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**Motions for Admission Pro Hac Vice Forthcoming*

Attorneys for Plaintiff

**IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA**

MATT CARTWRIGHT,

Plaintiff,

v.

LUZERNE COUNTY BOARD OF
ELECTIONS,

Defendant.

No. _____

**COMPLAINT IN MANDAMUS AND
FOR INJUNCTIVE AND DECLARATORY RELIEF**

INTRODUCTION

1. In Pennsylvania, certification of election results by a county board of elections is a ministerial act—one which the board is required to perform and has no discretion to refuse. The board must canvass and compute the election returns from various districts in the county and must certify the computed returns no later than the third Monday following the primary or election. For the November 8 general election, the deadline for county boards to certify election results was November 28.

2. County boards must comply with this non-discretionary duty regardless of whether they agree with the results. The Election Code confers no authority to delay certification and thwart the will of the people for *any* reason, much less oblique references to irregularities, none of which have been established in court or supported with any evidence that could call the election results into question.

3. Notwithstanding its clear and mandatory legal duty, the Luzerne County Board of Elections (the “Board”) refused to execute its mandatory duty to certify the results of the 2022 general election for Pennsylvania’s Eighth Congressional District by the November 28, 2022 statutory deadline. The winning candidate in that race—United States Representative Matt Cartwright—petitions this Court to enforce the Board’s compliance with the Election Code and clarify that the certification of election results is not a discretionary decision for the county board to make, but rather a ministerial act that must be completed under the timeline established by Pennsylvania law. That deadline has passed, yet the Board continues to ignore its statutory duty. Plaintiff is thus entitled to a court order mandating the immediate certification of his victory.

JURISDICTION

4. This Court has original jurisdiction under 42 Pa. C.S.A. § 931(a).

5. Venue over this complaint in mandamus is proper where the cause of action arose and where the Luzerne County Board of Elections is located. Pa. R.C.P. 1092(c)(1), (2).

PARTIES

6. Plaintiff is United States Representative Matt Cartwright, the candidate for reelection representing the Commonwealth's Eighth Congressional District, which includes parts of Luzerne County.

7. Defendant is the Luzerne County Board of Elections. The Board has "jurisdiction over the conduct of primaries and elections" in Luzerne County. 25 P.S. § 2641(a). As part of the Board's responsibilities, it must "receive from district election officers the returns of all primaries and elections," "canvass and compute the same," and "certify, no later than the third Monday following the primary or election, the results thereof to the Secretary of the Commonwealth." *Id.* § 2642(k).

STATEMENT OF FACTS

8. County Boards of Elections are obligated to certify election results. Election districts canvas and count all lawfully cast ballots and send those returns to their corresponding county board of election. 25 P.S. § 3154(f). Boards then convene three days after a general election to compute and canvass the election returns they received from their election districts. *Id.* § 3154(a). Election boards compute and canvas said returns by maintaining all the returns that are entitled to be counted and adding them together. *Id.* § 3154(f).

9. Once a county board has added together the returns from its election districts, it announces unofficial election results. *Id.* Five days later, or once all recounts and recanvasses are completed, the county is required to certify its results. *Id.*; see also *Chapman v. Berks Cnty. Bd. of Elections*, No. 355 M.D. 2022, 2022 WL 4100998, at *2 (Pa. Cmwlth. Aug. 19, 2022) ("the county

board shall certify the returns so computed in said county in the manner required by the Election Code, unless an appeal or recount requires revision of the returns, which will be revised and then certified”) (internal quotations omitted).

10. The certification must take place “no later than the third Monday following” the election. 25 P.S. § 2642(k).

11. County boards must “compute and certify the votes justly regardless of any fraudulent or erroneous returns presented to it and shall report the facts to the district attorney of the proper county for action.” *Id.* § 3154(d)(3).

12. County boards have no discretion in fulfilling their statutory duties to canvass and compute election returns and certify the election. *In re Mun. Reapportionment of Twp. of Haverford*, 873 A.2d 821, 833 n.17 (Pa. Cmwlth. 2005) (citing *Shroyer v. Thomas*, 81 A.2d 435 (Pa. 1951)).

13. In 2022, Representative Cartwright sought reelection to represent Pennsylvania’s Eighth Congressional District, which includes parts of Luzerne County.

14. The election was held on November 8, 2022.

15. The Board canvassed mail-in and Election Day ballots and submitted unofficial results to the Secretary of the Commonwealth on November 16, 2022.

16. On November 18, 2022, the Board completed the counting of mail-in and provisional ballots with only the adjudication of write-ins, overvotes (meaning a voter selected more than one candidate in a race), and stray marks remaining to be completed. *See* Jake Sawar, *Luzerne County Finishes Mail-In and Provisional Counting*, Fox56 Wolf (Nov. 18, 2022), <https://fox56.com/news/local/luzerne-county-finished-mail-in-and-provisional-counting>.

17. On Monday, November 28, 2022, the Board held a special meeting to certify the November 8, 2022, general election. Two members voted in favor of certification, two members voted against certification, and one member abstained.

18. None of the Board members provided any legal citation or justification for failing to certify the election.

COUNT I WRIT OF MANDAMUS

19. Plaintiff realleges and incorporates by reference the preceding allegations in this Complaint as if fully set forth herein.

20. Plaintiff is entitled to a writ of mandamus where he seeks enforcement of a ministerial act and can establish a clear right to relief, Defendant's failure to discharge a corresponding duty, and the lack of any other adequate alternative remedy. *MFW Wine Co., LLC v. Pa. Liquor Control Bd.*, 231 A.3d 50, 56 (Pa. Cmwlth. 2020) (citing *Baron v. Dep't of Hum. Servs.*, 169 A.3d 1268, 1272 (Pa. Cmwlth. 2017) (en banc), *aff'd*, 648 Pa. 574, 194 A.3d 563 (2018)).

21. Ministerial acts are those which "a public officer is required to perform upon a given state of facts and in a prescribed manner in obedience to the mandate of legal authority." *Phila. Firefighters' Union, Loc. 22, Int'l Ass'n of Firefighters, AFL-CIO ex rel. Gault v. City of Philadelphia*, 119 A.3d 296, 303 (Pa. 2015) (internal citations omitted).

22. Under Pennsylvania law, county boards are required to certify the election results they receive from their election districts after these results have been computed and canvassed. 25 P.S. §§ 2642(k), 3154(f).

23. Boards must certify the election returns "no later than the third Monday following the primary or election." *Id.* § 2642(k).

24. Boards must also “compute and certify the votes justly regardless of any fraudulent or erroneous returns presented to it and shall report the facts to the district attorney of the proper county for action.” *Id.* § 3154 (d)(3).

25. Furthermore, “[t]he duties of a board of elections under the Election Code are ministerial and allow for no exercise of discretion.” *In re Mun. Reapportionment of Twp. of Haverford*, 873 A.2d at 833 (quoting *Shroyer*, 81 A.2d 435).

26. The 2022 general election took place on Tuesday, November 8. Under Pennsylvania law, the Board had until Monday, November 28 to certify the election returns. Yet it failed to do so, with two of its five board members instead voting *not* to certify the results of the 2022 general election and one abstaining.

27. The Board has already violated its statutory duty to certify the election by the third Monday following election day and will continue to do so absent this Court’s intervention.

28. Plaintiff’s right to relief is clear because he is the winning candidate in an election that the Board refuses to certify. He is entitled to the immediate certification of his victory.

29. Plaintiff has no alternative recourse to direct the Board to certify the election results absent a court order.

30. This Court should therefore issue a writ of mandamus directing the Board to complete its statutorily prescribed obligation to certify the results of the 2022 general election.

COUNT II DECLARATORY AND INJUNCTIVE RELIEF

31. Plaintiff realleges and incorporates by reference the preceding allegations in this Complaint as if fully set forth herein.

32. County boards are obligated to compute and canvass the election results they receive from their corresponding election districts. 25 P.S. §§ 2642(k), 3154(f). Once the

computation and canvassing has been finalized, county boards must “certify the returns” by the third Monday following the election. *Id.* §§ 3154(f), 2642(k).

33. County boards have no discretion in carrying out their statutory duties under the Election Code, including their duty to canvass and compute election returns and to certify elections. *See In re Mun. Reapportionment of Twp. of Haverford*, 873 A.2d at 833 n.17 (citing *Shroyer*, 81 A.2d 435); 25 P.S. § 2642(k).

34. Indeed, boards must certify the result of election returns regardless of any error or fraud that is discovered during the count or certification process. 25 P.S. § 3154(d)(3).

35. The Luzerne County Board of Elections has failed to timely certify the results of the 2022 general election, in violation of 25 P.S. §§ 3154(f), 2642(k).

36. This Court “ha[s] power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” 42 Pa. C.S.A. § 7532.

37. This Court should declare that Pennsylvania law requires the Luzerne County Board of Elections to certify the results of the 2022 general election without any further delay.

38. Injunctive relief is warranted where the party seeking relief establishes “that his right to relief is clear, that an injunction is necessary to avoid an injury that cannot be compensated by damages, and that greater injury will result from refusing rather than granting the relief requested.” *Kuznik v. Westmoreland Cnty. Bd. of Comm’rs*, 902 A.2d 476, 489 (Pa. 2006) (quoting *Harding v. Stickman*, 823 A.2d 1110, 1111 (Pa. Cmwlth. 2003)).

39. Plaintiff’s right to relief is clear because he is the winning candidate in an election that the Board refuses to certify. He is entitled to the immediate certification of his victory.

40. The Board’s refusal to certify Plaintiff’s victory cannot be compensated by damages, and the injury that will result from refusing to grant the injunction will far outweigh

any injury to the Board from granting the relief requested. Indeed, the Board will suffer no injury from being ordered to discharge its mandatory statutory duty.

41. This Court should issue an injunction directing the Luzerne County Board of Elections to remedy its violation of 25 P.S. §§ 3154(f) & 2642(k) by immediately certifying the results of the 2022 general election.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court order the following relief:

1. Issue a writ of mandamus compelling the Luzerne County Board of Elections to certify immediately results for the November 8, 2022 general election;
2. Declare that the Luzerne County Board of Elections is obligated by Pennsylvania law to certify results for the November 8, 2022 general election;
3. Enjoin the Luzerne County Board of Elections from further delaying certification of the results for the November 8, 2022 general election; and
4. Grant such further relief as may be necessary.

Dated: November 29, 2022

Respectfully submitted,

By: /s/ Timothy J. Ford

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Counsel for Plaintiff

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VERIFICATION

I, Timothy J. Ford, verify that that the facts set forth in the foregoing pleading are true and correct to the best of my personal knowledge, and to the extent they are based upon information provided by others, they are true and correct to the best of my knowledge, information and belief. This Verification is made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: November 29, 2022

/s/ Timothy J. Ford

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