

IN THE COURT OF COMMON PLEAS OF MONROE COUNTY, PENNSYLVANIA

MONROE COUNTY REPUBLICAN
COMMITTEE, JOSEPHINE FERRO,
THOMAS C. WHITEHEAD, and PETER
BEGLEY,

Plaintiffs,

v.

MONROE COUNTY BOARD OF
ELECTIONS, JOHN D. CHRISTY,
County Commissioner of Monroe County,
Pennsylvania, SHARON S.
LAVERDURE, County Commissioner of
Monroe County, Pennsylvania,

Defendants.

: CIVIL DIVISION

:
: No. 7228 CV 22

:
: **MEMORANDUM OF LAW IN SUPPORT**
: **OF PLAINTIFFS' MOTION FOR**
: **PRELIMINARY INJUNCTION**
: **WITHOUT PRIOR NOTICE AND**
: **HEARING AND APPLICATION FOR**
: **RELIEF PURSUANT TO 42 PA.C.S. §**
: **7531, et seq., et al.**

: Filed on Behalf of Plaintiffs:

: MONROE COUNTY REPUBLICAN
: COMMITTEE, JOSEPHINE FERRO,
: THOMAS C. WHITEHEAD and PETER
: BEGLEY

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Monroe County PA Prothonotary
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COMMITTEE, JOSEPHINE FERRO,	:	
THOMAS C. WHITEHEAD, and PETER	:	No.
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Plaintiffs,	:	
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MONROE COUNTY BOARD OF	:	
ELECTIONS, JOHN D. CHRISTY,	:	
County Commissioner of Monroe County,	:	
Pennsylvania, SHARON S.	:	
LAVERDURE, County Commissioner of	:	
Monroe County, Pennsylvania,	:	
	:	
Defendants.	:	

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION WITHOUT PRIOR NOTICE AND HEARING AND
APPLICATION FOR RELIEF PURSUANT TO 42 PA.C.S. § 7531, et seq., et al.**

Plaintiffs, by and through their undersigned counsel, file the within Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Injunction without Prior Notice and Hearing and Application for Relief pursuant to 42 Pa.C.S. § 7531, *et seq., et al.*, stating in support thereof as follows:

INTRODUCTION

The Monroe County Board of Elections (the "Board"), by and through its two Commissioners, John D. Christy and Sharon S. Laverdure (the "Commissioner Defendants"), have disregarded the Pennsylvania Election Code (the "Election Code") and violated the Pennsylvania Sunshine Act (the "Sunshine Act"). Egregiously, a swath of individuals, including the members of the Board and partisan participants, unilaterally decided to pre-canvass ballots before 7:00 a.m. on Election Day in direct contravention of the Election Code. The Board's violation of the Election

Code constitutes *per se* irreparable harm, and Plaintiffs respectfully ask this Honorable Court to enter an immediate declaratory judgment and injunction ordering the Board to stop pre-canvassing the ballots. Plaintiffs have filed a Complaint for Declaratory Judgment and Emergency Injunctive Relief as well as a Motion for Preliminary Injunction without Prior Notice and Hearing and Application for Relief Pursuant to 42 Pa.C.S. § 7531, *et seq.*, *et al.*, which pleadings Plaintiffs incorporate by reference as if fully set forth at length herein.

STANDARD OF REVIEW

As set forth by Rule 1531 of the Pennsylvania Rules of Civil Procedure,

[a] court shall issue a preliminary or special injunction only after written notice and hearing unless it appears to the satisfaction of the court that immediate and irreparable injury will be sustained before notice can be given or a hearing held, in which case the court may issue a preliminary or special injunction without a hearing or without notice.

Pa. R.C.P. 1531(a).

Further, Section 7538 of Pennsylvania's Declaratory Judgments Act provides that, "[j]udicial relief based on a declaratory judgment or decree may be granted whenever necessary or proper, subject to Chapter 55 (relating to limitation of time)." 42 Pa.C.S. § 7538(a).

Here, Plaintiffs seek a preliminary injunction without notice and hearing to enjoin the illegal actions of the Monroe County Board of Elections, as set forth herein. In the alternative, Plaintiffs are seeking a permanent injunction pursuant to 42 Pa.C.S. § 7538(a) to effectuate the declarations sought in Plaintiffs' Complaint for Declaratory Judgment and Emergency Injunctive Relief.

The six essential prerequisites that a moving party must show to obtain a preliminary injunction are:

- 1) the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages;
- 2) greater injury would result from refusing the injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings;
- 3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct;
- 4) the party seeking injunctive relief has a clear right to relief and is likely to prevail on the merits;
- 5) the injunction is reasonably suited to abate the offending activity; and,
- 6) the preliminary injunction will not adversely affect the public interest.

See Warehime v. Warehime, 860 A.2d 41, 46-47 (Pa. 2004); *citing Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003).

ARGUMENT

As an initial matter, Defendant Monroe County Board of Elections' conduct in pre-canvassing ballots, removing mail-in and absentee ballots from their secure containers, and disclosing the results of the County's pre-canvass, all in violation of Pennsylvania's Election Code, has created immediate and irreparable harm, as Defendant's conduct is ongoing as of the time of the filing of the within Memorandum of Law. As such, immediate and irreparable harm will occur before notice can be provided and a full hearing conducted, as contemplated by Rule 1531 of the Pennsylvania Rules of Civil Procedure.

Plaintiffs meet each of the above-cited requirements for the granting of a Preliminary Injunction without Notice and Hearing.

For purposes of a preliminary injunction, irreparable harm is established where the offending conduct sought to be restrained violates a statutory mandate. *See SEIU Healthcare Pennsylvania v. Commonwealth*, 104 A.3d 495, 508 (Pa. 2014).

As stated in Section 3146.8 of Pennsylvania's Election Code,

[t]he county board of elections shall meet no earlier than seven o'clock A.M. on election day to pre-canvass all ballots received prior to the meeting. A county board of elections shall provide at least forty-eight hours' notice of a pre-canvass meeting by publicly posting a notice of a pre-canvass meeting on its publicly accessible Internet website. One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the absentee ballots and mail-in ballots are pre-canvassed. 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.

25 P.S. § 3146.8(g)(1.1).

Further, Pennsylvania's Election Code requires that, "upon receipt" of an absentee or mail-in ballot, the board "shall safely keep the ballots in sealed or locked containers until they are to be canvassed by the county board of elections." 25 P.S. § 3146.8(a).

The Monroe County Board of Elections, in direct violation of the requirements of 25 P.S. § 3146.8, have started pre-canvassing mail-in and absentee ballots before November 8, 2022, by inspecting already received and processed mail-in and absentee ballots. In doing so the County Board of Elections has entered into the secured facility which stores the mail-in and absentee ballots required under the Election Code where such ballots are to remain in protective custody until the official pre-canvass commences on Election Day.

The conduct of the Board of Elections in violating the requirements of 25 P.S. § 3146.8 satisfies the first element for obtaining a preliminary injunction requiring immediate and irreparable harm that cannot be adequately compensated by damages. *See SEIU Healthcare Pennsylvania v. Commonwealth*, 104 A.3d 495, 508 (Pa. 2014).

Greater injury will result from refusing the injunction than from granting it as should an injunction not issue, Defendants will be permitted to continue in their flagrant violations of Pennsylvania's Election Code by pre-canvassing mail-in and absentee ballots prior to November

8, 2022 and by removing the mail-in and absentee ballots from their secured containers required by the Election Code. Defendants' conduct is ongoing and continuous as of the time of the filing of the within Memorandum. Should Defendants not be stopped from their egregious violations of Pennsylvania law, such conduct will continue to occur.

Plaintiffs' injunction will properly restore the status quo as it existed prior to Defendants improper/illegal directives to pre-canvass mail-in ballots prior to November 8, 2022 as Plaintiffs' injunction will require Defendants to comply with 25 P.S. § 3146.8 by forcing the Defendants to wait until the proper time for pre-canvassing and further forcing Defendants to maintain the ballots in their secured containers until the proper time for canvassing.

As set forth herein, as Defendants conduct clearly violates the provisions of Pennsylvania's Election Code and Pennsylvania's Sunshine Act, Plaintiffs are likely to prevail on the merits of their claims.

Plaintiffs' injunction is reasonable, necessary, and narrowly tailored to abate the violations of the Election Code and Pennsylvania's Sunshine Act as it simply seeks to enjoin the Defendants from proceeding in their illegal course of conduct in pre-canvassing mail-in ballots prior to November 8, 2022 and will require the Defendants to maintain the ballots in their secured containers until the proper time for canvassing, as already required under Pennsylvania's Election Code.

Lastly, Plaintiffs' injunction will not adversely affect the public interest. Rather, Plaintiffs' injunction will further the public's interest in maintaining the integrity of Pennsylvania's Elections and will advanced the interests of law-abiding registered electors in Monroe County.

WHEREFORE, Plaintiffs respectfully request that the Court set aside the aforesaid Monroe County Board of Elections' directives, and further request declaratory and injunctive relief that includes, but is not limited to the following:

1. an order enjoining the Monroe County Board of Elections from pre-canvassing ballots;
2. an order declaring that the Monroe County Board of Elections' actions are in violation of the Election Code;
3. an order declaring that the Monroe County Board of Elections' actions are in violation of the Sunshine Act;
4. an order directing that the Monroe County Board of Elections fully comply with Pennsylvania law and cease such unlawful activities as are heretofore described;
5. an order directing that the Monroe County Board of Elections set aside any mail-in and absentee ballots improperly pre-canvassed and removed from their secure containers in violation of Pennsylvania's Election Code; and
6. an order granting any such further relief as may be just or appropriate in the circumstances, including an award of counsel fees to the Plaintiffs.

Respectfully submitted,

**DILLON, McCANDLESS, KING,
COULTER & GRAHAM LLP.**

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Counsel for Plaintiffs

CERTIFICATE OF COMPLIANCE

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



Thomas W. King, III
Thomas E. Breth

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THOMAS C. WHITEHEAD, and PETER : No.
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V.

Defendants.

TO THE SHERIFF OF MONROE COUNTY:

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Date: November 4, 2022

By:

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