

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

COVER SHEET - NOTICE OF FILING OF MOTION OR PETITION UNDER
LOCAL RULES OF CIVIL PROCEDURE

CASE CAPTION:

Delaware County Republican Executive Com.

CIVIL CASE NO. CV-2020-007523

vs. Delaware County Board of Elections

NATURE OF MATTER FILED: (please check one)

- Petition Pursuant to Rule 206.1 Response to Petition Motion for Judgment on the Pleadings Pursuant to Rule 1034(a)
 Motion Pursuant to Rule 208.1 Response to Motion Summary Judgment Pursuant to Rule 1035.2
 Family Law Petition/Motion Pursuant to Rule 206.8

**FILING PARTY IS RESPONSIBLE FOR SERVICE OF THE RULE RETURNABLE
DATE OR HEARING DATE UPON ALL PARTIES**

A motion or petition was filed in the above captioned matter on the ____ day of _____, which:

Requires you, Respondent, to file an Answer within twenty (20) days of the above date to this notice, or risk the entry of an Order in favor of the Petitioner. Answers must be filed and time stamped by the Office of Judicial Support by 4:30 PM on the following date _____.

Requires all parties, to appear at a hearing/conference on the ____ day of _____, at ____ in Courtroom ____, Delaware County Courthouse, Media, Pennsylvania. At this hearing/conference you must be prepared to present all testimony and/or argument, and must ensure that your witnesses will be present.

Was timely answered, thus requiring the scheduling of the following hearing in the above captioned matter on: _____ at 10:00 AM in Courtroom ____.

At this hearing, all parties must be prepared to present all testimony and/or argument and **must ensure that their witnesses will be present.**

Qualifies as an Uncontested Motion or Petition, and as such requires neither an answer from the Respondent nor the scheduling of a hearing in this matter.

Has been assigned to Judge John P. Capuzzi, Sr.

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Mailing date: _____

Processed by: _____

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

CIVIL DIVISION – LAW

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U.S. House of Representatives Candidate Dasha Pruett, and
Duly Appointed Observers Gregory Stenstrom and Leah Hoopes

DELAWARE COUNTY REPUBLICAN EXECUTIVE COMMITTEE	:	ELECTION LAW
	:	
V.	:	NO.: CV-2020-007523
	:	
	:	
BOARD OF ELECTIONS	:	EMERGENCY PETITION FOR SANCTIONS FOR CONTEMPT AND FOR VIOLATING THE ELECTION CODE
	:	

**INTERVENING PETITIONERS’ REPLY TO
RESPONSE OF THE BOARD OF ELECTIONS**

Prospective Intervening Petitioners, Candidate Dasha Pruett (“Pruett”), and duly appointed observers Gregory Stenstrom (“Stenstrom”) and Leah Hoopes (“Hoopes”), respectfully submit their Reply to the response of the Board of Elections (“BOE”), as follows.

I. Intervening Petitioners Seek Sanctions against the BOE for Violating both Judge Capuzzi’s Order and the Election Code Provisions Allowing Observers.

A. Intervening Petitioners have standing to intervene.

Unless this Court allows Stenstrom and Hoopes to intervene and give testimony at the evidentiary hearing on the Petition for Sanctions for Contempt of Judge Capuzzi's Order and for violations of the Election Code, Dasha Pruett will not be able to prove her allegations against the BOE.

The Delaware County Republican Executive Committee has not sought any sanctions for the BOE's disobedience of Judge Capuzzi's Order. The effect on Candidate Dasha Pruett is clear, as she has been deprived of a fair and transparent election.

The observers have valuable testimony which proves through their personal observations that the BOE failed to comply with Judge Capuzzi's Order.

Pursuant to Pennsylvania Rule of Civil Procedure 2327, this Court may permit a party to intervene "at any time during the pendency of an action" if "the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action." Pa.R.C.P. 2327(4).

All of the Prospective Intervening Petitioners have legally enforceable interests in the enforcement of Judge Capuzzi's Order, and in this Court awarding sanctions against the BOE for disobeying this Order.

Judge Capuzzi's Order has the intended benefit of ensuring a fair and transparent election for Candidate Dasha Pruett, and of enabling Gregory Stenstrom and Leah Hoopes to fulfill their function as duly appointed observers to insure same.

Without the Intervenors' involvement in this action the BOE will get off without any punishment for its willful failure to comply with Judge Capuzzi's Order.

That will send a message that will only encourage election fraud to continue occurring in future elections.

A criminal has no incentive to obey the law if he is never punished for violating it.

Election fraud is a crime.

Not allowing duly appointed observers to inspect/view the resolution process at all stages where votes are resolved makes it possible for election fraud to flourish, particularly where there is an unprecedented number of absentee and mail-in ballots as occurred in the 2020 General Election.

On page 13 of its Memorandum of Law, the BOE seems to acknowledge exactly what Intervening Petitioners stated in their Petition to Intervene, namely that when a person is adversely affected as Intervening Petitioners were when the BOE violated the court order and the Election Code, by the matter they seek to challenge, are aggrieved thereby, which Intervening Petitioners most certainly were, there absolutely is standing to obtain a judicial resolution challenging the BOE's failure to comply with a court order, where they are the intended beneficiaries of that order.

On page 6 of its Memorandum of Law, the BOE seems to acknowledge that intervention is mandatory where there are no grounds for refusal present, which is the case here.

A determination of the action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action. Pennsylvania Rule of Civil Procedure 2327.

The BOE contends on page 5 of its Memorandum of Law that the Petitioners lack standing because they have not shown that they are aggrieved by the BOE's failure to comply with a court order, and with the Election Code provisions allowing observers.

That is a preposterous contention which this Court should flatly reject.

Observers, poll watchers and canvass representatives serve the important purpose of assuring voters, candidates, political parties, and political bodies, who may question the fairness of the election process, that the same is conducted in compliance with the law, and is done in a correct manner which protects the integrity and validity of the vote and ensures that all elections are free, open and honest.

The right to an honest count is a right possessed by each voting elector, and to the extent that the importance of his or her vote is nullified, wholly or in part, he or she has been injured in the free exercise of a right or privilege secured to him or her by the laws and Constitution of the United States. *Anderson v. United States*, 417 U.S. 211, 226 (1974).

Lawful elections are at the heart of our constitutional democracy. The public, and indeed, the candidates themselves, have a compelling interest in ensuring that the selection of a candidate is legitimate. The equal enforcement of election laws is necessary to preserve our most basic and fundamental rights. Without observers and watchers, the integrity of the vote in elections is threatened and the constitutional right to free, fair and transparent public elections under the United States Constitution is denied.

So how can the BOE credibly claim on page 5 of its Memorandum of Law that “Petitioners have not shown that the Board took any action deviating from the Order that would result in a cognizable injury”?

This Court is smarter than that, all 3 Petitioners, Dasha Pruett, Gregory Stenstrom, and Leah Hoopes were aggrieved by the BOE’s violation of a court order, and a violation of the Election Code provisions allowing observers. Make no mistake about that.

And they have standing to intervene because the rights of these 3 Petitioners are not protected by the Delaware County Republican Executive Committee (“DCREC”).

In point of fact, when John McBlain, the attorney for the DCREC, was approached by the attorney for Intervening Petitioners, asking whether he wanted to file a petition for sanctions against the BOE for violating Judge Capuzzi's Order, he told her that he was too busy handling other cases, stating "my dance card is full." When the attorney for the Intervening Petitioners recently asked Attorney John McBlain to join her petitions he told her that he was recently recovering from Covid, is limited in his activities, and is therefore unable to accommodate her request.

Does that sound as if the DCREC, or its attorney, John McBlain, somehow acquiesced to the BOE violating a court order, and the Election Code provisions allowing observers? That is a stretch, and is simply not true.

There is no unity of interests, as the BOE falsely claims on page 20 of its Memorandum of Law in that the DCREC has not taken any action to seek sanctions against the BOE for its violations of a court order and for violating the Election Code provisions as to observers.

The interest of the Intervening Petitioners are not adequately represented by the DCREC in that the DCREC has been unable to take on the BOE for violating the court order because its attorney is too busy to handle it!

B. There is no undue delay, no deadline in the Election Code, and no prejudice suffered by the BOE.

It is absurd to claim that Intervening Petitioners' waiting 48 days to file its petitions make their intervention "stale" or "unduly delayed."

The BOE has done its best to stretch out the 48-day period by falsely claiming that Intervening Petitioners waited 8 weeks when, in fact, the Petitions were filed less than 7 weeks from November 4, 2020, when Judge Capuzzi issued his Order.

Based on a 7-day week, 8 weeks is 56 days. Respectfully, the BOE is off on its math.

And where is the prejudice to the BOE from a 48-day waiting period? Did the BOE get upset that someone is trying to hold it accountable for violating a court order and the Election Code?

That “upset” does not rise to the level of prejudice which is necessary to establish a “laches” defense. The BOE does not describe in what way it has been prejudiced by a delay of only 48 days.

The Election Code sets no deadline for bringing an action where a member of the Board of Elections has not allowed observers to be present while the ballots are resolved. See Sections 3506 and 1806 of the Election Code.

There is no deadline set forth in the Election Code for enforcing its provisions as to observers. Indeed, Section 3506 of the Election Code states:

“Any member of a county board of elections . . . who shall refuse to permit any overseer or watcher . . . as authorized by this act, at any session of . . . canvassing of returns of any primary or election . . . during the time that the polls are open . . . and after the close of the polls during the time the ballots are counted . . . and until the returns of such . . . election have been made up and signed, shall be guilty of a misdemeanor.”

Section 1806 of the Election Code states that upon conviction thereof, any member of a county board of elections “shall be sentenced to pay a fine not exceeding one thousand (\$1,000) dollars, or to undergo an imprisonment not exceeding one (1) year, or both, in the discretion of the court.”

There are deadlines for seeking some remedies set forth in the Election Code, but no deadline for seeking sanctions against a member of the Board of Elections for refusing to permit an observer or watcher from being present during the time that the polls are open, *and* after the close of the polls.

And what were Gregory Stenstrom and Leah Hoopes doing during this 48-day period? Not sitting on their butts wasting time. Instead, they called and wrote the U.S. Attorney, the Delaware County District Attorney, the Pennsylvania Attorney General. Why do you think that Attorney General Shapiro sent his “investigators” unannounced to the houses of Gregory Stenstrom and Leah Hoopes, to intimidate them, rather than getting off his politically motivated butt to conduct his own investigation into the misconduct of the Board of Elections for violating a court order and for violating the Election Code allowing observers.

While exhausting their administrative remedies, appearing to testify before Pennsylvania legislators in Gettysburg and elsewhere, Stenstrom and Hoopes were both busy fact gathering and speaking to other observers to coordinate an investigation that the law enforcement agents should have taken on but did not, again because they are politically motivated Democrats.

To date, the District Attorney of Delaware County and the Pennsylvania Attorney General have not investigated, let alone prosecuted the BOE, for violating the Election Code as to observers.

So instead of rushing to court, Stenstrom and Hoopes conducted their own investigation, speaking with witnesses and other observers who were also kept away from where the ballots were being resolved.

A 48-day period is hardly an undue delay under the unique facts of this case.

C. The BOE violated the 11/4/2020 Court Order, and the Election Code.

The BOE boasts on page 4 of its Memorandum of Law that they granted “even greater access to party observers.”

What the BOE fails to admit is the obvious, that they did not comply with paragraph 1 of Judge Capuzzi's order which states that observers are "permitted to observe the resolution area at *all* hours while ballots are being resolved." All means all.

Yet the BOE admits in its responses to both petitions that it permitted observers in the rear room where mail-in and absentee ballots were being resolved for only 5 minutes every 2 hours.

Five (5) minutes every two (2) hours is clearly not "at all hours while ballots are being resolved." It makes absolutely no sense how observers can meaningfully observe the resolution of the ballots when they are only permitted to observe for 5 minutes.

Judge Capuzzi's Order mirrors what the Election Code requires as to the length of time that observers are permitted to be present, to observe the opening, canvassing and resolution of ballots in any Election. Limiting access to only 5 minutes does not make any sense given that the purpose of observers is to help ensure that procedures are properly followed which can increase public confidence in well-run elections.

The BOE did not comply with Judge Capuzzi's Order, period!

Whether or not Attorney McBlain objected to the BOE's continued violation of the Election Code and a court order does not constrain Intervening Petitioners from seeking sanctions for this violation.

As long as Pennsylvania has had an Election Code, it has had watchers. In 1937, the Pennsylvania General Assembly included the concept of "watchers" in the then-newly enacted Pennsylvania Election Code, a statutory scheme addressing the administration of elections in the Commonwealth. See 25 P.S. §§ 2600, et. seq.

Ignorance of the Law is no excuse. The Election Code has been around for such a long time that the BOE cannot reasonably claim that it is not aware of its provisions allowing observers to be present at all times that the ballots are resolved.

D. The Photos

The BOE submits many photos trying desperately to create a false narrative that everything is “hunky-dory.”¹

Attorney John McBlain for the DCREC said it well in paragraph 10 of his Emergency Petition to this Court which he filed on November 4, 2020:

“... there are various activities of the pre-canvass and canvass activities that are occurring in the Rear, which cannot be observed from the “pen” in the Front.”

As stated in paragraph 9 of Attorney McBlain’s Emergency Petition to this Honorable Court:

“The Board has established a “pen” for watchers to “observe” the pre-canvass and canvass of the ballots at the entrance of the Front but will not permit watchers or attorneys to leave this “pen” area to actually observe the pre-canvass and canvass of ballots.”

As stated in paragraph 11 of this same Emergency Petition submitted by McBlain on behalf of the DCREC:

“Petitioner’s watchers, candidate watchers and their attorneys all pleaded with employees of the Board to allow for the observation of the pre-canvas and canvass activities in both the Front and the Rear throughout the evening hours of November 3, 2020, and into the morning hours of November 4, 2020, to no avail. The solicitor of the Board (William Martin) was present in the Wharf Office during this time but refused to discuss the issue of access, transparency and fairness and instead mostly retreated to the Rear, out of sight.”

¹ Adjective Slang.

About as well as one could wish or expect; satisfactory; fine; OK.

<https://www.dictionary.com/browse/hunky-dory>

See paragraph 19 of the Emergency Petition of McBlain which states:

“Restricting the Petitioner’s watchers, candidate watchers and their attorneys to “observe” these processes (pre-canvassing and canvassing of votes) from the “pen” in the Front neither comports with the actual statutory requirements or the spirit of the various sections of the Election Code cited above, in that the watchers and attorneys are denied any meaningful opportunity to observe the activities occurring in the Front, and, are completely prohibited from observing whatever the Board is doing in the Rear with the pre-canvass and canvass activities.”

Does this sound as if everything is “honky-dory”?

The photos the BOE included in its response cannot dispute the hard evidence presented by Attorney McBlain, who was himself present in the Wharf Office Building of the BOE on Election Day, November 3, 2020, and the days that followed, 3 days, where the BOE completely barred any observers from the rear room where the mail-in and absentee ballots were being resolved.

In fact, Attorney McBlain, himself, submitted the verification in support of his Emergency Petition, based on his own personal knowledge and observations of having been in the Wharf Office Building to observe these violations of the Election Code committed by the BOE.

At the upcoming evidentiary hearing that this Court schedules Prospective Intervening Petitioners will submit eye witness testimony from Gregory Stenstrom, Leah Hoopes and other observers present at the Wharf Office Building in Chester, Pennsylvania, which disputes that everything was “honky-dory,” as well as photographs and videos showing how the BOE kept observers from seeing from the ballots, and from seeing the resolution of those ballots, violating both Judge Capuzzi’s 11/4/2020 Order, and the Election Code which allow observers to be present at all times that the ballots are resolved.

So, this Court should be skeptical under these facts, and not overly impacted by the photos which the BOE submitted with its response. Wait until the evidentiary hearing to hear testimony, and see the photos and videos that Intervening Petitioners present, before concluding that everything was “honky-dory.”

E. The ridiculous “live-streaming” defense.

And the BOE gives an excuse for its non-compliance by stating that its cameras allowed live streaming around the world while the ballots were being resolved. It appears that the BOE is claiming that it is free to disregard a court order and the Election Code provisions requiring the BOE to allow observers, because it has live streaming!

Well, gee, what happens during those moments where the live streaming is blackened out, or when live streaming is unavailable at critical moments when fraud, irregularities or illegalities may be occurring? And, who gave the BOE the right to re-write the Election Code and to violate a Court Order?

Are we missing something here?

The BOE has no excuse for limiting the observers in the rear where mail-in and absentee ballots were being resolved to a 5-minute period every 2 hours, where the first paragraph of Judge Capuzzi’s Order clearly states that the observers are permitted to have access to the resolution of ballots “at all hours of the resolution process.” Need it be repeated that all means all.

And the language of Judge Capuzzi’s Order mirrors the Election Code provisions allowing observers to be present at all hours while ballots are opened, canvassed and counted.

Section 3146.8 of the Election Code states that observers/watchers shall be permitted to be present when the envelopes containing official absentee ballots are opened and when such ballots are counted and recorded.

The Election Code does not state that the BOE is excused from complying with Section 3146.8 if it live streams the ballot resolution area to the entire world. Who are we kidding here? The BOE wants to disobey the Election Code with impunity and thinks it will get away with it.

Not enforcing the Election Code with sanctions only encourages fraud and destroys integrity in our elections.

Section 2687 of the Election Code states that partisan observers may observe at polling locations and may stay until the time that the counting of votes is complete.

Yet the BOE claims in its Memorandum of Law that this provision only allows observers to be present at the polling place, and not at the Wharf Office Building where the ballots were clearly being counted and tabulated.

The BOE wants to turn the Election Code on its head, while it should not have been necessary for Judge Capuzzi to issue his 11/4/2020 Order in the first place, had the BOE complied with the Election Code provisions allowing observers.

F. Preposterous Contentions in the BOE's Memorandum of Law.

A preposterous contention, and the BOE's response is full of them, is that the BOE "has complied in all respects with the Order." See page 5 of its Memorandum of Law.

How is allowing only 5 minutes of observation time compliance with paragraph 1 of Judge Capuzzi's Order, requiring the BOE to permit observers to be present "at all hours while ballots are being resolved"?

Are we missing something here?

The BOE – in another preposterous contention – states that Candidate Pruett has not asserted a legally cognizable interest. See page 5 of Memorandum of Law.

Really? How about the BOE depriving Candidate Pruett of her right to a free, open and transparent election?

The observers pleaded with employees of the BOE to be allowed in the rear to observe the pre-canvass and canvass activities in both the front and the rear throughout the evening hours of November 3, 2020, and into the morning hours of November 4, 2020, to no avail.

The solicitor to the BOE, William Martin, who was present at the Wharf Office Building in Chester, Pennsylvania, where the ballots were being resolved, refused to discuss the issue of access, transparency and fairness, and instead retreated to the rear, out of sight.

For 3 days, November 3-5, 2020, the BOE kept observers away from the rear where mail-in and absentee ballots were being resolved, and it was during this extended time period that most of the mail-in and absentee ballots were resolved, without *any* observers present to view the resolution process!

The BOE – in another preposterous contention – claims that Gregory Stenstrom and Leah Hoopes had no personal right to be present to observe the resolution of the ballots.

Well, how about the rest of the observers? The BOE kept ALL of the observers out of the ballot resolution rear room for 3 days!

Not being allowed access to the rear where mail-in and absentee ballots are being resolved precludes the observers from observing even basic matters such as the number of ballots already canvassed, the number of ballots yet to be canvassed, the number of ballots to be set aside as defective, and how the BOE makes any determination about what votes will or will not be counted for this most important election!

And yet the BOE has the nerve to claim that Intervening Petitioners “have not shown that the Board took any action deviating from the Order that would result in a cognizable injury.” See page 5 of its Memorandum of Law.

Really?

The reason Judge Capuzzi may have ordered observers to be permitted access to a ballot room for up to 5 minutes every 2 hours is to prevent anyone from swapping out legal ballots for fake ones, or to make sure that the universe of ballots does not suddenly increase without any valid explanation. Without observation of the ballot room with some limited degree of regularity, even for 5 minutes or less, this fraud could occur.

Yet the BOE contends it complied with paragraph 3 of Judge Capuzzi’s Order even though the BOE did not allow ANYONE in the rear room where unopened ballots were stored until 1:30 p.m., even though Gregory Stenstrom and other observers sought entry into that room when they arrived at 8:30 a.m., including Leah Hoopes, when Judge Capuzzi had ordered access to this rear ballot storage room at 9:30 p.m. the night before!

And, for no reason at all, the BOE stopped allowing entrance to the rear ballot storage room from 7:30 p.m. onwards. It was not only Gregory Stenstrom that the BOE kept out, it was every observer present at the Wharf Office Building!

And, the BOE has the nerve to falsely claim that it is off the hook for allowing limited access between the hours of 1:30 p.m. and 7:30 p.m. Well, what about all the other hours that the BOE kept ALL observers out?

It is beyond galling to hear the cavalier way the BOE excuses its flagrant failure to comply with a valid court order by pointing out a limited but not full compliance.

Way too little, way too late, that is how the BOE deprived Dasha Pruett of her right to a free, transparent and fair election. And the BOE has the nerve to contend that the Intervening Petitioners have no standing because they were not aggrieved by the BOE's misconduct?

This Court is way too smart to fall for this crock of bull the BOE is feeding it.

G. The BOE's misconduct occurred before and after Judge Capuzzi's Order.

The BOE wants this Court to limit its scrutiny of the BOE's misconduct to the BOE's actions only after 9:30 p.m. when Judge Capuzzi issued his Order. What about the misconduct in violating the Election Code that the BOE is guilty of that occurred for 2 days prior to then?

Intervening Petitioners are seeking sanctions not only for the BOE violating Judge Capuzzi's Order. The precise same misconduct committed by the BOE also violates the Election Code, and Intervening Petitioners are also seeking sanctions for the BOE being guilty of a misdemeanor in accordance with Sections 3506 and 1806 of the Election Code.

H. Observers are permitted to be present at the Wharf Office Building, and not just at the polls, and even after Election Day, until the ballots are fully resolved.

Section 2650 of the Election Code states that partisan observers may be present at the tabulation or canvassing of unofficial and official returns, and any recount or recanvass. Yet the BOE makes the illogical statement in its Memorandum of Law that the BOE need not allow observers in the Wharf Office Building where the ballots were clearly being canvassed, tabulated and counted. Another preposterous contention here.

I. Miscellaneous false claims in the BOE's Memorandum of Law.

The BOE falsely claims on page 20 of its Memorandum of Law that Intervening Petitioners brought their petitions to expand access for ballot observers. To the contrary, Intervening Petitioners are seeking sanctions for the BOE's non-compliance with the Election

Code and with Judge Capuzzi's 11/4/2020 Order, which mirrors the Election Code provisions allowing observers. The same misconduct violates both.

Nor are Intervening Petitioners, as the BOE falsely claims on page 20 of its Memorandum of Law, seeking relief because Judge Capuzzi's 11/4/2020 Order "did not go far enough for Petitioners liking."

To the contrary, Intervening Petitioners know and recognize that Judge Capuzzi's Order which mirrors the Election Code would not have been necessary had the BOE complied with the Election Code provisions as to observers. Judge Capuzzi is not authorized to order any more or less than what the Election Code requires. The BOE did not comply with a court order, and the BOE's same misconduct violated the Election Code.

It is thus ridiculous for the BOE to falsely claim on page 21 of its Memorandum of Law that the DCREC negotiated with the Board of Elections to secure additional accommodations for its observers "above and beyond those set forth in the Order." False, again. A fair reading of John McBlain's Emergency Petition which resulted in Judge Capuzzi issuing his 11/4/2020 Order evidences that the DCREC was merely seeking compliance with the various Election Code sections cited and quoted therein.

All of which require the BOE to allow observers to be present at all hours that ballots are resolved, which is precisely why Judge Capuzzi ordered the exact same relief, which mirrors what the Election Code requires.

It is truly galling for the BOE to contend in its Memorandum of Law that the Election Code does not extend beyond Election Day. Really? The counting continued well beyond Election Day, and the Election Code is clear that observers are permitted to observe at all times that the ballots are resolved.

J. Plenty of Impropriety

The BOE claims on page 25 that “Petitioners present non-contextual facts and use innuendo to attempt to create the appearance of impropriety.” To the contrary, the BOE has done that all on its own.

The return receipts which are necessary in order for the Board of Elections to certify the election were lost or purposefully discarded by employees of the BOE.

An independent consultant of the BOE, Christina Iacono, sent an email to the election judges and minority inspectors telling them to return to the Wharf Office Building on November 13, 2020, to “reconcile” (i.e., recreate) the return receipts. In reality, they were summoned because of ineptitude or intentional spoliation, the original return receipts were all gone, or at least some of them were gone.

Knowing that the Board of Elections could not certify the election results without these return receipts, it wanted the election judges and inspectors to recreate these return receipts even though in at least some cases the end of the day receipts tabulating how many votes each candidate received from each precinct were absent.

Some inspectors cried when being questioned, stating that they were pressured to include numbers on the recreated return receipts that were not based on anything.

So make no mistake, there was impropriety committed by the BOE, you cannot make this stuff up!

Attached to this Reply Brief as **Exhibit A** are (1) the email from Christina Iacono, and (2) a sample blank return receipt that the Board of Elections must have in order to certify the elections.

Without end of the day receipts, showing how many votes each candidate received, and with missing cartridges and USB-V sticks, the BOE employees at the Wharf Office Building pressured election judges and inspectors, at least some of them, to recreate the return receipts with numbers not based on any credible source of information.

K. Muzzling the Observers

It is outrageous for the BOE to claim on page 26 of its Memorandum of Law that Gregory Stenstrom violated the court order by objecting when he saw Wharf Office Manager, Jim Savage, plugging in USB-V sticks into computers that tabulated the votes without any chain of custody, cartridges or end of day receipts present with those USB-V sticks.

The BOE is falsely claiming that Gregory Stenstrom “attempted to interfere with the process of ballots being uploaded.” Not allowing observers to report concerns and not answering their questions about serious irregularities they witness violates the spirit of the Election Code which allows observers. Observers and watchers serve as an important check to ensure transparency and guard against inconsistencies and other wrongdoing by election officials.

In no case should election officials hinder legitimate observation, “muzzle” observers, or prevent them from reporting or releasing information that has been obtained through their observations.

Sadly Gregory Stenstrom reported that he was continually harassed, threatened, denied access to the room and ballots, and the election officials were openly hostile and refused to answer questions. Leah Hoopes reports that Solicitor William Martin told the observers that they could ask all the questions they want but “we will not answer them.”

Great. So why are we having observers in the first place if the BOE obstructs their ability to observe the count in a way that would enable them to identify irregularities, which is the primary purpose of the observer role.

Without observers the integrity of the vote in elections is threatened and the constitutional right to free and fair public elections under the United States Constitution is denied. Period.

II. Conclusion

Unless this Court holds the BOE accountable for violating the Election Code and Judge Capuzzi's Order allowing observers, we will never again have a free, fair and transparent election.

Prospective Intervening Petitioners, Dasha Pruett, Gregory Stenstrom and Leah Hoopes respectfully request that this Court, in the interest of justice, grant the following relief:

- (1) grant their Petition to Intervene;
- (2) issue an Order setting a date for an evidentiary hearing to present testimony from witnesses that personally observed the BOE violating Judge Capuzzi's Order and the Election Code provisions as to observers;
- (3) issue a Declaration that the BOE is in contempt of Judge Capuzzi's order, which it flagrantly violated;
- (4) issue a Declaration that the BOE is guilty of a misdemeanor for violating the Election Code provisions allowing observers, in accordance with Sections 3506 and 1806 of the Election Code;
- (5) issue an Order allowing Intervening Petitioners to conduct discovery to enable a forensic examination of the ballots and envelopes, and other physical, electronic and

documentary evidence to ascertain whether outcome determinative fraud, irregularities and/or illegalities occurred in the 2020 General Election; and

(6) issue an Order imposing whatever other sanctions this Court determines are just and appropriate against the BOE for violating Judge Capuzzi's 11/4/2020 order and the Election Code provisions allowing observers.

Dated: January 8, 2021

Respectfully submitted,



Deborah Silver, Esq.
For Prospective Intervening Petitioners,
Dasha Pruett, Gregory Stenstrom and Leah Hoopes

-----Original Message-----

From: Iacono, Christina <IaconoC@co.delaware.pa.us>

Sent: Thu, Nov 12, 2020 10:59 pm

Subject: URGENT - Delaware County Bureau of Elections - Missing Precinct Data - ACTION REQUIRED
FROM Judges of Election

Dear Delaware County Poll Worker,

Thank you very much for your service on election day. We know that it was a long day and that things may have been missed during the closing procedures at the end of the night.

Unfortunately, due to missing data, election results from your precinct cannot be confirmed and approved for final tabulation until the missing data is reconciled.

In order to ensure that all votes cast will be counted, we need at least one member of your election team to come to the Machine Warehouse asap to help complete forms. If you were the minority inspector and were provided an envelope at the close of polls, Please bring the envelope with you to ensure the county has as much data as possible to correct issues in the precinct.

The missing data may be any of the following:

- Missing yellow numbered list of voters
- Incorrect numbers in the yellow book (numbers that do not match the scanner tabulation)
- Missing ballot reconciliation forms (this impacts the ballot chain of custody)
- Missing information on the close of night Return Sheet

EXHIBIT A

- Missing Return Sheet

The machine warehouse is located at 403 East 24th Street in Chester PA and will be open Friday, Saturday, Sunday and Monday from 8:30AM-3PM.

We appreciate your commitment to serve the voters on election day and appreciate the time and effort spent helping the county in this endeavor.

Kindest regards,
Christina Iacono
Delaware County Poll Worker Coordinator
(610) 717-2509 | laconoC@co.delaware.pa.us



Return Sheet

ALDAN BOROUGH Eastern Precinct

Attach
Write In Tape(s)
Here

== ALL ENTRIES ON THIS SHEET MUST BE MADE IN INK ==

Print as many "Tally by Precinct" reports as needed for three (3) Precinct Return Sheets and one (1) to each Party present at count and one (1) for clear return box.

Opening of Polls

Certificate No. 1 (Before the Opening of the Polls)				
	Touch Writer	Scanner #1	Scanner #2	Cage
Blue Seal from Handle				
Blue Seal from Printer Port				
Red Seal from Cage				
Lifetime Counter				
Signatures: Judge of Election: _____ Minority Inspector: _____				

1. Complete Certificate No. 1.
2. Record all Seal Numbers
3. Record the Lifetime Counter for each device.
4. Be certain that all present Election Board Members review the zero count on the Scanner(s) prior to certifying

Closing of Polls

Certificate No. 2 (After Closing the Polls)				
	Touch Writer	Scanner #1	Scanner #2	Cage
New Blue Seal for Handle				
New Blue Seal for Printer Port				
New Red Seal for Cage				
New Lifetime Counter				
Ballots Cast (by Scanner)				
				TOTALS
Total Scanned Ballots Cast				
Total Provisional Ballots Cast				
GRAND TOTAL BALLOTS CAST				
Signatures:				
Judge of Election: _____				
Minority Inspector: _____				

1. Record all New Seal Numbers
2. Record the new Lifetime Counter for each device.
3. Complete and sign Certificate No. 2.
4. Place the v-drive from each scanner, the Zero Count Report (with the Board signatures from opening) and one (1) Tally by Precinct Report Tape (with the Board signatures from closing) in the clear box.
5. On the right side of each return sheet, attach the Tally by Precinct Report Tape(s) (results) and the Write In Report Tape(s).
6. Post one Return Sheet with Tapes attached outside the polling place.
7. Place one Return Sheet with Tapes attached in Envelope "C" and return it inside of the supply box to your designated site.
8. Place one Return Sheet with Tapes attached in Envelope "D" (to be retained by the Minority Inspector)
9. Complete the "Audit of Election Day Ballots" section below.

Audit of Election Day Ballots	
Blank Election Day Ballots Received	1500
Subtract Ballot Count from Scanner # 1 <i>(If consolidated Precincts, only use Ballot Count for this Precinct)</i>	-
Subtract Ballot Count from Scanner # 2 <i>(If consolidated Precincts, only use Ballot Count for this Precinct)</i>	-
Subtract Spoiled Precinct Ballots	-
Total of Ballots to be returned unused	=
Signatures:	
Judge of Election: _____	
Minority Inspector: _____	

DELAWARE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE

V.

BOARD OF ELECTIONS

: ELECTION LAW

: NO.: CV-2020-007523

: INTERVENING PETITIONERS'
: REPLY TO RESPONSE OF
: THE BOARD OF ELECTIONS
:
:


CERTIFICATE OF SERVICE

I, Deborah Silver, Esq., hereby certify that I have on the date below served a true and correct copy of the foregoing (1) Intervening Petitioners' Reply to Response of the Board of Elections, and Exhibit A thereto; and (2) the Instant Certificate of Service, were all served on the attorneys for the parties electronically, as indicated below:

J. Manly Parks, Esq., for the Delaware County Board of Elections
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Philadelphia, PA. 19103
JMParks@duanemorris.com

And

Attorney John McBlain, for the Delaware County Republican Executive Committee
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Media, PA. 19063
jmcbain@swartzcampbell.com



Deborah Silver, Esq.
Attorney for Prospective Intervening Petitioners

Dated: January 8, 2020