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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 comparencia 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 requerir 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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COURT OF COMMON PLEAS
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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 bring 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 allege the following facts and claims upon personal knowledge, investigation of counsel, and information and belief.

NATURE OF THE ACTION

1. The provisional ballots collected by the Philadelphia County Board of Elections will be examined and adjudicated starting tomorrow, November 8, 2024.

2. Pursuant to 25 P.S. § 3050(a.4)(4):

Within seven calendar days of the election, the county board of elections shall examine each provisional ballot envelope that is received to determine if the individual voting that ballot was entitled to vote at the election district in the election. **One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the determination is being made. Representatives shall be permitted to keep a list of those persons who cast a provisional ballot and shall be entitled to challenge any determination of the county board of elections with respect to the counting or partial counting of the ballot under this section.** Upon challenge of any provisional ballot under this clause, the ballot envelope shall be marked “challenged” together with the reason for the challenge, and the provisional ballot shall be set aside pending final determination of the challenge according to the following procedure: . . .

25 P.S. § 3050(a.4)(4) (emphasis added).

3. The foregoing text of 25 P.S. § 3050(a.4)(4), including references to each provisional ballot in the singular makes it clear that **each** provisional ballot is subject to visual examination by a representative of **each** candidate and/or party at the time it is counted, so that the representative can determine whether to challenge the ballot.

4. Upon information and belief, Defendants and/or their representatives intend to examine and adjudicate the provisional ballots in such a manner as to effectively preclude Plaintiff McCormick and the Republican Party from exercising their rights under 25 P.S. § 3050(a.4)(4).

5. In the 2024 General Election, the Democratic Party had 37 candidates running for office in Philadelphia County while the Republican Party had 10.¹

6. Of the 37 Democratic Party candidates, 28 ran unopposed while one of the Republican Party candidates ran unopposed.²

7. In accordance with 25 P.S. § 3050, the Democratic Party is entitled to a total of 38 authorized representatives while the Republican Party is entitled to 11 authorized representatives. (one authorized representative of each candidate in an election and one representative from each political party). *Id.*

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

9. Plaintiff McCormick brings this action to ensure *at least* one representative from each party is capable of **directly** observing and challenging the examination and/or adjudication of each provisional ballot as permitted by 25 P.S. § 3050.

¹ See *Candidates for Office*, Philadelphia City Commissioners, <https://vote.phila.gov/voting/candidates-for-office/> (last visited November 7, 2024).

² See *id.*

10. Upon information and belief, the examination and adjudication of provisional ballots will occur before more personnel of the Defendants, specifically certified SURE operators, than the Plaintiff and/or Republican Party may have in authorized representatives pursuant to 25 P.S. § 3050(a.4)(4).

11. As a result, at least one representative of the Plaintiff and/or Republican Party will not be present to observe and/or challenge the examination and adjudication of each provisional ballot. Therefore, Plaintiff and the Republican Party will be effectively precluded from exercising their rights under 25 P.S. § 3050.

12. Plaintiff McCormick requests the Court grant the relief sought herein, which will mandate that the examination and adjudication of each provisional ballot take place in the presence of at least one authorized representative from each party so that each candidate and/or party's representative has a free and equal opportunity to exercise their rights under 25 P.S. § 3050, such as by keeping a list of those persons who cast a provisional ballot and, if necessary, to easily challenge a determination of the Philadelphia County Board of Elections with respect to the counting or partial counting of any given ballot.

THE PARTIES

13. 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.

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>

14. 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.

15. 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.

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

17. Defendant Seth Bluestein is a Philadelphia City Commissioner. Commissioner Seth Bluestein 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.

JURISDICTION AND VENUE

18. 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.

19. 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 PCBE is a political subdivision located in Philadelphia County and the causes of action against both Defendants have arisen in this county.

20. 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

21. The provisional ballots collected by the Philadelphia County Board of Elections will be examined and adjudicated starting tomorrow, November 8, 2024.

22. Pursuant to 25 P.S. § 3050:

Within seven calendar days of the election, the county board of elections shall examine each provisional ballot envelope that is received to determine if the individual voting that ballot was entitled to vote at the election district in the election. **One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the determination is being made. Representatives shall be permitted to keep a list of those persons who cast a provisional ballot and shall be entitled to challenge any determination of the county board of elections with respect to the counting or partial counting of the ballot under this section.** Upon challenge of any provisional ballot under this clause, the ballot envelope shall be marked “challenged” together with the reason for the challenge, and the provisional ballot shall be set aside pending final determination of the challenge according to the following procedure: . . .

25 P.S. § 3050 (emphasis added).

23. In the 2024 General Election, the Democratic Party had 37 candidates running for office in Philadelphia County while the Republican Party had 10.⁴

24. Of the 37 Democratic Party candidates, 28 ran unopposed while one of the Republican Party candidates ran unopposed.⁵

25. In accordance with 25 P.S. § 3050, the Democratic Party is entitled to a total of 38 authorized representatives while the Republican Party is entitled to 11 authorized representatives. (one authorized representative of each candidate in an election and one representative from each political party). *Id.*

⁴ See *Candidates for Office*, Philadelphia City Commissioners, <https://vote.phila.gov/voting/candidates-for-office/> (last visited November 7, 2024).

⁵ See *id.*

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

27. Plaintiff brings this action to ensure *at least* one representative from the Democratic Party and one representative from the Republican Party (or a representative of at least one candidate thereof) are able to observe and/or challenge the examination and adjudication of each provisional ballot.

28. Plaintiff is concerned that given the volume of provisional ballots, the much higher number of Democratic Party representatives, and the intended procedure Defendants may follow, examination and adjudication of the ballots will occur in such a fashion as to preclude Plaintiff, the Republican Party and/or their respective authorized representatives from exercising their rights under 25 P.S. § 3050.

29. For example, upon information and belief, the examination and adjudication of provisional ballots will occur using more personnel of the Defendants, specifically certified SURE operators, than the Plaintiff and the Republican Party may have as their authorized representatives pursuant to 25 P.S. § 3050(a.4)(4).

30. This would result in thousands of provisional ballots being examined and adjudicated outside the presence of at least one representative of the Plaintiff and/or the Republican Party, making them unable to visually observe each ballot and determine whether to challenge it, in contravention of Pa. Const. Art. I, § 5 and 25 P.S. § 3050.

31. The Pennsylvania Constitution has a clear and unambiguous directive: “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Pa. Const. Art. I, § 5.

32. 25 P.S. § 3050 expressly states: “Representatives shall be permitted to keep a list of those persons who cast a provisional ballot and shall be entitled to challenge any determination of the county board of elections with respect to the counting or partial counting of the ballot under this section.”

33. If at least one authorized representative from each candidate and/or party is not present for the examination of each provisional ballot, Pa. Const. Art. I, § 5 and 25 P.S. § 3050 will be violated.

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

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

35. 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.

36. An actual controversy exists between the parties as to whether at least one authorized representative from each candidate and/or party must be present for the examination and adjudication of each individual provisional ballot.

37. Plaintiff contends that if provisional ballots are examined and adjudicated before more county board of election officials (or certified SURE operators) than authorized

representatives of the respective candidates and/or political parties, Pa. Const. Art. I, § 5 and 25 P.S. § 3050 will be violated.

38. As a result, Plaintiff and/or the Republican Party's authorized representatives will be denied in their ability to observe the examination of provisional ballots and thereby precluded from enjoying and exercising their rights under Pa. Const. Art. I, § 5 and 25 P.S. § 3050.

39. Upon information and belief, Defendants intend to examine and adjudicate the provisional ballots in such a fashion as to effectively preclude Plaintiff and/or the Republican Party from exercising their rights under Pa. Const. Art. I, § 5 and 25 P.S. § 3050.

40. Thus, Plaintiff and the Republican Party's rights under Pa. Const. Art. I, § 5 and 25 P.S. § 3050 will be infringed upon.

41. Plaintiff McCormick therefore seeks declaratory relief from this Court whereby it declares that the examination and adjudication of all provisional ballots shall only take place within the presence of at least one authorized representative of each candidate and/or political party, and that such representative be able to observe each ballot, so that the activity permitted by 25 P.S. § 3050 may occur.

WHEREFORE, Plaintiff McCormick respectfully requests this Court enter judgment in his favor and against Defendants, declaring that the examination and adjudication of all provisional ballots shall only take place within the presence of *at least* one authorized representative of each candidate and/or political party, and that such representative be able to observe each ballot, so that the activity permitted by 25 P.S. § 3050 can occur.

COUNT II
PRELIMINARY INJUNCTIVE RELIEF
PLAINTIFF v. ALL DEFENDANTS

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

43. 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).

44. A preliminary injunction is necessary to prevent immediate and irreparable harm of counting provisional ballots outside the presence of at least one authorized representative of Plaintiff and/or the Republican Party.

45. Plaintiff and the Republican Party will be irreparably harmed because their rights under Pa. Const. Art. I, § 5 and 25 P.S. § 3050 will have been infringed upon.

46. Greater injury will result because Plaintiff and the Republican Party's rights under Pa. Const. Art. I, § 5 and 25 P.S. § 3050 will be denied.

47. Injunctive relief that provides for the observance of Pa. Const. Art. I, § 5 and 25 P.S. § 3050 restores the parties to the *status quo*.

48. 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.

49. Plaintiff and the Republican Party’s rights under Pa. Const. Art. I, § 5 and 25 P.S. § 3050 are clear and the alleged wrong is manifest, as set forth above and incorporated herein by reference.

WHEREFORE, Plaintiff McCormick respectfully requests this Court enter judgment in their favor and against Defendants, and enjoin Defendants and their personnel from taking any action to examine and/or adjudicate any provisional ballot outside the immediate presence of an authorized representative of Plaintiff and/or the Republican Party who would be able to visually examine each ballot, and award such further relief deemed just and equitable by the Court.

COUNT III
PERMANENT INJUNCTIVE RELIEF
PLAINTIFF v. ALL DEFENDANTS

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

51. “[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)).

52. As set forth above, and incorporated herein by reference, a permanent injunction is warranted to protect the rights of Plaintiff and the Republican Party under Pa. Const. Art. I, § 5 and 25 P.S. § 3050.

WHEREFORE, Plaintiff McCormick respectfully requests this Court enter judgment in their favor and against Defendants, and permanently enjoin Defendants and their personnel from taking any action to examine and/or adjudicate any provisional ballot outside the immediate presence of an authorized representative of Plaintiff and/or the Republican Party who would be able to visually examine each ballot, and award such further relief deemed just and equitable by the Court.

COUNT IV
WRIT OF MANDAMUS
PLAINTIFF v. ALL DEFENDANTS

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

54. Defendants have a duty, as set forth by Pa. Const. Art. I, § 5 and 25 P.S. § 3050, to allow at least one representative of the candidates and/or Republican Party to directly observe the examination and adjudication of each and every provisional ballot so as to allow the authorized representative to carry out the rights set forth in 25 P.S. § 3050.

55. The writ of mandamus exists to compel official performance of a ministerial act or mandatory duty where the official refuses to so act. *See Breslin v. Earley*, 36 Pa. Super. 49 (1908) (issuing a writ of mandamus because the borough president had no discretionary authority to refuse to comply with the contract); *see also Del. River Port Auth’y v. Thornburgh*, 493 A.2d 1351 (Pa.

1985) (holding that a writ of mandamus was proper in compelling the Department of Transportation to build a highway because no other adequate legal remedy existed).

56. Plaintiff petitions the Court to issue a writ of mandamus based on the law.

57. Specifically, 25 P.S. § 3050(a.4)(4) provides:

One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the determination is being made. Representatives shall be permitted to keep a list of those persons who cast a provisional ballot and shall be entitled to challenge any determination of the county board of elections with respect to the counting or partial counting of the ballot under this section. Upon challenge of any provisional ballot under this clause, the ballot envelope shall be marked “challenged” together with the reason for the challenge, and the provisional ballot shall be set aside pending final determination of the challenge according to the following procedure: . . .

58. Upon information and belief, the Defendants plan to examine and adjudicate the provisional ballots at such a rate, and before a large number of Defendants’ personnel, that will preclude Plaintiff and/or the Republican Party’s respective authorized representatives from exercising their rights under 25 P.S. § 3050(a.4)(4).

59. The Court may issue a mandamus “when the petitioner seeking relief establishes that: (1) there is a want of any other adequate, appropriate and specific remedy available; (2) there is a *clear* legal right to which he is entitled; and (3) there exists a corresponding duty on the part of the defendant.” *Citizens Committee to Recall Rizzo v. Board of Elections*, 367 A.2d 232, 234-35 (Pa. 1976).

60. First, Plaintiff has no other specific legal remedy available to them to force Defendants to comply with the applicable statute.

61. Second, there is a clear legal right to which Plaintiff is entitled because the statute specifically provides for certain rights of his and the Republican Party’s authorized representatives.

62. Finally, pursuant to the statute, a corresponding duty exists on the part of the Defendants to ensure it is observed since the examination and adjudication is conducted under their oversight.

63. Defendants' refusal to perform their mandatory duties, so as to ensure Plaintiff's rights as set forth in 25 P.S. § 3050 may be observed, will result in significant harm to Plaintiff and the Republican Party because their rights will be unlawfully infringed upon.

64. Accordingly, the Court should issue the instant mandamus to require the Defendants to carry out the examination and adjudication of each provisional ballot in such as manner as to ensure at least one authorized representative of Plaintiff and/or the Republican Party can directly observe the examination and adjudication of each such ballot so as to be able to exercise their rights under 25 P.S. § 3050 with respect to each ballot.

WHEREFORE, Plaintiff McCormick respectfully requests this Court issue a writ of mandamus requiring Defendants to carry out the examination and adjudication of each provisional ballot in such as manner as to ensure at least one authorized representative of Plaintiff and/or the Republican Party can directly observe the examination and adjudication so as to comfortably exercise their rights under 25 P.S. § 3050.

Respectfully submitted,

BOCHETTO & LENTZ, P.C.

/s/ George Bochetto

Dated: November 7, 2024

By:

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Attorneys for Plaintiff

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