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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

*Defendants.*

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COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY,  
PENNSYLVANIA

NOVEMBER TERM, 2024

CASE I.D.: 241100912

**RULE TO SHOW CAUSE WHY SPECIAL INJUNCTION  
PURSUANT TO PA.R.C.P. 1531 SHOULD NOT BE ISSUED**

**AND NOW**, this \_\_\_\_\_ day of \_\_\_\_\_, 2024, a Rule to Show Cause is entered upon the Defendants to show why the relief requested in Plaintiff's Petition for a Special Injunction should not be granted in the form of order set forth below. The Plaintiff shall serve a copy of this Rule and the Petition upon all Defendants within \_\_\_\_\_ hours / days from the date of this rule. The Defendants shall file their response(s) to the Petition within \_\_\_\_\_ hour / days of service of this Rule.

**Plaintiff's requested relief:**

1. The number of Defendants' personnel examining and adjudicating provisional ballots not exceed the number of authorized representatives of Republican candidates and the Republican Party or, *in the alternative*, that at least one authorized representative from the Republican candidates and/or Republican Party be permitted to directly examine and challenge each provisional ballot.

2. This Order will be effective immediately upon presentation to this Court of Plaintiff's bond in the amount of One Dollar (\$1.00).

**BY THE COURT:**

\_\_\_\_\_  
**J.**



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

**PLAINTIFF DAVID MCCORMICK'S  
EMERGENCY PETITION FOR SPECIAL INJUNCTION**

**AND NOW**, comes Plaintiff David McCormick (“McCormick” or “Plaintiff”), by and through undersigned counsel, Bochetto & Lentz, P.C., and pursuant to Pa.R.C.P. § 1531, requests this Honorable Court to grant the requested Special Injunction against Defendants Philadelphia County Board of Elections, Commissioner Omar Sabir, Commissioner Lisa M. Deeley, and Commissioner Seth Bluestein (collectively, “PCBE” or “Defendants”) for the following reasons:

1. The factual basis upon which the Plaintiffs move for a Special Injunction Order requesting is set forth in detail in the Verified Complaint and the accompanying Memorandum of Law, which are incorporated herein by reference. (*See* Verified Complaint, attached hereto as **Exhibit “A.”**)

2. As set forth in the Verified Complaint, Plaintiffs recently discovered that the Defendants do not intend on complying with the election law in their examination and adjudication of provisional ballots.

3. Specifically, 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 is permitted to have in authorized representatives pursuant to 25 P.S. § 3050(a.4)(4).

4. 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.

5. 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.

6. This Court should issue an order, as proposed in the Rule to Show Cause, that mandates either (1) the number of Defendants' personnel examining and adjudicating provisional ballots not exceed the number of authorized representatives of Republican candidates and the Republican Party or, *in the alternative*, (2) that at least one authorized representative from the Republican candidates and/or Republican Party be permitted to directly examine and challenge each provisional ballot.

7. Injunctive relief is necessary in this case to prevent immediate and irreparable harm to the Plaintiff and to preserve the *status quo* during the pendency of this litigation.

8. Defendants were provided with written notice of Plaintiffs' intention to seek injunctive relief shortly after the filing of this Petition.

**WHEREFORE**, Plaintiff McCormick respectfully requests this Honorable Court enter a Special Injunction Order providing the relief detailed in the accompanying Rule to Show Cause.

Respectfully submitted,

**BOCHETTO & LENTZ, P.C.**

*/s/ George Bochetto*

Dated: November 7, 2024

By:

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COURT OF COMMON PLEAS  
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NOVEMBER TERM, 2024

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**COMMISSIONER SETH BLUESTEIN** :  
City Hall, Rm 142 :  
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*Defendants.* :

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF HIS  
EMERGENCY PETITION FOR A SPECIAL INJUNCTION**

**I. MATTER BEFORE THE COURT**

Plaintiff David McCormick’s Petition for a Special Injunction to ensure *at least one* representative from each candidate and/or Party are capable of **directly** observing and challenging the examination and/or adjudication of each provisional ballot as permitted by 25 P.S. § 3050.

As set forth in the Rule to Show Cause, Plaintiff requests this Court issue an order that mandates either (1) the number of Defendants’ personnel examining and adjudicating provisional ballots not exceed the number of authorized representatives of Republican candidates and the Republican Party or, *in the alternative*, (2) that at least one authorized representative from the Republican candidates and/or Republican Party be permitted to directly examine and challenge each provisional ballot.

**QUESTION PRESENTED**

1. Whether the Court should issue a writ of mandamus, injunctive relief and/or declaratory relief so as to ensure the Plaintiff and/or the Republican Party have at least one authorized representative directly observing the examination and/or adjudication of each and every provisional ballot as permitted by 25 P.S. § 3050?

**Suggested Answer: Yes.**

## **II. STATEMENT OF THE CASE**

Plaintiff incorporates by reference the facts set forth in the Verified Complaint, attached hereto.

## **III. ARGUMENT**

### **A. Legal Standard.**

Pursuant to Pa. R.C.P. § 1531(a), this Court:

shall issue a preliminary or special injunction only after written notice and hearing unless it appears to the satisfaction of the court that immediate and irreparable injury will be sustained before notice can be given or a hearing held, in which case the court may issue a preliminary or special injunction without a hearing or without notice. In determining whether a preliminary or special injunction should be granted and whether notice or a hearing should be required, the court may act on the basis of the averments of the pleadings or petition and may consider affidavits of parties or third persons or any other proof which the court may require.

Pa.R.C.P. § 1531.

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).

“The purpose of a preliminary injunction is to preserve the status quo by restoring it to the

last peaceable status which preceded the alleged wrongful conduct.” *Records Ctr., Inc. v. Comprehensive Mgmt., Inc.*, 525 A.2d 433, 434 (Pa. Super. Ct. 1987).

The facts set forth in Plaintiff’s Verified Complaint establish that Plaintiff David McCormick is entitled to the requested preliminary injunction, which is designed to protect Plaintiff and the Republican Party’s rights under Pa. Const. Art. I, § 5 and 25 P.S. § 3050(a.4)(4).

**B. The Prerequisites for Issuance of a Preliminary Injunction Are Satisfied.**

*(1) Preliminary Injunction Is Necessary to Prevent Immediate and Irreparable Harm Which Cannot Be Compensated By Damages.*

If the Defendants carry out the examination and adjudication of provisional ballots using more personnel of the Defendants, specifically certified SURE operators, than the Plaintiff and the Republican Party may have in authorized representatives pursuant to 25 P.S. § 3050(a.4)(4), the Plaintiff and the Republican Party’s rights under Pa. Const. Art. I, § 5 and 25 P.S. § 3050 will be violated. This is due to the fact that Plaintiff and the Republican Party will be precluded from examining and, if necessary, challenging each provisional ballot as it is examined by Defendants’ personnel.

“[W]here the offending conduct sought to be restrained through a preliminary injunction violates a statutory mandate, irreparable injury will have been established.” *SEIU Healthcare Pennsylvania v. Com.*, 628 Pa. 573, 594–95, 104 A.3d 495, 508 (2014). Accordingly, if the Defendants examine and adjudicate provisional ballots outside the direct supervision of Plaintiff and/or the Republican Party’s authorized representatives, Plaintiff’s constitutional and statutory rights will be violated.<sup>1</sup>

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<sup>1</sup> *Commonwealth v. Coward*, 489 Pa. 327, 414 A.2d 91, 98–99 (1980) (holding that where a statute prescribes certain activity, the court need only make a finding that the illegal activity occurred to conclude that there was irreparable injury for purposes of issuing a preliminary injunction); *Pennsylvania Public Utility Commission v. Israel*, 356 Pa. 400, 52 A.2d 317, 321 (1947) (holding that when the Legislature declares certain conduct to be unlawful, it is tantamount to calling it injurious to the public, and to continue such unlawful conduct

(2) Greater Injury Will Result From Refusing The Requested Preliminary Injunction Than Granting It.

A preliminary injunction should be issued if “greater injury will result if preliminary injunctive relief is denied than if such relief is granted.” *Anesthesiology Assocs., Inc. v. Allegheny Gen. Hosp.*, 826 A.2d 886, 891 (Pa. Super. Ct. 2003), *appeal denied*, 844 A.2d 550 (2004).

Greater injury will result from refusing Plaintiff the requested preliminary injunction than granting it because Plaintiff’s rights, the Republican Party’s rights, and the voters’ rights, under Pa. Const. Art. I, § 5 and 25 P.S. § 3050, will be infringed upon, as set forth in the Verified Complaint.

(3) Injunctive Relief Is Necessary To Properly Restore The Parties To The Status Quo As It Existed Immediately Prior To Defendants’ Wrongful Conduct.

A preliminary injunction is appropriate if “it properly restores the parties to their status as it existed immediately prior to the alleged wrongful conduct.” *John G. Bryant Co.*, 369 A.2d at 1167. The status quo to be maintained by a preliminary injunction is the “last actual, peaceable and lawful noncontested status” of the parties. *Valley Forge Historical Soc’y v. Washington Mem’l Chapel*, 426 A.2d 1123, 1129 (Pa. 1981).

The issuance of a preliminary injunction in this matter will return the parties to the status quo, which requires adherence to Pa. Const. Art. I, § 5 and 25 P.S. § 3050.

(4) The Requested Preliminary Injunction Is Reasonably Suited To Abate The Offending Activity.

The proposed preliminary injunction seeks to ensure compliance with 25 P.S. § 3050(a.4)(4). If requested injunction is granted, the Court will mandate that the examination and adjudication of each provisional ballot take place in the presence of at least one authorized

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constitutes irreparable injury for purposes of seeking injunctive relief); *Commonwealth ex rel. Corbett v. Snyder*, 977 A.2d 28 (Pa.Cmwth.2009) (affirming issuance of a preliminary injunction and finding that irreparable harm was presumed where there was a credible violation of the state consumer protection statute).

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. Thus, the injunction is reasonably suited to abate the offending activity.

(5) *The Requested Preliminary Injunction Is In the Public Interest.*

It is in the public interest to enforce the election laws of this Commonwealth.

**IV. CONCLUSION**

For the reasons set forth herein, and in the Verified Complaint (which is incorporated herein by reference), Plaintiff respectfully requests that this Honorable Court grant the relief set forth in the Rule to Show Cause that accompanies this Special Injunction, and order such other relief as the Court deems just and appropriate.

Respectfully submitted,

**BOCHETTO & LENTZ, P.C.**

*/s/ George Bochetto*

Dated: November 7, 2024

By:

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