

REPUBLICAN COMMITTEE OF  
CHESTER COUNTY, FELICE  
FEIN, JEANNE LOCASTRO,  
BECKY MCCARRON and KIM  
SCHAFFER,

Plaintiffs,

v.

CHESTER COUNTY BOARD OF  
ELECTIONS,

Defendant

IN THE COURT OF COMMON PLEAS  
CHESTER COUNTY, PENNSYLVANIA

NO. 2024-03305-MJ

CIVIL ACTION

**MEMORANDUM OPINION AND ORDER**

On April 18, 2024, Plaintiffs, the Republican Committee of Chester County, Felice Fein, Jeanne Locastro, Becky McCarron, and Kim Schaffer, commenced this action by filing a complaint against Defendant, the Chester County Board of Elections, seeking injunctive relief and mandamus. Concurrently, Plaintiffs filed a Petition for Preliminary Injunctive Relief pursuant to Pa.R.C.P. 1531.

The action was initially assigned to Judge Nicole Forzato, who filed an Order on April 18, 2024, recusing herself. The action was then reassigned to this court.

On April 18, 2024, after reviewing the Petition, we entered a Rule Order directing Defendant to answer the Petition no later than 3:00 p.m. on April 19, 2024, and scheduling a hearing for April 22, 2024.

On April 19, 2024, Defendant filed a timely answer to the Petition together with a supporting brief.

On April 22, 2024, a hearing was held on the Petition. For the reasons that follow, the Plaintiffs' Petition for Preliminary Injunctive Relief is denied.

### **DISCUSSION**

Petitioner seeks a broad based preliminary injunction that, at its essence, seeks to enjoin: the reapportionment of wards in Phoenixville Borough, Chester County, Pennsylvania (Borough); the inclusion mail-in-ballots in the vote count which have been returned by one designated agent on behalf of multiple residents of long-term care facilities; and the prohibition of candidates for political party committee positions from serving as poll watchers in a precinct in which they are a candidate. In order for Petitioner to prevail, it must establish that:

(1) the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; (2) greater injury would result from refusing an injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) the injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the party seeking the injunction is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and (6) the injunction will not adversely affect the public interest.

*Lindeman v. Borough of Meyersdale*, 131 A.3d 145, 151 (Pa.Cmwlt. 2015) (vacating and remanding to trial court for findings addressing the elements necessary for grant of preliminary injunction). If the Petitioner “fails to establish any one of them, there is no need to address the others.” *Id.* (citations omitted).

1. Reapportionment of wards in the Borough.

Petitioner’s principle complaint with regard to the *proposed* redistricting in Phoenixville appears to be a lack of notice regarding actions related to such redistricting now and in the future in other locations.<sup>1</sup> There is currently pending before another judge of this court, a matter captioned *In re: Reapportionment of the Election Districts of the Borough of Phoenixville*, Chester County Court of Common Pleas No. 2024-00312-MJ. In that matter, an order was entered granting the petition for reapportionment, but that order was vacated by Order dated March 8, 2024, and a hearing was to be set for that petition after the April 23, 2024, Primary Election. (Exh. D-4). Once a hearing date is set, then public notice of the hearing is required to be provided as set forth by law. 25 P.S. § 2704 (setting forth notice requirements). Petitioner will have both notice and an opportunity to

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<sup>1</sup> Petitioner has alleged that counsel for Chester County had engaged in *ex parte* communications with the court in matter captioned *In re: Reapportionment of the Election Districts of the Borough of Phoenixville*, Chester County Court of Common Pleas no. 2024-00312-MJ. There was no evidence presented to support such allegation.

participate in that hearing, but this is not the first public notice of reapportionment in the Borough.

The Borough was required, by law, to reapportion its wards. 53 Pa.C.S. § 903(a); *see also* 8 Pa.C.S. § 601 (creation and alteration of wards). The Borough adopted Ordinance No. 2023-2375, the Ward Reapportionment Ordinance, on December 12, 2023 (Ordinance). (Exh. P-1 (Exh. A thereto)). The Ordinance was to be made available for public consideration prior to adoption and to be advertised in a newspaper of general circulation before adoption. (Exh. P-1 (Exh. A thereto)); *see also* 8 Pa.C.S. § 603 (notice requirement for reapportionment ordinance). Petitioner was aware of the reapportionment by at least February 8, 2024. (Exh. D-1). Being aware of the Ordinance, Petitioner had the ability to contest the reapportionment of the Borough. 53 Pa.C.S. § 906 (contest of reapportionment by governing body). There is no evidence of record that Petitioner ever challenged the proposed reapportionment as provided by law.

The Court does not find, nor does the record support a finding that the County has engaged in a pattern of concealing the reapportionment of the Borough. Moreover, Petitioner has failed to challenge the Ordinance and will have a full opportunity to participate in any hearing on the County's petition for reapportionment. Based on

the forgoing, there is no immediate nor irreparable harm present in this matter that would support the entry of a temporary injunction to enjoin the reapportionment of wards in the Borough.<sup>2</sup>

2. Accepting and counting mail-in ballots of residents of a long term care facility submitted by a single designated agent.

Petitioner acknowledges that it did not object to the County accepting and counting mail-in ballots of residents of a long term care facility that had been submitted by a single designated agent. There does not appear to be any dispute that the residents of a long term care facility fall within the rubric of those who may use a designated agent to, *inter alia*, deliver their mail-in ballot. Petitioner also does not appear to object to residents of a long term care facility utilizing a designated agent, but rather the objection is that the long term care facility is not a household where more than one mail-in ballot may be submitted by a single designated agent. Petitioner offered no testimony or documentary evidence to establish that it or any other person or entity would be immediately and irreparably harmed in the absence of an injunction.

Neither party has provided a state regulation, statute, or case stating that a single designated agent is prohibited from submitting

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<sup>2</sup> The Court declines to enter a broader based injunction with regard to *potential* redistricting that may or may not take place in the future, as the statutory provisions addressed herein provide adequate remedies at law.

ballots for more than one person living in a long term care facility. There is no evidence of record that the potential submission of ballots for more than one person by a single designated agent will cause immediate and irreparable harm to Petitioner. This is especially so where, as here, Petitioner may have the opportunity to challenge ballots so submitted after the Primary Election. Moreover, at least one court has concluded that restrictions on “harvesting” ballots of those requiring assistance in voting, may be subject to an action based on a violation of those voters’ civil rights. *La Unión del Pueblo Entero v. Abbott*, 618 F.Supp.3d 504 (W.D. Texas 2022) (denying motion to dismiss claims under 42 U.S.C. § 1983 based on various voting restrictions related to persons with disabilities).

The injunction proposed in this matter would disenfranchise and, therefore, harm voters who are unable to submit their ballots on their own and have already provided their mail-in ballot to a single designated agent. The public interest will be adversely affected were this Court to issue an order preemptively disenfranchising voters by denying them the right to have their vote counted. This factor weighs heavily against the grant of a temporary injunction especially so where, as here, there is no evidence of immediate and irreparable harm, and Petitioner may challenge those ballots under the Election Code upon payment of ten dollars per ballot. 25 P.S. § 3146.8(f).

3. Prohibiting candidates for political party committee positions from serving as poll watchers in precincts where they are a candidate.

Petitioner failed to offer the testimony of a single candidate or any other person who might be harmed by their inability to serve as a watcher on behalf of a candidate for a Republican Party Committee position. There is simply no evidence that Petitioner will suffer immediate and irreparable harm if candidates for committee positions are not allowed to serve as watchers in the precincts where they are a candidate. In addition to the evidentiary deficit, there does not appear to be a basis in law for Petitioners position.

The Election Code provides and requires all persons to remain at least ten feet from the polling place during the progress of voting. 25 P.S. § 3060(d). However, a specific list of those excepted from this requirement is also set forth in that section. *Id.* That specific list does not include candidates. Section 3060(d) does not permit candidates inside the polling place because “the inclusion of a specific matter in a statute implies the exclusion of other matters,” in this case candidates. *Shrom v. Pennsylvania Underground Storage Tank Indemnification Bd.*, 261 A.3d 1082, 1092 (Pa.Cmwlt. 2021) (reversing lower court where criteria that was not listed in statute was utilized to determine eligibility for payment of remediation costs); *see also In re Gen. Election to be Held in City & Cnty. of Philadelphia*, 75 A.2d 812, 813

(Pa. 1950) (finding that candidates are not permitted in polling places except during the time they are voting). Moreover, because electioneering is prohibited, allowing candidates to sit in a polling place when their campaign literature is excluded, would produce an absurd result that could not have been intended by the legislature. 25 P.S. § 3060(c) (prohibiting electioneering and soliciting votes in a polling place); 1 Pa.C.S. § 1922 (“General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.”).

After consideration of the foregoing, and for all of the reasons stated, we enter this

**ORDER**

AND NOW, this 22<sup>ND</sup> day of April, 2024, upon consideration of Plaintiffs’ Petition for Preliminary Injunctive Relief, the answer thereto, and after hearing it is hereby ORDERED and DECREED that Plaintiffs’ Petition for Preliminary Injunctive Relief is DENIED.

BY THE COURT:

  
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Anthony T. Verwey, J.