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DAVID MCCORMICK
Three PPG Place
Suite 500
Pittsburgh, PA 15222

Plaintiff,

v.

PHILADELPHIA COUNTY BOARD OF ELECTIONS
City Hall, Rm 142
1400 John F Kennedy Blvd
Philadelphia, PA 19107

and

COMMISSIONER OMAR SABIR
City Hall, Rm 142
1400 John F Kennedy Blvd
Philadelphia, PA 19107

and

COMMISSIONER LISA M. DEELEY
City Hall, Rm 142
1400 John F Kennedy Blvd
Philadelphia, PA 19107

and

COMMISSIONER SETH BLUESTEIN
City Hall, Rm 142
1400 John F Kennedy Blvd
Philadelphia, PA 19107

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY,
PENNSYLVANIA

NOVEMBER TERM, 2024

CASE I.D.: _____

Defendants.

NOTICE

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Philadelphia County Bar Association
1101 Market Street, 10th Floor
Philadelphia, PA 19107
Telephone: (215) 238-6300

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparesencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requier que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE, SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

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Plaintiff,

v.

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COURT OF COMMON PLEAS
PHILADELPHIA COUNTY,
PENNSYLVANIA

NOVEMBER TERM, 2024

CASE I.D.: _____

COMMISSIONER SETH BLUESTEIN City Hall, Rm 142 1400 John F Kennedy Blvd Philadelphia, PA 19107 *Defendants.*	: : : : : :

VERIFIED COMPLAINT

Plaintiff David McCormick ("McCormick" or "Plaintiff"), by and through undersigned counsel, Bochetto & Lentz, P.C., hereby files this Verified Complaint against Defendants Philadelphia County Board of Elections, Commissioner Omar Sabir, Commissioner Lisa M. Deeley, and Commissioner Seth Bluestein (collectively, "PCBE" or "Defendants") and alleges the following facts and claims upon personal knowledge, investigation of counsel, and information and belief.

NATURE OF THE ACTION

1. This action arises on the heels of the 2024 senatorial election in which Republican candidate Dave McCormick leads Democratic Party candidate Robert P. Casey Jr. by 31,958 votes at the time of this filing.[1]

2. The provisional ballots collected by the Philadelphia County Board of Elections will be examined and adjudicated starting tomorrow, November 8, 2024 at 9:00 a.m.

3. Section 3050(a)(5)(ii) delineates that a provisional ballot should not be counted if:

> **(A)** either the provisional ballot envelope under clause (3) or the affidavit under clause (2) is not signed by the individual;
>
> **(B)** the signature required under clause (3) and the signature required under clause (2) are either not genuine or are not executed by the same individual;
>
> **(C)** a provisional ballot envelope does not contain a secrecy envelope;

[1] The exact counts as of 6:30pm are 3,340,649 for Plaintiff David McCormick vs. 3,308,691 for Robert P. Casey, Jr. *See* https://www.electionreturns.pa.gov/General/SummaryResults?ElectionID=105&ElectionType=G&IsActive=1

> **(D)** in the case of a provisional ballot that was cast under subsection (a.2)(1)(i), within six calendar days following the election the elector fails to appear before the county board of elections to execute an affirmation or the county board of elections does not receive an electronic, facsimile or paper copy of an affirmation affirming, under penalty of perjury, that the elector is the same individual who personally appeared before the district election board on the day of the election and cast a provisional ballot and that the elector is indigent and unable to obtain proof of identification without the payment of a fee; or
>
> **(E)** in the case of a provisional ballot that was cast under subsection (a.2)(1)(ii), within six calendar days following the election, the elector fails to appear before the county board of elections to present proof of identification and execute an affirmation or the county board of elections does not receive an electronic, facsimile or paper copy of the proof of identification and an affirmation affirming, under penalty of perjury, that the elector is the same individual who personally appeared before the district election board on the day of the election and cast a provisional ballot[;]
>
> **(F)** The elector's absentee ballot or mail-in ballot is timely received by a county board of elections.

25 P.S. § 3050(a.4)(5)(ii)(A)-(F).

4. As such, certain deficiencies such as missing the voter's signature on the affidavit, a provisional ballot envelope that lacks a secrecy envelope, or discrepancies where the required signature on the affidavit and the envelope do not match will render the ballot invalid and thus result in the ballot being excluded from the count under 25 P.S. § 3050(a.4)(5)(ii).

5. Upon information and belief, approximately 15,000-20,000 provisional ballots will be examined and adjudicated over the course of the next several days.

6. The Democratic Party is currently entitled to 38 authorized representatives under Section 3050, while the Republican Party is entitled to only 11.[2]

[2] Section 3050 allows one authorized representative of each candidate in an election and one representative from each political party. 25 P.S. § 3050(a.4)(4). Notably, Of the 37 Democratic Party candidates, 28 run unopposed while one of the Republican Party candidates runs unopposed. *See Candidates for Office*, Philadelphia City Commissioners, https://vote.phila.gov/voting/candidates-for-office/ (last visited November 7, 2024).

7. For the sake of judicial and economic efficiency, Plaintiff demands relief in the form of declaratory and injunctive relief that permits Plaintiff to make global challenges to large groups of provisional ballots that share the same deficiencies, as set forth by 25 P.S. § 3050.

8. In addition, in light of the recent Pennsylvania Supreme Court decision in *Genser v. Butler County*, No. 26 WAP 2024 (Pa. Oct. 23, 2024), Plaintiff further requests that any provisional ballots from voters who had requested mail-in or absentee ballots be sequestered and held pending action from the U.S. Supreme Court, or, *in the alternative*, that a global challenge be permitted as to all such ballots.

THE PARTIES

9. Plaintiff David McCormick is the leading candidate in the 2024 Pennsylvania United States Senate race. As of this filing, David McCormick leads Democratic Party incumbent Robert Casey Jr. by 31,958 votes.[3] David McCormick agrees to accept service through his undersigned counsel.

10. Defendant Philadelphia Board of Elections operates Philadelphia County's elections. The Philadelphia Board of Elections maintains an office at City Hall, Room 142, 1400 John F Kennedy Blvd, Philadelphia, PA 19107.

11. Defendant Omar Sabir is a Philadelphia City Commissioner. Commission Omar Sabir is named in this action in his official capacity. The Commissioners maintain an office at City Hall, Room 142, 1400 John F Kennedy Blvd, Philadelphia, PA 19107.

12. Defendant Lisa M. Deeley is a Philadelphia City Commissioner. Commissioner Lisa M. Deeley is named in this action in her official capacity. The Commissioner maintains an office at City Hall, Room 142, 1400 John F Kennedy Blvd, Philadelphia, PA 19107.

[3] The exact counts as of 6:30pm are 3,340,649 for Plaintiff David McCormick vs. 3,308,691 for Robert P. Casey, Jr. *See* https://www.electionreturns.pa.gov/General/SummaryResults?ElectionID=105&ElectionType=G&IsActive=1

13. Defendant Seth Bluestein is a Philadelphia City Commissioner. Commissioner Seth Bluestein is named in this action in his official capacity. The Commissioner maintains an office at City Hall, Room 142, 1400 John F Kennedy Blvd, Philadelphia, PA 19107.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over this matter pursuant to 42 Pa.C.S.A. § 931(a) and has personal jurisdiction pursuant to 42 Pa.C.S.A. § 5301, as more fully set forth below.

15. Venue is proper in the Court of Common Pleas of Philadelphia County under Rules 1006 and 2103(b) of the Pennsylvania Rules of Civil Procedure as Defendant City of Philadelphia is a political subdivision located in Philadelphia County and the causes of action against both Defendants have arisen in this county.

16. This Court may also have jurisdiction under to 25 P.S. §3050(a.4)(4)(v) and/or 25 P.S. 3157(a)-(b).

FACTS COMMON TO ALL COUNTS

17. The provisional ballots collected by the Philadelphia County Board of Elections will be examined and adjudicated starting tomorrow, November 8, 2024 at 9:00 a.m.

18. Section 3050(a)(5)(ii) delineates that a provisional ballot should not be counted if:

> **(A)** either the provisional ballot envelope under clause (3) or the affidavit under clause (2) is not signed by the individual;
>
> **(B)** the signature required under clause (3) and the signature required under clause (2) are either not genuine or are not executed by the same individual;
>
> **(C)** a provisional ballot envelope does not contain a secrecy envelope;
>
> **(D)** in the case of a provisional ballot that was cast under subsection (a.2)(1)(i), within six calendar days following the election the elector fails to appear before the county board of elections to execute an affirmation or the county board of elections does not receive an electronic, facsimile or

> paper copy of an affirmation affirming, under penalty of perjury, that the elector is the same individual who personally appeared before the district election board on the day of the election and cast a provisional ballot and that the elector is indigent and unable to obtain proof of identification without the payment of a fee; or
>
> **(E)** in the case of a provisional ballot that was cast under subsection (a.2)(1)(ii), within six calendar days following the election, the elector fails to appear before the county board of elections to present proof of identification and execute an affirmation or the county board of elections does not receive an electronic, facsimile or paper copy of the proof of identification and an affirmation affirming, under penalty of perjury, that the elector is the same individual who personally appeared before the district election board on the day of the election and cast a provisional ballot[;]
>
> **(F)** The elector's absentee ballot or mail-in ballot is timely received by a county board of elections.

25 P.S. § 3050(a.4)(5)(ii)(A)-(F).

19. Upon information and belief, approximately 15,000-20,000 provisional ballots will be examined and adjudicated over the course of the next several days.

20. The Democratic Party is currently entitled to 37 authorized representatives under Section 3050, while the Republican Party is entitled to only 11.[4]

21. Plaintiffs bring this action to seek declaratory and injunctive relief allowing for the ability to make global challenges to provisional ballots under 25 P.S. § 3050, ensuring that any ballots not meeting statutory requirements can be contested collectively for judicial and administrative efficiency.

[4] Section 3050 allows one authorized representative of each candidate in an election and one representative from each political party. 25 P.S. § 3050(a.4)(4). Notably, Of the 37 Democratic Party candidates, 28 run unopposed while 1 of the Republican Party candidates run unopposed. *See Candidates for Office*, Philadelphia City Commissioners, https://vote.phila.gov/voting/candidates-for-office/ (last visited November 7, 2024).

22. In this same regard, Plaintiff is concerned that the sheer number of provisional ballots will overwhelm the capacity for individual challenges, creating an impractical burden that risks errors or inconsistencies in the adjudication process. Without the ability to make global challenges, Plaintiffs fear that potentially non-compliant ballots may be improperly counted, compromising the fairness and integrity of the election.

23. Moreover, the recent decision in *Genser v. Butler County*, No. 26 WAP 2024 (Pa. Oct. 23, 2024), in which the court held that void mail-in ballots have no legal effect and do not preclude voters from casting valid provisional ballots, further complicates the process for determining whether certain provisional ballots are properly cast.

24. Given the wide-scale implications of the *Genser* decision and the "threat of future enforcement" of the same, such a matter is ripe for appeal to the United States Supreme Court. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159, 160 (2014).

25. Because of such, Plaintiff further requests that any provisional ballots from voters who had requested mail-in or absentee ballots be sequestered and held pending action from the U.S. Supreme Court, or, in the alternative, that a global challenge be placed on all such ballots of the same.

26. In totality, each of the above-mentioned requests discussed herein is necessary to ensure both judicial and economic efficiency, as well as to protect the integrity and fairness of the electoral process in this Commonwealth.

COUNT I
DECLARATORY RELIEF: PENNSYLVANIA DECLARATORY JUDGMENTS ACT (42. Pa.C.S. § 7531 *et seq.*)
PLAINTIFF v. ALL DEFENDANTS

27. Plaintiff hereby incorporates by reference all of the preceding paragraphs of this Complaint as though fully set forth herein at length.

28. The Pennsylvania Declaratory Judgment Act, 75 Pa. Cons. Stat. 7531, *et. seq.*, provides that in "Courts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree." 42 Pa. Cons. Stat. § 7532.

29. An actual controversy exists between the parties as to whether the provisional ballots are subject to a global challenge (as opposed to individualized challenges and review) in accordance with the relevant provisions of 25 P.S. § 3050.

30. Plaintiff contends that an individual challenge of the expected 15,000-20,000 ballots would be a waste of judicial and economic resources, whereas a global challenge to all ballots which fail to comply with the clearly defined parameters of 25 P.S. § 3050 would be sufficient.

31. Upon information and belief – given the significant disparity in the number of authorized Democratic Party representatives compared to authorized Republican Party representatives – Defendants intend to examine and adjudicate the provisional ballots at such a pace that it effectively prevents Plaintiff from fully exercising his rights under 25 P.S. § 3050.

32. Thus, a global objection to invalid provisional ballots would be proper as to not deprive Plaintiff of his statutorily guaranteed rights.

33. Plaintiff therefore seeks declaratory relief from this Court declaring that the examination and adjudication of all provisional ballots shall permit and recognize global challenges to ballots that do not meet the statutory requirements of 25 P.S. § 3050. Such a

declaration would ensure that Plaintiff can effectively exercise his rights under the statute without being precluded by an impractical need for individual challenges, thereby safeguarding judicial and economic efficiency.

WHEREFORE, Plaintiff respectfully requests this Court enter judgment in his favor and against Defendants, declaring that the examination and adjudication of all provisional ballots shall allow for global challenges to be made to any ballots not meeting the statutory requirements of 25 P.S. § 3050, and that this process shall only take place in the presence of at least one authorized representative of the Republican Party to ensure the full exercise of rights afforded under the statute.

COUNT II
PRELIMINARY INJUNCTIVE RELIEF
PLAINTIFF v. ALL DEFENDANTS

34. Plaintiffs hereby incorporate by reference all of the paragraphs of this Complaint as though fully set forth herein at length.

35. The Pennsylvania Supreme Court has articulated the following prerequisites for issuance of a preliminary injunction:

> 1) it is necessary to prevent immediate and irreparable harm which could not be compensated by damages;
> 2) greater injury would result by refusing such relief than by granting it;
> 3) it properly restores the parties to the status quo as it existed immediately prior to the alleged wrongful conduct;
> 4) the activities sought to be restrained are actionable and the injunction is reasonably suited to abate such activity;
> 5) the Plaintiff's right is clear and the alleged wrong is manifest.

John G. Bryant Co. v. Sling Testing & Repair, Inc., 369 A.2d 1164, 1167 (Pa. 1977).

36. Preliminary injunction is necessary to prevent immediate and irreparable harm that would result from the examination and counting of provisional ballots without the opportunity for global challenges.

37. Plaintiffs will be irreparably harmed because their rights under 25 P.S. § 3050 will have been infringed upon and they will be unable to ensure that the provisional ballots are properly examined and adjudicated in accordance with statutory requirements, resulting in a compromised and unfair electoral process, in violation of Pennsylvania law.

38. Greater injury will result because Plaintiffs' rights under 25 P.S. § 3050 will be denied.

39. Injunctive relief that provides for the observance 25 P.S. § 3050 restores the parties to the status quo.

40. The injunction, which will permit observance of 25 P.S. § 3050, and constrain the Defendants' conduct accordingly, is reasonably suited to abate the offending activity.

41. Plaintiffs' rights under 25 P.S. § 3050 are clear and the alleged wrong is manifest, as set forth above and incorporated herein by reference.

WHEREFORE, Plaintiff respectfully requests this Court enter judgment in his favor and against Defendants, and issue a preliminary injunction enjoining Defendants and their personnel from taking any action to examine and/or adjudicate any provisional ballot without allowing for global challenges and outside the immediate presence of at least one authorized representative of Plaintiff and/or the Republican Party. Plaintiff further seeks any additional relief deemed just and equitable by the Court to ensure compliance with 25 P.S. § 3050 and to protect the integrity of the electoral process.

COUNT III
PERMANENT INJUNCTIVE RELIEF
PLAINTIFF v. ALL DEFENDANTS

42. Plaintiff hereby incorporates by reference all of the paragraphs of this Complaint as though fully set forth herein at length.

43. "[I]n order to establish a claim for a permanent injunction, the party must establish his or her clear right to relief." *Buffalo Tp. v. Jones*, 571 Pa. 637, 644 (2002). "To justify the award of a permanent injunction, the party seeking relief must establish [1] that his right to relief is clear, [2] that an injunction is necessary to avoid an injury that cannot be compensated by damages, and [3] that greater injury will result from refusing rather than granting the relief requested." *City of Philadelphia v. Armstrong*, 271 A.3d 555, 560 (Pa. Commw. Ct. 2022) (Quoting *Kuznik v. Westmoreland County Board of Commissioners*, 588 Pa. 95, 902 A.2d 476, 489 (2006)); *See PG Publishing Company, Inc. v. Pittsburgh Typographical Union #7 (CWA Local 14827)*, 304 A.3d 1227, 1234 (Pa. Super. Ct. 2023); *See also Medical Marijuana Access & Patient Safety, Inc. v. Johnson*, 317 A.3d 1106, 1114 (Pa. Commw. Ct. 2024). "[U]nlike a claim for a preliminary injunction, the party need not establish either irreparable harm or immediate relief and a court may issue a final injunction if such relief is necessary to prevent a legal wrong for which there is no adequate redress at law." *Id.* (Quoting *Buffalo Township v. Jones*, 571 Pa. 637, 644 (2002)).

44. As detailed above and incorporated herein by reference, a permanent injunction is warranted to protect the rights of Plaintiffs under 25 P.S. § 3050 and to ensure judicial and economic efficiencies in the examination and adjudication of provisional ballots.

WHEREFORE, Plaintiff respectfully requests this Court enter judgment in his favor and against Defendants, and permanently enjoin Defendants and their personnel from taking any action

to examine and/or adjudicate any provisional ballot without allowing for global challenges and outside the immediate presence of at least one authorized representative of Plaintiff and/or the Republican Party. Plaintiff further requests any additional relief deemed just and equitable by the Court to ensure compliance with 25 P.S. § 3050 and to promote judicial and economic efficiencies.

COUNT IV
WRIT OF MANDAMUS
PLAINTIFF v. ALL DEFENDANTS

45. Plaintiff hereby incorporates all allegations of the Complaint as though fully set forth herein.

46. The writ of mandamus is used to compel the performance of a ministerial act or mandatory duty where an official refuses to act. *See Breslin v. Earley*, 36 Pa. Super. 49 (1908) (mandamus issued because the official had no discretionary authority to refuse compliance); *Del. River Port Auth'y v. Thornburgh*, 493 A.2d 1351 (Pa. 1985) (mandamus proper to compel action where no other adequate legal remedy existed).

47. Defendants have a statutory duty under 25 P.S. § 3050 to ensure that the adjudication of provisional ballots adheres to the procedures set forth in the statute, including the rights to challenge the counting of ballots.

48. Specifically, Section 3050(a)(5)(ii) delineates that a provisional ballot should not be counted if:

> **(A)** either the provisional ballot envelope under clause (3) or the affidavit under clause (2) is not signed by the individual;
>
> **(B)** the signature required under clause (3) and the signature required under clause (2) are either not genuine or are not executed by the same individual;
>
> **(C)** a provisional ballot envelope does not contain a secrecy envelope;
>
> **(D)** in the case of a provisional ballot that was cast under subsection (a.2)(1)(i), within six calendar days following the election the elector fails

> to appear before the county board of elections to execute an affirmation or the county board of elections does not receive an electronic, facsimile or paper copy of an affirmation affirming, under penalty of perjury, that the elector is the same individual who personally appeared before the district election board on the day of the election and cast a provisional ballot and that the elector is indigent and unable to obtain proof of identification without the payment of a fee; or
>
> **(E)** in the case of a provisional ballot that was cast under subsection (a.2)(1)(ii), within six calendar days following the election, the elector fails to appear before the county board of elections to present proof of identification and execute an affirmation or the county board of elections does not receive an electronic, facsimile or paper copy of the proof of identification and an affirmation affirming, under penalty of perjury, that the elector is the same individual who personally appeared before the district election board on the day of the election and cast a provisional ballot[;]
>
> **(F)** The elector's absentee ballot or mail-in ballot is timely received by a county board of elections.

25 P.S. § 3050(a.4)(5)(ii)(A)-(F).

49. Plaintiff petitions this Court to issue a writ of mandamus compelling Defendants to permit the submission and consideration of global challenges to provisional ballots that fail to meet statutory requirements under 25 P.S. § 3050.

50. Without the ability to make global challenges, Plaintiff faces significant procedural obstacles that undermine the fairness and efficiency of the adjudication process, potentially resulting in improperly counted ballots.

51. The Court may issue a writ of mandamus when: (1) no other adequate, appropriate, and specific remedy is available; (2) the petitioner has a clear legal right to relief; and (3) a corresponding duty exists on the part of the respondent. *See Citizens Committee to Recall Rizzo v. Board of Elections*, 367 A.2d 232, 234-35 (Pa. 1976).

52. Plaintiff has no other specific legal remedy available to enforce his right to make global challenges during the adjudication process, which would ensure the integrity and efficiency of the proceedings.

53. Plaintiff has a clear legal right to challenge provisional ballots in a manner that ensures compliance with the statutory requirements outlined in 25 P.S. § 3050.

54. Defendants have a corresponding statutory duty to ensure the process allows for effective challenges, including global challenges where applicable.

55. Defendants' failure to facilitate a process that includes global challenges will result in significant harm to Plaintiff by compromising his statutory rights and the overall fairness of the election process.

WHEREFORE, Plaintiff respectfully requests that this Court issue a writ of mandamus compelling Defendants to allow for global challenges to provisional ballots in accordance with 25 P.S. § 3050. Plaintiff further seeks any additional relief deemed just and equitable by the Court to ensure the statutory rights of Plaintiff and the integrity of the electoral process are upheld.

COUNT V
PRELIMINARY INJUNCTIVE RELIEF – SEQUESTRATION OF PROVISIONAL BALLOTS
PLAINTIFF v. ALL DEFENDANTS

61. Plaintiff hereby incorporates by reference all of the paragraphs of this Complaint as though fully set forth herein.

62. The Pennsylvania Supreme Court's recent decision in *Genser v. Butler County*, No. 26 WAP 2024 (Pa. Oct. 23, 2024), has introduced complexities regarding the handling of provisional ballots cast by voters who previously submitted mail-in or absentee ballots that were voided due to procedural defects.

63. The decision in *Genser* emphasized that voided mail-in ballots do not preclude voters from casting valid provisional ballots. However, the ruling has created uncertainty surrounding the proper adjudication of such ballots.

64. Given the significant legal implications and potential impact on the outcome of the election, Plaintiff seeks a preliminary injunction directing Defendants to sequester any provisional ballots cast by voters who had previously requested mail-in or absentee ballots until further action is taken by the United States Supreme Court.

65. A preliminary injunction is necessary to prevent immediate and irreparable harm that could result from the counting of these provisional ballots without proper judicial review. The potential inclusion of improperly counted ballots would compromise the integrity of the electoral process and infringe upon Plaintiffs' rights.

66. The prerequisites for the issuance of a preliminary injunction, as articulated by the Pennsylvania Supreme Court, are:

1. The injunction is necessary to prevent immediate and irreparable harm that cannot be compensated by money damages;

2. Greater injury would result from refusing such relief than from granting it;

3. The injunction restores the parties to the status quo as it existed immediately prior to the alleged wrongful conduct;

4. The activities sought to be restrained are actionable, and the injunction is reasonably suited to abate such activity;

5. Plaintiffs' right to relief is clear, and the alleged wrong is manifest.

John G. Bryant Co. v. Sling Testing & Repair, Inc., 369 A.2d 1164, 1167 (Pa. 1977).

67. Plaintiff will suffer immediate and irreparable harm without the sequestration of the relevant provisional ballots, as his rights under 25 P.S. § 3050 and the broader integrity of the election would be jeopardized.

68. Greater injury would result from allowing these ballots to be adjudicated and counted without sequestration, potentially impacting the election outcome and/or violating statutory requirements.

69. The sequestration of these ballots until the United States Supreme Court provides further guidance maintains the status quo and prevents harm while ensuring compliance with the applicable law.

70. The requested injunction is necessary and appropriate to protect the rights of Plaintiffs, maintain electoral integrity, and uphold judicial and administrative efficiency.

WHEREFORE, Plaintiff respectfully requests this Court enter judgment in his favor and against Defendants, and issue a preliminary injunction directing Defendants to sequester all provisional ballots cast by voters who had previously requested mail-in or absentee ballots until further action is taken by the United States Supreme Court. Plaintiff further seeks any additional relief deemed just and equitable by the Court to ensure the integrity of the electoral process.

COUNT VI
(*IN THE ALTERNATIVE*)
DECLARATORY RELIEF PENNSYLVANIA DECLARATORY JUDGMENTS ACT (42 Pa.C.S. § 7531 *et seq.)*
PLAINTIFF v. ALL DEFENDANTS

71. Plaintiff hereby incorporates by reference all of the paragraphs of this Complaint as though fully set forth herein at length.

72. Plaintiff brings this count as alternative relief to the relief requested in Count V above.

73. The Pennsylvania Declaratory Judgment Act, 42 Pa.C.S. § 7531 et seq., states that "Courts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree." 42 Pa.C.S. § 7532.

74. An actual controversy exists between the parties as to whether Plaintiff is entitled to place a global challenge on all provisional ballots cast by voters who had previously requested mail-in or absentee ballots, pursuant to 25 P.S. § 3050 and in light of the Pennsylvania Supreme Court's decision in *Genser v. Butler County*, No. 26 WAP 2024 (Pa. Oct. 23, 2024).

75. The *Genser* decision held that mail-in ballots which are void due to procedural deficiencies, such as missing secrecy envelopes, do not preclude voters from casting valid provisional ballots. However, this decision has potential ambiguity and complexity in adjudicating which provisional ballots may be lawfully counted.

76. Plaintiff contends that in the absence of a sequestration order (as detailed in Count V above), the right to place a global challenge on such ballots is essential to uphold judicial and administrative efficiency, ensuring that non-compliant ballots are contested collectively rather than through impractical individualized challenges.

77. Without the ability to make global challenges, Plaintiff risks facing procedural inefficiencies that could compromise the fairness and accuracy of the adjudication process.

78. Plaintiff seeks a declaration in the alternative from this Court that global challenges are permissible for all provisional ballots cast by voters who had requested mail-in or absentee

ballots that may fall within the scope of the *Genser* decision's holding, ensuring compliance with 25 P.S. § 3050 and safeguarding Plaintiffs' rights during the adjudication process.

WHEREFORE, Plaintiff respectfully requests this Court enter judgment in his favor and against Defendants, declaring that the examination and adjudication of all provisional ballots shall allow for global challenges to be placed on any ballots cast by voters who requested mail-in or absentee ballots, to ensure compliance with 25 P.S. § 3050 and uphold the integrity and efficiency of the electoral process. Plaintiff further requests any additional relief deemed just and equitable by the Court.

Respectfully submitted,

BOCHETTO & LENTZ, P.C.

Dated: November 7, 2024 By: */s/ George Bochetto*
_____

George Bochetto, Esquire
PA Attorney ID No. 27783
Matthew L. Minsky, Esquire
PA Attorney ID No. 329262
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VERIFICATION

I, David McCormick, verify that the statements made in the foregoing Verified Complaint, to the best of my knowledge, are true and correct. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: 11/7/2024

/s/ David McCormick
David McCormick