

IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY,
PENNSYLVANIA

JIM BOGNET,

Plaintiff,

v.

LUZERNE COUNTY BOARD OF
ELECTIONS,

Defendant.

No. 2022-10514

EMERGENCY PETITION FOR
PEREMPTORY JUDGMENT,
DECLARATORY AND INJUNCTIVE
RELIEF

Filed on behalf of Plaintiff

Counsel of Record for Plaintiff:

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PROTHONOTARY LUZERNE COUNTY
FILED NOV 22 2022 09:06

IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY,
PENNSYLVANIA

JIM BOGNET,

No.

Plaintiff,

v.

LUZERNE COUNTY BOARD OF
ELECTIONS,

Defendant.

EMERGENCY PETITION FOR PEREMPTORY JUDGMENT AND SUMMARY,
DECLARATORY AND INJUNCTIVE RELIEF

1. Pursuant to Pennsylvania Rule of Civil Procedure 1098 and Luzerne County Local Rule of Civil Procedure 1098, Plaintiff, Jim Bognet, asks that this Court enter peremptory judgment granting Plaintiff's claim for a writ of mandamus and enter summary relief granting Plaintiff's claim for declaratory and injunctive relief.

2. The requested relief is warranted because there are no material factual disputes and Plaintiff's right to a writ of mandamus and declaratory and injunctive relief is clear as a matter of law. *MFW Wine Co., LLC v. Pennsylvania Liquor Control Bd.*, 231 A.3d 50, 52 n.2 & 56 (Pa. Commw. 2020) (describing the standard that governs both peremptory judgment and summary relief); *Thomas v. Com., Bd. of Prob. & Parole*, 699 A.2d 792, 795 (Pa. Commw. 1997) (same).

3. The Election Code requires boards of election to complete reconciliation process during the canvass and prior to certification of the election results. 25 P.S. § 3154(b)–(d), (f).

4. During the 2022 General Election, several polling locations in Luzerne County experienced a paper shortage and ran out of ballot paper on November 8, 2022.

5. The Luzerne County Board of Elections has not completed the mandatory reconciliation process for the November 8, 2022 General Election.

6. Plaintiffs request expedited consideration of this motion.

7. In support of this motion, Plaintiff relies on the contemporaneously filed brief in support and his complaint, which is incorporated by reference. A proposed Order is attached.

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

1. Issue a writ of mandamus compelling the Board to complete the reconciliation process for the 2022 General Election prior to certifying the results of the election under 25 P.S. § 3154(f);

2. Issue a declaratory judgment that the Board may not forego any aspect of the reconciliation process as set forth in 25 P.S. § 3154; and

3. Issue an injunction prohibiting the Board from certifying the results of the election until it has completed the reconciliation process; and

4. Grant such further relief as may be necessary or appropriate.

Respectfully submitted,

Dated: November 21, 2022

/s/ Walter S. Zimolong, III

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JIM BOGNET,

No.

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LUZERNE COUNTY BOARD OF
ELECTIONS,

Defendant.

**[PROPOSED] ORDER GRANTING PLAINTIFFS' EMERGENCY MOTION FOR
PEREMPTORY JUDGMENT AND SUMMARY RELIEF**

AND NOW, this _____ day of November, 2022, upon consideration of the Plaintiff's Emergency Motion for Peremptory Judgment and Summary Relief, and any response thereto, it is hereby ORDERED that such motion is Granted. It is further ORDERED:

1. The Board shall complete the reconciliation process for the 2022 General Election as set forth in 25 P.S. § 3154 prior to certifying the results of the 2022 General Election.

2. The Board may not forego any aspect of the reconciliation process as set forth in 25 P.S. § 3154; and

3. The Board is hereby enjoined from certifying the results of the 2022 General Election until it has completed the reconciliation process.

BY THE COURT:

, J.

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RULE TO SHOW CAUSE

AND NOW, this _____ day of November, 2022, upon consideration of the Plaintiff's Emergency Motion for Peremptory Judgment and Summary Relief, and any response thereto, it is hereby ORDERED that:

1. A Rule is issued upon defendant, Luzerne County Board of Elections to show cause why petitioner/plaintiff, Jim Bognet, is not entitled to the relief requested.
2. Defendant/respondent shall file an answer to this petition and plaintiff's complaint by Monday, November 28, 2022.
3. A hearing shall be held on the petition on _____ in Courtroom _____ of the Luzerne County Court of Common Pleas.
4. Defendant/Respondent, Luzerne County Board of Elections, is hereby enjoined from certifying the results of the 2022 General Election until further order of this Court.

BY THE COURT:

, J.

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