

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

**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

Counsel of Record for this Party:

Thomas W. King, III
PA. ID. No. 21580
tking@dmkcg.com

Thomas E. Breth
PA. ID. No. 66350
tbreth@dmkcg.com

NOTICE TO PLEAD:

You are hereby notified to plead to the
enclosed **Motion for Preliminary
Injunction Without Prior Notice and
Hearing** within Twenty (20) Days from
service hereof or a default judgment may be
entered against you.



Thomas W. King, III
Thomas E. Breth

**DILLON, McCANDLESS, KING,
COULTER & GRAHAM L.L.P.**
128 West Cunningham Street
Butler, PA 16001
Telephone: 724-283-2200
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Monroe County PA Prothonotary
NOV 4 '22 AM 11:33

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County Commissioner of Monroe County, :
Pennsylvania, SHARON S. :
LAVERDURE, County Commissioner of :
Monroe County, Pennsylvania, :

Defendants. :

**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 with Emergency Petition for Preliminary Injunction and Application for Relief pursuant to 42 Pa.C.S. § 7531, *et seq., et al.*, stating in support thereof as follows:

1. This Motion for Preliminary Injunction is brought pursuant to Pennsylvania Rule of Civil Procedure 1531.

2. Plaintiffs filed a Complaint for Declaratory Judgment and Injunctive Relief contemporaneously with this injunction at the above-captioned docket number. A copy of the Complaint is attached hereto and incorporated by reference as if fully set forth at length herein as Exhibit "A."

3. As a supplement to the averments in Plaintiffs' Complaint, Plaintiff states that the Defendants are engaging in conduct contrary to the Pennsylvania Election Code as well as Pennsylvania's Sunshine Act.

4. Specifically, the Monroe County Board of Elections, in direct contravention of Pennsylvania's Election Code, started pre-canvassing before November 8, 2022, by inspecting already received and processed mail-in ballots and in doing so entering into the secured facility required under the Election Code wherein such ballots are stored and are to remain in protective custody until the official pre-canvass commences on Election Day.

5. Upon information and belief, the Board has directed Monroe County employees (some of whom are not even assigned to the Election Bureau) to do the following, including but not limited to:

- a. handle and examine already secured and processed absentee and mail-in ballots;
- b. search for the secured ballots' privacy envelope;
- c. search for the existence of the secured ballots' signatures; and
- d. search for the secured ballots' dates.

6. Defendants' illegal actions are immediate and ongoing as of the time of the filing of the within Motion for Preliminary Injunction.

7. Defendants' actions in violating the provisions of Pennsylvania's Election Code and Pennsylvania's Sunshine Act must be stopped immediately.

8. 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).

9. 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).

10. For the reasons as further stated in Plaintiffs' Complaint, Plaintiffs meet the requirements necessary for this Court to issue a preliminary injunction because:

- 1) it is necessary to prevent immediate and irreparable harm that cannot be compensated by damages,
- 2) greater injury would result from refusing the injunction than from granting it,
- 3) the injunction will properly restore the status quo as it existed prior to the issuance of their improper/illegal directives and its violation of the Sunshine Act,
- 4) Plaintiffs are likely to prevail on the merits,
- 5) the injunction is reasonable, necessary, and narrowly tailored to abate the violations of the Election Code and Sunshine Act, and
- 6) the injunction will not adversely affect the public interest, on the contrary, it will be in the interests of law-abiding citizens in Monroe County.

11. A preliminary injunction is reasonable to abate Defendant's ongoing offending activities to protect Plaintiffs' rights.

12. Further, a preliminary injunction will not adversely affect the public interest.

13. Additionally, Section 7538 of Pennsylvania's Declaratory Judgments Act provides,

[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). If an application for supplemental relief is deemed sufficient the court shall, on a reasonable notice, require any adverse party whose rights have been adjudicated by a previously entered declaratory judgment or decree to show cause why further relief should not be granted.

42 Pa.C.S. § 7538(a).

14. Pennsylvania's Declaratory Judgments Act provides, in relevant part, as follows:

Relief may be granted under this subchapter notwithstanding the fact that the purpose or effect of the proceeding, in whole or in part, is to resolve or determine a question of fact.

42 Pa.C.S. § 7539(a).

15. Pennsylvania's Declaratory Judgments Act further provides, in relevant part as follows:

This subchapter is declared to be remedial. Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.

42 Pa.C.S. § 7541(a).

16. The within Complaint requests that this Honorable Court expedite this matter and schedule a final hearing on a Permanent Injunction enjoining Defendants from pre-canvassing the ballots.

17. In order to obtain a permanent injunction, a party "must establish that [its] 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 County Bd. of Com'rs, 902 A.2d 476 (Pa. 2006).

18. Plaintiffs meet each element of the above-cited elements for entering a permanent injunction in the present case.

19. A permanent injunction is necessary to avoid an injury that cannot be compensated by damages.

WHEREFORE, Plaintiffs request pursuant to Pa.R.C.P. No. 1531(d) that this Honorable Court grant a Preliminary Injunction without prior notice to enjoin the Defendants, the Monroe County Board of Elections, John D. Christy, and Sharon S. Laverdure, from pre-canvassing ballots in violation of Pennsylvania's Election Code, or alternatively issue a permanent injunction pursuant to 42 Pa.C.S. § 7531, *et seq.*, *et al.* A Proposed Order is attached.

Respectfully submitted,

**DILLON, McCANDLESS, KING,
COULTER & GRAHAM L.L.P.**

By: 

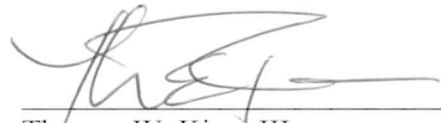
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Counsel for Plaintiffs

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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Defendants. :

ORDER

AND NOW, this _____ day of _____, 2022, upon consideration 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.*, and any opposition thereto, it is hereby ORDERED that Defendant Monroe County Board of Elections is PERMANENTLY ENJOINED from pre-canvassing mail-in and absentee ballots in violation of Pennsylvania's Election Code. Further, Defendant Monroe County Board of Elections is ORDERED to set aside any mail-in and absentee ballots improperly pre-canvassed and removed from their secure containers in violation of Pennsylvania's Election Code.

IT IS FURTHER ORDERED that this Order shall be enforced by the Sheriff of Monroe County, the Pennsylvania State Police, and any other law enforcement agency having jurisdiction. Any violation of this Order shall constitute contempt of Court and may be punishable by a fine of \$1,000 per violation.

BY THE COURT:

_____ J.

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SHERIFF'S DIRECTIONS

TO THE SHERIFF OF MONROE COUNTY:

I have attached one (1) certified copy of the **MOTION FOR PRELIMINARY INJUNCTION WITHOUT PRIOR NOTICE AND HEARING AND APPLICATION FOR RELIEF PURSUANT TO 42 PA.C.S. § 7531, et seq., et al.** in the above-captioned action. Please kindly serve the same upon the Defendant, the Monroe County Board of Elections at the following address:

One Quaker Plaza
Room 105
Stroudsburg, PA 18360

**DILLON, McCANDLESS, KING,
COULTER & GRAHAM L.L.P.**

Date: November 4, 2022

By: 

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