

DUANE MORRIS LLP

J. Manly Parks (74647)
Nicholas M. Centrella, Jr. (326127)
30 South 17th Street
Philadelphia, PA 19103
Tel.: (215) 979-1000
JMParks@duanemorris.com
NMCentrella@duanemorris.com

Attorneys for Board of Elections

**NICHOLE MISSINO, LEAH HOOPES &
GREGORY STENSTROM**

v.

**DELAWARE COUNTY BOARD OF
ELECTIONS & DELAWARE COUNTY
BUREAU OF ELECTIONS**

**: COURT OF COMMON PLEAS,
: DELAWARE COUNTY
:
: ELECTION LAW**

: NO: CV-2022-008091

**DELAWARE COUNTY BOARD OF ELECTIONS OPPOSITION TO MOTION FOR
LITIGATION HOLD FILED BY PLAINTIFFS NICHOLE MISSINO, LEAH HOOPES,
& GREGORY STENSTROM**

The Delaware County Board of Elections and Delaware County Bureau of Elections (collectively, the “Board”), by and through their undersigned counsel, hereby submit their Opposition to the Motion for Reconsideration (“Motion”) filed by Plaintiffs Nichole Missino, Leah Hoopes and Gregory Stenstrom (collectively “Plaintiffs”).

1. This Paragraph purports to describe Plaintiffs’ request for relief, and no response is required. To the extent this Paragraph contains allegations of fact, they are denied.
2. This Paragraph contains conclusions of law to which no response is required. By way of further answer, the Board denies spoiling evidence in any fashion.
3. This Paragraph contains conclusions of law to which no response is required. By way of further answer, the Board denies spoiling evidence in any fashion.

4. This Paragraph contains conclusions of law to which no response is required. By way of further answer, the Board denies spoiling evidence in any fashion.

5. Denied. The Board denies this Paragraph as unintelligible. By way of further answer, no order has been entered. Additionally, the Board denies spoiling evidence in any fashion.

6. This Paragraph contains conclusions of law to which no response is required. To the extent this Paragraph contains allegations of fact, the Board denies this Paragraph as unintelligible. By way of further answer, the Board denies spoiling evidence in any fashion.

7. Denied as stated. The allegations of this Paragraph are denied as mischaracterizations and gross misrepresentations. The Board specifically denies spoiling evidence in any fashion.

8. Denied. The Board specifically denies that any so-called fraudulent ballots were counted in the 2022 General Election.

9. Denied. This Paragraph fails to contain an allegation against the Board. To the extent it is directed at the Board, it is denied. The Board specifically denies spoiling any evidence.

10. Denied. This Paragraph fails to contain an allegation against the Board. To the extent it is directed at the Board, it is denied. The Board specifically denies spoiling any evidence. Further, this Paragraph contains conclusions of law to which no response is required.

11. Denied. This Paragraph fails to contain an allegation against the Board. To the extent it is directed at the Board, it is denied. The Board specifically denies spoiling any evidence.

12. Denied. This Paragraph fails to contain an allegation against the Board. To the extent it is directed at the Board, it is denied. The Board specifically denies spoiling any evidence.

13. Denied. This Paragraph fails to contain an allegation against the Board. To the extent it is directed at the Board, it is denied. The Board specifically denies spoiling any evidence.

Dated: December 15, 2022

Respectfully submitted,

/s/ J. Manly Parks

J. Manly Parks (74647)

Nicholas M. Centrella, Jr. (326127)

30 South 17th Street

Philadelphia, PA 19103

Tel.: (215) 979-1000

JMParks@duanemorris.com

NMCentrella@duanemorris.com

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a true and correct copy of the foregoing
Opposition to Motion for Litigation Hold to be filed and served via this Court's e-filing system
upon all counsel and pro se parties of record.

/s/ Nicholas M. Centrella, Jr.

Dated: December 15, 2022

DUANE MORRIS LLP

J. Manly Parks (74647)
Nicholas M. Centrella, Jr. (326127)
30 South 17th Street
Philadelphia, PA 19103
Tel.: (215) 979-1000
JMParks@duanemorris.com
NMCentrella@duanemorris.com

Attorneys for Board of Elections

**NICHOLE MISSINO, LEAH HOOPES &
GREGORY STENSTROM**

v.

**DELAWARE COUNTY BOARD OF
ELECTIONS & DELAWARE COUNTY
BUREAU OF ELECTIONS**

: **COURT OF COMMON PLEAS,**
: **DELAWARE COUNTY**
:
: **ELECTION LAW**
:
: **NO: CV-2022-008091**
:
:
:
:

**DELAWARE COUNTY BOARD OF ELECTIONS MEMORANDUM OF LAW IN
OPPOSITION TO MOTION FOR LITIGATION HOLD FILED BY PLAINTIFFS
NICHOLE MISSINO, LEAH HOOPES, & GREGORY STENSTROM**

The Delaware County Board of Elections and Delaware County Bureau of Elections (collectively, the “Board”), by and through their undersigned counsel, hereby submit their Memorandum of Law in Support of their Opposition to the Motion for Litigation Hold (“Motion”) filed by Plaintiffs Nichole Missino, Leah Hoopes and Gregory Stenstrom (collectively “Plaintiffs”).

I. INTRODUCTION

The Motion, to the extent it even contains allegations against the Board, is factually meritless and does not even attempt to establish an entitlement to relief. The Board is required by state and federal law to retain documents from every election for a certain period of time. Plaintiffs here file a request to retain those very same documents, cite none of the laws which obligate the Board to do so, and fail to establish why the Motion is necessary in any fashion.

Additionally, Plaintiffs fail to even allege that any spoliation of evidence actually occurred, or is likely to occur. The Motion is totally meritless and should be denied.

II. LEGAL STANDARD

The Pennsylvania Election Code requires that “[a]ll documents, papers and records in the office of the county board of elections of each county shall be preserved therein for a period of at least eleven (11) months, and all official ballots and the contents of ballot boxes shall be preserved therein for a period of at least four (4) months.” 25 P.S. § 2649. Further, federal law requires that, for federal races, “[e]very officer of election shall retain and preserve, for a period of twenty-two months....all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election.” 52 U.S.C. § 20701.

III. ARGUMENT

The Motion is nearly unintelligible, unnecessary, and fails to establish any entitlement to relief.

As an initial matter, as stated above, the Board is required to maintain records from state-level races in the 2022 General Election until October of 2023. 25 P.S. § 2649. For federal races, it is required to keep the records until September 2024. 52 U.S.C. § 20701. Plaintiffs did not even need to file this Motion, because the Board was already maintaining these records.

Plaintiffs also fail, in large part, to even allege the Board did anything wrong. Virtually the entire Motion describes the types of documents that Plaintiffs wish the Board will maintain. See Motion at ¶¶ 8-13. Because these paragraphs fail to make any allegation that the Board did something wrong, they do not require a response. Additionally, the Board is already maintaining these materials.

Plaintiffs also fail to establish any entitlement to relief. Plaintiffs fail to allege the Board has spoiled any of the documents requested. *See generally* Motion. Plaintiffs also incorrectly cite federal law on the spoliation of evidence – not at issue here – rather than the state and federal laws governing the maintenance of election records. *See id.* at ¶¶ 1-6. Plaintiffs frequently allege certain actions are violations of federal and state law, but utterly fail to identify a single law being violated. *See, e.g., id.* at ¶ 7.

Regarding the single allegation against the Board, in ¶ 7 of the Motion, which asserts that Director of Election Operations Jim Allen testified that required records were deleted, this allegation is false and is a total mischaracterization of the testimony given. The November 21st, 2022 hearing Plaintiffs reference – which lasted for nine hours and ended in an order holding that Plaintiffs showed no evidence of fraud whatsoever – is a matter of public record, as is the testimony given, and Plaintiffs have chosen to blatantly misrepresent what occurred.

This Motion has no legitimate purpose. This Motion is hardly directed toward the court or the parties, and instead is clearly an attempt to continue to cast doubt on the results of the 2022 General Election by implying that evidence was spoiled when it was not. Plaintiffs' failure to allege the Board actually did anything wrong is a clear indicator that they know this to be true, yet they have persisted in filing the Motion as a vexatious litigation tactic designed to broadcast this message to certain segments of the public.

The Court should not countenance this continued abuse of the judicial process, whereby Plaintiffs continue to bring meritless cases and file frivolous motions, including this one. The Motion should be denied.

IV. CONCLUSION

Because Plaintiffs' Motion for Litigation Hold has no legal or factual merit, the Board respectfully requests that this Court deny the Motion as well as all other relief sought by Plaintiffs.

Dated: December 15, 2022

Respectfully submitted,

/s/ J. Manly Parks
J. Manly Parks (74647)
Nicholas M. Centrella, Jr. (326127)
30 South 17th Street
Philadelphia, PA 19103
Tel.: (215) 979-1000