.

31. Those videos showed that over 400 individuals ignored the plain and unambiguous instructions of the Board of Election that (a) “you must only return your own ballot” and (b) you are prohibited from delivering or returning anyone else’s ballot, even if that person is your spouse, parent, child, grandparent, other relative, neighbor, or friend.”

32. In numerous instances individuals delivered more than 2 ballots.

33. Examples of individuals delivering more than 2 ballots are depicted in the screen shots from the video of the drop box at 601 Westtown Road appear below:

34. This means that at least 400 invalid and void ballots were deposited into just one drop box, which were then canvassed and counted.

35. A review of the security camera footage of the other drop box that was not physically monitored in person has not been completed but it is fair to assume that a similar number of void and invalid ballots were deposited at that location as well.

36. To underscore the significance of that number of votes, consider that the Pennsylvania Republican primary for United States Senate was decided by less than 900 votes.

37. Accordingly, these void and invalid ballots have the potential impact the results of an election.

38. Upon information and belief, the Board of Election intends to utilize the drop boxes in the same manner as it did for the 2022 primary election for the upcoming 2022 general election.

39. That is, it intends to have 11 of the 13 drop boxes physically monitored, in person, by voter services staff member and only available between. But, as in the primary, 2 of the drop boxes will have *no* in person monitoring.

40. Surely, like in the primary, individuals will delivery ballots that do not belong to them.

41. Moreover, the general election is likely to see a greater number of people delivering ballots that do not belong them.

42. Accordingly, plaintiffs seek injunctive relief and mandamus to compel defendants to have *all* drop boxes (not only 11 of 13) used by Chester County in the upcoming general election physically monitored, in person, to assure that an individual only deposits one ballot *belonging only to that individual* into the drop box.

43. Defendants do not currently maintain written procedures or instructions to assure that disabled voters and their agents comply with Commonwealth law.

44. This creates the risk that any voters, rather than simply disabled voters, will designate agents to deliver his or her ballot.

45. So, plaintiffs seek injunctive relief to require that all disabled voters complete and file a designated agent form prepared by the Commonwealth before depositing a ballot on behalf of a disabled voter.

46. A special and preliminary injunction is necessary to prevent the Chester County Board of Elections from receiving void and invalid ballots that are delivered by third parties and then commingling those ballots with validly cast ballots.

47. The five elements for the issuance of a preliminary injunction are (1) the injunction is necessary to prevent immediate and irreparable harm, which cannot be compensated by damages; (2) greater injury would result by refusing it than by granting it; (3) an injunction will restore the parties to the status quo as it existed immediately before the alleged wrongful conduct; (4) the alleged wrong is manifest, and the injunction is reasonably suited to abate it; and (5) the plaintiff's right to relief is clear. *Kierski v. Twp. of Robinson*, 810 A.2d 196, 198 (Pa.Cmwlth. 2002).

48. Each of these five elements exists here.

49. First, plaintiffs will suffer irreparable harm in that the void or invalid ballots will dilute their validly cast ballots— and the validly cast ballots of other voters— thereby impinging on their fundamental right to vote under the United States Constitution and their right to a free and fair election under the Pennsylvania Constitution.

50. As in *Pierce v. Allegheny Cty. Bd. of Elections*, 324 F.Supp.2d 684, 691 (W.D. Pa. 2003), injunctive relief is necessary to preclude the commingling of ballots delivered by third parties and “if relief is not granted, the hand-delivered ballots would be rendered unidentifiable and any practical opportunity for the ballots to be challenged would be eliminated.”

51. Plaintiffs will also suffer irreparable harm because the Chester County Board of Elections will be conducting an election in contravention of the Pennsylvania election code. *Shaeffer v. City of Lancaster*, 754 A.2d 719, 723 (Pa.Cmwlth. 2000) (“Statutory violations are sufficiently injurious to constitute irreparable harm.”)



52. Second, greater injury will result if the injunction is not entered than if it is granted.

53. If the injunction is not entered plaintiffs' fundamental right to vote will be lost because their votes will be cancelled by invalid votes delivered by third parties and the election will not be free or fair because invalid and void votes will be counted.

54. Conversely, there will be no harm to the Chester County Board of Elections.

55. Indeed, the requested relief seeks only to compel defendants to do what they are already doing at 11 of 13 drop boxes.

56. Defendants/respondents can continue to use drop boxes provided they institute adequate procedures at all 13 drop boxes (not just 11 of 13) to assure that only the voter delivers an absentee or mailed ballot to the drop box, such as placing the drop boxes inside and open only during normal business hours where the delivery of the ballot can be verified.

57. Third, the injunction will maintain the status quo because it will assure that the drop boxes do not receive invalid ballots.

58. Fourth, the requested injunction is limited to abate the harm.

59. Indeed, the preliminary injunction would not prohibit the use of ballot drop boxes. It only requires defendants to use 2 unmanned drop boxes in the same manner that it uses 11 other drop boxes and to assure that the ballot is delivered to the drop box only by the person to whom it belongs and, in a manner, otherwise consistent with the Election Code.

60. Fifth, plaintiffs' right to relief is clear.

### **Demand for Relief**

WHEREFORE, Plaintiffs, Daryl Campbell, James C. Romine, and Sandra Lynn Bowman, respectfully request that this Court grant their emergency petition for a special and preliminary injunction award the following relief:

1. Enjoining Defendants and anyone acting through, with, or on behalf of them, from using drop boxes to receive absentee or mailed ballots unless they are placed inside a building and accessible only Monday through Saturday and during normal business hours, for example from 9:00am to 6:00pm.

2. Enjoining Defendants and anyone acting through, with, or on behalf of them, from using drop boxes to receive absentee or mailed ballots unless they are physically monitored in-person to assure that the person delivering the ballot is only delivering his or her own ballot, unless the person is an authorized designated agent of a disabled voter with the proper affidavit signed by the voter and verified by the election board.

3. Enjoining Defendants and anyone acting through, with, or on behalf of them, from accepting, counting, or canvassing any mailed or absentee ballot that was delivered by a person other than the voter himself or herself, except for ballots delivered by an authorized designated agent of a disabled voter who has executed and filed a designated agent form;

4. Compelling Defendants to fulfill their statutory duties to assure that void and invalid ballots are not commingled with valid ballots and not counted in the November 8, 2022 general election and all elections thereafter; and

5. Entering any other appropriate relief.

Respectfully submitted,

Dated: October 12, 2022

/s/ Walter S. Zimolong  
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## CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was served upon all counsel of record on October 12, 2022 by this Court's electronic filing system.

/s/ Walter S. Zimolong III

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