

NICHOLE MISSINO, LEAH HOOPES
And
GREGORY STENSTROM, ALL PRO SE
Petitioners

v.

**DELAWARE COUNTY BOARD OF
ELECTIONS**
And
**DELAWARE COUNTY BUREAU OF
ELECTIONS,**
Respondents

IN THE DELAWARE COUNTY COURT OF
COMMON PLEAS, PENNSYLVANIA

No.: CV-2022-008091

CIVIL ACTION

MOTION FOR LITIGATION HOLD

DISCOVERY REQUESTED

EVIDENTIARY HEARING REQUESTED

JURY TRIAL REQUESTED

PETITIONERS' APPLICATION FOR LITIGATION HOLD ORDER

1. Petitioners hereby request the Court issue an Order for Litigation Hold to Defendants to preserve everything (document, electronic and digital files, and tangible thing) in connection with the 2022 General Election, that it is required, in accordance with the Pennsylvania Election Code, for which further clarification is included herein.

2. In Pennsylvania, spoliation of evidence is defined as **“the non-preservation or significant alteration of evidence for pending or future litigation.”** *Pyeritz v. Pennsylvania*, 32 A. 3d 687, 692 (Pa. 2011).

3. Following the standard established by the 3rd Circuit Court of Appeals in *Schmid v. Milwaukee Elec. Tool Corp.*, 13 F.3d 76 (3rd Cir. 1994), the federal court applied a two-part analysis. It first determined if any spoliation occurred, and then decided on an appropriate sanction. As noted by the court, the “spoliation analysis” is distinct from the “sanctions analysis” and courts must conduct the spoliation analysis before determining any sanctions. In a “spoliation analysis,” spoliation is deemed to have occurred if:

- a. the evidence is within the alleged spoliator’s control;
- b. there has been actual suppression or withholding of the evidence;
- c. the evidence was relevant; and
- d. it was reasonably foreseeable that the evidence would be discoverable.

4. With respect to the second prong of the test, the federal court in Cohen emphasized that the 3rd Circuit requires a showing of “intentionality and bad faith.” A defendant’s mere negligence in failing to preserve evidence is not enough. Hence, the requirement for this order to put a litigative stake in the ground of due notice and Order to preserve such evidence.

5. Any alteration, loss, or destruction to a document, electronic or digital file, or tangible item associated with the 2022 General Election process will be interpreted as violating this Order.

6. When a party spoliates evidence, the standard of culpability courts require before they will instruct a jury that they may view the missing evidence as unfavorable to that party, in addition to the lawful sanctions and fines defined by USC Code 52 and PA Title 12 Election Law already provides, is potentially at the courts’ discretion. Hence, violation of this order will predispose such speculation and discretion, and demonstrate “bad faith” and “intentionality,” that any missing evidence would be damaging to the Defendants’ case, and require either adverse direction, or a directed verdict. In short – spoliation of evidence IS evidence.

7. While Petitioners hope that the Board of Elections has already taken steps to preserve this data since it had an obligation to preserve relevant evidence in connection with the 2022 General Election as required by law, Defendants Director of Election Operations, Jim Allen, indicated in his most recent testimony at the November 21st, 2022 injunctive hearing that “maybe” the BlueCrest mail sorter images of envelopes and system logs might have been destroyed, which if so, is a clear violation of both federal and state election law, as it is the only definitive evidence that would show when mail in ballots were pre-canvassed prior to the election outside of the observation of certified poll watchers (which is already a violation of PA Title 12 election code), and the subject Order is required.

8. Petitioners have additional evidence and affidavits and of qualified electors that paper mail-in and absentee ballots counted in this 2022 Election include illegal fraudulent ballots, or were counted, but since removed from SURE and Department of State

databases that will be included with forthcoming amended complaint. Petitioners believe that independent forensic examination will reveal that many fraudulent ballots were counted which were not sent by registered voters of Delaware County in the 2022 General Election, or that mail in ballots they returned to the Defendants were not counted.

9. Hence, it is of the utmost importance that the Board of Elections have not destroyed or failed to preserve the actual ballots, and the envelopes, and their digital images connected to those ballots, which were counted in Delaware County. No procedures should have been implemented to alter any active, deleted or fragmented data. Further, no electronic data should have been disposed of or destroyed. We further require that the Board of Elections will continue to preserve such electronic data, paper files and tangible items throughout this litigation.

10. There is a myriad of other physical evidence that the Board of Elections is obligated to preserve, including but not limited to Hart Intercivic vDrives, vDrive duplicators, Verity keys, Electronic Management System (EMS) logs, original return receipts prepared and attached to bags containing vDrives and portable media, and end receipts from each precinct of Delaware County. Any collateral equipment involved in processing mail in or precinct ballots, such as mail sorters not named herein, USPS postal meters, and essentially anything that touched, or made digital record of (including Defendant intermediate work products such as spreadsheets Defendants included in the body of previous filings and correspondence, any ballot is included in the request for order.

11. Regarding voting machines, scanners, and computers used to tabulate and count the votes, the operating systems, internal storage media (Verity CAST drives), and any other fixed or portable electronic storage devices, they must be preserved, and left unmodified.

12. In addition, any security footage from any video surveillance at the Wharf Office Building of the Board of Elections in Chester, Pennsylvania, and drop boxes located throughout the County, that may reveal large numbers of ballots delivered on loading docks, entrances or elsewhere, and that may reveal large numbers of ballots brought into a

rear ballot storage room or taken out of that rear ballot storage room, must be preserved. This video footage should not be altered in any way, to remove any time and/or date stamp on the video surveillance footage.

13. This request for an Order for evidence preservation includes all of the above and more - the Board of Elections is required by the Pennsylvania Election Code to preserve everything, without limitation, connected with the 2022 General Election.

(This section intentionally left blank - signature page below)

Respectfully submitted:



NICHOLE MISSINO

Date: 01DEC2022

478 Granite Terrace,
Springfield, Pennsylvania 19064
nicholemissino@gmail.com



LEAH HOOPES

Date: 01DEC2022

241 Sulky Way
Chadds Ford, PA 19317
leahfreedelcopa@protonmail.com



GREGORY STENSTROM

Date: 01DEC2022

1541 Farmers Lane
Glen Mills, PA 19342
gstenstrom@xmail.net

ORDER

AND NOW, this _____ day of November 2022, upon consideration of the preliminary objections of all Defendants¹ to Plaintiffs Complaint and Plaintiffs' response(s) thereto, the Court finds as follows:

1. Federal and State election law, and Pennsylvania Department of State Directives and Guidance require statutory requirements for the preservation of election materials for a minimum period of 22 months, and/or as long as litigation is in motion (including appellate trajectories), after each election
2. Federal and State Rules of Evidence, and civil spoliation law requires retaining further evidence requested relevant to litigation,
3. Plaintiffs have requested discovery, evidentiary hearings, and jury trial to assess accountability and other remedies as alliterated in their petition(s), and litigants for which all parties will be notified of scheduled date and time.

WHEREFORE, this court hereby enters the following ORDER FOR LITIGATION HOLD.:

AND NOW, this _____ day of December 2022, upon consideration of the petition, motions, injunctions, and preliminary objections of all Defendants, and Plaintiffs' response(s) thereto, it is hereby ORDERED and DECREED that:

1. Defendants retain and preserve the actual ballots, and the envelopes, and their digital images connected to those ballots, which were counted in Delaware County in the 2022 General Election. No procedures should have been, or will be implemented to alter any active, deleted or fragmented data. Further, no electronic data should have been, or will be, disposed of or destroyed. Defendants will continue to preserve such electronic data, paper files and tangible items throughout this litigation.
2. There is a myriad of other physical evidence that the Defendants are obligated to preserve, including but not limited to Hart Intercivic vDrives, vDrive

duplicators, Verity keys, Electronic Management System (EMS) logs, original return receipts prepared and attached to bags containing vDrives and portable media, and end receipts from each precinct of Delaware County. Any collateral equipment involved in processing mail in or precinct ballots, such as mail sorters not named herein, USPS postal meters, and essentially anything that touched, or made digital record of (including Defendant intermediate work products such as spreadsheets Defendants included in the body of previous filings and correspondence, any ballot is included in the request for order.

3. Defendants will retain and preserve voting machines, scanners, and computers used to tabulate and count the votes, the operating systems, internal storage media (Verity CAST drives), and any other fixed or portable electronic storage devices, they must be preserved, and left unmodified.
4. In addition, any security footage from any video surveillance at the Wharf Office Building of the Board of Elections in Chester, Pennsylvania, and drop boxes located throughout the County, or any other location, including ballots delivered on loading docks, entrances or elsewhere, must be preserved. This video footage should not be altered in any way, to remove any time and/or date stamp on the video surveillance footage.

BY THE COURT

VERIFICATION

We, Nichole Mission, Leah Hoopes and Gregory Stenstrom, hereby verify the statements made in the foregoing pleadings are true correct to the best of our knowledge, information, and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S. section 4904 relating to unsworn falsification to authorities.

Respectfully submitted:



NICHOLE MISSINO

Date: 01DEC2022

478 Granite Terrace,
Springfield, Pennsylvania 19064
nicholemissino@gmail.com



LEAH HOOPEES

Date: 01DEC2022

241 Sulky Way
Chadds Ford, PA 19317
leahfreedelcopa@protonmail.com



GREGORY STENSTROM

Date: 01DEC2022

1541 Farmers Lane
Glen Mills, PA 19342
gstenstrom@xmail.net