

IN THE

Commonwealth Court of Pennsylvania

No. 125 CD 2021

DELAWARE COUNTY REPUBLICAN EXECUTIVE COMMITTEE,

Appellant,

v.

BOARD OF ELECTIONS,

Appellee.

Appeal from Docketed Order dated January 12, 2021,

Issued by the Honorable Judge John Capuzzi,

Of the Court of Common Pleas of Delaware County, No. CV-2020-007523

REPRODUCED RECORD

OF APPELLANTS/PROSPECTIVE INTERVENORS

GREGORY STENSTROM & LEAH HOOPES

Bruce L. Castor, Jr.

PA. Attorney I.D. #46370

van der Veen, O'Neill, Hartshorn, Levin

1219 Spruce St.

Philadelphia, PA 19107

Attorney for Appellants/Prospective Intervenor, Gregory Stenstrom and Leah Hoopes

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Case Search

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Case Information

Court Delaware County Court of Common Pleas

Case CV-2020-007523

Class Civil - Miscellaneous - Other

Short Title Delaware County Republican Executive Committee v. Delaware County Board of Elections

Status AOPC Closed

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PENNSYLVANIA E-FILING

Deborah Silver ▾



Case View - CV-2020-007523



CASE INFORMATION ▾

Court Level	Court of Common Pleas	Court	Delaware County Court of Common Pleas
Case Title	Delaware County Republican Executive Committee v. Delaware County Board of Elections	Case Type	Civil - Miscellaneous - Other
Filed Date	11-04-2020	Status	AOPC Closed
Next Hearing		Judge	
Next Hearing Type			

PARTIES / PARTICIPANTS













#	Role	Name	Attorney	Service Type
1	Plaintiff	Delaware County Republican Executive Committee	MCBLAIN, JOHN P	Conventional
1	Intervener	Pruett, Dasha	SILVER, DEBORAH FRANKEL CASTOR JR, BRUCE L	eService eService
1	Defendant	Delaware County Board of Elections	PARKS, J MANLY	Conventional
2	Intervener	Stenstrom, Gregory	CASTOR JR, BRUCE L	eService
3	Intervener	Hoopes, Leah	CASTOR JR, BRUCE L	eService
1 to 5 of 5 records				

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DOCKET SHEET

Filed Date	Document Description	Filed By	
03-05-2021	Praeipce - Praeipce to Attach	Gregory Stenstrom, Leah Hoopes	
03-05-2021	Praeipce - Praeipce to Attach	Gregory Stenstrom, Leah Hoopes	
03-03-2021	Miscellaneous - Motion Cover Sheet	Dasha Pruett, Gregory Stenstrom, Leah Hoopes	
03-03-2021	Answer - Answer/Response to Motion/Petition	Dasha Pruett, Gregory Stenstrom, Leah Hoopes	
03-03-2021	Miscellaneous - Entry of Appearance	Dasha Pruett	
03-02-2021	Miscellaneous - Entry of Appearance	Gregory Stenstrom, Leah Hoopes	
02-19-2021	Appeal - Transmittal of Record to the Appellate Court		

RR001

Filed Date	Document Description	Filed By	
02-19-2021	Opinion - Opinion		
02-12-2021	Praecipe - Praecipe		
02-11-2021	Miscellaneous - Motion Cover Sheet	Delaware County Board of Elections	
02-11-2021	Petition - Petition for Counsel Fees	Delaware County Board of Elections	
02-11-2021	Financials - Receipt		
02-11-2021	Notice - Notice of Appeal and Certification of Service	Gregory Stenstrom, Leah Hoopes	
02-11-2021	Miscellaneous - Entry of Appearance Self Represented Party	Gregory Stenstrom	
02-11-2021	Miscellaneous - Entry of Appearance Self Represented Party	Leah Hoopes	
02-11-2021	Financials - Receipt		
01-15-2021	Order - Order		
01-13-2021	Order - Order		
01-11-2021	Answer - Reply Brief	Dasha Pruett, Gregory Stenstrom, Leah Hoopes	
01-11-2021	Order - Order Denied		
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Case Search

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Case Information

Court Delaware County Court of Common Pleas

Case CV-2020-007523

Class Civil - Miscellaneous - Other

Short Title Delaware County Republican Executive Committee v. Delaware County Board of Elections

Status AOPC Closed

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Deborah Silver



Case View - CV-2020-007523



CASE INFORMATION

Court Level	Court of Common Pleas	Court	Delaware County Court of Common Pleas
Case Title	Delaware County Republican Executive Committee v. Delaware County Board of Elections	Case Type	Civil - Miscellaneous - Other
Filed Date	11-04-2020	Status	AOPC Closed
Next Hearing		Judge	
Next Hearing Type			

PARTIES / PARTICIPANTS

#	Role	Name	Attorney	Service Type
1	Plaintiff	Delaware County Republican Executive Committee	MCBLAIN, JOHN P	Conventional
1	Intervener	Pruett, Dasha	SILVER, DEBORAH FRANKEL CASTOR JR, BRUCE L	eService eService
1	Defendant	Delaware County Board of Elections	PARKS, J MANLY	Conventional
2	Intervener	Stenstrom, Gregory	CASTOR JR, BRUCE L	eService
3	Intervener	Hoopas, Leah	CASTOR JR, BRUCE L	eService
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DOCKET SHEET

Filed Date	Document Description	Filed By
01-09-2021	Order - Order Denied	
01-08-2021	Answer - Reply	Dasha Pruett, Delaware County Republican Executive Committee, Gregory Stenstrom
01-08-2021	Memorandum - Memorandum of Law	
01-06-2021	Petition - Emergency Petition	
01-04-2021	Miscellaneous - Transcript of Proceedings	
12-31-2020	Miscellaneous - Entry of Appearance	
12-31-2020	Miscellaneous - Entry of Appearance	Delaware County Board of Elections

RR003

Filed Date	Document Description	Filed By	
12-30-2020	Memorandum - Memorandum of Law	Delaware County Republican Executive Committee	
12-30-2020	Motion - Emergency Motion	Delaware County Republican Executive Committee	
12-28-2020	Order - Order		
12-28-2020	Order - Order		
12-23-2020	Miscellaneous - Entry of Appearance	Delaware County Board of Elections	
12-22-2020	Memorandum - Memorandum of Law		
12-22-2020	Memorandum - Memorandum of Law		
12-22-2020	Petition - Petition		
12-22-2020	Petition - Petition to Intervene		
11-04-2020	Order - Order/Petition for Relief		
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Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

DELAWARE

County

For Prothonotary Use Only:

Docket No:

FILED

2020 DEC 22 PM 4:54

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- ☐ Complaint ☐ Writ of Summons ☒ Petition
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:

Delaware County Republican Executive Committee

Lead Defendant's Name:

Delaware County Board of Elections

Are money damages requested? ☒ Yes ☐ No

Dollar Amount Requested: ☒ within arbitration limits
(check one) ☐ outside arbitration limits

Is this a *Class Action Suit*? ☐ Yes ☒ No

Is this an *MDJ Appeal*? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: Deborah Silver, Esq.

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- ☐ Intentional
☐ Malicious Prosecution
☐ Motor Vehicle
☐ Nuisance
☐ Premises Liability
☐ Product Liability (does not include mass tort)
☐ Slander/Libel/ Defamation
☐ Other:

CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff
☐ Debt Collection: Credit Card
☐ Debt Collection: Other

- ☐ Employment Dispute:
Discrimination
☐ Employment Dispute: Other

☐ Other:

CIVIL APPEALS

- Administrative Agencies
☐ Board of Assessment
☐ Board of Elections
☐ Dept. of Transportation
☐ Statutory Appeal: Other

- ☐ Zoning Board
☐ Other:

MASS TORT

- ☐ Asbestos
☐ Tobacco
☐ Toxic Tort - DES
☐ Toxic Tort - Implant
☐ Toxic Waste
☐ Other:

REAL PROPERTY

- ☐ Ejectment
☐ Eminent Domain/Condemnation
☐ Ground Rent
☐ Landlord/Tenant Dispute
☐ Mortgage Foreclosure: Residential
☐ Mortgage Foreclosure: Commercial
☐ Partition
☐ Quiet Title
☐ Other:

MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration
☐ Declaratory Judgment
☐ Mandamus
☐ Non-Domestic Relations
Restraining Order
☐ Quo Warranto
☐ Replevin
☒ Other:
Election Law Matter

PROFESSIONAL LIABILITY

- ☐ Dental
☐ Legal
☐ Medical
☐ Other Professional:

NOTICE

Pennsylvania Rule of Civil Procedure 205.5. (Cover Sheet) provides, in part:

Rule 205.5. Cover Sheet

(a)(1) This rule shall apply to all actions governed by the rules of civil procedure except the following:

- (i) actions pursuant to the Protection from Abuse Act, Rules 1901 et seq.
- (ii) actions for support, Rules 1910.1 et seq.
- (iii) actions for custody, partial custody and visitation of minor children, Rules 1915.1 et seq.
- (iv) actions for divorce or annulment of marriage, Rules 1920.1 et seq.
- (v) actions in domestic relations generally, including paternity actions, Rules 1930.1 et seq.
- (vi) voluntary mediation in custody actions, Rules 1940.1 et seq.

(2) At the commencement of any action, the party initiating the action shall complete the cover sheet set forth in subdivision (e) and file it with the prothonotary.

(b) The prothonotary shall not accept a filing commencing an action without a completed cover sheet.

(c) The prothonotary shall assist a party appearing pro se in the completion of the form.

(d) A judicial district which has implemented an electronic filing system pursuant to Rule 205.4 and has promulgated those procedures pursuant to Rule 239.9 shall be exempt from the provisions of this rule.

(e) The Court Administrator of Pennsylvania, in conjunction with the Civil Procedural Rules Committee, shall design and publish the cover sheet. The latest version of the form shall be published on the website of the Administrative Office of Pennsylvania Courts at www.pacourts.us.

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:

CIVIL CASE NO. CV-2020-007523

Delaware County Republican Executive Com.

vs. Delaware County Board of Elections

NATURE OF MATTER FILED: (please check one)

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Petition Pursuant to Rule 206.1 | <input type="checkbox"/> Response to Petition | <input type="checkbox"/> Motion for Judgment on the Pleadings Pursuant to Rule 1034(a) |
| <input type="checkbox"/> Motion Pursuant to Rule 208.1 | <input type="checkbox"/> Response to Motion | <input type="checkbox"/> Summary Judgment Pursuant to Rule 1035.2 |
| <input type="checkbox"/> 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.

FOR OFFICE USE ONLY

Mailing date: _____

Processed by: _____

RR007

DELAWARE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE

V.

BOARD OF ELECTIONS

: ELECTION LAW

: NO.: CV-2020-007523

: EMERGENCY PETITION FOR
: SANCTIONS FOR CONTEMPT
: AND FOR VIOLATING
: ELECTION CODE
:

Praecipe for Entry of Appearance

To the Prothonotary:

Please enter my appearance on behalf of Prospective Intervening Petitioners
Dasha Pruett, Gregory Stenstrom and Leah Hoopes.

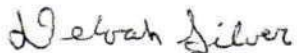
Papers may be served at the address set forth below.

Attorney Deborah Silver, ID # 45521

Law Office of Deborah Silver
54 Shadeland Avenue
Drexel Hill, PA. 19026

(610) 284-4247

Date: December 22, 2020



Signature: Deborah Silver, Esq.

DELAWARE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE

V.

BOARD OF ELECTIONS

:
: ELECTION LAW
:
: NO.: CV-2020-007523
:
:
: EMERGENCY PETITION FOR
: SANCTIONS FOR CONTEMPT
: AND FOR VIOLATING
: ELECTION CODE
:

[Proposed] ORDER

AND NOW, this ____ day of December, 2020, upon consideration of the Emergency Petition for Sanctions Against the Board of Elections for Contempt for Disobeying Judge Capuzzi's November 4, 2020 Order, and for Violating the Election Code Provisions Related to Observers, of Intervening Petitioners Dasha Pruett, Gregory Stenstrom and Leah Hoopes, and any response thereto by the Board of Elections, it is hereby ORDERED AND DECREED that said Petition for Sanctions is **GRANTED**.

____ A Declaration is Issued holding the Board of Elections in Contempt for disobeying paragraphs 1, 2 and 3 of Judge Capuzzi's Order issued 11/4/2020, permitting observers to be present at all hours during the resolution process of ballots, permitting observers to be present to observe the sorting machine at all hours when ballots are sorted, and permitting observers to be present in a ballot room to observe the room for at least 5 minutes every 2 hours. The Board of Elections violated and disobeyed all three of the above-referenced paragraphs in Judge Capuzzi's 11/4/2020 Order, and there is no valid excuse or reason for doing so.

____ A Declaration is Issued holding the Board of Elections is guilty of a misdemeanor, and in violation of the provisions of the Election Code permitting observers to be present when

mail-in and absentee ballots are opened and counted (Section 3146.8), and the Board of Elections is Ordered to pay a \$1,000.00 sanction ____ to the Intervening Petitioner Dasha Pruett, whose election was adversely affected by same, _____ to this Court, and _____ the members of the Board of Elections are sentenced to 1 year in prison, which sanctions are set forth in Section 1806 of Pennsylvania's Election Code as penalties for refusing to permit watchers to be present during the computation and canvassing of returns of any election, and for refusing to permit observers and watchers to be present when envelopes containing official absentee and mail-in ballots are opened, counted and recorded.

_____ An Order that the Board of Elections forthwith provide Pruett, Stenstrom and Hoopes with (1) the original USB V-cards that were inserted into computers that tabulated the votes, (2) the chain of custody documents signed by the election judges, and (3) the outer envelopes, in order that an independent forensic audit can be obtained by the Prospective Intervening Petitioners;

_____ An Order that the Board of Elections forthwith provide Pruett, Stenstrom and Hoopes with the computer event logs that disclose when the USB V-cards were inserted into computers used to tabulate the votes;

_____ An order, declaration and/or injunction enjoining the "winning" U.S. House of Representative candidate that ran against Candidate Dasha Pruett from exercising official authority during the pendency of this action until an independent forensic audit is completed, or until a hearing is held on this Petition, where testimony from witnesses are presented;

_____ An Order that the Board of Elections pay Intervening Petitioners' attorneys' fees in the amount of \$ _____, and costs in the amount of \$ _____.

BY THE COURT: _____, J.

**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY,
PENNSYLVANIA
CIVIL DIVISION – LAW**

Deborah Silver, Esq.
Attorney I.D. # 45521
54 Shadeland Avenue
Drexel Hill, PA. 19026
(610) 284-4247

Attorney for Prospective Intervening Petitioners
U.S. House of Representatives Candidate Dasha Pruett, and
Duly Appointed Observers Gregory Stenstrom and Leah Hoopes

DELAWARE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE

V.

BOARD OF ELECTIONS

:
: ELECTION LAW
:
: NO.: CV-2020-007523
:
:
: EMERGENCY PETITION FOR
: SANCTIONS FOR CONTEMPT
: AND FOR VIOLATING
: ELECTION CODE
:

**EMERGENCY PETITION AGAINST BOARD OF ELECTIONS
FOR SANCTIONS FOR CONTEMPT FOR VIOLATING
JUDGE CAPUZZI'S 11/4/2020 ORDER, AND FOR VIOLATING
ELECTION CODE PROVISIONS ALLOWING OBSERVERS**

Prospective Intervening Petitioners Dasha Pruett, Gregory Stenstrom and Leah Hoopes hereby petition this Honorable Court on an Emergency Basis to issue an Order declaring Delaware County Board of Elections to be in contempt for failing to comply with the November 4, 2020 Order issued by Honorable Judge John Capuzzi, related to observers, and for sanctions for that contempt, and sanctions for violating the Election Code provisions allowing observers.

In support of this Petition, Prospective Intervening Petitioners aver as follows:

1. A true and correct copy of this Order is attached hereto as **Exhibit 1**.

2. Judge John Capuzzi granted the request of Delaware County Republican Executive Committee ("DCREC"), for an Order directing Delaware County Board of Electors ("BOE") to grant access to and permit DCREC's observers to be present in all areas of the BOE offices where pre-canvassing, sorting, opening, counting and recording of absentee and mail-in ballots was occurring or taking place for the returns of the November 3, 2020 General Election.

3. The following paragraphs of Judge Capuzzi's Order were disobeyed:

"1. Four Observers in total (2 observers from the Republican Party, or affiliated candidates, and 2 observers from the Democratic Party, or affiliated candidates) are permitted to observe the resolution area at all hours while ballots are being resolved;

2. Two observers (1 representing the Republican Party, or affiliated candidates, and 1 representing the Democratic Party, or affiliated candidates) are permitted to observe the sorting machine area at all times while the machine is in use. However all observers shall stand back while the machine is in use due to safety concerns;

3. At two-hour intervals in total (1 representing the Republican Party, or affiliated candidates, and 1 representing the Democratic Party, or affiliated candidates) are permitted to enter the ballot room, to examine the room; however are not permitted to examine the physical ballots contained within the room, individually. They must be escorted by a member of the Election Board Staff with the time not to exceed five minutes each visit;"

4. The BOE only allowed observers in the rear room where mail-in and absentee ballots were being resolved for 5 minutes every two hours in violation of paragraph 1 of Judge Capuzzi's Order which permits observers to be present at all hours when ballots are resolved.

5. The BOE did not allow observers to enter a rear locked room where ballots were stored for at least 5 minutes every 2 hours, only allowing observer Gregory Stenstrom to enter that room twice, at 1:30 p.m. and 3:30 p.m., where he observed what appeared to be tens of thousands of unopened ballots.

6. The BOE did not give meaningful access to observe/view the area where the sorting machine was in use. Instead, duly appointed observers were confined to a "pen" 25

feet away from the sorting machine, preventing the observers from having a clear and unobstructed view of the sorting machine while in operation sorting ballots.

7. Besides violating the first 3 paragraphs of Judge Capuzzi's Order, the BOE also violated the Election Code provisions which permit observers and watchers duly appointed by political candidates to be present when absentee and mail-in ballots are opened, and while those ballots are counted and recorded.
8. Partisan observers are permitted to be present when absentee and mail-in ballot envelopes are opened, and when the ballots are counted and recorded (25 P.S. § 3146.8).
9. Pennsylvania Statutes Title 25 P.S. Elections & Electoral Districts § 3146.8, Canvassing of official absentee ballots, states:

“(b) Watchers shall be permitted to be present when the envelopes containing official absentee ballots are opened and when such ballots are counted and recorded.”
10. Partisan observers may be present at the tabulation or canvassing of unofficial and official returns, and any recount or recanvass (25 P.S. § 2650).
11. Partisan observers may observe at polling locations and may stay until the time that the counting of votes is complete (25 P.S. § 2687).
12. The BOE violated the Election Code provisions allowing observers, and violated Judge Capuzzi's Order permitting “observers to observe the resolution area at all hours while ballots are being resolved.”
13. According to Prospective Intervening Petitioners Gregory Stenstrom and Leah Hoopes, who were both duly appointed observers, resolution of mail-in and absentee ballots took place in an unlocked back room.

14. The BOE did not allow observers to observe this resolution process at all hours. To the contrary, the BOE restricted access by only allowing two observers in the back room for 5 minutes every two hours.
15. Furthermore, Judge Capuzzi issued his order at or around 9:30 p.m. on Wednesday, November 4, 2020. Stenstrom and Hoopes arrived on Thursday morning, November 5, 2020, at or around 8:30 a.m., and they sought entrance to the back room.
16. The BOE did not allow any observers to enter the back room until 11:00 a.m.
17. The distance the observers were allowed to be in the back room when they were finally allowed to enter, behind a roped off area, was too far away from where the resolution process was taking place to see the ballots or the envelopes.
18. Prospective Intervening Petitioners are filing a contemporaneous Emergency Petition to Intervene. A true and correct copy of the Emergency Petition to Intervene is attached hereto as **Exhibit 2**.
19. Prospective Intervening Petitioner Dasha Pruett ("Pruett") is a candidate for the U.S. House of Representatives for the 5th Congressional District. She resides at 1122 Childs Avenue, Drexel Hill, PA. 19026.
20. Pruett is an intended beneficiary of the Order issued by Judge Capuzzi on November 4, 2020 because the observers ensure that candidates such as Pruett obtain a fair and transparent election in their run for public office.
21. Prospective Intervening Petitioner Gregory Stenstrom ("Stenstrom") is an observer appointed by Candidate Thomas Killion, who ran for re-election to the Pennsylvania State Senate. A true and correct copy of the Watcher's Certificate evidencing Stenstrom's appointment as an observer, which was approved by the County Board of Elections, is attached to his verification at the end of this Emergency Petition. Mr. Stenstrom resides at 1541 Farmers Lane, Glenn Mills, PA. 19342.

22. Prospective Intervening Petitioner Leah Hoopes (“Hoopes”) is a duly appointed observer appointed by Candidate Craig Williams, who successfully ran to Represent District 160 in the Pennsylvania House of Representatives. Ms. Hoopes resides at 241 Sulky Way, Chadds Ford, PA. 19317.
23. Each of the Prospective Intervening Petitioners are “qualified electors” as that term is defined in Pennsylvania’s Election Code. Hence, they all have standing to challenge the election results in Delaware County.
24. Both Stenstrom and Hoopes are intended beneficiaries of the Order issued by Judge Capuzzi on November 4, 2020 because they are duly appointed observers which Judge Capuzzi ordered must be permitted to observe (a) the resolution area at all hours while ballots were being resolved, (b) the sorting machine area at all times while the machine is in use, and (c) the ballot room.
25. This Petition for Contempt, and Sanctions for Contempt and for the BOE’s violation of the Election Code provisions permitting observers, is filed on an Emergency Basis because there is little time remaining before the “winning” candidate that ran against Pruett takes the oath of office and is sworn in. One of the requested items in the prayer for relief is an Order prohibiting Pruett’s opponent from taking any official action until such time as Judge Capuzzi rules on the instant petition.
26. Prospective Intervening Petitioners respectfully request any relief that this Court deems appropriate, including but not limited to an independent forensic audit of (a) the original USB V-Cards that were inserted into computers used for tabulating the votes, (b) the chain of custody documents signed by the election judges and (c) an independent forensic audit and count of the outer envelopes.

27. Further, Prospective Intervening Petitioners request an Order that the BOE provide them with the computer event logs which disclose when the USB V-Cards were inserted into computers used for tabulating the votes.
28. At the time that Stenstrom left the Wharf Office of the BOE in Chester, PA., where the opening and counting of mail-in and absentee ballots were taking place, at or around 2:30 a.m. on Election Day, November 3, 2020, President Trump, and Pruett, were winning their elections.
29. Counting of mail-in and absentee ballots must have continued unobserved by any duly appointed observers throughout the night on Election Day, because the next morning Biden and the opponent of Pruett were winning.
30. On information and belief, the votes of people that voted at the polls in person were counted first in Delaware County, Pennsylvania. President Trump and Pruett were winning based on those in-person ballots which we cast in Delaware County at or around 2:30 a.m. on Election Day, when Stenstrom left the Wharf warehouse.
31. The absentee and mail-in ballots cast by voters were delivered to the offices of the BOE at the Wharf Office Building in Chester, Delaware County.
32. Beginning at 7:00 a.m. on November 3, 2020, the BOE began to "pre-canvass" (inspect for defects, compare voter name to signed name) the absentee and mail-in ballots in accordance with 15 P.S. § 3146.8 of the Election Code.
33. At the close of the polls at 8:00 p.m., the BOE began to "canvass" (sort, open, count and record) absentee and mail-in ballots. See § 3146.8.
34. The pre-canvass and canvass of the absentee and mail-in ballots occurs at the BOE's Wharf Offices located on one floor of the building, and consists of various rooms. One wall bisects the office to create an open front area (the "front"), and a rear area that consists of various offices and work stations (the "rear").

35. These factual statements are contained in the Verified Emergency Petition filed by Attorney John McBlain on November 4, 2020. Attorney McBlain, himself, signed the verification, because he went to the Wharf Offices of the BOE on multiple occasions when he was attempting to get the BOE to allow observers entrance in the rear area where absentee and mail-in ballots were being resolved.
36. Observers appointed by the DCREC and various candidates arrived at the Wharf Offices of the BOE after the polls closed on November 3, 2020, to be present and observe the opening, counting and recording of the absentee and mail-in ballots, as allowed by 25 P.S. § 3146.8(b), and to observe the pre-canvas of any ballots as allowed by 25 P.S. § 3146.8(g)(1.1).
37. The BOE confined observers to a “pen” – a roped off area at the entrance of the front, and refused to permit observers to inspect/view the pre-canvass and canvass of ballots taking place in the rear.
38. 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.
39. The solicitor to the BOE was present in the Wharf Offices of the BOE during this time but refused to discuss the issue of access, transparency and fairness and, instead, retreated to the rear, out of sight.
40. When observers arrived at the Wharf Offices of the BOE at 9:30 a.m. on November 4, 2020 for inspection/view of the pre-canvass and canvass activities the BOE’s employees continued to refuse entry to the rear, where absentee and mail-in ballots were being opened, sorted and counted.

41. During all this time pre-canvass and canvassing activities continued to occur, without any observers present, in violation of the Election Code which allows observers to be present during these activities. See 25 P.S. §§ 3146.9, 2648 and 3150.17, which provide that the ballots and envelopes for such ballots are public records which must be held open for inspection in accordance with the rules established by the Election Code.
42. See 25 P.S. § 3152, which provides that the general returns from the various election precincts which have been returned unsealed shall be open to public inspection at the office of the county board as soon as they are received from the judges of election.
43. The refusal of any member of the county board of elections to permit an observer or their attorney to observe the canvassing of returns is guilty of a misdemeanor upon such conviction. See 25 P.S. § 3506. Prospective Intervening Petitioners respectfully request that this Court issue an Order declaring that the BOE is guilty of a misdemeanor, and in the Court's discretion, to award a financial sanction against the BOE not to exceed \$1,000 and/or a prison sentence not to exceed 1 year, as proscribed by Section 1806 of the Election Code.
44. The BOE kept observers away from the rear where mail-in and absentee ballots were being resolved for all of Election Day, November 3, 2020, and for mostly all of November 4, 2020 as well.
45. It is 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.
46. It is during this extended time period, in the absence of any statutorily permitted observers, that a fraud was perpetrated resulting in a rigged election which deprives candidate Dasha Pruett of her right to a fair and transparent election.

47. The Pennsylvania Election Code requires that observers be allowed to be present during the pre-canvassing and canvassing of votes, in order for the election process to be fair and transparent.
48. The BOE's restricting the observers for the candidates and their attorneys to a "pen" in the front, and completely prohibiting them from observing whatever the BOE is doing in the rear with the pre-canvass and canvass activities violates the statutory requirements and the spirit of the various Election Code sections cited above.
49. 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.
50. The BOE applied these Draconian restrictive rules not only to the pre-canvass and canvass process, but also to the computation of returns and the provisional ballots that were thereafter counted.
51. In violation of Judge Capuzzi's Order issued at 9:30 p.m. on November 4, 2020, which provides in paragraph 1 that observers are allowed to be present at all hours when ballots are being resolved, the BOE only allowed access for 5 minutes every 2 hours to the rear room where mail-in and absentee ballots were being resolved, and 20-25 feet away from the resolution process, where the observers were deprived of a clear unobstructed view of the envelopes and the ballots.
52. The BOE violated paragraph 3 of Judge Capuzzi's Order by not allowing the observers to enter and observe the ballot rooms where ballots were being stored for up to 5 minutes every 2 hours, only allowing Stenstrom to enter the rear locked ballot

storage room twice, at 1:30 p.m. and 3:30 p.m., where he observed what appeared to him to be tens of thousands of unopened ballots. It appeared to Stenstrom that the number of unopened mail-in ballots increased by 20,000, from upwards of 50,000 at 1:30 p.m. to upwards of 70,000 at 3:30 p.m., with no explanation.

53. Other observers were also allowed to observe the rear locked ballot storage room, but the BOE did not begin allowing anyone to enter the ballot room until 1:30 p.m. when Judge Capuzzi issued his Order at 9:30 p.m., the night before.

54. The BOE stopped letting observers in the ballot room after 7:30 p.m., even though the observers still desired entrance. Stenstrom left the Wharf Office at 10:00 p.m. when the BOE stopped allowing observers to inspect/view the ballot room on the evening of Thursday, November 5, 2020.

55. The reason Judge Capuzzi may have ordered observers to be permitted access to a ballot room for at least 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 dramatically increase without any valid explanation. Without observers in the ballot room with some limited degree of regularity, even for 5 minutes or less, this fraud could occur.

56. A shocking number of mail-in ballots have inexplicably appeared in counties since the November 4 ballot reports. For instance, in Delaware County, the county's Wednesday, November 4 report indicated that Delaware County reported it has received about 113,000 mail-in ballots and counted approximately 93,000 voted ballots. On the next day, November 5, the Secretary of the Commonwealth's 4:30 report reflected that Delaware County had received about 114,000 ballots. Several hours later, the Delaware County solicitor reported to an observer that the County had received about 126,000 mail-in ballots and counted about 122,000.

57. As of Sunday, November 8, 2020, the Department of State's website reflects that the County has counted about 127,000 mail-in ballots. Intervening Prospective Petitioners have received no explanation for where the additional 14,000 voted ballots came from, when they arrived, or why they are included in the current count.
58. In Delaware County, an observer in the county office where mail-in ballots were counted was told by the Delaware County Solicitor that ballots received on November 4, 2020, were not separated from ballots received on Election Day, and the County refused to answer any additional questions.
59. The Honorable Justice Samuel Alito, Associate Justice of the U.S. Supreme Court, had issued an Order that any mail-in and absentee votes that arrived after 8:00 p.m. on Election Day, November 3, 2020, were to be segregated from the votes that were made in person and those that were mail-in and absentee votes that arrived by Election Day.
60. The BOE violated Justice Alito's Order, causing a spoliation of evidence and making it impossible to determine when those late arriving mail-in and absentee ballots were sent, and whether there were any other irregularities appearing on those late arriving votes.
61. According to Ms. Hoopes, in the back room to the right, was a table in which pre-sorting of mail-in and absentee ballots was occurring. When she was finally allowed to enter the back room for 5 minutes on November 5, 2020, she saw that there were stacks of ballots in envelopes.
62. 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 states that the observers are permitted to have access to the resolution of ballots at all hours of the resolution process.

63. 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.
64. The BOE has no excuse for preventing the observers from being present when the envelopes containing official absentee ballots are opened and when such ballots are counted and recorded, as allowed by the Pennsylvania Election Code. See 25 P.S. § 3146.8.
65. When Stenstrom and Hoopes attempted to gain entrance to the rear room where absentee and mail-in ballots were being resolved when they arrived at or around 8:30 a.m. on the morning of November 5, 2020, the sheriff barred their entry in defiance of Judge Capuzzi's Order.
66. At or around 9:30 a.m. on November 5, 2020, Stenstrom contacted Judge Capuzzi's chambers and explained to his secretary that the elections officials were not complying with his Order. She suggested that Stenstrom consult with an attorney, and that she could not discuss the matter further with him.
67. At or around 1:00 p.m., Stenstrom called Judge Capuzzi's chambers multiple times requesting that Judge Capuzzi call the Sheriff and Solicitor to enforce his Order. The judge's law clerk told Stenstrom to "seek counsel," and hung up on him.
68. At or around 1:20 p.m. Stenstrom returned upstairs and again demand access to a locked back room where he suspected ballots were being stored. The Deputy Sheriff told Stenstrom that the Solicitor will let him in the back room for 5 minutes at 1:30 p.m. Stenstrom returned again at 3:30 p.m. and was allowed reentry for the last time.
69. At or around 11:00 a.m. on Thursday, November 5, 2020, when Stenstrom returned to the main room, he saw that some areas had been cordoned off. Attorney John McBlain unexpectedly came out from the back room and stated he had conferred with

Solicitor Manley Parks and they had mutually agreed to bringing ballots in question out from the sequestered room to the main room so that the poll watchers would not have to go into the back room where mail-in and absentee ballots were being resolved.

70. Attorney McBlain told Stenstrom that the elections officials were going to bring 4,500 of the 6,000 total ballots in the back room out to the main room, and leave the remaining 1,500 spoiled ballots in the "spoilage room."
71. Stenstrom asked Attorney McBlain multiple times whether the "universe" of remaining ballots in the back room that remained to be processed was, in fact, 6,000, and further asked Attorney McBlain multiple times whether he had personally seen those ballots in the back rooms and storage rooms, and he re-affirmed this multiple times to Stenstrom.
72. GOP observers later reported to Stenstrom that there appeared to be additional paper ballots in excess of the 6,000 "universe" that Attorney McBlain has assured Stenstrom of, coming into the office administration area. As stated above, Stenstrom and other observers that entered the back locked ballot storage room saw what appeared to be upwards of 50,000 unopened mail-in ballots at 1:30 p.m., only 2 and a half hours after McBlain told Stenstrom that there were only 6,000 remaining ballots left to be counted.
73. According to Ms. Leah Hoopes, she and other observers were kept in a roped off area with chairs, but they could not observe from that area the resolution process because they were 10 feet from the closest table, 20 feet from the scanning area and 25 feet from tables that were partitioned off behind plexiglass where votes were being processed. The observers were not allowed close enough to have a clear and unobstructed view.

74. Ms. Hoopes reports that she and the other observers were kept inside a roped off area 20 feet from the sorting machine, and they were unable to observe from such a great distance. This violates paragraph 2 of Judge Capuzzi's Order permitting observers to be near enough to observe the sorting machines.
75. When Ms. Hoopes and other observers were finally allowed in the rear unlocked room where mail-in and absentee ballots were being resolved, the BOE set up 2 chairs for them, but 20-25 feet from the ballots, too far away for them to observe anything.
76. According to Ms. Hoopes, Solicitor William Martin said you can ask all the questions you want but we will not answer them. The observation process allows comments and questions, without which the value of observers is greatly diminished.
77. The observers witnessed questionable things. Representatives of the BOE were hostile and refused to answer questions or to respond to protests when for example chain of custody concerns were raised.
78. Stenstrom reports that he saw Jim Savage, the Delaware County voting machine warehouse supervisor plugging USB drives into vote tallying computers. The bag containing those drives was not sealed or secured, and the voting machine cartridges were not present with the drives. Mr. Savage had no paper tapes or ballots at that time.
79. Stenstrom reports: "I immediately objected and challenged the uploading of votes from the unsecured drives," reporting what he saw to Deputy Sheriff Mike Donahue. Donahue retrieved Ms. Hagan, who told Stenstrom that he could only observe the process but could not make any comments or ask any questions while Mr. Savage was directly in front of them loading USB sticks, and the display monitors above the computers reflected that they were being updated.

80. Stenstrom responded that he was observing a person plug USB sticks into the computer without any apparent chain of custody and without any oversight. No one stopped the upload, and Mr. Savage was permitted to continue this process and he was then allowed to walk out without any interference or examination by anyone.
81. In Delaware County, an observer, Mr. Gregory Stenstrom, in the county office where mail-in ballots were counted witnessed a delivery on November 5, 2020, of v-cards or USB drives in a plastic bag with no seal and no accompanying paper ballots. The v-cards or USB drives were taken to the back counting room, where observer access was limited. There was no opportunity to observe what happened to the v-cards or USB drives in the back counting room.
82. Ms. Hoopes observed issues related to mail-in voted ballots being scanned through machines four or five times before finally being counted. When a voting machine warehouse supervisor arrived to address whether the machine was malfunctioning, the supervisor instead reported that the bar codes on the ballots must be "defective."
83. Ms. Hoopes was watching workers enter information into the SURE system. She and other observers were told by Attorney John McBlain that the SURE system was having issues and that it required the workers to manually enter the information into the system.
84. Mr. Stenstrom and other poll watchers observed in at least seven (7) different polling locations in Delaware County numerous instances of voters who were told they had registered to vote by mail, but were given regular ballots, rather than provisional ballots, and were not made to sign in the registration book.
85. Not allowing observers to report concerns and not answering their questions about serious irregularities they witnessed violates spirit of the Election Code which allows observers.

86. Without observers, watchers and representatives, 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.
87. Sadly, Stenstrom reported: “As a result of the election officials’ acts, I was unable to fulfill my responsibilities or exercise my rights as an official observer. I was continuously harassed, threatened, denied access to the room and the ballots, and the election officials were openly hostile and refused to answer questions, repeatedly defied a court order to provide access, and obstructed my ability to observe the count in a way that would enable me to identify irregularities, which is the primary purpose of the observer role.”
88. Observers and watchers serve as an important check to ensure transparency and guard against inconsistencies and other wrongdoing by election officials.
89. 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.
90. Failing to uphold and ensure the adherence to even basic transparency measures or safeguards against the casting of illegal or unreliable ballots creates an obvious opportunity for ineligible voters to cast ballots, results in fraud, and undermines the public’s confidence in the integrity of elections — all of which violate the fundamental right to vote, the guarantee of equal protection, and the right to participate in free, fair, and transparent elections as guaranteed by the United States Constitution.
91. If a State fails to follow even basic integrity and transparency measures — especially its own — it violates the right to free, fair, and transparent public elections because its

elections are no longer meaningfully public and the State has functionally denied its voters a fair election.

92. The actions of the BOE, and its failure to comply with Judge Capuzzi's Order and with the Election Code sections allowing observers, has deprived candidate Dasha Pruett of her right to a transparent and fair election to the public office she seeks to hold, as a member of the United States House of Representatives for the 5th Congressional District.
93. "[P]ublic confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process." *Crawford v. Marion County Election Board*, 553 US 181, 195-196 (2008) (plurality op. of Stevens, J.).
94. In every instance where an absentee or mail-in ballot is opened and canvassed by a county election board, poll watchers and canvass representatives are legally permitted to be present. See Election Code Section 1308(b), 25 P.S. § 3146.8(b) ("Watchers shall be permitted to be present when the envelopes containing official absentee ballots and mail-in ballots are opened and when such ballots are counted and recorded."); see also 25 P.S. § 3146.8(g)(1.1) and (g)(2).
95. When the BOE representatives did not comply with Judge Capuzzi's Order that the observers be allowed in the back room, where votes were being canvassed and processed they also violated the Election Code which allows watchers to be present when envelopes containing absentee and mail-in ballots are opened, counted and recorded.
96. 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, fair, and honest.

97. The BOE representatives did not allow observers to be present when the required declarations on envelopes containing official absentee and mail-in ballots were reviewed for sufficiency, when the ballot envelopes were opened, and when such ballots were counted and recorded.
98. Instead, observers were kept by security personnel from the rear room, and were confined to a small cordoned off area too far from the area where the review, opening, and counting were taking place. Consequently, it was physically impossible to view the envelopes or ballots.
99. Because of the BOE's spoliation of evidence, it is not now possible to ascertain what ballots were cast legally from those that were cast illegally. Prospective Intervening Petitioners suspect that the BOE did not safeguard and retain the original USB V-Cards that were inserted into computers that were used to tabulate the votes, and that they did not safeguard and retain the computer event logs that disclose when the USB V-cards were inserted into those computers.
100. Prospective Intervening Petitioners suspect that the BOE did not safeguard and retain the chain of custody documents signed by the election judges, or the envelopes that would enable an independent forensic audit to be carried out to determine whether the number of envelopes matches the number of ballots that were tabulated.
101. While a spoliation inference may not normally arise in an Election case, this 2020 general election is anything but ordinary, since an unprecedented large number of mail-in and absentee ballots were cast.

102. The illegalities and irregularities occurred because the BOE representatives prevented the observers from entering the rear where those mail-in and absentee ballots were being resolved.
103. If the BOE disposed of or failed to retain items that would enable an independent forensic audit to take place, even fraud may be inferred as a spoliation inference.
104. Prospective Intervening Petitioners respectfully request discovery to enable them to conduct an independent forensic audit. If spoliation by the BOE prevents such an audit, this Court may decide to impose a spoliation inference that includes fraud.
105. The rigged election occurred during the multiple full days when the BOE prevented any observers from entering the rear room where mail-in and absentee ballots were being resolved.
106. By the time that the BOE finally allowed observers in that rear room for only 5 minutes every 2 hours, it was too little, too late, with no meaningful opportunity to ensure that a fair and transparent election has taken place.
107. Particularly during the Pandemic, when this election is extraordinary because of the historic large numbers of mail-in and absentee ballots that were cast is it necessary for this Court, for Judge Capuzzi, to Order extraordinary relief.
108. Candidate Dasha Pruett has been deprived of a fair and transparent election, period. How will she ever know whether she lost in a fair election, or whether she is a victim of a rigged election.
109. Invalid or fraudulent votes “debase” and “dilute” the weight of each validly cast vote. *Anderson v. United States*, 417 U.S. 211, 227 (1974).
110. The right to an honest count is a right possessed by each voting elector, and to the extent that the importance of his vote is nullified, wholly or in part, he has been injured in the free exercise of a right or privilege secured to him by the laws and

Constitution of the United States. *Anderson*, 417 U.S. at 226 (quoting *Prichard v. United States*, 181 F.2d 326, 331 (6th Cir.), *aff'd* due to absence of quorum, 339 U.S. 974 (1950)).

111. Separate from the Equal Protection Clause, the Fourteenth Amendment's due process clause protects the fundamental right to vote against "the disenfranchisement of a state electorate." *Duncan v. Poythress*, 657 F.2d 691, 702 (5th Cir. 1981).
112. Practices that promote the casting of illegal or unreliable ballots, or fail to contain basic minimum guarantees against such conduct, can violate the Fourteenth Amendment by leading to the dilution of validly cast ballots.
113. The BOE was acting under color of State law when it prevented the duly appointed observers from performing their duties as allowed under the Election Code and in accordance with the terms of Judge Capuzzi's Order.
114. "When an election process 'reaches the point of patent and fundamental unfairness,' there is a due process violation." *Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1183-84 (11th Cir. 2008) (quoting *Roe v. Alabama*, 43 F.3d 574, 580 (11th Cir.1995) (citing *Curry v. Baker*, 802 F.2d 1302, 1315 (11th Cir.1986)). See *Marks v. Stinson*, 19 F.3d 873, 889 (3d Cir. 1994) (enjoining winning state senate candidate from exercising official authority where absentee ballots were obtained and cast illegally).
115. In statewide and federal elections conducted in the Commonwealth of Pennsylvania, including without limitation the November 3, 2020 General Election, all candidates, political parties, and voters, including the candidate Dasha Pruett, have a vested interest in observers being present and having meaningful access to observe and monitor the electoral process to ensure that it is properly administered in every election district and that it is free, fair, and transparent.

116. Rather than heeding these mandates and duties, the BOE arbitrarily and capriciously denied the observers meaningful access to observe and monitor the electoral process by not allowing observers to see and review all envelopes containing official absentee and mail-in ballots either at the time or before they were opened and/or when such ballots were counted and recorded.
117. The BOE created a system whereby it was physically impossible for the political candidates' and political parties' observers to view the ballots and verify that illegally cast ballots were not opened and counted.
118. Put simply, there is substantial reason to doubt the voting results. Our future depends on fair elections, and a rigged fraudulent one cannot be allowed to stand. A dark cloud hangs over the 2020 election.
119. 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.
120. The equal enforcement of election laws is necessary to preserve our most basic and fundamental rights.
121. 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.
122. Candidate Dasha Pruett is not seeking relief by participating in this Petition to change the election results, although if this Court could provide that relief she would appreciate it.
123. Rather, Candidate Dasha Pruett is seeking other remedies to protect the integrity of this 2020 general election. Unless integrity is sought, we will not have any.

WHEREFORE, Prospective Intervening Petitioners Dasha Pruett, Gregory Stenstrom and Leah Hoopes respectfully request an emergency Order allowing them to intervene in the instant action. Relief is sought on an emergency basis because the days are few before the “winning” candidate that ran against Dasha Pruett is sworn in, and takes office.

Accordingly, Prospective Intervening Petitioners request an emergency fact hearing where they will put on their witnesses at that hearing.

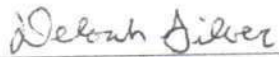
Prospective Intervening Petitioners respectfully request any relief that this Court deems appropriate, including but not limited to the following relief and/or sanctions against the Board of Elections:

- i. An emergency fact hearing on this Petition, where witnesses testify;
- ii. A Declaration holding the Board of Elections to be in contempt for its non-compliance with Judge John Capuzzi's order with respect to observers;
- iii. A Declaration that the Board of Elections is guilty of a misdemeanor in accordance with Section 1806 of the Election Code;
- iv. A Declaration that the Board of Elections must pay a fine of \$1,000.00, or its members undergo an imprisonment of 1 year, or both, in the discretion of the Court, in accordance with Section 1806 of the Election Code;
- v. An order, declaration and/or injunction enjoining the “winning” U.S. House of Representative candidate that ran against Candidate Dasha Pruett from exercising official authority during the pendency of this action until an independent forensic audit is completed;
- vi. An order that the Board of Elections forthwith provide Pruett, Stenstrom and Hoopes with (1) the original USB V-cards that were inserted into computers that tabulated the votes, (2) the chain of custody documents signed by the election judges, and (3) the outer envelopes, in order that an independent forensic audit can be obtained by the Prospective Intervening Petitioners;
- vii. An order that the Board of Elections forthwith provide Pruett, Stenstrom and Hoopes with the computer event logs that disclose when the USB V-cards were inserted into computers used to tabulate the votes;

- viii. Prospective Intervening Petitioners' reasonable costs and expenses of this action, including attorneys' fees and costs;
- and
- ix. All other further relief to which Prospective Intervening Petitioners might be entitled.

Date: December 22, 2020

Respectfully submitted,



Deborah Silver, Esq. (PA. # 45521)
54 Shadeland Avenue
Drexel Hill, PA. 19026

EXHIBIT 1

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

CIVIL DIVISION

DELAWARE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE

323 West Front Street
Media PA, 19063

V.

DELAWARE COUNTY
BOARD OF ELECTIONS
201 West Front Street
Media, PA 19063

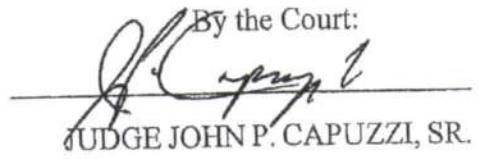
ELECTION LAW
NO:

ORDER

AND NOW, to wit, this 4th day of November 2020, upon consideration of Petitioner's Emergency Petition or Relief Seeking Order Granting Access to Canvassing of Official Absentee Ballots and Mail-In Ballots, and the hearing held on November 4, 2020 wherein argument was heard from both Parties, it is hereby **ORDERED** and **DECREED** as follows:

1. Four Observers in total (2 observers from the Republican Party, or affiliated candidates, and 2 observers from the Democratic Party, or affiliated candidates,) are permitted to observe the resolution area at all hours while ballots are being resolved;
2. Two observers (1 representing the Republican Party, or affiliated candidates, and 1 representing the Democratic Party, or affiliated candidates,) are permitted to observe the sorting machine area at all times while the machine is in use. However, all observers shall stand back while the machine is in use due to safety concerns.
3. At two-hour intervals, two observers in total (1 representing the Republican Party, or affiliated candidates, and 1 representing the Democratic party, or affiliated candidates) are permitted to enter the ballot room, to examine the room; however, are not permitted to examine the physical ballots contained within the room, individually. They must be escorted by a member of the Election Board Staff with the time not to exceed five minutes each visit.

4. Any observer may not interference with the process, nor may any observer object to individual ballots.

By the Court:

JUDGE JOHN P. CAPUZZI, SR.

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

CIVIL DIVISION – LAW

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54 Shadeland Avenue
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Attorney for Prospective Intervening Petitioners
U.S. House of Representatives Candidate Dasha Pruett, and
Duly Appointed Observers Gregory Stenstrom and Leah Hoopes

DELAWARE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE

V.

BOARD OF ELECTIONS

: ELECTION LAW

: NO.: CV-2020-007523

: EMERGENCY PETITION
: TO INTERVENE

**EMERGENCY PETITION TO INTERVENE OF
CANDIDATE FOR POLITICAL OFFICE DASHA PRUETT, AND
OBSERVERS GREGORY STENSTROM & LEAH HOOPES**

Prospective Intervening Petitioners, candidate for political office Dasha Pruett, and
observers Gregory Stenstrom and Leah Hoopes, file this Emergency Petition to Intervene as
parties in this litigation pursuant to Pennsylvania Rules of Civil Procedure 2327 and 2328, and
aver in support thereof as follows:

PROCEDURAL AND FACTUAL BACKGROUND

1. On November 4, 2020, Delaware County Republican Executive Committee
("DCREC") filed an Emergency Petition seeking an Order granting access to
canvassing of official absentee and mail-in ballots, to grant access to and permit

DCREC's watchers and attorneys to be present in all areas of the offices of the Board of Elections ("BOE") where pre-canvassing, sorting, opening, counting and recording of absentee and mail-in ballots is occurring and taking place for the returns of the November 3, 2020 General Election.

2. The Honorable Judge John Capuzzi granted this Petition, stating in relevant part as follows:

"1. Four Observers in total (2 observers from the Republican Party, or affiliated candidates, and 2 observers from the Democratic Party, or affiliated candidates) are permitted to observe the resolution area at all hours while ballots are being resolved;

2. Two observers (1 representing the Republican Party, or affiliated candidates, and 1 representing the Democratic Party, or affiliated candidates) are permitted to observe the sorting machine area at all times while the machine is in use. However all observers shall stand back while the machine is in use due to safety concerns;

3. At two-hour intervals in total (1 representing the Republican Party, or affiliated candidates, and 1 representing the Democratic Party, or affiliated candidates) are permitted to enter the ballot room, to examine the room; however are not permitted to examine the physical ballots contained within the room, individually. They must be escorted by a member of the Election Board Staff with the time not to exceed five minutes each visit;"

PROPOSED INTERVENORS

3. Dasha Pruett ("Pruett") is clearly an intended beneficiary of the Order issued by Judge Capuzzi on November 4, 2020 because the duly appointed observers ensure that she obtains a fair and transparent election in her run for public office.
4. Pruett resides at 1122 Childs Avenue, Drexel Hill, PA. 19026.
5. Gregory Stenstrom ("Stenstrom") is a duly appointed observer appointed by Candidate Thomas Killion, a former Pennsylvania State Senator for District 9. Stenstrom resides at 1541 Farmers Lane, Glenn Mills, PA. 19342.

6. Leah Hoopes (“Hoopes”) is a duly appointed observer appointed by Pennsylvania House of Representatives Candidate Craig Williams, who serves District 160. Ms. Hoopes resides at 41 Sulky Way, Chadds Ford, PA. 19317.
7. Both Stenstrom and Hoopes are intended beneficiaries of the Order issued by Judge Capuzzi on November 4, 2020, because they are duly appointed observers which Judge Capuzzi ordered must be permitted to observe (a) the resolution area at all hours while ballots are being resolved, (b) the sorting machine at all times while the machine is in use, and (c) the ballot room.
8. Unless Stenstrom and Hoopes can bring their concerns and questions to the attention of the BOE’s staff and representatives if they observe any irregularities or illegalities they cannot perform the functions that their position as observers are required to perform to ensure the integrity, transparency and fairness of the 2020 General Election.
9. It should not have been necessary in the first place for the Delaware County Republican Executive Committee (“DCREC”) to seek an Emergency Order from Judge Capuzzi as to observers being permitted to inspect/view the area where mail-in and absentee ballots were being resolved, as the Election Code allows representatives for both political parties to serve as observers.
10. In addition to watchers, the Election Code permits “representatives” of candidates and political parties to be involved in the pre-canvassing and canvassing of absentee and mail-in ballots. See 25 P.S. § 3146.8(g)(1.1) & (2).

11. Watchers are authorized under Election Code Section 1308(b), 25 P.S. § 3146.8(b), to be present when the envelopes containing absentee and mail-in ballots are opened, counted, and recorded. 25 P.S. § 3146.8(b).
12. As it exists today, Election Code Section 417, codified at 25 P.S. § 2687, creates the position of watcher and entrusts to each candidate for nomination or election at any election, and each political party and each political body which has nominated candidates for such elections, the power to appoint watchers to serve in each election district in the Commonwealth. See 25 P.S. § 2687(a).
13. 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.
14. Put simply, there is substantial reason to doubt the voting results. Our future depends on fair elections, and a rigged fraudulent one cannot be allowed to stand.
15. A dark cloud hangs over the 2020 election.
16. 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.
17. The equal enforcement of election laws is necessary to preserve our most basic and fundamental rights.
18. The BOE was acting under color of State law when it prevented the duly appointed observers from performing their duties as allowed under the Election Code and in accordance with the terms of Judge Capuzzi’s Order.

19. The BOE kept the poll watchers and observers in a small cordoned off area too far away to see, too far away from the areas where the inspection, opening, and counting of absentee and mail-in ballots were taking place. Consequently, the BOE created a system whereby it was physically impossible for the candidates' and political parties' duly appointed observers to view the ballots and verify that illegally cast ballots were not opened and counted.
20. In statewide and federal elections conducted in the Commonwealth of Pennsylvania, including without limitation the November 3, 2020 General Election, all candidates, political parties, and voters, including Intervening Candidate Dasha Pruett, have a vested interest in the poll watchers and observers being present and having meaningful access to observe and monitor the electoral process to ensure that it is properly administered in every election district and that it is free, fair, and transparent.
21. Rather than heeding these mandates and duties, the BOE arbitrarily and capriciously denied the duly appointed observers meaningful access to observe and monitor the electoral process by not allowing them to visibly see and review all envelopes containing official absentee and mail-in ballots either at the time or before they were opened and/or when such ballots were counted and recorded.
22. The observers were repeatedly denied access to back rooms where the absentee and mail-in ballots were canvassed and resolved. The BOE kept the observers in a small cordoned off area too far away to see, too far away from the areas where the inspection, opening, and counting of absentee and mail-in ballots were taking place.

23. Consequently, the BOE created a system whereby it was physically impossible for the political candidates' and political parties' observers to view the ballots and verify that illegally cast ballots were not opened and counted.
24. The BOE disobeyed the Order issued by Judge John Capuzzi that should not have been necessary in the first place.
25. Stenstrom reports that representatives of the BOE prevented observers from entering back rooms where absentee and mail-in ballots were being canvassed, resolved, opened, sorted and counted. The BOE allowed counting to continue all night long on November 3, 2020, without any access granted to observers that were present and requesting entrance to said back rooms.
26. Even after Judge Capuzzi issued his Order at or around 9:30 p.m. on November 4, 2020, there were repeated instances over a long period of time on November 5, 2020 where observers were still denied entrance, and none of the observers were allowed close enough to see anything meaningful.
27. Hoopes reports that they set up 2 chairs for them, but 20-25 feet from the ballots, too far for them to observe anything. She further reports that she and the other observers were kept inside a roped off area 20 feet from the sorting machine, and they were unable to observe from such a great distance.
28. Hoopes and other observers were kept in a roped off area with chairs, but they could not observe from that area the resolution process because they were 10 feet from the closest table, 20 feet from the scanning area and 25 feet from tables that were partitioned off behind plexiglass where votes were being processed.

29. Judge Capuzzi's Order states that observers are permitted to be present wherever ballots are resolved at all hours when the ballots are resolved. Yet the BOE, in violation of the first paragraph of Judge Capuzzi's Order, only allowed observers to enter the back room where mail-in and absentee ballots were being resolved for 5 minutes every two hours, and too far from the ballot resolution process to have a meaningful opportunity to investigate/view the resolution process.
30. The canvassing and resolution process of the absentee and mail-in ballots went on all through the night and the observers were granted very minimal access even after Judge Cappuzi's Order was issued.
31. A fair, honest and transparent vote count is a cornerstone of democratic elections. This requires that votes be counted, tabulated and consolidated in the presence of the representatives of parties and candidates and election observers, and that the entire process by which a winner is determined is fully and completely open to public scrutiny.
32. There were plenty of questionable things witnessed by the poll watchers, and the representatives of the BOE were hostile and refused to answer questions or to respond to protests when for example chain of custody concerns were raised.
33. Sadly, Stenstrom reported: "As a result of the election officials' acts, I was unable to fulfill my responsibilities or exercise my rights as an official observer. I was continuously harassed, threatened, denied access to the room and the ballots, and the election officials were openly hostile and refused to answer questions, repeatedly defied a court order to provide access, and obstructed my ability to observe the count

in a way that would enable me to identify irregularities, which is the primary purpose of the observer role.”

34. Stenstrom reports that he saw Jim Savage, the Delaware County voting machine warehouse supervisor plugging USB drives into vote tallying computers. The bag containing those drives was not sealed or secured, and the voting machine cartridges were not present with the drives. Mr. Savage had no paper tapes or ballots at that time.
35. Stenstrom reports: “I immediately objected and challenged the uploading of votes from the unsecured drives,” reporting what he saw to Deputy Sheriff Mike Donahue. Donahue retrieved Ms. Hagan, who told Stenstrom that he could only observe the process but could not make any comments or ask any questions while Mr. Savage was directly in front of them loading USB sticks, and the display monitors above the computers reflected that they were being updated.
36. Stenstrom responded that he was observing a person plug USB sticks into the computer without any apparent chain of custody and without any oversight. No one stopped the upload, and Mr. Savage was permitted to continue this process and he was then allowed to walk out without any interference or examination by anyone.
37. Stenstrom returned at 8:30 a.m. on November 5, 2020, with Ms. Hoopes. The sheriff again barred entry in defiance of the court order.
38. At or around 9:30 a.m. on November 5, 2020, Stenstrom contacted Judge Capuzzi’s chambers and explained to his secretary that the elections officials were not complying with his Order. She suggested that Stenstrom consult with an attorney, and that she could not discuss the matter further with him.

39. At or around 1:00 p.m, Stenstrom called Judge Capuzzi's chambers multiple times requesting that Judge Capuzzi call the Sheriff and Solicitor to enforce his Order. The judge's law clerk told Stenstrom to "seek counsel," and hung up on him.
40. Attorney McBlain did not return until approximately 5:30 p.m. on 11/4/20, to again try to get the observers into the back office and rear locked storage room. Paragraph 3 of Judge Capuzzi's Order permitted observers to be present to investigate/view the ballot room (storage room where ballots are kept) for at least 5 minutes every 2 hours. The BOE violated paragraph 3 of Judge Capuzzi's Order because observers were not allowed to enter the ballot room until 1:30 p.m. on Thursday, November 5, 2020, where Judge Capuzzi issued his Order at 9:30 p.m. the night before, on November 4, 2020.
41. Furthermore, Stenstrom was only allowed to enter the ballot room at 1:30 p.m. and 3:30 p.m., observing what appeared to be an increase in the amount of unopened mail-in ballots approaching 50,000 at 1:30 p.m., to approaching 70,000 at 3:30 p.m., with no explanation for the additional 20,000 ballots over a period of 2 hours.
42. The BOE stopped allowing observers into the ballot room after 7:30 p.m. Stenstrom left the Wharf Office at 10:00 p.m. when he saw that the BOE was no longer allowing observers to enter and inspect/view the ballot room where tens of thousands of unopened mail-in ballots were stored.
43. There is a direct connection between the disobeying of Judge Capuzzi's Order and the fraudulent, irregular and illegal shenanigans that transpired which were enabled to be carried out without the observers present to inspect/view the resolution of absentee and mail-in ballots.

44. A shocking number of mail-in ballots have inexplicably appeared in counties since the November 4 ballot reports. For instance, in Delaware County, the county's Wednesday, November 4 report indicated that Delaware County reported it has received about 113,000 mail-in ballots and counted approximately 93,000 voted ballots.
45. On the next day, November 5, the Secretary of the Commonwealth's 4:30 report reflected that Delaware County had received about 114,000 ballots. Several hours later, the Delaware County solicitor reported to an observer that the County had received about 126,000 mail-in ballots and counted about 122,000.
46. As of Sunday, November 8, 2020, the Department of State's website reflects that the County has counted about 127,000 mail-in ballots. Petitioner has received no explanation for where the additional 14,000 voted ballots came from, when they arrived, or why they are included in the current count.
47. In Delaware County, an observer in the county office where mail-in ballots were counted was told by the Delaware County Solicitor that ballots received on November 4, 2020, were not separated from ballots received on Election Day, and the County refused to answer any additional questions.
48. Failing to uphold and ensure the adherence to even basic transparency measures or safeguards against the casting of illegal or unreliable ballots creates an obvious opportunity for ineligible voters to cast ballots, results in fraud, and undermines the public's confidence in the integrity of elections — all of which violate the fundamental right to vote, the guarantee of equal protection, and the right to

participate in free, fair, and transparent elections as guaranteed by the United States Constitution.

49. If a State fails to follow even basic integrity and transparency measures — especially its own — it violates the right to free, fair, and transparent public elections because its elections are no longer meaningfully public and the State has functionally denied its voters a fair election.
50. The actions of the BOE and their failure to comply with Judge Capuzzi's Order has Candidate Dasha Pruett, of her right to a transparent and fair election to the public offices that she seeks to hold, as a member of the United States House of Representatives for the 5th Congressional District.
51. Because of the BOE's spoliation of evidence, it is not now possible to ascertain what ballots were cast legally from those that were cast illegally. The illegalities occurred because the BOE representatives kept observers from inspecting/viewing the resolution of mail-in and absentee ballots in direction violation of Judge Capuzzi's November 4, 2020 Order.
52. Candidate Dasha Pruett will be never know whether she lost her bid to public office in a fair election, or whether she is the victim of a rigged and stolen election.
53. Invalid or fraudulent votes "debase" and "dilute" the weight of each validly cast vote.
Anderson v. United States, 417 U.S. 211, 227 (1974).
54. Prospective Intervening Petitioners respectfully request any relief that this Court deems appropriate, including but not limited to an independent forensic audit of (a) the original USB V-Cards that were inserted into computers used for tabulating the

votes, (b) the chain of custody documents signed by the election judges and (c) an independent forensic audit and count of the outer envelopes.

55. Further, Prospective Intervening Petitioners request an Order that the BOE provide them with the computer event logs which disclose when the USB V-Cards were inserted into computers used for tabulating the votes.

56. At least, after an independent forensic audit, the evidence can be evaluated to determine whether there was fraud in this election.

57. Prospective Intervening Petitioners suspect that the BOE did not safeguard and retain the original USB V-Cards that were inserted into computers that were used to tabulate the votes, and that they did not safeguard and retain the computer event logs that disclose when the USB V-cards were inserted into those computers.

58. Prospective Intervening Petitioners suspect that the BOE did not safeguard and retain the chain of custody documents signed by the election judges, or the envelopes that would enable an independent forensic audit to be carried out to determine whether the number of envelopes matches the number of ballots that were tabulated.

59. While a spoliation inference may not normally arise in an Election case, this 2020 general election is anything but ordinary, since an unprecedented large number of mail-in and absentee ballots were cast.

60. The illegalities and irregularities occurred because the BOE representatives prevented the observers from entering the rear where those mail-in and absentee ballots were being resolved.

61. If the BOE disposed of or failed to retain items that would enable an independent forensic audit to take place, even fraud may be inferred as a spoliation inference.

62. Prospective Intervening Petitioners respectfully request discovery to enable them to conduct an independent forensic audit. If spoliation by the BOE prevents such an audit, this Court may decide to impose a spoliation inference that includes fraud.
63. The rigged election occurred during the multiple full days when the BOE prevented any observers from entering the rear room where mail-in and absentee ballots were being resolved.
64. By the time that the BOE finally allowed observers in that rear room for only 5 minutes every 2 hours, it was too little, too late, with no meaningful opportunity to ensure that a fair and transparent election has taken place.

BASIS FOR PROPOSED INTERVENTION

65. 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).
66. 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.
67. Judge Capuzzi’s Order has the intended benefit of ensuring a fair and transparent election for Candidate Dasha Pruett, and of Gregory Stenstrom and Leah Hoopes to fulfill their function as duly appointed observers to insure same.

THERE EXISTS NO BASIS ON WHICH TO DENY THIS PETITION FOR INTERVENTION

68. The interests of the Prospective Intervening Petitioners are not adequately represented in this proceeding. Pa.R.C.P. 2329(2).

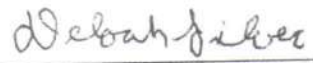
69. The Delaware County Republican Executive Committee ("DCREC") does not represent the interests of the political candidates or the observers seeking to intervene in this action.
70. The DCREC has not sought any sanctions for the BOE's disobedience of Judge Capuzzi's Order. The effect on Candidate Dasha Pruett is clear, as she has been deprived of a fair and transparent election, and the observers have valuable testimony which proves through their personal observations that the BOE failed to comply with Judge Capuzzi's Order.
71. 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.
72. That will send a message that will only encourage election fraud to continue occurring in future elections.
73. A criminal has no incentive to obey the law if he is never punished for violating it. Election fraud is a crime.
74. Not allowing duly appointed observers to investigate/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.

CONCLUSION

WHEREFORE, Prospective Intervening Petitioners Dasha Pruett, Gregory Stenstrom and Leah Hoopes respectfully request that this Honorable Court grant their Petition to Intervene in the above-captioned proceeding.

Date: December 22, 2020

Respectfully submitted,



Deborah Silver, Esq. (PA. # 45521)
54 Shadeland Avenue
Drexel Hill, PA. 19026

VERIFICATION

I verify that the facts in the foregoing Petition to Intervene are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Dated: December 16, 2020

A handwritten signature in black ink, appearing to read 'Dasha Pruett', written over a horizontal line.

Dasha Pruett

VERIFICATION

I verify that the facts in the foregoing Petition to Intervene are true and correct to the best of my own personal knowledge, information, and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Dated: December 18, 2020


Gregory Stenstrom

VERIFICATION

I verify that the facts in the foregoing Petition to Intervene are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Dated: December 16, 2020



Leah Hoopes

DELAWARE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE

V.

BOARD OF ELECTIONS

:
: ELECTION LAW
:
: NO.: CV-2020-007523
:
:
: EMERGENCY PETITION
: TO INTERVENE
:

[Proposed] ORDER

AND NOW, this ____ day of December, 2020, upon consideration of the Emergency
Petition to Intervene of Prospective Intervening Petitioners Dasha Pruett, Gregory Stenstrom and
Leah Hoopes, and any response thereto by the Board of Elections, it is hereby ORDERED AND
DECREED that said Petition to Intervene is **GRANTED**.

BY THE COURT: _____, J.

DELAWARE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE

V.

BOARD OF ELECTIONS

ELECTION LAW

NO.: CV-2020-007523

EMERGENCY PETITION FOR
SANCTIONS FOR CONTEMPT
AND FOR VIOLATING
ELECTION CODE

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) Emergency Petition for Sanctions for Contempt and for Violating the Election Code, and (2) Emergency Petition to Intervene, to the parties stated below:

By hand delivery to the office below:

Delaware County Solicitor William F. Martin for the Board of Elections
Government Center, 2nd Floor
201 W. Front Street
Media, PA 19063

And

Electronically to:

Attorney John McBlain, for the Delaware County Republican Executive Committee
Swartz, Campbell, LLC
115 North Jackson Street
Media, PA. 19063

Respectfully submitted,



Deborah Silver, Esq.
Attorney for Prospective Intervening Petitioners

Dated: December 22, 2020

DELAWARE COUNTY REPUBLICAN :
EXECUTIVE COMMITTEE :

v. :

DELAWARE COUNTY :
BOARD OF ELECTION :

COURT OF COMMON PLEAS
DELAWARE COUNTY
PENNSYLVANIA
CIVIL ACTION

ELECTION LAW
No.: CV-2020-007523

VERIFICATION OF PETITIONER

I am a Petitioner on the Petition for Order Holding Delaware County Board of Elections in Contempt of an Order of this Court, Per Hon. Judge John P. Capuzzi, Sr. Dated November 4, 2020,

Dasha Pruett, having an address at 1122 Chible Ave, and I am:
Drexel Hill, PA 19026

☐ A qualified elector in Delaware County Pennsylvania.

☒ A candidate for Office in the Delaware County for the November 3, 2020 election.

☐ A duly designated Watcher for Candidate _____.

On November 3, 2020 I was present at the _____ located at _____.

I was present there from _____ to _____, and from _____, to _____.

I have read the Order of the Honorable Judge John P. Capuzzi, Sr., dated November 4, 2020. I personally observed the following violation(s) of the Order:

☐ The County Board of Elections, deliberately prohibited 2 observers from the Republican Party, or affiliated candidates, from meaningfully observing the resolution area at all hours while ballots were being resolved.


☐ The County Board of Elections, deliberately prohibited one observer representing the

Republican Party to meaningfully observe the sorting machine area at all times while the machine was in use.

_____ The County Board of Elections, deliberately prohibited an observer from the Republican Party, to enter the ballot room and to examine the room at two-hour intervals.

_____ The County Board of Elections, deliberately prohibited a representative of Republican candidate for office _____ to enter the ballot room and to examine the room at two-hour intervals.

I hereby state that I am a Petitioner on this Petition and verify that the statements made therein are true and correct to the best of my knowledge, information, and belief. The undersigned understands that the statements made herein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsifications to authorities.


Dasha Pruett
12/16/2020

DELAWARE COUNTY REPUBLICAN :
EXECUTIVE COMMITTEE :

v. :

DELAWARE COUNTY :
BOARD OF ELECTION :

COURT OF COMMON PLEAS
DELAWARE COUNTY
PENNSYLVANIA
CIVIL ACTION

ELECTION LAW
No.: CV-2020-007523

VERIFICATION OF PETITIONER

I am a Petitioner on the Petition for Order Holding Delaware County Board of Elections in Contempt of an Order of this Court, Per Hon. Judge John P. Capuzzi, Sr. Dated November 4, 2020, Gregory Stenstrom, having an address at 1541 Farmers Lane, Glen Mills, PA 19342 and I am:

☐ A qualified elector in Delaware County Pennsylvania.

☐ A candidate for Office in the Delaware County for the November 3, 2020 election.

☒ A duly designated Watcher for Candidate Tom Killion.

On November 3rd from 1800-0230, Nov 4th from 0930-2030, and 5th, 2020 from 0830 to 2200, I was present at the Delaware County, PA Election Ballot and Vote Counting Center located at the City of Chester, Seaport, Ave.

I have read the Order of the Honorable Judge John P. Capuzzi, Sr., dated November 4, 2020. I personally observed the following violation(s) of the Order:

☒ The County Board of Elections, deliberately prohibited 2 observers from the Republican Party, or affiliated candidates, from meaningfully observing the resolution area at all hours while ballots were being resolved.

☒ The County Board of Elections, deliberately prohibited one observer representing the




Republican Party to meaningfully observe the sorting machine area at all times while the machine was in use.

 X The County Board of Elections, deliberately prohibited an observer from the Republican Party, to enter the ballot room and to examine the room at two-hour intervals.

 X The County Board of Elections, deliberately prohibited a representative of Republican candidate for office Tom Killion, and President Donald Trump, to enter the ballot room and to examine the room at two-hour intervals.

I hereby state that I am a Petitioner on this Petition and verify that the statements made therein are true and correct to the best of my knowledge, information, and belief. The undersigned understands that the statements made herein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsifications to authorities.


GREGORY STENSTROM
18 DEC 2020



Commonwealth of Pennsylvania

County of Delaware Watcher's Certificate

This will Certify that **Gregory Stenstrom** residing at 1541 Farmers Lane has been regularly appointed as a WATCHER for the Election District of **EDGMONT TOWNSHIP 2nd Precinct** by **Thomas H. KILLION**, Candidate for the office of Senator in the General Assembly 9th District to serve at the General Election, 3rd day of November, 2020.

Witness our hands and official seal, the 5th day of October, 2020.

Laureen T. Hagan
Chief Clerk

Gerald Lawrence
Ashley Lunkenheimer

James J. Byrne, Jr.

County Board of Elections

NOTE - 25 PS 2687

"Each candidate for nomination or election at any election shall be entitled to appoint 2 watchers for each election district in which such candidate is voted for." Furthermore, "only one watcher for each candidate at primaries, or for each party or political body at general, municipal or special elections, shall be present in the polling place at any one time..."

<u>DELAWARE COUNTY REPUBLICAN</u>	:	COURT OF COMMON PLEAS
<u>EXECUTIVE COMMITTEE</u>	:	DELAWARE COUNTY
	:	PENNSYLVANIA
v.	:	CIVIL ACTION
	:	
<u>DELAWARE COUNTY</u>	:	ELECTION LAW
<u>BOARD OF ELECTION</u>	:	No.: CV-2020-007523

VERIFICATION OF PETITIONER

I am a Petitioner on the Petition for Order Holding Delaware County Board of Elections in Contempt of an Order of this Court, Per Hon. Judge John P. Capuzzi, Sr. Dated November 4, 2020, Leah M. Hoopes, having an address at 241 Sulky Way, Chadds Ford, PA 19317 and I am:

☐ A qualified elector in Delaware County Pennsylvania.

☐ A candidate for Office in the Delaware County for the November 3, 2020 election.

☒ A duly designated Watcher for Candidate Craig Williams.

On November 4th from 0900-2030, and 5th, 2020 from 0830 to 2200, I was present at the Delaware County, PA Election Ballot and Vote Counting Center located at the City of Chester, Seaport, Ave.

I have read the Order of the Honorable Judge John P. Capuzzi, Sr., dated November 4, 2020. I personally observed the following violation(s) of the Order:

☒ The County Board of Elections, deliberately prohibited 2 observers from the Republican Party, or affiliated candidates, from meaningfully observing the resolution area at all hours while ballots were being resolved.

☒ The County Board of Elections, deliberately prohibited one observer representing the

Republican Party to meaningfully observe the sorting machine area at all times while the machine was in use.

 X The County Board of Elections, deliberately prohibited an observer from the Republican Party, to enter the ballot room and to examine the room at two-hour intervals.

 X The County Board of Elections, deliberately prohibited a representative of Republican candidate for office Craig Williams, and President Donald Trump, to enter the ballot room and to examine the room at two-hour intervals.

I hereby state that I am a Petitioner on this Petition and verify that the statements made therein are true and correct to the best of my knowledge, information, and belief. The undersigned understands that the statements made herein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsifications to authorities.


LEAH M. HOOPES
18 DEC 2020

DELAWARE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE

V.

BOARD OF ELECTIONS

: ELECTION LAW

: NO.: CV-2020-007523

: EMERGENCY PETITION FOR
: SANCTIONS FOR CONTEMPT
: AND FOR VIOLATING
: ELECTION CODE
:

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) Emergency Petition for Sanctions for Contempt and for Violating the Election Code, and (2) Emergency Petition to Intervene, to the parties stated below:

By hand delivery to the office below:

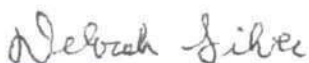
Delaware County Solicitor William F. Martin for the Board of Elections
Government Center, 2nd Floor
201 W. Front Street
Media, PA 19063

And

Electronically to:

Attorney John McBlain, for the Delaware County Republican Executive Committee
Swartz, Campbell, LLC
115 North Jackson Street
Media, PA. 19063

Respectfully submitted,



Deborah Silver, Esq.
Attorney for Prospective Intervening Petitioners

Dated: December 22, 2020

RR063

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY,
PENNSYLVANIA

CIVIL DIVISION – LAW

Deborah Silver, Esq.
Attorney I.D. # 45521
54 Shadeland Avneue
Drexel Hill, PA. 19026
(610) 284-4247

Attorney for Prospective Intervening Petitioners
U.S. House of Representatives Candidate Dasha Pruett, and
Duly Appointed Observers Gregory Stenstrom and Leah Hoopes

2020 DEC 22 PM 1:56

FILED

DELAWARE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE

V.

BOARD OF ELECTIONS

: ELECTION LAW

: NO.: CV-2020-007523

: EMERGENCY PETITION FOR
: SANCTIONS FOR CONTEMPT
: AND FOR VIOLATING
: ELECTION CODE
:

**MEMORANDUM OF LAW IN SUPPORT OF EMERGENCY PETITION AGAINST
BOARD OF ELECTIONS FOR SANCTIONS FOR CONTEMPT FOR VIOLATING
JUDGE CAPUZZI'S 11/4/2020 ORDER, AND FOR VIOLATING ELECTION CODE
PROVISIONS ALLOWING OBSERVERS**

Prospective Intervening Petitioners, Candidate Dasha Pruett ("Pruett"), and duly
appointed observers Gregory Stenstrom ("Stenstrom") and Leah Hoopes ("Hoopes"),
respectfully submit this Memorandum of Law in Support of their Petition against the Board of
Elections ("BOE") for sanctions for Contempt and sanctions for violating the Election Code
provisions allowing observers, as follows.

History of the Case

On November 4, 2020, the Delaware County Republican Executive Committee (“DCREC”), through its attorney, John McBlain (“McBlain”), filed an emergency petition seeking an order granting access to canvassing of official absentee ballots and mail-in ballots.

In this petition, McBlain and the DCREC asked the Court for an Order directing the BOE to grant access and permit watchers and attorneys to be present in all areas of the BOE offices where pre-canvassing, sorting, opening, counting and recording of absentee and mail-in ballots is occurring or taking place of the November 3, 2020 General Election.

As stated in this petition, “Petitioner seeks the basic fairness and transparency to allow its watchers and attorneys to be present and observe in a meaningful way the pre-canvassing, sorting, opening, counting and recording of absentee and mail-in ballots cast in the November 3, 2020 General Election, which right is guaranteed by the Pennsylvania Election Code.” See paragraph 3. All references to paragraphs of this petition are to the emergency petition filed by McBlain on behalf of the DCREC on November 4, 2020.

The absentee and mail-in ballots cast by voters were delivered to the offices of the BOE located at the Wharf Office Building in Chester, Delaware County. See paragraph 4.

Beginning at 7:00 a.m. on November 3, 2020, the BOE began to “pre-canvass” (inspect for defects, compare voter name to signed name) the absentee and mail-in ballots in accordance with 25 P.S. § 3146.8 of the Election Code. At the close of the polls at 8:00 p.m. the BOE began to “canvass” (sort, open, count and record) absentee and mail-in ballots. See § 3146.8. Paragraph 5.

The pre-canvass and canvass of the absentee and mail-in ballots occurs at the BOE’s Wharf Office located on one floor of the building and consists of various rooms. One wall bisects the office to create an open front area (the “front”) and a rear area that consists of various offices and work stations (the “rear”). See paragraph 6.

Watchers appointed by Petitioner DCREC and various candidates appeared at the Wharf Office of the BOE after polls closed on November 3, 2020, to be present and observe the opening, counting and recording of the absentee and mail-in ballots, in conformity with 25 P.S. § 3146.8(b), and to observe the pre-canvass of any ballots, in conformity with 25 P.S. § 3146.8(g)(1.1). See paragraph 8.

The BOE established a “pen” for watchers to “observe” the front office counting areas at the entrance of the front, but refused to permit watchers or attorneys to leave this “pen” area to actually observe the pre-canvass and canvass of ballots in the sequestered “back office,” and to inspect/view a rear locked “ballot room,” in violation of the Election Code which permitted observers to be present. See paragraph 9.

The BOE acknowledges that there are various activities of the sequestered pre-canvass and canvass activities that are occurring in the rear, which cannot be observed from the “pen” in the front. See paragraph 10.

The watchers of the DCREC, and of candidates and their attorneys, pleaded with employees of the BOE to be allowed in the rear to observe the sequestered 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. See paragraph 11.

The solicitor to the BOE was present in the Wharf Office of the BOE during this time but refused to discuss the issue of access, transparency and fairness and, instead, mostly retreated to the rear, out of sight. See paragraph 11.

McBlain, the DCREC’s attorney, spoke with the BOE Chairman at the Wharf Office in the early morning hours of November 4, 2020, and after some discussion the Chairman agreed that an inspection or view of the entirety of the Wharf Office where the pre-canvass and canvass activities were occurring could occur at 9:30 a.m. on November 4, 2020. See paragraph 12.

When various watchers and McBlain appeared at 9:30 a.m. at the Wharf Office of the BOE on November 4, 2020 for inspection/view of the pre-canvass and canvass activities the BOE's employees continued to refuse entry to the rear. See paragraph 13.

As stated by McBlain in his petition, the Election Code permits watchers and their attorneys to be present for all the pre-canvass and canvass activities. 25 P.S. §§ 2650, 3146.8. See paragraph 15.

The ballots and envelopes for such ballots are public records and must be held open for inspection in accordance with the rules established by the Election Code. 25 P.S. §§ 3146.9, 2648 and 3150.17. See paragraph 16.

The general returns from the various election precincts which have been returned unsealed shall be open to public inspection at the office of the county board as soon as they are received from the judges of election. 25 P.S. § 3152. See paragraph 17.

The refusal of any member of a county board of elections to permit a watcher or their attorney to observe the canvassing of returns is guilty of a misdemeanor upon such conviction. 25 P.S. § 3506. See paragraph 18.

Hence, Prospective Intervening Petitioners Pruett, Stenstrom and Hoopes respectfully request that Judge Capuzzi issue an Order of sanctions against the BOE for violating the Election Code, and for a Declaration that the BOE is guilty of a misdemeanor for not allowing observers in the rear of the Wharf Office where absentee and mail-in ballots were resolved during all of Election Day, November 3, 2020, and mostly all of November 4, 2020 as well.

It is during this extended time period that most of the absentee and mail-in ballots were resolved. In the absence of statutorily permitted observers a fraud was perpetrated resulting in a rigged election that deprived candidate Dasha Pruett of her right to a fair and transparent election.

The Pennsylvania Election Code and the decisions thereunder require observers to be present during the pre-canvassing and canvassing of votes, in order for the election process to be fair and transparent.

The BOE's restricting the watchers of the candidates and their attorneys to "observe" these processes from a "pen" in the front neither comports with the statutory requirements nor the spirit of the various Election Code sections above cited, in that the watchers and attorneys for the candidates are denied any meaningful opportunity to observe the activities occurring in the front, and are completely prohibited from observing whatever the BOE is doing in the rear "back office" with pre-canvass and canvass activities, and in a rear ("back office" and locked "ballot room"), with the pre-canvass and canvass activities.

The restriction of watchers and attorneys to a "pen" in the front precludes them 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. See paragraph 20.

The BOE applied these Draconian restrictive rules not only to the pre-canvass and canvass process, but also to the computation of returns and the provisional ballots that were thereafter counted.

Even after Judge Capuzzi issued an Order on November 4, 2020, at or around 9:30 p.m., permitting observers to be present in all areas where the resolution of ballots was taking place, at all hours where the ballots are being resolved, the BOE violated this Order by restricting observers to only 5 minutes in the rear "back office" where absentee and mail-in ballots were being resolved, and only began to allow this extremely limited observation to take place starting at 11:00 a.m. on November 5, 2020, and way too far away from where the resolution process was

taking place to enable the watchers to see the envelopes or the ballots clearly and without obstruction.

The BOE also violated the third paragraph of Judge Capuzzi's 11/4/2020 Order by not allowing observers to be present for at least 5 minutes every 2 hours in the rear locked ballot storage room. No observers were allowed in the rear locked ballot storage room until 1:30 p.m., notwithstanding that Judge Capuzzi's Order was issued 9:30 p.m. the night before.

Stenstrom gained access to the rear locked ballot storage room by demanding entry multiple times, believing the room contained ballots. Stenstrom contacted Judge Capuzzi's chambers multiple times by telephone on Thursday morning, November 5, 2020, asking the judge to enforce his Order. When Stenstrom persisted in his demands to be allowed in the rear locked room it turned out that he was correct. Indeed, there were tens of thousands of unopened mail-in ballots observed by a number of observers throughout the day that were also allowed entry.

Stenstrom was the first observer allowed to enter the rear locked ballot room at 1:30 p.m. for 5 minutes on Thursday, November 5, 2020, where it appeared to him that he observed approaching 50,000 unopened mail-in ballots. Stenstrom was again allowed to enter the rear locked ballot storage room at 3:30 p.m. for another 5 minutes, where it appeared to him that he observed approaching 70,000 unopened mail-in ballots. The number increased significantly by 20,000 ballots without explanation in the span of 2 hours, from 1:30 p.m. until 3:30 p.m.

When Stenstrom left the Wharf Office at 10:00 p.m. on Thursday, November 5, 2020, it was because the BOE representatives had stopped allowing observers to enter the rear locked ballot storage room, in violation of the third paragraph of Judge Capuzzi's Order. The last time Stenstrom witnessed any observer being allowed to inspect/view the rear locked ballot storage room was 7:30 p.m.

The BOE violated the second paragraph of Judge Capuzzi's Order by not allowing the observers to be close enough to the sorting machines to have a clear and unobstructed view of the sorting process, confining them to a "pen" 25 feet away.

Questions Presented

1. Did the BOE violate the Election Code by not allowing observers to see the pre-canvass and canvassing process of the absentee and mail-in ballots both before and after Judge Capuzzi issued his November 4, 2020 Order?

Answer: Yes.

2. Did the BOE violate paragraphs 1, 2 and 3 of Judge Capuzzi's Order permitting observers to be present at all hours when ballots are being resolved, to observe the sorting process close enough to have a clear and unobstructed view of the sorting machine, and to be present for at least 5 minutes every 2 hours in ballot rooms where ballots were stored?

Answer: Yes.

3. Should this Court issue a Declaration that the BOE is in contempt of Judge Capuzzi's Order and guilty of a misdemeanor under the Election Code provisions permitting observers?

Answer: Yes.

4. Should this Court issue a financial sanction in the amount of \$1,000 and/or 1 year prison time against members of the BOE, as allowed in the Election Code, as sanctions for the BOE's violation of the Election Code provisions permitting observers to watch the pre-canvass and canvassing process of absentee and mail-in ballots?

Answer: Yes.

As stated above, in Delaware County, observers were denied access to a back room counting area. After a court-ordered injunction, the watchers and observers were finally allowed in the back room counting area on November 5, 2020, at 11:00 a.m., to observe, but for only five minutes every two hours. During the allowed observation time in the back room counting area, the observers witnessed tens of thousands of paper ballots.

But they were only allowed for 5 minutes, and not at all hours that ballots were being resolved, in violation of the first paragraph of Judge Capuzzi's Order, and too far away from where the ballots were being resolved to have a clear and unobstructed view of them.

As stated above, the observers did not get access to a locked rear ballot storage room for 5 minutes every 2 hours in violation of the third paragraph of Judge Capuzzi's Order. Stenstrom, an observer, was only allowed entrance on two occasions only, at 1:30 p.m. and at 3:30 p.m. on Thursday, November 5, 2020, and he saw what appeared to be tens of thousands of unopened mail-in ballots in the rear locked ballot storage room.

The BOE violated the second paragraph of Judge Cappuzi's Order by confining observers to a "pen" 25 feet from the sorting machine, where they were too far away to have a clear and unobstructed view of the sorting machine while it was sorting ballots.

Observers and watchers 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, fair, and honest.

It is worth noting that it should not even have been necessary to seek and obtain an Emergency Order from Judge Capuzzi since Pennsylvania's Election Code clearly allows watchers and observers to be present during the pre-canvass and canvassing of absentee and mail-in ballots to ensure transparency, fairness and integrity in our elections.

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.

As it exists today, Election Code Section 417, codified at 25 P.S. § 2687, creates the position of watcher and entrusts to each candidate for nomination or election at any election, and each political party and each political body which has nominated candidates for such elections, the power to appoint watchers to serve in each election district in the Commonwealth. See 25 P.S. § 2687(a).

Watchers are also authorized under Election Code Section 1308(b), 25 P.S. § 3146.8(b), to be present when the envelopes containing absentee and mail-in ballots are opened, counted, and recorded. 25 P.S. § 3146.8(b). In every instance where an absentee or mail-in ballot is opened and canvassed by a county election board, watchers and observers are legally permitted to be present. See Election Code Section 1308(b), 25 P.S. § 3146.8(b) (“Watchers shall be permitted to be present when the envelopes containing official absentee ballots and mail-in ballots are opened and when such ballots are counted and recorded.”); see also 25 P.S. § 3146.8(g)(1.1) and (g)(2).

In addition to watchers, the Election Code permits “representatives” of candidates and political parties to be involved in the pre-canvassing and canvassing of absentee and mail-in ballots. See 25 P.S. § 3146.8(g)(1.1) & (2).

Without watchers and representatives, 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.

When the BOE representatives did not comply with Judge Capuzzi’s Order that the observers be allowed in the back room, where votes were clearly being canvassed and processed,

they also violated the Election Code which allows watchers to be present when envelopes containing absentee and mail-in ballots are opened, counted and recorded.

Pursuant to the first paragraph of Judge Capuzzi's Order, observers are to be allowed in the resolution area at all hours while ballots are being resolved. Even after Judge Capuzzi issued his Order the BOE failed to allow observers access to a rear set of rooms where absentee and mail-in ballots were being canvassed, opened and counted.

Even after Judge Capuzzi issued his Order, Stenstrom reports that he had no meaningful opportunity to observe any part of the count. The sorting appeared to have been done elsewhere, and the machines were too far away from the observation position to see any part of the mail-in envelopes or ballots.

The morning after Judge Capuzzi issued his Order Stenstrom returned at 8:30 a.m. with Attorney John McBlain and Leah Hoopes, another duly appointed observer. He was denied entry to the back room where absentee and mail-in ballots were being opened, sorted and counted. The sheriff barred entry in defiance of the court order.

At or around 9:30 a.m. Stenstrom contacted Judge Capuzzi's chambers and explained to his secretary that the elections officials were not complying with his Order. She suggested that Stenstrom consult with an attorney, and that she could not discuss the matter further with him.

At or around 1:00 p.m, Stenstrom called Judge Capuzzi's chambers multiple times requesting that Judge Capuzzi call the Sheriff and Solicitor to enforce his Order. The judge's law clerk told Stenstrom to "seek counsel," and hung up on him.

At or around 1:20 p.m. Stenstrom returned upstairs and demanded access to a locked room in the rear of the Wharf Office where he suspected ballots were being stored, and the Deputy Sheriff told Stenstrom that the Solicitor will let him in the back room for 5 minutes at 1:30 p.m. Stenstrom was again allowed entry at 3:30 p.m.

The number of unopened mail-in ballots Stenstrom observed looked to have increased by almost 20,000, from approaching 50,000 at 1:30 p.m. to almost 70,000 at 3:30 p.m., without explanation.

Attorney McBlain did not return until approximately 5:30 p.m., to again try to get the observers into the back office and ballot storage room as ordered by Judge Capuzzi.

BOE representatives have not allowed watchers and representatives to be present when the required declarations on envelopes containing official absentee and mail-in ballots are reviewed for sufficiency, when the ballot envelopes are opened, and when such ballots are counted and recorded.

Instead, watchers were kept by security personnel from the rear room, and were confined to a small cordoned off area too far from the area where the review, opening, and counting were taking place. Consequently, it was physically impossible to view the envelopes or ballots.

According to Ms. Leah Hoopes, she and other observers were kept in a roped off area with chairs, but they could not observe from that area the resolution process because they were 10 feet from the closest table, 20 feet from the scanning area and 25 feet from tables that were partitioned off behind plexiglass where votes were being processed. The observers were kept so far away that they could not observe much of anything.

According to Ms. Hoopes, when she was finally allowed a very limited 5-minute time period in the rear room where absentee and mail-in votes were being resolved, she was confined to a "pen" 20-25 feet from the ballots, too far away for her to observe anything.

According to Ms. Hoopes, Solicitor William Martin said you can ask all the questions you want but we will not answer them. The observation process clearly allows comments and questions, without which the value of observers is greatly diminished.

The importance of watchers and representatives serving as an important check in elections is recognized internationally. The International Institute for Democracy and Electoral

Assistance (“IDEA”) issued a publication in 2002 called the International Electoral Standards: Guidelines for Review the Legal Framework of Elections.

The purpose of the International IDEA standards is to be “used as benchmarks to assess whether or not an election is free and fair.” “These international standards are relevant to each component, and necessary for the legal framework to be able to ensure democratic elections. This publication is intended to identify electoral standards which contribute to uniformity, reliability, consistency, accuracy and overall professionalism in elections.”

The sources for the Standards include numerous international Declarations, Charters, and Conventions, including many to which the U.S. is a signatory.

“[T]he representatives of parties and candidates should have the right to immediately query decisions made by polling officials or the implementation of voting procedures” *Id.* at 84.

As it relates to ballot counting and tabulation, the Standards set out as a general principle the following: A fair, honest and transparent vote count is a cornerstone of democratic elections. This requires that votes be counted, tabulated and consolidated in the presence of the representatives of parties and candidates and election observers, and that the entire process by which a winner is determined is fully and completely open to public scrutiny. Standards, at 77.

There were plenty of questionable things witnessed by the observers. Representatives of the BOE were hostile and refused to answer questions or to respond to protests when, for example, chain of custody concerns were raised.

Stenstrom reports that he saw Jim Savage, the Delaware County voting machine warehouse supervisor plugging USB drives into vote tallying computers. The bag containing those drives was not sealed or secured, and the voting machine cartridges were not present with the drives. Mr. Savage had no paper tapes or ballots at that time.

Stenstrom reports: "I immediately objected and challenged the uploading of votes from the unsecured drives," reporting what he saw to Deputy Sheriff Mike Donahue. Donahue retrieved Ms. Hagan, who told Stenstrom that he could only observe the process but could not make any comments or ask any questions while Mr. Savage was directly in front of them loading USB sticks, and the display monitors above the computers reflected that they were being updated.

Strenstrom responded that he was observing a person plug USB sticks into the computer without any apparent chain of custody and without any oversight. No one stopped the upload, and Mr. Savage was permitted to continue this process and he was then allowed to walk out without any interference or examination by anyone.

Not allowing observers to report concerns and not answering their questions about serious irregularities they witnessed is a violation not only of Judge Capuzzi's Order but also a violation of the provisions and spirit of the Election Code which allows watchers and observers to be present during the pre-canvass and canvassing process of absentee and mail-in ballots.

Watchers and representatives serve as an important check to ensure transparency and guard against inconsistencies and other wrongdoing by election officials. According to the Standards, "in no case should it hinder legitimate observation, 'muzzle' observers, or prevent them from reporting or releasing information that has been obtained through their observations." Id. at 90.

Failing to uphold and ensure the adherence to even basic transparency measures or safeguards against the casting of illegal or unreliable ballots creates an obvious opportunity for ineligible voters to cast ballots, results in fraud, and undermines the public's confidence in the integrity of elections — all of which violate the fundamental right to vote, the guarantee of equal protection, and the right to participate in free, fair, and transparent elections as guaranteed by the United States Constitution.

If a State fails to follow even basic integrity and transparency measures — especially its own — it violates the right to free, fair, and transparent public elections because its elections are no longer meaningfully public and the State has functionally denied its voters a fair election.

Sadly, Stenstrom reported: “As a result of the election officials’ acts, I was unable to fulfill my responsibilities or exercise my rights as an official observer. I was continuously harassed, threatened, denied access to the room and the ballots, and the election officials were openly hostile and refused to answer questions, repeatedly defied a court order to provide access, and obstructed my ability to observe the count in a way that would enable me to identify irregularities, which is the primary purpose of the observer role.”

The actions of the BOE and their failure to comply with Judge Capuzzi’s Order has deprived Prospective Intervening Petitioner Candidate Dasha Pruett of her right to a transparent and fair election to the public office they seek to hold, as a member of the United States House of Representatives for the 5th Congressional District.

“[P]ublic confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process.” *Crawford v. Marion County Election Board*, 553 US 181, 195-196 (2008) (plurality op. of Stevens, J.).

In Delaware County, Ms. Hoopes observed issues related to mail-in voted ballots being scanned through machines four or five times before finally being counted. When a voting machine warehouse supervisor arrived to address whether the machine was malfunctioning, the supervisor instead reported that the bar codes on the ballots must be “defective.”

In Delaware County, Mr. Stenstrom and other watchers observed in at least seven (7) different polling locations numerous instances of voters who were told they had registered to vote by mail, but were given regular ballots, rather than provisional ballots, and were not made to sign in the registration book.

A shocking number of mail-in ballots have inexplicably appeared in counties since the November 4 ballot reports. For instance, in Delaware County, the county's Wednesday, November 4 report indicated that Delaware County reported it has received about 113,000 mail-in ballots and counted approximately 93,000 voted ballots. On the next day, November 5, the Secretary of the Commonwealth's 4:30 report reflected that Delaware County had received about 114,000 ballots. Several hours later, the Delaware County solicitor reported to an observer that the County had received about 126,000 mail-in ballots and counted about 122,000.

As of Sunday, November 8, 2020, the Department of State's website reflects that the County has counted about 127,000 mail-in ballots. Petitioner has received no explanation for where the additional 14,000 voted ballots came from, when they arrived, or why they are included in the current count.

In Delaware County, an observer in the county office where mail-in ballots were counted was told by the Delaware County Solicitor that ballots received on November 4, 2020, were not separated from ballots received on Election Day, and the County refused to answer any additional questions.

The Equal Protection Clause requires every county in the Commonwealth to enforce and apply the same standards and procedures for an election, and it does not allow a select few counties to either decline to enforce or employ those standards or develop their own contradicting standards that benefit their voters to the detriment of voters outside their counties. *Pierce v. Allegheny County Bd. of Elections*, 324 F. Supp. 2d 684, 698–699 (W.D. Pa. 2003).

In Delaware County, an observer, Mr. Gregory Stenstrom, in the county office where mail-in ballots were counted witnessed a delivery on November 5, 2020, of v-cards or USB drives in a plastic bag with no seal and no accompanying paper ballots. The v-cards or USB drives were taken to the back counting room, where observer access was limited. There was no opportunity to observe what happened to the v-cards or USB drives in the back counting room.

Because of the BOE's spoliation of evidence, it is not now possible to ascertain what ballots were cast legally from those that were cast illegally. Illegalities occurred because the BOE representatives kept observers from fulfilling their duties in direct violation of Judge Capuzzi's November 4, 2020 Order.

Invalid or fraudulent votes "debase" and "dilute" the weight of each validly cast vote. *Anderson v. United States*, 417 U.S. 211, 227 (1974). The right to an honest count is a right possessed by each voting elector, and to the extent that the importance of his vote is nullified, wholly or in part, he has been injured in the free exercise of a right or privilege secured to him by the laws and Constitution of the United States. *Anderson*, 417 U.S. at 226 (quoting *Prichard v. United States*, 181 F.2d 326, 331 (6th Cir.), *aff'd* due to absence of quorum, 339 U.S. 974 (1950)).

Separate from the Equal Protection Clause, the Fourteenth Amendment's due process clause protects the fundamental right to vote against "the disenfranchisement of a state electorate." *Duncan v. Poythress*, 657 F.2d 691, 702 (5th Cir. 1981). Practices that promote the casting of illegal or unreliable ballots, or fail to contain basic minimum guarantees against such conduct, can violate the Fourteenth Amendment by leading to the dilution of validly cast ballots.

The BOE was acting under color of State law when it prevented the observers from performing their duties as allowed under the Election Code and in accordance with the terms of Judge Capuzzi's Order.

"When an election process 'reaches the point of patent and fundamental unfairness,' there is a due process violation." *Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1183-84 (11th Cir. 2008) (quoting *Roe v. Alabama*, 43 F.3d 574, 580 (11th Cir.1995) (citing *Curry v. Baker*, 802 F.2d 1302, 1315 (11th Cir.1986)). See also *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978) ("If the election process itself reaches the point of patent and fundamental

unfairness, a violation of the due process clause may be indicated and relief under § 1983 therefore in order.”).

See *Marks v. Stinson*, 19 F.3d 873, 889 (3d Cir. 1994) (enjoining winning state senate candidate from exercising official authority where absentee ballots were obtained and cast illegally).

In statewide and federal elections conducted in the Commonwealth of Pennsylvania, including without limitation the November 3, 2020 General Election, all candidates, political parties, and voters, including Candidate Dasha Pruett, have a vested interest in the observers being present and having meaningful access to observe and monitor the electoral process to ensure that it is properly administered, and that it is free, fair, and transparent.

Put simply, there is substantial reason to doubt the voting results. Our future depends on fair elections, and a rigged fraudulent one cannot be allowed to stand. A dark cloud hangs over the 2020 election.

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.

This woeful and blatant violation of the Judge Capuzzi’s Order deserves a finding of contempt accompanied by extraordinary sanctions. Prospective Intervening Petitioners respectfully request that the BOE be held in contempt of court for its failure to obey the November 4, 2020 Order of Judge Capuzzi.

How will Candidate Dasha Pruett ever know whether she lost in a fair election or whether she is the victim of a rigged election.

Dasha Pruett respectfully requests that this Court order contempt sanctions that will protect the integrity of our elections. Unless integrity is pursued, we will not have any.

Conclusion

This Court is requested to issue a Declaration holding the BOE in contempt for disobeying paragraphs 1, 2 and 3 of Judge Capuzzi's Order.

It is appropriate, in this Court's discretion, to issue a \$1,000 financial sanction against the BOE accompanied by a 1-year prison sentence against its members for violating the Election Code provisions allowing observers, as proscribed by Section 1806 of the Election Code.

Respectfully, this Court is requested to issue an Order that the Board of Elections forthwith provide Pruett, Stenstrom and Hoopes with (1) the original USB V-cards that were inserted into computers that tabulated the votes, (2) the chain of custody documents signed by the election judges, and (3) the outer envelopes, in order that an independent forensic audit can be obtained by the Prospective Intervening Petitioners.

This Court is also requested to issue an Order requiring that the Board of Elections forthwith provide Pruett, Stenstrom and Hoopes with the computer event logs that disclose when the USB V-cards were inserted into computers used to tabulate the votes;

Prospective Intervening Petitioners suspect that the BOE has failed to retain and safeguard these items and that an independent forensic audit is no longer possible. If this is the case, this Court is respectfully requested to consider issuing an Order as to a spoliation of evidence inference, and possibly even an inference that fraud has been committed in the rigging our election.

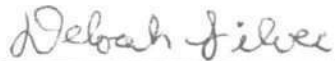
Prospective Intervening Petitioners request that this Court issue an Order enjoining the "winner" of the United States House of Representatives race that ran against Dasha Pruett from taking any official actions in the exercise of her official authority during the pendency of this

action, until the completion of an independent forensic audit, or at least until the Court can hold a fact hearing, where witnesses can be presented in support of this Petition.

Election fraud is a crime. Not allowing observers enables fraud. If criminals get away with their crime there will be no disincentive in future elections for the BOE to act in accordance with the law as stated in the Election Code, and at what cost. There may never again be a fair and transparent election, and this will discourage participation in future elections.

Date: December 22, 2020

Respectfully submitted,



Deborah Silver, Esq. (PA. # 45521)
54 Shadeland Avenue
Drexel Hill, PA. 19026

DELAWARE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE

V.

BOARD OF ELECTIONS

ELECTION LAW

NO.: CV-2020-007523

EMERGENCY PETITION FOR
SANCTIONS FOR CONTEMPT
AND FOR VIOLATING
ELECTION CODE

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) Memorandum of Law in Support of Emergency Petition for Sanctions for Contempt and for Violating the Election Code, and (2) Memorandum of Law in Support of Emergency Petition to Intervene, to the parties stated below:

By hand delivery to the office below:

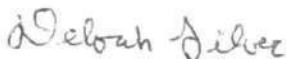
Delaware County Solicitor William F. Martin for the Board of Elections
Government Center, 2nd Floor
201 W. Front Street
Media, PA 19063

And

Electronically to:

Attorney John McBlain, for the Delaware County Republican Executive Committee
Swartz, Campbell, LLC
115 North Jackson Street
Media, PA. 19063

Respectfully submitted,



Deborah Silver, Esq.
Attorney for Prospective Intervening Petitioners

Dated: December 22, 2020

RR083

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY,
PENNSYLVANIA

CIVIL DIVISION – LAW

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Attorney for Prospective Intervening Petitioners
U.S. House of Representatives Candidate Dasha Pruett, and
Duly Appointed Observers Gregory Stenstrom and Leah Hoopes

2020 DEC 22 PM 1:56

FILED

DELAWARE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE

V.

BOARD OF ELECTIONS

:
: ELECTION LAW
:
: NO.: CV-2020-007523
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:
: EMERGENCY PETITION
: TO INTERVENE
:

**EMERGENCY PETITION TO INTERVENE OF
CANDIDATE FOR POLITICAL OFFICE DASHA PRUETT, AND
OBSERVERS GREGORY STENSTROM & LEAH HOOPES**

Prospective Intervening Petitioners, candidate for political office Dasha Pruett, and
observers Gregory Stenstrom and Leah Hoopes, file this Emergency Petition to Intervene as
parties in this litigation pursuant to Pennsylvania Rules of Civil Procedure 2327 and 2328, and
aver in support thereof as follows:

PROCEDURAL AND FACTUAL BACKGROUND

1. On November 4, 2020, Delaware County Republican Executive Committee
("DCREC") filed an Emergency Petition seeking an Order granting access to
canvassing of official absentee and mail-in ballots, to grant access to and permit

DCREC's watchers and attorneys to be present in all areas of the offices of the Board of Elections ("BOE") where pre-canvassing, sorting, opening, counting and recording of absentee and mail-in ballots is occurring and taking place for the returns of the November 3, 2020 General Election.

2. The Honorable Judge John Capuzzi granted this Petition, stating in relevant part as follows:

"1. Four Observers in total (2 observers from the Republican Party, or affiliated candidates, and 2 observers from the Democratic Party, or affiliated candidates) are permitted to observe the resolution area at all hours while ballots are being resolved;

2. Two observers (1 representing the Republican Party, or affiliated candidates, and 1 representing the Democratic Party, or affiliated candidates) are permitted to observe the sorting machine area at all times while the machine is in use. However all observers shall stand back while the machine is in use due to safety concerns;

3. At two-hour intervals in total (1 representing the Republican Party, or affiliated candidates, and 1 representing the Democratic Party, or affiliated candidates) are permitted to enter the ballot room, to examine the room; however are not permitted to examine the physical ballots contained within the room, individually. They must be escorted by a member of the Election Board Staff with the time not to exceed five minutes each visit;"

PROPOSED INTERVENORS

3. Dasha Pruett ("Pruett") is clearly an intended beneficiary of the Order issued by Judge Capuzzi on November 4, 2020 because the duly appointed observers ensure that she obtains a fair and transparent election in her run for public office.

4. Pruett resides at 1122 Childs Avenue, Drexel Hill, PA. 19026.

5. Gregory Stenstrom ("Stenstrom") is a duly appointed observer appointed by Candidate Thomas Killion, a former Pennsylvania State Senator for District 9. Stenstrom resides at 1541 Farmers Lane, Glenn Mills, PA. 19342.

6. Leah Hoopes (“Hoopes”) is a duly appointed observer appointed by Pennsylvania House of Representatives Candidate Craig Williams, who serves District 160. Ms. Hoopes resides at 41 Sulky Way, Chadds Ford, PA. 19317.
7. Both Stenstrom and Hoopes are intended beneficiaries of the Order issued by Judge Capuzzi on November 4, 2020, because they are duly appointed observers which Judge Capuzzi ordered must be permitted to observe (a) the resolution area at all hours while ballots are being resolved, (b) the sorting machine at all times while the machine is in use, and (c) the ballot room.
8. Unless Stenstrom and Hoopes can bring their concerns and questions to the attention of the BOE’s staff and representatives if they observe any irregularities or illegalities they cannot perform the functions that their position as observers are required to perform to ensure the integrity, transparency and fairness of the 2020 General Election.
9. It should not have been necessary in the first place for the Delaware County Republican Executive Committee (“DCREC”) to seek an Emergency Order from Judge Capuzzi as to observers being permitted to inspect/view the area where mail-in and absentee ballots were being resolved, as the Election Code allows representatives for both political parties to serve as observers.
10. In addition to watchers, the Election Code permits “representatives” of candidates and political parties to be involved in the pre-canvassing and canvassing of absentee and mail-in ballots. See 25 P.S. § 3146.8(g)(1.1) & (2).

11. Watchers are authorized under Election Code Section 1308(b), 25 P.S. § 3146.8(b), to be present when the envelopes containing absentee and mail-in ballots are opened, counted, and recorded. 25 P.S. § 3146.8(b).
12. As it exists today, Election Code Section 417, codified at 25 P.S. § 2687, creates the position of watcher and entrusts to each candidate for nomination or election at any election, and each political party and each political body which has nominated candidates for such elections, the power to appoint watchers to serve in each election district in the Commonwealth. See 25 P.S. § 2687(a).
13. 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.
14. Put simply, there is substantial reason to doubt the voting results. Our future depends on fair elections, and a rigged fraudulent one cannot be allowed to stand.
15. A dark cloud hangs over the 2020 election.
16. 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.
17. The equal enforcement of election laws is necessary to preserve our most basic and fundamental rights.
18. The BOE was acting under color of State law when it prevented the duly appointed observers from performing their duties as allowed under the Election Code and in accordance with the terms of Judge Capuzzi’s Order.

19. The BOE kept the poll watchers and observers in a small cordoned off area too far away to see, too far away from the areas where the inspection, opening, and counting of absentee and mail-in ballots were taking place. Consequently, the BOE created a system whereby it was physically impossible for the candidates' and political parties' duly appointed observers to view the ballots and verify that illegally cast ballots were not opened and counted.
20. In statewide and federal elections conducted in the Commonwealth of Pennsylvania, including without limitation the November 3, 2020 General Election, all candidates, political parties, and voters, including Intervening Candidate Dasha Pruett, have a vested interest in the poll watchers and observers being present and having meaningful access to observe and monitor the electoral process to ensure that it is properly administered in every election district and that it is free, fair, and transparent.
21. Rather than heeding these mandates and duties, the BOE arbitrarily and capriciously denied the duly appointed observers meaningful access to observe and monitor the electoral process by not allowing them to visibly see and review all envelopes containing official absentee and mail-in ballots either at the time or before they were opened and/or when such ballots were counted and recorded.
22. The observers were repeatedly denied access to back rooms where the absentee and mail-in ballots were canvassed and resolved. The BOE kept the observers in a small cordoned off area too far away to see, too far away from the areas where the inspection, opening, and counting of absentee and mail-in ballots were taking place.

23. Consequently, the BOE created a system whereby it was physically impossible for the political candidates' and political parties' observers to view the ballots and verify that illegally cast ballots were not opened and counted.
24. The BOE disobeyed the Order issued by Judge John Capuzzi that should not have been necessary in the first place.
25. Stenstrom reports that representatives of the BOE prevented observers from entering back rooms where absentee and mail-in ballots were being canvassed, resolved, opened, sorted and counted. The BOE allowed counting to continue all night long on November 3, 2020, without any access granted to observers that were present and requesting entrance to said back rooms.
26. Even after Judge Capuzzi issued his Order at or around 9:30 p.m. on November 4, 2020, there were repeated instances over a long period of time on November 5, 2020 where observers were still denied entrance, and none of the observers were allowed close enough to see anything meaningful.
27. Hoopes reports that they set up 2 chairs for them, but 20-25 feet from the ballots, too far for them to observe anything. She further reports that she and the other observers were kept inside a roped off area 20 feet from the sorting machine, and they were unable to observe from such a great distance.
28. Hoopes and other observers were kept in a roped off area with chairs, but they could not observe from that area the resolution process because they were 10 feet from the closest table, 20 feet from the scanning area and 25 feet from tables that were partitioned off behind plexiglass where votes were being processed.

29. Judge Capuzzi's Order states that observers are permitted to be present wherever ballots are resolved at all hours when the ballots are resolved. Yet the BOE, in violation of the first paragraph of Judge Capuzzi's Order, only allowed observers to enter the back room where mail-in and absentee ballots were being resolved for 5 minutes every two hours, and too far from the ballot resolution process to have a meaningful opportunity to investigate/view the resolution process.
30. The canvassing and resolution process of the absentee and mail-in ballots went on all through the night and the observers were granted very minimal access even after Judge Cappuzi's Order was issued.
31. A fair, honest and transparent vote count is a cornerstone of democratic elections. This requires that votes be counted, tabulated and consolidated in the presence of the representatives of parties and candidates and election observers, and that the entire process by which a winner is determined is fully and completely open to public scrutiny.
32. There were plenty of questionable things witnessed by the poll watchers, and the representatives of the BOE were hostile and refused to answer questions or to respond to protests when for example chain of custody concerns were raised.
33. Sadly, Stenstrom reported: "As a result of the election officials' acts, I was unable to fulfill my responsibilities or exercise my rights as an official observer. I was continuously harassed, threatened, denied access to the room and the ballots, and the election officials were openly hostile and refused to answer questions, repeatedly defied a court order to provide access, and obstructed my ability to observe the count

in a way that would enable me to identify irregularities, which is the primary purpose of the observer role.”

34. Stenstrom reports that he saw Jim Savage, the Delaware County voting machine warehouse supervisor plugging USB drives into vote tallying computers. The bag containing those drives was not sealed or secured, and the voting machine cartridges were not present with the drives. Mr. Savage had no paper tapes or ballots at that time.
35. Stenstrom reports: “I immediately objected and challenged the uploading of votes from the unsecured drives,” reporting what he saw to Deputy Sheriff Mike Donahue. Donahue retrieved Ms. Hagan, who told Stenstrom that he could only observe the process but could not make any comments or ask any questions while Mr. Savage was directly in front of them loading USB sticks, and the display monitors above the computers reflected that they were being updated.
36. Stenstrom responded that he was observing a person plug USB sticks into the computer without any apparent chain of custody and without any oversight. No one stopped the upload, and Mr. Savage was permitted to continue this process and he was then allowed to walk out without any interference or examination by anyone.
37. Stenstrom returned at 8:30 a.m. on November 5, 2020, with Ms. Hoopes. The sheriff again barred entry in defiance of the court order.
38. At or around 9:30 a.m. on November 5, 2020, Stenstrom contacted Judge Capuzzi’s chambers and explained to his secretary that the elections officials were not complying with his Order. She suggested that Stenstrom consult with an attorney, and that she could not discuss the matter further with him.

39. At or around 1:00 p.m, Stenstrom called Judge Capuzzi's chambers multiple times requesting that Judge Capuzzi call the Sheriff and Solicitor to enforce his Order. The judge's law clerk told Stenstrom to "seek counsel," and hung up on him.
40. Attorney McBlain did not return until approximately 5:30 p.m. on 11/4/20, to again try to get the observers into the back office and rear locked storage room. Paragraph 3 of Judge Capuzzi's Order permitted observers to be present to investigate/view the ballot room (storage room where ballots are kept) for at least 5 minutes every 2 hours. The BOE violated paragraph 3 of Judge Capuzzi's Order because observers were not allowed to enter the ballot room until 1:30 p.m. on Thursday, November 5, 2020, where Judge Capuzzi issued his Order at 9:30 p.m. the night before, on November 4, 2020.
41. Furthermore, Stenstrom was only allowed to enter the ballot room at 1:30 p.m. and 3:30 p.m., observing what appeared to be an increase in the amount of unopened mail-in ballots approaching 50,000 at 1:30 p.m., to approaching 70,000 at 3:30 p.m., with no explanation for the additional 20,000 ballots over a period of 2 hours.
42. The BOE stopped allowing observers into the ballot room after 7:30 p.m. Stenstrom left the Wharf Office at 10:00 p.m. when he saw that the BOE was no longer allowing observers to enter and inspect/view the ballot room where tens of thousands of unopened mail-in ballots were stored.
43. There is a direct connection between the disobeying of Judge Capuzzi's Order and the fraudulent, irregular and illegal shenanigans that transpired which were enabled to be carried out without the observers present to inspect/view the resolution of absentee and mail-in ballots.

44. A shocking number of mail-in ballots have inexplicably appeared in counties since the November 4 ballot reports. For instance, in Delaware County, the county's Wednesday, November 4 report indicated that Delaware County reported it has received about 113,000 mail-in ballots and counted approximately 93,000 voted ballots.
45. On the next day, November 5, the Secretary of the Commonwealth's 4:30 report reflected that Delaware County had received about 114,000 ballots. Several hours later, the Delaware County solicitor reported to an observer that the County had received about 126,000 mail-in ballots and counted about 122,000.
46. As of Sunday, November 8, 2020, the Department of State's website reflects that the County has counted about 127,000 mail-in ballots. Petitioner has received no explanation for where the additional 14,000 voted ballots came from, when they arrived, or why they are included in the current count.
47. In Delaware County, an observer in the county office where mail-in ballots were counted was told by the Delaware County Solicitor that ballots received on November 4, 2020, were not separated from ballots received on Election Day, and the County refused to answer any additional questions.
48. Failing to uphold and ensure the adherence to even basic transparency measures or safeguards against the casting of illegal or unreliable ballots creates an obvious opportunity for ineligible voters to cast ballots, results in fraud, and undermines the public's confidence in the integrity of elections — all of which violate the fundamental right to vote, the guarantee of equal protection, and the right to

participate in free, fair, and transparent elections as guaranteed by the United States Constitution.

49. If a State fails to follow even basic integrity and transparency measures — especially its own — it violates the right to free, fair, and transparent public elections because its elections are no longer meaningfully public and the State has functionally denied its voters a fair election.
50. The actions of the BOE and their failure to comply with Judge Capuzzi's Order has Candidate Dasha Pruett, of her right to a transparent and fair election to the public offices that she seeks to hold, as a member of the United States House of Representatives for the 5th Congressional District.
51. Because of the BOE's spoliation of evidence, it is not now possible to ascertain what ballots were cast legally from those that were cast illegally. The illegalities occurred because the BOE representatives kept observers from inspecting/viewing the resolution of mail-in and absentee ballots in direction violation of Judge Capuzzi's November 4, 2020 Order.
52. Candidate Dasha Pruett will be never know whether she lost her bid to public office in a fair election, or whether she is the victim of a rigged and stolen election.
53. Invalid or fraudulent votes "debase" and "dilute" the weight of each validly cast vote. *Anderson v. United States*, 417 U.S. 211, 227 (1974).
54. Prospective Intervening Petitioners respectfully request any relief that this Court deems appropriate, including but not limited to an independent forensic audit of (a) the original USB V-Cards that were inserted into computers used for tabulating the

votes, (b) the chain of custody documents signed by the election judges and (c) an independent forensic audit and count of the outer envelopes.

55. Further, Prospective Intervening Petitioners request an Order that the BOE provide them with the computer event logs which disclose when the USB V-Cards were inserted into computers used for tabulating the votes.

56. At least, after an independent forensic audit, the evidence can be evaluated to determine whether there was fraud in this election.

57. Prospective Intervening Petitioners suspect that the BOE did not safeguard and retain the original USB V-Cards that were inserted into computers that were used to tabulate the votes, and that they did not safeguard and retain the computer event logs that disclose when the USB V-cards were inserted into those computers.

58. Prospective Intervening Petitioners suspect that the BOE did not safeguard and retain the chain of custody documents signed by the election judges, or the envelopes that would enable an independent forensic audit to be carried out to determine whether the number of envelopes matches the number of ballots that were tabulated.

59. While a spoliation inference may not normally arise in an Election case, this 2020 general election is anything but ordinary, since an unprecedented large number of mail-in and absentee ballots were cast.

60. The illegalities and irregularities occurred because the BOE representatives prevented the observers from entering the rear where those mail-in and absentee ballots were being resolved.

61. If the BOE disposed of or failed to retain items that would enable an independent forensic audit to take place, even fraud may be inferred as a spoliation inference.

62. Prospective Intervening Petitioners respectfully request discovery to enable them to conduct an independent forensic audit. If spoliation by the BOE prevents such an audit, this Court may decide to impose a spoliation inference that includes fraud.
63. The rigged election occurred during the multiple full days when the BOE prevented any observers from entering the rear room where mail-in and absentee ballots were being resolved.
64. By the time that the BOE finally allowed observers in that rear room for only 5 minutes every 2 hours, it was too little, too late, with no meaningful opportunity to ensure that a fair and transparent election has taken place.

BASIS FOR PROPOSED INTERVENTION

65. 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).
66. 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.
67. Judge Capuzzi’s Order has the intended benefit of ensuring a fair and transparent election for Candidate Dasha Pruett, and of Gregory Stenstrom and Leah Hoopes to fulfill their function as duly appointed observers to insure same.

THERE EXISTS NO BASIS ON WHICH TO DENY THIS PETITION FOR INTERVENTION

68. The interests of the Prospective Intervening Petitioners are not adequately represented in this proceeding. Pa.R.C.P. 2329(2).

69. The Delaware County Republican Executive Committee ("DCREC") does not represent the interests of the political candidates or the observers seeking to intervene in this action.
70. The DCREC 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, and the observers have valuable testimony which proves through their personal observations that the BOE failed to comply with Judge Capuzzi's Order.
71. Without the Intervenor's involvement in this action the BOE will get off without any punishment for its willful failure to comply with Judge Capuzzi's Order.
72. That will send a message that will only encourage election fraud to continue occurring in future elections.
73. A criminal has no incentive to obey the law if he is never punished for violating it. Election fraud is a crime.
74. Not allowing duly appointed observers to investigate/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.

CONCLUSION

WHEREFORE, Prospective Intervening Petitioners Dasha Pruett, Gregory Stenstrom and Leah Hoopes respectfully request that this Honorable Court grant their Petition to Intervene in the above-captioned proceeding.

Date: December 22, 2020

Respectfully submitted,

Deborah Silver

Deborah Silver, Esq. (PA. # 45521)
54 Shadeland Avenue
Drexel Hill, PA. 19026

DELAWARE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE

V.

BOARD OF ELECTIONS

:
: ELECTION LAW
:
: NO.: CV-2020-007523
:
:
: EMERGENCY PETITION
: TO INTERVENE
:

[Proposed] ORDER

AND NOW, this ____ day of December, 2020, upon consideration of the Emergency
Petition to Intervene of Prospective Intervening Petitioners Dasha Pruett, Gregory Stenstrom and
Leah Hoopes, and any response thereto by the Board of Elections, it is hereby ORDERED AND
DECREED that said Petition to Intervene is **GRANTED**.

BY THE COURT: _____, J.

VERIFICATION

I verify that the facts in the foregoing Petition to Intervene are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Dated: December 16 2020

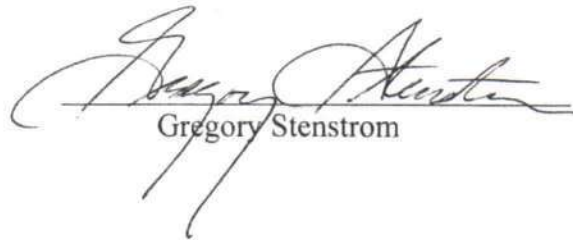
A handwritten signature in black ink, appearing to read 'Dasha Pruett', written over a horizontal line.

Dasha Pruett

VERIFICATION

I verify that the facts in the foregoing Petition to Intervene are true and correct to the best of my own personal knowledge, information, and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Dated: December 18, 2020



Gregory Stenstrom

VERIFICATION

I verify that the facts in the foregoing Petition to Intervene are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Dated: December 16, 2020


Leah Hoopes

DELAWARE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE

V.

BOARD OF ELECTIONS

: ELECTION LAW

: NO.: CV-2020-007523

: EMERGENCY PETITION FOR
: SANCTIONS FOR CONTEMPT
: AND FOR VIOLATING
: ELECTION CODE

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) Emergency Petition for Sanctions for Contempt and for Violating the Election Code, and (2) Emergency Petition to Intervene, to the parties stated below:

By hand delivery to the office below:

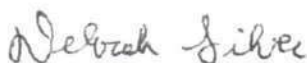
Delaware County Solicitor William F. Martin for the Board of Elections
Government Center, 2nd Floor
201 W. Front Street
Media, PA 19063

And

Electronically to:

Attorney John McBlain, for the Delaware County Republican Executive Committee
Swartz, Campbell, LLC
115 North Jackson Street
Media, PA. 19063

Respectfully submitted,



Deborah Silver, Esq.
Attorney for Prospective Intervening Petitioners

Dated: December 22, 2020

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

CIVIL DIVISION – LAW

Deborah Silver, Esq.
Attorney I.D. # 45521
54 Shadeland Avneue
Drexel Hill, PA. 19026
(610) 284-4247

Attorney for Prospective Intervening Petitioners
U.S. House of Representatives Candidate Dasha Pruett, and
Duly Appointed Observers Gregory Stenstrom and Leah Hoopes

DELAWARE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE

V.

BOARD OF ELECTIONS

ELECTION LAW

NO.: CV-2020-007523

EMERGENCY PETITION
TO INTERVENE

2020 DEC 22 PM 1:56

FILED

**MEMORANDUM OF LAW IN SUPPORT OF EMERGENCY PETITION TO
INTERVENE OF DASHA PRUETT,
GREGORY STENSTROM AND LEAH HOOPES**

Prospective Intervening Petitioners, Candidate Dasha Pruett, and duly appointed observers Gregory Stenstrom and Leah Hoopes, respectfully submit this Memorandum of Law in Support of their Emergency Petition to Intervene in the instant action, as follows.

History of the Case

Dasha Pruett ("Pruett") is a clearly intended beneficiary of the Order issued by Judge Capuzzi on November 4, 2020 because the observers ensure that she obtains a fair and transparent election in her run for public office.

Pruett is running for the United States House of Representatives for the 5th Congressional District.

Gregory Stenstrom ("Stenstrom") is a duly appointed observer appointed by Candidate Thomas Killion (former State Senator).

Petitioner Leah Hoopes ("Hoopes") is a duly appointed observer appointed by Pennsylvania House of Representatives Candidate Craig Williams.

Both Stenstrom and Hoopes are intended beneficiaries of the Order issued by Judge Capuzzi on November 4, 2020, because they are duly appointed observers which Judge Capuzzi ordered must be permitted to observe (a) the resolution area at all hours while ballots are being resolved, (b) the sorting machine at all times while the machine is in use, and (c) the ballot room.

Unless this Court allows Stenstrom and Hoopes to intervene and give testimony at the emergency 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.

On November 4, 2020, the Delaware County Republican Executive Committee ("DCREC"), through its attorney, John McBlain ("McBlain"), filed an emergency petition seeking an order granting access to canvassing of official absentee ballots and mail-in ballots. All references to this emergency petition are to the petition filed by McBlain on behalf of the DCREC on November 4, 2020.

In this petition, McBlain and the DCREC asked the Court for an Order directing the BOE to grant access and permit watchers and attorneys to be present in all areas of the BOE offices where pre-canvassing, sorting, opening, counting and recording of absentee and mail-in ballots is occurring or taking place of the November 3, 2020 General Election.

As stated in this petition, “Petitioner seeks the basic fairness and transparency to allow its watchers and attorneys to be present and observe in a meaningful way the pre-canvassing, sorting, opening, counting and recording of absentee and mail-in ballots cast in the November 3, 2020 General Election, which right is guaranteed by the Pennsylvania Election Code.” See paragraph 3 of this petition.

The absentee and mail-in ballots cast by voters were delivered to the offices of the BOE located at the Wharf Office Building in Chester, Delaware County. See paragraph 4 of this petition.

Beginning at 7:00 a.m. on November 3, 2020, the BOE began to “pre-canvass” (inspect for defects, compare voter name to signed name) the absentee and mail-in ballots in accordance with 25 P.S. § 3146.8 of the Election Code. At the close of the polls at 8:00 p.m. the BOE began to “canvass” (sort, open, count and record) absentee and mail-in ballots. See § 3146.8. Paragraph 5 of this petition.

The pre-canvass and canvass of the absentee and mail-in ballots occurs at the BOE’s Wharf Office located on one floor of the building and consists of various rooms. One wall bisects the office to create an open front area (the “front”) and a rear area that consists of various offices and work stations (the “rear”). See paragraph 6 of this petition.

Watchers appointed by Petitioner DCREC and various candidates appeared at the Wharf Office of the BOE after polls closed on November 3, 2020, to be present and observe the opening, counting and recording of the absentee and mail-in ballots, in conformity with 25 P.S. § 3146.8(b), and to observe the pre-canvass of any ballots, in conformity with 25 P.S. § 3146.8(g)(1.1). See paragraph 8 of this petition.

The BOE established a “pen” for watchers to “observe” the pre-canvass and canvass of the ballots at the entrance of the front, but refused to permit watchers or attorneys to leave this “pen” area to actually observe the pre-canvass and canvass of ballots, in violation of the Election Code which permitted observers to be present. See paragraph 9 of this petition.

The BOE acknowledges that there are various activities of the sequestered pre-canvass and canvass activities that are occurring in the rear office, which cannot be observed from the “pen” in the front. See paragraph 10 of this petition.

The watchers of the DCREC, and of candidates and their attorneys, 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. See paragraph 11 of this petition.

The solicitor to the BOE was present in the Wharf Office of the BOE during this time but refused to discuss the issue of access, transparency and fairness and, instead, mostly retreated to the rear, out of sight. See paragraph 11.

McBlain, the DCREC’s attorney, spoke with the Chairman of the BOE at the Wharf Office in the early morning hours of November 4, 2020, and after some discussion the Chairman agreed that an inspection or view of the entirety of the Wharf Office where the pre-canvass and canvass activities were occurring could occur at 9:30 a.m. on November 4, 2020. See paragraph 12 of this petition.

When various watchers and McBlain appeared at 9:30 a.m. at the Wharf Office of the BOE on November 4, 2020 for inspection/view of the pre-canvass and canvass activities the BOE’s employees continued to refuse entry to the rear. See paragraph 13 of this petition.

As stated by McBlain in his petition on behalf of the DCREC, the Election Code permits watchers and their attorneys to be present for all the pre-canvass and canvass activities. 25 P.S. §§ 2650, 3146.8. See paragraph 15 of this petition.

The ballots and envelopes for such ballots are public records and must be held open for inspection in accordance with the rules established by the Election Code. 25 P.S. §§ 3146.9, 2648 and 3150.17. See paragraph 16 of this petition.

The general returns from the various election precincts which have been returned unsealed shall be open to public inspection at the office of the county board as soon as they are received from the judges of election. 25 P.S. § 3152. See paragraph 17 of this petition.

The refusal of any member of a county board of elections to permit a watcher or their attorney to observe the canvassing of returns is guilty of a misdemeanor upon such conviction. 25 P.S. § 3506. See paragraph 18 of this petition.

Hence, Prospective Intervening Petitioners Pruett, Stenstrom and Hoopes respectfully request that Judge Capuzzi issue an Order of sanctions against the BOE for violating the Election Code, and for a Declaration that the BOE is guilty of a misdemeanor for not allowing observers in the rear of the Wharf Office where absentee and mail-in ballots were resolved for all of Election Day, November 3, 2020, and mostly all of November 4, 2020 as well.

It is during this extended time period that most of the absentee and mail-in ballots were resolved, and in the absence of statutorily permitted observers a fraud was perpetrated resulting in a rigged election that deprived Candidate Dasha Pruett of her right to a fair and transparent election.

The Pennsylvania Election Code and the cases and decisions thereunder require observers to be present during the pre-canvassing and canvassing of votes, in order for the election process to be transparent and fair.

The BOE's restricting the watchers and observers of the candidates and their attorneys to "observe" these processes from a "pen" in the front neither comports with the actual statutory requirements nor the spirit of the various Election Code sections above cited, in that the watchers, observers and attorneys for the candidates are denied any meaningful opportunity to observe the activities occurring in the front, and are completely prohibited from observing whatever the BOE is doing in the rear, with the pre-canvass and canvass activities.

The restriction of watchers and attorneys to a "pen" in the front precludes them 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. See paragraph 20 of this petition.

The BOA applied these Draconian restrictive rules not only to the pre-canvass and canvass process, but also to the computation of returns and the provisional ballots that were thereafter counted.

Judge Capuzzi issued an Order on November 4, 2020, at or around 9:30 p.m., permitting observers to be present in all areas where the resolution of ballots was taking place, at all hours where the ballots are being resolved.

The BOE violated this Order by restricting observers to only 5 minutes in the rear where absentee and mail-in ballots were being resolved, and only began to allow this extremely limited observation to take place starting at 11:00 a.m. on November 5, 2020, and way too far away from

where the resolution process was taking place to enable the watchers to see the envelopes or the ballots clearly and without obstruction.

The BOE violated the third paragraph of Judge Capuzzi's 11/4/2020 Order by not allowing observers to be present for at least 5 minutes every 2 hours in ballot storage rooms. The BOE only allowed Stenstrom to enter a rear locked ballot storage room at 1:30 p.m. and 3:30 p.m. on Thursday, November 5, 2020, where it appeared to him that he observed tens of thousands of unopened mail-in ballots. Stenstrom observed upwards of 50,000 at 1:30 p.m., which increased to upwards of 70,000 by 3:30 p.m., with no explanation why 20,000 votes were added in just 2 hours.

Stenstrom was only allowed entrance after he made repeated demands, after he contacted Judge Capuzzi's chambers multiple times by telephone, asking the judge to enforce his Order.

The BOE violated the second paragraph of Judge Capuzzi's Order by not allowing the observers to be close enough to the sorting machines to have a clear and unobstructed view of the sorting process, confining them to a "pen" 25 feet away.

The enforcement of election laws is necessary to preserve our most basic and fundamental rights. Lawful elections are at the heart of our constitutional democracy. The public, and, indeed, Dasha Pruett, herself, has a compelling interest in ensuring that the selection of a candidate is legitimate.

The actions of the BOE, and its failure to comply with Judge Capuzzi's Order, has deprived Candidate Dasha Pruett of her right to a fair and transparent election to the public office she sought to hold, as a member of the United States House of Representatives for the 5th Congressional District.

Because of the BOE's spoliation of evidence, it is not now possible to ascertain what ballots were cast legally from those that were cast illegally. The illegalities occurred because the BOE representatives kept observers from their duties in direction violation of Judge Capuzzi's November 4, 2020 Order.

Dasha Pruett will be never know whether she lost her bid to public office in a fair election, or whether she is the victim of a rigged and stolen election.

This Court is requested to issue an Order that the Board of Elections forthwith provide Pruett, Stenstrom and Hoopes with (1) the original USB V-cards that were inserted into computers that tabulated the votes, (2) the chain of custody documents signed by the election judges, and (3) the outer envelopes, in order that an independent forensic audit can be obtained by the Prospective Intervening Petitioners.

This Court is also requested to issue an Order requiring that the Board of Elections forthwith provide Pruett, Stenstrom and Hoopes with the computer event logs that disclose when the USB V-cards were inserted into computers used to tabulate the votes.

At least with this discovery, after the completion of an independent forensic audit, results may reveal whether there was fraud committed in this election.

Prospective Intervening Petitioners suspect that the BOE has failed to retain and safeguard these items and that an independent forensic audit is no longer possible. If this is the case, this Court is respectfully requested to consider issuing an Order as to a spoliation of evidence inference, and possibly even an inference that fraud has been committed in the rigging our election.

The Delaware County Republican Executive Committee ("DCREC") does not represent the interests of the political candidate or the observers seeking to intervene in this action.

The DCREC has not sought any sanctions for the BOE's disobedience of Judge Capuzzi's Order and for the BOE's violation of the Election Code provisions allowing observers. The effect on Dasha Pruett is clear, as she has been deprived of a fair and transparent election.

The duly appointed observers have valuable testimony which proves through their personal observations that the BOE failed to comply with Judge Capuzzi's Order, and violated the Election Code provisions permitting observers to be present during the pre-canvassing and canvassing process of mail-in and absentee ballots.

Without the Prospective Intervening Petitioners' involvement in this action the BOE will get off without any punishment for its willful failure to comply with Judge Capuzzi's Order and the Election Code provisions allowing observers.

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

Questions Presented

1. Does the Delaware County Republican Executive Committee ("DCREC") represent the interests of the political candidates or the duly appointed observers seeking to intervene in this action?

Answer: No.

2. Has the DCREC sought any sanctions for the BOE's disobedience of Judge Capuzzi's Order or for the BOE's violation of the Election Code provisions permitting duly appointed observers to be present when mail-in and absentee ballots are opened, handled and counted?

Answer: No.

3. Is the candidate, Dasha Pruett, and are the duly appointed observers Stenstrom and Hoopes, intended beneficiaries of Judge Capuzzi's Order allowing observers to be present at all times the mail-in and absentee ballots are resolved? When the sorting machines are operating? To inspect the ballot rooms for at least 5 minutes every 2 hours?

Answer: Yes.

4. Can the candidate, Dasha Pruett, prove that the BOE violated Judge Capuzzi's Order and the Election Code without testimony at an emergency hearing from the observers that were prevented from entering the rear room where mail-in and absentee ballots were resolved?

Answer: No.

Argument

Under 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).

If a proposed intervenor satisfies this requirement, and no grounds for refusing the petition exist under Pa. R.C.P. 2329, "[a]llowance of intervention is mandatory." *T.H. Props., L.P. v. Upper Salford Twp. Bd. of Supervisors*, 970 A.2d 495, 499 (Pa. Commw. Ct. 2009); see also *In re Pa. Crime Comm'n Subpoena*, 309 A.2d 401, 408 n.11 (1973) (if a petitioner satisfies Rule 2327, "the allowance of intervention is not discretionary, but is mandatory, unless one of the grounds for refusal of intervention enumerated in Rule 2329 is present").

Pennsylvania courts define a “legally enforceable interest” as a substantial, direct, and immediate interest in the outcome of the litigation. *Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205, 1215 (Pa. Commw. Ct. 2018) (en banc) (citations omitted). “A substantial interest in the outcome of the litigation is one that surpasses the common interest of all citizens in procuring obedience to the law.

A direct interest requires a causal connection between the asserted violation and the harm complained of. An interest is immediate when the causal connection is not remote or speculative.” *Id.*

The political candidate, Dasha Pruett, and the duly appointed observers Stenstrom and Hoopes (collectively, “Prospective Intervening Petitioners”), have the requisite substantial interest to intervene in this lawsuit, and no grounds exist for refusing this Emergency Petition to Intervene under Pa. R.C.P. 2329, rendering intervention mandatory.

A. The Proposed Intervenors Have Legally Enforceable Interests in a Fair and Transparent Election.

Without contempt penalties against the Board of Elections for violating Judge Capuzzi’s Order, a message will be sent that will encourage fraud in future elections.

The candidate for political office, and the observers, are directly affected by the BOE’s failure to comply with Judge Capuzzi’s Order as to observers.

The Prospective Intervening Petitioners’ interests are immediate because without the personal observations of Stenstrom and Hoopes it will not be possible for Dasha Pruett to prove that the BOE violated Judge Capuzzi’s Order and the Election Code. The candidate that “won” will soon take office, so there is a finite, short period of time in which Dasha Pruett can challenge the election results.

The interests of the political candidate and the observers are not speculative, but very real because unless this Court issues the requested sanctions for the BOE's disobedience of Judge Capuzzi's Order and the BOE's violation of the Election Code, Dasha Pruett will never know whether the candidate that "won" her election actually did so by receiving illegal votes in a rigged election.

Put simply, there is substantial reason to doubt the voting results. Our future depends on fair elections, and a rigged fraudulent one cannot be allowed to stand. A dark cloud hangs over the 2020 election.

There is a direct connection between the disobeying of Judge Capuzzi's Order and the Election Code on the one hand, and the fraudulent, irregular and illegal shenanigans that transpired which were enabled to be carried out without the observers being allowed to inspect/view the resolution of absentee and mail-in ballots.

This case presents precisely the type of circumstance where intervention is warranted. Importantly, the other Petitioner, the Delaware County Republican Executive Committee, does not adequately represent the interests of the candidate and the poll watchers because since the November 3, 2020 election this organization has not sought any sanctions against the Board of Elections for violating Judge Capuzzi's Order and for violating the Election Code.

Under Rule 2329 of the Pennsylvania Rules of Civil Procedure, a court may deny a petition to intervene—even when a party has demonstrated an enforceable interest in the matter—if any one of four factors is present, including whether the interests of the proposed intervenors are adequately represented by other parties in the case.

Here, the inadequacy of representation of these Proposed Intervenors' interests is evidenced by the failure of any existing party to raise issues concerning the Board of Elections

violating Judge Capuzzi's Order and the Election Code as to poll watchers, nor has any existing party requested this Court to impose sanctions for same.

In their Petition, the Proposed Intervenors focus specifically and uniquely on protecting the right to a fair and transparent election by asking this Court to allow discovery and an independent forensic audit to determine whether only legal votes were counted.

Because of the BOE's spoliation of evidence, it is not now possible to ascertain what ballots were cast legally from those that were cast illegally. The illegalities occurred because the BOE representatives kept observers from fulfilling their duties in direction violation of Judge Capuzzi's November 4, 2020 Order, and in violation of the Election Code.

Finally, this Court is the only forum where the Proposed Intervenors can be heard because any opportunity to challenge the BOE's violations of Judge Capuzzi's Order must be directed to the same venue where that Order was issued.

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

Prospective Intervening Petitioners seek a Declaration from this Court that the BOE is in contempt, and that the BOE's violation of the Election Code constitutes a misdemeanor, entitling this Court to impose penalties against the BOE in accordance with Section 1806 of the Election Code.

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

B. The political candidate and the observers have additional distinct legally enforceable interests that are not adequately represented by the other parties.

As already stated above, the original Petitioner has not taken any action to seek sanctions against the BOE for violating Judge Capuzzi's Order and for violating the Election Code. A rigged election cannot stand.

The Proposed Intervenors' interests are separate and distinct from the general interests of other parties and are not adequately represented by the Delaware County Republican Executive Committee.

C. There Is No Other Basis to Deny this Petition.

Finally, none of the other applicable factors warranting a denial of this petition under Pa.R.C.P. 2329 is present. Proposed Intervenors have not unduly delayed in making application for intervention nor will their proposed intervention unduly delay, embarrass or prejudice the adjudication of the rights of the parties. Pa.R.C.P. 2329(3).

The observers tried different courses of action to bring to the attention of different bodies, including the Attorney General, what they witnessed and how they were kept from performing their duties to ensure a fair and transparent election.

Conclusion

Prospective Intervening Petitioners also known as the Proposed Intervenors, Dasha Pruett, Gregory Stenstrom and Leah Hoopes, have demonstrated that they have legally enforceable interests that will be directly affected by determinations in this proceeding, thereby qualifying them to intervene pursuant to Pa. R.C.P. 2327(4).

Accordingly, in the absence of any grounds for denial, the political candidate Dasha Pruett, and the observers Gregory Stenstrom and Leah Hoopes, respectfully request that this Honorable Court grant their Emergency Petition to Intervene in this matter.

Date: December 22, 2020

Respectfully submitted,

Deborah Silver

Deborah Silver, Esq. (PA. # 45521)
54 Shadeland Avenue
Drexel Hill, PA. 19026

DELAWARE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE

V.

BOARD OF ELECTIONS

: ELECTION LAW

: NO.: CV-2020-007523

: EMERGENCY PETITION FOR
: SANCTIONS FOR CONTEMPT
: AND FOR VIOLATING
: ELECTION CODE
:

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) Memorandum of Law in Support of Emergency Petition for Sanctions for Contempt and for Violating the Election Code, and (2) Memorandum of Law in Support of Emergency Petition to Intervene, to the parties stated below:

By hand delivery to the office below:

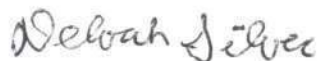
Delaware County Solicitor William F. Martin for the Board of Elections
Government Center, 2nd Floor
201 W. Front Street
Media, PA 19063

And

Electronically to:

Attorney John McBlain, for the Delaware County Republican Executive Committee
Swartz, Campbell, LLC
115 North Jackson Street
Media, PA. 19063

Respectfully submitted,



Deborah Silver, Esq.
Attorney for Prospective Intervening Petitioners

Dated: December 22, 2020

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)

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Petition Pursuant to Rule 206.1 | <input type="checkbox"/> Response to Petition | <input type="checkbox"/> Motion for Judgment on the Pleadings Pursuant to Rule 1034(a) |
| <input type="checkbox"/> Motion Pursuant to Rule 208.1 | <input type="checkbox"/> Response to Motion | <input type="checkbox"/> Summary Judgment Pursuant to Rule 1035.2 |
| <input type="checkbox"/> 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.

FOR OFFICE USE ONLY

Mailing date: _____

Processed by: _____

RR120

**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY,
PENNSYLVANIA
CIVIL DIVISION – LAW**

Deborah Silver, Esq.
Attorney I.D. # 45521
54 Shadeland Avenue
Drexel Hill, PA. 19026
(610) 284-4247

Attorney for Prospective Intervening Petitioners
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 <laconoC@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

RR141

- 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 (If consolidated Precincts, only use Ballot Count for this Precinct)	-
Subtract Ballot Count from Scanner # 2 (If consolidated Precincts, only use Ballot Count for this Precinct)	-
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
Duane Morris, LLP
30 S. 17th Street
Philadelphia, PA. 19103
JMParks@duanemorris.com

And

Attorney John McBlain, for the Delaware County Republican Executive Committee
Swartz, Campbell, LLC
115 North Jackson Street
Media, PA. 19063
jmcblain@swartzcampbell.com



Deborah Silver, Esq.
Attorney for Prospective Intervening Petitioners

Dated: January 8, 2020

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

Delaware

County

For Prothonotary Use Only:

Docket No:

TIME STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- ☐ Complaint ☐ Writ of Summons ☒ Petition
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:

Delaware County Republican Executive Committee

Lead Defendant's Name:

Delaware County Board of Elections

Are money damages requested? ☐ Yes ☒ No

Dollar Amount Requested: ☐ within arbitration limits
(check one) ☐ outside arbitration limits

Is this a *Class Action Suit*? ☐ Yes ☒ No

Is this an *MDJ Appeal*? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: John P. McBlain, Esquire

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- ☐ Intentional
☐ Malicious Prosecution
☐ Motor Vehicle
☐ Nuisance
☐ Premises Liability
☐ Product Liability (does not include mass tort)
☐ Slander/Libel/ Defamation
☐ Other:

CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff
☐ Debt Collection: Credit Card
☐ Debt Collection: Other

☐ Employment Dispute:
Discrimination
☐ Employment Dispute: Other

☐ Other:

CIVIL APPEALS

- Administrative Agencies
☐ Board of Assessment
☐ Board of Elections
☐ Dept. of Transportation
☐ Statutory Appeal: Other

- ☐ Zoning Board
☐ Other:

MASS TORT

- ☐ Asbestos
☐ Tobacco
☐ Toxic Tort - DES
☐ Toxic Tort - Implant
☐ Toxic Waste
☐ Other:

REAL PROPERTY

- ☐ Ejectment
☐ Eminent Domain/Condemnation
☐ Ground Rent
☐ Landlord/Tenant Dispute
☐ Mortgage Foreclosure: Residential
☐ Mortgage Foreclosure: Commercial
☐ Partition
☐ Quiet Title
☐ Other:

MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration
☐ Declaratory Judgment
☐ Mandamus
☐ Non-Domestic Relations
☐ Restraining Order
☐ Quo Warranto
☐ Replevin
☒ Other:
Election Law Matter

PROFESSIONAL LIABILITY

- ☐ Dental
☐ Legal
☐ Medical
☐ Other Professional:

NOTICE

Pennsylvania Rule of Civil Procedure 205.5. (Cover Sheet) provides, in part:

Rule 205.5. Cover Sheet

(a)(1) This rule shall apply to all actions governed by the rules of civil procedure except the following:

- (i) actions pursuant to the Protection from Abuse Act, Rules 1901 et seq.
- (ii) actions for support, Rules 1910.1 et seq.
- (iii) actions for custody, partial custody and visitation of minor children, Rules 1915.1 et seq.
- (iv) actions for divorce or annulment of marriage, Rules 1920.1 et seq.
- (v) actions in domestic relations generally, including paternity actions, Rules 1930.1 et seq.
- (vi) voluntary mediation in custody actions, Rules 1940.1 et seq.

(2) At the commencement of any action, the party initiating the action shall complete the cover sheet set forth in subdivision (e) and file it with the prothonotary.

(b) The prothonotary shall not accept a filing commencing an action without a completed cover sheet.

(c) The prothonotary shall assist a party appearing pro se in the completion of the form.

(d) A judicial district which has implemented an electronic filing system pursuant to Rule 205.4 and has promulgated those procedures pursuant to Rule 239.9 shall be exempt from the provisions of this rule.

(e) The Court Administrator of Pennsylvania, in conjunction with the Civil Procedural Rules Committee, shall design and publish the cover sheet. The latest version of the form shall be published on the website of the Administrative Office of Pennsylvania Courts at www.pacourts.us.

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:

CIVIL CASE NO.

DELAWARE COUNTY REPUBLICAN EXECUTIVE COM.

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 _____.

FOR OFFICE USE ONLY

Mailing date: _____

Processed by: _____

RR148

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY,
PENNSYLVANIA

DELAWARE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE
323 West Front Street
Media, PA 19063

vs.

DELAWARE COUNTY
BOARD OF ELECTIONS
201 West Front Street
Media, PA 19063

ELECTION LAW

NO.

ORDER

AND NOW, this ____ day of November, 2020, upon consideration of Petitioner's Emergency Petition For Relief Seeking Order Granting Access to Canvassing of Official Absentee Ballots and Mail-In Ballots, and any response thereto by Respondent, it is hereby ORDERED and DECREED that said Petition is **GRANTED**. Petitioner's duly appointed watchers and attorneys, and all other duly appointed and eligible watchers and attorneys, shall be permitted to meaningfully observe the pre-canvass, canvass, computation and provisional ballot process in all areas of Respondent's offices where such process occurs.

BY THE COURT:

**Attorney for Petitioner,
Delaware County Republican
Executive Committee**

**DELAWARE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE**
323 West Front Street
Media, PA 19063

vs.

**DELAWARE COUNTY
BOARD OF ELECTIONS**
201 West Front Street
Media, PA 19063

ELECTION LAW

NO.

Petitioner, Delaware County Republican Executive Committee, hereby petitions this Honorable Court to issue an Order directing Respondent, Delaware County Board of Elections, to grant access to and permit Petitioner's watchers and attorneys to be present in all areas of the Board of Elections offices where pre-canvassing, sorting, opening, counting and recording of absentee and mail-in ballots is occurring or taking place for the returns of the November 3, 2020 General Election, and in support thereof avers as follows:

1. Petitioner is the Delaware County Republican Executive Committee, with a

business address of 323 West Front Street, Media, PA 19063. Petitioner is a political party and political body under the Pennsylvania Election Code, 25 Pa.C.S. §2501, *et seq.* (the “Election Code”) and has standing to seek and enjoy the relief herein requested.

2. Respondent is the Delaware County Board of Elections (the “Board”), a county board of elections for the County of Delaware with those powers and duties as set forth in the Pennsylvania Election Code. The Board of Elections has appointed various employees to act for it pursuant to 25 Pa.C.S. §2643.

3. Petitioner seeks the basic fairness and transparency to allow its watchers and attorneys be present and observe in a meaningful way the pre-canvassing, sorting, opening, counting and recording of absentee and mail-in ballots cast in the November 3, 2020 General Election, which right is guaranteed by the Pennsylvania Election Code, as hereafter described.

ACTIONS OF THE RESPONDENT WHICH CAUSED THIS PETITION

4. The 2020 General Election was conducted on November 3, 2020. The absentee and mail-in ballots cast by voters and delivered to Respondent in-person, by U.S. mail and by placement in “Election Drop Boxes” were all delivered to Respondent’s offices located at the Wharf office building, 2501 Seaport Drive, City of Chester, Delaware County, Pennsylvania (the “Wharf Office”).

5. Beginning at 7:00 a.m. on November 3, 2020, the Board began to “pre-canvass” (inspect for defects; compare voter name to signed name) absentee and mail-in ballots in accordance with 25 P.S. §3146.8. At the close of polls at 8 p.m., the Board began to “canvass” (sort, open, counting and recording) absentee and mail-in ballots. Id.

6. The pre-canvass and canvass of the absentee and mail-in ballots occurs at the Board’s Wharf Office. The Board’s Wharf Office is located on one floor of the building and

consists of various rooms; however, one wall essentially bisects the office to create an open front area (the “Front”) and a rear area that appears to consist of various offices and work stations (the “Rear”).

7. Petitioner has requested that various individuals be appointed as watchers of the election process as provided by the Election Code. Respondent has appointed the various individuals as watchers for the November 3, 2020 General Election. Candidates in said election have also requested the Board to appoint watchers, which requests have been granted relative to this petition.

8. Watchers appointed by Petitioner and various candidates did appear at the Wharf Office after polls closed on November 3, 2020 to be present and observe the opening, counting and recording of the absentee and mail-in ballots, in conformity with 25 P.S. §3146.8(b), and observe the pre-canvass of any ballots, in conformity with 25 P.S. §3146.8(g)(1.1).

9. 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.

10. Based upon descriptions of duties and activities provided to Petitioner and its attorneys by employees of the Board, 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.

11. Petitioner’s watchers, candidate watchers and their attorneys all pleaded with employees of the Board to allow for the observation of 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 Board 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.

12. The undersigned counsel was able to speak to the Chairman of the Board at the Wharf Office in the early morning hours of November 4, 2020 and the Chairman was very reasonable and considerate. After some discussion, the Chairman agreed that an inspection or view of the entirety of the Wharf Office where the pre-canvass and canvass activities were occurring could occur at 9:30 a.m. on November 4, 2020. This compromise was acceptable to the undersigned counsel and those watchers present.

13. Various watchers and the undersigned counsel did appear and were present at 9:30 a.m. in the Wharf office on November 4, 2020 for the inspection / view of the pre-canvass and canvass activities. However, the Board's employees refused to proceed with the inspection / view. Finally, at approximately 11:15 a.m. employees of the Board did begin the inspection / view with the undersigned counsel and various watchers for both the Democrat and Republican party and candidates. During all this time, pre-canvass and canvassing activities continued to occur.

14. A short time after the inspection / view began, the solicitor for the Board appeared from the Rear and commanded that the inspection / view end and that all watchers and attorneys must return to the "pen" area. The watchers and attorneys were only able to view some of the areas of the Front; the Board's employees informed the undersigned counsel that the Board solicitor forbade duly appointed watchers and their attorneys from observing the pre-canvass and canvass activities occurring in the Rear.

15. The Election Code permits the watchers and their attorneys to be present for all the pre-canvass and canvass activities. 25 P.S. §§ 2650, 3146.8.

16. The ballots and envelopes for such ballots are public records and must be held open for inspection in accordance with the rules established by the Election Code. 25 P.S. §§3146.9,

2648, 3150.17.

17. The general returns from the various election precincts which have been returned unsealed shall be open to public inspection at the office of the county board as soon as they are received from the judges of election. 25 P.S. §3152.

18. The refusal of any member of a county board of elections to refuse to permit a watcher or their attorney to observe the canvassing of returns is guilty of a misdemeanor upon such conviction. 25 P.S. §3506.

19. The Pennsylvania Election Code and the cases and decisions thereunder favor the election process, including the pre-canvassing and canvassing of votes, to be transparent and fair. Restricting the Petitioner's watchers, candidate watchers and their attorneys to "observe" these processes 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.

20. The Petitioners, its watchers and their attorneys have no desire to interfere with, disrupt or otherwise alter the pre-canvass and canvass activities. However, the restriction of watchers and attorneys to the "pen" in the Front precludes the watchers 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 set aside as defective; and how the Board makes any determinations about what votes will or will not count for this most important election.

21. The Petitioners believe that the Board will apply these same Draconian rules and restrictions not only to the pre-canvass and canvass process, but also to the computation of returns

and provisional ballots that is about to occur within the coming days.

WHEREFORE, Petitioner, Delaware County Republican Executive Committee, hereby prays that this Honorable Court issue a Rule to the Delaware County Board of Elections to Show Cause why an Order should not be entered granting Petitioner relief and allowing duly appointed watchers and attorneys to meaningfully observe the various election process activities from the Front and Rear of the Wharf Office.

Respectfully submitted,

SWARTZ CAMPBELL LLC



John P. McBlain, Esquire
Counsel to Petitioner,
Delaware County Republican
Executive Committee

Date: November 4, 2020

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY,
PENNSYLVANIA

DELAWARE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE
323 West Front Street
Media, PA 19063

vs.

DELAWARE COUNTY
BOARD OF ELECTIONS
201 West Front Street
Media, PA 19063

ELECTION LAW


NO.

VERIFICATION

The undersigned, having read the attached Petition verifies that the facts set forth therein are based on the undersigned's knowledge. The undersigned verifies that the factual averments are true and correct to the best of signer's knowledge, information, and belief. The undersigned understands that false statements herein are made subject to the penalties of 18 PA.C.S. Section 4904 relating to unsworn falsification to authorities.

Respectfully submitted,

SWARTZ CAMPBELL LLC


John P. McBlain, Esquire
Attorney for Petitioner

Date: 11/4/2020

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY,
PENNSYLVANIA

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ELECTION LAW

NO.

CERTIFICATE OF SERVICE

I, John P. McBlain, Esquire, hereby certify that I have on the date below served a true and correct copy of the foregoing petition to the party stated below by hand delivering a copy to the office below.

Delaware County Board of Elections
Election Bureau
Delaware County Government Center
201 West Front Street
Media, PA 19063

Respectfully submitted,

SWARTZ CAMPBELL LLC



John P. McBlain, Esquire
Attorney for Petitioner

Date: 11/4/2020