

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY,
PENNSYLVANIA

DONALD J. TRUMP FOR
PRESIDENT, INC.

Plaintiff,

v.

PHILADELPHIA COUNTY BOARD OF
ELECTIONS; COMMISSIONER LISA M.
DEELEY IN HER OFFICIAL CAPACITY;
COMMISSIONER AL SCHMIDT IN HIS
OFFICIAL CAPACITY; COMMISSIONER
OMAR SABIR IN HIS OFFICIAL
CAPACITY

Defendants.

: CIVIL ACTION - EQUITY

:
: Case No. _____

:
: **ELECTION MATTER**

:
: Filed on behalf of:
: Donald J. Trump for President, Inc.

VERIFIED COMPLAINT IN EQUITY

NOW COMES Donald J. Trump for President, Inc. and states the following as its Complaint against the Defendants, Philadelphia County Board of Elections, Commissioner Lisa M. Deeley in her Official Capacity, Commissioner Al Schmidt in his Official Capacity and Commissioner Omar Sabir in his Official Capacity:

INTRODUCTION

1. Bad things are happening in Philadelphia. While transparency and accountability are hallmarks of election integrity, the actions of Philadelphia election officials to date have undermined election integrity by shrouding the casting of ballots in secrecy.

2. Long ago, the United States Supreme Court noted: “[S]unlight,” as has so often

been observed, “is the most powerful of all disinfectants.” *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 305 (1964). Indeed, “openness of the voting process helps prevent election fraud, voter intimidation, and various other kinds of electoral evils.” *PG Publishing Co. v. Aichele*, 705 F.3d 91 (3d Cir. 2013).

3. Donald J. Trump for President, Inc., brings this action to ensure free, fair, open, transparent, and accountable elections for all Americans.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this Complaint, and venue in this Court is proper, because the Defendants are all residents, or maintain their principal places of business, in Philadelphia County, Pennsylvania, and because all or part of the claim for relief at issue in this litigation arose in Philadelphia County, Pennsylvania.

PARTIES

5. Plaintiff Donald J. Trump for President, Inc. (hereinafter, the “Trump Campaign”), is the principal committee for the reelection campaign of Donald J. Trump, the 45th President of the United States of America (hereinafter, “President Trump”). President Trump is the Republican candidate for the office of the President of the United States of America in the upcoming November 3, 2020 General Election. The Trump Campaign brings this action for itself and on behalf of its candidate, President Trump. President Trump is a “candidate” as that term is defined in Election Code Section 102(a), 25 P.S. § 2602(a). *See Rowland v. Smith*, 83 Pa. D. & C. 99, 101-2 (Pa. Ct. Com. Pl. Dauphin 1952) (“candidate” under the Election Code includes one who is a candidate for nomination for President of the United States). The Trump Campaign is a “political body” as that term is defined in 25 P.S. § 1102. *See In re Canvass of Absentee Ballots of November 4, 2003*, 839 A.2d 451, 457 (Pa. Commw. Ct. 2003) (Under

Election Code, status given to political bodies grants standing regarding watchers), *rev'd on other grounds* 843 A.2d 1223 (Pa. 2004); *In re General Election-1985*, 531 A.2d 836, 838 (Pa. Commw. Ct. 1987) (a candidate for office in the election at issue suffers a direct and substantial harm sufficient for standing to contest the manner in which an election will be conducted).

6. Defendant Philadelphia County Board of Elections is responsible for overseeing the conduct of elections in Philadelphia County, including the conduct of election personnel at polling locations throughout the county as well as at the County Board of Elections and satellite election offices throughout Philadelphia County. Its principal place of business is located at Philadelphia City Hall, Room 142, 1400 John F. Kennedy Blvd., Philadelphia, PA 19107.

7. Defendant Lisa M. Deeley is a Philadelphia City Commissioner. She is the Chairwoman of the Philadelphia City Commissioners Office. The Philadelphia City Commissioners are elected by the citizens of the County of Philadelphia to four year terms and are responsible for voter registration and conducting elections. She is being sued in her official capacity as a Philadelphia City Commissioner. Her official address is City Hall Room 130, Philadelphia, PA 19107.

8. Defendant Al Schmidt is a Philadelphia City Commissioner. He is the Vice-Chair of the Philadelphia City Commissioners Office. The Philadelphia City Commissioners are elected by the citizens of the County of Philadelphia to four-year terms and are responsible for voter registration and conducting elections. He is being sued in his official capacity as a Philadelphia City Commissioner. His official address is City Hall Room 134, Philadelphia, PA 19107.

9. Defendant Omar Sabir is a Philadelphia City Commissioner. He is the Secretary of the Philadelphia City Commissioners Office. The Philadelphia City Commissioners are

elected by the citizens of the County of Philadelphia to four-year terms and are responsible for voter registration and conducting elections. He is being sued in his official capacity as a Philadelphia City Commissioner. His official address is City Hall Room 132, Philadelphia, PA 19107.

BACKGROUND

I. The Election Permits Poll Watchers To Ensure Elections Are Free, Fair, And Transparent.

10. The United States Constitution reserves to the states the power to regulate elections. It instructs that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.” U.S. Const. art. I, § 4. The states have long exercised this authority, “enact[ing] comprehensive and sometimes complex election codes.” *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983).

11. In 1937, the Pennsylvania General Assembly crafted just such a comprehensive statutory scheme: the Pennsylvania Election Code. *See* 25 P.S. §§ 2600, *et. seq.*

12. “Although the [Commonwealth] is ultimately responsible for the conduct and organization of elections, the statutory scheme [promulgated by the Election Code] delegates aspects of that responsibility to the political parties. This delegation is a legislative recognition of ‘the critical role played by political parties in the process of selecting and electing candidates for state and national office.’” *Tiryak v. Jordan*, 472 F. Supp. 822, 823-24 (E.D. Pa. 1979) (quoting *Marchioro v. Chaney*, 442 U.S. 191, 195 (1979)).

13. Codified Section 2687 of the Election Code creates the position of poll watcher and entrusts to each candidate for nomination or election at any election, and each political party

and each political body which has nominated candidates for such elections, the power to appoint poll watchers. *See* 25 P.S. § 2687(a).

14. Under Section 2687(a), poll watchers are permitted inside “polling places” which the Election Code defines as “the room provided in each election district for voting at a primary or election.” *See* 25 P.S. §§ 2687(b) & 2602(q).

15. Poll watchers are permitted in polling places to help “guard the integrity of the vote.” *Tiryak*, 472 F. Supp. at 824. They also serve a decidedly partisan interest—assisting their party or candidate to keep track of who has voted to aid in “get out the vote” efforts. *Id.*

16. “Protecting the purity of the electoral process is a state responsibility and [poll watchers’] statutory role in providing that protection involves [them] in a public activity, regardless of [their] private political motives.” *Tiryak*, 472 F. Supp. at 824.

17. Moreover, poll watchers’ functions go beyond activities at polling places. Poll watchers are permitted to observe the registration of voters and attend “any public session or sessions of the county boards of elections, and at any computation and canvassing of returns of any primary or election and recount of ballots or recanvass of voting machines under the provisions of the [Election Code].” 25 P.S. § 2650(a).

18. The absence of poll watchers at polling places where registration and voting are occurring threatens the integrity of the vote in elections and denies voters the constitutional right to free and fair public elections under the United States and Pennsylvania Constitutions.

II. Pennsylvania Enacts No-Excuse Mail-In Voting.

19. On October 31, 2019, the Pennsylvania General Assembly enacted Act 77. *See* Act 2019-77 (S.B. 421), § 8, approved October 31, 2019, eff. October 31, 2019.

20. Act 77 made significant changes to Pennsylvania’s elections, including the adoption of no excuse mail-in voting for all qualified electors. *See, e.g.*, 25 P.S. §§ 3150.11-

3150.17.

21. Under the Election Code, as amended by Act 77, “a voter who presents the voter’s own application for an absentee or mail-in ballot within the office of the county board of elections during regular business hours may request to receive the voter’s absentee or mail-in ballot while the voter is at the office. This request may be made orally or in writing. Upon presentation of the application and the making of the request and upon approval under sections 1302.2 and 1302.2-D, the county board of elections shall promptly present the voter with the voter’s absentee or mail-in ballot.” *See* 25 P.S. § 3146.5(b)(2).

22. Further, under the Election Code, “[t]he county commissioners or other appropriate authorities of the county shall provide the county [election] board with suitable and adequate offices at the county seat, properly furnished for keeping its records, holding its public sessions and otherwise performing its public duties, and shall also provide, such branch offices for the board in cities other than the county seat, as may be necessary.” *See* 25 P.S. §2645(b).

23. Although she has no power or authority to intrude upon the province of the General Assembly and has no rule-making authority over the administration of elections conducted in Pennsylvania, Secretary of the Commonwealth Kathy Boockvar, as the head of the Pennsylvania Department of State, has issued “guidance” to the county election boards, which essentially constitutes her interpretation of Pennsylvania law, encouraging them to create satellite county election offices to facilitate the early voting of absentee and mail-in ballots. *See* “Pennsylvania Applications and Balloting Guidance: Mail-In and Absentee Ballots and Voter Registration Changes,” January 10, 2020, v. 1.0. A true and correct copy of the January 10, 2020 guidance is available at the Pennsylvania Department of State’s web site at [https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/PADOS Act%2077](https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/PADOS_Act%2077)

III. Philadelphia City Commissioners Establish Early Voting Sites for the Upcoming General Election.

24. On November 3, 2020, Pennsylvania will hold a general election, in which candidates for both state and federal office will be elected.

25. President Trump is the Republican candidate for the office of the President of the United States of America in the upcoming November 3, 2020 General Election and is on the ballot for the upcoming Pennsylvania general election.

26. On August 26, 2020, the Philadelphia City Commissioners announced the acceptance of a grant in the amount of \$10,016,074 from the Center for Tech and Civic Life, a Chicago, Illinois-based nonprofit funded by Google, Facebook, and a number of other organizations known to support Democrats and Democrat causes around the country. This grant essentially doubled the budget of the Philadelphia City Commissioners office, and the acceptance of the grant was premised in part on the establishment of satellite election offices for “in-person mail-in voting.”

27. On September 23, 2020, the Office of the Philadelphia City Commissioners announced that as of September 29, 2020, seven of its 15 planned satellite election offices would be opened in Philadelphia County. Pursuant to the notice published on www.philadelphiavotes.com: “These offices will allow voters to register to vote, if needed, request a mail-in ballot in-person, receive it, vote, and return it, all at the same location. In addition, voters could bring already voted ballots, making the satellite offices also drop-off locations.”

28. The seven satellite election offices opened on September 29, 2020, at the following locations in Philadelphia County: City Hall Room 140, 1400 John F Kennedy Blvd;

George Washington High School, 10175 Bustleton Ave; The Liacouras Center, 1776 N Broad St; Roxborough High School, 6498 Ridge Ave; Tilden Middle School, 6601 Elmwood Ave; Julia De Burgos Elementary, 401 W Lehigh Ave. and Overbrook Elementary School, 2032 N 62Nd St.

29. Pursuant to the notice published on www.philadelphiavotes.com, the satellite election offices will be open 7 days a week and will remain open through Election Day. The hours of operation are Monday through Thursday from 11:30 am until 6:30 pm and Friday through Sunday from 9:30 am until 4:30 pm.

IV. Although Allowing Photographs and the Press to be Present, Philadelphia City Commissioners Refuse to Permit Poll Watching at its Early Voting Satellite Sites.

30. On September 29, 2020, the first seven of Philadelphia's 15 satellite election offices opened.

31. According to Lisa Deeley, Chair of the Philadelphia Board of the City Commissioners, the satellite elections offices are "mail-in vot[ing] without having to use the mail." See The start of early voting in Philly was riddled with technical issues <https://www.inquirer.com>, <https://www.inquirer.com/politics/election/philadelphia-pennsylvania-early-voting-offices-open-20200929.html> (last visited Oct 1, 2020).

32. The photograph accompanying the Inquirer story showed reporters, photographers and videographers standing shoulder to shoulder, inside the satellite election offices, where voting occurred. Thus, the City Commissioners allowed the press access to these sites to observe, ask questions, take pictures, and shoot videos but denied the Campaign the same courtesy.

33. On September 29, 2020, qualified registered electors of Philadelphia County appeared at the satellite election offices on behalf of the Campaign to observe voters casting their

ballots and to observe the operations of these satellite election offices as the business conducted appears to essentially be a public session of the county board of elections.

34. The watchers did not attempt to enter any non-public spaces within the satellite election offices, nor interfere with the voting process in any way, nor mark or alter any official election record.

35. Representatives of the County Board of Elections denied admission to all representatives of the Campaign who sought to observe the operations of the satellite election offices.

36. Philadelphians began voting at the satellite election offices on September 29, 2020 at 11:30 am.

37. The Philadelphia County Board of Elections is funded by taxpayer dollars.

38. On September 29, 2020, counsel for the Campaign sent correspondence to the Philadelphia City Commissioners, requesting watcher certificates for duly qualified electors under 25 Pa. Stat. Ann. § 2687 and the right to have watchers in the satellite election offices. In the alternative, the Campaign requested access to public, taxpayer funded spaces. Attached hereto and made part hereof as Exhibit A is a true and correct copy of the September 29, 2020 letter.

39. On September 30, 2020, the Philadelphia Law Department responded to the Campaign's request, refusing entry except for a single tour of the satellite offices "to see how they operate." Attached hereto and made part hereof as Exhibit B is a true and correct copy of the September 30, 2020 letter.

40. The Campaign responded, again requesting either the opportunity for watchers or access to the public offices. Attached hereto and made part hereof as Exhibit C is a true and

correct copy of the September 30, 2020 letter.

41. At some point, the Biden-Harris Coordinated Campaign/PA Dems Voter Protection team began recruiting “Vote-Early Monitors” via a website and encouraging users to share on social media with the hashtag #BackToBluePA in order to assemble a team to “monitor vote-early locations and educate voters in Philadelphia” at the Philadelphia satellite elections offices that opened on September 29, 2020. *See* Events & Volunteer Opportunities to Elect PA Democrats · Mobilize, https://www.mobilize.us/padems/?tag_ids=172 (last visited Oct 1, 2020).

VIOLATION OF 25 PA. STAT. ANN. § 2687

42. Plaintiff incorporates the allegations of Paragraphs 1 through 41 of the Complaint herein by this reference.

43. Defendants Philadelphia County Board of Elections, Commissioner Lisa M. Deeley, Commissioner Al Schmidt and Commissioner Omar Sabir violated 25 Pa. Stat. Ann. § 2687 by:

a. refusing to allow Campaign representatives to enter the public areas of the satellite election offices where voters were casting ballots to serve as a watchers, as required by 25 Pa. Stat. Ann. § 2687;

b. refusing to allow Campaign representatives to remain in an unobtrusive area of the polling location from where they could reasonably see and hear what was occurring at the polling location without interfering with election officers or the smooth progress of voting, consistent with 25 Pa. Stat. Ann. § 2687;

VIOLATION OF 25 PA. STAT. ANN. § 2650

44. Plaintiff incorporates the allegations of Paragraphs 1 through 43 of the Complaint herein by this reference.

45. Defendants Philadelphia County Board of Elections, Commissioner Lisa M. Deeley, Commissioner Al Schmidt and Commissioner Omar Sabir violated 25 Pa. Stat. Ann. § 2650 by:

a. refusing to allow Campaign representatives appointed as watchers to represent the Campaign at the satellite election offices where the business of the Board of Elections is occurring which constitutes a public session, as required by 25 Pa. Stat. Ann. § 2650;

b. refusing to allow Campaign representatives who are attorneys in fact duly authorized to participate in proceedings before the Philadelphia County Board of Elections where matters which may affect the candidacy of Donald J. Trump are being heard as required by 25 Pa. Stat. Ann. § 2650 (b).

46. Defendants Philadelphia County Board of Elections, Commissioner Lisa M. Deeley, Commissioner Al Schmidt and Commissioner Omar Sabir were notified about their violation of the Campaign representatives' rights under 25 Pa. Stat. Ann. § 2650 and § 2687, but refused to take timely and effective action. Attached hereto, and made part hereof, as Exhibit A is a true and correct copy of correspondence from counsel for the Campaign to Defendants regarding this matter. To date the Board has not responded to this correspondence.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

a. A declaratory judgment that Defendants violated the rights of representatives from the Campaign under 25 Pa. Stat. Ann. §§ 2650 and 2687;

b. A Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction requiring Defendants to allow representatives of the Campaign to enter and remain in the satellite election offices to serve as a watchers pursuant to 25 Pa. Stat. Ann. §§ 2650 and

2687. Specifically, Defendants, as well as their officers, agents, servants, employees, attorneys, and any persons acting in active concert or participation with them, shall:

(1) provide watcher certifications and allow watchers to enter and remain in public areas of the satellite election offices during all hours of operation;

(2) allow watchers to remain in a public area within the satellite election offices during all days and times said offices are open to the public, from which they reasonably may see and hear what is occurring at the satellite election office;

c. Such other and further relief as equity and the nature of the case shall require and the court deems just.

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Dated: October 1, 2020

Respectfully submitted,

/s/ Linda A. Kerns

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VERIFICATION

I hereby swear or affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/ James J. Fitzpatrick
James J. Fitzpatrick, PA EDO Director
Donald J. Trump for President, Inc.

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