

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA**

MATTHEW ALLEN VAN BIBBER,

Plaintiff,

v.

ALLEGHENY COUNTY & ALLEGHENY  
COUNTY BOARD OF ELECTIONS,

Defendants.

: **CIVIL DIVISION**

:

:

: Docket No.

:

: **EMERGENCY MOTION FOR  
PRELIMINARY INJUNCTION**

:

: Filed on behalf of Plaintiff,

: Matthew Allen Van Bibber

:

: Counsel of Record for this Party:

:

: Gregory H. Teufel, Esq.

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: Adam G. Locke, Esq.

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**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA**

MATTHEW ALLEN VAN BIBBER, : **CIVIL DIVISION**  
 :  
 Plaintiff, :  
 :  
 v. : Docket No.  
 :  
 ALLEGHENY COUNTY & ALLEGHENY :  
 COUNTY BOARD OF ELECTIONS, :  
 :  
 Defendants. :

**NOTICE OF PRESENTATION**

TO: Allan J. Opsitnick, Esquire  
Assistant County Solicitor  
Allegheny County Law Department  
564 Forbes Avenue, Suite 1301  
Pittsburgh, PA 15219  
aopsitnick@opsitnickslaw.com  
(412) 391-3299  
*Counsel for Defendants*

PLEASE TAKE NOTICE that the within **Emergency Motion for Preliminary Injunction** will be presented to the Honorable \_\_\_\_\_ in Courtroom \_\_\_\_\_ of the City-County Building, Pittsburgh, PA 15219, on the 4th day of November, 2024, at \_\_\_\_\_ a.m.

**CERTIFICATE OF SERVICE**

I certify that this filing was served via e-mail upon the counsel indicated above on the date listed below.

Dated: November 4, 2024



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Gregory H. Teufel, Esq.

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

MATTHEW ALLEN VAN BIBBER,	:	<b>CIVIL DIVISION</b>
	:	
Plaintiff,	:	
	:	Docket No.
v.	:	
	:	
ALLEGHENY COUNTY & ALLEGHENY	:	
COUNTY BOARD OF ELECTIONS,	:	
	:	
Defendants.	:	

**EMERGENCY MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff Matthew Allen Van Bibber (“Mr. Van Bibber”), by and through his undersigned attorneys, files this Emergency Motion for Preliminary Injunction:

1. On November 2, 2024, Plaintiff Matthew Van Bibber (“Mr. Van Bibber”) commenced a civil action in this Court, seeking a writ of mandamus to compel Defendant Allegheny County (“the County”) and/or Defendant Allegheny County Board of Elections (“the BoE”) to provide him with access to information that he is entitled to under a statutory section in the Election Code, 25 Pa.Stat. § 2648. A true and correct copy of Mr. Van Bibber’s Complaint for a Writ of Mandamus and attached Exhibits are attached hereto.

2. On September 24, 2024, Mr. Van Bibber sent an e-mail request for documents, records, and/or reports to the County’s Election Division Deputy Manager, Chet Harhut (“Mr. Harhut”), seeking records, reports, and documents with respect to the Logic & Accuracy testing (“L and A testing” or “L & A testing”) the County and/or the BoE performed on the County’s voting machines.

3. After Mr. Van Bibber sent two follow-up e-mails, the County’s Open Records Officer responded with an e-mail dated October 22, 2024, purporting to invoke a thirty-day extension under the Right-to-Know Law (“RTKL”).

4. However, the RTKL is not implicated in this matter.
5. Instead, Mr. Van Bibber's request for information is governed by the Election Code.
6. Titled, "Records and documents to be open to public inspection," 25 Pa.Stat. § 2648

provides in full:

The records of each county board of elections, general and duplicate returns, tally papers, affidavits of voters and others, nomination petitions, certificates and papers, other petitions, appeals, witness lists, accounts, contracts, reports and other documents and records in its custody, except the contents of ballot boxes and voting machines and records of assisted voters, shall be open to public inspection, except as herein provided, and may be inspected and copied by any qualified elector of the county during ordinary business hours, at any time when they are not necessarily being used by the board, or its employes having duties to perform thereto: Provided, however, That such public inspection thereof shall only be in the presence of a member or authorized employe of the county board, and shall be subject to proper regulation for safekeeping of the records and documents, and subject to the further provisions of this act: And provided further, That general and duplicate returns, tally papers, affidavits of voters and others, and all other papers required to be returned by the election officers to the county board sealed, shall be open to public inspection only after the county board shall, in the course of the computation and canvassing of the returns, have broken such seals and finished, for the time, their use of said papers in connection with such computation and canvassing.

(emphasis added).

7. Pursuant to 25 Pa.Stat. § 2648, Mr. Van Bibber has a clear and unambiguous legal right to access documents, reports, and records that the County and/or BoE has in its custody that reflect or otherwise pertain to data or other information that the County and/or BoE collected as part of its duty to conduct L & A testing.

8. Correspondingly, under 25 Pa.Stat. § 2648, the County and/or BoE has an unqualified duty to provide Mr. Van Bibber with access to the above-mentioned documents, reports, and records, namely after the L & A testing was completed and no one was testing or otherwise using the voting machines.

9. Mr. Van Bibber does not have an adequate remedy at law. Mr. Van Bibber has no statutory right to appeal to the Court of Common Pleas or the Commonwealth Court under the RTKL, the Election Code, or otherwise. In this Election Code case, Mr. Van Bibber cannot be adequately compensated with monetary damages.

10. For purposes of a preliminary injunction, Mr. Van Bibber's right to relief is clear and certain because he has satisfied the requisite elements for a mandamus action.

11. A preliminary injunction is necessary to prevent immediate and irreparable harm that would occur to Mr. Van Bibber if he is denied his statutory right, pursuant to 25 Pa.Stat. § 2648, to access and obtain documents, reports, and records with respect to the County's L & A testing, particularly in the event that the County and/or the BoE would not provide Mr. Van Bibber with said documents, reports, and records prior to the general election on November 5, 2024.

12. Nothing that Mr. Van Bidder requested was in any way nonpublic or confidential.

13. If the County and/or BoE continues to delay in providing the requested documents, reports and records, then it will be too late to correct the problems Mr. Van Bibber is likely to find, given the pattern of his finding problems in the past, before those problems impact the election results in a way that will be difficult or impossible to remedy after the election.

14. Problems that Mr. Van Bibber found in the past utilizing digital images and CVRs from the L & A tests conducted in prior elections in Allegheny County include blurry images and lines through timing marks. Those were issues that were able to be addressed prior to using the relevant machines in the elections.

15. In addition, by viewing configuration reports, voting results reports, and zero reports from the L & A testing, in prior elections in Allegheny County, Mr. Van Bibber was able to identify protected counts that were improperly set back to zero on some or all of the DS200 machines that

Allegheny County uses in conducting elections (similar to rolling back the mileage to zero on a used car). He wishes to confirm that all of the necessary reports were generated and that this problem did not repeat and confirm the protected count on each machine before the November 5, 2024 election.

16. He requested the serial numbers of the backup machines that Allegheny County did not test, to be able to object tomorrow if those backup machines are attempted to be used without first conducting the required L & A testing.

17. Mr. Van Bibber requested to review the video recording of L & A testing to confirm which machines were tested and that testing was properly conducted.

18. A violation of 25 Pa.Stat. § 2648, in and of itself, constitutes immediate and irreparable harm and is injurious to the public.

19. Greater injury would result from refusing an injunction than from granting it, because an injunction with further the laudable goals and initiatives of transparency and accountability embodied in the Election Code and promote the public's freedom to access and obtain election-related documents in accordance with 25 Pa.Stat. § 2648.

20. The requested preliminary injunction is suited to abate the offending activity and violation of 25 Pa.Stat. § 2648.

21. The issuance of a preliminary injunction would advance the public interest in election integrity and transparency by providing open access to election-related documents, reports, and records, as that strong public policy is pronounced in 25 Pa.Stat. § 2648.

WHEREFORE, Plaintiff, Matthew Van Bibber, respectfully requests that this Court enter a preliminary injunction requiring Defendants, the County and/or the BoE, to

- a. provide Mr. Van Bibber with access to his requested documents, reports, and records prior to the general election on November 5, 2024;

- b. provide Mr. Van Bibber with the opportunity to inspect his requested documents, reports, and records prior to the general election on November 5, 2024; and
- c. provide Mr. Van Bibber with the opportunity to photocopy his requested documents, reports, and records prior to the general election on November 5, 2024

Respectfully submitted,



Dated: November 4, 2024

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Gregory H. Teufel, Esquire  
Adam G. Locke, Esq.  
*Attorneys for Matthew Allen Van Bibber*



**CERTIFICATE OF COMPLIANCE**

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

Dated: November 4, 2024



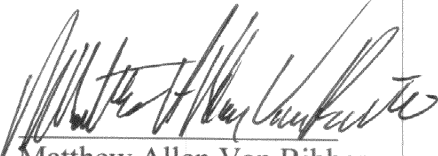
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Gregory H. Teufel, Esquire

**VERIFICATION**

I, Matthew Allen Van Bibber, verify that the statements made in this Emergency Motion for Preliminary Injunction are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.Cons.Stat. § 4904, relating to unsworn falsification to authorities.

Dated: November 2, 2024



Matthew Allen Van Bibber

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA**

MATTHEW ALLEN VAN BIBBER,	:	<b>CIVIL DIVISION</b>
	:	
Plaintiff,	:	
	:	Docket No.
v.	:	
	:	
ALLEGHENY COUNTY & ALLEGHENY	:	
COUNTY BOARD OF ELECTIONS,	:	
	:	
Defendants.	:	

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2024, upon consideration of the Emergency Motion for Preliminary Injunction submitted by Plaintiff, Matthew Allen Van Bibber, it is hereby ORDERED that said Motion is GRANTED as follows:

- a. Defendants Allegheny County (“the County”) and Allegheny County Board of Elections (“the BoE”) shall provide Mr. Van Bibber with access to his requested documents, reports, and records immediately;
- b. The County and BoE shall provide Mr. Van Bibber with the opportunity to inspect his requested documents, reports, and records prior to the general election on November 4, 2024; and
- c. The County and BoE shall provide Mr. Van Bibber with the opportunity to photocopy his requested documents, reports, and records prior to the general election on November 4, 2024.

BY THE COURT:

\_\_\_\_\_, J.

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this 2<sup>nd</sup> day of November, 2024 served a copy of the foregoing Motion for Preliminary Injunction upon the following counsel of record via email and first-class U.S. mail:

Allan J. Opsitnick, Esquire  
Assistant County Solicitor  
Allegheny County Law Department  
564 Forbes Avenue, Suite 1301  
Pittsburgh, PA 15219  
aopsitnick@opsitnickslaw.com  
(412) 391-3299  
*Counsel for Defendants*

Dated: November 4, 2024



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Gregory H. Teufel, Esquire