

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

**NICHOLE MISSINO, GREGORY
STENSTROM AND LEAH HOOPES,**
Plaintiffs,

v.

**DELAWARE COUNTY BOARD OF
ELECTIONS, AND DELAWARE
COUNTY BUREAU OF ELECTIONS**
Defendants.

No.: CV-2022

008091

PRO SE COMPLAINT

CIVIL ACTION: ELECTION CASE

ORAL ARGUMENTS REQUESTED

JURY TRIAL REQUESTED

COMPLAINT FOR RELIEF IN ELECTION CASE

1. The Plaintiff, Nicole Missino, resides at 478 Granite Terrace, Springfield, Pennsylvania. Ms. Missino is a political candidate running for the Pennsylvania House of Representatives.

2. The Plaintiff, Gregory Stenstrom, is a duly appointed observer and certified poll watcher appointed by Nicole Missino. Mr. Stenstrom resides at 1541 Farmers Lane, Glen Mills, PA. 19342.

3. The Plaintiff, Leah Hoopes, is a duly appointed observer and poll watcher appointed by Nicole Missino, and also a Bethel Township Committeewoman. Ms. Hoopes resides at 41 Sulky Way, Chadds Ford, PA. 19317.

4. The Defendant, Delaware County Board of Elections ("DELCO BOE"), is a County Board of Elections for Delaware County, Pennsylvania, with those powers and duties as set forth in the Pennsylvania Election Code. The DELCO BOE has appointed various employees to act for it pursuant to 25 Pa.C.S. § 2643. The poll watchers have standing in the case as poll watchers allowed in the polling places who are entitled to challenge the qualifications of voters in accordance with the provision of section 1210(d) of the Code (25 PS Sec 3050(d) Sec(417(b), and

inspect the voting check list and either of the two numbered lists of voter during those intervals when voters are not present in the polling place provided the watcher does not mark upon or alter any of these official records. PA 12 Sec 417(b). Specifically, the only surface area provided to challenge either ballots or application for ballots is in the Wharf center. With the implementation of changes to the configuration of the voting process and centralized counting centers, the surface for meaningful challenge must include the Wharf because it is where votes are sent, received and stored before elections. Once Election day commences, so does prec canvassing and canvassing, where poll watchers have limited to no right to challenge, leaving no surface area or interval for poll watchers to carry out their rightful duties on behalf of candidates. Therefore, the rights of the poll watchers MUST apply to the centralized counting centers because that is the only surface area and interval, they have to exert those rights – hence Hoopes and Stenstrom have standing. (See Exhibit 20)

5. The Court has both personal juris as the Plaintiffs are residents of Delaware County and subject matter juris and legal authority over State election code.

6. The Plaintiff, Nicole Missino, seeks basic fairness and transparency to allow her watchers and observers to be present and observe in a meaningful way the curing of defective ballots at the Wharf Counting Center in Chester, Pennsylvania.

7. Nicole Missino also wants access to the records which would ensure that the DELCO BOE has properly verified the approximately 25,000 unverified mail-in ballots for Delaware County.

8. On information and belief, there is no evidence that the DELCO BOE has contacted the Help America Vote Verification (“HAVV”) to verify that the voter was a “qualified elector” before sending out the mail-in ballots.

9. This written attestation as to the completion of the required L&A Testing must be emailed to RA-STBEST@pa.gov as required by Section 1105-A of the Pennsylvania Election Code, found at 25 P.S. § 3031.5.

10. Defendant, the DELCO BOE, failed to provide the attestation as to the L&A

Testing because the absentee/mail-in ballots were mailed out before the L&A testing was performed.

11. Defendant cannot certify to the Secretary of the Commonwealth of Pennsylvania that it has completed its L&A testing, nor has it identified the system configuration, which includes testing whether the scanners can read the ballots, and checking if the software works properly.

12. This type of required testing must be done publicly.

13. Plaintiffs will establish that Defendant failed to comply with the Election Code and the aforesaid directives and cannot certify to the Secretary that Delaware County that it has completed its L&A testing or identified the system configuration for the election.

CAUSE OF ACTION

14. Defendants had a fiduciary duty to adhere to PA Election code as prescribed by law, which is their primary function and duties, and their names apply – Board of Elections and Bureau of Elections.

15. There are multiple key elements of the fiduciary duty of Board Members, the duty of care and the duty of loyalty. The duty of care requires Board Members to act on a fully informed basis, in good faith, and with due diligence and care. The duty of fair dealing The fiduciary has to act in a fair manner and not take advantage of the confidence of the beneficiaries to gain profit or unfair disadvantage.

16. Violations of Election Code

17. Breach of Fiduciary Duty See 42 PA C.S.A Sec 5525

- a. A fiduciary duty and trust relationship exists
- b. A breach of that duty or abuse of that trust has occurred and committed misconduct
- c. The misconduct has caused them to suffer damages

BACKGROUND

18. With the Pennsylvania midterm elections scheduled to occur on November 8, 2022, the Petitioners in prior pleadings have noted gross irregularities in handling ballots and precinct V-drives by the Respondents. Respondents have significantly deviated from Federal and State law, and from State Directives issued by the Pennsylvania Secretary of State to ensure that mail in and absentee ballots are properly and securely tested, verified, only mailed to “eligible / qualified voters,” and will subsequently, securely survive the processing, scanning and tabulation of votes, as they were cast by the “eligible / qualified voters.”

19. These said deviations from law, statutes, and directives directly jeopardizes election integrity and the security of the citizenry’s right to vote. The US Election Assistance Commission (“EAC”), in conjunction with voting machines systems manufacturers (Hart Intercivic, Dominion, and ES&S, being the most predominant). These steps must include every protocol that counties will use in the actual election.

20. L & A testing promotes election integrity by:

- a) Providing election officials an opportunity to identify errors in election definition and ballot format and layout, including appropriate locations for folds on absentee/mail-in ballots, missing races, missing party identification, misspellings of candidate names, incorrectly worded ballot questions, and incorrect tabulation.
- b) Exposing inadequate or faulty election supplies, such as incorrect paper stock and memory cards that haven’t been properly wiped of data and reformatted.
- c) Demonstrating to political parties, candidates, the media, and voters that they should feel confident in the integrity of Pennsylvania elections.

INJUNCTIVE RELIEF

21. Pursuant to Rule 1531 (a) of the Pennsylvania Rules of Civil Procedure holds that “a court

shall issue a preliminary or special injunction only after written notice and hearing only unless it appears to 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 injunctions or special injunction without a hearing or without notice.” The Pennsylvania Commonwealth Court has enumerated criteria for deciding whether to grant special relief of a preliminary injunction. The court is asked to consider whether (1) the petitioner(s) is (are) likely to prevail on the merits; (2) an injunction is necessary to prevent immediate and irreparable harm; (3) greater injury would result from refusing the injunction than from granting it, and granting it will not substantially harm other interested parties; and (4) the injunction will not adversely affect the public interest; (5) the injunction will properly restore the parties to their status immediately prior to the passage of the law and (6) the injunction is reasonably suited to abate the offending activity. *SEIU Healthcare PA. v. Commonwealth*, 104 A.3d 495, 501-02 (Pa. 2014).

ARGUMENT

22. The fair, safe and secure election process is integral to every registered voter in the County of Delaware. The elected and hired officials owe its citizens the highest duty to ensure that their voting franchise is not compromised or rendered unnecessarily diluted by the introduction of improper and, frankly illegal, ballots. If permitted to conduct canvassing of absentee and mail-in ballots using untested machines and paper ballots, the potential for tampering with ballots and criminal manipulation of voting data will cast a cloud over November 8, 2022 and adversely affect all voters who attempted to participate by voting in that election.
23. The petitions are not strangers to the Respondents and their repeated demands for transparency and fairness in conducting the elections in the past have been vigorously resisted.
24. Defendants have significantly deviated from Federal and State law, and from State Directives issued by the Pennsylvania Secretary of State to ensure that mail in and absentee ballots are properly and securely tested, verified, only mailed to “eligible / qualified voters,” and will

subsequently, securely survive the processing, scanning and tabulation of votes, as they were cast by the "eligible / qualified voters." Said deviation from law, statutes, and directives directly jeopardizes election integrity and the security of the citizenry's right to vote.

25. The US Election Assistance Commission ("EAC"), in conjunction with voting machines systems manufacturers (Hart Intercivic, Dominion, and ES&S, being the most predominant), other federal agencies, and the Secretary of State of the Commonwealth of Pennsylvania, have crafted procedures to ensure the integrity of the vote in compliance with Federal and State laws. The EAC's Testing and Certification program is the critical first step in the process of maintaining the reliability and security of voting systems in the United States. When properly and strictly followed, they minimize surface area and vectors for potential election fraud.
26. To wit, the "Commonwealth of Pennsylvania Department of State Certification of Hart Intercivic Verity Voting 2.3.4," issued by the Secretary of State, pertinent excerpts of which are included in Exhibit 1, which are used by Delaware County, states that as a condition for certification of the Hart Intercivic Verity voting systems in Pennsylvania that:

"All jurisdictions implementing the Verity Voting 2.3.4 need to carry out a full Logic and Accuracy test on each device without fail and maintain evidence of Logic and Accuracy Testing (L&A Testing) in accordance with the statutory requirements for pre-election and post-election testing." (page 48)

And further states that:

"The systems used for ballot definition must be configured securely following conditions outlined in this report and following any Directives and Guidance issued by the Secretary. Any data transfer between the vendor and county must be done using encrypted physical media or secure file transfer process. The file transfer and download must be tracked and audited to make sure that data has not been accessed by unauthorized personnel" (page 50)

27. The Secretary of State also includes the EAC certification certificate, and diagrams of system components covered by the State's certification (in Exhibit 1), and references the

“Commonwealth of Pennsylvania Department of State Directive on Logic and Accuracy Testing” (Exhibit 2) which states that ALL counties “must” comply with all directives issued that are related to conditions for certification.

28. The Defendants have ignored Federal and State law – again; ignored the requirements and procedures that must be followed as a condition of State certification of voting systems – again; and ignored the directives of the Secretary of State - again; and as they did in the 2020 general election and the 2022 primary, as documented by Petitioners previous cases, that included lengthy, detailed complaints, 98 exhibits of physical, quantitative evidence documenting election violations, and criminal fraud.
29. Deviation from these strict laws, directives and specific procedures introduces multiple vulnerabilities for election fraud, the most grievous of which is they most often result in cast ballots being removed and culled from the normal processing and tabulation trajectory for “remediation,” “curation,” and “repair,” where they are susceptible to spoliation, and even wholesale substitution. In short, it is the physical equivalent of intentionally throwing a wrench into an engine that has been built to perform under specific conditions. Once a mail in or absentee ballot is removed from its outer envelope, and secrecy envelope, it is equivalent to a fired bullet, without forensic or auditable pedigree, and susceptible to fraud – hence the strict procedures required by Federal and State law and directives to ensure a ballot will remain within a secure, and auditable trajectory.
30. On October 6th, 2022, Delaware County placed a legal notice in the “Philadelphia Inquirer” stating they would be conducting “Logic and Accuracy Testing” (“L&A”) starting on October 11th, 2022. (Exhibit 3)
31. On October 7th, 2022, the Delaware County government website stated they would commence mailing out mail in and absentee ballots to voters that had requested them on October 7th and 8th, 2022. (Exhibit 4)
32. This sequence of events – mailing out mail in and absentee ballots to voters (commencing October 7th and 8th) before conducting L&A Testing (commencing on October 11th) – is in direct contravention of Pennsylvania law, and the Secretary of State’s Certification of Voting

Systems, and Directives for pre-election L&A Testing referred to previously in Exhibit 2, to wit on page 2 of the Directive (the first page after the cover), it states:

Logic & Accuracy Testing

Scope:

*All jurisdictions in Pennsylvania **must** conduct pre-election logic and accuracy testing (hereinafter L & A testing) prior to every election (primary, general, special, etc.) that is conducted in the jurisdiction. Pursuant to Section 1105-A of the Pennsylvania Election Code, 25 P.S. § 3031.5, the following Directive is issued by the Secretary of the Commonwealth for all pre-election L & A testing in the Commonwealth of Pennsylvania.*

L&A testing is a series of pre-election steps intended to ensure that ballots, scanners, ballot marking devices, and any component of a county's certified voting system are properly configured and in good working order prior to being used in an election. These steps must include every protocol that counties will use in the actual election.

L & A testing promotes election integrity by:

- Providing election officials an opportunity to identify errors in election definition and ballot format and layout, including appropriate locations for folds on absentee/mail-in ballots, missing races, missing party identification, misspellings of candidate names, incorrectly worded ballot questions, and incorrect tabulation.*
- Exposing inadequate or faulty election supplies, such as incorrect paper stock and memory cards that haven't been properly wiped of data and reformatted.*

- **Demonstrating to political parties, candidates, the media, and voters that they should feel confident in the integrity of Pennsylvania elections.** (bold and underline added for emphasis)

Following completion of L&A testing, each county board shall certify to the Secretary when they have completed their L & A testing and identify the system configuration for the election. The certification shall be on a form prescribed and furnished by the Secretary. Jurisdictions must complete the attestation at least 15 days prior to every election held in the jurisdiction and must be submitted via email to "RA-STBEST@pa.gov."

33. Section 1105-A of the Pennsylvania Election Code, 25 P.S. § 3031.5, referenced by the aforementioned paragraph provides further clarification of the sequence of events in which L&A Testing must take place, and the importance of testing forms, in general, and it's intent to include ballots in the context of the Directive's scope, BEFORE the Board of Elections and Bureau of Elections may commence mailing out registration, and mail in and absentee ballots to voters, to wit:

25 P.S. § 1105. Standardized forms.

General rule. --Whenever possible, the secretary shall prescribe by regulation standardized voter registration or absentee ballot application forms which may be used, with prior approval by the secretary, by political bodies, candidates and organized bodies of citizens in compliance with both the provisions of this part and the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code.

(b) Prior approval. -- The secretary shall develop a system whereby political bodies, candidates and organized bodies of citizens may receive prior approval of standardized forms developed pursuant to subsection (a).

34. The essence and summary of this required sequence of events is that if the printed paper ballots mailed out to mail in and absentee voters have not been verified to ensure the

candidates and issues are printed properly on the paper forms, and tested by the scanners and tabulation servers, and also tested with the equipment that will process and scan those mail in ballots, to include the BlueCrest Mail Sorter, and Agissar Envelope slicing and extraction machines, which are critical processing components that failed (miserably) in previous elections in November 2020, 2021, and 2022, then the entire voting and election process remains in dire jeopardy.

35. Many thousands of mail in and absentee ballots were culled and removed from the “normal” voting tabulation process in the Delaware County central counting center at the Wharf building on Seaport Avenue in Chester City because mail in ballots could not be sorted properly by precinct by the “BlueCrest” mail sorter, or were sliced into pieces by the “Agissar” envelope slicer and ballot extraction equipment – and spoiled. This required hundreds of foreign “Voter Protection volunteers” who arrived by busloads, and by the hundreds, converging from outside the county, to remove ballots from the observation of certified poll watchers and observers who resided in Delaware County, to scotch tape the ballots back together, and for approximately 6,000 ballots that were spoiled so badly they could not be scanned at all, for these same foreign persons to “curate” the ballots by “interpreting” and copying over the voters marked choices to “fresh” ballots from a myriad of different precincts and districts, to rescan the substituted ballots. This made national and international news, with the media, fixated on the narrative of “the safest and most secure election in history,” diligently massaging the optics with headlines like “*Fact check: Video does not show election workers fraudulently completing ballots in Delaware County, PA,*” citing the “*Delaware County's response to video circulating of ballots*” press release – all leaving out the gargantuan number of ballots that had been spoiled with the public lie of omission that “*Some ballots were damaged by the extractor during this process in such a way that the ballots could not be scanned successfully.*” Defendants also conveniently left out the fact that the “curation” were previously being performed out sight of observers – a fact known to Petitioners, and few others. Petitioners Stenstrom and Hoopes had initiated an injunction to allow poll watchers into a sequestered back room where the aforementioned “volunteers” had previously been doing their “curating.” Despite the Court’s order to allow Petitioners in the back room for 5 minutes every 2 hours, initially Delaware County Republican Executive Committee (DCREC) Board Member John McBlain, who was representing Petitioners as their counsel, and Board of Elections Solicitor Manley Parks resisted this Court’s order over Petitioners vigorous objections, and unilaterally decided to move the “curation” to the main room, along with the 6,000 spoiled ballots, in an effort to keep Petitioners out of the back room – ignoring this Court’s order. McBlain subsequently resigned from

the DCREC after the 2020 election and shortly thereafter was appointed as a Board Member to the Board of Elections – and is now among the Defendants. This willful recalcitrance of the Defendants, and their firsthand knowledge of exactly what happens as a result of not properly conducting L&A Testing, and the resulting massive spoliation, demonstrates that without the Court's intervention, there is no reason for the behavior not to continue. (See Exhibit 16)

36. Regardless of the allegations of wholesale substitution of mail in ballots which is among the stated controversies in Petitioners other lawsuits in the appellate trajectory, **this disaster in the processing of mail in and absentee ballots substantially contributed to the fact that 220 precincts of the 428 precincts (51%) could not be reconciled in accordance with PA Title 25 Sec § 1404 and Sec § 1405 specifications for the November 2020 general election.** (See 2020 Return Board Report in Exhibit 5)
37. The **May 2022 primary election** preceding the upcoming November 8th, 2022, general election suffered identical problems because of illegitimate deviations from Law and Directives **resulting in 108 precincts of 428 precincts (25%) that could not be reconciled in accordance with PA Title 25 Sec § 1404 and Sec § 1405 specifications.** (See 2022 Return Board Report in Exhibit 6)
38. In both the November 2020 and May 2022 elections the bipartisan Return Board could not complete reconciliation and certification of the vote for reasons described in their reports (Exhibit 5 and 6), and did NOT physically sign or certify the election results as required by Pennsylvania election law, in which their duties are specified no less than 26 times in the code, in part because of the aforementioned election law violations, deviations from Law and Directives, and acts of the Defendants as described herein.
39. As a matter of record, the closing statement in Exhibit 7 that the report was "Reviewed in person or via e-mail by each Return Board Member. In lieu of in-person signing, approval of content via e-mail was accepted" is highly suspect, as the Return Board was denied the opportunity to attest to, and present their report in public hearing, on the public record, in accordance with P.A. 25 Sec § 1404 and § 1405, by James Allen, Director of Election Operations for the Bureau of Elections of Delaware County (Defendant), and subsequently, in both frustration and in order to comply with law, the Return Board member distributed the

report to members of the public in attendance, of which a copy (Exhibit 7) was provided to Petitioners. It is for this reason, among others enumerated herein, that oral arguments are required, to be able to confirm, or refute, the reports, and false utterances of James Allen, by Return Board members to be called as witnesses.

40. Regardless of any attestations by witnesses, the Return Board reports for November 2020 and May 2022 contain and describe so many blatant violations of PA Title 25 Sec § 1404 and Sec § 1405 they are too numerous to list, the sections of which are included as Exhibit 7 – in full – because **virtually the entire sections of the statutes were ignored and wantonly violated by the Defendants, and the elections were certified without investigation or reconciliation of tens of thousands of votes by electors.**
41. Had the Defendants adhered to, and strictly complied with Pennsylvania Law and the Directives of the Secretary of State, this debacle could have been potentially avoided, and at a minimum, met the standard of intent and purpose of the Secretaries Directive on L&A Testing that *“political parties, candidates, the media, and voters ... should feel confident in the integrity of Pennsylvania elections.”*
42. Exhibit 2 includes excerpts from the L&A Testing procedures, as only four examples of procedures defined in the Pennsylvania Secretary of State’s Directive on L&A Testing that were not strictly followed by the Defendants, and instead they used their own procedures – which they refused to provide to “eligible /qualified voters” and citizens of Delaware County who observed and documented the L&A Testing, in great detail.
43. Among the most egregious deviations from the lawfully required by the Secretary of State Directive on L&A Testing procedures excerpt in Exhibit 2, are:
 - (1) The scanners were NOT tested in “Election Mode” and instead set to “Test” mode in direct contradiction to the specification to **“Set each voting machine to be tested in “election mode” rather than “test mode”** per paragraph 4.3.1 of the Directive.
 - (2) There was no testing of pre-printed ballots, as directed in the test procedures per paragraph 2 of the Directive that **“Prior to beginning the structured L & A testing, test the**

printed ballots that will be issued to voters to confirm that the ballots can be read by the tabulating equipment once they are returned for counting.

The Defendants did not test the special ballot paper purchased by the County for the special ballot printers specified by Hart Intercivic. *NOTE: The County has the capability to pre-print their own ballots to meet all specifications for printed ballots but did not do so, yet, the L&A observers, whose affidavits are included herein, sighted pre-printed ballots – which were not used – which was further confirmed by James Allen, Director of Election Operations in public statements at the Board of Elections meeting on October 25th, 2022.*

- (3) Hart Intercivic Verity vDrives were discarded after the test in a “bucket” contrary to the test procedures which require the same vDrives used in L&A Testing be used in the election per paragraph 3.3 of the Directive to **“Create a media device for each precinct scanner or central scanner that will be used in the election.”**
- (4) Mail in envelopes, secrecy envelopes, and folded ballots were not tested with the “BlueCrest” mail sorter and “Agissar” envelope slicer and ballot extraction equipment per paragraph 2 of the Directive to **“Test these ballots on the equipment that will be used to centrally count mail ballots.”**
- 44. Observer reports of L&A Testing and sworn Affidavits are included as Exhibits 8, 9, 10, and 11, which enumerate a large, gross number of deviations from the Secretary of State’s L&A Testing Directive (Exhibit 2), and violations of applicable sections of P.A. 25, including multiple affirmations of the specific violations in the aforementioned paragraph.
- 45. Return Sheets for Upper Darby Precincts 3,4, and 5 were publicly posted the evening of the May 2022 election for public inspection (Exhibit 12), along with paper tape receipts from the Verity Scanners (otherwise known as “Proof Sheets” in P.A. 25), and serve as an example for what should be done at all polling locations, and at the Wharf building. Proof Sheets can only be printed out with a Verity vDrive formatted and bonded to the specific Verity Scanner by the Verity Election Management System (EMS).

46. The reason that Verity vDrives used in L&A Testing MUST be used for the election, and not discarded as sworn and documented in the Affidavits of Exhibits 8, 9, 10 and 11 are as follows:

- A record of the L&A Testing, verification of the Cast Vote Record (CVR) for the ballot test deck, machine counts and serial number counts documented on the official L&A Testing Return Sheet, provides an audit trail and pedigree that can be verified post-election that the vDrive is, indeed, the authentic media device mapped to the specific machine.
- The "Blue Seal vDrive Compartment" serial number on the tamper proof tape circled in red, and highlighted in transparent yellow (black and light gray in monotone versions of this document) on the Return Sheets in Exhibits 12 must be sequential and are an essential part of the requirement for a "strict chain of custody."
- Process vulnerability exploits could be used to create pre- or post- election vDrives to fabricate election day returns for Verity Scanners and entire precincts that could be substituted by as few as a single confederate "bad actor." Evidence of such substitution could include any or all of the following:
 - Entire precincts that cannot be reconciled, as was the case in November 2020 and May 2022 elections as documented in the Return Board reports (Exhibits 5 and 6).
 - "Missing" or unreconcilable Return Sheets and Proof Sheets (paper tapes)
 - "Missing" Verity vDrives not turned in by 0200 hours (2:00am) US EST on Election Eve.
 - "Missing" Verity vDrives being "found" post-election that do not reconcile and match Return Sheets and/or Proof Sheets (paper tapes).
 - Unexplained breaks in the required "strict chain of custody" required by the Secretary of State's Certification of Hart Intercivic voting systems (Exhibit 1).

Most of which were admitted by (the same) Defendants own attorneys for the November 2020 election in their response to Petitioners appellate cases CV-2020-007532 and CV-2022-000032.

47. Arguments that pre-printed ballots need not be tested in accordance with the Pennsylvania Secretary of State L&A Testing Directive were posed by James Allen, Director of Election Operations for the Defendants at the public October 25th, 2022, Board of Elections meeting. He stated that he directed “informal” testing of the mail in ballots before they were sent to persons who requested them using Ballot Document Definition (BDD) files and ballots created by personnel employed by the Defendants at the Delaware County Voting Machine Warehouse using Verity Touch Writers to create test ballots. Aside from the fact that he ignored Federal and State law, and the Secretary of States Directive, this argument is easily refuted by the fact that thousands of mail in ballots could not be scanned or were so badly spoiled in the November 2020 election during the BlueCrest mail sorting and Agissar ballot extraction process at the centralized Delaware County Wharf Counting Center, it disenfranchised thousands of “eligible / qualified voters” and called election integrity into question by voters who could not know if their ballots were among the “remediated,” “curated,” spoiled or otherwise uncounted mail in ballots.
48. At the same aforementioned Board of Elections meeting, James Allen also reported that over “60,000” (untested) mail in ballots had been sent out by the Bureau of Elections, of which “32%” had already been returned. Without having conducted lawful L&A Testing in accordance with the Secretary of State’s Directive, Petitioners and the class of “eligible / qualified voters” and candidates have no way of know whether there will be a repeat of the Delaware County Bureau of Elections debacle in 2021, where Delaware County Council candidates Frank Agovino and Joseph Lombardo sued after hundreds (670) of ballots were sent to wrong address by Defendant's vendor, ElectionIQ (See Exhibit 14). James Allen told the Inquirer "the county is aware of the lawsuit and plans to respond," while ElectionIQ did not return messages. Whether this was another case of not following lawful procedures and directives, or whether the matter was successfully resolved, is not a matter of public record, but indicative of the seeming contempt Defendant’s executives and employees seem to hold for compliance with the law to ensure the highest level of confidence in election integrity.
49. As of 1030 hours (10:30am) US EST, October 28th, 2022, the Pennsylvania Department of State currently aligns with Allen’s aforementioned report that over “60,000” ballots have been mailed to persons who requested them. However the same Department of State report shows

that 18,359 of those ballots were sent to "Unverified" persons who may, or may not, be "eligible / qualified voters." Given the propensity for Defendants eschewing federal law, state law as defined in P.A. Title 25, and Secretary of State Directives, as described herein, whether those persons were properly verified as "eligible / qualified voters" is reasonably suspect.

50. Persons listed as "unverified" in the Department of State's database in Exhibit 15, currently number **18,359**, by the Friday before Election Day. These prospective "unverified" voters have up to six (6) days AFTER election day to provide verification that they are "eligible / qualified voters." Note that previously verified voters can be automatically dropped from the "verified" list if they have not voted in the previous two (2) general elections among other reasons, but nevertheless, the list is what it is, and all we have to reference. Exhibit 15, is the most current Social Security Administration (SSA) Weekly Data for Help America Vote Verification ("HAVV") Transactions for Pennsylvania as of October 28th, 1440 hrs (2:40pm) US EST. Given that there are currently 265,000 "unverified" voters that were sent mail in ballots statewide, it seems unlikely that Delaware County would account for the bulk of the HAVV requests and returns.
51. Regarding the Pennsylvania Secretary of State's press release titled "Department of State Corrects Information About "Unverified Ballots"" dated October 27th, 2022 included as EXHIBIT 17, it directly contradicts the Secretary's own previously full document and directive titled "Guidance Concerning Civilian Absentee and Mail-In Ballot Procedures" (Exhibit 18).
52. Further, the Secretary's press release also contradicts PA Title 25 Sec § 1305 "Delivering or Mailing Ballots," and Sec § 1302-D "Application for Official Mail In Ballots" (as Amended by "Act 77" of 2019) which are included in full in EXHIBIT 19, to wit, the Secretary's Guidance directly quotes and references PA 25 Sec § 1305 and § 1302-D, which states no less than 15 times that ONLY a "qualified" elector (voter) may receive a ballot, and ONLY AFTER the elector is "qualified" by verification of identity.
53. Contrary to both Federal and State law, and the Secretary of States own Guidance document that a ballot CAN NOT BE PROVIDED to an elector unless they are first verified and qualified, the Defendants ignored the law and guidance - again.

54. Pennsylvania election law PA Title 25 Sec § 1305 "Delivering or Mailing Ballots," and Sec § 1302-D "Application for Official Mail In Ballots" (as Amended by "Act 77" of 2019) is quite clear and requires NO interpretation that ONLY a qualified elector can receive a ballot, and must be verified beforehand, and that failing that check and /or if ballots are received from Unverified (unqualified) voters, then they must be segregated, and cannot be counted in the election unless the elector (voter) or the Defendants can VERIFY that the elector (voter) within 6 days of the election.

55. Regarding the \$10.00 cash deposit for challenging an application for an absentee ballot, "no excuse" mail in ballot, or an application for a mail-in ballot, "for any of the reasons provided in 25 PA CONS STAT § 1329, the statute specifically states that:

"Absentee electors may be challenged on the grounds that: (1) elector is not a qualified elector, (2) the elector was within the municipality of his residence on the day of the election when the polls were open, except where he was in military service or ill or physically disabled, or (3) that the elector was able to appear personally at the polling place on the day of the election during the period the polls were open in the case his ballot was obtained for the reason that he was unable to appear personally at the polling place due to illness or physical disability (Id. § 2135.8(e),

56. NONE of the above situations applies to the Petitioners complaint. **Petitioners are NOT "challenging" any verified elector, but rather requesting that the 18,389 unverified electors already identified in the Pennsylvania Department of State database in Exhibit 15, be segregated until Defendants provide proof that they submitted the HAVV request and received a reply before sending the requestor (elector) a mail in ballot.**

57. It is incumbent of the Defendants to verify electors BEFORE sending them a mail in ballot, and an individual unverified elector to ensure they are "verified" prior to the election (or up to 6 days after the election), and NOT the Petitioners or any other "eligible / qualified voter" responsibility to do so.

58. Clearly the intent of the statute is not to burden the Petitioners with a \$189,389 cash tariff to verify that the Defendants complied with the law, and requesting documentation that the Defendants did so in a game of financial "chicken" and chance that the County citizenry

should have to shoulder the price for. The recalcitrant Defendants have already violated election law by not lawfully performing L&A Testing before sending out the 60,000+ untested ballots, and Petitioners intent, remedy and relief is to mitigate the damage.

59. As further rationale and logic that that is not the Statute's intent, then with a fine of \$15,000 for each election law violation, it would seem to good bet for an enterprising person with the available cash to post the \$189,389 cash bet on the odds of finding only 13 unverified voter out of 18,389 currently unverified voters listed in the Department of State database, to break even, and double that investment assuming an additional 13 unverified voters. Given the litany of gross election violations and poor attention to detail demonstrated by the Defendants, as described herein, it is just as likely that none of the 18,389 unverified voters were verified by HAVV requests, and a potential "payout" of a whopping \$275,835,000 fine for said enterprising investor.
60. Defendants have continuously insisted that "Risk Limited Audits" ("RLA") have shown "no discrepancies" as evidence of their competence and compliance with law and directives – which is also a conflation with a reconcilable election by "eligible / qualified voters," and frankly, an utter falsehood. An RLA merely verifies that the Hart Intercivic Varity scanners are operating correctly for a small number of sampled ballots (less than 1%), selected by the Defendants for testing, when in fact, tens of thousands of votes could not be reconciled in the 2020 general election and May 2022 primary – and it is almost surely going to happen again in the November 2022 general election.
61. The disingenuous insistence by Defendants that "all is well" and the elections they have presided over are the "safest and most secure in history" despite the plethora of evidence to the contrary, while continuing to ignore the Laws and Directives designed by informed legislatures, the Secretary of State, manufacturers, and experts in election integrity is why it is critical that the Court must intervene and grant the remedies and relief sought by the Petitioners.

RELIEF REQUESTED

62. WHEREFORE, a preliminary injunction segregating the mail-in ballots from the canvassing of votes for the November 8, 2022, midterm elections is necessary to preserve the integrity of the election. Petitioners recognize that at this late juncture before the election, which is less than two weeks away, there are seemingly too many problems described herein to overcome, but they must be addressed, and Petitioners acted as soon as they were able.
63. Petitioner's appellate brief to the Commonwealth Court for CV-2022-000032, which this Court has granted right of appeal, considers the dilemma that if the Court avoid review of allegations in the crucible of a public courtroom before a trier of fact for the requested oral arguments, and / or avoid evidentiary hearing and discovery at a minimum for the jury trial requested, it could clearly enable the unrepentant Defendants to continue with their unlawful conduct, without civil remedy by the citizenry, candidates, and "eligible / qualified voters," either before an election (for not being "ripe"), or after an election (for being moot), with no remaining litigative surface area or vector for remedy under Pennsylvania "civil law" that governs conduct of election officials that stands apart from the vagaries of standing and laches requirements specific to "election law," leaving a Constitutional "no man's land" in which public corruption may thrive. Granting the relief and remedies sought by the Petitioners is the only way to bring clarity to these controversies, and almost certainly to only way to meet P.A. Title 25 and the Secretary of States related directives and intent of "Demonstrating to political parties, candidates, the media, and voters that they should feel confident in the integrity of Pennsylvania elections."
64. Petitioners also recognize that a demand for relief that requires a complete "do over" to force Defendants to strictly comply with the law and directives enumerated herein to ensure a secure, honest, and auditable election could not likely be performed before Election Day, which could potentially disenfranchise "eligible / qualified voters" and cast further doubt on the integrity of Pennsylvania elections, and the competence and integrity of the Defendants and the respective County Council members charged with their appointments and governance of those agencies. Petitioners cannot, in good conscience, request the Court to be the arbiter of the Hobson's Choice of enforcing the law it is sworn to uphold and adjudicate, or delaying the election.

PRAYER FOR RELIEF

65. Hence, Petitioners propose the following remedies:

- Immediately execute the separately filed Spial Injunction and Order.
- In accordance with P.A. Title 12 that ALL Precinct Return Sheets and Proof Sheets (paper tapes), which are “unsealed records,” be made available for inspection, copy and photographs for ALL Precincts on Election Evening by the public, as required by law, as soon as possible after the polls close, and BEFORE that precinct may be processed further and counted.
- Given that the Return Sheet is an integral, required part of the returned election materials by Judges of Elections (JOE’s), then it only makes sense that one part cannot exist without the others, and that it cannot be possible to count the Election Day cast votes for a Precinct without having a Return Sheet, so this could not possibly be objectional because it cannot be allowed to happen in accordance with law.
- Given that the L&A Testing Verity vDrives has already been spoiled, and there is no possible means to “unspoil” them, or re-establish an already broke chain of custody, and the only alternative to be able to ensure a renewed “strict chain of custody” is for vDrives to be separately be ensconced in a tamper proof envelope or box (by itself), and a tamper proof film tape (which will easily show breakage if anyone attempts to open the container), signed and dated by the Judge of Elections, and at least one other poll worker at the Precinct. In addition to signature and date, the Serial number for the Paper Tape, the Lifetime Machine Count from the Paper Tape, and Scanner Bag Seal # will be written on the tamper proof foil for comparison to the Return Sheet and Paper Tapes at the Wharf Building BEFORE the vDrive can be processed further for tabulation.
- ONLY after the above verifications that a strict chain of custody has been maintained, as evidenced by the vDrive still within the sealed container, and tamper proof tape intact, as verified by the Petitioners, or their designated representative, may the vDrive be opened, at which point it will be observed with continuous “eyeballs on” – again by the Petitioners, their designated representative, and at least two other certified poll watchers, from both the DNC and GOP – may the vDrive be inserted into the tabulation servers, and be counted and processed by the EMS.

- That the Defendants provide physical evidence in the form of emails or other suitable HAVV responses that all persons requesting mail in, or absentee ballots were verified – as required by law (P.A. Title 25) before the Defendants sent them, which in turn will may be spot checked by Petitioners or their designated representatives.
- That any ballot of an unverified voter be segregated from the “eligible / qualified voter” ballots until it is verified, and not be ingested into the processing and specifically that the ballot envelope remains sealed. This may be simply done by the Defendants providing proof that they received a response from the SSA for their presumed 18,389 HAVV requests sent by the Defendants. By statute, an unverified voter (or the Defendants) has up to 6 days post-election day to verify and process the ballot.
- If an unverified voter ballot remains after tabulation and provisional ballot challenge on the Saturday following the election, any provisional ballots that are subsequently considered to be counted, will be compared to both the ballots already processed and counted, and the segregated unverified person’s envelopes before being further ingested into the counting and tabulation process.
- A simple remedy to verifying that only “eligible / qualified voters” mail in ballots be ingested into the count and processed for tabulation that complies with the letter, intent and spirit of the law is to enter the returned mail in ballots through the BlueCrest mail sorter, which as its name implies, will sort the mail in and absentee ballots by precinct, and also takes an image of each envelope. Whether a voter participated, or not, in an election is a matter of public record, and is not private or protected information – only the person’s ballot inside the envelope is sacrosanct. It could not be a violation of pre-canvassing or canvassing laws or directives to provide Petitioners or their appointed representatives, or the public envelope images, sorted by precinct, so that they can be compared with the ballots requested, sent, and received list PRIOR to opening the envelopes and extracting the inside, sacrosanct ballot for further processing and counting.
- Given that mail in and absentee ballots from “verified” “eligible / qualified voters” should be sorted by precinct, and available for further ingestion into the counting and tabulation process, it would seem reasonable and prudent to allow certified poll watchers from opposing parties, and the public to compare the count of the number of mail in ballots by

precinct, and to allow a minimum of ten (10) spot checks comparing outer envelopes to the BlueCrest mail sorter images provided to the public, Petitioners and their designated representatives, earlier, as described above, and total mail in ballot piece count for the precinct.

- Given that the mail in ballots were not tested with the “Agissar” envelope slicers and ballot extraction machines, as required by the Secretary of State’s L&A Testing Directive **“to confirm that the ballots can be read by the tabulating equipment once they are returned for counting”** and the surety that they will again slice thousands of ballots into pieces that must be handled, scotch taped, “remediated,” “curated” or otherwise spoiled, as has been the case in all elections since November 2020, then the only viable alternative is that the envelopes be opened by hand – as has been the case in ALL previous elections prior to November 2020, it is a simple math equation to compute how many workers will need to be engaged to open them in a timely manner, by precinct. The BlueCrest mail sorter processes 50,000 pieces per hour, so virtually all mail in ballots can be processed by 10am on election day after the 7am start of pre-canvassing and canvassing. Assuming one person can carefully open and extract 6 ballots per minute, and 30 workers can reasonably fit in the area adjacent to the “Agissar” equipment as has been the case in previous elections, that is approximately 180 ballots per minute, and 10,800 ballots per hour – and assuming reasonable breaks, and kerfuffle’s that always accompany a manual process, it is reasonable to assume that it could take as little as six (6) hours after the envelopes are sorted to be ready for scanning in the Wharf building Verity high speed scanners, and the ballots can be sorted by box per precinct along with their outer envelopes to preserve the ability to audit any anomalies further should the need arise. The above is meant to be illustrative of the fact that the mail in ballots can be readily prepared and scanned well before, or at least simultaneous to the return of election materials from the precincts, and certainly all counted the evening of the Election.

66. The above modifications, which will be summarized in the proposed Order, only address the specific violations of Federal and State laws, and the L&A Testing Directives, and do not violate any other existing laws or Directives the Petitioners are aware of. Oral arguments have been requested to discuss these remedies in public, before the Court, and while the Defendants

– and public – may bristle, the Petitioners and “eligible / qualified voters” did not create this situation – the Defendants did. It is either come to some reasonable accommodation to cure the violations sufficient to conduct the election on Election Day, or the Hobson’s choice that will cause even more grist, venom and doubt of election integrity for the “eligible / qualified voters” of Pennsylvania.

67. The Petitioners, who were private citizens who valued their anonymity prior to the November 2020 election, and since, have been venomously and viciously attacked in public hearings, forums, and the media, and been endlessly harassed for simply performing their civic duty as first certified poll watchers, and now common citizens, with standing as “eligible / qualified voters.” Petitioners have been called by Defendants executives and Delaware County Council – all public authorities and figures – as well as both DNC and GOP corporate officers – also public figures – and elected officials that include the District Attorney, Pennsylvania Attorney General, and US Attorney General “liars,” “lunatics,” “vexatious,” “contemptible,” “Trumpanzees,” “MAGA extremists,” “extremists,” “terrorists,” and every imaginable manner of vile filth. They have been physically threatened, threatened with arrest and incarceration, harassed and “investigated” by Special Agents of the District Attorney, Attorney General, and FBI. They have been formally classified as “domestic terrorists” by the Department of Homeland Security, surveilled, and wiretapped. They have suffered loss of their incomes and professional careers. They have been sanctioned three separate times by the Defendants seeking hundreds of thousands of dollars. Their attorneys have been harassed and complaints submitted for their disbarment to State disciplinary boards. They have been almost entirely alone, save a relative handful of other private citizens, who were similarly afflicted for having the temerity to do their duty and uphold their sworn oaths and allegiance to our great Republic.
68. Election integrity, accountability and change can only be brought to lawful, peaceful fruition via the Courts, and a restoration of faith that justice will ultimately prevail – that our laws and Courts will prevail. Of the 65+ primary election fraud cases that arose from the November 2020 election, not one was allowed the right of an evidentiary hearing. Most were dismissed without opinion or surface area for meaningful appeal.

69. Given that citizens filing meritorious petitions were pilloried, none more than the Petitioners; their lawyers fighting disbarment, and no other esquires willing to stand in the breach and make an argument, and election violations and vectors for fraud unabated by the Defendants and other like Boards, politicians, and political parties, who will be left to speak? Even if Petitioners cases could possibly be refuted if they ever see a day in a public courtroom, and they potentially have it all wrong – what is to become of the next citizen and esquire with righteous cause?
70. The only remedy and relief, is an incentive to re-engage the citizenry and esquires to vigorously participate in elections, our sovereign rights to self-governance with representative that we, the people choose, and whom are not selected and illegitimately installed “for our own good.”
71. As a starting point, 60,000+ mail in ballots were unlawfully sent out by the Defendants, each one being an individual election violation, with the statues and penalties for each violation ranging from \$1,000 to \$15,000 per violation, which provides a range of between \$60,000,000 and \$900,000,000, not accounting for punitive and treble damages should fraud be proven.
72. The Petitioners did not do this for money or any other financial recompense, and those staggering potential damages would place a financial burden on the same citizenry that will hopefully benefit from Petitioners’ efforts. However, to restore a sense of order, justice, and encourage others to engage and risk their lives, property and liberty to ensure election integrity in the future, Petitioners seek jury trial post-election, and after the storm has passed, to assess accountability and a meaningful financial judgement, that a jury will decide, that will hopefully remind them Defendants that the citizenry is watching them, they will act, and they will be held accountable, as they should be.
73. Petitioners pray that the Court will grant these remedies and relief, and others as the Court deems fit, to ensure the violations of law by the Defendants to not occur again – and will not be unamenable or displeased should the Court decide to make the Hobson’s Choice.

Respectfully submitted:



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