

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION – CIVIL

<u>ELIZABETH ELKIN, et al.</u>	:	OCTOBER TERM, 2022
	:	
v.	:	NO. 2504
	:	
THE PHILADELPHIA CITY	:	
COMMISSIONERS, et al.	:	

ORDER

AND NOW, this 7<sup>th</sup> day of November 2022, upon consideration of *Plaintiffs' Emergency Petition for Special Injunction and Preliminary Injunction*, filed on Wednesday, November 2, 2022, to which Intervening Party, Martina White as State Representative has joined; the attached and filed Exhibits and supporting filings; the responsive filings thereto; the testimony, evidence and oral arguments that had been proffered and introduced; and of the orally stated stipulations that had been submitted on behalf of all parties during the Emergency Hearing that was held before this Court on Friday, November 4, 2022, it is hereby **ORDERED** and **DECREEED** that *Plaintiffs' Emergency Petition for Special Injunction and Preliminary Injunction*, to which Intervening Party Martina White as State Representative has joined, is **DENIED** because the **Emergency Petition for Special Injunction and Preliminary Injunction** has been filed too close in time to the upcoming general election on Tuesday, November 8, 2022 to practically grant the requested form of relief. Moreover, the grant of Petitioners' requested form of relief at this late date would cause a greater measure of harm to the electoral process conducted in the upcoming general election on November 8, 2022 in the City of Philadelphia than would denial of their Petition.

This **ORDER** and **DECREE** has been entered based upon the following determinations that may be supplemented:

1. The Defendants are duly elected or appointed public officials, who have been charged with supervision and administration of elections held within the County of Philadelphia and therefore have a collective sworn duty to exercise due diligence to detect, prevent and report double voting by persons who submit mail in ballots and vote in person in city-wide elections.

2. The Defendants are duly elected or appointed public officials, who have been charged with THE supervision and administration of elections held within the County of Philadelphia and therefore have a collective sworn duty to exercise due diligence to publicly report critical changes of their administration and operation of county-wide elections in a timely manner.

3. For the past two years since mail in ballots have been employed in the City of Philadelphia until Defendants' public announcement of November 2, 2022, the Defendants have repeatedly publicized their collective opinion that the subject Poll Book Reconciliation Process, that Defendants as an administrative elected body have created and employed, has been a valuable tool to detect, prevent and report double voting by persons who submit mail-in ballots and vote in person in city-wide elections.

4. On or about July 11, 2022, the Honorable Tom Wolf, Governor of the Commonwealth of Pennsylvania signed into law, salient amendments to the provisions of *Pennsylvania Election Code-Public Funding of Elections, Powers and Duties of County Boards, Establishing the Election Integrity Grant Program and Violation of Public Funding of Elections, per Act of July 11, 2022, P.L. 1577 No. Cl.24*, hereinafter referenced as "Act 88." (Full citations omitted)

5. As all Parties acknowledge, the enacted amended provisions of Act 88 and its resulting grants of state taxpayer sourced funds were implemented to promote accurate and efficient pre-canvassing, canvassing, and accurate tabulation of electoral votes by Pennsylvania county electoral administrative boards and to prevent undue influence of those boards from privately sourced funding.

6. As a result of application and implementation of Act 88, the City and County of Philadelphia has been granted approximately \$5,700,000.00.

7. As part of their collective electoral board duties, Defendants are charged with the exercise of due diligence in the administration and implementation of this sizeable grant to improve the electoral processes of the City of Philadelphia including adding resources to aid and improve pre-canvassing, canvassing and accurate and expeditious tabulation of electoral votes.

8. Defendants, by and through stipulation recited during the subject hearing, have reported that the allotment of the City of Philadelphia's grant of \$5,700,000.00 to Defendants' administrative control had occurred sometime in August 2022.

9. Despite receipt of this sizeable grant of financial assistance well in advance of the 2022 general election, Defendants did not allocate or utilize any Act 88 funds to improve or implement the Poll Book Reconciliation process.

10. The cumulative evidence reflects that well in advance of Defendants' public revelation of their decision on November 2, 2022, the Defendants had decided instead to remove the Poll Book Reconciliation process rather than include or improve or allocate the grant funds toward its improvement and implementation.

11. The cumulative evidence reflects that the Defendants had delayed public announcement of the Defendants' decision to remove the Poll Book Reconciliation process until November 2, 2022.

12. The cumulative evidence reflects that the delayed timing of Defendants' public announcement of the decision to dispense with the Poll Book Reconciliation process had been affected by publications of the Philadelphia Inquirer on or about October 17, 2022, which had revealed knowledge of Defendants' intention to reduce rather than improve the administrative Poll Book Rendition process of checks and balances that had been employed by Defendants

within the past two years of electoral processes.

13. The cumulative evidence reflects that the Defendants refused to reasonably respond to multiple inquiries of concerned voters, poll workers and public official(s), following publication of the referenced and exhibited articles.

14. In response, Plaintiffs initiated and filed the above-captioned Civil Action via Complaint on October 27, 2022.

15. Well in advance, counsel for Plaintiffs advised Defendants that an Emergency Petition for Special Injunctions and Preliminary Injunction would be filed if Defendants chose to reduce or remove the electoral checks and balances methods including the Poll Book Reconciliation process that had been previously employed in every election since the general election in 2020.

16. Defendants' reaction to this advanced notice information was to delay public announcement of their collective decision to eliminate Poll Book Reconciliation processes until November 2, 2022.

17. Plaintiffs filed the instant Emergency Petition for Special Injunctions and Preliminary Injunction with the Office of Judicial Records for the Civil Division of Court of Common Pleas for the First Judicial District of Pennsylvania on November 2, 2022 immediately after Defendants' same day publicized announcement of their decision to dispense with certain Poll Book Reconciliation processes.

18. Plaintiffs asserted that the delay in filing of the *Emergency Petition for Special Injunctions and Preliminary Injunction* until November 2, 2022 stemmed from reliance upon intervening verbal assurances of expected contrary results from Defendant(s).

19. On Wednesday, November 2, 2022 the Honorable Anne Marie B. Coyle Judge of the Court of Common Pleas for the First Judicial District of Pennsylvania Civil Division, hereafter referenced as "this Court," was assigned to hear *Plaintiffs' Emergency Petition for Special*

*Injunction and Preliminary Injunction*, and immediately scheduled an “in person” evidentiary hearing as an Emergency Motion per Order and Rule for Friday, November 4, 2022 at 11:00 a.m. in City Hall Courtroom 446 and directed service of the subject Petition by Petitioner upon all relevant parties.

20. A *Petition for Leave to Intervene of Martina White, member of the Pennsylvania House of Representatives for the 170<sup>th</sup> legislative District of Pennsylvania in Philadelphia County, and of Seth Grove, member of the House of Representatives of the 196<sup>th</sup> Legislative District of Pennsylvania in York County* was later filed on November 2, 2022.

21. Upon notification of assignment of the *Petition to Intervene* on November 3, 2022, this Court immediately entered an Order and Rule directing a consolidated hearing with the previously scheduled evidentiary hearing on the Emergency Motions Hearing List in Courtroom 446 City Hall for Friday, November 4, 2022 at 11:00 a.m. and directing service of the Petition by Petitioners upon all relevant parties.

22. Petitioners duly submitted proof of service of the respective Orders, Rules and Petitions upon Respondent Defendants.

23. Petitioners had also issued a Notice to Attend to Defendant Commissioner Lisa M. Deeley coupled with Notice to Produce Documents including certain identified communications.

24. Defendant’s attorneys appeared in Courtroom 446 City Hall for November 4, 2022 at 11:00 a.m., without presence of any of the Defendants despite receipt of Notice directing appearance of at least Defendant Commissioner Deeley.

25. At the beginning of the hearing on November 4, 2022, Defendants’ counsel handed this Court paper copies of several responsive motions, supportive memorandum, and exhibits that claimed to have electronically filed either late at night on Thursday, November 3, 2022 or into

the morning hours of Friday, November 4, 2022.<sup>1</sup>

26. Similarly, on Friday, November 4, 2022, additional attorneys appeared and handed this Court with the *Petition for Intervention of the Pennsylvania Democratic Party* and the *Philadelphia Democratic City Committee* and additional responsive filings of proposed Preliminary Objections to the Complaint and attached that had been reportedly filed sometime in the morning of November 4, 2022.<sup>2</sup>

27. Delay has resulted from the fact that not one single document that had been filed on behalf of Defendants and of the Pennsylvania Democratic Party and the Philadelphia Democratic City Committee as Intervening Parties, had been forwarded to the Court before the hearing had begun on November 4, 2022 despite notice of the hearing jurist per Order and Rule.

28. The Defendants' counseled *Response and New Matter to Plaintiffs' Petition for Special Injunction and Preliminary Injunctions* that was physically handed to this Court on November 4, 2022, summarily asserted that Plaintiff's did not demonstrate any elements necessary to obtain a preliminary injunction, and that Plaintiffs did not have standing to complain, and that Plaintiffs did not present meritorious claim, and that the requested form of relief would cause hardship upon Defendants.

29. After initial introductions and submissions of respective pleadings, counsel for all parties conferred and announced agreement to grant Intervenor Party status to *Petition for Leave to Intervene of Martina White*, member of the Pennsylvania House of Representatives for the 170<sup>th</sup> Legislative District of Pennsylvania in Philadelphia County and to grant Amicus Curiae status to

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<sup>1</sup> Notably, those documents lacked stamped evidence of docketing processing and assignment of Control Numbers by the Office of Judicial Records for the First Judicial District of Pennsylvania Civil Division and verification affidavits of Defendants.

<sup>2</sup> Notably, those documents lacked stamped evidence of docketing processing and assignment of Control Numbers by the Office of Judicial Records for the First Judicial District of Pennsylvania Civil Division.

the Honorable Seth Grove, member of the House of Representatives of the 196<sup>th</sup> legislative District of Pennsylvania in York County.

30. Simultaneously, counsel for all parties agreed to grant Intervening Party status to the Pennsylvania Democratic Party and the Philadelphia Democratic City Committee.

31. After painstaking review of all submitted evidence, this Court has concluded that Plaintiffs and Intervening Party, State Representative Martina White have sufficiently established standing in *Plaintiffs' Emergency Petition for Special Injunction and Preliminary Injunction to which Intervening Party, Martina White as State Representative*.

32. On November 4, 2022, this Court orally entered Orders granting the respective Petitions to Intervene, that had been timely filed on behalf of State Representatives Martina White and State Representative Seth Grove and those that had been untimely filed on behalf of Pennsylvania Democratic Party and the Philadelphia Democratic City Committee, following the announced verbal agreements on behalf of all parties.

33. At the outset of the emergency hearing on November 4, 2022, Defendants' counsel physically submitted to this Court the Motion to Quash Notice to Attend to Commissioner Deeley and for Protective Order seeking a prohibition grant from requiring the attendance of Lisa M. Deeley and the production of documents including the requested hearing productions of communications between the Commissioners of the Pennsylvania Department of Community and Economic Development, hereinafter referenced as "DCED."<sup>3</sup>

34. Defendants' counsel cited inconvenience or unavailability of Defendants due to preparation for the upcoming election.

35. Counsel for Plaintiffs vacillated in their response to the Motion to Quash and initially settled for the appearance and affidavit information elicited from Nick Custodio, in his capacity

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<sup>3</sup> The DCED is the administrative body governing the Act 88 applications and resulting grants.

as a Deputy Commissioner, in leu of Defendants' appearance and direct testimony, despite this Court's stated concern and prediction that this alternative method would prove insufficient.

36. As a result, this Court initially held the Motion to Quash under advisement with the expressed concern of omitted relevant information concerning the Defendants' debated decision-making process that should be addressed directly by Defendants.

37. Just before the end of the day and after approximately five hours of hearing and unnecessary debate, and after this Court's repeated requests for salient information from Defendants, and within less than five minutes following this Court's issued directive that the hearing was going to be bifurcated to early Monday morning with compulsory attendance of all Defendants, Defendant Commissioner Lisa M. Deeley appeared in person in the Courtroom visibly and unusually agitated.

38. Defendant Commissioner Seth Bluestein also simultaneously appeared in the Courtroom but did not testify.

39. Defendant Commissioner Lisa M. Deeley subsequently testified tersely in response to this Court's relevant questions.

40. Following this Court's relevant inquiry and Commissioner Deeley responses, no questions were posed to Commissioner Deeley by counsel for any party.

41. As a result of the appearance and testimony of Defendant Lisa M. Deeley in her capacity as Philadelphia City Commissioner, the Defendants' Motion to Quash is deemed Moot.

42. In response to this Court's inquiry, Defendant Lisa M. Deeley in her capacity as Philadelphia City Commissioner, testified summarily that the reason that the Defendants as a collective elected body had dispensed with the Poll Book Reconciliation process was that she had deemed it no longer needed.

43. In response to this Court's inquiry, Defendant Commissioner Lisa M. Deeley rationalized



that the Poll Book Rendition processes that the Defendants had created and developed over the past two years was now considered by Defendants to be labor intensive and cumbersome.

44. In response to this Court's inquiry, Defendant Commissioner Lisa M. Deeley, equivocally testified Defendants had eliminated the checks and balances afforded by the Poll Book Revision process partially because of the concern that its employment would result in delay in the counting process and that this might breach certain contractual conditions of Act 88 and thus cause return of granted funds.

45. In response to this Court's inquiry, Defendant Commissioner Lisa M. Deeley, however, admitted during her sworn testimony that she has never contacted the DCED administrators of the grant to discuss any of Defendants now professed concerns of Act 88 compliance.

46. Defendant Commissioner Lisa M. Deeley did not proffer any reason why Defendants as a collective body had not allocated any of the \$5,700,000.00 granted funds within at least the two plus months to improve the Poll Book Rendition process or to produce any alternate viable second tiered checks and balances system designed to detect double voting.

47. Defendant Commissioner Lisa M. Deeley rationalized that teaching methods of poll workers had improved in the last two years and that the highly criticized "front end" paper poll book system, that depends solely upon the accuracy and honesty of poll workers throughout the City of Philadelphia, should suffice.

48. The evidence reflected in the Plaintiffs' attached exhibits reflective of multiple public hearings conducted by Defendants however reflect that human frailty and error is ever present among poll workers.

49. The cumulative evidence further demonstrates that Defendants failed to consider the harm to public perception of our electoral process that could reasonably result from Defendants' late date public announcement of removal of their previously publicly touted and utilized Poll

Book Rendition process.

50. The cumulative evidence demonstrates that Defendants failed to consider the encouragement of fraudulent voting that could reasonably result from Defendants' late date public announcement of removal of the previously publicly touted and employed Poll Book Rendition process.

51. The cumulative evidence demonstrates that Defendants have unwisely discounted the inherent deterrence of fraudulent voting value that the Poll Book Rendition process has afforded the City of Philadelphia even in its unimproved and imperfect state.

52. The cumulative evidence demonstrates that Defendants have unwisely discounted the inherent fraud detection value that the Poll Book Rendition process has afforded the City of Philadelphia even in its unimproved and imperfect state.

53. The cumulative evidence demonstrates that Defendants failed to consider the effect of their decisions within litigation following this upcoming highly contested general election.

54. At different intervals throughout the subject November 4, 2022 hearing and again in response to Commissioner Deeley's testimony, this Court raised the natural concern regarding the potential harm to the City of Philadelphia's electoral process and equally important to the public perception of the City of Philadelphia's administration of the electoral process resulting from Defendants' publicized decisions so close to this highly contested general election.

55. In response to this Court's concerned inquiry, Defendant Commissioner Deeley responded by professing deferred reliance and responsibility upon post-election detection and upon prosecution of potential offenders by the District Attorney of Philadelphia Larry Krasner.

56. The evidence demonstrates that Defendants failed to consider that demand for the return of afforded Act 88 grant funds may very well result from their publicly announced decision on November 2, 2022 to remove rather than improve, efficiently implement, or alternatively replace

the Poll Book Renditions processes.

57. Defendants' comparisons to the voting results of the last three minimally voted elections to upcoming highly contested races in the general election on November 8, 2002 are inapposite.

58. As postured, Defendants' claim is that the Poll Book Rendition process is no longer needed because no double voting had been detected in the last two city-wide elections following successful detection of double voting via employment of the Poll Book Rendition process in the highly contested 2020 general election.

59. Defendants' reliance upon the last two prior city-wide election results as solely indicative of improved "front-end" poll book procedures and commensurate unblemished performance of "front-end" poll workers is significantly misplaced.

60. Defendants' reliance upon the last two prior city-wide election results is illusory because it failed to appreciate the stronger likelihood that the lack of detection of double voting stems from the administrative and operational imperfections within the tabulation and vote inspection systems that had been employed in those poorly attended and minor races.

61. Experiences over the last two years coupled with the receipt of the Act 88 grant should have naturally propelled Defendants forward in their capacity as public servants who were elected to administer our city-wide electoral processes.

62. Voters of the County of Philadelphia should have received timely information as to how Defendants have improved pre-canvassing, canvassing and fraudulent voting detection and checks and balances methods.

63. The submitted evidence demonstrates that the Defendants' decision to remove the Poll Book Rendition process had constituted an erroneous and reversible exercise of administrative agency discretion.

64. Similarly, the cumulative evidence reveals that Defendants compounded their erroneous

decision by publicizing their removal of the Poll Book rendition system so close in time to the expected highly contested general election scheduled for November 8, 2022.

65. In short, Petitioners have sufficiently established meritorious claims for injunctive forms of relief.

66. This Court however must consider the evidence that had been introduced by way of stipulation of the respective parties within the Jointly filed Exhibit #1 identified as Affidavit of Nick Custodio, as Deputy Commissioner, which contains a description of the Poll Book Reconciliation process.

67. As recited within the Affidavit of Nick Custodio, as Deputy Commissioner, the Poll Book Reconciliation process that has been removed, requires at the very least, advance hiring, training and deployment of at least seventy (70) full-time workers who are willing to work continually overnight following the upcoming election.

68. As a practical matter, this stipulated evidence coupled with cumulative data that had been filed and orally debated, unequivocally demonstrates that unusually burdensome operational efforts that would have to be employed by Defendants to reinstall the Poll Book Rendition process too close in time to the state-wide General Election beginning November 8, 2022.

69. Given the November 2, 2022 timing of the filing of the Emergency Petition and acknowledged complexities involved with reinstatement and implementation of the removed Poll Book Rendition system as described, the predictable result from this Court's grant of Petitioners' requested form of emergency relief would be detrimental to the efficient administration of the 2022 General Election.

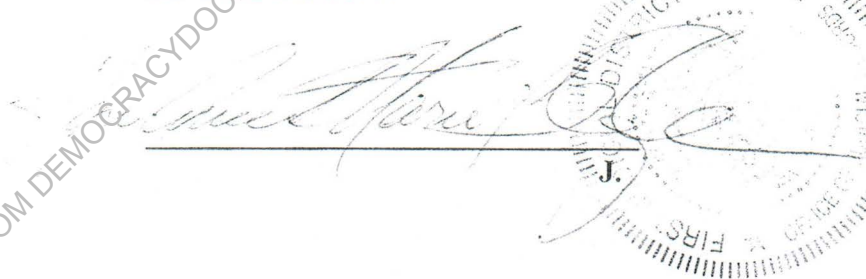
70. Grant of Petitioners' requested emergency relief in the form of reinstatement and implementation of the removed Poll Book Rendition system is not remotely feasible at this late date.

71. Grant of Petitioners' requested form of emergency relief would therefore cause harm and hardship to the administration of electoral processes that are being employed within the City and County of Philadelphia in the General Election to be held on November 8, 2022.

72. The anticipated harm that would result from the grant of the Petitioners' requested form of emergency reliefs outweighs the positive effects that grant of requested relief could produce.

73. As a result, *Plaintiffs' Emergency Petition for Special Injunction and Preliminary Injunction to which Intervening Party, Martina White as State Representative has joined*, must be denied.

**BY THE COURT:**

A handwritten signature in cursive script is written over a horizontal line. To the right of the signature is a circular court seal. The seal contains the text "JUDICIAL DISTRICT OF PHILADELPHIA" around the top edge and "J. J. FISHER" around the bottom edge. The seal is partially obscured by the signature and a diagonal watermark.

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