

TROIANI LAW FIRM
BY: Dolores M. Troiani, Esquire
Solicitor, Republican Committee
of Chester County
I.D. NO: 21283
P.O. Box 1363
Paoli, PA 19301
(610) 688-8400

Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA
CIVIL DIVISION

REPUBLICAN COMMITTEE OF CHESTER : CIVIL ACTION – IN EQUITY
COUNTY, FELICE FEIN, JEANNE LOCASTRO, :
BECKY MCCARRON and KIM SCHAFFER :
C/O RCCC :
15 South Church Street :
West Chester, PA 19382 :
Plaintiffs :
vs. :
CHESTER COUNTY BOARD OF ELECTIONS :
C/O Chester County Solicitor :
313 West Market Street :
West Chester, PA 19380 :
Defendant :

RETRIEVED FROM DEMOCRACYDOCKET.COM

APR 16 2016 11:39 AM
CLERK OF COURT
JUDICIAL CENTER
100 N. MARKET ST.
WEST CHESTER, PA 19380

COMPLAINT FOR INJUNCTIVE RELIEF AND MANDAMUS

Plaintiffs file this Complaint and Petition for Injunction against Defendant and anyone acting through, with, or on behalf of Defendant, and seek to enjoin the Chester County Board of Elections from its pattern of promulgating rules and making policy decisions without notice to the public as required by law, from surreptitiously filing legal actions without serving copies on interested parties, from engaging in ex-parte communications with the court, from failing to preserve the status quo regarding committee members acting as poll watchers, as they have done for decades, and aver as follows:

Plaintiffs

1. The Republican Committee of Chester County, (hereinafter RCCC), is a non-profit political organization whose office is located at 15 South Church Street, West Chester, Pennsylvania.
2. Plaintiff, Felice Fein, is a Republican committee member, a resident of Chester County, and a registered voter who intends to vote in the upcoming primary and general elections.
3. Plaintiff, Jeanne LoCastro, is a Republican committee member, a resident of Chester County, and a registered voter who intends to vote in the upcoming primary and general election.
4. Plaintiff, Becky McCarron, is a Republican committee member, a resident of Chester County, and a registered voter who intends to vote in the upcoming primary and general elections.
5. Plaintiff, Kim Schaffer, is a Republican committee member, a resident of Chester County, and a registered voter who intends to vote in the upcoming primary and general elections.

Background - Committee Members as Poll Watchers

6. Each of the above-named individual Plaintiffs is an RCCC committee member and each is a candidate for election to the committee in the 2024 primary and each candidate/committee member is unopposed.
7. Kim Schaffer is a Judge of Elections. The other above-named plaintiffs are committee members who applied for a poll watcher's certificate to fulfill his/her duty as committee member in the 2024 primary election.

8. Each of the above-named committee members has served as a poll watcher in his/her own precinct in previous elections, including in years when the plaintiff was a candidate for reelection in his/her own precinct.

9. Each plaintiff has agreed to refrain from electioneering of any kind while engaged in poll watching, and further agreed to abide by the provisions of the Election Code 25 P.S. 2687.

10. Only Republican committee members are on the ballot this year. Democrat committee members are running next year.

Background – Filing Legal Actions without Notice to Counsel and Engaging in Ex-parte Communications with the Court

11. At a meeting held on January 31, 2024, with representatives of the Republican, Democrat and Libertarian Parties in attendance, representatives of Voter Services announced that Phoenixville Borough had passed an ordinance changing its wards, that the ordinance had been approved by the Department of State, and that Voter Services would be presenting an order to the court to have the precincts changed prior to the primary. The Board of Elections did not serve the petition on interested parties and did not post the notice on the Voter Service's website or elsewhere.

12. The RCCC requested a copy of the petition and voiced concern that, in order to appear on the ballot, committee members are required to obtain nomination petitions in the precinct in which they reside and to submit those petitions to Voter Services within a set period of time. For 2024, the petitions could not be signed prior to January 23 and were required to be filed by February 13, 2024.

13. By altering the precincts without notice to the RCCC, the committee members would not be able to submit nomination petitions in sufficient time for their names to appear on the ballot.

14. The RCCC requested a copy of the petition, which was not provided until February 8 (after the third request). The petition had been filed on January 11, 2024.

15. At averment 53, the petition alleges, "The Pennsylvania Department of State has reviewed and provided preliminary approval of the proposed modification of the Election Districts contained in Exhibit "D" (Proposed Precinct Map and Verbal Description)." The alleged preliminary approval was not attached as an exhibit and eventually, the county admitted that the approval had not occurred.

16. Paragraph 18 of the petition partially reproduced the pertinent statute authorizing the court to make the alteration, but then wrote "Provided [sufficient notice is provided]"

The portion omitted in bold below reads:

Provided, however, That the court shall not make any final order for the division, redivision, alteration, formation or consolidation of election districts until at least ten days after notice shall have been posted in at least five public and conspicuous places in the district or districts to be affected thereby, one of which notices shall be posted on or in the immediate vicinity of the polling place in each such district. Such notice shall state in brief form the division, redivision, alteration, formation or consolidation of election districts recommended by the county board, the number of electors registered in each district at the immediately preceding general or municipal election, and the date upon which the same will be considered by the court, and shall contain a warning that any person objecting thereto must file his objections with the clerk of the court prior to such date. Upon the making of any such final order by the court, a copy thereof shall be certified by the clerk to the county board of elections. 25 Pa.S. § 2740

17. The petition does NOT allege that the required notice was given, and the County obtained an ex-parte Order from the Court. The RCCC requested that the County provide it with a copy of the Order and that the order be vacated for failure to provide the statutorily required notice.

18. The County did not provide a copy of the Order and the RCCC purchased the Order from the Prothonotary and filed a Motion to Vacate Order. After filing the Motion, the RCCC discovered that the petitioners had vacated it the previous business day.

19. Because the Order had been vacated, the Republican committee members were able to have their names printed on the ballot in the precincts in which they reside. However, on March 27, 2024, the County Solicitors announced that they were researching the law as to whether the Republican Committee Members could act as poll watchers (as they have done for decades), because the committee members are on the ballot.

Background -- Failure to Allow Poll Watchers to Serve

20. Because committee members are not civil officials, they only run in the primary and not in the general election. The majority of the RCCC committee members are running unopposed. Again, only Republicans are on the ballot. *In Re Ganzman*, 133 Pa. Commw. 33; 574 A. 2d 732 (1990); Pa. Commw 260.

21. Following the March meeting, the Democrat solicitor sent an email to the county solicitors, asking for the statute the solicitor was looking for at the meeting on her phone which prohibits a candidate from being a poll watcher. In response on April 3rd, the county's deputy solicitor sent an email citing 25 P. S. §§ 2687 and 3060. The Republican solicitor asked for the specific sentence in each statute that prohibits a candidate from being a poll watcher.

22. In response, the county solicitors did not provide the specific language from either statute expressly prohibiting a candidate from being a poll watcher, but rather, cited the 1950 Pennsylvania Supreme Court case of *In re General Election to be Held in City and County of Philadelphia* at 366 Pa. 6 (PA. Supreme Ct. 1950). In that case, the candidate sought to be present inside the polling place based upon his status as candidate. Importantly, there is nothing in the Supreme Court case that indicates that a candidate is prohibited from being a poll watcher in his/her own precinct, and the post that candidate was seeking is not identified.

23. For decades, committee members have been permitted to act as poll watchers in their respective precincts without interference from government. *See: Mohn v. Bucks County Republican Comm.* 259 A.3d 449 (Pa. 2021).

24. Voter Services has propagated poll watcher rules, which are published on Voter Services' web site. The only requirement is that the watcher must be a registered voter in Chester County.

Background- Attempt to Disqualify Republican Judges of Election

25. On April 15, 2024, Voter Services notified Republican Judges of Election, including Kim Schaffer that they were not permitted to fulfill their elected duties in the precinct to which they were elected because they were also running for the RCCC.

26. Upon demand for the legal authority supporting their decision, Defendant reversed course and admitted that the Republicans were not running for a civil office and, therefore, could fulfill their duties as Judges of Election.

27. In that the rules for poll workers, including Judges of Election, are more stringent than poll watchers, the RCCC requested that Defendant also relent as to the poll watchers.

Background – Making Rules and Decisions without Public Notice

28. Following the November 2023 general election, the RCCC learned that Chester County was not following the Department of State directives related to designated agents in long-term care facilities.

29. The Pennsylvania Department of State's Bureau of Commissions, Elections and Legislation oversees the Commonwealth's electoral process through the issuance of directives to the counties.

30. The Pennsylvania Department of State directive, as well as the form related to designated agents, provides that if a registered voter has a disability, as defined under the Americans with Disabilities Act, that prevents the voter from applying in person, or delivering the voter's mail-in ballot, then that voter may designate an agent to deliver the disabled voter's ballot materials. See DOS Voting and Election Information "Third Party Ballot Delivery for Mail Voting, www.vote.pa.gov/Voting-in-PA/Pages/Accessible-Voting.aspx. The voter must designate the agent by completing a specific form.

31. The PA DOS Form is entitled "Authorize a Designated Agent to Help You Obtain and/or Return Your Mail-In or Absentee Ballot" and reads, "Who can be a designated agent? The person you designate as your agent is only allowed to serve as a designated agent for ONE voter, unless the additional voter(s) live in the same household as you (the voter named in this form)".

32. According to bullet point number three of the PA DOS Fact Sheet for Voters in Long-Term Care Facilities issued 8/2022:

"An individual may serve as a designated agent for only one voter unless the relevant voters live in the same household. A "household" for the purpose of designating an agent does not include a long-term care facility. This means that each resident in a long-term care facility who is unable to return their own voted ballot due to a disability must designate a different agent. However, a couple sharing a room or apartment within a facility may be considered members of the same household." (emphasis added).

33. In direct contradiction to the clear mandate of the PA DOS Fact Sheet for Voters in a long-term care facility, defendant determined that the definition of "household" did include a long-term care facility without providing any notice or ability for public discussion of this policy deviation from the PA DOS, and as such, counted votes that the one designated agent signed and then submitted on behalf of several voters residing at one long-term care facility.

34. On several occasions, including by letter to the Board of Elections dated March 13, 2024, the RCCC requested access to the forms and raised the concerns alleged herein.

35. At a public hearing held on March 14, 2024, minority Commissioner Eric Roe asked the Deputy County Solicitor to respond to some of the concerns. The county solicitor cited the case of *Dipietrae v. City of Philadelphia*, which reads in *footnote nine* “We do not herein address the definition of “household” as it relates to that part of the trial court/s order, providing that “an individual cannot be the agent for persons living in more than one household.” Any interpretation concerning places, such as nursing homes or hospitals must be left initially to the administrative discretion of the election officials or the trial court.” 666 A.2d 1132 (Pa. Cmmw. Ct. 1995) at footnote 9.

36. When questioned as to whether the Board of Elections had, in fact, adopted the Court’s suggestion in the footnote, Commissioner Maxwell stated the County Solicitor would provide the answer. On April 3rd, the county solicitor acknowledged in an email that there is no written documentation or directive that the Board of Elections had, in fact, adopted a definition of household to include a long-term care facility.

Defendant’s Pattern of Actions

37. As detailed in the above averments, defendant has engaged in a pattern of actions in violation of the Election Code, the Sunshine Act and the PA DOS directive.

38. Plaintiffs seek the Court’s intercession to enjoin the defendant from further violations and to reverse their actions which are contrary to law.

39. Defendant, Chester County Board of Elections, is a governmental entity existing under 25 P.S. § 2641. It is responsible for, *inter alia*, conducting primary and general elections, making

rules and regulations and instructions consistent with the Pennsylvania Election Code, investigating irregularities and violations, reporting same to the district attorney, canvassing and counting the ballots, and certifying the election to the Secretary of State., 25 P.S. § 2642.

40. The board of commissioners is an agency as the term is defined in the Sunshine Act 65 Pa. C. S. §703. The county commissioners are empowered by the County Code to issue resolutions and ordinances prescribing the manner in which the powers of the county shall be executed and generally regulating the resources of the county, 65 Pa. C.S. § 509.

41. The Sunshine Act affords Pennsylvanians the right to advance notice of the topics for discussion at any official public meeting, 65 Pa. C. S. §701. et seq. The Sunshine Act details specific notice requirements consistent with its express legislative purpose, which is defined as the right of citizens to participation and transparency “vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public’s effectiveness in fulfilling its role in a democratic society.” 65 Pa. C.S. §702.

42. The court has original jurisdiction over this complaint pursuant to 42 Pa. C.S. § 931(a)(1) and 65 Pa C.S. § 715.

Causes of Action

Count I

Injunctive Relief-Violation of the PA Election Code and Sunshine Act

43. Plaintiffs incorporate the previous paragraphs by reference.

44. A special and preliminary injunction is necessary to prevent Defendant from promulgating rules and making policy decisions without notice as required by law, from surreptitiously filing legal actions, engaging in ex-parte communications with the court, from including invalid ballots

in the vote count, and to preserve the status quo by permitting Republican Committee Members to be poll watchers and cease from interfering with the RCCC's right to assign its poll watchers to the precincts they represent.

45. Plaintiffs request this Honorable Court direct the Chester County Board of Elections to provide notice in accordance with the applicable statutes prior to re-applying for any alteration of precincts or making policy decisions which differ from those previously established, and further direct that Chester County Board of Elections to serve the registered political parties, including the Republican Committee of Chester County, with any future petitions relating to the conduct of elections, and refrain from any ex-parte communications with the court.

46. Plaintiffs request that this Honorable Court direct the County to cease and desist from any further interference with the election of Republican Committee Members and permit its member candidates to be poll watchers in their own precincts as has been the practice for decades.

47. The five elements for the issuance of a preliminary injunction are (1) the injunction is necessary to prevent immediate and irreparable harm, which cannot be compensated by damages; (2) greater injury would result by refusing it than by granting it; (3) an injunction will restore the parties to the status quo as it existed immediately before the alleged wrongful conduct; (4) the alleged wrong is manifest, and the injunction is reasonably suited to abate it; and (5) the plaintiffs' right to relief is clear. *Kierski v. Twp. Of Robinson*, 810 A.2d 196, (Pa.Cmmw. Ct. 2002).

48. Each of these five elements exist here.

49. First, plaintiffs will suffer irreparable harm if defendant is permitted to continue to disregard all notice requirements, to act in secret, to change the status quo regarding Republican committee

members, to enact rules and policies that adversely affect one political party and not the others, and to count void or invalid ballots which will dilute validly cast ballots.

50. Second, greater injury will result if the injunction is not entered than if it is granted. If the injunction is not granted, plaintiffs' fundamental right to vote will be impacted because valid votes will be cancelled when invalid votes are counted contrary to the clear requirement of the PA DOS, defendant will continue to act in secret, and will continue to promulgate rules and regulations that may target only one political party.

51. Conversely, there will be no harm to the Chester County Board of Elections or Chester County Voter Services when the Election Code, Sunshine Act and PA DOS Fact Sheet are followed, and defendant is required to follow the law.

52. Furthermore, there will also be no harm to a disabled voter who will continue to be entitled to designate an agent to submit a paper application for, obtain, and /or return the mail-in or absentee ballot on the disabled voter's behalf.

53. Third, the injunction will maintain the status quo because disabled voters and their designated agents will be following PA election law and directives as they stand, and Republican committee members will continue to represent their precincts as they have done for decades.

54. Fourth, the requested injunction is limited to preventing defendant from making policy decisions without notice and an opportunity for public discussion, refraining from ex-parte communications with the court, and maintaining the status quo as it relates to poll watchers.

55. Fifth, Plaintiffs' right to relief is clear. Plaintiffs are asking that defendant follow the directives of the Department of State, that it provide the statutorily required notice of its intent to deviate from those directives and that it maintain a record of when and why it deviated from the directives, that it maintain the status quo and afford committee members to serve as poll

watchers in their precincts as they have for decades, and that it cease and desist from engaging in impermissible ex-parte communications with the court and from committing ethical violations and governing in secret.

COUNT II
Action in Mandamus
Pa. R. Civ.P. 1091

56. Plaintiffs incorporate the previous paragraphs by reference.

57. Defendant has a public duty to canvass votes according to the Pennsylvania Election Code and PA DOS, to provide uniformity in its conduct of elections, to cease from acting in secret, to provide notice to the public in accordance with applicable law and to serve the registered political parties, including the Republican Committee of Chester County, with any future petitions relating to the conduct of elections and/or the alteration of election districts and to cease and desist from ex-parte communications with the court.

58. Plaintiffs lack an adequate remedy at law.

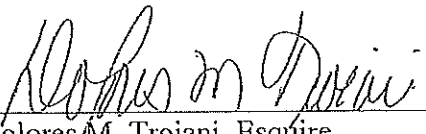
Demand for Relief

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment in their favor and against Defendant and award the following relief:

1. Require the Board of Elections to provide notice in accordance with applicable statutes including the Sunshine Act and the PA election code when determining the conduct of elections and making rulings and policy decisions affecting any and all voters;

2. Require the Board of Elections to serve the registered political parties, including the Republican Committee of Chester County, with any future petitions relating to the conduct of elections including but not limited to the alteration of election districts;
3. To provide uniformity in defendant's conduct of elections;
4. To refrain from ex-parte communications with the court;
5. To cease and desist from interfering with the Republican Party's election of its own members;
6. To issue poll watcher certificates to Republican Committee members, without restriction; and
7. To enter any other relief that the Court deems appropriate.

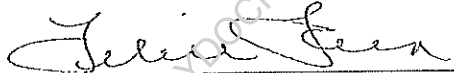
Respectfully submitted,



Dolores M. Troiani, Esquire
Attorney for Plaintiffs
Solicitor, Republican Committee of Chester County

VERIFICATION

I, Felice Fein verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.



Felice Fein

Date: 4/17/24

RETRIEVED FROM DEMOCRACYPOCKET.COM

VERIFICATION

I, BECKY MCCLEES verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.

Becky McClees

Date: 4-17-2024

RETRIEVED FROM DEMOCRACYDOCKET.COM

VERIFICATION

I, Jean LaCastro verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.

Jean LaCastro

Date: 4/17/2024

RETRIEVED FROM DEMOCRACYDOCKET.COM

VERIFICATION

I, Kimberly Schaffer verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.

Kimberly Schaffer

Date: 4.17.24

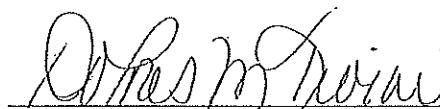
RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Justice System of Pennsylvania Case Records of the Appellate and Trial Courts that require confidential information and documents differently than non-confidential information and documents.

Date:

4/18/13



Dolores M. Troiani, Esquire
Attorney I.D. #62588
Attorney for Plaintiffs

Solicitor, Republican Committee
of Chester County

RETRIEVED FROM DEMOCRACY DOCKET.COM